

# DIGEST OF MALT BEVERAGE LAWS

## INTRODUCTION

The following summary of malt beverage laws has been updated to March 1, 2017

This summary is intended to provide a general overview of laws and regulations applicable to the malt beverage industry in Pennsylvania. It is no substitute for legal counsel. Every effort has been made for accuracy and completeness but MBDA and its representatives cannot guarantee the accuracy, adequacy or completeness of any information and are not responsible for any errors or omissions or for the results obtained from use of such information.

## I. CLASSIFICATION OF LICENSES

### 1. MANUFACTURERS

The MANUFACTURER (BREWER) is licensed to engage in the manufacture, transportation and sale of malt or brewed beverages, in original containers approved as to capacity by the Pennsylvania Liquor Control Board (PLCB), in quantities of not less than a case or original containers containing 128 ounces or more, which may be sold separately.

A case is defined by statute as a package prepared by the Manufacturer for sale or distribution of twelve or more original containers totaling two hundred sixty four or more fluid ounces of malt or brewed beverages excepting those packages containing twenty-four or more original containers each holding seven fluid ounces or more. The PLCB is required by the Code to determine the nature, form and capacity of all packages and original containers of malt or brewed beverages and has, accordingly, eliminated all previous restrictions on container sizes other than that the capacity of the same may not be less than seven (7) fluid ounces.

The customary tolerances permitted by Federal Regulations shall apply to all the aforementioned containers.

Manufacturer's Annual License Fee - \$1,425. There is no longer a requirement that individuals, partnerships and associations applying for Manufacturer's licenses be citizens of the United States. No Manufacturer or other persons located outside of the Commonwealth may sell malt or brewed beverages in Pennsylvania, except through an Importing Distributor duly licensed by the PLCB, under the provisions of the Liquor Code, and then, only if distributing rights for the product involved in designated geographical areas to specific Importing Distributor is given in writing. For an exception to this general rule, see notes about Direct Malt and Brewed Beverage Shipper licenses.

### SPECIAL NOTE

**RESTRICTION ON MANUFACTURERS** – The 1987 Act requires that a successor Manufacturer honor the previous Manufacturer's franchise and territorial agreements as to a particular brand of malt or brewed beverage.

Manufacturers must register brands of malt beverages with the PLCB before selling them in the Commonwealth. Consent or approval of the Manufacturer to any territorial or franchise agreement granted to a Pennsylvania Importing Distributor

must be submitted with the application for registration.

**BREWERIES** – Holders of a brewery license may now sell malt or brewed beverages produced and owned by the brewery, in any container or package of any volume, to individuals for off-premises consumption. Breweries may also operate a restaurant or brewery pub on the licensed premises under such conditions and regulations as the Board may enforce. Holders of a brewery license which also hold a brewery pub license may sell its malt or brewed beverages for consumption on the licensed premises, as well as wine produced by a licensed limited winery, under such conditions and regulations as the Board may enforce. Breweries may also sell to hotel, restaurant, club and public service liquor licensees.

In 2016, legislation was passed authorizing a brewery (even if it does not possess a brewery pub license) to sell alcoholic cider, wine, liquor and malt or brewed beverages produced by other PLCB-licensed manufacturers for consumption on its licensed premises. The combined sales of wine, liquor, and malt or brewed beverages produced by another manufacturer may not exceed 50% of the on-premises sales of its own malt or brewed beverages for the preceding calendar year, or for the current year if the brewery had not previously operated for a full calendar year. Breweries may also produce and sell mead, which was re-categorized as a malt or brewed beverage in Act 166 of 2016.

A brewery can obtain special permits to participate in malt and brewed beverages and food expositions off its licensed premises under certain conditions. A brewery can also obtain a farmers market permit under certain conditions. To qualify for either of these permits, the brewery must be a manufacturer under section 431(a) of the Liquor Code. The permits may be used anywhere in Pennsylvania, regardless of whether the brewery has granted distribution rights to other licensees for a particular area.

**ALTERNATING BREWER** – An Alternating Brewer license allows the licensee to produce malt or brewed beverages at premises that are licensed by another entity under a Pennsylvania Manufacturer's license. To qualify for this license, the applicant must hold a Federal brewer's notice registration for premises within the Commonwealth and shall have all the rights and be subject to the same conditions and qualifications as the holder of a Pennsylvania malt or brewed beverage Manufacturer, except the holder of such a license: (a) is not required to maintain separate manufacturing premises; (b) shall not be entitled to the limited tax credit available to Pennsylvania brewers; and (c) shall distribute its product in the Commonwealth through the distribution system required for out-of-state Manufacturers. Board Regulation 3.91 requires these licensees to maintain the same records as Brewery licensees.

### 2. IMPORTING DISTRIBUTOR

The IMPORTING DISTRIBUTOR ("ID") is licensed to engage in the purchase of malt beverages from Manufacturers and other persons located outside of the Commonwealth, and from persons licensed in Pennsylvania as Manufacturers and Importing Distributors under this Act, for resale to all licen-

sees and directly to the home consumer in the original sealed containers as prepared for the market by the Manufacturer. To salvage one or more salable cases from one or more damaged cases, cartons or packages of malt or brewed beverages, an Importing Distributor may repackage consequent to inadvertent damage and sell a case, carton or package of identical units of malt or brewed beverages. Each out of state Manufacturer of malt or brewed beverages whose products are sold or delivered in this Commonwealth shall give distributing rights for such products in designated geographical areas of specific Importing Distributors, and such Importing Distributor shall not sell or deliver malt or brewed beverages manufactured by the out of state Manufacturer to any person issued a license under the provisions of this Act whose licensed premises are not located within the geographical area for which he has been given distributing rights by such Manufacturer. If a licensee accepts delivery of such malt or brewed beverage, in violation of this section, it is subject to a license suspension of thirty (30) days. The Importing Distributor holding such distributing rights for such product shall not sell or deliver the same to another Importing Distributor without first having entered into a written agreement with the said secondary Importing Distributor, setting forth the terms and conditions under which such products are to be resold within the territory granted to the primary Importing Distributor by the Manufacturer.

Act 166 of 2016 allows an importing distributor to sell malt or brewed beverages in any package configuration to a non-licensee for off-premises consumption. These sales do not have to be in the manufacturer's original configuration and can be sold in refillable growlers that can be resealed. The Act did not change the packaging rules for importing distributors' sales to distributors and other licensees.

When a Pennsylvania Manufacturer of malt or brewed beverages names or constitutes a Distributor or Importing Distributor as the primary or original supplier of its product, it shall also designate the specific geographical area for which the said Distributor or Importing Distributor is given distributing rights, and such Distributor or Importing Distributor shall not sell or deliver the products of such Manufacturer to any person issued a license under the provisions of this act whose licensed premises are not located within the geographical area for which distributing rights have been given to the Distributor or Importing Distributor by the said Manufacturer. The Importing Distributor holding such distributing rights for such product shall not sell or deliver the same to another Importing Distributor without first having entered into a written agreement with the said secondary Importing Distributor, setting forth the terms and conditions under which such products are to be resold within the territory granted to the primary Importing Distributor by the Manufacturer.

All agreements, franchises or statements of distribution rights given by any Manufacturer or by any Importing Distributor shall be in writing, and a correct copy thereof shall be permanently maintained on the licensed premises of each party to such agreement, franchise or statement. The agreement, franchise, or statement of distribution rights shall be open to inspection by authorized representatives of the Board at all times.

Recent changes to the Liquor Code allow for franchise territories that are in counties that are contiguous to each other, even if territories are not contiguous themselves.

#### SALES BY SECONDARY IMPORTING DISTRIBUTORS RESTRICTED

Each Importing Distributor, and secondary Importing Distributor deriving rights of distribution by agreement with any Manufacturer or Importing Distributor, must:

(a) Post and keep posted at all times on the licensed premises of such Importing Distributor, in a conspicuous place near to the license issued to such Importing Distributor by the Board, a schedule designating the territorial areas of, limits of, or rights vested in such Importing Distributor by a Manufacturer or Importing Distributor. Moreover, such Importing Distributor shall furnish to all Distributors and Importing Distributors in its territory to whom it intends to sell, a schedule in which the territorial areas of the selling Importing Distributor are set forth, and it shall obtain the signatures on a copy of such schedule of all Distributors or Importing Distributors to whom he intends to sell. These signed copies of schedules shall be kept on file in both the Distributor's and Importing Distributor's office.

(b) File with the Board a certified copy of each franchise or territorial agreement entered into with a Manufacturer or Importing Distributor.

(c) File with the Board a certified copy of each revised, altered or modified franchise or territorial agreement, revising, altering, or modifying previously existing agreements, within ten (10) days of execution thereof.

(d) Repost on the licensed premises within five (5) days of execution of such revised, altered or modified agreement, the schedule required herein, indicating any changes in territorial areas, limits or rights as a result of revision, alteration, or modification of a previously existing agreement; furnish to all Distributors or Importing Distributors in its territory to whom he intends to sell, a revised, altered or modified schedule indicating any changes in territorial area, limits or rights as a result of such revision, alteration or modification of a previously existing agreement; and obtain the signatures of such Distributors or Importing Distributors on copies thereof.

(e) Distributors, when making purchases from Importing Distributors or secondary Importing Distributors, shall have the right to rely upon territorial areas, limits or rights posted on the premises of such Importing and secondary Importing Distributors.

IMPORTING DISTRIBUTOR'S ANNUAL LICENSING FEE - \$1,350. There is no longer a requirement that applicants for Importing Distributor's licenses be citizens of the United States; however, applicants must be residents of the Commonwealth of Pennsylvania at the time of application. If Applicant is a corporation, all officers and directors, and 51% of the stockholders, must be residents of the Commonwealth of Pennsylvania at the time of application. The Board may refuse to license any applicant who, in the Board's opinion, is not reputable. Board Regulations 3.35-3.37 require that all applicants undergo a criminal record check

from the Pennsylvania State Police in connection with the initial application. The Board may refuse a license to any person or corporation if such person, officer or director of a corporation or any member of a partnership shall have been convicted or found guilty of a felony within a period of five (5) years prior to the application. No new Distributor or Importing Distributor license will be granted in any county where the combined number of such licenses exceeds one license for each 30,000 inhabitants in the county. However, 5 licenses may be issued in any county. The Act permits the exchange of D and ID licenses, and further provides for transfers in the event of sale or death. A license may be transferred from one place to another within the same county, providing the new premises have adequate toilet facilities for employees, a separate office for maintaining the required records, an entrance on a public thoroughfare, and an interior area within the same building of 2,500 square feet.

In addition, the Board may, in its discretion, refuse an application for transfer to a new location or an application for a new license if the premises proposed to be licensed is:

- (a) within 200 ft. of any other licensee; or
- (b) within 300 ft. of a church, hospital, charitable institution, school or public playground.

The Board shall refuse the application for a new license or transfer to a new location if it finds that the new license or transfer will be detrimental to the "welfare, health, peace, and morals" of residents within a 500 ft. radius of the premises proposed to be licensed.

### 3. DISTRIBUTOR

The DISTRIBUTOR ("D") Licensee is licensed to engage in the purchase of malt and brewed beverages only from within-state Manufacturers and from Importing Distributors for resale to all other licensees (except to other distributors) and to the consumer (home trade) in the original sealed containers as prepared for the market by the manufacturer thereof. To salvage one or more salable cases from one or more damaged cases, cartons or packages of malt or brewed beverages, a Distributor may repackage consequent to inadvertent damage and sell a case, carton or package of identical units of malt or brewed beverages. On-premises consumption is prohibited, except for tastings or samplings conducted under Board regulations.

Act 166 of 2016 allows a distributor to sell malt or brewed beverages in any package configuration to a non-licensee for off-premises consumption. These sales do not have to be in the manufacturer's original configuration and can be sold in refillable growlers that can be resealed. A "growler" as a refillable container for malt or brewed beverages that can be resealed. The Act did not change the packaging rules for distributors' sales to licensees. The Act also precludes a distributor from selling or delivering malt or brewed beverages to any licensee whose licensed premises is located within the designated geographical area granted to an importing distributor other than the importing distributor that sold the beer to the distributor. If the licensee purchasing the beer from the distributor holds multiple licenses or operates at more than one location, then the beer may not be consumed or sold at licensed premises located within the designated geographical area granted to an importing distributor other than the importing distributor that sold the beer to the distributor. A licensee

accepting delivery and/or transferring malt or brewed beverages in violation of this provision shall be subject to a suspension of at least thirty days.

**DISTRIBUTOR'S ANNUAL LICENSE FEE - \$600.** Residency and quota law requirements same as to the Importing Distributor. License may be transferred from one place to another within the same county only, providing the new premises has adequate toilet facilities for employees, a separate office for maintaining the required records, an entrance on a public thoroughfare, and an interior area within the same building of at least 1,000 square feet. D licensees may obtain a permit to sell malt and brewed beverages on Sundays to non-licensees and holders of special occasion permits between the hours of 9:00a.m - 9:00p.m. upon paying an annual fee of \$100.

The restrictions imposed upon ID licensees as to proximity to other licensees and restrictive institutions, and to neighborhood welfare apply to the transfer of D licenses.

### 4. RETAIL LICENSEES

(a) RESTAURANTS AND EATING PLACES ("R" and "E" Licensees) are licensed to sell malt and brewed beverages for consumption on the premises, and also to the off-premises consumer, in quantities not in excess of 192 fluid ounces in a single sale to one person. These sales may be made in either open or closed containers unless a municipal ordinance prohibits open containers in public places. R licensees may also sell wine and liquor to consumers for on premises consumption. Restaurant and hotel licensees may allow patrons who have purchased a bottle of wine in conjunction with a meal to remove the unconsumed portion of the bottle from the licensed premises. The bottle must be resealed before leaving the premises. Act 141 of 2000 made significant changes to the quota restrictions and transferability of these licenses which are now issued on the basis of one such license for each 3,000 residents in a county. Inter-municipal transfer of these licenses within a county is permitted under certain terms and conditions set forth in the Liquor Code at Sec. 461 and at the discretion of the receiving municipality when the municipal quota is met or exceeded. Once a license is transferred inter-municipally, it must remain in the receiving municipality for at least five years. The PLCB may issue "R" and "E" licenses in excess of the quota restrictions for the purpose of economic development in a municipality under certain circumstances set forth at Sec. 461 of the Liquor Code. In addition, there is a limitation as to the number of these "Economic Development" licenses which may be issued each year; a surcharge of \$25,000 \$50,000 is imposed to obtain these licenses depending on county; they are non-transferable with regard to ownership or location; and the applicants must prove sales of 50% or more of food and non-alcoholic beverages. Consult Secs. 102, 461 and 468 for Liquor Code provisions governing Mixed-use Town Center Development Project Licenses.

Holders of a current and valid R, E, H, GP (brew pub) or other license that is treated like a restaurant license (but NOT C or CC licenses) can obtain an off-premises catering permit authorizing sale by the glass, open bottle or other container at a catered event away from the licensed premises. No sales for take-out are permitted at these events. The fee for the initial permit is \$500 and subsequent permits in

the same calendar year (up to 52 are permitted) are free of charge. Licensees who want to obtain one of these permits must notify the Board and pay the permit fee by March 1 of each calendar year. Late OPCPs by a licensee in good standing may be approved in the PLCB's discretion, but a licensee must still apply at least 60 days prior to its first catered function. The Liquor Code or the Bureau of Licensing should be consulted for the requirements and restrictions on this permit.

Recent legislative changes allow an E license to convert its license to a restaurant liquor license by paying a one time fee of \$30,000. These conversions can only occur in municipalities that are "wet" for liquor and may not occur in Philadelphia. Recent legislative changes also allow for license auctions of expired licenses which will be addressed later in this digest.

(b) HOTELS ("H" Licensees) are licensed to sell malt beverages for consumption on the premises, and also to the off-premises consumer in the same manner as restaurants, and may purchase malt beverages only from within-state Manufacturers, Distributors, or Importing Distributors. This license is not subject to quota laws, provided it meets certain requirements in the Code, including as to number of rooms, etc. Sec. 461(c) of the Liquor Code sets forth certain classes of hotel licensees no longer required to maintain bedrooms for public accommodation.

Sunday Sales/Super Bowl Sunday—Most retail licensees with a Sunday Sales Permit can dispense alcohol between 9 a.m. Sunday (5 a.m. for airport licenses and 11 a.m. for E licensees unless a meal is offered, then 9 a.m.) and 2 a.m. Monday. Restaurants, hotels, airport restaurants, municipal golf course restaurant liquor licensees and privately owned public golf course restaurant licensees who do not hold a Sunday Sales Permit can serve alcohol between 1 p.m. on Sunday and 2 a.m. on Monday on Super Bowl Sunday. Retail dispenser licensees may not sell alcohol on Super Bowl Sunday without a Sunday Sales Permit.

St. Patrick's Day—When St. Patrick's Day falls on Sunday all hotel and restaurant licensees may be open for alcohol sales from 7 a.m. Sunday until 2 a.m. the following day, including licensees that do not hold a Sunday Sales Permit. This change **does not** apply to Retail Dispenser licensees.

New Year's Eve—When December 31<sup>st</sup> falls on a Sunday hotel and restaurant licensees without a Sunday Sales Permit may sell alcohol after 1 p.m. and until 2 a.m. the following day.

Groundhog Day—Hotel and restaurant licensees (not E Licensees) may sell liquor and malt or brewed beverages on Groundhog Day from 7am to 2am the following day, even if it falls on a Sunday, and regardless of whether the licensee has a Sunday Sales Permit.

(c) CLUBS AND CATERING CLUBS ("C" and "CC" Licensees) are not for profit businesses licensed to sell malt beverages for consumption on the premises to its members only (and in some instances their guests), and may purchase only from within-state Manufacturers, Distributors or Importing Distributors. The annual license fee is \$150. Club catering privileges and small games of chance may be obtained under special conditions. Club licensees are permitted to sell alco-

hol beverages until 3:00am (as opposed to 2:00am for most other retail licensees). The Liquor Code and regulations should be consulted for a more detailed discussion as to qualifications and rules in regards to C and CC licensees.

(d) SPECIAL LICENSES - The PLCB may issue retail liquor licenses outside of the quota for casinos, ski resorts, public venues, continuing care retirement communities and performing arts facilities. This includes sites such as stadiums, arenas or similar structures publicly owned, and performing arts facilities such as halls and theaters where live musical concert, dance or play productions are performed. Some of these licenses are not transferable and restrict in both time and place sales of alcoholic beverages. The Liquor Code should be consulted for a more detailed discussion of the requirements which must be met to obtain licenses for such locations as well as other special types of retail licenses.

(e) SPECIAL OCCASION PERMITS - These permits are available to hospitals, churches, synagogues, certain volunteer companies and rescue squads, certain sportsmen clubs, fraternal benefit societies and other associations. Consult Sec. 102 of the Liquor Code for the most inclusive and recent list. Section 408.4 of the Code explains how these permits may be used.

(f) SMALL GAMES OF CHANCE - Effective January 27, 2014, certain licensees are eligible to obtain a "tavern gaming license" and sell certain small games of chance. A tavern gaming license is a new kind of license that may be issued by the PLCB to a "for profit" hotel, restaurant, privately-owned public golf course, brew pub, or brewery licensee. Grocery stores, restaurants where the sale of liquid fuels are conducted, hotels or restaurants located within a casino, licensees on the grounds of a public venue facility where a major league sports team or racing facility conducts games or races and other types of licensees not specifically identified above are not eligible for these special licenses.

(g) WINE EXPANDED PERMITS— Act 39 of 2016 created a wine expanded permit for restaurant and hotel liquor licenses. This permit allows its holder to sell up to 3,000ml (3 liters) of wine to go in a single transaction (equivalent of 4 bottles of wine). Act 166 clarifies language from Act 39 regarding wine expanded permits. The Act now specifies that the holders of such permits must sell wine-to-go through a register at "which malt or brewed beverages and restaurant foods sales are made on the licensed premises." Also, permit holders need to have a RAMP-trained cashier at the register when patrons are on the licensed premises. The Act also clarifies that the annual renewal fee for a wine expanded permit is equal to 2% of the total cost of wine purchased from the PLCB for off-premises consumption. For more information on these permits, you should consult Section 415 of the Liquor Code.

## 5. OTHER LICENSEES

(a) DIRECT MALT OR BREWED BEVERAGE SHIPPER. A direct malt or brewed beverage shipper (DBS) license allows out-of-state shipment of malt and brewed beverages to Pennsylvania residents. Act 166 of 2016 limits who may obtain this new license to any person licensed by another state or another country as a wholesaler or retailer of malt or brewed beverages. The license permits its holder to

ship a maximum of 192 fluid ounces per month of any malt or brewed beverage upon the order of any Pennsylvania resident 21 years old or older for such resident's personal use (not for resale). No more than 96 fluid ounces of a specific brand of malt or brewed beverages may be shipped to any one Pennsylvania resident within one calendar year. To obtain a DBS license, the applicant must file an application, pay a \$250 fee, provide a copy of the applicant's current alcohol beverage license, provide documentation that the applicant has obtained a sales tax number from the Department of Revenue, and provide other information as required by the PLCB. All malt or brewed beverages ordered from a DBS must be transported by a licensed transporter-for-hire. Malt or brewed beverages sold by a DBS license holder will not be subject to the three-tier system, territorial rights, and brand registration requirements found in sections 431 and 445 of the Liquor Code.

(b) **DISTILLERIES AND LIMITED DISTILLERIES.** Act 39 of 2016 authorized sales of wine and malt or brewed beverages by distilleries and limited distilleries provided such products are produced by licensed limited wineries and breweries. Act 166 of 2016 expanded what products distilleries and limited distilleries can sell for on-premises consumption to include alcoholic cider produced by a PLCB-licensed limited winery and liquor produced by another PLCB-licensed distillery or a limited distillery. Said products must be consumed on the distilleries' licensed premises. The combined sales of wine, liquor, and malt or brewed beverages produced by other manufacturers may not exceed 50% of the on-premises sales of the distillery's own sales of liquor for the preceding calendar year, or for the current year if the distillery was not operating for a full calendar year. Distilleries are prohibited from selling products or substantially similar products listed for sale by the PLCB at a lower price than that charged by the PLCB. Act 39 increased the number of additional PLCB approved locations from 2 to 5.

(c) **LIMITED WINERIES.** Act 166 of 2016 allows limited wineries to produce and sell mead. The Act adds distributors and importing distributors to the list of entities to which a limited winery can sell certain products classified as malt or brewed beverages. Sales to distributors and importing distributors are limited to mead and alcoholic cider produced by the limited winery. Limited wineries may also sell wine, liquor, malt or brewed beverages and alcoholic cider produced by another limited winery, licensed breweries, limited distilleries or distilleries for on-premises consumption only. Said products are to be consumed on the limited winery's licensed premises. The combined sales of wine, liquor, and malt or brewed beverages produced by other manufacturers may not exceed 50% of the on-premises sales of the limited winery's own wine and alcoholic cider for the preceding calendar year, or for the current year if the limited winery was not operating for a full calendar year. Act 39 permits a limited winery to hold and operate an R license at one of its PLCB approved locations, provided the location does not serve as an additional PLCB approved location for any other manufacturer, and provided that it is not using a retail license at its main facility. A limited winery must obtain a DWS license to ship its wine to a PA resident's home.

(d) **DIRECT WINE SHIPPER.** Act 39 eliminated the direct shipper license and replaces it with a direct wine shipper license (DWS license). DWS license can be obtained by any person licensed by the PLCB, another state, or another coun-

try as a wine producer. The license permits shipment of a maximum of 36 cases of wine, up to nine liters per case, in any calendar year, to a PA resident for personal use. All wine ordered from a DWS must be transported by a licensed transporter-for-hire. Limited wineries must also obtain this license to directly ship wine to a PA resident's home.

## **SPECIAL NOTES**

(a) **INTERLOCKING BUSINESSES PROHIBITED.** No licensee under the Act shall, directly or indirectly, have any financial interest in any other class of license. Distributors may hold only one license, and are forbidden to sell other than from their licensed premises. No Distributor or Importing Distributor, its servants, agents or employees, may engage in any other business without the approval of the Board. By way of example, a Manufacturer may not engage the services, even part time, of any distributor's employees, or vice versa; nor may a distributor engage the services of any employee of a retail licensee, or vice versa. Interlocking of officers and business ownership of premises used by other classes of licensees, or leaseholds between the classes, extensions of grants and loans, guarantees of payment, mortgages, notes, and other obligations are prohibited. The purpose of this section is to require a separation of the financial and business interests between the various classes of business regulated by the Act, and no person or corporation shall by any device whatsoever, directly or indirectly, evade the provisions of the Act. Any person having a pecuniary interest in the conduct of business on a licensed premises, whether that interest is direct or indirect, legal or equitable, individual, corporate, or mutual, shall file its name and address with the Board on forms provided by the Board. In the case of corporate ownership, the secretary of the corporation shall file with the Board the names and addresses of all persons having such a corporate pecuniary interest.

An exception to the general prohibition against interlocking business interests among classes of licensees is that a holder of a Manufacturer's license (such as a distillery, winery or brewery) may also hold and operate under a hotel liquor license, restaurant liquor license or malt and brewed beverages retail license, on the Manufacturer's licensed premises under certain conditions. The Manufacturer must satisfy all requirements for each license. Another exception allows any officer, director, or stockholder of any hotel, restaurant, or club license to own land or buildings which are leased to a holder of an eating place retail dispenser license, a distillery license, or a limited distillery license.

A more specific exception permits a member of the governing body of certain public authorities to have an interest in a Distributor or Importing Distributor license, despite the fact the public authority holds a retail-class license or is landlord to a retail-class licensee.

Recent changes to the Code allow for additional exceptions including a person who holds a ten (10%) percent or less interest in a publicly or privately-held entity owning a restaurant or eating-place retail dispenser license is not deemed to have a financial interest and is not subject to the interlocking business prohibitions if the person is not an officer or employee of, nor has an interest in, nor exercises any control over any other licensed entity that engages in any sales to or from the restaurant or eating place retail dispenser licensee.

Additionally, a manufacturer or licensee and its officers, directors, shareholders, employees, etc. may contribute or accept money or other things of value solely for the administration of RAMP training for alcohol service personnel.

(b) CERTAIN LAW ENFORCEMENT OFFICERS PRECLUDED - Certain public officials with responsibility to enforce penal laws and with arrest powers may not have an interest in a brewer, ID, D, retail dispenser, hotel or restaurant license. This prohibition does not apply if the license is located outside the jurisdiction of the person's office.

(c) LIQUID FUELS. Act 39 of 2016 deleted language from the Liquor Code regarding sales of liquid fuels and oil in proximity to licensed premises. Now, the PLCB cannot license the specific area where liquid fuels or oil are sold. However, interior connections between licensed premises and locations that sell liquid fuels and oil are permissible with PLCB approval.

(d) LICENSES ARE PROPERTY - Licenses are regarded as property between the licensees and third parties other than the PLCB (with whom they are regarded as a privilege) and can be subject to liens and sheriff's sales.

(e) STORAGE FACILITIES - Manufacturers are permitted to rent storage space for malt and brewed beverages either at the licensed premises of an Importing Distributor or from an independent warehouse licensed and regulated by the PLCB. A Manufacturer is permitted two such storage facilities in the state. The Manufacturer retains ownership rights to the product while in these storage facilities. Out of state Manufacturers may sell product from the storage facilities only to Importing Distributors who hold distribution rights. A payment by a Manufacturer to a licensee for use of such storage facilities is not a violation of the prohibition against interlocking business interests among licensees.

(f) STORAGE FOR IMPORTING DISTRIBUTORS - Upon approval by the Board, Importing Distributors are permitted to maintain four additional storage areas in addition to a cold storage facility. The storage area must be in the licensee's franchise territory, and no retail sales may be made from this facility. The Liquor Code should be checked for other requirements and restrictions.

(g) LICENSEE RECORD KEEPING - A licensee must keep its business records for 2 years, and must keep them on the licensed premises for a period of 6 months. After that, they may be removed if they are returned to the licensed premises within 24 hours of a request by the Board or BLCE. Records for the most recent 6-month period may be removed from the licensed premises for "a lawful business purpose" but must be returned when that business is completed.

(h) VEHICLE LETTERING - Vehicles used to transport alcoholic beverages must identify the licensee's name, address and license number in letters that are at least 2 inches in height (reduced from the previous requirement of 4 inches).

(i) RECORDS OF SALES TO NON-LICENSEES - D's and ID's are not required to collect identifying information from non-licensees who purchase malt or brewed beverages. Collection of such information is urged where prudent to establish a defense against a charge of sales to minor, using the procedure under Liquor Code section 495.

(j) RE-PACKAGING BY MANUFACTURERS - Out-of-state manufacturers may re-package product at either or both of their in-state storage facilities. Such re-packaged product must be returned to the out-of-state manufacturer before being sold through the 3-tier system in Pennsylvania. In-state manufacturers may do the same and their product must likewise be returned to their manufacturing facility before being sold as provided under the Liquor Code.

(k) ADDITIONAL RESTRICTIONS ON LICENSEES - With regard to the issuance, transfer and renewal of Distributor, Importing Distributor, Manufacturer, Eating Place Retail Dispenser, Restaurant, Hotel and Club Licenses the Board may enter into agreements which may impose additional restrictions upon these licensees. These agreements are referred to as Conditional Licensing Agreements (CLAs). Such CLAs will be binding upon subsequent holders of the license until it is transferred to a new location or the Board removes the restrictions. Failure to adhere to these restrictions can form the basis for a citation or for nonrenewal of the license.

(l) INTERIOR CONNECTIONS—A licensee may have an interior connection with another business with approval from the Board. So long as the licensee's hours of operation do not exceed the hours for an unlicensed premises for which the Board has approved an interior connection, the Board cannot require an exterior entrance to the licensed premises as a condition for approving a license or approving a renewal.

(m) LICENSE SAFEKEEPING - Distributor, Importing Distributor, Restaurant, Eating Place Retail Dispenser and Hotel Licensees not in operation for 15 consecutive days must surrender their licenses to the Board for safekeeping, where they can remain for no more than two (2) consecutive years. Any license remaining in safekeeping for more than 2 consecutive years shall be immediately revoked unless a transfer application or request for reissue of the license has been filed prior to the expiration of the 2 year period. A limited extension of time is allowed for the license to remain in safekeeping under certain circumstances, including payment of substantial fees, as set forth in the Liquor Code at Sec. 474. There is no safekeeping fee if a licensee can show that it is unable to use the license through no fault of its own because of events such as fire, flood or inability to obtain an occupancy permit.

(n) PROVIDING EQUIPMENT TO OTHER LICENSEES - Under Section 493(17) of the Liquor Code licensees may sell glasses at not less than cost, and provide metal keg connectors and tap knobs to other licensees and to holders of special occasion permits. This activity is an exception to the general prohibition against providing equipment to other licensees.

(o) PREEMPTION—Local municipalities which seek to impose certain taxes upon beer distributors are referred to the case of *Commonwealth v. Wilsbach*, 519 A.2d 397 (1986). Under the facts of that case the Pennsylvania Supreme Court held that the extensive regulation of and control over the alcoholic beverage industry indicated that the legislature intended to preempt both regulation and taxation of beer distributors and held the local mercantile tax invalid as

applied to beer distributors.

(p) **DRUG ACTIVITY**—Licensees are specifically prohibited from possessing, furnishing, selling, offering to sell, purchasing, receiving, aiding, or abetting in the sale or purchase of any controlled substance or drug paraphernalia on the licensed premises, unless authorized by law. Licensees are strictly liable for such violations. Servants, agents, and employees of licensees are also prohibited from such activity on the licensed premises, and the licensee can be cited for such a violation if the licensee knew or should have known of the activity and failed to take substantial affirmative steps to prevent the activity on the premises.

(q) **MEAD**—Mead is defined as an alcoholic beverage produced by fermenting a solution of at least 51% honey, water, and other agricultural products, containing no more than 8.5% alcohol by volume and marketed as malt or brewed beverages rather than wine. It can be sold in bottles, cases, kegs, cans, or other suitable containers, and it is considered to be a malt or brewed beverage. Mead may be produced by breweries or limited wineries. The PLCB may continue to sell the mead in its inventory until such mead inventory is depleted, but the PLCB may not purchase additional mead after January 17, 2017. This is because after January 17, 2017, mead will be categorized as a malt or beverage under the Liquor Code.

(r) **MUG CLUBS**—Act 39 of 2016 allowed retail licensees and breweries to offer a mug club to their patrons. Act 39 defined a “mug club” as a group organized by a retail licensee or a brewery whose members are entitled to discounted malt or brewed beverages. Membership in the mug club shall be by written application, and the licensee must maintain a written list of active members as part of its records. Act 166 amended the definition of a mug club to remove the requirement that every member of a mug club be provided a mug or similar container to be used when purchasing alcohol, and it makes the mug club annual fee and renewal fee optional at the discretion of the licensee. Mug club discounts are not counted against a licensee’s happy hour restrictions.

(s) **MANAGEMENT COMPANIES**—Act 39 of 2016 allowed management companies to have a pecuniary interest in a licensee’s liquor license. The PLCB must refuse a management company application if the management company or any person involved in the management company would be precluded from holding an interest in the licensee’s license.

## II. RULES AND REGULATIONS AFFECTING SALES AND ADVERTISING

### **SPECIAL NOTE**

*Pennsylvania is classified as a monopoly State in that it maintains absolute control over the purchase and sale of all liquors and wines in the package form. It neither buys nor sells malt or brewed beverages. In this respect the Pennsylvania Liquor Control Board is the licensing and reporting agency only for all dealers in malt beverages, regardless of classification.*

Section 493(2) of the Code prohibits sales or purchases of malt or brewed beverages by licensees with cash or on credit. Therefore, an ID or D who is selling malt or brewed beverages to a licensee traditionally could only accept checks, money orders or debit cards. Cash payments from other licensees

may be accepted if made at the seller’s licensed premises prior to delivery or through the use of escrow accounts. It is also permissible for a licensed buyer to prepay for the malt or brewed beverages in question or to pay by electronic funds transfer as long as the transfer occurs prior to delivery of the malt or brewed beverages. As of 2016, credit cards are an additional form of payment for malt or brewed beverages which Distributors and Importing Distributors are now authorized, but not required, to accept from licensees and non-licensees.

Distributors and Importing Distributors are authorized to accept checks in payment of malt or brewed beverages from individual purchasers and licensees, provided such individual purchasers and licensees are the payors of the checks.

It is a violation of the Code to issue a worthless check in payment for malt beverages. The recipient of a dishonored check must, within five (5) days of receipt of notice of the dishonor, notify the Board’s Malt Beverage Compliance Officer of the dishonor. The MBCO will then notify the licensee whose check was dishonored that he has 10 days from the date the notice was mailed to honor the check. If the licensee does not honor the check within the 10 days, the matter shall be turned over to BLCE for citation. No licensee is permitted to receive, cash, or negotiate any payroll, public assistance, or unemployment checks or vouchers.

(2) It is unlawful for any licensee, regardless of classification, or its servants, agents, or employees, to offer, give, solicit or receive anything of value, including any prize, premium, gift, or similar inducement except advertising novelties. Regulation 13.52 eliminates the need to obtain Board approval for such advertising novelties, so long as they are of nominal value and are not of an obscene nature. This regulation applies to both trade and consumer buyers. Limited exceptions to this general prohibition are set forth in Board Regulations.

(3) Every licensee authorized to sell, purchase, and resell malt or brewed beverages shall, pursuant to Section 493 (2) of the Liquor Code, require payment of, pay, and collect the minimum cash deposits on all original returnable containers as prescribed in this sub-chapter or as required of and paid by such licensees. Whenever a returnable original container for which a licensee has received a deposit is not returned, the manufacturing licensee, Importing Distributor, or Distributor, as the case may be, shall not be entitled to any amount in excess of the deposit monies paid on such returnable original containers.

### **Minimum Cash Deposits**

Subject to the limitations imposed by the Liquor Code on sales by licensees, minimum cash deposits are imposed on original returnable containers as follows:

Size	Deposit
All barrels-regardless of size	\$10.00
8 oz. or less per bottle	00.03
16 oz. or more than 8 oz. per bottle	00.05
32 oz. or more than 16 oz. per bottle	00.10

Whenever the bottled malt or brewed beverages are sold by

the case, the minimum cash deposits on such cases, including the minimum cash deposit on the bottles therein shall be as follows:

Size	Deposit
8 oz. or less in a case containing 24 bottles to the case	\$1.00
16 oz. or more than 8 oz in a case containing 24 bottles to the case	\$1.50
32 oz. or less in a case containing 12 bottles to the case	\$1.50

Every licensee receiving deposits as above provided shall make refund on such deposits in cash, or, at the option of the purchaser, as a credit on a purchase made, upon return of empty original containers.

Manufacturing licensees may only accept empty original containers of their own product. Manufacturers, Importing Distributors and Distributors may only accept empty original containers from licensees or persons to whom same were sold and delivered by such licensees.

Manufacturing licensees shall accept empty original containers, the property of such Manufacturer, from any person who paid a deposit, on a sale and delivery, to an Importing Distributor or a Distributor who has permanently or temporarily ceased doing business as an Importing Distributor or a Distributor. Such manufacturing licensee shall make refunds of the deposits received by such Importing Distributor or Distributors to such person returning the original containers.

Successors and transferees to and of Importing Distributors and Distributors shall accept empty original containers from licensees or persons to whom same were sold and delivered by predecessor to transferor licensees and shall make refunds of deposits received by such predecessor or transferor licensees to such licensee or person returning the original containers.

When any other size original container is developed for use, and approved by the Board, the minimum cash deposit on such container shall be determined by the Board prior to marketing.

(4) It is unlawful for any person to transport malt or brewed beverages for a licensee within the Commonwealth of Pennsylvania unless such person holds a proper license or permit issued by the Board. All vehicles used in connection with such transportation shall bear the name, address, license or permit number of the licensee or transporter on each side of the vehicle, no smaller than two (2) inches in height. Further, all shipments of malt beverages whether originating from within state or out-of-state source, must come to rest in the warehouse of the distributor to whom it was consigned before being offered for resale by such distributor. Accordingly, any sale of merchandise by the distributor may be made only from its licensed premises and must be properly invoiced and accompanied by a delivery slip. Failure to comply with this ruling constitutes "hawking and peddling" of beer contrary to law.

(5) Importing Distributors and Distributors may sell or deliver beer to other licensees and permit holders from 2 a.m. Monday until 12 midnight of the following Saturday. Importing Distributors and Distributors with Sunday Sales Permits may

sell beer to non-licensed persons and holders of Special Occasion Permits between the hours of 9:00a.m. and 9:00 p.m. on Sunday. No sales to licensees may occur on Sundays with or without a Sunday Sales Permit. Importing Distributors and Distributors without Sunday Sales permits may deliver beer on Sunday between 9 a.m. and noon to Special Occasion Permittees and non-licensees if prior arrangements have been made, i.e. a sale of more than \$250 has been ordered, invoiced and paid for in full at the seller's licensed premises before the Sunday of delivery. Importing Distributors and Distributors may sell beer to non-licensees and Special Occasion Permittees Monday through Saturday from 8 a.m. to 11 p.m.

(6) Distributors may not mention the name or address of any retail licensee in any advertisement by radio, billboard, newspaper, or other method of advertising.

## **SIGNS, ADVERTISING, LABELING**

### ***Advertising***

Section 498 of the Liquor Code which prohibited price advertising was amended in 1997. This Code provision now permits all manufacturers, wholesalers, retailers, shippers and licensees to advertise products and prices, subject to federal and state laws and regulations. Price advertisements may not be false, deceptive or misleading; disparage a competitor's products; nor make monetary comparisons between brands. Prices displayed on licensed premises must be effective as of the time of the display.

With regard to alcoholic beverage and malt beverage advertising in general, Section 498 prohibits: (a) print ads within 300 feet of any church, school or public playground; (b) ads directed to minors to promote consumption of alcoholic beverages; (c) ads in publications published by, for or in behalf of any educational institution; (d) obscene ads. It requires that the entity responsible for the ad be identified in it. And it also prohibits licensees from distributing price lists and circulars off the licensed premises to the general public to advertise liquor, wine or malt or brewed beverages. Section 498 was further amended in 2002 so that the prohibition against print ads within 300 feet of any church, school or public playground shall not preclude any point of sale ads, menus or other print ads regarding alcoholic beverages inside the licensed premises.

By amendment effective February 7, 2003 Section 498 makes it clear that Internet and any other form of electronic transmission advertisements are subject to the provisions of this section.

### ***40 Pennsylvania Code Section 13.41***

Manufacturers of malt or brewed beverages, and Importing Distributors may include the names and addresses of all Distributors and Importing Distributors to whom they sell in the locality covered by such billboard, newspaper, radio and television advertising. No discrimination may be shown to one Distributor or Importing Distributor over another, and if more than one Distributor or Importing Distributor purchases the product from the Manufacturer or Importing Distributor in a given area covered by any such advertisement, the names and addresses of all who purchase the product directly from the advertiser shall be displayed or mentioned in



equal prominence. Otherwise none may be displayed or mentioned.

### **Labels**

Section 493 of the Liquor Code allows a Manufacturer of malt or brewed beverages to display on the label the percentage of alcohol by volume. This display is permitted but not required.

### **Beer Taps**

Licensees are no longer required to label their taps (faucet, spigot, or dispensing apparatus), as long as the brand label is located somewhere in full sight of the customer.

### **40 Pennsylvania Code Section 13.42 Window and Doorway Advertising of Brand Names.**

Installation of any electrically operated signs or devices, lithographs, framed pictures, cardboard displays, statuettes, plaques, placards, streamers or similar items advertising brand names and intended for window and doorway display on the licensed premises is permitted.

Advertising may not exceed 600 sq. inches in display area. When the advertising material is of maximum size, no background material may be used. When installing signs of smaller size, the combined area of the sign and background or decoration may not exceed the maximum area of 600 sq. inches.

### **40 Pennsylvania Code Section 13.43 Interior Display Advertising of Brand Names (Other than Window and Doorway)**

No licensee shall install or permit to be installed electrically operated signs or devices, lithographs, framed pictures, cardboard displays, statuettes, plaques, placards, streamers or similar items advertising brand names and intended for interior display on the licensed premises.

When the point of sale material is of maximum value no background material may be used in conjunction with the installation.

Signs or displays intended for use interchangeably in a window, doorway or in the interior must meet the requirements for both maximum area, as provided in Sec. 13.42 above, and maximum value as set by the Board.

### **Advertising Limits**

Pursuant to its authority under Section 493(20)(i) of the Pennsylvania Liquor Code the Board has established the point of sale limits to be \$300.00 per brand, with any one piece of advertising material also limited to \$300.00.

### **40 Pennsylvania Code Section 13.51 Prohibition Against Giving and Accepting Things of Value**

No licensee or group of licensees, or their servants, agents, or employees, shall, directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees, or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase or sale of tickets, donations, or by any device or for any purpose what-

soever; provided, however, that nothing contained herein shall prohibit Manufacturers of alcoholic beverages and their servants, agents, employees or representatives from participating in the activities of State or National conventions of State or National organizations of retail liquor licensees or Distributor and/or Importing Distributor malt beverage licensees.

Such participation shall be limited to the payment of registration fees entitling registrants to admission to the convention, to the insertion of advertising in the convention program of the State or National convention aforesaid and to the furnishing of food, beverages and entertainment to persons who are bona fide registrants at such conventions.

No licensee may furnish to, or do, or cause to be done for another licensee, and no licensee shall permit to be furnished to him, any painting of any sort, under any pretext whatsoever, whether or not such painting may be paid for by the licensee for whom done.

An exception to the general prohibition against giving anything of value as a direct inducement to purchase beer allows licensees, Manufacturers and trade organizations to provide "routine business entertainment" to other licensees, Manufacturers and trade organizations under the following conditions:

- (a) Routine business entertainment includes meals, beverages, tickets or passes to concerts, theaters, arts, sporting or charitable events provided to licensees, trade organizations or Manufacturers.
- (b) There can be no corresponding obligation by the recipient to buy beer or provide any other benefit to the donor or to exclude or restrict from sale the products of other licensees.
- (c) Donor, its servants, agents or employees shall accompany the recipient during the routine business entertainment. When items such as tickets are donated by a Manufacturer to an ID ultimately for the retailer, the ID is considered to be the donor and must accompany the retailer.
- (d) Limited to \$800.00 per year, per recipient licensee. This includes the licensee, his spouse, his employees and guests.
- (e) Donor and recipient must keep complete and accurate records of all expenses incurred and all routine business entertainment received for 2 years.

### **40 Pennsylvania Code Section 9.93 Prohibiting Sale of Items Other than Malt or Brewed Beverages**

#### **A. DISTRIBUTORS AND IMPORTING DISTRIBUTORS MAY ENGAGE IN THE SALE OF THE FOLLOWING:**

##### **1. To the general public and to other licensees of the Board**

- (a) Cups and mugs made of material other than glass.
- (b) Snack foods consisting of candy, gum, nuts, popcorn, chips, dips, pretzels, crackers, hot sauces, barbeque sauces, cheese, pickled products (eggs, pigs feet, red beets, and pickles), and dried meat products (jerky). Heating and roasting devices used in conjunction with snack items are permitted on the licensed premises.
- (c) Tobacco products consisting of cigarettes by the pack or carton, cigars, cigar carrying cases, cigar lighters, humidors,

pipe tobacco, pipes, pipe tobacco pouches, chewing tobacco, cigarette-making supplies, such as papers, tobacco tubes, and machines to fill the tubes, tobacco grinders, disposable and refillable lighters, and matches. Tobacco products may not be sold in wholesale lots for resale.

(d) Pennsylvania lottery tickets

(e) Ice and dry ice. Vending machines for ice are permitted on the licensed premises.

(f) Non-alcoholic beverages consisting of non-alcoholic wine, non-alcoholic malt beverages, soft drinks, juices, water, milk, non-alcoholic drink mixes, carbonic and non-carbonic mixes, including iced tea (prepared or mixed form), coffee (prepared or unprepared form), and tea (prepared or unprepared form). Non-alcoholic malt beverages may not be sold to any person under 21 years of age.

(g) Newspapers.

(h) Greeting cards.

(i) Rock salt or other similar ice melting or anti-slip products.

(j) Carbon dioxide tank refills.

## **2. To the general public only**

(a) Serving and dispensing items consisting of cups, cub lids, glasses and beer mugs of any material, and disposable plates, utensils, napkins and tablecloths; foam and plastic beer coolers; foam and plastic can holders; home bar supplies; and office size soft drink/water dispensers.

(b) Promotional items bearing Manufacturer (beverage alcohol or other product manufacturer), or Distributor or Importing Distributor logos consisting of: wearing apparel such as shirts, caps, hats, and jackets; sporting equipment such as balls, gloves, bats, inner tubes, rafts and sports bags; and serving and dispensing equipment such as cooler chests, beer mugs, beer pitchers and picnic rods and pumps. Promotional items having a wholesale value of more than \$1,000.00 should be submitted to the Board for approval. Requests for such approval should be directed to Malt Beverage Compliance, Pennsylvania Liquor Control Board, Room 302, Northwest Office Building, Harrisburg, PA 17124-0001.

(c) Signs and mirrors of any value containing logos intended for home bar use.

(d) Tickets to beer-related events, such as brew fest, food pairings and other similar events.

(e) Gift certificates of any denomination redeemable at their business and gift certificates to other businesses, not including other Board licensees.

(f) Home brewing equipment, ingredients, or other supplies necessary for the unlicensed manufacture of beer and wine.

(g) Books, magazines, or other publications related to beer.

(h) All equipment and supplies needed to dispense draft beer.

(i) Keg connectors and keg handling gloves.

(j) Can and bottle openers.

(k) Over-the-counter pain relief medications, such as aspirin, Tylenol, antacid products, or other similar items.

(l) Windshield wiper fluid and glass cleaner.

(m) Drink garnishes, such as limes, lemons, oranges, olives, and other similar items.

(n) Grilling equipment and supplies, such as charcoal, propane, lighter fluid, and utensils.

(o) Party supplies, such as candles, balloons, hats, noise makers, banners, ribbons, and trash and recycling bags.

(p) Playing cards.

(q) Live Christmas trees.

(r) Fishing tackle and live bait.

(s) Firewood and Duraflame logs.

(t) Locally grown sweet corn.

(u) Pre-packaged ice cream novelties, such as bars and sandwiches.

(v) Municipal-approved trash bags.

(w) Frozen seafood/steamed crabs.

(x) Bread/rolls.

(y) Hot dogs.

(z) Frozen pizza.

(aa) Beer salt

(bb) Empty beer cans.

(cc) NASCAR-related items

## **3. To other distributors and importing distributors for resale to the general public only**

(a) Importing Distributors may sell the items listed in 2(a) through 2(d) to other Importing Distributors and Distributors for resale to the general public only and not for use in the operation of a licensed business.

## **B. DISTRIBUTORS AND IMPORTING DISTRIBUTORS MAY ENGAGE IN THE RENTAL OF THE FOLLOWING:**

### **1. To the general public and holders of Special Occasion Permits**

(a) Coil boxes

(b) Compressors

(c) Cooler chests, picnic

(d) Draft beer equipment

(e) Ice picks and ice buckets

(f) Picnic rods and pumps

(g) Tapping devices (including refrigerated trucks and trailers)

(h) Compressed gas tanks for use in draft beer systems

(i) Office size soft drink/water dispensers

(j) Movies

(k) Tents, tables, and chairs

(l) Fishing equipment

### **2. To other licensees of the Board**

(a) Compressed gas tanks for use in draft beer systems

(b) Office size soft drink/water dispensers

## **C. DISTRIBUTORS AND IMPORTING DISTRIBUTORS WHO SELL KEGS THAT REQUIRE SPECIAL TAPPING DEVICES WHICH ARE NOT AVAILABLE FROM THE USUAL COMMERCIAL SOURCES ARE AUTHORIZED TO RENT OR SELL SUCH DEVICES WITH THE SALE OF THE KEGS**

## **D. DISTRIBUTORS AND IMPORTING DISTRIBUTORS SHALL NOT SELL, RENT, OR OTHERWISE MAKE AVAILABLE EQUIPMENT SUCH AS THE FOLLOWING ITEMS TO OTHER LICENSEES OF THE BOARD:**

(a) Coil boxes

(b) Compressors

(c) Cooler chests, picnic chests

(d) Draft beer equipment

(e) Ice picks or ice buckets

(f) Picnic rods and pumps

(g) Beer trays

(h) Bowls

(i) Coasters/napkins

- (j) Tapping devices (including refrigerated trucks and trailers)

#### **40 Pennsylvania Code Section 13.52 Advertising Novelties**

Board Advisory Notice No. 10 sets forth trade practices relative to the prohibition against the giving of things of value as an inducement to purchase alcoholic beverages. Section 493 (24) of the Liquor Code forbids licensees "...to offer or give to trade or consumer buyers any prize, premium, gift or other similar inducement, except advertising novelties of nominal value which the Board shall define."

Board Regulation 13.52 eliminates the need to obtain Board approval for such advertising novelties as long as the item is not obscene in nature and does not exceed the Board established value. The most recent Board established value is the wholesale cost of \$15.00 per item.

Outside signs and banners are classified as "advertising novelties". They may be distributed by any class of licensee to licensees of the same or another class. However, as with other advertising novelties the wholesale cost of such exterior signs or banners must be \$15.00 or less. In addition, such exterior signs or banners are subject to Section 4-498 of the Liquor Code that forbids print advertisement of alcoholic beverages of any type within 300 ft. of any church, school or public playground.

#### **BRAND REGISTRATION/BEER SALES REPORTING**

No brand of malt beverage may be sold unless the brand has been registered with the Pennsylvania Liquor Control Board. Licensees are subject to a fine for selling an unregistered malt beverage, and should consult the Board's published list of registered brands should any question arise.

If a manufacturer fails properly to register a brand that is in the marketplace, the product shall be left on the licensed premises where found, under orders not to sell the contraband product until it comes into compliance or is returned to the manufacturer for refund by the licensee holding it. If the Board's Malt Beverage Compliance Officer determines a licensee is selling unregistered product, he must give the brewer 10 days' notice to register the product. If the brewer does not do so, it must remove the unregistered product and reimburse the licensee for the unsalable beer. If BLCE becomes aware of a possible violation of the brand registration requirements, it must give written notice to the licensees holding such product. If the product is not registered within 10 days, BLCE will proceed with enforcement action.

Any person selling malt or brewed beverages at wholesale, and any person selling at retail malt or brewed beverages that were not sold at wholesale, must report to the PLCB the volume of the malt or brewed beverages sold. The monthly report, in the form and manner determined by the PLCB, must be made no later than sixty days after the end of each calendar month and must show product volumes broken down by brewer. All volumes must be reported in thirty-one-gallon barrel equivalents, regardless of the package size. Within fourteen days of receiving the reports, the PLCB must post them on the internet for public view for a period of two years. The PLCB must retain the reports for ten years.

### **III. SPECIAL LAWS AND REGULATIONS**

#### **40 Pennsylvania Code Section 11.181**

Any person licensed by the Pennsylvania Liquor Control Board under the provisions of Article IV of the Liquor Code who shall receive in payment for malt or brewed beverages sold by him any check, draft or similar order, for the payment of money which is subsequently dishonored by the bank, banking institution, trust company or other depository upon which drawn, for any reason whatsoever, shall, within five (5) days of receipt of notice of such dishonor, notify the Pennsylvania Liquor Control Board thereof by letter sent by United States mail and addressed Malt Beverage Compliance Officer, Pennsylvania Liquor Control Board, Harrisburg, Pennsylvania. Such separate letter or notice for each dishonored instrument shall be submitted and shall contain information listed in the following manner:

- Date of instrument
- Institution upon which drawn
- Maker of instrument, trade name, address and licensed business
- Amount of instrument
- Payee of Instrument (to whom payable)
- Date received by reporting licensee in payment for malt or brewed beverages
- Date of notice of non-payment or dishonor
- List of endorsements, if any
- Reason for return and other remarks

Such notice shall specifically identify the reporting licensee together with the address of its licensed premises.

#### **40 Pennsylvania Code Section 11.182**

Any person licensed by the Pennsylvania Liquor Control Board under the provisions of Article IV of the Liquor Code who shall receive in payment for malt or brewed beverages sold by him any check, draft or similar order for the payment of money which is subsequently dishonored by the bank, banking institution, trust company or other depository upon which drawn, for any reason whatsoever, shall, within five (5) days of receipt of notice of such dishonor, notify by certified mail the person who presented the said worthless check, draft or similar order. If this is the first such "bad check" violation by the licensee that calendar year, from the purchaser to the seller, and if payment is subsequently honored within 10 days from the day it was made, drawn, uttered, issued or delivered, then an administrative warning shall be issued in lieu of a citation.

#### **40 Pennsylvania Code Section 11.183**

Any person licensed by the Pennsylvania Liquor Control Board under the provisions of Article IV of the Liquor Code who shall receive in payment for malt or brewed beverages sold by him any check, draft or similar order for the payment of money shall give instructions in writing to the banking institution or other depositories in which he shall deposit any such instruments that such banking institution or other depositories shall give notice to him forthwith when any such instrument has been dishonored by the banking institution or depository upon which it was drawn.

A copy of each notice required in Sections 11.181, 11.182 and 11.183 shall be maintained on the licensed premises.

## **VIOLATIONS**

The Liquor Code provides severe penalties for violations by licensees, which can result not only in a suspension or revocation of the license, but also criminal charges against the licensee and his employees.

Section 471 permits the Board, after hearing on a violation, to suspend or revoke the license, or imposes a fine of not less than \$50 nor more than \$1,000. Under the 1987 Act, fines for sales to minors, public nuisance, prostitution and drug violations were increased to \$1,000 to \$5,000. Act 141 of 2000 imposes fines of \$1,000 to \$5,000 for sales to visibly intoxicated persons. If the fine is not paid within 20 days the license shall be suspended or revoked. Act 26 of 2006 makes mandatory RAMP participation upon a first offense conviction for sales to a minor or to a visibly intoxicated person.

Act 212 of 2002 provides that a license will be suspended when three violations of the following types occur within four years. These are: (a) sales to minors; (b) sales to visibly intoxicated persons; (c) allowing lewd, immoral or improper entertainment; (d) permitting undesirable persons or minors to frequent the premises; (e) furnishing or delivering liquor or malt or brewed beverages at unlawful hours; (f) refusing the right of inspection; (g) allowing licensed premises to become a "common nuisance"; (h) conviction of the owner or operator or his/her authorized agent of violation of those sections of the Pennsylvania Crimes Code relating to controlled substances, prostitution or corruption of minors, at or relating to the licensed premises; and (i) violation of Title 18 of the Pennsylvania Consolidated Statutes commonly called the Pennsylvania Crimes Code.

Act 31 of 1988 amended both the Liquor Code and the Crimes Code by transferring provisions making the sale of alcohol to minors a misdemeanor from the Liquor Code to the Crimes Code. Under the Crimes Code provision, "knowing and intentional" sales to minors are misdemeanors of the third degree carrying a minimum \$1,000 fine for a first offense, and a \$2,500 fine for each subsequent offense.

Section 494 of the Liquor Code still governs criminal penalties for other violations of the Liquor Code, which are deemed to be misdemeanors. Fines are not less than \$100 nor more than \$500 for a first offense, and for any subsequent offense, a fine of \$300 to \$500 or three months to one-year imprisonment, or both. More severe violations can result in fines up to \$5,000 or three months to one-year imprisonment, or both.

On October 1, 2003 Pennsylvania's BAC mandate for DUI became .08. A three-tiered DUI penalty system went into effect February 1, 2004. Penalties for first-time offenders range from a \$300 fine and up to 6 months probation to as much as a \$5,000 fine, minimum 72 hrs. jail plus mandatory drug and alcohol assessment and treatment program. Repeat offenders face even more severe penalties.

Also it is unlawful for any person who is an operator or an occupant in any motor vehicle to be in possession of an open alcoholic beverage container or to consume any alcoholic beverage in a motor vehicle. There is an exception for passengers in buses, taxis and limousines.

## **COMPLIANCE CHECKS**

Act 141 of 2002 allows an individual between the ages of 18 and 21, who is an officer, employee or intern of the Bureau of Liquor Control Enforcement to act as an undercover agent in

an attempt to purchase alcoholic beverages. The State Police is required to make known official regulations prescribing the manner in which compliance checks are performed. Under no circumstances may such minors consume alcoholic beverages.

## **RESPONSIBLE ALCOHOL SERVICE PROGRAM**

Act 141 of 2000 authorized the PLCB to offer a Responsible Alcohol Service Program to licensees. It consists of:

1. New Employee Orientation-training newly hired alcohol service personnel as to Pennsylvania law relating to sale, furnishing or serving of alcoholic beverages to minors or visibly intoxicated persons, and to responsible server practices.
2. Training for Alcohol Service Personnel-training to prevent service of alcohol to minors and visibly intoxicated persons.
3. Manager/Owner Training-training on how to monitor employees, proper service of alcohol and how to develop an appropriate alcohol service policy.
4. Responsible Alcohol Service Signage-signage dealing with the licensees' policy against sales to minors or visibly intoxicated persons.

Participation and compliance with the program shall be taken into consideration if a licensee is cited for either sale to a minor or a visibly intoxicated person. So long as no similar citation has been issued within the previous four years the monetary fine imposed would be not less than \$50 nor more than \$1,000. All alcohol service personnel are now required to complete RAMP seller/server training within 6 months of being hired by a licensee, unless that person has completed said training before being hired. Alcohol service personnel means any employee of a licensee such as a bartender, waiter or, in the case of a D or ID, a salesperson whose primary responsibility includes the resale, furnishing or serving of malt or brewed beverages. It also means an employee, such as a doorperson, whose primary responsibility is to ascertain the age of individuals attempting to enter a licensed premises. A manager appointed by a distributor, restaurant, eating place retail dispenser, hotel, club or limited distillery license must complete the manager/owner training within 180 days of approval of the appointment by the board, unless successfully completed prior to appointment.

## **LICENSE RENEWALS**

Since 1994 the Liquor Code provides multiple year license periods. Licenses are used for two year periods, with fees prorated as required to establish new license terms. Mid-term validation of the license will be in the year following renewal.

Licensees are required to obtain clearance from the Departments of Revenue and Labor & Industry regarding taxes prior to filing license renewals. Licensees whose taxes are listed as "not clear" on the renewal application must obtain certificates from the Departments of Revenue and/or Labor & Industry, which are then to be attached to the renewal when submitted. If a renewal is submitted without tax clearance, the renewal will be returned and the licensee will be required to pay a late fee. Failure to take prompt action can

result in nonrenewal of the license.

The Board will at times invoke the provisions of Section 470 of the Liquor Code to deny license renewals to “nuisance” licensees, i.e. licensees with a history of complaints and violations. The Board is invoking this power even though the license was not revoked in the enforcement proceedings.

#### LICENSE TRANSFERS

Upon approval of a license transfer, the Board, by temporary authority letter, will allow immediate temporary operation of the licensed premises for a period of thirty (30) days. No temporary authority will be given for license transfers filed on a prior approval basis.

#### IV. STATE TAX LAWS

##### 1. Tax

(a) Each Manufacturer shall be subject to pay to the Commonwealth the taxes imposed by this section upon all malt or brewed beverages manufactured and sold by him in this Commonwealth for use in this Commonwealth, or manufactured by him outside this Commonwealth and sold to an Importing Distributor or any person for importation into, and use in, this Commonwealth.

Every person who ships or transports malt or brewed beverages into this Commonwealth for sale, delivery or storage in this Commonwealth shall pay to the Commonwealth the taxes imposed in this section. Such taxes shall be at the rate of two-thirds (2/3) cent per half pint of eight (8) fluid ounces or fraction thereof, and in larger quantities at the rate of one (1) cent per pint of sixteen (16) fluid ounces or fraction thereof.

The tax rates per original container or standard fraction thereof are as follows:

Standard Fraction	Malt Beverage Tax Rate	Volume
1 Barrel	\$2.48	31 gal.
1/2 Barrel	1.24	15 1/2 gal.
1/3 Barrel	.84	10 1/3 gal.
1/4 Barrel	.62	7 3/4 gal.
1/6 Barrel	.42	5 1/6 gal.
1/8 Barrel	.32	3 7/8 gal.
1 Gallon	.08	
1/2 Gallon	.04	
1 Quart	.02	
1 Pint	.01	
1/2 Pint	.0066	

(1) A 10% penalty is added to the tax if not paid when due, plus interest.

(2) A manufacturer or his agent who fails to file the return and pay the tax when due shall be considered delinquent. While delinquent no malt or brewed beverages in possession or control of a manufacturer may be removed from his licensed premises for sale in the Commonwealth, nor shipped in from outside thereof.

(b) Any state, territory or country which taxes Pennsylvania manufactured malt or brewed beverages at a higher rate than its domestic malt or brewed beverages shall, in addition to the tax imposed by Pennsylvania, pay to Pennsylvania a tax equal to such excess tax or fee. Such additional tax shall be levied,

assessed and collected in the same manner as the other taxes imposed by this act.

(c) Manufacturers whose malt or brewed beverages are sold in this Commonwealth or are sold to Importing Distributors or any person for importation into, and use in, this Commonwealth shall be liable to the Commonwealth as taxpayers for the payment of the taxes imposed by this act.

##### 2. Reports

(a) Each Manufacturer whose malt or brewed beverages are sold in or imported into this Commonwealth shall, on or before the fifteenth day of each month, file with the department, on forms prescribed by it, a verified report showing for the preceding calendar month the quantities of such malt and brewed beverages:

(1) Manufactured by him in this Commonwealth, and constituting his beginning and ending inventory in this Commonwealth for the month;

(2) Sold by him in this Commonwealth for use in this Commonwealth or sold to an Importing Distributor or any person for importation into, and use in, this Commonwealth, specifically naming the distributors to whom such sales were made and the quantity sold to each;

(3) Sold to purchasers or persons outside this Commonwealth for exportation from, and use outside, this Commonwealth, or sold in other tax exempt transactions, naming the purchasers and the quantity sold to each, and specifically indicating those sales or transactions to which the tax imposed by this act is not applicable;

(4) Such additional information as the department may reasonably require to assure the accuracy of the tax computation and payment and the proper administration of this act.

The tax payable on all malt or brewed beverage first sold in this Commonwealth for use in this Commonwealth or first sold to an Importing Distributor or any person for importation into, and use in, this Commonwealth during such month in the amount disclosed by the report, shall accompany the report and be paid by the Manufacturer to the department.

It is the intent and purpose of this section to require all Manufacturers and other persons whose malt or brewed beverages are sold or used in this Commonwealth to pay the tax on all such malt or brewed beverages in the month following that in which such beverages are first sold in this Commonwealth or first sold to an Importing Distributor or any person for importation into and use in this Commonwealth, except that as to malt or brewed beverages sold to public service licensees, the public service licensees, and not the Manufacturer, shall report and pay the tax on all malt or brewed beverages sold by them within the Commonwealth.

##### 3. Bond

(a) No malt or brewed beverages shall be sold in or imported into the Commonwealth of Pennsylvania until and unless the Manufacturer of such malt or brewed beverage has on file with the department and in full force and effect an approved bond, duly executed, payable to the Commonwealth of Pennsylvania, together with a warrant of attorney to confess judgment in a sum equal to the amount of his highest two month average tax liability during the last year prior to the time of giving bond, but in no event less than five thousand dollars (\$5,000.00). All such bonds shall be condi-

tioned upon the payment of the tax imposed by this act and shall have as surety a duly authorized surety company, or shall have deposited therewith as collateral security, cash or negotiable obligations of the United States of America or the Commonwealth of Pennsylvania in the same amount as herein provided for the penal sum of such bonds.

#### **4. Monthly Reports To Pennsylvania Department of Revenue**

(a) For the purpose of verifying the tax payments required by this act, it shall be the duty of every transporter for hire, bailee for hire, warehouseman, distributor and retail licensee, on or before the fifteenth day of the succeeding month, to transmit to the department, on forms supplied by the department, a report, under oath or affirmation, of malt or brewed beverages which were imported and came to rest or storage, at his place of business in this Commonwealth during the preceding month, or which were transported from a point outside the Commonwealth to a point within the Commonwealth. Such report shall show the number of barrels, or standard fraction thereof, imported, transported, or stored during the period for which it is made, and such further information as the department shall prescribe.

(b) Each manufacturer, transporter for hire, bailee for hire, warehouseman, distributor and retail licensee shall maintain and keep, for a period of two (2) years, such record or records of malt or brewed beverages manufactured, sold by a manufacturer or distributor, transported from a point outside of the Commonwealth to a point within the Commonwealth, substantiating the other information required on his report, together with invoices, bills of lading and other pertinent papers, as may be required by the department.

#### **V. STATE TAX REGULATIONS**

The "Distributor Monthly Report of Malt Beverages" on Forms REV-1014 and REV-1055 were devised by the Pennsylvania Department of Revenue to properly account for the tax liability on malt or brewed beverages in accordance with the amended Malt Beverage Tax Law effective July 1, 1965.

Triplicate copies must be retained on licensed premises for a period of two (2) years. Distributors must save their records in hard copy or electronic media. Regulation 9.101.

The following are answers to the questions raised most frequently by distributors and importing distributors concerning the preparation of monthly report forms:

1. When listing name and address at the top of Form REV-1014, show it in the same manner as it appears on the PLCB license, including the county.

2. It is not necessary to have the monthly reports notarized. Space is provided at the lower right hand side of Form REV-1014 for the signature and title of person signing the report. These reports must be signed by the licensee or by his duly authorized agent.

3. The monthly reports are due on or before the 15<sup>th</sup> of the month immediately succeeding the month for which the reports are prepared.

4. Report Forms REV-1014 and REV-1055 must be compiled according to container size and number of containers. For example, report:

7 oz. and 8 oz. cans and bottles in column headed "1/2 pt. Can and Bottle"

12 oz. and 16 oz. cans and bottles in column headed "1 pt. Can and Bottle".

Other column headings are self-explanatory.

It will be necessary to multiply the number of bottles in a case of 24 x 7 oz., 35 x 7 oz., 40 x 7 oz., 42 x 7 oz., etc. by the number of cases to arrive at the correct number of units or containers to report in the column headed "1/2 pt. Cans and Bottles", etc.

5. With reference to Schedule "A" entitled "Malt Beverage Purchased From Pennsylvania Manufacturers", which appears on the reverse side of Form REV-1014, it is only necessary to report totals according to container size and number of containers purchased directly from each brewery during the month.

6. With reference to Schedule "B", entitled "Malt Beverage Purchased from Importing Distributors", which appears on the reverse side of Form REV-1014, it is only necessary to report totals according to container size and number of containers purchased directly from each Importing Distributor during the month.

7. With reference to Form REV-1055, Schedule "C" entitled "Malt Beverage Purchased From Manufacturers Outside Pennsylvania", only Importing Distributors purchasing malt beverages directly from outside Pennsylvania are required to prepare this form. Since this form does not apply to "D" Distributors, it is not necessary for such distributors to file Form REV-1055 in blank. The Importing Distributors who are required to file Form REV-1055 must prepare a separate form for each source of supply from out of state, listing each purchase by date, invoice number and number of containers according to container size.

8. It is permissible to prepare the monthly reports either on the typewriter or by hand.

A unit is not a case, but a bottle, can and any size barrel or container, and all figures reported on Forms REV-1014 and REV-1055 must be reduced to such units. To arrive at the correct number of units to be reported on these forms, simply multiply the number of cases by the number of bottles or cans contained therein.

Monthly reports as above are required to be filed only with the Department of Revenue, not the Liquor Control Board.

#### **VI. (A) FEDERAL REGULATIONS RELATING TO WHOLESALERS BASIC PERMIT AND SPECIAL OCCUPATION REGISTRATION**

Under federal law, before you can legally engage in business as a beer distributor, two measures are essential: You must register as either a Retailer of Beer or a Wholesale Dealer in Beer; and, you must apply for and obtain from the Treasury Tax and Trade Bureau, Department of the Treasury, a Basic Permit as a Wholesaler under the Federal Alcohol Administration Act. Both of these steps are in addition to a State license or any other requirements of the Commonwealth of Pennsylvania.

A wholesale dealer in beer is any person, partnership, or corporation that sells beer to anyone else who intends to resell the beer to others. The quantity of beer involved in such transactions is not important except that any person who

sells 20 gallons or more of beer to the same person at the same time is presumed to be a wholesaler, unless he can show that the purchaser was not another wholesaler or a retail dealer.

A Basic Permit must be obtained from the Treasury Tax and Trade Bureau. After issuance, these permits continue in effect until suspended, revoked, annulled, voluntarily surrendered or automatically terminated. Every applicant is investigated for financial responsibility, general reputation, and law observance. False statements in the application or supporting documents, omission of pertinent facts, including criminal records, concealment of true source of finances, are basis for denial of permits. Compliance with all state and local laws are prerequisites to issuance of basic permits. These permits cannot be leased, sold or transferred, but automatically terminate on change of ownership of the business. If you purchase a business from someone who holds a valid permit, you may continue to operate provided you make application for a permit within 30 days. Failure to do so constitutes a violation of law and subjects you to penalties. Such permits must be filed at the designated place of business and made available for examination by government officers.

After you have properly qualified to engage in the business of selling beer at wholesale you are required to keep for a period of three years, records of purchases of beer. Invoices of bills are satisfactory for this purpose, but book records containing this information may be used if you prefer. Your place of business and operations will be subjected to inspection by Government Officers from time to time.

The application for a Wholesaler's Basic Permit can be obtained from the Tax and Trade Bureau's website, [www.ttb.gov](http://www.ttb.gov) by clicking on the *Importers/Wholesalers Applying for a Permit* tab.

The Special Occupational Tax on both wholesalers and retailers of beer was repealed as of July 1, 2008, but registration and record-keeping requirements are still in effect. Wholesalers and retailers who registered prior to July 1, 2008 need do nothing more unless there has been a change in the existing registration information, such as a change in address. Beginning July 1, 2008 and thereafter, all beer wholesalers and retailers are required to register with TTB before beginning business. TTB must be notified when a registered business is going out of business. Beer wholesalers and retailers in business prior to July 1, 2008 but who were not registered, are required to register and will be liable for the annual flat tax (Wholesalers-\$500; Retailers-\$250) imposed prior to repeal.

## **(B) FEDERAL REGULATIONS RELATING TO UNLAWFUL INDUCEMENTS**

The Federal Alcohol Administration Act prohibits certain practices involving inducements to retailers to purchase one brand of beer to the exclusion in whole or in part of other brands of beer.

## **VII. MBDA SPONSORED LEGISLATION**

### **1. Trade Name/Signs**

Act 30 of 1994 took effect June 28, 1994. It permits beer distributors to place their trade names on the outside of their buildings, which previously had been forbidden. This Act also permits the display in windows and doorways of one sign for each product, rather than one sign for each manufacturer

as previously permitted.

### **2. PLCB Advisory Opinions**

Act 61 of 1993 took effect July 2, 1993. Prior to enactment there was confusion in Pennsylvania as to whose opinion regarding the Liquor Code or Regulations was the final opinion. Under this Act a legal opinion issued by the PLCB or its counsel, regarding the Liquor Code or Regulations is binding on the Pennsylvania State Police Bureau of Liquor Control Enforcement. A licensee may obtain such an opinion by sending a written request to the PLCB or its counsel.

### **3. Equal Treatment Law**

This 1980 Act equalized the treatment of in-state and out-of-state brewers with regard to like violations of the Liquor Code.

### **4. Franchise Protection Law**

Excerpts of this 1980 Act are printed below:

#### **DISTRIBUTING RIGHTS TO BE IN WRITING**

All distributing rights as hereinabove required shall be in writing, shall be equitable in their provisions and shall be substantially similar as to terms and conditions with all other distributing rights agreements between the Manufacturer giving such agreement and its other Importing Distributors and Distributors, shall not be modified, cancelled, terminated or rescinded by the Manufacturer without good cause, and shall contain a provision in substance or effect as follows: "The manufacturer recognizes that the Importing Distributor and Distributor are free to manage their business in the manner the Importing Distributor and Distributor deem best, and that this prerogative vests in the Importing Distrib-

considered a malt or brewed beverage under the Liquor Code. Under this definition distributors are permitted to sell this product upon the same terms and conditions as any other malt or brewed beverage. The definition of "alcoholic cider" in section 102 has been expanded to include products produced from any fruit, not only from apples. Licensed breweries and limited wineries may also produce and sell alcoholic cider in accordance with the provisions of the Liquor Code. The definition of "alcoholic cider" was amended in 2016 by changing the maximum carbonation level from .392 of a gram per 100 milliliters to 6.4 grams per liter, which is more consistent with the federal definition.

### **8. 12-Pack Decision**

On March 6, 2015, the PLCB, Office of Chief Counsel issued Advisory Opinion No. 15-077 confirming that licensed distributors and importing distributors are authorized to sell and deliver malt or brewed beverages in one of two configurations; they can sell in "case" quantities or they can sell in original containers, as prepared for the market by the manufacturer, containing one hundred twenty-eight (128) ounces or more. In doing so, the PLCB opined that the term "original container" refers not only to the container that is in contact with the malt or brewed beverages, but also to the overall sealed package being offered for sale by the manufacturer. This changed dramatically the way manufacturers and beer distributors sell malt and brewed beverages in Pennsylvania. For the first time since prohibition, packages such as 12-packs, 15-packs and 18-packs could legally be sold to and from beer distributors in Pennsylvania. This change came by way of an advisory opinion issued by the

PLCB's Office of Chief counsel to MBDA legal counsel, who was acting on behalf of two local beer distributors (both MBDA members) and a Pennsylvania brewery. This decision led the way for full package reform, which was accomplished through Act 166 of 2016 and Distributors can now sell malt and brewed beverages in any package configuration to non-licensees of the Board.

## **UNLAWFUL ACTS OF MANUFACTURERS (47 P.S. Section 4-492)**

### **PERSUASION OR COERCING**

For any Manufacturer or any officer, agent or representative of any Manufacturer to coerce or persuade or attempt to coerce or persuade any person licensed to sell or distribute malt or brewed beverages at wholesale or retail to establish selling prices for its products or to enter into any contracts or agreements, whether written or oral, or take any action which will violate or tend to violate any provisions of this act or any of the rules or regulations promulgated by the Board pursuant thereto.

### **MODIFICATION OR TERMINATION OF AGREEMENTS**

For any Manufacturer or any officer, agent or representative of any Manufacturer to modify, cancel, terminate, rescind or not renew, without good cause, any distributing rights agreement, and in no event shall any modification, cancellation, termination, rescission or nonrenewal of any distributing rights agreement become effective for at least ninety (90) days after written notice of such modification, cancellation, termination, rescission or intention not to renew has been served on the affected party and Board by certified mail, return receipt requested, except by written consent of the parties to the agreement. The notice shall state all the reasons for the intended modification, termination, cancellation, rescission or nonrenewal. The distributor or importing distributor holding such agreement shall have ninety (90) days in which to rectify any claimed deficiency, or challenge the alleged cause.

If the deficiency shall be rectified within ninety (90) days of notice, then the proposed modification, termination, cancellation, rescission or nonrenewal shall be null and void and without legal effect.

If the notice states as one of the reasons for the intended modification, cancellation, termination, rescission or nonrenewal that the Importing Distributor's or Distributor's equipment or warehouse requires major changes or additions, then if the Distributor or Importing Distributor shall have taken some positive action to comply with the required changes or additions, the Distributor or Importing Distributor shall be deemed to have complied with the deficiency as set forth in the notice. The notice provisions of this section shall not apply if the reason for termination, cancellation or nonrenewal is insolvency, assignment for the benefit of creditors, bankruptcy, liquidation, fraudulent conduct in its dealings with the Manufacturer, revocation or suspension for more than a thirty (30) day period of the Importing Distributor or Distributor license.

### **INTERFERENCE WITH TRANSFER**

For any Manufacturer to interfere with or prevent any Distributor or Importing Distributor from selling or transferring his license, business or franchise, whether before or after notice of modification, cancellation, termination, rescission or nonrenewal has been given, provided the proposed purchaser of the business of the Distributor or Importing Distributor meets

the material qualifications and standards of the Manufacturer's other Distributors or Importing Distributors.

If the proposed transfer of the Distributor's or Importing Distributor's business is to a surviving spouse or adult child, the Manufacturer shall not, for any reason, interfere with, or prevent, the transfer of the Distributor's or Importing Distributor's license, business or franchise. Any subsequent transfer by surviving spouse or adult child shall thereafter be subject to the provisions of 47 P.S. Section 4-492 (20) (i).

### **UNORDERED PRODUCTS AND ILLEGAL ACTS**

For any Manufacturer to compel or attempt to compel any Distributor or Importing Distributor to accept delivery of any malt or brewed beverages or any other commodity which shall not have been ordered by the Distributor or Importing Distributor, or to do any illegal act by any means whatsoever including, but not limited to, threatening to amend, cancel, terminate, rescind or refuse to renew any agreement existing between Manufacturer and the Distributor or Importing Distributor, or to require a Distributor or Importing Distributor to assent to any condition, stipulation or provision limiting the Distributor or Importing Distributor to his right to sell the products of any other Manufacturer.

## **VII. DISTRIBUTORS' RIGHTS**

### **IMPORTANT NOTICE**

Brewers and distributors (D and ID) are not permitted to engage in cooperative advertising (of alcohol beverages) which under Section 13.51 is deemed to be the giving and acceptance of a thing of value. Furthermore, under federal laws and regulations all advertisements (of alcoholic beverages) must carry the name and address of the sponsor of such advertisement.

The following PLCB Bulletins set forth court opinions and Board interpretations which are important to all members.

### **TERRITORIAL DISTRIBUTING RIGHTS**

#### **Bulletin A-154, 11/12/86**

The Commonwealth Court, in its decision **In re Genna (1985)**, interpreted territorial distributing rights set forth in 47 P.S. Section 4-431 (b). The Court rejected the concept of a "tertiary" ID (not subject to territorial restrictions) and further stated that as between any two IDs the seller is considered "primary" while the purchaser is "secondary". Therefore, once a brewer has conferred territorial distributing rights to an ID, each ID's purchase and sales are governed by territorial agreements regardless of the number of IDs through which malt beverages may pass.

There must be a valid territorial agreement between IDs before any sale or transfer of malt beverages may be completed. The territorial agreement must specify the terms and conditions under which malt beverages are to be resold within the territory granted to the seller (the "primary" ID). The purchaser (the "secondary" ID) may not resell malt beverages in any territory located outside the geographic area which has been granted by the "primary" ID.

The Board further issued a recommendation in way of a reminder to all Ds and IDs that they comply with 40 Pennsylvania Code Section 9.96 by filing all territorial agreements with the Board and by posting such territorial agreements on the licensed premises. The Board has warned that citations



utor and Distributor the exclusive right to establish a selling price, to select the brands of the malt or brewed beverages they wish to handle and to determine the efforts and resources which the ID and D will exert to develop and promote the same of the manufacturer's products handled by the ID and D. However, the manufacturer expects that the ID and D will price competitively the products handled by them, devote reasonable effort and resources to the sale of such products and maintain a reasonable sales level." "Good cause" shall mean the failure by any party to an agreement, without reasonable excuse or justification, to comply substantially with an essential, reasonable and commercially acceptable requirement imposed by the other party under the terms of an agreement.

The Amendment appears to be designed to eliminate favoritism by Manufacturers towards certain distributors, so as to prevent unfair competition. To this end, Manufacturers are required by the 1980 Amendment to make the same terms and conditions available to ALL distributors and to terminate those distributors for good cause only. However, this Amendment does NOT operate retroactively and therefore does not apply to agreements entered into before August 22, 1980. See **Centre Beverage Company, Inc. v. Miller Brewing Company**, 779 F.2D 168 (3<sup>RD</sup> Cir.1985).

#### LIMITATION ON AGREEMENTS

No Manufacturer shall enter into any agreement with more than one Distributor or Importing Distributor for the purpose of establishing more than one agreement for designated brand or brands of malt or brewed beverages in any one territory. After January 1, 1996, all Importing Distributors must maintain records which establish that each and every case of a brand of malt or brewed beverage for which the Importing Distributor is assigned was sold, resold, stored, delivered or transported by the Importing Distributor, either from a point or to a point within the assigned geographically contiguous territory, to any person or persons, whether such person or persons are Board licensees or not.

#### TERRITORIAL & BRAND OBLIGATIONS OF PURCHASER

Except for discontinuance of a brand or a valid termination for good cause, the purchaser of the assets of the Manufacturer as defined in this act shall become obligated to all the territorial and brand designations of the agreement in effect on the date of purchase. Purchase of assets as defined for the purposes of this act shall include, but not be limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

#### JURISDICTION OF COURT OF COMMON PLEAS

The court of common pleas of the county wherein the licensed premises of the Importing Distributor or Distributor are located is vested with jurisdiction and power to enjoin the modification, rescission, cancellation or termination of a franchise or agreement between a Manufacturer and an Importing Distributor or Distributor at the instance of such Importing Distributor or Distributor who is or might be adversely affected by such modification, rescission, cancellation or termination, and in granting an injunction the court shall provide that no Manufacturer shall supply the customers or territory of the Importing Distributor or Distributor by servicing the territory or customers through other Importing Distributors or Distributors or any other means while the injunction is in effect: Pro-

vided, however, that any injunction issued shall require the posting of sufficient bond against damages arising from an injunction improvidently granted and a showing that danger or irrevocable loss or damage is immediate and that during the pendency of such injunction the Importing Distributor or Distributor shall continue to service the accounts of the Manufacturer in good faith.

#### EXEMPTION-PENNSYLVANIA MANUFACTURERS

The provisions of this section of the law do not apply to Pennsylvania Manufacturers, whose principal place of business is located in Pennsylvania unless they name or constitute a Distributor or Importing Distributor as a primary or original supplier of their products subsequent to the effective date of the act, or unless such Pennsylvania Manufacturers have named or constituted a Distributor or Importing Distributor as a primary or original supplier of their products prior to the effective date of the act, and which status was continuing when the act became effective.

#### 5. Credit Cards

Importing Distributors and Distributors may accept credit cards from licensees and non-licensees in payment for purchases of malt and brewed beverages, but are not required to do so.

#### 6. Proof of Age

Act 10 of 2002 amended Section 4-495 of the Liquor Code. This Act defines an acceptable identification card for the purpose of proof of age as a *valid* photo driver's license, a *valid* armed forces of the *United States* identification card or a valid passport or travel visa issued by *the United States* or a foreign country, containing the holder's photograph. A "good faith defense" for serving alcohol to a minor can be established if the licensee established that (a) the minor was required to produce an acceptable identification card (as defined above); (b) that the minor either signed a proof of age affidavit or the licensee made a photograph, photocopy or other visual or video presentation of the identification card; and (c) that those documents were relied upon in good faith.

Act 221 of 2002 further amends Section 4-495 so that if a licensee or licensee's employees can establish that the minor was required to produce one of the authorized identification cards, and the identification card was scanned by a transaction scan device and was found to be valid, and the result was relied upon in good faith, then the licensee or the employee cannot be penalized in a civil or criminal prosecution. Act 39 added Canadian driver's licenses or other bona fide Canadian ID, such as a Canadian passport, to the list of identification cards that may be accepted by licensees.

#### 7. Cider

Alcoholic cider not exceeding 8.5% alcohol by volume is

will be issued should such transfers of malt beverages occur without having a valid territorial agreement filed and posted.

#### **“NEW PACKAGE”**

The Board has interpreted that under the Liquor Code there must be a change in the number of fluid ounces contained within a bottle or can and/or a change in the number of bottles or cans per case to constitute a “new package”. The Board specifically excluded from the definition of “new package” the concept of alteration in the configuration of a case, e.g. four 6-packs changed to two 12-packs.

#### **MANUFACTURER’S REBATE COUPONS**

The 1987 Act permits manufacturer’s rebate coupons on malt beverages. The LCB has placed the following conditions and restrictions on the use of manufacturer’s coupons:

1. May be used by retail customers only; cannot be used by any LCB licensee

2. Must be made available only on the licensed premises

Must contain the following:

(a) Initiation and expiration dates

(b) Rebate value

(c) Provision for the name and address of the person redeeming the coupon

(d) Identity of manufacturer or his agent

(e) Description of product including at least brand name and size

(f) A warning statement that purchase of product and resale offer is limited to persons 21 years old and up.

4. Must require proof of purchase by sales slip or cash register receipt. May also require additional proof of purchase.

5. Manufacturer must maintain complete records for a period of at least 2 years after expiration date.

#### **BRAND NAME COOPERATIVE ADVERTISING**

Under Liquor Code Section 493 (20)(ii), Ds and IDs may be reimbursed by a brewer pursuant to prior written agreement for such portion of an expenditure made by the D or ID which can be attributed to the placement of brand name advertising upon the uniforms of personnel employed by such D or ID. Further, again only pursuant to prior written agreement, reimbursement is permitted for the cost of painting a brewer’s brand logo on delivery trucks of Ds or IDs.

#### **SAMPLES**

Samples for market research and for the purpose of educating consumers may be provided by Manufacturers’ representatives and D and ID licensees to licensed and unlicensed customers. Samples must be in unopened containers of the smallest commercially available size and the providing of such samples cannot be conditioned upon any purchase requirement. Samples may not be opened or consumed on D or ID licensed premises. Samples are limited to one container per patron in any offering.

#### **EDUCATIONAL SEMINARS**

Licensees of any class may conduct educational seminars for other licensees or groups of licensees providing only instructions to participants. Licensees conducting seminars may not assume the costs for food, alcoholic beverages, lodging or transportation for attendees.

#### **TASTINGS**

Product tasting for market research and for the purpose of educating consumers as to the quantities and availability of malt/brewed beverages may be conducted on the licensed premises of IDs and Ds, provided:

(a) Products used are legally procured and tax paid.

(b) There is no purchase requirement associated with the tasting

(c) There is no cooperative advertising associated with the tasting event.

(d) No more than one standard size beverage(12 fl. oz.) of each product shall be provided to each tasting participant. Section 441(b) of the Liquor Code, as amended.

#### **CHARITABLE INSTITUTIONS - SALES TAX EXEMPTION**

The sale of beer to charitable, volunteer firemen’s, religious organizations, and non-profit educational institutions may be exempt from sales tax provided that the purchasing organization presents an exemption certificate, form REV-1220, validly claiming at number 4 on the form that the purchaser is an exempt organization holding an exemption number, a number that begins with the digits “75”. Distributors are advised to keep copies of all forms REV-1220 for their records.

#### **WINE KEGS**

The Board is now permitted to sell wine in containers having a capacity of sixty (60) liters or less. This provision gives the Board the authority to sell wine in keg-sized containers, should it choose to do so. It should be noted that, effective July 7, 2012, licensed limited wineries are authorized to sell wine in any size containers, including wine kegs, pursuant to a change in section 11.111(a)(3) of the Board’s Regulations.

#### **AUCTIONING OF EXPIRED RETAIL LICENSES.**

Act 39 of 2016 allows the PLCB to auction expired restaurant liquor licenses in cases where the licenses were either non-renewed, revoked by an ALJ, or are no longer eligible for safekeeping. This applies to all restaurant licenses that expired since 2000 and is ongoing. The PLCB may auction a maximum of 50 licenses per county per year, and any licenses not bid on at auction are available for sale at future auctions. As of the date hereof, there has been one auction and a second one is scheduled for March, 2017. The manner of conducting the auction is within the PLCB’s discretion, but both auctions so far have been by silent bid. The minimum bid for a license is \$25,000 and the highest bidder must file a transfer application within six months of the award.



