

No. 1980-73

AN ACT

HB 1528

Amending the act of April 12, 1951 (P.L.90, No.21), entitled "An act relating to alcoholic liquors, alcohol and malt and brewed beverages; amending, revising, consolidating and changing the laws relating thereto; regulating and restricting the manufacture, purchase, sale, possession, consumption, importation, transportation, furnishing, holding in bond, holding in storage, traffic in and use of alcoholic liquors, alcohol and malt and brewed beverages and the persons engaged or employed therein; defining the powers and duties of the Pennsylvania Liquor Control Board; providing for the establishment and operation of State liquor stores, for the payment of certain license fees to the respective municipalities and townships, for the abatement of certain nuisances and, in certain cases, for search and seizure without warrant; prescribing penalties and forfeitures; providing for local option, and repealing existing laws," further regulating distributing rights for malt and brewed beverages and providing remedies and penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 431, act of April 12, 1951 (P.L.90, No.21), known as the "Liquor Code," is amended by adding a subsection to read:

Section 431. Malt and Brewed Beverages Manufacturers', Distributors' and Importing Distributors' Licenses.—* * *

(d) (1) 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such agreement and its other importing distributors and distributors shall not be modified, cancelled, terminated or rescinded by the manufacturer without good cause, and shall contain a provision in substance or effect as follows: "The manufacturer recognizes that the importing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 distributor and distributor the exclusive right to establish a selling price, to select the brands of malt or brewed beverages they wish to handle and to determine the efforts and resources which the importing distributor and distributor will exert to develop and promote the same of the manufacturer's products handled by the importing distributor and distributor. However, the manufacturer expects that the importing distributor and distributor 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.

(2) After January 1, 1980, 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. Each franchise territory which is granted by a manufacturer shall be geographically contiguous.

(3) 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.

(4) The court of common pleas of the county wherein the licensed premises of the importing distributor or distributor are located is hereby 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: Provided, however, That any injunction issued under this subsection shall require the posting of sufficient bond against damages arising from an injunction improvidently granted and a showing that the danger of 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.

(5) The provisions of this subsection shall 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 this 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 this act, and which status is continuing when this act becomes effective.

Section 2. Section 492 of the act is amended by adding clauses to read:

Section 492. Unlawful Acts Relative to Malt or Brewed Beverages and Licensees.—

It shall be unlawful—

* * *

(18) Coercing Distributors and Importing Distributors. 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.

(19) Modifying or Terminating Distributing Rights Agreement. 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 renewal that the importing distributor 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 have 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.

(20) Interference with Transfer of License, Business or Franchise.

(i) 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 required of the manufacturers other distributors or importing distributors; (ii) if the proposed transfer of the distributor 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 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 subclause (i) above.

(21) Inducing or Coercing Distributors or Importing Distributors to Accept Unordered Products or Commit 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 in his right to sell the products of any other manufacturer.

Section 3. This act shall take effect in 60 days.

APPROVED—The 22nd of June, A. D. 1980.

DICK THORNBURGH