



ADVISORY NOTICE NO. 11 (Third Revision)

**MALT OR BREWED BEVERAGE PRICE CHANGES
MARCH 30, 1999**

TO: All Malt or Brewed Beverage Manufacturers, Importing Distributors and Distributors

Note: This Advisory Notice Revision replaces in its entirety previous

The purpose of this Advisory Notice is to inform all affected parties of recent developments regarding Act 196 of 1996, known as "the 120-day law." By Order of January 15, 1999, Judge Richard Caputo of the United States District Court for the Middle District of Pennsylvania granted a permanent injunction prohibiting the enforcement of several sections of the Liquor Code. The court found that parts of the law violated the Sherman Antitrust Act. No appeal will be taken from the court's decision.

As a result of this decision, the requirements that wholesale prices be reported and if reduced, that they remain at that level for at least 120 days, are no longer legal and cannot be enforced. Therefore, prices of malt beverages can be reduced and then raised at any time. Price reports need not be filed with Malt Beverage Compliance each April. Section 447 of the Liquor Code will no longer be enforced. (A copy is attached hereto). [47 P.S. §4-447].

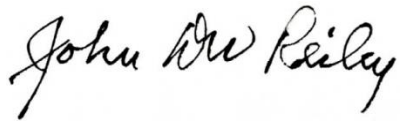
The Regulations which were passed to implement the 120-day law will no longer be enforced either. This entails Sections 11.201 - 11.205 of the Board's Regulations which were attached to Advisory Notice No. 11 (Second Revision). Licensees are still required to comply with §§9.96 and 9.108 of the Board's Regulations which involves territorial rights agreements. Manufacturer rebate coupons will no longer be required to run for 120 days as stated in Advisory Notice No. 10 (Fourth Revision). Coupons must still include the dates of initiation and expiration.

Furthermore, the surcharge provisions of Act 196 have been voided by the court's decision. As a result, the surcharge fee of \$95.00 for a distributor's license and \$470.00 for an importing distributor's license, as well as a surcharge of \$75.00 for each brand registration, shall no longer be collected by the Board. Refunds for surcharge fees prorated for the 1999 licensing and brand registration periods will be processed in the near future and sent to you.

If you have any questions, please contact Malt Beverage Compliance at (717) 783-7580.

The provisions of this Advisory Notice are effective immediately. Please govern your operations accordingly.

**BY ORDER OF:
THE PENNSYLVANIA LIQUOR CONTROL BOARD**



**JOHN D.W. REILEY
Secretary to the Board**

SECTION 447. PRICE CHANGES OF MALT AND BREWED BEVERAGES.

(a)(1) The purpose of this section is to effect and promote the intent of the General Assembly, expressed in section 104 of this act and in this section, by regulating the manner in which wholesale prices of malt or brewed beverages are changed by a manufacturer, importing distributor and distributor and by providing for the retention and the furnishing of records of price changes by such manufacturers, importing distributors and distributors. By forbidding manufacturers, importing distributors and distributors from providing short-term price wholesale discounts, it is the intent of the General Assembly to discourage increased consumption and irresponsible conduct resulting from impulse buying, price promotion or the natural elasticity of demand relative to price.

(2) Any manufacturer, importing distributor or distributor which reduces the price on any package of any brand of malt or brewed beverage sold for resale within this Commonwealth may further reduce the price at any time, but any reduction shall continue in full force and effect for at least one hundred twenty days from the date on which the last such reduced price becomes effective, except that price may be increased earlier:

- i. to reflect any tax increase on malt or brewed beverages;
- ii. in the manner described in subsection (b) if the increase was effected to meet competition; or
- iii. with permission of the board granted in the manner described in subsection (c).

(3) If an importing distributor or distributor of malt or brewed beverages lowers the wholesale price on any package of any brand of malt or brewed beverages to one importing distributor or distributor or retail licensee within the geographic area for which he possesses distribution rights for that product, the importing distributor or distributor shall lower the wholesale price on such package of such brand offered or sold to all other importing distributors or distributors or retail licensees within the geographic area by a like amount. Any importing distributor or distributor who lowers the wholesale price on any package of any brand of malt or brewed beverages shall file a notice of the lowered price with the Commonwealth no later than seven days of such change and retain a record of the lowered price for at least two years from the date of filing. If such importing distributor or distributor, having lowered the wholesale price on a package of a brand pursuant to this section, subsequently raises the wholesale price on such package of such brand to one importing distributor or distributor or retail licensee within the geographic area for which he possesses distribution rights for that product, the importing distributor or distributor shall raise the wholesale price on such package of such brand offered or sold to all other importing distributors or distributors or retail licensees within the geographic area by a like amount.

(4) No importing distributor or distributor shall be required by any manufacturer or importing distributor to reduce the resale price of any package of any brand of malt or brewed beverages by an amount greater than the amount by which such manufacturer or importing distributor has reduced the wholesale price on such package of such brand to such importing distributor or distributor.

(5) Deleted.

(6) Manufacturers shall notify importing distributors and distributors, in writing, of any:

- i. price reduction with respect to any malt or brewed beverage;
- ii. price of a new brand or package of a malt or brewed beverage; or
- iii. price increase subsequent to a price reduction at least fifteen days before such reduced, new or increased price becomes effective.

(b) If any manufacturer, importing distributor or distributor has reduced the wholesale price of any package of any brand of malt or brewed beverages, any other manufacturer, importing distributor or distributor may reduce the wholesale price on the same or similar package or competing brand to meet competition, which reduction shall:

(1) not exceed the reduction to which it responds; and

(2) continue in full force and effect until the earlier of:

- i. the one hundred twentieth day after the date on which the reduction to which it responds became effective; or
- ii. the lawful rescission of the reduction to which it responds.

(c) A manufacturer, importing distributor or distributor may change the price within a time period of less than one hundred twenty days from when the price went into effect if market conditions or any other good cause support the change. The manufacturer, importing distributor or distributor shall notify the board within forty-eight hours of the change of such price. The board shall set a hearing date as soon as practicable and shall rule on whether the manufacturer, importing distributor or distributor has made an appropriate showing which supports the price change. If the manufacturer, importing distributor or distributor fails to show good cause, it shall reimburse the difference between the original and increased price to those who purchased the malt or brewed beverage.

(d) The board shall monitor the filings deriving from subsection (a)(3) and the applications deriving from subsection (c). The board shall, no less frequently than four times each year, consider at a regularly or specially scheduled meeting the issue of whether the Commonwealth's policy of temperance and responsible conduct with respect to alcoholic beverages is being effected and promoted by this act, including, without limitation, this section and sections 492(18), 493(8) and (22) and 498 of this article, and by the board's regulations, including, without limitation, to those regulations restricting retail licensees' discount pricing practices. The board shall, no less frequently than once each year, provide to the General Assembly a report with respect to the board's findings, which report shall contain a summary of the filing and applications deriving from this section.