



# Malt Beverage Distributors Association of Pennsylvania

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## MBDA MEMBERSHIP — “Strength, Service, Value”

The General Assembly is in summer recess and no legislation was enacted that is detrimental to Pennsylvania’s beer distributors. As noted below, in the legislative session’s closing week, MBDA and others who have an interest in maintaining stable beverage markets fought off an amendment to eliminate the requirements that food merchants use a register in their licensed area to sell alcoholic beverages.

During this period, MBDA had extensive talks with key state lawmakers regarding the issue of sales tax fairness for beer distributors and discussions with the PLCB to significantly increase the items that distributors are permitted to sell.

Supermarkets and convenience stores have also lobbied to change and remove three key provisions in the way they currently operate, the 30-person seating requirement for the sale of alcohol as well as the single register requirement. They continue to push to gain permission to ring up multiple twelve packs, which would lead to their ultimate goal of selling cased beer in their aisles. **Beer distributors working with their industry partners have been able to defeat these proposals.** Food merchants and now Wal-Mart will continue to pursue them. They want the entire market!

Our activity in promoting positive legislation and halting the enactment of grocery and convenience store proposals reinforces the significance and influence of a strong trade association and the importance of its role in guiding its membership. MBDA spends countless hours evaluating legislation, communicating the pros and cons of legislation to our members, testifying at public hearings, issuing news releases, visiting Senators and House Members in Harrisburg, and organizing our membership base to call on their legislators both at their Capitol and district offices.

MBDA extends our deepest appreciation to each of you for taking the time to make your opinions known to our state lawmakers. You effectively conveyed your Association’s message that we are a private industry that makes major contributions to our Commonwealth and local communities, and that grocery and convenience store proposals were not developed for consumer convenience, but to benefit big corporations at the expense of small, local businesses. Our industry has 1,200 specialty beer retailers who employ more than 10,000 Pennsylvanians. We provide consumers with great prices, excellent choice, and unparalleled service 7 days per week, confirming that beer distributors are the best value for the purchase of malt and brewed beverages.

Over the summer, please continue to develop personal relationships with your Senator and House Member by visiting or calling them at their district offices. Your grassroots effort is essential as we prepare for mid-September. That is when the General Assembly returns. We anticipate another strong push for the expansion of beer in supermarkets and convenience stores, particularly since Wal-Mart is now on the playing field. Please join MBDA today. This is a crucial time for all Pennsylvania distributors to come on board and support your organization. There is strength in numbers, and the more members we have, the louder our voice is in Harrisburg. **We hope that you return the enclosed membership invoice with your dues check at your earliest opportunity. You also have the option to pay on-line.**

And, please remember to take advantage of our discounted membership programs—business insurance, credit/debit card processing, commercial electricity, web site design, office supplies & equipment purchase—the savings for which will pay for your dues many times over!

Please read on—

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## What Package Reform Means for Beer Distributors

First MBDA went to court to win the right for distributors to sell twelve packs. Then, at our urging, the General Assembly agreed to give consumers the long-sought-after right to buy any package from us—singles, 4-packs, 6-packs, 12-packs, growlers, crowlers & slushies in addition to cases & kegs. Act 166 transformed beer distributors into the ultimate beer retailers in Pennsylvania!

Yes, our business model has changed, and we're excited by its improvements. Package reform has enabled us to do an even better job of accommodating our customers. We've always provided great selection. Now we're able to offer that selection in all package sizes! Now we're able to quench our customers' thirst for draft beer at our growler and crowler stations! Now we're able to satisfy their cravings for slushies! And, we're proud to say that we do it all so responsibly.

While we're excited to have improved our business prototype, we strive to enhance our stores even further with high-quality shelving, coolers, signage and lighting. However, we guarantee that one thing will not change. We'll continue to roll out the welcome mat by offering the highest personalized service, greatest selection, and best value to our customers.



## Recently Enacted Legislation

**Pennsylvania Brewers Sales Tax:** Under HB 262, which passed the General Assembly on June 28, 2019 and was signed into law by the Governor on July 8, 2019, PA breweries will pay 6 percent sales tax on 25 percent of the retail sale to the consumer for consumption on premises.

**HB 1524 by Jack Rader (R-Monroe Co.)** amends the Liquor Code by adding language to allow restaurant liquor licenses from a "saturated county" to be transferred to tourist development projects. It defines "saturated county" as a county with more than one restaurant liquor license per 3,000 inhabitants in the top 25 highest ratios of restaurant liquor licenses to county population. It defines "tourist development project" as a planned development situated on at least 90 acres of land, constructed since January 1, 2019, that is dedicated primarily to tourism with at least 500,000 square feet of actual or proposed development, with a mix of entertainment and retail uses.

The legislation sets the application fee at \$1 million, and licenses in the tourist development project cannot provide alcohol for off-premise consumption. A license not used by a tourist development project is returned to the county from which it originated. HB 1524 passed the House and Senate on June 26, 2019 and was signed by the Governor on July 2nd. It becomes effective in 60 days.

## Legislation Opposed by MBDA

Outreach by MBDA and our members to their senators and house members were key to our success in stopping the following legislation. We thank you!

**Amendment to Liberalize Sales in Grocery Stores:** In late June, MBDA, working closely with a coalition of industry partners, defeated a fast-moving, last-minute amendment in the Pennsylvania Senate that would have allowed grocery and convenience stores to sell alcohol at registers outside of their licensed premises.

Current law, designed to discourage underage sales, requires that all licensees – including grocery and convenience stores – sell alcoholic beverages only through a register located inside the licensed premises. The circulated amendment would have created an exception for grocery and convenience stores, and would also have eliminated the current prohibition against gas and beer being sold at the same register.

**Grocery & Convenience Store Dream Bill:** Matt Dowling (R-Fayette Co.) introduced HB 1644, legislation that would:

- Eliminate the requirement for tables and chairs.
- Eliminate the requirement to have a register in the licensed premises.
- Eliminate the requirement that they sell for on-premises consumption, allowing them to sell for takeout only.
- Allow for the sale of unlimited quantities of 12 packs.
- Allow for the sale of more than 4 bottles of wine.



**Additional Wine Discount for Grocery Stores:** HB1346, by Kurt Masser (R-Northumberland Co.), Permits all R licensees, including supermarkets and convenience stores, to sell take-out wine at a discount of up to 30 per cent below state store prices by allowing them to negotiate and purchase wine from any wholesaler, clearly tilting the playing field even more for large corporate grocery and convenience stores and giving them yet another advantage in the takeout market.

Currently, R licensees are permitted to sell up to 4 bottles of take-out wine, but only if it is acquired from the PLCB at an 8% discount (10% less 2% renewal fee).

**State Franchise Stores:** SB 548, by Gene Yaw (R-Lycoming Co.) creates a “Franchise Store System” to allow licensees to sell wine and spirits for off-premises consumption. As drafted the bill would allow wine-expanded permit holders to automatically obtain these licenses and allow anyone with “significant retail experience” the ability to apply if they meet certain standards. The PLCB would retain the wholesale distribution of wine and spirits.



**10,000 New Takeout Beer Licenses:** A proposal by John Lawrence (R-Chester Co.) would allow R licensees to “split” their license into two separate licenses—one for beer takeout and one for on-premises sales of beer, wine and spirits. The proposal would allow separate individuals to each hold portions of the license. This would enable grocery and convenience stores to sell off the on-premises portion of their license, permitting them to sell for take-out only.

You’ll recall that this is something grocery and convenience stores attempted to achieve years ago by insisting they could sell beer for off-premises only. Of course, they were defeated by MBDA in the PA Supreme Court.

**Clubs Selling 6-Packs To Go:** HB 763, by Tim O’Neal (R-Washington Co.), would allow club licensees to sell up to 192 ounces of beer for off-premise consumption, creating more than 3,000 additional retail licensees permitted to sell beer to go.

## Sales Tax Parity for Distributors

R licensees pay sales tax at the wholesale level, and do not charge sales tax to the consumer. Distributors do not pay sales tax at the wholesale level, and charge the consumer sales tax at the point of sale.

This tax disparity issue hurts the state, as they are leaving significant tax dollars on the table. It’s also of concern to beer distributors, as supermarkets and convenience stores are able to sell at a lower cost.

MBDA is pursuing this matter legislatively and also investigating the possibility of a legal challenge. Members will be kept updated.

## Senate and House Session Dates

The PA House will be in Harrisburg on September 17, 18, 19, 23, 24, 25; October 21, 22, 23, 28, 29, 30; November 12, 13, 14, 18, 19, 20; and December 9, 10, 11, 16, 17 18.

The PA Senate will be in session on September 23, 24, 25; October 21, 22, 23, 28, 29, 30; November 18, 19, 20; and December 16, 17, 18.

When not in session, Senators and House Members can be reached at their district offices. For House contact information, please go to [www.pahouse](http://www.pahouse). Senate information is available at [www.pasenate](http://www.pasenate).

## Three of the Four Committee Chairs are New for 2019

Three of the four chairs of the committees charged with regulating beer, wine and spirits are new this year. Only Jim Brewster (D-Allegheny) as Minority Chairman of Senate Law & Justice served in that capacity last year. Pat Stefano (R-Fayette) is the Majority Chairman of the Senate Law & Justice Committee.

Jeff Pyle (R-Armstrong) is Majority Chairman of the House Committee on Liquor Control and Dan Deasy (D-Allegheny) is the Minority Chairman.

We ask our MBDA members to contact the committee chairs as a way of introduction. It’s important that they understand the value of the private enterprise beer distributor.

MBDA has met with each chair, and we look forward to working with them.



## Congratulations to the New PLCB Member

Mary Isenhour, former chief of staff to Gov. Tom Wolf, is the first woman elected to serve on the three-member PA Liquor Control Board. In June, she was confirmed for a four-year term by the PA Senate by a 45-5 vote. She joins Chairman Tim Holden and Member Mike Negra on the board.

We encourage our members to send Ms. Isenhour a congratulatory note and advise her that they look forward to working with her. Correspondence should be addressed to Mary Isenhour, Member, PA Liquor Control Board, Northwest Office Building, Harrisburg, PA 17124.

## Legal Updates

Distributors—The following are examples of the type of information that our legal counsel readily makes available to our members. Please join MBDA as a member, so that you too can be informed as things are happening!



### Slushie Guidelines:

Many members have asked about the requirements for slushy sales at beer distributors. Since the passage of Act 166, Distributors have been permitted to sell these products under advisory opinions from the PLCB's Office of Chief Counsel so long as they fit under the definition of "growler". While there have been few official rulings and/or regulations from the PLCB or PA Department of Agriculture on the issue of slushy sales, here are some guidelines we believe will be important for our members:

The Department of Agriculture ("DOA") will require distributors to register with them (and pay an application fee) in order to fill and sell slushies. For distributors who are already registered with the DOA, you should be able to treat this as a change in operations application. If you are already selling growlers then no additional registration or application should be required. Distributors will be required to install a 3 compartment sink and a separate hand washing sink near the slushy area (although it may be possible to seek a variance to utilize the 3 compartment sink as the hand



washing sink). The location of the sinks must be approved by the DOA. We have heard of instances where the DOA or local health department has approved a 2 compartment sink, so we suggest contacting the DOA or local health department to confirm.

All tap systems must be cleaned in accordance with PLCB Regulations (40 Pa Code §§5.50-5.54). Importantly, the tap system is to be cleaned at the sole expense of the distributor and the method of cleaning must leave the entire system in a clean and sanitary condition. The following cleaning methods have been approved by the PLCB: (i) use of a chemical cleaning solution; (ii) live steam; or (iii) hot water solution followed by a thorough rinsing with hot water. The frequency of cleaning is to occur once every 7 days or at a cleaning frequency approved by the PLCB. The distributor must maintain and keep a record of the date of each cleaning and the method utilized. If the distributor uses a third party to clean the dispensing system, the distributor must obtain a certificate showing the date cleaned, the name of the person by whom cleaned and the method utilized, and keep the certificate on file at the licensed premises.

Section 493(6) of the Liquor Code requires all licensees (including distributors) who sell malt or brewed beverages from a faucet, spigot or other dispensing apparatus to have the trade name or brand of the product served apparent in full sight of the customer.

The container in which slushies are sold must be refillable and capable of being resealed. Customers are not permitted to consume these beverages on a distributor's licensed premises.

There is no requirement to affix any sort of product label to a slushy once it is filled, but a distributor is responsible for maintaining accurate records that reflect what type of beer is being sold in a transaction in order to comply with 47 P.S. § 4-493(12). A distributor is not permitted to mix anything with the malt or brewed beverage (not even ice).

Employees serving and filling slushies must be RAMP certified, and they must refuse to fill slushies for patrons who are underage or visibly intoxicated.

The Surgeon General's Warning regarding alcohol consumption set forth in 27 U.S. Code § 215 (a) should be posted on all slushies: "GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems." Best practices dictate that a slushy should not be filled unless the Surgeon General's warning is in a conspicuous and prominent location on the container, or a label containing the warning (e.g., a sticker) can be affixed to the container by the distributor.

If you intend to sell slushies or growlers at your distributor, you should contact the DOA as soon as possible to initiate the application and inspection process. Be advised that not all facilities are under the DOA's jurisdiction. Six counties (Allegheny, Bucks, Chester, Erie, Montgomery and



Philadelphia) have county health departments that handle inspections and licensing in their jurisdictions. Additionally, some local municipalities also do their own inspection and licensing. If your business is located in a county or local health department jurisdiction, you should contact your local health department for assistance with licensing and requirements.

### **Food Products and Beer Containing CBD:**

Many of our members have asked about the legality of selling dietary supplements or food products that contain hemp-derived CBD. As an initial matter, the PA Liquor Code and regulations provide that no distributor shall engage in any other business for the sale, rental, or use of any products without first obtaining approval from the PLCB. While the PLCB's Advisory Notice No. 9,



which can be found on the PLCB's website at <http://www.lcb.pa.gov>, lists the types of items a distributor is permitted to sell without approval from the three-member Board, CBD products are not included in Advisory Notice No. 9. As such, a request to sell CBD products would first have to be submitted to the PLCB's Bureau of Licensing for review and approval by the three-member Board. At least one distributor has inquired about CBD water and the PLCB suggested the distributor first contact the PA Department of Agriculture, the Federal TTB and FDA for guidance on whether it is legal to sell CBD water in Pennsylvania.

Our research shows it is not legal in Pennsylvania to sell dietary supplements or food products that contain hemp-derived CBD in interstate commerce, at least not for now. The FDA has repeatedly found in a series of warning letters - and in its most recent statement following the enactment of the Agriculture Improvement Act of 2018 (also known as the 2018 Farm Bill) - that it is unlawful to introduce food containing added CBD into interstate commerce or to market CBD products as dietary supplements. We checked with the Pa Dept of Agriculture and they follow the FDA's guidance on this topic and advised us it is not legal to mix CBD with food or drink and introduce those products into interstate commerce. We are aware of many retailers, including some of the larger chains, selling these products currently and it seems that enforcement is lacking. Based upon the feedback received from the PA Department of

Agriculture and the PLCB, however, we have advised our members that anyone selling CBD products does so at their own risk.

### **PLCB Clarifies Requirements for R, H & E Licensees:**

The law is clear that R, H and E licensees are required to have sufficient seating and food for at least 30 patrons on premises. Recognizing there is no definition for the term "food" in the Liquor Code, the PLCB has attempted to clarify what the term "food" means for retail licensees. Based upon case law which has developed over the years, the PLCB recently clarified that retail licensees must comply with the following: (a) a menu or similar indication of food available for on-premises consumption must be immediately and publicly accessible, (b) food must be stored in the licensed or unlicensed portion of the licensed business, or if the licensee has an interior connection to another business it operates, within the premises that houses the business, and (c) the licensee may establish hours of food availability, but food must be regularly and habitually available for patrons. Effective December 17, 2018, if licensees do not meet these requirements, they could be facing a period of closure.

### **Distributors Shipping Beer Out of State:**

We have been asked by some members about the possibility of shipping beer and malt or brewed beverages into other states. The Liquor Code and the PLCB Regulations do not regulate the export of beer from Pennsylvania to other states; and the PLCB, Office of Chief Counsel has previously opined that distributors are free to conduct legal commerce with parties outside of Pennsylvania at their discretion. However, exporting beer from Pennsylvania to another state would require compliance with the requirements of the state where the beer will be delivered. A distributor would have to contact the appropriate liquor regulatory agency in each state to find out what their requirements are before attempting to send shipments of beer there. It would also be prudent to check with the United States Alcohol and Tobacco Tax and Trade Bureau to make sure there are no federal implications based upon the specific fact scenario. Additionally, while in Pennsylvania, beer may only be transported by distributors or properly licensed Class A or B transporters-for-hire. So, even if a state would permit the shipment of beer there, a Pennsylvania distributor would have to transport the beer itself, or use a properly licensed transporter-for-hire to transport the beer while in Pennsylvania. Our members are cautioned to consult with private counsel before embarking on this type of endeavor.

### **Distributors Selling Other Items:**

Section 492(12) of the Liquor Code prohibits any distributor or importing distributor or its servants, agents, or employees, from selling any other items or engaging in any other business whatsoever except the business of distributing malt or brewed beverages unless the PLCB grants permission to sell other items. Requests to sell additional items are submitted to the PLCB, Office of Chief Counsel for a formal response and the PLCB will, from time to time, approve additional items for



distributors to sell. PLCB Advisory Notice #9 contains a list of the additional items that have been approved by the PLCB for sale at distributors through April 25, 2012 (which was the last time the list was updated). We are always looking for ways our members can grow and improve their businesses, so if there are additional items you would be interested in selling, please share those ideas with us.

### **Home Deliveries by Beer Distributors:**

We have been asked several times recently what a beer distributor is required to do in order to deliver to people's homes. Pursuant to section 431(b) of the Liquor Code, a distributor license authorizes the holder thereof to sell or deliver malt or brewed beverages which have been purchased from licensed manufacturers or importing distributors to non-licensees anywhere within Pennsylvania. Thus, the license currently held by your distributorship already allows for home delivery of malt or brewed beverages, and there is no need to obtain an additional permit.

Pursuant to section 492(9) of the Liquor Code, distributors are only permitted to deliver or transport malt or brewed beverages in "vehicles bearing the name and address and license number of such licensee painted or affixed on each side of such vehicle in letters no smaller than two inches in height." Please note that it is unlawful for distributors to deliver or transport any malt or brewed beverages in a vehicle in which any other commodity is being transported without first obtaining board approval.

With regard to form of payment, it is permissible for distributors that are selling malt or brewed beverages to a non-licensed individual or entity to accept cash, checks, money orders, credit cards, gift certificates or debit cards as payment, so long as the payment is received on the licensed premises prior to delivery of the alcohol.

A distributor may only make sales of malt or brewed beverages on its licensed premises. A "sale" is defined as "any transfer of liquor, alcohol or malt or brewed beverages for a consideration." Therefore, while a distributorship is permitted to transport and deliver malt or brewed beverages to a residence, the sale must have been completed (i.e. payment received) at the distributor's licensed premises prior to such delivery. It would not be permissible for the non-licensed customer to pay the delivery person for the malt or brewed beverages at the time of delivery, in any payment form whatsoever.

Please keep in mind that, regardless of the location of the delivery of alcohol, the Liquor Code makes it unlawful to sell, furnish, or give any alcoholic beverages to any person who is visibly intoxicated or a minor. Section 493(1) also makes it unlawful to permit any alcoholic beverages to be sold, furnished, or given to any person who is visibly intoxicated or a minor. Your distributorship must comply with these restrictions when engaging in home delivery of malt and brewed beverages.

## **U.S. Supreme Court Invalidates State Durational Residency Requirements for Retail Liquor Licenses**

On June 26, 2019, the U.S. Supreme Court released its decision upholding the determination from the U.S. Court of Appeals for the 6th Circuit (Middle District of Tennessee) which held that durational residency requirements for an alcohol beverage license in Tennessee were unconstitutional. The Supreme Court's ruling in this case could significantly impact the regulation of alcohol and state licensing throughout the country. Under Tennessee law, an applicant for a retail liquor license must have been a resident of Tennessee for at least two years prior to making application for a license. For corporations and other business entities, the 2-year requirement applied to any officer, director or shareholder of the company. Two out-of-state applicants, including Total Wine and Spirits, filed applications for licensure and the matter ended up in the federal court system captioned as *Byrd v. Tennessee Wine and Spirits Retailers Association*. The U.S. Court of Appeals for the 6th Circuit ultimately determined the residency requirements violated the "dormant" Commerce Clause. There had been a split in the federal courts over this issue in recent years, and, as expected, the Supreme Court weighed in to provide more clear guidance on these residency requirements.

The decision will impact Pennsylvania which has similar requirements for retail licenses. Under the Pennsylvania Liquor Code, any individual applying to hold a retail (restaurant, hotel, club or retail dispenser) license must show he or she has been a Pennsylvania resident for at least two years preceding the application; however, if the applicant is a company, the applicant must only show the company was formed in Pennsylvania or holds a certificate of authority to transact business in Pennsylvania. With respect to distributor licenses, Pennsylvania law requires applicants to be Pennsylvania residents at the time of making application and, in the case of corporations, all the officers and directors must be residents of Pennsylvania and at least 51% of the company must be owned by individuals who are residents of Pennsylvania. Individuals who are not residents are limited to ownership of no more than 49% of the company.

It is expected this decision will lead to more challenges to state alcohol regulations, including basic residency requirements that differentiate between in-state and out-of-state interests. The Supreme Court acknowledged, however, that its decision is limited and that the States still play a legitimate role in regulating alcohol stating "State law empowers the relevant authorities to limit both the number of retail licenses and the amount of alcohol that may be sold to an individual". The Court also noted that "each variation [of State regulation] must be judged based on its own features."



## Legislative Talking Points

Distributors—When talking with your legislators, please make your story personal. Tell them how many years you have been in business, how you've invested your savings, earnings and retirement in a business that provides a very efficient system of distributing 80-85% of the beer sold for off-premises consumption. We are a huge source of revenue for the Commonwealth and our local communities.

Advise them of how many Pennsylvanians you employ—good-paying jobs with benefits that would not be recouped by grocery, convenience and big box stores should you be forced to close your doors. Talk with them about your involvement in community events and your excellent record in not selling to minors.

Remind them that we have only beer to sell and strictly for off-premises consumption. Grocery and convenience stores with R licenses have the benefit of selling numerous food items; beer, wine and spirits for on-premises consumption; and beer and wine to go. It would be beneficial to us and our customers to be given wine parity with the R licensees as well as the PLCB granting us additional items to sell.

## Walmart Purchases R License

Walmart was the winning bidder of a license in Redstone Township, Fayette County, as a result of the PLCB's eighth zombie license auction for 25 liquor licenses. The winning bid was \$65,000. They plan to use the license at its store in South Union Township and by law will be limited to selling 192 fluid ounces of beer to go.

The winning bids for other licenses auctioned ranged in price from \$276,100 for a license in Bucks County to \$28,888 for a license in Elk County. The average winning bid was \$95,255. Three of the licenses auctioned in Dauphin, Monroe and Sullivan counties received no bids.

As with the previous seven auctions, supermarkets and convenience stores dominated. Winning bids and bidders are posted on the PLCB web site, [www.lcb.pa.gov/](http://www.lcb.pa.gov/).

## Intermunicipal Hearing Talking Points

MBDA assembled the following talking points in order to arm members with pertinent information should they want to challenge intermunicipal license transfers.

- **Quota argument:** If the municipality is over the statutory quota (1 license per 3,000 inhabitants), it should determine what efforts the applicant has made to acquire a license from within the municipality. Approving new licenses in the municipality will lower the value of existing licenses and hurt existing bars, restaurants, beer distributors and other alcohol retailers. The General

Assembly set this quota for a reason and there should be a compelling reason to saturate the municipality with additional liquor licenses.

- **Subsequent Purchaser Issue:** The municipality loses control of the liquor license once it is approved within its borders. If the applicant decides it no longer wants to use the license, the applicant will be able to sell the license to anyone for use within the municipality. The person they sell the license to does not have to come back to the municipality for another hearing.

- **Restrictive Institutions/Residents:** If there are churches, schools, hospitals, charitable organizations, playgrounds, other businesses with liquor licenses, or other restrictive institutions nearby, the presence of these organizations may be a reason to deny the application. These organizations should be made aware of the application and encouraged to appear at the public hearing to provide comments. The same can be said about residents of the municipality and, specifically, residents within 500-foot since they have automatic standing under the Liquor Code.

- **Prior experience/police incidents:** The municipality should determine if the applicant has prior experience owning and operating a licensed business and ask questions about alcohol service personnel (e.g., age, training, turnover rate, etc.). If the applicant or its principals own (or have owned) other licenses, the municipality should determine if they have ever been cited for violations of the Liquor Code. A representative of the police department should be asked to attend the public hearing and provide testimony/evidence as to police incidents occurring at the proposed licensed premises. If the business already has frequent police incidents, traffic or parking issues, the addition of a liquor license may exacerbate these issues. The municipality should be aware of whether there are colleges in the vicinity and if minors frequent the business.

- **Conditional Approvals:** Some municipalities put conditions in their resolutions but these conditions are basically unenforceable. The restrictions are not binding on the PLCB and there is no enforcement agency for these restrictions. The municipality can only enforce these conditions through the courts, which is a costly process. These conditions are quickly forgotten unless they are made part of final approval by the PLCB. A representative of the municipality should contact the PLCB to make sure they are aware of the conditions and ask the PLCB to incorporate the conditions or restrictions into a conditional licensing agreement with the applicant.

- **Grocery Stores/Convenience Stores/Gas Stations:** Below are some issues to consider when evaluating a request submitted by a grocery store, convenience store or gas station:

*Continued on Page 12*

# Frequently Asked Questions

The following are answers to questions that MBDA members regularly present to our Executive Office. Additional questions are posted on-line at [www.mbdapa.org](http://www.mbdapa.org), and you can also download the “Digest of Malt Beverage Laws” from our web site.

## **When Can Distributors and Importing Distributors Sell Beer:**

To Non-Licensees (Consumers)—Monday through Saturday 8 am to 11 pm. D’s and ID’s who purchase a Sunday Sales Permit from the PLCB may sell beer on Sunday from 9 am to 9 pm.

To Special Occasion Permit Holders—From 2 am Monday until 12 midnight of the following Saturday. D’s and ID’s who purchase a Sunday Sales Permit may sell beer on Sunday from 9 am to 9 pm.

To Other Licensees and Permit Holders—From 2 am Monday until 12 midnight of the following Saturday. D’s and ID’s may not sell beer to other licensees or permit holders on Sunday.

## **When Can Distributors and Importing Distributors Deliver Beer:**

To Non-Licensees—Monday through Saturday 8 am to 11 pm. D’s and ID’s may deliver beer on Sunday between the hours of 9 am and 12 noon by “prior arrangement”. Prior arrangement means that the sale price of the beer must be more than \$250 and have been ordered, invoiced and paid for in full at the seller’s licensed premises before the Sunday of delivery. No Sunday Sales Permit is needed to deliver beer to non-licensees by prior arrangement on Sunday.

To Special Occasion Permit Holders—From 2 am Monday until 12 midnight of the following Saturday, and on Sunday between the hours of 9 am and 12 noon by “prior arrangement” as explained above.

To Other Licensees:—From 2 am Monday until 12 midnight of the following Saturday. D’s and ID’s may not deliver beer to other licensees on Sunday.

## **Can D’s and ID’s Advertise Price:**

Yes, but there are some restrictions as set forth in Section 498 of the Liquor Code. Ads may not contain any statement that is false, deceptive or misleading; any statement disparaging of a competitor’s product; any statement referring to monetary comparison between brands; and prices advertised on the licensed premises must be those in effect at the time of the ad or display.

## **Minimum Age Requirements to be an Employee of a D or ID:**

In general, the minimum age requirement is 18 years, and there is no exception for family members or temporary employees. PLCB Regulation 5.14 does recognize that a 17 year old who is a high school graduate or who is declared to have attained his academic potential by the chief administrator of the school district within which the minor resides is deemed to be an 18 year old for the purposes of employment. However, when employing such individuals, D’s and ID’s must keep on the licensed premises a certified copy of the diploma or certificate of graduation, or a letter on the official stationery of the school district and over the signature of the chief administrator of that district declaring that he/she has attained his/her academic potential.

## **Collecting Identifying Information**

Distributors and importing distributors are no longer required to collect and file the name, address or other identifying information of the private individual purchasing four or more cases or other large volume of malt or brewed beverages. This provision also applies to kegs, as “quantity of cases or volume” of malt and brewed beverages is all inclusive. Licensees may wish to continue to collect such identifying information for purposes of section 495 of the Liquor Code, including the establishment of a defense to a citation for selling alcohol to a minor. (47 P.S. §4-495).

## **Licensees have ten days to make good on a bad check:**

If a Malt Beverage Compliance Officer receives notification that a licensee issued a worthless check, the officer shall give the licensee written notice that the licensee has ten days from the date the notice was mailed to honor that check. Should the licensee fail





to honor the check within ten days from the date the notice was mailed, the matter shall be turned over to the Enforcement Bureau for citation.

**Q Lettering size on vehicles:**

The minimum sized lettering bearing the name and address and license number of a licensee painted or affixed on each side of a vehicle used to transport or deliver malt or brewed beverages has been reduced from four inches to two inches in height.

**Q Period to keep records on licensed premises:**

The records from the most recent six-month period must be maintained on the licensed premises. Records from the remainder of the two-year period may be kept off the licensed premises as long as the records are returned to the licensed premises within twenty-four hours of a re-request by the Board or Enforcement Bureau. A licensee may remove the records for the most recent six-month period from the licensed premises only for a lawful business purpose provided that they are returned to the premises when the business is completed.

**Q Sale Below Cost:**

PA licensees can sell alcoholic beverages below cost. There are restrictions on giving it away free, but there are no restrictions on minimum pricing, as long as they comply with discount pricing rules.

**Q Can D's & ID's be selective in pricing, reductions and incentives:**

It is the PLCB's position that distributors and importing distributors may charge whatever they wish for beer, and for the most part, price reductions and incentives may be applied selectively.

**Q Coupons:**

Distributors are not permitted to offer or give anything of value to induce the purchase of malt or brewed beverages. Generally, only manufacturer rebates/coupons redeemed by mail are permissible.

**Q In what package configurations are distributor to sell:**

Act 166 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. The Act did not change the packaging rules for distributors' sales to licensees.

**Q In what package configurations are restaurant liquor licensees permitted to sell:**

They can sell up to 192 ounces in a single transaction. The latest opinions from the PLCB have stated that continuous sales are still not legal and the customer must remove the initial purchase from the licensed area before returning to make a subsequent purchase.

**Q Is a D licensee permitted to sell product anywhere in Pennsylvania:**

Act 166 precludes a distributor from selling or delivering malt or brewed beverage to any licensee whose licensed premises is located within the designated geographic 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.

**Q Sale of non-alcoholic beverages to minors:** The PA Liquor Code does not address this issue, but Section 6310-7 of the PA Crimes Code prohibits anyone from intentionally and knowingly selling or furnishing non-alcoholic beverages to any person under twenty-one (21) years of age. Section 6310.7 defines a non-alcoholic beverage as any beverage intended to be marketed or sold as non-alcoholic beer, wine or liquor, having some alcohol content but which does not contain more than 0.5% alcohol by volume.

**Q Tasting vs. Samplings:**

A sampling promotion is intended to introduce consumers to a manufacturer's product. Samplings must adhere to the following criteria: (1) samples may be provided by the manufacturer's representatives and distributor or importing distributor licensees to licensed

*Continued on Page 19*

# The Following Discounted Programs and Services

Association membership numbers translate into **group buying power**. MBDA offers the following benefits and services to our dues-paying members to **make and save you money. Your savings will pay for your MBDA membership dues many times over**. Members who are interested in enrolling in a program should contact Stephanie Eckert at our Executive Office by email [mbdassn@aol.com](mailto:mbdassn@aol.com) or phone 215-732-6258.

***Credit/Debit Card Processing Program:*** Association members are assured of receiving the lowest possible fee schedule of only \$0.05 cents plus 5 basis points to process credit and debit card transactions through our Interchange Plus Program with PNC Merchant Services. The program offers:

- Low pricing to lease or purchase the latest equipment or reprogram existing equipment free of charge.
- No fees for set up, statements, reporting, account maintenance, batch, ACH, etc.
- Supplies free of charge.
- Dedicated Account Manager for MBDA merchants. Customer help desk 24 hours a day/7 days a week.
- Continue to do business with your existing bank. Monies are deposited into your business checking ac- count within 2 calendar days; 1 day for PNC bank customers.
- Fee collection is monthly, not daily.
- Increase your customer base with our Gift Card Program.
- Distributors who process through another processor can send us their statement and we'd be happy to do a rate comparison.

***Business Insurance Program:*** Our comprehensive package is sponsored through *Penn National Insurance*, and is available through all Penn National agents. We encourage you to “Tap Into The Savings” with MBDA’s unique business insurance program designed specifically to meet the needs of beer distributors:

- Enhanced coverage on auto, businessowners, property and general liability.
- Comprehensive liquor liability with additional credit, if you use an electronic scan device.
- Preferred pricing on property, umbrella and GL.
- Equipment breakdown coverage automatically included.
- Dividend opportunity based on our group’s loss ratio. MBDA members received a 9% return on their investment for 2019. This program has paid a dividend back to policy holders in eight of the last ten years.

***Electronic ID Scanning Program:*** *Ray Swerdlow* offers a selection of equipment with the latest technology to protect your license and help prevent citations for underage sales.

***ATM Program:*** Our ATM Program, sponsored in partnership with *CORD Financial Services*, gives you the benefits of having an ATM in your store at minimal cost to you:

- Machines are brand new and ADA compliant.
- You’ll earn money on every transaction paid monthly to your account by EFT or check.
- All cash withdrawn is deposited into your account within 48 hours.

***Office Supplies:*** *Pinnacle Business Products*, celebrating their 20th year in business, is your discounted office equipment and supply source.

- Visit their website and on-line catalog at [www.pinnaclebuspro.com](http://www.pinnaclebuspro.com).
- The pricing you see is their standard commercial list, but MBDA members will receive a substantial discount from that pricing when you email your list to [sales@pinnaclebuspro.com](mailto:sales@pinnaclebuspro.com).

***Web Site Design:***

- Members pay only \$500 for Sagapixel to build a custom website.
- Go to [www.sagapixel.com/web-design/philadelphia/](http://www.sagapixel.com/web-design/philadelphia/) to view samples of their website design work.
- For more information contact Frank Olivo by phone 856-701-7947 or email [frank@sagapixel.com](mailto:frank@sagapixel.com).



## are Available Exclusively to MBDA Members

**Energy:** MBDA is proud to partner with *Kinetic Energy Associates*, our energy consulting firm, to save members money on the generation portion of their commercial electricity:

- Use the power of group purchasing by combining your energy usage with other MBDA members to attain the lowest possible kWh rate. Members are benefiting from our latest round of shopping by paying less than 6 cents per kWh for the generation portion of their electricity service.
- Savings are guaranteed for the length of the contract.
- Each member will continue to receive their own bill, be responsible for their own payment of the bill, and each member's local utility company will continue to maintain and service the wires that carry electricity to their businesses.

**Promotional Items Program:** Our advertising specialist, *Networker Promotions*, offers you an excellent and inexpensive way to promote your business, and invoicing takes place only after delivery:

- Advertising and novelty items are imprinted with name, address and wording of your choice.
- Very low pricing on all items, even on minimum quantity orders.
- Free catalog with 1000's of advertising specialties from which to choose.

**Automatic Enrollment in American Beverage Licensees:** ABL is the leading national trade association for beer, wine and spirits retailers. You'll receive their quarterly membership magazine "The ABL Insider".

**Our Attorney's Legal Services** offer specialized advice on industry-related questions.

**Government Affairs Lobbying** gives MBDA a strong advocate in Harrisburg.

**Our Public Relations Campaign** by way of website features, social media channels and other marketing activities is directed to consumers and state lawmakers.

**Any Questions? Need Advice?** Our *Executive Office* is only a phone call away. MBDA's experienced staff is always ready, willing and able to help our members on any industry issue or problem.

**Board of Directors.** MBDA's officers, district vice presidents and directors are not paid employees of the Association, but give generously of their time throughout the year to attend board, industry, and legislative meetings and receptions. Members should feel free to call on them with questions and suggestions. Visit [www.mbdapa.org](http://www.mbdapa.org) for contact information.

**MBDA Committees:** Association directors further volunteer their time and talent to serve on committees to help make the best possible decisions on behalf of our members. MBDA members who are interested in serving on any of the following committees should contact the Association's Executive Office—Legislation, Finance, Membership, Convention, Fundraising, Public Relations, Legal.

**Newsletters, Releases & Emails** are regularly sent to members to keep you up-to-date on administrative, government, legal, legislative and regulatory issues. Please contact the Executive Office with your email address to make sure you receive this important and timely information and continue to visit [www.mbdapa.org](http://www.mbdapa.org) for the latest up-to-the-minute industry developments.

**Convention Registration Discounts** are offered to participate in the Sunday business & hospitality sessions.

**Responsible Alcohol Management Program (RAMP)** participation is offered at a discounted rate to distributor member employees. Call MBDA to obtain the discount code and then visit [www.mbdapa.org](http://www.mbdapa.org) to register for MBDA's online RAMP training as approved by the PLCB.

**Attend Board of Director and Membership Meetings.** We urge each member to become involved and active.

**MBDA Welcomes Suggestions From Our Members.** Let us hear from you as to what changes should be made to benefit and improve the beer business.



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1. Many of these stores are open 24/7, but alcohol sales must cease at 2AM – who will be in charge of monitoring the licensed area when it is not open for business? How will the alcohol be secured when the licensed area is closed but there are customers in the store?

These stores typically do not place the alcohol under lock and key and have the same minimal security/monitoring of alcohol products as they do non-alcohol products.

2. Minors have access to these stores at all hours. Often, minors tend to “hang out” or eat at popular grocery stores, convenience stores and gas stations.

3. Approval of liquor licenses to these businesses will make alcohol more accessible and convenient, which is contrary to the core principals of the Liquor Code, which are to restrain the sale of alcohol.

4. Alcohol would be accessible at a location where customers go out of necessity, not because they choose to. Everybody needs to purchase gas, food and other household products sold at these locations.

5. The potential for people struggling from addiction to relapse when exposed to alcohol at a location they must go to for gas, food and other household products.

6. Potential for the addition of a license to exacerbate existing health and safety issues in the area, including potential increase in traffic or speeding and danger to pedestrians/walking traffic. Many of these businesses are located at or near high traffic intersections.

7. Enforcement of store “policies” and control of alcoholic beverages are left to employees of the business. There is usually a high turnover rate for employees at these businesses.

8. The municipality should elicit testimony from a representative of the police department to determine the propensity for crime at the premises. These are usually high theft businesses. Cigarettes are behind the counter but alcohol will be out in the open for potential beer runs and shoplifting.

9. The transient nature of the gas station/convenience store business model promotes drinking and driving.

10. Will cold beer be sold? Gas stations can sell cold beer in coolers next to the cash register.

- Permissible conduct under the Liquor Code.

It may help for municipalities to understand some of the things grocery stores, convenience stores and

gas stations will be able to do under existing PLCB laws (if they are approved for a license). The following activity has been observed at these businesses in PA:

(a) sell all alcoholic beverages – beer, wine and spirits – in any sized containers for consumption inside or outside the building on any “licensed premises”, including pitchers, wine by the bottle and mixed drinks;

(b) Customers could potentially shop and drink at the same time;

(c) with 50% food sales, provide on-premises food and alcoholic beverage consumption with adjacent-table seating of minors who are not then accompanied by an adult;

(d) sell novelty drinks (Jell-O shots, alcohol infused gummy bears, alcohol slushies, etc.) for immediate consumption by customers;

(e) sell a full bottle of spirits and hold it for the patron’s later return;

(f) promote a daily special and discount a specific drink each day of the week;

(g) conduct “happy hours” with product discounts of up to 4 hours per day, not to exceed 14 hours per week;

(h) implement “mug clubs” for customers to enjoy non-regulated discounts on any alcohol products for on or off premises consumption;

(i) sell beer from either a single container or up to a 12 pack for off-premises consumption (including 24oz cans and 40oz bottles);

(j) sell up to four (4) bottles of wine, draft beer, along with other open containers of beer up to 192 ounces, and allow it to be removed from the licensed premises;

(k) forego table service by restaurant personnel and the supervision that goes with it;

(l) allow free tastings and samplings on premises with little to no oversight;

(m) install a bar or beer tub; and

(n) give away one (1) free alcoholic beverage in a standard sized container.

## **Supermarkets Hit with Fines**

The myth that supermarkets do not incur infractions or that they are immune from receiving citations was debugged in the March and July issues of *The Observer* when they reported three supermarkets who received citations:



- 1) Allegheny County: Giant Eagle, Inc., Pittsburgh. Underage Sale. \$750 & RAMP.
- 2) Snyder County: Weis Markets, Inc., Selinsgrove. Failed to comply with requirements regarding RAMP. \$500.
- 3) Lackawanna County: Bill's Shoprite Supermarket, Covington Township. Not a bona fide restaurant. \$250 & verification or 1 day continuing thereafter until received.

## Reporting Supermarket Violations

We've received reports from MBDA members regarding supermarkets conducting illegal beer promotions, reconfiguring their licensed areas and storing alcohol and/or adding service areas outside their Board approved licensed premises, removing the 4' permanent partition separating licensed and unlicensed premises, or not having the required seating for thirty (can include counter seating) as required for R or E licensees.

Suspected violations of the Liquor Code or Regulations should be directed to the Pennsylvania State Police Bureau of Liquor Control Enforcement (BLCE) for investigation. **All complaints submitted to the BLCE are confidential and complaints may be submitted anonymously.**

You have the option of calling the BLCE's complaint hotline 1-800-932-0602, filing an electronic complaint at [www.lce.state.pa.gov](http://www.lce.state.pa.gov) by selecting "Reporting Violations", or reporting the suspected violation to your local BLCE district office with a copy to the PLCB Office of the Chief Counsel, Northwest Office Building, Harrisburg, PA 17124. A list of the BLCE district offices is available on its website.

The complaint should contain as much information about the grocery store as possible, including its name and address, liquor license number and actions taken by the store which you believe to be in violation. Photos would also be helpful. The BLCE should investigate the complaint and make sure the grocery store is operating in accordance with the law and any additional conditions imposed by the PLCB as part of its licensing process. Depending upon the nature of the complaint, the PLCB may also investigate to determine if the licensed premises are still in compliance with the regulatory requirements. Please advise MBDA of the complaint submitted and the outcome.

## MBDA Continues our Affiliation with ABL

The food merchants' movement contending that Pennsylvania's laws are antiquated is exactly what is being said in every other state where alcohol sales are not dominated by large and predatory corporate retail chains.

Just as it is important for Pennsylvania's beer distributors to band together and join MBDA, we continue our membership with the leading national trade association that represents alcohol retailers—the American Beverage Licensees (ABL).

In working with the ABL we combine our resources with theirs and do not have to reinvent the wheel to find tactics and practices that have been successful in other parts of the country and learn from those to strengthen our efforts here in Pennsylvania.

All MBDA members are automatically enrolled as members of the ABL, and each will receive their quarterly membership magazine "The ABL Insider", featuring news and views about the industry, and their monthly legislative update, offering the latest on legislation and policy issues.

As a way to stay current of Pennsylvania and nationwide alcohol issues, you can sign up for the ABL weekly email update at [www.ablusa.org](http://www.ablusa.org).

Membership in ABL is another benefit of MBDA membership.

## MBDA Associate Member RITE POS Offers a Great Discount to MBDA Members

RITE has a large POS footprint in the PA beer market, and they are pleased to offer an exclusive discount to MBDA members. Members will receive a \$200 savings off of RITE's CloudRetailer software. This means that the initial POS license is only \$300 per POS (there is no back office license cost). RITE also adds that they have a very smooth and beneficial migration path to CloudRetailer for Microsoft RMS users! Please contact Gary Noble for all details and to discuss your operational needs. [garyn@rite.us](mailto:garyn@rite.us). #320-230-2282, ext. 4007.

## Defense Against Sales to Minors

Licenses are reminded that they have three proven “good faith” defenses against the sale of beer to persons under 21 years of age: (1) Have a suspected minor sign the PLCB declaration of age affidavit. (2) Take a photocopy or photograph of one of the following forms of identification—valid driver’s license with photo, ID card with photo issued by the Department of Transportation, military ID or valid passport. (3) Use an electronic scanning device. Keep all records on your licensed premises for a period of at least two years.



## MBDA Offers Employee Online Ramp Training

Under Act 39 of 2016, all alcohol service personnel must complete RAMP server/seller training within six months of being hired by a licensee, unless the person had successfully completed the training prior to being hired. RAMP training is good for two years.

To have your employees RAMP (Responsible Alcohol Management Program) trained, MBDA members should call our Executive Office to obtain your discount code and then visit [www.mbdapa.org](http://www.mbdapa.org).

For only \$10.00 per person, your entire staff can complete their certification ANYTIME, ANYWHERE! Users have 30 days to complete the two-hour online test, so there is no need to finish in one sitting. Employees print their certification upon completion of the test, and the results are immediately sent to the PLCB. If an employee fails the test, the first re-take is automatic and free of charge.

It makes good business sense to have your employees well trained not to sell to minors. Let’s maintain our excellent record in preventing underage sales.



## Association Health Insurance

We were told at the end of last year that insurance carriers had put their plans on hold at that time. MBDA continues to explore our options to bring an association health insurance plan to our members that is competitive with affordable rates. Members will be kept updated.

## MBDA Buyer’s Guide Available Online

MBDA is honored by the support given to us by many of our brewers and allied trade suppliers who have joined as associate members. Distributors—Please visit our Buyer’s Guide of Associate Members by going on line to [www.mbdapa.org](http://www.mbdapa.org). and view their variety of products and services that help our members’ businesses run more efficiently and economically. Their membership support of MBDA warrants our support and we urge you to consider them when addressing your business needs.

## Thank You 2019 Associate Members

MBDA thanks the following firms for investing in the future of the beer distributing industry by becoming associate members:

**Anheuser-Busch** #317-753-9811. **Atlantic Systems** (POS System), Joe Gilliam, #732-280-6616. **Burns Industrial Equipment** (Forklift Trucks), Chris Burns, #412-856-9253. **FIFCO USA**, #585-546-1030. **Flightware Solutions** (POS System), George Kahwaji, #816-774-3500. **Gerbron Wholesale** (Tobacco, Candy, Paper Products), John Gerbron, #610-347-0440. **Harold Levinson Associates** (Tobacco, Beverages, Snacks), Marty Glick, #631-962-2400. **The Lion Brewery** #570-823-8801. **Longley Insurance Agency** (Insurance), Bob or Rosemary Longley, #610-524-1940. **Mark Anthony Brands** #312-715-9210. **Micro Matic USA** (Beverage Dispensing Equipment), Doug Wetmore, #610-625-4464. **MillerCoors**, #949-929-0104. **Modern Store Equipment** (Store Fixtures & Equipment), Robert Henuset, #609-298-2100. **mPower Beverage Software** (POS System), Kris Perez, #877-396-0141. **Networker Promotions**, (Promotional & Novelty Items), Jackie Moore, #800-485-4461. **North American Breweries**





#412-780-5367. **Penn Brewery** #412-237-9400. **Penn National Insurance** (MBDA Endorsed Insurance Company), Jake Sheaffer, #717-645-8716. **Petrosoft** (POS Systems), Bill Limpert, 412-306-0640. **Pinnacle Business Products** (Discounted Office Supplies & Equipment), Russ Hayes, 215-742-9002. **Pittsburgh Brewing Co.**, #724-831-1203. **PNC Merchant Services** (MBDA Endorsed Credit Card Processor), Jammie Jones, #717-597-4786. **Pomodo** (POS Systems), Steve Thompson, 814-288-5034. **RITE** (POS System), Gary Noble, #320-230-2282. **Rusty Rail Brewing Co.**, #570-594-3860. **Schubert Equipment Sales** (Shelving & Refrigeration), Doug Nickel, #724-903-0880. **Straub Brewery** #814-834-2875. **3 x 3 Insights** (Consumer Analytics for Retailers), Emily Newton, #646-442-5829. **Yards Brewing Co.** #215-634-2600. **D.G. Yuengling & Son** #570-622-0153.

## Interested in Applying for Associate Memberships

Brewers and Allied Trade Suppliers who want to show support for the Pennsylvania distributors with whom they do business can apply for associate membership by going on-line to [www.mbdapa.org](http://www.mbdapa.org) or calling our Executive Office at 215-732-6258.

## MBDA 2019 Convention Recap

Beer distributors from across Pennsylvania joined their local, national and regional brewers and allied trade suppliers at the Kalahari Resort & Conference Center in Pocono Manor, as the Malt Beverage Distributors Association (MBDA) celebrated its 83rd annual convention and trade show, May 4 & 5, 2019.

The convention opened on Saturday afternoon with a luncheon and business session. Athan Koutsouroumbas of our lobbying firm, Long Nyquist, gave a presentation on the "Importance of Social Media". Joe Thompson, president of the Independent Beverage Group, spoke on the overall landscape and trends of the beer industry on a national level. Please contact Stephanie Eckert at the MBDA executive office if you're interested in receiving a copy of our speakers' presentations.

Attorney Rob Dillman of Caputo Law Office discussed MBDA's legal initiative to have PA's beer distributors gain sales tax parity. Our Executive Director Carson Baker gave a legislative review and spoke on our opposition to House Bill 763 to allow clubs to sell six-packs to go, thereby creating 3,000 more take-out establishments, and Senate Bill 548 to benefit grocery and convenience stores by creating retail franchise stores to sell wine and spirits. He concluded by reporting on Wal-Mart's purchase of a

restaurant liquor license in Fayette County allowing them to sell beer for off-premises consumption.

Distributors, brewers and allied trade suppliers attended our Saturday evening cocktail reception and banquet. They feasted on scrumptious food, sampled great beer, and listened to a fabulous musical performance by Clarence Oliver. Our treasurer Jim Yapple was presented with the C. John Muller Award for Distinguished Service. We thank Anheuser-Busch and Straub Brewery for their generosity in contributing prize awards for our banquet auction.

Sunday morning, distributors, brewers and allied trade suppliers gathered for another informative business session. The program's objective was to help distributor's merchandize and sell more effectively. Our first guest speaker, Mike Provance, CEO of 3 x 3 Insights, champions the independent alcohol retailer by providing tools, analytics, and services that give them a deeper understanding of their customers and how they can better serve and market products to them.

Amy Foster of LGA-Partners, a premier architectural firm based out of Pittsburgh, gave a presentation on concept layouts and designs for a retailer's store, as well as the best way to make changes and renovations to improve its flow pattern. Our audience viewed floor plans suggesting optimal locations for domestics, craft, imports, growler stations, chilled beer, candy & snacks, tobacco, etc. We thank Mike and Amy for a tremendous program. Please contact the MBDA executive office if you're interested in obtaining a copy of their presentations. They are also available for consultation. Emily Newton, 3 x 3 Insights Director of Retail Partnership Development, can be reached at 646-442-5829. You can contact LGA's Amy Foster at 412-224-6589 or Paulette Burns at 412-224-6548.

On Sunday afternoon, brewers and allied trade suppliers showcased their products and services in thirty-one hospitality and exhibit booths. Distributors taste-tested the newest products, saw demonstrations of products and services to improve their business operations, and sampled from creative food stations placed throughout the ballroom. Our thanks go out to the following firms whose participation made our trade show a huge success: 3 x 3 Insights, Anheuser-Busch, Atlantic Systems, Boston Beer, DISPAC, Dotmark Promotions, FIFCO USA, Flightware Solutions, Lancaster Brewing, Harold Levinson, Lion Brewery, Longley Insurance Agency, Micro Matic, Mike's Hard Lemonade, MillerCoors, mPower, Petrossoft, Pinnacle Business Products, PNC Merchant Services, Pomodo, RITE, Schubert Equipment, Sofranko Advisory, Stockertown Beverage,



*Continued on Page 16*

## Mark Your Calendar MBDA 2020 Convention Scheduled

MBDA is excited to announce that the venue for our April 25 & 26 Convention is the newly renovated Crowne Plaza Hotel in King of Prussia, PA. Great changes have been brought to the Crowne Plaza! You're going to love their new state-of-the-art hotel, complete with brand new & stylish guest rooms and the award-winning Forager Restaurant.

Please plan to attend. MBDA was able to negotiate a special discounted room rate at the amazing price of only \$125/per night.

Exciting social events are scheduled that include our Saturday cocktail party, banquet and entertainment. Informative business sessions will be held on Saturday afternoon and Sunday morning, and our traditionally sold out supplier trade show will be featured on Sunday afternoon.

King of Prussia offers something for the entire family – theaters, restaurants, shops and professional sports team. Just minutes from the hotel, history buffs can visit a dozen Revolutionary War sites including Valley Forge National Historical Park. Across from the hotel, shoppers can enjoy The Plaza & Court of King of Prussia – the largest shopping mall in the US with over 400 stores. Philadelphia's Liberty Bell, Art Museum and National Constitution Center are only a short drive away.

Distributors, brewers and allied trade suppliers can expect to receive convention registration forms in February 2020. We look forward to seeing you at our 84th Annual Convention. Should you have any questions, contact Stephanie Eckert at the MBDA Executive Office, mbdassn@aol.com or 215-732-6258



Straub Brewery, Troegs Brewing, Victory Brewing, Yards Brewing, and Yuengling Brewery. Distributors who are interested in contacting any of the participants can call or email our executive office.

MBDA's 83rd annual convention drew to a close Sunday evening as attendees gathered for a superb Hibachi dinner at the nearby Desaki Restaurant.

Our best wishes are extended to Banko Beverage in Allentown and Penn Distributors in Philadelphia for their generosity in serving as convention sponsors.

MBDA appreciates that Representatives Donna Bullock, Torren Ecker, Jeanne McNeill, Tom Mehaffie, and Jesse Topper took time from their busy schedules to attend the convention and meet with our members.

We thank John McElroy of Harmony Beverage in Blakeslee for running our raffle drawings and Skip Link of Link Beverages in Coopersburg, Arun Patel of Beer Belly's in State College, and Jim Yapple of Westy Beer in Camp Hill for staffing our Distributors Political Action Committee booth.

In closing, we thank all who attended the convention. Special recognition is given to MBDA convention chairman JJ Bromwell of Link Beverages in Coopersburg, convention coordinator Stephanie Eckert, and their team members, Alexis Shipula and Sharon Shipula of Beer Super in Wilkes-Barre, for a job well done.

## Distributors Political Action Committee (DISPAC) Appeal

DISPAC, MBDA's Political Action Committee, needs your support and help.

MBDA has fought hard to strengthen our industry and we should all be proud of our successes over recent years. However, as we continue our work in the legislature, we see a **new storm brewing that demands our full attention.**

Grocery stores, convenience stores, and big box stores have not gone away, and are back once more pushing hard for legislation that would be destructive to beer distributors. A series of bills is now being scrutinized to completely overhaul the retail distribution of alcohol. These bills would:

- Allow major classes of licensees to sell beer, wine and liquor and R licensees (but not Ds) to buy wine from private wholesalers and discount below wholesale cost.
- Permit R licensees (grocery and convenience stores) to sell beer anywhere in the store and ring the sale at any register.
- Allow clubs to sell take-out beer.
- Eliminate the on-premises consumption requirement to allow R's to sell take-out only (Wal-Mart).
- Eliminate the 30 seat requirement, and the 192 ounce sales restriction for R licensees.



On the offensive side, parity for wine sales and potential liquor sales remains a goal. In addition, while our sales tax equity battle may occur in the courts, it must also include strong legislative advocacy against supermarket and convenience store competitors who currently enjoy a tax advantage.

These fights are at our doorstep and it is vital that we again replenish DISPAC funds to bolster our advocacy. These funds allow us to provide meaningful support to legislators who respect and support our businesses. Your investments have been integral to our past achievements and remain so for our future.

Our competitors are well armed with resources. We must again step up to the plate to combat them. If you can contribute, please make your personal or partnership (no corporate) check payable to DISPAC at 230 S. Broad St., Suite 903, Philadelphia, PA 19102. Or visit us at [mbdapa.org](http://mbdapa.org) to donate by credit card.

A commitment of \$250 or more by every distributor will enable us to strengthen the force of our advocacy, and preserve and enhance the future of our businesses.

We urge you to please make a contribution. Thank you!

## Thank You DISPAC Contributors

As we go to press, we thank the following distributors for their generous 2019 DISPAC contributions: Michael Baker, Ron Baumbach, Joseph Bound, Anthony & Patricia Colangelo, Michael & Lindale DeBone, Ryan & Gretchen Federbusch, Patrick Flannery, John & Cheryl Grunden, Ryan Jack, Peter Koorie, Sam & Mary Jo Krafty, Frank LaRosa, John Millin, Arun & Manasvi Patel, Greg & Joy Ramirez, Ed & Judy Rau, Keith Rutt, Pete Sirianni, Dale Spahr, Robert & Christine Spaziani, LeAnn Supeck, Mark Tanczos, Elizabeth Ann & John Walsh, Jessica Wheeland, Jim Yapple, and Tim Zettlemoyer.

## MBDA Directors Elected

At their May 5th meeting, MBDA policy board representatives elected the following district vice presidents and directors to serve for the current term, July 1, 2019 to June 30, 2020. Please remember that they are not paid employees of MBDA, but give generously of their time to attend director meetings and relay industry information back to their area members. They are available to answer your questions and concerns. Their contact information can be found on-line at [www.mbdapa.org](http://www.mbdapa.org).

**District #1** — Philadelphia County: Frank Palladinetti.

**District #2** — Lackawanna, Luzerne, Monroe, Pike, Susquehanna, Wayne & Wyoming Counties: Tony Colangelo, Rich Mineo, Jeff Schmidt, Ron Sherwood, Dave Shipula.

**District #3** — Adams, Cumberland, Dauphin, Franklin, Juniata, Lancaster, Lebanon, Perry & York Counties: Ron Bambach, Neal Fulkerson, Keith Rutt, LeAnn Supeck, Jim Yapple.

**District #4** — Allegheny, Beaver, Fayette, Greene, Washington, Westmoreland Counties: Mike Baker, Michael DeBone, Ryan Federbusch, Ralph Hill, Steve Klein, Chris Miller, Dipesh Patel, Frank Pistella.

**District #5** — Bedford, Blair, Cambria, Centre, Fulton, Huntingdon, Mifflin, Somerset Counties: Rich Francke, Kevin Luensmann, Arun Patel.

**District #6** — Columbia, Montour, Northumberland, Snyder, Union Counties: Bill Bucher, Joe DeSantis.

**District #7** — Armstrong, Butler, Cameron, Clarion, Clearfield, Elk, Forest, Indiana, Jefferson Counties: Joe DiMaio, Doug Jack, Ryan Jack.

**District #8** — Crawford, Erie, Lawrence, McKean, Mercer, Venango, Warren Counties: Mike Kondak, Scott Saber, Pete Sirianni.

**District #9** — Berks, Carbon, Lehigh, Northampton, Schuylkill Counties: Tom Derr, Skip Link, John McElroy, Mark Tanczos.

**District #10** — Delaware & Montgomery Counties: Brian Mutschler, David Piermani.

**District #11** — Bucks & Chester Counties: Dave Dripps, Frank LaRosa, Tim Zettlemoyer.

**District #12** — Bradford, Clinton, Lycoming, Potter, Sullivan, Tioga Counties: Ben Thomke, Jessica Wheeland.



## Director Vacancies

Director vacancies exist in District #1 (Philadelphia), District #3 (Adams, Cumberland, Dauphin, Franklin, Juniata, Lancaster, Lebanon, Perry & York), District #10 (Delaware & Montgomery), District #11 (Bucks & Chester).

MBDA members who are interested in serving should call the Association's Executive Office. Directors are asked to attend quarterly board of director meetings and our annual convention. They assist MBDA in relaying information back to their area members.

## MBDA's Professional Staff

The following Association employees strive to meet the needs of our member distributors and exceed their expectations.

**Executive Office:** MBDA's Executive Office is your primary source for information. Executive Secretary Stephanie Eckert corresponds with distributors on a daily basis, and is only a phone call away to answer member questions on any industry issue or concern. Executive Director Carson Baker assists us in getting our message out to consumers, the legislature and the media.

**Lobbyists:** MBDA is well represented in Harrisburg by Bob Archibald and Chip Brightbill of the government relations firm—Stevens & Lee.

**Counsel:** Charlie Caputo, Esq. of Caputo Law Offices, serves as MBDA counsel. Charlie is responsible for analyzing legislation, appraising and managing litigation, and reviewing association contracts.

## Officer Vacancy

We have an officer vacancy for MBDA secretary. Association members who are in serving should contact our Executive Office.

## Congratulations on Another Successful Energy Program

We're pleased to announce that MBDA through its partnership with our energy consultant, Kinetic Energy Associates, has locked in our members, who signed up for the energy-savings program, at the tremendous price of only 5.987 cents per kWh (not including sales tax) for 31 months.

Special thanks go out to MBDA's Stephanie Eckert and Matt Viens and Kinetic's Judi Cassel and Jenn Deitch for all their hard work in getting this job done. It's hard to imagine a better price for electricity, and it's especially a great value that the price will stay this low for the next 2 years. What a fantastic result for our membership!



MBDA members who did not respond to our appeal, can contact Stephanie of the MBDA executive office, and we will try to get you into the current program or our next program.

## Business Insurance Program Again Pays Dividends

In May 2019, our endorsed provider, Penn National Insurance, issued a 9% dividend check to each MBDA member policy holder. Our program has a history of paying dividends, and we are pleased to report that members have received a dividend check in eight out of the last ten years!

Members who are interested in enrolling in our business insurance program are asked to reach out to Stephanie Eckert by email or phone or go to the Penn National website, [www.pennnationalinsurance.com](http://www.pennnationalinsurance.com), to view a list of their agents.

## Receive Lowest Fee Schedule to Process Credit Cards

We have yet to see processing costs that are lower than our fees through PNC Merchant Services. We're pleased that our discounted program enables members to affordably accept all major cards. Members pay only 5 basis points (.005) & \$0.05 per transaction to process VISA, MasterCard, Discover and American Express. And, our dedicated relationship manager, Jammie Jones, is available to address member questions and concerns. Jammie can be reached by phone 717-597-4786 or e-mail [Jammie.jones@pnc.com](mailto:Jammie.jones@pnc.com)

## MBDA's Record of Accomplishments

MBDA is your industry's voice and provides you with legal guidance, lobbying, trade and public relations services. We are committed to our members and proud of the achievements that have promoted and safeguarded your interests. The following is a list of some of our successes. Please give careful consideration to the positive impact they have made to your business when determining if you should join MBDA as a dues-paying member!

- Secured the sale of all package sizes for beer distributors, the most significant package reform in more than 80 years.
- Without MBDA's concerted opposition, there would be thousands of non-specialty retailers selling cases of beer from their aisles today.
- Secured passage of the Quota Law to ensure the value of your license.
- Substantially reduced the amount of on-premises records you are required to maintain.
- Stopped efforts to make distributors pay thousands in mercantile taxes on their yearly gross receipts.
- Secured Sunday sales with extended hours to help distributors better compete with other licensees.

- Helped defeat efforts to increase the state excise tax on beer.
- Had legislation enacted to allow on-premise beer tastings.
- Secured passage of legislation allowing beer distributors to accept credit cards.
- Obtained a far greater inventory of items that distributors are permitted to sell, in addition to malt beverage products.
- Added member benefit programs and services that help distributors save thousands a year in operational and other costs.

## MBDA Membership—An Investment in Your Future

As we begin our new fiscal year, July 1, 2019 to June 30, 2020, we are enclosing a membership invoice for your use with the hope that you will return it with your dues payment at your earliest opportunity.

Joining MBDA is a smart business decision. Whether it's our success in enabling distributors to sell all smaller packages in addition to cases and kegs, keeping a close eye on proposals and how it could affect your business, defeating legislation that would seriously hurt your ability to make a living, obtaining the right for

distributors to sell additional items, or introducing legislation that has a positive impact on your business, your Association is on the front lines of promoting and protecting the interests of Pennsylvania's beer distributors.

While our most important functions are in the legislative and legal arenas, our member benefit programs will help you make and save thousands of dollars a year in insurance costs, credit/debit card processing fees, ATM transaction revenue, and electric utility rates. See pages 10 & 11 of this newsletter for detailed information on each. MBDA members learn quickly that the cost of their membership is more than offset by the savings they realize from participating in these programs. **So before you say you can't afford to join, ask yourself, "Can I afford not to join?"**

We accept payment by check or credit card. To pay by check, simply return the enclosed invoice with your dues payment. For credit card payment, please go to [www.mbdapa.org](http://www.mbdapa.org).

MBDA looks forward to your support and our continued association for many years to come. Our best wishes for happy, healthy and prosperous summer season!

### Frequently Asked Question *Continued from Page 9*

and unlicensed customers. (2) samples must be in unopened containers of the smallest commercially available size (i.e., 12 oz. can or bottle); (3) the providing of such samples cannot be conditioned upon any purchase requirement; (4) samples are limited to one (1) container per patron in any offering; and (5) samples may not be opened or consumed on a distributor premises.

Tasting or tasting events are defined in the Board's Regulations as presentations of alcoholic products to the public for the purpose of market research, disseminating product information and education to the public as to quantity and availability. Tastings may be conducted by licensed brokers, distributors, importing distributors, and manufacturers or their agents upon unlicensed or unlicensed premises. Any products used must be properly procured and registered, and taxes on the products must be paid. There can be no purchase requirement associated with such tasting. Finally, no more than one (1) standard-sized alcoholic beverage of each product shall be provided to each tasting participant. A standard-size serving of beer is twelve (12) fluid ounces. Therefore, offering unlimited number of drinks to attendees would not be permissible.

#### **Q What types of payment are acceptable:**

Under Act 39, which went into effect August 8, 2016, distributors and importing distributors may accept credit cards for payment of malt or brewed beverage from licensees of the Board, but they are not required to do so. Here is a summary of acceptable forms of payment that D's and ID's can accept if the buyer is licensed by the PLCB:

- 1) Check or certified check if the payer of the check is the licensed entity purchasing the malt or brewed beverages and the payee of the check is the distributor or ID selling the malt or brewed beverage.
- 2) Cashier's check
- 3) Money order
- 4) Credit card
- 5) Debit card
- 6) Electronic transfer of funds so long as the transfer occurs prior to delivery
- 7) Prepayment in cash so long as it occurs prior to delivery.

#### **Q What are the PA Residency Requirements to purchase a D license:**

The person must be a PA resident at the time of filing its application.

**DISTRIBUTORS—PLEASE BE REMINDED TO:**

GET TO KNOW YOUR SENATORS & HOUSE MEMBERS.  
YOUR GRASSROOTS EFFORT IS EXTREMELY IMPORTANT  
AS WE PREPARE FOR WHEN THE LEGISLATURE RETURNS  
TO SESSION IN SEPTEMBER.

RETURN THE ENCLOSED MBDA MEMBERSHIP INVOICE  
WITH YOUR DUES PAYMENT - OR -  
GO ON-LINE TO [MBDAPA.ORG](http://MBDAPA.ORG) TO PAY BY CREDIT CARD.  
IT'S THE BEST INVESTMENT YOU CAN MAKE  
TO PROMOTE & PROTECT YOUR BUSINESS  
AND PRESERVE THE VALUE OF YOUR LICENSE.

MAIL YOUR PERSONAL CHECK TO DISPAC.  
YOUR DONATION ENABLES US TO CONTRIBUTE  
TO THE CAMPAIGNS OF LEGISLATORS  
WHO ARE FAVORABLE TO OUR ISSUES.

SAVE MONEY AND JOIN MBDA'S  
DISCOUNTED MEMBERSHIP PROGRAMS.

PLEASE PROVIDE MBDA WITH YOUR EMAIL ADDRESS  
SO WE CAN KEEP YOU UP-TO-DATE  
ON INDUSTRY NEWS AS IT'S HAPPENING.

VISIT MBDA'S WEBSITE, [WWW.MBDAPA.ORG](http://WWW.MBDAPA.ORG)  
TO GET THE LATEST INDUSTRY DEVELOPMENTS.

