

8177

I N S E N A T E

June 14, 2010

Introduced by Sens. ESPADA, HUNTLEY, KRUGER, ONORATO, STEWART-COUSINS --
read twice and ordered printed, and when printed to be committed to
the Committee on Rules

AN ACT to amend the alcoholic beverage control law, in relation to the
manner of posting and changing beer prices to wholesalers and retail
licensees

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The alcoholic beverage control law is amended by adding a
2 new section 53-b to read as follows:
3 S 53-B. MANNER OF POSTING AND CHANGING BEER PRICES TO WHOLESALERS AND
4 RETAIL LICENSEES IN CITIES OF ONE MILLION OR MORE.
5 1. IT IS HEREBY DECLARED AS THE POLICY OF THE STATE THAT THE SALE AND
6 DISTRIBUTION OF BEER SHALL BE SUBJECT TO CERTAIN RESTRICTIONS, PROHIBI-
7 TIONS AND REGULATIONS WHICH TEND TO MAINTAIN AN ORDERLY MARKET AND
8 PREVENT DESTRUCTIVE COMPETITION. THE NECESSITY OF THE PROVISIONS OF THIS
9 SECTION IS THEREFORE DECLARED AS A MATTER OF LEGISLATIVE NECESSITY.
10 2. AS USED IN THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOW-
11 ING MEANINGS:
12 A. "BEER WHOLESALER" OR "WHOLESALER" MEANS THE HOLDER OF A WHOLE-
13 SALER'S LICENSE, PURSUANT TO SECTION FIFTY-THREE OF THIS ARTICLE, WHO
14 PURCHASES, OFFERS TO SELL, MARKETS, PROMOTES, WAREHOUSES OR PHYSICALLY
15 DISTRIBUTES BEER SOLD BY A BREWER.
16 B. "CASE", "DRAFT PACKAGE" OR "SPECIAL PACKAGE" MEANS A PACKAGE
17 PRODUCED BY A BREWER AND SOLD TO A BEER WHOLESALER.
18 C. "COD" MEANS CASH, CHECK OR ELECTRONIC PAYMENT AT THE TIME OF DELIV-
19 ERY.
20 D. "FORKLIFT" MEANS ANY MECHANICAL SYSTEM ABLE TO UNLOAD PALLETS OFF A
21 DELIVERY VEHICLE.
22 E. "LOADING DOCK" MEANS A PLATFORM WHERE TRUCKS, SEMI-TRUCKS, AND SEA
23 OR RAIL CONTAINERS ARE UNLOADED BY FORKLIFTS.
24 F. "NON-CONTRACTED WHOLESALER" MEANS THE HOLDER OF A WHOLESALER'S
25 LICENSE ISSUED OR RENEWED PRIOR TO JULY FIRST, NINETEEN HUNDRED SIXTY,
26 AND THEREAFTER RENEWED OR TRANSFERRED WHO (1) PURCHASES PRODUCTS FROM A

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD17663-01-0

1 BEER WHOLESALER AND (2) IS NOT SUBJECT TO ANY AGREEMENT WITH A BREWER OR
2 BEER WHOLESALER PURSUANT TO SECTION FIFTY-FIVE-C OF THIS ARTICLE AND (3)
3 IS LOCATED IN A CITY OF ONE MILLION OR MORE.

4 G. "PALLET" MEANS A QUANTITY OF CASES, DRAFT PACKAGES OR SPECIAL PACK-
5 AGES PRODUCED BY A BREWER AND STACKED ON A DEVICE MOVABLE BY A FORKLIFT
6 OR OTHER MECHANICAL METHOD.

7 H. "TRUCKLOAD" MEANS A QUANTITY OF PALLETS CONTAINING CASES, DRAFT
8 PACKAGES OR SPECIAL PACKAGES OF NOT LESS THAN THE MAXIMUM QUANTITY
9 FITTING TYPE OF VEHICLE OR LEGAL WEIGHT LIMIT.

10 3. BEER WHOLESALERS SHALL POST WITH THE AUTHORITY THE PRICE PER CASE,
11 DRAFT PACKAGE OR SPECIAL PACKAGE OF BEER SOLD TO RETAIL LICENSEES EVERY
12 ONE HUNDRED EIGHTY DAYS. THE POSTED PRICE ON SUCH CASE, DRAFT PACKAGE OR
13 SPECIAL PACKAGE TO RETAIL LICENSEES MUST BE A MINIMUM OF:

14 A. TWO AND ONE-HALF PERCENT ABOVE THE POSTED PRICE TO NON-CONTRACTED
15 WHOLESALERS IF PURCHASED BY THE CASE, DRAFT PACKAGE OR SPECIAL PACKAGE;

16 B. FIVE PERCENT ABOVE THE POSTED CASE, DRAFT PACKAGE OR SPECIAL PACK-
17 AGE PRICE TO NON-CONTRACTED WHOLESALERS IF PURCHASED BY THE PALLET;

18 C. SEVEN AND ONE-HALF PERCENT ABOVE THE POSTED CASE, DRAFT PACKAGE OR
19 SPECIAL PACKAGE PRICE TO NON-CONTRACTED WHOLESALERS IF PURCHASED BY THE
20 TRUCKLOAD;

21 D. TEN PERCENT ABOVE THE POSTED CASE, DRAFT PACKAGE OR SPECIAL PACKAGE
22 PRICE TO NON-CONTRACTED WHOLESALERS IF PURCHASED BY THE TRAILERLOAD; AND

23 E. IF A FORKLIFT AND/OR A LOADING DOCK IS USED TO UNLOAD THE PALLETS
24 FROM THE DELIVERY VEHICLE, A MINIMUM OF AN ADDITIONAL TWO AND ONE-HALF
25 PERCENT SHALL BE DEDUCTED FROM THE CASE, DRAFT PACKAGE OR SPECIAL PACK-
26 AGE PRICE. IF THE NON-CONTRACTED WHOLESALER PAYS COD FOR THE PURCHASE A
27 MINIMUM OF TWO AND ONE-HALF PERCENT SHALL BE DEDUCTED FROM THE PRICE PER
28 CASE, DRAFT PACKAGE OR SPECIAL PACKAGE. FURTHERMORE, NOTHING IN THIS
29 SECTION SHALL REQUIRE A NON-CONTRACTED WHOLESALER TO POST PRICING. THE
30 PRICE PER CASE, DRAFT PACKAGE OR SPECIAL PACKAGE OF BEER SOLD TO
31 NON-CONTRACTED WHOLESALERS OR RETAIL LICENSEES ON THE FIRST DAY OF THE
32 MONTH FOLLOWING THE EFFECTIVE DATE OF THIS SUBDIVISION SHALL BE DEEMED
33 THE BASE PRICE, TO OR FROM WHICH PRICE INCREASES OR DECREASES MAY BE
34 MADE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

35 4. THE AUTHORITY IS AUTHORIZED AND EMPOWERED TO DO SUCH ACTS,
36 PRESCRIBE SUCH FORMS AND ADOPT RULES AND REGULATIONS AS IT MAY DEEM
37 NECESSARY OR PROPER TO CARRY INTO EFFECT THE PURPOSE AND PROVISIONS OF
38 THIS SECTION AND TO PREVENT CIRCUMVENTION OR EVASION THEREOF.

39 WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AND IN ADDITION TO
40 ITS OTHER POWERS, THE AUTHORITY MAY, IN ITS DISCRETION, ADOPT RULES OR
41 REGULATIONS:

42 A. PARTICULARIZING THE STANDARDS OF PACKAGING WHICH CONSTITUTE A CASE,
43 SPECIAL PACKAGE AND DRAFT PACKAGE OF BEER.

44 B. DEFINING THE GUIDELINES RELATING TO "PRICE" WITHIN THE PURVIEW OF
45 THIS SECTION WHICH GUIDELINES MAY PROVIDE, WITHOUT LIMITATION THERETO,
46 POSTING OF PRICE ON THE AUTHORITY'S WEBSITE.

47 C. REQUIRING LICENSEES TO FILE WITH THE AUTHORITY REPORTS CERTIFYING
48 THEIR PRICES OF BEER, THE DATES OF ANY CHANGES IN THE PRICE OF ANY ITEM
49 OF BEER, AND SUCH OTHER MATTERS AS THE AUTHORITY MAY DETERMINE FROM TIME
50 TO TIME TO BE NECESSARY TO DISCLOSE ACCURATELY THE PRICE OF BEER DURING
51 THE PREVIOUS TWELVE MONTHS AND REQUIRING LICENSEES TO KEEP FORMS,
52 RECORDS AND MEMORANDA PRESCRIBED BY THE AUTHORITY.

53 D. REQUIRING BEER WHOLESALERS TO REGISTER WITH THE AUTHORITY EACH
54 CONTRACT AND AGREEMENT, INCLUDING THE NAMES OF BREWERS AND IMPORTERS
55 WITH WHICH SUCH WHOLESALER HAS CONTRACTS OR AGREEMENTS, AND REQUIRING

1 WHOLESALERS TO MAINTAIN FORMS, RECORDS AND MEMORANDA PRESCRIBED BY THE
2 AUTHORITY.

3 5. FOR THE PURPOSE OF DEFRAYING THE EXPENSES INCURRED IN THE ADMINIS-
4 TRATION OF THIS SECTION, THERE SHALL BE PAID TO THE AUTHORITY BY EACH
5 PERSON HEREAFTER APPLYING FOR A LICENSE AS A BEER WHOLESALER THE FOLLOW-
6 ING SUMS: BEER WHOLESALER, FIVE THOUSAND DOLLARS; FOR EACH CONTRACT OR
7 AGREEMENT ENTERED INTO BY A BEER WHOLESALER, FIVE THOUSAND DOLLARS; A
8 NON-CONTRACTED WHOLESALER, FIVE THOUSAND DOLLARS; A LIKE SUM SHALL BE
9 PAID BY EACH PERSON HEREAFTER APPLYING FOR THE ISSUANCE OR RENEWAL OF
10 ANY SUCH LICENSE AND/OR FOR EACH CONTRACT OR AGREEMENT, AND SUCH SUM
11 SHALL ACCOMPANY THE APPLICATION AND THE LICENSE FEE PRESCRIBED BY THIS
12 CHAPTER FOR SUCH LICENSE OR RENEWAL THEREOF, AS THE CASE MAY BE. THE
13 SUMS PRESCRIBED BY THIS SUBDIVISION SHALL NOT BE PRORATED FOR ANY
14 PORTION OF THE LICENSE FEE AND SHALL HAVE NO REFUND VALUE.

15 6. FOR ANY VIOLATION OF ANY PROVISION OF THIS SECTION OR OF ANY RULE
16 OR REGULATION DULY PROMULGATED UNDER THIS SECTION THE AUTHORITY MAY
17 REVOKE, CANCEL OR SUSPEND A LICENSE OR RECOVER, AS PROVIDED IN SECTION
18 ONE HUNDRED TWELVE OF THIS CHAPTER, THE PENAL SUM OF THE BOND FILED BY
19 THE LICENSEE.

20 S 2. This act shall take effect on the sixtieth day after it shall
21 have become a law.