

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DESTITO, LATIMER, MAGEE, MORELLE, BUTLER, BALL --
Multi-Sponsored by -- M. of A. GALEF -- read once and referred to the
Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the alcoholic beverage control law, in relation to
agreements between small brewers and beer wholesalers

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

1 Section 1. Subdivision 4 of section 55-c of the alcoholic beverage
2 control law is amended by adding a new paragraph (c) to read as follows:
3 (C) NOTWITHSTANDING ANY PROVISION OF THIS SUBDIVISION TO THE CONTRARY:
4 (I) ANY BREWER WITH AN ANNUAL VOLUME AS DEFINED IN THIS PARAGRAPH OF
5 LESS THAN THREE HUNDRED THOUSAND BARRELS OF BEER AND WHOSE SALES TO AN
6 AFFECTED BEER WHOLESALER ARE THREE PERCENT OR LESS OF THE BEER WHOLE-
7 SALER'S TOTAL ANNUAL BRAND SALES MEASURED IN CASE EQUIVALENT SALES OF
8 TWENTY-FOUR--TWELVE OUNCE UNITS MAY TERMINATE AN AGREEMENT WITH ANY BEER
9 WHOLESALER WITHOUT HAVING GOOD CAUSE FOR SUCH TERMINATION, AS DEFINED IN
10 PARAGRAPH (E) OF SUBDIVISION TWO OF THIS SECTION, AND SHALL NOT BE
11 SUBJECT TO LIABILITY TO THE BEER WHOLESALER UNDER PARAGRAPH (B) OF
12 SUBDIVISION SEVEN OF THIS SECTION PROVIDED THAT, PRIOR TO THE EFFECTIVE
13 DATE OF THE TERMINATION, THE BREWER PAYS THE BEER WHOLESALER THE FAIR
14 MARKET VALUE OF THE DISTRIBUTION RIGHTS WHICH WILL BE LOST OR DIMINISHED
15 BY REASON OF THE TERMINATION. IF THE BREWER AND BEER WHOLESALER CANNOT
16 MUTUALLY AGREE TO THE FAIR MARKET VALUE OF THE APPLICABLE DISTRIBUTION
17 RIGHTS LOST OR DIMINISHED BY REASON OF THE TERMINATION, THEN THE BREWER
18 SHALL PAY THE BEER WHOLESALER A GOOD FAITH ESTIMATE OF THE FAIR MARKET
19 VALUE OF THE APPLICABLE DISTRIBUTION RIGHTS.
20 (II) IF THE BEER WHOLESALER BEING TERMINATED UNDER SUBPARAGRAPH (I) OF
21 THIS PARAGRAPH DISPUTES THAT THE PAYMENT MADE BY THE BREWER WAS LESS
22 THAN THE FAIR MARKET VALUE OF THE DISTRIBUTION RIGHTS, THEN THE BEER
23 WHOLESALER MAY WITHIN FORTY-FIVE DAYS OF TERMINATION SUBMIT THE QUESTION

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

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1 OF FAIR MARKET VALUE OF THE APPLICABLE DISTRIBUTION RIGHTS LOST OR
2 DIMINISHED BY REASON OF THE TERMINATION TO BINDING ARBITRATION BEFORE A
3 PANEL OF THREE NEUTRAL ARBITRATORS APPOINTED IN ACCORDANCE WITH THE
4 COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION,
5 WHICH PANEL SHALL DETERMINE BY MAJORITY DECISION WHETHER THE BREWER'S
6 PAYMENT MEETS THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH. IF
7 THE ARBITRATION PANEL RULES THAT THE PAYMENT MADE BY THE BREWER TO THE
8 BEER WHOLESALER UPON TERMINATION WAS LESS THAN THE FAIR MARKET VALUE OF
9 DISTRIBUTION RIGHTS LOST OR DIMINISHED BY REASON OF THE TERMINATION,
10 THEN THE BREWER SHALL PAY THE BEER WHOLESALER THE DIFFERENCE BETWEEN THE
11 PAYMENT MADE TO THE BEER WHOLESALER AND THE DETERMINED FAIR MARKET VALUE
12 PLUS INTEREST. IF THE ARBITRATION PANEL RULES THAT THE PAYMENT MADE BY
13 THE BREWER TO THE BEER WHOLESALER UPON TERMINATION WAS MORE THAN THE
14 FAIR MARKET VALUE OF DISTRIBUTION RIGHTS LOST OR DIMINISHED BY REASON OF
15 THE TERMINATION, THEN THE BEER WHOLESALER SHALL PAY THE BREWER THE
16 DIFFERENCE BETWEEN THE PAYMENT MADE TO THE BEER WHOLESALER AND THE
17 DETERMINED FAIR MARKET VALUE PLUS INTEREST. ALL ARBITRATION FEES AND
18 EXPENSES SHALL BE EQUALLY DIVIDED AMONG THE PARTIES TO THE ARBITRATION
19 EXCEPT IF THE ARBITRATION PANEL DETERMINES THAT THE BREWER'S PAYMENT
20 UPON TERMINATION WAS NOT A GOOD FAITH ESTIMATE OF THE FAIR MARKET VALUE,
21 THEN THE PANEL MAY AWARD UP TO ONE HUNDRED PERCENT OF THE ARBITRATION
22 COSTS TO THE BREWER.

23 (III) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY,
24 FOR PURPOSES OF THIS PARAGRAPH, THE TERM "BREWER" SHALL MEAN ANY PERSON
25 OR ENTITY ENGAGED PRIMARILY IN BUSINESS AS A BREWER OR MANUFACTURER OF
26 BEER.

27 (IV) FOR THE PURPOSE OF THIS PARAGRAPH, THE TERM "ANNUAL VOLUME" SHALL
28 MEAN: (1) THE AGGREGATE NUMBER OF BARRELS OF BEER, UNDER TRADEMARKS
29 OWNED BY THE BREWERY, BREWED, DIRECTLY OR INDIRECTLY, BY OR ON BEHALF OF
30 THE BREWER DURING THE MEASURING PERIOD, ON A WORLDWIDE BASIS, PLUS (2)
31 THE AGGREGATE NUMBER OF BARRELS OF BEER BREWED, DURING THE MEASURING
32 PERIOD, DIRECTLY OR INDIRECTLY, BY OR ON BEHALF OF ANY PERSON OR ENTITY
33 WHICH, AT ANY TIME DURING THE MEASURING PERIOD, CONTROLLED, WAS
34 CONTROLLED BY OR WAS UNDER COMMON CONTROL WITH THE BREWER, ON A WORLD-
35 WIDE BASIS. ANNUAL VOLUME SHALL NOT INCLUDE BEER BREWED UNDER CONTRACT
36 FOR ANY OTHER BREWER. THERE SHALL BE NO DOUBLE COUNTING OF THE SAME
37 BARRELS OF BEER UNDER CLAUSES ONE AND TWO OF THIS SUBPARAGRAPH.

38 (V) FOR THE PURPOSES OF THIS PARAGRAPH, THE TERM "MEASURING PERIOD"
39 SHALL MEAN THE TWELVE MONTH CALENDAR PERIOD IMMEDIATELY PRECEDING THE
40 DATE NOTICE OF TERMINATION, AS REQUIRED UNDER SUBPARAGRAPH (I) OF THIS
41 PARAGRAPH THAT WAS GIVEN BY A BREWER TO THE BEER WHOLESALER.

42 S 2. This act shall take effect immediately.