

488--C

Cal. No. 31

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. ERRIGO, GALEF -- read once and referred
to the Committee on Economic Development, Job Creation, Commerce and
Industry -- reported from committee, advanced to a third reading,
amended and ordered reprinted, retaining its place on the order of
third reading -- reported from committee, advanced to a third reading,
amended and ordered reprinted, retaining its place on the order of
third reading -- reported from committee, advanced to a third reading,
amended and ordered reprinted, retaining its place on the order of
third reading

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 ASSEM-
BLY, 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 SUBPARAGRAPH (IV)
5 OF THIS PARAGRAPH OF LESS THAN THREE HUNDRED THOUSAND BARRELS OF BEER
6 AND WHOSE SALES TO AN AFFECTED BEER WHOLESALER ARE THREE PERCENT OR LESS
7 OF THE BEER WHOLESALER'S TOTAL ANNUAL BRAND SALES MEASURED IN CASE
8 EQUIVALENT SALES OF TWENTY-FOUR--TWELVE OUNCE UNITS MAY TERMINATE AN
9 AGREEMENT WITH ANY BEER WHOLESALER WITHOUT HAVING GOOD CAUSE FOR SUCH
10 TERMINATION, AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION TWO OF THIS
11 SECTION, AND SHALL NOT BE SUBJECT TO LIABILITY TO THE BEER WHOLESALER
12 UNDER PARAGRAPH (B) OF SUBDIVISION SEVEN OF THIS SECTION PROVIDED THAT,
13 PRIOR TO THE EFFECTIVE DATE OF THE TERMINATION, THE BREWER PAYS THE BEER
14 WHOLESALER THE FAIR MARKET VALUE OF THE DISTRIBUTION RIGHTS WHICH WILL
15 BE LOST OR DIMINISHED BY REASON OF THE TERMINATION. IF SUCH BREWER AND
16 BEER WHOLESALER CANNOT MUTUALLY AGREE TO THE FAIR MARKET VALUE OF THE

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

LBD03513-06-0

1 APPLICABLE DISTRIBUTION RIGHTS LOST OR DIMINISHED BY REASON OF THE
2 TERMINATION, THEN THE BREWER SHALL PAY THE BEER WHOLESALER A GOOD FAITH
3 ESTIMATE OF THE FAIR MARKET VALUE OF THE APPLICABLE DISTRIBUTION RIGHTS.

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

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

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

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

49 S 2. This act shall take effect on the first of January next succeed-
50 ing the date on which it shall have become a law.