S T A T E O F N E W Y O R K

5001--D

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. V. LOPEZ, ESPAILLAT, LENTOL, BARRA, BOYLAND, CASTRO, J. RIVERA, TITUS -- Multi-Sponsored by -- M. of A. HEASTIE, HEVESI, ORTIZ, PHEFFER, TOWNS -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Economic Development, Job Creation, Commerce and Industry in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The alcoholic beverage control law is amended by adding a new section 53-b to read as follows:

S 53-B. MANNER OF POSTING AND CHANGING BEER PRICES TO WHOLESALERS AND RETAIL LICENSEES IN CITIES OF ONE MILLION OR MORE.

1. IT IS HEREBY DECLARED AS THE POLICY OF THE STATE THAT THE SALE AND DISTRIBUTION OF BEER SHALL BE SUBJECT TO CERTAIN RESTRICTIONS, PROHIBITIONS AND REGULATIONS WHICH TEND TO MAINTAIN AN ORDERLY MARKET AND PREVENT DESTRUCTIVE COMPETITION. THE NECESSITY OF THE PROVISIONS OF THIS SECTION IS THEREFORE DECLARED AS A MATTER OF LEGISLATIVE NECESSITY.

2. AS USED IN THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:

A. "BEER WHOLESALER" OR "WHOLESALER" MEANS THE HOLDER OF A WHOLESALER'S LICENSE, PURSUANT TO SECTION FIFTY-THREE OF THIS ARTICLE, WHO

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

LBD08692-12-0

PURCHASES, OFFERS TO SELL, MARKETS, PROMOTES, WAREHOUSES OR PHYSICALLY DISTRIBUTES BEER SOLD BY A BREWER.

B. "CASE", "DRAFT PACKAGE" OR "SPECIAL PACKAGE" MEANS A PACKAGE PRODUCED BY A BREWER AND SOLD TO A BEER WHOLESALER.

C. "COD" MEANS CASH, CHECK OR ELECTRONIC PAYMENT AT THE TIME OF DELIVERY.

D. "FORKLIFT" MEANS ANY MECHANICAL SYSTEM ABLE TO UNLOAD PALLETS OFF A DELIVERY VEHICLE.

E. "LOADING DOCK" MEANS A PLATFORM WHERE TRUCKS, SEMI-TRUCKS, AND SEA OR RAIL CONTAINERS ARE UNLOADED BY FORKLIFTS.

F. "NON-CONTRACTED WHOLESALER" MEANS THE HOLDER OF A WHOLESALER'S LICENSE ISSUED OR RENEWED PRIOR TO JULY FIRST, NINETEEN HUNDRED SIXTY, AND THEREAFTER RENEWED OR TRANSFERRED WHO (1) PURCHASES PRODUCTS FROM A BEER WHOLESALER AND (2) IS NOT SUBJECT TO ANY AGREEMENT WITH A BREWER OR BEER WHOLESALER PURSUANT TO SECTION FIFTY-FIVE-C OF THIS ARTICLE AND (3) IS LOCATED IN A CITY OF ONE MILLION OR MORE.

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

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

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

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

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

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

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

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

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

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

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

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

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

D. REQUIRING BEER WHOLESALERS TO REGISTER WITH THE AUTHORITY EACH CONTRACT AND AGREEMENT, INCLUDING THE NAMES OF BREWERS AND IMPORTERS WITH WHICH SUCH WHOLESALER HAS CONTRACTS OR AGREEMENTS, AND REQUIRING WHOLESALERS TO MAINTAIN FORMS, RECORDS AND MEMORANDA PRESCRIBED BY THE AUTHORITY.

5. FOR THE PURPOSE OF DEFRAYING THE EXPENSES INCURRED IN THE ADMINISTRATION OF THIS SECTION, THERE SHALL BE PAID TO THE AUTHORITY BY EACH PERSON HEREAFTER APPLYING FOR A LICENSE AS A BEER WHOLESALER THE FOLLOWING SUMS: BEER WHOLESALER, FIVE THOUSAND DOLLARS; FOR EACH CONTRACT OR AGREEMENT ENTERED INTO BY A BEER WHOLESALER, FIVE THOUSAND DOLLARS; A NON-CONTRACTED WHOLESALER, FIVE THOUSAND DOLLARS; A LIKE SUM SHALL BE PAID BY EACH PERSON HEREAFTER APPLYING FOR THE ISSUANCE OR RENEWAL OF ANY SUCH LICENSE AND/OR FOR EACH CONTRACT OR AGREEMENT, AND SUCH SUM SHALL ACCOMPANY THE APPLICATION AND THE LICENSE FEE PRESCRIBED BY THIS CHAPTER FOR SUCH LICENSE OR RENEWAL THEREOF, AS THE CASE MAY BE. THE SUMS PRESCRIBED BY THIS SUBDIVISION SHALL NOT BE PRORATED FOR ANY PORTION OF THE LICENSE FEE AND SHALL HAVE NO REFUND VALUE.

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

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