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

5614--B

2009-2010 Regular Sessions

I N S E N A T E

May 21, 2009

Introduced by Sens. VALESKY, GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Commerce, Economic Development and Small Business in accordance with Senate Rule 6, sec. 8 -- 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 agreements between small brewers and beer wholesalers

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

Section 1. Subdivision 4 of section 55-c of the alcoholic beverage control law is amended by adding a new paragraph (c) to read as follows:

(C) NOTWITHSTANDING ANY PROVISION OF THIS SUBDIVISION TO THE CONTRARY:

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

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

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(II) IF THE BEER WHOLESALER BEING TERMINATED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH DISPUTES THAT THE PAYMENT MADE BY THE BREWER WAS LESS THAN THE FAIR MARKET VALUE OF THE DISTRIBUTION RIGHTS, THEN THE BEER WHOLESALER MAY WITHIN FORTY-FIVE DAYS OF TERMINATION SUBMIT THE QUESTION OF FAIR MARKET VALUE OF THE APPLICABLE DISTRIBUTION RIGHTS LOST OR DIMINISHED BY REASON OF THE TERMINATION TO BINDING ARBITRATION BEFORE A PANEL OF THREE NEUTRAL ARBITRATORS APPOINTED IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, WHICH PANEL SHALL DETERMINE BY MAJORITY DECISION WHETHER THE BREWER'S PAYMENT MEETS THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH. IF THE ARBITRATION PANEL RULES THAT THE PAYMENT MADE BY THE BREWER TO THE BEER WHOLESALER UPON TERMINATION WAS LESS THAN THE FAIR MARKET VALUE OF DISTRIBUTION RIGHTS LOST OR DIMINISHED BY REASON OF THE TERMINATION, THEN THE BREWER MUST PAY THE BEER WHOLESALER THE DIFFERENCE BETWEEN THE PAYMENT MADE TO THE BEER WHOLESALER AND THE DETERMINED FAIR MARKET VALUE PLUS INTEREST. IF THE ARBITRATION PANEL RULES THAT THE PAYMENT MADE BY THE BREWER TO THE BEER WHOLESALER UPON TERMINATION WAS MORE THAN THE FAIR MARKET VALUE OF DISTRIBUTION RIGHTS LOST OR DIMINISHED BY REASON OF THE TERMINATION, THEN THE BEER WHOLESALER MUST PAY THE BREWER THE DIFFERENCE BETWEEN THE PAYMENT MADE TO THE BEER WHOLESALER AND THE DETERMINED FAIR MARKET VALUE PLUS INTEREST. ALL ARBITRATION FEES AND EXPENSES SHALL BE EQUALLY DIVIDED AMONG THE PARTIES TO THE ARBITRATION EXCEPT IF THE ARBITRATION PANEL DETERMINES THAT THE BREWER'S PAYMENT UPON TERMINATION WAS NOT A GOOD FAITH ESTIMATE OF THE FAIR MARKET VALUE, THEN THE PANEL MAY AWARD UP TO ONE HUNDRED PERCENT OF THE ARBITRATION COSTS TO THE BREWER.

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

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

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

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.