

789

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. DESTITO, MORELLE, MAGEE, JAFFEE, LATIMER, BUTLER
-- Multi-Sponsored by -- M. of A. GALEF, P. LOPEZ -- 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 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
17 APPLICABLE DISTRIBUTION RIGHTS LOST OR DIMINISHED BY REASON OF THE
18 TERMINATION, THEN THE BREWER SHALL PAY THE BEER WHOLESALER A GOOD FAITH
19 ESTIMATE OF THE FAIR MARKET 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

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

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

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

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

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

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