

2221

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. V. LOPEZ, LENTOL, BOYLAND, CASTRO, RIVERA, TITUS
-- Multi-Sponsored by -- M. of A. HEASTIE, HEVESI, ORTIZ -- read once
and referred to the Committee on Economic Development

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The alcoholic beverage control law is amended by adding a
2 new section 53-b to read as follows:
3 S 53-B. MANNER OF POSTING AND CHANGING BEER PRICES TO WHOLESALERS AND
4 RETAIL LICENSEES IN CITIES OF ONE MILLION OR MORE.
5 1. IT IS HEREBY DECLARED AS THE POLICY OF THE STATE THAT THE SALE AND
6 DISTRIBUTION OF BEER SHALL BE SUBJECT TO CERTAIN RESTRICTIONS, PROHIBI-
7 TIONS AND REGULATIONS WHICH TEND TO MAINTAIN AN ORDERLY MARKET AND
8 PREVENT DESTRUCTIVE COMPETITION. THE NECESSITY OF THE PROVISIONS OF THIS
9 SECTION IS THEREFORE DECLARED AS A MATTER OF LEGISLATIVE NECESSITY.
10 2. AS USED IN THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOW-
11 ING MEANINGS:
12 A. "BEER WHOLESALER" OR "WHOLESALER" MEANS THE HOLDER OF A WHOLE-
13 SALER'S LICENSE, PURSUANT TO SECTION FIFTY-THREE OF THIS ARTICLE, WHO
14 PURCHASES, OFFERS TO SELL, MARKETS, PROMOTES, WAREHOUSES OR PHYSICALLY
15 DISTRIBUTES BEER SOLD BY A BREWER.
16 B. "BREWER/WHOLESALER" MEANS THE HOLDER OF A WHOLESALER'S LICENSE,
17 PURSUANT TO SECTION FIFTY-THREE OF THIS ARTICLE, WHO PURCHASES, OFFERS
18 TO SELL, MARKETS, PROMOTES, WAREHOUSES, OR PHYSICALLY DISTRIBUTES BEER
19 PREDOMINANTLY BREWED BY THE LICENSEE.
20 C. "CASE", "DRAFT PACKAGE" OR "SPECIAL PACKAGE" MEANS A PACKAGE
21 PRODUCED BY A BREWER AND SOLD TO A BEER WHOLESALER.

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

LBD05119-01-3

1 D. "COD" MEANS CASH, CHECK OR ELECTRONIC PAYMENT AT THE TIME OF DELIV-
2 ERY.

3 E. "FORKLIFT" MEANS ANY MECHANICAL SYSTEM ABLE TO UNLOAD PALLETS OFF A
4 DELIVERY VEHICLE.

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

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

13 H. "PALLET" MEANS A QUANTITY OF CASES, DRAFT PACKAGES OR SPECIAL PACK-
14 AGES PRODUCED BY A BREWER AND STACKED ON A DEVICE MOVABLE BY A FORKLIFT
15 OR OTHER MECHANICAL METHOD.

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

19 3. BEER WHOLESALERS AND BREWER/WHOLESALERS SHALL POST WITH THE AUTHOR-
20 ITY THE PRICE PER CASE, DRAFT PACKAGE OR SPECIAL PACKAGE OF BEER SOLD TO
21 RETAIL LICENSEES EVERY ONE HUNDRED EIGHTY DAYS. THE POSTED PRICE ON SUCH
22 CASE, DRAFT PACKAGE OR SPECIAL PACKAGE TO RETAIL LICENSEES MUST BE A
23 MINIMUM OF:

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

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

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

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

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

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

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

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

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

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

7 D. REQUIRING BEER WHOLESALERS AND BREWER/WHOLESALERS TO REGISTER WITH
8 THE AUTHORITY EACH CONTRACT AND AGREEMENT, INCLUDING THE NAMES OF BREW-
9 ERS AND IMPORTERS WITH WHICH SUCH WHOLESALER HAS CONTRACTS OR AGREE-
10 MENTS, AND REQUIRING WHOLESALERS TO MAINTAIN FORMS, RECORDS AND MEMORAN-
11 DA PRESCRIBED BY THE AUTHORITY.

12 5. FOR THE PURPOSE OF DEFRAYING THE EXPENSES INCURRED IN THE ADMINIS-
13 TRATION OF THIS SECTION, THERE SHALL BE PAID TO THE AUTHORITY BY EACH
14 PERSON HEREAFTER APPLYING FOR A LICENSE AS A BEER WHOLESALER THE FOLLOW-
15 ING SUMS: BEER WHOLESALER, FIVE THOUSAND DOLLARS; FOR EACH CONTRACT OR
16 AGREEMENT ENTERED INTO BY A BEER WHOLESALER, FIVE THOUSAND DOLLARS; A
17 NON-CONTRACTED WHOLESALER, FIVE THOUSAND DOLLARS; A LIKE SUM SHALL BE
18 PAID BY EACH PERSON HEREAFTER APPLYING FOR THE ISSUANCE OR RENEWAL OF
19 ANY SUCH LICENSE AND/OR FOR EACH CONTRACT OR AGREEMENT, AND SUCH SUM
20 SHALL ACCOMPANY THE APPLICATION AND THE LICENSE FEE PRESCRIBED BY THIS
21 CHAPTER FOR SUCH LICENSE OR RENEWAL THEREOF, AS THE CASE MAY BE. THE
22 SUMS PRESCRIBED BY THIS SUBDIVISION SHALL NOT BE PRORATED FOR ANY
23 PORTION OF THE LICENSE FEE AND SHALL HAVE NO REFUND VALUE.

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

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