STATE OF NEW YORK

6701--A

2019-2020 Regular Sessions

IN ASSEMBLY

March 15, 2019

Introduced by M. of A. SCHIMMINGER, ABBATE, QUART, BRAUNSTEIN, HEVESI, HYNDMAN, B. MILLER, MONTESANO, RAIA, ZEBROWSKI, PHEFFER AMATO, AUBRY, PERRY, MORINELLO, BRABENEC, NORRIS, JEAN-PIERRE, SOLAGES -- read once and referred to the Committee on Economic Development -- 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 authorizing retail licenses to purchase beer, wine or liquor with a business payment card

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 101-aa of the alcoholic beverage control law is amended by adding three new paragraphs g, h and i to read as follows:

g. "Business payment card" means a credit card issued to a retail licensee for business or commercial use pursuant to an agreement that allows the holder thereof to obtain goods and services on the credit of the issuer, or a debit card that provides access to the bank account of a retail licensee. Such card must be issued in the same name as a retail licensee and registered to the same address as the address on the retail license, or as otherwise permitted by the authority in regulation.

h. "Final cash invoice amount" means the amount charged by a manufacturer or wholesaler to a retail licensee pursuant to paragraphs (a) and (b) of subdivision two of this section.

i. "Final business payment card invoice amount" means the amount charged by a manufacturer or wholesaler to a retail licensee pursuant to paragraph (c) of subdivision two of this section; and shall equal the final cash invoice amount plus remuneration for surcharges and fees incurred by a manufacturer or wholesaler as a result of such a transaction, which shall be calculated by multiplying the final cash invoice amount by a rate determined annually by the authority.

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

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§ 2. Subdivision 2 of section 101-aa of the alcoholic beverage control law, as amended by chapter 242 of the laws of 2012, is amended and a new subdivision 2-a is added to read as follows:

2. No manufacturer or wholesaler licensed under this chapter shall sell or deliver any liquor or wine to any retail licensee except as provided for in this section:

(a) for cash to be paid at the time of delivery; [~~or~~]

(b) on terms requiring payment by such retail licensee for such alcoholic beverages on or before the final payment date of the credit period for which delivery is made**; or**

(c) by business payment card; provided that a manufacturer or wholesaler that exercises reasonable diligence to ensure the sale comports with the requirements of this section shall not be found to have violated this subdivision where a retail licensee uses a credit card other than a business payment card.

2-a. A manufacturer or wholesaler that accepts business payment cards shall clearly state the final cash invoice amount and the final business payment card invoice amount on an invoice provided to a retail licensee. Nothing in this section shall preclude, or permit a manufacturer or wholesaler to preclude, a retail licensee that receives such an invoice from electing to use any payment method permitted pursuant to subdivision two of this section following receipt of such invoice.

§ 3. Subdivision 1 of section 101-aaa of the alcoholic beverage control law is amended by adding three new paragraphs h, i and j to read as follows:

h. "Business payment card" means any credit card issued to a retail licensee for business or commercial use pursuant to an agreement that allows the holder thereof to obtain goods and services on the credit of the issuer or a debit card that provides access to a bank account of a retail licensee. Such card must be issued in the same name as a retail licensee and registered to the same address as the address on the retail license, or as otherwise permitted by the authority in regulation.

i. "Final cash invoice amount" means the amount charged by a manufacturer or wholesaler to a retail licensee pursuant to paragraphs (a) and (b) of subdivision two of this section.

j. "Final business payment card invoice amount" means the amount charged by a manufacturer or wholesaler to a retail licensee pursuant to paragraph (c) of subdivision two of this section; and shall equal the final cash invoice amount plus remuneration for surcharges and fees incurred by a manufacturer or wholesaler as a result of such a transaction, which shall be calculated by multiplying the final cash invoice amount by a rate determined annually by the authority.

§ 4. Subdivision 2 of section 101-aaa of the alcoholic beverage control law, as amended by chapter 522 of the laws of 2018, is amended and a new subdivision 2-a is added to read as follows:

2. No manufacturer or wholesaler licensed under this chapter shall sell or deliver any beer, mead, cider or wine products to any retail licensee except as provided for in this section:

(a) for cash to be paid at the time of delivery; [~~or~~]

(b) on terms requiring payment by such retail licensee for such beer, mead, cider, or wine products on or before the final payment date of any credit period within which delivery is made**; or**

(c) by business payment card; provided that a manufacturer or wholesaler that exercises reasonable diligence to ensure the sale comports with the requirements of this section shall not be found to have

violated this subdivision where a retail licensee uses a credit card other than a business payment card.

Provided, however, that the sale of wine products, mead, or cider to a retail licensee by a wholesaler licensed under section fifty-eight, sixty-two, or seventy-eight of this chapter, or a licensed manufacturer of liquor, mead or wine or a cider producer's license, shall be governed by the provisions of section one hundred-one-aa of this article.

2-a. A manufacturer or wholesaler that accepts business payment cards shall clearly state the final cash invoice amount and the final business payment card invoice amount on an invoice provided to a retail licensee. Nothing in this section shall preclude, or permit a manufacturer or wholesaler to preclude, a retail licensee that receives such an invoice from electing to use any payment method permitted pursuant to subdivision two of this section following receipt of such invoice.

§ 5. Subdivision 2 of section 55-b of the alcoholic beverage control law, as amended by chapter 322 of the laws of 1978, is amended to read follows:

2. No brewer or beer wholesaler may increase the price per case, draft package or special package of beer sold to beer wholesalers or retail licensees until at least one hundred eighty days have elapsed since his last price decrease on such case, draft package or special package, provided, however, that the brewer or beer wholesaler may increase any price established by him at any time in the amount of any direct tax increase on beer or in the amount necessary to reasonably remunerate such wholesaler for surcharges and fees incurred for business payment card payments, as determined by the authority pursuant to paragraph j of subdivision one of section one hundred one-aaa of this chapter, or on containers thereof, actually paid by such brewer or beer wholesaler, and provided further, however, that if a brewer or beer wholesaler has increased his price to beer wholesalers at any time pursuant to the provisions hereof, the beer wholesaler may increase the price established by him on such package in an amount equal to the direct price increase to the beer wholesaler. The price per case, draft package or special package of beer sold to beer wholesalers or retail licensees on the first day of the month following the effective date of this act 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.

§ 6. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.