

# STATE OF NEW YORK

4241--A

Cal. No. 411

2019-2020 Regular Sessions

## IN SENATE

March 5, 2019

Introduced by Sens. KAMINSKY, LANZA, ADDABBO, GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

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

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

8 2-a. A manufacturer or wholesaler that accepts business payment cards  
9 shall clearly state the final cash invoice amount and the final business  
10 payment card invoice amount on an invoice provided to a retail licensee.  
11 Nothing in this section shall preclude, or permit a manufacturer or  
12 wholesaler to preclude, a retail licensee that receives such an invoice  
13 from electing to use any payment method permitted pursuant to subdivi-  
14 sion two of this section following receipt of such invoice.

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

18 2. No brewer or beer wholesaler may increase the price per case, draft  
19 package or special package of beer sold to beer wholesalers or retail  
20 licensees until at least one hundred eighty days have elapsed since his  
21 last price decrease on such case, draft package or special package,  
22 provided, however, that the brewer or beer wholesaler may increase any  
23 price established by him at any time in the amount of any direct tax  
24 increase on beer or in the amount necessary to reasonably remunerate  
25 such wholesaler for surcharges and fees incurred for business payment  
26 card payments, as determined by the authority pursuant to paragraph j of  
27 subdivision one of section one hundred one-aaa of this chapter, or on  
28 containers thereof, actually paid by such brewer or beer wholesaler, and  
29 provided further, however, that if a brewer or beer wholesaler has  
30 increased his price to beer wholesalers at any time pursuant to the  
31 provisions hereof, the beer wholesaler may increase the price estab-  
32 lished by him on such package in an amount equal to the direct price  
33 increase to the beer wholesaler. The price per case, draft package or  
34 special package of beer sold to beer wholesalers or retail licensees on  
35 the first day of the month following the effective date of this act  
36 shall be deemed the base price, to or from which price increases or  
37 decreases may be made in accordance with the provisions of this section.

38 § 6. This act shall take effect on the one hundred twentieth day after  
39 it shall have become a law. Effective immediately, the addition, amend-  
40 ment and/or repeal of any rule or regulation necessary for the implemen-  
41 tation of this act on its effective date are authorized to be made and  
42 completed on or before such effective date.