

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:

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

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

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

14 i. "Final business payment card invoice amount" means the amount
15 charged by a manufacturer or wholesaler to a retail licensee pursuant to
16 paragraph (c) of subdivision two of this section; and shall equal the
17 final cash invoice amount plus remuneration for surcharges and fees
18 incurred by a manufacturer or wholesaler as a result of such a trans-
19 action, which shall be calculated by multiplying the final cash invoice
20 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.

LBD10011-02-9

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

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

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

8 (b) on terms requiring payment by such retail licensee for such alco-
9 holic beverages on or before the final payment date of the credit period
10 for which delivery is made; or

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

16 2-a. A manufacturer or wholesaler that accepts business payment cards
17 shall clearly state the final cash invoice amount and the final business
18 payment card invoice amount on an invoice provided to a retail licensee.
19 Nothing in this section shall preclude, or permit a manufacturer or
20 wholesaler to preclude, a retail licensee that receives such an invoice
21 from electing to use any payment method permitted pursuant to subdivi-
22 sion two of this section following receipt of such invoice.

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

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

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

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

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

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

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

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

53 (c) by business payment card; provided that a manufacturer or whole-
54 saler that exercises reasonable diligence to ensure the sale comports
55 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.