

33:1-93.12

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 243

NJSA: 33:1-93.12 (Concerns relationship between manufacturers and wholesalers of malt alcoholic beverages)

BILL NO: A3619 (Substituted for S2170)

SPONSOR(S): Cryan and others

DATE INTRODUCED: January 10, 2005

COMMITTEE: **ASSEMBLY:** Law and Public Safety
SENATE: Law and Public Safety and Veterans' Affairs

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 20, 2005
SENATE: December 8, 2005

DATE OF APPROVAL: December 15, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Assembly Committee Substitute for A3619 enacted)

A3619

[SPONSOR'S STATEMENT](#): (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S2170

[SPONSOR'S STATEMENT](#): (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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No

IS 11/27/07

§§1-9 -
C.33:1-93.12
to 33:1-93.20
§10 - C.33:1-43.2
§11 - Note to §§1-10

P.L. 2005, CHAPTER 243, *approved December 15, 2005*

Assembly Committee Substitute for

Assembly, No. 3619

1 **AN ACT** concerning alcoholic beverages and supplementing Title 33
2 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Sections 1 through 9 of this act shall be known and may be
8 cited as the "Malt Alcoholic Beverage Practices Act."

9

10 2. The Legislature finds and declares that:

11 a. The distribution and sale of malt alcoholic beverages in this
12 State vitally affects the general economy and revenues of the State, as
13 well as the public interest and public welfare.

14 b. It is appropriate to recognize the guiding characteristics
15 regarding the distribution of malt alcoholic beverages to foster
16 responsible industry practices involving the moderate and responsible
17 use of these beverages, to provide a framework for the malt alcohol
18 beverage industry that recognizes and encourages the beneficial
19 aspects of competition, to provide trade stability, to maintain the
20 three-tier distribution system, to protect the interests of the consumer
21 regarding product quality and freshness and to achieve all facets of the
22 legislatively declared public policy of this State as set forth in section
23 4 of P.L.1985, c.258 (C.33:1-3.1).

24 c. It is therefore fitting and proper to regulate the business
25 relationship between and brewers and wholesalers of malt alcoholic
26 beverages and set forth their respective responsibilities to further the
27 public policy of this State and protect beer wholesalers from
28 unreasonable demands and requirements by brewers, while devoting
29 sufficient efforts and resources to the distribution and sale of malt
30 alcoholic beverages.

31 d. The Legislature also finds and declares that nothing in sections
32 1 through 9 of this act shall be construed in any manner whatsoever to
33 apply to wholesalers of wines and spirits and that sections 1 through
34 9 of the act shall be strictly limited to the responsibilities of brewers
35 and wholesalers. But section 10 of this act shall apply to wholesalers
36 of beer, wine and spirits alike.

37

38 3. As used in sections 1 through 9 of this act:

39 "Base product" is a malt alcoholic beverage product distributed by
40 a wholesaler.

1 "Brand extension" means any malt alcoholic beverage product
2 offered for sale in the State, other than on a test market basis in a
3 defined market area, that uses as part of its brand name, logo,
4 packaging or trade dress, including but not limited to, the name of the
5 brewer if the brewer's name is a part of the product name, or that is
6 sold or marketed to the beer trade or to the consumer substantially in
7 association with, a brand name, logo, packaging or trade dress,
8 including, but not limited to, the name of the brewer if the brewer's
9 name is a part of the product name, of a malt alcoholic beverage
10 product then distributed by a wholesaler.

11 "Brewer" means any person, whether located within or outside the
12 State who:

13 a. brews, manufactures, imports, markets or supplies malt
14 alcoholic beverages and sells malt alcoholic beverages to a plenary
15 wholesale licensee or a limited wholesale licensee for the purpose of
16 resale; or

17 b. is an agent or broker of such a person who solicits orders for
18 or arranges sales of such person's malt alcoholic beverages to a plenary
19 wholesale licensee or a limited wholesale licensee for the purpose of
20 resale; or

21 c. is a successor brewer.

22 "Fair market value" of an asset means the price at which the asset
23 would change hands between a willing seller and a willing buyer when
24 neither is acting under compulsion and when both have knowledge of
25 the relevant facts.

26 "Good cause" means and is limited to a failure to substantially
27 comply with reasonable terms contained in a contract or agreement
28 between a brewer and wholesaler that contains the same terms as the
29 brewer's contract with similarly situated United States, not including
30 United States territories or possessions, distributors.

31 "Person" means a natural person, corporation, partnership, trust,
32 or other entity and, in case of an entity, it shall include any other
33 entity, except a natural person, which has a majority interest in such
34 entity or effectively controls such entity.

35 "Sale or transfer" means any disposition of a contract, agreement
36 or relationship between a brewer and a wholesaler or of any rights to
37 acquire and distribute products of a brewer, or any interest therein,
38 with or without consideration, including, but not limited to, bequest,
39 inheritance, gift, exchange, lease or license.

40 "Successor brewer" means any person, not under common control
41 with the predecessor brewer, who by any means, including, without
42 limitation, by way of purchase, assignment, transfer, lease, license,
43 appointment, contract, agreement, joint venture, merger, or other
44 disposition of all or part of the business, assets, including trademarks,
45 brands, distribution rights and other intangible assets, or ownership
46 interests of a brewer, acquires the business or malt alcoholic beverage

1 brands of another brewer, or otherwise succeeds to a brewer's interest
2 with respect to any malt alcoholic beverage brands.

3 "Wholesaler" means a plenary wholesale licensee or a limited
4 wholesale licensee who purchases malt alcoholic beverages from a
5 brewer for the purpose of resale to Class C licensees or State
6 Beverage Distributor Licensees.

7

8 4. a. Every brewer shall contract and agree in writing with a
9 wholesaler for all supply, distribution and sale of the products of the
10 brewer in this State, and each contract shall provide and specify the
11 rights and duties of the brewer and the wholesaler with regard to such
12 supply, distribution and sale. The terms and provisions of such
13 contracts shall be reasonable, reflect the parties' mutuality of purpose
14 and community of interest in the responsible sale and marketing of
15 their products, and shall comply with and conform to State law and the
16 terms of this act. The provisions of this act may not be waived or
17 modified by written or oral agreement, estoppel or otherwise, and any
18 provision of a contract or ancillary agreement that directly or
19 indirectly requires or amounts to a waiver of any provision of this act,
20 or that would relieve any person of any obligation or liability under
21 this act, or that imposes unreasonable standards of performance on a
22 wholesaler, shall be a violation of this act and shall be null, void and
23 of no effect.

24 b. This act shall apply to all contracts, agreements and
25 relationships among any brewers and wholesalers, including contracts,
26 agreements or relationships entered into, renewed, extended or
27 modified after the effective date of this act. Contracts, agreements and
28 relationships existing prior to the effective date of this act that are
29 continuing in nature, have an indefinite term or have no specific
30 duration shall be deemed for purposes of this act to have been renewed
31 60 days after the effective date of this act.

32 c. The terms or provisions of a contract or agreement between a
33 brewer and wholesaler shall not permit a brewer, and it shall be a
34 violation of this act for a brewer:

35 (1) to terminate, cancel or refuse to renew a contract, agreement
36 or relationship with a wholesaler, or to fail or refuse to grant to a
37 wholesaler the right to purchase and resell any brand extension under
38 the same form of agreement as the base product, in part or in whole,
39 except where the brewer establishes that it has acted for good cause
40 and in good faith;

41 (2) to terminate, cancel or refuse to renew a contract, agreement
42 or relationship with a wholesaler, in part or in whole, because the
43 wholesaler refuses or fails to accept an unreasonable amendment to the
44 contract, agreement or relationship;

45 (3) to terminate, cancel or refuse to renew a contract, agreement
46 or relationship with a wholesaler, in part or in whole, without first

1 giving the wholesaler written notice setting forth all of the alleged
2 deficiencies on the part of the wholesaler and giving the wholesaler a
3 reasonable opportunity of not more than 120 days to cure the alleged
4 deficiencies; provided, however, that such period for cure may be
5 increased or reduced to a commercially reasonable period by an order
6 of a court in this State in a proceeding in which each party shall bear
7 its own costs and expenses;

8 (4) to require the brewer's consent to the acquisition, sale or
9 transfer of distribution rights for products other than those of the
10 brewer or of assets unrelated to the distribution of the brewer's
11 products;

12 (5) to unreasonably withhold consent to a proposed sale or
13 transfer of any ownership interests in the wholesaler to the spouse,
14 children or heirs of existing holders of such ownership interests or to
15 employees of the wholesaler, or to trusts for the benefit of such
16 persons, except upon a statement of reasonable grounds, provided
17 such transfer does not result in a sale or transfer of effective control,
18 including but not limited to a change in the persons holding the
19 majority voting power, of the wholesaler; or to take more than 30 days
20 to approve or disapprove the proposed sale or transfer after the
21 brewer has received written notice of the proposal from the wholesaler
22 and received all reasonably requested information from the wholesaler
23 to enable the brewer to pass upon the proposed sale or transfer.

24 (6) to unreasonably withhold consent to a proposed sale or
25 transfer, in part or in whole, of any ownership interests in the
26 wholesaler or the distribution rights for the brewer's products, assets
27 of the wholesaler related to the distribution of the brewer's products,
28 or of ownership interests in the wholesaler to other parties, except
29 upon a statement of reasonable grounds that are based upon
30 reasonable, previously announced, in an agreement with its
31 wholesalers or otherwise, standards of the brewer, relating to the
32 qualifications of such transferee relating to the character, financial
33 ability or business experience of the proposed transferee, or relating
34 to the resulting market combinations or territory to be serviced by the
35 transferee; or to take more than 30 days to approve or disapprove the
36 proposed sale or transfer after the brewer has received written notice
37 of the proposal from the wholesaler and received all reasonably
38 requested information from the wholesaler to enable the brewer to
39 pass upon the proposed sale or transfer, provided that such period may
40 be extended by agreement of the parties; provided, however, that at
41 any time within such 30-day period prior to the date on which the
42 brewer approves or disapproves such a proposed sale or transfer, the
43 brewer shall have the right and option to purchase, and in the event of
44 a brewer's disapproval relating to the resulting market combinations or
45 territory to be serviced by the transferee, the wholesaler shall have the
46 right and option to require the brewer to purchase at the price and on

1 the terms and conditions set forth in the agreement between the
2 wholesaler and the proposed transferee, all of the distribution rights,
3 assets or ownership interest that are the subject of the proposed sale
4 or transfer, at the price and on the terms and conditions set forth in the
5 agreement between the wholesaler and the proposed transferee,
6 subject to the following:

7 (a) if the proposed transferee is the spouse, children or heirs of
8 existing holders of ownership interests in the wholesaler, then the
9 brewer shall not have the right and option to purchase such ownership
10 interest;

11 (b) if the proposed transferee is an existing holder of ownership
12 interests in the wholesaler, or is the manager or the successor manager
13 of the wholesaler, then if the brewer exercises its option to purchase
14 under this section, the wholesaler may, instead of selling or
15 transferring to the brewer, rescind the proposed sale or transfer by
16 notice to the brewer; and

17 (c) the brewer shall complete such purchase within sixty days of
18 its exercise of its right to do so.

19 (7) to allow more than one wholesaler to sell any of the brewer's
20 product lines or brands within the same territory or area at the same
21 time. This paragraph shall not apply to contracts or agreements
22 entered into prior to the effective date of this act, or future renewals
23 of such contracts or agreements, to the extent that, as permitted under
24 the existing contract or agreement and the future renewals allow, as of
25 the effective date of this act, different wholesalers to sell certain but
26 not all of the brewer's brands or brand extensions within the same
27 territory or area at the same time;

28 (8) to unreasonably fail to consent to the wholesaler's designation
29 of an individual as the wholesaler's manager or successor-manager in
30 accordance with previously announced non-discriminatory and
31 reasonable qualifications and standards;

32 (9) to withdraw approval of an individual as the wholesaler's
33 manager or successor-manager unless in good faith and with just cause
34 based upon deficiencies in the performance of the manager or
35 successor-manager, which in the case of the manager shall be material
36 deficiencies; or

37 (10) to prohibit, directly or indirectly, the right of free association
38 among wholesalers for any lawful purpose; or

39 (11) to fail to act, during the term of the contract, agreement or
40 relationship between them in a manner consistent with the covenant of
41 good faith and fair dealing implicit in State contract law.

42 A wholesaler also shall act in a manner consistent with the
43 covenant of good faith and fair dealing implied in State contract.

44 d. It shall not be a violation of this act for a successor brewer to:

45 (1) terminate, in whole or in part, its contract, agreement or
46 relationship with a wholesaler, or the contract, agreement or

1 relationship with a wholesaler of the brewer it succeeded, for the
2 purpose of transferring the distribution rights in the wholesaler's
3 territory for the malt alcoholic beverage brands to which the successor
4 brewer succeeded, to a wholesaler or wholesalers that then distributes
5 other products of the successor brewer in such territory, provided that
6 the successor brewer or the second wholesaler or wholesalers first
7 pays to the first wholesaler the fair market value of the first
8 wholesaler's business with respect to the terminated brand or brands;
9 provided, however, that such termination shall not be permitted, and
10 may be enjoined, where it may cause irreparable injury to the first
11 wholesaler and the standards for injunctive relief are otherwise met;
12 and provided further that a rebuttable presumption of such irreparable
13 injury shall be inferred when the terminated brand or brands represent
14 20% or more of the first wholesaler's gross sales; or

15 (2) to assume and continue the contract, agreement or relationship
16 of the brewer it succeeded with a wholesaler in the wholesaler's
17 territory for the malt alcoholic beverage brands to which it succeeded,
18 notwithstanding that the successor brewer distributes other products
19 in such territory through another wholesaler.

20 e. Whether the terms of a contract, agreement or relationship
21 conform with the provisions of this section shall be determined by a
22 court of this State in the context of a specific case or controversy
23 among wholesalers and brewers only, and not by generally applicable
24 rule, regulation or otherwise. In any such determination proper
25 consideration should be given to relevant precedents provided under
26 the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.),
27 and the fact that a term of a contract, agreement or relationship may
28 be a term of the kind described in section 9 of this act shall not be
29 considered in making such determination.

30

31 5. Notwithstanding the provisions of paragraphs (1) through (3)
32 of subsection c. of section 4 of this act, a brewer may immediately
33 terminate a contract or agreement with a wholesaler, to the extent
34 provided in reasonable terms of the contract or agreement that
35 contains the same terms as the brewer's contract with similarly situated
36 United States, not including United States territories or possessions,
37 distributors, if any of the following occur:

38 a. The assignment or attempted assignment by the wholesaler for
39 the benefit of creditors, the institution of proceedings in bankruptcy by
40 or against the wholesaler, the dissolution or liquidation of the
41 wholesaler, the insolvency of the wholesaler or the wholesaler's failure
42 to pay for malt alcoholic beverages in accordance with the agreed
43 terms;

44 b. Failure of any owner to sell his ownership interest in a
45 wholesaler within 120 days after the:

46 (1) owner has been convicted of a felony or crime of the third

1 degree or higher which, in the reasonable judgment of the brewer, may
2 adversely affect the goodwill or interests of the wholesaler or the
3 brewer and the brewer notifies the wholesaler that it requires such
4 sale; or

5 (2) brewer learns of such conviction and notifies the wholesaler
6 that it requires such sale because, in the reasonable judgment of the
7 brewer, it may adversely affect the goodwill or interests of the
8 wholesaler or the brewer and the brewer notifies the wholesaler that
9 it requires such sale;

10 c. Fraudulent conduct of the wholesaler, in any of its dealings with
11 the brewer or the brewer's products, that is known to, or should have
12 been known to the senior management or the owners of the
13 wholesaler;

14 d. Revocation or suspension for more than 31 days of the
15 wholesaler's federal basic permit or of any state or local license
16 required of a wholesaler for the normal operation of its business;

17 e. Intentional sale, directly or indirectly, of malt alcoholic
18 beverages by a wholesaler outside the sales territory prescribed by the
19 brewer; or

20 f. Without brewer consent, the wholesaler engages in changes in
21 ownership, the establishment of trusts or other ownership interests,
22 enters into buy-sell agreements, or grants an option to purchase an
23 ownership interest; this provision will not apply if the wholesaler
24 establishes that the brewer's failure to consent, after having received
25 notice as provided in paragraphs (5) or (6) of subsection c. of section
26 4 of this act, was in violation of this act.

27
28 6. During the term of a contract or agreement between a brewer
29 and a wholesaler subject to this act, the wholesaler shall, in accordance
30 with the reasonable standards of such contract or agreement, as
31 reasonably relied upon by the wholesaler, enforced without
32 discriminatory intent and in good faith, and uniformly applicable to
33 similarly situated distributors, maintain physical facilities, equipment
34 and personnel so that the product and brand of the brewer are properly
35 represented in the territory of the wholesaler, the reputation and trade
36 name of the brewer are reasonably protected, and the public is served.

37
38 7. a. Any brewer or wholesaler may bring an action against a
39 brewer for violation of this act, or against a successor brewer in
40 connection with a termination pursuant to paragraph (1) of subsection
41 d. of section 4 of this act, in the Superior Court of the State of New
42 Jersey. Any brewer who violates any provision of this act, and any
43 successor brewer who terminates a contract, agreement or relationship
44 with a wholesaler pursuant to paragraph (1) of subsection d. of section
45 4 of this act, shall pay the injured wholesaler all reasonable damages
46 sustained by it as a result of the brewer's violations. Injunctive and

1 other equitable relief also shall be available in appropriate
2 circumstances under the applicable standards for such relief under
3 State law. Injunctive equitable relief shall be granted against an actual
4 or threatened unlawful failure or refusal to grant a wholesaler the right
5 to purchase and resell a brand extension. The wholesaler or brewer
6 who sues alleging a violation of this act shall, if successful, also be
7 entitled to the costs of the action including, but not limited to,
8 reasonable attorney's fees.

9 b. Without limiting the provisions of subsection a. of this section,
10 if a brewer violates paragraphs (1), (2) or (3) of subsection c. of
11 section 4 of this act, the injured wholesaler's reasonable damages shall
12 include the fair market value of the wholesaler's business with respect
13 to the terminated brand or brands.

14 c. If a brewer terminates or fails to renew, in whole or in part, a
15 contract, agreement or relationship with a wholesaler for good cause
16 and in good faith, other than terminations or failures to renew properly
17 based upon grounds for immediate termination under section 5 of this
18 act, the brewer shall pay to the wholesaler reasonable compensation,
19 which may be established by a reasonable liquidated damages provision
20 in a written contract or written agreement between the brewer and the
21 wholesaler. Payment for inventory and other tangible assets owned and
22 used by the wholesaler in its operation as a wholesaler for the brewer's
23 products as provided for under the standards of a written contract or
24 written agreement, as well as a payment determined by multiplying by
25 two the wholesaler's pre-tax net income attributable to the sale of the
26 brewer's brand or brands for the wholesaler's most recently completed
27 fiscal year preceding the year in which the termination occurs, is
28 deemed to be a reasonable liquidated damages provision under this act
29 for such a termination of the right to distribute brands representing
30 more than 20% of the wholesaler's revenues. This payment shall not
31 be deemed reasonable compensation in any other circumstance or to
32 represent a basis for calculating fair market value. In particular and
33 without limitation, in the case of brands representing 20% or less of a
34 wholesaler's revenues, which may not require significant incremental
35 expenses for delivery, sales and service, making a net income standard
36 inappropriate, such payment shall not be deemed to be a reasonable
37 liquidated damages provision under this act.

38 d. In the event of a termination under section 5 of this act,
39 payment for inventory in the manner prescribed under the reasonable
40 standards of a contract or agreement is reasonable compensation under
41 this act.

42 e. Nothing in this act shall be deemed to give a right of action for
43 violation of this act to any third party to the relationship between a
44 brewer and a wholesaler, except for a brewer adversely affected by
45 another brewer's violation of this act with respect to a common
46 wholesaler.

1 8. If any material provision within any section of this act is held
2 invalid, the remainder of this act and the act as a whole shall be held
3 invalid; provided that if the application of any material provision
4 within any section of this act to any person or circumstance is held
5 invalid, then the remainder of this act and the act as a whole shall be
6 held invalid as to such person or circumstance. The "Franchise
7 Practices Act," P.L.1971, c. 356 (C.56:10-1 et seq.) shall not apply to
8 those agreements subject to this act; provided, however, that as the
9 material provisions of this act are not severable, this section shall not
10 be severable from the provisions of sections 3, 4 and 7 of this act, and
11 in the event that any provision thereof is held invalid, then the
12 "Franchise Practices Act" shall be fully applicable to the extent it
13 would otherwise apply as if this act had not been enacted, and if the
14 application of any provision thereof to any person or circumstance is
15 held invalid, then the "Franchise Practices Act" shall be fully applicable
16 to such person or circumstance to the extent it would otherwise apply
17 as if this act had not been enacted with respect to such person or
18 circumstance.

19

20 9. The Legislature finds that where a brewer's products represent
21 more than 20% of a wholesaler's gross sales and the brewer and
22 wholesaler have a community of interest in the marketing of the
23 brewer's products, there is a justification for certain input by the
24 brewer into the operations of the wholesaler, but that such input from
25 numerous brewers representing smaller percentages of a wholesaler's
26 gross sales might subject wholesalers to inconsistent obligations,
27 create uncertainty as to those obligations, and interfere unreasonably
28 with the wholesaler's ability to operate its business. Accordingly,
29 consistent with the legislatively declared public policy of this State in
30 section 4 of P.L.1985, c.258 (C.33:1-3.1), the use of the following
31 terms in any agreement or contract, including agreements or contracts
32 existing on the effective date of this act, between manufacturers of
33 malt alcoholic beverages and wholesalers, shall not be construed to
34 grant such manufacturer or wholesaler an interest in another
35 manufacturer or wholesaler under the relevant provisions of Title 33
36 of the Revised Statutes or any rule or regulation promulgated
37 thereunder provided that the brewer's products represent more than
38 20% of the wholesaler's gross sales and the brewer and wholesaler
39 have a community of interest in the marketing of the brewer's
40 products:

41 a. Terms providing brewers the ability to give reasonable consent
42 to wholesaler ownership and management changes, including successor
43 management;

44 b. Terms setting forth quality, operational, marketing and sales
45 standards designed to properly represent the products, brands,
46 reputation and trade name of the brewer, in the territory and at retail,

1 including terms under which a wholesaler commits to provide certain
2 efforts and resources toward a brewer's products;

3 c. Terms concerning ordering and inventory methods with respect
4 to the brewer's products; and

5 d. Terms requiring wholesalers to provide financial information to
6 a brewer related to sales and operations of the brewer's products, and
7 reasonable aggregated financial information related to the sales and
8 operations of all other malt alcoholic beverage products distributed by
9 the wholesaler.

10

11 10. a. Manufacturers, importing entities or wholesalers, as these
12 terms are defined in R.S.33:1-1, or third parties at the direction of
13 manufacturers, importing entities or wholesalers, may sell, lease or
14 provide services, items or equipment to retailers that are intended to
15 enhance or protect the quality, display, availability or marketing of
16 their products to consumers, including:

17 (1) Cleaning and needed repairs of dispensing systems for
18 alcoholic beverage products, including draught systems for malt
19 alcoholic beverages, powered decanter systems for wine and pouring
20 systems, and decanter racks or blending machines for distilled spirits.

21 (2) Certain equipment, such as tap handles, filters, faucets, tavern
22 heads, regulators, and similar ancillary equipment, that protects the
23 quality or taste of the alcoholic beverage products produced or
24 supplied by the appropriate licensee, subject to the provisions of
25 R.S.33:1-43.1. Substantial equipment such as complete draught or
26 refrigeration systems, or coolant shall only be sold at no less than fair
27 market value; however nothing in this subsection shall be construed to
28 prevent a licensee from renting or providing such substantial
29 equipment to a retailer on a short-term temporary basis for special
30 events.

31 (3) Delivery of alcoholic beverages into a retail account at the
32 number of locations as mutually agreed upon by the wholesaler and the
33 retailer.

34 (4) Occasional, unscheduled placing, and stocking of alcoholic
35 beverages sold by the wholesaler within a retail accounts' premises, to
36 ensure the alcoholic beverages will be available for consumers to
37 purchase, as mutually agreed upon by the wholesaler and retailer, and
38 regular rotation of alcoholic beverages sold by the wholesaler as
39 necessary to ensure the freshness of those products with a limited shelf
40 life.

41 (5) Shelf management, marketing and pricing recommendations,
42 and implementation of shelf management decisions and resets of a
43 manufacturer's supplier's, wholesaler's, or third party's own products
44 as mutually agreed upon by the wholesaler and the retailer.

45 (6) Building product displays, including price signs denoting
46 prices established by the retailer, sweepstakes prizes for customers as

1 part of a display and advertising items such as point of sale advertising
2 and consumer novelties, as mutually agreed upon by the wholesaler
3 and retailer.

4 b. A licensee may provide reasonable entertainment to another
5 licensee, such as engaging in sporting activities, taking a licensee to an
6 entertainment or sports event, or providing meals and beverages to the
7 licensee. The licensee shall not condition the provision of such
8 services, equipment, consumer sweepstakes prizes or entertainment on
9 an agreement to sell the alcoholic beverage products of a
10 manufacturer, supplier or wholesaler. A retailer shall not request the
11 provision of such services, equipment, consumer sweepstakes prizes
12 or entertainment as a condition for selling the alcoholic beverage
13 products of a manufacturer, supplier or wholesaler.

14

15 11. This act shall take effect on the first day of the third month
16 after enactment.

17

18

19

20

21 Concerns relationship between manufacturers and wholesalers of malt
22 alcoholic beverages; authorizes certain alcoholic beverage trade
23 practices.

ASSEMBLY, No. 3619

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JANUARY 10, 2005

Sponsored by:

Assemblyman JOSEPH CRYAN

District 20 (Union)

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

SYNOPSIS

Concerns certain agreements between brewers and beer wholesalers; regulates the provision of certain services to alcoholic beverage retailers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning alcoholic beverages and supplementing Title 33
2 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. The use of the following terms in any agreement or contract,
8 including agreements or contracts existing on the effective date of this
9 act, between manufacturers of malt alcoholic beverages and
10 wholesalers, shall not be construed to grant such manufacturer or
11 wholesaler an interest in another manufacturer or wholesaler under
12 R.S.33:1-1 et seq. or any other statute, rule or regulation:

13 a. Terms providing manufacturers of malt alcoholic beverages the
14 ability to give reasonable consent to wholesaler ownership and
15 management changes, including successor management;

16 b. Terms setting forth quality, operational, marketing and sales
17 standards designed to properly represent the products, brands,
18 reputation and trade name of the manufacturer of malt alcoholic
19 beverages, in the territory and at retail, including terms under which
20 a wholesaler commits to provide certain efforts and resources toward
21 a manufacturer's products;

22 c. Terms concerning ordering and inventory methods;

23 d. Terms requiring wholesalers to provide financial information to
24 a manufacturer related to sales and operations of malt beverage
25 products; and

26 e. Terms arising from modifications that occur after written notice
27 to the wholesaler by a manufacturer after having consulted with an
28 advisory panel of wholesalers.

29

30 2. Manufacturers, suppliers, wholesalers, or third parties at the
31 direction of manufacturers, suppliers or wholesalers, may provide
32 services, items or equipment to retailers that are intended to enhance
33 the quality, display, availability or marketing of their products to
34 consumers, including:

35 a. Systematic cleaning and needed repairs of dispensing systems for
36 alcoholic beverage products, including draught systems for malt
37 alcoholic beverages, powered decanter systems for wine and pouring
38 systems, and decanter racks or blending machines for distilled spirits.

39 b. Certain equipment that enhances the quality or taste of the
40 alcoholic beverage products produced or supplied by the appropriate
41 licensee, subject to the provisions of R.S.33:1-43.1. Tap handlers,
42 filters, faucets, tavern heads, regulators, and similar ancillary
43 equipment may be provided pursuant to the provisions of this
44 subsection, but not substantial equipment such as complete draught or
45 refrigeration systems, or coolant. Nothing in this subsection shall be
46 construed to prevent a licensee from renting such substantial

1 equipment to a retailer at a fair market rental, or providing such
2 equipment to a retailer on a short-term temporary basis for special
3 events.

4 c. Delivery of malt beverages into a retail account at the number of
5 locations as mutually agreed upon by the wholesaler and the retailer.

6 d. Placing, stocking and rotating their alcoholic beverages within
7 a retail account's premises, to ensure the alcoholic beverages will be
8 available for consumers to purchase, and as necessary to ensure the
9 freshness of those products with a limited shelf life.

10 e. Shelf management, marketing and pricing recommendations, and
11 implementation of shelf management decisions and resets of a
12 manufacturer's, supplier's, wholesaler's or third party's own products
13 as reasonably directed by the retailer.

14 f. Building product displays, including price signs denoting prices
15 directed by the retailer, sweepstakes prizes for customers as part of a
16 display and advertising items such as point of sale advertising and
17 consumer novelties.

18

19 3. A licensee may provide reasonable entertainment to another
20 licensee, such as engaging in sporting activities, taking a licensee to an
21 entertainment or sports event, or providing meals and beverages to the
22 licensee. The licensee shall not condition the provision of such
23 services, equipment, consumer sweepstakes prizes or entertainment on
24 an agreement to sell the alcoholic beverage products of a
25 manufacturer, supplier, or wholesaler. A retailer shall not request the
26 provision of such services, equipment, consumer sweepstakes prizes
27 or entertainment as a condition for selling the alcoholic beverage
28 products of a manufacturer, supplier, or wholesaler.

29

30 4. This act shall take effect on the first day of the third month after
31 enactment.

32

33

34

STATEMENT

35

36 This bill supplements Title 33 of the Revised Statutes (Alcoholic
37 Beverages) to establish permissible terms that may appear in
38 agreements or contracts between manufacturers of malt alcoholic
39 beverages and wholesalers and which do not constitute a manufacturer
40 or wholesaler holding an interest in another manufacturer or
41 wholesaler. Permissible terms would include:

42 1) Terms providing manufacturers of malt alcoholic beverages the
43 ability to give reasonable consent to wholesaler ownership and
44 management, including successor management, changes;

45 2) Terms setting forth quality, operational, marketing and sales
46 standards designed to properly represent the products, brands,

1 reputation and trade name of the manufacturer of malt alcoholic
2 beverages, in the territory and at retail, including terms under which
3 a wholesaler commits to provide certain efforts and resources toward
4 a manufacturer's products;

5 3) Terms concerning ordering and inventory methods;

6 4) Terms requiring wholesalers to provide financial information to
7 a manufacturer related to sales and operations of malt beverage
8 products; and

9 5) Terms arising from modifications that occur after written notice
10 to the wholesaler by a manufacturer after having consulted with an
11 advisory panel of wholesalers.

12 The bill further provides that manufacturers, suppliers, wholesalers,
13 or third parties at the direction of manufacturers, suppliers or
14 wholesalers, may provide services, items or equipment to retailers that
15 are intended to enhance the quality, display, availability or marketing
16 of their products to consumers, including: systematic cleaning and
17 needed repairs of dispensing systems for alcoholic beverage products;
18 certain equipment that enhances the quality or taste of the alcoholic
19 beverage products; delivery of malt beverages into a retail account at
20 the number of locations as mutually agreed upon by the wholesaler and
21 the retailer; placing, stocking and rotating their alcoholic beverages
22 within a retail account's premises, to ensure the alcoholic beverages
23 will be available for consumers to purchase, and as necessary to
24 ensure the freshness of those products with a limited shelf life; shelf
25 management, marketing and pricing recommendations, and
26 implementation of shelf management decisions and resets of one's own
27 products as reasonably directed by the retailer; and building product
28 displays.

29 The bill also provides that a licensee may provide reasonable
30 entertainment to another licensee, such as engaging in sporting
31 activities, taking a licensee to an entertainment or sports event, or
32 providing meals and beverages to the licensee. However, a licensee is
33 prohibited from conditioning the provision of such services,
34 equipment, consumer sweepstakes prizes or entertainment on an
35 agreement to sell the alcoholic beverage products of a manufacturer,
36 supplier, or wholesaler. Finally, retailers are prohibited from
37 requesting the provision of such services, equipment, consumer
38 sweepstakes prizes or entertainment as a condition for selling the
39 alcoholic beverage products of a manufacturer, supplier, or
40 wholesaler.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 3619**

STATE OF NEW JERSEY

DATED: JUNE 9, 2005

The Assembly Law and Public Safety Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3619.

This Assembly Committee Substitute for Assembly Bill No. 3619 establishes the "Malt Alcoholic Beverages Act" governing written agreements between brewers and wholesalers; establishes that certain contractual terms between manufactures and wholesalers of malt alcoholic beverages do not constitute "ownership;" and authorizes manufacturers, suppliers and wholesalers to provide to retailers certain services, items or equipment intended to enhance the quality, display, availability or marketing of their products to consumers.

The specific provisions of the committee substitute are as follows:

I. Written Agreements between Brewers and Wholesalers under the "Malt Alcoholic Beverages Act"

Sections 1 through 8 of the committee substitute, to be known as the "Malt Alcoholic Beverages Act," (MABA) require all agreements between brewers and wholesalers of malt alcoholic beverages to be in writing and to specify the rights and duties of the brewer and wholesaler in regard to the supply, distribution and sale of these beverages. The terms of the agreement must be reasonable and any provision that imposes an unreasonable standard of performance on a wholesaler is a violation of the substitute's provisions and as such would be null and void.

The MABA makes it a violation for a brewer to terminate, cancel or refuse to renew a contract with a wholesaler unless the brewer establishes that it has acted for good cause and in good faith. The MABA also sets forth limited specific grounds for immediate termination of a wholesaler, such as wholesaler insolvency or when a wholesaler has been convicted of a felony crime of the third degree or higher or engages in fraudulent conduct.

The MABA establishes a framework for damages and injunctive relief in the event of reasonable and unreasonable terminations and provides for actions that violate the committee substitute's provisions to be brought in the Superior Court of New Jersey.

If a material provision within a section of the MABA is held invalid as a whole or in application to a particular person or circumstance,

then the remainder of this bill shall be held invalid in whole or in application to a particular person or circumstance, as the case may be and the "Franchise Practices Act" would be applicable.

The committee substitute specifically states that nothing in the "Malt Alcoholic Beverages Act" shall be construed in any manner whatsoever to apply to wholesalers of wines and spirits and the act shall be strictly limited to the responsibilities of brewers and wholesalers. But section 10 of the substitute does apply to beer, wine and spirits wholesalers alike.

II. Terms Not Constituting Ownership Interests

The committee substitute also establishes that certain common terms in agreements or contracts between manufacturers of malt alcoholic beverages and wholesalers do not constitute one of the parties holding an "interest" in the other if the manufacturer's products represent 20% or more of the wholesaler's gross sales. The categories of terms are those:

(1) providing manufacturers the ability to give reasonable consent to wholesaler ownership and management, including successor management, changes;

(2) setting forth quality, operational, marketing and sales standards designed to properly represent the products, brands, reputation and trade name of the manufacturer in the territory and at retail, including terms under which a wholesaler commits to provide certain efforts and resources toward the manufacturer's products;

(3) concerning ordering and inventory methods regarding the manufacturer's products; and

(4) requiring wholesalers to provide financial information to a manufacturer related to sales and operations of the manufacturer's products, as well as other aggregated financial information.

III. Trade Practices

The committee substitute further provides that manufacturers, suppliers, wholesalers, or third parties at the direction of manufacturers, suppliers or wholesalers, may provide services, items or equipment to retailers that are intended to enhance the quality, display, availability or marketing of their products to consumers, including: cleaning and needed repairs of dispensing systems for alcoholic beverage products; certain equipment that enhances the quality or taste of the alcoholic beverage products; delivery of malt beverages into a retail account at the number of locations as mutually agreed upon by the wholesaler and the retailer; placing, stocking and rotating their alcoholic beverages within a retail account's premises, to ensure the alcoholic beverages will be available for consumers to purchase, and as necessary to ensure the freshness of those products with a limited shelf life; shelf management, marketing and pricing recommendations, and implementation of shelf management decisions and resets of one's own products as mutually agreed upon by the retailer and wholesaler; and building product displays.

The committee substitute also provides that a licensee may provide

reasonable entertainment to another licensee, such as engaging in sporting activities, taking a licensee to an entertainment or sports event, or providing meals and beverages to the licensee. However, a licensee is prohibited from conditioning the provision of such services, equipment, consumer sweepstakes prizes or entertainment on an agreement to sell the alcoholic beverage products of a manufacturer, supplier, or wholesaler. Finally, retailers are prohibited from requesting the provision of such services, equipment, consumer sweepstakes prizes or entertainment as a condition for selling the alcoholic beverage products of a manufacturer, supplier, or wholesaler.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'
AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3619

STATE OF NEW JERSEY

DATED: SEPTEMBER 26, 2005

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably the Assembly Committee Substitute for Assembly Bill No. 3619.

This committee substitute establishes the "Malt Alcoholic Beverages Act" governing written agreements between brewers and wholesalers; establishes that certain contractual terms between manufactures and wholesalers of malt alcoholic beverages do not constitute "ownership;" and authorizes manufacturers, suppliers and wholesalers to provide to retailers certain services, items or equipment intended to enhance the quality, display, availability or marketing of their products to consumers.

The specific provisions of the committee substitute are as follows:

I. Written Agreements between Brewers and Wholesalers under the "Malt Alcoholic Beverages Act"

Sections 1 through 8 of the committee substitute, to be known as the "Malt Alcoholic Beverages Act," (MABA) require all agreements between brewers and wholesalers of malt alcoholic beverages to be in writing and to specify the rights and duties of the brewer and wholesaler in regard to the supply, distribution and sale of these beverages. The terms of the agreement must be reasonable and any provision that imposes an unreasonable standard of performance on a wholesaler is a violation of the substitute's provisions and as such would be null and void.

The MABA makes it a violation for a brewer to terminate, cancel or refuse to renew a contract with a wholesaler unless the brewer establishes that it has acted for good cause and in good faith. The MABA also sets forth limited specific grounds for immediate termination of a wholesaler, such as wholesaler insolvency or when a wholesaler has been convicted of a felony or crime of the third degree or higher or engages in fraudulent conduct.

The MABA establishes a framework for damages and injunctive relief in the event of reasonable and unreasonable terminations and provides for actions that violate the committee substitute's provisions to be brought in the Superior Court of New Jersey.

If a material provision within a section of the MABA is held invalid as a whole or in application to a particular person or circumstance, then the remainder of shall be held invalid in whole or in application to a particular person or circumstance, as the case may be and the "Franchise Practices Act" would be applicable.

The committee substitute specifically states that nothing in the MABA shall be construed in any manner whatsoever to apply to wholesalers of wines and spirits and that its provisions are strictly limited to the responsibilities of brewers and wholesalers. But section 10 of the substitute does apply to beer, wine and spirits wholesalers alike.

II. Terms Not Constituting Ownership Interests

The committee substitute also establishes that certain common terms in agreements or contracts between manufacturers of malt alcoholic beverages and wholesalers do not constitute one of the parties holding an "interest" in the other if the manufacturer's products represent 20% or more of the wholesaler's gross sales. The categories of terms are those:

(1) providing manufacturers the ability to give reasonable consent to wholesaler ownership and management, including successor management, changes;

(2) setting forth quality, operational, marketing and sales standards designed to properly represent the products, brands, reputation and trade name of the manufacturer in the territory and at retail, including terms under which a wholesaler commits to provide certain efforts and resources toward the manufacturer's products;

(3) concerning ordering and inventory methods regarding the manufacturer's products; and

(4) requiring wholesalers to provide financial information to a manufacturer related to sales and operations of the manufacturer's products, as well as other aggregated financial information.

III. Trade Practices

The committee substitute further provides that manufacturers, suppliers, wholesalers, or third parties at the direction of manufacturers, suppliers or wholesalers, may provide services, items or equipment to retailers that are intended to enhance the quality, display, availability or marketing of their products to consumers, including: cleaning and needed repairs of dispensing systems for alcoholic beverage products; certain equipment that enhances the quality or taste of the alcoholic beverage products; delivery of malt beverages into a retail account at the number of locations as mutually agreed upon by the wholesaler and the retailer; placing, stocking and rotating their alcoholic beverages within a retail account's premises, to ensure the alcoholic beverages will be available for consumers to purchase, and as necessary to ensure the freshness of those products with a limited shelf life; shelf management, marketing and pricing recommendations, and implementation of shelf management decisions and resets of one's own products as mutually agreed upon by the

retailer and wholesaler; and building product displays.

The committee substitute also provides that a licensee may provide reasonable entertainment to another licensee, such as engaging in sporting activities, taking a licensee to an entertainment or sports event, or providing meals and beverages to the licensee. However, a licensee is prohibited from conditioning the provision of such services, equipment, consumer sweepstakes prizes or entertainment on an agreement to sell the alcoholic beverage products of a manufacturer, supplier, or wholesaler. Finally, retailers are prohibited from requesting the provision of such services, equipment, consumer sweepstakes prizes or entertainment as a condition for selling the alcoholic beverage products of a manufacturer, supplier, or wholesaler.

As reported by the committee, this committee substitute is identical to the Senate Committee Substitute for Senate Bill No. 2170, which also was reported by the committee on this same date.

SENATE, No. 2170

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED DECEMBER 13, 2004

Sponsored by:

Senator BERNARD F. KENNY, JR.

District 33 (Hudson)

SYNOPSIS

Concerns certain agreements between brewers and beer wholesalers; regulates the provision of certain services to alcoholic beverage retailers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning alcoholic beverages and supplementing Title 33
2 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The use of the following terms in any agreement or contract,
8 including agreements or contracts existing on the effective date of this
9 act, between manufacturers of malt alcoholic beverages and
10 wholesalers, shall not be construed to grant such manufacturer or
11 wholesaler an interest in another manufacturer or wholesaler under
12 R.S.33:1-1 et seq. or any other statute, rule or regulation:

13 a. Terms providing manufacturers of malt alcoholic beverages the
14 ability to give reasonable consent to wholesaler ownership and
15 management changes, including successor management;

16 b. Terms setting forth quality, operational, marketing and sales
17 standards designed to properly represent the products, brands,
18 reputation and trade name of the manufacturer of malt alcoholic
19 beverages, in the territory and at retail, including terms under which
20 a wholesaler commits to provide certain efforts and resources toward
21 a manufacturer's products;

22 c. Terms concerning ordering and inventory methods;

23 d. Terms requiring wholesalers to provide financial information to
24 a manufacturer related to sales and operations of malt beverage
25 products; and

26 e. Terms arising from modifications that occur after written notice
27 to the wholesaler by a manufacturer after having consulted with an
28 advisory panel of wholesalers.

29

30 2. Manufacturers, suppliers, wholesalers, or third parties at the
31 direction of manufacturers, suppliers or wholesalers, may provide
32 services, items or equipment to retailers that are intended to enhance
33 the quality, display, availability or marketing of their products to
34 consumers, including:

35 a. Systematic cleaning and needed repairs of dispensing systems for
36 alcoholic beverage products, including draught systems for malt
37 alcoholic beverages, powered decanter systems for wine and pouring
38 systems, and decanter racks or blending machines for distilled spirits.

39 b. Certain equipment that enhances the quality or taste of the
40 alcoholic beverage products produced or supplied by the appropriate
41 licensee, subject to the provisions of R.S.33:1-43.1. Tap handlers,
42 filters, faucets, tavern heads, regulators, and similar ancillary
43 equipment may be provided pursuant to the provisions of this
44 subsection, but not substantial equipment such as complete draught or
45 refrigeration systems, or coolant. Nothing in this subsection shall be
46 construed to prevent a licensee from renting such substantial

1 equipment to a retailer at a fair market rental, or providing such
2 equipment to a retailer on a short-term temporary basis for special
3 events.

4 c. Delivery of malt beverages into a retail account at the number of
5 locations as mutually agreed upon by the wholesaler and the retailer.

6 d. Placing, stocking and rotating their alcoholic beverages within
7 a retail account's premises, to ensure the alcoholic beverages will be
8 available for consumers to purchase, and as necessary to ensure the
9 freshness of those products with a limited shelf life.

10 e. Shelf management, marketing and pricing recommendations, and
11 implementation of shelf management decisions and resets of a
12 manufacturer's, supplier's, wholesaler's or third party's own products
13 as reasonably directed by the retailer.

14 f. Building product displays, including price signs denoting prices
15 directed by the retailer, sweepstakes prizes for customers as part of a
16 display and advertising items such as point of sale advertising and
17 consumer novelties.

18

19 3. A licensee may provide reasonable entertainment to another
20 licensee, such as engaging in sporting activities, taking a licensee to an
21 entertainment or sports event, or providing meals and beverages to the
22 licensee. The licensee shall not condition the provision of such
23 services, equipment, consumer sweepstakes prizes or entertainment on
24 an agreement to sell the alcoholic beverage products of a
25 manufacturer, supplier, or wholesaler. A retailer shall not request the
26 provision of such services, equipment, consumer sweepstakes prizes
27 or entertainment as a condition for selling the alcoholic beverage
28 products of a manufacturer, supplier, or wholesaler.

29

30 4. This act shall take effect on the first day of the third month after
31 enactment.

32

33

34

STATEMENT

35

36 This bill supplements Title 33 of the Revised Statutes (Alcoholic
37 Beverages) to establish permissible terms that may appear in
38 agreements or contracts between manufacturers of malt alcoholic
39 beverages and wholesalers and which do not constitute a manufacturer
40 or wholesaler holding an interest in another manufacturer or
41 wholesaler. Permissible terms would include:

42 1) Terms providing manufacturers of malt alcoholic beverages the
43 ability to give reasonable consent to wholesaler ownership and
44 management, including successor management, changes;

45 2) Terms setting forth quality, operational, marketing and sales
46 standards designed to properly represent the products, brands,

1 reputation and trade name of the manufacturer of malt alcoholic
2 beverages, in the territory and at retail, including terms under which
3 a wholesaler commits to provide certain efforts and resources toward
4 a manufacturer's products;

5 3) Terms concerning ordering and inventory methods;

6 4) Terms requiring wholesalers to provide financial information to
7 a manufacturer related to sales and operations of malt beverage
8 products; and

9 5) Terms arising from modifications that occur after written notice
10 to the wholesaler by a manufacturer after having consulted with an
11 advisory panel of wholesalers.

12 The bill further provides that manufacturers, suppliers, wholesalers,
13 or third parties at the direction of manufacturers, suppliers or
14 wholesalers, may provide services, items or equipment to retailers that
15 are intended to enhance the quality, display, availability or marketing
16 of their products to consumers, including: systematic cleaning and
17 needed repairs of dispensing systems for alcoholic beverage products;
18 certain equipment that enhances the quality or taste of the alcoholic
19 beverage products; delivery of malt beverages into a retail account at
20 the number of locations as mutually agreed upon by the wholesaler and
21 the retailer; placing, stocking and rotating their alcoholic beverages
22 within a retail account's premises, to ensure the alcoholic beverages
23 will be available for consumers to purchase, and as necessary to
24 ensure the freshness of those products with a limited shelf life; shelf
25 management, marketing and pricing recommendations, and
26 implementation of shelf management decisions and resets of one's own
27 products as reasonably directed by the retailer; and building product
28 displays.

29 The bill also provides that a licensee may provide reasonable
30 entertainment to another licensee, such as engaging in sporting
31 activities, taking a licensee to an entertainment or sports event, or
32 providing meals and beverages to the licensee. However, a licensee is
33 prohibited from conditioning the provision of such services,
34 equipment, consumer sweepstakes prizes or entertainment on an
35 agreement to sell the alcoholic beverage products of a manufacturer,
36 supplier, or wholesaler. Finally, retailers are prohibited from
37 requesting the provision of such services, equipment, consumer
38 sweepstakes prizes or entertainment as a condition for selling the
39 alcoholic beverage products of a manufacturer, supplier, or
40 wholesaler.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'
AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2170

STATE OF NEW JERSEY

DATED: SEPTEMBER 26, 2005

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2170.

This Senate Committee Substitute for Senate Bill No. 2170 establishes the "Malt Alcoholic Beverages Act" governing written agreements between brewers and wholesalers; establishes that certain contractual terms between manufactures and wholesalers of malt alcoholic beverages do not constitute "ownership;" and authorizes manufacturers, suppliers and wholesalers to provide to retailers certain services, items or equipment intended to enhance the quality, display, availability or marketing of their products to consumers.

The specific provisions of the committee substitute are as follows:

I. Written Agreements between Brewers and Wholesalers under the "Malt Alcoholic Beverages Act"

Sections 1 through 8 of the committee substitute, to be known as the "Malt Alcoholic Beverages Act," (MABA) require all agreements between brewers and wholesalers of malt alcoholic beverages to be in writing and to specify the rights and duties of the brewer and wholesaler in regard to the supply, distribution and sale of these beverages. The terms of the agreement must be reasonable and any provision that imposes an unreasonable standard of performance on a wholesaler is a violation of the substitute's provisions and as such would be null and void.

The MABA makes it a violation for a brewer to terminate, cancel or refuse to renew a contract with a wholesaler unless the brewer establishes that it has acted for good cause and in good faith. The MABA also sets forth limited specific grounds for immediate termination of a wholesaler, such as wholesaler insolvency or when a wholesaler has been convicted of a felony or crime of the third degree or higher or engages in fraudulent conduct.

The MABA establishes a framework for damages and injunctive relief in the event of reasonable and unreasonable terminations and provides for actions that violate the committee substitute's provisions to be brought in the Superior Court of New Jersey.

If a material provision within a section of the MABA is held invalid as a whole or in application to a particular person or circumstance, then the remainder shall be held invalid in whole or in application to a particular person or circumstance, as the case may be and the "Franchise Practices Act" would be applicable.

The committee substitute specifically states that nothing in the MABA shall be construed in any manner whatsoever to apply to wholesalers of wines and spirits and that its provisions are strictly limited to the responsibilities of brewers and wholesalers. But section 10 of the substitute does apply to beer, wine and spirits wholesalers alike.

II. Terms Not Constituting Ownership Interests

The committee substitute also establishes that certain common terms in agreements or contracts between manufacturers of malt alcoholic beverages and wholesalers do not constitute one of the parties holding an "interest" in the other if the manufacturer's products represent 20% or more of the wholesaler's gross sales. The categories of terms are those:

(1) providing manufacturers the ability to give reasonable consent to wholesaler ownership and management, including successor management, changes;

(2) setting forth quality, operational, marketing and sales standards designed to properly represent the products, brands, reputation and trade name of the manufacturer in the territory and at retail, including terms under which a wholesaler commits to provide certain efforts and resources toward the manufacturer's products;

(3) concerning ordering and inventory methods regarding the manufacturer's products; and

(4) requiring wholesalers to provide financial information to a manufacturer related to sales and operations of the manufacturer's products, as well as other aggregated financial information.

III. Trade Practices

The committee substitute further provides that manufacturers, suppliers, wholesalers, or third parties at the direction of manufacturers, suppliers or wholesalers, may provide services, items or equipment to retailers that are intended to enhance the quality, display, availability or marketing of their products to consumers, including: cleaning and needed repairs of dispensing systems for alcoholic beverage products; certain equipment that enhances the quality or taste of the alcoholic beverage products; delivery of malt beverages into a retail account at the number of locations as mutually agreed upon by the wholesaler and the retailer; placing, stocking and rotating their alcoholic beverages within a retail account's premises, to ensure the alcoholic beverages will be available for consumers to purchase, and as necessary to ensure the freshness of those products with a limited shelf life; shelf management, marketing and pricing recommendations, and implementation of shelf management decisions and resets of one's own products as mutually agreed upon by the retailer and wholesaler; and building product displays.

The committee substitute also provides that a licensee may provide reasonable entertainment to another licensee, such as engaging in sporting activities, taking a licensee to an entertainment or sports event, or providing meals and beverages to the licensee. However, a licensee is prohibited from conditioning the provision of such services, equipment, consumer sweepstakes prizes or entertainment on an agreement to sell the alcoholic beverage products of a manufacturer, supplier, or wholesaler. Finally, retailers are prohibited from requesting the provision of such services, equipment, consumer sweepstakes prizes or entertainment as a condition for selling the alcoholic beverage products of a manufacturer, supplier, or wholesaler.

As reported by the committee, this committee substitute is identical to the Assembly Committee Substitute for Assembly Bill No. 3619, which also was reported by the committee on this same date.