

§1457. Compensation

1. Reasonable compensation.

[PL 2019, c. 529, §9 (RP).]

1-A. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affected brand or brands" means the brand or brands of a certificate of approval holder that will no longer be distributed by a wholesale licensee after the certificate of approval holder makes a triggering change to the agreement between the certificate of approval holder and the wholesale licensee. [PL 2019, c. 529, §9 (NEW).]

B. "Case equivalent" means a volume equivalent to 24 12-ounce units. [PL 2019, c. 529, §9 (NEW).]

C. "Good cause" has the same meaning as described in section 1454. [PL 2019, c. 529, §9 (NEW).]

D. "Small beer manufacturer" means a small brewery or out-of-state brewery that brews, lagers and kegs, bottles or packages its own malt liquor, not to exceed 30,000 barrels per year. [PL 2021, c. 658, §259 (AMD).]

E. "Small hard cider manufacturer" means a small winery or out-of-state winery that ferments, ages or bottles any amount of wine, as long as it ferments, ages or bottles no more than 3,000 barrels per year of wine that is hard cider. [PL 2019, c. 529, §9 (NEW).]

F. "Triggering change" means an amendment, cancellation in whole or in part, termination, refusal to continue or refusal to renew an agreement by a certificate of approval holder or the resignation of a wholesale licensee from an agreement if the resignation is caused by the certificate of approval holder, unless good cause can be established or proven for the amendment, cancellation, termination, refusal to continue, refusal to renew or caused resignation. "Triggering change" includes the unreasonable withholding of consent by a certificate of approval holder to any assignment, transfer or sale of a wholesale licensee's business. [PL 2019, c. 529, §9 (NEW).]

[PL 2021, c. 658, §259 (AMD).]

1-B. Reasonable compensation; general rule. Except as otherwise provided in subsections 1-C and 1-D, if a certificate of approval holder makes a triggering change to an agreement, the certificate of approval holder shall pay the wholesale licensee reasonable compensation for the fair market value of the wholesale licensee's business related to the affected brand or brands. The fair market value of the wholesale licensee's business related to the affected brand or brands includes inventory and other tangible assets and the wholesale licensee's good will.

[PL 2019, c. 529, §9 (NEW).]

1-C. Exception; small beer manufacturer or small hard cider manufacturer. Notwithstanding subsection 1-B, a small beer manufacturer or small hard cider manufacturer must pay a wholesale licensee reasonable compensation in accordance with subsection 1-D if:

A. The small beer manufacturer makes a triggering change to an agreement that prevents the wholesale licensee from continuing to distribute a brand or brands of malt liquor or the small hard cider manufacturer makes a triggering change to an agreement that prevents the wholesale licensee from continuing to distribute a brand or brands of hard cider; and [PL 2019, c. 529, §9 (NEW).]

B. During the 12-month period immediately preceding the date on which the small beer manufacturer or the small hard cider manufacturer provides the wholesale licensee with the first written notice of the triggering change, if notice is required under section 1455, or the date on which the small beer manufacturer or small hard cider manufacturer unreasonably withholds its consent to any assignment, transfer or sale of the wholesale licensee's business, the total number of case

equivalents of the affected brand or brands of malt liquor or hard cider distributed by the wholesale licensee was less than 10,000 and represented no more than 3% of the total number of case equivalents of all brands of liquor for all certificate of approval holders that were distributed by the wholesale licensee. [PL 2019, c. 529, §9 (NEW).]

[PL 2019, c. 529, §9 (NEW).]

1-D. Reasonable compensation; alternative calculation. Notwithstanding subsection 1-B, if a small beer manufacturer or small hard cider manufacturer makes a triggering change to an agreement that meets the requirements of subsection 1-C, the small beer manufacturer or small hard cider manufacturer shall pay the wholesale licensee reasonable compensation for the fair market value of the wholesale licensee's business related to the affected brand or brands of malt liquor or hard cider in accordance with this subsection.

A. If the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C were equal to or less than the wholesale licensee's total gross profits with respect to the affected brand or brands during the next preceding 12-month period, the small beer manufacturer or small hard cider manufacturer shall pay as reasonable compensation an amount equal to the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C. [PL 2019, c. 529, §9 (NEW).]

B. If the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C were greater than the wholesale licensee's total gross profits with respect to the affected brand or brands during the next preceding 12-month period, the small beer manufacturer or small hard cider manufacturer shall pay as reasonable compensation an amount equal to twice the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C. [PL 2019, c. 529, §9 (NEW).]

This subsection does not govern the reasonable compensation that a small hard cider manufacturer is required to pay a wholesale licensee for the fair market value of the wholesale licensee's business related to an affected brand or brands of wine that is not hard cider.

[PL 2019, c. 529, §9 (NEW).]

1-E. Waiver. Notwithstanding section 1462, nothing in this chapter prevents a wholesale licensee from limiting or waiving its right to receive reasonable compensation under subsection 1-B or 1-D from a small beer manufacturer or a small hard cider manufacturer in an agreement between the wholesale licensee and the small beer manufacturer or the small hard cider manufacturer.

[PL 2019, c. 529, §9 (NEW).]

2. Neutral arbitrator. If the certificate of approval holder and the wholesale licensee are unable to agree on the amount of reasonable compensation to be paid for the fair market value of the wholesale licensee's business related to the affected brand or brands of the certificate of approval holder, they shall submit the matter to a neutral arbitrator selected by the parties, or, if they cannot agree, by the Chief Justice of the Supreme Judicial Court. The costs of the arbitration must be paid 1/2 by the wholesale licensee and 1/2 by the certificate of approval holder or otherwise the arbitration proceeding must be governed by the Uniform Arbitration Act. The arbitrator shall issue a written decision on the matter no later than 45 days after the date of the commencement of the arbitration proceeding.

[PL 2019, c. 529, §9 (AMD).]

3. Distribution during arbitration. Notwithstanding any provision of this Title to the contrary or the terms, conditions or other provisions of any agreement, when a small beer manufacturer or a small hard cider manufacturer makes a triggering change to an agreement, the small beer manufacturer or the small hard cider manufacturer may immediately:

A. If the small beer manufacturer is a small brewery, sell the affected brand or brands of malt liquor directly to retail licensees in the wholesale licensee's territory in accordance with section 1355-A, subsection 3, paragraph B, subparagraph (2); [PL 2019, c. 529, §9 (NEW).]

B. If the small hard cider manufacturer is a small winery, sell the affected brand or brands of hard cider directly to retail licensees in the wholesale licensee's territory in accordance with section 1355-A, subsection 4, paragraph B, subparagraph (1); [PL 2019, c. 529, §9 (NEW).]

C. Appoint one or more new wholesale licensees to sell the affected brand or brands of malt liquor or hard cider in all or any portion of the territory of the wholesale licensee subject to the triggering change; or [PL 2019, c. 529, §9 (NEW).]

D. Engage in any combination of actions described in paragraphs A, B and C, if applicable. [PL 2019, c. 529, §9 (NEW).]

[PL 2019, c. 529, §9 (AMD).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW). PL 2019, c. 529, §9 (AMD). PL 2021, c. 658, §259 (AMD).

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