

4241--A

2011-2012 Regular Sessions

I N S E N A T E

March 24, 2011

Introduced by Sens. LARKIN, CARLUCCI, BONACIC, JOHNSON, MAZIARZ, O'MARA, RITCHIE, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the alcoholic beverage control law, in relation to authorizing the sale of wine produced by farm or special wineries or micro-wineries at licensed roadside farm markets

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 3 of the alcoholic beverage control law is amended
2 by adding a new subdivision 27-a to read as follows:
3 27-A. "ROADSIDE FARM MARKET" MEANS ANY RETAILER AUTHORIZED TO SELL NEW
4 YORK STATE LABELLED WINE PURSUANT TO SECTION SEVENTY-SIX-F OF THIS CHAP-
5 TER.
6 S 2. Subdivision 3 of section 17 of the alcoholic beverage control
7 law, as separately amended by section 1 of part L of chapter 62 and
8 chapter 522 of the laws of 2003, is amended to read as follows:
9 3. To revoke, cancel or suspend for cause any license or permit issued
10 under this chapter and/or to impose a civil penalty for cause against
11 any holder of a license or permit issued pursuant to this chapter. Any
12 civil penalty so imposed shall not exceed the sum of ten thousand
13 dollars as against the holder of any retail permit issued pursuant to
14 sections ninety-five, ninety-seven, ninety-eight, ninety-nine-d, and
15 paragraph f of subdivision one of section ninety-nine-b of this chapter,
16 and as against the holder of any retail license issued pursuant to
17 sections fifty-two, fifty-three-a, fifty-four, fifty-four-a, fifty-five,
18 fifty-five-a, sixty-three, sixty-four, sixty-four-a, sixty-four-b,
19 sixty-four-c, SEVENTY-SIX-F, seventy-nine, eighty-one, and eighty-one-a

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

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1 of this chapter, and the sum of thirty thousand dollars as against the
2 holder of a license issued pursuant to sections fifty-three, seventy-
3 six, seventy-six-a[, seventy-six-f,] and seventy-eight of this chapter,
4 provided that the civil penalty against the holder of a wholesale
5 license issued pursuant to section fifty-three of this chapter shall not
6 exceed the sum of ten thousand dollars where that licensee violates
7 provisions of this chapter during the course of the sale of beer at
8 retail to a person for consumption at home, and the sum of one hundred
9 thousand dollars as against the holder of any license issued pursuant to
10 sections fifty-one, sixty-one and sixty-two of this chapter. Any civil
11 penalty so imposed shall be in addition to and separate and apart from
12 the terms and provisions of the bond required pursuant to section one
13 hundred twelve of this chapter. Provided that no appeal is pending on
14 the imposition of such civil penalty, in the event such civil penalty
15 imposed by the division remains unpaid, in whole or in part, more than
16 forty-five days after written demand for payment has been sent by first
17 class mail to the address of the licensed premises, a notice of impend-
18 ing default judgment shall be sent by first class mail to the licensed
19 premises and by first class mail to the last known home address of the
20 person who signed the most recent license application. The notice of
21 impending default judgment shall advise the licensee: (a) that a civil
22 penalty was imposed on the licensee; (b) the date the penalty was
23 imposed; (c) the amount of the civil penalty; (d) the amount of the
24 civil penalty that remains unpaid as of the date of the notice; (e) the
25 violations for which the civil penalty was imposed; and (f) that a judg-
26 ment by default will be entered in the supreme court of the county in
27 which the licensed premises are located, or other court of civil juris-
28 diction, or any other place provided for the entry of civil judgments
29 within the state of New York unless the division receives full payment
30 of all civil penalties due within twenty days of the date of the notice
31 of impending default judgment. If full payment shall not have been
32 received by the division within thirty days of mailing of the notice of
33 impending default judgment, the division shall proceed to enter with
34 such court a statement of the default judgment containing the amount of
35 the penalty or penalties remaining due and unpaid, along with proof of
36 mailing of the notice of impending default judgment. The filing of such
37 judgment shall have the full force and effect of a default judgment duly
38 docketed with such court pursuant to the civil practice law and rules
39 and shall in all respects be governed by that chapter and may be
40 enforced in the same manner and with the same effect as that provided by
41 law in respect to execution issued against property upon judgments of a
42 court of record. A judgment entered pursuant to this subdivision shall
43 remain in full force and effect for eight years notwithstanding any
44 other provision of law.

45 S 3. Subdivision 4 of section 75 of the alcoholic beverage control
46 law, as amended by chapter 275 of the laws of 1976, is amended and a new
47 subdivision 5 is added to read as follows:

48 4. License to sell wine at retail for consumption on the premises[.];

49 5. ROADSIDE FARM MARKET LICENSE.

50 S 4. Section 76-a of the alcoholic beverage control law is amended by
51 adding a new subdivision 10 to read as follows:

52 10. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A FARM WINERY
53 LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO SELL WINES MANUFACTURED OR
54 PRODUCED BY SUCH LICENSEE TO A ROADSIDE FARM MARKET PURSUANT TO SECTION
55 SEVENTY-SIX-F OF THIS ARTICLE.

1 S 5. Section 76-c of the alcoholic beverage control law is amended by
2 adding a new subdivision 3 to read as follows:

3 3. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A SPECIAL
4 WINERY LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO SELL WINES MANUFAC-
5 TURED OR PRODUCED BY SUCH LICENSEE TO A ROADSIDE FARM MARKET PURSUANT TO
6 SECTION SEVENTY-SIX-F OF THIS ARTICLE.

7 S 6. The alcoholic beverage control law is amended by adding a new
8 section 76-f to read as follows:

9 S 76-F. ROADSIDE FARM MARKET LICENSE. 1. ANY PERSON OWNING OR OPERAT-
10 ING A ROADSIDE FARM MARKET MAY APPLY TO THE LIQUOR AUTHORITY FOR A ROAD-
11 SIDE FARM MARKET LICENSE TO SELL WINE PURSUANT TO THIS SECTION. SUCH
12 APPLICATION SHALL BE IN WRITING AND VERIFIED, AND SHALL CONTAIN SUCH
13 INFORMATION AS THE LIQUOR AUTHORITY SHALL REQUIRE AND SHALL BE ACCOMPA-
14 NIED BY A CHECK OR DRAFT FOR THE AMOUNT REQUIRED BY THIS ARTICLE FOR
15 SUCH LICENSE. IF THE LIQUOR AUTHORITY SHALL GRANT THE APPLICATION, IT
16 SHALL ISSUE A LICENSE IN SUCH FORM AS SHALL BE DETERMINED BY ITS RULES,
17 AND THE LICENSE SHALL REMAIN IN EFFECT FOR ONE YEAR.

18 2. FOR THE PURPOSES OF THIS SECTION, THE TERM "ROADSIDE FARM MARKET"
19 MEANS A BUILDING OR STRUCTURE LOCATED ON A FARM OPERATION, AS DEFINED IN
20 SUBDIVISION ELEVEN OF SECTION THREE HUNDRED ONE OF THE AGRICULTURE AND
21 MARKETS LAW, EXCEPT FOR A COMMERCIAL HORSE BOARDING OPERATION, IN WHICH
22 NEW YORK AGRICULTURAL PRODUCTS ARE PRIMARILY SOLD BY PRODUCERS, GROWERS
23 OR FARMERS OF SUCH AGRICULTURAL PRODUCTS TO THE GENERAL PUBLIC, AND THE
24 TERM "NEW YORK AGRICULTURAL PRODUCT" MEANS ANY AGRICULTURAL OR AQUACUL-
25 TURAL PRODUCT OF THE SOIL OR WATER THAT HAS BEEN GROWN, HARVESTED OR
26 PRODUCED WITHIN THE STATE, INCLUDING BUT NOT LIMITED TO FRUITS, VEGETA-
27 BLES, EGGS, DAIRY PRODUCTS, MEAT AND MEAT PRODUCTS, POULTRY AND POULTRY
28 PRODUCTS, FISH AND FISH PRODUCTS, GRAIN AND GRAIN PRODUCTS, HONEY, NUTS,
29 PRESERVES, MAPLE SAP PRODUCTS, APPLE CIDER, FRUIT JUICE, AND CHRISTMAS
30 TREES.

31 3. A ROADSIDE FARM MARKET LICENSE SHALL AUTHORIZE THE HOLDER THEREOF
32 TO SELL WINE MANUFACTURED OR PRODUCED BY UP TO TWO DULY LICENSED FARM OR
33 SPECIAL WINERIES OR MICRO-WINERIES THAT ARE LOCATED WITHIN TWENTY MILES
34 OF THE ROADSIDE FARM MARKET BY THE BOTTLE FOR OFF-PREMISES CONSUMPTION;
35 PROVIDED THAT SUCH MARKET'S OWNER, OPERATOR OR REPRESENTATIVE SHALL BE
36 PRESENT AT ALL TIMES DURING WHICH WINE IS BEING OFFERED FOR SALE. SUCH
37 MARKET SHALL BE DEEMED TO POSSESS A WAREHOUSE PERMIT AND BE PERMITTED TO
38 WAREHOUSE UP TO TWENTY CASES OF WINE; PROVIDED THAT SUCH MARKET SHALL
39 ABIDE BY ALL RULES AND REGULATIONS PROMULGATED PURSUANT TO SECTION NINE-
40 TY-SIX OF THIS CHAPTER AND ANY OTHER RULES AND REGULATIONS PROMULGATED
41 BY THE LIQUOR AUTHORITY TO IMPLEMENT THE PROVISIONS OF THIS SECTION TO
42 ENSURE THAT WINE STORED OR KEPT BY SUCH MARKET IS SEGREGATED AND KEPT IN
43 A SAFE AND SECURE LOCATION WHEN SUCH MARKET IS CLOSED FOR BUSINESS.

44 4. THE SALE OF WINE PURSUANT TO THIS SECTION SHALL OCCUR ONLY WITHIN
45 THE HOURS FIXED BY OR PURSUANT TO SUBDIVISION FOURTEEN OF SECTION ONE
46 HUNDRED FIVE OF THIS CHAPTER. NOTWITHSTANDING THE PROVISIONS OF SECTION
47 EIGHTY OF THIS ARTICLE OR ANY OTHER PROVISION OF LAW, NO WINE TASTINGS
48 SHALL BE CONDUCTED AT A ROADSIDE FARM MARKET THAT SELLS WINE FOR
49 OFF-PREMISES CONSUMPTION PURSUANT TO THE PROVISIONS OF THIS SECTION.

50 5. THE LIQUOR AUTHORITY, IN CONSULTATION WITH THE DEPARTMENT OF AGRI-
51 CULTURE AND MARKETS, SHALL PROMULGATE ANY RULES AND REGULATIONS NECES-
52 SARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

53 S 7. Section 83 of the alcoholic beverage control law is amended by
54 adding a new subdivision 8 to read as follows:

55 8. THE ANNUAL FEE FOR A ROADSIDE FARM MARKET LICENSE SHALL BE ONE
56 HUNDRED DOLLARS.

1 S 8. Subdivision 1 of section 99-d of the alcoholic beverage control
2 law, as amended by chapter 213 of the laws of 2010, is amended to read
3 as follows:

4 1. Before any substantial alteration to a licensed premises may be
5 undertaken by or on the behalf of any licensee except a micro-winery
6 [or], a farm winery OR A ROADSIDE FARM MARKET, the licensee shall make
7 an application to the liquor authority for permission to effect such
8 alteration. A substantial alteration shall include any enlargement or
9 contraction of a licensed premises whether indoors or outdoors; any
10 physical change that reduces the visibility that existed at the time of
11 licensing; any other physical changes in the interior of a licensed
12 premises that materially affect the character of the premises; and, in
13 the case of establishments licensed for consumption on the premises, any
14 material changes to the dining or kitchen facilities, or any change in
15 the size or location of any bar within the contemplation of subdivision
16 four of section one hundred of this chapter at which alcoholic beverages
17 are dispensed. A minor alteration shall be deemed to be one costing and
18 valued at less than ten thousand dollars, which does not materially
19 affect the character of the premises or the physical structure that
20 existed at the time of licensing. Before commencing work on the alter-
21 ation, any licensee other than a micro-winery [or], a farm winery OR A
22 ROADSIDE FARM MARKET licensee, shall request permission to effect such
23 minor alteration and shall submit an affidavit to the liquor authority
24 by filing the same in person or by certified mail return receipt
25 requested or overnight delivery service with proof of mailing on forms
26 prescribed by the authority. A winery, micro-winery, [or] farm winery OR
27 ROADSIDE FARM MARKET licensee is not required to obtain permission from
28 the authority to make a minor alteration to its premises. The affidavit
29 shall include but not be limited to a description of the proposed alter-
30 ation, the cost and value of the alteration, and the source of money
31 making the alteration possible. Upon receipt of such affidavit, the
32 authority shall have twenty days in which to review the proposed alter-
33 ation and notify the licensee of any objection to the same by certified
34 mail return receipt requested. If no such objection is made within such
35 period permission shall be deemed to have been granted. Work may
36 commence on such alteration if no objection is received by the twenty-
37 fifth day after filing such affidavit. The cost of an alteration, for
38 purposes of this subdivision, shall be equal to the total sum expended
39 to complete the proposed alteration excluding professional fees.

40 S 9. This act shall take effect on the one hundred eightieth day after
41 it shall have become a law; provided that any and all rules and regu-
42 lations and any other measures necessary to implement any provision of
43 this act on its effective date may be promulgated and taken, respective-
44 ly, on or before the effective date of such provision.