

4533--A

Cal. No. 1023

2011-2012 Regular Sessions

I N S E N A T E

April 11, 2011

Introduced by Sens. CARLUCCI, RITCHIE, KLEIN, SAVINO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture -- recommitted to the Committee on Agriculture in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

AN ACT to amend the agriculture and markets law and the alcoholic beverage control law, in relation to providing that food processing establishments shall include the operation of home wine makers centers

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

1 Section 1. Subdivisions 3 and 4 of section 251-z-2 of the agriculture
2 and markets law, subdivision 3 as amended by chapter 507 of the laws of
3 1973 and subdivision 4 as added by chapter 863 of the laws of 1972, are
4 amended and a new subdivision 5 is added to read as follows:
5 3. The term "food processing establishment" means any place which
6 receives food or food products for the purpose of processing or other-
7 wise adding to the value of the product for commercial sale, AND THOSE
8 PLACES LICENSED AS HOME WINE MAKERS CENTERS THAT PRODUCE WINE FOR HOME
9 CONSUMPTION AND NOT FOR COMMERCIAL SALE. It includes, but is not limit-
10 ed to, bakeries, processing plants, beverage plants [and], food manufac-
11 tories, AND HOME WINE MAKERS CENTERS. However, the term does not
12 include: those establishments that process and manufacture food or food
13 products that are sold exclusively at retail for consumption on the
14 premises; those operations which cut meat and sell such meat at retail
15 on the premises; bottled and bulk water facilities; those food process-
16 ing establishments which are covered by articles four, [four-a, five-a,
17 five-b, five-c, five-d, seventeen-b,] FOUR-A, FIVE-A, FIVE-B, FIVE-C,
18 FIVE-D, SEVENTEEN-B, nineteen[, twenty-b,] and twenty-one of this chap-
19 ter; service food establishments, including vending machine commissar-

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

LBD10267-02-2

ies, under permit and inspection by the [state] department of health or by a local health agency which maintains a program certified and approved by the [state] commissioner of health; establishments under federal meat, poultry or egg product inspection; or establishments engaged solely in the harvesting, storage, or distribution of one or more raw agricultural commodities which are ordinarily cleaned, prepared, treated or otherwise processed before being marketed to the consuming public.

4. The term "processing" means processing foods in any manner, such as by manufacturing, canning, preserving, freezing, drying, dehydrating, juicing, pickling, baking, brining, bottling, packing, repacking, pressing, waxing, heating or cooking, or otherwise treating food in such a way as to create a risk that it may become adulterated if improperly handled, OR THE FERMENTATION OF FRUIT, AS DEFINED IN SUBDIVISION NINE OF SECTION TWO HUNDRED FIFTY-ONE-Z-THIRTEEN OF THIS ARTICLE INTO WINE, FOR HOME CONSUMPTION, UPON THE PREMISES OF A HOME WINE MAKERS CENTER.

5. THE TERM "WINE MAKERS CENTER" MEANS ANY PLACE WHERE AN INDIVIDUAL PAYS A FEE TO USE SPACE AND EQUIPMENT FOR THE PURPOSE OF MAKING WINE FOR PERSONAL HOUSEHOLD USE AND NOT FOR RESALE.

S 2. Section 251-z-13 of the agriculture and markets law, as renumbered by chapter 665 of the laws of 2005, is renumbered section 251-z-14 and a new section 251-z-13 is added to read as follows:

S 251-Z-13. HOME WINE MAKERS CENTERS. 1. THE PROVISIONS OF THIS SECTION SHALL APPLY TO HOME WINE MAKERS CENTERS IN ADDITION TO ANY OTHER PROVISION OF THIS ARTICLE. THE OPERATION OF HOME WINE MAKERS CENTERS SHALL BE SUBJECT TO THE PROVISIONS OF THIS ARTICLE AND THE SUPERVISION OF THE DEPARTMENT. PROVIDED, HOWEVER, THAT THE DEPARTMENT MAY CONSULT WITH THE STATE LIQUOR AUTHORITY BEFORE ISSUING SUCH LICENSE TO ENSURE COMPLIANCE WITH THE ALCOHOLIC BEVERAGE CONTROL LAW.

SUCH OPERATION SHALL NOT BE SUBJECT TO THE PROVISIONS OF THE ALCOHOLIC BEVERAGE CONTROL LAW OR THE JURISDICTION OF THE STATE LIQUOR AUTHORITY, UNLESS SPECIFICALLY PROVIDED IN THIS ARTICLE.

2. EVERY HOME WINE MAKERS CENTER SHALL BE LICENSED BY THE COMMISSIONER TO PROVIDE, FOR A FEE, FRUIT, AND EQUIPMENT AND STORAGE FACILITIES FOR THE PRODUCTION OF WINE BY INDIVIDUALS FOR PERSONAL HOUSEHOLD USE AND NOT FOR RESALE IN ACCORDANCE WITH FEDERAL LAW, RULES AND REGULATIONS AUTHORIZING THE PRODUCTION OF WINE FOR HOUSEHOLD PERSONAL OR FAMILY USE.

3. EVERY PERSON ENGAGING IN THE PRODUCTION OF WINE AT A HOME WINE MAKERS CENTER:

(A) SHALL BE TWENTY-ONE YEARS OF AGE OR OLDER;

(B) SHALL BE LIMITED TO PRODUCING NOT MORE THAN FIFTY GALLONS OF WINE DURING ANY CALENDAR YEAR; PROVIDED THAT IF THERE ARE ONE OR MORE OTHER PERSONS WHO ARE TWENTY-ONE YEARS OF AGE RESIDING IN THE SAME HOUSEHOLD AS SUCH PERSON, AND ALL OTHER SUCH PERSONS IN THE SAME HOUSEHOLD MAY PRODUCE AN AGGREGATE OF NOT MORE THAN ONE HUNDRED GALLONS OF WINE FOR THE HOUSEHOLD DURING ANY CALENDAR YEAR;

(C) MAY REMOVE THE WINE HE OR SHE PRODUCES AT THE HOME WINE MAKERS CENTER FOR THE PURPOSE OF PERSONAL USE, INCLUDING USE IN CONTESTS OR TASTINGS;

(D) SHALL NOT PRODUCE WINE FOR SALE OR OFFER SUCH WINE FOR SALE;

(E) SHALL PRODUCE NOT LESS THAN FIVE GALLONS OF WINE IN EACH CALENDAR YEAR;

(F) MAY JOINTLY PRODUCE WINE WITH PERSONS RESIDING IN A DIFFERENT HOUSEHOLD OR HOUSEHOLDS AS LONG AS THE QUANTITY OF WINE MADE IS WITHIN THE QUANTITY LIMITS SPECIFIED PURSUANT TO FEDERAL LAW, RULES AND REGULATIONS;

(G) SHALL ACTIVELY PARTICIPATE IN THE PRODUCTION OF THE WINE;

(H) SHALL USE FRUIT GROWN OR PRODUCED IN THE STATE OF NEW YORK TO PRODUCE THE WINE;

(I) SHALL ADD YEAST AND/OR OTHER INGREDIENTS TO THE GRAPE OR OTHER FRUIT JUICE OR WINE;

(J) SHALL CAUSE THE FRUIT TO FERMENT;

(K) SHALL RACK, FILTER AND BOTTLE THE WINE;

(L) SHALL NOT ACCEPT ANY UNAUTHORIZED ASSISTANCE FROM THE HOME WINE MAKERS CENTER, OR FROM ANY EMPLOYEE OR AGENT THEREOF; AND

(M) SHALL READ AND SIGN A STATEMENT THAT HE OR SHE UNDERSTANDS AND AGREES TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION.

4. NO HOME WINE MAKERS CENTER, NOR ANY EMPLOYEE OR AGENT THEREOF, SHALL ASSIST ANY CUSTOMER IN THE PRODUCTION OF WINE, EXCEPT AS FOLLOWS:

(A) THE FURNISHING, SELLING OR RENTING OF SPACE, SUPPLIES AND EQUIPMENT, INGREDIENTS, FRUIT, AND BOTTLING SUPPLIES;

(B) THE PROVISION OF ADVICE AND TECHNICAL SERVICES TO CUSTOMERS AS PROVIDED PURSUANT TO FEDERAL LAW, RULES AND REGULATIONS;

(C) THE MOVING OF CONTAINERS OF WINE BETWEEN STORAGE AREAS;

(D) THE PROVISION, MAINTENANCE, CLEANING AND REPAIR OF WINE MAKING EQUIPMENT, SUCH AS PRESSES, PUMPS, FILTERS, BOTTLING EQUIPMENT AND OTHER EQUIPMENT;

(E) THE PROVISION, RENTAL OR SALE OF STORAGE VESSELS, INCLUDING, BUT NOT LIMITED TO, GLASS CARBOYS, WOODEN BARRELS OR OTHER STORAGE CONTAINERS FOR WINE FERMENTATION AND STORAGE;

(F) THE PROVISION OF A CLIMATE AND TEMPERATURE CONTROLLED SPACE FOR WINE FERMENTATION AND STORAGE;

(G) THE DISPOSAL OF GRAPE PRESSINGS AND OTHER WASTES; AND

(H) THE PROVISION OF QUALITY CONTROL SERVICES, SUCH AS LABORATORY ANALYSIS AND TASTING OF WINE FOR QUALITY CONTROL PURPOSES IN THE PRESENCE OF THE HOME WINE MAKER.

5. NO HOME WINE MAKERS CENTER SHALL ALLOW, MAINTAIN OR STORE ANY CONTAINER OF WINE IN EXCESS OF ONE HUNDRED GALLONS.

6. THE AGGREGATE PRODUCTION OF ALL INDIVIDUALS OR HOUSEHOLDS MAKING WINE AT A HOME WINE MAKERS CENTER PURSUANT TO A HOME WINE MAKERS LICENSE SHALL NOT EXCEED TEN THOUSAND GALLONS PER YEAR. PROVIDED, THAT SUCH AGGREGATE PRODUCTION LIMIT SHALL NOT BE OFFSET BY WINES PRODUCED AT SUCH FACILITY UNDER A WINERY OR FARM WINERY LICENSE.

7. THE LOCATION OF A FREE STANDING HOME WINE MAKERS CENTER MAY BE ON A FARM OR OTHER PREMISES THAT IS NOT ASSOCIATED WITH A WINERY OR FARM WINERY.

8. (A) A PERSON OR ENTITY LICENSED PURSUANT TO THE ALCOHOLIC BEVERAGE CONTROL LAW MAY ALSO BE LICENSED AS A HOME WINE MAKERS CENTER ON THE SAME OR ADJACENT PREMISES OF A WINERY OR FARM WINERY, IF SUCH PERSON OR ENTITY IS THE HOLDER OF:

(I) A WINERY LICENSE, PURSUANT TO SECTION SEVENTY-SIX OF THE ALCOHOLIC BEVERAGE CONTROL LAW; OR

(II) A FARM WINERY LICENSE, PURSUANT TO SECTION SEVENTY-SIX-A OF THE ALCOHOLIC BEVERAGE CONTROL LAW.

(B) NO WINERY OR FARM WINERY AUTHORIZED TO OPERATE A HOME WINE MAKERS CENTER PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE ISSUED A LICENSE PURSUANT TO THIS ARTICLE, UNLESS THE STATE LIQUOR AUTHORITY GRANTS A WRITTEN CONSENT LETTER THERETO. THE STATE LIQUOR AUTHORITY, IN GRANTING ITS CONSENT, SHALL DETERMINE WHETHER THE APPLICANT COMPLIES OR WILL COMPLY WITH THE PROVISIONS OF FEDERAL LAW AND THE RULES AND REGULATIONS OF THE FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU RELATING TO HOME WINE MAKERS CENTERS. IF THE WINERY OR FARM WINERY APPLYING FOR

1 CONSENT COMPLIES WITH SUCH FEDERAL LAW, RULES AND REGULATIONS THE STATE
2 LIQUOR AUTHORITY SHALL GRANT ITS WRITTEN CONSENT FOR THE OPERATION OF A
3 HOME WINE MAKERS CENTER. SUCH AUTHORITY SHALL NOT ESTABLISH ANY ADDI-
4 TIONAL REQUIREMENT FOR THE GRANTING OF ITS WRITTEN CONSENT.

5 (C) THE OPERATIONS OF A HOME WINE MAKERS CENTER OPERATED BY ANY WINERY
6 OR FARM WINERY SHALL BE SEGREGATED FROM THE PORTION OF SUCH WINERY OR
7 FARM WINERY IN WHICH WINE SUBJECT TO THE PROVISIONS OF THE ALCOHOLIC
8 BEVERAGE CONTROL LAW IS FERMENTED, PROCESSED, BOTTLED, STORED, SHIPPED
9 AND SOLD. PROVIDED, HOWEVER, THAT A WINERY OR FARM WINERY MAY SHARE ITS
10 WINE MAKING EQUIPMENT WITH A LICENSED HOME WINE MAKERS CENTER AS LONG AS
11 ALL HOME MADE WINES PRODUCED BY SUCH EQUIPMENT IS SEGREGATED FROM SUCH
12 PORTION OF THE PREMISES IN WHICH A WINERY OR FARM WINERY IS LOCATED.

13 9. FOR THE PURPOSES OF THIS SECTION, "FRUIT" SHALL MEAN GRAPES, OTHER
14 FRUITS, FRUIT JUICES AND OTHER AGRICULTURAL PRODUCTS INCLUDING, BUT NOT
15 LIMITED TO, HONEY, FLOWERS AND VEGETABLES.

16 S 3. Section 76 of the alcoholic beverage control law is amended by
17 adding a new subdivision 14 to read as follows:

18 14. NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A LICENSED WINERY
19 SHALL BE AUTHORIZED TO OPERATE A HOME WINE MAKERS CENTER PURSUANT TO
20 ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW. PROVIDED, FURTHER,
21 THAT A WINERY MAY OPERATE SUCH A CENTER UPON THE SAME OR ADJACENT PREM-
22 ISSES AS THE WINERY IS OPERATED SUBJECT TO THE PROVISIONS OF PARAGRAPH
23 (C) OF SUBDIVISION EIGHT OF SECTION TWO HUNDRED FIFTY-ONE-Z-THIRTEEN OF
24 THE AGRICULTURE AND MARKETS LAW AND FEDERAL LAW.

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

27 10. NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A LICENSED FARM
28 WINERY SHALL BE AUTHORIZED TO OPERATE A HOME WINE MAKERS CENTER PURSUANT
29 TO ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW. PROVIDED,
30 FURTHER, THAT A FARM WINERY MAY OPERATE SUCH A CENTER UPON THE SAME OR
31 ADJACENT PREMISES AS THE FARM WINERY IS OPERATED SUBJECT TO THE
32 PROVISIONS OF PARAGRAPH (C) OF SUBDIVISION EIGHT OF SECTION TWO HUNDRED
33 FIFTY-ONE-Z-THIRTEEN OF THE AGRICULTURE AND MARKETS LAW AND FEDERAL LAW.

34 S 5. Section 83 of the alcoholic beverage control law is amended by
35 adding a new subdivision 8 to read as follows:

36 8. THE FEE FOR A WRITTEN CONSENT LETTER AUTHORIZING A WINERY OR FARM
37 WINERY TO OPERATE A HOME WINE MAKERS CENTER PURSUANT TO ARTICLE TWENTY-C
38 OF THE AGRICULTURE AND MARKETS LAW SHALL BE ONE HUNDRED TWENTY-FIVE
39 DOLLARS.

40 S 6. This act shall take effect on the first of January next succeed-
41 ing the date on which it shall have become a law; provided, that, effec-
42 tive immediately any rules, regulations or other actions necessary to
43 implement the provisions of this act on its effective date are author-
44 ized and directed to be completed on or before such date.