

STATE OF NEW YORK

5756

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. WOERNER -- read once and referred to the Committee on Economic Development

AN ACT to amend the alcoholic beverage control law, in relation to establishing a primary American source of supply for liquor and wine sold in this state

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 35 of section 3 of the alcoholic beverage control law is amended, and two new subdivisions 23-a and 23-b are added to read as follows:

23-a. "Primary American source of supply" means (a) a manufacturer of liquor or wine or its exclusive agent in the United States if such liquor or wine can be secured directly from the manufacturer or its exclusive agent by a wholesaler in the United States; or (b) if the liquor or wine cannot be secured directly from such manufacturer or its exclusive agent, the source closest to such manufacturer in the United States when the brand enters the stream of commerce shall be the primary American source of supply in the United States.

23-b. "Private collection" means (a) bottled wine that (i) was purchased at retail or auction, (ii) was owned by a non-licensed person for at least two years with proof of purchase, and (iii) is not price posted in New York at the time of sale; or (b) a bottled liquor that is either (i) not price posted in New York at the time of sale, (ii) is no longer in production, or (iii) is contained in its original ceramic, lead, crystal or similar collectible specialty container which is no longer being offered for sale.

35. "Wholesaler" means any person who sells at wholesale any beverage for the sale of which a license is required under the provisions of this chapter. An "authorized wholesaler" is a wholesaler authorized by a primary American source of supply to carry a specific brand of liquor or wine in this state.

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

LBD01255-02-9

1 § 2. The alcoholic beverage control law is amended by adding a new
2 section 116-a to read as follows:

3 § 116-a. Primary American source of supply. 1. The primary American
4 source of supply at the time the wine or liquor becomes suitable for
5 wholesale or retail sale in New York or a wholesaler licensed under this
6 chapter who has been appointed its exclusive agent for such purpose,
7 shall file a registration application with the authority on forms
8 provided by the authority. Each brand of such liquor or wine shall be
9 individually listed on such registration.

10 2. The authority shall allow only one primary American source of
11 supply to register any brand of liquor or wine. The primary American
12 source of supply may change the exclusive agent acting and cancel any
13 authority granted to a prior agent by filing a new authorization with
14 the authority not less than forty days before the new authorization
15 becomes effective.

16 3. A primary American source of supply or its exclusive agent shall
17 file with the authority the names of each authorized wholesaler permit-
18 ted to sell each brand of liquor or wine sold in this state. If the
19 primary American source of supply is a wholesaler, it may list itself
20 and other wholesalers as a wholesaler authorized to sell the brand. The
21 filing of a wholesale price posting, in accordance with section one
22 hundred one-b of this article, listing the names of the authorized
23 wholesalers shall be deemed compliance with this requirement. The
24 authorized wholesalers may be changed at any time at or prior to the
25 time a wholesale price posting is to be filed pursuant to such section.
26 If the primary American source of supply does not list any authorized
27 wholesalers, any licensed wholesaler may purchase the liquor or wine
28 from the primary American source of supply and sell the brand in this
29 state.

30 4. Except as set forth in subdivisions seven and eight of this section
31 or shipments of wine or liquor from a private collection made directly
32 to a resident of New York for personal use pursuant to sections seven-
33 ty-nine-c and seventy-nine-d of this chapter, no one shall ship or cause
34 to be shipped into this state, nor shall any wholesaler or retailer in
35 this state receive, any liquor or wine unless the primary American
36 source of supply for such liquor or wine (i) has registered such brand
37 with the authority, (ii) such registration has been approved by the
38 authority, and (iii) the brand is purchased from the primary American
39 source of supply or an authorized wholesaler.

40 5. Except as set forth in subdivisions seven and eight of this
41 section, a wholesaler in this state shall not purchase, receive or be in
42 possession of any liquor or wine unless the wholesaler obtained the
43 liquor or wine directly from (i) a registered primary American source of
44 supply, (ii) a designated representative of the primary American source
45 of supply if the primary American source of supply is outside this
46 state, or (iii) an authorized wholesaler.

47 6. Nothing in this section shall be deemed to prohibit subsequent
48 intrastate sales, transfer, and invoicing of a brand of liquor or wine
49 between authorized wholesalers of that brand subsequent to the purchase
50 in this state from the primary American source of supply.

51 7. The authority shall allow a wholesaler to bring liquor or wine into
52 this state if the wholesaler certifies to the satisfaction of the
53 authority that the brand of liquor or wine comes from a manufacturer or
54 bottler that cannot, or has not and will not appoint a primary American
55 source of supply.

1 8. This section shall not apply to (i) a brand of liquor or wine owned
2 exclusively by one retailer and sold at retail within this state exclu-
3 sively by such retailer; or (ii) a product purchased by a wholesaler or
4 retailer from a private collection in accordance with sections eighty-
5 five and ninety-nine-g of this chapter consistent with the rules, regu-
6 lations, orders and advisories established by the authority.

7 9. The authority is authorized to perform such acts, prescribe forms,
8 and make rules, regulations, orders and advisories as it may deem neces-
9 sary or proper to fully effectuate the provisions of this section
10 including, but not limited to, establishing a format for recording the
11 primary American source of supply and its designees.

12 § 3. This act shall take effect on the ninetieth day after it shall
13 have become a law; provided, however, that effective immediately, the
14 addition, amendment and/or repeal of any rule or regulation necessary
15 for the implementation of this act on its effective date are authorized
16 and directed to be made and completed on or before such effective date.