S T A T E O F N E W Y O R K

11533

I N A S S E M B L Y

June 22, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. DelMonte, Schimminger, Alessi) -- (at request of the Governor) -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the alcoholic beverage control law, in relation to wineries, farm wineries, special wineries, special farm wineries and microwineries; and to repeal certain provisions of such law relating thereto

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

Section 1. Section 3 of the alcoholic beverage control law is amended by adding two new subdivisions 9-a and 12-aa to read as follows:

9-A. "CUSTOM CRUSH FACILITY" MEANS A LICENSED WINERY OR FARM WINERY WHICH OBTAINS GRAPES, FRUITS AND OTHER PLANTS GROWN EXCLUSIVELY IN NEW YORK STATE FROM, OR ON BEHALF OF, OTHER LICENSED WINERIES OR FARM WINERIES AND CRUSHES, PROCESSES, FERMENTS, BOTTLES OR CONDUCTS ANY COMBINATION OF SUCH SERVICES FOR SUCH OTHER LICENSED WINERIES OR FARM WINERIES.

12-AA. "FARM" MEANS THE LAND, BUILDINGS AND EQUIPMENT USED TO PRODUCE, PREPARE AND MARKET CROPS, LIVESTOCK AND LIVESTOCK PRODUCTS AS A COMMERCIAL ENTERPRISE. A FARM MAY CONSIST OF ONE OR MORE PARCELS OF OWNED OR RENTED LAND, WHICH PARCELS MAY BE CONTIGUOUS OR NONCONTIGUOUS TO EACH OTHER.

S 2. Section 76 of the alcoholic beverage control law, as amended by chapter 682 of the laws of 1945, subdivision 1 as amended by chapter 361 of the laws of 1994, subdivisions 2, 4 and 5 as amended by chapter 490 of the laws of 1993, paragraph (a) of subdivision 2 and subdivision 3 as amended by chapter 539 of the laws of 1999, paragraph (a-1) of subdivision 2 as added by chapter 438 of the laws of 1997, paragraph (c) of subdivision 2 as added by chapter 639 of the laws of 2004, subparagraph (ii) of paragraph (c) of subdivision 2 as amended by chapter 613 of the laws of 2008, subdivision 3-a as added by chapter 206 of the laws of 2003, subdivision 5 as added by chapter 505 of the laws of 1984, subdivision 6 as added by chapter 210 of the laws of 2005, and subdivision 7

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

LBD12196-03-0

as added by chapter 183 of the laws of 2008, is amended to read as follows:

S 76. Winery license. 1. Any person may apply to the liquor authority for a winery license as provided for in this article. Such application shall be in writing and verified and shall contain such information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the liquor authority shall grant the application it shall issue a license in such form as shall be determined by its rules.

2. A WINERY LICENSE SHALL AUTHORIZE THE HOLDER THEREOF:

(A) TO OPERATE A WINERY FOR THE MANUFACTURE OF WINE AT THE PREMISES SPECIFICALLY DESIGNATED IN THE LICENSE;

(B) TO RECEIVE AND POSSESS WINE FROM OTHER STATES CONSIGNED TO A UNITED STATES GOVERNMENT BONDED WINERY, WAREHOUSE OR STOREROOM LOCATED WITHIN THE STATE;

(C) TO SELL IN BULK FROM THE LICENSED PREMISES THE PRODUCTS MANUFACTURED UNDER SUCH LICENSE AND WINE RECEIVED BY SUCH LICENSEE FROM ANY OTHER STATE TO ANY WINERY LICENSEE, ANY DISTILLER LICENSEE OR TO A PERMITTEE ENGAGED IN THE MANUFACTURE OF PRODUCTS WHICH ARE UNFIT FOR BEVERAGE USE AND TO SELL OR DELIVER SUCH WINE TO PERSONS OUTSIDE THE STATE PURSUANT TO THE LAWS OF THE PLACE OF SUCH SALE OR DELIVERY;

(D) TO SELL FROM THE LICENSED PREMISES TO A LICENSED WHOLESALER OR RETAILER, OR TO A CORPORATION OPERATING RAILROAD CARS OR AIRCRAFT FOR CONSUMPTION ON SUCH CARRIERS, WINE MANUFACTURED OR RECEIVED BY THE LICENSEE AS ABOVE SET FORTH IN THE ORIGINAL SEALED CONTAINERS OF NOT MORE THAN FIFTEEN GALLONS EACH AND TO SELL OR DELIVER SUCH WINE TO PERSONS OUTSIDE THE STATE PURSUANT TO THE LAWS OF THE PLACE OF SUCH SALE OR DELIVERY. ALL WINE SOLD BY SUCH LICENSEE SHALL BE SECURELY SEALED AND HAVE ATTACHED THERETO A LABEL SETTING FORTH SUCH INFORMATION AS SHALL BE REQUIRED BY THIS CHAPTER; AND

(E) TO OPERATE, OR USE THE SERVICES OF, A CUSTOM CRUSH FACILITY AS DEFINED IN SUBDIVISION NINE-A OF SECTION THREE OF THIS CHAPTER.

3. (a) Any person having applied for and received a license as a winery [or farm winery] under this section [or section seventy-six-a of this article] may conduct wine tastings of New York state labelled wines in establishments licensed under [section] SECTIONS sixty-three AND SECTION SEVENTY-NINE of this chapter to sell [alcoholic beverages] WINE for off-premises consumption. Such winery [or farm winery] may charge a fee for each wine sample tasted. The state liquor authority shall promulgate rules and regulations regarding such tastings as provided for in this subdivision.

(a-1) Any person having applied for and received a license as a winery [or farm winery] under this section [or section seventy-six-a of this article] may conduct wine tastings of New York state labelled wines and apply to the liquor authority for a permit to sell wine produced by such winery [or farm winery,] by the bottle, during such tastings in establishments licensed under section sixty-four, SECTION SIXTY-FOUR-A, SECTION EIGHTY-ONE OR SECTION EIGHTY-ONE-A of this chapter to sell [alcoholic beverages] WINE for consumption on the premises. Such winery [or farm winery] may charge a fee of no more than twenty-five cents for each wine sample tasted. The state liquor authority shall promulgate rules and regulations regarding such tastings as provided for in this subdivision.

(b) Tastings shall be conducted subject to the following limitations:

(i) wine tastings shall be conducted by an official agent, representative or solicitor of one or more wineries [or farm wineries]. Such

agent, representative or solicitor shall be physically present at all times during the conduct of the tastings; and

(ii) any liability stemming from a right of action resulting from a wine tasting as authorized herein and in accordance with the provisions of sections 11-100 and 11-101 of the general obligations law, shall accrue to the [farm winery or] winery licensee.

(c)(i) Any person having applied for and received a license as a winery [or farm winery] under this section or [section seventy-six-a of this article] may conduct wine tastings of New York state labelled wines and sell such wine by the bottle, during such tasting, for off-premises consumption at outdoor or indoor gatherings, functions, occasions or events, within the hours fixed by or pursuant to subdivision fourteen of section one hundred five of this chapter, sponsored by a bona fide charitable organization. For the purposes of this paragraph, a bona fide charitable organization shall mean and include any bona fide religious or charitable organization or bona fide educational, fraternal or service organization or bona fide organization of veterans or volunteer firefighters, which by its charter, certificate of incorporation, constitution, or act of the legislature, shall have among its dominant purposes one or more of the lawful purposes as defined in subdivision five of section one hundred eighty-six of the general municipal law.

(ii) Upon application, the liquor authority shall issue [one or more licenses] AN ANNUAL PERMIT authorizing such winery [or farm winery] to participate in [no more than five] outdoor or indoor gatherings, functions, occasions or events sponsored by a charitable organization [for each such license]. The winery [or farm winery] must give THE AUTHORITY written OR ELECTRONIC notice of the date, time and specific location of each [of the five tastings authorized by a license to the authority] TASTING at least fifteen days prior to [such tastings authorized by such license] THE TASTING. A winery [or farm winery] that obtains a [license] PERMIT to conduct such wine tastings does not need to apply for or obtain a temporary beer or wine permit pursuant to section ninety-seven of this chapter or any other permit to conduct such a tasting or to sell wine by the bottle for off-premises consumption AT SUCH TASTINGS.

(iii) Such winery [or farm winery] may charge a fee for each wine sample tasted. Tastings shall be conducted by an official agent, representative or solicitor of such winery [or farm winery]. The state liquor authority may promulgate rules and regulations regarding such tastings as provided for in this subdivision.

[3.] 4. A licensed winery may apply to the liquor authority for a license to sell wine at retail for consumption on the premises. All the provisions of this chapter relative to licenses to sell wine at retail for consumption on the premises shall apply so far as applicable to such application.

[3-a.] 4-A. Notwithstanding any other provision of law, any winery, licensed pursuant to subdivision [three] FOUR of this section to sell wine at retail for consumption on the premises in a restaurant in or adjacent to the winery, may apply to the liquor authority for a license to sell beer, wine or liquor at retail for consumption on the premises of such restaurant. All of the provisions of this chapter relative to licenses to sell beer, wine or liquor at retail for consumption on the premises shall apply so far as applicable to such application.

[4.] 5. Notwithstanding any provision of this chapter to the contrary, any one or more winery licensees [or farm winery licensees], singly or jointly, may apply to the liquor authority for a license or licenses to sell wine at retail for consumption off the premises. [The] FOR LICEN-

SEES APPLYING SINGLY, THE duration of such license shall be coextensive with the duration of such licensee's winery license [or farm winery license], and the fee therefor shall be five hundred dollars if such retail premises is located in cities having a population of one million or more; in cities having less than one million population and more than one hundred thousand, two hundred fifty dollars; and elsewhere, the sum of one hundred twenty-five dollars. Such license shall entitle the holder thereof to sell at retail for consumption off the premises any New York state labelled wine. Such license shall also entitle the holder thereof to conduct winetastings and engage in any of the activities authorized by paragraphs (a), (b) and (c) of subdivision four of section seventy-seven of this article on such licensed premises. Such license shall also authorize the sale by the holder thereof of New York state labelled wine, in sealed containers for off-premises consumption, from the specially licensed premises of any person licensed pursuant to section eighty-one-a of this article to sell wine at retail for consumption on premises in which the principal business is the operation of a legitimate theater or such other lawful adult entertainment or recreational facility as the liquor authority may classify for eligibility pursuant to subdivision six of section sixty-four-a of this chapter. Not more than five such licenses shall be issued, EITHER SINGLY OR JOINTLY, to any licensed winery [or farm winery]. All other provisions of this chapter relative to licenses to sell wine at retail for consumption off the premises shall apply so far as applicable to such application. The liquor authority is hereby authorized to adopt such rules as it may deem necessary to carry out the purpose of this subdivision, provided that all licenses issued pursuant to this subdivision shall be subject to the same rules and regulations as are applicable to the sale of wine at retail for consumption off the premises of the winery licensee [or farm winery licensee].

[5.] 6. Any winery licensed pursuant to this section is authorized to engage in what is commonly known as wine by wire services whereby a winery within the state may make deliveries on behalf of other wineries within the state.

[5.] 7. Notwithstanding any provision of this chapter to the contrary, a licensed winery [or a licensed farm winery] may apply to the liquor authority for a permit to sell New York state labelled wine, by the bottle, at the state fair, at recognized county fairs and at farmers markets operated on a not-for-profit basis. As a condition of the permit, an agent, representative, or solicitor from the winery must be present at the time of sale.

[6.] 8. Any winery may sell or deliver such wine produced by the winery to persons outside the state pursuant to the laws of the place of such sale or delivery.

[7.] 9. Notwithstanding any other provision of law to the contrary, a licensed winery [or farm winery] may sell wine for consumption upon the premises known as the New York state fairgrounds during the annual New York state fair without obtaining any additional permission or payment of any additional fee, provided that such winery applies for, is granted and maintains a concessionaire's license from the division of the New York state fair in the department of agriculture and markets and such wine is sold and dispensed in amounts of ten ounces or less and further provided that consumption of such wine shall be limited to and shall occur upon such premises.

10. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, AND UPON PAYMENT TO THE LIQUOR AUTHORITY OF AN ADDITIONAL ANNUAL FEE OF ONE

HUNDRED TWENTY-FIVE DOLLARS, THE LIQUOR AUTHORITY MAY IN ITS DISCRETION AND UPON SUCH TERMS AND CONDITIONS AS IT MAY PRESCRIBE, ISSUE TO A LICENSED WINERY UPON APPLICATION THEREFOR A CERTIFICATE AUTHORIZING SUCH WINERY TO SELL WINE AT RETAIL IN SEALED CONTAINERS TO A REGULARLY ORGANIZED CHURCH, SYNAGOGUE OR RELIGIOUS ORGANIZATION FOR SACRAMENTAL PURPOSES, AND TO A HOUSEHOLDER FOR CONSUMPTION IN HIS HOME.

11. (A) A LICENSED WINERY MAY MANUFACTURE, BOTTLE AND SELL FRUIT JUICE, FRUIT JELLIES AND FRUIT PRESERVES, TONICS, SALAD DRESSINGS AND UNPOTABLE WINE SAUCES ON AND FROM LICENSED PREMISES.

(B) SUCH LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO STORE AND SELL GIFT ITEMS IN A TAX-PAID ROOM UPON THE LICENSED PREMISES. THESE GIFT ITEMS SHALL BE LIMITED TO THE FOLLOWING CATEGORIES:

(I) NON-ALCOHOLIC BEVERAGES FOR CONSUMPTION ON OR OFF PREMISES, INCLUDING BUT NOT LIMITED TO BOTTLED WATER, JUICE AND SODA BEVERAGES.

(II) FOOD ITEMS FOR THE PURPOSE OF COMPLIMENTING WINE TASTING SHALL MEAN A DIVERSIFIED SELECTION OF FOOD WHICH IS ORDINARILY CONSUMED WITHOUT THE USE OF TABLEWARE AND CAN CONVENIENTLY BE CONSUMED WHILE STANDING OR WALKING. SUCH FOOD ITEMS SHALL INCLUDE BUT NOT BE LIMITED TO: CHEESES, FRUITS, VEGETABLES, CHOCOLATES, BREADS AND CRACKERS.

(III) FOOD ITEMS, WHICH SHALL INCLUDE LOCALLY PRODUCED FARM PRODUCTS AND ANY FOOD OR FOOD PRODUCT NOT SPECIFICALLY PREPARED FOR IMMEDIATE CONSUMPTION UPON THE PREMISES. SUCH FOOD ITEMS MAY BE COMBINED INTO A PACKAGE CONTAINING WINE OR WINE PRODUCT.

(IV) WINE SUPPLIES AND ACCESSORIES, WHICH SHALL INCLUDE ANY ITEM UTILIZED FOR THE STORAGE SERVING OR CONSUMPTION OF WINE OR FOR DECORATIVE PURPOSES. THESE SUPPLIES MAY BE SOLD AS SINGLE ITEMS OR MAY BE COMBINED INTO A PACKAGE CONTAINING WINE OR A WINE PRODUCT.

(V) SOUVENIR ITEMS, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO ARTWORK, CRAFTS, CLOTHING, AGRICULTURAL PRODUCTS AND ANY OTHER ARTICLES WHICH CAN BE CONSTRUED TO PROPAGATE TOURISM WITHIN THE REGION.

(VI) NEW YORK STATE LABELLED WINE PRODUCED OR MANUFACTURED BY ANY OTHER NEW YORK STATE WINERY OR FARM WINERY LICENSEE. SUCH WINE MAY BE PURCHASED OUTRIGHT BY THE LICENSEE FROM A NEW YORK WINERY OR FARM WINERY LICENSEE OR OBTAINED ON A CONSIGNMENT BASIS PURSUANT TO A WRITTEN AGREEMENT BETWEEN THE SELLING AND PURCHASING LICENSEE.

(C) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, ANY WINERY LICENSEE MAY CHARGE:

(I) FOR TOURS OF ITS PREMISES; AND

(II) FOR ANY WINE TASTINGS.

(D) WINE GRAPE GROWERS OR WINE PRODUCER ORGANIZATIONS OR ASSOCIATIONS, INCORPORATED WITHIN THE STATE FOR THE PURPOSE OF WINE OR WINE GRAPE PROMOTION MAY HOLD WINE TASTINGS FOR PURPOSES OF EDUCATION IN THE PRODUCTION AND PROPER USE OF WINE PRODUCTS UNDER THE SAME RULES APPLYING TO WINERY LICENSEES.

(E) THE AUTHORITY IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGULATIONS TO EFFECTUATE THE PURPOSES OF THIS SUBDIVISION.

(F) A LICENSED WINERY MAY ENGAGE IN ANY OTHER BUSINESS ON THE LICENSED PREMISES SUBJECT TO SUCH RULES AND REGULATIONS AS THE LIQUOR AUTHORITY MAY PRESCRIBE. IN PRESCRIBING SUCH RULES AND REGULATIONS, THE LIQUOR AUTHORITY SHALL PROMOTE THE EXPANSION AND PROFITABILITY OF WINE PRODUCTION AND OF TOURISM IN NEW YORK, THEREBY PROMOTING THE CONSERVATION, PRODUCTION AND ENHANCEMENT OF NEW YORK STATE AGRICULTURAL LANDS. FURTHER, SUCH RULES AND REGULATIONS SHALL DETERMINE WHICH BUSINESSES WILL BE COMPATIBLE WITH THE POLICY AND PURPOSES OF THIS CHAPTER AND SHALL CONSIDER THE EFFECT OF PARTICULAR BUSINESSES ON THE COMMUNITY AND AREA IN THE VICINITY OF THE WINERY LICENSEE.

12. A LICENSED WINERY SHALL BE PERMITTED TO REMAIN OPEN FOR THE PURPOSES OF SELLING ITS PRODUCTS, IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISIONS TWO AND FOUR OF THIS SECTION, AND/OR CONDUCTING WINE TASTING AT THE WINERY, AND/OR CONDUCTING PUBLIC TOURS OF ITS WINERY AND/OR TO SELL NEW YORK STATE LABELLED WINE, BY THE BOTTLE, AT THE STATE FAIR, AT RECOGNIZED COUNTY FAIRS AND AT FARMERS MARKETS OPERATED ON A NOT-FOR-PROFIT BASIS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION ON SUNDAY BETWEEN THE HOURS OF TEN O'CLOCK IN THE MORNING AND MIDNIGHT. THE AUTHORITY IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGULATIONS TO EFFECTUATE THE PURPOSES OF THIS SUBDIVISION.

13. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A WINERY LICENSED PURSUANT TO THIS SECTION MAY ENGAGE IN CUSTOM WINE PRODUCTION ALLOWING INDIVIDUALS TO ASSIST IN THE PRODUCTION OF WINE FOR SALE FOR PERSONAL OR FAMILY USE, PROVIDED, HOWEVER, THAT (A) THE WINE MUST BE PURCHASED BY THE INDIVIDUAL ASSISTING IN THE PRODUCTION OF SUCH WINE; AND (B) THE OWNER, EMPLOYEE OR AGENT OF SUCH WINERY SHALL BE PRESENT AT ALL TIMES DURING SUCH PRODUCTION.

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

2. A FARM WINERY LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO:

(A) OPERATE A FARM WINERY FOR THE MANUFACTURE OF WINE OR CIDER AT THE PREMISES SPECIFICALLY DESIGNATED IN THE LICENSE;

(B) SELL IN BULK FROM THE LICENSED PREMISES THE PRODUCTS MANUFACTURED UNDER SUCH LICENSE TO ANY WINERY LICENSEE, ANY OTHER FARM WINERY LICENSEE, ANY DISTILLER LICENSEE OR TO A PERMITTEE ENGAGED IN THE MANUFACTURE OF PRODUCTS WHICH ARE UNFIT FOR BEVERAGE USE AND TO SELL OR DELIVER SUCH WINE TO PERSONS OUTSIDE THE STATE PURSUANT TO THE LAWS OF THE PLACE OF SUCH SALE OR DELIVERY;

(C) SELL FROM THE LICENSED PREMISES TO A LICENSED WHOLESALER OR RETAILER, OR TO A CORPORATION OPERATING RAILROAD CARS OR AIRCRAFT FOR CONSUMPTION ON SUCH CARRIERS, OR AT RETAIL FOR CONSUMPTION OFF THE PREMISES, WINE OR CIDER MANUFACTURED BY THE LICENSEE AS ABOVE SET FORTH AND TO SELL OR DELIVER SUCH WINE OR CIDER TO PERSONS OUTSIDE THE STATE PURSUANT TO THE LAWS OF THE PLACE OF SUCH SALE OR DELIVERY. ALL WINE OR CIDER SOLD BY SUCH LICENSEE FOR CONSUMPTION OFF THE PREMISES SHALL BE SECURELY SEALED AND HAVE ATTACHED THERETO A LABEL SETTING FORTH SUCH INFORMATION AS SHALL BE REQUIRED BY THIS CHAPTER;

(D) OPERATE, OR USE THE SERVICES OF, A CUSTOM CRUSH FACILITY AS DEFINED IN SUBDIVISION NINE-A OF SECTION THREE OF THIS CHAPTER;

(E) SELL CIDER AND WINE AT RETAIL FOR CONSUMPTION ON OR OFF THE PREMISES;

(F) SELL WINE AT RETAIL FOR CONSUMPTION ON THE PREMISES OF A RESTAURANT, CONFERENCE CENTER, INN, BED AND BREAKFAST OR HOTEL BUSINESS OWNED AND OPERATED BY THE LICENSEE IN OR ADJACENT TO THE FARM WINERY FOR WHICH THE LICENSEE IS LICENSED. A LICENSEE WHO OPERATES A RESTAURANT, CONFERENCE CENTER, INN, BED AND BREAKFAST OR HOTEL PURSUANT TO SUCH AUTHORITY SHALL COMPLY WITH ALL APPLICABLE PROVISIONS OF THIS CHAPTER WHICH RELATE TO LICENSES TO SELL WINE AT RETAIL FOR CONSUMPTION ON THE PREMISES.

S 4. Subdivision 3 of section 76-a of the alcoholic beverage control law is REPEALED and a new subdivision 3 is added to read as follows:

3. (A) ANY PERSON HAVING APPLIED FOR AND RECEIVED A LICENSE AS A FARM WINERY UNDER THIS SECTION MAY CONDUCT WINE TASTINGS OF NEW YORK STATE LABELLED WINES IN ESTABLISHMENTS LICENSED UNDER SECTION SIXTY-THREE OF THIS CHAPTER AND SECTION SEVENTY-NINE OF THIS ARTICLE TO SELL WINE FOR OFF-PREMISES CONSUMPTION. SUCH FARM WINERY MAY CHARGE A FEE FOR EACH WINE SAMPLE TASTED. THE STATE LIQUOR AUTHORITY SHALL PROMULGATE RULES

AND REGULATIONS REGARDING SUCH TASTINGS AS PROVIDED FOR IN THIS SUBDIVISION.

(B) ANY PERSON HAVING APPLIED FOR AND RECEIVED A LICENSE AS A FARM WINERY UNDER THIS SECTION MAY CONDUCT WINE TASTINGS OF NEW YORK STATE LABELLED WINES AND APPLY TO THE LIQUOR AUTHORITY FOR A PERMIT TO SELL WINE PRODUCED BY SUCH FARM WINERY, BY THE BOTTLE, DURING SUCH TASTINGS IN ESTABLISHMENTS LICENSED UNDER SECTIONS SIXTY-FOUR AND SIXTY-FOUR-A OF THIS CHAPTER AND SECTION EIGHTY-ONE OR SECTION EIGHTY-ONE-A OF THIS ARTICLE TO SELL WINE FOR CONSUMPTION ON THE PREMISES. SUCH FARM WINERY MAY CHARGE A FEE OF NO MORE THAN TWENTY-FIVE CENTS FOR EACH WINE SAMPLE TASTED. THE STATE LIQUOR AUTHORITY SHALL PROMULGATE RULES AND REGULATIONS REGARDING SUCH TASTINGS AS PROVIDED FOR IN THIS SUBDIVISION.

(C) TASTINGS SHALL BE CONDUCTED SUBJECT TO THE FOLLOWING LIMITATIONS:

(I) WINE TASTINGS SHALL BE CONDUCTED BY AN OFFICIAL AGENT, REPRESENTATIVE OR SOLICITOR OF ONE OR MORE FARM WINERIES. SUCH AGENT, REPRESENTATIVE OR SOLICITOR SHALL BE PHYSICALLY PRESENT AT ALL TIMES DURING THE CONDUCT OF THE TASTINGS; AND

(II) ANY LIABILITY STEMMING FROM A RIGHT OF ACTION RESULTING FROM A WINE TASTING AS AUTHORIZED HEREIN AND IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 11-100 AND 11-101 OF THE GENERAL OBLIGATIONS LAW, SHALL ACCRUE TO THE FARM WINERY.

(D) (I) ANY PERSON HAVING APPLIED FOR AND RECEIVED A LICENSE AS A FARM WINERY UNDER THIS SECTION MAY CONDUCT WINE TASTINGS OF NEW YORK STATE LABELLED WINES AND SELL SUCH WINE BY THE BOTTLE, DURING SUCH TASTING, FOR OFF-PREMISES CONSUMPTION AT OUTDOOR OR INDOOR GATHERINGS, FUNCTIONS, OCCASIONS OR EVENTS, WITHIN THE HOURS FIXED BY OR PURSUANT TO SUBDIVISION FOURTEEN OF SECTION ONE HUNDRED FIVE OF THIS CHAPTER, SPONSORED BY A BONA FIDE CHARITABLE ORGANIZATION. FOR THE PURPOSES OF THIS PARAGRAPH, A BONA FIDE CHARITABLE ORGANIZATION SHALL MEAN AND INCLUDE ANY BOND FIDE RELIGIOUS OR CHARITABLE ORGANIZATION OR BONA FIDE EDUCATIONAL, FRATERNAL OR SERVICE ORGANIZATION OR BONA FIDE ORGANIZATION OF VETERANS OR VOLUNTEER FIREFIGHTERS, WHICH BY ITS CHARTER, CERTIFICATE OF INCORPORATION, CONSTITUTION, OR ACT OF THE LEGISLATURE, SHALL HAVE AMONG ITS DOMINANT PURPOSES ONE OR MORE OF THE LAWFUL PURPOSES AS DEFINED IN SUBDIVISION FIVE OF SECTION ONE HUNDRED EIGHTY-SIX OF THE GENERAL MUNICIPAL LAW.

(II) UPON APPLICATION, THE LIQUOR AUTHORITY SHALL ISSUE AN ANNUAL PERMIT AUTHORIZING SUCH FARM WINERY TO PARTICIPATE IN SUCH OUTDOOR OR INDOOR GATHERINGS, FUNCTIONS, OCCASIONS OR EVENTS SPONSORED BY A CHARITABLE ORGANIZATION. THE FARM WINERY MUST GIVE THE AUTHORITY WRITTEN OR ELECTRONIC NOTICE OF THE DATE, TIME AND SPECIFIC LOCATION OF EACH TASTING AT LEAST FIFTEEN DAYS PRIOR TO THE TASTING. A FARM WINERY THAT OBTAINS A PERMIT TO CONDUCT SUCH WINE TASTINGS DOES NOT NEED TO APPLY FOR OR OBTAIN A TEMPORARY BEER OR WINE PERMIT PURSUANT TO SECTION NINETY-SEVEN OF THIS CHAPTER OR ANY OTHER PERMIT TO CONDUCT SUCH A TASTING OR TO SELL WINE BY THE BOTTLE FOR OFF-PREMISES CONSUMPTION AT SUCH TASTINGS.

(III) SUCH FARM WINERY MAY CHARGE A FEE FOR EACH WINE SAMPLE TASTED. TASTINGS SHALL BE CONDUCTED BY AN OFFICIAL AGENT, REPRESENTATIVE OR SOLICITOR OF SUCH FARM WINERY. THE STATE LIQUOR AUTHORITY MAY PROMULGATE RULE AND REGULATIONS REGARDING SUCH TASTINGS AS PROVIDED IN THIS SUBDIVISION.

S 5. Subdivision 3-a of section 76-a of the alcoholic beverage control law, as added by chapter 304 of the laws of 2004, is amended to read as follows:

3-a. Notwithstanding any other provision of law, any farm winery, licensed pursuant to subdivision [three] TWO of this section to sell

wine at retail for consumption on the premises in a restaurant, conference center, inn, bed and breakfast or hotel business owned and operated by the licensee in or adjacent to such farm winery, may apply to the liquor authority for a license to sell beer and/or liquor at retail for consumption on the premises of such facility. All of the provisions of this chapter relative to licenses to sell beer, wine or liquor at retail for consumption on the premises shall apply so far as applicable to such application.

S 6. Subdivision 4 of section 76-a of the alcoholic beverage control law is amended by adding a new paragraph (e) to read as follows:

(E) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, ANY FARM WINERY LICENSEE MAY CHARGE:

(I) FOR TOURS OF ITS PREMISES; AND

(II) FOR ANY WINE TASTINGS.

S 7. Subdivision 7 of section 76-a of the alcoholic beverage control law is renumbered subdivision 8.

S 8. Section 76-a of the alcoholic beverage control law is amended by adding two new subdivisions 7 and 9 to read as follows:

7. THE HOLDER OF A LICENSE ISSUED UNDER THIS SECTION MAY OPERATE UP TO FIVE BRANCH OFFICES LOCATED AWAY FROM THE LICENSED FARM WINERY. SUCH LOCATIONS, ALTHOUGH NOT REQUIRED TO BE ON A FARM, SHALL BE CONSIDERED PART OF THE LICENSED PREMISES AND ALL ACTIVITIES ALLOWED AT THE FARM WINERY MAY BE CONDUCTED AT THE BRANCH OFFICES. PRIOR TO COMMENCING OPERATION OF ANY SUCH BRANCH OFFICE, THE LICENSEE SHALL NOTIFY THE AUTHORITY OF THE LOCATION OF SUCH BRANCH OFFICE AND THE AUTHORITY SHALL ISSUE A PERMIT FOR THE OPERATION OF SAME. SUCH BRANCH OFFICES SHALL NOT BE SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO, THREE OR FOUR OF SECTION SEVENTY-NINE OF THIS ARTICLE OR THE PROVISIONS OF SUBDIVISIONS TWO AND THREE, AND PARAGRAPHS (B) AND (C) OF SUBDIVISION TEN OF SECTION ONE HUNDRED FIVE OF THIS CHAPTER.

9. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A FARM WINERY LICENSED PURSUANT TO THIS SECTION MAY ENGAGE IN CUSTOM WINE PRODUCTION ALLOWING INDIVIDUALS TO ASSIST IN THE PRODUCTION OF WINE FOR SALE FOR PERSONAL OR FAMILY USE, PROVIDED, HOWEVER, THAT (A) THE WINE MUST BE PURCHASED BY THE INDIVIDUAL ASSISTING IN THE PRODUCTION OF SUCH WINE; AND (B) THE OWNER, EMPLOYEE OR AGENT OF SUCH WINERY SHALL BE PRESENT AT ALL TIMES DURING SUCH PRODUCTION.

S 9. Section 76-b of the alcoholic beverage control law, as added by chapter 332 of the laws of 1993 and subdivision 1 as amended by chapter 361 of the laws of 1994, is amended to read as follows:

S 76-b. Temporary winery or farm winery permit. 1. Any person may apply to the liquor authority for a temporary [winery or farm winery permit] PERMIT TO OPERATE A WINERY, FARM WINERY, SPECIAL WINERY, OR SPECIAL FARM WINERY. Such application shall be in writing and verified and shall contain information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such permit. Such application fee shall offset any subsequently assessed fees required by this article for the issuance of a winery [or farm winery], FARM WINERY, SPECIAL WINERY, OR SPECIAL FARM WINERY license to such applicant.

2. Upon application, the liquor authority shall issue [a] SUCH temporary [winery or farm winery] permit when the applicant:

(a) [either requires a license to establish a winery to produce or manufacture wine or] has a winery [or farm winery], FARM WINERY, SPECIAL WINERY, OR SPECIAL FARM WINERY license application pending before the liquor authority, and the beginning of the harvest season for grapes or

any other fruit or product necessary for the production or manufacture of wine at that facility will occur within thirty days; or

(b) is in good faith negotiating with or has entered into an agreement with a winery [or farm winery], FARM WINERY, SPECIAL WINERY, OR SPECIAL FARM WINERY licensee to purchase, obtain or acquire part or full ownership rights in the assets or stock of [an existing and operating winery facility] SUCH EXISTING LICENSEE; or

(c) due to unforeseen circumstances or an emergency situation is in need of a permit to ensure the continued or future operation of an existing winery facility.

3. The liquor authority in granting such permit shall ensure that:

(a) issuance of the permit will not inordinately hinder the operation or effective administration of this article.

(b) the applicant would in all likelihood be able to ultimately obtain a permanent winery [or farm winery], FARM WINERY, SPECIAL WINERY, OR SPECIAL FARM WINERY license.

(c) the applicant has substantially complied with the requirements necessary to obtain [a winery or farm winery] SUCH license.

(d) upon issuance of the temporary permit, the [winery or farm winery] EXISTING license for said premises shall have been surrendered TO, OR PLACED into safekeeping WITH, THE AUTHORITY pursuant to rules of the liquor authority.

[(e) the applicant for the temporary permit shall have filed concurrently with the liquor authority an application for a permanent winery or farm winery license at such premises.]

4. The application for a permit shall be approved or denied by the liquor authority within forty-five days after the receipt of such application.

5. A temporary [winery or farm winery] permit shall authorize the holder thereof to operate a winery [or], farm winery, SPECIAL WINERY, OR SPECIAL FARM WINERY as the case may be, for the manufacture and sale of wine at the premises specifically designated in the permit. Further, it shall authorize the holder of [a temporary winery permit or a temporary farm winery] THE permit to conduct any of the activities permitted, respectively, by [section] SECTIONS seventy-six, [section] seventy-six-a [or seventy-seven], SEVENTY-SIX-C OR SEVENTY-SIX-D of this [chapter] ARTICLE.

6. Such temporary permit shall remain in effect for six months or until the permittee is issued a permanent winery [or], farm winery, SPECIAL WINERY, OR SPECIAL FARM WINERY license, whichever is shorter. Such permit may be extended at the discretion of the authority for [an] additional three month [period] PERIODS of time upon payment of an additional fee of fifty dollars FOR EACH SUCH EXTENSION. Notwithstanding any other provision of law, a temporary permit may be summarily cancelled or suspended at any time if the liquor authority determines that good cause for such cancellation or suspension exists. The liquor authority shall promptly notify the holder of such permit in writing of such cancellation or suspension and shall set forth the reasons for such action.

7. The liquor authority in reviewing such application shall review the entire record and grant it unless good cause is otherwise shown. A decision on an application shall be based on substantial evidence in the record and supported by a preponderance of the evidence in favor of the applicant.

S 10. Subdivisions 2, 3, 4, 5, 6 and 7 of section 76-c of the alcoholic beverage control law are REPEALED and subdivision 1, as amended by

chapter 361 of the laws of 1994 is amended and a new subdivision 2 is added to read as follows:

1. Any person may apply to the liquor authority for a license to operate a SPECIAL winery on the premises of [a] AN EXISTING winery licensee. Such application shall be in writing and verified and shall contain such information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the liquor authority shall grant the application it shall issue a license in such form as shall be determined by its rules.

2. THE PROVISIONS OF SECTION SEVENTY-SIX OF THIS ARTICLE RELATING TO THE OPERATION OF A WINERY SHALL ALSO APPLY TO THE HOLDER OF A LICENSE UNDER THIS SECTION.

S 11. Subdivision 1 of section 76-d of the alcoholic beverage control law, as amended by chapter 361 of the laws of 1994, is amended and subdivision 2 is REPEALED and a new subdivision 2 is added to read as follows:

1. Any person may apply to the liquor authority [for] TO OPERATE a special farm winery [license to operate] on the premises of an existing FARM WINERY licensee as provided for in this article. Such application shall be in writing and verified and shall contain such information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the liquor authority shall grant the application it shall issue a license in such form as shall be determined by its rules.

2. THE PROVISIONS OF SECTION SEVENTY-SIX-A OF THIS ARTICLE RELATING TO THE OPERATION OF A FARM WINERY SHALL ALSO APPLY TO THE HOLDER OF A LICENSE UNDER THIS SECTION.

S 12. Section 76-f of the alcoholic beverage control law is REPEALED.

S 13. Section 77 of the alcoholic beverage control law is REPEALED.

S 14. Subdivisions 2 and 3 of section 79-c of the alcoholic beverage control law, as amended by chapter 184 of the laws of 2005, are amended to read as follows:

2. License. Before sending any shipment hereunder to a resident in this state, the out-of-state shipper shall first obtain a license from the [New York state liquor] authority under procedures prescribed by rules and regulations of the authority and after providing the authority with a true copy of its current license to manufacture wine in the applicant's state of domicile along with a copy of the applicant's federal basic permit after payment of an annual fee of one hundred twenty-five dollars. Notwithstanding the provisions of section one hundred ten of this chapter, the authority in its discretion, may excuse an out-of-state winery from the submission of such information. [Such rules or regulations shall provide for the collection and annual reporting of information by such out-of-state shipper which at a minimum, shall include:

(a) the name of the purchaser;

(b) the full mailing address of the purchaser including zip code;

(c) the name, total quantity, and total price of wine purchased;

(d) the date purchased;

(e) the name and address of the transporter; and

(f) the signature of the person filing the report.]

3. Licensee's responsibilities. The holder of an out-of-state direct shipper's license shall:

(a) ship no more than thirty-six cases (no more than nine liters each case) per year of wine produced by such license holder directly to a New

York state resident who is at least twenty-one years of age, for such resident's personal use and not for resale;

(b) ensure that the outside of each shipping container used to ship wine directly to a New York resident is conspicuously labeled with the words: "CONTAINS WINE - SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY - NOT FOR RESALE," or with other language specifically approved by the New York state liquor authority;

(c) [report to the authority semi-annually,] MAINTAIN RECORDS in such manner and form as the authority may direct, SHOWING the total amount of wine shipped into the state [the preceding] EACH calendar year; the names and addresses of the purchasers to whom the wine was shipped, the date purchased, the name of the common carrier used to deliver the wine, and the quantity and value of each shipment;

(d) in connection with the acceptance of an order for a delivery of wine to a New York resident, require the prospective customer to represent that he or she has attained the age of twenty-one years or more and that the wine being purchased will not be resold or introduced into commerce;

(e) require common carriers to:

(i) require a recipient, at the delivery address, upon delivery, to demonstrate that the recipient is at least twenty-one years of age by providing a valid form of photographic identification authorized by section sixty-five-b of this chapter;

(ii) require a recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the authority; and

(iii) refuse delivery when the proposed recipient appears to be under twenty-one years of age and refuses to present valid identification as required by subparagraph (i) of this paragraph;

(f) file returns with and pay to the New York state department of taxation and finance all state and local sales taxes and excise taxes due on sales into this state in accordance with the applicable provisions of the tax law relating to such taxes, the amount of such taxes to be determined on the basis that each sale in this state was at the location where delivery is made;

(g) keep ALL records REQUIRED BY THIS SECTION for three years and PROVIDE COPIES OF SUCH RECORDS, UPON WRITTEN REQUEST, TO THE AUTHORITY OR THE DEPARTMENT OF TAXATION AND FINANCE;

(H) permit the authority or the department of taxation and finance to perform an audit of such out-of-state shipper upon request;

[(h)] (I) execute a written consent to the jurisdiction of this state, its agencies and instrumentalities and the courts of this state concerning enforcement of this section and any related laws, rules, or regulations, including tax laws, rules or regulations; and

[(i)] (J) prior to obtaining an out-of-state direct shipper's license, obtain a certificate of authority pursuant to section eleven hundred thirty-four of the tax law and a registration as a distributor pursuant to sections four hundred twenty-one and four hundred twenty-two of the tax law.

S 15. Paragraph (c) of subdivision 1 of section 79-d of the alcoholic beverage control law, as amended by chapter 184 of the laws of 2005, is amended to read as follows:

(c) [report to the authority annually,] MAINTAIN RECORDS in such manner and form as the authority may direct SHOWING the total amount of wine shipped in the state [the preceding] EACH calendar year, the names and addresses of the purchasers to whom the wine was shipped, the date purchased, the name of the common carrier used to deliver the wine, and

the quantity and value of each shipment. SUCH RECORDS SHALL BE KEPT FOR THREE YEARS AND, UPON WRITTEN REQUEST, BE PROVIDED TO THE AUTHORITY OR THE DEPARTMENT OF TAXATION AND FINANCE;

S 16. Section 80 of the alcoholic beverage control law, as added by chapter 458 of the laws of 1993, is amended to read as follows:

S 80. Wine tasting. [Any] 1. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS CHAPTER, ANY person licensed to sell wine pursuant to this article, or section sixty-three OR SECTION SEVENTY-NINE of this chapter, shall be permitted to conduct wine tastings ONLY UPON THE LICENSED PREMISES. Wine tastings which are conducted under the auspices of an official agent of a farm winery, winery, wholesaler, or importer and where such agent is physically present at all times during the conduct of the tasting, then, in that event, any liability stemming from a right of action resulting from a wine tasting as authorized herein, and in accordance with the provisions of sections 11-100 and 11-101 of the general obligations law, shall accrue to the farm winery, winery, wholesaler, or importer.

2. IN ADDITION TO SUCH OTHER WINE TASTINGS PERMITTED UNDER THIS CHAPTER, LICENSED FARM WINERIES, WINERIES, AND WINE WHOLESALERS MAY APPLY FOR A PERMIT, PURSUANT TO PARAGRAPH K OF SUBDIVISION ONE OF SECTION NINETY-NINE-B OF THIS CHAPTER, TO CONDUCT WINE TASTINGS. SUCH PERMITS SHALL BE VALID THROUGHOUT THE STATE AND MAY BE ISSUED ON AN ANNUAL BASIS OR FOR INDIVIDUAL EVENTS. EACH SUCH PERMIT AND THE EXERCISE OF THE PRIVILEGE GRANTED THEREBY SHALL BE SUBJECT TO SUCH RULES OF THE LIQUOR AUTHORITY AS IT DEEMS NECESSARY.

S 17. Subdivision 1-a of section 83 of the alcoholic beverage control law, as amended by section 7 of part Z of chapter 85 of the laws of 2002, is amended to read as follows:

1-a. The annual fee for a farm winery license shall be one hundred twenty-five dollars, PROVIDED THAT THE ANNUAL FEE FOR A FARM WINERY MANUFACTURING NO MORE THAN FIFTEEN HUNDRED FINISHED GALLONS OF WINE ANNUALLY SHALL BE FIFTY DOLLARS.

S 18. Subdivision 1-c of section 83 of the alcoholic beverage control law is REPEALED.

S 19. Subdivision 7 of section 103 of the alcoholic beverage control law, as amended by chapter 162 of the laws of 1969, is amended to read as follows:

7. Each manufacturer shall keep and maintain upon the licensed premises, adequate books and records of all transactions involving the manufacture and sale of his or its products, which shall show the ingredients but not the formula or recipe used in the manufacture of such alcoholic beverages together with the quantity of alcoholic beverages manufactured by such manufacturer; the names, addresses, and the license numbers of the purchasers of such alcoholic beverages, together with the quantities involved in such purchases, whether the same shall be sold within or without the state. Each sale shall be recorded separately on a numbered invoice, which shall have printed thereon the number, the name of the licensee, the address of the licensed premises, and the current license number. Such manufacturer shall deliver to the purchaser a true duplicate invoice stating the name and address of the purchaser, the quantity of alcoholic beverages, description by brands and the price of such alcoholic beverages, and a true, accurate and complete statement of the terms and conditions on which such sale is made. Any terms and conditions of a sale not stated on said invoice shall constitute a service within the meaning of PARAGRAPH (C) OF SUBDIVISION ONE OF section one hundred [and] one[, subdivision one (c)] of this [chapter]

ARTICLE. Such books, records and invoices shall be kept for a period of two years and shall be available for inspection by any authorized representative of the liquor authority. PROVIDED, HOWEVER, THAT ANY BOOKS AND RECORDS REQUIRED BY THIS CHAPTER TO BE MAINTAINED BY A WINERY, FARM WINERY, SPECIAL WINERY, SPECIAL FARM WINERY OR MICROWINERY MUST BE KEPT EITHER UPON THE LICENSED PREMISES OR SUCH OTHER LOCATION AS MAY BE APPROVED BY THE AUTHORITY.

S 20. This act shall take effect on the ninetieth day after it shall have become a law.