

2009-2010 Regular Sessions

I N S E N A T E

January 13, 2009

Introduced by Sens. LARKIN, BONACIC, FLANAGAN, LEIBELL, MORAHAN, SALAND, SEWARD, WINNER, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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-G 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-G, seventy-nine, eighty-one, and eighty-one-a
20 of this chapter, and the sum of thirty thousand dollars as against the
21 holder of a license issued pursuant to sections fifty-three, seventy-
22 six, seventy-six-a, seventy-six-f, and seventy-eight of this chapter,

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

LBD05399-01-9

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

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

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

46 5. ROADSIDE FARM MARKET LICENSE.

47 S 4. Section 76-a of the alcoholic beverage control law is amended by
48 adding a new subdivision 8 to read as follows:

49 8. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A FARM WINERY
50 LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO SELL WINES MANUFACTURED OR
51 PRODUCED BY SUCH LICENSEE TO A ROADSIDE FARM MARKET PURSUANT TO SECTION
52 SEVENTY-SIX-G OF THIS ARTICLE.

53 S 5. Section 76-c of the alcoholic beverage control law is amended by
54 adding a new subdivision 8 to read as follows:

55 8. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A SPECIAL
56 WINERY LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO SELL WINES MANUFAC-

1 TURED OR PRODUCED BY SUCH LICENSEE TO A ROADSIDE FARM MARKET PURSUANT TO
2 SECTION SEVENTY-SIX-G OF THIS ARTICLE.

3 S 6. Section 76-f of the alcoholic beverage control law is amended by
4 adding a new subdivision 9 to read as follows:

5 9. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A MICRO-WINERY
6 LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO SELL WINES MANUFACTURED OR
7 PRODUCED BY SUCH LICENSEE TO A ROADSIDE FARM MARKET PURSUANT TO SECTION
8 SEVENTY-SIX-G OF THIS ARTICLE.

9 S 7. The alcoholic beverage control law is amended by adding a new
10 section 76-g to read as follows:

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

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

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

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

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

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

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

3 S 9. Subdivision 1 of section 99-d of the alcoholic beverage control
4 law, as amended by chapter 522 of the laws of 2003, is amended to read
5 as follows:

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

42 S 10. This act shall take effect on the one hundred eightieth day
43 after it shall have become a law; provided that any and all rules and
44 regulations and any other measures necessary to implement any provision
45 of this act on its effective date may be promulgated and taken, respec-
46 tively, on or before the effective date of such provision.