

7974

2009-2010 Regular Sessions

I N   A S S E M B L Y

May 1, 2009

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Introduced by M. of A. ABBATE -- 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 the  
sale of wine and wine products at wholesale and retail

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

1     Section 1. Declaration of legislative findings and intent. It is the  
2     declared policy of the state to conserve, protect and encourage the  
3     development and improvement of its agricultural lands. These policies  
4     are served by measures designed to facilitate entry for domestic agricultural  
5     products into the markets of the state. Agriculture in certain  
6     parts of the state is under economic restraint due to low-priced  
7     imported products and commodity surplus conditions in other states and  
8     foreign countries. This is the case for fruit growing areas of New York  
9     state which produce grapes for wine. Heretofore, the sale of wine in the  
10    state has been limited to certain licensees authorized to sell intoxicating  
11    beverages. Such limitations overlook the nature of table wines as  
12    food, as well as the practices of selling beer in food stores in New  
13    York state, and selling both beer and wines in food stores in numerous  
14    other states. It is the intention of this legislation to remove these  
15    present restrictions to allow for the sale of table wine in retail food  
16    stores within the state which currently sell beer for off-premises  
17    consumption.

18    This legislation will not only assist New York state agriculture, but  
19    it will also provide added convenience to the consumers of New York  
20    state. Wine is a food and should be available in a food store. Over  
21    thirty states recognize this and allow for its sale in retail food  
22    outlets. This added convenience to the general public is recognized by  
23    the legislature, and is another major goal of this legislation.

24    S 2. Section 53 of the alcoholic beverage control law, as amended by  
25    chapter 361 of the laws of 1994, is amended to read as follows:

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

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1 S 53. Wholesaler's license. 1. Any person may apply to the liquor  
2 authority for a license to sell beer at wholesale. Such application  
3 shall be in writing and verified and shall contain such information as  
4 the liquor authority shall require. Such application shall be accompa-  
5 nied by a check or draft for the amount required by this article for  
6 such license. If the liquor authority shall grant the application it  
7 shall issue a license in such form as shall be determined by its rules.  
8 Such a license shall contain a description of the licensed premises and  
9 in form and in substance shall be a license to the person therein  
10 specifically designated to sell beer at wholesale in the premises there-  
11 in specifically licensed to duly licensed wholesalers, retailers and  
12 permittees in this state, and to sell or deliver beer to persons outside  
13 the state pursuant to the laws of the place of such sale or delivery. A  
14 wholesaler's license issued or renewed prior to July first, nineteen  
15 hundred sixty, and thereafter renewed or transferred, shall authorize  
16 the holder thereof to sell beer at retail to a person for consumption in  
17 his home; provided, however, that regardless of the date issued, renewed  
18 or transferred, a wholesaler's license issued to a brewer or to the  
19 wholly-owned subsidiary of a brewer, shall authorize the holder thereof  
20 to sell beer at retail to a person for consumption in his home.

21 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE HOLDER OF A BEER  
22 WHOLESALE'S LICENSE SHALL ALSO BE AUTHORIZED TO CONTRACT WITH THE HOLD-  
23 ER OF A LIQUOR AND/OR WINE WHOLESALE'S LICENSE TO DELIVER ON BEHALF OF  
24 SUCH LIQUOR AND/OR WINE WHOLESALE WINE'S SOLD BY SAID LIQUOR AND/OR WINE  
25 WHOLESALE TO ANY PERSON LICENSED TO SELL WINE AT RETAIL FOR CONSUMPTION  
26 OFF THE PREMISES PURSUANT TO THE PROVISIONS OF SECTION FIFTY-FOUR-B OF  
27 THIS ARTICLE.

28 S 3. Section 62 of the alcoholic beverage control law, as amended by  
29 chapter 361 of the laws of 1994, is amended to read as follows:

30 S 62. Wholesaler's liquor license. 1. Any person may apply to the  
31 liquor authority for a license to sell liquor at wholesale. Such appli-  
32 cation shall be in writing and verified and shall contain such informa-  
33 tion as the liquor authority shall require. Such application shall be  
34 accompanied by a check or draft for the amount required by this article  
35 for such license. If the liquor authority shall grant the application it  
36 shall issue a license in such form as shall be determined by its rules.  
37 Such license shall contain a description of the licensed premises and in  
38 form and in substance shall be a license to the person therein specif-  
39 ically designated to sell liquors at wholesale in the premises therein  
40 specifically licensed to duly licensed wholesalers, retailers and  
41 permittees in this state, and to sell liquor in bulk to a licensed  
42 rectifier or to a permittee engaged in the manufacture of products which  
43 are unfit for beverage use, for use in the manufacture of products  
44 produced and sold by such rectifier or permittee, and to sell or deliver  
45 liquor to persons outside the state pursuant to the laws of the place of  
46 such sale or delivery. Such a license shall also include the privilege  
47 to sell wine at wholesale under the same terms and conditions without  
48 the payment of any additional fee.

49 2. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, THE  
50 HOLDER OF A LIQUOR WHOLESALE'S LICENSE SHALL BE AUTHORIZED TO CONTRACT  
51 WITH THE HOLDER OF A BEER WHOLESALE'S LICENSE FOR THE DELIVERY OF WINE  
52 ON BEHALF OF SUCH LIQUOR WHOLESALE, TO ANY PERSON LICENSED TO SELL WINE  
53 AT RETAIL FOR CONSUMPTION OFF THE PREMISES PURSUANT TO THE PROVISIONS OF  
54 SECTION FIFTY-FOUR-B OF THIS CHAPTER, AND THE SERVICING OF SUCH ACCOUNTS  
55 IN THE SALE AND PROMOTION OF WINE, INCLUDING BUT NOT LIMITED TO THE  
56 TAKING OF ORDERS, THE OBTAINING OF THE RECEIPTS OF DELIVERY OR PAYMENT

FOR TRANSMISSION TO THE LIQUOR WHOLESALER, THE SETTING UP OF PROMOTIONAL OR OTHER TYPES OF DISPLAYS, PACKAGING, SHELF LOCATIONS OR STORAGE, AS SUCH BEER WHOLESALER IS PRESENTLY PERFORMING FOR ITS BEER RETAILER CUSTOMER.

S 4. Subdivision 3-b of section 102 of the alcoholic beverage control law, as amended by chapter 458 of the laws of 1993, is amended to read as follows:

3-b. No retail licensee shall purchase, agree to purchase or receive any alcoholic beverage except from a person duly licensed within the state by the liquor authority to sell such alcoholic beverage at the time of such agreement and sale to such retail licensee, except as provided for in section eighty-five [or], ninety-nine-g OR SUBDIVISION TWO OF SECTION FIFTY-THREE of this chapter.

S 5. Paragraph (a) of subdivision 1 of section 104 of the alcoholic beverage control law, as amended by chapter 223 of the laws of 2002, is amended to read as follows:

(a) No wholesaler shall be engaged in any other business on the premises to be licensed; except that nothing contained in this chapter shall (1) prohibit a beer wholesaler from (i) acquiring, storing or selling non-alcoholic snack foods, as defined in paragraph (b) of this subdivision, (ii) manufacturing, bottling, storing, or selling non-alcoholic carbonated beverages, (iii) manufacturing, storing or selling non-alcoholic non-carbonated soft drinks, mineral waters, spring waters, drinking water, non-taxable malt or cereal beverages, juice drinks, fruit or vegetable juices, ice, liquid beverage mixes and dry or frozen beverage mixes, (iv) acquiring, storing or selling wine products, (v) the sale of promotional items on such premises, or (vi) the sale of tobacco products at retail by wholesalers who are licensed to sell beer and other products at retail, (2) prohibit a wholesaler authorized to sell wine from manufacturing, acquiring or selling wine merchandise, as defined in paragraph (d) of this subdivision, or (3) prohibit a licensed winery or licensed farm winery from engaging in the business of a wine wholesaler for New York state labeled wines produced by any licensed winery or licensed farm winery or prohibit such wine wholesaler from exercising any of its rights pursuant to sections seventy-six and seventy-six-a of this chapter provided that the operation of such beer [and], wine AND/OR WINE PRODUCTS wholesalers business shall be subject to such rules and regulations as the liquor authority may prescribe; AND EXCEPT THAT NOTHING CONTAINED HEREIN SHALL PROHIBIT A BEER WHOLESALER FROM STORING WINE WHICH HE HAS CONTRACTED TO DELIVER TO AUTHORIZED LICENSED GROCERY STORES ON BEHALF OF A LICENSED LIQUOR AND/OR WINE WHOLESALER PURSUANT TO SECTION FIFTY-THREE OF THIS CHAPTER, FOR SUCH PERIOD AS IS REASONABLY NECESSARY.

S 6. The alcoholic beverage control law is amended by adding a new section 54-b to read as follows:

S 54-B. LICENSE TO SELL BEER, WINE AND/OR WINE PRODUCTS AT RETAIL FOR CONSUMPTION OFF THE PREMISES. 1. ANY PERSON MAY APPLY TO THE APPROPRIATE BOARD FOR A LICENSE TO SELL BEER, WINE AND/OR WINE PRODUCTS AT RETAIL NOT TO BE CONSUMED UPON THE PREMISES WHERE SOLD. 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 CERTIFIED CHECK, BANK OFFICERS' CHECK OR DRAFT, OR MONEY ORDER FOR THE AMOUNT REQUIRED BY THIS ARTICLE FOR SUCH LICENSE. THE TERM "PREMISES" SHALL INCLUDE ANY DULY LICENSED SUPPLY SHIP OPERATING IN HARBORS IN LAKE ERIE.

1 2. IF THE LOCAL BOARD SHALL APPROVE SUCH APPLICATION IT SHALL ENDORSE  
2 ITS APPROVAL THEREON IN WRITING SIGNED BY THE MEMBERS OF THE LOCAL BOARD  
3 OR BY THEIR AGENT DULY AUTHORIZED SO TO SIGN BY A CERTIFICATE SIGNED BY  
4 THE MEMBERS OF THE LOCAL BOARD AND FILED IN THE OFFICE OF THE LIQUOR  
5 AUTHORITY. IT SHALL THEREUPON FORWARD SUCH APPLICATION TOGETHER WITH THE  
6 FEE THEREFOR TO THE LIQUOR AUTHORITY WHICH MAY THEREUPON ISSUE SUCH  
7 LICENSE ACCORDINGLY OR MAY REFUSE TO ISSUE SUCH LICENSE. IN THE EVENT  
8 THAT THE LIQUOR AUTHORITY ISSUES SUCH LICENSE IT SHALL FORWARD THE SAME  
9 TO THE APPLICANT AND SHALL NOTIFY THE LOCAL BOARD IN SUCH FORM AS THE  
10 LIQUOR AUTHORITY MAY PRESCRIBE. IN THE EVENT THAT THE LIQUOR AUTHORITY  
11 REFUSES TO ISSUE SUCH LICENSE IT SHALL STATE AND FILE IN ITS OFFICE ITS  
12 REASONS THEREFOR AND SHALL NOTIFY THE LOCAL BOARD OF ITS ACTION IN SUCH  
13 FORM AS THE LIQUOR AUTHORITY MAY PRESCRIBE.

14 3. IF THE LOCAL BOARD SHALL DISAPPROVE SUCH AN APPLICATION FOR A  
15 LICENSE IT SHALL ENDORSE UPON SUCH APPLICATION ITS DISAPPROVAL THEREOF  
16 TOGETHER WITH A STATEMENT OF ITS REASONS THEREFOR SIGNED IN THE SAME  
17 MANNER AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, AND SHALL NOTIFY  
18 THE APPLICANT OF SUCH ACTION. IF THE LOCAL BOARD IS NOT UNANIMOUS IN ITS  
19 RECOMMENDATION AS TO SUCH APPLICATION, EACH MEMBER OF SUCH BOARD SHALL  
20 ENDORSE THEREON HIS OR HER APPROVAL OR DISAPPROVAL OF SUCH APPLICATION,  
21 AS THE CASE MAY BE, TOGETHER WITH HIS OR HER REASONS THEREFOR AND SHALL  
22 NOTIFY THE APPLICANT OF SUCH ACTION. SUCH APPLICANT MAY THEREUPON APPLY  
23 TO THE LIQUOR AUTHORITY FOR A REVIEW OF SUCH ACTION BY THE LOCAL BOARD  
24 IN A MANNER TO BE PRESCRIBED BY THE RULES OF THE LIQUOR AUTHORITY. A  
25 HEARING UPON NOTICE TO THE LOCAL BOARD AND TO THE APPLICANT SHALL THERE-  
26 UPON BE HELD BY THE LIQUOR AUTHORITY OR BY ONE OF ITS MEMBERS AT ITS  
27 OFFICE MOST CONVENIENTLY SITUATED TO THE OFFICE OF THE LOCAL BOARD IN A  
28 MANNER TO BE PRESCRIBED IN ITS RULES; AND ON SUCH HEARING PROOF MAY BE  
29 TAKEN BY ORAL TESTIMONY OR BY AFFIDAVIT RELATIVE THERETO. AFTER SUCH  
30 HEARING, IF THE LIQUOR AUTHORITY CONCUR IN THE ACTION BY THE LOCAL  
31 BOARD, IT SHALL ENDORSE SUCH APPLICATION ACCORDINGLY AND SHALL SEND  
32 NOTICE TO THE LOCAL BOARD OF ITS ACTION IN SUCH FORM AS THE LIQUOR  
33 AUTHORITY MAY PRESCRIBE. IF THE LIQUOR AUTHORITY DOES NOT CONCUR IN THE  
34 DISAPPROVAL ACTION BY THE LOCAL BOARD IT MAY NEVERTHELESS GRANT SUCH  
35 APPLICATION AND ISSUE SUCH LICENSE IN THE MANNER PRESCRIBED IN SUBDIVI-  
36 SION TWO OF THIS SECTION.

37 4. NO SUCH LICENSE SHALL BE ISSUED, HOWEVER, TO ANY PERSON FOR ANY  
38 PREMISES OTHER THAN A GROCERY STORE, DRUG STORE, OR DULY LICENSED SUPPLY  
39 SHIP OPERATING IN HARBORS IN LAKE ERIE.

40 5. SUCH LICENSE SHALL CONTAIN A DESCRIPTION OF THE LICENSED PREMISES  
41 AND IN FORM AND IN SUBSTANCE SHALL BE A LICENSE TO THE PERSON SPECIF-  
42 ICALLY DESIGNATED THEREIN TO SELL BEER, WINE AND/OR WINE PRODUCTS AT  
43 RETAIL IN THE PREMISES SPECIFICALLY LICENSED, NOT TO BE CONSUMED UPON  
44 SUCH PREMISES.

45 6. NO PERSON AUTHORIZED TO SELL WINE AND/OR WINE PRODUCTS PURSUANT TO  
46 THIS SECTION SHALL OFFER SUCH WINE OR WINE PRODUCTS FOR SALE WHICH ARE  
47 OF AN ALCOHOLIC CONTENT IN EXCESS OF FOURTEEN PER CENTUM, BY VOLUME.

48 S 7. Section 56 of the alcoholic beverage control law is amended by  
49 adding a new subdivision 11 to read as follows:

50 11. THE ANNUAL FEE FOR A LICENSE TO SELL BEER, WINE AND/OR WINE  
51 PRODUCTS AT RETAIL, NOT TO BE CONSUMED ON THE PREMISES WHERE SOLD, SHALL  
52 BE ONE HUNDRED FIFTY DOLLARS; PROVIDED, HOWEVER, THAT WHERE THE LICENSED  
53 PREMISES ARE LOCATED IN CITIES HAVING A POPULATION OF ONE HUNDRED THOU-  
54 SAND OR OVER, THE ANNUAL FEE THEREFOR SHALL BE TWO HUNDRED TEN DOLLARS  
55 AND WHERE THE PREMISES TO BE LICENSED ARE LOCATED OUTSIDE OF A CITY OR

VILLAGE OR IN A VILLAGE OF LESS THAN ONE THOUSAND FIVE HUNDRED INHABITANTS, THE ANNUAL FEE THEREFOR SHALL BE ONE HUNDRED TWENTY-SIX DOLLARS.

S 8. Subdivision 2-a of section 100 of the alcoholic beverage control law, as amended by chapter 249 of the laws of 2002, is amended to read as follows:

2-a. No retailer shall employ, or permit to be employed, or shall suffer to work, on any premises licensed for retail sale hereunder, ANY PERSON UNDER THE AGE OF TWENTY-ONE YEARS, AS A CASHIER, OR any person under the age of eighteen years, as a hostess, waitress, waiter, or in any other capacity where the duties of such person require or permit such person to sell, dispense or handle alcoholic beverages; except that: (1) any person, OTHER THAN A PERSON EMPLOYED AS A CASHIER, under the age of eighteen years and employed by any person holding a grocery or drug store beer license shall be permitted to handle and deliver beer and wine products for such licensee, (2) [any person under the age of eighteen employed as a cashier by a person holding a grocery or drug store beer license shall be permitted to record and receive payment for beer and wine product sales when in the presence of and under the direct supervision of a person eighteen years of age or over, (2-a)] any person under the age of eighteen years and employed by a person holding a grocery store or drug store beer license [as either a cashier or] in any [other] position OTHER THAN CASHIER to which handling of containers which may have held alcoholic beverages is necessary, shall be permitted to handle the containers if such have been presented for redemption in accordance with the provisions of title ten of article twenty-seven of the environmental conservation law, and (3) any person under the age of eighteen years employed as a dishwasher, busboy, or other such position, OTHER THAN CASHIER, as to which handling of containers which may have held alcoholic beverages is necessary shall be permitted to do so under the direct supervision of a person of legal age to purchase alcoholic beverages in the state.

S 9. This act shall take effect on the one hundred eightieth day after it shall have become a law. Provided, however, that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date.