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

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2009-2010 Regular Sessions

I N A S S E M B L Y

May 1, 2009

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:

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

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

S 2. Section 53 of the alcoholic beverage control law, as amended by 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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S 53. Wholesaler's license. 1. Any person may apply to the liquor authority for a license to sell beer at wholesale. 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. Such a license shall contain a description of the licensed premises and in form and in substance shall be a license to the person therein specifically designated to sell beer at wholesale in the premises therein specifically licensed to duly licensed wholesalers, retailers and permittees in this state, and to sell or deliver beer to persons outside the state pursuant to the laws of the place of such sale or delivery. A wholesaler's license issued or renewed prior to July first, nineteen hundred sixty, and thereafter renewed or transferred, shall authorize the holder thereof to sell beer at retail to a person for consumption in his home; provided, however, that regardless of the date issued, renewed or transferred, a wholesaler's license issued to a brewer or to the wholly-owned subsidiary of a brewer, shall authorize the holder thereof to sell beer at retail to a person for consumption in his home.

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

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

S 62. Wholesaler's liquor license. 1. Any person may apply to the liquor authority for a license to sell liquor at wholesale. 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. Such license shall contain a description of the licensed premises and in form and in substance shall be a license to the person therein specifically designated to sell liquors at wholesale in the premises therein specifically licensed to duly licensed wholesalers, retailers and permittees in this state, and to sell liquor in bulk to a licensed rectifier or to a permittee engaged in the manufacture of products which are unfit for beverage use, for use in the manufacture of products produced and sold by such rectifier or permittee, and to sell or deliver liquor to persons outside the state pursuant to the laws of the place of such sale or delivery. Such a license shall also include the privilege to sell wine at wholesale under the same terms and conditions without the payment of any additional fee.

2. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, THE HOLDER OF A LIQUOR WHOLESALER'S LICENSE SHALL BE AUTHORIZED TO CONTRACT WITH THE HOLDER OF A BEER WHOLESALER'S LICENSE FOR THE DELIVERY OF WINE ON BEHALF OF SUCH LIQUOR WHOLESALER, TO ANY PERSON LICENSED TO SELL WINE AT RETAIL FOR CONSUMPTION OFF THE PREMISES PURSUANT TO THE PROVISIONS OF SECTION FIFTY-FOUR-B OF THIS CHAPTER, AND THE SERVICING OF SUCH ACCOUNTS IN THE SALE AND PROMOTION OF WINE, INCLUDING BUT NOT LIMITED TO THE 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.

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

3. IF THE LOCAL BOARD SHALL DISAPPROVE SUCH AN APPLICATION FOR A LICENSE IT SHALL ENDORSE UPON SUCH APPLICATION ITS DISAPPROVAL THEREOF TOGETHER WITH A STATEMENT OF ITS REASONS THEREFOR SIGNED IN THE SAME MANNER AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, AND SHALL NOTIFY THE APPLICANT OF SUCH ACTION. IF THE LOCAL BOARD IS NOT UNANIMOUS IN ITS RECOMMENDATION AS TO SUCH APPLICATION, EACH MEMBER OF SUCH BOARD SHALL ENDORSE THEREON HIS OR HER APPROVAL OR DISAPPROVAL OF SUCH APPLICATION, AS THE CASE MAY BE, TOGETHER WITH HIS OR HER REASONS THEREFOR AND SHALL NOTIFY THE APPLICANT OF SUCH ACTION. SUCH APPLICANT MAY THEREUPON APPLY TO THE LIQUOR AUTHORITY FOR A REVIEW OF SUCH ACTION BY THE LOCAL BOARD IN A MANNER TO BE PRESCRIBED BY THE RULES OF THE LIQUOR AUTHORITY. A HEARING UPON NOTICE TO THE LOCAL BOARD AND TO THE APPLICANT SHALL THEREUPON BE HELD BY THE LIQUOR AUTHORITY OR BY ONE OF ITS MEMBERS AT ITS OFFICE MOST CONVENIENTLY SITUATED TO THE OFFICE OF THE LOCAL BOARD IN A MANNER TO BE PRESCRIBED IN ITS RULES; AND ON SUCH HEARING PROOF MAY BE TAKEN BY ORAL TESTIMONY OR BY AFFIDAVIT RELATIVE THERETO. AFTER SUCH HEARING, IF THE LIQUOR AUTHORITY CONCUR IN THE ACTION BY THE LOCAL BOARD, IT SHALL ENDORSE SUCH APPLICATION ACCORDINGLY AND SHALL SEND NOTICE TO THE LOCAL BOARD OF ITS ACTION IN SUCH FORM AS THE LIQUOR AUTHORITY MAY PRESCRIBE. IF THE LIQUOR AUTHORITY DOES NOT CONCUR IN THE DISAPPROVAL ACTION BY THE LOCAL BOARD IT MAY NEVERTHELESS GRANT SUCH APPLICATION AND ISSUE SUCH LICENSE IN THE MANNER PRESCRIBED IN SUBDIVISION TWO OF THIS SECTION.

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

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

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

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

11. THE ANNUAL FEE FOR A LICENSE TO SELL BEER, WINE AND/OR WINE PRODUCTS AT RETAIL, NOT TO BE CONSUMED ON THE PREMISES WHERE SOLD, SHALL BE ONE HUNDRED FIFTY DOLLARS; PROVIDED, HOWEVER, THAT WHERE THE LICENSED PREMISES ARE LOCATED IN CITIES HAVING A POPULATION OF ONE HUNDRED THOUSAND OR OVER, THE ANNUAL FEE THEREFOR SHALL BE TWO HUNDRED TEN DOLLARS 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.