

7971

2011-2012 Regular Sessions

I N A S S E M B L Y

May 25, 2011

Introduced by M. of A. MAGEE -- read once and referred to the Committee
on Agriculture

AN ACT to amend the agriculture and markets law and the alcoholic beverage control law, in relation to providing that food processing establishments shall include the operation of home wine makers centers

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

1 Section 1. Subdivisions 3 and 4 of section 251-z-2 of the agriculture
2 and markets law, subdivision 3 as amended by chapter 507 of the laws of
3 1973 and subdivision 4 as added by chapter 863 of the laws of 1972, are
4 amended and a new subdivision 5 is added to read as follows:
5 3. The term "food processing establishment" means any place which
6 receives food or food products for the purpose of processing or other-
7 wise adding to the value of the product for commercial sale, AND THOSE
8 PLACES LICENSED AS HOME WINE MAKERS CENTERS THAT PRODUCE WINE FOR HOME
9 CONSUMPTION AND NOT FOR COMMERCIAL SALE. It includes, but is not limit-
10 ed to, bakeries, processing plants, beverage plants [and], food manufac-
11 tories, AND HOME WINE MAKERS CENTERS. However, the term does not
12 include: those establishments that process and manufacture food or food
13 products that are sold exclusively at retail for consumption on the
14 premises; those operations which cut meat and sell such meat at retail
15 on the premises; bottled and bulk water facilities; those food process-
16 ing establishments which are covered by articles four, [four-a, five-a,
17 five-b, five-c, five-d, seventeen-b,] FOUR-A, FIVE-A, FIVE-B, FIVE-C,
18 FIVE-D, SEVENTEEN-B, nineteen[, twenty-b,] and twenty-one of this chap-
19 ter; service food establishments, including vending machine commissar-
20 ies, under permit and inspection by the [state] department of health or
21 by a local health agency which maintains a program certified and
22 approved by the [state] commissioner of health; establishments under
23 federal meat, poultry or egg product inspection; or establishments
24 engaged solely in the harvesting, storage, or distribution of one or

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

LBD10267-01-1

1 more raw agricultural commodities which are ordinarily cleaned,
2 prepared, treated or otherwise processed before being marketed to the
3 consuming public.

4 4. The term "processing" means processing foods in any manner, such as
5 by manufacturing, canning, preserving, freezing, drying, dehydrating,
6 juicing, pickling, baking, brining, bottling, packing, repacking, press-
7 ing, waxing, heating or cooking, or otherwise treating food in such a
8 way as to create a risk that it may become adulterated if improperly
9 handled, OR THE FERMENTATION OF FRUIT, AS DEFINED IN SUBDIVISION NINE OF
10 SECTION TWO HUNDRED FIFTY-ONE-Z-THIRTEEN OF THIS ARTICLE INTO WINE, FOR
11 HOME CONSUMPTION, UPON THE PREMISES OF A HOME WINE MAKERS CENTER.

12 5. THE TERM "WINE MAKERS CENTER" MEANS ANY PLACE WHERE AN INDIVIDUAL
13 PAYS A FEE TO USE SPACE AND EQUIPMENT FOR THE PURPOSE OF MAKING WINE FOR
14 PERSONAL HOUSEHOLD USE AND NOT FOR RESALE.

15 S 2. Section 251-z-13 of the agriculture and markets law, as renum-
16 bered by chapter 665 of the laws of 2005, is renumbered section 251-z-14
17 and a new section 251-z-13 is added to read as follows:

18 S 251-Z-13. HOME WINE MAKERS CENTERS. 1. THE PROVISIONS OF THIS
19 SECTION SHALL APPLY TO HOME WINE MAKERS CENTERS IN ADDITION TO ANY OTHER
20 PROVISION OF THIS ARTICLE. THE OPERATION OF HOME WINE MAKERS CENTERS
21 SHALL BE SUBJECT TO THE PROVISIONS OF THIS ARTICLE AND THE SUPERVISION
22 OF THE DEPARTMENT. PROVIDED, HOWEVER, THAT THE DEPARTMENT MAY CONSULT
23 WITH THE STATE LIQUOR AUTHORITY BEFORE ISSUING SUCH LICENSE TO ENSURE
24 COMPLIANCE WITH THE ALCOHOLIC BEVERAGE CONTROL LAW.

25 SUCH OPERATION SHALL NOT BE SUBJECT TO THE PROVISIONS OF THE ALCOHOLIC
26 BEVERAGE CONTROL LAW OR THE JURISDICTION OF THE STATE LIQUOR AUTHORITY,
27 UNLESS SPECIFICALLY PROVIDED IN THIS ARTICLE.

28 2. EVERY HOME WINE MAKERS CENTER SHALL BE LICENSED BY THE COMMISSIONER
29 TO PROVIDE, FOR A FEE, FRUIT, AND EQUIPMENT AND STORAGE FACILITIES FOR
30 THE PRODUCTION OF WINE BY INDIVIDUALS FOR PERSONAL HOUSEHOLD USE AND NOT
31 FOR RESALE IN ACCORDANCE WITH FEDERAL LAW, RULES AND REGULATIONS AUTHOR-
32 IZING THE PRODUCTION OF WINE FOR HOUSEHOLD PERSONAL OR FAMILY USE.

33 3. EVERY PERSON ENGAGING IN THE PRODUCTION OF WINE AT A HOME WINE
34 MAKERS CENTER:

35 (A) SHALL BE TWENTY-ONE YEARS OF AGE OR OLDER;

36 (B) SHALL BE LIMITED TO PRODUCING NOT MORE THAN FIFTY GALLONS OF WINE
37 DURING ANY CALENDAR YEAR; PROVIDED THAT IF THERE ARE ONE OR MORE OTHER
38 PERSONS WHO ARE TWENTY-ONE YEARS OF AGE RESIDING IN THE SAME HOUSEHOLD
39 AS SUCH PERSON, AND ALL OTHER SUCH PERSONS IN THE SAME HOUSEHOLD MAY
40 PRODUCE AN AGGREGATE OF NOT MORE THAN ONE HUNDRED GALLONS OF WINE FOR
41 THE HOUSEHOLD DURING ANY CALENDAR YEAR;

42 (C) MAY REMOVE THE WINE HE OR SHE PRODUCES AT THE HOME WINE MAKERS
43 CENTER FOR THE PURPOSE OF PERSONAL USE, INCLUDING USE IN CONTESTS OR
44 TASTINGS;

45 (D) SHALL NOT PRODUCE WINE FOR SALE OR OFFER SUCH WINE FOR SALE;

46 (E) SHALL PRODUCE NOT LESS THAN FIVE GALLONS OF WINE IN EACH CALENDAR
47 YEAR;

48 (F) MAY JOINTLY PRODUCE WINE WITH PERSONS RESIDING IN A DIFFERENT
49 HOUSEHOLD OR HOUSEHOLDS AS LONG AS THE QUANTITY OF WINE MADE IS WITHIN
50 THE QUANTITY LIMITS SPECIFIED PURSUANT TO FEDERAL LAW, RULES AND REGU-
51 LATIONS;

52 (G) SHALL ACTIVELY PARTICIPATE IN THE PRODUCTION OF THE WINE;

53 (H) SHALL USE FRUIT GROWN OR PRODUCED IN THE STATE OF NEW YORK TO
54 PRODUCE THE WINE;

55 (I) SHALL ADD YEAST AND/OR OTHER INGREDIENTS TO THE GRAPE OR OTHER
56 FRUIT JUICE OR WINE;

1 (J) SHALL CAUSE THE FRUIT TO FERMENT;

2 (K) SHALL RACK, FILTER AND BOTTLE THE WINE;

3 (L) SHALL NOT ACCEPT ANY UNAUTHORIZED ASSISTANCE FROM THE HOME WINE
4 MAKERS CENTER, OR FROM ANY EMPLOYEE OR AGENT THEREOF; AND

5 (M) SHALL READ AND SIGN A STATEMENT THAT HE OR SHE UNDERSTANDS AND
6 AGREES TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION.

7 4. NO HOME WINE MAKERS CENTER, NOR ANY EMPLOYEE OR AGENT THEREOF,
8 SHALL ASSIST ANY CUSTOMER IN THE PRODUCTION OF WINE, EXCEPT AS FOLLOWS:

9 (A) THE FURNISHING, SELLING OR RENTING OF SPACE, SUPPLIES AND EQUIP-
10 MENT, INGREDIENTS, FRUIT, AND BOTTLING SUPPLIES;

11 (B) THE PROVISION OF ADVICE AND TECHNICAL SERVICES TO CUSTOMERS AS
12 PROVIDED PURSUANT TO FEDERAL LAW, RULES AND REGULATIONS;

13 (C) THE MOVING OF CONTAINERS OF WINE BETWEEN STORAGE AREAS;

14 (D) THE PROVISION, MAINTENANCE, CLEANING AND REPAIR OF WINE MAKING
15 EQUIPMENT, SUCH AS PRESSES, PUMPS, FILTERS, BOTTLING EQUIPMENT AND OTHER
16 EQUIPMENT;

17 (E) THE PROVISION, RENTAL OR SALE OF STORAGE VESSELS, INCLUDING, BUT
18 NOT LIMITED TO, GLASS CARBOYS, WOODEN BARRELS OR OTHER STORAGE CONTAIN-
19 ERS FOR WINE FERMENTATION AND STORAGE;

20 (F) THE PROVISION OF A CLIMATE AND TEMPERATURE CONTROLLED SPACE FOR
21 WINE FERMENTATION AND STORAGE;

22 (G) THE DISPOSAL OF GRAPE PRESSINGS AND OTHER WASTES; AND

23 (H) THE PROVISION OF QUALITY CONTROL SERVICES, SUCH AS LABORATORY
24 ANALYSIS AND TASTING OF WINE FOR QUALITY CONTROL PURPOSES IN THE PRES-
25 ENCE OF THE HOME WINE MAKER.

26 5. NO HOME WINE MAKERS CENTER SHALL ALLOW, MAINTAIN OR STORE ANY
27 CONTAINER OF WINE IN EXCESS OF ONE HUNDRED GALLONS.

28 6. THE AGGREGATE PRODUCTION OF ALL INDIVIDUALS OR HOUSEHOLDS MAKING
29 WINE AT A HOME WINE MAKERS CENTER PURSUANT TO A HOME WINE MAKERS LICENSE
30 SHALL NOT EXCEED TEN THOUSAND GALLONS PER YEAR. PROVIDED, THAT SUCH
31 AGGREGATE PRODUCTION LIMIT SHALL NOT BE OFFSET BY WINES PRODUCED AT SUCH
32 FACILITY UNDER A WINERY, FARM WINERY OR MICRO-WINERY LICENSE.

33 7. THE LOCATION OF A FREE STANDING HOME WINE MAKERS CENTER MAY BE ON A
34 FARM OR OTHER PREMISES THAT IS NOT ASSOCIATED WITH A WINERY, FARM WINERY
35 OR MICRO-WINERY.

36 8. (A) A PERSON OR ENTITY LICENSED PURSUANT TO THE ALCOHOLIC BEVERAGE
37 CONTROL LAW MAY ALSO BE LICENSED AS A HOME WINE MAKERS CENTER ON THE
38 SAME OR ADJACENT PREMISES OF A WINERY, FARM WINERY OR MICRO-WINERY, IF
39 SUCH PERSON OR ENTITY IS THE HOLDER OF:

40 (I) A WINERY LICENSE, PURSUANT TO SECTION SEVENTY-SIX OF THE ALCOHOLIC
41 BEVERAGE CONTROL LAW;

42 (II) A FARM WINERY LICENSE, PURSUANT TO SECTION SEVENTY-SIX-A OF THE
43 ALCOHOLIC BEVERAGE CONTROL LAW; OR

44 (III) A MICRO-WINERY LICENSE, PURSUANT TO SECTION SEVENTY-SIX-F OF THE
45 ALCOHOLIC BEVERAGE CONTROL LAW.

46 (B) NO WINERY, FARM WINERY OR MICRO-WINERY AUTHORIZED TO OPERATE A
47 HOME WINE MAKERS CENTER PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION
48 SHALL BE ISSUED A LICENSE PURSUANT TO THIS ARTICLE, UNLESS THE STATE
49 LIQUOR AUTHORITY GRANTS A WRITTEN CONSENT LETTER THERETO. THE STATE
50 LIQUOR AUTHORITY, IN GRANTING ITS CONSENT, SHALL DETERMINE WHETHER THE
51 APPLICANT COMPLIES OR WILL COMPLY WITH THE PROVISIONS OF FEDERAL LAW AND
52 THE RULES AND REGULATIONS OF THE FEDERAL ALCOHOL AND TOBACCO TAX AND
53 TRADE BUREAU RELATING TO HOME WINE MAKERS CENTERS. IF THE WINERY, FARM
54 WINERY OR MICRO-WINERY APPLYING FOR CONSENT COMPLIES WITH SUCH FEDERAL
55 LAW, RULES AND REGULATIONS THE STATE LIQUOR AUTHORITY SHALL GRANT ITS
56 WRITTEN CONSENT FOR THE OPERATION OF A HOME WINE MAKERS CENTER. SUCH

1 AUTHORITY SHALL NOT ESTABLISH ANY ADDITIONAL REQUIREMENT FOR THE GRANT-
2 ING OF ITS WRITTEN CONSENT.

3 (C) THE OPERATIONS OF A HOME WINE MAKERS CENTER OPERATED BY ANY
4 WINERY, FARM WINERY OR MICRO-WINERY SHALL BE SEGREGATED FROM THE PORTION
5 OF SUCH WINERY, FARM WINERY OR MICRO-WINERY IN WHICH WINE SUBJECT TO THE
6 PROVISIONS OF THE ALCOHOLIC BEVERAGE CONTROL LAW IS FERMENTED, PROC-
7 ESSED, BOTTLED, STORED, SHIPPED AND SOLD. PROVIDED, HOWEVER, THAT A
8 WINERY, FARM WINERY OR MICRO-WINERY MAY SHARE ITS WINE MAKING EQUIPMENT
9 WITH A LICENSED HOME WINE MAKERS CENTER AS LONG AS ALL HOME MADE WINES
10 PRODUCED BY SUCH EQUIPMENT IS SEGREGATED FROM SUCH PORTION OF THE PREM-
11 ISES IN WHICH A WINERY, FARM WINERY OR MICRO-WINERY IS LOCATED.

12 9. FOR THE PURPOSES OF THIS SECTION, "FRUIT" SHALL MEAN GRAPES, OTHER
13 FRUITS, FRUIT JUICES AND OTHER AGRICULTURAL PRODUCTS INCLUDING, BUT NOT
14 LIMITED TO, HONEY, FLOWERS AND VEGETABLES.

15 S 3. Section 76 of the alcoholic beverage control law is amended by
16 adding a new subdivision 8 to read as follows:

17 8. NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A LICENSED WINERY
18 SHALL BE AUTHORIZED TO OPERATE A HOME WINE MAKERS CENTER PURSUANT TO
19 ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW. PROVIDED, FURTHER,
20 THAT A WINERY MAY OPERATE SUCH A CENTER UPON THE SAME OR ADJACENT PREM-
21 ISES AS THE WINERY IS OPERATED SUBJECT TO THE PROVISIONS OF PARAGRAPH
22 (C) OF SUBDIVISION EIGHT OF SECTION TWO HUNDRED FIFTY-ONE-Z-THIRTEEN OF
23 THE AGRICULTURE AND MARKETS LAW AND FEDERAL LAW.

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

26 8. NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A LICENSED FARM
27 WINERY SHALL BE AUTHORIZED TO OPERATE A HOME WINE MAKERS CENTER PURSUANT
28 TO ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW. PROVIDED,
29 FURTHER, THAT A FARM WINERY MAY OPERATE SUCH A CENTER UPON THE SAME OR
30 ADJACENT PREMISES AS THE FARM WINERY IS OPERATED SUBJECT TO THE
31 PROVISIONS OF PARAGRAPH (C) OF SUBDIVISION EIGHT OF SECTION TWO HUNDRED
32 FIFTY-ONE-Z-THIRTEEN OF THE AGRICULTURE AND MARKETS LAW AND FEDERAL LAW.

33 S 5. Section 76-f of the alcoholic beverage control law is amended by
34 adding a new subdivision 9 to read as follows:

35 9. NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A LICENSED
36 MICRO-WINERY SHALL BE AUTHORIZED TO OPERATE A HOME WINE MAKERS CENTER
37 PURSUANT TO ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW.
38 PROVIDED, FURTHER, THAT A MICRO-WINERY MAY OPERATE SUCH A CENTER UPON
39 THE SAME OR ADJACENT PREMISES AS THE MICRO-WINERY IS OPERATED SUBJECT TO
40 THE PROVISIONS OF PARAGRAPH (C) OF SUBDIVISION EIGHT OF SECTION TWO
41 HUNDRED FIFTY-ONE-Z-THIRTEEN OF THE AGRICULTURE AND MARKETS LAW AND
42 FEDERAL LAW.

43 S 6. Section 83 of the alcoholic beverage control law is amended by
44 adding a new subdivision 8 to read as follows:

45 8. THE FEE FOR A WRITTEN CONSENT LETTER AUTHORIZING A WINERY, FARM
46 WINERY OR MICRO-WINERY TO OPERATE A HOME WINE MAKERS CENTER PURSUANT TO
47 ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW SHALL BE ONE HUNDRED
48 TWENTY-FIVE DOLLARS.

49 S 7. This act shall take effect on the first of January next succeed-
50 ing the date on which it shall have become a law; provided, that, effec-
51 tive immediately any rules, regulations or other actions necessary to
52 implement the provisions of this act on its effective date are author-
53 ized and directed to be completed on or before such date.