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

6884--A

2011-2012 Regular Sessions

I N A S S E M B L Y

April 5, 2011

Introduced by M. of A. SCHIMMINGER -- read once and referred to the Committee on Economic Development -- recommitted to the Committee on Economic Development in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the alcoholic beverage control law, in relation to the shipment of alcoholic beverages into the state

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

Section 1. The alcoholic beverage control law is amended by adding a new section 101-c to read as follows:

S 101-C. PRIMARY SOURCE OF SUPPLY. 1. (A) FOR THE PURPOSES OF THIS SECTION, THE "PRIMARY SOURCE OF SUPPLY" OF AN ALCOHOLIC BEVERAGE BRAND SHALL MEAN THE BRAND OWNER OR AN AGENT SPECIFICALLY AUTHORIZED TO MAKE SALES TO A NEW YORK LICENSED WHOLESALER BY THE BRAND OWNER AND, IN THE CASE OF CLASSIFIED GROWTH WINES, SHALL INCLUDE THE NEGOCIANT OR NEGOCIANTS OF SUCH BRAND.

(B) "CLASSIFIED GROWTH WINES" SHALL MEAN THOSE STILL WINES PRODUCED IN THE BORDEAUX REGION OF FRANCE AND CERTIFIED BY THE APPELLATION D'ORIGINE CONTROLEE AND UNDER THE AUSPICES OF THE INSTITUT NATIONAL DES APPELLATIONS D'ORIGINE AND AS ORIGINALLY CLASSIFIED IN THE YEAR EIGHTEEN HUNDRED FIFTY-FIVE.

2. THE PRIMARY SOURCE OF SUPPLY SHALL FILE WITH THE AUTHORITY A LIST IDENTIFYING THE LICENSED WHOLESALERS DESIGNATED TO SELL ITS ALCOHOLIC BEVERAGE BRAND OR BRANDS TO LICENSED RETAILERS UNLESS THE PRIMARY SOURCE OF SUPPLY MADE A FILING UNDER PARAGRAPH (A) OF SUBDIVISION FOUR-A OF SECTION ONE HUNDRED ONE-B OF THIS ARTICLE LISTING THE NAMES, ADDRESSES AND LICENSE NUMBERS OF SAID WHOLESALERS. THE PRIMARY SOURCE OF SUPPLY MAY AMEND THE LIST.

3. THE PRIMARY SOURCE OF SUPPLY SHALL NOT BE REQUIRED TO RESTRICT THE SALE OF ANY ALCOHOLIC BEVERAGE BRAND TO CERTAIN WHOLESALERS.

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

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4. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO PRIVATELY HELD WINE OR LIQUOR BEING SOLD PURSUANT TO SECTIONS EIGHTY-FIVE OR NINETY-NINE-G OF THIS CHAPTER OR TO WINE SOLD PURSUANT TO A DIRECT INTERSTATE WINE SHIPPING LICENSE ISSUED UNDER SECTION SEVENTY-NINE-C OF THIS CHAPTER OR AN ALCOHOLIC BEVERAGE SOLD PURSUANT TO A PERMIT UNDER SECTION NINETY-NINE-B OF THIS CHAPTER. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO BEER, CIDER, OR WINE PRODUCTS, AS DEFINED IN SECTION THREE OF THIS CHAPTER.

5. NO LICENSED WHOLESALER SHALL SELL AN ALCOHOLIC BEVERAGE BRAND TO A LICENSED RETAILER UNLESS SUCH LICENSED WHOLESALER HAS PURCHASED THE ALCOHOLIC BEVERAGE BRAND FROM THE PRIMARY SOURCE OF SUPPLY AND SUCH LICENSED WHOLESALER IS DESIGNATED BY THE PRIMARY SOURCE OF SUPPLY TO SELL ITS ALCOHOLIC BEVERAGE BRAND OR BRANDS UNDER THIS SECTION.

6. NO LICENSED RETAILER SHALL PURCHASE AN ALCOHOLIC BEVERAGE BRAND OTHER THAN FROM A LICENSED WHOLESALER OR LICENSED MANUFACTURER. ANYTHING HEREIN CONTAINED TO THE CONTRARY NOTWITHSTANDING, LICENSEES UNDER SECTIONS SEVENTY-SIX, SEVENTY-SIX-A, SEVENTY-SIX-B, SEVENTY-SIX-C, SEVENTY-SIX-E, AND PARAGRAPHS TWO-A AND TWO-C OF SECTION SIXTY-ONE OF THIS CHAPTER SHALL CONTINUE TO HAVE PRIVILEGES OF PURCHASE AND SALE.

7. ANYTHING IN THIS SECTION TO THE CONTRARY NOTWITHSTANDING, UPON A WRITTEN FINDING SHOWING THAT SPECIAL CIRCUMSTANCES AND GOOD CAUSE EXIST NOT INCONSISTENT WITH THE PURPOSE OF THIS CHAPTER AND UPON PRIOR WRITTEN NOTICE TO THE PRIMARY SOURCE OF SUPPLY AND/OR THE NAME OF THE COMPANY IDENTIFIED ON THE LABEL OF AN ALCOHOLIC BEVERAGE CONTAINER PURSUANT TO 27 C.F.R. SS 4.35, 5.36 AND 7.25, THE AUTHORITY MAY GIVE WRITTEN PERMISSION FOR A LICENSEE TO PURCHASE AND SELL A BRAND OF ALCOHOLIC BEVERAGE WITHOUT THE AUTHORIZATION REQUIRED UNDER THIS SECTION. THE AUTHORITY'S WRITTEN AUTHORITY SHALL BE FOR A SPECIFIC PERIOD OF TIME NOT TO EXCEED THE TIME NECESSARY TO MEET THE SPECIAL CIRCUMSTANCES AND GOOD CAUSE FOUND TO EXIST.

8. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT, CREATE OR EXTEND, DIRECTLY OR INDIRECTLY, ANY CONTRACT OR ARRANGEMENT, WRITTEN OR UNWRITTEN, FOR THE DISTRIBUTION OF AN ALCOHOLIC BEVERAGE BRAND BY A LICENSED WHOLESALER.

9. THE AUTHORITY IS HEREBY AUTHORIZED TO DO SUCH ACTS, PRESCRIBE SUCH FORMS AND MAKE SUCH RULES, REGULATIONS AND ORDERS AS IT MAY DEEM NECESSARY OR PROPER TO EFFECTUATE THE PROVISIONS OF THIS SECTION.

10. IF ANY PART OF THIS SECTION IS HELD TO BE UNCONSTITUTIONAL OR OTHERWISE CONTRARY TO LAW, THEN IT SHALL BE SEVERED AND THE REMAINING PORTIONS SHALL REMAIN IN FULL FORCE AND EFFECT.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.