

9387

I N A S S E M B L Y

February 24, 2012

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

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 ASSEM-
BLY, 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-F 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-F, 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,
23 provided that the civil penalty against the holder of a wholesale
24 license issued pursuant to section fifty-three of this chapter shall not
25 exceed the sum of ten thousand dollars where that licensee violates
26 provisions of this chapter during the course of the sale of beer at
27 retail to a person for consumption at home, and the sum of one hundred

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

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

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

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

41 5. ROADSIDE FARM MARKET LICENSE.

42 S 4. Section 76-a of the alcoholic beverage control law is amended by
43 adding a new subdivision 10 to read as follows:

44 10. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A FARM WINERY
45 LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO SELL WINES MANUFACTURED OR
46 PRODUCED BY SUCH LICENSEE TO A ROADSIDE FARM MARKET PURSUANT TO SECTION
47 SEVENTY-SIX-F OF THIS ARTICLE.

48 S 5. Section 76-c of the alcoholic beverage control law is amended by
49 adding a new subdivision 3 to read as follows:

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

54 S 6. The alcoholic beverage control law is amended by adding a new
55 section 76-f to read as follows:

1 S 76-F. ROADSIDE FARM MARKET LICENSE. 1. ANY PERSON OWNING OR OPERAT-
2 ING A ROADSIDE FARM MARKET MAY APPLY TO THE LIQUOR AUTHORITY FOR A ROAD-
3 SIDE FARM MARKET LICENSE TO SELL WINE PURSUANT TO THIS SECTION. SUCH
4 APPLICATION SHALL BE IN WRITING AND VERIFIED, AND SHALL CONTAIN SUCH
5 INFORMATION AS THE LIQUOR AUTHORITY SHALL REQUIRE AND SHALL BE ACCOMPA-
6 NIED BY A CHECK OR DRAFT FOR THE AMOUNT REQUIRED BY THIS ARTICLE FOR
7 SUCH LICENSE. IF THE LIQUOR AUTHORITY SHALL GRANT THE APPLICATION, IT
8 SHALL ISSUE A LICENSE IN SUCH FORM AS SHALL BE DETERMINED BY ITS RULES,
9 AND THE LICENSE SHALL REMAIN IN EFFECT FOR ONE YEAR.

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

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

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

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

45 S 7. Section 83 of the alcoholic beverage control law is amended by
46 adding a new subdivision 8 to read as follows:

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

49 S 8. Subdivision 1 of section 99-d of the alcoholic beverage control
50 law, as amended by chapter 213 of the laws of 2010, is amended to read
51 as follows:

52 1. Before any substantial alteration to a licensed premises may be
53 undertaken by or on the behalf of any licensee except a micro-winery
54 [or], a farm winery OR A ROADSIDE FARM MARKET, the licensee shall make
55 an application to the liquor authority for permission to effect such
56 alteration. A substantial alteration shall include any enlargement or

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

32 S 9. This act shall take effect on the one hundred eightieth day after
33 it shall have become a law; provided that any and all rules and regu-
34 lations and any other measures necessary to implement any provision of
35 this act on its effective date may be promulgated and taken, respective-
36 ly, on or before the effective date of such provision.