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

7204

I N S E N A T E

May 2, 2012

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the alcoholic beverage control law, in relation to the shipment of wine to residents

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

Section 1. Subdivision 3 of section 79-c of the alcoholic beverage control law, as amended by chapter 221 of the laws of 2011, is amended to read as follows:

3. Licensee's responsibilities. The holder of an out-of-state direct shipper's license shall:

(a) ship no more than thirty-six cases (no more than nine liters each case) per year of wine produced by such license holder directly to a New York state resident who is at least twenty-one years of age, for such resident's personal use and not for resale;

(b) ensure that the outside of each shipping container used to ship wine directly to a New York resident is conspicuously labeled with the words: "CONTAINS WINE - SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY - NOT FOR RESALE," or with other language specifically approved by the New York state liquor authority. THE LABEL REQUIRED PURSUANT TO THIS PARAGRAPH MUST BE APPLIED REGARDLESS OF THE MODE OF PURCHASE AND INCLUDES, BUT IS NOT LIMITED TO, PURCHASES MADE BY TELEPHONE, BY MAIL, BY CATALOG, IN PERSON AT AN ESTABLISHMENT THAT SELLS WINE OR THROUGH AN ONLINE PURCHASE;

(c) maintain records in such manner and form as the authority may direct, showing the total amount of wine shipped into the state each calendar year; the names and addresses of the purchasers to whom the wine was shipped, the date purchased, the name of the common carrier used to deliver the wine, and the quantity and value of each shipment;

(d) in connection with the acceptance of an order for a delivery of wine to a New York resident, require the prospective customer to represent that he or she has attained the age of twenty-one years or more and

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

LBD14314-06-2

that the wine being purchased will not be resold or introduced into commerce;

(e) require common carriers to:

(i) require a recipient, at the delivery address, upon delivery, to demonstrate that the recipient is at least twenty-one years of age by providing a valid form of photographic identification authorized by section sixty-five-b of this chapter. THE IDENTIFICATION REQUIRED BY THIS SUBPARAGRAPH MUST BE PRESENTED TO THE COMMON CARRIER REGARDLESS OF THE MODE OF PURCHASE AND INCLUDES, BUT IS NOT LIMITED TO, PURCHASES OF THE WINE BY TELEPHONE, BY MAIL, BY CATALOG, IN PERSON AT AN ESTABLISHMENT THAT SELLS WINE OR THROUGH AN ONLINE PURCHASE;

(ii) require a recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the authority. THE SIGNATURE REQUIRED BY THIS SUBPARAGRAPH MUST BE ACQUIRED BY THE COMMON CARRIER REGARDLESS OF THE MODE OF PURCHASE AND INCLUDES, BUT IS NOT LIMITED TO, PURCHASES OF THE WINE BY TELEPHONE, BY MAIL, BY CATALOG, IN PERSON AT AN ESTABLISHMENT THAT SELLS WINE OR THROUGH AN ONLINE PURCHASE; and

(iii) refuse delivery when the proposed recipient appears to be under twenty-one years of age and refuses to present valid identification as required by subparagraph (i) of this paragraph, REGARDLESS OF THE MODE OF PURCHASE AND INCLUDES, BUT IS NOT LIMITED TO, PURCHASES OF THE WINE BY TELEPHONE, BY MAIL, BY CATALOG, IN PERSON AT AN ESTABLISHMENT THAT SELLS WINE OR THROUGH AN ONLINE PURCHASE;

(f) file returns with and pay to the New York state department of taxation and finance all state and local sales taxes and excise taxes due on sales into this state in accordance with the applicable provisions of the tax law relating to such taxes, the amount of such taxes to be determined on the basis that each sale in this state was at the location where delivery is made;

(g) keep all records required by this section for three years and provide copies of such records, upon written request, to the authority or the department of taxation and finance;

(h) permit the authority or the department of taxation and finance to perform an audit of such out-of-state shipper upon request;

(i) execute a written consent to the jurisdiction of this state, its agencies and instrumentalities and the courts of this state concerning enforcement of this section and any related laws, rules, or regulations, including tax laws, rules or regulations; and

(j) prior to obtaining an out-of-state direct shipper's license, obtain a certificate of authority pursuant to section eleven hundred thirty-four of the tax law and a registration as a distributor pursuant to sections four hundred twenty-one and four hundred twenty-two of the tax law.

S 2. Subdivision 1 of section 79-d of the alcoholic beverage control law, as amended by chapter 184 of the laws of 2005, paragraph (c) as amended by chapter 221 of the laws of 2011, is amended to read as follows:

1. Licensee's shipping responsibilities. Notwithstanding any provision to the contrary contained in this chapter, any above referred licensee shall:

(a) in the case of a farm winery licensee or a winery licensee, ship no more than thirty-six cases (no more than nine liters) per year of wine produced by such license holder directly to a New York state resident who is at least twenty-one years of age, for such resident's personal use and not for resale;

(b) ensure that the outside of each shipping container used to ship wine directly to a New York state resident is conspicuously labeled with the words: "CONTAINS WINE - SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY," or with other language specifically approved by the New York state liquor authority. THE LABEL REQUIRED PURSUANT TO THIS PARAGRAPH MUST BE APPLIED REGARDLESS OF THE MODE OF PURCHASE AND INCLUDES, BUT IS NOT LIMITED TO, PURCHASES MADE BY TELEPHONE, BY MAIL, BY CATALOG, IN PERSON AT AN ESTABLISHMENT THAT SELLS WINE OR THROUGH AN ONLINE PURCHASE;

(c) maintain records in such manner and form as the authority may direct showing the total amount of wine shipped in the state each calendar year, the names and addresses of the purchasers to whom the wine was shipped, the date purchased, the name of the common carrier used to deliver the wine, and the quantity and value of each shipment. Such records shall be kept for three years and, upon written request, be provided to the authority or the department of taxation and finance;

(d) in connection with the acceptance of an order for a delivery of wine to a New York resident, require the prospective customer to represent that he or she has attained the age of twenty-one years or more and that the wine being purchased will not be resold or introduced into commerce; and

(e) require common carriers to:

(i) require a recipient, at the delivery address, upon delivery, to demonstrate that the recipient is at least twenty-one years of age by providing a valid form of photographic identification authorized by section sixty-five-b of this chapter. THE IDENTIFICATION REQUIRED BY THIS SUBPARAGRAPH MUST BE PRESENTED TO THE COMMON CARRIER REGARDLESS OF THE MODE OF PURCHASE AND INCLUDES, BUT IS NOT LIMITED TO, PURCHASES OF THE WINE BY TELEPHONE, BY MAIL, BY CATALOG, IN PERSON AT AN ESTABLISHMENT THAT SELLS WINE OR THROUGH AN ONLINE PURCHASE;

(ii) require a recipient to sign an electronic or paper form or other acknowledgment of receipt as approved by the authority. THE SIGNATURE REQUIRED BY THIS SUBPARAGRAPH MUST BE ACQUIRED BY THE COMMON CARRIER REGARDLESS OF THE MODE OF PURCHASE AND INCLUDES, BUT IS NOT LIMITED TO, PURCHASES OF THE WINE BY TELEPHONE, BY MAIL, BY CATALOG, IN PERSON AT AN ESTABLISHMENT THAT SELLS WINE OR THROUGH AN ONLINE PURCHASE; and

(iii) refuse delivery when the proposed recipient appears to be under twenty-one years of age and refuses to present valid identification as required by paragraph (a) of this subdivision, REGARDLESS OF THE MODE OF PURCHASE AND INCLUDES, BUT IS NOT LIMITED TO, PURCHASES OF THE WINE BY TELEPHONE, BY MAIL, BY CATALOG, IN PERSON AT AN ESTABLISHMENT THAT SELLS WINE OR THROUGH AN ONLINE PURCHASE.

S 3. Subdivision 1 of section 102 of the alcoholic beverage control law is amended by adding a new paragraph (c-1) to read as follows:

(C-1) ANY COMMON CARRIER OR OTHER PERSON BRINGING OR CARRYING INTO THE STATE PACKAGES THAT MAY CONTAIN ALCOHOLIC BEVERAGES SHALL VERIFY THE CONTENTS OF SUCH PACKAGES AND IF SUCH PACKAGES CONTAIN ALCOHOLIC BEVERAGES, SUCH PERSON OR COMMON CARRIER SHALL ADHERE TO THE SHIPPING REQUIREMENTS SET FORTH IN SUBDIVISION THREE OF SECTION SEVENTY-NINE-C AND SUBDIVISION ONE OF SECTION SEVENTY-NINE-D OF THIS CHAPTER OR BE GUILTY OF A MISDEMEANOR AS PROVIDED FOR IN SUBDIVISIONS THREE AND FIVE OF SECTION ONE HUNDRED THIRTY OF THIS ARTICLE.

S 4. This act shall take effect on the sixtieth day after it shall have become a law.