

1512

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. MAGEE, MONTESANO -- Multi-Sponsored by -- M. of  
A. CLARK -- 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 ASSEMBLY,  
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 CHAPTER.  
5     TER.  
6     S 2. Subdivision 3 of section 17 of the alcoholic beverage control  
7     law, as amended by chapter 118 of the laws of 2012, is amended to read  
8     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, and seventy-eight of this chapter, provided that the

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

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

41 S 3. Subdivision 3 of section 17 of the alcoholic beverage control  
42 law, as separately amended by section 1 of part L of chapter 62 and  
43 chapter 522 of the laws of 2003, is amended to read as follows:

44 3. To revoke, cancel or suspend for cause any license or permit issued  
45 under this chapter and/or to impose a civil penalty for cause against  
46 any holder of a license or permit issued pursuant to this chapter. Any  
47 civil penalty so imposed shall not exceed the sum of ten thousand  
48 dollars as against the holder of any retail permit issued pursuant to  
49 sections ninety-five, ninety-seven, ninety-eight, ninety-nine-d, and  
50 paragraph f of subdivision one of section ninety-nine-b of this chapter,  
51 and as against the holder of any retail license issued pursuant to  
52 sections fifty-two, fifty-three-a, fifty-four, fifty-four-a, fifty-five,  
53 fifty-five-a, sixty-three, sixty-four, sixty-four-a, sixty-four-b,  
54 sixty-four-c, SEVENTY-SIX-F, seventy-nine, eighty-one, and eighty-one-a  
55 of this chapter, and the sum of thirty thousand dollars as against the  
56 holder of a license issued pursuant to sections fifty-three, seventy-

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

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

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

47 5. ROADSIDE FARM MARKET LICENSE.

48 S 5. Section 76-a of the alcoholic beverage control law is amended by  
49 adding a new subdivision 10 to read as follows:

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

54 S 6. Section 76-c of the alcoholic beverage control law is amended by  
55 adding a new subdivision 3 to read as follows:

1 3. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A SPECIAL  
2 WINERY LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO SELL WINES MANUFAC-  
3 TURED OR PRODUCED BY SUCH LICENSEE TO A ROADSIDE FARM MARKET PURSUANT TO  
4 SECTION SEVENTY-SIX-F OF THIS ARTICLE.

5 S 7. The alcoholic beverage control law is amended by adding a new  
6 section 76-f to read as follows:

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

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

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

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

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

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

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

1 S 9. Subdivision 1 of section 99-d of the alcoholic beverage control  
2 law, as amended by chapter 213 of the laws of 2010, is amended to read  
3 as follows:

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

40 S 10. This act shall take effect on the one hundred eightieth day  
41 after it shall have become a law; provided that the amendments to subdi-  
42 vision 3 of section 17 of the alcoholic beverage control law, made by  
43 section two of this act, shall not affect the expiration and reversion  
44 of such subdivision and shall expire and be deemed repealed therewith,  
45 when upon such date section three of this act shall take effect; and  
46 provided, further, that any and all rules and regulations and any other  
47 measures necessary to implement any provision of this act on its effec-  
48 tive date may be promulgated and taken, respectively, on or before the  
49 effective date of such provision.