STATE OF NEW YORK

5437--A

2017-2018 Regular Sessions

IN SENATE

March 28, 2017

Introduced by Sen. MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- 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 establishing a primary American source of supply for liquor and wine sold in this state

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 35 of section 3 of the alcoholic beverage control law is amended, and two new subdivisions 23-a and 23-b are added to read as follows:

23-a. "Primary American source of supply" means (a) a manufacturer of liquor or wine if such liquor or wine can be secured directly from the manufacturer by a distributor in the United States; or (b) if the liquor or wine cannot be secured directly from the liquor or wine's manufacturer by a distributor in the United States, another manufacturer or bottler, or its legally authorized exclusive agent, from whom the liquor or wine can be secured by a wholesaler or distributor in the United States and is the source closest to the liquor or wine's manufacturer in the channel of commerce.

23-b. "Private collection" as applied to wine or privately held wines means bottled wine that (a) was purchased at retail or auction, (b) was owned by a non-licensed person for at least two years with proof of purchase, and (c) is at least five years old if it is white or rose wine, and at least ten years old if it is red wine, port or sparkling wine.

35. "Wholesaler" means any person who sells at wholesale any beverage for the sale of which a license is required under the provisions of this

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

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chapter. An "authorized wholesaler" is a wholesaler authorized by a primary American source of supply to carry a specific brand of liquor or wine in this state.

§ 2. The alcoholic beverage control law is amended by adding a new section 116-a to read as follows:

§ 116-a. Primary American source of supply. 1. The manufacturer of a liquor or wine at the time the same became suitable for wholesale or retail sale shall designate the primary American source of supply thereof and such primary American source of supply shall file a registration application with the authority on forms provided by the authority. Each brand of such liquor or wine shall be individually listed on such registration. A wholesaler shall designate one primary American source of supply for each brand of liquor or wine the wholesaler sells in this state.

2. The authority shall register only one primary American source of supply for any single brand of liquor or wine. The manufacturer or bottler may register a new primary American source of supply and cancel the registration of the former primary American source of supply by filing a new authorization with the authority not less than forty days before the new authorization becomes effective.

3. A primary American source of supply shall file with the authority the names of authorized wholesalers for each brand of liquor or wine sold in this state. If the primary American source of supply is a wholesaler, it may list itself and other wholesalers as an authorized wholesaler of the brand. The filing of a wholesale price posting, in accordance with section one hundred one-b of this article, listing the names of the authorized wholesalers shall be deemed compliance with this requirement. The authorized wholesalers may be changed at any time at or prior to the time a wholesale price posting is to be filed pursuant to such section. If the primary American source of supply does not list any authorized wholesalers, any licensed wholesaler may purchase the liquor or wine from the primary American source of supply and sell the brand in this state.

4. Except as set forth in subdivisions seven and eight of this section or shipments made directly to a resident of New York for personal use pursuant to sections seventy-nine-c and seventy-nine-d of this chapter, no one shall ship or cause to be shipped into this state, nor shall any wholesaler or retailer in this state receive, any liquor or wine unless the primary American source of supply for such liquor or wine has filed an application for registration as the primary American source of supply, that application has been approved by the authority, and the brand is purchased from the primary American source of supply or an authorized wholesaler.

5. Except as set forth in subdivisions seven and eight of this section, a wholesaler in this state shall not purchase, receive or be in possession of any liquor or wine unless the wholesaler obtained the liquor or wine directly from a registered primary American source of supply, a designated representative of the primary American source of supply if the primary American source of supply is outside this state, or an authorized wholesaler.

6. Nothing in this section shall be deemed to prohibit subsequent intrastate sales, transfer, and invoicing of a brand of liquor or wine between authorized wholesalers of that brand.

7. The authority shall allow a wholesaler to bring liquor or wine into this state if the wholesaler certifies to the satisfaction of the authority that the brand of liquor or wine comes from a manufacturer or

bottler that cannot, or has not and will not appoint a primary American source of supply.

8. This section shall not apply to (a) a brand of liquor or wine owned exclusively by one retailer and sold at retail within this state exclusively by such retailer; or (b) a product purchased by a wholesaler or retailer in accordance with sections eighty-five and ninety-nine-g of this chapter consistent with the rules, regulations, orders and advisories established by the authority.

9. The authority is authorized to perform such acts, prescribe forms, and make rules, regulations, orders and advisories as it may deem necessary or proper to fully effectuate the provisions of this section including, but not limited to, establishing a format for recording the primary American source of supply and its designees.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.