

# STATE OF NEW YORK

5756--D

2019-2020 Regular Sessions

## IN ASSEMBLY

February 14, 2019

Introduced by M. of A. WOERNER, D'URSO, ARROYO, LAVINE, BUTTENSCHON, GRIFFIN -- Multi-Sponsored by -- M. of A. WALSH -- read once and referred to the Committee on Economic Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 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:

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

4 23-a. "Primary American source of supply" means (a) a manufacturer of  
5 liquor or wine or its exclusive agent in the United States if such  
6 liquor or wine can be secured directly from the manufacturer or its  
7 exclusive agent by a wholesaler in the United States; or (b) if the  
8 liquor or wine cannot be secured directly from such manufacturer or its  
9 exclusive agent, the source closest to such manufacturer in the United  
10 States when the brand enters the stream of commerce shall be the primary  
11 American source of supply in the United States.

12 23-b. "Private collection" means (a) bottled wine that (i) was  
13 purchased at retail or auction, (ii) is at minimum a vintage ten years  
14 old at the time of sale, or if sparkling wine, is a minimum vintage of  
15 fifteen years old at the time of sale, and (iii) was owned by a non-li-

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

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1 censed person with proof of purchase, or (iv) is not price posted in New  
2 York at the time of sale; or (b) a bottled liquor that is either (i) not  
3 price posted in New York at the time of sale, (ii) is no longer in  
4 production, or (iii) is contained in its original ceramic, lead, crystal  
5 or similar collectible specialty container which is no longer being  
6 offered for sale, or (iv) was bottled ten years prior to the date of  
7 sale.

8 23-c. "Negociant" means third-party wine merchants based in France who  
9 purchase stock directly from the producer with the authorization to mass  
10 distribute around the world on a non-exclusive basis to any authorized  
11 wholesaler to allow the resale of the wines into as many markets as  
12 possible.

13 35. "Wholesaler" means any person who sells at wholesale any beverage  
14 for the sale of which a license is required under the provisions of this  
15 chapter. An "authorized wholesaler" is a wholesaler authorized by a  
16 primary American source of supply to carry a specific brand of liquor or  
17 wine in this state.

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

20 § 116-a. Primary American source of supply. 1. (a) The primary Ameri-  
21 can source of supply at the time the wine or liquor becomes suitable for  
22 wholesale or retail sale in New York or a wholesaler licensed under this  
23 chapter who has been appointed its exclusive agent for such purpose,  
24 shall file a form provided by the authority. Each brand of such liquor  
25 or wine shall be individually listed on such registration.

26 (b) For wines purchased through a negociant, the primary American  
27 source of supply is any wholesaler licensed under this chapter who shall  
28 file a form provided by the authority.

29 2. With the exception of wines purchased through a negociant, the  
30 authority shall allow only one primary American source of supply to  
31 register any brand of liquor or wine. The primary American source of  
32 supply may change the exclusive agent acting and cancel any authority  
33 granted to a prior agent by filing a new authorization with the authori-  
34 ty not less than forty days before the new authorization becomes effec-  
35 tive.

36 3. A primary American source of supply or its exclusive agent shall  
37 file with the authority the names of each authorized wholesaler permit-  
38 ted to sell each brand of liquor or wine sold in this state. If the  
39 primary American source of supply is a wholesaler, it may list itself  
40 and other wholesalers as a wholesaler authorized to sell the brand. The  
41 filing of a wholesale price posting, in accordance with section one  
42 hundred one-b of this article, listing the names of the authorized  
43 wholesalers shall be deemed compliance with this requirement. The  
44 authorized wholesalers may be changed at any time at or prior to the  
45 time a wholesale price posting is to be filed pursuant to such section.  
46 If the primary American source of supply does not list any authorized  
47 wholesalers, any licensed wholesaler may purchase the liquor or wine  
48 from the primary American source of supply and sell the brand in this  
49 state.

50 4. Except as set forth in subdivisions seven and eight of this section  
51 or shipments of wine or liquor from a private collection made directly  
52 to a resident of New York, no one shall ship or cause to be shipped into  
53 this state, nor shall any wholesaler or retailer in this state receive,  
54 any liquor or wine unless the primary American source of supply for such  
55 liquor or wine (i) has registered such brand with the authority, (ii)  
56 such registration has been approved by the authority, and (iii) the

1 brand is purchased from the primary American source of supply or an  
2 authorized wholesaler.

3 5. Except as set forth in subdivisions seven and eight of this  
4 section, a wholesaler in this state shall not purchase, receive or be in  
5 possession of any liquor or wine unless the wholesaler obtained the  
6 liquor or wine directly from (i) a registered primary American source of  
7 supply, (ii) a designated representative of the primary American source  
8 of supply if the primary American source of supply is outside this  
9 state, (iii) an authorized wholesaler or (iv) a negociant.

10 6. Nothing in this section shall be deemed to prohibit subsequent  
11 intrastate sales, transfer, and invoicing of a brand of liquor or wine  
12 between authorized wholesalers of that brand subsequent to the purchase  
13 in this state from the primary American source of supply.

14 7. The authority shall allow a wholesaler to bring liquor or wine into  
15 this state if the wholesaler certifies to the satisfaction of the  
16 authority that the brand of liquor or wine comes from a manufacturer or  
17 bottler that cannot, or has not and will not appoint a primary American  
18 source of supply.

19 8. This section shall not apply to (i) a brand of liquor or wine owned  
20 exclusively by one retailer and sold at retail within this state exclu-  
21 sively by such retailer; or (ii) a product purchased by a wholesaler or  
22 retailer from a private collection in accordance with sections eighty-  
23 five and ninety-nine-g of this chapter consistent with the rules, regu-  
24 lations, orders and advisories established by the authority.

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

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