

# STATE OF NEW YORK

3881--A

2019-2020 Regular Sessions

## IN SENATE

February 20, 2019

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- 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 two new subdivisions 23-a and 23-b are added  
3 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, and (iii) was owned by a non-licensed person  
15 with proof of purchase, or (iv) is not price posted in New York at the  
16 time of sale; or (b) a bottled liquor that is either (i) not price post-  
17 ed in New York at the time of sale, (ii) is no longer in production, or  
18 (iii) is contained in its original ceramic, lead, crystal or similar  
19 collectible specialty container which is no longer being offered for  
20 sale, or (iv) was bottled ten years prior to the date of sale.

21 35. "Wholesaler" means any person who sells at wholesale any beverage  
22 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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1 chapter. An "authorized wholesaler" is a wholesaler authorized by a  
2 primary American source of supply to carry a specific brand of liquor or  
3 wine in this state.

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

6 § 116-a. Primary American source of supply. 1. The primary American  
7 source of supply at the time the wine or liquor becomes suitable for  
8 wholesale or retail sale in New York or a wholesaler licensed under this  
9 chapter who has been appointed its exclusive agent for such purpose,  
10 shall file a registration application with the authority on forms  
11 provided by the authority. Each brand of such liquor or wine shall be  
12 individually listed on such registration.

13 2. The authority shall allow only one primary American source of  
14 supply to register any brand of liquor or wine. The primary American  
15 source of supply may change the exclusive agent acting and cancel any  
16 authority granted to a prior agent by filing a new authorization with  
17 the authority not less than forty days before the new authorization  
18 becomes effective.

19 3. A primary American source of supply or its exclusive agent shall  
20 file with the authority the names of each authorized wholesaler permit-  
21 ted to sell each brand of liquor or wine sold in this state. If the  
22 primary American source of supply is a wholesaler, it may list itself  
23 and other wholesalers as a wholesaler authorized to sell the brand. The  
24 filing of a wholesale price posting, in accordance with section one  
25 hundred one-b of this article, listing the names of the authorized  
26 wholesalers shall be deemed compliance with this requirement. The  
27 authorized wholesalers may be changed at any time at or prior to the  
28 time a wholesale price posting is to be filed pursuant to such section.  
29 If the primary American source of supply does not list any authorized  
30 wholesalers, any licensed wholesaler may purchase the liquor or wine  
31 from the primary American source of supply and sell the brand in this  
32 state.

33 4. Except as set forth in subdivisions seven and eight of this section  
34 or shipments of wine or liquor from a private collection made directly  
35 to a resident of New York, no one shall ship or cause to be shipped into  
36 this state, nor shall any wholesaler or retailer in this state receive,  
37 any liquor or wine unless the primary American source of supply for such  
38 liquor or wine (i) has registered such brand with the authority, (ii)  
39 such registration has been approved by the authority, and (iii) the  
40 brand is purchased from the primary American source of supply or an  
41 authorized wholesaler.

42 5. Except as set forth in subdivisions seven and eight of this  
43 section, a wholesaler in this state shall not purchase, receive or be in  
44 possession of any liquor or wine unless the wholesaler obtained the  
45 liquor or wine directly from (i) a registered primary American source of  
46 supply, (ii) a designated representative of the primary American source  
47 of supply if the primary American source of supply is outside this  
48 state, or (iii) an authorized wholesaler.

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

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

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

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

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

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