

# STATE OF NEW YORK

3881--B

2019-2020 Regular Sessions

## IN SENATE

February 20, 2019

Introduced by Sens. KAPLAN, GAUGHRAN -- 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 -- 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, 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-  
16 censed person with proof of purchase, or (iv) is not price posted in New  
17 York at the time of sale; or (b) a bottled liquor that is either (i) not  
18 price posted in New York at the time of sale, (ii) is no longer in  
19 production, or (iii) is contained in its original ceramic, lead, crystal  
20 or similar collectible specialty container which is no longer being

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

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1 offered for sale, or (iv) was bottled ten years prior to the date of  
2 sale.

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

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

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

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

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

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

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

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

1     7. The authority shall allow a wholesaler to bring liquor or wine into  
2 this state if the wholesaler certifies to the satisfaction of the  
3 authority that the brand of liquor or wine comes from a manufacturer or  
4 bottler that cannot, or has not and will not appoint a primary American  
5 source of supply.

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

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

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