STATE OF NEW YORK

703

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. KAPLAN, GAUGHRAN, HARCKHAM, MAY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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 three new subdivisions 23-a, 23-b and 23-c are added to read as follows:

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

23-b. "Private collection" means (a) bottled wine that (i) was purchased at retail or auction, (ii) is at minimum a vintage ten years old at the time of sale, or if sparkling wine, is a minimum vintage of fifteen years old at the time of sale, and (iii) was owned by a non-licensed person with proof of purchase, or (iv) is not price posted in New York at the time of sale; or (b) a bottled liquor that is either (i) not price posted in New York at the time of sale, (ii) is no longer in production, or (iii) is contained in its original ceramic, lead, crystal or similar collectible specialty container which is no longer being offered for sale, or (iv) was bottled ten years prior to the date of sale.

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

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

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

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

2. With the exception of wines purchased through a negociant, the authority shall allow only one primary American source of supply to register any brand of liquor or wine. The primary American source of supply may change the exclusive agent acting and cancel any authority granted to a prior agent 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 or its exclusive agent shall file with the authority the names of each authorized wholesaler permitted to sell 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 a wholesaler authorized to sell 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 of wine or liquor from a private collection made directly to a resident of New York, 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 (i) has registered such brand with the authority, (ii) such registration has been approved by the authority, and (iii) 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 (i) a registered primary American source of supply, (ii) a designated representative of the primary American source

of supply if the primary American source of supply is outside this state, (iii) an authorized wholesaler or (iv) a negociant.

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 subsequent to the purchase in this state from the primary American source of supply.

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 (i) a brand of liquor or wine owned exclusively by one retailer and sold at retail within this state exclusively by such retailer; or (ii) a product purchased by a wholesaler or retailer from a private collection 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. 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 to be made and completed on or before such effective date.