

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:

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-
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
21 offered for sale, or (iv) was bottled ten years prior to the date of
22 sale.

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

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1 23-c. "Negociant" means third-party wine merchants based in France who
2 purchase stock directly from the producer with the authorization to mass
3 distribute around the world on a non-exclusive basis to any authorized
4 wholesaler to allow the resale of the wines into as many markets as
5 possible.

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

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

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

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

22 2. With the exception of wines purchased through a negociant, the
23 authority shall allow only one primary American source of supply to
24 register any brand of liquor or wine. The primary American source of
25 supply may change the exclusive agent acting and cancel any authority
26 granted to a prior agent by filing a new authorization with the authori-
27 ty not less than forty days before the new authorization becomes effec-
28 tive.

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

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

52 5. Except as set forth in subdivisions seven and eight of this
53 section, a wholesaler in this state shall not purchase, receive or be in
54 possession of any liquor or wine unless the wholesaler obtained the
55 liquor or wine directly from (i) a registered primary American source of
56 supply, (ii) a designated representative of the primary American source

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

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

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

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

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

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