

# STATE OF NEW YORK

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3567--A

2023-2024 Regular Sessions

## IN SENATE

February 1, 2023

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Introduced by Sen. SKOUFIS -- 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 permitting the sale or promotional gifting of certain complementary products for wine and spirits

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (a) of subdivision 1 of section 104 of the alco-  
2 holic beverage control law, as amended by chapter 2 of the laws of 2013,  
3 is amended to read as follows:  
4 (a) No wholesaler shall be engaged in any other business on the prem-  
5 ises to be licensed; except that nothing contained in this chapter  
6 shall: (1) prohibit a beer wholesaler from (i) acquiring, storing or  
7 selling non-alcoholic snack foods, as defined in paragraph (b) of this  
8 subdivision, (ii) manufacturing, bottling, storing, or selling non-alco-  
9 holic carbonated beverages, (iii) manufacturing, storing or selling  
10 non-alcoholic non-carbonated soft drinks, mineral waters, spring waters,  
11 drinking water, non-taxable malt or cereal beverages, juice drinks,  
12 fruit or vegetable juices, ice, liquid beverage mixes and dry or frozen  
13 beverage mixes, (iv) acquiring, storing or selling wine products, (v)  
14 the sale of promotional items on such premises, or (vi) the sale of  
15 tobacco products at retail by wholesalers who are licensed to sell beer  
16 and other products at retail; (2) prohibit a wholesaler authorized to  
17 sell wine from manufacturing, acquiring or selling wine merchandise, as  
18 defined in paragraph (d) of this subdivision; (3) prohibit a licensed  
19 winery or licensed farm winery from engaging in the business of a wine  
20 wholesaler for New York state labeled wines produced by any licensed  
21 winery or licensed farm winery or prohibit such wine wholesaler from  
22 exercising any of its rights pursuant to sections seventy-six and seven-

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

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ty-six-a of this chapter provided that the operation of such beer and wine wholesalers business shall be subject to such rules and regulations as the liquor authority may prescribe; (4) prohibit a beer wholesaler who is authorized to sell beer at retail from selling at retail: (i) candy, chewing gum and cough drops; (ii) non-refrigerated salsa; (iii) cigarette lighters, lighter fluid, matches and ashtrays; (iv) barbecue and picnic-related products and supplies, which shall include, but not be limited to, charcoal, grills, propane gas, plastic and paper cups, paper or plastic tablecloths and coolers; (v) beer making and brewing supplies and publications, which shall include, but not be limited to, books, magazines, equipment and ingredients; (vi) steins, mugs and other glassware appropriate for the consumption of beer, malt beverages and wine products; (vii) items typically used to serve beer and malt beverages including, but not limited to, taps, kegerators, koozies and beer socks; (viii) lemons, limes and oranges, provided that no more than two dozen of each shall be displayed at any one time; (ix) rock salt, ice and snow melting compounds, snow shovels; windshield washer solvent; firewood; beach umbrellas; sunglasses and sun block; and (x) prepaid telephone cards; ~~[ex]~~ (5) prohibit the installation and operation of a single automated teller machine in the premises of a beer wholesaler who is authorized to sell beer at retail; or (6) prohibit a liquor wholesaler from transporting or selling gifts or promotional items associated with wine or spirit products as provided for in subdivision four of section sixty-three of this chapter. For the purposes of this subdivision, "automated teller machine" means a device which is linked to the accounts and records of a banking institution and which enables consumers to carry out banking transactions, including but not limited to, account transfers, deposits, cash withdrawals, balance inquiries and loan payments.

§ 2. Paragraph (a) of subdivision 3 of section 101-b of the alcoholic beverage control law, as amended by section 1 of part E of chapter 56 of the laws of 2006, is amended to read as follows:

(a) No brand of liquor or wine shall be sold to or purchased by a wholesaler, irrespective of the place of sale or delivery, unless a schedule, as provided by this section, is transmitted to and received by the liquor authority, and is then in effect. Such schedule shall be transmitted to the authority in such form, manner, medium and format as the authority may direct; shall be deemed duly verified by the person submitting such schedule upon its transmission to the authority; and shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on the label, the number of bottles contained in each case, the bottle and case price to wholesalers, the net bottle and case price paid by the seller, which prices, in each instance, shall be individual for each item and not in "combination" with any other item, the discounts for quantity, if any, and the discounts for time of payment, if any. Such brand of liquor or wine shall not be sold to wholesalers except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. Such schedule shall be transmitted by (1) the owner of such brand, or (2) a wholesaler selling such brand and who is designated as agent for the purpose of filing such schedule if the owner of the brand is not licensed by the authority, or (3) with the approval of the authority, by a wholesaler, in the event that the owner of the brand is unable to transmit a schedule or designate an agent for such purpose. As used in this subdivision the term

1 "item" shall be deemed to include a sealed, pre-wrapped package consist-  
2 ing of a sealed container or containers of liquor, wine or wine product  
3 and other merchandise reasonably used in connection with the prepara-  
4 tion, storage, promotion, gifting, or service of liquor, wine or wine  
5 products provided that such other merchandise shall not be potable or  
6 edible.

7 For the purposes of this section, gift and promotional items  
8 shall only include those items that are complimentary and directly asso-  
9 ciated with the sale of wine or distilled spirits they are gifting or  
10 promoting and shall mean: (i) items that are de minimis in value, but in  
11 no instance shall merchandise be valued at more than fifteen dollars in  
12 total; (ii) items that are imprinted with the wine or spirits brand logo  
13 on the gift or promotional item; and (iii) items that are included as  
14 part of a manufactured pre-sealed package with the wine or distilled  
15 spirit that is being gifted or promoted. Further, for the purposes of  
16 this section, gift or promotional items shall not include any food,  
17 non-alcoholic beverage, or other drink or food mix, nor shall these  
18 items be offered for sale to the general public as individual items.

19 § 3. Subdivision 4 of section 63 of the alcoholic beverage control  
20 law, as amended by section 3 of part H of chapter 58 of the laws of  
21 2019, is amended to read as follows:

22 4. No licensee under this section shall be engaged in any other busi-  
23 ness on the licensed premises. The sale of lottery tickets, when duly  
24 authorized and lawfully conducted, the sale of reusable bags as defined  
25 in section 27-2801 of the environmental conservation law, the sale of  
26 corkscrews or the sale of ice or the sale of publications, including  
27 prerecorded video and/or audio cassette tapes, or educational seminars,  
28 designed to help educate consumers in their knowledge and appreciation  
29 of alcoholic beverages, as defined in section three of this chapter and  
30 allowed pursuant to their license, or the sale of non-carbonated, non-  
31 flavored mineral waters, spring waters and drinking waters or the sale  
32 of glasses designed for the consumption of wine or spirits, racks  
33 designed for the storage of wine, and devices designed to minimize  
34 oxidation in bottles of wine which have been uncorked, or the sale of  
35 gift bags, gift boxes, associated gift or promotional items, or wrap-  
36 ping, for alcoholic beverages purchased at the licensed premises shall  
37 not constitute engaging in another business within the meaning of this  
38 subdivision. Any fee obtained from the sale of an educational seminar  
39 shall not be considered as a fee for any tasting that may be offered  
40 during an educational seminar, provided that such tastings are available  
41 to persons who have not paid to attend the seminar and all tastings are  
42 conducted in accordance with section sixty-three-a of this article. For  
43 the purposes of this section, gift or promotional items shall only  
44 include those items that are complimentary and directly associated with  
45 the sale of wine or distilled spirits they are promoting and shall mean:  
46 (i) items that are de minimis in value, but in no instance shall  
47 merchandise be valued at more than fifteen dollars in total; (ii) items  
48 that are imprinted with the wine or spirits brand logo on the gift or  
49 promotional item; and (iii) items that are included as part of a manu-  
50 factured pre-sealed package with the wine or distilled spirit that is  
51 being gifted or promoted. Further, for the purposes of this section,  
52 promotional items shall not include any food, non-alcoholic beverage, or  
53 other drink or food mix, nor shall these items be offered for sale to  
54 the general public as individual items.

55 § 4. This act shall take effect on the ninetieth day after it shall  
have become a law.