

# STATE OF NEW YORK

8068

## IN SENATE

January 5, 2024

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 liquor

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 a chapter of the laws of 2023  
3 amending the alcoholic beverage control law relating to permitting the  
4 sale or promotional gifting of certain complementary products for wine  
5 and spirits, as proposed in legislative bills numbers S. 3567-A and A.  
6 6050-A, is amended to read as follows:  
7 (a) No wholesaler shall be engaged in any other business on the prem-  
8 ises to be licensed; except that nothing contained in this chapter  
9 shall: (1) prohibit a beer wholesaler from (i) acquiring, storing or  
10 selling non-alcoholic snack foods, as defined in paragraph (b) of this  
11 subdivision, (ii) manufacturing, bottling, storing, or selling non-alco-  
12 holic carbonated beverages, (iii) manufacturing, storing or selling  
13 non-alcoholic non-carbonated soft drinks, mineral waters, spring waters,  
14 drinking water, non-taxable malt or cereal beverages, juice drinks,  
15 fruit or vegetable juices, ice, liquid beverage mixes and dry or frozen  
16 beverage mixes, (iv) acquiring, storing or selling wine products, (v)  
17 the sale of promotional items on such premises, or (vi) the sale of  
18 tobacco products at retail by wholesalers who are licensed to sell beer  
19 and other products at retail; (2) prohibit a wholesaler authorized to  
20 sell wine from manufacturing, acquiring or selling wine merchandise, as  
21 defined in paragraph (d) of this subdivision; (3) prohibit a licensed  
22 winery or licensed farm winery from engaging in the business of a wine  
23 wholesaler for New York state labeled wines produced by any licensed  
24 winery or licensed farm winery or prohibit such wine wholesaler from  
25 exercising any of its rights pursuant to sections seventy-six and seven-  
26 ty-six-a of this chapter provided that the operation of such beer and  
27 wine wholesalers business shall be subject to such rules and regulations

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

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

28 § 2. Paragraph (a) of subdivision 3 of section 101-b of the alcoholic  
29 beverage control law, as amended by a chapter of the laws of 2023 amending  
30 the alcoholic beverage control law relating to permitting the sale  
31 or promotional gifting of certain complementary products for wine and  
32 spirits, as proposed in legislative bills numbers S. 3567-A and A.  
33 6050-A, is amended and a new paragraph (e) is added to read as follows:

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

1 nate an agent for such purpose. [~~As used in this subdivision the term~~  
2 ~~"item" shall be deemed to include a sealed, pre-wrapped package consist-~~  
3 ~~ing of a sealed container or containers of liquor, wine or wine product~~  
4 ~~and other merchandise reasonably used in connection with the prepara-~~  
5 ~~tion, storage, promotion, gifting, or service of liquor, wine or wine~~  
6 ~~products provided that such other merchandise shall not be potable or~~  
7 ~~edible. 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 (e) As used in this subdivision the term "item" shall be deemed to  
20 include a sealed, pre-wrapped package consisting of a sealed container  
21 or containers of liquor, wine or wine products and other merchandise  
22 reasonably used in connection with the preparation, storage, promotion,  
23 gifting, or service of liquor, wine or wine products provided that such  
24 other merchandise shall not be potable or edible; provided however that  
25 any such wine, liquor or wine products sealed or pre-wrapped in combina-  
26 tion with other items shall also be available individually for sale. For  
27 the purposes of this section, gift and promotional items shall only  
28 include those items that are complementary and directly associated with  
29 the sale of wine or liquor they are gifting or promoting and shall mean:  
30 (1) items that are de minimis in value, but in no instance shall  
31 merchandise be valued at more than fifteen dollars in total; (2) items  
32 that are imprinted with the wine or liquor brand logo on the gift or  
33 promotional item; and (3) items that are included as part of a manufac-  
34 tured pre-sealed package with the wine or liquor that is being gifted or  
35 promoted. Further, for the purposes of this section, gift or promotional  
36 items shall not include any food, non-alcoholic beverage, or other drink  
37 or food mix, nor shall these items be offered for sale to the general  
38 public as individual items.

39 § 3. Subdivision 4 of section 63 of the alcoholic beverage control  
40 law, as amended by a chapter of the laws of 2023 amending the alcoholic  
41 beverage control law relating to permitting the sale or promotional  
42 gifting of certain complementary products for wine and spirits, as  
43 proposed in legislative bills numbers S. 3567-A and A. 6050-A, is  
44 amended to read as follows:

45 4. No licensee under this section shall be engaged in any other busi-  
46 ness on the licensed premises. The sale of lottery tickets, when duly  
47 authorized and lawfully conducted, the sale of reusable bags as defined  
48 in section 27-2801 of the environmental conservation law, the sale of  
49 corkscrews or the sale of ice or the sale of publications, including  
50 prerecorded video and/or audio cassette tapes, or educational seminars,  
51 designed to help educate consumers in their knowledge and appreciation  
52 of alcoholic beverages, as defined in section three of this chapter and  
53 allowed pursuant to their license, or the sale of non-carbonated, non-  
54 flavored mineral waters, spring waters and drinking waters or the sale  
55 of glasses designed for the consumption of wine or [~~spirits~~] liquor,  
56 racks designed for the storage of wine, and devices designed to minimize

1 oxidation in bottles of wine which have been uncorked, or the sale of  
2 gift bags, gift boxes, associated gift or promotional items, or wrap-  
3 ping, for alcoholic beverages purchased at the licensed premises shall  
4 not constitute engaging in another business within the meaning of this  
5 subdivision. Any fee obtained from the sale of an educational seminar  
6 shall not be considered as a fee for any tasting that may be offered  
7 during an educational seminar, provided that such tastings are available  
8 to persons who have not paid to attend the seminar and all tastings are  
9 conducted in accordance with section sixty-three-a of this article. For  
10 the purposes of this section, gift or promotional items shall only  
11 include those items that are complimentary and directly associated with  
12 the sale of wine or [~~distilled spirits~~] liquor they are promoting and  
13 shall mean: (i) items that are de minimis in value, but in no instance  
14 shall merchandise be valued at more than fifteen dollars in total; (ii)  
15 items that are imprinted with the wine or [~~spirits~~] liquor brand logo on  
16 the gift or promotional item; and (iii) items that are included as part  
17 of a manufactured pre-sealed package with the wine or [~~distilled spir-~~  
18 ~~it~~] liquor that is being gifted or promoted. Further, for the purposes  
19 of this section, promotional items shall not include any food, non-alco-  
20 holic beverage, or other drink or food mix, nor shall these items be  
21 offered for sale to the general public as individual items.

22 § 4. This act shall take effect on the same date and in the same  
23 manner as a chapter of the laws of 2023 amending the alcoholic beverage  
24 control law relating to permitting the sale or promotional gifting of  
25 certain complementary products for wine and spirits, as proposed in  
26 legislative bills numbers S. 3567-A and A. 6050-A, takes effect.