

# STATE OF NEW YORK

3331

2023-2024 Regular Sessions

## IN SENATE

January 30, 2023

Introduced by Sen. MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the alcoholic beverage control law, in relation to providing for certain limited direct interstate shipments of wine for off-premises consumption

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

1 Section 1. The section heading of section 79-c of the alcoholic beverage control law, as amended by chapter 184 of the laws of 2005, is  
2 amended to read as follows:

3 Direct interstate wine shipments by licensees to manufacturing wine.

4 § 2. Section 79-d of the alcoholic beverage control law is renumbered  
5 section 79-e and a new section 79-d is added to read as follows:

6 § 79-d. Direct interstate wine shipments by retail licensees to sell  
7 wine for off-premises consumption. 1. Authorization. Notwithstanding any  
8 provision of law, rule or regulation to the contrary, any holder of a  
9 license to sell wine for off-premises consumption in any other state who  
10 obtains an out-of-state direct shipper's license, as provided in this  
11 section, may ship no more than thirty-six cases (no more than nine  
12 liters each case) of wine per year directly to a resident of New York  
13 who is at least twenty-one years of age, for such resident's personal  
14 use and not for resale. No person shall place an order for shipment of  
15 wine unless they are twenty-one years of age or older. Any common carrier  
16 with a permit issued pursuant to this chapter to whom such out-of-  
17 state shipper's license is presented is authorized to make delivery of  
18 shipments provided for hereunder in this state in compliance with this  
19 section.

20 2. License. Before sending any shipment hereunder to a resident in  
21 this state, the out-of-state shipper shall first obtain a license from  
22 the authority under procedures prescribed by rules and regulations of  
23

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

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1 the authority and after providing the authority with a true copy of its  
2 current license to sell wine for off-premises consumption in the appli-  
3 cant's state of domicile after payment of an annual fee of one hundred  
4 twenty-five dollars.

5 3. Licensee's responsibilities. The holder of an out-of-state direct  
6 shipper's license shall:

7 (a) ship no more than thirty-six cases (no more than nine liters each  
8 case) per year of wine to a New York state resident who is at least  
9 twenty-one years of age, for such resident's personal use and not for  
10 resale;

11 (b) ensure that the outside of each shipping container used to ship  
12 wine directly to a New York resident is conspicuously labeled with the  
13 words: "CONTAINS WINE - SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED  
14 FOR DELIVERY - NOT FOR RESALE", or with other language specifically  
15 approved by the New York state liquor authority;

16 (c) maintain records in such manner and form as the authority may  
17 direct, showing the total amount of wine shipped into the state each  
18 calendar year; the names and addresses of the purchasers to whom the  
19 wine was shipped, the date purchased, the name of the common carrier  
20 used to deliver the wine, and the quantity and value of each shipment;

21 (d) in connection with the acceptance of an order for a delivery of  
22 wine to a New York resident, require the prospective customer to repre-  
23 sent that he or she has attained the age of twenty-one years or more and  
24 that the wine being purchased will not be resold or introduced into  
25 commerce;

26 (e) require common carriers to:

27 (i) require a recipient, at the delivery address, upon delivery, to  
28 demonstrate that the recipient is at least twenty-one years of age by  
29 providing a valid form of photographic identification authorized by  
30 section sixty-five-b of this chapter;

31 (ii) require a recipient to sign an electronic or paper form or other  
32 acknowledgement of receipt as approved by the authority; and

33 (iii) refuse delivery when the proposed recipient appears to be under  
34 twenty-one years of age and refuses to present valid identification as  
35 required by subparagraph (i) of this paragraph;

36 (f) file returns with and pay to the New York state department of  
37 taxation and finance all state and local sales taxes due on sales into  
38 this state in accordance with the applicable provisions of the tax law  
39 relating to such taxes, the amount of such taxes to be determined on the  
40 basis that each sale in this state was at the location where delivery is  
41 made;

42 (g) keep all records required by this section for three years and  
43 provide copies of such records, upon written request, to the authority  
44 or the department of taxation and finance;

45 (h) permit the authority or the department of taxation and finance to  
46 perform an audit of such out-of-state shipper upon request;

47 (i) execute a written consent to the jurisdiction of this state, its  
48 agencies and instrumentalities and the courts of this state concerning  
49 enforcement of this section and any related laws, rules, or regulations,  
50 including tax laws, rules or regulations; and

51 (j) prior to obtaining an out-of-state direct shipper's license,  
52 obtain a certificate of authority pursuant to section eleven hundred  
53 thirty-four of the tax law and a registration as a distributor pursuant  
54 to sections four hundred twenty-one and four hundred twenty-two of the  
55 tax law.

1 4. Situs. Delivery of a shipment in this state by the holder of an  
2 out-of-state direct shipper's license shall be deemed to constitute a  
3 sale in this state at the place of delivery and shall be subject to all  
4 sales taxes levied pursuant to articles twenty-eight and twenty-nine of  
5 the tax law.

6 5. Renewal. The out-of-state shipper may annually renew its license  
7 with the authority by paying a one hundred twenty-five dollar renewal  
8 fee, providing the authority with a true copy of its current license in  
9 such other state to sell wine for off-premises consumption and by  
10 complying with such other procedures as are prescribed by rule of the  
11 authority.

12 6. Rules and regulations. The authority and the department of taxation  
13 and finance may promulgate rules and regulations to effectuate the  
14 purposes of this section.

15 7. Enforcement. The authority may enforce the requirements of this  
16 section including the requirements imposed on the common carrier, by  
17 administrative proceedings to suspend or revoke an out-of-state ship-  
18 per's license and the authority may accept payment of an administrative  
19 fine in lieu of suspension, such payments to be determined by rules or  
20 regulations promulgated by the authority.

21 8. Violations. In any action brought under this section, the common  
22 carrier and the licensee shall only be held liable for their independent  
23 acts.

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