STATE OF NEW YORK

S. 6786 A. 6989

2023-2024 Regular Sessions

SENATE - ASSEMBLY

May 10, 2023

IN SENATE -- Introduced by Sens. KRUEGER, COONEY, FELDER, HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

IN ASSEMBLY -- Introduced by M. of A. HUNTER, HYNDMAN, WILLIAMS, CUNNINGHAM -- read once and referred to the Committee on Economic Development

AN ACT to amend the alcoholic beverage control law, in relation to establishing supermarket wine licenses

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

Section 1. Section 3 of the alcoholic beverage control law is amended by adding a new subdivision 13-a to read as follows:

13-a. "Supermarket" shall mean any retail establishment (a) whose primary business is the sale of foodstuffs for off-premises consumption, and (b) which is at least five thousand square feet, in total floor area. There shall be a rebuttable presumption that a retail establishment is primarily engaged in the sale of foodstuffs where such sales of foodstuffs constitutes greater than sixty-five percent of the total revenue of such establishment in the twelve months preceding submission of an application.

§ 2. Subdivisions 3 and 5 of section 75 of the alcoholic beverage control law, subdivision 3 as amended by section 4 of part K of chapter 60 of the laws of 2004, subdivision 5 as added by chapter 355 of the laws of 2013, are amended and a new subdivision 6 is added to read as follows:

3. Seven day license to sell wine at retail for consumption off the premises subject to paragraph (a) of subdivision fourteen of section one hundred five of this chapter[~~.~~]*;*

5. Roadside farm market license[~~.~~]*;*

6. Supermarket wine license.

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

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§ 3. The alcoholic beverage control law is amended by adding a new section 79-e to read as follows:

§ 79-e. Supermarket wine license. 1. Any person may apply to the authority for a license to sell from the licensed premises wine in sealed containers for consumption off such premises.

2. No such license shall be issued, however, to any person for any premises other than a supermarket, as defined in subdivision thirteen-a of section three of this chapter.

3. (a) Notwithstanding any other provision of this chapter, except for good cause shown, the authority shall issue a supermarket license to the holder of a license to sell beer at retail for consumption off the premises pursuant to section fifty-four of this chapter, or beer and wine products at retail for consumption off the premises pursuant to section fifty-four-a of this chapter, at the request of such licensee and thereafter renewed or transferred, which authorizes the holder thereof to sell beer at retail to a person for consumption in his or her home.

(b) For the purposes of this section, the premises of the supermarket wine licensee shall be the same as the premises licensed under section fifty-four or fifty-four-a of this chapter.

(c) Notwithstanding any other provisions of this chapter, any license issued pursuant to this section shall run concurrently with the underlying license under section fifty-four or fifty-four-a of this chapter, and shall be deemed expired at such time as the underlying license expires.

(d) Any person licensed to sell wine pursuant to this article shall be permitted to conduct wine tastings. Wine tastings which are conducted under the auspices of an official agent of a farm winery, winery, wholesaler, or importer and where such agent is physically present at all times during the conduct of the tasting, then, in that event, any liability stemming from a right of action resulting from a wine tasting as authorized pursuant to this section, and in accordance with the provisions of sections 11-100 and 11-101 of the general obligations law, shall accrue to the farm winery, winery, wholesaler, or importer.

4. Such application shall be in such form and shall contain such information as shall be required by the rules of the authority and shall be accompanied by a check or draft in the amount required by this article for such license.

5. Notwithstanding any other provisions of this chapter, any person receiving a license pursuant to this section shall not be subject to the provisions of subdivision two, three or four of section seventy-nine of this article.

6. Notwithstanding any other provisions of this chapter, any person receiving a license pursuant to this section shall not be subject to the provisions of subdivision two, paragraph (a) of subdivision three, and subdivision fourteen of section one hundred five of this chapter.

7. (a) A one-time franchise fee shall be paid for by each licensee to the state liquor authority. This franchise fee is hereby imposed at a rate of ten thousand dollars.

(b) No license shall be issued pursuant to this section until the franchise fee or estimated franchise fee required by paragraph (a) of this subdivision has been paid in full.

(c) The franchise fee shall be deposited and disposed of in the same manner as any license fee as provided in section one hundred twenty-five of this chapter.

8. Any person licensed to sell wine at retail for consumption off the premises under section seventy-nine of this article is authorized to

sell wine to persons licensed to sell wine under this article and this section who operate the premises of the supermarket wine licensee.

9. The state liquor authority may make such rules as it deems necessary to carry out the provisions of this section.

§ 4. Section 83 of the alcoholic beverage control law is amended by adding a new subdivision 10 to read as follows:

10. The annual fee for a supermarket wine license pursuant to section seventy-nine-e of this article shall be at a rate of one-half (0.5) percent of sales of wine sold, less the amount from sales of wines sold that were produced in New York state.

§ 5. Subdivision 2-a of section 100 of the alcoholic beverage control law, as amended by chapter 249 of the laws of 2002, is amended to read as follows:

2-a. No retailer shall employ, or permit to be employed, or shall suffer to work, on any premises licensed for retail sale hereunder, any person under the age of eighteen years, as a hostess, waitress, waiter, or in any other capacity where the duties of such person require or permit such person to sell, dispense or handle alcoholic beverages; except that: (1) any person under the age of eighteen years and employed by any person holding a grocery or drug store beer license shall be permitted to handle and deliver beer and wine products for such licensee, (2) any person under the age of eighteen employed as a cashier by a person holding a grocery or drug store beer license shall be permitted to record and receive payment for beer and wine product sales when in the presence of and under the direct supervision of a person eighteen years of age or over, (2-a) any person under the age of eighteen years and employed by a person holding a grocery store or drug store beer license as either a cashier or in any other position to which handling of containers which may have held alcoholic beverages is necessary, shall be permitted to handle the containers if such have been presented for redemption in accordance with the provisions of title ten of article twenty-seven of the environmental conservation law, [~~and~~] (3) any person under the age of eighteen years employed as a dishwasher, busboy, or other such position as to which handling of containers which may have held alcoholic beverages is necessary shall be permitted to do so under the direct supervision of a person of legal age to purchase alcoholic beverages in the state, (4) any person under the age of eighteen years and employed by any person holding a supermarket wine license shall be permitted to handle and deliver wine for such licensee, and (5) any person under the age of eighteen employed as a cashier by a person holding a supermarket wine license shall be permitted to record and receive payment for wine when in the presence of and under the direct supervision of a person eighteen years of age or over.

§ 6. Subdivisions 3-a and 3-b of section 102 of the alcoholic beverage control law, as amended by chapter 458 of the laws of 1993, are amended to read as follows:

3-a. No licensee or permittee shall purchase or agree to purchase any alcoholic beverages from any person within the state who is not duly licensed to sell such alcoholic beverage as the case may be, at the time of such agreement and sale nor give any order for any alcoholic beverage to any individual who is not the holder of a solicitor's permit, except as provided for in section eighty-five [~~or~~], ninety-nine-g, or seventy-nine-e of this chapter.

3-b. No retail licensee shall purchase, agree to purchase or receive any alcoholic beverage except from a person duly licensed within the state by the liquor authority to sell such alcoholic beverage at the

time of such agreement and sale to such retail licensee, except as provided for in section eighty-five [~~or~~], ninety-nine-g**, or seventy-nine-e** of this chapter.

§ 7. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 8. This act shall take effect immediately.