

CHAPTER 210

AN ACT to amend the alcoholic beverage control law, in relation to providing for certain limited direct interstate shipments of wine and repealing provisions of such law relating thereto

Became a law July 12, 2005, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

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

Section 1. The alcoholic beverage control law is amended by adding a new section 79-c to read as follows:

§ 79-c. Direct interstate wine shipments. 1. Authorization. Notwithstanding any provision of law, rule or regulation to the contrary, any holder of a license to manufacture wine in any other state who obtains an out-of-state shipper's license, as provided in this section, may ship wine sold by such license holder directly to a resident of New York who is at least twenty-one years of age, for such resident's personal use and not for resale, provided the state in which such person is so licensed affords lawful means for shipments of wine to be received by a resident thereof who is at least twenty-one years of age, for such resident's personal use and not for resale, from a person licensed in this state as a manufacturer and, provided further, that the state in which such out-of-state winery is located affords to New York state winery and farm winery licensees reciprocal shipping privileges, meaning shipping privileges that are substantially similar to the requirements in this section. No person shall place an order for shipment of wine unless they are twenty-one years of age or older. Any common carrier with a permit issued pursuant to this chapter to whom such out-of-state shipper's license is presented is authorized to make delivery of shipments provided for hereunder in this state in compliance with this section.

2. License. Before sending any shipment hereunder to a resident in this state, the out-of-state shipper shall first obtain a license from the New York state liquor authority under procedures prescribed by rules and regulations of the authority and after providing the authority with a true copy of its current license to manufacture wine in the applicant's state of domicile along with a copy of the applicant's federal basic permit after payment of an annual fee of one hundred twenty-five dollars. Notwithstanding the provisions of section one hundred ten of this chapter, the authority in its discretion, may excuse an out-of-state winery from the submission of such information. Such rules or regulations shall provide for the collection and annual reporting of information by such out-of-state shipper which at a minimum, shall include:

- (a) the name of the purchaser;
- (b) the full mailing address of the purchaser including zip code;
- (c) the name, total quantity, and total price of wine purchased;
- (d) the date purchased;
- (e) the name and address of the transporter; and

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

(f) the signature of the person filing the report.

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

(a) ship wine produced by such license holder directly to a New York state resident who is at least twenty-one years of age, for such resident's personal use and not for resale;

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

(c) report to the authority semi-annually, in such manner and form as the authority may direct, the total amount of wine shipped into the state the preceding calendar year; the names and addresses of the purchasers to whom the wine was shipped, the date purchased, the name of the common carrier used to deliver the wine, and the quantity and value of each shipment;

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

(e) require common carriers to:

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

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

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

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

(g) keep records for three years and permit the authority or the department of taxation and finance to perform an audit of such out-of-state shipper upon request;

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

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

(j) report to the authority, in a method prescribed by the authority, within three business days of receiving an order that is greater than thirty cases or two hundred seventy thousand milliliters of wine, or thirty cases or two hundred seventy thousand milliliters of wine within a thirty day period.

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

5. Taxes. Delivery of a shipment in this state from the holder of an out-of-state shipper's license shall be deemed to constitute a sale in this state at the place of delivery and shall be subject to all sales taxes levied pursuant to section eleven hundred five of the tax law and all excise taxes levied pursuant to section four hundred twenty-four of the tax law.

6. Renewal. The out-of-state shipper may annually renew its license with the authority by paying a one hundred twenty-five dollar renewal fee, providing the authority with a true copy of its current license in such other state as an alcoholic beverage manufacturer and by complying with such other procedures as are prescribed by rule of the authority.

7. Rules and regulations. The authority and the department of taxation and finance may promulgate rules and regulations to effectuate the purposes of this section.

8. Enforcement. The authority may enforce the requirements of this section including the requirements imposed on the common carrier, by administrative proceedings to suspend or revoke an out-of-state shipper's license and the authority may accept payment of an administrative fine in lieu of suspension, such payments to be determined by rules or regulations promulgated by the authority. In addition, the authority or the attorney general of the state of New York shall report violations of this section, where appropriate, to the United States department of treasury, tax and trade bureau, for administrative action to suspend or revoke the federal basic permit.

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

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

§ 79-d. Direct intrastate wine shipments. Any person having applied for and received a license as a winery or farm winery under sections seventy-six and seventy-six-a of this article may ship wine produced by such winery for farm winery directly to a New York state resident who is at least twenty-one years of age, for such resident's personal use and not for resale.

1. Licensee's shipping responsibilities. Notwithstanding any provision to the contrary contained in this chapter, any above referred licensee shall:

(a) in the case of a farm winery licensee or a winery licensee, ship wine produced by such license holder directly to a New York state resident who is at least twenty-one years of age, for such resident's personal use and not for resale;

(b) ensure that the outside of each shipping container used to ship wine directly to a New York state resident is conspicuously labeled with the words: "CONTAINS WINE - SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY," or with other language specifically approved by the New York state liquor authority;

(c) report to the authority annually, in such manner and form as the authority may direct the total amount of wine shipped in the state the preceding calendar year, the names and addresses of the purchasers to

whom the wine was shipped, the date purchased, the name of the common carrier used to deliver the wine, and the quantity and value of each shipment;

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

(e) require common carriers to:

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

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

(iii) refuse delivery when the proposed recipient appears to be under twenty-one years of age and refuses to present valid identification as required by paragraph (a) of this subdivision.

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

§ 3. Paragraphs (a) and (b) of subdivision 1 of section 102 of the alcoholic beverage control law are REPEALED.

§ 4. Paragraph (c) of subdivision 1 of section 102 of the alcoholic beverage control law, as amended by chapter 242 of the laws of 1970, is amended to read as follows:

~~[(e) No]~~ (a) Except as provided in section seventy-nine-c of this chapter, no alcoholic beverages shall be shipped into the state unless the same shall be consigned to a person duly licensed hereunder to traffic in alcoholic beverages. This prohibition shall apply to all shipments of alcoholic beverages into New York state and includes importation or distribution for commercial purposes, for personal use, or otherwise, and irrespective of whether such alcoholic beverages were purchased within or without the state, provided, however, this prohibition shall not apply to any shipment consigned to a New York resident who has personally purchased alcoholic beverages for his personal use while outside the United States for a minimum period of forty-eight consecutive hours and which he has shipped as consignor to himself as consignee. Purchases made outside the United States by persons other than the purchaser himself, regardless whether made as his agent, or by his authorization or on his behalf, are deemed not to have been personally purchased within the meaning of this paragraph.

§ 5. Paragraph (d) of subdivision 1 of section 102 of the alcoholic beverage control law, as amended by chapter 242 of the laws of 1970, is amended to read as follows:

~~[(d) No]~~ (b) Except as provided in section seventy-nine-c of this chapter, no common carrier or other person shall bring or carry into the state any alcoholic beverages, unless the same shall be consigned to a person duly licensed hereunder to traffic in alcoholic beverages, provided, however, that alcoholic beverages may be delivered by a trucking permittee from a steamship or railroad station or terminal to a New York resident who has personally purchased alcoholic beverages for his personal use while outside the United States for a minimum period of forty-eight consecutive hours, and which he has shipped as consignor to himself as consignee, and except as so stated, no trucking permittee shall accept for delivery, deliver or transport from a steamship or

railroad station or terminal any shipment of alcoholic beverages consigned to a non-licensed person having his home or business in New York state. Purchases of alcoholic beverages made outside the United States by persons other than the purchaser himself, regardless whether made as his agent, or by his authorization or on his behalf, are deemed not to have been personally purchased within the meaning of this paragraph.

§ 6. Paragraphs (e) and (f) of subdivision 1 of section 102 of the alcoholic beverage control law are relettered paragraphs (c) and (d).

§ 7. Paragraph (c) of subdivision 1 of section 102 of the alcoholic beverage control law, as amended by chapter 242 of the laws of 1970 and as relettered by section six of this act, is amended to read as follows:

(c) [~~Subdivisions (c) and (d) hereof~~] Paragraphs (a) and (b) of this subdivision shall apply to alcoholic beverages, either in the original package or otherwise, whether intended for commercial or personal use, as well as otherwise, and to foreign, interstate, as well as intrastate, shipments or carriage, irrespective of whether such alcoholic beverages were purchased within or without the state.

§ 8. Section 76 of the alcoholic beverage control law is amended by adding a new subdivision 6 to read as follows:

6. Any winery may sell or deliver such wine produced by the winery to persons outside the state pursuant to the laws of the place of such sale or delivery.

§ 9. Paragraphs (f) and (g) of subdivision 13 of section 17 of the alcoholic beverage control law, paragraph (f) as added and paragraph (g) as relettered by section 2 of part F of chapter 411 of the laws of 1999 and paragraph (g) as added by chapter 403 of the laws of 1999, are amended and a new paragraph (h) is added to read as follows:

(f) recommendations concerning the addition of field enforcement personnel and the ratios of such field enforcement personnel to the total numbers of licensees that in the view of the authority would be appropriate to insure compliance with the law. Such study shall provide a detailed analysis of the costs and projected revenues to be obtained from the addition of such field enforcement personnel; [~~and~~]

(g) such other observations and recommendations concerning the activities of the authority as will improve its effectiveness and efficiency including the utilization of on-line services to provide information on a fee-for-service basis[~~-~~]; ~~and~~

(h) provide information concerning the name, total quantity and total price of wine purchased from New York state and out-of-state wineries and farm wineries, and such other information on and recommendations concerning interstate wine shipment.

§ 10. Severability. If the provisions of this act or if any application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this act which shall be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

§ 11. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are hereby authorized and directed to be made.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A7379C

SPONSOR: Farrell

TITLE OF BILL: An act to amend the alcoholic beverage control law, in relation to providing for certain limited direct interstate shipments of wine and repealing provisions of such law relating thereto

PURPOSE: The U.S. Supreme Court, on May 16, 2006, in a 5-4 decision written by Justice Kennedy, held that the ban on direct shipment of wine from out-of-state wineries is unconstitutional. The court found that the law discriminates against interstate commerce because in-state wineries are treated differently from out-of-state wineries. The court noted that this discrimination is not authorized by the 21st amendment's aim to permit states to regulate alcohol sales. This decision will impact 24 states that ban interstate shipment.

This bill will amend the alcoholic beverage control law to enable wine manufactured by licensed New York wineries and farm wineries to be shipped to individual consumers in other states that have reciprocal direct shipping statutes. To accomplish this, the bill permits licensees in such other states to apply to the New York State Liquor Authority (SLA) for out-of-state shippers' licenses that will permit them to make direct shipments to individual adult consumers in New York subject to appropriate of the state liquor authority and payment of all sales and excise taxes.

controls

Interstate carriers provide the principal means of transportation for wineries and farm wineries sending packages to individual consumers for personal use. Under present law, it is a violation for these carriers to carry such shipments to New York from states that have reciprocal legislation requirements. The proposed legislation is needed to address the Supreme Court ruling so that these shipments can be carried legally into such states.

SUMMARY OF PROVISIONS:

Section 1 Para 1 Direct Shipment Authorizes an out-of-state winery or farm winery, that obtains an out-of-state shipper's license to ship wine directly to a resident of New York or to a resident of another state provided that state allows direct shipment of wine from New York. The wine may only be shipped to a person 21 years or older and is only for personal use and not for resale.

Para. 2 License The out-of-state shipper must obtain a license from the NYS Liquor Authority by providing a copy of their current license and a copy of their federal basic permit, and by paying a fee of \$125. The Licensee must report annually to the SLA concerning the purchaser, quantity and price of wine purchased and name of carrier.

Para. 3 Licensee's Responsibilities The out of state licensee shall: (a) ship to a resident at least 21 years old for personal use; (b) ensure the package is conspicuously marked; (c) report certain information to the SLA annually; (d) require the prospective customer to represent that they are 21 years old and the purchase is for personal use; (e) require the common carrier to obtain proof of age and obtain the signature of the recipient, and refuse delivery if unable to verify proof of age; (f) file returns and pay all sales and excise taxes to the Department of Taxation and Finance; (g) keep records for three (3) years; (h) execute consent to jurisdiction of NY, its agencies and courts; and finally report to the SLA within 3 business days of receipt of an order for 30 cases or more, or 30 cases in a thirty day period.

Para. 4 Situs Delivery of a shipment shall be deemed a sale within NYS and subject to all excise taxes.

Para. 5 Taxes Delivery of a shipment shall be deemed a sale within NYS and subject to all sales taxes.

Para. 6 Renewal Licenses may be renewed for a fee of \$125.

Para. 7 Rules and Regulations The SLA and Department of Taxation and Finance may promulgate rules and regulations to effectuate the purpose of the legislation.

Para. 8 Enforcement The SLA may suspend or revoke a license, or impose fines in lieu of suspension. Further, the SLA or Attorney General shall report violations by out-of-state wineries to the Treasury Department for administrative action concerning the wineries federal basic permit.

Para. 9 Violations The licensee and common carrier are liable for their independent acts.

Section 2 Any licensed winery or farm winery may ship wine directly intrastate, under the same provisions applying to the interstate shipment of wine.

Section 3 Repeals provisions of section 102 of the ABC law that place prohibitions and restrictions on the shipment of wine.

Section 4 Amends section 102 of the ABC law to permit shipment of wine pursuant to section 102.

Section 5 Amends section 102 of the ABC law concerning common carrier's obligations with respect to the shipment of wine.

Section 6 Re-letters paragraphs (c) and (d) of section 102 of the ABC law, to reflect the amendments referenced in section 3, 4 and 5 above.

Section 7 Specifies that paragraph (a) and (b) of section 102 of the ABC law applies to alcoholic beverages irrespective of whether purchased within or without the state.

Section 8 Any winery may sell or deliver wine to persons outside the state pursuant to the laws of the place of sale or delivery.

Section 9 The SLA will report to the Legislature information and recommendations concerning interstate wine shipment.

Section 10 Severability. Any provisions found invalid shall not invalidate any other provisions.

Section 11 The act shall take effect 120 days after it shall become a law; except that any change in law or regulation necessary to effectuate this act shall take effect immediately.

JUSTIFICATION: A recent United States Supreme Court decision held that New York's law banning direct shipment from out of state wineries was discriminatory and therefore unconstitutional. As such, the legislature must act to address the ruling by providing a reasonable and workable process for the direct shipment of wine, both inter-state and intra-state, while safeguarding the state's right to regulate the sale of alcoholic beverages within the state.

This bill provides for New York licensing of out-of-state wineries and farm wineries to permit direct shipping of wine to NY consumers for personal use. The legislation provides for regulation by NYS by requiring an out-of-state shipper's license and subjects the licensee to the jurisdiction of NY's agencies and courts.

Safeguards are provided to ensure that only a NY resident 21 or older may order and sign for a shipment. Proof of age must be presented at the place of delivery and acknowledgement of receipt signed. The common carrier has the responsibility of refusing delivery if the recipient appears to be under 21 and refuses to present identification.

Currently, New York is the third largest grape and wine producer in the nation with over 200 farm and commercial wineries. This legislation will not only continue to strengthen the economic development of this industry in New York and help the state stay competitive in the national market, and enable the New York wine industry to expand their sales to the over 2.7 million visitors to NY's wine country who wish to purchase the state's wine products. The wine and grape industry has been the fastest growing area of our State's tourism and agricultural economies, bringing in over \$1 billion in gross sales annually. Encouraging its growth has immeasurable fiscal potential for New York State.

LEGISLATIVE HISTORY:

1999-00 S.4941/A.7895, referred to Senate Investigation, Taxation & Gov't Operations and Assembly Economic Development Committee;
2001-02 S.3015A, amend & recommit to Assembly, economic development committee and Senate Commerce Economic Development & Small Business.
2003-04, referred to commerce, economic development and small business,

FISCAL IMPLICATIONS: Increased revenues from the collection of State of New York Sales and excise tax.

EFFECTIVE DATE: This act shall take effect on the one hundred twentieth day after it shall have become law; provided, however, that effective immediately, in addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are hereby authorized and directed to be made.

A 7379-C Farrell Same as [S 5731](#) WINNER
Alcoholic Beverage Control Law
TITLE....Authorizes limited direct interstate
shipment of wine; repealer
04/14/05referred to economic development
05/26/05amend (t) and recommit to economic
development
05/26/05print number 7379a
06/01/05reported referred to codes
06/06/05amend and recommit to codes
06/06/05print number 7379b
06/09/05reported referred to ways and means
06/14/05reported referred to rules
06/14/05amend and recommit to rules 7379c
06/21/05reported
06/21/05rules report cal.662
06/21/05ordered to third reading rules cal.662
06/21/05passed assembly
06/21/05delivered to senate
06/21/05REFERRED TO RULES
06/24/05SUBSTITUTED FOR S5731
06/24/053RD READING CAL.1961
06/24/05PASSED SENATE
06/24/05RETURNED TO ASSEMBLY
06/30/05delivered to governor
07/12/05signed chap.210

S5731 WINNER Same as [A 7379-C](#) Farrell
ON FILE: 06/16/05 Alcoholic Beverage Control
Law
TITLE....Authorizes limited direct interstate
shipment of wine; repealer
06/16/05 REFERRED TO RULES
06/24/05 ORDERED TO THIRD READING
CAL.1961
06/24/05 SUBSTITUTED BY A7379C
A07379 Farrell AMEND=C
04/14/05 referred to economic development
05/26/05 amend (t) and recommit to economic
development
05/26/05 print number 7379a
06/01/05 reported referred to codes
06/06/05 amend and recommit to codes
06/06/05 print number 7379b
06/09/05 reported referred to ways and means
06/14/05 reported referred to rules
06/14/05 amend and recommit to rules 7379c
06/21/05 reported
06/21/05 rules report cal.662
06/21/05 ordered to third reading rules cal.662
06/21/05 passed assembly
06/21/05 delivered to senate
06/21/05 REFERRED TO RULES
06/24/05 SUBSTITUTED FOR S5731
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FARRELL, MAGEE, DELMONTE, CAHILL, LIFTON, TOKASZ, BRODSKY, MORELLE,
KON, TONKO, SWEENEY, CARROZZA, AUBERTINE, GALEF; M-S: Bacalles, Benjamin,
Bing, Brennan, Destito, DiNapoli, Finch, Gottfried, Gunther, John, Kolb, O'Mara, Parment, Quinn,
Sanders, Schroeder, Zebrowski

Add SS79-c & 79-d, rpld S102 sub 1 PP(a) & (b), amd SS102, 76 & 17, ABC L

Authorizes limited direct interstate shipment of wine to persons of age provided such shipper
complies with all of the enumerated provisions and such other states have reciprocal direct shipping
statutes; directs the state liquor authority and the department of taxation and finance to promulgate
rules and regulations; grants the state liquor authority the power to enforce the provisions of this
section.

EFF. DATE 01/08/2006

STATE OF NEW YORK

7379--C

2005-2006 Regular Sessions

IN ASSEMBLY

April 14, 2005

Introduced by M. of A. FARRELL, MAGEE, DelMONTE, CAHILL, LIFTON, TOKASZ, BRODSKY, MORELLE, KOON, TONKO, SWEENEY, CARROZZA, AUBERTINE -- Multi-Sponsored by -- M. of A. BACALLES, BENJAMIN, BING, BRENNAN, DESTITO, DiNAPOLI, GALEF, GUNTHER, JOHN, O'MARA, PARMENT, QUINN, SANDERS, SCHROEDER, TOWNS, ZEBROWSKI -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the alcoholic beverage control law, in relation to providing for certain limited direct interstate shipments of wine and repealing provisions of such law relating thereto

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

1 Section 1. The alcoholic beverage control law is amended by adding a
2 new section 79-c to read as follows:
3 § 79-c. Direct interstate wine shipments. 1. Authorization. Notwith-
4 standing any provision of law, rule or regulation to the contrary, any
5 holder of a license to manufacture wine in any other state who obtains
6 an out-of-state shipper's license, as provided in this section, may ship
7 wine sold by such license holder directly to a resident of New York who
8 is at least twenty-one years of age, for such resident's personal use
9 and not for resale, provided the state in which such person is so
10 licensed affords lawful means for shipments of wine to be received by a
11 resident thereof who is at least twenty-one years of age, for such resi-
12 dent's personal use and not for resale, from a person licensed in this
13 state as a manufacturer and, provided further, that the state in which
14 such out-of-state winery is located affords to New York state winery and

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

LBD06902-13-5

1 farm winery licensees reciprocal shipping privileges, meaning shipping
2 privileges that are substantially similar to the requirements in this
3 section. No person shall place an order for shipment of wine unless they
4 are twenty-one years of age or older. Any common carrier with a permit
5 issued pursuant to this chapter to whom such out-of-state shipper's
6 license is presented is authorized to make delivery of shipments
7 provided for hereunder in this state in compliance with this section.

8 2. License. Before sending any shipment hereunder to a resident in
9 this state, the out-of-state shipper shall first obtain a license from
10 the New York state liquor authority under procedures prescribed by rules
11 and regulations of the authority and after providing the authority with
12 a true copy of its current license to manufacture wine in the appli-
13 cant's state of domicile along with a copy of the applicant's federal
14 basic permit after payment of an annual fee of one hundred twenty-five
15 dollars. Notwithstanding the provisions of section one hundred ten of
16 this chapter, the authority in its discretion, may excuse an out-of-
17 state winery from the submission of such information. Such rules or
18 regulations shall provide for the collection and annual reporting of
19 information by such out-of-state shipper which at a minimum, shall
20 include:

- 21 (a) the name of the purchaser;
- 22 (b) the full mailing address of the purchaser including zip code;
- 23 (c) the name, total quantity, and total price of wine purchased;
- 24 (d) the date purchased;
- 25 (e) the name and address of the transporter; and
- 26 (f) the signature of the person filing the report.

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

29 (a) ship wine produced by such license holder directly to a New York
30 state resident who is at least twenty-one years of age, for such resi-
31 dent's personal use and not for resale;

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

37 (c) report to the authority semi-annually, in such manner and form as
38 the authority may direct, the total amount of wine shipped into the
39 state the preceding calendar year; the names and addresses of the
40 purchasers to whom the wine was shipped, the date purchased, the name of
41 the common carrier used to deliver the wine, and the quantity and value
42 of each shipment;

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

48 (e) require common carriers to:

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

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

1 (iii) refuse delivery when the proposed recipient appears to be under
2 twenty-one years of age and refuse to present valid identification as
3 required by subparagraph one of this paragraph;

4 (f) file returns with and pay to the New York state department of
5 taxation and finance all state and local sales taxes and excise taxes
6 due on sales into this state in accordance with the applicable
7 provisions of the tax law relating to such taxes, the amount of such
8 taxes to be determined on the basis that each sale in this state was at
9 the location where delivery is made;

10 (g) keep records for three years and permit the authority or the
11 department of taxation and finance to perform an audit of such out-of-
12 state shipper upon request;

13 (h) execute a written consent to the jurisdiction of this state, its
14 agencies and instrumentalities and the courts of this state concerning
15 enforcement of this section and any related laws, rules, or regulations,
16 including tax laws, rules or regulations;

17 (i) prior to obtaining an out-of-state direct shipper's license,
18 obtain a certificate of authority pursuant to section eleven hundred
19 thirty-four of the tax law and a registration as a distributor pursuant
20 to sections four hundred twenty-one and four hundred twenty-two of the
21 tax law; and

22 (j) report to the authority, in a method prescribed by the authority,
23 within three business days of receiving an order that is greater than
24 thirty cases or two hundred seventy thousand milliliters of wine, or
25 thirty cases or two hundred seventy thousand milliliters of wine within
26 a thirty day period.

27 4. Situs. Delivery of a shipment in this state by the holder of an
28 out-of-state direct shipper's license shall be deemed to constitute a
29 sale in this state at the place of delivery and shall be subject to all
30 excise taxes levied pursuant to section four hundred twenty-four of the
31 tax law and all sales taxes levied pursuant to articles twenty-eight and
32 twenty-nine of such law.

33 5. Taxes. Delivery of a shipment in this state from the holder of an
34 out-of-state shipper's license shall be deemed to constitute a sale in
35 this state at the place of delivery and shall be subject to all sales
36 taxes levied pursuant to section eleven hundred five of the tax law and
37 all excise taxes levied pursuant to section four hundred twenty-four of
38 the tax law.

39 6. Renewal. The out-of-state shipper may annually renew its license
40 with the authority by paying a one hundred twenty-five dollar renewal
41 fee, providing the authority with a true copy of its current license in
42 such other state as an alcoholic beverage manufacturer and by complying
43 with such other procedures as are prescribed by rule of the authority.

44 7. Rules and regulations. The authority and the department of taxa-
45 tion and finance may promulgate rules and regulations to effectuate the
46 purposes of this section.

47 8. Enforcement. The authority may enforce the requirements of this
48 section including the requirements imposed on the common carrier, by
49 administrative proceedings to suspend or revoke an out-of-state ship-
50 per's license and the authority may accept payment of an administrative
51 fine in lieu of suspension, such payments to be determined by rules or
52 regulations promulgated by the authority. In addition, the authority or
53 the attorney general of the state of New York shall report violations of
54 this section, where appropriate, to the United States department of
55 treasury, tax and trade bureau, for administrative action to suspend or
56 revoke the federal basic permit.

1 9. Violations. In any action brought under this section, the common
2 carrier and the licensee shall only be held liable for their independent
3 acts.

4 § 2. The alcoholic beverage control law is amended by adding a new
5 section 79-d to read as follows:

6 § 79-d. Direct intrastate wine shipments. Any person having applied
7 for and received a license as a winery or farm winery under sections
8 seventy-six and seventy-six-a of this article may ship wine produced by
9 such winery for farm winery directly to a New York state resident who is
10 at least twenty-one years of age, for such resident's personal use and
11 not for resale.

12 1. Licensee's shipping responsibilities. Notwithstanding any provision
13 to the contrary contained in this chapter, any above referred licensee
14 shall:

15 (a) in the case of a farm winery licensee or a winery licensee, ship
16 wine produced by such license holder directly to a New York state resi-
17 dent who is at least twenty-one years of age, for such resident's
18 personal use and not for resale;

19 (b) ensure that the outside of each shipping container used to ship
20 wine directly to a New York state resident is conspicuously labeled with
21 the words: "CONTAINS WINE - SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED
22 FOR DELIVERY," or with other language specifically approved by the New
23 York state liquor authority;

24 (c) report to the authority annually, in such manner and form as the
25 authority may direct the total amount of wine shipped in the state the
26 preceding calendar year, the names and addresses of the purchasers to
27 whom the wine was shipped, the date purchased, the name of the common
28 carrier used to deliver the wine, and the quantity and value of each
29 shipment;

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

35 (e) require common carriers to:

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

40 (ii) require a recipient to sign an electronic or paper form or other
41 acknowledgment of receipt as approved by the authority; and

42 (iii) refuse delivery when the proposed recipient appears to be under
43 twenty-one years of age and refuses to present valid identification as
44 required by paragraph (a) of this subdivision.

45 2. Violations. In any action brought under this section, the common
46 carrier and the licensee shall only be held liable for their independent
47 acts.

48 § 3. Paragraphs (a) and (b) of subdivision 1 of section 102 of the
49 alcoholic beverage control law are REPEALED.

50 § 4. Paragraph (c) of subdivision 1 of section 102 of the alcoholic
51 beverage control law, as amended by chapter 242 of the laws of 1970, is
52 amended to read as follows:

53 ~~[(e) No]~~ (a) Except as provided in section seventy-nine-c of this
54 chapter, no alcoholic beverages shall be shipped into the state unless
55 the same shall be consigned to a person duly licensed hereunder to traf-
56 fic in alcoholic beverages. This prohibition shall apply to all ship-

1 ments of alcoholic beverages into New York state and includes importa-
2 tion or distribution for commercial purposes, for personal use, or
3 otherwise, and irrespective of whether such alcoholic beverages were
4 purchased within or without the state, provided, however, this prohibi-
5 tion shall not apply to any shipment consigned to a New York resident
6 who has personally purchased alcoholic beverages for his personal use
7 while outside the United States for a minimum period of forty-eight
8 consecutive hours and which he has shipped as consignor to himself as
9 consignee. Purchases made outside the United States by persons other
10 than the purchaser himself, regardless whether made as his agent, or by
11 his authorization or on his behalf, are deemed not to have been
12 personally purchased within the meaning of this paragraph.

13 § 5. Paragraph (d) of subdivision 1 of section 102 of the alcoholic
14 beverage control law, as amended by chapter 242 of the laws of 1970, is
15 amended to read as follows:

16 [~~(d) No~~] (b) Except as provided in section seventy-nine-c of this
17 chapter, no common carrier or other person shall bring or carry into the
18 state any alcoholic beverages, unless the same shall be consigned to a
19 person duly licensed hereunder to traffic in alcoholic beverages,
20 provided, however, that alcoholic beverages may be delivered by a truck-
21 ing permittee from a steamship or railroad station or terminal to a New
22 York resident who has personally purchased alcoholic beverages for his
23 personal use while outside the United States for a minimum period of
24 forty-eight consecutive hours, and which he has shipped as consignor to
25 himself as consignee, and except as so stated, no trucking permittee
26 shall accept for delivery, deliver or transport from a steamship or
27 railroad station or terminal any shipment of alcoholic beverages
28 consigned to a non-licensed person having his home or business in New
29 York state. Purchases of alcoholic beverages made outside the United
30 States by persons other than the purchaser himself, regardless whether
31 made as his agent, or by his authorization or on his behalf, are deemed
32 not to have been personally purchased within the meaning of this para-
33 graph.

34 § 6. Paragraphs (e) and (f) of subdivision 1 of section 102 of the
35 alcoholic beverage control law are relettered paragraphs (c) and (d).

36 § 7. Paragraph (c) of subdivision 1 of section 102 of the alcoholic
37 beverage control law, as amended by chapter 242 of the laws of 1970 and
38 as relettered by section six of this act, is amended to read as follows:

39 (c) [~~Subdivisions (c) and (d) hereof~~] Paragraphs (a) and (b) of this
40 subdivision shall apply to alcoholic beverages, either in the original
41 package or otherwise, whether intended for commercial or personal use,
42 as well as otherwise, and to foreign, interstate, as well as intrastate,
43 shipments or carriage, irrespective of whether such alcoholic beverages
44 were purchased within or without the state.

45 § 8. Section 76 of the alcoholic beverage control law is amended by
46 adding a new subdivision 6 to read as follows:

47 6. Any winery may sell or deliver such wine produced by the winery to
48 persons outside the state pursuant to the laws of the place of such sale
49 or delivery.

50 § 9. Paragraphs (f) and (g) of subdivision 13 of section 17 of the
51 alcoholic beverage control law, paragraph (f) as added and paragraph (g)
52 as relettered by section 2 of part F of chapter 411 of the laws of 1999
53 and paragraph (g) as added by chapter 403 of the laws of 1999, are
54 amended and a new paragraph (h) is added to read as follows:

55 (f) recommendations concerning the addition of field enforcement
56 personnel and the ratios of such field enforcement personnel to the

1 total numbers of licensees that in the view of the authority would be
2 appropriate to insure compliance with the law. Such study shall provide
3 a detailed analysis of the costs and projected revenues to be obtained
4 from the addition of such field enforcement personnel; ~~and~~
5 (g) such other observations and recommendations concerning the activ-
6 ities of the authority as will improve its effectiveness and efficiency
7 including the utilization of on-line services to provide information on
8 a fee-for-service basis~~[-]~~; and
9 (h) provide information concerning the name, total quantity and total
10 price of wine purchased from New York state and out-of-state wineries
11 and farm wineries, and such other information on and recommendations
12 concerning interstate wine shipment.
13 § 10. Severability. If the provisions of this act or if any applica-
14 tion thereof to any person or circumstance is held to be invalid, such
15 invalidity shall not affect other provisions or applications of this act
16 which shall be given effect without the invalid provisions or applica-
17 tion, and to this end the provisions of this act are severable.
18 § 11. This act shall take effect on the one hundred twentieth day
19 after it shall have become a law; provided, however, that effective
20 immediately, the addition, amendment and/or repeal of any rule or regu-
21 lation necessary for the implementation of this act on its effective
22 date are hereby authorized and directed to be made.