

ARTICLE 6

SPECIAL PROVISIONS RELATING TO WINE

- Section 75. Kinds of licenses.
- 76. Winery license.
 - 76-a. Farm winery license.
 - 76-b. Temporary winery or farm winery permit.
 - 76-c. Special winery license.
 - 76-d. Special farm winery license.
 - 76-e. Special provisions relating to wineries and farm wineries holding a distiller's license.
 - 78. Wholesaler's wine license.
 - 79. Seven day license to sell wine at retail for consumption off the premises.
 - 79-a. Authorization to sell wine products by certain licensees for consumption off the premises.
 - 79-b. Authorization to sell wine products by certain licensees for consumption on the premises.
 - 79-c. Direct interstate wine shipments.
 - 79-d. Direct intrastate wine shipments.
 - 80. Wine tasting.
 - 81. License to sell wine at retail for consumption on the premises.
 - 81-a. Special license to sell wine at retail for consumption on the premises.
 - 82. Prohibited sales.
 - 83. License fees.
 - 84. License fees; when due and payable; fee for part of year.
 - 85. Purchase from private collection.

§ 75. Kinds of licenses. The following licenses may be issued for the manufacture and sale of wine, to wit:

- 1. Winery license;
 - 1-a. Farm winery license;
 - 1-b. Temporary winery or farm winery permit;
 - 1-c. Micro-winery license;
- 2. Wholesaler's license;
- 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.
- 4. License to sell wine at retail for consumption on the premises.

§ 76. Winery license. 1. Any person may apply to the liquor authority for a winery license as provided for in this article. Such application shall be in writing and verified and shall contain such information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the liquor authority shall grant the application it shall issue a license in such form as shall be determined by its rules.

2. A winery license shall authorize the holder thereof:

- (a) to operate a winery for the manufacture of wine at the premises specifically designated in the license;
- (b) to receive and possess wine from other states consigned to a United States government bonded winery, warehouse or storeroom located within the state;
- (c) to sell in bulk from the licensed premises the products

manufactured under such license and wine received by such licensee from any other state to any winery licensee, any distiller licensee or to a permittee engaged in the manufacture of products which are unfit for beverage use and to sell or deliver such wine to persons outside the state pursuant to the laws of the place of such sale or delivery;

(d) to sell from the licensed premises to a licensed wholesaler or retailer, or to a corporation operating railroad cars or aircraft for consumption on such carriers, wine manufactured or received by the licensee as above set forth in the original sealed containers of not more than fifteen gallons each and to sell or deliver such wine to persons outside the state pursuant to the laws of the place of such sale or delivery. All wine sold by such licensee shall be securely sealed and have attached thereto a label setting forth such information as shall be required by this chapter; and

(e) to operate, or use the services of, a custom crush facility as defined in subdivision nine-a of section three of this chapter.

3. (a) Any person having applied for and received a license as a winery under this section may conduct wine tastings of New York state labelled wines in establishments licensed under sections sixty-three and seventy-nine of this chapter to sell wine for off-premises consumption. Such winery may charge a fee for each wine sample tasted. The state liquor authority shall promulgate rules and regulations regarding such tastings as provided for in this subdivision.

(a-1) Any person having applied for and received a license as a winery under this section may conduct wine tastings of New York state labelled wines and apply to the liquor authority for a permit to sell wine produced by such winery by the bottle, during such tastings in establishments licensed under section sixty-four, section sixty-four-a, section eighty-one or section eighty-one-a of this chapter to sell wine for consumption on the premises. Such winery may charge a fee of no more than twenty-five cents for each wine sample tasted. The state liquor authority shall promulgate rules and regulations regarding such tastings as provided for in this subdivision.

(b) Tastings shall be conducted subject to the following limitations:

(i) wine tastings shall be conducted by an official agent, representative or solicitor of one or more wineries. Such agent, representative or solicitor shall be physically present at all times during the conduct of the tastings; and

(ii) any liability stemming from a right of action resulting from a wine tasting as authorized herein and in accordance with the provisions of sections 11-100 and 11-101 of the general obligations law, shall accrue to the winery licensee.

(c) (i) Any person having applied for and received a license as a winery under this section may conduct wine tastings of New York state labelled wines and sell such wine by the bottle, during such tasting, for off-premises consumption at outdoor or indoor gatherings, functions, occasions or events, within the hours fixed by or pursuant to subdivision fourteen of section one hundred five of this chapter, sponsored by a bona fide charitable organization. For the purposes of this paragraph, a bona fide charitable organization shall mean and include any bona fide religious or charitable organization or bona fide educational, fraternal or service organization or bona fide organization of veterans or volunteer firefighters, which by its charter, certificate of incorporation, constitution, or act of the legislature, shall have among its dominant purposes one or more of the lawful purposes as defined in subdivision five of section one hundred eighty-six of the general municipal law.

(ii) Upon application, the liquor authority shall issue an annual permit authorizing such winery to participate in outdoor or indoor gatherings, functions, occasions or events sponsored by a charitable organization. The winery must give the authority written or electronic notice of the date, time and specific location of each tasting at least fifteen days prior to the tasting. A winery that obtains a permit to conduct such wine tastings does not need to apply for or obtain a temporary beer or wine permit pursuant to section ninety-seven of this chapter or any other permit to conduct such a tasting or to sell wine by the bottle for off-premises consumption at such tastings.

(iii) Such winery may charge a fee for each wine sample tasted. Tastings shall be conducted by an official agent, representative or solicitor of such winery. The state liquor authority may promulgate rules and regulations regarding such tastings as provided for in this subdivision.

4. A licensed winery may apply to the liquor authority for a license to sell wine at retail for consumption on the premises. All the provisions of this chapter relative to licenses to sell wine at retail for consumption on the premises shall apply so far as applicable to such application.

4-a. Notwithstanding any other provision of law, any winery, licensed pursuant to subdivision four of this section to sell wine at retail for consumption on the premises in a restaurant in or adjacent to the winery, may apply to the liquor authority for a license to sell beer, wine or liquor at retail for consumption on the premises of such restaurant. All of the provisions of this chapter relative to licenses to sell beer, wine or liquor at retail for consumption on the premises shall apply so far as applicable to such application.

5. Notwithstanding any provision of this chapter to the contrary, any one or more winery licensees, singly or jointly, may apply to the liquor authority for a license or licenses to sell wine at retail for consumption off the premises. For licensees applying singly, the duration of such license shall be coextensive with the duration of such licensee's winery license, and the fee therefor shall be five hundred dollars if such retail premises is located in cities having a population of one million or more; in cities having less than one million population and more than one hundred thousand, two hundred fifty dollars; and elsewhere, the sum of one hundred twenty-five dollars. Such license shall entitle the holder thereof to sell at retail for consumption off the premises any New York state labelled wine. Such license shall also entitle the holder thereof to conduct wine tastings. Such license shall also authorize the sale by the holder thereof of New York state labelled wine, in sealed containers for off-premises consumption, from the specially licensed premises of any person licensed pursuant to section eighty-one-a of this article to sell wine at retail for consumption on premises in which the principal business is the operation of a legitimate theater or such other lawful adult entertainment or recreational facility as the liquor authority may classify for eligibility pursuant to subdivision six of section sixty-four-a of this chapter. Not more than five such licenses shall be issued, either singly or jointly, to any licensed winery. All other provisions of this chapter relative to licenses to sell wine at retail for consumption off the premises shall apply so far as applicable to such application. The liquor authority is hereby authorized to adopt such rules as it may deem necessary to carry out the purpose of this subdivision, provided that all licenses issued pursuant to this subdivision shall be subject to the same rules and regulations as are

applicable to the sale of wine at retail for consumption off the premises of the winery licensee.

6. Any winery licensed pursuant to this section is authorized to engage in what is commonly known as wine by wire services whereby a winery within the state may make deliveries on behalf of other wineries within the state.

7. Notwithstanding any provision of this chapter to the contrary, a licensed winery may apply to the liquor authority for a permit to sell New York state labelled wine, by the bottle, at the state fair, at recognized county fairs and at farmers markets operated on a not-for-profit basis. As a condition of the permit, an agent, representative, or solicitor from the winery must be present at the time of sale.

8. 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. Notwithstanding any other provision of law to the contrary, a licensed winery may sell wine for consumption upon the premises known as the New York state fairgrounds during the annual New York state fair without obtaining any additional permission or payment of any additional fee, provided that such winery applies for, is granted and maintains a concessionaire's license from the division of the New York state fair in the department of agriculture and markets and such wine is sold and dispensed in amounts of ten ounces or less and further provided that consumption of such wine shall be limited to and shall occur upon such premises.

10. Notwithstanding any provision of this chapter to the contrary, and upon payment to the liquor authority of an additional annual fee of one hundred twenty-five dollars, the liquor authority may in its discretion and upon such terms and conditions as it may prescribe, issue to a licensed winery upon application therefor a certificate authorizing such winery to sell wine at retail in sealed containers to a regularly organized church, synagogue or religious organization for sacramental purposes, and to a householder for consumption in his home.

11. (a) A licensed winery may manufacture, bottle and sell fruit juice, fruit jellies and fruit preserves, tonics, salad dressings and unpotable wine sauces on and from licensed premises.

(b) Such license shall authorize the holder thereof to store and sell gift items in a tax-paid room upon the licensed premises. These gift items shall be limited to the following categories:

(i) Non-alcoholic beverages for consumption on or off premises, including but not limited to bottled water, juice and soda beverages.

(ii) Food items for the purpose of complementing wine tasting shall mean a diversified selection of food which is ordinarily consumed without the use of tableware and can conveniently be consumed while standing or walking. Such food items shall include but not be limited to: cheeses, fruits, vegetables, chocolates, breads and crackers.

(iii) Food items, which shall include locally produced farm products and any food or food product not specifically prepared for immediate consumption upon the premises. Such food items may be combined into a package containing wine or wine product.

(iv) Wine supplies and accessories, which shall include any item utilized for the storage, serving or consumption of wine or for decorative purposes. These supplies may be sold as single items or may be combined into a package containing wine or a wine product.

(v) Souvenir items, which shall include, but not be limited to artwork, crafts, clothing, agricultural products and any other articles

which can be construed to propagate tourism within the region.

(vi) New York state labelled wine produced or manufactured by any other New York state winery or farm winery licensee. Such wine may be purchased outright by the licensee from a New York winery or farm winery licensee or obtained on a consignment basis pursuant to a written agreement between the selling and purchasing licensee.

(c) Notwithstanding any provision of this chapter to the contrary, any winery licensee may charge:

(i) For tours of its premises; and

(ii) For any wine tastings.

(d) Wine grape growers or wine producer organizations or associations, incorporated within the state for the purpose of wine or wine grape promotion may hold wine tastings for purposes of education in the production and proper use of wine products under the same rules applying to winery licensees.

(e) The authority is hereby authorized to promulgate rules and regulations to effectuate the purposes of this subdivision.

(f) A licensed winery may engage in any other business on the licensed premises subject to such rules and regulations as the liquor authority may prescribe. In prescribing such rules and regulations, the liquor authority shall promote the expansion and profitability of wine production and of tourism in New York, thereby promoting the conservation, production and enhancement of New York state agricultural lands. Further, such rules and regulations shall determine which businesses will be compatible with the policy and purposes of this chapter and shall consider the effect of particular businesses on the community and area in the vicinity of the winery licensee.

12. A licensed winery shall be permitted to remain open for the purposes of selling its products, in accordance with the provisions of subdivisions two and four of this section, and/or conducting wine tasting at the winery, and/or conducting public tours of its winery and/or to sell New York state labelled wine, by the bottle, at the state fair, at recognized county fairs and at farmers markets operated on a not-for-profit basis in accordance with the provisions of this section on Sunday between the hours of ten o'clock in the morning and midnight. The authority is hereby authorized to promulgate rules and regulations to effectuate the purposes of this subdivision.

13. Notwithstanding any other provision of law to the contrary, a winery licensed pursuant to this section may engage in custom wine production allowing individuals to assist in the production of wine for sale for personal or family use, provided, however, that (a) the wine must be purchased by the individual assisting in the production of such wine; and (b) the owner, employee or agent of such winery shall be present at all times during such production.

§ 76-a. Farm winery license. 1. Any person may apply to the liquor authority for a farm winery license as provided for in this article. Such application shall be in writing and verified and shall contain such information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the liquor authority shall grant the application it shall issue a license in such form as shall be determined by its rules.

2. A farm winery license shall authorize the holder thereof to:

(a) operate a farm winery for the manufacture of wine or cider at the premises specifically designated in the license;

(b) sell in bulk from the licensed premises the products manufactured

under such license to any winery licensee, any other farm winery licensee, any distiller licensee or to a permittee engaged in the manufacture of products which are unfit for beverage use and to sell or deliver such wine to persons outside the state pursuant to the laws of the place of such sale or delivery;

(c) sell from the licensed premises to a licensed wholesaler or retailer, or to a corporation operating railroad cars or aircraft for consumption on such carriers, or at retail for consumption off the premises, wine or cider manufactured by the licensee as above set forth and to sell or deliver such wine or cider to persons outside the state pursuant to the laws of the place of such sale or delivery. All wine or cider sold by such licensee for consumption off the premises shall be securely sealed and have attached thereto a label setting forth such information as shall be required by this chapter;

(d) operate, or use the services of, a custom crush facility as defined in subdivision nine-a of section three of this chapter;

(e) sell cider and wine at retail for consumption on or off the premises;

(f) sell wine at retail for consumption on the premises of a restaurant, conference center, inn, bed and breakfast or hotel business owned and operated by the licensee in or adjacent to the farm winery for which the licensee is licensed. A licensee who operates a restaurant, conference center, inn, bed and breakfast or hotel pursuant to such authority shall comply with all applicable provisions of this chapter which relate to licenses to sell wine at retail for consumption on the premises.

3. (a) Any person having applied for and received a license as a farm winery under this section may conduct wine tastings of New York state labelled wines in establishments licensed under section sixty-three of this chapter and section seventy-nine of this article to sell wine for off-premises consumption. Such farm winery may charge a fee for each wine sample tasted. The state liquor authority shall promulgate rules and regulations regarding such tastings as provided for in this subdivision.

(b) Any person having applied for and received a license as a farm winery under this section may conduct wine tastings of New York state labelled wines and apply to the liquor authority for a permit to sell wine produced by such farm winery, by the bottle, during such tastings in establishments licensed under sections sixty-four and sixty-four-a of this chapter and section eighty-one or section eighty-one-a of this article to sell wine for consumption on the premises. Such farm winery may charge a fee of no more than twenty-five cents for each wine sample tasted. The state liquor authority shall promulgate rules and regulations regarding such tastings as provided for in this subdivision.

(c) Tastings shall be conducted subject to the following limitations:

(i) wine tastings shall be conducted by an official agent, representative or solicitor of one or more farm wineries. Such agent, representative or solicitor shall be physically present at all times during the conduct of the tastings; and

(ii) any liability stemming from a right of action resulting from a wine tasting as authorized herein and in accordance with the provisions of sections 11-100 and 11-101 of the general obligations law, shall accrue to the farm winery.

(d) (i) Any person having applied for and received a license as a farm winery under this section may conduct wine tastings of New York state labelled wines and sell such wine by the bottle, during such tasting, for off-premises consumption at outdoor or indoor gatherings, functions,

occasions or events, within the hours fixed by or pursuant to subdivision fourteen of section one hundred five of this chapter, sponsored by a bona fide charitable organization. For the purposes of this paragraph, a bona fide charitable organization shall mean and include any bona fide religious or charitable organization or bona fide educational, fraternal or service organization or bona fide organization of veterans or volunteer firefighters, which by its charter, certificate of incorporation, constitution, or act of the legislature, shall have among its dominant purposes one or more of the lawful purposes as defined in subdivision five of section one hundred eighty-six of the general municipal law.

(ii) Upon application, the liquor authority shall issue an annual permit authorizing such farm winery to participate in such outdoor or indoor gatherings, functions, occasions or events sponsored by a charitable organization. The farm winery must give the authority written or electronic notice of the date, time and specific location of each tasting at least fifteen days prior to the tasting. A farm winery that obtains a permit to conduct such wine tastings does not need to apply for or obtain a temporary beer or wine permit pursuant to section ninety-seven of this chapter or any other permit to conduct such a tasting or to sell wine by the bottle for off-premises consumption at such tastings.

(iii) Such farm winery may charge a fee for each wine sample tasted. Tastings shall be conducted by an official agent, representative or solicitor of such farm winery. The state liquor authority may adopt rules and regulations regarding such tastings as provided in this subdivision.

3-a. Notwithstanding any other provision of law, any farm winery, licensed pursuant to subdivision two of this section to sell wine at retail for consumption on the premises in a restaurant, conference center, inn, bed and breakfast or hotel business owned and operated by the licensee in or adjacent to such farm winery, may apply to the liquor authority for a license to sell beer and/or liquor at retail for consumption on the premises of such facility. All of the provisions of this chapter relative to licenses to sell beer, wine or liquor at retail for consumption on the premises shall apply so far as applicable to such application.

4. (a) A farm winery license shall authorize the holder thereof to manufacture, bottle and sell fruit juice, fruit jellies and fruit preserves, tonics, salad dressings and unpotable wine sauces on and from the licensed premises.

(b) Such license shall authorize the holder thereof to store and sell gift items in a tax-paid room upon the licensed premises incidental to the sale of wine. These gift items shall be limited to the following categories:

(1) Non-alcoholic beverages for consumption on or off premises, including but not limited to bottled water, juice and soda beverages.

(2) Food items for the purpose of complementing wine tastings, shall mean a diversified selection of food which is ordinarily consumed without the use of tableware and can conveniently be consumed while standing or walking. Such food items shall include but not be limited to: cheeses, fruits, vegetables, chocolates, breads and crackers.

(3) Food items, which shall include locally produced farm products and any food or food product not specifically prepared for immediate consumption upon the premises. Such food items may be combined into a package containing wine or a wine product.

(4) Wine supplies and accessories, which shall include any item

utilized for the storage, serving or consumption of wine or for decorative purposes. These supplies may be sold as single items or may be combined into a package containing wine or a wine product.

(5) Souvenir items, which shall include, but not be limited to artwork, crafts, clothing, agricultural products and any other articles which can be construed to propagate tourism within the region.

(6) New York state labelled wine or liquors produced or manufactured by any other New York state winery or farm winery licensee or by the holder of a class A-1, B-1, or C distiller's license. Such wine or liquors may be purchased outright by the licensee from a New York winery or farm winery licensee or the holder of a class A-1, B-1, or C distiller's license or obtained on a consignment basis pursuant to a written agreement between the selling and purchasing licensee.

(7) Wine-making equipment and supplies including, but not limited to, grapes, grape juice, grape must, home wine-making kits, presses, pumps, bottling equipment, filters, yeasts, chemicals and other wine additives, wine storage or fermenting vessels, barrels, and books or other written material to assist wine-makers and home wine-makers to produce and bottle wine.

(c) The authority is hereby authorized to promulgate rules and regulations to effectuate the purposes of this subdivision.

(d) A licensed farm winery may engage in any other business on the licensed premises subject to such rules and regulations as the liquor authority may prescribe. In prescribing such rules and regulations, the liquor authority shall promote the expansion and profitability of wine production and of tourism in New York, thereby promoting the conservation, production and enhancement of New York state agricultural lands. Further, such rules and regulations shall determine which businesses will be compatible with the policy and purposes of this chapter and shall consider the effect of particular businesses on the community and area in the vicinity of the farm winery licensee.

(e) Notwithstanding any provision of this chapter to the contrary, any farm winery licensee may charge:

(i) For tours of its premises; and

(ii) For any wine tastings.

5. (a) Except as provided in paragraph (b) of this subdivision, no licensed farm winery shall manufacture or sell any wine not produced exclusively from grapes or other fruits or agricultural products grown or produced in New York state.

(b) In the event that the commissioner of agriculture and markets, after investigating and compiling information pursuant to subdivision forty-two of section sixteen of the agriculture and markets law, determines that a natural disaster, act of God, or continued adverse weather condition has destroyed no less than forty percent of a specific grape varietal grown or produced in New York state and used for winemaking, the commissioner, in consultation with the chairman of the state liquor authority, may give authorization to a duly licensed farm winery to manufacture or sell wine produced from grapes grown outside this state. No such authorization shall be granted to a farm winery licensee unless such licensee certifies to the commissioner the quantity of New York grown grapes unavailable to such licensee due to such natural disaster, act of God or continuing adverse weather condition and satisfies the commissioner that reasonable efforts were made to obtain grapes from a New York state source for such wine making purpose. No farm winery shall utilize an amount of out-of-state grown grapes or juice exceeding the amount of New York grown grapes that such winery is unable to obtain due to the destruction of New York grown grapes by a

natural disaster, act of God or continuing adverse weather condition as determined by the commissioner of agriculture and markets pursuant to this subdivision. For purposes of this subdivision, the department of agriculture and markets and the state liquor authority are authorized to adopt rules and regulations as they may deem necessary to carry out the provisions of this subdivision which shall include ensuring that in manufacturing wine farm wineries utilize grapes grown or produced in New York state to the extent they are reasonably available, prior to utilizing grapes or juice from an out-of-state source for such purpose.

(c) The commissioner of agriculture and markets shall make available to farm wineries and to the public each specific grape varietal loss determination issued pursuant to paragraph (b) of this subdivision on or before August twentieth of each year.

(d) In the event that the continuing effects of a natural disaster, act of God, or adverse weather condition which occurred prior to August twentieth of each year or the effects of a natural disaster, act of God, or adverse weather condition which occurs subsequent to August twentieth each year results in any grape varietal loss which meets the standards provided in paragraph (b) of this subdivision, the commissioner of agriculture and markets, in consultation shall with the chairman of the state liquor authority, may issue additional grape varietal loss determinations and shall expeditiously make available to farm wineries and to the public each specific grape varietal loss determination issued pursuant to this paragraph prior to October tenth of each year.

6. Notwithstanding any other provision of this chapter, a farm winery license shall authorize the holder thereof to:

(a) Offer for sale or solicit any order in the state for the sale of any New York state labelled wine manufactured by the licensee or any other winery or farm winery licensed pursuant to this article.

(b) Engage as a broker in the purchase and sale of New York state labelled wines for a fee or commission for or on behalf of any winery or farm winery licensed pursuant to this article.

(c) Maintain a warehouse on the premises pursuant to section ninety-six of this chapter for the warehousing of any New York state labelled wines manufactured by any winery or farm winery licensed pursuant to this article. Any winery or farm winery that maintains such a warehouse must comply with the provisions of section ninety-six of this chapter.

(d) Deliver or transport any New York state labelled wine manufactured or produced by the licensee or any other winery or farm winery licensed pursuant to this article in any vehicle owned, leased or hired by the licensee. The New York state labelled wine can be delivered, transported or sold by the licensee to any holder of: (i) a winery or farm winery license, (ii) a license to sell alcoholic beverages for consumption on the premises, (iii) a license to sell alcoholic beverages for consumption off the premises, (iv) or any person that can receive or purchase wine from a farm winery. The licensee is not required to obtain from the liquor authority a trucking permit or pay any fees pursuant to section ninety-four of this chapter.

(e) Sell for consumption off the premises New York state labelled liquors manufactured by the holder of a class A-1, B-1, or C distiller's license.

(f) Conduct tastings of New York state labelled liquors manufactured by the holder of a class A-1, B-1, or C distiller's license. All liquor tastings conducted pursuant to this paragraph shall be conducted in the same manner as tastings of brandy pursuant to section seventy-six-e of this article.

7. The holder of a license issued under this section may operate up to five branch offices located away from the licensed farm winery. Such locations, although not required to be on a farm, shall be considered part of the licensed premises and all activities allowed at and limited to the farm winery may be conducted at the branch offices. Such branch offices shall not be located within, share a common entrance and exit with, or have any interior access to any other business, including premises licensed to sell alcoholic beverages at retail. Prior to commencing operation of any such branch office, the licensee shall notify the authority of the location of such branch office and the authority may issue a permit for the operation of same. Such branch offices shall not be subject to the provisions of subdivision two, three or four of section seventy-nine of this article or the provisions of subdivisions two and three, and paragraphs (b) and (c) of subdivision ten of section one hundred five of this chapter.

8. No licensed farm winery shall manufacture in excess of one hundred fifty thousand finished gallons of wine annually.

9. Notwithstanding any other provision of law to the contrary, a farm winery licensed pursuant to this section may engage in custom wine production allowing individuals to assist in the production of wine for sale for personal or family use, provided, however, that (a) the wine must be purchased by the individual assisting in the production of such wine; and (b) the owner, employee or agent of such winery shall be present at all times during such production.

§ 76-b. Temporary winery or farm winery permit. 1. Any person may apply to the liquor authority for a temporary permit to operate a winery, farm winery, special winery, or special farm winery. Such application shall be in writing and verified and shall contain information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such permit. Such application fee shall offset any subsequently assessed fees required by this article for the issuance of a winery, farm winery, special winery, or special farm winery license to such applicant.

2. Upon application, the liquor authority shall issue such temporary permit when the applicant:

(a) has a winery, farm winery, special winery, or special farm winery license application pending before the liquor authority, and the beginning of the harvest season for grapes or any other fruit or product necessary for the production or manufacture of wine at that facility will occur within thirty days; or

(b) is in good faith negotiating with or has entered into an agreement with a winery, farm winery, special winery, or special farm winery licensee to purchase, obtain or acquire part or full ownership rights in the assets or stock of such existing licensee; or

(c) due to unforeseen circumstances or an emergency situation is in need of a permit to ensure the continued or future operation of an existing winery facility.

3. The liquor authority in granting such permit shall ensure that:

(a) issuance of the permit will not inordinately hinder the operation or effective administration of this article.

(b) the applicant would in all likelihood be able to ultimately obtain a permanent winery, farm winery, special winery, or special farm winery license.

(c) the applicant has substantially complied with the requirements necessary to obtain such license.

(d) upon issuance of the temporary permit, the existing license for said premises shall have been surrendered to, or placed into safekeeping with, the authority pursuant to rules of the liquor authority.

4. The application for a permit shall be approved or denied by the liquor authority within forty-five days after the receipt of such application.

5. A temporary permit shall authorize the holder thereof to operate a winery, farm winery, special winery, or special farm winery as the case may be, for the manufacture and sale of wine at the premises specifically designated in the permit. Further, it shall authorize the holder of the permit to conduct any of the activities permitted, respectively, by section seventy-six, seventy-six-a, seventy-six-c or seventy-six-d of this article.

6. Such temporary permit shall remain in effect for six months or until the permittee is issued a permanent winery, farm winery, special winery, or special farm winery license, whichever is shorter. Such permit may be extended at the discretion of the authority for additional three month periods of time upon payment of an additional fee of fifty dollars for each such extension. Notwithstanding any other provision of law, a temporary permit may be summarily cancelled or suspended at any time if the liquor authority determines that good cause for such cancellation or suspension exists. The liquor authority shall promptly notify the holder of such permit in writing of such cancellation or suspension and shall set forth the reasons for such action.

7. The liquor authority in reviewing such application shall review the entire record and grant it unless good cause is otherwise shown. A decision on an application shall be based on substantial evidence in the record and supported by a preponderance of the evidence in favor of the applicant.

§ 76-c. Special winery license. 1. Any person may apply to the liquor authority for a license to operate a special winery on the premises of an existing winery licensee. Such application shall be in writing and verified and shall contain such information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the liquor authority shall grant the application it shall issue a license in such form as shall be determined by its rules.

2. The provisions of section seventy-six of this article relating to the operation of a winery shall also apply to the holder of a license under this section.

§ 76-d. Special farm winery license. 1. Any person may apply to the liquor authority to operate a special farm winery on the premises of an existing farm winery licensee as provided for in this article. Such application shall be in writing and verified and shall contain such information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the liquor authority shall grant the application it shall issue a license in such form as shall be determined by its rules.

2. The provisions of section seventy-six-a of this article relating to the operation of a farm winery shall also apply to the holder of a license under this section.

§ 76-e. Special provisions relating to wineries and farm wineries holding a distiller's license. 1. Any person who holds a winery license

pursuant to section seventy-six of this article or a farm winery license pursuant to section seventy-six-a of this article and, in addition to such license, holds a distiller's license pursuant to section sixty-one of this chapter, and who conducts wine tastings pursuant to the provisions of such sections seventy-six and seventy-six-a of this article, shall be authorized to conduct tastings of brandy manufactured by such licensed winery or licensed farm winery, at such wine tastings.

2. All consumer tastings of brandy shall be conducted subject to the following limitations:

(a) Tastings of brandy shall be conducted by an official agent of one or more persons licensed pursuant to section sixty-one of this chapter. Such agent shall be physically present upon the premises at all times during the conducting of the consumer tasting of brandy.

(b) No such person or persons licensed pursuant to section sixty-one of this chapter, and no official agent thereof, may provide, directly or indirectly: (i) more than a total of three samples of brandy for tasting to a person in one calendar day; or (ii) a sample of brandy for tasting equal to more than one-quarter fluid ounce.

(c) Any liability stemming from a right of action resulting from a consumer tasting of brandy authorized by this section and in accordance with the provisions of sections 11-100 and 11-101 of the general obligations law, shall accrue to the persons licensed pursuant to section sixty-one of this chapter, who conducted such tasting.

3. The state liquor authority shall promulgate rules and regulations regarding brandy tastings as provided for in this section.

4. Any person who holds a winery license pursuant to section seventy-six of this article or a farm winery license pursuant to section seventy-six-a of this article, and who is authorized to sell wine for consumption off the premises pursuant to the provisions of such sections seventy-six and seventy-six-a of this article, shall be authorized to sell brandy manufactured by such licensed winery or licensed farm winery for consumption off the premises. Such sale of brandy for consumption off the premises shall only occur at the licensed winery or farm winery and not at any other off-premises locations licensed to the winery or farm winery, pursuant to subdivision four of section seventy-six of this article. The sale of brandy at a winery or farm winery shall also be subjected to the same hours of operation as set forth for the sale of wine at a winery or farm winery. The authority shall promulgate rules and regulations for the sale of brandy at wineries or farm wineries for off-premises consumption.

§ 78. Wholesaler's wine license. 1. The procedure contained in section sixty-two hereof shall apply so far as applicable to applications for a wholesaler's wine license. Such license shall contain a description of the licensed premises and in form and in substance shall be a license to the person therein specifically designated to sell wine at wholesale in the premises therein specifically licensed in the original sealed containers of not more than fifteen gallons each to duly licensed manufacturers, wholesalers, retailers and permittees in this state, and to sell or deliver such wine to persons outside the state pursuant to the laws of the place of such sale or delivery.

2. Upon payment to the liquor authority of an additional annual fee of one hundred twenty-five dollars, the liquor authority may in its discretion and upon such terms and conditions as it may prescribe, issue to a wholesale wine licensee upon application therefor a certificate authorizing such wholesaler to sell wine at retail in sealed containers

to a regularly organized church, synagogue or religious organization for sacramental purposes.

§ 79. Seven day license to sell wine at retail for consumption off the premises. 1. The procedure set forth in section sixty-three of this chapter shall apply so far as applicable to applications for seven day licenses to sell wine at retail for off-premise consumption. Such seven day license shall in form and in substance be a license to the person specifically licensed to sell wine at retail for off-premise consumption.

1-a. The liquor authority shall convert all current licenses to sell wine at retail for consumption off the premises to seven day licenses to sell wine at retail for consumption off the premises pursuant to subdivision three of section seventy-five of this article. However, the conversion of the license to the seven day license shall not affect licenses other than licenses issued pursuant to subdivision three of section seventy-five of this article prior to the effective date of part W3 of chapter 62 of the laws of 2003.

2. Not more than one license shall be granted to any person under this section.

3. No licensee under this section shall be engaged in any other business in the premises licensed. The sale of those items specifically enumerated in subdivision four of section sixty-three of this chapter shall not constitute engaging in another business within the meaning of this subdivision.

4. Determinations under this section with respect to the issuance of a new license or under section one hundred eleven with respect to the transfer to any other premises of a license issued hereunder shall be made in accordance with public convenience and advantage.

§ 79-a. Authorization to sell wine products by certain licensees for consumption off the premises. 1. Any person licensed to sell beer at retail for consumption off the premises, pursuant to section fifty-four of this chapter, shall, by virtue of such license and upon payment to the liquor authority of an additional fee in the sum of one hundred sixty-five dollars in cities having a population of one hundred thousand or over and eighty-three dollars elsewhere, be granted authorization to sell from the licensed premises wine products in sealed containers for consumption off such premises. Upon receipt of such additional fee, the liquor authority shall promptly issue a permit authorizing such sales by the licensee.

2. Notwithstanding any other provisions of this chapter, any person receiving a permit pursuant to this section shall be subject to such provisions of this chapter as are applicable to persons licensed pursuant to section fifty-four of this chapter, and not to those provisions which are applicable only to persons licensed pursuant to sections sixty-three and seventy-nine of this chapter.

§ 79-b. Authorization to sell wine products by certain licensees for consumption on the premises. 1. Any person licensed to sell beer at retail for consumption on the premises, pursuant to section fifty-five of this chapter, shall, by virtue of such license and upon payment to the liquor authority of an additional fee in the sum of one hundred ninety-two dollars in cities having a population of one hundred thousand or over and ninety-six dollars elsewhere, be granted authorization to sell from the licensed premises wine products in sealed containers at retail for consumption on or off such premises. Upon receipt of such

additional fee, the liquor authority shall promptly issue a permit authorizing such sales by the licensee.

1-a. Any person licensed to sell beer at retail for consumption on the premises, pursuant to section fifty-five-a of this chapter, shall, by virtue of such license and upon payment to the liquor authority of an additional fee in the sum of one hundred ninety-two dollars in cities having a population of one hundred thousand or over and ninety-six dollars elsewhere, be granted authorization to sell from the licensed premises wine products in sealed containers at retail for consumption on such premises. Upon receipt of such additional fee, the liquor authority shall promptly issue a permit authorizing such sales by the licensee.

2. Notwithstanding any other provisions of this chapter, any person receiving a permit pursuant to this section shall be subject to such provisions of this chapter as are applicable to persons licensed pursuant to section fifty-five of this chapter, and not to those provisions which are applicable only to persons licensed pursuant to sections sixty-four and eighty of this chapter.

§ 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 direct shipper's license, as provided in this section, may ship no more than thirty-six cases (no more than nine liters each case) of wine produced by such license holder per year 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 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.

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

(a) ship no more than thirty-six cases (no more than nine liters each case) per year of 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) maintain records in such manner and form as the authority may direct, showing the total amount of wine shipped into the state each 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 refuses to present valid identification as required by subparagraph (i) 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 all records required by this section for three years and provide copies of such records, upon written request, to the authority or the department of taxation and finance;

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

(i) 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; and

(j) 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.

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. 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.

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

7. 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.

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

§ 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, seventy-six-a, seventy-six-b, seventy-six-c, seventy-six-d and seventy-six-f of this article may ship no more than thirty-six cases (no more than nine liters per case) of wine produced by such winery for farm winery per year 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 no more than thirty-six cases (no more than nine liters) per year of 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) maintain records in such manner and form as the authority may direct showing the total amount of wine shipped in the state each 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. Such records shall be kept for three years and, upon written request, be provided to the authority or the department of taxation and finance;

(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.

§ 80. Wine tasting. 1. Except as otherwise provided for in this chapter, any person licensed to sell wine pursuant to this article, or section sixty-three or section seventy-nine of this chapter, shall be permitted to conduct wine tastings only upon the licensed premises. 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 herein, 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.

2. In addition to such other wine tastings permitted under this chapter, licensed farm wineries, wineries, and wine wholesalers may apply for a permit, pursuant to paragraph k of subdivision one of section ninety-nine-b of this chapter, to conduct wine tastings. Such permits shall be valid throughout the state and may be issued on an annual basis or for individual events. Each such permit and the exercise of the privilege granted thereby shall be subject to such rules of the liquor authority as it deems necessary.

§ 81. License to sell wine at retail for consumption on the premises.

1. The procedure set forth in section sixty-four hereof shall apply so far as applicable to applications for licenses to sell wine at retail for consumption on the premises, except as provided in subdivision two of this section.

2. No such license shall be issued to any person for any premises other than premises for which a license may be issued under section sixty-four of this chapter or a hotel or premises which are kept, used, maintained, advertised or held out to the public to be a place where food is prepared and served for consumption on the premises in such quantities as to satisfy the liquor authority that the sale of wine intended is incidental to and not the prime source of revenue from the operation of such premises. Such license may also include such suitable space outside the licensed premises and adjoining it as may be approved by the liquor authority.

3. Such license shall in form and in substance be a license to the person specifically licensed to sell wine at retail, to be consumed upon the premises. Such license shall also be deemed to include a license to sell beer and soju at retail to be consumed under the same terms and conditions without the payment of any additional fee. For the purposes of this subdivision, "soju" shall mean an imported Korean alcoholic beverage that contains not more than twenty-four per centum alcohol, by volume, and is derived from agricultural products.

4. A restaurant licensed to sell wine under this section may permit a patron to remove one unsealed bottle of wine for off-premises consumption provided that the patron has purchased a full course meal and consumed a portion of the bottle of wine with such meal on the restaurant premises. For the purposes of this subdivision the term "full course meal" shall mean a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking. A partially consumed bottle of wine that is to be removed from the premises pursuant to this subdivision shall be securely sealed by the licensee or an agent of the licensee

prior to removal from the premises, in a bag such that it is visibly apparent that such resealed bottle of wine has not been tampered with. Such licensee or agent of the licensee shall provide a dated receipt for the bottle of wine to the patron.

§ 81-a. Special license to sell wine at retail for consumption on the premises. 1. On or after the effective date hereof, any person may make an application to the appropriate board for a special license to sell wine at retail to be consumed on the premises where sold.

2. Such special license shall in form and in substance be a license to the person specifically licensed to sell wine at retail to be consumed on the premises specifically licensed. Such license shall also be deemed to include a license to sell beer at retail to be consumed under the same terms and conditions, without the payment of any additional fee.

3. The provisions contained in subdivisions three, four, six, eight and nine of section sixty-four-a shall apply to applicants for licenses under this section.

4. a. No such license shall be issued to any person for any premises other than premises for which a license may be issued under section sixty-four of this chapter or a hotel or premises which are kept, used, maintained, advertised or held out to the public to be a place where food is prepared and served for consumption on the premises in such quantities as to satisfy the liquor authority that the sale of wine intended is incidental to and not the prime source of revenue from the operation of such premises. Such license may also include such suitable space outside the licensed premises and adjoining it as may be approved by the liquor authority.

b. Notwithstanding paragraph a of this subdivision, a special on-premises license for a premises in which the principal business shall be the operation of a legitimate theater by a corporation organized pursuant to the not-for-profit corporation law may be granted notwithstanding the proximity of such premises to any school, provided that the availability of alcoholic beverages on such premises shall not be advertised in any way at such premises in any manner visible from such street or avenue.

§ 82. Prohibited sales. The restrictions contained in section sixty-five hereof shall apply to persons licensed to sell wine at retail.

§ 83. License fees. 1. The annual fee for a winery license shall be six hundred twenty-five dollars.

1-a. The annual fee for a farm winery license shall be one hundred twenty-five dollars, provided that the annual fee for a farm winery manufacturing no more than fifteen hundred finished gallons of wine annually shall be fifty dollars.

1-b. The fee for a temporary winery or farm winery permit shall be one hundred twenty-five dollars.

1-d. The fee for each license issued for a winery or farm winery licensee's authority to conduct wine tastings and the sale of New York state labelled wines for off-premises consumption pursuant to paragraph (c) of subdivision two of section seventy-six of this article shall be forty dollars.

2. The annual fee for a license to sell wine at wholesale shall be eight hundred dollars.

3. The annual fee for a license to sell wine at retail, not to be consumed on the premises, shall be six hundred forty dollars for each

such place where such business is carried on in cities having a population of one million or more; in cities having less than one million population and more than one hundred thousand, three hundred twenty dollars; and elsewhere, the sum of one hundred forty-five dollars.

4. The annual fee for selling wine at retail, to be consumed on the premises where sold, shall be as follows:

(a) In cities having a population of one hundred thousand or over the sum of four hundred eighty dollars per year; and

(b) Elsewhere, the sum of two hundred forty dollars per year.

4-a. The annual fee for a license to sell wine at retail to be consumed on the premises where sold where the premises to be licensed remain open only within the period commencing April first and ending October thirty-first of any one year or only within the period commencing October first and ending the following April thirtieth, the liquor authority, in its discretion, may grant a summer or winter license effective only for such appropriate period of time, for which an annual fee of one hundred twelve dollars shall be paid.

5. The annual fee for a special license to sell wine at retail, to be consumed on the premises where sold, shall be as follows:

(a) In cities having a population of one hundred thousand or over, the sum of five hundred seventy-six dollars per year; and

(b) Elsewhere, the sum of two hundred seventy dollars per year.

6. The annual fee for a special winery license shall be six hundred twenty-five dollars.

7. The annual fee for a special farm winery license shall be one hundred twenty-five dollars.

§ 84. License fees; when due and payable; fee for part of year. The provisions contained in section sixty-seven shall apply to all licenses issued pursuant to this article.

§ 85. Purchase from private collection. Notwithstanding any other provisions of this chapter any nonlicensed person owning bottled wine is authorized to sell that wine to a wholesale or retail licensee authorized to sell wine. The licensee involved in such sale shall ensure that each bottle of wine sold from a private collection has a permanently affixed label stating that the wine was acquired from a private collection.