

33:1-10.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 207

NJSA: 33:1-10.1 (Permits direct shipping by wineries and creates Out-of-State winery license)

BILL NO: S3172 (Substituted for A4436)

SPONSOR(S) Sweeney and others

DATE INTRODUCED: December 12, 2011

COMMITTEE: **ASSEMBLY:** Regulatory Oversight and Gaming
Budget

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 9, 2012

SENATE: January 9, 2012

DATE OF APPROVAL: January 17, 2012

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First reprint enacted)

S3172

SPONSOR'S STATEMENT: (Begins on page 9 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, **may possibly** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: Yes

A4436

SPONSOR'S STATEMENT: (Begins on page 9 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Christie signs bills on school elections, wine shipping," Burlington County Times, 1-18-12

"Christie signs bill on wine shipping," The Philadelphia inquirer, 1-18-12

"Governor gives N.J.'s wineries reason to break out the bubbly," The Press of Atlantic City, 1-18-12

"Law lifts ban on shipping wine to consumers," The Record, 1-18-12

"Mail-order wine bill now law," Asbury Park Press, 1-18-12

"N.J. wineries OK's for mail-order sales," Courier News, 1-18-12

"Drink up! N.J. law lets wineries get into mail-order sales," Daily Record, 1-18-12

"Wineries may direct ship their products in NJ under new law," Gloucester County Times, 1-18-12

"Sweeney, Burzichelli, Riley bill to expand, aid state wineries signed into law," Today's Sunbeam, 1-18-12

"Drink up! Mail-order wine bill now law," Courier-Post, 1-18-12

"Grapes of Growth," Courier News, 1-19-12

"Christie lauds effort to pass wine bill," The Press of Atlantic City, 1-19-12

"Wine bill passed despite \$1M. fight, Sweeney says," The Press of Atlantic City, 1-19-12

LAW/KR

P.L.2011, CHAPTER 207, *approved January 17, 2012*

Senate, No. 3172 (*First Reprint*)

1 **AN ACT** concerning certain winery licenses and amending R.S.33:1-
2 10 and supplementing Title 33 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. R.S.33:1-10 is amended to read as follows:

8 33:1-10. Class A licenses shall be subdivided and classified as
9 follows:

10 Plenary brewery license. 1a. The holder of this license shall be
11 entitled, subject to rules and regulations, to brew any malt alcoholic
12 beverages and to sell and distribute his products to wholesalers and
13 retailers licensed in accordance with this chapter, and to sell and
14 distribute without this State to any persons pursuant to the laws of
15 the places of such sale and distribution, and to maintain a
16 warehouse. The fee for this license shall be \$10,625.

17 Limited brewery license. 1b. The holder of this license shall be
18 entitled, subject to rules and regulations, to brew any malt alcoholic
19 beverages in a quantity to be expressed in said license, dependent
20 upon the following fees and not in excess of 300,000 barrels of 31
21 fluid gallons capacity per year and to sell and distribute this product
22 to wholesalers and retailers licensed in accordance with this
23 chapter, and to sell and distribute without this State to any persons
24 pursuant to the laws of the places of such sale and distribution, and
25 to maintain a warehouse. The fee for this license shall be graduated
26 as follows: to so brew not more than 50,000 barrels of 31 fluid
27 gallons capacity per annum, \$1,250; to so brew not more than
28 100,000 barrels of 31 fluid gallons capacity per annum, \$2,500; to
29 so brew not more than 200,000 barrels of 31 fluid gallons capacity
30 per annum, \$5,000; to so brew not more than 300,000 barrels of 31
31 fluid gallons capacity per annum, \$7,500.

32 Restricted brewery license. 1c. The holder of this license shall
33 be entitled, subject to rules and regulations, to brew any malt
34 alcoholic beverages in a quantity to be expressed in such license not
35 in excess of 3,000 barrels of 31 fluid gallons capacity per year.
36 Notwithstanding the provisions of R.S.33:1-26, the director shall
37 issue a restricted brewery license only to a person or an entity
38 which has identical ownership to an entity which holds a plenary
39 retail consumption license issued pursuant to R.S.33:1-12, provided

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted January 9, 2012.

1 that such plenary retail consumption license is operated in
2 conjunction with a restaurant regularly and principally used for the
3 purpose of providing meals to its customers and having adequate
4 kitchen and dining room facilities, and that the licensed restaurant
5 premises is immediately adjoining the premises licensed as a
6 restricted brewery. The holder of this license shall only be entitled
7 to sell or deliver the product to that restaurant premises. The fee for
8 this license shall be \$1,250, which fee shall entitle the holder to
9 brew up to 1,000 barrels of 31 fluid gallons per annum. The
10 licensee also shall pay an additional \$625 for every additional 1,000
11 barrels of 31 fluid gallons produced. No more than two restricted
12 brewery licenses shall be issued to a person or entity which holds an
13 interest in a plenary retail consumption license. If the governing
14 body of the municipality in which the licensed premises will be
15 located should file a written objection, the director shall hold a
16 hearing and may issue the license only if the director finds that the
17 issuance of the license will not be contrary to the public interest.
18 All fees related to the issuance of both licenses shall be paid in
19 accordance with statutory law.

20 Plenary winery license. 2a. Provided that the holder is engaged
21 in growing and cultivating grapes or fruit used in the production of
22 wine on at least three acres on, or adjacent to, the winery premises,
23 the holder of this license shall be entitled, subject to rules and
24 regulations, to produce any fermented wines, and to blend, fortify
25 and treat wines, and to sell and distribute his products to
26 wholesalers **[and retailers]** licensed in accordance with this chapter
27 and to churches for religious purposes, and to sell and distribute
28 without this State to any persons pursuant to the laws of the places
29 of such sale and distribution, and to maintain a warehouse, and to
30 sell his products at retail to consumers on the licensed premises of
31 the winery for consumption on or off the premises and to offer
32 samples for sampling purposes only. The fee for this license shall
33 be \$938. **[The]** A holder of this license who produces not more
34 than 250,000 gallons per year shall also have the right to sell and
35 distribute his products to retailers licensed in accordance with this
36 chapter, except that the 'holder of this license shall not use a
37 common carrier for such distribution. The' fee for this additional
38 privilege shall be graduated as follows: a licensee who
39 manufactures more than 150,000 gallons, but not in excess of
40 250,000 gallons per annum, \$1,000; a licensee who manufactures
41 more than 100,000 gallons, but not in excess of 150,000 gallons per
42 annum, \$500; a licensee who manufactures more than 50,000
43 gallons, but not in excess of 100,000 gallons per annum, \$250; a
44 licensee who manufactures 50,000 gallons or less per annum, \$100.
45 A holder of this license who produces not more than 250,000
46 gallons per year shall have the right to sell such wine at retail in
47 original packages in **[six]** **'[18]** 15' salesrooms apart from the

1 winery premises for consumption on or off the premises and for
2 sampling purposes for consumption on the premises, at a fee of
3 \$250 for each salesroom. Licensees shall not jointly control and
4 operate salesrooms. Additionally, **【**subject to rules and regulations,
5 one salesroom per county may be jointly controlled and operated by
6 at least two plenary or farm winery licensees for the sale of the
7 products of any plenary or farm winery licensee for consumption on
8 or off the premises and for consumption on the licensed premises
9 for sampling purposes at an additional fee of \$625 per county
10 salesroom.**】** the holder of this license who produces not more than
11 250,000 gallons per year may ship not more than 12 cases of wine
12 per year, subject to regulation, to any person within or without this
13 State over 21 years of age for personal consumption and not for
14 resale. A case of wine shall not exceed a maximum of nine liters.
15 A copy of the original invoice shall be available for inspection by
16 persons authorized to enforce the alcoholic beverage laws of this
17 State for a minimum period of three years at the licensed premises
18 of the winery. For the purposes of this subsection, "sampling"
19 means the selling at a nominal charge or the gratuitous offering of
20 an open container not exceeding one and one-half ounces of any
21 wine.

22 A holder of this license who produces not more than 250,000
23 gallons per year shall not own, either in whole or in part, or hold,
24 either directly or indirectly, any interest in a winery that produces
25 more than 250,000 gallons per year. ¹In addition, a holder of this
26 license who produces more than 250,000 gallons per year shall not
27 own, either in whole or in part, or hold, either directly or indirectly,
28 any interest in a winery that produces not more than 250,000
29 gallons per year.¹

30 For the purposes of this subsection, "product" means any wine
31 that is produced, blended, fortified, or treated by the licensee on its
32 licensed premises situated in the State of New Jersey.

33 **【**Any holder of a plenary winery license who sold wine which
34 was produced, bottled, and labelled by that holder in a place other
35 than its licensed New Jersey premises between July 1, 1992 and
36 June 30, 1993, may continue to sell that wine provided no more
37 than 25,000 cases, each case consisting of 12 750 milliliter bottles
38 or the equivalent, are sold in any single license year. This privilege
39 shall terminate upon, and not survive, any transfer of the license to
40 another person or entity subsequent to the effective date of this
41 1993 amendatory act or any transfer of stock of the licensed
42 corporation other than to children, grandchildren, parents, spouses
43 or siblings of the existing stockholders.**】**

44 Farm winery license. 2b. The holder of this license shall be
45 entitled, subject to rules and regulations, to manufacture any
46 fermented wines and fruit juices in a quantity to be expressed in
47 said license, dependent upon the following fees and not in excess of

1 50,000 gallons per year and to sell and distribute his products to
2 wholesalers and retailers licensed in accordance with this chapter
3 and to churches for religious purposes and to sell and distribute
4 without this State to any persons pursuant to the laws of the places
5 of such sale and distribution, and to maintain a warehouse and to
6 sell at retail to consumers for consumption on or off the licensed
7 premises and to offer samples for sampling purposes only. The
8 license shall be issued only when the winery at which such
9 fermented wines and fruit juices are manufactured is located and
10 constructed upon a tract of land exclusively under the control of the
11 licensee, provided that the licensee is actively engaged in growing
12 and cultivating an area of not less than three acres on or adjacent to
13 the winery premises and on which are growing grape vines or fruit
14 to be processed into wine or fruit juice; and provided, further, that
15 for the first five years of the operation of the winery such fermented
16 wines and fruit juices shall be manufactured from at least 51%
17 grapes or fruit grown in the State and that thereafter they shall be
18 manufactured from grapes or fruit grown in this State at least to the
19 extent required for labeling as "New Jersey Wine" under the
20 applicable federal laws and regulations. The containers of all wine
21 sold to consumers by such licensee shall have affixed a label stating
22 such information as shall be required by the rules and regulations of
23 the Director of the Division of Alcoholic Beverage Control. The
24 fee for this license shall be graduated as follows: to so manufacture
25 between 30,000 and 50,000 gallons per annum, \$375; to so
26 manufacture between 2,500 and 30,000 gallons per annum, \$250; to
27 so manufacture between 1,000 and 2,500 gallons per annum, \$125;
28 to so manufacture less than 1,000 gallons per annum, \$63. No farm
29 winery license shall be held by the holder of a plenary winery
30 license or be situated on a premises licensed as a plenary winery.

31 The holder of this license shall also have the right to sell and
32 distribute his products to retailers licensed in accordance with this
33 chapter, except that the 'holder of this license shall not use a
34 common carrier for such distribution. The' fee for this additional
35 privilege shall be \$100. The holder of this license shall have the
36 right to sell his products in original packages at retail to consumers
37 in [six] '[18] 15' salesrooms apart from the winery premises for
38 consumption on or off the premises, and for sampling purposes for
39 consumption on the premises, at a fee of \$250 for each salesroom.
40 Licensees shall not jointly control and operate salesrooms.
41 Additionally, [subject to rules and regulations, one salesroom per
42 county may be jointly controlled and operated by at least two
43 plenary or farm winery licensees for the sale of the products of any
44 plenary or farm winery licensee for consumption on or off the
45 premises and for consumption on the licensed premises for
46 sampling purposes only, at an additional fee of \$625 per county
47 salesroom.] the holder of this license may ship not more than 12

1 cases of wine per year, subject to regulation, to any person within or
2 without this State over 21 years of age for personal consumption
3 and not for resale. A case of wine shall not exceed a maximum of
4 nine liters. A copy of the original invoice shall be available for
5 inspection by persons authorized to enforce the alcoholic beverage
6 laws of this State for a minimum period of three years at the
7 licensed premises of the winery. For the purposes of this
8 subsection, "sampling" means the selling at a nominal charge or the
9 gratuitous offering of an open container not exceeding one and one-
10 half ounces of any wine.

11 A holder of this license who produces not more than 250,000
12 gallons per year shall not own, either in whole or in part, or hold,
13 either directly or indirectly, any interest in a winery that produces
14 more than 250,000 gallons per year.

15 Unless otherwise indicated, for the purposes of this subsection,
16 with respect to farm winery licenses, "manufacture" means the
17 vinification, aging, storage, blending, clarification, stabilization and
18 bottling of wine or juice from New Jersey fruit to the extent
19 required by this subsection.

20 Wine blending license. 2c. The holder of this license shall be
21 entitled, subject to rules and regulations, to blend, treat, mix, and
22 bottle fermented wines and fruit juices with non-alcoholic
23 beverages, and to sell and distribute his products to wholesalers and
24 retailers licensed in accordance with this chapter, and to sell and
25 distribute without this State to any persons pursuant to the laws of
26 the places of such sale and distribution, and to maintain a
27 warehouse. The fee for this license shall be \$625.

28 Instructional winemaking facility license. 2d. The holder of this
29 license shall be entitled, subject to rules and regulations, to instruct
30 persons in and provide them with the opportunity to participate
31 directly in the process of winemaking and to directly assist such
32 persons in the process of winemaking while in the process of
33 instruction on the premises of the facility. The holder of this
34 license also shall be entitled to manufacture wine on the premises
35 not in excess of an amount of 10% of the wine produced annually
36 on the premises of the facility, which shall be used only to replace
37 quantities lost or discarded during the winemaking process, to
38 maintain a warehouse, and to offer samples produced by persons
39 who have received instruction in winemaking on the premises by
40 the licensee for sampling purposes only on the licensed premises for
41 the purpose of promoting winemaking for personal or household use
42 or consumption. Wine produced on the premises of an instructional
43 winemaking facility shall be used, consumed or disposed of on the
44 facility's premises or distributed from the facility's premises to a
45 person who has participated directly in the process of winemaking
46 for the person's personal or household use or consumption. The
47 holder of this license may sell mercantile items traditionally
48 associated with winemaking and novelty wearing apparel identified

1 with the name of the establishment licensed under the provisions of
2 this section. The holder of this license may use the licensed
3 premises for an event or affair, including an event or affair at which
4 a plenary retail consumption licensee serves alcoholic beverages in
5 compliance with all applicable statutes and regulations promulgated
6 by the director. The fee for this license shall be \$1,000. For the
7 purposes of this subsection, "sampling" means the gratuitous
8 offering of an open container not exceeding one and one-half
9 ounces of any wine.

10 Out-of-State winery license. 2e. Provided that the applicant
11 does not produce more than 250,000 gallons of wine per year, the
12 holder of a valid winery license issued in any other state may make
13 application to the director for this license. The holder of this
14 license shall have the right to sell and distribute his products to
15 wholesalers licensed in accordance with this chapter and to sell
16 such wine at retail in original packages in '19] 16' salesrooms
17 apart from the winery premises for consumption on or off the
18 premises at a fee of \$250 for each salesroom. Licensees shall not
19 jointly control and operate salesrooms. The annual fee for this
20 license shall be \$938. A copy of a current license issued by another
21 state shall accompany the application. The holder of this license
22 also shall have the right to sell and distribute his products to
23 retailers licensed in accordance with this chapter, except that the
24 'holder of this license shall not use a common carrier for such
25 distribution. The¹ fee for this additional privilege shall be
26 graduated as follows: a licensee who manufactures more than
27 150,000 gallons, but not in excess of 250,000 gallons per annum,
28 \$1,000; a licensee who manufactures more than 100,000 gallons,
29 but not in excess of 150,000 gallons per annum, \$500; a licensee
30 who manufactures more than 50,000 gallons, but not in excess of
31 100,000 gallons per annum, \$250; a licensee who manufactures
32 50,000 gallons or less per annum, \$100. Additionally, the holder of
33 this license may ship not more than 12 cases of wine per year,
34 subject to regulation, to any person within or without this State over
35 21 years of age for personal consumption and not for resale. A case
36 of wine shall not exceed a maximum of nine liters. A copy of the
37 original invoice shall be available for inspection by persons
38 authorized to enforce the alcoholic beverage laws of this State for a
39 minimum period of three years at the licensed premises of the
40 winery.

41 The licensee shall collect from the customer the tax due on the
42 sale pursuant to the "Sales and Use Tax Act," P.L.1966, c.30,
43 (C.54:32B-1 et seq.) and shall pay the tax due on the delivery of
44 alcoholic beverages pursuant to the "Alcoholic beverage tax law,"
45 R.S.54:41-1 et seq. The Director of the Division of Taxation in the
46 Department of the Treasury shall promulgate such rules and
47 regulations necessary to effectuate the provisions of this paragraph,
48 and may provide by regulation for the co-administration of the tax

1 due on the delivery of alcoholic beverages pursuant to the
2 “Alcoholic beverage tax law,” R.S.54:41-1 et seq. with the
3 administration of the tax due on the sale pursuant to the “Sales and
4 Use Tax Act,” P.L.1966, c.30, (C.54:32B-1 et seq.).

5 A holder of this license who produces not more than 250,000
6 gallons per year shall not own, either in whole or in part, or hold,
7 either directly or indirectly, any interest in a winery that produces
8 more than 250,000 gallons per year.

9 Plenary distillery license. 3a. The holder of this license shall be
10 entitled, subject to rules and regulations, to manufacture any
11 distilled alcoholic beverages and rectify, blend, treat and mix, and
12 to sell and distribute his products to wholesalers and retailers
13 licensed in accordance with this chapter, and to sell and distribute
14 without this State to any persons pursuant to the laws of the places
15 of such sale and distribution, and to maintain a warehouse. The fee
16 for this license shall be \$12,500.

17 Limited distillery license. 3b. The holder of this license shall be
18 entitled, subject to rules and regulations, to manufacture and bottle
19 any alcoholic beverages distilled from fruit juices and rectify,
20 blend, treat, mix, compound with wine and add necessary
21 sweetening and flavor to make cordial or liqueur, and to sell and
22 distribute to wholesalers and retailers licensed in accordance with
23 this chapter, and to sell and distribute without this State to any
24 persons pursuant to the laws of the places of such sale and
25 distribution and to warehouse these products. The fee for this
26 license shall be \$3,750.

27 Supplementary limited distillery license. 3c. The holder of this
28 license shall be entitled, subject to rules and regulations, to bottle
29 and rebottle, in a quantity to be expressed in said license, dependent
30 upon the following fees, alcoholic beverages distilled from fruit
31 juices by such holder pursuant to a prior plenary or limited distillery
32 license, and to sell and distribute his products to wholesalers and
33 retailers licensed in accordance with this chapter, and to sell and
34 distribute without this State to any persons pursuant to the laws of
35 the places of such sale and distribution, and to maintain a
36 warehouse. The fee for this license shall be graduated as follows:
37 to so bottle and rebottle not more than 5,000 wine gallons per
38 annum, \$313; to so bottle and rebottle not more than 10,000 wine
39 gallons per annum, \$625; to so bottle and rebottle without limit as
40 to amount, \$1,250.

41 Rectifier and blender license. 4. The holder of this license shall
42 be entitled, subject to rules and regulations, to rectify, blend, treat
43 and mix distilled alcoholic beverages, and to fortify, blend, and
44 treat fermented alcoholic beverages, and prepare mixtures of
45 alcoholic beverages, and to sell and distribute his products to
46 wholesalers and retailers licensed in accordance with this chapter,
47 and to sell and distribute without this State to any persons pursuant

1 to the laws of the places of such sale and distribution, and to
2 maintain a warehouse. The fee for this license shall be \$7,500.

3 Bonded warehouse bottling license. 5. The holder of this license
4 shall be entitled, subject to rules and regulations, to bottle alcoholic
5 beverages in bond on behalf of all persons authorized by federal and
6 State law and regulations to withdraw alcoholic beverages from
7 bond. The fee for this license shall be \$625. This license shall be
8 issued only to persons holding permits to operate Internal Revenue
9 bonded warehouses pursuant to the laws of the United States.

10 The provisions of section 21 of P.L.2003, c.117 amendatory
11 of this section shall apply to licenses issued or transferred on or
12 after July 1, 2003, and to license renewals commencing on or after
13 July 1, 2003.

14 (cf: P.L.2007, c.329, s.1)

15

16 2. (New section) The taxes collected and paid pursuant to the
17 licenses issued pursuant to R.S.33:1-10 shall be governed by the
18 provisions of the "State Uniform Tax Procedure Law," R.S.54:48-1
19 et seq., including the tax clearance and license suspension
20 provisions of section 5 of P.L.2004, c.58 (C.54:50-26.3).

21

22 3. This act shall take effect on the first day of the fourth month
23 after enactment.

24

25

26

27

28 Permits direct shipping by wineries and creates Out-of-State
29 winery license.

SENATE, No. 3172

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED DECEMBER 12, 2011

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Assemblywoman CELESTE M. RILEY

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Assemblyman Dancer

SYNOPSIS

Permits direct shipping by wineries and creates Out-of-State winery license.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/10/2012)

S3172 SWEENEY

2

1 AN ACT concerning certain winery licenses and amending R.S.33:1-
2 10 and supplementing Title 33 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. R.S.33:1-10 is amended to read as follows:

8 33:1-10. Class A licenses shall be subdivided and classified as
9 follows:

10 Plenary brewery license. 1a. The holder of this license shall be
11 entitled, subject to rules and regulations, to brew any malt alcoholic
12 beverages and to sell and distribute his products to wholesalers and
13 retailers licensed in accordance with this chapter, and to sell and
14 distribute without this State to any persons pursuant to the laws of
15 the places of such sale and distribution, and to maintain a
16 warehouse. The fee for this license shall be \$10,625.

17 Limited brewery license. 1b. The holder of this license shall be
18 entitled, subject to rules and regulations, to brew any malt alcoholic
19 beverages in a quantity to be expressed in said license, dependent
20 upon the following fees and not in excess of 300,000 barrels of 31
21 fluid gallons capacity per year and to sell and distribute this product
22 to wholesalers and retailers licensed in accordance with this
23 chapter, and to sell and distribute without this State to any persons
24 pursuant to the laws of the places of such sale and distribution, and
25 to maintain a warehouse. The fee for this license shall be graduated
26 as follows: to so brew not more than 50,000 barrels of 31 fluid
27 gallons capacity per annum, \$1,250; to so brew not more than
28 100,000 barrels of 31 fluid gallons capacity per annum, \$2,500; to
29 so brew not more than 200,000 barrels of 31 fluid gallons capacity
30 per annum, \$5,000; to so brew not more than 300,000 barrels of 31
31 fluid gallons capacity per annum, \$7,500.

32 Restricted brewery license. 1c. The holder of this license shall
33 be entitled, subject to rules and regulations, to brew any malt
34 alcoholic beverages in a quantity to be expressed in such license not
35 in excess of 3,000 barrels of 31 fluid gallons capacity per year.
36 Notwithstanding the provisions of R.S.33:1-26, the director shall
37 issue a restricted brewery license only to a person or an entity
38 which has identical ownership to an entity which holds a plenary
39 retail consumption license issued pursuant to R.S.33:1-12, provided
40 that such plenary retail consumption license is operated in
41 conjunction with a restaurant regularly and principally used for the
42 purpose of providing meals to its customers and having adequate
43 kitchen and dining room facilities, and that the licensed restaurant
44 premises is immediately adjoining the premises licensed as a
45 restricted brewery. The holder of this license shall only be entitled

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

S3172 SWEENEY

1 to sell or deliver the product to that restaurant premises. The fee for
2 this license shall be \$1,250, which fee shall entitle the holder to
3 brew up to 1,000 barrels of 31 fluid gallons per annum. The
4 licensee also shall pay an additional \$625 for every additional 1,000
5 barrels of 31 fluid gallons produced. No more than two restricted
6 brewery licenses shall be issued to a person or entity which holds an
7 interest in a plenary retail consumption license. If the governing
8 body of the municipality in which the licensed premises will be
9 located should file a written objection, the director shall hold a
10 hearing and may issue the license only if the director finds that the
11 issuance of the license will not be contrary to the public interest.
12 All fees related to the issuance of both licenses shall be paid in
13 accordance with statutory law.

14 Plenary winery license. 2a. Provided that the holder is engaged
15 in growing and cultivating grapes or fruit used in the production of
16 wine on at least three acres on, or adjacent to, the winery premises,
17 the holder of this license shall be entitled, subject to rules and
18 regulations, to produce any fermented wines, and to blend, fortify
19 and treat wines, and to sell and distribute his products to
20 wholesalers **[and retailers]** licensed in accordance with this chapter
21 and to churches for religious purposes, and to sell and distribute
22 without this State to any persons pursuant to the laws of the places
23 of such sale and distribution, and to maintain a warehouse, and to
24 sell his products at retail to consumers on the licensed premises of
25 the winery for consumption on or off the premises and to offer
26 samples for sampling purposes only. The fee for this license shall
27 be \$938. **[The]** A holder of this license who produces not more
28 than 250,000 gallons per year shall also have the right to sell and
29 distribute his products to retailers licensed in accordance with this
30 chapter, except that the fee for this additional privilege shall be
31 graduated as follows: a licensee who manufactures more than
32 150,000 gallons, but not in excess of 250,000 gallons per annum,
33 \$1,000; a licensee who manufactures more than 100,000 gallons,
34 but not in excess of 150,000 gallons per annum, \$500; a licensee
35 who manufactures more than 50,000 gallons, but not in excess of
36 100,000 gallons per annum, \$250; a licensee who manufactures
37 50,000 gallons or less per annum, \$100. A holder of this license
38 who produces not more than 250,000 gallons per year shall have the
39 right to sell such wine at retail in original packages in **[six]** 18
40 salesrooms apart from the winery premises for consumption on or
41 off the premises and for sampling purposes for consumption on the
42 premises, at a fee of \$250 for each salesroom. Licensees shall not
43 jointly control and operate salesrooms. Additionally, **[subject to**
44 rules and regulations, one salesroom per county may be jointly
45 controlled and operated by at least two plenary or farm winery
46 licensees for the sale of the products of any plenary or farm winery
47 licensee for consumption on or off the premises and for
48 consumption on the licensed premises for sampling purposes at an

1 additional fee of \$625 per county salesroom.】 the holder of this
2 license who produces not more than 250,000 gallons per year may
3 ship not more than 12 cases of wine per year, subject to regulation,
4 to any person within or without this State over 21 years of age for
5 personal consumption and not for resale. A case of wine shall not
6 exceed a maximum of nine liters. A copy of the original invoice
7 shall be available for inspection by persons authorized to enforce
8 the alcoholic beverage laws of this State for a minimum period of
9 three years at the licensed premises of the winery. For the purposes
10 of this subsection, "sampling" means the selling at a nominal charge
11 or the gratuitous offering of an open container not exceeding one
12 and one-half ounces of any wine.

13 A holder of this license who produces not more than 250,000
14 gallons per year shall not own, either in whole or in part, or hold,
15 either directly or indirectly, any interest in a winery that produces
16 more than 250,000 gallons per year.

17 For the purposes of this subsection, "product" means any wine
18 that is produced, blended, fortified, or treated by the licensee on its
19 licensed premises situated in the State of New Jersey.

20 【Any holder of a plenary winery license who sold wine which
21 was produced, bottled, and labelled by that holder in a place other
22 than its licensed New Jersey premises between July 1, 1992 and
23 June 30, 1993, may continue to sell that wine provided no more
24 than 25,000 cases, each case consisting of 12 750 milliliter bottles
25 or the equivalent, are sold in any single license year. This privilege
26 shall terminate upon, and not survive, any transfer of the license to
27 another person or entity subsequent to the effective date of this
28 1993 amendatory act or any transfer of stock of the licensed
29 corporation other than to children, grandchildren, parents, spouses
30 or siblings of the existing stockholders.】

31 Farm winery license. 2b. The holder of this license shall be
32 entitled, subject to rules and regulations, to manufacture any
33 fermented wines and fruit juices in a quantity to be expressed in
34 said license, dependent upon the following fees and not in excess of
35 50,000 gallons per year and to sell and distribute his products to
36 wholesalers and retailers licensed in accordance with this chapter
37 and to churches for religious purposes and to sell and distribute
38 without this State to any persons pursuant to the laws of the places
39 of such sale and distribution, and to maintain a warehouse and to
40 sell at retail to consumers for consumption on or off the licensed
41 premises and to offer samples for sampling purposes only. The
42 license shall be issued only when the winery at which such
43 fermented wines and fruit juices are manufactured is located and
44 constructed upon a tract of land exclusively under the control of the
45 licensee, provided that the licensee is actively engaged in growing
46 and cultivating an area of not less than three acres on or adjacent to
47 the winery premises and on which are growing grape vines or fruit
48 to be processed into wine or fruit juice; and provided, further, that

1 for the first five years of the operation of the winery such fermented
2 wines and fruit juices shall be manufactured from at least 51%
3 grapes or fruit grown in the State and that thereafter they shall be
4 manufactured from grapes or fruit grown in this State at least to the
5 extent required for labeling as "New Jersey Wine" under the
6 applicable federal laws and regulations. The containers of all wine
7 sold to consumers by such licensee shall have affixed a label stating
8 such information as shall be required by the rules and regulations of
9 the Director of the Division of Alcoholic Beverage Control. The
10 fee for this license shall be graduated as follows: to so manufacture
11 between 30,000 and 50,000 gallons per annum, \$375; to so
12 manufacture between 2,500 and 30,000 gallons per annum, \$250; to
13 so manufacture between 1,000 and 2,500 gallons per annum, \$125;
14 to so manufacture less than 1,000 gallons per annum, \$63. No farm
15 winery license shall be held by the holder of a plenary winery
16 license or be situated on a premises licensed as a plenary winery.

17 The holder of this license shall also have the right to sell and
18 distribute his products to retailers licensed in accordance with this
19 chapter, except that the fee for this additional privilege shall be
20 \$100. The holder of this license shall have the right to sell his
21 products in original packages at retail to consumers in ~~【six】~~ 18
22 salesrooms apart from the winery premises for consumption on or
23 off the premises, and for sampling purposes for consumption on the
24 premises, at a fee of \$250 for each salesroom. Licensees shall not
25 jointly control and operate salesrooms. Additionally, ~~【subject to~~
26 rules and regulations, one salesroom per county may be jointly
27 controlled and operated by at least two plenary or farm winery
28 licensees for the sale of the products of any plenary or farm winery
29 licensee for consumption on or off the premises and for
30 consumption on the licensed premises for sampling purposes only,
31 at an additional fee of \$625 per county salesroom. ~~】~~ the holder of
32 this license may ship not more than 12 cases of wine per year,
33 subject to regulation, to any person within or without this State over
34 21 years of age for personal consumption and not for resale. A case
35 of wine shall not exceed a maximum of nine liters. A copy of the
36 original invoice shall be available for inspection by persons
37 authorized to enforce the alcoholic beverage laws of this State for a
38 minimum period of three years at the licensed premises of the
39 winery. For the purposes of this subsection, "sampling" means the
40 selling at a nominal charge or the gratuitous offering of an open
41 container not exceeding one and one-half ounces of any wine.

42 A holder of this license who produces not more than 250,000
43 gallons per year shall not own, either in whole or in part, or hold,
44 either directly or indirectly, any interest in a winery that produces
45 more than 250,000 gallons per year.

46 Unless otherwise indicated, for the purposes of this subsection,
47 with respect to farm winery licenses, "manufacture" means the
48 vinification, aging, storage, blending, clarification, stabilization and

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1 bottling of wine or juice from New Jersey fruit to the extent
2 required by this subsection.

3 Wine blending license. 2c. The holder of this license shall be
4 entitled, subject to rules and regulations, to blend, treat, mix, and
5 bottle fermented wines and fruit juices with non-alcoholic
6 beverages, and to sell and distribute his products to wholesalers and
7 retailers licensed in accordance with this chapter, and to sell and
8 distribute without this State to any persons pursuant to the laws of
9 the places of such sale and distribution, and to maintain a
10 warehouse. The fee for this license shall be \$625.

11 Instructional winemaking facility license. 2d. The holder of this
12 license shall be entitled, subject to rules and regulations, to instruct
13 persons in and provide them with the opportunity to participate
14 directly in the process of winemaking and to directly assist such
15 persons in the process of winemaking while in the process of
16 instruction on the premises of the facility. The holder of this
17 license also shall be entitled to manufacture wine on the premises
18 not in excess of an amount of 10% of the wine produced annually
19 on the premises of the facility, which shall be used only to replace
20 quantities lost or discarded during the winemaking process, to
21 maintain a warehouse, and to offer samples produced by persons
22 who have received instruction in winemaking on the premises by
23 the licensee for sampling purposes only on the licensed premises for
24 the purpose of promoting winemaking for personal or household use
25 or consumption. Wine produced on the premises of an instructional
26 winemaking facility shall be used, consumed or disposed of on the
27 facility's premises or distributed from the facility's premises to a
28 person who has participated directly in the process of winemaking
29 for the person's personal or household use or consumption. The
30 holder of this license may sell mercantile items traditionally
31 associated with winemaking and novelty wearing apparel identified
32 with the name of the establishment licensed under the provisions of
33 this section. The holder of this license may use the licensed
34 premises for an event or affair, including an event or affair at which
35 a plenary retail consumption licensee serves alcoholic beverages in
36 compliance with all applicable statutes and regulations promulgated
37 by the director. The fee for this license shall be \$1,000. For the
38 purposes of this subsection, "sampling" means the gratuitous
39 offering of an open container not exceeding one and one-half
40 ounces of any wine.

41 Out-of-State winery license. 2e. Provided that the applicant
42 does not produce more than 250,000 gallons of wine per year, the
43 holder of a valid winery license issued in any other state may make
44 application to the director for this license. The holder of this
45 license shall have the right to sell and distribute his products to
46 wholesalers licensed in accordance with this chapter and to sell
47 such wine at retail in original packages in 19 salesrooms apart from
48 the winery premises for consumption on or off the premises at a fee

1 of \$250 for each salesroom. Licensees shall not jointly control and
2 operate salesrooms. The annual fee for this license shall be \$938.
3 A copy of a current license issued by another state shall accompany
4 the application. The holder of this license also shall have the right
5 to sell and distribute his products to retailers licensed in accordance
6 with this chapter, except that the fee for this additional privilege
7 shall be graduated as follows: a licensee who manufactures more
8 than 150,000 gallons, but not in excess of 250,000 gallons per
9 annum, \$1,000; a licensee who manufactures more than 100,000
10 gallons, but not in excess of 150,000 gallons per annum, \$500; a
11 licensee who manufactures more than 50,000 gallons, but not in
12 excess of 100,000 gallons per annum, \$250; a licensee who
13 manufactures 50,000 gallons or less per annum, \$100. Additionally,
14 the holder of this license may ship not more than 12 cases of wine
15 per year, subject to regulation, to any person within or without this
16 State over 21 years of age for personal consumption and not for
17 resale. A case of wine shall not exceed a maximum of nine liters.
18 A copy of the original invoice shall be available for inspection by
19 persons authorized to enforce the alcoholic beverage laws of this
20 State for a minimum period of three years at the licensed premises
21 of the winery.

22 The licensee shall collect from the customer the tax due on the
23 sale pursuant to the "Sales and Use Tax Act," P.L.1966, c.30,
24 (C.54:32B-1 et seq.) and shall pay the tax due on the delivery of
25 alcoholic beverages pursuant to the "Alcoholic beverage tax law,"
26 R.S.54:41-1 et seq. The Director of the Division of Taxation in the
27 Department of the Treasury shall promulgate such rules and
28 regulations necessary to effectuate the provisions of this paragraph,
29 and may provide by regulation for the co-administration of the tax
30 due on the delivery of alcoholic beverages pursuant to the
31 "Alcoholic beverage tax law," R.S.54:41-1 et seq. with the
32 administration of the tax due on the sale pursuant to the "Sales and
33 Use Tax Act," P.L.1966, c.30, (C.54:32B-1 et seq.).

34 A holder of this license who produces not more than 250,000
35 gallons per year shall not own, either in whole or in part, or hold,
36 either directly or indirectly, any interest in a winery that produces
37 more than 250,000 gallons per year.

38 Plenary distillery license. 3a. The holder of this license shall be
39 entitled, subject to rules and regulations, to manufacture any
40 distilled alcoholic beverages and rectify, blend, treat and mix, and
41 to sell and distribute his products to wholesalers and retailers
42 licensed in accordance with this chapter, and to sell and distribute
43 without this State to any persons pursuant to the laws of the places
44 of such sale and distribution, and to maintain a warehouse. The fee
45 for this license shall be \$12,500.

46 Limited distillery license. 3b. The holder of this license shall be
47 entitled, subject to rules and regulations, to manufacture and bottle
48 any alcoholic beverages distilled from fruit juices and rectify,

1 blend, treat, mix, compound with wine and add necessary
2 sweetening and flavor to make cordial or liqueur, and to sell and
3 distribute to wholesalers and retailers licensed in accordance with
4 this chapter, and to sell and distribute without this State to any
5 persons pursuant to the laws of the places of such sale and
6 distribution and to warehouse these products. The fee for this
7 license shall be \$3,750.

8 Supplementary limited distillery license. 3c. The holder of this
9 license shall be entitled, subject to rules and regulations, to bottle
10 and rebottle, in a quantity to be expressed in said license, dependent
11 upon the following fees, alcoholic beverages distilled from fruit
12 juices by such holder pursuant to a prior plenary or limited distillery
13 license, and to sell and distribute his products to wholesalers and
14 retailers licensed in accordance with this chapter, and to sell and
15 distribute without this State to any persons pursuant to the laws of
16 the places of such sale and distribution, and to maintain a
17 warehouse. The fee for this license shall be graduated as follows:
18 to so bottle and rebottle not more than 5,000 wine gallons per
19 annum, \$313; to so bottle and rebottle not more than 10,000 wine
20 gallons per annum, \$625; to so bottle and rebottle without limit as
21 to amount, \$1,250.

22 Rectifier and blender license. 4. The holder of this license shall
23 be entitled, subject to rules and regulations, to rectify, blend, treat
24 and mix distilled alcoholic beverages, and to fortify, blend, and
25 treat fermented alcoholic beverages, and prepare mixtures of
26 alcoholic beverages, and to sell and distribute his products to
27 wholesalers and retailers licensed in accordance with this chapter,
28 and to sell and distribute without this State to any persons pursuant
29 to the laws of the places of such sale and distribution, and to
30 maintain a warehouse. The fee for this license shall be \$7,500.

31 Bonded warehouse bottling license. 5. The holder of this license
32 shall be entitled, subject to rules and regulations, to bottle alcoholic
33 beverages in bond on behalf of all persons authorized by federal and
34 State law and regulations to withdraw alcoholic beverages from
35 bond. The fee for this license shall be \$625. This license shall be
36 issued only to persons holding permits to operate Internal Revenue
37 bonded warehouses pursuant to the laws of the United States.

38 The provisions of section 21 of P.L.2003, c.117 amendatory
39 of this section shall apply to licenses issued or transferred on or
40 after July 1, 2003, and to license renewals commencing on or after
41 July 1, 2003.

42 (cf: P.L.2007, c.329, s.1)

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44 2. (New section) The taxes collected and paid pursuant to the
45 licenses issued pursuant to R.S.33:1-10 shall be governed by the
46 provisions of the "State Uniform Tax Procedure Law," R.S.54:48-1
47 et seq., including the tax clearance and license suspension
48 provisions of section 5 of P.L.2004, c.58 (C.54:50-26.3).

1 3. This act shall take effect on the first day of the fourth month
2 after enactment.

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STATEMENT

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7 This bill makes various changes to the statutes governing the sale
8 and distribution of products by New Jersey wineries and creates a
9 new Out-of-State winery license governing New Jersey sales by
10 wineries licensed in other states.

11 Under the provisions of the bill, plenary wineries that produce a
12 maximum of 250,000 gallons per year and farm wineries would be
13 permitted to directly sell their products to licensed retailers after
14 paying a fee set forth in the bill. The maximum production of
15 250,000 gallons per year is based on the Internal Revenue Code's
16 definition of a small producer of wine. Plenary wineries would pay
17 a graduated fee ranging from \$100 to \$1,000 based on the winery's
18 annual production; farm wineries would pay a fee of \$100. All
19 plenary and farm wineries would continue to be able to sell their
20 products to licensed wholesalers.

21 The bill permits plenary wineries that produce a maximum of
22 250,000 gallons per year and farm wineries to sell products at retail
23 at 18 sales rooms but eliminates the provision in current law that
24 permits them to open joint sales rooms with other plenary wineries
25 or farm wineries. Under current law, all plenary and farm wineries
26 may operate six individual sales rooms and jointly operate twenty-
27 one sales rooms. Additionally, the bill permits plenary wineries
28 that produce a maximum of 250,000 gallons per year and farm
29 wineries to directly ship up to 12 cases of wine to any person over
30 age 21 in New Jersey or any other state for personal consumption
31 and not for resale. A case of wine may not exceed nine liters. The
32 winery is required to retain the original invoices for any wine
33 shipped for at least three years on the winery premises for
34 inspection by the State.

35 The bill also creates an Out-of-State winery license which may
36 be issued to wineries licensed in other states that produce a
37 maximum of 250,000 gallons of wine per year. The licensee would
38 be permitted to sell his or her products to wholesalers and retailers
39 and at retail in 19 salesrooms apart from the winery premises, for
40 consumption on or off the premises, at a fee of \$250 for each
41 salesroom. The license holder also is permitted to ship up to 12
42 cases of wine per year to any person in this State over age 21 for
43 personal consumption and not for resale. A case of wine may not
44 exceed nine liters. The bill sets the annual fee for the Out-of-State
45 winery license at \$938, which is the same fee paid by plenary and
46 farm wineries. The bill provides for the collection of all applicable
47 taxes for sales made by the holders of Out-of-State winery licenses.

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1 Finally, the bill clarifies that the holders of the new Out-of-State
2 winery license, like all other license holders, are subject to the tax
3 clearance and licensing provisions of the “State Uniform Tax
4 Procedure Law,” R.S.54:48-1 et seq. and section 5 of P.L.2004, c.58
5 (C.54:50-26.3).

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 3172
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: DECEMBER 20, 2011

SUMMARY

- Synopsis:** Permits direct shipping by wineries and creates out-of-State winery license.
- Type of Impact:** Indeterminate Revenue Impact. Funds may be derived from various taxes and licensure fees.
- Agencies Affected:** Department of Law and Public Safety; Division of Alcoholic Beverage Control; Department of Treasury; Division of Taxation.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		
State Revenue	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) notes this bill has an indeterminate fiscal impact on the State since the revenue from various taxes and licensure fees, and potential enforcement costs, are unknown. It is unknown what revenue, if any, will be gained from: 1) taxes if additional bottles/cases of New Jersey wine are sold by licensed New Jersey wineries to out-of-State buyers; 2) the purchase of licenses by eligible out-of-State wineries; and 3) taxes from the out-of-State wine being shipped to individuals in New Jersey. Additionally, the failure of out-of-State, and possibly in-State, wineries to pay taxes is an additional factor to consider. It is unknown how many entities will be non-compliant.
- New Jersey wineries that produce not more than 250,000 gallons per year and farm wineries would be permitted to sell and ship their products to out-of-State consumers and sell directly to licensed retailers after paying a licensure fee based on their annual production. The number of salesrooms that could be operated by each licensee would also be increased to 18, from six, at a cost of \$250 for each salesroom. These changes would increase selling options for eligible New Jersey wineries, which may result in an increase in State tax revenues and licensure fees.
- The bill creates an out-of-State winery license, at a cost of \$938, which may be issued to wineries licensed in other states that produce no more than 250,000 gallons of wine per year. Similar to the provision for in-State wineries, a salesroom option would be provided,

allowing for 19 salesrooms at a cost of \$250 per salesroom. Allowing certain out-of-State wineries to sell and distribute products should generate an indeterminate increase in State tax revenues and licensing fees.

BILL DESCRIPTION

Senate Bill No. 3172 of 2011 makes various changes to the statutes governing the sale and distribution of products by New Jersey wineries and creates a new out-of-State winery license governing New Jersey sales by wineries licensed in other states.

Under the provisions of the bill, plenary wineries that produce not more than 250,000 gallons per year and farm wineries would be permitted to directly sell their products to licensed retailers after paying a fee set forth in the bill. Plenary wineries would pay a graduated fee ranging from \$100 to \$1,000 based on the winery's annual production; farm wineries would pay a fee of \$100. All plenary and farm wineries would continue to be able to sell their products to licensed wholesalers.

The bill permits plenary wineries that produce not more than 250,000 gallons per year and farm wineries to sell products at retail at 18 sales rooms but eliminates the provision in current law that permits them to open joint sales rooms with other plenary wineries or farm wineries. Under current law, all plenary and farm wineries may operate six individual sales rooms and jointly operate 21 sales rooms.

Additionally, the bill permits plenary wineries that produce not more than 250,000 gallons per year and farm wineries to directly ship up to 12 cases of wine to any person over age 21 in New Jersey or any other state for personal consumption and not for resale. A case of wine may not exceed nine liters. The winery is required to retain the original invoices for any wine shipped for at least three years on the winery premises for inspection by the State.

Finally, the bill creates an out-of-State winery license which may be issued to wineries licensed in other states that produce not more than 250,000 gallons of wine per year. The licensee would be permitted to sell products to wholesalers and retailers and at retail in 19 salesrooms apart from the winery premises, for consumption on or off the premises, at a fee of \$250 for each salesroom. The license holder also is permitted to ship up to 12 cases of wine per year to any person in this State over age 21 for personal consumption and not for resale. A case of wine may not exceed nine liters.

The bill sets the annual fee for the out-of-State winery license at \$938, which is the same fee paid by plenary and farm wineries. The bill provides for the collection of all applicable taxes for sales made by the holders of out-of-State winery licenses.

The bill clarifies that the holders of the new out-of-State winery license, like all other license holders, are subject to the tax clearance and licensing provisions of the "State Uniform Tax Procedure Law."

FISCAL ANALYSIS

EXECUTIVE BRANCH

Division of Taxation, Department of Treasury

None provided.

The Division of Alcoholic Beverage Control, Department of Law and Public Safety

In reviewing similar legislation (Senate Bill No. 2782 of 2011) the Division of Alcoholic Beverage Control (ABC) unofficially indicated that the bill may affect the cost of compliance enforcement, revenue collection oversight, and general enforcement.

The capability to enforce compliance with the bill's mandates for out-of-State wineries would require a significant expansion of investigator staffing and operating costs (travel, background checks, etc.). Additionally, enforcing the verification and payment of license fees and sales taxes concerning out-of-State direct shipments would require new audit and investigative resources.

The division has determined that they cannot provide an estimate of the number of out-of-State wineries which would submit applications. It is unclear to ABC if the added license revenue generated based on a set fee structure could support increased administrative costs. ABC concluded that there is no adequate basis for estimating a cost impact at this juncture.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes this bill has an indeterminate fiscal impact on the State since the revenue from various taxes and licensure fees, and potential enforcement costs, are unknown. It is unknown what revenue, if any, will be gained from: 1) taxes if additional bottles/cases of New Jersey wine are sold by licensed New Jersey wineries to out-of-State buyers; 2) the purchase of licenses by eligible out-of-State wineries; and 3) taxes from the out-of-State wine being shipped to individuals in New Jersey. Additionally, the failure of out-of-State, and possibly in-State, wineries to pay taxes is an additional factor to consider. It is unknown how many entities will be non-compliant.

New Jersey wineries that produce not more than 250,000 gallons per year and farm wineries would be permitted to ship and sell their products out-of-State and sell directly to licensed retailers after paying a licensure fee based on their annual production. The number of salesrooms that could be operated by each licensee would also be increased to 18, from six, at a cost of \$250 for each salesroom. These changes would increase selling options for eligible State wineries, which may result in an increase in tax revenues and licensure fees. The Division of Alcoholic Beverage Control (ABC) notes that there are 39 licensed wineries and 14 additional pending, or temporary, winery licenses currently in the State.

The bill also establishes an out-of-State winery license, at a cost of \$938, which may be issued to wineries licensed in other states that produce no more than 250,000 gallons of wine per year. Similar to the provision for the New Jersey wineries, a salesroom option would be provided, allowing for 19 salesrooms at a cost of \$250 per salesroom. Allowing certain out-of-State wineries to sell and distribute products should generate an indeterminate increase in State tax revenues and licensing fees.

Although there may be an increased cost to ABC for administration and enforcement of New Jersey and out-of-State tax collection, fees authorized in the bill may offset those expenditures. Furthermore, the Division of Taxation, in the Department of the Treasury, conducts field audits out-of-State and could, if necessary, conduct audits of the licensed out-of-State wineries to ensure compliance with New Jersey's taxation requirements. According to a 2010 summary, the out-of-State field audit branch is responsible for performing field audits for all New Jersey taxes on all taxpayers whose accounting records are maintained outside of the State.

The Wine Institute, a public policy advocacy association of California wineries, notes that currently 40 states, including Connecticut, Florida, New York, Maine, and California, allow direct shipping of wine. A majority of those states require a winery to hold a state issued license. In Maryland, legislation authorizing direct shipping of wine became effective July 1, 2011. New Jersey's neighboring states Delaware and Pennsylvania prohibit direct shipping.

The Wine Institute further notes that similar legislation (Senate Bill No. 2782 of 2011) would exclude at least 90 percent of U.S. wine producers from direct sales to New Jersey buyers because the bill only applies to wineries that produce not more than 250,000 gallons per year and farm wineries. The 250,000 gallons per year in the graduated fee structure is based on the Internal Revenue Code's definition of a small producer of wine.

Section: Law and Public Safety

*Analyst: Kristin B. Santos
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

SENATE, No. 3172

STATE OF NEW JERSEY

DATED: JANUARY 5, 2012

The Assembly Budget Committee reports favorably Senate Bill No. 3172.

This bill makes various changes to the statutes governing the sale and distribution of products by New Jersey wineries and creates a new out-of-State winery license governing New Jersey direct sales by wineries licensed in other states.

Under the bill, plenary wineries that produce a maximum of 250,000 gallons per year and farm wineries will be permitted to directly sell their products to licensed retailers after paying a fee. The maximum production of 250,000 gallons per year is based on the federal Internal Revenue Code's definition of a small producer of wine. The bill requires plenary wineries to pay a graduated fee ranging from \$100 to \$1,000 based on the winery's annual production; farm wineries will pay a fee of \$100. All plenary and farm wineries will continue to be able to sell their products to licensed wholesalers.

The bill permits plenary wineries that produce a maximum of 250,000 gallons per year and farm wineries to sell products at retail at 18 sales rooms but eliminates the provision in current law that permits them to open joint sales rooms with other plenary wineries or farm wineries. Under current law, all plenary and farm wineries may operate six individual sales rooms and jointly operate twenty-one sales rooms. Additionally, the bill permits plenary wineries that produce a maximum of 250,000 gallons per year and farm wineries to directly ship up to 12 cases of wine to any person over the age of 21 in New Jersey or any other state for personal consumption and not for resale. The bill specifies that a case of wine may not exceed nine liters. The bill requires a winery to retain the original invoices for any wine shipped for at least three years on the winery premises for inspection by the State.

The bill also creates an out-of-State winery license which may be issued to wineries, licensed in other states, that produce a maximum of 250,000 gallons of wine per year. The bill permits a licensee to sell its products to wholesalers and retailers and at retail in 19 salesrooms apart from the winery premises, for consumption on or off the premises, at a fee of \$250 for each salesroom. The bill allows a licensee to ship up to 12 cases of wine per year to any person in this State over the age of 21 for personal consumption and not for resale.

The bill specifies that a case of wine may not exceed nine liters. The bill sets the annual fee for the out-of-State winery license at \$938, which is the same fee paid by plenary wineries. The bill provides for the collection of all applicable State taxes for sales made by the holders of out-of-State winery licenses.

The bill clarifies that the holders of the new out-of-State winery license, like all other license holders, are subject to the "State Uniform Tax Procedure Law," R.S.54:48-1 et seq., including the tax clearance and licensing provisions of section 5 of P.L.2004, c.58 (C.54:50-26.3).

FISCAL IMPACT:

The Office of Legislative Services notes that this bill has an indeterminate fiscal impact on the State, as revenue from various taxes and fees are unknown. Revenue might be gained from: 1) taxes related to additional sales of New Jersey wine by licensed New Jersey wineries to out-of-State buyers; 2) the purchase of licenses by eligible out-of-State wineries; and 3) taxes from the out-of-State wine being shipped to individuals in New Jersey. The additional State costs of enforcing tax compliance are also unknown.

STATEMENT TO
SENATE, No. 3172

with Assembly Floor Amendments
(Proposed by Assemblyman Burzichelli)

ADOPTED: JANUARY 9, 2012

Senate Bill No. 3172 makes various changes to the statutes governing the sale and distribution of products by New Jersey wineries and creates a new Out-of-State winery license governing New Jersey direct sales by wineries licensed in other states.

As reported by the Assembly Budget Committee, the bill permitted a plenary or farm winery to operate 18 retail salesrooms apart from the winery premises and permitted Out-of-State winery licensees to operate 19 retail salesrooms. This Assembly amendment reduces the maximum number of salesrooms to 15 for farm and plenary wineries, and 16 for holders of the Out-of State winery license.

The bill also permits winery licensees to sell and distribute their products to New Jersey licensed retailers after paying a fee. This Assembly amendment provides that the winery is prohibited from using a common carrier for such distribution.

Finally, the amendments provide that a plenary winery licensee who produces more than 250,000 gallons per year is prohibited from owning, either in whole or in part, or holding, either directly or indirectly, any interest in a winery that produces 250,000 gallons or less per year.

ASSEMBLY, No. 4436

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED DECEMBER 15, 2011

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Salem, Cumberland and Gloucester)
Assemblyman JOHN S. WISNIEWSKI
District 19 (Middlesex)
Assemblywoman CELESTE M. RILEY
District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Assemblyman Dancer

SYNOPSIS

Permits direct shipping by wineries and creates Out-of-State winery license.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/6/2012)

1 AN ACT concerning certain winery licenses and amending R.S.33:1-
2 10 and supplementing Title 33 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. R.S.33:1-10 is amended to read as follows:

8 33:1-10. Class A licenses shall be subdivided and classified as
9 follows:

10 Plenary brewery license. 1a. The holder of this license shall be
11 entitled, subject to rules and regulations, to brew any malt alcoholic
12 beverages and to sell and distribute his products to wholesalers and
13 retailers licensed in accordance with this chapter, and to sell and
14 distribute without this State to any persons pursuant to the laws of
15 the places of such sale and distribution, and to maintain a
16 warehouse. The fee for this license shall be \$10,625.

17 Limited brewery license. 1b. The holder of this license shall be
18 entitled, subject to rules and regulations, to brew any malt alcoholic
19 beverages in a quantity to be expressed in said license, dependent
20 upon the following fees and not in excess of 300,000 barrels of 31
21 fluid gallons capacity per year and to sell and distribute this product
22 to wholesalers and retailers licensed in accordance with this
23 chapter, and to sell and distribute without this State to any persons
24 pursuant to the laws of the places of such sale and distribution, and
25 to maintain a warehouse. The fee for this license shall be graduated
26 as follows: to so brew not more than 50,000 barrels of 31 fluid
27 gallons capacity per annum, \$1,250; to so brew not more than
28 100,000 barrels of 31 fluid gallons capacity per annum, \$2,500; to
29 so brew not more than 200,000 barrels of 31 fluid gallons capacity
30 per annum, \$5,000; to so brew not more than 300,000 barrels of 31
31 fluid gallons capacity per annum, \$7,500.

32 Restricted brewery license. 1c. The holder of this license shall
33 be entitled, subject to rules and regulations, to brew any malt
34 alcoholic beverages in a quantity to be expressed in such license not
35 in excess of 3,000 barrels of 31 fluid gallons capacity per year.
36 Notwithstanding the provisions of R.S.33:1-26, the director shall
37 issue a restricted brewery license only to a person or an entity
38 which has identical ownership to an entity which holds a plenary
39 retail consumption license issued pursuant to R.S.33:1-12, provided
40 that such plenary retail consumption license is operated in
41 conjunction with a restaurant regularly and principally used for the
42 purpose of providing meals to its customers and having adequate
43 kitchen and dining room facilities, and that the licensed restaurant
44 premises is immediately adjoining the premises licensed as a
45 restricted brewery. The holder of this license shall only be entitled

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 to sell or deliver the product to that restaurant premises. The fee for
2 this license shall be \$1,250, which fee shall entitle the holder to
3 brew up to 1,000 barrels of 31 fluid gallons per annum. The
4 licensee also shall pay an additional \$625 for every additional 1,000
5 barrels of 31 fluid gallons produced. No more than two restricted
6 brewery licenses shall be issued to a person or entity which holds an
7 interest in a plenary retail consumption license. If the governing
8 body of the municipality in which the licensed premises will be
9 located should file a written objection, the director shall hold a
10 hearing and may issue the license only if the director finds that the
11 issuance of the license will not be contrary to the public interest.
12 All fees related to the issuance of both licenses shall be paid in
13 accordance with statutory law.

14 Plenary winery license. 2a. Provided that the holder is engaged
15 in growing and cultivating grapes or fruit used in the production of
16 wine on at least three acres on, or adjacent to, the winery premises,
17 the holder of this license shall be entitled, subject to rules and
18 regulations, to produce any fermented wines, and to blend, fortify
19 and treat wines, and to sell and distribute his products to
20 wholesalers **[and retailers]** licensed in accordance with this chapter
21 and to churches for religious purposes, and to sell and distribute
22 without this State to any persons pursuant to the laws of the places
23 of such sale and distribution, and to maintain a warehouse, and to
24 sell his products at retail to consumers on the licensed premises of
25 the winery for consumption on or off the premises and to offer
26 samples for sampling purposes only. The fee for this license shall
27 be \$938. **[The]** A holder of this license who produces not more
28 than 250,000 gallons per year shall also have the right to sell and
29 distribute his products to retailers licensed in accordance with this
30 chapter, except that the fee for this additional privilege shall be
31 graduated as follows: a licensee who manufactures more than
32 150,000 gallons, but not in excess of 250,000 gallons per annum,
33 \$1,000; a licensee who manufactures more than 100,000 gallons,
34 but not in excess of 150,000 gallons per annum, \$500; a licensee
35 who manufactures more than 50,000 gallons, but not in excess of
36 100,000 gallons per annum, \$250; a licensee who manufactures
37 50,000 gallons or less per annum, \$100. A holder of this license
38 who produces not more than 250,000 gallons per year shall have the
39 right to sell such wine at retail in original packages in **[six]** 18
40 salesrooms apart from the winery premises for consumption on or
41 off the premises and for sampling purposes for consumption on the
42 premises, at a fee of \$250 for each salesroom. Licensees shall not
43 jointly control and operate salesrooms. Additionally, **[subject to**
44 rules and regulations, one salesroom per county may be jointly
45 controlled and operated by at least two plenary or farm winery
46 licensees for the sale of the products of any plenary or farm winery
47 licensee for consumption on or off the premises and for
48 consumption on the licensed premises for sampling purposes at an

1 additional fee of \$625 per county salesroom.】 the holder of this
2 license who produces not more than 250,000 gallons per year may
3 ship not more than 12 cases of wine per year, subject to regulation,
4 to any person within or without this State over 21 years of age for
5 personal consumption and not for resale. A case of wine shall not
6 exceed a maximum of nine liters. A copy of the original invoice
7 shall be available for inspection by persons authorized to enforce
8 the alcoholic beverage laws of this State for a minimum period of
9 three years at the licensed premises of the winery. For the purposes
10 of this subsection, "sampling" means the selling at a nominal charge
11 or the gratuitous offering of an open container not exceeding one
12 and one-half ounces of any wine.

13 A holder of this license who produces not more than 250,000
14 gallons per year shall not own, either in whole or in part, or hold,
15 either directly or indirectly, any interest in a winery that produces
16 more than 250,000 gallons per year.

17 For the purposes of this subsection, "product" means any wine
18 that is produced, blended, fortified, or treated by the licensee on its
19 licensed premises situated in the State of New Jersey.

20 【Any holder of a plenary winery license who sold wine which
21 was produced, bottled, and labelled by that holder in a place other
22 than its licensed New Jersey premises between July 1, 1992 and
23 June 30, 1993, may continue to sell that wine provided no more
24 than 25,000 cases, each case consisting of 12 750 milliliter bottles
25 or the equivalent, are sold in any single license year. This privilege
26 shall terminate upon, and not survive, any transfer of the license to
27 another person or entity subsequent to the effective date of this
28 1993 amendatory act or any transfer of stock of the licensed
29 corporation other than to children, grandchildren, parents, spouses
30 or siblings of the existing stockholders.】

31 Farm winery license. 2b. The holder of this license shall be
32 entitled, subject to rules and regulations, to manufacture any
33 fermented wines and fruit juices in a quantity to be expressed in
34 said license, dependent upon the following fees and not in excess of
35 50,000 gallons per year and to sell and distribute his products to
36 wholesalers and retailers licensed in accordance with this chapter
37 and to churches for religious purposes and to sell and distribute
38 without this State to any persons pursuant to the laws of the places
39 of such sale and distribution, and to maintain a warehouse and to
40 sell at retail to consumers for consumption on or off the licensed
41 premises and to offer samples for sampling purposes only. The
42 license shall be issued only when the winery at which such
43 fermented wines and fruit juices are manufactured is located and
44 constructed upon a tract of land exclusively under the control of the
45 licensee, provided that the licensee is actively engaged in growing
46 and cultivating an area of not less than three acres on or adjacent to
47 the winery premises and on which are growing grape vines or fruit
48 to be processed into wine or fruit juice; and provided, further, that

1 for the first five years of the operation of the winery such fermented
2 wines and fruit juices shall be manufactured from at least 51%
3 grapes or fruit grown in the State and that thereafter they shall be
4 manufactured from grapes or fruit grown in this State at least to the
5 extent required for labeling as "New Jersey Wine" under the
6 applicable federal laws and regulations. The containers of all wine
7 sold to consumers by such licensee shall have affixed a label stating
8 such information as shall be required by the rules and regulations of
9 the Director of the Division of Alcoholic Beverage Control. The
10 fee for this license shall be graduated as follows: to so manufacture
11 between 30,000 and 50,000 gallons per annum, \$375; to so
12 manufacture between 2,500 and 30,000 gallons per annum, \$250; to
13 so manufacture between 1,000 and 2,500 gallons per annum, \$125;
14 to so manufacture less than 1,000 gallons per annum, \$63. No farm
15 winery license shall be held by the holder of a plenary winery
16 license or be situated on a premises licensed as a plenary winery.

17 The holder of this license shall also have the right to sell and
18 distribute his products to retailers licensed in accordance with this
19 chapter, except that the fee for this additional privilege shall be
20 \$100. The holder of this license shall have the right to sell his
21 products in original packages at retail to consumers in ~~【six】~~ 18
22 salesrooms apart from the winery premises for consumption on or
23 off the premises, and for sampling purposes for consumption on the
24 premises, at a fee of \$250 for each salesroom. Licensees shall not
25 jointly control and operate salesrooms. Additionally, ~~【subject to~~
26 rules and regulations, one salesroom per county may be jointly
27 controlled and operated by at least two plenary or farm winery
28 licensees for the sale of the products of any plenary or farm winery
29 licensee for consumption on or off the premises and for
30 consumption on the licensed premises for sampling purposes only,
31 at an additional fee of \$625 per county salesroom. the holder of
32 this license may ship not more than 12 cases of wine per year,
33 subject to regulation, to any person within or without this State over
34 21 years of age for personal consumption and not for resale. A case
35 of wine shall not exceed a maximum of nine liters. A copy of the
36 original invoice shall be available for inspection by persons
37 authorized to enforce the alcoholic beverage laws of this State for a
38 minimum period of three years at the licensed premises of the
39 winery. For the purposes of this subsection, "sampling" means the
40 selling at a nominal charge or the gratuitous offering of an open
41 container not exceeding one and one-half ounces of any wine.

42 A holder of this license who produces not more than 250,000
43 gallons per year shall not own, either in whole or in part, or hold,
44 either directly or indirectly, any interest in a winery that produces
45 more than 250,000 gallons per year.

46 Unless otherwise indicated, for the purposes of this subsection,
47 with respect to farm winery licenses, "manufacture" means the
48 vinification, aging, storage, blending, clarification, stabilization and

1 bottling of wine or juice from New Jersey fruit to the extent
2 required by this subsection.

3 Wine blending license. 2c. The holder of this license shall be
4 entitled, subject to rules and regulations, to blend, treat, mix, and
5 bottle fermented wines and fruit juices with non-alcoholic
6 beverages, and to sell and distribute his products to wholesalers and
7 retailers licensed in accordance with this chapter, and to sell and
8 distribute without this State to any persons pursuant to the laws of
9 the places of such sale and distribution, and to maintain a
10 warehouse. The fee for this license shall be \$625.

11 Instructional winemaking facility license. 2d. The holder of this
12 license shall be entitled, subject to rules and regulations, to instruct
13 persons in and provide them with the opportunity to participate
14 directly in the process of winemaking and to directly assist such
15 persons in the process of winemaking while in the process of
16 instruction on the premises of the facility. The holder of this
17 license also shall be entitled to manufacture wine on the premises
18 not in excess of an amount of 10% of the wine produced annually
19 on the premises of the facility, which shall be used only to replace
20 quantities lost or discarded during the winemaking process, to
21 maintain a warehouse, and to offer samples produced by persons
22 who have received instruction in winemaking on the premises by
23 the licensee for sampling purposes only on the licensed premises for
24 the purpose of promoting winemaking for personal or household use
25 or consumption. Wine produced on the premises of an instructional
26 winemaking facility shall be used, consumed or disposed of on the
27 facility's premises or distributed from the facility's premises to a
28 person who has participated directly in the process of winemaking
29 for the person's personal or household use or consumption. The
30 holder of this license may sell mercantile items traditionally
31 associated with winemaking and novelty wearing apparel identified
32 with the name of the establishment licensed under the provisions of
33 this section. The holder of this license may use the licensed
34 premises for an event or affair, including an event or affair at which
35 a plenary retail consumption licensee serves alcoholic beverages in
36 compliance with all applicable statutes and regulations promulgated
37 by the director. The fee for this license shall be \$1,000. For the
38 purposes of this subsection, "sampling" means the gratuitous
39 offering of an open container not exceeding one and one-half
40 ounces of any wine.

41 Out-of-State winery license. 2e. Provided that the applicant
42 does not produce more than 250,000 gallons of wine per year, the
43 holder of a valid winery license issued in any other state may make
44 application to the director for this license. The holder of this
45 license shall have the right to sell and distribute his products to
46 wholesalers licensed in accordance with this chapter and to sell
47 such wine at retail in original packages in 19 salesrooms apart from
48 the winery premises for consumption on or off the premises at a fee

1 of \$250 for each salesroom. Licensees shall not jointly control and
2 operate salesrooms. The annual fee for this license shall be \$938.
3 A copy of a current license issued by another state shall accompany
4 the application. The holder of this license also shall have the right
5 to sell and distribute his products to retailers licensed in accordance
6 with this chapter, except that the fee for this additional privilege
7 shall be graduated as follows: a licensee who manufactures more
8 than 150,000 gallons, but not in excess of 250,000 gallons per
9 annum, \$1,000; a licensee who manufactures more than 100,000
10 gallons, but not in excess of 150,000 gallons per annum, \$500; a
11 licensee who manufactures more than 50,000 gallons, but not in
12 excess of 100,000 gallons per annum, \$250; a licensee who
13 manufactures 50,000 gallons or less per annum, \$100. Additionally,
14 the holder of this license may ship not more than 12 cases of wine
15 per year, subject to regulation, to any person within or without this
16 State over 21 years of age for personal consumption and not for
17 resale. A case of wine shall not exceed a maximum of nine liters.
18 A copy of the original invoice shall be available for inspection by
19 persons authorized to enforce the alcoholic beverage laws of this
20 State for a minimum period of three years at the licensed premises
21 of the winery.

22 The licensee shall collect from the customer the tax due on the
23 sale pursuant to the "Sales and Use Tax Act," P.L.1966, c.30,
24 (C.54:32B-1 et seq.) and shall pay the tax due on the delivery of
25 alcoholic beverages pursuant to the "Alcoholic beverage tax law,"
26 R.S.54:41-1 et seq. The Director of the Division of Taxation in the
27 Department of the Treasury shall promulgate such rules and
28 regulations necessary to effectuate the provisions of this paragraph,
29 and may provide by regulation for the co-administration of the tax
30 due on the delivery of alcoholic beverages pursuant to the
31 "Alcoholic beverage tax law," R.S.54:41-1 et seq. with the
32 administration of the tax due on the sale pursuant to the "Sales and
33 Use Tax Act," P.L.1966, c.30, (C.54:32B-1 et seq.).

34 A holder of this license who produces not more than 250,000
35 gallons per year shall not own, either in whole or in part, or hold,
36 either directly or indirectly, any interest in a winery that produces
37 more than 250,000 gallons per year.

38 Plenary distillery license. 3a. The holder of this license shall be
39 entitled, subject to rules and regulations, to manufacture any
40 distilled alcoholic beverages and rectify, blend, treat and mix, and
41 to sell and distribute his products to wholesalers and retailers
42 licensed in accordance with this chapter, and to sell and distribute
43 without this State to any persons pursuant to the laws of the places
44 of such sale and distribution, and to maintain a warehouse. The fee
45 for this license shall be \$12,500.

46 Limited distillery license. 3b. The holder of this license shall be
47 entitled, subject to rules and regulations, to manufacture and bottle
48 any alcoholic beverages distilled from fruit juices and rectify,

1 blend, treat, mix, compound with wine and add necessary
2 sweetening and flavor to make cordial or liqueur, and to sell and
3 distribute to wholesalers and retailers licensed in accordance with
4 this chapter, and to sell and distribute without this State to any
5 persons pursuant to the laws of the places of such sale and
6 distribution and to warehouse these products. The fee for this
7 license shall be \$3,750.

8 Supplementary limited distillery license. 3c. The holder of this
9 license shall be entitled, subject to rules and regulations, to bottle
10 and rebottle, in a quantity to be expressed in said license, dependent
11 upon the following fees, alcoholic beverages distilled from fruit
12 juices by such holder pursuant to a prior plenary or limited distillery
13 license, and to sell and distribute his products to wholesalers and
14 retailers licensed in accordance with this chapter, and to sell and
15 distribute without this State to any persons pursuant to the laws of
16 the places of such sale and distribution, and to maintain a
17 warehouse. The fee for this license shall be graduated as follows:
18 to so bottle and rebottle not more than 5,000 wine gallons per
19 annum, \$313; to so bottle and rebottle not more than 10,000 wine
20 gallons per annum, \$625; to so bottle and rebottle without limit as
21 to amount, \$1,250.

22 Rectifier and blender license. 4. The holder of this license shall
23 be entitled, subject to rules and regulations, to rectify, blend, treat
24 and mix distilled alcoholic beverages, and to fortify, blend, and
25 treat fermented alcoholic beverages, and prepare mixtures of
26 alcoholic beverages, and to sell and distribute his products to
27 wholesalers and retailers licensed in accordance with this chapter,
28 and to sell and distribute without this State to any persons pursuant
29 to the laws of the places of such sale and distribution, and to
30 maintain a warehouse. The fee for this license shall be \$7,500.

31 Bonded warehouse bottling license. 5. The holder of this license
32 shall be entitled, subject to rules and regulations, to bottle alcoholic
33 beverages in bond on behalf of all persons authorized by federal and
34 State law and regulations to withdraw alcoholic beverages from
35 bond. The fee for this license shall be \$625. This license shall be
36 issued only to persons holding permits to operate Internal Revenue
37 bonded warehouses pursuant to the laws of the United States.

38 The provisions of section 21 of P.L.2003, c.117 amendatory
39 of this section shall apply to licenses issued or transferred on or
40 after July 1, 2003, and to license renewals commencing on or after
41 July 1, 2003.

42 (cf: P.L.2007, c.329, s.1)

43

44 2. (New section) The taxes collected and paid pursuant to the
45 licenses issued pursuant to R.S.33:1-10 shall be governed by the
46 provisions of the "State Uniform Tax Procedure Law," R.S.54:48-1
47 et seq., including the tax clearance and license suspension
48 provisions of section 5 of P.L.2004, c.58 (C.54:50-26.3).

1 3. This act shall take effect on the first day of the fourth month
2 after enactment.

3

4

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STATEMENT

6

7 This bill makes various changes to the statutes governing the sale
8 and distribution of products by New Jersey wineries and creates a
9 new Out-of-State winery license governing New Jersey sales by
10 wineries licensed in other states.

11 Under the provisions of the bill, plenary wineries that produce a
12 maximum of 250,000 gallons per year and farm wineries would be
13 permitted to directly sell their products to licensed retailers after
14 paying a fee set forth in the bill. The maximum production of
15 250,000 gallons per year is based on the Internal Revenue Code's
16 definition of a small producer of wine. Plenary wineries would pay
17 a graduated fee ranging from \$100 to \$1,000 based on the winery's
18 annual production; farm wineries would pay a fee of \$100. All
19 plenary and farm wineries would continue to be able to sell their
20 products to licensed wholesalers.

21 The bill permits plenary wineries that produce a maximum of
22 250,000 gallons per year and farm wineries to sell products at retail
23 at 18 sales rooms but eliminates the provision in current law that
24 permits them to open joint sales rooms with other plenary wineries
25 or farm wineries. Under current law, all plenary and farm wineries
26 may operate six individual sales rooms and jointly operate twenty-
27 one sales rooms. Additionally, the bill permits plenary wineries
28 that produce a maximum of 250,000 gallons per year and farm
29 wineries to directly ship up to 12 cases of wine to any person over
30 age 21 in New Jersey or any other state for personal consumption
31 and not for resale. A case of wine may not exceed nine liters. The
32 winery is required to retain the original invoices for any wine
33 shipped for at least three years on the winery premises for
34 inspection by the State.

35 The bill also creates an Out-of-State winery license which may
36 be issued to wineries licensed in other states that produce a
37 maximum of 250,000 gallons of wine per year. The licensee would
38 be permitted to sell his or her products to wholesalers and retailers
39 and at retail in 19 salesrooms apart from the winery premises, for
40 consumption on or off the premises, at a fee of \$250 for each
41 salesroom. The license holder also is permitted to ship up to 12
42 cases of wine per year to any person in this State over age 21 for
43 personal consumption and not for resale. A case of wine may not
44 exceed nine liters. The bill sets the annual fee for the Out-of-State
45 winery license at \$938, which is the same fee paid by plenary and
46 farm wineries. The bill provides for the collection of all applicable
47 taxes for sales made by the holders of Out-of-State winery licenses.

1 Finally, the bill clarifies that the holders of the new Out-of-State
2 winery license, like all other license holders, are subject to the tax
3 clearance and licensing provisions of the “State Uniform Tax
4 Procedure Law,” R.S.54:48-1 et seq. and section 5 of P.L.2004, c.58
5 (C.54:50-26.3).

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4436

STATE OF NEW JERSEY

DATED: JANUARY 5, 2012

The Assembly Budget Committee reports favorably Assembly Bill No. 4436.

This bill makes various changes to the statutes governing the sale and distribution of products by New Jersey wineries and creates a new out-of-State winery license governing New Jersey direct sales by wineries licensed in other states.

Under the bill, plenary wineries that produce a maximum of 250,000 gallons per year and farm wineries will be permitted to directly sell their products to licensed retailers after paying a fee. The maximum production of 250,000 gallons per year is based on the federal Internal Revenue Code's definition of a small producer of wine. The bill requires plenary wineries to pay a graduated fee ranging from \$100 to \$1,000 based on the winery's annual production; farm wineries will pay a fee of \$100. All plenary and farm wineries will continue to be able to sell their products to licensed wholesalers.

The bill permits plenary wineries that produce a maximum of 250,000 gallons per year and farm wineries to sell products at retail at 18 sales rooms but eliminates the provision in current law that permits them to open joint sales rooms with other plenary wineries or farm wineries. Under current law, all plenary and farm wineries may operate six individual sales rooms and jointly operate twenty-one sales rooms. Additionally, the bill permits plenary wineries that produce a maximum of 250,000 gallons per year and farm wineries to directly ship up to 12 cases of wine to any person over the age of 21 in New Jersey or any other state for personal consumption and not for resale. The bill specifies that a case of wine may not exceed nine liters. The bill requires a winery to retain the original invoices for any wine shipped for at least three years on the winery premises for inspection by the State.

The bill also creates an out-of-State winery license which may be issued to wineries, licensed in other states, that produce a maximum of 250,000 gallons of wine per year. The bill permits a licensee to sell its products to wholesalers and retailers and at retail in 19 salesrooms apart from the winery premises, for consumption on or off the premises, at a fee of \$250 for each salesroom. The bill allows a licensee to ship up to 12 cases of wine per year to any person in this State over the age of 21 for personal consumption and not for resale.

The bill specifies that a case of wine may not exceed nine liters. The bill sets the annual fee for the out-of-State winery license at \$938, which is the same fee paid by plenary wineries. The bill provides for the collection of all applicable State taxes for sales made by the holders of out-of-State winery licenses.

The bill clarifies that the holders of the new out-of-State winery license, like all other license holders, are subject to the "State Uniform Tax Procedure Law," R.S.54:48-1 et seq., including the tax clearance and licensing provisions of section 5 of P.L.2004, c.58 (C.54:50-26.3).

FISCAL IMPACT:

The Office of Legislative Services notes that this bill has an indeterminate fiscal impact on the State, as revenue from various taxes and fees are unknown. Revenue might be gained from: 1) taxes related to additional sales of New Jersey wine by licensed New Jersey wineries to out-of-State buyers; 2) the purchase of licenses by eligible out-of-State wineries; and 3) taxes from the out-of-State wine being shipped to individuals in New Jersey. The additional State costs of enforcing tax compliance are also unknown.