

# 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)**

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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.

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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)

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.

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4

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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).