

Unconsolidated Laws of New York State

Chapter 80 of the laws of 1985 (including amendments such as the wine marketing fund 3 A)

New York state wine/grapes

Section 1. Legislative findings and purposes. The legislature finds that the wine/grape industry is a significant part of the state's agricultural industry and that the continued production of wine, unfermented juice and table grapes is of significant importance to the economy of the state.

The legislature further finds that in recent years economic conditions have had an adverse effect on the wine/grape industry, especially grape growers, resulting predominately from an international surplus of grapes. Such economic disadvantages have included various incentives made available by their counties to European wine producers, tariff and non-tariff barriers to United States wines entering other countries and most recently, a strong United States dollar which has increased the price of all domestic wines in relation to foreign wines. All these conditions have resulted in a decline in New York's share of the national and international wine market.

The legislature further finds and recognizes that an important step in strengthening the agricultural and economic potential of New York's wine/grape industry is to encourage the long term operation of an organization, representative of all sectors of the grape industry for the purpose of conducting an extensive and coordinated promotional and applied research program intended to stimulate and centralize the New York wine/grape industry.

For these purposes, there shall be created a non-profit corporation known as the "New York wine/grape foundation", which may independently initiate promotional and research projects to fulfill essential public purposes which are necessary for the health, safety and welfare of the people of this state.

§ 2. New York wine/grape foundation. 1. There is hereby created a non-profit corporation which shall be known as the "New York wine/grape foundation". Such foundation shall be governed by the not-for-profit corporation law except where such law conflicts with this act, in which case the provisions of this act shall govern.

2. The foundation is created to fulfill the public purpose of providing for an effective and continuous program of research, promotion and education to strengthen the New York wine and grape industry's position in the marketplace including the maintenance and expansion of domestic and foreign markets and uses for grapes grown and processed within the state.

§ 3. Purposes and powers. 1. The foundation is authorized and directed to plan and provide for the implementation of programs to:

(a) Engage in research into market development, new or improved methods of production, packaging, and processing of wine, grapes, and grape products; production of by-products of grape manufacturing processes and any other marketable products; improved methods of grape breeding, virus resistance and control of pests and disease; vineyard conversion; mechanization of brandy production; and overall improvement in the production and quality of wines, grapes and grape products,

(b) Reduce agricultural unemployment and increase state and local revenues by developing methods and techniques to enhance the image and quality of New York wine and grape products so as to expand existing

markets and develop new markets therefor,

(c) Advertise and promote the sale of wine and other grape products in areas that will reach the greatest number of potential consumers,

(d) Publish and distribute to producers, retailers and consumers information relating to the grape, wine and grape products industries,

(e) Facilitate educational and promotional activities to enhance the image of New York wines and grape products through coordination, promotional and educational activities with other organizations,

(f) Carry out in any other way the declared policy of this act to promote wine and other grape products and the grape industry of this state.

2. The foundation shall have power: (a) to sue and be sued; (b) to have a seal and alter the same at pleasure; (c) to acquire, hold and dispose of personal property for its corporate purposes; (d) to enter into contracts with the state, political subdivisions or any agency or instrumentality thereof, or any person, firm or corporation; (e) to accept gifts, funds, property or services from public or private sources in furtherance of its corporate purposes; (f) to adopt, amend and repeal by-laws for the management and regulation of its affairs; and (g) to do any and all other things necessary or convenient to carry out its purposes and effectively implement the provisions of this act.

§ 3-a. The New York wine marketing program is hereby created. The New York wine/grape foundation is authorized, within available appropriations and/or other sources, to establish and operate the New York wine marketing program. The New York wine marketing program shall market New York state labeled wine both within and outside of New York state with the goal of promoting New York state wines. Notwithstanding any provision of law to the contrary, no commitment from such foundation shall be required in the case of a contract for the New York wine marketing program.

§ 4. Report. The foundation shall submit to the governor and the legislature within ninety days after the end of its fiscal year, an annual report setting forth its operations and accomplishments, assets and liabilities, receipts and expenditures during such fiscal year as set forth according to generally accepted accounting practices, and a list of its consultants and outside contracts with the purposes and amounts thereof set forth. The report shall also include information on the amount of money designated for applied research and the types of research conducted; and the amount of money designated for promotion and the geographic distribution of promotion funds and the effectiveness of this program.

§ 5. Board of directors of the foundation. 1. The foundation shall be managed by, and its powers, functions and duties shall be exercised through a board of directors.

2. The initial board of directors shall consist of eleven members of whom three shall be appointed by the governor, three by the temporary president of the senate and three by the speaker of the assembly, one by the minority leader of the senate and one by the minority leader of the assembly. In making the appointments, consideration should be given to ensure that the four wine/grape regions of the state are geographically represented. Of the eleven appointed members, one shall be a person who receives the major portion of his or her income from the growing of wine grapes, one shall be an officer or owner of a commercial winery, one shall be a person who receives the major portion of his or her income from the operation of a farm/estate winery, one shall be a person who receives a major portion of his or her income from growing table grapes, one shall be a person engaged in the manufacturing of grape products

other than wine, one shall be a person engaged in the retail sale of wine for off premises consumption, one shall be a person engaged in the wholesale sale of wine, one shall be an owner or operator of a licensed establishment engaged in the sale of wine on premises, two shall be on the staff of an educational institution which is engaged in the study of viticulture, entomology and enology and one shall be a person familiar with the advertising, promotion and marketing of commercial products. The directors so appointed shall serve for a term of three years, except that, of the directors so appointed by the governor one shall serve for a term of two years and one shall serve for a term of one year; of the three directors so appointed by the temporary president of the senate one shall serve for a term of two years and one shall serve for a term of one year; and of the three directors so appointed by the speaker of the assembly one shall serve for a term of two years and one shall serve for a term of one year.

3. The commissioner of agriculture and markets and the commissioner of commerce shall be ex-officio members of the board for that period of time during which state moneys are available to the foundation.

4. If any vacancy other than by expiration of term occurs on the board amongst those first appointed such vacancy shall be filled by appointment for the unexpired term by the appointing authority initially appointing such member. Upon expiration of the initial terms, successors shall be elected by the remaining members of the board for a three year term; such directors shall have the qualifications required of the original directors. Members shall continue as such until their successors have been duly elected.

5. The board of directors shall elect one of its members as chairman and one of its members as vice chairman of such board, and may appoint such officers and employees as it deems advisable.

6. Members of the board of directors shall serve without compensation, but shall be reimbursed for actual expenses reasonably incurred in the performance of their duties.

7. The board shall meet four times annually at the call of the chairman or in his absence the vice chairman or on petition of any three members. A majority of the members of the board then in office shall constitute a quorum for the transaction of any business. The board is encouraged to conduct its meetings in a manner which will ensure the active participation of any person having an interest in the wine/grape industry.

§ 6. Cooperation and coordination. 1. The foundation shall establish and maintain working relationships with organizations and institutions in the state directly involved in the production, processing and sales of wine, grapes, and grape products and in related educational and research activities. Such contact should also include governmental agencies which may have promotional or economic development responsibilities or have jurisdiction over facilities at which wine or grape products may be used or sold.

2. The foundation shall annually request from the groups and organizations with which its directors have affiliations and from other appropriate organizations and interests such as noted in subdivision one, reports detailing their present and planned activities in the area of promotion and research for wine and other grape products. The foundation shall review such activities and take them into account in development of its own plans and programs.

3. The foundation should annually make available to all interested parties a description of its programs and plans and the ways in which the activities of others will be supplemented.

§ 7. Limitation of liability. Neither the directors nor any member, officer or employee of the corporation, while acting within the scope of his or her authority, shall be subject to any personal liability resulting from the activities of the corporation.

§ 8. Inconsistent provisions of other laws superseded. Insofar as the provisions of this act are inconsistent with the provisions of any other law, general, special or local, the provisions of this act shall be controlling.

§ 9. Short title. Sections one through nine of this act shall be known and may be cited as the New York wine/grape foundation act.

§ 10. 1. The department of agriculture and markets, within moneys appropriated therefor, shall enter into a contract or contracts with the New York wine/grape foundation created by section two of this act for:

(a) a research study or studies into new or improved methods of production, packaging, and processing of wine, grapes, and grape products; production of by-products of grape manufacturing processes and any other marketable products; improved methods of grape breeding, virus resistance and control of pests and disease; vineyard conversion; mechanization of brandy production; and overall improvement in the production and quality of wines, grapes and grape products;

(b) a demonstration project or projects to reduce agricultural unemployment and increase state and local revenues by developing methods and techniques to enhance the image and quality of New York wine and grape products so as to expand existing markets and develop new markets therefor;

(c) advertising and promotion of the sale of wine and other grape products in areas that will reach the greatest number of potential consumers;

(d) publication and distribution to producers, retailers and consumers information relating to the grape, wine and grape products industries;

(e) the facilitating of educational and promotional activities to enhance the image of New York wines and grape products through coordination, promotional and educational activities with other organizations; and

(f) the carrying out in any other way the declared policy of this act to promote wine and other grape products and the grape industry of this state.

Not less than twenty-five percent and not more than forty percent of the sum total of moneys made available to the foundation through such contract or contracts shall be applied for purposes of paragraph (a) of this subdivision, and not more than two and one-half percent of such moneys shall be applied for purposes of administration of the foundation.

2. Any such contract shall provide that the cost of the work to be performed thereunder during the state fiscal year commencing April 1, 1987 shall be at least one hundred eleven percent of the amount to be paid by the state to such foundation. Any such contract shall provide that the cost of the work to be performed thereunder during the state fiscal year commencing April 1, 1988 shall be at least one hundred thirty-three percent of the amount to be paid by the state to such foundation. Any such contract shall provide that the cost of the work to be performed thereunder during the state fiscal year commencing April 1, 1989 shall be at least two hundred percent of the amount paid by the state to such foundation. Any such contract shall provide that the work to be performed thereunder during the state fiscal year commencing April 1, 1990 shall be at least four hundred percent of the amount paid by the state to such foundation. No such contract shall be entered into between

the foundation and the department of agriculture and markets unless and until the foundation expressly commits funds of the foundation in an amount sufficient, together with the amount to be paid by the state, to pay the total cost of the work to be performed under such contract; provided, however, that no such commitment shall be required in the case of a contract to be entered into prior to April 1, 1987.

§ 11. Separability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.