S T A T E O F N E W Y O R K

5833

2013-2014 Regular Sessions

I N S E N A T E

June 17, 2013

Introduced by Sens. VALESKY, RITCHIE -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the alcoholic beverage control law and the agriculture and markets law, in relation to the creation of a farm cidery license and to amend the tax law, in relation to farm cidery sales tax information return filing requirements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 7-b of section 3 of the alcoholic beverage control law, as amended by chapter 578 of the laws of 1978, is amended to read as follows:

7-b. (A) "Cider" means the partially or fully fermented juice of fresh, whole apples OR OTHER POME FRUITS, containing more than three and two-tenths per centum but not more than [seven] EIGHT AND ONE-HALF per centum alcohol by volume[, when used for beverage purposes, and]: (I) to which nothing has been added to increase the alcoholic content produced by natural fermentation; AND (II) WITH THE USUAL CELLAR TREATMENTS AND NECESSARY ADDITIONS TO CORRECT DEFECTS DUE TO CLIMATE, SACCHARINE LEVELS AND SEASONAL CONDITIONS. Nothing contained in this subdivision shall be deemed to preclude the use of such methods or materials as may be necessary to encourage a normal alcoholic fermentation and to make a product that is free of microbiological activity at the time of sale. Cider may be sweetened OR FLAVORED after fermentation with [apple] FRUIT juice, [apple] FRUIT juice concentrate, [or] sugar, MAPLE SYRUP, HONEY, SPICES OR OTHER AGRICULTURAL PRODUCTS, separately or in combination. Cider may contain retained or added carbon dioxide.

(B) IN THE EVENT THAT AN ALCOHOLIC BEVERAGE MEETS THE DEFINITION OF BOTH A CIDER, AS DEFINED IN THIS SUBDIVISION, AND A WINE, AS DEFINED IN SUBDIVISION THIRTY-SIX OF THIS SECTION, THE BRAND OR TRADE NAME LABEL OWNER OF SUCH ALCOHOLIC BEVERAGE SHALL DESIGNATE WHETHER SUCH ALCOHOLIC

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

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BEVERAGE SHALL BE SOLD AS A CIDER OR A WINE FOR ALL PURPOSES UNDER THIS CHAPTER.

S 2. Section 3 of the alcoholic beverage control law is amended by adding two new subdivisions 7-c and 7-d to read as follows:

7-C. "CIDERY" MEANS AND INCLUDES ANY PLACE OR PREMISES WHEREIN CIDER IS MANUFACTURED FOR SALE.

7-D. "FARM CIDERY" MEANS AND INCLUDES ANY PLACE OR PREMISES, LOCATED ON A FARM IN NEW YORK STATE, IN WHICH NEW YORK STATE LABELLED CIDER IS MANUFACTURED, STORED AND SOLD, OR ANY OTHER PLACE OR PREMISES IN NEW YORK STATE IN WHICH NEW YORK STATE LABELLED CIDER IS MANUFACTURED, STORED AND SOLD.

S 3. Subdivision 20-e of section 3 of the alcoholic beverage control law, as added by chapter 108 of the laws of 2012, is amended to read as follows:

20-e. "New York state labelled cider" means cider made exclusively from apples OR OTHER POME FRUITS grown in New York state.

S 4. Subdivisions 1 and 3 of section 58 of the alcoholic beverage control law, subdivision 1 as amended and subdivision 3 as added by chapter 347 of the laws of 1999, are amended to read as follows:

1. Any person may apply to the liquor authority for a cider producers' or wholesalers' license as provided for in this subdivision. Such application shall be in writing and shall contain such information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this subdivision for such license. If the liquor authority shall grant the application it shall issue a license in such form as shall be determined by its rules. A license issued under this subdivision shall authorize the licensee to manufacture cider within the licensed premises in this state for sale in bottles, barrels or casks to beer, wine and liquor retail licensee and/or to sell cider at wholesale from the licensed premises to such licensees and to holders of licenses under this section in bottles, barrels or casks and to sell and deliver cider to persons outside the state pursuant to the laws of the place of such sale or delivery. The annual fee for such a license shall be one hundred twenty-five dollars; PROVIDED, HOWEVER, THAT THE ANNUAL FEE FOR A FARM CIDERY LICENSE SHALL BE SEVENTY-FIVE DOLLARS. The provisions contained in section sixty-seven of this chapter shall apply to all licenses issued pursuant to this article.

3. Notwithstanding any provision of this chapter to the contrary, a licensed cider [producer or] wholesaler may apply to the liquor authority for a permit to sell New York state labelled cider by the bottle and conduct cider tastings at the state fair, at recognized county fairs and at farmers markets operated on a not-for-profit basis. As a condition of such permit, an agent, representative or solicitor from the cider [producer or] wholesaler shall be present at the time of sale or tastings.

S 5. Section 58 of the alcoholic beverage control law is amended by adding a new subdivision 3-a to read as follows:

3-A. A LICENSED CIDER PRODUCER PRODUCING NEW YORK STATE LABELLED CIDER MAY:

(A) SELL SUCH CIDER TO LICENSED FARM DISTILLERS, FARM WINERIES, FARM CIDERIES AND FARM BREWERIES. ALL SUCH CIDER SOLD BY THE LICENSEE SHALL BE SECURELY SEALED AND HAVE ATTACHED THERETO A LABEL AS SHALL BE REQUIRED BY SECTION ONE HUNDRED SEVEN-A OF THIS CHAPTER;

(B) CONDUCT TASTINGS AT THE LICENSED PREMISES OF SUCH CIDER;

(C) SELL SUCH CIDER AT RETAIL FOR CONSUMPTION OFF THE PREMISES AT THE STATE FAIR, AT RECOGNIZED COUNTY FAIRS AND AT FARMERS MARKETS OPERATED ON A NOT-FOR-PROFIT BASIS;

(D) SELL AND CONDUCT TASTINGS OF SUCH CIDER AT RETAIL FOR CONSUMPTION ON THE PREMISES OF A RESTAURANT, CONFERENCE CENTER, INN, BED AND BREAKFAST OR HOTEL BUSINESS OWNED AND OPERATED BY THE LICENSEE IN OR ADJACENT TO ITS FARM CIDERY. A LICENSEE WHO OPERATES A RESTAURANT, CONFERENCE CENTER, INN, BED AND BREAKFAST OR HOTEL PURSUANT TO SUCH AUTHORITY SHALL COMPLY WITH ALL APPLICABLE PROVISIONS OF THIS CHAPTER WHICH RELATE TO LICENSES TO SELL CIDER AT RETAIL FOR CONSUMPTION ON THE PREMISES;

(E) APPLY FOR A PERMIT TO CONDUCT TASTINGS AWAY FROM THE LICENSED PREMISES OF SUCH CIDER. SUCH PERMIT SHALL BE VALID THROUGHOUT THE STATE AND MAY BE ISSUED ON AN ANNUAL BASIS OR FOR INDIVIDUAL EVENTS. EACH SUCH PERMIT AND THE EXERCISE OF THE PRIVILEGE GRANTED THEREBY SHALL BE SUBJECT TO SUCH RULES AND CONDITIONS OF THE AUTHORITY AS IT DEEMS NECESSARY. TASTINGS SHALL BE CONDUCTED SUBJECT TO THE FOLLOWING CONDITIONS:

(I) TASTINGS SHALL BE CONDUCTED BY AN OFFICIAL AGENT, REPRESENTATIVE OR SOLICITOR OF THE LICENSEE. SUCH AGENT, REPRESENTATIVE OR SOLICITOR SHALL BE PHYSICALLY PRESENT AT ALL TIMES DURING THE CONDUCT OF THE TASTINGS; AND

(II) ANY LIABILITY STEMMING FROM A RIGHT OF ACTION RESULTING FROM A TASTING OF CIDER AS AUTHORIZED HEREIN AND IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 11-100 AND 11-101 OF THE GENERAL OBLIGATIONS LAW, SHALL ACCRUE TO THE LICENSEE.

(F) IF IT HOLDS A TASTING PERMIT ISSUED PURSUANT TO PARAGRAPH (E) OF THIS SUBDIVISION, APPLY TO THE AUTHORITY FOR A PERMIT TO SELL SUCH CIDER, FOR CONSUMPTION OFF THE PREMISES, DURING SUCH TASTINGS IN PREMISES LICENSED UNDER SECTIONS SIXTY-FOUR, SIXTY-FOUR-A, EIGHTY-ONE AND EIGHTY-ONE-A OF THIS CHAPTER. EACH SUCH PERMIT AND THE EXERCISE OF THE PRIVILEGE GRANTED THEREBY SHALL BE SUBJECT TO SUCH RULES AND CONDITIONS OF THE AUTHORITY AS IT DEEMS NECESSARY.

S 6. The alcoholic beverage control law is amended by adding a new section 58-c to read as follows:

S 58-C. FARM CIDERY LICENSE. 1. ANY PERSON MAY APPLY TO THE AUTHORITY FOR A FARM CIDERY LICENSE AS PROVIDED FOR IN THIS SECTION TO PRODUCE CIDER WITHIN THIS STATE FOR SALE. SUCH APPLICATION SHALL BE IN WRITING AND VERIFIED AND SHALL CONTAIN SUCH INFORMATION AS THE AUTHORITY SHALL REQUIRE. SUCH APPLICATION SHALL BE ACCOMPANIED BY A CHECK OR DRAFT FOR THE AMOUNT REQUIRED BY THIS ARTICLE FOR SUCH LICENSE. IF THE AUTHORITY GRANTS THE APPLICATION, IT SHALL ISSUE A LICENSE IN SUCH FORM AS SHALL BE DETERMINED BY ITS RULES. SUCH LICENSE SHALL CONTAIN A DESCRIPTION OF THE LICENSED PREMISES AND IN FORM AND IN SUBSTANCE SHALL BE A LICENSE TO THE PERSON THEREIN SPECIFICALLY DESIGNATED TO PRODUCE CIDER IN THE PREMISES THEREIN SPECIFICALLY LICENSED.

2. A FARM CIDERY LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO OPERATE A CIDERY FOR THE MANUFACTURE OF NEW YORK STATE LABELLED CIDER. SUCH A LICENSE SHALL ALSO AUTHORIZE THE LICENSEE TO:

(A) SELL IN BULK CIDER MANUFACTURED BY THE LICENSEE TO ANY PERSON LICENSED TO MANUFACTURE ALCOHOLIC BEVERAGES IN THIS STATE OR TO A PERMITTEE ENGAGED IN THE MANUFACTURE OF PRODUCTS WHICH ARE UNFIT FOR BEVERAGE USE;

(B) SELL OR DELIVER CIDER MANUFACTURED BY THE LICENSEE TO PERSONS OUTSIDE THE STATE PURSUANT TO THE LAWS OF THE PLACE OF SUCH DELIVERY;

(C) SELL CIDER MANUFACTURED BY THE LICENSEE TO WHOLESALERS AND RETAILERS LICENSED IN THIS STATE TO SELL SUCH CIDER, LICENSED FARM DISTILLERS, LICENSED FARM WINERIES, LICENSED FARM BREWERIES AND ANY OTHER LICENSED

FARM CIDERY. ALL SUCH CIDER SOLD BY THE LICENSEE SHALL BE SECURELY SEALED AND HAVE ATTACHED THERETO A LABEL AS SHALL BE REQUIRED BY SECTION ONE HUNDRED SEVEN-A OF THIS CHAPTER;

(D) SELL AT THE LICENSED PREMISES CIDER MANUFACTURED BY THE LICENSEE OR ANY OTHER LICENSED FARM CIDERY AT RETAIL FOR CONSUMPTION ON OR OFF THE LICENSED PREMISES;

(E) CONDUCT TASTINGS AT THE LICENSED PREMISES OF CIDER MANUFACTURED BY THE LICENSEE OR ANY OTHER LICENSED FARM CIDERY;

(F) SELL AND CONDUCT TASTINGS OF CIDER MANUFACTURED BY THE LICENSEE OR ANY OTHER LICENSED FARM CIDERY AT RETAIL FOR CONSUMPTION ON THE PREMISES OF A RESTAURANT, CONFERENCE CENTER, INN, BED AND BREAKFAST OR HOTEL BUSINESS OWNED AND OPERATED BY THE LICENSEE IN OR ADJACENT TO ITS FARM CIDERY. A LICENSEE WHO OPERATES A RESTAURANT, CONFERENCE CENTER, INN, BED AND BREAKFAST OR HOTEL PURSUANT TO SUCH AUTHORITY SHALL COMPLY WITH ALL APPLICABLE PROVISIONS OF THIS CHAPTER WHICH RELATE TO LICENSES TO SELL CIDER AT RETAIL FOR CONSUMPTION ON THE PREMISES;

(G) SELL CIDER MANUFACTURED BY THE LICENSEE OR ANY OTHER LICENSED FARM CIDERY AT RETAIL FOR CONSUMPTION OFF THE PREMISES, AT THE STATE FAIR, AT RECOGNIZED COUNTY FAIRS AND AT FARMERS MARKETS OPERATED ON A NOT-FOR-PROFIT BASIS;

(H) CONDUCT TASTINGS OF AND SELL AT RETAIL FOR CONSUMPTION OFF THE PREMISES NEW YORK STATE LABELED BEER MANUFACTURED BY A LICENSED BREWERY OR LICENSED FARM BREWERY;

(I) CONDUCT TASTINGS OF AND SELL AT RETAIL FOR CONSUMPTION OFF THE PREMISES NEW YORK STATE LABELLED WINE MANUFACTURED BY A LICENSED WINERY OR LICENSED FARM WINERY;

(J) CONDUCT TASTINGS OF AND SELL AT RETAIL FOR CONSUMPTION OFF THE PREMISES NEW YORK STATE LABELLED LIQUOR MANUFACTURED BY A LICENSED DISTILLER OR LICENSED FARM DISTILLER; PROVIDED, HOWEVER, THAT NO CONSUMER MAY BE PROVIDED, DIRECTLY OR INDIRECTLY: (I) WITH MORE THAN THREE SAMPLES OF LIQUOR FOR TASTING IN ONE CALENDAR DAY; OR (II) WITH A SAMPLE OF LIQUOR FOR TASTING EQUAL TO MORE THAN ONE-QUARTER FLUID OUNCE; AND

(K) ENGAGE IN ANY OTHER BUSINESS ON THE LICENSED PREMISES SUBJECT TO SUCH RULES AND REGULATIONS AS THE AUTHORITY MAY PRESCRIBE. SUCH RULES AND REGULATIONS SHALL DETERMINE WHICH BUSINESSES WILL BE COMPATIBLE WITH THE POLICY AND PURPOSES OF THIS CHAPTER AND SHALL CONSIDER THE EFFECT OF PARTICULAR BUSINESSES ON THE COMMUNITY AND AREA IN THE VICINITY OF THE FARM CIDERY LICENSEE.

3. (A) A FARM CIDERY LICENSEE MAY APPLY FOR A PERMIT TO CONDUCT TASTINGS AWAY FROM THE LICENSED PREMISES OF CIDER PRODUCED BY THE LICENSEE. SUCH PERMIT SHALL BE VALID THROUGHOUT THE STATE AND MAY BE ISSUED ON AN ANNUAL BASIS OR FOR INDIVIDUAL EVENTS. EACH SUCH PERMIT AND THE EXERCISE OF THE PRIVILEGE GRANTED THEREBY SHALL BE SUBJECT TO SUCH RULES AND CONDITIONS OF THE AUTHORITY AS IT DEEMS NECESSARY.

(B) TASTINGS SHALL BE CONDUCTED SUBJECT TO THE FOLLOWING LIMITATIONS:

(I) TASTINGS SHALL BE CONDUCTED BY AN OFFICIAL AGENT, REPRESENTATIVE OR SOLICITOR OF ONE OR MORE FARM CIDERIES. SUCH AGENT, REPRESENTATIVE OR SOLICITOR SHALL BE PHYSICALLY PRESENT AT ALL TIMES DURING THE CONDUCT OF THE TASTINGS; AND

(II) ANY LIABILITY STEMMING FROM A RIGHT OF ACTION RESULTING FROM A TASTING OF CIDER AS AUTHORIZED HEREIN AND IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 11-100 AND 11-101 OF THE GENERAL OBLIGATIONS LAW, SHALL ACCRUE TO THE FARM CIDERY.

4. A LICENSED FARM CIDERY HOLDING A TASTING PERMIT ISSUED PURSUANT TO SUBDIVISION THREE OF THIS SECTION MAY APPLY TO THE AUTHORITY FOR A PERMIT TO SELL CIDER PRODUCED BY SUCH FARM CIDERY, BY THE BOTTLE, DURING

SUCH TASTINGS IN PREMISES LICENSED UNDER SECTIONS SIXTY-FOUR, SIXTY-FOUR-A, EIGHTY-ONE AND EIGHTY-ONE-A OF THIS CHAPTER. EACH SUCH PERMIT AND THE EXERCISE OF THE PRIVILEGE GRANTED THEREBY SHALL BE SUBJECT TO SUCH RULES AND CONDITIONS OF THE AUTHORITY AS IT DEEMS NECESSARY.

5. A LICENSED FARM CIDERY MAY, UNDER SUCH RULES AS MAY BE ADOPTED BY THE AUTHORITY, SELL CIDER MANUFACTURED BY THE LICENSEE OR ANY OTHER LICENSED FARM CIDERY AT RETAIL IN BULK BY THE KEG, CASK OR BARREL FOR CONSUMPTION AND NOT FOR RESALE AT A CLAM-BAKE, BARBEQUE, PICNIC, OUTING OR OTHER SIMILAR OUTDOOR GATHERING AT WHICH MORE THAN FIFTY PERSONS ARE ASSEMBLED.

6. A LICENSED FARM CIDERY MAY APPLY TO THE AUTHORITY FOR A LICENSE TO SELL BEER, LIQUOR AND/OR WINE AT RETAIL FOR CONSUMPTION ON THE PREMISES IN A RESTAURANT OWNED BY HIM AND CONDUCTED AND OPERATED BY THE LICENSEE IN OR ADJACENT TO ITS FARM CIDERY. ALL OF THE PROVISIONS OF THIS CHAPTER RELATIVE TO LICENSES TO SELL BEER, LIQUOR OR WINE AT RETAIL OR CONSUMPTION ON THE PREMISES SHALL APPLY SO FAR AS APPLICABLE.

7. A FARM CIDERY LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO MANUFACTURE, BOTTLE AND SELL FOOD CONDIMENTS AND PRODUCTS SUCH AS MUSTARDS, SAUCES, JAMS, JELLIES, MULLING SPICES AND OTHER CIDER RELATED FOODS IN ADDITION TO OTHER SUCH FOOD AND CRAFTS ON AND FROM THE LICENSED PREMISES. SUCH LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO STORE AND SELL GIFT ITEMS IN A TAX-PAID ROOM UPON THE LICENSED PREMISES INCIDENTAL TO THE SALE OF CIDER. THESE GIFT ITEMS SHALL BE LIMITED TO THE FOLLOWING CATEGORIES:

(A) NON-ALCOHOLIC BEVERAGES FOR CONSUMPTION ON OR OFF PREMISES, INCLUDING BUT NOT LIMITED TO BOTTLED WATER, JUICE AND SODA BEVERAGES;

(B) FOOD ITEMS FOR THE PURPOSE OF COMPLEMENTING CIDER TASTINGS, WHICH SHALL MEAN A DIVERSIFIED SELECTION OF FOOD THAT IS ORDINARILY CONSUMED WITHOUT THE USE OF TABLEWARE AND CAN BE CONVENIENTLY CONSUMED WHILE STANDING OR WALKING. SUCH FOOD ITEMS SHALL INCLUDE BUT NOT BE LIMITED TO: CHEESES, FRUITS, VEGETABLES, CHOCOLATES, BREADS, MUSTARDS AND CRACKERS;

(C) FOOD ITEMS, WHICH SHALL INCLUDE LOCALLY PRODUCED FARM PRODUCTS AND ANY FOOD OR FOOD PRODUCT NOT SPECIFICALLY PREPARED FOR IMMEDIATE CONSUMPTION UPON THE PREMISES. SUCH FOOD ITEMS MAY BE COMBINED INTO A PACKAGE CONTAINING CIDER RELATED PRODUCTS;

(D) CIDER SUPPLIES AND ACCESSORIES, WHICH SHALL INCLUDE ANY ITEM UTILIZED FOR THE STORAGE, SERVING OR CONSUMPTION OF CIDER OR FOR DECORATIVE PURPOSES. THESE SUPPLIES MAY BE SOLD AS SINGLE ITEMS OR MAY BE COMBINED INTO A PACKAGE CONTAINING CIDER;

(E) CIDER-MAKING EQUIPMENT AND SUPPLIES INCLUDING, BUT NOT LIMITED TO, HOME CIDER-MAKING KITS, FILTERS, BOTTLING EQUIPMENT, AND BOOKS OR OTHER WRITTEN MATERIAL TO ASSIST CIDER-MAKERS AND HOME CIDER-MAKERS TO PRODUCE AND BOTTLE CIDER;

(F) SOUVENIR ITEMS, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO ARTWORK, CRAFTS, CLOTHING, AGRICULTURAL PRODUCTS AND ANY OTHER ARTICLES WHICH CAN BE CONSTRUED TO PROPAGATE TOURISM WITHIN THE REGION.

8. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, ANY FARM CIDERY LICENSEE MAY CHARGE FOR TOURS OF ITS PREMISES.

9. THE HOLDER OF A LICENSE ISSUED UNDER THIS SECTION MAY OPERATE UP TO FIVE BRANCH OFFICES LOCATED AWAY FROM THE LICENSED FARM CIDERY. SUCH LOCATIONS SHALL BE CONSIDERED PART OF THE LICENSED PREMISES AND ALL ACTIVITIES ALLOWED AT AND LIMITED TO THE FARM CIDERY MAY BE CONDUCTED AT THE BRANCH OFFICES. SUCH BRANCH OFFICES SHALL NOT BE LOCATED WITHIN, SHARE A COMMON ENTRANCE AND EXIT WITH, OR HAVE ANY INTERIOR ACCESS TO

ANY OTHER BUSINESS, INCLUDING PREMISES LICENSED TO SELL ALCOHOLIC BEVERAGES AT RETAIL. PRIOR TO COMMENCING OPERATION OF ANY SUCH BRANCH OFFICE, THE LICENSEE SHALL NOTIFY THE AUTHORITY OF THE LOCATION OF SUCH BRANCH OFFICE AND THE AUTHORITY MAY ISSUE A PERMIT FOR THE OPERATION OF SAME.

10. NO FARM CIDERY SHALL MANUFACTURE IN EXCESS OF ONE HUNDRED FIFTY THOUSAND GALLONS OF CIDER ANNUALLY.

11. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, NO LICENSED FARM CIDERY SHALL MANUFACTURE OR SELL ANY CIDER OTHER THAN NEW YORK STATE LABELLED CIDER.

(B) IN THE EVENT THAT THE COMMISSIONER OF AGRICULTURE AND MARKETS, AFTER INVESTIGATING AND COMPILING INFORMATION PURSUANT TO SUBDIVISION FORTY-TWO OF SECTION SIXTEEN OF THE AGRICULTURE AND MARKETS LAW, DETERMINES THAT A NATURAL DISASTER, ACT OF GOD, OR CONTINUED ADVERSE WEATHER CONDITION HAS DESTROYED MUCH OF THE APPLE CROP NECESSARY FOR PRODUCING CIDER, SUCH COMMISSIONER, IN CONSULTATION WITH THE CHAIRMAN OF THE AUTHORITY, MAY GIVE AUTHORIZATION TO A DULY LICENSED FARM CIDERY TO MANUFACTURE OR SELL CIDER PRODUCED FROM APPLES GROWN OUTSIDE THIS STATE. NO SUCH AUTHORIZATION SHALL BE GRANTED TO A FARM CIDERY LICENSEE UNLESS SUCH LICENSEE CERTIFIES TO SUCH COMMISSIONER THE QUANTITY OF NEW YORK GROWN APPLES UNAVAILABLE TO SUCH LICENSEE DUE TO SUCH NATURAL DISASTER, ACT OF GOD OR CONTINUING ADVERSE WEATHER CONDITION AND SATISFIES SUCH COMMISSIONER THAT REASONABLE EFFORTS WERE MADE TO OBTAIN APPLES FROM A NEW YORK STATE SOURCE FOR SUCH CIDER MAKING PURPOSE. NO FARM CIDERY SHALL UTILIZE AN AMOUNT OF OUT-OF-STATE GROWN APPLES EXCEEDING THE AMOUNT OF NEW YORK GROWN APPLES THAT SUCH CIDERY IS UNABLE TO OBTAIN DUE TO THE DESTRUCTION OF NEW YORK GROWN APPLES BY A NATURAL DISASTER, ACT OF GOD OR CONTINUING ADVERSE WEATHER CONDITION AS DETERMINED BY THE COMMISSIONER OF AGRICULTURE AND MARKETS PURSUANT TO THIS SUBDIVISION. FOR PURPOSES OF THIS SUBDIVISION, THE DEPARTMENT OF AGRICULTURE AND MARKETS AND THE AUTHORITY ARE AUTHORIZED TO ADOPT RULES AND REGULATIONS AS THEY MAY DEEM NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBDIVISION WHICH SHALL INCLUDE ENSURING THAT IN MANUFACTURING CIDER FARM CIDERIES UTILIZE APPLES GROWN IN NEW YORK STATE TO THE EXTENT THEY ARE REASONABLY AVAILABLE, PRIOR TO UTILIZING APPLES FROM AN OUT-OF-STATE SOURCE FOR SUCH PURPOSE.

(C) THE COMMISSIONER OF AGRICULTURE AND MARKETS SHALL MAKE AVAILABLE TO FARM CIDERIES AND TO THE PUBLIC EACH SPECIFIC APPLE LOSS DETERMINATION ISSUED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION ON OR AFTER AUGUST TWENTIETH OF EACH YEAR.

(D) IN THE EVENT THAT THE CONTINUING EFFECTS OF A NATURAL DISASTER, ACT OF GOD, OR ADVERSE WEATHER CONDITION WHICH OCCURRED PRIOR TO AUGUST TWENTIETH OF EACH YEAR OR THE EFFECTS OF A NATURAL DISASTER, ACT OF GOD, OR ADVERSE WEATHER CONDITION WHICH OCCURS SUBSEQUENT TO AUGUST TWENTIETH OF EACH YEAR RESULTS IN ANY APPLE CROP LOSS WHICH MEETS THE STANDARDS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, THE COMMISSIONER OF AGRICULTURE AND MARKETS, IN CONSULTATION WITH THE CHAIRMAN OF THE AUTHORITY, MAY ISSUE ADDITIONAL APPLE CROP LOSS DETERMINATIONS AND SHALL EXPEDITIOUSLY MAKE AVAILABLE TO FARM CIDERIES AND TO THE PUBLIC THE LOSS DETERMINATION ISSUED PURSUANT TO THIS PARAGRAPH PRIOR TO OCTOBER TENTH OF EACH YEAR.

12. NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW OR OF ANY RULE OR REGULATION PROMULGATED PURSUANT THERETO, AND IN ADDITION TO THE ACTIVITIES WHICH MAY OTHERWISE BE CARRIED OUT BY ANY PERSON LICENSED UNDER THIS SECTION, SUCH PERSON MAY, ON THE PREMISES DESIGNATED IN SUCH LICENSE:

(A) PRODUCE, PACKAGE, BOTTLE, SELL AND DELIVER SOFT DRINKS AND OTHER NON-ALCOHOLIC BEVERAGES, VITAMINS, AND OTHER BY-PRODUCTS;
(B) RECOVER CARBON DIOXIDE AND YEAST;
(C) STORE BOTTLES, PACKAGES AND SUPPLIES NECESSARY OR INCIDENTAL TO ALL SUCH OPERATIONS;
(D) PACKAGE, BOTTLE, SELL AND DELIVER WINE PRODUCTS;
(E) ALLOW FOR THE PREMISES INCLUDING SPACE AND EQUIPMENT TO BE RENTED BY A LICENSED TENANT CIDER PRODUCER FOR THE PURPOSES OF ALTERNATION.

13. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE AUTHORITY MAY ISSUE A FARM CIDERY LICENSE TO THE HOLDER OF A FARM BREWERY, FARM WINERY OR FARM DISTILLER'S LICENSE FOR USE AT SUCH LICENSEE'S EXISTING LICENSED PREMISES. THE HOLDER OF A FARM BREWERY, FARM WINERY OR FARM DISTILLER'S LICENSE THAT SIMULTANEOUSLY HOLDS A FARM CIDERY LICENSE ON AN ADJACENT PREMISES MAY SHARE AND USE THE SAME TASTING ROOM FACILITIES TO CONDUCT ANY TASTINGS THAT SUCH LICENSEE IS OTHERWISE AUTHORIZED TO CONDUCT.

14. THE AUTHORITY IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGULATIONS TO EFFECTUATE THE PURPOSES OF THIS SECTION. IN PRESCRIBING SUCH RULES AND REGULATIONS, THE AUTHORITY SHALL PROMOTE THE EXPANSION AND PROFITABILITY OF CIDER PRODUCTION AND OF TOURISM IN NEW YORK, THEREBY PROMOTING THE CONSERVATION, PRODUCTION AND ENHANCEMENT OF NEW YORK STATE AGRICULTURAL LANDS.

S 7. Subdivision 1 of section 56-a of the alcoholic beverage control law, as amended by chapter 108 of the laws of 2012, is amended to read as follows:

1. In addition to the annual fees provided for in this chapter, there shall be paid to the authority with each initial application for a license filed pursuant to section fifty-one, fifty-one-a, fifty-three, fifty-eight, FIFTY-EIGHT-C, sixty-one, sixty-two, seventy-six or seventy-eight of this chapter, a filing fee of four hundred dollars; with each initial application for a license filed pursuant to section sixty-three, sixty-four, sixty-four-a or sixty-four-b of this chapter, a filing fee of two hundred dollars; with each initial application for a license filed pursuant to section fifty-three-a, fifty-four, fifty-five, fifty-five-a, seventy-nine, eighty-one or eighty-one-a of this chapter, a filing fee of one hundred dollars; with each initial application for a permit filed pursuant to section ninety-one, ninety-one-a, ninety-two, ninety-two-a, ninety-three, ninety-three-a, if such permit is to be issued on a calendar year basis, ninety-four, ninety-five, ninety-six or ninety-six-a, or pursuant to paragraph b, c, e or j of subdivision one of section ninety-nine-b of this chapter if such permit is to be issued on a calendar year basis, or for an additional bar pursuant to subdivision four of section one hundred of this chapter, a filing fee of twenty dollars; and with each application for a permit under section ninety-three-a of this chapter, other than a permit to be issued on a calendar year basis, section ninety-seven, ninety-eight, ninety-nine, or ninety-nine-b of this chapter, other than a permit to be issued pursuant to paragraph b, c, e or j of subdivision one of section ninety-nine-b of this chapter on a calendar year basis, a filing fee of ten dollars.

S 8. Subdivision 2 of section 56-a of the alcoholic beverage control law, as amended by chapter 108 of the laws of 2012, is amended to read as follows:

2. In addition to the annual fees provided for in this chapter, there shall be paid to the authority with each renewal application for a license filed pursuant to section fifty-one, fifty-one-a, fifty-three, fifty-eight, FIFTY-EIGHT-C, sixty-one, sixty-two, seventy-six or seven-

ty-eight of this chapter, a filing fee of one hundred dollars; with each renewal application for a license filed pursuant to section sixty-three, sixty-four, sixty-four-a or sixty-four-b of this chapter, a filing fee of ninety dollars; with each renewal application for a license filed pursuant to section seventy-nine, eighty-one or eighty-one-a of this chapter, a filing fee of twenty-five dollars; and with each renewal application for a license or permit filed pursuant to section fifty-three-a, fifty-four, fifty-five, fifty-five-a, ninety-one, ninety-one-a, ninety-two, ninety-two-a, ninety-three, ninety-three-a, if such permit is issued on a calendar year basis, ninety-four, ninety-five, ninety-six or ninety-six-a of this chapter or pursuant to subdivisions b, c, e or j of section ninety-nine-b, if such permit is issued on a calendar year basis, or with each renewal application for an additional bar pursuant to subdivision four of section one hundred of this chapter, a filing fee of thirty dollars.

S 9. Paragraph (a) of subdivision 6-a of section 51 of the alcoholic beverage control law, as added by chapter 108 of the laws of 2012, is amended to read as follows:

(a) sell such beer to licensed farm distillers, farm wineries, FARM CIDERIES and farm breweries. All such beer sold by the licensee shall be securely sealed and have attached thereto a label as shall be required by section one hundred seven-a of this chapter;

S 10. Paragraph (d) of subdivision 2 of section 51-a of the alcoholic beverage control law, as added by chapter 108 of the laws of 2012, is amended to read as follows:

(d) sell beer and cider manufactured by the licensee to wholesalers and retailers licensed in this state to sell such beer and cider, licensed farm distillers, licensed farm wineries, LICENSED FARM CIDERIES and any other licensed farm brewery. All such beer and cider sold by the licensee shall be securely sealed and have attached thereto a label as shall be required by section one hundred seven-a of this chapter;

S 11. Paragraphs (j) and (k) of subdivision 2 of section 51-a of the alcoholic beverage control law are relettered paragraphs (k) and (l) and a new paragraph (j) is added to read as follows:

(J) CONDUCT TASTINGS OF AND SELL AT RETAIL FOR CONSUMPTION OFF THE PREMISES NEW YORK STATE LABELLED CIDER MANUFACTURED BY A LICENSED CIDER PRODUCER OR LICENSED FARM CIDERY;

S 12. Subdivision 1 of section 61 of the alcoholic beverage control law, as amended by chapter 108 of the laws of 2012, is amended to read as follows:

1. A class A distiller's license shall authorize the holder thereof to operate a distillery for the manufacture of liquors by distillation or redistillation at the premises specifically designated in the license. Such a license shall also authorize the sale in bulk by such licensee from the licensed premises of the products manufactured under such license to any person holding a distiller's class A license, a distiller's class B license or a permittee engaged in the manufacture of products which are unfit for beverage use. It shall also authorize the sale from the licensed premises and from one other location in the state of New York of any liquor whether or not manufactured by such licensee to a wholesale or retail liquor licensee or permittee in sealed containers of not more than one quart each. Such license shall also authorize the sale of New York state labelled liquor to licensed farm wineries, FARM CIDERIES, FARM DISTILLERIES and farm breweries in sealed containers of not more than one quart each. Such license shall also include the privilege to operate a rectifying plant under the same terms and condi-

tions as the holder of a class B distiller's license without the payment of any additional fee.

S 13. Subdivision 1-a of section 61 of the alcoholic beverage control law, as amended by chapter 571 of the laws of 2008, is amended to read as follows:

1-a. A class A-1 distiller's license shall authorize the holder thereof to operate a distillery which has a production capacity of no more than thirty-five thousand gallons per year for the manufacture of liquors by distillation or redistillation at the premises specifically designated in the license. Such a license shall also authorize the sale in bulk by such licensee from the licensed premises of the products manufactured under such license to any person holding a winery license, farm winery license, distiller's class A license, a distiller's class B license or a permittee engaged in the manufacture of products which are unfit for beverage use. It shall also authorize the sale from the licensed premises and from one other location in the state of New York of liquors manufactured by such licensee to a wholesale or retail liquor licensee or permittee in sealed containers of not more than one quart each. In addition, it shall authorize such licensee to sell from the licensed premises New York state labelled liquors to [a] LICENSED farm [winery licensee] WINERIES, FARM BREWERIES, FARM DISTILLERIES AND FARM CIDERIES in sealed containers of not more than one quart for retail sale for off-premises consumption. Such license shall also include the privilege to operate a rectifying plant under the same terms and conditions as the holder of a class B-1 distiller's license without the payment of any additional fee.

S 14. Paragraph (a) of subdivision 2-c of section 61 of the alcoholic beverage control law, as amended by chapter 108 of the laws of 2012, is amended to read as follows:

(a) A class D distiller's license, otherwise known as a farm distillery license, shall authorize the holder of such a license to operate a farm distillery at the premises specifically designated in the license:

(i) To manufacture liquor primarily from farm and food products, as defined in subdivision two of section two hundred eighty-two of the agriculture and markets law;

(ii) To put such liquor into containers of not more than one quart each, which containers shall then be sealed and to sell such liquor at wholesale, for resale, and to licensed farm wineries, FARM CIDERIES [and], farm breweries[,] AND OTHER FARM DISTILLERIES, wholesale and retail licensees, and permittees;

(iii) To sell at retail, for personal use, in such sealed containers;

(iv) To sell in bulk, liquor manufactured by the licensee to a winery or farm winery licensee, or to the holder of a class A, A-1, B, B-1 or C distiller's license, or to the holder of a permit issued pursuant to paragraph c of subdivision one of section ninety-nine-b of this chapter;

(v) To conduct tastings of and sell at retail for consumption off the premises New York state labelled beer manufactured by a licensed brewer or licensed farm brewery;

(vi) To conduct tastings of and sell at retail for consumption off the premises New York state labelled cider manufactured by a licensed brewer, licensed farm brewery, licensed farm winery [or], licensed cider producer OR LICENSED FARM CIDERY; and

(vii) To conduct tastings of and sell at retail for consumption off the premises New York state labelled wine manufactured by a licensed winery or licensed farm winery.

S 15. Paragraph (e) of subdivision 2 of section 76 of the alcoholic beverage control law, as amended by chapter 108 of the laws of 2012, is amended to read as follows:

(e) to sell from the licensed premises to licensed farm wineries, FARM CIDERIES, FARM DISTILLERIES and farm breweries New York state labelled wine manufactured by the licensee in the original sealed containers of not more than fifteen gallons each; and

S 16. Paragraph (c) of subdivision 2 of section 76-a of the alcoholic beverage control law, as amended by chapter 108 of the laws of 2012, is amended to read as follows:

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

S 17. Paragraph (h) of subdivision 6 of section 76-a of the alcoholic beverage control law, as added by chapter 108 of the laws of 2012, is amended to read as follows:

(h) Conduct tastings of and sell at retail for consumption off the premises New York state labelled cider manufactured by a licensed brewer, licensed farm brewery, licensed farm winery [or], licensed cider producer OR LICENSED FARM CIDERY.

S 18. Paragraph (c) of subdivision 42 of section 16 of the agriculture and markets law, as added by chapter 108 of the laws of 2012, is amended to read as follows:

(c) For purposes of making timely determinations and consulting with the chairman of the state liquor authority pursuant to subdivision twelve of section fifty-one-a AND SUBDIVISION ELEVEN OF SECTION FIFTY-EIGHT-C of the alcoholic beverage control law, investigate and compile information relative to natural disasters, acts of God, or continued adverse weather conditions which shall affect the crop of apples used in the production of cider.

S 19. Paragraph (i) of subdivision 22 of section 210 of the tax law, as amended by section 6 of part K of chapter 62 of the laws of 2006, is amended to read as follows:

(i) Special rules. For purposes of this subdivision, the term "federal gross income from farming" shall include gross income from the production of maple syrup, cider, Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump, or from a commercial horse boarding operation as defined in subdivision thirteen of section three hundred one of the agriculture and markets law, or from the sale of wine from a licensed farm winery as provided for in article six of the alcoholic beverage control law, OR FROM THE SALE OF CIDER FROM A LICENSED FARM CIDERY AS PROVIDED FOR IN SECTION FIFTY-EIGHT-C OF THE ALCOHOLIC BEVERAGE CONTROL LAW.

S 20. Paragraph 8 of subsection (n) of section 606 of the tax law, as amended by section 3 of part K of chapter 62 of the laws of 2006, is amended to read as follows:

(8) Special rules. For purposes of this subsection, the term "federal gross income from farming" shall include gross income from the production of maple syrup, cider, Christmas trees derived from a managed

Christmas tree operation whether dug for transplanting or cut from the stump, or from a commercial horse boarding operation as defined in subdivision thirteen of section three hundred one of the agriculture and markets law, or from the sale of wine from a licensed farm winery as provided for in article six of the alcoholic beverage control law, OR FROM THE SALE OF CIDER FROM A LICENSED FARM CIDERY AS PROVIDED FOR IN SECTION FIFTY-EIGHT-C OF THE ALCOHOLIC BEVERAGE CONTROL LAW.

S 21. Subparagraph (C) of paragraph 1 of subdivision (i) of section 1136 of the tax law, as amended by chapter 108 of the laws of 2012, is amended to read as follows:

(C) Every wholesaler, as defined by section three of the alcoholic beverage control law, if it has made a sale of an alcoholic beverage, as defined by section four hundred twenty of this chapter, without collecting sales or use tax during the period covered by the return, except (i) a sale to a person that has furnished an exempt organization certificate to the wholesaler for that sale; or (ii) a sale to another wholesaler whose license under the alcoholic beverage control law does not allow it to make retail sales of the alcoholic beverage. For each vendor, operator, or recipient to whom the wholesaler has made a sale without collecting sales or compensating use tax, the return must include the total value of those sales made during the period covered by the return (excepting the sales described in clauses (i) and (ii) of this subparagraph) and the vendor's, operator's or recipient's state liquor authority license number, along with the information required by paragraph two of this subdivision. A person operating pursuant to a farm winery license as provided in section seventy-six-a of the alcoholic beverage control law, or a person operating pursuant to a farm distillery license as provided in subdivision two-c of section sixty-one of such law, OR A PERSON OPERATING PURSUANT TO A FARM CIDERY LICENSE AS PROVIDED IN SECTION FIFTY-EIGHT-C OF THE ALCOHOLIC BEVERAGE CONTROL LAW, or a person operating pursuant to a farm brewery license as provided in section fifty-one-a of the alcoholic beverage control law, or a person operating pursuant to any combination of such licenses, shall not be subject to any of the requirements of this subdivision.

S 22. This act shall take effect on the ninetieth day after it shall have become a law.