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

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I N S E N A T E

March 12, 2012

Introduced by Sens. VALESKY, CARLUCCI, KLEIN, RITCHIE, SAVINO -- (at request of the State Liquor Authority) -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the alcoholic beverage control law and the agriculture and markets law, in relation to the creation of a farm brewery license

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

Section 1. Section 3 of the alcoholic beverage control law is amended by adding a new subdivision 12-aaa to read as follows:

12-AAA. "FARM BREWERY" MEANS AND INCLUDES ANY PLACE OR PREMISES, LOCATED ON A FARM IN NEW YORK STATE, IN WHICH BEER IS MANUFACTURED AND SOLD.

S 2. Section 3 of the alcoholic beverage control law is amended by adding a new subdivision 20-d to read as follows:

20-D. "NEW YORK STATE LABELLED BEER" MEANS:

(A) FROM THE EFFECTIVE DATE OF THIS SUBDIVISION UNTIL DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN, BEER MADE WITH NO LESS THAN TWENTY PERCENT OF ITS HOPS GROWN OR PRODUCED IN NEW YORK STATE AND NO LESS THAN FORTY PERCENT OF ALL OF ITS OTHER INGREDIENTS GROWN OR PRODUCED IN NEW YORK STATE; AND

(B) FROM JANUARY FIRST, TWO THOUSAND EIGHTEEN UNTIL DECEMBER THIRTY-FIRST, TWO THOUSAND TWENTY-TWO, BEER MADE WITH NO LESS THAN SIXTY PERCENT OF ITS HOPS GROWN OR PRODUCED IN NEW YORK STATE AND NO LESS THAN SEVENTY-FIVE PERCENT OF ALL OF ITS OTHER INGREDIENTS GROWN OR PRODUCED IN NEW YORK STATE; AND

(C) FROM JANUARY FIRST, TWO THOUSAND TWENTY-THREE AND THEREAFTER, BEER MADE WITH NO LESS THAN NINETY PERCENT OF ITS HOPS GROWN OR PRODUCED IN NEW YORK STATE AND NO LESS THAN NINETY PERCENT OF ALL OF ITS OTHER INGREDIENTS GROWN OR PRODUCED IN NEW YORK STATE.

S 3. The alcoholic beverage control law is amended by adding a new section 51-a to read as follows:

S 51-A. FARM BREWERY LICENSE. 1. ANY PERSON MAY APPLY TO THE AUTHORITY FOR A FARM BREWERY LICENSE AS PROVIDED FOR IN THIS CHAPTER TO BREW

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

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BEER 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 BREW BEER IN THE PREMISES THEREIN SPECIFICALLY LICENSED.

2. EXCEPT AS PROVIDED FOR IN SUBDIVISIONS SEVEN AND EIGHT OF THIS SECTION, THE PROVISIONS OF SECTION FIFTY-ONE OF THIS ARTICLE SHALL APPLY TO A LICENSE ISSUED UNDER THIS SECTION.

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

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

(I) BEER TASTINGS SHALL BE CONDUCTED BY AN OFFICIAL AGENT, REPRESENTATIVE OR SOLICITOR OF ONE OR MORE FARM BREWERIES. 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 BEER TASTING AS AUTHORIZED HEREIN AND IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 11-100 AND 11-101 OF THE GENERAL OBLIGATIONS LAW, SHALL ACCRUE TO THE FARM BREWERY.

(C) SUCH FARM BREWERY MAY CHARGE A FEE FOR EACH BEER SAMPLE TASTED.

4. A FARM BREWERY LICENSEE HOLDING A TASTING PERMIT ISSUED PURSUANT TO SUBDIVISION THREE OF THIS SECTION MAY APPLY TO THE AUTHORITY FOR A PERMIT TO SELL BEER PRODUCED BY SUCH FARM BREWERY, 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 FARM BREWERY LICENSE SHALL AUTHORIZE THE HOLDER THEREOF TO MANUFACTURE, BOTTLE AND SELL FOOD CONDIMENTS AND PRODUCTS SUCH AS MUSTARDS, SAUCES, HOP SEASONINGS, BEER NUTS, AND OTHER HOPS AND BEER RELATED FOODS IN ADDITION TO BEER AND HOP SOAPS, HOP PILLOWS, HOP WREATHS AND 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 BEER. 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 BEER TASTINGS, SHALL MEAN A DIVERSIFIED SELECTION OF FOOD WHICH IS ORDINARILY CONSUMED WITHOUT THE USE OF TABLEWARE AND CAN CONVENIENTLY BE CONSUMED WHILE STANDING OR WALKING. SUCH FOOD ITEMS SHALL INCLUDE BUT NOT BE LIMITED TO: CHEESES, FRUITS, VEGETABLES, CHOCOLATES, BREADS, 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 BEER AND/OR HOP RELATED PRODUCT.

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

(E) BEER-MAKING EQUIPMENT AND SUPPLIES INCLUDING, BUT NOT LIMITED TO, HOME BEER-MAKING OR HOMEBREWING KITS, FILTERS, BOTTLING EQUIPMENT, HOPS, BARLEY, YEASTS, CHEMICALS AND OTHER BEER ADDITIVES, AND BOOKS OR OTHER WRITTEN MATERIAL TO ASSIST BEER-MAKERS AND HOME BEER-MAKERS OR HOMEBREWERS TO PRODUCE AND BOTTLE BEER.

(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.

(G) NEW YORK STATE LABELLED BEER PRODUCED OR MANUFACTURED BY A LICENSED BREWER OR FARM BREWERY. SUCH BEER MAY BE PURCHASED OUTRIGHT BY THE LICENSEE FROM THE LICENSED BREWER OR FARM BREWERY OR OBTAINED ON A CONSIGNMENT BASIS PURSUANT TO A WRITTEN AGREEMENT BETWEEN THE SELLING AND PURCHASING LICENSEE.

(H) NEW YORK STATE LABELLED WINE PRODUCED OR MANUFACTURED BY A LICENSED WINERY OR FARM WINERY. SUCH WINE MAY BE PURCHASED OUTRIGHT BY THE LICENSEE FROM A LICENSED WINERY OR FARM WINERY OR OBTAINED ON A CONSIGNMENT BASIS PURSUANT TO A WRITTEN AGREEMENT BETWEEN THE SELLING AND PURCHASING LICENSEE.

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

7. NO FARM BREWERY SHALL MANUFACTURE IN EXCESS OF SIXTY THOUSAND FINISHED BARRELS OF BEER ANNUALLY.

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

(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 NECESSARY INGREDIENTS FOR BREWING BEER, THE COMMISSIONER, IN CONSULTATION WITH THE CHAIRMAN OF THE AUTHORITY, MAY GIVE AUTHORIZATION TO A DULY LICENSED FARM BREWERY TO MANUFACTURE OR SELL BEER PRODUCED FROM INGREDIENTS GROWN OR PRODUCED OUTSIDE THIS STATE. NO SUCH AUTHORIZATION SHALL BE GRANTED TO A FARM BREWERY LICENSEE UNLESS SUCH LICENSEE CERTIFIES TO THE COMMISSIONER THE QUANTITY OF NEW YORK GROWN INGREDIENTS UNAVAILABLE TO SUCH LICENSEE DUE TO SUCH NATURAL DISASTER, ACT OF GOD OR CONTINUING ADVERSE WEATHER CONDITION AND SATISFIES THE COMMISSIONER THAT REASONABLE EFFORTS WERE MADE TO OBTAIN BREWING INGREDIENTS FROM A NEW YORK STATE SOURCE FOR SUCH BEER-MAKING PURPOSE. NO FARM BREWERY SHALL UTILIZE AN AMOUNT OF OUT-OF-STATE GROWN OR PRODUCED INGREDIENTS EXCEEDING THE AMOUNT OF NEW YORK GROWN INGREDIENTS THAT SUCH BREWERY IS UNABLE TO OBTAIN DUE TO THE DESTRUCTION OF NEW YORK GROWN OR PRODUCED INGREDIENTS 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 BEER FARM BREWERIES UTILIZE INGREDIENTS GROWN OR PRODUCED IN NEW YORK STATE TO THE EXTENT THEY ARE REASONABLY AVAILABLE, PRIOR TO UTILIZING INGREDIENTS FROM AN OUT-OF-STATE SOURCE FOR SUCH PURPOSE.

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

(D) IN THE EVENT THAT THE CONTINUING EFFECTS OF A NATURAL DISASTER, ACT OF GOD, OR ADVERSE WEATHER CONDITION WHICH OCCURRED PRIOR TO AUGUST TWENTIETH OF EACH YEAR OR THE EFFECTS OF A NATURAL DISASTER, ACT OF GOD, OR ADVERSE WEATHER CONDITION WHICH OCCURS SUBSEQUENT TO AUGUST TWENTIETH EACH YEAR RESULTS IN ANY INGREDIENT 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 INGREDIENT LOSS DETERMINATIONS AND SHALL EXPEDITIOUSLY MAKE AVAILABLE TO FARM BREWERIES AND TO THE PUBLIC EACH SPECIFIC INGREDIENT LOSS DETERMINATION ISSUED PURSUANT TO THIS PARAGRAPH PRIOR TO OCTOBER TENTH OF EACH YEAR.

S 4. Subdivision 1 of section 56 of the alcoholic beverage control law, as amended by section 1 of part Z of chapter 85 of the laws of 2002, is amended to read as follows:

1. The annual fee for a [brewer's] license TO MANUFACTURE BEER shall be:

(A) four thousand dollars FOR A BREWER'S LICENSE, unless the annual production of the brewer is less than sixty thousand barrels per year, in which case the annual fee shall be three hundred twenty dollars;

(B) THREE HUNDRED TWENTY DOLLARS FOR A FARM BREWERY LICENSE.

S 5. Subdivision 1 of section 56-a of the alcoholic beverage control law, as amended by section 1 of part B of chapter 56 of the laws of 2004, is amended to read as follows:

1. In addition to the annual fees provided for in this chapter, there shall be paid to the [division] AUTHORITY with each initial application for a license filed pursuant to section fifty-one, FIFTY-ONE-A, fifty-three, fifty-eight, 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 [seventy-seven,] 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 6. Subdivision 2 of section 56-a of the alcoholic beverage control law, as amended by chapter 55 of the laws of 1992, 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, sixty-one, sixty-two, seventy-six or seventy-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, [seventy-seven,] 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 7. Subdivision 6 of section 76-a of the alcoholic beverage control law is amended by adding a new paragraph (g) to read as follows:

(G) SELL FOR CONSUMPTION OFF THE PREMISES NEW YORK STATE LABELLED BEER MANUFACTURED BY A LICENSED BREWER OR FARM BREWERY.

S 8. Subdivision 6 of section 76-a of the alcoholic beverage control law is amended by adding a new paragraph (h) to read as follows:

(H) CONDUCT TASTINGS OF NEW YORK STATE LABELLED BEER MANUFACTURED BY A LICENSED BREWER OR FARM BREWERY.

S 9. Subdivision 42 of section 16 of the agriculture and markets law, as amended by chapter 227 of the laws of 2006, is amended to read as follows:

42. (A) For purposes of making timely determinations and consulting with the chairman of the state liquor authority pursuant to subdivision five of section seventy-six-a 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 grapes or other fruit products used in the production of wine.

(B) FOR PURPOSES OF MAKING TIMELY DETERMINATIONS AND CONSULTING WITH THE CHAIRMAN OF THE STATE LIQUOR AUTHORITY PURSUANT TO SUBDIVISION EIGHT OF SECTION FIFTY-ONE-A 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 NECESSARY INGREDIENTS FOR BREWING BEER.

S 10. This act shall take effect on the one hundred eightieth day after it shall have become a law.