

5330

2015-2016 Regular Sessions

I N   S E N A T E

May 13, 2015

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Introduced by Sens. VALESKY, KLEIN -- read twice and ordered printed,  
and when printed to be committed to the Committee on Commerce, Econom-  
ic Development and Small Business

AN ACT to amend the alcoholic beverage control law, in relation to  
promoting economic development by expanding products sold by farm  
cideries and authorizing such cideries to sell cider to other licen-  
sees for resale

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

1     Section 1. Subdivision 3-a of section 58 of the alcoholic beverage  
2     control law, as added by chapter 384 of the laws of 2013, is amended to  
3     read as follows:  
4     3-a. A licensed cider producer producing New York state labelled cider  
5     may:  
6     (a) sell such cider OR ANY NEW YORK STATE LABELED CIDER to licensed  
7     farm distillers, farm wineries, WINERIES, farm cideries [and], CIDERIES  
8     AND farm breweries. All such cider sold by the licensee shall be  
9     securely sealed and have attached thereto a label as shall be required  
10    by section one hundred seven-a of this chapter;  
11    (b) conduct tastings at the licensed premises of such cider OR ANY NEW  
12    YORK STATE LABELED CIDER;  
13    (c) sell such cider OR ANY NEW YORK STATE LABELED CIDER at retail for  
14    consumption off the premises at the state fair, at recognized county  
15    fairs and at farmers markets operated on a not-for-profit basis;  
16    (d) sell and conduct tastings of such cider OR ANY NEW YORK STATE  
17    LABELED CIDER at retail for consumption on the premises of a restaurant,  
18    conference center, inn, bed and breakfast or hotel business owned and  
19    operated by the licensee in or adjacent to its farm cidery. A licensee  
20    who operates a restaurant, conference center, inn, bed and breakfast or  
21    hotel pursuant to such authority shall comply with all applicable

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

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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 OR ANY NEW YORK STATE LABELED 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] IN THIS PARAGRAPH 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 OR ANY NEW YORK STATE LABELED 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 2. Paragraphs (c) and (g) of subdivision 2 of section 58-c of the alcoholic beverage control law, as added by chapter 384 of the laws of 2013, are amended to read as follows:

(c) sell cider manufactured by the licensee OR ANY NEW YORK STATE LABELED CIDER to wholesalers and retailers licensed in this state to sell such cider, TO licensed farm distillers, licensed farm wineries, LICENSED WINERIES, licensed farm breweries, and any other licensed farm cidery OR LICENSED 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;

(g) sell cider manufactured by the licensee or any other licensed farm cidery, OR ANY NEW YORK STATE LABELED 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;

S 3. Subdivision 5 of section 58-c of the alcoholic beverage control law, as added by chapter 384 of the laws of 2013, is amended to read as follows:

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, OR ANY NEW YORK STATE LABELED CIDER 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.

S 4. Paragraphs (b) and (e) of subdivision 7 of section 58-c of the alcoholic beverage control law, as added by chapter 384 of the laws of 2013, are amended to read as follows:

(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

1 to: cheeses, fruits, vegetables, chocolates, breads, BAKED GOODS,  
2 mustards and crackers;

3 (e) cider-making equipment and supplies including, but not limited to,  
4 APPLES, APPLE JUICE, OTHER POME FRUITS, OTHER POME FRUIT JUICES, home  
5 cider-making kits, PRESSES, PUMPS, filters, YEASTS, CHEMICALS AND OTHER  
6 CIDER ADDITIVES, bottling equipment, BOTTLES, CIDER STORAGE AND FERMENT-  
7 ING VESSELS, BARRELS, and books or other written material to assist  
8 cider-makers and home cider-makers to produce and bottle cider;

9 S 5. Subdivision 2 of section 76 of the alcoholic beverage control law  
10 is amended by adding a new paragraph (d-1) to read as follows:

11 (D-1) TO SELL FROM THE LICENSED PREMISES TO LICENSED FARM DISTILLERS,  
12 FARM WINERIES, WINERIES, FARM CIDERIES, CIDERIES AND FARM BREWERS ANY  
13 NEW YORK STATE LABELED CIDER. ALL SUCH CIDER SHALL BE SECURELY SEALED  
14 AND HAVE ATTACHED THERETO A LABEL AS SHALL BE REQUIRED BY SECTION ONE  
15 HUNDRED SEVEN-A OF THIS CHAPTER;

16 S 6. Subdivisions 3, 4 and 5 of section 76 of the alcoholic beverage  
17 control law, subdivisions 3 and 5 as amended by chapter 221 of the laws  
18 of 2011 and subdivision 4 as amended by chapter 431 of the laws of 2014,  
19 are amended to read as follows:

20 3. (a) Any person having applied for and received a license as a  
21 winery under this section may conduct wine AND CIDER tastings of New  
22 York state labelled wines OR CIDERS in establishments licensed under  
23 sections sixty-three and seventy-nine of this chapter to sell wine for  
24 off-premises consumption. Such winery may charge a fee for each wine OR  
25 CIDER sample tasted. The state liquor authority shall promulgate rules  
26 and regulations regarding such tastings as provided for in this subdivi-  
27 sion.

28 (a-1) Any person having applied for and received a license as a winery  
29 under this section may conduct wine AND CIDER tastings of New York state  
30 labelled wines OR CIDERS and apply to the liquor authority for a permit  
31 to sell wine produced by such winery OR ANY NEW YORK STATE LABELED CIDER  
32 by the bottle, during such tastings in establishments licensed under  
33 section sixty-four, section sixty-four-a, section eighty-one or section  
34 eighty-one-a of this chapter to sell wine for consumption on the prem-  
35 ises. Such winery may charge a fee of no more than twenty-five cents for  
36 each wine OR CIDER sample tasted. The state liquor authority shall  
37 promulgate rules and regulations regarding such tastings as provided for  
38 in this subdivision.

39 (b) Tastings shall be conducted subject to the following limitations:

40 (i) wine AND CIDER tastings shall be conducted by an official agent,  
41 representative or solicitor of one or more wineries. Such agent, repre-  
42 sentative or solicitor shall be physically present at all times during  
43 the conduct of the tastings; and

44 (ii) any liability stemming from a right of action resulting from a  
45 wine OR CIDER tasting as authorized herein and in accordance with the  
46 provisions of sections 11-100 and 11-101 of the general obligations law,  
47 shall accrue to the winery licensee.

48 (c)(i) Any person having applied for and received a license as a  
49 winery under this section may conduct wine AND CIDER tastings of New  
50 York state labelled wines OR CIDERS and sell such wine OR CIDER by the  
51 bottle, during such tasting, for off-premises consumption at outdoor or  
52 indoor gatherings, functions, occasions or events, within the hours  
53 fixed by or pursuant to subdivision fourteen of section one hundred five  
54 of this chapter, sponsored by a bona fide charitable organization. For  
55 the purposes of this paragraph, a bona fide charitable organization  
56 shall mean and include any bona fide religious or charitable organiza-

tion or bona fide educational, fraternal or service organization or bona fide organization of veterans or volunteer firefighters, which by its charter, certificate of incorporation, constitution, or act of the legislature, shall have among its dominant purposes one or more of the lawful purposes as defined in subdivision five of section one hundred eighty-six of the general municipal law.

(ii) Upon application, the liquor authority shall issue an annual permit authorizing such winery to participate in outdoor or indoor gatherings, functions, occasions or events sponsored by a charitable organization. The winery must give the authority written or electronic notice of the date, time and specific location of each tasting at least fifteen days prior to the tasting. A winery that obtains a permit to conduct such wine OR CIDER tastings does not need to apply for or obtain a temporary beer or wine permit pursuant to section ninety-seven of this chapter or any other permit to conduct such a tasting or to sell wine OR CIDER by the bottle for off-premises consumption at such tastings.

(iii) Such winery may charge a fee for each wine OR CIDER sample tasted. Tastings shall be conducted by an official agent, representative or solicitor of such winery. The state liquor authority may promulgate rules and regulations regarding such tastings as provided for in this subdivision.

4. A licensed winery may at the licensed premises, conduct tastings of, and sell at retail for consumption on or off the licensed premises, any wine or wine product manufactured by the licensee or any New York state labeled wine or New York state labeled wine product OR ANY NEW YORK STATE LABELED CIDER. Provided, however, for tastings and sales for on-premises consumption, the licensee shall regularly keep food available for sale or service to its retail customers for consumption on the premises. A licensee providing the following shall be deemed in compliance with this provision: (i) sandwiches, soups or other such foods, whether fresh, processed, pre-cooked or frozen; and/or (ii) food items intended to complement the tasting of alcoholic beverages, 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, including but not limited to: cheeses, fruits, vegetables, chocolates, breads, mustards and crackers. All of the provisions of this chapter relative to licenses to sell wine at retail for consumption on or off the premises shall apply so far as applicable to such licensee.

5. Notwithstanding any provision of this chapter to the contrary, any one or more winery licensees, singly or jointly, may apply to the liquor authority for a license or licenses to sell wine AND ANY NEW YORK STATE LABELED CIDER at retail for consumption off the premises. For licensees applying singly, the duration of such license shall be coextensive with the duration of such licensee's winery license, and the fee therefor shall be five hundred dollars if such retail premises is located in cities having a population of one million or more; in cities having less than one million population and more than one hundred thousand, two hundred fifty dollars; and elsewhere, the sum of one hundred twenty-five dollars. Such license shall entitle the holder thereof to sell at retail for consumption off the premises any New York state labelled wine OR CIDER. Such license shall also entitle the holder thereof to conduct wine AND CIDER tastings. Such license shall also authorize the sale by the holder thereof of New York state labelled wine OR CIDER, in sealed containers for off-premises consumption, from the specially licensed premises of any person licensed pursuant to section eighty-one-a of this article to sell wine at retail for consumption on premises in which the

1 principal business is the operation of a legitimate theater or such  
2 other lawful adult entertainment or recreational facility as the liquor  
3 authority may classify for eligibility pursuant to subdivision six of  
4 section sixty-four-a of this chapter. Not more than five such licenses  
5 shall be issued, either singly or jointly, to any licensed winery. All  
6 other provisions of this chapter relative to licenses to sell wine at  
7 retail for consumption off the premises shall apply so far as applicable  
8 to such application. The liquor authority is hereby authorized to adopt  
9 such rules as it may deem necessary to carry out the purpose of this  
10 subdivision, provided that all licenses issued pursuant to this subdivi-  
11 sion shall be subject to the same rules and regulations as are applica-  
12 ble to the sale of wine at retail for consumption off the premises of  
13 the winery licensee.

14 S 7. Subdivisions 2 and 3 of section 76-a of the alcoholic beverage  
15 control law, as added by chapter 221 of the laws of 2011, paragraph (c)  
16 of subdivision 2 as amended by chapter 384 of the laws of 2013, para-  
17 graph (f) of subdivision 2 as amended by chapter 431 of the laws of  
18 2014, are amended to read as follows:

19 2. A farm winery license shall authorize the holder thereof to:

20 (a) operate a farm winery for the manufacture of wine or cider at the  
21 premises specifically designated in the license;

22 (b) sell in bulk from the licensed premises the products manufactured  
23 under such license OR ANY NEW YORK STATE LABELED CIDER to any winery  
24 licensee, any other farm winery licensee, any distiller licensee or to a  
25 permittee engaged in the manufacture of products which are unfit for  
26 beverage use and to sell or deliver such wine OR CIDER to persons  
27 outside the state pursuant to the laws of the place of such sale or  
28 delivery;

29 (c) sell from the licensed premises to a licensed winery, farm distil-  
30 ler, farm brewery, farm cidery, wholesaler or retailer, or to a corpo-  
31 ration operating railroad cars or aircraft for consumption on such  
32 carriers, or at retail for consumption off the premises, wine or cider  
33 manufactured by the licensee OR ANY NEW YORK STATE LABELED CIDER as  
34 above set forth and to sell or deliver such wine or cider to persons  
35 outside the state pursuant to the laws of the place of such sale or  
36 delivery. All wine or cider sold by such licensee for consumption off  
37 the premises shall be securely sealed and have attached thereto a label  
38 setting forth such information as shall be required by this chapter;

39 (d) operate, or use the services of, a custom crush facility as  
40 defined in subdivision nine-a of section three of this chapter;

41 (e) sell cider and wine at retail for consumption on or off the prem-  
42 ises;

43 (f) operate a restaurant, hotel, catering establishment, or other food  
44 and drinking establishment in or adjacent to the licensed premises and  
45 sell at such place, at retail for consumption on the premises, wine,  
46 cider and wine products manufactured by the licensee and any New York  
47 state labeled wine, New York state labeled cider or New York state  
48 labeled wine product. All of the provisions of this chapter relative to  
49 licenses to sell wine at retail for consumption on the premises shall  
50 apply so far as applicable to such licensee. Notwithstanding any other  
51 provision of law, the licensed winery may apply to the authority for a  
52 license under article four of this chapter to sell other alcoholic  
53 beverages at retail for consumption on the premises at such establish-  
54 ment.

55 3. (a) Any person having applied for and received a license as a farm  
56 winery under this section may conduct wine AND CIDER tastings of New

York state labelled wines AND CIDERS in establishments licensed under section sixty-three of this chapter and section seventy-nine of this article to sell wine OR ANY NEW YORK STATE LABELED CIDER for off-premises consumption. Such farm winery may charge a fee for each wine OR CIDER sample tasted. The state liquor authority shall promulgate rules and regulations regarding such tastings as provided for in this subdivision.

(b) Any person having applied for and received a license as a farm winery under this section may conduct wine AND CIDER tastings of New York state labelled wines AND CIDERS and apply to the liquor authority for a permit to sell wine produced by such farm winery OR ANY NEW YORK STATE LABELED CIDER, by the bottle, during such tastings in establishments licensed under sections sixty-four and sixty-four-a of this chapter and section eighty-one or section eighty-one-a of this article to sell wine for consumption on the premises. Such farm winery may charge a fee of no more than twenty-five cents for each wine OR CIDER sample tasted. The state liquor authority shall promulgate rules and regulations regarding such tastings as provided for in this subdivision.

(c) Tastings shall be conducted subject to the following limitations:

(i) wine OR CIDER tastings shall be conducted by an official agent, representative or solicitor of one or more farm wineries. 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 wine 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 winery.

(d) (i) Any person having applied for and received a license as a farm winery under this section may conduct wine AND CIDER tastings of New York state labelled wines AND CIDERS and sell such wine OR CIDER by the bottle, during such tasting, for off-premises consumption at outdoor or indoor gatherings, functions, occasions or events, within the hours fixed by or pursuant to subdivision fourteen of section one hundred five of this chapter, sponsored by a bona fide charitable organization. For the purposes of this paragraph, a bona fide charitable organization shall mean and include any bona fide religious or charitable organization or bona fide educational, fraternal or service organization or bona fide organization of veterans or volunteer firefighters, which by its charter, certificate of incorporation, constitution, or act of the legislature, shall have among its dominant purposes one or more of the lawful purposes as defined in subdivision five of section one hundred eighty-six of the general municipal law.

(ii) Upon application, the liquor authority shall issue an annual permit authorizing such farm winery to participate in such outdoor or indoor gatherings, functions, occasions or events sponsored by a charitable organization. The farm winery must give the authority written or electronic notice of the date, time and specific location of each tasting at least fifteen days prior to the tasting. A farm winery that obtains a permit to conduct such wine OR CIDER tastings does not need to apply for or obtain a temporary beer or wine permit pursuant to section ninety-seven of this chapter or any other permit to conduct such a tasting or to sell wine OR CIDER by the bottle for off-premises consumption at such tastings.

(iii) Such farm winery may charge a fee for each wine OR CIDER sample tasted. Tastings shall be conducted by an official agent, representative or solicitor of such farm winery. The state liquor authority may

1 adopt rules and regulations regarding such tastings as provided in this  
2 subdivision.

3 S 8. Paragraph (a) of subdivision 7-b of section 3 of the alcoholic  
4 beverage control law, as amended by chapter 384 of the laws of 2013, is  
5 amended to read as follows:

6 (a) "Cider" means the partially or fully fermented juice of fresh,  
7 whole apples or other pome fruits, containing more than three and two-  
8 tenths per centum but not more than eight and one-half per centum alco-  
9 hol by volume: (i) to which nothing has been added to increase the alco-  
10 holic content produced by natural fermentation; and (ii) with the usual  
11 cellar treatments and necessary additions to correct defects due to  
12 climate, [saccharine] SUGAR levels and seasonal conditions. Nothing  
13 contained in this subdivision shall be deemed to preclude the use of  
14 such methods or materials as may be necessary to encourage a normal  
15 alcoholic fermentation and to make a product that is free of microbi-  
16 ological activity at the time of sale. Cider may be sweetened or  
17 flavored after fermentation with fruit juice, fruit juice concentrate,  
18 sugar, maple syrup, honey, spices or other agricultural products, sepa-  
19 rately or in combination. Cider may contain retained or added carbon  
20 dioxide.

21 S 9. This act shall take effect on the one hundred eightieth day after  
22 it shall have become a law; provided, however, that effective immediate-  
23 ly, the addition, amendment and/or repeal of any rule or regulation  
24 necessary for the implementation of this act on its effective date are  
25 authorized and directed to be made and completed on or before such  
26 effective date.