STATE OF NEW YORK

10473

IN ASSEMBLY

April 26, 2018

Introduced by M. of A. FAHY -- read once and referred to the Committee on Economic Development

AN ACT to amend the alcoholic beverage control law, in relation to direct interstate and intrastate cider shipments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The alcoholic beverage control law is amended by adding two new sections 59-b and 59-c to read as follows:

§ 59-b. Direct interstate cider shipments. 1. Authorization. Notwithstanding any provision of law, rule or regulation to the contrary, any holder of a license to manufacture cider in any other state who obtains an out-of-state direct shipper's license, as provided in this section, may ship no more than thirty-six cases (no more than nine liters each case) of cider produced by such license holder per year directly to a resident of New York who is at least twenty-one years of age, for such resident's personal use and not for resale, provided the state in which such person is so licensed affords lawful means for shipments of cider to be received by a resident thereof who is at least twenty-one years of age, for such resident's personal use and not for resale, from a person licensed in this state as a manufacturer and, provided further, that the state in which such out-of-state cider producer is located affords to New York state cider producer, farm cidery, farm winery and farm brewery licensees reciprocal cider shipping privileges, meaning shipping privileges that are substantially similar to the requirements in this section. No person shall place an order for shipment of cider unless they are twenty-one years of age or older. Any common carrier with a permit issued pursuant to this chapter to whom such out-of-state shipper's license is presented is authorized to make delivery of shipments provided for hereunder in this state in compliance with this section.

2. License. Before sending any shipment hereunder to a resident in this state, the out-of-state shipper shall first obtain a license from the authority under procedures prescribed by rules and regulations of the authority and after providing the authority with a true copy of its current license to manufacture cider in the applicant's state of domi-

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

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cile along with a copy of the applicant's federal basic permit after payment of an annual fee of one hundred twenty-five dollars. Notwithstanding the provisions of section one hundred ten of this chapter, the authority in its discretion, may excuse an out-of-state cider producer from the submission of such information.

3. Licensee's responsibilities. The holder of an out-of-state direct shipper's license shall:

(a) ship no more than thirty-six cases (no more than nine liters each case) per year of cider produced by such license holder directly to a New York state resident who is at least twenty-one years of age, for such resident's personal use and not for resale;

(b) ensure that the outside of each shipping container used to ship cider directly to a New York resident is conspicuously labeled with the words: "CONTAINS HARD CIDER--SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY--NOT FOR RESALE", or with other language specifically approved by the New York state liquor authority;

(c) maintain records in such manner and form as the authority may direct, showing the total amount of cider shipped into the state each calendar year; the names and addresses of the purchasers to whom the cider was shipped, the date purchased, the name of the common carrier used to deliver the cider, and the quantity and value of each shipment;

(d) in connection with the acceptance of an order for a delivery of cider to a New York resident, require the prospective customer to represent that he or she has attained the age of twenty-one years or more and that the cider being purchased will not be resold or introduced into commerce;

(e) require common carriers to:

(i) require a recipient, at the delivery address, upon delivery, to demonstrate that the recipient is at least twenty-one years of age by providing a valid form of photographic identification authorized by section sixty-five-b of this chapter;

(ii) require a recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the authority; and

(iii) refuse delivery when the proposed recipient appears to be under twenty-one years of age and refuses to present valid identification as required by subparagraph (i) of this paragraph;

(f) file returns with and pay to the New York state department of taxation and finance all state and local sales taxes and excise taxes due on sales into this state in accordance with the applicable provisions of the tax law relating to such taxes, the amount of such taxes to be determined on the basis that each sale in this state was at the location where delivery is made;

(g) keep all records required by this section for three years and provide copies of such records, upon written request, to the authority or the department of taxation and finance;

(h) permit the authority or the department of taxation and finance to perform an audit of such out-of-state shipper upon request;

(i) execute a written consent to the jurisdiction of this state, its agencies and instrumentalities and the courts of this state concerning enforcement of this section and any related laws, rules, or regulations, including tax laws, rules or regulations; and

(j) prior to obtaining an out-of-state direct shipper's license, obtain a certificate of authority pursuant to section eleven hundred thirty-four of the tax law and a registration as a distributor pursuant to sections four hundred twenty-one and four hundred twenty-two of the tax law.

4. Situs. Delivery of a shipment in this state by the holder of an out-of-state direct shipper's license shall be deemed to constitute a sale in this state at the place of delivery and shall be subject to all excise taxes levied pursuant to section four hundred twenty-four of the tax law and all sales taxes levied pursuant to articles twenty-eight and twenty-nine of such law.

5. Renewal. The out-of-state shipper may annually renew its license with the authority by paying a one hundred twenty-five dollar renewal fee, providing the authority with a true copy of its current license in such other state as an alcoholic beverage manufacturer and by complying with such other procedures as are prescribed by rule of the authority.

6. Rules and regulations. The authority and the department of taxation and finance may promulgate rules and regulations to effectuate the purposes of this section.

7. Enforcement. The authority may enforce the requirements of this section including the requirements imposed on the common carrier, by administrative proceedings to suspend or revoke an out-of-state shipper's license and the authority may accept payment of an administrative fine in lieu of suspension, such payments to be determined by rules or regulations promulgated by the authority. In addition, the authority or the attorney general of the state of New York shall report violations of this section, where appropriate, to the United States department of treasury, tax and trade bureau, for administrative action to suspend or revoke the federal basic permit.

8. Violations. In any action brought under this section, the common carrier and the licensee shall only be held liable for their independent acts.

§ 59-c. Direct intrastate cider shipments. Any person having applied for and received a license as a cider producer or farm cidery under section fifty-eight or fifty-eight-c of this article, a farm winery under section seventy-six-a or seventy-six-d of this article, or a farm brewery under section fifty-one-a of this article may ship no more than thirty-six cases (no more than nine liters per case) of cider produced by such cider producer, farm cidery, farm winery or farm brewery per year directly to a New York state resident who is at least twenty-one years of age, for such resident's personal use and not for resale.

1. Licensee's shipping responsibilities. Notwithstanding any provision to the contrary contained in this chapter, any above referred licensee shall:

(a) ship no more than thirty-six cases (no more than nine liters) per year of cider produced by such license holder directly to a New York state resident who is at least twenty-one years of age, for such resident's personal use and not for resale;

(b) ensure that the outside of each shipping container used to ship cider directly to a New York state resident is conspicuously labeled with the words: "CONTAINS HARD CIDER -- SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY -- NOT FOR RESALE", or with other language specifically approved by the New York state liquor authority;

(c) maintain records in such manner and form as the authority may direct showing the total amount of cider shipped in the state each calendar year, the names and addresses of the purchasers to whom the cider was shipped, the date purchased, the name of the common carrier used to deliver the cider, and the quantity and value of each shipment. Such records shall be kept for three years and, upon written request, be provided to the authority or the department of taxation and finance;

(d) in connection with the acceptance of an order for a delivery of cider to a New York resident, require the prospective customer to represent that he or she has attained the age of twenty-one years or more and that the cider being purchased will not be resold or introduced into commerce; and

(e) require common carriers to:

(i) require a recipient, at the delivery address, upon delivery, to demonstrate that the recipient is at least twenty-one years of age by providing a valid form of photographic identification authorized by section sixty-five-b of this chapter;

(ii) require a recipient to sign an electronic or paper form or other acknowledgment of receipt as approved by the authority; and

(iii) refuse delivery when the proposed recipient appears to be under twenty-one years of age and refuses to present valid identification as required by paragraph (a) of this subdivision.

2. Violations. In any action brought under this section, the common carrier and the licensee shall only be held liable for their independent acts.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law.