STATE OF NEW YORK

5853--A

Cal. No. 433

2017-2018 Regular Sessions

IN SENATE

May 3, 2017

Introduced by Sen. RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the alcoholic beverage control law, in relation to more closely align the privileges of farm distilleries with other privileges enjoyed by farmers

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

Section 1. Subdivision 25 of section 3 of the alcoholic beverage control law is amended to read as follows:

25. "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale. **Such sale may occur during a tasting or during any other activities where permitted by law.**

§ 2. Subparagraphs (v) and (vii) of paragraph (a) of subdivision 2-c of section 61 of the alcoholic beverage control law, as amended by chapter 103 of the laws of 2017, are amended to read as follows:

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

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

§ 3. Paragraph (e) of subdivision 2-c of section 61 of the alcoholic beverage control law, as amended by chapter 431 of the laws of 2014, is amended to read as follows:

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

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(e) Notwithstanding any other provision of law to the contrary, the holder of a farm distillery license may (i) sell at retail for consumption on the licensed premises[~~,~~]: any liquor manufactured by the licensee or any New York state labeled liquor, or any alcoholic beverage for consumption on the licensed premises pursuant to this subdivision. Provided, however, 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: sandwiches, soups or other such foods, whether fresh, processed, pre-cooked or frozen; and/or food items intended to [~~compliment~~] 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: cheese, fruits, vegetables, chocolates, breads, mustards and crackers. All of the provisions of this chapter relative to licenses to sell liquor at retail for consumption on the premises shall apply so far as applicable to such licensee; and

(ii) operate a restaurant, hotel, catering establishment, or other food and drinking establishment in or adjacent to the licensed premises and sell at such place, in addition to any food items or other purchased items, at retail for consumption on the premises, only liquor manufactured by the licensee and any New York state labeled liquor. All of the provisions of this chapter relative to licenses to sell liquor at retail for consumption on [~~the~~] such premises shall apply so far as applicable to such licensee. Notwithstanding any other provision of law, the licensee may apply to the authority for a license under this chapter to sell other alcoholic beverages at retail for consumption on the premises at such establishment. The privileges contained in this subdivision shall not extend to the premises of a restaurant, hotel or catering establishment.

§ 4. Paragraphs (e) and (f) of subdivision 2 of section 76-a of the alcoholic beverage control law, paragraph (e) as amended by chapter 328 of the laws of 2016 and paragraph (f) as amended by chapter 431 of the laws of 2014, are amended to read as follows:

(e) sell at the licensed premises at retail for consumption on or off the licensed premises: cider and wine manufactured by the licensee or any other licensed farm winery[~~, and beer and spirits manufactured by any licensed farm brewery or farm distillery, at retail for consumption on or off the licensed premises~~]; New York state labeled cider manufactured by any of the following so long as it is licensed in New York state by a brewer, farm brewer, winery, cider producer, or a farm cidery; New York state labeled beer manufactured by either a brewer licensed in New York state or a farm brewery licensed in New York state; and New York state labeled liquor manufactured by either a distillery licensed in New York state or a farm distillery licensed in New York state;

(f) operate a restaurant, hotel, catering establishment, or other food and drinking establishment in or adjacent to the licensed premises and sell at such place, in addition to any food items or other permitted items, at retail for consumption on the premises, wine, cider and wine products manufactured by the licensee and any New York state labeled wine, New York state labeled cider or New York state labeled wine product. All of the provisions of this chapter relative to licenses to sell wine at retail for consumption on the premises shall apply so far as applicable to such licensee. Notwithstanding any other provision of law, the licensed winery may apply to the authority for a license under arti-

cle four of this chapter to sell other alcoholic beverages at retail for consumption on the premises at such establishment. **The privileges contained in paragraphs (e), (f), (g) and (h) of subdivision six of this section shall not extend to the premises of a restaurant, hotel or catering establishment.**

§ 5. Paragraphs (e), (f), (g) and (h) of subdivision 6 of section 76-a of the alcoholic beverage control law, paragraphs (e) and (f) as amended by chapter 571 of the laws of 2008, paragraph (g) as added by chapter 108 of the laws of 2012 and paragraph (h) as amended by chapter 384 of the laws of 2013, are amended to read as follows:

(e) Sell for consumption **on or** off the **licensed** premises New York state labelled liquors manufactured by the holder of a class A-1, B-1, or C distiller's license.

(f) Conduct tastings **on the licensed premises** of New York state labelled liquors manufactured by the holder of a class A-1, B-1, or C distiller's license **or by a farm distillery licensed in New York state**. All liquor tastings conducted pursuant to this paragraph shall be conducted in the same manner as tastings of brandy pursuant to section seventy-six-e of this article.

(g) Conduct tastings of and sell at retail for consumption **on or** off the **licensed** premises New York state labelled beer manufactured by **either** a [~~licensed~~] brewer **licensed in New York state** or **a** farm brewery **licensed in New York state**.

(h) Conduct tastings of and sell at retail for consumption **on or** off the **licensed** premises New York state labelled cider manufactured by [~~a~~] **any of the following so long as it is** licensed **in New York state: a** brewer **licensed in New York state**, [~~licensed~~] **a** farm brewery **licensed in New York state, a winery**, [~~licensed~~] farm winery, [~~licensed~~] cider producer or [~~licensed~~] farm cidery.

§ 6. Paragraphs (f), (h), (i) and (j) of subdivision 2 of section 58-c of the alcoholic beverage control law, paragraph (f) as amended by chapter 431 of the laws of 2014 and paragraphs (h), (i) and (j) as amended by chapter 327 of the laws of 2016, are amended to read as follows:

(f) (i) **if** at the licensed premises, [~~conduct~~] **the licensee conducts** tastings of, [~~and sell~~] **or sells** at retail for consumption on or off the licensed premises, any cider manufactured by the licensee or any New York state labeled cider**, or any alcoholic beverage for consumption on the licensed premises pursuant to paragraph (g), (h), (i), or (j) of this subdivision the licensee shall regularly keep food available for sale or service to its retail customers for consumption on the premises**. Provided, [~~however,~~] **further that** 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: (A) sandwiches, soups or other such foods, whether fresh, processed, pre-cooked or frozen; and/or (B) 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 licensees selling cider at retail shall apply; and

(ii) operate a restaurant, hotel, catering establishment, or other food and drinking establishment in or adjacent to the licensed premises and sell at such place, **in addition to any food items or other permitted items,** at retail for consumption on the premises, **only** cider manufac-

tured by the licensee and any New York state labeled cider. All of the provisions of this chapter relative to licensees to selling cider at retail shall apply. Notwithstanding any other provision of law, the licensed farm cidery may apply to the authority for a license under this chapter to sell other alcoholic beverages at retail for consumption on the premises at such establishment**, but the privileges contained in paragraph (g), (h), (i), or (j) of this subdivision shall not extend to the premises of the restaurant, hotel, or catering establishment**;

(h) conduct tastings of and sell at retail for consumption on or off the premises New York state labeled beer manufactured by [~~a licensed~~] **either a** brewery **licensed in New York state** or [~~licensed~~] **a** farm brewery **licensed in New York state**;

(i) conduct tastings of and sell at retail for consumption on or off the **licensed** premises New York state labelled wine manufactured by **either** a [~~licensed~~] winery **licensed in New York state** or [~~licensed~~] **a** farm winery **licensed in New York state**;

(j) conduct tastings of and sell at retail for consumption on or off the premises New York state labelled liquor manufactured by [~~a licensed~~] **either a** distiller **licensed in New York state** or [~~licensed~~] **a** farm distiller **licensed in New York state**; 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

§ 7. Paragraphs (e), (f), (g), (h), (i), (j), (k) and (l) of subdivision 2 of section 51-a of the alcoholic beverage control law, paragraph (e) as amended by chapter 328 of the laws of 2016, paragraphs (f), (h), (i), (k) and (l) as added by chapter 108 of the laws of 2012, paragraph (g) as amended by chapter 431 of the laws of 2014 and paragraph (j) as added and paragraphs (k) and (l) as relettered by chapter 384 of the laws of 2013, are amended to read as follows:

(e) [~~sell at the licensed premises beer and cider manufactured by the licensee or any other licensed farm brewery, and wine and spirits manufactured by any licensed farm winery or farm distillery, at retail for consumption on or off the licensed premises~~] **(i) sell at retail for consumption on or off the licensed premises beer manufactured by the licensee, or New York state labelled beer manufactured by either a brewer licensed in New York state or a farm brewery licensed in New York state;**

(ii) to conduct tastings of, and sell at retail for consumption on or off the licensed premises cider manufactured by the licensee, or New York state labelled cider manufactured by either a cidery licensed in New York state or a farm cidery licensed in New York state;

(iii) to conduct tastings of, and sell at retail for consumption on or off the licensed premises New York state labelled wine manufactured by either a winery licensed in New York state or a farm winery licensed in New York state; and

(iv) to conduct tastings of, and sell at retail for consumption on or off the licensed premises New York state labelled spirits manufactured by either a distillery licensed in New York state or a farm distillery licensed in New York state; provided, however, that no consumer may be provided, directly or indirectly: (A) with more than three samples of liquor for tasting in one calendar day; or (B) with a sample of liquor for tasting equal to more than one-quarter fluid ounce;

(f) [~~conduct tastings at the licensed premises of beer and cider manufactured by the licensee or any other licensed farm brewery;~~

~~(g) operate a restaurant, hotel, catering establishment, or other food and drinking establishment in or adjacent to the licensed premises and sell at such place, at retail for consumption on the premises, beer and cider manufactured by the licensee and any New York state labeled beer or New York state labeled cider. All of the provisions of this chapter relative to licenses to sell beer at retail for consumption on and off the premises shall apply so far as applicable to such licensee. Notwithstanding any other provision of law, the licensed farm brewery may apply to the authority for a license under this chapter to sell other alcoholic beverages at retail for consumption on the premises at such establishment~~] at the licensed premises, conduct tastings of any beer manufactured by the licensee or any New York state labeled beer, or any alcoholic beverage for consumption licensed pursuant to paragraph (e) of this subdivision. Provided however, the licensee shall regularly keep food available for sale or service to its retail customers for consumption on the premises. 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 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 licensees selling cider at retail shall apply; and (iii) operate a restaurant, hotel, catering establishment, or other food and drinking establishment in or adjacent to the licensed premises and sell at such place, in addition to any food items or other permitted items, at retail for consumption on the premises, only cider manufactured by the licensee and any New York state labeled cider. All of the provisions of this chapter relative to licensees to selling cider at retail shall apply. Notwithstanding any other provision of law, the licensed farm brewery may apply to the authority for a license under this chapter to sell other alcoholic beverages at retail for consumption on the premises at such establishment, but the privileges contained in paragraph (e) of this subdivision shall not extend to the premises of the restaurant, hotel, or catering establishment;

[~~(h)~~] (g) sell beer and cider manufactured by the licensee or any other [~~licensed~~] farm brewery licensed in New York state 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; and

[~~(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 cider manufactured by a licensed cider producer or licensed farm cidery;~~

~~(k) 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~~

~~(l)~~] (h) 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 brewery licensee.

§ 8. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.