

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

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

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

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

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

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

27 (e) require common carriers to:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 § 59-c. Direct intrastate cider shipments. Any person having applied
29 for and received a license as a cider producer or farm cidery under
30 section fifty-eight or fifty-eight-c of this article, a farm winery
31 under section seventy-six-a or seventy-six-d of this article, or a farm
32 brewery under section fifty-one-a of this article may ship no more than
33 thirty-six cases (no more than nine liters per case) of cider produced
34 by such cider producer, farm cidery, farm winery or farm brewery per
35 year directly to a New York state resident who is at least twenty-one
36 years of age, for such resident's personal use and not for resale.

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

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

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

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

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

6 (e) require common carriers to:

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

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

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

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

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