STATE OF NEW YORK

1078

2017-2018 Regular Sessions

IN SENATE

January 6, 2017

Introduced by Sens. VALESKY, KLEIN, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic 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 licensees for resale

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

Section 1. Subdivision 3-a of section 58 of the alcoholic beverage control law, as added by chapter 384 of the laws of 2013, is amended to read as follows:

3-a. A licensed cider producer producing New York state labelled cider may:

(a) sell such cider **or any New York state labeled cider** to licensed farm distillers, farm wineries, **wineries,** farm cideries [~~and~~], **cideries and** farm breweries. 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;

(b) conduct tastings at the licensed premises of such cider **or any New York state labeled cider**;

(c) sell such cider **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;

(d) sell and conduct tastings of such cider **or any New York state labeled cider** at retail for consumption on the premises of a restaurant, conference center, inn, bed and breakfast or hotel business owned and operated by the licensee in or adjacent to its farm cidery. A licensee who operates a restaurant, conference center, inn, bed and breakfast or 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.

§ 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;

§ 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.

§ 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

to: cheeses, fruits, vegetables, chocolates, breads, **baked goods,** mustards and crackers;

(e) cider-making equipment and supplies including, but not limited to, **apples, apple juice, other pome fruits, other pome fruit juices,** home cider-making kits, **presses, pumps,** filters, **yeasts, chemicals and other cider additives,** bottling equipment, **bottles, cider storage and fermenting vessels, barrels,** and books or other written material to assist cider-makers and home cider-makers to produce and bottle cider;

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

(d-1) to sell from the licensed premises to licensed farm distillers, farm wineries, wineries, farm cideries, cideries and farm brewers any New York state labeled cider. All such cider shall be securely sealed and have attached thereto a label as shall be required by section one hundred seven-a of this chapter;

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

3. (a) Any person having applied for and received a license as a winery under this section may conduct wine **and cider** tastings of New York state labelled wines **or ciders** in establishments licensed under sections sixty-three and seventy-nine of this chapter to sell wine for off-premises consumption. Such 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.

(a-1) Any person having applied for and received a license as a winery under this section may conduct wine **and cider** tastings of New York state labelled wines **or ciders** and apply to the liquor authority for a permit to sell wine produced by such winery **or any New York state labeled cider** by the bottle, during such tastings in establishments licensed under section sixty-four, section sixty-four-a, section eighty-one or section eighty-one-a of this chapter to sell wine for consumption on the premises. Such 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.

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

(i) wine **and cider** tastings shall be conducted by an official agent, representative or solicitor of one or more 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 **or cider** 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 winery licensee.

(c)(i) Any person having applied for and received a license as a winery under this section may conduct wine **and cider** tastings of New York state labelled wines **or 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 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

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

§ 7. Subdivisions 2 and 3 of section 76-a of the alcoholic beverage control law, as added by chapter 221 of the laws of 2011, paragraph (c) of subdivision 2 as amended by chapter 384 of the laws of 2013, paragraph (e) of subdivision 2 as amended by chapter 328 of the laws of 2016, paragraph (f) of subdivision 2 as amended by chapter 431 of the laws of 2014, are amended to read as follows:

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

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

(b) sell in bulk from the licensed premises the products manufactured under such license **or any New York state labeled cider** to any winery licensee, any other farm winery licensee, any distiller licensee or to a permittee engaged in the manufacture of products which are unfit for beverage use and to sell or deliver such wine **or cider** to persons outside the state pursuant to the laws of the place of such sale or delivery;

(c) sell from the licensed premises to a licensed winery, farm distiller, farm brewery, farm cidery, wholesaler or retailer, or to a corporation operating railroad cars or aircraft for consumption on such carriers, or at retail for consumption off the premises, wine or cider manufactured by the licensee **or any New York state labeled cider** as above set forth and to sell or deliver such wine or cider to persons outside the state pursuant to the laws of the place of such sale or delivery. All wine or cider sold by such licensee for consumption off the premises shall be securely sealed and have attached thereto a label setting forth such information as shall be required by this chapter;

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

(e) sell at 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;

(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, 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 article four of this chapter to sell other alcoholic

beverages at retail for consumption on the premises at such establishment.

3. (a) 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** 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 adopt rules and regulations regarding such tastings as provided in this subdivision.

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

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

§ 9. This act shall take effect on the one hundred eightieth 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.