

# STATE OF NEW YORK

2827

2019-2020 Regular Sessions

## IN SENATE

January 29, 2019

Introduced by Sen. MAY -- 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 direct interstate and intrastate cider shipments

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

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

3 § 59-b. Direct interstate cider shipments. 1. Authorization. Notwith-  
4 standing any provision of law, rule or regulation to the contrary, any  
5 holder of a license to manufacture cider in any other state who obtains  
6 an out-of-state direct shipper's license, as provided in this section,  
7 may ship no more than thirty-six cases (no more than nine liters each  
8 case) of cider produced by such license holder per year directly to a  
9 resident of New York who is at least twenty-one years of age, for such  
10 resident's personal use and not for resale, provided the state in which  
11 such person is so licensed affords lawful means for shipments of cider  
12 to be received by a resident thereof who is at least twenty-one years of  
13 age, for such resident's personal use and not for resale, from a person  
14 licensed in this state as a manufacturer and, provided further, that the  
15 state in which such out-of-state cider producer is located affords to  
16 New York state cider producer, farm cidery, farm winery and farm brewery  
17 licensees reciprocal cider shipping privileges, meaning shipping privi-  
18 leges that are substantially similar to the requirements in this  
19 section. No person shall place an order for shipment of cider unless  
20 they are twenty-one years of age or older. Any common carrier with a  
21 permit issued pursuant to this chapter to whom such out-of-state ship-  
22 per's license is presented is authorized to make delivery of shipments  
23 provided for hereunder in this state in compliance with this section.

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

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1 2. License. Before sending any shipment hereunder to a resident in  
2 this state, the out-of-state shipper shall first obtain a license from  
3 the authority under procedures prescribed by rules and regulations of  
4 the authority and after providing the authority with a true copy of its  
5 current license to manufacture cider in the applicant's state of domi-  
6 cile along with a copy of the applicant's federal basic permit after  
7 payment of an annual fee of one hundred twenty-five dollars. Notwith-  
8 standing the provisions of section one hundred ten of this chapter, the  
9 authority in its discretion, may excuse an out-of-state cider producer  
10 from the submission of such information.

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

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

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

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

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

32 (e) require common carriers to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (c) maintain records in such manner and form as the authority may  
55 direct showing the total amount of cider shipped in the state each  
56 calendar year, the names and addresses of the purchasers to whom the

1 cider was shipped, the date purchased, the name of the common carrier  
2 used to deliver the cider, and the quantity and value of each shipment.  
3 Such records shall be kept for three years and, upon written request, be  
4 provided to the authority or the department of taxation and finance;

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

10 (e) require common carriers to:

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

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

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

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

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