

# STATE OF NEW YORK

2471

2019-2020 Regular Sessions

## IN ASSEMBLY

January 22, 2019

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:

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.

24 2. License. Before sending any shipment hereunder to a resident in  
25 this state, the out-of-state shipper shall first obtain a license from

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

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

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

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

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

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

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

30 (e) require common carriers to:

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

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

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

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

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

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

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

55 (j) prior to obtaining an out-of-state direct shipper's license,  
56 obtain a certificate of authority pursuant to section eleven hundred

1 thirty-four of the tax law and a registration as a distributor pursuant  
2 to sections four hundred twenty-one and four hundred twenty-two of the  
3 tax law.

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

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

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

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

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

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

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

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

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

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

1 Such records shall be kept for three years and, upon written request, be  
2 provided to the authority or the department of taxation and finance;

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

8 (e) require common carriers to:

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

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

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

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

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