

STATE OF NEW YORK

8732

2019-2020 Regular Sessions

IN ASSEMBLY

November 25, 2019

Introduced by M. of A. LUPARDO, WOERNER, CROUCH, HAWLEY -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, the public health law and the alcoholic beverage control law, in relation to authorizing the manufacture and sale of ice cream and other frozen desserts made with liquor

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

- 1 Section 1. Subdivisions 14 and 15 of section 200 of the agriculture
2 and markets law, as amended by chapter 118 of the laws of 2018, are
3 amended to read as follows:
4 14. If it is ice cream or other frozen desserts made with liquor,
5 wine, beer or cider bearing or containing more than five percent of
6 alcohol by volume.
7 15. With respect to the manufacture and sale of ice cream or other
8 frozen desserts made with liquor, wine, beer or cider bearing or
9 containing more than one-half of one percent, but not more than five
10 percent of alcohol by volume:
11 (a) No person shall sell at retail packages of ice cream or other
12 frozen desserts made with liquor, wine, beer or cider for consumption
13 off the premises where sold unless:
14 (i) each package is a sealed package, as received from the manufactur-
15 er or distributor;
16 (ii) each sealed package, as received from the manufacturer or
17 distributor, in a format to be established or approved by the commis-
18 sioner, prominently bears the following statements, provided that such
19 statements may refer to either liquor, wine, beer or cider or a combina-
20 tion thereof:
21 (A) The sale of this product to individuals under the age of twenty-
22 one years is prohibited.

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

LBD14059-01-9

1 (B) This product is made with (insert liquor, wine, beer and/or cider)
2 and contains alcohol up to five percent by volume.

3 (C) Notice. This product contains alcohol used as a flavoring and, as
4 with any product that contains alcohol:

5 (1) women should not consume alcohol during pregnancy because of the
6 risk of birth defects, and

7 (2) consumption of alcohol impairs your ability to drive a car or
8 operate machinery, and may cause health problems.

9 (iii) the following advisory, on a sign or poster not less than seven
10 inches by five inches, in a format to be established or approved by the
11 commissioner, is displayed prominently at each location where packages
12 of ice cream or other frozen desserts made with liquor, wine, beer or
13 cider are made available to the public provided that such sign or poster
14 may refer to either liquor, wine, beer or cider or a combination there-
15 of:

16 "THIS AREA CONTAINS (INSERT LIQUOR, WINE, BEER AND/OR
17 CIDER) ICE CREAM OR OTHER FROZEN DESSERTS

18 The sale of (INSERT LIQUOR, WINE, BEER AND/OR CIDER) ICE CREAM OR
19 OTHER FROZEN DESSERTS to individuals under the age of twenty-one years
20 is prohibited.

21 (INSERT LIQUOR, WINE, BEER AND/OR CIDER) ICE CREAM OR OTHER FROZEN
22 DESSERTS contain alcohol up to five percent by volume.

23 NOTICE: (INSERT LIQUOR, WINE, BEER AND/OR CIDER) ICE CREAM OR OTHER
24 FROZEN DESSERTS contain alcohol used as a flavoring and, as with any
25 product that contains alcohol:

26 (1) women should not consume alcohol during pregnancy because of the
27 risk of birth defects, and

28 (2) consumption of alcohol impairs your ability to drive a car or
29 operate machinery, and may cause health problems.

30 IT IS A VIOLATION PUNISHABLE UNDER LAW FOR ANY PERSON UNDER THE AGE OF
31 TWENTY-ONE TO PRESENT ANY WRITTEN EVIDENCE OF AGE WHICH IS FALSE, FRAU-
32 DULENT OR NOT ACTUALLY HIS OR HER OWN FOR THE PURPOSE OF ATTEMPTING TO
33 PURCHASE (INSERT LIQUOR, WINE, BEER AND/OR CIDER) ICE CREAM OR OTHER
34 FROZEN DESSERTS."

35 (b) No manufacturer and/or distributor of ice cream or other frozen
36 desserts made with liquor, wine, beer or cider shall sell such product:

37 (i) to a person intending to sell at retail individual servings of ice
38 cream or other frozen desserts made with liquor, wine, beer or cider,
39 unless, with each shipment, such manufacturer and/or distributor
40 provides:

41 (A) a written notice that individual servings of ice cream or other
42 frozen desserts made with liquor, wine, beer or cider may be sold at
43 retail only where the retailer complies with all of the requirements set
44 forth in paragraph (a) of this subdivision, and

45 (B) a written copy of such requirements; and

46 (ii) to a person intending to sell at retail packages of ice cream or
47 other frozen desserts made with liquor, wine, beer or cider for consump-
48 tion off the premises, unless, with each shipment, such manufacturer
49 and/or distributor provides:

50 (A) a written notice that packages of ice cream or other frozen
51 desserts made with liquor, wine, beer or cider may be sold at retail
52 only where the retailer complies with all of the requirements set forth
53 in paragraph (a) of this subdivision, and

54 (B) a written copy of such requirements.

55 § 2. Section 1352-c of the public health law, as amended by chapter
56 118 of the laws of 2018, is amended to read as follows:

1 § 1352-c. Ice cream or other frozen desserts made with liquor, wine,
2 beer or cider. No person shall sell at retail individual servings of ice
3 cream or other frozen desserts made with liquor, wine, beer or cider
4 bearing or containing more than one-half of one percent but not more
5 than five percent of alcohol by volume, unless the following statements
6 are prominently displayed on the printed menu (or, if no printed menus
7 are used, on the menu board or sign setting forth the bill of fare)
8 immediately adjacent to the listing of the item or items of ice cream or
9 other frozen desserts made with liquor, wine, beer or cider being
10 offered provided that such statements may refer to liquor, wine, beer or
11 cider or a combination thereof:

12 1. The sale of (insert liquor, wine, beer and/or cider) ice cream or
13 other frozen desserts to individuals under the age of twenty-one is
14 prohibited.

15 2. (Insert liquor, wine, beer and/or cider) ice cream or other frozen
16 desserts contain alcohol up to five percent by volume.

17 3. Notice: (Insert liquor, wine, beer and/or cider) ice cream or other
18 frozen desserts contain alcohol used as a flavoring and, as with any
19 product that contains alcohol:

20 (a) women should not consume alcohol during pregnancy because of the
21 risk of birth defects, and

22 (b) consumption of alcohol impairs your ability to drive a car or
23 operate machinery, and may cause health problems.

24 § 3. Subdivision 1 of section 3 of the alcoholic beverage control law,
25 as amended by chapter 118 of the laws of 2018, is amended to read as
26 follows:

27 1. "Alcoholic beverage" or "beverage" mean and include alcohol, spir-
28 its, liquor, wine, beer, cider and every liquid, solid, powder or crys-
29 tal, patented or not, containing alcohol, spirits, wine or beer and
30 capable of being consumed by a human being, and any warehouse receipt,
31 certificate, contract or other document pertaining thereto; except that
32 confectionery containing alcohol as provided by subdivision twelve of
33 section two hundred of the agriculture and markets law and ice cream and
34 other frozen desserts made with liquor, wine, beer or cider as provided
35 in subdivision fifteen of section two hundred of the agriculture and
36 markets law shall not be regulated as an "alcoholic beverage" or "bever-
37 age" within the meaning of this section where the sale, delivery or
38 giving away is to a person aged twenty-one years or older. The sale,
39 delivery or giving away of ice cream or other frozen desserts made with
40 liquor, wine, beer or cider to a person under the age of twenty-one
41 years may be prosecuted administratively and/or criminally in accordance
42 with the provisions of this chapter.

43 § 4. This act shall take effect immediately.