

# STATE OF NEW YORK

8572

## IN SENATE

June 16, 2020

Introduced by Sen. METZGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the alcoholic beverage control law, in relation to authorizing the direct intrastate and interstate shipment of liquor

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 64-e and 64-f to read as follows:

3 § 64-e. Direct intrastate liquor shipments. Any person having applied  
4 for and received a license as a distillery or farm distillery pursuant  
5 to the provisions of section sixty-one of this article may ship no more  
6 than thirty-six cases (no more than nine liters per case) of liquor  
7 produced by such distillery or farm distillery per year directly to a  
8 New York state resident who is at least twenty-one years of age, for  
9 such resident's personal use and not for resale.

10 1. Licensee's shipping responsibilities. Notwithstanding any provision  
11 to the contrary contained in this chapter, any above referred licensee  
12 shall:

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

18 (b) ensure that the outside of each shipping container used to ship  
19 liquor directly to a New York state resident is conspicuously labeled  
20 with the words: "CONTAINS LIQUOR - SIGNATURE OF PERSON AGE 21 OR OLDER  
21 REQUIRED FOR DELIVERY," or with other language specifically approved by  
22 the New York state liquor authority;

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

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

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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 liquor to a New York resident, require the prospective customer to  
5 represent that he or she has attained the age of twenty-one years or  
6 more and that the liquor being purchased will not be resold or intro-  
7 duced into 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 article;

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 § 64-f. Direct interstate liquor shipments. 1. Authorization.  
22 Notwithstanding any provision of law, rule or regulation to the contra-  
23 ry, any holder of a license to manufacture liquor in any other state,  
24 who obtains an out-of-state direct shipper's license, as provided in  
25 this section, may ship no more than thirty-six cases (no more than nine  
26 liters each case) of liquor produced by such license holder per year  
27 directly to a resident of New York who is at least twenty-one years of  
28 age, for such resident's personal use and not for resale, provided the  
29 state in which such person is so licensed affords lawful means for ship-  
30 ments of liquor to be received by a resident thereof who is at least  
31 twenty-one years of age, for such resident's personal use and not for  
32 resale, from a person licensed in this state as a manufacturer and,  
33 provided further, that the state in which such out-of-state distillery  
34 is located affords to New York state distillery and farm distillery  
35 licensees reciprocal shipping privileges, meaning shipping privileges  
36 that are substantially similar to the requirements in this section. No  
37 person shall place an order for shipment of liquor unless they are twen-  
38 ty-one years of age or older. Any common carrier with a permit issued  
39 pursuant to this chapter to whom such out-of-state shipper's license is  
40 presented is authorized to make delivery of shipments provided for here-  
41 under in this state in compliance with this section.

42 2. License. Before sending any shipment hereunder to a resident in  
43 this state, the out-of-state shipper shall first obtain a license from  
44 the authority under procedures prescribed by rules and regulations of  
45 the authority and after providing the authority with a true copy of its  
46 current license to manufacture liquor in the applicant's state of domi-  
47 cile along with a copy of the applicant's federal basic permit after  
48 payment of an annual fee of one hundred twenty-five dollars. Notwith-  
49 standing the provisions of section one hundred ten of this chapter, the  
50 authority in its discretion, may excuse an out-of-state distillery from  
51 the submission of such information.

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

54 (a) ship no more than thirty-six cases (no more than nine liters each  
55 case) per year of liquor produced by such license holder directly to a

1 New York state resident who is at least twenty-one years of age, for  
2 such resident's personal use and not for resale;

3 (b) ensure that the outside of each shipping container used to ship  
4 liquor directly to a New York resident is conspicuously labeled with the  
5 words: "CONTAINS LIQUOR - SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED  
6 FOR DELIVERY - NOT FOR RESALE," or with other language specifically  
7 approved by the New York state liquor authority;

8 (c) maintain records in such manner and form as the authority may  
9 direct, showing the total amount of liquor shipped into the state each  
10 calendar year; the names and addresses of the purchasers to whom the  
11 liquor was shipped, the date purchased, the name of the common carrier  
12 used to deliver the liquor, and the quantity and value of each shipment;

13 (d) in connection with the acceptance of an order for a delivery of  
14 liquor to a New York resident, require the prospective customer to  
15 represent that he or she has attained the age of twenty-one years or  
16 more and that the liquor being purchased will not be resold or intro-  
17 duced into commerce;

18 (e) require common carriers to:

19 (i) require a recipient, at the delivery address, upon delivery, to  
20 demonstrate that the recipient is at least twenty-one years of age by  
21 providing a valid form of photographic identification authorized by  
22 section sixty-five-b of this article;

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

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

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

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

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

39 (i) execute a written consent to the jurisdiction of this state, its  
40 agencies and instrumentalities and the courts of this state concerning  
41 enforcement of this section and any related laws, rules, or regulations,  
42 including tax laws, rules or regulations; and

43 (j) prior to obtaining an out-of-state direct shipper's license,  
44 obtain a certificate of authority pursuant to section eleven hundred  
45 thirty-four of the tax law and a registration as a distributor pursuant  
46 to sections four hundred twenty-one and four hundred twenty-two of the  
47 tax law.

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

54 5. Renewal. The out-of-state shipper may annually renew its license  
55 with the authority by paying a one hundred twenty-five dollar renewal  
56 fee, providing the authority with a true copy of its current license in

1 such other state as an alcoholic beverage manufacturer and by complying  
2 with such other procedures as are prescribed by rule of the authority.

3 6. Rules and regulations. The authority and the department of taxation  
4 and finance may promulgate rules and regulations to effectuate the  
5 purposes of this section.

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

16 8. 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 ninetieth day after it shall  
20 have become a law. Effective immediately, the addition, amendment  
21 and/or repeal of any rule or regulation necessary for the implementation  
22 of this act on its effective date are authorized to be made and  
23 completed on or before such effective date.