STATE OF NEW YORK

10199

IN ASSEMBLY

May 10, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Lupardo) -- (at request of the Department of Agriculture and Markets) -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, the alcoholic beverage control law, and the tax law, in relation to crop loss determinations for apples used in the production of New York state labeled cider

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

Section 1. Paragraphs (a) and (b) of subdivision 42 of section 16 of the agriculture and markets law, paragraph (a) as amended and paragraph (b) as added by chapter 108 of the laws of 2012, are amended to read as follows:

(a) For purposes of making timely determinations and consulting with the chairman of the state liquor authority pursuant to subdivision five of section seventy-six-a of the alcoholic beverage control law, investigate and compile information relative to natural disasters, acts of God, or continued adverse weather conditions which shall affect**: (i)** the crop of grapes or other fruit products used in the production of wine**; and/or (ii) the crop of apples used in the production of cider**.

(b) For purposes of making timely determinations and consulting with the chairman of the state liquor authority pursuant to subdivision eleven of section fifty-one-a of the alcoholic beverage control law, investigate and compile information relative to natural disasters, acts of God, or continued adverse weather conditions which shall affect**: (i)** the necessary ingredients for brewing beer**; and/or (ii) the crop of apples used in the production of cider**.

§ 2. Paragraph (b) of subdivision 12 of section 51-a of the alcoholic beverage control law, as added by chapter 108 of the laws of 2012, is amended to read as follows:

(b) In the event that the commissioner of agriculture and markets, after investigating and compiling information pursuant to subdivision forty-two of section sixteen of the agriculture and markets law, determines that a natural disaster, act of God, or continued adverse weather condition has destroyed [~~much~~] **at least thirty percent** of the apple crop

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

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necessary for producing cider, such commissioner, in consultation with the chairman of the authority, may give authorization to a duly licensed farm brewery to manufacture or sell cider produced from **such** apples **designated as necessary for producing cider and** grown outside this state. No such authorization shall be granted to a farm brewery licensee unless such licensee certifies to such commissioner the quantity of **such** New York grown apples **designated as necessary for producing cider** unavailable to such licensee due to such natural disaster, act of God**,** or continuing adverse weather condition and satisfies such commissioner that reasonable efforts were made to obtain **such** apples from a New York state source for such cider making purpose. No farm brewery shall utilize an amount of out-of-state grown apples exceeding the amount of **such designated** New York grown apples that such brewery is unable to obtain due to the destruction of New York grown apples by a natural disaster, act of God**,** or continuing adverse weather condition as determined by the commissioner of agriculture and markets pursuant to this subdivision. For purposes of this subdivision, the department of agriculture and markets and the authority are authorized to adopt rules and regulations as they may deem necessary to carry out the provisions of this subdivision which shall include ensuring that in manufacturing cider farm breweries utilize apples grown in New York state to the extent they are reasonably available, prior to utilizing apples from an out-of-state source for such purpose.

§ 3. Paragraph (b) of subdivision 11 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:

(b) In the event that the commissioner of agriculture and markets, after investigating and compiling information pursuant to subdivision forty-two of section sixteen of the agriculture and markets law, determines that a natural disaster, act of God, or continued adverse weather condition has destroyed [**~~much~~**] **at least thirty percent** of the apple crop necessary for producing cider, such commissioner, in consultation with the chairman of the authority, may give authorization to a duly licensed farm cidery to manufacture or sell cider produced from **such** apples **designated as necessary for producing cider and** grown outside this state. No such authorization shall be granted to a farm cidery licensee unless such licensee certifies to such commissioner the quantity of **such** New York grown apples **designated as necessary for producing cider** unavailable to such licensee due to such natural disaster, act of God**,** or continuing adverse weather condition and satisfies such commissioner that reasonable efforts were made to obtain **such** apples from a New York state source for such cider making purpose. No farm cidery shall utilize an amount of out-of-state grown apples exceeding the amount of New York grown apples that such cidery is unable to obtain due to the destruction of New York grown apples by a natural disaster, act of God**,** or continuing adverse weather condition as determined by the commissioner of agriculture and markets pursuant to this subdivision. For purposes of this subdivision, the department of agriculture and markets and the authority are authorized to adopt rules and regulations as they may deem necessary to carry out the provisions of this subdivision which shall include ensuring that in manufacturing cider farm cideries utilize apples grown in New York state to the extent they are reasonably available, prior to utilizing apples from an out-of-state source for such purpose.

§ 4. Subdivisions 6, 7, 8, 9, 10 and 11 of section 76-a of the alcoholic beverage control law are renumbered subdivisions 7, 8, 9, 10, 11 and 12 and a new subdivision 6 is added to read as follows:

6. (a) Except as provided in paragraph (b) of this subdivision, no licensed farm winery shall manufacture or sell any cider other than New York state labeled cider.

(b) In the event that the commissioner of agriculture and markets, after investigating and compiling information pursuant to subdivision forty-two of section sixteen of the agriculture and markets law, determines that a natural disaster, act of God, or continued adverse weather condition has destroyed at least thirty percent of the apple crop necessary for producing cider, the commissioner of agriculture and markets, in consultation with the chairman of the authority, may give authorization to a duly licensed farm winery to manufacture or sell cider produced from such apples designated as necessary for producing cider and grown outside this state. No such authorization shall be granted to a farm winery licensee unless such licensee certifies to the commissioner of agriculture and markets the quantity of such New York state apples designated as necessary for producing cider unavailable to such licensee due to such natural disaster, act of God, or continuing adverse weather condition and satisfies the commissioner of agriculture and markets that reasonable efforts were made to obtain such apples from a New York state source for such cider making purpose. No farm winery shall utilize an amount of out-of-state grown apples exceeding the amount of such designated New York grown apples that such cidery is unable to obtain due to the destruction of New York grown apples by a natural disaster, act of God, or continuing adverse weather condition as determined by the commissioner of agriculture and markets pursuant to this subdivision. For purposes of this subdivision, the department of agriculture and markets and the authority are authorized to adopt rules and regulations as they may deem necessary to carry out the provisions of this subdivision which shall include ensuring that in manufacturing cider farm cideries utilize apples grown in New York state to the extent they are reasonably available, prior to utilizing apples from an out-of-state source for such purpose.

(c) The commissioner of agriculture and markets shall make available to farm wineries and to the public each specific apple loss determination issued pursuant to paragraph (b) of this subdivision on or after August twentieth of each year.

(d) In the event that the continuing effects of a natural disaster, act of God, or adverse weather condition which occurred prior to August twentieth of each year or the effects of a natural disaster, act of God, or adverse weather condition which occurs subsequent to August twentieth of each year results in any apple crop loss which meets the standards provided in paragraph (b) of this subdivision, the commissioner of agriculture and markets, in consultation with the chairman of the authority, may issue additional apple crop loss determinations and shall expeditiously make available to farm wineries and to the public the loss determination issued pursuant to this paragraph prior to October tenth of each year.

§ 5. Subparagraph (D) of paragraph 1 of subdivision (i) of section 1136 of the tax law, as added by section 3 of part J of chapter 59 of the laws of 2020, is amended to read as follows:

(D) Notwithstanding the provisions of subparagraph (C) of this paragraph, a person operating pursuant to any of the following licenses shall not be subject to any of the requirements of this subdivision: (i) a farm winery license, as provided in section seventy-six-a of the alcoholic beverage control law; (ii) a winery license, as provided in section seventy-six of the alcoholic beverage control law, where the

number of gallons of wine, cider and mead produced annually by such person does not exceed the annual limits on the number of finished gallons of wine, cider and mead permitted to be produced by a farm winery under subdivision [~~eight~~] **nine** of section seventy-six-a of the alcoholic beverage control law; (iii) a farm distillery license, as provided in subdivision two-c of section sixty-one of the alcoholic beverage control law; (iv) a distiller's license, as provided in section sixty-one of the alcoholic beverage control law, where the number of gallons of liquor produced annually by such person does not exceed the annual limits on the number of gallons of liquor permitted to be produced by a farm distillery under paragraph (f) of subdivision two-c of section sixty-one of the alcoholic beverage control law; (v) a farm cidery license, as provided in section fifty-eight-c of the alcoholic beverage control law; (vi) a cider producers' license, as provided in section fifty-eight of the alcoholic beverage control law, where the number of gallons of cider produced annually by such person does not exceed the annual limits on the number of gallons of cider permitted to be produced by a farm cidery under subdivision ten of section fifty-eight-c of the alcoholic beverage control law; (vii) a farm brewery license, as provided in section fifty-one-a of the alcoholic beverage control law; (viii) a brewer's license, as provided in section fifty-one of the alcoholic beverage control law, where the number of finished barrels of beer, cider and braggot produced annually by such person does not exceed the annual number of finished barrels of beer, cider and braggot permitted to be produced by a farm brewery under subdivision ten of section fifty-one-a of the alcoholic beverage control law; (ix) a farm meadery license, as provided in section thirty-one of the alcoholic beverage control law; or (x) a mead producers' license, as provided in section thirty of the alcoholic beverage control law, where the number of gallons of mead and braggot produced annually by such person does not exceed the annual number of finished barrels of mead and braggot permitted to be produced by a farm meadery under subdivision ten of section thirty-one of the alcoholic beverage control law. Nothing in this subparagraph shall exempt a person operating pursuant to multiple licenses under the alcoholic beverage control law from the requirements of subparagraph (C) of this paragraph if such person produces an amount of any alcoholic beverage in excess of the amounts permitted to be produced annually by a person who holds only a farm winery, farm cidery, farm distillery, farm brewery or farm meadery license for such beverage, nor shall this section exempt any person holding a wholesalers' license under the alcoholic beverage control law from the requirements of subparagraph (C) of this paragraph.

§ 6. This act shall take effect immediately.