

# PROGRAM BILL # 41

## GOVERNOR'S PROGRAM BILL

2012

### MEMORANDUM

AN ACT to amend the alcoholic beverage control law and the agriculture and markets law, in relation to the creation of a farm brewery license and to amend the tax law, in relation to farm winery, farm distillery farm brewery sales tax information return filing requirements.

#### Purpose:

This legislation would authorize the establishment of farm breweries for the manufacture and sale of beer and cider made from crops grown in New York State and would exclude such breweries from the sales tax information return filing requirements

#### Summary of Provisions:

Section 1 of the bill would amend Alcoholic Beverage Control Law ("ABCL") § 3 to define "farm brewery."

Section 2 of the bill would amend ABCL § 3 to define "New York state labelled beer" and "New York state labelled cider."

Sections 3 and 4 of the bill would amend ABCL § 51 to permit licensed brewers to produce New York State labeled beer and to: (a) sell such beer to licensed farm distillers, farm wineries, and farm breweries; (b) conduct tastings at the licensed premises of such beer production; (c) sell such beer at retail for consumption off the premises at the State Fair, recognized county fairs, and farmers markets; (d) sell and conduct tastings of such beer at retail for consumption on the premises of a restaurant, conference center, inn, bed and breakfast, or hotel owned and operated by the licensee in or adjacent to its farm brewery; and (e) apply for a permit to conduct tastings away from the licensed premises under certain conditions.

Section 5 of the bill would create a new ABCL § 51-a to establish a new license category for farm breweries. A farm brewery would be permitted to manufacture only New York State labeled beer in quantities not to exceed 60,000 barrels annually. A farm brewery would also be permitted to: (a) manufacture New York State labeled cider; (b) sell in bulk its beer and cider to other licensed manufacturers of alcoholic beverages and to persons outside the State; (c) sell its beer and cider to wholesalers, retailers, farm distillers, farm wineries, and other farm brewers; (d) sell its beer and cider at retail for consumption on or off the premises; (e) conduct tastings on the licensed premises of beer and cider manufactured by the licensee or any other farm brewery; (f)

sell and conduct tastings of beer and cider manufactured by the licensee or any other farm brewery at retail for consumption on the premises of a restaurant, conference center, inn, bed and breakfast, or hotel owned and operated by the licensee in or adjacent to the farm brewery; (g) sell beer and cider manufactured by the licensee or any other farm brewery at retail for consumption off the premises at the State Fair, recognized county fairs, and farmers markets; (h) conduct tastings of and sell at retail for consumption off the premises New York State labeled wine and liquor; and (i) sell New York State labeled beer, wine, and liquor at retail and to sell food and other items and to operate up to five branch offices.

Section 6 of the bill would amend ABCL § 56 to set the annual fee for a farm brewery license at \$320.

Sections 7 and 8 of the bill would amend ABCL § 56-a to make technical corrections.

Sections 9 through 14 of the bill would amend ABCL §§ 61, 76, and 76-a to allow distillers and wineries to sell their New York State labeled liquor and wine to farm wineries and farm breweries, grant farm wineries and farm distilleries the same powers to conduct tastings that farm breweries have and make minor technical corrections.

Section 15 of the bill would amend Agriculture and Markets Law § 16(42) to grant the Commissioner of Agriculture and Markets the power to investigate and report on crop losses impacting the production of New York State labelled beer and cider.

Section 16 of the bill would amend Tax Law § 1136(i)(1)(C) to exempt farm breweries from the sales tax information return filing requirements.

Section 17 of the bill provides for the effective date

**Existing Law:**

Licenses to manufacture beer are issued pursuant to ABCL § 51, the only distinction between brewers being for “micro-brewers” (those producing less than 60,000 barrels annually) which pay a reduced license fee. Brewers also have a limited ability to sell their products at retail, and are restricted on the activities that can be conducted on their premises.

**Statement in Support:**

As noted in the New York State Law Commission’s Report on the ABCL, beer produced by craft brewers is becoming increasingly popular. However, as the report also noted, the most significant obstacle facing these businesses is their inability to compete with larger domestic and multi-national brewers. This bill would provide small craft brewers with additional opportunities

to market their products. ABCL § 51-a is modeled on analogous law for farm wineries and for farm distilleries. The farm winery and farm distillery licensing programs have been an integral part of promoting these industries in New York.

By allowing farm breweries to expand the activities that can be conducted at the licensed premises, these businesses, much like farm wineries, will become destination locations that will promote tourism within their communities. In addition, the need for ingredients in the manufacture of New York State labeled beer would create a sustained demand for products from New York's farmers.

Like farm wineries and farm distilleries, it would be difficult for farm breweries to absorb the cost of complying with the annual sales tax information return requirements. Exempting farm breweries from such requirement will not undermine the effectiveness of the third-party reporting requirements, because purchases from farm breweries are expected to account for a very small percentage of retailers' overall purchases. Moreover, farm breweries will be required to maintain sales records pursuant to requirements imposed by the State Liquor Authority.

**Budget Implications:**

This bill is not expected to have a significant impact on the State's budget.

**Effective Date:**

This act shall take effect on the 180th day after it becomes law, except that Section 16 shall take effect immediately and apply to annual returns due on and after March 20, 2012