

# PROGRAM BILL #18

## GOVERNOR'S PROGRAM BILL

2013

### MEMORANDUM

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

#### Purpose:

This legislation would authorize the establishment and licensure of farm cideries for the manufacture and sale of cider made from crops grown in New York State and would exclude licensed farm cideries from the sales tax information return filing requirements imposed by Tax Law § 1136(i)(1)(C).

#### Summary of Provisions:

Section 1 of the bill would amend Alcoholic Beverage Control Law ("ABCL") § 3 (7-b) to revise the definition of "cider" to increase the alcohol percentage by volume from 7% to 8.5%, to allow other pome fruits (such as pears) to be used in cider, and to allow the addition of other ingredients to flavor the cider after fermentation.

Section 2 of the bill would add new subdivisions (7-c) and (7-c) to ABCL § 3 to establish definitions of "cidery" and "farm cidery." "Cidery" means "any place or premises wherein cider is manufactured for sale," and "farm cidery" means "any place or premises, located on a farm in New York state, in which New York state labelled cider is manufactured, stored and sold, or any other place or premises in New York state in which New York state labelled cider is manufactured, stored and sold."

Section 3 of the bill would amend ABCL § 3(20-e) to revise the definition of "New York state labelled cider," which currently must be made exclusively from apples grown in New York. This bill would allow the use of other pome fruits grown in New York State.

Sections 4 and 5 of the bill would amend ABCL § 58 to establish an annual license fee of \$75 for a farm cidery license and to permit licensed cider producers to produce New York State labeled cider and to: (a) sell such cider to licensed farm distillers, farm wineries, farm cideries and farm breweries; (b) conduct tastings at the licensed premises of such cider; (c) sell such cider at retail for consumption off the premises at the New York State Fair, recognized county fairs and farmers markets; (d) sell and conduct tastings of such cider 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 cidery; and (e) apply for a permit to conduct tastings away from the licensed premises under certain conditions.

Section 6 of the bill would create a new ABCL § 58-c to establish a new license category for farm cideries. A farm cidery would be permitted to manufacture only New York State labelled cider in quantities not to exceed 150,000 gallons annually. A farm cidery would also be permitted to: (a) sell in bulk its cider to other licensed manufacturers of alcoholic beverages; (b) sell or deliver its cider to persons outside the State; (c) sell its cider to wholesalers, retailers, farm distillers, farm wineries, farm breweries and other farm cideries; (d) sell its cider at retail for consumption on or off the premises; (e) conduct tastings on the licensed premises of cider manufactured by the licensee or any other farm cidery; (f) sell and conduct tastings of cider manufactured by the licensee or any other farm cidery 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 cidery; (g) sell cider manufactured by the licensee or any other farm cidery 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 labelled beer, wine and liquor.

In addition, the farm cidery license allows a farm cidery sell New York State labelled beer, wine and liquor at retail within certain limitations and to sell food items to complement cider tastings. A farm cidery may also sell food condiments and products such as mustards, sauces, jams, jellies, mulling spices; cider-making equipment and supplies; and souvenirs, artwork, crafts, and other gift items. The license also permits a farm cidery to operate up to five branch offices.

In the event that a natural disaster, act of God, or continued adverse weather condition destroys the necessary New York-grown apple crop for cider, the Commissioner of Agriculture and Markets, in consultation with the Chairman of the State Liquor Authority, may give authorization to a farm cidery to produce cider from apples grown outside the State.

Sections 7 and 8 of the bill would amend ABCL §§ 56 and 56-a to provide that the filing fee for an initial application for a farm cidery license is \$400 and the filing fee for a renewal application is \$100.

Sections 9 through 17 of the bill would amend ABCL §§ 51, 51-a, 61, 76, and 76-a to: (a) allow farm breweries, farm distilleries, and farm wineries to conduct tastings of and sell at retail New York State labelled cider from a cider producer or farm cidery; (b) allow breweries, farm breweries, distillers, wineries, and farm wineries to sell their New York State labelled alcoholic beverages to farm cideries; and (c) to make technical corrections to allow wineries and distillers to sell their New York State labelled alcoholic beverages to farm distilleries.

Section 18 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 affecting the production of New York State labelled cider.

Sections 19 and 20 of the bill would amend Tax Law §§ 210(22)(i) and 606(n)(8) to provide an agricultural property tax credit against corporate franchise taxes and personal income taxes for income derived from the sale of cider by a farm cidery.

Section 21 of the bill would amend Tax Law § 1136(i)(1)(C) to exempt farm cideries from the sales tax information return filing requirements.

Section 22 of the bill provides that the act will take effect 90 days after becoming law.

**Existing Law:**

Under current law, all licenses to manufacture cider are issued under ABCL § 58. Cider producers have a limited ability to sell their products at retail. In addition, there are restrictions on the activities that can be conducted by a licensed cider producer. In recent years, licenses have been established for farm wineries, farm distilleries, and, in 2012, farm breweries. No similar license exists for cider.

With respect to the sales tax information reporting provisions of Tax Law § 1136(i)(1)(C), last year the law was amended to exempt farm wineries, farm distilleries, and farm breweries from the tax reporting provisions. This bill would extend such exemption to farm cideries.

**Statement in Support:**

The Wine, Beer and Spirits Summit, hosted by Governor Cuomo on October 24, 2012, identified an increased interest in the production of hard cider in New York State. New York has already established licenses for farm producers of wine, spirits, and beer, but not for cider. This bill would provide small craft cider makers with additional opportunities to highlight and market their products. The provisions of new ABCL § 58-c are modeled on similar provisions for farm breweries enacted in 2012 in ABCL § 51-a, which were themselves based on provisions for farm wineries in ABCL § 76-a and for farm distilleries in ABCL § 61(2-c). The farm winery and farm distillery licensing programs have been an integral part of promoting these industries in New York.

By allowing farm cideries 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 apples in the manufacture of New York State labeled cider would create a sustained demand for products from New York's farmers.

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

**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 90th day after it becomes law.