

McKinney's Consolidated Laws of New York Annotated
Alcoholic Beverage Control Law (Refs & Annos)
Chapter 3-B. Of the Consolidated Laws
Article 4. Special Provisions Relating to Beer (Refs & Annos)

McKinney's Alcoholic Beverage Control Law § 51-a

§ 51-a. Farm brewery license

Effective: December 13, 2014

Currentness

1. Any person may apply to the authority for a farm brewery license as provided for in this section to brew beer within this state for sale. Such application shall be in writing and verified and shall contain such information as the authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the authority grants the application, it shall issue a license in such form as shall be determined by its rules. Such license shall contain a description of the licensed premises and in form and in substance shall be a license to the person therein specifically designated to brew beer in the premises therein specifically licensed.

2. A farm brewery license shall authorize the holder thereof to operate a brewery for the manufacture of New York state labelled beer. Such a license shall also authorize the licensee to:

- (a) manufacture New York state labelled cider;
- (b) sell in bulk beer and cider manufactured by the licensee to any person licensed to manufacture alcoholic beverages in this state or to a permittee engaged in the manufacture of products which are unfit for beverage use;
- (c) sell or deliver beer and cider manufactured by the licensee to persons outside the state pursuant to the laws of the place of such delivery;
- (d) sell beer and cider manufactured by the licensee to wholesalers and retailers licensed in this state to sell such beer and cider, licensed farm distillers, licensed farm wineries, licensed farm cideries and any other licensed farm brewery. All such beer and cider sold by the licensee shall be securely sealed and have attached thereto a label as shall be required by section one hundred seven-a of this chapter;
- (e) sell at the licensed premises beer and cider manufactured by the licensee or any other licensed farm brewery at retail for consumption on or off the licensed premises;
- (f) conduct tastings at the licensed premises of beer and cider manufactured by the licensee or any other licensed farm brewery;
- (g) operate a restaurant, hotel, catering establishment, or other food and drinking establishment in or adjacent to the licensed premises and sell at such place, at retail for consumption on the premises, beer and cider manufactured by the licensee and any

New York state labeled beer or New York state labeled cider. All of the provisions of this chapter relative to licenses to sell beer at retail for consumption on and off the premises shall apply so far as applicable to such licensee. Notwithstanding any other provision of law, the licensed farm brewery may apply to the authority for a license under this chapter to sell other alcoholic beverages at retail for consumption on the premises at such establishment;

(h) sell beer and cider manufactured by the licensee or any other licensed farm brewery at retail for consumption off the premises, at the state fair, at recognized county fairs and at farmers markets operated on a not-for-profit basis;

(i) conduct tastings of and sell at retail for consumption off the premises New York state labelled wine manufactured by a licensed winery or licensed farm winery;

(j) conduct tastings of and sell at retail for consumption off the premises New York state labelled cider manufactured by a licensed cider producer or licensed farm cidery;

(k) conduct tastings of and sell at retail for consumption off the premises New York state labelled liquor manufactured by a licensed distiller or licensed farm distiller; provided, however, that no consumer may be provided, directly or indirectly: (i) with more than three samples of liquor for tasting in one calendar day; or (ii) with a sample of liquor for tasting equal to more than one-quarter fluid ounce; and

(l) engage in any other business on the licensed premises subject to such rules and regulations as the authority may prescribe. Such rules and regulations shall determine which businesses will be compatible with the policy and purposes of this chapter and shall consider the effect of particular businesses on the community and area in the vicinity of the farm brewery licensee.

3. (a) A farm brewery licensee may apply for a permit to conduct tastings away from the licensed premises of beer and cider produced by the licensee. Such permit shall be valid throughout the state and may be issued on an annual basis or for individual events. Each such permit and the exercise of the privilege granted thereby shall be subject to such rules and conditions of the authority as it deems necessary.

(b) Tastings shall be conducted subject to the following limitations:

(i) tastings shall be conducted by an official agent, representative or solicitor of one or more farm breweries. Such agent, representative or solicitor shall be physically present at all times during the conduct of the tastings; and

(ii) any liability stemming from a right of action resulting from a tasting of beer or cider as authorized herein and in accordance with the provisions of sections 11-100 and 11-101 of the general obligations law, shall accrue to the farm brewery.

4. A licensed farm brewery holding a tasting permit issued pursuant to subdivision three of this section may apply to the authority for a permit to sell beer and cider produced by such farm brewery, by the bottle, during such tastings in premises licensed under sections sixty-four, sixty-four-a, eighty-one and eighty-one-a of this chapter. Each such permit and the exercise of the privilege granted thereby shall be subject to such rules and conditions of the authority as it deems necessary.

5. A licensed farm brewery may, under such rules as may be adopted by the authority, sell beer or cider manufactured by the licensee or any other licensed farm brewery at retail in bulk by the keg, cask or barrel for consumption and not for resale at a clam-bake, barbeque, picnic, outing or other similar outdoor gathering at which more than fifty persons are assembled.

6. A licensed farm brewery may apply to the authority for a license to sell liquor and/or wine at retail for consumption on the premises in a restaurant owned by him and conducted and operated by the licensee in or adjacent to its farm brewery. All of the provisions of this chapter relative to licenses to sell liquor or wine at retail or consumption on the premises shall apply so far as applicable.

7. A farm brewery license shall authorize the holder thereof to manufacture, bottle and sell food condiments and products such as mustards, sauces, hop seasonings, beer nuts, and other hops and beer related foods in addition to beer and hop soaps, hop pillows, hop wreaths and other such food and crafts on and from the licensed premises. Such license shall authorize the holder thereof to store and sell gift items in a tax-paid room upon the licensed premises incidental to the sale of beer. These gift items shall be limited to the following categories:

(a) non-alcoholic beverages for consumption on or off premises, including but not limited to bottled water, juice and soda beverages;

(b) food items for the purpose of complementing beer and cider tastings, which shall mean a diversified selection of food that is ordinarily consumed without the use of tableware and can be conveniently consumed while standing or walking. Such food items shall include but not be limited to: cheeses, fruits, vegetables, chocolates, breads, mustards and crackers;

(c) food items, which shall include locally produced farm products and any food or food product not specifically prepared for immediate consumption upon the premises. Such food items may be combined into a package containing cider, beer and/or hop related products;

(d) beer supplies and accessories, which shall include any item utilized for the storage, serving or consumption of beer or for decorative purposes. These supplies may be sold as single items or may be combined into a package containing beer;

(e) beer-making equipment and supplies including, but not limited to, home beer-making or homebrewing kits, filters, bottling equipment, hops, barley, yeasts, chemicals and other beer additives, and books or other written material to assist beer-makers and home beer-makers or homebrewers to produce and bottle beer;

(f) souvenir items, which shall include, but not be limited to artwork, crafts, clothing, agricultural products and any other articles which can be construed to propagate tourism within the region.

8. Notwithstanding any provision of this chapter to the contrary, any farm brewery licensee may charge for tours of its premises.

9. The holder of a license issued under this section may operate up to five branch offices located away from the licensed farm brewery. Such locations shall be considered part of the licensed premises and all activities allowed at and limited to the farm brewery may be conducted at the branch offices. Such branch offices shall not be located within, share a common entrance and

exit with, or have any interior access to any other business, including premises licensed to sell alcoholic beverages at retail. Prior to commencing operation of any such branch office, the licensee shall notify the authority of the location of such branch office and the authority may issue a permit for the operation of same.

10. (a) No farm brewery shall manufacture in excess of seventy-five thousand finished barrels of beer and cider annually.

(b) A farm brewery shall manufacture at least fifty barrels of beer and cider annually.

11. (a) Except as provided in paragraph (b) of this subdivision, no licensed farm brewery shall manufacture or sell any beer other than New York state labelled beer.

(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 of the necessary ingredients for brewing beer, such commissioner, in consultation with the chairman of the authority, may give authorization to a duly licensed farm brewery to manufacture or sell beer produced from ingredients grown or produced outside this state. No such authorization shall be granted to a farm brewery licensee unless such licensee certifies to such commissioner the quantity of New York grown ingredients 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 brewing ingredients from a New York state source for such beer making purpose. No farm brewery shall utilize an amount of out-of-state grown or produced ingredients exceeding the amount of New York grown ingredients that such brewery is unable to obtain due to the destruction of New York grown or produced ingredients 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 beer farm breweries utilize ingredients grown or produced in New York state to the extent they are reasonably available, prior to utilizing ingredients from an out-of-state source for such purpose.

(c) The commissioner of agriculture and markets shall make available to farm breweries and to the public each specific ingredient loss determination issued pursuant to paragraph (b) of this subdivision on or before 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 each year results in any ingredient 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 ingredient loss determinations and shall expeditiously make available to farm breweries and to the public each specific ingredient loss determination issued pursuant to this paragraph prior to October tenth of each year.

12. (a) Except as provided in paragraph (b) of this subdivision, no licensed farm brewery shall manufacture or sell any cider other than New York state labelled 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 much 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 brewery to manufacture or sell cider produced from apples 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 New York grown apples 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 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 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.

(c) The commissioner of agriculture and markets shall make available to farm breweries 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 breweries and to the public the loss determination issued pursuant to this paragraph prior to October tenth of each year.

13. Notwithstanding any contrary provision of law or of any rule or regulation promulgated pursuant thereto, and in addition to the activities which may otherwise be carried out by any person licensed under this section, such person may, on the premises designated in such license:

(a) produce, package, bottle, sell and deliver soft drinks and other non-alcoholic beverages, vitamins, malt, malt syrup, and other by-products;

(b) dry spent grain from the brewery;

(c) recover carbon dioxide and yeast;

(d) store bottles, packages and supplies necessary or incidental to all such operations;

(e) package, bottle, sell and deliver wine products;

(f) allow for the premises including space and equipment to be rented by a licensed tenant brewer for the purposes of alternation.

14. Notwithstanding any other provision of this chapter, the authority may issue a farm brewery license to the holder of a farm winery or farm distiller's license for use at such licensee's existing licensed premises. The holder of a farm winery or farm

distiller's license that simultaneously holds a farm brewery license on an adjacent premises may share and use the same tasting room facilities to conduct any tastings that such licensee is otherwise authorized to conduct.

15. The authority is hereby authorized to promulgate rules and regulations to effectuate the purposes of this section. In prescribing such rules and regulations, the authority shall promote the expansion and profitability of beer and cider production and of tourism in New York, thereby promoting the conservation, production and enhancement of New York state agricultural lands.

Credits

(Added L.2012, c. 108, § 5, eff. Jan. 14, 2013. Amended L.2013, c. 384, §§ 10, 11, eff. Jan. 15, 2014; L.2014, c. 431, §§ 5, 6, eff. Dec. 13, 2014.)

McKinney's Alcoholic Beverage Control Law § 51-a, NY AL BEV CON § 51-a
Current through L.2015, chapters 1 to 13, 50 to 58, 60 to 61.

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