



# Senate

General Assembly

**File No. 77**

January Session, 2009

Senate Bill No. 312

*Senate, March 16, 2009*

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## ***AN ACT CONCERNING THE SALE OF CIDER AND APPLE WINE ON THE INTERNET.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 30-16 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2009*):

4 (c) (1) A manufacturer permit for cider not exceeding six per cent  
5 alcohol by volume and apple wine not exceeding fifteen per cent  
6 alcohol by volume shall allow the manufacture, storage, bottling, [and]  
7 shipping, wholesale distribution and sale at retail of such cider and  
8 apple wine to permittees and nonpermittees in this state as may be  
9 permitted by law; but no such permit shall be issued unless the place  
10 or the plan of the place of manufacture has received the approval of  
11 the department.

12 (2) Such permit shall authorize (A) the sale and shipment by the  
13 holder thereof of such cider and apple wine by such permittee to

14 persons outside the state; (B) the offering and tasting of free samples of  
15 such cider and apple wine to visitors and prospective retail customers  
16 for consumption on the premises of the permittee; (C) the sale at retail  
17 from such premises of sealed bottles or other sealed containers of such  
18 cider and apple wine for consumption off the premises; and (D) subject  
19 to the provisions of subdivision (3) of this subsection, the sale and  
20 delivery or shipment of cider and apple wine manufactured by the  
21 permittee directly to a consumer in this state. Notwithstanding the  
22 provisions of subparagraphs (B) and (C) of this subdivision, a town  
23 may, by ordinance or zoning regulation, prohibit any such offering,  
24 tasting or selling at retail at premises within such town.

25 (3) A permittee, when selling and shipping cider and apple wine  
26 directly to a consumer in this state, shall: (A) Ensure that the shipping  
27 labels on all containers of cider and apple wine shipped directly to a  
28 consumer in this state conspicuously state the following: "CONTAINS  
29 ALCOHOL—SIGNATURE OF A PERSON AGE 21 OR OLDER  
30 REQUIRED FOR DELIVERY"; (B) obtain the signature of a person age  
31 twenty-one or older at the address prior to delivery, after requiring the  
32 signer to demonstrate that he or she is age twenty-one or older by  
33 providing a valid motor vehicle operator's license or a valid identity  
34 card described in section 1-1h; (C) not ship more than five gallons of  
35 cider and apple wine in any two-month period to any person in this  
36 state; (D) pay, to the Department of Revenue Services, all sales taxes  
37 and alcoholic beverage taxes due under chapters 219 and 220 on sales  
38 of cider and apple wine to consumers in this state, and file, with said  
39 department, all sales tax returns and alcoholic beverage tax returns  
40 relating to such sales; (E) report to the Department of Consumer  
41 Protection a separate and complete record of all sales and shipments to  
42 consumers in the state, on a ledger sheet or similar form which readily  
43 presents a chronological account of such permittee's dealings with  
44 each such consumer; (F) not ship to any address in the state where the  
45 sale of alcoholic liquor is prohibited by local option pursuant to section  
46 30-9; and (G) hold an in-state transporter's permit pursuant to section  
47 30-19f or make any such shipment through the use of a person who  
48 holds such an in-state transporter's permit.

49     (4) No holder of a manufacturer permit for cider and apple wine  
 50     may sell any such cider and apple wine not manufactured by such  
 51     permittee, except such permittee may sell from the premises cider and  
 52     apple wine manufactured by another holder of a manufacturer permit  
 53     for cider and apple wine located in this state.

54     (5) A holder of a manufacturer permit for cider and apple wine,  
 55     when advertising or offering cider and apple wine for direct shipment  
 56     to a consumer in this state via the Internet or any other on-line  
 57     computer network, shall clearly and conspicuously state such  
 58     permittee's liquor permit number in its advertising.

59     (6) The annual fee for a manufacturer permit for cider shall be one  
 60     hundred sixty dollars.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2009	30-16(c)

**GL**           *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None

Municipal Impact: None

**OLR Bill Analysis****SB 312*****AN ACT CONCERNING THE SALE OF CIDER AND APPLE WINE ON THE INTERNET.*****SUMMARY:**

This bill allows a holder of a manufacturer permit for cider and apple wine to (1) sell and ship cider or apple wine outside the state, (2) offer samples to visitors for tasting on-premises, (3) sell on-premises at retail price sealed bottles or containers of the cider or apple wine for consumption off-premises, and (4) sell and deliver or ship cider or apple wine to consumers in the state under certain conditions (see COMMENT). Towns may prohibit tastings or on-premises retail sale by ordinance or zoning. The bill sets the same standards for shipping cider and apple wine in-state as for wine.

The bill prohibits permittees from selling cider and apple wine not manufactured by the permittee unless they were manufactured by another holder of a manufacturer permit for cider and apple wine in the state.

EFFECTIVE DATE: July 1, 2009

**PROCEDURE FOR SHIPPING IN-STATE**

To ship directly to Connecticut consumers, the bill requires permittees to:

1. ensure that all packages of cider and apple wine shipped to Connecticut consumers bear labels stating: "CONTAINS ALCOHOL—SIGNATURE OF A PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY;"
2. obtain the signature of a person age 21 or older before

- delivering, after requiring the signer to prove his or her age by showing a valid driver's license or Connecticut identity card;
3. pay all sales and alcoholic beverage taxes due on the sales to the Department of Revenue Services, and file related tax returns;
  4. report to the Department of Consumer Protection a separate and complete record of all sales and shipments to consumers in the state, on a ledger or similar form, which readily presents a chronological account of the permittee's dealings with each consumer;
  5. hold an in-state transporter's permit or ship to Connecticut consumers using a delivery company that holds such a permit; and
  6. clearly and conspicuously state their liquor permit number when advertising or offering cider or apple wine for direct shipment to Connecticut consumers on the Internet or any other on-line computer network.

The act prohibits shipping (1) more than five gallons of cider and apple wine in a two-month period to anyone in Connecticut or (2) to any state location where the sale of alcoholic beverages is prohibited under the local option provision of the Liquor Control Act.

By law, the annual fee for an in-state transporter's liquor permit is \$1,000 (CGS § 30-19f(a)).

## **BACKGROUND**

### ***Apple Wine and Hard Cider***

The law provides for manufacturer permits for cider and apple wine for the production of hard cider not exceeding 6% alcohol by volume and apple wine not exceeding 15% alcohol by volume. Both made from the fermentation of apple cider or juice, the distinction between hard cider and apple wine is generally based on alcohol content, which is traditionally above 7% for apple wine and below 7% for hard cider.

Holders of farm winery manufacturer permits are also able to produce apple wine, as their scope of operations includes “wine and brandies distilled from grape products or other fruit products.”

## COMMENT

### ***Related Court Case***

The bill appears to raise a constitutional issue because it allows in-state apple wine and hard cider producers to sell and ship their products directly to in-state consumers without giving the same privilege to out-of-state producers. The U.S. Supreme Court addressed this issue in *Granholm v. Heald*, 544 U. S. 460 (2005).

In *Granholm*, the Court ruled on a challenge to state regulatory schemes in Michigan and New York brought by small wineries. The Court considered whether a state’s regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violates the dormant Commerce Clause in light of § 2 of the 21st Amendment. In general, the U.S. Constitution’s Commerce Clause prohibits states from adopting laws that benefit in-state economic interests to the detriment of out-of-state interests. In similar broad terms, § 2 of the 21<sup>st</sup> Amendment forbids transporting or importing liquor into a state in violation of its laws.

The Supreme Court held, in a 5 to 4 decision, that laws banning or severely restricting the ability of out-of-state shippers to ship wine directly to consumers while allowing in-state wineries to do so violate the Commerce Clause. The Court’s opinion stressed that, if states choose to allow the direct shipment of wine to consumers, they must do so on even-handed terms.

## COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 17    Nay 0    (03/03/2009)