S T A T E O F N E W Y O R K

7800

2009-2010 Regular Sessions

I N A S S E M B L Y

April 24, 2009

Introduced by M. of A. SCHIMMINGER -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the alcoholic beverage control law, in relation to temporary transfer retail permits

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 97-a of the alcoholic beverage control law, as added by chapter 366 of the laws of 1991, paragraph (d) of subdivision 1 and subdivision 2 as amended by section 20 of part Z of chapter 85 of the laws of 2002, is amended to read as follows:

S 97-a. Temporary TRANSFER retail permit. 1. The liquor authority is hereby authorized to issue a temporary TRANSFER retail permit to the transferee of a retail license to continue the operation of a retail premises during the period a transfer application for the license from person to person at the same premises is pending and when all the following conditions exist:

(a) The premises shall have been operated under a retail license within thirty days of the date of filing the application for a temporary permit;

(b) The retail license for said premises shall have been surrendered into safekeeping pursuant to rules of the authority;

(c) The applicant for the temporary TRANSFER permit shall have filed with the authority an application for transfer of the retail license at such premises; [and]

(d) THE HOLDER OF THE RETAIL LICENSE SHALL HAVE EITHER (I) PAID ANY OUTSTANDING DEBT FOR THE PURCHASE AND DELIVERY OF ALCOHOLIC BEVERAGES TO WHOLESALERS SIMULTANEOUSLY WITH THE SURRENDER OF OR THE PLACEMENT OF THE LICENSE IN SAFEKEEPING WITH THE AUTHORITY, WHICHEVER OCCURS FIRST, AND MUST PROVIDE PROOF OF SUCH PAYMENT TO THE AUTHORITY IN THE FORM OF AN AFFIDAVIT SETTING FORTH THE NAMES OF THE WHOLESALERS AND THE SUMS PAID OR (II) PROVIDE TO THE AUTHORITY AN AFFIDAVIT SETTING FORTH THE NAMES OF

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

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EACH UNPAID WHOLESALER AND THE AMOUNTS OWED AND CERTIFYING THAT THE SUM TOTAL OF THE AMOUNTS SO OWED SHALL BE PLACED IN ESCROW FOR PAYMENT WITH THE TEMPORARY PERMITEE'S COUNSEL OR AGENT, PENDING ISSUANCE OF THE TEMPORARY PERMIT, WITH PAYMENT TO BE MADE WITHIN FIVE DAYS OF ISSUANCE OF SUCH PERMIT; AND

(E) The application for the temporary TRANSFER permit shall be accompanied by a nonrefundable temporary permit filing fee of one hundred twenty-eight dollars for all retail beer licenses; all other temporary permit applications shall be accompanied by a filing fee of six hundred forty dollars.

2. A temporary TRANSFER permit issued by the authority pursuant to this section shall be for a period not to exceed ninety days. A temporary TRANSFER permit may be extended at the discretion of the authority, for an additional thirty day period upon payment of an additional fee of sixty-four dollars for all retail beer licenses and ninety-six dollars for all other temporary permits and upon compliance with all conditions required herein. A temporary TRANSFER permit is a conditional permit and authorizes the holder thereof to purchase and sell such alcoholic beverages as would be permitted to be purchased and sold under the privileges of the retail license for which transfer application has been filed; to sell such alcoholic beverages to consumers only and not for resale; and to purchase such alcoholic beverages only by payment in currency or check for such alcoholic beverages on or before they are delivered to the premises.

3. Provided, however, that the holder of a temporary TRANSFER permit who also holds one or more retail licenses and is operating under such retail license or licenses in addition to the temporary permit, and who is not delinquent under the provisions of section one hundred [one-a] ONE-AA of this chapter as to any retail license under which he operates, may purchase alcoholic beverages on credit under the temporary permit.

4. Notwithstanding any other provision of law, a temporary TRANSFER permit may be summarily cancelled or suspended at any time if the authority determines that good cause for such cancellation or suspension exists. The authority shall promptly notify the holder of a temporary TRANSFER permit in writing of such cancellation or suspension and shall set forth the reasons for such action. IF THE OUTSTANDING DEBTS ARE NOT PROPERLY PAID OR PLACED IN ESCROW PURSUANT TO THE PROVISIONS OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION THE AUTHORITY SHALL NOT ISSUE OR MAY SUMMARILY CANCEL OR SUSPEND A TEMPORARY TRANSFER PERMIT. IF AFTER ISSUANCE OF A TEMPORARY TRANSFER PERMIT IT IS DETERMINED THAT THE FORMER LICENSE HOLDER HAS PROVIDED AN INCORRECT AFFIDAVIT, THE TEMPORARY PERMITTEE SHALL SUPPLY TO THE AUTHORITY AN AFFIDAVIT SETTING FORTH THE CORRECTED LIST OF WHOLESALERS WITH SUMS OWED AND SHALL REMIT SUCH SUMS OR RECEIVE ANY OVERAGE PRIOR TO THE ISSUANCE OF ANY ADDITIONAL EXTENSIONS TO THE TRANSFER PERMIT AND/OR THE ISSUANCE OF THE PERMANENT LICENSE TO THE TEMPORARY LICENSEE.

5. IN ANY INSTANCE IN WHICH RETAIL LICENSEE UNDERGOES A CORPORATE CHANGE OR THE FILING OF AN ENDORSEMENT APPLICATION, WHICH CHANGE OR ENDORSEMENT REFLECTS A CHANGE IN CONTROLLING INTEREST IN THE LICENSEE AS EVIDENCED BY A CHANGE OF STOCK OWNERSHIP OR OTHERWISE, OR IN THE CASE OF A TRANSFER APPLICATION WHERE THE PARTIES DO NOT FILE FOR A TEMPORARY PERMIT BUT AWAIT THE ISSUANCE OF A PERMANENT LICENSE TO THE APPLICANT, THE AUTHORITY SHALL NOT APPROVE SUCH APPLICATION OR ISSUE A LICENSE TO THE APPLICANT UNLESS ALL OUTSTANDING DEBT TO WHOLESALERS HAS BEEN PAID AS EVIDENCED BY AN AFFIDAVIT SETTING FORTH THE CREDITOR LIST WITH

AMOUNTS PAID FROM THE LICENSEE, A COPY OF WHICH MUST BE PROVIDED AND TO THE AUTHORITY AND THE AFFECTED WHOLESALERS WITH PROOF OF RECEIPT.

6. Application for a temporary TRANSFER permit shall be on such form as the authority shall prescribe.

[6.] 7. Notwithstanding any inconsistent provision of law to the contrary, the authority may promulgate such rules and regulations as may be necessary to carry out the provisions of this section.

S 2. This act shall take effect immediately.