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

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2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DESTITO, BENEDETTO, BING, CAHILL, MILLMAN, SCHROEDER, MAGNARELLI -- Multi-Sponsored by -- M. of A. CHRISTENSEN, FARRELL, GOTTFRIED, KOON, MAGEE, MAYERSOHN, PHEFFER, SWEENEY, TOWNS -- 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 providing for certain limited direct interstate shipments of beer and other malt beverages

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

Section 1. The alcoholic beverage control law is amended by adding two new sections 53-b and 53-c to read as follows:

S 53-B. DIRECT INTERSTATE BEER OR MALT BEVERAGE SHIPMENTS. 1. AUTHORIZATION. NOTWITHSTANDING ANY PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, ANY HOLDER OF A LICENSE TO MANUFACTURE BEER IN ANY OTHER STATE WHO OBTAINS AN OUT-OF-STATE SHIPPER'S LICENSE, AS PROVIDED IN THIS SECTION, MAY SHIP BEER AND OTHER MALT BEVERAGES SOLD BY SUCH LICENSE HOLDER DIRECTLY TO A RESIDENT OF NEW YORK WHO IS AT LEAST TWENTY-ONE YEARS OF AGE, FOR SUCH RESIDENT'S PERSONAL USE AND NOT FOR RESALE, PROVIDED THE STATE IN WHICH SUCH PERSON IS SO LICENSED AFFORDS LAWFUL MEANS FOR SHIPMENTS OF BEER AND OTHER MALT BEVERAGES SOLD TO BE RECEIVED BY A RESIDENT THEREOF WHO IS AT LEAST TWENTY-ONE YEARS OF AGE, FOR SUCH RESIDENT'S PERSONAL USE AND NOT FOR RESALE, FROM A PERSON LICENSED IN THIS STATE AS A MANUFACTURER AND, PROVIDED FURTHER, THAT THE STATE IN WHICH SUCH OUT-OF-STATE BREWING FACILITY IS LOCATED AFFORDS TO A NEW YORK STATE BREWING LICENSEE RECIPROCAL SHIPPING PRIVILEGES, MEANING SHIPPING PRIVILEGES THAT ARE SUBSTANTIALLY SIMILAR TO THE REQUIREMENTS IN THIS SECTION. NO PERSON SHALL PLACE AN ORDER FOR SHIPMENT OF BEER OR MALT BEVERAGES UNLESS THEY ARE TWENTY-ONE YEARS OF AGE OR OLDER. ANY COMMON CARRIER WITH A PERMIT ISSUED PURSUANT TO THIS CHAPTER TO WHOM

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

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SUCH OUT-OF-STATE SHIPPER'S LICENSE IS PRESENTED IS AUTHORIZED TO MAKE DELIVERY OF SHIPMENTS PROVIDED FOR HEREUNDER IN THIS STATE IN COMPLIANCE WITH THIS SECTION.

2. LICENSE. BEFORE SENDING ANY SHIPMENT HEREUNDER TO A RESIDENT IN THIS STATE, THE OUT-OF-STATE SHIPPER SHALL FIRST OBTAIN A LICENSE FROM THE NEW YORK STATE LIQUOR AUTHORITY UNDER PROCEDURES PRESCRIBED BY RULES AND REGULATIONS OF THE AUTHORITY AND AFTER PROVIDING THE AUTHORITY WITH A TRUE COPY OF ITS CURRENT LICENSE TO MANUFACTURE BEER OR OTHER MALT BEVERAGES IN THE APPLICANT'S STATE OF DOMICILE ALONG WITH A COPY OF THE APPLICANT'S FEDERAL BASIC PERMIT, IN THE CASE OF A BREWER, AFTER PAYMENT OF AN ANNUAL FEE OF ONE HUNDRED DOLLARS. NOTWITHSTANDING THE PROVISIONS OF SECTION ONE HUNDRED TEN OF THIS CHAPTER, THE AUTHORITY IN ITS DISCRETION, MAY EXCUSE AN OUT-OF-STATE BREWERY FROM THE SUBMISSION OF SUCH INFORMATION. SUCH RULES OR REGULATIONS SHALL PROVIDE FOR THE COLLECTION AND ANNUAL REPORTING OF INFORMATION BY SUCH OUT-OF-STATE SHIPPER WHICH AT A MINIMUM, SHALL INCLUDE:

(A) THE NAME OF THE PURCHASER;

(B) THE FULL MAILING ADDRESS OF THE PURCHASER INCLUDING ZIP CODE;

(C) THE NAME, TOTAL QUANTITY, AND TOTAL PRICE OF PRODUCTS PURCHASED;

(D) THE DATE PURCHASED;

(E) THE NAME AND ADDRESS OF THE TRANSPORTER; AND

(F) THE SIGNATURE OF THE PERSON FILING THE REPORT.

3. LICENSEE'S RESPONSIBILITIES. THE HOLDER OF AN OUT-OF-STATE DIRECT SHIPPER'S LICENSE SHALL:

(A) SHIP BEER OR OTHER MALT BEVERAGE PRODUCED BY SUCH LICENSE HOLDER DIRECTLY TO A NEW YORK STATE RESIDENT WHO IS AT LEAST TWENTY-ONE YEARS OF AGE, FOR SUCH RESIDENT'S PERSONAL USE AND NOT FOR RESALE;

(B) ENSURE THAT THE OUTSIDE OF EACH SHIPPING CONTAINER USED TO SHIP BEER OR OTHER MALT BEVERAGE DIRECTLY TO A NEW YORK RESIDENT IS CONSPICUOUSLY LABELED WITH THE WORDS: "CONTAINS BEER - SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY - NOT FOR RESALE," OR WITH OTHER LANGUAGE SPECIFICALLY APPROVED BY THE NEW YORK STATE LIQUOR AUTHORITY;

(C) REPORT TO THE AUTHORITY SEMI-ANNUALLY, IN SUCH MANNER AND FORM AS THE AUTHORITY MAY DIRECT, THE TOTAL AMOUNT OF BEER OR MALT BEVERAGE SHIPPED INTO THE STATE THE PRECEDING CALENDAR YEAR; THE NAMES AND ADDRESSES OF THE PURCHASERS TO WHOM THE BEER OR MALT BEVERAGE WAS SHIPPED, THE DATE PURCHASED, THE NAME OF THE COMMON CARRIER USED TO DELIVER THE BEER OR MALT BEVERAGE, AND THE QUANTITY AND VALUE OF EACH SHIPMENT;

(D) IN CONNECTION WITH THE ACCEPTANCE OF AN ORDER FOR A DELIVERY OF BEER OR MALT BEVERAGES TO A NEW YORK RESIDENT, REQUIRE THE PROSPECTIVE CUSTOMER TO REPRESENT THAT HE OR SHE HAS ATTAINED THE AGE OF TWENTY-ONE YEARS OR MORE AND THAT THE BEER OR MALT BEVERAGES BEING PURCHASED WILL NOT BE RESOLD OR INTRODUCED INTO COMMERCE;

(E) REQUIRE COMMON CARRIERS TO:

(I) REQUIRE A RECIPIENT, AT THE DELIVERY ADDRESS, UPON DELIVERY, TO DEMONSTRATE THAT THE RECIPIENT IS AT LEAST TWENTY-ONE YEARS OF AGE BY PROVIDING A VALID FORM OF PHOTOGRAPHIC IDENTIFICATION AUTHORIZED BY SECTION SIXTY-FIVE-B OF THIS CHAPTER;

(II) REQUIRE A RECIPIENT TO SIGN AN ELECTRONIC OR PAPER FORM OR OTHER ACKNOWLEDGEMENT OF RECEIPT AS APPROVED BY THE AUTHORITY; AND

(III) REFUSE DELIVERY WHEN THE PROPOSED RECIPIENT APPEARS TO BE UNDER TWENTY-ONE YEARS OF AGE AND REFUSES TO PRESENT VALID IDENTIFICATION AS REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH;

(F) FILE RETURNS WITH AND PAY TO THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE ALL STATE AND LOCAL SALES TAXES AND EXCISE TAXES

DUE ON SALES INTO THIS STATE IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE TAX LAW RELATING TO SUCH TAXES, THE AMOUNT OF SUCH TAXES TO BE DETERMINED ON THE BASIS THAT EACH SALE IN THIS STATE WAS AT THE LOCATION WHERE DELIVERY IS MADE;

(G) KEEP RECORDS FOR THREE YEARS AND PERMIT THE AUTHORITY OR THE DEPARTMENT OF TAXATION AND FINANCE TO PERFORM AN AUDIT OF SUCH OUT-OF-STATE SHIPPER UPON REQUEST;

(H) EXECUTE A WRITTEN CONSENT TO THE JURISDICTION OF THIS STATE, ITS AGENCIES AND INSTRUMENTALITIES AND THE COURTS OF THIS STATE CONCERNING ENFORCEMENT OF THIS SECTION AND ANY RELATED LAWS, RULES, OR REGULATIONS, INCLUDING TAX LAWS, RULES OR REGULATIONS;

(I) PRIOR TO OBTAINING AN OUT-OF-STATE DIRECT SHIPPER'S LICENSE, OBTAIN A CERTIFICATE OF AUTHORITY PURSUANT TO SECTION ELEVEN HUNDRED THIRTY-FOUR OF THE TAX LAW AND A REGISTRATION AS A DISTRIBUTOR PURSUANT TO SECTIONS FOUR HUNDRED TWENTY-ONE AND FOUR HUNDRED TWENTY-TWO OF THE TAX LAW; AND

(J) REPORT TO THE AUTHORITY, IN A METHOD PRESCRIBED BY THE AUTHORITY, WITHIN FIVE BUSINESS DAYS OF RECEIVING AN ORDER THAT IS GREATER THAN TWO CASES OR FIVE HUNDRED SEVENTY-SIX OUNCES OF BEER, OR FIVE CASES OR FOURTEEN HUNDRED FORTY OUNCES OF BEER WITHIN A THIRTY-DAY PERIOD.

4. SITUS. DELIVERY OF A SHIPMENT IN THIS STATE BY THE HOLDER OF AN OUT-OF-STATE DIRECT SHIPPER'S LICENSE SHALL BE DEEMED TO CONSTITUTE A SALE IN THIS STATE AT THE PLACE OF DELIVERY AND SHALL BE SUBJECT TO ALL EXCISE TAXES LEVIED PURSUANT TO SECTION FOUR HUNDRED TWENTY-FOUR OF THE TAX LAW AND ALL SALES TAXES LEVIED PURSUANT TO ARTICLES TWENTY-EIGHT AND TWENTY-NINE OF SUCH LAW.

5. TAXES. DELIVERY OF A SHIPMENT IN THIS STATE FROM THE HOLDER OF AN OUT-OF-STATE SHIPPER'S LICENSE SHALL BE DEEMED TO CONSTITUTE A SALE IN THIS STATE AT THE PLACE OF DELIVERY AND SHALL BE SUBJECT TO ALL SALES TAXES LEVIED PURSUANT TO SECTION ELEVEN HUNDRED FIVE OF THE TAX LAW AND ALL EXCISE TAXES LEVIED PURSUANT TO SECTION FOUR HUNDRED TWENTY-FOUR OF THE TAX LAW.

6. RENEWAL. THE OUT-OF-STATE SHIPPER MAY ANNUALLY RENEW ITS LICENSE WITH THE AUTHORITY BY PAYING A ONE HUNDRED DOLLAR RENEWAL FEE, PROVIDING THE AUTHORITY WITH A TRUE COPY OF ITS CURRENT LICENSE IN SUCH OTHER STATE AS AN ALCOHOLIC BEVERAGE MANUFACTURER AND BY COMPLYING WITH SUCH OTHER PROCEDURES AS ARE PRESCRIBED BY RULE OF THE AUTHORITY.

7. RULES AND REGULATIONS. THE AUTHORITY AND THE DEPARTMENT OF TAXATION AND FINANCE MAY PROMULGATE RULES AND REGULATIONS TO EFFECTUATE THE PURPOSES OF THIS SECTION.

8. ENFORCEMENT. THE AUTHORITY MAY ENFORCE THE REQUIREMENTS OF THIS SECTION INCLUDING THE REQUIREMENTS IMPOSED ON THE COMMON CARRIER, BY ADMINISTRATIVE PROCEEDINGS TO SUSPEND OR REVOKE AN OUT-OF-STATE SHIPPER'S LICENSE AND THE AUTHORITY MAY ACCEPT PAYMENT OF AN ADMINISTRATIVE FINE IN LIEU OF SUSPENSION, SUCH PAYMENTS TO BE DETERMINED BY RULES OR REGULATIONS PROMULGATED BY THE AUTHORITY. IN ADDITION, THE AUTHORITY OR THE ATTORNEY GENERAL OF THE STATE OF NEW YORK SHALL REPORT VIOLATIONS OF THIS SECTION, WHERE APPROPRIATE, TO THE UNITED STATES DEPARTMENT OF TREASURY, TAX AND TRADE BUREAU, FOR ADMINISTRATIVE ACTION TO SUSPEND OR REVOKE THE FEDERAL BASIC PERMIT.

9. VIOLATIONS. IN ANY ACTION BROUGHT UNDER THIS SECTION, THE COMMON CARRIER AND THE LICENSEE SHALL ONLY BE HELD LIABLE FOR THEIR INDEPENDENT ACTS.

S 53-C. DIRECT INTRASTATE BEER OR MALT BEVERAGE SHIPMENTS. ANY PERSON HAVING APPLIED FOR AND RECEIVED A LICENSE AS A BREWER UNDER THIS ARTICLE MAY SHIP BEER OR MALT BEVERAGES PRODUCED OR DISTRIBUTED BY SUCH

BREWER DIRECTLY TO A NEW YORK STATE RESIDENT WHO IS AT LEAST TWENTY-ONE YEARS OF AGE, FOR SUCH RESIDENT'S PERSONAL USE AND NOT FOR RESALE.

1. LICENSEE'S SHIPPING RESPONSIBILITIES. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY CONTAINED IN THIS CHAPTER, ANY ABOVE REFERRED LICENSEE SHALL:

(A) IN THE CASE OF A BREWER, SHIP BEER OR MALT BEVERAGES PRODUCED OR DISTRIBUTED BY SUCH LICENSE HOLDER DIRECTLY TO A NEW YORK STATE RESIDENT WHO IS AT LEAST TWENTY-ONE YEARS OF AGE, FOR SUCH RESIDENT'S PERSONAL USE AND NOT FOR RESALE;

(B) ENSURE THAT THE OUTSIDE OF EACH SHIPPING CONTAINER USED TO SHIP BEER OR MALT BEVERAGES DIRECTLY TO A NEW YORK STATE RESIDENT IS CONSPICUOUSLY LABELED WITH THE WORDS: "CONTAINS BEER - SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY," OR WITH OTHER LANGUAGE SPECIFICALLY APPROVED BY THE NEW YORK STATE LIQUOR AUTHORITY;

(C) REPORT TO THE AUTHORITY ANNUALLY, IN SUCH MANNER AND FORM AS THE AUTHORITY MAY DIRECT THE TOTAL AMOUNT OF BEER OR MALT BEVERAGES SHIPPED IN THE STATE THE PRECEDING CALENDAR YEAR, THE NAMES AND ADDRESSES OF THE PURCHASERS TO WHOM THE BEER OR MALT BEVERAGE WAS SHIPPED, THE DATE PURCHASED, THE NAME OF THE COMMON CARRIER USED TO DELIVER THE BEER OR MALT BEVERAGE, AND THE QUANTITY AND VALUE OF EACH SHIPMENT;

(D) IN CONNECTION WITH THE ACCEPTANCE OF AN ORDER FOR A DELIVERY OF BEER OR MALT BEVERAGE TO A NEW YORK RESIDENT, REQUIRE THE PROSPECTIVE CUSTOMER TO REPRESENT THAT HE OR SHE HAS ATTAINED THE AGE OF TWENTY-ONE YEARS OR MORE AND THAT THE BEER OR MALT BEVERAGE BEING PURCHASED WILL NOT BE RESOLD OR INTRODUCED INTO COMMERCE; AND

(E) REQUIRE COMMON CARRIERS TO:

(I) REQUIRE A RECIPIENT, AT THE DELIVERY ADDRESS, UPON DELIVERY, TO DEMONSTRATE THAT THE RECIPIENT IS AT LEAST TWENTY-ONE YEARS OF AGE BY PROVIDING A VALID FORM OF PHOTOGRAPHIC IDENTIFICATION AUTHORIZED BY SECTION SIXTY-FIVE-B OF THIS CHAPTER;

(II) REQUIRE A RECIPIENT TO SIGN AN ELECTRONIC OR PAPER FORM OR OTHER ACKNOWLEDGMENT OF RECEIPT AS APPROVED BY THE AUTHORITY; AND

(III) REFUSE DELIVERY WHEN THE PROPOSED RECIPIENT APPEARS TO BE UNDER TWENTY-ONE YEARS OF AGE AND REFUSES TO PRESENT VALID IDENTIFICATION AS REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH.

2. VIOLATIONS. IN ANY ACTION BROUGHT UNDER THIS SECTION, THE COMMON CARRIER AND THE LICENSEE SHALL ONLY BE HELD LIABLE FOR THEIR INDEPENDENT ACTS.

S 2. Paragraphs (a) and (b) of subdivision 1 of section 102 of the alcoholic beverage control law, as amended by chapter 210 of the laws of 2005, are amended to read as follows:

(a) Except as provided in section seventy-nine-c AND SECTION FIFTY-THREE-B of this chapter, no alcoholic beverages shall be shipped into the state unless the same shall be consigned to a person duly licensed hereunder to traffic in alcoholic beverages. This prohibition shall apply to all shipments of alcoholic beverages into New York state and includes importation or distribution for commercial purposes, for personal use, or otherwise, and irrespective of whether such alcoholic beverages were purchased within or without the state, provided, however, this prohibition shall not apply to any shipment consigned to a New York resident who has personally purchased alcoholic beverages for his personal use while outside the United States for a minimum period of forty-eight consecutive hours and which he has shipped as consignor to himself as consignee. Purchases made outside the United States by persons other than the purchaser himself, regardless whether made as his

agent, or by his authorization or on his behalf, are deemed not to have been personally purchased within the meaning of this paragraph.

(b) Except as provided in section seventy-nine-c AND SECTION FIFTY-THREE-B of this chapter, no common carrier or other person shall bring or carry into the state any alcoholic beverages, unless the same shall be consigned to a person duly licensed hereunder to traffic in alcoholic beverages, provided, however, that alcoholic beverages may be delivered by a trucking permittee from a steamship or railroad station or terminal to a New York resident who has personally purchased alcoholic beverages for his personal use while outside the United States for a minimum period of forty-eight consecutive hours, and which he has shipped as consignor to himself as consignee, and except as so stated, no trucking permittee shall accept for delivery, deliver or transport from a steamship or railroad station or terminal any shipment of alcoholic beverages consigned to a non-licensed person having his home or business in New York state. Purchases of alcoholic beverages made outside the United States by persons other than the purchaser himself, regardless whether made as his agent, or by his authorization or on his behalf, are deemed not to have been personally purchased within the meaning of this paragraph.

S 3. Severability. If the provisions of this act or if any application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this act which shall be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

S 4. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.