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

7698

I N S E N A T E

May 3, 2010

Introduced by Sen. C. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the alcoholic beverage control law, in relation to the powers of the chairman and the members of the authority; and to repeal certain provisions of such law relating thereto

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

Section 1. Section 15 of the alcoholic beverage control law, as amended by chapter 83 of the laws of 1995 and the second undesignated paragraph as amended by section 1 of part F of chapter 411 of the laws of 1999, is amended to read as follows:

S 15. Officers; employees; offices. [The authority shall have power to appoint any necessary deputies, counsels, assistants, investigators, and other employees within the limits provided by appropriation. Investigators so employed by the Authority shall be deemed to be peace officers for the purpose of enforcing the provisions of the alcoholic beverage control law or judgements or orders obtained for violation thereof, with all the powers set forth in section 2.20 of the criminal procedure law.] The counsel, secretary, chief executive officer, assistant chief executive officers, confidential secretaries to commissioners and deputies shall be in the exempt class of the civil service. The other assistants, investigators and employees of the authority shall all be in the competitive class of the civil service. *INVESTIGATORS EMPLOYED BY THE AUTHORITY SHALL BE DEEMED TO BE PEACE OFFICERS FOR THE PURPOSE OF ENFORCING THE PROVISIONS OF THE ALCOHOLIC BEVERAGE CONTROL LAW OR JUDGMENTS OR ORDERS OBTAINED FOR VIOLATION THEREOF, WITH ALL THE POWERS SET FORTH IN SECTION 2.20 OF THE CRIMINAL PROCEDURE LAW.* The authority shall continue to have its principal office in the city of Albany, and may maintain a branch office in the cities of New York and Buffalo and such other places as [it] *THE CHAIRMAN* may deem necessary.

[The authority shall establish appropriate procedures to insure that hearing officers are shielded from ex parte communications with alleged violators and their attorneys and from other employees of the authority and shall take such other steps as it shall deem necessary and proper to shield its judicial processes from unwarranted and inappropriate communications and attempts to influence.]

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

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S 2. Subdivisions 4, 8, 8-a, 12, 13 and 14 of section 17 of the alcoholic beverage control law are REPEALED, subdivisions 5, 6, 7, 9, 10 and 11 are renumbered subdivisions 4, 5, 6, 7, 8 and 9 and subdivision 7, as amended by chapter 83 of the laws of 1995, is amended to read as follows:

7. [The] TO DELEGATE THE powers provided in this section [may be delegated by the authority] to the chairman, or to such other officers or employees as may be designated by the chairman.

S 3. Section 18 of the alcoholic beverage control law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

S 18. Powers and duties of the chairman. The chairman shall have the following functions, powers and duties:

1. To exercise the powers and perform the duties in relation to the administration of the division of alcoholic beverage control as are not specifically vested by this chapter in the state liquor authority, INCLUDING BUT NOT LIMITED TO BUDGETARY AND FISCAL MATTERS.

2. To preside at all meetings of the authority and perform the administrative functions of the authority.

3. TO APPOINT ANY NECESSARY DEPUTIES, COUNSELS, ASSISTANTS, INVESTIGATORS, AND OTHER EMPLOYEES WITHIN THE LIMITS PROVIDED BY APPROPRIATION.

4. TO REMOVE ANY EMPLOYEE OF THE AUTHORITY FOR CAUSE, AFTER GIVING SUCH EMPLOYEE A COPY OF THE CHARGES AGAINST HIM IN WRITING, AND AN OPPORTUNITY TO BE HEARD THEREON. ANY ACTION TAKEN UNDER THIS SUBDIVISION SHALL BE SUBJECT TO AND IN ACCORDANCE WITH THE CIVIL SERVICE LAW.

5. To keep records in such form as he OR SHE may prescribe of all licenses and permits issued and revoked within the state; such records shall be so kept as to provide ready information as to the identity of all licensees including the names of the officers and directors of corporate licensees and the location of all licensed premises. The chairman may, with the approval of the commissioner of taxation and finance, contract to furnish copies of the records of licenses and permits of each class and type issued within the state or any political subdivision thereof, for any license or permit year or term of years not exceeding five years.

[4.] 6. To inspect or provide for the inspection of any premises where alcoholic beverages are manufactured or sold.

[5.] 7. To prescribe forms of applications for licenses and permits under this chapter and of all reports deemed necessary by the authority.

[6.] 8. To delegate to the officers and employees of the [division] AUTHORITY such of his OR HER powers and duties as he OR SHE may determine.

9. TO ESTABLISH APPROPRIATE PROCEDURES TO ENSURE THAT HEARING OFFICERS ARE SHIELDED FROM EX PARTE COMMUNICATIONS WITH ALLEGED VIOLATORS AND THEIR ATTORNEYS AND FROM OTHER EMPLOYEES OF THE AUTHORITY AND SHALL TAKE SUCH OTHER STEPS AS IT SHALL DEEM NECESSARY AND PROPER TO SHIELD ITS JUDICIAL PROCESSES FROM UNWARRANTED AND INAPPROPRIATE COMMUNICATIONS AND ATTEMPTS TO INFLUENCE.

10. TO DEVELOP AND ESTABLISH MINIMUM CRITERIA FOR ALCOHOL TRAINING AWARENESS PROGRAMS WHICH MAY BE GIVEN AND ADMINISTERED BY SCHOOLS; OTHER ENTITIES INCLUDING TRADE ASSOCIATIONS WHOSE MEMBERS ARE ENGAGED IN OR INVOLVED IN THE RETAIL SALE OF ALCOHOLIC BEVERAGES; NATIONAL AND REGIONAL FRANCHISORS WHO HAVE GRANTED AT LEAST FIVE FRANCHISES IN THE STATE WHICH ARE LICENSED TO SELL BEER AT RETAIL FOR OFF-PREMISES CONSUMPTION; LICENSEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR OFF-PREMISES CONSUMPTION OPERATING FIVE OR MORE LICENSED PREMISES; AND PERSONS INTERESTED, WHETHER AS AN INDIVIDUAL PROPRIETOR OR PARTNER

OR OFFICER OR MEMBER OF A LIMITED LIABILITY COMPANY, IN FIVE OR MORE LICENSEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR OFF-PREMISES CONSUMPTION. THE AUTHORITY SHALL PROVIDE FOR THE ISSUANCE OF CERTIFICATES OF APPROVAL TO ALL CERTIFIED ALCOHOL TRAINING AWARENESS PROGRAMS. CERTIFICATES OF APPROVAL MAY BE REVOKED BY THE AUTHORITY FOR FAILURE TO ADHERE TO THE AUTHORITY'S RULES AND REGULATIONS. SUCH RULES AND REGULATIONS SHALL AFFORD THOSE WHO HAVE BEEN ISSUED A CERTIFICATE OF APPROVAL AN OPPORTUNITY FOR A HEARING PRIOR TO ANY DETERMINATION OF WHETHER SUCH CERTIFICATE SHOULD BE REVOKED.

NO LICENSEE SHALL BE REQUIRED TO APPLY FOR ANY SUCH CERTIFICATE OR RENEWAL CERTIFICATE AND THE LICENSEE MAY VOLUNTARILY SURRENDER SUCH A CERTIFICATE OR RENEWAL CERTIFICATE AT ANY TIME. A FEE IN THE AMOUNT OF NINE HUNDRED DOLLARS SHALL BE PAID TO THE AUTHORITY WITH EACH APPLICATION FOR A CERTIFICATE OF APPROVAL OR RENEWAL CERTIFICATE. THE AUTHORITY SHALL PROMPTLY REFUND SUCH FEE TO AN APPLICANT WHOSE APPLICATION WAS DENIED. EACH CERTIFICATE OF APPROVAL AND RENEWAL THEREOF SHALL BE ISSUED FOR A PERIOD OF THREE YEARS. TO EFFECTUATE THE PROVISIONS OF THIS SUBDIVISION, THE AUTHORITY IS EMPOWERED TO REQUIRE IN CONNECTION WITH AN APPLICATION THE SUBMISSION OF SUCH INFORMATION AS THE AUTHORITY MAY DIRECT; TO PRESCRIBE FORMS OF APPLICATIONS AND OF ALL REPORTS WHICH IT DEEMS NECESSARY TO BE MADE BY ANY APPLICANT OR CERTIFICATE HOLDER; TO CONDUCT INVESTIGATIONS; TO REQUIRE THE MAINTENANCE OF SUCH BOOKS AND RECORDS AS THE AUTHORITY MAY DIRECT; TO REVOKE, CANCEL, OR SUSPEND FOR CAUSE ANY CERTIFICATE PROVIDED FOR IN THIS SUBDIVISION. EACH ENTITY AUTHORIZED TO GIVE AND ADMINISTER AN ALCOHOL TRAINING AWARENESS PROGRAM SHALL ISSUE CERTIFICATES OF COMPLETION TO ALL LICENSEES AND EMPLOYEES WHO SUCCESSFULLY COMPLETE SUCH AN APPROVED ALCOHOL TRAINING AWARENESS PROGRAM. SUCH ENTITY SHALL REGULARLY TRANSMIT TO THE AUTHORITY THE NAMES, ADDRESSES AND DATES OF ATTENDANCE OF ALL THE LICENSEES AND EMPLOYEES OF LICENSEES WHO SUCCESSFULLY COMPLETE AN APPROVED ALCOHOL TRAINING AWARENESS PROGRAM. SUCH TRANSMITTAL SHALL BE IN A FORM AND MANNER PRESCRIBED BY THE AUTHORITY. THE AUTHORITY SHALL ADOPT RULES AND REGULATIONS TO EFFECTUATE THE PROVISIONS OF THIS SUBDIVISION, INCLUDING THE MINIMUM REQUIREMENTS FOR THE CURRICULUM OF EACH SUCH TRAINING PROGRAM AND THE REGULAR ONGOING TRAINING OF EMPLOYEES HOLDING CERTIFICATES OF COMPLETION OR RENEWAL CERTIFICATES. SUCH RULES AND REGULATIONS SHALL INCLUDE THE MINIMUM REQUIREMENTS FOR A SEPARATE CURRICULUM FOR LICENSEES AND THEIR EMPLOYEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR OFF-PREMISES CONSUMPTION, MINIMUM REQUIREMENTS FOR A SEPARATE CURRICULUM FOR LICENSEES AND THEIR EMPLOYEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR ON-PREMISES CONSUMPTION, AND THE FORM OF A CERTIFICATE OF COMPLETION OR RENEWAL THEREOF TO BE ISSUED IN RESPECT TO EACH SUCH TYPE OF PROGRAM. A CERTIFICATE OF COMPLETION OR RENEWAL THEREOF ISSUED BY AN ENTITY AUTHORIZED TO GIVE AND ADMINISTER AN ALCOHOL TRAINING AWARENESS PROGRAM PURSUANT TO THIS SUBDIVISION TO LICENSEES AND THEIR EMPLOYEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR OFF-PREMISES CONSUMPTION SHALL NOT BE INVALIDATED BY A CHANGE OF EMPLOYMENT TO ANOTHER SUCH LICENSEE. A CERTIFICATE OF COMPLETION OR RENEWAL THEREOF ISSUED BY AN ENTITY AUTHORIZED TO GIVE AND ADMINISTER AN ALCOHOL TRAINING AWARENESS PROGRAM PURSUANT TO THIS SUBDIVISION TO LICENSEES AND THEIR EMPLOYEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR ON-PREMISES CONSUMPTION SHALL NOT BE INVALIDATED BY A CHANGE OF EMPLOYMENT TO ANOTHER SUCH LICENSEE. THE FEE CHARGED TO ANY PARTICIPANT FOR ANY SUCH PROGRAM SHALL NOT EXCEED ONE HUNDRED DOLLARS.

11. TO MAKE AN ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE OF ITS ACTIVITIES FOR THE PRECEDING YEAR.

12. ON AND AFTER JANUARY FIRST, TWO THOUSAND ELEVEN THE REPORT PROVIDED FOR IN SUBDIVISION ELEVEN OF THIS SECTION SHALL INCLUDE AN EVALUATION OF THE EFFECTIVENESS OF THE PROHIBITION ON THE SALE OF ALCOHOL TO PERSONS UNDER THE AGE OF TWENTY-ONE AS PROVIDED IN SECTION SIXTY-FIVE-B OF THIS CHAPTER WITH PARTICULAR EMPHASIS ON THE PROVISIONS OF SUBDIVISIONS ONE, TWO, THREE, FOUR AND FIVE OF SECTION SIXTY-FIVE-B, SUBDIVISION FIVE OF SECTION ONE HUNDRED NINETEEN AND SUBDIVISION SIX OF SECTION SIXTY-FIVE OF THIS CHAPTER, PARAGRAPH (B) OF SUBDIVISION SEVEN OF SECTION 170.55 OF THE CRIMINAL PROCEDURE LAW AND SUBDIVISION (F) OF SECTION 19.07 OF THE MENTAL HYGIENE LAW.

13. TO STUDY AND REPORT TO THE GOVERNOR AND THE LEGISLATURE BIENNIALLY ON OR BEFORE FEBRUARY FIRST OF EACH YEAR CONCERNING:

(A) RECOMMENDATIONS TO REDUCE THE NUMBER AND TYPE OF LICENSES, AND TO ESTABLISH A UNIFORM, STATEWIDE SCHEDULE OF FEES, SUCH RECOMMENDATIONS TO INCLUDE THE DEVELOPMENT OF A MASTER APPLICATION FORM FOR ALL LICENSES, WITH SPECIFIC EXHIBITS REQUIRED FOR SPECIFIC LICENSES, AS APPROPRIATE, AS WELL AS RECOMMENDATIONS ON A NON-REFUNDABLE APPLICATION FEE SET AT A LEVEL WHICH WILL COVER THE COST OF THE REVIEW AND WHICH WOULD BE APPLIED AGAINST THE FIRST YEAR LICENSE FEE IF THE APPLICATION IS GRANTED;

(B) RECOMMENDATIONS TO SIMPLIFY LICENSE RENEWAL PROCEDURES;

(C) RECOMMENDATIONS TO STREAMLINE THE PROCESSING OF APPLICATIONS AND TO ELIMINATE DUPLICATION OF REVIEWS, SUCH RECOMMENDATIONS TO INCLUDE UNIFORM STANDARDS FOR APPLICATION REVIEW AND DECISION WHICH SHALL SEEK TO ASSURE THAT THE REVIEW IS AS OBJECTIVE AS POSSIBLE AND TO NARROW THE DISCRETION OF THE AUTHORITY OR OF ANY REVIEWER EMPLOYED BY THE AUTHORITY;

(D) THE EXTENT TO WHICH QUALITY OF LIFE ISSUES, SUCH AS NOISE LEVEL, VEHICULAR TRAFFIC AND PARKING ARE CONSIDERED IN LICENSING DECISIONS, PARTICULARLY AS SUCH ISSUES PERTAIN TO PROCEEDINGS PURSUANT TO SUBDIVISION SEVEN OF SECTION SIXTY-FOUR OF THIS CHAPTER;

(E) RECOMMENDATIONS TO IMPROVE ENFORCEMENT METHODOLOGIES IN ORDER TO PROTECT THE HEALTH AND SAFETY OF RESIDENTS OF COMMUNITIES EXPERIENCING PERSISTENT PROBLEMS IN THE OPERATION OF RETAIL ESTABLISHMENTS;

(F) RECOMMENDATIONS CONCERNING THE ADDITION OF FIELD ENFORCEMENT PERSONNEL AND THE RATIOS OF SUCH FIELD ENFORCEMENT PERSONNEL TO THE TOTAL NUMBERS OF LICENSEES THAT IN THE VIEW OF THE AUTHORITY WOULD BE APPROPRIATE TO ENSURE COMPLIANCE WITH THE LAW. SUCH STUDY SHALL PROVIDE A DETAILED ANALYSIS OF THE COSTS AND PROJECTED REVENUES TO BE OBTAINED FROM THE ADDITION OF SUCH FIELD ENFORCEMENT PERSONNEL;

(G) SUCH OTHER OBSERVATIONS AND RECOMMENDATIONS CONCERNING THE ACTIVITIES OF THE AUTHORITY AS WILL IMPROVE ITS EFFECTIVENESS AND EFFICIENCY INCLUDING THE UTILIZATION OF ON-LINE SERVICES TO PROVIDE INFORMATION ON A FEE-FOR-SERVICE BASIS; AND

(H) PROVIDE INFORMATION CONCERNING THE NAME, TOTAL QUANTITY AND TOTAL PRICE OF WINE PURCHASED FROM NEW YORK STATE AND OUT-OF-STATE WINERIES AND FARM WINERIES, AND SUCH OTHER INFORMATION ON AND RECOMMENDATIONS CONCERNING INTERSTATE WINE SHIPMENT.

14. FOR STATE FISCAL YEAR TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE, THE AUTHORITY SHALL, WITHIN AMOUNTS APPROPRIATED THEREFOR, IMPROVE AND UPDATE THEIR INFORMATION TECHNOLOGY IN ORDER TO MEET FEDERAL SECURITY REQUIREMENTS AND TO ASSIST IN THE PROCESSING OF LICENSE AND/OR PERMIT APPLICATIONS AND RENEWALS.

S 4. This act shall take effect September 15, 2010.