

3370

2011-2012 Regular Sessions

I N A S S E M B L Y

January 25, 2011

Introduced by M. of A. SCHIMMINGER, GOTTFRIED, CAHILL, KAVANAGH, ZEBROW-SKI -- Multi-Sponsored by -- M. of A. DESTITO, GABRYSZAK, PHEFFER -- read once and referred to the Committee on Economic Development

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:

1 Section 1. Section 15 of the alcoholic beverage control law, as
2 amended by chapter 83 of the laws of 1995 and the second undesignated
3 paragraph as amended by section 1 of part F of chapter 411 of the laws
4 of 1999, is amended to read as follows:
5 S 15. Officers; employees; offices. [The authority shall have power to
6 appoint any necessary deputies, counsels, assistants, investigators, and
7 other employees within the limits provided by appropriation. Investi-
8 gators so employed by the Authority shall be deemed to be peace officers
9 for the purpose of enforcing the provisions of the alcoholic beverage
10 control law or judgements or orders obtained for violation thereof, with
11 all the powers set forth in section 2.20 of the criminal procedure law.]
12 The counsel, secretary, chief executive officer, assistant chief execu-
13 tive officers, confidential secretaries to commissioners and deputies
14 shall be in the exempt class of the civil service. The other assistants,
15 investigators and employees of the authority shall all be in the compet-
16 itive class of the civil service. INVESTIGATORS EMPLOYED BY THE AUTHOR-
17 ITY SHALL BE DEEMED TO BE PEACE OFFICERS FOR THE PURPOSE OF ENFORCING
18 THE PROVISIONS OF THE ALCOHOLIC BEVERAGE CONTROL LAW OR JUDGMENTS OR
19 ORDERS OBTAINED FOR VIOLATION THEREOF, WITH ALL THE POWERS SET FORTH IN
20 SECTION 2.20 OF THE CRIMINAL PROCEDURE LAW. The authority shall continue
21 to have its principal office in the city of Albany, and may maintain a
22 branch office in the cities of New York and Buffalo and such other plac-
23 es as [it] THE CHAIRMAN may deem necessary.

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

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

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

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

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

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

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

23 2. To preside at all meetings of the authority and perform the admin-
24 istrative functions of the authority.

25 3. TO APPOINT ANY NECESSARY DEPUTIES, COUNSELS, ASSISTANTS, INVESTI-
26 GATORS, AND OTHER EMPLOYEES WITHIN THE LIMITS PROVIDED BY APPROPRIATION.

27 4. TO REMOVE ANY EMPLOYEE OF THE AUTHORITY FOR CAUSE, AFTER GIVING
28 SUCH EMPLOYEE A COPY OF THE CHARGES AGAINST HIM OR HER IN WRITING, AND
29 AN OPPORTUNITY TO BE HEARD THEREON. ANY ACTION TAKEN UNDER THIS SUBDIVI-
30 SION SHALL BE SUBJECT TO AND IN ACCORDANCE WITH THE CIVIL SERVICE LAW.

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

41 [4.] 6. To inspect or provide for the inspection of any premises where
42 alcoholic beverages are manufactured or sold.

43 [5.] 7. To prescribe forms of applications for licenses and permits
44 under this chapter and of all reports deemed necessary by the authority.

45 [6.] 8. To delegate to the officers and employees of the [division]
46 AUTHORITY such of his OR HER powers and duties as he OR SHE may deter-
47 mine.

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

54 10. TO DEVELOP AND ESTABLISH MINIMUM CRITERIA FOR ALCOHOL TRAINING
55 AWARENESS PROGRAMS WHICH MAY BE GIVEN AND ADMINISTERED BY SCHOOLS; OTHER
56 ENTITIES INCLUDING TRADE ASSOCIATIONS WHOSE MEMBERS ARE ENGAGED IN OR

1 INVOLVED IN THE RETAIL SALE OF ALCOHOLIC BEVERAGES; NATIONAL AND
2 REGIONAL FRANCHISORS WHO HAVE GRANTED AT LEAST FIVE FRANCHISES IN THE
3 STATE WHICH ARE LICENSED TO SELL BEER AT RETAIL FOR OFF-PREMISES
4 CONSUMPTION; LICENSEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL
5 FOR OFF-PREMISES CONSUMPTION OPERATING FIVE OR MORE LICENSED PREMISES;
6 AND PERSONS INTERESTED, WHETHER AS AN INDIVIDUAL PROPRIETOR OR PARTNER
7 OR OFFICER OR MEMBER OF A LIMITED LIABILITY COMPANY, IN FIVE OR MORE
8 LICENSEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR OFF-PREM-
9 ISES CONSUMPTION. THE AUTHORITY SHALL PROVIDE FOR THE ISSUANCE OF
10 CERTIFICATES OF APPROVAL TO ALL CERTIFIED ALCOHOL TRAINING AWARENESS
11 PROGRAMS. CERTIFICATES OF APPROVAL MAY BE REVOKED BY THE AUTHORITY FOR
12 FAILURE TO ADHERE TO THE AUTHORITY'S RULES AND REGULATIONS. SUCH RULES
13 AND REGULATIONS SHALL AFFORD THOSE WHO HAVE BEEN ISSUED A CERTIFICATE OF
14 APPROVAL AN OPPORTUNITY FOR A HEARING PRIOR TO ANY DETERMINATION OF
15 WHETHER SUCH CERTIFICATE SHOULD BE REVOKED.

16 NO LICENSEE SHALL BE REQUIRED TO APPLY FOR ANY SUCH CERTIFICATE OR
17 RENEWAL CERTIFICATE AND THE LICENSEE MAY VOLUNTARILY SURRENDER SUCH A
18 CERTIFICATE OR RENEWAL CERTIFICATE AT ANY TIME. A FEE IN THE AMOUNT OF
19 NINE HUNDRED DOLLARS SHALL BE PAID TO THE AUTHORITY WITH EACH APPLICA-
20 TION FOR A CERTIFICATE OF APPROVAL OR RENEWAL CERTIFICATE. THE AUTHORITY
21 SHALL PROMPTLY REFUND SUCH FEE TO AN APPLICANT WHOSE APPLICATION WAS
22 DENIED. EACH CERTIFICATE OF APPROVAL AND RENEWAL THEREOF SHALL BE ISSUED
23 FOR A PERIOD OF THREE YEARS. TO EFFECTUATE THE PROVISIONS OF THIS SUBDI-
24 VISION, THE AUTHORITY IS EMPOWERED TO REQUIRE IN CONNECTION WITH AN
25 APPLICATION THE SUBMISSION OF SUCH INFORMATION AS THE AUTHORITY MAY
26 DIRECT; TO PRESCRIBE FORMS OF APPLICATIONS AND OF ALL REPORTS WHICH IT
27 DEEMS NECESSARY TO BE MADE BY ANY APPLICANT OR CERTIFICATE HOLDER; TO
28 CONDUCT INVESTIGATIONS; TO REQUIRE THE MAINTENANCE OF SUCH BOOKS AND
29 RECORDS AS THE AUTHORITY MAY DIRECT; TO REVOKE, CANCEL, OR SUSPEND FOR
30 CAUSE ANY CERTIFICATE PROVIDED FOR IN THIS SUBDIVISION. EACH ENTITY
31 AUTHORIZED TO GIVE AND ADMINISTER AN ALCOHOL TRAINING AWARENESS PROGRAM
32 SHALL ISSUE CERTIFICATES OF COMPLETION TO ALL LICENSEES AND EMPLOYEES
33 WHO SUCCESSFULLY COMPLETE SUCH AN APPROVED ALCOHOL TRAINING AWARENESS
34 PROGRAM. SUCH ENTITY SHALL REGULARLY TRANSMIT TO THE AUTHORITY THE
35 NAMES, ADDRESSES AND DATES OF ATTENDANCE OF ALL THE LICENSEES AND
36 EMPLOYEES OF LICENSEES WHO SUCCESSFULLY COMPLETE AN APPROVED ALCOHOL
37 TRAINING AWARENESS PROGRAM. SUCH TRANSMITTAL SHALL BE IN A FORM AND
38 MANNER PRESCRIBED BY THE AUTHORITY. THE AUTHORITY SHALL ADOPT RULES AND
39 REGULATIONS TO EFFECTUATE THE PROVISIONS OF THIS SUBDIVISION, INCLUDING
40 THE MINIMUM REQUIREMENTS FOR THE CURRICULUM OF EACH SUCH TRAINING
41 PROGRAM AND THE REGULAR ONGOING TRAINING OF EMPLOYEES HOLDING CERTIF-
42 ICATES OF COMPLETION OR RENEWAL CERTIFICATES. SUCH RULES AND REGULATIONS
43 SHALL INCLUDE THE MINIMUM REQUIREMENTS FOR A SEPARATE CURRICULUM FOR
44 LICENSEES AND THEIR EMPLOYEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT
45 RETAIL FOR OFF-PREMISES CONSUMPTION, MINIMUM REQUIREMENTS FOR A SEPARATE
46 CURRICULUM FOR LICENSEES AND THEIR EMPLOYEES AUTHORIZED TO SELL ALCOHOL-
47 IC BEVERAGES AT RETAIL FOR ON-PREMISES CONSUMPTION, AND THE FORM OF A
48 CERTIFICATE OF COMPLETION OR RENEWAL THEREOF TO BE ISSUED IN RESPECT TO
49 EACH SUCH TYPE OF PROGRAM. A CERTIFICATE OF COMPLETION OR RENEWAL THERE-
50 OF ISSUED BY AN ENTITY AUTHORIZED TO GIVE AND ADMINISTER AN ALCOHOL
51 TRAINING AWARENESS PROGRAM PURSUANT TO THIS SUBDIVISION TO LICENSEES AND
52 THEIR EMPLOYEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR
53 OFF-PREMISES CONSUMPTION SHALL NOT BE INVALIDATED BY A CHANGE OF EMPLOY-
54 MENT TO ANOTHER SUCH LICENSEE. A CERTIFICATE OF COMPLETION OR RENEWAL
55 THEREOF ISSUED BY AN ENTITY AUTHORIZED TO GIVE AND ADMINISTER AN ALCOHOL
56 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 TWELVE 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 BIENNIALY 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 TWELVE--TWO THOUSAND THIRTEEN, THE AUTHORITY SHALL, WITHIN AMOUNTS APPROPRIATED THEREFOR, IMPROVE AND UPDATE THEIR INFORMATION TECHNOLOGY IN ORDER TO MEET FEDERAL SECURITY

1 REQUIREMENTS AND TO ASSIST IN THE PROCESSING OF LICENSE AND/OR PERMIT
2 APPLICATIONS AND RENEWALS.
3 S 4. This act shall take effect September 15, 2011.