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

8397

2011-2012 Regular Sessions

I N  A S S E M B L Y

June 15, 2011

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Economic Development

AN ACT to amend the alcoholic beverage control law, in relation to flavored malt beverages and wine products, to repeal section 54-a of the alcoholic beverage control law, in relation to the sale of beer and wine products at retail for consumption off the premises, and section 79-a of the alcoholic beverage control law, in relation to authorization to sell wine products by certain licensees for consumption off the premises

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

Section 1. Subdivision 3 of section 3 of the alcoholic beverage control law is amended to read as follows:

3. "Beer" means and includes any fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute therefor. THE TERM BEER SHALL INCLUDE FLAVORED MALT BEVERAGES.

S 2. Section 3 of the alcoholic beverage control law is amended by adding a new subdivision 12-b-1 to read as follows:

12-B-1. "FLAVORED MALT BEVERAGE" MEANS AND INCLUDES ANY ALCOHOLIC BEVERAGE OF ANY NAME OR DESCRIPTION THAT IS MANUFACTURED FROM MALT, WHOLLY OR IN PART, OR FROM ANY SUBSTITUTE THEREFOR INCLUDING, BUT NOT LIMITED TO, LIQUOR, SPIRIT OR WINE; AND CONTAINING MORE THAN ONE PER CENTUM SUGAR BY VOLUME WHICH IS MANUFACTURED WITH THE ADDITION OF FLAVORINGS OR OTHER INGREDIENTS INCLUDING, BUT NOT LIMITED TO, FRUIT, FRUIT JUICE OR FRUIT FLAVOR, OR HERBS, NUTS OR SPICES (INCLUDING, BUT NOT LIMITED TO, CHOCOLATE, LICORICE OR VANILLA), OR STIMULANTS (INCLUDING, BUT NOT LIMITED TO, CAFFEINE, GUARANA, GINSENG, TAURINE OR WORMWOOD OIL). THE AUTHORITY MAY, PURSUANT TO SUBDIVISION FIFTEEN OF SECTION SEVENTEEN OF THIS CHAPTER, FURTHER DEFINE THOSE ALCOHOLIC BEVERAGES THAT SHALL BE INCLUDED WITHIN SUCH TERM. A FLAVORED MALT BEVERAGE IS A BEER. NATURALLY FERMENTED OR TRADITIONALLY BREWED BEERS, SUCH AS ALES, BITTERS, BROWNS, LAGERS, PORTERS, STOUTS, SEASONAL BEERS, WHEAT BEERS OR OTHER SPECIALTY BEERS SHALL NOT BE DEEMED FLAVORED MALT BEVERAGES.

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

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S 3. Section 17 of the alcoholic beverage control law is amended by adding a new subdivision 15 to read as follows:

15. TO ESTABLISH RULES AND REGULATIONS FURTHER DEFINING THE TERM "FLAVORED MALT BEVERAGE" IN ACCORDANCE WITH SUBDIVISION TWELVE-B-1 OF SECTION THREE OF THIS CHAPTER. SUCH RULES AND REGULATIONS SHALL EXCLUDE FROM SUCH TERM THOSE TRADITIONALLY BREWED BEERS AND MALT LIQUORS WHICH HAVE SMALL AMOUNTS OF FRUIT, FRUIT JUICE, FRUIT FLAVOR OR OTHER NATURAL HERBS OR SPICES ADDED DURING THE FERMENTATION PROCESS. HOWEVER, THE AUTHORITY SHALL INCLUDE WITHIN SUCH TERM THOSE ALCOHOLIC BEVERAGES WHICH CONTAIN FLAVORS OR CONSIST OF COLORS OR SWEETNESS LEVELS THAT WOULD APPEAL TO PERSONS UNDER THE AGE OF TWENTY-ONE YEARS.

S 4. Subdivision 5 of section 50 of the alcoholic beverage control law, as amended by chapter 519 of the laws of 1937, is amended to read as follows:

5. Licenses to sell beer OTHER THAN FLAVORED MALT BEVERAGES at retail for consumption off the premises; and

S 5. Section 53 of the alcoholic beverage control law, as amended by chapter 361 of the laws of 1994, is amended to read as follows:

S 53. Wholesaler's license. 1. Any person may apply to the liquor authority for a license to sell beer at wholesale. Such application shall be in writing and verified and shall contain such information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the liquor authority shall grant the application it shall issue a license in such form as shall be determined by its rules. Such a license shall contain a description of the licensed premises and in form and in substance shall be a license to the person therein specifically designated to sell beer at wholesale in the premises therein specifically licensed to duly licensed wholesalers, retailers and permittees in this state, and to sell or deliver beer to persons outside the state pursuant to the laws of the place of such sale or delivery. A wholesaler's license issued or renewed prior to July first, nineteen hundred sixty, and thereafter renewed or transferred, shall authorize the holder thereof to sell beer at retail to a person for consumption in his home; provided, however, that regardless of the date issued, renewed or transferred, a wholesaler's license issued to a brewer or to the wholly-owned subsidiary of a brewer, shall authorize the holder thereof to sell beer at retail to a person for consumption in his OR HER home.

2. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION, ON AND AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION A WHOLESALER'S LICENSE SHALL NOT AUTHORIZE THE HOLDER TO SELL FLAVORED MALT BEVERAGES TO A PERSON AT RETAIL FOR CONSUMPTION IN HIS OR HER HOME. THE HOLDER OF A WHOLESALER'S LICENSE THAT IS IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBDIVISION MAY CONTINUE TO SELL FLAVORED MALT BEVERAGES AT RETAIL TO A PERSON FOR CONSUMPTION IN HIS OR HER HOME ONLY UNTIL THE EXPIRATION OF THE THEN CURRENT TERM OF SUCH LICENSE. THE RENEWAL OF SUCH A LICENSE SHALL NOT INCLUDE THE RIGHT TO SELL FLAVORED MALT BEVERAGES AT RETAIL TO A PERSON FOR CONSUMPTION IN HIS OR HER HOME.

S 6. Section 53-a of the alcoholic beverage control law, as amended by chapter 361 of the laws of 1994, is amended to read as follows:

S 53-a. Vendor's license. 1. In cities having a population of one million or more, any individual person may apply for a license to sell beer as a vendor. Such application shall be in writing, and verified, and shall contain such information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the liquor

authority shall grant the application it shall issue a license in such form as shall be determined by its rules. Such a license shall contain a description of the licensed premises and in form and in substance shall be a license to the person therein specifically designated to sell beer as a vendor in cities having a population of one million or more only, from the premises therein specifically licensed. A vendor's license shall authorize the holder thereof to sell beer at retail to be delivered by such vendor to a person for consumption in his OR HER home and shall authorize the holder thereof to operate one vehicle for the delivery of beer, but shall not authorize the sale to any person or licensee for resale.

2. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION, ON AND AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, A VENDOR'S LICENSE SHALL NOT AUTHORIZE THE HOLDER TO SELL FLAVORED MALT BEVERAGES TO BE DELIVERED BY SUCH VENDOR TO A PERSON FOR CONSUMPTION IN HIS OR HER HOME OR THE RIGHT TO OPERATE A VEHICLE FOR DELIVERY OF FLAVORED MALT BEVERAGES. THE HOLDER OF A VENDOR'S LICENSE THAT IS IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBDIVISION MAY CONTINUE TO SELL FLAVORED MALT BEVERAGES TO BE DELIVERED BY SUCH VENDOR TO A PERSON FOR CONSUMPTION IN HIS OR HER HOME AND TO OPERATE A VEHICLE FOR DELIVERY OF FLAVORED MALT BEVERAGES ONLY UNTIL THE EXPIRATION OF THE THEN CURRENT TERM OF SUCH LICENSE. THE RENEWAL OF SUCH A LICENSE SHALL NOT INCLUDE THE RIGHT TO SELL FLAVORED MALT BEVERAGES TO BE DELIVERED BY SUCH VENDOR TO A PERSON FOR CONSUMPTION IN HIS OR HER HOME OR THE RIGHT TO OPERATE A VEHICLE FOR DELIVERY OF FLAVORED MALT BEVERAGES.

S 7. The section heading of section 54 of the alcoholic beverage control law is amended to read as follows:

License to sell beer OTHER THAN FLAVORED MALT BEVERAGES at retail for consumption off the premises.

S 8. Section 54 of the alcoholic beverage control law is amended by adding a new subdivision 6 to read as follows:

6. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION, ON AND AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, A LICENSE DESCRIBED IN THIS SECTION SHALL NOT AUTHORIZE THE HOLDER TO SELL FLAVORED MALT BEVERAGES. THE HOLDER OF A LICENSE THAT IS IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBDIVISION MAY CONTINUE TO SELL FLAVORED MALT BEVERAGES UNTIL THE EXPIRATION OF THE THEN CURRENT TERM OF SUCH LICENSE. THE RENEWAL OF SUCH A LICENSE SHALL NOT INCLUDE THE RIGHT TO SELL FLAVORED MALT BEVERAGES.

S 9. Section 54-a of the alcoholic beverage control law is REPEALED.

S 10. Section 55-a of the alcoholic beverage control law is amended by adding a new subdivision 3 to read as follows:

3. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION, ON AND AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, A LICENSE DESCRIBED IN THIS SECTION SHALL NOT AUTHORIZE THE HOLDER TO SELL FLAVORED MALT BEVERAGES. THE HOLDER OF A LICENSE THAT IS IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBDIVISION MAY CONTINUE TO SELL FLAVORED MALT BEVERAGES UNTIL THE EXPIRATION OF THE THEN CURRENT TERM OF SUCH LICENSE. THE RENEWAL OF SUCH A LICENSE SHALL NOT INCLUDE THE RIGHT TO SELL FLAVORED MALT BEVERAGES.

S 11. Subdivision 3 of section 63 of the alcoholic beverage control law is amended to read as follows:

3. Such license shall in form and in substance be a license to the person specifically designated therein to sell liquor in the premises specifically licensed at retail for off-premise consumption and shall also include the privilege to sell wine, WINE PRODUCTS, AND FLAVORED MALT BEVERAGES under the same terms and conditions without the payment of any additional fee.

S 12. Section 79-a of the alcoholic beverage control law is REPEALED.

S 13. Subdivision 2-a of section 100 of the alcoholic beverage control law, as amended by chapter 249 of the laws of 2002, is amended to read as follows:

2-a. No retailer shall employ, or permit to be employed, or shall suffer to work, on any premises licensed for retail sale hereunder, any person under the age of eighteen years, as a hostess, waitress, waiter, or in any other capacity where the duties of such person require or permit such person to sell, dispense or handle alcoholic beverages; except that: (1) any person under the age of eighteen years and employed by any person holding a grocery or drug store beer license shall be permitted to handle and deliver [beer and wine products] for such licensee THE ALCOHOLIC BEVERAGES WHICH SUCH PERSON IS AUTHORIZED TO SELL PURSUANT TO SUCH LICENSE, (2) any person under the age of eighteen employed as a cashier by a person holding a grocery or drug store beer license shall be permitted to record and receive payment for [beer and wine product] sales OF SUCH ALCOHOLIC BEVERAGES when in the presence of and under the direct supervision of a person eighteen years of age or over, (2-a) any person under the age of eighteen years and employed by a person holding a grocery store or drug store beer license as either a cashier or in any other position to which handling of containers which may have held alcoholic beverages is necessary, shall be permitted to handle the containers if such have been presented for redemption in accordance with the provisions of title ten of article twenty-seven of the environmental conservation law, and (3) any person under the age of eighteen years employed as a dishwasher, busboy, or other such position as to which handling of containers which may have held alcoholic beverages is necessary shall be permitted to do so under the direct supervision of a person of legal age to purchase alcoholic beverages in the state.

S 14. Paragraph f of subdivision 1 of section 101-aaa of the alcoholic beverage control law, as added by section 183 of part A of chapter 389 of the laws of 1997, is amended to read as follows:

f. "Retail licensee" means a person licensed pursuant to this chapter who purchases beer and/or wine products for resale for on or off premises consumption[, except a person licensed to sell liquor and/or wine for off premises consumption].

S 15. Section 101-aaa of the alcoholic beverage control law is amended by adding a new subdivision 10 to read as follows:

10. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE THE SALE OF WINE PRODUCTS OR FLAVORED MALT BEVERAGES FOR CONSUMPTION OFF PREMISES EXCEPT BY A PERSON WHO HOLDS A LICENSE AUTHORIZING SUCH SALES.

S 16. All licenses to sell beer and wine products at retail for consumption off the premises and all permits to sell wine products by certain licensees for consumption off the premises issued prior to the effective date of this act pursuant to any provision repealed by this act and in force immediately prior to the taking effective of such repeal shall continue in force until they expire or are revoked as if the provisions under which they were issued had not been repealed.

S 17. Nothing in this act shall be deemed to impair the authority of the state liquor authority to commence or maintain an action under section 17 of the alcoholic beverage control law, nor to pursue or defend any appeals of such actions.

S 18. This act shall take effect on the one hundred twentieth day after it shall have become a law.