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

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2011-2012 Regular Sessions

I N S E N A T E

February 1, 2011

Introduced by Sens. KLEIN, VALESKY -- 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 requiring the segregation of certain alcoholic beverages with a stimulant sold for off-premises consumption and the labeling of containers containing certain alcoholic beverages

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

Section 1. Section 105 of the alcoholic beverage control law is amended by adding a new subdivision 13 to read as follows:

13. (A) EACH RETAIL LICENSE FOR OFF-PREMISES CONSUMPTION THAT SELLS ALCOHOLIC BEVERAGES THAT CONTAIN MORE THAN TWO PER CENTUM ALCOHOL BY VOLUME, IN COMBINATION WITH MORE THAN FIVE MILLIGRAMS PER OUNCE OF CAFFEINE OR ANY OTHER STIMULANT INCLUDING, BUT NOT LIMITED TO GUARANA, GINSENG OR TAURINE THAT HAS AN EQUIVALENT EFFECT AS SUCH QUANTITY OF CAFFEINE SHALL SELL SUCH ALCOHOLIC BEVERAGES IN AN AREA OF THE LICENSED PREMISES THAT IS SEGREGATED FROM THE AREA WHERE OTHER BEVERAGES, INCLUDING ALCOHOLIC BEVERAGES, ARE SOLD. NO SUCH ALCOHOLIC BEVERAGES CONTAINING A STIMULANT SHALL BE COMMINGLED WITH OTHER ALCOHOLIC BEVERAGES OR ENERGY DRINKS.

(B) AT THE FRONT OF THE SEGREGATED AREA OF THE LICENSED PREMISES WHERE ALCOHOLIC BEVERAGES CONTAINING A STIMULANT ARE SOLD, THE LICENSEE SHALL CONSPICUOUSLY POST A SIGN CONTAINING THE NOTICES AND WARNINGS PROVIDED FOR IN PARAGRAPHS (A), (B) AND (C) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SEVEN-A OF THIS ARTICLE. FURTHERMORE, SUCH SIGN SHALL STATE THAT THESE BEVERAGES CONTAIN ALCOHOL AND BY LAW CANNOT LEGALLY BE CONSUMED BY PERSONS UNDER THE AGE OF TWENTY-ONE YEARS, AND THAT THESE BEVERAGES SHOULD NOT BE CONFUSED WITH ENERGY DRINKS. THE STATE LIQUOR AUTHORITY SHALL BE AUTHORIZED TO PROMULGATE RULES AND REGULATIONS PROVIDING FOR THE FORM AND CONTENT OF SUCH NOTICES AND WARNINGS.

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

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S 2. Subdivision 2 of section 107-a of the alcoholic beverage control law, as added by chapter 479 of the laws of 1940, is amended to read as follows:

2. Such regulations shall be calculated to prohibit deception of the consumer; to afford him OR HER adequate information as to quality and identity; and to achieve national uniformity in this field in so far as possible. IN ADDITION, FOR THE APPROVAL OF LABELS FOR CONTAINERS OF ANY ALCOHOLIC BEVERAGE THAT CONTAINS MORE THAN TWO PER CENTUM ALCOHOL BY VOLUME, IN COMBINATION WITH MORE THAN FIVE MILLIGRAMS PER OUNCE OF CAFFEINE OR ANY OTHER STIMULANT INCLUDING, BUT NOT LIMITED TO GUARANA, GINSENG OR TAURINE THAT HAS AN EQUIVALENT EFFECT AS SUCH QUANTITY OF CAFFEINE, THE LABEL OR CONTAINER THEREOF MUST:

(A) HAVE A DISCLOSURE THAT IS EITHER PART OF THE LABEL OR AFFIXED TO THE CONTAINER THAT ADVISES PURCHASERS THAT THIS ALCOHOLIC BEVERAGE (I) CONTAINS A COMBINATION OF HIGH CONCENTRATIONS OF ALCOHOL (A DEPRESSANT) AND CAFFEINE (A STIMULANT) OR ANOTHER STIMULANT, AND THAT THE HEALTH EFFECTS OF SUCH COMBINATION ARE NOT COMPLETELY KNOWN; (II) OVER CONSUMPTION OF THIS ALCOHOLIC BEVERAGE MAY CAUSE FUTURE CARDIOVASCULAR OR NEUROLOGICAL PROBLEMS, HIGHER RISK OF ACCIDENTAL PHYSICAL INJURY TO THE CONSUMER OR OTHERS, OR ALCOHOL POISONING; (III) THE STIMULANT IN THIS ALCOHOLIC BEVERAGE MAY MASK THE LEVEL OF IMPAIRMENT AND DISORIENTATION THAT CAN OCCUR DUE TO THE AMOUNT OF ALCOHOL THAT IS ALSO CONTAINED IN THIS BEVERAGE; AND (IV) THE OPERATION OF MOTOR VEHICLES AND OTHER MACHINERY SHOULD BE AVOIDED AFTER CONSUMING THIS ALCOHOLIC BEVERAGE;

(B) BE DESIGNED SO THAT IT CANNOT BE CONFUSED WITH OTHER ENERGY DRINKS OR BEVERAGES THAT ARE NOT ALCOHOLIC BEVERAGES AND ARE LEGALLY AVAILABLE FOR SALE TO PERSONS UNDER THE AGE OF TWENTY-ONE YEARS. SUCH DESIGN MAY BE ACCOMPLISHED BY A LABEL DESIGN THAT PLACES A STRIPE OR OTHER INDICATOR TO SHOW THAT THIS BEVERAGE CONTAINS ALCOHOL OR BY AFFIXING THE DISCLOSURE REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION THAT ALSO CLEARLY INDICATES THAT THE BEVERAGE CONTAINS ALCOHOL AND THAT IT IS ILLEGAL TO BE CONSUMED BY ANY PERSON UNDER THE AGE OF TWENTY-ONE YEARS; AND

(C) BE DESIGNED SO AS NOT TO BE ATTRACTIVE TO OR ENCOURAGE THE CONSUMPTION OF SUCH ALCOHOLIC BEVERAGE BY PERSONS UNDER THE AGE OF TWENTY-ONE YEARS. SUCH DESIGN MAY BE ACCOMPLISHED BY A LABEL DESIGN THAT CLEARLY INDICATES THAT THIS IS AN ALCOHOLIC BEVERAGE THAT CANNOT BE LEGALLY CONSUMED BY PERSONS UNDER THE AGE OF TWENTY-ONE YEARS OR BY THE PROMINENT AFFIXING OF THE DISCLOSURE REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION.

S 3. Clause (ii) of subparagraph 2 of paragraph (c) of subdivision 4 of section 107-a of the alcoholic beverage control law, as amended by chapter 490 of the laws of 1993, is amended to read as follows:

(ii) the authority does not deny such application within thirty days after receipt; PROVIDED, HOWEVER, THAT WITH RESPECT TO ANY ALCOHOLIC BEVERAGE THAT CONTAIN A COMBINATION OF ALCOHOL AND CAFFEINE OR OTHER STIMULANT, AS DESCRIBED IN SUBDIVISION TWO OF THIS SECTION, THE AUTHORITY DOES NOT DENY SUCH APPLICATION WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIPT SO THAT THE AUTHORITY HAS A SUFFICIENT PERIOD OF TIME TO REVIEW SUCH LABEL AND ENSURE THAT THE REQUIREMENTS ESTABLISHED IN SUCH SUBDIVISION ARE COMPLIED WITH.

S 4. This act shall take effect on the two hundred seventieth day after it shall have become a law. Effective immediately, the state liquor authority is authorized to add, amend and/or repeal any rules and regulations necessary to implement the provisions of this act within one hundred twenty days after it shall have become a law.