

5873

2013-2014 Regular Sessions

I N   A S S E M B L Y

March 7, 2013

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Introduced by M. of A. ORTIZ, ROBINSON, AUBRY, GIBSON, STEVENSON --  
Multi-Sponsored by -- M. of A. ARROYO, THIELE -- read once and  
referred to the Committee on Economic Development

AN ACT to amend the alcoholic beverage control law, in relation to  
requiring the segregation of certain alcoholic beverages with a stimu-  
lant 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 105 of the alcoholic beverage control law is  
2     amended by adding a new subdivision 13 to read as follows:  
3     13. (A) EACH RETAIL LICENSE FOR OFF-PREMISES CONSUMPTION THAT SELLS  
4     ALCOHOLIC BEVERAGES THAT CONTAIN MORE THAN TWO PER CENTUM ALCOHOL BY  
5     VOLUME, IN COMBINATION WITH MORE THAN FIVE MILLIGRAMS PER OUNCE OF  
6     CAFFEINE OR ANY OTHER STIMULANT INCLUDING, BUT NOT LIMITED TO GUARANA,  
7     GINSENG OR TAURINE THAT HAS AN EQUIVALENT EFFECT AS SUCH QUANTITY OF  
8     CAFFEINE SHALL SELL SUCH ALCOHOLIC BEVERAGES IN AN AREA OF THE LICENSED  
9     PREMISES THAT IS SEGREGATED FROM THE AREA WHERE OTHER BEVERAGES, INCLUD-  
10    ING ALCOHOLIC BEVERAGES, ARE SOLD. NO SUCH ALCOHOLIC BEVERAGES CONTAIN-  
11    ING A STIMULANT SHALL BE COMMINGLED WITH OTHER ALCOHOLIC BEVERAGES OR  
12    ENERGY DRINKS.  
13    (B) AT THE FRONT OF THE SEGREGATED AREA OF THE LICENSED PREMISES WHERE  
14    ALCOHOLIC BEVERAGES CONTAINING A STIMULANT ARE SOLD, THE LICENSEE SHALL  
15    CONSPICUOUSLY POST A SIGN CONTAINING THE NOTICES AND WARNINGS PROVIDED  
16    FOR IN PARAGRAPHS (A), (B) AND (C) OF SUBDIVISION TWO OF SECTION ONE  
17    HUNDRED SEVEN-A OF THIS ARTICLE. FURTHERMORE, SUCH SIGN SHALL STATE  
18    THAT THESE BEVERAGES CONTAIN ALCOHOL AND BY LAW CANNOT LEGALLY BE  
19    CONSUMED BY PERSONS UNDER THE AGE OF TWENTY-ONE YEARS, AND THAT THESE  
20    BEVERAGES SHOULD NOT BE CONFUSED WITH ENERGY DRINKS. THE STATE LIQUOR  
21    AUTHORITY SHALL BE AUTHORIZED TO PROMULGATE RULES AND REGULATIONS  
22    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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1 S 2. Subdivision 2 of section 107-a of the alcoholic beverage control  
2 law, as added by chapter 479 of the laws of 1940, is amended to read as  
3 follows:

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

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

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

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

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

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

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