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

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2013-2014 Regular Sessions

I N A S S E M B L Y

June 17, 2013

Introduced by M. of A. SCHIMMINGER -- (at request of the Governor) -- read once and referred to the Committee on Economic Development

AN ACT to amend the alcoholic beverage control law, in relation to brand or trade name labeling of alcoholic beverages

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

Section 1. Section 107-a of the alcoholic beverage control law, as added by chapter 479 of the laws of 1940, subdivision 1 as amended by chapter 204 of the laws of 1963, subdivisions 3 and 4 as amended by chapter 490 of the laws of 1993, subparagraph 1 and clause (i) of subparagraph 2 of paragraph (c) of subdivision 4 as amended by chapter 213 of the laws of 2010, paragraph (d) of subdivision 4 as amended by chapter 361 of the laws of 1994 and paragraph (g) of subdivision 4 as amended by chapter 109 of the laws of 2012, is amended to read as follows:

S 107-a. Labeling containers of alcoholic beverages. 1. The liquor authority is hereby authorized to promulgate rules and regulations governing the labeling and offering of alcoholic beverages bottled, packaged, sold or possessed for sale within this state.

[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.

[3.] 2. The bottling, packaging, sale or possession by any licensee of any alcoholic beverage not labelled or offered in conformity with this section shall be ground for suspension, revocation or cancellation of the license.

[4. (a)] 3. No [liquor, wine or beer] ALCOHOLIC BEVERAGE shall be [labelled,] offered or advertised for sale IN THIS STATE unless [in accordance with this section and unless the]:

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

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(A) THERE IS A brand or trade name label affixed to or imprinted upon the container of such alcoholic beverage [shall have been];

(B) SUCH LABEL IS registered with and approved by the authority and CONTAINS THE INFORMATION REQUIRED IN THIS SECTION; AND

(C) the appropriate fee HAS BEEN paid as provided for in this section.

[(b)] 4. An application for registration of a brand or trade name label shall be filed by (1) the owner of the brand or trade name if such owner is licensed by the authority, or (2) a wholesaler selling such brand who is appointed as exclusive agent, in writing, by the owner of the brand or trade name for the purpose of filing such application, if the owner of the brand or trade name is not licensed by the authority, or (3) any wholesaler, with the approval of the authority, in the event that the owner of the brand or trade name does not file or is unable to file such application or designate an agent for such purposes, or (4) any wholesaler, with the approval of the authority, in the event that the owner of the brand or trade name is a retailer who does not file such application, provided that the retailer shall consent to such filing by such wholesaler. Such retailer may revoke his consent at any time, upon written notice to the authority and to such wholesaler.

Unless otherwise permitted or required by the authority, the application for registration of a liquor or wine brand or trade name label filed pursuant to this section shall be filed by the same licensee filing schedules pursuant to section one hundred one-b of this [chapter] ARTICLE.

Cordials and wines which differ only as to fluid content, age, or vintage year, as defined by such regulations, shall be considered the same brand; and those that differ as to type or class may be considered the same brand by the authority where consistent with the purposes of this section.

[(c)] (A) (1) The application for registration of a brand or trade name label shall be filed by certified mail return receipt requested, registered mail return receipt requested, or overnight delivery service with proof of mailing, on a form prescribed by the authority, and shall contain such information as the authority shall require. Such application shall be accompanied by the appropriate fee prescribed by paragraph [(d)] (B) of this subdivision.

(2) Provided, however, where a brand or trade name label has been approved by the [federal bureau of alcohol, tobacco and firearms] ALCOHOL AND TOBACCO TAX AND TRADE BUREAU OF THE UNITED STATES DEPARTMENT OF TREASURY, it shall be deemed registered and approved by the authority if:

(i) the applicant submits on a form prescribed by the authority, by certified mail return receipt requested, registered mail return receipt requested, or overnight delivery service with proof of mailing, a true copy of the brand or trade name label approval issued by the [federal bureau of alcohol, tobacco and firearms] ALCOHOL AND TOBACCO TAX AND TRADE BUREAU OF THE UNITED STATES DEPARTMENT OF TREASURY along with the appropriate fee as established in paragraph [(d)] (B) of this subdivision; and

(ii) the authority does not deny such application within thirty days after receipt.

(3) Provided, however, that where a brand or trade name label for wine has been approved by the [federal bureau of alcohol, tobacco and firearms] ALCOHOL AND TOBACCO TAX AND TRADE BUREAU OF THE UNITED STATES DEPARTMENT OF TREASURY, it shall be deemed registered and approved by

the authority and no application, application fee, or annual registration fee shall be submitted to the authority.

[(d)] (B) The annual fee for registration of any brand or trade name label for liquor shall be two hundred fifty dollars; the annual fee for registration of any brand or trade name label for beer OR CIDER shall be one hundred fifty dollars; the annual fee for registration of any brand or trade name label for wine OR WINE PRODUCTS shall be fifty dollars. Such fee shall be in the form of a check or draft. No annual fee for registration of any brand or trade name label for wine shall be required if it has been approved by the [federal bureau of alcohol, tobacco and firearms] ALCOHOL AND TOBACCO TAX AND TRADE BUREAU OF THE UNITED STATES DEPARTMENT OF TREASURY pursuant to this section.

Each brand or trade name label registration approved pursuant to this section shall be valid for a term [which shall run concurrently with the term of the license of the person registering such brand or trade name label] OF ONE YEAR AS SET FORTH BY THE AUTHORITY AND WHICH SHALL BE PRO-RATED FOR PARTIAL YEARS AS APPLICABLE.

Each brand or trade name label registration approved pursuant to this section shall be valid only for the licensee to whom issued and shall not be transferable.

[(e)] (C) If the authority shall deny the application for registration of a brand or trade name label pursuant to this section, it shall return the registration fee to the applicant, less twenty-five per centum of such fee and shall notify the applicant, in writing with the specific reasons for its denial.

[(f) When not inconsistent with the purposes of this subdivision and whenever necessary to avoid practical difficulties or unnecessary hardship to any licensee affected by this section, the authority may, until October first, nineteen hundred sixty-three, exempt any brand from the fee provisions of this subdivision upon satisfactory showing by the licensee that such brand is being discontinued.] (D) The authority may at any time exempt any discontinued brand from such fee provisions where a manufacturer or wholesaler has an inventory of one hundred cases or less of liquor or wine and five hundred cases or less of beer, and certifies to the authority in writing that such brand is being discontinued. The authority may also at any time exempt any discontinued brand from such fee provisions where a retailer discontinuing a brand owned by him has a balance of an order yet to be delivered of fifty cases or less of liquor or wine, or two hundred fifty cases or less of beer, WINE PRODUCTS OR CIDER.

[(g)] (E) The authority shall exempt from such fee provisions the registration of each brand OR TRADE NAME label used for beer OR CIDER that is produced in small size batches totaling fifteen hundred barrels [of beer] or less OF BEER OR CIDER annually.

(F) THE AUTHORITY SHALL EXEMPT FROM SUCH FEE PROVISIONS THE REGISTRATION OF EACH BRAND OR TRADE NAME LABEL USED FOR SPIRITS OR LIQUOR THAT IS PRODUCED IN SMALL SIZE BATCHES TOTALING ONE THOUSAND GALLONS OR LESS OF SPIRITS OR LIQUOR ANNUALLY.

5. (A) EACH BRAND OR TRADE NAME LABEL SHALL CONTAIN THE FOLLOWING INFORMATION:

(I) THE BRAND OR TRADE NAME;

(II) THE CLASS AND TYPE (IF APPLICABLE) OF ALCOHOLIC BEVERAGE IN ACCORDANCE WITH THE LABELING REGULATIONS PROMULGATED BY THE ALCOHOL AND TOBACCO TAX AND TRADE BUREAU OF THE UNITED STATES DEPARTMENT OF TREASURY; AND

(III) THE NET CONTENTS OF THE CONTAINER.

(B) THE BRAND OR TRADE NAME LABEL, OR A SEPARATE LABEL ON THE FRONT OR BACK OF THE CONTAINER SHALL CONTAIN INFORMATION CONSISTENT WITH THE LABELING REGULATIONS PROMULGATED BY THE ALCOHOL AND TOBACCO TAX AND TRADE BUREAU OF THE UNITED STATES DEPARTMENT OF TREASURY.

(C) NO BRAND OR TRADE NAME LABEL, OR ANY SEPARATE LABEL ON THE FRONT OR BACK OF THE CONTAINER SHALL CONTAIN:

(I) ANY STATEMENT THAT IS FALSE OR UNTRUE IN ANY PARTICULAR MANNER;

(II) ANY STATEMENT THAT IS DISPARAGING OF A COMPETITOR'S PRODUCT;

(III) ANY STATEMENT, DESIGN, DEVICE OR REPRESENTATION THAT IS LIKELY TO MISLEAD THE CONSUMER; OR

(IV) ANY STATEMENT OR CLAIM OF HEALTH BENEFITS TO BE DERIVED FROM CONSUMPTION BY THE CONSUMER.

(D) A SEPARATE LABEL REGISTRATION SHALL BE REQUIRED IN CONNECTION WITH THE REGISTRATION OF A BRAND OR TRADE NAME LABEL USED WHERE THERE IS A DIFFERENCE IN ANY OF THE FOLLOWING INFORMATION:

(I) THE BRAND OR TRADE NAME;

(II) THE CLASS AND TYPE (IF APPLICABLE) OF ALCOHOLIC BEVERAGE IN ACCORDANCE WITH FEDERAL LABEL REGULATIONS; OR

(III) A PRIVATE LABEL OWNED AND SOLD EXCLUSIVELY BY ONE RETAILER, WHERE THE ALCOHOLIC BEVERAGE IS MANUFACTURED, BOTTLED, OR IMPORTED BY A DIFFERENT MANUFACTURER, BOTTLER, OR IMPORTER, PROVIDED ALL OTHER INFORMATION APPEARING ON THE LABEL IS THE SAME.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.