

5832

2013-2014 Regular Sessions

I N   S E N A T E

June 17, 2013

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Introduced by Sens. MARCELLINO, GALLIVAN -- (at request of the Governor)  
-- read twice and ordered printed, and when printed to be committed to  
the Committee on Rules

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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 107-a of the alcoholic beverage control law, as  
2     added by chapter 479 of the laws of 1940, subdivision 1 as amended by  
3     chapter 204 of the laws of 1963, subdivisions 3 and 4 as amended by  
4     chapter 490 of the laws of 1993, subparagraph 1 and clause (i) of  
5     subparagraph 2 of paragraph (c) of subdivision 4 as amended by chapter  
6     213 of the laws of 2010, paragraph (d) of subdivision 4 as amended by  
7     chapter 361 of the laws of 1994 and paragraph (g) of subdivision 4 as  
8     amended by chapter 109 of the laws of 2012, is amended to read as  
9     follows:  
10    S 107-a. Labeling containers of alcoholic beverages. 1. The liquor  
11    authority is hereby authorized to promulgate rules and regulations  
12    governing the labeling and offering of alcoholic beverages bottled,  
13    packaged, sold or possessed for sale within this state.  
14    [2.] Such regulations shall be calculated to prohibit deception of the  
15    consumer; to afford him OR HER adequate information as to quality and  
16    identity; and to achieve national uniformity [in this field] in so far  
17    as possible.  
18    [3.] 2. The bottling, packaging, sale or possession by any licensee of  
19    any alcoholic beverage not labelled or offered in conformity with this  
20    section shall be ground for suspension, revocation or cancellation of  
21    the license.  
22    [4. (a)] 3. No [liquor, wine or beer] ALCOHOLIC BEVERAGE shall be  
23    [labelled,] offered or advertised for sale IN THIS STATE unless [in  
24    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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1 (A) THERE IS A brand or trade name label affixed to or imprinted upon  
2 the container of such alcoholic beverage [shall have been];

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

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

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

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

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

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

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

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

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

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

1 the authority and no application, application fee, or annual registra-  
2 tion fee shall be submitted to the authority.

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

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

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

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

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

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

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

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

51 (I) THE BRAND OR TRADE NAME;

52 (II) THE CLASS AND TYPE (IF APPLICABLE) OF ALCOHOLIC BEVERAGE IN  
53 ACCORDANCE WITH THE LABELING REGULATIONS PROMULGATED BY THE ALCOHOL AND  
54 TOBACCO TAX AND TRADE BUREAU OF THE UNITED STATES DEPARTMENT OF TREAS-  
55 URY; AND

56 (III) THE NET CONTENTS OF THE CONTAINER.

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

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

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

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

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

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

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

16 (I) THE BRAND OR TRADE NAME;

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

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

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