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

1164

2015-2016 Regular Sessions

I N A S S E M B L Y

January 8, 2015

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

AN ACT to amend the alcoholic beverage control law, in relation to the training of applicants, licensees and servers of alcoholic beverages; and to repeal certain provisions of such law relating thereto

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

Section 1. Subdivision 12 of section 17 of the alcoholic beverage control law, as amended by chapter 549 of the laws of 2001, is REPEALED.

S 2. Subdivision 10 of section 18 of the alcoholic beverage control law is REPEALED.

S 3. The alcoholic beverage control law is amended by adding a new section 18-a to read as follows:

S 18-A. ALCOHOL TRAINING AWARENESS PROGRAMS. 1. THE CHAIRMAN SHALL DEVELOP AND ESTABLISH MINIMUM CRITERIA FOR RETAIL LICENSEE ALCOHOL TRAINING AWARENESS PROGRAMS AND SERVER ALCOHOL AWARENESS.

(A) SUCH CRITERIA SHALL INCLUDE THE MINIMUM REQUIREMENTS FOR THE CURRICULUM OF LICENSE AND SERVER TRAINING PROGRAMS. THERE SHALL BE SEPARATE SERVER TRAINING PROGRAMS FOR EMPLOYEES OF ON-PREMISES AND OFF-PREMISES RETAIL LICENSEES.

(B) SUCH CRITERIA SHALL INCLUDE THE FORM OF A CERTIFICATE OF COMPLETION OR RENEWAL THEREOF TO BE ISSUED IN RESPECT TO EACH SUCH TYPE OF PROGRAM.

(C) RETAIL LICENSEE PROGRAMS SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, TRAINING ON THE PREVENTION OF SALES AND SERVICE OF ALCOHOLIC BEVERAGES TO PERSONS UNDER THE AGE OF TWENTY-ONE AND INTOXICATED PATRONS, AND OPERATING THE LICENSED PREMISES IN COMPLIANCE WITH THIS CHAPTER AND THE RULES OF THE AUTHORITY.

(D) SERVER PROGRAMS SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, TRAINING ON THE PREVENTION OF SALES AND SERVICE OF ALCOHOLIC BEVERAGES TO PERSONS UNDER THE AGE OF TWENTY-ONE AND INTOXICATED PATRONS.

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

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2. SUCH PROGRAMS MAY BE GIVEN AND ADMINISTERED BY THE AUTHORITY OR ANY PERSON, PARTNERSHIP, LIMITED LIABILITY COMPANY OR CORPORATION THAT HAS BEEN ISSUED A CERTIFICATE OF APPROVAL BY THE AUTHORITY.

3. THE AUTHORITY SHALL PROVIDE FOR THE TRAINING OF, AND ISSUANCE OF CERTIFICATES OF APPROVAL TO, ALL CERTIFIED TRAINING PROVIDERS.

(A) CERTIFICATES OF APPROVAL MAY BE REVOKED BY THE AUTHORITY FOR FAILURE TO ADHERE TO THE AUTHORITY'S RULES AND REGULATIONS. SUCH RULES AND REGULATIONS SHALL AFFORD THOSE WHO HAVE BEEN ISSUED A CERTIFICATE OF APPROVAL AN OPPORTUNITY FOR A HEARING PRIOR TO ANY DETERMINATION OF WHETHER SUCH CERTIFICATE SHOULD BE REVOKED.

(B) A FEE IN THE AMOUNT OF NINE HUNDRED DOLLARS SHALL BE PAID TO THE AUTHORITY WITH EACH APPLICATION FOR A CERTIFICATE OF APPROVAL OR A RENEWAL CERTIFICATE. THE AUTHORITY SHALL PROMPTLY REFUND SUCH FEE TO AN APPLICANT WHOSE APPLICATION WAS DENIED.

(C) EACH CERTIFICATE OF APPROVAL OR RENEWAL THEREOF SHALL BE ISSUED FOR A PERIOD OF THREE YEARS.

4. THE CERTIFIED TRAINING PROVIDER SHALL ISSUE CERTIFICATES OF COMPLETION TO ALL PARTICIPANTS WHO SUCCESSFULLY COMPLETE AN APPROVED PROGRAM.

(A) EACH CERTIFICATE OF COMPLETION SHALL BE VALID FOR A PERIOD OF THREE YEARS FROM THE DATE OF THE TRAINING PROGRAM.

(B) ATTENDANCE AT ANY TRAINING PROGRAM ESTABLISHED PURSUANT TO THIS SECTION SHALL BE IN PERSON, THROUGH LONG DISTANCE LEARNING METHODS, OR THROUGH AN INTERNET-BASED ONLINE PROGRAM.

(C) THE AUTHORITY OR THE CERTIFIED TRAINING PROVIDER MAY CHARGE A FEE NOT TO EXCEED ONE HUNDRED DOLLARS TO A PARTICIPANT FOR ANY LICENSEE PROGRAM; AND TWENTY-FIVE DOLLARS TO A PARTICIPANT FOR ANY SERVER PROGRAM.

(D) EACH CERTIFIED TRAINING PROVIDER SHALL TRANSMIT A QUARTERLY REPORT TO THE AUTHORITY WITH THE NAMES, ADDRESSES AND DATES OF ATTENDANCE OF ALL THE INDIVIDUALS WHO SUCCESSFULLY COMPLETED AN APPROVED PROGRAM. SUCH TRANSMITTAL SHALL BE IN A FORM AND MANNER PRESCRIBED BY THE AUTHORITY.

5. A CERTIFICATE OF COMPLETION ISSUED BY A CERTIFIED TRAINING PROVIDER ADMINISTERING A SERVER TRAINING AWARENESS PROGRAM PURSUANT TO THIS SECTION:

(A) TO EMPLOYEES OF LICENSEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR OFF-PREMISES CONSUMPTION SHALL NOT BE INVALIDATED BY A CHANGE OF EMPLOYMENT TO ANOTHER SUCH LICENSEE; AND

(B) TO EMPLOYEES OF LICENSES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR ON-PREMISES CONSUMPTION SHALL NOT BE INVALIDATED BY A CHANGE OF EMPLOYMENT TO ANOTHER SUCH LICENSEE.

6. TO EFFECTUATE THE PROVISIONS OF THIS SECTION, THE AUTHORITY IS EMPOWERED TO REQUIRE IN CONNECTION WITH AN APPLICATION THE SUBMISSION OF SUCH INFORMATION AS THE AUTHORITY MAY DIRECT; TO PRESCRIBE FORMS OF APPLICATIONS AND OF ALL REPORTS WHICH IT DEEMS NECESSARY TO BE MADE BY ANY APPLICANT OR CERTIFICATE HOLDER; TO CONDUCT INVESTIGATIONS; TO REQUIRE THE MAINTENANCE OF SUCH BOOKS AND RECORDS AS THE AUTHORITY MAY DIRECT; TO REVOKE, CANCEL, OR SUSPEND FOR CAUSE ANY CERTIFICATE PROVIDED FOR IN THIS SECTION; AND TO PROMULGATE SUCH RULES AS MAY BE NECESSARY TO CARRY OUT THE PURPOSE OF THIS SECTION.

S 4. Paragraph (b) of subdivision 6 of section 65 of the alcoholic beverage control law, as amended by chapter 435 of the laws of 2010, is amended to read as follows:

(b) it shall be an affirmative defense that at the time of such violation such person who committed such alleged violation held a valid certificate of completion [or renewal] from [an entity authorized to

give and administer an] A CERTIFIED TRAINING PROVIDER FOR A LICENSEE OR SERVER alcohol training awareness program [pursuant to subdivision twelve of] AS PROVIDED FOR IN section [seventeen] EIGHTEEN-A of this chapter. Such licensee shall have diligently implemented and complied with all of the provisions of the approved training program. In such proceeding to revoke, cancel or suspend a license pursuant to section one hundred eighteen of this chapter, the licensee must prove each element of such affirmative defense by a preponderance of the credible evidence. Evidence of three unlawful sales of alcoholic beverages by any employee of a licensee to persons under twenty-one years of age, within a two year period, shall be considered by the authority in determining whether the licensee had diligently implemented such an approved program.

S 5. Subdivision 7 of section 65 of the alcoholic beverage control law, as added by chapter 435 of the laws of 2010, is amended to read as follows:

7. In any proceeding pursuant to section one hundred eighteen of this chapter to revoke, cancel or suspend a license to sell alcoholic beverages, in which proceeding a charge is sustained that a person violated subdivision one or two of this section and the licensee has not had any adjudicated violation of this chapter at the licensed premises where the violation occurred within the previous five year period; and

(a) at the time of such violation the person that committed such violation held a valid certificate of completion [or renewal] from [an entity authorized to give and administer an] A CERTIFIED TRAINING PROVIDER FOR A LICENSEE OR SERVER alcohol training awareness program [pursuant to subdivision twelve of] AS PROVIDED FOR IN section [seventeen] EIGHTEEN-A of this chapter, the civil penalty related to such offense shall be recovery of, as provided for in section one hundred twelve of this chapter, the penal sum of the bond on file during the period in which the violation took place; or

(b) at the time of such violation the licensee has not had any adjudicated violations of this chapter at the licensed premises where the violation occurred within the previous five year period, any civil penalty imposed shall be reduced by twenty-five percent if the licensee submits written proof, within ninety days of the imposition of such civil penalty, that all of the licensee's employees involved in the direct sale or service of alcoholic beverages to the public at the licensed premises where the violation occurred have obtained a valid certificate of completion [or renewal] from [an entity authorized to give and administer an] A CERTIFIED TRAINING PROVIDER FOR A LICENSEE OR SERVER alcohol training awareness program [pursuant to subdivision twelve of] AS PROVIDED FOR IN section [seventeen] EIGHTEEN-A of this chapter.

For the purposes of this subdivision, the five year period shall be measured from the dates that the violations occurred.

S 6. The alcoholic beverage control law is amended by adding a new section 106-c to read as follows:

S 106-C. REQUIRED TRAINING FOR ON-PREMISES LICENSEES AND EMPLOYEES. 1. EVERY LICENSEE HOLDING A LICENSE UNDER SECTION FIFTY-FIVE, FIFTY-FIVE-A, EIGHTY-ONE, EIGHTY-ONE-A, SIXTY-FOUR, SIXTY-FOUR-A, SIXTY-FOUR-B, SIXTY-FOUR-C OR SIXTY-FOUR-D OF THIS CHAPTER SHALL HAVE A PERSON WHO HOLDS A VALID CERTIFICATE OF COMPLETION FROM AN APPROVED LICENSEE ALCOHOL AWARENESS TRAINING PROGRAM AS PROVIDED FOR IN SECTION EIGHTEEN-A OF THIS CHAPTER.

(A) IN THE CASE OF AN INDIVIDUAL HOLDING A LICENSE, SUCH PERSON SHALL BE THE LICENSEE;

(B) IN THE CASE OF A PARTNERSHIP HOLDING A LICENSE, SUCH PERSON SHALL BE ONE OF THE PARTNERS;

(C) IN THE CASE OF A CORPORATION HOLDING A LICENSE, SUCH PERSON SHALL BE ONE OF THE OFFICERS OR DIRECTORS; AND

(D) IN THE CASE OF A LIMITED LIABILITY COMPANY, SUCH PERSON SHALL BE ONE OF THE MEMBERS.

2. (A) NO LICENSEE HOLDING A LICENSE UNDER SECTION FIFTY-FIVE, FIFTY-FIVE-A, EIGHTY-ONE, EIGHTY-ONE-A, SIXTY-FOUR, SIXTY-FOUR-A, SIXTY-FOUR-B, SIXTY-FOUR-C OR SIXTY-FOUR-D OF THIS CHAPTER SHALL EMPLOY A PERSON TO PERFORM ANY OF THE FOLLOWING DUTIES UNLESS SUCH PERSON HOLDS A VALID CERTIFICATE OF COMPLETION FROM AN APPROVED SERVER ALCOHOL AWARENESS TRAINING PROGRAM AS PROVIDED FOR IN SECTION EIGHTEEN-A OF THIS CHAPTER:

(I) ANY PERSON WHO SELLS OR SERVES ALCOHOLIC BEVERAGES TO PATRONS OF THE LICENSED PREMISES;

(II) ANY PERSON WHO CHECKS IDENTIFICATION OF PATRONS IN OR ENTERING THE LICENSED PREMISES;

(III) ANY PERSON PROVIDING SECURITY IN OR ABOUT THE LICENSED PREMISES;

(IV) ANY PERSON WHO SUPERVISES PERSONS PERFORMING THE DUTIES SET FORTH IN SUBPARAGRAPH (I), (II) OR (III) OF THIS PARAGRAPH.

(B) FOR PURPOSES OF THIS SUBDIVISION, "EMPLOY" SHALL INCLUDE PERSONS EMPLOYED DIRECTLY BY THE LICENSEE AND ANY OTHER PERSON DIRECTLY OR INDIRECTLY HIRED OR RETAINED TO PERFORM SERVICES FOR THE LICENSEE.

(C) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO ANY PERSON WHO HAS BEEN DIRECTLY EMPLOYED BY THE LICENSEE FOR LESS THAN SIXTY DAYS.

S 7. Section 109 of the alcoholic beverage control law is amended by adding a new subdivision 3 to read as follows:

3. NO APPLICATION FOR THE RENEWAL OF A LICENSE UNDER SECTION FIFTY-FIVE, FIFTY-FIVE-A, EIGHTY-ONE, EIGHTY-ONE-A, SIXTY-FOUR, SIXTY-FOUR-A, SIXTY-FOUR-B, SIXTY-FOUR-C OR SIXTY-FOUR-D OF THIS CHAPTER SHALL BE APPROVED UNLESS THE LICENSEE SUBMITS PROOF OF COMPLIANCE WITH THE PROVISIONS OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIX-C OF THIS ARTICLE.

S 8. Section 110 of the alcoholic beverage control law is amended by adding a new subdivision 3-a to read as follows:

3-A. NO APPLICATION FOR A LICENSE UNDER SECTION FIFTY-FIVE, FIFTY-FIVE-A, EIGHTY-ONE, EIGHTY-ONE-A, SIXTY-FOUR, SIXTY-FOUR-A, SIXTY-FOUR-B, SIXTY-FOUR-C OR SIXTY-FOUR-D OF THIS CHAPTER SHALL BE APPROVED UNLESS THE LICENSEE SUBMITS PROOF OF COMPLIANCE WITH THE PROVISIONS OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIX-C OF THIS ARTICLE.

S 9. Subdivision 7 of section 110-b of the alcoholic beverage control law, as amended by chapter 560 of the laws of 2011, is amended to read as follows:

7. The liquor authority shall require such notification to be on a standardized form that can be obtained on the internet or from the liquor authority and such notification to include:

(a) the trade name or "doing business as" name, if any, of the establishment;

(b) the full name of the applicant;

(c) the street address of the establishment, including the floor location or room number, if applicable;

(d) the mailing address of the establishment, if different than the street address;

(e) the name, address and telephone number of the attorney or representative of the applicant, if any;
(f) a statement indicating whether the application is for:
(i) a new establishment;
(ii) a transfer of an existing licensed business;
(iii) a renewal of an existing license; or
(iv) an alteration of an existing licensed premises;
(g) if the establishment is a transfer or previously licensed premises, the name of the old establishment and such establishment's license serial number;
(h) in the case of a renewal or alteration application, the license serial number of the applicant; [and]
(i) the type of license[.]; AND
(J) A STATEMENT THAT THE APPLICANT IS IN COMPLIANCE WITH THE PROVISIONS OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIX-C OF THIS ARTICLE.
S 10. This act shall take effect on the one hundred eightieth day after it shall have become a law provided, however, that section one of this act shall take effect upon the expiration and reversion of section 17 of the alcoholic beverage control law as provided in section 4 of chapter 118 of the laws of 2012, as amended.