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

5920--A

2015-2016 Regular Sessions

I N A S S E M B L Y

March 9, 2015

Introduced by M. of A. STECK, QUART, PAULIN, FAHY, CYMBROWITZ, CUSICK, RAIA -- Multi-Sponsored by -- M. of A. COOK, McDONOUGH -- read once and referred to the Committee on Economic Development -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the alcoholic beverage control law, in relation to limiting the authority of the state liquor authority to penalize licensees based on perceived violations of the laws of other states, unless the conduct in question amounts to an independent violation of the alcoholic beverage control law or has resulted in a criminal conviction in another state

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

Section 1. Subdivision 3 of section 17 of the alcoholic beverage control law, as amended by section 2 of chapter 355 of the laws of 2013, is amended to read as follows:

3. To revoke, cancel or suspend for cause any license or permit issued under this chapter and/or to impose a civil penalty for cause against any holder of a license or permit issued pursuant to this chapter, PROVIDED, HOWEVER, THAT THE LIQUOR AUTHORITY SHALL NOT HAVE THE POWER TO REVOKE, CANCEL OR SUSPEND ANY LICENSE OR IMPOSE ANY CIVIL PENALTY AGAINST ANY HOLDER OF A LICENSE OR PERMIT BASED UPON CONDUCT OUTSIDE NEW YORK, OR VIOLATIONS OF ANOTHER STATE'S LAW, UNLESS, FOLLOWING DUE PROCESS OF LAW, INCLUDING, BUT NOT LIMITED TO A FULL OPPORTUNITY TO BE HEARD THE AUTHORIZED PUBLIC AGENCY OR OFFICIAL HAVING LAWFUL JURISDICTION DETERMINES THAT SUCH LICENSEE OR PERMITTEE HAS VIOLATED SUCH STATE'S LAWS OR REGULATIONS, SUCH DETERMINATION IS FINAL, AND EITHER:

(A) SUCH WRONGFUL CONDUCT INDEPENDENTLY VIOLATES A SPECIFIC PROVISION OF THIS CHAPTER; OR

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

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(B) SUCH WRONGFUL CONDUCT, HAD IT OCCURRED WITHIN THIS STATE, WOULD CONSTITUTE A VIOLATION OF THIS CHAPTER.

Any civil penalty so imposed shall not exceed the sum of ten thousand dollars as against the holder of any retail permit issued pursuant to sections ninety-five, ninety-seven, ninety-eight, ninety-nine-d, and paragraph f of subdivision one of section ninety-nine-b of this chapter, and as against the holder of any retail license issued pursuant to sections [fifty-two,] fifty-three-a, fifty-four, fifty-four-a, fifty-five, fifty-five-a, sixty-three, sixty-four, sixty-four-a, sixty-four-b, sixty-four-c, seventy-six-f, seventy-nine, eighty-one and eighty-one-a of this chapter, and the sum of thirty thousand dollars as against the holder of a license issued pursuant to sections fifty-three, seventy-six, seventy-six-a, and seventy-eight of this chapter, provided that the civil penalty against the holder of a wholesale license issued pursuant to section fifty-three of this chapter shall not exceed the sum of ten thousand dollars where that licensee violates provisions of this chapter during the course of the sale of beer at retail to a person for consumption at home, and the sum of one hundred thousand dollars as against the holder of any license issued pursuant to sections fifty-one, sixty-one and sixty-two of this chapter. Any civil penalty so imposed shall be in addition to and separate and apart from the terms and provisions of the bond required pursuant to section one hundred twelve of this chapter. Provided that no appeal is pending on the imposition of such civil penalty, in the event such civil penalty imposed by the division remains unpaid, in whole or in part, more than forty-five days after written demand for payment has been sent by first class mail to the address of the licensed premises, a notice of impending default judgment shall be sent by first class mail to the licensed premises and by first class mail to the last known home address of the person who signed the most recent license application. The notice of impending default judgment shall advise the licensee: (a) that a civil penalty was imposed on the licensee; (b) the date the penalty was imposed; (c) the amount of the civil penalty; (d) the amount of the civil penalty that remains unpaid as of the date of the notice; (e) the violations for which the civil penalty was imposed; and (f) that a judgment by default will be entered in the supreme court of the county in which the licensed premises are located, or other court of civil jurisdiction or any other place provided for the entry of civil judgments within the state of New York unless the division receives full payment of all civil penalties due within twenty days of the date of the notice of impending default judgment. If full payment shall not have been received by the division within thirty days of mailing of the notice of impending default judgment, the division shall proceed to enter with such court a statement of the default judgment containing the amount of the penalty or penalties remaining due and unpaid, along with proof of mailing of the notice of impending default judgment. The filing of such judgment shall have the full force and effect of a default judgment duly docketed with such court pursuant to the civil practice law and rules and shall in all respects be governed by that chapter and may be enforced in the same manner and with the same effect as that provided by law in respect to execution issued against property upon judgments of a court of record. A judgment entered pursuant to this subdivision shall remain in full force and effect for eight years notwithstanding any other provision of law.

S 2. Subdivision 3 of section 17 of the alcoholic beverage control law, as amended by section 3 of chapter 355 of the laws of 2013, is amended to read as follows:

3. To revoke, cancel or suspend for cause any license or permit issued under this chapter and/or to impose a civil penalty for cause against any holder of a license or permit issued pursuant to this chapter, PROVIDED, HOWEVER, THAT THE LIQUOR AUTHORITY SHALL NOT HAVE THE POWER TO REVOKE, CANCEL OR SUSPEND ANY LICENSE OR IMPOSE ANY CIVIL PENALTY AGAINST ANY HOLDER OF A LICENSE OR PERMIT BASED UPON CONDUCT OUTSIDE NEW YORK, OR VIOLATIONS OF ANOTHER STATE'S LAW, UNLESS, FOLLOWING DUE PROCESS OF LAW, INCLUDING, BUT NOT LIMITED TO A FULL OPPORTUNITY TO BE HEARD THE AUTHORIZED PUBLIC AGENCY OR OFFICIAL HAVING LAWFUL JURISDICTION DETERMINES THAT SUCH LICENSEE OR PERMITTEE HAS VIOLATED SUCH STATE'S LAWS OR REGULATIONS, SUCH DETERMINATION IS FINAL, AND EITHER:

(A) SUCH WRONGFUL CONDUCT INDEPENDENTLY VIOLATES A SPECIFIC PROVISION OF THIS CHAPTER; OR

(B) SUCH WRONGFUL CONDUCT, HAD IT OCCURRED WITHIN THIS STATE, WOULD CONSTITUTE A VIOLATION OF THIS CHAPTER.

Any civil penalty so imposed shall not exceed the sum of ten thousand dollars as against the holder of any retail permit issued pursuant to sections ninety-five, ninety-seven, ninety-eight, ninety-nine-d, and paragraph f of subdivision one of section ninety-nine-b of this chapter, and as against the holder of any retail license issued pursuant to sections [fifty-two,] fifty-three-a, fifty-four, fifty-four-a, fifty-five, fifty-five-a, sixty-three, sixty-four, sixty-four-a, sixty-four-b, sixty-four-c, seventy-six-f, seventy-nine, eighty-one, and eighty-one-a of this chapter, and the sum of thirty thousand dollars as against the holder of a license issued pursuant to sections fifty-three, seventy-six, seventy-six-a and seventy-eight of this chapter, provided that the civil penalty against the holder of a wholesale license issued pursuant to section fifty-three of this chapter shall not exceed the sum of ten thousand dollars where that licensee violates provisions of this chapter during the course of the sale of beer at retail to a person for consumption at home, and the sum of one hundred thousand dollars as against the holder of any license issued pursuant to sections fifty-one, sixty-one and sixty-two of this chapter. Any civil penalty so imposed shall be in addition to and separate and apart from the terms and provisions of the bond required pursuant to section one hundred twelve of this chapter. Provided that no appeal is pending on the imposition of such civil penalty, in the event such civil penalty imposed by the division remains unpaid, in whole or in part, more than forty-five days after written demand for payment has been sent by first class mail to the address of the licensed premises, a notice of impending default judgment shall be sent by first class mail to the licensed premises and by first class mail to the last known home address of the person who signed the most recent license application. The notice of impending default judgment shall advise the licensee: (a) that a civil penalty was imposed on the licensee; (b) the date the penalty was imposed; (c) the amount of the civil penalty; (d) the amount of the civil penalty that remains unpaid as of the date of the notice; (e) the violations for which the civil penalty was imposed; and (f) that a judgment by default will be entered in the supreme court of the county in which the licensed premises are located, or other court of civil jurisdiction, or any other place provided for the entry of civil judgments within the state of New York unless the division receives full payment of all civil penalties due within twenty days of the date of the notice of impending default judgment. If full payment shall not have been received by the division within thirty days of mailing of the notice of impending default judgment, the division shall proceed to enter with such court a statement of the

default judgment containing the amount of the penalty or penalties remaining due and unpaid, along with proof of mailing of the notice of impending default judgment. The filing of such judgment shall have the full force and effect of a default judgment duly docketed with such court pursuant to the civil practice law and rules and shall in all respects be governed by that chapter and may be enforced in the same manner and with the same effect as that provided by law in respect to execution issued against property upon judgments of a court of record. A judgment entered pursuant to this subdivision shall remain in full force and effect for eight years notwithstanding any other provision of law.

S 3. This act shall take effect on the sixtieth day after it shall have become a law; provided that the amendments to subdivision 3 of section 17 of the alcoholic beverage control law, made by section one of this act, shall not affect the expiration and reversion of such subdivision and shall expire and be deemed repealed therewith, when upon such date section two of this act shall take effect.