

4446--A

Cal. No. 932

2015-2016 Regular Sessions

I N S E N A T E

March 20, 2015

Introduced by Sens. BOYLE, AMEDORE, CROCI, MARCHIONE, RANZENHOFER, ROBACH, SERRANO, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

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:

1 Section 1. Subdivision 3 of section 17 of the alcoholic beverage  
2 control law, as amended by section 2 of chapter 355 of the laws of 2013,  
3 is amended to read as follows:  
4 3. To revoke, cancel or suspend for cause any license or permit issued  
5 under this chapter and/or to impose a civil penalty for cause against  
6 any holder of a license or permit issued pursuant to this chapter,  
7 PROVIDED, HOWEVER, THAT THE LIQUOR AUTHORITY SHALL NOT HAVE THE POWER TO  
8 REVOKE, CANCEL OR SUSPEND ANY LICENSE OR IMPOSE ANY CIVIL PENALTY  
9 AGAINST ANY HOLDER OF A LICENSE OR PERMIT BASED UPON CONDUCT OUTSIDE NEW  
10 YORK, OR VIOLATIONS OF ANOTHER STATE'S LAW, UNLESS, FOLLOWING DUE PROC-  
11 ESS OF LAW, INCLUDING, BUT NOT LIMITED TO A FULL OPPORTUNITY TO BE HEARD  
12 THE AUTHORIZED PUBLIC AGENCY OR OFFICIAL HAVING LAWFUL JURISDICTION  
13 DETERMINES THAT SUCH LICENSEE OR PERMITTEE HAS VIOLATED SUCH STATE'S  
14 LAWS OR REGULATIONS, SUCH DETERMINATION IS FINAL, AND EITHER:  
15 (A) SUCH WRONGFUL CONDUCT INDEPENDENTLY VIOLATES A SPECIFIC PROVISION  
16 OF THIS CHAPTER; OR

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

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

3 Any civil penalty so imposed shall not exceed the sum of ten thousand  
4 dollars as against the holder of any retail permit issued pursuant to  
5 sections ninety-five, ninety-seven, ninety-eight, ninety-nine-d, and  
6 paragraph f of subdivision one of section ninety-nine-b of this chapter,  
7 and as against the holder of any retail license issued pursuant to  
8 sections [fifty-two,] fifty-three-a, fifty-four, fifty-four-a, fifty-  
9 five, fifty-five-a, sixty-three, sixty-four, sixty-four-a, sixty-four-b,  
10 sixty-four-c, seventy-six-f, seventy-nine, eighty-one and eighty-one-a  
11 of this chapter, and the sum of thirty thousand dollars as against the  
12 holder of a license issued pursuant to sections fifty-three, seventy-  
13 six, seventy-six-a, and seventy-eight of this chapter, provided that the  
14 civil penalty against the holder of a wholesale license issued pursuant  
15 to section fifty-three of this chapter shall not exceed the sum of ten  
16 thousand dollars where that licensee violates provisions of this chapter  
17 during the course of the sale of beer at retail to a person for consump-  
18 tion at home, and the sum of one hundred thousand dollars as against the  
19 holder of any license issued pursuant to sections fifty-one, sixty-one  
20 and sixty-two of this chapter. Any civil penalty so imposed shall be in  
21 addition to and separate and apart from the terms and provisions of the  
22 bond required pursuant to section one hundred twelve of this chapter.  
23 Provided that no appeal is pending on the imposition of such civil  
24 penalty, in the event such civil penalty imposed by the division remains  
25 unpaid, in whole or in part, more than forty-five days after written  
26 demand for payment has been sent by first class mail to the address of  
27 the licensed premises, a notice of impending default judgment shall be  
28 sent by first class mail to the licensed premises and by first class  
29 mail to the last known home address of the person who signed the most  
30 recent license application. The notice of impending default judgment  
31 shall advise the licensee: (a) that a civil penalty was imposed on the  
32 licensee; (b) the date the penalty was imposed; (c) the amount of the  
33 civil penalty; (d) the amount of the civil penalty that remains unpaid  
34 as of the date of the notice; (e) the violations for which the civil  
35 penalty was imposed; and (f) that a judgment by default will be entered  
36 in the supreme court of the county in which the licensed premises are  
37 located, or other court of civil jurisdiction or any other place  
38 provided for the entry of civil judgments within the state of New York  
39 unless the division receives full payment of all civil penalties due  
40 within twenty days of the date of the notice of impending default judg-  
41 ment. If full payment shall not have been received by the division with-  
42 in thirty days of mailing of the notice of impending default judgment,  
43 the division shall proceed to enter with such court a statement of the  
44 default judgment containing the amount of the penalty or penalties  
45 remaining due and unpaid, along with proof of mailing of the notice of  
46 impending default judgment. The filing of such judgment shall have the  
47 full force and effect of a default judgment duly docketed with such  
48 court pursuant to the civil practice law and rules and shall in all  
49 respects be governed by that chapter and may be enforced in the same  
50 manner and with the same effect as that provided by law in respect to  
51 execution issued against property upon judgments of a court of record. A  
52 judgment entered pursuant to this subdivision shall remain in full force  
53 and effect for eight years notwithstanding any other provision of law.

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

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

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

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

16 Any civil penalty so imposed shall not exceed the sum of ten thousand  
17 dollars as against the holder of any retail permit issued pursuant to  
18 sections ninety-five, ninety-seven, ninety-eight, ninety-nine-d, and  
19 paragraph f of subdivision one of section ninety-nine-b of this chapter,  
20 and as against the holder of any retail license issued pursuant to  
21 sections [fifty-two,] fifty-three-a, fifty-four, fifty-four-a, fifty-  
22 five, fifty-five-a, sixty-three, sixty-four, sixty-four-a, sixty-four-b,  
23 sixty-four-c, seventy-six-f, seventy-nine, eighty-one, and eighty-one-a  
24 of this chapter, and the sum of thirty thousand dollars as against the  
25 holder of a license issued pursuant to sections fifty-three, seventy-  
26 six, seventy-six-a and seventy-eight of this chapter, provided that the  
27 civil penalty against the holder of a wholesale license issued pursuant  
28 to section fifty-three of this chapter shall not exceed the sum of ten  
29 thousand dollars where that licensee violates provisions of this chapter  
30 during the course of the sale of beer at retail to a person for consump-  
31 tion at home, and the sum of one hundred thousand dollars as against the  
32 holder of any license issued pursuant to sections fifty-one, sixty-one  
33 and sixty-two of this chapter. Any civil penalty so imposed shall be in  
34 addition to and separate and apart from the terms and provisions of the  
35 bond required pursuant to section one hundred twelve of this chapter.  
36 Provided that no appeal is pending on the imposition of such civil  
37 penalty, in the event such civil penalty imposed by the division remains  
38 unpaid, in whole or in part, more than forty-five days after written  
39 demand for payment has been sent by first class mail to the address of  
40 the licensed premises, a notice of impending default judgment shall be  
41 sent by first class mail to the licensed premises and by first class  
42 mail to the last known home address of the person who signed the most  
43 recent license application. The notice of impending default judgment  
44 shall advise the licensee: (a) that a civil penalty was imposed on the  
45 licensee; (b) the date the penalty was imposed; (c) the amount of the  
46 civil penalty; (d) the amount of the civil penalty that remains unpaid  
47 as of the date of the notice; (e) the violations for which the civil  
48 penalty was imposed; and (f) that a judgment by default will be entered  
49 in the supreme court of the county in which the licensed premises are  
50 located, or other court of civil jurisdiction, or any other place  
51 provided for the entry of civil judgments within the state of New York  
52 unless the division receives full payment of all civil penalties due  
53 within twenty days of the date of the notice of impending default judg-  
54 ment. If full payment shall not have been received by the division with-  
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1 default judgment containing the amount of the penalty or penalties  
2 remaining due and unpaid, along with proof of mailing of the notice of  
3 impending default judgment. The filing of such judgment shall have the  
4 full force and effect of a default judgment duly docketed with such  
5 court pursuant to the civil practice law and rules and shall in all  
6 respects be governed by that chapter and may be enforced in the same  
7 manner and with the same effect as that provided by law in respect to  
8 execution issued against property upon judgments of a court of record. A  
9 judgment entered pursuant to this subdivision shall remain in full force  
10 and effect for eight years notwithstanding any other provision of law.

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