

4446

2015-2016 Regular Sessions

I N S E N A T E

March 20, 2015

Introduced by Sen. BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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 WHICH THE
10 AUTHORITY DETERMINES TO BE IN VIOLATION OF THE LAWS OF ANOTHER STATE,
11 UNLESS SUCH CONDUCT INDEPENDENTLY VIOLATES A SPECIFIC PROVISION OF THIS
12 CHAPTER, OR UNLESS DUE PROCESS OF LAW HAS BEEN PROVIDED BY AUTHORITIES
13 OF COMPETENT JURISDICTION IN SUCH OTHER STATE AND THE LICENSEE OR
14 PERMITTEE IS FOUND GUILTY BY SUCH AUTHORITIES OF VIOLATING SUCH STATE'S
15 LAWS. Any civil penalty so imposed shall not exceed the sum of ten
16 thousand dollars as against the holder of any retail permit issued
17 pursuant to sections ninety-five, ninety-seven, ninety-eight, ninety-
18 nine-d, and paragraph f of subdivision one of section ninety-nine-b of
19 this chapter, and as against the holder of any retail license issued
20 pursuant to sections [fifty-two,] fifty-three-a, fifty-four,

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

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

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

50 3. To revoke, cancel or suspend for cause any license or permit issued
51 under this chapter and/or to impose a civil penalty for cause against
52 any holder of a license or permit issued pursuant to this chapter,
53 PROVIDED, HOWEVER, THAT THE LIQUOR AUTHORITY SHALL NOT HAVE THE POWER TO
54 REVOKE, CANCEL, OR SUSPEND ANY LICENSE OR IMPOSE ANY CIVIL PENALTY
55 AGAINST ANY HOLDER OF A LICENSE OR PERMIT BASED UPON CONDUCT WHICH THE
56 AUTHORITY DETERMINES TO BE IN VIOLATION OF THE LAWS OF ANOTHER STATE,

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

1 S 3. Section 118 of the alcoholic beverage control law is amended by
2 adding a new subdivision 5 to read as follows:

3 5. AS USED IN THIS CHAPTER, THE TERM "FOR CAUSE" SHALL NOT INCLUDE
4 CONDUCT WHICH THE AUTHORITY DETERMINES TO BE IN VIOLATION OF THE LAWS OF
5 ANOTHER STATE, UNLESS:

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

8 (B) DUE PROCESS OF LAW HAS BEEN PROVIDED TO THE LICENSEE OR PERMITTEE
9 BY AUTHORITIES OF COMPETENT JURISDICTION IN SUCH OTHER STATE AND THE
10 LICENSEE OR PERMITTEE IS FOUND GUILTY BY SUCH AUTHORITIES OF VIOLATING
11 SUCH STATE'S LAWS.

12 S 4. This act shall take effect on the sixtieth day after it shall
13 have become a law; provided that the amendments to subdivision 3 of
14 section 17 of the alcoholic beverage control law, made by section one of
15 this act, shall not affect the expiration and reversion of such subdivi-
16 sion and shall expire and be deemed repealed therewith, when upon such
17 date section two of this act shall take effect.