STATE OF NEW YORK

10264

IN ASSEMBLY

May 13, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Gonzalez-Rojas) -- read once and referred to the Committee on Economic Development

AN ACT to amend the alcoholic beverage control law, in relation to providing for alternative penalties for violations of certain provisions of the alcoholic beverage control law

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 118 of the alcoholic beverage control law is amended by adding a new subdivision 7 to read as follows:

7. (a) Notwithstanding any other provision of this chapter or subdivision six of this section, in lieu of commencement of a disciplinary proceeding against a licensee or permittee, the authority shall provide a cure period of ninety days and an opportunity for ameliorative action if a licensee or permittee violates one of the following provisions of law: (i) subdivision two of section sixty-five-d of this chapter; (ii) subdivision two of section one hundred five-b of this article; (iii) subdivision six of section one hundred fourteen of this article; (iv) subdivision twelve of section one hundred six of this article; (v) subdivision three or subdivision nine of section one hundred six of this article; (vi) 9 NYCRR 48.3; (vii) 9 NYCRR 53.1(p); or (viii) any law, rule or regulation which prohibits the pre-batching of alcoholic beverages or sangria.

(b) Upon such violation, the authority shall (i) provide the licensee a written warning and a copy of the applicable law or rule and any other helpful guidance or information explaining such law or rule, to the extent such materials exist, in English and any other languages of the licensee as known to the authority, and (ii) to the extent practicable, provide such licensee assistance with compliance with the law or the authority's rules. All written communications to a licensee shall be through mail and electronic communications, including but not limited to email.

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

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§ 2. Subdivision 3 of section 17 of the alcoholic beverage control law, as amended by section 8 of chapter 522 of the laws of 2018, 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. Any civil penalty so imposed shall not exceed the sum of [~~ten~~] five 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-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 thirty, thirty-one, fifty-three, sixty-one-a, sixty-one-b, 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~~] five 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.

§ 3. Subdivision 3 of section 17 of the alcoholic beverage control law, as amended by section 9 of chapter 522 of the laws of 2018, 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. Any civil penalty so imposed shall not exceed the sum of [~~ten~~] five 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-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 thirty, thirty-one, fifty-three, sixty-one-a, sixty-one-b, 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~~] five 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.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law, provided that the amendments to section 17 of the alcoholic beverage control law made by section two of this act shall be subject to the expiration and reversion of such section pursuant to section 4 of chapter 118 of the laws of 2012, as amended, when upon such date the provisions of section three of this act shall take effect.