STATE OF NEW YORK

8693

IN ASSEMBLY

January 10, 2022

Introduced by M. of A. BRONSON -- 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 a first-time violation 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. Subdivision 3 of section 118 of the alcoholic beverage control law is amended by adding a new paragraph (c) to read as follows:

(c) As used in this section, the term "for cause" shall also include a licensee's or permittee's failure to cure a violation of law or rule in the time period prescribed by the authority pursuant to subdivision six of this section.

§ 2. Section 118 of the alcoholic beverage control law is amended by adding a new subdivision 6 to read as follows:

6. (a) Notwithstanding any other provision of this chapter, in lieu of commencement of a disciplinary proceeding against a licensee or permittee, for a first-time violation of either a provision of this chapter or a rule of the authority that is deemed by the authority under its discretion to be de minimis under the circumstances, and is related to (i) an administrative process, or (ii) paperwork requested or received by the authority, or (iii) acts or omissions of the licensee or permittee, the authority shall provide a cure period or other opportunity for ameliorative action if the violation can be corrected.

(b) Upon such first-time violation, the authority shall (i) provide the licensee with 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, or (ii) to the extent practicable, provide such licensee assistance with compliance with the law or the authority's rules.

(c) The authority shall have the discretion to determine the appropriate period of time to allow such licensee to cure or take such other ameliorative action to address such violation, which shall be reasonable but shall not be less than fifteen business days and not more than twen-

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

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ty business days, unless a longer period is allowed pursuant to law or regulation.

(d) No waiver of penalties or cure period or other opportunity for ameliorative action may be given if the authority determines that such violation may result in serious actual harm, or may present an endangerment to public safety, human health or the environment, is a violation of human or civil rights law, results in loss of employee wages or benefits, interferes with any remedy, review, or resolution related to harassment or discrimination claims, was or is a willful violation, involves tax fraud, violates requirements related to federal funding to the state, relates to state funding or procurement, is similar to prior violations, is a penal law violation, relates to a material or substantive portion of the licensee's business, or is in contravention of the public interest and/or policy reflected by the authority's mission.

§ 3. Subdivision 3 of section 130 of the alcoholic beverage control law, as amended by a chapter of the laws of 2021 amending the alcoholic beverage control law relating to providing for alternative penalties for a first time violation of certain provisions of the alcoholic beverage control law, as proposed in legislative bills numbers S. 5979 and A. 5972, is amended to read as follows:

3. [~~(a)~~] Any violation by any person of any provision of this chapter for which no punishment or penalty is otherwise provided shall be a misdemeanor, provided, however, that the provisions of this [~~paragraph~~] subdivision shall not apply to the prohibitions provided for in subdivision six-a of section one hundred six of this article.

[~~(b) In lieu of such misdemeanor penalty as provided for in paragraph (a) of this subdivision, for a first time violation of either this chapter, an authority rule, or regulation, any of which are related to administrative or paperwork violations submitted to or requested by the authority or to actions or omissions that are reasonably determined by the authority to be de minimus under the circumstances, the authority shall provide for a cure period or other opportunity for ameliorative action if the violation can be corrected, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement of such violation. Provided, however, that the provisions of this paragraph shall not apply to the prohibitions provided for in section sixty-five or subdivision six-a of section one hundred six of this chapter. Further, no waiver of penalties or cure period or other opportunity for ameliorative action may be given if the authority determines that such violation may result in serious actual harm, or may present an endangerment to public safety, human health or the environment, is a violation of human or civil rights law, results in loss of employee wages or benefits, interferes with any remedy, review, or resolution related to harassment or discrimination claims, was or is a willful violation, involves tax fraud, violates requirements related to federal funding to the state, relates to state funding or procurement, is similar to prior violations, is a penal law violation, relates to a material or substantive portion of the licensee's business, or is in contravention of the public interest and/or policy reflected by the authority's mission. Upon such first violation, the authority shall (i) provide the licensee with a copy of the applicable rule or regulation guides pursuant to section one hundred two-a of the state administrative procedure act and any other helpful guidance or information detailing the authority's rules and regulations, to the extent such materials exist, or (ii) to the extent practicable, provide such licensee assistance with compliance with the authority's rules and regulations. The~~

~~authority shall have the discretion to determine the appropriate period of time to allow such licensee to cure or take such other ameliorative action to address such violation, which shall be reasonable but shall not be less than fifteen business days and not more than twenty business days unless a longer period is allowed pursuant to law or regulation.~~]

§ 4. Notwithstanding the provisions of article 5 of the general construction law, the provisions of subdivision 5 of section 130 of the alcoholic beverage control law are hereby revived and shall continue in full force and effect as such provisions existed on the day before the date of a chapter of the laws of 2021 amending the alcoholic beverage control law relating to providing for alternative penalties for a first time violation of certain provisions of the alcoholic beverage control law, as proposed in legislative bills numbers S. 5979 and A. 5972, takes effect.

§ 5. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the alcoholic beverage control law relating to providing for alternative penalties for a first time violation of certain provisions of the alcoholic beverage control law, as proposed in legislative bills numbers S. 5979 and A. 5972, takes effect.