STATE OF NEW YORK

5619

2023-2024 Regular Sessions

IN SENATE

March 9, 2023

Introduced by Sen. HARCKHAM -- 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 restricting advertisements for alcoholic beverages

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

Section 1. Section 17 of the alcoholic beverage control law is amended by adding a new subdivision 10 to read as follows:

10. To promulgate rules that require any holder of a license or permit issued pursuant to this chapter to implement responsible drinking programs that include comprehensive employee trainings on responding to circumstances in which individuals present signs of alcohol abuse or suffering from the disease of alcoholism and requirements for such licensee or permit holder to assess, prevent, and address alcohol abuse by users under the age of thirty. The authority shall establish a hotline or other method of communication that will allow any person to confidentially report information about prohibited conduct to the authority. The authority shall promulgate rules governing the investigation and resolution of a charge of any person purported to have engaged in prohibited conduct.

§ 2. Section 17 of the alcoholic beverage control law is amended by adding a new subdivision 15 to read as follows:

15. To promulgate rules that require any holder of a license or permit issued pursuant to this chapter to implement responsible drinking programs that include comprehensive employee trainings on responding to circumstances in which individuals present signs of alcohol abuse or suffering from the disease of alcoholism and requirements for such licensee or permit holder to assess, prevent, and address alcohol abuse by users under the age of thirty. The authority shall establish a hotline or other method of communication that will allow any person to

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

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confidentially report information about prohibited conduct to the authority. The authority shall promulgate rules governing the investigation and resolution of a charge of any person purported to have engaged in prohibited conduct.

§ 3. The alcoholic beverage control law is amended by adding a new section 107-b to read as follows:

§ 107-b. Advertising restrictions. 1. As used in this section, the term "advertisement" shall mean any notice or communication to the public or any information concerning alcoholic beverages of a licensee or permit applicant through broadcasting, publication or any other means of dissemination, including electronic dissemination. Promotional activities are considered advertisements for purposes of this section.

2. No person shall directly or indirectly promote, offer or advertise any alcoholic beverage to persons located in New York state unless licensed pursuant to this chapter.

3. Advertising shall be based upon fact, and shall not be false, deceptive or misleading, and no advertising by or on behalf of a licensee shall:

(a) Use any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact;

(b) Fail to clearly and conspicuously specify and state any material conditions or limiting factors;

(c) Depict any person under the age of twenty-one consuming an alcoholic beverage and related activities; or

(d) Fail to designate and state the name and location of the licensed facility conducting the advertisement. The location of the licensed facility need not be included on billboards within thirty miles of such facility.

4. Each advertisement shall, clearly and conspicuously, state an alcoholism hotline number required pursuant to subdivision seven of this section.

5. Each licensee or permit applicant shall provide to the authority at its main office a complete and accurate copy of all advertisements within five business days of the advertisement's public dissemination. Licensees or permit applicants shall discontinue the public dissemination upon receipt of notice from the authority to discontinue an advertisement.

6. A licensee or permit applicant shall maintain a complete record of all advertisements for a period of at least two years. Records shall be made available to the authority upon request.

7. (a) Advertisements for alcoholic beverages shall contain an alcoholism assistance message comparable to one of the following: (i) If you or someone you know suffer from alcoholism, help is available. Call (877-8-HOPENY) or text HOPENY (46769); (ii) Suffering from Alcoholism? Call (877-8-HOPENY) or text HOPENY (46769); or (iii) any other message approved in writing by the authority.

(b) Unless otherwise approved in writing by the authority, the alcoholism assistance message shall meet the following requirements: (i) for signs, direct mail marketing materials, posters and other print advertisements, the height of the font used for the alcoholism assistance message must be the greater of: (1) the same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; and (2) two percent of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement; (ii) for billboards, the height of the font used for the alcoholism assistance message must be at least five percent

of the height or width, whichever is greater, of the face of the billboard; (iii) for video and television, the alcoholism assistance message must be visible for either: (1) the entire time the video or television advertisement is displayed, in which case the height of the font used for the problem alcoholism assistance message must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; or (2) from the first time an alcoholic beverage, alcohol or the licensed facility name is displayed or orally referenced, and on a dedicated screenshot visible for at least the last three seconds of the video or television advertisement. If the licensee elects to use this option, the height of the font used for the alcoholism assistance message displayed: (A) during the advertisement must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; and (B) on the dedicated screen shot must be at least eight percent of the height or width, whichever is greater, of the image that will be displayed; (iv) for websites, including social media sites and mobile phone applications: (1) the problem alcoholism assistance message must be posted on each webpage or profile page and on any alcoholic beverage related advertisement posted on the webpage or profile page; (2) the height of the font used for the problem alcoholism assistance message must be at least the same size as the majority of the text used in the webpage or profile page; and (3) for advertisements posted on the webpage or profile page, the height of the font used for the alcoholism assistance message must comply with subparagraph two of this paragraph.

§ 4. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided, however that the amendments made to section 17 of the alcoholic beverage control law made by section one 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 two of this act shall take effect.