

RESOLUTION NO. 2015085

RE: REQUESTING THE STATE LIQUOR AUTHORITY TO CHANGE THE HOURS OF RESTRICTIONS ON HOLIDAY SALES OF ALCOHOLIC BEVERAGES BY WINE AND LIQUOR STORES WITHIN DUTCHESS COUNTY

Legislators MICCIO, FLESLAND, WEISS, KELSEY, MACAVERY, AMPARO, JOHNSON, PULVER, and FARLEY offer the following and move its adoption:

WHEREAS, the New York State Liquor Authority limits the hours for retail sale of wine and liquor in Dutchess County from 9 a.m. to 10 a.m. on New Year's, Memorial, Independence, Labor and Thanksgiving days; and

WHEREAS, it is desirable for consumers and retailers to permit the sale of wine and liquor for off-premises consumption on Memorial, Independence and Labor day holidays from noon to 5 p.m.; and

WHEREAS, Section 17 of the New York State Alcohol Beverage Control Law empowers the New York State Liquor Authority, upon the request of a County legislative body, to change the business hours for sale of wine and liquor for off-premises consumption within the confines of State limitations, after notice and a hearing; now, therefore, let it be

RESOLVED, that pursuant to Section 17 of the New York State Alcohol Beverage Control Law the Dutchess County Legislature hereby requests that the New York State Liquor Authority change Dutchess County's restriction on sales of alcoholic beverages for off-premises consumption on Memorial, Independence and Labor days to permit their sale from noon to 5 p.m.; and be further

RESOLVED, that the Clerk of the Legislature is directed to forward certified copies of this resolution to the New York State Liquor Authority so that notice be given and a hearing on this request be held within the County.

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 11th day of May 2015, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 11th day of May 2015.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

McKinney's Consolidated Laws of New York Annotated
Alcoholic Beverage Control Law (Refs & Annos)
Chapter 3-B. Of the Consolidated Laws
Article 2. Liquor Authority (Refs & Annos)

McKinney's Alcoholic Beverage Control Law § 17

§ 17. Powers of the authority

Effective: July 18, 2015

Currentness

<[Eff. July 18, 2015, pursuant to L.2012, c. 118, § 4. See, also, § 17, ante.]>

The authority shall have the following functions, powers and duties:

1. To issue or refuse to issue any license or permit provided for in this chapter.
2. To limit in its discretion the number of licenses of each class to be issued within the state or any political subdivision thereof, and in connection therewith to prohibit the acceptance of applications for such class or classes of licenses which have been so limited.
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 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-two, 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 fifty-three, 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 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. To remove any employee of the authority for cause, after giving such employee a copy of the charges against him in writing, and an opportunity to be heard thereon. Any action taken under this subdivision shall be subject to and in accordance with the civil service law.

5. To fix by rule the standards of manufacture and fermentation in order to insure the use of proper ingredients and methods in the manufacture of alcoholic beverages to be sold or consumed in the state.

6. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, to examine any person under oath and in connection therewith to require the production of any books or papers relative to the inquiry. A subpoena issued under this section shall be regulated by the civil practice law and rules.

7. To prohibit, at any time of public emergency, without previous notice or advertisement, the sale of any or all alcoholic beverages for and during the period of such emergency.

8. To make an annual report to the governor and the legislature of its activities for the preceding year.

8-a. On and after January first, two thousand the report provided for in subdivision eight of this section shall include an evaluation of the effectiveness of the prohibition on the sale of alcohol to persons under the age of twenty-one as provided in section sixty-five-b of this chapter with particular emphasis on the provisions of subdivisions one, two, three, four and five of section sixty-five-b, subdivision five of section one hundred nineteen and subdivision six of section sixty-five of this chapter, paragraph (b) of subdivision seven of section 170.55 of the criminal procedure law and subdivision (f) of section 19.07 of the mental hygiene law.

8-b. On and after January first, two thousand eleven, the report provided for in subdivision eight of this section shall include information related to the number of licenses applied for and the length of time required for the approval or denial of such retail license applied for pursuant to subdivision two-c of section sixty-one, section sixty-four, section seventy-six, section seventy-six-a, section seventy-six-c, section seventy-six-d, and section seventy-six-f of this chapter.

8-c. *Expired and deemed repealed May 15, 2008, pursuant to L.2003, c. 62, pt. W3, § 8.*

9. The powers provided in this section may be delegated by the authority to the chairman, or to such other officers or employees as may be designated by the chairman.

10. To appoint such advisory groups and committees as it deems necessary to provide assistance to the authority to carry out the purposes and objectives of this chapter.

11. Upon receipt of a resolution adopted by a board of supervisors or a county legislative body requesting further restriction of hours of sale of alcoholic beverages within such county, and upon notice and hearing within such county, to approve or disapprove such hours within such county.

12. To develop and establish minimum criteria for alcohol training awareness programs which may be given and administered by schools; other entities including trade associations whose members are engaged in or involved in the retail sale of alcoholic beverages; national and regional franchisors who have granted at least five franchises in the state which are licensed to sell beer at retail for off-premises consumption; licensees authorized to sell alcoholic beverages at retail for off-premises consumption operating five or more licensed premises; and persons interested, whether as an individual proprietor or partner or officer or member of a limited liability company, in five or more licensees authorized to sell alcoholic beverages at retail for off-premises consumption. The authority shall provide for the issuance of certificates of approval to all certified alcohol training awareness programs. Certificates of approval may be revoked by the authority for failure to adhere to the authority's rules and regulations. Such rules and regulations shall afford those who have been issued a certificate of approval an opportunity for a hearing prior to any determination of whether such certificate should be revoked.

No licensee shall be required to apply for any such certificate or renewal certificate and the licensee may voluntarily surrender such a certificate or renewal certificate at any time. A fee in the amount of nine hundred dollars shall be paid to the authority with each application for a certificate of approval or renewal certificate. The authority shall promptly refund such fee to an applicant whose application was denied. Each certificate of approval and renewal thereof shall be issued for a period of three years. To effectuate the provisions of this subdivision, the authority is empowered to require in connection with an application the submission of such information as the authority may direct; to prescribe forms of applications and of all reports which it deems necessary to be made by any applicant or certificate holder; to conduct investigations; to require the maintenance of such books and records as the authority may direct; to revoke, cancel, or suspend for cause any certificate provided for in this subdivision. Each entity authorized to give and administer an alcohol training awareness program shall issue certificates of completion to all licensees and employees who successfully complete such an approved alcohol training awareness program. Such entity shall regularly transmit to the authority the names, addresses and dates of attendance of all the licensees and employees of licensees who successfully complete an approved alcohol training awareness program. Such transmittal shall be in a form and manner prescribed by the authority. The authority shall adopt rules and regulations to effectuate the provisions of this subdivision, including the minimum requirements for the curriculum of each such training program and the regular ongoing training of employees holding certificates of completion or renewal certificates. Such rules and regulations shall include the minimum requirements for a separate curriculum for licensees and their employees authorized to sell alcoholic beverages at retail for off-premises consumption, minimum requirements for a separate curriculum for licensees and their employees authorized to sell alcoholic beverages at retail for on-premises consumption, and the form of a certificate of completion or renewal thereof to be issued in respect to each such type of program. A certificate of completion or renewal thereof issued by an entity authorized to give and administer an alcohol training awareness program pursuant to this subdivision to licensees and their employees authorized to sell alcoholic beverages at retail for off-premises consumption shall not be invalidated by a change of employment to another such licensee. A certificate of completion or renewal thereof issued by an entity authorized to give and administer an alcohol training awareness program pursuant to this subdivision to licensees and their employees authorized to sell alcoholic beverages at retail for on-premises consumption shall not be invalidated by a change of employment to another such licensee. Attendance at any course established pursuant to this section shall be in person, through distance learning methods, or through an internet based online program.

13. To study and report to the governor and the legislature bi-ennially¹ on or before February first of each year concerning:

(a) recommendations to reduce the number and type of licenses, and to establish a uniform, statewide schedule of fees, such recommendations to include the development of a master application form for all licenses, with specific exhibits required for

specific licenses, as appropriate, as well as recommendations on a non-refundable application fee set at a level which will cover the cost of the review and which would be applied against the first year license fee if the application is granted;

(b) recommendations to simplify license renewal procedures;

(c) recommendations to streamline the processing of applications and to eliminate duplication of reviews, such recommendations to include uniform standards for application review and decision which shall seek to assure that the review is as objective as possible and to narrow the discretion of the authority or of any reviewer employed by the authority;

(d) the extent to which quality of life issues, such as noise level, vehicular traffic and parking are considered in licensing decisions, particularly as such issues pertain to proceedings pursuant to subdivision seven of section sixty-four of this chapter;

(e) recommendations to improve enforcement methodologies in order to protect the health and safety of residents of communities experiencing persistent problems in the operation of retail establishments;

(f) recommendations concerning the addition of field enforcement personnel and the ratios of such field enforcement personnel to the total numbers of licensees that in the view of the authority would be appropriate to insure compliance with the law. Such study shall provide a detailed analysis of the costs and projected revenues to be obtained from the addition of such field enforcement personnel;

(g) such other observations and recommendations concerning the activities of the authority as will improve its effectiveness and efficiency including the utilization of on-line services to provide information on a fee-for-service basis; and

(h) provide information concerning the name, total quantity and total price of wine purchased from New York state and out-of-state wineries and farm wineries, and such other information on and recommendations concerning interstate wine shipment.

14. For state fiscal year two thousand nine--two thousand ten, the authority shall, within amounts appropriated therefore,² improve and update their information technology in order to meet federal security requirements and to assist in the processing of license and/or permit applications and renewals.

Credits

(L.1934, c. 478. Amended L.1938, c. 315; L.1938, c. 329, § 1; L.1945, c. 687; L.1949, c. 488; L.1950, c. 689, § 4; L.1962, c. 310, § 39; L.1968, c. 948, §§ 2, 3; L.1989, c. 658, § 1; L.1995, c. 83, § 149; L.1998, c. 383, § 3, eff. April 1, 1999; L.1998, c. 383, § 4, eff. Sept. 1, 1999; L.1999, c. 403, § 2, eff. July 27, 1999; L.1999, c. 411, pt. F, § 2, eff. July 27, 1999; L.1999, c. 481, § 2, eff. Sept. 1, 1999; L.2000, c. 114, § 1, eff. July 11, 2000; L.2001, c. 549, § 1, eff. Jan. 1, 2002; L.2003, c. 62, pt. L, eff. May 15, 2003, deemed eff. April 1, 2003; L.2003, c. 62, pt. W3, § 7, eff. May 15, 2003; L.2003, c. 522, § 4, eff. March 15, 2004; L.2005, c. 210, § 9, eff. Aug. 11, 2005; L.2009, c. 56, pt. WW, § 1, eff. April 7, 2009; L.2010, c. 396, § 1, eff. Oct. 12, 2010; L.2010, c. 435, § 4, eff. Sept. 29, 2010; L.2012, c. 118, § 2, eff. July 18, 2012; L.2013, c. 355, § 3.)

Notes of Decisions (136)