

2515

2009-2010 Regular Sessions

I N A S S E M B L Y

January 16, 2009

Introduced by M. of A. ORTIZ, FIELDS, ARROYO, P. RIVERA, ESPAILLAT --
Multi-Sponsored by -- M. of A. COLTON, GREENE, MAYERSOHN -- read once
and referred to the Committee on Economic Development, Job Creation,
Commerce and Industry

AN ACT to amend the alcoholic beverage control law, in relation to criminal history information for persons employed as bouncers at all retail establishments for on-premises consumption

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 3 of the alcoholic beverage control law is amended
2 by adding two new subdivisions 6-a and 9-a to read as follows:
3 6-A. "BOUNCER" SHALL MEAN A PERSON EMPLOYED BY AN ON-PREMISES RETAIL
4 LICENSEE WHERE THE BASIS FOR SUCH PERSON'S EMPLOYMENT IS TO GENERALLY
5 KEEP THE PEACE WITHIN SUCH LICENSEE'S ON-PREMISES RETAIL ESTABLISHMENT.
6 9-A. "CRIMINAL HISTORY INFORMATION" SHALL MEAN A RECORD OF ALL
7 CONVICTIONS OF CRIMES MAINTAINED ON AN INDIVIDUAL BY THE DIVISION OF
8 CRIMINAL JUSTICE SERVICES PURSUANT TO PARAGRAPH (C) OF SUBDIVISION FOUR
9 OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW.
10 S 2. Section 106 of the alcoholic beverage control law is amended by
11 adding a new subdivision 18 to read as follows:
12 18.(A) ALL RETAIL LICENSEES FOR ON-PREMISES CONSUMPTION THAT EMPLOY
13 ONE OR MORE BOUNCERS, AS DEFINED IN SUBDIVISION SIX-A OF SECTION THREE
14 OF THIS CHAPTER, SHALL REQUIRE AN APPLICANT FOR EMPLOYMENT AS A BOUNCER
15 TO SUBMIT A SET OF FINGERPRINTS TO SUCH LICENSEE IN ORDER TO OBTAIN
16 CRIMINAL HISTORY INFORMATION. SUCH CRIMINAL HISTORY INFORMATION SHALL BE
17 OBTAINED ACCORDING TO THE PROVISIONS OF THIS SUBDIVISION.
18 (B) TO THE EXTENT PERMITTED BY LAW, THE LICENSEE OF AN ON-PREMISES
19 CONSUMPTION RETAIL ESTABLISHMENT SHALL REQUEST FROM A PERSON APPLYING
20 FOR EMPLOYMENT AS A BOUNCER A STATEMENT OF HIS OR HER PRIOR CRIMINAL
21 CONVICTIONS IN THIS STATE OR ANY OTHER JURISDICTION. PRIOR TO REQUESTING

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

LBD03403-01-9

1 INFORMATION ON PRIOR CRIMINAL CONVICTION FROM A PROSPECTIVE BOUNCER,
2 SUCH LICENSEE SHALL:

3 (1) INFORM THE PROSPECTIVE BOUNCER IN WRITING THAT SUCH LICENSEE IS
4 REQUIRED TO REQUEST HIS OR HER CRIMINAL HISTORY INFORMATION FROM THE
5 DIVISION OF CRIMINAL JUSTICE SERVICES AND REVIEW SUCH INFORMATION PURSU-
6 ANT TO THIS SUBDIVISION;

7 (2) INFORM THE PROSPECTIVE BOUNCER THAT BEFORE SUCH LICENSEE REQUESTS
8 SUCH CRIMINAL HISTORY INFORMATION, THE PROSPECTIVE BOUNCER HAS THE RIGHT
9 TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY
10 INFORMATION PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE
11 DIVISION OF CRIMINAL JUSTICE SERVICES;

12 (3) OBTAIN THE SIGNED INFORMED CONSENT OF THE PROSPECTIVE BOUNCER ON A
13 FORM SUPPLIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES WHICH INDI-
14 CATES THAT SUCH PROSPECTIVE BOUNCER HAS:

15 (I) BEEN INFORMED OF THE RIGHT AND PROCEDURES NECESSARY TO OBTAIN,
16 REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION;

17 (II) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMI-
18 NAL HISTORY INFORMATION; AND

19 (III) CONSENTED TO SUCH REQUEST.

20 (C) UPON RECEIVING SUCH WRITTEN CONSENT, SUCH LICENSEE SHALL OBTAIN
21 THE FINGERPRINTS OF SUCH PROSPECTIVE BOUNCER IN SUCH FORM AND MANNER AS
22 SHALL BE SPECIFIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

23 (D) SUCH LICENSEE MAY DESIGNATE ONE PERSON IN HIS OR HER EMPLOY WHO
24 SHALL BE AUTHORIZED TO REQUEST, RECEIVE AND REVIEW SUCH CRIMINAL HISTORY
25 INFORMATION, AND ONLY SUCH LICENSEE, HIS OR HER DESIGNEE AND THE
26 PROSPECTIVE BOUNCER TO WHICH THE CRIMINAL HISTORY INFORMATION RELATES
27 SHALL HAVE ACCESS TO SUCH INFORMATION.

28 (E) SUCH LICENSEE, OR HIS OR HER DESIGNEE, SHALL PROMPTLY SUBMIT THE
29 FINGERPRINTS TO THE DIVISION OF CRIMINAL JUSTICE SERVICES IN A MANNER
30 PRESCRIBED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES AND SHALL
31 REQUEST AND IS AUTHORIZED TO RECEIVE FROM THE DIVISION OF CRIMINAL
32 JUSTICE SERVICES CRIMINAL HISTORY INFORMATION CONCERNING SUCH PROSPEC-
33 TIVE BOUNCER.

34 (F) NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY,
35 NO PERSON APPLYING FOR EMPLOYMENT AS A BOUNCER SHALL BE CHARGED A FEE
36 FOR THE CRIMINAL HISTORY BACKGROUND CHECK REQUIRED BY THIS SUBDIVISION.

37 (G) SUCH LICENSEE, OR HIS OR HER DESIGNEE, SHALL CONSIDER SUCH CRIMI-
38 NAL HISTORY INFORMATION IN ACCORDANCE WITH ARTICLE TWENTY-THREE-A OF THE
39 CORRECTION LAW.

40 (H) SUCH LICENSEE, OR HIS OR HER DESIGNEE, SHALL UPON RECEIPT IMME-
41 DIATELY MARK SUCH CRIMINAL HISTORY INFORMATION "CONFIDENTIAL", AND SHALL
42 AT ALL TIMES MAINTAIN SUCH CRIMINAL HISTORY INFORMATION IN A SECURE
43 PLACE. CRIMINAL HISTORY INFORMATION RECEIVED PURSUANT TO THIS SUBDIVI-
44 SION SHALL NOT BE PUBLISHED OR IN ANY WAY DISCLOSED OR REDISCLOSED TO
45 PERSONS OTHER THAN SUCH LICENSEE, OR HIS OR HER DESIGNEE, AND THE
46 PROSPECTIVE BOUNCER. ANY PERSON WHO WILLFULLY RELEASES OR PERMITS THE
47 RELEASE OF ANY CONFIDENTIAL CRIMINAL HISTORY INFORMATION RECEIVED PURSU-
48 ANT TO THIS SUBDIVISION TO PERSONS NOT PERMITTED BY THIS SUBDIVISION TO
49 RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A MISDEMEANOR. ANY UNAUTHOR-
50 IZED DISCLOSURE OF FINGERPRINTS OR CRIMINAL HISTORY INFORMATION OBTAINED
51 PURSUANT TO THIS SUBDIVISION SHALL ALSO ENTITLE THE SUBJECT OF SUCH
52 FINGERPRINTS OR CRIMINAL HISTORY INFORMATION TO RECOVER A CIVIL AWARD OF
53 DAMAGES RESULTING FROM SUCH UNAUTHORIZED DISCLOSURE, TOGETHER WITH COSTS
54 AND REASONABLE ATTORNEY'S FEES.

55 (I) CRIMINAL HISTORY INFORMATION PROVIDED BY THE DIVISION OF CRIMINAL
56 JUSTICE SERVICES PURSUANT TO THIS SUBDIVISION SHALL BE FURNISHED ONLY BY

1 MAIL OR OTHER METHOD OF SECURE AND CONFIDENTIAL DELIVERY, ADDRESSED TO
2 THE AUTHORIZED RECIPIENT. SUCH INFORMATION AND THE ENVELOPE IN WHICH IT
3 IS ENCLOSED, IF ANY, SHALL BE PROMINENTLY MARKED "CONFIDENTIAL", AND
4 SHALL AT ALL TIMES BE MAINTAINED BY THE RECIPIENT IN A SECURE PLACE.

5 (J) FINGERPRINTS AND CRIMINAL JUSTICE INFORMATION CONCERNING A
6 PROSPECTIVE BOUNCER SHALL BE RETURNED TO SUCH PROSPECTIVE BOUNCER WITHIN
7 NINETY DAYS OF RECEIPT UPON A DENIAL OF EMPLOYMENT OR SHALL BE RETURNED
8 WHEN SUCH PROSPECTIVE BOUNCER LEAVES SUCH EMPLOYMENT.

9 (K) THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES
10 SHALL PROMULGATE ALL RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE
11 PROVISIONS OF THIS SUBDIVISION, WHICH SHALL INCLUDE CONVENIENT PROCE-
12 DURES FOR PROSPECTIVE BOUNCERS TO PROMPTLY VERIFY THE ACCURACY OF THEIR
13 CRIMINAL HISTORY INFORMATION AND, TO THE EXTENT AUTHORIZED BY LAW, TO
14 HAVE ACCESS TO RELEVANT DOCUMENTS RELATED THERETO.

15 S 3. Section 17 of the alcoholic beverage control law is amended by
16 adding two new subdivisions 14 and 15 to read as follows:

17 14. THE STATE LIQUOR AUTHORITY SHALL PREPARE AND DISSEMINATE INFORMA-
18 TION TO ADVISE LICENSEES OF ON-PREMISES CONSUMPTION RETAIL ESTABLISH-
19 MENTS OF THE REQUIREMENT TO OBTAIN THE CRIMINAL HISTORY INFORMATION OF A
20 PROSPECTIVE BOUNCER PURSUANT TO SUBDIVISION EIGHTEEN OF SECTION ONE
21 HUNDRED SIX OF THIS CHAPTER. SUCH INFORMATION SHALL ALSO INCLUDE, BUT
22 NOT BE LIMITED TO, THE FOLLOWING:

23 (A) THE STEPS NECESSARY TO PERFORM THE CRIMINAL HISTORY INFORMATION
24 CHECK, INCLUDING INFORMATION ON FORM AVAILABILITY, AND FINGERPRINTING;

25 (B) APPLICABLE CONFIDENTIALITY REQUIREMENTS;

26 (C) THE REQUIREMENTS OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW
27 RELATED TO THE PERMISSIVE USE OF CRIMINAL HISTORY INFORMATION IN HIRING
28 DECISIONS; AND

29 (D) OTHER INFORMATION THAT IS AVAILABLE TO PROSPECTIVE EMPLOYERS UPON
30 THE CONSENT OF A PROSPECTIVE BOUNCER INCLUDING BUT NOT LIMITED TO
31 DEPARTMENT OF MOTOR VEHICLES RECORDS, EDUCATIONAL RECORDS AND CREDIT
32 RECORDS, INCLUDING, WHERE RELEVANT AND AVAILABLE, PHONE NUMBERS,
33 ADDRESSES AND A DESCRIPTION OF THE CONTENT AND POTENTIAL USES OF SUCH
34 RECORDS.

35 15. THE STATE LIQUOR AUTHORITY SHALL REQUIRE ALL PROSPECTIVE BOUNCERS
36 TO TAKE A TRAINING COURSE PRIOR TO ANY EMPLOYMENT AS A BOUNCER. SUCH
37 TRAINING COURSE SHALL INCLUDE IDENTIFICATION PROCEDURES, CIVIL LIABIL-
38 ITIES AND POTENTIAL CRIMINAL LIABILITIES FACED BY THE EMPLOYING ESTAB-
39 LISHMENT AND THE BOUNCER FOR ABUSIVE, NEGLIGENT, AND CRIMINAL BEHAVIOR,
40 LAW ENFORCEMENT CONTACTS, AND ANY OTHER TOPIC THE STATE LIQUOR AUTHORITY
41 MAY DEEM NECESSARY.

42 S 4. This act shall take effect on the one hundred twentieth day after
43 it shall have become a law.