

7800

2009-2010 Regular Sessions

I N A S S E M B L Y

April 24, 2009

Introduced by M. of A. SCHIMMINGER -- 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 temporary transfer retail permits

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

1 Section 1. Section 97-a of the alcoholic beverage control law, as
2 added by chapter 366 of the laws of 1991, paragraph (d) of subdivision 1
3 and subdivision 2 as amended by section 20 of part Z of chapter 85 of
4 the laws of 2002, is amended to read as follows:

5 S 97-a. Temporary TRANSFER retail permit. 1. The liquor authority is
6 hereby authorized to issue a temporary TRANSFER retail permit to the
7 transferee of a retail license to continue the operation of a retail
8 premises during the period a transfer application for the license from
9 person to person at the same premises is pending and when all the
10 following conditions exist:

11 (a) The premises shall have been operated under a retail license with-
12 in thirty days of the date of filing the application for a temporary
13 permit;

14 (b) The retail license for said premises shall have been surrendered
15 into safekeeping pursuant to rules of the authority;

16 (c) The applicant for the temporary TRANSFER permit shall have filed
17 with the authority an application for transfer of the retail license at
18 such premises; [and]

19 (d) THE HOLDER OF THE RETAIL LICENSE SHALL HAVE EITHER (I) PAID ANY
20 OUTSTANDING DEBT FOR THE PURCHASE AND DELIVERY OF ALCOHOLIC BEVERAGES TO
21 WHOLESALERS SIMULTANEOUSLY WITH THE SURRENDER OF OR THE PLACEMENT OF THE
22 LICENSE IN SAFEKEEPING WITH THE AUTHORITY, WHICHEVER OCCURS FIRST, AND
23 MUST PROVIDE PROOF OF SUCH PAYMENT TO THE AUTHORITY IN THE FORM OF AN
24 AFFIDAVIT SETTING FORTH THE NAMES OF THE WHOLESALERS AND THE SUMS PAID
25 OR (II) PROVIDE TO THE AUTHORITY AN AFFIDAVIT SETTING FORTH THE NAMES OF

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

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1 EACH UNPAID WHOLESALER AND THE AMOUNTS OWED AND CERTIFYING THAT THE SUM
2 TOTAL OF THE AMOUNTS SO OWED SHALL BE PLACED IN ESCROW FOR PAYMENT WITH
3 THE TEMPORARY PERMITEE'S COUNSEL OR AGENT, PENDING ISSUANCE OF THE
4 TEMPORARY PERMIT, WITH PAYMENT TO BE MADE WITHIN FIVE DAYS OF ISSUANCE
5 OF SUCH PERMIT; AND

6 (E) The application for the temporary TRANSFER permit shall be accom-
7 panied by a nonrefundable temporary permit filing fee of one hundred
8 twenty-eight dollars for all retail beer licenses; all other temporary
9 permit applications shall be accompanied by a filing fee of six hundred
10 forty dollars.

11 2. A temporary TRANSFER permit issued by the authority pursuant to
12 this section shall be for a period not to exceed ninety days. A tempo-
13 rary TRANSFER permit may be extended at the discretion of the authority,
14 for an additional thirty day period upon payment of an additional fee of
15 sixty-four dollars for all retail beer licenses and ninety-six dollars
16 for all other temporary permits and upon compliance with all conditions
17 required herein. A temporary TRANSFER permit is a conditional permit and
18 authorizes the holder thereof to purchase and sell such alcoholic bever-
19 ages as would be permitted to be purchased and sold under the privileges
20 of the retail license for which transfer application has been filed; to
21 sell such alcoholic beverages to consumers only and not for resale; and
22 to purchase such alcoholic beverages only by payment in currency or
23 check for such alcoholic beverages on or before they are delivered to
24 the premises.

25 3. Provided, however, that the holder of a temporary TRANSFER permit
26 who also holds one or more retail licenses and is operating under such
27 retail license or licenses in addition to the temporary permit, and who
28 is not delinquent under the provisions of section one hundred [one-a]
29 ONE-AA of this chapter as to any retail license under which he operates,
30 may purchase alcoholic beverages on credit under the temporary permit.

31 4. Notwithstanding any other provision of law, a temporary TRANSFER
32 permit may be summarily cancelled or suspended at any time if the
33 authority determines that good cause for such cancellation or suspension
34 exists. The authority shall promptly notify the holder of a temporary
35 TRANSFER permit in writing of such cancellation or suspension and shall
36 set forth the reasons for such action. IF THE OUTSTANDING DEBTS ARE NOT
37 PROPERLY PAID OR PLACED IN ESCROW PURSUANT TO THE PROVISIONS OF PARA-
38 GRAPH (D) OF SUBDIVISION ONE OF THIS SECTION THE AUTHORITY SHALL NOT
39 ISSUE OR MAY SUMMARILY CANCEL OR SUSPEND A TEMPORARY TRANSFER PERMIT. IF
40 AFTER ISSUANCE OF A TEMPORARY TRANSFER PERMIT IT IS DETERMINED THAT THE
41 FORMER LICENSE HOLDER HAS PROVIDED AN INCORRECT AFFIDAVIT, THE TEMPORARY
42 PERMITEE SHALL SUPPLY TO THE AUTHORITY AN AFFIDAVIT SETTING FORTH THE
43 CORRECTED LIST OF WHOLESALERS WITH SUMS OWED AND SHALL REMIT SUCH SUMS
44 OR RECEIVE ANY OVERAGE PRIOR TO THE ISSUANCE OF ANY ADDITIONAL EXTEN-
45 SIONS TO THE TRANSFER PERMIT AND/OR THE ISSUANCE OF THE PERMANENT
46 LICENSE TO THE TEMPORARY LICENSEE.

47 5. IN ANY INSTANCE IN WHICH RETAIL LICENSEE UNDERGOES A CORPORATE
48 CHANGE OR THE FILING OF AN ENDORSEMENT APPLICATION, WHICH CHANGE OR
49 ENDORSEMENT REFLECTS A CHANGE IN CONTROLLING INTEREST IN THE LICENSEE AS
50 EVIDENCED BY A CHANGE OF STOCK OWNERSHIP OR OTHERWISE, OR IN THE CASE OF
51 A TRANSFER APPLICATION WHERE THE PARTIES DO NOT FILE FOR A TEMPORARY
52 PERMIT BUT AWAIT THE ISSUANCE OF A PERMANENT LICENSE TO THE APPLICANT,
53 THE AUTHORITY SHALL NOT APPROVE SUCH APPLICATION OR ISSUE A LICENSE TO
54 THE APPLICANT UNLESS ALL OUTSTANDING DEBT TO WHOLESALERS HAS BEEN PAID
55 AS EVIDENCED BY AN AFFIDAVIT SETTING FORTH THE CREDITOR LIST WITH

1 AMOUNTS PAID FROM THE LICENSEE, A COPY OF WHICH MUST BE PROVIDED AND TO
2 THE AUTHORITY AND THE AFFECTED WHOLESALERS WITH PROOF OF RECEIPT.

3 6. Application for a temporary TRANSFER permit shall be on such form
4 as the authority shall prescribe.

5 [6.] 7. Notwithstanding any inconsistent provision of law to the
6 contrary, the authority may promulgate such rules and regulations as may
7 be necessary to carry out the provisions of this section.

8 S 2. This act shall take effect immediately.