S T A T E O F N E W Y O R K

9227--B

2009-2010 Regular Sessions

I N A S S E M B L Y

November 4, 2009

Introduced by M. of A. SCHIMMINGER, SKARTADOS -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- recommitted to the Committee on Economic Development, Job Creation, Commerce and Industry in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the alcoholic beverage control law, in relation to liquidator's permits and temporary retail permits; to repeal section 97-a of such law relating thereto; and providing for the repeal of certain provisions upon expiration thereof

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 8-b to read as follows:

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.

S 2. Section 97-a of the alcoholic beverage control law is REPEALED and a new section 97-a is added to read as follows:

S 97-A. TEMPORARY RETAIL PERMIT. 1. THE AUTHORITY IS HEREBY AUTHORIZED TO ISSUE A TEMPORARY RETAIL PERMIT:

(A) TO THE TRANSFEREE OF A RETAIL LICENSE TO CONTINUE THE OPERATIONS OF A RETAIL PREMISES DURING THE PERIOD THAT THE TRANSFER APPLICATION FOR THE LICENSE FROM PERSON TO PERSON AT THE SAME PREMISES IS PENDING; OR

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

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(B) TO THE APPLICANT FOR A NEW RETAIL LICENSE WHERE THE PROSPECTIVE LICENSED PREMISES IS LOCATED IN A MUNICIPALITY WITH A POPULATION OF LESS THAN ONE MILLION DURING THE PERIOD THAT THE APPLICATION IS PENDING.

2. SUCH A PERMIT MAY BE ISSUED IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) THE APPLICANT FOR THE TEMPORARY PERMIT SHALL HAVE FILED WITH THE AUTHORITY AN APPLICATION FOR A RETAIL LICENSE AT SUCH PREMISES, TOGETHER WITH ALL REQUIRED FILING AND LICENSE FEES;

(B) THE APPLICANT SHALL HAVE FILED WITH THE AUTHORITY AN APPLICATION FOR A TEMPORARY RETAIL PERMIT, ACCOMPANIED BY A NONREFUNDABLE FILING FEE OF ONE HUNDRED TWENTY-EIGHT DOLLARS FOR ALL RETAIL BEER LICENSES OR SIX HUNDRED FORTY DOLLARS FOR ALL OTHER RETAIL LICENSES;

(C) IN THE CASE OF A TRANSFER APPLICATION, THE PREMISES SHALL HAVE BEEN OPERATED UNDER A RETAIL LICENSE WITHIN THIRTY DAYS OF THE DATE OF FILING THE APPLICATION FOR A TEMPORARY PERMIT;

(D) AT THE TIME THE PERMIT IS ISSUED THE CURRENT LICENSE, IF ANY, IN EFFECT FOR SAID PREMISES SHALL HAVE BEEN SURRENDERED TO, PLACED INTO SAFEKEEPING WITH, OR OTHERWISE DEEMED ABANDONED BY THE AUTHORITY.

3. A TEMPORARY RETAIL PERMIT UNDER PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION MAY NOT BE ISSUED FOR ANY PREMISES THAT IS SUBJECT TO THE PROVISIONS OF SECTION SIXTY-THREE, PARAGRAPH (B) OF SUBDIVISION SEVEN OF SECTION SIXTY-FOUR, SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION SEVEN OF SECTION SIXTY-FOUR-A, SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION ELEVEN OF SECTION SIXTY-FOUR-C, PARAGRAPH (B) OF SUBDIVISION EIGHT OF SECTION SIXTY-FOUR-D, OR SECTION SEVENTY-NINE OF THIS CHAPTER.

4. A TEMPORARY RETAIL PERMIT ISSUED BY THE AUTHORITY PURSUANT TO THIS SECTION SHALL BE FOR A PERIOD NOT TO EXCEED NINETY DAYS. A TEMPORARY PERMIT MAY BE EXTENDED AT THE DISCRETION OF THE AUTHORITY, FOR AN ADDITIONAL THIRTY DAY PERIOD UPON PAYMENT OF AN ADDITIONAL FEE OF SIXTY-FOUR DOLLARS FOR ALL RETAIL BEER LICENSES AND NINETY-SIX DOLLARS FOR ALL OTHER TEMPORARY PERMITS AND UPON COMPLIANCE WITH ALL CONDITIONS REQUIRED IN THIS SECTION. THE AUTHORITY MAY, IN ITS DISCRETION, ISSUE ADDITIONAL THIRTY DAY EXTENSIONS UPON PAYMENT OF THE APPROPRIATE FEE.

5. A TEMPORARY RETAIL PERMIT IS A CONDITIONAL PERMIT AND AUTHORIZES THE HOLDER THEREOF:

(A) IN THE CASE OF A TRANSFER APPLICATION TO PURCHASE AND SELL SUCH ALCOHOLIC BEVERAGES AS WOULD BE PERMITTED TO BE PURCHASED AND SOLD UNDER THE PRIVILEGES OF THE RETAIL LICENSE FOR WHICH THE TRANSFER APPLICATION HAS BEEN FILED;

(B) IN THE CASE OF ALL OTHER RETAIL APPLICATIONS, TO PURCHASE AND SELL SUCH ALCOHOLIC BEVERAGES AS WOULD BE PERMITTED TO BE PURCHASED AND SOLD UNDER THE PRIVILEGES OF THE LICENSE APPLIED FOR; AND

(C) TO SELL SUCH ALCOHOLIC BEVERAGES TO CONSUMERS ONLY AND NOT FOR RESALE.

6. THE HOLDER OF A TEMPORARY RETAIL PERMIT SHALL PURCHASE ALCOHOLIC BEVERAGES ONLY BY PAYMENT IN CURRENCY OR CHECK FOR SUCH ALCOHOLIC BEVERAGES ON OR BEFORE THE DAY SUCH ALCOHOLIC BEVERAGES ARE DELIVERED, PROVIDED, HOWEVER, THAT THE HOLDER OF A TEMPORARY PERMIT ISSUED PURSUANT TO THIS SECTION WHO ALSO HOLDS ONE OR MORE RETAIL LICENSES AND IS OPERATING UNDER SUCH RETAIL LICENSE OR LICENSES IN ADDITION TO THE TEMPORARY RETAIL PERMIT, AND WHO IS NOT DELINQUENT UNDER THE PROVISIONS OF SECTION ONE HUNDRED ONE-AA OF THIS CHAPTER AS TO ANY RETAIL LICENSE UNDER WHICH HE OPERATES, MAY PURCHASE ALCOHOLIC BEVERAGES ON CREDIT UNDER THE TEMPORARY PERMIT.

7. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A TEMPORARY RETAIL PERMIT MAY BE SUMMARILY CANCELLED OR SUSPENDED AT ANY TIME IF THE

AUTHORITY DETERMINES THAT GOOD CAUSE FOR SUCH CANCELLATION OR SUSPENSION EXISTS. THE AUTHORITY SHALL PROMPTLY NOTIFY THE HOLDER OF A TEMPORARY RETAIL PERMIT IN WRITING OF SUCH CANCELLATION OR SUSPENSION AND SHALL SET FORTH THE REASONS FOR SUCH ACTION.

8. THE APPLICATION FOR A TEMPORARY PERMIT SHALL BE ON SUCH FORM AS THE AUTHORITY SHALL PRESCRIBE.

9. APPROVAL OF, OR EXTENSION OF, A TEMPORARY RETAIL PERMIT SHALL NOT BE DEEMED AS AN APPROVAL OF THE RETAIL APPLICATION.

10. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW TO THE CONTRARY, THE AUTHORITY MAY PROMULGATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

S 3. Paragraph f of subdivision 1 of section 99-b of the alcoholic beverage control law, as added by chapter 486 of the laws of 1941, is amended to read as follows:

f. A licensee who is liquidating or selling [his] ITS business, or a former licensee whose license [was] HAS BEEN surrendered, REVOKED, CANCELLED or HAS expired, to sell [his] ITS entire stock of alcoholic beverages to other licensees, PROVIDED, HOWEVER, THAT NO SUCH PERMIT SHALL BE ISSUED TO A LICENSEE OR FORMER LICENSEE WHO IS DELINQUENT UNDER THE PROVISIONS OF SECTION ONE HUNDRED ONE-AA OR SECTION ONE HUNDRED ONE-AAA OF THIS CHAPTER. A FORMER LICENSEE WHOSE LICENSE HAS BEEN SURRENDERED, REVOKED, CANCELLED, OR HAS EXPIRED, MAY NOT TRANSFER ITS STOCK OF ALCOHOLIC BEVERAGES TO ANY OTHER PERSON UNLESS IT OBTAINS SUCH A PERMIT.

S 4. Section 3 of the alcoholic beverage control law is amended by adding a new subdivision 30-a to read as follows:

30-A. "TRANSFER" MEANS THE ADMINISTRATIVE PROCESSES INVOLVED IN ISSUING A LICENSE TO A NEW APPLICANT FOR AN EXISTING LICENSED BUSINESS. TRANSFER APPLICANTS SHALL BE UNDER CONTRACT WITH THE EXISTING LICENSEE FOR PURCHASE OF THE EXISTING LICENSED BUSINESS.

S 5. This act shall take effect on the sixtieth day after it shall have become a law, provided that paragraph (b) of subdivision 1 of section 97-a of the alcoholic beverage control law as added by section two of this act shall expire and be deemed repealed one year after such effective date.