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

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2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GALEF, DINOWITZ, SCHIMEL, FIELDS, EDDINGTON, McDONOUGH, LANCMAN, JAFFEE, MAYERSOHN, FINCH, BURLING, ERRIGO, McKEVITT, MOLINARO, RABBITT, WALKER -- Multi-Sponsored by -- M. of A. BOYLAND, CHRISTENSEN, CONTE, CROUCH, DelMONTE, GOTTFRIED, MAISEL, MILLMAN, PHEFFER, REILLY, SAYWARD, THIELE -- 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 providing that adults in control of private property are responsible for alcoholic beverages provided to minors at social events held on the property

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

Section 1. The alcoholic beverage control law is amended by adding a new section 65-e to read as follows:

S 65-E. OFFENSE TO PROVIDE ALCOHOLIC BEVERAGES TO MINORS ON PRIVATE PROPERTY. 1. AS USED IN THIS SECTION:

(A) "RESIDENTIAL PREMISES" SHALL MEAN PRIVATE PROPERTY INCLUDING A HOUSE, CONDOMINIUM, APARTMENT, ROOM, STUDIO, LOFT, TOWNHOUSE, AND COOPERATIVE UNIT, TOGETHER WITH YARDS AND OTHER OPEN AREAS ADJACENT THERETO, PROVIDED SUCH YARDS OR AREAS ARE PART OF THE PROPERTY;

(B) "LEGAL OCCUPANT" SHALL MEAN A PERSON OWNING, OCCUPYING PURSUANT TO A LEASE OR RENTAL AGREEMENT, OR OTHERWISE EXERTING SUBSTANTIAL CONTROL, DOMINATION AND DIRECTION OVER A RESIDENTIAL PREMISES, AND SHALL INCLUDE ALL COMPETENT ADULT PERSONS LIVING AT A RESIDENTIAL PREMISES ON A PERMANENT BASIS; AND

(C) "SOCIAL EVENT" SHALL MEAN A PARTY, OPEN HOUSE OR OTHER SOCIAL GATHERING AT A RESIDENTIAL PREMISES ATTENDED BY ONE OR MORE PERSONS UNDER THE AGE OF TWENTY-ONE YEARS.

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

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2. NO PERSON WHO IS THE LEGAL OCCUPANT OF A RESIDENTIAL PREMISES SHALL:

(A) KNOWINGLY OR INTENTIONALLY OBTAIN, FURNISH, DELIVER OR OTHERWISE PROVIDE ALCOHOLIC BEVERAGES TO ANY PERSON UNDER THE AGE OF TWENTY-ONE YEARS AT A SOCIAL EVENT HELD AT SUCH PREMISES; OR

(B) ALLOW THE CONSUMPTION OF ALCOHOLIC BEVERAGES BY ANY PERSON UNDER THE AGE OF TWENTY-ONE YEARS AT A SOCIAL EVENT HELD AT SUCH PREMISES, REGARDLESS OF WHETHER SUCH PERSON KNOWINGLY OR INTENTIONALLY OBTAINED, FURNISHED, DELIVERED OR OTHERWISE PROVIDED THE ALCOHOLIC BEVERAGES.

3. EXCEPT AS IS OTHERWISE PROVIDED IN THIS CHAPTER, THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL NOT APPLY TO:

(A) A PERSON WHO GIVES OR CAUSES TO BE GIVEN ANY ALCOHOLIC BEVERAGE TO A PERSON UNDER THE AGE OF TWENTY-ONE YEARS, WHO IS A STUDENT IN A CURRICULUM LICENSED OR REGISTERED BY THE STATE EDUCATION DEPARTMENT AND IS REQUIRED TO TASTE OR IMBIBE ALCOHOLIC BEVERAGES IN COURSES WHICH ARE PART OF THE REQUIRED CURRICULUM, PROVIDED SUCH ALCOHOLIC BEVERAGES ARE USED ONLY FOR INSTRUCTIONAL PURPOSES DURING CLASSES CONDUCTED PURSUANT TO SUCH CURRICULUM; OR

(B) A PERSON WHO GIVES OR CAUSES TO BE GIVEN ANY ALCOHOLIC BEVERAGE TO A PERSON UNDER THE AGE OF TWENTY-ONE YEARS, WHICH MINOR PERSON IS A SPOUSE, CHILD, GRANDCHILD OR WARD OF SUCH PERSON, AT A SOCIAL EVENT AT THE RESIDENTIAL PREMISES SUPERVISED BY SUCH PERSON AND ATTENDED BY FAMILY MEMBERS OF SUCH PERSON, PROVIDED SUCH SPOUSE, CHILD, GRANDCHILD OR WARD IS PROHIBITED FROM OPERATING A MOTOR VEHICLE AS DEFINED IN THE VEHICLE AND TRAFFIC LAW UNTIL SUCH TIME AS ALL ALCOHOL HAS DISSIPATED FROM HIS OR HER SYSTEM, BUT IN NO EVENT, FOR A PERIOD OF LESS THAN TWELVE HOURS AFTER CONSUMPTION OF THE LAST ALCOHOLIC BEVERAGE; OR

(C) A LANDLORD WHO HAS RENTED A RESIDENTIAL PREMISES TO A TENANT PURSUANT TO A VALID LEASE EXECUTED OR RENTAL AGREEMENT ENTERED INTO BY THE LANDLORD AND TENANT IN THE USUAL COURSE OF BUSINESS PRIOR TO THE DATE OF THE SOCIAL EVENT, WHICH LEASE GIVES THE TENANT ACTUAL CONTROL OVER THE RESIDENTIAL PREMISES AND SUBSTANTIALLY RESTRICTS THE LANDLORD'S CONTROL OVER SUCH PREMISES.

4. A PERSON VIOLATING THE PROVISIONS OF THIS SECTION SHALL BE GUILTY OF A VIOLATION AND SHALL BE SENTENCED IN ACCORDANCE WITH THE FOLLOWING:

(A) ANY PERSON WHO HAS KNOWLEDGE OF FACTS WHICH WOULD HAVE LED A REASONABLE PERSON TO CONCLUDE THAT ALCOHOLIC BEVERAGES WOULD BE CONSUMED IN VIOLATION OF THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION SHALL BE GUILTY OF AN OFFENSE, AND UPON CONVICTION THEREOF SHALL BE PUNISHED BY A FINE OF NOT MORE THAN ONE HUNDRED DOLLARS, OR BY IMPRISONMENT FOR NOT MORE THAN ONE DAY, OR BY BOTH SUCH FINE AND IMPRISONMENT.

(B) ANY PERSON WHO KNOWINGLY OR INTENTIONALLY ALLOWS THE CONSUMPTION OF ALCOHOLIC BEVERAGES IN VIOLATION OF THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION SHALL BE GUILTY OF A VIOLATION OF THE PROVISIONS OF THIS SECTION AND SHALL BE GUILTY OF AN OFFENSE, AND UPON CONVICTION THEREOF SHALL BE PUNISHED BY A FINE OF NOT MORE THAN TWO HUNDRED DOLLARS, OR BY IMPRISONMENT FOR NOT MORE THAN THREE DAYS, OR BY BOTH SUCH FINE AND IMPRISONMENT, AND SHALL BE GUILTY OF A CLASS B MISDEMEANOR.

(C) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION SHALL BE GUILTY OF AN OFFENSE, AND UPON CONVICTION THEREOF SHALL BE PUNISHED BY A FINE OF NOT MORE THAN TWO HUNDRED DOLLARS, OR BY IMPRISONMENT FOR NOT MORE THAN FIVE DAYS, OR BY BOTH SUCH FINE AND IMPRISONMENT, AND SHALL ALSO BE GUILTY OF A CLASS A MISDEMEANOR, AND SHALL ALSO BE POTENTIALLY SUBJECT TO A CHARGE OF RECK-

LESS ENDANGERMENT IN THE SECOND DEGREE AS PROVIDED IN SECTION 120.20 OF THE PENAL LAW.

(D) ANY PERSON WHO HAS KNOWLEDGE OF FACTS WHICH WOULD HAVE LED A REASONABLE PERSON TO CONCLUDE THAT ALCOHOLIC BEVERAGES WOULD BE CONSUMED IN VIOLATION OF THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, AND WHO ALSO HAS KNOWLEDGE OF FACTS WHICH WOULD HAVE LED A REASONABLE PERSON TO CONCLUDE THAT A MINOR PERSON WHO CONSUMED SUCH ALCOHOLIC BEVERAGES WOULD SUBSEQUENTLY OPERATE A MOTOR VEHICLE AS DEFINED IN THE VEHICLE AND TRAFFIC LAW PRIOR TO THE TIME ALL ALCOHOL HAS DISSIPATED FROM HIS OR HER SYSTEM, BUT IN NO EVENT, FOR A PERIOD OF LESS THAN TWELVE HOURS AFTER CONSUMPTION OF THE LAST ALCOHOLIC BEVERAGE, SHALL BE GUILTY OF AN OFFENSE, AND UPON CONVICTION THEREOF SHALL BE PUNISHED BY A FINE OF NOT MORE THAN ONE HUNDRED DOLLARS, OR BY IMPRISONMENT FOR NOT MORE THAN ONE DAY, OR BY BOTH SUCH FINE AND IMPRISONMENT AND SHALL ALSO BE GUILTY OF A CLASS B MISDEMEANOR.

(E) ANY PERSON WHO KNOWINGLY OR INTENTIONALLY VIOLATES THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, AND WHO SUBSEQUENTLY ALLOWS A MINOR PERSON WHO CONSUMED SUCH ALCOHOLIC BEVERAGES TO OPERATE A MOTOR VEHICLE AS DEFINED IN THE VEHICLE AND TRAFFIC LAW PRIOR TO THE TIME ALL ALCOHOL HAS DISSIPATED FROM HIS OR HER SYSTEM, BUT IN NO EVENT, FOR A PERIOD OF LESS THAN TWELVE HOURS AFTER CONSUMPTION OF THE LAST ALCOHOLIC BEVERAGE, SHALL BE GUILTY OF AN OFFENSE, AND UPON CONVICTION THEREOF SHALL BE PUNISHED BY A FINE OF NOT MORE THAN TWO HUNDRED DOLLARS, OR BY IMPRISONMENT FOR NOT MORE THAN THREE DAYS, OR BY BOTH SUCH FINE AND IMPRISONMENT, AND SHALL ALSO BE GUILTY OF RECKLESS ENDANGERMENT IN THE SECOND DEGREE AS PROVIDED IN SECTION 120.20 OF THE PENAL LAW. A PERSON GUILTY OF A SUBSEQUENT VIOLATION AS DESCRIBED IN THIS PARAGRAPH SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS, OR BY IMPRISONMENT FOR NOT MORE THAN FIVE DAYS, OR BY BOTH SUCH FINE AND IMPRISONMENT, AND SHALL ALSO BE GUILTY OF RECKLESS ENDANGERMENT IN THE FIRST DEGREE AS PROVIDED IN SECTION 120.25 OF THE PENAL LAW.

(F) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, AND WHO SUBSEQUENTLY ALLOWS A MINOR PERSON WHO CONSUMED SUCH ALCOHOLIC BEVERAGES TO OPERATE A MOTOR VEHICLE AS DEFINED IN THE VEHICLE AND TRAFFIC LAW PRIOR TO THE TIME ALL ALCOHOL HAS DISSIPATED FROM HIS OR HER SYSTEM, BUT IN NO EVENT, FOR A PERIOD OF LESS THAN TWELVE HOURS AFTER CONSUMPTION OF THE LAST ALCOHOLIC BEVERAGE, SHALL BE GUILTY OF AN OFFENSE AS PROVIDED IN SECTION SIXTY-FIVE-A OF THIS ARTICLE, AND UPON CONVICTION THEREOF SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS, OR BY IMPRISONMENT FOR NOT MORE THAN FIVE DAYS, OR BY BOTH SUCH FINE AND IMPRISONMENT, AND SHALL ALSO BE GUILTY OF RECKLESS ENDANGERMENT IN THE FIRST DEGREE AS PROVIDED IN SECTION 120.25 OF THE PENAL LAW. A PERSON GUILTY OF A SUBSEQUENT VIOLATION AS DESCRIBED IN THIS PARAGRAPH SHALL BE PUNISHED BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BY IMPRISONMENT FOR NOT MORE THAN TEN DAYS, OR BY BOTH SUCH FINE AND IMPRISONMENT, AND SHALL ALSO BE GUILTY OF RECKLESS ENDANGERMENT IN THE FIRST DEGREE AS PROVIDED IN SECTION 120.25 OF THE PENAL LAW.

(G) ANY PERSON CONVICTED OF A VIOLATION AS DESCRIBED IN PARAGRAPH (B), (C), (E) OR (F) OF THIS SUBDIVISION, OR OF THREE OR MORE VIOLATIONS AS DESCRIBED IN PARAGRAPH (A) OR (D) OF THIS SUBDIVISION, SHALL BE REQUIRED TO COMPLETE AN ALCOHOL AWARENESS PROGRAM ESTABLISHED PURSUANT TO SECTION 19.25 OF THE MENTAL HYGIENE LAW, AND TO PAY ALL COSTS INCURRED IN CONNECTION WITH HIS OR HER PARTICIPATION IN THE PROGRAM.

(H) ANY SENTENCING FOR A CONVICTION UNDER PARAGRAPH (C) OR (F) OF THIS SUBDIVISION SHALL INCLUDE MANDATORY PROBATION FOR A PERIOD DETERMINED TO

BE IN ACCORDANCE WITH THE SEVERITY OF THE OFFENSE AND WITH REGARD TO WHETHER THE CONVICTION INVOLVED A REPEAT OFFENSE.

(I) ANY PERSON CONVICTED OF A VIOLATION AS DESCRIBED IN PARAGRAPH (E) OR (F) OF THIS SUBDIVISION, SHALL BE REQUIRED TO:

(I) COMPLETE AN ALCOHOL AND DRIVER SAFETY PROGRAM ESTABLISHED PURSUANT TO SECTION FIVE HUNDRED TWENTY-THREE-A OF THE VEHICLE AND TRAFFIC LAW, AND TO PAY ALL COSTS INCURRED IN CONNECTION WITH HIS OR HER PARTICIPATION IN THE PROGRAM; AND

(II) BE PRESENT FOR ANY VICTIM IMPACT STATEMENTS MADE BY PERSONS INJURED BY A MINOR AS A RESULT OF AN AUTOMOBILE ACCIDENT FOLLOWING A SOCIAL EVENT WHEREAT SAID MINOR WAS PROVIDED WITH OR ALLOWED TO CONSUME ALCOHOLIC BEVERAGES BY THE PERSON CONVICTED OF A VIOLATION OF THE PROVISIONS OF THIS SECTION.

5. NOTHING IN THIS SECTION SHALL PROHIBIT THE PROSECUTION OF A PERSON VIOLATING OR CONVICTED OF VIOLATING THE PROVISIONS OF THIS SECTION FROM BEING PROSECUTED UNDER ANY SECTION OF THE LAW, OR PREVENT SUCH PERSON FROM BEING HELD CIVILLY LIABLE IN CONNECTION WITH HIS OR HER ACTIONS.

6. NO DETERMINATION OF GUILT PURSUANT TO THIS SECTION SHALL OPERATE AS A DISQUALIFICATION OF ANY SUCH PERSON SUBSEQUENTLY TO HOLD PUBLIC OFFICE, PUBLIC EMPLOYMENT, OR AS A FORFEITURE OF ANY RIGHT OR PRIVILEGE OR TO RECEIVE ANY LICENSE GRANTED BY PUBLIC AUTHORITY; AND NO SUCH PERSON SHALL BE DENOMINATED A CRIMINAL BY REASON OF SUCH DETERMINATION.

7. IN ANY PROCEEDING CONCERNING A VIOLATION OF THE PROVISIONS OF THIS SECTION, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT A PERSON CHARGED WITH THE VIOLATION, OR ANOTHER ADULT PERSON LEGALLY OCCUPYING THE RESIDENTIAL PREMISES AND ACTING IN CONJUNCTION WITH THE PERSON CHARGED WITH THE VIOLATION, ACTIVELY ATTEMPTED TO ASCERTAIN THE AGES OF PERSONS PRESENT AT THE SOCIAL EVENT PRIOR TO PROVIDING OR ALLOWING THE CONSUMPTION OF ALCOHOLIC BEVERAGES TO OR BY ANY PERSON UNDER THE AGE OF TWENTY-ONE YEARS, THAT SUCH PERSON WAS PRESENTED WITH CLEAR AND CONVINCING EVIDENCE THAT THE INDIVIDUALS CONSUMING THE ALCOHOLIC BEVERAGES WERE OVER THE AGE OF TWENTY-ONE YEARS, AND THAT SUCH PERSON DID NOT PROVIDE OR ALLOW CONSUMPTION OF ALCOHOLIC BEVERAGES TO OR BY ANY INDIVIDUAL KNOWN TO BE UNDER THE AGE OF TWENTY-ONE YEARS. PRESENTATION OF A VALID DRIVER'S LICENSE OR NON-DRIVER PHOTO IDENTIFICATION CARD ISSUED BY A GOVERNMENTAL ENTITY SHALL BE CLEAR AND CONVINCING EVIDENCE OF AGE. THIS DEFENSE SHALL NOT BE AVAILABLE WITH REGARD TO A VIOLATION OF THIS SECTION INVOLVING A MINOR OTHERWISE SUSPECTED OR KNOWN TO THE PERSON TO BE UNDER THE AGE OF TWENTY-ONE YEARS. NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, ANY SUCH AFFIRMATIVE DEFENSE SHALL NOT BE APPLICABLE IN ANY OTHER CIVIL OR CRIMINAL PROCEEDING, OR IN ANY OTHER FORUM.

8. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT OR PROHIBIT THE AUTHORITY OF A COUNTY, CITY, TOWN OR VILLAGE FROM ADOPTING OR ENFORCING ANY LOCAL LAW, ORDINANCE OR REGULATION IF SUCH LOCAL LAW, ORDINANCE OR REGULATION PROVIDES PENALTIES EQUAL TO OR GREATER THAN THE PROVISIONS OF THIS SECTION, OR ANY RULES AND REGULATIONS PROMULGATED HEREUNDER.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.