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

2840--A

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. MILLMAN -- Multi-Sponsored by -- M. of A. GALEF -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- 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 the siting of certain premises licensed to sell liquor for consumption on the premises

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

Section 1. Paragraphs (c), (d) and (d-1) of subdivision 7 of section 64 of the alcoholic beverage control law, paragraphs (c) and (d) as amended by chapter 177 of the laws of 1996 and paragraph (d-1) as added by chapter 406 of the laws of 2007, are amended to read as follows:

(c) the measurements in paragraphs (a) and (b) of this subdivision are to be taken in straight lines from the [center of the nearest entrance] POINT ON THE PROPERTY BOUNDARY LINE of the premises sought to be licensed to [the center of the nearest entrance] THAT IS CLOSEST TO THE PROPERTY BOUNDARY LINE of such school, church, synagogue or other place of worship [or] to the [center of the nearest entrance] CLOSEST POINT ON THE PROPERTY BOUNDARY LINE OF SUCH SCHOOL, CHURCH, SYNAGOGUE OR OTHER PLACE OF WORSHIP OR FROM THE POINT ON THE PROPERTY BOUNDARY LINE OF THE PREMISES SOUGHT TO BE LICENSED THAT IS CLOSEST TO THE PROPERTY BOUNDARY LINE OF A PREMISES LICENSED AND OPERATING PURSUANT TO THIS SECTION TO THE CLOSEST POINT ON THE BOUNDARY LINE of each such premises licensed and operating pursuant to the provisions of this section; except, however, that no renewal license shall be denied because of such restriction to any premises so located which were maintained as a bona fide hotel, restaurant, catering establishment or club on or prior to December fifth, nineteen hundred thirty-three; and, except that no license shall be denied to any premises at which a license under this chapter has been

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

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in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school, church, synagogue or other place of worship; AND EXCEPT THAT NO LICENSE OR RENEWAL THEREOF SHALL BE DENIED TO ANY PREMISES PURSUANT TO THIS SECTION AT WHICH A LICENSE UNDER THIS CHAPTER HAS BEEN IN EXISTENCE CONTINUOUSLY FROM A DATE PRIOR TO DECEMBER THIRTY-FIRST, TWO THOUSAND NINE; and except that no license shall be denied to any premises, which is within five hundred feet of three or more existing premises licensed and operating pursuant to the provisions of this section, at which a license under this chapter has been in existence continuously on or prior to November first, nineteen hundred ninety-three; and except that this subdivision shall not be deemed to restrict the issuance of a hotel liquor license to a building used as a hotel and in which a restaurant liquor license currently exists for premises which serve as a dining room for guests of the hotel and a caterer's license to a person using the permanent catering facilities of a church, synagogue or other place of worship pursuant to a written agreement between such person and the authorities in charge of such facilities. The liquor authority, in its discretion, may authorize the removal of any such licensed premises to a different location on the same street or avenue, within two hundred feet of said school, church, synagogue or other place of worship, provided that such new location is not within a closer distance to such school, church, synagogue or other place of worship.

(d) [Within the context of this subdivision, the word "entrance" shall mean a door of a school, of a house of worship, or premises licensed and operating pursuant to the provisions of this section or of the premises sought to be licensed, regularly used to give ingress to students of the school, to the general public attending the place of worship, and to patrons or guests of the premises licensed and operating pursuant to the provisions of this section or of the premises sought to be licensed, except that where a school or house of worship or premises licensed and operating pursuant to the provisions of this section is set back from a public thoroughfare, the walkway or stairs leading to any such door shall be deemed an entrance; and the measurement shall be taken to the center of the walkway or stairs at the point where it meets the building line or public thoroughfare. A door which has no exterior hardware, or which is used solely as an emergency or fire exit, or for maintenance purposes, or which leads directly to a part of a building not regularly used by the general public or patrons, is not deemed an "entrance".

(d-1)] Within the context of this subdivision, a building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship by incidental uses that are not of a nature to detract from the predominant character of the building as a place of worship, such uses which include, but which are not limited to: the conduct of legally authorized games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at the place of worship or for other not-for-profit organizations or groups; use of the building for fund-raising performances by or [benefitting] BENEFITING the not-for-profit religious organization which conducts services at the place of worship or other not-for-profit organizations or groups; the use of the building by other religious organizations or groups for religious services or other purposes; the conduct of social activities by or for the benefit of the congregants; the use of the building for meetings held by organizations or groups providing bereavement counseling to persons having suffered

the loss of a loved one, or providing advice or support for conditions or diseases including, but not limited to, alcoholism, drug addiction, cancer, cerebral palsy, Parkinson's disease, or Alzheimer's disease; the use of the building for blood drives, health screenings, health information meetings, yoga classes, exercise classes or other activities intended to promote the health of the congregants or other persons; and use of the building by non-congregant members of the community for private social functions. The building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship where the not-for-profit religious organization occupying the place of worship accepts the payment of funds to defray costs related to another party's use of the building.

S 2. Subdivision 7 of section 64-a of the alcoholic beverage control law, as amended by chapter 177 of the laws of 1996 and paragraph (e) as added by chapter 406 of the laws of 2007, is amended to read as follows:

7. (a) No special on-premises license shall be granted for any premises which shall be

(i) on the same street or avenue and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other place of worship or

(ii) in a city, town or village having a population of twenty thousand or more within five hundred feet of three or more existing premises licensed and operating pursuant to the provisions of this section;

(iii) the measurements in subparagraphs (i) and (ii) of this paragraph are to be taken in straight lines from the [center of the nearest entrance of the premises sought to be licensed to the center of the nearest entrance of such school, church, synagogue or other place of worship or to the center of the nearest entrance] POINT ON THE PROPERTY BOUNDARY LINE OF THE PREMISES SOUGHT TO BE LICENSED THAT IS CLOSEST TO THE PROPERTY BOUNDARY LINE OF SUCH SCHOOL, CHURCH, SYNAGOGUE OR OTHER PLACE OF WORSHIP TO THE CLOSEST POINT ON THE PROPERTY BOUNDARY LINE OF SUCH SCHOOL, CHURCH, SYNAGOGUE OR OTHER PLACE OF WORSHIP, OR FROM THE POINT ON THE PROPERTY BOUNDARY LINE OF THE PREMISES SOUGHT TO BE LICENSED THAT IS CLOSEST TO THE PROPERTY BOUNDARY LINE OF A PREMISES LICENSED AND OPERATING PURSUANT TO THIS SECTION TO THE CLOSEST POINT ON THE BOUNDARY LINE of each such premises licensed and operating pursuant to the provisions of this section; except that no license shall be denied to any premises at which a license under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school, church, synagogue or other place of worship; AND EXCEPT THAT NO LICENSE OR RENEWAL THEREOF SHALL BE DENIED TO ANY PREMISES PURSUANT TO THIS SECTION AT WHICH A LICENSE UNDER THIS CHAPTER HAS BEEN IN EXISTENCE CONTINUOUSLY FROM A DATE PRIOR TO DECEMBER THIRTY-FIRST, TWO THOUSAND NINE; and except that no license shall be denied to any premises, which is within five hundred feet of three or more existing premises licensed and operating pursuant to the provisions of this section, at which a license under this chapter has been in existence continuously on or prior to November first, nineteen hundred ninety-three.

(b) [Within the context of this subdivision, the word "entrance" shall mean a door of a school, of a house of worship, or premises licensed and operating pursuant to the provisions of this section or of the premises sought to be licensed, regularly used to give ingress to students of the school, to the general public attending the place of worship, and to patrons or guests of the premises licensed and operating pursuant to the

provisions of this section or of the premises sought to be licensed, except that where a school or house of worship or premises licensed and operating pursuant to the provisions of this section is set back from a public thoroughfare, the walkway or stairs leading to any such door shall be deemed an entrance; and the measurement shall be taken to the center of the walkway or stairs at the point where it meets the building line or public thoroughfare. A door which has no exterior hardware, or which is used solely as an emergency or fire exit, or for maintenance purposes, or which leads directly to a part of a building not regularly used by the general public or patrons, is not deemed an "entrance".

(c)] Notwithstanding paragraph (a) of this subdivision, a special on-premises license for a premises in which the principal business shall be the operation of a legitimate theater by a corporation organized pursuant to the not-for-profit corporation law may be granted notwithstanding the proximity of such premises to any school, provided that the availability of alcoholic beverages on such premises shall not be advertised in any way at such premises in any manner visible from such street or avenue.

[(d)] (C) Notwithstanding the provisions of subparagraph (ii) of paragraph (a) of this subdivision, the authority may issue a retail license for on-premises consumption for a premises which shall be within five hundred feet of three or more existing premises licensed and operating pursuant to the provisions of this section if, after consultation with the municipality or community board, it determines that granting such license would be in the public interest. Before it may issue any such license, the authority shall conduct a hearing, upon notice to the applicant and the municipality or community board, and shall state and file in its office its reasons therefor. No premises having been granted a license pursuant to this section shall be denied a renewal of such license upon the grounds that such premises are within five hundred feet of a building or buildings wherein three or more premises are operating and licensed pursuant to this section.

[(e)] (D) Within the context of this subdivision, a building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship by incidental uses that are not of a nature to detract from the predominant character of the building as a place of worship, such uses which include, but which are not limited to: the conduct of legally authorized games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at the place of worship or for other not-for-profit organizations or groups; use of the building for fund-raising performances by or benefitting the not-for-profit religious organization which conducts services at the place of worship or other not-for-profit organizations or groups; the use of the building by other religious organizations or groups for religious services or other purposes; the conduct of social activities by or for the benefit of the congregants; the use of the building for meetings held by organizations or groups providing bereavement counseling to persons having suffered the loss of a loved one, or providing advice or support for conditions or diseases including, but not limited to, alcoholism, drug addiction, cancer, cerebral palsy, Parkinson's disease, or Alzheimer's disease; the use of the building for blood drives, health screenings, health information meetings, yoga classes, exercise classes or other activities intended to promote the health of the congregants or other persons; and use of the building by non-congregant members of the community for private social functions. The building occupied as a place of worship does not cease to

be "exclusively" occupied as a place of worship where the not-for-profit religious organization occupying the place of worship accepts the payment of funds to defray costs related to another party's use of the building.

S 3. Paragraph (a) of subdivision 5 of section 64-b of the alcoholic beverage control law, as amended by chapter 406 of the laws of 2007, is amended to read as follows:

(a) No bottle club license shall be granted for any premises which shall be on the same street or avenue and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other place of worship; the measurements to be taken in a straight line from the [center of the nearest entrance of such school, church, synagogue or other place of worship to the center of the nearest entrance] POINT ON THE PROPERTY BOUNDARY LINE of the premises to be licensed THAT IS CLOSEST TO THE PROPERTY BOUNDARY LINE OF SUCH SCHOOL, CHURCH, SYNAGOGUE OR OTHER PLACE OF WORSHIP TO THE CLOSEST POINT ON THE PROPERTY BOUNDARY LINE OF SUCH SCHOOL, CHURCH, SYNAGOGUE OR OTHER PLACE OF WORSHIP; except that no license shall be denied to any premises at which a license under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school, church, synagogue or other place of worship; AND EXCEPT THAT NO LICENSE OR RENEWAL THEREOF SHALL BE DENIED TO ANY PREMISES PURSUANT TO THIS SECTION AT WHICH A LICENSE UNDER THIS CHAPTER HAS BEEN IN EXISTENCE CONTINUOUSLY FROM A DATE PRIOR TO DECEMBER THIRTY-FIRST, TWO THOUSAND NINE.

S 4. Subparagraph (iii) of paragraph (a) and paragraphs (b), (c) and (d) of subdivision 11 of section 64-c of the alcoholic beverage control law, subparagraph (iii) of paragraph (a), paragraphs (b) and (c) as added by chapter 538 of the laws of 1997 and paragraph (d) as added by chapter 406 of the laws of 2007, are amended to read as follows:

(iii) the measurements in subparagraphs (i) and (ii) of this paragraph are to be taken in straight lines from the [center of the nearest entrance of the premises sought to be licensed to the center of the nearest entrance of such school, church, synagogue or other place of worship or to the center of the nearest entrance] POINT ON THE PROPERTY BOUNDARY LINE OF THE PREMISES SOUGHT TO BE LICENSED THAT IS CLOSEST TO THE PROPERTY BOUNDARY LINE OF SUCH SCHOOL, CHURCH, SYNAGOGUE OR OTHER PLACE OF WORSHIP TO THE CLOSEST POINT ON THE PROPERTY BOUNDARY LINE OF SUCH SCHOOL, CHURCH, SYNAGOGUE OR OTHER PLACE OF WORSHIP, OR FROM THE POINT ON THE PROPERTY BOUNDARY LINE OF THE PREMISES SOUGHT TO BE LICENSED THAT IS CLOSEST TO THE PROPERTY BOUNDARY LINE OF A PREMISES LICENSED AND OPERATING PURSUANT TO THIS SECTION TO THE CLOSEST POINT ON THE BOUNDARY LINE of each such premises licensed and operating pursuant to the provisions of this section; except that no license shall be denied to any premises at which a license under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school, church, synagogue or other place of worship; AND EXCEPT THAT NO LICENSE OR RENEWAL THEREOF SHALL BE DENIED TO ANY PREMISES PURSUANT TO THIS SECTION AT WHICH A LICENSE UNDER THIS CHAPTER HAS BEEN IN EXISTENCE CONTINUOUSLY FROM A DATE PRIOR TO DECEMBER THIRTY-FIRST, TWO THOUSAND NINE; and except that no license shall be denied to any premises, which is within five hundred feet of three or more existing premises licensed and operating pursuant to the provisions of this section or section sixty-four or sixty-four-a of this article, at which a license under this chapter has been in existence

continuously on or prior to November first, nineteen hundred ninety-three.

(b) [Within the context of this subdivision, the word "entrance" shall mean a door of a school, of a house of worship, or premises licensed and operating pursuant to the provisions of this section or of the premises sought to be licensed, regularly used to give ingress to students of the school, to the general public attending the place of worship, and to patrons or guests of the premises licensed and operating pursuant to the provisions of this section or of the premises sought to be licensed, except that where a school or house of worship or premises licensed and operating pursuant to the provisions of this section is set back from a public thoroughfare, the walkway or stairs leading to any such door shall be deemed an entrance; and the measurement shall be taken to the center of the walkway or stairs at the point where it meets the building line or public thoroughfare. A door which has no exterior hardware, or which is used solely as an emergency or fire exit, or for maintenance purposes, or which leads directly to a part of a building not regularly used by the general public or patrons, is not deemed an "entrance".

(c)] Notwithstanding the provisions of subparagraph (ii) of paragraph (a) of this subdivision, the authority may issue a license pursuant to this section which shall be within five hundred feet of three or more existing premises licensed and operating pursuant to the provisions of this section or section sixty-four or sixty-four-a of this article if, after consultation with the municipality or community board, it determines that granting such license would be in the public interest. Before it may issue any such license, the authority shall conduct a hearing, upon notice to the applicant and the municipality or community board, and shall state and file in its office its reasons therefor. No premises having been granted a license pursuant to this section shall be denied a renewal of such license upon the grounds that such premises are within five hundred feet of a building or buildings where three or more premises are operating and licensed pursuant to this section or section sixty-four or sixty-four-a of this article.

[(d)] (C) Within the context of this subdivision, a building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship by incidental uses that are not of a nature to detract from the predominant character of the building as a place of worship, such uses which include, but which are not limited to: the conduct of legally authorized games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at the place of worship or for other not-for-profit organizations or groups; use of the building for fund-raising performances by or benefitting the not-for-profit religious organization which conducts services at the place of worship or other not-for-profit organizations or groups; the use of the building by other religious organizations or groups for religious services or other purposes; the conduct of social activities by or for the benefit of the congregants; the use of the building for meetings held by organizations or groups providing bereavement counseling to persons having suffered the loss of a loved one, or providing advice or support for conditions or diseases including, but not limited to, alcoholism, drug addiction, cancer, cerebral palsy, Parkinson's disease, or Alzheimer's disease; the use of the building for blood drives, health screenings, health information meetings, yoga classes, exercise classes or other activities intended to promote the health of the congregants or other persons; and use of the building by non-congregant members of the community for private social

functions. The building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship where the not-for-profit religious organization occupying the place of worship accepts the payment of funds to defray costs related to another party's use of the building.

S 5. Subdivision 3 of section 105 of the alcoholic beverage control law, as amended by chapter 406 of the laws of 2007, is amended to read as follows:

3. (a) No retail license to sell liquor and/or wine for off-premises consumption shall be granted for any premises which shall be located on the same street or avenue, and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other place of worship; the measurements to be taken in a straight line from the [center of the nearest entrance to the building used for such school, church, synagogue or other place of worship to the center of the nearest entrance] POINT ON THE PROPERTY BOUNDARY LINE of the premises to be licensed THAT IS CLOSEST TO THE PROPERTY BOUNDARY LINE OF SUCH SCHOOL, CHURCH, SYNAGOGUE OR OTHER PLACE OF WORSHIP TO THE CLOSEST POINT ON THE PROPERTY BOUNDARY LINE OF SUCH SCHOOL, CHURCH, SYNAGOGUE OR OTHER PLACE OF WORSHIP; except, however, that no license shall be denied to any premises at which a license under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school, church, synagogue or other place of worship; AND EXCEPT THAT NO LICENSE OR RENEWAL THEREOF SHALL BE DENIED TO ANY PREMISES PURSUANT TO THIS SECTION AT WHICH A LICENSE UNDER THIS CHAPTER HAS BEEN IN EXISTENCE CONTINUOUSLY FROM A DATE PRIOR TO DECEMBER THIRTY-FIRST, TWO THOUSAND NINE.

(b) [Within the context of this subdivision, the word "entrance" shall mean a door of a school, of a house of worship, or of the premises sought to be licensed, regularly used to give ingress to students of the school, to the general public attending the place of worship, and to patrons or guests of the premises proposed to be licensed, except that where a school or house of worship is set back from a public thoroughfare, the walkway or stairs leading to any such door shall be deemed an entrance; and the measurement shall be taken to the center of the walkway or stairs at the point where it meets the building line or public thoroughfare. A door which has no exterior hardware, or which is used solely as an emergency or fire exit, or for maintenance purposes, or which leads directly to a part of a building not regularly used by the general public or patrons, is not deemed an "entrance".

(c)] Within the context of this subdivision, a building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship by incidental uses that are not of a nature to detract from the predominant character of the building as a place of worship, such uses which include, but which are not limited to: the conduct of legally authorized games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at the place of worship or for other not-for-profit organizations or groups; use of the building for fund-raising performances by or benefitting the not-for-profit religious [organizations] ORGANIZATION which conducts services at the place of worship or other not-for-profit organizations or groups; the use of the building by other religious organizations or groups for religious services or other purposes; the conduct of social activities by or for the benefit of the congregants; the use of the building for meetings held by organizations

or groups providing bereavement counseling to persons having suffered the loss of a loved one, or providing advice or support for conditions or diseases including, but not limited to, alcoholism, drug addiction, cancer, cerebral palsy, Parkinson's disease, or Alzheimer's disease; the use of the building for blood drives, health screenings, health information meetings, yoga classes, exercise classes or other activities intended to promote the health of the congregants or other persons; and use of the building by non-congregant members of the community for private social functions. The building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship where the not-for-profit religious organization occupying the place of worship accepts the payment of funds to defray costs related to another party's use of the building.

S 6. This act shall take effect December 31, 2009.