

1058

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. ORTIZ, ARROYO, P. RIVERA -- Multi-Sponsored by --
M. of A. COLTON, 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 and in relation to the licensure and training of bouncers

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.

LBD03645-01-1

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

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

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

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

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

15. THE STATE LIQUOR AUTHORITY SHALL PREPARE AND DISSEMINATE INFORMATION TO ADVISE LICENSEES OF ON-PREMISES CONSUMPTION RETAIL ESTABLISHMENTS OF THE REQUIREMENT TO OBTAIN THE CRIMINAL HISTORY INFORMATION OF A PROSPECTIVE BOUNCER PURSUANT TO SUBDIVISION EIGHTEEN OF SECTION ONE HUNDRED SIX OF THIS CHAPTER. SUCH INFORMATION SHALL ALSO INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

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

(B) APPLICABLE CONFIDENTIALITY REQUIREMENTS;

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

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

16. THE STATE LIQUOR AUTHORITY SHALL REQUIRE ALL PROSPECTIVE BOUNCERS TO TAKE A TRAINING COURSE PRIOR TO ANY EMPLOYMENT AS A BOUNCER. SUCH TRAINING COURSE SHALL INCLUDE IDENTIFICATION PROCEDURES, CIVIL LIABILITIES AND POTENTIAL CRIMINAL LIABILITIES FACED BY THE EMPLOYING ESTABLISHMENT AND THE BOUNCER FOR ABUSIVE, NEGLIGENT, AND CRIMINAL BEHAVIOR, LAW ENFORCEMENT CONTACTS, AND ANY OTHER TOPIC THE STATE LIQUOR AUTHORITY MAY DEEM NECESSARY.

S 4. The alcoholic beverage control law is amended by adding a new article 3 to read as follows:

ARTICLE 3 BOUNCERS

SECTION 30. BOUNCERS; LICENSURE.

31. BOUNCERS; TRAINING.

S 30. BOUNCERS; LICENSURE. 1. ON AND AFTER SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ARTICLE, ONLY A PERSON LICENSED PURSUANT TO THIS ARTICLE SHALL BE EMPLOYED AS A BOUNCER.

2. TO QUALIFY FOR A LICENSE AS A BOUNCER, AN APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:

(A) APPLICATION: FILE AN APPLICATION WITH THE AUTHORITY;

(B) FINGERPRINTS: SUBMIT A SET OF FINGERPRINTS TO THE AUTHORITY IN ORDER TO OBTAIN CRIMINAL HISTORY INFORMATION;

1 (C) CRIMINAL HISTORY: SUBMIT A LIST OF ALL CRIMINAL CONVICTIONS OF THE
2 APPLICANT;

3 (D) TRAINING: COMPLETE THE TRAINING REQUIREMENTS SET FORTH IN SECTION
4 THIRTY-ONE OF THIS ARTICLE; AND

5 (E) FEE: PAY AN APPLICATION FEE OF FIFTY DOLLARS. FEES COLLECTED
6 PURSUANT TO THIS PARAGRAPH SHALL BE USED TO FUND THE TRAINING PROGRAM
7 ESTABLISHED BY SECTION THIRTY-ONE OF THIS ARTICLE.

8 3. THE AUTHORITY SHALL ISSUE LICENSES TO QUALIFIED APPLICANTS FOR
9 EMPLOYMENT AS A BOUNCER. SUCH LICENSE SHALL BE OF SUCH A SIZE AS TO
10 ENABLE EMPLOYED BOUNCERS TO CARRY SUCH LICENSE AT ALL TIMES WHEN
11 EMPLOYED.

12 4. UNLESS A DETERMINATION IS MADE PURSUANT TO SUBDIVISION FIVE OF THIS
13 SECTION THAT AN APPLICANT IS OTHERWISE ELIGIBLE FOR A LICENSE, NO APPLI-
14 CANT WITH A CRIMINAL CONVICTION SHALL BE ELIGIBLE FOR A LICENSE. THE
15 DURATION OF TIME FOR WHICH SUCH APPLICANT SHALL BE INELIGIBLE FOR A
16 LICENSE SHALL BE NO SHORTER THAN THE LENGTH OF THE SENTENCE IMPOSED UPON
17 SUCH APPLICANT AS A RESULT OF SUCH CRIMINAL CONVICTION. AN APPLICANT
18 WITH MORE THAN ONE CRIMINAL CONVICTION SHALL BE INELIGIBLE FOR A DURA-
19 TION OF TIME NO SHORTER THAN THE LONGEST SENTENCE IMPOSED.

20 5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION,
21 UPON CONSIDERATION OF THE CRITERIA SET FORTH IN THIS SUBDIVISION, THE
22 AUTHORITY MAY ISSUE A LICENSE TO AN APPLICANT WITH ONE OR MORE CRIMINAL
23 CONVICTIONS IF THE AUTHORITY DEEMS THE ISSUANCE OF SUCH LICENSE APPRO-
24 PRIATE. CRITERIA TO BE CONSIDERED BY THE DEPARTMENT ARE:

25 (A) THE NATURE AND SERIOUSNESS OF THE CRIMINAL CONVICTION;

26 (B) THE LENGTH OF TIME THAT HAS ELAPSED SINCE THE APPLICANT COMPLETED
27 SERVING THE SENTENCE FOR SUCH CONVICTION;

28 (C) THE BEST INTEREST OF THE PUBLIC;

29 (D) THE RELATIONSHIP BETWEEN THE CRIMINAL CONVICTION AND ITS RELEVANCE
30 TO EMPLOYMENT AS A BOUNCER;

31 (E) THE APPLICANT'S AGE WHEN THE CRIMINAL CONVICTION OCCURRED;

32 (F) THE CONDUCT OF SUCH PERSON BEFORE AND AFTER THE CRIMINAL
33 CONVICTION;

34 (G) EVIDENCE THAT THE APPLICANT HAS BEEN REHABILITATED; AND

35 (H) ANY OTHER CRITERIA THE AUTHORITY DEEMS RELEVANT.

36 6. LAW ENFORCEMENT OFFICERS THROUGHOUT THE STATE ARE HEREBY AUTHORIZED
37 TO ENFORCE THE PROVISIONS OF THIS ARTICLE. IN PROVIDING SUCH ENFORCEMENT
38 SUCH OFFICERS MAY REQUEST ANY BOUNCER TO PRODUCE HIS OR HER LICENSE
39 ISSUED PURSUANT TO THIS ARTICLE. ANY BOUNCER WHO FAILS TO PRODUCE SUCH
40 LICENSE WHEN REQUESTED SHALL BE SUBJECT TO A FINE OF NO MORE THAN THIR-
41 TY-FIVE HUNDRED DOLLARS, TERM OF IMPRISONMENT NOT EXCEEDING ONE YEAR, OR
42 BOTH SUCH FINE AND IMPRISONMENT.

43 S 31. BOUNCERS; TRAINING. AN APPLICANT FOR A LICENSE ISSUED PURSUANT
44 TO THIS ARTICLE SHALL COMPLETE THE TRAINING SET FORTH IN THIS SECTION.
45 SUCH TRAINING SHALL BE PROVIDED BY AUTHORIZED AGENCIES OF THE AUTHORITY,
46 AND SHALL EMPHASIZE AND CONSIST OF:

47 1. AN UNDERSTANDING OF THE DUTIES AND RESPONSIBILITIES OF A DOOR
48 SUPERVISOR;

49 2. AN AWARENESS OF APPLICABLE LAWS, RULES AND REGULATIONS;

50 3. AN UNDERSTANDING OF USING AGREED UPON CRITERIA FOR ALLOWING ENTRY
51 TO A PREMISES;

52 4. AN UNDERSTANDING OF PROCEDURES, INCLUDING, BUT NOT LIMITED TO NON-
53 VIOLENT RESTRAINT, USED FOR THE MONITORING AND SUPERVISION OF PERSONS
54 WITHIN THE PREMISES AND THE RISKS ASSOCIATED WITH SUCH PROCEDURES;

55 5. AN APPRECIATION OF THE INCREASED RISKS ASSOCIATED WITH ALCOHOL AND
56 SUBSTANCE ABUSE;

1 6. INSIGHT INTO INTERVENTION AND CROWD CONTROL;
2 7. AN UNDERSTANDING OF RECOMMENDED RESPONSES TO EMERGENCIES, ACCIDENTS
3 AND INJURIES; AND
4 8. BASIC FIRST AID.
5 S 5. This act shall take effect on the one hundred twentieth day after
6 it shall have become a law.