

4014

2011-2012 Regular Sessions

I N   S E N A T E

March 14, 2011

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Introduced by Sen. MARCELLINO -- (at request of the State Liquor Authority) -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the alcoholic beverage control law, in relation to expanding the types of agreements that will suffice to show ownership or control of a licensed premises

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

1     Section 1. Subdivision 1 of section 105 of the alcoholic beverage  
2 control law, as amended by chapter 48 of the laws of 1985, is amended to  
3 read as follows:  
4     1. No retail license to sell liquors and/or wines for consumption off  
5 the premises shall be granted for any premises, unless the applicant  
6 shall be the owner thereof, or shall be in possession of said premises  
7 under a lease, MANAGEMENT AGREEMENT OR FRANCHISE AGREEMENT, in writing,  
8 for a term not less than the license period except, however, that such  
9 license may thereafter be renewed without the requirement of a lease,  
10 MANAGEMENT AGREEMENT OR FRANCHISE AGREEMENT, as herein provided. This  
11 subdivision shall not apply to premises leased from government agencies,  
12 as defined under subdivision [twelve-b] TWELVE-C of section three of  
13 this chapter; provided, however, that the appropriate administrator of  
14 such government agency provides some form of written documentation  
15 regarding the terms of occupancy under which the applicant is leasing  
16 said premises from the government agency for presentation to the state  
17 liquor authority at the time of the license application. Such documenta-  
18 tion shall include the terms of occupancy between the applicant and the  
19 government agency, including, but not limited to, any short-term leasing  
20 agreements or written occupancy agreements.  
21     S 2. Subdivision 1 of section 106 of the alcoholic beverage control  
22 law, as amended by chapter 48 of the laws of 1985, is amended to read as  
23 follows:

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

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1 1. No retail license for on-premises consumption shall be granted for  
2 any premises, unless the applicant shall be the owner thereof, or shall  
3 be in possession of said premises under a lease, MANAGEMENT AGREEMENT OR  
4 FRANCHISE AGREEMENT, in writing, for a term not less than the license  
5 period except, however, that such license may thereafter be renewed  
6 without the requirement of a lease, MANAGEMENT AGREEMENT OR FRANCHISE  
7 AGREEMENT, as herein provided. This subdivision shall not apply to prem-  
8 ises leased from government agencies, as defined under subdivision  
9 [twelve-b] TWELVE-C of section three of this chapter; provided, however,  
10 that the appropriate administrator of such government agency provides  
11 some form of written documentation regarding the terms of occupancy  
12 under which the applicant is leasing said premises from the government  
13 agency for presentation to the state liquor authority at the time of the  
14 license application. Such documentation shall include the terms of occu-  
15 pancy between the applicant and the government agency, including, but  
16 not limited to, any short-term leasing agreements or written occupancy  
17 agreements.

18 S 3. Paragraph f of subdivision 1 of section 110 of the alcoholic  
19 beverage control law, as amended by chapter 114 of the laws of 2000, is  
20 amended to read as follows:

21 (f) A statement that the applicant has control of the premises to be  
22 licensed by ownership of a fee interest or VIA a leasehold, MANAGEMENT  
23 AGREEMENT, OR FRANCHISE AGREEMENT, with a term at least as long as the  
24 license for which the application is being made, or by a binding  
25 contract to acquire the same and a statement of identity under paragraph  
26 (a) of this subdivision for the lessor of any leasehold, MANAGER OF ANY  
27 MANAGEMENT AGREEMENT, OR FRANCHISE OF ANY FRANCHISE AGREEMENT, with a  
28 copy of the lease, contract, MANAGEMENT AGREEMENT, OR FRANCHISE AGREE-  
29 MENT, or deed evidencing fee ownership of the premises.

30 S 4. Subdivision 3 of section 113 of the alcoholic beverage control  
31 law, as added by chapter 572 of the laws of 1996, is amended to read as  
32 follows:

33 3. For purposes of this section, "arm's length transaction" shall mean  
34 a sale of a fee [or] OF all undivided interests in real property, [or]  
35 lease [of], MANAGEMENT AGREEMENT, OR FRANCHISE AGREEMENT, OR any part  
36 thereof, in the open market, between an informed and willing buyer and  
37 seller where neither is under any compulsion to participate in the tran-  
38 saction, unaffected by any unusual conditions indicating a reasonable  
39 possibility that the sale was made for the purpose of permitting the  
40 original licensee to avoid the effect of the revocation. The following  
41 sales shall be presumed not to be arm's length transactions unless  
42 adequate documentation is provided demonstrating that the sale [or],  
43 lease, MANAGEMENT AGREEMENT, OR FRANCHISE AGREEMENT, was not conducted,  
44 in whole or in part, for the purpose of permitting the original licensee  
45 to avoid the effect of the revocation:

46 (a) a sale between relatives;

47 (b) a sale between related companies or partners in a business; or

48 (c) a sale [or], lease, MANAGEMENT AGREEMENT, OR FRANCHISE AGREEMENT,  
49 affected by other facts or circumstances that would indicate that the  
50 sale [or], lease, MANAGEMENT AGREEMENT, OR FRANCHISE AGREEMENT, is [not]  
51 entered into for the primary purpose of permitting the original licensee  
52 to avoid the effect of the revocation.

53 S 5. This act shall take effect on the one hundred eightieth day after  
54 it shall have become a law; provided that the state liquor authority may  
55 promulgate rules necessary for the implementation of this act immediate-  
56 ly.