

4014--A

Cal. No. 361

2011-2012 Regular Sessions

I N S E N A T E

March 14, 2011

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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 OTHER AGREEMENT GIVING THE APPLI-
8 CANT CONTROL OVER THE FOOD AND BEVERAGE SERVICE AT THE PREMISES, in
9 writing, for a term not less than the license period except, however,
10 that such license may thereafter be renewed without the requirement of a
11 lease, MANAGEMENT AGREEMENT OR OTHER AGREEMENT GIVING THE APPLICANT
12 CONTROL OVER THE FOOD AND BEVERAGE SERVICE AT THE PREMISES, as herein
13 provided. This subdivision shall not apply to premises leased from
14 government agencies, as defined under subdivision [twelve-b] TWELVE-C of
15 section three of this chapter; provided, however, that the appropriate
16 administrator of such government agency provides some form of written
17 documentation regarding the terms of occupancy under which the applicant
18 is leasing said premises from the government agency for presentation to
19 the state liquor authority at the time of the license application. Such
20 documentation shall include the terms of occupancy between the applicant

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

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1 and the government agency, including, but not limited to, any short-term
2 leasing agreements or written occupancy agreements.

3 S 2. Subdivision 1 of section 106 of the alcoholic beverage control
4 law, as amended by chapter 48 of the laws of 1985, is amended to read as
5 follows:

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

25 S 3. Paragraph (f) of subdivision 1 of section 110 of the alcoholic
26 beverage control law, as amended by chapter 114 of the laws of 2000, is
27 amended to read as follows:

28 (f) A statement that the applicant has control of the premises to be
29 licensed by ownership of a fee interest or VIA a leasehold, MANAGEMENT
30 AGREEMENT, OR OTHER AGREEMENT GIVING THE APPLICANT CONTROL OVER THE FOOD
31 AND BEVERAGE AT THE PREMISES, with a term at least as long as the
32 license for which the application is being made, or by a binding
33 contract to acquire the same and a statement of identity under paragraph
34 (a) of this subdivision for the lessor of any leasehold, MANAGER OF ANY
35 MANAGEMENT AGREEMENT, OR OTHER AGREEMENT GIVING THE APPLICANT CONTROL
36 OVER THE FOOD AND BEVERAGE AT THE PREMISES, with a copy of the lease,
37 contract, MANAGEMENT AGREEMENT, OR OTHER AGREEMENT GIVING THE APPLICANT
38 CONTROL OVER THE FOOD AND BEVERAGE AT THE PREMISES, OR deed evidencing
39 fee ownership of the premises.

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

43 3. For purposes of this section, "arm's length transaction" shall mean
44 a sale of a fee [or] OF all undivided interests in real property, [or]
45 lease [of], MANAGEMENT AGREEMENT, OR OTHER AGREEMENT GIVING THE APPLI-
46 CANT CONTROL OVER THE FOOD AND BEVERAGE AT THE PREMISES, OR any part
47 thereof, in the open market, between an informed and willing buyer and
48 seller where neither is under any compulsion to participate in the tran-
49 saction, unaffected by any unusual conditions indicating a reasonable
50 possibility that the sale was made for the purpose of permitting the
51 original licensee to avoid the effect of the revocation. The following
52 sales shall be presumed not to be arm's length transactions unless
53 adequate documentation is provided demonstrating that the sale [or],
54 lease, MANAGEMENT AGREEMENT, OR OTHER AGREEMENT GIVING THE APPLICANT
55 CONTROL OVER THE FOOD AND BEVERAGE AT THE PREMISES, was not conducted,

1 in whole or in part, for the purpose of permitting the original licensee
2 to avoid the effect of the revocation:
3 (a) a sale between relatives;
4 (b) a sale between related companies or partners in a business; or
5 (c) a sale [or], lease, MANAGEMENT AGREEMENT, OR OTHER AGREEMENT
6 GIVING THE APPLICANT CONTROL OVER THE FOOD AND BEVERAGE AT THE PREMISES,
7 affected by other facts or circumstances that would indicate that the
8 sale [or], lease, MANAGEMENT AGREEMENT, OR OTHER AGREEMENT GIVING THE
9 APPLICANT CONTROL OVER THE FOOD AND BEVERAGE AT THE PREMISES, is [not]
10 entered into for the primary purpose of permitting the original licensee
11 to avoid the effect of the revocation.
12 S 5. This act shall take effect on the one hundred eightieth day after
13 it shall have become a law; provided that the state liquor authority may
14 promulgate rules necessary for the implementation of this act immediate-
15 ly.