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

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:

Section 1. Section 3 of the alcoholic beverage control law is amended by adding two new subdivisions 6-a and 9-a to read as follows:

6-A. "BOUNCER" SHALL MEAN A PERSON EMPLOYED BY AN ON-PREMISES RETAIL LICENSEE WHERE THE BASIS FOR SUCH PERSON'S EMPLOYMENT IS TO GENERALLY KEEP THE PEACE WITHIN SUCH LICENSEE'S ON-PREMISES RETAIL ESTABLISHMENT.

9-A. "CRIMINAL HISTORY INFORMATION" SHALL MEAN A RECORD OF ALL CONVICTIONS OF CRIMES MAINTAINED ON AN INDIVIDUAL BY THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO PARAGRAPH (C) OF SUBDIVISION FOUR OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW.

S 2. Section 106 of the alcoholic beverage control law is amended by adding a new subdivision 18 to read as follows:

18.(A) ALL RETAIL LICENSEES FOR ON-PREMISES CONSUMPTION THAT EMPLOY ONE OR MORE BOUNCERS, AS DEFINED IN SUBDIVISION SIX-A OF SECTION THREE OF THIS CHAPTER, SHALL REQUIRE AN APPLICANT FOR EMPLOYMENT AS A BOUNCER TO SUBMIT A SET OF FINGERPRINTS TO SUCH LICENSEE IN ORDER TO OBTAIN CRIMINAL HISTORY INFORMATION. SUCH CRIMINAL HISTORY INFORMATION SHALL BE OBTAINED ACCORDING TO THE PROVISIONS OF THIS SUBDIVISION.

(B) TO THE EXTENT PERMITTED BY LAW, THE LICENSEE OF AN ON-PREMISES CONSUMPTION RETAIL ESTABLISHMENT SHALL REQUEST FROM A PERSON APPLYING FOR EMPLOYMENT AS A BOUNCER A STATEMENT OF HIS OR HER PRIOR CRIMINAL 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.

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INFORMATION ON PRIOR CRIMINAL CONVICTION FROM A PROSPECTIVE BOUNCER, SUCH LICENSEE SHALL:

(1) INFORM THE PROSPECTIVE BOUNCER IN WRITING THAT SUCH LICENSEE IS REQUIRED TO REQUEST HIS OR HER CRIMINAL HISTORY INFORMATION FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES AND REVIEW SUCH INFORMATION PURSUANT TO THIS SUBDIVISION;

(2) INFORM THE PROSPECTIVE BOUNCER THAT BEFORE SUCH LICENSEE REQUESTS SUCH CRIMINAL HISTORY INFORMATION, THE PROSPECTIVE BOUNCER HAS THE RIGHT TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES;

(3) OBTAIN THE SIGNED INFORMED CONSENT OF THE PROSPECTIVE BOUNCER ON A FORM SUPPLIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES WHICH INDICATES THAT SUCH PROSPECTIVE BOUNCER HAS:

(I) BEEN INFORMED OF THE RIGHT AND PROCEDURES NECESSARY TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION;

(II) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMINAL HISTORY INFORMATION; AND

(III) CONSENTED TO SUCH REQUEST.

(C) UPON RECEIVING SUCH WRITTEN CONSENT, SUCH LICENSEE SHALL OBTAIN THE FINGERPRINTS OF SUCH PROSPECTIVE BOUNCER IN SUCH FORM AND MANNER AS SHALL BE SPECIFIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

(D) SUCH LICENSEE MAY DESIGNATE ONE PERSON IN HIS OR HER EMPLOY WHO SHALL BE AUTHORIZED TO REQUEST, RECEIVE AND REVIEW SUCH CRIMINAL HISTORY INFORMATION, AND ONLY SUCH LICENSEE, HIS OR HER DESIGNEE AND THE PROSPECTIVE BOUNCER TO WHICH THE CRIMINAL HISTORY INFORMATION RELATES SHALL HAVE ACCESS TO SUCH INFORMATION.

(E) SUCH LICENSEE, OR HIS OR HER DESIGNEE, SHALL PROMPTLY SUBMIT THE FINGERPRINTS TO THE DIVISION OF CRIMINAL JUSTICE SERVICES IN A MANNER PRESCRIBED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES AND SHALL REQUEST AND IS AUTHORIZED TO RECEIVE FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES CRIMINAL HISTORY INFORMATION CONCERNING SUCH PROSPECTIVE BOUNCER.

(F) NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, NO PERSON APPLYING FOR EMPLOYMENT AS A BOUNCER SHALL BE CHARGED A FEE FOR THE CRIMINAL HISTORY BACKGROUND CHECK REQUIRED BY THIS SUBDIVISION.

(G) SUCH LICENSEE, OR HIS OR HER DESIGNEE, SHALL CONSIDER SUCH CRIMINAL HISTORY INFORMATION IN ACCORDANCE WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW.

(H) SUCH LICENSEE, OR HIS OR HER DESIGNEE, SHALL UPON RECEIPT IMMEDIATELY MARK SUCH CRIMINAL HISTORY INFORMATION "CONFIDENTIAL", AND SHALL AT ALL TIMES MAINTAIN SUCH CRIMINAL HISTORY INFORMATION IN A SECURE PLACE. CRIMINAL HISTORY INFORMATION RECEIVED PURSUANT TO THIS SUBDIVISION SHALL NOT BE PUBLISHED OR IN ANY WAY DISCLOSED OR REDISCLOSED TO PERSONS OTHER THAN SUCH LICENSEE, OR HIS OR HER DESIGNEE, AND THE PROSPECTIVE BOUNCER. ANY PERSON WHO WILLFULLY RELEASES OR PERMITS THE RELEASE OF ANY CONFIDENTIAL CRIMINAL HISTORY INFORMATION RECEIVED PURSUANT TO THIS SUBDIVISION TO PERSONS NOT PERMITTED BY THIS SUBDIVISION TO RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A MISDEMEANOR. ANY UNAUTHORIZED DISCLOSURE OF FINGERPRINTS OR CRIMINAL HISTORY INFORMATION OBTAINED PURSUANT TO THIS SUBDIVISION SHALL ALSO ENTITLE THE SUBJECT OF SUCH FINGERPRINTS OR CRIMINAL HISTORY INFORMATION TO RECOVER A CIVIL AWARD OF DAMAGES RESULTING FROM SUCH UNAUTHORIZED DISCLOSURE, TOGETHER WITH COSTS AND REASONABLE ATTORNEY'S FEES.

(I) CRIMINAL HISTORY INFORMATION PROVIDED BY THE DIVISION OF CRIMINAL 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;

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

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

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

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

4. UNLESS A DETERMINATION IS MADE PURSUANT TO SUBDIVISION FIVE OF THIS SECTION THAT AN APPLICANT IS OTHERWISE ELIGIBLE FOR A LICENSE, NO APPLICANT WITH A CRIMINAL CONVICTION SHALL BE ELIGIBLE FOR A LICENSE. THE DURATION OF TIME FOR WHICH SUCH APPLICANT SHALL BE INELIGIBLE FOR A LICENSE SHALL BE NO SHORTER THAN THE LENGTH OF THE SENTENCE IMPOSED UPON SUCH APPLICANT AS A RESULT OF SUCH CRIMINAL CONVICTION. AN APPLICANT WITH MORE THAN ONE CRIMINAL CONVICTION SHALL BE INELIGIBLE FOR A DURATION OF TIME NO SHORTER THAN THE LONGEST SENTENCE IMPOSED.

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

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

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

(C) THE BEST INTEREST OF THE PUBLIC;

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

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

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

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

(H) ANY OTHER CRITERIA THE AUTHORITY DEEMS RELEVANT.

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

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

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

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

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

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

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

6. INSIGHT INTO INTERVENTION AND CROWD CONTROL;
7. AN UNDERSTANDING OF RECOMMENDED RESPONSES TO EMERGENCIES, ACCIDENTS AND INJURIES; AND
8. BASIC FIRST AID.

S 5. This act shall take effect on the one hundred twentieth day after it shall have become a law.