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

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I N A S S E M B L Y

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Introduced by M. of A. CUSICK, WRIGHT, KELLNER -- Multi-Sponsored by -- M. of A. BOYLAND, MAISEL, TOBACCO, WEISENBERG -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law and the executive law, in relation to the licensing of security guards and the business of watch, guard and patrol agencies and the registry thereof

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

Section 1. Section 89-p of the general business law, as added by chapter 336 of the laws of 1992, is amended to read as follows:

S 89-p. Violations and penalties. Any person who is employed as a security guard or who acts as a security guard in violation of the provisions of section eighty-nine-g of this article or WHO IS EMPLOYED AS A SECURITY GUARD IN THE CITY OF NEW YORK IN VIOLATION OF SECTION EIGHTY-NINE-R-1 OF THIS ARTICLE OR RULES PROMULGATED BY THE POLICE COMMISSIONER OF SUCH CITY PURSUANT TO SUCH SECTION OR who knowingly and wilfully makes material misstatements in the application for or renewal of his or her registration card OR THE LICENSE ISSUED BY THE POLICE COMMISSIONER OF THE CITY OF NEW YORK PURSUANT TO SECTION EIGHTY-NINE-R-1 OF THIS ARTICLE or who permits or authorizes the employment of a person as a security guard in violation of the provisions of section eighty-nine-g of this article OR OF SECTION EIGHTY-NINE-R-1 OF THIS ARTICLE OR RULES PROMULGATED BY THE POLICE COMMISSIONER OF SUCH CITY PURSUANT TO SUCH SECTION or any security guard company which employs a security guard in violation of the provisions of section eighty-nine-g of this article OR OF SECTION EIGHTY-NINE-R-1 OF THIS ARTICLE OR RULES PROMULGATED BY THE POLICE COMMISSIONER OF SUCH CITY PURSUANT TO SUCH SECTION shall be guilty of a misdemeanor which, upon conviction, shall be punishable by a term of imprisonment not to exceed six months, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment upon the first conviction and by a term of imprisonment not

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

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to exceed one year or by a fine of not less than one thousand dollars and not to exceed two thousand five hundred dollars or by both such fine and imprisonment upon a subsequent conviction. Any person who shall knowingly and wilfully fail to surrender his or her registration card as required by subdivision seven of section eighty-nine-l of this article OR HIS OR HER LICENSE PURSUANT TO RULES PROMULGATED BY THE POLICE COMMISSIONER OF SUCH CITY PURSUANT TO SECTION EIGHTY-NINE-R-1 OF THIS ARTICLE shall be guilty of a violation punishable by a fine not to exceed two hundred fifty dollars in addition to any other penalty prescribed by law. Each violation of this article shall be deemed a separate offense.

S 2. Section 89-r of the general business law, as amended by chapter 634 of the laws of 1994, is amended to read as follows:

S 89-r. Preemption. [The] EXCEPT AS PROVIDED IN SECTION EIGHTY-NINE-R-1 OF THIS ARTICLE, THE provisions of this article shall govern notwithstanding any other law to the contrary and further, no local law shall be enacted which shall require any fee or license for the licensure [of] OR registration [or] OF security guards.

S 3. The general business law is amended by adding a new section 89-r-1 to read as follows:

S 89-R-1. LICENSURE IN THE CITY OF NEW YORK. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IN THE CITY OF NEW YORK, THE POLICE COMMISSIONER OF SUCH CITY SHALL BE AUTHORIZED TO PRESCRIBE BY RULE LICENSURE, REGISTRATION AND TRAINING REQUIREMENTS, WHICH MAY DIFFER FROM THE DEFINITIONS AND REQUIREMENTS OTHERWISE SPECIFIED IN THIS ARTICLE, AS A CONDITION OF EMPLOYMENT OF SECURITY GUARDS WITHIN SUCH CITY AT PREMISES LICENSED PURSUANT TO THE ALCOHOLIC BEVERAGE CONTROL LAW FOR ON-PREMISES CONSUMPTION OR AT PREMISES WHICH ARE DETERMINED BY THE POLICE COMMISSIONER TO CONSTITUTE OR TO INCLUDE CRITICAL INFRASTRUCTURE AND/OR KEY RESOURCES.

1. FOR PURPOSES OF THIS SECTION, CRITICAL INFRASTRUCTURE SHALL MEAN SYSTEMS AND ASSETS, WHETHER PHYSICAL OR VIRTUAL, SO VITAL TO THE CITY OF NEW YORK, THE STATE OR THE UNITED STATES THAT THE INCAPACITY OR DESTRUCTION OF SUCH SYSTEMS AND ASSETS WOULD HAVE A DEBILITATING IMPACT ON SECURITY, ECONOMIC SECURITY, PUBLIC HEALTH OR SAFETY, OR ANY COMBINATION OF THOSE MATTERS, AND KEY RESOURCES SHALL MEAN PUBLICLY OR PRIVATELY CONTROLLED RESOURCES ESSENTIAL TO THE MINIMAL OPERATIONS OF THE ECONOMY AND GOVERNMENT, PROVIDED THAT CRITICAL INFRASTRUCTURE AND/OR KEY RESOURCES SHALL BE PRESUMED NOT TO INCLUDE A RETAIL MERCANTILE ESTABLISHMENT AS THAT TERM IS DEFINED IN SECTION TWO HUNDRED SEVENTEEN OF THIS CHAPTER, EXCEPT FOR THOSE ESTABLISHMENTS HOUSED WITHIN PREMISES DEFINED AS CRITICAL INFRASTRUCTURE AND/OR KEY RESOURCES UNDER THIS SECTION.

2. IN THE CITY OF NEW YORK, NO SECURITY GUARD COMPANY SHALL KNOWINGLY EMPLOY A PERSON AS A SECURITY GUARD AND NO PERSON SHALL BE EMPLOYED AS A SECURITY GUARD OR ACT AS A SECURITY GUARD AT PREMISES LICENSED PURSUANT TO THE ALCOHOLIC BEVERAGE CONTROL LAW FOR ON-PREMISES CONSUMPTION OR AT PREMISES WHICH HAVE BEEN DETERMINED BY THE POLICE COMMISSIONER OF THE CITY OF NEW YORK TO CONSTITUTE OR TO INCLUDE CRITICAL INFRASTRUCTURE AND/OR KEY RESOURCES UNLESS SUCH PERSON HAS BEEN LICENSED AS A SECURITY GUARD OR OTHERWISE APPROVED FOR SUCH EMPLOYMENT BY THE POLICE COMMISSIONER PURSUANT TO THIS SECTION.

3. WITH RESPECT TO SECURITY GUARDS LICENSED PURSUANT TO THIS SECTION, ONLY THE FOLLOWING PROVISIONS OF THIS ARTICLE SHALL APPLY IN ADDITION TO THIS SECTION: SUBDIVISIONS SIX, EIGHT, NINE AND TEN OF SECTION EIGHTY-NINE-G, AND SECTIONS EIGHTY-NINE-F, EIGHTY-NINE-J, EIGHTY-NINE-P,

EIGHTY-NINE-Q AND EIGHTY-NINE-R OF THIS ARTICLE, PROVIDED THAT ANY REFERENCE TO A REGISTERED SECURITY GUARD IN SUBDIVISION NINE OF SECTION EIGHTY-NINE-G OF THIS ARTICLE SHALL BE DEEMED TO INCLUDE A SECURITY GUARD LICENSED PURSUANT TO THIS SECTION.

4. THE POLICE COMMISSIONER OF THE CITY OF NEW YORK MAY EXERCISE THE AUTHORITY GRANTED PURSUANT TO THIS SECTION TO DESIGN AND/OR APPROVE TRAINING COURSES, CONDUCT TRAINING COURSES, EVALUATE AND APPROVE OR DISAPPROVE SECURITY GUARD TRAINING SCHOOLS OR ENTITIES WHICH PROVIDE SECURITY GUARD TRAINING, AND PRESCRIBE TRAINING REQUIREMENTS SPECIFICALLY RELATED TO THE DUTIES PERFORMED BY SUCH SECURITY GUARDS.

5. IN FURTHERANCE OF THE EXERCISE OF THE AUTHORITY GRANTED PURSUANT TO THIS SECTION, AND IN ORDER TO ASCERTAIN ANY PREVIOUS CRIMINAL RECORD OF APPLICANTS FOR SECURITY GUARD LICENSES PURSUANT TO THIS SECTION, THE POLICE COMMISSIONER OF THE CITY OF NEW YORK SHALL BE AUTHORIZED TO TRANSMIT TO THE DIVISION TWO SETS OF FINGERPRINTS AND THE FEES REQUIRED BY THE DIVISION FOR A SEARCH OF CRIMINAL RECORDS. A SEARCH OF THE FILES OF THE DIVISION AND WRITTEN NOTIFICATION OF THE RESULTS OF THE SEARCH TO SUCH POLICE COMMISSIONER SHALL BE MADE WITHOUT UNNECESSARY DELAY. THE DIVISION SHALL FORWARD A SET OF FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION WITH A REQUEST THAT THE FILES OF THE BUREAU BE SEARCHED AND NOTIFICATION OF THE RESULTS OF THE SEARCH BE MADE TO SUCH POLICE COMMISSIONER.

6. EXCEPT AS PROVIDED IN SECTION SEVEN HUNDRED FIFTY-TWO OF THE CORRECTION LAW, NO SECURITY GUARD COMPANY SHALL KNOWINGLY EMPLOY TO PERFORM SECURITY GUARD FUNCTIONS AT PREMISES WITHIN THE CITY OF NEW YORK REQUIRING SECURITY GUARDS LICENSED PURSUANT TO THIS SECTION, ANY INDIVIDUAL:

A. WHO HAS BEEN CONVICTED OF A CRIME, AS DEFINED IN SECTION 10.00 OF THE PENAL LAW, IN THIS STATE OR OF ANY OFFENSE IN ANY OTHER JURISDICTION WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE A CRIME, WHERE, IN THE DISCRETION OF THE POLICE COMMISSIONER OF THE CITY OF NEW YORK, SUCH CRIME OR OFFENSE BEARS SUCH A RELATIONSHIP TO THE PERFORMANCE OF THE DUTIES OF A SECURITY GUARD, AS TO CONSTITUTE A BAR TO EMPLOYMENT; OR

B. WHO IN ANY JURISDICTION HAS BEEN DENIED AUTHORIZATION TO PERFORM SECURITY GUARD FUNCTIONS OR WHOSE AUTHORIZATION TO PERFORM SECURITY GUARD FUNCTIONS HAS BEEN SUSPENDED OR REVOKED ON GROUNDS WHICH WOULD CONSTITUTE A BASIS FOR DENYING, SUSPENDING OR REVOKING A REGISTRATION CARD OR A LICENSE ISSUED PURSUANT TO THIS SECTION IN THIS STATE.

7. A LICENSE ISSUED BY THE POLICE COMMISSIONER OF THE CITY OF NEW YORK PURSUANT TO THIS SECTION SHALL BE GIVEN FULL FORCE AND EFFECT THROUGHOUT THE STATE AND SHALL BE DEEMED TO SATISFY THE REQUIREMENTS OF THIS ARTICLE WITH RESPECT TO THE LICENSURE AND REGISTRATION OF SECURITY GUARDS, EXCEPT THAT SUCH LICENSE SHALL NOT BE DEEMED TO SATISFY THE REQUIREMENTS OF THIS ARTICLE WITH RESPECT TO ISSUANCE OF A SPECIAL ARMED GUARD REGISTRATION CARD UNLESS SUCH LICENSE CONTAINS A CERTIFICATION TO THAT EFFECT.

8. THE POLICE COMMISSIONER OF THE CITY OF NEW YORK MAY TAKE ALL NECESSARY AND APPROPRIATE STEPS IN THE FURTHERANCE OF THE AUTHORITY GRANTED PURSUANT TO THIS SECTION, INCLUDING SUSPENSION, REVOCATION AND REISSUANCE OF LICENSES, AND MAY ESTABLISH FEES AND PROMULGATE RULES AS NECESSARY AND APPROPRIATE TO ACCOMPLISH THE PURPOSES OF THIS SECTION. SUCH RULES MAY INCLUDE REQUIREMENTS AFFECTING SECURITY GUARD COMPANIES EMPLOYING SECURITY GUARDS LICENSED PURSUANT TO THIS SECTION AS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS SECTION, INCLUDING BUT NOT LIMITED TO RECORDKEEPING, SUBMISSION AND/OR VERIFICATION OF REQUIRED INFORMATION, AVAILABILITY OF RECORDS FOR INSPECTION, AND NOTIFICATION REQUIREMENTS.

SUCH POLICE COMMISSIONER MAY ALSO REQUEST AND RECEIVE INFORMATION FROM THE DEPARTMENT AS NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS SECTION.

S 4. Subdivisions 1, 4 and 6 of section 99 of the executive law, as added by chapter 336 of the laws of 1992, are amended to read as follows:

1. The department shall collect information and maintain, on a current basis, a registry of all security guards and applicants for registration cards in the state, WHICH SHALL INCLUDE SECURITY GUARDS LICENSED BY THE POLICE COMMISSIONER OF THE CITY OF NEW YORK AND APPLICANTS FOR SUCH LICENSES PURSUANT TO SECTION EIGHTY-NINE-R-1 OF THE GENERAL BUSINESS LAW. Such registry shall include, but not be limited to, with respect to each security guard or applicant as the case may be, his or her name, address, date of birth, whether a registration card OR LICENSE has been issued, denied, suspended or revoked or has expired, and the security guard company or companies by whom he or she is or has been employed and such other information as may in the discretion of the secretary be appropriate; provided, however, that in no case shall such registry include criminal history information.

4. Notwithstanding any other provision of law, security guard companies, as defined in subdivision five of section eighty-nine-f of the general business law, shall, upon such terms and conditions as the department shall by rules and regulations prescribe, have timely access to information contained in the registry, with respect to security guards as defined in subdivision six of section eighty-nine-f of the general business law [or], applicants as defined in subdivision nine of section eighty-nine-f of the general business law, SECURITY GUARDS LICENSED PURSUANT TO SECTION EIGHTY-NINE-R-1 OF THE GENERAL BUSINESS LAW, OR APPLICANTS FOR LICENSES ISSUED PURSUANT TO SECTION EIGHTY-NINE-R-1 OF THE GENERAL BUSINESS LAW, who as certified by such security guard companies making such inquiries are presently employed by or who have applied for employment by such security guard companies as security guards. Such information shall include but not be limited to employment history and such other information as may in the discretion of the secretary be appropriate and relevant to the employment of a security guard.

6. Whenever an applicant for or holder of a security guard registration card has been charged with a serious offense as defined by subdivision thirteen of section eighty-nine-f of the general business law or [of] a misdemeanor, the division shall notify the department and the department shall notify the security guard company which employs such applicant OR SECURITY GUARD or which has filed the application on behalf of such applicant of such CHARGE OF A serious offense or [a] misdemeanor as provided for in paragraph a of subdivision three of section eighty-nine-g of [this article] THE GENERAL BUSINESS LAW. NOTWITHSTANDING THE FOREGOING, WHERE A SECURITY GUARD LICENSED BY THE POLICE COMMISSIONER OF THE CITY OF NEW YORK PURSUANT TO SECTION EIGHTY-NINE-R-L OF THE GENERAL BUSINESS LAW OR AN APPLICANT FOR SUCH LICENSE HAS BEEN CHARGED WITH A CRIME, AS DEFINED IN SECTION 10.00 OF THE PENAL LAW, THE DIVISION SHALL NOTIFY SUCH POLICE COMMISSIONER AND THE SECURITY GUARD COMPANY WHICH EMPLOYS SUCH SECURITY GUARD OR WHICH HAS FILED THE APPLICATION ON BEHALF OF SUCH APPLICANT OF SUCH CHARGE.

S 5. The general business law is amended by adding a new section 70-a to read as follows:

S 70-A. LICENSURE IN THE CITY OF NEW YORK. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IN THE CITY OF NEW YORK, THE POLICE COMMISSIONER OF SUCH CITY SHALL BE AUTHORIZED TO PRESCRIBE BY

RULE LICENSURE AND REGISTRATION REQUIREMENTS THAT MAY DIFFER FROM THE DEFINITIONS AND REQUIREMENTS OTHERWISE SPECIFIED IN THIS ARTICLE AS A CONDITION OF ENGAGING IN THE BUSINESS OF WATCH, GUARD OR PATROL AGENCY WITHIN SUCH CITY AT PREMISES LICENSED PURSUANT TO THE ALCOHOLIC BEVERAGE CONTROL LAW FOR ON-PREMISES CONSUMPTION OR AT PREMISES WHICH ARE DETERMINED BY THE POLICE COMMISSIONER OF SUCH CITY TO CONSTITUTE OR INCLUDE CRITICAL INFRASTRUCTURE AND/OR KEY RESOURCES.

2. FOR PURPOSES OF THIS SECTION, CRITICAL INFRASTRUCTURE SHALL MEAN SYSTEMS AND ASSETS, WHETHER PHYSICAL OR VIRTUAL, SO VITAL TO THE CITY OF NEW YORK, THE STATE OR THE UNITED STATES THAT THE INCAPACITY OR DESTRUCTION OF SUCH SYSTEMS AND ASSETS WOULD HAVE A DEBILITATING IMPACT ON SECURITY, ECONOMIC SECURITY, PUBLIC HEALTH OR SAFETY, OR ANY COMBINATION OF THOSE MATTERS, AND KEY RESOURCES SHALL MEAN PUBLICLY OR PRIVATELY CONTROLLED RESOURCES ESSENTIAL TO THE MINIMAL OPERATIONS OF THE ECONOMY AND GOVERNMENT, PROVIDED THAT CRITICAL INFRASTRUCTURE AND/OR KEY RESOURCES SHALL BE PRESUMED NOT TO INCLUDE A RETAIL MERCANTILE ESTABLISHMENT AS THAT TERM IS DEFINED IN SECTION TWO HUNDRED SEVENTEEN OF THIS CHAPTER, EXCEPT FOR THOSE ESTABLISHMENTS HOUSED WITHIN PREMISES DEFINED AS CRITICAL INFRASTRUCTURE AND/OR KEY RESOURCES UNDER THIS SECTION.

3. IN THE CITY OF NEW YORK, WHERE THE POLICE COMMISSIONER OF SUCH CITY HAS EXERCISED THE AUTHORITY GRANTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, NO PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY OR CORPORATION SHALL CONDUCT THE BUSINESS OF WATCH, GUARD OR PATROL AGENCY AT PREMISES LICENSED PURSUANT TO THE ALCOHOLIC BEVERAGE CONTROL LAW FOR ON-PREMISES CONSUMPTION OR AT PREMISES WHICH HAVE BEEN DETERMINED BY THE POLICE COMMISSIONER OF THE CITY OF NEW YORK TO CONSTITUTE OR INCLUDE CRITICAL INFRASTRUCTURE AND/OR KEY RESOURCES UNLESS SUCH PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY OR CORPORATION HAS BEEN LICENSED OR REGISTERED BY THE POLICE COMMISSIONER OF SUCH CITY PURSUANT TO THIS SECTION.

4. IN FURTHERANCE OF THE EXERCISE OF THE AUTHORITY GRANTED PURSUANT TO THIS SECTION, AND IN ORDER TO ASCERTAIN ANY PREVIOUS CRIMINAL RECORD OF APPLICANTS FOR WATCH, GUARD OR PATROL AGENCY LICENSES PURSUANT TO THIS SECTION, THE POLICE COMMISSIONER OF THE CITY OF NEW YORK SHALL BE AUTHORIZED TO TRANSMIT TO THE DIVISION OF CRIMINAL JUSTICE SERVICES TWO SETS OF FINGERPRINTS AND THE FEES REQUIRED BY THE DIVISION FOR A SEARCH OF CRIMINAL RECORDS. A SEARCH OF THE FILES OF THE DIVISION AND WRITTEN NOTIFICATION OF THE RESULTS OF THE SEARCH TO SUCH POLICE COMMISSIONER SHALL BE MADE WITHOUT UNNECESSARY DELAY. THE DIVISION SHALL FORWARD A SET OF FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION WITH A REQUEST THAT THE FILES OF THE BUREAU BE SEARCHED AND NOTIFICATION OF THE RESULTS OF THE SEARCH BE MADE TO SUCH POLICE COMMISSIONER.

5. THE POLICE COMMISSIONER OF THE CITY OF NEW YORK MAY TAKE ALL NECESSARY AND APPROPRIATE STEPS IN THE FURTHERANCE OF THE AUTHORITY GRANTED PURSUANT TO THIS SECTION, INCLUDING SUSPENSION, REVOCATION AND REISSUANCE OF LICENSES, AND MAY ESTABLISH FEES AND PROMULGATE RULES AS NECESSARY AND APPROPRIATE TO ACCOMPLISH THE PURPOSES OF THIS SECTION. SUCH COMMISSIONER MAY ALSO REQUEST AND RECEIVE INFORMATION FROM THE SECRETARY OF STATE AS NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS SECTION.

6. A LICENSE ISSUED PURSUANT TO THIS SECTION SHALL BE GIVEN FULL FORCE AND EFFECT THROUGHOUT THE STATE AND SHALL BE DEEMED TO SATISFY THE REQUIREMENTS OF THIS ARTICLE WITH RESPECT TO LICENSURE OF WATCH, GUARD, OR PATROL AGENCIES.

S 6. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, effective immediately the

police commissioner of the city of New York is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date on or before such date.