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

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2011-2012 Regular Sessions

I N A S S E M B L Y

June 13, 2011

Introduced by M. of A. SCHIMMINGER -- (at request of the New York State Liquor Authority) -- read once and referred to the Committee on Economic Development

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:

Section 1. Subdivision 1 of section 105 of the alcoholic beverage control law, as amended by chapter 48 of the laws of 1985, is amended to read as follows:

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

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

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

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

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

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

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

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

(a) a sale between relatives;

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

(c) a sale [or], lease, MANAGEMENT AGREEMENT, OR OTHER AGREEMENT GIVING THE APPLICANT CONTROL OVER THE FOOD AND BEVERAGE AT THE PREMISES, affected by other facts or circumstances that would indicate that the sale [or], lease, MANAGEMENT AGREEMENT, OR OTHER AGREEMENT GIVING THE APPLICANT CONTROL OVER THE FOOD AND BEVERAGE AT THE PREMISES, is [not] entered into for the primary purpose of permitting the original licensee to avoid the effect of the revocation.

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