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

5358

2011-2012 Regular Sessions

I N S E N A T E

May 11, 2011

Introduced by Sen. O'MARA -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the alcoholic beverage control law and the state finance law, in relation to establishing the wine industry and liquor store development act; and to repeal certain provisions of the alcoholic beverage control law relating thereto

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

Section 1. Short title. This act shall be known and may be cited as the "wine industry and liquor store development act".

S 2. Subdivision 8-b of section 17 of the alcoholic beverage control law, as added by chapter 396 of the laws of 2010, is amended to read as follows:

8-b. On and after January first, two thousand eleven, the report provided for in subdivision eight of this section shall include information related to the number of licenses applied for, RENEWALS SOUGHT and the length of time required for the approval or denial of such retail [license] LICENSES AND RENEWALS applied for pursuant to subdivision two-c of section sixty-one, section sixty-four, section seventy-six, section seventy-six-a, section seventy-six-c, section seventy-six-d, and section seventy-six-f of this chapter.

S 3. Subdivisions 4 and 5 of section 63 of the alcoholic beverage control law, subdivision 4 as amended by chapter 603 of the laws of 1992, are amended and two new subdivisions 7 and 8 are added to read as follows:

4. (A) No licensee under this section shall be engaged in any other business on the licensed premises. The SALE OF PRODUCTS COMPLEMENTARY TO THE BUSINESS OF THE LICENSED PREMISES SHALL NOT CONSTITUTE ENGAGING IN ANOTHER BUSINESS WITHIN THE MEANING OF THIS SUBDIVISION. SUCH PRODUCTS SHALL INCLUDE BUT NOT BE LIMITED TO THE sale of lottery tickets, when

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

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duly authorized and lawfully conducted, the sale of corkscrews or the sale of ice or the sale of publications, including prerecorded video and/or audio cassette tapes, designed to help educate consumers in their knowledge and appreciation of wine and wine products, as defined in section three of this chapter, or the sale of [non-carbonated, non-flavored mineral waters, spring waters and drinking waters or the sale of glasses designed for the consumption of wine] BOTTLED WATER, MIXERS, JUICE AND SODA, OR THE SALE OF CIGARS, CIGAR ACCESSORIES INCLUDING BUT NOT LIMITED TO HUMIDORS, LIGHTERS AND CUTTERS, CIGAR RELATED PUBLICATIONS DESIGNED TO HELP EDUCATE CONSUMERS IN THEIR KNOWLEDGE AND APPRECIATION OF CIGAR PRODUCTS, NEWSPAPERS OR FOOD ITEMS INCLUDING BUT NOT LIMITED TO LOCALLY GROWN FARM PRODUCTS AND ANY FOOD NOT SPECIFICALLY PREPARED FOR IMMEDIATE ON PREMISES CONSUMPTION AND FOOD PRODUCTS TYPICALLY CONSUMED WITH ALCOHOLIC BEVERAGES, INCLUDING BUT NOT LIMITED TO SNACK FOODS AND GOURMET FOODS, GIFTS, GIFT BAGS AND GIFT BASKETS, GLASSWARE AND DECANTERS RELATED TO THE CONSUMPTION OR STORAGE OF WINE AND/OR LIQUOR, WINE REFRIGERATORS AND COOLERS, WINE MAKING PUBLICATIONS AND SUPPLIES, racks designed for the storage of wine, and devices designed to minimize oxidation in bottles of wine which have been uncorked[, shall not constitute engaging in another business within the meaning of this subdivision].

(B) THE INSTALLATION AND OPERATION OF AUTOMATED TELLER MACHINES SHALL NOT CONSTITUTE ENGAGING IN ANOTHER BUSINESS WITHIN THE MEANING OF THIS SUBDIVISION. FOR PURPOSES OF THIS SUBDIVISION, "AUTOMATED TELLER MACHINE" MEANS A DEVICE WHICH IS LINKED TO THE ACCOUNTS AND RECORDS OF A BANKING INSTITUTION AND WHICH ENABLES CONSUMERS TO CARRY OUT BANKING TRANSACTIONS, INCLUDING, BUT NOT LIMITED TO, ACCOUNT TRANSFERS, DEPOSITS, CASH WITHDRAWALS, BALANCE INQUIRIES, AND LOAN PAYMENTS.

5. [Not more than one license shall be] NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT MULTIPLE LICENSES FROM BEING granted to any person under this section EXCEPT GROCERY AND DRUG STORES LICENSED PURSUANT TO SECTION SEVENTY-NINE-E OF THIS CHAPTER.

7. ANY LICENSE UNDER THIS SECTION GRANTED FOR LICENSED PREMISES OCCUPYING LESS THAN THREE THOUSAND SQUARE FEET, INCLUDES THE PRIVILEGES TO SELL UP TO FIFTEEN BOTTLES OF LIQUOR AND/OR WINE IN ANY THIRTY DAY PERIOD TO ANY PERSON LICENSED UNDER THIS CHAPTER TO SELL LIQUOR AT RETAIL FOR CONSUMPTION ON THE PREMISES AND WINE TO ANY PERSON LICENSED UNDER THIS CHAPTER TO SELL WINE AT RETAIL FOR CONSUMPTION ON THE PREMISES. SUCH SALES SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED ONE-AA OR ONE HUNDRED ONE-B OF THIS CHAPTER.

8. EVERY LICENSEE UNDER THIS SECTION SHALL HAVE AN INDIVIDUAL IN A POSITION OF MANAGEMENT AND CONTROL ASSIGNED TO IT WHO HAS BEEN ISSUED A CERTIFICATE OF COMPLETION FROM AN APPROVED ALCOHOL TRAINING AWARENESS PROGRAM.

S 4. Subdivision 2 of section 79 of the alcoholic beverage control law is amended and two new subdivisions 5 and 6 are added to read as follows:

2. [Not more than one license shall be] NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT MULTIPLE LICENSES FROM BEING granted to any person under this section EXCEPT GROCERY AND DRUG STORES LICENSED PURSUANT TO SECTION SEVENTY-NINE-E OF THIS ARTICLE.

5. ANY LICENSE UNDER THIS SECTION GRANTED FOR LICENSED PREMISES OCCUPYING LESS THAN THREE THOUSAND SQUARE FEET INCLUDES THE PRIVILEGES TO SELL UP TO FIFTEEN BOTTLES OF LIQUOR AND/OR WINE IN ANY THIRTY DAY PERIOD TO ANY PERSON LICENSED UNDER THIS CHAPTER TO SELL WINE AT RETAIL FOR CONSUMPTION OFF THE PREMISES OR ANY PERSON HOLDING A SINGLE LICENSE

GRANTED PURSUANT TO SECTION SEVENTY-NINE-E OF THIS ARTICLE. SUCH SALES SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED ONE-AA OR ONE HUNDRED ONE-B OF THIS CHAPTER.

6. EVERY LICENSEE UNDER THIS SECTION SHALL HAVE AN INDIVIDUAL IN A POSITION OF MANAGEMENT AND CONTROL ASSIGNED TO IT WHO HAS BEEN ISSUED A CERTIFICATE OF COMPLETION FROM AN APPROVED ALCOHOL TRAINING AWARENESS PROGRAM.

S 5. The alcoholic beverage control law is amended by adding a new section 79-e to read as follows:

S 79-E. GROCERY OR DRUG STORE WINE LICENSE. 1. ANY PERSON MAY APPLY TO THE AUTHORITY FOR A LICENSE TO SELL FROM THE LICENSED PREMISES WINE IN SEALED CONTAINERS FOR CONSUMPTION OFF SUCH PREMISES; PROVIDED, HOWEVER THAT NO PERSON LICENSED PURSUANT TO THIS SECTION MAY APPLY FOR A WAREHOUSE PERMIT PURSUANT TO SECTION NINETY-SIX OF THIS CHAPTER.

2. NO SUCH LICENSE SHALL BE ISSUED, HOWEVER, TO ANY PERSON FOR ANY PREMISES OTHER THAN A GROCERY STORE, AS DEFINED IN SUBDIVISION THIRTEEN OF SECTION THREE OF THIS CHAPTER, OR A DRUG STORE, AS DEFINED IN SUBDIVISION TWELVE OF SECTION THREE OF THIS CHAPTER.

3. (A) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, EXCEPT FOR GOOD CAUSE SHOWN, THE AUTHORITY SHALL ISSUE A GROCERY OR DRUG STORE WINE LICENSE TO THE HOLDER OF A LICENSE TO SELL BEER AT RETAIL FOR CONSUMPTION OFF THE PREMISES PURSUANT TO SECTION FIFTY-FOUR OF THIS CHAPTER, OR BEER AND WINE PRODUCTS AT RETAIL FOR CONSUMPTION OFF THE PREMISES PURSUANT TO SECTION FIFTY-FOUR-A OF THIS CHAPTER, AT THE REQUEST OF SUCH LICENSEE.

(B) FOR THE PURPOSES OF THIS SUBDIVISION, THE PREMISES OF THE GROCERY OR DRUG STORE WINE LICENSEE SHALL BE THE SAME AS THE PREMISES LICENSED UNDER SECTION FIFTY-FOUR OR FIFTY-FOUR-A OF THIS CHAPTER.

(C) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER, ANY LICENSE ISSUED PURSUANT TO THIS SECTION SHALL RUN CONCURRENTLY WITH THE UNDERLYING LICENSE UNDER SECTION FIFTY-FOUR OR FIFTY-FOUR-A OF THIS CHAPTER, AND SHALL BE DEEMED EXPIRED AT SUCH TIME AS THE UNDERLYING LICENSE EXPIRES.

(D) ANY PERSON LICENSED TO SELL WINE PURSUANT TO THIS ARTICLE SHALL BE PERMITTED TO CONDUCT WINE TASTINGS. WINE TASTINGS WHICH ARE CONDUCTED UNDER THE AUSPICES OF AN OFFICIAL AGENT OF A FARM WINERY, WINERY, WHOLESALER, OR IMPORTER AND WHERE SUCH AGENT IS PHYSICALLY PRESENT AT ALL TIMES DURING THE CONDUCT OF THE TASTING, THEN, IN THAT EVENT, ANY LIABILITY STEMMING FROM A RIGHT OF ACTION RESULTING FROM A WINE TASTING AS AUTHORIZED PURSUANT TO THIS SECTION, AND IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 11-100 AND 11-101 OF THE GENERAL OBLIGATIONS LAW, SHALL ACCRUE TO THE FARM WINERY, WINERY, WHOLESALER, OR IMPORTER.

4. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE AUTHORITY MAY ISSUE A LICENSE UNDER THIS SECTION TO THE HOLDER OF A LICENSE TO SELL WINE AT RETAIL FOR CONSUMPTION OFF THE PREMISES PURSUANT TO SECTION SEVENTY-NINE OF THIS ARTICLE, PROVIDED THAT: (A) THE LICENSEE MEETS THE REQUIREMENTS OF SUBDIVISION TWO OF THIS SECTION; AND (B) UPON ISSUANCE OF A LICENSE, THE LICENSEE UNDER THIS SECTION SURRENDERS THE LICENSE CERTIFICATE ISSUED PURSUANT TO SUCH SECTION SEVENTY-NINE.

5. SUCH APPLICATION SHALL BE IN SUCH FORM AND SHALL CONTAIN SUCH INFORMATION AS SHALL BE REQUIRED BY THE RULES OF THE AUTHORITY AND SHALL BE ACCOMPANIED BY A CHECK OR DRAFT IN THE AMOUNT REQUIRED BY THIS ARTICLE FOR SUCH LICENSE.

6. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER, ANY PERSON RECEIVING A LICENSE PURSUANT TO THIS SECTION SHALL NOT BE SUBJECT TO THE

PROVISIONS OF SUBDIVISION TWO, THREE OR FOUR OF SECTION SEVENTY-NINE OF THIS ARTICLE.

7. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER, ANY PERSON RECEIVING A LICENSE PURSUANT TO THIS SECTION SHALL NOT BE SUBJECT TO THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION ONE HUNDRED FIVE OF THIS CHAPTER.

8. (A) A ONE-TIME FRANCHISE FEE SHALL BE PAID BY EACH RETAIL OUTLET TO THE STATE LIQUOR AUTHORITY. THIS FRANCHISE FEE IS HEREBY IMPOSED PURSUANT TO THE FOLLOWING SCHEDULE PER LOCATION BASED UPON GROSS SALES IN THE PREVIOUS YEAR:

ANNUAL SALES	FRANCHISE FEE PER LOCATION
$0-$249,999	$1,000
$250,000-$499,999	0.39 OF ONE PERCENT OF TOTAL GROSS SALES
$500,000-$999,999	0.39 OF ONE PERCENT OF TOTAL GROSS SALES
$1,000,000-$2,499,000	0.49 OF ONE PERCENT OF TOTAL GROSS SALES
$2,500,000-$4,999,999	0.49 OF ONE PERCENT OF TOTAL GROSS SALES
$5,000,000-$9,999,999	0.49 OF ONE PERCENT OF TOTAL GROSS SALES
$10,000,000-$24,999,999	0.99 OF ONE PERCENT OF TOTAL GROSS SALES
$25,000,000-$39,999,999	1.5 OF ONE PERCENT OF TOTAL GROSS SALES
$40,000,000 AND GREATER	1.7 PERCENT OF TOTAL GROSS SALES
WAREHOUSE STORES	2.0 PERCENT OF TOTAL GROSS SALES

FOR THE PURPOSES OF THIS PARAGRAPH, "TOTAL GROSS SALES" SHALL NOT INCLUDE SALES RESULTING FROM THE SALE OF TOBACCO AS DEFINED BY ARTICLE TWENTY OF THE TAX LAW, MOTOR FUEL AS DEFINED BY ARTICLE TWELVE-A OF THE TAX LAW NOR SHALL IT INCLUDE A MEMBERSHIP FEE PURSUANT TO SECTION NINETY-SIX OF THIS CHAPTER. FOR THE PURPOSES OF THIS PARAGRAPH, NOTWITHSTANDING THE GROSS SALES OF THE APPLICANT, AN ESTABLISHMENT THAT CHARGES A MEMBERSHIP FEE TO ITS CUSTOMERS SHALL BE DEEMED A "WAREHOUSE STORE".

(B) IN THE EVENT AN APPLICANT HAS BEEN IN BUSINESS FOR LESS THAN TWELVE MONTHS PRIOR TO THE FILING OF THE APPLICATION FOR THIS LICENSE, SUCH APPLICANT SHALL, IN ACCORDANCE WITH THE RULES OF THE AUTHORITY, REMIT AN ESTIMATE OF ITS FRANCHISE FEE BASED ON SQUARE FOOTAGE AT A LICENSEE'S LOCATION PURSUANT TO THE FOLLOWING SCHEDULE:

SQUARE FOOTAGE LICENSEE'S LOCATION	FRANCHISE FEE PER LOCATION
0-999	$825
1,000-1,999	$1,650
2,000-3,999	$3,300
4,000-9,999	$8,250
10,000-19,999	$16,500
20,000-24,999	$33,000
25,000-29,999	$82,500
30,000-39,999	$132,000
40,000-79,999	$250,000
80,000 AND GREATER	$350,000

WITHIN SIXTY DAYS AFTER SUCH LICENSEE SHALL HAVE BEEN IN BUSINESS FOR TWELVE MONTHS, SUCH LICENSEE SHALL SUBMIT TO THE AUTHORITY, IN ACCORDANCE WITH THE RULES OF THE AUTHORITY, A STATEMENT SHOWING ITS ACTUAL TOTAL GROSS SALES FOR THE FIRST TWELVE MONTHS OF OPERATION AND THE FRANCHISE FEE DUE PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. IN THE EVENT THE FRANCHISE FEE DETERMINED PURSUANT TO SUCH PARAGRAPH EXCEEDS THE AMOUNT PAID PURSUANT TO THIS PARAGRAPH, THE LICENSEE SHALL REMIT PAYMENT FOR THE BALANCE OF THE REQUIRED FRANCHISE FEE WITHIN SUCH SIXTY-DAY PERIOD. FAILURE TO REMIT PAYMENT WITHIN SUCH SIXTY-DAY PERIOD SHALL BE GROUNDS FOR CANCELLATION OR REVOCATION OF SUCH LICENSE. IN THE EVENT THAT THE FRANCHISE FEE DUE PURSUANT TO PARAGRAPH (A) OF THIS

SUBDIVISION IS LESS THAN THE AMOUNT PAID PURSUANT TO THIS PARAGRAPH, THE LICENSEE SHALL BE ENTITLED TO A REFUND EQUAL TO THE DIFFERENCE BETWEEN THE FRANCHISE FEE PAID PURSUANT TO THIS PARAGRAPH AND THE AMOUNT DUE PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION.

(C) NO LICENSE SHALL BE ISSUED PURSUANT TO THIS SECTION UNTIL THE FRANCHISE FEE OR ESTIMATED FRANCHISE FEE UNDER THIS SUBDIVISION REQUIRED BY EITHER PARAGRAPH (A) OR (B) OF THIS SUBDIVISION HAS BEEN PAID IN FULL.

9. EVERY LICENSEE UNDER THIS SECTION SHALL HAVE AN INDIVIDUAL IN A POSITION OF MANAGEMENT AND CONTROL ASSIGNED TO IT WHO HAS BEEN ISSUED A CERTIFICATE OF COMPLETION FROM AN APPROVED ALCOHOL TRAINING AWARENESS PROGRAM.

10. NOTWITHSTANDING SUBDIVISION EIGHT OF THIS SECTION, NO FRANCHISE FEE SHALL BE REQUIRED FROM AN APPLICANT WHO IS PURCHASING THE BUSINESS OF A LICENSEE WHO HAS ALREADY PAID A FRANCHISE FEE, PROVIDED THAT SUCH APPLICANT CONTINUES THE BUSINESS OPERATION AT THE SAME GEOGRAPHIC LOCATION AS THE LICENSEE. IN THE EVENT THE APPLICANT SUBSEQUENTLY REMOVES THE BUSINESS TO ANOTHER LOCATION, PAYMENT OF THE APPROPRIATE FRANCHISE FEE SHALL BE REQUIRED PRIOR TO THE APPROVAL OF THE REMOVAL PURSUANT TO SUBDIVISION THREE OF SECTION NINETY-NINE-D OF THIS CHAPTER.

11. THE AUTHORITY MAY MAKE SUCH RULES AS IT DEEMS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION, HOWEVER, SUCH RULES SHALL NOT BE CONSTRUED TO PLACE ADDITIONAL LIMITATIONS UPON THE HOLDERS OF LICENSES ISSUED PURSUANT TO SECTION SEVENTY-NINE OF THIS ARTICLE UNRELATED TO THE SALE OF WINE.

S 6. Section 83 of the alcoholic beverage control law is amended by adding a new subdivision 8 to read as follows:

8. THE ANNUAL FEE FOR A GROCERY OR DRUG STORE WINE LICENSE PURSUANT TO SECTION SEVENTY-NINE-E OF THIS ARTICLE SHALL BE FIVE HUNDRED DOLLARS. WHERE, HOWEVER, THE APPLICANT IS THE HOLDER OF TWO OR MORE SUCH LICENSES, THE ANNUAL FEE FOR EACH ADDITIONAL LICENSE SHALL BE ONE THOUSAND DOLLARS. TEN PERCENT OF THE OVERALL FEES PAID UP TO ONE MILLION DOLLARS SHALL BE DEPOSITED TO THE MISCELLANEOUS SPECIAL REVENUE FUND (339) WINE INDUSTRY MARKETING AND PROMOTION ACCOUNT FOR APPROPRIATION AND ALLOCATION TO THE NEW YORK WINE MARKETING PROGRAM, AS ESTABLISHED IN SECTION THREE-A OF CHAPTER EIGHTY OF THE LAWS OF NINETEEN EIGHTY-FIVE, SUCH SECTION AS ADDED BY CHAPTER THREE HUNDRED THIRTY OF THE LAWS OF TWO THOUSAND FOUR. FURTHER, TEN PERCENT OF THE OVERALL FEES PAID UP TO TWO MILLION DOLLARS PER YEAR SHALL BE APPROPRIATED TO MAKE STATE ASSISTANCE PAYMENTS TO NOT-FOR-PROFIT CONSERVATION ORGANIZATIONS FOR FARMLAND PROTECTION PROGRAMS PURSUANT TO SECTION THREE HUNDRED TWENTY-FIVE-A OF THE AGRICULTURE AND MARKETS LAW.

S 7. The state finance law is amended by adding a new section 97-kkkk to read as follows:

S 97-KKKK. NEW YORK WINE INDUSTRY MARKETING AND PROMOTION ACCOUNT. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT TO BE KNOWN AS THE NEW YORK WINE INDUSTRY MARKETING AND PROMOTION ACCOUNT.

2. SUCH ACCOUNT SHALL CONSIST OF REVENUES RECEIVED FROM GROCERY OR DRUG STORE WINE LICENSE FEES PURSUANT TO SUBDIVISION EIGHT OF SECTION EIGHTY-THREE OF THE ALCOHOLIC BEVERAGE CONTROL LAW.

3. MONEYS OF THE ACCOUNT, FOLLOWING APPROPRIATION BY THE LEGISLATURE, SHALL BE EXPENDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION THREE-A OF CHAPTER EIGHTY OF THE LAWS OF NINETEEN HUNDRED EIGHTY-FIVE, SUCH SECTION AS ADDED BY CHAPTER THREE HUNDRED THIRTY OF THE LAWS OF TWO THOUSAND FOUR. MONEYS SHALL BE PAID OUT OF THE ACCOUNT ON THE AUDIT AND

WARRANT OF THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSIONER OF AGRICULTURE AND MARKETS.

S 8. Section 97-a of the alcoholic beverage control law is REPEALED and a new section 97-a is added to read as follows:

S 97-A. TEMPORARY RETAIL PERMIT. 1. THE AUTHORITY IS HEREBY AUTHORIZED TO ISSUE A TEMPORARY RETAIL PERMIT:

(A) TO THE TRANSFEREE OF A RETAIL LICENSE TO CONTINUE THE OPERATIONS OF A RETAIL PREMISES DURING THE PERIOD THAT THE TRANSFER APPLICATION FOR THE LICENSE FROM PERSON TO PERSON AT THE SAME PREMISES IS PENDING; OR

(B) TO THE APPLICANT FOR A NEW RETAIL LICENSE WHERE THE PROSPECTIVE LICENSED PREMISES IS LOCATED IN A MUNICIPALITY WITH A POPULATION OF LESS THAN ONE MILLION DURING THE PERIOD THAT THE APPLICATION IS PENDING.

2. SUCH A PERMIT MAY BE ISSUED IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) THE APPLICANT FOR THE TEMPORARY PERMIT SHALL HAVE FILED WITH THE AUTHORITY AN APPLICATION FOR A RETAIL LICENSE AT SUCH PREMISES, TOGETHER WITH ALL REQUIRED FILING AND LICENSE FEES;

(B) THE APPLICANT SHALL HAVE FILED WITH THE AUTHORITY AN APPLICATION FOR A TEMPORARY RETAIL PERMIT, ACCOMPANIED BY A NONREFUNDABLE FILING FEE OF ONE HUNDRED TWENTY-EIGHT DOLLARS FOR ALL RETAIL BEER LICENSES OR SIX HUNDRED FORTY DOLLARS FOR ALL OTHER RETAIL LICENSES; PROVIDED, HOWEVER, THAT NO TEMPORARY RETAIL PERMIT SHALL BE ISSUED TO AN APPLICANT FOR A LICENSE PURSUANT TO SECTION SEVENTY-NINE-E OF THIS CHAPTER UNTIL THE FRANCHISE FEE OR ESTIMATED FRANCHISE FEE REQUIRED BY EITHER PARAGRAPH (A) OR (B) OF SUBDIVISION EIGHT OF SECTION SEVENTY-NINE-E OF THIS CHAPTER HAS BEEN PAID IN FULL. IN THE EVENT SUCH APPLICATION IS DENIED, THE APPLICANT SHALL RECEIVE A REFUND OF THE FRANCHISE FEE OR ESTIMATED FRANCHISE FEE;

(C) IN THE CASE OF A TRANSFER APPLICATION, THE PREMISES SHALL HAVE BEEN OPERATED UNDER A RETAIL LICENSE WITHIN THIRTY DAYS OF THE DATE OF FILING THE APPLICATION FOR A TEMPORARY PERMIT; AND

(D) AT THE TIME THE PERMIT IS ISSUED THE CURRENT LICENSE, IF ANY, IN EFFECT FOR SAID PREMISES SHALL HAVE BEEN SURRENDERED TO, PLACED INTO SAFEKEEPING WITH, OR OTHERWISE DEEMED ABANDONED BY THE AUTHORITY.

3. A TEMPORARY RETAIL PERMIT UNDER PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION MAY NOT BE ISSUED FOR ANY PREMISES THAT IS SUBJECT TO THE PROVISIONS OF SECTION SIXTY-THREE, PARAGRAPH (B) OF SUBDIVISION SEVEN OF SECTION SIXTY-FOUR, SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION SEVEN OF SECTION SIXTY-FOUR-A, SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION ELEVEN OF SECTION SIXTY-FOUR-C, PARAGRAPH (B) OF SUBDIVISION EIGHT OF SECTION SIXTY-FOUR-D, OR SECTION SEVENTY-NINE OF THIS CHAPTER.

4. A TEMPORARY RETAIL PERMIT ISSUED BY THE AUTHORITY PURSUANT TO THIS SECTION SHALL BE FOR A PERIOD NOT TO EXCEED NINETY DAYS. A TEMPORARY PERMIT MAY BE EXTENDED AT THE DISCRETION OF THE AUTHORITY, FOR AN ADDITIONAL THIRTY DAY PERIOD UPON PAYMENT OF AN ADDITIONAL FEE OF SIXTY-FOUR DOLLARS FOR ALL RETAIL BEER LICENSES AND NINETY-SIX DOLLARS FOR ALL OTHER TEMPORARY PERMITS AND UPON COMPLIANCE WITH ALL CONDITIONS REQUIRED IN THIS SECTION. THE AUTHORITY MAY, IN ITS DISCRETION, ISSUE ADDITIONAL THIRTY DAY EXTENSIONS UPON PAYMENT OF THE APPROPRIATE FEE.

5. A TEMPORARY RETAIL PERMIT IS A CONDITIONAL PERMIT AND AUTHORIZES THE HOLDER THEREOF:

(A) IN THE CASE OF A TRANSFER APPLICATION TO PURCHASE AND SELL SUCH ALCOHOLIC BEVERAGES AS WOULD BE PERMITTED TO BE PURCHASED AND SOLD UNDER THE PRIVILEGES OF THE RETAIL LICENSE FOR WHICH THE TRANSFER APPLICATION HAS BEEN FILED;

(B) IN THE CASE OF ALL OTHER RETAIL APPLICATIONS, TO PURCHASE AND SELL SUCH ALCOHOLIC BEVERAGES AS WOULD BE PERMITTED TO BE PURCHASED AND SOLD UNDER THE PRIVILEGES OF THE LICENSE APPLIED FOR; AND

(C) TO SELL SUCH ALCOHOLIC BEVERAGES TO CONSUMERS ONLY AND NOT FOR RESALE.

6. THE HOLDER OF A TEMPORARY RETAIL PERMIT SHALL PURCHASE ALCOHOLIC BEVERAGES ONLY BY PAYMENT IN CURRENCY OR CHECK FOR SUCH ALCOHOLIC BEVERAGES ON OR BEFORE THE DAY SUCH ALCOHOLIC BEVERAGES ARE DELIVERED, PROVIDED, HOWEVER, THAT THE HOLDER OF A TEMPORARY PERMIT ISSUED PURSUANT TO THIS SECTION WHO ALSO HOLDS ONE OR MORE RETAIL LICENSES AND IS OPERATING UNDER SUCH RETAIL LICENSE OR LICENSES IN ADDITION TO THE TEMPORARY RETAIL PERMIT, AND WHO IS NOT DELINQUENT UNDER THE PROVISIONS OF SECTION ONE HUNDRED ONE-AA OF THIS CHAPTER AS TO ANY RETAIL LICENSE UNDER WHICH HE OR SHE OPERATES, MAY PURCHASE ALCOHOLIC BEVERAGES ON CREDIT UNDER THE TEMPORARY PERMIT.

7. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A TEMPORARY RETAIL PERMIT MAY BE SUMMARILY CANCELLED OR SUSPENDED AT ANY TIME IF THE AUTHORITY DETERMINES THAT GOOD CAUSE FOR SUCH CANCELLATION OR SUSPENSION EXISTS. THE AUTHORITY SHALL PROMPTLY NOTIFY THE HOLDER OF A TEMPORARY RETAIL PERMIT IN WRITING OF SUCH CANCELLATION OR SUSPENSION AND SHALL SET FORTH THE REASONS FOR SUCH ACTION.

8. THE APPLICATION FOR A TEMPORARY PERMIT SHALL BE ON SUCH FORM AS THE AUTHORITY SHALL PRESCRIBE.

9. APPROVAL OF, OR EXTENSION OF, A TEMPORARY RETAIL PERMIT SHALL NOT BE DEEMED AS AN APPROVAL OF THE RETAIL APPLICATION.

10. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW TO THE CONTRARY, THE AUTHORITY MAY PROMULGATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

S 9. Subdivision 2-a of section 100 of the alcoholic beverage control law, as amended by chapter 249 of the laws of 2002, is amended to read as follows:

2-a. No retailer shall employ, or permit to be employed, or shall suffer to work, on any premises licensed for retail sale hereunder, any person under the age of eighteen years, as a hostess, waitress, waiter, or in any other capacity where the duties of such person require or permit such person to sell, dispense or handle alcoholic beverages; except that: (1) any person under the age of eighteen years and employed by any person holding a grocery or drug store beer license shall be permitted to handle and deliver beer and wine products for such licensee, (2) any person under the age of eighteen employed as a cashier by a person holding a grocery or drug store beer license shall be permitted to record and receive payment for beer and wine product sales when in the presence of and under the direct supervision of a person eighteen years of age or over, (2-a) any person under the age of eighteen years and employed by a person holding a grocery store or drug store beer license as either a cashier or in any other position to which handling of containers which may have held alcoholic beverages is necessary, shall be permitted to handle the containers if such have been presented for redemption in accordance with the provisions of title ten of article twenty-seven of the environmental conservation law, [and] (3) any person under the age of eighteen years employed as a dishwasher, busboy, or other such position as to which handling of containers which may have held alcoholic beverages is necessary shall be permitted to do so under the direct supervision of a person of legal age to purchase alcoholic beverages in the state, (4) ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS AND EMPLOYED BY A PERSON HOLDING A GROCERY OR DRUG STORE WINE LICENSE

SHALL BE PERMITTED TO HANDLE AND DELIVER WINE FOR SUCH LICENSEE, AND (5) ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS AND EMPLOYED BY A PERSON HOLDING A GROCERY OR DRUG STORE WINE LICENSE SHALL BE PERMITTED TO RECORD AND RECEIVE PAYMENT FOR WINE SALES WHEN IN THE PRESENCE OF AND UNDER THE DIRECT SUPERVISION OF A PERSON EIGHTEEN YEARS OR OVER.

S 10. Section 100 of the alcoholic beverage control law is amended by adding a new subdivision 2-c to read as follows:

2-C. NO PERSON SHALL SELL, DELIVER OR GIVE AWAY OR CAUSE, PERMIT OR PROCURE TO BE SOLD, DELIVERED OR GIVEN AWAY ANY ALCOHOLIC BEVERAGES TO ANY PERSON, ACTUALLY OR APPARENTLY, UNDER THE AGE OF TWENTY-ONE YEARS. AS A PRECONDITION TO THE SALE OF ANY ALCOHOLIC BEVERAGE FOR OFF-PREMISES CONSUMPTION, THE PURCHASER OF ANY ALCOHOLIC BEVERAGE MUST PROVIDE WRITTEN EVIDENCE OF AGE. NO LICENSEE, OR AGENT OR EMPLOYEE OF A LICENSEE UNDER THIS CHAPTER, SHALL ACCEPT AS WRITTEN EVIDENCE OF AGE BY ANY SUCH PERSON FOR THE PURCHASE OF ANY ALCOHOLIC BEVERAGE, ANY DOCUMENTATION OTHER THAN: (A) A VALID DRIVER'S LICENSE OR NON-DRIVER IDENTIFICATION CARD ISSUED BY THE COMMISSIONER OF MOTOR VEHICLES, THE FEDERAL GOVERNMENT, ANY UNITED STATES TERRITORY, COMMONWEALTH OR POSSESSION, THE DISTRICT OF COLUMBIA, A STATE GOVERNMENT WITHIN THE UNITED STATES OR A PROVINCIAL GOVERNMENT OF THE DOMINION OF CANADA, OR (B) A VALID PASSPORT ISSUED BY THE UNITED STATES GOVERNMENT OR ANY OTHER COUNTRY, OR (C) AN IDENTIFICATION CARD ISSUED BY THE ARMED FORCES OF THE UNITED STATES.

S 11. Paragraph a of subdivision 1 of section 101-aa of the alcoholic beverage control law, as amended by chapter 84 of the laws of 2004, is amended to read as follows:

a. "Credit period" means a period beginning on the date alcoholic beverages are delivered and ending thirty days thereafter, EXCEPT THAT WITH REGARD TO LICENSEES LICENSED UNDER SECTION SIXTY-THREE OF THIS CHAPTER THE "CREDIT PERIOD" MEANS A PERIOD BEGINNING ON THE DATE ALCOHOLIC BEVERAGES ARE DELIVERED AND ENDING SIXTY DAYS THEREAFTER.

S 12. Section 101-aa of the alcoholic beverage control law is amended by adding a new subdivision 3-a to read as follows:

3-A. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION, THE HOLDER OF A LICENSE TO SELL LIQUOR AND WINE AT RETAIL FOR CONSUMPTION OFF THE PREMISES, PURSUANT TO SECTION SIXTY-THREE OF THIS CHAPTER, OR A LICENSE TO SELL WINE AT RETAIL FOR CONSUMPTION OFF THE PREMISES PURSUANT TO SECTION SEVENTY-NINE OF THIS CHAPTER, WHO IS IN DEFAULT EXCEPT TO A FARM WINERY LICENSED PURSUANT TO SECTION SEVENTY-SIX-A OF THIS CHAPTER MAY PURCHASE ALCOHOLIC BEVERAGES ON CREDIT EXCEPT FROM THE MANUFACTURER OR WHOLESALER WHO PLACED SUCH RETAIL LICENSEE IN DEFAULT.

S 13. Paragraph (b) of subdivision 2 of section 101-b of the alcoholic beverage control law, as amended by chapter 669 of the laws of 1989, is amended to read as follows:

(b) to grant, directly or indirectly, any discount, rebate, free goods, allowance or other inducement of any kind whatsoever, except a discount or discounts for quantity of liquor or for quantity of wine and a discount not in excess of one per centum for payment on or before ten days from date of shipment. A DISCOUNT ON WINE PURCHASED ON A QUANTITY BASIS SHALL NOT BE AUTHORIZED ON THE PURCHASE OF MORE THAN ONE HUNDRED CASES OF WINE PER MONTH, OF THE SAME VARIETAL.

S 14. Paragraph (b) of subdivision 3 of section 101-b of the alcoholic beverage control law, as amended by section 1 of part E of chapter 56 of the laws of 2006, is amended to read as follows:

(b) No brand of liquor or wine shall be sold to or purchased by a retailer unless a schedule, as provided by this section, is transmitted

to and received by the liquor authority, and is then in effect. Such schedule shall be transmitted to the authority in such form, manner, medium and format as the authority may direct; shall be deemed duly verified by the person submitting such schedule upon its transmission to the authority; and shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on the label, the number of bottles contained in each case, the bottle and case price to retailers, the net bottle and case price paid by the seller, which prices, in each instance, shall be individual for each item and not in "combination" with any other item, the discounts for quantity, if any, and the discounts for time of payment, if any. PROVIDED HOWEVER THAT, FOR THE PURPOSES OF THIS PARAGRAPH, DIFFERENT PRODUCTS OR DIFFERENT SIZED BOTTLES FROM THE SAME MANUFACTURER MAY BE COMBINED. Such brand of liquor or wine shall not be sold to retailers except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. Such schedule shall be transmitted by each manufacturer selling such brand to retailers and by each wholesaler selling such brand to retailers.

S 15. Subdivision 2 of section 105 of the alcoholic beverage control law is REPEALED.

S 16. Subdivision 7 of section 105 of the alcoholic beverage control law is REPEALED.

S 17. Paragraphs (b) and (c) of subdivision 10 of section 105 of the alcoholic beverage control law are REPEALED and paragraph (a), as amended by chapter 679 of the laws of 1950, is amended to read as follows:

[(a)] Each retail licensee of liquor and/or wine for off-premises consumption shall have conspicuously displayed within the interior of the licensed premises where sales are made and where it can be readily inspected by consumers a printed price list of the liquors and/or wines offered for sale therein; and no liquor and/or wine shall be sold except at the price set forth in such list[;].

S 18. Paragraphs (a) and (b) of subdivision 14 of section 105 of the alcoholic beverage control law, paragraph (a) as amended by section 1 of part U of chapter 63 of the laws of 2003 and paragraph (b) as amended by chapter 334 of the laws of 2004, are amended to read as follows:

(a) No premises licensed to sell liquor and/or wine for off-premises consumption shall be permitted to [remain open] SELL LIQUOR AND/OR WINE:

(i) On Sunday before twelve o'clock post meridian and after nine o'clock post meridian.

(ii) On any day between midnight and eight o'clock antemeridian.

(iii) On the twenty-fifth day of December, known as Christmas day.

In any community where daylight saving time is in effect, such time shall be deemed the standard time for the purpose of this subdivision.

(b) This subdivision shall only be interpreted to prohibit the sale of liquor and/or wine for off-premises consumption [when it is closed to the public, provided however, retail licensees may undertake all other activities allowed during the course of normal business operations]. A LICENSEE MAY ENGAGE IN ANY OTHER LAWFUL ACTIVITY ALLOWED ON THE LICENSEE'S PREMISES, including but not limited to:

(i) placing orders with or taking deliveries from wholesalers AND MANUFACTURERS;

(ii) meeting with individuals who have valid solicitors permits issued by the liquor authority;

(iii) stocking shelves;

(iv) filling or building displays; [and]
(v) rotating product on store shelves; AND
(VI) IN THE CASE OF PERSONS LICENSED UNDER SECTION SEVENTY-NINE-E OF THIS CHAPTER, THE SALE OF OTHER PRODUCTS, INCLUDING BEER AND WINE PRODUCTS IF THE PERSON IS ALSO LICENSED UNDER SECTION FIFTY-FOUR OR SECTION FIFTY-FOUR-A OF THIS CHAPTER.

S 19. Section 105 of the alcoholic beverage control law is amended by adding a new subdivision 24 to read as follows:

24. FOR THE PURPOSES OF PURCHASING ONLY, ANY TWO OR MORE PERSONS LICENSED PURSUANT TO SECTIONS SIXTY-THREE AND/OR SEVENTY-NINE OF THIS CHAPTER MAY JOIN IN AN AGREEMENT TO MAKE JOINT PURCHASES OF LIQUOR AND/OR WINE IN LARGER QUANTITIES THAN MIGHT OTHERWISE BE PURCHASED; PROVIDED, HOWEVER, THAT ALL SUCH ALCOHOLIC BEVERAGES PURCHASED PURSUANT TO ANY SUCH AGREEMENT SHALL BE DISTRIBUTED TO NONE OTHER THAN A LICENSEE WHO IS A PARTY TO SUCH AGREEMENT. THE COOPERATIVE AGREEMENTS, AS AUTHORIZED UNDER THIS SUBDIVISION, SHALL BE VOID IF, WITHIN A CITY WITH A POPULATION OF ONE MILLION OR MORE AND THE PREMISES OPERATING UNDER THE COOPERATIVE AGREEMENTS AUTHORIZED IN THIS SUBDIVISION ARE LOCATED MORE THAN ONE MILE FROM ONE ANOTHER. THE COOPERATIVE AGREEMENTS, AS AUTHORIZED UNDER THIS SUBDIVISION, SHALL BE VOID IF, OUTSIDE OF A CITY WITH A POPULATION OF ONE MILLION OR MORE AND THE PREMISES OPERATING UNDER AGREEMENTS AUTHORIZED IN THIS SUBDIVISION ARE LOCATED MORE THAN FIFTY MILES FROM ONE ANOTHER. THE AUTHORITY MAY PROMULGATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBDIVISION.

S 20. This act shall take effect immediately; provided that section ten of this act shall take effect on the one hundred eightieth day after it shall have become a law; provided further, that, effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on or before its effective date are authorized to be made by the state liquor authority on or before such date.