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

5408--A

2011-2012 Regular Sessions

I N S E N A T E

May 18, 2011

Introduced by Sen. LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the alcoholic beverage control law and the general business law, in relation to criminal history information for persons employed as bouncers at retail licensed premises for on-premises consumption and directing the state liquor authority to establish a certification program for 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 PRINCIPAL BASIS FOR SUCH PERSON'S EMPLOYMENT IS TO GENERALLY KEEP THE PEACE UPON THE LICENSED PREMISES OF SUCH LICENSEE, OR TO SCREEN POTENTIAL CUSTOMERS FOR SUITABLE ATTIRE OR CLOTHING. A BOUNCER SHALL NOT INCLUDE (I) ANY PERSON WHOSE PRINCIPAL DUTIES ARE TO ASSIST IN COMPLIANCE WITH SECTION SIXTY-FIVE OF THIS CHAPTER BY CHECKING IDENTIFICATION, OR ASSESSING THE STATE OF IMPAIRMENT OF PERSONS ON OR ABOUT THE LICENSED PREMISES, OR ANY PERSON WHOSE PRINCIPAL DUTIES ARE THE SERVING OF FOOD AND BEVERAGES TO PATRONS, OR (II) ANY PERSON EMPLOYED AS A SECURITY GUARD AT A THEATRE, ARENA, STADIUM OR OTHER PLACE WHERE PUBLIC EXHIBITIONS, GAMES, CONTESTS AND/OR PERFORMANCES ARE HELD, PROVIDED THAT SUCH PERSON IS A REGISTERED SECURITY GUARD PURSUANT TO ARTICLE SEVEN-A OF THE GENERAL BUSINESS LAW.

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.

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

LBD11045-04-1

S 2. Section 106 of the alcoholic beverage control law is amended by adding a new subdivision 16 to read as follows:

16. (A) ALL RETAIL LICENSEES FOR ON-PREMISES CONSUMPTION LICENSED PURSUANT TO SECTION SIXTY-FOUR-D OF THIS CHAPTER AND ALL OTHER RETAIL LICENSEES FOR ON-PREMISES CONSUMPTION WITH A CAPACITY OF TWO HUNDRED FIFTY PERSONS OR MORE THAT EMPLOY ONE OR MORE BOUNCERS SHALL:

(1) 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;

(2) TO THE EXTENT PERMITTED BY LAW, 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 INFORMATION ON PRIOR CRIMINAL CONVICTION FROM A PROSPECTIVE BOUNCER, SUCH LICENSEE SHALL:

(A) 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;

(B) 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; AND

(C) 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; AND

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

(B) 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.

(C) 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.

(D) NOTWITHSTANDING THE PROVISIONS OF ANY 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.

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

(F) SUCH LICENSEE, OR HIS OR HER DESIGNEE, SHALL, UPON RECEIPT OF ANY PERSON'S CRIMINAL HISTORY INFORMATION, IMMEDIATELY MARK SUCH CRIMINAL HISTORY INFORMATION "CONFIDENTIAL", AND SHALL AT ALL TIMES MAINTAIN SUCH CRIMINAL HISTORY INFORMATION IN A SECURE PLACE. CRIMINAL HISTORY INFOR-

MATION 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 AUTHORIZED BY THIS SUBDIVISION TO RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A CLASS 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.

(G) 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.

(H) FINGERPRINTS AND CRIMINAL HISTORY 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.

(I) THE COMMISSIONER 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. TO PREPARE AND DISSEMINATE INFORMATION TO ADVISE LICENSEES LICENSED FOR ON-PREMISES CONSUMPTION OF THE REQUIREMENT FOR CERTAIN LICENSEES TO OBTAIN THE CRIMINAL HISTORY INFORMATION OF A PROSPECTIVE BOUNCER PURSUANT TO SUBDIVISION SIXTEEN OF SECTION ONE HUNDRED SIX OF THIS CHAPTER. SUCH INFORMATION SHALL ALSO INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(A) WHICH LICENSEES ARE SUBJECT TO THE CRIMINAL HISTORY INFORMATION REQUIREMENTS;

(B) THE STEPS NECESSARY TO PERFORM THE CRIMINAL HISTORY INFORMATION CHECK, INCLUDING INFORMATION ON FORM AVAILABILITY AND FINGERPRINTING;

(C) APPLICABLE CONFIDENTIALITY REQUIREMENTS;

(D) THE REQUIREMENTS OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW RELATED TO THE PERMISSIVE USE OF CRIMINAL HISTORY INFORMATION IN HIRING DECISIONS; AND

(E) 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, TELEPHONE NUMBERS, ADDRESSES, AND A DESCRIPTION OF THE CONTENT AND POTENTIAL USES OF SUCH RECORDS.

16. (A) TO DEVELOP AND ESTABLISH MINIMUM CRITERIA FOR BOUNCER TRAINING PROGRAMS WHICH MAY BE GIVEN AND ADMINISTERED BY SCHOOLS AND OTHER ENTITIES INCLUDING TRADE ASSOCIATIONS WHOSE MEMBERS ARE ENGAGED IN OR INVOLVED IN THE RETAIL SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION. THE AUTHORITY SHALL PROVIDE FOR THE ISSUANCE OF CERTIFICATES OF APPROVAL TO ALL CERTIFIED BOUNCER TRAINING PROGRAMS. CERTIF-

ICATES OF APPROVAL MAY BE REVOKED BY THE AUTHORITY FOR FAILURE TO ADHERE TO THE AUTHORITY'S RULES AND REGULATIONS. SUCH RULES AND REGULATIONS SHALL AFFORD THOSE WHO HAVE BEEN ISSUED A CERTIFICATE OF APPROVAL AN OPPORTUNITY FOR A HEARING PRIOR TO ANY DETERMINATION OF WHETHER SUCH CERTIFICATE SHOULD BE REVOKED.

(B) A FEE IN THE AMOUNT OF NINE HUNDRED DOLLARS SHALL BE PAID TO THE AUTHORITY WITH EACH APPLICATION FOR A CERTIFICATE OF APPROVAL OR RENEWAL CERTIFICATE. THE AUTHORITY SHALL PROMPTLY REFUND SUCH FEE TO AN APPLICANT WHOSE APPLICATION IS DENIED. EACH CERTIFICATE OF APPROVAL AND RENEWAL THEREOF SHALL BE ISSUED FOR A PERIOD OF THREE YEARS. TO EFFECTUATE THE PROVISIONS OF THIS SUBDIVISION, THE AUTHORITY IS EMPOWERED TO REQUIRE IN CONNECTION WITH AN APPLICATION THE SUBMISSION OF SUCH INFORMATION AS THE AUTHORITY MAY DIRECT; TO PRESCRIBE FORMS OF APPLICATIONS AND OF ALL REPORTS WHICH IT DEEMS NECESSARY TO BE MADE BY ANY APPLICANT OR CERTIFICATE HOLDER; TO CONDUCT INVESTIGATIONS; TO REQUIRE THE MAINTENANCE OF SUCH BOOKS AND RECORDS AS THE AUTHORITY MAY DIRECT; TO REVOKE, CANCEL OR SUSPEND FOR CAUSE ANY CERTIFICATE PROVIDED FOR IN THIS SUBDIVISION. EACH ENTITY AUTHORIZED TO GIVE AND ADMINISTER A BOUNCER TRAINING PROGRAM SHALL ISSUE CERTIFICATES OF COMPLETION TO ALL LICENSEES AND EMPLOYEES WHO SUCCESSFULLY COMPLETE SUCH AN APPROVED BOUNCER TRAINING PROGRAM. SUCH ENTITY SHALL REGULARLY TRANSMIT TO THE AUTHORITY THE NAMES, ADDRESSES AND DATES OF ATTENDANCE OF ALL THE LICENSEES AND EMPLOYEES OF LICENSEES WHO SUCCESSFULLY COMPLETE AN APPROVED BOUNCER TRAINING PROGRAM. SUCH TRANSMITTAL SHALL BE IN A FORM AND MANNER PRESCRIBED BY THE AUTHORITY. THE AUTHORITY SHALL ADOPT RULES AND REGULATIONS TO EFFECTUATE THE PROVISIONS OF THIS SUBDIVISION, INCLUDING THE MINIMUM REQUIREMENTS FOR THE CURRICULUM OF SUCH TRAINING PROGRAM AND THE REGULAR ONGOING TRAINING OF EMPLOYEES HOLDING CERTIFICATES OF COMPLETION OR RENEWAL CERTIFICATES. SUCH RULES AND REGULATIONS SHALL INCLUDE THE FORM OF A CERTIFICATE OF COMPLETION OR RENEWAL THEREOF TO BE ISSUED IN RESPECT TO SUCH PROGRAM. A CERTIFICATE OF COMPLETION OR RENEWAL THEREOF ISSUED BY AN ENTITY AUTHORIZED TO GIVE AND ADMINISTER A BOUNCER TRAINING PROGRAM PURSUANT TO THIS SUBDIVISION TO LICENSEES AND THEIR EMPLOYEES AUTHORIZED TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR ON-PREMISES CONSUMPTION SHALL NOT BE INVALIDATED BY A CHANGE OF EMPLOYMENT TO ANOTHER ON-PREMISES LICENSEE. ATTENDANCE AT ANY COURSE ESTABLISHED PURSUANT TO THIS SUBDIVISION SHALL BE IN PERSON, THROUGH DISTANCE LEARNING METHODS, OR THROUGH AN INTERNET BASED ONLINE PROGRAM.

(C) THE AUTHORITY SHALL REQUIRE ALL BOUNCERS EMPLOYED BY A LICENSEE FOR ON-PREMISES CONSUMPTION LICENSED PURSUANT TO SECTION SIXTY-FOUR-D OF THIS CHAPTER AND ALL OTHER RETAIL LICENSEES FOR ON-PREMISES CONSUMPTION WITH A CAPACITY OF TWO HUNDRED FIFTY PERSONS OR MORE TO OBTAIN A CERTIFICATE OF COMPLETION FROM A BOUNCER TRAINING PROGRAM HOLDING A CERTIFICATE OF APPROVAL WITHIN THIRTY DAYS OF EMPLOYMENT AS A BOUNCER.

S 4. Subdivision 6 of section 106 of the alcoholic beverage control law is amended by adding a new closing paragraph to read as follows:

IN ANY PROCEEDING PURSUANT TO SECTION ONE HUNDRED EIGHTEEN OF THIS ARTICLE TO REVOKE, CANCEL OR SUSPEND A LICENSE TO SELL ALCOHOLIC BEVERAGES, IN WHICH PROCEEDING A CHARGE IS SUSTAINED THAT A LICENSEE VIOLATED THIS SUBDIVISION AND THE LICENSEE HAS NOT HAD ANY ADJUDICATED VIOLATION OF THIS CHAPTER AT THE LICENSED PREMISES WHERE THE VIOLATION OCCURRED WITHIN THE PREVIOUS FIVE YEAR PERIOD; AND AT THE TIME OF SUCH VIOLATION ALL BOUNCERS EMPLOYED AT THE LICENSEES PREMISES AND PRESENT AT SUCH PREMISES WHERE THE VIOLATION OCCURRED HELD A VALID CERTIFICATE OF COMPLETION OR RENEWAL FROM AN ENTITY AUTHORIZED TO GIVE AND ADMINISTER A BOUNCER TRAINING PROGRAM PURSUANT TO SUBDIVISION SIXTEEN OF SECTION

SEVENTEEN OF THIS CHAPTER, THE CIVIL PENALTY RELATED TO SUCH OFFENSE SHALL BE RECOVERY OF, AS PROVIDED FOR IN SECTION ONE HUNDRED TWELVE OF THIS ARTICLE, THE PENAL SUM OF THE BOND ON FILE DURING THE PERIOD IN WHICH THE VIOLATION TOOK PLACE. FOR THE PURPOSES OF THIS SUBDIVISION, THE FIVE YEAR PERIOD SHALL BE MEASURED FROM THE DATES THAT THE VIOLATIONS OCCURRED. THIS PROVISION SHALL NOT APPLY TO LICENSEES FOR ON-PREMISES CONSUMPTION LICENSED PURSUANT TO SECTION SIXTY-FOUR-D OF THIS CHAPTER AND ALL OTHER RETAIL LICENSES FOR ON-PREMISES CONSUMPTION WITH A CAPACITY OF TWO HUNDRED FIFTY OR MORE PERSONS.

S 5. Subdivisions 5 and 6 of section 89-f of the general business law, subdivision 5 as amended by chapter 324 of the laws of 1998 and subdivision 6 as amended by chapter 634 of the laws of 1994, are amended to read as follows:

5. "Security guard company" shall mean any person, firm, limited liability company, corporation, public entity or subsidiary or department of such firm, limited liability company, corporation or public entity employing one or more security guards or being self-employed as a security guard on either a proprietary basis for its own use or on a contractual basis for use by another person, firm, limited liability company, corporation, public entity or subsidiary thereof within the state. ANY PERSON, FIRM, LIMITED LIABILITY COMPANY, CORPORATION OR PUBLIC ENTITY LICENSED FOR THE ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES SHALL NOT BE SUBJECT TO THE PROVISIONS OF THIS ARTICLE.

6. "Security guard" shall mean a person, other than a police officer, employed by a security guard company to principally perform one or more of the following functions within the state:

a. protection of individuals and/or property from harm, theft or other unlawful activity;

b. deterrence, observation, detection and/or reporting of incidents in order to prevent any unlawful or unauthorized activity including but not limited to unlawful or unauthorized intrusion or entry, larceny, vandalism, abuse, arson or trespass on property;

c. street patrol service;

d. response to but not installation or service of a security system alarm installed and/or used to prevent or detect unauthorized intrusion, robbery, burglary, theft, pilferage and other losses and/or to maintain security of a protected premises.

Provided, however, that a security guard who is otherwise subject to regulation with respect to registration and training by the federal government in the performance of their duties, or a security guard providing such services on a voluntary basis, shall not be subject to the provisions of this article. ANY PERSON ACTING AS AN AGENT, WHERE THE PRINCIPAL BASIS FOR SUCH AGENT'S EMPLOYMENT IS TO SERVE FOOD OR BEVERAGES OR ASSIST IN COMPLIANCE WITH THE PROVISIONS OF SECTION SIXTY-FIVE OF THE ALCOHOLIC BEVERAGE CONTROL LAW, OR WHO IS A BOUNCER, AS DEFINED IN SUBDIVISION SIX-A OF SECTION THREE OF THE ALCOHOLIC BEVERAGE CONTROL LAW, OF A LICENSEE FOR THE ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES SHALL NOT BE SUBJECT TO THE PROVISIONS OF THIS ARTICLE.

S 6. This act shall take effect on the one hundred twentieth day after it shall have become a law.