

Memorandum

AN ACT to amend the alcoholic beverage control law, to clarify the activities that may be held within a building occupied as a place of worship without depriving the building of the protections afforded by such law to a building exclusively occupied as a place of worship

Purpose:

This bill would amend the Alcoholic Beverage Control (ABC) Law regarding the 200 foot rule in order to clarify that certain activities may occur at places of worship without jeopardizing the exclusive use requirement.

Summary of provisions:

Section one of the bill would amend ABC Law § 64, which governs licenses to sell liquor at retail for on-premises consumption, by listing a number of activities that would be regarded as consistent with the conduct of the building as a place of worship.

Section two of the bill would amend ABC Law § 64-a, which governs special licenses to sell liquor at retail for on-premises consumption, by listing a number of activities that would be regarded as consistent with the conduct of the building as a place of worship.

Section three of the bill would amend ABC Law § 64-b, which governs bottle club licenses, by listing a number of activities that would be regarded as consistent with the conduct of the building as a place of worship.

Section four of the bill would amend ABC Law § 64-c, which governs restaurant-brewery licenses, by listing a number of activities that would be regarded as consistent with the conduct of the building as a place of worship.

Section five of the bill would amend ABC Law § 64-d, which governs cabaret licenses, by listing a number of activities that would be regarded as consistent with the conduct of the building as a place of worship.

Section six of the bill would amend ABC Law § 105, which governs licenses to sell at retail for off-premises consumption, by listing a number of activities that would be regarded as consistent with the conduct of the building as a place of worship.

Existing law:

Sections 64, 64-a, 64-b, 64-c, and 64-d of the ABC Law provide for the issuance of on-premises liquor, wine and beer licenses for a number of different types of establishments. Section 105 of the ABC Law provides for the issuance of off-premises retail liquor and/or wine licenses. Each statute contains a provision that prohibits the issuance of such licenses to any establishment that is on the same street and within 200 feet of a building that is used exclusively as a school, church, synagogue or other place of worship. This prohibition is commonly referred to as the "200 foot rule".

Legislative history:

New bill.

Statement in support:

While the statutes use the phrase "building used exclusively" as a school or church, the courts have adopted a test that looks to whether the building is used primarily as a school or church. The building will still be considered a school or church as long as any use is incidental to, and is not inconsistent with or detracting from the predominant character of the building as a school or church. See Fayez v. State Liquor Authority, 66 N.Y.2d 978 (1985). However, the determination in each case is fact specific and conflicting decisions have been reached on similar facts. For example, the use of the fifth floor of a church five nights a week by a chapter of Alcoholics Anonymous or holding bridal showers or birthday parties have been held to not detract from the predominant character of the building. On the other hand, renting of a wing of church to a not-for-profit engaged in rehabilitation programs or the use of a church by a cancer sewing group have been found to be inconsistent with the exclusive use requirement.

Consequently, legislation is required to resolve these conflicting decisions and minimize the number of resulting cases in the future. This legislation would clarify what uses would not pose a risk to the exclusive use provisions of the ABC Law (i.e. social service related activities, senior citizen functions, Red Cross blood drives, etc.). Listing specific examples of the types of permitted activities will provide guidance to places of worship and eliminate the need for detailed fact finding in license applications.

Budget implications:

None.

Effective Date:

This act shall take effect on the first day of the month that begins at least ninety days after the date on which it shall have become a law.

**DEPARTMENTAL BILL # 47**

S. \_\_\_\_\_  
Senate  
\_\_\_\_\_

IN SENATE--Introduced by Sen

--read twice and ordered printed,  
and when printed to be committed  
to the Committee on

----- A.  
Assembly  
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IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the  
Committee on

\*ALCOBELA\* \*State Liquor Authority  
2\*  
(Clarifies the activities that may  
be held within a building occupied  
as a place of worship without  
depriving the building of its  
protections)

ABC. place of worship; uses

AN ACT

to amend the alcoholic beverage  
control law, to clarify the activ-  
ities that may be held within a  
building occupied as a place of  
worship without depriving the build-  
ing of the protections afforded by  
such law to a building exclusively  
occupied as a place of worship

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship  
of this proposal

- |                 |                 |                 |                  |                |
|-----------------|-----------------|-----------------|------------------|----------------|
| s20 Adams       | s22 Golden      | s39 Larkin      | s11 Padavan      | s14 Smith      |
| s55 Alesi       | s33 Gonzalez    | s01 LaValle     | s21 Parker       | s58 Stachowski |
| s42 Bonacic     | s47 Griffio     | s40 Leibell     | s30 Perkins      | s16 Stavisky   |
| s46 Breslin     | s06 Hannon      | s52 Libous      | s61 Rath         | s35 Stewart-   |
| s43 Bruno       | s36 Hassell-    | s45 Little      | s56 Robach       | Cousins        |
| s25 Connor      | Thompson        | s15 Maltese     | s13 Sabini       | s60 Thompson   |
| s50 DeFrancisco | s10 Huntley     | s05 Marcellino  | s41 Saland       | s03 Trunzo     |
| s32 Diaz        | s07 Johnson, C. | s62 Maziarz     | s19 Sampson      | s49 Valesky    |
| s17 Dilan       | s04 Johnson, O. | s18 Montgomery  | s23 Savino       | s59 Volker     |
| s29 Duane       | s34 Klein       | s38 Morahan     | s31 Schneiderman | s53 Winner     |
| s44 Farley      | s26 Krueger     | s54 Nozzolio    | s28 Serrano      | s48 Wright     |
| s02 Flanagan    | s27 Kruger      | s12 Onorato     | s51 Seward       | s57 Young      |
| s08 Fuschillo   | s24 Lanza       | s37 Oppenheimer | s09 Skelos       |                |

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the  
multi-sponsorship of this proposal:

- |                   |                  |                   |                 |                  |
|-------------------|------------------|-------------------|-----------------|------------------|
| a049 Abbate       | a010 Conte       | a098 Gunther      | a030 Markey     | a080 Rivera, N.  |
| a001 Alessi       | a032 Cook        | a139 Hawley       | a027 Mayersohn  | a076 Rivera, P.  |
| a021 Alfano       | a107 Crouch      | a148 Hayes        | a112 McDonald   | a056 Robinson    |
| a084 Arroyo       | a063 Cusick      | a083 Heastie      | a019 McDonough  | a067 Rosenthal   |
| a118 Aubertine    | a045 Cymbrowitz  | a028 Hevesi       | a104 McEneny    | a012 Saladino    |
| a035 Aubry        | a138 DelMonte    | a049 Hiking       | a017 McKeivitt  | a113 Sayward     |
| a136 Bacalles     | a116 Destito     | a018 Hooper       | a102 Miller     | a029 Scarborough |
| a099 Ball         | a086 Diaz, L.    | a144 Hoyt         | a052 Millman    | a140 Schimwinger |
| a124 Barclay      | a085 Diaz, R.    | a060 Hyer-Spencer | a103 Molinaro   | a145 Schroeder   |
| a014 Barra        | a081 Dinowitz    | a062 Ignizio      | a132 Morelle    | a122 Scorzafava  |
| a082 Benedetto    | a114 Duprey      | a042 Jacobs       | a037 Nolan      | a038 Seminerio   |
| a079 Benjamin     | a003 Eddington   | a095 Jaffee       | a128 Oaks       | a064 Silver      |
| a073 Bing         | a004 Englebright | a057 Jeffries     | a069 O'Donnell  | a093 Spano       |
| a055 Boyland      | a130 Errigo      | a131 John         | a137 O'Mara     | a121 Stirpe      |
| a008 Boyle        | a072 Espaillet   | a074 Kavanagh     | a051 Ortiz      | a011 Sweeney     |
| a089 Bradley      | a071 Farrell     | a100 Kirwan       | a150 Parment    | a110 Tediaco     |
| a044 Brennan      | a005 Fields      | a129 Kolb         | a088 Paulin     | a002 Thiele      |
| a092 Brodsky      | a123 Finch       | a135 Koon         | a141 Peoples    | a031 Titus       |
| a046 Brook-Krasny | a007 Fitzpatrick | a034 Lafayette    | a039 Peralta    | a105 Tonko       |
| a147 Burling      | a143 Gabryszak   | a025 Lancman      | a058 Perry      | a054 Towns       |
| a117 Butler       | a090 Galef       | a091 Latimer      | a023 Pheffer    | a115 Townsend    |
| a101 Cahill       | a133 Gantt       | a013 Lavine       | a068 Powell     | a015 Walker      |
| a096 Calhoun      | a036 Gianaris    | a050 Lentol       | a087 Pretlow    | a041 Weinstein   |
| a043 Canara       | a149 Giglio      | a125 Lifton       | a146 Quinn      | a020 Weisenberg  |
| a106 Canestrari   | a066 Glick       | a127 Lopez, P.    | a097 Rabbitt    | a024 Weprin      |
| a026 Carrozza     | a040 Gordon, D.  | a053 Lopez, V.    | a009 Raia       | a070 Wright      |
| a119 Christensen  | a108 Gordon, T.  | a126 Lupardo      | a006 Ramos      | a022 Young       |
| a033 Clark        | a075 Gottfried   | a111 Magee        | a134 Reilich    | a094 Zebrowski   |
| a142 Cole         | a065 Grammis     | a120 Magnarelli   | a109 Reilly     | a016             |
| a047 Colton       | a077 Greene      | a059 Maisel       | a078 Rivera, J. | a061             |

1) Single House Bill (introduced and printed separately in either or both  
houses). Uni-Bill (introduced simultaneously in both houses and printed as one  
bill). Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed  
copies of bill and 4 copies of memorandum in support (single house); or 4 signed  
copies of bill and 8 copies of memorandum in support (uni-bill).

02/16/07

2

09597-01-7

The People of the State of New  
York, represented in Senate and  
Assembly, do enact as follows:

1 Section 1. Subdivision 7 of section 64 of the alcoholic beverage  
2 control law is amended by adding a new paragraph (d-1) to read as  
3 follows:

4 (d-1) Within the context of this subdivision, a building occupied as a  
5 place of worship does not cease to be "exclusively" occupied as a place  
6 of worship by incidental uses that are not of a nature to detract from  
7 the predominant character of the building as a place of worship, such  
8 uses which include, but which are not limited to: the conduct of legally  
9 authorized games of bingo or other games of chance held as a means of  
10 raising funds for the not-for-profit religious organization which  
11 conducts services at the place of worship or for other not-for-profit  
12 organizations or groups; use of the building for fund-raising perform-  
13 ances by or benefitting the not-for-profit religious organization which  
14 conducts services at the place of worship or other not-for-profit  
15 organizations or groups; the use of the building by other religious  
16 organizations or groups for religious services or other purposes; the  
17 conduct of social activities by or for the benefit of the congregants;  
18 the use of the building for meetings held by organizations or groups  
19 providing bereavement counseling to persons having suffered the loss of  
20 a loved one, or providing advice or support for conditions or diseases  
21 including, but not limited to, alcoholism, drug addiction, cancer, cere-  
22 bral palsy, Parkinson's disease, or Alzheimer's disease; the use of the  
23 building for blood drives, health screenings, health information meet-  
24 ings, yoga classes, exercise classes or other activities intended to  
25 promote the health of the congregants or other persons; and use of the  
26 building by non-congregant members of the community for private social  
27 functions. The building occupied as a place of worship does not cease  
28 to be "exclusively" occupied as a place of worship where the not-for-

1 profit religious organization occupying the place of worship accepts the  
2 payment of funds to defray costs related to another party's use of the  
3 building.

4 § 2. Subdivision 7 of section 64-a of the alcoholic beverage control  
5 law is amended by adding a new paragraph (e) to read as follows:

6 (e) Within the context of this subdivision, a building occupied as a  
7 place of worship does not cease to be "exclusively" occupied as a place  
8 of worship by incidental uses that are not of a nature to detract from  
9 the predominant character of the building as a place of worship, such  
10 uses which include, but which are not limited to: the conduct of legally  
11 authorized games of bingo or other games of chance held as a means of  
12 raising funds for the not-for-profit religious organization which  
13 conducts services at the place of worship or for other not-for-profit  
14 organizations or groups; use of the building for fund-raising perform-  
15 ances by or benefitting the not-for-profit religious organization which  
16 conducts services at the place of worship or other not-for-profit organ-  
17 izations or groups; the use of the building by other religious organiza-  
18 tions or groups for religious services or other purposes; the conduct of  
19 social activities by or for the benefit of the congregants; the use of  
20 the building for meetings held by organizations or groups providing  
21 bereavement counseling to persons having suffered the loss of a loved  
22 one, or providing advice or support for conditions or diseases includ-  
23 ing, but not limited to, alcoholism, drug addiction, cancer, cerebral  
24 palsy, Parkinson's disease, or Alzheimer's disease; the use of the  
25 building for blood drives, health screenings, health information meet-  
26 ings, yoga classes, exercise classes or other activities intended to  
27 promote the health of the congregants or other persons; and use of the  
28 building by non-congregant members of the community for private social

1 functions. The building occupied as a place of worship does not cease  
2 to be "exclusively" occupied as a place of worship where the not-for-  
3 profit religious organization occupying the place of worship accepts the  
4 payment of funds to defray costs related to another party's use of the  
5 building.

6 § 3. Subdivision 5 of section 64-b of the alcoholic beverage control  
7 law, as added by chapter 786 of the laws of 1969, is amended to read as  
8 follows:

9 5. (a) No bottle club license shall be granted for any premises which  
10 shall be on the same street or avenue and within two hundred feet of a  
11 building occupied exclusively as a school, church, synagogue or other  
12 place of worship; the measurements to be taken in a straight line from  
13 the center of the nearest entrance of such school, church, synagogue or  
14 other place of worship to the center of the nearest entrance of the  
15 premises to be licensed; except that no license shall be denied to any  
16 premises at which a license under this chapter has been in existence  
17 continuously from a date prior to the date when a building on the same  
18 street or avenue and within two hundred feet of said premises has been  
19 occupied exclusively as a school, church, synagogue or other place of  
20 worship.

21 (b) Within the context of this subdivision, a building occupied as a  
22 place of worship does not cease to be "exclusively" occupied as a place  
23 of worship by incidental uses that are not of a nature to detract from  
24 the predominant character of the building as a place of worship, such  
25 uses which include, but which are not limited to: the conduct of legally  
26 authorized games of bingo or other games of chance held as a means of  
27 raising funds for the not-for-profit religious organization which  
28 conducts services at the place of worship or for other not-for-profit

1 organizations or groups; use of the building for fund-raising perform-  
2 ances by or benefitting the not-for-profit religious organization which  
3 conducts services at the place of worship or other not-for-profit organ-  
4 izations or groups; the use of the building by other religious organiza-  
5 tions or groups for religious services or other purposes; the conduct of  
6 social activities by or for the benefit of the congregants; the use of  
7 the building for meetings held by organizations or groups providing  
8 bereavement counseling to persons having suffered the loss of a loved  
9 one, or providing advice or support for conditions or diseases includ-  
10 ing, but not limited to, alcoholism, drug addiction, cancer, cerebral  
11 palsy, Parkinson's disease, or Alzheimer's disease; the use of the  
12 building for blood drives, health screenings, health information meet-  
13 ings, yoga classes, exercise classes or other activities intended to  
14 promote the health of the congregants or other persons; and use of the  
15 building by non-congregant members of the community for private social  
16 functions. The building occupied as a place of worship does not cease to  
17 be "exclusively" occupied as a place of worship where the not-for-profit  
18 religious organization occupying the place of worship accepts the  
19 payment of funds to defray costs related to another party's use of the  
20 building.

21 § 4. Subdivision 11 of section 64-c of the alcoholic beverage control  
22 law is amended by adding a new paragraph (d) to read as follows:

23 (d) Within the context of this subdivision, a building occupied as a  
24 place of worship does not cease to be "exclusively" occupied as a place  
25 of worship by incidental uses that are not of a nature to detract from  
26 the predominant character of the building as a place of worship, such  
27 uses which include, but which are not limited to: the conduct of legally  
28 authorized games of bingo or other games of chance held as a means of

1 raising funds for the not-for-profit religious organization which  
2 conducts services at the place of worship or for other not-for-profit  
3 organizations or groups; use of the building for fund-raising perform-  
4 ances by or benefitting the not-for-profit religious organization which  
5 conducts services at the place of worship or other not-for-profit organ-  
6 izations or groups; the use of the building by other religious organiza-  
7 tions or groups for religious services or other purposes; the conduct of  
8 social activities by or for the benefit of the congregants; the use of  
9 the building for meetings held by organizations or groups providing  
10 bereavement counseling to persons having suffered the loss of a loved  
11 one, or providing advice or support for conditions or diseases includ-  
12 ing, but not limited to, alcoholism, drug addiction, cancer, cerebral  
13 palsy, Parkinson's disease, or Alzheimer's disease; the use of the  
14 building for blood drives, health screenings, health information meet-  
15 ings, yoga classes, exercise classes or other activities intended to  
16 promote the health of the congregants or other persons; and use of the  
17 building by non-congregant members of the community for private social  
18 functions. The building occupied as a place of worship does not cease  
19 to be "exclusively" occupied as a place of worship where the not-for-  
20 profit religious organization occupying the place of worship accepts the  
21 payment of funds to defray costs related to another party's use of the  
22 building.

23 § 5. Subdivision 8 of section 64-d of the alcoholic beverage control  
24 law, as added by chapter 602 of the laws of 1999, is amended to read as  
25 follows:

26 8. No cabaret license shall be granted for any premises which shall  
27 be:

1 (a) on the same street or avenue and within two hundred feet of a  
2 building occupied exclusively as a school, church, synagogue or other  
3 place of worship or

4 (b) in a city, town or village having a population of twenty thousand  
5 or more within five hundred feet of an existing premises licensed and  
6 operating pursuant to the provisions of this section, or within five  
7 hundred feet of three or more existing premises licensed and operating  
8 pursuant to sections sixty-four and sixty-four-c of this article.

9 (c) The measurements in paragraphs (a) and (b) of this subdivision  
10 shall be taken in accordance with the provisions of subdivision seven of  
11 section sixty-four of this article.

12 (d) Within the context of this subdivision, a building occupied as a  
13 place of worship does not cease to be "exclusively" occupied as a place  
14 of worship by incidental uses that are not of a nature to detract from  
15 the predominant character of the building as a place of worship, such  
16 uses which include, but which are not limited to: the conduct of legally  
17 authorized games of bingo or other games of chance held as a means of  
18 raising funds for the not-for-profit religious organization which  
19 conducts services at the place of worship or for other not-for-profit  
20 organizations or groups; use of the building for fund-raising perform-  
21 ances by or benefitting the not-for-profit religious organization which  
22 conducts services at the place of worship or other not-for-profit organ-  
23 izations or groups; the use of the building by other religious organiza-  
24 tions or groups for religious services or other purposes; the conduct of  
25 social activities by or for the benefit of the congregants; the use of  
26 the building for meetings held by organizations or groups providing  
27 bereavement counseling to persons having suffered the loss of a loved  
28 one, or providing advice or support for conditions or diseases includ-

1 ing, but not limited to, alcoholism, drug addiction, cancer, cerebral  
2 palsy, Parkinson's disease, or Alzheimer's disease; the use of the  
3 building for blood drives, health screenings, health information meet-  
4 ings, yoga classes, exercise classes or other activities intended to  
5 promote the health of the congregants or other persons; and use of the  
6 building by non-congregant members of the community for private social  
7 functions. The building occupied as a place of worship does not cease  
8 to be "exclusively" occupied as a place of worship where the not-for-  
9 profit religious organization occupying the place of worship accepts the  
10 payment of funds to defray costs related to another party's use of the  
11 building.

12 § 6. Subdivision 3 of section 105 of the alcoholic beverage control  
13 law, as amended by chapter 591 of the laws of 1942 and the closing para-  
14 graph as added by chapter 501 of the laws of 1969, is amended to read as  
15 follows:

16 3. (a) No retail license to sell liquor and/or wine for off-premises  
17 consumption shall be granted for any premises which shall be located on  
18 the same street or avenue, and within two hundred feet of a building  
19 occupied exclusively as a school, church, synagogue or other place of  
20 worship; the measurements to be taken in a straight line from the center  
21 of the nearest entrance to the building used for such school, church,  
22 synagogue or other place of worship to the center of the nearest  
23 entrance of the premises to be licensed; except, however, that no  
24 license shall be denied to any premises at which a license under this  
25 chapter has been in existence continuously from a date prior to the date  
26 when a building on the same street or avenue and within two hundred feet  
27 of said premises has been occupied exclusively as a school, church,  
28 synagogue or other place of worship.

1     **(b)** Within the context of this subdivision, the word "entrance" shall  
2 mean a door of a school, of a house of worship, or of the premises  
3 sought to be licensed, regularly used to give ingress to students of the  
4 school, to the general public attending the place of worship, and to  
5 patrons or guests of the premises proposed to be licensed, except that  
6 where a school or house of worship is set back from a public thorough-  
7 fare, the walkway or stairs leading to any such door shall be deemed an  
8 entrance; and the measurement shall be taken to the center of the walk-  
9 way or stairs at the point where it meets the building line or public  
10 thoroughfare. A door which has no exterior hardware, or which is used  
11 solely as an emergency or fire exit, or for maintenance purposes, or  
12 which leads directly to a part of a building not regularly used by the  
13 general public or patrons, is not deemed an "entrance".

14     **(c)** Within the context of this subdivision, a building occupied as a  
15 place of worship does not cease to be "exclusively" occupied as a place  
16 of worship by incidental uses that are not of a nature to detract from  
17 the predominant character of the building as a place of worship, such  
18 uses which include, but which are not limited to: the conduct of legally  
19 authorized games of bingo or other games of chance held as a means of  
20 raising funds for the not-for-profit religious organization which  
21 conducts services at the place of worship or for other not-for-profit  
22 organizations or groups; use of the building for fund-raising perform-  
23 ances by or benefitting the not-for-profit religious organizations which  
24 conducts services at the place of worship or other not-for-profit organ-  
25 izations or groups; the use of the building by other religious organiza-  
26 tions or groups for religious services or other purposes; the conduct of  
27 social activities by or for the benefit of the congregants; the use of  
28 the building for meetings held by organizations or groups providing

1 bereavement counseling to persons having suffered the loss of a loved  
2 one, or providing advice or support for conditions or diseases includ-  
3 ing, but not limited to, alcoholism, drug addiction, cancer, cerebral  
4 palsy, Parkinson's disease, or Alzheimer's disease; the use of the  
5 building for blood drives, health screenings, health information meet-  
6 ings, yoga classes, exercise classes or other activities intended to  
7 promote the health of the congregants or other persons; and use of the  
8 building by non-congregant members of the community for private social  
9 functions. The building occupied as a place of worship does not cease to  
10 be "exclusively" occupied as a place of worship where the not-for-profit  
11 religious organization occupying the place of worship accepts the  
12 payment of funds to defray costs related to another party's use of the  
13 building.

14 § 7. This act shall take effect on the first day of the month that  
15 begins at least ninety days after the date on which it shall have become  
16 a law.