



NEW YORK
CITY BAR

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**REPORT ON LEGISLATION BY THE
CORRECTIONS COMMITTEE**

**A.3770-A
S.4686**

**M. of A. Aubry
Sen. Hassell-Thompson**

AN ACT allowing qualified individuals with criminal records to be employed in certain establishments that hold liquor licenses.

THIS BILL IS APPROVED

The Corrections Committee of the New York City Bar Association supports Assembly Bill 3770-A and Senate Bill 4686. This legislation removes a provision in New York’s Alcoholic Beverage Control Law (“ABC Law”) § 102(2) – enacted in the wake of Prohibition – that forbids an establishment licensed to sell liquor for on-premises consumption¹ to hire any person *in any capacity* who has been previously convicted of a felony or certain misdemeanors, unless that person has (1) received a pardon or a certificate of good conduct or relief from disabilities, or (2) obtained written approval from the New York State Liquor Authority. Removal of this far-reaching prohibition is not only appropriate, but also long overdue.

Section 102(2) of the ABC Law, which dates from 1934, forbids employers licensed to sell liquor for on-premises consumption from hiring most people who have felony or certain misdemeanor records, regardless of their fitness for the job they seek. While this law exempts those few applicants who have been pardoned, obtained documents issued at the discretion of courts or agencies, or received special permission from the State Liquor Authority, it renders most people previously convicted of a felony or another enumerated offense ineligible for work *of any kind* at restaurants, hotels, clubs, sporting arenas and catering establishments. Because of this law, employers licensed to serve liquor on site are generally prohibited from hiring otherwise qualified people for work as busboys, dishwashers, janitors, waiters, delivery persons, *maîtres d’hôtel* or chefs, or in any other capacity in their businesses.

The current version of Section 102(2) is out of step with state legislation that encourages the employment of qualified individuals with criminal histories. For instance, the New York State Human Rights Law prohibits unfair discrimination against individuals with criminal records, *see* N.Y. Exec. Law § 296(16); and Article 23-A of the Correction Law makes it unlawful to deny a license or a job to someone solely on the basis of a prior criminal conviction. *See* N.Y. Corr. Law § 752. These more recent statutes (enacted almost four decades after Section 102(2)) seek to prevent bias against people with criminal histories, which impedes such

¹ The Law exempts those licensed to sell alcohol for *off*-premises consumption, such as supermarkets, liquor stores and convenience stores.

people from earning a living and contributing to society. These antidiscrimination laws also reflect the understanding that a key predictor of a person's successful reentry into society after a period of incarceration is her ability to obtain and maintain gainful employment. The ABC Law should be amended to harmonize with these principles and policy goals.

Opening employment opportunities to people with criminal histories does not mean jeopardizing public safety. Article 23-A of the Correction Law requires employers to make an individualized determination regarding whether a person's convictions are related to the job sought or constitute a threat to safety or property. *See* N.Y. Corr. Law § 752. Therefore, before hiring anyone with a criminal conviction, any restaurant, hotel, club or other establishment with a liquor license will still consider whether an applicant's conviction implicates relevant job duties and whether the public safety or property would be placed at risk. Far from putting people in danger, the proposed amendment, by improving job prospects for qualified persons with criminal records, advances the public interest and promotes public safety by helping to reduce recidivism.

For the foregoing reasons, the Corrections Committee recommends enactment of this bill.

Reissued May 2009