

5803--B

2009-2010 Regular Sessions

I N   S E N A T E

June 5, 2009

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Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Mental Health and Developmental Disabilities in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the alcoholic beverage control law, in relation to alcohol training awareness programs; and to amend the penal law, in relation to unlawfully dealing with a child in the first degree

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

1     Section 1. Subdivision 4 of section 65 of the alcoholic beverage  
2 control law, as amended by chapter 519 of the laws of 1999, is amended  
3 to read as follows:  
4     4. Neither such person so refusing to sell or deliver under this  
5 section nor his OR HER employer shall be liable in any civil or criminal  
6 action or for any fine or penalty based upon such refusal, except that  
7 such sale or delivery shall not be refused, withheld from or denied to  
8 any person on account of race, creed, color or national origin. [In any  
9 proceeding pursuant to subdivision one of this section, it shall be an  
10 affirmative defense that such person had produced a photographic iden-  
11 tification card apparently issued by a governmental entity and that the  
12 alcoholic beverage had been sold, delivered or given to such person in  
13 reasonable reliance upon such identification. In evaluating the applica-  
14 bility of such affirmative defense, the authority shall take into  
15 consideration any written policy adopted and implemented by the seller  
16 to carry out the provision of paragraph (b) of subdivision two of  
17 section sixty-five-b of this article.]

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

LBD14138-12-0

1 S 2. Subdivision 6 of section 65 of the alcoholic beverage control  
2 law, as amended by chapter 481 of the laws of 1999, is amended to read  
3 as follows:

4 6. In any proceeding pursuant to section one hundred eighteen of this  
5 chapter to revoke, cancel or suspend a license to sell alcoholic bever-  
6 ages [at retail], in which proceeding it is alleged that a person  
7 violated subdivision one of this section[,];

8 (A) IT SHALL BE AN AFFIRMATIVE DEFENSE THAT SUCH PERSON HAD PRODUCED A  
9 PHOTOGRAPHIC IDENTIFICATION CARD APPARENTLY ISSUED BY A GOVERNMENTAL  
10 ENTITY AND THAT THE ALCOHOLIC BEVERAGE HAD BEEN SOLD, DELIVERED OR GIVEN  
11 TO SUCH PERSON IN REASONABLE RELIANCE UPON SUCH IDENTIFICATION. IN EVAL-  
12 UATING THE APPLICABILITY OF SUCH AFFIRMATIVE DEFENSE, THE AUTHORITY  
13 SHALL TAKE INTO CONSIDERATION ANY WRITTEN POLICY ADOPTED AND IMPLEMENTED  
14 BY THE SELLER TO CARRY OUT THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVI-  
15 SION TWO OF SECTION SIXTY-FIVE-B OF THIS ARTICLE; AND

16 (B) it shall be an affirmative defense that at the time of such  
17 violation such person who committed such alleged violation held a valid  
18 certificate of completion or renewal from an entity authorized to give  
19 and administer an alcohol training awareness program pursuant to subdi-  
20 vision twelve of section seventeen of this chapter. Such licensee shall  
21 have diligently implemented and complied with all of the provisions of  
22 the approved training program. In such proceeding to revoke, cancel or  
23 suspend a license pursuant to section one hundred eighteen of this chap-  
24 ter, the licensee must prove each element of such affirmative defense by  
25 a preponderance of the credible evidence. Evidence of three unlawful  
26 sales of alcoholic beverages by any employee of a licensee to persons  
27 under twenty-one years of age, within a two year period, shall be  
28 considered by the authority in determining whether the licensee had  
29 diligently implemented such an approved program. [Such affirmative  
30 defense shall not preclude the recovery of the penal sum of a bond as  
31 provided in sections one hundred twelve and one hundred eighteen of this  
32 chapter.]

33 S 3. Section 65 of the alcoholic beverage control law is amended by  
34 adding a new subdivision 7 to read as follows:

35 7. IN ANY PROCEEDING PURSUANT TO SECTION ONE HUNDRED EIGHTEEN OF THIS  
36 CHAPTER TO REVOKE, CANCEL OR SUSPEND A LICENSE TO SELL ALCOHOLIC BEVER-  
37 AGES, IN WHICH PROCEEDING A CHARGE IS SUSTAINED THAT A PERSON VIOLATED  
38 SUBDIVISION ONE OR TWO OF THIS SECTION AND THE LICENSEE HAS NOT HAD ANY  
39 ADJUDICATED VIOLATION OF THIS CHAPTER AT THE LICENSED PREMISES WHERE THE  
40 VIOLATION OCCURRED WITHIN THE PREVIOUS FIVE YEAR PERIOD; AND

41 (A) AT THE TIME OF SUCH VIOLATION THE PERSON THAT COMMITTED SUCH  
42 VIOLATION HELD A VALID CERTIFICATE OF COMPLETION OR RENEWAL FROM AN  
43 ENTITY AUTHORIZED TO GIVE AND ADMINISTER AN ALCOHOL TRAINING AWARENESS  
44 PROGRAM PURSUANT TO SUBDIVISION TWELVE OF SECTION SEVENTEEN OF THIS  
45 CHAPTER, THE CIVIL PENALTY RELATED TO SUCH OFFENSE SHALL BE RECOVERY OF,  
46 AS PROVIDED FOR IN SECTION ONE HUNDRED TWELVE OF THIS CHAPTER, THE PENAL  
47 SUM OF THE BOND ON FILE DURING THE PERIOD IN WHICH THE VIOLATION TOOK  
48 PLACE; OR

49 (B) AT THE TIME OF SUCH VIOLATION THE LICENSEE HAS NOT HAD ANY ADJUDI-  
50 CATED VIOLATIONS OF THIS CHAPTER AT THE LICENSED PREMISES WHERE THE  
51 VIOLATION OCCURRED WITHIN THE PREVIOUS FIVE YEAR PERIOD, ANY CIVIL  
52 PENALTY IMPOSED SHALL BE REDUCED BY TWENTY-FIVE PERCENT IF THE LICENSEE  
53 SUBMITS WRITTEN PROOF, WITHIN NINETY DAYS OF THE IMPOSITION OF SUCH  
54 CIVIL PENALTY, THAT ALL OF THE LICENSEE'S EMPLOYEES INVOLVED IN THE  
55 DIRECT SALE OR SERVICE OF ALCOHOLIC BEVERAGES TO THE PUBLIC AT THE  
56 LICENSED PREMISES WHERE THE VIOLATION OCCURRED HAVE OBTAINED A VALID

1 CERTIFICATE OF COMPLETION OR RENEWAL FROM AN ENTITY AUTHORIZED TO GIVE  
2 AND ADMINISTER AN ALCOHOL TRAINING AWARENESS PROGRAM PURSUANT TO SUBDI-  
3 VISION TWELVE OF SECTION SEVENTEEN OF THIS CHAPTER.

4 FOR THE PURPOSES OF THIS SUBDIVISION, THE FIVE YEAR PERIOD SHALL BE  
5 MEASURED FROM THE DATES THAT THE VIOLATIONS OCCURRED.

6 S 4. The closing paragraph of subdivision 12 of section 17 of the  
7 alcoholic beverage control law, as amended by chapter 549 of the laws of  
8 2001, is amended to read as follows:

9 No licensee shall be required to apply for any such certificate or  
10 renewal certificate and the licensee may voluntarily surrender such a  
11 certificate or renewal certificate at any time. A fee in the amount of  
12 nine hundred dollars shall be paid to the authority with each applica-  
13 tion for a certificate of approval or renewal certificate. The authority  
14 shall promptly refund such fee to an applicant whose application was  
15 denied. Each certificate of approval and renewal thereof shall be issued  
16 for a period of three years. To effectuate the provisions of this subdi-  
17 vision, the authority is empowered to require in connection with an  
18 application the submission of such information as the authority may  
19 direct; to prescribe forms of applications and of all reports which it  
20 deems necessary to be made by any applicant or certificate holder; to  
21 conduct investigations; to require the maintenance of such books and  
22 records as the authority may direct; to revoke, cancel, or suspend for  
23 cause any certificate provided for in this subdivision. Each entity  
24 authorized to give and administer an alcohol training awareness program  
25 shall issue certificates of completion to all licensees and employees  
26 who successfully complete such an approved alcohol training awareness  
27 program. Such entity shall regularly transmit to the authority the  
28 names, addresses and dates of attendance of all the licensees and  
29 employees of licensees who successfully complete an approved alcohol  
30 training awareness program. Such transmittal shall be in a form and  
31 manner prescribed by the authority. The authority shall adopt rules and  
32 regulations to effectuate the provisions of this subdivision, including  
33 the minimum requirements for the curriculum of each such training  
34 program and the regular ongoing training of employees holding certif-  
35 icates of completion or renewal certificates. Such rules and regulations  
36 shall include the minimum requirements for a separate curriculum for  
37 licensees and their employees authorized to sell alcoholic beverages at  
38 retail for off-premises consumption, minimum requirements for a separate  
39 curriculum for licensees and their employees authorized to sell alcohol-  
40 ic beverages at retail for on-premises consumption, and the form of a  
41 certificate of completion or renewal thereof to be issued in respect to  
42 each such type of program. A certificate of completion or renewal there-  
43 of issued by an entity authorized to give and administer an alcohol  
44 training awareness program pursuant to this subdivision to licensees and  
45 their employees authorized to sell alcoholic beverages at retail for  
46 off-premises consumption shall not be invalidated by a change of employ-  
47 ment to another such licensee. A certificate of completion or renewal  
48 thereof issued by an entity authorized to give and administer an alcohol  
49 training awareness program pursuant to this subdivision to licensees and  
50 their employees authorized to sell alcoholic beverages at retail for  
51 on-premises consumption shall not be invalidated by a change of employ-  
52 ment to another such licensee. ATTENDANCE AT ANY COURSE ESTABLISHED  
53 PURSUANT TO THIS SECTION SHALL BE IN PERSON, THROUGH DISTANCE LEARNING  
54 METHODS, OR THROUGH AN INTERNET BASED ONLINE PROGRAM.

55 S 5. Section 260.20 of the penal law is amended by adding a new third  
56 undesignated paragraph to read as follows:

1 IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION PURSUANT TO SUBDIVISION  
2 TWO OF THIS SECTION THAT THE DEFENDANT WHO SOLD, CAUSED TO BE SOLD OR  
3 ATTEMPTED TO SELL SUCH ALCOHOLIC BEVERAGE TO A PERSON LESS THAN TWENTY-  
4 ONE YEARS OLD, HAD NOT BEEN, AT THE TIME OF SUCH SALE OR ATTEMPTED SALE,  
5 CONVICTED OF A VIOLATION OF THIS SECTION OR SECTION 260.21 OF THIS ARTI-  
6 CLE WITHIN THE PRECEDING FIVE YEARS, AND SUCH DEFENDANT, SUBSEQUENT TO  
7 THE COMMENCEMENT OF THE PRESENT PROSECUTION, HAS COMPLETED AN ALCOHOL  
8 TRAINING AWARENESS PROGRAM ESTABLISHED PURSUANT TO SUBDIVISION TWELVE OF  
9 SECTION SEVENTEEN OF THE ALCOHOLIC BEVERAGE CONTROL LAW. A DEFENDANT  
10 OTHERWISE QUALIFYING PURSUANT TO THIS PARAGRAPH MAY REQUEST AND SHALL BE  
11 AFFORDED A REASONABLE ADJOURNMENT OF THE PROCEEDINGS TO ENABLE HIM OR  
12 HER TO COMPLETE SUCH ALCOHOL TRAINING AWARENESS PROGRAM.

13 S 6. This act shall take effect on the thirtieth day after it shall  
14 have become a law.