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

8645--B

Cal. No. 743

2009-2010 Regular Sessions

I N A S S E M B L Y

June 1, 2009

Introduced by M. of A. PAULIN, SCHIMMINGER, GALEF, ESPAILLAT, HOOPER -- Multi-Sponsored by -- M. of A. DelMONTE, GOTTFRIED, McENENY, RUSSELL, WEISENBERG -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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:

Section 1. Subdivision 4 of section 65 of the alcoholic beverage control law, as amended by chapter 519 of the laws of 1999, is amended to read as follows:

4. Neither such person so refusing to sell or deliver under this section nor his OR HER employer shall be liable in any civil or criminal action or for any fine or penalty based upon such refusal, except that such sale or delivery shall not be refused, withheld from or denied to any person on account of race, creed, color or national origin. [In any proceeding pursuant to subdivision one of this section, it shall be an affirmative defense that such person had produced a photographic identification card apparently issued by a governmental entity and that the alcoholic beverage had been sold, delivered or given to such person in reasonable reliance upon such identification. In evaluating the applicability of such affirmative defense, the authority shall take into consideration any written policy adopted and implemented by the seller to carry out the provision of paragraph (b) of subdivision two of section sixty-five-b of this article.]

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

LBD14138-11-0

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

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

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

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

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

7. IN ANY PROCEEDING PURSUANT TO SECTION ONE HUNDRED EIGHTEEN OF THIS CHAPTER TO REVOKE, CANCEL OR SUSPEND A LICENSE TO SELL ALCOHOLIC BEVERAGES, IN WHICH PROCEEDING A CHARGE IS SUSTAINED THAT A PERSON VIOLATED SUBDIVISION ONE OR TWO OF THIS SECTION 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

(A) AT THE TIME OF SUCH VIOLATION THE PERSON THAT COMMITTED SUCH VIOLATION HELD A VALID CERTIFICATE OF COMPLETION OR RENEWAL FROM AN ENTITY AUTHORIZED TO GIVE AND ADMINISTER AN ALCOHOL TRAINING AWARENESS PROGRAM PURSUANT TO SUBDIVISION TWELVE 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 CHAPTER, THE PENAL SUM OF THE BOND ON FILE DURING THE PERIOD IN WHICH THE VIOLATION TOOK PLACE; OR

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

CERTIFICATE OF COMPLETION OR RENEWAL FROM AN ENTITY AUTHORIZED TO GIVE AND ADMINISTER AN ALCOHOL TRAINING AWARENESS PROGRAM PURSUANT TO SUBDIVISION TWELVE OF SECTION SEVENTEEN OF THIS CHAPTER.

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

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

No licensee shall be required to apply for any such certificate or renewal certificate and the licensee may voluntarily surrender such a certificate or renewal certificate at any time. 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 was 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 an alcohol training awareness program shall issue certificates of completion to all licensees and employees who successfully complete such an approved alcohol training awareness 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 alcohol training awareness 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 each such training program and the regular ongoing training of employees holding certificates of completion or renewal certificates. Such rules and regulations shall include the minimum requirements for a separate curriculum for licensees and their employees authorized to sell alcoholic beverages at retail for off-premises consumption, minimum requirements for a separate curriculum for licensees and their employees authorized to sell alcoholic beverages at retail for on-premises consumption, and the form of a certificate of completion or renewal thereof to be issued in respect to each such type of program. A certificate of completion or renewal thereof issued by an entity authorized to give and administer an alcohol training awareness program pursuant to this subdivision to licensees and their employees authorized to sell alcoholic beverages at retail for off-premises consumption shall not be invalidated by a change of employment to another such licensee. A certificate of completion or renewal thereof issued by an entity authorized to give and administer an alcohol training awareness 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 such licensee. ATTENDANCE AT ANY COURSE ESTABLISHED PURSUANT TO THIS SECTION SHALL BE IN PERSON, THROUGH DISTANCE LEARNING METHODS, OR THROUGH AN INTERNET BASED ONLINE PROGRAM.

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

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

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