

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

1900

2009-2010 Regular Sessions

I N S E N A T E

February 9, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the alcoholic beverage control law and the tax law, in relation to mandatory license suspensions for repeat violations of the sale of alcoholic beverages to persons under the age of twenty-one

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

1 Section 1. Subdivision 6 of section 65 of the alcoholic beverage
2 control law, as amended by chapter 481 of the laws of 1999, is amended
3 to read 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 beverages
6 at retail, in which proceeding it is alleged that a person violated
7 subdivision one of this section, it shall be an affirmative defense that
8 at the time of such violation such person who committed such alleged
9 violation held a valid certificate of completion or renewal from an
10 entity authorized to give and administer an alcohol training awareness
11 program pursuant to subdivision twelve of section seventeen of this
12 chapter. Such licensee shall have diligently implemented and complied
13 with all of the provisions of the approved training program. In such
14 proceeding to revoke, cancel or suspend a license pursuant to section
15 one hundred eighteen of this chapter, the licensee must prove each
16 element of such affirmative defense by a preponderance of the credible
17 evidence. Evidence of [three] TWO unlawful sales of alcoholic beverages
18 by any employee of a licensee to persons under twenty-one years of age,
19 within a two year period, shall be considered by the authority in determining
20 whether the licensee had diligently implemented such an approved
21 program. Such affirmative defense shall not preclude the recovery of the
22 penal sum of a bond as provided in sections one hundred twelve and one
23 hundred eighteen of this chapter. NOTWITHSTANDING THE FOREGOING THE

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

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1 AUTHORITY SHALL SUSPEND FOR SIX MONTHS THE LICENSE OF ANY LICENSEE WHO
2 HAS ACCUMULATED THREE OR MORE POINTS PURSUANT TO SECTION ONE HUNDRED
3 EIGHTEEN OF THIS CHAPTER AND SHALL REVOKE THE LICENSE OF ANY LICENSEE
4 WHO HAS VIOLATED SUBDIVISION ONE OF THIS SECTION FOUR OR MORE TIMES
5 WITHIN A THREE YEAR PERIOD.

6 S 2. Subdivision 1 of section 118 of the alcoholic beverage control
7 law is amended by adding a new paragraph (c) to read as follows:

8 (C) FOUR OR MORE VIOLATIONS OF SUBDIVISION ONE OF SECTION SIXTY-FIVE
9 OF THIS CHAPTER WITH RESPECT TO THE SALE, DELIVERY OR GIVING OF ALCOHOL-
10 IC BEVERAGES TO A PERSON UNDER TWENTY-ONE YEARS OF AGE WITHIN A THREE
11 YEAR PERIOD.

12 S 3. Section 118 of the alcoholic beverage control law is amended by
13 adding a new subdivision 4 to read as follows:

14 4. (A) IF THE ADMINISTRATIVE LAW JUDGE DETERMINES AFTER A HEARING
15 CONDUCTED PURSUANT TO SECTION ONE HUNDRED NINETEEN OF THIS CHAPTER, THAT
16 THE LICENSEE VIOLATED SUBDIVISION ONE OF SECTION SIXTY-FIVE OF THIS
17 CHAPTER WITH RESPECT TO PROHIBITED SALE, DELIVERY OR GIVING OF ALCOHOL
18 TO A PERSON UNDER TWENTY-ONE YEARS OF AGE, HE OR SHE, SHALL, IN ADDITION
19 TO IMPOSING ANY OTHER PENALTY REQUIRED OR PERMITTED PURSUANT TO THIS
20 CHAPTER, ASSIGN TWO POINTS TO THE LICENSEE'S RECORD WHERE THE INDIVIDUAL
21 WHO COMMITTED THE VIOLATION DID NOT HOLD A CERTIFICATE OF COMPLETION
22 FROM AN ALCOHOL TRAINING AWARENESS PROGRAM ESTABLISHED PURSUANT TO
23 SUBDIVISION TWELVE OF SECTION SEVENTEEN OF THIS CHAPTER AND ONE POINT
24 WHERE THE LICENSEE DEMONSTRATES THAT THE PERSON WHO COMMITTED THE
25 VIOLATION HELD A CERTIFICATE OF COMPLETION FROM AN ALCOHOL TRAINING
26 AWARENESS PROGRAM ESTABLISHED PURSUANT TO SUBDIVISION TWELVE OF SECTION
27 SEVENTEEN OF THIS CHAPTER.

28 (B) IF A LICENSEE ACCUMULATES THREE OR MORE POINTS PURSUANT TO THIS
29 SECTION, THE ADMINISTRATIVE LAW JUDGE SHALL, IN ADDITION TO IMPOSING ANY
30 OTHER PENALTY REQUIRED OR PERMITTED UNDER THIS CHAPTER, SUSPEND SUCH
31 LICENSE OR PERMIT FOR A PERIOD OF SIX MONTHS. THE THREE POINTS SERVING
32 AS A BASIS FOR A SUSPENSION SHALL BE ERASED UPON THE COMPLETION OF THE
33 SIX MONTH PENALTY. IF, DURING THE PERIOD OF SUSPENSION OF A LICENSE A
34 LICENSEE CONTINUES TO OPERATE PURSUANT TO THE SUSPENDED LICENSE SUCH
35 VIOLATION SHALL RESULT IN THE REVOCATION OF SAID LICENSE OR PERMIT.

36 (C) POINTS ASSIGNED TO A LICENSEE'S RECORD SHALL BE ASSESSED FOR A
37 PERIOD OF THIRTY-SIX MONTHS BEGINNING ON THE FIRST DAY OF THE MONTH
38 FOLLOWING THE ASSIGNMENT OF POINTS.

39 S 4. Section 1607 of the tax law is amended by adding a new subdivi-
40 sion i to read as follows:

41 I. A VIOLATION OF SUBDIVISION ONE OF SECTION SIXTY-FIVE OF THE ALCO-
42 HOLIC BEVERAGE CONTROL LAW AS PROVIDED IN THIS SUBDIVISION:

43 1. A LICENSE SHALL BE SUSPENDED FOR A PERIOD OF SIX MONTHS UPON
44 NOTIFICATION TO THE DIVISION BY THE CHAIRMAN OF THE STATE LIQUOR AUTHOR-
45 ITY OR HIS OR HER DESIGNEE OF A LOTTERY SALES AGENT'S ACCUMULATION OF
46 THREE OR MORE POINTS PURSUANT TO SUBDIVISION FOUR OF SECTION ONE HUNDRED
47 EIGHTEEN OF THE ALCOHOLIC BEVERAGE CONTROL LAW.

48 2. A LICENSE SHALL BE REVOKED FOR ONE YEAR UPON NOTIFICATION TO THE
49 DIVISION BY THE CHAIRMAN OF THE STATE LIQUOR AUTHORITY OR HIS OR HER
50 DESIGNEE OF A LOTTERY SALES AGENT'S FOURTH VIOLATION OF SUBDIVISION ONE
51 OF SECTION SIXTY-FIVE OF THE ALCOHOLIC BEVERAGE CONTROL LAW WITHIN A
52 THREE YEAR PERIOD.

53 S 5. This act shall take effect on the ninetieth day after it shall
54 have become law.