

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- 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, in relation to increasing the penalties imposed on a person under the age of twenty-one years to purchase or attempt to purchase an alcoholic beverage through fraudulent means, and to amend the vehicle and traffic law, in relation to requiring a personal identification number for individuals applying for a duplicate or amended license or permit

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

1 Section 1. Section 65-b of the alcoholic beverage control law, as
2 amended by chapter 519 of the laws of 1999 and the opening paragraph of
3 subdivision 6 as amended by chapter 503 of the laws of 2000, is amended
4 to read as follows:
5 S 65-b. Offense for one under age of twenty-one years to purchase or
6 attempt to purchase an alcoholic beverage through fraudulent means. 1.
7 As used in this section: (a) "A device capable of deciphering any elec-
8 tronically readable format" or "device" shall mean any commercial device
9 or combination of devices used at a point of sale or entry that is capa-
10 ble of reading the information encoded on the magnetic strip or bar code
11 of a driver's license or non-driver identification card issued by the
12 commissioner of motor vehicles;
13 (b) "Card holder" means any person presenting a driver's license or
14 non-driver identification card to a licensee, or to the agent or employ-
15 ee of such licensee under this chapter; and
16 (c) "Transaction scan" means the process involving a device capable of
17 deciphering any electronically readable format by which a licensee, or
18 agent or employee of a licensee under this chapter reviews a driver's
19 license or non-driver identification card presented as a precondition

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

LBD03593-01-9

1 for the purchase of an alcoholic beverage as required by subdivision two
2 of this section or as a precondition for admission to an establishment
3 licensed for the on-premises sale of alcoholic beverages where admission
4 is restricted to persons twenty-one years or older.

5 2. (a) No person under the age of twenty-one years shall present or
6 offer to any licensee under this chapter, or to the agent or employee of
7 such licensee, any written evidence of age which is false, fraudulent or
8 not actually his own, for the purpose of purchasing or attempting to
9 purchase any alcoholic beverage.

10 (b) No licensee, or agent or employee of such licensee shall accept as
11 written evidence of age by any such person for the purchase of any alco-
12 holic beverage, any documentation other than: (i) a valid driver's
13 license or non-driver identification card issued by the commissioner of
14 motor vehicles, the federal government, any United States territory,
15 commonwealth or possession, the District of Columbia, a state government
16 within the United States or a provincial government of the dominion of
17 Canada, or (ii) a valid passport issued by the United States government
18 or any other country, or (iii) an identification card issued by the
19 armed forces of the United States. Upon the presentation of such driv-
20 er's license or non-driver identification card issued by a governmental
21 entity, such licensee or agent or employee thereof may perform a trans-
22 action scan as a precondition to the sale of any alcoholic beverage.
23 Nothing in this section shall prohibit a licensee or agent or employee
24 from performing such a transaction scan on any of the other documents
25 listed in this subdivision if such documents include a bar code or
26 magnetic strip that [that] may be scanned by a device capable of deci-
27 phering any electronically readable format.

28 (c) In instances where the information deciphered by the transaction
29 scan fails to match the information printed on the driver's license or
30 non-driver identification card presented by the card holder, or if the
31 transaction scan indicates that the information is false or fraudulent,
32 the attempted purchase of the alcoholic beverage shall be denied.

33 3. A person violating the provisions of paragraph (a) of subdivision
34 two of this section shall be guilty of a violation [and shall be
35 sentenced in accordance with the following:

36 (a) For a first violation, the court shall order payment of a fine of
37 not more than one hundred dollars and/or an appropriate amount of commu-
38 nity service not to exceed thirty hours. In addition, the court may
39 order completion of an alcohol awareness program established pursuant to
40 section 19.25 of the mental hygiene law.

41 (b) For a second violation, the court shall order payment of a fine of
42 not less than fifty dollars nor more than three hundred fifty dollars
43 and/or an appropriate amount of community service not to exceed thirty
44 hours. The court also shall order completion of an alcohol awareness
45 program as referenced in paragraph (a) of this subdivision if such
46 program has not previously been completed by the offender, unless the
47 court determines that attendance at such program is not feasible due to
48 the lack of availability of such program within a reasonably close prox-
49 imity to the locality in which the offender resides or matriculates, as
50 appropriate.

51 (c) For third and subsequent violations, the court shall order payment
52 of a fine of not less than fifty dollars nor more than seven hundred
53 fifty dollars and/or an appropriate amount of community service not to
54 exceed thirty hours. The court also shall order that such person submit
55 to an evaluation by an appropriate agency certified or licensed by the
56 office of alcoholism and substance abuse services to determine whether

1 the person suffers from the disease of alcoholism or alcohol abuse,
2 unless the court determines that under the circumstances presented such
3 an evaluation is not necessary, in which case the court shall state on
4 the record the basis for such determination. Payment for such evaluation
5 shall be made by such person. If, based on such evaluation, a need for
6 treatment is indicated, such person may choose to participate in a
7 treatment plan developed by an agency certified or licensed by the
8 office of alcoholism and substance abuse services. If such person elects
9 to participate in recommended treatment, the court shall order that
10 payment of such fine and community service be suspended pending the
11 completion of such treatment] PUNISHABLE BY A FINE OF NOT LESS THAN
12 SEVEN HUNDRED FIFTY DOLLARS NOR MORE THAN TWENTY-FIVE HUNDRED DOLLARS OR
13 BY IMPRISONMENT FOR NOT MORE THAN TWELVE MONTHS, OR BY BOTH SUCH FINE
14 AND IMPRISONMENT. IN ADDITION, THE COURT MAY ORDER COMPLETION OF AN
15 ALCOHOL AWARENESS PROGRAM ESTABLISHED PURSUANT TO SECTION 19.25 OF THE
16 MENTAL HYGIENE LAW.

17 [(d) Evaluation procedures. For purposes of this subdivision, the
18 following shall apply:

19 (i) The contents of an evaluation pursuant to paragraph (c) of this
20 subdivision shall be used for the sole purpose of determining if such
21 person suffers from the disease of alcoholism or alcohol abuse.

22 (ii) The agency designated by the court to perform such evaluation
23 shall conduct the evaluation and return the results to the court within
24 thirty days, subject to any state or federal confidentiality law, rule
25 or regulation governing the confidentiality of alcohol and substance
26 abuse treatment records.

27 (iii) The office of alcoholism and substance abuse services shall make
28 available to each supreme court law library in this state, or, if no
29 supreme court law library is available in a certain county, to the coun-
30 ty court law library of such county, a list of agencies certified to
31 perform evaluations as required by subdivision (f) of section 19.07 of
32 the mental hygiene law.

33 (iv) All evaluations required under this subdivision shall be in writ-
34 ing and the person so evaluated or his or her counsel shall receive a
35 copy of such evaluation prior to its use by the court.

36 (v) A minor evaluated under this subdivision shall have, and shall be
37 informed by the court of, the right to obtain a second opinion regarding
38 his or her need for alcoholism treatment.]

39 4. A person violating the provisions of paragraph (b) of subdivision
40 two of this section shall be guilty of a violation punishable by a fine
41 of not more than one hundred dollars, and/or an appropriate amount of
42 community service not to exceed thirty hours. In addition, the court may
43 order completion of an alcohol training awareness program established
44 pursuant to subdivision twelve of section seventeen of this chapter
45 where such program is located within a reasonably close proximity to the
46 locality in which the offender is employed or resides.

47 5. No determination of guilt pursuant to this section shall operate as
48 a disqualification of any such person subsequently to hold public
49 office, public employment, or as a forfeiture of any right or privilege
50 or to receive any license granted by public authority[; and no such
51 person shall be denominated a criminal by reason of such determination].

52 6. In addition to the penalties otherwise provided in subdivision
53 three of this section, if a determination is made sustaining a charge of
54 illegally purchasing or attempting to illegally purchase an alcoholic
55 beverage, the court may suspend such person's license to drive a motor
56 vehicle and the privilege of an unlicensed person of obtaining such

1 license, [in accordance with the following and for the following peri-
2 ods,] FOR ONE YEAR OR UNTIL THE HOLDER REACHES THE AGE OF TWENTY-ONE,
3 WHICHEVER IS A GREATER PERIOD OF TIME, if it is found that a driver's
4 license was used for the purpose of such illegal purchase or attempt to
5 illegally purchase[; provided, however, that where a person is sentenced
6 pursuant to paragraph (b) or (c) of subdivision three of this section,
7 the court shall impose such license suspension if it is found that a
8 driver's license was used for the purpose of such illegal purchase or
9 attempt to illegally purchase:

10 (a) For a first violation of paragraph (a) of subdivision two of this
11 section, a three month suspension.

12 (b) For a second violation of paragraph (a) of subdivision two of this
13 section, a six month suspension.

14 (c) For a third or subsequent violation of paragraph (a) of subdivi-
15 sion two of this section, a suspension for one year or until the holder
16 reaches the age of twenty-one, whichever is the greater period of time].

17 Such person may thereafter apply for and be issued a restricted use
18 license in accordance with the provisions of section five hundred thirty
19 of the vehicle and traffic law.

20 7. (a) In any proceeding pursuant to subdivision one of section
21 sixty-five of this article, it shall be an affirmative defense that such
22 person had produced a driver's license or non-driver identification card
23 apparently issued by a governmental entity, successfully completed the
24 transaction scan, and that the alcoholic beverage had been sold, deliv-
25 ered or given to such person in reasonable reliance upon such identifi-
26 cation and transaction scan. In evaluating the applicability of such
27 affirmative defense, the liquor authority shall take into consideration
28 any written policy adopted and implemented by the seller to carry out
29 the provisions of this chapter. Use of a transaction scan shall not
30 excuse any licensee under this chapter, or agent or employee of such
31 licensee, from the exercise of reasonable diligence otherwise required
32 by this section. Notwithstanding the above provisions, any such affirma-
33 tive defense shall not be applicable in any other civil or criminal
34 proceeding, or in any other forum.

35 (b) A licensee or agent or employee of a licensee may electronically
36 or mechanically record and maintain only the information from a trans-
37 action scan necessary to effectuate the purposes of this section. Such
38 information shall be limited to the following: (i) name, (ii) date of
39 birth, (iii) driver's license or non-driver identification number, and
40 (iv) expiration date. The liquor authority and the state commissioner of
41 motor vehicles shall jointly promulgate any regulation necessary to
42 govern the recording and maintenance of these records by a licensee
43 under this chapter. The liquor authority and the commissioner of health
44 shall jointly promulgate any regulations necessary to ensure quality
45 control in the use of transaction scan devices.

46 8. A licensee or agent or employee of such licensee shall only use the
47 information recorded and maintained through the use of such devices for
48 the purposes contained in paragraph (a) of subdivision seven of this
49 section, and shall only use such devices for the purposes contained in
50 subdivision two of this section. No licensee or agent or employee of a
51 licensee shall resell or disseminate the information recorded during
52 such scan to any third person. Such prohibited resale or dissemination
53 includes, but is not limited to, any advertising, marketing or promo-
54 tional activities. Notwithstanding the restrictions imposed by this
55 subdivision, such records may be released pursuant to a court ordered
56 subpoena or pursuant to any other statute that specifically authorizes

1 the release of such information. Each violation of this subdivision
2 shall be punishable by a civil penalty of not more than one thousand
3 dollars.

4 S 2. Section 65-b of the alcoholic beverage control law, as amended by
5 chapter 383 of the laws of 1998 and the opening paragraph of subdivision
6 5 as amended by chapter 503 of the laws of 2000, is amended to read as
7 follows:

8 S 65-b. Offense for one under age of twenty-one years to purchase or
9 attempt to purchase an alcoholic beverage through fraudulent means. 1.
10 AS USED IN THIS SECTION: (A) "A DEVICE CAPABLE OF DECIPHERING ANY ELEC-
11 TRONICALLY READABLE FORMAT" OR "DEVICE" SHALL MEAN ANY COMMERCIAL DEVICE
12 OR COMBINATION OF DEVICES USED AT A POINT OF SALE OR ENTRY THAT IS CAPA-
13 BLE OF READING THE INFORMATION ENCODED ON THE MAGNETIC STRIP OR BAR CODE
14 OF A DRIVER'S LICENSE OR NON-DRIVER IDENTIFICATION CARD ISSUED BY THE
15 COMMISSIONER OF MOTOR VEHICLES;

16 (B) "CARD HOLDER" MEANS ANY PERSON PRESENTING A DRIVER'S LICENSE OR
17 NON-DRIVER IDENTIFICATION CARD TO A LICENSEE, OR TO THE AGENT OR EMPLOY-
18 EE OF SUCH LICENSEE UNDER THIS CHAPTER; AND

19 (C) "TRANSACTION SCAN" MEANS THE PROCESS INVOLVING A DEVICE CAPABLE OF
20 DECIPHERING ANY ELECTRONICALLY READABLE FORMAT BY WHICH A LICENSEE, OR
21 AGENT OR EMPLOYEE OF A LICENSEE UNDER THIS CHAPTER REVIEWS A DRIVER'S
22 LICENSE OR NON-DRIVER IDENTIFICATION CARD PRESENTED AS A PRECONDITION
23 FOR THE PURCHASE OF AN ALCOHOLIC BEVERAGE AS REQUIRED BY SUBDIVISION TWO
24 OF THIS SECTION OR AS A PRECONDITION FOR ADMISSION TO AN ESTABLISHMENT
25 LICENSED FOR THE ON-PREMISES SALE OF ALCOHOLIC BEVERAGES WHERE ADMISSION
26 IS RESTRICTED TO PERSONS TWENTY-ONE YEARS OR OLDER.

27 2. (a) No person under the age of twenty-one years shall present or
28 offer to any licensee under this chapter, or to the agent or employee of
29 such licensee, any written evidence of age which is false, fraudulent or
30 not actually his own, for the purpose of purchasing or attempting to
31 purchase any alcoholic beverage.

32 (b) No licensee, or agent or employee of such licensee shall accept as
33 written evidence of age by any such person for the purchase of any alco-
34 holic beverage, any documentation other than: (i) a valid driver's
35 license or non-driver identification card issued by the commissioner of
36 motor vehicles, the federal government, any United States territory,
37 commonwealth or possession, the District of Columbia, a state government
38 within the United States or a provincial government of the dominion of
39 Canada, or (ii) a valid passport issued by the United States government
40 or any other country, or (iii) an identification card issued by the
41 armed forces of the United States.

42 [2.] 3. A person violating the provisions of paragraph (a) of subdivi-
43 sion [one] TWO of this section shall be guilty of a violation [and shall
44 be sentenced in accordance with the following:

45 (a) For a first violation, the court shall order payment of a fine of
46 not more than one hundred dollars and/or an appropriate amount of commu-
47 nity service not to exceed thirty hours. In addition, the court may
48 order completion of an alcohol awareness program established pursuant to
49 section 19.25 of the mental hygiene law.

50 (b) For a second violation, the court shall order payment of a fine of
51 not less than fifty dollars nor more than three hundred fifty dollars
52 and/or an appropriate amount of community service not to exceed thirty
53 hours. The court also shall order completion of an alcohol awareness
54 program as referenced in paragraph (a) of this subdivision if such
55 program has not previously been completed by the offender, unless the
56 court determines that attendance at such program is not feasible due to

1 the lack of availability of such program within a reasonably close prox-
2 imity to the locality in which the offender resides or matriculates, as
3 appropriate.

4 (c) For third and subsequent violations, the court shall order payment
5 of a fine of not less than fifty dollars nor more than seven hundred
6 fifty dollars and/or an appropriate amount of community service not to
7 exceed thirty hours. The court also shall order that such person submit
8 to an evaluation by an appropriate agency certified or licensed by the
9 office of alcoholism and substance abuse services to determine whether
10 the person suffers from the disease of alcoholism or alcohol abuse,
11 unless the court determines that under the circumstances presented such
12 an evaluation is not necessary, in which case the court shall state on
13 the record the basis for such determination. Payment for such evaluation
14 shall be made by such person. If, based on such evaluation, a need for
15 treatment is indicated, such person may choose to participate in a
16 treatment plan developed by an agency certified or licensed by the
17 office of alcoholism and substance abuse services. If such person elects
18 to participate in recommended treatment, the court shall order that
19 payment of such fine and community service be suspended pending the
20 completion of such treatment] PUNISHABLE BY A FINE OF NOT LESS THAN
21 SEVEN HUNDRED FIFTY DOLLARS NOR MORE THAN TWENTY-FIVE HUNDRED DOLLARS OR
22 BY IMPRISONMENT FOR NOT MORE THAN TWELVE MONTHS, OR BY BOTH SUCH FINE
23 AND IMPRISONMENT. IN ADDITION, THE COURT MAY ORDER COMPLETION OF AN
24 ALCOHOL AWARENESS PROGRAM ESTABLISHED PURSUANT TO SECTION 19.25 OF THE
25 MENTAL HYGIENE LAW.

26 [(d) Evaluation procedures. For purposes of this subdivision, the
27 following shall apply:

28 (i) The contents of an evaluation pursuant to paragraph (c) of this
29 subdivision shall be used for the sole purpose of determining if such
30 person suffers from the disease of alcoholism or alcohol abuse.

31 (ii) The agency designated by the court to perform such evaluation
32 shall conduct the evaluation and return the results to the court within
33 thirty days, subject to any state or federal confidentiality law, rule
34 or regulation governing the confidentiality of alcohol and substance
35 abuse treatment records.

36 (iii) The office of alcoholism and substance abuse services shall make
37 available to each supreme court law library in this state, or, if no
38 supreme court law library is available in a certain county, to the coun-
39 ty court law library of such county, a list of agencies certified to
40 perform evaluations as required by subdivision (f) of section 19.07 of
41 the mental hygiene law.

42 (iv) All evaluations required under this subdivision shall be in writ-
43 ing and the person so evaluated or his or her counsel shall receive a
44 copy of such evaluation prior to its use by the court.

45 (v) A minor evaluated under this subdivision shall have, and shall be
46 informed by the court of, the right to obtain a second opinion regarding
47 his or her need for alcoholism treatment.

48 3.] 4. A person violating the provisions of paragraph (b) of subdivi-
49 sion [one] TWO of this section shall be guilty of a violation punishable
50 by a fine of not more than one hundred dollars, and/or an appropriate
51 amount of community service not to exceed thirty hours. In addition, the
52 court may order completion of an alcohol training awareness program
53 established pursuant to subdivision twelve of section seventeen of this
54 chapter where such program is located within a reasonably close proximi-
55 ty to the locality in which the offender is employed or resides.

1 [4.] 5. No determination of guilt pursuant to this section shall oper-
2 ate as a disqualification of any such person subsequently to hold public
3 office, public employment, or as a forfeiture of any right or privilege
4 or to receive any license granted by public authority[; and no such
5 person shall be denominated a criminal by reason of such determination].

6 [5.] 6. In addition to the penalties otherwise provided in subdivision
7 [two] THREE of this section, if a determination is made sustaining a
8 charge of illegally purchasing or attempting to illegally purchase an
9 alcoholic beverage, the court may suspend such person's license to drive
10 a motor vehicle and the privilege of an unlicensed person of obtaining
11 such license, [in accordance with the following and for the following
12 periods] FOR ONE YEAR OR UNTIL THE HOLDER REACHES THE AGE OF TWENTY-ONE,
13 WHICHEVER IS A GREATER PERIOD OF TIME, if it is found that a driver's
14 license was used for the purpose of such illegal purchase or attempt to
15 illegally purchase[; provided, however, that where a person is sentenced
16 pursuant to paragraph (b) or (c) of subdivision two of this section, the
17 court shall impose such license suspension if it is found that a driv-
18 er's license was used for the purpose of such illegal purchase or
19 attempt to illegally purchase:

20 (a) For a first violation of paragraph (a) of subdivision one of this
21 section, a three month suspension.

22 (b) For a second violation of paragraph (a) of subdivision one of this
23 section, a six month suspension.

24 (c) For a third or subsequent violation of paragraph (a) of subdivi-
25 sion one of this section, a suspension for one year or until the holder
26 reaches the age of twenty-one, whichever is the greater period of time].

27 Such person may thereafter apply for and be issued a restricted use
28 license in accordance with the provisions of section five hundred thirty
29 of the vehicle and traffic law.

30 S 3. The vehicle and traffic law is amended by adding a new section
31 505-a to read as follows:

32 S 505-A. DUPLICATE AND AMENDED LICENSES AND PERMITS; INTERNET TRANS-
33 ACTIONS. ANY INDIVIDUAL SEEKING A DUPLICATE OR AMENDED LICENSE OR
34 PERMIT, PURSUANT TO SECTION FIVE HUNDRED FIVE OF THIS ARTICLE, THROUGH
35 THE DEPARTMENT'S WEBSITE, SHALL BE REQUIRED TO OBTAIN A PERSONAL IDEN-
36 TIFICATION NUMBER FROM THE DEPARTMENT. SUCH PERSONAL IDENTIFICATION
37 NUMBER SHALL BE SENT TO THE APPLICANT'S REGISTERED ADDRESS WITHIN THREE
38 DAYS TO VERIFY AUTHENTICITY OF THE APPLICANT. THE APPLICANT SHALL THEN
39 PROVIDE ALL INFORMATION REQUIRED BY SECTION FIVE HUNDRED FIVE OF THIS
40 ARTICLE.

41 S 4. This act shall take effect the first of November next succeeding
42 the date on which it shall have become a law; provided, however, that
43 the amendments to section 65-b of the alcoholic beverage control law
44 made by section one of this act shall be subject to the expiration and
45 reversion of such section pursuant to section 4 of chapter 519 of the
46 laws of 1999, as amended, when upon such date the provisions of section
47 two of this act shall take effect; provided, further, that the commis-
48 sioner of motor vehicles is authorized to promulgate any and all rules
49 and regulations and take any other measures necessary to implement this
50 act on its effective date, on or before such date.