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

453

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:

Section 1. Section 65-b of the alcoholic beverage control law, as amended by chapter 519 of the laws of 1999 and the opening paragraph of subdivision 6 as amended by chapter 503 of the laws of 2000, is amended to read as follows:

S 65-b. Offense for one under age of twenty-one years to purchase or attempt to purchase an alcoholic beverage through fraudulent means. 1. As used in this section: (a) "A device capable of deciphering any electronically readable format" or "device" shall mean any commercial device or combination of devices used at a point of sale or entry that is capable of reading the information encoded on the magnetic strip or bar code of a driver's license or non-driver identification card issued by the commissioner of motor vehicles;

(b) "Card holder" means any person presenting a driver's license or non-driver identification card to a licensee, or to the agent or employee of such licensee under this chapter; and

(c) "Transaction scan" means the process involving a device capable of deciphering any electronically readable format by which a licensee, or agent or employee of a licensee under this chapter reviews a driver's 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.

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

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

(b) No licensee, or agent or employee of such licensee shall accept as written evidence of age by any such person for the purchase of any alcoholic beverage, any documentation other than: (i) a valid driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or (ii) a valid passport issued by the United States government or any other country, or (iii) an identification card issued by the armed forces of the United States. Upon the presentation of such driver's license or non-driver identification card issued by a governmental entity, such licensee or agent or employee thereof may perform a transaction scan as a precondition to the sale of any alcoholic beverage. Nothing in this section shall prohibit a licensee or agent or employee from performing such a transaction scan on any of the other documents listed in this subdivision if such documents include a bar code or magnetic strip that [that] may be scanned by a device capable of deciphering any electronically readable format.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the lack of availability of such program within a reasonably close proximity to the locality in which the offender resides or matriculates, as appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 505-A. DUPLICATE AND AMENDED LICENSES AND PERMITS; INTERNET TRANSACTIONS. ANY INDIVIDUAL SEEKING A DUPLICATE OR AMENDED LICENSE OR PERMIT, PURSUANT TO SECTION FIVE HUNDRED FIVE OF THIS ARTICLE, THROUGH THE DEPARTMENT'S WEBSITE, SHALL BE REQUIRED TO OBTAIN A PERSONAL IDENTIFICATION NUMBER FROM THE DEPARTMENT. SUCH PERSONAL IDENTIFICATION NUMBER SHALL BE SENT TO THE APPLICANT'S REGISTERED ADDRESS WITHIN THREE DAYS TO VERIFY AUTHENTICITY OF THE APPLICANT. THE APPLICANT SHALL THEN PROVIDE ALL INFORMATION REQUIRED BY SECTION FIVE HUNDRED FIVE OF THIS ARTICLE.

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