



Alcohol Training Awareness Program

New York Supplement

New York

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This Alcohol Training Awareness Program is designed to introduce you to the lawful sale and service of alcohol in the State of New York. We will review New York specific laws and cases to help you better understand your responsibilities as a seller and server of alcoholic beverages.

Pursuant to Alcoholic Beverage Control Law section 17.3, the authority shall have the following functions, powers and duties:

To revoke, cancel or suspend for cause any alcoholic beverage license or permit and/or to impose a civil penalty for cause against any holder of a license or permit. Any civil penalty so imposed shall not exceed the sum of \$10,000 as against the holder of any retail permit issued pursuant to sections 95, 97, 98, 99(b)(1)(f), and 99(d), and as against a retail licenses issued pursuant to sections 52, 53(a), 54, 54(a), 55, 55(a), 63, 64, 64(a)-(c), 69, 81 and 81(a) and the sum of \$30,000 as against the holder of a license issued pursuant to sections 53, 76, 76(a) and 78 of this chapter provided that the civil penalty against the holder of a wholesale license issued pursuant to section 53 of this chapter shall not exceed the sum of \$10,000 where that licensee violates provisions of this chapter during the course of the sale of beer at retail to a person for consumption at home, and the sum of \$100,000 as against the holder of any license issued pursuant to sections 51, 61, and 62 of this chapter. Any civil penalty so imposed shall be in addition to and separate and apart from the terms and provisions of the bond required pursuant to section 112 of this chapter.

According to Alcoholic Beverage Control Law section 65, no person shall sell, deliver or give away any alcoholic beverages to:

1. Any person, actually or apparently, under the age of 21;
2. Any visibly intoxicated person; or
3. Any known habitual drunkard.

The prohibitions of this section shall not apply to a person who gives or causes to be given any such alcoholic beverage to a person under the age of 21 who is a student in a curriculum licensed or registered by the state education department and is required to taste or imbibe alcoholic beverages in courses which are part of the required curriculum, provided such alcoholic beverages are used only for instructional purposes during classes conducted pursuant to such curriculum.

Licensees and servers can refuse service to these people without fear of criminal or civil action. However, service cannot be refused based on a person's race, creed, color or national origin.

Acceptable Forms of Identification

The following are the only acceptable forms of identification by any person purchasing any alcoholic beverage in the State of New York:

1. A valid driver's license OR non-driver identification card issued by:
 - a. The commissioner of motor vehicles
 - b. The federal government
 - c. Any United States territory
 - d. Commonwealth or possession
 - e. The District of Columbia
 - f. A state government within the United States
 - g. A province of Canada
2. A valid passport issued by the United States government or any other country
3. An identification card issued by the armed forces of the United States.

Electronic Scanners

The law permits licensees or employees to scan any valid form of identification if such identification includes a bar code or magnetic strip that may be scanned by a device capable of deciphering any electronically readable format.

A device capable of deciphering any electronically readable format means 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.

"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 reviews a driver's license or non-driver identification card presented as a precondition for the purchase of an alcoholic beverage or as a precondition for admission to an establishment licensed for the on-premises sale of alcoholic beverages where admission is restricted to persons 21 years or older.

In the 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 should be denied.

The information gathered by a transaction scan may be recorded and maintained only for the purposes of the transaction. The information gathered shall be limited to: (i) name; (ii) date of birth; (iii) identification number; and (iv) expiration

date. Such information shall only be used for the transaction and shall not be resold or disseminated for any purpose. The only permitted disclosure of such records is through court order or subpoena. Each violation of this section shall be punishable by civil penalty of not more than \$1,000.

A person found accepting an unauthorized form of identification shall be guilty of a violation punishable by a fine of not more than \$100 and/or an appropriate amount of community service not to exceed 30 hours. In addition, the court may order completion of an approved alcohol training awareness program.

Direct and Indirect Delivery of Alcohol

Under Section 65.1, a licensee or server can be legally responsible for either direct delivery or indirect delivery of alcohol to an underage person.

Direct Delivery is the simplest form of delivery to understand. It's when you, as the licensee or server, directly sell or serve alcohol to an underage person.

Indirect Delivery can be a little more complicated and therefore you need to understand what you are legally required to do to prevent the indirect sale or service of alcohol to an underage person. You are legally required to be aware of conditions within the licensed establishment. What that means is, you have to pay attention to your surroundings, monitor the establishment and patrons to ensure that alcohol is not being delivered to underage persons. *Matter of Beverly Lanes, Inc. v. Rohan*.

Why? Because if you sell or serve alcohol to a person who then redelivers it to an underage person, then you are legally responsible. Specifically, the law states that: If the licensee or server knows or should know in the exercise of reasonable diligence that another individual (usually, but not necessarily, a patron) is delivering or has delivered alcohol to an underage person, and if the licensee or server does not act to stop or withdraw such delivery, then the licensee or server has, by his or her inaction, permitted that other individual to deliver alcohol to an underage person, and the licensee and/or server will be held responsible for the delivery. *Matter of Al Ronick, Inc. v. New York State Liquor Authority*; *Matter of Austin Lemontree, Inc. v. New York State Liquor Authority*.

Multiple Delivery is a form of indirect permissive delivery of alcohol to an underage person made as the result of the sale or service of multiple alcoholic beverages to a single individual. "Multiple delivery" includes the delivery of a quantity of alcohol which would reasonably be consumed by more than one person, such as, a pitcher of an alcoholic beverage with more than one glass, cup, or mug; or more than one bottle, can, shot or other serving of an alcoholic beverage. *Matter of Beverly Lanes, Inc. v. Rohan*.

If a licensee or server serves more than one alcoholic beverage to an individual patron, the licensee or server is obligated to accompany the individual to the area of where the drinks will be consumed to make sure that no alcohol is given to an underage person. The licensee or server will be held legally responsible for failing to follow the patron and that patron delivers alcohol to an underage person.

In the following cases, the courts held that the licensee or server were legally responsible for permitting the delivery of alcohol to an underage person:

- A server sold two alcoholic drinks to an adult male at the bar. The adult male then handed one of the drinks to a female seated next to him at the bar. The female was underage. *Matter of Al Ronick, Inc. v. New York State Liquor Authority*.
- An alcoholic beverage was sold to a male patron at the bar. The patron then gave the drink to a female located three feet from the bar. The female was underage. *Matter of Austin Lemontree, Inc. v. New York State Liquor Authority*.
- The server sold two alcoholic drinks to an adult male at the bar. The male returned to a table where a female was seated and gave her one of the drinks. The bartender had an unobstructed view of the table. The female was underage. (If there had been an obstructed view of the table, then the server could have been charged under “multiple delivery” as discussed earlier). *Matter of Jo Mar Jo Restaurant Corp. v. New York State Liquor Authority*.
- The server sold two pitchers of beer at the bar and provided five glasses. The beer was consumed by five males at a table about seven or eight feet from the bar. The bartender had an unobstructed view of the table. The female was underage. (If there had been an obstructed view of the table, then the server could have been charged under “multiple delivery” as discussed earlier). *Matter of Culligan’s Pub, Inc. v. New York State Liquor Authority*.

Off-premises licensees or store clerks can also be held liable if they knowingly sell alcohol to a patron who is likely to provide it to an underage person and actually does so.

Affirmative Defenses

In the event a licensee or server is accused of either direct or indirect delivery of an alcoholic beverage to an underage person, there are a few affirmative defenses they can present to avoid administrative liability for the service. (These affirmative defenses will not be applicable in any other civil or criminal

proceeding). The licensee or server presenting the affirmative defense must present evidence that proves when checking the age of the person they:

1. Reasonably relied upon the underage youth's presentation of a photographic identification card apparently issued by a governmental agency.
2. Verified that the identification was currently valid and in effect (meaning the identification is not expired).
3. Checked the identification of the person on "the occasion of the specific sale or delivery underlying the alleged violation."
4. Made a careful and critical examination of the identification and reasonably concluded that it belonged to the person presenting it, and reasonably concluded that the it had not been altered.
5. Personally examined the identification of the person who they delivered the alcohol to. (An employee who delivers an alcoholic beverage to an underage patron cannot take advantage of the affirmative defense unless the delivering employee has personally examined and reasonably relied upon the photographic identification by the underage person.)

*** The use of a transaction scan shall not excuse any license, agent or employee from the exercise of reasonable diligence in examining the identification and person presenting the identification.

A licensee or server can limit their liability for serving an underage person or someone who is visibly intoxicated if they can prove that:

1. They have had a clean disciplinary record for at least 5 years; and
2. They have a valid certificate of completion from an approved ATAP program.

In such case, the civil liability will be limited to \$1,000.00. If a licensee or server has not completed an approved ATAP program, the licensee must submit written proof within 90 days that all employees involved in the direct sale of alcohol have completed or renewed their certificate. This will reduce the liquor authority penalty by 25%.

Alcoholic Beverage Licenses

Civil Administrative Penalties which the State Liquor Authority May Impose Against the Alcoholic Beverage License Holder

In connection with a violation of law, the State Liquor Authority may impose civil administrative penalties against a licensee. Penalties which may be imposed against the holder of a retail beverage license include revocation, cancellation, or suspension of the alcoholic beverage license; a civil money penalty of up to

\$10,000; a bond claim of up to \$1,000; and a two-year ban against future licensure of the building containing the licensed premises.

Alcoholic Beverage Control Law §112 - Bonds of licensees and permittees – The liquor authority may require licensees or permittees to file a bond to the people of the state of New York in such penal sum as the liquor authority may prescribe, conditioned that such licensee or permittee will not suffer or permit any violation of the administrative laws and that all fines or penalties will be paid, together with all costs taxed or allowed in any action for a violation of these laws. A suit to recover on any bond may be brought by the liquor authority or by any aggrieved party in a court of competent jurisdiction and in the event that the licensee or permittee has violated any of the conditions of the bond, recovery for the penal sum of such bond may be had in favor of the people of the state.

Alcoholic Beverage Control Law §113 – Premises for which no license shall be granted

1. Where a license has been revoked, the liquor authority may refuse to issue a license for a period of 2 years after such revocation for such licensed premises or for any part of the building containing such licensed premises and connected therewith.
2. In determining whether to issue such license during the 2 year period, the liquor authority shall, in the case of a license revoked due to the illegal sale of alcohol to a minor, determine whether the proposed subsequent licensee has obtained such premises through an arm's length transaction, and, if such transaction is not found to be an arm's length transaction, the liquor authority shall deny the issuance of such license.
3. An "arm's length transaction" means the sale of all or divided interest in real property, or lease of any part thereof, in the open market, between an informed and willing buyer and seller where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale was made for the purpose of permitting the original licensee to avoid the effect of the revocation. The following sales shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of revocation:
 - a. A sale between relatives;
 - b. A sale between related companies or partners in a business; or
 - c. A sale or lease affected by other facts or circumstances that would indicate that the sale or lease is not entered into for the primary purpose of permitting the original licensee to avoid the effect of the revocation.

Administrative Penalties
Alcoholic Beverage Control Law Section 65-b

Unlawful sale - Any person who unlawfully sells or serves an alcoholic beverage to an underage patron shall be guilty of a violation punishable by a fine of not more than \$100 and/or appropriate amount of community service not to exceed thirty hours. In addition, the court may order completion of an alcohol training awareness program.

Underage patron – Any person under the age of 21 who presents identification for the purchase of alcoholic beverages and that identification is false, fraudulent or not actually his own, then the underage person shall be guilty of a violation and shall be sentenced as follows:

1. For a first violation – a fine not more than \$100 and/or community service not to exceed 30 hours. In addition, the court may order completion of an alcohol awareness program.
2. For a second violation – a fine not less than \$50 nor more than \$350 and/or community service not to exceed 30 hours. The court may order completion of an alcohol awareness program if not completed in the first offense.
3. For a third and subsequent violations – a fine of not less than \$50 nor more than \$750 and/or community service not to exceed 30 hours. The court shall also order the person submit to an evaluation by a substance abuse service provider to determine if the person suffers from the disease of alcoholism or alcohol abuse, unless the court determines that evaluation is not necessary and states so on the record the basis for such determination. The evaluation will be paid by the person. If the evaluation recommends a need for treatment and the person participates in the treatment, then the court shall suspend the payment of fine and community service until completion of the treatment.
4. Evaluation Procedures – For the purposes of this subdivision, the following shall apply.
 - (i) The contents of a required evaluation 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 30 days, subject to any state or federal confidentiality laws governing 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 in county court law library, a list of agencies certified to perform evaluations.
 - (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.

5. The court may also suspend the underage person's driver's license if it is found that a New York state driver's license was used for the purpose of such illegal purchase or attempt to illegally purchase alcohol.
 - a. For a first violation – a 3-month suspension
 - b. For a second violation – a 6-month suspension
 - c. For a third or subsequent violation – one year or until the person reaches the age of 21, whichever is greater.
6. No determination of guilt of violating the administrative laws 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.
7. Any violation by any person of the alcoholic beverage control law for which no punishment or penalty is otherwise provided shall be a misdemeanor, provided, however, that the provisions of this subdivision shall not apply to the prohibitions provided for in §106(6)(a).

Civil Liability

General Obligations Law Sections 11-100 and 11-101

Injuries Caused by Intoxicated Underage People – Any person who knowingly caused or assisted in the intoxication or impairment of ability of an underage person shall be liable to any person who was injured in person, property, means of support or otherwise, by reason of the intoxication or impairment of ability of any person under the age of 21 with knowledge or reasonable cause to believe that such person was under the age of 21.

In the case of the death of either party, the action or right of action shall survive to or against his or her executor or administrator, and the amount so recovered by either a husband, wife or child shall be his or her sole and separate property.

Such action may be brought in any court of competent jurisdiction.

In any case where parents shall be entitled to such damages, either of such parents may bring an action therefor; but that recovery by either one of such parties shall constitute a bar to suit brought by the other.

Injuries Caused by Intoxicated People – Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by unlawful selling to or unlawfully assisting in procuring liquor for such intoxicated person, have

caused or contributed to such intoxication; and in any such action such person shall have a right to recover actual and exemplary damages.

In the case of the death of either party, the action or right of action shall survive to or against his or her executor or administrator, and the amount so recovered by either a husband, wife or child shall be his or her sole and separate property.

Such action may be brought in any court of competent jurisdiction.

In any case where parents shall be entitled to such damages, either of such parents may bring an action therefor; but that recovered by either one of such parties shall constitute a bar to suit brought by the other.

Criminal Laws

Unlawfully Dealing with a Child in the First & Second Degree

Penal Law Sections 260.20 and 260.21

Criminal penalties – Delivering or permitting the delivery of alcohol to a person under the legal age in violation of Law Section 65.1 is an unclassified misdemeanor.

A person can be charged with unlawfully dealing with a child in the first degree when:

- The person knowingly allows a child under 18 years old to enter or remain in a space where there is:
 - Sexual activity as defined by the Alcoholic Beverage Control Law
 - Activity involving controlled substances or marijuana
- The person gives or sells alcoholic beverages to a person under 21 years old. This does not apply if:
 - A parent or guardian provides the alcohol to the underage person
 - The underage person is tasting alcohol as a requirement of a curriculum licensed by the state education department, where the tasting or imbibing of alcoholic beverages is required in courses that are part of the required curriculum, provided that such alcoholic beverages are given only for instructional purposes during classes conducted pursuant to such curriculum.
 - It is no defense to a prosecution that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Licensees and servers may be able to present an “affirmative defense” against the charge of unlawfully dealing with a child in the first degree. See the section in this document titled: “Affirmative Defenses.”

Unlawfully dealing with a child in the first degree is a class A misdemeanor.

A person can be charged with unlawfully dealing with a child in the second degree when:

- The person (owner, lessee, manager or employee) allows a child under the age of 16 years old to enter or remain in a place where alcoholic beverages are sold or given away unless:
 - The child is accompanied by a parent, guardian or adult authorized by a parent or guardian
 - An entertainment or activity is being conducted on a premises for or by a non-profit school, church or other educational or religious institution
 - The establishment is closed to the public for a specific time to conduct an activity or entertainment, the child is on the premises and no alcohol is sold, served or given away. The state liquor authority shall be notified in writing by the licensee of such establishment, of the intended closing of such establishment, to conduct any such activity or entertainment, not less than 10 days prior to any such closing.
 - It is permitted by law
- The person tattoos the body of a child under the age of 18 years old with ink that cannot be removed
- The person sells tobacco in any form to a child under the age of 18 years old
- It is no defense to a prosecution that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Unlawfully dealing with a child in the second degree is a class B misdemeanor.

Criminal Penalties

Penal Law Sections 55.10, 70.15, 80.05

The Alcoholic Beverage Control Law identifies specific felonies and misdemeanors associated with violations of the laws contained in it. These are explicitly spelled out in each section with different penalties for each.

Any felony that is not specifically identified in the Alcoholic Beverage Control Law should be considered a class E felony. These require a minimum sentence of one year in prison.

Misdemeanors are classified as either class A or class B misdemeanors in the Alcoholic Beverage Control Law. Any misdemeanor that is not specifically identified should be considered a class A misdemeanor.

Sentencing and Fines (does not apply to corporations)

Type	Sentence	Fine
Class A Misdemeanors	<ul style="list-style-type: none">• Fixed by the court• Will not exceed one year (except for criminal possession of a weapon)• Depends on whether the person was convicted of previous offenses in the last 5 years• Depends on whether the court would consider the sentence unduly harsh	<ul style="list-style-type: none">• Fixed by the court• Will not exceed \$1,000
Class B Misdemeanors	<ul style="list-style-type: none">• Fixed by the court• Will not exceed 3 months	<ul style="list-style-type: none">• Fixed by the court• Will not exceed \$500
Unclassified Misdemeanors	<ul style="list-style-type: none">• Fixed by the court• Specified in the law or ordinance that defines the crime	<ul style="list-style-type: none">• Fixed by the court• Will be in agreement with the provisions of the law defining the crime
Violations	<ul style="list-style-type: none">• Fixed by the court• Will not exceed 15 days• No imprisonment will be imposed for violations consisting solely of a fine	<ul style="list-style-type: none">• Fixed by the court• Will not exceed \$250

If a person has made money or gained property through the commission of a misdemeanor or violation a fine may be imposed that:

- Is fixed by the court
- May be up to double the amount of the defendant's monetary gain (not to exceed \$5,000)

Where an offense is defined outside Penal Law §55.10 and a sentence to a term of imprisonment in excess of 15 days but not in excess of 1 year is provided in the law or ordinance defining it, such offense shall be deemed an unclassified misdemeanor.

Violations – Every violation defined in this chapter is expressly designated as such. Any offense defined outside this chapter which is not expressly designated a violation shall be deemed a violation if:

1. Notwithstanding any other designation, a sentence to a term of imprisonment which is not in excess of 15 days or the only sentence provided therein is a fine; or
2. A sentence to a term of imprisonment in excess of 15 days is provided for such offense in a law or ordinance enacted prior to the effective date of this chapter but the offense was not a crime prior to that date.

Traffic Infractions – Notwithstanding any other provision, an offense which is defined as a “traffic infraction” shall not be deemed a violation or a misdemeanor by virtue of the sentence prescribed therefor.

Penalties for Corporations

Corporations that violate the Alcoholic Beverage Control Law will be required to pay specific corporate fines outlined in the law. In instances where fines are not specified, corporations are required to pay the following fines:

- Felony: Fine not exceeding \$10,000
- Class A Misdemeanor: Fine not exceeding \$5,000
- Class B Misdemeanor: Fine not exceeding \$2,000
- Violation: Fine not exceeding \$500
- Up to double the amount the corporation has gained from the commission of an offense

In the event that a special fine is identified in the Alcoholic Beverage Control Law for a corporate violation, the fine will be:

- An amount within the limits specified by the law
- Any higher amount not exceeding double the amount the corporation has gained from the commission of an offense