



New York  
State Liquor Authority

*Table of*  
**TOPICS**  
related to  
**WRITTEN MATERIALS**

Alcohol Training  
Awareness Program  
*for*  
Off-Premises Licensees

| Topic   | Written Materials                                   |             |
|---|---|-------------|
|   | Statutes  | Court Cases |
| <p><b><u>DIRECT DELIVERY PROHIBITED:</u></b><br/>a delivery <b>made</b> by the licensee or an employee. The law forbids a licensee or an employee to sell or deliver alcohol to an underage person. ("No person shall sell, deliver or give away *** any alcoholic beverage to any person actually, or apparently, under the age of twenty-one years.")</p>   | <p>Alcoholic Beverage<br/>Control Law<br/>§65.1</p> |             |
| <p><b><u>INDIRECT PERMISSIVE DELIVERY PROHIBITED:</u></b><br/>a delivery <b>permitted</b> by the licensee or an employee. The law forbids a licensee or an employee to permit another individual to deliver alcohol to an underage person. ("No person shall *** cause or permit or procure to be sold, delivered or given away any alcoholic beverage to any person actually, or apparently, under the age of twenty-one years.")</p>  | <p>Alcoholic Beverage<br/>Control Law<br/>§65.1</p> |             |
| <p><b><u>INDIRECT PERMISSIVE DELIVERY MADE IN THE AREA WITHIN THE LICENSEE'S OR AN EMPLOYEE'S REASONABLE APPREHENSION.</u></b> The licensee and employee are legally responsible for any subsequent redelivery of an alcoholic beverage made by an individual who has purchased or received alcohol, where such redelivery is made in the area within the licensee's or employee's reasonable apprehension.</p> <p>If the licensee or employee knows -- or if the licensee or employee, in the exercise of reasonable diligence, should know -- that another individual (usually, but not necessarily, a customer) is delivering or has delivered alcohol to an underage person, and if the licensee or employee does not act to stop or withdraw such delivery, then the licensee or employee, by his or her inaction, has permitted that other individual to deliver alcohol to an underage person, and the licensee and/or the employee will be held responsible for the delivery. (Charges may also be brought against the other individual for delivering alcohol to an underage person.)</p> <p>If an off-premises licensee or employee makes an alcohol delivery to an adult customer under circumstances which would indicate to a reasonable person that the alcohol is likely to be shared with or redelivered to a person under the legal age; and if the adult customer actually does share the alcohol with a person under the legal age, or actually does redeliver the alcohol to a person under the legal age, then the licensee or employee will be held to have permitted the delivery of alcohol to a person under the legal age, in violation of ABCL § 65.1.</p> | <p>Alcoholic Beverage<br/>Control Law<br/>§65.1</p> |             |

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| <p><b><u>A LICENSEE OR EMPLOYEE MAY LEGALLY REFUSE TO DELIVER AN ALCOHOLIC BEVERAGE IF THE LICENSEE OR EMPLOYEE IS NOT CERTAIN THAT THE PERSON SEEKING THE ALCOHOL DELIVERY IS OF LEGAL AGE.</u></b><br/> The first sentence of subdivision 4 of section 65 of the Alcoholic Beverage Control Law provides: "Neither such person so refusing to sell or deliver under this section nor his 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."</p>  | <p>Alcoholic Beverage Control<br/> Law §65.4</p>                |   |
| <p><b><u>NO DEFENSE. THE LACK OF INTENT TO SELL ALCOHOL TO A PERSON UNDER THE LEGAL AGE IS NOT A DEFENSE TO THE CHARGE THAT ONE HAS ILLEGALLY DELIVERED ALCOHOL TO AN UNDERAGE PERSON.</u></b> Selling or delivering alcoholic beverages to a person under the legal age is a crime of strict liability. To prove that the offense was committed, it need only be proved that the defendant delivered the alcoholic beverage to a person under the legal age. It need <u>not</u> be proved that the person who made the delivery intended to violate the law and actually knew the purchaser was under the legal age.</p>  |   | <p><u>Ross's Dairies Ltd. v. Rohan</u><br/> 10 A.D.2d 987, 9 N.Y.2d 60,<br/> <u>lv. den.</u> 8 N.Y.2d 708 (1960)<br/> [2 pages]</p> |
| <p><b><u>THE AFFIRMATIVE DEFENSE (ADDED TO THE ABC LAW IN 1983). THE LICENSEE'S OR EMPLOYEE'S REASONABLE RELIANCE UPON A PHOTOGRAPHIC IDENTIFICATION CARD APPARENTLY ISSUED BY A GOVERNMENTAL ENTITY.</u></b> If a licensee or employee is charged with delivering alcohol to an underage person, the licensee or employee is entitled to offer an affirmative defense to the charge. The defense is called an affirmative defense because the licensee or employee has the affirmative burden of presenting evidence which will satisfy all required elements of the defense. In order to establish the affirmative defense, the licensee or employee must present evidence which proves that, in connection with the specific underage alcohol delivery which is being charged, the licensee or employee reasonably relied upon the underage youth's presentation of a photographic identification card apparently issued by a governmental agency.</p>  | <p>Alcoholic Beverage Control<br/> Law<br/> §65.4</p>           |   |
| <p><b><u>THE LICENSEE'S OR SERVER'S HOLDING OF A VALID CERTIFICATE OF COMPLETION FROM AN AUTHORIZED ATAP PROGRAM.</u></b> If a licensee or server is charged with delivering alcohol to an underage person or to a person that appears visibly intoxicated, and the licensee has had a clean disciplinary record for at least five years, and the licensee or employee alleged to have committed the violation has a valid certificate of completion (or renewal) from an approved ATAP program, the civil penalty related to such offense will be limited to \$1,000.00. In addition, if a licensee or server is charged with delivering alcohol to an underage person or to a person that appears visibly intoxicated, and the licensee has had a clean disciplinary record for at least five years, but the licensee or employee alleged to have committed the violation does not hold a valid certificate of completion (or renewal) from an approved ATAP program at that time, the licensee will be given a period of 90 days from the imposition of any civil penalty arising from same to submit written proof that all of the licensee's employees involved in the direct sale or service of alcoholic beverages have obtained a valid certificate of completion (or renewal) from an approved ATAP program in return for which the civil penalty will be reduced by 25% by the liquor authority.</p> | <p>Alcoholic Beverage Control<br/> Law<br/> 65.6 &amp; 65.7</p> |   |

**ONLY THE FORMS OF IDENTIFICATION LISTED IN THE ALCOHOLIC BEVERAGE CONTROL LAW CAN BE ACCEPTED AS WRITTEN EVIDENCE OF AGE.**

Paragraph (b) of subdivision 2 of section 65-b of the Alcoholic Beverage Control Law provides (emphasis by underlining and italics is added):

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.

Alcoholic Beverage Control  
Law  
§65-b.2(b)

**REASONABLE RELIANCE: THE IDENTIFICATION PRESENTED BY THE CUSTOMER MUST BE CURRENTLY VALID AND IN EFFECT.**

A driver's license, non-driver identification card, or passport presented as written evidence of age must be currently valid. If the identification offered as written evidence of age has expired, the licensee or employee cannot reasonably rely upon the identification.

Alcoholic Beverage Control  
Law  
65-b.2(b)

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| <p><b><u>REASONABLE RELIANCE: THE AFFIRMATIVE DEFENSE CANNOT BE ESTABLISHED UNLESS THE IDENTIFICATION WAS EXAMINED ON THE SAME OCCASION AS THE UNDERAGE ALCOHOL DELIVERY BEING PROSECUTED.</u></b></p> <p>The affirmative defense of reasonable reliance upon a photographic identification apparently issued by a governmental agency is not established unless the licensee and employee prove that "the photographic identification was presented <i>on the occasion of the specific sale or delivery underlying the alleged violation</i>" (<u>Lakeside Inn Supper Club</u>, 147 A.D.2d at 901-902) [emphasis by italics has been added].</p>  |   | <p><u>Matter of Lakeside Inn Supper Club, Inc.</u><br/>v.<br/><u>New York State Liquor Authority</u>,<br/>147 A.D.2d 901 (1989)</p> |
| <p><b><u>REASONABLE RELIANCE: CAREFUL AND CRITICAL EXAMINATION.</u></b></p> <p>The defense of reasonable reliance is not established unless a reviewing court would find that the licensee or the employee making the alcohol delivery -- after having made a careful and critical examination of the identification -- reasonably concluded that the identification belonged to the person presenting the identification, and reasonably concluded that the identification had not been altered.</p>  | <p>Alcoholic Beverage<br/>Control Law<br/>§ 65.4</p>  | <p><u>Matter of Dark Horse Tavern, Inc.</u><br/>v.<br/><u>New York State Liquor Authority</u>,<br/>232 A.D.2d 947 (1996)</p>        |
| <p><b><u>CRIMINAL PENALTIES.</u></b> Delivering or permitting the delivery of alcohol to a person under the legal age in violation of ABCL § 65.1 is an unclassified misdemeanor.<br/>The Penal Law directs that an unclassified misdemeanor be treated as a class A misdemeanor.<br/>Unlawfully Dealing with a Child in the First Degree, in violation of Penal Law §260.20, is a class A misdemeanor.<br/>A person convicted of a class A misdemeanor may be sentenced to a term of imprisonment of up to one year, and fined up to \$1,000. In addition, the corporation for which the person works may be fined up to \$5,000.</p> <p><b><u>THE LICENSEE'S OR SERVER'S HOLDING OF A VALID CERTIFICATE OF COMPLETION FROM AN AUTHORIZED ATAP PROGRAM.</u></b> If a licensee or server is charged with Unlawfully Dealing with a Child in the First Degree, and the licensee or server has not been convicted of same within the preceding five years, the licensee or server is entitled to offer an affirmative defense to the charge that he or she is in possession of a valid certificate of completion (or renewal) from an approved ATAP program. In addition, the licensee or server involved is supposed to have the ability to obtain a "reasonable" adjournment to obtain a valid certificate of completion (or renewal) from an approved ATAP program.</p> | <p>Alcoholic Beverage<br/>Control Law<br/>§ 65.1 and § 130.5<br/>-----<br/>Penal Law<br/>§ 260.20<br/>§ 55.10.2(b)<br/>§ 70.15.1<br/>§ 80.05<br/>§ 80.10.1(b)</p> |   |

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| <p><b><u>CIVIL LIABILITY FOR INJURIES CAUSED BY THE INTOXICATION OF A PERSON UNDER THE AGE OF TWENTY-ONE YEARS.</u></b> A licensee or employee who delivers alcohol to a person under the legal age may subsequently be found to have caused the intoxication of a person under the age of twenty-one. Where such liability is established, the licensee and/or employee may be obligated to pay money damages to innocent third parties to compensate them for injuries, including personal injury, injury to property, and injury to means of support.</p>  | <p>General<br/>Obligations Law<br/>§ 11-100 and<br/>§ 11-101</p>          |  |
| <p><b><u>CIVIL ADMINISTRATIVE PENALTIES WHICH THE STATE LIQUOR AUTHORITY MAY IMPOSE AGAINST THE ALCOHOLIC BEVERAGE LICENSE HOLDER.</u></b><br/>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 alcoholic beverage license include revocation, cancellation, or suspension of the alcoholic beverage license; a civil money penalty of up to ten thousand dollars; a bond claim of up to one thousand dollars; and a two-year ban against the future licensure of the building containing the licensed premises.</p> | <p>Alcoholic Beverage<br/>Control Law<br/>§ 17.3,<br/>§ 112 and § 113</p> |  |
| <p><b><u>FIRST HAND ACCOUNTS OF PERSONS WHO HAVE SUFFERED A LOSS ATTRIBUTABLE TO PERSONS DRIVING A MOTOR VEHICLE WHILE INTOXICATED.</u></b><br/><br/>Pamphlet issued by STOP DWI New York<br/>"Shattered Lives"</p>   |   |  |

**New York  
Alcoholic Beverage Control Law  
Section 17.3**

**Alcoholic Beverage Control Law § 17.3** Powers of the authority

The authority shall have the following functions, powers and duties:

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3. To revoke, cancel or suspend for cause any license or permit issued under this chapter and/or to impose a civil penalty for cause against any holder of a license or permit issued pursuant to this chapter. Any civil penalty so imposed shall not exceed the sum of ten thousand dollars as against the holder of any retail permit issued pursuant to sections ninety-five, ninety-seven, ninety-eight, ninety-nine-d and paragraph f of subdivision one of section ninety-nine-b of this chapter and as against the holder of any retail license issued pursuant to sections fifty-two, fifty-three-a, fifty-four, fifty-four-a, fifty-five, fifty-five-a, sixty-three, sixty-four, sixty-four-a, sixty-four-b, sixty-four-c, seventy-nine, eighty-one and eighty-one-a of this chapter, and the sum of thirty thousand dollars as against the holder of a license issued pursuant to sections fifty-three, seventy-six, seventy-six-a and seventy-eight of this chapter, provided that the civil penalty against the holder of a wholesale license issued pursuant to section fifty-three of this chapter shall not exceed the sum of ten thousand dollars 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 one hundred thousand dollars as against the holder of any license issued pursuant to sections fifty-one, sixty-one and sixty-two 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 one hundred twelve of this chapter.

*[Last amended by Laws 2000, Chapter 114]*

*[Current through Laws of 2001, 224<sup>th</sup> Session]*

10/27/10

New York  
Alcoholic Beverage Control Law  
Section 65

**Alcoholic Beverage Control Law § 65. Prohibited sales**

No person shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away any alcoholic beverages to

1. Any person, actually or apparently, under the age of twenty-one years;
2. Any visibly intoxicated person;
3. Any habitual drunkard known to be such to the person authorized to dispense any alcoholic beverages.
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.  
[As amended by Laws 2010, Ch. 435]
5. The provisions of subdivision one 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 twenty-one years, 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.
6. 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 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.  
[As amended by Laws 2010, Ch. 435]
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.

[As amended by Laws 2010, Ch. 435]

**New York**  
**Alcoholic Beverage Control Law**  
**Section 65-b**

**Alcoholic Beverage Control Law § 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. 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.

**New York**  
**Alcoholic Beverage Control Law**  
**Section 65-b**

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.

(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

**New York**  
**Alcoholic Beverage Control Law**  
**Section 65-b**

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, 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.

*[Last amended by Laws 2000, Chapter 503]*

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.

*[Last amended by Laws 1999, Ch. 519, Laws 2000, Ch. 503 and Laws 2002, Ch. 503]*

*[Current through Laws of 2001, 224th Session]*

**Alcoholic Beverage Control Law  
Section 112**

**Alcoholic Beverage Control Law § 112** Bonds of licensees and permittees

The liquor authority may require the licensees and permittees of one or more of the kinds or classes described in this chapter to file with it a bond to the people of the state of New York issued by a surety company, approved by the superintendent of insurance as to solvency and responsibility and authorized to transact business in this state, in such penal sum as the liquor authority may heretofore have prescribed or hereafter shall prescribe, conditioned that such licensee or permittee will not suffer or permit any violation of the provisions of this chapter and that all fines and penalties which shall accrue, during the time the license or permit shall be in effect, will be paid, together with all costs taxed or allowed in any action or proceeding brought or instituted for a violation of any of the provisions of this chapter. A suit to recover on any bond filed pursuant to chapter one hundred eighty of the laws of nineteen hundred thirty-three [FN1] or this chapter may be brought by the liquor authority or on relation of any party aggrieved, in a court of competent jurisdiction and in the event that the obligor named in such bond has violated any of the conditions of such bond, recovery for the penal sum of such bond may be had in favor of the people of the state.

[FN1] The 1933 Alcoholic Beverage Control Law, which was repealed by former section 152 of the 1934 Alcoholic Beverage Control Law. Former section 152 was renumbered as section 162 in 1954.

*[Last amended by Laws 1999, Chapter 335]*

*[Current through Laws of 2001, 224<sup>th</sup> Session]*

**Alcoholic Beverage Control Law  
Section 113**

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

1. Where a license for any premises licensed has been revoked, the liquor authority in its discretion may refuse to issue a license under this chapter, for a period of two 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 a license for such two year period, in addition to any other factors deemed relevant, 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. For purposes of this section, "arm's length transaction" shall mean a sale of a fee or all undivided interests 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 the 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.

*[Last amended by Laws 1996, Chapter 572]*

*[Current through Laws of 2001, 224<sup>th</sup> Session]*

**New York**  
**Alcoholic Beverage Control Law**  
**Section 130, subdivision 5**

**Alcoholic Beverage Control Law § 130** Penalties for violations of chapter

\* \* \*

5. 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 subdivision six-a of section one hundred six of this chapter.

*[Last amended by Laws 1977, Chapter 321]*

*[Current through Laws of 2001, 224<sup>th</sup> Session]*

**Alcoholic Beverage Control Law  
Section 113**

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

1. Where a license for any premises licensed has been revoked, the liquor authority in its discretion may refuse to issue a license under this chapter, for a period of two 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 a license for such two year period, in addition to any other factors deemed relevant, 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. For purposes of this section, "arm's length transaction" shall mean a sale of a fee or all undivided interests 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 the 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.

*[Last amended by Laws 1996, Chapter 572]*

*[Current through Laws of 2001, 224<sup>th</sup> Session]*

**New York  
Penal Law  
Section 55.10**

**Penal Law § 55.10** Designation of offenses

1. Felonies.

(a) The particular classification or subclassification of each felony defined in this chapter is expressly designated in the section or article defining it.

(b) Any offense defined outside this chapter which is declared by law to be a felony without specification of the classification thereof, or for which a law outside this chapter provides a sentence to a term of imprisonment in excess of one year, shall be deemed a class E felony.

2. Misdemeanors.

(a) Each misdemeanor defined in this chapter is either a class A misdemeanor or a class B misdemeanor, as expressly designated in the section or article defining it.

(b) Any offense defined outside this chapter which is declared by law to be a misdemeanor without specification of the classification thereof or of the sentence therefor shall be deemed a class A misdemeanor.

(c) Except as provided in paragraph (b) of subdivision three, where an offense is defined outside this chapter and a sentence to a term of imprisonment in excess of fifteen days but not in excess of one year is provided in the law or ordinance defining it, such offense shall be deemed an unclassified misdemeanor.

3. 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:

(a) Notwithstanding any other designation specified in the law or ordinance defining it, a sentence to a term of imprisonment which is not in excess of fifteen days is provided therein, or the only sentence provided therein is a fine; or

(b) A sentence to a term of imprisonment in excess of fifteen 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.

4. Traffic infraction. Notwithstanding any other provision of this section, 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.

*[Last amended by Laws 1978, Chapter 104]*

*[Current through Laws of 2001, 224<sup>th</sup> Session]*

**New York**  
**General Obligations Law**  
**Sections 11-100 and 11-101**

**General Obligations Law § 11-100** Compensation for injury or damage caused by the intoxication of a person under the age of twenty-one years

1. Any person who shall be 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 twenty-one years, whether resulting in his death or not, shall have a right of action to recover actual damages against any person who knowingly causes such intoxication or impairment of ability by unlawfully furnishing to or unlawfully assisting in procuring alcoholic beverages for such person with knowledge or reasonable cause to believe that such person was under the age of twenty-one years.

2. In case of the death of either party, the action or right of action established by the provisions of this section 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.

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

4. 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.

*[Last amended by Laws 1985, Chapter 274]*

**General Obligations Law § 11-101** Compensation for injury caused by the illegal sale of intoxicating liquor

1. 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.

2. In case of the death of either party, the action or right of action given by this section 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.

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

4. In any case where parents shall be entitled to such damages, either the father or mother may sue alone therefor, but recovery by one of such parties shall be a bar to suit brought by the other.

*[Last amended by Laws 1980, Chapter 281]*

*[Current through Laws of 2001, 224<sup>th</sup> Session]*

**New York  
Penal Law  
Section 80.05**

**Penal Law § 80.05** Fines for misdemeanors and violations

1. Class A misdemeanor. A sentence to pay a fine for a class A misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding one thousand dollars, provided, however, that a sentence imposed for a violation of section 215.80 of this chapter may include a fine in an amount equivalent to double the value of the property unlawfully disposed of in the commission of the crime.

2. Class B misdemeanor. A sentence to pay a fine for a class B misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding five hundred dollars.

3. Unclassified misdemeanor. A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, in accordance with the provisions of the law or ordinance that defines the crime.

4. Violation. A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding two hundred fifty dollars.

In the case of a violation defined outside this chapter, if the amount of the fine is expressly specified in the law or ordinance that defines the offense, the amount of the fine shall be fixed in accordance with that law or ordinance.

5. Alternative sentence. If a person has gained money or property through the commission of any misdemeanor or violation then upon conviction thereof, the court, in lieu of imposing the fine authorized for the offense under one of the above subdivisions, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense; provided, however, that the amount fixed by the court pursuant to this subdivision upon a conviction under section 11-1904 of the environmental conservation law shall not exceed five thousand dollars. In such event the provisions of subdivisions two and three of section 80.00 shall be applicable to the sentence.

6. Exception. The provisions of this section shall not apply to a corporation.

*[Last amended by Laws 1999, Chapter 208]*

*[Current through Laws of 2001, 224<sup>th</sup> Session]*

**New York  
Penal Law  
Section 70.15**

**Penal Law § 70.15** Sentences of imprisonment for misdemeanors and violation

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime.

2. Class B misdemeanor. A sentence of imprisonment for a class B misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed three months.

3. Unclassified misdemeanor. A sentence of imprisonment for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law or ordinance that defines the crime.

4. Violation. A sentence of imprisonment for a violation shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed fifteen days.

In the case of a violation defined outside this chapter, if the sentence is expressly specified in the law or ordinance that defines the offense and consists solely of a fine, no term of imprisonment shall be imposed.

*[Last amended by Laws 1993, Chapter 291]*

*[Current through Laws of 2001, 224<sup>th</sup> Session]*

**New York  
Penal Law  
Section 80.10**

**Penal Law § 80.10** Fines for corporations

1. In general. A sentence to pay a fine, when imposed on a corporation for an offense defined in this chapter or for an offense defined outside this chapter for which no special corporate fine is specified, shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) Ten thousand dollars, when the conviction is of a felony;

(b) Five thousand dollars, when the conviction is of a class A misdemeanor or of an unclassified misdemeanor for which a term of imprisonment in excess of three months is authorized;

(c) Two thousand dollars, when the conviction is of a class B misdemeanor or of an unclassified misdemeanor for which the authorized term of imprisonment is not in excess of three months;

(d) Five hundred dollars, when the conviction is of a violation;

(e) Any higher amount not exceeding double the amount of the corporation's gain from the commission of the offense.

2. Exception. In the case of an offense defined outside this chapter, if a special fine for a corporation is expressly specified in the law or ordinance that defines the offense, the fine fixed by the court shall be as follows:

(a) An amount within the limits specified in the law or ordinance that defines the offense; or

(b) Any higher amount not exceeding double the amount of the corporation's gain from the commission of the offense.

3. Determination of amount or value. When the court imposes the fine authorized by paragraph (e) of subdivision one or paragraph (b) of subdivision two for any offense the provisions of subdivision three of section 80.00 shall be applicable to the sentence.

*[Added by Laws 1965, Chapter 1030]*

*[Current through Laws of 2001, 224<sup>th</sup> Session]*

**New York  
Penal Law  
Sections 260.20 and 260.21**

**Penal Law § 260.20** Unlawfully dealing with a child in the first degree

A person is guilty of unlawfully dealing with a child in the first degree when:

1. He knowingly permits a child less than eighteen years old to enter or remain in or upon a place, premises or establishment where sexual activity as defined by article one hundred thirty, two hundred thirty or two hundred sixty-three of this chapter or activity involving controlled substances as defined by article two hundred twenty of this chapter or involving marihuana as defined by article two hundred twenty-one of this chapter is maintained or conducted, and he knows or has reason to know that such activity is being maintained or conducted; or

2. He gives or sells or causes to be given or sold any alcoholic beverage, as defined by section three of the alcoholic beverage control law, to a person less than twenty-one years old; except that this subdivision does not apply to the parent or guardian of such a person or to a person who gives or causes to be given any such alcoholic beverage to a person under the age of twenty-one years, who is a student in a curriculum licensed or registered 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 such alcoholic beverages are given only for instructional purposes during classes conducted pursuant to such curriculum.

It is no defense to a prosecution pursuant to subdivision two of this section 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 first degree is a class A misdemeanor.

*[Last amended by Laws 1992, Chapter 362]*

**Penal Law § 260.21** Unlawfully dealing with a child in the second degree

A person is guilty of unlawfully dealing with a child in the second degree when:

1. Being an owner, lessee, manager or employee of a place where alcoholic beverages are sold or given away, he permits a child less than sixteen years old to enter or remain in such place unless:

(a) The child is accompanied by his parent, guardian or an adult authorized by a parent or guardian; or

(b) The entertainment or activity is being conducted for the benefit or under the auspices of a non-profit school, church or other educational or religious institution; or

(c) Otherwise permitted by law to do so; or

(d) The establishment is closed to the public for a specified period of time to conduct an activity or entertainment, during which the child is in or remains in such establishment, and no alcoholic beverages are sold, served, given away or consumed at such establishment during such period. 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 ten days prior to any such closing; or

2. He marks the body of a child less than eighteen years old with indelible ink or pigments by means of tattooing; or

3. He sells or causes to be sold tobacco in any form to a child less than eighteen years old.

It is no defense to a prosecution pursuant to subdivision three of this section 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.

*[Last amended by Laws 1996, Chapter 478]*

*[Current through Laws of 2001, 224th Session]*

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10 A.D.2d 987 202 N.Y.S.2d 807

**\*987 In the Matter of Ross's Dairies, Ltd., Petitioner,  
v.  
Thomas E. Rohan et al., Constituting the State Liquor Authority, Respondents.**

Supreme Court, Appellate Division, Second Department, New York

May 23, 1960

OPINION OF THE COURT

Beldock, Acting P. J., Ughetta, Christ, Pette and Brennan, JJ.,

Proceeding under article 78 of the Civil Practice Act to review a determination of the State Liquor Authority, dated December 11, 1959, suspending for 10 days petitioner's retail off-premises beer license on the ground that the petitioner had violated subdivision 1 of section 65 of the Alcoholic Beverage Control Law by selling an alcoholic beverage to a minor actually under the age of 18 years. The proceeding has been transferred to this court for disposition (Civ. Prac. Act, § 1296), by order of the Supreme Court, Kings County, dated February 5, 1960.)

Determination confirmed and proceeding dismissed, without costs. **A sale of an alcoholic beverage to a minor** \* who is actually under the age of 18 [now 21]\* years constitutes a violation of the statute, regardless of the fact that the minor appeared to be over that age.<sup>1</sup> Nor is it a defense that the minor represented herself to be, or presented purported proof of being, over that age<sup>2</sup> [unless the seller can prove that the seller reasonably relied upon a photographic identification card apparently issued by a governmental entity]\*. Such a sale is an act malum prohibitum and **is not to be excused by ignorance, mistake of fact or honorable intention.**<sup>3</sup> \* concur.

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N.Y.A.D., 1960.  
ROSS'S DAIRIES, LTD. V ROHAN  
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*\* Material in brackets, underlining, and bolding are not part of the original opinion and have been added. Cases cited in the opinion appear in the footnotes found below.*

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**8 N.Y.2d 708** (Table) 169 N.E.2d 926 206 N.Y.S.2d 1026

**Ross's Dairies, Matter of, v. Rohan**

Court of Appeals of New York  
Decided October 6, 1960.

(2d dept.: 10 A D 2d 987)

MOTIONS FOR LEAVE TO APPEAL

denied

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N.Y. 1960.  
Ross's Dairies, Matter of, v. Rohan

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<sup>1</sup> (*Matter of Barnett v. O'Connell*, 279 App. Div. 449)  
<sup>2</sup> (*Matter of Ward v. O'Connell*, 280 App. Div. 1021)  
<sup>3</sup> (*People v. Werner*, 174 N. Y. 132; *People v. Davin*, 1 A D 2d 811)

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147 A.D.2d 901 537 N.Y.S.2d 352

**In the Matter of Lakeside Inn Supper Club, Inc., Petitioner,**  
**v.**  
**New York State Liquor Authority, Respondent.**

Supreme Court, Appellate Division, Fourth Department, New York

February 3, 1989

Determination unanimously confirmed and petition dismissed without costs.

OPINION OF THE COURT

This is a proceeding transferred to this court pursuant to CPLR 7804 (g) to review a New York State Liquor Authority determination that petitioner violated Alcoholic Beverage Control Law § 65 (1), which prohibits the sale or delivery of alcoholic beverages to persons under the age of 21.

The record demonstrates without contradiction that on July 8, 1986 petitioner's bartender served an alcoholic beverage to a minor without having required the minor to produce proof of age. The bartender testified that he served the patron because on previous dates she had presented photographic identification in the form of a motor vehicle operator's license reflecting that she was 21 years old.

Alcoholic Beverage Control Law § 65 (4) provides in relevant part: "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 or institution of higher education and that the alcoholic beverage had been sold, delivered or given to such person in reasonable reliance upon such identification."

Although the Administrative Law Judge who presided at the hearing credited the testimony of the bartender, he found nevertheless that **the affirmative defense of reasonable reliance was not established.**\* He ruled that **the defense could only be<sup>1</sup> established by showing that the photographic identification was presented on the occasion of the specific sale or delivery underlying the alleged violation.**\* By adopting the findings of the Hearing Officer, the State Liquor Authority necessarily adopted his interpretation of Alcoholic Beverage Control Law § 65 (4). That interpretation by the agency charged with the responsibility for administration and enforcement of the statute must be upheld since it is neither irrational nor unreasonable.<sup>2</sup> We conclude, therefore, that the determination is supported by substantial evidence and that the penalty of a 10-day suspension of petitioner's license is not so disproportionate to the offense as to be shocking to one's sense of fairness.<sup>3</sup> (Article 78 proceeding transferred by order of Supreme Court, Erie County, Fallon, J.)

Present--Dillon, P. J., Doerr, Green, Pine and Davis, JJ.

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*\* Underlining and bolding are not part of the original opinion and have been added. A page-break indicator and cases cited in the opinion appear in the footnotes found below.*

N.Y.A.D., 1989.

LAKESIDE INN SUPPER CLUB, INC. V NEW YORK STATE LIQUOR AUTHORITY

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<sup>1</sup> \*902

<sup>2</sup> (see, *Matter of Howard v Wyman*, 28 NY2d 434, 438, *lv granted* 29 NY2d 481, *rearg denied* 29 NY2d 749, *Matter of Reader's Digest Assn. v State Tax Commn.*, 103 AD2d 926, 927).

<sup>3</sup> (see, *Matter of Pell v Board of Educ.*, 34 NY2d 222, 233)

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**232 A.D.2d 947** 649 N.Y.S.2d 83

**In the Matter of Dark Horse Tavern, Inc., Doing Business as Dark Horse Tavern,  
 Petitioner,**

**v.**

**New York State Liquor Authority, Respondent.**

Supreme Court, Appellate Division, Third Department, New York  
 (October 30, 1996)

OPINION OF THE COURT

Mercure, J.

SUMMARY

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Cortland County) to review a determination of respondent which suspended petitioner's on-premises liquor license.

The undisputed evidence adduced at the administrative hearing conducted in this matter established that on February 12, 1994, Krista Krueger and Rebecca Garrett, both 20 years old, gained admission to petitioner's licensed establishment by displaying genuine New York State driver's licenses belonging to other individuals who were over the age of 21. Garrett did the same on March 31, 1994. Under the system petitioner established on each of those occasions, the patrons exhibited identification at the sole entrance to the premises, thereby ostensibly ensuring that only patrons of legal drinking age were present inside and obviating the need for bartenders to check patrons' identification. On each of the dates at issue here, the minor's payment of a \$3 admission charge entitled her to consume an unlimited quantity of beer during the evening. **\*948** Without doubt, Krueger and Garrett were served and consumed beer on the respective occasions. **Petitioner's affirmative defense**\* that the minors had each "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" (Alcoholic Beverage Control Law § 65 [4]) **was rejected**\* by respondent.

In our view, respondent's determination that petitioner failed to sustain its burden with respect to the affirmative defense defined in Alcoholic Beverage Control Law § 65 (4) is supported by substantial evidence on the record and is by no means arbitrary or capricious <sup>1</sup>. Because **Krueger destroyed the driver's license**\* that she exhibited to petitioner's employee on February 14, 1994, **petitioner was unable to present any reliable evidence as to Krueger's likeness to the person portrayed on the license**.\* Moreover, Krueger's testimony established that she had **brown eyes**,\* whereas the license indicated that its holder had **blue eyes**.\* With regard to Garrett, the evidence established that she obtained entrance to petitioner's premises by exhibiting **her 25-year-old sister's license**.\* Our examination of photographs of Garrett and her sister's license, which were received in evidence at the administrative hearing, supports the Hearing Officer's conclusion that Garrett had a "youthful appearance" and **[did] not appear to be as old as the person portrayed on the license**.\*

Under the circumstances, we need not consider respondent's legal bases for rejecting petitioner's affirmative defense.

Cardona, P. J., Casey, Spain and Carpinello, JJ., concur.

Adjudged that the determination is confirmed, without costs, and petition dismissed.

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*\* Underlining, and bolding are not part of the original opinion and have been added. Cases cited in the opinion appear in the footnote found below.*

N.Y.A.D., 1996. Matter of Dark Horse Tavern v New York State Liq. Auth.  
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<sup>1</sup> (see, Matter of Roc's Z-Bar v State of New York Liq. Auth., 189 AD2d 1077, 1078, appeal dismissed 81 NY2d 1006; Matter of Lakeside Inn Supper Club v New York State Liq. Auth., 147 AD2d 901, 902).