

BILL TEXT:

STATE OF NEW YORK

2197

2005-2006 Regular Sessions

IN ASSEMBLY

January 25, 2005

Introduced by M. of A. ORTIZ, GREENE, J. RIVERA -- Multi-Sponsored by --
M. of A. GORDON, GREEN, PEOPLES, ROBINSON, TOWNS, WEISENBERG -- read
once and referred to the Committee on Economic Development, Job
Creation, Commerce and Industry

AN ACT to amend the alcoholic beverage control law and the civil prac-
tice law and rules, in relation to cause of action for supplying alco-
hol to a minor

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The alcoholic beverage control law is amended by adding a
2 new section 65-e to read as follows:

3 § 65-e. Prohibited sale of alcohol; cause of action. 1. A civil cause
4 of action may be commenced for a violation of subdivision one of section
5 sixty-five or section sixty-five-a of this article by (a) the minor who
6 suffered damages as the result of such violation; (b) a parent, legal
7 guardian, child or spouse of the minor; (c) the employer of the minor;
8 or (d) a medical facility, insurer, governmental entity, employer, or
9 other entity that funds an alcohol treatment program or employee assist-
10 ance program for the minor to whom the alcohol was supplied.

11 2. Any of the parties described in paragraph (b), (c) or (d) of subdivi-
12 vision one of this section that have commenced an action pursuant to
13 this section may seek damages from the person who knowingly participated
14 in supplying alcohol to a minor for (a) economic losses, including but
15 not limited to, the cost of treatment and rehabilitation, medical
16 expenses, loss of economic potential, loss of productivity, and support
17 expenses; (b) noneconomic damages, including but not limited to, phys-
18 ical and emotional pain and suffering, disfigurement, loss of compani-
19 ship and consortium; (c) reasonable attorney fees; (d) reasonable expert
20 consultant and expert witness fees; and (e) costs and disbursements as
21 provided by the civil practice law and rules.

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

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1 3. A minor may not commence an action pursuant to this section unless
2 such minor: (a) discloses to law enforcement authorities information
3 regarding the source of the alcohol; or (b) can prove that he or she had
4 not used alcohol within the six month period preceding the filing of the
5 cause of action. A minor may only seek damages from the person who know-
6 ingly participated in supplying the alcohol to the minor. A minor may
7 recover damages for economic loss, including but not limited to the cost
8 of treatment, rehabilitation, medical expenses, loss of economic poten-
9 tial and loss of productivity.

10 4. Notwithstanding any provisions of article six of the civil practice
11 law and rules to the contrary, two or more persons may join in one cause
12 of action pursuant to this section as plaintiffs if each action has at
13 least one person charged with violating the provisions of subdivision
14 one of section sixty-five or section sixty-five-a of this article in
15 common and if any portion of the period of violation overlaps with the
16 period of violation for every other plaintiff.

17 5. An action by a minor shall be governed by the provisions of article
18 fourteen-A of the civil practice law and rules while any action
19 commenced by the parties described in paragraph (b), (c) or (d) of
20 subdivision one of this section shall be governed by the otherwise
21 applicable provisions of the civil practice law and rules. The burden of
22 proving the comparative culpable conduct of the plaintiff shall fall
23 upon the defendant. Comparative culpable conduct shall not be attributed
24 to a plaintiff who is not a minor. A person subject to liability under
25 this section shall have a right of action for contribution against
26 another person subject to liability under this section pursuant to arti-
27 cle fourteen-A of the civil practice law and rules. A plaintiff may seek
28 recovery pursuant to this section and any other appropriate provision of
29 law from a person against whom a defendant has asserted a right of
30 contribution.

31 6. The provisions of the civil practice law and rules relating to the
32 exemption of certain real and personal property from execution and
33 enforcement of civil judgments shall not apply to judgment rendered in
34 favor of the plaintiff under this section. Any assets subject to admin-
35 istrative, civil or criminal forfeiture proceedings under state or
36 federal law or which have been seized for forfeiture by any state or
37 federal agency may not be used to satisfy a judgment under this section
38 unless and until such assets have been released following the conclusion
39 of the forfeiture action or released by the agency that seized such
40 assets.

41 § 2. The civil practice law and rules is amended by adding a new
42 section 214-f to read as follows:

43 § 214-f. Action for supplying a minor with alcohol. Notwithstanding
44 any other provision of law to the contrary, an action to recover damages
45 for supplying a minor with alcohol may be commenced within two years
46 from the date of injury or within two years from the date when a person
47 eligible to bring an action under section sixty-five-e of the alcoholic
48 beverage control law has reason to know of the harm from the supplying
49 of alcohol to a minor that is the basis for the cause of action and has
50 reason to know that the supplying of alcohol to a minor is the cause of
51 such harm.

52 § 3. This act shall take effect on the sixtieth day after it shall
53 have become a law.

SPONSORS MEMO:

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)

RETRIEVE BILL

BILL NUMBER: A2197

SPONSOR: Ortiz (MS)

TITLE OF BILL: An act to amend the alcoholic beverage control law and the civil practice law and rules, in relation to cause of action for supplying alcohol to a minor

PURPOSE OR GENERAL IDEA OF BILL: This bill would establish a cause of action for supplying a minor with alcohol.

SUMMARY OF SPECIFIC PROVISIONS: The alcoholic beverage control law is amended by adding a new section 65-e. Subdivision 1 defines the people who may seek damages, subdivisions 2 and 3 define what damages a plaintiff may seek. Subdivision 4 defines the instances in which two or more persons to join in one cause of action as plaintiffs. Subdivisions 5 and 6 describe how provisions of the civil practice law and rules apply.

The civil practice law and rules is amended by adding a new section 214-f, which sets the time period in which an action may be commenced.

JUSTIFICATION: The current law in New York State does not address all issues that may arise when a minor consumes, or is given an opportunity to consume, alcohol. It is illegal for anyone, other than a parent or guardian, to give alcohol to a minor, as stated in section 65 of the Alcoholic Beverage Control Law and section 260.20 of the Penal Law. In the General Obligations Law, article 11, section 100, allows the victim of an incident caused by an intoxicated minor to sue whoever supplied the minor with alcohol. However, there is no mention of the ability of those related, or with other close bonds, to a minor.

This bill would hold anyone who supplies alcohol to a minor liable for civil damages if a suit is brought against them by specific entities. Among those who could bring an action for and recover damages are family members, employers of, or medical centers treating a minor. This bill would also allow the minor to bring an action forth, but only if certain criteria are met.

There is not always a physical victim when a minor abuses alcohol. Sometimes the casualties are an emotional strain on a family relationship, neglect of a spouse, child, or elderly family member, or a setback in the treatment of the abuse problems of the minor. The suffering and loss felt in these cases are as real and sincere as the physical, and those who have suffered should be allowed the chance to seek damages.

PRIOR LEGISLATIVE HISTORY:

2002 - A.10051/S.7170 - Referred to Economic Development
2003-04 - A.3844 - Ref to Economic Development

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS: None.

EFFECTIVE DATE: This act shall take effect on the 60th day after it shall have become a law.