

BILL TEXT:

STATE OF NEW YORK

8639

2005-2006 Regular Sessions

IN ASSEMBLY

May 31, 2005

Introduced by M. of A. MANNING -- 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 practice law and rules, in relation to cause of action for supplying alcohol to a minor and to amend the penal law, in relation to establishing the crime of aggravated unlawfully dealing with a minor

The People of the State of New York, represented in Senate and Assembly, 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.

22 3. A minor may not commence an action pursuant to this section unless
23 such minor: discloses to law enforcement authorities information regard-

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

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1 ing the source of the alcohol. A minor may only seek damages from the
2 person who knowingly participated in supplying the alcohol to the minor.
3 A minor may recover damages for economic loss, including but not limited
4 to the cost of treatment, rehabilitation, medical expenses, loss of
5 economic potential and loss of productivity.

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

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

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

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

39 § 214-f. Action for supplying a minor with alcohol. Notwithstanding
40 any other provision of law to the contrary, an action to recover damages
41 for supplying a minor with alcohol may be commenced within two years
42 from the date of injury or within two years from the date when a person
43 eligible to bring an action under section sixty-five-e of the alcoholic
44 beverage control law has reason to know of the harm from the supplying
45 of alcohol to a minor that is the basis for the cause of action and has
46 reason to know that the supplying of alcohol to a minor is the cause of
47 such harm.

48 § 3. The penal law is amended by adding a new section 260.22 to read
49 as follows:

50 § 260.22 Aggravated unlawfully dealing with a minor; alcoholic beverag-
51 es.

52 1. A person is guilty of aggravated unlawful by dealing with a minor
53 when, being twenty-one years of age or older, he knowingly gives or
54 sells or causes to be given or sold any alcoholic beverage to a minor
55 and, not more than twelve hours after receiving such alcoholic beverages
56 such minor consumes such alcoholic beverage and commits one or more of

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1 the following crimes: vehicular assault in the first or second degree as
 2 defined by sections 120.03 and 120.04 of this chapter, or vehicular
 3 manslaughter in the first or second degree as defined by sections 125.12
 4 and 125.13 of this chapter.

5 2. It shall not be a defense to a prosecution under this section that
 6 the minor acted as the agent or representative of another person or that
 7 the defendant dealt with the minor as an agent or representative.

8 Aggravated unlawfully dealing with a minor is a class E felony.

9 § 4. This act shall take effect on the sixtieth day after it shall
 10 have become a law; provided, however, that section three of this act
 11 shall take effect on the first of November next succeeding the date on
 12 which it shall 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)**

BILL NUMBER: A8639

SPONSOR: Manning

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 and to amend the penal law, in relation to establishing the crime of aggravated unlawfully dealing with a minor

PURPOSE OR GENERAL IDEA OF BILL:

The general purpose of this legislation is to provide a way for a party who has been injured by a person, property or means of support to take civil action against the individual that supplied alcohol to the minor.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 adds a new section 65-e to the alcoholic beverage control law.

Section 2 amends the civil practice law and rules by adding a section 214-f. This section provides civil action for an injured party onto the individual that purchased the alcohol for the minor.

Section 3 amends the penal law by adding a new section 260.22 which establishes the crime of aggravated unlawfully dealing with a minor and punishment therein.

Section 4 provides that this act shall take effect immediately except for section 3 which shall take effect on the first of November following when it became law.

JUSTIFICATION:

Underage drinking continues to have a negative impact on our society. While there are laws currently in place in regard to stores selling alcohol to minors, the laws do not go far enough in punishing the individuals over 21 that knowingly purchase alcohol for those under the

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legal age.

This legislation puts in place a system where an individual that has suffered a loss whether through injury in person, property, means of support or financially can take civil action against the individual that supplied the minor alcohol. This legislation will hopefully serve as a deterrent for individuals to purchase alcohol for minors.

In addition to the liability for civil action, the individual of legal age will now be committing a crime punishable as a class E felony.

PRIOR LEGISLATIVE HISTORY: New bill

FISCAL IMPLICATIONS: None to state

EFFECTIVE DATE: This act shall take effect immediately after it becomes law.
