



SEP 29 1989

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## Memorandum to Presidents

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Date: September 21, 1989 Vol. 89 No. 17

From: Offices of Vice Chancellor for Student Affairs  
and Special Programs and University Counsel and  
Vice Chancellor for Legal Affairs

Subject: Alcoholic Beverage Control Law Amendments

To: Presidents, State-operated Campuses  
Presidents, Community Colleges

Recent amendments to the Alcoholic Beverage Control Law (Chapters 225, 586 and 592 of the Laws of 1989, copies attached) may have a significant impact on campus alcohol policies as applied to persons under the age of 21. Campus publications will need to be revised to incorporate appropriate policy changes in order to inform parents, students and student organizations of the more stringent statutory restrictions.

The amendments to sections 65-b and 65-c of the Alcoholic Beverage Control Law provide:

- Effective January 1, 1990, persons under the age of 21 are prohibited from possessing any alcoholic beverage with intent to consume the beverage. Exceptions are provided for consumption in an instructional setting and in cases where the alcoholic beverage is provided by a parent or guardian.

Violators are subject to a fine of up to \$50 per offense, but are not subject to arrest. Alcoholic beverages involved in alleged violations of this law may be seized by authorized law enforcement officials, including campus public safety officers. Disposal and destruction of the seized alcoholic beverages are also authorized but cannot be carried out until three days after the initial appearance date, unless otherwise ordered by a court.

- Effective November 1, 1989, persons under the age of 21 who present falsified or fraudulently altered proofs of age for the purpose of purchasing or attempting to purchase alcoholic beverages are

guilty of a violation, punishable by a fine of up to \$100.00 and a community service requirement of up to thirty (30) hours. Previously, violations of this section were punishable only by the imposition of a one-year probationary period and a fine.

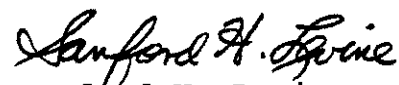
- Effective October 19, 1989, a person under the age of 21 who presents an altered New York State driver's license for the purpose of illegally purchasing an alcoholic beverage may be subject to a suspension of that driver's license for up to ninety (90) days and may also be required to apply to the Department of Motor Vehicles for a restricted use driver's license following the suspension.

As you are aware, prior law did not prohibit activities involving possession or consumption of alcoholic beverages by under-age individuals. Rather, the law primarily regulated the purchase and distribution of alcoholic beverages to persons under the age of 21. Campus alcohol policies which have not in the past prohibited possession of open containers of alcoholic beverages or consumption of alcoholic beverages by persons under the age of 21 will need to be reviewed to consider whether amendments might be appropriate.

Enforcement efforts must also be reviewed to assure consistency with the amendments. Procedures for the seizure and disposal of alcoholic beverages by public safety officers in cases involving an alleged violation of Alcoholic Beverage Control Law, §65-c must comply with the three-day time limitation.

If you have any questions, the Office of the Associate Vice Chancellor for Student Services (518-443-5139) or the Office of University Counsel (518-443-5400) should be contacted.

  
Frank G. Pogue

  
Sanferd H. Levine

Attachments

cc: Chief Student Affairs Administrators

Copies for information only sent to:

Deans, Statutory Colleges  
President Coll  
Provost Nesheim

LAWS OF 1989

Chapter 225

S. 3108-A

Approved June 26, 1989, effective Nov. 1, 1989

AN ACT to amend the alcoholic beverage control law, in relation to a violation involving purchasing alcoholic beverages through fraudulent means by a person under twenty-one years of age

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

§ 1. Subdivision 1 of section 65-b of the alcoholic beverage control law, as amended by chapter 274 of the laws of 1985, is amended to read as follows:

1. ~~Any~~ No person under the age of twenty-one years ~~who presents or offers shall present or offer~~ to any licensee under the alcoholic beverage control law ~~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, ~~may be arrested or summoned and be examined by a magistrate having jurisdiction on a charge of illegally purchasing or attempting to illegally purchase an alcoholic beverage. If a determination is made sustaining such charge the court or magistrate shall release such person on probation for a period of not exceeding one year, and may in addition impose a fine not exceeding one hundred dollars. A person violating the provisions of this subdivision is 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.~~

§ 2. Subdivision 2 of section 65-b of the alcoholic beverage control law, as added by chapter 1031 of the laws of 1965, is amended to read as follows:

2. No such determination 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, ~~nor shall such determination be deemed a conviction.~~

§ 3. Subdivisions 1 and 2 of section 65-c of the alcoholic beverage control law, as added by chapter 838 of the laws of 1981, are amended to read as follows:

1. The authority shall prepare, have printed and distribute across the state to all persons with a license to sell ~~liquor~~ alcoholic beverages for consumption on the premises or a license to sell ~~liquor~~ alcoholic beverages for consumption off the premises a sign or poster with conspicuous lettering that states the provisions of subdivision two of section ~~sixty-five of this article~~ following:

"No person shall sell or give away any alcoholic beverages to:

1. any person under the age of twenty-one years; or
2. any visibly intoxicated person.

IT IS A VIOLATION PUNISHABLE UNDER LAW FOR ANY PERSON UNDER THE AGE OF TWENTY-ONE TO PRESENT ANY WRITTEN EVIDENCE OF AGE WHICH IS FALSE, FRAUDULENT OR NOT ACTUALLY HIS OWN FOR THE PURPOSE OF ATTEMPTING TO PURCHASE ANY ALCOHOLIC BEVERAGE".

Such sign or poster shall be captioned with the word "warning" in at least two inch lettering.

2. All persons with a license to sell ~~liquor~~ alcoholic beverages for consumption on the premises or a license to sell ~~liquor~~ alcoholic beverages for consumption off the premises shall display, in an upright position and in a conspicuous place, where it can be easily read by the clientele of the establishment, the sign or poster upon receiving it from the authority.

§ 4. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

LAWS OF 1989

Chapter 586

S. 935-B

Approved July 21, 1989, effective as provided in section 2

**AN ACT to amend the alcoholic beverage control law, in relation to additional penalties for the purchase of alcoholic beverages by persons under the age of twenty-one through fraudulent means**

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

§ 1. Section 65-b of the alcoholic beverage control law is amended by adding a new subdivision 3 to read as follows:

3. In addition to the penalties otherwise provided in subdivision one 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 for ninety days if it is found that it was a New York state driver's license which was the written evidence of age used for the purpose of such illegal purchase or attempt to illegally purchase. 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.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.

LAWS OF 1989

Chapter 592

S. 2126-C, A. 3188-C

*Memorandum relating to this chapter, see Legislative Memoranda, post*

Approved July 21, 1989, effective Jan. 1, 1990

Message of necessity, pursuant to Art. III, sec. 14, of Const.

**AN ACT to amend the alcoholic beverage control law, in relation to possession of alcoholic beverages with intent to consume by persons under twenty-one years of age**

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

§ 1. Section 65-c of the alcoholic beverage control law is renumbered section 65-d and a new section 65-c is added to read as follows:

§ 65-c. Unlawful possession of an alcoholic beverage with the intent to consume by persons under the age of twenty-one years

1. Except as hereinafter provided, no person under the age of twenty-one years shall possess any alcoholic beverage, as defined in this chapter, with the intent to consume such beverage.

2. A person under the age of twenty-one years may possess any alcoholic beverage with intent to consume if the alcoholic beverage is given:

(a) to a person who is a student in a curriculum licensed or registered by the state education department and the student is required to taste or imbibe alcoholic beverages in courses which are a part of the required curriculum, provided such alcoholic beverages are used only for instructional purposes during class conducted pursuant to such curriculum; or

(b) to the person under twenty-one years of age by that person's parent or guardian.

3. Any person who unlawfully possesses an alcoholic beverage with intent to consume may be summoned before and examined by a court having jurisdiction of that charge; provided, however, that nothing contained herein shall authorize, or be construed to authorize, a peace officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law or a police officer as defined in subdivision thirty-four of section 1.20 of such law to arrest a person who unlawfully possesses an alcoholic beverage with intent to consume. If a determination is made sustaining such charge the court may impose a fine not exceeding fifty dollars.

4. No such determination 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, nor shall such determination be deemed a conviction.

5. Whenever a peace officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law or police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law shall observe a person under twenty-one years of age openly in possession of an alcoholic beverage as defined in this chapter, with the intent to consume such beverage in violation of this section, said officer may seize the beverage, and shall deliver it to the custody of his or her department.

6. Any alcoholic beverage seized in violation of this section is hereby declared a nuisance. The official to whom the beverage has been delivered shall, no earlier than three days following the return date for initial appearance on the summons, dispose of or destroy the alcoholic beverage seized or cause it to be disposed of or destroyed. Any person claiming ownership of an alcoholic beverage seized under this section may, on the initial return date of the summons or earlier on five days notice to the official or department in possession of the beverage, apply to the court for an order preventing the destruction or disposal of the alcoholic beverage seized and ordering the return of that beverage. The court may order the beverage returned if it is determined that return of the beverage would be in the interest of justice or that the beverage was improperly seized.

§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.