

New York Training Supplement to the ServSafe® Alcohol Course (Instructor-Led and Online)



To complete the ServSafe® Alcohol Course in New York, you must learn the content of this supplement in addition to what you've learned in the course. We highly recommend that you study this supplement after you have finished the training portion of the course. The content of this supplement is used with permission from the New York State Liquor Authority.

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Giving Alcohol to An Underage Person — Alcoholic Beverage Control Law §65.1

Direct Delivery of Alcohol to Underage People

It is illegal to sell, deliver, or give away alcohol to an underage person. That's true whether the person is or appears to be under 21 years old.

A licensee or server can legally refuse to sell or deliver alcohol to an underage person without penalty. However, service cannot be refused based on a person's race, creed, color or national origin.

There are specific rules when it comes to delivering alcohol to an underage person. It's illegal to do so whether the licensee or server:

- Directly delivers the alcohol to the underage person.
- Permits another individual to deliver the alcohol to the underage person.

Indirect Delivery of Alcohol to Underage People

Licensees and servers are expected to monitor the establishment, within reason, to ensure that alcohol is not being delivered to underage people. If an incident occurs, pleading ignorance will not be a defense if those involved should have known the situation had occurred. See *Matter of Beverly Lanes v. Rohan*.

If a licensee or server knows or should know that a patron is delivering alcohol to an underage person, they must stop that delivery. If the alcohol has already been delivered, it must be removed. Failure to do so is a violation and the licensee or server will be held responsible. Charges may also be brought against the patron for delivering alcohol to an underage person. See *Matter of Al Ronick, Inc. v. New York State Liquor Authority*; *Matter of Austin Lemontree, Inc. v. New York State Liquor Authority*.

If a licensee or server has provided more than one alcoholic beverage to a patron, that patron must be accompanied back to the area where the drinks will be consumed to ensure that no alcohol will be given to an underage person. The licensee or server will be held liable if they fail to do this and an underage person is served alcohol. (See *Matter of Jo Mar Jo Restaurant Corp. v. New York State Liquor Authority*; See *Matter of Culligan's Pub, Inc. v. New York State Liquor Authority*)

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

Mitigation of Penalties for Serving an Underage Person — Alcoholic Beverage Control Law §65.4, §65.6, §65.7

Affirmative Defense

Licensees and servers may be able to present an “affirmative defense” against the charge of delivering alcohol to an underage person. To do so, they must present evidence which proves that when checking the age of the person:

- They relied upon a photo identification card that appeared to be issued by a government agency.
- They personally checked the card at the time of the incident.

Licensees and servers charged with delivering alcohol to an underage person (or to a person that appears visibly intoxicated) may receive a lesser penalty if they:

- Have had a clean disciplinary record for at least five years
- Have a valid certificate of completion (or renewal) from an Approved Alcohol Training Awareness Program (ATAP)

The fine for those who meet these conditions will be limited to \$1,000. If a licensee or server has not completed an ATAP, the licensee must submit written proof within 90 days that all employees involved in the direct sale of alcohol have completed or renewed one. This will reduce the civil penalty from the liquor authority by 25%.

Checking Identification — Alcoholic Beverage Control Law §65-b.2(b), §65.4,

Acceptable IDs

Only certain types of identification are acceptable as written evidence of age in New York:

- A valid driver’s license or non-driver identification card issued by:
 - The commissioner of motor vehicles
 - The federal government
 - Any U.S. territory, commonwealth, or possession
 - The District of Columbia
 - A state government within the U.S.
 - A province of Canada
- A valid passport issued by the United States government or any other country
- An identification card issued by the armed forces of the United States.

It is legal for a licensee or server to scan any valid form of identification that includes a bar code or magnetic stripe if the scanning device is capable of reading the information encoded on it.

Checking Identification Cards

An identification card must be checked to make sure it is valid. If the card has expired, it cannot be used to verify a person’s age. Identification cards must also be carefully checked until the licensee or server can reasonably conclude that the card:

- Belongs to the person who presented it
- Has not been altered

Penalties for Delivering Alcohol to Underage People — Alcoholic Beverage Control Law §65.1 and §130.5, §17.3, §112 and §113 General Obligations Law §11-100 and §11-101

Criminal Penalties

A server who delivers or allows the delivery of alcohol to an underage person can be charged with a class A misdemeanor. A class A misdemeanor is punishable by:

- Imprisonment up to one year
- A fine up to \$1,000
- A fine for the establishment up to \$5,000

These charges may be dropped or mitigated if the licensee or server:

- Has not been convicted of delivering or allowing the delivery of alcohol to a minor in the last 5 years *and*
- Has completed or renewed an approved alcohol training awareness program (if not, they are allowed to complete or renew one)

Civil Penalties

The license holder may also be issued penalties by the state liquor authority for violations of the law. Penalties include:

- Revocation, cancellation, or suspension of the liquor license
- A civil fine up to \$10,000
- A bond claim of up to \$1,000
- 2-year ban against future licensure of the building containing the licensed premises

Civil Liability

Licensees and servers who delivered alcohol to an underage person are liable for injuries caused by them as a result of intoxication. This may include paying money damages to innocent third parties to compensate them for personal injury, injury to property, and injury to their means of support.

Powers of the New York State Liquor Authority — Alcoholic Beverage Control Law §17.3

The New York State Liquor Authority has the power to do the following when liquor laws are violated:

- Revoke, cancel, or suspend liquor licenses and permits
- Impose civil penalties on holders of liquor licenses and permits

Prohibited Sales — Alcoholic Beverage Control Law §65

Alcoholic beverages cannot be sold, delivered, or given away to any person who is:

- Under 21 years of age (or appears to be)
- Visibly intoxicated
- Known by the server to be a habitual drunkard

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

Alcoholic beverages can be served to a person under 21 years of age if the person is a student in a curriculum licensed or registered by the state education department and:

- The person is required to taste alcoholic beverages in courses which are part of the registered curriculum.
- The beverages are only used for instructional purposes within a class that is part of the curriculum

Penalties for Underage People Purchasing Alcohol — Alcoholic Beverage Control Law §65b

It is illegal for a person under the age of 21 to purchase or attempt to purchase alcoholic beverages using identification that is:

- False
- Fraudulent
- Not their own

Penalties for a violation include:

- **First Offense:** Fine of not more than \$100 and/or community service not to exceed 30 hours. The person may also be asked to complete an alcohol awareness program.
- **Second Offense:** Fine from \$50 to \$300 and/or community service not to exceed 30 hours. The person may also be asked to complete an alcohol awareness program if they have not previously done so.
- **Third or Subsequent Offense:** Fine from \$50 to \$750 and/or community service not to exceed 30 hours. The person must also submit to an evaluation to determine if he or she suffers from alcoholism or alcohol abuse.

In addition to these penalties, the court may also suspend the person's license to drive motor vehicles or in the case of unlicensed people, the right to obtain a license. If a New York Driver's license was used for an illegal purchase, or attempted purchase the license may be suspended for:

- **First Offense:** Three months
- **Second Offense:** Six months
- **Third or Subsequent Offense:** One year or until the person reaches 21 years of age (whichever is first)

Licensee Bonds — Alcoholic Beverage Control Law §112

The state liquor authority may require a licensee to file a bond issued by a surety company. The bond will help guarantee that the licensee does not violate liquor laws and ensure that all fines and penalties that accrue will be paid. The sum of the bond will be specified by the state liquor authority.

Refusal to Reinstate a Revoked Liquor License — Alcoholic Beverage Control Law §113

The state liquor authority may refuse to reinstate a revoked liquor license for up to two years. This is based on a number of considerations. For revocation due to the illegal sale of alcohol to a minor, the state liquor authority will also consider whether a subsequent licensee, through the sale of the premises, has obtained that premises through what is called an “arm’s length” transaction. This is a sale where neither the buyer nor the seller was compelled to participate in the transaction. If the sale was made to allow the original licensee to avoid the effects of the revocation, then the license will not be granted.

The following types of sales are not considered “arm’s length” transactions:

- Sale between relatives
- Sale between related companies or business partners
- Sale or lease affected by other circumstances

These sales may be allowed and license granted if the parties can prove that the original licensee did not make the sale to avoid the effects of the revocation.

Penalties for Violations — Alcoholic Beverage Control Law §130

Penalties for violations not spelled out in the Alcoholic Beverage Control Law should be considered misdemeanors. This does not apply to section 106-6(a) of the Alcoholic Beverage Control Law, which addresses the display of nudity in an establishment

Compensation for Injuries — General Obligations Law § 11-100 and § 11-101

Injuries Caused by Intoxicated Underage People

People injured by an underage person who was intoxicated or impaired have the right to recover damages from the licensee or server if:

- They knowingly caused the intoxication
- They illegally provided alcoholic beverages to the person or assisted the person in getting them
- They knew or should have known the person was underage

It doesn't matter whether or not the underage person died or not after causing the injury. Damages can be recovered for injuries to the person, their property, or their means of support

Injuries Caused by Intoxicated People

People injured by an intoxicated person have the right to recover damages from the licensee or server if:

- They caused or contributed to the intoxication
- They illegally sold alcoholic beverages to the person or assisted the person in getting them

It doesn't matter if the intoxicated person died or not after causing the injury. Damages, both actual (those meant to compensate for actual losses) and punitive (those meant to deter the defendant from committing the same crime), can be recovered for injuries to the person, their property, or their means of support. If the plaintiff or the defendant have died, the case continues with their executors.

Offenses and Penalties for Licensees and Servers — Penal Law §55.10, §70.15, §80.05

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

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

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

Sentencing and Fines (does not apply to corporations)

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

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

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

Penalties for Corporations — Penal Law §80.10

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

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

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

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

Unlawfully Dealing with a Child in the First & Second Degree — Penal Law §260.20, §260.21

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

- The person knowingly allows a child under 18 years old to enter or remain in a space where there is:
 - Sexual activity as defined by the Alcoholic Beverage Control Law
 - Activity involving controlled substances or marijuana
- The person gives or sells alcoholic beverages to a person under 21 years old. This does not apply if:
 - A parent or guardian provides the alcohol to the underage person
 - The underage person is tasting alcohol as a requirement of a curriculum licensed by the state education department

Licensees and servers may be able to present an “affirmative defense” against the charge of unlawfully dealing with a child in the first degree. See the section in this document titled: *Mitigation of Penalties for Serving an Underage Person*.

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

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

- The person (owner, lessee, manager, or employee) allows a child under the age of 16 years old to enter or remain in a place where alcoholic beverages are sold or given away unless:
 - The child is accompanied by a parent, guardian, or adult authorized by a parent or guardian
 - An entertainment or activity is being conducted on a premises for or by a non-profit school, church, or other educational or religious institution
 - The establishment is closed to the public for a specific time to conduct an activity or entertainment, the child is on the premises and no alcohol is sold, served, or given away
 - It is permitted by law

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- The person tattoos the body of a child under the age of 18 years old with ink that cannot be removed
- The person sells tobacco in any form to a child under the age of 18 years old

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

Case Law

Matter of Al Ronick, Inc. v. New York State Liquor Authority, 157 A.D.2d 656	The server sold two alcoholic drinks to an adult male at the bar. The adult male then handed one of the drinks to a female seated next to him at the bar. The female was under the legal age.
Matter of Austin Lemontree, Inc., v. New York State Liquor Authority, 147 A.D.2d 476, affirmed, 74 N.Y.2d 869	An alcoholic drink was sold to a male patron at the bar. The patron then gave the drink to a female located three feet from the bar. Four or five bartenders were working at the bar at the time. The female was under the legal age.
Matter of Jo Mar Jo Restaurant Corp. v. New York State Liquor Authority, 197 A.D.2d 625	The server sold two alcoholic drinks to an adult male at the bar. The male returned to a table where a female was seated, and gave her one of the drinks. The bartender had an unobstructed view of the table. The female was under the legal age. (If the view of the bartender had been obstructed, the charge could have been sustained as a result of a “multiple delivery”.)
Matter of Culligan’s Pub, Inc. v. New York State Liquor Authority, 170 A.D.2d 506	The server sold two pitchers of beer at the bar and provided five glasses. The beer was consumed by five males at a table situated seven or eight feet from the bar. The bartender had an unobstructed view of the table. One of the males was under the legal age. (If the view of the bartender had been obstructed, the charge could have been sustained as a result of a “multiple delivery”.)