

APPENDIX B

Responsible Alcohol Management Program Frequently Asked Questions

The FAQs must be available to all users. You may also choose to use some of these questions as a pre-test leading into a section or as a knowledge check at the end of the section in which the topic is covered.

1. What is a standard drink?

Board Regulations provide that a standard-sized alcoholic beverage is twelve (12) fluid ounces of malt or brewed beverage, four (4) fluid ounces of wine (including fortified wine), or one and one-half (1½) fluid ounces of spirits. [40 Pa. Code § 13.201].

2. What is the difference between light beer and regular beer?

The main difference between light and regular beer is calories. Light beer has fewer calories than regular beer.

3. Is it legal to serve a patron more than one drink at a time?

There is nothing in the Liquor Code that prohibits serving more than one drink to a patron at a time as long as the patron is not visibly intoxicated or a minor, and assuming the drinks are served during legal hours of operation.

4. How many drinks can the body eliminate per hour? At what rate does the body eliminate alcohol?

The body will eliminate approximately 1 standard drink per hour. This is a constant rate, both during and after drinking.

5. May a minor be sold non-alcoholic beer?

No. Although it is not a violation of the Liquor Code it is a violation of the Pennsylvania Crimes Code. Section 6310.7 states “A person commits a summary offense if he intentionally and knowingly sells or furnishes nonalcoholic beverages to any person under 21 years of age”. As used in this section, the term “non-alcoholic beverage” means any beverage intended to be marketed or sold as a non-alcoholic beer, having some alcohol content but not more than .5% alcohol by volume.

It is also recommended that any legal non-alcoholic drinks that are purchased by minors such as, virgin daiquiri, etc. should appear differently than their alcoholic counterparts. This can be accomplished by serving them in a different style glass so that they are easily identifiable by all employees.

6. Can dancing or any other physical activity help the body to eliminate alcohol?

Physical activity doesn't eliminate alcohol from the blood stream. It may cause a person to perspire, but perspiration, urination, and respiration only eliminates 10% of the alcohol consumed.

The body eliminates approximately 1 standard drink an hour, so time is the only thing that sobers up a person.

7. Is a licensee liable for serving a visibly intoxicated person or a legally intoxicated person?

A licensee is culpable only if it serves a visibly intoxicated person.

8. What is visible intoxication?

Visible intoxication is defined as the level of impairment that any person can detect by noticing the various obvious visible signs of intoxication.

9. What are some factors that determine visible intoxication?

Some of the factors that affect visible intoxication are: tolerance, health, food intake, emotional state, and the rate and amount of alcohol consumed.

10. What determines if someone is visibly intoxicated?

If it is apparent that the person's behavior, judgment, and coordination have diminished, then the person may be considered visibly intoxicated.

11. What are some of the signs of visible intoxication?

Some examples of the signs of visible intoxication that a server will notice can include: glassy or bloodshot eyes, loud or slurred speech, lack of coordination or concentration, spilling a drink, staggered walk, etc.

12. What is legal intoxication?

Legal intoxication under the motor vehicle code is an objective measurement of blood alcohol content ("BAC").

13. How is legal intoxication determined?

Legal intoxication is determined by performing a blood, breath, or urine test.

14. Can a server determine if a patron is legally intoxicated?

No. A server can only detect visible intoxication.

15. What is the correlation between visible and legal intoxication?

There is no correlation between the two. Visible intoxication can occur at either a high or low BAC.

16. What are some factors that affect legal intoxication?

Some of the factors that affect legal intoxication are: weight, gender, health, food intake, and the rate and amount of alcohol consumed.

17. Can a server serve an alcoholic beverage to a visibly intoxicated person?

No. A licensee and its employees are prohibited by the Liquor Code from serving or permitting to be furnished, alcoholic beverages.

18. What hours may licensees legally sell alcohol?

Club licensees may only sell (sell, serve, give, furnish, or deliver) alcohol between 7:00 a.m. and 3:00 a.m., Monday – Sunday. Distributor licensees may sell alcohol between 8:00 a.m. and 11:00 p.m., Monday – Saturday (to non-licensees), 9:00 a.m. and 9:00 p.m. Sunday by permit only. Restaurant, Hotel and Limited Winery licensees may only sell alcohol between 7 a.m. and 2 a.m. Monday to Saturday, 9 a.m. to 2 a.m. Sunday (Effective January 17, 2017, Act 166 removed the Sunday sales with a meal requirement and permits licensees to begin selling at 9 a.m. Sunday. Eating Place Retail Dispenser licensees may only sell alcohol between 7:00 a.m. and 2:00 a.m. Monday – Saturday. 11:00 a.m. and 2:00 a.m. Sunday***.

*****Sunday Sales with a Meal - Act 113 of 2011** allows the holder of an eating place retail dispenser license, which also holds a Sunday sales permit, to sell alcohol on Sundays between 9:00 a.m. and 11:00 a.m., provided that the licensee offers a “meal” beginning at 9:00 a.m. A “meal” is defined as “food prepared on the premises, sufficient to constitute breakfast, lunch or dinner; it shall not mean a snack, such as pretzels, popcorn, chips, or similar food.”

Note: All patrons must vacate the premises no later than ½ hour after the legal selling time.

19. Can a patron bring their own alcohol into a licensed establishment?

Yes, unless there is a local ordinance or house policy that prohibits this practice. The licensee should make sure the alcohol was legally purchased according to Pennsylvania law. The alcohol can only be served during legal hours of operation.

20. Can a patron leave the premises with alcohol?

Retail licensees can sell 192 fluid ounces or less of malt or brewed beverages for off-premises consumption in any container they wish, i.e. open bottles, full glasses, pitchers, etc. Wine may be taken from the retail establishment if the unfinished bottle was purchased in conjunction with a meal and is resealed. Local municipalities could have ordinances which prohibit open containers of alcoholic beverages within the boundaries of that municipality. Therefore, you should contact the local municipality to see whether such ordinances are in effect within its boundaries.

21. What is administrative liability?

In the context of a licensed premises, administrative liability results from a violation of the Pennsylvania Liquor Code or Board's Regulations.

22. Who can be held liable under administratively liable?

The licensees (owners) can be held liable under the Pennsylvania Liquor Code.

23. What administrative liability would the licensee face if a VIP were served alcohol?

The licensee can receive a citation resulting in fines ranging from \$1000-\$5000. The liquor license can also be suspended or revoked. The Administrative Law Judge will also require the licensee

to obtain RAMP Certification. Licensees who are already RAMP certified at the time of the citation and who have not sold to minors or visibly intoxicated patrons in the previous four (4) years are subject to a fine ranging from \$50-\$1000.

24. What is civil liability?

Liability to be sued in a civil action. Liability for money damages arising from damages caused by a patron's intoxication is often referred to as "Dram Shop Liability."

25. May a licensee be held liable for money damages arising from a patron's intoxication?

Section 479 of the Liquor Code provides that a licensee who serves an individual who is not visibly intoxicated shall not be liable for damages arising incidents occurring off of the licensed premises caused by the customer.

26. Why can individual servers and managers be held liable in civil liability cases?

The server can be held liable because they had control of the alcohol and served it directly to the visibly intoxicated person. The manager may be held liable because it happened during their watch.

27. How can it be proved that a visibly intoxicated person was served?

It can be proven by eyewitness accounts or circumstantial evidence.

28. How long do people have to file a Dram Shop lawsuit?

They have 2 years from the date of the incident to file the lawsuit.

29. Are the licensees and servers expected to remember the incident 2 years from the date?

Yes, they are expected to remember the incidents that occur in the establishments.

30. How can they remember something that happened 2 years ago?

They can fill out an Incident Documentation Form or keep their video surveillance tapes for 2 years.

31. What is an Incident Documentation Form?

An Incident Documentation Form is a form that is used to write down specific information about the incident and those involved. It simply can act as a written reminder of the incident.

32. When, why, and how should it be completed?

An incident documentation form should be completed any time an incident occurs. Just shutting someone off is enough to document. It should be completed with as much information as possible and as soon as the incident occurs.

33. How long should it be kept?

It should be kept for at least 2 years but you are advised to consult with legal counsel.

34. How can servers slow down service to a potential VIP?

They can take time serving the drinks. They can offer a free non-alcoholic drink or water. They can offer food or try to get the person involved in another activity besides drinking.

35. How should a server shut off a VIP?

A server should be courteous to and concerned about the person they are shutting off. They should never be offensive or use derogatory words. They should also offer safe driving alternatives.

36. Who is considered a minor?

Pennsylvania law specifically defines a minor as a “person under the age of 21 years.” [1 Pa.C.S.A. § 1991].

37. How can you tell if someone is under 21?

The only sure way is to card them.

38. Who should be carded?

Although there is no legal requirement that a licensee obtain identification prior to providing alcohol service, it is suggested that anyone who looks under the age of 35 should be carded, unless your house rules state otherwise. (ex. Everyone)

39. What is considered acceptable ID?

There are only 5 types of ID that, when examined and relied upon in good faith by a licensee, will serve to insulate a licensee from liability for sales of alcohol to a minor.

They are:

- 1) A valid Photo Driver’s License issued by any state or territory of the United States.
- 2) A valid Photo Identification Card issued by any state or territory of the United States.
- 3) A Canadian driver’s license or other bona fide Canadian identification, such as a Canadian-issued passport that contains a photograph
- 4) A valid Photo Military ID containing the holder’s photograph.
- 5) A valid Passport, Passport Card or travel visa containing the holder’s photograph.

Any other form of ID cannot be relied upon as proof of age.

40. How can they determine if the ID presented to them is real or fake?

They should practice using the F.E.A.R. method of carding.

41. What is the FEAR method?

Feel, Examine, Ask, and Return or refuse the identification presented.

42. What do they feel for on the ID?

The person should feel for any imperfections with the lamination or the addition of a photograph.

43. What do they examine on the ID?

They should examine the font, the numbers, state seal or hologram, the background, the expiration date, the driver's license number, and the photograph - making sure it matches the person handing it to them.

44. What kinds of questions should they ask?

They can ask questions pertaining to the information contained on the ID such as: zip code, address, middle initial, etc.

45. Why does the server have to return the ID if it is fake?

Even though the ID is considered to be fake, it is not the server's property. The licensee/server should call the police while still in possession of the ID, and then return it after confirmation.

46. How do they know if an out of state license is real or fake?

They may use the *ID Checking Guide* to aid them. They may also use an ID swipe machine to read the magnetic strip on the back of the ID.

47. What must a licensee use to defend themselves against a charge of sales to minors? Will using one of these defenses really help a licensee?

It is recommended that a licensee document each time they card an individual. In order for a licensee to defend themselves against a charge of sales to minors they must be able to provide that: (1)The minor was required to produce a valid form of identification as defined by the Liquor Code; (2)One of the following three forms of documentation were used: (a) a signed statement by the person to whom alcoholic beverages will be provided in the form required by the Liquor Code (Declaration of Age Card); (b) or a photograph, photocopy, or other visual or video representation of the identification card used by the person to whom alcoholic beverages will be provided; (c) or use of a transaction scan device as described in the Liquor Code; (3) that the documents were relied upon in good faith. The Liquor Code states that "no penalty shall be imposed on a licensee, licensee's employee or Pennsylvania Liquor Store Employee for serving alcohol to a minor if the licensee or employee can establish that the minor was required to produce a valid form of identification and that one of the forms of documentation were used and relied upon in good faith."

48. What is the PLCB 931 Declaration of Age Card?

This card is used by the licensee to provide proof of whom they carded and the form of ID presented.

49. Who should fill out a 931 card?

If this is the licensee's preferred method of documentation of carding, it is recommended that anyone who is carded should complete a Declaration of Age Card. Otherwise, the licensee would use one of the other acceptable methods.

50. How long do they keep the cards on file?

The cards should be kept for a minimum of 2 years in an index card file.

51. Do owners face administrative liability if a minor is served in their establishment?

Yes, they will receive a citation with a potential fine of \$1,000 to \$5,000 (\$50 to \$1,000 if a first time offender who is RAMP certified at the time of the violation), and a possible suspension or revocation of their liquor license. The Administrative Law Judge will also require the licensee to obtain RAMP Certification.

52. What criminal liabilities do servers/patrons face if they intentionally and knowingly serve or provide alcohol to minors?

It is unlawful for anyone to intentionally and knowingly sell or intentionally and knowingly furnish, or purchase with the intent to sell or furnish, any liquor or malt or brewed beverages to a person who is less than 21 years of age. If convicted, they shall pay a fine of \$1,000 for their first offense and \$2,500 for each subsequent violation.

53. Does the Dram Shop Law pertain to the service of alcohol to a minor?

Yes, the licensee, server, and manager can be held liable for any death, injury, or property damage caused by a minor who was served alcohol.

54. How can a minor legally frequent a licensed premises? Who can they be with?

The general rule in Pennsylvania is that no one younger than age twenty-one (21) may be present in an establishment licensed to sell alcoholic beverages. However, there are five (5) exceptions to the general rule:

1. Minors with parents ("Parent exception")

If a minor is with one (1) or both of the minor's parents, then the minor is permitted to be on the premises. The minor and parent(s) can sit anywhere on the premises, including the bar area, and alcoholic beverages can be served to the parent(s) or to any other adult with the minor.

2. Minors with legal guardians ("Guardian exception")

If a minor is with a legal guardian, then the minor is permitted to be on the premises. The minor and the legal guardian can sit anywhere on the premises, including the bar area, and alcoholic beverages can be served to the guardian or to any other adult with the minor.

3. Minors under proper supervision ("Proper supervision exception")

If a minor is under proper supervision, then the minor is permitted to be on the premises. Section 102 of the Liquor Code defines proper supervision as someone who is at least twenty-five (25) years of age, who is directly responsible for the care and conduct of the minor while on the premises, and who keeps the minor within his or her sight or hearing. Proper supervisors are generally unpaid volunteers. However, licensees or their employees are allowed to act as proper supervisors as long as they are not performing any other employment-related duties at the same time. [47 P.S. § 1-102].

If a minor is in the premises under proper supervision, the minor can sit anywhere on the premises, including the bar area, and alcoholic beverages can be served to any adults with the minor.

Proper supervisors can only supervise a limited number of minors. In Philadelphia, that number is five (5). In the rest of Pennsylvania, the number is twenty (20), i.e., one (1) proper supervisor

can supervise up to twenty (20) minors. Notwithstanding the above limitations, if the minors are on the premises as part of a school-endorsed function, each proper supervisor can supervise up to fifty (50) minors.

Regardless of relationship, someone who is eighteen (18) years old may be properly supervised by anyone who is twenty-five (25) or older, as long as that person is directly responsible for the care and conduct of the minor while on the premises, and keeps the minor within his or her sight or hearing.

4. Minors attending a social gathering (“Social gathering exception”)

If a minor is attending a social gathering, then the minor is permitted to be on the premises. A social gathering is an event marketed to or catering to minors, in whole or in part, for which at least forty-eight (48) hours advance notice has been given to the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”). No alcohol can be served to anyone, even adults, at a social gathering and all alcohol must be removed from or secured by lock and key at the licensed premises.

5. Minors at food-oriented establishments (“Pizza Hut exception”)

If a restaurant, hotel, or retail dispenser licensed premises has gross sales of food and non-alcoholic beverages equal to fifty percent (50%) or more of its combined gross sales of both food and alcoholic beverages, then minors are permitted on the premises. The presence of a parent, legal guardian, or proper supervisor is not necessary.

Minors present under the Pizza Hut exception are not permitted to sit at the bar section of the premises. Further, no alcoholic beverages can be served to any adult at the table or booth where the minor is seated (unless the minor is also there with a parent, legal guardian, or proper supervisor), without risk of citation by the Bureau for having minors frequent the premises. Note this exception does not apply to clubs.

Pennsylvania law specifically defines a minor as a “person under the age of 21 years.” [1 Pa.C.S.A. § 1991]. Minors are not permitted on licensed premises unless they fall under one (1) of the above-listed exceptions. Be advised that it does not matter if a minor is age eighteen (18) or age twenty (20); the same rules apply. It should also be noted that an establishment is permitted to make house rules that place additional limits as to when minors are allowed on the premises.

55. Are minors permitted to sit at the bar with their parents?

Yes, unless the licensee has a house policy preventing this to occur.

56. What time does a minor have to leave the licensed establishment?

At the time their supervision leaves, unless the licensee has a stricter house policy saying that the minors have to leave at a certain time.

57. Are minors permitted if smoking is allowed on the premises?

If a retail establishment allows smoking, then no one under the age of eighteen (18) is permitted on the licensed premises.

Note from the Department of Health: The provisions for private clubs in the CIAA do not require a private club to restrict children under 18 from being in the club while smoking is occurring. Any such restriction to protect children from exposure to secondhand smoke is the responsibility of the club.