

Trends, tips, and useful information . . .

he "back-bar inspection" portion of our newsletter is designed to provide law enforcement personnel, and our stakeholders, with up-to-date information on alcohol-related crime trends, enforcement tips, and additional information that may be useful in enhancing ABC investigations. Although this section is specifically written for the purpose of increasing officer awareness and reducing alcohol-related crimes, it will also enlighten all readers as to what is new in terms of our response to irresponsible alcoholic beverage sales, service, and consumption.

Identification Basics: A Legal Update

■ 2010 Changes Expand Bona Fide Identification Requirements

As discussed in a previous edition of the *ABC Debriefer* (Volume 11, Issue 4) the use of bona fide evidence of age can be a criminal and administrative defense regarding the sale of alcoholic beverages to underage individuals. This legal defense is established in Section 25660 Business and Professions Code (BP), and outlines the requirements for a document to be considered bona fide evidence of age. The document *must be issued by a government agency and contain the name of the person, date of birth, a physical description, a photograph, and be currently valid.*

On January 1, 2010, California Assembly Bills 59 (Jeffries) and 1191 (Conway) became effective, amending Section 25660 BP, and expanded the types of identification that will constitute bona fide evidence of age in regards to purchasing alcoholic beverages. The expansion of this Section 25660 BP will afford retailers with additional protection by adding additional documentation to the list of identification which may be used as a means of establishing the age of individuals attempting to purchase alcoholic beverages. The section will now read as follows (underlined provisions reflect 2010 changes):

- 25660. (a) Documentary evidence of age and identity. Bona fide evidence of majority and identity of the person is a document issued by a federal, state county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, an identification card issued to a member of the Armed Forces that contains the name, date of birth, description, and picture of the person, or a valid passport issued by the United States or by a foreign government.
- (b) In the event an identification cad issued to a member of the Armed Forces is provided as proof of majority and lacks a physical description, but does include date of birth and a photo, further proof of majority shall not be required.
- (c) Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon bona fide evidence in any transaction, employment, use or permission forbidden by Section 25658, 25663, or 25665, shall be a defense to any criminal prosecution therefore or to any proceedings for the suspension or revocation of any license based thereon.

The California Department of Alcoholic Beverage Control (ABC) has examined changes in Section 25660 BP and established specific guidelines pertaining to this section. Changes in Section 25660 BP only add to the list of affirmative defenses. Simply stated, in any legal proceeding involving the alleged sale or furnishing of an alcoholic beverage to a minor, the person asserting the defense has the burden of proof (*Lacabanne Properties, Inc. vs. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181*). In matters pertaining to alleged documentation used to purchase alcoholic beverages, it is the licensee's burden to prove the identification in question, did comply with the requirements of Section 25660 BP.

There are two parts to this defense: first, the identification must meet the requirements of Section 25660. With respect to

"federal, state, county, or municipal government, or subdivision or agency thereof, such issuing government or agency shall be located within the United States. Changes in the section specifically cite "a valid passport issued by the <u>United States or by a foreign government</u>. As military identification issued by foreign governments is not specified, "Armed Forces" shall be identified as the United States military. Secondly, the person accepting the identification must make a reasonable inspection of the identification, and act with due diligence to confirm the identification presented is that of the person presenting it. Persons unfamiliar with any identification, should not rely on its authenticity without additional verification (i.e. identification guides containing photographic representations of the concerned documentation). Likewise, if presented with identification that describes the presenter as being 6'5" tall and the person is in fact only 5' tall, then it would likely not be reasonable to accept it. (For additional reference see: Department of Alcoholic Beverage Control vs. Alcoholic Beverage Control Appeals Board (Masani) (2004) 118 Cal.App.4th 1429: Lacabanne Properties, Inc. vs. Department of Alcoholic Beverage Control (1968) 262 Cal.App.2d 181; Farah vs. Alcoholic Beverage Control Appeals Board (1958) 159 Cal.App.2d 335; and 5501 Hollywood Inc. vs. Department of Alcoholic Beverage Control (1957) 155 Cal.App.2d 748).

Nothing in Section 25660 BP overrides the licensee's right pursuant to Section 25659 BP. This section authorizes anyone to "refuse to sell or serve alcoholic beverages to any person who is unable to produce adequate written evidence that he or she is over the age of 21 years." By exercising diligence and relying on acceptable forms of identification when selling and serving alcoholic beverages, retailers will be better able to meet the needs of their patrons while preventing underage individuals from gaining access to alcoholic beverages.

Officers involved in daily ABC enforcement should familiarize themselves with the above changes. By applying regulations effectively and within the "spirit of the law," we will be better able to assist the ABC retail community in reducing the availability of alcoholic beverages to minors and thereby reduce alcohol-related crime tendencies. Officers should remain cognizant that a majority of retailers are not identification experts, however through education, training, and fair application of the law, we can better able them to assist the law enforcement community in preventing alcoholic beverages from reaching the hands of unintended individuals

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