

## **Sue the Minor and Parents of the Minor Who Uses False ID to Buy Alcohol**

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Some kid with false identification walks into your store or bar one fine day and manages to buy alcohol from your employee. Yes, your clerk or waitress or bartender did check the ID, but a better inspection would have shown that the ID was a second class attempt at a computer generated out of state license. Standing about five feet from the minor are two ABC investigators taking mental notes. A few moments later, one investigator asks the kid how old he or she is, and he or she eventually admits his or her true age as 16 or 17. The investigators find the fake identification and easily see its errors and flaws. You are busted by the ABC, pay an attorney to fight the criminal case and the ABC case. Your license is suspended for 25 days, and you lose \$ 75,000 in sales. Can you sue the kid and parents and get your losses back from them in civil court?

If the kid with the false ID was driving and negligently or intentionally ran you over, you could sue that kid and get a judgment for serious money damages. If the minor was under the age of 18 at the time, and intentionally drove over you, you could go after the parents as well in civil court. California law tells us "Any act of willful misconduct of a minor which results in injury or death to another person or in any injury to the property of another" may result in liability for the minor and the parents of the minor.

This law provides the means to hold parents of minors legally liable for injuries caused by the willful misconduct of their children. The law was designed to find the minors' parents liable for acts of malicious mischief and vandalism. By a different statute the minor is legally responsible for intentional misconduct and for negligent acts where others are injured as a result. In our scenario, the 16 or 17 year old intentionally engaged in fraudulent misconduct that injured you the ABC licensee. That minor could be liable for money damages in civil trial. Parental liability is a more difficult issue. Does it matter whether the parent knew or should have known what the kid was up to at your licensed premises?

Recently, the family of a teenage girl paid \$250,000 to a severely injured woman where the victim had been stabbed by a 16 year old girl when the teenager broke into the victim's home in a methamphetamine induced burglary. The same Civil Code Section was the basis for liability. In another case the Court of Appeal recently reviewed the statutory liability created by this section and found the reasonable interpretation of the statute would hold parents liable where a parent had either legal custody or control of the minor.

This conclusion should be compared to the holding of the Court of Appeal in *Cynthia M v. Rodney E.* (1991) where 16 year old Cynthia delivered minor Rodney's baby all with

great medical expense. Rodney's parents were held not liable, because while financially injured by the willful misconduct of Rodney, Cynthia herself was not an innocent victim in a civil law sense. The Court reasoned:

We have emphasized the word "innocent" because we believe there is an important distinction between a party who is injured through no fault of his or her own and an injured party who willingly participated in the offense about which a complaint is made. Given the admittedly scant legislative history of ...[the statute] we do not believe the Legislature intended ...[the law] to encompass torts in which the injured party was a willing participant in the "willful misconduct." "Between those who are equally in the right, or equally in the wrong, the law does not interpose." .... Also, "He who consents to an act is not wronged by it." (Citations omitted)

In the scenario where the 16 or 17 year old with false identification buys alcohol from your employee, in discussing general issues of liability, some of the questions come down to these: did your waitress or clerk or bartender consent to the wrongful act of the minor? Was your employee a willing participant in the misconduct? Did your employee innocently get taken in by this kid's fraud and deceit?

In a few states, this very type of litigation has been tried and has been successful to some extent. Last summer Fox News Channel reported on a 19 year old female Notre Dame freshman who, along with around 212 other kids, bought alcohol in a bar in Indiana in January 2003. Faced with the choice of "having its liquor license revoked or paying a \$5,000 fine and selling its liquor permit to a new owner" the bar's corporate owner sued this freshman and others seeking about \$3000 each as compensation for the damages and losses caused by the alcohol purchase and resulting administrative action. In that case and in some similar cases around the country, bar owners caught selling to minors are suing those kids for misrepresenting their age. In those cases, the suits are based on fraud since the minors lied about their age and/or presented fake ID's, and the bar owner or the waitress or bartender relied on the misrepresentations. A few years ago a Massachusetts bar owner was successful in suing a minor who used fake ID to buy beer in his bar.

Let's change our scenario a little. The 17 year old minor is accompanied by local law enforcement officers, because that minor is a police decoy. The identification presented is real and shows a person who won't be old enough to buy alcohol for another four years or so. Your clerk is utterly fooled by the smooth demeanor and sophisticated manner of the decoy and sells to the kid. At the administrative hearing the judge is impressed by the decoy's fairly adult behavior but is overwhelmed by his or her ever so youthful face and physique. Accusation sustained. Suspension or revocation as above. You turn to your lawyer and ask: Can I sue this kid? Can I sue this kid's parents? Can I sue the police department?

In addition to the questions, concerns and factual issues that apply to the non-decoy, there's another layer of legal analysis. As far as the police are concerned: no you cannot sue the police department just for using a police decoy. This is not to say that if the police engage in some physical abuse or attack on your civil rights, you are without recourse. However, you cannot sue the police for simply doing their job. They are immune from civil liability for their discretionary acts within the scope of their employment. State

statute provides: "A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment."

However, most police decoys are not government employees. Most decoys are simply volunteers who hold some relationship to an officer or the department or attend an after school program or have an unpaid cadet position with the police department. Under wholly different circumstances, volunteers have been given public employee type immunity from civil liability, but not always as a volunteer acting with police in police investigations. Deputized or appointed Reserve Officers are immune by statute. Volunteers rendering technical assistance in a hazardous occurrence are immune by statute. There is no specific immunity delineated by statute to cover minor decoys. Generally, without statutory protection, volunteers to the government are not public employees who enjoy immunity from civil liability. In fact, the volunteer decoy may be specifically excluded from the definition of public employee by the statute that excludes: "Any person performing voluntary service for a public agency..." unless the government issues a specific legislative authorization.

Most likely the problem with suing the minor decoy lies elsewhere. The minor decoy is authorized by state statute to work with local law enforcement. Purchasing alcohol wouldn't then constitute misconduct nor would it constitute a negligent act resulting in injury. However, be advised that if the decoy negligently knocks over the coffee machine and burns down the building, he isn't a city employee. He may be liable for damages; the city probably won't be. If he does that intentionally, maybe his or parents may be liable as well.

That 17 year old kid who presented your employee with false identification may be the first named defendant in California in such a lawsuit where you the licensee will sue him or her and his or her parents and will allege that when the minor showed up at your business with fake ID in order to buy alcohol, he or she engaged in willful misconduct and intentional misrepresentation resulting in the loss of your ABC license as severe economic injury.

**Solomon, Saltsman & Jamieson are attorneys practicing in the areas of ABC law, ABC Appeals Board cases, and all related Land Use Matters such as City and County Conditional Use Permits, Variances, Police and Fire permits, Entertainment law, and Gambling Law; as well as Business and Personal Injury litigation. Solomon, Saltsman & Jamieson can be reached at 800 405 4222."**