

The World of False Identification

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Any licensee's list of nightmares includes selling alcohol to a minor who has fake ID. Welcome to the world of false identification. In this world minors use good looking identification cards belonging to an older sibling or purchased at their college campus or manufactured using mildly sophisticated computer software. Drivers' licenses can be stolen, borrowed, or found. In this world, by the time law enforcement interrogates the minor, the ID no longer exists, at least not in the youth's possession. The kid goes home. Your clerk or bartender gets a citation and goes into the criminal justice system and you get an ABC Accusation and a hearing. Remember, the outcome good or bad in the Criminal case, does not determine or guide the ABC's proceeding.

The statute governing the defense in this major problem is Business and Prof. Code Section 25660, which tells us that Bona Fide evidence of majority is a document issued by a government containing name, birth date,

description and picture. In a sale to a minor prosecution, and in other cases involving licensed premises and minors, reliance on such bona fide evidence “shall be a defense.”

Guidance from the courts explains the statute. In 1949 the Court of Appeal in *Young v. State Board of Equalization* wrote: “...[S]uch a registration certificate is bona fide documentary evidence....The clerk, if he acted in good faith and without actual knowledge, gained from the appearance of the purchaser or otherwise, that the card did not belong or could not belong to the minor, and if the alteration was with reasonable diligence not discernible or ascertainable, had a right to assume...” its validity.

Later, the Court of Appeal in *Conti v. State Board of Equalization* in 1952 held: “...[T]he statute does not impose upon the licensee the duty of determining at his peril whether the driver’s license is a bona fide license of the person presenting it. Possession...is presumptive evidence...” of ownership by the holder.

In 1955 the Court in *Keane v. Reilly* warned: “The defense must be asserted in good faith.” If the evidence demonstrates that the holder of the ID isn’t

the person identified by the ID, the defense will fail. Further, the Court in *Lacabanne Properties v. Alcoholic Beverage Control Appeals Board* taught that reliance by the seller on earlier observation of identification may establish the defense. The Court ruled where bona fide proof of majority was actually exhibited at entry into the premises, the seller could reasonably rely on that original demand.

Also defining the defense of reasonable reliance on government identification, the Alcoholic Beverage Control Appeals Board reviews ABC decisions for legal sufficiency. In *S.S. Schooners v. Department* (January 12, 1999) AB 7039 (tried by the undersigned) the Appeals Board considered use of and reliance on an Irish Passport and Resident Alien Card issued to an Irish citizen who was not the presenter of the identifications. The Administrative Law Judge sustained the accusation opining the photograph on the Passport “looked nothing like” the presenter. Reliance on that ID, then, was not reasonable and in good faith. The ALJ also noted that the police officers were able to see that the minor was untruthful about who she was. The Appeals Board disagreed and reversed.

In *Schooners*, the Board acknowledged the presenter's Irish accent as an indicia of true ownership of Irish government ID. The Board also said the photograph in the Passport was taken 10 ½ years before the incident, the Board noting that appearances change with time. The Board also understood that several trained police investigators interrogated the minor for at least 20 minutes before concluding that she was not the true owner of the identifications. With all this, the Board concluded the licensee's "employee acted as a reasonable and prudent person would have acted under the circumstances." The Board continued: "A licensee is required to act reasonably, not perfectly."

More recently, the Board has hinted at a more strict statutory interpretation. In *7-Eleven (Salem) v. Department* (April 2002), AB 7771, the Board indicated that it is conceivable that the 25660 defense may not be available "when the identification proffered by a minor is that of a person other than the minor...which contains the name, date of birth, description, and a picture of the person." (Emphasis by the Board.)

It is difficult to believe that the Board would interpret 25660 in a fashion that would preclude reliance on ID presented by a minor to whom the

identification was not issued. After all, that is what “false identification” is.

When true evidence of majority is shown by the person to whom the government personally issued the ID, then the presenter is actually and always over the age of 21.

There is always danger in relying on identification where there is more than a “mere suspicion” that the identification isn’t genuine and really issued to the presenter. There is the danger the minor will lose the ID after the sale as he/she leaves the location with eight or more of his/her close friends. There is the danger the minor will swear under penalty of perjury that he/she never used and never possessed false identification. There is the danger a reasonably close inspection of the ID will show it just doesn’t look right; that the photograph shows someone obviously not the presenter; that the height shown is several inches taller than the height of the presenter (most kids don’t shrink); that the sex indicated on the card is different than the apparent sex of the presenter (be careful here); or that the age difference between ID and presenter is so significant that acceptance of the ID is just not reasonable. It should be understood that the more discrepancies between ID and presenter, the greater likelihood the ID is “false.” Note the expiration date. If expired, note when the ID expired. The more time that has

passed since, the greater likelihood the ID was found by the presenter and not issued to the presenter.

Licensees should also remember that the 25660, reliance on government issued photo ID with physical description is an affirmative defense. The licensee accused of the “minor offense” has the burden of proving that defense. The law clearly tells us that licensees do not “act at their peril” in selling to individuals holding bona fide evidence of majority. The law tells us licensees must act reasonably not necessarily perfectly. But in the licensed premises, licensees and employees selling alcoholic beverages should be very wary. If in doubt, don’t sell. If unsure, ask for more and different ID. Minors who have their older sibling’s ID may not have corresponding credit cards or corresponding school ID for comparison. Perhaps more problematic is the ID manufactured by the computer genius at school. All the information on that ID will be exactly right except, obviously, the date of birth. The photograph will be that minor. If you check the back of the ID, that may provide clues as to invalidity with absence of the magnetic strip that so many states now include in their licenses. If still unsure, ask questions that the presenter will likely know only if that’s their own ID. When did he/she graduate High School? What’s his/her astrological

sign? Asking for a signature sometimes weeds out the good ID from the bad.

If you're still not sure, don't sell. The law allows you to act with restraint and to exercise discretion.

You've demonstrated good faith reliance on bona fide identification... but still sold alcohol to a minor, and now the ABC is pursuing its Accusation. But don't just give up and take the "sales to a minor strike." Take heart. These are cases that can be fought and won. Your nightmare may have a happy ending.

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 Land Use Permits, Variances, Police and Fire Permits, Entertainment Law, Gaming Law, as well as Personal Injury litigation. Solomon Saltsman & Jamieson can be contacted at 800-405-4222.

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