



FROM TOPEKA: It's Time Kansas Pass the "Brown Jug" Law

By R.E. "Tuck" Duncan, Attorney at Law

Recently I had a client who was cited for selling to an underage person as a result of a "sting" operation. The reason: failure to check the identification. The clerk on duty really had no incentive to check the I.D. (except that it's the law not to sell to a person under 21).

Truth is, most underage citations at liquor stores are the result of stings, not because a licensee was caught doing so doing.

At a recent meeting of the National Conference of State Liquor Administrators meeting which I attended in October, the subject of underage enforcement was one of the discussion topics. I learned that providing an incentive for clerks to check was really critical. Basically, the sale to an underage person is a crime of indifference.

The speaker from the Responsible Retailing Forum related the story that the forum had given liquor store clerks a name of a person to watch for, and if the clerk identified that person, the clerk would receive \$100.00. Nearly every clerk checked every ID, and the Forum paid out a significant sum as a result of this experiment. Incentive.

So how do we create an incentive in Kansas, and provide an enforcement mechanism that is not just a series of stings? It's call the "Brown Jug" law.

Alaska passed the first more than a decade ago and the bill is named for the Brown Jug liquor store chain in Anchorage that first pushed for the measure. Only a small number of states have such a law in place. But since technology has made it easier to produce fake identification cards, many small businesses are spending more to hire additional staff to check IDs.

The Alaska law was promoted by a para-legal, who also happened to be vice-president of the Brown Jug liquor store in Anchorage. He promoted the notion that the market for fake IDs could be better regulated, based on the following logic: When a minor uses a false identification or misuses a valid ID to attempt to circumvent the law, a crime has been committed, and that's the case in almost every jurisdiction. Too often the business that has been hoodwinked gets charged with the crime when it is in reality the business that is the victim. In Alaska,

they took the tack that a business that is the victim or attempted victim of such fraud can confiscate the ID and then sue the perpetrator in civil damages.

Licensees that are part of the solution are no longer part of the problem.

In Wisconsin which passed the law 2 years ago, bar owners and other establishments that sell alcoholic beverages were given the ability to report underage drinkers to the police and then take them to court. The underage drinker would then be required to pay the business owner \$1,000 if found guilty. The fine would be in addition to the \$250 to \$1,000 underage drinking fine an individual would receive from law enforcement.

Getting busted for underage drinking in Wisconsin got a bit more expensive and an incentive was created for clerks to be diligent in checking IDs.

In response to the question: "It sounds like a lot of bars are being duped by fake IDs that kids carry, and then that puts the bar owner's license at risk. Is that accurate?" The sponsor of the bill in Wisconsin replied: "Absolutely, with the Internet the demand for fake IDs is at an all-time high, and it's hard to tell a legitimate one from a fake one. So it has become a very difficult process to be able to tell if somebody can legally be on your premise or not. This bill in Alaska has worked very well. I don't think under age 19 or 20 years old are that worried about getting a ticket from law enforcement. They would be more worried if a bar owner could go after them, as this bill allows, for \$1,000."

The conversation continued as follows:

Q: One of the things that people talk about is that this bill could potentially give an incentive to bar owners or bartenders to serve underage patrons then take them to court, because they get to keep the recovery. What about that argument?

Senator: To be very polite, that's crazy. That is an absolutely-- There's arguments you might line up against this bill. If that is your argument you've lost the debate. Our members have their license as their livelihood. None of them are going to knowingly risk that license. The bill requires you to call law enforcement if an underage person illegally

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attempts to enter your bar. As the experience has been in Alaska, I believe we'll see very little litigation under this bill. Instead you will see a sign on the door that says, try to come in my bar, I'll sue you for \$1,000, and that will be the deterrent to keep underage out of those establishments.

Q: Again, you think that that is a deterrent, whereby the \$250 to \$1,000 fine they might get if they were cited by police isn't?

Senator: Absolutely, they aren't even getting those tickets. In fact, the proponents of this bill, it was not the Tavern League, it was the Green Bay police department who came to our representative, ... and said, this is a good bill and it will help fight the issue of underage drinking. When you talk to college kids, they don't put a fake ID and try to go into a bar if they fear they could be penalized. It is just not there. The city of Madison, or any college town, have more pressing priorities on a Friday or Saturday night than to go to the local bar and give someone a ticket. So it's not happening."

"Crime of Indifference." That's a good way to describe what happens. Clerks get busy, they forget to ask for IDs, they think most folks will be honest, they make an age calculation mistake, or they just don't remember that a vertical Kansas license means the person is under 21, whereas a horizontal license means it's OK to a sell.

Then there are the fake IDs. We have previously written about those, but they get better and better each year. (Kinda' like wine).

Here's the Alaska law:

Alaska Statue Sec. 04.16.065. provides for: Civil penalty for violations of AS 04.16.060* as follows:

(a) A person who has attained 18 years of age, or an emancipated minor, who violates AS 04.16.060 is, in addition to any criminal penalty provided by law, liable in a civil action to the licensee for a penalty of \$1,500 plus costs and reasonable attorney fees.

(b) A person, having legal custody of an unemancipated minor who solicits another person to violate AS 04.16.060, is liable in a civil action for a penalty of \$1,000, plus costs and reasonable attorney fees, to the licensee from whom the other person purchased, ordered, or received an alcoholic beverage in violation of AS 04.16.060.

(c) It is a condition precedent to maintaining an action under this section that the owner or seller of the merchandise send by first class mail to the defendant at the defendant's last known address 15 days or more before the action is commenced a notice demanding the relief authorized. The board may adopt regulations prescribing the form of this notice. It is not a condition precedent to maintaining an action under this section that the person who violated AS 04.16.060 or solicited a violation was charged or convicted under any statute or ordinance.

(d) In this section, "emancipated minor" means a minor whose disabilities have been removed for general purposes under AS 09.55.590.

For reference :

ALASKA Sec. 04.16.060. (in part provides) Purchase by or delivery to persons under the age of 21.

(a) A person under the age of 21 years may not purchase alcoholic beverages or solicit another to purchase alcoholic beverages for the person under the age of 21.

(b) A person may not influence the sale, gift, or service of an alcoholic beverage to a person under the age of 21 years, by misrepresenting the age of that person.

(c) A person may not order or receive an alcoholic beverage from a licensee, an agent or employee of the licensee, or another person, for the purpose of selling, giving, or serving it to a person under the age of 21 years.

Maybe \$1000.00 is too high. That's a public policy question for the Kansas

Legislature. What is most important is that the law creates a whole new emphasis at places that sell liquor to be more diligent in checking IDs. There are not enough ABC agents or law enforcement folks to monitor all the sales transactions. But there are servers and clerks who can effectively assist if there is an incentive to so do.

It seems to me that the benefits are self-evident. The benefit of this legislation is its effectiveness in deterring underage persons from violating the law. Participating retailers would probably post signs warning underage persons of the stiff penalties that await them if they violate the law. Further, once a retailer elects to bring a civil action, it will send a strong message throughout their community that underage persons are not welcome at their establishment. Finally, by allowing retailers to enforce the underage drinking laws in this manner, municipal law enforcement resources would be freed up to concentrate on other pressing matters.

We cannot ignore that underage drinking is a causal factor in a host of serious problems, including traumatic injury, property crime, high risk sex, alcohol poisoning, and need for treatment for alcohol abuse and dependence as a result of self-medication. It can also lead to impaired driving by our youth.

We enacted the keg-registration law in Kansas and imposed a burden on retailers to assist in preventing underage drinking. Kansas retailer have been active participants in the We Don't Serve Teens effort promoted by industry and the Federal Trade Commission. You can find these materials at www.wedontserve teens.gov. As that program has shown, we can reduce teen drinking by stopping teens' easy access to alcohol.

This concept has proven to be effective in Alaska, and Wisconsin. It would be a valuable tool to fight underage drinking in Kansas as well. I am aware of efforts to pass this law elsewhere in the U.S.A. Maybe Kansas could be a leader as well.