

Tickets issued to underage persons possessing alcohol could cost you your license!

Licensed premises must learn how to protect themselves from being charged with a violation of Section 65 of the Alcoholic Beverage Control (ABC) Act. Section 65 provides:

“No person shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away any alcoholic beverages to ... any person, actually or apparently, under the age of twenty-one years.”

Although an underage patron may be charged with and plead guilty to possessing alcohol, the operator of a licensed premises should not simply plead guilty to a violation of section 65. This article focuses on how the licensee can protect itself and why the licensee should not simply plead guilty to a violation of Section 65.

Charges against underage patrons

Section 65-c of the Alcoholic Beverage Control Act makes it a violation for a person under the age of 21 years to possess alcohol.

Often times, police officers catch under age patrons with alcoholic beverages in a licensed premises. Police are quick to give out tickets for violation of Section 65-c (underage possession). These violations are frequently referred to the State Liquor Authority. The Authority then imposes charges upon licensed operators for violating section 65 of the ABC Law.

Police rarely determine how the underage patron obtained the alcohol. The police do not determine if someone of legal age purchased the alcohol for the underage patron or whether the underage patron used a false identification to obtain access. Both are plausible defenses for the licensed premises, as discussed below.

The underage patron has no incentive to fight the charges of underage possession, since a conviction is only a violation (ie: not a criminal offense) and the fine is often only \$50.00. Thus, it is not worth the time or effort to plead not guilty. Convictions are used by the Authority against the licensed premises to prove that an underage patron obtained alcohol in violation of ABC Law Section 65. As readers will learn, a plea alone is not enough for a conviction.

Defending ABC Section 65 violations

False Identifications

The law provides an affirmative defense to licensees for patrons that enter a licensed premises utilizing a false identification. So long as the false identification, such as a driver's license, bore a reasonable resemblance to the underage patron and was for an age at least 21 years, the premises will not be liable for serving the patron.

This defense is tough to obtain, however. Underage patrons are not quick to provide an altered identification to the police when caught possessing alcohol. Police require persons with alcohol to produce an identification, and rarely do such patrons provide the false or altered license they used to access the premises. Altering a driver's license is actually a misdemeanor. Police often feel as if they are doing an underage patron a favor by not charging him/her with a misdemeanor, and instead charge with a violation of underage possession of alcohol. Thus, the patron does not fight the charge and simply pleads guilty, having thus gotten a break from the police. Of course, this break hurts the licensee.

Additionally, underage patrons caught in possession of alcohol are rarely searched by the police to look for a false identification. Thus, the manner of how the patrons entered the licensed premises is not detected and this defense is difficult to assert by the licensee.

Licensees should consider a method to record the patrons entering the bar and simultaneously record the identification used by the patron to gain access. That way, if a licensee knows that it would not have knowingly permitted an underage patron to gain access, the licensee can produce a picture of the identification used. The danger, of course, is that the identification did not bear a reasonable resemblance to the patron. Although video recording systems and cameras can cost in the range of \$2,000 - \$4,000, they are well worth the investment.

Of-age patrons purchasing for underage patrons

A defense not utilized enough by licensees is that the underage patron did not purchase the alcohol for themselves but was instead provided with the beverage.

Many recent court cases have held that mere possession of alcohol by an underage patron is not enough to establish a violation of ABC Section 65. The State must prove how the underage patron obtained the alcohol, or that the patron should not have been admitted to the bar in the first place. The reason for this is that Section 65 requires intent or knowledge on behalf of the licensee that alcohol was obtained by an underage patron.

In the instance where the bar permits persons under the age of 21 to enter the premises, this defense is available. Assume that a patron at least 21 years of age purchased the alcohol for an underage patron. If the underage patron had the drink for a period of only a few minutes, and if no employee of the bar had reason to know that the patron was in possession of the alcohol for that time period, a defense is available.

It will be helpful if the bar can establish that when it served more than one drink to a patron at the bar, it has followed a method for looking where the alcohol is brought. Serving more than one drink generally requires the bar to prove that it monitors where the other drink is brought.

Of course, if the bar prohibits persons under 21 years from entering the premises, and an underage patron had entered the bar without using a false identification, this defense will not be available, as the patron should not have been in the bar in the first place.

Conclusion

Licensees charged with serving underage persons have defenses available to them. It takes time for the attorney to find the patrons and learn facts from them. Hopefully, the attorney can convince the patrons to come forward and testify at the hearing. If helpful facts can be gathered and admitted at the hearing, the bar stands a very good chance of defeating charges that could have proven fatal to the licensee.

Future articles will focus on methods that can be used to protect the licenses.

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