



Industry Advisory
Business and Professions Code Section 25660
“Documentary Evidence of Age and Identity”

On January 1, 2010, Assembly Bills 59 (Jeffries) and 1191 (Conway) will become effective and amend Business and Professions Code section 25660, expanding upon the types of identification that constitute “bona fide evidence of majority and identity of the person.” The section will read as follows (new provisions are underlined):

25660. (a) 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 card 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 therefor or to any proceedings for the suspension or revocation of any license based thereon.

The Department has already received a number of inquiries concerning the effect of the changes to this Section on licensees' obligations to insure that no alcohol is sold or furnished to persons under the age of 21, or that minors are not able to enter public premises (bars). This Industry Advisory is intended to offer some guidance on the legal requirements.

There are several key points to remember in connection with Section 25660. First, this provision is an affirmative defense. That means that in any legal proceeding involving the alleged sale or furnishing of alcoholic beverages to a minor, the person asserting the defense has the burden of proving it. *See, Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181*. For example, in an ABC disciplinary matter, the Department does not have to prove that the identification did not meet the requirements of Section 25660; rather, it is the licensee's burden to prove it did comply with the requirements of Section 25660.

Second, there are two parts to this defense:

1. The identification itself must meet the requirements of the 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. "Armed Forces" means the United States military.

AND

2. 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. *See, Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (Masani) (2004) 118 Cal.App.4th 1429; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181; 5501 Hollywood Inc. v. Department of Alcoholic Beverage Control (1957) 155 Cal.App.2d 748; Farah v. Alcoholic Beverage Control Appeals Board (1958) 159 Cal.App.2d 335.*

For example, if you are presented with a foreign passport, but you are not familiar with what passports issued by that country look like, then it may not be reasonable to rely upon it. Likewise, if you are presented with an identification card issued to an individual that is described as 6'5" tall and the person presenting the identification is only 5' tall, then it would likely not be reasonable to accept it.

Finally, nothing in Section 25660 overrides a licensee's right pursuant to Section 25659 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."

Licensees are often presented with many different and varied forms of identification. This Industry Advisory is not intended to address every situation that a licensee may face in the normal operation of their business. Rather, it is intended to offer some general guidance. It is ultimately up to individual licensees to establish appropriate house policies and training programs to assure compliance with the law, and protect their license privilege.