



March 5, 2015

Testimony on HB 2333 for the House Judiciary Committee

Chairman Barker, Vice Chair Macheers, Ranking Member Carmichael, and Members of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Association. The KLBA represents the interests of the men and women in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels, and restaurants. These are the places you frequent and enjoy with the tens of thousands of employees that are glad to serve you. I have also been asked to speak for the KS Craft Brewers Assn., the KS Viticulture and Farm Winery Assn. and the Artisan Distillers of KS. Thank you for the opportunity to speak today and I will be brief. With me today is Robert "Tuck" Duncan. Mr Duncan is an attorney with extensive experience in alcohol law. With your permission he will follow me and answer your questions of a more legal nature on this issue.

Thank you in advance for your consideration. **We support HB 2333 and ask you to pass it favorably.**

In the 2013 legislative session the "Underage ID Fraud Act" was proposed (Brown Jug Law). It was a part of SB 203 and it passed the Senate Federal and State Affairs Committee and the whole Senate as well. In the House it was amended and many parts were placed in the composite alcohol bill of that year. The elements of HB 2333 as well as some other issues were not a part of that late session effort. The idea originated in an Alaska statute which further deters underage efforts to purchase beverage alcoholic and **makes the licensee a partner with the state in enforcing the prohibition of minors attempting purchase, possessing and consuming.** How this started is quite interesting, several years ago a para-legal, who also happened to be vice-president of the Brown Jug liquor store in Anchorage, initiated a new Fake ID law for Alaska. 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. But too often only the business that has been hoodwinked gets charged with a violation/crime when it is in reality the business that is also the victim. In Alaska, they now take a different tack: a business that is the victim or attempted victim of such fraud can confiscate the ID, and then sue the perpetrator for a capped dollar amount in civil damages. This has been very successful and has been adopted in other states including Wisconsin in 2013 and is being considered in still others.

HB 2333 would allow a civil cause of action against any person who has attained 18 years of age, or is an emancipated minor, who enters premises licensed under the Kansas Liquor Control Act or the Club and Drinking Establishment Act and presents fraudulent written evidence of the person's age, or who otherwise misrepresents the person's age, in order to induce the licensee to sell, give, serve or furnish alcoholic beverages contrary to applicable law. The person would be liable to the licensee for damages of \$1,000 plus costs and reasonable attorney fees.

A licensee may also bring a civil cause of action against a person of legal age for the consumption of alcoholic beverages who solicits another person, or who purchases or receives alcoholic beverages from a licensee for the purpose of selling, giving or serving it to a person under the age of 21. The person would be liable for damages of \$1,000 plus costs and reasonable attorney fees.

This law has been featured and endorsed by the *Responsible Retailing Forum* and is being made into a video for circulation to other states as an example of Enforcement and industry cooperation.

I have attached the Alaska and Wisconsin Statutes below.

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There is no such thing as a 'self-made' man. We are made up of thousands of others. Everyone who has ever done a kind deed for us, or spoken one word of encouragement to us, has entered into the make-up of our character and of our thoughts, as well as our success. **George Matthew Adams**

pbcc consulting, representing;
Kansas Licensed Beverage Association
Kansas Viticulture & Farm Winery Association
Craft Brewers Guild of Kansas
Kansas Homebrewers Alliance
Artisan Distillers of Kansas
Kansas Fireworks Association
Equal Entertainment Group

The AK Statute;

Alaska Statute 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.

The Wisconsin Statute; 2013 WISCONSIN ACT 65

AN ACT *to create* 125.07 (3) (a) 15., 125.07 (4) (bg) and 125.07 (4) (f) of the statutes; **relating to:** alcohol beverages violations involving underage persons on licensed premises. *The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 125.07 (3) (a) 15. of the statutes is created to read:

125.07 (3) (a) 15. An underage person employed by or assisting a law enforcement agency in carrying out enforcement activities to determine compliance with, or investigate potential violations of, the provisions of this section.

SECTION 2. 125.07 (4) (bg) of the statutes is created to read:

125.07 (4) (bg) Paragraphs (a) and (b) do not apply to an underage person employed by or assisting a law enforcement agency in carrying out enforcement activities to determine compliance with, or investigate potential violations of, the provisions of this section.

SECTION 3. 125.07 (4) (f) of the statutes is created to read:

125.07 (4) (f) 1. Except as provided in subd. 2., and subject to subds. 3. to 5., if an underage person engages in conduct that violates par. (a) on the premises of a licensee, the licensee may bring a civil action against the underage person. If judgment is entered in favor of the licensee, the court shall award to the licensee damages in the amount of \$1,000 and, notwithstanding s. 814.04 (1), the costs of the action. A licensee may bring an action under this paragraph regardless of whether the underage person has been convicted of, or received a citation for, the violation of par. (a), but the licensee has the burden of proving, by a preponderance of the evidence, that the underage person's conduct was in violation of par. (a).

2. If the underage person who engages in conduct that violates par. (a) on the licensee's premises is less than 18 years of age and is not an emancipated minor, the licensee may bring the civil action against the underage person's parent, as defined in s. 46.56 (1) (j).

3. A licensee may not bring a civil action under this paragraph unless the licensee has first provided notice to the underage person or the underage person's parent, as applicable, of the licensee's intent to bring the action. The notice shall be mailed to the last-known address of the underage person or underage person's parent, as applicable, at least 15 days prior to filing the action and shall include a demand for the relief described in subd. 1. The department may, by rule, prescribe a form for this notice.

4. A licensee may not bring a civil action under this paragraph if the licensee has been convicted of, or received a citation for or been charged with, a violation of sub. (1) or (3) related to the same incident, occurrence, or conduct giving rise to the underage person's violation of par. (a), unless the licensee is entitled to a defense under sub. (6). A licensee that asserts a defense under sub. (6) has the burden of proving the defense by a preponderance of the evidence.

5. A licensee may not bring a civil action under this paragraph unless the licensee or the licensee's employee reports to law enforcement the conduct suspected to be in violation of par. (a) at or near the time that the conduct occurs or is first discovered.

SECTION 4. Initial applicability.

(1) The treatment of section 125.07 (4) (f) of the statutes first applies to violations of section 125.07 (4) (a) of the statutes committed on the effective date of this subsection.