Business & Professions Code section 25660

PART 1

The Identification and the Inspection

How the statute evolved—and what reasonable diligence requires

Training for the California Alcoholic Beverage Control Appeals Board

Part 1 asks three practical questions

1	**What counted as identification?**	The statutory categories changed over time.
2	**What did the employee inspect?**	The record must show a concrete comparison.
3	**What would reasonable diligence reveal?**	The law requires care—not perfect detection.

1955 tightened timing; 1959 rewrote the test

1953

“before furnishing”

The version applied in Dethlefsen allowed an earlier check.

1955

“immediately prior”

The Legislature imposed a much tighter temporal rule.

1959

phrase deleted

The rigid phrase disappeared; “in any transaction” remained.

2026

technology added

Biometric systems and scanners now receive different treatment.

Current section 25660 separates the document from the conduct

1 Does the document qualify?

- Government-issued document with name, birth date, description, and picture
- Valid U.S. or foreign passport
- Valid Armed Forces identification with birth date and picture

2 What did the employee do?

- Demanded and was shown the evidence
- Compared the document with its holder
- Acted in objectively reasonable reliance

Reasonable diligence is concrete—but not forensic

1	DOCUMENT	Did it appear to be qualifying government identification?
2	HOLDER	Did the photo and descriptors reasonably match?
3	FEATURES	What information and visible defects were examined?
4	CONTEXT	Would the problem be apparent under the circumstances?

Dethlefsen: reasonable inspection can be enough

IDENTIFICATION

The minor’s genuine Selective Service card, altered to show an earlier birth year.

145 Cal.App.2d 561 (1956)

INSPECTION / TIMING

The clerk examined both sides and compared the description on the previous Saturday; no ID was requested during the charged sale.

RESULT

Defense established

Rule to carry forward

Under the 1953 statute, the prior check and a difficult-to-detect alteration supported the defense.

5501 Hollywood: the card must match the person

IDENTIFICATION

A found driver license belonging to another person; the birth date showed 21.

155 Cal.App.2d 748 (1957)

INSPECTION / TIMING

No examination was established. Height, weight, eye color, and youthful appearance did not match.

RESULT

Defense failed

Rule to carry forward

Possession of a license is not enough when reasonable comparison would expose the mismatch.

Farah: the old statute required an immediate check

IDENTIFICATION

An altered temporary driver license; the alteration's obviousness was disputed.

159 Cal.App.2d 335 (1958)

INSPECTION / TIMING

The customer had shown identification earlier—but not for at least two weeks before the charged sale.

RESULT

Defense failed

Rule to carry forward

Under the 1955 "immediately prior" language, the earlier inspection was too remote.

Part 1 takeaway: inspect the document and the holder

1. Is the document within the statutory categories?
2. What features did the employee actually examine?
3. Did the document reasonably match the person?
4. **Would reasonable inspection have revealed the defect?**

Part 2: When may the licensee continue to rely on that inspection?

Business & Professions Code § 25660

PART 1

The Identification and the Inspection

Statutory development, qualifying documents, and reasonable diligence.

CALIFORNIA ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

Short-form Board training packet • presentation companion

Slide-to-Tab Guide

Tab	Slides	Topic	Supporting materials
A	3-5	Statute and inspection framework	1953, 1955, 1959, and current statute
B	6-8	Historical cases	Dethlefsen, 5501 Hollywood, and Farah
—	9	Part 1 wrap-up	Four-question inspection checklist

Tab A

Statute and Inspection Framework

Slides 3-5

The early cases must be read against the statutory language in effect when the transaction occurred.

TAB A

Statutory Evolution

1953

“before furnishing”

Applied in Dethlefsen; an inspection on the previous Saturday supported the defense.

1955

“immediately prior”

Applied in Farah; identification shown weeks earlier was too remote.

1959

phrase removed

The rigid phrase disappeared and the transaction language remained.

2026

technology added

Biometrics and scanners are addressed in Part 2.

Current Section 25660 - Inspection Framework

1	**Qualifying evidence**	Is the document within the statutory categories?
2	**Holder comparison**	Do the photograph and physical descriptors match the person?
3	**Concrete inspection**	What features and visible irregularities were actually examined?
4	**Reasonable diligence**	Would the defect have been apparent under the circumstances?

25632. Any retail licensee, or agent or employee of such licensee, who permits any alcoholic beverage to be consumed by any person on the licensee's licensed premises during any hours in which it is unlawful to sell, give, or deliver any alcoholic beverage for consumption on the premises is guilty of a misdemeanor.

Hours for delivery

25633. Except as otherwise provided in this section, no person licensed as a manufacturer, wine grower, distilled spirits manufacturer's agent, rectifier, or wholesaler of any alcoholic beverage shall deliver or cause to be delivered any alcoholic beverage to or for any person holding an on-sale or off-sale license on Sunday or except between the hours of 6 a.m. and 8 p.m. of any day other than Sunday. No delivery of any distilled spirits shall be made or caused to be made by any licensee in any precinct where an election is in progress during the hours when by law the polls are required by law to be kept open for voting Beer and wine may be delivered at the platform of the manufacturing, producing, or distributing plant at any time. Nothing contained in this section prohibits the transportation or the carriage and delivery in transit at any time of beer or wine between the premises of a manufacturer, wine grower, wholesaler, distiller, importer, or any of them. Every person violating the provisions of this section is guilty of a misdemeanor.

Article 3. Women and Minors

Females prohibited from dispensing distilled spirits, etc

25655. All females other than a licensee are prohibited from dispensing wine or distilled spirits from behind any permanently affixed fixture, which fixture is used for the preparation or concoction of alcoholic beverages in any of the places mentioned in Section 23786.

Penalties

25656. Every person who uses the services of a female in mixing alcoholic beverages containing distilled spirits, on any premises used for the sale of alcoholic beverages for consumption on the premises, or any female who renders such services on such premises, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than one hundred dollars ($100) or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Exceptions

The provisions of this section do not apply to the mixing of alcoholic beverages containing distilled spirits by any on-sale licensee or to the mixing of such beverages by the wife of any licensee on the premises for which her husband holds an on-sale license.

Use of hostesses, etc.

25657. It is unlawful for any person to employ upon any licensed on-sale premises any hostess or entertainer for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or to pay any such hostess or entertainer a percentage or commission on the sale of the alcoholic beverages for procuring or encouraging the purchase or sale of alcoholic beverages on such premises.

Every person who violates the provisions of this section is guilty of a misdemeanor.

25658. (a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor. Sale to minors

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

25659. For the purpose of preventing the violation of Section 25658, any licensee, or his agent or employee, may 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. Presentment of proof of age

25660 In any criminal prosecution or proceeding for the suspension or revocation of any license based upon violation of Section 25658, proof that the defendant licensee, or his agent or employee, demanded and was shown, before furnishing any alcoholic beverage to a minor, a motor vehicle operator's license or a registration certificate issued under the Federal Selective Service Act or other bona fide documentary evidence of majority and identity of the person, is a defense to the prosecution or proceeding for the suspension or revocation of any license.

25661. Any person under the age of 21 years who presents or offers to any licensee, his agent or employee, any written evidence of age which is false, fraudulent, or not actually his own, for the purpose of ordering, purchasing, attempting to purchase, or otherwise procuring or attempting to procure, the serving of any alcoholic beverage, is guilty of a misdemeanor. False identification

25662. Any person under the age of 21 years who has any alcoholic beverage in his possession on any street or highway or in any public place is guilty of a misdemeanor. This section does not apply to possession by a person under the age of 21 years making a delivery of an alcoholic beverage in pursuance of the order of his parent or in pursuance of his employment. Minor's possession of alcoholic beverage

25663. Every person who employs or uses the services of minors in or on that portion of any premises which are used for the sale and service of alcoholic beverages for consumption on the premises is guilty of a misdemeanor. Employment of minors

25664. The use in any advertisement of distilled spirits of any subject matter, language, or slogan addressed to and intended to encourage minors or immature persons to drink the distilled spirits is prohibited. Advertisements

CHAPTER 17. ADMINISTRATIVE PROVISIONS

25750. The board shall make and prescribe such reasonable rules as may be necessary or proper to carry out the purposes and intent of Section 22 of Article XX of the Constitution and to enable it to exercise the powers and perform the duties conferred upon it by that section or by this division, not inconsistent with any of the provisions of any statute of this State, Board's rule making powers

1955 Amendment

Stats. 1955, ch. 627, p. 1127, § 1

Packet-ready transcription from the official California session-law volume

SECTION 1. Section 25660 of the Business and Professions Code is amended to read:

25660. In any criminal prosecution or proceeding for the suspension or revocation of any license based upon violation of Section 25658, proof that the defendant licensee, or his agent or employee, demanded and was shown, immediately prior to furnishing any alcoholic beverage to a person under 21 years of age, bona fide documentary evidence of majority and identity of the person 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, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the Armed Forces, is a defense to the prosecution or proceeding for the suspension or revocation of any license.

Official source volume

https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1955/55Vol1_55Chapters.pdf

1959 Amendment

Stats. 1959, ch. 550, p. 2512, § 1

Packet-ready transcription from the official California session-law volume

SECTION 1. Section 25660 of the Business and Professions Code is amended to read:

25660. 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, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the Armed Forces. Proof that the defendant-licensee, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any transaction, employment, use, or permission forbidden by Sections 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.

Official source volume

https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1959/59Vol1_59Chapters.pdf

This is a verified transcription, not a photographic reproduction of the printed session-law page.

West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 9. Alcoholic Beverages (Refs & Annos)
Chapter 16. Regulatory Provisions (Refs & Annos)
Article 3. Women and Minors (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 25660

§ 25660. Bona fide evidence of majority and identity; utilization of biometric system and age verification software or device; defense to criminal prosecutions and license revocation proceedings; evidentiary standards

Effective: January 1, 2026
Currentness

(a) Bona fide evidence of majority and identity of the person is any of the following:

(1) A document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, description, and picture of the person.

(2) A valid passport issued by the United States or by a foreign government.

(3) A valid identification card issued to a member of the Armed Forces that includes a date of birth and a picture of the person.

(b)(1) Proof that the defendant-licensee, or their employee or agent, demanded, was shown, and acted in reliance upon bona fide evidence, or utilized a biometric system, 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.

(2) A biometric system utilized by a defendant-licensee shall be based upon a review of bona fide evidence of majority and identity of a person and that verifies and authenticates the validity of that bona fide evidence.

(3) The use of an active age verification software or an age verification device to establish the age of a purchaser of alcoholic beverages, that fails to identify a false identification card, shall be considered evidence in a criminal prosecution therefor, or to any proceedings for the suspension or revocation of any license based thereon, provided that the identification is bona fide evidence of majority and identity as described in subdivision (a) and was physically inspected, is seemingly legitimate, and matches the physical appearance of the customer.

(c) For purposes of this section, the following definitions apply:

(1) “Biometrics” means the unique characteristics of a person, including, but not limited to, fingerprints, iris, face, or other similar biometric characteristics, or any combination thereof.

(2) “Biometric system” means technology that links the identity of a person to that person's biometrics.

(3) “Use of an active age verification software or an age verification device” means scanning the magnetic strip or the barcode on the bona fide evidence of majority and identity, as described in subdivision (a), to verify data on the identification document.

Credits

(Added by Stats.1953, c. 152, p. 1025, § 1. Amended by Stats.1955, c. 627, p. 1127, § 1; Stats.1959, c. 550, p. 2512, § 1; Stats.1987, c. 67, § 1; Stats.2005, c. 68 (A.B.764), § 1; Stats.2006, c. 538 (S.B.1852), § 35; Stats.2009, c. 142 (A.B.1191), § 2; Stats.2009, c. 405 (A.B.59), § 1.5; Stats.2010, c. 165 (A.B.1896), § 1; Stats.2024, c. 606 (S.B.1371), § 1, eff. Jan. 1, 2025; Stats.2025, c. 264 (A.B.509), § 1, eff. Jan. 1, 2026.)

West's Ann. Cal. Bus. & Prof. Code § 25660, CA BUS & PROF § 25660
Current with urgency legislation through Ch. 124 of 2026 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

Tab B

Historical Cases

Slides 6-8

Three chronological decisions show a successful inspection, an obvious holder mismatch, and the effect of the former timing rule.

TAB B

Dethlefsen v. State Bd. of Equalization

145 Cal.App.2d 561 (1956)

IDENTIFICATION	The minor’s genuine Selective Service card with an altered birth year.
INSPECTION / TIMING	Thoroughly inspected on the previous Saturday; no identification requested during the charged sale.
LEGAL RESULT	Defense established under the 1953 “before furnishing” language; the alteration was not reasonably apparent.
TEACHING POINT	Use for reasonable diligence, not as a current rule defining how long reliance may continue.

5501 Hollywood, Inc. v. Dept. of ABC

155 Cal.App.2d 748 (1957)

IDENTIFICATION	A found driver license belonging to another person.
INSPECTION / TIMING	No examination was established; height, weight, eye color, and youthful appearance did not match.
LEGAL RESULT	Defense failed because reasonable comparison would have exposed the mismatch.
TEACHING POINT	A government card is not an absolute defense merely because it states an adult birth date.

Farah v. ABC Appeals Bd.

159 Cal.App.2d 335 (1958)

IDENTIFICATION	An altered temporary driver license.
INSPECTION / TIMING	Shown on earlier visits, but not for at least two weeks before the charged sale.
LEGAL RESULT	Defense failed under the 1955 “immediately prior” language.
TEACHING POINT	The precise rule changed in 1959; the lasting lesson is the need for transaction-related proof.

Part 1 Inspection Checklist

1. Is the document within the statutory categories?

2. What features did the employee actually examine?

3. Did the document reasonably match the person?

4. **Would reasonable inspection have revealed the defect?**

Next: Part 2 examines technology, continued reliance, and the transaction nexus.

145 Cal.App.2d 561, 303 P.2d 7

HENRY DETHLEFSEN et al., Respondents,
v.
THE STATE BOARD OF EQUALIZATION, Appellant.

Civ. No. 8894.
District Court of Appeal, Third District, California.
Nov. 1, 1956.

HEADNOTES

(1)
Intoxicating Liquors § 9.11--Licenses--Suspension--Review.
On appeal from a superior court judgment in mandamus setting aside the State Board of Equalization's findings on the hearing of a liquor license violation charge, the appellate court must test the sufficiency of evidence to support the board's decision by the substantial evidence rule.

(2)
Intoxicating Liquors § 9.11--Licenses--Suspension--Review.
Neither the superior court nor the District Court of Appeal has power to reweigh, or exercise its independent judgment on evidence presented before the State Board of Equalization on a liquor license violation charge.

(3)
Intoxicating Liquors § 9.11--Suspension--Defenses.
A liquor licensee established a defense under Bus. & Prof. Code, § 25660, to a charge of selling to a minor, where the licensee showed that he relied on a draft card from which it appeared that the minor was 21, and where, notwithstanding the birth date on the card had been altered, there was no substantial support for the State Board of Equalization's finding that the alteration should have been apparent from a reasonably careful inspection, where there was no finding that the licensee acted in bad faith or discovered the alteration, where the card accurately described the minor, and where his physical appearance was that of a person who might be under or over 21.

See **Cal.Jur.2d,** Alcoholic Beverages, § 36; **Am.Jur.,** Intoxicating Liquors, § 142 et seq.

SUMMARY

APPEAL from a judgment of the Superior Court of San Joaquin County. Thomas B. Quinn, Judge. Affirmed. ***562**

Proceeding in mandamus to review an order of the State Board of Equalization suspending a liquor license. Judgment setting aside findings and order of board, affirmed.

COUNSEL
Edmund G. Brown, Attorney General, and G. A. Strader, Deputy Attorney General, for Appellant.
Smallpage & Willis for Respondents.

VAN DYKE, P. J.

In a proceeding before the State Board of Equalization, respondents were found guilty of selling liquor to a minor in violation of section 25658 of the Business and Professions Code. The board ordered that respondents' off-sale license be suspended for 30 days. They applied for mandate to the superior court, which after a hearing set aside the findings and order of the board on the ground of insufficient evidence and remanded the cause for further proceedings. The board appeals.

The board found that on June 5, 1954, an employee of respondents sold an alcoholic beverage to one Anthony Sanchez Gamino, who was then under 21 years of age; that he was born June 13, 1934; that on a previous occasion Gamino had exhibited to the employee documentary evidence of age and identity consisting of a selective service registration certificate which had been issued to and was in fact the property of Gamino; that the date of birth on said identification card had been altered by Gamino to show his age as over 21; that the alteration should have been apparent from a reasonably careful inspection of the card by said employee; and that she was, therefore, not justified on the basis of said selective service card in assuming the said Gamino was over 21 years of age. The board concluded that respondents had failed to establish a defense to the accusation under the provisions of section 25660 of said code. Section 25660 then read as follows:

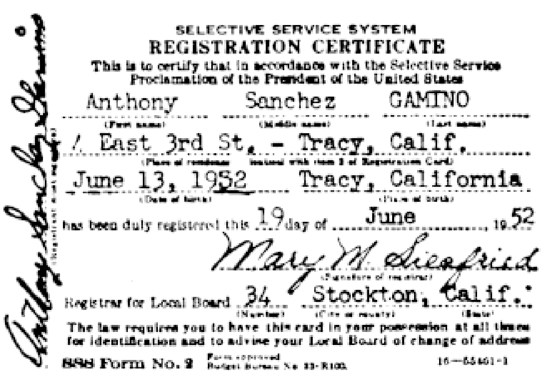
"In any criminal prosecution or proceeding for the suspension or revocation of any license based upon violation of Section 25658, proof that the defendant licensee, or his agent or employee, demanded and was shown, before furnishing any alcoholic beverage to a minor, a motor vehicle operator's license or a registration certificate issued under the Federal Selective Service Act or other bona fide documentary evidence of majority and identity of the person, is a defense to the prosecution or proceeding for the suspension or revocation of any license." ***563**

The trial court found that the evidence offered and received in the board proceedings was insufficient to support the board's finding that no defense had been established to the accusation in that, "the Selective Service Card referred to in said finding was offered in evidence and was physically present at said proceeding, from which card it affirmatively appears that the alteration of said Selective Service Card was and is not apparent and should not have been apparent from a reasonably careful inspection of said card."

(1) The appellant board being a state-wide agency exercising fact-finding powers, the situation presented on appeal from the superior's court's judgment is that this court, on the record presented, which is the same record presented to the superior court, must test the sufficiency of the evidence to support the appellant board's decision by the substantial evidence rule, the same rule as was applied in the superior court. (2) Neither the superior court nor this court has power to reweigh the evidence presented to the appellant board or to exercise independent judgment thereon. (*Covert v. State Board of Equalization,* 29 Cal.2d 125 [173 P.2d 545].)

The accusation was made by two state liquor officers, both of whom testified at the hearing before the board. They said they had been watching the licensed premises, saw Gamino enter, walk up to the counter and buy a half pint of Vodka; that as he left he appeared to them to be under age, so they stopped him. In response to questions he said he was 21 years of age, but on further questioning admitted that he was a minor. He told the officers he had not shown respondents' employee any identification before purchasing the Vodka because he had made a purchase of liquor at the same place on the previous Saturday, at which time the employee had demanded, and he had shown her, his registration certificate. The registration certificate was introduced in evidence and is part of the record before us. Admittedly, it is a genuine certificate that had been issued to Gamino, but Gamino had altered the date of his birth appearing on the card so as to show that he was born in 1932 instead of in 1934. The officers said the premises were well lighted. Gamino testified as a witness when called by the attorney for the board at the board hearing. He said the date of his birth was June 13, 1934 (this would make him within a few days of being twenty years of age when he made the purchase); that when the officers stopped him he showed them his driver's license, which was the first thing they asked for. Then he ***564** showed them his service card and told them that he had made the changes on the card by erasing the "34" and typing in "32" on his own typewriter. The description of Gamino on the card was as follows: "Color of eyes, brown; Color of hair, brown; Complexion, olive; Height (Approx.) 5 ft. 10 in.; Weight (Approx.), 170; Race, WH." Gamino gave his own description as of the time of testifying, saying he was then 5 feet, 10 inches tall and weighed about 180 pounds. As to the occurrence when he first showed his card to respondents' employee, he testified as follows: The card he showed her was a genuine card issued to him by the government; that she asked him for proof of majority and identification before she sold him liquor; that he showed her his service card; that she turned it over and looked at the description on the back which she checked very thoroughly with his appearance to see that he was the person to whom the card had been issued; that she then sold him the liquor, not apparently detecting the alteration of the two figures on the card which he said represented the best job he could do to make the altered card look authentic; that his purpose was to represent that he was older than he really was. He said that on the second occasion the employee did not ask him for further identification, but that she recognized him from the previous time and simply said "Hello." The employee testified as follows: That she recalled Gamino coming into the store prior to the time when the officers stopped him as he left; that he wanted to buy liquor and she asked him for an "I.D." because she wasn't sure he was 21; that he showed her a draft card, being the one in evidence; that she had never seen him before; that she sold him liquor when he presented the card; that she looked at the description; that she looked to see how old he was, and the card showed that he was over 21; that she turned it over and compared his height and the color of his eyes and it all fit, so she sold him liquor; that she was satisfied that the description fit him; that she looked from him to the card and back from the card to him; that when he came in the second time she saw no need of asking him for identification as she recognized him.

The card in evidence shows the discoloration and scuffing which might be expected on a card the owner is required to have in his possession at all times, and which, therefore, presumably had been carried by Gamino for about two years. It is difficult indeed to detect the alteration of the "3" and ***565** "2" without a close and critical examination. For better illustration we append hereto a photostat of the face of the card:



SELECTIVE SERVICE SYSTEM
REGISTRATION CERTIFICATE
This is to certify that in accordance with the Selective Service Proclamation of the President of the United States

Anthony Sanchez GAMINO
(First name) (Middle name) (Last name)

/ East 3rd St. - Tracy, Calif.
(Place of residence)

June 13, 1952 Tracy, California
(Date of birth) (Place of birth)

has been duly registered this 19 day of June, 1952

Mary M. Siegfried
(Signature of registrar)

Registrar for Local Board 34 Stockton, Calif.
(Number) (City or county) (State)

The law requires you to have this card in your possession at all times for identification and to advise your Local Board of change of address

SSS Form No. 2

There are three appellate court decisions which bear upon the issues presented on this appeal. They are: *Young v. State Board of Equalization,* 90 Cal.App.2d 256 [202 P.2d 587]; *Conti v. State Board of Equalization,* 113 Cal.App.2d 465 [248 P.2d 31], and *Keane v. Reilly,* 130 Cal.App.2d 407 [279 P.2d 152]. *Keane v. Reilly* reviews the other two.

In *Young v. State Board of Equalization* a 17-year-old, to prove majority and identity, had presented to a bartender a draft registration card issued to another and had been required to write his name, which the bartender testified resembled the one on the identification card to his satisfaction. The court said that the presentation to the bartender of the card was prima facie evidence under section 25660 of the majority and identity of the person presenting it and observed, at page 258:

"... 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 or could not belong to the minor, and if the alteration was with reasonable diligence not discernible or ascertainable, had a right to assume that anyone presenting such a card would not unlawfully possess or use it."

In the Conti case a 19-year-old presented an out-of-state driver's license not his own which on its face showed that it ***566** was issued to a person over twenty-one. The appellate court said, at page 466:

"... [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 party presenting it. Possession of the license is presumptive evidence that the license belonged to the holder. ... To hold otherwise would require the attendant to determine at his peril whether the driver's license had been legally issued, whether it had not been revoked or suspended, and whether the party presenting it was in truth and fact the legitimate holder of the paper.

"... Unless the personal appearance of the holder of the driver's license demonstrates above mere suspicion that he is not the legal owner of the license the bartender is justified in assuming the validity of the driver's license and in accepting the holder as the legal owner."

In *Keane v. Reilly* the foregoing holdings interpreting the statute were applied to a case where sales had been made to minors who presented fake identification documents. One had been carefully prepared to resemble a bona fide official identification card, another was a driver's license belonging to someone else, but on which the physical description fitted the minor with fair accuracy, and the other was a driver's license belonging to another from whom the minor had obtained it for the purpose of "fooling bartenders" and which showed a physical description that roughly fitted the minor. We quote the following headnote:

"Where evidence shows that before purchasing an intoxicant purchaser submitted to the bartender a document, purporting to indicate majority, apparently complying with former Alcoholic Beverage Control Act, § 61.2(b), and bartender testified that he believed document to be official, Board of Equalization and courts may not suspend license for selling to a minor in absence of a supported finding that bartender acted in bad faith and without diligence."

(3) In this case there is no finding of bad faith and no finding that the employee in fact discovered the alteration of the card. There is no express finding of want of diligence on the part of respondents' employee. What the board did find was that "The alteration should have been apparent from reasonably careful inspection of the card by" the employee, therefore the employee "was not justified on the basis of said Selective Service Card in assuming the said Gamino was over 21 years of age." Gamino was practically 20 years of age, ***567** was 5 feet, 10 inches in height, weighed about 180 pounds, and the description on the card fitted him. The whole decision then rests upon the finding that the employee should have detected the alteration, and in turn that depends entirely on the appearance of the card itself which is a part of the record. It is our view that to say, as the board did, that "the alteration should have been apparent from reasonably careful inspection of the card" is a wholly false conclusion. We agree with the superior court that this record contains no substantial support for the vital finding of the board.

Appellant contends that the superior court weighed the evidence when it held the alteration not in fact apparent on a reasonably diligent inspection. If that be so, then this court has fallen into the same error. But we think that is not so when the purpose of section 25660 of the act, as interpreted by the decisions cited herein, is considered. The purpose of the legislation when enacted was to relieve vendors of alcoholic beverages from having in all events to determine at their peril the age of the purchaser. It was intended to furnish a readily applicable standard usable under the conditions generally obtaining which, when complied with, would constitute a defense if in fact the purchaser was under 21. A plan was hit upon whereby the vendor could demand that he be shown bona fide documentary evidence of majority and identity, vehicle operators' licenses and draft board certificates being specifically mentioned. Obviously, to protect a vendor such evidence of majority and identity would have to be presented by a person whose appearance was such as to make it doubtful on which side of the line dividing minority from majority the purchaser was. When a doubt as to that would arise in good faith, it was intended that the vendor could rely upon documentary evidence of majority and identity such as motor vehicle operators' licenses and draft board certificates, but the bona fides of such documents must be ascertained if the lack of it would be disclosed by reasonable inspection, the circumstances considered. The circumstances include the right of the vendor to rely upon the usual presumptions, which section 1963 of the Code of Civil Procedure provides all may rely upon. In this case a card issued by a draft board to the purchaser was presented. It accurately described him. His appearance physically was that of one who might either be a minor or have attained his majority. The vendor was entitled to rely upon the presumption that he had not committed the crime of altering the ***568** certificate. When these matters are considered we do not hesitate to say as a matter of law that respondents established the statutory defense to the charge of selling liquor to a minor.

The judgment is affirmed.

Peek, J., and McMurray, J. pro tem.,[*] concurred.
Appellant's petition for a hearing by the Supreme Court was denied December 24, 1956.

Footnotes

* Assigned by Chairman of Judicial Council.

155 Cal.App.2d 748
District Court of Appeal, Second District, Division 2, California.

5501 HOLLYWOOD, Inc., doing business as Peacock Lane, a corporation, Petitioner and Respondent,
v.
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL of the State of California, Russell S. Munro, Director of the Department of Alcoholic Beverage Control of the State of California, Philip E. Davis, Area Administrator, Department of Alcoholic Beverage Control of the State of California, and Alcoholic Beverage Control Appeals Board of the State of California, Defendants and Appellants.

Civ. 22569.
|
Nov. 1, 1957.

Synopsis

Proceeding by tavern owners for writ of mandate requiring Department of Alcoholic Beverage Control to annul its decision suspending owners' license and commanding Appeals Board to set aside and annul its order affirming decision of the Department. The Superior Court of Los Angeles County, John J. Ford, J., entered judgment ordering issuance of writ and Department and Appeals Board appealed. The District Court of Appeal, Ashburn, J., held that finding that minor was served alcoholic beverages prohibited by statute and that in serving same upon presentation of driver's license as proof of age, licensee's agent did not act as a reasonably prudent person, was supported by substantial evidence.

Reversed.

Attorneys and Law Firms

***749** ****821** Edmund G. Brown, Atty. Gen., Edward M. Belasco, Deputy Atty. Gen., for appellants.

Albert E. Isenberg and Ronald H. Freemond, Beverly Hills, for respondent.

Opinion

ASHBURN, Justice.

Defendants appeal from a judgment ordering issuance of a writ of mandate commanding defendant Department of Alcoholic Beverage Control (hereinafter designated as 'Department') to set aside and annual its decision of May 24, 1956, suspending respondent's liquor license, and also commanding the defendant Alcoholic Beverage Control Appeals Board (hereinafter referred to as 'Appeals Board') to set aside and annul its order affirming the decision of the Department.

The Department had charged respondent, as the holder of a general on-sale liquor license, with violations of subdivisions ***750** (a) and (b) of § 25658,[1] Business & Professions ****822** Code, in that it did sell whiskey to a minor 18 years of age and permitted said minor to consume the same upon the licensed premises. A hearing officer found both charges to be true and the Department ordered the license suspended for a period of 15 days on each charge, said suspensions to run concurrently. Respondent herein filed an appeal with the Appeals Board which affirmed the decision of the Department. Thereupon respondent petitioned the superior court for a writ of mandate to vacate and set aside the orders of the Department and the Appeals Board and the superior court, after hearing, found and adjudged that there was no substantial evidence to sustain the findings of fact and the writ of mandate should issue as prayed.

Petitioner, engaged in conducting an establishment known as Peacock Lane, is the owner of an on-sale general license for sale of alcoholic beverages at 5501–5 Hollywood Boulevard, in the city of Los Angeles. On October 23, 1955, Peggy Joanne Michele, who was 18 years old, arrived at said establishment about 1:30 a. m. in the company of three boys and two girls. They occupied a booth and, after dancing, drinks were ordered from a waitress. Peggy called for a coke and whiskey. Upon being served she drank a little of it, whereupon the police interfered. When the order was given the waitress asked for proof of her age and Peggy produced a driver's license which she had found, one issued in the name of Patricia Jean Meyer. What, if any, examination the waitress made of same does not appear. The license itself was placed in evidence. The age shown is 18 but the date is August 7, 1952, indicating the licensee's age to be 21 at the time of the incident in question. The height of the licensee as given is five feet three inches and Peggy was three inches taller than that. The weight is stated at 102 pounds and Peggy then weighed 19 pounds more, 121 pounds. Her eyes were blue, whereas the license gives color ***751** of eyes as hazel. Peggy appeared as a witness at the hearing before the referee on April 6, 1956, less than six months after the incident, and the referee observed that 'although she is fairly tall her general figure appeared immature, her voice, poise, and manner that of a girl not older than 19 years and in general her appearance is clearly that of a girl between 18 and 19 years of age.' Petitioner produced no evidence at the hearing.

The referee found: '(d) That the discrepancies between the actual description and appearance of said Peggy Jeanne Michele and the description on the said driver's license shown Respondent's said waitress were such that a reasonable prudent licensee or employee in a premises licensed for the sale of alcoholic beverages would not in good faith accept said driver's license as a bona fide documentary evidence of the identity of or of the majoirty of said Peggy Jeanne Michele. (e) That after having been shown the above-described driver's license Respondent Licensee's said waitress made no further inquiry or investigation into either the identity or majority of said Peggy Jeanne Michele. (f) That the personal appearance of Peggy Jeanne Michele at the above time and place was such that Respondent Licensee's waitress did not act with reasonable prudence or in good faith in accepting said license as bona fide documentary evidence of either the identity or majority of the said Peggy Jeanne Michele.'

As the Department and the Appeals Board are constitutional agencies created by Article XX, § 22, as amended in November, 1956, the scope of review of their decisions is limited to determining whether they are supported by substantial evidence, and both the superior court in a mandate proceeding and an appellate court upon appeal therefrom are without authority to reweigh the evidence. ****823** Marcucci v. Board of Equalization, 138 Cal.App.2d 605, 608, 292 P.2d 264; Griswold v. Dept. of Alcoholic Beverage Control, 141 Cal.App.2d 807, 810, 297 P.2d 762; Maxwell Cafe v. Dept. of Alcoholic Beverage Control, 142 Cal.App.2d 73, 77, 298 P.2d 64.

Respondent makes two points, (1) that there was no proof that Peggy was served an alcoholic beverage prohibited by the statute, and (2) that a defense was proved without contradiction under § 25660, Business & Professions Code, quoted infra.

As to the first point, Peggy ordered coke and whiskey. ***752** Without comment the waitress served her a drink which, according to the police officer, was an amber-colored fluid smelling of alcohol. When asked what type of alcohol, he replied: 'I would say bourbon.' There being no evidence to the contrary there arose a fair inference (or perhaps presumption) that she was served the drink she had ordered. Griswold v. Dept. of Alcoholic Beverage Control, supra, 141 Cal.App.2d 807, 811, 297 P.2d 762; Wright v. Munro, 144 Cal.App.2d 843, 847, 301 P.2d 997; Mercurio v. Dept. of Alcoholic Beverage Control, 144 Cal.App.2d 626, 634, 301 P.2d 474. This state of the record was clearly sufficient to support the challenged finding.

The defense which petitioner claims to have established without substantial contradiction is that of compliance with § 25660, Business & Professions Code, which says: 'In any criminal prosecution or proceeding for the suspension or revocation of any license based upon violation of Section 25658, proof that the defendant licensee, or his agent or employee, demanded and was shown, immediately prior to furnishing any alcoholic beverage to a person under 21 years of age, bona fide documentary evidence of majority and identity of the person 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, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces, is a defense to the prosecution or proceeding for the suspension or revocation of any license.'

When introduced into the code in 1953 [2] its phrasing was such as to indicate 'that such a registration certificate is bona fide documentary evidence of majority and identity.' Young v. State Board of Equalization, 90 Cal.App.2d 256, 258, 202 P.2d 587, 588. But the substitution of the phrase 'bona fide documentary evidence of majority and identity of the person issued * * * including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the ***753** Federal Selective Service Act [50 U.S.C.A.Appendix, § 451 et seq.], or an identification card issued to a member of the armed forces,' carries a different significance. The statute now demands documentary evidence of majority and identity which is intrinsically bona fide and the mere fact of production of a vehicle operator's license does not make a case. 'Under this last-quoted section a licensee does not establish an absolute defense by evidence that the minor produced an identification card purporting to show that the person in possession of the card is 21. The defense must be asserted in good faith, that is, the licensee or the agent of the licensee must act as a reasonable and prudent man would have acted under the circumstances. Obviously, the appearance of the one producing the card, or the description on the card, or its nature, may well indicate that the person in possession of it is not the person described on such card. In such a case the defense permitted by section 61.2(b) ****824** could not successfully be urged.' Keane v. Reilly, 130 Cal.App.2d 407, 410, 279 P.2d 152, 154.

Although the licensee is not required to act at his peril, he must exercise the caution which would be shown by a reasonable and prudent man in the same circumstances. Keane v. Reilly, supra, 130 Cal.App.2d at page 410, 279 P.2d at page 154. He has an active duty in that respect. 'A licentiate conducting the sale of beverages under an on sale license is charged with an active duty to prevent minors from consuming intoxicating liquor on the licensed premises and if the licentiate, through an employee, has knowledge that such consumption is taking place there arises immediately an active duty to prevent its continuance. A failure to prevent it is within the meaning of the statute a permitting of that unlawful consumption.' Marcucci v. Board of Equalization, supra, 138 Cal.App.2d 605, 610, 292 P.2d 264, 266. To the same effect, see, Cornell v. Reilly, 127 Cal.App.2d 178, 187, 273 P.2d 572.

It is essential to a successful defense that the operator's license or other evidence of majority be presented by one whose appearance indicates that he or she could be 21 years of age, and a reasonable inspection of the document must be made by the licensee or his agent. 'Obviously, to protect a vendor such evidence of majority ***754** and identity would have to be presented by a person whose appearance was such as to make it doubtful on which side of the line dividing minority from majority the purchaser was. When a doubt as to that would arise in good faith, it was intended that the vendor could rely upon documentary evidence of majority and identity such as motor vehicle operators' licenses and draft board certificates, but the bona fides of such documents must be ascertained if the lack of its would be disclosed by reasonable inspection, the circumstances considered.' Dethlefsen v. State Board of Equalization, 145 Cal.App.2d 561, 567, 303 P.2d 7, 12. That process must do more than raise a mere suspicion (Keane v. Reilly, supra, 130 Cal.App.2d 407, 411, 279 P.2d 152; Conti v. State Board of Equalization, 113 Cal.App.2d 465, 466, 248 P.2d 31); but whether it does so ordinarily is a question of fact for the Board to determine. If the licensee delegates that task to an employee, such as a waitress, he is bound by her conduct as if he had acted in person. Cornell v. Reilly, supra, 127 Cal.App.2d 178, 186, 273 P.2d 572.

In this instance Peggy had been on the dance floor; she was too young in appearance to be 21 (as the referee observed to be the case some six months later); she weighed 19 pounds more than the person to whom the license was issued; she was three and one-half years younger and had blue eyes instead of hazel. Whether a reasonably careful inspection of the license and comparison with Peggy's appearance would have done something more than raise a suspicion in the mind of a reasonably prudent man, whether it would prompt him to require something additional by way of evidence of bona fides of the license or to refuse altogether to serve her was a question for the trier of fact. The referee, in paragraph (d) above quoted, found that the discrepancies between the license and the appearance of Peggy 'were such that a reasonable prudent licensee or employee in a premises licensed for the sale of alcoholic beverages would not in good faith accept said driver's license as a bona fide documentary evidence of the identity of or of the majority of said Peggy Jeanne Michele,' and the Appeals Board said: 'The apparent discrepancies between the driver's license presented and the minor presenting it were sufficient to put appellant's employee on guard and to indicate that further inquiry was in order.' Drawing of inferences is a major portion of the fact finding process. Petitioner, who was the employer of the waitress and presumptively in command of any evidence tending to show bona fides on her part or that of her employer, offered no evidence whatever. As the burden of proving the special defense of § 25660 rested upon petitioner, a presumption arose that ****825** that evidence, if produced would have been unfavorable to its contentions. ***755** Bone v. Hayes, 154 Cal. 759, 765, 99 P. 172. While this is a presumption which does not amount to affirmative evidence of the facts shown in the testimony produced by the other side, it does add emphasis to the adverse inferences flowing therefrom. Talbert v. Ostergaard, 129 Cal.App.2d 222, 230, 276 P.2d 880; In re Estate of Bould, 135 Cal.App.2d 260, 265, 287 P.2d 8, 289 P.2d 15.

There was substantial evidence before the Board to warrant the findings made and it was reversible error for the superior court to hold otherwise.

The judgment is reversed, with instructions to the trial court to enter judgment denying the peremptory writ.

FOX, Acting P. J., and RICHARDS, Justice pro tem., concur.

All Citations

155 Cal.App.2d 748, 318 P.2d 820

Footnotes

1 Bus. & Prof.Code § 25658.

‘(a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

‘(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100).

‘(c) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.’

2 ‘In any criminal prosecution or proceeding for the suspension or revocation of any license based upon violation of Section 25658, proof that the defendant licensee, or his agent or employee, demanded and was shown, before furnishing any alcoholic beverage to a minor, a motor vehicle operator's license or a registration certificate issued under the Federal Selective Service Act or other bona fide documentary evidence of majority and identity of the person, is a defense to the prosecution or proceeding for the suspension or revocation of any license.’

159 Cal.App.2d 335
District Court of Appeal, Second District, Division 1, California.

Joseph L. FARAH and Mary T. Farah, Plaintiffs and Appellants,
v.
ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD of the State of California and Department of Alcoholic Beverage Control, Defendants and Respondents.

Civ. 22901.
|
April 10, 1958.

Synopsis
Petition for writ of mandate to compel cancellation of order suspending for 15 days petitioners' on-sale general liquor license. The Superior Court of Los Angeles County, Bayard Rhone, J., rendered judgment denying petition for writ, and petitioners appealed. The District Court of Appeal, Fourt, J., held that license was subject to suspension for sale of beer to a minor, in absence of proof that licensees or their agent or employee had demanded and been shown, immediately prior to furnishing beer to minor, bona fide documentary evidence of majority and identity of customer, as provided by West's Ann.Bus. & Prof.Code, § 25660, and that documentary evidence of majority and identity of customer exhibited to waitress two or three weeks prior to sale was not shown immediately prior to sale within meaning of statute.

Judgment affirmed.

Attorneys and Law Firms

***336** ****100** Carl B. Sturzenacker and Walter Monarch, Los Angeles, for appellants.

Edmund G. Brown, Atty. Gen., Edward M. Belasco, Deputy Atty. Gen., for respondents.

Opinion

FOURT, Justice.

This is an appeal from a judgment denying appellants' petition for a writ of mandate to compel respondents to cancel their order suspending for fifteen days appellants' on-sale general liquor license.

The facts are as follows: On April 20, 1956, the plaintiffs, licensees, sold and furnished beer to a girl about nineteen years of age and permitted her to consume the beer on their premises. At the time of this sale and consumption the minor was not requested to produce nor exhibit any bona fide documentary evidence of her majority or identity. About two or three weeks before the sale about mentioned, the girl had exhibited to a waitress in the establishment a temporary automobile operator's license, upon which the date of birth had been fraudulently altered to show the age as twenty-two, instead of nineteen. The Department of Alcoholic Beverage Control, by accusation, ***337** charged the licensees with a violation of sections 25658a and b, and 24200(b) of the Business and Professions Code for the acts heretofore mentioned. The Department of Alcoholic Beverage Control found, after a hearing, that the charges were true and found that the licensees had failed to establish the defense available to liquor licensees under section 25660, Business & Professions Code, that the alterations were reasonably apparent on an inspection of the driver's license, and also that the minor could not reasonably have been mistaken for a person of the age of majority. The licensees took an appeal to the Alcoholic Beverage Control Appeals Board, which considered the matter and made its decision. The Appeals Board ordered stricken from the decision the statements as to the alteration of the driver's license being apparent and as to the unlikelihood of the minor's being mistaken for an adult, on the ground that there was no evidence in the record to support such findings. The decision of the Department, however, was affirmed, apparently upon the ground that the licensees ‘did not demand, nor were they shown, on April 20, 1956, documentary evidence of majority and identity.’ The minor admitted altering the driver's license and exhibiting it as altered over a period of time to the licensees and their employees.

It seems generally agreed by all that the licensees had been previously imposed upon by the minor without fault on their part.

The licensees petitioned the superior court for a writ of mandate to compel the Department and the Appeals Board to set aside their decision. The writ was denied and this appeal is from that determination.

The question involved here is the interpretation of section 25660 of the Business & Professions Code, as amended in 1955. That section reads as follows:
'In any criminal prosecution or proceeding for the suspension or revocation of any license based upon violation of Section 25658, proof that the defendant licensee, or his agent or employee, demanded and was shown, *immediately prior* to furnishing any alcoholic beverage to a person under 21 years of age, bona fide documentary evidence of majority and identity of the person 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, a registration certificate issued under the Federal Selective ***338** Service Act, or an identification card issued to a member of the armed forces, is a defense to the prosecution or proceeding for the suspension or ****101** revocation of any license.' (Emphasis added.)

The 1955 amendment, among other things, substituted the words 'immediately prior,' for the word 'before,' just preceding the phrase 'furnishing any alcoholic beverage,' which had appeared in the statute before amendment.

Appellants' contentions are that a complete defense was established under the section in question; that the section does not require proof of age and identity on each occasion of service of an alcoholic beverage; that the section violates the due process clauses of the state and federal constitutions, and that a legislative body may not, under the guise of the police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities.
The Department of Alcoholic Beverage Control is a constitutional agency (Art. XX, § 22, Calif.Const.), and is charged with the enforcement of the Alcoholic Beverage Control Act, and the decisions of the Department should be affirmed by the courts when supported by substantial evidence. 5501 Hollywood, Inc., v. Department of Alcoholic Beverage Control, 155 Cal.App.2d 748, 318 P.2d 820, and the cases cited therein.

The business of selling intoxicating liquor is one attended with dangers, and under the police power the state may limit the operation of such business to conditions which will minimize its evils. Ritz v. Lightston, 10 Cal.App. 685, 689, 103 P. 363; People v. Baker, 38 Cal.App. 28, 34, 175 P. 88; Cornell v. Reilly, 127 Cal.App.2d 178, 187, 273 P.2d 572.

The licenses in this case sold the liquor to the minor, and unless they can come under the protection of the provisions of section 25660 of the Business & Professions Code the license was subject to suspension.

The legislature, in adopting the provisions of the above cited code section, provided a method whereby a license can protect himself in any case of doubt as to the age of a prospective customer: 'immediately prior to furnishing' any liquor the licensee can demand bona fide documentary evidence of the majority and identity of the prospective customer. The defense is affirmative and the burden is therefore upon the licensee to show that he is entitled to the benefits ***339** of such a defense. Keane v. Reilly, 130 Cal.App.2d 407, 279 P.2d 152; Molina v. Munro, 145 Cal.App.2d 601, 302 P.2d 818.

The cases interpreting section 25660, Business & Professions Code, have generally set forth three tests by which to measure the conduct of the licensee in determining whether there has been a compliance with the provisions of the section.
First, the licensee who makes a diligent inspection of the documentary evidence of majority and identity offered by the customer at or about the time of the sale is entitled to rely upon its apparent genuineness. Dethlefsen v. State Board of Equalization, 145 Cal.App.2d 561, 567, 303 P.2d 7; Young v. State Board of Equalization, 90 Cal.App.2d 256, 202 P.2d 587.

Second, a licensee must exercise the caution which would be shown by a reasonable and prudent person in the same or similar circumstances. 5501 Hollywood, Inc. v. Dept. of Alcoholic Beverage Control, supra, 155 Cal.App.2d 748, 318 P.2d 820.

Third, a licensee must make the inspection of the documentary evidence and his appraisal of the physical appearance of the customer 'immediately prior' to the sale. People v. Garrigan, 137 Cal.App.2d Supp. 854, 289 P.2d 892.

In this case the licensees did not demand, nor were they shown any evidence of the majority or identity of the customer at the time of sale, nor during any period for at least two weeks prior thereto.
The legislature very properly saw fit to place a definite limit and restriction upon the use of the defense, and if a licensee does not see fit to take advantage of the available defense in accordance with the plain mandate of the statute, he assumes ****102** the risk of whatever hazards may lie ahead. A licensee

has no inherent right to sell liquor and his engaging in the business may legitimately be subject to rigid conditions which will limit the possibilities of sales to children under the age of twenty-one years. The words 'immediately prior' are words of limitation in time, and plainly, the act of questioning the minor and seeing some proof of age two or three weeks before the sale is not 'immediately prior' to the sale in question.

There is no merit to the contentions of appellants.

The judgment is affirmed.

WHITE, P. J., and LILLIE, J., concur.

All Citations

159 Cal.App.2d 335, 324 P.2d 98

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INFORMATIONAL ITEM: Case Illustration - Trader Joe's False Identification Appeal

Issue: Did the Board err in reversing the Department of ABC's decision, when the Department found that Trader Joe's failed to establish an affirmative defense under section 25660 (reliance on a false identification) after its employee sold alcohol to a minor?

Holding: Yes. The Board impermissibly reweighed the evidence in rejecting the Department's factual determination that the employee failed to conduct a reasonable inspection of the minor's false identification.

Facts: A Trader Joe's employee sold beer to a 19-year-old minor, whom the employee knew as an acquaintance from nearby San Francisco State University. The employee asked the minor for identification during the sale and the minor presented a fake South Carolina driver's license through a plastic window in the minor's wallet. The fake license contained the minor's actual photograph, her correct height, weight, and birthday month and day. However, the minor's birth year was changed to indicate that she was 21 years of age and the signature on the license was not the minor's.

The sale was witnessed by a Department agent who noted that the minor appeared youthful. The agent confronted the minor outside of the store after the sale and inspected the minor's false identification. The agent noted the laminate overlay had a crooked edge and an "orange peel" or undulating texture which in the agent's experience, was typical for a false identification. Further, the agent observed a raised ridge in the middle of the license and a cross-shaped ridge on the left side.

Analysis: The California First District Court of Appeal (the Court) noted that the Board was bound by the factual determinations of the Department. The Department determined that the employee did not make a reasonable inspection of the license based on: 1) the minor's youthful appearance; 2) the employee's knowledge that the minor was a college student, and; 3) the employee's brief inspection of the license from approximately two feet away. The Court found the Board improperly reweighed the evidence by finding that the defects to the false identification were merely minor imperfections.

The Court also found that case-specific facts reasonably aroused suspicion regarding the minor's age, supported the Department's finding that in this instance, the employee should have removed the license from the wallet to physically inspect it.

Disposition: The Board's Opinion was vacated; the Department's decision was reinstated. The case was not published.