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## California Amends Alcohol Law to Allow Military IDs and Passports as Proof of Age

by James M. Seff, Jerry R. Jolly and Carrie L. Bonnington

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*On December 17, 2009, the California Department of Alcoholic Beverage Control (ABC) issued an Industry Advisory setting forth guidelines amending Business and Professions Code Section 25660, "Documentary Evidence of Age and Identity," to include Military Identification cards and United States and foreign government passports as valid proof of majority. Both forms of identification were previously excluded because such documents did not typically contain a physical description. The amended law now allows these documents to be used as proof of majority even though a physical description is not included.*

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**Effective January 1, 2010, Assembly Bills 59 and 1191 will become law and amend Section 25660 as follows (new provisions are in bold):**

"Business and Professions Code Section 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 of 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 therefore or to any proceedings for the suspension or revocation of any license based thereon."

The California ABC Industry Advisory is intended to offer guidance on the legal requirements subject to the new law as follows:

There are several key points to remember in connection with Section 25660. Primarily, this provision is an **affirmative defense to an alleged violation of Section 25658**. That means that in any legal proceeding involving the alleged sale or furnishing of alcoholic beverages to a minor, the licensee has the burden of proving it. 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.

Proving a Section 25660 affirmative defense requires the licensee to prove the following:

1. **The identification itself must meet the requirements of the Section 25600.** 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 State 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.**

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. The 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.

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If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or the attorney below.

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