

Affirmative Defenses

In the event a licensee or server is accused of either direct or indirect delivery of an alcoholic beverage to an underage person, there are a few affirmative defenses they can present to avoid administrative liability for the service. (These affirmative defenses will not be applicable in any other civil or criminal proceeding). The licensee or server presenting the affirmative defense must present evidence that proves when checking the age of the person they:

1. Reasonably relied upon the underage youth's presentation of a photographic identification card apparently issued by a governmental agency.
2. Verified that the identification was currently valid and in effect (meaning the identification is not expired).
3. Checked the identification of the person on "the occasion of the specific sale or delivery underlying the alleged violation."
4. Made a careful and critical examination of the identification and reasonably concluded that it belonged to the person presenting it, and reasonably concluded that it had not been altered.
5. Personally examined the identification of the person who they delivered the alcohol to. (An employee who delivers an alcoholic beverage to an underage patron cannot take advantage of the affirmative defense unless the delivering employee has personally examined and reasonably relied upon the photographic identification by the underage person.)

**** The use of a transaction scan shall not excuse any licensee, agent or employee from the exercise of reasonable diligence in examining the identification and person presenting the identification.*

A licensee or server can limit their liability for serving an underage person or someone who is visibly intoxicated if they can prove that:

1. They have had a clean disciplinary record for at least 5 years; and
2. They have a valid certificate of completion from an approved ATAP program.

In such case, the civil liability will be limited to \$1,000.00. If a licensee or server has not completed an approved ATAP program, the licensee must submit written proof within 90 days that all employees involved in the direct sale of alcohol have completed or renewed their certificate. This will reduce the liquor authority penalty by 25%.