

Recent Issues in Illinois Liquor Laws & Enforcement

By Mark C. Palmer, Evans, Froehlich, Beth & Chamley, Champaign
May, 2008

Prefatory Remarks

Illinois Public Act 92-0503 became effective on January 1, 2002 and enhanced the responsibilities of local liquor commissioners (typically mayors or presidents and their acting deputies) to create underage alcohol (and tobacco) enforcement policies and procedures.¹ Fortunately, the Liquor Control Act of 1934 was also amended to direct the Illinois Law Enforcement Training and Standards Board to develop a model policy and guidelines for liquor control compliance enforcement operations by law enforcement officers.²

Over six years later, we find various agencies and organizations from the Illinois State Police to Prevention First³ continuing to assist local liquor commissioners and law enforcement with policy development and enforcement of liquor laws. Underage consumption and other violations of alcohol related statutes and ordinances demand uniformity and consistency in enforcement, especially in university and college based communities. While local liquor control officials may evaluate their own community standards in defining and addressing problem areas, various state liquor laws continue to evolve as Illinois legislators attempt to revise penalties and plug statutory gaps that the retail liquor industry utilizes.

Introduction

Some recent issues in Illinois liquor laws and enforcement that this article will address are: (a) what are the possible penalties for a parent when underage drinking occurs at the parent's residence, (b) whether "bottle service" is a violation of state "happy hour" laws, (c) whether a local liquor commissioner must notify the Secretary of State of alcohol offenses, and (d) whether a minor can be guilty of delivering alcohol to another minor under state law.

Parent Responsibility Law Changes

Under Section 6-16(a-1) of the Liquor Control Act, parents or guardians guilty of knowingly permitting underage consumption at their residence are guilty of a Class A misdemeanor with a fine not less than \$500.⁴ Illinois Public Act 95-0563 amended this section to include a Class 4 felony penalty where the violation directly or indirectly results in great bodily harm or death of any person.⁵ The new law, which became effective on August 31, 2007, also added the word "knowingly" to further clarify the required mens rea element of the offense: "It is unlawful for any parent or guardian to knowingly permit his or her residence to be used by an invitee of the parent's child or the guardian's ward, if the invitee is under the age of 21, in a manner that constitutes a violation of this Section."⁶

¹ 235 ILCS 5/6-16.1(c) through (e).

² <http://www.iletsbei.com/alcohol.pdf>

³ Prevention First is a nonprofit resource and training provider funded by the Illinois Department of Human Services. <http://www.prevention.org>

⁴ 235 ILCS 5/6-16(a-1).

⁵ Id.

⁶ Id. (Emphasis added).

While this change in the law increases the possible penalty for an offender, it actually lessens the scope of the definition of “knowingly permit.” An amendment by the Illinois House to the original Senate Bill 0158 specifically excluded the failure of control of access to the residence itself or to the alcoholic liquor maintained in the residence (e.g. liquor cabinet) in the definition of “knowingly permit.”⁷ The final language reads, “A parent or guardian is deemed to have knowingly permitted his or her residence to be used in violation of this Section if he or she knowingly authorizes, enables, or permits consumption of alcoholic liquor by underage invitees.”⁸

Lastly, the change in law includes additional exception language for religious holidays. The new language provides that nothing in the provision shall be construed to prohibit the giving of alcoholic liquor to a person under the age of 21 years in the performance of a religious ceremony or service in observation of a religious holiday.⁹ However, for unknown reasons (beyond hasty legislating), the same language was not added to similar religious exceptions in 235 ILCS 5/6-16(a), 5/6-16(e), 5/6-20(g).

“Bottle Service” and Happy Hour Laws

Some bar customers in Chicago and several other cities throughout Illinois are willing to spend upwards of several hundred dollars at times to share their own bottle of distilled spirits with friends. This purchase of a bottle of hard alcohol, typically with mixers provided, to be consumed by a small group of people is known as “bottle service.” In the summer of 2006, the Illinois Liquor Control Commission (ILCC) responded to media reports of and advertisements by liquor licensees for this “bottle service,” and determined the practice to be in violation of Illinois happy hour laws.¹⁰ “Bottle service does not allow the bar staff to properly supervise alcohol consumption by its patrons,” said ILCC Executive Director Michael Malone in a 2006 press release.¹¹ “The health, safety, and welfare of the general public is at risk when licensees allow their patrons to be overserved.”¹² The ILCC issued violation notices to thirteen Chicago licensees, mostly clubs and upscale lounges.

Within three months, Illinois Senate Bill 0948 had passed the Illinois Senate and was on its way to the House, eventually to be approved by Governor Blagojevich on February 27, 2007 (effective immediately). The new law (PA 94-1112) added an exception to happy hour laws for the sale of bottles of spirits under the same subsection that allows for the sale of pitchers of beer and carafes or bottles of wine.¹³ Bottle service was once again on the menu from glamorous clubs in downtown Chicago to college town pubs.

Nevertheless, just as this amendment to the happy hour exceptions was taking effect, Representative Paul D. Froehlich (D-Schaumburg), a frequent sponsor of alcohol related legislation, proposed House Bill 0701. HB 0701 would carve out the bottle service exception

⁷ Illinois Public Act 95-563, House Amendment No. 1.

⁸ 235 ILCS 5/6-16(a-1).

⁹ *Id.* (New language emphasized).

¹⁰ 235 ILCS 5/6-28.

¹¹ ILCC Press Release, August 14, 2006. Press Release, Illinois Liquor Control Commission, Chicago Bars Found Breaking The Law (Aug. 14, 2006) at

<http://www.illinois.gov/PressReleases/ShowPressRelease.cfm?RecNum=5177&SubjectID=62>.

¹² *Id.*

¹³ 235 ILCS 5/6-28(c)(6).

from its proximity to pitchers and carafes. This change would allow beer and wine containers to be served to only two or more persons at one time, while a bottle of spirits would require service to a party of four or more persons. At the time of this article, HB 0701 remains in Rules Committee.

Illinois Secretary of State Notification of Certain Alcohol Related Offenses

Article 4 of the Liquor Control Act describes local control of liquor issues and specifically details the functions and duties of the local liquor control commissioner.¹⁴ One of those specific duties is “to notify the Secretary of State of any convictions or dispositions of court supervision for a violation of Section 6-20 of this Act or a similar provision of a local ordinance.”¹⁵ Such violations include possession, transfer or consumption of alcohol by an underage person as well as identification card violations such as possessing a false or forged identification card or using the identification card of another person.¹⁶

This notification requirement was updated as of January 1, 2008 to include incidents of court supervision for such offenses.¹⁷ Prior to this year, defendants could avoid a suspension of their Illinois driver’s license by successfully completing court supervision and avoid a conviction of the specific liquor offense. Now, a disposition of court supervision requires a mandatory three-month minimum suspension¹⁸ while a conviction typically results in a minimum one-year suspension.¹⁹ However, many municipalities offer a pre-pay settlement option to their ordinance violations. If a suspect completes the pre-pay option directions on the notice to appear citation, no formal complaint would be filed with a court, and no conviction or supervision would result. This can save the suspect not only additional court costs, but a suspended driver’s license as well.

Furthermore, it may be possible for a defendant to receive court supervision and a conviction in the same case. After the Secretary of State would be notified of the supervision, the same defendant in the same matter could fail supervision and receive a conviction.²⁰ In this fact pattern, it would seem to be appropriate to send a subsequent notice to the Secretary of State noting that the court supervision has become a conviction.

One recent case against the Secretary of State challenged Jesse White’s discretion in such a driver’s license suspension and won. In Webb v. White, 364 Ill.App.3d 650, 850 N.E.2d 233, 302 Ill. Dec. 796 (Ill. App. 4th Dist., 2006), a twenty-year-old was charged with consumption of alcohol by a minor at a downtown bar in Champaign. The Court explains that the defendant was caught in a bar “raid” and issued a local ordinance violation after she registered a blood-alcohol concentration (BAC) of 0.005 on a portable breath test device

¹⁴ 235 ILCS 5/4-1 et seq.

¹⁵ 235 ILCS 5/4-4.

¹⁶ 235 ILCS 6/6-20.

¹⁷ PA 95-0166, effective January 1, 2008.

¹⁸ 625 ILCS 5/6-206(a)(43).

¹⁹ 625 ILCS 5/6-206(a)(38); 92 Ill. Admin. Code 1040.32(b)(9).

²⁰ Supervision in an municipal ordinance violation case is a continuance of the case. Unsuccessful completion of supervision should force the case to continue to sentencing, resulting in a conviction.

(PBT).²¹ She admitted to having “two to three gulps” of her friend’s Captain Morgan and Coke before realizing the drink contained alcohol.²²

After pleading guilty and paying her fine and costs, the Secretary of State suspended her driver’s license for 12-months pursuant to 625 ILCS 5/6-206(a)(38), which allows for discretionary authority to suspend or revoke without a preliminary hearing. The Sangamon County Circuit Court upheld a hearing officer’s decision to maintain the year long suspension. Defendant argued that the Secretary abused his administrative discretion in not substantially modifying the suspension, and the Appellate Court agreed.

In its analysis, the Appellate Court noted that the defendant had no prior revocations or suspensions, was not driving or even in a vehicle at the time of the offense, voluntarily submitted to the breathalyzer test and had consumed a very minimal amount of alcohol.²³ Furthermore, the Appellate Court noted that the Secretary punished defendant “four times more severely than the General Assembly saw fit to set the minimum punishment for a zero-tolerance offender who was drinking and driving but agreed to testing”²⁴ which would be a three-month suspension under the zero-tolerance statute for underage drinking and driving.²⁵

In Webb, the court reversed the circuit court’s judgment by finding that the Secretary had clearly abused his discretion under Section 6-206 of the Illinois Vehicle Code.²⁶ While noting that the decision was moot as to the defendant (her suspension had already ended), the Court considered the matter under the public-interest exception to the mootness doctrine.²⁷ According to a Springfield area attorney familiar with appealing such revocation and suspension reviews, the effect of the Webb decision on the Secretary of State’s policy and procedures is yet to be seen.

Minor Delivering Alcohol to Another Minor

An issue of statute interpretation is currently before the Illinois Supreme Court as to whether the word “person” includes a person under the age of 21 in the state statute prohibiting a “person” from delivering of alcohol to a minor.²⁸ In People v. Christopherson, 377 Ill.App.3d 752, 879 N.E.2d 1035, 316 Ill.Dec. 647 (Ill.App. 2nd Dist., 2007) appeal allowed, --- N.E.2d --- (Ill. Mar. 26, 2008), the defendant, who was 17 years old at the time, was charged with delivery of alcohol to another minor who subsequently died in a one-car accident while driving after consuming the alcohol.²⁹ The penalty rose to a Class 4 felony because death occurred as a result of the violation.³⁰ Defendant brought a motion to dismiss the information on the grounds that the statute is ambiguous and the legislative history demonstrated that such

²¹ Webb v. White, 364 Ill.App.3d 650, 654, 850 N.E.2d 233, 236, 302 Ill. Dec. 796, 799 (Ill. App. 4th Dist., 2006).

²² Id.; She could be present in the establishment because the entry age was 19 years old.

²³ Id.

²⁴ Id.

²⁵ 625 ILCS 5/6-208.2(a)(1), (a)(2).

²⁶ Webb, 364 Ill.App.3d at 655, 850 N.E.2d at 238, 302 Ill. Dec. at 801.

²⁷ Webb, 364 Ill.App.3d at 652, 850 N.E.2d at 235, 302 Ill. Dec. at 798.

²⁸ 235 ILCS 5/6-16.

²⁹ Christopherson, 337 Ill.App.3d at 753, 879 N.E.2d at 1036. The victim suffered injuries from the one-car accident and died eight months later in the hospital from the injuries.

³⁰ 235 ILCS 5/6-16(a).

“persons” should only include persons 21 and older.³¹ The Circuit Court of McHenry County agreed and granted the motion to dismiss, whereupon the State appealed.³²

The Appellate Court, by a 3-0 vote, reversed and remanded the trial court’s decision by interpreting the word “person” to include all persons, regardless of age, as possible offenders under the statute.³³ “It would not be appropriate for us to read into the statute age limitations the legislature did not express.”³⁴ In addition, the Appellate Court was not persuaded, unlike the trial court, that the legislative history clarified the intent of the statute.³⁵ Instead, the Appellate Court justified its reasoning as consistent with the purposes of the Liquor Control Act and the liberal construction afforded to it.³⁶ “This [Liquor Control] Act shall be liberally construed, to the end that the health, safety and welfare of the People of the State of Illinois shall be protected and temperance in the consumption of alcoholic liquors shall be fostered and promoted by sound and careful control and regulation...”³⁷

Despite the Second District Appellate Court’s unanimous decision, the Illinois Supreme Court has decided to accept this appeal and is expected to hear the case in late 2008/early 2009. Therefore, until further review, the “Prohibited Sales and Possession” statute³⁸ remains applicable to minors delivering to minors.

Mark C. Palmer

Mr. Palmer is an associate attorney at Evans, Froehlich, Beth & Chamley, Champaign, Illinois. His practice primarily focuses on Banking, Creditor's Rights and Municipal Law.

Mark C. Palmer
Evans, Froehlich, Beth & Chamley
44 East Main Street, Third Floor
Champaign, Illinois 61820
PH: 217.359.6494
FX: 217.359.6468
mpalmer@efbclaw.com
www.efbclaw.com

³¹ Christopherson, 337 Ill.App.3d at 753, 879 N.E.2d at 1036.

³² Id.

³³ Christopherson, 337 Ill.App.3d at 754, 879 N.E.2d at 1037.

³⁴ Christopherson, 337 Ill.App.3d at 755-56, 879 N.E.2d at 1038.

³⁵ Christopherson, 337 Ill.App.3d at 758, 879 N.E.2d at 1041.

³⁶ Christopherson, 337 Ill.App.3d at 757, 879 N.E.2d at 1039.

³⁷ Id.; 235 ILCS 5/1-2.

³⁸ 235 ILCS 5/6-16.