

Win A Bet? When Is It Legal To Give An Underage Person A Drink?

By Timothy J. Bechtold

For as long as human beings have made and consumed alcoholic beverages, there have been customs, social mores and laws that have attempted to influence their consumption in a positive way. Jim Koch, the founder and president of Samuel Adams Brewery (and a native Ohioan and attorney) has a wonderfully entertaining presentation about how the history of civilization is really the history of beer. His basic premise is that: (1) early humans settled down so that they could grow the crops needed to make beer, (2) those that did this had something to drink that was healthy and didn't make them sick (like drinking water did), and (3) these early brewers prospered and mankind has continued to follow in their footsteps ever since.

Whether you are ready to embrace Jim's admittedly biased views on the cause and effect relationship between alcohol and man's cultural evolution or not, there is no question that there have always been laws and rules related to its use. That interesting social experiment known as Prohibition in the early part of the 20th century in the United States is an example of a period of time where there were fairly clear laws on the books regulating the consumption of alcohol but also a significant degree of non-compliance with those laws. When the 21st Amendment to the United States Constitution was adopted in 1933, it marked the beginning of the current period of primarily state-based alcohol beverage regulation in our country. One of the main reasons for state-based regulation was so that the laws of a state could be tailored to address the concerns of that particular state in a way that was consistent with the views of, and generally accepted by, the citizens of that state. Such considerations are not inconsequential in terms of matching public policy with the wishes of residents of a state. One need only look at the controversies surrounding the enforcement of Ohio's open container law in conjunction with tailgating activities at OSU football games in recent years as an example of the difficult challenge that faces public officials in coordinating public policy with the desires of local residents on alcohol policy matters.

My professional interest in Ohio's Liquor Control Law (Title 43 of the Ohio Revised Code) began as a law clerk at the then-Department of Liquor Control in the late 1970's. I have always been impressed by two aspects of the work the legal scholars and draftspersons that crafted the statutes in Ohio achieved: (1) what the General Assembly adopted in the first couple of decades after Prohibition is pretty much what we have on the books today, and (2) no matter how odd or antiquated some particular provision may seem, there was a good reason for it at one time. The lesson I have taken away from this is that you need to know why a liquor law provision was originally adopted if you want to change it in a way that is going to be beneficial and lasting from a public policy perspective.

Which brings us to the question at hand: When is it legal to give an underage person a drink? The answer can be found in O.R.C. Section 4301.69 (A). "Except as otherwise provided in this chapter, no person shall sell beer or intoxicating liquor to an underage person, shall buy beer or intoxicating liquor for an underage person, or shall furnish it to an underage person, unless given by a physician in the regular line of the physician's practice or given for established religious purposes or unless the underage person is supervised by a parent, spouse who is not an underage person, or legal guardian...." (emphasis added)

Further, O.R.C. Section 4301.69 (B) provides, "No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the place while possessing or consuming beer or intoxicating liquor, unless the intoxicating liquor or beer is given to the person possessing or consuming it by that person's parent, spouse who is not an underage person, or legal guardian and the parent, spouse who is not an underage person, or legal guardian is present at the time of the person's possession or consumption of the beer or intoxicating liquor...." (emphasis added). Finally, O.R.C. Section 4301.69 (D) (1) relates to the engagement of accommodations at a hotel that involves underage consumption and O.R.C. Section 4301.69 (E) (1) contains the language which permits the underage persons themselves to consume or possess

alcoholic beverages. Both of these sections also contain the relevant exemptions discussed above in Sections (A) and (B).

The bottom line is that a parent, spouse of legal drinking age or legal guardian can provide alcoholic beverages to an underage person in Ohio.

In response to questions from restaurant operators, tavern owners and other liquor permit holders, I have advised them that, while the law allows for such conduct, it is up to them to decide if they want to permit patrons to do so at their establishments as they could be cited for underage sale or furnishing if it would turn out that the person providing the beverage to the underage person was not, in fact, their parent, guardian or spouse of legal drinking age.

In checking the legislative history of these provisions, the physician, parent and legal guardian language has been in the statute at least since the 1960s, the spousal exemption was first enacted in 1987 and was further qualified in 1989 with the "who is not an underage person" provision. Perhaps surprisingly, there does not appear to be much case law interpreting these sections of the Revised Code. The parental supervision aspect of the exception in O.R.C. Section 4301.69 (E) was essentially affirmed in a 2006 case, *State v. Pelfrey*, 167 Ohio App. 3d 388, 855 N.E 2d 501, 2006 Ohio 1416. In this case, the court stated that the parent's presence in the home where an underage person consumed alcohol was sufficient to satisfy, as a matter of law, the "accompanying" requirement of O.R.C. Section 4301.69 (E).

The common sense public policy behind these exemptions is, I believe, evidenced by the length of time they have been in effect and the relative lack of controversy surrounding them and I salute the drafters of these provisions for their wisdom and foresight.



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