



# ANDRÉ JACQUE

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TO: Members of the Assembly Committee on State Affairs

FROM: Representative André Jacque

DATE: April 18, 2013

RE: Assembly Bill 61

Chairman Kuglitsch and Members of the Assembly State Affairs Committee:

Thank you for holding this hearing on Assembly Bill 61, which will further our state's efforts to address and prevent youth and underage access to alcohol. Underage drinking is tremendous public health concern in Wisconsin; according to data from the federal Substance Abuse and Mental Health Services Administration, over 30% of Wisconsin 12 to 20 year olds report alcohol consumption within the previous month and over 20 percent acknowledge binge drinking within the same period. A high percentage of those convicted of underage drinking offense admit to driving after consuming alcohol. It is a problem which pervades our culture to nearly epidemic proportions and requires a vigorous response and utilization of the best practices available to combat it.

I initially brought this legislation forward at the urging of community leaders after being introduced to the concept of the Brown Jug model, or civil penalties for underage purchasing, by Green Bay Police Department Captain Bill Bongle shortly after first being elected in December of 2010. While Capt. Bongle is unable to be here today, I am pleased to attach his written testimony. Captain Bongle is an expert in community policing strategies, with considerable research into best practices for law enforcement, and I am appreciative of his recommendation to draft this bill, research from the Green Bay City Attorney's Office, and the urging of the Green Bay Area Partners in Education Drug Alliance to bring this legislation forward.

AB 61 is modeled after measures that have proven very effective in Alaska in curbing underage access to alcohol, as demonstrated by dramatically improved licensee compliance rates for ID checking. The civil penalty concept was first introduced on the municipal level in Alaska in 1998, and was so successful that it was enacted into state law in 2001. The concept is that minors who illegally enter licensed premises, clearly marked with a required sign, are liable to the licensee in the amount of \$1,000 as restitution for the cost of compliance efforts such as bouncers, video cameras, and ID scanners. The law serves the dual purpose of deterrence and punishment, and promotes server vigilance to discourage minors from coming in the door to make a purchase in the first place. Essentially it is a form of zero cost law enforcement, because no city or state dollars are used to implement the process. No police or prosecution funds are involved, as it is a small claims action directly between the licensee and the minor.

This legislation does not replace or reduce existing penalties but rather supplements those in place against underage alcohol purchasers. The experience in Alaska has been that licensees do make use of the civil action created by this legislation, at a time when law enforcement in much of the country has seen great difficulty in sustaining licensee compliance and enforcement levels for underage consumption. Given the severity of penalties their establishments may face for serving underage, I am confident that licensees will not be shy in trumpeting the penalties minors purchasing alcohol would incur under this bill. Many in law enforcement look forward to publicizing the possible new penalties as well.

We should embrace the concept that licensed establishments can also be an effective partner in fighting underage drinking, and incentivize proper behavior by licensee and their front line employees. The standard practice in Alaska has been for licensed establishments to financially reward clerks and bartenders who confiscate IDs and refuse to serve those under the legal drinking age, a practice that would be replicated in Wisconsin based on the conversations that I have had with business owners in my area. Common practice by licensees in Alaska has also allowed for a significant reduction in the amount of the civil penalty to minors who enroll in an approved alcohol awareness class, though there is no statutory language or requirement codifying it.

Under current state law, a person who commits an underage violation is subject to various penalties, including a forfeiture ranging in amount from \$250 to \$1,000 depending on the number of prior underage violations the person has committed. These amounts are not indexed and have not been increased in many years. Alcohol license holders are also subject to these fines even if the underage person uses false identification. Under this legislation, a licensee may bring a civil action against such an underage person and, if judgment is entered in favor of the licensee, the court must award to the licensee damages of \$1,000, plus costs and reasonable attorney fees. The licensee has the burden of proving that the underage person's conduct constituted an underage violation, but the action may be brought regardless of whether the underage person received a citation for, or was convicted of, the violation.

The sale of alcohol to underage people is mainly an act of negligence and one that is highly preventable. While many Wisconsin communities are suffering from a low rate of licensee adherence during law enforcement compliance checks for underage alcohol sales (often below 50%), the civil penalty approach has achieved remarkable and sustained improvement including an approximately 96% compliance rate in Alaska, rightly seen as an indicator for the general ease of alcohol purchase by those under the drinking age, or in this case, lack thereof. For whatever concerns exist regarding the mechanism of the Alaska Model, the bottom line is that it works. Law enforcement cannot be present 24/7 in every bar, restaurant or liquor store. Our current policies shortcomings are systemic, and we need a substantial and systemic change such as AB 61 to upgrade our efforts to protect our youth. Enforcement is an important component of compliance, but enforcement alone can become an exercise in futility - a comprehensive approach is needed.

AB 61 also establishes formal statutory authority for law enforcement to conduct compliance checks with underage volunteers under their supervision, and precludes licensees from undertaking a civil action against underage individuals participating in these compliance checks, as well as prohibits them from bringing a civil action related to an incident where the licensee has been charged with or convicted of a violation themselves.

I will also be bringing forward an amendment to ensure law enforcement is notified once the licensee and their employees become aware of the illegal activity in order for the civil penalty to be sought.

Thank you for your consideration, and I welcome any questions you may have.

April 18, 2013

Dear Committee Members,

I am writing to express my support for Assembly Bill 61. As a 26 year veteran of the Green Bay Police Department and District Captain, I have extensive experience in dealing with alcohol related issues in our community. I have worked with many community partners to address the problem of underage access to alcohol. In addition, I serve as an advisor to Green Bay's alcohol licensing committee and oversee alcohol compliance checks in our community.

Police typically conduct compliance checks using an underage person to test licensees to see if they are in compliance with state law. Sadly, we have found that persons under the age of 21 seem to have easy access to alcohol because of failure at the point of sale. The failure rate of our retailers is high, at times exceeding 50%.

When police conduct compliance checks, our underage buyers are instructed to provide their authentic ID and are instructed not to lie about their age. In many cases, our mystery shopper is never asked for an ID. In cases where they are asked for ID, the seller does not seem to process the information and make the sale anyway.

Our research, and research of my colleagues confirms that this oversight is usually not intentional but rather, it is typically an act of negligence. In the mind of the seller, they make the decision to make the sale based on their calculation of risk. Since police conduct compliance checks only a few times per year, the odds of a particular clerk or bartender, on a particular shift being singled out on a compliance check are minimal, and they know it.

I have studied programs throughout the country and learned that initiatives that create an incentive for the seller have created a situation where the seller becomes vigilant in checking ID's and making better decisions of whether or not to make the sale. Incentivized programs have a much higher rate of success than tradition sting operations. I learned of such initiatives through my work with the Responsible Retailers Forum, a non profit organization which conducts research into best practices in the alcohol industry.

This bill is modeled after similar legislation in Alaska which created a cause of action, placing some responsibility on the person attempting to make the illegal purchase. The seller stands to reap a monetary reward if they successfully identify an illegal purchaser and properly notify police. It also creates a disincentive for those attempting to make the illegal purchase.

I have a strong background in community policing and problem oriented policing strategies and was the architect of a project that won international recognition for reducing alcohol related problems in Green Bay. I have identified this strategy as a best practice, which is why I proposed the idea to Assemblyman Jacque.

To be clear, police fully intend to continue compliance checks and taking enforcement action when violations are detected. However, I believe this legislation will serve as one additional tool that will aid in reducing underage access to alcohol, an issue I think everyone agrees is important.

I hope that the committee will consider this written testimony. This legislation is supported by Chief Tom Molitor and the City Attorney's office in Green Bay.

Sincerely,

Captain Bill Bongle  
Green Bay Police Department



State Senator  
**Rick Gudex**

District 18

April 18, 2013

To: The Assembly Judiciary Committee  
From: Sen. Rick Gudex  
Re: **Assembly Bill 61**

Mr. Chair and members of the committee, thank you for holding this hearing today. Assembly Bill 61, known as the “Brown Jug” bill, will allow a retailer to bring a civil action against an under-ager (or the under-ager’s parents) who :

- illegally enters the tavern,
- illegally attempts to purchase alcohol,
- successfully purchases alcohol after falsifying his/her age.

This will apply to tavern owners and other retailers who sell alcohol. If a court rules in favor of the retailer, the defendant will have to pay \$1,000 plus “reasonable attorney fees.”

Why do this? Because retailers are being forced to spend time and resources to protect themselves against law breaking.

Minors and adults under 21 years of age know they aren’t supposed to go into a tavern or attempt to purchase alcohol, but taverns and other retail establishments are forced to spend money and effort on training, extra personnel, ID scanners and such things to make sure that both they **and** the minors are complying with the law.

The people who are trying to break the law, thus making those extra expenditures necessary, should bear some of the financial burden.

It is true that a tavern or convenience store could turn a blind eye in order to get the extra business from an underage person. That’s why alcohol sellers must still be held responsible for taking reasonable steps to ensure their customers are old enough to buy alcohol.

But the fact remains that it is the minor who tries to buy alcohol who is deliberately, knowingly breaking the law. Law-abiding merchants should have some relief from the expense of protecting against that.

Thank you again for giving me this opportunity to speak on behalf of this fair and commonsense bill. I urge your support.



TO: Members, Assembly Committee on State Affairs  
FROM: Maureen Busalacchi, Health First Wisconsin  
RE: Assembly Bill 61  
DATE: April 18, 2013

We are pleased that the Legislature is interested in preventing underage drinking in Wisconsin, but Assembly Bill 61 is heading down the wrong path.

We feel that the bill does not have all the aspects needed to effectively reduce underage drinking in the state of Wisconsin. Giving licensed premises the right to bring a civil action against an underage individual or their parent/guardian dilutes the responsibility of licensees to identify and refuse to serve underage individuals and creates troubling incentives for licensees.

First, under this bill the forfeited money would go right into the retailer's pocket, becoming a type of financial incentive to licensed premises owners, almost rewarding them for allowing underage drinking to occur at their establishment. If this money were instead put toward some type of prevention effort, there may be a better argument that this policy could over time reduce underage drinking in our state. Second, these civil actions brought by the licensee would be cases that could be very difficult to prove in the court of law and in turn waste valuable time, money and resources that municipalities throughout the state cannot afford. Finally, since the forfeiture does not incentivize bouncers and bartenders on the front line, it misses an opportunity to reward these workers for their part in reducing underage drinking.

In addition, many states with much lower rates of underage drinking hold licensees responsible when they serve a minor, or when patrons they serve harm others because of their intoxication. This is the direction we should be going if we're serious about reducing alcohol-related harms in Wisconsin. In Alaska, where this current legislation is modeled after, licensed establishments face possible license revocation for serving a minor and a \$5,000 fine. In Wisconsin, serving a minor is up to a mere \$500 fine to the licensee.

We need to hold person(s) who allow underage individuals into a licensed premises and serve them alcohol accountable for their actions. Having an alcohol license is a privilege, not a right. Operators should be doing their job responsibly to ensure that underage drinking is not occurring in the first place. For meaningful change to occur, licensees must strengthen their commitment to proactively identify underage individuals and refuse to serve them. Preventing initial access to alcohol will help reduce underage consumption in the state.

We ask this committee to oppose this legislation.