

2011 SENATE JUDICIARY


SB 2181

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2181  
1/17/11  
Job #12967

Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

Relating to mitigating factors for contributing to the consumption or possession of alcoholic beverages by a minor.

## Minutes:

There is attached testimony

**Senator Olafson** – Vice Chairman

**Senator Lyson** opens the hearing on 2181

**Senator Olafson** – Introduces the bill – See written attachment

**Senator Sitte** – Asks if this definition can be someone with an unsound mind.

**Senator Olafson** – In his review of Chapter 14 it says a minor or a person of an unsound mind.

**Senator Sitte** – Asks if we have certain protected classes of citizens who may be under guardianship who might fall under this as well.

**Senator Olafson** – Said he believes we are strictly talking about people who have not yet attained the age of 18. This bill clarifies section 14 and it will not change the fact that prosecutors are going to use strictly section 5.

**Aaron Burst** – Association of Counties – He said the states attorneys did review this change and have no problem with it. It is still against the law, even if this bill were to pass, to deliver alcohol to a person under 21 years of age. This will not have negative implications.

**Senator Sorvaag** – Asks why this is needed.

**Birst** – Said he doesn't know the under lying facts or issues with it.

**Senator Sitte** – Asks if this bill is necessary.

**Birst** – Said he is unaware if there was some sort of case law or charging problem that was a result of this bill.

**Senator Lyson** - Asks if we would be better off deleting Subsection 3 since they use section 5.

**Birst** – Said his reading of Section 3 allows the court to make certain findings, so he thinks that would still be a permissible statute.

**Senator Nelson** – She thinks it more clear as it is written than by using the word minor. She asks where the reference to chapter 5 in subsection 3 is.

**Birst** – He suggests that when a prosecutor charges delivery of alcohol to a minor it is under the 5 code and not the 14.10 code. If an adult would buy alcohol for a minor or somebody under the age of 21 it would be charged under 501.09 which is the delivery to certain persons unlawful. He said they do not reference the 14.10, contributing to the delinquency or deprivation of a minor. He added 14.10.06 is a more broad statute for any deprivation or contributing to the delinquency of a minor.

**Senator Nelson** – Asks what we will do with the gap between 18 and 21.

**Birst** – States under current state law a minor is somebody under the age of 18, 18 to 21 are adults but still cannot possess alcohol and would be against the law.

**Senator Sitte** – Asks if we're setting a conflict in state law.

**Birst** – Said he doesn't believe so. The intent was not to change the process, just to make the language consistent. He said they do not want to change the current practices whether it's illegal and whether they have the immunity. He said if that were the case he could not support the bill.

**Senator Olafson** – Said he believes Senator Sitte's concern are addressed in Chapter 501-08, subsection 6, which does allow immunity from prosecution for a person between 18 and 21, who summons medical or law enforcement for assistance in a medical emergency for themselves or someone else. He said he doesn't believe there is a conflict.

The committee asks Birst for an analysis of the bill.


Close the hearing on 2181.

# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

SB2181  
1/18/11  
Job #12969

Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

Relating to mitigating factors for contributing to the consumption or possession of alcoholic beverages by a minor.

## Minutes:

No written testimony

## Committee work

Committee discusses the bill that was heard on 1/17/11  
They discuss that they understand better now what this bill is trying to achieve. Minors are under 18.

**Senator Lyson** – motions for a do pass

**Senator Sitte** – seconds

Roll call vote – 6 yes, 0 no

**Senator Olafson** will carry

# FISCAL NOTE

Requested by Legislative Council  
01/29/2011

Amendment to: SB 2281

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Student athletics - Administration of Concussion management programs.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Amendment to SB 2281 removes oversight responsibilities from the Department of Public Instruction. Since the school districts will not be under the administration of DPI, no funds are required. In light of this fact, there may be a minimal or no cost effect to school districts for semi-annual training for coaches.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Gwyn Marback	Agency:	Public Instruction
Phone Number:	328-2295	Date Prepared:	01/31/2011

Date: 1/18/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2181

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Lyson Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Olafson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2181: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2181 was placed on the  
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2181



# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2181  
March 8, 2011  
15071

Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will open the hearing on SB 2181.

Sen. Curtis Olafson: Sponsor, support (see attached 1, 2, 3).

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2181?

Rep. Hogan: I move a Do Pass.

Rep. Kingsbury: Second the motion.

**12 YES 0 NO 2 ABSENT**

**DO PASS**

**CARRIER: Rep. Brabandt**

Date: 3/8/11  
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2181

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Hogan Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin			Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos					
Rep. Steiner	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Brabandt

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2181: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2181 was placed on the  
Fourteenth order on the calendar.

2011 TESTIMONY

SB 2181

## CHAPTER 14-10 MINORS

**14-10-01. Minors defined.** Minors are persons under eighteen years of age. In this code, unless otherwise specified, the term "child" means "minor". Age must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

**14-10-02. Adults defined.** All persons eighteen years of age and over are adults.

**14-10-03. Minor or person of unsound mind liable for wrongs.** A minor or a person of unsound mind of whatever degree is liable civilly for a wrong done by the minor or person of unsound mind in like manner as any other person.

**14-10-04. Minor's rights of action.** A minor may enforce the minor's rights by civil action or other legal proceedings in the same manner as an adult, except that a guardian ad litem must be appointed to conduct the same.

**14-10-05. Assignment of children prohibited - Penalty.** No person, other than the parents, may assume the permanent care and custody of a child, unless authorized so to do by an order or decree of a court having jurisdiction, except that a parent, upon giving written notice to the department of human services, may place that person's own child in the home of the child's grandparent, uncle, or aunt for adoption or guardianship by the person receiving the child. The child must be considered abandoned if proceedings for the adoption or guardianship of the child are not initiated by such relative within one year following the date of notice of placement. No parent may assign or otherwise transfer the parent's rights or duties with respect to the care and custody of the parent's child. Any such transfer or assignment, written or otherwise, is void. This section does not affect the right of the parent to consent in writing to the legal adoption of the parent's child, but such written consent does not operate to transfer any right in the child in the absence of a decree by a court having jurisdiction. Any person who violates the provisions of this section is guilty of a class A misdemeanor.

**14-10-06. Unlawful to encourage or contribute to the deprivation or delinquency of minor - Penalty.**

1. Any individual who by any act willfully encourages, causes, or contributes to the delinquency or deprivation of any minor is guilty of a class A misdemeanor.

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**5-01-05.3. Disturbing the peace - Disorderly conduct - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**5-01-05.4. Informational, counseling, and referral centers for alcoholism.** Any county or city within the state at the discretion of their governing bodies, either individually or jointly, may establish or provide office space, including personnel, for informational, counseling, and referral services for alcoholics and their families.

**5-01-06. Recovery of damages resulting from intoxication.** Repealed by S.L. 1987, ch. 95, § 5; S.L. 1987, ch. 99, § 2.

**5-01-06.1. Claim for relief for fault resulting from intoxication.** Every spouse, child, parent, guardian, employer, or other person who is injured by any obviously intoxicated person has a claim for relief for fault under section 32-03.2-02 against any person who knowingly disposes, sells, barter, or gives away alcoholic beverages to a person under twenty-one years of age, an incompetent, or an obviously intoxicated person, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. No claim for relief pursuant to this section may be had on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or personal representatives, nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated person or on behalf of the passenger's estate or personal representatives.

**5-01-07. Township beer or liquor licenses.** No retail beer or liquor license may be issued in any organized township without the written consent of the board of township supervisors.

**5-01-08. Individuals under twenty-one years of age prohibited from using alcoholic beverages or entering licensed premises - Penalty.**

1. Except as permitted in this section and section 5-02-06, an individual under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of an alcoholic beverage.
2. An individual under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except:
  - a. A restaurant if accompanied by a parent or legal guardian;
  - b. In accordance with section 5-02-06;
  - c. If the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
  - d. If the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or
  - e. If the individual enters the premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.
3. A violation of this section is a class B misdemeanor. For a violation of subsection 2, the court also shall sentence a violator to alcohol and drug education.
4. The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of human services for evaluation and appropriate counseling or treatment.

5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
6. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals that may be immune for any one occurrence is five individuals.

**5-01-08.1. Misrepresentation of age - Penalty - Licensee may keep book.** Any person who misrepresents or misstates that person's age or the age of any other person or who misrepresents that person's age through presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of a class B misdemeanor. Any licensee may keep a book and may require anyone who has shown documentary proof of that person's age, which substantiates that person's age to allow the purchase of alcoholic beverages, to sign the book if the age of that person is in question. The book must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and the purchaser's signature.

**5-01-08.2. Presumption of licensee's innocence when certain facts established.** The establishment of the following facts by a person making a sale of alcoholic beverages to a person not of legal age constitutes prima facie evidence of innocence and a defense to any prosecution therefor:

1. That the purchaser falsely represented and supported with other documentary proof that the purchaser was of legal age to purchase alcoholic beverages.
2. That the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages.
3. That the sale was made in good faith and in reliance upon the representation and appearance of the purchaser in the belief that the purchaser was of legal age to purchase alcoholic beverages.

**5-01-09. Delivery to certain persons unlawful.**

1. Any individual knowingly delivering alcoholic beverages to an individual under twenty-one years of age, except as allowed under section 5-02-06, or to a habitual drunkard, an incompetent, or an obviously intoxicated individual is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene and cooperated with medical assistance and law enforcement personnel on the scene, or was the individual in need of medical assistance. The maximum number of individuals that may be immune for any one occurrence is five individuals.
3. If an individual is convicted of this section for delivering alcoholic beverages to an individual under twenty-one years of age, the court shall consider the following in mitigation:
  - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and

**Olafson, Curtis**

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**From:** R. Scott Stewart, PC [sstewart@nd.gov]  
**Sent:** Friday, January 14, 2011 4:13 PM  
**To:** Olafson, Curtis  
**Subject:** 14-10-06

Curt,

My request for a change in the language of 14-10-06(3) is that the statute deals with minors but the current language in sub-section 3 refers to persons under 21. Persons under 21 aren't necessarily minors.

The language in the bill draft you sent me is how I believe the statute should be amended.  
Scott



Senate Bill 2181

House Judiciary Committee

Testimony of Senator Curtis Olafson

3-8-2011

Senate Bill 2181 will provide a technical correction to Century Code chapter 14-10-06. Chapter 14-10 is the chapter containing the code relating to minors. "Minors" are defined in chapter 14-10 as follows: **14-10-01. Minors defined.** Minors are persons under eighteen years of age.

The needed correction to the current language of 14-10-06 is contained on lines 16 and 17 of the bill, where "an individual under twenty-one years of age" is replaced by "a minor." An individual under twenty-one years of age and eighteen and older is not a minor, so this language should not be in the chapter on minors.

There is no need for concern that this will create any loopholes or any problems for prosecutors when charging cases of consumption of alcohol by persons under the age of 21 or when charging cases of delivery of alcohol to persons under 21 years of age. Chapters 5-01-08 and 5-01-09 are the sections of code which prosecutors use to charge those offenses.

Senate Bill 2181 is a simple correction to a section of code that needs to be corrected.

**CHAPTER 14-10  
MINORS**

**14-10-01. Minors defined.** Minors are persons under eighteen years of age. In this code, unless otherwise specified, the term "child" means "minor". Age must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

**14-10-02. Adults defined.** All persons eighteen years of age and over are adults.

**14-10-03. Minor or person of unsound mind liable for wrongs.** A minor or a person of unsound mind of whatever degree is liable civilly for a wrong done by the minor or person of unsound mind in like manner as any other person.

**14-10-04. Minor's rights of action.** A minor may enforce the minor's rights by civil action or other legal proceedings in the same manner as an adult, except that a guardian ad litem must be appointed to conduct the same.

**14-10-05. Assignment of children prohibited - Penalty.** No person, other than the parents, may assume the permanent care and custody of a child, unless authorized so to do by an order or decree of a court having jurisdiction, except that a parent, upon giving written notice to the department of human services, may place that person's own child in the home of the child's grandparent, uncle, or aunt for adoption or guardianship by the person receiving the child. The child must be considered abandoned if proceedings for the adoption or guardianship of the child are not initiated by such relative within one year following the date of notice of placement. No parent may assign or otherwise transfer the parent's rights or duties with respect to the care and custody of the parent's child. Any such transfer or assignment, written or otherwise, is void. This section does not affect the right of the parent to consent in writing to the legal adoption of the parent's child, but such written consent does not operate to transfer any right in the child in the absence of a decree by a court having jurisdiction. Any person who violates the provisions of this section is guilty of a class A misdemeanor.

**14-10-06. Unlawful to encourage or contribute to the deprivation or delinquency of minor - Penalty.**

1. Any individual who by any act willfully encourages, causes, or contributes to the delinquency or deprivation of any minor is guilty of a class A misdemeanor.
2. Any individual who by any act willfully encourages, causes, or contributes to the deprivation of a child less than sixteen years of age by causing that child to engage in sexual conduct as defined under section 12.1-27.2-01, in any play, motion picture, photograph, dance, or other visual representation is guilty of a class C felony.
3. If an individual is convicted of this section for encouraging, causing, or contributing to the consumption or possession of alcoholic beverages by an individual under twenty-one years of age, the court shall consider the following in mitigation:
  - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
  - b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

**14-10-07. Marriage of minors under supervision of juvenile court may be annulled - Penalty.** A minor, while under the supervision or custody of the juvenile court or the superintendent of the North Dakota youth correctional center, may not marry without the order of

**5-01-05.3. Disturbing the peace - Disorderly conduct - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**5-01-05.4. Informational, counseling, and referral centers for alcoholism.** Any county or city within the state at the discretion of their governing bodies, either individually or jointly, may establish or provide office space, including personnel, for informational, counseling, and referral services for alcoholics and their families.

**5-01-06. Recovery of damages resulting from intoxication.** Repealed by S.L. 1987, ch. 95, § 5; S.L. 1987, ch. 99, § 2.

**5-01-06.1. Claim for relief for fault resulting from intoxication.** Every spouse, child, parent, guardian, employer, or other person who is injured by any obviously intoxicated person has a claim for relief for fault under section 32-03.2-02 against any person who knowingly disposes, sells, barter, or gives away alcoholic beverages to a person under twenty-one years of age, an incompetent, or an obviously intoxicated person, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. No claim for relief pursuant to this section may be had on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or personal representatives, nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated person or on behalf of the passenger's estate or personal representatives.

**5-01-07. Township beer or liquor licenses.** No retail beer or liquor license may be issued in any organized township without the written consent of the board of township supervisors.

**5-01-08. Individuals under twenty-one years of age prohibited from using alcoholic beverages or entering licensed premises - Penalty.**

1. Except as permitted in this section and section 5-02-06, an individual under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of an alcoholic beverage.
2. An individual under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except:
  - a. A restaurant if accompanied by a parent or legal guardian;
  - b. In accordance with section 5-02-06;
  - c. If the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
  - d. If the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or
  - e. If the individual enters the premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.
3. A violation of this section is a class B misdemeanor. For a violation of subsection 2, the court also shall sentence a violator to alcohol and drug education.
4. The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of human services for evaluation and appropriate counseling or treatment.

5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
6. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals that may be immune for any one occurrence is five individuals.

**5-01-08.1. Misrepresentation of age - Penalty - Licensee may keep book.** Any person who misrepresents or misstates that person's age or the age of any other person or who misrepresents that person's age through presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of a class B misdemeanor. Any licensee may keep a book and may require anyone who has shown documentary proof of that person's age, which substantiates that person's age to allow the purchase of alcoholic beverages, to sign the book if the age of that person is in question. The book must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and the purchaser's signature.

**5-01-08.2. Presumption of licensee's innocence when certain facts established.** The establishment of the following facts by a person making a sale of alcoholic beverages to a person not of legal age constitutes prima facie evidence of innocence and a defense to any prosecution therefor:

1. That the purchaser falsely represented and supported with other documentary proof that the purchaser was of legal age to purchase alcoholic beverages.
2. That the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages.
3. That the sale was made in good faith and in reliance upon the representation and appearance of the purchaser in the belief that the purchaser was of legal age to purchase alcoholic beverages.

**5-01-09. Delivery to certain persons unlawful.**

1. Any individual knowingly delivering alcoholic beverages to an individual under twenty-one years of age, except as allowed under section 5-02-06, or to a habitual drunkard, an incompetent, or an obviously intoxicated individual is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene and cooperated with medical assistance and law enforcement personnel on the scene, or was the individual in need of medical assistance. The maximum number of individuals that may be immune for any one occurrence is five individuals.
3. If an individual is convicted of this section for delivering alcoholic beverages to an individual under twenty-one years of age, the court shall consider the following in mitigation:
  - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and