

ANDRÉ JACQUE

STATE REPRESENTATIVE • 2nd ASSEMBLY DISTRICT

(608) 266-9870

Fax: (608) 282-3602

Toll-Free: (888) 534-0002

Rep.Jacque@legis.wi.gov

P.O. Box 8952

Madison, WI 53708-8952

TO: Members of the Assembly Committee on State Affairs
FROM: Rep. André Jacque
DATE: May 17, 2017
RE: Assembly Bill 275

Chairman Swearingen and colleagues on the Assembly State Affairs Committee,

Thank you for holding this hearing on Assembly Bill 275 and the opportunity to appear before you today as the author of this common sense, bi-partisan legislation to restore Wisconsin's social hosting prohibition and reduce underage access to alcohol. I first began working on this legislation with former State Rep. Penny Bernard Schaber at the request of law enforcement, and I am very excited to have Sen. Wanggaard's leadership on this issue in the State Senate.

Current law prohibits adults over 21 from allowing minors to drink on "premises" they own or control. However, the definition of "premises" under state law has been interpreted in recent years to be limited to establishments with alcohol licenses, beginning with the 2008 Nichols v. Progressive decision by the Wisconsin Supreme Court and most recently in the 2016 Fond du Lac County v. Muche decision by the 2nd District Court of Appeals. AB 275 eliminates this "social hosting" loophole and clarifies the intent of the existing statute to restore the ability of law enforcement to cite the individuals who host underage drinking parties on their property, which was the understanding when the original statutory language this bill modifies was enacted in 1985. As of 2016, there are 30 other states with prohibitions on hosting underage drinking parties.

People under the legal drinking age of 21 have the nation's highest rate of alcohol dependence, and thousands of people in the United States are killed or injured each year as a result of alcohol-related crashes involving teenage drivers. Surveys of youth show that the most common sources of alcohol for them are the young person's own home or from persons over the age of 21 who purchase alcohol for them. While citizens are increasingly familiar with the "Parents Who Host Lose the Most" slogan championed by DHS, law enforcement and community organizations, that phrase is not presently backed up in state statute. It is also important to note that it is not just parents who are providing alcohol for youth, but other acquaintances and family as well.

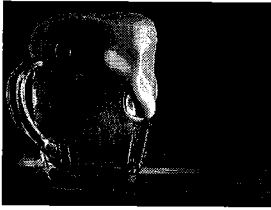
This legislation provides clear meaning to a statutory provision that has been subject to differing court interpretations, and will help deter parents and other adults from hosting underage parties and purchasing or providing alcohol for underage youth. Research has shown that social host legislation is effective, and associated with reductions in impaired driving and binge drinking amongst youth, and of course reduced underage drinking. AB 275 is supported by the Wisconsin Medical Society, the League of Wisconsin Municipalities, the Wisconsin Professional Police Association, the Badger State Sheriffs Association and the Wisconsin Association of Sheriffs and Deputy Sheriffs.

Identical legislation to AB 275 passed the Assembly Committee on Public Safety and Homeland Security by a vote of 7-1 during the 2013-'14 legislative session. Thank you for your consideration.

Editorial: Hold parents accountable for underage drinking

Published 5:16 p.m. CT Oct. 27, 2016 | Updated 5:21 p.m. CT Oct. 28, 2016

A glass of wine at dinner for older teens may be one thing. Hosting a party at which kids get drunk is quite another.



(Photo: TNS)

A state appeals court ruled this week (</story/news/local/wisconsin/2016/10/26/parent-beats-ticket-over-teens-drinking-party/92767242/>) that local "social host" ordinances aimed at curbing underage drinking don't apply to private residences because such ordinances are tougher than the state statute covering such behavior. We think the ruling is a mistaken reading of the statute, and that the state Supreme Court and the Legislature need to ensure that parents who serve drinks to kids or allow drinking on their premises are held accountable.

Underage drinking remains a scourge across the country. According to the [National Institute on Alcohol Abuse and Alcoholism](http://pubs.niaaa.nih.gov/publications/UnderageDrinking/UnderageFact.htm) (<http://pubs.niaaa.nih.gov/publications/UnderageDrinking/UnderageFact.htm>), by age 15, about 33% of teens have had at least one drink, and by age 18, about 60% percent of teens have had at least one drink. The institute also reported that in 2015, 7.7 million young people ages 12 to 20 reported that they drank alcohol beyond "just a few sips" in the past month.

And it noted that: "5.1 million young people reported binge drinking ... at least once in the past month" that "1.3 million young people reported binge drinking on 5 or more days over the past month" and that more teens use alcohol than cigarettes or marijuana.

Parents who allow kids to drink at parties in their homes are only abetting such behavior, sending a signal that underage drinking is acceptable in certain settings. A glass of wine at dinner is one thing. Hosting a party at which kids get drunk is quite another. The argument that the kids would do it anyway and a home is safer than a car or a park is only an excuse. The consistent message from parents and authorities should be that underage drinking is never acceptable.

[Parent beats ticket over teens drinking at party](http://www.jsonline.com/story/news/local/wisconsin/2016/10/26/parent-beats-ticket-over-teens-drinking-party/92767242/?from=global&sessionKey=&autologin=)

(<http://www.jsonline.com/story/news/local/wisconsin/2016/10/26/parent-beats-ticket-over-teens-drinking-party/92767242/?from=global&sessionKey=&autologin=>)

In the case at hand, a Fond du Lac County parent was fined \$1,000 for holding a high school graduation party where underage guests were caught drinking in 2015. In [the ruling](https://wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=176587) (<https://wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=176587>), two of three appellate court judges said that Fond du Lac's ordinance was invalid because the state "statute does not penalize social hosts for conduct in private residences."

The third judge disagreed with that conclusion (although he would have invalidated the ordinance because of another issue), arguing that the portion of the state law that reads, "No adult may knowingly permit underage persons to consume alcohol on premises owned by the adult," clearly was meant to apply to homes, despite the meaning of "premises" in other subsections of the same law, the Journal Sentinel reported.

We think the third judge got it right, and the other two are splitting hairs. The state Supreme Court could fix that through a reinterpretation of the ordinance, as could the Legislature by writing more precise language for the law. We encourage both bodies to do that. We also encourage local governments to make any necessary adjustments to their laws to avoid future problems.

Teens and parents need to understand that underage drinking is unacceptable, and that they will be held accountable.

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Lawmakers target adults who host underage drinking parties

By [Greg Neumann](#) [CONNECT](#)
Posted: Apr 25, 2017 6:26 PM CDT
Updated: May 10, 2017 6:47 PM CDT

MADISON (WKOW) – Wisconsin law enforcement officials are turning to the state legislature for help to prohibit adults from hosting underage drinking parties, after a court ruling made 54 local government prohibitions unenforceable.

On October 26, 2016, the Wisconsin Appeals Court ruled a social hosting ordinance in Fond du Lac County could not apply to a high school graduation party at a home where adults allowed other people's underage children to drink alcohol, because it was not consistent with state law.

The court ruled state statute only prohibits adults allowing other people's underage children to drink at places they own that also require a license or permit to sell alcohol.

Rep. Andre Jacque (R-De Pere) believes it is time to close that loophole statewide for a number of reasons.

"Underage access and involvement with alcohol leads to greater dependence, the younger the age of onset is with drinking," said Rep. Jacque. "And along with that, we've also found a very high propensity of people who drink underage admit to getting behind the wheel drunk."

A number of other Republicans and Democrats have signed on to Rep. Jacque's legislation, which would set a penalty of \$500 for any adult who allows other people's underage kids to drink at their home while they are present.

There is an existing statute that prohibits adults from purchasing alcohol for someone underage to consume, but Rep. Jacque said that doesn't address the problem.

"What law enforcement will tell you is, in the absence of receipts and direct testimony - as to who exactly purchased the alcohol - it's very difficult to prove the case," said Rep. Jacque.

Experts at UW Law School's Wisconsin Alcohol Policy Project told 27 News this is actually a crucial time for the state when it comes to underage drinking.

According to Project Coordinator Julia Sherman, Wisconsin had highest incidence of underage drinking in the country just one decade ago, but is now closer to the national average.

"You know, the first social host ordinance was adopted in 2009. I don't think it's the sole reason. There was a lot going on in the nation. But one thing we know for certain - when you reduce youth access to alcohol - underage drinking drops," said Sherman.

Passage of Rep. Jacque's bill isn't a sure thing.

He's introduced the same legislation in three previous sessions, only to see it stop short of Gov. Walker's desk each time.

But Rep. Jacque he feels the amount of bipartisan support and the Appeals Court ruling could be enough to finally get it passed.

"I do think it's something we'll be able to get over the hump this session," said Rep. Jacque, who hopes to get a hearing on the bill in May.

Both the Wisconsin League of Municipalities and the Wisconsin Medical Society also support the legislation.

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http://journaltimes.com/news/opinion/editorial/journal-times-editorial-hosting-ordinances-stumble-in-court/article_61aa6e81-2457-51f2-9363-69dbf78da9f9.html

OUR PERSPECTIVE

Journal Times editorial: Hosting ordinances stumble in court

The Journal Times Editorial Board Oct 28, 2016



The Wisconsin Legislature pumps out laws on a regular basis and legislators are fully aware of the need to dot their i's and cross their t's when it comes to the wording of those laws.

But in the case of a state law prohibiting adults from hosting alcohol parties for underage drinkers, the Legislature apparently crossed its i's, instead.

That was the conclusion this week of the 2nd District Court of Appeals as it tossed the conviction of a Fond du Lac area man and his \$1,000 fine for hosting a high school graduation celebration at his home for his son.

The ruling could undermine local "social hosting" ordinances against serving alcohol to minors across the state.

The parent, Stuart Muche, of Van Dyne, fought the fine and lost in Circuit Court before winning a 3-0 decision from the Court of Appeals. According to the opinion, Muche hosted a graduation party at his home for his son at which alcohol was served. Later that night, young people who had not been invited arrived with their own beer and began drinking.

According to the court records, Muche didn't stop the youths from drinking or make them leave, but he did collect their car keys. Deputies arrived at the party and gave Muche a citation.

Instead of paying the fine, Muche went to court and argued on appeal that the Fond du Lac County ordinance was invalid because it doesn't conform with a state law that bars adults from hosting underage drinkers on premises that the adult owns or controls. He argued that "premises" as defined by state law applies to an area described in a license or permit — a tavern or a liquor store — and not to a home.

He further argued that the local ordinance was invalid because the \$1,000 ticket he was given exceeded state law which proscribes a \$500 fine for first offenses and escalates to jail time and fines for subsequent violations.

The 2nd Court of Appeals agreed with him on both counts. Their opinion stated, the "statute does not penalize social hosts for conduct in private residences." One judge said the court shouldn't have addressed the premises issue and the intent of the Legislature was clearly meant to apply to homes — but said he would have reversed the conviction solely on the penalty issue.

The ruling may well have resulted in a celebration at the Muche residence.

But for the myriad of counties that have adopted social hosting ordinances and for the state Legislature it will mean back to the drawing boards to craft new wording that carries out their intentions.

They might want to run spell-checker on those proposed laws and ordinances. Legal checker, too. If you can't get the law right, you can't enforce it.

We hope they get it right this time. June, and another round of graduations, is just around the corner.



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1025 S. Moorland Road,
Suite 200
Brookfield, WI 53005
Phone: 262/782-2851
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May 17, 2017

Memo To: Assembly Committee on State Affairs
Representative Rob Swearingen, Chair
From: Trisha Pugal, CAE, President, CEO
Kathi Kilgore, WH&LA Contract Lobbyist
RE: AB 275 Preventing Underage Drinking – For Information Only

On behalf of over 750 hotels, motels, resorts, inns, condos and Bed & Breakfasts throughout Wisconsin, we would like to first compliment the bill authors on their intended pursuit of barriers to underage drinking.

While the intentions are admirable, we believe, based on advice from our legal counsel, that there are some unintended consequences of the current bill language. We would like to explain these to you, for information purposes only, as the bill author has expressed an interest in making modifications to remedy these concerns.

The courts have clarified that the current statute covers establishments with liquor licenses, which currently does not include residences and premises without such licenses – such as lodging property structures separate from bars and restaurants that are licensed.

The language in the bill extends new liability to lodging properties that rent out overnight stays to the public. The rentals are private rooms, with the guests bringing in their luggage, packages, bags, etc. to their rooms. Not only is the lodging owner/operator not privy to what is in the luggage or packages, but they also are not privy to what is done with the contents in the privacy of the rooms.

The current statutory language states that “No adult may knowingly permit **or fail to take action to prevent** the illegal consumption of alcohol beverages by an underage person...” Thus, with the new extended language coverage of “**property**” that includes lodging properties, whether the owner/operator knows about it or not they are expected to take preventive action, which naturally is an unreasonable expectation in a lodging property with people coming and going frequently.

We look forward to working with the bill authors to ensure that an admirable intent does not unintentionally broaden to include licensed lodging properties that are not serving alcohol beverages.

Thank you for allowing us to share our concerns today.

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The Wisconsin Hotel & Lodging Association (WH&LA) represents more than 750 hotels, motels, resorts, inns, hotel condos, and bed & breakfasts throughout Wisconsin. Established in 1896, WH&LA provides marketing, education, legislative and information services to Wisconsin’s lodging industry.



May 17, 2017

Testimony of Julia Sherman, Wisconsin Alcohol Policy Project
AB 275

Thank you for this opportunity to provide additional background on AB 275. While this proposal is not new, there is new urgency to the matter. Beginning in 2009, Wisconsin communities began to adopt ordinances making it illegal to provide a location for underage drinking, regardless the source of the alcohol. By October 2017, at least 46 municipalities and 8 counties (listed below) had adopted the Two Rivers model ordinance or a very similar measure. These ordinances created an effective deterrent for individuals inclined to allow underage youth to consume alcohol illegally on their property.

The October 26, 2016 appeals court decision in *Fond du Lac County v. Muche* made many of Wisconsin's social host ordinances unenforceable. Municipalities lost their best tool to hold individuals who provided a location, but not the alcohol, accountable for underage drinking. Citing youth for underage drinking while allowing adults who permit or even facilitate the event, to avoid sanctions fails to get at the root problem.

Alcohol is a contributing factor in the leading causes of death among youth, accidents, homicides and suicides,ⁱ and the prelude to numerous tragedies including, sexual assault, falls, drowning or vehicular injury. The tragic March 2012 events in Slinger began with an underage drinking party. Media accounts indicate a hosting parent advised youth to flee the police, precipitating a young man's attempt to hide nearby with tragic consequences.ⁱⁱ

Because preemption of existing ordinances is no longer an issue, community and law enforcement leaders are looking for a workable alternative. There are lingering concerns that AB 275 has a narrow definition of the host and circumstances that could result in a citation. There is also some concern that the term "property" is not as expansive as the list of locations (docks, hotel rooms, outbuildings, etc.) enumerated in local social host ordinances. However, law enforcement and coalition leaders tell me the need for an enforceable social host law is greater than their concerns about AB 275.

Wisconsin's underage drinking rate dropped significantly in the past decade to near the national average. Wisconsin's rate of alcohol initiation before age 13 dropped from 24% in 2005 to 15% in 2013. Early alcohol use generally occurs in noncommercial settings, this bill reduces youth access to alcohol in those settings.

Interventions including alcohol age compliance checks, social host ordinances and active community coalitions all contributed to recent decreases in underage drinking.

Research has confirmed that alcohol is the primary gateway drug for children and teens. Research published in the *Journal of School Health* (January 2016) reported that alcohol, more often than either marijuana or tobacco, was the gateway drug for youth leading to illicit drug use.ⁱⁱⁱ Preventing and reducing underage drinking and especially early alcohol initiation today is drug abuse prevention for 2020.

We cannot risk backsliding.

ⁱ American Academy of Pediatrics, October 1998, child health month promotional material.

ⁱⁱ Milwaukee Journal Sentinel, Homeowner knew police were nearby before firing. Bruce Vielmetti, March 25, 2012

ⁱⁱⁱ Barry, A. King, J., Sears, C., Harville, C., Bondoc, Irina, Joseph, K. Prioritizing Alcohol Prevention: Establishing Alcohol as the Gateway Drug and Linking Age of First Drink with Illicit Drug Use, *Journal of School Health*, January 2016, Vol. 86, No. 1. Page 31-38.

Municipalities that adopted social host ordinance

1. Ashwaubenon, village
2. Bangor, village
3. Beaver Dam
4. Campbellsport
5. Coleman, village
6. Cudahy
7. Deerfield
8. De Pere
9. Edgerton – including other intoxicants
10. Evansville
11. Florence County – no incorporated municipalities in the county
12. Fond du Lac, city
13. Holman, village
14. Kenosha, city
15. Kronenwetter, village
16. La Crosse, city
17. Manitowoc, city
18. Montello
19. Neshkoro, village
20. New Holstein
21. North Fond du Lac, village
22. Oakdale, village
23. Oakfield, village
24. Onalaska
25. Oregon, village

-
26. Oregon, town
 27. Oxford, village
 28. Plainfield, village
 29. Plover, town
 30. Prairie du Chien, city
 31. Racine
 32. Rosendale, village
 33. Rothschild
 34. Schofield
 35. Sparta
 36. Stoughton
 37. Stevens Point
 38. Stratford, village
 39. Two Rivers
 40. Union , town
 41. Valders, village (no draft)
 42. Wausau
 43. West Salem, village
 44. Westfield
 45. Weston
 46. Wisconsin Rapids

Counties: Applies only to unincorporated areas of the county.

1. Barron County
2. Fond du Lac County
3. Florence County
4. La Crosse County
5. Manitowoc County
6. Marathon County
7. Marquette County
8. Waushara County



131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

To: Assembly Committee on State Affairs
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: May 17, 2017
Re: AB 275, Prohibiting adults from allowing underage drinking on property they own or control

The League of Wisconsin Municipalities supports AB 275, which is aimed at preventing adults from hosting underage drinking parties at private residences. This bill solves a flaw in current law and has the additional positive effect of allowing municipalities to adopt and enforce social host ordinances.

Last fall, the Wisconsin Court of Appeals ruled that Fond du Lac County lacked authority to impose a forfeiture against a parent who violated the county's social host ordinance by hosting his son's graduation party at their residence where alcohol was consumed by underage persons. The court concluded that the county's ordinance did not strictly conform to state law and therefore exceeded the county's authority.

Wisconsin Statute § 125.07(1) contains restrictions relating to alcohol and underage persons. Wis. Stat. § 125.10(2) allows a municipality or county to enact an ordinance regulating certain conduct regulated by 125.07 only if the ordinance strictly conforms to the statute. The court of appeals held that the term "premise" as used in §125.07 means "the area described in a license or permit," as defined in § 125.02(14m), and that Fond du Lac County's social host ordinance was not in strict conformity with Wis. Stat. § 125.07(1) because it regulated private property and therefore "forbids what the statute does not forbid"

As a result of this decision, 46 municipalities and counties with social host ordinances similar to Fond du Lac County's found those ordinances unenforceable.

AB 275 will make municipal social host ordinances enforceable once again. We urge you to recommend passage of this sensible bill. Thanks for considering our comments.

YOUR VOICE. YOUR WISCONSIN.