

Dram Shop Liability

2018 50-State Overview



Presented by Jennifer Thomas
Van De Poel, Levy, Thomas LLP
1600 South Main Plaza, Suite 325
Walnut Creek, CA, 94596



Alabama



Dram Shop Act, ALA. CODE 1975, § 6-5-71(a): “Every wife, child, parent, or other person who shall be injured in person, property, or means of support by any intoxicated person or in consequence of the intoxication of any person shall have a right of action against any person who shall, by selling, giving, or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages, cause the intoxication of such person for all damages actually sustained, as well as exemplary damages.”

Violation of the Dram Shop Act has three elements: The sale must have 1) been contrary to the provisions of law; 2) been the cause of the intoxication; and 3) resulted in the plaintiff's injury. *Attalla Golf and Country Club, Inc. v. Harris*, 601 So. 2d 965 (Ala. 1992). The most prominent liquor sales violation that results in Dram Shop Act liability is that regulation prohibiting serving alcohol to any person who appears, considering the totality of the circumstances, to be intoxicated. ALA. ADMIN. CODE r. 20-X-6-.02. See *Duckett v. Wilson Hotel Management Co., Inc.*, 669 So. 2d 977 (Ala. Civ. App. 1995). Dram Shop Act imposes liability in cases in which an alcohol licensee, acting through its managers, permits an underage employee to consume alcoholic beverages on its premises. *McGough v. G&A, Inc.*, 999 So. 2d 898 (Ala. Civ. App. 2007).

Dram Shop liability does not lie where a store sells alcohol to a minor and then the minor shares the alcohol with a minor driver who causes an automobile accident. *Jones v. BP Oil Co., Inc.*, 632 So. 2d 435 (Ala. 1994). Dram Shop liability also does not lie when property owners allow underaged persons to consume alcohol but does not provide the alcohol to the minors. *Runyans v. Littrell*, 850 So. 2d 244, 667 (Ala. 2002). No action lies for negligent dispensing of alcohol. *Williams v. Reasoner*, 668 So. 2d 541 (Ala. 1995).

Alabama's Dram Shop Act creates strict liability in case of its violation. The defenses of complicity and contributory negligence are not available, but a defendant can raise as a defense that the injured party assumed the risk of injury, if the facts would support such a defense. *McIsaac v. Monte Carlo Club, Inc.*, 587 So. 2d 320, 324 (Ala. 1991).

Alaska



A person who provides alcohol to another person cannot be held civilly liable for injuries resulting from intoxication unless that person furnishing alcohol is licensed to sell alcohol and the alcohol was sold to someone under the age of 21 or to a drunken person. (AS 04.21.020) That is, the dram shop act does not apply to social hosts. *Christiansen v. Christiansen*, 152 P.3d 1144 (2007). However, a person is not liable for selling to a person under the age of 21 if he secures in good faith a signed statement or driver's license that indicates the person is 21 years of age or older. (AS 04.21.050) A drunken person is a person whose physical or mental conduct is substantially impaired by alcohol and who exhibits plain, easily observable, or discovered outward manifestations of alcohol impairment. (AS 04.21.080)

A person not licensed to sell alcohol is strictly liable for selling alcohol to the recipient or another person for civil damages if the person receiving the alcohol engages in conduct that results in damages. An unlicensed person is also strictly liable for the cost of the state to prosecute the person who purchased the alcoholic beverage. (04.21.020)

Arizona



I. Elements A licensee is liable for property damages and personal injuries or is liable to a person who may bring an action for wrongful death pursuant to §12-612, or both, if a jury finds all of the following:

1. The licensee sold spirituous liquor [] to a purchaser who was obviously intoxicated...
 2. The purchaser consumed the spirituous liquor sold by the licensee
 3. The consumption of spirituous liquor was a proximate cause of the injury, death or property damage...
- A.R.S. §4-311.

A dram shop owes both a statutory and common law duty of care to use reasonable care in serving a patron alcohol, and that duty extends so far as to encompass protecting the patron from himself. See *Ontiveros v. Borak*, 136 Ariz. 500, 667 P.2d 200 (1983); *Brannigan v. Raybuck*, 136 Ariz. 513, 667 P.2d 213 (1983). In order to establish that the dram shop defendant breached its common law duty of care, the plaintiff need only establish that, at the time he or she was served alcohol, he or she had consumed a sufficient number of alcoholic drinks that the dram shop defendant knew or should have known that he was intoxicated. *Young v. DFW Corp.*, 184 Ariz. 187, 189, 908 P.2d 1, 3 (App. 1995). The question of causation is one reserved for the jury under usual principles of Arizona tort law. *Ontiveros*, 136 Ariz. at 508, 667 P.2d at 208.

Negligence Per Se: A dram shop plaintiff may establish that a dram shop defendant was negligent per se if he or she is able to prove that the dram shop defendant violated A.R.S. §4-244 when it served the plaintiff alcohol when he or she was "disorderly or obviously intoxicated." The dram shop defendant may then be able to show its violation of the statute excusable if it can establish that "the demeanor or conduct of the person served was such that there was no reason to believe that he or she was intoxicated." *Brannigan*, 136 Ariz at 518, 667 P.2d at 218.

Defenses: A dram shop defendant has a constitutional right, under the Arizona Constitution, to raise the affirmative defenses of contributory negligence and assumption of the risk, and determination of these defenses must be left to the jury. Ariz. Const., art. 18, §5.

Under the common law contributory negligence scheme, "it is well established that plaintiff's contributory negligence, if a proximate cause of his injuries, could operate as an absolute bar to plaintiff's recovery in a negligence action." *Cheney v. Super Co.*, 144 Ariz. 446, 698 P.2d 691 (1985). Plaintiff's negligence may bar recovery if plaintiff contributes in any degree, even only slightly, to his injury. *Id.*

A dram shop defendant may be able to raise a defense under A.R.S. §12-711 also. Under A.R.S. §12-711, if the dram shop defendant is able to establish that the plaintiff was under the influence of an intoxicating liquor and as a result of that influence, the dram shop plaintiff was at least fifty percent responsible for the accident or the event that caused plaintiff's harm, then the jury may find the dram shop defendant not liable. See A.R.S. 12-711.

Arkansas



Arkansas law prohibits an alcoholic beverage retailer from selling alcoholic beverages to a person who the retailer knows or reasonably should know is clearly intoxicated.

The plaintiff has the burden of proving the following:

First, that defendant sold alcoholic beverages to an intoxicated person; and

Second, that defendant knew or reasonably should have known that intoxicated person was so obviously intoxicated at the time of the sale that he presented a clear danger to others; and

Third, that such sale was a proximate cause of the plaintiff's damages.

To establish a prima facie case under § 16-126-104, the plaintiff must allege that the intoxicated person caused the injury. See *Sluder v. Steak and Ale of Little Rock, Inc.*, 361 Ark. 267, 275, 206 S.W.3d 213, 217 (2005). The statute adds a specific requirement that proof of proximate cause include a causal link between the intoxicated person and the injured third party. *Id.*, 206 S.W.3d at 218; see also AMI 501 (definition of proximate cause).

Ark. Code Ann. § 16-126-104 provides the following affirmative defense:

It shall be an affirmative defense to civil liability under this section that an alcoholic beverage retailer had a reasonable belief that the person was not clearly intoxicated at the time of such sale or that the person would not be operating a motor vehicle while in the impaired state.

California



Under California Civil Code section 1714, the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

No social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages. However, if an adult knowingly furnishes alcoholic beverages at his or her residence to a person whom he or she knows, or should have known, to be under 21 years of age, the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death.

Colorado



COLORADO LIQUOR CODE/DRAM SHOP ACT

C.R.S. § 12-47-801 et. seq. governs civil liability for dram shop violations in Colorado. These provisions prohibit dram shop liability for personal injury or property damage suffered because of the intoxication of any person due to the sale or service of any alcoholic beverage, except where it is proven that a licensee willfully and knowingly sold or served any alcoholic beverage to such person who was under the age of 21 years or who was visibly intoxicated, and where the civil action is commenced within one year after such sale or service. No civil action may be brought by the person to whom the alcoholic beverage was sold or served, or by his or her estate, legal guardian, or dependent. In any civil action brought pursuant to this subsection, the total liability in any such action shall not exceed \$280,810.00 (current inflation-adjusted damages limitation).

In addition, no social host who furnishes any alcoholic beverage is civilly liable for personal injury or property damage, including wrongful death, except when it is proven that the social host knowingly served any alcoholic beverage to a person who was under the age of 21 years or knowingly permitted the person under the age of 21 to consume any alcoholic beverage, and where the civil action is commenced within one year after such service. No civil action may be brought by the person to whom such alcoholic beverage was served or by his or her estate, legal guardian, or dependent. The total liability in any such action shall not exceed \$280,810.00 (current inflation-adjusted damages limitation).

Connecticut



Notice

The statute requires that notice be given within 120 days of the accident and, in the case of death, within 180 days.

Conn. Gen. Stat. § 30-102 provides, in relevant part: "If any person, by such person or such person's agent, sells any alcoholic liquor to an intoxicated person, and such purchaser, in consequence of such intoxication, thereafter injures the person or property of another, such seller shall pay just damages to the person injured. . ."

Damages Limitation

Damages are capped at \$250,000 per person and per occurrence, unless the plaintiff can prove recklessness.

Interpretation

The act covers all sales of liquor that result in an intoxicated person causing injury, irrespective of the bar owner's knowledge or state of mind. The act thereby provides an action in strict liability, both without the burden of proving the element of scienter essential to a negligence action and without the benefit of the broader scope of recovery permitted under such an action.

The underlying premise of the act is that it is in the public interest to compensate citizens of this state for injuries received when a vendor sells alcohol to an intoxicated person who in turn brings about injuries as a result of such intoxication. The plaintiff has the burden of proving that the patron was visibly or perceivably intoxicated when he/she was served.

A plaintiff seeking to prevail under the dram shop statute must establish that there was: (1) a sale of intoxicating liquor; (2) to an intoxicated person; (3) who, in consequence of such intoxication, causes injury to the person or property of another.

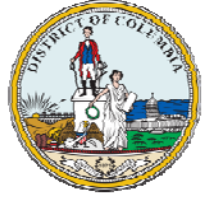
An intoxicated adult patron cannot sue for his own injuries under the Dram Shop Act. If the sale is to a minor, then the statutory cap does not apply and the intoxicated minor can sue for his/her injuries.

Delaware



Delaware law does not recognize dram shop liability.

District of Columbia



The District of Columbia has enacted statutory regulations that prohibit a holder of a liquor license from either serving alcohol to an underage and/or visibly intoxicated patron or permitting the consumption of alcohol by such persons. See D.C. Code § 25-101.

There is fairly extensive District of Columbia case law extending liability to liquor licensees for injuries sustained by third parties as a result of the tortious conduct of intoxicated patrons. See e.g. *Zhou v. Jennifer Mall Restaurant, Inc.*, 534 A.2d 1268 (D.C. 1987) (finding a tavern liable for injuries sustained by plaintiffs in an automobile accident caused by an intoxicated patron). In *Zhou*, the Court of Appeals held that serving a person already intoxicated or apparently intoxicated renders the liquor licensee negligent per se, and that where injuries are proximately caused to a member of the public by that violation the licensee may be liable in damages.

The Court of Appeals has also held liquor licensees negligent per se for serving underaged patrons. In such instances, the defendant may not raise the affirmative defenses of contributory negligence or assumption of the risk. See *Jarrett v. Woodward Bros.*, 751 A.2d 972 (2000).

Dram shop liability may be found whether the alleged injury was incurred on the licensee's premises or elsewhere.

Florida



768.125 Liability for injury or damage resulting from intoxication.—A person who sells or furnishes alcoholic beverages to a person of lawful drinking age shall not thereby become liable for injury or damage caused by or resulting from the intoxication of such person, except that a person who willfully and unlawfully sells or furnishes alcoholic beverages to a person who is not of lawful drinking age or who knowingly serves a person habitually addicted to the use of any or all alcoholic beverages may become liable for injury or damage caused by or resulting from the intoxication of such minor or person.

Georgia



O.C.G.A. Sec. 51-1-40, a person who knowingly provides alcohol to an individual under the age of 21, and has knowledge that such an individual will soon be driving a motor vehicle, can be held liable for any injury, death, or damage caused by the intoxicated individual. A person who knowingly provides alcohol to an individual over the age of 21 who is noticeably intoxicated, and has knowledge or in the exercise or ordinary care should know that such an individual will soon be driving a motor vehicle, can likewise be held liable for subsequent injury, death, or damage. This statute applies not only to those who sell alcohol, but also to those who furnish or serve alcoholic beverages. Alcohol providers can only be held liable to third parties harmed by an intoxicated individual. Claims brought by an individual harmed as a result of his own intoxication are expressly barred by this statute.

Hawaii



Although Hawaii does not have a dram shop statute, it does recognize common law liquor liability. Hawaii recognizes that third parties injured by inebriated tavern customers clearly have a right of action against the tavern that provided liquor to the customer. *Ono v. Applegate*, 62 Haw. 131, 136, 612 P.2d 533, 538 (1980).

In *Ono v. Applegate*, the plaintiffs alleged that a tavern had negligently supplied alcohol to the defendant driver, who was already intoxicated when she entered the bar, and who left the bar intoxicated and caused a car collision. *Id.* at 133, 612 P.2d at 536. The Hawaii Supreme Court held that the State's liquor licensing law imposed a duty of care on a licensee. *Id.* at 138, 612 P.2d at 539. The statute in question currently provides that: At no time under any circumstances shall any licensee or its employee: (1) Sell, serve, or furnish any liquor to, or allow the consumption of any liquor by:

- (A) Any minor;
- (B) Any person at the time under the influence of liquor;
- (C) Any person known to the licensee to be addicted to the excessive use of intoxicating liquor;
or
- (D) Any person for consumption in any vehicle that is licensed to travel on public highways;

provided that the consumption or sale of liquor to a minor shall not be deemed to be a violation of this subsection if, in making the sale or allowing the consumption of any liquor by a minor, the licensee was misled by the appearance of the minor and the attending circumstances into honestly believing that the minor was of legal age and the licensee acted in good faith; and provided further that it shall be incumbent upon the licensee to prove that the licensee so acted in good faith[.] HAW. REV. STAT. § 281-78(b)(1) (2007).



23-808. (1) The legislature finds that it is not the furnishing of alcoholic beverages that is the proximate cause of injuries inflicted by intoxicated persons and it is the intent of the legislature, therefore, to limit dram shop and social host liability; provided, that the legislature finds that the furnishing of alcoholic beverages may constitute a proximate cause of injuries inflicted by intoxicated persons under the circumstances set forth in subsection (3) of this section.

(2) No claim or cause of action may be brought by or on behalf of any person who has suffered injury, death or other damage caused by an intoxicated person against any person who sold or otherwise furnished alcoholic beverages to the intoxicated person, except as provided in subsection (3) of this section.

(3) A person who has suffered injury, death or any other damage caused by an intoxicated person, may bring a claim or cause of action against any person who sold or otherwise furnished alcoholic beverages to the intoxicated person, only if: (a) The intoxicated person was younger than the legal age for the consumption of alcoholic beverages at the time the alcoholic beverages were sold or furnished and the person who sold or furnished the alcoholic beverages knew or ought reasonably to have known at the time the alcoholic beverages were sold or furnished that the intoxicated person was younger than the legal age for consumption of the alcoholic beverages; or (b) The intoxicated person was obviously intoxicated at the time the alcoholic beverages were sold or furnished, and the person who sold or furnished the alcoholic beverages knew or ought reasonably to have known that the intoxicated person was obviously intoxicated.

(4) (a) No claim or cause of action pursuant to subsection (3) of this section shall lie on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or representatives. (b) No claim or cause of action pursuant to subsection (3) of this section shall lie on behalf of a person who is a passenger in an automobile driven by an intoxicated person nor on behalf of the passenger's estate or representatives.

(5) No claim or cause of action may be brought under this section against a person who sold or otherwise furnished alcoholic beverages to an intoxicated person unless the person bringing the claim or cause of action notified the person who sold or otherwise furnished alcoholic beverages to the intoxicated person within one hundred eighty (180) days from the date the claim or cause of action arose by certified mail that the claim or cause of action would be brought.

(6) For the purposes of this section, the term "alcoholic beverage" shall include alcoholic liquor as defined in section 23-105, Idaho Code, beer as defined in section 23-1001, Idaho Code, and wine as defined in section 23-1303, Idaho Code.

Illinois



As to Civil Liability - Pursuant to 235 ILCS 5/6-21, commonly referred to as the Dramshop Act, every person who is injured within this State, in person or property, by any intoxicated person has a right of action in his or her own name, severally or jointly, against any person, licensed under the laws of this State or of any other state to sell alcoholic liquor, who, by selling or giving alcoholic liquor, within or without the territorial limits of this State, causes the intoxication of such person. Causes of action under the Dramshop Act are based on strict liability and are statutorily capped. For causes of action involving persons injured, killed, or incurring property damage on or after January 20, 2018, the judgment or recovery shall not exceed \$68,777.44, and for causes of action involving either loss of means of support or loss of society, the judgment or recovery shall not exceed \$84,061.32.

As to Criminal Liability - Pursuant to 235 ILCS 5/6-16(a)(i), no licensee nor any officer, associate, member, representative, agent, or employee of such licensee shall sell, give, or deliver alcoholic liquor to any person under the age of 21 years or to any intoxicated person. Any person who violates this provision is guilty of a Class A misdemeanor and the sentence shall include, but shall not be limited to, a fine of not less than \$500.

Indiana

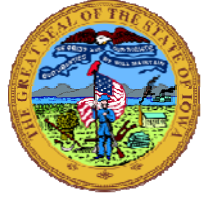


The Indiana Dram Shop Act provides:

"A person who furnishes an alcoholic beverage to a person is not liable in a civil action for damages caused by the impairment or intoxication of the person who was furnished the alcoholic beverage unless:

- (1) the person furnishing the alcoholic beverage had actual knowledge that the person to whom the alcoholic beverage was furnished was visibly intoxicated at the time the alcoholic beverage was furnished; and
- (2) the intoxication of the person to whom the alcoholic beverage was furnished was a proximate cause of the death, injury, or damage alleged in the complaint." I.C. 7.1-5-10-15.5(b).

While voluntary intoxication was a complete bar to recovery by an intoxicated Plaintiff prior to the comparative fault act, this is no longer the law in Indiana. Currently, Indiana law provides that "no degree of negligence on the part of the plaintiff, including that which may be characterized as willful and wanton, may operate to bar recovery [against the person who furnished alcohol]." *Gray v. D&G, Inc.*, 938 N.E.2d 256, 260-61 (Ind. Ct. App. 2010). Now, under section (c) of the statute, if the intoxicated person is at least 21 years old suffers injury or death proximately caused by his or her intoxication, he or she (or his/her estate) may assert a claim for personal injury or death against the person who furnished the alcohol if subsections(1) and (2) above apply.



123.92 1. a. Any person who is injured in person or property or means of support by an intoxicated person or resulting from the intoxication of a person, has a right of action for all damages actually sustained, severally or jointly, against any licensee or permittee, whether or not the license or permit was issued by the division or by the licensing authority of any other state, who sold and served any beer, wine, or intoxicating liquor to the intoxicated person when the licensee or permittee knew or should have known the person was intoxicated, or who sold to and served the person to a point where the licensee or permittee knew or should have known the person would become intoxicated. b. If the injury was caused by an intoxicated person, a permittee or licensee may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the person.

2. Every liquor control licensee and class "B" beer permittee, except a class "E" liquor control licensee, shall furnish proof of financial responsibility by the existence of a liability insurance policy in an amount determined by the division. If an insurer provides dramshop liability insurance at a new location to a licensee or permittee who has a positive loss experience at other locations for which such insurance is provided by the insurer, and the insurer bases premium rates at the new location on the negative loss history of the previous licensee or permittee at that location, the insurer shall examine and consider adjusting the premium for the new location not less than thirty months after the insurance is issued, based on the loss experience of the licensee or permittee at that location during that thirty-month period of time.

3. a. Notwithstanding section 123.49, subsection 1, any person who is injured in person or property or means of support by an intoxicated person who is under legal age or resulting from the intoxication of a person who is under legal age, has a right of action for all damages actually sustained, severally or jointly, against a person who is not a licensee or permittee and who dispensed or gave any beer, wine, or intoxicating liquor to the intoxicated underage person when the nonlicensee or nonpermittee who dispensed or gave the beer, wine, or intoxicating liquor to the underage person knew or should have known the underage person was intoxicated, or who dispensed or gave beer, wine, or intoxicating liquor to the underage person to a point where the nonlicensee or nonpermittee knew or should have known that the underage person would become intoxicated. b. If the injury was caused by an intoxicated person who is under legal age, a person who is not a licensee or permittee and who dispensed or gave beer, wine, or intoxicating liquor to the underage person may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the underage person. c. For purposes of this subsection, "dispensed" or "gave" means the act of physically presenting a receptacle containing beer, wine, or intoxicating liquor to the underage person whose actions or intoxication results in the sustaining of damages by another person. However, a person who dispenses or gives beer, wine, or intoxicating liquor to an underage person shall only be liable for any damages if the person knew or should have known that the underage person was under legal age.

Kansas



No redress exists under Kansas common law against persons selling or furnishing liquor when injuries or damages occur due to the acts of intoxicated persons. Furthermore, because Kansas does not have a dram shop act, Kansas does not recognize a civil cause of action in favor of those injured as a result of a violation of the liquor laws. See *Ling v. Jan's Liquors*, 237 Kan. 629 (1985).

Kentucky



413.241 Legislative finding -- Limitation on liability of licensed sellers or servers of intoxicating beverages
-- Liability of intoxicated person.

(1) The General Assembly finds and declares that the consumption of intoxicating beverages, rather than the serving, furnishing, or sale of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or another person.

(2) Any other law to the contrary notwithstanding, no person holding a permit under KRS Chapters 241 to 244, nor any agent, servant, or employee of the person, who sells or serves intoxicating beverages to a person over the age for the lawful purchase thereof, shall be liable to that person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises including but not limited to wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served, unless a reasonable person under the same or similar circumstances should know that the person served is already intoxicated at the time of serving.

(3) The intoxicated person shall be primarily liable with respect to injuries suffered by third persons.

(4) The limitation of liability provided by this section shall not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol.

(5) This section shall not apply to civil actions filed prior to July 15, 1988.

Louisiana



LA Rev Stat § 9:2800.1

Limitation of liability for loss connected with sale, serving, or furnishing of alcoholic beverages

A. The legislature finds and declares that the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person.

B. Notwithstanding any other law to the contrary, no person holding a permit under either Chapter 1 or Chapter 2 of Title 26 of the Louisiana Revised Statutes of 1950, nor any agent, servant, or employee of such a person, who sells or serves intoxicating beverages of either high or low alcoholic content to a person over the age for the lawful purchase thereof, shall be liable to such person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served.

C.(1) Notwithstanding any other law to the contrary, no social host who serves or furnishes any intoxicating beverage of either high or low alcoholic content to a person over the age for the lawful purchase thereof shall be liable to such person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were served or furnished.

(2) No social host who owns, leases, or otherwise lawfully occupies premises on which, in his absence and without his consent, intoxicating beverages of either high or low alcoholic content are consumed by a person over the age for the lawful purchase thereof shall be liable to such person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person who consumed the intoxicating beverages.

D. The insurer of the intoxicated person shall be primarily liable with respect to injuries suffered by third persons.

E. The limitation of liability provided by this Section shall not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol.

Maine



The “Maine Liquor Liability Act” replaces so-called Dram Shop Act cases. See 28- A M.R.S.A. §2501-2520. Any person injured as a result of negligently or recklessly serving liquor may bring an action against the server. However, neither the intoxicated individual, assuming that he is at least 18 years old, nor the estate of the intoxicated individual nor any other person claiming damages arising out of personal injury to the intoxicated individual, may sue the server.

The limitation on damages for losses other than medical care and treatment is \$250,000. This act is the exclusive remedy against servers, and liability is several, not joint. This cap has been held constitutional by the Maine Supreme Court. *Peters v. Saft*, 597 A.2d 50 (Me. 1991). Thus, the intoxicated individual and the server are not jointly and severally liable to the plaintiff but only liable for each one’s proportionate causal share of fault. Additionally, no action against a server may be maintained unless the intoxicated individual is both named as a defendant in the action and is retained until the litigation is concluded by trial or settlement. The Supreme Court held that if a plaintiff settles with the intoxicated person, his ongoing suit against the server is barred. *Swan v. Sohio Oil Company*, 618 A.2d 214 (Me. 1992).

The statute of limitations is two (2) years for such action. Additionally, the plaintiff must give written notice within 180 days of the date of the server’s conduct creating liability. Failure to give written notice within 180 days will result in dismissal unless plaintiff can demonstrate good cause for not doing so. These two requirements are similar to the Maine Tort Claims Act requirements.

If the server is a licensed individual, that individual may be liable for negligently serving liquor to a visibly intoxicated person or to a minor. The standard for comparison is that of a reasonable and prudent person. Moreover, the server is not chargeable with the knowledge of an individual’s consumption of liquor or other drugs off the server’s premises unless that individual’s appearance and behavior or other facts would put a reasonable and prudent person on notice.

If the person serving the alcohol is not a licensee, such as an individual or someone at a social gathering, that individual has to be guilty of reckless conduct to impose liability. If such server recklessly provides liquor to a minor or recklessly serves to a visibly intoxicated person, liability can be imposed. This type of conduct will be limited to extreme cases of excessive consumption of liquor or active encouragement to consume substantial amounts of liquor.

In the context of social parties, the Maine Supreme Court held that defendant employers owed no duty to the plaintiff to exercise reasonable care to prevent an employee, who consumed self-supplied whiskey, from driving. *Trusiani v. Cumberland and York Distributors*, 538 A.2d 258 (Me. 1988). The court held that to impose that duty on an employer, when there were no signs of visible intoxication of the employee, would result in making the employer strictly liable for the employee’s action. The court warned, however, that there may be circumstances under which an employer may have a duty to exercise reasonable care in warning or prohibiting an employee from operating a vehicle.

Maryland



Dram Shop liability is not recognized in Maryland.

Massachusetts



To prevail in a dram shop case, a plaintiff must prove by a preponderance of the evidence that the patron in question was exhibiting outward signs of intoxication by the time he was served his last alcoholic drink. *Vickowski v. Polish Am. Citizens Club of Deerfield, Inc.*, 422 Mass. 606, 610 (1996). However, a plaintiff can establish this with circumstantial proof. "In other words, a jury confronted with evidence of a patron's excessive consumption of alcohol, properly could infer, on the basis of common sense and experience, that the patron would have displayed obvious outward signs of intoxication while continuing to receive service from the licensee." *Id.* at 611.

Michigan



436.1801

...(3) Except as otherwise provided in this section, an individual who suffers damage or who is personally injured by a minor or visibly intoxicated person by reason of the unlawful selling, giving, or furnishing of alcoholic liquor to the minor or visibly intoxicated person, if the unlawful sale is proven to be a proximate cause of the damage, injury, or death, or the spouse, child, parent, or guardian of that individual, shall have a right of action in his or her name against the person who by selling, giving, or furnishing the alcoholic liquor has caused or contributed to the intoxication of the person or who has caused or contributed to the damage, injury, or death. In an action pursuant to this section, the plaintiff shall have the right to recover actual damages in a sum of not less than \$50.00 in each case in which the court or jury determines that intoxication was a proximate cause of the damage, injury, or death.

(4) An action under this section shall be instituted within 2 years after the injury or death. A plaintiff seeking damages under this section shall give written notice to all defendants within 120 days after entering an attorney-client relationship for the purpose of pursuing a claim under this section. Failure to give written notice within the time specified shall be grounds for dismissal of a claim as to any defendants that did not receive that notice unless sufficient information for determining that a retail licensee might be liable under this section was not known and could not reasonably have been known within the 120 days. In the event of the death of either party, the right of action under this section shall survive to or against his or her personal representative. In each action by a husband, wife, child, or parent, the general reputation of the relation of husband and wife or parent and child shall be prima facie evidence of the relation, and the amount recovered by either the husband, wife, parent, or child shall be his or her sole and separate property. The damages, together with the costs of the action, shall be recovered in an action under this section. If the parents of the individual who suffered damage or who was personally injured are entitled to damages under this section, the father and mother may sue separately, but recovery by 1 is a bar to action by the other.

(5) An action under this section against a retail licensee shall not be commenced unless the minor or the alleged intoxicated person is a named defendant in the action and is retained in the action until the litigation is concluded by trial or settlement.

(6) Any licensee subject to the provisions of subsection (3) regarding the unlawful selling, furnishing, or giving of alcoholic liquor to a visibly intoxicated person shall have the right to full indemnification from the alleged visibly intoxicated person for all damages awarded against the licensee.

(7) All defenses of the alleged visibly intoxicated person or the minor shall be available to the licensee. In an action alleging the unlawful sale of alcoholic liquor to a minor, proof that the defendant retail licensee or the defendant's agent or employee demanded and was shown a Michigan driver license or official state personal identification card, appearing to be genuine and showing that the minor was at least 21 years of age, shall be a defense to the action.

Michigan

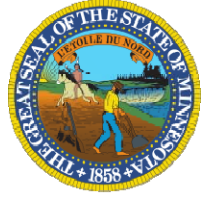


(8) There shall be a rebuttable presumption that a retail licensee, other than the retail licensee who last sold, gave, or furnished alcoholic liquor to the minor or the visibly intoxicated person, has not committed any act giving rise to a cause of action under subsection (3).

(9) The alleged visibly intoxicated person shall not have a cause of action pursuant to this section and a person shall not have a cause of action pursuant to this section for the loss of financial support, services, gifts, parental training, guidance, love, society, or companionship of the alleged visibly intoxicated person.

(10) This section provides the exclusive remedy for money damages against a licensee arising out of the selling, giving, or furnishing of alcoholic liquor to a minor or intoxicated person.

Minnesota



To establish liability under Minn. Stat. § 340A.801, a plaintiff must establish:

1. That the sale of alcohol was in violation of a provision of Minn.Stat. ch. 340A;
2. That the violation was substantially related to the purposes sought to be achieved by the Dram Shop Act;
3. That the illegal sale was a cause of the intoxication; and
4. That the intoxication was a cause of the plaintiff's injuries.

Rambaum v. Swisher, 435 N.W.2d 19, 21 (Minn.1989).

Who may sue:

Minn. Stat. § 340A.801, subdiv. 1 provides in part that “[a] spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss by an intoxicated person or by the intoxication of another person, has a right of action in the person's own name for all damages sustained against a person who caused the intoxication of that person by illegally selling alcoholic beverages.” Minn. Stat. § 340A.801, subdiv. 1 (2013).

The intoxicated person is barred from any recovery under the act. Sather v. Woodland Liquors, Inc., 597 NW 2d 295, 298 (1999).

Notice required under Minn. Stat. § 340A.802:

A plaintiff must serve notice of a claim upon the establishment within 240 days of the commencement of an attorney-client relationship regarding the claim. Minn. Stat. § 340A.802, subdiv. 2 (2013).

Statute of Limitations:

9 Minn. Stat. § 340A.802 provides for a two year statute of limitations, which begins running from the date of the injury. Minn. Stat. § 340A.802, subdiv. 2 (2013).

Joint and Several Liability:

Minnesota's joint and several liability statute has reduced the number and success of dram shop claims. See Minn. Stat. § 604.02 (2013).

Mississippi



Mississippi's statutes, which prohibit the sale of alcoholic beverages to minors and other expressly named groups, create a civil cause of action against the purveyor in favor of anyone injured by an intoxicated minor. Sale of alcohol to a minor in violation of the statutory prohibition constitutes negligence per se. The injured party must further prove that the violation of statute was the proximate cause of its injury. Where the minor tortfeasor received the alcohol from another minor who purchased it, the plaintiff must also show that it was foreseeable to the purveyor that the alcohol would be shared by other minors.

The sale of alcohol to a minor does not constitute per se negligence where it results from the presentation of an apparently valid identification representing that the purchaser is an adult. Nevertheless, vendor liability may still result on other grounds because presentation of an apparently valid identification only excuses the sale of liquor to a person on the basis of age. Vendors are also prohibited from "selling, giving, or furnishing" intoxicating beverages to:

- (1) persons visibly or noticeably intoxicated;
- (2) insane persons;
- (3) habitual drunkards; and
- (4) minors.

In essence, the Dram Shop Act prohibits a minor in a bar from purchasing or possessing, and the vendor from selling or furnishing, alcohol to any of the previously listed classes. When a bartender delivers alcoholic beverages to a person buying alcohol for minors to openly consume on the vendor's premises, liability attaches to the vendor if it is foreseeable that the intoxicants will be given or consumed by the non-purchasing minors because the vendor is "furnishing" alcohol to them all.

The Mississippi Dram Shop Act protects the public, i.e. third parties whether adult or minors, from the negligence of an intoxicated person. The Act provides a cause of action against a person or business who furnishes alcoholic beverages in violation of the statute. The statute does not impose liability on a person or business furnishing intoxicants to an individual who voluntarily consumes intoxicants and becomes inebriated and then, because of that inebriation, injures himself or herself.

Mississippi



Civil Statute

Miss. Code Ann. § 67-3-73 provides:

(1) The Mississippi Legislature finds and declares that the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person.

(2) Notwithstanding any other law to the contrary, no holder of an alcoholic beverage, beer or light wine permit, or any agent or employee of such holder, who lawfully sells or serves intoxicating beverages to a person who may lawfully purchase such intoxicating beverages, shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off the licensed premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served.

(3) Notwithstanding any other law to the contrary, no social host who serves or furnishes any intoxicating beverage to a person who may lawfully consume such intoxicating beverage shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off such social host's premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were served or furnished. No social host who owns, leases or otherwise lawfully occupies a premises on which, in his absence and without his consent, intoxicating beverages are consumed by a person who may lawfully consume such intoxicating beverage shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person who consumed the intoxicating beverages.

(4) The limitation of liability provided by this section shall not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol, or to any holder of an alcoholic beverage, beer or light wine permit, or any agent or employee of such holder when it is shown that the person making a purchase of an alcoholic beverage was at the time of such purchase visibly intoxicated.

Criminal Statute

Miss. Code. Ann. § 67-1-81 provides

(1) Any permittee or other person who shall sell, furnish, dispose of, give, or cause to be sold, furnished, disposed of, or given, any alcoholic beverage to any person under the age of twenty-one (21) years shall be guilty of a misdemeanor and shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00) for a first offense. For a second or subsequent offense, such permittee or other person shall be punished by a fine of not less than One

Mississippi



Thousand Dollars (\$1,000.00) nor more than Two Thousand Dollars (\$2,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment in the discretion of the court. Upon conviction of a second offense under the provisions of this section the permit of any permittee so convicted shall be automatically and permanently revoked.

(2) Any person under the age of twenty-one (21) years who purchases, receives, or has in his or her possession in any public place, any alcoholic beverages, shall be guilty of a misdemeanor and shall be punished by a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00). Provided, that clearing or busing tables that have glasses or other containers that contain or did contain alcoholic beverages, or stocking, bagging or otherwise handling purchases of alcoholic beverages shall not be deemed possession of alcoholic beverages for the purposes of this section. Provided further, that a person who is at least eighteen (18) years of age but under the age of twenty-one (21) years who waits on tables by taking orders for or delivering orders of alcoholic beverages shall not be deemed to unlawfully possess or furnish alcoholic beverages if in the scope of his employment by the holder of an on-premises retailer's permit. This exception shall not authorize a person under the age of twenty-one (21) to tend bar or act in the capacity of bartender. Any person under the age of twenty-one (21) who knowingly makes a false statement to the effect that he or she is twenty-one (21) years old or older or presents any document that indicates he or she is twenty-one (21) years of age or older for the purpose of purchasing alcoholic beverages from any person engaged in the sale of alcoholic beverages shall be guilty of a misdemeanor and shall be punished by a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00), and a sentence to not more than thirty (30) days' community service.

(3) The term "community service" as used in this section shall mean work, projects or services for the benefit of the community assigned, supervised and recorded by appropriate public officials.

(4) If a person under the age of twenty-one (21) years is convicted or enters a plea of guilty of purchasing, receiving or having in his or her possession in any public place any alcoholic beverages in violation of subsection (2) of this section, the trial judge, in lieu of the penalties otherwise provided under subsection (2) of this section, shall suspend the minor's driver's license by taking and keeping it in the custody of the court for a period of time not to exceed ninety (90) days. The judge so ordering the suspension shall enter upon his docket "DEFENDANT'S DRIVER'S LICENSE SUSPENDED FOR ... DAYS IN LIEU OF CONVICTION" and such action by the trial judge shall not constitute a conviction. During the period that the minor's driver's license is suspended, the trial judge shall suspend the imposition of any fines or penalties that may be imposed under subsection (2) of this section and may place the minor on probation subject to such conditions as the judge deems appropriate. If the minor violates any of the conditions of probation, then the trial judge shall return the driver's license to the minor and impose the fines, penalties or both, that he would have otherwise imposed, and such action shall constitute a conviction.

Missouri



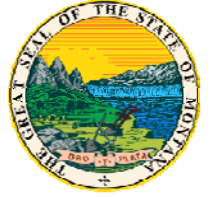
Bar Owner or Tavernkeeper Liability

1. Missouri's dramshop statute provides that a cause of action may be brought by or on behalf of any person who has suffered personal injury or death against a liquor licensee when it can be proven by clear and convincing evidence that the seller knew or should have know:

- a. That intoxicating liquor was served to a person under the age of 21 years old; or
- b. That intoxicating liquor was served to a "visibly intoxicated" person. (RSMo §537.053.2)
- c. "Visible intoxication" is defined as "significantly uncoordinated physical action or significant physical disfunction." (§537.053.3)
- d. An individual's blood alcohol content is not prima facie evidence of visible intoxication. (RSMo §537.053.)

2. There is no social host liability.

Montana



27-1-710. Civil liability for injuries involving alcohol consumption. (1) The purpose of this section is to set statutory criteria governing the liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage.

(2) Except as provided in 16-6-305, a person or entity furnishing an alcoholic beverage may not be found liable for injury or damage arising from an event involving the consumer wholly or partially on the basis of a provision or a violation of a provision of Title 16.

(3) Furnishing a person with an alcoholic beverage is not a cause of, or grounds for finding the furnishing person or entity liable for, injury or damage wholly or partly arising from an event involving the person who consumed the beverage unless: (a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age; (b) the consumer was visibly intoxicated; or (c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

(4) A jury or trier of fact may consider the consumption of an alcoholic beverage in addition to the sale, service, or provision of the alcoholic beverage in determining the cause of injuries or damages inflicted upon another by the consumer.

(5) A civil action may not be brought pursuant to subsection (3) by the consumer or by the consumer's estate, legal guardian, or dependent unless: (a) the consumer was under the legal age and the furnishing person knew or should have known that the consumer was under age; or (b) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did contain alcohol.

(6) A civil action may not be commenced under this section against a person who furnished alcohol unless the person bringing the civil action provides notice of an intent to file the action to the person who furnished the alcohol by certified mail within 180 days from the date of sale or service. The civil action must be commenced pursuant to this section within 2 years after the sale or service.

(7) In any civil action brought pursuant to this section, the total liability for noneconomic damages may not exceed \$250,000.

(8) In any civil action brought pursuant to this section, the total liability for punitive damages may not exceed \$250,000.

(9) Evidence of intentional or criminal activity by a person causing injury in connection with any event or injury commenced pursuant to this part is admissible in any action brought pursuant to this section.

Nebraska



Dram Shop liability is not available generally in the State of Nebraska (see *Holmes v. Circo*, 196 Neb. 496 (Neb. 1976)) but is limited to providing alcohol to minors pursuant to the Minor Alcoholic Liquor Liability Act, Neb. Rev. Stat. §§54-404 thru 54-409. The elements are:

Any person who sustains injury or property damage, or the estate of any person killed, as a proximate result of the negligence of an intoxicated minor shall have, in addition to any other cause of action available in tort, a cause of action against:

- (1) A social host who allowed the minor to consume alcoholic liquor in the social host's home or on property under his or her control;
- (2) Any person who procured alcoholic liquor for the minor, other than with the permission and in the company of the minor's parent or guardian, when such person knew or should have known that the minor was a minor; or
- (3) Any retailer who sold alcoholic liquor to the minor. The absolute defenses found in section 53-180.07 shall be available to a retailer in any cause of action brought under this section.

Defenses:

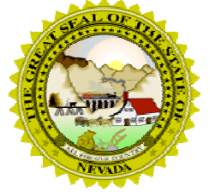
It is a complete defense to this action that the intoxication did not contribute to the negligent conduct.

No cause of action is available to the intoxicated person, his or her estate, or anyone whose claim is based upon injury to or death of the intoxicated person.

Settlement:

- (1) A plaintiff's settlement and release of one defendant in an action under the Minor Alcoholic Liquor Liability Act does not bar claims against any other defendant.
- (2) The amount paid to a plaintiff in consideration for the settlement and release of a defendant in an action under the act shall be offset against all other subsequent judgments awarded to the plaintiff.
- (3) The retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor who are defendants in an action brought under the act are jointly and severally liable in such action as provided in section 25-21,185.10 for those who act in concert to cause harm.
- (4) In an action based on the act, the retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor shall have a right of contribution and not a right of subrogation from one another.

Nevada



1. Nevada does not recognize dram-shop liability. See *Rodriguez v. Primadonna Co., LLC*, 125 Nev. Adv. Op. No. 25, 216 P.3d 793, 799 (2009).

2. A person who serves, sells or otherwise furnishes an alcoholic beverage to another person who is 21 years of age or older is not liable in a civil action for any damages caused by the person to whom the alcoholic beverage was served, sold or furnished as a result of the consumption of the alcoholic beverage. NRS 41.1305.

New Hampshire



New Hampshire's Dram Shop statute is contained in N.H. Rev. Stat. Ann. §507-F. The statute provides "the exclusive remedy against a defendant for claims by those suffering damages based on the defendant's service of alcoholic beverages." N.H. Rev. Stat. Ann. § 507-F:8. The statute creates two classes of liability: one for negligence and one for recklessness.

Negligence:

N.H. Rev. Stat. Ann. § 507-F:4 provides that:

I. A defendant who negligently serves alcoholic beverages to a minor or to an intoxicated person is liable for resulting damages, subject to the provisions of this chapter.

II. Service of alcoholic beverages to a minor or to an intoxicated person is negligent if the defendant knows or if a reasonably prudent person in like circumstances would know that the person being served is a minor or is intoxicated.

III. Proof of service of alcoholic beverages to a minor without request for proof of age as required by RSA 179:8 shall be admissible as evidence of negligence.

IV. Service of alcoholic beverages by a defendant to an adult person who subsequently serves a minor off the premises or who is legally permitted to serve a minor does not constitute service to the minor unless a reasonably prudent person in like circumstances would know that such subsequent service is reasonably likely to occur and is illegal.

V. A defendant does not have a duty to investigate whether a person being served alcoholic beverages intends to serve the alcoholic beverages to other persons off the premises.

VI. A defendant is not chargeable with knowledge of a person's consumption of alcoholic beverages or other drugs off the defendant's premises, when the person misrepresents such consumption or the amount of such consumption, unless the defendant's service to such person qualifies as reckless under RSA 507-F:5.

VII. A defendant is not under a duty to recognize signs of a person's intoxication other than those normally associated with the consumption of alcoholic beverages except for intoxication resulting in whole or in part from other drugs consumed on defendant's premises with defendant's actual or constructive knowledge.

New Hampshire



Recklessness:

N.H. Rev. Stat. Ann. § 507-F:5 provides:

I. A person who becomes intoxicated may bring an action against a defendant for serving alcoholic beverages only when the server of such beverages is reckless. The service of alcoholic beverages is reckless when a defendant intentionally serves alcoholic beverages to a person when the server knows, or a reasonable person in his position should have known, that such service creates an unreasonable risk of physical harm to the drinker or to others that is substantially greater than that which is necessary to make his conduct negligent.

II. A defendant who recklessly provides alcoholic beverages to another is liable for resulting damages. III. Specific serving practices that are admissible as evidence of reckless conduct include, but are not limited to, the following:

(a) Active encouragement of intoxicated persons to consume substantial amounts of 8 alcoholic beverages.

(b) Service of alcoholic beverages to a person, 16 years of age or under, when the server knows or should reasonably know the patron's age.

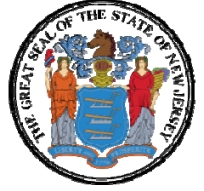
(c) Service of alcoholic beverages to a patron that is so continuous and excessive that it creates a substantial risk of death by alcohol poisoning.

(d) The active assistance by a defendant of a patron into a motor vehicle when the patron is so intoxicated that such assistance is required, and the defendant knows or should know that the intoxicated person intends to operate the motor vehicle.

Defenses"

The statute also provides a defense for responsible business practices under N.H. Rev. Stat. Ann. § 507-F:6.

New Jersey



In New Jersey, in order to prevail on a Dram Shop claim, the Plaintiff must prove the following three elements:

- (1) A licensed alcoholic beverage server "served a visibly intoxicated person, or served a minor, under circumstances where the server knew, or reasonably should have known, that the person served was a minor."
- (2) "The injury or damage was proximately caused by the negligent service of alcoholic beverages; and"
- (3) "that the injury or damage was a foreseeable consequence of the negligent service of alcoholic beverages."

N.J.S.A. 2A:22A-5. Statutory Dram Shop claims are the exclusive remedy for actions involving negligent service of alcohol. Pursuant to N.J.S.A. 2A:22A-6(b) there is several 13 liability, only for licensees/servers, no joint liability, so the 60% rule for Joint and Several Liability does not apply.

New Mexico



A. No civil liability shall be predicated upon the breach of Section 60-7A-16 NMSA 1978 by a licensee, except in the case of the licensee who:

- (1) sold or served alcohol to a person who was intoxicated;
- (2) it was reasonably apparent to the licensee that the person buying or apparently receiving service of alcoholic beverages was intoxicated; and
- (3) the licensee knew from the circumstances that the person buying or receiving service of alcoholic beverages was intoxicated.

B. No person who was sold or served alcoholic beverages while intoxicated shall be entitled to collect any damages or obtain any other relief against the licensee who sold or served the alcoholic beverages unless the licensee is determined to have acted with gross negligence and reckless disregard for the safety of the person who purchased or was served the alcoholic beverages.

C. No licensee is chargeable with knowledge of previous acts by which a person becomes intoxicated at other locations unknown to the licensee.

D. As used in this section:

(1) "licensee" means a person licensed under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] and the agents or servants of the licensee; and

(2) "intoxicated" means the impairment of a person's mental and physical faculties as a result of alcoholic beverage use so as to substantially diminish that person's ability to think and act in a manner in which an ordinary [ordinarily] prudent person, in full possession of his faculties, would think and act under like circumstances.

E. No person who has gratuitously provided alcoholic beverages to a guest in a social setting may be held liable in damages to any person for bodily injury, death or property damage arising from the intoxication of the social guest unless the alcoholic beverages were provided recklessly in disregard of the rights of others, including the social guest.

F. A licensee may be civilly liable for the negligent violation of Sections 60-7B-1 and 60-7B-1.1 NMSA 1978. The fact-finder shall consider all the circumstances of the sale in determining whether there is negligence such as the representation used to obtain the alcoholic beverage. It shall not be negligence per se to violate Sections 60-7B-1 and 60-7B-1.1 NMSA 1978.

G. A licensee shall not be held civilly liable pursuant to the provisions of Subsection F of this section except when:

New Mexico



(1) it is demonstrated by the preponderance of the evidence that the licensee knew, or that a reasonable person in the same circumstances would have known, that the person who received the alcoholic beverages was a minor; and

(2) licensee's violation of Section 60-7B-1 or 60-7B-1.1 NMSA 1978 was a proximate cause of the plaintiff 's injury, death or property damage.

H. No person may seek relief in a civil claim against a licensee or a social host for injury or death or damage to property which was proximately caused by the sale, service or provision of alcoholic beverages except as provided in this section.

I. Liability arising under this section shall not exceed fifty thousand dollars (\$50,000) for bodily injury to or death of one person in each transaction or occurrence or, subject to that limitation for one person, one hundred thousand dollars (\$100,000) for bodily injury to or death of two or more persons in each transaction or occurrence, and twenty thousand dollars (\$20,000) for property damage in each transaction or occurrence.

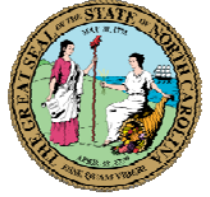
New York



N.Y. General Obligations Law § 11-101.

1. Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by unlawful selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication; and in any such action such person shall have a right to recover actual and exemplary damages.
2. In case of the death of either party, the action or right of action given by this section shall survive to or against his or her executor or administrator, and the amount so recovered by either a husband, wife or child shall be his or her sole and separate property.
3. Such action may be brought in any court of competent jurisdiction.
4. In any case where parents shall be entitled to such damages, either the father or mother may sue alone therefor, but recovery by one of such parties shall be a bar to suit brought by the other.

North Carolina



Statutory Dram Shop claim for injury caused by underage person - N.C.G.S. 18B-120 and -121 - One who sustains injury as a consequence of the actions of an underage person has a claim for relief against a permittee if: (1) the permittee negligently sold or furnished alcohol to an underage person; AND (2) the consumption of the alcohol that was sold or furnished to the underage person caused an underage driver's being subject to an impairing substance within the meaning of N.C.G.S. § 20-138.1 (DWI statute) at the time of the injury; AND (3) the resulting injury was proximately caused by the underage driver's negligent operation of a vehicle while so impaired. N.C.G.S. 18B-122 – Plaintiff has the burden to prove the above elements to make a prima facie case; however, Defendant (Permittee) can prove good practices, that underage person misrepresented age, or that sale or furnishing of alcohol was made under duress as evidence that permittee was not negligent. N.C.G.S. 18B-123 – damages are limited to no more than \$500,000.00 per occurrence. When all claims out of one occurrence exceed \$500,000.00, each claim shall abate in the proportion it bears to the total of all claims. N.C.G.S. 18B-124 – Joint and Several – liability of negligent driver or owner of the vehicle and the permittee shall be joint and several with right of contribution but not indemnification.

Common Law Dram Shop Claim. (1) Duty – a permittee shall not knowingly sell or give alcohol to any person who is intoxicated; (2) Breach - the patron was intoxicated and the permittee knew or should have known that the patron was in an intoxicated condition at the time he or she was served; (3) Proximate Cause: the permittee's sale of alcohol to the intoxicated customer may be found to be a substantial factor in the chain of events culminating in injuries to third persons as a result of the customer's operation of an automobile while intoxicated.

North Dakota



5-01-06.1. Claim for relief for fault resulting from intoxication.

1. Every spouse, child, parent, guardian, employer, or other individual who is injured by any obviously intoxicated individual 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 an individual under twenty-one years of age or to an incompetent or an obviously intoxicated individual, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. If a retail licensee is found liable under this section and exemplary damages are sought, the finder of fact may consider as a mitigating factor that the licensee provided to an employee alcohol server training that addressed intoxication, drunk driving, and underage drinking.

2. If a retail licensee provided to an employee alcohol server training that addresses intoxication, drunk driving, and underage drinking, a person with a claim for relief under this section may not use the fact that the retail licensee provided this training to prove culpability.

3. A claim for relief under this section may not be had on behalf of the intoxicated individual nor on behalf of the intoxicated individual'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 individual.

Ohio



Dram Shop liability under Ohio law consists of two statutory causes of action. One action imposes liability upon liquor permit holders for injuries to persons on the liquor permit holders' premises. The other action imposes liability upon liquor permit holders for injuries to persons away from the premises.

Ohio Rev. Code § 4399.18 states that no person may bring a cause of action against a liquor permit holder for personal injury or property damage caused by the acts of an intoxicated patron, unless the injury or damage occurred on the liquor permit holder's premises or parking lot. Ohio Rev. Code § 4399.18. The Ohio Revised Code further provides that a person may bring a cause of action for injury or damage that occurs away from the premises only if (1) the liquor permit holder or its employee knowingly sold an intoxicating beverage to a noticeably intoxicated person, to a minor, or to a person in violation of Sunday liquor sales laws, and (2) the person's intoxication was the proximate cause of the injury or damage. *Id.*

Whether injury or damage occurs on or away from the premises, Dram Shop liability only exists if the liquor permit holder has actual knowledge that a person was intoxicated at the time the liquor permit holder sold the intoxicating beverage. *Greesman v. McClain*, 40 Ohio St. 3d 359 (1988). Actual knowledge may be proven by direct or circumstantial evidence.

Most Ohio appellate courts hold that the statutory remedies against liquor permit holders for injury or damage caused by intoxicated patrons are exclusive. As a result, statutory Dram Shop liability precludes common law causes of action against a liquor permit holder. *Aubin v. Metzger*, 2002-Ohio-5130 (2002).

Ohio Dram Shop laws provide protection only for innocent third parties. If the injured party is also intoxicated, he or she cannot recover against the liquor permit holder. *Smith v. The 10th Inning, Inc.*, 49 Ohio St. 3d 289 (1990).

Oklahoma



In *Brigance v. Velvet Dove Restaurant*, 725 P.2d 300, 304 (Okla. 1986), the Oklahoma Supreme Court rejected the common law rule of non-liability for tavern owners with respect to injured third parties, holding that "one who sells intoxicating beverages for on the premises consumption has a duty to exercise reasonable care not to sell liquor to a noticeably intoxicated person."

In *Tomlinson v. Love's Country Stores, Inc.*, 854 P.2d 910, 912 (Okla. 1993), the Supreme Court acknowledged the profit potential for liquor vendors as one of the driving reasons for imposing dram shop liability against the commercial vendor of alcohol: "The Legislature has placed on every vendor who holds a license to furnish alcoholic beverages and a concomitant right of profit from its sale the responsibility to refrain from supplying those beverages to minors or to intoxicated persons." This Court made a similar acknowledgment in *Busby v. Quail Creek Golf and Country Club*, 1994 OK 63, 885 P.2d 1326, 1331, "[t]he public regulates and licenses commercial vendors to sell and distribute alcohol for profit. The public has a right to demand that a commercial vendor act more prudently and with greater duty towards minors than is asked of a private person who hosts a party."

In Oklahoma issues involving minors being served alcohol are treated under a negligence per se analysis. See *Busby v. Quail Creek*, 885 P.2d 1326.

Oregon



Oregon dram shop liability is set forth by statute at ORS 471.565

1. Injury to Intoxicated Person

A patron who voluntarily consumes alcoholic beverages does not have a cause of action, based on statute or common law, against the person serving the alcoholic beverages even though the alcoholic beverages are served to the patron while the patron is visibly intoxicated. (This protection for the providers of alcohol only applies to claims of injury/damage caused by intoxication, not to other causes of injury/damage.)

2. Injury to Third Party Caused by Intoxicated Person

A provider of alcohol is liable to third parties for damages caused by an intoxicated person if the third party proves by clear and convincing evidence that:

- (a) The provider of alcohol served or provided alcoholic beverages to the patron while the patron was visibly intoxicated; and
- (b) The third party did not substantially contribute to the intoxication of the patron by:
 - (A) Providing or furnishing alcoholic beverages to the patron;
 - (B) Encouraging the patron to consume or purchase alcoholic beverages; or
 - (C) Facilitating the consumption of alcoholic beverages by the patron.

Claims for damages arising out of wrongful death or injury must be preceded by appropriate notice of the claim to the provider of alcohol. In the event of wrongful death, notice of claim must be provided within one year of the discovery of existence of the claim, and in the event of injury other than wrongful death, notice must be given within 180 days, not including time when the claiming is incapacitated by his injuries.

ORS 471.565 supersedes all common law providing the liability of Oregon alcohol providers on any other basis.

Pennsylvania



1. Pennsylvania dram shop laws state that liability may be imposed on an establishment serving alcohol for injuries sustained both by intoxicated patrons of the establishment, and by third parties injured by an intoxicated patron after that patron has left the establishment.
2. It is a violation of the dram shop act for any establishment to serve alcohol to any visibly intoxicated person or a minor. 47 P.S. § 4-493(1). Violation of the act is negligence per se. *Fandozzi v. Kelly Hotel, Inc.*, 711 A.2d 524 (Pa. Super. Ct. 1998). However, even if the patron has been served alcoholic beverages while visibly intoxicated, no civil liability attaches unless the injuries were proximately caused by the patron's intoxication. *Id.* Even if proximate cause is proven, liability will not attach unless the patron was served while visibly intoxicated in violation of the act. *Holpp v. Fez, Inc.*, 440 Pa. Super. 512 (1995).
3. Liability on sales of alcohol to minors is limited to situations in which the tavern knew or should have known that an adult would furnish the alcohol to a minor, or situations in which the minor did not appear to be of legal drinking age at the time of the sale in question. *Barrie v. Pennsylvania Liquor Control Bd.*, 5 Pa. D & C 4th 174 (1990).
4. Comparative negligence is applicable to negligence actions brought by third parties in situations such where the third party accepted a ride from a visibly intoxicated person. *Terwilliger v. Kitchen*, 2001 PA super 205, 781 A.2d 1201 (2001).

Rhode Island



Under Rhode Island law, there is no common law cause of action for liquor liability. Rather, a plaintiff must proceed under the Rhode Island Liquor Liability Act. The Act provides that a defendant “who negligently serves liquor to a visibly intoxicated individual is liable for damages proximately caused by the individual’s consumption of the liquor.” R.I.G.L. § 3-14-6(b).

The statute builds in a potential defense. It provides that, “A defendant is not chargeable with knowledge of an individual’s consumption of liquor or other drugs off the defendant’s premises unless the individual’s appearance and behavior, or other facts known to the defendant, would put a reasonable and prudent person on notice of that consumption.” § 3-14-6(d).

A defendant, as described in § 3-14-5, who negligently serves liquor to a minor is liable for damages proximately caused by the minor's consumption of the liquor.

A defendant, as defined in § 3-14-5, who negligently serves liquor to a visibly intoxicated individual is liable for damages proximately caused by the individual's consumption of the liquor.

Punitive damages can be recovered where the service is “reckless.” R.I.G.L. 3-14-7(b) provides that a defendant “who recklessly provides liquor to a visibly intoxicated individual is liable for damages proximately caused by that individual’s consumption of the liquor.” The statute provides that, “Service of liquor is reckless if a defendant intentionally serves liquor to an individual when the server knows that the individual being served is a minor or is visibly intoxicated, and the server consciously disregards an obvious and substantial risk that serving liquor to that individual will cause physical harm to the drinker or to others.” 3-14-7(c)(1). Moreover, “the disregard of the risk, when viewed in light of the nature and purpose of the server’s conduct and the circumstances known to him or her, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.” 3-14-7(c)(2).

The statute provides examples of “reckless conduct”: “Specific serving practices that are admissible as evidence of reckless conduct include, but are not limited to, the following: (1) Active encouragement of intoxicated individuals to consume substantial amounts of liquor; (2) Service of liquor to an individual who is under twenty-one (21) years old when the server has actual or constructive knowledge of the individual’s age; and (3) Service of liquor to an individual that is so continuous and excessive that it creates a substantial risk of death by alcohol poisoning.” 3-14-7(d).

Finally, the statute provides that, “Damages may be awarded for all injuries recognized under Rhode Island common or statutory law.” R.I.G.L. 3-14- 8(a). Moreover, “Punitive damages may be awarded in all actions based on reckless conduct, as set forth in 3-14-7(c). Punitive damages may not be awarded for actions based on negligent conduct, as set forth in 3-14-6(c).” 3-14-8(b).

Proof of service of alcoholic beverages to a person under twenty-one (21) years of age without request for identification forms a rebuttable presumption of negligence. R.I. Gen. Laws Ann. § 3-14-6 (West).

South Carolina



§ 61-4-580 imposes prohibits establishments licensed to sell alcoholic beverages from serving minors or intoxicated persons. A commercial host is liable only to third parties injured by an intoxicated adult guest, and then only when he knowingly sells alcoholic beverages to an intoxicated person. A commercial vendor who knowingly sells alcohol to a person the vendor knows or reasonably should know is under age 21 may be liable to the unlawful purchaser, and to third parties harmed by the purchaser's consumption of the alcohol. South Carolina does not recognize a “first party” cause of action brought by an intoxicated adult guest. Plaintiff must still show the violation was the proximate cause of the injury.

With regard to sale to adult patrons, a Plaintiff must show the defendant knew or should have known the patron was intoxicated at the time of the sale and that his intoxication caused the subsequent injury.

South Dakota



No licensee may sell any alcoholic beverage to any person who is obviously intoxicated at the time. A violation of this section is a Class 1 misdemeanor. S.D. Codified Laws Ann. §35-4-78

However, no licensee is civilly liable to any injured person or the injured person's estate for any injury suffered, including any action for wrongful death, or property damage suffered because of the intoxication of any person due to the sale or consumption of any alcoholic beverage in violation of the provisions of this section. S.D. Codified Laws Ann. §35-4-78

It is a Class 1 misdemeanor to sell or give for use as a beverage any alcoholic beverage to any person under the age of 18 years unless:

- (1) It is done in the immediate presence of a parent or guardian or spouse, who is at least 21 years of age, while not on the premises of an establishment licensed for the retail sale of alcoholic beverages pursuant to §35-4-2 or at a special event for which an alcoholic beverage license has been issued or
- (2) It is done by prescription or direction of a duly licensed practitioner or nurse of the healing arts for medicinal purposes. S.D. Codified Laws Ann. §35-9-1

However, no licensee is civilly liable to any injured person or the injured person's estate for any injury suffered, including any action for wrongful death, or property damage suffered because of the sale or consumption of any alcoholic beverage in violation of the provisions of this section. 11 S.D. Codified Laws Ann. §35-9-1

It is a Class 2 misdemeanor to sell or give for use as a beverage any alcoholic beverage to any person who is 18 years of age or older but less than 21 years of age unless it is done in the immediate presence of a parent or guardian or spouse over 21 years of age or by prescription or direction of a duly licensed practitioner or nurse of the healing arts for medicinal purposes. S.D. Codified Laws Ann. §35-9-1.1

However, no licensee is civilly liable to any injured person or the injured person's estate for any injury suffered, including any action for wrongful death, or property damage suffered because of the sale or consumption of any alcoholic beverage in violation of the provisions of this section. S.D. Codified Laws Ann. §35-9-1.1

The Legislature finds that the consumption of alcoholic beverages, rather than the serving of alcoholic beverages, is the proximate cause of any injury inflicted upon another by an intoxicated person. Therefore, the rule in *Walz v. City of Hudson*, 327 N.W. 2nd 120 (S.D. 1982) is hereby abrogated. S.D. Codified Laws Ann. §35-11-1

Tennessee



57-10-101. Proximate cause.

The general assembly hereby finds and declares that the consumption of any alcoholic beverage or beer rather than the furnishing of any alcoholic beverage or beer is the proximate cause of injuries inflicted upon another by an intoxicated person.

57-10-102. Standard of proof.

Notwithstanding the provisions of § 57-10-101, no judge or jury may pronounce a judgment awarding damages to or on behalf of any party who has suffered personal injury or death against any person who has sold any alcoholic beverage or beer, unless such jury of twelve (12) persons has first ascertained beyond a reasonable doubt that the sale by such person of the alcoholic beverage or beer was the proximate cause of the personal injury or death sustained and that such person:

(1) Sold the alcoholic beverage or beer to a person known to be under the age of twenty-one (21) years and such person caused the personal injury or death as the direct result of the consumption of the alcoholic beverage or beer so sold; or

(2) Sold the alcoholic beverage or beer to a visibly intoxicated person and such person caused the personal injury or death as the direct result of the consumption of the alcoholic beverage or beer so sold.

Texas



The Texas Dram Shop Act is contained in the Texas Alcoholic Beverage Code. The Act holds establishments liable for selling alcohol to obviously intoxicated persons. Section 2.02(b) of the Texas Alcoholic Beverage Code states as follows:

- (b) Providing, selling or serving an alcoholic beverage may be made the basis of a statutory cause of action under this chapter and may be made the basis of a revocation proceeding ... upon proof that:
 - (1) at the time the provision occurred it was apparent to the provider that the individual being sold, served, or provided with an alcoholic beverage was obviously intoxicated to the extent that he presented a clear danger to himself and others; and
 - (2) the intoxication of the recipient of the alcoholic beverage was a proximate cause of the damages suffered.

In Texas, there is a Safe Harbor Defense to the Dram Shop Act. When applicable, a bar can plead the Safe Harbor Defense and the case against it is dismissed. The Safe Harbor Defense is codified in Section 106.14(a) of the Texas Alcoholic Beverage Code and reads as follows:

- (a) For purposes of this chapter and any other provision of this code relating to the sales, service, dispensing, or delivery of alcoholic beverages to a person who is not a member of a private club on the club premises, a minor, or an intoxicated person or the consumption of alcoholic beverages by a person who is not a member of a private club on the club premises, a minor, or an intoxicated person, the actions of an employee shall not be attributable to the employer if:
 - (1) the employer requires its employees to attend a commission-approved seller training program;
 - (2) the employee has actually attended such a training program; and
 - (3) the employer has not directly or indirectly encouraged the employee to violate such law.

The Texas Supreme Court interpreted the Safe Harbor Defense in the case styled *20801, Inc. v. Parker*, 249 S.W.3d 392, 396-397 (Tex. 2008). In that case, the court interpreted the statute to mean that a defendant must prove that it meets the first two prongs of the Safe Harbor Defense. However, if a plaintiff wants to counter the defense, it is the plaintiff's burden to show that an employer has violated the third prong of the defense. A plaintiff would have to show that the defendant encourages its employees to violate the rules. The court explained that this objective standard complies with the legislature's intent to provide a broad shelter from liability for a provider who has complied with the first two prongs of the defense, while also ensuring that the defense is not abused. *Id.* at 398.



Utah Code 32B-15-201 Liability for injuries and damage resulting from distribution of alcoholic products.

(1)

(a) Except as provided in Subsections 32B-15-202(2) and (3), a person described in Subsection (1)(b) is liable for: (i) any and all injury and damage, except punitive damages to: (A) a third person; or (B) the heir, as defined in Section 78B-3-105, of that third person; or (ii) the death of a third person.

(b) A person is liable under Subsection (1)(a) if: (i) the person directly gives, sells, or otherwise provides an alcoholic product: (A) to a person described in Subsection (1)(b)(ii); and (B) as part of the commercial sale, storage, service, manufacture, distribution, or consumption of an alcoholic product; (ii) those actions cause the intoxication of: (A) an individual under the age of 21 years; Utah Code Page 295 (B) an individual who is apparently under the influence of intoxicating alcoholic products or drugs; (C) an individual whom the person furnishing the alcoholic product knew or should have known from the circumstances was under the influence of intoxicating alcoholic products or drugs; or (D) an individual who is a known interdicted person; and (iii) the injury or death described in Subsection (1)(a) results from the intoxication of the individual who is provided the alcoholic product.

(2)

(a) A person 21 years of age or older who is described in Subsection (2)(b) is liable for: (i) any and all injury and damage, except punitive damages to: (A) a third person; or (B) the heir, as defined in Section 78B-3-105, of that third person; or (ii) the death of the third person.

(b) A person is liable under Subsection (2)(a) if: (i) that person directly gives or otherwise provides an alcoholic product to an individual who the person knows or should have known is under the age of 21 years; (ii) those actions caused the intoxication of the individual provided the alcoholic product; (iii) the injury or death described in Subsection (2)(a) results from the intoxication of the individual who is provided the alcoholic product; and (iv) the person is not liable under Subsection (1), because the person did not directly give or provide the alcoholic product as part of the commercial sale, storage, service, manufacture, distribution, or consumption of an alcoholic product.

(3) This section does not apply to a business licensed in accordance with Chapter 7, Off-Premise Beer Retailer Act, to sell beer at retail only for off-premise consumption

Vermont



7 V.S.A. § 501

(a) Action for damages. A spouse, child, guardian, employer, or other person who is injured in person, property, or means of support by an intoxicated person, or in consequence of the intoxication of any person, shall have a right of action in his or her own name, jointly or severally, against any person or persons who have caused in whole or in part the intoxication by selling or furnishing alcoholic beverages:

- (1) to a minor as defined in section 2 of this title;
- (2) to a person apparently under the influence of alcohol;
- (3) to a person after legal serving hours; or
- (4) to a person who it would be reasonable to expect would be under the influence of alcohol as a result of the amount of alcoholic beverages served by the defendant to that person.

(b) Survival of action; joint action. Upon the death of either party, the action and right of action shall survive to or against the party's executor or administrator. The party injured or his or her legal representatives may bring either a joint action against the person intoxicated, the person or persons who furnished the alcoholic beverages, and an owner who may be liable under subsection (c) of this section, or a separate action against either or any of them.

(c) Landlord liability.

(1) If the alcoholic beverages were sold or furnished to the intoxicated person in a rented building, the owner may be joined as a defendant in the action, and judgment in the action may be rendered against the owner, if the owner of the building or in the case of a corporation, its agent, knew or had reason to know that alcoholic beverages were sold or furnished by the tenant:

- (A) to minors as defined in section 2 of this title;
- (B) to persons apparently under the influence of alcohol;
- (C) to persons after legal serving hours; or
- (D) to persons who it would be reasonable to expect would be under the influence of alcohol as a result of the amount of alcoholic beverages served to them by the tenant.

(2) It shall be an affirmative defense to an action against an owner that the owner took reasonable steps to prevent the sale of alcoholic beverages under the circumstances described in this subsection or to evict the tenant.

Vermont



(d) Statute of limitations. An action to recover damages under this section shall be commenced within two years after the cause of action accrues, and not after.

(e) Evidence.

(1) In an action brought under this section, evidence of responsible actions taken or not taken is admissible, if otherwise relevant.

(2) Responsible actions may include instruction of servers as to laws governing the sale of alcoholic beverages, training of servers regarding intervention techniques, admonishment to patrons or guests concerning laws regarding the consumption of alcoholic beverages, and inquiry under the methods provided by law as to the age or degree of intoxication of the persons involved.

(f) Right of contribution. A defendant in an action brought under this section has a right of contribution from any other responsible person or persons, which may be enforced in a separate action brought for that purpose.

(g) Social host.

(1) Except as set forth in subdivision (2) of this subsection, nothing in this section shall create a statutory cause of action against a social host for furnishing alcoholic beverages to any person without compensation or profit. However, this subdivision shall not be construed to limit or otherwise affect the liability of a social host for negligence at common law.

(2) A social host who knowingly furnishes alcoholic beverages to a minor may be held liable under this section if the social host knew, or a reasonable person in the same circumstances would have known, that the person who received the alcoholic beverages was a minor.

(h) Definitions. As used in this section:

(1) "Apparently under the influence of alcohol" means a state of intoxication accompanied by a perceptible act or series of actions which present signs of intoxication.

(2) "Social host" means a person who is not the holder of a license or permit under this title and is not required to hold a license or permit under this title.

Virginia



Virginia does not recognize Dram Shop Liability.

Washington



1. Generally

A commercial host, i.e., one engaged in the business of supplying alcoholic beverages, has a duty to exercise care when serving patrons. However, that duty has been specified to impose liability in only two situations:

- a. serving "apparently intoxicated" persons; and
- b. serving minors. RCW 66.44.200; RCW 66.44.320

2. Apparently Intoxicated

A commercial host is liable if he furnishes intoxicating beverages to an "apparently intoxicated" person. (RCW 66.44.200). However, no duty is owed to the intoxicated driver himself or herself; the only duty is owed to potential victims of the intoxicated driver's negligence. At one time the standard was whether or not the person served was "obviously intoxicated." However, the Washington Supreme Court has held that the statutory standard does not require proof that the patron was obviously intoxicated, but it is sufficient to show that the patron appeared to be under the influence.

The standard of liability is based on the actual appearance of the patron and not the assumed appearance. Therefore, jurors are not allowed to infer that a driver appeared drunk because he had a high blood alcohol content at the time of service.

2. Serving Minors

A commercial host is also liable for serving a minor. RCW 66.44.320 prohibits serving alcohol to anyone under twenty-one. While a violation of that statute is not negligence per se, it may be used as evidence of negligence by the trier of fact. Where a commercial vendor of alcohol furnishes alcohol to a minor, the vendor is negligent with respect to anyone who could foreseeably be injured as a result of the provision of alcohol.

West Virginia



§55-7-9. Violation of statutes.

Any person injured by the violation of any statute may recover from the offender such damages as he may sustain by reason of the violation, although a penalty or forfeiture for such violation be thereby imposed, unless the same be expressly mentioned to be in lieu of such damages.

§60-3-22. Sales to certain persons prohibited.

(a) Alcoholic liquors and nonintoxicating beer as defined in section three, article sixteen, chapter eleven of this code shall not be sold to a person who is:

- (1) Less than twenty-one years of age;
- (2) An habitual drunkard;
- (3) Intoxicated;
- (4) Addicted to the use of any controlled substance as defined by any of the provisions of chapter sixty-a of this code; or
- (5) Mentally incompetent.

(b) It shall be a defense to a violation of subdivision (1), subsection (a) of this section if the seller shows that the purchaser:

- (1) Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or
- (2) Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

Wisconsin



125.035 Civil liability exemption: furnishing alcohol beverages.

(1) In this section, "person" has the meaning given in s. 990.01 (26) ["Person" includes all partnerships, associations and bodies politic or corporate.]

(2) A person is immune from civil liability arising out of the act of procuring alcohol beverages for or selling, dispensing or giving away alcohol beverages to another person.

(3) Subsection (2) does not apply if the person procuring, selling, dispensing or giving away alcohol beverages causes their consumption by force or by representing that the beverages contain no alcohol.

(4) (a) In this subsection, "provider" means a person, including a licensee or permittee, who procures alcohol beverages for or sells, dispenses or gives away alcohol beverages to an underage person in violation of s. 125.07 (1) (a).

(b) Subsection (2) does not apply if the provider knew or should have known that the underage person was under the legal drinking age and if the alcohol beverages provided to the underage person were a substantial factor in causing injury to a 3rd party. In determining whether a provider knew or should have known that the underage person was under the legal drinking age, all relevant circumstances surrounding the procuring, selling, dispensing or giving away of the alcohol beverages may be considered, including any circumstance under subds. 1. to 4. In addition, sub. (2) does apply if all of the following occur:

1. The underage person falsely represents that he or she has attained the legal drinking age.

2. The underage person supports the representation with documentation that he or she has attained the legal drinking age.

3. The alcohol beverages are provided in good faith reliance on the underage person's representation that he or she has attained the legal drinking age.

4. The appearance of the underage person is such that an ordinary and prudent person would believe that he or she had attained the legal drinking age.

(5) Subsection (2) does not apply to civil forfeiture actions for violation of any provision of this chapter or any local ordinance in conformity with any provision of this chapter.

Wyoming



12-8-301. Limitation of liability.

- (a) No person who has legally provided alcoholic liquor or malt beverage to any other person is liable for damages caused by the intoxication of the other person.
- (b) This section does not affect the liability of the intoxicated person for damages.
- (c) This section does not affect the liability of the licensee or person if the alcoholic liquor or malt beverage was sold or provided in violation of title 12 of the Wyoming statutes.
- (d) For purposes of this section "licensee" is as defined in W.S. 12-1-101(a)(viii) and includes the licensee's employee or employees.