

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1120
Judiciary

(Delegates Dumais and Simmons)

Civil Action - Wrongfully Selling or Furnishing Alcoholic Beverages

This bill authorizes a person to bring a civil action for damages, other than punitive damages, against an alcoholic beverages licensee or the licensee's employee (licensee/employee) who sells or furnishes alcoholic beverages to an individual (customer) if: (1) the licensee/employee knows or reasonably should know that the customer is younger than age 21 or is visibly under the influence of alcoholic beverages, regardless of the customer's age; (2) the licensee/employee can reasonably foresee that the customer may drive or attempt to drive a motor vehicle after consuming the alcoholic beverages; (3) after consuming the alcoholic beverages, the customer negligently drives or attempts to drive a motor vehicle; and (4) the customer's negligence in driving or attempting to drive the motor vehicle is a proximate cause of the damages claimed in the action.

A cause of action against a licensee/employee has a one year statute of limitations. The bill applies prospectively to acts or omissions occurring on or after the bill's October 1, 2011 effective date.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues and District Court caseloads if the cause of action created by the bill results in a decrease in violations of laws prohibiting sales or furnishing of alcoholic beverages to intoxicated persons or underage persons.

Local Effect: Potential minimal decrease in local revenues from administrative fines imposed on alcoholic beverages licensees if the bill's cause of action results in a decrease in violations for sales to minors and intoxicated persons.

Small Business Effect: Potential meaningful impact on small businesses that are sued for damages as a result of the actions of intoxicated patrons.

Analysis

Bill Summary: A customer or the customer's personal representative, parent, legal guardian, spouse, child, dependent, or beneficiary is prohibited from suing the licensee/employee under the cause of action created by the bill.

The trier of fact must determine, based on the evidence, whether the wrongful sale or furnishing of alcohol by the licensee/employee to the customer was a proximate cause of the damages claimed in the case. A plaintiff who sues a licensee/employee under the bill has the burden of proving the licensee/employee's liability by clear and convincing evidence.

The bill specifies that proof of whether the licensee/employee requested and examined the customer's driver's license or other written form of identification and age is admissible as evidence, as is proof of whether the licensee/employee followed responsible serving practices for alcoholic beverages. The bill does not limit the admissibility of any other evidence otherwise admissible under law.

Current Law: Under the Criminal Law Article, a person is generally prohibited from furnishing an alcoholic beverage to an individual if: (1) the person furnishing the alcoholic beverage knows that the individual is younger than age 21; and (2) the alcoholic beverage is furnished for the purpose of consumption by the individual who is younger than age 21. Violators are issued citations, which are subject to a fine of up to \$500 or \$1,000 for a subsequent violation.

Under the Alcoholic Beverages Article, a licensee or any employee of a licensee may not sell any alcoholic beverage to a person younger than age 21 or to a person who is visibly under the influence of alcohol. A licensee who violates these prohibitions is guilty of a misdemeanor, unless the licensee can prove that due caution was used (such as through the acceptance of a purchaser's Maryland issued driver's license or identification card, or a U.S. military identification card). Following a licensee's conviction, or upon being placed on probation without a verdict, liquor licensing authorities are barred from any further proceedings against the licensee except in the City of Annapolis and Cecil, Charles, Dorchester, Garrett, Howard, Kent, Montgomery, St. Mary's, Somerset, Washington, and Wicomico counties, where granting of probation before judgment does not bar the board of license commissioners from proceeding administratively against a licensee.

Background: A “dram shop act” is a statute that allows a plaintiff to sue a commercial seller of alcoholic beverages for damages incurred as a result of a customer’s intoxication. In 1918, the U.S. Supreme Court ruled that states are authorized to enact dram shop statutes under their broad police powers to regulate the traffic of liquor. *Eigner v. Garrity*, 246 U.S. 97, 102-4 (1918).

While several states do have dram shop laws, Maryland does not. In a 1951 case involving a minor who became intoxicated at a tavern and killed a person while driving home, the Maryland Court of Appeals stated that according to the common law of the State, a tavern could not be held liable for the actions of an intoxicated patron who injured another person. *State v. Hatfield*, 197 Md. 249, 254-55 (1951). The court revisited the issue in a virtually identical case in 1981. While acknowledging a growth in the number of jurisdictions that have enacted dram shop laws, the court stated that the proper venue for such a change is the legislature. *Felder v. Butler*, 292 Md. 174 (1981). In *Wright v. Sue & Charles, Inc.*, 131 Md. App. 466 (2000), the Court of Special Appeals reiterated the reasoning in *Felder* when it declined to create a dram shop law in a case brought by the parents of a minor who died in a car accident after consuming alcohol he purchased at a liquor store.

According to the Comptroller’s Office, there were 411 violations in fiscal 2010 of the prohibition on sales to minors or intoxicated persons under the Alcoholic Beverages Article. Of these violations, 395 involved minors and 16 involved sales to intoxicated persons.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller’s Office, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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