

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 93

(Senator Kelley, *et al.*)

Judicial Proceedings

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 have known that the customer was visibly under the influence of alcoholic beverages; (2) the licensee/employee could have reasonably foreseen that the customer might drive or attempt to drive a motor vehicle after consuming the alcoholic beverages; (3) after consuming the alcoholic beverages, the customer negligently drove or attempted to drive a motor vehicle; and (4) the customer's negligence in driving or attempting to drive the motor vehicle was 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, 2015 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. State alcoholic beverages tax revenues are not materially affected, as discussed below.

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 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 followed responsible serving practices for alcoholic beverages is admissible as evidence. The bill does not limit the admissibility of any other evidence otherwise admissible under law.

The bill's provisions do not (1) limit a defendant from raising assumption of risk or contributory negligence as a defense or (2) affect any limitation on damages under any provision of law not contained in the bill's provisions.

Current Law: Under Article 2B (Alcoholic Beverages), a licensee or any employee of a licensee may not sell or furnish any alcoholic beverage to a person who is visibly under the influence of alcohol. A licensee who violates this prohibition is guilty of a misdemeanor, punishable by imprisonment for up to 2 years and/or a \$1,000 maximum fine. Additional jurisdiction-specific penalties may apply.

If a licensee or employee is found not guilty or is 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 the granting of probation before judgment does not bar the board of license commissioners from proceeding administratively against a licensee.

Background: Under well-settled common law, vendors of alcoholic beverages could not be held liable for the acts of intoxicated or underage customers. Through case law and statutes, most states have carved out exceptions to this common law principle in the form of "dram shop" laws. These laws allow a person to sue an alcoholic beverages licensee, such as a restaurant, bar, or liquor store, for damages incurred as a result of a patron's intoxication. While a majority of states do have dram shop laws, Maryland does not.

In 2010, William and Angela Warr (the Warrs) filed suit in the Circuit Court for Montgomery County against JMGM Group, LLC, the corporate owner of a tavern, the

Dogfish Head Alehouse (Dogfish Head), for injuries they and their daughter sustained in a car accident and for the death of their other daughter. The car that struck the Warrs' vehicle was driven by Michael Eaton, whom the Warrs alleged was improperly served by Dogfish Head while he was visibly intoxicated. The Warrs maintained Dogfish Head had breached its duty to them not to furnish alcohol to an intoxicated person and, therefore, was liable for damages. The trial court decided that the case could not proceed to trial because Maryland does not have a dram shop liability law. The Warrs sought review of the decision in the Court of Appeals.

The Court of Appeals affirmed the decision of the trial court (*Warr v. JMGM Group, LLC*, 433 Md. 170 (2013)), stating that the determination as to whether to change the common law and impose liability on an alcoholic beverages licensee for damages caused by serving a visibly intoxicated patron involves significant public policy considerations that are best left to the General Assembly.

Dram Shop Laws in Other States

According to the National Conference of State Legislatures, 30 states had dram shop laws as of June 2013. However, these laws vary greatly. Twenty-two of the states that have adopted the doctrine of dram shop liability have limited liability to cases where a licensed establishment served alcohol to an obviously intoxicated individual or an individual younger than the legal drinking age. Generally, only individuals injured by the underage or visibly intoxicated individual who had been furnished alcohol by the licensee may recover under a dram shop law.

Several states have adopted specific limits on the amount of damages that may be recovered in a dram shop action. For example, New Mexico limits dram shop liability to \$50,000 for bodily injury to, or death of, one person in each instance; \$100,000 for bodily injury to, or death of, two or more persons in each instance; and \$20,000 for property damage in each instance. Meanwhile, Utah permits recovery by an individual of not more than \$1,000,000, and awards not in excess of \$2,000,000 to all persons injured as a result of one occurrence. Some states that have adopted specific limits on recovery automatically adjust the limits for inflation.

Some states have imposed notice requirements and statutes of limitation for causes of action for dram shop liability. Several states require a plaintiff to provide a licensee written notice of intent to bring an action for dram shop liability within a specified period of time. For example, in Connecticut, written notice of intent to bring an action must be provided to a licensee within 120 days of the injury or property damage (180 days if the aggrieved person died or is incapacitated) and must specify the time, date, and person to whom the sale was made; the name and address of the person injured or whose property was damaged; and the time, date, and place where the injury to person or property occurred. Michigan

similarly requires a plaintiff to provide written notice to all defendants within 120 days of entering an attorney-client relationship for the purpose of pursuing an action for dram shop liability. Failure to provide timely written notice constitutes grounds for dismissal of the claim unless sufficient information for determining that a retail licensee might be liable was not known and could not reasonably have been known within the 120 days. Idaho, Iowa, and Montana require plaintiffs to notify a licensee of intent to file a suit within 180 days of the date of sale or injury. Other states specify periods of time in which an action must be brought against the licensee. Generally, statutes of limitation range from one year (*e.g.*, Connecticut) to four years (*e.g.*, Nebraska).

Sales of Alcoholic Beverages to Intoxicated Persons

According to the Comptroller's Office, there were 13 violations in fiscal 2014 of the prohibition on sales to intoxicated persons under the Alcoholic Beverages Article.

State Revenues: While alcoholic beverages licensees may be more reluctant to serve intoxicated patrons as a result of the liability established by the bill, it is unlikely that any resulting shift in behavior will have a material effect on State tax revenues. The Comptroller's Office has historically advised that the bill has no direct impact on alcoholic beverages tax revenues unless an establishment is forced to close as a result of litigation/awarded damages, in which case revenues could decline. However, given the demand for alcoholic beverages licenses and consumer behavior, the Department of Legislative Services advises that any such effect is unlikely to materially affect State revenues.

Additional Information

Prior Introductions: SB 209 of 2014 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 1000 of 2012 and HB 1120 of 2011, both similar bills, received hearings in the House Judiciary Committee. No further action was taken on either bill.

Cross File: HB 102 (Delegates Dumais and Smith) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Comptroller's Office, National Conference of State Legislatures, Department of Legislative Services

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