



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: June 17, 2010

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell *DM/Kit* Chairperson
State Council for Persons with Disabilities

RE: S.B. 243 [Dram Shop Liability]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 243 which would create dram shop liability under the limited circumstances of when a bar or restaurant, intentionally or recklessly sells alcohol to an intoxicated person for on premises consumption, and that person later injures or kills an innocent party. The synopsis recites that Delaware courts have consistently recognized that a bar owner cannot be found liable for selling alcohol to intoxicated persons who then injure third parties in the absence of an authorizing statute. This bill would create such a statute. Liability would be capped at \$250,000, be limited to sales for "on premises" consumption, and only apply if the bar acted intentionally or recklessly. Simple negligence would be insufficient to trigger liability. The bill would not allow the inebriated patron to recover any damages, only third parties.

SCPD endorses the proposed legislation since it may result in a reduction of accidents and therefore the incidences of disabling injuries (e.g. spinal cord injury, traumatic brain injury). The majority of states have adopted some form of dram shop liability by statute. See attached table. Delaware's sister states of Pennsylvania and New Jersey have adopted such laws

Thank you for your consideration and please contact SCPD if you have any questions regarding our position on the proposed legislation.

cc: The Honorable Jack A. Markell
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

Dram shop

From Wikipedia, the free encyclopedia

Dram shop or **dramshop** is a legal term in the United States referring to a bar, tavern or the like where alcoholic beverages are sold. Traditionally, it referred to a shop where spirits were sold by the dram, a small unit of liquid.

Dram shop liability refers to the body of law governing the liability of taverns, liquor stores and other commercial establishments that serve alcoholic beverages. Generally, dram shop laws establish the liability of establishments arising out of the sale of alcohol to visibly intoxicated persons or minors who subsequently cause death or injury to third-parties (those not having a relationship to the bar) as a result of alcohol-related car crashes and other accidents.

The laws are intended to protect the general public from the hazards of serving alcohol to minors and intoxicated patrons. Groups such as Mothers Against Drunk Driving (MADD) have advocated for the enforcement and enactment of dram shop laws across the United States as well as in the United Kingdom, Canada, New Zealand and Australia. The earliest dram shop laws date from the 19th century temperance movement.

The laws have drawn criticism by those who claim they downplay the role of personal responsibility.

Contents

- 1 Differences among U.S. state laws
- 2 Effectiveness
- 3 References
- 4 External links

Differences among U.S. state laws

Serving alcohol to minors is illegal in all 50 states. Many states impose liability on bars for serving minors who subsequently injure themselves or others in order to deter minor from being served alcohol. Thus in states like Texas and New Jersey, minors can sue a drinking establishment for their own injuries sustained while intoxicated. In other states, dram shop liability only extends to serving the "habitually intoxicated."

The majority of states allow for recovery when the defendant knew (or should have known) the customer was intoxicated. Some states have attempted to address this problem through more exacting tests. Missouri's recently revised dram shop law requires proof that the party demonstrates "significantly uncoordinated physical action or significant physical dysfunction." In Texas, a patron must be so obviously intoxicated that he presents a clear danger to himself and others.

On the other hand, in Massachusetts, the state's highest court has held that a bar could be sued where a patron exhibiting "drunk, loud and vulgar" behavior was determined to be "visibly intoxicated," *Cimino v. The Milford Keg, Inc.*, 385 Mass. 323 (1981). In *Cimino*, evidence showed that the intoxicated patron had been served six or more White Russians by the Milford Keg bar. The patron left the bar, arriving at another bar about fifteen minutes later "totally drunk," holding a White Russian. The next bar that he went to refused to serve him. Shortly thereafter, the intoxicated patron lost control of his car, drove on a sidewalk, and killed a pedestrian.

Under Illinois' dram shop law, plaintiffs can recover after demonstrating that:

1. alcohol was sold to the patron by the defendant;
2. damages were sustained by the plaintiff;
3. the sale of alcohol was the proximate cause of the intoxication; and

4. intoxication was at least one cause of the plaintiff's damages.

Proximate cause includes the requirement that the dram shop must have been able to foresee that its actions could cause injuries to third parties, but this is true for any establishment that serves (sells) alcohol. One Illinois court allowed a lawsuit against a company that dropped off self-serve barrels of beer at a union picnic.

Some states (such as New Jersey) impose liability on social hosts as well as commercial establishments. This related area of the law is known as social host liability.

Different states' dram shop acts also differ as to whether a person who becomes intoxicated and injures themselves has a cause of action against the establishment that served them. Some states, such as New Jersey, will allow such a cause of action but will instruct the jury to take the intoxicated person's own negligence into account. Other states, such as New York, will not allow a person who injures themselves to bring a lawsuit against the bar that served them, but if that person dies will allow such a person's children to sue the drinking establishment for loss of parental consortium. ^[1]

Effectiveness

According to a 2004 comparison by YAERD, a U.S. organization that studies alcohol use among youth, Michigan and Alaska, whose dram shop laws are considerably narrower than MADD proposes, have drunk-driving fatality rates below the national average, while Illinois is above the national average despite having one of the broadest dram shop laws. Comparisons between a rural state like Alaska, with the lowest population density in the United States, with that of Illinois, which includes the Chicago metropolitan area and other major cities, may not be scientifically valid because of the existence of confounding variables. A 1993 study from the National Bureau of Economic Research found some reduction in alcohol-related fatalities from the implementation of dram shop laws though it did not control for the special cases of Utah and Nevada, which may have distorted the results.^[1]

References

1. [^] <http://kreppein.blogspot.com/2008/10/lil-bit-olaw-dram-shop-act.html>

External links

- "Blame It On The Bars"

Retrieved from "http://en.wikipedia.org/wiki/Dram_shop"

Categories: [Tort law](#) | [Alcohol law in the United States](#)

- This page was last modified on 18 March 2010 at 12:08.
- Text is available under the Creative Commons Attribution-ShareAlike License; additional terms may apply. See Terms of Use for details.
- Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization.
- Privacy policy
- About Wikipedia
- Disclaimers

As part of the event, the MTA announced the release of several new data sets on its website, including turnstile and bridges and tunnel data, elevator/escalator status updates, and a host of other performance measures. In addition, the MTA as designated three staff persons to act as relationship managers with developers as they build apps using the data, and has plans for an apps contest in the fall. In response, the CIOs from the various line businesses of the MTA were given a round of applause – a symbol of sincere appreciation from a developer community starved for more data that provide real-time information.

Jay Walder, the MTA's new CEO, seems to be behind much of the change in attitude. Coming off his experience implementing a smart card fare system for Transport of London (with a stint at McKinsey & Company in between), there are high hopes that he can reform the MTA. In the case of open data and technology, he seems to be delivering.

Citing that mobile apps could replace above ground next train signs – Walder stated his hope that the tools that might be developed using the agency's data would help transform the city's transit system into an even more useful resource for residents much faster and cheaper than it could do so itself (as an example of the MTA's bureaucratic sluggishness, he admitted that it might be a decade before wireless cellular and data service would be installed in the city's subway tunnels).

Of course, challenges still remain. Certainly, it can be hard to get government and developers working together, and some of that was on display during the event. Several conversations throughout the evening involved developers asking why technologies and data couldn't be put in place or made available, with MTA staff responding with the political and bureaucratic hurdles that prevent things from happening. Others pointed out that the next step will be for the agency to get feedback from developers and customers, rather than just broadcasting its own data.

Still the agency has taken an active stance towards collaboration and cooperation with the developer community, and seems to recognize it stands to gain much more from release its data and letting things happen than trying to manage the process itself. While the MTA may still have some ways to go in other areas, it is poised to become a leader when it comes to open data.

Christian Madera writes the Open Cities column for Next American City. He is a former managing editor of Planetizen, and has spent the last decade working in the fields of urban planning policy and web technology. He is currently a master's degree candidate at the Woodrow Wilson School of International and Public Affairs at Princeton University.

new york city transportation transit Internet technology public participation open cities open data
web applications developers iphone apps

RELATED ENTRIES



the Public Meeting

How Well do You Know Your Park?

Reinventing



Workweek Gets a Makeover

Fare Hikes in New York City: The First Major Urban Casualty of the Financial Crisis?

Birmingham's

COMMENTS

Steven Romalewski in New York on Fri, May 07, 2010 at 9:49am

Great post about the sea change in MTA's approach to data sharing. I've blogged about it at <http://spatialityblog.com/2010/05/06/mta-data-in-gis-format/>, where I've also posted links to shapefiles of the data.

The "GTFS" format that MTA is using for their data about bus routes, subway stations, etc is flexible and powerful. But I thought it would be helpful to create shapefiles of the data for anyone who wants to display bus routes, subway stations, etc in a map layout or analyze them with GIS (and even app developers who might want a stand-alone set of map layers). The files are yours to use as you wish. Hope this is helpful.

Steve Romalewski

Dram Shop Liability By State

State	Relevant Statutes	Vendor Liability for Intoxicated Adults?	Vendor Liability for Intoxicated Minors?	Social Host Liability for Intoxicated Adults?	Social Host Liability for Intoxicated Minors?
Alabama	§ 6-5-71	Yes	Yes	No	Yes
Alaska	§ 04.21.020	Limited	Yes	No	No
Arizona	§§ 4-311; 4-301; 4-312(B)	Yes	Yes	No	Yes
Arkansas		No	No	No	No
California	§§ 25602; 25602.1 (Bus. & Prof. Code) & § 1714 (Civ. Code)	No	Yes	No	No
Colorado	§§ 12-46-112.5; 12-47-128.5	Yes	Yes	No	Yes
Connecticut	§ 30-102	Yes	Yes	No	Yes
Delaware		No	No	No	No
District of Columbia		Yes	Yes	No	No
Florida	§ 768.125	Limited	Yes	No	Limited
Georgia	§ 51-1-40(b)	Limited	Yes	Limited	Yes
Hawaii		No	Limited	No	No
Idaho	§ 23-808	Limited	Yes	Limited	Yes
Illinois	§ 235 ILLCS 5/6-21	Yes	Yes	No	No
Indiana	§ IC7.1-5-10-15.5	Yes	Yes	Yes	Yes
Iowa	§§ 123.92; 123.49(1)	Yes	Yes	No	Yes
Kansas		No	No	No	No
Kentucky	§ 413.241	Yes	Yes	No	No
Louisiana	§ 9:2800.1	No	Yes	No	Limited
Maine	28-A MRSA § 2501 et seq.	Yes	Yes	Limited	Yes
Maryland		No	No	No	No
Massachusetts		Yes	Yes	No	Yes
Michigan	§ 436.1801(3) & (10)	Limited	Yes	No	Yes
Minnesota	§340A.801	Yes	Yes	No	Limited
Mississippi	§ 67-3-73 (2) & (4)	Limited	Yes	No	Yes
Missouri	§ 537.053	Limited	Yes	No	No
Montana	§ 27-1-710	Limited	Yes	No	Yes
Nebraska		No	No	No	No
Nevada	§ 41.1305	No	No	No	No
New Hampshire	§ 507-F:1 et seq.	Yes	Yes	Yes	Yes
New Jersey	§2A:22A-1 et seq.	Limited	Yes	Limited	Yes
New Mexico	§ 41-11-1	Yes	Yes	Yes	Yes
New York	Gen Oblig. Law §§ 11-100 & 11-101	Yes	Yes	No	Yes
North Carolina	§§ 18B-120 et seq.	Limited	Yes	Limited	Limited
North Dakota	§ 5-01-06.1	Yes	Yes	Yes	Yes
Ohio	§§ 4399.01, 4399.02 & 4388.18	Yes	Yes	No	Yes
Oklahoma		No	Yes	No	No
Oregon	§§ 30.950 & 30.960	Yes	Yes	Limited	Yes
Pennsylvania	47 § 4-497	Yes	Yes	No	Yes
Rhode Island	§ 3-14-1 et seq.	Yes	Yes	No	No
South Carolina		No	Yes	No	No
South Dakota	§§ 35-4-78, 35-11-1 & 35-11-2	No	No	No	No
Tennessee	§§ 57-10-101 & 57-10-102	Limited	Yes	No	No
Texas	Alcoholic Beverage Code § 2.01 et seq.	Limited	Limited	No	Limited
Utah	§ 32A-14-101	Limited	Limited	No	Yes
Vermont	7 § 501	Yes	Yes	Yes	Yes
Virginia		No	No	No	No
Washington		No	Yes	No	Yes
West Virginia		Yes	Yes	No	No
Wisconsin	§ 125.035	No	Yes	No	Yes
Wyoming	§ 12-8-301	Limited	Yes	No	Yes