

Department of Legislative Services
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FISCAL AND POLICY NOTE

House Bill 1000
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, 2012 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 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: 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, under which a seller of alcoholic beverages may be sued for injuries caused by an intoxicated or underage customer. Thirty-six states and the District of Columbia have dram shop laws applicable to intoxicated customers, while 43 states have dram shop laws applicable to underage customers.

Maryland Cases:

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 that the number of jurisdictions with dram shop laws had grown, the court stated that the proper venue for such a change is the legislature. *Felder v. Butler*, 292 Md. 174 (1981). In April 2000, the Court of Special Appeals reiterated the reasoning in *Felder* when it declined to create a dram shop law. *Wright v. Sue & Charles, Inc.*, 131 Md. App. 466 (2000).

Recent Activity:

A recent case in Montgomery County revisited the issue of dram shop liability in Maryland. In 2008, 10-year-old Jazimen Warr was killed when her family's vehicle was hit by a drunk driver, Michael D. Eaton. Jazimen's half-sister, grandfather, and grandmother were also injured in the crash. The drunk driver pled guilty to vehicular manslaughter and leaving the scene of an accident involving injury and was sentenced to 20 years imprisonment with 12 years suspended and 5 years supervised probation.

In 2010, William J. Warr, Jr., Jazimen's grandfather, filed a lawsuit against the bar where Mr. Eaton had consumed 20 alcoholic beverages in six hours on the night of the crash. A motion to dismiss the case on the ground that Maryland law does not recognize dram shop liability was denied by the court. While acknowledging that Maryland law does not recognize dram shop liability, the court stated that "...the factual underpinnings of this case make a change in Maryland jurisprudence with respect to Dram Shop Liability ripe to the core."

The court noted that the *Felder* case recognized that the common law may change in response to changes in society and that judicial rulings "must keep pace with the world while constantly searching for fair and just solutions" to cases. The court cited the increase in drunk driving accidents since the *Hatfield* and *Felder* decisions and the relatively low level of enforcement of laws prohibiting the sale of alcohol to intoxicated persons as examples of relevant societal changes justifying a need to consider the establishment of dram shop liability in Maryland. The court also referred to public policy considerations and empirical data as justification for the creation of a civil duty on liquor licensees and the existence of a causal link between the service of alcohol to intoxicated customers and driving fatalities, respectively.

On January 20, 2012, a circuit court judge in Montgomery County dismissed the case but noted in his order that the Court of Appeals should consider the case an opportunity to change the law. The Warr family plans to file an appeal.

Sales of Alcoholic Beverages to Minors or Intoxicated Persons:

According to the Comptroller's Office, there were 370 violations in fiscal 2011 of the prohibition on sales to minors or intoxicated persons under the Alcoholic Beverages Article. Of these violations, 351 involved minors and 19 involved sales to intoxicated persons.

Additional Information

Prior Introductions: HB 1120 of 2011 received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), *Gazette.net*, Department of Legislative Services

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