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PREVENTING LIQUOR LIABILITY CLAIMS

The following scenarios illustrate the potential liquor liability exposure for businesses that sell, serve, or furnish any alcoholic beverages. Lawsuits demanding that these businesses be held accountable for the injuries and damages caused by intoxicated customers can be very costly.

A venue hosts an event at which alcohol is served. An intoxicated attendee gets in his car and drives into oncoming traffic, killing a family of four. Surviving relatives sued the venue for damages and were awarded \$25 million.

A venue served alcohol to a 17-year-old boy. After leaving the facility in his car, he crossed the center line of the highway and struck a motorcycle. The 17-year-old had a blood alcohol level of 0.22, which was more than twice the legal limit. A lawsuit was filed against the venue alleging they contributed to the accident by serving a minor. A jury awarded the plaintiff \$5 million.

An intoxicated patron fell off of their seat. The venue's bartenders decided not to call emergency responders because they didn't want the publicity. Instead, they took the individual out to their car to "sleep it off." After several hours, a relative discovered the intoxicated individual and took him to the hospital, where he died days later. The venue is currently involved in a lawsuit seeking a major damage award.

If your business sells, serves or furnishes alcoholic beverages, or hosts events where this occurs, you may be held legally liable for the actions of those individuals who have become intoxicated as a result of consuming those beverages. Most states have "dram shop" laws that impose these liabilities for the injuries and damages caused by intoxicated persons to themselves or to third parties. In states where these laws do not exist, you still owe a duty of care to individuals to whom you have sold, served, or furnished alcoholic beverages to ensure that they do not get intoxicated, and that they are of legal drinking age.

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What can you do?

The only way to reduce your liquor liability exposure is to establish protocols and guidelines for selling, serving, or furnishing alcoholic beverages. Here are some steps you can take to reduce your liquor liability risk.

Transfer the Risk

Hire a caterer or other related company to sell, serve or furnish alcoholic beverages. This process should include:

⇒ Verifying that the vendors are licensed to sell, serve, or furnish alcohol beverages, and have inforce liability insurance coverage with a minimum limit of \$1,000,000.

⇒ Checking their references, including recent customers. Explore their level of satisfaction in areas such as responsiveness to customer requirements, their willingness to rehire them and how they handled intoxicated patrons.

⇒ Verifying that their alcohol servers have completed a state approved alcohol awareness training course such as **TIPS, TAM or SERV Safe Alcohol** within the last year. Alcohol-awareness training teaches servers how to recognize and prevent intoxication, how to deal with guests who have overindulged, and how to meet legal responsibilities related to alcohol service. Additionally, such training may be required for all servers in your state.

If your findings are satisfactory, have a signed written contract in place, including defense, hold harmless and indemnification provisions. The contract should also require that the company has, and will maintain, liability insurance coverage and that your business be listed as an additional insured on the liability insurance policy.

Develop and Communicate a Safe Alcoholic Beverage Consumption Policy

Your written alcoholic beverage consumption policy should encourage patrons to drink responsibly. This policy may include table tent cards or other signs urging patrons to use good judgment in their consumption of alcohol, the steps to be taken in the event a patron is suspected of being intoxicated and actions to help them return home safely.

Your policy may also include the following statements:

- Your commitment to the responsible consumption of alcoholic beverages.
- Not selling, serving, or furnishing alcoholic beverages to any person under the legal drinking age.
- Commitment to minimizing alcohol-related harm to individuals and property.
- Commitment to ensuring compliance with applicable liquor liability laws.
- Ensuring that your business is licensed to serve alcoholic beverages and possesses any required state or local permits.
- Minimizing the incidences of intoxication and ensuring patron safety with proactive measures.
- Following established procedure when refusing to sell, serve or furnish an alcoholic beverage to a potentially intoxicated patron.
- Having guidelines in place to prevent intoxication-related disturbances, and safe measures to be taken in dealing with those disturbances.

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Prohibit Sales to Persons Under the Legal Drinking Age

- Require that servers and bartenders obtain a proper form of identification from any patron they believe may be under the legal drinking age.
- Use hand stamps, identification scanners or other effective means to verify that a customer's identification has previously been checked.
- Verify that servers, bartenders, and security personnel are trained in identifying fake or expired identification or individuals attempting to use the identification of another person. Provide electronic means to verify authenticity.
- Establish procedures for handling situations where fake, incorrect, or expired identification is discovered.

Your bartenders and servers are your first line of defense. All servers and bartenders should be trained in your alcohol policy upon hire and annually. They should also attend a state approved alcohol server training with annual refreshers (or more frequently per your state's guidelines).

Prevent Intoxication

The best way to reduce your liquor liability exposure is to create an environment that discourages overconsumption.

For example:

- Limit "Happy Hour" or other similar events to one hour.
- Discontinue the sale, serving or furnishing of alcoholic beverages at least one hour before the close of business or end of the event.
- Establish a designated driver service; provide the driver with free food and non-alcoholic drinks.
- For venues having more than two bars, require the bartenders and servers to communicate with each other when they discontinue service for someone to prevent that person from being served again.
- Provide water and offer a range of alcohol-free drinks.
- Slow down service or ask patrons if they would like another drink instead of automatically refilling their glass (such as an open bottle of wine at the table).
- Provide a variety of food. The consumption of food slows down the absorption of alcohol.
- Ensure that only authorized persons have access to the bar or area where alcoholic beverages are being served.
- Track the number and types of alcoholic beverages served to each customer.
- Limit the number of straight-alcohol shots.
- Add extra ice to alcoholic beverages to slow the rate of alcohol absorption.
- Offer free food and non-alcoholic beverages when a customer shows signs of intoxication.
- Discontinue contests which encourage greater alcohol consumption and rapid intoxication.

- Do not serve more than one alcoholic beverage at a time to any customer.
- Provide highly visible police or security presence in parking areas to discourage drunk driving and after-event tailgating.

Establish Guidelines For Handling Intoxicated Patrons

- Hold your servers responsible for identifying potentially intoxicated patrons and give them the authority to discontinue service to those patrons.
- Train your security staff in handling unruly, potentially intoxicated patrons.
- Stop serving suspected intoxicated customers. If they arrive in an intoxicated state, refuse to serve them.
- Offer the customer coffee and food as an alternative to an alcoholic beverage.
- Make arrangements with a local transportation company to provide rides for potentially intoxicated customers to get them home safely.
- Call a taxi or arrange for another ride home for the customer. Do not let them drive!
- If a customer becomes belligerent or angry, call the police. Avoid confrontations and contact. Assault charges have been filed against these business owners or employees by patrons who believe they have been mistreated.



Prepare a Defense

- Require bartenders to keep a daily bound incident logbook to document all incidents that take place, even minor. An entry should be listed each day. If there were no incidents, the log should state so. Record:

⇒ The arrival and departure time of any person who appears to be visibly intoxicated.

⇒ Type of incident (fake ID, minor, refusal of service, etc.), number of drinks served, any intervention attempted (including refusal of service), food or non-alcoholic beverage offers, alternative transportation arrangements.

⇒ Witnesses, including names, addresses and phone numbers.

- Save register receipts, payroll records, and work schedules; these should be kept for at least 3 years.
- Instruct your staff and servers to avoid providing information about any alcoholic beverage-related incident to anyone other than a member of law enforcement or an authorized insurance company representative.

Preventing alcohol-related injuries and damages, and the ensuing litigation, requires a dedicated effort to establish effective policies and procedures, and hold individuals responsible and accountable for enforcing them. There are many organizations available to assist businesses in developing effective programs and procedures. These include:

- ◆ Mothers Against Drunk Driving
- ◆ State Alcohol Control Boards
- ◆ National Highway Traffic Safety Administration