

Legal News: Liquor Serving and Liability

An engineer attends a meeting sponsored by an ASCE chapter and purchases several drinks from the cash bar at the closing reception. On the way home, this engineer is involved in a serious automobile accident, causing injury to himself and to the driver of a second car, as well as extensive property damage. Does the Section that hosted the event face any civil liability for serving alcohol to its guest? Unfortunately, the answer may well be 'yes.'

In recent years, an increasing number of host organizations have been held liable for injuries or damage caused by an intoxicated guest. The extent of an organization's exposure under these third-party or "dram shop" laws varies from state to state; while some states allow no cause of action against a host vendor, others impose strict liability on an entity that serves alcohol to its guests. The range of potential plaintiffs to such a lawsuit is also determined by state law; injured parties, their families and employers, even the intoxicated guest him/herself may be permitted to file suit against a liquor vendor.

Faced with the possibility of costly legal action involving the sale or service of alcohol at an event, what can an organization do to protect itself?

The simplest—and best—course of action is simply not to serve alcohol at all, particularly in situations where there may be underage guests in attendance. At the same time, ASCE recognizes that there are instances where a host organization may reasonably wish to serve alcohol at a sponsored event or meeting. In those circumstances, ASCE's recommendations are:

- **Where possible, shift the liability for service of alcohol to the hotel or leased facility in which the event will be held.** ASCE's standard hotel contract [addendum](#) includes several crucial provisions for limiting the Society's legal exposure for service of alcohol:
 - Alcoholic drinks shall be dispensed only by the hotel's employees or bartenders (Section 3.1);
 - The hotel certifies that it will request proper identification from persons who might appear underage and will refuse service to persons who appear intoxicated (Section 3.2);
 - The hotel certifies that its personnel have all been trained to prevent incidents that could give rise to liquor liability claims (Section 3.3);
 - The hotel shall indemnify, defend, and hold harmless the Society for any claims arising from the hotel's service of alcohol (Section 3.4); and
 - The hotel warrants that it carries a sufficient amount of insurance to protect itself in the event of a claim arising from its service of alcohol, and it agrees to provide proof of this insurance to the Society upon request (Section 6.2).

As a further layer of protection for the host organization, it may be possible to negotiate with the hotel or leased facility that the host shall be named as an additional insured party on the facility's liquor liability insurance.

- **Understand the laws of your state and the extent of coverage provided in your insurance policy.** As part of ASCE’s general liability insurance, all Sections, Branches, and subsidiary units are protected by up to \$1 million general liability and \$10 million excess coverage for claims arising from the unit’s usual activities. Service of alcohol at a sponsored function is covered under this policy, with two important conditions:
 - Alcoholic beverages must be served at a social function by a trained professional, such as a bartender or waiter, employed by the facility where the event takes place; and
 - The host section or unit must not share in the profits from the sale of alcoholic beverages.

- **Act responsibly.** Remember that your first priority is not reducing your exposure to lawsuits, but ensuring the safety of your guests. Make sure that the individuals who are serving the alcohol have the necessary training and guidelines to make intelligent decisions about whom they will be serving, and in what amounts. Keep a listing of local cab companies and consider reserving a room in the hotel for use in the event that a guest shows signs of impairment.

ASCE’s in-house counsel will be happy to answer any questions you may have concerning its policy on liquor service. Please call Tom Smith at (800) 548-2723 x6061 or Tara Hoke at (800) 548-2723 x 6151.

Liquor Serving and Liability, Part II

In the November Section Informant, we reported to you on the possibility that ASCE Sections and Branches could face civil liability for accidents caused by individuals who were served alcohol at a function sponsored by the Section. Since publishing that article, ASCE has received a number of responses from ASCE Section representatives, requesting additional information on liquor service liability in a particular state.

While it would be impossible to include in this newsletter a complete analysis of the rules governing liquor service liability across the United States, ASCE can provide the following general guidelines on the existence of these laws in the 50 states and the District of Columbia.

Dram Shop Laws

Dram shop laws, as explained in the previous article, are laws providing that persons or establishments who sell alcohol to an intoxicated person or minor can be held liable for injuries or damages caused by the intoxicated person.

The following states and territories have enacted some type of dram shop law, either by legislative act or through case law:

Alabama	Maine	Oklahoma
Alaska	Massachusetts	Oregon

Arizona	Michigan	Pennsylvania
Arkansas	Minnesota	Rhode Island
Colorado	Mississippi	South Carolina
Connecticut	Missouri	Tennessee
District of Columbia	Montana	Texas
Florida	New Hampshire	Utah
Georgia	New Jersey	Vermont
Hawaii	New Mexico	Washington
Idaho	New York	West Virginia
Illinois	North Carolina	Wisconsin
Iowa	North Dakota	Wyoming
Kentucky	Ohio	

The following states, conversely, do not impose civil liability on persons or establishments for sale of alcohol:

California	Louisiana	Nevada
Delaware	Maryland	South Dakota
Kansas	Nebraska	Virginia

Social Host Liability

States having social host liability laws may impose civil liability for the acts of an intoxicated person or minor on persons or establishments who served alcohol to the individual at a social event or function.

The following states have imposed civil liability on social hosts for service of alcohol to an intoxicated person or minor:

Alabama	Massachusetts	Ohio
Arizona	Michigan	Oregon
Colorado	Minnesota	Pennsylvania
Connecticut	Mississippi	Tennessee
Florida	Montana	Utah
Georgia	New Hampshire	Vermont
Hawaii	New Jersey	Washington
Idaho	New Mexico	Wisconsin
Iowa	New York	Wyoming
Louisiana	North Carolina	
Maine	North Dakota	

The following states and territories do not impose civil liability on social hosts:

Alaska	Kentucky	South Carolina
Arkansas	Maryland	South Dakota
California	Missouri	Texas
Delaware	Nebraska	Virginia
District of Columbia	Nevada	West Virginia
Illinois	Oklahoma	
Kansas	Rhode Island	

This list is intended only to indicate the states that have imposed *some* form of civil liability for sale or social service of alcohol beverages; the amount and extent of that liability varies greatly from state to state. For example, while Colorado imposes civil liability for sale of alcohol to minors, obviously intoxicated persons, and “known drunkards,” Wisconsin’s dram shop liability laws extend only to sale of alcohol to minors.

For individuals wishing to learn more about this issue, the Mothers Against Drunk Driving website is an excellent source of information on liquor service and a variety of other alcohol-related state laws.

>>You may find this resource at: <http://www.madd.org/stats/1113>