

## Dram Shop Liability

### Policy Description

Dram shop liability refers to the civil liability that commercial alcohol providers face for injuries or damages caused by their intoxicated or underage drinking patrons.<sup>6</sup> The analysis here is limited to alcohol service to minors. The typical factual scenario in legal cases arising from dram shop liability is a licensed retail alcohol outlet furnishing alcohol to a minor who, in turn, causes an alcohol-related motor vehicle crash that injures a third party.

In states with dram shop liability, the injured third party (“plaintiff”) may be able to sue the retailer (as well as the minor who caused the crash) for monetary damages. Liability comes into play only if an injured private citizen files a lawsuit. The state’s role is to provide a forum for such a lawsuit; the state does not impose a dram shop–related penalty directly. (This distinguishes dram shop liability from the underage furnishing policy, which results in criminal liability imposed by the state.)

Dram shop liability is closely related to the policy on furnishing alcohol to minors, but the two topics are distinct. Retailers who furnish alcohol to minors may face fines or other punishment imposed by the state as well as dram shop liability lawsuits filed by parties injured as a result of the same incident. Dram shop liability and social host liability (presented elsewhere in this report) are identical, except that the former involves lawsuits filed against commercial alcohol retailers and the latter involves lawsuits filed against noncommercial alcohol providers.

Dram shop liability serves two purposes: (1) it creates a disincentive for retailers to furnish to minors because of the risk of litigation leading to substantial monetary losses, and (2) it allows parties injured as a result of an illegal sale to a minor to gain compensation from those responsible for the injury. The minor causing the injury is the primary and most likely party to be sued. Typically, the retailer is sued through a dram shop claim when the minor does not have the resources to fully compensate the injured party.

Dram shop liability is established by statute or by a state court through “common law.” Common law is the authority of state courts to establish rules by which an injured party can seek redress against the person or entity that negligently or intentionally caused injury. Courts can establish these rules only when the state legislature has not enacted its own statutes, in which case the courts must follow the legislative dictates (unless found to be unconstitutional). Thus, dram shop statutes normally take precedence over dram shop common law court decisions. This analysis includes both statutory and common law dram shop liability for each state.

A common law liability designation signifies that the state allows lawsuits by injured third parties against alcohol retailers for the negligent service or provision of alcohol to a minor. Common law liability assumes the following procedural and substantive rules:

1. A negligence standard applies (i.e., the defendant did not act as a reasonable person would be expected to act in like circumstances). Plaintiffs need not show that the defendant acted intentionally, willfully, or with actual knowledge of the minor’s underage status.

<sup>6</sup> Dram shops were retail establishments that sold distilled spirits by the “dram,” a liquid measure that equals 1 ounce. This form of liability is also known as “commercial host liability.”

2. Damages are not arbitrarily limited. If negligence is established, the plaintiff receives actual damages and can seek punitive damages.
3. Plaintiffs can pursue claims against defendants without regard to the age of the person who furnished the alcohol and the age of the underage person furnished with the alcohol.
4. Plaintiffs must establish only that minors were furnished alcohol and that the furnishing contributed to the injury without regard to the minor's intoxicated state at the time of sale.
5. Plaintiffs must establish key elements of the lawsuit via "preponderance of the evidence" rather than a more rigorous standard (e.g., "beyond a reasonable doubt").

A statutory liability designation indicates that the state has a dram shop statute. Statutory provisions can alter the common law rules listed above, restricting an injured party's ability to make successful claims. This analysis includes three of the most important statutory limitations:

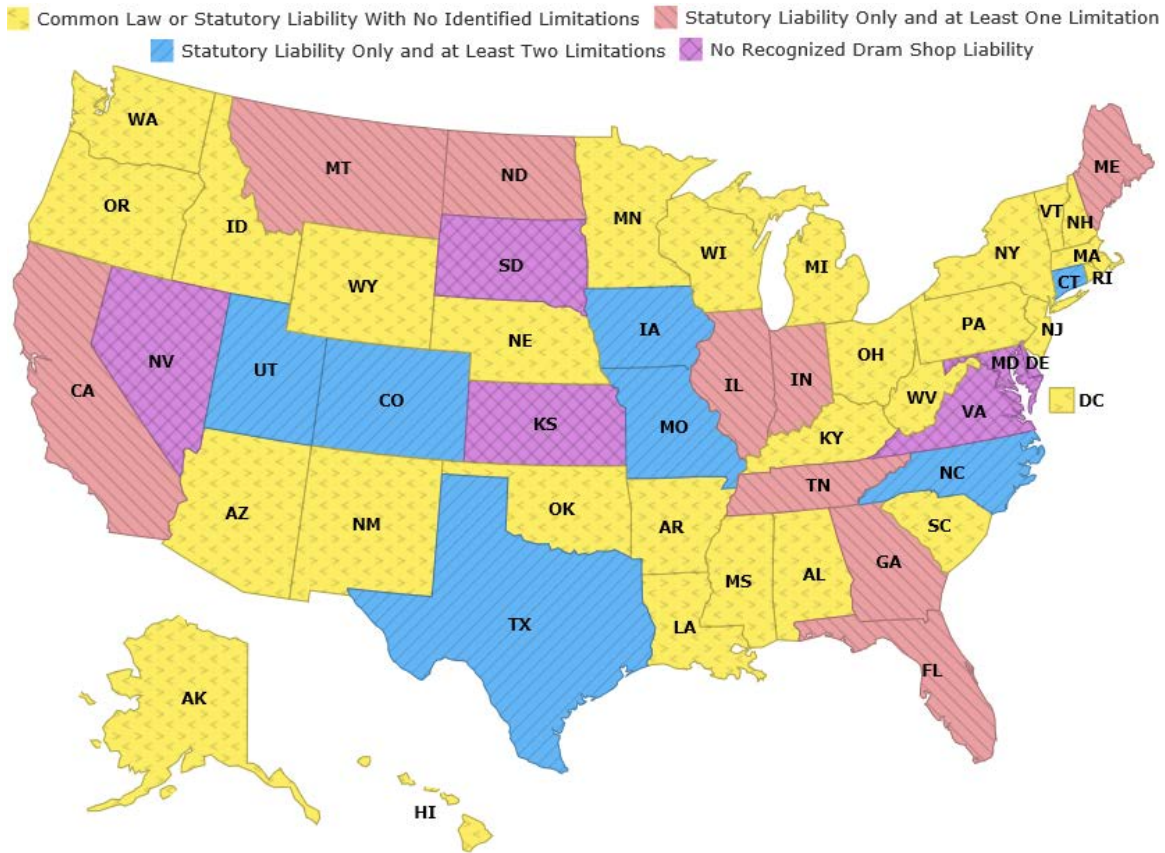
1. Limitations on damages: Statutes may impose statutory caps on the total dollar amount that plaintiffs may recover through dram shop lawsuits.
2. Limitations on who may be sued: Potential defendants may be limited to only certain types of retail establishments (e.g., on-premises but not off-premises licensees), or certain types of servers (e.g., servers above a certain age).
3. Limitations on elements or standards of proof: Statutes may require plaintiffs to prove additional facts or meet a more rigorous standard of proof than would normally apply in common law. Statutory provisions may require a plaintiff to:
  - a. Establish that the retailer knew the minor was underage or that the retailer intentionally or willfully served the minor.
  - b. Establish that the minor was intoxicated at the time of sale or service.
  - c. Provide clear and convincing evidence or evidence beyond a reasonable doubt that the allegations are true.

These limitations can restrict circumstances that can give rise to liability or greatly diminish a plaintiff's chances of prevailing in a dram shop liability lawsuit, thus reducing the likelihood of a lawsuit being filed. Other restrictions may also apply. For example, many states do not allow "first-party claims," cases brought by the person who was furnished alcohol for his or her own injuries. These additional limitations are not discussed here.

Some states have enacted responsible beverage service (RBS) affirmative defenses. In these states, a defendant can avoid liability if it can establish that its retail establishment had implemented an RBS program and was adhering to RBS practices at the time of the service to a minor. Texas has enacted a more sweeping RBS defense. There, a defendant licensee can avoid liability if it establishes that (a) it did not encourage the illegal sale, and (b) it required its staff, including the server in question, to attend RBS training. Proof that RBS practices were being adhered to at the time of service is not required.

See the "RBS Training" policy topic for more information.

### Exhibit I.29: Common Law/Statutory Dram Shop Liability and Limitations as of January 1, 2017



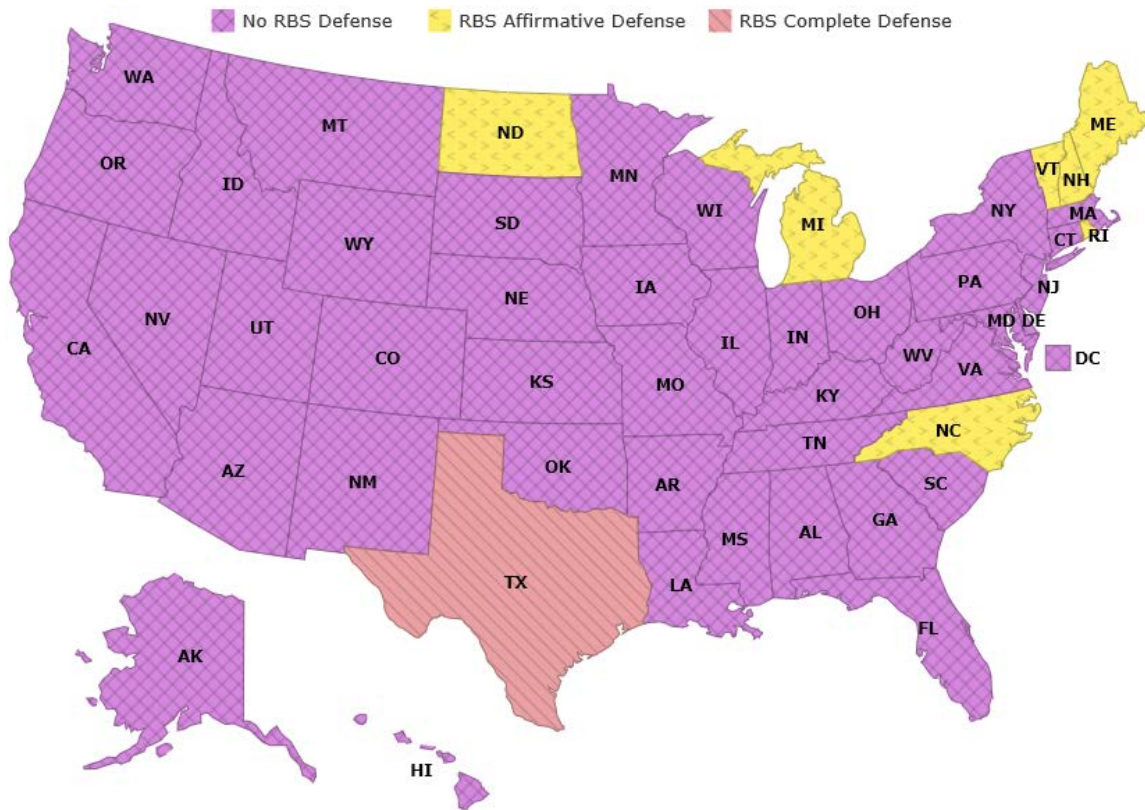
#### Status of Dram Shop Liability

As of January 1, 2017, 45 jurisdictions imposed dram shop liability as a result of statutory or common law or both (see Exhibit I.29). The District of Columbia and 28 states have either common law liability or statutory liability or both with no identified limitation. The remaining 16 states impose one or more limits on statutory dram shop liability, including limits on the damages that may be recovered, limits on who may be sued, and stricter standards for proof of wrongdoing than for usual negligence. Eight states provide an RBS defense for alcohol outlets (see Exhibit I.30). Seven states provide an affirmative RBS defense, and one state provides a complete RBS defense.

#### Trends in Dram Shop Liability for Furnishing Alcohol to a Minor

Between 2009 and 2017, the number of jurisdictions that permit dram shop liability remained constant.

### Exhibit I.30: Responsible Beverage Service Program Defenses Against Dram Shop Liability Across the United States as of January 1, 2017



#### Data Sources and Citations

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. For more information, including definitions of the variables for this policy, contact [underagedrinking@samhsa.gov](mailto:underagedrinking@samhsa.gov).

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