

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.¹³ The analysis of this policy topic in this document is limited to alcohol service to underage people. The most common factual scenario in legal cases arising from dram shop liability is a licensed retail alcohol outlet furnishing alcohol to an underage person 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 underage person who caused the crash) for monetary damages.¹⁴ Liability is relevant 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 underage people, but the two topics are distinct. Retailers who furnish alcohol to underage youth 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 non-commercial alcohol providers.

Dram shop liability serves two purposes: (1) It creates a disincentive for retailers to furnish to people under age 21 because of the risk of litigation leading to substantial monetary losses, and (2) it enables parties injured as a result of an illegal sale to a person under age 21 to gain compensation from those responsible for the injury. The underage person 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 underage person 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. Dram shop liability can be strengthened by expanding it to include adults and by avoiding major limitations (e.g., strong evidentiary requirements, caps on damages, and restrictions on who may be sued).

¹³ 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.”

¹⁴ Note that throughout this chapter, “states” refers to the 50 states and the District of Columbia.

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 person under age 21. 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 underage youth's underage status.
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 underage persons were furnished alcohol and that the furnishing contributed to the injury without regard to their 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 purchaser was underage or that the retailer intentionally or willfully served an underage person.
 - b. Establish that the underage person 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," which are 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 RBS affirmative defenses. In these states, a defendant may 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 person under age 21. Texas has enacted a more sweeping RBS defense. There, a defendant licensee can avoid liability if it establishes that: (1) It did not encourage the illegal sale, and (2) 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.

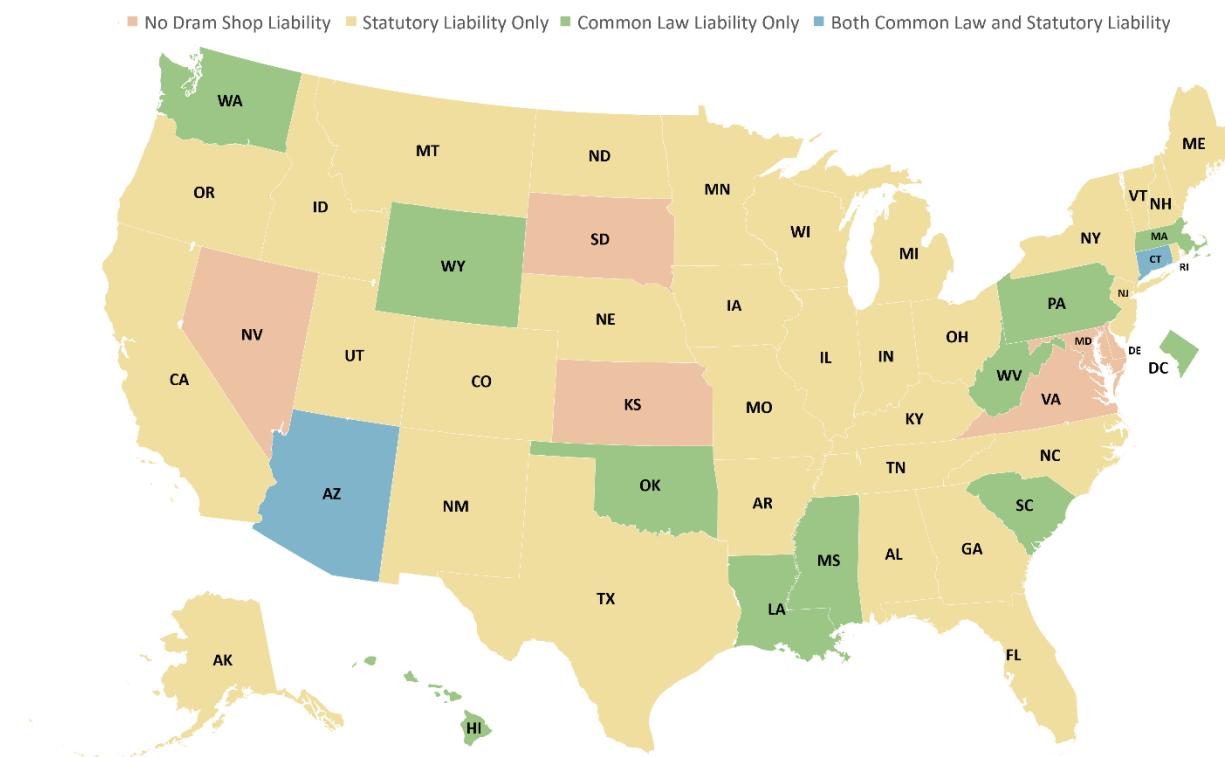
Status of Dram Shop Liability

As of January 1, 2020, 45 states imposed dram shop liability as a result of statutory or common law or both (Exhibit 2.17). Many states with statutory dram shop liability impose one or more limits on 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.

Trends in Dram Shop Liability for Furnishing Alcohol to a Person Under Age 21

Between 2009–2020, the number of states that permit dram shop liability has remained constant.

Exhibit 2.17: Common Law/Statutory Dram Shop Liability as of January 1, 2020



Data Sources and Citations

Legal research for this topic is planned and managed by the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD), chaired by Miriam Delphin-Rittmon, Ph.D., Assistant Secretary for Mental Health and Substance Use, and is conducted under contract number 75S20120C00001. For more information, including definitions of the variables for this policy, visit stopalcoholabuse.gov.

- Blanchette, Jason G., Marlene C. Lira, Timothy C. Heeren, and Timothy S. Naimi. "Alcohol policies in US states, 1999–2018." *Journal of studies on alcohol and drugs* 81, no. 1 (2020): 58–67.
- Fell, J. C., Scherer, M., & Voas, R. (2015). The utility of including the strengths of underage drinking laws in determining their effect on outcomes. *Alcoholism: Clinical and Experimental Research*, 39(8), 1528–1537.
- Fell, J. C., Scherer, M., Thomas, S., & Voas, R. B. (2016). Assessing the impact of twenty underage drinking laws. *Journal of Studies on Alcohol and Drugs*, 77(2), 249–260.
- Fell, J. C., Thomas, S., Scherer, M., Fisher, D. A., & Romano, E. (2015). Scoring the strengths and weaknesses of underage drinking laws in the United States. *World Medical & Health Policy*, 7, 28–58.
- Holder, H., Janes, K., Mosher, J., Saltz, R., Spurr, S., & Wagenaar, A. (1993). Alcoholic beverage server liability and the reduction of alcohol-involved problems. *Journal of Studies on Alcohol*, 54, 23–36.
- Mosher, J., Boertzel, G. S., Clune, K. P., Clune, J. R., Cohen, H. M., Cohen, M. L., . . . Weinstein, S. S. (2011). *Liquor Liability Law*. Newark, NJ: LexisNexis.
- Mosher, J. F., Cohen, E. N., & Jernigan, D. H. (2013). Commercial host (dram shop) liability: Current status and trends. *American Journal of Preventive Medicine*, 45, 347–353.
- Rammohan, V., Hahn, R. A., Elder, R., Brewer, R., Fielding, J., Naimi, T. S., Toomey, T. L., Chattopadhyay, S. K., Zometa, C., & Task Force on Community Preventive Services (2011). Effects of dram shop liability and enhanced overservice law enforcement initiatives on excessive alcohol consumption and related harms: Two community guide systematic reviews. *American Journal of Preventive Medicine*, 41(3), 334–343.
<https://doi.org/10.1016/j.amepre.2011.06.027>
- Romano, E., Scherer, M., Fell, J., & Taylor, E. (2015). A comprehensive examination of U.S. laws enacted to reduce alcohol-related crashes among underage drivers. *Journal of Safety Research*, 55, 213–221.
- Scherer, M., Fell, J. C., Thomas, S., & Voas, R. B. (2015). Effects of dram shop, responsible beverage service training, and state alcohol control laws on underage drinking driver fatal crash ratios. *Traffic Injury Prevention*, 16(Suppl. 2), S59–S65.
- U.S. Department of Health and Human Services, Office of the Surgeon General. (2016). *Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health*. Washington, DC: U.S. Department of Health and Human Services.
- Wagenaar, A. C., & Holder, H. D. (1991). Effects of alcoholic beverage server liability on traffic crash injuries. *Alcoholism: Clinical and Experimental Research*, 15(6), 942–947.
- Wagenaar, A. C., Lenk, K. M., & Toomey, T. L. (2005). Policies to reduce underage drinking: A review of the recent literature. In M. Galanter (Ed.), *Recent Developments in Alcoholism: Alcohol Problems In Adolescents and Young Adults*. New York: Kluwer Academic/Plenum Publishers.