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**SUBJECT: LOUISIANA LIQUOR LIABILITY LAW**

**BACKGROUND:**

Several circumstances in today's society work concurrently to make liquor liability an important topic. These include the general overall increase in litigation, increased public awareness of alcohol-related accidents, and the potentially astronomical medical bills that often result from severe accidents.

**MAIN POINTS:**

The degree and type of legal liability that surrounds alcohol-related injuries varies by state. Some states have adopted Dram Shop statutes, which impose liability on the *server* of the alcohol. (A "dram" was originally a term used in colonial America, and referred to a measured amount of alcohol, approximately one teaspoonful. A "dram shop" was where alcohol was purchased and consumed.)

While some Dram Shop statutes date back to the nineteenth century in America, many are of very recent origin. For example, Texas and Wisconsin did not adopt their Dram Shop statutes until the 1980's. These and other state Dram Shop statutes are usually intended to overcome the prevailing common law position that a server of alcohol is not legally liable for the acts of an inebriated patron.

The scope of each state's Dram Shop statute is different. Some states bring only the serving alcohol to *underage* drinkers within the statute. Other states include both underage drinkers and adults who are obviously intoxicated, while others have their Dram Shop statutes apply to any and all serving of alcohol.

Another element of Dram Shop liability used in some states is to put a dollar cap on the amount of recovery an injured person can receive. Illinois, for example, places the cap at \$45,000 per person for injury and property damage, and \$55,000 for loss of support. (These amounts are adjusted annually based on the consumer price index.)

Social hosts also face potential liability for their serving of alcohol to guests. However, in approximately 40 states, social host enjoy some form of immunity for alcohol-related injuries and damages caused by their guests. In cases where the guest is an underage drinker, only around 20 states provide social hosts with immunity.

The principal argument in support of state Dram Shop statutes seems to be two-fold. First, the injured persons should have a dependable source of recovery (the server), should the consumer not have adequate financial resources to cover the damage they do. Second, by placing potential liability on servers, they will in turn be more diligent about their serving of alcohol.

A completely different approach is taken by approximately 15 states, in that they have no Dram Shop statutes. Louisiana is one of those states. States with no Dram Shop statute generally take the legal position that it is the *consumer*, not the server, who should bear the liability for injuries or damage caused by their intoxication.

**Louisiana statute.** In Louisiana, the statute that addresses liquor liability is 9:2800.1, which was passed as Act 18 in 1986. It reads as follows:

§ 2800.1. Limitation of liability for loss connected with sale, serving, or furnishing of alcoholic beverages

*“A. The legislature finds and declares that the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person.*

*B. Notwithstanding any other law to the contrary, no person holding a permit under either Chapter 1 or Chapter 2 of Title 26 of the Louisiana Revised Statutes of 1950, nor any agent, servant, or employee of such a person, who sells or serves intoxicating beverages of either high or low alcoholic content to a person over the age for the lawful purchase thereof, shall be liable to such person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served.*

*C. (1) Notwithstanding any other law to the contrary, no social host who serves or furnishes any intoxicating beverage of either high or low alcoholic content to a person over the age for the lawful purchase thereof shall be liable to such person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were served or furnished.*

(2) No social host who owns, leases, or otherwise lawfully occupies premises on which, in his absence and without his consent, intoxicating beverages of either high or low alcoholic content are consumed by a person over the age for the lawful purchase thereof shall be liable to such person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person who consumed the intoxicating beverages.

D. The insurer of the intoxicated person shall be primarily liable with respect to injuries suffered by third persons.

E. The limitation of liability provided by this Section shall not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol.”

It is important to note that the broad immunity granted to both commercial servers and social hosts applies only to the serving of alcohol to persons of legal drinking age, which is 21 in Louisiana.

**Louisiana court cases.** Louisiana courts have for the most part upheld both the spirit and letter of the immunities provided under 9:2800.1, which is consistent with the prevailing jurisprudence even before the statute was enacted in 1986.

The first time the Louisiana Supreme Court addressed the issue of liability for a seller of alcohol was *Lee v. Peerless Ins. Co.*, in 1966. In that case, the Court held that a vendor was not liable for damages sustained by an intoxicated customer who was ejected from a nightclub, and subsequently hit by a car.

In 1976, ten years after *Lee*, the Supreme Court overturned the *Lee* decision in *Pence v. Ketchum*. However, part of the reason for finding an alcohol vendor liable for injuries to a customer was the duty of business owners under Louisiana Civil Code Article 2315 and Article 2316 (general negligence).

Three years later, in 1979, the Supreme Court decision in *Thrasher v. Leggett* partially reversed the *Pence* decision in a similar case in which an intoxicated patron was injured after being ejected from a bar. The Court recognized the bar’s duties under Article 2315 (general negligence), but held that if an ejected patron was subsequently injured due simply to his state of intoxication, the bar was not liable.

In 1986, the Louisiana Legislature passed Act 18 (Louisiana statute 9:2800.1), granting broad immunity to commercial servers and social hosts, so long as the consumer is of legal drinking age.

Most cases since then have involved underage drinkers, which is the exception to the immunity provided in 9:2800.1

In the 1993 case of *Hopkins v. Sovereign Fire & Casualty Ins. Co.*, the Louisiana Third Circuit Court of Appeals ruled against a retailer in the sale of beer to a 14-year-old girl. Since the girl later gave the beer to some friends (also minors), the court decided that the retailer could hardly claim lack of knowledge of possible risk for the auto accident that later occurred. In fact, the girl purchased a large quantity of beer (“cold and ready to drink,” the court noted), with her underage friends present at the time of purchase.

An interesting twist developed in the 1990 case of *Boudreaux v. Delchamps, Inc.* The Third Circuit Court of Appeals ruled that the supermarket was not liable in the sale of beer to a major, who then provided the beer to his friends, who were minors, even though the minors were present when the major purchased the beer. The dissenting judge in the 2-1 decision noted that all the boys had pooled their money in the purchase of the beer.

In April 2001, the Louisiana Supreme Court ruled on another case involving the serving of alcohol to a minor, in *Berg v. Zummo*. The defendant Zummo was a 17 year old who consumed beer with four friends at a bar in New Orleans, and then got into a fight with Berg. After Berg was knocked down, Zummo fled the scene in his truck, but struck Berg in the process.

Two issues were before the Court were: (1) was the bar liable for serving a minor, and (2) could punitive damages be awarded against the bar, since some of Berg’s injuries arose from the operation of a motor vehicle by an intoxicated driver (Zummo). (Punitive damages are permissible under Louisiana Civil Code Article 2315.4, for injuries that arise from a drunk driver. In this case, the question was whether or not punitive damages could be assessed vicariously against the bar, for Zummo’s drunk driving that contributed to Berg’s injuries.)

As to the first issue, regarding the bar’s legal liability for serving alcohol to a minor, the Court noted that the immunity granted to commercial servers of alcohol under 9:2800.1 exists only for serving persons over 21. Since Zummo was 17, the bar had no immunity.

Absent the statutory immunity, the bar’s duties and subsequent liabilities were therefore governed by Louisiana Civil Code Articles 2315 and 2316, which relate to general negligence. The Supreme Court upheld the trial court’s assessment of 45% fault for the bar.

However, the Supreme Court did not allow punitive damages against the bar, through vicarious liability for Zummo’s drunk driving, under Article 2315.4. The

Court said the intent of the punitive damages provisions of Article 2315.4 should only apply to the driver.

**Insurance issues.** In the standard CGL, the exclusion for liquor liability provides an exception for those *not in the business of* manufacturing, distributing, selling, serving or furnishing alcoholic beverages. The coverage thus granted as an exception to the exclusion is often referred to as “host liquor” coverage.

Much litigation has arisen over the meaning of “in the business of.” As a result, where there is doubt about an insured’s operations, the safest course of action is to purchase a separate Liquor Liability policy. It is important to note that some Liquor Liability policies exclude serving minors, and since that is virtually the only exposure in Louisiana, such policies would provide no coverage for the primary exposure.

In the Homeowners Policy, there is no exclusion for liquor liability.

Under Business Auto and Personal Auto, there is also no liquor liability exclusion.

However, a related auto exposure exists for punitive damages, which are permitted under Louisiana Civil Code Article 2315.4, for cases involving drunk driving.

Two important points about punitive damages. Courts in Louisiana have generally upheld the payment of punitive damages under insurance policies. And the Courts have generally allowed exclusions for punitive damages in insurance policies.

**NECESSARY ACTION:**

Circulate this Technical Advisory to appropriate Commercial Lines and Personal Lines staff.