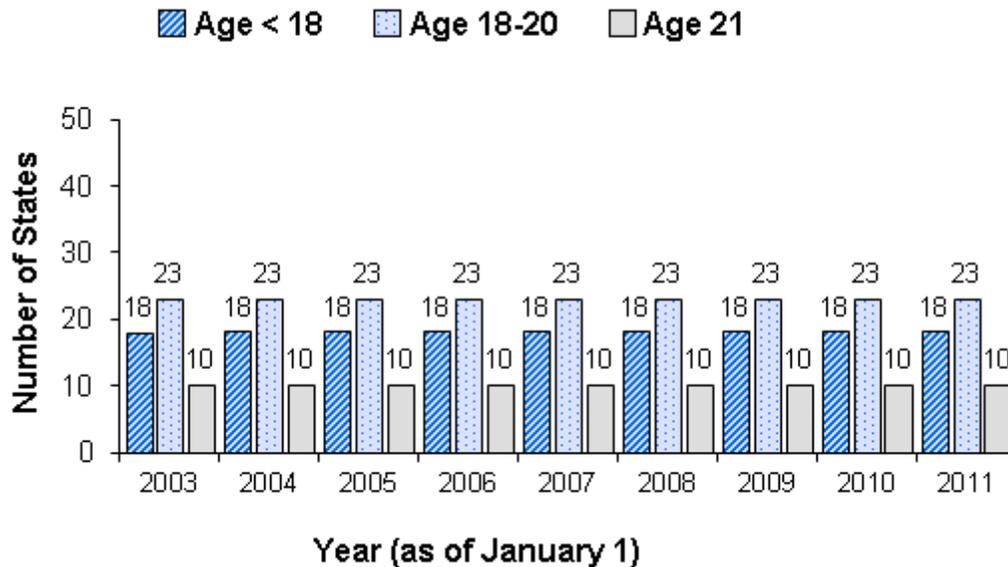


Exhibit 4.3.26: Distribution of Minimum Ages for Off-Premises Sellers of Beer, January 1, 2003, through January 1, 2011



References and Further Information

All data for this policy were obtained from APIS at <http://www.alcoholpolicy.niaaa.nih.gov>. Follow links to the policy entitled “Minimum Ages for Off-Premises Sellers.” APIS provides further descriptions of this policy and its variables, details regarding State policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

13. DRAM SHOP LIABILITY

Policy Description

Dram shop liability refers to the civil liability faced by commercial alcohol providers for injuries or damages caused by their intoxicated or underage drinking patrons. The analysis in this Report is limited to alcohol service to minors.³² The typical factual scenario in legal cases arising from dram shop liability involves a licensed retail alcohol outlet that furnishes 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.)

³² “Dram shop liability” is a legal term that originated in the 19th century. Dram shops were retail establishments that sold distilled spirits by the “dram” – a liquid measure that equals 1 ounce. This form of liability may also be referred to as “commercial host liability.”

Dram shop liability is closely related to the Furnishing of Alcohol to Minors policy, 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 have the authority to 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:

- 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.
- Damages are not arbitrarily limited. If negligence is established, the plaintiff receives actual damages and can seek punitive damages.
- Plaintiffs can pursue claims against defendants without regard for the age of the person who furnished the alcohol and the age of the underage person furnished with alcohol.
- Plaintiffs must only establish 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.
- 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 report includes three of the most important statutory limitations:

- Limitations on damages: Statutes may impose statutory caps on the total dollar amount that plaintiffs may recover through dram shop lawsuits.
- 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).

- 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. The statutory provisions may require plaintiff to:
 - Establish that the retailer knew the minor was underage or that the retailer intentionally or willfully served the minor.
 - Establish that the minor was intoxicated at the time of sale or service.
 - Provide clear and convincing evidence or evidence beyond a reasonable doubt that the allegations are true.

These limitations can restrict the 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 in addition to the three listed above 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. This report does not track these additional limitations.

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. A defendant licensee can avoid liability if it establishes (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 in this Report for additional information.

Status of Dram Shop Liability

As of January 1, 2011, 45 jurisdictions imposed dram shop liability as a result of statutory or common law or both (see Exhibit 4.3.27). The District of Columbia and 28 States have either common law liability or statutory liability or both with no identified limitation. The remaining 17 States impose one or more limits on statutory dram shop liability: 7 States limit the damages that may be recovered; 4 States limit who may be sued; and 10 States require stricter standards for proof of wrongdoing than for usual negligence. Seven States provide an RBS defense for alcohol outlets (see Exhibit 4.3.28). Six 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 2011, the number of jurisdictions that permit dram shop liability remained constant and three States increased the dollar limits on damages.

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see:

Holder, H., Janes, K., Mosher, J., Saltz, R., Spurr, S., & Wagenaar, A. (1992). Final report: Evaluation of dram shop liability and the reduction of alcohol-related traffic problems. National Highway Traffic Safety Administration, DTNH22-87-R-07254.

Holder, H., et al. (1993). Alcoholic beverage server liability and the reduction of alcohol-involved problems. *J Stud Alcohol*, 54, 23–36.

Mosher, J., et al. (2011). *Liquor liability law*. Newark, NJ: LexisNexis.

14. SOCIAL HOST LIABILITY

Policy Description

Social host liability refers to the civil liability faced by noncommercial alcohol providers for injuries or damages caused by their intoxicated or underage drinking guests. The analysis in this Report does not address social host liability for serving adult guests. The typical factual scenario in legal cases arising from social host liability involves an underage drinking party at which the party host furnishes alcohol to a minor who in turn injures a third party in an alcohol-related incident (often a motor vehicle crash). In States with social host liability, injured third parties (“plaintiffs”) may be able to sue social hosts (as well as the minor who caused the crash) for monetary damages. Liability comes into play only if injured private citizens file lawsuits. The State’s role is to provide a forum for such lawsuits; the State does not impose social host-related penalties directly. (As discussed below, this distinguishes social host liability from underage furnishing and host party policies, which can result in criminal liability imposed by the State.)

Social host liability is closely related to the furnishing alcohol to a minor and host party policy topics, but the three topics are distinct. Social hosts who furnish alcohol to minors or allow underage drinking parties on their property may face fines or other punishment imposed by the State as well as social host liability lawsuits filed by injured parties stemming from the same incident. Social host liability and dram shop liability (presented elsewhere in this Report) are identical policies except that the former involves lawsuits brought against noncommercial alcohol retailers, and the latter involves lawsuits filed against commercial alcohol providers.

Social host liability serves two purposes: (1) it creates disincentives for social hosts to furnish to minors due to the risk of litigation and potentially substantial monetary losses and (2) it allows those injured as a result of illegal furnishing of alcohol to minors to gain compensation from the person(s) responsible for their injuries. Minors causing injuries are the primary and most likely parties to be sued. Typically, social hosts are sued through social host liability claims when minors do not have the resources to fully compensate the injured parties.