

SUBJECT: Extending Dram Shop Act coverage to employees of alcohol providers

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Flores, Hamilton, Driver, Eissler, Goolsby, D. Jones, Wise

0 nays

2 absent — Raymond, Homer

WITNESSES: For — Stewart Knight; Melinda Lipani, Mothers Against Drunk Driving

Against — None

On — (*Registered, but did not testify:*) Lou Bright, Texas Alcoholic Beverage Commission; Glen Gary, Texas Restaurant Association

BACKGROUND: The Dram Shop Act (Alcoholic Beverage Code, sec. 2.02) creates a civil cause of action and grounds for license revocation against a provider of an alcoholic beverage when it is “apparent” to the provider that the person being sold or served the alcohol is “obviously intoxicated” in a manner that presents a clear danger to himself and others, and that the intoxication of the recipient was a cause of damages suffered. A provider of alcohol means a person who sells or serves an alcoholic beverage under authority or permit issued by the state or who otherwise sells an alcoholic beverage.

Sec. 2.03 provides the exclusive remedy for plaintiffs against providers of alcohol. A person damaged by intoxicated “customers, members, or guests” of a provider may not bring an action against the provider under common law or other statutory law, as long as the customer, member, or guest is 18 years of age or older.

The Dram Shop Act modifies common law concerning the liability of providers of alcohol. Under common law, a plaintiff injured by the negligence of an alcohol provider need prove only that the provider “knows or should have known” that the person served by the provider was intoxicated.

DIGEST: CSHB 724 would add “employees” of providers of alcohol to the list of people who could subject providers to liability under negligence law, but only under the conditions of the Dram Shop Act. The bill would take effect September 1, 2003.

SUPPORTERS SAY: CSHB 724 would treat certain cases involving employees of alcohol providers within the framework of existing negligence law. This change would accomplish an efficient, fair, and uniform handling of civil actions against providers of alcohol.

The bill would state simply that a plaintiff damaged by the intoxication of an employee (for example, a clerk, waiter, or bartender) who had been served alcohol by his or her employer-provider could file suit against the employer-provider under the Dram Shop Act. This simplification would provide logical consistency by requiring plaintiffs to prove the same evidence against providers of alcohol in cases when providers serve their own employees as when providers serve their customers, members, and guests. Current law is unclear about whether employees served alcohol by their employer-provider are considered customers, members, or guests under those circumstances, and CSHB 724 would clarify the issue.

OPPONENTS SAY: By making “employees” of alcohol providers another class of people whose damaging conduct would subject plaintiffs to the heightened evidentiary standards of the Dram Shop Act, CSHB 724 would make it more difficult for plaintiffs to prove negligence of alcohol providers. Common law expresses the better negligence standard for the rare case that this bill would address. When an employer knows or should have known that an employee was intoxicated while serving the employee alcohol at work (the common law negligence standard), the employer should be liable for damages caused later by that employee due to intoxication. Instead, CSHB 724 would heighten the standard for proving liability against an employer-provider by requiring a plaintiff to prove that it was apparent to the provider that provider’s employee was obviously intoxicated when being served.

NOTES: The committee substitute would preserve the age requirement contained in the exclusivity clause of existing law, which states that the Dram Shop Act “provides the exclusive cause of action for providing an alcoholic beverage to

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a person 18 years of age or older.” As introduced, HB 724 would have increased the age to 21.

The companion bill, SB 936 by Jackson, has been referred to the Senate Criminal Justice Committee.