

# Serving alcohol in your restaurant?

Important considerations about dram shop laws



Customers come into your restaurant to relax and enjoy themselves, and alcohol enhances the overall experience for some. But serving alcohol brings with it the heavy responsibility of understanding and following the rules governing the sale of liquor in your state. One of those laws is the dram shop law. Dram shop laws are state statutes that allow for the recovery of damages from establishments responsible for serving an intoxicated person who then harms a third party, property or themselves. The laws vary widely by state, and while they may seem straightforward, they're continually being challenged in the courts and can easily become entangled with other state-specific regulations, licensing and common law.

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Many states have dram shop laws. States typically enact them to protect "the innocents" who were caused harm to themselves or their property by an intoxicated person or minor who was knowingly served alcohol by an establishment licensed to serve liquor. Most states enacted them over the past few decades in an attempt to reduce drunk driving and underaged drinking. Therefore, the two aspects of the law that nearly all states have in common are "knowingly" serving intoxicated patrons and serving minors.

Dram shop laws have played out in the courts in some interesting ways, and New York and New Jersey are no exception. Many of cases in these and other states involve drunk driving.

#### **Who can sue and what they must prove**

While dram shop laws were originally intended to allow innocent third parties to recover damages, there have been cases where an intoxicated person was successful in a first-party suit against an establishment. One such case took place in New Jersey in 2010 (*Voss v. Tranquilino et. Al.* A5431-08T1). This decision opened the door for an entire new class of plaintiffs in that state. Restaurant owners should be aware of the burden of proof in such matters and relevant factors such as whether:

- The defendant made an illegal sale of alcohol
- The seller was negligent by "knowingly" selling to a visibly intoxicated person or that the seller should have known they were selling to a minor
- The sale of that alcohol can be reasonably connected to the resulting injuries or property damage

Other circumstances that may come into play under dram shop laws are leasing your establishment to a third party, selling liquor after hours and serving employees. Note that dram shop laws may also hold restaurants liable when patrons bring their own alcohol and imbibe at the restaurant. One of the most commonly contested issues is what's considered "visibly" or obviously intoxicated, and each state seems to have its own interpretation of this definition. In many states, a plaintiff can sue when the establishment should have reasonably known that they were serving someone who was intoxicated. New York and New Jersey have attempted to determine more specific criteria for what's considered intoxicated behavior and have allowed toxicologists who never saw the intoxicated person give expert opinions based on blood alcohol levels.<sup>1</sup>

#### **How insurance can help you protect your business in the event of dram shop law exposure**

A standard general liability policy doesn't usually cover claims stemming from the service of alcohol. Therefore, liquor liability insurance can be an important consideration in helping to protect a restaurant against financial loss from lawsuits for serving intoxicated customers. You should also be aware that the dram shop laws in a particular state may affect the cost of liquor liability insurance—the stricter the state's law the higher the rate may be. When looking for an insurance program to help protect your restaurant from dram shop-related claims, keep in mind these, and other, key considerations:

- Experience and expertise in underwriting restaurants
- Knowledge of the liquor laws in your jurisdiction
- Risk management support to help you reduce loss exposure
- Coverage from a highly-rated carrier that will be there to pay claims that may linger in the courts for years

### New Jersey Example:

#### Challenges to “visibly intoxicated”

“Visibly intoxicated” is defined by the NJ statute as “{a} state of intoxicated accompanied by a perceptible act or series of acts which present clear signs of intoxication.”<sup>2</sup> This seems to place a heavy burden on the plaintiff to show evidence that the server ignored “clear signs of intoxication.” But in the case, *Halvorsen v. Villamil*, 60 A.3d 827 (App. Div. 2013) the New Jersey Appellate Division said that no eyewitness testimony was required to prove that a visibly intoxicated patron was served by the restaurant. In the reported facts of this case, the defendant driver, Villamil, had been drinking in a restaurant’s bar for several hours then was involved in a car accident about 30 minutes after leaving. His blood alcohol content taken 90 minutes after the accident was .278. There was no eyewitness testimony as to Villamil’s condition while at the restaurant, but the plaintiff submitted an expert toxicologist’s report stating that based on the “relation back” of Villamil’s blood alcohol content, he must have been served at the restaurant while “visibly intoxicated.” The Appellate Division decision focused on the aggregate of evidence (testimony that the defendant had only drunk at that one restaurant, the arresting officer’s testimony, the fact that the defendant didn’t order food at the restaurant, etc.) in its ruling on a motion for summary judgment, and the restaurant did not appeal. This case was significant because it indicated that a plaintiff may be able to prove negligence with circumstantial evidence alone.<sup>3</sup>

### New York Example:

#### Establishment becomes third-party defendant

Another dram shop case in New York, *O’Gara v. Alacci* <sup>4</sup>, also illustrates the potential scope of dram shop liability. In the reported facts of this case, in the morning a motorist was driving through Westchester County and struck the plaintiff, who was walking across the parkway. The plaintiff later admitted she had taken the drug Percocet and drank an excessive amount of alcohol at the bar owned by the defendants. She proceeded to sue the driver of the car, Alacci, to recover damages for her injuries from the accident. The driver Alacci asserted that the accident was caused in part by the plaintiff’s conduct. He then sued the bar that had served her the alcohol for “active negligence” in serving alcohol to the plaintiff “in such quantities and over a long period of time.”<sup>4</sup> So in this case, the bar was sued by a defendant who became a third-party plaintiff. The court addressed the issue of whether sellers of alcohol who owe no duty to protect consumers from the result of their voluntary intoxication, nonetheless do have a duty to the public not to sell liquor to visibly intoxicated people. The driver, a member of the “public,” argued he should have a right to seek responsibility for the accident from the establishment who served the intoxicated person.

### Tips for serving alcohol responsibly

The National Restaurant Association offers restaurant owners these tips for responsible alcoholic service<sup>5</sup>:

Understand your responsibilities as a seller of alcohol. This means understanding your state’s (and any neighboring states if you’re near a border) alcohol laws. Avoid penalties by following your jurisdiction’s legal requirements

Make sure your employees are properly trained in the sale of alcohol. Have your staff complete a training program such as the National Restaurant Associations’ ServSafe Alcohol program and TIPS. This program is not just for bartenders but for other servers, hosts, security staff, valets and other customer-facing employees.

Keep training ongoing. Be sure to talk to your staff regularly about the importance of responsible alcohol service and answer any questions they may have.

Model responsible alcohol service. If you are certified to serve alcohol to guests, follow the correct procedures all the time to demonstrate that responsible service is embraced by management.

No matter the size of your restaurant, if you serve alcohol you are vulnerable to lawsuits invoking your state's dram shop laws. A solid risk management plan along with the financial protection made possible by Liquor Liability insurance may help you proactively reduce your exposure and remain a responsible server of alcohol to your customers.  
**For more information talk to your insurance agent or visit [www.zurichna.com](http://www.zurichna.com).**

- 1, 3 Allen, Teagan S. "'Seeing the Invisible'—Recent Challenges for Restaurant, Bar and Tavern Owners In Defending Claims Under the New Jersey Dram Shop Act." *Defense Digest*. Vol. 22, No2, June 2016
- 2 National Conference of State Legislatures. "Dram Shop Civil Liability and Criminal Penalty State Statutes." June 14, 2013
- 4 O'Gara v. Alacci 67 A.D. 3d 54, 887 N.Y.S. 2d 106 (2d Dept. 2009). [www.courts.state.ny/courts](http://www.courts.state.ny/courts)
- 5 National Restaurant Association. "Manage My Restaurant" [www.restaurant.org](http://www.restaurant.org)

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