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States Weakening Commercial Host Liability Laws to Protect Retailers

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A new report says that in recent years many states have enacted legislation to protect retailers from commercial host liability by increasing the evidentiary requirements, limiting the amount of liability awards and/or protecting certain retailers from liability.

The report is from researchers at Alcohol Policy Consultations and the Center on Alcohol Marketing and Youth (CAMY) at the Johns Hopkins Bloomberg School of Public Health, which has been published online by the American Journal of Preventive Medicine, documents the gradual erosion of commercial host liability (also referred to as dram shop liability) from 1989 to 2011.

Between 1989 and 2011, the number of states that recognized liability for serving intoxicated adults without restrictions declined from 25 to 21, and states with one of these major restrictions increased from 11 to 16.

Maps documenting the erosion of these laws by state can be found on CAMY's website here.

Commercial host liability holds alcohol retailers liable for alcohol-attributable harms resulting from illegal alcohol sales to patrons who are intoxicated or underage at the time of service. It applies to both on-premise (bars, restaurants and clubs) and off-premise locations.

The Community Preventive Services Task Force (an expert panel appointed by the Centers for Disease Control and Prevention) in 2010 determined that commercial host liability was effective in reducing a range of harms from alcohol in states that have it, including a median 6.4 percent drop in alcohol-related motor vehicle crash deaths. As of January 2009, 44 U.S. states and the District of Columbia had dram shop laws, although they vary by state in their scope and the evidence required for holding commercial hosts liable for their illegal, reckless and/or intentional service.

"The erosion of commercial host liability in recent decades is a public health failure that directly contributes to the exorbitant human and economic costs of excessive drinking," said lead author of the new Johns Hopkins Bloomberg study, James F. Mosher, JD, of Alcohol Policy Consultations, a public health legal consultancy in Felton, California. "Alcohol retailers who operate negligently and engage in illegal serving practices should not receive special protection, denying those who are injured their day in court."

The report also examines states' adoption of the Responsible Beverage Service (RBS) practices defense, an optional provision in commercial host liability laws first developed in 1985 as part of a project funded by the National Institute on Alcohol Abuse and Alcoholism. In states that have adopted it, retailers can avoid liability if they show that they adhered to RBS practices at the time of the alcohol service leading to the injury and lawsuit.

RBS practices include instituting effective ID checks, training staff on identifying signs of intoxication and discontinuing marketing practices that encourage intoxication, among others. The report found that only six states had adopted the RBS defense provision despite the potential benefits to both public health and retailers.

"These findings underscore the critical importance of commercial host liability laws," said David Jernigan, PhD, co-author of the report and CAMY director. "These laws have been proven to prevent alcohol sales to underage and intoxicated persons, and should be a priority for public health."

Excessive alcohol consumption is responsible for approximately 80,000 deaths in the U.S. each year. The economic cost of excessive drinking was an estimated $223.5 billion in 2006, or approximately $1.90 per drink consumed. Most binge drinkers (54.3%) who reported driving after their most recent binge drinking episode drank in an on-premises retail alcohol establishment such as a bar, club or restaurant, and 25.7 percent of this group reported consuming 10 or more drinks before getting behind the wheel. On- and off-premise alcohol retail outlets are also sources of alcohol for underage drinkers, particularly those aged 18 to 20 who have high rates of binge drinking and associated public health and safety problems.

This research was supported with funding from the Centers for Disease Control and Prevention.

The Center on Alcohol Marketing and Youth monitors the marketing practices of the alcohol industry practices that jeopardize the health and safety of America's youth. The Center was founded in 2002 at Georgetown University with funding from The Pew Charitable Trusts and the Robert Wood Johnson Foundation. The Center moved to the Johns Hopkins Bloomberg School of Public Health in 2008 and is currently funded by the federal Centers for Disease Control and Prevention.

*Sources: The Center on Alcohol Marketing and Youth at Johns Hopkins Bloomberg School of Public Health, American Journal of Preventive Medicin*e