

Overview of Alcohol Liability in Texas – Part II

Alcohol, Hospitality, Restaurant / October 4, 2017

This is the second in a series of posts addressing alcohol or dram shop liability in Texas. You can find the first post here <https://www.krcl.com/insights/overview-alcohol-liability-texas-part/>

In order to be liable for the alleged over-service of alcohol to a customer, an establishment must be classified as a "provider" under the Texas Alcoholic Beverage Code. That begs the question, what is a provider?

A provider is someone who sells or serves alcoholic beverages. Generally, in Texas, providers are licensed and regulated by the Texas Alcoholic Beverage Commission ("TABC"). However, a person need not be licensed by the TABC to be classified as a provider and subject to liability under the Texas Dram Shop Act. Rather, a provider can either be licensed or unlicensed. However, an unlicensed provider may only be liable in a civil action if it **sells** alcoholic beverages (rather than *sells or serves* alcoholic beverages as applies to licensed providers).

This distinction between requiring an unlicensed party to sell alcohol can become important in non-traditional restaurant and hospitality settings. For example, in Texas, a social host that serves alcohol to adult guests without charge is not a provider and cannot be liable in connection with a dram shop claim. Importantly, we will discuss the service of alcohol to minors in a later post, but suffice to say that these protections related to social host liability do not apply to service of alcohol to minors. Instead, the provision of alcohol to minors has to be treated wholly distinctly from the sale or service of alcohol to adults.

Another common situation where an unlicensed provider serves alcohol involves an employer providing alcohol to employees at an event, e.g., a happy hour event on-site or champagne to celebrate a key employee's 25 year anniversary. If the employer does not charge employees for the alcohol, in other words, the employer only serves rather than sells the alcohol, then the employer cannot be held liable for over-service under the Texas Dram Shop Act. This is because the employer would not be properly classified as a provider under the definition in the statute as it never sold alcohol to anyone.

Traditionally, Texas courts have viewed the restaurant or bar involved in selling the alcohol to the public as a provider. However, it is becoming more common for plaintiffs' lawyers to attempt to misconstrue the statute and claim that both the restaurant/bar and the individual bartender or server involved in the applicable service are providers and potentially subject to liability under the Texas Dram Shop Act. It is this author's opinion that this is an incorrect reading of the statute and bartenders and servers are not properly classified as providers in their individual capacity. Indeed, there are no reported Texas cases where a bartender or server has been held individually liable as a provider under the Texas Dram Shop Act. However, hospitality businesses must be prepared to fight against this issue and explain to courts the proper definition of a provider so as to not potentially subject their individual employees to liability.

Kane Russell Coleman Logan PC's Retail, Restaurant & Hospitality Practice Group has extensive experience representing alcohol providers in dram shop claims and litigation. The Practice Group also has experience guiding providers through inquiries and investigations undertaken by the TABC. Further, the Practice Group provides guidance on alcohol safety

manuals and training materials and conducts workshop programs to assist providers and their employees with understanding and complying with the requirements of the Texas Dram Shop Act.