

30 DRAMSHOP LIABILITY

In Alaska, common law claims against a liquor licensee are no longer recognized.¹ However, causes of action for civil liability are expressly authorized by statute, and licensees who provide alcoholic beverages to drunken persons or minors may be held civilly liable for injuries arising from the intoxication of that person.² The Alaska Supreme Court has held that the basic function of AS 04.21.020 is to state a rule of immunity and that traditional principles of tort law apply when the conditions of immunity are not met.³ This means that a liquor licensee has no liability under general tort law, unless the licensee has been found to have violated AS 04.21.020.⁴ The *Gonzales* court also held that Alaska's dramshop statute is constitutional, both under the United States Constitution and the Alaska Constitution.⁵

Civil liability for the sale of alcohol to a drunken person arises if the licensee or his agent acts with "criminal negligence" (*i.e.*, if the patron is served or sold alcohol notwithstanding such outward manifestations of intoxication that a reasonable person should have recognized that the customer was drunk).⁶ Liability for the sale of alcohol to a minor may be avoided only if the licensee or his agent secures in good faith from the purchaser a signed statement, liquor identification card, or driver's license indicating that the person is 21 years of age or older.⁷

The dramshop statute was intended, at least in part, to relieve social hosts of liability arising from the acts of intoxicated guests.⁸ However, the statute was amended to make non-licensees who sell or provide alcohol to minors civilly liable for damages caused by those minors. Additionally, social hosts may be held liable for acts of negligence other than serving liquor, such as failing to provide adequate security for guests when it was foreseeable that drunken persons would be on the premises.⁹

¹ *Williford v. L.J. Carr Inv.*, 783 P.2d 235, 238 n.10 (Alaska 1989). This ruling also applies to causes of action that arise on a boat and the court will not apply federal maritime laws. *Christiansen v. Christiansen*, 152 P.3d 1144 (Alaska 2007).

² See AS 04.21.020.

³ *Gonzales v. Safeway Stores*, 882 P.2d 389 (Alaska 1994).

⁴ *Id.* at 393-95.

⁵ *Id.* at 395-98.

⁶ See AS 04.16.030; see also *Williford v. L.J. Carr Inv.*, 783 P.2d 235, 239 n.12 (Alaska 1989); and *Kavorkian v. Tommy's Elbow Room*, 694 P.2d 160 (Alaska 1985).

⁷ See AS 04.16.030.

⁸ *Gordon v. Alaska Pac. Bancorp.*, 753 P.2d 721, 723 (Alaska 1988).

⁹ *Id.*

The Alaska Supreme Court has adopted an expansive view of vendor liability, and has held licensees liable regardless of whether suit was filed by an innocent third-party or by the intoxicated consumer.¹⁰ In order for liability to attach, it is necessary only that the purchaser's intoxication, and not the particular sale of intoxicants to a drunken person, be the proximate cause of the accident.¹¹

If alcohol is sold to a minor, it is not even necessary that the liquor be consumed by the purchaser for liability to accrue. In *Morris*, a 17-year-old youth unlawfully purchased alcohol, which he then shared with his traveling companions, one of whom was the driver of the automobile in which they were traveling.¹² Thereafter, an accident occurred in which two of the youths, including the 17-year-old purchaser, were killed. The court found it foreseeable that a youth would share alcohol with his friends, and held that the minors' complicity in causing the accident did not preclude claims against the licensee. Similarly, when an intoxicated automobile passenger purchases alcohol and subsequently shares it with the driver of the vehicle, the licensee may be held civilly liable for injuries caused in a vehicular accident, since the sale to the intoxicated passenger could be considered a proximate cause of the accident.¹³ In other words, a vendor may be held civilly liable for unwittingly "providing" alcohol to third parties other than the purchaser.¹⁴

The Alaska Supreme Court has overturned its prior holding that, in defending against a claim brought by a minor or her estate, a licensee is not entitled to allege that the minor was comparatively negligent in making the illegal purchase or consuming alcohol, since minors are protected persons under the dramshop statute.¹⁵ Citing AS 09.17.080, the court found that the rule in *Loeb* was "from an earlier era" and the enactment of pure several liability had changed the landscape to the point it was improper to impose the minor's portion of liability on the liquor licensee.¹⁶

However, even if a bar violated the dramshop statute by selling alcohol to a drunken customer who subsequently committed crimes, the Alaska Supreme Court has held the bar not liable for damages the purchaser suffered as a result of his imprisonment, since the statute was not intended to protect persons from the consequences of their own intentional, criminal conduct.¹⁷

¹⁰ *Morris v. Farley Enter*, 661 P.2d 167 (Alaska 1983).

¹¹ *Kavorkian v. Tommy's Elbow Room*, 711 P.2d 521 (Alaska 1985).

¹² *Morris*, 661 P.2d 167.

¹³ *Gonzales v. Krueger*, 799 P.2d 1318 (Alaska 1990).

¹⁴ *Williford v. L.J. Carr Inv.*, 783 P.2d 235 (Alaska 1989).

¹⁵ *Loeb v. Rasmussen*, 822 P.2d 914 (Alaska 1991).

¹⁶ *Sowinski c. Walker*, 198 P.3d 1134. 1156 (Alaska 2008).

¹⁷ *Lord v. Fogcutter Bar*, 813 P.2d 660 (Alaska 1991).

In addition, AS 09.65.210 precludes an individual from recovering damages for personal injury or death if the personal injury or death occurred while the person was engaged in conduct constituting a violation of AS 28.35.030 (Alaska's drunk driving statute). Consequently, if a liquor licensee over-serves a patron who then drives while under the influence of alcohol and causes injury to himself, the liquor licensee cannot be held liable for the injury or death under the express provisions of AS 09.65.210. The statute has not, however, been interpreted by the Alaska Supreme Court on this precise question.

Appendices:

AS 04.16.030
AS 04.21.020
AS 09.65.210
AS 28.35.030

Sec. 04.16.030. Prohibited conduct relating to drunken persons. (a) A licensee, an agent, or employee may not with criminal negligence

- (1) sell, give, or barter alcoholic beverages to a drunken person;
 - (2) allow another person to sell, give, or barter an alcoholic beverage to a drunken person within licensed premises;
 - (3) allow a drunken person to enter and remain within licensed premises or to consume an alcoholic beverage within licensed premises;
 - (4) permit a drunken person to sell or serve alcoholic beverages.
- (b) A person receiving compensation for transporting alcoholic beverages may not knowingly deliver alcoholic beverages to a drunken person. (§ 3 ch 131 SLA 1980; am § 6 ch 156 SLA 1988)

Sec. 04.21.020. Civil liability of persons providing alcoholic beverages.

(a) Except as provided under (b) and (d) of this section, a person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080 — 04.11.220 or is an agent or employee of such a licensee and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, liquor identification card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030.

(b) A person who sells or barter an alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable (1) to the recipient or another person for civil damages if, while under the influence of the alcoholic beverage, the person receiving the alcoholic beverage engages in conduct that results in civil damages and the recipient's being under the influence of the alcoholic beverage substantially contributes to the civil damages; and (2) for the cost to the state or a political subdivision of the state to criminally prosecute a person who receives an alcoholic beverage from a person who violates AS 04.11.010 if the prosecution results from the violation of AS 04.11.010 described in this subsection.

(c) In an action under (b) or (d) of this section, it is not a defense that the person receiving the alcoholic beverage voluntarily consumed the alcoholic beverage or that the person receiving the alcoholic beverage was voluntarily under the influence of the alcoholic beverage.

(d) A person who knowingly furnishes or delivers an alcoholic beverage to a person under 21 years of age in violation of AS 04.16.051 is civilly liable to the recipient or another person for civil damages if, while under the influence of the alcoholic beverage, the person receiving the alcoholic beverage engages in conduct that results in civil damages and the recipient's being under the influence of the alcoholic beverage substantially contributes to the civil damages.

(e) In this section, "civil damages" includes damages for personal injury, death, or injury to property of a person, including the state or a political subdivision of the state. (§ 5 ch 131 SLA 1980; am § 14 ch 109 SLA 1983; am § 1 ch 18 SLA 1997; am §§ 1, 2 ch 88 SLA 2002)

Sec. 09.65.210. Damages resulting from commission of a felony or while under the influence of alcohol or drugs. A person who suffers personal injury or death or the person's personal representative under AS 09.55.570 or 09.55.580 may not recover damages for the personal injury or death if the injury or death occurred while the person was

(1) engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo contendere, and the party defending against the claim proves by clear and convincing evidence that the felony substantially contributed to the personal injury or death;

(2) engaged in conduct that would constitute the commission of an unclassified felony, a class A felony, or a class B felony for which the person was not convicted and the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

(B) that the felonious conduct substantially contributed to the personal injury or death;

(3) fleeing after the commission, by that person, of conduct that would constitute an unclassified felony, a class A felony, or a class B felony or being apprehended for conduct that would constitute an unclassified felony, a class A felony, or a class B felony if the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

(B) that the conduct during the flight or apprehension substantially contributed to the injury or death;

(4) operating a vehicle, aircraft, or watercraft while under the influence of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was convicted, including conviction based on a guilty plea or plea of nolo contendere, and the party defending against the claim proves by clear and convincing evidence that the conduct substantially contributed to the personal injury or death; or

(5) engaged in conduct that would constitute a violation of AS 28.35.030 for which the person was not convicted if the party defending against the claim proves by clear and convincing evidence

(A) the violation of AS 28.35.030; and

(B) that the conduct substantially contributed to the personal injury or death. (§ 1 ch 139 SLA 1986; am § 31 ch 26 SLA 1997)

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance. (a) A person commits the crime of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of an alcoholic beverage, intoxicating liquor, inhalant, or any controlled substance;

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.08 percent or more by weight of alcohol in the person's blood or 80 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.08 grams or more of alcohol per 210 liters of the person's breath; or

(3) while the person is under the combined influence of an alcoholic beverage, an intoxicating liquor, an inhalant, and a controlled substance.

(b) Except as provided under (n) of this section, driving while under the influence of an alcoholic beverage, inhalant, or controlled substance is a class A misdemeanor. Except as provided under (p) of this section, upon conviction,

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours and a fine of not less than \$1,500 if the person has not been previously convicted;

(B) not less than 20 days and a fine of not less than \$3,000 if the person has been previously convicted once;

(C) not less than 60 days and a fine of not less than \$4,000 if the person has been previously convicted twice and is not subject to punishment under (n) of this section;

(D) not less than 120 days and a fine of not less than \$5,000 if the person has been previously convicted three times and is not subject to punishment under (n) of this section;

(E) not less than 240 days and a fine of not less than \$6,000 if the person has been previously convicted four times and is not subject to punishment under (n) of this section;

(F) not less than 360 days and a fine of not less than \$7,000 if the person has been previously convicted more than four times and is not subject to punishment under (n) of this section;

(2) the court may not

(A) suspend execution of sentence or grant probation except on condition that the person serve the minimum imprisonment under (1) of this subsection;

(B) suspend imposition of sentence;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036; and

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law.

(c) *[Repealed, § 34 ch 119 SLA 1990.]*

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under this section shall supply the judge,

prosecutor, defendant, and an agency involved in the defendant's treatment with information and reports concerning the defendant's past and present assessment, treatment, and progress. Information compiled under this subsection is confidential and may only be used in connection with court proceedings involving the defendant's treatment, including use by a court in sentencing a person convicted under this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) *[Repealed, § 34 ch 119 SLA 1990.]*

(g) Notwithstanding (b) of this section, if the court imposes probation under AS 12.55.102 the court may reduce the fine required to be imposed under (b) of this section by the cost of the ignition interlock device.

(h) The court shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an alcohol safety action program if such a program is available in the community where the person resides, or a private or public treatment facility approved by the division of alcoholism and drug abuse, of the Department of Health and Social Services, under AS 47.37 to make referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person is convicted under (n) of this section, the court shall order the person to be evaluated as required by this subsection before the court imposes sentence for the offense.

(i) A program of inpatient treatment may be required by the authorized agency under (h) of this section only if authorized in the judgment, and may not exceed the maximum term of inpatient treatment specified in the judgment. A person who has been referred for inpatient treatment under this subsection may make a written request to the sentencing court asking the court to review the referral. The request for review shall be made within seven days of the agency's referral, and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(j) If a person fails to satisfy the requirements of an authorized agency under (i) of this section, the court

(1) may impose any portion of a suspended sentence; however, if the person was convicted under (n) of this section, the court shall impose a part or all of the remaining portion of any suspended sentence;

(2) may punish the failure as contempt of the authority of the court under AS 09.50.010 or as a violation of a condition of probation; and

(3) shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a driver's license until the requirements are satisfied.

(k) Imprisonment required under (b)(1)(A) of this section shall be served at a community residential center or, if a community residential center is not available, at another appropriate place determined by the commissioner of corrections. Imprisonment required under (b)(1)(B) — (F) of this section may be served at a community residential center or at a private residence if approved by the commissioner of corrections. Imprisonment served at a private residence must include electronic monitoring. The cost of imprisonment resulting from the sentence imposed under (b)(1) of this section shall be paid to the state by the person being sentenced provided, however, that the cost of imprisonment required to be paid under this subsection may not exceed \$2,000. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as

provided in this subsection, payment of the cost of imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.065. While at the community residential center or other appropriate place, a person sentenced under (b)(1)(A) of this section shall perform at least 24 hours of community service work. A person sentenced under (b)(1)(B) of this section shall perform at least 160 hours of community service work, as required by the director of the community residential center or other appropriate place, or as required by the commissioner of corrections if the sentence is being served at a private residence. In this subsection, "appropriate place" means a facility with 24-hour on-site staff supervision that is specifically adapted to provide a residence, and includes a correctional center, residential treatment facility, hospital, halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction.

(l) The commissioner of corrections shall determine and prescribe by regulation a uniform average cost of imprisonment for the purpose of determining the cost of imprisonment required to be paid under (k) of this section by a convicted person.

(m) If the act for which a person is convicted under this section contributes to a motor vehicle accident, the court shall order the person to pay the reasonable cost of any emergency services that responded to the accident, if the convicted person or the convicted person's insurer has not already paid the cost of the emergency services. If payment is required under this subsection, the payment shall be made directly to the emergency service and shall be equal to the actual cost of responding to the accident or the previous year's annual average cost of responding to a motor vehicle accident, whichever is higher. In this subsection, "emergency service" includes a peace officer, fire department, ambulance service, emergency medical technician or emergency trauma technician.

(n) A person is guilty of a class C felony if the person is convicted under (a) of this section and has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense. For purposes of determining minimum sentences based on previous convictions, the provisions of (r)(4) of this section apply. Upon conviction, the court

(1) shall impose a fine of not less than \$10,000 and a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on condition that the person serve the minimum imprisonment under (1) of this subsection; or

(B) suspend imposition of sentence;

(3) shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration of the license under (o) of this section;

(4) may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs, intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law;

(5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft, or aircraft used in the commission of the offense, subject to remission under AS 28.35.037; and

(6) shall order the department to revoke the registration for any vehicle registered by the department in the name of the person convicted under this subsection; if a person convicted under this subsection is a registered co-owner of a vehicle or is registered as a co-owner under a business name, the department shall reissue the vehicle registration and omit the name of the person convicted under this subsection.

(o) Upon request, the department shall review a driver's license revocation imposed under (n)(3) of this section and may restore the driver's license if

- (1) the license has been revoked for a period of at least 10 years;
- (2) the person has not been convicted of a criminal offense since the license was revoked; and
- (3) the person provides proof of financial responsibility.

(p) If the court determines that the person has successfully completed a court-ordered treatment program, the court may suspend up to 75 percent of the mandatory minimum sentence required under (b)(1) of this section and up to 50 percent of the minimum fines required under (b)(1) of this section. This subsection does not apply to a person who has already participated in a court-ordered treatment program two or more times. In this subsection, "court-ordered treatment" means a treatment program for a person who consumes alcohol or drugs and that

- (1) requires participation for at least 18 consecutive months;
- (2) includes planning and treatment for alcohol or drug addiction;
- (3) includes emphasis on personal responsibility;
- (4) provides in-court recognition of progress and sanctions for relapses;
- (5) requires payment of restitution to victims and completion of community work service;
- (6) includes physician approved treatment of physical addiction and treatment of the psychological causes of addiction;
- (7) includes a monitoring program and physical placement or housing; and
- (8) requires adherence to conditions of probation.

(q) For purposes of this section, the director of the division within the department responsible for administration of this section or a person designated by the director may request and receive criminal justice information available under AS 12.62. In this subsection, "criminal justice information" has the meaning given in AS 12.62.900.

(r) In this section,

(1) "inhalant" has the meaning given to the phrase "hazardous volatile material or substance" in AS 47.37.270;

(2) "operate an aircraft" means to navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(3) "operate a watercraft" means to navigate a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state;

(4) "previously convicted" means having been convicted in this or another jurisdiction of any of the following offenses; however, convictions for any of these offenses, if arising out of a single transaction and a single arrest, are considered one previous conviction:

(A) operating a motor vehicle, aircraft, or watercraft in violation of this section or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under (a)(2) of this section;

(B) refusal to submit to a chemical test in violation of AS 28.35.032 or in violation of another law or ordinance with similar elements; or

(C) operating a commercial motor vehicle in violation of AS 28.33.030 or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under AS 28.33.030(a)(2). (§ 50-5-3 ACLA 1949; am § 1 ch 107 SLA 1955; am § 1 ch 121 SLA 1967; am § 45 ch 32 SLA 1971; am § 4 ch 74 SLA 1974; am §§ 2, 3 ch 152 SLA 1978; am § 28 ch 94 SLA 1980; am § 10 ch 129 SLA 1980; am § 21 ch 45 SLA 1982; am §§ 13 — 15 ch 117 SLA 1982; am §§ 13 — 15 ch 77 SLA 1983; am §§ 4, 5 ch 57 SLA 1989; am §§ 23, 24, 34 ch 119 SLA 1990; am §§ 6, 7 ch 188 SLA 1990; am §§ 22, 23 ch 3 SLA 1992; am § 8 ch 59 SLA 1993; am § 17 ch 55 SLA 1994; am §§ 3 — 7 ch 80 SLA 1995; am § 1 ch 87 SLA 1995; am §§ 5 — 7 ch 143 SLA 1996; am §§ 9 — 11 ch 63 SLA 2001; am §§ 27 — 33 ch 60 SLA 2002)