

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1066 Session of
1989

INTRODUCED BY COLAFELLA, SALOOM, DALEY, TRELLO, STISH, HALUSKA,
STABACK, MORRIS, McCALL, SERAFINI, BELARDI, CAWLEY, TIGUE,
MARSICO, FAIRCHILD, GODSHALL, FARGO, HOWLETT, OLASZ, BOYES,
LINTON, KOSINSKI, FOX, D. W. SNYDER AND BURD, APRIL 10, 1989

REFERRED TO COMMITTEE ON LIQUOR CONTROL, APRIL 10, 1989

AN ACT

1 Concerning the civil liability of retail liquor licensees.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Retail Liquor
6 Licensee Fair Liability Act.

7 Section 2. Declaration of policy.

8 The General Assembly finds and declares that retail liquor
9 licensees face great difficulty in obtaining liability insurance
10 coverage. Even when insurance coverage is available, drastic
11 increases in the cost of that insurance have recently taken
12 place and many licensees are no longer able to afford liability
13 insurance coverage. This lack of insurance adversely affects not
14 only the retail liquor licensees themselves, but also patrons
15 and third persons who suffer personal injury and property damage
16 as a result of the negligent service of alcoholic beverages by a

1 licensee. In order to make it economically feasible for
2 insurance companies to provide coverage, the incidence of
3 liability should be more predictable. That predictability may be
4 achieved by defining the limits of the civil liability of retail
5 liquor licensees in order to encourage the development and
6 implementation of risk reduction techniques. This act has been
7 designed to protect the rights of persons who suffer loss as a
8 result of the negligent service of alcoholic beverages by a
9 licensee while at the same time providing a balanced and
10 reasonable procedure for allocating responsibility for such
11 losses. It is anticipated that this act may result in the
12 improvement of the alcoholic beverage liability insurance market
13 in this Commonwealth.

14 Section 3. Definitions.

15 The following words and phrases when used in this act shall
16 have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Alcoholic beverage." Includes all liquor and malt or brewed
19 beverages as defined in section 102 of the act of April 12, 1951
20 (P.L.90, No.21), known as the Liquor Code.

21 "Minor." A person under 21 years of age.

22 "Person." Includes a corporation, a partnership and an
23 association, as well as a natural person.

24 "Retail liquor licensee" or "licensee." Any person,
25 partnership, association or corporation holding a hotel,
26 restaurant, club, distributor, public service liquor license or
27 other license issued under the act of April 12, 1951 (P.L.90,
28 No.21), known as the Liquor Code, for the sale of liquor or malt
29 and brewed beverages at retail.

30 "Visibly intoxicated." A state of intoxication accompanied

1 by a perceptible act or series of acts which present clear signs
2 of intoxication.

3 Section 4. Exclusive civil remedy.

4 This act shall be the exclusive civil remedy for personal
5 injury or property damage resulting from the negligent service
6 of alcoholic beverages by a retail liquor licensee. Nothing
7 contained in this act shall be deemed to limit the criminal,
8 quasicriminal or regulatory penalties which may be imposed upon
9 a licensee by any other statute, rule or regulation.

10 Section 5. Conditions for damages.

11 (a) General rule.--A person who sustains personal injury or
12 property damage as a result of the negligent service of
13 alcoholic beverages by a retail liquor licensee may recover
14 damages from the licensee only if:

15 (1) The licensee is deemed negligent pursuant to
16 subsection (b).

17 (2) The injury or damage was proximately caused by the
18 negligent service of alcoholic beverages.

19 (3) The injury or damage was a foreseeable consequence
20 of the negligent service of alcoholic beverages.

21 (b) Service to visibly intoxicated persons and minors.--A
22 retail liquor licensee shall be deemed to have been negligent
23 only when the licensee served a visibly intoxicated person, or
24 served a minor under circumstances where the licensee knew or
25 reasonably should have known that the person served was a minor.

26 Section 6. Damages.

27 (a) General rule.--Damages may be awarded in a civil action
28 under this act, subject to the limitations set forth in this
29 section.

30 (b) Comparative negligence.--The provisions of 42 Pa.C.S. §

7102(a) (relating to comparative negligence) shall apply in all civil actions instituted pursuant to the provisions of this act.

(c) Joint tortfeasors.--Notwithstanding the provisions of any other law to the contrary, in any case where a licensee or any other party to a suit instituted pursuant to the provisions of this act is determined to be a joint tortfeasor, the retail liquor licensee or other party shall be responsible for no more than that percentage share of the damages which is equal to the percentage of negligence attributable to the licensee or other party.

Section 7. Duties of Insurance Department.

The Insurance Department shall monitor the alcoholic beverage liability insurance market in this Commonwealth following the effective date of this act. The Insurance Department shall gather information and statistics on the number of insurers, including surplus lines insurers, issuing alcoholic beverage insurance policies, the number of policies issued, the premiums for such policies, the number of civil actions filed in accordance with the provisions of this act, the amounts of damages awarded in civil actions or the amounts of settlements, and any other information deemed necessary in order to determine the effect of this act on the alcoholic beverage liability insurance market. The Insurance Department shall issue an initial report on the information obtained to the Governor and the General Assembly and make appropriate recommendations within two years following the effective date of this act, and shall issue a final report within three years following the effective date of this act. The Insurance Commissioner shall promulgate any rules and regulations necessary in order to fulfill the requirements of this section.

1 Section 8. Repeals.

2 Section 497 of the act of April 12, 1951 (P.L.90, No.21),
3 known as the Liquor Code, is repealed.

4 Section 9. Applicability.

5 This act shall apply only to personal injury or property
6 damage which occurs after the effective date of this act.

7 Section 10. Effective date.

8 This act shall take effect in 90 days.