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New Year's Resolutions

**INDUSTRY LEADERS
SHARE THEIR BIG GOALS—
AND HOW THEY PLAN
TO ACHIEVE THEM**

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KNOW THE 'HABITUAL DRUNKARD'?

BE ALERT: LIABILITY CAN RESULT FROM A LETTER OF WARNING SENT TO A LICENSEE

BY HANNAH BECKER AND JOHN HARRIS

Florida's Dram Shop law has a unique cause of action that extends liability where a licensed retailer serves alcohol beverages to a "habitual drunkard." This law is codified in two statutes.

Section 768.125 of the Florida Statutes addresses the risk of civil liability for knowingly serving alcohol to a habitual drunkard or willfully and unlawfully selling or furnishing alcohol to a minor. However, the critical one in this article's context, Section 562.50, deals with the criminal liability of a licensee who sells or gives alcohol to a habitual drunkard *where written notice has been provided by certain family members (namely a "wife, husband, father, mother, sister, brother, child, or nearest relative).*" (Emphasis added.) If the retailer does not have any reasonable way to confirm the identity of the sender, then the notice is not effective.

Although there have been a number of bills introduced in Florida over the years to expand the scope of this liability, none have been adopted by the Florida Legislature. Regarding potential civil liability, the law on this issue began with a Florida Supreme Court case, *Ellis v. N.G.N. of Tampa, Inc.*, 586 So.2d 1042 (Fla. 1991). That case dealt with a licensee's liability under a theory of negligence for serving a "habitual drunkard" 20 drinks. The consumer subsequently drove and wound up suffering permanent brain damage in the resulting car crash. The Florida Supreme Court held that "written

Florida licensees should be prepared to demonstrate that they did not actually know a patron they served or sold alcohol to was a 'habitual drunkard.'

notice as required to establish the criminal offense in section 562.50 *is not a requisite* [emphasis added] to proving a vendor knowingly serving alcoholic beverages to a habitual drunkard." The cause of action under Section 768.125 only requires evidence, which may include circumstantial evidence, obtained from witnesses, photos, or video surveillance."

SITUATION OFF-PREMISE: DIFFERENT, BUT NOT

An off-premises retailer, however, presumably sells, rather than serves the alcohol. The *Ellis* opinion makes clear that liability under Section 768.125 is predicated on the licensee serving the alcohol and seeing the individual consume that alcohol in a manner that would lead to the conclusion that the consumer is a habitual drunkard.

That retail license type distinction and the application of Section 768.125 was made clear in the 1995 case of *Persen v. Southland Corp.* In that case, the Florida appellate court held that liability

predicated on Section 768.125 could not be imposed upon the off-premises retail vendor who sold closed containers of alcohol to an alleged habitual drunkard because the containers could not be (and were not) opened or consumed on the vendors' premises. However, the retail license type distinction does not exist under Section 562.50; criminal liability extends to all licensed retailers, including on- and off-premise retailers who provide any alcohol beverage to a habitual drunkard.

While Florida's Dram Shop law establishes a very narrow scope of potential liability, Florida licensees should be prepared to demonstrate that they did not actually know that a patron they served or sold alcohol to was a "habitual drunkard." If a letter is addressed and sent to a licensed retailer providing notice of a habitual drunkard, such retailer should determine who sent the notice, and whether the person is a family member or relative within the meaning of Section 562.50. As an extra precaution, the licensed retailer should confirm that no employee of the retailer in question knows the identified habitual drunkard, to the extent that knowledge of his/her consumption could reasonably be imputed to the licensed retailer. ■

Hannah Becker and John Harris co-authored this month's article. Hannah is a senior associate in GrayRobinson's Tampa law firm office and a member of the firm's nationwide alcohol beverage and food law department. (hannah.becker@gray-robinson.com; 813-273-5216) and John is a professional government consultant with 52 years of experience in Florida alcohol beverage regulations and policies (john.harris@gray-robinson.com; 850-577-5491).