



Senate

General Assembly

File No. 541

February Session, 2008

Substitute Senate Bill No. 689

Senate, April 9, 2008

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING BREATH ALCOHOL TESTING IN BARS AND THE TOLLING OF TIME PERIODS FOR INITIATING A DRAM SHOP OR WRONGFUL DEATH ACTION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2008*) (a) The liability under
2 section 30-102 of the 2008 supplement to the general statutes, as
3 amended by this act, of a holder of a permit to sell alcoholic liquor
4 issued under chapter 545 of the general statutes to a person or persons
5 injured by an intoxicated person shall be not more than one hundred
6 thousand dollars if such holder (1) installs and maintains on the permit
7 premises a device certified by the Commissioner of Consumer
8 Protection that determines a person's blood alcohol content by
9 analyzing a sample of such person's breath, (2) makes such device
10 available for the use of customers at no charge, (3) posts a conspicuous
11 notice in the permit premises that the permit holder will, upon request,
12 make arrangements for the transportation of a customer, at the
13 customer's expense, to his or her residence, and (4) checks the device
14 for accuracy in accordance with regulations adopted by the

15 Commissioner of Consumer Protection under subsection (b) of this
16 section.

17 (b) The Commissioner of Consumer Protection shall ascertain the
18 reliability of devices used to determine a person's blood alcohol
19 content by analyzing a sample of such person's breath and certify those
20 devices that the commissioner finds suitable for use by holders of a
21 permit to sell alcoholic liquor issued under chapter 545 of the general
22 statutes. The commissioner shall adopt regulations, in accordance with
23 chapter 54 of the general statutes, concerning the installation,
24 calibration, operation and use of such devices for the purpose of
25 protecting the health and safety of persons who use such devices and
26 ensuring reasonable accuracy in the results produced by such devices.

27 (c) Evidence that a permit holder installed on the permit premises,
28 in accordance with subsection (a) of this section, a device that
29 determines a person's blood alcohol content by analyzing a sample of
30 such person's breath shall be inadmissible in any criminal, civil or
31 administrative proceeding.

32 Sec. 2. Section 30-102 of the 2008 supplement to the general statutes
33 is repealed and the following is substituted in lieu thereof (*Effective*
34 *October 1, 2008*):

35 If any person, by such person or such person's agent, sells any
36 alcoholic liquor to an intoxicated person, and such purchaser, in
37 consequence of such intoxication, thereafter injures the person or
38 property of another, such seller shall, except as provided in section 1 of
39 this act, pay just damages to the person injured, up to the amount of
40 two hundred fifty thousand dollars, or to persons injured in
41 consequence of such intoxication up to an aggregate amount of two
42 hundred fifty thousand dollars, to be recovered in an action under this
43 section, provided the aggrieved person or persons shall give written
44 notice to such seller of such person's or persons' intention to bring an
45 action under this section. Such notice shall be given (1) within one
46 hundred twenty days of the occurrence of such injury to person or
47 property, or (2) in the case of the death or incapacity of any aggrieved

48 person, within one hundred eighty days of the occurrence of such
 49 injury to person or property. Such notice shall specify the time, the
 50 date and the person to whom such sale was made, the name and
 51 address of the person injured or whose property was damaged, and
 52 the time, date and place where the injury to person or property
 53 occurred. No action under the provisions of this section shall be
 54 brought but within one year from the date of the act or omission
 55 complained of. Such injured person shall have no cause of action
 56 against such seller for negligence in the sale of alcoholic liquor to a
 57 person twenty-one years of age or older.

58 Sec. 3. (NEW) (*Effective October 1, 2008*) In any action brought
 59 pursuant to section 30-102 of the 2008 supplement to the general
 60 statutes, as amended by this act, or section 52-555 of the general
 61 statutes in which the state police, a local police department or other
 62 law enforcement agency has conducted an investigation of any factual
 63 circumstances underlying the claim, any applicable time period for
 64 bringing such action shall be tolled until one year after the date of the
 65 act or omission complained of or until the date such department or
 66 agency makes its report of such investigation public, whichever is
 67 earlier. For the purposes of this section, "time period for bringing such
 68 action" includes any statute of limitation, any statute of repose, any
 69 period for providing notice and any other statutory, regulatory or
 70 common law time period that provides a time limit for the initiation of
 71 a legal action or claim.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	New section
Sec. 2	<i>October 1, 2008</i>	30-102
Sec. 3	<i>October 1, 2008</i>	New section

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Consumer Protection, Dept.	GF - Cost	225,000	290,000
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a cost of up to \$225,000 in FY 09 and up to \$290,000 in FY 10 to the Department of Consumer Protection (DCP) plus fringe benefit costs. The DCP would need as many as four new Liquor Control Agents, a Processing Technician and an Office Assistant. The additional Liquor Control agents are needed as the DCP would have to conduct inspections to ensure compliance with the regulations concerning breath alcohol testing; respond to complaints concerning alleged violations of the regulations; examine records to ensure that all breath alcohol testing devices are calibrated and installed properly and testify at administrative hearings and judicial proceedings regarding these devices and their conformance to state regulations. The DCP currently has 20 Liquor Control Agents.

The Out Years

The annualized ongoing fiscal impact identified above would

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

continue into the future subject to inflation.

OLR Bill Analysis**sSB 689*****AN ACT CONCERNING BREATH ALCOHOL TESTING IN BARS AND THE TOLLING OF TIME PERIODS FOR INITIATING A DRAM SHOP OR WRONGFUL DEATH ACTION.*****SUMMARY:**

The bill decreases the maximum dram shop liability from \$250,000 to \$100,000 for a liquor permit holder if he or she installs and maintains on the permit premises a device certified by the consumer protection commissioner that determines a person's blood alcohol content by analyzing a sample of such person's breath, and satisfies related requirements the bill establishes. The Dram Shop Act makes someone who sells liquor to an intoxicated person liable if that person injures someone or property because of the intoxication. It does not require proof that the seller acted negligently.

The bill requires the commissioner to certify which devices are suitable and adopt implementing regulations. The bill makes evidence that a permit holder installed such a device under the conditions the bill establishes inadmissible in any criminal, civil, or administrative proceeding (see COMMENT).

The bill tolls the running of the time period for bringing a dram shop or wrongful death law suit in which the state police, a local police department, or other law enforcement agency has investigated the circumstances underlying the claim, until one year after the date of the act or omission complained of or until the date the department or agency makes its report of the investigation public, whichever is earlier. Under the bill the time period includes any statute of limitation; statute of repose; period for providing notice; and other statutory, regulatory, or common law time period that provides a time limit to initiate a legal action or claim.

EFFECTIVE DATE: October 1, 2008

CONDITIONS FOR DECREASED LIABILITY

The bill decreases the maximum dram shop liability from \$250,000 to \$100,000 for a liquor permit holder if the holder:

1. installs and maintains on the permit premises a device certified by the consumer protection commissioner that determines a person's blood alcohol content by analyzing a sample of his or her breath;
2. makes the device available for customers to use at no charge;
3. posts a conspicuous notice in the permit premises that the permit holder will, upon request, make arrangements for the transportation of a customer, at the customer's expense, to his or her residence; and
4. checks the device for accuracy in accordance with regulations adopted by the consumer protection commissioner under the bill.

SUITABLE DEVICES

The bill requires the commissioner to ascertain the reliability of devices used to determine a person's blood alcohol content by analyzing a breath sample, and certify those devices that he or she finds suitable for use by permit holders.

REGULATIONS

The commissioner must adopt regulations concerning the installation, calibration, operation, and use of such devices to protect the health and safety of people who use them and ensure reasonable accuracy.

BACKGROUND

Dram Shop Act

Under the Dram Shop Act, a liquor seller is liable if the seller or the seller's employee sells liquor to an already-intoxicated person who

injures a person or property. The actual amount of liability in a particular case is decided in court. The injured party must notify the seller within 60 days of the incident causing harm of his intention to sue for damages. Up to 120 days between the death or incapacity of the injured party and the appointment of an executor, administrator, conservator, or guardian of the estate is not counted toward the 60-day deadline. The notice must state: (1) the time and day of the sale and to whom it was made; (2) the name and address of the injured party; and (3) the time, day, and place of injury. Suits must be brought within one year of the sale (CGS § 30-102).

Wrongful Death Lawsuits

A wrongful death lawsuit must be brought within two years from the date of death, and within five years from the date of the act or omission complained of (CGS § 52-555).

COMMENT

Inadmissibility of Evidence

It is not clear how a permit holder can establish that he qualifies for the lower liability amount without introducing evidence.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 43 Nay 0 (03/24/2008)