



WINE AND SPIRITS WHOLESALERS OF CONNECTICUT, INC.

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TESTIMONY OF WINE AND SPIRITS WHOLESALERS OF CONNECTICUT

IN OPPOSITION TO AN ACT CONCERNING THE DRAM SHOP ACT, HB 6700

The Wine & Spirits Wholesalers of Connecticut, Inc. ("WSWC") is the state trade association which represents wine and spirits wholesalers located in the state of Connecticut. Its members purchase wine and spirits from manufacturers and in turn market and sell those items to Connecticut retailers (restaurants and package stores).

The members of the WSWC are committed to ensuring that the best possible safeguards are in place to prevent the sale of beverage alcohol to minors and adults of legal drinking age consume beverage alcohol responsibly. To that end, since 2005, the WSWC has spent in excess of \$750,000 on community programs designed to prevent underage drinking and drunk driving. The WSWC also believes that the policies and laws which seek to advance the objective of safe and responsible consumption must provide practical and work guidelines. The WSWC believes HB6700 fails to meet this standard and, if enacted, would have a devastating effect on those who sell beverage alcohol, including wine and spirits wholesalers and especially their customers - Connecticut's 2625 restaurants and cafes, 1213 package stores and 304 private social clubs.

1. **Specifically, if enacted, HB6700 would require every waiter at every restaurant to conduct a breathalyzer test on every customer just prior to the service of each and every drink.** *Why so?* Because, the standard that HB6700 seeks to impose is absolute liability on one who sells alcohol to anyone whose blood alcohol content exceeds .08¹. The only way to accurately make such a determination is by means of a scientific test.² Only by requiring each and every customer to take a breathalyzer test before each and every drink, could a seller of alcohol ensure that it would avoid liability under the Dram Shop Act. Should HB6700 become law, a seller of alcohol could not rely upon the observations of trained staff, because the standard would no longer require visible signs of intoxication. Nor could the seller rely on tracking the quantity served to a person because the amount, if any, alcohol consumed by the customer beforehand could not be known.

One need only contemplate who this will impact to see the effect. The Dram Shop Act has broad application, applying to every seller of alcohol from restaurants to package stores to charities to private social clubs. Should HB6700 become law every purchase at a package store, every drink served at diner in a restaurant and every glass of wine served at a charity event would have to be proceeded by a breathalyzer test. This would be unworkable to administer, unaffordable for the sellers and would not be accepted by Connecticut citizens. The WSWC believes that

¹ CGS Sec 14-227a.

² The accepted testing methods to determine the BAC of an individual are: i) breathalyzer; 2) blood test; and iii) urine analysis. Because of the time involved, the expense of the equipment and the technical expertise necessary none of these tests could be practically undertaken by restaurants.

the existing standard, one which requires visible signs of intoxication is one that is workable and can be practically applied by sellers of alcohol.

2. **Visible signs of intoxication are required by all states under a Dram Shop type of recovery.** Every state that imposes civil liability on a purveyor of alcohol, who sells alcohol to an intoxicated person, has a standard which requires some “manifestation of intoxication and/or the purveyor’s actual or constructive knowledge of the patron’s intoxicated state.”³ Adopting the new standard contemplated under HB6700, one which is unusual and impossible to monitor, will make dram shop insurance unaffordable in Connecticut forcing restaurateurs to either not serve alcohol or run the risk of having a claim for which they will have no insurance. Significantly, having the option to purchase dram shop insurance at affordable rates is important for sellers of alcohol because while not every claimant may prevail, even the costs of defending a dram shop case (which costs are paid for by the insurance carrier when a policy is acquired) can be financially devastating.
3. **HB 6700 is unfair and will not further public safety.** As was stated by the Connecticut Supreme Court in considering whether or not the term “intoxication” under the Dram Shop Act is synonymous with that under CGS § 14-227a: “[T]here is good cause to question the fairness and incremental gains to public safety of a construction under which a purveyor will be liable for injuries caused by an intoxicated patron even if it was taken every reasonable precaution to avoid selling alcohol to patrons who have reached the point of intoxication,”⁴
4. **The unintended consequences of HB6700 can result in absurd results.** By example, since the law does not require consumption of the alcohol sold for the seller to be liable, a package store could be found liable under the Dram Shop Act where it sells to a person who has a BAC at or exceeding .08 (and who exhibits no visible or perceivable sign of intoxication), who without ever consuming a drop of the alcohol purchased at the package store, gets into an accident while exiting the package store parking lot.
5. **Current law provides a fair standard.** The evidence that a plaintiff must present to establish intoxication is not onerous⁵. As the Supreme Court has recently stated:

3 *O'Dell v Kozee*, 307 Conn. 231, 267 (2012).

4 *O'Dell v Kozee*, 307 Conn. 231, 267 (2012).

5 Connecticut’s Official Jury Instructions, Section 3.17-1 Dram Shop Act, provides in relevant part:

To establish that the defendant violated the statute, the plaintiff must prove by a preponderance of the evidence that:

1. On <date>, the defendant <name>, through (his/her/their) agent or agents, sold alcoholic liquor to <name of customer>;
2. <Name of customer> was intoxicated at the time of the sale; and
3. In consequence of that intoxication, <name of customer> injured the plaintiff or the plaintiff’s property.

The defendant <name> disputes that <name of customer> was intoxicated when it sold the liquor to (him/her). In order to impose liability under this act, the plaintiff <name> must prove, by a preponderance of the evidence, that <name of customer> was intoxicated when the defendant sold the liquor to (him/her). The plaintiff does not need to prove, however, that the defendant knew that <name of customer> was intoxicated when it sold liquor to (him/her). Nor does the plaintiff have to prove that the liquor sold to <name of customer> by the defendant produced or contributed to (his/her) intoxication. The plaintiff merely has to prove that the defendant sold liquor to <name of customer> when (he/she) was intoxicated.

To be intoxicated is something more than to be merely under the influence of, or affected to some extent by, liquor. A person may be found to be intoxicated when it is apparent that he/she is under the influence of liquor to such a degree that (his/her) manner is unusual or abnormal and is reflected in (his/her) walk or conversation, when (his/her) ordinary judgment or common sense are disturbed, or (his/her) usual willpower temporarily suspended.

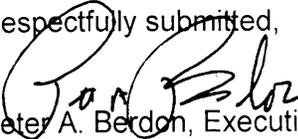
“...any perceptible indicator of intoxication at the time itself, including excessive alcohol consumption itself, can be sufficient to deem the purveyor on notice of its potential exposure to liability under the act and thus permit recovery.”⁶

In conclusion, while to the WSWC wholeheartedly supports the objects of preventing drunk driving, imposing liability on sellers who have no reason whatsoever to believe the person to whom they are selling beverage alcohol is intoxicated violates basic principles of equity and fairness. People should be given a reasonable opportunity to comply with the law. They should not have to guess at what some else has done to determine whether or not they are compliant. Enacting HB6700 will do just that and for those reasons the WSWC urges you to reject HB 6700.

By way of further background, the WSWC was established in 1964 and since that date has been the trade association representing wine and spirits wholesalers in Connecticut. The WSWC membership totals 53 and is governed by a board of directors of 6. The members of the WSWC range in size from the very large to very small family owned business. They can have as many as 230 employees and as few as a one person working part-time. However, collectively they are significant and integral part of Connecticut's economy. The members of the WSWC:

- are licensed and regulated by the state of Connecticut and the federal government;
- are responsible to insure that the wines and spirits brought in to the state by manufacturers and importers are sold and distributed only to licensed retailers (package stores and restaurant);
- collect in excess of \$34 million dollars in state excise taxes (wine and spirits only);
- assist the Department of Revenue Services in the collection of Sales and Use Taxes, in excess of \$141 Million Dollars annually⁷;
- provide in excess of 1,600 direct jobs to Connecticut residents; and
- contribute in excess of \$200 million dollars in direct and in direct benefits to the state's economy.

Respectfully submitted,



Peter A. Berdon, Executive Director/General Counsel

Intoxication means an abnormal mental or physical condition due to intoxicating liquors, a visible excitation of the passions and impairment of the judgment, or a derangement or impairment of physical functions and energies.²

The person need not be "dead drunk." It is enough that the use of liquor has so affected (him/her) in (his/her) acts or conduct that a person coming in contact with (him/her) can readily see and know that (he/she) is intoxicated.

Finally, the plaintiff must also prove by a preponderance of the evidence that the customer's intoxication proximately caused the injury. I remind you that the plaintiff does not have to prove that the liquor sold to <name of customer> by the defendant produced or contributed to the <name of customer>'s intoxication.

⁶ *O'Dell v. Kozee*, 307 Conn. 231, 267 (2012).

⁷ \$141 million is the total sales and use taxes estimated to be collected on the retail sale of wine, spirits and beer in 2010. Spencer Kane, Cain Associates, LLC, *Economic Impact*, March 2012.