

# TITLE LII

## ACTIONS, PROCESS, AND SERVICE OF PROCESS

### Chapter 507-F

#### ALCOHOLIC BEVERAGE LICENSEE LIABILITY

##### Section 507-F:1

###### **507-F:1 Definitions. –**

In this chapter:

- I. "Adult" means any person of legal age to purchase alcoholic beverages, or older as defined by RSA 175:1, I.
- II. "Alcoholic beverages" means liquor and beverages as those terms are defined in RSA 175:1, VIII and XLII.
- III. "Intoxicated person" means an individual who is in a state of intoxication as defined by this chapter.
- IV. "Intoxication" means an impairment of a person's mental or physical faculties as a result of drug or alcoholic beverage use so as to diminish that person's ability to think and act in a manner in which an ordinary prudent and cautious person, in full possession of his faculties and using reasonable care, would act under like circumstances.
- V. "Licensee" means any person who is required to be licensed to serve alcoholic beverages under RSA 178 and 179.
- VI. "Minor" means any person under the legal age to purchase alcoholic beverages.
- VII. "Person" means any individual, governmental body, corporation or other legal entity.
- VIII. "Premises" means any establishment licensed or required to be licensed under RSA 175:1, LIV.
- IX. "Service of alcoholic beverage" or "service" means any sale, gift, or other furnishing of alcoholic beverages.

**Source.** 1986, 227:11. 1990, 255:13-15, eff. July 1, 1990.

##### Section 507-F:2

###### **507-F:2 Plaintiff. –**

- I. Any person who suffers damage, as provided in RSA 507-F:8, may bring an action under this chapter subject to the limitation found in paragraph II of this section.
- II. A person who becomes intoxicated may not bring an action under RSA 507-F:4 against a defendant for serving alcoholic beverages to such person.

**Source.** 1986, 227:11, eff. July 1, 1986.

### **Section 507-F:3**

**507-F:3 Defendants.** – Any person licensed or required to be licensed under RSA 178:1, I and any employee or agent of such person who commits an act giving rise to liability, as provided in RSA 507-F:4 and 5, may be made a defendant to a claim under the provisions of this chapter.

**Source.** 1986, 227:11. 1990, 255:16, eff. July 1, 1990.

### **Section 507-F:4**

#### **507-F:4 Negligent Service of Alcoholic Beverages. –**

I. A defendant who negligently serves alcoholic beverages to a minor or to an intoxicated person is liable for resulting damages, subject to the provisions of this chapter.

II. Service of alcoholic beverages to a minor or to an intoxicated person is negligent if the defendant knows or if a reasonably prudent person in like circumstances would know that the person being served is a minor or is intoxicated.

III. Proof of service of alcoholic beverages to a minor without request for proof of age as required by RSA 179:8 shall be admissible as evidence of negligence.

IV. Service of alcoholic beverages by a defendant to an adult person who subsequently serves a minor off the premises or who is legally permitted to serve a minor does not constitute service to the minor unless a reasonably prudent person in like circumstances would know that such subsequent service is reasonably likely to occur and is illegal.

V. A defendant does not have a duty to investigate whether a person being served alcoholic beverages intends to serve the alcoholic beverages to other persons off the premises.

VI. A defendant is not chargeable with knowledge of a person's consumption of alcoholic beverages or other drugs off the defendant's premises, when the person misrepresents such consumption or the amount of such consumption, unless the defendant's service to such person qualifies as reckless under RSA 507-F:5.

VII. A defendant is not under a duty to recognize signs of a person's intoxication other than those normally associated with the consumption of alcoholic beverages except for intoxication resulting in whole or in part from other drugs consumed on defendant's premises with defendant's actual or constructive knowledge.

**Source.** 1986, 227:11. 1990, 255:17. 1993, 48:18, eff. Jan. 1, 1994.

### **Section 507-F:5**

#### **507-F:5 Reckless Service of Alcoholic Beverages. –**

I. A person who becomes intoxicated may bring an action against a defendant for serving alcoholic beverages only when the server of such beverages is reckless. The service of alcoholic beverages is reckless when a defendant intentionally serves alcoholic beverages to a person when the server knows, or a reasonable person in his position should have known, that such service creates an unreasonable risk of physical harm to the drinker or to others that is substantially greater than that which is necessary to make his conduct negligent.

II. A defendant who recklessly provides alcoholic beverages to another is liable for resulting

damages.

III. Specific serving practices that are admissible as evidence of reckless conduct include, but are not limited to, the following:

- (a) Active encouragement of intoxicated persons to consume substantial amounts of alcoholic beverages.
- (b) Service of alcoholic beverages to a person, 16 years of age or under, when the server knows or should reasonably know the patron's age.
- (c) Service of alcoholic beverages to a patron that is so continuous and excessive that it creates a substantial risk of death by alcohol poisoning.
- (d) The active assistance by a defendant of a patron into a motor vehicle when the patron is so intoxicated that such assistance is required, and the defendant knows or should know that the intoxicated person intends to operate the motor vehicle.

**Source.** 1986, 227:11, eff. July 1, 1986.

### **Section 507-F:6**

#### **507-F:6 Responsible Business Practices Defense. –**

I. Service of alcoholic beverages is not negligent or reckless if the defendant, at the time of the service, is adhering to responsible business practices. Responsible business practices are those business policies, procedures, and actions which an ordinarily prudent person would follow in like circumstances.

II. The service of alcoholic beverages to a person with actual knowledge that such person is intoxicated or is a minor is not a responsible business practice. Evidence of responsible business practices pursuant to this section is relevant to determining whether a defendant who does not have such actual knowledge should have known of the person's intoxicated condition or age.

III. With respect to service to intoxicated persons, evidence of responsible business practices may include, but is not limited to, comprehensive training of the defendant and the defendant's employees and agents who are present at the time of service of alcoholic beverages and responsible management policies, procedures, and actions which are in effect at the time of such service.

IV. With respect to service to intoxicated persons, evidence of comprehensive training includes, but is not limited to, the development of knowledge and skills regarding the responsible service of alcoholic beverages and the handling of intoxicated persons. Such training shall be appropriate to the level and kind of responsibility for each employee and agent to be trained.

V. With respect to service to intoxicated persons, evidence of responsible management policies, procedures, and actions may include, but is not limited to, those policies, procedures, and actions which:

- (a) Encourage persons not to become intoxicated if they consume alcoholic beverages on the defendant's premises.
- (b) Promote availability of nonalcoholic beverages and food.
- (c) Promote safe transportation alternatives other than driving while intoxicated.
- (d) Prohibit employees and agents of defendant from consuming alcoholic beverages while acting in their capacity as employee or agent.
- (e) Establish promotions and marketing efforts which publicize responsible business practices to the defendant's customers and community.

(f) Implement comprehensive training procedures.

(g) Maintain an adequate number of trained employees and agents for the type and size of defendant's business.

VI. With respect to service to minors, evidence of responsible business practices may include, but is not limited to:

(a) Management policies which assure the examination of proof of age as required by RSA 179:8, for all persons seeking service of alcoholic beverages who may reasonably be suspected to be minors.

(b) Comprehensive training of employees who are responsible for such examination regarding the detection of false or altered identification.

VII. Proof of responsible business practices shall be based on the totality of the circumstances, including but not limited to: the availability of training programs and alternative public transportation; the defendant's type and size of business; and the nature of the defendant's previous contacts with the intoxicated person or minor who is served. Evidence of the existence or omission of one or more elements of responsible business practices does not conclusively prove or disprove the responsible business practices defense.

**Source.** 1986, 227:11. 1990, 255:18, eff. July 1, 1990.

### **Section 507-F:7**

#### **507-F:7 Privileges. –**

I. No defendant may be held civilly liable for damages resulting from the refusal to serve alcoholic beverages to any person who:

(a) Fails to show proof of age as required by RSA 179:8; or

(b) Appears to a reasonable person to be a minor; or

(c) Is refused service of alcoholic beverages by defendant in a good faith effort to prevent that person's intoxication.

II. No defendant may be held civilly liable for retaining documents presented as proof of age, provided such retention is for a reasonable length of time in a good faith effort to determine whether the person is of legal age or to notify law enforcement authorities of a suspected violation of law.

III. No defendant may be held civilly liable for using reasonable force to detain a person who is attempting to operate a motor vehicle while intoxicated for a reasonable period of time, necessary to summon law enforcement officers.

IV. This section does not limit a defendant's right to assert any other defense to a civil liability claim otherwise provided by law.

**Source.** 1986, 227:11. 1990, 255:19, eff. July 1, 1990.

### **Section 507-F:8**

**507-F:8 Exclusive Remedy. –** This chapter is the exclusive remedy against a defendant for claims by those suffering damages based on the defendant's service of alcoholic beverages.

**Source.** 1986, 227:11, eff. July 1, 1986.

