

Testimony of Stephen C. Clarke, Vice President Government Relations  
Insurance Services Office, Inc.  
House Bill 288 (Liquor Liability)  
3/3/2023

Insurance Services Office, Inc. (ISO) thanks the Members of the House Committee on Judiciary for the opportunity to provide comments in relation to consideration of Vermont House Bill 288 Liquor Liability. Our participation is at the request of the Committee and is in relation to previous testimony received by the committee that generally referenced, in part, certain ISO advisory insurance programs related to liquor liability filed in the state of Vermont.

**ISO Background**

First, it is important to understand ISO's role in the industry. Insurance Services Office, Inc. (ISO) is licensed in all 50 states as an advisory, rating, or rate service organization under the relevant section of each state's insurance code, and as such is regulated by the insurance commissioner and insurance department. In the state of Vermont specifically, ISO is licensed as an advisory and rate service organization under the Vermont Insurance Code and is regulated by the Vermont Department of Financial Regulation.

As a rate service organization, ISO's primary role is to provide our insurer customers with advisory insurance policy forms and endorsements, policywriting and rating manuals and advisory prospective loss costs, which are that portion of an insurance rate that covers estimated future losses but does not include any provision for expense or profit. That portion is determined by an insurer and filed as a part of its final rate. Our advisory programs cover roughly 30 insurance lines of business in the property/casualty market, including General Liability, which encompasses Liquor Liability as one of its sublines.

**Advisory nature of products**

It is important to underscore the advisory nature of ISO products and services. No insurer is required to participate with ISO, and for those that do, we have no adherence requirements. In other words, our customers are free to use our advisory material as is, modify our material, or not use it at all. These decisions are made independently by each customer based on their own independent decision making process and in accordance with their own independent business needs.

**State Liquor Liability Grades**

With respect to our Liquor Liability program, we make available to participating insurers a portfolio of policy forms and endorsements as well associated manuals of rules and supplementary rating information so that coverage can be written by carriers for those "in the business" of manufacturing, selling and/or serving alcohol. This can include traditional establishments, such as taverns and bars, but can also include those that operate on a "bring your own" basis, as the consumption of alcohol on those premises may impart some level of liability.

In evaluating a liquor exposure from an underwriting and pricing perspective it is critical to understand the liability environment a particular risk operates in. To that end, our Liquor Liability manual contains a liquor liability grade, based on a 0-10 scale, that generally reflects a particular state's liability environment with respect to establishments in the business of manufacturing, selling and serving alcohol. A "0" grade generally

reflects no to minimal liability exposure, while a “10” reflects the strict liability or the highest liability exposure. These grades are generally based on applicable state statutes and relevant case law concerning vendor/risks liability exposure and related limitations, if any, on damage awards. As such, a state grade may change whenever there is a material change to an applicable state law.

Once we determine a particular grade we develop a manual rule that not only contains the grade, but includes reference to the appropriate state statute(s) and or case law as well as pertinent relevant information related to the law such as specific statutory language and citations. These rules are then submitted to the insurance department in accordance with that state’s regulatory filing requirements, before being distributed to our customers.

Our liquor liability grades are not new and have been in place across the country with the current numeric scale for nearly 30 years, having been preceded by an alpha scale score for a number of years prior to that time. As described, the given state grade does not turn on the historical losses, number of related establishments, number or size of related lawsuits, awards, claims nor liquor related incidents. It is based on the potential exposure assessment related to the applicable state law at a given point in time.

As for the pricing of liquor liability insurance coverage, a summary of our insurance programs will likely prove helpful.

For most ISO insurance programs, we file and make available advisory prospective loss costs (“loss costs”). In general, loss costs are a portion of an insurance rate, often the largest portion, based on historical aggregate losses and loss adjustment expenses that are used by our actuaries to project average future claims costs and loss adjustment expenses. Participating insurers can adopt our advisory prospective loss costs as filed, or with modification based on their own book of business, and then modify the loss costs to include insurance carrier determined provisions for expenses (other than loss adjustment expense) and/or profits in order to determine the applicable insurance rates.

However, for some insurance programs, or portions of a program, ISO does not file or make available loss costs and instead provides that the related rating is on a “refer to company” basis, generally meaning that the insurer must develop the related rates in the absence of our loss costs as a starting point.

A certain degree of underwriting flexibility is typically needed in addressing these risks to help ensure that the premium charged is commensurate with the exposure being assumed. The current ISO Liquor Liability program, including the program currently available in Vermont, provides for rating on a “Refer to Company” basis. This is in part due to the potential hazards present, the varying degree of risk management employed, and the amount of data available to project potential future losses.

### **Vermont Liquor Liability Grade**

When a state has an applicable strict liability regime, as is the case in Vermont, the grades will usually be higher than in states that do not, all else being equal. In terms of applicable Vermont law, statutory code section 7 V.S.A. §501 et seq. are relevant as is Vermont case law. Notably, in the case of *Langle v. Kurkul*, 146 Vt. 513, 510 A.2d 1301 (1986), the Vermont Supreme Court has confirmed the statute provides a cause of action in strict liability to the injured third party persons. In comparison, some of Vermont’s neighboring states have lower liquor liability grades as the law in those states generally do not impose strict liability on the liquor vendor and generally set limitations on liability to varying degrees. Notably, in terms of the reference to “strict liability,” this is not our characterization of the law but rather is taken directly from the noted state supreme court decision wherein the court unambiguously stated, “Vermont's Dram Shop Act provides a cause of action in strict liability to injured third persons.”

Historically, Vermont has had a liquor liability grade of 10 since at least 1994, which as noted earlier, is based on the relevant state law which, in the case of Vermont, has not significantly changed in that regard during that time. Naturally, should the relevant state law change, whether it arises from legislative, regulatory or case law developments, ISO reviews the related change and determines whether a revision to the liquor liability grade for the state in question may be appropriate. In that regard, our current and historical processes have included monitoring relevant legal developments.

ISO reviews approximately over 15,000 state legislative and regulatory actions and over 2000 court cases countrywide every year. To the extent that applicable law (and/or court decisions) potentially change the liability environment, and there is impact on our products and services, we review and respond accordingly.

### **Marketplace and Other Issues to Consider**

As our liquor liability grade has not changed in Vermont in nearly 30 years, due to the absence of any significant developments in relevant state law, and as insurance rating under our program is on a “refer to company” basis, any recent issues or developments arising in the marketplace is not likely attributed to our grade and our program.

In addition, we also would note that the Excess & Surplus lines market tends to be attractive for these risks as this market does tend to have more freedom around the policy terms and pricing they are able to propose. The admitted market, which ISO generally serves, must go through the regulatory review process before bringing changes to market.