

Vermont Dram Shop and Social Host Liability Laws

Statutes

7 V.S.A. § 501. Unlawful sale of intoxicating liquors; civil action for damages

(a) Action for damages. A spouse, child, guardian, employer or other person who is injured in person, property or means of support by an intoxicated person, or in consequence of the intoxication of any person, shall have a right of action in his or her own name, jointly or severally, against any person or persons who have caused in whole or in part such intoxication by selling or furnishing intoxicating liquor:

- (1) to a minor as defined in this title;
- (2) to a person apparently under the influence of intoxicating liquor;
- (3) to a person after legal serving hours; or
- (4) to a person whom it would be reasonable to expect would be under the influence of intoxicating liquor as a result of the amount of liquor served by the defendant to that person.

(b) Survival of action; joint action. Upon the death of either party, the action and right of action shall survive to or against the party's executor or administrator. The party injured or his or her legal representatives may bring either a joint action against the person intoxicated and the person or persons who furnished the liquor and an owner who may be liable under subsection (c) of this section, or a separate action against either or any of them.

(c) Landlord liability. If the intoxicating liquor was sold or furnished to the intoxicated person in a rented building, the owner may be joined as a defendant in the action, and judgment therein may be rendered against the owner, if the owner of the building or in the case of a corporation, its agent, knew or had reason to know that intoxicating liquor was sold or furnished by the tenant:

- (1) to minors as defined in this title;
- (2) to persons apparently under the influence of intoxicating liquor;
- (3) to persons after legal serving hours; or
- (4) to persons whom it would be reasonable to expect would be under the influence of intoxicating liquor as a result of the amount of liquor served to them by the tenant. It shall be an affirmative defense to an action against an owner that the owner took reasonable

steps to prevent the sale of intoxicating liquor under the circumstances described in this Subsection or to evict the tenant.

(d) Statute of limitations. An action to recover for damages under this section shall be commenced within two years after the cause of action accrues, and not after.

(e) Evidence. In an action brought under this section, evidence of responsible actions taken or not taken is admissible, if otherwise relevant. Responsible actions may include, but are not limited to, instruction of servers as to laws governing the sale of alcoholic beverages, training of servers regarding intervention techniques, admonishment to patrons or guests concerning laws regarding the consumption of intoxicating liquor, and inquiry under the methods provided by law as to the age or degree of intoxication of the persons involved.

(f) Right of contribution. A defendant in an action brought under this section has a right of contribution from any other responsible person or persons, which may be enforced in a separate action brought for that purpose.

(g) Social host.

(1) Except as set forth in subdivision (2) of this subsection, nothing in this section shall create a statutory cause of action against a social host for furnishing intoxicating liquor to any person without compensation or profit, if the social host is not a licensee or required to be a licensee under this title. However, this subdivision shall not be construed to limit or otherwise affect the liability of a social host for negligence at common law.

(2) A social host who knowingly furnishes intoxicating liquor to a minor may be held liable under this section if the social host knew, or a reasonable person in the same circumstances would have known, that the person who received the intoxicating liquor was a minor.

(h) Definitions. For the purpose of this section:

(1) “ Apparently under the influence of intoxicating liquor” means a state of intoxication accompanied by a perceptible act or series of actions which present signs of intoxication.

(2) “Social host” means a person who is not the holder of a liquor license and is not required under this title to hold a liquor license.

7 V.S.A. § 502. Minors; payment of damages recovered

All damages recovered by a minor in such action shall be paid over to such minor or to his guardian on such terms as the court may order.

7 V.S.A. § 503. Satisfaction of judgment; revocation of license

If a judgment recovered against a licensee under the provisions of [section 501](#) of this title remains unsatisfied for 30 days after the entry thereof, the board of control commissioners or the liquor control board shall revoke his license. A license shall not be granted to a person against whom such judgment has been recovered, until the same is satisfied.

7 V.S.A. § 504. Action founded on tort; certified execution

A judgment for the plaintiff under [section 501](#) of this title shall be treated as rendered in an action founded on tort. At the time of such judgment, the court shall adjudge that the cause of action arose from the wilful and malicious act of the defendant, and that he or she ought to be confined in close jail, and a certificate thereof shall be stated in or upon the execution.

7 V.S.A. § 505. Notice to prohibit sales to certain persons

The father, mother, husband, wife, child, brother, sister, guardian, or employer of a person may, in writing, notify any Board of Control Commissioners as defined in [section 2](#) of this title, who may, on investigation, forbid the sale or furnishing of spirituous liquor or malt or vinous beverages or both by licensees as defined in [section 2](#) of this title, within the jurisdiction of that Board of Control Commissioners to that person.

7 V.S.A. § 506. Record of notices

(a) Such board of control commissioners shall place on file the notices received under [section 505](#) of this title and they shall be open to public inspection at reasonable times, except that the notices of a husband, father, wife, child, mother or a sister provided for in [section 505](#) of this title shall not be open to inspection nor be disclosed by such board of control commissioners. Upon receipt of a notice, such board of control commissioners may, upon investigation, give written

notice forbidding the sale or furnishing of spirituous liquors or malt and vinous beverages or both to such person and to all licensees within the jurisdiction of such board of control commissioners.

(b) Copies of all notices sent by a board of control commissioners shall be furnished forthwith to the commissioner of liquor control who may upon receipt of such copy forbid the sale of spirituous liquors by any state agency or agencies to such person.

7 V.S.A. § 507. Expiration of notices

All notices given under [section 506](#) of this title shall expire six months from their date unless sooner revoked.

14 V.S.A. § 1491. Right of action where death results from wrongful act

When the death of a person is caused by the wrongful act, neglect or default of a person or corporation, and the act, neglect or default is such as would have entitled the party injured to maintain an action and recover damages in respect thereof, if death had not ensued, the person or corporation liable to such action shall be liable to an action for damages, notwithstanding the death of the person injured and although the death is caused under such circumstances as amount in law to a felony.

Case Law

Construction with other laws

Acts that trigger dramshop liability clearly fit within broad scope of term “wrongful act,” within meaning of Wrongful Death Act. 7 V.S.A. § 501; 14 V.S.A. § 1491 et seq. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905.

Construction and application

Dram Shop Act is primarily a remedial statute and must be construed liberally. 7 V.S.A. § 501 et seq. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905. 283

Preemption

Car occupants' Vermont common-law negligence claims against saloon, which allegedly served driver alcohol prior to driver falling asleep at the wheel and crashing into occupants' car, were preempted by Vermont's Dram Shop Act (DSA). *Schulman v. Saloon Beverage, Inc.*, 2014, 991 F.Supp.2d 501.

Nature of Remedy

Motorist's negligence claims against business, which served drunk driver prior to his accident with motorist, were plainly within the scope of the Dram Shop Act and, thus, were preempted. 7 V.S.A. §§ 501-507. *Rodrigue v. VALCO Enterprises, Inc.*, 1999, 726 A.2d 61, 169 Vt. 539.

Dram Shop Act preempts common-law negligence actions that come within its scope. 7 V.S.A. §§ 501-507. *Swett v. Haig's, Inc.*, 1995, 164 Vt. 1, 663 A.2d 930, reargument denied.

Motorist who was injured by intoxicated driver may bring common-law negligence action against intoxicated driver as well as action under Dram Shop Act against dram shop owner that served driver when he or she was apparently under influence of intoxicating liquor. 7 V.S.A. § 501(a)(2), (b). *Swett v. Haig's, Inc.*, 1995, 164 Vt. 1, 663 A.2d 930, reargument denied.

Dram Shop Act preempts those common-law negligence actions that come within its scope. 7 V.S.A. § 501 et seq. *Estate of Kelley v. Moguls, Inc.*, 1993, 160 Vt. 531, 632 A.2d 360.

Dram Shop Act does not preempt common-law negligence action against licensed vendor for damages sustained based on furnishing or selling of alcoholic beverages. 7 V.S.A. § 501 et seq. *Estate of Kelley v. Moguls, Inc.*, 1993, 160 Vt. 531, 632 A.2d 360.

Fact that Dram Shop Act provides exclusive remedy for cases falling within its scope, and preempts causes of actions in common-law negligence, does not preclude award of damages under Wrongful Death Act in all cases brought pursuant to Dram Shop Act. 7 V.S.A. § 501; 14 V.S.A. § 1491 et seq. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905.

Survival statutes were inapplicable in action brought under Dram Shop Act, since Act has its own survival provision. 7 V.S.A. § 501 et seq.; 14 V.S.A. §§ 1451-1453. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905.

Automobile accident victim's suit against tavern under Dram Shop Act did not supersede traditional common-law negligence action against driver who allegedly had voluntarily become intoxicated and caused automobile accident. 7 V.S.A. § 501; 12 V.S.A. § 1036. *Plante v. Johnson*, 1989, 152 Vt. 270, 565 A.2d 1346.

Where particular facts of case fall within scope of Vermont's Dram Shop Act, Act provides exclusive remedy, and preempts cause of action in common-law negligence. 7 V.S.A. § 501. *Winney v. Ransom & Hastings, Inc.*, 1988, 149 Vt. 213, 542 A.2d 269.

Dram Shop Act, in providing cause of action and strict liability to third persons injured by inebriates, did not preempt remedy under common law for social guest himself injured on third party's premises after becoming intoxicated; disagreeing with *Cunningham v. Brown*, 22 Ill.2d 23, 174 N.E.2d 153; *Snyder v. Davenport*, 323 N.W.2d 225 (Iowa); *Browder v. International Fidelity Insurance Co.*, 413 Mich. 603, 321 N.W.2d 668. (Per Billings, C.J., with one Justice concurring, and one Justice concurring in result). 1 V.S.A. § 271; 7 V.S.A. § 501. *Langle v. Kurkul*, 1986, 146 Vt. 513, 510 A.2d 1301.

Limitation of Actions

Under Vermont law, car occupants were entitled to equitable tolling of two-year statute of limitations on their Dram Shop Act action against saloon, which allegedly served driver alcohol prior to driver falling asleep at the wheel and crashing into occupants' car, where occupants timely brought action against saloon in New York state court, occupants at all times exercised due diligence, and even though occupants were incorrect about jurisdiction in New York, such a mistake was not instance of neglect or legal maneuvering that would have precluded equitable tolling. *Schulman v. Saloon Beverage, Inc.*, 2014, 991 F.Supp.2d 501.

Under Vermont law, two-year statute of limitations on car occupants' Dram Shop Act (DSA) action against saloon, which allegedly served driver alcohol prior to driver falling asleep at the wheel and crashing into occupants' car, was statutorily tolled when occupants brought New York state court action against saloon, and, thus, DSA action was timely, given that New York case was commenced within two years of collision, and DSA action was commenced within one year from dismissal of New York case. *Schulman v. Saloon Beverage, Inc.*, 2014, 991 F.Supp.2d 501.

In action under Vermont's Dram Shop Act (DSA), district Court would take judicial notice of car occupants' filings in other courts, which saloon owner offered in effort to show that car occupants knew, approximately two years before commencing action in District Court, that driver, who crashed into occupants' car after falling asleep at the wheel, had consumed alcohol at saloon. *Schulman v. Saloon Beverage, Inc.*, 2014, 991 F.Supp.2d 501.

In Vermont, the discovery rule applies to the limitations period under the Dram Shop Act (DSA), and thus an action under the DSA does not accrue until the plaintiff discovered or should have discovered both the injury and its cause. *Schulman v. Saloon Beverage, Inc.*, 2014, 991 F.Supp.2d 501.

Minority tolling provision under which applicable statute of limitations would not begin to run until plaintiff reached age of majority did not apply to suit against bar under Dram Shop Act that provided that actions under Act be brought within two years after cause of action accrued. 7 V.S.A. § 501(a); 12 V.S.A. § 551(a). *Pike v. Chuck's Willoughby Pub, Inc.*, 2006, 904 A.2d 1133, 180 Vt. 25.

Discovery rule applied to action brought by injured passenger against bar under Dram Shop Act based on claim that bar served visibly intoxicated motorist who later struck vehicle in which passenger was riding, and thus, two-year limitations period governing suit under Act did not accrue until passenger discovered elements of claim. 7 V.S.A. § 501(d). *Pike v. Chuck's Willoughby Pub, Inc.*, 2006, 904 A.2d 1133, 180 Vt. 25.

Motorist who knew, approximately two months after being struck by drunk driver, that police investigation had concluded that driver had been drinking at business on evening of accident had more than sufficient information to alert him of a possible dram shop action against business so as to commence running of Dram Shop Act's statute of limitations; any fraudulent concealment on business' part did not prevent motorist from bringing action within limitations period. 7

V.S.A. § 501(d); 12 V.S.A. § 555. *Rodrigue v. VALCO Enterprises, Inc.*, 1999, 726 A.2d 61, 169 Vt. 539.

Grounds of Action

Motorist who struck plaintiff pedestrian after motorist was in defendant tavern was not “intoxicated person” within meaning of Vermont Dram Shop Act, thus precluding tavern's liability; evidence showed that motorist consumed only one beer all evening, that he was not served after legal serving hours, and that he was not “apparently under the influence of intoxicating liquor” or otherwise “overserved” by defendant. 7 V.S.A. § 501(a)(2-4). *Mercier v. Peterson*, 1996, 927 F.Supp. 764.

Administrator of estate of decedent had cause of action pursuant to Dram Shop Act against commercial vendors that served alcohol to patron, who subsequently drove car that struck and killed decedent, and damages would be determined under Wrongful Death Act. 7 V.S.A. § 501; 14 V.S.A. § 1491 et seq. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905.

Wrongful death of individual constitutes “injury to person” under Dram Shop Act, allowing recovery thereunder. 7 V.S.A. § 501. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905.

Survivors had to show that motorist's intoxication caused accident in which their daughter died in order to recover under Dram Shop Act. 7 V.S.A. § 501. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905.

Persons Entitled to Sue

Relatives of a deceased imbiber have an independent and direct right of recovery under the Dram Shop Act. 7 V.S.A. § 501(a). *Thompson v. Dewey's South Royalton, Inc.*, 1999, 733 A.2d 65, 169 Vt. 274.

Deceased imbiber's father had standing to bring claim under Dram Shop Act; the Act expressly included guardians, such as parents, among the list of persons entitled to recover, and father had some legal right to the support of his adult child by virtue of statute subjecting children who do not support needy parents to imprisonment and monetary penalties. 7 V.S.A. § 501(a); 14 V.S.A. §§ 2641, 2645, 3060; 15 V.S.A. § 202. *Thompson v. Dewey's South Royalton, Inc.*, 1999, 733 A.2d 65, 169 Vt. 274.

Deceased imbiber's unmarried partner and her daughter had standing to bring claim under Dram Shop Act; imbiber had lived with both partner and her child for over seven years, until his death, and provided both financial and emotional support to them, and partner would have been able to seek support from imbiber as the man of the house. 7 V.S.A. § 501(a); 15 V.S.A. §§ 294, 301. *Thompson v. Dewey's South Royalton, Inc.*, 1999, 733 A.2d 65, 169 Vt. 274.

Dram Shop Act provides no remedy to inebriate, whether he be customer of commercial vendor or guest of social host, to recover for subsequent injuries to himself as result of consumption of too much alcohol; term “other person,” in Act providing for cause of action for husband, wife, child, guardian, employer or other person injured by intoxicated person, referred to someone similarly situated to specific persons listed, and intoxicated person does not occupy that same

special relationship. (Per Billings, C.J., with one Justice concurring and one Justice concurring in result.) 7 V.S.A. § 501. *Langle v. Kurkul*, 1986, 146 Vt. 513, 510 A.2d 1301.

Persons Liable

Franchisors were not liable under “furnishing” provision of Dram Shop Act for franchisee's alleged negligence in overserving alcohol to patron who was subsequently involved in auto accident in which plaintiff's decedent was killed; evidence did not show that franchisors had control over service of alcoholic beverages at franchisee's bar, and, although franchise agreement provided that franchisors had right to prescribe and approve standards of service, there was no evidence that franchisors had actually prescribed such standards, or if they had, that those standards included training bartenders in proper exercise of discretion in serving alcoholic beverages. 7 V.S.A. § 501(a). *Carrick v. Franchise Associates, Inc.*, 1995, 164 Vt. 418, 671 A.2d 1243, reargument denied.

Guest at party, who became inebriated and was injured after swimming pool railing which he was preparing to dive from broke, had no cause of action against host under Dram Shop Act. (Per Billings, C.J., with one Justice concurring and one Justice concurring in result.) 7 V.S.A. § 501. *Langle v. Kurkul*, 1986, 146 Vt. 513, 510 A.2d 1301.

Defenses

Tavern's liability to automobile accident victim was based on dram shop statute and not based on negligence, and, therefore, tavern's liability would not have come under comparative negligence statute. 7 V.S.A. § 501; 12 V.S.A. § 1036. *Plante v. Johnson*, 1989, 152 Vt. 270, 565 A.2d 1346.

Damages

Third persons injured in consequence of the death of imbibor were only entitled to recover under the Dram Shop Act for their loss of means of support, if any, and not for loss of companionship and loss of parental training and guidance. 7 V.S.A. § 501(a). *Thompson v. Dewey's South Royalton, Inc.*, 1999, 733 A.2d 65, 169 Vt. 274.

Decedent's parents had not themselves been injured “in person, property or means of support,” within meaning of Dram Shop Act, aside from out-of-pocket medical and funeral expenses. 7 V.S.A. § 501. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905.

Supreme Court must look to Wrongful Death Act to determine what damages are available for to injury to person when decedent's personal representative brings action under Dram Shop Act, since Supreme Court has never recognized common-law action for wrongful death. 7 V.S.A. § 501; 14 V.S.A. § 1491 et seq. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905.

Damages for loss of future earnings are not recoverable under Dram Shop Act's survival provision. 7 V.S.A. § 501. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905.

Dram Shop Act does not preclude award of punitive damages. 7 V.S.A. § 501 et seq. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905.

Res judicata

Verdict against tavern under Dram Shop Act did not prevent verdict and judgment against driver of vehicle involved in automobile accident which resulted in victim's injuries, where liability was joint and several. 7 V.S.A. §§ 501, 501(b). *Plante v. Johnson*, 1989, 152 Vt. 270, 565 A.2d 1346.

Contribution

“Any other responsible person,” for purposes of Dram Shop Act section providing that defendant in action brought under Act has right of contribution from any other responsible person or persons, includes intoxicated driver who caused plaintiff's injuries. 7 V.S.A. § 501(f). *Swett v. Haig's, Inc.*, 1995, 164 Vt. 1, 663 A.2d 930, reargument denied.

Appellees' contention on appeal from dismissal of suit brought under Dram Shop Act that award of punitive damages under Act would violate various constitutional guarantees was premature, since there had been no award of punitive damages as of yet, and issue had barely been briefed by parties. 7 V.S.A. § 501 et seq. *Clymer v. Webster*, 1991, 156 Vt. 614, 596 A.2d 905.

Driver could not raise for first time on appeal her claim that, under the comparative negligence statute, verdict against tavern for all damages claimed by victim under Dram Shop Act left nothing to assess against driver. 7 V.S.A. § 501; 12 V.S.A. § 1036. *Plante v. Johnson*, 1989, 152 Vt. 270, 565 A.2d 1346.