

123.92 Civil liability for dispensing or sale and service of any alcoholic beverage (Dramshop Act) — liability insurance — underage persons.

1. *a.* Subject to the limitation amount specified in paragraph “c”, if applicable, any third party who is not the intoxicated person who caused the injury at issue and who is injured in person or property or means of support by an intoxicated person or resulting from the intoxication of a person, has a right of action for damages actually sustained, severally or jointly against any licensee or permittee, whether or not the license or permit was issued by the division or by the licensing authority of any other state, who sold and served any alcoholic beverage directly to the intoxicated person, provided that the person was visibly intoxicated at the time of the sale or service.

b. If the injury was proximately caused by an intoxicated person, a permittee or licensee may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the person.

c. The total amount recoverable by each plaintiff in any civil action for noneconomic damages for personal injury, whether in tort, contract, or otherwise, against a licensee or permittee, shall be limited to two hundred fifty thousand dollars for any injury or death of a person, unless the jury determines that there is a substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or death, which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained.

2. *a.* Every liquor control licensee, class “B” beer permittee, and class “C” native wine permittee, except a class “E” liquor control licensee, shall furnish proof of financial responsibility by the existence of a liability insurance policy in an amount determined by the division. If an insurer provides dramshop liability insurance at a new location to a licensee or permittee who has a positive loss experience at other locations for which such insurance is provided by the insurer, and the insurer bases premium rates at the new location on the negative loss history of the previous licensee or permittee at that location, the insurer shall examine and consider adjusting the premium for the new location not less than thirty months after the insurance is issued, based on the loss experience of the licensee or permittee at that location during that thirty-month period of time.

b. A dramshop liability insurance policy may be written on an aggregate limit basis.

c. The purpose of dramshop liability insurance is to provide protection for members of the public who experience damages as a result of licensees or permittees serving patrons any alcoholic beverage to a point that reaches or exceeds the standard set forth in law for liability. Minimum coverage requirements for such insurance are not for the purpose of making the insurance affordable for all licensees or permittees regardless of claims experience. A dramshop liability insurance policy obtained by a licensee or permittee shall meet the minimum insurance coverage requirements as determined by the division and is a mandatory condition for holding a license or permit.

3. *a.* Notwithstanding [section 123.49, subsection 1](#), any person who is injured in person or property or means of support by an intoxicated person who is under legal age or resulting from the intoxication of a person who is under legal age, has a right of action for all damages actually sustained, severally or jointly, against a person who is not a licensee or permittee and who dispensed or gave any alcoholic beverage to the intoxicated underage person when the nonlicensee or nonpermittee who dispensed or gave the alcoholic beverage to the underage person knew or should have known the underage person was intoxicated, or who dispensed or gave any alcoholic beverage to the underage person to a point where the nonlicensee or nonpermittee knew or should have known that the underage person would become intoxicated.

b. If the injury was caused by an intoxicated person who is under legal age, a person who is not a licensee or permittee and who dispensed or gave the alcoholic beverage to the underage person may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the underage person.

c. For purposes of [this subsection](#), “dispensed” or “gave” means the act of physically presenting a receptacle containing any alcoholic beverage to the underage person whose

actions or intoxication results in the sustaining of damages by another person. However, a person who dispenses or gives any alcoholic beverage to an underage person shall only be liable for any damages if the person knew or should have known that the underage person was under legal age.

[C73, §1557; C97, §2418; C24, 27, 31, 35, 39, §2055; C46, 50, 54, 58, 62, §129.2; C66, 71, §123.95, 129.2; C73, 75, 77, 79, 81, §123.92]

85 Acts, ch 32, §57; 86 Acts, ch 1211, §12; 88 Acts, ch 1158, §30; 92 Acts, ch 1136, §1; 97 Acts, ch 126, §7; 2009 Acts, ch 128, §1; 2013 Acts, ch 124, §1; 2016 Acts, ch 1008, §9; 2018 Acts, ch 1060, §45 – 47; 2018 Acts, ch 1090, §1; 2018 Acts, ch 1172, §18, 51

Referred to in §123.3, 123.10, 123.95

Minimum coverage requirements evaluation, see §505.33