

**Testimony before House Judiciary Committee, Tuesday, May 14, 2002  
Regarding HB 2315 (Joint and Several Liability)  
Nancy P. Oppedal, State Chair, MADD, Pennsylvania**

Good afternoon Chairman Gannon and members of the Judiciary Committee. I appreciate the opportunity to express MADD's concerns regarding HB 2315. This legislation will particularly affect victims of alcohol-related motor vehicle crashes who bring a cause of action against the bar/tavern that over served the drunk driving offender.

The Pennsylvania Dram Shop Law found in the Pennsylvania Statutes Annotated Section 47-497 provides civil liability for servers providing alcohol to visibly intoxicated persons. There are no provisions in the statutory language for social hosts or underage patrons. There are also no provisions limiting damages so both actual and punitive damages are available to plaintiffs. Pennsylvania does have a common law dram shop rule which gives liability to social hosts serving minors. There is no provision in the common law, however, for service to "able-bodied" adults as common law dictates that service was not the proximate cause of the injury.

There are currently 43 states plus the District of Columbia that have a dram shop law. Some are limited in the amount of damages they allow. Some are limited in the time allowed to bring suit, and others limit who can be sued using a proximate cause of injury definition in their statute.

MADD's national position statement on dram shop is as follows:

MADD strongly supports by means of legislation or case law the right of victims of alcohol-related traffic crashes to seek financial recovery from establishments and servers who have irresponsibly provided alcohol to those who are intoxicated or to minors, or to serve past the point of intoxication individuals who then cause fatal or injurious crashes.

Studies that have been done to date on dram shop liability laws' impact indicate that these laws can be an effective way of reducing alcohol-related injury crashes.

Stricter liability laws may also encourage alcohol establishments to implement responsible beverage service programs to establish clear policies and to train servers to prevent patrons from becoming intoxicated and prevent sales to minors. This goes directly to the safety of Pennsylvania citizens.

Under the Pennsylvania dram shop statute, a violation is considered negligence per se and if the violation was the proximate cause of the plaintiff's injury, then the defendant is liable for the injury.

HB 2315, although dealing with the comparative responsibility law and not the dram shop law, will affect dram shop liability that is based in negligence.

By proportioning the responsibility among all defendants based on share of blame, servers will not be held responsible to the extent they should. It will abrogate any deterrent effect that dram shop laws have in promoting responsible serving and most importantly will re-victimize the victims in limiting recovery for their loss.

In order to preserve dram shop liability in Pennsylvania, MADD recommends that the following language be added to HB 2315:

**"Nothing in this section shall be construed in any way to abolish, modify or affect a cause of action under Section 47-497 of the state's Dram Shop law. A cause of action established under the Dram Shop law shall not limit liability to comparative negligence principles."**

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