Laws regarding the selling and consumption of alcohol are not established by the federal government. Local authorities establish and enforce these laws, which means the specific guidelines as to who can sell, purchase, and consume alcohol and under what conditions — as well as the punishments for violation — vary widely across jurisdictions. Although all 50 states have a minimum drinking age of 21 and maximum limit for blood alcohol content allowable to operate a vehicle, that’s where the similarities end and differences begin. Mismanagement of the commercial sale of alcohol at your bar could threaten the success of your business due to increased liability exposure, both criminal and civil.

**ALCOHOL SERVICE PRESENTS UNIQUE RISKS**

There are a variety of laws and regulations that might impact your business in relation to service of alcoholic beverages. One such law enforceable in many states is a Dram Shop Act that may allow first or third parties or others to recover damages caused by alleged over-service of alcohol. In addition to Dram, some states allow for the criminal prosecution of the servers in cases where the alleged alcohol over-service caused damage to property or injury to people. Failure to follow the appropriate laws and regulations for your bar could result in fines, jail, license revocation, civil lawsuits and bad publicity.

It’s no secret that alcohol service creates unique risks and exposure. Liquor liability insurance is critical for costly claims and litigation that arise because of alcohol service and damage or injury caused by an intoxicated person. Even if your bar is not liable in these complicated situations, your legal defense costs can add up quickly. Let’s take a closer look.

In the state of Wisconsin, it is generally held that the person consuming alcoholic beverages is responsible for injuries to a third party, not the person or business that served the alcohol. However, there are times when the person or business serving the alcohol could be sued for injuries to a third party caused by an intoxicated bar patron. It is important for you to know when this could happen. The following scenarios represent the most common circumstances in which a bar could be held liable or sued for serving alcohol in Wisconsin:

**SERVING ALCOHOL TO A MINOR**

There is an exception in Wisconsin code for procuring alcohol
for or serving alcohol to a minor, when the person serving the minor knew or should have known that they were not of legal drinking age. In those cases, if it can be proven that the consumption of alcohol by the minor was a “substantial” factor in causing injuries to a third party, the person/business serving alcohol to the minor can be held liable for damages sustained by the third party.

SERVING A PATRON INVOLVED IN AN ACCIDENT IN A NEIGHBORING STATE

This scenario is most likely to occur when the location of the bar/tavern is near one of Wisconsin’s neighboring states. The patron of your Wisconsin bar leaves and is involved in an auto accident in a neighboring state. The injured third party retains legal counsel and they file a lawsuit in the neighboring state where the accident took place. The court will likely allow the lawsuit to remain in the neighboring state if it feels your bar meets certain criteria such as advertising and seeking to do business with the residents of that state. You are then subject to the laws of that state including the liquor liability laws of that state.

It’s critical to be knowledgeable of laws governing alcohol service and the agency responsible for enforcement. It’s equally important to take an active approach to responsible alcohol service by modeling the proper behaviors and developing policies and procedures for ensuring staff adherence to applicable laws — but knowing the laws in your state may not be enough. Especially if your bar is located near a neighboring state, Dram Shop laws in that state could have an impact on your business.

Are there laws in Wisconsin’s neighboring states that would hold your bar liable?

• The Illinois Liquor Control Act, known as the Dram Shop Act, gives any person who is injured by an intoxicated person the right to sue any person licensed under the laws of Illinois or any other state to sell liquor, who by selling or giving liquor cause the intoxication of the person who causes the injury. Any person who owns, rents, leases or permits occupation of a building or premises knowing that alcohol is sold on the property, and who permits the sale of alcohol on the property that causes the intoxication of any person, is liable along with the person selling or giving the alcohol.

• Iowa’s Dram Shop law provides that any third party who is not the intoxicated person who caused the injury at issue, who is injured in person or property or means of support by intoxicated person or resulting from the intoxication of a person, has a cause of action against the dram shop that sold and served alcohol directly to the alleged intoxicated person provided that the person was visibly intoxicated at the time of the sale or service.

• A Minnesota statute referred to as the Civil Damages Act provides a right of action against those that illegally sell alcoholic beverages to individuals who, due to intoxication, injure third parties. An illegal sale includes any sale of alcohol to a minor under age 21 or individuals who are obviously intoxicated.

FIGHTS OR ALTERCATIONS OCCUR ON YOUR PREMISES

We have seen an increase in the number of insurance claims involving fights and altercations. Many times, a fight can break out quickly and serious injuries can occur from just one punch. The medical bills can be staggering, and the injured party will most likely seek legal representation to recover their expenses and damages.

The attorney will allege that you have failed to maintain a safe place of business and question the training and supervision of your employees to handle these situations. If the situation involves gross negligence on the part of your employees, the attorney may even seek punitive damages in an effort to punish the bar for their actions or failure to act when the fight broke out. In this situation, your general liability policy would likely provide coverage as long as it does not contain a punitive damage exclusion and/or an altercation/fight exclusion. Punitive damages are not insurable in many states and cannot be paid under your insurance policy. If the attorney only alleges the overserving of alcohol as the cause of the fight, your policy would provide for the defense of the matter and would likely result in a favorable outcome under Wisconsin law.

CHALLENGING THE COMMON LAW PRECEDENT IN WISCONSIN

There are times when an attorney will file a liquor liability claim against a bar for overserving in Wisconsin, even though they know the courts have held that the person consuming the alcohol is responsible, not the bar serving the alcohol. This usually occurs when there are serious injuries to an innocent third party from an intoxicated person and the attorney is hoping they can convince a jury or judge to find negligence on the part of the bar. A liquor liability policy would provide a defense on behalf of the bar and likely results in a favorable outcome under Wisconsin law.

These are just a few examples of the need to have adequate general liability and liquor liability coverage to protect your bar business. Luckily, liquor liability insurance is very inexpensive in Wisconsin and will cover your legal expenses to defend against these types of claims and pay damages if they are awarded. You need to make sure your liquor liability policy provides coverage for all states and not just for Wisconsin. Also, you will want your policies to cover fights or altercations. If you need to review your coverage, go to the agent locator on SocietyInsurance.com to find a Society agent near you. They would be happy to do a policy review to make sure your bar has the insurance coverage you need.

Editor’s Note: The author, Brad Korkow, has been in the insurance industry since 1985 and has experience in claims, field underwriting, marketing and sales. He has spent the last 20 years of his career with Society Insurance and is currently a regional sales manager. Korkow has earned his CIC, CPCU, AU and AIC designations.

This article is not intended to give legal opinions or provide any kind of legal counsel. For a legal opinion, please seek legal counsel from a qualified attorney.