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IN THE FLORIDA SUPREME COURT

CASE NO.: SC22-910

GUARDIANSHIP OF JACQUELYN ANNE FAIRCLOTH,

Petitioner,

vs.

MAIN STREET ENTERTAINMENT, INC., d/b/a POTBELLY'S,

Respondent.
_____/

AMICUS BRIEF OF FLORIDA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF RESPONDENTS

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STATEMENT OF IDENTITY AND INTEREST

The Florida Defense Lawyers Association (FDLA), a statewide organization of civil defense attorneys formed in 1967, has approximately 1,400 members. FDLA aspires to "bring industry leaders and defense counsel together and form a strong alliance that promotes fairness and justice in the civil justice system for all parties." FDLA maintains an active amicus curiae program where members donate time and skills to submit briefs in state and federal cases involving significant legal issues impacting the interests of the defense bar or the fair administration of justice. These include cases with statewide impact on tort, insurance, or litigation issues.

This is one of those cases. It addresses whether an alleged violation of Florida's Dram Shop statute is a negligence or intentional tort action. The answer to that question is determinative of whether Florida's Comparative Fault Statute may be applied in Dram Shop cases.

FDLA's members defend persons and entities who sell or furnish alcoholic beverages in Florida, whether directly or through insurers. Certainty as to whether conduct proscribed under the statute constitutes negligence or intentional tort impacts the character of that defense. It also may impact whether that conduct is covered under most insurance policies.

A decision from this Court on determining that such conduct is

negligence, as it has been traditionally treated by the courts of this state, will permit FDLA's members, their clients, and the cases they defend to stay the course.

SUMMARY OF ARGUMENT

Most states have a Dram Shop or alcohol control statute. Some also permit common law claims for negligence. FDLA provides those statutes, as well as their treatment by the courts, for this Court's information. Based on the statutes and their overwhelming treatment under negligence principles, this Court should similarly do so and treat Florida's Dram Shop Statute, section 768.125, Florida Statutes, under negligence—and not intentional tort—principles. And comparative fault under section 768.81, Florida Statutes, would necessarily follow and apply to such actions.

ARGUMENT

I. THE COURT SHOULD ALIGN ITSELF WITH THE OVERWHELMING MAJORITY OF JURISDICTIONS THAT TREAT ACTIONS BROUGHT UNDER OR AS A RESULT OF A VIOLATION OF DRAM SHOP LAWS AS ACTIONS FOR NEGLIGENCE.

To assist the Court in determining whether prohibited actions under the Dram Shop statute should be considered negligence or an intentional tort, FDLA provides this Court with a survey of how other states view actions for Dram Shop liability, whether by statute or through the common law.

Alabama
Dram Shop Statute: Ala. Code §§ 6-5-70 & 6-5-71. **Treatment:** "[O]ne cannot recover for negligence in the dispensing of alcohol." Wiggins v. Mobile Greyhound Park, LLP, 294 So. 3d 709, 729 (Ala. 2019). "Alabama law provides no remedy for the unlawful dispensing of alcohol other than that provided by the Civil Damages Act . . . and the Dram Shop Act. . . ." Williams v. Reasoner, 668 So. 2d 541, 542 (Ala. 1995).
Alaska
Dram Shop Statute: Alaska Stat. § 04.21.020. **Treatment:** Dram Shop liability is considered negligence and "a dram shop is liable only for its percentage of fault in actions between the shop and a minor that involve the shop's provision of and the minors use of alcohol." Sowinski v. Walker, 198 P.3d 1134, 1140, 1148 (Alaska 2008).
Arizona
Dram Shop Statute: Ariz. Rev. Stat. §§ 4-311 & 4-312. **Treatment:** Common law negligence and dram shop claims are preempted by statutory dram shop negligence. Torres v. JAI Dining Servs. (Phx.), Inc., 508 P.3d 1148, 1151 (Ariz. Ct. App. 2022).
Arkansas
Dram Shop Statute: Ark. Code Ann. § 16-126-101, et seq., including § 16-126-103. **Treatment:** Sluder v. Steak & Ale of Little Rock, Inc., 206 S.W.3d 213 (Ark. 2005) (discussing negligence action filed under the Arkansas dram shop act).

California

Dram Shop Statute: Cal. Bus. & Prof. Code §§ 23000, et seq. & 25602.1.

Treatment: "[S]weeping civil immunity' was intended to supersede evolving common law negligence principles which would otherwise permit a finding of liability under the[se] circumstances." Ennabe v. Manosa, 319 P.3d 201, 207 (Cal. 2014). However, if plaintiff can establish defendant provided alcohol to an obviously intoxicated minor, and such action was the proximate cause of the plaintiff's injuries or death, section 25602.1 permits liability if the defendant was licensed to sell alcohol, required to be licensed, or federally authorized to sell alcoholic beverages and the defendant sold he minor alcohol. Id. at 209.

Colorado

Dram Shop Statute: Colo. Rev. Stat. § 12-47-801.

Treatment: The statute

> provides the sole means for someone injured by an intoxicated person to obtain a remedy from the vendor who sold or provided alcohol to the intoxicated person. [It] abolishes any common law cause of action against a vendor of alcohol while simultaneously creating statutory liability for such vendors ... including when the vendor willfully and knowingly serves alcohol to a visibly intoxicated person.

Build It & They Will Drink, Inc. v. Strauch, 253 P.3d 302, 303 (Colo. 2011). An exception exists when "the licensee willfully and knowingly sold or served any alcohol beverage to such person who was under the age of twenty-one years or who was visibly intoxicated." Id. at 305.

Connecticut

Dram Shop Statute: Conn. Gen Stat. § 30-102.

Treatment: Connecticut recognized a common-law negligence action for

injuries to further the state's public policy goals expressed in the Dram Shop Act, Craig v. Driscoll, 813 A.2d 1003 (Conn. 2003), but the legislature overruled the court's holding, Campos v. Coleman, 123 A.3d 854, 880 n.10 (Conn. 2014) (Zarella, J., dissenting).

Delaware

Dram Shop Statute: None

Treatment: "[T]here is no statutory or common law cause of action by one injured off the tavern premises by an intoxicated patron, whether the injured person be the patron or a third-party." McCall v. Villa Pizza, 636 A.2d 912, 913 (Del. 1994). "[W]hether to impose liability on tavern owners for injuries caused by intoxicated patrons involves significant public policy considerations and is best left to the General Assembly." Id.

District of Columbia

Dram Shop Statute: D.C. Code § 25-781 (Renumbered from section 25-121).

Treatment: An unexcused violation of the statute "renders the tavern keeper negligent per se, and that where injuries are proximately caused to a member of the public by that violation the tavern keeper may be liable in damages." Jarrett v. Woodward Bros., 751 A. 2d 972, 979 (D.C. 2000).

Georgia

Dram Shop Statute: Ga. Code Ann. § 51-1-40.

Treatment: Georgia's statute bars claims by the consumer of alcohol against the provider, even a minor, unless the provider know that minor will soon drive a motor vehicle. Dion v. Y.S.G. Enters., 776 S.E.2d 48, 49 (Ga. 2014).

Hawaii

Dram Shop Statute: Haw. Rev. Stat. § 281-78.

Treatment: "[A] dram shop owes no duty to a customer who injures himself or herself after drinking, it owes a duty to innocent injured third parties." Kuahiwinui v. Zelo's Inc., 453 P.3d 254, 258 (Haw. 2019). "[E]ven a minor who was sold liquor in violation of [the statute] was not part of the class meant to be protected by that statute if he had become voluntarily intoxicated and injured himself." Reyes v. Kumboyama, 870 P.2d 1281, 1288 (Haw. 1994).

Idaho

Dram Shop Statute: Idaho Code. § 23-808.

Treatment: Idaho has a legitimate, rational basis for enacting its act: "it wanted to limit liability upon purveyors of alcohol, discourage irresponsible drinking, and implicitly leave liability for injuries caused by inebriated persons upon the person who allowed themselves to become inebriated: the inebriate himself." Jones v. Nosworhty, No. CV-2017-3456, 2018 Ida. Dist. LEXIS 20, at *1, *24 (Idaho 1st Jud. Cir. Aug. 9, 2018). No claim may be brought on behalf of an intoxicated person who was younger than the legal age for the consumption of alcoholic beverages against the entity that furnished the alcohol. § 23-808(5).

Illinois

Dram Shop Statute: 235 Ill. Comp. Stat. 5/6-21.

Treatment: The act is the "exclusive remedy for holding providers of alcohol liable for the actions of an intoxicated person." Simmons v. Homatas, 925 N.E. 2d 1089, 1095 (Ill. 2010). "Illinois has no common law cause of action for injuries arising out of the sale or gift of alcoholic

beverages," and "impos[es] a form of no-fault liability upon dramshops for selling or giving intoxicating liquors to persons who subsequently injure third parties." Wakulich v. Mraz, 785 N.E.2d 843 (Ill. 2003).

Indiana

Dram Shop Statute: Ind. Code § 7.1-5-10-15.5.

Treatment: The act imposes civil liability for "furnishing" alcohol to minor or visibly intoxicated people who, in turn, cause injury. Rogers v. Martin, 63 N.E3d 316, 327 (Ind. 2016). Proof of same "provid[es] evidence of negligence." Rauck v. Hawn, 564 N.E.2d 334, 337 (Ind. 1990).

Iowa

Dram Shop Statute: Iowa Code § 123.92.

Treatment: The statute "provides the exclusive remedy against a licensee or permittee for selling intoxicating beverages to an intoxicated person" and creates liability where none existed at common law. Grovijohn v. Virjon, Inc., 643 N.W.2d 200 (Iowa 2002).

Kansas

Dram Shop Statute: None.

Treatment: The courts of Kansas declined to impose a common law duty of liability:

> The imposition of a common law duty of due care would create a situation rife with uncertainty and difficulty. . . . The difficulties of recognizing intoxication and predicting conduct of an intoxicated patron without imposing some duty of inquiry are evident. . . . The correct standard of care to be used also presents a problem, as does the determination of whether all acts of the patron, including intentional torts, should be included within the liability of the tavern owner or operator.

Ling v. Jan's Liquors, 703 P.2d 731, 739 (Kan. 1985). The court

determined that the decision should be left to the legislature. Id.

Kentucky

Dram Shop Statute: Ky. Rev. Stat. Ann. § 413.241.

Treatment: The law applies equally to a minor. Sixty-Eight Liquors, Inc. v. Colvi, 118 S.W.3d 171 (Ky. 2003). In Taylor v. King, 345 S.W.3d 237 (Ky. 2010), the court "permitted recovery for injuries suffered by a third party as a result of an unlawful sale of alcohol to a minor." Id. at 240. There was no statement on whether liability was based upon the dram shop's own negligence or the negligence of the intoxicated tortfeasor. Id.

Louisiana

Dram Shop Statute: La. Stat. Ann. § 9.2800.1.

Treatment: There is no liability for those selling alcoholic beverage to a person over the lawful age to purchase such beverages. Id. Louisiana "appl[ies] the well accepted duty risk analysis to claims of injuries caused by effects of alcoholic beverages" under negligence in cases pertaining to minors. Berg v. Zummo, 786 So. 2d 708, 715-16 (La. 2001).

Maine

Dram Shop Statute: Me. Stat. tit. 28-A, §§ 2501–2520.

Treatment: Maine's act "is a variation on the common law of negligence." Samson v. DiConzo, 669 A.2d 760, 762 (Me. 1996).

Maryland

Dram Shop Statute: None.

Treatment: Maryland has a criminal liability statute on service of alcoholic beverages to visibly intoxicated persons or minors, but Maryland courts have "not extrapolated civil liability from criminal statutes regulating the sale of alcohol." Warr v. JMGM Grp., Inc., 70 A.3d 347, 363 (Md. 2013).

"Since Maryland law imposes no liability on tavern owners for negligent acts of their patrons, it can hardly be interpreted to impose such liability for their intentional acts." Fenninger v. Harris Crab House, Inc., No. 98-2526, 2000 U.S. App. LEXIS 4285, at *1, *8 (4th Cir. Mar. 20, 2000).

Massachusetts

Dram Shop Statute: Mass. Gen. Laws ch. 231, § 60J.

Treatment: Dram shop "liability is grounded on the common law of negligence." Bayless v. TTS Trio Corp., 49 N.E.3d 217, 225 (Mass. 2016).

Michigan

Dram Shop Statute: Mich. Comp. Laws § 436.1801.

Treatment: "The dramshop act affords the exclusive remedy for injuries arising out of an unlawful sale, giving away, or furnishing of intoxicants. An 'unlawful' sale is a sale to either a minor or a visibly intoxicated person." Mann v. Schesteric Enters., 683 N.W2d 573, 576 n.7 (Mich. 2004) (internal citations omitted). "[A]n imbibing minor . . . ha[s] no cause of action under the dramshop act." Madejski v. Kotmar Ltd., 633 N.W.2d 429, 432 (Mich. Ct. App. 2001).

Minnesota

Dram Shop Statute: Minn. Stat. § 340A.801-340A.802.

Treatment: Osborne v. Twin Town Bowl, Inc., 749 N.W.2d 367 (Minn. 2008), states that the civil jury instruction guide directs trial courts in dram shop cases "to instruct juries on causation by using the causation standard in negligence cases." Id. at 372. "The Dram Shop Act explicitly provides that comparative negligence principles . . . apply to dram shop actions." Henson v. Uptown Drink, LLC, 922 N.W.2d 185, 193 (Minn. 2019).

Mississippi

Dram Shop Statute: Miss. Code Ann. §§ 67-1-53, 67-1-73, 67-1-83.

Treatment: Market who sold beer to minors was "guilty of negligence per se in selling alcoholic beverages to the minors, and if that negligence proximately caused or contributed to the minor's death and injury, the plaintiffs were entitled to recover." Estate of White v. Rainbow Casino-Vicksburg P'ship, 910 So. 2d 713, 716 (Miss. 2005) (discussing Munford v. Peterson, 368 So. 2d 213 (Miss. 1979)).

Missouri

Dram Shop Statute: Mo. Rev. Stat. § 537.053.

Treatment: "Section 537.053.1 provides . . . liability is generally prohibited and that Missouri follows the 'common law rule that furnishing alcoholic beverages is not the proximate cause of injuries inflicted by intoxicated persons.' However, section 537.053.2 provides an exception by allowing a cause of action against 'any person licensed to sell intoxicating liquor by the drink for consumption on the premises . . . [if] the seller knew or should have known that intoxicating liquor was served to a person under the age of twenty-one or knowingly served intoxicating liquor to a visibly intoxicated person.'" Snodgras v. Martin & Bayley, Inc. 204 S.W.3d 638, 640 (Mo. 2006).

Montana

Dram Shop Statute: Mont. Code Ann. § 27-1-710.

Treatment: "[A] tavern owner who serves an intoxicated minor [may] be held liable for injuries sustained by that minor . . . [and] the minor's acts in drinking alcoholic beverages served to her and then becoming involved in an injury-producing accident were reasonably foreseeable events that

would no longer protect a defendant from liability for negligence." Cusenbary v. Mortensen, 987 P.2d 351, 357 (Mont. 1999).

Nebraska

Dram Shop Statute: None. But see Neb. Rev. Stat. § 53-108. See also Neb. Rev. Stat. § 53-404.

Treatment: "Nebraska's Minor Alcoholic Liquor Liability Act grants a cause of action to '[a]ny person who sustains injury or property damage . . . as a proximate result of the negligence of an intoxicated minor' against (among others) a 'social host who allowed the minor to consume alcoholic liquor on property under his or her control.'" Spagna v. Phi Kappa Psi, Inc., 30 F.4th 710, 720 (8th Cir. 2022) (citing Neb. Rev. Stat. § 53-404. (including cause of action against retailer who sold alcoholic liquor to the minor)).

Nevada

Dram Shop Statute: Nev. Stat. § 41.1305.

Treatment: "[O]nly legislative mandate should create civil liability for vendors who serve alcohol to minors." Hinegardner v. Marcor Resorts, 844 P.2d 800, 803 (Nev. 1992). Section 41.1305 specifically provides that liability does not lie against a licensed purveyor of alcoholic beverages to a minor and "may not be used to establish proximate cause in a civil action and does not constitute negligence per se." Snyder v. Viani, 916 P.2d 170, 178 (Nev. 1996) (Rose, J., concurring).

New Hampshire

Dram Shop Statute: N.H. Rev. Stat. Ann. § 507-F:4.

Treatment: Section 507-F:4 provides that knowing service of alcoholic beverages to a minor is negligence. Section 507-F:2, however, prevents

"[a] person who becomes intoxicated" from "bring[ing] an action under RSA 507-F:4 against a defendant for serving alcoholic beverages to such person."
New Jersey
Dram Shop Statute: N.J Stat. Ann. §§ 2A:22A-1 through 2A:22A-7.
Treatment: The act is "the exclusive civil remedy for personal injury or property damage resulting from the negligent service of alcoholic beverages by a licensed alcoholic beverage server." Bauer v. Nesbitt, 969 A.2d 1122, 1129 (N.J. 2009). The act deems a licensed alcoholic beverage server to be "negligent only when the server served a visibly intoxicated person, or served a minor, under circumstances where the server knew, or reasonably should have known, that the person served was a minor." N.J. Stat. Ann. § 2A:22A-5(b).
New Mexico
Dram Shop Statute: N.M. Stat. Ann. §§ 41-11-1 & 60-7B-1.
Treatment: Statutes that make it a violation of the liquor control act to sell or deliver alcohol to a minor create a duty to a third party and that minor if they are injured; but only if the breach of that duty is the proximate cause of the accident or injury. Porter v. Ortiz, 665 P.2d 1149, 1150 (N.M. 1983).
New York
Dram Shop Statute: N.Y. Gen. Oblig. §§ 11-100 & 11-101.
Treatment: "[L]iability under . . . § 11-100 may be imposed only on a person who knowingly causes intoxication by furnishing alcohol to (or assisting in the procurement of alcohol for) persons known or reasonably believed to be underage." Sherman v. Robinson, 606 N.E.2d 1365, 1368 (N.Y. 1992). Intoxicated minors have no cause of action against the

alcohol purveyor. Gigliotti v. Byrne Dairy, Inc., 249 A.2d 973, 973 (N.Y. App. Div. 1998).

North Carolina

Dram Shop Statute: N.C. Gen. Stat. § 18B-302.

Treatment: Statute was not negligence per se because it was not a public safety statute imposing a duty for the protection of the public; rather, its purpose was to restrict minors' consumption of alcohol. Estate of Mullis v. Monroe Oil Co., 505 S.E.2d 131, 134 (N.C. 1998). Plaintiff could, however, maintain a common law negligence action against defendant commercial vendors for the sale of alcohol to an underage person. Id.

North Dakota

Dram Shop Statute: N.D. Cent. Code § 5-01-06.1.

Treatment: Law authorized a person who is injured by an obviously intoxicated person or minor to bring an action against "any person who knowingly disposes, sells, barters, or gives away alcoholic beverages to" an obviously intoxicated person or minor. Forsman v. Blues, Brews & Bar-B-Ques, Inc., 820 N.W.2d 748, 752 (N.D. 2012). Under North Dakota's comparative fault law, "negligence remains a separate theory from dram shop liability" with different elements of proof. Id. The Dram Shop Law specifically incorporates the requirement of comparative fault for allocation of fault among all persons "who contributed to the injury." Stewart v. Ryan, 520 N.W.2d 39, 46 (N.D. 1994).

Ohio

Dram Shop Statute: Ohio Rev. Code Ann. § 4399.18.

Treatment: Under Ohio's Act, "someone injured by an 'intoxicated person' may sue a liquor-permit holder for an off-premises injury only when the

permit holder or its employee served the person knowing her to be intoxicated or underage." Johnson v. Montgomery, 86 N.E.3d 279, 280 (Ohio 2017). A violation of the act constitutes negligence per se. Northcutt v. Grilliot, No. 97-CA-1433, 1997 Ohio App. LEXIS 3619, at *1, *4 (Ohio Ct. App. 1997).

Oklahoma

Dram Shop Statute: None

Treatment: The court "cited the elements of a common law negligence action as the standard for determining liability in a dram-shop action: (1) the existence of a duty on the part of the defendant to protect plaintiff from injury; (2) a violation of that duty; and (3) injury proximately resulting therefrom." Sheffer v. Buffalo Run Casino, PTE, Inc., 315 P.3d 359, 369 (Okla. 2013).

Oregon

Dram Shop Statute: Or. Rev. Stat. §§ 471.565 & 471.567.

Treatment: Oregon's statute does not "create a statutory right of action" and "does not provide a right of action against alcohol providers that has elements independent of a claim for common law negligence." Deckard v. Bunch, 370 P.3d 478, 501 (Or. 2016).

Pennsylvania

Dram Shop Statute: 47 Pa. Cons. Stat. § 4-493.

Treatment: "[A] violation of this section is negligence per se for which the violator will be liable in damages to a person protected by the statute." Smith v. Clark, 190 A.2d 441, 442 (Pa. 1963).

Rhode Island

Dram Shop Statute: R.I. Gen. Laws §§ 3-14-6 & 3-14-7.

Treatment: A plaintiff must demonstrate that the defendant was "either negligent, as defined under § 3-14-6, or that [it] acted recklessly, as defined under § 3-14-7." Gerstenblatt v. Nordic Lodge, Inc., No. 01-0225, 2002 R.I. Super. LEXIS 158, at * 1, *5 (R.I. Super. Ct. Nov. 26, 2002).

South Carolina

Dram Shop Statute: None.

Treatment: South Carolina's civil remedy arises out of criminal statutes. See Tobias v. Sports Club, Inc., 504 S.E.2d 318, 319 (S.C. 1998) (holding injured third parties may bring a negligence suit against the tavern owner based on a violation of the alcohol control statutes). Hartfield v. Getaway Lounge & Grill, Inc., 697 S.E.2d 558, 563 (S.C. 2010).

South Dakota

Dram Shop Statute: None.

Treatment: South Dakota's legislature abrogated its prior dram shop law and found "that the consumption of alcoholic beverages, rather than the serving of alcoholic beverages, is the proximate cause of any injury inflicted upon another by an intoxicated person." S.D. Codified Laws § 35-11-1. Although there is a statute prohibiting a liquor licensee from selling alcoholic beverages to persons under the age of 21, its violation is a misdemeanor and such licensee is not civilly liable. Wildeboer v. S.D. Junior Chamber of Com., 561 N.W.2d 666, 671 (S.D. 1997).

Tennessee

Dram Shop Statute: Tenn. Code Ann. §§ 57-10-101 & 57-10-102.

Treatment: "[T]here can be no cause of action resting on the allegation that one person 'furnished' alcohol to another because it is impossible to prove proximate cause. The statute does not merely provide immunity

from suit where one has furnished alcohol to another; rather, the statute constitutes the legislative determination that persons who furnish alcohol are not at fault for injuries inflicted by an intoxicated person." Biscan v. Brown, 160 S.W.3d 462, 472–73 (Tenn. 2005).

Texas

Dram Shop Statute: Tex. Alco. Bev. Code Ann. § 2.02.

Treatment: Texas's Dram Shop Act "provides the exclusive cause of action for providing an alcoholic beverage to a person 18 years of age or older. . . . [T]he Dram Shop Act only creates one civil cause of action—an action against commercial providers for serving obviously intoxicated persons—and does not create civil liability for serving alcohol to minors." Reeder v. Daniel, 161 S.W.3d 359, 362-63 (Tex. 2001). It is the exclusive remedy available to injured parties. Tex. Alco. Bev. Code Ann. § 2.03.

Utah

Dram Shop Statute: Utah Code Ann. § 32B-15-201.

Treatment: The act is a "strict liability statute. . . . Utah does not recognize a common law cause of action in negligence for the sale of alcohol to persons who cause injury to third parties while under the influence of alcohol." Miller v. U.S., 104 P.3d 1202, 1203 (Utah 2004).

Vermont

Dram Shop Statute: Vt. Stat. Ann. tit. 7, § 501.

Treatment: The act "gives a cause of action only to third persons who are injured by an intoxicated person. [It] provides no remedy to the imbiber . . . to recover for subsequent injuries to himself as the result of his consumption of too much alcohol." Langle v. Kurkul, 510 A.2d 1301, 1301 (Vt. 1986). The act "does not address a cause of action in negligence.

Therefore, it cannot be said that the Act forecloses a cause of action in negligence, since all common law that is 'not repugnant to the constitution or laws shall be laws' in Vermont." Id.

Virginia

Dram Shop Statute: None.

Treatment: "[I]ndividuals, drunk or sober, are responsible for their own torts and that, apart from statute, drinking the intoxicant, not furnishing it, is the proximate cause of the injury." Robinson v. Matt Mary Moran, Inc., 350 S.E.2d 559, 562 (Va. 2000). "The responsibility of individuals for torts they commit does not change because they are 19 or 20 years of age, rather than 21 years of age." Id.

Washington

Dram Shop Statute: Wash. Rev. Code §§ 66.44.200 & 66.44.270.

Treatment: Section 66.44.270 establishes a duty of care and liability for injuries to a minor who has been given alcohol. Barrett v. Lucky Seven Saloon, Inc., 96 P.3d 386, 391 (Wash. 2004). "The common law of negligence distinguishes between the commercial vendor and the social host. The commercial vendor owes a duty of reasonable care to the minor . . . ." Estate of Templeton v. Daffern, 990 P.2d 968, 970 (Wash. Ct. App. 2000).

West Virginia

Dram Shop Statute: W. Va. Code § 60-3-22.

Treatment: "[T]he sale of beer to a person under twenty-one years of age . . . gives rise to a cause of action against the vendor in favor of a purchaser or a third party injured as a proximate result of the unlawful sale. . . . [V]iolation of a statute . . . is only prima facie evidence of

negligence." Anderson v. Moulder, 394 S.E.2d 61, 68 (W. Va. 1990).
Wisconsin
Dram Shop Statute: Wis. Stat. § 125.035.
Treatment: "Under § 125.035(4)(b), providers of alcohol are deterred from providing alcohol to minors by the liability that may arise when the provision of alcohol results in an injury to a third party. . . . [T]he exception to immunity applies only in an action brought by the injured third party." Meier v. Champ's Sport Bar & Grill, Inc., 623 N.W.2d 94, 101 (Wis. 2001). Liability under the statute is in the same manner and to the same extent as that by a person who engages in negligent conduct. Harmann v. Hadley, 382 N.W.2d 673, 676 (Wis. 1986).
Wyoming
Dram Shop Statute: Wyo. Stat. Ann. § 12-8-301.
Treatment: "[I]f a licensee or nonlicensee person sells or provides liquor to another in violation of Title 12 and that consumer damages a third party, then both the liquor provider and the intoxicated person are exposed to civil liability." Greenwalt v. Ram Rest. Corp., 71 P.3d 717, 728 (Wyo. 2003).

As shown by the various state statutes and their treatment by their respective courts, the vast majority of jurisdictions view actions brought under or as a result of Dram Shop and alcohol control statutes under negligence principles. While some specifically authorize actions under the statute, and others treat a violation of a statute as evidence of negligence or negligence per se, few (if any) states treat a Dram Shop related action

as an intentional tort. The Court should similarly decline to do so. This Court should align itself with the majority of states and view Dram Shop actions under negligence principles.

II. THERE IS NO PROHIBITION TO APPLYING THE COMPARATIVE FAULT STATUTE TO NEGLIGENCE ACTIONS ARISING UNDER THE DRAM SHOP STATUTE, AND THE COURT SHOULD NOT SO FIND.

"In a negligence action, the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability." § 768.81, Fla. Stat. This statutory provision should be applied to negligence actions arising under Florida's Dram Shop Statute.

CONCLUSION

This Court should conclude that any cause of action related to Florida's Dram Shop Law sounds in negligence, such that there is no prohibition in applying the comparative fault statute to such claims.

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CERTIFICATE OF SERVICE

We HEREBY CERTIFY that a true and correct copy of the foregoing has been served via e-mail to Raoul G. Cantero, Esq., David P. Draigh, Esq., White & Case, LLP, 200 S. Biscayne Blvd., Ste. 4900, Miami FL 33131 (rcantero@whitecase.com), (ddraigh@whitecase.com) (Lillian.dominguez@whitecase.com), (MiamiLitigationFileRoom@whitecase.com); Angela C. Flowers, Esq., Kubicki Draper, 1396 N.E. 20th Avenue, Bldg. 500, Ocala, FL 34470 (afkd@kubickidraper.com); Brian Chojnowski, Esq., Michael J. Carney, Esq., Kubicki Draper, 1705 Metropolitan Blvd., Suite 202, Tallahassee, FL 32308 (sp-kd@kubickidraper.com; mjc-kd@kubickidraper.com); Donald M. Hinkle, Esq., Hinkle Law, 3520 Thomasville Road, Ste. 501, Tallahassee, FL 32309 (don@hinkle.law); Mark A. Avera, Esq., Avera & Smith, LLP, 2814 S.W. 13th Street, Gainesville, FL 32608 (mavera@avera.com); David J. Sales, Esq., Daniel R. Hoffman, Esq., David J. Sales, P.A., 1857 Morrill Street, Sarasota, FL 34236 (david@salesappeals.com) (dan@salesappeals.com) (roni@salesappeals.com) (serviceportal@salesappeals.com); Rohom Khonsari, Esq., Khonasari Law Group, 150 2nd Avenue N, Suite 970, St. Petersburg, FL 33701 (rohom@klgflorida.com); Joseph W. Jacquot, Esq., Kenneth B. Bell, Esq., Gunster Yoakley & Stewart, P.A., 215 South Monroe Street, Suite 601, Tallahassee, FL 32301 (jjacquot@gunster.com) (kbell@gunster.com) (wpruim@gunster.com) (awinsor@gunster.com); William J. Schifino, Esq., John A. Schifino, Esq., Gunster Yoakley & Stewart, P.A., 401 East Jackson St., Suite 2500, Tampa, FL 33602 (wschifino@gunster.com) (jschifino@gunster.com) (kkovach@gunster.com) (csander@gunster.com); on this 5th day of May, 2023.

/s/ Kansas R. Gooden
KANSAS R. GOODEN

CERTIFICATION OF COMPLIANCE

WE HEREBY CERTIFY that this Amicus Brief petition complies with Florida Rules of Appellate Procedure 9.045's font requirements and 9.370's word count limit requirement.

/s/ Kansas R. Gooden
KANSAS R. GOODEN