**South Carolina General Assembly**

125th Session, 2023-2024

**S. 1175**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Malloy

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Introduced in the Senate on March 19, 2024

Currently residing in the Senate Committee on **Judiciary**

Summary: Dram Shop Act

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 3/19/2024 Senate Introduced and read first time (Senate Journal‑page 5)

 3/19/2024 Senate Referred to Committee on **Judiciary** (Senate Journal‑page 5)

 3/27/2024 Senate Committee report: Favorable with amendment **Judiciary** (Senate Journal‑page 18)

 5/7/2024 Senate Recommitted to Committee on **Judiciary** (Senate Journal‑page 46)

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**VERSIONS OF THIS BILL**

[03/19/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/1175_20240319.docx)

[03/27/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/1175_20240327.docx)

Indicates Matter Stricken

Indicates New Matter

Committee Report

March 27, 2024

S. 1175

Introduced by Senator Malloy

S. Printed 03/27/24--S.

Read the first time March 19, 2024

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The committee on Senate Judiciary

To whom was referred a Bill (S. 1175) to amend the South Carolina Code of Laws by adding Section 15‑3‑800 so as to provide definitions for the South Carolina Dram Shop Act; by adding Section 15‑3‑810, etc., respectfully

Report:

That they have duly and carefully considered the same, and recommend that the same do pass with amendment:

 Amend the bill, as and if amended, by adding an appropriately numbered SECTION to read:

SECTION X. Chapter 4, Title 61 of the S.C. Code is amended by adding:

 Section 61-4-585. As used in this article:

 (A) “Alcoholic beverages” means beer, wine, or liquor.

 (B) “Knowingly” or “knowing” means that the permit holder or the permit holder’s server, agent, or employee knew or should have known that the individual to whom he sold, furnished, or served, or who possessed or consumed the alcoholic beverage was intoxicated or not of lawful drinking age. This knowledge would be based on the observations made by the permit holder or their servant, agent, or employee, and those observations must be ones that a reasonably prudent person would make under similar circumstances.

 (C) “Lawful drinking age” means the age of twenty‑one years or older.

 (D) “Permit to sell beer, wine, or liquor by the drink” means any permit issued by the South Carolina Department of Revenue that allows the permitted establishment to sell beer, wine, or liquor on a drink‑by‑drink basis for consumption on the permitted premises.

 (E) “Permit to sell beer, wine, or liquor at retail” means any permit issued by the South Carolina Department of Revenue that allows the permitted establishment to sell beer, wine, or liquor on a retail basis for consumption off the permitted premises.

 (F) “Premises” means the buildings or grounds that are permitted by the South Carolina Department of Revenue for the applicable alcoholic beverage sales. Premises consist of, but are not limited to, any buildings, parking lots, and surrounding areas subject to the direct control of the permit holder and the permit holder’s agents, servants, and employees and used by such parties to conduct the business of the permit holder.

 (G) “Visible intoxication” means a degree of impairment characterized by, but not limited to, the exhibition of the following:

 (1) bloodshot eyes;

 (2) loud and boisterous behavior;

 (3) belligerent, aggressive, or fighting behavior;

 (4) stumbling; or

 (5) slurred speech.

 Section 61-4-586. (A) An individual, or any spouse, child, parent, or legal representative of that individual, who suffers personal injury or whose property is damaged by an intoxicated individual has a private cause of action for all actual and exemplary damages against: (1) the intoxicated individual; (2) any holder of a permit to sell beer, wine, or liquor by the drink for on‑premises consumption; (3) any holder of a permit to sell beer, wine, or liquor at retail for off‑premises consumption; or (4) the permit holder’s servant, agent, or employee if the permit holder or the permit holder’s servant, agent, or employee knowingly sells, furnishes, or serves alcoholic beverages to the intoxicated individual and the sale, furnishment, or service is the proximate cause of the injury or damage.

 (B) Upon the death of any individual who is a party or may become a party to an action provided for in subsection (A), the action or right of action will survive to or against the individual’s personal representative.

 (C) Evidence of intoxication in subsection (A), must be based on the totality of the circumstances present at the time of sale, furnishment, or service of the alcoholic beverages to the individual. The evidence must not be speculative. Evidence of intoxication includes, but is not limited to:

 (1) visible intoxication, as defined in Section 61‑4‑585(G);

 (2) a blood alcohol content of eight one hundredths of one percent or greater if obtained contemporaneously to the event giving rise to the civil action;

 (3) retrograde extrapolation performed by a chemist or toxicologist demonstrating intoxication at the time of sale, furnishment, or service and the opinion of such chemist or toxicologist as to the individual’s likely physical appearance, demeanor, or behavior at the time of sale, furnishment, or service; or

 (4) the permit holder or the permit holder’s servant’s, agent’s, or employee’s knowledge that the individual was intoxicated based on the number of alcoholic beverages served to the individual during a specific period of time; or the permit holder’s, his servant’s, agent’s, or employee’s knowledge of the individual’s consumption of alcoholic beverages in other settings prior to the individual’s entry onto the permit holder’s premises or the number of alcoholic beverages consumed by the individual during a specific period of time, both on the permitted premises, and if applicable, off the permitted premises.

 (D) Nothing contained in this section authorizes the intoxicated individual or their estate to recover from the permit holder or the permit holder’s servants, agents, or employees for injuries or damages suffered by the intoxicated individual as a result of his consumption of alcoholic beverages, provided that the individual was of lawful drinking age at the time of the event giving rise to the civil action.

 Section 61-4-587. (A) An individual, or any spouse, child, parent, or legal representative of an individual, who suffers personal injury or whose property is damaged by an individual under the lawful drinking age has a cause of action for all actual and exemplary damages against: (1) the individual under the lawful drinking age; (2) any holder of a permit to sell beer, wine, or liquor by the drink for on‑premises consumption; (3) any holder of a permit to sell beer, wine, or liquor at retail for off‑premises consumption; or (4) the permit holder’s servant, agent, or employee, if the permit holder or the permit holder’s servant, agent, or employee knowingly sells, furnishes, or serves alcoholic beverages to the individual under the lawful drinking age or the permit holder or the permit holder’s servant, agent, or employee knew or should have known that the individual under the lawful drinking age was possessing and consuming alcoholic beverages on the permitted premises, and the sale, furnishment, service, or possession and consumption is the proximate cause of the injury or damage.

 (B) Upon the death of any individual who is a party or may become a party to an action in subsection (A), the action or right of action will survive to or against the individual’s personal representative.

 (C)(1) An individual not of lawful drinking age who suffers personal injury or whose property was damaged when the knowing sale, furnishment, or service of an alcoholic beverage by the holder of a permit to sell beer, wine, or liquor by the drink or at retail or the permit holder’s servant, agent, or employee was the proximate cause of such injury or damage, has a cause of action against the permit holder or the permit holder’s servant, agent, or employee for damages sustained.

 (2) An individual not of lawful drinking age who suffers personal injury or whose property was damaged when the holder of a permit to sell beer, wine, or liquor by the drink or at retail or the permit holder’s servant, agent, or employee knew or should have known that the individual was in possession of and was consuming alcoholic beverages and such possession and consumption was the proximate cause of the injury or damage, has a cause of action against the permit holder or the permit holder’s servant, agent, or employee for the damages sustained.

 (D) Upon the death of any individual who is a party or may become a party to an action in subsection (C), the action or right of action will survive to or against the individual’s personal representative.

Amend the bill further, by deleting SECTION 1.

Renumber sections to conform.

Amend title to conform.

LUKE RANKIN for Committee.

statement of estimated fiscal impact

Explanation of Fiscal Impact

State Expenditure

This bill enables a person to bring an action against an intoxicated individual; a permitted establishment that sells beer, wine, or liquor; a retailer that sells such beverages; or an agent or employee of a permitted entity that knowingly sells, furnishes, or serves the intoxicated individual whereby the sale, furnishment, or service is the proximate cause of injury or damage to the plaintiff. The bill prohibits the intoxicated individual from recovering damages for injuries suffered by the individual as a result of his consumption of alcoholic beverages, provided that he was of lawful drinking age at the time of the event giving rise to the civil action. The bill also enables a person injured by an underage intoxicated individual to bring an action against the underage individual; a permitted establishment that sells beer, wine, or liquor; a retailer that sells such beverages; or an agent or employee of a permitted entity that knew or should have known that the individual was under the lawful drinking age and was possessing and consuming alcoholic beverages on the premises whereby the sale, furnishment, service, or possession and consumption is the proximate cause of injury or damages to the plaintiff. The bill does allow underage individuals who suffer injury or property damage to bring an action against an alcoholic beverage permit holder or his agent or employee whose knowing sale, furnishment, or service to the individual is the proximate cause of the injury or damages.

Judicial anticipates implementation of this bill may result in a slight increase in the number of civil actions filed in court. However, Judicial intends to use existing General Fund appropriations to manage any modifications in caseloads. Therefore, this bill will have no expenditure impact on Judicial.

State Revenue

The bill may result in a corresponding slight increase fees collected in court due to the increase in civil actions. These fees are distributed to the General Fund, Other Funds, and local funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 15‑3‑800 SO AS TO PROVIDE DEFINITIONS FOR THE SOUTH CAROLINA DRAM SHOP ACT; BY ADDING SECTION 15‑3‑810 SO AS TO PROVIDE THAT AN INDIVIDUAL WHO SUFFERS DEATH, BODILY INJURY, OR PROPERTY DAMAGE BY AN INTOXICATED PERSON HAS A CAUSE OF ACTION FOR DAMAGES AGAINST THE HOLDER OF A PERMIT TO SELL BEER, WINE, OR LIQUOR IF THE PERMIT HOLDER KNOWINGLY SOLD, FURNISHED, OR SERVED ALCOHOL TO THE INTOXICATED PERSON AND THE SALE, FURNISHMENT, OR SERVICE WAS THE PROXIMATE CAUSE OF THE INJURY GIVING RISE TO THE CLAIM; AND BY ADDING SECTION 15‑3‑820 SO AS TO PROVIDE THAT AN INDIVIDUAL WHO SUFFERS DEATH, BODILY INJURY, OR PROPERTY DAMAGE BY A PERSON UNDER THE LAWFUL DRINKING AGE HAS A CAUSE OF ACTION FOR DAMAGES AGAINST THE HOLDER OF A PERMIT TO SELL BEER, WINE, OR LIQUOR IF THE PERMIT HOLDER KNOWINGLY SOLD, FURNISHED, OR SERVED ALCOHOL TO THE PERSON UNDER THE LAWFUL DRINKING AGE AND THE SALE, FURNISHMENT, OR SERVICE WAS THE PROXIMATE CAUSE OF THE INJURY GIVING RISE TO THE CLAIM.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 3, Title 15 of the S.C. Code is amended by adding:

Article 8

South Carolina Dram Shop Act

 Section 15‑3‑800. As used in this article:

 (A) “Alcoholic beverages” means beer, wine, or liquor.

 (B) “Knowingly” or “knowing” means that the permit holder or the permit holder’s server, agent, or employee knew or should have known that the individual to whom he sold, furnished, or served, or who possessed or consumed the alcoholic beverage was intoxicated or not of lawful drinking age. This knowledge would be based on the observations made by the permit holder or their servant, agent, or employee, and those observations must be ones that a reasonably prudent person would make under similar circumstances.

 (C) “Lawful drinking age” means the age of twenty‑one years or older.

 (D) “Permit to sell beer, wine, or liquor by the drink” means any permit issued by the South Carolina Department of Revenue that allows the permitted establishment to sell beer, wine, or liquor on a drink‑by‑drink basis for consumption on the permitted premises.

 (E) “Permit to sell beer, wine, or liquor at retail” means any permit issued by the South Carolina Department of Revenue that allows the permitted establishment to sell beer, wine, or liquor on a retail basis for consumption off the permitted premises.

 (F) “Premises” means the buildings or grounds that are permitted by the South Carolina Department of Revenue for the applicable alcoholic beverage sales. Premises consist of, but are not limited to, any buildings, parking lots, and surrounding areas subject to the direct control of the permit holder and the permit holder’s agents, servants, and employees and used by such parties to conduct the business of the permit holder.

 (G) “Visible intoxication” means a degree of impairment characterized by, but not limited to, the exhibition of the following:

 (1) bloodshot eyes;

 (2) loud and boisterous behavior;

 (3) belligerent, aggressive, or fighting behavior;

 (4) stumbling; or

 (5) slurred speech.

 Section 15‑3‑810. (A) An individual, or any spouse, child, parent, or legal representative of that individual, who suffers personal injury or whose property is damaged by an intoxicated individual has a private cause of action for all actual and exemplary damages against: (1) the intoxicated individual; (2) any holder of a permit to sell beer, wine, or liquor by the drink for on‑premises consumption; (3) any holder of a permit to sell beer, wine, or liquor at retail for off‑premises consumption; or (4) the permit holder’s servant, agent, or employee if the permit holder or the permit holder’s servant, agent, or employee knowingly sells, furnishes, or serves alcoholic beverages to the intoxicated individual and the sale, furnishment, or service is the proximate cause of the injury or damage.

 (B) Upon the death of any individual who is a party or may become a party to an action provided for in subsection (A), the action or right of action will survive to or against the individual’s personal representative.

 (C) Evidence of intoxication in subsection (A), must be based on the totality of the circumstances present at the time of sale, furnishment, or service of the alcoholic beverages to the individual. The evidence must not be speculative. Evidence of intoxication includes, but is not limited to:

 (1) visible intoxication, as defined in Section 15‑3‑800(G);

 (2) a blood alcohol content of eight one hundredths of one percent or greater if obtained contemporaneously to the event giving rise to the civil action;

 (3) retrograde extrapolation performed by a chemist or toxicologist demonstrating intoxication at the time of sale, furnishment, or service and the opinion of such chemist or toxicologist as to the individual’s likely physical appearance, demeanor, or behavior at the time of sale, furnishment, or service; or

 (4) the permit holder or the permit holder’s servant’s, agent’s, or employee’s knowledge that the individual was intoxicated based on the number of alcoholic beverages served to the individual during a specific period of time; or the permit holder’s, his servant’s, agent’s, or employee’s knowledge of the individual’s consumption of alcoholic beverages in other settings prior to the individual’s entry onto the permit holder’s premises or the number of alcoholic beverages consumed by the individual during a specific period of time, both on the permitted premises, and if applicable, off the permitted premises.

 (D) Nothing contained in this section authorizes the intoxicated individual or their estate to recover from the permit holder or the permit holder’s servants, agents, or employees for injuries or damages suffered by the intoxicated individual as a result of his consumption of alcoholic beverages, provided that the individual was of lawful drinking age at the time of the event giving rise to the civil action.

 Section 15‑3‑820. (A) An individual, or any spouse, child, parent, or legal representative of an individual, who suffers personal injury or whose property is damaged by an individual under the lawful drinking age has a cause of action for all actual and exemplary damages against: (1) the individual under the lawful drinking age; (2) any holder of a permit to sell beer, wine, or liquor by the drink for on‑premises consumption; (3) any holder of a permit to sell beer, wine, or liquor at retail for off‑premises consumption; or (4) the permit holder’s servant, agent, or employee, if the permit holder or the permit holder’s servant, agent, or employee knowingly sells, furnishes, or serves alcoholic beverages to the individual under the lawful drinking age or the permit holder or the permit holder’s servant, agent, or employee knew or should have known that the individual under the lawful drinking age was possessing and consuming alcoholic beverages on the permitted premises, and the sale, furnishment, service, or possession and consumption is the proximate cause of the injury or damage.

 (B) Upon the death of any individual who is a party or may become a party to an action in subsection (A), the action or right of action will survive to or against the individual’s personal representative.

 (C)(1) An individual not of lawful drinking age who suffers personal injury or whose property was damaged when the knowing sale, furnishment, or service of an alcoholic beverage by the holder of a permit to sell beer, wine, or liquor by the drink or at retail or the permit holder’s servant, agent, or employee was the proximate cause of such injury or damage, has a cause of action against the permit holder or the permit holder’s servant, agent, or employee for damages sustained.

 (2) An individual not of lawful drinking age who suffers personal injury or whose property was damaged when the holder of a permit to sell beer, wine, or liquor by the drink or at retail or the permit holder’s servant, agent, or employee knew or should have known that the individual was in possession of and was consuming alcoholic beverages and such possession and consumption was the proximate cause of the injury or damage, has a cause of action against the permit holder or the permit holder’s servant, agent, or employee for the damages sustained.

 (D) Upon the death of any individual who is a party or may become a party to an action in subsection (C), the action or right of action will survive to or against the individual’s personal representative.

SECTION 2. This act takes effect upon approval by the Governor.

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