

SENATE BILL NO. 107

INTRODUCED BY S. FITZPATRICK

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO CIVIL LIABILITY FOR INJURIES INVOLVING ALCOHOL OVERCONSUMPTION; PROVIDING THAT STATUTORY LAW PRECLUDES A CLAIM UNDER ANY OTHER THEORY OF RECOVERY OR COMMON LAW CLAIM FOR INJURY OR DAMAGES INVOLVING THE ALCOHOL CONSUMER; CLARIFYING LAWS RELATED TO THE SERVING OF ALCOHOL CONSUMERS; PROVIDING CONSIDERATIONS REQUIRED OF A JURY OR TRIER OF FACT; PROHIBITING CERTAIN CONSIDERATIONS BY A JURY OR TRIER OF FACT; REVISING WHO MAY BRING A CIVIL ACTION; REVISING NOTICE REQUIREMENTS; REVISING PUNITIVE DAMAGE CONSIDERATIONS; AMENDING SECTION 27-1-710, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 27-1-710, MCA, is amended to read:

**"27-1-710. Civil liability for injuries involving alcohol consumption.** (1) The purpose of this section is to set statutory criteria governing the civil liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage.

(2) Except as provided in this section, a person or entity that furnishes alcoholic beverages may not be found civilly liable under any other statute, theory of recovery, or common law claim for injury or damages arising from an event involving the person who was served or who consumed the beverage.

~~(2)(3)~~ ~~Except as provided in 16-6-305, a~~ A person or entity furnishing an alcoholic beverage may not be found civilly liable for injury or damage arising from an event involving the consumer wholly or partially on the basis of a licensing status under Title 16 or a provision or a violation of a provision of Title 16.

~~(3)(4)~~ Furnishing a person with an alcoholic beverage is not a cause of, or grounds for finding the furnishing person or entity liable for, injury or damage wholly or partly arising from an event involving the person who consumed the beverage unless:

1 (a) the consumer was under the legal drinking age and the furnishing person knew that the  
2 consumer was underage or did not make a reasonable attempt to determine the consumer's age;

3 (b) the consumer was visibly intoxicated when furnished the alcoholic beverage; or

4 (c) the furnishing person forced or coerced the consumption or told the consumer that the  
5 beverage contained no alcohol.

6 ~~(4)(5)~~ A jury or trier of fact may consider the consumption of an alcoholic beverage in addition to the  
7 sale, service, or provision of the alcoholic beverage in In determining the cause of injuries or damages inflicted  
8 ~~upon~~ on another by the consumer of an alcoholic beverage, in addition to other admissible evidence, a jury or  
9 trier of fact shall consider:

10 (a) the consumption of the alcoholic beverage;

11 (b) the actions of the consumer;

12 (c) the negligence of the person allegedly harmed by the consumer;

13 (d) the visible and audible intoxication indicators actually observed by the person furnishing the  
14 alcoholic beverage to the consumer, including but not limited to bloodshot eyes, loud and boisterous behavior,  
15 fighting behavior, stumbling, and slurred speech; and

16 (e) independent intervening cause or multiple causes.

17 (6) Because a furnishing person or entity can perceive only visual or audible indicators of  
18 intoxication, when determining liability under subsection (4)(b), a jury or trier of fact may not consider:

19 (a) a hypothetical blood alcohol level in any way to impute that the server observed visibly  
20 intoxicated behavior of the consumer prior to service;

21 (b) an actual blood alcohol level in any way to impute that the server observed visibly intoxicated  
22 behavior of the consumer prior to service;

23 (c) the signs of visible intoxication displayed by the consumer after the furnishing of the alcoholic  
24 beverage;

25 (d) the conduct of the furnishing person or entity after the furnishing of the alcoholic beverage; or

26 (e) whether the furnishing person or entity holds special events, alcohol specials, happy hours, or  
27 similar events or activities.

28 ~~(5)(7)~~ A civil action may not be brought pursuant to subsection ~~(3)~~ (4) by:

1           (a) a passenger over 18 years of age in the consumer's car or by the passenger's estate, legal  
2 guardian, or dependent; or

3           (b) the consumer or by the consumer's estate, legal guardian, or dependent unless:

4           ~~(a)~~(i) the consumer was under the legal age and the furnishing person knew or should have known  
5 that the consumer was ~~under age~~ underage; or

6           ~~(b)~~(ii) the furnishing person forced or coerced the consumption or told the consumer that the  
7 beverage contained no alcohol while knowing that it did contain alcohol.

8           ~~(6)~~(8) A civil action may not be commenced under this section against a person or entity who  
9 furnished alcohol to the consumer unless the person bringing the civil action provides notice of an intent to file  
10 the action to the person or entity who furnished the alcohol by certified mail within 180 days from the date of  
11 sale or service. The civil action must be commenced pursuant to this section within 2 years after the sale or  
12 service.

13           (9) Notice made pursuant to subsection (8) must include the date, time, and circumstances of the  
14 event involving the consumer along with the alleged visual or audible indicators of visible intoxication observed  
15 by the furnishing party prior to service to the consumer. The person providing the notice must have a  
16 reasonable basis in law and fact that an exception described in subsections (4)(a) through (4)(c) has occurred  
17 before sending the notice.

18           ~~(7)~~(10) In any civil action brought pursuant to this section, the total liability for noneconomic damages  
19 for all claimants may not exceed \$250,000 for each event.

20           ~~(8)~~(11) In any civil action brought pursuant to this section, the total liability for punitive damages may  
21 not exceed \$250,000. Service to a visibly intoxicated consumer is not enough to assess punitive damages  
22 against the person or entity furnishing the alcoholic beverage to the consumer. Conduct must be shown that  
23 meets the criteria in 27-1-221.

24           ~~(9)~~(12) Evidence of intentional or criminal activity by a person causing injury in connection with any  
25 event or injury commenced pursuant to this part is admissible in any action brought pursuant to this section."  
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27           NEW SECTION. Section 2. Saving clause. [This act] does not affect rights and duties that matured,  
28 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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