**ALLOWING UNDERAGE DRINKING AT GRADUATION PARTY**

**CREATES LIABILITY**

**BY: WILLIAM G. MORRIS, ESQ.**

Liability of a person providing alcohol to another for injuries caused by intoxicated behavior is not uniform among the states. Some states provide strict liability for businesses and business owners. Others provide liability only when serving someone who is intoxicated. Many states differentiate between the social host and commercial business.

Florida’s legislature has adopted a number of statutes addressing alcohol providers. Some let a social host off the hook while others impose liability. This is the time of year when graduation parties abound. Some parents look the other way while young guests drink or even provide alcohol, not thinking of the consequences. When someone gets hurt, liability can be substantial.

Section 768.125 Florida Statutes addresses alcohol. The statute provides that a person who sells or furnishes alcoholic beverages to a person of lawful drinking age does not thereby become liable for injury or damage caused by or resulting from intoxication of the person. Liability attaches if the person served is not of lawful drinking age or the server knows the person served is habitually addicted to the use of alcoholic beverages. The statute is primarily directed toward bars and restaurants.

Florida’s Supreme Court has confirmed that the carveout for liability for serving someone habitually addicted to alcohol not of lawful drinking age does not create liability for social hosts and is limited to commercial vendors. The liability for a bar or restaurant can be swift and substantial. Violating the statute is negligence per se, which means anyone injured due to the intoxication of a minor served by a bar or restaurant can sue the bar or restaurant providing the alcohol. If the alcohol provider’s actions are particularly heinous, the injured party might even get punitive damages. Even one drink can expose the provider to liability. But, Section 562.11 Florida Statutes allows bars and restaurants to escape liability if they can establish that a minor provided false evidence of legal age.

Even though social hosts are off the liability hook when serving drinks, a social host can still be liable when someone gets hurt and injury is due, at least in part, to intoxication. In one case, a social host was liable when the host of an intoxicated man abandoned him while he was helpless by the pool and he drowned. The social host’s claim to immunity due to status as a social host did not protect her from liability for the manner in which she “took care of” the intoxicated man.

Florida’s legislature also adopted an “open house party” statute. Section 856.015 Florida Statutes prohibits anyone having control of a residence from allowing an open house party if any alcoholic beverage or drug is possessed or consumed at the residence by any minor and the person knows that an alcoholic beverage or drug is in possession of or being consumed by a minor and the person fails to take reasonable steps to prevent possession or consumption of the alcoholic beverage or drug.

Violation of the statute is a misdemeanor of the second degree. If violating the statute contributes to serious bodily injury or death to the minor or if the minor causes or contributes to serious bodily injury or death to another, violation is upgraded to a first-degree misdemeanor

Violation of the statute is negligence per se, that means an injured person does not have to prove negligence. The host will be defending the amount of damages and maybe can argue the injured person was also negligent to reduce liability. The homeowners’ insurance may deny coverage on the basis that the risk was not insured or serving alcohol to a minor is a statutory violation.

Graduation parties certainly qualify as open house parties. Parents hoping to help their kids have a great time celebrating graduation, be forewarned. Providing or allowing alcohol or drugs at these parties creates both criminal and civil liability. Providing a good time could be a lot more costly than the parent planned.

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