



## VFW POST INSURANCE PROGRAM

P.O. Box 410679, Kansas City, MO 64141-0679

Insurance Program Administered By Lockton Risk Services

### LIQUOR LIABILITY AS IT PERTAINS TO VFW POSTS

#### **Purpose**

The purpose of this paper is to outline the various governing legal requirements (both dram shop statutes and common law principles) regarding the service of alcoholic beverages by VFW Posts. It is designed to help Posts answer this question: Should we purchase separate Liquor Liability Coverage or can we depend on Host Liquor Coverage provided by the general liability policy.

#### **General Facts Regarding Service of Alcohol**

The service of alcohol to others, whether one is in the business of serving alcohol or not, is viewed by all states as a serious responsibility. All states have established laws regarding the requirement of alcohol or liquor licenses for those selling and sometimes those serving alcohol. Many states have enacted dram shop laws. Those statutes govern the responsibilities of establishments serving alcohol as well as define the rights of the consumer. In other states common law principles govern the standards that apply to serving alcohol standards in their state.

#### **Dram Shop Acts or Statutes**

Typically, a dram shop statute exists to permit lawsuits against licensed establishments that irresponsibly serve alcohol to intoxicated persons and minors. However, the particular facts of a case can also help establish the basis for lawsuits against a person or entity other than licensed purveyors.

There is also wide variation in the degree of responsibility dram shop statutes place on the establishment. Some allow the service of alcohol to a minor or intoxicated person to be *evidence of negligence* or *evidence of the lack of reasonable care* that may be used to establish liability. Others define such service as *negligence per se*, which means that the service of alcohol to minors or intoxicated persons alone will establish liability.

The following is a list of the states that have some sort of dram shop act in effect:

Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Wisconsin and Wyoming.



## **Common Law**

The remaining states and the District of Columbia do not have dram shop acts at this time. In these states common law principles are followed in establishing the legal claims against establishments that serve alcohol. Since claims in these states are not governed by a statute pertaining specifically to the service of alcohol, the decisions vary greatly from state to state and even case to case.

Most dram shop statutes require that the dram shop law is the sole remedy for liquor liability actions. These states have taken the position that it is better left to the legislature to govern liquor liability cases rather than leave it to the courts to apply Common Law principles. However, some dram shop states have issued rulings allowing the application of Common Law principles in place of, or in addition to, the dram shop regulations. It suffices to say that there is much variety in the application of Common Law principles as they apply to liquor liability. Because of the variations from state to state, it is not possible to provide any clear-cut rules.

## **Insurance Coverage**

The insurance coverage provided by the VFW Post Insurance Program can provide coverage to insured VFW Posts in one of two ways. The first is through the purchase by the Post of separate Liquor Liability Coverage. This is available for qualifying Posts and a separate premium charge is made for the exposure. The second manner in which liquor liability coverage can be provided is through what is usually called Host Liquor Coverage.

The basic distinction between the two types of coverage is made based on a couple of factors. 1) Does the Post have a liquor license from the applicable state and is the Post in the business of selling or serving alcohol, or 2) Is the Post only supplying alcohol at functions where the Post is not deemed to be in the business of selling or serving alcohol.

## **Other Insurance Coverage Issues**

The general liability policy provided by the VFW Post Insurance Program contains requirements, clarifications and exclusions pertaining to liquor liability coverage. Any claim made against a Post will be subject to the application of these clauses as well as to the particular matters relating to the individual claim. There is an exclusion in our general liability policy (and other general liability policies as well) pertaining to the service of alcohol. Ours states:

### *2. Exclusions*

*This insurance does not apply to:*

#### *c. Liquor Liability*

*"Bodily injury" or "property damage" for which any insured may be held liable by reason of:*

*(1) Causing or contributing to the intoxication of any person;*



- (2) *The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol, or*
- (3) *Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.*

*This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.*

Thus, if the Post is in the business of selling, serving or furnishing alcoholic beverages, coverage for that activity is excluded from the general liability policy. On the other hand, if the Post is not in the business of selling, serving or furnishing alcoholic beverages, the exclusion would not apply and the Host Liquor Coverage provided under the policy may be available. This coverage is similar to coverage provided under a homeowner's policy for liquor liability, if any, resulting from serving alcohol to social guests.

If the Post is "in the business of" selling, serving or furnishing alcoholic beverages, then it needs to consider obtaining separate Liquor Liability Coverage.

The separate Liquor Liability Coverage Part has its own terms and conditions which will not be repeated here. However, there are a couple of Exclusions and Conditions to keep in mind:

*Exclusion 2. d. Liquor License Not in Effect*  
*"Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is suspended or after such license expires, is cancelled and revoked.*

While this exclusion applies to those Posts that have had a liquor license revoked or the license has lapsed, it could also apply to Posts that do not have a license where one is required. This would have particular relevance to a Post that stated in the insurance application that it had an alcohol license when, in fact, it did not. Insurers rely on the accuracy and completeness of information from the insured.

### **Is a Post in the Business of Selling/Serving Alcohol?**

As in dram shop acts, there is variance amongst the states as with respect to whether a Post is in the business of selling and serving alcohol. Some states, such as Mississippi, Missouri, Montana and Tennessee (*this list is not meant to be exhaustive*), have specific statutory provision stating their dram shop laws are not intended to extend to social hosts. However, in other states, there are court cases in which this rule has not been followed. e.g., California has ruled that a license is required of any server of alcohol unless the server establishes that there is 1) no sale of alcohol, 2) the premises is not open to the public, and 3) the premises is not maintained for the purpose of dispensing alcohol. Thus, what the Post may regard as a social host situation might, depending on the facts, be construed as activities that should require a license.



The states of California, Iowa, North Carolina, Ohio, Pennsylvania, Vermont and Wyoming (*this list is also not meant to be exhaustive*) have specifically restricted dram shop statutes to licensees. Thus, a social host, or any other entity not required to have a license in these states would not necessarily be held to the rules and guidelines of the dram shop statutes, (but, as suggested above with respect to California, some states construe broadly the definition of the entities that are required to have a license).

### **Should a Post Buy Separate Liquor Liability Coverage or Rely on Host Liquor Coverage?**

The answer to this question is not always clear and is often complicated. However, there are certain guidelines that seem to help. e.g., It is clear that each state intends to require that any entity have an alcohol license if it is in the business of serving alcohol. As this question pertains to VFW Posts, the following guidelines are suggested:

- 1) Any Post that purchases alcohol and sells it to its members or to guests for profit or other economic gain should obtain a license. In this case, the Post should also purchase separate Liquor Liability Coverage to eliminate doubts concerning whether Host Liquor Coverage would apply.
- 2) Any Post that has a separate part of the premises that is set up for the regular service (whether for sale or not) of alcohol to its members or guests should obtain a license if a license is required by the applicable state, but should purchase Liquor Liability Coverage regardless of whether that state requires a license.
- 3) Any Post that serves alcohol and is open to the public should obtain a license if a license is required by the applicable state, but should purchase Liquor Liability Coverage regardless of whether that state requires a license.
- 4) A Post that does not allow alcohol to be sold or served on its premises or at its functions would not be required to obtain a license nor would it need to purchase separate Liquor Liability Coverage. Host Liquor Coverage would suffice.
- 5) A Post that does not have any of the exposures listed under points 1) through 3) but does allow alcohol to be served at functions such as weddings held at the Post but does not exercise any control over the serving of alcohol, would probably not need a license nor would it need to purchase separate Liquor Liability Coverage. Host Liquor Coverage would suffice. This is not the case if Post volunteers or employees are dispensing alcohol as part of the service provided in connection with the use of the hall.

### **Conclusion and Suggested Actions**

- 1) Each VFW Post should consult an attorney and/or the applicable state alcohol commission or board to determine whether it should obtain an alcohol or liquor license.
- 2) Each VFW Post should consult an attorney to determine if it should purchase separate Liquor Liability Coverage rather than relying on the Host Liquor Liability Coverage afforded under the general liability policy.

- 3) Each Post should use the points provided above to help determine its need for license and/or Liquor Liability Coverage.
- 4) Each Post should require its commander, quartermaster and all bartenders and other servers of alcohol to review the VFW Post Insurance Program Alcohol Service Packet.
- 5) Each Post should obtain the services of a professional alcohol training service such as TIPS or TAMS.
- 6) For Posts not requiring separate Liquor Liability Coverage, no additional premium would be charged to provide the currently provided Host Liquor Liability Coverage.

**For questions regarding this information, please contact the  
VFW Post Insurance Program at 1-800-829-8390.**

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