

Confronting the liquor liability dilemma

by James E. Peters

During the past two years, Restaurant Business Magazine has provided penetrating commentary on the growing concern about dram shop liability and the changing public attitudes toward the use of alcoholic beverages. Will drunk drivers drive you out of business? (October 1983); The drunk driving dilemma: What are your options? (November 1983); Are we bartenders or babysitters? (May 1984); and The lower proof restaurant (October 1984) are articles tracing the evolution of these changes and the potential impact on the hospitality industry.

Four forces are coming to bear on the sale of alcoholic beverages by the industry: the economy, the public health and safety movement, legal liability, and government intervention are making it more difficult to maintain a profitable business.

What is the problem?

In recent months, increase in dram shop liability and the diminishing availability of insurance are the issues of greatest concern to most operators. Bar and restaurant owners are left vulnerable, with no protection other than the assets of their businesses.

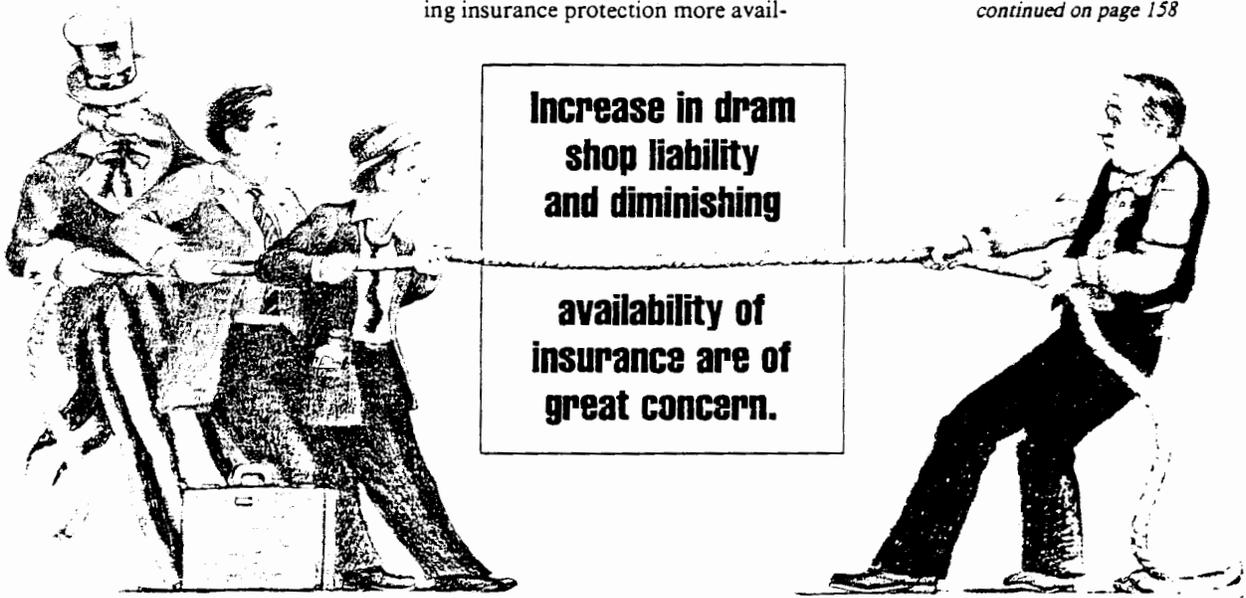
The industry has been reacting in many ways. Server training programs are available from most national and state trade associations, designated driver and dial-a-ride programs are in place providing alternative transportation, and there is increased promotion of low and non-alcohol beverages. Clear standards are developing on responsible beverage service practices.

Simultaneous to these changes, legislation is being introduced which will create "insurance pools," making insurance protection more avail-

able. In Minnesota, where there's both statutory liability and mandatory dram shop insurance, efforts to create the state's own assigned risk pool were defeated by insurers in the courts. At present, Minnesota is "still fighting to create the pool and no new insurers are coming into the market," says David Corum of the state's Department of Commerce and Economic Development.

In Massachusetts, legislation is pending for creating a joint underwriters association, similar to that for medical malpractice. Originally, a dram shop statute with a \$500,000/\$1 million "cap" on liability was attached to the bill. Strong lobbying by trial lawyers and citizen groups defeated the dram shop statute, while still establishing an insurance pool with maximum coverage of \$500,000/\$1 million.

According to Frank Mancini of
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the Independent Insurance Agents Association. "Rates have not been set, but they are expected to be high, and will probably continue to rise for the next few years until a history is established to more accurately define risk to the insurers. All losses will be passed on to the bars and restaurants through premiums. Unless actions are taken to change tort law, and settlements continue to be large, the situation will not change very much. Insurance will be unaffordable to most small operators, and losses over the cap will have to be paid by the business."

A significant issue is now emerging. A large sector of the hospitality industry is developing new and responsible beverage service practices. The legislation being introduced for dram shop and insurance is unresponsive to these new practices. Insurance will continue to be costly or unavailable and courts are not being educated as to what constitutes realistic and responsible business practices. This will create a disincentive for the industry to continue these new practices, which often contradict traditional marketing strategies to increase sales and profits. Government will become more involved,

increasing regulation (as with happy hours) and taxes (as with excise taxes). The vicious downward cycle will continue to escalate.

What is the "true problem?" Is it dram shop liability? Unavailability of insurance? Or are these symptoms of a larger problem?

Broadening the perspective, four basic "influencing forces" on consumer demands emerge. The hospitality industry responds to these forces by providing products and services through four basic "business practices." Consumer behavior is thus determined by the strength of the "influencing forces" and the emphasis on each of the "business practices." Figure 1 shows the way the system operates.

Economics

Sales and profits are the prime motivators in business. During the past two decades the restaurant industry witnessed rapid growth and development. The sale of alcoholic beverages fueled much of this growth, and the attention paid to "social responsibility" in the promotion of these products was minimal.

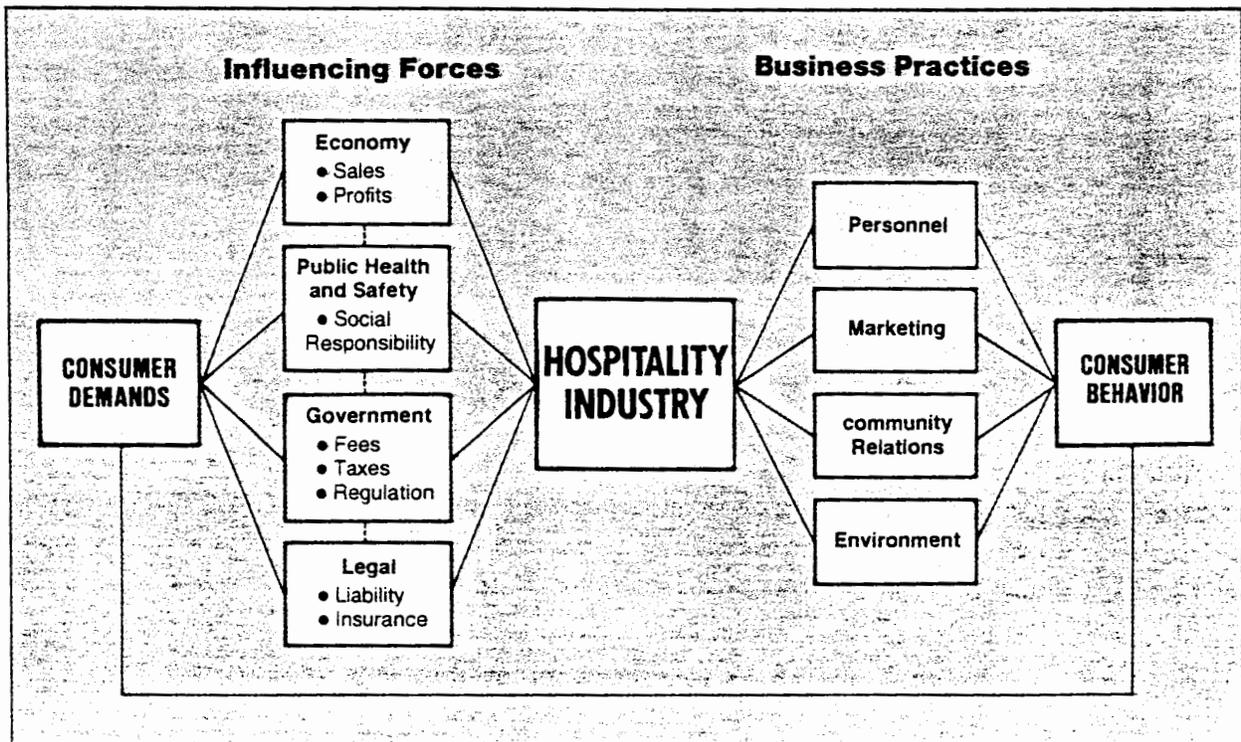
According to Dr. Larry J. Rosenbert of the School of Management at

the University of Massachusetts, this commonly held position is shortsighted on three counts: "First, underlying consumer dissatisfaction may build until it turns against the marketer. Second, the government may impose yet another layer of regulation which impedes marketing innovation or escalates costs to the consumer. Third, firms run risks when their actions encourage consumer advocates and professional groups to appeal to consumers or the government."

Public health and safety

There are many indications that the public health and safety movement will continue to grow and influence business practices. The "me" generation of the '70s is becoming the "we" generation. The current administration is placing social welfare programs back into the local community. As the baby boom generation's children mature, there will be increased emphasis on the family and community lifestyle. Parents of the baby boomers are living longer, and both groups will become less mobile as the aging process limits activities. All of these factors will

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have a significant impact on marketing practices of the future.

In addition, alcohol consumption is declining, fewer people are smoking, fitness centers continue to expand, and the American diet is moving from processed, high fat foods to more natural, low fat foods.

Groups supporting this new health and social responsibility movement are becoming more visible and influential. The basic platform they promote—long, healthier, and more fulfilling lives—is a difficult one to resist. The hospitality industry must anticipate these trends if it is to continue to survive and prosper.

Legal considerations

Currently, the strongest negative force influencing the hospitality industry is dram shop liability. The basic philosophy is that business has a duty to protect its customers as well as members of the general public. In colonial days, the tavern keeper was often second in respect and influence to the town's minister. As the industry expanded, and decisions about business practices were made in national corporate headquarters, the responsibility of individual establishments within the community was often neglected.

Government influence

Government uses taxes, fees, and regulations to influence business practices of industry. The sustained concern about alcohol abuse and drunk driving has led to such regulations as the ban on happy hours, increase in the drinking age, and an expansion of dram shop liability.

The recent efforts to take alcohol advertising off television and radio, increases in excise taxes, and control over hours of sale of alcoholic beverages are further examples of government's infiltration.

Developing responses

Positive and long-lasting solutions can only be developed by understanding each of the factors in the formula, and by defining appropriate "business practices" which satisfy the "influencing forces" while

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meeting consumer demands.

It is better to anticipate the positive influencing forces of economy and public health and safety than react to the negative forces of legal and government intervention. Establishing acceptable industry standards for responsible business practices in the service of alcoholic beverages is the first step in lobbying legislators and insurance companies to reduce legal and governmental pressure.

Personnel practices

A key element entering into dram shop lawsuits is the personnel practices of the bar or restaurant. Just as business has a social responsibility to its customers, it has similar responsibility to its employees. The "paper cup" theory of management—use them up and throw them away—will have to be replaced with practices which demonstrate respect and recognition for responsibility, maturity, knowledge and skills. Although server training in alcohol awareness is an important step in defining responsible personnel practices, it represents only one part of a comprehensive approach. Consider the methods of selecting and promoting employees, on-going training and staff meetings, clear and specific written policies and procedures, and fair compensation.

Marketing methods

The recent movement to ban happy hours serves as an example of efforts to establish standards on acceptable promotion of alcoholic beverages. It is necessary to develop

advertisements and promotions which do not focus on drinking as a primary activity.

In addition, expanding product offerings to include low and nonalcohol beverages, making food available during all hours of operation, and creative marketing of these products and services will be the challenge for the '80s.

The use of advertising, menus, table tents, displays, and signs to emphasize consumer responsibility can also be important methods to balance liability. The designated driver program is an example of this type of campaign.

Community relations

As the overall welfare of the community becomes more important in our society, the hospitality industry will have to become more active in local politics and activities.

The common practice of management being "married" to the job will have to be modified to include participation in community activities. Business has to be sensitive and responsive to the concerns of local citizens.

Environmental factors

There is growing research to support the theory that environmental factors can influence drinking behavior. Decor, lighting, sound, seating arrangements, and the general atmosphere of the establishment can promote either irresponsible or responsible drinking decisions.

Availability of alternative activities such as games, entertainment, "social" rooms conducive to group activities, and dancing are important to demonstrate responsible business practices.

Beyond server training

In 1899 a group of educators, lawyers, clergymen described the saloon as "the workingman's club in which he finds more of the things that approximate luxury in his home. It is a center of learning, books, papers, and lecture hall to them. It is the clearing house for common intelligence, the place where their philoso-

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phy of life is worked out, and their political and social beliefs take their beginnings.”

It is this philosophy, expressing the importance of the tavern/bar/restaurant/club as an institution in our society, which must be expanded and emphasized if the pressure of legal and government intervention is to be reduced. This can only be accomplished if the hospitality industry joins together to define standards which legitimately support this philosophy.

The fragmentation of the industry has left it weak and vulnerable. Hotels, restaurants, bars, clubs, taverns, package and convenience stores, producers, wholesalers, and distributors are distinctively different, yet also face very similar problems. If all were united, and efforts more focused, the industry would be more effective in implementing change.

Four years ago when “server training” was a new concept, its proponents viewed it as the panacea to

end dram shop liability. Its opponents viewed it as having the complete opposite impact—creating greater liability. It is still too early to adequately calculate the number of lives being saved because servers are more aware and responsible in how they serve alcoholic beverages. Yet each life saved means one less potential lawsuit.

Although a promising strategy, server training has not totally solved the liability problem. In fact, the massive movement to develop programs has led to considerable duplication of efforts and waste of resources. A growing competition and minimal cooperation with nonindustry groups is inhibiting any organized effort to lobby for fair and equitable legislation.

A small group of retailers recognized this fragmentation, and organized themselves as Beverage Retailers Against Drunk Driving (BRADD). In a united effort, this sophisticated information gathering network will anticipate trends, for-

mulate strategies which address the concerns of all groups without necessarily harming the industry, and share these strategies with legislators and key industry decision makers.

Social responsibility is a negligible and affordable cost industry must pay. As an industry grows, society’s tolerance for the neglect of this responsibility diminishes. The hospitality industry faces one of its greatest challenges: the past four years show how responsive it can be. What will the next four years bring? It will be the sincerity of commitment to change which will ultimately be accepted and recognized as solution to the “true problem.”

Subsequent articles will analyze current and pending dram shop legislation.

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