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# Liquor Liability Costs Shake And Stir SC's Hospitality Industry

By **Jennifer Mandato**

Law360 (June 6, 2024, 5:01 PM EDT) -- As the South Carolina General Assembly returned to session Wednesday, grassroots organizations advocating for small businesses gathered at the State House for a press conference urging elected officials to reform legislation burdening restaurants, bars and music venues with increasingly high costs of liability insurance.

About 12 state representatives and 20 business owners showed support at the press conference, and another 1,000 signatures have been garnered in just a week since a petition was started in support of bar, pool hall and tavern owners, Chris Smith, creator of the South Carolina Bar and Tavern Association told Law360. Advocacy organizations intend to deliver the petition to the governor's office and general assembly leadership at the next session scheduled for June 18.

"Small businesses across the state are being forced to shutter their doors and close their businesses due to exorbitant insurance rates caused by the State's joint and several liability laws," a coalition of business owners and elected officials said in an end-of-May letter to South Carolina House and Senate leadership and the governor.

A 2017 state law mandated that businesses carry at least \$1 million in liquor liability insurance, and while the coverage is sensible from a public policy perspective in the event of a horrific accident, experts say premiums have skyrocketed. The status quo has left establishments unable to operate and deterred carriers from joining the market, leaving industry players with a pessimistic outlook on the future of the market.

Since 2017, the liquor liability subline has become "extremely unprofitable" in South Carolina, according to the state's 2024 Status Report on the Commercial Liability Insurance Market. Over the six years observed, the industry lost an estimated 91 cents per \$1 of premiums earned. The amount of earned premium, however, has more than doubled from 2017 to 2022, according to the report.

## Current Market Troubles

Russ Dubisky, executive director of the South Carolina Insurance Association, told Law360 that venues that serve alcohol by the drink, are open past 5 p.m. and have a low percentage of food sales when looking at total gross revenue are "really feel[ing] the squeeze" when it comes to availability and affordability of coverage.

Grocery stores, convenience stores and other establishments with liquor liability insurance and a license to sell alcohol are not seeing the same pressures, Dubisky said.

When comparing South Carolina to its neighboring states, the Palmetto State is an outlier in terms

of losses such as claims, lawsuits and verdicts, he said.

"We're an outlier in frequency and to some degree, severity, that's both the number of insurance claims that we get and lawsuits that we see and then also what it takes ultimately to resolve those issues in terms of the dollar amounts that are paid out," Dubisky said. "South Carolina is outpacing other states in the region, prompting a downward shift in the number of carriers who offer this type of coverage along with rate increases and an overall significant rise in premiums."

Christian Stegmaier, Chair of Collins & Lacy PC's Retail & Hospitality Practice Group, also emphasized that the dramatic increase in liquor liability claims has caused a higher rate of settlements from carriers and noted that settlements are often for limits.

In an effort to cover the increased risk and settlements, carriers have raised premiums for this type of coverage, Stegmaier told Law360.

The increased risk has also prompted more stringent underwriting practices, with carriers often requiring more detailed risk assessments and stricter eligibility criteria, Stegmaier said.

Further, any experience on an insured's record is often making them uninsurable in today's market and some carriers are now refusing to cover certain higher risk establishments. These include establishments that have a younger demographic, are alcohol focused and have minimal food sales, such as college bars and gentlemen clubs, that may have a history of alcohol-related claims filed against them.

This perfect storm of risk factors, coupled with the rising costs of defending liquor liability claims, has led carriers to withdraw from the liquor liability market in South Carolina, Dubisky and Stegmaier said.

According to the 2024 status report, the number of insurance groups participating in this market has remained "relatively flat" since 2019, hovering at around 47 groups.

Finding ways to bring more carriers into the market is something the South Carolina Insurance Association would love to see, Dubisky said.

"Competition, in my opinion, is the best arbiter of rate," he told Law360. "Number one, it can bring some of the pricing relief, but also it gives more options for consumers too."

To bring more competition into the space, however, would require that loss trends become more predictable with clearer parameters set around when late-night entertainment-type venues with low food sales become responsible for damages, Dubisky said.

In 2022, the combined ratio, or the financial metric used by carriers to measure profitability, was 290%, according to the report. In other words, carriers expect to ultimately spend \$2.90 in claims and expenses for every dollar of premium they earned that year.

In comparison, Georgia broke even with its liquor liability estimated combined ratios, Florida operated at an 81% estimated combined ratio and North Carolina operated at 62%.

## **Turning To Tort Reform**

Experts pointed to a few factors as to what sets South Carolina apart from neighboring states, including the state's lack of codified dram shop legislation as it relates to civil liability and the issues of joint and several liability.

A dram shop is a commercial establishment that sells alcoholic beverages and the legislation known as dram shop statutes or laws are intended to establish liability for the harmful acts of intoxicated customers.

As it stands, South Carolina's statutes are all case law-made for civil actions. The state supreme court ruled in the 2010 decision of Hartfield vs. Getaway Lounge that a permit holder has liability if they knew or should have known that a person was overserved, Stegmaier said.

The challenge with the "knew or should have known" standard is that it requires bartenders and servers to become "mind readers," he told Law360. If a patron comes into a venue appearing to be fine, has half a glass of wine and then gets into a "monstrous wreck" after leaving, that patron has just roped the venue into the chain of permit holders that sold alcohol despite the venue not realizing the patron had been drinking before entry.

Codifying these statutes to include visible intoxication standards adds a layer of protection to the permit holder as establishing that a server sold alcohol to someone who was already visibly intoxicated then becomes crucial in suing a venue under Dram Shop laws, Stegmaier said.

Joint and several liability should also be reformed, ensuring that each party in a lawsuit is only responsible for their proportionate share of the damages, Stegmaier and Dubisky said.

Current liability standards create "an incentive to pursue the deep pocket defendant, which is going to be the bar almost every time," Dubisky said.

In South Carolina, joint and several liability ordinarily means that if there are multiple people who could be at fault, including the plaintiff, a defendant typically pays their own pro rata share based on jury-based percentages. An exception arises, however, in cases involving alcohol and even if a party is only found to be 1% liable, they may end up on the hook for the entire verdict, Stegmaier said.

Naturally, an exception such as this creates "an existential crisis" for permit holders, he told Law360. However, legislative changes on this issue are unlikely because of the inner political workings of the state senate, he said.

The plaintiff's bar in South Carolina is very well organized and has a very active lobby in the General Assembly, he shared.

"The plaintiff's bar treats insurance in South Carolina like it's this ever-lasting, eternal resource, but there's such a thing as running out of insurance," Stegmaier said. The plaintiff bar's viewpoint could snowball quickly and impact the market to the point where only bigger chains with substantial self-insured retention will be able to afford to operate rather than local small businesses that are fixtures of the community, he said.

With so many trial lawyers and personal injury lawyers serving as legislators, they directly benefit from the bill mandating that venues serving alcohol beyond 5 p.m. maintain a \$1 million liquor liability policy, Smith added.

Dubisky emphasized that there isn't a "silver bullet" to fixing the issues that plague this market, but that carriers remain open-minded and willing to talk about possible solutions with lawmakers.

### **The Delicate Balance Of Third-Party Victims, Carriers and Venue Owners**

When evaluating the troubled liquor liability market, it's not lost on experts that multiple victims exist, including the third parties injured by over-served patrons.

Stegmaier noted that it's crucial to protect the rights of those third parties, while also ensuring that businesses can operate sustainably and that the market remains viable.

Asheton Reid, community outreach director of SC Venue Crisis, a grassroots organization pushing for liquor liability reform shared that SC Venue Crisis remains committed to showing support for stricter DUI laws to hopefully decrease dangerous drivers and, in turn, reduce the number of victims.

"If a venue is truly knowingly over-serving someone, yes, they should be held accountable, but there is a lot of personal responsibility that goes along with that as well," she said. "We just try to be as sensitive and respectful as possible on the topic."

Stegmaier agreed that compromise is crucial in any effort to remedy the market, adding that if the plaintiff's bar were to continue to have its way, it's not a sustainable process.

Dubisky shared that he's cautious not to make it sound like reform to the market is a self-serving effort to reduce claims and payouts, since that's exactly what insurance is intended for. However, he noted that "something's out of whack here when you look at the other state's data side by side."

In May, popular music venue The Blind Horse Saloon was forced to close its doors after nearly 30 years of operation because of South Carolina liquor insurance requirements, according to a social media post by the venue.

The venue's closure, which hosted country music acts including Garth Brooks and Cody Johnson, was a heavy hit to the upstate region, prompting further support for SC Venue Crisis' mission, Reid said.

Of the venue's closure, Stegmaier emphasized that the market has reached a point where business owners can't afford to operate, buy inventory or keep the lights on because premiums have become so expensive.

"Hospitality's our largest industry in South Carolina, especially on the coast, but everywhere else in South Carolina it's a large supporter," he said. "We're in crisis mode right now."

--Editing by Amy Rowe.