

By: Anderson of Dallas

H.B. No. 3869

A BILL TO BE ENTITLED

AN ACT

relating to civil liability for damages caused by a person while intoxicated or otherwise related to the person's intoxication.

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

SECTION 1. This Act may be cited as the Drunk Driver Liability Act.

SECTION 2. Section 2.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 2.01. DEFINITIONS. In this chapter:

(1) "Claimant" means a party, including a claimant, counterclaimant, cross-claimant, or third-party claimant, seeking recovery of damages.

(2) "Obviously intoxicated person" means an individual who has been sold, served, or provided with an alcoholic beverage when the person was obviously intoxicated to the extent that the person presented a clear danger to himself or herself and to others.

(3) "Provider" means a person who sells or serves an alcoholic beverage under authority of a license or permit issued under the terms of this code or who otherwise sells an alcoholic beverage to an individual.

(4) [~~(2)~~] "Provision" includes, but is not limited to, the sale or service of an alcoholic beverage.

SECTION 3. Section 2.02, Alcoholic Beverage Code, is

amended by adding Subsections (d), (e), and (f) to read as follows:

(d) An action against a provider under Subsection (b) may not be commenced unless the alleged obviously intoxicated person is a named defendant in the action and is retained in the action until the litigation is concluded by trial or settlement.

(e) There is a rebuttable presumption that a provider, other than the provider who last sold, served, or provided an alcoholic beverage to an alleged obviously intoxicated person, has not committed an act giving rise to a cause of action under Subsection (b).

(f) A person does not have a cause of action against a provider under Subsection (b) if the person:

(1) is the alleged obviously intoxicated person; or

(2) purchased an alcoholic beverage for or provided an alcoholic beverage to the alleged obviously intoxicated person.

SECTION 4. Chapter 2, Alcoholic Beverage Code, is amended by adding Sections 2.04, 2.05, 2.06, 2.07, and 2.08 to read as follows:

Sec. 2.04. NOTICE REQUIRED. (a) A claimant seeking damages under this chapter must give written notice to all potential defendants not later than the 120th day after the date the claimant enters into an attorney-client relationship for the purpose of pursuing a claim under this chapter.

(b) Failure to give written notice in the time prescribed by Subsection (a) is grounds for dismissal of a claim against any defendant that did not receive that notice unless sufficient information for determining that the defendant might be liable

under this chapter was not known and could not reasonably have been known within that time.

Sec. 2.05. DEFENSES. All defenses available to the alleged obviously intoxicated person shall be available to the provider.

Sec. 2.06. RECOVERY OF DAMAGES. (a) Except as provided by Subsection (b), damages, together with the costs of the action, may be recovered in an action under this chapter.

(b) A person may not recover damages under Section 2.02(b) for the loss of financial support, services, gifts, parental training, guidance, love, society, or companionship of the alleged obviously intoxicated person.

(c) If a parent of an individual injured by an alleged obviously intoxicated person is entitled to damages under this chapter, each parent may sue separately, but recovery by one is a bar to action by the other.

Sec. 2.07. SURVIVAL OF CAUSE OF ACTION. (a) In the event of the death of either party, the right of action under this chapter shall survive to or against that party's personal representative.

(b) In an action by a spouse, child, or parent:

(1) the general reputation of the relation of the spouses or the child and parent is prima facie evidence of the relation; and

(2) the amount recovered by the spouse, child, or parent is the sole and separate property of the person who recovers it.

Sec. 2.08. STATUTE OF LIMITATIONS. A person must bring suit under this chapter not later than two years after the day the cause

1 of action accrues.

2 SECTION 5. The change in law made by this Act applies only
3 to a cause of action that accrues on or after the effective date of
4 this Act. A cause of action that accrued before the effective date
5 of this Act is governed by the law applicable to the cause of action
6 immediately before the effective date of this Act, and that law is
7 continued in effect for that purpose.

8 SECTION 6. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2017.