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## **Opponent Testimony to HB 504**

Sean Harris, Past President

House Civil Justice Committee

June 5, 2024

Chairman Hillyer, Ranking Member Issacson, and members of the House Civil Justice Committee, thank you for the opportunity to testify in opposition to HB 504.

My name is Sean Harris. I am an attorney in Columbus, and a Past President of the Ohio Association for Justice. I've been representing injured people for the last 24 years. I'm here today on behalf of Ohio motorists and the future victims of drunk drivers to address the potential confusion and discord created by HB 504.

As an initial matter, OAJ opposes legislation that grants legal immunity to wrongdoers. When a person's conduct wrongfully injures, maims, or kills another, legislation and bureaucracy should not be a "get out of jail free" card. Every person must maintain personal responsibility for the consequences of their actions.

Ohio's laws to establish liability for liquor permit holders' roll in alcohol-related crashes or deaths is long-standing, well-established, and demanding of plaintiffs. Under current law, a person injured by a drunk driver must prove that the bar "knowingly" served alcohol to a noticeably intoxicated person. "Knowingly," in Ohio law, is the highest standard to prove, save for acting intentionally. To establish this standard to a judge or jury requires proof that the person had actual knowledge. ([O.R.C. 2901.22\(B\)](#)). As a practical matter, proving what a busy



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bartender, who is serving multiple customers over the course of a long evening, actually knew or did not know about a particular customer is easier said than done . I recently handled a case where a server was ordering herself drinks to an empty table. By ordering from multiple bartenders who each only observed her momentarily, the bar claimed it had no knowledge of her intoxication. That server then attempted to drive home and plowed head on into my client. When this high legal standard is coupled with the reduction in liability provided by Ohio's joint and several liability statute (R.C. 2307.22), liquor permit holders, in fact, already enjoy a great deal of legal protection.

But the language of HB 504 raises several questions of how this area of law might change. For example, once a bartender completes the proposed training, is the permit holder then given lifetime immunity, regardless of how long that bar tender continues serving? Who is responsible for verifying that the training a bar tender took was an approved training? Is one training course good for a lifetime or should a bar tender or server be retained after a certain period of years?

Further, what does "follow all protocols" in line 45 of the bill mean? Virtually any training classes, like TIPS or ServSafe, train bartenders to gauge a customer's level of intoxication before serving them alcohol. The training includes the evaluation of factors such as the customer's apparent age, body size, gender, physical signs of intoxication, behavior at the bar, the amount of time between drinking each alcoholic drink, whether and how many non-alcoholic drinks they've consumed, and whether and how much food they've eaten, among other factors. One bartender may make the assessment but come to an inappropriate conclusion about the



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customer's level of intoxication. Another bartender might complete the evaluation but still improperly weigh certain factors more heavily than others. Simply checking a box that the assessment was made and the protocol was followed will not tell the whole story of what happened nor guarantee a safe sale of alcohol.

Other questions raised by HB 504 include, if "any employee" in line 44 of the bill completes the training, does the permit holder receive immunity for other employees, such as temporary banquet staff, who do not follow the protocols or are not adequately trained? Does the failure to follow all protocols then create liability? Who makes the decision whether each and every one of the protocols have been followed – the judge or the jury?

Based on these remaining questions, we ask that the Committee take additional time to review and consider all the potential implications of HB 504.

Thank you for the opportunity to be here today. I am happy to address any questions.