

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1013 (Lowenthal)
Version: June 28, 2023
Hearing Date: July 6, 2023
Fiscal: Yes
Urgency: No
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SUBJECT

On-sale general public premises: drug testing devices

DIGEST

This bill requires holders of and applicants for a bar/night club license to offer for sale drug testing devices at reasonable prices. Such licensees are immune from liability for defective or inaccurate tests.

EXECUTIVE SUMMARY

The Alcoholic Beverage Control Act regulates the licensing of businesses that serve alcoholic beverages. A Type 48 license is associated with bars or night clubs authorized to sell beer, wine, and distilled spirits for consumption on the premises where sold. Minors are prohibited from entering.

This bill places a requirement on such licensees to sell, at a reasonable price, drug testing devices to patrons. These devices include test strips, stickers, straws, and other devices designed to detect the presence of controlled substances in a drink.

The goal of the bill is to address the incidence of drink spiking in such establishments and to prevent the commission of crimes associated with such conduct, namely sexual assault and rape. The bill provides immunity to licensees from liability for defective tests and inaccurate test results.

The bill is author-sponsored. It is supported by Alcohol Justice. There is no known opposition. The bill passed out of the Senate Governmental Organization Committee on a 15 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that no person who, in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. This applies only to medical, law enforcement, and emergency personnel, as specified. (Health & Saf. Code § 1799.102(a).)
- 2) Extends to all other persons not covered by the above who are rendering medical or nonmedical care or other assistance in such situations immunity from civil damages resulting from any act or omission other than acts or omissions constituting gross negligence or willful or wanton misconduct. (Health & Saf. Code § 1799.102(b).)
- 3) Provides that every person who willfully mingles any poison or harmful substance with any food, drink, medicine, or pharmaceutical product or who willfully places any poison or harmful substance in any spring, well, reservoir, or public water supply, where the person knows or should have known that the same would be taken by any human being to his or her injury, is guilty of a felony punishable by imprisonment in the state prison for two, four, or five years. Any violation involving the use of a poison or harmful substance that may cause death if ingested or that causes the infliction of great bodily injury on any person shall be punished by an additional term of three years. (Pen. Code § 347.)
- 4) Provides that every person guilty of administering to another any chloroform, ether, laudanum, or any controlled substance, anesthetic, or intoxicating agent, with intent thereby to enable or assist themselves or any other person to commit a felony, is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years. (Pen. Code § 222.)

This bill:

- 1) Requires an applicant for a new permanent on-sale general public premises (Type 48) license or the holder of an existing Type 48 license to offer for sale to their customers drug testing devices at a cost not to exceed a reasonable amount based on the wholesale cost of the drug testing devices.
- 2) Requires licensees to post notices of this requirement, as provided.
- 3) Provides that a licensee shall not be held liable for a defective test or inaccurate test result, including a false positive or false negative test result. However, a

licensee shall ensure that all testing devices offered to customers have not exceeded their expiration date or recommended period of use, according to the product label, product packaging, or otherwise recommended by the manufacturer.

- 4) Defines “drug testing devices” as test strips, stickers, straws, and other devices designed to detect the presence of controlled substances in a drink. Controlled substances include flunitrazepam, ketamine, and gamma hydroxybutyric acid, also known by other names, including GHB, gamma hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, and sodium oxybutyrate.
- 5) Sunsets on January 1, 2027.

COMMENTS

1. The scourge of drink spiking

Drink spiking, in which drugs are placed into another’s drink, is a growing issue in this country. The Office on Women’s Health in the U.S. Department of Health and Human Services explains:

Date rape drugs are any type of drug used to make rape or sexual assault easier. Alcohol is often used this way. Or date rape drugs can be put into a drink without you knowing. Drugs or alcohol can make a person confused about what is happening, less able to defend themselves against unwanted sexual contact, or unable to remember what happened. Nearly 11 million women in the United States have been raped while drunk, drugged, or high.¹

The Office on Women’s Health provides guidance on preventing drink spiking:

- Be aware of drinks in punchbowls or other containers that can be easily “spiked.”
- Don’t accept drinks from other people. If someone offers to get you a drink from a bar or at a party, go with the person to order your drink. Watch your drink as it is poured and carry it yourself.
- Open your drink yourself. Keep control of it at all times.
- Don’t drink anything that smells strange.

¹ *Date rape drugs* (Feb. 22, 2021) Office on Women’s Health, <https://www.womenshealth.gov/a-z-topics/date-rape-drugs>. All internet citations are current as of June 30, 2023.

- Get help right away if you feel drunk and haven't had any alcohol or if you feel like the effects of drinking alcohol are stronger than usual. Find a friend who can help you get to a safe place.
- Look out for your friends, and ask them to look out for you. You can play a powerful role in helping other people stay safe. If a friend seems out of it, seems much too drunk for the amount of alcohol she drank, is acting out of character, or seems too drunk to stay safe in general, get her to a safe place.²

One emerging trend beyond these steps is the distribution and use of drug testing devices. These devices can come in the form of test strips, straws, and other devices that are specifically designed to detect the presence of controlled substances that are often used in drink spiking, including ketamine and GHB. The devices can be used in public drinking establishments when drink spiking is suspected.

This bill requires such devices to be offered for sale by licensees operating specified bars and nightclubs. The devices must be offered at a reasonable price.

This approach has been piloted in various localities, including West Hollywood:

The City of West Hollywood will begin distributing drink-spiking test strips in partnership with the Los Angeles LGBT Center's WeHo Life program to West Hollywood nightlife establishments. Drink-spiking test strips are designed to detect the possible presence of "date rape" drugs, such as GHB (gamma hydroxybutyrate) or ketamine. The test-strip user drops a small amount of drink liquid on the testing patch, which turns dark blue if drugs are present.

Outreach staff from the WeHo Life program will begin test-strip distribution efforts on Friday, October 14, 2022. The program will partner with local nightlife venues to ensure test strips are available on an ongoing basis for interested patrons. The immediate aim is to inform and educate community members and businesses that drink-spiking test strips are a tool for personal safety that can be used anywhere at any time. The City and the Center hope that personal experience with using test strips will encourage nightlife patrons to purchase, carry, and use them on a regular basis.

The West Hollywood City Council approved a plan to purchase and distribute drink-spiking test strips earlier this year following reports of

² *Ibid.*

individuals feeling that they had been drugged (“roofied”) at West Hollywood nightlife venues.³

According to the author:

The underreported epidemic of drink spiking continues to plague California and the world. Unfortunately, drink spiking is often used to facilitate the commission of other crimes, such as sexual assault and rape. While anyone can have their drink spiked, the targets of this act are all too often women. Although drink spiking can be perpetrated in almost any setting, a common location for this activity to take place is at bars or night clubs, where alcoholic beverages are being served. Type 48 licensees are the primary operators of these types of establishments. AB 1013 is a commonsense measure to protect individuals from being unknowingly drugged by requiring Type 48 licensees to offer for sale to customers drug testing devices, such as test strips, that can detect the presence of controlled substances and anti-tampering devices, such lids, that can help prevent someone’s drink from being drugged. These devices are simple, preventative measures that can protect someone from being drugged and becoming the victim of another crime, such as sexual assault or rape.

Alcohol Justice writes in support:

The actual incidence of having a drug put in one’s drink without one’s knowledge (“spiking”) varies from around 6% to 25% depending on the survey (American Psychological Association 2016). Yet even the lowest rate—1 in 20—means that you can look around any given bar on a Friday night and know that at least one person there has or will be the victim of spiked drink.

Even if the only result is unwanted extreme intoxication, the experience can be deeply upsetting, with feelings of anxiety or mistrust that last for years. That is not always the only result, however. Along with acquaintance rape and other forms of sexual assault, this person may be humiliated, robbed, and/or injured. Worse, however, is the risk of death. Not only are the most common additives—benzodiazepines and/or GHB or other hypnotics—synergistic with alcohol (lowering the threshold for life-threatening alcohol poisoning), but recent changes in the illegal drug supply raise the risk that the “mickey” may include fentanyl or other adulterants that are fatal on their own.

³ *City of West Hollywood will Begin Distributing Drink-Spiking Test Strips in Partnership with the Los Angeles LGBT Center’s WeHo Life Program* (Oct. 13, 2022) City of West Hollywood, <https://www.weho.org/Home/Components/News/News/10573/23#:~:text=The%20West%20Hollywod%20City%20Council,at%20West%20Hollywood%20nightlife%20venues.>

The proposed bill goes for empowering individuals to monitor their drink, and to normalize the act of additive testing for those who might be hesitant to engage in it.

2. Civil liability and immunity

As a general rule, California law provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).) Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty.

Conversely, immunity from liability disincentivizes careful planning and acting on the part of individuals and entities. When one enjoys immunity from civil liability, it is relieved of the responsibility to act with due regard and an appropriate level of care in the conduct of its activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured parties to absorb losses for which they are not responsible. Liability acts not only to allow a victim to be made whole, but to encourage appropriate compliance with legal requirements.

Although immunity provisions are rarely preferable, the Legislature has in limited scenarios approved measured immunity from liability (as opposed to blanket immunities) to promote other policy goals that could benefit the public. Immunities are generally afforded when needed to ensure the willingness of individuals to continue taking on certain roles that may involve some risk and to incentivize certain conduct, such as the provision of life-saving or other critical services. Examples include protections for use of CPR (Civ. Code § 1714.2); use of an automated external defibrillator (Civ. Code § 1714.21); use of opiate overdose treatment (Civ. Code § 1714.22); providing emergency care at the scene of an emergency (Health & Saf. Code §§ 1799.102, 1799.106); and performing emergency rescue services (Health & Saf. Code § 1799.107). However, as indicated above, rarely is immunity absolute, and these immunities generally do not cover grossly negligent conduct or intentional misconduct.

This bill provides that licensees shall not be held liable for a defective test or inaccurate test result, including a false positive or false negative test result. This is a narrow immunity that applies only to the effectiveness of the product the licensees are required to purchase and sell. Given the strong public policy aim, arguably this is a well-measured immunity. To ensure the Legislature can revisit the policy, the bill provides a sunset date of January 1, 2027.

SUPPORT

Alcohol Justice

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Senate Governmental Organization Committee (Ayes 15, Noes 0)

Assembly Floor (Ayes 76, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Governmental Organization Committee (Ayes 19, Noes 0)
