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## TORTS

### *Service of Alcoholic Beverages to Minors: Provide Right of Action to Custodial Parent*

<b>CODE SECTION:</b>	O.C.G.A. § 51-1-18 (amended)
<b>BILL NUMBER:</b>	HB 1123
<b>ACT NUMBER:</b>	1142
<b>SUMMARY:</b>	The Act provides a custodial parent with a right of action against any person who sells or furnishes alcoholic beverages to that parent's underage child.
<b>EFFECTIVE DATE:</b>	July 1, 1988

#### *History*

Prior law allowed a "father or, if the father [was] dead, a mother," to bring suit against a person who had provided alcoholic beverages to an underage child.<sup>1</sup> Although parents had a cause of action against any party who provided alcoholic beverages without the parents' permission to their underage child,<sup>2</sup> the mother's right did not become operational until the father's death.<sup>3</sup>

In 1987, the Supreme Court of Georgia, in *Stepperson, Inc. v. Long*,<sup>4</sup> interpreted this law to allow a mother the right to bring the action. In *Stepperson*, a minor, after drinking six beers at an Atlanta restaurant, was involved in an automobile accident which killed one person and seriously injured another.<sup>5</sup> At the time of the accident, the parents were divorced and the mother had custody of the minor child.<sup>6</sup>

The defendant restaurant moved for summary judgment in a suit brought against it by the minor's mother. The trial court denied the motion for summary judgment on the ground that O.C.G.A. § 51-1-18(a) was unconstitutional under the standard announced by the United States Supreme Court in *Orr v. Orr*,<sup>7</sup> and ruled that either parent has a right to

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1. CODE OF GA. § 105-1205 (1933) (formerly found at O.C.G.A. § 51-1-18(a)). This right of action, first enacted in 1860, was intended to prevent the exploitation of minors by those who furnished alcoholic beverages to them without parental consent. See CODE OF GA. §§ 2952, 2953 (1860) (also known as the Original Code of 1863).

2. *Dodd v. Slater*, 101 Ga. App. 358, 114 S.E.2d 167 (1960).

3. CODE OF GA. § 105-1205 (1933) (formerly found at O.C.G.A. § 51-1-18(a)).

4. 256 Ga. 838, 353 S.E.2d 461 (1987).

5. *Stepperson, Inc. v. Long*, 256 Ga. at 839, 353 S.E.2d at 462.

6. *Id.*

7. 440 U.S. 268 (1979). In *Orr*, the United States Supreme Court ruled that any

bring suit under the Code.<sup>8</sup>

On appeal, the Georgia Supreme Court upheld the decision of the lower court.<sup>9</sup> This court based its decision on the fact that O.C.G.A. § 51-1-18(b), which addresses gambling by minors, was amended to give a cause of action to the parent, rather than the father.<sup>10</sup> The court reasoned that it was a mere oversight by the legislature that subsection (a) had not been similarly amended in 1981.<sup>11</sup>

### HB 1123

The Act was a response to the court's decision in *Stepperson*.<sup>12</sup> The Act amends O.C.G.A. § 51-1-18(a), giving the custodial parent a right of action against anyone who sells or furnishes alcoholic beverages to the parent's minor child, for the child's use, without the permission of the child's parent.<sup>13</sup>

The original bill gave the right to bring the cause of action to the parent of the child.<sup>14</sup> The House Committee on Judiciary offered a substitute which placed the right of action in the custodial parent.<sup>15</sup> The House committee version was enacted;<sup>16</sup> the intent was to prevent an absentee parent from bringing a suit individually or jointly with the custodial parent.<sup>17</sup>

The Act essentially codifies the rule that emerged from *Stepperson*.<sup>18</sup> The Act allows the custodial parent of minor children the same right that

gender classification is prohibited unless it rests upon some "difference having a fair and substantial relation to the object of the legislation." *Id.* at 281.

8. *Stepperson*, 256 Ga. at 839—40, 353 S.E.2d at 462—63 (discussing trial court ruling).

9. *Id.* at 840, 353 S.E.2d at 463.

10. *Id.* See CODE OF GA. § 105-1206 (1933).

11. *Stepperson*, 256 Ga. at 840, 353 S.E.2d at 463. The court held that O.C.G.A. § 51-1-18(a) did not meet the *Orr* standard and thus violated equal protection of the laws.

12. Telephone interview with Representative Eleanor Richardson, House District No. 52 (Apr. 16, 1988) [hereinafter Richardson Interview].

13. "For the child's use" suggests that the provider may not be liable under this Act if alcoholic beverages were given to an underage child without the provider's intention or knowledge that the child would drink the intoxicating beverage. Thus, if a neighbor gives a six-pack of beer to an underage child to take to the child's parents, and the underage child drinks the beer and is later involved in some accident, the provider may not be liable under this Act. See O.C.G.A. § 51-1-18(a) (Supp. 1988).

14. HB 1123, as introduced, 1988 Ga. Gen. Assem.

15. HB 1123 (HCS), 1988 Ga. Gen. Assem.

16. O.C.G.A. § 51-1-18(a) (Supp. 1988).

17. Richardson Interview, *supra* note 12. The child's parents can still permit a minor child to receive and use alcoholic beverages. See O.C.G.A. § 51-1-18(a) (Supp. 1988). If the non-custodial parent gives the child permission to receive and use alcoholic beverages, it is possible that the custodial parent has no right to bring suit under this Act. Richardson Interview, *supra* note 12.

18. *Stepperson, Inc. v. Long*, 256 Ga. 838, 840, 353 S.E.2d 461, 463 (1987).

was previously reserved to custodial and noncustodial fathers under O.C.G.A. § 51-1-18(a).

*J. Voyles*