

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 573

FINAL READING

Introduced by Kruse, 13; Aguilar, 35; Burling, 33; Carlson, 38;
Hansen, 42; Harms, 48; Lathrop, 12

Read first time January 17, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to alcoholic liquor; to amend sections
2 53-167.03 and 53-180.02, Reissue Revised Statutes of
3 Nebraska; to adopt the Minor Alcoholic Liquor Liability
4 Act; to change provisions relating to keg identification
5 numbers and minors in possession of alcoholic liquor;
6 to provide operative dates; and to repeal the original
7 sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and
2 may be cited as the Minor Alcoholic Liquor Liability Act.

3 Sec. 2. The purposes of the Minor Alcoholic Liquor
4 Liability Act are to prevent intoxication-related traumatic
5 injuries, deaths, and other damages and to establish a legal basis
6 for obtaining compensation for persons suffering damages as a
7 result of provision or service of alcoholic liquor to minors under
8 circumstances described in the act.

9 Sec. 3. For purposes of the Minor Alcoholic Liquor
10 Liability Act:

11 (1) Alcoholic liquor has the definition found in section
12 53-103;

13 (2) Intoxication means an impairment of a person's mental
14 or physical faculties as a result of his or her use of alcoholic
15 liquor so as to diminish the person's ability to think and act in
16 the manner of a reasonably prudent person in full possession of his
17 or her faculties using reasonable care under the same or similar
18 circumstances;

19 (3) Licensee means a person holding a license issued
20 under the Nebraska Liquor Control Act to sell alcoholic liquor at
21 retail;

22 (4) Minor has the definition found in section 53-103;

23 (5) Retailer means a licensee, any agent or employee of
24 the licensee acting within the scope and course of his or her
25 employment, or any person who at the time of the events leading

1 to an action under the Minor Alcoholic Liquor Liability Act was
2 required to have a license issued under the Nebraska Liquor Control
3 Act in order to sell alcoholic liquor at retail;

4 (6) Service of alcoholic liquor means any sale, gift, or
5 other manner of conveying possession of alcoholic liquor; and

6 (7) Social host means a person who knowingly allows
7 consumption of alcoholic liquor in his or her home or on property
8 under his or her control by one or more minors. Social host
9 does not include (a) a parent providing alcoholic liquor to
10 only his or her minor child and to no other minors or (b)
11 a religious corporation, organization, association, or society,
12 and any authorized representative of such religious corporation,
13 organization, association, or society, dispensing alcoholic liquor
14 as part of any bona fide religious rite, ritual, or ceremony.

15 Sec. 4. Any person who sustains injury or property
16 damage, or the estate of any person killed, as a proximate result
17 of the negligence of an intoxicated minor shall have, in addition
18 to any other cause of action available in tort, a cause of action
19 against:

20 (1) A social host who allowed the minor to consume
21 alcoholic liquor in the social host's home or on property under his
22 or her control;

23 (2) Any person who procured alcoholic liquor for the
24 minor, other than with the permission and in the company of the
25 minor's parent or guardian, when such person knew or should have

1 known that the minor was a minor; or

2 (3) Any retailer who sold alcoholic liquor to the minor.

3 The absolute defenses found in section 53-180.07 shall be available
4 to a retailer in any cause of action brought under this section.

5 Sec. 5. It shall be a complete defense in any action
6 brought under the Minor Alcoholic Liquor Liability Act that the
7 intoxication did not contribute to the negligent conduct.

8 Sec. 6. No cause of action under the Minor Alcoholic
9 Liquor Liability Act shall be available to the intoxicated person,
10 his or her estate, or anyone whose claim is based upon injury to or
11 death of the intoxicated person.

12 Sec. 7. In an action under the Minor Alcoholic Liquor
13 Liability Act, damages may be awarded for all actual damages,
14 including damages for wrongful death, as in other tort actions.

15 Sec. 8. Notwithstanding any other provision of law, any
16 action under the Minor Alcoholic Liquor Liability Act shall be
17 brought within four years after the occurrence causing the injury,
18 property damage, or death.

19 Sec. 9. (1) A plaintiff's settlement and release of one
20 defendant in an action under the Minor Alcoholic Liquor Liability
21 Act does not bar claims against any other defendant.

22 (2) The amount paid to a plaintiff in consideration for
23 the settlement and release of a defendant in an action under the
24 act shall be offset against all other subsequent judgments awarded
25 to the plaintiff.

1 (3) The retailer, licensee, social host, person procuring
2 alcoholic liquor for a minor, and minor who are defendants in an
3 action brought under the act are jointly and severally liable in
4 such action as provided in section 25-21,185.10 for those who act
5 in concert to cause harm.

6 (4) In an action based on the act, the retailer,
7 licensee, social host, person procuring alcoholic liquor for a
8 minor, and minor shall have a right of contribution and not a right
9 of subrogation from one another.

10 Sec. 10. Section 53-167.03, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 53-167.03 (1) Any person who unlawfully tampers with,
13 alters, or removes the keg identification number from a beer
14 container or is in possession of a beer container described in
15 section 53-167.02 with an altered or removed keg identification
16 number after such container has been taken from the licensed
17 premises pursuant to a retail sale and before its return to such
18 licensed premises or other place where returned kegs are accepted
19 shall be guilty of a Class III misdemeanor.

20 (2) A licensee may require a deposit of not more than the
21 replacement cost of the container described in section 53-167.02
22 from a person purchasing beer for consumption off the premises.
23 Such deposit may be retained by the licensee, in the amount of
24 actual damages, if upon return the container or any associated
25 equipment is damaged or if the keg identification number has been

1 unlawfully tampered with, altered, or removed and such tampering,
2 alteration, or removal has been reported to a law enforcement
3 officer.

4 Sec. 11. Section 53-180.02, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 53-180.02 Except as provided in section 53-168.06, no
7 minor may sell, dispense, consume, or have in his or her possession
8 or physical control any alcoholic liquor in any tavern or in any
9 other place, including public streets, alleys, roads, or highways,
10 upon property owned by the State of Nebraska or any subdivision
11 thereof, or inside any vehicle while in or on any other place,
12 including, but not limited to, the public streets, alleys, roads,
13 or highways, or upon property owned by the State of Nebraska or
14 any subdivision thereof, except that a minor may consume, possess,
15 or have physical control of alcoholic liquor as a part of a bona
16 fide religious rite, ritual, or ceremony or in his or her permanent
17 place of residence. in his or her permanent place of residence or
18 on the premises of a place of religious worship on which premises
19 alcoholic liquor is consumed as a part of a religious rite, ritual,
20 or ceremony.

21 The governing bodies of counties, cities, and villages
22 shall have the power to, and may by applicable resolution or
23 ordinance, regulate, suppress, and control the transportation,
24 consumption, or knowing possession of or having under his or her
25 control beer or other alcoholic liquor in or transported by any

1 motor vehicle, by any person under twenty-one years of age, and may
2 provide penalties for violations of such resolution or ordinance.

3 Sec. 12. Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 of this
4 act become operative on January 1, 2008. The other sections of this
5 act become operative on their effective date.

6 Sec. 13. Original sections 53-167.03 and 53-180.02,
7 Reissue Revised Statutes of Nebraska, are repealed.