

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 573

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

Read first time January 17, 2007

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to alcoholic liquor; to adopt the Alcoholic
- 2 Liquor Liability Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 14 of this act shall be known
2 and may be cited as the Alcoholic Liquor Liability Act.

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

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

11 (1) Adult means a person who is not a minor;

12 (2) Alcoholic liquor has the definition found in section
13 53-103;

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

20 (4) Licensed premises means the real property to which
21 the license held by the licensee applies;

22 (5) Licensee means a person holding a license issued
23 under the Nebraska Liquor Control Act to sell alcoholic liquor at
24 retail;

25 (6) Minor has the definition found in section 53-103;

1 (7) Retailer means a licensee, any agent or employee of
2 the licensee, or any person who at the time of the events leading
3 to an action under the Alcoholic Liquor Liability Act was required
4 to have a license to sell alcoholic liquor at retail issued under
5 the Nebraska Liquor Control Act;

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

8 (9) Social host means a person (a) who knowingly provides
9 alcoholic liquor in his or her home or on property under his or
10 her control to one or more minors, (b) who is not a licensee under
11 the Nebraska Liquor Control Act and, (c) who is not required to be
12 a licensee under the act. Social host does not include a parent
13 providing alcoholic liquor to only his or her minor child, and to
14 no other minors, in such parent's or his or her minor child's own
15 home.

16 Sec. 4. Any person who suffers injury, death, or other
17 damages as provided in section 5 of this act may bring an
18 action under the Alcoholic Liquor Liability Act, except that an
19 intoxicated adult who caused such injury, death, or other damages
20 or his or her estate does not have a cause of action under the act.

21 Sec. 5. A retailer who serves alcoholic liquor to an
22 adult who is noticeably intoxicated or to any minor is liable
23 for resulting injury, death, or other damages if the retailer was
24 negligent pursuant to section 6 of this act or reckless pursuant to
25 section 7 of this act.

1 A social host is liable for injury, death, or damage
2 resulting in whole or in part from his or her provision of
3 alcoholic liquor to a minor.

4 Sec. 6. (1) A retailer is negligent if the retailer
5 serves alcoholic liquor to an adult who is noticeably intoxicated
6 or to any minor if the retailer knew or a reasonably prudent person
7 in the same or similar circumstances would know that the person
8 being served is an intoxicated adult or is a minor.

9 (2) Failure of the retailer to request identification of
10 a person whom a reasonably prudent person in the same or similar
11 circumstances would believe to be a minor raises a rebuttable
12 presumption of negligence on the part of the retailer.

13 (3) Service of alcoholic liquor by a retailer to an
14 adult who subsequently serves alcoholic liquor to a minor off the
15 licensed premises does not constitute service of alcoholic liquor
16 to the minor by the retailer, unless a reasonably prudent person
17 in the same or similar circumstances as the retailer would know
18 that such subsequent service to a minor is likely to occur. A
19 retailer does not have a duty to investigate whether an adult to
20 whom the retailer serves alcoholic liquor intends to subsequently
21 serve alcoholic liquor off the premises.

22 (4) A retailer is not chargeable with knowledge of a
23 person's consumption of alcoholic liquor or drugs away from the
24 licensed premises unless the person's appearance and behavior or
25 other facts known to the retailer would put a reasonably prudent

1 person in the same or similar circumstances on notice of such
2 consumption.

3 (5) A retailer is not under a duty to recognize signs
4 of a person's intoxication other than those normally associated
5 with the consumption of alcoholic liquor, except for intoxication
6 resulting in whole or in part from consumption of alcoholic liquor
7 or drugs on the licensed premises with the retailer's actual or
8 constructive knowledge.

9 Sec. 7. (1) A retailer is reckless if the retailer
10 intentionally serves alcoholic liquor to a person when the retailer
11 knows or a reasonably prudent person in the same or similar
12 circumstances should know that such service creates an unreasonable
13 risk of physical harm to the person served or to others.

14 (2) Evidence of recklessness by the retailer includes,
15 but is not limited to, the following:

16 (a) Active encouragement of an intoxicated person to
17 consume substantial amounts of alcoholic liquor;

18 (b) Service of alcoholic liquor to a minor when the
19 retailer has actual or constructive notice of the minor's age;

20 (c) Service of alcoholic liquor which is so continuous
21 and excessive that it creates a substantial risk of death from
22 alcohol poisoning for the person served; or

23 (d) Active assistance of a person to a motor vehicle
24 by the retailer when the person is noticeably intoxicated to the
25 extent that such assistance is required and the retailer knows or

1 a reasonably prudent person in the same or similar circumstances
2 should know that the intoxicated person intends to operate the
3 motor vehicle.

4 Sec. 8. (1) A retailer is not liable for any damages
5 resulting from a refusal in good faith to serve alcoholic liquor to
6 any person (a) who reasonably appears to be a minor and refuses to
7 show proper identification when asked or (b) to prevent excessive
8 consumption of alcoholic liquor by any person.

9 (2) A retailer is not liable for any damages resulting
10 from holding identification presented as proof of a person's age
11 for purposes of acquiring alcoholic liquor from the retailer if
12 (a) the length of time the identification is held is reasonable
13 in a good faith effort to determine the age of the person or to
14 summon law enforcement officers and (b) the retailer informs the
15 person presenting the identification of the reason for holding the
16 identification.

17 (3) This section does not limit the right to assert any
18 defense to a claim of negligence or recklessness otherwise provided
19 by law.

20 Sec. 9. Defenses applicable to tort actions in Nebraska
21 based on negligence and recklessness may be asserted in defending
22 an action brought under the Alcoholic Liquor Liability Act.

23 Sec. 10. In addition to the defenses described in
24 sections 8 and 9 of this act, the licensee has the following
25 affirmative defenses to any action brought under the Alcoholic

1 Liquor Liability Act:

2 (1) Complicity. The licensee may establish that the
3 plaintiff or, in the case of death, the decedent was guilty
4 of complicity if the plaintiff or, in the case of death,
5 the decedent encouraged, contributed to, or participated in the
6 drinking activities of the intoxicated person;

7 (2) Assumption of risk. The licensee may establish that
8 the plaintiff or, in the case of death, the decedent assumed the
9 risk when (a) the plaintiff or, in the case of death, the decedent
10 (i) knew of or understood the specific danger and (ii) voluntarily
11 exposed himself or herself to the danger and (b) the plaintiff's
12 or, in the case of death, the decedent's injury, death, or other
13 damages occurred as a result of his or her exposure to the danger.
14 The plaintiff may not assert his, her, or the decedent's own
15 intoxication as a reason for failure to perceive the risk or its
16 seriousness as a reason for his, her, or the decedent's choice to
17 incur the risk; and

18 (3) Server training program. The licensee may establish
19 that all of his, her, or its employees have taken and passed a
20 state-certified server training program and that the program and
21 training tenets were being followed at the time of sale or service
22 to the individual who caused harm or injury to a third party.

23 Any of the defenses described in this section, if
24 established, bars the plaintiff's recovery.

25 Sec. 11. In an action under the Alcoholic Liquor

1 Liability Act, damages may be awarded for all actual damages
2 recognized under common law, including damages for wrongful death,
3 as in other tort actions.

4 Sec. 12. Notwithstanding any other provision of law, any
5 action under the Alcoholic Liquor Liability Act shall be brought
6 within two years after the alleged negligent or reckless service of
7 alcoholic liquor.

8 Sec. 13. (1) A plaintiff's settlement and release of one
9 defendant in an action under the Alcoholic Liquor Liability Act
10 does not bar potential claims against any other defendant.

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

15 (3) The retailer and the intoxicated adult or minor to
16 whom the retailer served alcoholic liquor who are defendants in an
17 action brought under the act are jointly and severally liable in
18 such action.

19 (4) In an action based on negligence as described in
20 section 6 of this act, the retailer and the intoxicated adult
21 or minor to whom the retailer served alcoholic liquor shall have
22 a right of contribution and not a right of subrogation from
23 defendants found negligent.

24 (5) In an action based on recklessness as described in
25 section 7 of this act, any defendant who is found not reckless has

1 a right of either contribution or subrogation from defendants found
2 reckless.

3 Sec. 14. The Alcoholic Liquor Liability Act is the
4 exclusive remedy for damage claims based on a retailer's negligent
5 or reckless service of alcoholic liquor.