

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 810

Introduced by Kruse, 13; Aguilar, 35; Burling, 33; Carlson, 38;
Kopplin, 3; Lathrop, 12; Nelson, 6; Pankonin, 2.

Read first time January 10, 2008

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. This act shall be known and may be cited as
2 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 among Nebraskans and to establish a legal basis
6 of obtaining compensation to persons suffering damages as a result
7 of provision or service of alcoholic liquor under circumstances
8 described in the act.

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

11 (1) Adult means a person who is not a minor as defined in
12 section 53-103;

13 (2) Alcoholic liquor has the definition found in section
14 53-103;

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

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

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

1 (6) Service of alcoholic liquor means any sale, gift, or
2 other manner of conveying possession of alcoholic liquor.

3 Sec. 4. Any person who suffers injury, death, or damage
4 as provided in section 5 of this act may bring an action under the
5 Alcoholic Liquor Liability Act, except that an intoxicated adult
6 who caused such injury, death, or damage or his or her estate does
7 not have a cause of action under the act.

8 Sec. 5. A licensee who through his, her, or its employees
9 serves alcoholic liquor to an adult who is noticeably intoxicated
10 is liable for resulting injury, death, or damage if the licensee
11 was negligent pursuant to section 6 of this act or reckless
12 pursuant to section 7 of this act.

13 Sec. 6. (1) A licensee is negligent if the licensee
14 serves alcoholic liquor to an adult who is noticeably intoxicated
15 if the licensee knew or a reasonably prudent person in the same or
16 similar circumstances would know that the person being served is an
17 intoxicated adult.

18 (2) A licensee is not chargeable with knowledge of a
19 person's consumption of alcoholic liquor away from the licensed
20 premises unless the person's appearance and behavior or other facts
21 known to the licensee would put a reasonably prudent person in the
22 same or similar circumstances on notice of such consumption.

23 (3) A licensee is not under a duty to recognize signs
24 of a person's intoxication other than those normally associated
25 with the consumption of alcoholic liquor, except for intoxication

1 resulting in whole or in part from consumption of alcoholic liquor
2 on the licensed premises with the licensee's actual or constructive
3 knowledge.

4 Sec. 7. (1) A licensee is reckless if the licensee
5 intentionally serves alcoholic liquor to a person when the licensee
6 knows or a reasonably prudent person in the same or similar
7 circumstances should know that such service creates an unreasonable
8 risk of physical harm to the person served or to others.

9 (2) Evidence of recklessness by the licensee includes,
10 but is not limited to, the following:

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

13 (b) Service of alcoholic liquor which is so continuous
14 and excessive that it creates a substantial risk of death of the
15 person served from alcohol poisoning; or

16 (c) Active assistance of a person to a motor vehicle
17 by the licensee when the person is noticeably intoxicated to the
18 extent that such assistance is required and the licensee knows or
19 a reasonably prudent person in the same or similar circumstances
20 should know that the intoxicated person intends to operate the
21 motor vehicle.

22 Sec. 8. (1) A licensee is not liable for any damages
23 resulting from a refusal in good faith to serve alcoholic liquor to
24 any person to prevent excessive consumption of alcoholic liquor by
25 any person.

1 (2) A licensee is not liable for any damages resulting
2 from holding identification presented as proof of a person's age
3 for purposes of acquiring alcoholic liquor from the licensee if
4 (a) the length of time the identification is held is reasonable
5 in a good faith effort to determine the age of the person or to
6 summon law enforcement officers and (b) the licensee informs the
7 person presenting the identification of the reason for holding the
8 identification.

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

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

15 Sec. 10. In addition to the defenses described in
16 sections 8 and 9 of this act, the licensee has the following
17 affirmative defenses to any action brought under the Alcoholic
18 Liquor Liability Act:

19 (1) Complicity. The licensee may establish that the
20 plaintiff or, in the case of death, the decedent was guilty
21 of complicity if the plaintiff or, in the case of death,
22 the decedent encouraged, contributed to, or participated in the
23 drinking activities of the intoxicated person;

24 (2) Assumption of risk. The licensee may establish that
25 the plaintiff or, in the case of death, the decedent assumed the

1 risk when (a) the plaintiff or, in the case of death, the decedent
2 (i) knew of or understood the specific danger and (ii) voluntarily
3 exposed himself or herself to the danger and (b) the plaintiff's
4 or, in the case of death, the decedent's injury, death, or other
5 damages occurred as a result of his or her exposure to the danger.
6 The plaintiff may not assert his, her, or the decedent's own
7 intoxication as a reason for failure to perceive the risk or its
8 seriousness as a reason for his, her, or the decedent's choice to
9 incur the risk; and

10 (3) Server training program. The licensee may establish
11 that the licensee, if a natural person, all of the licensee's
12 employees who serve alcohol, and all of the licensee's employees
13 who manage such servers have taken and passed a state-certified
14 server training program and that the program and training tenets
15 were being followed at the time of sale or service to the
16 individual who caused harm or injury to a third party.

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

19 Sec. 11. In an action under the Alcoholic Liquor
20 Liability Act, damages may be awarded for all actual damages
21 recognized under common law, including damages for wrongful death,
22 as in other tort actions.

23 Sec. 12. Notwithstanding any other provision of law, any
24 action under the Alcoholic Liquor Liability Act shall be brought
25 within two years after the alleged negligent or reckless service of

1 alcoholic liquor.

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

5 (2) The amount paid to a plaintiff in consideration
6 for the settlement and proper release of any defendant in an
7 action under the act shall be offset against all other subsequent
8 judgments awarded to the plaintiff under the act.

9 (3) The licensee and the intoxicated adult to whom the
10 licensee served alcoholic liquor who are defendants in an action
11 brought under the act are jointly and severally liable in such
12 action.

13 (4) In an action based on negligence as described in
14 section 6 of this act, the licensee and the intoxicated adult to
15 whom the licensee served alcoholic liquor shall have a right of
16 contribution and not a right of indemnification.

17 (5) In an action based on recklessness as described in
18 section 7 of this act, any defendant who is found not reckless has
19 a right of either indemnification or contribution from defendants
20 found reckless.

21 Sec. 14. The Alcoholic Liquor Liability Act is the
22 exclusive remedy for claims of damage based on a licensee's
23 negligent or reckless service of alcoholic liquor.