



**Hundredth Legislature - First Session - 2007  
Committee Statement  
LB 573**

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**Hearing Date:** February 22, 2007  
**Committee On:** Judiciary

**Introducer(s):** (Kruse)  
**Title:** Adopt the Alcoholic Liquor Liability Act

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**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

7	Yes	Sen. Ashford, Sen. Lathrop, Sen. McDonald, Sen. McGill, Sen. Pedersen, Sen. Pirsch, Sen. Schimek
	No	
	Present, not voting	
1	Absent	Sen. Chambers

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**Proponents:**

Sen. Kruse  
Robert Moodie  
James Duncan  
Tim Regler  
Dian Riibe  
Mark Vasina  
Frank Lamere  
Judy Giachkitso

**Representing:**

Introducer  
NE Association of Trial Attorneys  
Citizen  
Citizen  
Project Extra Mile  
Nebraskans for Peace  
Citizen  
Nebraska Council on Indian Affairs

**Opponents:**

Jim Moylan  
Joe Kohort  
Jim Otto  
Jim Pautington  
Tim Keigher  
Kathy Siefken

**Representing:**

NE License Beverage Association  
Responsible Beverage Operators of Nebraska  
NE Retail Federation  
NE Restaurant Association  
NE Petroleum Marketer’s & Convenience Assoc.  
NE Grocery Industry Association

**Neutral:**

Diane Martin  
Jim Cunningham

**Representing:**

Strong Hear: Civil Rights Movement  
Nebraska Catholic Conference

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## Summary of purpose and/or changes:

Legislative Bill 573 proposes to adopt the Liquor Liability Act. Under the Act, a retailer who serves alcohol to a minor or a noticeably intoxicated adult is liable for any resulting injury, death, or damage if the retailer was negligent or reckless in serving the minor or intoxicated adult. The bill also provides that a social host, defined as a person who provides alcohol to a minor on premises under his or her control and who does not hold a liquor license, is liable for an injury, death, or damage resulting from providing alcohol to a minor. Social host does not include a parent providing alcohol to his or her own minor child at home.

A retailer is considered to be negligent under the act if he or she serves alcohol to a minor or noticeably intoxicated adult if the retailer knew or a reasonable person in the retailer's position would have known that the individual served was a minor or a noticeably intoxicated adult. Additionally, the failure of a retailer to request identification of a person a reasonably prudent individual would believe to be a minor creates a rebuttable presumption of negligence on the part of the retailer.

A retailer is considered to be reckless under the act if he or she knows or a reasonable person in the retailer's position should know that serving an individual would create an unreasonable risk of physical harm to the person being served or others. Evidence of recklessness includes the following:

- Active encouragement of an intoxicated person to consume substantial amounts of alcohol;
- Serving alcohol to a minor with actual or constructive knowledge of the minor's age;
- Excessive service of alcohol which creates a substantial risk of death from alcohol poisoning; or
- Actively assisting a noticeably intoxicated person to a motor vehicle with knowledge that the person intends to operate such motor vehicle.

The act also provides the following three specific affirmative defenses from suits under the act for retailers:

- Complicity – The retailer may establish that the plaintiff encouraged, contributed to or participated in the drinking activities of the intoxicated person;
- Assumption of risk – The retailer may establish that the plaintiff knew and understood the danger and voluntarily exposed himself or herself to the danger resulting in injury or death.
- Server Training – The bill provides a defense if the retailer can establish that all of its employees have taken and passed a state certified server training program and that the training tenets were being followed at the time of the sale or service to the person who caused the injury, death or damage which is the subject of the lawsuit.

Lastly the bill provides that the Alcoholic Liquor Liability Act is the exclusive remedy for claims of damage based on a retailer's negligent or reckless serve of alcoholic liquor and all actions

under the act must be filed within two years of the alleged negligent or reckless service of alcohol.

**Explanation of amendments, if any:**

COMMITTEE AMENDMENT

The committee amendment to LB 573 replaced the green copy and removes the provisions of the bill relating to dram shop liability for serving adults and retains the provisions relating to liability for serving or procuring alcohol for minors.

As amended, the bill provides that social hosts who allow minors to drink on their property, adults who procure alcohol for a minor, and retailers who sell alcohol to a minor are liable for injuries or other damages caused by the negligence of an intoxicated minor. The amendment explicitly prohibits recovery by the intoxicated person, his or her estate or any person whose claim is based upon injury to or death of the intoxicated minor.

The amendment provides a complete defense to liability under the act if the intoxication did not contribute to the negligent conduct. Additionally, retailers are provided the defense currently found in section 53-180.07, which protects retailers in situations where they act in good faith and rely on false identification that a reasonable and prudent person would believe is a valid ID.

The remaining provisions of the committee amendment establish a 2 year statute of limitations for claims under the act, provide that defendants in an action under the act are jointly and severably liable, clarify that such defendants shall have a right of contribution and not a right of subrogation from each other, and remove the requirement that retailers provide proof of liability insurance coverage to the liquor control commission.

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**Senator Brad Ashford, Chairperson**