

LEGISLATURE OF NEBRASKA  
NINETY-NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 592**

Introduced by Kruse, 13; Aguilar, 35; Baker, 44; Burling, 33;  
Byars, 30; Combs, 32; Foley, 29; Jensen, 20;  
Johnson, 37; Kopplin, 3; Kremer, 34; Price, 26;  
Schrock, 38; Thompson, 14

Read first time January 18, 2005

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;

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 an ordinary prudent and cautious person in  
18 full possession of his or her faculties using reasonable care under  
19 like 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;

26           (7) Retailer means a licensee, any agent or employee of  
27 the licensee, or any person who at the time of the events leading  
28 to an action under the Alcoholic Liquor Liability Act was required

1 to have a license to sell alcoholic liquor at retail issued under  
2 the Nebraska Liquor Control Act;

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

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

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

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

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

26 Sec. 6. (1) A retailer is negligent if the retailer  
27 serves alcoholic liquor to any minor or to an adult who is  
28 noticeably intoxicated if the retailer knew or a reasonably prudent

1 person in the same or similar circumstances would know that the  
2 person being served is a minor or is an intoxicated adult.

3 (2) Failure of the retailer to request identification of  
4 a person whom a reasonably prudent person in the same or similar  
5 circumstances would believe to be a minor raises a rebuttable  
6 presumption of negligence on the part of the retailer.

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

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

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

28 Sec. 7. (1) A retailer is reckless if the retailer

1 intentionally serves alcoholic liquor to a person when the retailer  
2 knows or a reasonably prudent person in the same or similar  
3 circumstances should know that such service creates an unreasonable  
4 risk of physical harm to the person served or to others.

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

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

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

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

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

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

25 (2) A retailer is not liable for any damages resulting  
26 from holding identification presented as proof of a person's age  
27 for purposes of acquiring alcoholic liquor from the retailer if (a)  
28 the length of time the identification is held is reasonable in a

1 good faith effort to determine the age of the person or to summon  
2 law enforcement officers and (b) the retailer informs the person  
3 presenting the identification of the reason for holding the  
4 identification.

5 (3) A retailer is not liable in damages for using  
6 reasonable force to detain, for a time period reasonably necessary  
7 to summon law enforcement officers, a person who in the retailer's  
8 presence is committing or has committed a breach of the peace or a  
9 felony or is attempting to operate a motor vehicle while noticeably  
10 intoxicated.

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

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

17 Sec. 10. In an action under the Alcoholic Liquor  
18 Liability Act, damages may be awarded for all actual damages  
19 recognized under common law, including damages for wrongful death,  
20 as in other tort actions.

21 Sec. 11. Notwithstanding any other provision of law, any  
22 action under the Alcoholic Liquor Liability Act shall be brought  
23 within two years after the alleged negligent or reckless service of  
24 alcoholic liquor.

25 Sec. 12. (1) A plaintiff's settlement and proper release  
26 of any defendant in an action under the Alcoholic Liquor Liability  
27 Act does not bar potential claims against any other defendant.

28 (2) The amount paid to a plaintiff in consideration for

1 the settlement and proper release of any defendant in an action  
2 under the act shall be offset against all other subsequent  
3 judgments awarded to the plaintiff under the act.

4 (3) The retailer and the minor or intoxicated adult to  
5 whom the retailer served alcoholic liquor who are defendants in an  
6 action brought under the act are jointly and severally liable in  
7 such action.

8 (4) In an action based on negligence as described in  
9 section 6 of this act, the retailer and the minor or intoxicated  
10 adult to whom the retailer served alcoholic liquor shall have a  
11 right of contribution and not a right of indemnification.

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

16 Sec. 13. The Alcoholic Liquor Liability Act is the  
17 exclusive remedy for claims of damage based on a retailer's  
18 negligent or reckless service of alcoholic liquor.

19 Sec. 14. For purposes of satisfying any claim for  
20 damages awarded under the Alcoholic Liquor Liability Act, every  
21 licensee shall furnish proof of financial responsibility to the  
22 Nebraska Liquor Control Commission, either by documenting the  
23 existence of a liability insurance policy or by posting bond in an  
24 amount determined by the commission. Compliance with this section  
25 is not admissible as evidence in the trial of any action brought  
26 under the act.

27 Sec. 15. For purposes of providing proof of financial  
28 responsibility as required under the Alcoholic Liquor Liability

1 Act, a liability insurance policy shall meet the following  
2 requirements:

3 (1) The policy must be issued by a company holding a  
4 current certificate of authority from the Department of Insurance  
5 authorizing the company to issue dram shop liability insurance in  
6 Nebraska;

7 (2) The policy must be countersigned by a resident agent  
8 licensed by the issuing company;

9 (3) The policy must provide the following limits of  
10 liability, exclusive of interest and cost of actions, per accident,  
11 which, for purposes of this subdivision, means any one occurrence  
12 or series of occurrences arising out of any one event or any one  
13 case of intoxication:

14 (a) Fifty thousand dollars to any one person who suffers  
15 injury or death;

16 (b) One hundred thousand dollars total when more than one  
17 person is injured or suffers death;

18 (c) Ten thousand dollars total for property damage;

19 (d) Fifty thousand dollars in respect to any one person  
20 who is injured in means of support;

21 (e) One hundred thousand dollars total when more than one  
22 person is injured in means of support; and

23 (f) Three hundred thousand dollars annual aggregate  
24 liability coverage; and

25 (4) The policy must contain a provision that the policy  
26 cannot be canceled by either the company or the insured until after  
27 the Nebraska Liquor Control Commission has received a thirty-day  
28 prior written notice of cancellation.

1           A licensee shall be deemed to have furnished proof of  
2 financial responsibility when it has filed with the commission a  
3 properly executed form evidencing either a liability insurance  
4 policy or a bond, either of which meets the requirements of  
5 subdivision (3) of this section.

6           Sec. 16. The Alcoholic Liquor Liability Act applies only  
7 to events which occur on or after the effective date of this act.

8           Sec. 17. The Nebraska Liquor Control Commission shall  
9 report to the Legislature within two years after the effective date  
10 of this act on the impact of the Alcoholic Liquor Liability Act.  
11 The report shall include, but not be limited to, initiation of,  
12 extent of, or changes in:

13           (1) The number and type of training programs relating to  
14 service of alcoholic liquor, including training for licensees,  
15 managers, and servers, in the state;

16           (2) The curricula of such training programs;

17           (3) The management policies, procedures, and actions of  
18 licensees regarding the service of alcoholic liquor;

19           (4) The number of actions filed, settled, and litigated  
20 under the Alcoholic Liquor Liability Act and the number of actions  
21 brought under the act which were successfully defended;

22           (5) The legal interpretations of the act, particularly as  
23 compared to interpretations of similar statutes by courts of other  
24 states;

25           (6) The incidence of injuries and deaths related to  
26 driving under the influence of alcoholic liquor or drugs;

27           (7) The incidence of service of alcoholic liquor to  
28 minors and to intoxicated adults; and

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(8) The incidence of other alcohol-related problems.