

ONE HUNDREDTH LEGISLATURE - SECOND SESSION - 2008

COMMITTEE STATEMENT

LB810

Hearing Date: January 24, 2008

Committee On: Judiciary

Introducer(s): (Kruse)

Title: Adopt the Alcoholic Liquor Liability Act

Roll Call Vote - Final Committee Action:

Placed on General File with Amendments

Vote Results:

6 Yes	Senators Ashford, Lathrop, McGill, Chambers, Pirsch, Schimek
1 No	Sen. Pedersen
0 Absent	
1 Present, not voting	Senator McDonald

Proponents:

Senator Kruse
Chris Welsh
Nick Ellinger
Tara Kuipers
Kathy Burson
Bob Schmill

Representing:

Introducer
NATA
MADD
Gage County Maps
Pride Omaha
Matts Dream Foundation

Opponents:

Jim Parington
Kathy Siefken
Tim Keigher

Representing:

Self
Nebraska Grocery Industry Assoc
Nebraska Petroleum Markets

Neutral:

Tim Rigler
Hobert Rube

Representing:

Self
Nebraska Liquor Control Commission

Summary of purpose and/or change:**Legislative Bill 810 proposes to adopt the Liquor Liability Act.**

Under the Act, a retailer who serves alcohol to a noticeably intoxicated adult is liable for any resulting injury, death, or damage if the retailer was negligent or reckless in serving the intoxicated adult.

A retailer is considered to be negligent under the act if he or she serves alcohol to a 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 noticeably intoxicated adult.

A licensee is not chargeable with knowledge of a person's consumption of alcohol away from the licensed premises unless the person's appearance and behavior known to the licensee would put a reasonable person in the same or similar circumstances on notice of such consumption.

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;
- 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, (which if established bars the plaintiff's recovery):

- 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.

The bill establishes a 2 year statute of limitations for claims brought under the act, provides that defendants in an action under the act are jointly and sever ably liable, and clarifies that in an action based on negligence such defendants shall have a right of contribution and not a right of subrogation from each other.

The bill also provides that an action based on recklessness as defined in this act, any defendant who is found not reckless has a right of either indemnification or contribution from defendants found reckless.

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 service of alcoholic liquor.

Explanation of amendments, if any:

Amendment 2664 to LB 810

AM 2664 makes the following changes to LB 810:

AM 2664 would require a retail licensee to train its employees who sell or serve alcoholic liquor. An employee would be required to be trained within sixty days after the operative date of this act if the employee was employed on the operative date of this act or within sixty days after employment for employees hired after the operative date of this act.

AM 2664 would also require that the training provided to the employee must meet the requirements established under 53-117.03 and that the employee must receive a certificate demonstrating completion of the training program. Employees would have to retake the training every three years.

Punishment for a violation of this section will be the same as the punishment provided for a violation of section 53-180.

Senator Brad Ashford, Chairperson