

## LEGISLATIVE BILL 573

Approved by the Governor May 31, 2007

Introduced by Kruse, 13; Aguilar, 35; Burling, 33; Carlson, 38; Hansen, 42; Harms, 48; Lathrop, 12

FOR AN ACT relating to alcoholic liquor; to amend sections 53-167.03 and 53-180.02, Reissue Revised Statutes of Nebraska; to adopt the Minor Alcoholic Liquor Liability Act; to change provisions relating to keg identification numbers and minors in possession of alcoholic liquor; to provide operative dates; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 9 of this act shall be known and may be cited as the Minor Alcoholic Liquor Liability Act.

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

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

(1) Alcoholic liquor has the definition found in section 53-103;

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

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

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

(5) Retailer means a licensee, any agent or employee of the licensee acting within the scope and course of his or her employment, or any person who at the time of the events leading to an action under the Minor Alcoholic Liquor Liability Act was required to have a license issued under the Nebraska Liquor Control Act in order to sell alcoholic liquor at retail;

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

(7) Social host means a person who knowingly allows consumption of alcoholic liquor in his or her home or on property under his or her control by one or more minors. Social host does not include (a) a parent providing alcoholic liquor to only his or her minor child and to no other minors or (b) a religious corporation, organization, association, or society, and any authorized representative of such religious corporation, organization, association, or society, dispensing alcoholic liquor as part of any bona fide religious rite, ritual, or ceremony.

Sec. 4. Any person who sustains injury or property damage, or the estate of any person killed, as a proximate result of the negligence of an intoxicated minor shall have, in addition to any other cause of action available in tort, a cause of action against:

(1) A social host who allowed the minor to consume alcoholic liquor in the social host's home or on property under his or her control;

(2) Any person who procured alcoholic liquor for the minor, other than with the permission and in the company of the minor's parent or guardian, when such person knew or should have known that the minor was a minor; or

(3) Any retailer who sold alcoholic liquor to the minor. The absolute defenses found in section 53-180.07 shall be available to a retailer in any cause of action brought under this section.

Sec. 5. It shall be a complete defense in any action brought under the Minor Alcoholic Liquor Liability Act that the intoxication did not contribute to the negligent conduct.

Sec. 6. No cause of action under the Minor Alcoholic Liquor Liability Act shall be available to the intoxicated person, his or her estate, or anyone whose claim is based upon injury to or death of the intoxicated person.

Sec. 7. In an action under the Minor Alcoholic Liquor Liability Act, damages may be awarded for all actual damages, including damages for wrongful death, as in other tort actions.

Sec. 8. Notwithstanding any other provision of law, any action under the Minor Alcoholic Liquor Liability Act shall be brought within four years after the occurrence causing the injury, property damage, or death.

Sec. 9. (1) A plaintiff's settlement and release of one defendant in

an action under the Minor Alcoholic Liquor Liability Act does not bar claims against any other defendant.

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

(3) The retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor who are defendants in an action brought under the act are jointly and severally liable in such action as provided in section 25-21,185.10 for those who act in concert to cause harm.

(4) In an action based on the act, the retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor shall have a right of contribution and not a right of subrogation from one another.

Sec. 10. Section 53-167.03, Reissue Revised Statutes of Nebraska, is amended to read:

53-167.03 (1) Any person who unlawfully tampers with, alters, or removes the keg identification number from a beer container or is in possession of a beer container described in section 53-167.02 with an altered or removed keg identification number after such container has been taken from the licensed premises pursuant to a retail sale and before its return to such licensed premises or other place where returned kegs are accepted shall be guilty of a Class III misdemeanor.

(2) A licensee may require a deposit of not more than the replacement cost of the container described in section 53-167.02 from a person purchasing beer for consumption off the premises. Such deposit may be retained by the licensee, in the amount of actual damages, if upon return the container or any associated equipment is damaged or if the keg identification number has been unlawfully tampered with, altered, or removed and such tampering, alteration, or removal has been reported to a law enforcement officer.

Sec. 11. Section 53-180.02, Reissue Revised Statutes of Nebraska, is amended to read:

53-180.02 Except as provided in section 53-168.06, no minor may sell, dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor as a part of a bona fide religious rite, ritual, or ceremony or in his or her permanent place of residence. ~~in his or her permanent place of residence or on the premises of a place of religious worship on which premises alcoholic liquor is consumed as a part of a religious rite, ritual, or ceremony.~~

The governing bodies of counties, cities, and villages shall have the power to, and may by applicable resolution or ordinance, regulate, suppress, and control the transportation, consumption, or knowing possession of or having under his or her control beer or other alcoholic liquor in or transported by any motor vehicle, by any person under twenty-one years of age, and may provide penalties for violations of such resolution or ordinance.

Sec. 12. Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 of this act become operative on January 1, 2008. The other sections of this act become operative on their effective date.

Sec. 13. Original sections 53-167.03 and 53-180.02, Reissue Revised Statutes of Nebraska, are repealed.