

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1075**

Introduced by Carlson, 38; Harms, 48.

Read first time January 21, 2010

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to alcoholic liquor; to adopt the Alcoholic
- 2           Liquor Liability Act; and to provide an operative date.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 9 of this act shall be known and  
2 may be cited as 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 and to establish a legal basis for obtaining  
6 compensation for persons suffering damages as a result of provision  
7 or service of alcoholic liquor under circumstances described in the  
8 act.

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

11           (1) Alcoholic liquor has the definition found in section  
12 53-103;

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

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

22           (4) Retailer means a licensee, any agent or employee of  
23 the licensee, or any person who at the time of the events leading  
24 to an action under the Alcoholic Liquor Liability Act was required  
25 to have a license issued under the Nebraska Liquor Control Act in

1 order to sell alcoholic liquor at retail; and

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

4 Sec. 4. (1) Any person who sustains injury or property  
5 damage, or the estate of any person killed, as a proximate result  
6 of the negligence of an intoxicated person shall have, in addition  
7 to any other cause of action available in tort, a cause of action  
8 against a licensee who served alcoholic liquor by the drink to the  
9 intoxicated person when the licensee knew or should have known that  
10 the person was intoxicated or when the licensee knew or should have  
11 known that the person would become intoxicated.

12 (2) The following complete defenses shall be available in  
13 any action brought under this section:

14 (a) The intoxication did not contribute to the negligent  
15 conduct; or

16 (b) The injured person or the decedent encouraged,  
17 contributed to, or participated in the drinking activities of  
18 the intoxicated person.

19 Sec. 5. No cause of action under the Alcoholic Liquor  
20 Liability Act shall be available to the intoxicated person, his or  
21 her estate, or anyone whose claim is based upon injury to or death  
22 of the intoxicated person.

23 Sec. 6. In an action under the Alcoholic Liquor Liability  
24 Act, damages may be awarded for all actual damages, including  
25 damages for wrongful death, as in other tort actions.

1           Sec. 7. Notwithstanding any other provision of law, any  
2 action under the Alcoholic Liquor Liability Act shall be brought  
3 within four years after the occurrence causing the injury, property  
4 damage, or death.

5           Sec. 8. (1) A plaintiff's settlement and release of one  
6 defendant in an action under the Alcoholic Liquor Liability Act  
7 does not bar claims against any other defendant.

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

12           (3) The retailer, the licensee, and the intoxicated  
13 person who are defendants in an action brought under the act are  
14 jointly and severally liable in such action as provided in section  
15 25-21,185.10 for those who act in concert to cause harm.

16           (4) In an action based on the Alcoholic Liquor Liability  
17 Act, the retailer, the licensee, and the intoxicated person shall  
18 have a right of contribution and not a right of subrogation from  
19 one another.

20           Sec. 9. Every retailer shall furnish proof of financial  
21 responsibility for the provisions of the Alcoholic Liquor Liability  
22 Act by the existence of a liability insurance policy in an amount  
23 determined by the Nebraska Liquor Control Commission.

24           Sec. 10. This act becomes operative on January 1, 2011.