

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 693

Introduced by Carlson, 38.

Read first time January 19, 2011

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 53-103.02;

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 the
16 manner of a reasonably prudent person in full possession of his or
17 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 to
24 an action under the Alcoholic Liquor Liability Act was required to
25 have a license issued under the Nebraska Liquor Control Act in order

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

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

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

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

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

24 Sec. 6. In an action under the Alcoholic Liquor Liability
25 Act, damages may be awarded for all actual damages, including damages

1 for wrongful death, as in other tort actions.

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

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

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

13 (3) The retailer, the licensee, and the intoxicated
14 person who are defendants in an action brought under the act are
15 jointly and severally liable in such action as provided in section
16 25-21,185.10 for those who act in concert to cause harm.

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

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

25 Sec. 10. This act becomes operative on January 1, 2012.