

4 January 2/77

Do Pass 3/20 (p. 1081)

FILED FEB 6 1980

SENATE FILE 2154

By COMMITTEE ON JUDICIARY
approved 7.548

Passed Senate, Date 2-13-80 (p. 424) Passed House, Date 4/10/80 (p. 454)

Vote: Ayes 43 Nays 0 Vote: Ayes 53 Nays 9

Approved May 13, 1980

A BILL FOR

1 An Act relating to the civil liability resulting from the
2 sale or giving of beer or intoxicating liquor, by liquor
3 control licensees or beer permittees.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section one hundred twenty-three point ninety-
2 two (123.92), Code 1979, is amended to read as follows:

3 123.92 CIVIL LIABILITY APPLICABLE TO SALE OR GIFT OF BEER
4 OR INTOXICANTS BY LICENSEES. Every husband, wife, child,
5 parent, guardian, employer or other person who shall be injured
6 in person or property or means of support by any intoxicated
7 person or resulting from the intoxication of any such person,
8 shall have a right of action, severally or jointly, against
9 any licensee or permittee, who shall sell or give any beer
10 or intoxicating liquor to any such person while he or she
11 is intoxicated, or serve any such person to a point where
12 such person is intoxicated, for all damages actually sustained.
13 If the injury was caused by an intoxicated person, a permittee
14 or licensee may establish as an affirmative defense that the
15 intoxication did not contribute to the injurious action of
16 the person.

17 Every liquor control licensee and class "B" beer permittee
18 shall furnish proof of financial responsibility either by
19 the existence of a liability insurance policy or by posting
20 bond in such amount as determined by the department.

21 Sec. 2. This Act is effective January first following
22 its enactment.

23 EXPLANATION

24 The Iowa Supreme Court has held that to recover under the
25 Dram Shop Act "It is enough that the injury was by an intoxi-
26 cated person, regardless of whether it would have been
27 committed by him if sober. In other words, if by an
28 intoxicated person, it is not necessary to prove that the
29 injury was in consequence of intoxication." This bill provides
30 that a liquor control licensee or beer permittee can avoid
31 civil liability under the Dram Shop Act by establishing that
32 the intoxication did not contribute to the injurious action.

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SENATE FILE 2154

H-52

1 Amend H-5929 to Senate File 2154 as follows:

2 1. Page 1, by striking lines 2 and 3 and inserting
3 in lieu thereof the following:

4 "1. Page 1, line 4, by striking the words "BY
5 LICENSEES" and inserting in lieu thereof the words
6 "BY-LICENSEES".

7 2. Page 1, by inserting after line 12, the
8 following: "If the intoxicated person consumed
9 alcoholic liquor purchased by him or her personally
10 from a state liquor store which alcoholic liquor
11 contributed to the person's intoxication, the person
12 injured shall have a right of action severally or
13 jointly against the state as well as against the
14 licensees or permittees."

15 3. Page 1, line 14, by inserting after the word
16 "licensee" the words "or the state".

17 2. Page 1, by inserting after line 3, the
18 following:

19 "5. Page 1, by inserting after line 20, the
20 following:

21 "Sec. ____ . Section one hundred twenty-three point
22 ninety-three (123.93), Code 1979, is amended to read
23 as follows:

24 123.93 LIMITATION OF ACTION. Within six months
25 of the occurrence of an injury, the injured person
26 shall give written notice to the licensee or permittee
27 or the department or such licensee's or permittee's
28 or the department's insurance carrier of his or her
29 intention to bring an action under this section,
30 indicating the time, place and circumstances causing
31 the injury. Such six months' period shall be extended
32 if the injured party is incapacitated at the expiration
33 thereof or unable, through reasonable diligence, to
34 discover the name of the licensee, permittee, state
35 liquor store, or person causing the injury or until
36 such time as such incapacity is removed or such person
37 has had a reasonable time to discover the name of
38 the licensee, permittee, state liquor store, or person
39 causing the injury.

40 Sec. ____ . Section one hundred twenty-three point
41 ninety-four (123.94), Code 1979, is amended to read
42 as follows:

43 123.94 INUREMENT OF ACTION PROHIBITED. No right
44 of action for contribution or indemnity shall accrue
45 to any insurer, guarantor or indemnitor of any
46 intoxicated person for any act of such intoxicated
47 person against any licensee or permittee or the state,
48 as defined in this chapter."

H-5952 FILED
APRIL 9, 1980

BY PERKINS of Greene
WELSH of Dubuque

Filed and approved 4/10 (p. 1470)

SENATE FILE 2154

H-5931

- 1 Amend Sena'e File 2154 as follows:
- 2 1. Page 1, by striking lines 1 through 20 and
- 3 inserting in lieu thereof the following:
- 4 Section 1. Section one hundred twenty-three
- 5 point ninety-two (123.92), Section one hundred
- 6 twenty-three point ninety-three (123.93), and
- 7 Section one hundred twenty-three point ninety-four
- 8 (123.94) are repealed.

H-5931 FILED
APRIL 8, 1980
Revised 4/10 (1980)

BY WELSH of Dubuque
PERKINS of Greene

SENATE FILE 2154

H-5930

- 1 Amend Senate File 2154 as follows:
- 2 1. Page 1, by striking line 17 and in-
- 3 sserting in lieu thereof the following:
- 4 "Every liquor control licensee and class
- 5 "B" and "C" beer permittee"

H-5930 FILED
APRIL 8, 1980
Revised 4/10 (1980)

BY PERKINS of Greene
WELSH of Dubuque

SENATE FILE 2154

H-5929

- 1 Amend Senate File 2154 as follows:
- 2 1. Page 1, by inserting after line 17 the
- 3 following: "and state liquor stores"

H-5929 FILED
APRIL 8, 1980
Revised 4/10 (1980)

BY PERKINS of Greene
WELSH of Dubuque

SENATE FILE 2154

H-5972

- 1 Amend the amendment, H-5930, to Senate File 2154
- 2 as follows:
- 3 1. Page 1, by inserting after line 5 the
- 4 following:
- 5 "2. Page 1, line 20, by inserting the following
- 6 sentence after the word "department.": "With
- 7 respect to class C beer permittees, proof must be
- 8 shown that the beer was purchased within a 12 hour
- 9 period of the incident involving injury to a person
- 10 or property." "

H-5972 FILED
APRIL 10, 1980
Revised 4/10 (1980)

BY WELSH of Dubuque

Sec. 2. This Act is effective January first following its enactment.

SENATE FILE 2154

AN ACT

RELATING TO THE CIVIL LIABILITY RESULTING FROM THE SALE OR GIVING OF BEER OR INTOXICATING LIQUOR, BY LIQUOR CONTROL LICENSEES OR BEER PERMITTEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section one hundred twenty-three point ninety-two (123.92), Code 1979, is amended to read as follows:

123.92 CIVIL LIABILITY APPLICABLE TO SALE OR GIFT OF BEER OR INTOXICANTS BY LICENSEES. Every husband, wife, child, parent, guardian, employer or other person who shall be injured in person or property or means of support by any intoxicated person or resulting from the intoxication of any such person, shall have a right of action, severally or jointly, against any licensee or permittee, who shall sell or give any beer or intoxicating liquor to any such person while he or she is intoxicated, or serve any such person to a point where such person is intoxicated, for all damages actually sustained. If the injury was caused by an intoxicated person, a permittee or licensee may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the person.

Every liquor control licensee and class "B" beer permittee shall furnish proof of financial responsibility either by the existence of a liability insurance policy or by posting bond in such amount as determined by the department.

TERRY E. BRANSTAD
President of the Senate

WILLIAM H. HARBOR
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2154, Sixty-eighth General Assembly.

FRANK J. STORK
Secretary of the Senate

Approved May 13, 1980

ROBERT D. RAY
Governor