

House Study Bill 679

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
PUBLIC SAFETY BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning alcoholic beverages by establishing criminal
2 and civil liability for providing alcoholic beverages to
3 persons under legal age, providing for an identification
4 number on kegs of beer, and making penalties applicable.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 5373XD 81
7 ec/je/5

PAG LIN

1 1 Section 1. Section 123.47, subsection 1, Code Supplement
1 2 2005, is amended to read as follows:
1 3 1. a. A person shall not sell, give, or otherwise supply
1 4 alcoholic liquor, wine, or beer to any person knowing or
1 5 having reasonable cause to believe that person to be under
1 6 legal age.

1 7 b. ~~A person who is the owner, lessee, or who has control~~
1 8 ~~of property that is not a licensed premises shall not permit~~
1 9 ~~any person, knowing or having reasonable cause to believe the~~
1 10 ~~person to be under legal age, to consume or possess on such~~
1 11 ~~property any alcoholic liquor, wine, or beer.~~

1 12 Sec. 2. Section 123.47, subsection 4, Code Supplement
1 13 2005, is amended to read as follows:
1 14 4. Except as otherwise provided in subsections 5 and 6, a
1 15 person who is of legal age, other than a licensee or
1 16 permittee, who ~~sells, gives, or otherwise supplies alcoholic~~
1 17 ~~liquor, wine, or beer to a person who is under legal age in~~
1 18 ~~violation of this section~~ violates subsection 1 commits a
1 19 serious misdemeanor punishable by a minimum fine of five
1 20 hundred dollars.

1 21 Sec. 3. Section 123.47, subsection 5, Code Supplement
1 22 2005, is amended to read as follows:
1 23 5. A person who is of legal age, other than a licensee or
1 24 permittee, who sells, gives, or otherwise supplies alcoholic
1 25 liquor, wine, or beer to a person who is under legal age in
1 26 violation of ~~this section~~ subsection 1, paragraph "a", which
1 27 results in serious injury to any person commits an aggravated
1 28 misdemeanor.

1 29 Sec. 4. Section 123.47, subsection 6, Code Supplement
1 30 2005, is amended to read as follows:
1 31 6. A person who is of legal age, other than a licensee or
1 32 permittee, who sells, gives, or otherwise supplies alcoholic
1 33 liquor, wine, or beer to a person who is under legal age in
1 34 violation of ~~this section~~ subsection 1, paragraph "a", which
1 35 results in the death of any person commits a class "D" felony.

2 1 Sec. 5. Section 123.50, subsection 1, Code 2005, is
2 2 amended to read as follows:
2 3 1. Any person who violates any of the provisions of
2 4 section 123.49, except subsection 2, paragraph "h", or who
2 5 fails to affix upon sale, defaces, or fails to record a keg
2 6 identification sticker or produce a record of keg
2 7 identification stickers pursuant to section 123.138, shall be
2 8 guilty of a simple misdemeanor. A person who violates section
2 9 123.49, subsection 2, paragraph "h", commits a simple
2 10 misdemeanor punishable as a scheduled violation under section
2 11 805.8C, subsection 2.

2 12 Sec. 6. Section 123.92, unnumbered paragraph 3, Code 2005,
2 13 is amended to read as follows:
2 14 Notwithstanding section 123.49, subsection 1, any person
2 15 who is injured in person or property or means of support by an
2 16 intoxicated person who is under legal age or resulting from
2 17 the intoxication of a person who is under legal age, has a

2 18 right of action for all damages actually sustained, severally
2 19 or jointly, against a person who is not a licensee or
2 20 permittee and who dispensed or gave any beer, wine, or
2 21 intoxicating liquor to the intoxicated underage person when
2 22 the nonlicensee or nonpermittee who dispensed or gave the
2 23 beer, wine, or intoxicating liquor to the underage person knew
2 24 or should have known the underage person was intoxicated, or
2 25 who dispensed or gave beer, wine, or intoxicating liquor to
2 26 the underage person to a point where the nonlicensee or
2 27 nonpermittee knew or should have known that the underage
2 28 person would become intoxicated. If the injury was caused by
2 29 an intoxicated person who is under legal age, a person who is
2 30 not a licensee or permittee and who dispensed or gave beer,
2 31 wine, or intoxicating liquor to the underage person may
2 32 establish as an affirmative defense that the intoxication did
2 33 not contribute to the injurious action of the underage person.
2 34 For purposes of this paragraph, "dispensed" or "gave" means
2 35 the act of physically presenting a receptacle containing beer,
3 1 wine, or intoxicating liquor to the underage person, or
3 2 deliberately and knowingly making available a receptacle
3 3 containing beer, wine, or intoxicating liquor to the underage
3 4 person with direct knowledge that the underage person intends
3 5 to consume the beer, wine, or other intoxicating liquor, but
3 6 without physically presenting such receptacle to the underage
3 7 person, whose actions or intoxication results in the
3 8 sustaining of damages by another person. However, a person
3 9 who dispenses or gives beer, wine, or intoxicating liquor to
3 10 an underage person, or who deliberately and knowingly makes
3 11 available a receptacle containing beer, wine, or intoxicating
3 12 liquor to an underage person, shall only be liable for any
3 13 damages if the person knew or should have known that the
3 14 underage person was under legal age.

3 15 Sec. 7. Section 123.138, Code 2005, is amended to read as
3 16 follows:

3 17 123.138 BOOKS OF ACCOUNT REQUIRED.

3 18 1. Each class "A" or special class "A" permittee shall
3 19 keep proper books of account and records showing the amount of
3 20 beer sold by the permittee, and these books of account shall
3 21 be at all times open to inspection by the administrator and to
3 22 other persons pursuant to section 123.30, subsection 1. Each
3 23 class "B" and class "C" permittee shall keep proper books of
3 24 account and records showing each purchase of beer made by the
3 25 permittee, and the date and the amount of each purchase and
3 26 the name of the person from whom each purchase was made, which
3 27 books of account and records shall be open to inspection
3 28 pursuant to section 123.30, subsection 1, during normal
3 29 business hours of the permittee.

3 30 2. Each class "B", "C", or special class "C" liquor
3 31 control licensee and class "B" or "C" beer permittee who sells
3 32 beer for off-premises consumption shall affix to each keg of
3 33 beer an identification sticker provided by the administrator.
3 34 For the purposes of this section, "keg" means all durable and
3 35 disposable containers with a liquid capacity of five gallons
4 1 or more. Each class "B", "C", or special class "C" liquor
4 2 control licensee and class "B" or "C" beer permittee shall
4 3 also keep a record of the identification sticker number of
4 4 each keg of beer sold by the licensee or permittee with the
4 5 name and address of the purchaser and the number of the
4 6 purchaser's driver's license, nonoperator's identification
4 7 card, or military identification card, if the military
4 8 identification card contains a picture and signature. This
4 9 information shall be retained by the licensee or permittee for
4 10 a minimum of ninety days. The records kept pursuant to this
4 11 section shall be available for inspection by any law
4 12 enforcement officer during normal business hours.

4 13 3. The division shall provide the keg identification
4 14 stickers described in subsection 2. Each sticker shall
4 15 contain a number and the following statement: "It is unlawful
4 16 to sell, give, or otherwise supply any alcoholic beverage,
4 17 wine, or beer to any person under legal age. Any person who
4 18 defaces this sticker shall be guilty of criminal mischief
4 19 punishable pursuant to section 716.6 and shall cause the
4 20 forfeiture of any deposit, if applicable." The identification
4 21 sticker shall be placed on the keg at the time of retail sale.
4 22 The licensee or permittee shall purchase the stickers referred
4 23 to in this section from the division and shall remit to the
4 24 division deposits forfeited pursuant to this subsection due to
4 25 defacement. The cost of the stickers to licensees and
4 26 permittees shall not exceed the division's cost of producing
4 27 and distributing the stickers. The moneys collected by the
4 28 division relating to the sale of stickers and forfeited

4 29 deposits shall be credited to the beer and liquor control
4 30 fund.
4 31 4. Enforcement of this section shall be implemented
4 32 uniformly throughout the state. For purposes of uniform
4 33 implementation, a county or municipality shall not set
4 34 requirements or establish a penalty which is higher or more
4 35 stringent than the requirements or penalties enumerated in
5 1 this section, section 123.50, and section 716.6. The division
5 2 shall establish by rule procedures relating to the forfeiture
5 3 and remittance of deposits pursuant to subsection 3.

5 4 EXPLANATION

5 5 This bill concerns alcohol beverage control relating to
5 6 providing alcohol to underage persons, dram shop liability,
5 7 and providing keg identification numbers for sales of beer in
5 8 containers of five gallons or more.

5 9 Code section 123.47 is amended to provide that it shall be
5 10 unlawful for a person who owns, leases, or has control of
5 11 property that is not a licensed premises to permit any person,
5 12 knowing or having reasonable cause to believe the person to be
5 13 under legal age, to consume or possess on the property any
5 14 alcoholic liquor, wine, or beer. A violation of this
5 15 provision would be a serious misdemeanor punishable by a
5 16 minimum fine of \$500.

5 17 Code section 123.92 is amended to extend civil liability to
5 18 a person who deliberately and knowingly makes available a
5 19 receptacle containing beer, wine, or intoxicating liquor to an
5 20 underage person with direct knowledge that the underage person
5 21 intends to consume the beer, wine, or other intoxicating
5 22 liquor and the underage person becomes intoxicated and injures
5 23 another person. Current law provides that a person must
5 24 physically present such receptacle to a person under legal age
5 25 for that person to be liable for injuries caused by that
5 26 intoxicated underage person.

5 27 The bill provides in Code section 123.138 that specified
5 28 liquor control licensees and beer permittees who sell beer for
5 29 off-premises consumption shall affix to each keg of beer an
5 30 identification sticker provided by the administrator of the
5 31 alcoholic beverages division of the department of commerce.
5 32 The bill provides that a "keg" of beer shall refer to all
5 33 durable and disposable containers with a liquid capacity of
5 34 five gallons or more.

5 35 The bill also provides that each of the specified licensees
6 1 and permittees shall keep a record of the identification
6 2 sticker number of each keg of beer sold by the licensee or
6 3 permittee with the name and address of the purchaser and the
6 4 number of the purchaser's driver's license, nonoperator's
6 5 identification card, or military identification card. The
6 6 bill provides that this information shall be retained for a
6 7 minimum of 90 days, and shall be available for inspection by
6 8 any law enforcement officer during normal business hours. The
6 9 bill provides that the identification sticker shall be affixed
6 10 to the keg at the time of the retail sale.

6 11 The bill provides that the alcoholic beverages division
6 12 shall provide the keg identification stickers, and that each
6 13 sticker shall display an identification number and a statement
6 14 that it is unlawful to sell, give, or otherwise supply any
6 15 alcoholic beverage, wine, or beer to any person under legal
6 16 age, and that any person who defaces the sticker shall be
6 17 guilty of criminal mischief and shall forfeit a deposit, if
6 18 applicable. The bill provides that the licensee or permittee
6 19 shall purchase the stickers from the division, that the
6 20 licensee or permittee shall be authorized to retain a
6 21 forfeited deposit, that the cost of the stickers shall not
6 22 exceed the division's production and distribution cost, and
6 23 that the moneys collected by the division from the sale of the
6 24 stickers or from forfeited deposits shall be credited to the
6 25 beer and liquor control fund.

6 26 The bill provides that penalty provisions contained in Code
6 27 section 123.50, regarding violations being punishable as a
6 28 simple misdemeanor, shall be applicable to a licensee or
6 29 permittee who fails to affix upon sale, defaces, or fails to
6 30 record a keg identification sticker or produce a record of keg
6 31 identification stickers. The bill provides that the
6 32 provisions of the bill shall be enforced and implemented
6 33 uniformly across the state, and that a county or municipality
6 34 shall not set requirements or establish a penalty which is
6 35 higher or more stringent than the requirements or penalty
7 1 provisions made applicable in Code section 123.50 or 716.6.

7 2 LSB 5373XD 81

7 3 ec:rj/je/5.1