

# Senate File 379 - Introduced

SENATE FILE \_\_\_\_\_  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1183)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the use of insurance loss history in the  
2 issuance of dramshop liability insurance.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1993SV 83  
5 av/rj/14

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1 1 Section 1. Section 123.92, Code 2009, is amended to read  
1 2 as follows:  
1 3 123.92 CIVIL LIABILITY FOR DISPENSING OR SALE AND SERVICE  
1 4 OF BEER, WINE, OR INTOXICATING LIQUOR (DRAMSHOP ACT) ==  
1 5 LIABILITY INSURANCE == UNDERAGE PERSONS.  
1 6 1. a. Any person who is injured in person or property or  
1 7 means of support by an intoxicated person or resulting from  
1 8 the intoxication of a person, has a right of action for all  
1 9 damages actually sustained, severally or jointly, against any  
1 10 licensee or permittee, whether or not the license or permit  
1 11 was issued by the division or by the licensing authority of  
1 12 any other state, who sold and served any beer, wine, or  
1 13 intoxicating liquor to the intoxicated person when the  
1 14 licensee or permittee knew or should have known the person was  
1 15 intoxicated, or who sold to and served the person to a point  
1 16 where the licensee or permittee knew or should have known the  
1 17 person would become intoxicated.  
1 18 b. If the injury was caused by an intoxicated person, a  
1 19 permittee or licensee may establish as an affirmative defense  
1 20 that the intoxication did not contribute to the injurious  
1 21 action of the person. ~~The remedy provided by this section~~  
~~1 22 shall apply both prospectively, to actions filed on or after~~  
~~1 23 July 1, 1992, and retrospectively, to actions pending in trial~~  
~~1 24 or appellate courts prior to July 1, 1992.~~  
1 25 2. Every liquor control licensee and class "B" beer  
1 26 permittee, except a class "E" liquor control licensee, shall  
1 27 furnish proof of financial responsibility by the existence of  
1 28 a liability insurance policy in an amount determined by the  
1 29 division. If an insurer provides dramshop liability insurance  
1 30 at a new location to a licensee or permittee who has a  
1 31 positive loss experience at other locations for which such  
1 32 insurance is provided by the insurer, and the insurer bases  
1 33 premium rates at the new location on the negative loss history  
1 34 of the previous licensee or permittee at that location, the  
1 35 insurer shall adjust the premium for the new location not less  
2 1 than thirty months after the insurance is issued, based on the  
2 2 loss experience of the licensee or permittee at that location  
2 3 during that thirty-month period of time.  
2 4 3. a. Notwithstanding section 123.49, subsection 1, any  
2 5 person who is injured in person or property or means of  
2 6 support by an intoxicated person who is under legal age or  
2 7 resulting from the intoxication of a person who is under legal  
2 8 age, has a right of action for all damages actually sustained,  
2 9 severally or jointly, against a person who is not a licensee  
2 10 or permittee and who dispensed or gave any beer, wine, or  
2 11 intoxicating liquor to the intoxicated underage person when  
2 12 the nonlicensee or nonpermittee who dispensed or gave the  
2 13 beer, wine, or intoxicating liquor to the underage person knew  
2 14 or should have known the underage person was intoxicated, or  
2 15 who dispensed or gave beer, wine, or intoxicating liquor to  
2 16 the underage person to a point where the nonlicensee or

2 17 nonpermittee knew or should have known that the underage  
2 18 person would become intoxicated.  
2 19 b. If the injury was caused by an intoxicated person who  
2 20 is under legal age, a person who is not a licensee or  
2 21 permittee and who dispensed or gave beer, wine, or  
2 22 intoxicating liquor to the underage person may establish as an  
2 23 affirmative defense that the intoxication did not contribute  
2 24 to the injurious action of the underage person.  
2 25 c. For purposes of this ~~paragraph~~ subsection, "dispensed"  
2 26 or "gave" means the act of physically presenting a receptacle  
2 27 containing beer, wine, or intoxicating liquor to the underage  
2 28 person whose actions or intoxication results in the sustaining  
2 29 of damages by another person. However, a person who dispenses  
2 30 or gives beer, wine, or intoxicating liquor to an underage  
2 31 person shall only be liable for any damages if the person knew  
2 32 or should have known that the underage person was under legal  
2 33 age.

2 34 EXPLANATION

2 35 This bill amends Code section 123.92 to provide that if an  
3 1 insurer provides dramshop liability insurance at a new  
3 2 location to a licensee or permittee who has a positive loss  
3 3 history at other locations for which such insurance is  
3 4 provided, and the insurer bases premiums at the new location  
3 5 on the negative loss history of a previous licensee or  
3 6 permittee at that location the insurer shall adjust the  
3 7 premium at the new location not less than 30 months after the  
3 8 insurance is issued, based on the loss experience of the  
3 9 licensee or permittee at that location during that 30-month  
3 10 period of time.  
3 11 LSB 1993SV 83  
3 12 av/rj/14