

Senate Study Bill 1183

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON WARNSTADT)

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 1993XC 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. An insurer providing dramshop liability insurance
1 30 shall not surcharge the premium or decline to insure a
1 31 licensee or permittee at the location for which the license or
1 32 permit is issued based on the insurance loss history of a
1 33 previous licensee or permittee at that location.
1 34 3. a. Notwithstanding section 123.49, subsection 1, any
1 35 person who is injured in person or property or means of
2 1 support by an intoxicated person who is under legal age or
2 2 resulting from the intoxication of a person who is under legal
2 3 age, has a right of action for all damages actually sustained,
2 4 severally or jointly, against a person who is not a licensee
2 5 or permittee and who dispensed or gave any beer, wine, or
2 6 intoxicating liquor to the intoxicated underage person when
2 7 the nonlicensee or nonpermittee who dispensed or gave the
2 8 beer, wine, or intoxicating liquor to the underage person knew
2 9 or should have known the underage person was intoxicated, or
2 10 who dispensed or gave beer, wine, or intoxicating liquor to
2 11 the underage person to a point where the nonlicensee or
2 12 nonpermittee knew or should have known that the underage
2 13 person would become intoxicated.
2 14 b. If the injury was caused by an intoxicated person who
2 15 is under legal age, a person who is not a licensee or
2 16 permittee and who dispensed or gave beer, wine, or
2 17 intoxicating liquor to the underage person may establish as an
2 18 affirmative defense that the intoxication did not contribute

2 19 to the injurious action of the underage person.
2 20 c. For purposes of this ~~paragraph~~ subsection, "dispensed"
2 21 or "gave" means the act of physically presenting a receptacle
2 22 containing beer, wine, or intoxicating liquor to the underage
2 23 person whose actions or intoxication results in the sustaining
2 24 of damages by another person. However, a person who dispenses
2 25 or gives beer, wine, or intoxicating liquor to an underage
2 26 person shall only be liable for any damages if the person knew
2 27 or should have known that the underage person was under legal
2 28 age.

2 29 EXPLANATION

2 30 This bill amends Code section 123.92 to prohibit an insurer
2 31 that provides dramshop liability insurance from surcharging
2 32 the premium or declining to insure a licensee or permittee at
2 33 the location for which the license or permit is issued based
2 34 on the loss history of a previous licensee or permittee at
2 35 that location.

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