

# Senate Study Bill 1184

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 unfounded claims history in  
2 determinations related to the issuance of dramshop liability  
3 coverage.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 1994XC 83  
6 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 consider unfounded claims in an applicant's or  
1 31 insured's claims history in determining whether to decline,  
1 32 cancel, nonrenew, or surcharge such a policy.  
1 33 3. a. Notwithstanding section 123.49, subsection 1, any  
1 34 person who is injured in person or property or means of  
1 35 support by an intoxicated person who is under legal age or  
2 1 resulting from the intoxication of a person who is under legal  
2 2 age, has a right of action for all damages actually sustained,  
2 3 severally or jointly, against a person who is not a licensee  
2 4 or permittee and who dispensed or gave any beer, wine, or  
2 5 intoxicating liquor to the intoxicated underage person when  
2 6 the nonlicensee or nonpermittee who dispensed or gave the  
2 7 beer, wine, or intoxicating liquor to the underage person knew  
2 8 or should have known the underage person was intoxicated, or  
2 9 who dispensed or gave beer, wine, or intoxicating liquor to  
2 10 the underage person to a point where the nonlicensee or  
2 11 nonpermittee knew or should have known that the underage  
2 12 person would become intoxicated.  
2 13 b. If the injury was caused by an intoxicated person who  
2 14 is under legal age, a person who is not a licensee or  
2 15 permittee and who dispensed or gave beer, wine, or  
2 16 intoxicating liquor to the underage person may establish as an  
2 17 affirmative defense that the intoxication did not contribute

2 18 to the injurious action of the underage person.  
2 19 c. For purposes of this ~~paragraph~~ subsection, "dispensed"  
2 20 or "gave" means the act of physically presenting a receptacle  
2 21 containing beer, wine, or intoxicating liquor to the underage  
2 22 person whose actions or intoxication results in the sustaining  
2 23 of damages by another person. However, a person who dispenses  
2 24 or gives beer, wine, or intoxicating liquor to an underage  
2 25 person shall only be liable for any damages if the person knew  
2 26 or should have known that the underage person was under legal  
2 27 age.

2 28 EXPLANATION

2 29 This bill amends Code section 123.92 to prohibit an insurer  
2 30 that provides dramshop liability coverage from considering  
2 31 unfounded claims in an applicant's or insured's claims history  
2 32 in determining whether to decline, cancel, nonrenew, or  
2 33 surcharge such a policy.  
2 34 LSB 1994XC 83  
2 35 av/rj/14