

CHAPTER 128**DRAMSHOP LIABILITY INSURANCE
— USE OF LOSS HISTORY***S.F. 379*

AN ACT relating to the use of insurance loss history in the issuance of dramshop liability insurance.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 123.92, Code 2009, is amended to read as follows:

123.92 CIVIL LIABILITY FOR DISPENSING OR SALE AND SERVICE OF BEER, WINE, OR INTOXICATING LIQUOR (DRAMSHOP ACT) — LIABILITY INSURANCE — UNDERAGE PERSONS.

1. a. Any person who is injured in person or property or means of support by an intoxicated person or resulting from the intoxication of a person, has a right of action for all damages actually sustained, severally or jointly, against any licensee or permittee, whether or not the license or permit was issued by the division or by the licensing authority of any other state, who sold and served any beer, wine, or intoxicating liquor to the intoxicated person when the licensee or permittee knew or should have known the person was intoxicated, or who sold to and served the person to a point where the licensee or permittee knew or should have known the person would become intoxicated.

b. 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. The remedy provided by this section shall apply both prospectively, to actions filed on or after July 1, 1992, and retrospectively, to actions pending in trial or appellate courts prior to July 1, 1992.

2. Every liquor control licensee and class “B” beer permittee, except a class “E” liquor control licensee, shall furnish proof of financial responsibility by the existence of a liability insurance policy in an amount determined by the division. If an insurer provides dramshop liability insurance at a new location to a licensee or permittee who has a positive loss experience at other locations for which such insurance is provided by the insurer, and the insurer bases premium rates at the new location on the negative loss history of the previous licensee or permittee at that location, the insurer shall examine and consider adjusting the premium for the new location not less than thirty months after the insurance is issued, based on the loss experience of the licensee or permittee at that location during that thirty-month period of time.

3. a. Notwithstanding section 123.49, subsection 1, any person who is injured in person or property or means of support by an intoxicated person who is under legal age or resulting from the intoxication of a person who is under legal age, has a right of action for all damages actually sustained, severally or jointly, against a person who is not a licensee or permittee and who dispensed or gave any beer, wine, or intoxicating liquor to the intoxicated underage person when the nonlicensee or nonpermittee who dispensed or gave the beer, wine, or intoxicating liquor to the underage person knew or should have known the underage person was intoxicated, or who dispensed or gave beer, wine, or intoxicating liquor to the underage person to a point where the nonlicensee or nonpermittee knew or should have known that the underage person would become intoxicated.

b. If the injury was caused by an intoxicated person who is under legal age, a person who is not a licensee or permittee and who dispensed or gave beer, wine, or intoxicating liquor to the underage person may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the underage person.

c. For purposes of this paragraph subsection, “dispensed” or “gave” means the act of physically presenting a receptacle containing beer, wine, or intoxicating liquor to the underage person whose actions or intoxication results in the sustaining of damages by another person.

However, a person who dispenses or gives beer, wine, or intoxicating liquor to an underage person shall only be liable for any damages if the person knew or should have known that the underage person was under legal age.

Approved May 22, 2009

CHAPTER 129

PROPERTY RIGHTS, DISASTER RECOVERY, AND ABANDONED PROPERTY

S.F. 415

AN ACT relating to the acquisition of title to disaster-affected abandoned property by cities in certain years and authorizing cities to establish a property rights defense account.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 384.3A PROPERTY RIGHTS DEFENSE ACCOUNT.

1. A city may establish a property rights defense account within the city's general fund. If a property rights defense account is established under this section, moneys which remain unclaimed under section 2, subsection 11, paragraph "d", of this Act, may be deposited in the account. Interest or earnings on moneys in the property rights defense account shall be credited to the account. Moneys in the property rights defense account are not subject to transfer, appropriation, or reversion to any other account or fund, or any other use except as provided in this section.

2. Moneys in the account shall be used for the reimbursement of reasonable attorney fees and reasonable costs incurred by a property owner as the result of proceedings initiated under this Act, chapters 6A and 6B, and section 657A.10A.

3. Property owners shall apply to the city council on a form prescribed by the city council. If sufficient funds exist in the account, the city council shall reimburse each property owner who applies for all reasonable attorney fees and reasonable costs incurred. If insufficient funds exist in the account to reimburse a property owner for all reasonable attorney fees and reasonable costs incurred, the city council shall reimburse the property owner for the fees and costs in an amount equal to the remaining balance in account.¹

Sec. 2. PETITION BY CITY FOR TITLE TO DISASTER-AFFECTED ABANDONED PROPERTY.

1. In lieu of the procedures in sections 657A.2 through 657A.10A, a city in which a disaster-affected abandoned building is located may petition the court to enter judgment awarding title to the disaster-affected abandoned property to the city. For the purposes of this section, "disaster-affected abandoned building" means a building that is abandoned as defined in section 657A.1, and the land the building is located on, that was damaged by a disaster as defined in section 29C.2 between May 1, 2008, and September 1, 2008, that is located in an area for which the governor proclaimed a state of disaster emergency during 2008, that constitutes a public nuisance, and that is not feasible to rehabilitate.

2. At least thirty days prior to filing a petition for title to disaster-affected abandoned property under this section, the city shall attempt to notify the owner of the property of the city's intent to acquire the property. The city shall mail the notice by certified mail to the owner at the

¹ See chapter 179, §148, 153 herein