

REVISED
SESSION OF 2005

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR
HOUSE BILL NO. 2114**

As Recommended by House Committee on
Judiciary

Brief*

HB 2114 would enact legislation to allow for civil liability for serving alcoholic beverages. Specifically, the bill would permit an aggrieved party to have a cause of action against a licensee who knowingly sells, gives away, or permits the sale, gift, or procuring of any alcoholic liquor or cereal malt beverage to or for any person who is visibly intoxicated by the consumption of such alcoholic liquor or cereal malt beverage. In addition, a cause of action would be permitted against a licensee who directly or indirectly sells to, buys for, gives, or furnishes any alcoholic liquor or cereal malt beverage to a minor. A jury or court must find, by clear and convincing evidence, the following:

- ! That alcoholic liquor or cereal malt beverage was sold by the licensee on the licensed premises of such licensee to the minor or visibly intoxicated person;
- ! The consumption of such alcoholic liquor or cereal malt beverage was a proximate cause of the damages sustained by the aggrieved party; and
- ! The damages were a foreseeable consequence of the service of alcoholic liquor or cereal malt beverage by the licensee.

Any claim would be subject to the comparative fault statute. Actions of an employee would not be attributable to the employer if:

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- ! The employer requires its employees to attend a server/seller training program certified by the Director of Alcoholic Beverage Control of the Department of Revenue;
- ! The employee has actually attended such a training program; and
- ! The employer has not directly or indirectly permitted the employee to sell, give away, or permit the sale, gift, or procuring of any alcoholic liquor or cereal malt beverage to or for any person who is visibly intoxicated by the consumption of such alcoholic liquor or cereal malt beverage, or directly or indirectly, sell to, buy for, give or furnish any alcoholic liquor or cereal malt beverage to any minor.

It would be an absolute defense in any civil cause of action claimed under the bill, in regard to a minor, if the licensee shows, by clear and convincing evidence that:

- ! At the time of the occurrence of the act giving rise to the cause of action, the licensee held a valid license or valid temporary permit;
- ! The licensee sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and
- ! To purchase the alcoholic liquor or cereal malt beverage, the person exhibited to the licensee a driver's license, Kansas nondriver's identification card, or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage. This defense would not apply if the minor is a visibly intoxicated person.

Under the bill, "licensee" means a licensee under the Kansas Liquor Control Act; the Club and Drinking Establishment Act; or the provisions of Chapter 41, Article 26; or the provisions of Chapter 41, Article 27, of the Kansas statutes. "Licensee" shall not include a licensee who sells only cereal malt beverages in original and unopened

containers, and not for consumption on the premises, or a person who sells at retail, alcoholic liquor.

Background

Informational material and support for dram shop liability was presented by the Committee Chairman. A conferee with the Judicial Council expressed support for the original bill and reviewed the Judicial Council's position on recent bills dealing with civil liability for serving alcoholic beverages. Others who testified in support of the bill as drafted included representatives of the Kansas Trial Lawyers Association, Mothers Against Drunk Driving (MADD), the DUI Victim Center of Kansas, as well as the mother of a victim of a drunk driver, the wife of a victim of a drunk driver, and the victim of a drunk driver.

Those who spoke in opposition to the original bill included a liquor retailer and the owner of a liquor store. Others who expressed opposition to the measure included conferees on behalf of the Kansas Restaurant and Hospitality Association, Kansas Clubs and Associates, Kansas Wine and Spirits Association, and the Kansas Licensed Beverage Association.

The fiscal note on the original bill indicated that an estimate of the fiscal effect could not be made. The fiscal note on the substitute bill is not yet available.