

VETOED MEASURES

CHAPTER 647

HOUSE BILL NO. 1251
(Representatives Wald, H. Larson)
(Senators Cussons, Iszler)

INTOXICATION DAMAGE RECOVERY LIMITATION

AN ACT to amend and reenact section 5-01-06 of the North Dakota Century Code, relating to recovery of damages resulting from intoxication.

VETO

March 16, 1981

The Honorable James Peterson
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1251, as passed by the Legislature, amended §5-01-06 of the North Dakota Century Code, which is sometimes referred to as a "Dram Shop statute." This amendment would be an important change in the law because the effect of House Bill 1251 would be to take away the right, in certain limited situations, to bring an action against a host who negligently serves additional intoxicants to a person who is already "intoxicated", and who then injures or damages a totally innocent third person.

Each person should be held accountable for his actions. Where someone has provided alcoholic beverages to "a person under twenty-one years of age, an habitual drunkard, an incompetent, or an intoxicated person . . ." (NDCC 5-01-09), and thereby created a

situation where a totally innocent third party is injured or killed because of the subsequent activity of the intoxicated person, then I believe that the priority of responsibility and accountability to those injured or killed must be first on the intoxicated individual, and secondly, on the person who sold or gave the intoxicant to the intoxicated individual.

That is what the present law provides. However, House Bill 1251 would exempt the person who gave away the intoxicants from any liability, and if the intoxicated person has no insurance or assets to compensate the totally innocent third person who was injured or killed, then the burden falls entirely on that totally innocent person. It would also exempt from any liability an adult who gives away liquor to a minor who might cause injury or damage to a totally innocent party on the highway or elsewhere.

That is an unjust result and contrary to the philosophy that each person should be held accountable for his actions.

The proponents of the bill argue that a person should be able to serve intoxicants to guests in his home without concern for possibly being civilly liable because of subsequent acts committed by his guests. That activity can be conducted in one's home under the existing law if the host acts responsibly; however, if he does not act responsibly, he should not be insulated from liability to the possible detriment of a totally innocent third party.

The statute as it presently exists gives our citizens who are damaged and are totally innocent of wrongdoing two possible sources of recovery for their damage - first, recovery from the intoxicated person and, secondly, from the provider of the intoxicants.

House Bill 1251 would eliminate one of those possible sources of recovery to the detriment of a totally innocent third party. In turn, that is detrimental to the citizens of North Dakota.

For the above reasons, I veto House Bill 1251.

Sincerely,

ALLEN I. OLSON
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-06. RECOVERY OF DAMAGES RESULTING FROM INTOXICATION. Every ~~wife, child, parent, guardian, employer, or other~~ person who shall be injured in person, property, or means of support by any intoxicated person, or in consequence of intoxication, shall have a right of action against any person licensed or unlicensed seller and his agent or employees who shall have caused such intoxication by disposing of or selling, ~~bartering, or giving away~~ alcoholic beverages contrary to statute for all damages sustained.

Disapproved March 16, 1981

Filed March 20, 1981

CHAPTER 648

HOUSE BILL NO. 1593
(Rued)

INSURANCE RATING ORGANIZATION OFFICE

AN ACT to create and enact a new section to chapter 26-29 of the North Dakota Century Code, requiring a fire and property insurance rating organization to maintain an office within the state.

VETO

April 3, 1981

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

House Bill 1593 requires that a fire and property insurance rating organization maintain an office within our state. Other insurance rating organizations are not required to maintain state located offices. All rating organizations operating in the state are regulated by the Commissioner of Insurance regardless of office location.

While it is in the state's best interest to encourage the location of business enterprises within our borders, that interest is not well served by selectively mandating certain businesses to maintain state located office facilities as a condition to providing services to our citizens.

House Bill 1593 creates an unfavorable impression which discourages the consideration of our state for purposes of locating and conducting business enterprise in an equal, fair and competitive atmosphere. We can attract business and industry without first requiring their presence.

State law presently provides for the protection of persons who make use of the services provided by such organizations through fair and nondiscriminatory laws which are administered by the Commissioner of Insurance. The provisions of House Bill 1593 do not add to that high standard of fair and even regulation.

Therefore, I veto House Bill 1593.

Sincerely,

ALLEN I. OLSON
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26-29 of the North Dakota Century Code is hereby created and enacted to read as follows:

MAINTENANCE OF LOCAL OFFICE. The rating organization shall maintain an office within this state that shall be open for business during usual business hours and the office shall be staffed by a person trained to interpret the rating organizations' rating methods and the office shall maintain field notes and rate make-ups on all risks that are specifically rated by the rating organization. This section does not apply to rating organizations licensed under this chapter for the rating of inland marine nor for the rating of insurance on growing crops.

Disapproved April 3, 1981

Filed April 3, 1981