

85 ISO 0804

HOUSE BILL 0390

HB0390FT03

AN ACT to create W.S. 12-8-301 relating to alcoholic beverages; limiting liability in some cases of selling or providing alcoholic liquor or malt beverages; providing for exceptions; and providing for an effective date.

HOUSE BILL 0390

Introduced by:

James H. Jones

DATE	ACTION	DATE	ACTION
JAN 1 8 1985	READ FIRST TIME	2/10/85	Rules Suspended - 30 aq
	REFERRED TO COM. NO. 1		READ THIRD TIME
	DELIVERED TO COM. NO. 1		AMENDED AS FOLLOWS HB 390531-AE
JAN 2 8 1985	RETURNED		
	Recommended Amend and Do Pass <i>3 ayes 4 nays 144</i>		PASSED AYES 5 NOES 2 EXCUSED 3 ABSENT 0
JAN 3 1 1985	CONSIDERED IN AMT. OF WHOLE		SENT TO HOUSE
	Standing Com. Amendment HB390 HSI/A	FEB 2 8 1985	Rep. Harrison moved to amend with Senate Amend.
	ADOPTED		Received Amended
	RECOMMENDED DO PASS		House did not concur on Senate Amendment YES 17 NOES 43 EXCUSED 2 ABSENT 0
FEB 1 1 1985	READ SECOND TIME		Joint Conf. Comm. appointed
FEB 4 1 1985	READ THIRD TIME		Held pending House and Senate Report
	PASSED Ayes 44 Noes 15 Excused 5 Absent 0		Conf. Comm. #1
	Went to Senate		1. Rep. Jones 1. Sen. Arnesen
	ENGROSSED		2. Rep. Jackson 2. Sen. Nickerson
2-5-85	sent to Senate		3. Rep. Richardson 3. Sen. Hensley
2/5/85	READ FIRST TIME	FEB 2 8 1985	Rep. Jones moved to adopt HB 390 JCI/A/E
	REFERRED TO COM. NO. 1		House did not adopt Joint Conf. Comm. R. no Ayes 14 Noes 19 Excused 2 Absent 0
	DELIVERED TO COM. NO. 1		Senate did not adopt Joint Conf. Comm. R. no Ayes 14 Noes 19 Excused 2 Absent 0
2/19/85	STANDING COMMITTEE REPORT	FEB 2 8 1985	RECEIVED FROM SENATE
	AMEND AND DO PASS		SENT TO LEO FOR ENROLLING
2/20/85	CONSIDERED ON COM. OF WHOLE	FEB 2 8 1985	RECEIVED FROM LEO ENROLLED
	STANDING COM. AMT. ADOPTED HB390531-AE		
	DO PASS		
2/21/85	READ SECOND TIME		

AMENDED AS FOLLOWS HB390531-AE

CONTINUED ON BACK

HEA NO. 126

SIGNED BY SPEAKER 2-23-85

SIGNED BY PRESIDENT 2-23-85

APPROVED BY GOVERNOR 3-1-85

CHAPTER NO. 205 SESSION LAWS OF WYOMING

HB 390

Date 2-23-05

ADAPT JCR 1

SENATE ROLL CALL

FORTY-EIGHTH WYOMING LEGISLATURE

	Excused	Absent	Ayes	Noes
ARNEY			✓	
CUNDALL			✓	
DIXON			✓	
DUSL	✓			
EDDINS			✓	
FANOS			✓	
FRISBY			✓	
GEIS				
HICKEY			✓	
HINCKLEY			✓	
KINNEY				✓
KINNISON	✓			
LARSON			✓	
MADER			✓	
MOORE			✓	
NICHOLAS			✓	
NORRIS			✓	
PERRY			✓	
PREVEDEL			✓	
PUGH			✓	
SCHMIDT			✓	
SCOTT			✓	
STROOCK			✓	
SULLIVAN			✓	
TROWBRIDGE			✓	
TRUE	✓		✓	
TURNER			✓	
VINICH	✓			
WIEDERSPAHN			✓	
ZIMMER			✓	
MR. PRESIDENT			✓	

PRESENT _____

AYES 26

NOES 1

EXCUSED 3

ABSENT 0

TOTAL 30

SENATE ROLL CALL

* FORTY-EIGHTH WYOMING LEGISLATURE

	Excused	Absent	Ayes	Noes
ARNEY			✓	
CUNDALL			✓	
DIXON			✓	
DUSL	✓		0	
EDDINS			✓	
FANOS			✓	
FRISBY			✓	
GEIS				
HICKEY			✓	
HINCKLEY				✓
KINNEY			✓	
KINNISON	✓		0	
LARSON			✓	
MADER			✓	
MOORE			✓	
NICHOLAS			✓	
NORRIS			0	
PERRY			✓	
PREVEDEL			✓	
PUGH			✓	
SCHMIDT			✓	
SCOTT			✓	
STROOCK			✓	
SULLIVAN			✓	
TROWBRIDGE			✓	
TRUE			✓	
TURNER			✓	
VINICH	✓		✓	
WIEDERSPAHN			✓	
ZIMMER			✓	
MR. PRESIDENT				✓

PRESENT

AYES

25

NOES

2

EXCUSED

0-3

ABSENT

0

TOTAL

30

HOUSE ROLL CALL

FORTY-EIGHTH WYOMING LEGISLATURE

	Ayes	Noes	Excused	Absent		Ayes	Noes	Excused	Absent
ARNOLD	✓				MURPHY	✓			
BAKER	✓				ODDE	✓			
BARLOW	✓				PARKER	✓			
BIRLEFFI	✓				PERKINS	✓			
BLACKWELL		✓			RATLIFF	✓			
BROWN	✓				ROBERTSON		✓		
BUDD	✓				RYCKMAN		✓		
BURNS	✓				SALISBURY	✓			
BURTON	✓				SANDERS		✓		
BYRD	✓				SCHWOPE		✓		
CHAMBERLAIN		✓			SHREVE	✓			
CROSS	✓				SMITH				
CROWLEY	✓				SIMONS	✓			
DICKEY		✓			SORENSEN		✓		
DOBOS		✓			STAUFFER		✓		
GERINGER		✓			STRAND		✓		
GETTER	✓				TATE	✓			
GRANT	✓				THOMAS		✓		
HAGEMAN	✓				TIBBS		✓		
HANSEN	✓				TIPPETS	✓			
HARRISON	✓	✓			TIPTON	✓			
HERBST <i>Exc</i>	✓	✓			TYSDAL	✓			
HINES	✓				WAGGENER	✓			
HUMPHREY <i>Exc</i>	✓				WALLIS	✓			
JACKSON	✓				WEAVER	✓			
JENSEN <i>Exc</i>			✓		WOLFLEY		✓		
JONES	✓				ZIMMERMAN	✓			
KUNZ	✓				ZUMBRUNNEN	✓			
LAMB		✓			MR. SPEAKER	✓			
LUMMIS	✓								
MACMILLAN	✓		✓						
MALDONADO	✓								
MARTON	✓								
MCILVAIN	✓								
MEENAN	✓								
MICHELI	✓								

PRESENT _____

AYES 44

NOES 15

EXCUSED 6

ABSENT _____

TOTAL 64

LESS 20

44

HOUSE ROLL CALL

FORTY-EIGHTH WYOMING LEGISLATURE

	Ayes	Noes	Excused	Absent		Ayes	Noes	Excused	Absent
ARNOLD		✓			MURPHY		✓		
BAKER		✓			ODDE	✓			
BARLOW		✓			PARKER		✓		
BIRLEFFI		✓			PERKINS		✓		
BLACKWELL	✓				RATLIFF		✓		
BROWN		✓			ROBERTSON	✓			
BUDD		✓			RYCKMAN	✓			
BURNS		✓			SALISBURY		✓		
BURTON		✓			SANDERS	✓			
BYRD		✓			SCHWOPE		✓		
CHAMBERLAIN	✓				SHREVE		✓		
CROSS		✓			SID				
CROWLEY		✓			SIMONS		✓		
DICKEY	✓				SORENSEN	✓			
DOBOS		✓			STAUFFER	✓			
GERINGER	✓				STRAND	✓			
GETTER		✓			TATE		✓		
GRANT		✓			THOMAS <i>Conf</i>			✓	
HAGEMAN		✓			TIBBS	✓			
HANSEN		✓			TIPPETS	✓			
HARRISON	✓				TIPTON		✓		
HERBST		✓			TYSDAL		✓		
HINES		✓			WAGGENER		✓		
HUMPHREY		✓			WALLIS		✓		
JACKSON		✓			WEAVER	✓			
JENSEN		✓			WOLFLEY	✓			
JONES		✓			ZIMMERMAN		✓		
KUNZ		✓			ZUMBRUNNEN	✓			
LAMB		✓			MR. SPEAKER	✓	✓		
LUMMIS		✓							
MACMILLAN <i>Conf</i>			✓	✓	PRESENT				
MALDONADO		✓							
MARTON		✓							
MCILVAIN	✓								
MEENAN		✓							
MICHEL	✓								

AYES 19
 NOES 43
 EXCUSED 2
 ABSENT 0
 TOTAL 64
 LESS 21
43

7113390 J e 1 / A John Jones 2/29/85
Ed. Joseph Date

HOUSE ROLL CALL

FORTY-EIGHTH WYOMING LEGISLATURE

	Ayes	Noes	Excused	Absent		Ayes	Noes	Excused	Absent
ARNOLD	✓				MURPHY	✓			
BAKER	✓				ODDE	✓			
BARLOW	✓				PARKER	✓	✓		
BIRLEFFI	✓				PERKINS	✓			
BLACKWELL	✓				RATLIFF	✓			
BROWN	✓				ROBERTSON	✓			
BUDD	✓	✓			RYCKMAN	✓			
BURNS	✓				SALISBURY	✓			
BURTON	✓				SANDERS	✓	✓		
BYRD	✓				SCHWOPE	✓			
CHAMBERLAIN	✓				SHREVE	✓	✓		
CROSS	✓	✓			SID	✓			
CROWLEY	✓				SIMONS	✓			
DICKEY	✓	✓			SORENSEN	✓			
DOBOS	✓				STAUFFER	✓	✓		
GERINGER	✓	✓			STRAND	✓			
GETTER	✓				TATE	✓			
GRANT	✓				THOMAS <i>Conf</i>			✓	
HAGEMAN	✓				TIBBS	✓	✓		
HANSEN	✓				TIPPETS	✓	✓		
HARRISON	✓				TIPTON	✓			
HERBST	✓	✓			TYSDAL	✓			
HINES	✓				WAGGENER	✓			
HUMPHREY	✓				WALLIS	✓			
JACKSON	✓				WEAVER	✓			
JENSEN	✓				WOLFLEY	✓	✓		
JONES	✓				ZIMMERMAN	✓			
KUNZ	✓				ZUMBRUNNEN	✓			
LAMB	✓				MR. SPEAKER	✓			
LUMMIS	✓								
MACMILLAN <i>Conf</i>	✓		✓						
MALDONADO	✓								
MARTON	✓								
MCILVAIN	✓								
MEENAN	✓								
MICHEL	✓	✓							

PRESENT _____

AYES 49

NOES 13

EXCUSED 2

ABSENT _____

TOTAL 64

LESS 15

49

1 HB0390H31/PC CORRECTED CORRECTED COPY

2 Page 1-line 3 After " ," insert "providing a definition of
3 when alcoholic liquor or malt beverages are
4 furnished illegally;".


5 Page 1-line 9 Before "Any" insert "(a)".

6 Page 2-After line 10 Insert:

7 "(b) Alcoholic liquor or malt beverages are deemed to
8 be furnished illegally if they are furnished to:

9 (i) A minor in violation of Section 12-6-101(a);

10 (ii) An intoxicated person who the person fur-
11 nishing the alcoholic liquor or malt beverage knew or
12 should have known was obviously intoxicated to a degree to
13 render that person unable to safely drive a motor vehicle in
14 violation of W.S. 31-5-233.". -HARRISON



House of Intro
To Com. No. _____
Stand Report Do ___ Amd ___ Not ___
Com Whole Do ___ Amd ___ Not ___
2nd Reading Amd ___
3rd Reading Amd ___ Pass ___ Fail ___

Second House
To Com No. _____
Stand Report Do ___ Amd ___ Not ___
Com Whole Do ___ Amd ___ Not ___
2nd Reading Amd ___
3rd Reading Amd ___ Pass ___ Fail ___

ENGROSSED

1985

STATE OF WYOMING

85LSO-0804/eng

HOUSE BILL NO. 0390

Alcoholic beverages.

Sponsored by: Representative(s) JONES

A BILL

for

1 AN ACT to create W.S. 12-8-301 relating to alcoholic bev-
2 erages; limiting causes of action in cases of voluntary
3 intoxication in some cases; and providing for an effective
4 date.

5 Be It Enacted by the Legislature of the State of Wyoming:

6 Section 1. W.S. 12-8-301 is created to read:

7 ARTICLE 3

8 DAMAGES

9 12-8-301. Cause of action abolished. Any right of

1 action against a licensee or the licensee's employees
2 alleging that a person to whom alcoholic liquor or malt
3 beverages were legally sold by the licensee or the
4 licensee's employees caused damages because of intoxica-
5 tion is abolished. Any right of action against a person
6 which alleges that he legally furnished a third person
7 with alcoholic liquor or malt beverages which third person
8 caused damages to another because of intoxication is abol-
9 ished. This section does not affect the liability of the
10 intoxicated person for damages.

11 Section 2. This act is effective May 23, 1985.

12 (END)

- 1 HB0390HS1/A
- 2 ✓ Page 2-line 2: After "alcoholic" insert "liquor".
- 3 ✓ Page 2-line 6 After "that" insert "he legally furnished";
- 4 delete "to whom" insert "with"; after
- 5 "alcoholic" insert "liquor".
- 6 ✓ Page 2-line 7 Delete line through "that" insert "which
- 7 third". CROWLEY, CHAIRMAN *bnl* **ADOPTED**

- 1 HB0390JC1/AE (TO ENGROSSED COPY)
- 2 Delete the following Senate amendments:
- 3 HB0390SS1/AE
- 4 HB0390S21/AE
- 5 HB0390S31/AE
- 6 Further amend the ENGROSSED COPY as follows:
- 7 Page 1-line 2 Delete "causes of action" insert "liabil-
- 8 ity"; after "in" insert "some"; after
- 9 "cases" delete balance of the line.
- 10 Page 1-line 3 Delete through ";" and insert "of selling
- 11 or providing alcoholic liquor or malt bev-
- 12 erages; providing for exceptions;".
- 13 Page 1-line 9 Delete "Cause of action abolished." insert
- 14 "Limitation of liability."; delete balance
- 15 of the line.
- 16 Page 2-lines 1 through 10 Delete entirely and insert:
- 17 "(a) No licensee is liable for damages caused by an
- 18 intoxicated person to whom the licensee legally sold or fur-
- 19 nished alcoholic liquor or malt beverages unless the licen-
- 20 see sold or provided alcoholic liquor or malt beverages to
- 21 a person who was intoxicated, and:
- 22 (i) It was reasonably apparent to the licensee
- 23 that the person buying or receiving the alcoholic liquor or
- 24 malt beverage was intoxicated; or
- 25 (ii) The licensee knew or reasonably should have
- 26 known from the circumstances that the person buying or
- 27 receiving the alcoholic liquor or malt beverages was intoxi-
- 28 cated.
- 29 (b) No person who is not a licensee who has gratu-
- 30 itously and legally provided alcoholic liquor or malt bev-
- 31 erage to any other person is liable for damages caused by the
- 32 intoxication of the other person.
- 33 (c) This section does not affect the liability of the
- 34 intoxicated person for damages.
- 35 (d) This section does not affect the liability of the
- 36 licensee or person if the alcoholic liquor or malt beverage
- 37 was sold or provided in violation of Title 12 of the Wyoming
- 38 Statutes.
- 39 (e) For purposes of this section "licensee" is as
- 40 defined in W.S. 12-1-101(a)(viii) and includes the
- 41 licensee's employee or employees."
- 42 -JONES, JACKSON, RYCKMAN, ARNEY, NICHOLAS, HINCKLEY *DP*

1 THE LEGISLATURE OF THE STATE OF WYOMING

2 JOINT CONFERENCE REPORT

3 Cheyenne, Wyoming

4 February 23, 1985

5 To the Honorable President of the Senate, and the Honorable
6 Speaker of the House of Representatives:

7 We, your Joint Conference Committee appointed to confer
8 on House Bill No. 0390, respectfully recommend as fol-
9 lows: HB0390JC1/RA (TO ENGROSSED COPY):

10 Delete the following Senate amendments:

11 HB0390SS1/AE

12 HB0390S21/AE

13 HB0390S31/AE

14 Further amend the ENGROSSED COPY as follows:

15 Page 1-line 2 Delete "causes of action" insert "liabil-
16 ity"; after "in" insert "some"; after
17 "cases" delete balance of the line.

18 Page 1-line 3 Delete through ";" and insert "of selling
19 or providing alcoholic liquor or malt bev-
20 erages; providing for exceptions;".

21 Page 1-line 9 Delete "Cause of action abolished." insert
22 "Limitation of liability."; delete balance
23 of the line.

24 Page 2-lines 1 through 10 Delete entirely and insert:

25 "(a) No licensee is liable for damages caused by an
26 intoxicated person to whom the licensee legally sold or fur-
27 nished alcoholic liquor or malt beverages unless the licen-
28 see sold or provided alcoholic liquor or malt beverages to
29 a person who was intoxicated, and:

30 (i) It was reasonably apparent to the licensee
31 that the person buying or receiving the alcoholic liquor or
32 malt beverage was intoxicated; or

33 (ii) The licensee knew or reasonably should have
34 known from the circumstances that the person buying or
35 receiving the alcoholic liquor or malt beverages was intoxi-
36 cated.


37 (b) No person who is not a licensee who has gratu-
38 itously and legally provided alcoholic liquor or malt bever-
39 age to any other person is liable for damages caused by the

1 intoxication of the other person.

2 (c) This section does not affect the liability of the
3 intoxicated person for damages.

4 (d) This section does not affect the liability of the
5 licensee or person if the alcoholic liquor or malt beverage
6 was sold or provided in violation of Title 12 of the Wyoming
7 Statutes.

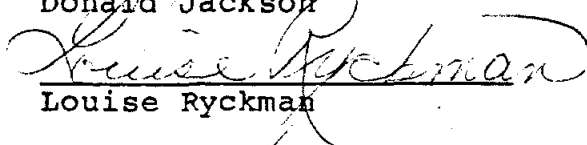
8 (e) For purposes of this section "licensee" is as
9 defined in W.S. 12-1-101(a)(viii) and includes the
10 licensee's employee or employees."



Tom Jones

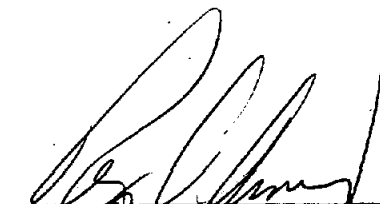


Donald Jackson



Louise Ryckman

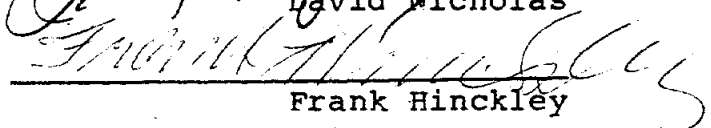
HOUSE



Rex Arney



David Nicholas



Frank Hinckley

SENATE

Delete the following Senate amendments:

HB0390SS1/AE

HB0390S21/AE

HB0390S31/AE

Further amend the ENGROSSED COPY as follows:

Page 1-line 2 Delete "causes of action" insert "liability"; after "in" insert "some"; after "cases" delete balance of the line.

Page 1-line 3 Delete through ";" and insert "of selling or providing alcoholic liquor or malt beverages; providing for exceptions;".

Page 1-line 9 Delete "Cause of action abolished." insert "Limitation of liability."; delete balance of the line.

Page 2-lines 1 through 10 Delete entirely and insert:

"(a) No licensee is liable for damages caused by an intoxicated person to whom the licensee legally sold or furnished alcoholic liquor or malt beverages unless the licensee sold or provided alcoholic liquor or malt beverages to a person who was intoxicated, and:

(i) It was reasonably apparent to the licensee that the person buying or receiving the alcoholic liquor or malt beverage was intoxicated; or

(ii) The licensee knew or reasonably should have known from the circumstances that the person buying or receiving the alcoholic liquor or malt beverages was intoxicated.

(b) No person who is not a licensee who has gratuitously and legally provided alcoholic liquor or malt beverage to any other person is liable for damages caused by the intoxication of the other person.

(c) This section does not affect the liability of the intoxicated person for damages.

(d) This section does not affect the liability of the licensee or person if the alcoholic liquor or malt beverage was sold or provided in violation of Title 12 of the Wyoming Statutes.

(e) For purposes of this section "licensee" is as defined in W.S. 12-1-101(a)(viii) and includes the licensee's employee or employees."

-JONES, JACKSON, RYCKMAN, ARNEY, NICHOLAS, HINCKLEY

THE LEGISLATURE OF THE STATE OF WYOMING

House of Representatives

HB03904151
Cheyenne,January 25,....., 1985..

Mr. Speaker:

Your Committee No. 1 on JUDICIARY

to whom was referred RE No. 1229

respectfully reports same back to the House with the recommendation that HB0390 DO PASS
with the following amendments:

Page 2 - line 2 After "alcoholic" insert "liquor".
Page 2 - line 6 After "that" insert "be legally furnished";
Delete "to whom" insert "with"; after
"alcoholic" insert "liquor".
Page 2 - line 7 Delete line through "chat" insert "which
third".

AYES
Rep. Hansen
P. Jackson
Kate
Ristph
Crowley

NOES
Rep. Harrison
O'Brien
Robertson
Wolfley

EXCUSED
Rep. Lunnis

ELLEN CROWLEY

Chairman

DW

Page 2-lines 1 through 10 Delete HB0390S21/AE to these lines, and in the standing committee amendment (HB0390SS1/AE) to these lines, amend as follows:

Delete paragraph (a) as written and insert the following:

(a) No licensee is liable for damages caused by an intoxicated person to whom the licensee legally sold or furnished alcoholic liquor or malt beverages unless the licensee sold or provided alcoholic liquor or malt beverages to a person who was intoxicated, and:

(i) It was reasonably apparent to the licensee that the person buying or receiving the alcoholic liquor or malt beverage was intoxicated; or

(ii) The licensee knew or reasonably should have known from the circumstances that the person buying or receiving the alcoholic liquor or malt beverages was intoxicated. -SULLIVAN

House of Intro
To Com. No. _____
Stand Report Do ___ Amd ___ Not ___
Com Whole Do ___ Amd ___ Not ___
2nd Reading Amd ___
3rd Reading Amd ___ Pass ___ Fail ___

Second House
To Com No. _____
Stand Report Do ___ Amd ___ Not ___
Com Whole Do ___ Amd ___ Not ___
2nd Reading Amd ___
3rd Reading Amd ___ Pass ___ Fail ___

INTRODUCED

1985

STATE OF WYOMING

85LSO-0804.01

HOUSE BILL NO. 0390

Alcoholic beverages.

Sponsored by: Representative(s) JONES

A BILL

for

1 AN ACT to create W.S. 12-8-301 relating to alcoholic bev-
2 erages; limiting causes of action in cases of voluntary
3 intoxication in some cases; and providing for an effective
4 date.

5 Be It Enacted by the Legislature of the State of Wyoming:

6 Section 1. W.S. 12-8-301 is created to read:

7 ARTICLE 3

8 DAMAGES

9 12-8-301. Cause of action abolished. Any right of

- 1 -

NO SIGNIFICANT FISCAL IMPACT

HB 390

1 action against a licensee or the licensee's employees
2 alleging that a person to whom alcoholic or malt beverages
3 were legally sold by the licensee or the licensee's
4 employees caused damages because of intoxication is abol-
5 ished. Any right of action against a person which alleges
6 that a third person to whom alcoholic or malt beverages
7 were legally furnished by that person caused damages to
8 another because of intoxication is abolished. This sec-
9 tion does not affect the liability of the intoxicated per-
10 son for damages.

11 Section 2. This act is effective May 23, 1985.

12 (END)

HB0390SS1/AE

TO ENGROSSED COPY

- Page 1-line 2 Delete "causes of action" and insert "liability"; after "in" insert "some"; after "cases" delete balance of the line.
- Page 1-line 3 Delete through "," and insert "of selling or providing alcoholic liquor or malt beverages; providing for exceptions;".
- Page 1-line 9 Delete "Cause of action abolished." and insert "Limitation of liability."; delete balance of the line.

Page 2-lines 1 through 10 Delete entirely and insert:

(a) No licensee is liable for damages caused by an intoxicated person to whom the licensee legally sold or furnished alcoholic liquor or malt beverages unless:

(i) The licensee sold or provided alcoholic liquor or malt beverages to a person who was intoxicated;

(ii) It was reasonably apparent to the licensee that the person buying or receiving the alcoholic liquor or malt beverage was intoxicated; and

(iii) The licensee knew or reasonably should have known from the circumstances that the person buying or receiving the alcoholic liquor or malt beverages was intoxicated.

(b) This section does not affect the liability of the intoxicated person for damages.

(c) This section does not affect the liability of the licensee if the alcoholic liquor was illegally sold or illegally provided.

(d) For the purposes of this section "licensee" is as defined in W.S. 12-1-101(a)(viii) and includes the licensee's employee or employees.

-ARNEY

HB0390S21/AE

TO ENGROSSED COPY

Page 2-lines 1 through 10 In the standing committee amendment (HB0390SS1/AE) to these lines, amend as follows:

In paragraph (a)(i) after ";" insert "and".

In paragraph (a)(ii) delete "and" and insert "or". -SULLIVAN