

SECOND REGULAR SESSION

SENATE BILL NO. 817

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GROSS.

Pre-filed December 11, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3455S.011

AN ACT

To repeal section 537.053, RSMo, relating to consumption of intoxicating beverage as proximate cause of injury in tort actions, and to enact in lieu thereof one new section relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 537.053, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.053, to read as follows:

537.053. 1. Since the repeal of the Missouri Dram Shop Act in 1934 (Laws of 1933-34, extra session, page 77), it has been and continues to be the policy of this state to follow the common law of England, as declared in section 1.010, RSMo, to prohibit dram shop liability and to follow the common law rule that furnishing alcoholic beverages is not the proximate cause of injuries inflicted by intoxicated persons.

2. The legislature hereby declares that this section shall be interpreted so that the holdings in cases such as *Carver v. Schafer*, 647 S.W.2d 570 (Mo. App. 1983); *Sampson v. W. F. Enterprises, Inc.*, 611 S.W.2d 333 (Mo. App. 1980); and *Nesbitt v. Westport Square, Ltd.*, 624 S.W.2d 519 (Mo. App. 1981) be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages, rather than the furnishing of alcoholic beverages, to be the proximate cause of injuries inflicted upon another by an intoxicated person.

3. Notwithstanding subsections 1 and 2 of this section, a cause of action

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

may be brought by or on behalf of any person who has suffered personal injury or death against any person licensed to sell intoxicating liquor by the drink for consumption on the premises [who, pursuant to section 311.310, RSMo, has been convicted, or has received a suspended imposition of the sentence arising from the conviction, of] **if the sale of such intoxicating liquor to a person under the age of twenty-one years or an obviously intoxicated person [if the sale of such intoxicating liquor] is the proximate cause of the personal injury or death sustained by such person. The sale of such intoxicating liquor to a person under the age of twenty-one years or to an obviously intoxicated person must have been done knowingly and must be proven beyond a reasonable doubt.**

4. For the purposes of this section, a person is "obviously intoxicated" when inebriated to such an extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction, that would have been obvious to a reasonable person.

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Bill

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