

SECOND REGULAR SESSION

SENATE BILL NO. 978

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KINDER.

Read 1st time January 17, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3685S.011

AN ACT

To repeal section 537.053, RSMo, relating to dram shop liability, 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Section A. Section 537.053, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.053, to read as follows: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] **subsection 1** [and 2] of this section, a cause of action 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 the sale of intoxicating liquor to a person under

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

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.] **when it is proven by clear and convincing evidence that the seller knowingly served intoxicating liquor to a person under the age of twenty-one years or knowingly served intoxicating liquor to a visibly intoxicated person.**

3. For purposes of this section, a person is "visibly 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. A person's blood alcohol content does not constitute prima facie evidence to establish that a person is visibly intoxicated within the meaning of this section.

4. Nothing in this section shall be interpreted to provide a right of recovery to a person who suffers injury or death proximately caused by the person's voluntary intoxication. Such person and his dependents, personal representative, and heirs may not assert a claim for damages for personal injury or death against a seller of intoxicating liquor arising out of the person's voluntary intoxication.

5. Civil liability arising pursuant to this section shall not exceed one hundred thousand dollars per incident or occurrence for bodily injuries or death, and twenty thousand dollars for property damage in each incident or occurrence regardless of the number of persons involved in the incident or occurrence.

6. Any action brought pursuant to this section must commence within one year of the date of the alleged violation of this section.

7. Every plaintiff seeking damages pursuant to this section must give written notice to all defendants within one hundred eighty days of the date of the seller's conduct creating liability pursuant to this section. The notice must specify the time, place, and circumstances of the seller's conduct creating liability pursuant to this section and the time, place, and circumstances of any resulting damages. No error or omission in the notice voids the effect of the notice, if otherwise valid, unless the error or omission is substantially material. Failure to give written notice within the time specified is grounds for dismissal of a claim.