

SECOND REGULAR SESSION
[PERFECTED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 817, 978 & 700

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GROSS.

Offered March 19, 2002.

Senate Substitute adopted, March 19, 2002.

Taken up for Perfection March 19, 2002. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

3455S.08P

AN ACT

To repeal section 537.053, RSMo, relating to dram shop liability, and to enact in lieu thereof two new sections 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Section A. Section 537.053, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 375.1730 and 537.053, to read as follows:

375.1730. Any insurance company that sells liability insurance which provides coverage for dram shop liability as described in section 537.053, RSMo, shall report all costs associated with such coverages to the department of insurance. The rates for such coverage shall be governed pursuant to section 379.889, RSMo.

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.

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

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 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 knew or should have known that intoxicating liquor was served 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 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, but may be admissible as relevant evidence of the person's intoxication.

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 unless the person is under the age of twenty-one years. No person over the age of twenty-one years or their dependents, personal representative, and heirs may 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. In an action alleging the sale of intoxicating liquor to a person under the age of twenty-one years, proof that the seller or the seller's agent or employee demanded and was shown a driver's license or official state or federal personal identification card, appearing to be genuine and showing that the minor was at least twenty-one years of age, shall be relevant in determining the relative fault of the seller or seller's agent or employee in the action.

6. Sellers shall have the right of contribution from the alleged intoxicated person or minor for all damages awarded against the seller.

7. No employer may discharge his or her employee for refusing service to a

visibly intoxicated person.

8. All servers of intoxicating liquor by the drink shall receive training to recognize visibly intoxicated persons.

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