

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 608

AN ACT

To repeal section 537.349, RSMo, and to enact in lieu thereof three new sections relating to civil liability due to criminal conduct.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Section 537.349, RSMo, is repealed and three new
2 sections enacted in lieu thereof, to be known as sections
3 537.349, 537.785, and 537.787, to read as follows:

4 537.349. A person or legal entity owning or controlling an
5 interest in real property, or an agent of such person or entity,
6 shall not incur any liability for the death of or injury to a
7 trespasser upon the property resulting from or arising by reason
8 of the trespasser's commission of the offense of trespass if the
9 normal faculties of such trespasser are substantially impaired by
10 alcohol or the illegal influence of a controlled substance as
11 defined in section 195.010. The person or entity owning or
12 controlling an interest in such real property shall not be immune
13 from liability if [negligence or] willful and wanton misconduct
14 on the part of such person or entity or agent thereof is the
15 proximate cause of the death of or injury to the trespasser.

16 537.785. 1. Sections 537.785 and 537.787 may be referred
17 to and cited as the "Business Premises Safety Act".

18 2. As used in sections 537.785 and 537.787, the following

1 terms mean:

2 (1) "Business", any commercial or agricultural enterprise
3 including, but not limited to, sales, services, manufacturing,
4 food service, entertainment, property management or leasing
5 company, or any other entity, whether for profit or not for
6 profit, which owns, operates, or leases property that is open to
7 the public, whether for charge or free of charge, and includes
8 all employees and agents thereof. The term "business" shall not
9 include commercial residential or lodging operations;

10 (2) "Criminal act", those offenses specified under chapters
11 565 to 571;

12 (3) "Harmful act", an intentional or reckless offensive
13 bodily contact with another person that has resulted in injury;

14 (4) "Injury", any personal injury including, but not
15 limited to, physical injury, sickness, disease, or death and all
16 damages resulting therefrom including, but not limited to,
17 medical expenses, wage loss, and loss of service;

18 (5) "Person", any individual who is lawfully on the
19 premises, without regard to the person's status as an invitee or
20 licensee. The term "person" shall not include employees or agents
21 of the business;

22 (6) "Premises", real property in the possession of and
23 under the control of a business;

24 (7) "Reasonable security measures", those precautions that
25 a reasonable business owner in such industry would implement in a
26 particular area of the premises to guard against criminal acts or
27 harmful acts based on the condition of the premises and the cost
28 of implementing such precautions.

1 537.787. 1. There is no duty upon a business to guard
2 against criminal acts or harmful acts on the premises unless the
3 business knows or has reason to know that such acts are being
4 committed or are reasonably likely to be committed in a
5 particular area of the premises and sufficient time exists to
6 prevent such crime or injury. In the absence of such a duty, no
7 civil action for damages shall lie against a business for
8 injuries sustained by a person in connection with criminal acts
9 or harmful acts committed by another person on the premises.

10 2. If a duty is found to exist under subsection 1 of this
11 section, the following affirmative defenses shall apply in any
12 civil action for damages against a business for injuries
13 sustained by a person in connection with criminal acts or harmful
14 acts committed by another person on the premises:

15 (1) The business has implemented reasonable security
16 measures;

17 (2) The claimant was on the premises and was:

18 (a) A trespasser;

19 (b) Under the influence of alcohol with a blood-alcohol
20 content of eight-hundredths of one percent or more;

21 (c) Illegally under the influence of any substance
22 controlled under chapter 195;

23 (d) Attempting to commit a felony; or

24 (e) Engaged in the commission of a felony;

25 (3) The criminal acts or harmful acts occurred while the
26 business was closed to the public.

27 3. Evidence of subsequent action taken by the business to
28 provide protection to persons on the premises shall not be

1 admissible in evidence to show negligence or to establish the
2 feasibility of any security measures.

3 4. Nothing in this section shall be construed to create or
4 increase the liability of a business and does not affect any
5 immunities from or defenses to liability established under state
6 law or available under common law to which a business may be
7 entitled.