

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1532**  
**91ST GENERAL ASSEMBLY**

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Reported from the Committee on Local Government and Related Matters, February 21, 2002, with recommendation that the House Committee Substitute for House Bill No. 1532 Do Pass.

TED WEDEL, Chief Clerk

3984L.02C

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**AN ACT**

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

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*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Section A. Section 537.053, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.053, to read as follows: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] **subsection 1** 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

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

16 imposition of the sentence arising from the conviction, of the sale of intoxicating liquor to a  
17 person under the age of twenty-one years or an obviously intoxicated person if the sale of such  
18 intoxicating liquor is the proximate cause of the personal injury or death sustained by such  
19 person.] **when it is proven beyond a reasonable doubt that the seller knowingly served**  
20 **intoxicating liquor to a person under the age of twenty-one years or knowingly served**  
21 **intoxicating liquor to a visibly intoxicated person.**

22 **3. For purposes of this section, a person is "visibly intoxicated" when inebriated**  
23 **to such an extent that a person's physical faculties are substantially impaired and the**  
24 **impairment is shown by significant uncoordinated physical action or significant physical**  
25 **dysfunction. A person's blood alcohol content does not constitute prima facie evidence to**  
26 **establish that a person is visibly intoxicated within the meaning of this section.**

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

32 **5. Any action brought pursuant to this section shall commence within one year of**  
33 **the date of the alleged violation of this section.**

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

41 **7. In any action alleging the sale of intoxicating liquor to a person less than twenty-**  
42 **one years of age, a showing that the person falsely represented in writing that he or she was**  
43 **at least twenty-one years of age, that the appearance of the person was such that an**  
44 **ordinary and prudent person would believe the person to be at least twenty-one years of**  
45 **age, and that the sale was made in good faith reliance on the written representation and**  
46 **appearance shall constitute a complete defense to any prosecution for sale to a person less**  
47 **than twenty-one years of age.**