

FIRST REGULAR SESSION

HOUSE BILL NO. 391

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BARTLE.

Read 1st time January 16, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1272L.011

AN ACT

To repeal sections 64.560, 130.032, 143.105, 143.106, 143.107, 143.431, 172.273, 211.453, 260.204, 295.180, 537.053, 621.155, 621.189 and 621.198, RSMo 2000, and to enact in lieu thereof seven new sections for the purpose of repealing provisions of law declared to be unconstitutional.

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

Section A. Sections 64.560, 130.032, 143.105, 143.106, 143.107, 143.431, 172.273, 211.453, 260.204, 295.180, 537.053, 621.155, 621.189 and 621.198, RSMo 2000, are repealed and seven new sections enacted in lieu thereof, to be known as sections 130.032, 143.431, 172.273, 211.453, 537.053, 621.189 and 621.198, to read as follows:

- 130.032. 1. In addition to the limitations imposed pursuant to section 130.031, the amount of contributions made by or accepted from any person other than the candidate in any one election shall not exceed the following:
- (1) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor or attorney general, one thousand dollars;
 - (2) To elect an individual to the office of state senator, five hundred dollars;
 - (3) To elect an individual to the office of state representative, two hundred fifty dollars;
 - (4) To elect an individual to any other office, including judicial office, if the population of the electoral district, ward, or other unit according to the latest decennial census is under one hundred thousand, two hundred fifty dollars;
 - (5) To elect an individual to any other office, including judicial office, if the population of the electoral district, ward, or other unit according to the latest decennial census is at least one

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

13 hundred thousand but less than two hundred fifty thousand, five hundred dollars; and

14 (6) To elect an individual to any other office, including judicial office, if the population
15 of the electoral district, ward, or other unit according to the latest decennial census is at least two
16 hundred fifty thousand, one thousand dollars.

17 2. For purposes of this subsection "base year amount" shall be the contribution limits
18 prescribed in this section on January 1, 1995. Such limits shall be increased on the first day of
19 January in each even-numbered year by multiplying the base year amount by the cumulative
20 consumer price index, as defined in section 104.010, RSMo, and rounded to the nearest
21 twenty-five-dollar amount, for all years since January 1, 1995.

22 3. Candidate committees, exploratory committees, campaign committees and continuing
23 committees, other than those continuing committees which are political party committees, shall
24 be subject to the limits prescribed in subsection 1 of this section. The provisions of this
25 subsection shall not limit the amount of contributions which may be accumulated by a candidate
26 committee and used for expenditures to further the nomination or election of the candidate who
27 controls such candidate committee, except as provided in section 130.052.

28 4. [Except as limited by this subsection, the amount of cash contributions, and a separate
29 amount for the amount of in-kind contributions, made by or accepted from a political party
30 committee in any one election shall not exceed the following:

31 (1) To elect an individual to the office of governor, lieutenant governor, secretary of
32 state, state treasurer, state auditor or attorney general, ten thousand dollars;

33 (2) To elect an individual to the office of state senator, five thousand dollars;

34 (3) To elect an individual to the office of state representative, two thousand five hundred
35 dollars; and

36 (4) To elect an individual to any other office of an electoral district, ward or unit, ten
37 times the allowable contribution limit for the office sought.

38

39 The amount of contributions which may be made by or accepted from a political party committee
40 in the primary election to elect any candidate who is unopposed in such primary shall be fifty
41 percent of the amount of the allowable contributions as determined in this subsection.

42 5.] Contributions from persons under fourteen years of age shall be considered made by
43 the parents or guardians of such person and shall be attributed toward any contribution limits
44 prescribed in this chapter. Where the contributor under fourteen years of age has two custodial
45 parents or guardians, fifty percent of the contribution shall be attributed to each parent or
46 guardian, and where such contributor has one custodial parent or guardian, all such contributions
47 shall be attributed to the custodial parent or guardian.

48 [6.] 5. Contributions received and expenditures made prior to January 1, 1995, shall be

49 reported as a separate account and pursuant to the laws in effect at the time such contributions
50 are received or expenditures made. Contributions received and expenditures made after January
51 1, 1995, shall be reported as a separate account from the aforementioned account and pursuant
52 to the provisions of this chapter. The account reported pursuant to the prior law shall be retained
53 as a separate account and any remaining funds in such account may be used pursuant to this
54 chapter and section 130.034.

55 [7. Any committee which accepts or gives contributions other than those allowed shall
56 be subject to a surcharge of one thousand dollars plus an amount equal to the contribution per
57 nonallowable contribution, to be paid to the ethics commission and which shall be transferred
58 to the director of revenue, upon notification of such nonallowable contribution by the ethics
59 commission, and after the candidate has had ten business days after receipt of notice to return
60 the contribution to the contributor. The candidate and the candidate committee treasurer or
61 deputy treasurer owing a surcharge shall be personally liable for the payment of the surcharge
62 or may pay such surcharge only from campaign funds existing on the date of the receipt of
63 notice. Such surcharge shall constitute a debt to the state enforceable under, but not limited to,
64 the provisions of chapter 143, RSMo.]

143.431. 1. The Missouri taxable income of a corporation taxable [under] **pursuant to**
2 sections 143.011 to 143.996 shall be so much of its federal taxable income for the taxable year,
3 with the modifications specified in subsections 2 and 3 of this section, as is derived from sources
4 within Missouri as provided in section 143.451. The tax of a corporation shall be computed on
5 its Missouri taxable income at the rates provided in section 143.071.

6 2. There shall be added to or subtracted from federal taxable income, the modifications
7 to adjusted gross income provided in section 143.121 and the applicable modifications to
8 itemized deductions provided in section 143.141. There shall be subtracted the federal income
9 tax deduction provided in section 143.171. There shall be subtracted, to the extent included in
10 federal taxable income, corporate dividends from sources within Missouri.

11 3. (1) If an affiliated group of corporations files a consolidated income tax return for the
12 taxable year for federal income tax purposes [and fifty percent or more of its income is derived
13 from sources within this state as determined in accordance with section 143.451], then it may
14 elect to file a Missouri consolidated income tax return. The federal consolidated taxable income
15 of the electing affiliated group for the taxable year shall be its federal taxable income.

16 (2) So long as a federal consolidated income tax return is filed, an election made by an
17 affiliated group of corporations to file a Missouri consolidated income tax return may be
18 withdrawn or revoked only upon substantial change in the law or regulations adversely changing
19 tax liability [under] **pursuant to** this chapter; or, with permission of the director of revenue upon
20 the showing of good cause for such action. After such a withdrawal or revocation with respect

21 to an affiliated group, it may not file a Missouri consolidated income tax return for five years
22 thereafter, except with the approval of the director of revenue, and subject to such terms and
23 conditions as he may prescribe.

24 (3) No corporation which is part of an affiliated group of corporations filing a Missouri
25 consolidated income tax return shall be required to file a separate Missouri corporate income tax
26 return for the taxable year.

27 (4) For each taxable year an affiliated group of corporations filing a federal consolidated
28 income tax return does not file a Missouri consolidated income tax return, for purposes of
29 computing the Missouri income tax, the federal taxable income of each member of the affiliated
30 group shall be determined as if a separate federal income tax return had been filed by each such
31 member.

32 (5) The director of revenue may prescribe such regulations not inconsistent with the
33 provisions of this chapter as he may deem necessary in order that the tax liability of any affiliated
34 group of corporations making a Missouri consolidated income tax return, and of each corporation
35 in the group, before, during, and after the period of affiliation, may be returned, determined,
36 computed, assessed, collected, and adjusted, in such manner as clearly to reflect the Missouri
37 taxable income derived from sources within this state and in order to prevent avoidance of such
38 tax liability.

172.273. 1. The curators of the University of Missouri may establish research,
2 development and office park projects, in order to promote cooperative relationships and to
3 provide for shared resources between private individuals, companies and corporations, and the
4 University of Missouri, for the advancement of the university in carrying out its educational
5 mission and such projects are declared to be in furtherance of the purposes of the university.

6 2. The curators may, in connection with such projects, enter into written, mutually
7 binding leases or agreements with individuals, businesses, corporations, and professional firms
8 participating in the project for the purpose of expanding business and professional opportunities
9 for students, faculty and graduates of the university and of the area it serves, and for making
10 available to the university the resources and expertise of the business and professional entities
11 participating in the project.

12 3. The curators may purchase necessary land and may purchase and construct or arrange
13 for or permit the construction of any necessary facilities for such projects, may utilize the power
14 of eminent domain, and may in any other manner acquire and accept in the name of the curators
15 of the University of Missouri suitable land and facilities for such projects, and may enter into
16 business arrangements, including long-term leases, for the development thereof. The curators
17 may also acquire options upon lands to be purchased. Lands and improvements utilized as a part
18 of such projects, so long as they remain a part of a project, shall not be subject to local zoning

19 or local regulatory ordinances; provided that if the project is located within a city or county, the
20 university is required to consult with the city or county, prior to board of curators' approval of
21 the master development plan or substantial amendments thereto. The city or county plan
22 commission may hold and complete a public hearing on such plan within forty-five days of
23 submission to the city or county and the city or county within fifteen days thereafter may issue
24 its advisory recommendations to the curators. The curators may in their sole discretion require
25 that project development conform to the planning, transportation, environmental, health and
26 safety requirements of such city or county. Interests in property included in such projects may
27 be conveyed as needed, without passage of a concurrent resolution as provided by the provisions
28 of section 172.020. The utilization of the real property, as provided in subsection 1 of this
29 section, is hereby deemed to be a public purpose and in furtherance of the purposes of the
30 university. [Provided such land is owned by the university, no leasehold or other interest therein,
31 by whomsoever held, shall be separately assessed or taxed, and such real property as a whole
32 shall be deemed the property of the curators of the University of Missouri and be exempt from
33 all forms of property tax.]

34 4. For the purpose of developing and operating the project, the curators may enter into
35 cooperative agreements, including leases, in the same manner and to the same extent that
36 political subdivisions are authorized to enter into such agreements by the provisions of section
37 70.220, RSMo.

38 5. Whenever the curators' acquisition of land for such a research, development and office
39 park project will result in displacement, relocation assistance and monetary benefits identical to
40 those provided by subchapter II of the Uniform Relocation Assistance and Real Property
41 Acquisition Policies Act of 1970, 42 U.S.C. 4621 et seq., and its implementing regulations shall
42 be afforded to each displaced occupant or entity.

43 6. Notwithstanding the exemption of the curators of the University of Missouri from
44 municipal regulation and the provisions of subsection 3 of this section, any entity acting pursuant
45 to a lease or cooperative agreement with the curators may request that permits, licenses and
46 certificates be issued by a city or county where a project is to be located in order to aid in the
47 construction, operation and financing of such project. Such permits, licenses and certificates may
48 be issued by the city or county after review and approval of plans submitted by an architect or
49 engineer licensed to practice in the state of Missouri. Any entity may also request that
50 inspections be conducted by such city or county if such activities are normally performed by the
51 city or county in the enforcement of its building code.

52 7. Such doctrines of sovereign and official immunity and the public duty doctrines as
53 now exist for the issuance of permits, licenses, certificates and performance of inspections shall
54 apply to any city, county or official or employee thereof issuing permits, licenses, and certificates

55 or performing inspections pursuant thereto with respect to any claim brought for damages as a
56 result of the wrongful or negligent issuance of such permit, license or certificate or the
57 performance of inspections.

58 [8. The exemption from assessment and taxation provided by subsection 3 of this section
59 for leaseholds in property owned by the university in a research park project shall not be
60 available for leases entered into from and after August 28, 1996. Notwithstanding the foregoing
61 and any provision of this section to the contrary, all leaseholds in property in such parks leased
62 by the university to tenants for research, development, office or any other nonrecreational use
63 prior to August 28, 1996, including leaseholds created after August 28, 1996, under options or
64 similar rights which were granted prior to January 1, 1996, shall be exempt from assessment and
65 taxation for the term of such lease, provided that leaseholds in property used for recreational
66 purposes shall be subject to assessment and taxation as determined by the assessor of the local
67 political subdivision, and all lands and improvements in such parks, by whomsoever owned.]

211.453. 1. Service of summons shall be made as in other civil cases in the manner
2 prescribed in section 506.150, RSMo. However, if service cannot be made as prescribed in
3 section 506.150, RSMo, and it is not waived, then the service shall be made by mail or
4 publication as provided in section 506.160, RSMo.

5 2. Persons who shall be summoned and receive a copy of the petition shall include:

- 6 (1) The parent of the child, including a putative father who has acknowledged the child
7 as his own by affirmatively asserting his paternity;
8 (2) The guardian of the person of the child;
9 (3) The person, agency or organization having custody of the child;
10 (4) The foster parent, relative or other person with whom the child has been placed; and
11 (5) Any other person whose presence the court deems necessary.

12 3. [The court shall not require service in the case of a parent whose identity is unknown
13 and cannot be ascertained, or cannot be located.

14 4.] Any person required to receive summons may waive appearance or service of
15 summons.

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

6 2. The legislature hereby declares that this section shall be interpreted so that the
7 holdings in cases such as Carver v. Schafer, 647 S.W.2d 570 (Mo. App. 1983); Sampson v. W.
8 F. Enterprises, Inc., 611 S.W.2d 333 (Mo. App. 1980); and Nesbitt v. Westport Square, Ltd., 624

9 S.W.2d 519 (Mo. App. 1981) be abrogated in favor of prior judicial interpretation finding the
10 consumption of alcoholic beverages, rather than the furnishing of alcoholic beverages, to be the
11 proximate cause of injuries inflicted upon another by an intoxicated person.

12 [3. Notwithstanding subsections 1 and 2 of this section, a cause of action may be brought
13 by or on behalf of any person who has suffered personal injury or death against any person
14 licensed to sell intoxicating liquor by the drink for consumption on the premises who, pursuant
15 to section 311.310, RSMo, has been convicted, or has received a suspended imposition of the
16 sentence arising from the conviction, of the sale of intoxicating liquor to a person under the age
17 of twenty-one years or an obviously intoxicated person if the sale of such intoxicating liquor is
18 the proximate cause of the personal injury or death sustained by such person.]

621.189. Final decisions of the administrative hearing commission in cases arising
2 [under] **pursuant to** the provisions of [sections 621.155 and] **section** 536.050, RSMo, and
3 [under] **pursuant to** the provisions of section 621.050 shall be subject to review pursuant to a
4 petition for review to be filed in the court of appeals in the district in which the hearing, or any
5 part thereof, is held or, where constitutionally required or ordered by transfer, to the supreme
6 court, and by delivery of copies of the petition to each party of record, within thirty days after the
7 mailing or delivery of the final decision and notice thereof in such a case. Review [under]
8 **pursuant to** this section shall be exclusive, and decisions of the administrative hearing
9 commission reviewable [under] **pursuant to** this section shall not be reviewable in any other
10 proceeding, and no other official or court shall have power to review any such decision by an
11 action in the nature of mandamus or otherwise except pursuant to the provisions of this section.
12 The party seeking review shall be responsible for the filing of the transcript and record of all
13 proceedings before the administrative hearing commission in the case with the appropriate court
14 of appeals.

621.198. The administrative hearing commission shall publish and file with the secretary
2 of state independent sets of rules of procedure for the conduct of proceedings before it. One set
3 of rules shall apply exclusively to proceedings in licensing cases under section 621.045. Another
4 set of rules shall apply [exclusively to challenges to agency authority brought under section
5 621.155. A third set of rules shall apply] to sales and use and income tax disputes [under]
6 **pursuant to** section 621.050. Rules of procedure adopted [under] **pursuant to** the authority of
7 this section shall be designed to simplify the maintenance of actions and to enable review to be
8 sought, where appropriate, without the need to be represented by independent counsel. Each set
9 of rules shall be promulgated [under] **pursuant to** the procedures set forth in sections 536.020
10 to 536.035, RSMo.

2 [64.560. That nothing herein shall affect the recovery of natural resources by
strip or open cut mining; provided that commercial structures shall be permitted in

all districts except those zoned for residential or recreational use.]

[143.105. Notwithstanding the provisions of section 143.071, to the contrary, a tax is hereby imposed upon the Missouri taxable income of corporations in an amount equal to five percent of Missouri taxable income.]

[143.106. 1. Notwithstanding the provisions of section 143.171, to the contrary, a taxpayer shall be allowed a deduction for his federal income tax liability under chapter 1 of the Internal Revenue Code for the same taxable year for which the Missouri return is being filed after reduction for all credits thereon, except the credit for payments of federal estimated tax, the credit for the overpayment of any federal tax, and the credits allowed by the Internal Revenue Code by section 31 (tax withheld on wages), section 27 (tax of foreign country and United States possessions), and section 34 (tax on certain uses of gasoline, special fuels, and lubricating oils).

2. If a federal income tax liability for a tax year prior to the applicability of sections 143.011 to 143.996 for which he was not previously entitled to a Missouri deduction is later paid or accrued, he may deduct the federal tax in the later year to the extent it would have been deductible if paid or accrued in the prior year.]

[143.107. 1. Sections 143.105 and 143.106 shall become effective only if the question prescribed in subsection 2 of this section is submitted to a statewide vote and a majority of the qualified voters voting on the issue approve such question, and not otherwise.

2. If the supreme court of Missouri does not affirm in whole or in part the decision in the case of COMMITTEE FOR EDUCATION EQUALITY, et al., v. STATE OF MISSOURI, et al., No. CV 190-1371CC, and LEE'S SUMMIT SCHOOL DISTRICT R-VII, et al., v. STATE OF MISSOURI, et al., No. CV 190-510CC, a statewide election shall be held on the first regularly scheduled statewide election date after such a ruling at which an election can be held pursuant to chapter 115, RSMo. At such election the qualified voters of this state shall vote on the question of whether the taxes prescribed in sections 143.105 and 143.106 shall be applied to all taxable years beginning on or after the date of such election and not otherwise. If the voters approve such question, sections 160.500 to 160.538, sections 160.545 and 160.550, sections 161.099 and 161.610, RSMo, sections 162.203 and 162.1010, RSMo, section 163.023, RSMo, sections 166.275 and 166.300, RSMo, section 170.254, RSMo, section 173.750, RSMo, and sections 178.585 and 178.698, RSMo, shall expire thirty days after certification of the results of the election.]

[260.204. No person shall be issued a permit to operate a facility for the treatment of infectious waste who in 1987 received a clean air permit and thereafter operated a facility for the treatment of infectious waste by incineration without applying for and receiving a permit as a solid waste processing facility permitted pursuant to section 260.203 or a hazardous waste facility permitted pursuant to sections 260.350 to 260.430.]

[295.180. 1. Should either the utility or its employees refuse to accept and abide by the recommendations made pursuant to the provisions of this chapter and as a result thereof the effective operation of a public utility be threatened or

4 interrupted, or should either party in a labor dispute between a utility and its
5 employees, after having given sixty days' notice thereof, or failing to give such
6 notice, engage in any strike, work stoppage or lockout which, in the opinion of the
7 governor, will result in the failure to continue the operation of the public utility, and
8 threatens the public interest, health and welfare, or in the event that neither side has
9 given notice to the other of an intention to seek a change in working conditions, and
10 there occurs a lockout, strike or work stoppage which, in the opinion of the governor,
11 threatens to impair the operation of the utility so as to interfere with the public
12 interest, health and welfare, then and in that case he is authorized to take immediate
13 possession of the plant, equipment or facility for the use and operation by the state
14 of Missouri in the public interest.

15 2. Such power and authority may be exercised by the governor through such
16 department or agency of the government as he may designate and may be exercised
17 after his investigation and proclamation that there is a threatened or actual
18 interruption of the operation of such public utility as the result of a labor dispute, a
19 threatened or actual strike, a lockout or other labor disturbance, and that the public
20 interest, health and welfare are jeopardized, and that the exercise of such authority
21 is necessary to insure the operation of such public utility; provided, that whenever
22 such public utility, its plant, equipment or facility has been or is thereafter so taken
23 by reason of a strike, lockout, threatened strike, threatened lockout, work stoppage
24 or slowdown, or other cause, such utility, plant, equipment or facility shall be
25 returned to the owners thereof as soon as practicable after the settlement of said labor
26 dispute, and it shall thereupon be the duty of such utility to continue the operation of
27 the plant facility, or equipment in accordance with its franchise and certificate of
28 public convenience and necessity.]

2 [621.155. The administrative hearing commission shall conduct hearings,
3 make findings of fact and conclusions of law, and issue decisions in those cases
involving complaints filed pursuant to the provisions of section 536.050, RSMo.]