

FIRST REGULAR SESSION

HOUSE BILL NO. 962

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BARTLE.

Read 1st time March 12, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2247L.011

AN ACT

To repeal sections 64.560, 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 six 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, 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143.106, 143.107, 143.431, 172.273, 211.453, 260.204, 295.180, 537.053, 621.155, 621.189 and 621.198, RSMo 2000, are repealed and six new sections enacted in lieu thereof, to be known as sections 143.431, 172.273, 211.453, 537.053, 621.189 and 621.198, to read as follows:

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

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

3. (1) If an affiliated group of corporations files a consolidated income tax return for the taxable year for federal income tax purposes [and fifty percent or more of its income is derived

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

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, 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 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.]

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

621.198. The administrative hearing commission shall publish and file with the secretary of state independent sets of rules of procedure for the conduct of proceedings before it. One set of rules shall apply exclusively to proceedings in licensing cases under section 621.045. Another 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
3 strip or open cut mining; provided that commercial structures shall be permitted in
all districts except those zoned for residential or recreational use.]

2 [143.105. Notwithstanding the provisions of section 143.071, to the contrary,
3 a tax is hereby imposed upon the Missouri taxable income of corporations in an
amount equal to five percent of Missouri taxable income.]

2 [143.106. 1. Notwithstanding the provisions of section 143.171, to the
3 contrary, a taxpayer shall be allowed a deduction for his federal income tax liability
4 under chapter 1 of the Internal Revenue Code for the same taxable year for which the
5 Missouri return is being filed after reduction for all credits thereon, except the credit
6 for payments of federal estimated tax, the credit for the overpayment of any federal
7 tax, and the credits allowed by the Internal Revenue Code by section 31 (tax withheld
8 on wages), section 27 (tax of foreign country and United States possessions), and
9 section 34 (tax on certain uses of gasoline, special fuels, and lubricating oils).

10 2. If a federal income tax liability for a tax year prior to the applicability of
11 sections 143.011 to 143.996 for which he was not previously entitled to a Missouri
12 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.]

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

5 2. If the supreme court of Missouri does not affirm in whole or in part the
6 decision in the case of COMMITTEE FOR EDUCATION EQUALITY, et al., v.
7 STATE OF MISSOURI, et al., No. CV 190-1371CC, and LEE'S SUMMIT SCHOOL
8 DISTRICT R-VII, et al., v. STATE OF MISSOURI, et al., No. CV 190-510CC, a
9 statewide election shall be held on the first regularly scheduled statewide election
10 date after such a ruling at which an election can be held pursuant to chapter 115,
11 RSMo. At such election the qualified voters of this state shall vote on the question
12 of whether the taxes prescribed in sections 143.105 and 143.106 shall be applied to
13 all taxable years beginning on or after the date of such election and not otherwise.
14 If the voters approve such question, sections 160.500 to 160.538, sections 160.545
15 and 160.550, sections 161.099 and 161.610, RSMo, sections 162.203 and 162.1010,
16 RSMo, section 163.023, RSMo, sections 166.275 and 166.300, RSMo, section
17 170.254, RSMo, section 173.750, RSMo, and sections 178.585 and 178.698, RSMo,
18 shall expire thirty days after certification of the results of the election.]

2 [260.204. No person shall be issued a permit to operate a facility for the
3 treatment of infectious waste who in 1987 received a clean air permit and thereafter
4 operated a facility for the treatment of infectious waste by incineration without
5 applying for and receiving a permit as a solid waste processing facility permitted
6 pursuant to section 260.203 or a hazardous waste facility permitted pursuant to
sections 260.350 to 260.430.]

2 [295.180. 1. Should either the utility or its employees refuse to accept and
3 abide by the recommendations made pursuant to the provisions of this chapter and
4 as a result thereof the effective operation of a public utility be threatened or
5 interrupted, or should either party in a labor dispute between a utility and its
6 employees, after having given sixty days' notice thereof, or failing to give such
7 notice, engage in any strike, work stoppage or lockout which, in the opinion of the
8 governor, will result in the failure to continue the operation of the public utility, and
9 threatens the public interest, health and welfare, or in the event that neither side has
10 given notice to the other of an intention to seek a change in working conditions, and
11 there occurs a lockout, strike or work stoppage which, in the opinion of the governor,
12 threatens to impair the operation of the utility so as to interfere with the public
13 interest, health and welfare, then and in that case he is authorized to take immediate
14 possession of the plant, equipment or facility for the use and operation by the state
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.]