

FIRST REGULAR SESSION

# HOUSE BILL NO. 1443

## 103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MACKEY.

2775H.011

JOSEPH ENGLER, Chief Clerk

### AN ACT

To repeal sections 311.310, 311.325, 311.480, 311.710, and 537.053, RSMo, and to enact in lieu thereof five new sections relating to supervised alcohol consumption by certain persons.

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

Section A. Sections 311.310, 311.325, 311.480, 311.710, and 537.053, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 311.310, 311.325, 311.480, 311.710, and 537.053, to read as follows:

311.310. 1. Any licensee under this chapter, or his employee, who shall sell, vend, give away or otherwise supply any intoxicating liquor in any quantity whatsoever to any person under the age of twenty-one years, or to any person intoxicated or appearing to be in a state of intoxication, or to a habitual drunkard, ~~[and]~~ **shall be deemed guilty of a misdemeanor.**

2. Any person whomsoever ~~[except his parent or guardian]~~ who shall procure for, sell, give away or otherwise supply intoxicating liquor to any person under the age of twenty-one years, **except his or her parent or guardian**, or to any intoxicated person or any person appearing to be in a state of intoxication, or to a habitual drunkard, shall be deemed guilty of a misdemeanor ~~[, except that]~~.

3. This section shall not apply to:

(1) The supplying of intoxicating liquor to a person under the age of twenty-one years for medical purposes only ~~[, or to]~~;

(2) The administering of such intoxicating liquor to any person by a duly licensed physician;

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16           **(3) The possession and consumption of intoxicating liquor by a person under the**  
17 **age of twenty-one years in a public location or establishment, including a licensed**  
18 **establishment, if the person is under twenty-one years of age and is eighteen years of age**  
19 **or older and such person is in the presence of, accompanied by, and supervised by his or**  
20 **her parent, guardian, or spouse who is twenty-one years of age or older; or**

21           **(4) The supplying or serving of intoxicating liquor to a person under twenty-one**  
22 **years of age, in a public location or establishment, including a licensed establishment, if**  
23 **the person is under twenty-one years of age and is eighteen years of age or older and**  
24 **such person is in the presence of, accompanied by, and supervised by his or her parent,**  
25 **guardian, or spouse who is twenty-one years of age or older.**

26

27 No person shall be denied a license or renewal of a license issued under this chapter solely  
28 due to a conviction for unlawful sale or supply to a minor when serving in the capacity as an  
29 employee of a licensed establishment.

30           ~~[2-]~~ **4. Except as provided under this subsection and under subsection 3 of this**  
31 **section, any owner, occupant, or other person or legal entity with a lawful right to the**  
32 **exclusive use and enjoyment of any property who knowingly allows a person under the age of**  
33 **twenty-one to drink or possess intoxicating liquor or knowingly fails to stop a person under**  
34 **the age of twenty-one from drinking or possessing intoxicating liquor on such property, unless**  
35 **such person allowing the person under the age of twenty-one to drink or possess intoxicating**  
36 **liquor is his or her parent or guardian, is guilty of a class B misdemeanor. Any second or**  
37 **subsequent violation of this subsection is a class A misdemeanor.**

38           ~~[3-]~~ **5. It shall be a defense to prosecution under this section if:**

39           (1) The defendant is a licensed retailer, club, drinking establishment, or caterer or  
40 holds a temporary permit, or an employee thereof;

41           (2) The defendant sold the intoxicating liquor to the minor with reasonable cause to  
42 believe that the minor was twenty-one ~~[or more]~~ years of age **or older, or with reasonable**  
43 **cause to believe that the person in the presence of, accompanying, and supervising the**  
44 **minor, as allowed under subsection 3 of this section, was twenty-one years of age or**  
45 **older and was the minor's parent, guardian, or spouse; and**

46           (3) To purchase the intoxicating liquor, the person exhibited to the defendant a  
47 driver's license, Missouri nondriver's identification card, or other official or apparently  
48 official document, containing a photograph of the minor and purporting to establish that such  
49 minor was twenty-one years of age and of the legal age for consumption of intoxicating  
50 liquor.

311.325. 1. Any person under the age of twenty-one years, who purchases or  
2 attempts to purchase, or has in his or her possession, any intoxicating liquor as defined in

3 section 311.020 or who is visibly in an intoxicated condition as defined in section 577.001, or  
4 has a detectable blood alcohol content of more than two-hundredths of one percent or more by  
5 weight of alcohol in such person's blood is guilty of a misdemeanor. A first violation of this  
6 section shall be punishable as a class D misdemeanor. A second or subsequent violation of  
7 this section shall be punishable as a class A misdemeanor. Prior findings of guilt shall be  
8 ~~pleaded~~ **pled** and proven in the same manner as required by section 558.021. For purposes  
9 of prosecution under this section or any other provision of this chapter involving an alleged  
10 illegal sale or transfer of intoxicating liquor to a person under twenty-one years of age, a  
11 manufacturer-sealed container describing that there is intoxicating liquor therein need not be  
12 opened or the contents therein tested to verify that there is intoxicating liquor in such  
13 container. The alleged violator may allege that there was not intoxicating liquor in such  
14 container, but the burden of proof of such allegation is on such person, as it shall be presumed  
15 that such a sealed container describing that there is intoxicating liquor therein contains  
16 intoxicating liquor.

17 2. For purposes of determining violations of any provision of this chapter, or of any  
18 rule or regulation of the supervisor of alcohol and tobacco control, a manufacturer-sealed  
19 container describing that there is intoxicating liquor therein need not be opened or the  
20 contents therein tested to verify that there is intoxicating liquor in such container. The alleged  
21 violator may allege that there was not intoxicating liquor in such container, but the burden of  
22 proof of such allegation is on such person, as it shall be presumed that such a sealed container  
23 describing that there is intoxicating liquor therein contains intoxicating liquor.

24 3. Any person under the age of twenty-one years who purchases or attempts to  
25 purchase, or has in his or her possession, any intoxicating liquor, or who is visibly in an  
26 intoxicated condition as defined in section 577.001, shall be deemed to have given consent to  
27 a chemical test or tests of the person's breath, blood, saliva, or urine for the purpose of  
28 determining the alcohol or drug content of the person's blood. The implied consent to submit  
29 to the chemical tests listed in this subsection shall be limited to not more than two such tests  
30 arising from the same arrest, incident, or charge. Chemical analysis of the person's breath,  
31 blood, saliva, or urine shall be performed according to methods approved by the state  
32 department of health and senior services by licensed medical personnel or by a person  
33 possessing a valid permit issued by the state department of health and senior services for this  
34 purpose. The state department of health and senior services shall approve satisfactory  
35 techniques, devices, equipment, or methods to be considered valid and shall establish  
36 standards to ascertain the qualifications and competence of individuals to conduct analyses  
37 and to issue permits which shall be subject to termination or revocation by the state  
38 department of health and senior services. The person tested may have a physician, or a  
39 qualified technician, chemist, registered nurse, or other qualified person at the choosing and

40 expense of the person to be tested, administer a test in addition to any administered at the  
41 direction of a law enforcement officer. The failure or inability to obtain an additional test by a  
42 person shall not preclude the admission of evidence relating to the test taken at the direction  
43 of a law enforcement officer. Upon the request of the person who is tested, full information  
44 concerning the test shall be made available to such person. Full information is limited to the  
45 following:

- 46 (1) The type of test administered and the procedures followed;
- 47 (2) The time of the collection of the blood or breath sample or urine analyzed;
- 48 (3) The numerical results of the test indicating the alcohol content of the blood and  
49 breath and urine;
- 50 (4) The type and status of any permit which was held by the person who performed  
51 the test;
- 52 (5) If the test was administered by means of a breath-testing instrument, the date of  
53 performance of the most recent required maintenance of such instrument.

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55 Full information does not include manuals, schematics, or software of the instrument used to  
56 test the person or any other material that is not in the actual possession of the state.  
57 Additionally, full information does not include information in the possession of the  
58 manufacturer of the test instrument.

59 4. The provisions of this section shall not apply to a student who:

- 60 (1) Is eighteen years of age or older;
- 61 (2) Is enrolled in an accredited college or university and is a student in a culinary  
62 course;
- 63 (3) Is required to taste, but not consume or imbibe, any beer, ale, porter, wine, or  
64 other similar malt or fermented beverage as part of the required curriculum; and
- 65 (4) Tastes a beverage under subdivision (3) of this subsection only for instructional  
66 purposes during classes that are part of the curriculum of the accredited college or university.  
67 The beverage must at all times remain in the possession and control of an authorized  
68 instructor of the college or university, who must be twenty-one years of age or older. Nothing  
69 in this subsection may be construed to allow a student under the age of twenty-one to receive  
70 any beer, ale, porter, wine, or other similar malt or fermented beverage unless the beverage is  
71 delivered as part of the student's required curriculum and the beverage is used only for  
72 instructional purposes during classes conducted as part of the curriculum.

73 **5. The provisions of this section shall not apply to a person eighteen years of age**  
74 **or older but under twenty-one years of age drinking, possessing, or consuming**  
75 **intoxicating liquor in a public location or establishment, including a licensed**  
76 **establishment, provided that such person is in the presence of, accompanied by, and**

77 **supervised by such person's parent, guardian, or spouse who is twenty-one years of age**  
78 **or older.**

311.480. 1. It shall be unlawful for any person operating any premises where food,  
2 beverages or entertainment are sold or provided for compensation, who does not possess a  
3 license for the sale of intoxicating liquor, to permit the drinking or consumption of  
4 intoxicating liquor in the premises, without having a license as in this section provided.

5 2. Application for such license shall be made to the supervisor of alcohol and tobacco  
6 control on forms to be prescribed by him or her, describing the premises to be licensed and  
7 giving all other reasonable information required by the form. The license shall be issued  
8 upon the payment of the fee required in this section. A license shall be required for each  
9 separate premises and shall expire on the thirtieth day of June next succeeding the date of  
10 such license. The license fee shall be sixty dollars per year and the applicant shall pay five  
11 dollars for each month or part thereof remaining from the date of the license to the next  
12 succeeding first of July. Applications for renewals of licenses shall be filed on or before the  
13 first of May of each year.

14 3. The drinking or consumption of intoxicating liquor shall not be permitted in or  
15 upon the licensed premises by any person under twenty-one years of age, **except as provided**  
16 **under subsection 9 of this section**, or by any other person between the hours of 1:30 a.m.  
17 and 6:00 a.m. on any day of the week. Licenses issued hereunder shall be conditioned upon  
18 the observance of the provisions of this section and the regulations promulgated thereunder  
19 governing the conduct of premises licensed for the sale of intoxicating liquor by the drink.  
20 The provision of this section regulating the drinking or consumption of intoxicating liquor  
21 between certain hours and on Sunday shall apply also to premises licensed under this chapter  
22 to sell intoxicating liquor by the drink. In any incorporated city having a population of more  
23 than twenty thousand inhabitants, the board of aldermen, city council, or other proper  
24 authorities of incorporated cities may, in addition to the license fee required in this section,  
25 require a license fee not exceeding three hundred dollars per annum, payable to the  
26 incorporated cities, and provide for the collection thereof; make and enforce ordinances  
27 regulating the hours of consumption of intoxicating liquors on premises licensed hereunder,  
28 not inconsistent with the other provisions of this law, and provide penalties for the violation  
29 thereof. No person shall be granted a license hereunder unless such person is of good moral  
30 character and a qualified legal voter and a taxpaying citizen of the county, town, city or  
31 village, nor shall any corporation be granted a license hereunder unless the managing officer  
32 of such corporation is of good moral character and a qualified legal voter and taxpaying  
33 citizen of the county, town, city or village.

34 4. Any premises operated in violation of the provisions of this section, or where  
35 intoxicating liquor is consumed in violation of this section, is hereby declared to be a public

36 and common nuisance, and it shall be the duty of the supervisor of alcohol and tobacco  
37 control and of the prosecuting or circuit attorney of the City of St. Louis, and the prosecuting  
38 attorney of the county in which the premises are located, to enjoin such nuisance.

39 5. Any person operating any premises, or any employee, agent, representative,  
40 partner, or associate of such person, who shall knowingly violate any of the provisions of this  
41 section, or any of the laws or regulations herein made applicable to the conduct of such  
42 premises, is guilty of a class A misdemeanor.

43 6. The supervisor of alcohol and tobacco control is hereby empowered to promulgate  
44 regulations necessary or reasonably designed to enforce or construe the provisions of this  
45 section, and is empowered to revoke or suspend any license issued hereunder, as provided in  
46 this chapter, for violation of this section or any of the laws or regulations herein made  
47 applicable to the conduct of premises licensed hereunder.

48 7. Nothing in this section shall be construed to prohibit the sale or delivery of any  
49 intoxicating liquor during any of the hours or on any of the days specified in this section by a  
50 wholesaler licensed under the provisions of section 311.180 to a person licensed to sell the  
51 intoxicating liquor at retail.

52 8. No intoxicating liquor may be served or sold on any premises used as a polling  
53 place on election day.

54 **9. The possession or consumption of intoxicating liquor shall not be permitted in**  
55 **or upon the licensed premises by any person under twenty-one years of age, unless the**  
56 **person under twenty-one years of age is eighteen years of age or older and such person is**  
57 **in the presence of, accompanied by, and supervised by his or her parent, guardian, or**  
58 **spouse who is twenty-one years of age or older.**

311.710. 1. In addition to the penalties and proceedings for suspension or revocation  
2 of licenses provided for in this chapter, and without limiting them, proceedings for the  
3 suspension or revocation of any license authorizing the sale of intoxicating liquor at retail  
4 may be brought in the circuit court of any county in this state, or in the City of St. Louis, in  
5 which the licensed premises are located and such proceedings may be brought by the sheriff  
6 or any peace officer of that county or by any eight or more persons who are taxpaying citizens  
7 of the county or city for any of the following offenses:

8 (1) Selling, giving or otherwise supplying intoxicating liquor to a habitual drunkard  
9 or to any person who is under or apparently under the influence of intoxicating liquor;

10 (2) Knowingly permitting any prostitute, degenerate, or dissolute person to frequent  
11 the licensed premises;

12 (3) Permitting on the licensed premises any disorderly conduct, breach of the peace,  
13 or any lewd, immoral or improper entertainment, conduct or practices;

14 (4) Selling, offering for sale, possessing or knowingly permitting the consumption on  
15 the licensed premises of any kind of intoxicating liquors, the sale, possession or consumption  
16 of which is not authorized under his or her license;

17 (5) Selling, giving, or otherwise supplying intoxicating liquor to any person under the  
18 age of twenty-one years **or a person who is eighteen years of age or older but under**  
19 **twenty-one years of age without the presence, accompaniment, or supervision of such**  
20 **person's parent, guardian, or spouse who is twenty-one years of age or older;**

21 (6) Selling, giving or otherwise supplying intoxicating liquors between the hours of  
22 1:30 a.m. and 6:00 a.m. any day of the week.

23 2. Provided, that said taxpaying citizen shall submit in writing, under oath, by  
24 registered United States mail to the supervisor of alcohol and tobacco control a joint  
25 complaint, stating the name of the licensee, the name under which the licensee's business is  
26 conducted and the address of the licensed premises, setting out in general the character and  
27 nature of the offense or offenses charged, together with the names and addresses of the  
28 witnesses by whom proof thereof is expected to be made; and provided, that after a period of  
29 thirty days after the mailing of such complaint to the supervisor of alcohol and tobacco  
30 control the person therein complained of shall not have been cited by the supervisor to appear  
31 and show cause why his or her license should not be suspended or revoked then they shall file  
32 with the circuit clerk of the county or city in which the premises are located a copy of the  
33 complaint on file with the supervisor of alcohol and tobacco control.

34 3. If, pursuant to the receipt of such complaint by the supervisor of alcohol and  
35 tobacco control, the licensee appears and shows cause why his or her license should not be  
36 suspended or revoked at a hearing held for that purpose by the supervisor and either the  
37 complainants or the licensee consider themselves aggrieved with the order of the supervisor  
38 then, after a request in writing by either the complainants or the licensee, the supervisor shall  
39 certify to the circuit clerk of the county or city in which the licensed premises are located a  
40 copy of the original complaint filed with him or her, together with a copy of the transcript of  
41 the evidence adduced at the hearing held by him or her. Such certification by the supervisor  
42 shall not act as a supersedeas of any order made by him or her.

43 4. Upon receipt of such complaint, whether from the complainant directly or from the  
44 supervisor of alcohol and tobacco control, the court shall set a date for an early hearing  
45 thereon and it shall be the duty of the circuit clerk to cause to be delivered by registered  
46 United States mail to the prosecuting attorney of the county or to the circuit attorney of the  
47 City of St. Louis and to the licensee copies of the complaint and he or she shall, at the same  
48 time, give notice of the time and place of the hearing. Such notice shall be delivered to the  
49 prosecuting attorney or to the circuit attorney and to the licensee at least fifteen days prior to  
50 the date of the hearing.

51           5. The complaint shall be heard by the court without a jury and if there has been a  
52 prior hearing thereon by the supervisor of alcohol and tobacco control then the case shall be  
53 heard de novo and both the complainants and the licensee may produce new and additional  
54 evidence material to the issues.

55           6. If the court shall find upon the hearing that the offense or offenses charged in the  
56 complaint have been established by the evidence, the court shall order the suspension or  
57 revocation of the license but, in so doing, shall take into consideration whatever order, if any,  
58 may have been made in the premises by the supervisor of alcohol and tobacco control. If the  
59 court finds that to revoke the license would be unduly severe, then the court may suspend the  
60 license for such period of time as the court deems proper.

61           7. The judgment of the court in no event shall be superseded or stayed during  
62 pendency of any appeal therefrom.

63           8. It shall be the duty of the prosecuting attorney or circuit attorney to prosecute  
64 diligently and without delay any such complaints coming to him or her by virtue of this  
65 section.

66           9. The jurisdiction herein conferred upon the circuit courts to hear and determine  
67 complaints for the suspension or revocation of licenses in the manner provided in this section  
68 shall not be exclusive and any authority conferred upon the supervisor of alcohol and tobacco  
69 control to revoke or suspend licenses shall remain in full force and effect, and the suspension  
70 or revocation of a license as provided in this section shall be in addition to and not in lieu of  
71 any other revocation or suspension provided by this chapter.

72           10. Costs accruing because of such hearings in the circuit court shall be taxed in the  
73 same manner as criminal costs.

537.053. 1. Since the repeal of the Missouri Dram Shop Act in 1934 (Laws of 1933-  
2 34, extra session, page 77), it has been and continues to be the policy of this state to follow  
3 the common law of England, as declared in section 1.010, 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. Notwithstanding subsection 1 of this section, a cause of action may be brought by  
7 or on behalf of any person who has suffered personal injury or death against any person  
8 licensed to sell intoxicating liquor by the drink for consumption on the premises when it is  
9 proven by clear and convincing evidence that the seller:

10           **(1) Knew or should have known that intoxicating liquor was served to a person under**  
11 **the age of twenty-one years, unless the person under twenty-one years of age is eighteen**  
12 **years of age or older and such person was in the presence of, accompanied by, and**  
13 **supervised by his or her parent, guardian, or spouse who is twenty-one years of age or**  
14 **older; or**



15           **(2)** Knowingly served intoxicating liquor to a visibly intoxicated person.

16           3. For purposes of this section, a person is "visibly intoxicated" when inebriated to  
17 such an extent that the impairment is shown by significantly uncoordinated physical action or  
18 significant physical dysfunction. A person's blood alcohol content does not constitute prima  
19 facie evidence to establish that a person is visibly intoxicated within the meaning of this  
20 section, but may be admissible as relevant evidence of the person's intoxication.

21           4. Nothing in this section shall be interpreted to provide a right of recovery to a  
22 person who suffers injury or death proximately caused by the person's voluntary intoxication  
23 unless the person is under the age of twenty-one years. No person over the age of twenty-one  
24 years or their dependents, personal representative, and heirs may assert a claim for damages  
25 for personal injury or death against a seller of intoxicating liquor by the drink for  
26 consumption on the premises arising out of the person's voluntary intoxication.

27           5. In an action brought pursuant to subsection 2 of this section alleging the sale of  
28 intoxicating liquor by the drink for consumption on the premises to a person under the age of  
29 twenty-one years, proof that the seller or the seller's agent or employee demanded and was  
30 shown a driver's license or official state or federal personal identification card, appearing to  
31 be genuine and showing that the minor was at least twenty-one years of age, shall be relevant  
32 in determining the relative fault of the seller or seller's agent or employee in the action.

33           6. No employer may discharge his or her employee for refusing service to a visibly  
34 intoxicated person.

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