EVELEIGH, J., with whom ROGERS, C. J., joins, dissenting. I respectfully dissent. I disagree with the majority's conclusion that "the Appellate Court properly determined that the plaintiff [John A. O'Dell, administrator of the estate of the decedent, Patrick C. O'Dell] was not entitled to judgment in his favor without proving that the patron [Joel Pracher] was visibly or otherwise perceivably intoxicated at the time he was sold liquor."[1] I further disagree that the majority's conclusion is compelled by *Sanders* v. *Officers Club of Connecticut, Inc.*, 196 Conn. 341, 493 A.2d 184 (1985). Instead, I would conclude that the plain language of General Statutes § 30-102,[2] Connecticut's Dram Shop Act (act), does not require a plaintiff to prove that the purchaser of alcoholic liquor was visibly or otherwise perceivably intoxicated at the time of sale in order to prevail on a claim against the purveyor of alcoholic liquor. I would further conclude that *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 341, and *Craig* v. *Driscoll*, 262 Conn. 312, 813 A.2d 1003 (2003), support the conclusion that § 30-102 does not require a plaintiff to present evidence of visible or otherwise perceivable signs of intoxication. Rather, I would conclude that evidence of visible or otherwise perceivable signs of intoxication is one means, but not the only means, of proving intoxication under § 30-102. Accordingly, I would reverse the judgment of the Appellate Court and remand the case with direction to enter judgment in favor of the plaintiff in the amount of $250,000.

I agree with the facts and procedural history set forth in the majority opinion. I also agree with the majority that "[t]he meaning of intoxicated under § 30-102 presents a question of statutory interpretation under which our review is plenary. See *Kinsey* v. *Pacific Employers Ins. Co.*, 277 Conn. 398, 404, 891 A.2d 959 (2006). When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In seeking to determine [the] meaning [of the statute], General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. . . . *Esposito* v. *Simkins Industries, Inc.*, 286 Conn. 319, 327, 943 A.2d 456 (2008). If that endeavor provides no clear and unambiguous result, it is appropriate to look at extratextual sources. General Statutes § 1-2z; see also *Eder Bros., Inc.* v. *Wine Merchants of Connecticut, Inc.*, 275 Conn. 363, 372, 880 a.2d 138 (2005) ([o]ur well established process of statutory interpretation [instructs us to look] . . . to the legislative history and circumstances surrounding [the statute's] enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter)." (Internal quota-

tion marks omitted.)

At the outset, I set forth the history of the act. In *Craig* v. *Driscoll*, supra, 262 Conn. 322–23, this court explained as follows: "At common law it was the general rule that no tort cause of action lay against one who furnished, whether by sale or gift, intoxicating liquor to a person who thereby voluntarily became intoxicated and in consequence of his intoxication injured the person or property either of himself or of another. The reason generally given for the rule was that the proximate cause of the intoxication was not the furnishing of the liquor, but the consumption of it by the purchaser or donee. The rule was based on the obvious fact that one could not become intoxicated by reason of liquor furnished him if he did not drink it. . . . Common-law tort claims against purveyors routinely failed, therefore, because the consumption of the liquor was viewed as an intervening act breaking the chain of causation between the purveyor and the ensuing injury caused by the intoxication. . . . In Connecticut, as far back as 1872, it came to be felt that the foregoing common-law rule was to some extent overly harsh and should be modified by statute. Such statutes, which were enacted in numerous other states, came to be known as civil damage or dram shop acts. . . . Connecticut's first such statute is found in § 8 of chapter 99 of the Public Acts of 1872, and its enactment indicated a knowledge, by the General Assembly, of the foregoing common-law rule. The 1872 act gave a cause of action against a seller who sold intoxicating liquor to a person who thereby became intoxicated for 'any damage or injury to any other person, or to the property of another' done by the intoxicated person 'in consequence' of his intoxication. Thus, this act, in situations where it was applicable, displaced the common-law rule that the proximate cause of intoxication was not the furnishing of the liquor but its consumption. . . . In subsequent amendments to the act, the legislature expanded liability by including sales by the purveyor's agents and by eliminating the requirement of proof of a causal connection between the selling of the alcoholic liquor and the intoxication that caused the injury. . . . The act, therefore, modified the common-law rule." Accordingly, in construing the act for purposes of determining whether it requires visible or otherwise perceivable signs of intoxication, I am mindful of the history and purpose of the act.

Like the majority, "[t]o answer the question of whether § 30-102 requires a plaintiff to prove that the patron was visibly or otherwise perceivably intoxicated, [I] turn first to the text of the statute." Section 30-102 provides in relevant part: "If any person, by such person or such person's agent, sells any alcoholic liquor to an *intoxicated person*, and such purchaser, in consequence of such intoxication, thereafter injures the person or property of another, such seller shall pay just damages to the person injured . . . ." (Emphasis

added.) On its face, § 30-102 creates liability upon the sale of alcoholic liquor to an intoxicated person, not to a visibly or otherwise perceivably intoxicated person. The plain language of the statute supports my conclusion that § 30-102 does not require proof of visible or otherwise perceivable intoxication. Indeed, adding an additional requirement to the plain language of § 30-102, as the majority does, is not in accord with the principles of § 1-2z, which requires us to look at the plain language of the act. Accordingly, I respectfully disagree with the majority's interpretation of § 30-102.

Indeed, it is important to note that the legislature has required visible intoxication in other statutes. Cf. General Statutes § 17a-683 (a) ("[a]ny police officer finding a person who *appears to be intoxicated* in a public place and in need of help may, with such person's consent, assist such person to his home, a treatment facility, or a hospital or other facility able to accept such person"). Moreover, there is no other language in the statute that might imply that the purchaser need be visibly or otherwise perceivably intoxicated for the purveyor's liability to arise. Cf. General Statutes § 17a-690 (a) ("[n]o town, city or borough or other political subdivision may adopt or enforce a local ordinance that includes drinking intoxicating liquor, being a common drunkard or *being found in an intoxicated condition* as one of the elements of an offense giving rise to a criminal or civil penalty or sanction" [emphasis added]). The legislature also has not set forth or limited the type of proof necessary to prevail in a dram shop claim. Cf. General Statutes § 30-86 (b) (1) (providing that "[a]ny permittee . . . who sells or delivers alcoholic liquor to any minor or any intoxicated person, or to any habitual drunkard, *knowing the person to be such a habitual drunkard*, shall be subject to the penalties of section 30-113" [emphasis added]); General Statutes § 14-227a ("[a] person commits the offense of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if such person operates a motor vehicle [1] while under the influence of intoxicating liquor or any drug or both, or [2] while such person has an elevated blood alcohol content [as later defined]"). On the basis of the legislature's use of visible or perceivable intoxication in other statutes, I would conclude that, if the legislature had intended visible or otherwise perceivable intoxication to be required for § 30-102, it would have used such language therein. As this court recently reiterated, "it is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly; e.g., *Dept. of Public Safety* v. *Freedom of Information Commission*, 298 Conn. 703, 729, 6 A.3d 763 (2010); or to use broader or limiting terms when it chooses to do so. See, e.g., *Stitzer* v. *Rinaldi's Restaurant*, 211 Conn. 116, 119, 557 A.2d 1256 (1989)." *Scholastic Book Clubs* v. *Commissioner of Revenue Services*, 304 Conn. 204, 219, A.3d

(2012). Accordingly, I would conclude that an examination of other statutes supports my conclusion that the legislature did not intend to require proof of visible or otherwise perceivable intoxication for purposes of § 30-102.[3]

As the majority suggests, a question remains, however, whether the term "intoxication" itself could mean a visible or otherwise perceivable state of inebriation. As this court previously has noted, "intoxication [has been] defined . . . in a number of ways in a number of contexts." *Wentland* v. *American Equity Ins. Co.*, 267 Conn. 592, 610, 610, 840 A.2d 1158 (2004). The legislature has not provided a definition of intoxication anywhere in the Liquor Control Act, of which the Dram Shop Act is a part. "When a statute does not provide a definition, words and phrases in a particular statute are to be construed according to their common usage. . . . To ascertain that usage, we look to the dictionary definition of the term." (Internal quotation marks omitted.) *Potvin* v. *Lincoln Service & Equipment Co.*, 298 Conn. 620, 633, 6 A.3d 60 (2010); see also General Statutes § 1-1 (a). The term intoxication or intoxicate is defined with substantial similarity in a number of dictionaries, none including the term visible. For instance, Webster's Third New International Dictionary (2002) defines intoxication as "poisoning or the abnormal state induced by a chemical agent." Black's Law Dictionary (9th Ed. 2009) defines intoxication similarly, as "a diminished ability to act with full mental and physical capabilities because of alcohol or drug consumption." The American Heritage Dictionary of the English Language (3d Ed. 1992) defines intoxicate as "stupefy or excite." Merriam-Webster's Collegiate Dictionary (11th Ed. 2005) defines intoxicate as "to affect by a drug (as in alcohol or cocaine), especially to the point of physical or mental impairment." Random House Webster's College Dictionary (2001) defines intoxicate as "to affect temporarily with diminished physical and mental control by means of alcoholic liquor, drug or another substance, especially to excite or stupefy with liquor." As these definitions demonstrate, the term intoxication does not necessarily include visible or otherwise perceivable signs.[4]

As I have previously explained herein, it is also appropriate to look to other statutes in construing § 30-102, and I therefore look to other statutes for the meaning of the term intoxication. See General Statutes § 1-2z. Indeed, "[i]t is settled that statutes must be construed consistently with other relevant statutes because the legislature is presumed to have created a coherent body of law. . . . In construing a statute, the court may look to other statutes relating to the same subject matter for guidance." *Petco Insulation Co.* v. *Crystal*, 231 Conn. 315, 324, 649 A.2d 790 (1994). A review of other statutes reveals that the legislature has specifically defined what constitutes intoxication in other sections

of the General Statutes, for the purposes of that section. See General Statutes § 17a-680 (defining "[i]ntoxicated person" for purposes of certain civil commitment statutes as "a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs"); General Statutes § 53a-7 (defining "intoxication" for purposes of affirmative defense to crime as "a substantial disturbance of mental or physical capacities resulting from the introduction of substances into the body"). The definition of intoxication adopted by the legislature in §§ 17a-680 and 53a-7 supports my conclusion that intoxication does not require a visible or otherwise perceivable sign.

Moreover, in ascertaining the nature of proof required for dram shop liability, I am not writing on a blank slate. Accordingly, I look to this court's previous interpretations of the statute to discover the contours and shadowing that those decisions cast upon my present construction. I begin with *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 341, the case relied upon by both the defendant and the Appellate Court. In *Sanders*, the court did not consider the certified question presently before us. Rather, the issue before the court was whether the plaintiff in a claim under the act had presented sufficient evidence to support the jury's finding that the patron was intoxicated at the time of sale. Id., 347–48. In that case, the evidence consisted entirely of lay testimony, that is, from the purchaser himself and persons who had observed him before and after he rear-ended another vehicle. Id., 343. No blood alcohol content evidence or expert testimony had been offered,[5] and no claim was raised that evidence of visible or otherwise perceivable indicators of intoxication was required.

In order to determine whether the evidence was sufficient in *Sanders*, this court first articulated a definitional and descriptive yardstick of intoxication against which the evidence could be measured. The emerging standard describes intoxication as a state of being, induced by the consumption of alcoholic liquor, which can be observed by the layperson through certain indicators.[6] See *Wentland* v. *American Equity Ins. Co.*, supra, 267 Conn. 609 ("the definition of intoxication set forth in *Sanders* goes on to provide examples that would be sufficient to support a finding of intoxication"). Per *Sanders*, "[t]o be intoxicated is something more than to be merely under the influence of, or affected to some extent by, liquor. Intoxication means an abnormal mental or physical condition due to the influence of intoxicating liquors, a visible excitation of the passions and impairment of the judgment, or a derangement or impairment of physical functions and energies. When it is apparent that a person is under the influence of liquor, when his manner is unusual or abnormal and is reflected in his walk or conversation, when his ordinary judgment or common sense are dis-

turbed or his usual will power temporarily suspended, when these or similar symptoms result from the use of liquor and are manifest, a person may be found to be intoxicated. He need not be 'dead-drunk.' It is enough if by the use of intoxicating liquor he is so affected in his acts or conduct that the public or parties coming in contact with him can readily see and know this is so."[7] *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 349–50.

Following its definition and description of intoxication, this court turned to the evidence proffered at trial: "[The purchaser] was drinking at noontime. He resumed his drinking immediately after work. His conduct [of speaking loudly] was such that the patrons coming in contact with him complained to management. He was warned, not once, but twice, concerning his boisterous behavior. He left for home, but took a roundabout route. He drove, almost an hour after sunset, without lights. He was unable to recall many of the events of the evening and testified guardedly. He never saw the vehicles with which he collided on the side of the highway. On all of the evidence, we conclude that the jury reasonably could have found facts to prove that a state of intoxication [existed] in [the purchaser] at the time of a sale of alcoholic liquor to him by the defendant . . . ." Id., 351. Thus, measuring the proffered evidence against the standard of intoxication, this court ruled that the evidence was sufficient to withstand the appeal.

Recognizing that the court in *Sanders* made several references to "visible" or "apparent" signs of intoxication, I nonetheless believe it is overreaching to read the case as having interpreted § 30-102 to *require* evidence of visible or otherwise perceivable intoxication.[8] Indeed, as this court later explained, *Sanders* articulates two principles, neither of which is meant to construe § 30-102 as requiring evidence of visible or perceivable intoxication. The first principle is this: to imbibe alcoholic liquor does not necessarily result in intoxication—there are various degrees of inebriation recognized by the law. See *Wentland* v. *American Equity Ins. Co.*, supra, 267 Conn. 604 ("[t]he first sentence in *Sanders* [stating] that intoxication is 'something more' than merely being affected by alcoholic liquor . . . is a plain indication that there may be levels of inebriation that are less severe than intoxication"); *State* v. *Lonergan*, 213 Conn. 74, 92 n.11, 566 A.2d 677 (1989) (citing *Sanders* in support of same principle), cert. denied, 496 U.S. 905, 110 S. Ct. 2586, 110 L. Ed. 2d 267 (1990), overruled on other grounds, *State* v. *Alvarez*, 257 Conn. 782, 794, 778 A.2d 938 (2001). Second, certain visible or otherwise perceivable indicators of intoxication are sufficient to prove that a person is intoxicated under § 30-102. See *Wentland* v. *American Equity Ins. Co.*, supra, 609 ("[*Sanders*] provide[s] examples that would be sufficient to support a finding of intoxication . . . . [T]hese examples . . . merely

provide illustrations of what will be sufficient to support a factual finding that a purchaser of alcohol was intoxicated for purposes of the [act].''). Thus, this court's decision in *Sanders* did not construe § 30-102 as requiring a plaintiff to prove that the purchaser was visibly or otherwise perceivably intoxicated for liability to arise. Rather, it held that the proffered evidence, which the jury considered in regard to the specific purchaser's level of inebriation, was sufficient to support a finding that the purchaser was intoxicated at the time of sale.[9]

Indeed, to interpret *Sanders* contrariwise would require ignoring pertinent language expressing a more expansive view of intoxication. In its descriptive standard of intoxication, the court included "an abnormal mental or physical condition due to the influence of intoxicating liquors." *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 349. Such an abnormal condition will not necessarily be visible or otherwise perceivable by lay persons. Furthermore, apart from the evidence that the purchaser in *Sanders* had been speaking loudly enough to cause other patrons to complain, none of the other evidence cited by this court can be fairly characterized as manifestations of visible or otherwise perceivable signs of intoxication at the time of sale. Id., 350–51.

Indeed, in *Sanders*, the court took note of many facts in its conclusion that the jury reasonably could have found sufficient facts to prove that the purchaser was intoxicated at the time of the sale of alcoholic liquor by the defendant, which clearly do not relate to visible intoxication at the time of sale. The court in *Sanders* noted the following: "[the purchaser] left for home, but took a roundabout route. He drove, almost an hour after sunset, without lights. He was unable to recall many of the events of the evening and testified guardedly. He never saw the vehicles with which he collided on the side of the highway." Id., 351. In fact, most of the facts cited by the court in *Sanders* occurred after the sale of the alcohol to the purchaser and away from the bar. Therefore, I do not share the majority's position that *Sanders* controls our decision in this case. In my view, *Sanders* supports my conclusion that there are several indicia of proof, both visible and imperceptible, which would qualify as sufficient proof to justify a verdict in favor of the plaintiff pursuant to § 30-102.

A subsequent decision by this court, *Craig* v. *Driscoll*, 262 Conn. 312, 813 A.2d 1003 (2003), confirms both my reading of *Sanders* and an interpretation of § 30-102 not requiring visible or perceivable intoxication. In *Craig*, this court considered whether § 30-102 manifested a legislative intent to occupy the field so as to preclude this court from recognizing a common-law negligence action against purveyors of alcohol. Id., 323–24. It was essential, therefore, to delineate the scope of the act so that we might determine whether the

statutory action was akin to, or in effect, a negligence action. Id., 326–27. In reaching the conclusion that the act operated in strict liability, we explained: "The act provides a means of recovery for plaintiffs who are unable to prove causation *and culpability*, subject to a statutory limitation on damages. . . . To prevail, a plaintiff simply must prove: (1) the sale of the alcoholic liquor; (2) that the sale was to an intoxicated person; and (3) that the intoxicated person caused injury to another's person or property as a result of his or her intoxication. . . . Accordingly, the act covers all sales of liquor that result in an intoxicated person causing injury, *irrespective of the bar owner's knowledge or state of mind*. The act thereby provides an action in strict liability, both without the burden of proving the element of scienter essential to a negligence action and without the benefit of the broader scope of recovery permitted under such an action."[10] Id., 327–28. (Emphasis added.) See also *State* v. *Katz*, 122 Conn. 439, 441, 189 A. 606 (1937) (holding that there is "no doubt of the legislative intent that knowledge is not an element of offense as regards sales [of alcoholic liquor] to intoxicated persons" under the predecessor to § 30-86).[11] Because we interpreted § 30-102 as operating in strict liability, rather than in negligence, we held that the legislature had not occupied the field and that this court could recognize a common-law negligence action for persons able to prove both a causal connection between the sale and injury and the purveyor's culpability. In view of this language in *Craig* v. *Driscoll*, supra, 262 Conn. 327–28, it is surprising to me that the majority would now rely upon *Sanders*, an earlier case, to control the present case. If anything, the language in *Craig* v. *Driscoll*, supra, 262 Conn., 327–28, is consistent with both *Sanders* and § 30-102 to the effect that visible or otherwise perceivable signs of intoxication are not requirements under both the act and our case law. Although the holding in *Craig* v. *Driscoll* was legislatively overruled, our conclusion that the statute did not require fault on the part of the bar owner was not legislatively changed. It seems counterintuitive for the majority to now reach back to a case decided in 1985 for language that, in my view, does not support the majority's conclusion.

Before turning to the significance of this analysis in the present case, I must acknowledge that the holding in *Craig* was legislatively overruled. In No. 03-91 of the 2003 Public Acts (P.A. 03-91), the legislature added the following language to § 30-102: "Such injured person shall have no cause of action against such seller for negligence in the sale of alcoholic liquor to a person twenty-one years of age or older." This amendment made clear that the legislature intended to occupy the field and, in so doing, eliminate the common-law negligence action that *Craig* had recognized. The legislature made no change, however, to the existing statutory

language that *Craig* had interpreted,[12] and thus appears to have endorsed the view in *Craig* of the act as a strict liability provision requiring no proof of a culpable state of mind. The legislative history of P.A. 03-91 provides some support for this conclusion.[13] This court's characterization of § 30-102 as a strict liability cause of action, then, remains viable. Indeed, the majority seems to recognize this fact by indicating that the patron's visible manifestations need not be visible to the purveyor of liquor.

An interpretation of § 30-102 that requires the plaintiff to prove visible or otherwise perceivable intoxication would be inconsistent with our prior construction of the act to the effect that the act does not require a showing of negligence. Under a rubric where a plaintiff is required to prove that the purchaser was visibly or otherwise perceivably intoxicated, the purveyor's culpability necessarily becomes relevant. After all, if the purchaser exhibited such indicators of intoxication at the time of sale, the purveyor would almost certainly *have reason to know* of the purchaser's state even if the purveyor did not *actually know*. Imposing such a requirement would largely convert the statutory action into a negligence action. See *Craig* v. *Driscoll*, supra, 262 Conn. 338 (explaining that common-law negligence action would give rise to liability when, inter alia, "a person, who, when he knows *or should have known a person is intoxicated*, sells or gives intoxicating liquor to such a person" [internal quotation marks omitted]). Such an interpretation would be inconsistent with the legislature's understanding of the act as giving rise to liability irrespective of whether the purveyor was at fault. See footnote 13 of this opinion.

I am not persuaded by the Appellate Court's effort to reconcile its holding that the act requires visible or otherwise perceivable signs of intoxication with this court's view of the act as providing an action in strict liability. The Appellate Court reasoned that "an establishment would be strictly liable . . . if it sold intoxicating liquor to a patron who exhibited perceivable signs of intoxication, even if the permittee or bartender completely was unaware of and had no reason to know of such behavior." *O'Dell* v. *Kozee*, supra, 128 Conn. App. 802. The majority also appears to adopt this view. In my view, there are such limited circumstances in which a purchaser could exhibit visible or otherwise perceivable signs of intoxication at the time of sale, while at the same time the purveyor would have no reason to know of that condition, that it seems exceedingly unlikely that the legislature would have crafted the statute with such an intention in mind.[14] Furthermore, interpreting the act in the manner suggested by the Appellate Court would be inconsistent with the balance struck under of the act. See *Craig* v. *Driscoll*, supra, 262 Conn. 328 ("[t]he act . . . provides an action in strict liability, both without the burden of proving the

element of scienter essential to a negligence action and without the benefit or the broader scope of recovery permitted under such an action"). Requiring the plaintiff to prove visible or otherwise perceivable intoxication would impose a significant burden of proof on the plaintiff akin to the standard required in a negligence cause of action without the unlimited damages commensurate with such proof available under the common law. Furthermore, the sort of evidence implicated in meeting such a heightened burden of proof might be extremely limited or even unavailable. Plaintiffs might, for example, be compelled to depend on the testimony of companions of the intoxicated person or other bar patrons whose recollections may be impaired by varying degrees of inebriation, as in the present case, or the testimony of agents of the party against whom suit is being brought.

It is also important to note, as the majority acknowledged, that this court has repeatedly "recognized the pervasiveness of the state's control over the liquor business. Because of the danger to the public health and welfare inherent in the liquor traffic, the police power to regulate and control it runs broad and deep, much more so than the power to curb and direct ordinary business activity. . . . We have acknowledged the broader than usual power of the state over this traffic when we said: 'A state has far broader power and latitude to regulate and restrict the use, distribution or consumption of liquor than the power to regulate or restrict ordinary business because of its effect on the health and welfare of the public.' " (Citations omitted.) *All Brand Importers* v. *Department of Liquor Control*, 213 Conn. 184, 198, 567 A.2d 1156 (1989).

Moreover, respectfully, I find the majority's reliance on *State* v. *Katz*, supra, 122 Conn. 439, misplaced. As the majority explains, *Katz* is a 1937 case in which this court interpreted the term "intoxicated person" for purposes of the criminal counterpart to § 30-102, § 30-86.[15] In *Katz*, the defendant purveyor of alcohol challenged his conviction under § 30-86 on the ground that "it was incumbent upon the [s]tate to prove knowledge on his part that [the purchaser] was intoxicated when he made the sale to him." Id., 441. This court rejected the defendant's claim, concluding that "[i]t was not, however, incumbent upon the [s]tate to prove that the defendant did have knowledge of [the purchaser's] condition. The phrase in the statute, 'knowing him to be such an habitual drunkard,' clearly applies only to sales made to an habitual drunkard and the insertion in the statute of the requirement of proof of knowledge only in such a case leaves no doubt of the legislative intent that knowledge is not an element of the offense as regards sales to intoxicated persons or minors." Id., 441–42. The defendant in *Katz* also claimed that § 30-86 was unconstitutionally vague because it did not contain a definition of "intoxication." This court rejected

that claim, concluding that "[i]t is not necessary in this case, even if it were practicable, to attempt to formulate a definition of intoxication. There was evidence of one of the most common indications of intoxication, staggering in walking or running. Certainly when a person displays outward manifestations of such a condition by an abnormality of behavior generally accepted as a result of the use of liquor he is 'an intoxicated person' within the meaning of this statute. The condition of intoxication and its common accompaniments are so much a matter of general knowledge that practicable and sensible effect may be given to the words "intoxicated person" as used in the statute . . . and the law cannot be held too indefinite to be enforceable." (Citations omitted.) Id., 442–43.

In *Katz*, this court affirmed the defendant's conviction under § 30-86 based only on evidence from a police officer that saw the purchaser stumbling before and after he entered the store. Commenting on the evidence produced to demonstrate that the defendant was intoxicated—as opposed to evidence that the purveyor had knowledge of his intoxication—this court stated: "The vital issue is whether the evidence supports the trial court's conclusion that [the purchaser] was intoxicated when the liquor was sold to him. A police officer who saw him before and after he was in the store definitely testified that he was and as evidencing that fact stated that he staggered and, when he attempted to run, could not do so very well. The trial court was, of course, not bound to give credence to the testimony of the defendant and the one witness he produced that [the purchaser] gave no indications of intoxication while in the store. Upon all the evidence the trial court could reasonably have reached the conclusion that [the purchaser] was intoxicated." Id., 441. In *Katz*, it so happened that intoxication was proven by testimony that the patron was staggering, but nothing in *Katz* suggests that such evidence is necessary. Indeed, the fact that this court concluded that § 30-86 does not require the state to prove that the purveyor knew the patron was intoxicated supports my conclusion that visible or otherwise perceivable evidence of intoxication at the time of purchase is not necessary to support a claim under § 30-102.

The majority asserts that "[t]hese cases suggest that intoxication, as used in §§ 30-86 and 30-102, requires some external manifestation of that condition that the purveyor could observe. In other words, by 'plac[ing] the burden of determining whether or not the purchaser of liquor is intoxicated upon the seller'; *State* v. *Katz*, supra, 122 Conn. 442; the legislature must have assumed that there would be an objective basis from which the seller could make such a determination through reasonable efforts." I disagree. There is no requirement in the statutory language of § 30-102, or in the cases interpreting it, of a visible or otherwise perceivable manifesta-

tion of intoxication. To the contrary, I would conclude that examining the language of § 30-102 in light of its purpose to "[provide] an action in strict liability, both without the burden of proving the element of scienter essential to a negligence action and without the benefit of the broader scope of recovery permitted under such an action"; *Craig* v. *Driscoll*, supra, 262 Conn. 338; requires the conclusion that intoxication does not require a visible or otherwise perceivable manifestation.

The plaintiff has also urged us to rule that a blood alcohol content of .08 at the time of sale shall be per se evidence of intoxication for the purposes of the act. I would conclude that a blood alcohol content of .08 at the time of sale, coupled with an expert's testimony that the consumption of the alcohol or drug caused a significant mental or physical impairment, would constitute a prima facie case sufficient to have the case submitted to the jury. The legislature has expressly identified that a blood alcohol content level of .08 is per se evidence of the offense of operating a motor vehicle while under the influence of intoxicating liquor. General Statutes § 14-227a. I agree with the plaintiff to the extent that it is difficult to rationalize why the legislature would consider blood alcohol content to be competent evidence in one context and not the other when the act aims to deter the same injurious conduct—drunk driving—and to compensate victims harmed by such conduct. In *Coble* v. *Maloney*, 34 Conn. App. 655, 643 A.2d 277 (1994), the Appellate Court determined that the results of blood alcohol tests are relevant to the determination of whether an individual is intoxicated pursuant to § 30–102, but that "[§] 30-102 is not a per se offense that can be proven merely by establishing a blood alcohol level of 0.10 percent or greater at the time the elements of the offense occurred, the results of the blood alcohol tests nonetheless may indicate that a person had imbibed intoxicating liquors, which is a key factor in determining whether an individual is intoxicated." Nonetheless, I would conclude that blood alcohol content evidence can establish liability if it is supported by expert testimony that also establishes the definition of intoxication adopted by the legislature in §§ 17a-680 and 53a-7, namely, that the individual's mental or physical functioning was substantially impaired by the consumption of alcohol.

Indeed, I would conclude that the definition of intoxication set forth in *Sanders*, which is adopted by the majority, is so broad and unwieldy so as to be unhelpful in pursuing and defending against claims under § 30-102. Specifically, the majority relies on the following language from *Sanders*: "To be intoxicated is something more than to be merely under the influence of, or affected to some extent by, liquor. Intoxication means an abnormal mental or physical condition due to the influence of intoxicating liquors, a visible excitation

of the passions and impairment of the judgment, or a derangement or impairment of physical functions and energies. When it is apparent that a person is under the influence of liquor, when his manner is unusual or abnormal and is reflected in his walk or conversation, when his ordinary judgment or common sense are disturbed or his usual will power temporarily suspended, when these or similar symptoms result from the use of liquor and are manifest, a person may be found to be intoxicated." *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 349–50. Indeed, the definition that I propose herein—intoxication is the state in which, as a result of the consumption of alcohol or other drugs, a person's mental or physical functioning is substantially impaired—is in accord with the statutory usage of intoxication, and is very close to one of the definitions contained in *Sanders* v. *Officers Club of Connecticut, Inc.* See id. ("intoxication means an abnormal mental or physical condition due to the influence of intoxicating liquors"). It also comports with the dictionary definition, which is a state in which one is affected "by a drug (as in alcohol or cocaine), especially to the point of physical or mental impairment." See Merriam-Webster's Collegiate Dictionary (11th Ed. 2005).

In the present case, the evidence established that, shortly after the accident, Pracher's blood alcohol content was 0.187. The plaintiff's expert extrapolated back to various periods of time preceding the accident and opined that Pracher's blood alcohol content would have been between above 0.10 at 10 p.m., between 0.19 and 0.23 at all times between 11 p.m. and 12 a.m., and between 0.18 and 0.20 at 12:45 a.m. The expert further testified that, with a blood alcohol content of 0.10 or higher: (1) a person's mental or physical condition would be considered abnormal; and (2) his or her physical functions and energies would "most likely" be impaired. Notably, this testimony squarely comports with two of *Sanders*' descriptive standards of intoxication. See *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 349 ("[i]ntoxication means an abnormal mental or physical condition due to the influence of intoxicating liquors, a visible excitation of the passions and impairment of the judgment, or a derangement or impairment of physical functions and energies"). Moreover, evidence of the circumstances of the accident in the present case—driving at an excessive speed directly into a large, legally parked vehicle in a lighted area with ample room for safe passage—is similar to the evidence cited in *Sanders* and provides additional support for the expert's conclusion as applied to Pracher. Indeed, the facts of the present case persuasively demonstrate why the legislature would have intended to afford relief under § 30-102 even in the absence of proof of visible or otherwise perceivable signs of intoxication. In addition, I would conclude that Pracher's own testimony in the present case that he

was "drunk" when he was served the alcohol should, on its own, be sufficient to establish a prima facie case under § 30-102 to submit to the jury.

While I agree with the majority that expert testimony should be allowed, I can foresee situations in which a person may not show any visible or otherwise perceivable signs of intoxication, but may have a blood alcohol content at a level of .08 or higher, and his or her mental or physical functioning would be substantially impaired. In such a situation, it may be difficult for an expert to testify that the person would have exhibited visible signs of intoxication. Indeed, other individuals accompanying that person may honestly testify that there were no outward signs, yet that person will have diminished capacity to drive and present a danger to others. I would conclude that the language of the act demonstrates that the legislature intended there to be liability on the purveyor when such a situation occurs. Accordingly, I would conclude that when an expert can testify that a person had a blood alcohol content of .08 at the time the purveyor served them alcohol, and that the person's mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs, the plaintiff has established a prima facie case to go to the jury. If the legislature had intended the term "intoxication" to mean "visible intoxication," it certainly could have inserted the word "visible" into the language of § 30-102. As the majority correctly points out, many of our sister states that have Dram Shop Acts have already required "visible intoxication." The fact that the legislature of this state did not include such language in the act, coupled with the fact that it has not used the term "visible" when defining "intoxicated person" and "intoxication" in other statutes, is further support for my conclusion that the legislature did not intend the act to require visible or otherwise perceivable signs of intoxication.

As I have indicated previously, if I were to agree with the majority's conclusion in part I of its opinion that the plaintiff was not entitled to judgment in his favor, I would agree with part II of the majority opinion. I point out the following inconsistency—after interpreting § 30-102 to require visible or otherwise perceivable signs of intoxication, the majority states the following: "In the absence of evidence that Pracher's plan at the outset of the evening was to drink to the point of intoxication, a jury reasonably could find that imbibing to such excess is a visible sign of impaired judgment due to alcohol consumption, one example of competent evidence of intoxication identified in *Sanders*." Although I agree that evidence of imbibing to such excess is sufficient evidence to establish a prima facie case and get to the jury, if mere excess drinking at the purveyor's establishment is sufficient under the majority's reading of § 30-102, it seems that the majority is not requiring visible signs of intoxication.

For the foregoing reasons, I respectfully dissent. I would reverse the judgment of the Appellate Court and remand the case to enter judgment in favor of the plaintiff in the statutory amount of $250,000.

[1] If I were to agree with the majority's conclusion in part I of its opinion that the plaintiff was not entitled to judgment in his favor, I would agree with its conclusion in part II of its opinion that the Appellate Court improperly concluded that the plaintiff was not entitled to a new trial.

[2] General Statutes § 30-102 provides: "If any person, by such person or such person's agent, sells any alcoholic liquor to an intoxicated person, and such purchaser, in consequence of such intoxication, thereafter injures the person or property of another, such seller shall pay just damages to the person injured, up to the amount of two hundred fifty thousand dollars, or to persons injured in consequence of such intoxication up to an aggregate amount of two hundred fifty thousand dollars, to be recovered in an action under this section, provided the aggrieved person or persons shall give written notice to such seller of such person's or persons' intention to bring an action under this section. Such notice shall be given (1) within one hundred twenty days of the occurrence of such injury to person or property, or (2) in the case of the death or incapacity of any aggrieved person, within one hundred eighty days of the occurrence of such injury to person or property. Such notice shall specify the time, the date and the person to whom such sale was made, the name and address of the person injured or whose property was damaged, and the time, date and place where the injury to person or property occurred. No action under the provisions of this section shall be brought but within one year from the date of the act or omission complained of. Such injured person shall have no cause of action against such seller for negligence in the sale of alcoholic liquor to a person twenty-one years of age or older."

[3] Generally, the legislatures of other states that have enacted dram shop acts have *expressly* indicated that for liability to arise: (1) the purchaser of alcoholic liquor must be perceivably intoxicated (the statutes vary between specifying that the purchaser be "obviously," "clearly, "visibly," "noticeably," or "apparently" intoxicated); or (2) the purveyor of alcoholic liquor must have had actual or constructive knowledge of the purchaser's intoxicated state; or (3) both of the above. See Ariz. Rev. Stat. Ann. § 4-311; Ark. Code Ann. § 16-126-104; Colo. Rev. Stat. § 12-47-801; Ga. Code Ann. § 51-1-40; Idaho Code § 23-808; Ind. Code § 7.1-5-10-15.5; Iowa Code § 123.921; Ky. Rev. Stat. Ann. § 413.241; Me. Rev. Stat. Ann. Tit. 28, § 2506; Mich. Comp. Laws § 436.1801; Miss. Code Ann. § 67-3-73; Mo. Rev. Stat § 537.053; Mont. Code Ann. § 27-1-710; N.H. Rev. Stat. Ann. § 507-F:4; N.J. Stat. Ann. § 2A:22A-5; N. M. Stat. Ann. § 41-11-1; N.D. Cent. Code § 5-01-06.1; Ohio Rev. Code Ann. § 4399.18; Or. Rev. Stat. § 471.565; Pa. Stat. Ann. tit. 47, § 4-497; R.I. Gen. Laws § 3-14-6; Tenn. Code Ann. § 57-10-102; Tex. Alco. Bev. § 2.02; Utah Code Ann. § 32B-15-201; Vt. Stat. Ann. tit. 7 § 501. But see 235 Ill. Comp. Stat. 5/6-21 (imposing liability under different conditions than other states' dram shop acts by having liability arise upon sale of alcohol that *causes* intoxication rather than sale to an already intoxicated person and thus containing no requirements of perceivable intoxication or knowledge by purveyor). A few states have dram shop acts that permit recovery for the violation of applicable criminal or administrative statutes that proscribe the selling of alcohol to intoxicated persons. In these states, either the dram shop act itself or the applicable criminal or administrative statute expressly contain "perceivability" and/or "knowledge" elements like the dram shop acts catalogued above. See Ala. Code § 6-5-71; Alaska Stat. § 04.21.020; Minn. Stat. § 340A.801; NY Gen. Oblig. § 11–101.

Under the principle of statutory construction that the use of such qualifying terms add something to the meaning of the statute; see *American Promotional Events, Inc.* v. *Blumenthal*, 285 Conn. 192, 203, 937 A.2d 1184 (2008) ("[i]nterpreting a statute to render some of its language superfluous violates cardinal principles of statutory interpretation"); these statutes lend support to the proposition that our legislature's failure to specify "visible" or "perceivable" intoxication reflects a deliberate decision not to so limit the proof required under our act. Indeed, there is some evidence that our legislature was aware that our dram shop imposed a standard more favorable to plaintiffs than other states. See footnote 17 of this dissenting opinion.

[4] As I have explained previously herein, the legislature has specifically required visible intoxication in certain statutes. See, e.g., General Statutes §§ 17a-683 (a) and 30-86 (b) (1). If the term intoxication standing alone

included a requirement of visible or perceivable signs, the language in these other statutes specifically requiring visible intoxication would be superfluous. "We presume that the legislature did not intend to enact meaningless provisions. . . . [S]tatutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant. . . ." (Internal quotation marks omitted.) *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, 301 Conn. 268, 303, 21 A.3d 759 (2011). Accordingly, I would conclude that the term intoxication does not, on its own, require proof of visible or perceivable signs of intoxication.

[5] Testing for blood alcohol content has been used as evidence for the offense of driving under the influence; General Statutes § 14-227a; since 1963. See Public Acts 1963, No. 63-616, § 1.

[6] This court long ago recognized that "[t]he condition of intoxication and its common accompaniments are . . . a matter of general knowledge"; *State* v. *Katz*, 122 Conn. 439, 442, 189 A. 606 (1937); thus rendering laypersons competent witnesses in finding a person to have been intoxicated. In *Sanders*, this court elaborated on these "common accompaniments."

[7] I note that the standard articulated in *Sanders*, in its entirety, has been adopted almost verbatim as a model jury instruction for dram shop claims on the judicial branch's website. See Civil Jury Instructions, available at http://www.jud.ct.gov/JI/civil/part3/3.17-1.htm (last visited September 28, 2012). In light of my conclusion in the present case, it is clear that, although this instruction may be entirely proper in a case in which the plaintiff chooses to rely on evidence of visible or otherwise perceivable signs of intoxication, I would conclude that the language from *Sanders* that has been construed by the Appellate Court to suggest that such evidence is required cannot properly be given to a jury in a case where the plaintiff relies on other forms of evidence.

In the present case, the trial court provided the following instruction to the jury, which modified and expanded upon the model jury instruction to indicate that evidence of visible or perceivable intoxication was relevant, but not required: "The plaintiff has the burden of proving by a preponderance of the evidence that [Pracher] was intoxicated. To be intoxicated . . . means more than merely being under the influence of or affected to some extent by liquor. On the other hand, a person need not be dead drunk. Intoxication means an abnormal mental or physical condition due to intoxicating liquors, an impairment of judgment, a derangement or impairment of physical functions and energies. A person may be found to be intoxicated if he exhibits a visible excitation of the passions or unusual or abnormal manner, reflected in walk or conversation. . . . Thus, it is enough that the use of liquor has so affected him in acts or conduct that a person coming in contact with him can readily see and know that he is intoxicated. A person may also be found to be intoxicated upon evidence of impaired judgment, upon evidence of deranged or impaired physical functions and energies, or upon evidence of that his ordinary judgment or common sense are disturbed or his usual will power is temporarily suspended. The evidence may or may not show [Pracher's] behavior or manner indicating intoxication while being served, but other facts might show that he was indeed intoxicated at the time. Examples of evidence which you may consider in determining whether [Pracher] was intoxicated when the defendant sold liquor to him include the type and amount of alcohol; the time period over which he drank the alcohol; the atmosphere of the location where the alcohol was sold and drunk; observations made by others of his conduct and demeanor; his body, his body weight, tolerance to alcohol, whether he consumed food or non-alcoholic beverages during the relevant time period; testimony of third persons about whether he was intoxicated; his own assessment and statements about whether he was intoxicated; the level of his blood alcohol content; expert witness testimony regarding the meaning of his blood alcohol content and its effect; the chronology of events and time [lapse] between the sale and the accident; the nature, manner and circumstances of the accident and expert witness testimony concerning the accident and cause. Those are only examples of some of the factors you may consider and you may find others. Of course, it is up to you as finders of fact to determine what the evidence is and what weight to give it. It is for you as finders of fact to consider the totality of the evidence—both direct and circumstantial—when deciding whether [Pracher] was intoxicated when served alcohol by the defendant."

[8] The Appellate Court noted that it had previously concluded, in reliance on *Sanders*, that § 30-102 requires visible signs of intoxication. *O'Dell* v. *Kozee*, supra, 128 Conn. App. 801 (discussing *Hayes* v. *Caspers, Ltd.*, 90

Conn. App. 781, 881 A.2d 428, cert. denied, 276 Conn. 915, 888 A.2d 84 [2005]). First, I note that our denial of certification in *Hayes* cannot be read as an endorsement of its interpretation of *Sanders* or § 30-102. "We have made it clear that a denial of a petition for certification to appeal does not signify that this court approves of or affirms the decision or judgment of the Appellate Court." *Potvin* v. *Lincoln Service & Equipment Co.*, 298 Conn. 620, 653, 6 A.3d 60 (2010). Second, I am mindful that the legislature amended § 30-102 subsequent to *Hayes* without changing or clarifying the term "intoxication"; Public Acts 2006, No. 06-69; Public Acts 2007, No. 07-165; thus raising the question of whether the doctrine of legislative acquiescence applies to the holding in *Hayes*. See *Ciarlelli* v. *Hamden*, 299 Conn. 265, 285, 8 A.3d 1093 (2010) ("we have characterized the failure of the legislature to take corrective action as manifesting the legislature's acquiescence in our construction of a statute" [internal quotation marks omitted]); *State* v. *Fernando A.*, 294 Conn. 1, 20 n.15, 981 A.2d 427 (2009) (noting that doctrine of legislative acquiescence also applies to Appellate Court decisions). I conclude, however, for the reasons I set forth later in this opinion, that the Appellate Court's holding was in tension with this court's decision in *Craig* v. *Driscoll*, 262 Conn. 312, 813 A.2d 1003 (2003), and, therefore, that this doctrine would not necessarily apply. To the extent that *Hayes* held that a plaintiff asserting a claim under the act is required to prove visible or perceivable intoxication, I would overrule it.

[9] The court in *Sanders* also held that there was sufficient evidence for the jury to have found that the purchaser's intoxicated state "continued through to, and constituted a proximate cause of, the collision." *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 351.

[10] This court's express reference to the act's lack of requirement of proof of knowledge or state of mind makes clear that the defendants are incorrect in asserting that the act is strict liability only as to causation.

[11] Although §§ 30-86 and 30-102 both refer to "intoxicated person[s]," I recognize that the former imposes criminal liability whereas the latter creates a civil cause of action. Mindful of these differences, I express no opinion about the requirements of proof under § 30-86 other than to acknowledge what this court already has held: that selling alcoholic liquor to an intoxicated person gives rise to criminal liability irrespective of whether the defendant had knowledge that the person was intoxicated at the time of sale.

[12] I note that the legislature also increased the cap on damages in 2003, an element contained in the same sentence setting forth the requirements of proof under the act that had been examined in *Craig*.

[13] In committee hearings on the 2003 public act, whilst eliciting testimony from a representative of the insurance industry, Senator David J. Cappiello contrasted the act to other states' comparable acts, describing Connecticut as a state where "it doesn't matter if [purveyors are] at fault or not." Conn. Joint Standing Committee Hearings, General Law, Pt. 2, 2003 Sess., p. 601. This and other similar remarks in the exchange indicate that insurers also understood the law as giving rise to a strict liability cause of action.

[14] For example, a particular purchaser's individualized response to intoxication as manifested overtly may be so atypical that his or her intoxication might reasonably be perceivable only by his or her intimates. Indeed, there may be some people who are used to drinking abundant amounts of alcohol who may not exhibit any visible or otherwise perceivable signs of intoxication, but may have a significant mental or physical impairment.

[15] General Statutes § 30-86 (b) (1) provides: "Any permittee or any servant or agent of a permittee who sells or delivers alcoholic liquor to any minor or any intoxicated person, or to any habitual drunkard, knowing the person to be such an habitual drunkard, shall be subject to the penalties of section 30-113."