

FIRST REGULAR SESSION

# SENATE BILL NO. 112

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Pre-filed December 3, 2014, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0343S.011

## AN ACT

To repeal sections 192.2260, 301.559, 339.100, 400.9-501, 565.030, 565.032, 565.040, 571.020, 571.030, 571.060, 571.063, 571.070, 571.072, and 632.520, RSMo, and to enact in lieu thereof fourteen new sections relating to the sole purpose of restructuring the Missouri criminal code, with penalty provisions, and an effective date.

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

Section A. Sections 192.2260, 301.559, 339.100, 400.9-501, 565.030, 565.032, 565.040, 571.020, 571.030, 571.060, 571.063, 571.070, 571.072, and 632.520, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 192.2260, 301.559, 339.100, 400.9-501, 565.030, 565.032, 565.040, 571.020, 571.030, 571.060, 571.063, 571.070, 571.072, and 632.520, to read as follows:

192.2260. 1. Any person who violates any provision of sections 192.2200 to 192.2260, or who, for himself or for any other person, makes materially false statements in order to obtain a certificate or license, or the renewal thereof, issued pursuant to sections 192.2200 to 192.2260, shall be guilty of a class A misdemeanor. Any person violating this subsection wherein abuse or neglect of a participant of the program has occurred is guilty of a class **[D] E** felony.

2. Any person who is convicted pursuant to this section shall, in addition to all other penalties provided by law, have any license issued to him under sections 192.2200 to 192.2260 revoked, and shall not operate, nor hold any license to operate, any adult day care program, or other entity governed by the provisions of sections 192.2200 to 192.2260 for a period of three years after such conviction.

301.559. 1. It shall be unlawful for any person to engage in business as

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

2 or act as a motor vehicle dealer, boat dealer, manufacturer, boat manufacturer,  
3 public motor vehicle auction, wholesale motor vehicle auction or wholesale motor  
4 vehicle dealer without first obtaining a license from the department as required  
5 in sections 301.550 to 301.573. Any person who maintains or operates any  
6 business wherein a license is required pursuant to the provisions of sections  
7 301.550 to 301.573, without such license, is guilty of a class A misdemeanor. Any  
8 person committing a second violation of sections 301.550 to 301.573 shall be  
9 guilty of a class [D] E felony.

10 2. All dealer licenses shall expire on December thirty-first of the  
11 designated license period. The department shall notify each person licensed  
12 under sections 301.550 to 301.573 of the date of license expiration and the  
13 amount of the fee required for renewal. The notice shall be mailed at least ninety  
14 days before the date of license expiration to the licensee's last known business  
15 address. The director shall have the authority to issue licenses valid for a period  
16 of up to two years and to stagger the license periods for administrative efficiency  
17 and equalization of workload, at the sole discretion of the director.

18 3. Every manufacturer, boat manufacturer, motor vehicle dealer,  
19 wholesale motor vehicle dealer, wholesale motor vehicle auction, boat dealer or  
20 public motor vehicle auction shall make application to the department for  
21 issuance of a license. The application shall be on forms prescribed by the  
22 department and shall be issued under the terms and provisions of sections  
23 301.550 to 301.573 and require all applicants, as a condition precedent to the  
24 issuance of a license, to provide such information as the department may deem  
25 necessary to determine that the applicant is bona fide and of good moral  
26 character, except that every application for a license shall contain, in addition to  
27 such information as the department may require, a statement to the following  
28 facts:

29 (1) The name and business address, not a post office box, of the applicant  
30 and the fictitious name, if any, under which he intends to conduct his business;  
31 and if the applicant be a partnership, the name and residence address of each  
32 partner, an indication of whether the partner is a limited or general partner and  
33 the name under which the partnership business is to be conducted. In the event  
34 that the applicant is a corporation, the application shall list the names of the  
35 principal officers of the corporation and the state in which it is  
36 incorporated. Each application shall be verified by the oath or affirmation of the  
37 applicant, if an individual, or in the event an applicant is a partnership or

38 corporation, then by a partner or officer;

39 (2) Whether the application is being made for registration as a  
40 manufacturer, boat manufacturer, new motor vehicle franchise dealer, used motor  
41 vehicle dealer, wholesale motor vehicle dealer, boat dealer, wholesale motor  
42 vehicle auction or a public motor vehicle auction;

43 (3) When the application is for a new motor vehicle franchise dealer, the  
44 application shall be accompanied by a copy of the franchise agreement in the  
45 registered name of the dealership setting out the appointment of the applicant as  
46 a franchise holder and it shall be signed by the manufacturer, or his authorized  
47 agent, or the distributor, or his authorized agent, and shall include a description  
48 of the make of all motor vehicles covered by the franchise. The department shall  
49 not require a copy of the franchise agreement to be submitted with each renewal  
50 application unless the applicant is now the holder of a franchise from a different  
51 manufacturer or distributor from that previously filed, or unless a new term of  
52 agreement has been entered into;

53 (4) When the application is for a public motor vehicle auction, that the  
54 public motor vehicle auction has met the requirements of section 301.561.

55 4. No insurance company, finance company, credit union, savings and loan  
56 association, bank or trust company shall be required to obtain a license from the  
57 department in order to sell any motor vehicle, trailer or vessel repossessed or  
58 purchased by the company on the basis of total destruction or theft thereof when  
59 the sale of the motor vehicle, trailer or vessel is in conformance with applicable  
60 title and registration laws of this state.

61 5. No person shall be issued a license to conduct a public motor vehicle  
62 auction or wholesale motor vehicle auction if such person has a violation of  
63 sections 301.550 to 301.573 or other violations of chapter 301, sections 407.511  
64 to 407.556, or section 578.120 which resulted in a felony conviction or finding of  
65 guilt or a violation of any federal motor vehicle laws which resulted in a felony  
66 conviction or finding of guilt.

339.100. 1. The commission may, upon its own motion, and shall upon  
2 receipt of a written complaint filed by any person, investigate any real  
3 estate-related activity of a licensee licensed under sections 339.010 to 339.180  
4 and sections 339.710 to 339.860 or an individual or entity acting as or  
5 representing themselves as a real estate licensee. In conducting such  
6 investigation, if the questioned activity or written complaint involves an affiliated  
7 licensee, the commission may forward a copy of the information received to the

8 affiliated licensee's designated broker. The commission shall have the power to  
9 hold an investigatory hearing to determine whether there is a probability of a  
10 violation of sections 339.010 to 339.180 and sections 339.710 to 339.860. The  
11 commission shall have the power to issue a subpoena to compel the production of  
12 records and papers bearing on the complaint. The commission shall have the  
13 power to issue a subpoena and to compel any person in this state to come before  
14 the commission to offer testimony or any material specified in the  
15 subpoena. Subpoenas and subpoenas duces tecum issued pursuant to this section  
16 shall be served in the same manner as subpoenas in a criminal case. The fees  
17 and mileage of witnesses shall be the same as that allowed in the circuit court in  
18 civil cases.

19         2. The commission may cause a complaint to be filed with the  
20 administrative hearing commission as provided by the provisions of chapter 621  
21 against any person or entity licensed under this chapter or any licensee who has  
22 failed to renew or has surrendered his or her individual or entity license for any  
23 one or any combination of the following acts:

24             (1) Failure to maintain and deposit in a special account, separate and  
25 apart from his or her personal or other business accounts, all moneys belonging  
26 to others entrusted to him or her while acting as a real estate broker or as the  
27 temporary custodian of the funds of others, until the transaction involved is  
28 consummated or terminated, unless all parties having an interest in the funds  
29 have agreed otherwise in writing;

30             (2) Making substantial misrepresentations or false promises or  
31 suppression, concealment or omission of material facts in the conduct of his or her  
32 business or pursuing a flagrant and continued course of misrepresentation  
33 through agents, salespersons, advertising or otherwise in any transaction;

34             (3) Failing within a reasonable time to account for or to remit any moneys,  
35 valuable documents or other property, coming into his or her possession, which  
36 belongs to others;

37             (4) Representing to any lender, guaranteeing agency, or any other  
38 interested party, either verbally or through the preparation of false documents,  
39 an amount in excess of the true and actual sale price of the real estate or terms  
40 differing from those actually agreed upon;

41             (5) Failure to timely deliver a duplicate original of any and all  
42 instruments to any party or parties executing the same where the instruments  
43 have been prepared by the licensee or under his or her supervision or are within

44 his or her control, including, but not limited to, the instruments relating to the  
45 employment of the licensee or to any matter pertaining to the consummation of  
46 a lease, listing agreement or the purchase, sale, exchange or lease of property, or  
47 any type of real estate transaction in which he or she may participate as a  
48 licensee;

49 (6) Acting for more than one party in a transaction without the knowledge  
50 of all parties for whom he or she acts, or accepting a commission or valuable  
51 consideration for services from more than one party in a real estate transaction  
52 without the knowledge of all parties to the transaction;

53 (7) Paying a commission or valuable consideration to any person for acts  
54 or services performed in violation of sections 339.010 to 339.180 and sections  
55 339.710 to 339.860;

56 (8) Guaranteeing or having authorized or permitted any licensee to  
57 guarantee future profits which may result from the resale of real property;

58 (9) Having been finally adjudicated and been found guilty of the violation  
59 of any state or federal statute which governs the sale or rental of real property  
60 or the conduct of the real estate business as defined in subsection 1 of section  
61 339.010;

62 (10) Obtaining a certificate or registration of authority, permit or license  
63 for himself or herself or anyone else by false or fraudulent representation, fraud  
64 or deceit;

65 (11) Representing a real estate broker other than the broker with whom  
66 associated without the express written consent of the broker with whom  
67 associated;

68 (12) Accepting a commission or valuable consideration for the performance  
69 of any of the acts referred to in section 339.010 from any person except the broker  
70 with whom associated at the time the commission or valuable consideration was  
71 earned;

72 (13) Using prizes, money, gifts or other valuable consideration as  
73 inducement to secure customers or clients to purchase, lease, sell or list property  
74 when the awarding of such prizes, money, gifts or other valuable consideration  
75 is conditioned upon the purchase, lease, sale or listing; or soliciting, selling or  
76 offering for sale real property by offering free lots, or conducting lotteries or  
77 contests, or offering prizes for the purpose of influencing a purchaser or  
78 prospective purchaser of real property;

79 (14) Placing a sign on or advertising any property offering it for sale or

80 rent without the written consent of the owner or his or her duly authorized agent;

81 (15) Violation of, or attempting to violate, directly or indirectly, or  
82 assisting or enabling any person to violate, any provision of sections 339.010 to  
83 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant  
84 to sections 339.010 to 339.180 and sections 339.710 to 339.860;

85 (16) Committing any act which would otherwise be grounds for the  
86 commission to refuse to issue a license under section 339.040;

87 (17) Failure to timely inform seller of all written offers unless otherwise  
88 instructed in writing by the seller;

89 (18) Been finally adjudicated and found guilty[, or entered a plea of guilty  
90 or nolo contendere,] in a criminal prosecution under the laws of this state or any  
91 other state or of the United States, for any offense reasonably related to the  
92 qualifications, functions or duties of any profession licensed or regulated under  
93 this chapter, for any offense an essential element of which is fraud, dishonesty  
94 or an act of violence, or for any offense involving moral turpitude, whether or not  
95 sentence is imposed;

96 (19) Any other conduct which constitutes untrustworthy, improper or  
97 fraudulent business dealings, demonstrates bad faith or incompetence,  
98 misconduct, or gross negligence;

99 (20) Disciplinary action against the holder of a license or other right to  
100 practice any profession regulated under sections 339.010 to 339.180 and sections  
101 339.710 to 339.860 granted by another state, territory, federal agency, or country  
102 upon grounds for which revocation, suspension, or probation is authorized in this  
103 state;

104 (21) Been found by a court of competent jurisdiction of having used any  
105 controlled substance, as defined in chapter 195, to the extent that such use  
106 impairs a person's ability to perform the work of any profession licensed or  
107 regulated by sections 339.010 to 339.180 and sections 339.710 to 339.860;

108 (22) Been finally adjudged insane or incompetent by a court of competent  
109 jurisdiction;

110 (23) Assisting or enabling any person to practice or offer to practice any  
111 profession licensed or regulated under sections 339.010 to 339.180 and sections  
112 339.710 to 339.860 who is not registered and currently eligible to practice under  
113 sections 339.010 to 339.180 and sections 339.710 to 339.860;

114 (24) Use of any advertisement or solicitation which is knowingly false,  
115 misleading or deceptive to the general public or persons to whom the

116 advertisement or solicitation is primarily directed;

117 (25) Making any material misstatement, misrepresentation, or omission  
118 with regard to any application for licensure or license renewal. As used in this  
119 section, "material" means important information about which the commission  
120 should be informed and which may influence a licensing decision;

121 (26) Engaging in, committing, or assisting any person in engaging in or  
122 committing mortgage fraud, as defined in section 443.930.

123 3. After the filing of such complaint, the proceedings will be conducted in  
124 accordance with the provisions of law relating to the administrative hearing  
125 commission. A finding of the administrative hearing commissioner that the  
126 licensee has performed or attempted to perform one or more of the foregoing acts  
127 shall be grounds for the suspension or revocation of his license by the  
128 commission, or the placing of the licensee on probation on such terms and  
129 conditions as the real estate commission shall deem appropriate, or the  
130 imposition of a civil penalty by the commission not to exceed two thousand five  
131 hundred dollars for each offense. Each day of a continued violation shall  
132 constitute a separate offense.

133 4. The commission may prepare a digest of the decisions of the  
134 administrative hearing commission which concern complaints against licensed  
135 brokers or salespersons and cause such digests to be mailed to all licensees  
136 periodically. Such digests may also contain reports as to new or changed rules  
137 adopted by the commission and other information of significance to licensees.

138 5. Notwithstanding other provisions of this section, a broker or  
139 salesperson's license shall be revoked, or in the case of an applicant, shall not be  
140 issued, if the licensee or applicant has pleaded guilty to, entered a plea of nolo  
141 contendere to, or been found guilty of any of the following offenses or offenses of  
142 a similar nature established under the laws of this, any other state, the United  
143 States, or any other country, notwithstanding whether sentence is imposed:

144 (1) Any dangerous felony as defined under section 556.061 or murder in  
145 the first degree;

146 (2) Any of the following sexual offenses: rape in the first degree, forcible  
147 rape, rape, statutory rape in the first degree, statutory rape in the second degree,  
148 rape in the second degree, sexual assault, sodomy in the first degree, forcible  
149 sodomy, statutory sodomy in the first degree, statutory sodomy in the second  
150 degree, child molestation in the first degree, child molestation in the second  
151 degree, sodomy in the second degree, deviate sexual assault, sexual misconduct

152 involving a child, sexual misconduct in the first degree under section 566.090 as  
153 it existed prior to August 28, 2013, sexual abuse under section 566.100 as it  
154 existed prior to August 28, 2013, sexual abuse in the first or second degree,  
155 enticement of a child, or attempting to entice a child;

156 (3) Any of the following offenses against the family and related offenses:  
157 incest, abandonment of a child in the first degree, abandonment of a child in the  
158 second degree, endangering the welfare of a child in the first degree, abuse of a  
159 child, using a child in a sexual performance, promoting sexual performance by a  
160 child, or trafficking in children;

161 (4) Any of the following offenses involving child pornography and related  
162 offenses: promoting obscenity in the first degree, promoting obscenity in the  
163 second degree when the penalty is enhanced to a class [D] E felony, promoting  
164 child pornography in the first degree, promoting child pornography in the second  
165 degree, possession of child pornography in the first degree, possession of child  
166 pornography in the second degree, furnishing child pornography to a minor,  
167 furnishing pornographic materials to minors, or coercing acceptance of obscene  
168 material; and

169 (5) Mortgage fraud as defined in section 570.310.

170 6. A person whose license was revoked under subsection 5 of this section  
171 may appeal such revocation to the administrative hearing commission. Notice of  
172 such appeal must be received by the administrative hearing commission within  
173 ninety days of mailing, by certified mail, the notice of revocation. Failure of a  
174 person whose license was revoked to notify the administrative hearing  
175 commission of his or her intent to appeal waives all rights to appeal the  
176 revocation. Upon notice of such person's intent to appeal, a hearing shall be held  
177 before the administrative hearing commission.

200.9-501. (a) Except as otherwise provided in subsection (b), if the local  
2 law of this state governs perfection of a security interest or agricultural lien, the  
3 office in which to file a financing statement to perfect the security interest or  
4 agricultural lien is:

5 (1) The office designated for the filing or recording of a record of a  
6 mortgage on the related real property, if:

7 (A) The collateral is as-extracted collateral or timber to be cut; or

8 (B) The financing statement is filed as a fixture filing and the collateral  
9 is goods that are or are to become fixtures; or

10 (2) The office of the secretary of state in all other cases, including a case

11 in which the collateral is goods that are or are to become fixtures and the  
12 financing statement is not filed as a fixture filing.

13 (b) The office in which to file a financing statement to perfect a security  
14 interest in collateral, including fixtures, of a transmitting utility is the office of  
15 the secretary of state. The financing statement also constitutes a fixture filing  
16 as to the collateral indicated in the financing statement which is or is to become  
17 fixtures.

18 (c) A person shall not knowingly or intentionally file, attempt to file, or  
19 record any document related to real property with a recorder of deeds under  
20 chapter 59 or a financing statement with the secretary of state under subdivision  
21 (2) of subsection (a) or subsection (b) of this section, with the intent that such  
22 document or statement be used to harass or defraud any other person or  
23 knowingly or intentionally file, attempt to file, or record such a document or  
24 statement that is materially false or fraudulent.

25 (1) A person who violates this subsection shall be guilty of a class [D] E  
26 felony.

27 (2) If a person is convicted of a violation under this subsection, the court  
28 may order restitution.

29 (d) In the alternative to the provisions of sections 428.105 through  
30 428.135, if a person files a false or fraudulent financing statement with the  
31 secretary of state under subdivision (2) of subsection (a) or subsection (b) of this  
32 section, a debtor named in that financing statement may file an action against  
33 the person that filed the financing statement seeking appropriate equitable relief,  
34 actual damages, or punitive damages, including, but not limited to, reasonable  
35 attorney fees.

565.030. 1. Where murder in the first degree is charged but not  
2 submitted or where the state waives the death penalty, the submission to the  
3 trier and all subsequent proceedings in the case shall proceed as in all other  
4 criminal cases [with a single stage trial in which guilt and punishment are  
5 submitted together].

6 2. Where murder in the first degree is submitted to the trier without a  
7 waiver of the death penalty, the trial shall proceed in two stages before the same  
8 trier. At the first stage the trier shall decide only whether the defendant is guilty  
9 or not guilty of any submitted offense. The issue of punishment shall not be  
10 submitted to the trier at the first stage. If an offense is charged other than  
11 murder in the first degree in a count together with a count of murder in the first

12 degree, the trial judge shall assess punishment on any such offense according to  
13 law, after the defendant is found guilty of such offense and after he finds the  
14 defendant to be a prior offender pursuant to chapter 558.

15           3. If murder in the first degree is submitted and the death penalty was  
16 not waived but the trier finds the defendant guilty of a lesser homicide, a second  
17 stage of the trial shall proceed [at which the only issue shall be the punishment  
18 to be assessed and declared. No further evidence shall be received. If the trier  
19 is a jury it shall be instructed on the law] **as in all other criminal cases**. The  
20 attorneys may then argue as in other criminal cases the issue of punishment,  
21 after which the trier shall assess and declare the punishment as in all other  
22 criminal cases.

23           4. If the trier at the first stage of a trial where the death penalty was not  
24 waived finds the defendant guilty of murder in the first degree, a second stage of  
25 the trial shall proceed at which the only issue shall be the punishment to be  
26 assessed and declared. Evidence in aggravation and mitigation of punishment,  
27 including but not limited to evidence supporting any of the aggravating or  
28 mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be  
29 presented subject to the rules of evidence at criminal trials. Such evidence may  
30 include, within the discretion of the court, evidence concerning the murder victim  
31 and the impact of the [crime] **offense** upon the family of the victim and  
32 others. Rebuttal and surrebuttal evidence may be presented. The state shall be  
33 the first to proceed. If the trier is a jury it shall be instructed on the law. The  
34 attorneys may then argue the issue of punishment to the jury, and the state shall  
35 have the right to open and close the argument. The trier shall assess and declare  
36 the punishment at life imprisonment without eligibility for probation, parole, or  
37 release except by act of the governor:

38           (1) If the trier finds by a preponderance of the evidence that the  
39 defendant is intellectually disabled; or

40           (2) If the trier does not find beyond a reasonable doubt at least one of the  
41 statutory aggravating circumstances set out in subsection 2 of section 565.032;  
42 or

43           (3) If the trier concludes that there is evidence in mitigation of  
44 punishment, including but not limited to evidence supporting the statutory  
45 mitigating circumstances listed in subsection 3 of section 565.032, which is  
46 sufficient to outweigh the evidence in aggravation of punishment found by the  
47 trier; or

48 (4) If the trier decides under all of the circumstances not to assess and  
49 declare the punishment at death. If the trier is a jury it shall be so instructed.  
50 If the trier assesses and declares the punishment at death it shall, in its findings  
51 or verdict, set out in writing the aggravating circumstance or circumstances listed  
52 in subsection 2 of section 565.032 which it found beyond a reasonable doubt. If  
53 the trier is a jury it shall be instructed before the case is submitted that if it is  
54 unable to decide or agree upon the punishment the court shall assess and declare  
55 the punishment at life imprisonment without eligibility for probation, parole, or  
56 release except by act of the governor or death. The court shall follow the same  
57 procedure as set out in this section whenever it is required to determine  
58 punishment for murder in the first degree.

59 5. Upon written agreement of the parties and with leave of the court, the  
60 issue of the defendant's intellectual disability may be taken up by the court and  
61 decided prior to trial without prejudicing the defendant's right to have the issue  
62 submitted to the trier of fact as provided in subsection 4 of this section.

63 6. As used in this section, the terms "intellectual disability" or  
64 "intellectually disabled" refer to a condition involving substantial limitations in  
65 general functioning characterized by significantly subaverage intellectual  
66 functioning with continual extensive related deficits and limitations in two or  
67 more adaptive behaviors such as communication, self-care, home living, social  
68 skills, community use, self-direction, health and safety, functional academics,  
69 leisure and work, which conditions are manifested and documented before  
70 eighteen years of age.

71 7. The provisions of this section shall only govern offenses committed on  
72 or after August 28, 2001.

565.032. 1. In all cases of murder in the first degree for which the death  
2 penalty is authorized, the judge in a jury-waived trial shall consider, or [he] shall  
3 include in his **or her** instructions to the jury for it to consider:

4 (1) Whether a statutory aggravating circumstance or circumstances  
5 enumerated in subsection 2 of this section is established by the evidence beyond  
6 a reasonable doubt; and

7 (2) If a statutory aggravating circumstance or circumstances is proven  
8 beyond a reasonable doubt, whether the evidence as a whole justifies a sentence  
9 of death or a sentence of life imprisonment without eligibility for probation,  
10 parole, or release except by act of the governor. In determining the issues  
11 enumerated in subdivisions (1) and (2) of this subsection, the trier shall consider

12 all evidence which it finds to be in aggravation or mitigation of punishment,  
13 including evidence received during the first stage of the trial and evidence  
14 supporting any of the statutory aggravating or mitigating circumstances set out  
15 in subsections 2 and 3 of this section. If the trier is a jury, it shall not be  
16 instructed upon any specific evidence which may be in aggravation or mitigation  
17 of punishment, but shall be instructed that each juror shall consider any evidence  
18 which he **or she** considers to be aggravating or mitigating.

19           2. Statutory aggravating circumstances for a murder in the first degree  
20 offense shall be limited to the following:

21           (1) The offense was committed by a person with a prior record of  
22 conviction for murder in the first degree, or the offense was committed by a  
23 person who has one or more serious assaultive criminal convictions;

24           (2) The murder in the first degree offense was committed while the  
25 offender was engaged in the commission or attempted commission of another  
26 unlawful homicide;

27           (3) The offender by his **or her** act of murder in the first degree knowingly  
28 created a great risk of death to more than one person by means of a weapon or  
29 device which would normally be hazardous to the lives of more than one person;

30           (4) The offender committed the offense of murder in the first degree for  
31 himself **or herself** or another, for the purpose of receiving money or any other  
32 thing of monetary value from the victim of the murder or another;

33           (5) The murder in the first degree was committed against a judicial  
34 officer, former judicial officer, prosecuting attorney or former prosecuting  
35 attorney, circuit attorney or former circuit attorney, assistant prosecuting  
36 attorney or former assistant prosecuting attorney, assistant circuit attorney or  
37 former assistant circuit attorney, peace officer or former peace officer, elected  
38 official or former elected official during or because of the exercise of his official  
39 duty;

40           (6) The offender caused or directed another to commit murder in the first  
41 degree or committed murder in the first degree as an agent or employee of  
42 another person;

43           (7) The murder in the first degree was outrageously or wantonly vile,  
44 horrible or inhuman in that it involved torture, or depravity of mind;

45           (8) The murder in the first degree was committed against any peace  
46 officer, or fireman while engaged in the performance of his **or her** official duty;

47           (9) The murder in the first degree was committed by a person in, or who

48 has escaped from, the lawful custody of a peace officer or place of lawful  
49 confinement;

50 (10) The murder in the first degree was committed for the purpose of  
51 avoiding, interfering with, or preventing a lawful arrest or custody in a place of  
52 lawful confinement, of himself **or herself** or another;

53 (11) The murder in the first degree was committed while the defendant  
54 was engaged in the perpetration or was aiding or encouraging another person to  
55 perpetrate or attempt to perpetrate a felony of any degree of rape, sodomy,  
56 burglary, robbery, kidnapping, or any felony offense in chapter [195] **579**;

57 (12) The murdered individual was a witness or potential witness in any  
58 past or pending investigation or past or pending prosecution, and was killed as  
59 a result of his **or her** status as a witness or potential witness;

60 (13) The murdered individual was an employee of an institution or facility  
61 of the department of corrections of this state or local correction agency and was  
62 killed in the course of performing his **or her** official duties, or the murdered  
63 individual was an inmate of such institution or facility;

64 (14) The murdered individual was killed as a result of the hijacking of an  
65 airplane, train, ship, bus or other public conveyance;

66 (15) The murder was committed for the purpose of concealing or  
67 attempting to conceal any felony offense defined in chapter [195] **579**;

68 (16) The murder was committed for the purpose of causing or attempting  
69 to cause a person to refrain from initiating or aiding in the prosecution of a felony  
70 offense defined in chapter [195] **579**;

71 (17) The murder was committed during the commission of [a crime] **an**  
72 **offense** which is part of a pattern of criminal street gang activity as defined in  
73 section 578.421.

74 3. Statutory mitigating circumstances shall include the following:

75 (1) The defendant has no significant history of prior criminal activity;

76 (2) The murder in the first degree was committed while the defendant was  
77 under the influence of extreme mental or emotional disturbance;

78 (3) The victim was a participant in the defendant's conduct or consented  
79 to the act;

80 (4) The defendant was an accomplice in the murder in the first degree  
81 committed by another person and his **or her** participation was relatively minor;

82 (5) The defendant acted under extreme duress or under the substantial  
83 domination of another person;

84 (6) The capacity of the defendant to appreciate the criminality of his **or**  
85 **her** conduct or to conform his **or her** conduct to the requirements of law was  
86 substantially impaired;

87 (7) The age of the defendant at the time of the **[crime] offense**.

565.040. 1. In the event that the death penalty provided in this chapter  
2 is held to be unconstitutional, any person convicted of murder in the first degree  
3 shall be sentenced by the court to life imprisonment without eligibility for  
4 probation, parole, or release except by act of the governor, with the exception that  
5 when a specific aggravating circumstance found in a case is held to be  
6 unconstitutional or invalid for another reason, the supreme court of Missouri is  
7 further authorized to remand the case for resentencing or retrial of the  
8 punishment pursuant to subsection 5 of section **[565.036] 565.035**.

9 2. In the event that any death sentence imposed pursuant to this chapter  
10 is held to be unconstitutional, the trial court which previously sentenced the  
11 defendant to death shall cause the defendant to be brought before the court and  
12 shall sentence the defendant to life imprisonment without eligibility for  
13 probation, parole, or release except by act of the governor, with the exception that  
14 when a specific aggravating circumstance found in a case is held to be  
15 inapplicable, unconstitutional or invalid for another reason, the supreme court  
16 of Missouri is further authorized to remand the case for retrial of the punishment  
17 pursuant to subsection 5 of section 565.035.

571.020. 1. A person commits **[a crime] an offense** if such person  
2 knowingly possesses, manufactures, transports, repairs, or sells:

3 (1) An explosive weapon;

4 (2) An explosive, incendiary or poison substance or material with the  
5 purpose to possess, manufacture or sell an explosive weapon;

6 (3) A gas gun;

7 (4) A bullet or projectile which explodes or detonates upon impact because  
8 of an independent explosive charge after having been shot from a firearm; or

9 (5) Knuckles; or

10 (6) Any of the following in violation of federal law:

11 (a) A machine gun;

12 (b) A short-barreled rifle or shotgun;

13 (c) A firearm silencer; or

14 (d) A switchblade knife.

15 2. A person does not commit **[a crime] an offense** pursuant to this

16 section if his **or her** conduct involved any of the items in subdivisions (1) to (5)  
17 of subsection 1, the item was possessed in conformity with any applicable federal  
18 law, and the conduct:

19 (1) Was incident to the performance of official duty by the Armed Forces,  
20 National Guard, a governmental law enforcement agency, or a penal institution;  
21 or

22 (2) Was incident to engaging in a lawful commercial or business  
23 transaction with an organization enumerated in subdivision (1) of this section; or

24 (3) Was incident to using an explosive weapon in a manner reasonably  
25 related to a lawful industrial or commercial enterprise; or

26 (4) Was incident to displaying the weapon in a public museum or  
27 exhibition; or

28 (5) Was incident to using the weapon in a manner reasonably related to  
29 a lawful dramatic performance.

30 3. [A crime] **An offense** pursuant to subdivision (1), (2), (3) or (6) of  
31 subsection 1 of this section is a class [C] **D** felony; a crime pursuant to  
32 subdivision (4) or (5) of subsection 1 of this section is a class A misdemeanor.

571.030. 1. A person commits the [crime] **offense** of unlawful use of  
2 weapons if he or she knowingly:

3 (1) Carries concealed upon or about his or her person a knife, a firearm,  
4 a blackjack or any other weapon readily capable of lethal use; or

5 (2) Sets a spring gun; or

6 (3) Discharges or shoots a firearm into a dwelling house, a railroad train,  
7 boat, aircraft, or motor vehicle as defined in section 302.010, or any building or  
8 structure used for the assembling of people; or

9 (4) Exhibits, in the presence of one or more persons, any weapon readily  
10 capable of lethal use in an angry or threatening manner; or

11 (5) Has a firearm or projectile weapon readily capable of lethal use on his  
12 or her person, while he or she is intoxicated, and handles or otherwise uses such  
13 firearm or projectile weapon in either a negligent or unlawful manner or  
14 discharges such firearm or projectile weapon unless acting in self-defense; or

15 (6) Discharges a firearm within one hundred yards of any occupied  
16 schoolhouse, courthouse, or church building; or

17 (7) Discharges or shoots a firearm at a mark, at any object, or at random,  
18 on, along or across a public highway or discharges or shoots a firearm into any  
19 outbuilding; or

20 (8) Carries a firearm or any other weapon readily capable of lethal use  
21 into any church or place where people have assembled for worship, or into any  
22 election precinct on any election day, or into any building owned or occupied by  
23 any agency of the federal government, state government, or political subdivision  
24 thereof; or

25 (9) Discharges or shoots a firearm at or from a motor vehicle, as defined  
26 in section 301.010, discharges or shoots a firearm at any person, or at any other  
27 motor vehicle, or at any building or habitable structure, unless the person was  
28 lawfully acting in self-defense; or

29 (10) Carries a firearm, whether loaded or unloaded, or any other weapon  
30 readily capable of lethal use into any school, onto any school bus, or onto the  
31 premises of any function or activity sponsored or sanctioned by school officials or  
32 the district school board; or

33 (11) Possesses a firearm while also knowingly in possession of a controlled  
34 substance that is sufficient for a felony violation of section 195.202.

35 2. Subdivisions (1), (8), and (10) of subsection 1 of this section shall not  
36 apply to the persons described in this subsection, regardless of whether such uses  
37 are reasonably associated with or are necessary to the fulfillment of such person's  
38 official duties except as otherwise provided in this subsection. Subdivisions (3),  
39 (4), (6), (7), and (9) of subsection 1 of this section shall not apply to or affect any  
40 of the following persons, when such uses are reasonably associated with or are  
41 necessary to the fulfillment of such person's official duties, except as otherwise  
42 provided in this subsection:

43 (1) All state, county and municipal peace officers who have completed the  
44 training required by the police officer standards and training commission  
45 pursuant to sections 590.030 to 590.050 and who possess the duty and power of  
46 arrest for violation of the general criminal laws of the state or for violation of  
47 ordinances of counties or municipalities of the state, whether such officers are on  
48 or off duty, and whether such officers are within or outside of the law  
49 enforcement agency's jurisdiction, or all qualified retired peace officers, as defined  
50 in subsection 12 of this section, and who carry the identification defined in  
51 subsection 13 of this section, or any person summoned by such officers to assist  
52 in making arrests or preserving the peace while actually engaged in assisting  
53 such officer;

54 (2) Wardens, superintendents and keepers of prisons, penitentiaries, jails  
55 and other institutions for the detention of persons accused or convicted of crime;

56 (3) Members of the Armed Forces or National Guard while performing  
57 their official duty;

58 (4) Those persons vested by Article V, Section 1 of the Constitution of  
59 Missouri with the judicial power of the state and those persons vested by Article  
60 III of the Constitution of the United States with the judicial power of the United  
61 States, the members of the federal judiciary;

62 (5) Any person whose bona fide duty is to execute process, civil or  
63 criminal;

64 (6) Any federal probation officer or federal flight deck officer as defined  
65 under the federal flight deck officer program, 49 U.S.C. Section 44921 regardless  
66 of whether such officers are on duty, or within the law enforcement agency's  
67 jurisdiction;

68 (7) Any state probation or parole officer, including supervisors and  
69 members of the board of probation and parole;

70 (8) Any corporate security advisor meeting the definition and fulfilling the  
71 requirements of the regulations established by the department of public safety  
72 under section 590.750;

73 (9) Any coroner, deputy coroner, medical examiner, or assistant medical  
74 examiner;

75 (10) Any prosecuting attorney or assistant prosecuting attorney, circuit  
76 attorney or assistant circuit attorney, or any person appointed by a court to be  
77 a special prosecutor who has completed the firearms safety training course  
78 required under subsection 2 of section 571.111;

79 (11) Any member of a fire department or fire protection district who is  
80 employed on a full-time basis as a fire investigator and who has a valid concealed  
81 carry endorsement issued prior to August 28, 2013, or a valid concealed carry  
82 permit under section 571.111 when such uses are reasonably associated with or  
83 are necessary to the fulfillment of such person's official duties; and

84 (12) Upon the written approval of the governing body of a fire department  
85 or fire protection district, any paid fire department or fire protection district chief  
86 who is employed on a full-time basis and who has a valid concealed carry  
87 endorsement issued prior to August 28, 2013, or a valid concealed carry permit,  
88 when such uses are reasonably associated with or are necessary to the fulfillment  
89 of such person's official duties.

90 3. Subdivisions (1), (5), (8), and (10) of subsection 1 of this section do not  
91 apply when the actor is transporting such weapons in a nonfunctioning state or

92 in an unloaded state when ammunition is not readily accessible or when such  
93 weapons are not readily accessible. Subdivision (1) of subsection 1 of this section  
94 does not apply to any person nineteen years of age or older or eighteen years of  
95 age or older and a member of the United States Armed Forces, or honorably  
96 discharged from the United States Armed Forces, transporting a concealable  
97 firearm in the passenger compartment of a motor vehicle, so long as such  
98 concealable firearm is otherwise lawfully possessed, nor when the actor is also in  
99 possession of an exposed firearm or projectile weapon for the lawful pursuit of  
100 game, or is in his or her dwelling unit or upon premises over which the actor has  
101 possession, authority or control, or is traveling in a continuous journey peaceably  
102 through this state. Subdivision (10) of subsection 1 of this section does not apply  
103 if the firearm is otherwise lawfully possessed by a person while traversing school  
104 premises for the purposes of transporting a student to or from school, or  
105 possessed by an adult for the purposes of facilitation of a school-sanctioned  
106 firearm-related event or club event.

107         4. Subdivisions (1), (8), and (10) of subsection 1 of this section shall not  
108 apply to any person who has a valid concealed carry permit issued pursuant to  
109 sections 571.101 to 571.121, a valid concealed carry endorsement issued before  
110 August 28, 2013, or a valid permit or endorsement to carry concealed firearms  
111 issued by another state or political subdivision of another state.

112         5. Subdivisions (3), (4), (5), (6), (7), (8), (9), and (10) of subsection 1 of this  
113 section shall not apply to persons who are engaged in a lawful act of defense  
114 pursuant to section 563.031.

115         6. Notwithstanding any provision of this section to the contrary, the state  
116 shall not prohibit any state employee from having a firearm in the employee's  
117 vehicle on the state's property provided that the vehicle is locked and the firearm  
118 is not visible. This subsection shall only apply to the state as an employer when  
119 the state employee's vehicle is on property owned or leased by the state and the  
120 state employee is conducting activities within the scope of his or her  
121 employment. For the purposes of this subsection, "state employee" means an  
122 employee of the executive, legislative, or judicial branch of the government of the  
123 state of Missouri.

124         7. Nothing in this section shall make it unlawful for a student to actually  
125 participate in school-sanctioned gun safety courses, student military or ROTC  
126 courses, or other school-sponsored or club-sponsored firearm-related events,  
127 provided the student does not carry a firearm or other weapon readily capable of

128 lethal use into any school, onto any school bus, or onto the premises of any other  
129 function or activity sponsored or sanctioned by school officials or the district  
130 school board.

131         8. Unlawful use of weapons is a class [D] E felony unless committed  
132 pursuant to subdivision (6), (7), or (8) of subsection 1 of this section, in which  
133 cases it is a class B misdemeanor, or subdivision (5) or (10) of subsection 1 of this  
134 section, in which case it is a class A misdemeanor if the firearm is unloaded and  
135 a class [D] E felony if the firearm is loaded, or subdivision (9) of subsection 1 of  
136 this section, in which case it is a class B felony, except that if the violation of  
137 subdivision (9) of subsection 1 of this section results in injury or death to another  
138 person, it is a class A felony.

139         9. Violations of subdivision (9) of subsection 1 of this section shall be  
140 punished as follows:

141             (1) For the first violation a person shall be sentenced to the maximum  
142 authorized term of imprisonment for a class B felony;

143             (2) For any violation by a prior offender as defined in section 558.016, a  
144 person shall be sentenced to the maximum authorized term of imprisonment for  
145 a class B felony without the possibility of parole, probation or conditional release  
146 for a term of ten years;

147             (3) For any violation by a persistent offender as defined in section  
148 558.016, a person shall be sentenced to the maximum authorized term of  
149 imprisonment for a class B felony without the possibility of parole, probation, or  
150 conditional release;

151             (4) For any violation which results in injury or death to another person,  
152 a person shall be sentenced to an authorized disposition for a class A felony.

153         10. Any person knowingly aiding or abetting any other person in the  
154 violation of subdivision (9) of subsection 1 of this section shall be subject to the  
155 same penalty as that prescribed by this section for violations by other persons.

156         11. Notwithstanding any other provision of law, no person who pleads  
157 guilty to or is found guilty of a felony violation of subsection 1 of this section shall  
158 receive a suspended imposition of sentence if such person has previously received  
159 a suspended imposition of sentence for any other firearms- or weapons-related  
160 felony offense.

161         12. As used in this section "qualified retired peace officer" means an  
162 individual who:

163             (1) Retired in good standing from service with a public agency as a peace

164 officer, other than for reasons of mental instability;

165 (2) Before such retirement, was authorized by law to engage in or  
166 supervise the prevention, detection, investigation, or prosecution of, or the  
167 incarceration of any person for, any violation of law, and had statutory powers of  
168 arrest;

169 (3) Before such retirement, was regularly employed as a peace officer for  
170 an aggregate of fifteen years or more, or retired from service with such agency,  
171 after completing any applicable probationary period of such service, due to a  
172 service-connected disability, as determined by such agency;

173 (4) Has a nonforfeitable right to benefits under the retirement plan of the  
174 agency if such a plan is available;

175 (5) During the most recent twelve-month period, has met, at the expense  
176 of the individual, the standards for training and qualification for active peace  
177 officers to carry firearms;

178 (6) Is not under the influence of alcohol or another intoxicating or  
179 hallucinatory drug or substance; and

180 (7) Is not prohibited by federal law from receiving a firearm.

181 13. The identification required by subdivision (1) of subsection 2 of this  
182 section is:

183 (1) A photographic identification issued by the agency from which the  
184 individual retired from service as a peace officer that indicates that the individual  
185 has, not less recently than one year before the date the individual is carrying the  
186 concealed firearm, been tested or otherwise found by the agency to meet the  
187 standards established by the agency for training and qualification for active peace  
188 officers to carry a firearm of the same type as the concealed firearm; or

189 (2) A photographic identification issued by the agency from which the  
190 individual retired from service as a peace officer; and

191 (3) A certification issued by the state in which the individual resides that  
192 indicates that the individual has, not less recently than one year before the date  
193 the individual is carrying the concealed firearm, been tested or otherwise found  
194 by the state to meet the standards established by the state for training and  
195 qualification for active peace officers to carry a firearm of the same type as the  
196 concealed firearm.

571.060. 1. A person commits the [crime] **offense** of unlawful transfer  
2 of weapons if he:

3 (1) Knowingly sells, leases, loans, gives away or delivers a firearm or

4 ammunition for a firearm to any person who, under the provisions of section  
5 571.070, is not lawfully entitled to possess such;

6 (2) Knowingly sells, leases, loans, gives away or delivers a blackjack to a  
7 person less than eighteen years old without the consent of the child's custodial  
8 parent or guardian, or recklessly, as defined in section 562.016, sells, leases,  
9 loans, gives away or delivers any firearm to a person less than eighteen years old  
10 without the consent of the child's custodial parent or guardian; provided, that this  
11 does not prohibit the delivery of such weapons to any peace officer or member of  
12 the Armed Forces or National Guard while performing his official duty; or

13 (3) Recklessly, as defined in section 562.016, sells, leases, loans, gives  
14 away or delivers a firearm or ammunition for a firearm to a person who is  
15 intoxicated.

16 2. Unlawful transfer of weapons under subdivision (1) of subsection 1 of  
17 this section is a class [D] E felony; unlawful transfer of weapons under  
18 subdivisions (2) and (3) of subsection 1 of this section is a class A misdemeanor.

571.063. 1. As used in this section the following terms shall mean:

2 (1) "Ammunition", any cartridge, shell, or projectile designed for use in a  
3 firearm;

4 (2) "Licensed dealer", a person who is licensed under 18 U.S.C. Section  
5 923 to engage in the business of dealing in firearms;

6 (3) "Materially false information", any information that portrays an illegal  
7 transaction as legal or a legal transaction as illegal;

8 (4) "Private seller", a person who sells or offers for sale any firearm, as  
9 defined in section 571.010, or ammunition.

10 2. A person commits the crime of fraudulent purchase of a firearm if such  
11 person:

12 (1) Knowingly solicits, persuades, encourages or entices a licensed dealer  
13 or private seller of firearms or ammunition to transfer a firearm or ammunition  
14 under circumstances which the person knows would violate the laws of this state  
15 or the United States; or

16 (2) Provides to a licensed dealer or private seller of firearms or  
17 ammunition what the person knows to be materially false information with intent  
18 to deceive the dealer or seller about the legality of a transfer of a firearm or  
19 ammunition; or

20 (3) Willfully procures another to violate the provisions of subdivision (1)  
21 or (2) of this subsection.

22 3. Fraudulent purchase of a firearm is a class **[D] E** felony.

23 4. This section shall not apply to criminal investigations conducted by the  
24 United States Bureau of Alcohol, Tobacco, Firearms and Explosives, authorized  
25 agents of such investigations, or to a peace officer, as defined in section 542.261,  
26 acting at the explicit direction of the United States Bureau of Alcohol, Tobacco,  
27 Firearms and Explosives.

571.070. 1. A person commits the **[crime] offense** of unlawful possession  
2 of a firearm if such person knowingly has any firearm in his or her possession  
3 and:

4 (1) Such person has been convicted of a felony under the laws of this  
5 state, or of a crime under the laws of any state or of the United States which, if  
6 committed within this state, would be a felony; or

7 (2) Such person is a fugitive from justice, is habitually in an intoxicated  
8 or drugged condition, or is currently adjudged mentally incompetent.

9 2. Unlawful possession of a firearm is a class **[C] D** felony.

10 3. The provisions of subdivision (1) of subsection 1 of this section shall not  
11 apply to the possession of an antique firearm.

571.072. 1. A person commits the **[crime] offense** of unlawful possession  
2 of an explosive weapon if he or she has any explosive weapon in his or her  
3 possession and:

4 (1) He or she has pled guilty to or has been convicted of a dangerous  
5 felony, as defined in section 556.061, or of an attempt to commit a dangerous  
6 felony, or of **[a crime] an offense** under the laws of any state or of the United  
7 States which, if committed within this state, would be a dangerous felony, or  
8 confined therefor in this state or elsewhere during the five-year period  
9 immediately preceding the date of such possession; or

10 (2) He or she is a fugitive from justice, is habitually in an intoxicated or  
11 drugged condition, or is currently adjudged mentally incompetent.

12 2. Unlawful possession of an explosive weapon is a class **[C] D** felony.

632.520. 1. For purposes of this section, the following terms mean:

2 (1) "Employee of the department of mental health", a person who is an  
3 employee of the department of mental health, an employee or contracted employee  
4 of a subcontractor of the department of mental health, or an employee or  
5 contracted employee of a subcontractor of an entity responsible for confining  
6 offenders as authorized by section 632.495;

7 (2) "Offender", a person ordered to the department of mental health after

8 a determination by the court that the person meets the definition of a sexually  
9 violent predator, a person ordered to the department of mental health after a  
10 finding of probable cause under section 632.489, or a person committed for  
11 control, care, and treatment by the department of mental health under sections  
12 632.480 to 632.513;

13 (3) "Secure facility", a facility operated by the department of mental  
14 health or an entity responsible for confining offenders as authorized by section  
15 632.495.

16 2. No offender shall knowingly commit violence to an employee of the  
17 department of mental health or to another offender housed in a secure  
18 facility. Violation of this subsection shall be a class B felony.

19 3. No offender shall knowingly damage any building or other property  
20 owned or operated by the department of mental health. Violation of this  
21 subsection shall be a class [C] D felony.

Section B. The repeal and reenactment of sections 192.2260, 301.559,  
2 339.100, 400.9-501, 565.032, 571.020, 571.030, 571.060, 571.063, 571.070, 571.072,  
3 and 632.520 of this act shall become effective on January 1, 2017.

Bill ✓

Copy