

SECOND REGULAR SESSION

SENATE BILL NO. 934

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CASKEY.

Read 1st time January 27, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4272S.011

AN ACT

To repeal section 577.017, RSMo 1994, and sections 302.302, 302.309, 302.505, 304.012, 577.012, 577.023 and 577.600, RSMo Supp. 1999, relating to alcohol-related traffic offenses, and to enact in lieu thereof eight new sections relating to the same subject, with penalty provisions.

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

Section A. Section 577.017, RSMo 1994, and sections 302.302, 302.309, 302.505, 304.012, 577.012, 577.023 and 577.600, RSMo Supp. 1999, are repealed and eight new sections enacted in lieu thereof, to be known as sections 302.302, 302.309, 302.505, 304.012, 577.012, 577.017, 577.023 and 577.600, to read as follows:

302.302. 1. The director of revenue shall put into effect a point system for the suspension and revocation of licenses. Points shall be assessed only after a conviction or forfeiture of collateral. The initial point value is as follows:

- (1) Any moving violation of a state law or county or municipal traffic ordinance not listed in this section, other than a violation of vehicle equipment provisions or a court-ordered supervision as provided in section 302.303 2 points (except any violation of municipal stop sign ordinance where no accident is involved 1 point)
- (2) Speeding
In violation of a state law 3 points

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

In violation of a county or municipal ordinance	2 points
(3) Leaving the scene of an accident in violation of section 577.060, RSMo	12 points
In violation of any county or municipal ordinance	6 points
(4) Careless and imprudent driving in violation of either section 304.012, RSMo, or section 304.016, RSMo, and serious physical injury or death to any person results	8 points
In violation of section 304.012, RSMo, or section 302.016 and physical injury to any person results	6 points
In violation of section 304.012, RSMo, or section 304.016, RSMo, and an accident is involved	4 points
In violation of section 304.012, RSMo, or section 304.016, RSMo	2 points
In violation of subsection 4 of section 304.016, RSMo	4 points
In violation of a county or municipal ordinance	2 points
(5) Operating without a valid license in violation of subdivision (1) or (2) of subsection 1 of section 302.020:	
(a) For the first conviction	2 points
(b) For the second conviction	4 points
(c) For the third conviction	6 points
(6) Operating with a suspended or revoked license prior to restoration of operating privileges	12 points
(7) Obtaining a license by misrepresentation	12 points
(8) For the first conviction of driving while in an intoxicated condition or under the influence of controlled substances or drugs	8 points
(9) For the second or subsequent conviction of any of the following offenses however combined: driving while in an intoxicated condition, driving under the influence of controlled substances or drugs or driving with a blood alcohol content of [ten-hundredths] eight-hundredths of one percent or more by weight when charged as driving while intoxicated	12 points
(10) For the first conviction for driving with blood alcohol content [ten-hundredths] eight-hundredths of one percent or more by weight when charged as driving	

while intoxicated

- In violation of state law 8 points
- In violation of a county or municipal ordinance 8 points

For the first conviction for driving with blood alcohol content eight-hundredths of one percent or more by weight

- In violation of state law 6 points**
- In violation of a county or municipal ordinance 6 points**

- (11) Any felony involving the use of a motor vehicle 12 points
- (12) Knowingly permitting unlicensed operator to operate a motor vehicle 4 points
- (13) For a conviction for failure to maintain financial responsibility pursuant to county or municipal ordinance or pursuant to section 303.025, RSMo 4 points

2. The director shall, as provided in subdivision (5) of subsection 1 of this section, assess an operator points for a conviction pursuant to subdivision (1) or (2) of subsection 1 of section 302.020, when the director issues such operator a license or permit pursuant to the provisions of sections 302.010 to 302.340.

3. An additional two points shall be assessed when personal injury or property damage results from any violation listed in subsection 1 of this section and if found to be warranted and certified by the reporting court.

4. When any of the acts listed in subdivision (2), (3), (4) or (8) of subsection 1 of this section constitutes both a violation of a state law and a violation of a county or municipal ordinance, points may be assessed for either violation but not for both. Notwithstanding that an offense arising out of the same occurrence could be construed to be a violation of subdivisions (8), (9) and (10) of subsection 1 of this section, no person shall be tried or convicted for more than one offense pursuant to subdivisions (8), (9) and (10) of subsection 1 of this section for offenses arising out of the same occurrence.

5. The director of revenue shall put into effect a system for staying the assessment of points against an operator. The system shall provide that the satisfactory completion of a driver improvement program or, in the case of violations committed while operating a motorcycle, a motorcycle rider training course approved by the director of the department of public safety, by an operator, when so ordered and verified by any court having jurisdiction over any law of this state or county or municipal ordinance, regulating motor vehicles, other than a violation committed in a commercial motor vehicle as defined in section 302.700, shall be accepted by the director in lieu of the assessment of points for a violation pursuant to subdivision (1), (2), or (4) of subsection 1 of this section or pursuant to subsection 3 of this section. For the purposes of this subsection, the driver improvement program shall meet or exceed the standards of the National

Safety Council's eight-hour "Defensive Driving Course" or, in the case of a violation which occurred during the operation of a motorcycle, the program shall meet the standards established by the director of the department of public safety pursuant to sections 302.133 to 302.138. The completion of a driver improvement program or a motorcycle rider training course shall not be accepted in lieu of points more than one time in any thirty-six-month period and shall be completed within sixty days of the date of conviction in order to be accepted in lieu of the assessment of points. Every court having jurisdiction pursuant to the provisions of this subsection shall, within fifteen days after completion of the driver improvement program or motorcycle rider training course by an operator, forward a record of the completion to the director, all other provisions of the law to the contrary notwithstanding. The director shall establish procedures for record keeping and the administration of this subsection.

302.309. 1. Whenever any license is suspended pursuant to sections 302.302 to 302.309, the director of revenue shall return the license to the operator immediately upon the termination of the period of suspension and upon compliance with the requirements of chapter 303, RSMo.

2. Any operator whose license is revoked pursuant to these sections, upon the termination of the period of revocation, shall apply for a new license in the manner prescribed by law.

3. (1) All circuit courts or the director of revenue shall have jurisdiction to hear applications and make eligibility determinations granting limited driving privileges. Any application may be made in writing to the director of revenue and the person's reasons for requesting the limited driving privilege shall be made therein.

(2) When any court of record having jurisdiction or the director of revenue finds that an operator is required to operate a motor vehicle in connection with any of the following:

- (a) A business, occupation, or employment;
- (b) Seeking medical treatment for such operator;
- (c) Attending school or other institution of higher education;
- (d) Attending alcohol or drug treatment programs; or

(e) Any other circumstance the court or director finds would create an undue hardship on the operator; the court or director may grant such limited driving privilege as the circumstances of the case justify if the court or director finds undue hardship would result to the individual, and while so operating a motor vehicle within the restrictions and limitations of the limited driving privilege the driver shall not be guilty of operating a motor vehicle without a valid license.

(3) An operator may make application to the proper court in the county in which such operator resides or in the county in which is located the operator's principal place of business or employment. Any application for a limited driving privilege made to a circuit court shall name the director as a party defendant and shall be served upon the director prior to the grant of any limited privilege, and shall be accompanied by a copy of the applicant's driving record as certified by the director. Any applicant for a limited driving privilege shall have on file with the

department of revenue proof of financial responsibility as required by chapter 303, RSMo. Any application by a person who transports persons or property as classified in section 302.015 may be accompanied by proof of financial responsibility as required by chapter 303, RSMo, but if proof of financial responsibility does not accompany the application, or if the applicant does not have on file with the department of revenue proof of financial responsibility, the court or the director has discretion to grant the limited driving privilege to the person solely for the purpose of operating a vehicle whose owner has complied with chapter 303, RSMo, for that vehicle, and the limited driving privilege must state such restriction. When operating such vehicle under such restriction the person shall carry proof that the owner has complied with chapter 303, RSMo, for that vehicle.

(4) The court order or the director's grant of the limited driving privilege shall indicate the termination date of the privilege, which shall be not later than the end of the period of suspension or revocation. A copy of any court order shall be sent by the clerk of the court to the director, and a copy shall be given to the driver which shall be carried by the driver whenever such driver operates a motor vehicle. The director of revenue upon granting a limited driving privilege shall give a copy of the limited driving privilege to the applicant. The applicant shall carry a copy of the limited driving privilege while operating a motor vehicle. A conviction which results in the assessment of points pursuant to section 302.302, other than a violation of a municipal stop sign ordinance where no accident is involved, against a driver who is operating a vehicle pursuant to a limited driving privilege terminates the privilege, as of the date the points are assessed to the person's driving record. If the date of arrest is prior to the issuance of the limited driving privilege, the privilege shall not be terminated. The director shall notify by ordinary mail the driver whose privilege is so terminated.

(5) [Except as provided in subdivision (6) of this subsection,] No person is eligible to receive a limited driving privilege who at the time of application for a limited driving privilege has previously been granted such a privilege within the immediately preceding five years, or whose license has been suspended or revoked for the following reasons:

(a) A conviction of violating the provisions of section 577.010 or 577.012, RSMo, or any similar provision of any federal or state law, or a municipal or county law where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney in writing, until the person has completed the first thirty days of a suspension or revocation imposed pursuant to this chapter;

(b) A conviction of any felony in the commission of which a motor vehicle was used;

(c) Ineligibility for a license because of the provisions of subdivision (1), (2), (4), (5), (6), (7), (8), (9), (10) or (11) of section 302.060;

(d) Because of operating a motor vehicle under the influence of narcotic drugs, a controlled substance as defined in chapter 195, RSMo, or having left the scene of an accident as provided in

section 577.060, RSMo;

(e) Due to a revocation for the first time for failure to submit to a chemical test pursuant to section 577.041, RSMo, or due to a refusal to submit to a chemical test in any other state, if such person has not completed the first ninety days of such revocation;

(f) Violation more than once of the provisions of section 577.041, RSMo, or a similar implied consent law of any other state;

(g) Disqualification of a commercial driver's license pursuant to sections 302.700 to 302.780, however, nothing in this subsection shall prevent a person holding a commercial driver's license who is suspended or revoked as a result of an action occurring while not driving a commercial motor vehicle or driving for pay, but while driving in an individual capacity as an operator of a personal vehicle from applying for a limited driving privilege to operate a commercial vehicle, if otherwise eligible for such limited privilege; or

(h) Due to a suspension pursuant to subsection 2 of section 302.525 and who has not completed the first thirty days of such suspension, provided the person is not otherwise ineligible for a limited driving privilege; or due to a revocation pursuant to subsection 2 of section 302.525 if such person has not completed such revocation.

[(6) (a) Provided that pursuant to the provisions of this section, the applicant is not otherwise ineligible for a limited driving privilege, a circuit court or the director may, in the manner prescribed in this subsection, allow a person who has had such person's license to operate a motor vehicle revoked where that person cannot obtain a new license for a period of ten years, as prescribed in subdivision (9) of section 302.060, to apply for a limited driving privilege pursuant to this subsection if such person has served at least three years of such disqualification or revocation. Such person shall present evidence satisfactory to the court or the director that such person has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding three years and that the person's habits and conduct show that the person no longer poses a threat to the public safety of this state.

(b) Provided that pursuant to the provisions of this section, the applicant is not otherwise ineligible for a limited driving privilege or convicted of involuntary manslaughter while operating a motor vehicle in an intoxicated condition, a circuit court or the director may, in the manner prescribed in this subsection, allow a person who has had such person's license to operate a motor vehicle revoked where that person cannot obtain a new license for a period of five years because of two convictions of driving while intoxicated, as prescribed in subdivision (10) of section 302.060, to apply for a limited driving privilege pursuant to this subsection if such person has served at least two years of such disqualification or revocation. Such person shall present evidence satisfactory to the court or the director that such person has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding two years and that the person's habits and conduct show that the person no longer poses a threat to the public safety of

this state. Any person who is denied a license permanently in this state because of an alcohol-related conviction subsequent to a restoration of such person's driving privileges pursuant to subdivision (9) of section 302.060 shall not be eligible for limited driving privilege pursuant to the provisions of this subdivision.]

4. Any person who has received notice of denial of a request of limited driving privilege by the director of revenue may make a request for a review of the director's determination in the circuit court of the county in which the person resides or the county in which is located the person's principal place of business or employment within thirty days of the date of mailing of the notice of denial. Such review shall be based upon the records of the department of revenue and other competent evidence and shall be limited to a review of whether the applicant was statutorily entitled to the limited driving privilege.

5. [The director of revenue shall promulgate rules and regulations necessary to carry out the provisions of this section.] **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.**

302.505. 1. The department shall suspend or revoke the license of any person upon its determination that the person was arrested upon probable cause to believe such person was driving a motor vehicle while the alcohol concentration in the person's blood, breath, or urine was ten-hundredths of one percent or more by weight, **or eight-hundredths of one percent by weight when the person was the proximate cause of a motor vehicle accident**, based on the definition of alcohol concentration in section 302.500, or where such person was less than twenty-one years of age when stopped and was stopped upon probable cause to believe such person was driving while intoxicated in violation of section 577.010, RSMo, or driving with excessive blood alcohol content in violation of section 577.012, RSMo, or upon probable cause to believe such person violated a state, county or municipal traffic offense and such person was driving with a blood alcohol content of two-hundredths of one percent or more by weight.

2. The department shall make a determination of these facts on the basis of the report of a law enforcement officer required in section 302.510, and this determination shall be final unless a hearing is requested and held. If a hearing is held, the department shall review the matter and make a final determination on the basis of evidence received at the hearing.

3. The determination of these facts by the department is independent of the determination

of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any suspension or revocation under this section.

304.012. 1. Every person operating a motor vehicle on the roads and highways of this state shall drive the vehicle in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person and shall exercise the highest degree of care.

2. Any person who violates the provisions of this section is guilty of a class B misdemeanor, unless an accident is involved **or there are aggravating circumstances** then it shall be a class A misdemeanor. **For the purposes of this section, the term "aggravating circumstances" shall be defined as circumstances in which any person suffers death or serious physical injury, as defined in section 565.002, RSMo, as a result of the violation of this section.**

577.012. 1. A person commits the crime of "driving with excessive blood alcohol content" if such person operates a motor vehicle in this state with [ten-hundredths] **eight-hundredths** of one percent or more by weight of alcohol in such person's blood.

2. As used in this section, percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood or two hundred ten liters of breath and may be shown by chemical analysis of the person's blood, breath, saliva or urine. For the purposes of determining the alcoholic content of a person's blood under this section, the test shall be conducted in accordance with the provisions of sections 577.020 to 577.041.

3. [For the first offense,] Driving with excessive blood alcohol content is a class C misdemeanor.

4. Any person guilty of driving with excessive blood alcohol content who is the proximate cause of a motor vehicle accident may be charged with driving while intoxicated. For the first offense, driving with excessive blood alcohol content when charged as driving while intoxicated is a class B misdemeanor.

577.017. 1. No person shall consume [any] **an** alcoholic beverage [while operating a moving motor vehicle upon the highways, as defined in section 301.010, RSMo] **or possess an open alcoholic beverage container in the passenger area of the motor vehicle in any motor vehicle operated on a public highway or the right-of-way of a public highway.**

2. Any person found guilty of violating the provisions of this section is guilty of an infraction.

3. Any infraction under this section shall not reflect on any records with the department of revenue.

4. The provisions of this section shall not apply to passengers who are occupying a chartered tour bus or a recreational motor vehicle, or to possession of an open

alcoholic beverage container behind the last upright seat of a motor vehicle that is not equipped with a trunk.

5. In order to protect public safety through the promotion of "sober chauffeur" and "designated driver" programs initiated throughout the state, the provisions of this section shall not apply to the occupants of any motor vehicle being operated by a driver with a blood alcohol level of zero percent by weight.

6. As used in this section, "alcoholic beverage", "open alcoholic beverage container", "motor vehicle" and "passenger area" shall have the same meaning as defined in Title 23 of the United States Code, Section 154.

577.023. 1. For purposes of this section, unless the context clearly indicates otherwise:

(1) An "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content **when charged as driving while intoxicated**, involuntary manslaughter pursuant to subdivision (2) of subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or a county or municipal ordinance, where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney in writing;

(2) An **"aggravated driving offender" is a person who has been convicted of three or more driving while intoxicated offenses, one of which was a felony conviction, where such three or more convictions occurred within fifteen years of the occurrence of the driving while intoxicated offense for which the person is charged;**

(3) A "persistent offender" is one of the following:

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses, where such two or more offenses occurred within ten years of the occurrence of the intoxication-related traffic offense for which the person is charged;

(b) A person who has pleaded guilty to or has been found guilty of involuntary manslaughter pursuant to subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo; and

~~[(3)]~~ (4) A "prior offender" is a person who has pleaded guilty to or has been found guilty of one intoxication-related traffic offense, where such prior offense occurred within five years of the occurrence of the intoxication-related traffic offense for which the person is charged.

2. Any person who is convicted of a violation of section 577.010 who is alleged and proved to be an aggravated driving offender shall be guilty of a class C felony.

3. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or

577.012 who is alleged and proved to be a prior offender shall be guilty of a class A misdemeanor.

[3.] **4.** Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D felony.

[4.] **5.** [No court shall suspend the imposition of sentence as to a prior or persistent offender under this section nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo, to the contrary notwithstanding, nor shall such person] **No prior offender shall** be eligible for parole or probation until he has served a minimum of [forty-eight consecutive hours'] **five days** imprisonment, unless as a condition of such parole or probation such person performs at least [ten] **thirty** days of community service under the supervision of the court in those jurisdictions which have a recognized program for community service. **No persistent offender shall be eligible for parole or probation until he or she has served a minimum of ten days imprisonment, unless as a condition of such parole or probation such person performs at least sixty days of community service under the supervision of the court in those jurisdictions which have a recognized program for community service.**

[5.] **6.** The court shall find the defendant to be a prior offender [or], persistent **or aggravated driving** offender, if:

(1) The indictment or information, original or amended, or the information in lieu of an indictment pleads all essential facts warranting a finding that the defendant is a prior offender [or], persistent **or aggravated driving** offender; and

(2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding beyond a reasonable doubt the defendant is a prior offender [or], persistent **or aggravated driving** offender; and

(3) The court makes findings of fact that warrant a finding beyond a reasonable doubt by the court that the defendant is a prior offender [or], persistent **or aggravated driving** offender.

[6.] **7.** In a jury trial, the facts shall be pleaded, established and found prior to submission to the jury outside of its hearing.

[7.] **8.** In a trial without a jury or upon a plea of guilty, the court may defer the proof in findings of such facts to a later time, but prior to sentencing.

[8.] **9.** The defendant shall be accorded full rights of confrontation and cross-examination, with the opportunity to present evidence, at such hearings.

[9.] **10.** The defendant may waive proof of the facts alleged.

[10.] **11.** Nothing in this section shall prevent the use of presentence investigations or commitments.

[11.] **12.** At the sentencing hearing both the state and the defendant shall be permitted to present additional information bearing on the issue of sentence.

[12.] **13.** The pleas or findings of guilty shall be prior to the date of commission of the

present offense.

[13.] **14.** The court shall not instruct the jury as to the range of punishment or allow the jury, upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of prior offenders [or], persistent **or aggravated driving** offenders.

[14.] **15.** Evidence of prior convictions shall be heard and determined by the trial court out of the hearing of the jury prior to the submission of the case to the jury, and shall include but not be limited to evidence of convictions received by a search of the records of the Missouri uniform law enforcement system maintained by the Missouri state highway patrol. After hearing the evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal or county ordinance in a county or municipal court for driving while intoxicated or a conviction or a plea of guilty or a finding of guilty followed by a suspended imposition of sentence, suspended execution of sentence, probation or parole or any combination thereof in a state court shall be treated as a prior conviction.

577.600. 1. [Beginning January 1, 1996, in addition to any other provisions of law, a court may require that any person who is found guilty of or pleads guilty to a first intoxication-related traffic offense, as defined in section 577.023, and a court shall require that any person who is found guilty of or pleads guilty to a second intoxication-related traffic offense, as defined in section 577.023, who was granted probation, shall not operate a motor vehicle during the period of probation unless that vehicle is equipped with a functioning, certified ignition interlock device as provided in sections 577.600 to 577.614. In addition, any court authorized to grant a limited driving privilege under section 302.309, RSMo, may require the use of an ignition interlock device as a condition of the limited driving privilege. Any person required to use an ignition interlock device shall comply with the court order, subject to the penalties provided by sections 577.600 to 577.614.] **Any person who is convicted of a second or subsequent intoxication related traffic offense shall be subject to the impoundment or immobilization of each of his or her motor vehicles, or the installation of an ignition interlock system on each of his or her motor vehicles for a period not to exceed one year from the date of the conviction.**

2. No person shall knowingly rent, lease or lend a motor vehicle to a person known to have had [his] **that person's** driving privilege restricted as provided in subsection 1 of this section, unless the vehicle is equipped with a functioning, certified ignition interlock device. Any person whose driving privilege is restricted as provided in subsection 1 of this section shall notify any other person who rents, leases or loans a motor vehicle to [him] **that person** of the driving restriction imposed [under] **pursuant to** this section.

3. Any person convicted of a violation of this section shall be guilty of a class A misdemeanor.

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