

FIRST REGULAR SESSION

# SENATE BILL NO. 404

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR DePASCO.

Read 1st time February 5, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1735S.011

## AN ACT

To repeal section 302.535, RSMo 2000, relating to the department of revenue's ruling to suspend or revoke a driver's license, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 302.535, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 302.535, to read as follows:

302.535. 1. Any person aggrieved by a decision of the department may file a petition for trial de novo by the circuit court. The burden of proof shall be on the state to adduce the evidence. Such trial shall be conducted pursuant to the Missouri rules of civil procedure and not as an appeal of an administrative decision pursuant to chapter 536, RSMo. The petition shall be filed in the circuit court of the county where the arrest occurred. The case shall be decided by the judge sitting without a jury. The presiding judge of the circuit court may assign a traffic judge, pursuant to section 479.500, RSMo 1994, a circuit judge or an associate circuit judge to hear such petition.

2. The filing of a petition for trial de novo shall not result in a stay of the suspension or revocation order. But upon the filing of such petition, a restricted driving privilege for the limited purpose of driving in connection with the petitioner's business, occupation, employment, or formal program of secondary, postsecondary or higher education shall be issued by the department if the person's driving record shows no prior alcohol related enforcement contact during the immediately preceding five years. Such limited driving privilege shall terminate on the date of the disposition of the petition for trial de novo.

3. In addition to the limited driving privilege as permitted in subsection 2 of this section, the department may upon the filing of a petition for trial de novo issue a restricted driving privilege

for the limited purpose of driving in connection with the petitioner's business, occupation, employment, or formal program of secondary, postsecondary or higher education. In determining whether to issue such a restrictive driving privilege, the department shall consider the number and the seriousness of prior convictions and the entire driving record of the driver.

4. Such time of restricted driving privilege pending disposition of trial de novo shall be counted toward any time of restricted driving privilege imposed pursuant to section 302.525. Nothing in this subsection shall be construed to prevent a person from maintaining his restricted driving privilege for an additional sixty days in order to meet the conditions imposed by section 302.540 for reinstating a person's driver's license.

**5. If a hearing held pursuant to subsection 1 of this section is found in favor of the petitioner, the department shall reinstate the defendant's driving privilege once the judgment becomes final and if the defendant has previously surrendered his or her driver's license, the department shall return such license to the petitioner. The reinstatement of such driving privilege shall not be deemed to constitute a waiver of the department's right to appeal.**

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