

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR

# SENATE BILL NO. 402

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

Offered April 19, 2005.

Senate Substitute adopted, April 19, 2005.

Taken up for Perfection April 19, 2005. Bill declared Perfected and Ordered Printed, as amended.

0337S.06P

TERRY L. SPIELER, Secretary.

## AN ACT

To repeal sections 302.178, 311.310, 311.325, 570.223, and 577.500, RSMo, and to enact in lieu thereof eight new sections relating to substance abuse, with penalty provisions.

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

Section A. Sections 302.178, 311.310, 311.325, 570.223, and 577.500, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 160.069, 160.782, 302.178, 311.310, 311.325, 311.722, 570.223, and 577.500, to read as follows:

**160.069. Every school district shall develop a policy by June 30, 2006, detailing the consequences that will result for a student at school if the student is found to be in possession or drinking alcohol either on or off school property.**

**160.782. 1. Any person who provides construction services under contract within two thousand feet of a public or private elementary or secondary school, public vocational school, or public or private junior college, college, or university or any land grant university shall submit to a chemical test for the purpose of determining the drug content of that person's blood prior to working in such area. The provision of this subsection shall not apply to any person who has submitted to a chemical test for the employer within six months of commencement of the construction and the results of such test were negative.**

**2. A "verified positive test result" means a test result that was positive on an initial Food and Drug Administration approved immunoassay test, confirmed by a gas chromatography/mass spectrometry assay, or other confirmatory tests approved by the department of health and human services and reviewed and verified by the medical review officer.**

3. "Medical review officer" means a licensed physician responsible for receiving laboratory results who has knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate all positive test results together with a tested individual's medical history and any other relevant biomedical information.

4. Any individual subject to testing under this plan shall be permitted to provide urine specimens in private, in a restroom stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender as the individual tested, however, may observe the individual providing the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual may alter or substitute the specimen to be provided when the individual:

- (1) Previously has been found to have tested positive for an illegal drug; or
- (2) Previously has tampered with a sample.

5. After an individual yields a verified positive test, a contractor shall not allow such a person to work on the school project and may:

(1) Take appropriate personnel action against such employee up to and including termination; and

(2) If the employee is not terminated, require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

302.178. 1. Notwithstanding any provision of this section to the contrary, beginning January 1, 2001, any person between the ages of sixteen and eighteen years who is qualified to obtain a license pursuant to sections 302.010 to 302.340 may apply for, and the director shall issue, an intermediate driver's license entitling the applicant, while having such license in his or her possession, to operate a motor vehicle of the appropriate class upon the highways of this state in conjunction with the requirements of this section. An intermediate driver's license shall be readily distinguishable from a license issued to those over the age of eighteen. All applicants for an intermediate driver's license shall:

- (1) Successfully complete the examination required by section 302.173;
- (2) Pay the fee required by subsection 3 of this section;
- (3) Have had a temporary instruction permit issued pursuant to subsection 1 of section 302.130 for at least a six-month period or a valid license from another state; and
- (4) Have a parent, grandparent, legal guardian, or, if the applicant is a participant in a federal residential job training program, a driving instructor employed by a federal residential job training program, sign the application stating that the applicant has

completed at least twenty hours of supervised driving experience under a temporary instruction permit issued pursuant to subsection 1 of section 302.130, or, if the applicant is an emancipated minor, the person over twenty-one years of age who supervised such driving. For purposes of this section, the term "emancipated minor" means a person who is at least sixteen years of age, but less than eighteen years of age, who:

(a) Marries with the consent of the legal custodial parent or legal guardian pursuant to section 451.080, RSMo;

(b) Has been declared emancipated by a court of competent jurisdiction;

(c) Enters active duty in the armed forces;

(d) Has written consent to the emancipation from the custodial parent or legal guardian; or

(e) Through employment or other means provides for such person's own food, shelter and other cost-of-living expenses;

(5) Have had no alcohol-related enforcement contacts as defined in section 302.525 during the preceding twelve months; and

(6) Have no nonalcoholic traffic convictions for which points are assessed pursuant to section 302.302, within the preceding six months.

2. An intermediate driver's license grants the licensee the same privileges to operate that classification of motor vehicle as a license issued pursuant to section 302.177, except that no person shall operate a motor vehicle on the highways of this state under such an intermediate driver's license between the hours of 1:00 a.m. and 5:00 a.m. unless accompanied by a person described in subsection 1 of section 302.130; except the licensee may operate a motor vehicle without being accompanied if the travel is to or from a school or educational program or activity, a regular place of employment or in emergency situations as defined by the director by regulation. Each intermediate driver's license shall be restricted by requiring that the driver and all passengers in the licensee's vehicle wear safety belts at all times. This safety belt restriction shall not apply to a person operating a motorcycle.

3. Notwithstanding the provisions of section 302.177 to the contrary, the fee for an intermediate driver's license shall be five dollars and such license shall be valid for a period of two years.

4. Any intermediate driver's licensee accumulating six or more points in a twelve-month period may be required to participate in and successfully complete a driver-improvement program approved by the director of the department of public safety. The driver-improvement program ordered by the director of revenue shall not be used in lieu of point assessment.

5. (1) An intermediate driver's licensee who has, for the preceding twelve-month period, had no alcohol-related enforcement contacts, as defined in section 302.525 and no

traffic convictions for which points are assessed, upon reaching the age of eighteen years may apply for and receive without further examination, other than a vision test as prescribed by section 302.173, a license issued pursuant to this chapter granting full driving privileges. Such person shall pay the required fee for such license as prescribed in section 302.177.

(2) If an intermediate driver's license expires on a Saturday, Sunday, or legal holiday, such license shall remain valid for the five business days immediately following the expiration date. In no case shall a licensee whose intermediate driver's license expires on a Saturday, Sunday, or legal holiday be guilty of an offense of driving with an expired or invalid driver's license if such offense occurred within five business days immediately following an expiration date that occurs on a Saturday, Sunday, or legal holiday.

(3) The director of revenue shall deny an application for a full driver's license until the person has had no traffic convictions for which points are assessed for a period of twelve months prior to the date of application for license or until the person is eligible to apply for a six-year driver's license as provided for in section 302.177, provided the applicant is otherwise eligible for full driving privileges. An intermediate driver's license shall expire when the licensee is eligible and receives a full driver's license as prescribed in subdivision (1) of this section.

6. No person upon reaching the age of eighteen years whose intermediate driver's license and driving privilege is denied, suspended, canceled or revoked in this state or any other state, for any reason may apply for a full driver's license until such license or driving privilege is fully reinstated. Any such person whose intermediate driver's license has been revoked pursuant to the provisions of sections 302.010 to 302.540 shall, upon receipt of reinstatement of the revocation from the director, pass the complete driver examination, apply for a new license, and pay the proper fee before again operating a motor vehicle upon the highways of this state.

7. A person shall be exempt from the intermediate licensing requirements if the person has reached the age of eighteen years and meets all other licensing requirements.

**8. Any person under the age of sixteen, who is found by a court of competent jurisdiction to be in violation of section 311.325, RSMo, shall not be eligible to obtain a license under this section until he or she reaches the age of eighteen years. Upon reaching eighteen years, the person must meet all of the requirements of subsection 1 of this section to obtain a license. Notwithstanding the provisions of chapter 211, RSMo, to the contrary, the court, if a juvenile court, shall forward to the director of revenue the order stating that an individual is not eligible to obtain a license until he or she reaches the age of eighteen years.**

9. 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.

311.310. 1. Any licensee under this chapter, or his employee, who shall sell, vend, give away or otherwise supply any intoxicating liquor in any quantity whatsoever to any person under the age of twenty-one years, or to any person intoxicated or appearing to be in a state of intoxication, or to a habitual drunkard, and any person whomsoever except his parent or guardian who shall procure for, sell, give away or otherwise supply intoxicating liquor to any person under the age of twenty-one years, or to any intoxicated person or any person appearing to be in a state of intoxication, or to a habitual drunkard, shall be deemed guilty of a misdemeanor, except that this section shall not apply to the supplying of intoxicating liquor to a person under the age of twenty-one years for medical purposes only, or to the administering of such intoxicating liquor to any person by a duly licensed physician. No person shall be denied a license or renewal of a license issued under this chapter solely due to a conviction for unlawful sale or supply to a minor when serving in the capacity as an employee of a licensed establishment.

**2. Any owner, occupant, or other person or legal entity with a lawful right to the use and enjoyment of any property is prohibited from knowingly allowing a person under the age of twenty-one to drink or possess alcohol or knowingly failing to stop a person under the age of twenty-one from drinking or possessing alcohol on such property, unless such person allowing the person under the age of twenty-one to drink or possess alcohol is his or her parent or guardian. A person who violates the provisions of this subsection is guilty of a class A misdemeanor.**

**3. Any owner, occupant, or other person or legal entity with a lawful right to the use and enjoyment of any property is prohibited from recklessly allowing a person under the age of twenty-one to drink or possess alcohol or recklessly failing to stop a person under the age of twenty-one from drinking or possessing alcohol on such property, unless such person allowing the person under the age of twenty-one to drink or possess alcohol is his or her parent or guardian. A person who violates the provisions of this subsection is guilty of a class B misdemeanor.**

311.325. 1. Any person under the age of twenty-one years, who purchases or attempts to purchase, or has in his **or her** possession, any intoxicating liquor as defined in section 311.020 is guilty of a misdemeanor. For purposes of prosecution under this section or any

other provision of this chapter involving an alleged illegal sale or transfer of intoxicating liquor to a person under twenty-one years of age, a manufacturer-sealed container describing that there is intoxicating liquor therein need not be opened or the contents therein tested to verify that there is intoxicating liquor in such container. The alleged violator may allege that there was not intoxicating liquor in such container, but the burden of proof of such allegation is on such person, as it shall be presumed that such a sealed container describing that there is intoxicating liquor therein contains intoxicating liquor.

**2. For the purposes of this section, the term "possession" shall include holding or having intoxicating liquor or any controlled substance, except as authorized by sections 195.005 to 195.425, RSMo, being in a visibly intoxicated condition, as defined in section 577.001, RSMo, or having a detectable blood alcohol content of more than two-hundredths of one percent or more by weight of alcohol in such person's blood.**

**3. If an arresting peace officer requests that a person under arrest submit to a chemical test for alcohol content, such request shall include the reasons the officer is requesting that the person submit to a test. The officer shall inform the person that he or she may refuse such request but that his or her refusal may be used as evidence against him or her in a judicial proceeding for a violation of this section. If a person refuses a test as provided in this subsection, no test shall be administered.**

**4. If a person refuses to submit to a chemical test for alcohol content of his or her breath, blood, or saliva, such refusal may be admissible as evidence at a judicial proceeding for a violation of this section.**

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

**311.722. 1. The supervisor of alcohol and tobacco control shall not use minors, to enforce the laws of this chapter or chapter 312, RSMo, unless the supervisor promulgates rules and regulations that establish standards for the use of minors. The standards shall include those in subsection 2 of this section.**

**2. The supervisor shall establish permissive guidelines for the use of minors in investigations by any state, county, municipal or other local law enforcement authority, and which shall, at a minimum, provide that the minor shall be eighteen**

**or nineteen years of age.**

570.223. 1. A person commits the crime of identity theft if he or she knowingly and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his or her use.

2. The term "means of identification" as used in this section includes, but is not limited to, the following:

- (1) Social Security numbers;
- (2) Drivers license numbers;
- (3) Checking account numbers;
- (4) Savings account numbers;
- (5) Credit card numbers;
- (6) Debit card numbers;
- (7) Personal identification (PIN) code;
- (8) Electronic identification numbers;
- (9) Digital signatures;
- (10) Any other numbers or information that can be used to access a person's financial resources;
- (11) Biometric data;
- (12) Fingerprints;
- (13) Passwords;
- (14) Parent's legal surname prior to marriage;
- (15) Passports; or
- (16) Birth certificates.

3. A person found guilty of identity theft shall be punished as follows:

(1) Identity theft or attempted identity theft which does not result in the theft or appropriation of credit, money, goods, services, or other property is a class B misdemeanor;

(2) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property not exceeding five hundred dollars in value is a class A misdemeanor;

(3) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding five hundred dollars and not exceeding ten thousand dollars in value is a class C felony;

(4) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding ten thousand dollars and not exceeding one hundred thousand dollars in value is a class B felony;

(5) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one hundred thousand dollars in value is a class A

felony.

4. In addition to the provisions of subsection 3 of this section, the court may order that the defendant make restitution to any victim of the offense. Restitution may include payment for any costs, including attorney fees, incurred by the victim:

(1) In clearing the credit history or credit rating of the victim; and

(2) In connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising from the actions of the defendant.

5. In addition to the criminal penalties in subsections 3 and 4 of this section, any person who commits an act made unlawful by subsection 1 of this section shall be liable to the person to whom the identifying information belonged for civil damages of up to five thousand dollars for each incident, or three times the amount of actual damages, whichever amount is greater. A person damaged as set forth in subsection 1 of this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of subsection 1 of this section. The court, in an action brought under this subsection, may award reasonable attorneys' fees to the plaintiff.

6. If the identifying information of a deceased person is used in a manner made unlawful by subsection 1 of this section, the deceased person's estate shall have the right to recover damages pursuant to subsection 5 of this section.

7. Civil actions under this section must be brought within five years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

8. Civil action pursuant to this section does not depend on whether a criminal prosecution has been or will be instituted for the acts that are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

9. This section and section 570.224 shall not apply to the following activities:

(1) A person obtains the identity of another person to misrepresent his or her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or another privilege denied to minors. **Nothing in this subdivision shall affect the provisions of subsection 10 of this section;**

(2) A person obtains means of identification or information in the course of a bona fide consumer or commercial transaction;

(3) A person exercises, in good faith, a security interest or right of offset by a creditor or financial institution;

(4) A person complies, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so;

(5) A person is otherwise authorized by law to engage in the conduct that is the

subject of the prosecution.

**10. Any person who obtains, transfers, or uses any means of identification for the purpose of manufacturing and providing or selling a false identification card to a person under the age of twenty-one for the purpose of purchasing or obtaining alcohol shall be guilty of a class A misdemeanor.**

11. Notwithstanding the provisions of subdivision (1) or (2) of subsection 3 of this section, every person who has previously pled guilty to or been found guilty of identity theft or attempted identity theft, and who subsequently pleads guilty to or is found guilty of identity theft or attempted identity theft of credit, money, goods, services, or other property not exceeding five hundred dollars in value is guilty of a class D felony and shall be punished accordingly.

[11.] 12. The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes, but is not limited to, market value within the community, actual value, or replacement value.

[12.] 13. If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

577.500. 1. A court of competent jurisdiction shall, upon a plea of guilty, conviction or finding of guilt, or, if the court is a juvenile court, upon a finding of fact that the offense was committed by a juvenile, enter an order suspending or revoking the driving privileges of any person determined to have committed one of the following offenses and who, at the time said offense was committed, was under twenty-one years of age:

(1) Any alcohol related traffic offense in violation of state law or a county or, beginning July 1, 1992, 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) Any offense in violation of state law or, beginning July 1, 1992, 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, involving the possession or use of alcohol, committed while operating a motor vehicle;

(3) Any offense involving the possession or use of a controlled substance as defined in chapter 195, RSMo, in violation of the state law or, beginning July 1, 1992, 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;

(4) Any offense involving the alteration, modification or misrepresentation of a license to operate a motor vehicle in violation of section 311.328, RSMo;

(5) Any offense in violation of state law or, beginning July 1, 1992, 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, involving the possession or use of alcohol [for a second time; except that a determination of guilt or its equivalent shall have been made for the first offense and both offenses shall have been committed by the person when the person was under eighteen years of age].

2. The court shall require the surrender to it of any license to operate a motor vehicle then held by any person against whom a court has entered an order suspending or revoking driving privileges under subsection 1 of this section.

3. The court, if other than a juvenile court, shall forward to the director of revenue the order of suspension or revocation of driving privileges and any licenses acquired under subsection 2 of this section.

4. (1) The court, if a juvenile court, shall forward to the director of revenue the order of suspension or revocation of driving privileges and any licenses acquired under subsection 2 of this section for any person sixteen years of age or older, the provision of chapter 211, RSMo, to the contrary notwithstanding.

(2) The court, if a juvenile court, shall hold the order of suspension or revocation of driving privileges for any person less than sixteen years of age until thirty days before the person's sixteenth birthday, at which time the juvenile court shall forward to the director of revenue the order of suspension or revocation of driving privileges, the provision of chapter 211, RSMo, to the contrary notwithstanding.

5. **Except as provided in subsection 6 of this section,** the period of suspension for a first offense under this section shall be ninety days. Any second or subsequent offense under this section shall result in revocation of the offender's driving privileges for one year.

6. **For a person between the ages of sixteen and twenty-one, the period of suspension for a first offense under subdivisions (1) and (2) of subsection 1 shall be two years. For a person between the ages of sixteen and twenty-one, any second or subsequent offense under subdivisions (1) and (2) of subsection 1 shall result in revocation of the offender's driving privileges for four years.**