

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 37, 322, 78, 351 & 424

93RD GENERAL ASSEMBLY

2005

0041L.10T

AN ACT

To repeal sections 302.060, 302.321, 302.541, 311.310, 565.024, 568.050, 577.001, 577.023, and 577.500, RSMo, and to enact in lieu thereof eleven new sections relating to alcohol related offenses, with penalty provisions.

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

Section A. Sections 302.060, 302.321, 302.541, 311.310, 565.024, 568.050, 577.001, 577.023, and 577.500, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 302.060, 302.309, 302.321, 302.541, 311.310, 565.022, 565.024, 568.050, 577.001, 577.023, and 577.500, to read as follows:

302.060. The director shall not issue any license and shall immediately deny any driving privilege:

(1) To any person who is under the age of eighteen years, if such person operates a motor vehicle in the transportation of persons or property as classified in section 302.015;

(2) To any person who is under the age of sixteen years, except as hereinafter provided;

(3) To any person whose license has been suspended, during such suspension, or to any person whose license has been revoked, until the expiration

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

of one year after such license was revoked;

(4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;

(5) To any person who has previously been adjudged to be incapacitated and who at the time of application has not been restored to partial capacity;

(6) To any person who, when required by this law to take an examination, has failed to pass such examination;

(7) To any person who has an unsatisfied judgment against such person, as defined in chapter 303, RSMo, until such judgment has been satisfied or the financial responsibility of such person, as defined in section 303.120, RSMo, has been established;

(8) To any person whose application shows that the person has been convicted within one year prior to such application of violating the laws of this state relating to failure to stop after an accident and to disclose the person's identity or driving a motor vehicle without the owner's consent;

(9) To any person who has been convicted more than twice of violating state law, or a county or municipal ordinance where [the judge in such cases was an attorney and] the defendant was represented by or waived the right to an attorney in writing, relating to driving while intoxicated; except that, after the expiration of ten years from the date of conviction of the last offense of violating such law or ordinance relating to driving while intoxicated, a person who was so convicted may petition the circuit court of the county in which such last conviction was rendered and the court shall review the person's habits and conduct since such conviction. If the court finds that the petitioner has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding ten years and that the petitioner's habits and conduct show such petitioner to no longer pose a threat to the public safety of this state, the court may order the director to issue a license to the petitioner if the petitioner is otherwise qualified pursuant to the provisions of sections 302.010 to 302.540. No person may obtain a license pursuant to the provisions of this subdivision through court action more than one time;

(10) To any person who has been convicted twice within a five-year period of violating state law, or a county or municipal ordinance where [the judge in such cases was an attorney and] the defendant was represented by or waived the right to an attorney in writing, of driving while intoxicated, or who has been convicted of the crime of involuntary manslaughter while operating a motor

vehicle in an intoxicated condition. The director shall not issue a license to such person for five years from the date such person was convicted for involuntary manslaughter while operating a motor vehicle in an intoxicated condition or for driving while intoxicated for the second time. Any person who has been denied a license for two convictions of driving while intoxicated prior to July 27, 1989, shall have the person's license issued, upon application, unless the two convictions occurred within a five-year period, in which case, no license shall be issued to the person for five years from the date of the second conviction;

(11) To any person who is otherwise disqualified pursuant to the provisions of sections 302.010 to 302.780, chapter 303, RSMo, or section 544.046, RSMo;

(12) To any person who is under the age of eighteen years, if such person's parents or legal guardians file a certified document with the department of revenue stating that the director shall not issue such person a driver's license. Each document filed by the person's parents or legal guardians shall be made upon a form furnished by the director and shall include identifying information of the person for whom the parents or legal guardians are denying the driver's license. The document shall also contain identifying information of the person's parents or legal guardians. The document shall be certified by the parents or legal guardians to be true and correct. This provision shall not apply to any person who is legally emancipated. The parents or legal guardians may later file an additional document with the department of revenue which reinstates the person's ability to receive a driver's license.

302.321. 1. A person commits the crime of driving while revoked if [he] **such person** operates a motor vehicle on a highway when [his] **such person's** license or driving privilege has been canceled, suspended or revoked under the laws of this state or any other state and acts with criminal negligence with respect to knowledge of the fact that [his] **such person's** driving privilege has been canceled, suspended or revoked.

2. Any person convicted of driving while revoked is guilty of a class A misdemeanor. Any person with no prior alcohol-related enforcement contacts as defined in section 302.525, convicted a fourth or subsequent time of driving while revoked or a county or municipal ordinance of driving while suspended or revoked where [the judge in such case was an attorney and] the defendant was represented by or waived the right to an attorney in writing, and where the prior three driving-while-revoked offenses occurred within ten years of the date of

occurrence of the present offense and where the person received and served a sentence of ten days or more on such previous offenses; and any person with a prior alcohol-related enforcement contact as defined in section 302.525, convicted a third or subsequent time of driving while revoked or a county or municipal ordinance of driving while suspended or revoked where [the judge in such case was an attorney and] the defendant was represented by or waived the right to an attorney in writing, and where the prior two driving-while-revoked offenses occurred within ten years of the date of occurrence of the present offense and where the person received and served a sentence of ten days or more on such previous offenses is guilty of a class D felony. No court shall suspend the imposition of sentence as to such a person nor sentence such person to pay a fine in lieu of a term of imprisonment, nor shall such person be eligible for parole or probation until [he] **such person** has served a minimum of forty-eight consecutive hours of imprisonment, unless as a condition of such parole or probation, such person performs at least ten days involving at least forty hours of community service under the supervision of the court in those jurisdictions which have a recognized program for community service. Driving while revoked is a class D felony on the second or subsequent conviction pursuant to section 577.010, RSMo, or a fourth or subsequent conviction for any other offense.

302.541. 1. In addition to other fees required by law, any person who has had a license to operate a motor vehicle suspended or revoked following a determination, pursuant to section 302.505, or section 577.010, 577.012, 577.041 or 577.510, RSMo, or any 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, that such person was driving while intoxicated or with a blood alcohol content of eight-hundredths of one percent or more by weight or, where such person was at the time of the arrest less than twenty-one years of age and was driving with a blood alcohol content of two-hundredths of one percent or more by weight, shall pay an additional fee of twenty-five dollars prior to the reinstatement or reissuance of the license.

2. Any person less than twenty-one years of age whose driving privilege has been suspended or revoked solely for a first determination pursuant to sections 302.500 to 302.540 that such person was driving a motor vehicle with two-hundredths of one percent or more blood alcohol content is exempt from filing proof of financial responsibility with the department of revenue in accordance with chapter 303, RSMo, as a prerequisite for reinstatement of driving privileges

or obtaining a restricted driving privilege as provided by section 302.525.

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 intoxicating liquor or knowingly failing to stop a person under the age of twenty-one from drinking or possessing intoxicating liquor on such property, unless such person allowing the person under the age of twenty-one to drink or possess intoxicating liquor is his or her parent or guardian. A person who violates the provisions of this subsection is guilty of a class A misdemeanor.

565.024. **1.** A person commits the crime of involuntary manslaughter in the first degree if he:

(1) Recklessly causes the death of another person; or

(2) While in an intoxicated condition operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause the death of any person.

2. Except as provided in subsections 3 and 4 of this section, involuntary manslaughter in the first degree is a class C felony.

3. A person commits the crime of involuntary manslaughter in the first degree if he or she, while in an intoxicated condition operates a motor vehicle in this state, and, when so operating, acts with criminal

negligence to:

(1) Cause the death of any person not a passenger in the vehicle operated by the defendant, including the death of an individual that results from the defendant's vehicle leaving a highway, as defined by section 301.010, RSMo, or the highway's right-of-way; or

(2) Cause the death of two or more persons; or

(3) Cause the death of any person while he or she has a blood alcohol content of at least eighteen-hundredths by weight of alcohol in such person's blood.

4. Involuntary manslaughter in the first degree under subdivisions (1), (2), or (3) of subsection 3 of this section is a class B felony. A second or subsequent violation of subdivision (3) of subsection 3 of this section is a class A felony. For any violation of subsection 3 of this section, the minimum prison term which the defendant must serve shall be eighty-five percent of his or her sentence.

5. A person commits the crime of involuntary manslaughter in the second degree if he acts with criminal negligence to cause the death of any person.

[4.] 6. Involuntary manslaughter in the second degree is a class D felony.

568.050. 1. A person commits the crime of endangering the welfare of a child in the second degree if:

(1) He **or she** with criminal negligence acts in a manner that creates a substantial risk to the life, body or health of a child less than seventeen years old; or

(2) He **or she** knowingly encourages, aids or causes a child less than seventeen years old to engage in any conduct which causes or tends to cause the child to come within the provisions of paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031, RSMo; or

(3) Being a parent, guardian or other person legally charged with the care or custody of a child less than seventeen years old, he **or she** recklessly fails or refuses to exercise reasonable diligence in the care or control of such child to prevent him from coming within the provisions of paragraph (c) of subdivision (1) of subsection 1 or paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031, RSMo; or

(4) He **or she** knowingly encourages, aids or causes a child less than seventeen years of age to enter into any room, building or other structure which is a public nuisance as defined in section 195.130, RSMo; or

(5) The person operates a vehicle in violation of section 565.024, 565.060, 577.010, or 577.012, RSMo, while a child less than seventeen years of age is present in the vehicle.

2. Nothing in this section shall be construed to mean the welfare of a child is endangered for the sole reason that he **or she** is being provided nonmedical remedial treatment recognized and permitted under the laws of this state.

3. Endangering the welfare of a child in the second degree is a class A misdemeanor unless the offense is committed as part of a ritual or ceremony, in which case the crime is a class D felony.

577.001. 1. **As used in this chapter, the term "court" means any circuit, associate circuit, or municipal court, including traffic court, but not any juvenile court or drug court.**

2. As used in this chapter, the term "drive", "driving", "operates" or "operating" means physically driving or operating a motor vehicle.

[2.] 3. As used in this chapter, a person is in an "intoxicated condition" when he is under the influence of alcohol, a controlled substance, or drug, or any combination thereof.

[3.] 4. As used in this chapter, the term "law enforcement officer" or "arresting officer" includes the definition of law enforcement officer in subdivision (17) of section 556.061, RSMo, and military policemen conducting traffic enforcement operations on a federal military installation under military jurisdiction in the state of Missouri.

[4.] 5. As used in this chapter, "substance abuse traffic offender program" means a program certified by the division of alcohol and drug abuse of the department of mental health to provide education or rehabilitation services pursuant to a professional assessment screening to identify the individual needs of the person who has been referred to the program as the result of an alcohol or drug related traffic offense. Successful completion of such a program includes participation in any education or rehabilitation program required to meet the needs identified in the assessment screening. The assignment recommendations based upon such assessment shall be subject to judicial review as provided in subsection 7 of section 577.041.

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

(1) An **"aggravated offender" is a person who has pleaded guilty to or been found guilty of three or more intoxication-related traffic**

offenses or a person who has pleaded guilty to or has been found guilty of involuntary manslaughter under section 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related offense; assault in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo; and in addition, one other intoxication-related traffic offense;

(2) A "chronic offender" is:

(a) A person who has pleaded guilty to or has been found guilty of four or more intoxication-related traffic offenses;

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

(c) A person who has pleaded guilty to or been found guilty of involuntary manslaughter under section 565.024, RSMo, assault in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo, or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo, and in addition, two or more intoxication-related traffic offenses;

(3) An "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter pursuant to [subdivision (2) of subsection 1 of] section 565.024, RSMo, **murder in the second degree pursuant to section 565.021, RSMo, where the underlying felony is an intoxication-related offense**, 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)] (4) 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)]~~ **(5)** 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 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. 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. **Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be an aggravated offender shall be guilty of a class C felony.**

5. **Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be a chronic offender shall be guilty of a class B felony.**

6. No **state, county, or municipal** court shall suspend the imposition of sentence as to a prior **offender**, [or] persistent offender, **aggravated offender, or chronic 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. No prior offender shall be eligible for parole or probation until he has served a minimum of five days imprisonment, unless as a condition of such parole or probation such person performs at least 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. **No aggravated offender shall be eligible for parole or probation until he or she has served a minimum of sixty days imprisonment. No chronic offender shall be eligible for parole or probation until he or she has served a minimum of two years imprisonment.**

[5.] **7.** The **state, county, or municipal** court shall find the defendant to be a prior offender [or], persistent offender, **aggravated offender, or chronic 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 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 offender, **aggravated offender, or chronic 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 offender, **aggravated offender, or chronic offender**.

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

[7.] **9.** 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.] **10.** The defendant shall be accorded full rights of confrontation and cross-examination, with the opportunity to present evidence, at such hearings.

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

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

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

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

[13.] **15.** 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 offenders, **aggravated offenders, or chronic offenders**.

[14.] **16.** 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.

577.500. 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. 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.

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