

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 747 & 736

94TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 7, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3364S.03C

AN ACT

To repeal sections 160.545, 311.310, 311.325, 577.021, 577.500, and 578.255, RSMo, and to enact in lieu thereof seven 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 160.545, 311.310, 311.325, 577.021, and 577.500, and
2 578.255, RSMo, are repealed and seven new sections enacted in lieu thereof, to
3 be known as sections 160.545, 167.628, 311.310, 311.325, 577.021, 577.500, and
4 578.255, to read as follows:

160.545. 1. There is hereby established within the department of
2 elementary and secondary education the "A+ Schools Program" to be administered
3 by the commissioner of education. The program shall consist of grant awards
4 made to public secondary schools that demonstrate a commitment to ensure that:

5 (1) All students be graduated from school;
6 (2) All students complete a selection of high school studies that is
7 challenging and for which there are identified learning expectations; and
8 (3) All students proceed from high school graduation to a college or
9 postsecondary vocational or technical school or high-wage job with work place
10 skill development opportunities.

11 2. The state board of education shall promulgate rules and regulations for
12 the approval of grants made under the program to schools that:

13 (1) Establish measurable districtwide performance standards for the goals
14 of the program outlined in subsection 1 of this section; and
15 (2) Specify the knowledge, skills and competencies, in measurable terms,

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

16 that students must demonstrate to successfully complete any individual course
17 offered by the school, and any course of studies which will qualify a student for
18 graduation from the school; and

19 (3) Do not offer a general track of courses that, upon completion, can lead
20 to a high school diploma; and

21 (4) Require rigorous coursework with standards of competency in basic
22 academic subjects for students pursuing vocational and technical education as
23 prescribed by rule and regulation of the state board of education; and

24 (5) Have a partnership plan developed in cooperation and with the advice
25 of local business persons, labor leaders, parents, and representatives of college
26 and postsecondary vocational and technical school representatives, with the plan
27 then approved by the local board of education. The plan shall specify a
28 mechanism to receive information on an annual basis from those who developed
29 the plan in addition to senior citizens, community leaders, and teachers to update
30 the plan in order to best meet the goals of the program as provided in subsection
31 1 of this section. Further, the plan shall detail the procedures used in the school
32 to identify students that may drop out of school and the intervention services to
33 be used to meet the needs of such students. The plan shall outline counseling
34 and mentoring services provided to students who will enter the work force upon
35 graduation from high school, address apprenticeship and intern programs, and
36 shall contain procedures for the recruitment of volunteers from the community
37 of the school to serve in schools receiving program grants.

38 3. By rule and regulation, the state board of education may determine a
39 local school district variable fund match requirement in order for a school or
40 schools in the district to receive a grant under the program. However, no school
41 in any district shall receive a grant under the program unless the district
42 designates a salaried employee to serve as the program coordinator, with the
43 district assuming a minimum of one-half the cost of the salary and other benefits
44 provided to the coordinator. Further, no school in any district shall receive a
45 grant under the program unless the district makes available facilities and
46 services for adult literacy training as specified by rule of the state board of
47 education.

48 4. For any school that meets the requirements for the approval of the
49 grants authorized by this section and specified in subsection 2 of this section for
50 three successive school years, by August first following the third such school year,
51 the commissioner of education shall present a plan to the superintendent of the

52 school district in which such school is located for the waiver of rules and
53 regulations to promote flexibility in the operations of the school and to enhance
54 and encourage efficiency in the delivery of instructional services in the
55 school. The provisions of other law to the contrary notwithstanding, the plan
56 presented to the superintendent shall provide a summary waiver, with no
57 conditions, for the pupil testing requirements pursuant to section 160.257 in the
58 school. Further, the provisions of other law to the contrary notwithstanding, the
59 plan shall detail a means for the waiver of requirements otherwise imposed on
60 the school related to the authority of the state board of education to classify
61 school districts pursuant to subdivision (9) of section 161.092, RSMo, and such
62 other rules and regulations as determined by the commissioner of education,
63 except such waivers shall be confined to the school and not other schools in the
64 school district unless such other schools meet the requirements of this
65 subsection. However, any waiver provided to any school as outlined in this
66 subsection shall be void on June thirtieth of any school year in which the school
67 fails to meet the requirements for the approval of the grants authorized by this
68 section as specified in subsection 2 of this section.

69 5. For any school year, grants authorized by subsections 1 to 3 of this
70 section shall be funded with the amount appropriated for this program, less those
71 funds necessary to reimburse eligible students pursuant to subsection 6 of this
72 section.

73 6. The commissioner of education shall, by rule and regulation of the state
74 board of education and with the advice of the coordinating board for higher
75 education, establish a procedure for the reimbursement of the cost of tuition,
76 books and fees to any public community college or vocational or technical school
77 for any student:

78 (1) Who has attended a public high school in the state for at least three
79 years immediately prior to graduation that meets the requirements of subsection
80 2 of this section, except that students who are active duty military dependents
81 who, in the school year immediately preceding graduation, meet all other
82 requirements of this subsection and are attending a school that meets the
83 requirements of subsection 2 of this section shall be exempt from the three-year
84 attendance requirement of this subdivision; and

85 (2) Who has made a good faith effort to first secure all available federal
86 sources of funding that could be applied to the reimbursement described in this
87 subsection; and

88 (3) Who has earned a minimal grade average while in high school as
89 determined by rule of the state board of education, and other requirements for the
90 reimbursement authorized by this subsection as determined by rule and
91 regulation of said board.

92 **7. Any person who pleads guilty to, is found guilty of, or is**
93 **adjudicated for violating section 311.325, RSMo, as a third offense shall**
94 **not be eligible for initial or continual reimbursement under subsection**
95 **6 of this section.**

96 **8.** The commissioner of education shall develop a procedure for evaluating
97 the effectiveness of the program described in this section. Such evaluation shall
98 be conducted annually with the results of the evaluation provided to the governor,
99 speaker of the house, and president pro tempore of the senate.

167.628. 1. The board of education of any school district may
2 **adopt a policy for the random testing of the district's students in**
3 **grades nine to twelve who participate in interscholastic athletics for**
4 **the unlawful use of controlled substances, as the term "controlled**
5 **substances" is defined in section 195.010, RSMo, including but not**
6 **limited to anabolic steroids.**

7 **2. The Missouri state high school activities association, or any**
8 **successor organization, shall conduct random testing of students in**
9 **grades nine to twelve who participate in post-season athletic play or**
10 **athletic tournaments and shall pay for the costs of such testing. Such**
11 **testing shall be done on a statistically significant sampling of such**
12 **students. The Missouri state high school activities association shall**
13 **develop a list of substances for which to test, including but not limited**
14 **to anabolic steroids. Testing shall be conducted by means of a urine**
15 **sample. Each urine sample shall be split into an "A" sample and a "B"**
16 **sample. If the "A" sample yields a positive test for a controlled**
17 **substance, the Missouri state high school activities association shall**
18 **notify the student's parents or guardian. The parents or guardian may**
19 **then have the "B" sample tested. No result shall be considered positive**
20 **unless both samples test positive. A licensed physician selected by the**
21 **Missouri state high school activities association shall review any**
22 **positive results to confirm that no proper medical reason exists for**
23 **such positive result. Results shall be confidential except as otherwise**
24 **provided in this section.**

25 **3. A student who tests positive under subsection 2 of this section**

26 **may appeal the positive result to a panel consisting of two members of**
27 **the Missouri state high school activities association executive staff and**
28 **a licensed physician.**

29 **4. Any student participating in interscholastic athletics or post-**
30 **season athletic play or athletic tournaments shall provide written**
31 **consent to random testing for the unlawful use of controlled**
32 **substances. The student's parent or guardian shall also provide written**
33 **consent to testing.**

34 **5. Any student who tests positive for unlawful use of a controlled**
35 **substance or anabolic steroid shall not be allowed to participate in**
36 **interscholastic athletics or intramural sports. The Missouri state high**
37 **school activities association shall report a positive test to the local**
38 **prosecuting attorney in the jurisdiction where the student resides.**

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

16 2. Any owner, occupant, or other person or legal entity with a lawful right
17 to the exclusive use and enjoyment of any property who knowingly allows a
18 person under the age of twenty-one to drink or possess intoxicating liquor or
19 knowingly fails to stop a person under the age of twenty-one from drinking or
20 possessing intoxicating liquor on such property, unless such person allowing the
21 person under the age of twenty-one to drink or possess intoxicating liquor is his
22 or her parent or guardian, is guilty of a class B misdemeanor. Any second or
23 subsequent violation of this subsection is a class A misdemeanor.

24 3. Any person who pleads guilty to or is found guilty of a
25 violation of this section for:

26 (1) Procuring, selling, giving away, or otherwise supplying
27 intoxicating liquor to any person under the age of twenty-one years of
28 age;

29 (2) Knowingly allowing a person under the age of twenty-one
30 years of age to drink or possess intoxicating liquor on property as
31 described in subsection 2 of this section; or

32 (3) Knowingly failing to stop a person under the age of twenty-
33 one from drinking or possessing intoxicating liquor on property as
34 described under subsection 2 of this section;
35 may be subject to a claim by the parent or legal guardian of the person
36 under the age of twenty-one for any resulting damages suffered by the
37 person under the age of twenty-one.

38 4. It shall be a defense to prosecution under this section if:

39 (1) The defendant is a licensed retailer, club, drinking establishment, or
40 caterer or holds a temporary permit, or an employee thereof;

41 (2) The defendant sold the intoxicating liquor to the minor with
42 reasonable cause to believe that the minor was twenty-one or more years of age;
43 and

44 (3) To purchase the intoxicating liquor, the person exhibited to the
45 defendant a driver's license, Missouri nondriver's identification card, or other
46 official or apparently official document, containing a photograph of the minor and
47 purporting to establish that such minor was twenty-one years of age and of the
48 legal age for consumption of intoxicating liquor.

311.325. 1. Any person under the age of twenty-one years, who purchases
2 or attempts to purchase, or has in his or her possession, any intoxicating liquor
3 as defined in section 311.020 or who is visibly intoxicated as defined in section
4 577.001, RSMo, or has a detectable blood alcohol content of more than
5 two-hundredths of one percent or more by weight of alcohol in such person's blood
6 is guilty of a misdemeanor. For purposes of prosecution under this section or any
7 other provision of this chapter involving an alleged illegal sale or transfer of
8 intoxicating liquor to a person under twenty-one years of age, a
9 manufacturer-sealed container describing that there is intoxicating liquor therein
10 need not be opened or the contents therein tested to verify that there is
11 intoxicating liquor in such container. The alleged violator may allege that there

12 was not intoxicating liquor in such container, but the burden of proof of such
13 allegation is on such person, as it shall be presumed that such a sealed container
14 describing that there is intoxicating liquor therein contains intoxicating liquor.

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

23 3. The provisions of this section shall not apply to a student who:

24 (1) Is eighteen years of age or older;

25 (2) Is enrolled in an accredited college or university and is a student in
26 a culinary course;

27 (3) Is required to taste, but not consume or imbibe, any beer, ale, porter,
28 wine, or other similar malt or fermented beverage as part of the required
29 curriculum; and

30 (4) Tastes a beverage under subdivision (3) of this subsection only for
31 instructional purposes during classes that are part of the curriculum of the
32 accredited college or university.

33 The beverage must at all times remain in the possession and control of an
34 authorized instructor of the college or university, who must be twenty-one years
35 of age or older. Nothing in this subsection may be construed to allow a student
36 under the age of twenty-one to receive any beer, ale, porter, wine, or other similar
37 malt or fermented beverage unless the beverage is delivered as part of the
38 student's required curriculum and the beverage is used only for instructional
39 purposes during classes conducted as part of the curriculum.

40 **4. Any peace officer, as defined in section 590.010, RSMo, who**
41 **believes that a person less than twenty-one years of age is in violation**
42 **of this section by being intoxicated, may request that such person**
43 **submit to a chemical test prescribed under section 577.021, RSMo. Any**
44 **person less than twenty-one years of age who refuses, upon the request**
45 **of the peace officer, to submit to such chemical test to determine his or**
46 **her blood alcohol content shall be deemed visibly intoxicated for the**
47 **purposes of this section.**

48 **5. As of August 28, 2008, the clerks of the courts shall forward a**
49 **copy of the judgement and date of birth of any person who is convicted**
50 **of, pleads guilty or nolo contendere to, is found guilty of, or is**
51 **adjudicated for violating section 311.325. The information shall be**
52 **forwarded to the highway patrol within twenty days of the date of**
53 **judgement. The highway patrol shall enter the information into the**
54 **Missouri uniform laws enforcement system (MULES) where it is**
55 **available to members of the criminal justice system, and other entities**
56 **as provided by law, upon request. No record or information shall be**
57 **made public in violation of chapter 610, RSMo.**

577.021. 1. Any state, county or municipal law enforcement officer who
2 has the power of arrest for violations of section **311.325, RSMo, section** 577.010,
3 or **section** 577.012 and who is certified pursuant to chapter 590, RSMo, may,
4 prior to arrest, administer a chemical test to any person suspected of operating
5 a motor vehicle in violation of section 577.010 or 577.012 **or any person**
6 **suspected of being intoxicated in violation of section 311.325, RSMo.**

7 2. Any state, county, or municipal law enforcement officer who has the
8 power of arrest for violations of section 577.010 or 577.012 and who is certified
9 under chapter 590, RSMo, shall make all reasonable efforts to administer a
10 chemical test to any person suspected of driving a motor vehicle involved in a
11 collision which resulted in a fatality or serious physical injury as defined in
12 section 565.002, RSMo.

13 3. A test administered pursuant to this section shall be admissible as
14 evidence of probable cause to arrest and as exculpatory evidence, but shall not be
15 admissible as evidence of blood alcohol content. The provisions of sections
16 577.019 and 577.020 shall not apply to a test administered prior to arrest
17 pursuant to this section.

18 [The provisions changing chapter 577 are severable from this legislation. The
19 general assembly would have enacted the remainder of this legislation without
20 the changes made to chapter 577, and the remainder of the legislation is not
21 essentially and inseparably connected with or dependent upon the changes to
22 chapter 577.]

577.500. 1. A court of competent jurisdiction shall, upon a plea of guilty,
2 conviction or finding of guilt, or, if the court is a juvenile court, upon a finding of
3 fact that the offense was committed by a juvenile, enter an order suspending or
4 revoking the driving privileges of any person determined to have committed one

5 of the following offenses and who, at the time said offense was committed, was
6 under twenty-one years of age:

7 (1) Any alcohol-related traffic offense in violation of state law or a county
8 or, beginning July 1, 1992, municipal ordinance, where the defendant was
9 represented by or waived the right to an attorney in writing;

10 (2) Any offense in violation of state law or, beginning July 1, 1992, a
11 county or municipal ordinance, where the defendant was represented by or
12 waived the right to an attorney in writing, involving the possession or use of
13 alcohol, committed while operating a motor vehicle;

14 (3) Any offense involving the possession or use of a controlled substance
15 as defined in chapter 195, RSMo, in violation of the state law or, beginning July
16 1, 1992, a county or municipal ordinance, where the defendant was represented
17 by or waived the right to an attorney in writing;

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

20 (5) Any offense in violation of state law or, beginning July 1, 1992, a
21 county or municipal ordinance, where the defendant was represented by or
22 waived the right to an attorney in writing, involving the possession or use of
23 alcohol for a second time; except that a determination of guilt or its equivalent
24 shall have been made for the first offense and both offenses shall have been
25 committed by the person when the person was under eighteen years of age.

26 2. A court of competent jurisdiction shall, upon a plea of guilty or nolo
27 contendere, conviction or finding of guilt, or, if the court is a juvenile court, upon
28 a finding of fact that the offense was committed by a juvenile, enter an order
29 suspending or revoking the driving privileges of any person determined to have
30 committed a crime or violation of section 311.325, RSMo, and who, at the time
31 said crime or violation was committed, was more than fifteen years of age and
32 under twenty-one years of age.

33 3. The court shall require the surrender to it of any license to operate a
34 motor vehicle, temporary instruction permit, intermediate driver's license or any
35 other driving privilege then held by any person against whom a court has entered
36 an order suspending or revoking driving privileges under subsections 1 and 2 of
37 this section.

38 4. The court, if other than a juvenile court, shall forward to the director
39 of revenue the order of suspension or revocation of driving privileges and any
40 licenses, temporary instruction permits, intermediate driver's licenses, or any

41 other driving privilege acquired under subsection 3 of this section.

42 5. (1) The court, if a juvenile court, shall forward to the director of
43 revenue the order of suspension or revocation of driving privileges and any
44 licenses, temporary instruction permits, intermediate driver's licenses, or any
45 other driving privilege acquired under subsection 3 of this section for any person
46 sixteen years of age or older, the provision of chapter 211, RSMo, to the contrary
47 notwithstanding.

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

54 6. The period of suspension for a first offense under subsection 1 of this
55 section shall be ninety days. Any second or subsequent offense under subsection
56 1 of this section shall result in revocation of the offender's driving privileges for
57 one year. The period of suspension for a first offense under subsection 2 of this
58 section shall be thirty days. The period of suspension for a second offense under
59 subsection 2 of this section shall be ninety days. Any third or subsequent offense
60 under subsection 2 of this section shall result in revocation of the offender's
61 driving privileges for one year. **The suspension of driving privileges for a**
62 **first offense under this subsection shall not be included on the person's**
63 **driving record. However, internal use of such information by the**
64 **department of revenue for administrative purposes shall be allowed.**

578.255. 1. As used in this section "alcohol beverage vaporizer"
2 **means any device which, by means of heat, a vibrating element, or any**
3 **other method, is capable of producing a breathable mixture containing**
4 **one or more alcoholic beverages to be dispensed for inhalation into the**
5 **lungs via the nose or mouth or both.**

6 2. No person shall intentionally or willfully induce the symptoms of
7 intoxication, elation, euphoria, dizziness, excitement, irrational behavior,
8 exhilaration, paralysis, stupefaction, or dulling of the senses or nervous system,
9 distortion of audio, visual or mental processes by the use of any [solvent,
10 particularly toluol] **of the following substances:**

11 **(1) Solvents, particularly toluol; or**

12 **(2) Ethyl alcohol.**

13 **3. This section shall not apply to substances that have been**
14 **approved by the United States Food and Drug Administration as**
15 **therapeutic drug products or are contained in approved over-the-**
16 **counter drug products or administered lawfully pursuant to the order**
17 **of an authorized medical practitioner.**

18 **[2.] 4. No person shall intentionally possess any solvent, particularly**
19 **toluol, for the purpose of using it in the manner prohibited by section 578.250 and**
20 **this section.**

21 **5. No person shall possess or use an alcoholic beverage**
22 **vaporizer.**

23 **6. Nothing in this section shall be construed to prohibit the legal**
24 **consumption of intoxicating liquor, as defined by section 311.020,**
25 **RSMo, or nonintoxicating beer, as defined by section 312.010, RSMo.**

✓

Bill

Copy