

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 254
96TH GENERAL ASSEMBLY

Reported from the Committee on Transportation, March 3, 2011, with recommendation that the Senate Committee Substitute do pass.

1491S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 302.309 and 577.023, RSMo, and to enact in lieu thereof two new sections relating to intoxicated-related traffic offenses, with existing penalty provisions.

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

Section A. Sections 302.309 and 577.023, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 302.309 and 577.023, to read as follows:

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.

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, the director of revenue, or a commissioner operating under section 478.007 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.

13. (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:

16. (a) A business, occupation, or employment;

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

17 (b) [Seeking medical treatment for such operator;
18 (c)] Attending school or other institution of higher education;
19 [(d)] **(e)** Attending alcohol or drug treatment programs; **or**
20 [(e)] **(d)** Seeking the required services of a certified ignition interlock
21 device provider; **[or**

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

47 (4) No limited driving privilege shall be issued to any person otherwise
48 eligible under the provisions of paragraph (a) of subdivision (6) of this subsection
49 on a license revocation resulting from a conviction under subdivision (9) of
50 subsection 1 of section 302.302, or a license denial under paragraph (a) or (b) of
51 subdivision (8) of this subsection, until the applicant has filed proof with the
52 department of revenue that any motor vehicle operated by the person is equipped

53 with a functioning, certified ignition interlock device as a required condition of
54 limited driving privilege.

55 (5) The court order or the director's grant of the limited or restricted
56 driving privilege shall indicate the termination date of the privilege, which shall
57 be not later than the end of the period of suspension or revocation. A copy of any
58 court order shall be sent by the clerk of the court to the director, and a copy shall
59 be given to the driver which shall be carried by the driver whenever such driver
60 operates a motor vehicle. The director of revenue upon granting a limited driving
61 privilege shall give a copy of the limited driving privilege to the applicant. The
62 applicant shall carry a copy of the limited driving privilege while operating a
63 motor vehicle. A conviction which results in the assessment of points pursuant
64 to section 302.302, other than a violation of a municipal stop sign ordinance
65 where no accident is involved, against a driver who is operating a vehicle
66 pursuant to a limited driving privilege terminates the privilege, as of the date the
67 points are assessed to the person's driving record. If the date of arrest is prior
68 to the issuance of the limited driving privilege, the privilege shall not be
69 terminated. Failure of the driver to maintain proof of financial responsibility, as
70 required by chapter 303, or to maintain proof of installation of a functioning,
71 certified ignition interlock device, as applicable, shall terminate the
72 privilege. The director shall notify by ordinary mail the driver whose privilege
73 is so terminated.

74 (6) Except as provided in subdivision (8) of this subsection, no person is
75 eligible to receive a limited driving privilege who at the time of application for a
76 limited driving privilege has previously been granted such a privilege within the
77 immediately preceding five years, or whose license has been suspended or revoked
78 for the following reasons:

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

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

87 (c) Ineligibility for a license because of the provisions of subdivision (1),
88 (2), (4), (5), (6), (7), (8), (9), (10) or (11) of section 302.060;

89 (d) Because of operating a motor vehicle under the influence of narcotic
90 drugs, a controlled substance as defined in chapter 195, or having left the scene
91 of an accident as provided in section 577.060;

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

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

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

103 (7) No person who possesses a commercial driver's license shall receive a
104 limited driving privilege issued for the purpose of operating a commercial motor
105 vehicle if such person's driving privilege is suspended, revoked, canceled, denied,
106 or disqualified. Nothing in this section shall prohibit the issuance of a limited
107 driving privilege for the purpose of operating a noncommercial motor vehicle
108 provided that pursuant to the provisions of this section, the applicant is not
109 otherwise ineligible for a limited driving privilege.

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

122 (b) Provided that pursuant to the provisions of this section, the applicant
123 is not otherwise ineligible for a limited driving privilege or convicted of
124 involuntary manslaughter while operating a motor vehicle in an intoxicated

125 condition, a circuit court or the director may, in the manner prescribed in this
126 subsection, allow a person who has had such person's license to operate a motor
127 vehicle revoked where that person cannot obtain a new license for a period of five
128 years because of two convictions of driving while intoxicated, as prescribed in
129 subdivision (10) of section 302.060, to apply for a limited driving privilege
130 pursuant to this subsection if such person has served at least two years of such
131 disqualification or revocation. Such person shall present evidence satisfactory to
132 the court or the director that such person has not been convicted of any offense
133 related to alcohol, controlled substances or drugs during the preceding two years
134 and that the person's habits and conduct show that the person no longer poses a
135 threat to the public safety of this state. Any person who is denied a license
136 permanently in this state because of an alcohol-related conviction subsequent to
137 a restoration of such person's driving privileges pursuant to subdivision (9) of
138 section 302.060 shall not be eligible for limited driving privilege pursuant to the
139 provisions of this subdivision.

140 (9) A DWI docket or court established under section 478.007 may grant
141 a limited driving privilege to a participant in or graduate of the program who
142 would otherwise be ineligible for such privilege under another provision of
143 law. The DWI docket or court shall not grant a limited driving privilege to a
144 participant during his or her initial forty-five days of participation.

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

153 5. The director of revenue shall promulgate rules and regulations
154 necessary to carry out the provisions of this section. Any rule or portion of a rule,
155 as that term is defined in section 536.010, that is created under the authority
156 delegated in this section shall become effective only if it complies with and is
157 subject to all of the provisions of chapter 536 and, if applicable, section
158 536.028. This section and chapter 536 are nonseverable and if any of the powers
159 vested with the general assembly pursuant to chapter 536 to review, to delay the
160 effective date or to disapprove and annul a rule are subsequently held

161 unconstitutional, then the grant of rulemaking authority and any rule proposed
162 or adopted after August 28, 2001, shall be invalid and void.

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

3 (1) An "aggravated offender" is a person who:

4 (a) Has pleaded guilty to or has been found guilty of three or more
5 intoxication-related traffic offenses; or

6 (b) Has pleaded guilty to or has been found guilty of one or more
7 intoxication-related traffic offense and, in addition, any of the following:
8 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section
9 565.024; murder in the second degree under section 565.021, where the
10 underlying felony is an intoxication-related traffic offense; or assault in the
11 second degree under subdivision (4) of subsection 1 of section 565.060; or assault
12 of a law enforcement officer in the second degree under subdivision (4) of
13 subsection 1 of section 565.082;

14 (2) A "chronic offender" is:

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

17 (b) A person who has pleaded guilty to or has been found guilty of, on two
18 or more separate occasions, any combination of the following: involuntary
19 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024;
20 murder in the second degree under section 565.021, where the underlying felony
21 is an intoxication-related traffic offense; assault in the second degree under
22 subdivision (4) of subsection 1 of section 565.060; or assault of a law enforcement
23 officer in the second degree under subdivision (4) of subsection 1 of section
24 565.082; or

25 (c) A person who has pleaded guilty to or has been found guilty of two or
26 more intoxication-related traffic offenses and, in addition, any of the following:
27 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section
28 565.024; murder in the second degree under section 565.021, where the
29 underlying felony is an intoxication-related traffic offense; assault in the second
30 degree under subdivision (4) of subsection 1 of section 565.060; or assault of a law
31 enforcement officer in the second degree under subdivision (4) of subsection 1 of
32 section 565.082;

33 (3) "Continuous alcohol monitoring", automatically testing breath, blood,
34 or transdermal alcohol concentration levels and tampering attempts at least once

35 every hour, regardless of the location of the person who is being monitored, and
36 regularly transmitting the data. Continuous alcohol monitoring shall be
37 considered an electronic monitoring service under subsection 3 of section 217.690;

38 (4) An "intoxication-related traffic offense" is driving while intoxicated,
39 driving with excessive blood alcohol content, involuntary manslaughter pursuant
40 to subdivision (2) or (3) of subsection 1 of section 565.024, murder in the second
41 degree under section 565.021, where the underlying felony is an
42 intoxication-related traffic offense, assault in the second degree pursuant to
43 subdivision (4) of subsection 1 of section 565.060, assault of a law enforcement
44 officer in the second degree pursuant to subdivision (4) of subsection 1 of section
45 565.082, or driving under the influence of alcohol or drugs in violation of state
46 law or a county or municipal ordinance;

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

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

50 (b) A person who has pleaded guilty to or has been found guilty of
51 involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of
52 section 565.024, assault in the second degree pursuant to subdivision (4) of
53 subsection 1 of section 565.060, assault of a law enforcement officer in the second
54 degree pursuant to subdivision (4) of subsection 1 of section 565.082; and

55 (6) A "prior offender" is a person who has pleaded guilty to or has been
56 found guilty of one intoxication-related traffic offense, where such prior offense
57 occurred within five years of the occurrence of the intoxication-related traffic
58 offense for which the person is charged.

59 2. Any person who pleads guilty to or is found guilty of a violation of
60 section 577.010 or 577.012 who is alleged and proved to be a prior offender shall
61 be guilty of a class A misdemeanor.

62 3. Any person who pleads guilty to or is found guilty of a violation of
63 section 577.010 or 577.012 who is alleged and proved to be a persistent offender
64 shall be guilty of a class D felony.

65 4. Any person who pleads guilty to or is found guilty of a violation of
66 section 577.010 or section 577.012 who is alleged and proved to be an aggravated
67 offender shall be guilty of a class C felony.

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

71 6. No state, county, or municipal court shall suspend the imposition of
72 sentence as to a prior offender, persistent offender, aggravated offender, or
73 chronic offender under this section nor sentence such person to pay a fine in lieu
74 of a term of imprisonment, section 557.011 to the contrary notwithstanding.

75 (1) No prior offender shall be eligible for parole or probation until he or
76 she has served a minimum of ten days imprisonment:

77 (a) Unless as a condition of such parole or probation such person performs
78 at least thirty days of community service under the supervision of the court in
79 those jurisdictions which have a recognized program for community service; or

80 (b) The offender participates in and successfully completes a program
81 established pursuant to section 478.007 or other court-ordered treatment
82 program, if available, **and as part of either program, the offender**
performs at least thirty days of community service under the
supervision of the court.

85 (2) No persistent offender shall be eligible for parole or probation until he
86 or she has served a minimum of thirty days imprisonment:

87 (a) Unless as a condition of such parole or probation such person performs
88 at least sixty days of community service under the supervision of the court; or

89 (b) The offender participates in and successfully completes a program
90 established pursuant to section 478.007 or other court-ordered treatment
91 program, if available, **and as part of either program, the offender**
performs at least sixty days of community service under the
supervision of the court.

94 (3) No aggravated offender shall be eligible for parole or probation until
95 he or she has served a minimum of sixty days imprisonment.

96 (4) No chronic offender shall be eligible for parole or probation until he
97 or she has served a minimum of two years imprisonment. In addition to any
98 other terms or conditions of probation, the court shall consider, as a condition of
99 probation for any person who pleads guilty to or is found guilty of an
100 intoxication-related traffic offense, requiring the offender to abstain from
101 consuming or using alcohol or any products containing alcohol as demonstrated
102 by continuous alcohol monitoring or by verifiable breath alcohol testing performed
103 a minimum of four times per day as scheduled by the court for such duration as
104 determined by the court, but not less than ninety days. The court may, in
105 addition to imposing any other fine, costs, or assessments provided by law,
106 require the offender to bear any costs associated with continuous alcohol

107 monitoring or verifiable breath alcohol testing.

108 7. The state, county, or municipal court shall find the defendant to be a
109 prior offender, persistent offender, aggravated offender, or chronic offender if:

110 (1) The indictment or information, original or amended, or the information
111 in lieu of an indictment pleads all essential facts warranting a finding that the
112 defendant is a prior offender or persistent offender; and

113 (2) Evidence is introduced that establishes sufficient facts pleaded to
114 warrant a finding beyond a reasonable doubt the defendant is a prior offender,
115 persistent offender, aggravated offender, or chronic offender; and

116 (3) The court makes findings of fact that warrant a finding beyond a
117 reasonable doubt by the court that the defendant is a prior offender, persistent
118 offender, aggravated offender, or chronic offender.

119 8. In a jury trial, the facts shall be pleaded, established and found prior
120 to submission to the jury outside of its hearing.

121 9. In a trial without a jury or upon a plea of guilty, the court may defer
122 the proof in findings of such facts to a later time, but prior to sentencing.

123 10. The defendant shall be accorded full rights of confrontation and
124 cross-examination, with the opportunity to present evidence, at such hearings.

125 11. The defendant may waive proof of the facts alleged.

126 12. Nothing in this section shall prevent the use of presentence
127 investigations or commitments.

128 13. At the sentencing hearing both the state, county, or municipality and
129 the defendant shall be permitted to present additional information bearing on the
130 issue of sentence.

131 14. The pleas or findings of guilt shall be prior to the date of commission
132 of the present offense.

133 15. The court shall not instruct the jury as to the range of punishment or
134 allow the jury, upon a finding of guilt, to assess and declare the punishment as
135 part of its verdict in cases of prior offenders, persistent offenders, aggravated
136 offenders, or chronic offenders.

137 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an
138 intoxication-related traffic offense shall be heard and determined by the trial
139 court out of the hearing of the jury prior to the submission of the case to the jury,
140 and shall include but not be limited to evidence received by a search of the
141 records of the Missouri uniform law enforcement system, including criminal
142 history records from the central repository or records from the driving while

143 intoxicated tracking system (DWITS) maintained by the Missouri state highway
144 patrol, or the certified driving record maintained by the Missouri department of
145 revenue. After hearing the evidence, the court shall enter its findings thereon.
146 A plea of guilty or a finding of guilt followed by incarceration, a fine, a suspended
147 imposition of sentence, suspended execution of sentence, probation or parole or
148 any combination thereof in any intoxication-related traffic offense in a state,
149 county or municipal court or any combination thereof, shall be treated as a prior
150 plea of guilty or finding of guilt for purposes of this section.

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