

FIRST REGULAR SESSION

# SENATE BILL NO. 254

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time February 10, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1491S.011

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Section A. Sections 302.309 and 577.023, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 302.309 and 577.023, to read as follows: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

(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:

- (a) A business, occupation, or employment;
- (b) [Seeking medical treatment for such operator;

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

18 (c)] Attending school or other institution of higher education;  
19 [(d)] (c) 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.

29 (3) An operator may make application to the proper court in the county  
30 in which such operator resides or in the county in which is located the operator's  
31 principal place of business or employment. Any application for a limited driving  
32 privilege made to a circuit court shall name the director as a party defendant and  
33 shall be served upon the director prior to the grant of any limited privilege, and  
34 shall be accompanied by a copy of the applicant's driving record as certified by  
35 the director. Any applicant for a limited driving privilege shall have on file with  
36 the department of revenue proof of financial responsibility as required by chapter  
37 303. Any application by a person who transports persons or property as classified  
38 in section 302.015 may be accompanied by proof of financial responsibility as  
39 required by chapter 303, but if proof of financial responsibility does not  
40 accompany the application, or if the applicant does not have on file with the  
41 department of revenue proof of financial responsibility, the court or the director  
42 has discretion to grant the limited driving privilege to the person solely for the  
43 purpose of operating a vehicle whose owner has complied with chapter 303 for  
44 that vehicle, and the limited driving privilege must state such restriction. When  
45 operating such vehicle under such restriction the person shall carry proof that the  
46 owner has complied with chapter 303 for that vehicle.

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 days of a suspension or revocation imposed pursuant to this  
84 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 **and**

81 (b) The offender participates in and successfully completes a program  
82 established pursuant to section 478.007 or other court-ordered treatment  
83 program, if available.

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

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

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.

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

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

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



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

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

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

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

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

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

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

124 12. Nothing in this section shall prevent the use of presentence  
125 investigations or commitments.

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

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

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

135 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an  
136 intoxication-related traffic offense shall be heard and determined by the trial  
137 court out of the hearing of the jury prior to the submission of the case to the jury,  
138 and shall include but not be limited to evidence received by a search of the  
139 records of the Missouri uniform law enforcement system, including criminal  
140 history records from the central repository or records from the driving while  
141 intoxicated tracking system (DWITS) maintained by the Missouri state highway  
142 patrol, or the certified driving record maintained by the Missouri department of  
143 revenue. After hearing the evidence, the court shall enter its findings thereon.

144 A plea of guilty or a finding of guilt followed by incarceration, a fine, a suspended  
145 imposition of sentence, suspended execution of sentence, probation or parole or  
146 any combination thereof in any intoxication-related traffic offense in a state,  
147 county or municipal court or any combination thereof, shall be treated as a prior  
148 plea of guilty or finding of guilt for purposes of this section.

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