

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 254**  
96TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR STOUFFER.

Offered April 6, 2011.

Senate Substitute adopted, April 6, 2011.

Taken up for Perfection April 6, 2011. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

1491S.05P

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**AN ACT**

To repeal sections 302.309, 558.021, and 577.023, RSMo, and to enact in lieu thereof three new sections relating to intoxicated-related traffic offenses, with existing penalty provisions.

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

Section A. Sections 302.309, 558.021, and 577.023, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as sections 302.309,  
3 558.021, and 577.023, to read as follows:

302.309. 1. Whenever any license is suspended pursuant to sections  
2 302.302 to 302.309, the director of revenue shall return the license to the operator  
3 immediately upon the termination of the period of suspension and upon  
4 compliance with the requirements of chapter 303.

5 2. Any operator whose license is revoked pursuant to these sections, upon  
6 the termination of the period of revocation, shall apply for a new license in the  
7 manner prescribed by law.

8 3. (1) All circuit courts, the director of revenue, or a commissioner  
9 operating under section 478.007 shall have jurisdiction to hear applications and  
10 make eligibility determinations granting limited driving privileges. Any  
11 application may be made in writing to the director of revenue and the person's  
12 reasons for requesting the limited driving privilege shall be made therein.

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

13           (2) When any court of record having jurisdiction or the director of revenue  
14 finds that an operator is required to operate a motor vehicle in connection with  
15 any of the following:

16           (a) [A business, occupation, or] **Driving to or from the operator's**  
17 **places of** employment;

18           (b) [Seeking medical treatment for such operator;

19           (c)] Attending school or other institution of higher education;

20           [(d)] **(c)** Attending alcohol or drug treatment programs; **or**

21           [(e)] **(d)** Seeking the required services of a certified ignition interlock  
22 device provider; [or

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

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

48           (4) No limited driving privilege shall be issued to any person otherwise

49 eligible under the provisions of paragraph (a) of subdivision (6) of this subsection  
50 on a license revocation resulting from a conviction under subdivision (9) of  
51 subsection 1 of section 302.302, or a license denial under paragraph (a) or (b) of  
52 subdivision (8) of this subsection, until the applicant has filed proof with the  
53 department of revenue that any motor vehicle operated by the person is equipped  
54 with a functioning, certified ignition interlock device as a required condition of  
55 limited driving privilege.

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

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

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

85 pursuant to this chapter;

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

88 (c) Ineligibility for a license because of the provisions of subdivision (1),  
89 (2), (4), (5), (6), (7), (8), (9), (10) or (11) of section 302.060;

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

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

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

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

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

111 (8) (a) Provided that pursuant to the provisions of this section, the  
112 applicant is not otherwise ineligible for a limited driving privilege, a circuit court  
113 or the director may, in the manner prescribed in this subsection, allow a person  
114 who has had such person's license to operate a motor vehicle revoked where that  
115 person cannot obtain a new license for a period of ten years, as prescribed in  
116 subdivision (9) of section 302.060, to apply for a limited driving privilege  
117 pursuant to this subsection if such person has served at least three years of such  
118 disqualification or revocation. Such person shall present evidence satisfactory to  
119 the court or the director that such person has not been convicted of any offense  
120 related to alcohol, controlled substances or drugs during the preceding three

121 years and that the person's habits and conduct show that the person no longer  
122 poses a threat to the public safety of this state.

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

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

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

154 5. The director of revenue shall promulgate rules and regulations  
155 necessary to carry out the provisions of this section. Any rule or portion of a rule,  
156 as that term is defined in section 536.010, that is created under the authority

157 delegated in this section shall become effective only if it complies with and is  
158 subject to all of the provisions of chapter 536 and, if applicable, section  
159 536.028. This section and chapter 536 are nonseverable and if any of the powers  
160 vested with the general assembly pursuant to chapter 536 to review, to delay the  
161 effective date or to disapprove and annul a rule are subsequently held  
162 unconstitutional, then the grant of rulemaking authority and any rule proposed  
163 or adopted after August 28, 2001, shall be invalid and void.

558.021. 1. The court shall find the defendant to be a prior offender,  
2 persistent offender, dangerous offender, persistent sexual offender or predatory  
3 sexual offender if:

4 (1) The indictment or information, original or amended, or the information  
5 in lieu of an indictment pleads all essential facts warranting a finding that the  
6 defendant is a prior offender, persistent offender, dangerous offender, persistent  
7 sexual offender or predatory sexual offender; and

8 (2) Evidence is introduced that establishes sufficient facts pleaded to  
9 warrant a finding beyond a reasonable doubt that the defendant is a prior  
10 offender, persistent offender, dangerous offender, persistent sexual offender or  
11 predatory sexual offender; and

12 (3) The court makes findings of fact that warrant a finding beyond a  
13 reasonable doubt by the court that the defendant is a prior offender, persistent  
14 offender, dangerous offender, persistent sexual offender or predatory sexual  
15 offender.

16 2. In a jury trial, the facts shall be pleaded, established and found prior  
17 to submission to the jury outside of its hearing, except the facts required by  
18 subdivision (1) of subsection 4 of section 558.016 may be established and found  
19 at a later time, but prior to sentencing, and may be established by judicial notice  
20 of prior testimony before the jury; **provided that any error or omission in**  
21 **pleading or proving the facts required to comply with this section may**  
22 **be corrected by amending the pleadings or supplementing the record,**  
23 **on notice and hearing, prior to sentencing; provided further that any**  
24 **error in pleading or proving the facts required to comply with this**  
25 **section shall not require vacation or reversal of sentence on appeal**  
26 **unless such error results in substantial prejudice to the rights of the**  
27 **defendant or a miscarriage of justice, and nothing herein shall be**  
28 **construed to preclude a remand to permit correction of such error after**  
29 **notice and hearing.**

30           3. In a trial without a jury or upon a plea of guilty, the court may defer  
31 the proof and findings of such facts to a later time, but prior to sentencing. The  
32 facts required by subdivision (1) of subsection 4 of section 558.016 may be  
33 established by judicial notice of prior testimony or the plea of guilty.

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

36           5. The defendant may waive proof of the facts alleged.

37           6. Nothing in this section shall prevent the use of presentence  
38 investigations or commitments under sections 557.026 and 557.031.

39           7. At the sentencing hearing both the state and the defendant shall be  
40 permitted to present additional information bearing on the issue of sentence.

          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**  
83 **performs at least thirty days of community service under the**  
84 **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**  
92 **performs at least sixty days of community service under the**  
93 **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; **provided that any error or**  
121 **omission in pleading or proving the facts required to comply with this**  
122 **section may be corrected by amending the pleadings or supplementing**  
123 **the record, on notice and hearing, prior to sentencing; provided further**  
124 **that any error in pleading or proving the facts required to comply with**  
125 **this section shall not require vacation or reversal of sentence on appeal**  
126 **unless such error results in substantial prejudice to the rights of the**  
127 **defendant or a miscarriage of justice, and nothing herein shall be**  
128 **construed to preclude a remand to permit correction of such error after**  
129 **notice and hearing.**

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

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

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

135 12. Nothing in this section shall prevent the use of presentence  
136 investigations or commitments.

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

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

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

146 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an  
147 intoxication-related traffic offense shall be heard and determined by the trial  
148 court out of the hearing of the jury prior to the submission of the case to the jury,  
149 and shall include but not be limited to evidence received by a search of the  
150 records of the Missouri uniform law enforcement system, including criminal  
151 history records from the central repository or records from the driving while  
152 intoxicated tracking system (DWITS) maintained by the Missouri state highway  
153 patrol, or the certified driving record maintained by the Missouri department of  
154 revenue. After hearing the evidence, the court shall enter its findings thereon.  
155 A plea of guilty or a finding of guilt followed by incarceration, a fine, a suspended  
156 imposition of sentence, suspended execution of sentence, probation or parole or  
157 any combination thereof in any intoxication-related traffic offense in a state,  
158 county or municipal court or any combination thereof, shall be treated as a prior  
159 plea of guilty or finding of guilt for purposes of this section.

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