

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 89
100TH GENERAL ASSEMBLY

Reported from the Committee on Transportation, Infrastructure and Public Safety, February 7, 2019, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 89, adopted February 11, 2019.

Taken up for Perfection February 11, 2019. Bill declared Perfected and Ordered Printed, as amended.

ADRIANE D. CROUSE, Secretary.

0253S.04P

AN ACT

To repeal sections 302.170, 302.720, and 302.768, RSMo, and to enact in lieu thereof three new sections relating to commercial driver's licenses, with existing penalty provisions.

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

Section A. Sections 302.170, 302.720, and 302.768, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 302.170,
3 302.720, and 302.768, to read as follows:

302.170. 1. As used in this section, the following terms shall mean:

2 (1) "Biometric data", shall include, but not be limited to, the following:

3 (a) Facial feature pattern characteristics;

4 (b) Voice data used for comparing live speech with a previously created
5 speech model of a person's voice;

6 (c) Iris recognition data containing color or texture patterns or codes;

7 (d) Retinal scans, reading through the pupil to measure blood vessels
8 lining the retina;

9 (e) Fingerprint, palm prints, hand geometry, measure of any and all
10 characteristics of biometric information, including shape and length of fingertips,
11 or recording ridge pattern or fingertip characteristics;

12 (f) Eye spacing;

13 (g) Characteristic gait or walk;

14 (h) DNA;

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

15 (i) Keystroke dynamic, measuring pressure applied to key pads or other
16 digital receiving devices;

17 (2) "Commercial purposes", shall not include data used or compiled solely
18 to be used for, or obtained or compiled solely for purposes expressly allowed
19 under Missouri law or the federal Drivers Privacy Protection Act;

20 (3) "Source documents", original or certified copies, where applicable, of
21 documents presented by an applicant as required under 6 CFR Part 37 to the
22 department of revenue to apply for a driver's license or nondriver's
23 license. Source documents shall also include any documents required for the
24 issuance of driver's licenses or nondriver's licenses by the department of revenue
25 under the provisions of this chapter or accompanying regulations.

26 2. Except as provided in subsection 3 of this section and as required to
27 carry out the provisions of subsection 4 of this section, the department of revenue
28 shall not retain copies, in any format, of source documents presented by
29 individuals applying for or holding driver's licenses or nondriver's licenses or use
30 technology to capture digital images of source documents so that the images are
31 capable of being retained in electronic storage in a transferable
32 format. Documents retained as provided or required by subsection 4 of this
33 section shall be stored solely on a system not connected to the internet nor to a
34 wide area network that connects to the internet. Once stored on such system, the
35 documents and data shall be purged from any systems on which they were
36 previously stored so as to make them irretrievable.

37 3. The provisions of this section shall not apply to:

38 (1) Original application forms, which may be retained but not scanned
39 except as provided in this section;

40 (2) Test score documents issued by state highway patrol driver examiners
41 **and Missouri commercial third-party tester examiners;**

42 (3) Documents demonstrating lawful presence of any applicant who is not
43 a citizen of the United States, including documents demonstrating duration of the
44 person's lawful presence in the United States;

45 (4) Any document required to be retained under federal motor carrier
46 regulations in Title 49, Code of Federal Regulations, including but not limited to
47 documents required by federal law for the issuance of a commercial driver's
48 license and a commercial driver instruction permit;

49 (5) Documents submitted by a commercial driver's license **or commercial**
50 **driver instruction permit** applicant who is a Missouri resident and is [active

51 duty military or a veteran, as "veteran" is defined in 38 U.S.C. Section 101,] a
52 **qualified current or former military service member** which [allows] allow
53 for waiver of the commercial driver's license knowledge test, skills test, or both;
54 and

55 (6) Any other document at the request of and for the convenience of the
56 applicant where the applicant requests the department of revenue review
57 alternative documents as proof required for issuance of a driver's license,
58 nondriver's license, or instruction permit.

59 4. (1) To the extent not prohibited under subsection 13 of this section, the
60 department of revenue shall amend procedures for applying for a driver's license
61 or identification card in order to comply with the goals or standards of the federal
62 REAL ID Act of 2005, any rules or regulations promulgated under the authority
63 granted in such Act, or any requirements adopted by the American Association
64 of Motor Vehicle Administrators for furtherance of the Act, unless such action
65 conflicts with Missouri law.

66 (2) The department of revenue shall issue driver's licenses or
67 identification cards that are compliant with the federal REAL ID Act of 2005, as
68 amended, to all applicants for driver's licenses or identification cards unless an
69 applicant requests a driver's license or identification card that is not REAL ID
70 compliant. Except as provided in subsection 3 of this section and as required to
71 carry out the provisions of this subsection, the department of revenue shall not
72 retain the source documents of individuals applying for driver's licenses or
73 identification cards not compliant with REAL ID. Upon initial application for a
74 driver's license or identification card, the department shall inform applicants of
75 the option of being issued a REAL ID compliant driver's license or identification
76 card or a driver's license or identification card that is not compliant with REAL
77 ID. The department shall inform all applicants:

78 (a) With regard to the REAL ID compliant driver's license or identification
79 card:

80 a. Such card is valid for official state purposes and for official federal
81 purposes as outlined in the federal REAL ID Act of 2005, as amended, such as
82 domestic air travel and seeking access to military bases and most federal
83 facilities;

84 b. Electronic copies of source documents will be retained by the
85 department and destroyed after the minimum time required for digital retention
86 by the federal REAL ID Act of 2005, as amended;

87 c. The facial image capture will only be retained by the department if the
88 application is finished and submitted to the department; and

89 d. Any other information the department deems necessary to inform the
90 applicant about the REAL ID compliant driver's license or identification card
91 under the federal REAL ID Act;

92 (b) With regard to a driver's license or identification card that is not
93 compliant with the federal REAL ID Act:

94 a. Such card is valid for official state purposes, but it is not valid for
95 official federal purposes as outlined in the federal REAL ID Act of 2005, as
96 amended, such as domestic air travel and seeking access to military bases and
97 most federal facilities;

98 b. Source documents will be verified but no copies of such documents will
99 be retained by the department unless permitted under subsection 3 of this
100 section, except as necessary to process a request by a license or card holder or
101 applicant;

102 c. Any other information the department deems necessary to inform the
103 applicant about the driver's license or identification card.

104 5. The department of revenue shall not use, collect, obtain, share, or
105 retain biometric data nor shall the department use biometric technology to
106 produce a driver's license or nondriver's license or to uniquely identify licensees
107 or license applicants. This subsection shall not apply to digital images nor
108 licensee signatures required for the issuance of driver's licenses and nondriver's
109 licenses or to biometric data collected from employees of the department of
110 revenue, employees of the office of administration who provide information
111 technology support to the department of revenue, contracted license offices, and
112 contracted manufacturers engaged in the production, processing, or manufacture
113 of driver's licenses or identification cards in positions which require a background
114 check in order to be compliant with the federal REAL ID Act or any rules or
115 regulations promulgated under the authority of such Act. Except as otherwise
116 provided by law, applicants' source documents and Social Security numbers shall
117 not be stored in any database accessible by any other state or the federal
118 government. Such database shall contain only the data fields included on driver's
119 licenses and nondriver identification cards compliant with the federal REAL ID
120 Act, and the driving records of the individuals holding such driver's licenses and
121 nondriver identification cards.

122 6. Notwithstanding any provision of this chapter that requires an

123 applicant to provide reasonable proof of lawful presence for issuance or renewal
124 of a noncommercial driver's license, noncommercial instruction permit, or a
125 nondriver's license, an applicant shall not have his or her privacy rights violated
126 in order to obtain or renew a Missouri noncommercial driver's license,
127 noncommercial instruction permit, or a nondriver's license.

128 7. No citizen of this state shall have his or her privacy compromised by
129 the state or agents of the state. The state shall within reason protect the
130 sovereignty of the citizens the state is entrusted to protect. Any data derived
131 from a person's application shall not be sold for commercial purposes to any other
132 organization or any other state without the express permission of the applicant
133 without a court order; except such information may be shared with a law
134 enforcement agency, judge, prosecuting attorney, or officer of the court, or with
135 another state for the limited purposes set out in section 302.600, or for the
136 purposes set forth in section 32.091, or for conducting driver history checks in
137 compliance with the Motor Carrier Safety Improvement Act, 49 U.S.C. Section
138 31309. The state of Missouri shall protect the privacy of its citizens when
139 handling any written, digital, or electronic data, and shall not participate in any
140 standardized identification system using driver's and nondriver's license records
141 except as provided in this section.

142 8. Other than to process a request by a license or card holder or applicant,
143 no person shall access, distribute, or allow access to or distribution of any
144 written, digital, or electronic data collected or retained under this section without
145 the express permission of the applicant or a court order, except that such
146 information may be shared with a law enforcement agency, judge, prosecuting
147 attorney, or officer of the court, or with another state for the limited purposes set
148 out in section 302.600 or for conducting driver history checks in compliance with
149 the Motor Carrier Safety Improvement Act, 49 U.S.C. Section 31309. A first
150 violation of this subsection shall be a class A misdemeanor. A second violation
151 of this subsection shall be a class E felony. A third or subsequent violation of
152 this subsection shall be a class D felony.

153 9. Any person harmed or damaged by any violation of this section may
154 bring a civil action for damages, including noneconomic and punitive damages,
155 as well as injunctive relief, in the circuit court where that person resided at the
156 time of the violation or in the circuit court of Cole County to recover such
157 damages from the department of revenue and any persons participating in such
158 violation. Sovereign immunity shall not be available as a defense for the

159 department of revenue in such an action. In the event the plaintiff prevails on
160 any count of his or her claim, the plaintiff shall be entitled to recover reasonable
161 attorney fees from the defendants.

162 10. The department of revenue may promulgate rules necessary to
163 implement the provisions of this section. Any rule or portion of a rule, as that
164 term is defined in section 536.010, that is created under the authority delegated
165 in this section shall become effective only if it complies with and is subject to all
166 of the provisions of chapter 536 and, if applicable, section 536.028. This section
167 and chapter 536 are nonseverable and if any of the powers vested with the
168 general assembly pursuant to chapter 536 to review, to delay the effective date,
169 or to disapprove and annul a rule are subsequently held unconstitutional, then
170 the grant of rulemaking authority and any rule proposed or adopted after August
171 28, 2017, shall be invalid and void.

172 11. Biometric data, digital images, source documents, and licensee
173 signatures, or any copies of the same, required to be collected or retained to
174 comply with the requirements of the federal REAL ID Act of 2005 shall be
175 digitally retained for no longer than the minimum duration required to maintain
176 compliance, and immediately thereafter shall be securely destroyed so as to make
177 them irretrievable.

178 12. No agency, department, or official of this state or of any political
179 subdivision thereof shall use, collect, obtain, share, or retain radio frequency
180 identification data from a REAL ID compliant driver's license or identification
181 card issued by a state, nor use the same to uniquely identify any individual.

182 13. Notwithstanding any provision of law to the contrary, the department
183 of revenue shall not amend procedures for applying for a driver's license or
184 identification card, nor promulgate any rule or regulation, for purposes of
185 complying with modifications made to the federal REAL ID Act of 2005 after
186 August 28, 2017, imposing additional requirements on applications, document
187 retention, or issuance of compliant licenses or cards, including any rules or
188 regulations promulgated under the authority granted under the federal REAL ID
189 Act of 2005, as amended, or any requirements adopted by the American
190 Association of Motor Vehicle Administrators for furtherance thereof.

191 14. If the federal REAL ID Act of 2005 is modified or repealed such that
192 driver's licenses and identification cards issued by this state that are not
193 compliant with the federal REAL ID Act of 2005 are once again sufficient for
194 federal identification purposes, the department shall not issue a driver's license

195 or identification card that complies with the federal REAL ID Act of 2005 and
196 shall securely destroy, within thirty days, any source documents retained by the
197 department for the purpose of compliance with such Act.

198 15. The provisions of this section shall expire five years after August 28,
199 2017.

302.720. 1. Except when operating under an instruction permit as
2 described in this section, no person may drive a commercial motor vehicle unless
3 the person has been issued a commercial driver's license with applicable
4 endorsements valid for the type of vehicle being operated as specified in sections
5 302.700 to 302.780. A commercial driver's instruction permit shall allow the
6 holder of a valid license to operate a commercial motor vehicle when accompanied
7 by the holder of a commercial driver's license valid for the vehicle being operated
8 and who occupies a seat beside the individual, or reasonably near the individual
9 in the case of buses, for the purpose of giving instruction in driving the
10 commercial motor vehicle. No person may be issued a commercial driver's
11 instruction permit until he or she has passed written tests which comply with the
12 minimum federal standards. A commercial driver's instruction permit shall be
13 **nonrenewable and shall be** valid for the vehicle being operated for a period
14 of not more than **[six months] one year**, and shall not be issued until the permit
15 holder has met all other requirements of sections 302.700 to 302.780, except for
16 the driving test. [A permit holder, unless otherwise disqualified, may be granted
17 one six-month renewal within a one-year period.] The fee for such permit [or
18 renewal] shall be **[five] ten** dollars. [In the alternative, a commercial driver's
19 instruction permit shall be issued for a thirty-day period to allow the holder of
20 a valid driver's license to operate a commercial motor vehicle if the applicant has
21 completed all other requirements except the driving test. The permit may be
22 renewed for one additional thirty-day period and the fee for the permit and for
23 renewal shall be five dollars] **The fee for a duplicate of such permit shall**
24 **be five dollars.**

25 2. No person may be issued a commercial driver's license until he has
26 passed written and driving tests for the operation of a commercial motor vehicle
27 which complies with the minimum federal standards established by the Secretary
28 and has satisfied all other requirements of the Commercial Motor Vehicle Safety
29 Act of 1986 (Title XII of Pub. Law 99-570), as well as any other requirements
30 imposed by state law. **Applicants for a commercial driver's license shall**
31 **complete an entry-level driver training program as required under 49**

32 **CFR 380.609.** All applicants for a commercial driver's license shall have
33 maintained the appropriate class of commercial driver's instruction permit issued
34 by this state or any other state for a minimum of fourteen calendar days prior to
35 the date of taking the skills test. Applicants for a hazardous materials
36 endorsement must also meet the requirements of the U.S. Patriot Act of 2001
37 (Title X of Public Law 107-56) as specified and required by regulations
38 promulgated by the Secretary. Nothing contained in this subsection shall be
39 construed as prohibiting the director from establishing alternate testing formats
40 for those who are functionally illiterate; provided, however, that any such
41 alternate test must comply with the minimum requirements of the Commercial
42 Motor Vehicle Safety Act of 1986 (Title XII of Pub. Law 99-570) as established by
43 the Secretary.

44 (1) The written and driving tests shall be held at such times and in such
45 places as the superintendent may designate. A twenty-five dollar examination
46 fee shall be paid by the applicant upon completion of any written or driving test,
47 except the examination fee shall be waived for applicants seventy years of age or
48 older renewing a license with a school bus endorsement. The director shall
49 delegate the power to conduct the examinations required under sections 302.700
50 to 302.780 to any member of the highway patrol or any person employed by the
51 highway patrol qualified to give driving examinations. The written test shall only
52 be administered in the English language. No translators shall be allowed for
53 applicants taking the test.

54 (2) The director shall adopt and promulgate rules and regulations
55 governing the certification of third-party testers by the department of
56 revenue. Such rules and regulations shall substantially comply with the
57 requirements of 49 CFR 383, Section 383.75. A certification to conduct
58 third-party testing shall be valid for one year, and the department shall charge
59 a fee of one hundred dollars to issue or renew the certification of any third-party
60 tester.

61 (3) Beginning August 28, 2006, the director shall only issue or renew
62 third-party tester certification to community colleges established under chapter
63 178 or to private companies who own, lease, or maintain their own fleet and
64 administer in-house testing to their employees, or to school districts and their
65 agents that administer in-house testing to the school district's or agent's
66 employees. Any third-party tester who violates any of the rules and regulations
67 adopted and promulgated pursuant to this section shall be subject to having his

68 certification revoked by the department. The department shall provide written
69 notice and an opportunity for the third-party tester to be heard in substantially
70 the same manner as provided in chapter 536. If any applicant submits evidence
71 that he has successfully completed a test administered by a third-party tester, the
72 actual driving test for a commercial driver's license may then be waived.

73 (4) Every applicant for renewal of a commercial driver's license shall
74 provide such certifications and information as required by the Secretary and if
75 such person transports a hazardous material must also meet the requirements of
76 the U.S. Patriot Act of 2001 (Title X of Public Law 107-56) as specified and
77 required by regulations promulgated by the Secretary. Such person shall be
78 required to take the written test for such endorsement. A twenty-five dollar
79 examination fee shall be paid upon completion of such tests.

80 (5) The director shall have the authority to waive the driving skills [test]
81 **and written tests** for any qualified **current or former military service**
82 **member** applicant for a **commercial driver's instruction permit or**
83 commercial driver's license who is currently licensed at the time of application for
84 a **commercial driver's instruction permit or** commercial driver's
85 license. The director shall impose conditions and limitations **and require**
86 **certification and evidence** to restrict the applicants from whom the
87 department may accept **the** alternative requirements for the skills [test] **and**
88 **written tests** described in federal regulation **49 CFR 383.71 and** 49 CFR
89 383.77. [An applicant must certify that, during the two-year period immediately
90 preceding application for a commercial driver's license, all of the following apply:

91 (a) The applicant has not had more than one license;

92 (b) The applicant has not had any license suspended, revoked, or
93 cancelled;

94 (c) The applicant has not had any convictions for any type of motor vehicle
95 for the disqualifying offenses contained in this chapter or federal rule 49 CFR
96 383.51(b);

97 (d) The applicant has not had more than one conviction for any type of
98 motor vehicle for serious traffic violations;

99 (e) The applicant has not had any conviction for a violation of state or
100 local law relating to motor vehicle traffic control, but not including any parking
101 violation, arising in connection with any traffic accident, and has no record of an
102 accident in which he or she was at fault;

103 (f) The applicant has been regularly employed within the last ninety days

104 in a military position requiring operation of a commercial motor vehicle and has
105 operated the vehicle for at least sixty days during the two years immediately
106 preceding application for a commercial driver's license. The vehicle must be
107 representative of the commercial motor vehicle the driver applicant operates or
108 expects to operate;

109 (g) The applicant, if on active duty, must provide a notarized affidavit
110 signed by a commanding officer as proof of driving experience as indicated in
111 paragraph (f) of this subdivision;

112 (h) The applicant, if honorably discharged from military service, must
113 provide a form-DD214 or other proof of military occupational specialty;

114 (i) The applicant must] **Applicants shall** meet all federal and state
115 qualifications to operate a commercial vehicle[; and

116 (j) The applicant will]. **Applicants shall** be required to complete all
117 applicable [knowledge] tests, **except when the applicant provides proof of**
118 **approved military training sufficient for waiver of the written and**
119 **skills tests as specified in subdivision (5) of subsection 3 of section**
120 **302.170.**

121 3. A commercial driver's license or commercial driver's instruction permit
122 may not be issued to a person while the person is disqualified from driving a
123 commercial motor vehicle, when a disqualification is pending in any state or while
124 the person's driver's license is suspended, revoked, or cancelled in any state; nor
125 may a commercial driver's license be issued unless the person first surrenders in
126 a manner prescribed by the director any commercial driver's license issued by
127 another state, which license shall be returned to the issuing state for
128 cancellation.

129 4. Beginning July 1, 2005, the director shall not issue an instruction
130 permit under this section unless the director verifies that the applicant is
131 lawfully present in the United States before accepting the application. The
132 director may, by rule or regulation, establish procedures to verify the lawful
133 presence of the applicant under this section. No rule or portion of a rule
134 promulgated pursuant to the authority of this section shall become effective
135 unless it has been promulgated pursuant to chapter 536.

136 5. Notwithstanding the provisions of this section or any other law to the
137 contrary, beginning August 28, 2008, the director of the department of revenue
138 shall certify as a third-party tester any municipality that owns, leases, or
139 maintains its own fleet that requires certain employees as a condition of

140 employment to hold a valid commercial driver's license; and that administered
141 in-house testing to such employees prior to August 28, 2006.

142 **6. Notwithstanding the provisions of this section or any other**
143 **law to the contrary, beginning December 1, 2019, the director of the**
144 **department of revenue shall certify as a third-party tester any private**
145 **education institution or other private entity, provided the institution**
146 **or entity meets the necessary qualifications required by the state.**

302.768. 1. Any applicant for a commercial driver's license or commercial
2 driver's instruction permit shall comply with the Federal Motor Carrier Safety
3 Administration application requirements of 49 CFR Part 383.71 by certifying to
4 one of the following applicable statements relating to federal and state driver
5 qualification rules:

6 (1) Nonexcepted interstate: certifies the applicant is a driver operating
7 or expecting to operate in interstate or foreign commerce, or is otherwise subject
8 to and meets requirements of 49 CFR Part 391 and is required to obtain a
9 medical examiner's certificate as defined in 49 CFR Part 391.45;

10 (2) Excepted interstate: certifies the applicant is a driver operating or
11 expecting to operate entirely in interstate commerce that is not subject to Part
12 391 and is subject to Missouri driver qualifications and not required to obtain a
13 medical examiner's certificate;

14 (3) Nonexcepted intrastate: certifies the applicant is a driver operating
15 only in intrastate commerce and is subject to Missouri driver qualifications;

16 (4) Excepted intrastate: certifies the applicant operates or expects to
17 operate only in intrastate commerce, and engaging only in operations excepted
18 from all parts of the Missouri driver qualification requirements.

19 2. Any applicant who cannot meet certification requirements under one
20 of the categories [defined] **described** in subsection 1 of this section shall be
21 denied issuance of a commercial driver's license or commercial driver's instruction
22 permit.

23 3. An applicant certifying to operation in nonexcepted interstate or
24 nonexcepted intrastate commerce shall provide the state with an original or copy
25 of a current medical examiner's certificate or a medical examiner's certificate
26 accompanied by a medical variance or waiver, **until such time as the medical**
27 **examiner's certificate information is received electronically through a**
28 **verification system approved by the Federal Motor Carrier Safety**
29 **Administration.** The state shall retain [the original or copy of] the

30 documentation of physical qualification for a minimum of three years beyond the
31 date the certificate was issued.

32 4. Applicants certifying to operation in nonexcepted interstate commerce
33 or nonexcepted intrastate commerce shall provide [an] updated medical certificate
34 or variance [documents] **information** to maintain a certified status during the
35 term of the commercial driver's license or commercial driver's instruction permit
36 in order to retain commercial privileges.

37 5. The director shall post the medical examiner's certificate of
38 information, medical variance if applicable, the applicant's self-certification and
39 certification status to the Missouri driver record within ten calendar days and
40 such information will become part of the CDLIS driver record.

41 6. Applicants certifying to operation in nonexcepted interstate commerce
42 or nonexcepted intrastate commerce who fail to provide or maintain a current
43 medical examiner's certificate, or if the state has received notice of a medical
44 variance or waiver expiring or being rescinded, the state shall, within ten
45 calendar days, update the driver's medical certification status to "not
46 certified". The state shall notify the driver of the change in certification status
47 and require the driver to annually comply with requirements for a commercial
48 driver's license downgrade within sixty days of the expiration of the applicant
49 certification.

50 7. The department of revenue may, by rule, establish the cost and criteria
51 for submission of updated medical certification status information as required
52 under this section.

53 8. Any person who falsifies any information in an application for or
54 update of medical certification status information for a commercial driver's
55 license shall not be licensed to operate a commercial motor vehicle, or the
56 person's commercial driver's license shall be cancelled for a period of one year
57 after the director discovers such falsification.

58 9. The director may promulgate rules and regulations necessary to
59 administer and enforce this section. Any rule or portion of a rule, as that term
60 is defined in section 536.010, that is created under the authority delegated in this
61 section shall become effective only if it complies with and is subject to all of the
62 provisions of chapter 536 and, if applicable, section 536.028. This section and
63 chapter 536 are nonseverable and if any of the powers vested with the general
64 assembly pursuant to chapter 536 to review, to delay the effective date, or to
65 disapprove and annul a rule are subsequently held unconstitutional, then the

66 grant of rulemaking authority and any rule proposed or adopted after August 28,
67 2012, shall be invalid and void.

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