

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
**SENATE BILLS NOS. 18,
49 & 167**
90TH GENERAL ASSEMBLY

Reported from the Committee on Civil and Criminal Jurisprudence, April 12, 1999, with recommendation that the Senate Committee Substitute do pass.

S0521.08C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 577.017, RSMo 1994, and sections 302.060, 302.302, 302.304, 302.309, 302.505, 302.541, 302.545, 559.630, 559.633, 559.635, 577.023 and 577.049, RSMo Supp. 1998, relating to driving with excessive blood alcohol content, and to enact in lieu thereof fifteen new sections relating to the same subject, with penalty provisions.

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

Section A. Section 577.017, RSMo 1994, and sections 302.060, 302.302, 302.304, 302.309, 302.505, 302.541, 302.545, 559.630, 559.633, 559.635, 577.023 and 577.049, RSMo Supp. 1998, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 302.060, 302.302, 302.304, 302.309, 302.505, 302.541, 302.545, 559.630, 559.633, 559.635, 577.015, 577.017, 577.023, 577.049 and 1, to read as follows:

302.060. The director shall not issue any license and shall immediately deny any driving privilege:

(1) To any person who is under the age of eighteen years, if such person operates a motor vehicle in the transportation of persons or property as classified in section 302.015;

(2) To any person who is under the age of sixteen years, except as hereinafter provided;

(3) To any person whose license has been suspended, during such suspension, or to any person whose license has been revoked, until the expiration of one year after such license was revoked;

(4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;

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

(5) To any person who has previously been adjudged to be incapacitated and who at the time of application has not been restored to partial capacity;

(6) To any person who, when required by this law to take an examination, has failed to pass such examination;

(7) To any person who has an unsatisfied judgment against such person, as defined in chapter 303, RSMo, until such judgment has been satisfied or the financial responsibility of such person, as defined in section 303.120, RSMo, has been established;

(8) To any person whose application shows that the person has been convicted within one year prior to such application of violating the laws of this state relating to failure to stop after an accident and to disclose the person's identity or driving a motor vehicle without the owner's consent;

(9) To any person who has been convicted more than twice of violating state law, or a county or municipal ordinance where the judge in such cases was an attorney and the defendant was represented by or waived the right to an attorney in writing, relating to driving while intoxicated, **including aggravated driving with an excessive blood alcohol content**; except that, after the expiration of ten years from the date of conviction of the last offense of violating such law or ordinance relating to driving while intoxicated, **including aggravated driving with an excessive blood alcohol content**, a person who was so convicted may petition the circuit court of the county in which such last conviction was rendered and the court shall review the person's habits and conduct since such conviction. If the court finds that the petitioner has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding ten years and that the petitioner's habits and conduct show such petitioner to no longer pose a threat to the public safety of this state, the court may order the director to issue a license to the petitioner if the petitioner is otherwise qualified pursuant to the provisions of sections 302.010 to 302.540. No person may obtain a license pursuant to the provisions of this subdivision through court action more than one time;

(10) To any person who has been convicted twice within a five-year period of violating state law, or a county or municipal ordinance where the judge in such cases was an attorney and the defendant was represented by or waived the right to an attorney in writing, of driving while intoxicated, **or aggravated driving with an excessive blood alcohol content**, or who has been convicted of the crime of involuntary manslaughter while operating a motor vehicle in an intoxicated condition. The director shall not issue a license to such person for five years from the date such person was convicted for involuntary manslaughter while operating a motor vehicle in an intoxicated condition or for driving while intoxicated **or aggravated driving with an excessive blood alcohol content** for the second time. Any person who has been denied a license for two convictions of driving while intoxicated prior to July 27, 1989, shall have the person's license issued, upon application, unless the two convictions occurred within a five-year period, in

which case, no license shall be issued to the person for five years from the date of the second conviction;

(11) To any person who is otherwise disqualified pursuant to the provisions of sections 302.010 to 302.780, chapter 303, RSMo, or section 544.046, RSMo.

302.302. 1. The director of revenue shall put into effect a point system for the suspension and revocation of licenses. Points shall be assessed only after a conviction or forfeiture of collateral. The initial point value is as follows:

(1) Any moving violation of a state law or county or municipal traffic ordinance not listed in this section, other than a violation of vehicle equipment provisions 2 points
(except any violation of municipal stop sign

ordinance where no accident is involved 1 point)

(2) Speeding

In violation of a state law 3 points

In violation of a county or municipal ordinance 2 points

(3) Leaving the scene of an accident in

violation of section 577.060, RSMo 12 points

In violation of any county or municipal ordinance 6 points

(4) Careless and imprudent driving in violation

of subsection 4 of section 304.016, RSMo 4 points

In violation of a county or municipal ordinance 2 points

(5) Operating without a license after suspension

or revocation and prior to restoration of operating

privileges which have been suspended or revoked 12 points

(6) Obtaining a license by misrepresentation 12 points

(7) For the first conviction of driving while

in an intoxicated condition or under the influence

of controlled substances or drugs 8 points

(8) For the second or subsequent conviction of

any of the following offenses however combined: driving

while in an intoxicated condition, driving under the

influence of controlled substances or drugs or driving

with a blood alcohol content of ten-hundredths of one

percent or more by weight 12 points

(9) For the first conviction for driving with

blood alcohol content ten-hundredths of one percent

or more by weight

In violation of state law 8 points

In violation of a county or municipal ordinance 8 points

(10) For a conviction of aggravated driving

with an excessive blood alcohol content 12 points

(11) Any felony involving the use of a motor vehicle 12 points

[(11)] (12) Knowingly permitting unlicensed operator to operate a motor vehicle 4 points

(13) For the second or subsequent offense of driving with a blood alcohol content of eight-hundredths of one percent, but less than ten-hundredths of one percent 4 points

2. An additional two points shall be assessed when personal injury or property damage results from any violation listed in subsection 1 of this section and if found to be warranted and certified by the reporting court.

3. When any of the acts listed in subdivision (2), (3), (4) or (7) of subsection 1 of this section constitutes both a violation of a state law and a violation of a county or municipal ordinance, points may be assessed for either violation but not for both. Notwithstanding that an offense arising out of the same occurrence could be construed to be a violation of subdivisions (7), (8), [and] (9) **and (10)** of subsection 1 of this section, no person shall be tried or convicted for more than one offense pursuant to subdivisions (7), (8), [and] (9) **and (10)** of subsection 1 of this section for offenses arising out of the same occurrence.

4. The director of revenue shall put into effect a system for staying the assessment of points against an operator. The system shall provide that the satisfactory completion of a driver improvement program or, in the case of violations committed while operating a motorcycle, a motorcycle rider training course approved by the director of the department of public safety, by an operator, when so ordered and verified by any court having jurisdiction over any law of this state or county or municipal ordinance, regulating motor vehicles, other than a violation committed in a commercial motor vehicle as defined in section 302.700, shall be accepted by the director in lieu of the assessment of points for a violation pursuant to subdivision (1), (2), or (4) of subsection 1 of this section or pursuant to subsection 2 of this section. For the purposes of this subsection, the driver improvement program shall meet or exceed the standards of the National Safety Council's eight-hour "Defensive Driving Course" or, in the case of a violation which occurred during the operation of a motorcycle, the program shall meet the standards established by the director of the department of public safety pursuant to sections 302.133 to 302.138. The completion of a driver improvement program or a motorcycle rider training course shall not be accepted in lieu of points more than one time in any thirty-six-month period and shall be completed within sixty days of the date of conviction in order to be accepted in lieu of the assessment of points. Every court having jurisdiction pursuant to the provisions of this subsection shall, within fifteen days after completion of the driver improvement program or motorcycle rider

training course by an operator, forward a record of the completion to the director, all other provisions of the law to the contrary notwithstanding. The director shall establish procedures for record keeping and the administration of this subsection.

302.304. 1. The director shall notify by ordinary mail any operator of the point value charged against the operator's record when the record shows four or more points have been accumulated in a twelve-month period.

2. In an action to suspend or revoke a license or driving privilege under this section points shall be accumulated on the date of conviction. No case file of any conviction for a driving violation for which points may be assessed pursuant to section 302.302 may be closed until such time as a copy of the record of such conviction is forwarded to the department of revenue.

3. The director shall suspend the license and driving privileges of any person whose driving record shows the driver has accumulated eight points in eighteen months.

4. The license and driving privilege of any person whose license and driving privilege has been suspended under the provisions of sections 302.010 to 302.540 except those persons whose license and driving privilege has been suspended under the provisions of subdivision (7) of subsection 1 of section 302.302 or has accumulated sufficient points together with a conviction under subdivision (9) of subsection 1 of section 302.302 and who has filed proof of financial responsibility with the department of revenue, in accordance with chapter 303, RSMo, and is otherwise eligible, shall be reinstated as follows:

(1) In the case of an initial suspension, thirty days after the effective date of the suspension;

(2) In the case of a second suspension, sixty days after the effective date of the suspension;

(3) In the case of the third and subsequent suspensions, ninety days after the effective date of the suspension. Unless proof of financial responsibility is filed with the department of revenue, a suspension shall continue in effect for two years from its effective date.

5. The period of suspension of the driver's license and driving privilege of any person under the provisions of subdivision (7) of subsection 1 of section 302.302 or who has accumulated sufficient points together with a conviction under subdivision (9) of subsection 1 of section 302.302 shall be thirty days, followed by a sixty-day period of restricted driving privilege issued by the director of revenue for the limited purpose of driving between a residence and a place of employment, or to and from an alcohol education or treatment program, or for both between a residence and a place of employment and to and from such a program. Upon completion of such period of restricted driving privilege, upon compliance with other requirements of law and upon filing of proof of financial responsibility with the department of revenue, in accordance with chapter 303, RSMo, the license and driving privilege shall be reinstated.

6. If the person fails to maintain proof of financial responsibility in accordance with chapter 303, RSMo, the person's driving privilege and license shall be resuspended.

7. The director shall revoke the license and driving privilege of any person when the person's driving record shows such person has accumulated twelve points in twelve months or eighteen points in twenty-four months or twenty-four points in thirty-six months. The revocation period of any person whose license and driving privilege has been revoked under the provisions of sections 302.010 to 302.540 and who has filed proof of financial responsibility with the department of revenue in accordance with chapter 303, RSMo, and is otherwise eligible, shall be terminated by a notice from the director of revenue after one year from the effective date of the revocation. Unless proof of financial responsibility is filed with the department of revenue, except as provided in subsection 2 of section 302.541, the revocation shall remain in effect for a period of two years from its effective date. If the person fails to maintain proof of financial responsibility in accordance with chapter 303, RSMo, the person's license and driving privilege shall be rerevoked. Any person whose license and driving privilege has been revoked under the provisions of sections 302.010 to 302.540 shall, upon receipt of the notice of termination of the revocation from the director, pass the complete driver examination and apply for a new license before again operating a motor vehicle upon the highways of this state.

8. If, prior to conviction for an offense that would require suspension or revocation of a person's license under the provisions of this section, the person's total points accumulated are reduced, pursuant to the provisions of section 302.306, below the number of points required for suspension or revocation pursuant to the provisions of this section, then the person's license shall not be suspended or revoked until the necessary points are again obtained and accumulated.

9. If any person shall neglect or refuse to surrender the person's license, as provided herein, the director shall direct the state highway patrol or any peace or police officer to secure possession thereof and return it to the director.

10. Upon the issuance of a reinstatement or termination notice after a suspension or revocation of any person's license and driving privilege under the provisions of sections 302.010 to 302.540, the accumulated point value shall be reduced to four points, except that the points of any person serving as a member of the armed forces of the United States outside the limits of the United States during a period of suspension or revocation shall be reduced to zero upon the date of the reinstatement or termination of notice. It shall be the responsibility of such member of the armed forces to submit copies of official orders to the director of revenue to substantiate such overseas service. Any other provision of sections 302.010 to 302.540 to the contrary notwithstanding, the effective date of the four points remaining on the record upon reinstatement or termination shall be the date of the reinstatement or termination notice.

11. No credit toward reduction of points shall be given during periods of suspension or revocation or any period of driving under a hardship driving privilege granted by a court.

12. Any person or nonresident whose license or privilege to operate a motor vehicle in this state has been suspended or revoked under this or any other law shall, before having the license

or privilege to operate a motor vehicle reinstated, pay to the director a reinstatement fee of twenty dollars which shall be in addition to all other fees provided by law.

13. Notwithstanding any other provision of law to the contrary, if after two years from the effective date of any suspension or revocation issued under this chapter, the person or nonresident has not paid the reinstatement fee of twenty dollars, the director shall reinstate such license or privilege to operate a motor vehicle in this state.

14. No person who has had a license to operate a motor vehicle suspended or revoked as a result of an assessment of points for a violation under subdivision (7), (8), [or] (9) **or (10)** of subsection 1 of section 302.302 shall have that license reinstated until such person has participated in and successfully completed a substance abuse traffic offender program defined in section 302.010, except the department may waive such requirement upon completion of a comparable program or upon good cause shown or the court may waive such requirement upon good cause shown. The court in making this determination shall consider the person's driving record, the circumstances surrounding the offense and the likelihood of the person committing a like offense in the future. Assignment recommendations, based upon the needs assessment as described in subdivision (21) of section 302.010, shall be delivered in writing to the person with written notice that the person is entitled to have such assignment recommendations reviewed by the court if the person objects to the recommendations. The person may file a motion in the associate division of the circuit court, on a printed form provided by the state courts administrator, to have the court hear and determine such motion pursuant to the provisions of chapter 517, RSMo, after reviewing such assessment. The motion shall name the person or entity making the needs assessment as the respondent and a copy of the motion shall be served upon the respondent in any manner allowed by law. Such assessment and compliance with the court determination of the motion shall satisfy the provisions of this section for the purpose of reinstating such person's license to operate a motor vehicle. The respondent's personal appearance at any hearing conducted pursuant to this subsection shall not be necessary unless directed by the court.

15. The fees for the program authorized in subsection 14 of this section, or a portion thereof to be determined by the department of mental health, shall be paid by the person enrolled in the program. Any person who is enrolled in the program shall pay, in addition to any fee charged for the program, a supplemental fee of sixty dollars. The administrator of the program shall remit to the division of alcohol and drug abuse of the department of mental health the supplemental fee for all persons enrolled in the program, less two percent for administrative costs. The supplemental fees received by the department of mental health pursuant to this section shall be deposited in the mental health earnings fund which is created in section 630.053, RSMo.

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, RSMo.

2. Any operator whose license is revoked under 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 or the director of revenue 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 privileges 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;
- (c) Attending school or other institution of higher education;
- (d) Attending alcohol or drug treatment programs; or

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

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

(4) The court order or the director's grant of the limited driving privilege shall indicate the termination date of the privilege, which shall be not later than the end of the period of suspension or revocation. A copy of any court order shall be sent by the clerk of the court to the director, and a copy shall be given to the driver which shall be carried by the driver whenever such

driver operates a motor vehicle. The director of revenue upon granting a limited driving privilege shall give a copy of the limited driving privilege to the applicant. The applicant shall carry a copy of the limited driving privilege while operating a motor vehicle. A conviction which results in the assessment of points under the provisions of section 302.302, other than a violation of a municipal stop sign ordinance where no accident is involved, against a driver who is operating a vehicle under the authority of a limited driving privilege terminates the privilege, as of the date the points are assessed to the person's driving record. If the date of arrest is prior to the issuance of the limited driving privilege, the privilege shall not be terminated. The director shall notify by ordinary mail the driver whose privilege is so terminated.

(5) [Except as provided in subdivision (6) of this subsection,] No person is eligible to receive [hardship] **limited** driving privilege whose license has been suspended [or], revoked **or denied, or who has been deemed ineligible** for the following reasons:

(a) A conviction of violating the provisions of section 577.010, [or] 577.012 **or 577.015**, RSMo, or any similar provision of any federal or state law, or a municipal or county law where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney in writing, until the person has completed the first thirty days of a suspension or revocation imposed pursuant to this chapter;

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

(c) **Has had their license to operate a motor vehicle revoked where that person cannot obtain a new license for a period of five years because of two convictions of driving while intoxicated as prescribed in subdivision (10) of section 302.060, until the person has served at least the first two years of the five year license denial period;**

(d) **Has had their license to operate a motor vehicle revoked where that person cannot obtain a new license for a period of ten years, as prescribed in subdivision (9) of section 302.060, until the person has served at least the first three years of the ten year license denial period;**

(e) **Has been convicted of the crime of involuntary manslaughter while operating a motor vehicle in an intoxicated condition;**

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

[(d)] (g) Because of operating a motor vehicle under the influence of narcotic drugs, a controlled substance as defined in chapter 195, RSMo, or having left the scene of an accident as provided in [section 577.060, RSMo] **state law or a county or municipal law;**

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

[(f) Violation] (i) **Violating** more than once [of] the provisions of section 577.041, RSMo,

or a similar implied consent law of any other state;

~~[(g)]~~ **(j)** Disqualification of a commercial driver's license pursuant to sections 302.700 to 302.780, however, nothing in this subsection shall prevent a person holding a commercial driver's license who is suspended or revoked as a result of an action occurring while not driving a commercial motor vehicle or driving for pay, but while driving in an individual capacity as an operator of a personal vehicle from applying for ~~[hardship]~~ **limited** driving privileges to operate a commercial vehicle, if otherwise eligible for such ~~[hardship]~~ **limited driving** privilege; or

(h) ~~(k)~~ Due to a suspension pursuant to subsection 2 of section 302.525 and who has not completed the first thirty days of such suspension, provided the person is not otherwise ineligible for limited driving privileges; or due to a revocation under subsection 2 of section 302.525 if such person has not completed such revocation.

(6) (a) ~~[Provided that pursuant to the provisions of this section, the applicant is not otherwise ineligible for a limited driving privilege,]~~ A circuit court or the director may, in the manner prescribed in this subsection, allow a person who has had such person's license to operate a motor vehicle revoked where that person cannot obtain a new license for a period of ten years, as prescribed in subdivision (9) of section 302.060, to apply for limited driving privileges pursuant to this subsection if such person has served at least three years of such disqualification, **denial** or revocation. Such person shall present evidence satisfactory to the court or the director that such person has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding three years and that the person's habits and conduct show that the person no longer poses a threat to the public safety of this state. **The issuance of a limited driving privilege under this subsection is prohibited if at the time of application the person is otherwise ineligible for such privilege for any reason set forth in subdivisions (a), (b), (e), (f), (g), (h), (i), (j) or (k) of subsection (5) of this section.**

(b) A circuit court or the director may, in the manner prescribed in this subsection, allow a person who has had such person's license to operate a motor vehicle revoked where that person cannot obtain a new license for a period of five years, as prescribed in subdivision (10) of section 302.060, to apply for limited driving privileges pursuant to this subsection if such person has served at least two years of such disqualification, **denial** or revocation. Such person shall present evidence satisfactory to the court or the director that such person has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding two years and that the person's habits and conduct show that the person no longer poses a threat to the public safety of this state. **The issuance of a limited driving privilege under this subsection is prohibited if at the time of application the person is otherwise ineligible for such privilege for any reason set forth in subdivisions (a), (b), (e), (f), (g), (h), (i), (j) or (k) of subsection (5) of this section.** Any person who is denied a license permanently in this state because of an alcohol-related conviction subsequent to a restoration of such person's driving

privileges pursuant to subdivision (9) of section 302.060 shall not be eligible for limited driving privileges pursuant to the provisions of this subdivision.

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

5. The director of revenue shall promulgate rules and regulations necessary to carry out the provisions of this section.

302.505. 1. The department shall suspend or revoke the license of any person upon its determination that the person was arrested upon probable cause to believe such person was driving a motor vehicle while the alcohol concentration in the person's blood, breath, or urine was ten-hundredths of one percent or more by weight, based on the definition of alcohol concentration in section 302.500, or where such person was less than twenty-one years of age when stopped and was stopped upon probable cause to believe such person was driving while intoxicated in violation of section 577.010, RSMo, or driving with excessive blood alcohol content in violation of section 577.012, RSMo, **or aggravated driving with excessive blood alcohol content in violation of section 577.015, RSMo**, or upon probable cause to believe such person violated a state, county or municipal traffic [offense] **ordinance** and such person was driving with a blood alcohol content of two-hundredths of one percent **to nine-hundredths of one percent** or more by weight.

2. The department shall make a determination of these facts on the basis of the report of a law enforcement officer required in section 302.510, and this determination shall be final unless a hearing is requested and held. If a hearing is held, the department shall review the matter and make a final determination on the basis of evidence received at the hearing.

3. The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any suspension or revocation under this section.

302.541. 1. In addition to other fees required by law, any person who has had a license to operate a motor vehicle suspended or revoked following a determination, pursuant to section 302.505, or section 577.010, 577.012, **577.015**, 577.041 or 577.510, RSMo, or any county or municipal ordinance, where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney, that such person was driving while intoxicated or with a blood alcohol content of ten-hundredths of one percent or more by weight or, where such person was at the time of the arrest less than twenty-one years of age and was driving with a blood

alcohol content of two-hundredths of one percent or more by weight, shall pay an additional fee of twenty-five dollars prior to the reinstatement or reissuance of the license.

2. Any person less than twenty-one years of age whose driving privilege has been suspended or revoked solely for a first determination pursuant to sections 302.500 to 302.540 that such person was driving a motor vehicle with two-hundredths of one percent or more blood alcohol content is exempt from filing proof of financial responsibility with the department of revenue in accordance with chapter 303, RSMo, as a prerequisite for reinstatement of driving privileges or obtaining a restricted driving privilege as provided by section 302.525.

302.545. 1. Any person who is less than twenty-one years of age and whose driving privilege has been suspended or revoked, for a first determination under sections 302.500 to 302.540, that such person was driving with two-hundredths of one percent **to nine-hundredths of one percent** of blood alcohol content, shall have all official records and all recordations maintained by the department of revenue of such suspension or revocation expunged two years after the date of such suspension or revocation, or when such person attains the age of twenty-one, whichever date first occurs. Such expungement shall be performed by the department of revenue without need of a court order. No records shall be expunged if the person was found guilty or pled guilty to operating a commercial motor vehicle, as defined in section 302.700, with a blood alcohol content of at least four-hundredths of one percent.

2. The provisions of this section shall not apply to any person whose license is suspended or revoked for a second or subsequent time pursuant to subsection 1 of this section or who is convicted of any alcohol-related driving offense before the age of twenty-one including, but not limited to:

- (1) Driving while intoxicated pursuant to section 577.010, RSMo; [or]
- (2) Driving with excessive blood alcohol content pursuant to section 577.012, RSMo; **or**
- (3) Aggravated driving with excessive blood alcohol content pursuant to section 577.015, RSMo.**

559.630. As used in sections 559.630 to 559.635, the following words and phrases mean:

(1) "Required educational assessment and community treatment program", a program certified by the department of mental health to provide education or rehabilitation services pursuant to a professional assessment screening to identify the individual needs of the person who has been referred to the program as the result of [a drug offense] **an alcohol or drug related offense or as the results of an offense for which alcohol or other drug abuse was a contributing factor;**

(2) "Substance abuse specialist", a person who is qualified under the regulations of the department of mental health as a qualified instructor or professional to provide services in an alcohol and drug offender education program.

559.633. 1. Upon a plea of guilty or a finding of guilty for a commission of a felony offense

pursuant to chapter 195, RSMo, **or for a commission of a felony offense for which alcohol or other drug abuse was a contributing factor**, except for those offenses in which there exists a statutory prohibition against either probation or parole, when placing the person on probation, the court shall order the person to begin a required educational assessment and community treatment program within the first sixty days of probation as a condition of probation. **Persons who are ordered by the court for a pre-sentence investigation may be ordered to begin the required educational assessment and community treatment program and if placed on probation the court shall order the person to continue the required educational assessment and community treatment program.** Persons who are placed on probation after a period of incarceration pursuant to section 559.115 **or have been ordered to complete the Missouri substance abuse traffic offenders program, pursuant to sections 302.540 and 577.049, RSMo** may not be required to participate in a required educational assessment and community treatment program.

2. Persons who are found guilty or who plead guilty to a driving while intoxicated offense pursuant to chapter 577.023, RSMo, may be required as a condition of probation to complete substance abuse traffic offender program in lieu of required educational assessment and community treatment program.

3. When placing persons on probation who are found guilty or who plead guilty to a second or subsequent violation to operating a vessel while intoxicated offense pursuant to chapter 306.111 or 306.112, RSMo, the court shall order the person to begin a required educational assessment and community treatment program within the first sixty days of probation as a condition of probation.

4. The fees for the required educational assessment and community treatment program, or a portion of such fees, to be determined by the department of corrections, shall be paid by the person receiving the assessment **whether ordered for the pre-sentence investigation or as a condition of probation.** Any person who is assessed shall pay, in addition to any fee charged for the assessment, a supplemental fee of sixty dollars. The administrator of the program shall remit to the department of corrections the supplemental fees for all persons assessed, less two percent for administrative costs. The supplemental fees received by the department of corrections pursuant to this section shall be deposited in the correctional substance abuse earnings fund created pursuant to section 559.635.

559.635. 1. There is hereby created in the state treasury a fund to be known as the "Correctional Substance Abuse Earnings Fund". The state treasurer shall credit to the fund any interest earned from investing the moneys in the fund. Notwithstanding the provisions of section 33.080, RSMo, money in the correctional substance abuse earnings fund shall not be transferred and placed to the credit of general revenue at the end of the biennium.

2. Fees received pursuant to the required educational assessment and community

treatment program, **other authorized fees paid by the offender for alcohol and drug treatment programs, as well as certain drug testing fees authorized by the department of corrections** shall be deposited in the correctional substance abuse earnings fund. The moneys received from such fees shall be appropriated solely for assistance in securing alcohol and drug rehabilitation services.

3. The department of corrections and the department of mental health shall promulgate rules and regulations to implement and administer the provisions of this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

577.015. 1. A person commits the crime of "aggravated driving with excessive blood alcohol content" if such person operates a motor vehicle in this state with eighteen-hundredths of one percent or more by weight of alcohol in such person's blood.

2. As used in this section, percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood or two hundred ten liters of breath and may be shown by chemical analysis of the person's blood, breath, saliva or urine. For the purposes of determining the alcoholic content of a person's blood under this section, the test shall be conducted in accordance with the provisions of sections 577.020 to 577.041.

3. For the first offense, driving with excessive blood alcohol content is a class B misdemeanor.

4. The court shall order one or more of the following restorative justice methods as a condition of any probation and parole for a second or subsequent offense of aggravated driving with excessive blood alcohol content within a ten year period:

- (1) Work release programs in local facilities;**
- (2) Electronic shackling; and**
- (3) Intensive supervision.**

The costs of work release programs and electronic shackling shall be assessed against the defendant.

5. No court shall suspend the imposition of sentence under this section nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo, to the contrary notwithstanding.

6. The defendant may be ordered to serve any period of imprisonment which is a condition of probation or parole in a county jail during overnight or weekend hours.

7. The court shall find the defendant to have committed prior offenses under this section pursuant to the provisions of subsections 5 through 14 of section 577.023.

577.017. 1. [No person shall consume any alcoholic beverage while operating a moving motor vehicle upon the highways, as defined in section 301.010, RSMo.] No person, including

the driver of the motor vehicle, shall consume an alcoholic beverage or possess an open alcoholic beverage container in any motor vehicle located on a highway or the right-of-way of a highway.

2. Any person found guilty of violating the provisions of this section is guilty of an infraction.

3. Any infraction under this section shall not reflect on any records with the department of revenue.

4. The provisions of this section shall not apply to passengers who are occupying a chartered tour bus or a recreational motor vehicle, or to possession of an open alcoholic beverage container behind the last upright seat of a motor vehicle that is not equipped with a trunk.

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

(1) An "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content, **aggravated driving with excessive blood alcohol content** involuntary manslaughter pursuant to subdivision (2) of subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or a county or municipal ordinance, where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney in writing;

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

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses, where such two or more offenses occurred within ten years of the occurrence of the intoxication-related traffic offense for which the person is charged;

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

(3) A "prior offender" is a person who has pleaded guilty to or has been found guilty of one intoxication-related traffic offense, where such prior offense occurred within five years of the occurrence of the intoxication-related traffic offense for which the person is charged, **or where the prior offense of aggravated driving with excessive blood alcohol content occurred within ten years of the offense of aggravated driving with excessive blood alcohol content for which the person is charged.**

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

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

4. No court shall suspend the imposition of sentence as to a prior or persistent offender under this section nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo, to the contrary notwithstanding[, nor shall such person]. **No prior offender shall be eligible for parole or probation until he has served a minimum of [forty-eight consecutive hours] five days imprisonment, unless as a condition of such parole or probation such person performs at least [ten] thirty days of community service under the supervision of the court in those jurisdictions which have a recognized program for community service. No persistent offender shall be eligible for parole or probation until he or she has served a minimum of ten days imprisonment, unless as a condition of such parole or probation such person performs at least sixty days of community service under the supervision of the court in those jurisdictions which have a recognized program for community service.**

5. The court shall find the defendant to be a prior offender or persistent offender, if:

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

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

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

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

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

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

9. The defendant may waive proof of the facts alleged.

10. Nothing in this section shall prevent the use of presentence investigations or commitments.

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

12. The pleas or findings of guilty shall be prior to the date of commission of the present offense.

13. The court shall not instruct the jury as to the range of punishment or allow the jury, upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of prior offenders or persistent offenders.

14. Evidence of prior convictions shall be heard and determined by the trial court out of the hearing of the jury prior to the submission of the case to the jury, and shall include but not be limited to evidence of convictions received by a search of the records of the Missouri uniform law enforcement system maintained by the Missouri state highway patrol. After hearing the evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal or county ordinance in a county or municipal court for driving while intoxicated or a conviction or a plea of guilty or a finding of guilty followed by a suspended imposition of sentence, suspended execution of sentence, probation or parole or any combination thereof in a state court shall be treated as a prior conviction.

577.049. 1. Upon a plea of guilty or a finding of guilty for an offense of violating the provisions of section 577.010 or 577.012 or violations of county or municipal ordinances involving alcohol or drug related traffic offenses, the court shall order the person to participate in and successfully complete a substance abuse traffic offender program defined in section 577.001 **or a required educational assessment and community treatment program pursuant to section 559.633, RSMo.**

2. The fees for the substance abuse traffic offender program, or a portion thereof, to be determined by the division of alcohol and drug abuse of the department of mental health, shall be paid by the person enrolling in the program. Any person who attends the program shall pay, in addition to any fee charged for the program, a supplemental fee of sixty dollars. The administrator of the program shall remit to the division of alcohol and drug abuse of the department of mental health the supplemental fees for all persons enrolled in the program, less two percent for administrative costs. The supplemental fees received by the department of mental health pursuant to this section shall be deposited in the mental health earnings fund which is created in section 630.053, RSMo.

Section 1. 1. No person shall operate a motor vehicle in this state with eight-hundredths of one percent but less than ten-hundredths of one percent by weight of alcohol in such person's blood.

2. As used in this section, percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood or two hundred ten liters of breath and may be shown by chemical analysis of the person's blood, breath, saliva or urine. For the purposes of determining the alcoholic content of a person's blood under this section, the test shall be conducted in accordance with the provisions of sections 577.020 to 577.041.

3. Any person found guilty of violating the provisions of this section is guilty of an infraction.

Unofficial

Bill

Copy