

FIRST REGULAR SESSION

HOUSE BILL NO. 860

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HINSON.

1949L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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

Section A. Sections 302.309 and 577.023, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 302.309 and 577.023, to read as follows:

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

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

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

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

- (a) A business, occupation, or employment;
- (b) [Seeking medical treatment for such operator;
- (c)] Attending school or other institution of higher education;
- (d)] (c) Attending alcohol or drug treatment programs; **or**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 [(e)] (d) Seeking the required services of a certified ignition interlock device provider;
19 [or

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

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

41 (4) No limited driving privilege shall be issued to any person otherwise eligible under
42 the provisions of paragraph (a) of subdivision (6) of this subsection on a license revocation
43 resulting from a conviction under subdivision (9) of subsection 1 of section 302.302, or a license
44 denial under paragraph (a) or (b) of subdivision (8) of this subsection, until the applicant has
45 filed proof with the department of revenue that any motor vehicle operated by the person is
46 equipped with a functioning, certified ignition interlock device as a required condition of limited
47 driving privilege.

48 (5) The court order or the director's grant of the limited or restricted driving privilege
49 shall indicate the termination date of the privilege, which shall be not later than the end of the
50 period of suspension or revocation. A copy of any court order shall be sent by the clerk of the
51 court to the director, and a copy shall be given to the driver which shall be carried by the driver
52 whenever such driver operates a motor vehicle. The director of revenue upon granting a limited
53 driving privilege shall give a copy of the limited driving privilege to the applicant. The applicant

54 shall carry a copy of the limited driving privilege while operating a motor vehicle. A conviction
55 which results in the assessment of points pursuant to section 302.302, other than a violation of
56 a municipal stop sign ordinance where no accident is involved, against a driver who is operating
57 a vehicle pursuant to a limited driving privilege terminates the privilege, as of the date the points
58 are assessed to the person's driving record. If the date of arrest is prior to the issuance of the
59 limited driving privilege, the privilege shall not be terminated. Failure of the driver to maintain
60 proof of financial responsibility, as required by chapter 303, or to maintain proof of installation
61 of a functioning, certified ignition interlock device, as applicable, shall terminate the privilege.
62 The director shall notify by ordinary mail the driver whose privilege is so terminated.

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

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

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

73 (c) Ineligibility for a license because of the provisions of subdivision (1), (2), (4), (5),
74 (6), (7), (8), (9), (10) or (11) of section 302.060;

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

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

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

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

87 (7) No person who possesses a commercial driver's license shall receive a limited driving
88 privilege issued for the purpose of operating a commercial motor vehicle if such person's driving
89 privilege is suspended, revoked, canceled, denied, or disqualified. Nothing in this section shall

90 prohibit the issuance of a limited driving privilege for the purpose of operating a noncommercial
91 motor vehicle provided that pursuant to the provisions of this section, the applicant is not
92 otherwise ineligible for a limited driving privilege.

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

103 (b) Provided that pursuant to the provisions of this section, the applicant is not otherwise
104 ineligible for a limited driving privilege or convicted of involuntary manslaughter while
105 operating a motor vehicle in an intoxicated condition, a circuit court or the director may, in the
106 manner prescribed in this subsection, allow a person who has had such person's license to operate
107 a motor vehicle revoked where that person cannot obtain a new license for a period of five years
108 because of two convictions of driving while intoxicated, as prescribed in subdivision (10) of
109 section 302.060, to apply for a limited driving privilege pursuant to this subsection if such person
110 has served at least two years of such disqualification or revocation. Such person shall present
111 evidence satisfactory to the court or the director that such person has not been convicted of any
112 offense related to alcohol, controlled substances or drugs during the preceding two years and that
113 the person's habits and conduct show that the person no longer poses a threat to the public safety
114 of this state. Any person who is denied a license permanently in this state because of an
115 alcohol-related conviction subsequent to a restoration of such person's driving privileges
116 pursuant to subdivision (9) of section 302.060 shall not be eligible for limited driving privilege
117 pursuant to the provisions of this subdivision.

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

122 4. Any person who has received notice of denial of a request of limited driving privilege
123 by the director of revenue may make a request for a review of the director's determination in the
124 circuit court of the county in which the person resides or the county in which is located the
125 person's principal place of business or employment within thirty days of the date of mailing of

126 the notice of denial. Such review shall be based upon the records of the department of revenue
127 and other competent evidence and shall be limited to a review of whether the applicant was
128 statutorily entitled to the limited driving privilege.

129 5. The director of revenue shall promulgate rules and regulations necessary to carry out
130 the provisions of this section. Any rule or portion of a rule, as that term is defined in section
131 536.010, that is created under the authority delegated in this section shall become effective only
132 if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
133 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the
134 general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove
135 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
136 and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

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

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

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

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

12 (2) A "chronic offender" is:

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

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

22 (c) A person who has pleaded guilty to or has been found guilty of two or more
23 intoxication-related traffic offenses and, in addition, any of the following: involuntary
24 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024; murder in the
25 second degree under section 565.021, where the underlying felony is an intoxication-related

26 traffic offense; assault in the second degree under subdivision (4) of subsection 1 of section
27 565.060; or assault of a law enforcement officer in the second degree under subdivision (4) of
28 subsection 1 of section 565.082;

29 (3) "Continuous alcohol monitoring", automatically testing breath, blood, or transdermal
30 alcohol concentration levels and tampering attempts at least once every hour, regardless of the
31 location of the person who is being monitored, and regularly transmitting the data. Continuous
32 alcohol monitoring shall be considered an electronic monitoring service under subsection 3 of
33 section 217.690;

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

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

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

44 (b) A person who has pleaded guilty to or has been found guilty of involuntary
45 manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, assault in the
46 second degree pursuant to subdivision (4) of subsection 1 of section 565.060, assault of a law
47 enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section
48 565.082; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

115 12. Nothing in this section shall prevent the use of presentence investigations or
116 commitments.

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

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

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

124 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an
125 intoxication-related traffic offense shall be heard and determined by the trial court out of the
126 hearing of the jury prior to the submission of the case to the jury, and shall include but not be
127 limited to evidence received by a search of the records of the Missouri uniform law enforcement
128 system, including criminal history records from the central repository or records from the driving
129 while intoxicated tracking system (DWITS) maintained by the Missouri state highway patrol, or
130 the certified driving record maintained by the Missouri department of revenue. After hearing the
131 evidence, the court shall enter its findings thereon. A plea of guilty or a finding of guilt followed
132 by incarceration, a fine, a suspended imposition of sentence, suspended execution of sentence,

133 probation or parole or any combination thereof in any intoxication-related traffic offense in a
134 state, county or municipal court or any combination thereof, shall be treated as a prior plea of
135 guilty or finding of guilt for purposes of this section.

T