

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE BILL NO. 402
93RD GENERAL ASSEMBLY

Reported from the Committee on Local Government May 5, 2005, with recommendation that House Committee Substitute for Senate Substitute for Senate Bill No. 402 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

0337L.09C

AN ACT

To repeal sections 311.310, 311.325, 570.223, and 577.500, RSMo, and to enact in lieu thereof seven new sections relating to substance abuse, with penalty provisions.

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

Section A. Sections 311.310, 311.325, 570.223, and 577.500, RSMo, are repealed and
2 seven new sections enacted in lieu thereof, to be known as sections 160.069, 311.310, 311.325,
3 311.326, 311.722, 570.223, and 577.500, to read as follows:

**160.069. Every school district shall develop a policy by June 30, 2006, detailing the
2 consequences that will result for a student at school if the student is found to be in
3 possession or drinking alcohol either on school property or while representing the school
4 at extracurricular activities.**

311.310. **1.** Any licensee under this chapter, or his employee, who shall sell, vend, give
2 away or otherwise supply any intoxicating liquor in any quantity whatsoever to any person under
3 the age of twenty-one years, or to any person intoxicated or appearing to be in a state of
4 intoxication, or to a habitual drunkard, and any person whomsoever except his parent or guardian
5 who shall procure for, sell, give away or otherwise supply intoxicating liquor to any person under
6 the age of twenty-one years, or to any intoxicated person or any person appearing to be in a state
7 of intoxication, or to a habitual drunkard, shall be deemed guilty of a misdemeanor, except that
8 this section shall not apply to the supplying of intoxicating liquor to a person under the age of

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.

9 twenty-one years for medical purposes only, or to the administering of such intoxicating liquor
10 to any person by a duly licensed physician. No person shall be denied a license or renewal of a
11 license issued under this chapter solely due to a conviction for unlawful sale or supply to a minor
12 when serving in the capacity as an employee of a licensed establishment.

13 **2. Any owner, occupant, or other person or legal entity with a lawful right to the**
14 **use and enjoyment of any property, except for a parent or guardian, who knowingly allows**
15 **any person under the age of twenty-one years to consume intoxicating liquor on such**
16 **property, or knowingly fails to stop any person under the age of twenty-one years from**
17 **consuming intoxicating liquor on such property shall be deemed guilty of a class B**
18 **misdemeanor.**

19 **3. It shall be a defense to prosecution under this section if:**

20 **(1) The defendant is a licensed retailer, club, drinking establishment, or caterer or**
21 **holds a temporary permit, or an employee thereof;**

22 **(2) The defendant sold the intoxicating liquor to the minor with reasonable cause**
23 **to believe that the minor was twenty-one or more years of age; and**

24 **(3) To purchase the intoxicating liquor, the person exhibited to the defendant a**
25 **driver's license, Missouri nondriver's identification card, or other official or apparently**
26 **official document, containing a photograph of the minor and purporting to establish that**
27 **such minor was twenty-one years of age and of the legal age for consumption of**
28 **intoxicating liquor.**

311.325. 1. Any person under the age of twenty-one years, who purchases or attempts
2 to purchase, or has in his **or her** possession, any intoxicating liquor as defined in section
3 311.020 **or who is visibly intoxicated as defined in section 577.001, RSMo, or has a**
4 **detectable blood alcohol content of more than two-hundredths of one percent or more by**
5 **weight of alcohol in such person's blood** is guilty of a misdemeanor. For purposes of
6 prosecution under this section or any other provision of this chapter involving an alleged illegal
7 sale or transfer of intoxicating liquor to a person under twenty-one years of age, a
8 manufacturer-sealed container describing that there is intoxicating liquor therein need not be
9 opened or the contents therein tested to verify that there is intoxicating liquor in such container.
10 The alleged violator may allege that there was not intoxicating liquor in such container, but the
11 burden of proof of such allegation is on such person, as it shall be presumed that such a sealed
12 container describing that there is intoxicating liquor therein contains intoxicating liquor.

13 **2.** For purposes of determining violations of any provision of this chapter, or of any rule
14 or regulation of the supervisor of alcohol and tobacco control, a manufacturer-sealed container
15 describing that there is intoxicating liquor therein need not be opened or the contents therein
16 tested to verify that there is intoxicating liquor in such container. The alleged violator may allege

17 that there was not intoxicating liquor in such container, but the burden of proof of such allegation
18 is on such person, as it shall be presumed that such a sealed container describing that there is
19 intoxicating liquor therein contains intoxicating liquor.

**311.326. After a period of not less than one year, or upon reaching the age of
2 twenty-one, whichever occurs first, a person who has pleaded guilty to or has been found
3 guilty of violating section 311.325 for the first time, and who since such conviction has not
4 been convicted of any other alcohol-related offense, may apply to the court in which he or
5 she was sentenced for an order to expunge all official records of his or her arrest, plea, trial
6 and conviction. If the court determines, upon review, that such person has not been
7 convicted of any other alcohol-related offense at the time of the application for
8 expungement, and the person has had no other alcohol-related enforcement contacts, as
9 defined in section 302.525, the court shall enter an order of expungement. The effect of
10 such an order shall be to restore such person to the status he or she occupied prior to such
11 arrest, plea or conviction, as if such event had never happened. No person as to whom such
12 order has been entered shall be held thereafter under any provision of any law to be guilty
13 of perjury or otherwise giving a false statement by reason of his or her failure to recite or
14 acknowledge such arrest, plea, trial, conviction or expungement in response to any inquiry
15 made of him or her for any purpose whatsoever. A person shall be entitled to only one
16 expungement pursuant to this section. Nothing contained in this section shall prevent
17 courts or other state officials from maintaining such records as are necessary to ensure that
18 an individual receives only one expungement pursuant to this section.**

**311.722. 1. The supervisor of alcohol and tobacco control shall not use minors, to
2 enforce the laws of this chapter or chapter 312, RSMo, unless the supervisor promulgates
3 rules and regulations that establish standards for the use of minors. The standards shall
4 include those in subsection 2 of this section.**

**2. The supervisor shall establish, by July 1, 2006, permissive standards for the use
6 of minors in investigations by any state, county, municipal or other local law enforcement
7 authority, and which shall, at a minimum, provide for the following:**

- 8 (1) The minor shall be eighteen or nineteen years of age;
- 9 (2) The minor shall have a youthful appearance and the minor, if a male, shall not
10 have facial hair or a receding hairline;
- 11 (3) The minor shall carry his or her own identification showing the minor's correct
12 date of birth and shall, upon request, produce such identification to the seller of the
13 intoxicating liquor or nonintoxicating beer at the licensed establishment;
- 14 (4) The minor shall answer truthfully any questions about his or her age and shall
15 not remain silent when asked questions regarding his or her age, nor misrepresent

16 **anything in order to induce a sale of intoxicating liquor or nonintoxicating beer.**

17 **3. The supervisor of alcohol and tobacco control shall not participate with any**
18 **state, county, municipal, or other local law enforcement agency, nor discipline any licensed**
19 **establishment when any state, county, municipal, or other law enforcement agency chooses**
20 **not to follow the supervisor's permissive standards.**

21 **4. Any minors used in investigations under this section shall be exempt from any**
22 **violations under chapter 311 and chapter 312, during the time they are under direct**
23 **control of the state, county, municipal, or other law enforcement authorities.**

570.223. 1. A person commits the crime of identity theft if he or she knowingly and with
2 the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer
3 or use, one or more means of identification not lawfully issued for his or her use.

4 2. The term "means of identification" as used in this section includes, but is not limited
5 to, the following:

- 6 (1) Social Security numbers;
- 7 (2) Drivers license numbers;
- 8 (3) Checking account numbers;
- 9 (4) Savings account numbers;
- 10 (5) Credit card numbers;
- 11 (6) Debit card numbers;
- 12 (7) Personal identification (PIN) code;
- 13 (8) Electronic identification numbers;
- 14 (9) Digital signatures;
- 15 (10) Any other numbers or information that can be used to access a person's financial
16 resources;
- 17 (11) Biometric data;
- 18 (12) Fingerprints;
- 19 (13) Passwords;
- 20 (14) Parent's legal surname prior to marriage;
- 21 (15) Passports; or
- 22 (16) Birth certificates.

23 3. A person found guilty of identity theft shall be punished as follows:

24 (1) Identity theft or attempted identity theft which does not result in the theft or
25 appropriation of credit, money, goods, services, or other property is a class B misdemeanor;

26 (2) Identity theft which results in the theft or appropriation of credit, money, goods,
27 services, or other property not exceeding five hundred dollars in value is a class A misdemeanor;

28 (3) Identity theft which results in the theft or appropriation of credit, money, goods,
29 services, or other property exceeding five hundred dollars and not exceeding ten thousand dollars
30 in value is a class C felony;

31 (4) Identity theft which results in the theft or appropriation of credit, money, goods,
32 services, or other property exceeding ten thousand dollars and not exceeding one hundred
33 thousand dollars in value is a class B felony;

34 (5) Identity theft which results in the theft or appropriation of credit, money, goods,
35 services, or other property exceeding one hundred thousand dollars in value is a class A felony.

36 4. In addition to the provisions of subsection 3 of this section, the court may order that
37 the defendant make restitution to any victim of the offense. Restitution may include payment
38 for any costs, including attorney fees, incurred by the victim:

39 (1) In clearing the credit history or credit rating of the victim; and

40 (2) In connection with any civil or administrative proceeding to satisfy any debt, lien,
41 or other obligation of the victim arising from the actions of the defendant.

42 5. In addition to the criminal penalties in subsections 3 and 4 of this section, any person
43 who commits an act made unlawful by subsection 1 of this section shall be liable to the person
44 to whom the identifying information belonged for civil damages of up to five thousand dollars
45 for each incident, or three times the amount of actual damages, whichever amount is greater. A
46 person damaged as set forth in subsection 1 of this section may also institute a civil action to
47 enjoin and restrain future acts that would constitute a violation of subsection 1 of this section.
48 The court, in an action brought under this subsection, may award reasonable attorneys' fees to
49 the plaintiff.

50 6. If the identifying information of a deceased person is used in a manner made unlawful
51 by subsection 1 of this section, the deceased person's estate shall have the right to recover
52 damages pursuant to subsection 5 of this section.

53 7. Civil actions under this section must be brought within five years from the date on
54 which the identity of the wrongdoer was discovered or reasonably should have been discovered.

55 8. Civil action pursuant to this section does not depend on whether a criminal
56 prosecution has been or will be instituted for the acts that are the subject of the civil action. The
57 rights and remedies provided by this section are in addition to any other rights and remedies
58 provided by law.

59 9. This section and section 570.224 shall not apply to the following activities:

60 (1) A person obtains the identity of another person to misrepresent his or her age for the
61 sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or
62 another privilege denied to minors. **Nothing in this subdivision shall affect the provisions of**

63 **subsection 10 of this section;**

64 (2) A person obtains means of identification or information in the course of a bona fide
65 consumer or commercial transaction;

66 (3) A person exercises, in good faith, a security interest or right of offset by a creditor
67 or financial institution;

68 (4) A person complies, in good faith, with any warrant, court order, levy, garnishment,
69 attachment, or other judicial or administrative order, decree, or directive, when any party is
70 required to do so;

71 (5) A person is otherwise authorized by law to engage in the conduct that is the subject
72 of the prosecution.

73 **10. Any person who obtains, transfers, or uses any means of identification for the**
74 **purpose of manufacturing and providing or selling a false identification card to a person**
75 **under the age of twenty-one for the purpose of purchasing or obtaining alcohol shall be**
76 **guilty of a class A misdemeanor.**

77 **11.** Notwithstanding the provisions of subdivision (1) or (2) of subsection 3 of this
78 section, every person who has previously pled guilty to or been found guilty of identity theft or
79 attempted identity theft, and who subsequently pleads guilty to or is found guilty of identity theft
80 or attempted identity theft of credit, money, goods, services, or other property not exceeding five
81 hundred dollars in value is guilty of a class D felony and shall be punished accordingly.

82 [11.] **12.** The value of property or services is its highest value by any reasonable standard
83 at the time the identity theft is committed. Any reasonable standard includes, but is not limited
84 to, market value within the community, actual value, or replacement value.

85 [12.] **13.** If credit, property, or services are obtained by two or more acts from the same
86 person or location, or from different persons by two or more acts which occur in approximately
87 the same location or time period so that the identity thefts are attributable to a single scheme,
88 plan, or conspiracy, the acts may be considered as a single identity theft and the value may be
89 the total value of all credit, property, and services involved.

577.500. 1. A court of competent jurisdiction shall, upon a plea of guilty, conviction or
2 finding of guilt, or, if the court is a juvenile court, upon a finding of fact that the offense was
3 committed by a juvenile, enter an order suspending or revoking the driving privileges of any
4 person determined to have committed one of the following offenses and who, at the time said
5 offense was committed, was under twenty-one years of age:

6 (1) Any alcohol related traffic offense in violation of state law or a county or, beginning
7 July 1, 1992, municipal ordinance, where the judge in such case was an attorney and the
8 defendant was represented by or waived the right to an attorney in writing;

9 (2) Any offense in violation of state law or, beginning July 1, 1992, a county or
10 municipal ordinance, where the judge in such case was an attorney and the defendant was
11 represented by or waived the right to an attorney in writing, involving the possession or use of
12 alcohol, committed while operating a motor vehicle;

13 (3) Any offense involving the possession or use of a controlled substance as defined in
14 chapter 195, RSMo, in violation of the state law or, beginning July 1, 1992, a county or
15 municipal ordinance, where the judge in such case was an attorney and the defendant was
16 represented by or waived the right to an attorney in writing;

17 (4) Any offense involving the alteration, modification or misrepresentation of a license
18 to operate a motor vehicle in violation of section 311.328, RSMo;

19 (5) Any offense in violation of state law or, beginning July 1, 1992, a county or
20 municipal ordinance, where the judge in such case was an attorney and the defendant was
21 represented by or waived the right to an attorney in writing, involving the possession or use of
22 alcohol for a second time; except that a determination of guilt or its equivalent shall have been
23 made for the first offense and both offenses shall have been committed by the person when the
24 person was under eighteen years of age.

25 **2. A court of competent jurisdiction shall, upon a plea of guilty or nolo contendere,**
26 **conviction or finding of guilt, or, if the court is a juvenile court, upon a finding of fact that**
27 **the offense was committed by a juvenile, enter an order suspending or revoking the driving**
28 **privileges of any person determined to have committed a crime or violation of section**
29 **311.325, RSMo, and who, at the time said crime or violation was committed, was more than**
30 **fifteen years of age and under twenty-one years of age.**

31 **3.** The court shall require the surrender to it of any license to operate a motor vehicle,
32 **temporary instruction permit, intermediate driver's license or any other driving privilege**
33 then held by any person against whom a court has entered an order suspending or revoking
34 driving privileges under [subsection] **subsections 1 and 2** of this section.

35 [3.] **4.** The court, if other than a juvenile court, shall forward to the director of revenue
36 the order of suspension or revocation of driving privileges and any licenses, **temporary**
37 **instruction permits, intermediate driver's licenses, or any other driving privilege** acquired
38 under subsection [2] **3** of this section.

39 [4.] **5.** (1) The court, if a juvenile court, shall forward to the director of revenue the order
40 of suspension or revocation of driving privileges and any licenses, **temporary instruction**
41 **permits, intermediate driver's licenses, or any other driving privilege** acquired under
42 subsection [2] **3** of this section for any person sixteen years of age or older, the provision of
43 chapter 211, RSMo, to the contrary notwithstanding.

44 (2) The court, if a juvenile court, shall hold the order of suspension or revocation of
45 driving privileges for any person less than sixteen years of age until thirty days before the
46 person's sixteenth birthday, at which time the juvenile court shall forward to the director of
47 revenue the order of suspension or revocation of driving privileges, the provision of chapter 211,
48 RSMo, to the contrary notwithstanding.

49 [5.] **6.** The period of suspension for a first offense under **subsection 1** of this section
50 shall be ninety days. Any second or subsequent offense under **subsection 1** of this section shall
51 result in revocation of the offender's driving privileges for one year. **The period of suspension**
52 **for a first offense under subsection 2 of this section shall be thirty days. The period of**
53 **suspension for a second offense under subsection 2 of this section shall be ninety days. Any**
54 **third or subsequent offense under subsection 2 of this section shall result in revocation of**
55 **the offender's driving privileges for one year.**