

SECOND REGULAR SESSION

# HOUSE BILL NO. 1367

97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BAHR.

4839L.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 301.216 and 301.562, RSMo, and to enact in lieu thereof two new sections relating to peace officers, with a penalty provision.

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

Section A. Sections 301.216 and 301.562, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 301.216 and 301.562, to read as follows:

301.216. Department investigators licensed as peace officers by the director of the department of public safety under chapter 590 shall be deemed to be peace officers within the state of Missouri while acting in an investigation to enforce the provisions of this chapter and any provisions regarding fees, licenses, or taxes **other than taxes under chapter 143, 144, or 147** administered by the director. The power of arrest of a department investigator acting as a peace officer shall be limited to offenses involving fees, licenses, taxes **other than taxes under chapter 143, 144, or 147**, or in situations of imminent danger to the investigator or another person.

301.562. 1. The department may refuse to issue or renew any license required pursuant to sections 301.550 to 301.573 for any one or any combination of causes stated in subsection 2 of this section. The department shall notify the applicant or licensee in writing at his or her last known address of the reasons for the refusal to issue or renew the license and shall advise the applicant or licensee of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any license issued under sections 301.550 to 301.573 for any one or any combination of the following causes:

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.

10 (1) The applicant or license holder was previously the holder of a license issued under  
11 sections 301.550 to 301.573, which license was revoked for cause and never reissued by the  
12 department, or which license was suspended for cause and the terms of suspension have not been  
13 fulfilled;

14 (2) The applicant or license holder was previously a partner, stockholder, director or  
15 officer controlling or managing a partnership or corporation whose license issued under sections  
16 301.550 to 301.573 was revoked for cause and never reissued or was suspended for cause and  
17 the terms of suspension have not been fulfilled;

18 (3) The applicant or license holder has, within ten years prior to the date of the  
19 application, been finally adjudicated and found guilty, or entered a plea of guilty or nolo  
20 contendere, in a prosecution under the laws of any state or of the United States, for any offense  
21 reasonably related to the qualifications, functions, or duties of any business licensed under  
22 sections 301.550 to 301.573; for any offense, an essential element of which is fraud, dishonesty,  
23 or an act of violence; or for any offense involving moral turpitude, whether or not sentence is  
24 imposed;

25 (4) Use of fraud, deception, misrepresentation, or bribery in securing any license issued  
26 pursuant to sections 301.550 to 301.573;

27 (5) Obtaining or attempting to obtain any money, commission, fee, barter, exchange, or  
28 other compensation by fraud, deception, or misrepresentation;

29 (6) Violation of, or assisting or enabling any person to violate any provisions of this  
30 chapter and chapters 143, 144, 306, 307, 407, 578, and 643 or of any lawful rule or regulation  
31 adopted pursuant to this chapter and chapters 143, 144, 306, 307, 407, 578, and 643;

32 (7) The applicant or license holder has filed an application for a license which, as of its  
33 effective date, was incomplete in any material respect or contained any statement which was, in  
34 light of the circumstances under which it was made, false or misleading with respect to any  
35 material fact;

36 (8) The applicant or license holder has failed to pay the proper application or license fee  
37 or other fees required pursuant to this chapter or chapter 306 or fails to establish or maintain a  
38 bona fide place of business;

39 (9) Uses or permits the use of any special license or license plate assigned to the license  
40 holder for any purpose other than those permitted by law;

41 (10) The applicant or license holder is finally adjudged insane or incompetent by a court  
42 of competent jurisdiction;

43 (11) Use of any advertisement or solicitation which is false;

44 (12) Violations of sections 407.511 to 407.556, section 578.120, which resulted in a  
45 conviction or finding of guilt or violation of any federal motor vehicle laws which result in a  
46 conviction or finding of guilt.

47 3. Any such complaint shall be filed within one year of the date upon which the  
48 department receives notice of an alleged violation of an applicable statute or regulation. After  
49 the filing of such complaint, the proceedings shall, except for the matters set forth in subsection  
50 5 of this section, be conducted in accordance with the provisions of chapter 621. Upon a finding  
51 by the administrative hearing commission that the grounds, provided in subsection 2 of this  
52 section, for disciplinary action are met, the department may, singly or in combination, refuse to  
53 issue the person a license, issue a license for a period of less than two years, issue a private  
54 reprimand, place the person on probation on such terms and conditions as the department deems  
55 appropriate for a period of one day to five years, suspend the person's license from one day to  
56 six days, or revoke the person's license for such period as the department deems appropriate. The  
57 applicant or licensee shall have the right to appeal the decision of the administrative hearing  
58 commission and department in the manner provided in chapter 536.

59 4. Upon the suspension or revocation of any person's license issued under sections  
60 301.550 to 301.573, the department shall recall any distinctive number plates that were issued  
61 to that licensee. If any licensee who has been suspended or revoked shall neglect or refuse to  
62 surrender his or her license or distinctive number license plates issued under sections 301.550  
63 to 301.580, the director shall direct any [agent or employee of the department or any] law  
64 enforcement officer, to secure possession thereof and return such items to the director. For  
65 purposes of this subsection, a "law enforcement officer" means any member of the highway  
66 patrol, any sheriff or deputy sheriff, or any peace officer certified under chapter 590 acting in his  
67 or her official capacity. Failure of the licensee to surrender his or her license or distinctive  
68 number license plates upon demand by the director[, any agent or employee of the department,]  
69 or any law enforcement officer shall be a class A misdemeanor.

70 5. Notwithstanding the foregoing provisions of this section, the following events or acts  
71 by the holder of any license issued under sections 301.550 to 301.580 are deemed to present a  
72 clear and present danger to the public welfare and shall be considered cause for suspension or  
73 revocation of such license under the procedure set forth in subsection 6 of this section, at the  
74 discretion of the director:

75 (1) The expiration or revocation of any corporate surety bond or irrevocable letter of  
76 credit, as required by section 301.560, without submission of a replacement bond or letter of  
77 credit which provides coverage for the entire period of licensure;

78 (2) The failure to maintain a bona fide established place of business as required by  
79 section 301.560;

80 (3) Criminal convictions as set forth in subdivision (3) of subsection 2 of this section;  
81 or

82 (4) Three or more occurrences of violations which have been established following  
83 proceedings before the administrative hearing commission under subsection 3 of this section, or  
84 which have been established following proceedings before the director under subsection 6 of this  
85 section, of this chapter and chapters 143, 144, 306, 307, 578, and 643 or of any lawful rule or  
86 regulation adopted under this chapter and chapters 143, 144, 306, 307, 578, and 643, not  
87 previously set forth herein.

88 6. (1) Any license issued under sections 301.550 to 301.580 shall be suspended or  
89 revoked, following an evidentiary hearing before the director or his or her designated hearing  
90 officer, if affidavits or sworn testimony by an authorized agent of the department alleges the  
91 occurrence of any of the events or acts described in subsection 5 of this section.

92 (2) For any license which the department believes may be subject to suspension or  
93 revocation under this subsection, the director shall immediately issue a notice of hearing to the  
94 licensee of record. The director's notice of hearing:

95 (a) Shall be served upon the licensee personally or by first class mail to the dealer's last  
96 known address, as registered with the director;

97 (b) Shall be based on affidavits or sworn testimony presented to the director, and shall  
98 notify the licensee that such information presented therein constitutes cause to suspend or revoke  
99 the licensee's license;

100 (c) Shall provide the licensee with a minimum of ten days' notice prior to hearing;

101 (d) Shall specify the events or acts which may provide cause for suspension or revocation  
102 of the license, and shall include with the notice a copy of all affidavits, sworn testimony or other  
103 information presented to the director which support discipline of the license; and

104 (e) Shall inform the licensee that he or she has the right to attend the hearing and present  
105 any evidence in his or her defense, including evidence to show that the event or act which may  
106 result in suspension or revocation has been corrected to the director's satisfaction, and that he or  
107 she may be represented by counsel at the hearing.

108 (3) At any hearing before the director conducted under this subsection, the director or  
109 his or her designated hearing officer shall consider all evidence relevant to the issue of whether  
110 the license should be suspended or revoked due to the occurrence of any of the acts set forth in  
111 subsection 5 herein. Within twenty business days after such hearing, the director or his or her  
112 designated hearing officer shall issue a written order, with findings of fact and conclusions of  
113 law, which either grants or denies the issuance of an order of suspension or revocation. The  
114 suspension or revocation shall be effective ten days after the date of the order. The written order

115 of the director or his or her hearing officer shall be the final decision of the director and shall be  
116 subject to judicial review under the provisions of chapter 536.

117 (4) Notwithstanding the provisions of this chapter or chapter 610 or 621 to the contrary,  
118 the proceedings under this section shall be closed and no order shall be made public until it is  
119 final, for purposes of appeal.

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