

FIRST REGULAR SESSION

# HOUSE BILL NO. 678

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LIPKE.

Read 1<sup>st</sup> time March 13, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2068L.011

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### AN ACT

To repeal sections 302.060, 302.309, and 577.023, RSMo, and to enact in lieu thereof three new sections relating to penalties for intoxication-related traffic offenses, with penalty provisions.

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

Section A. Sections 302.060, 302.309, and 577.023, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 302.060, 302.309, and 577.023, to read as follows: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(3) To any person whose license has been suspended, during such suspension, or to any person whose license has been revoked, until the expiration of one year after such license was revoked;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;

(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

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

15 chapter 303, RSMo, until such judgment has been satisfied or the financial responsibility of such  
16 person, as defined in section 303.120, RSMo, has been established;

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

21 (9) To any person who has been convicted more than twice of violating state law, or a  
22 county or municipal ordinance where the judge in such cases was an attorney and the defendant  
23 was represented by or waived the right to an attorney in writing, relating to [driving while  
24 intoxicated] **an intoxication-related traffic offense as defined in section 577.023, RSMo**;  
25 except that, after the expiration of ten years from the date of conviction of the last offense of  
26 violating such law or ordinance relating to [driving while intoxicated] **an intoxication-related**  
27 **traffic offense as defined in section 577.023, RSMo**, a person who was so convicted may  
28 petition the circuit court of the county in which such last conviction was rendered and the court  
29 shall review the person's habits and conduct since such conviction. If the court finds that the  
30 petitioner has not been convicted of any **intoxication-related traffic** offense [related to alcohol,  
31 controlled substances or drugs] **as defined in section 577.023, RSMo**, during the preceding ten  
32 years and that the petitioner's habits and conduct show such petitioner to no longer pose a threat  
33 to the public safety of this state, the court may order the director to issue a license to the  
34 petitioner if the petitioner is otherwise qualified pursuant to the provisions of sections 302.010  
35 to 302.540. No person may obtain a license pursuant to the provisions of this subdivision  
36 through court action more than one time;

37 (10) To any person who has been convicted twice within a five-year period of violating  
38 state law, or a county or municipal ordinance where the judge in such cases was an attorney and  
39 the defendant was represented by or waived the right to an attorney in writing, [of driving while  
40 intoxicated] **relating to an intoxication-related traffic offense as defined in section 577.023,**  
41 **RSMo**, or who has been convicted **once within a five-year period** of the crime of involuntary  
42 manslaughter while operating a motor vehicle in an intoxicated condition. The director shall not  
43 issue a license to such person for five years from the date such person was convicted for  
44 involuntary manslaughter while operating a motor vehicle in an intoxicated condition or [for  
45 driving while intoxicated] for the second time **for an intoxication-related traffic offense as**  
46 **defined in section 577.023, RSMo**. Any person who has been denied a license for two  
47 convictions of [driving while intoxicated] **an intoxication-related traffic offense as defined**  
48 **in section 577.023, RSMo**, prior to July 27, 1989, shall have the person's license issued, upon  
49 application, unless the two convictions occurred within a five-year period, in which case, no  
50 license shall be issued to the person for five years from the date of the second conviction;

51 (11) To any person who is otherwise disqualified pursuant to the provisions of sections  
52 302.010 to 302.780, chapter 303, RSMo, or section 544.046, RSMo;

53 (12) To any person who is under the age of eighteen years, if such person's parents or  
54 legal guardians file a certified document with the department of revenue stating that the director  
55 shall not issue such person a driver's license. Each document filed by the person's parents or  
56 legal guardians shall be made upon a form furnished by the director and shall include identifying  
57 information of the person for whom the parents or legal guardians are denying the driver's  
58 license. The document shall also contain identifying information of the person's parents or legal  
59 guardians. The document shall be certified by the parents or legal guardians to be true and  
60 correct. This provision shall not apply to any person who is legally emancipated. The parents  
61 or legal guardians may later file an additional document with the department of revenue which  
62 reinstates the person's ability to receive a driver's license.

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

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

7 3. (1) All circuit courts or the director of revenue shall have jurisdiction to hear  
8 applications and make eligibility determinations granting limited driving privileges. Any  
9 application may be made in writing to the director of revenue and the person's reasons for  
10 requesting the limited driving privilege shall be made therein.

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

- 13 (a) A business, occupation, or employment;
- 14 (b) Seeking medical treatment for such operator;
- 15 (c) Attending school or other institution of higher education;
- 16 (d) Attending alcohol or drug treatment programs; or
- 17 (e) Any other circumstance the court or director finds would create an undue hardship  
18 on the operator;

19 The court or director may grant such limited driving privilege as the circumstances of the case  
20 justify if the court or director finds undue hardship would result to the individual, and while so  
21 operating a motor vehicle within the restrictions and limitations of the limited driving privilege  
22 the driver shall not be guilty of operating a motor vehicle without a valid license.

23 (3) An operator may make application to the proper court in the county in which such  
24 operator resides or in the county in which is located the operator's principal place of business or

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

39 (4) The court order or the director's grant of the limited driving privilege shall indicate  
40 the termination date of the privilege, which shall be not later than the end of the period of  
41 suspension or revocation. A copy of any court order shall be sent by the clerk of the court to the  
42 director, and a copy shall be given to the driver which shall be carried by the driver whenever  
43 such driver operates a motor vehicle. The director of revenue upon granting a limited driving  
44 privilege shall give a copy of the limited driving privilege to the applicant. The applicant shall  
45 carry a copy of the limited driving privilege while operating a motor vehicle. A conviction  
46 which results in the assessment of points pursuant to section 302.302, other than a violation of  
47 a municipal stop sign ordinance where no accident is involved, against a driver who is operating  
48 a vehicle pursuant to a limited driving privilege terminates the privilege, as of the date the points  
49 are assessed to the person's driving record. If the date of arrest is prior to the issuance of the  
50 limited driving privilege, the privilege shall not be terminated. The director shall notify by  
51 ordinary mail the driver whose privilege is so terminated.

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

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

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

62 (c) Ineligibility for a license because of the provisions of subdivision (1), (2), (4), (5),  
63 (6), (7), (8), (9), (10) or (11) of section 302.060;

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

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

70 (f) Violation more than once of the provisions of section 577.041, RSMo, or a similar  
71 implied consent law of any other state;

72 (g) Disqualification of a commercial driver's license pursuant to sections 302.700 to  
73 302.780, however, nothing in this subsection shall prevent a person holding a commercial  
74 driver's license who is suspended or revoked as a result of an action occurring while not driving  
75 a commercial motor vehicle or driving for pay, but while driving in an individual capacity as an  
76 operator of a personal vehicle from applying for a limited driving privilege to operate a  
77 commercial vehicle, if otherwise eligible for such limited privilege; or

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

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

92 (b) Provided that pursuant to the provisions of this section, the applicant is not otherwise  
93 ineligible for a limited driving privilege or convicted of involuntary manslaughter while  
94 operating a motor vehicle in an intoxicated condition, 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 five years

97 because of two convictions of [driving while intoxicated] **an intoxication-related traffic**  
98 **offense as defined in section 577.023, RSMo**, as prescribed in subdivision (10) of section  
99 302.060, to apply for a limited driving privilege pursuant to this subsection if such person has  
100 served at least two years of such disqualification or revocation. Such person shall present  
101 evidence satisfactory to the court or the director that such person has not been convicted of any  
102 offense related to alcohol, controlled substances or drugs during the preceding two years and that  
103 the person's habits and conduct show that the person no longer poses a threat to the public safety  
104 of this state. Any person who is denied a license permanently in this state because of an  
105 [alcohol-related conviction] **intoxication-related traffic offense as defined in section 577.023,**  
106 **RSMo**, subsequent to a restoration of such person's driving privileges pursuant to subdivision  
107 (9) of section 302.060 shall not be eligible for limited driving privilege pursuant to the provisions  
108 of this subdivision.

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

116 5. The director of revenue shall promulgate rules and regulations necessary to carry out  
117 the provisions of this section. Any rule or portion of a rule, as that term is defined in section  
118 536.010, RSMo, that is created under the authority delegated in this section shall become  
119 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,  
120 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are  
121 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,  
122 RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently  
123 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted  
124 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 "intoxication-related traffic offense" is driving while intoxicated, driving with  
3 excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) of  
4 subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4)  
5 of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second  
6 degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo, or driving under  
7 the influence of alcohol or drugs in violation of state law or a county or municipal ordinance,  
8 where the judge in such case was an attorney and the defendant was represented by or waived

9 the right to an attorney in writing;

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

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

14 (b) A person who has pleaded guilty to or has been found guilty of involuntary  
15 manslaughter pursuant to subsection 1 of section 565.024, RSMo, assault in the second degree  
16 pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law  
17 enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section  
18 565.082, RSMo; and

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

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

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

28 4. No court shall suspend the imposition of sentence as to a prior or persistent offender  
29 under this section nor sentence such person to pay a fine in lieu of a term of imprisonment,  
30 section 557.011, RSMo, to the contrary notwithstanding. No prior offender shall be eligible for  
31 parole or probation until he **or she** has served a minimum of five days imprisonment, unless as  
32 a condition of such parole or probation such person performs at least [thirty days] **eighty hours**  
33 of community service, **within six months**, under the supervision of the court in those  
34 jurisdictions which have a recognized program for community service. No persistent offender  
35 shall be eligible for parole or probation until he or she has served a minimum of ten days  
36 imprisonment, unless as a condition of such parole or probation such person performs at least  
37 [sixty days] **one hundred sixty hours** of community service, **within one year**, under the  
38 supervision of the court.

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

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

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

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

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

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

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

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

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

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

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

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

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