

SECOND REGULAR SESSION

HOUSE BILL NO. 1473

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SKAGGS.

Read 1st time February 12, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3216L.011

AN ACT

To repeal sections 307.178, 577.017, and 577.041, RSMo, and to enact in lieu thereof three new sections relating to transportation safety.

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

Section A. Sections 307.178, 577.017, and 577.041, RSMo, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 307.178, 577.017, and 577.041, to read
3 as follows:

307.178. 1. As used in this section, the term "passenger car" means every motor vehicle
2 designed for carrying ten persons or less and used for the transportation of persons; except that,
3 the term "passenger car" shall not include motorcycles, motorized bicycles, motor tricycles and
4 trucks with a licensed gross weight of twelve thousand pounds or more.

5 2. Each driver, except persons employed by the United States Postal Service while
6 performing duties for that federal agency which require the operator to service postal boxes from
7 their vehicles, or which require frequent entry into and exit from their vehicles, and front seat
8 passenger of a passenger car manufactured after January 1, 1968, operated on a street or highway
9 in this state, and persons less than eighteen years of age operating or riding in a truck, as defined
10 in section 301.010, RSMo, on a street or highway of this state shall wear a properly adjusted and
11 fastened safety belt that meets federal National Highway, Transportation and Safety Act
12 requirements; except that, a child less than four years of age shall be protected as required in
13 section 210.104, RSMo. [No person shall be stopped, inspected, or detained solely to determine
14 compliance with this subsection.] The provisions of this section shall not be applicable to
15 persons who have a medical reason for failing to have a seat belt fastened about their body, nor

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.

16 shall the provisions of this section be applicable to persons while operating or riding a motor
17 vehicle being used in agricultural work-related activities. Noncompliance with this subsection
18 shall not constitute probable cause for violation of any other provision of law.

19 3. Each driver of a motor vehicle transporting a child four years of age or more, but less
20 than sixteen years of age, shall secure the child in a properly adjusted and fastened safety belt.

21 4. In any action to recover damages arising out of the ownership, common maintenance
22 or operation of a motor vehicle, failure to wear a safety belt in violation of this section shall not
23 be considered evidence of comparative negligence. Failure to wear a safety belt in violation of
24 this section may be admitted to mitigate damages, but only under the following circumstances:

25 (1) Parties seeking to introduce evidence of the failure to wear a safety belt in violation
26 of this section must first introduce expert evidence proving that a failure to wear a safety belt
27 contributed to the injuries claimed by plaintiff;

28 (2) If the evidence supports such a finding, the trier of fact may find that the plaintiff's
29 failure to wear a safety belt in violation of this section contributed to the plaintiff's claimed
30 injuries, and may reduce the amount of the plaintiff's recovery by an amount not to exceed one
31 percent of the damages awarded after any reductions for comparative negligence.

32 5. Each driver who violates the provisions of subsection 2 or 3 of this section is guilty
33 of an infraction for which a fine not to exceed ten dollars may be imposed. All other provisions
34 of law and court rules to the contrary notwithstanding, no court costs shall be imposed on any
35 person due to a violation of this section. In no case shall points be assessed against any person,
36 pursuant to section 302.302, RSMo, for a violation of this section.

37 6. The department of public safety shall initiate and develop a program of public
38 information to develop understanding of, and ensure compliance with, the provisions of this
39 section. The department of public safety shall evaluate the effectiveness of this section and shall
40 include a report of its findings in the annual evaluation report on its highway safety plan that it
41 submits to NHTSA and FHWA pursuant to 23 U.S.C. 402.

42 7. If there are more persons than there are seat belts in the enclosed area of a motor
43 vehicle, then the driver and passengers are not in violation of this section.

577.017. 1. No person, **including the driver of the motor vehicle** shall consume [any]
2 **an** alcoholic beverage [while operating a moving motor vehicle upon the highways, as defined
3 in section 301.010, RSMo] **or possess an open alcoholic beverage container in the passenger**
4 **area of a motor vehicle located on a highway or the right-of-way of a highway.**

5 2. Any person found guilty of violating the provisions of this section is guilty of an
6 infraction **for which a fine not to exceed twenty-five dollars may be imposed.**

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

9 **4. The provisions of this section shall not apply to passengers in the passenger area**
10 **of a motor vehicle designed, maintained or used primarily for the transportation of persons**
11 **for compensation or to passengers in the living quarters of a house coach, house trailer or**
12 **recreational motor vehicle. The provisions of this section shall also not apply to the**
13 **possession of an open alcoholic beverage container behind the last upright seat of a motor**
14 **vehicle that is not equipped with a trunk.**

15 **5. "Alcoholic beverage" as used in this section includes all distilled spirits,**
16 **regardless of the percentage of alcohol by volume the beverage contains. The term**
17 **alcoholic beverage includes beer and wine if they contain one-half of one percent or more**
18 **of alcohol by volume. The term alcoholic beverage shall include "intoxicating liquor" as**
19 **defined in section 311.020, RSMo, and "nonintoxicating beer" as defined in section**
20 **312.010, RSMo.**

21 **6. As used in this section, "passenger area" means the area designed to seat the**
22 **driver and passengers while the motor vehicle is in operation and any area that is readily**
23 **accessible to the driver or a passenger while in their seating positions, including the glove**
24 **compartment.**

25 **7. As used in this section, "open alcoholic beverage container" means any bottle,**
26 **can or other receptacle which:**

27 **(1) Contains any amount of alcoholic beverage, except for a receptacle that contains**
28 **a de minimus amount or which is otherwise empty; and**

29 **(2) Is open or has a broken seal; or**

30 **(3) The contents are partially removed.**

577.041. 1. If a person under arrest, or who has been stopped pursuant to subdivision
2 (2) or (3) of subsection 1 of section 577.020, refuses upon the request of the officer to submit to
3 any test allowed pursuant to section 577.020, then none shall be given and evidence of the refusal
4 shall be admissible in a proceeding pursuant to section 565.024 or 565.060, RSMo, or section
5 577.010 or 577.012. The request of the officer shall include the reasons of the officer for
6 requesting the person to submit to a test and also shall inform the person that evidence of refusal
7 to take the test may be used against such person and that the person's license shall be
8 immediately revoked upon refusal to take the test. If a person when requested to submit to any
9 test allowed pursuant to section 577.020 requests to speak to an attorney, the person shall be
10 granted twenty minutes in which to attempt to contact an attorney. If upon the completion of the
11 twenty-minute period the person continues to refuse to submit to any test, it shall be deemed a
12 refusal. In this event, the officer shall, on behalf of the director of revenue, serve the notice of
13 license revocation personally upon the person and shall take possession of any license to operate
14 a motor vehicle issued by this state which is held by that person. The officer shall issue a

15 temporary permit, on behalf of the director of revenue, which is valid for fifteen days and shall
16 also give the person a notice of such person's right to file a petition for review to contest the
17 license revocation.

18 2. The officer shall make a [sworn] **certified** report to the director of revenue, which
19 shall include the following:

20 (1) That the officer has:

21 (a) Reasonable grounds to believe that the arrested person was driving a motor vehicle
22 while in an intoxicated or drugged condition; or

23 (b) Reasonable grounds to believe that the person stopped, being under the age of
24 twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths
25 of one percent or more by weight; or

26 (c) Reasonable grounds to believe that the person stopped, being under the age of
27 twenty-one years, was committing a violation of the traffic laws of the state, or political
28 subdivision of the state, and such officer has reasonable grounds to believe, after making such
29 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater;

30 (2) That the person refused to submit to a chemical test;

31 (3) Whether the officer secured the license to operate a motor vehicle of the person;

32 (4) Whether the officer issued a fifteen-day temporary permit;

33 (5) Copies of the notice of revocation, the fifteen-day temporary permit and the notice
34 of the right to file a petition for review, which notices and permit may be combined in one
35 document; and

36 (6) Any license to operate a motor vehicle which the officer has taken into possession.

37 3. Upon receipt of the officer's report, the director shall revoke the license of the person
38 refusing to take the test for a period of one year; or if the person is a nonresident, such person's
39 operating permit or privilege shall be revoked for one year; or if the person is a resident without
40 a license or permit to operate a motor vehicle in this state, an order shall be issued denying the
41 person the issuance of a license or permit for a period of one year.

42 4. If a person's license has been revoked because of the person's refusal to submit to a
43 chemical test, such person may petition for a hearing before a circuit or associate circuit court
44 in the county in which the arrest or stop occurred. The person may request such court to issue
45 an order staying the revocation until such time as the petition for review can be heard. If the
46 court, in its discretion, grants such stay, it shall enter the order upon a form prescribed by the
47 director of revenue and shall send a copy of such order to the director. Such order shall serve
48 as proof of the privilege to operate a motor vehicle in this state and the director shall maintain
49 possession of the person's license to operate a motor vehicle until termination of any revocation
50 pursuant to this section. Upon the person's request the clerk of the court shall notify the

51 prosecuting attorney of the county and the prosecutor shall appear at the hearing on behalf of the
52 director of revenue. At the hearing the court shall determine only:

53 (1) Whether or not the person was arrested or stopped;

54 (2) Whether or not the officer had:

55 (a) Reasonable grounds to believe that the person was driving a motor vehicle while in
56 an intoxicated or drugged condition; or

57 (b) Reasonable grounds to believe that the person stopped, being under the age of
58 twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths
59 of one percent or more by weight; or

60 (c) Reasonable grounds to believe that the person stopped, being under the age of
61 twenty-one years, was committing a violation of the traffic laws of the state, or political
62 subdivision of the state, and such officer had reasonable grounds to believe, after making such
63 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater; and

64 (3) Whether or not the person refused to submit to the test.

65 5. If the court determines any issue not to be in the affirmative, the court shall order the
66 director to reinstate the license or permit to drive.

67 6. Requests for review as provided in this section shall go to the head of the docket of
68 the court wherein filed.

69 7. No person who has had a license to operate a motor vehicle suspended or revoked
70 pursuant to the provisions of this section shall have that license reinstated until such person has
71 participated in and successfully completed a substance abuse traffic offender program defined
72 in section 577.001, or a program determined to be comparable by the department of mental
73 health or the court. Assignment recommendations, based upon the needs assessment as
74 described in subdivision (22) of section 302.010, RSMo, shall be delivered in writing to the
75 person with written notice that the person is entitled to have such assignment recommendations
76 reviewed by the court if the person objects to the recommendations. The person may file a
77 motion in the associate division of the circuit court of the county in which such assignment was
78 given, on a printed form provided by the state courts administrator, to have the court hear and
79 determine such motion pursuant to the provisions of chapter 517, RSMo. The motion shall name
80 the person or entity making the needs assessment as the respondent and a copy of the motion
81 shall be served upon the respondent in any manner allowed by law. Upon hearing the motion,
82 the court may modify or waive any assignment recommendation that the court determines to be
83 unwarranted based upon a review of the needs assessment, the person's driving record, the
84 circumstances surrounding the offense, and the likelihood of the person committing a like
85 offense in the future, except that the court may modify but may not waive the assignment to an
86 education or rehabilitation program of a person determined to be a prior or persistent offender

87 as defined in section 577.023, or of a person determined to have operated a motor vehicle with
88 fifteen-hundredths of one percent or more by weight in such person's blood. Compliance with
89 the court determination of the motion shall satisfy the provisions of this section for the purpose
90 of reinstating such person's license to operate a motor vehicle. The respondent's personal
91 appearance at any hearing conducted pursuant to this subsection shall not be necessary unless
92 directed by the court.

93 8. The fees for the substance abuse traffic offender program, or a portion thereof to be
94 determined by the division of alcohol and drug abuse of the department of mental health, shall
95 be paid by the person enrolled in the program. Any person who is enrolled in the program shall
96 pay, in addition to any fee charged for the program, a supplemental fee to be determined by the
97 department of mental health for the purposes of funding the substance abuse traffic offender
98 program defined in section 302.010, RSMo, and section 577.001. The administrator of the
99 program shall remit to the division of alcohol and drug abuse of the department of mental health
100 on or before the fifteenth day of each month the supplemental fee for all persons enrolled in the
101 program, less two percent for administrative costs. Interest shall be charged on any unpaid
102 balance of the supplemental fees due the division of alcohol and drug abuse pursuant to this
103 section and shall accrue at a rate not to exceed the annual rates established pursuant to the
104 provisions of section 32.065, RSMo, plus three percentage points. The supplemental fees and
105 any interest received by the department of mental health pursuant to this section shall be
106 deposited in the mental health earnings fund which is created in section 630.053, RSMo.

107 9. Any administrator who fails to remit to the division of alcohol and drug abuse of the
108 department of mental health the supplemental fees and interest for all persons enrolled in the
109 program pursuant to this section shall be subject to a penalty equal to the amount of interest
110 accrued on the supplemental fees due the division pursuant to this section. If the supplemental
111 fees, interest, and penalties are not remitted to the division of alcohol and drug abuse of the
112 department of mental health within six months of the due date, the attorney general of the state
113 of Missouri shall initiate appropriate action of the collection of said fees and interest accrued.
114 The court shall assess attorney fees and court costs against any delinquent program.