

HOUSE _____ **AMENDMENT NO.** _____

Offered By

AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 58, Section 301.3084, Page 2, Line 33 by inserting after all of said section and line the following:

“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

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

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

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

1 employment. Any application for a limited driving privilege made to a circuit court shall name
2 the director as a party defendant and shall be served upon the director prior to the grant of any
3 limited privilege, and shall be accompanied by a copy of the applicant's driving record as certified
4 by the director. Any applicant for a limited driving privilege shall have on file with the
5 department of revenue proof of financial responsibility as required by chapter 303. Any
6 application by a person who transports persons or property as classified in section 302.015 may be
7 accompanied by proof of financial responsibility as required by chapter 303, but if proof of
8 financial responsibility does not accompany the application, or if the applicant does not have on
9 file with the department of revenue proof of financial responsibility, the court or the director has
10 discretion to grant the limited driving privilege to the person solely for the purpose of operating a
11 vehicle whose owner has complied with chapter 303 for that vehicle, and the limited driving
12 privilege must state such restriction. When operating such vehicle under such restriction the
13 person shall carry proof that the owner has complied with chapter 303 for that vehicle.

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

20
21 (5) The court order or the director's grant of the limited or restricted driving privilege shall
22 indicate the termination date of the privilege, which shall be not later than the end of the period of
23 suspension or revocation. A copy of any court order shall be sent by the clerk of the court to the
24 director, and a copy shall be given to the driver which shall be carried by the driver whenever such
25 driver operates a motor vehicle. The director of revenue upon granting a limited driving privilege
26 shall give a copy of the limited driving privilege to the applicant. The applicant shall carry a copy
27 of the limited driving privilege while operating a motor vehicle. A conviction which results in the
28 assessment of points pursuant to section 302.302, other than a violation of a municipal stop sign
29 ordinance where no accident is involved, against a driver who is operating a vehicle pursuant to a
30 limited driving privilege terminates the privilege, as of the date the points are assessed to the
31 person's driving record. If the date of arrest is prior to the issuance of the limited driving
32 privilege, the privilege shall not be terminated. Failure of the driver to maintain proof of financial
33 responsibility, as required by chapter 303, or to maintain proof of installation of a functioning,
34 certified ignition interlock device, as applicable, shall terminate the privilege. The director shall
35 notify by ordinary mail the driver whose privilege is so terminated.

36 (6) Except as provided in subdivision (8) of this subsection, no person is eligible to

1 receive a limited driving privilege who at the time of application for a limited driving privilege
2 has previously been granted such a privilege within the immediately preceding five years, or
3 whose license has been suspended or revoked for the following reasons:

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

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

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

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

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

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

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

24 (7) No person who possesses a commercial driver's license shall receive a limited driving
25 privilege issued for the purpose of operating a commercial motor vehicle if such person's driving
26 privilege is suspended, revoked, canceled, denied, or disqualified. Nothing in this section shall
27 prohibit the issuance of a limited driving privilege for the purpose of operating a noncommercial
28 motor vehicle provided that pursuant to the provisions of this section, the applicant is not
29 otherwise ineligible for a limited driving privilege.

30 (8) (a) Provided that pursuant to the provisions of this section, the applicant is not
31 otherwise ineligible for a limited driving privilege, a circuit court or the director may, in the
32 manner prescribed in this subsection, allow a person who has had such person's license to operate
33 a motor vehicle revoked where that person cannot obtain a new license for a period of ten years,
34 as prescribed in subdivision (9) of section 302.060, to apply for a limited driving privilege
35 pursuant to this subsection if such person has served at least three years of such disqualification or
36 revocation. Such person shall present evidence satisfactory to the court or the director that such

1 person has not been convicted of any offense related to alcohol, controlled substances or drugs
2 during the preceding three years and that the person's habits and conduct show that the person no
3 longer poses a threat to the public safety of this state.

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

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

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

30 5. The director of revenue shall promulgate rules and regulations necessary to carry out
31 the provisions of this section. Any rule or portion of a rule, as that term is defined in section
32 536.010, that is created under the authority delegated in this section shall become effective only if
33 it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
34 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the
35 general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove
36 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and

any rule proposed or adopted after August 28, 2001, shall be invalid and void.”; and

Further amend said bill, Section 537.293, Page 14, Line 13 by inserting after all of said section and line the following:

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

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

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

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

(2) A "chronic offender" is:

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

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

(c) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses and, in addition, any of the following: involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024; murder in the second degree under section 565.021, where the underlying felony is an intoxication-related traffic offense; assault in the second degree under subdivision (4) of subsection 1 of section 565.060; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082;

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

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

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

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

11 (b) A person who has pleaded guilty to or has been found guilty of involuntary
12 manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, assault in the
13 second degree pursuant to subdivision (4) of subsection 1 of section 565.060, assault of a law
14 enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section
15 565.082; and

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

19 2. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or
20 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A
21 misdemeanor.

22 3. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or
23 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D felony.

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

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

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

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

35 (a) Unless as a condition of such parole or probation such person performs at least thirty
36 days of community service under the supervision of the court in those jurisdictions which have a

1 recognized program for community service; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an intoxication-related traffic offense shall be heard and determined by the trial court out of the hearing of the jury prior to the submission of the case to the jury, and shall include but not be limited to evidence received by a search of the records of the Missouri uniform law enforcement system, including criminal history records from the central repository or records from the driving while intoxicated tracking system (DWITS) maintained by the Missouri state highway patrol, or the certified driving record maintained by the Missouri department of revenue. After hearing the evidence, the court shall enter its findings thereon. A plea of guilty or a finding of guilt followed by incarceration, a fine, a suspended imposition of sentence, suspended execution of sentence, probation or parole or any combination thereof in any intoxication-related traffic offense in a state, county or municipal court or any combination thereof, shall be treated as a prior plea of guilty or finding of guilt for purposes of this section.” ; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.