

HOUSE SUBSTITUTE  
FOR  
HOUSE COMMITTEE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILLS NOS. 662 & 704

1 AN ACT

2 To repeal sections 195.211, 195.222, 302.341,  
3 302.510, 302.530, 338.055, 556.061, 557.035,  
4 575.150, and 577.041, RSMo, and to enact in  
5 lieu thereof fourteen new sections relating  
6 to crimes and punishment, with penalty  
7 provisions.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
9 AS FOLLOWS:

10 Section A. Sections 195.211, 195.222, 302.341, 302.510,  
11 302.530, 338.055, 557.035, 556.061, 575.150, and 577.041, RSMo,  
12 are repealed and fourteen new sections enacted in lieu thereof,  
13 to be known as sections 195.211, 195.222, 302.341, 302.510,  
14 302.530, 338.055, 556.061, 557.035, 565.151, 565.350, 575.150,  
15 577.041, 1, and 2, to read as follows:

16 195.211. 1. Except as authorized by sections 195.005 to  
17 195.425 and except as provided in section 195.222, it is unlawful  
18 for any person to distribute, deliver, manufacture, produce or  
19 attempt to distribute, deliver, manufacture or produce a

1 controlled substance or to possess with intent to distribute,  
2 deliver, manufacture, or produce a controlled substance.

3 2. Any person who violates or attempts to violate this  
4 section with respect to any controlled substance [except five  
5 grams or less of marijuana] is guilty of a class B felony unless:

6 (1) The controlled substance is thirty grams or less of any  
7 material, compound, mixture or preparation which contains any  
8 quantity of the following substances having a stimulant effect on  
9 the central nervous system: amphetamine, its salts, optical  
10 isomers and salts of its optical isomers; methamphetamine, its  
11 salts, optical isomers and salts of its optical isomers;  
12 phenmetrazine and its salts; or methylphenidate; and any person  
13 under the age of seventeen years is present during its  
14 manufacture or production or attempted manufacture or production,  
15 in which case it is a class A felony and the term of imprisonment  
16 shall be served without probation or parole; or

17 (2) The controlled substance is five grams or less of  
18 marijuana, and the person is distributing or delivering it, in  
19 which case it is a class C felony.

20 [3. Any person who violates this section with respect to  
21 distributing or delivering not more than five grams of marijuana  
22 is guilty of a class C felony.]

23 195.222. 1. A person commits the crime of trafficking  
24 drugs in the first degree if, except as authorized by sections  
25 195.005 to 195.425, he distributes, delivers, manufactures,

1 produces or attempts to distribute, deliver, manufacture or  
2 produce more than thirty grams of a mixture or substance  
3 containing a detectable amount of heroin. Violations of this  
4 subsection shall be punished as follows:

5 (1) If the quantity involved is more than thirty grams but  
6 less than ninety grams the person shall be sentenced to the  
7 authorized term of imprisonment for a class A felony;

8 (2) If the quantity involved is ninety grams or more the  
9 person shall be sentenced to the authorized term of imprisonment  
10 for a class A felony which term shall be served without probation  
11 or parole.

12 2. A person commits the crime of trafficking drugs in the  
13 first degree if, except as authorized by sections 195.005 to  
14 195.425, he distributes, delivers, manufactures, produces or  
15 attempts to distribute, deliver, manufacture or produce more than  
16 one hundred fifty grams of a mixture or substance containing a  
17 detectable amount of coca leaves, except coca leaves and extracts  
18 of coca leaves from which cocaine, ecgonine, and derivatives of  
19 ecgonine or their salts have been removed; cocaine salts and  
20 their optical and geometric isomers, and salts of isomers;  
21 ecgonine, its derivatives, their salts, isomers, and salts of  
22 isomers; or any compound, mixture, or preparation which contains  
23 any quantity of any of the foregoing substances. Violations of  
24 this subsection shall be punished as follows:

25 (1) If the quantity involved is more than one hundred fifty

1 grams but less than four hundred fifty grams the person shall be  
2 sentenced to the authorized term of imprisonment for a class A  
3 felony;

4 (2) If the quantity involved is four hundred fifty grams or  
5 more the person shall be sentenced to the authorized term of  
6 imprisonment for a class A felony which term shall be served  
7 without probation or parole.

8 3. A person commits the crime of trafficking drugs in the  
9 first degree if, except as authorized by sections 195.005 to  
10 195.425, he distributes, delivers, manufactures, produces or  
11 attempts to distribute, deliver, manufacture or produce more than  
12 two grams of a mixture or substance described in subsection 2 of  
13 this section which contains cocaine base. Violations of this  
14 subsection shall be punished as follows:

15 (1) If the quantity involved is more than two grams but  
16 less than six grams the person shall be sentenced to the  
17 authorized term of imprisonment for a class A felony;

18 (2) If the quantity involved is six grams or more the  
19 person shall be sentenced to the authorized term of imprisonment  
20 for a class A felony which term shall be served without probation  
21 or parole.

22 4. A person commits the crime of trafficking drugs in the  
23 first degree if, except as authorized by sections 195.005 to  
24 195.425, he distributes, delivers, manufactures, produces or  
25 attempts to distribute, deliver, manufacture or produce more than

1 five hundred milligrams of a mixture or substance containing a  
2 detectable amount of lysergic acid diethylamide (LSD).

3 Violations of this subsection shall be punished as follows:

4 (1) If the quantity involved is more than five hundred  
5 milligrams but less than one gram the person shall be sentenced  
6 to the authorized term of imprisonment for a class A felony;

7 (2) If the quantity involved is one gram or more the person  
8 shall be sentenced to the authorized term of imprisonment for a  
9 class A felony which term shall be served without probation or  
10 parole.

11 5. A person commits the crime of trafficking drugs in the  
12 first degree if, except as authorized by sections 195.005 to  
13 195.425, he distributes, delivers, manufactures, produces or  
14 attempts to distribute, deliver, manufacture or produce more than  
15 thirty grams of a mixture or substance containing a detectable  
16 amount of phencyclidine (PCP). Violations of this subsection  
17 shall be punished as follows:

18 (1) If the quantity involved is more than thirty grams but  
19 less than ninety grams the person shall be sentenced to the  
20 authorized term of imprisonment for a class A felony;

21 (2) If the quantity involved is ninety grams or more the  
22 person shall be sentenced to the authorized term of imprisonment  
23 for a class A felony which term shall be served without probation  
24 or parole.

25 6. A person commits the crime of trafficking drugs in the

1 first degree if, except as authorized by sections 195.005 to  
2 195.425, he distributes, delivers, manufactures, produces or  
3 attempts to distribute, deliver, manufacture or produce more than  
4 four grams of phencyclidine. Violations of this subsection shall  
5 be punished as follows:

6 (1) If the quantity involved is more than four grams but  
7 less than twelve grams the person shall be sentenced to the  
8 authorized term of imprisonment for a class A felony;

9 (2) If the quantity involved is twelve grams or more the  
10 person shall be sentenced to the authorized term of imprisonment  
11 for a class A felony which term shall be served without probation  
12 or parole.

13 7. A person commits the crime of trafficking drugs in the  
14 first degree if, except as authorized by sections 195.005 to  
15 195.425, he distributes, delivers, manufactures, produces or  
16 attempts to distribute, deliver, manufacture or produce more than  
17 thirty kilograms of a mixture or substance containing marijuana.  
18 Violations of this subsection shall be punished as follows:

19 (1) If the quantity involved is more than thirty kilograms  
20 but less than one hundred kilograms the person shall be sentenced  
21 to the authorized term of imprisonment for a class A felony;

22 (2) If the quantity involved is one hundred kilograms or  
23 more the person shall be sentenced to the authorized term of  
24 imprisonment for a class A felony which term shall be served  
25 without probation or parole.

1           8. A person commits the crime of trafficking drugs in the  
2 first degree if, except as authorized by sections 195.005 to  
3 195.425, he distributes, delivers, manufactures, produces or  
4 attempts to distribute, deliver, manufacture or produce more than  
5 thirty grams of any material, compound, mixture or preparation  
6 which contains any quantity of the following substances having a  
7 stimulant effect on the central nervous system: amphetamine, its  
8 salts, optical isomers and salts of its optical isomers;  
9 methamphetamine, its salts, optical isomers and salts of its  
10 optical isomers; phenmetrazine and its salts; or methylphenidate.  
11 Violations of this subsection or attempts to violate this  
12 subsection shall be punished as follows:

13           (1) If the quantity involved is more than thirty grams but  
14 less than ninety grams the person shall be sentenced to the  
15 authorized term of imprisonment for a class A felony;

16           (2) If any person under the age of seventeen years is  
17 present during the manufacture or production or the attempted  
18 manufacture or production or, if the quantity involved is ninety  
19 grams or more, or if the quantity involved was thirty grams or  
20 more and the location of the offense was within two thousand feet  
21 of a school or public housing as defined in section 195.214 or  
22 section 195.218 or within a motor vehicle, or any structure or  
23 building which contains rooms furnished for the accommodation or  
24 lodging of guests, and kept, used, maintained, advertised, or  
25 held out to the public as a place where sleeping accommodations

1 are sought for pay or compensation to transient guests or  
2 permanent guests, the person shall be sentenced to the authorized  
3 term of imprisonment for a class A felony which term shall be  
4 served without probation or parole.

5 9. A person commits the crime of trafficking drugs in the  
6 first degree if, except as authorized by sections 195.005 to  
7 195.425, he or she distributes, delivers, manufactures, produces  
8 or attempts to distribute, deliver, manufacture or produce more  
9 than thirty grams of any material, compound, mixture or  
10 preparation which contains any quantity of 3,4-  
11 methylenedioxymethamphetamine. Violations of this subsection or  
12 attempts to violate this subsection shall be punished as follows:

13 (1) If the quantity involved is more than thirty grams but  
14 less than ninety grams the person shall be sentenced to the  
15 authorized term of imprisonment for a class A felony;

16 (2) If the quantity involved is ninety grams or more, or if  
17 the quantity involved was thirty grams or more and the location  
18 of the offense was within two thousand feet of a school or public  
19 housing as defined in section 195.214 or section 195.218 or  
20 within a motor vehicle, or any structure or building which  
21 contains rooms furnished for the accommodation or lodging of  
22 guests, and kept, used, maintained, advertised, or held out to  
23 the public as a place where sleeping accommodations are sought  
24 for pay or compensation to transient guests or permanent guests,  
25 the person shall be sentenced to the authorized term of

1 imprisonment for a class A felony which term shall be served  
2 without probation or parole.

3 302.341. If a Missouri resident charged with a moving  
4 traffic violation of this state or any county or municipality of  
5 this state fails to dispose of the charges of which he is accused  
6 through authorized prepayment of fine and court costs and fails  
7 to appear on the return date or at any subsequent date to which  
8 the case has been continued, or without good cause fails to pay  
9 any fine or court costs assessed against him for any such  
10 violation within the period of time specified or in such  
11 installments as approved by the court or as otherwise provided by  
12 law, any court having jurisdiction over the charges shall within  
13 ten days of the failure to comply inform the defendant by  
14 ordinary mail at the last address shown on the court records that  
15 the court will order the director of revenue to suspend the  
16 defendant's driving privileges if the charges are not disposed of  
17 and fully paid within thirty days from the date of mailing.  
18 Thereafter, if the defendant fails to timely act to dispose of  
19 the charges and fully pay any applicable fines and court costs,  
20 the court shall notify the director of revenue of such failure  
21 and of the pending charges against the defendant. Upon receipt  
22 of this notification, the director shall suspend the license of  
23 the driver, effective immediately, and provide notice of the  
24 suspension to the driver at the last address for the driver shown  
25 on the records of the department of revenue. Such suspension

1 shall remain in effect until the court with the subject pending  
2 charge requests setting aside the noncompliance suspension  
3 pending final disposition, or satisfactory evidence of  
4 disposition of pending charges and payment of fine and court  
5 costs, if applicable, is furnished to the director by the  
6 individual. Upon proof of disposition of charges and payment of  
7 fine and court costs, if applicable, and payment of the  
8 reinstatement fee as set forth in section 302.304, in the case of  
9 an individual who possesses a noncommercial driver's license the  
10 director shall [reinstate] return the license and remove the  
11 suspension from the individual's driving record. In the case of  
12 an individual who possesses a commercial driver's license, the  
13 director shall reinstate the license. The filing of financial  
14 responsibility with the bureau of safety responsibility,  
15 department of revenue, shall not be required as a condition of  
16 reinstatement of a driver's license suspended solely under the  
17 provisions of this section. If any city, town or village  
18 receives more than forty-five percent of its total annual revenue  
19 from fines for traffic violations occurring on state highways,  
20 all revenues from such violations in excess of forty-five percent  
21 of the total annual revenue of the city, town or village shall be  
22 sent to the director of the department of revenue and shall be  
23 distributed annually to the schools of the county in the same  
24 manner that proceeds of all penalties, forfeitures and fines  
25 collected for any breach of the penal laws of the state are

1 distributed. For the purpose of this section the words "state  
2 highways" shall mean any state or federal highway, including any  
3 such highway continuing through the boundaries of a city, town or  
4 village with a designated street name other than the state  
5 highway number.

6 302.510. 1. Except as provided in subsection 3 of this  
7 section, a law enforcement officer who arrests any person for a  
8 violation of any state statute related to driving while  
9 intoxicated or for a violation of a county or municipal ordinance  
10 prohibiting driving while intoxicated or a county or municipal  
11 alcohol-related traffic offense, and in which the alcohol  
12 concentration in the person's blood, breath, or urine was  
13 eight-hundredths of one percent or more by weight or  
14 two-hundredths of one percent or more by weight for anyone less  
15 than twenty-one years of age, shall forward to the department a  
16 [verified] certified report of all information relevant to the  
17 enforcement action, including information which adequately  
18 identifies the arrested person, a statement of the officer's  
19 grounds for belief that the person violated any state statute  
20 related to driving while intoxicated or was less than twenty-one  
21 years of age and was driving with two-hundredths of one percent  
22 or more by weight of alcohol in the person's blood, or a county  
23 or municipal ordinance prohibiting driving while intoxicated or a  
24 county or municipal alcohol-related traffic offense, a report of  
25 the results of any chemical tests which were conducted, and a

1 copy of the citation and complaint filed with the court.

2 2. The report required by this section shall be certified  
3 under penalties of perjury or for making a false statement to a  
4 public official and made on forms supplied by the department or  
5 in a manner specified by regulations of the department.

6 3. A county or municipal ordinance prohibiting driving  
7 while intoxicated or a county or municipal alcohol-related  
8 traffic offense may not be the basis for suspension or revocation  
9 of a driver's license pursuant to sections 302.500 to 302.540,  
10 unless the arresting law enforcement officer, other than an  
11 elected peace officer or official, has been [certified] licensed  
12 by the director of the department of public safety pursuant to  
13 the provisions of [sections 590.100 to 590.180] chapter 590,  
14 RSMo.

15 302.530. 1. Any person who has received a notice of  
16 suspension or revocation may make a request within fifteen days  
17 of receipt of the notice for a review of the department's  
18 determination at a hearing. If the person's driver's license has  
19 not been previously surrendered, it [shall] may be surrendered at  
20 the time the request for a hearing is made.

21 2. At the time the request for a hearing is made, if it  
22 appears from the record that the person is the holder of a valid  
23 driver's license issued by this state, and that the driver's  
24 license has been surrendered as required, the department shall  
25 issue a temporary permit which shall be valid until the scheduled

1 date for the hearing. The department may later issue an  
2 additional temporary permit or permits in order to stay the  
3 effective date of the suspension or revocation until the final  
4 order is issued following the hearing, as required by section  
5 302.520.

6 3. The hearing may be held by telephone, or if requested by  
7 the person, such person's attorney or representative, in the  
8 county where the arrest was made. The hearing shall be conducted  
9 by examiners who are licensed to practice law in the state of  
10 Missouri and who are employed by the department on a part-time or  
11 full-time basis as the department may determine.

12 4. The sole issue at the hearing shall be whether by a  
13 preponderance of the evidence the person was driving a vehicle  
14 pursuant to the circumstances set out in section 302.505. The  
15 burden of proof shall be on the state to adduce such evidence.  
16 If the department finds the affirmative of this issue, the  
17 suspension or revocation order shall be sustained. If the  
18 department finds the negative of the issue, the suspension or  
19 revocation order shall be rescinded.

20 5. The procedure at such hearing shall be conducted in  
21 accordance with chapter 536, RSMo, not otherwise in conflict with  
22 sections 302.500 to 302.540. A report certified pursuant to  
23 subsection 2 of section 302.510, shall be admissible as evidence  
24 as a record of the agency in a like manner as a verified report  
25 and any provision of chapter 536, RSMo, to the contrary shall not

1     apply.

2             6. The department shall promptly notify, by certified  
3 letter, the person of its decision including the reasons for that  
4 decision. Such notification shall include a notice advising the  
5 person that the department's decision shall be final within  
6 fifteen days from the date of certification of the letter unless  
7 the person challenges the department's decision within that time  
8 period by filing an appeal in the circuit court in the county  
9 where the arrest occurred.

10            7. Unless the person, within fifteen days after being  
11 notified by certified letter of the department's decision, files  
12 an appeal for judicial review pursuant to section 302.535, the  
13 decision of the department shall be final.

14            8. The director may adopt any rules and regulations  
15 necessary to carry out the provisions of this section.

16            338.055. 1. The board may refuse to issue any certificate  
17 of registration or authority, permit or license required pursuant  
18 to this chapter for one or any combination of causes stated in  
19 subsection 2 of this section. The board shall notify the  
20 applicant in writing of the reasons for the refusal and shall  
21 advise the applicant of his right to file a complaint with the  
22 administrative hearing commission as provided by chapter 621,  
23 RSMo.

24            2. The board may cause a complaint to be filed with the  
25 administrative hearing commission as provided by chapter 621,

1 RSMo, against any holder of any certificate of registration or  
2 authority, permit or license required by this chapter or any  
3 person who has failed to renew or has surrendered his certificate  
4 of registration or authority, permit or license for any one or  
5 any combination of the following causes:

6 (1) Use of any controlled substance, as defined in chapter  
7 195, RSMo, or alcoholic beverage to an extent that such use  
8 impairs a person's ability to perform the work of any profession  
9 licensed or regulated by this chapter;

10 (2) The person has been finally adjudicated and found  
11 guilty, or entered a plea of guilty or nolo contendere, in a  
12 criminal prosecution under the laws of any state or of the United  
13 States, for any offense reasonably related to the qualifications,  
14 functions or duties of any profession licensed or regulated under  
15 this chapter, for any offense an essential element of which is  
16 fraud, dishonesty or an act of violence, or for any offense  
17 involving moral turpitude, whether or not sentence is imposed;

18 (3) Use of fraud, deception, misrepresentation or bribery  
19 in securing any certificate of registration or authority, permit  
20 or license issued pursuant to this chapter or in obtaining  
21 permission to take any examination given or required pursuant to  
22 this chapter;

23 (4) Obtaining or attempting to obtain any fee, charge,  
24 tuition or other compensation by fraud, deception or  
25 misrepresentation;

1           (5) Incompetency, misconduct, gross negligence, fraud,  
2 misrepresentation or dishonesty in the performance of the  
3 functions or duties of any profession licensed or regulated by  
4 this chapter;

5           (6) Violation of, or assisting or enabling any person to  
6 violate, any provision of this chapter, or of any lawful rule or  
7 regulation adopted pursuant to this chapter;

8           (7) Impersonation of any person holding a certificate of  
9 registration or authority, permit or license or allowing any  
10 person to use his or her certificate of registration or  
11 authority, permit, license or diploma from any school;

12           (8) Disciplinary action against the holder of a license or  
13 other right to practice any profession regulated by this chapter  
14 granted by another state, territory, federal agency or country  
15 upon grounds for which revocation or suspension is authorized in  
16 this state;

17           (9) A person is finally adjudged incapacitated by a court  
18 of competent jurisdiction;

19           (10) Assisting or enabling any person to practice or offer  
20 to practice any profession licensed or regulated by this chapter  
21 who is not registered and currently eligible to practice under  
22 this chapter;

23           (11) Issuance of a certificate of registration or  
24 authority, permit or license based upon a material mistake of  
25 fact;

1 (12) Failure to display a valid certificate or license if  
2 so required by this chapter or any rule promulgated hereunder;

3 (13) Violation of any professional trust or confidence;

4 (14) Use of any advertisement or solicitation which is  
5 false, misleading or deceptive to the general public or persons  
6 to whom the advertisement or solicitation is primarily directed;

7 (15) Violation of the drug laws or rules and regulations of  
8 this state, any other state or the federal government;

9 (16) The intentional act of substituting or otherwise  
10 changing the content, formula or brand of any drug prescribed by  
11 written or oral prescription without prior written or oral  
12 approval from the prescriber for the respective change in each  
13 prescription; provided, however, that nothing contained herein  
14 shall prohibit a [pharmacist] licensee or registrant from  
15 substituting or changing the brand of any drug as provided under  
16 section 338.056, and any such substituting or changing of the  
17 brand of any drug as provided for in section 338.056 shall not be  
18 deemed unprofessional or dishonorable conduct unless a violation  
19 of section 338.056 occurs;

20 (17) Personal use or consumption of any controlled  
21 substance unless it is prescribed, dispensed or administered by a  
22 health care provider who is authorized by law to do so.

23 3. After the filing of such complaint, the proceedings  
24 shall be conducted in accordance with the provisions of chapter  
25 621, RSMo. Upon a finding by the administrative hearing

1 commission that the grounds, provided in subsection 2, for  
2 disciplinary action are met, the board may, singly or in  
3 combination, censure or place the person named in the complaint  
4 on probation on such terms and conditions as the board deems  
5 appropriate for a period not to exceed five years, or may  
6 suspend, for a period not to exceed three years, or revoke the  
7 license, certificate, or permit. The board may impose additional  
8 discipline on a licensee, registrant or permittee found to have  
9 violated any disciplinary terms previously imposed under this  
10 section or by agreement. The additional discipline may include,  
11 singly or in combination, censure, placing the licensee,  
12 registrant or permittee named in the complaint on additional  
13 probation on such terms and conditions as the board deems  
14 appropriate, which additional probation shall not exceed five  
15 years, or suspension for a period not to exceed three years, or  
16 revocation of the license, certificate or permit.

17 4. If the board concludes that a [pharmacist] licensee or  
18 registrant has committed an act or is engaging in a course of  
19 conduct which would be grounds for disciplinary action which  
20 constitutes a [clear and present danger] probability of serious  
21 danger to the public health and safety, the board may file a  
22 complaint before the administrative hearing commission requesting  
23 an expedited hearing and specifying the activities which give  
24 rise to the danger and the nature of the proposed restriction or  
25 suspension of the [pharmacist's] licensee's or registrant's

1 license. Within fifteen days after service of the complaint on  
2 the [pharmacist] licensee or registrant, the administrative  
3 hearing commission shall conduct a preliminary hearing to  
4 determine whether the alleged activities of the [pharmacist]  
5 licensee or registrant appear to constitute a [clear and present  
6 danger] probability of serious danger to the public health and  
7 safety which justify that the [pharmacist's] licensee's or  
8 registrant's license be immediately restricted or suspended. The  
9 burden of proving that the actions of a [pharmacist is] licensee  
10 or registrant constitute a [clear and present danger] probability  
11 of serious danger to the public health and safety shall be upon  
12 the state board of pharmacy. The administrative hearing  
13 commission shall issue its decision immediately after the hearing  
14 and shall either grant to the board the authority to suspend or  
15 restrict the license or dismiss the action.

16 5. If the administrative hearing commission grants  
17 temporary authority to the board to restrict or suspend the  
18 [pharmacist's] licensee's or registrant's license, such temporary  
19 authority of the board shall become final authority if there is  
20 no request by the [pharmacist] licensee or registrant for a full  
21 hearing within thirty days of the preliminary hearing. The  
22 administrative hearing commission shall, if requested by the  
23 [pharmacist] licensee or registrant named in the complaint, set a  
24 date to hold a full hearing under the provisions of chapter 621,  
25 RSMo, regarding the activities alleged in the initial complaint

1 filed by the board.

2 6. If the administrative hearing commission dismisses the  
3 action filed by the board pursuant to subsection 4 of this  
4 section, such dismissal shall not bar the board from initiating a  
5 subsequent action on the same grounds.

6 7. If the board concludes that a licensee or registrant has  
7 committed an act or is engaging in a course of conduct which  
8 would be grounds for disciplinary action and which constitutes a  
9 probability of serious danger to the public health and safety,  
10 the board may restrict or suspend the license of the licensee,  
11 registrant, or permittee pending action of the administrative  
12 hearing commission. Within three business days of such  
13 suspension, the board shall file a complaint before the  
14 administrative hearing commission requesting an expedited hearing  
15 and decision pursuant to subsection 4 of this section.

16 556.061. In this code, unless the context requires a  
17 different definition, the following shall apply:

18 (1) "Affirmative defense" has the meaning specified in  
19 section 556.056;

20 (2) "Burden of injecting the issue" has the meaning  
21 specified in section 556.051;

22 (3) "Commercial film and photographic print processor", any  
23 person who develops exposed photographic film into negatives,  
24 slides or prints, or who makes prints from negatives or slides,  
25 for compensation. The term commercial film and photographic

1 print processor shall include all employees of such persons but  
2 shall not include a person who develops film or makes prints for  
3 a public agency;

4 (4) "Confinement":

5 (a) A person is in confinement when such person is held in  
6 a place of confinement pursuant to arrest or order of a court,  
7 and remains in confinement until:

8 a. A court orders the person's release; or

9 b. The person is released on bail, bond, or recognizance,  
10 personal or otherwise; or

11 c. A public servant having the legal power and duty to  
12 confine the person authorizes his release without guard and  
13 without condition that he return to confinement;

14 (b) A person is not in confinement if:

15 a. The person is on probation or parole, temporary or  
16 otherwise; or

17 b. The person is under sentence to serve a term of  
18 confinement which is not continuous, or is serving a sentence  
19 under a work-release program, and in either such case is not  
20 being held in a place of confinement or is not being held under  
21 guard by a person having the legal power and duty to transport  
22 the person to or from a place of confinement;

23 (5) "Consent": consent or lack of consent may be expressed  
24 or implied. Assent does not constitute consent if:

25 (a) It is given by a person who lacks the mental capacity

1 to authorize the conduct charged to constitute the offense and  
2 such mental incapacity is manifest or known to the actor; or

3 (b) It is given by a person who by reason of youth, mental  
4 disease or defect, or intoxication, is manifestly unable or known  
5 by the actor to be unable to make a reasonable judgment as to the  
6 nature or harmfulness of the conduct charged to constitute the  
7 offense; or

8 (c) It is induced by force, duress or deception;

9 (6) "Criminal negligence" has the meaning specified in  
10 section 562.016, RSMo;

11 (7) "Custody", a person is in custody when the person has  
12 been arrested but has not been delivered to a place of  
13 confinement;

14 (8) "Dangerous felony" means the felonies of arson in the  
15 first degree, assault in the first degree, forcible rape,  
16 forcible sodomy, kidnapping, murder in the second degree [and],  
17 robbery in the first degree, or an attempt to commit any of the  
18 preceding felonies;

19 (9) "Dangerous instrument" means any instrument, article or  
20 substance, which, under the circumstances in which it is used, is  
21 readily capable of causing death or other serious physical  
22 injury;

23 (10) "Deadly weapon" means any firearm, loaded or unloaded,  
24 or any weapon from which a shot, readily capable of producing  
25 death or serious physical injury, may be discharged, or a

1 switchblade knife, dagger, billy, blackjack or metal knuckles;

2 (11) "Felony" has the meaning specified in section 556.016;

3 (12) "Forcible compulsion" means either:

4 (a) Physical force that overcomes reasonable resistance; or

5 (b) A threat, express or implied, that places a person in  
6 reasonable fear of death, serious physical injury or kidnapping  
7 of such person or another person;

8 (13) "Incapacitated" means that physical or mental  
9 condition, temporary or permanent, in which a person is  
10 unconscious, unable to appraise the nature of such person's  
11 conduct, or unable to communicate unwillingness to an act. A  
12 person is not incapacitated with respect to an act committed upon  
13 such person if he or she became unconscious, unable to appraise  
14 the nature of such person's conduct or unable to communicate  
15 unwillingness to an act, after consenting to the act;

16 (14) "Infraction" has the meaning specified in section  
17 556.021;

18 (15) "Inhabitable structure" has the meaning specified in  
19 section 569.010, RSMo;

20 (16) "Knowingly" has the meaning specified in section  
21 562.016, RSMo;

22 (17) "Law enforcement officer" means any public servant  
23 having both the power and duty to make arrests for violations of  
24 the laws of this state, and federal law enforcement officers  
25 authorized to carry firearms and to make arrests for violations

1 of the laws of the United States;

2 (18) "Misdemeanor" has the meaning specified in section  
3 556.016;

4 (19) "Offense" means any felony, misdemeanor or infraction;

5 (20) "Physical injury" means physical pain, illness, or any  
6 impairment of physical condition;

7 (21) "Place of confinement" means any building or facility  
8 and the grounds thereof wherein a court is legally authorized to  
9 order that a person charged with or convicted of a crime be held;

10 (22) "Possess" or "possessed" means having actual or  
11 constructive possession of an object with knowledge of its  
12 presence. A person has actual possession if such person has the  
13 object on his or her person or within easy reach and convenient  
14 control. A person has constructive possession if such person has  
15 the power and the intention at a given time to exercise dominion  
16 or control over the object either directly or through another  
17 person or persons. Possession may also be sole or joint. If one  
18 person alone has possession of an object, possession is sole. If  
19 two or more persons share possession of an object, possession is  
20 joint;

21 (23) "Public servant" means any person employed in any way  
22 by a government of this state who is compensated by the  
23 government by reason of such person's employment, any person  
24 appointed to a position with any government of this state, or any  
25 person elected to a position with any government of this state.

1 It includes, but is not limited to, legislators, jurors, members  
2 of the judiciary and law enforcement officers. It does not  
3 include witnesses;

4 (24) "Purposely" has the meaning specified in section  
5 562.016, RSMo;

6 (25) "Recklessly" has the meaning specified in section  
7 562.016, RSMo;

8 (26) "Ritual" or "ceremony" means an act or series of acts  
9 performed by two or more persons as part of an established or  
10 prescribed pattern of activity;

11 (27) "Serious emotional injury", an injury that creates a  
12 substantial risk of temporary or permanent medical or  
13 psychological damage, manifested by impairment of a behavioral,  
14 cognitive or physical condition. Serious emotional injury shall  
15 be established by testimony of qualified experts upon the  
16 reasonable expectation of probable harm to a reasonable degree of  
17 medical or psychological certainty;

18 (28) "Serious physical injury" means physical injury that  
19 creates a substantial risk of death or that causes serious  
20 disfigurement or protracted loss or impairment of the function of  
21 any part of the body;

22 (29) "Sexual conduct" means acts of human masturbation;  
23 deviate sexual intercourse; sexual intercourse; or physical  
24 contact with a person's clothed or unclothed genitals, pubic  
25 area, buttocks, or the breast of a female in an act of apparent

1 sexual stimulation or gratification;

2 (30) "Sexual contact" means any touching of the genitals or  
3 anus of any person, or the breast of any female person, or any  
4 such touching through the clothing, for the purpose of arousing  
5 or gratifying sexual desire of any person;

6 (31) "Sexual performance", any performance, or part  
7 thereof, which includes sexual conduct by a child who is less  
8 than seventeen years of age;

9 (32) "Voluntary act" has the meaning specified in section  
10 562.011, RSMo.

11 565.151. 1. A person twenty-one years of age or older  
12 commits the crime of enticement of a child if that person, for  
13 the purpose of engaging in conduct with a child which would be  
14 criminal conduct under the provisions of section 568.045,  
15 568.050, or 568.060, or chapter 566, RSMo attempts to persuade or  
16 persuades whether by words or actions or both or through  
17 communication via the Internet or electronic communication, any  
18 person who is less than seventeen years of age to:

19 (1) Leave home or school; or

20 (2) Enter a vehicle, building, structure, alley, or any  
21 other secluded area so that the child is concealed from public  
22 view.

23 2. Nothing contained in this section shall prevent the  
24 lawful detention of a child or the rendering of aid or assistance  
25 to a child.

1           3. It is not an affirmative defense to a prosecution for a  
2 violation of this section that the other person was a peace  
3 officer masquerading as a minor.

4           4. Enticement of a child is a class D felony unless the  
5 person has previously pled guilty to or been found guilty of  
6 violating the provisions of this section, section 568.045,  
7 568.050, or 568.060, RSMo, or chapter 566, RSMo, in which case it  
8 is a class C felony.

9           565.350. 1. A person commits the crime of tampering with a  
10 prescription drug order as defined in section 338.095, RSMo, if  
11 such person purposely:

12           (1) Misbrands, dilutes, or otherwise alters the  
13 concentration or chemical structure of a prescribed drug or drug  
14 therapy without the knowledge and consent of the prescribing  
15 practitioner; or

16           (2) Misrepresents a misbranded, altered, or diluted  
17 prescription drug or drug therapy with the purpose of misleading  
18 the recipient or the administering person of the prescription  
19 drug or drug therapy; or

20           (3) Sells a misbranded, altered, or diluted prescription  
21 drug or drug therapy with the intention of misleading the  
22 purchaser.

23           2. Tampering with a prescription drug order is a class B  
24 felony, unless death or serious physical injury occurs as a  
25 result of such tampering, in which case the offense is a class A

1 felony.

2 3. Any violation of this section shall also be an unfair  
3 merchandising practice pursuant to section 407.020, RSMo.

4 557.035. 1. For all violations of subdivision (1) of  
5 subsection 1 of section 569.040, RSMo, or subdivision (1) of  
6 subsection 1 of section 569.050, RSMo, in which the building or  
7 inhabitable structure damaged is a church or place where people  
8 assemble for worship, and which the state believes to be  
9 knowingly motivated because of race, color, religion, national  
10 origin, sex, sexual orientation or disability of the victim or  
11 victims, the state may charge the crime or crimes under this  
12 section, and the violation is a class B felony, unless a person  
13 has suffered serious physical injury or has died as a result of a  
14 violation of this subsection, in which case the violation is a  
15 class A felony.

16 2. For all violations of subdivision (1) of subsection 1 of  
17 section 569.100, RSMo, or subdivision (1), (2), (3), (4), (6),  
18 (7) or (8) of subsection 1 of section 571.030, RSMo, which the  
19 state believes to be knowingly motivated because of race, color,  
20 religion, national origin, sex, sexual orientation or disability  
21 of the victim or victims, the state may charge the crime or  
22 crimes under this section, and the violation is a class C felony.

23 [2.] 3. For all violations of section 565.070, RSMo;  
24 subdivisions (1), (3) and (4) of subsection 1 of section 565.090,  
25 RSMo; subdivision (1) of subsection 1 of section 569.090, RSMo;

1 subdivision (1) of subsection 1 of section 569.120, RSMo; section  
2 569.140, RSMo; or section 574.050, RSMo; which the state believes  
3 to be knowingly motivated because of race, color, religion,  
4 national origin, sex, sexual orientation or disability of the  
5 victim or victims, the state may charge the crime or crimes under  
6 this section, and the violation is a class D felony.

7 [3.] 4. The court shall assess punishment in all of the  
8 cases in which the state pleads and proves any of the motivating  
9 factors listed in this section.

10 [4.] 5. For the purposes of this section, the following  
11 terms mean:

12 (1) "Disability", a physical or mental impairment which  
13 substantially limits one or more of a person's major life  
14 activities, being regarded as having such an impairment, or a  
15 record of having such an impairment; and

16 (2) "Sexual orientation", male or female heterosexuality,  
17 homosexuality or bisexuality by inclination, practice, identity  
18 or expression, or having a self-image or identity not  
19 traditionally associated with one's gender.

20 575.150. 1. A person commits the crime of resisting or  
21 interfering with arrest, stop, or detention if, knowing that a  
22 law enforcement officer is making an arrest, or attempting to  
23 lawfully detain or stop an individual or vehicle, or the person  
24 reasonably should know that a law enforcement officer is making  
25 an arrest or attempting to lawfully detain or lawfully stop an

1 individual or vehicle, for the purpose of preventing the officer  
2 from effecting the arrest, stop or detention, the person:

3 (1) Resists the arrest, stop or detention of such person by  
4 using or threatening the use of violence or physical force or by  
5 fleeing from such officer; or

6 (2) Interferes with the arrest, stop or detention of  
7 another person by using or threatening the use of violence,  
8 physical force or physical interference.

9 2. This section applies to arrests, stops or detentions  
10 with or without warrants and to arrests, stops or detentions for  
11 any crime, infraction or ordinance violation.

12 3. [It is no defense to a prosecution pursuant to  
13 subsection 1 of this section that the law enforcement officer was  
14 acting unlawfully in making the arrest. However, nothing in this  
15 section shall be construed to bar civil suits for unlawful  
16 arrest.

17 4.] Resisting, by means other than flight, or interfering  
18 with an arrest detention or stop for a felony, is a class D  
19 felony[;]. Resisting an arrest by fleeing in such a manner that  
20 the person fleeing creates a substantial risk of serious physical  
21 injury or death to any person is a class D felony; otherwise,  
22 resisting or interfering with arrest is a class A misdemeanor.

23 577.041. 1. If a person under arrest, or who has been  
24 stopped pursuant to subdivision (2) or (3) of subsection 1 of  
25 section 577.020, refuses upon the request of the officer to

1 submit to any test allowed pursuant to section 577.020, then none  
2 shall be given and evidence of the refusal shall be admissible in  
3 a proceeding pursuant to section 565.024 or 565.060, RSMo, or  
4 section 577.010 or 577.012. The request of the officer shall  
5 include the reasons of the officer for requesting the person to  
6 submit to a test and also shall inform the person that evidence  
7 of refusal to take the test may be used against such person and  
8 that the person's license shall be immediately revoked upon  
9 refusal to take the test. If a person when requested to submit  
10 to any test allowed pursuant to section 577.020 requests to speak  
11 to an attorney, the person shall be granted twenty minutes in  
12 which to attempt to contact an attorney. If upon the completion  
13 of the twenty-minute period the person continues to refuse to  
14 submit to any test, it shall be deemed a refusal. In this event,  
15 the officer shall, on behalf of the director of revenue, serve  
16 the notice of license revocation personally upon the person and  
17 shall take possession of any license to operate a motor vehicle  
18 issued by this state which is held by that person. The officer  
19 shall issue a temporary permit, on behalf of the director of  
20 revenue, which is valid for fifteen days and shall also give the  
21 person a notice of such person's right to file a petition for  
22 review to contest the license revocation.

23 2. The officer shall make a [sworn] certified report to the  
24 director of revenue in a format prescribed by the director, which  
25 shall include the following:

1 (1) That the officer has:

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

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

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

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

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

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

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

24 (6) Any license to operate a motor vehicle which the  
25 officer has taken into possession. 3. Upon receipt of the

1 officer's report, the director shall revoke the license of the  
2 person refusing to take the test for a period of one year; or if  
3 the person is a nonresident, such person's operating permit or  
4 privilege shall be revoked for one year; or if the person is a  
5 resident without a license or permit to operate a motor vehicle  
6 in this state, an order shall be issued denying the person the  
7 issuance of a license or permit for a period of one year.

8 4. If a person's license has been revoked because of the  
9 person's refusal to submit to a chemical test, such person may  
10 petition for a hearing before a circuit or associate circuit  
11 court in the county in which the arrest or stop occurred. The  
12 person may request such court to issue an order staying the  
13 revocation until such time as the petition for review can be  
14 heard. If the court, in its discretion, grants such stay, it  
15 shall enter the order upon a form prescribed by the director of  
16 revenue and shall send a copy of such order to the director.  
17 Such order shall serve as proof of the privilege to operate a  
18 motor vehicle in this state and the director shall maintain  
19 possession of the person's license to operate a motor vehicle  
20 until termination of any revocation pursuant to this section.  
21 Upon the person's request the clerk of the court shall notify the  
22 prosecuting attorney of the county and the prosecutor shall  
23 appear at the hearing on behalf of the director of revenue. At  
24 the hearing the court shall determine only:

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

1 (2) Whether or not the officer had:

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

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

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

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

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

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

22 7. No person who has had a license to operate a motor  
23 vehicle suspended or revoked pursuant to the provisions of this  
24 section shall have that license reinstated until such person has  
25 participated in and successfully completed a substance abuse

1 traffic offender program defined in section 577.001, or a program  
2 determined to be comparable by the department or the court.  
3 Assignment recommendations, based upon the needs assessment as  
4 described in subdivision (21) of section 302.010, RSMo, shall be  
5 delivered in writing to the person with written notice that the  
6 person is entitled to have such assignment recommendations  
7 reviewed by the court if the person objects to the  
8 recommendations. The person may file a motion in the associate  
9 division of the circuit court, on a printed form provided by the  
10 state courts administrator, to have the court hear and determine  
11 such motion pursuant to the provisions of chapter 517, RSMo. The  
12 motion shall name the person or entity making the needs  
13 assessment as the respondent and a copy of the motion shall be  
14 served upon the respondent in any manner allowed by law. Upon  
15 hearing the motion, the court may modify or waive any assignment  
16 recommendation that the court determines to be unwarranted based  
17 upon a review of the needs assessment, the person's driving  
18 record, the circumstances surrounding the offense, and the  
19 likelihood of the person committing a like offense in the future,  
20 except that the court may modify but may not waive the assignment  
21 to an education or rehabilitation program of a person determined  
22 to be a prior or persistent offender as defined in section  
23 577.023, RSMo, or of a person determined to have operated a motor  
24 vehicle with fifteen-hundredths of one percent or more by weight  
25 in such person's blood. Compliance with the court determination

1 of the motion shall satisfy the provisions of this section for  
2 the purpose of reinstating such person's license to operate a  
3 motor vehicle. The respondent's personal appearance at any  
4 hearing conducted pursuant to this subsection shall not be  
5 necessary unless directed by the court.

6 8. The fees for the substance abuse traffic offender  
7 program, or a portion thereof to be determined by the division of  
8 alcohol and drug abuse of the department of mental health, shall  
9 be paid by the person enrolled in the program. Any person who is  
10 enrolled in the program shall pay, in addition to any fee charged  
11 for the program, a supplemental fee of sixty dollars. The  
12 administrator of the program shall remit to the division of  
13 alcohol and drug abuse of the department of mental health the  
14 supplemental fee for all persons enrolled in the program, less  
15 two percent for administrative costs. The supplemental fees  
16 received by the department of mental health pursuant to this  
17 section shall be deposited in the mental health earnings fund  
18 which is created in section 630.053, RSMo.

19 Section 1. 1. No person less than twenty-one years of age  
20 shall dance in an adult cabaret as defined in section 573.500,  
21 RSMo, nor shall any proprietor of such establishment permit any  
22 person less than twenty-one years of age to dance in an adult  
23 cabaret.

24 2. Any person who violates the provisions of subsection 1  
25 of this section is guilty of a class A misdemeanor.

1           Section 2. In the event that any person, or entity, which  
2 has entered into a contract with the state or any political  
3 subdivision has been convicted or pled guilty to any felony or  
4 has been found, or has admitted to be, in violation of any state  
5 statute or regulation which relates to the performance of its  
6 contract, then that person or entity will be prohibited for three  
7 years from entering into any contracts with the state or any  
8 political subdivision.

9           Section B. If any provision of this act or the application  
10 thereof to anyone or to any circumstances is held invalid, the  
11 remainder of those sections and the application of such  
12 provisions to others or other circumstances shall not be affected  
13 thereby.