

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

**SENATE BILLS NOS. 1185,
1163, 1174, 1200 & 1225**

93RD GENERAL ASSEMBLY

Reported from the Committee on Governmental Accountability and Fiscal Oversight, April 6, 2006, with recommendation that the Senate Committee Substitute do pass.

5418S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 42.014, 42.015, 44.020, 44.024, 44.237, 135.550, 192.510, 306.114, 306.117, 384.025, 384.051, 384.062, 577.020, 577.026, 577.037, 577.208, 595.010, 595.015, 595.020, 595.025, 595.027, 595.030, 595.035, 595.036, 595.037, 595.040, 595.045, and 595.060, RSMo, and to enact in lieu thereof twenty-nine new sections relating to the transfer of duties between certain state agencies, with penalty provisions and an emergency clause for certain sections.

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

Section A. Sections 42.014, 42.015, 44.020, 44.024, 44.237, 135.550, 192.510, 306.114, 306.117, 384.025, 384.051, 384.062, 577.020, 577.026, 577.037, 577.208, 595.010, 595.015, 595.020, 595.025, 595.027, 595.030, 595.035, 595.036, 595.037, 595.040, 595.045, and 595.060, RSMo, are repealed and twenty-nine new sections enacted in lieu thereof, to be known as sections 42.014, 42.015, 44.020, 44.024, 44.237, 135.550, 192.510, 306.114, 306.117, 384.025, 384.051, 384.062, 577.020, 577.026, 577.037, 577.208, 595.010, 595.015, 595.020, 595.025, 595.027, 595.030, 595.035, 595.036, 595.037, 595.040, 595.045, 595.060, and 621.060, to read as follows:

42.014. 1. The Missouri general assembly shall, through appropriations as provided by law, encourage the development of any veterans' programs approved by the executive director of the veterans' commission whereby the historical significance of veteran service can be dedicated to [outreach and] education inside public schools, veteran cemeteries, veteran homes, and other

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

6 institutions as determined by rule and regulation.

7 2. The [executive director of the veterans' commission] **lieutenant**
8 **governor** shall administer the provisions of this section and may adopt all rules
9 and regulations necessary to administer the provisions of this section. Any rule
10 or portion of a rule, as that term is defined in section 536.010, RSMo, that is
11 created under the authority delegated in this section shall become effective only
12 if it complies with and is subject to all of the provisions of chapter 536, RSMo,
13 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo,
14 are nonseverable and if any of the powers vested with the general assembly
15 pursuant to chapter 536, RSMo, to review, to delay the effective date, or to
16 disapprove and annul a rule are subsequently held unconstitutional, then the
17 grant of rulemaking authority and any rule proposed or adopted after August 28,
18 2004, shall be invalid and void.

19 3. Pursuant to section 23.253, RSMo, of the Missouri sunset act:

20 (1) The provisions of the new program authorized under this section shall
21 automatically sunset six years after August 28, 2004, unless reauthorized by an
22 act of the general assembly; and

23 (2) If such program is reauthorized, the program authorized under this
24 section shall automatically sunset twelve years after the effective date of the
25 reauthorization of this section; and

26 (3) This section shall terminate on September first of the calendar year
27 immediately following the calendar year in which the program authorized under
28 this section is sunset.

42.015. 1. In order to contribute to the preservation of freedom, there is
2 established in the state treasury a special trust fund, to be known as the
3 "Veterans' Historical Education Trust Fund". The fund shall be administered by
4 the [commission] **lieutenant governor** for the sole purpose of financing
5 veterans' [outreach and] education programs established in section 42.014.

6 2. The director of revenue shall deposit in the treasury to the credit of the
7 veterans' historical education trust fund all amounts received by or designated to
8 the fund established pursuant to this section and any other amounts which may
9 be received from grants, gifts, bequests, appropriations, the federal government,
10 or other sources granted or given for this specific purpose. The state treasurer
11 shall invest moneys in the veterans' historical education trust fund in the same
12 manner as surplus state funds are invested pursuant to section 30.260, RSMo. All
13 earnings resulting from the investment of moneys in the veterans' historical

14 education trust fund shall be credited to the veterans' historical education trust
15 fund.

16 3. As established by this section, funds appropriated by the general
17 assembly from the veterans' historical education trust fund shall only be used by
18 the [commission] **lieutenant governor** for purposes authorized pursuant to
19 section 42.014 and shall not be used to supplant any existing program or service.

20 4. The provisions of section 33.080, RSMo, requiring all unexpended
21 balances remaining in various state funds to be transferred and placed to the
22 credit of the general revenue fund of this state at the end of each biennium shall
23 not apply to the veterans' historical education trust fund.

44.020. There is hereby created within the [military division of the
2 executive department, office of the adjutant general] **department of public**
3 **safety**, the "State Emergency Management Agency", for the general purpose of
4 assisting in coordination of national, state and local activities related to
5 emergency functions by coordinating response, recovery, planning and
6 mitigation. This agency shall also serve as the statewide coordinator for activities
7 associated with the National Flood Insurance Program.

44.024. The [adjutant general, subject to the direction and control of the
2 governor,] **director of the department of public safety** shall be the executive
3 head of the office of the state emergency management agency **and shall appoint**
4 **a director of the state emergency management agency to manage the**
5 **day-to-day operations of the office.**

44.237. 1. In addition to its responsibilities listed in sections 44.225 to
2 44.237, the commission shall undertake a study to determine the feasibility of
3 establishing a comprehensive program of earthquake hazard reduction having as
4 its purposes the saving of lives and mitigating damage to property in Missouri.

5 2. The study shall accomplish the following tasks:

6 (1) Earthquake hazard reduction. The study shall develop a
7 comprehensive program for the reduction of earthquake hazards in Missouri. It
8 shall include, but not necessarily be limited to, the following:

9 (a) A review of and recommendations for improving the development and
10 implementation of technically and economically feasible codes, standards and
11 procedures for the design and construction of new structures and the
12 strengthening of existing structures so as to increase the earthquake resistance
13 of structures located in areas of significant seismic hazard;

14 (b) A review of current methods and recommendations for new methods

15 to improve the development, publication and promotion, in conjunction with local
16 officials, research organizations and professional organizations, of model codes
17 and other means to provide better information about seismic hazards to guide
18 land-use policy decisions and building activity;

19 (c) A review of and recommendations for methods, practices and
20 procedures to educate the public, including local officials, about the nature and
21 consequences of earthquakes, about procedures for identifying those locations and
22 structures especially susceptible to earthquake damage and about ways to reduce
23 and mitigate the adverse effects of an earthquake;

24 (d) A review of and recommendations for programs and techniques to
25 improve preparedness for and response to damaging earthquakes with special
26 attention being given to hazard control measures, pre-earthquake emergency
27 planning, readiness of emergency services and planning for post-earthquake
28 reconstruction and redevelopment.

29 (2) Implementation processes. With respect to implementation of
30 earthquake hazard reduction, the study shall include the following:

31 (a) Recommendations for new roles, responsibilities and programs for state
32 and local agencies, universities, private organizations and volunteer
33 organizations, including goals, priorities and expenditures of future state funds
34 specifically identified for the recommended hazards reduction program;

35 (b) Recommendations for methods and procedures to disseminate and
36 implement basic and applied earthquake research in order to achieve higher
37 levels of seismic safety.

38 (3) Coordination with other agencies. To the extent it is practical to do
39 so, the study required by this section shall be coordinated with the relevant local,
40 regional and federal government agencies, key elements of the private sector, and
41 at least the following state agencies: state emergency management agency,
42 division of geology and land survey, division of design and construction, Missouri
43 housing development commission, department of natural resources, department
44 of labor and industrial relations, public service commission, department of health
45 and senior services, office of the state fire marshal, department of transportation,
46 department of revenue, [office of the adjutant general] **department of public**
47 **safety**, department of insurance, and the department of elementary and
48 secondary education.

49 3. The study shall include recommendations for statutory changes and
50 specific executive actions to be taken by state and local agencies necessary to

51 establish and implement an earthquake hazards reduction program for the state
52 of Missouri.

53 4. The commission shall submit the study to the general assembly by June
54 30, 1997, or earlier at its discretion.

135.550. 1. As used in this section, the following terms shall mean:

2 (1) "Contribution", a donation of cash, stock, bonds or other marketable
3 securities, or real property;

4 (2) "Shelter for victims of domestic violence", a facility located in this state
5 which meets the definition of a shelter for victims of domestic violence pursuant
6 to section 455.200, RSMo, and which meets the requirements of section 455.220,
7 RSMo;

8 (3) "State tax liability", in the case of a business taxpayer, any liability
9 incurred by such taxpayer pursuant to the provisions of chapter 143, RSMo,
10 chapter 147, RSMo, chapter 148, RSMo, and chapter 153, RSMo, exclusive of the
11 provisions relating to the withholding of tax as provided for in sections 143.191
12 to 143.265, RSMo, and related provisions, and in the case of an individual
13 taxpayer, any liability incurred by such taxpayer pursuant to the provisions of
14 chapter 143, RSMo;

15 (4) "Taxpayer", a person, firm, a partner in a firm, corporation or a
16 shareholder in an S corporation doing business in the state of Missouri and
17 subject to the state income tax imposed by the provisions of chapter 143, RSMo,
18 or a corporation subject to the annual corporation franchise tax imposed by the
19 provisions of chapter 147, RSMo, or an insurance company paying an annual tax
20 on its gross premium receipts in this state, or other financial institution paying
21 taxes to the state of Missouri or any political subdivision of this state pursuant
22 to the provisions of chapter 148, RSMo, or an express company which pays an
23 annual tax on its gross receipts in this state pursuant to chapter 153, RSMo, or
24 an individual subject to the state income tax imposed by the provisions of chapter
25 143, RSMo.

26 2. A taxpayer shall be allowed to claim a tax credit against the taxpayer's
27 state tax liability, in an amount equal to fifty percent of the amount such
28 taxpayer contributed to a shelter for victims of domestic violence.

29 3. The amount of the tax credit claimed shall not exceed the amount of the
30 taxpayer's state tax liability for the taxable year that the credit is claimed, and
31 such taxpayer shall not be allowed to claim a tax credit in excess of fifty thousand
32 dollars per taxable year. However, any tax credit that cannot be claimed in the

33 taxable year the contribution was made may be carried over to the next four
34 succeeding taxable years until the full credit has been claimed.

35 4. Except for any excess credit which is carried over pursuant to
36 subsection 3 of this section, a taxpayer shall not be allowed to claim a tax credit
37 unless the total amount of such taxpayer's contribution or contributions to a
38 shelter or shelters for victims of domestic violence in such taxpayer's taxable year
39 has a value of at least one hundred dollars.

40 5. The director of [public safety] **the department of social services**
41 shall determine, at least annually, which facilities in this state may be classified
42 as shelters for victims of domestic violence. The director of [public safety] **the**
43 **department of social services** may require of a facility seeking to be classified
44 as a shelter for victims of domestic violence whatever information is reasonably
45 necessary to make such a determination. The director of [public safety] **the**
46 **department of social services** shall classify a facility as a shelter for victims
47 of domestic violence if such facility meets the definition set forth in subsection 1
48 of this section.

49 6. The director of [public safety] **the department of social services**
50 shall establish a procedure by which a taxpayer can determine if a facility has
51 been classified as a shelter for victims of domestic violence, and by which such
52 taxpayer can then contribute to such shelter for victims of domestic violence and
53 claim a tax credit. Shelters for victims of domestic violence shall be permitted to
54 decline a contribution from a taxpayer. The cumulative amount of tax credits
55 which may be claimed by all the taxpayers contributing to shelters for victims of
56 domestic violence in any one fiscal year shall not exceed two million dollars.

57 7. The director of [public safety] **the department of social services**
58 shall establish a procedure by which, from the beginning of the fiscal year until
59 some point in time later in the fiscal year to be determined by the director of
60 [public safety] **the department of social services**, the cumulative amount of
61 tax credits are equally apportioned among all facilities classified as shelters for
62 victims of domestic violence. If a shelter for victims of domestic violence fails to
63 use all, or some percentage to be determined by the director of [public safety] **the**
64 **department of social services**, of its apportioned tax credits during this
65 predetermined period of time, the director of [public safety] **the department of**
66 **social services** may reapportion these unused tax credits to those shelters for
67 victims of domestic violence that have used all, or some percentage to be
68 determined by the director of [public safety] **the department of social**

69 **services**, of their apportioned tax credits during this predetermined period of
70 time. The director of [public safety] **the department of social services** may
71 establish more than one period of time and reapportion more than once during
72 each fiscal year. To the maximum extent possible, the director of [public safety]
73 **the department of social services** shall establish the procedure described in
74 this subsection in such a manner as to ensure that taxpayers can claim all the tax
75 credits possible up to the cumulative amount of tax credits available for the fiscal
76 year.

77 8. This section shall become effective January 1, 2000, and shall apply to
78 all tax years after December 31, 1999.

192.510. The department of health and senior services shall respond to all
2 radiation emergencies. The department shall coordinate its radiation emergency
3 response activities and plans with the state emergency management agency, the
4 department of natural resources and other agencies, and provide a memorandum
5 of agreement documenting responsibilities. This section does not in any way alter
6 or change the provisions of chapter 44, RSMo, concerning response during an
7 emergency by the [office of the adjutant general] **department of public safety**
8 or its successor agency.

306.114. 1. No person convicted of or pleading guilty to a violation of
2 section 306.111 or 306.112 shall be granted a suspended imposition of sentence,
3 unless such person is placed on probation for a minimum of two years and a
4 record of the conviction or plea of guilty is entered into the records of the
5 Missouri uniform law enforcement system maintained by the Missouri state
6 highway patrol.

7 2. Chemical tests of a person's blood, breath, urine, or saliva to be
8 considered valid under the provisions of sections 306.111 to 306.119 shall be
9 performed according to methods and devices approved by the [department of
10 health and senior services] **highways and transportation commission** by
11 licensed medical personnel or by a person possessing a valid permit issued by the
12 [department of health and senior services] **highways and transportation**
13 **commission** for this purpose. In addition, any state, county, or municipal law
14 enforcement officer who is certified pursuant to chapter 590, RSMo, may, prior
15 to arrest, administer a portable chemical test to any person suspected of operating
16 any vessel in violation of section 306.111 or 306.112. A portable chemical test
17 shall be admissible as evidence of probable cause to arrest and as exculpatory
18 evidence, but shall not be admissible as evidence of blood alcohol content. The

19 provisions of section 306.116 shall not apply to a test administered prior to arrest
20 pursuant to this section.

21 3. The [department of health and senior services] **highways and**
22 **transportation commission** shall approve satisfactory techniques, devices,
23 equipment, or methods to conduct tests required by sections 306.111 to 306.119,
24 and shall establish standards as to the qualifications and competence of
25 individuals to conduct analyses and to issue permits which shall be subject to
26 termination, suspension or revocation by the [department of health and senior
27 services] **highways and transportation commission**.

28 4. A licensed physician, registered nurse, or trained medical technician,
29 acting at the request and direction of a law enforcement officer, shall withdraw
30 blood for the purpose of determining the alcohol content of the blood, unless the
31 medical personnel, in the exercise of good faith medical judgment, believes such
32 procedure would endanger the life or health of the person in custody. Blood may
33 be withdrawn only by such medical personnel, but such restriction shall not apply
34 to the taking of a breath test or a urine or saliva specimen. In withdrawing blood
35 for the purpose of determining the alcohol content in the blood, only a previously
36 unused and sterile needle and sterile vessel shall be used and the withdrawal
37 shall otherwise be in strict accord with accepted medical practices. A nonalcoholic
38 antiseptic shall be used for cleansing the skin prior to a venapuncture. Upon the
39 request of the person who is tested, full information concerning the test taken at
40 the direction of the law enforcement officer shall be made available to such
41 person.

42 5. No person who administers any test pursuant to the provisions of
43 sections 306.111 to 306.119 upon the request of a law enforcement officer, no
44 hospital in or with which such person is employed or is otherwise associated or
45 in which such test is administered, and no other person, firm, or corporation by
46 whom or with which such person is employed or is in any way associated shall be
47 civilly liable for damages to the person tested, except for negligence in
48 administering of the test or for willful and wanton acts or omissions.

49 6. Any person who is dead, unconscious or who is otherwise in a condition
50 rendering such person incapable of refusing to take a test as provided in sections
51 306.111 to 306.119 shall be deemed not to have withdrawn the consent provided
52 by section 306.116 and the test or tests may be administered.

306.117. 1. Upon the trial of any person for violation of any of the
2 provisions of section 306.111 or 306.112 the amount of alcohol or drugs in the

3 person's blood at the time of the act alleged as shown by any chemical analysis
4 of the person's blood, breath, urine, or saliva is admissible in evidence and the
5 provisions of subdivision (5) of section 491.060, RSMo, shall not prevent the
6 admissibility or introduction of such evidence if otherwise admissible. Evidence
7 of alcohol in a person's blood shall be given the following effect:

8 (1) If there was five-hundredths of one percent or less by weight of alcohol
9 in such person's blood, it shall be presumed that the person was not intoxicated
10 at the time the specimen was obtained;

11 (2) If there was in excess of five-hundredths of one percent but less than
12 ten-hundredths of one percent by weight of alcohol in such person's blood, the fact
13 shall not give rise to any presumption that the person was or was not intoxicated,
14 but the fact may be considered with other competent evidence in determining
15 whether the person was intoxicated;

16 (3) If there was ten-hundredths of one percent or more by weight of
17 alcohol in the person's blood, this shall be prima facie evidence that the person
18 was intoxicated at the time the specimen was taken.

19 2. Percent by weight of alcohol in the blood shall be based upon grams of
20 alcohol per one hundred milliliters of blood.

21 3. A chemical analysis of a person's breath, blood, urine, or saliva, in
22 order to give rise to the presumption or to have the effect provided for in
23 subsection 1 of this section, shall have been performed as provided in sections
24 306.111 to 306.119 and in accordance with methods and standards approved by
25 the [department of health and senior services] **highways and transportation**
26 **commission**.

27 4. The provisions of this section shall not be construed as limiting the
28 introduction of any other competent evidence bearing upon the question whether
29 the person was intoxicated or under the influence of a controlled substance, or
30 drug, or a combination of either or both with or without alcohol.

384.025. 1. If at any time the director has reason to believe that an
2 eligible surplus lines insurer:

3 (1) Is in unsound financial condition;

4 (2) Is no longer eligible under section 384.021;

5 (3) Has willfully violated the laws of this state; or

6 (4) Does not make reasonably prompt payment of just losses and claims
7 in this state or elsewhere;

8 the director may declare it ineligible.

9 2. The director shall promptly [mail] **publish** notice of all such
10 declarations [to each surplus lines licensee] **on the department's website.**

384.051. 1. Every insured in this state who procures or causes to be
2 procured or continues or renews insurance in any surplus lines insurer, or any
3 self-insurer in this state who so procures or continues with, any surplus lines
4 insurer, excess of loss, catastrophe or other insurance, upon a subject of insurance
5 resident, located or to be performed within this state, other than insurance
6 procured through a surplus lines broker pursuant to sections 384.011 to 384.071,
7 shall before March second of the year next succeeding the year in which the
8 insurance was so procured, continued or renewed, file a written report of the
9 same with the director on forms prescribed by the director and furnished to such
10 an insured upon request. The report shall show:

- 11 (1) The name and address of the insured or insureds;
- 12 (2) The name and address of the insurer or insurers;
- 13 (3) The subject of the insurance;
- 14 (4) A general description of the coverage;
- 15 (5) The amount of premium currently charged therefor;
- 16 (6) Such additional pertinent information as may be reasonably requested
17 by the director.

18 2. If any such insurance covers also a subject of insurance resident,
19 located or to be performed outside this state, for the purposes of this section, a
20 proper pro rata portion of the entire premium payable for all such insurance shall
21 be allocated as to the subjects of insurance resident, located or to be performed
22 in this state.

23 3. Any insurance in a surplus lines insurer procured through negotiations
24 or an application in whole or in part occurring or made within or from within this
25 state, or for which premiums in whole or in part are remitted directly or
26 indirectly from within this state, shall be deemed to be insurance procured or
27 continued or renewed in this state within the intent of subsection 1 of this
28 section.

29 4. For the general support of the government of this state there is levied
30 upon the insured **or self-insurer** who procures insurance pursuant to subsections
31 1 and 3 of this section a tax at the rate of five percent of the net amount of the
32 premium in respect of risks located in this state. Before April sixteenth of the
33 year next succeeding the year in which the insurance was so procured, continued
34 or renewed, the insured shall remit to the [director] **department of revenue** the

35 amount of the tax. [The director before June first of each year shall certify and
36 transmit to the director of revenue the sums so collected.] **The department of**
37 **revenue shall notify the director of sums collected from each insured or**
38 **self-insurer.**

384.062. 1. If [the] **any tax [collectible], penalty, or interest payable**
2 by a surplus lines licensee under the provisions of sections 384.011 to 384.071
3 [has been collected and] is not paid within the time prescribed, the same shall be
4 recoverable in a suit brought by the director against the surplus lines licensee.

5 2. All taxes, penalties, and interest or delinquent taxes levied pursuant
6 to this chapter shall be paid to the [director] **department of revenue**, who shall
7 [obtain such taxes, penalties and interest by civil action against the insured or
8 the surplus lines licensee, and the director shall remit such taxes when collected
9 to the director of revenue] **notify the director of the sums collected from**
10 **each surplus lines licensee.** All checks and drafts remitted for the payment
11 of such taxes, penalties and interest shall be made payable to the director of
12 revenue.

13 3. Taxes collected pursuant to this chapter are taxes collected by the
14 director of revenue within the meaning of section 139.031, RSMo.

577.020. 1. Any person who operates a motor vehicle upon the public
2 highways of this state shall be deemed to have given consent to, subject to the
3 provisions of sections 577.020 to 577.041, a chemical test or tests of the person's
4 breath, blood, saliva or urine for the purpose of determining the alcohol or drug
5 content of the person's blood pursuant to the following circumstances:

6 (1) If the person is arrested for any offense arising out of acts which the
7 arresting officer had reasonable grounds to believe were committed while the
8 person was driving a motor vehicle while in an intoxicated or drugged condition;
9 or

10 (2) If the person is under the age of twenty-one, has been stopped by a law
11 enforcement officer, and the law enforcement officer has reasonable grounds to
12 believe that such person was driving a motor vehicle with a blood alcohol content
13 of two-hundredths of one percent or more by weight; or

14 (3) If the person is under the age of twenty-one, has been stopped by a law
15 enforcement officer, and the law enforcement officer has reasonable grounds to
16 believe that such person has committed a violation of the traffic laws of the state,
17 or any political subdivision of the state, and such officer has reasonable grounds
18 to believe, after making such stop, that such person has a blood alcohol content

19 of two-hundredths of one percent or greater;

20 (4) If the person is under the age of twenty-one, has been stopped at a
21 sobriety checkpoint or roadblock and the law enforcement officer has reasonable
22 grounds to believe that such person has a blood alcohol content of two-hundredths
23 of one percent or greater;

24 (5) If the person, while operating a motor vehicle, has been involved in a
25 motor vehicle collision which resulted in a fatality or a readily apparent serious
26 physical injury as defined in section 565.002, RSMo, and has been arrested as
27 evidenced by the issuance of a uniform traffic ticket for the violation of any state
28 law or county or municipal ordinance with the exception of equipment violations
29 contained in chapter 306, RSMo, or similar provisions contained in county or
30 municipal ordinances; or

31 (6) If the person, while operating a motor vehicle, has been involved in a
32 motor vehicle collision which resulted in a fatality.

33 The test shall be administered at the direction of the law enforcement officer
34 whenever the person has been arrested or stopped for any reason.

35 2. The implied consent to submit to the chemical tests listed in subsection
36 1 of this section shall be limited to not more than two such tests arising from the
37 same arrest, incident or charge.

38 3. Chemical analysis of the person's breath, blood, saliva, or urine to be
39 considered valid pursuant to the provisions of sections 577.020 to 577.041 shall
40 be performed according to methods approved by the [state department of health
41 and senior services] **highways and transportation commission** by licensed
42 medical personnel or by a person possessing a valid permit issued by the [state
43 department of health and senior services] **highways and transportation**
44 **commission** for this purpose.

45 4. The [state department of health and senior services] **highways and**
46 **transportation commission** shall approve satisfactory techniques, devices,
47 equipment, or methods to be considered valid pursuant to the provisions of
48 sections 577.020 to 577.041 and shall establish standards to ascertain the
49 qualifications and competence of individuals to conduct analyses and to issue
50 permits which shall be subject to termination or revocation by the [state
51 department of health and senior services] **highways and transportation**
52 **commission**.

53 5. The person tested may have a physician, or a qualified technician,
54 chemist, registered nurse, or other qualified person at the choosing and expense

55 of the person to be tested, administer a test in addition to any administered at
56 the direction of a law enforcement officer. The failure or inability to obtain an
57 additional test by a person shall not preclude the admission of evidence relating
58 to the test taken at the direction of a law enforcement officer.

59 6. Upon the request of the person who is tested, full information
60 concerning the test shall be made available to such person.

61 7. Any person given a chemical test of the person's breath pursuant to
62 subsection 1 of this section or a field sobriety test may be videotaped during any
63 such test at the direction of the law enforcement officer. Any such video
64 recording made during the chemical test pursuant to this subsection or a field
65 sobriety test shall be admissible as evidence at either any trial of such person for
66 either a violation of any state law or county or municipal ordinance, or any
67 license revocation or suspension proceeding pursuant to the provisions of chapter
68 302, RSMo.

577.026. 1. Chemical tests of the person's breath, blood, saliva, or urine
2 to be considered valid under the provisions of sections 577.020 to 577.041, shall
3 be performed according to methods and devices approved by the [state department
4 of health and senior services] **highways and transportation commission** by
5 licensed medical personnel or by a person possessing a valid permit issued by the
6 [state department of health and senior services] **highways and transportation**
7 **commission** for this purpose.

8 2. The [state department of health and senior services] **highways and**
9 **transportation commission** shall approve satisfactory techniques, devices,
10 equipment, or methods to conduct tests required by sections 577.020 to 577.041,
11 and shall establish standards as to the qualifications and competence of
12 individuals to conduct analyses and to issue permits which shall be subject to
13 termination or revocation by the [state department of health and senior services]
14 **highways and transportation commission**.

15 3. **All the powers, duties, and functions described in this section,**
16 **and all powers, duties, and functions under sections 306.114 and 306.117,**
17 **RSMo, and sections 577.020 and 577.037, relating to the approval and**
18 **licensing of personnel, methods, techniques, devices, and equipment for**
19 **the testing of blood alcohol content, including all administrative rules**
20 **and orders, are hereby transferred from the department of health and**
21 **senior services to the department of transportation, which is in the**
22 **charge of the highways and transportation commission, by type I**

23 transfer, as defined in the omnibus state reorganization act of 1974, and
24 the department of health and senior services and its employees, officers,
25 and agents shall no longer be responsible for those powers, duties, and
26 functions.

27 4. All budget authority to fund the personal services and
28 equipment and expenses to carry out the powers, duties, and functions
29 under this section and sections 306.114 and 306.117, RSMo, and sections
30 577.020 and 577.037, relating to the approval and licensing of personnel,
31 methods, and devices for testing of blood alcohol content shall be
32 transferred from the department of health and senior services to the
33 department of transportation and all appropriations to fund the powers,
34 duties, and functions transferred under this section shall be paid from
35 the general revenue fund.

36 5. All credentials, permits, and licenses issued prior to the
37 effective date of this transfer by the department of health and senior
38 services under this section and sections 306.114 and 306.117, RSMo, and
39 sections 577.020 and 577.037, shall remain in force or expire as provided
40 by law. In addition, the highways and transportation commission shall
41 have the authority to suspend, cancel, or revoke such credentials,
42 permits, and licenses after the effective date of this act.

43 6. The commission may promulgate administrative rules to
44 administer the powers, duties, and functions relating to the approval
45 and licensing of personnel, methods, and devices for testing of blood
46 alcohol content. Any rule or portion of a rule, as that term is defined in
47 section 536.010, RSMo, that is created under the authority delegated in
48 this section shall become effective only if it complies with and is subject
49 to all of the provisions of chapter 536, RSMo, and, if applicable, section
50 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
51 and if any of the powers vested with the general assembly pursuant to
52 chapter 536, RSMo, to review, to delay the effective date, or to
53 disapprove and annul a rule are subsequently held unconstitutional,
54 then the grant of rulemaking authority and any rule proposed or
55 adopted after August 28, 2006, shall be invalid and void.

56 7. Notwithstanding any provision of law to the contrary, on and
57 after the effective date of this act, all bonds, certificates of deposit,
58 letters of credit, drafts, checks, or other financial instruments payable

59 **to the department of health and senior services or any other employee,**
60 **official, or agent whose powers, duties, or functions are transferred**
61 **under this section shall be payable instead to the highways and**
62 **transportation commission to be deposited to the credit of the general**
63 **revenue fund.**

577.037. 1. Upon the trial of any person for violation of any of the
2 provisions of section 565.024, RSMo, or section 565.060, RSMo, or section 577.010
3 or 577.012, or upon the trial of any criminal action or violations of county or
4 municipal ordinances or in any license suspension or revocation proceeding
5 pursuant to the provisions of chapter 302, RSMo, arising out of acts alleged to
6 have been committed by any person while driving a motor vehicle while in an
7 intoxicated condition, the amount of alcohol in the person's blood at the time of
8 the act alleged as shown by any chemical analysis of the person's blood, breath,
9 saliva or urine is admissible in evidence and the provisions of subdivision (5) of
10 section 491.060, RSMo, shall not prevent the admissibility or introduction of such
11 evidence if otherwise admissible. If there was eight-hundredths of one percent
12 or more by weight of alcohol in the person's blood, this shall be prima facie
13 evidence that the person was intoxicated at the time the specimen was taken.

14 2. Percent by weight of alcohol in the blood shall be based upon grams of
15 alcohol per one hundred milliliters of blood or grams of alcohol per two hundred
16 ten liters of breath.

17 3. The foregoing provisions of this section shall not be construed as
18 limiting the introduction of any other competent evidence bearing upon the
19 question whether the person was intoxicated.

20 4. A chemical analysis of a person's breath, blood, saliva or urine, in order
21 to give rise to the presumption or to have the effect provided for in subsection 1
22 of this section, shall have been performed as provided in sections 577.020 to
23 577.041 and in accordance with methods and standards approved by the [state
24 department of health and senior services] **highways and transportation**
25 **commission.**

26 5. Any charge alleging a violation of section 577.010 or 577.012 or any
27 county or municipal ordinance prohibiting driving while intoxicated or driving
28 under the influence of alcohol shall be dismissed with prejudice if a chemical
29 analysis of the defendant's breath, blood, saliva, or urine performed in accordance
30 with sections 577.020 to 577.041 and rules promulgated thereunder by the [state
31 department of health and senior services] **highways and transportation**

32 **commission** demonstrate that there was less than eight-hundredths of one
33 percent of alcohol in the defendant's blood unless one or more of the following
34 considerations cause the court to find a dismissal unwarranted:

35 (1) There is evidence that the chemical analysis is unreliable as evidence
36 of the defendant's intoxication at the time of the alleged violation due to the lapse
37 of time between the alleged violation and the obtaining of the specimen;

38 (2) There is evidence that the defendant was under the influence of a
39 controlled substance, or drug, or a combination of either or both with or without
40 alcohol; or

41 (3) There is substantial evidence of intoxication from physical observations
42 of witnesses or admissions of the defendant.

577.208. 1. Chemical tests of the person's breath, blood, or urine to be
2 considered valid shall be performed according to methods and devices approved
3 by the [state department of health and senior services] **highways and**
4 **transportation commission** and shall be performed by licensed medical
5 personnel or by a person possessing a valid permit issued by the [state
6 department of health and senior services] **highways and transportation**
7 **commission** for this purpose. A blood test shall not be performed if the medical
8 personnel, in good faith medical judgment, believe such procedure would endanger
9 the health of the person in custody.

10 2. Upon request of the person tested, full information concerning the test
11 shall be made available to him.

12 3. No person administering a chemical test under this section and sections
13 577.206, 577.211 and 577.214, or any other person, firm or corporation with whom
14 he is associated, shall be civilly liable for damages to the person tested except for
15 negligence or by willful or wanton act or omission.

595.010. 1. As used in sections 595.010 to 595.075, unless the context
2 requires otherwise, the following terms shall mean:

3 (1) "Child", a dependent, unmarried person who is under eighteen years
4 of age and includes a posthumous child, stepchild, or an adopted child;

5 (2) "Claimant", a victim or a dependent, relative, survivor, or member of
6 the family, of a victim eligible for compensation pursuant to sections 595.010 to
7 595.075;

8 (3) "Conservator", a person or corporation appointed by a court to have the
9 care and custody of the estate of a minor or a disabled person, including a limited
10 conservator;

11 (4) "Counseling", problem-solving and support concerning emotional issues
12 that result from criminal victimization licensed pursuant to section
13 595.030. Counseling is a confidential service provided either on an individual
14 basis or in a group. Counseling has as a primary purpose to enhance, protect and
15 restore a person's sense of well-being and social functioning after
16 victimization. Counseling does not include victim advocacy services such as crisis
17 telephone counseling, attendance at medical procedures, law enforcement
18 interviews or criminal justice proceedings;

19 (5) "Crime", an act committed in this state which, if committed by a
20 mentally competent, criminally responsible person who had no legal exemption
21 or defense, would constitute a crime; provided that, such act involves the
22 application of force or violence or the threat of force or violence by the offender
23 upon the victim but shall include the crime of driving while intoxicated, vehicular
24 manslaughter and hit and run; and provided, further, that no act involving the
25 operation of a motor vehicle except driving while intoxicated, vehicular
26 manslaughter and hit and run which results in injury to another shall constitute
27 a crime for the purpose of sections 595.010 to 595.075, unless such injury was
28 intentionally inflicted through the use of a motor vehicle. A crime shall also
29 include an act of terrorism, as defined in 18 U.S.C. section 2331, which has been
30 committed outside of the United States against a resident of Missouri;

31 (6) "Crisis intervention counseling", helping to reduce psychological
32 trauma where victimization occurs;

33 (7) "Department", the department of public safety;

34 (8) "Dependent", mother, father, spouse, spouse's mother, spouse's father,
35 child, grandchild, adopted child, illegitimate child, niece or nephew, who is wholly
36 or partially dependent for support upon, and living with, but shall include
37 children entitled to child support but not living with, the victim at the time of his
38 injury or death due to a crime alleged in a claim pursuant to sections 595.010 to
39 595.070;

40 (9) "Direct service", providing physical services to a victim of crime
41 including, but not limited to, transportation, funeral arrangements, child care,
42 emergency food, clothing, shelter, notification and information;

43 (10) "Director", the director of public safety of this state or a person
44 designated by him for the purposes of sections 595.010 to 595.070;

45 (11) "Disabled person", one who is unable by reason of any physical or
46 mental condition to receive and evaluate information or to communicate decisions

47 to such an extent that the person lacks ability to manage his financial resources,
48 including a partially disabled person who lacks the ability, in part, to manage his
49 financial resources;

50 (12) ["Division", the division of workers' compensation of the state of
51 Missouri;

52 (13) "Emergency service", those services provided within thirty days to
53 alleviate the immediate effects of the criminal act or offense, and may include
54 cash grants of not more than one hundred dollars;

55 [(14)] (13) "Earnings", net income or net wages;

56 [(15)] (14) "Family", the spouse, parent, grandparent, stepmother,
57 stepfather, child, grandchild, brother, sister, half brother, half sister, adopted
58 children of parent, or spouse's parents;

59 [(16)] (15) "Funeral expenses", the expenses of the funeral, burial,
60 cremation or other chosen method of interment, including plot or tomb and other
61 necessary incidents to the disposition of the remains;

62 [(17)] (16) "Gainful employment", engaging on a regular and continuous
63 basis, up to the date of the incident upon which the claim is based, in a lawful
64 activity from which a person derives a livelihood;

65 [(18)] (17) "Guardian", one appointed by a court to have the care and
66 custody of the person of a minor or of an incapacitated person, including a limited
67 guardian;

68 [(19)] (18) "Hit and run", the crime of leaving the scene of a motor
69 vehicle accident as defined in section 577.060, RSMo;

70 [(20)] (19) "Incapacitated person", one who is unable by reason of any
71 physical or mental condition to receive and evaluate information or to
72 communicate decisions to such an extent that he lacks capacity to meet essential
73 requirements for food, clothing, shelter, safety or other care such that serious
74 physical injury, illness, or disease is likely to occur, including a partially
75 incapacitated person who lacks the capacity to meet, in part, such essential
76 requirements;

77 [(21)] (20) "Injured victim", a person:

78 (a) Killed or receiving a personal physical injury in this state as a result
79 of another person's commission of or attempt to commit any crime;

80 (b) Killed or receiving a personal physical injury in this state while in a
81 good faith attempt to assist a person against whom a crime is being perpetrated
82 or attempted;

83 (c) Killed or receiving a personal physical injury in this state while
84 assisting a law enforcement officer in the apprehension of a person who the officer
85 has reason to believe has perpetrated or attempted a crime;

86 [(22)] (21) "Law enforcement official", a sheriff and his regular deputies,
87 municipal police officer or member of the Missouri state highway patrol and such
88 other persons as may be designated by law as peace officers;

89 [(23)] (22) "Offender", a person who commits a crime;

90 [(24)] (23) "Personal physical injury", actual bodily harm only with
91 respect to the victim. Personal physical injury may include mental or nervous
92 shock resulting from the specific incident upon which the claim is based;

93 [(25)] (24) "Private agency", a not-for-profit corporation, in good standing
94 in this state, which provides services to victims of crime and their dependents;

95 [(26)] (25) "Public agency", a part of any local or state government
96 organization which provides services to victims of crime;

97 [(27)] (26) "Relative", the spouse of the victim or a person related to the
98 victim within the third degree of consanguinity or affinity as calculated according
99 to civil law;

100 [(28)] (27) "Survivor", the spouse, parent, legal guardian, grandparent,
101 sibling or child of the deceased victim of the victim's household at the time of the
102 crime;

103 [(29)] (28) "Victim", a person who suffers personal physical injury or
104 death as a direct result of a crime, as defined in subdivision (5) of this subsection;

105 [(30)] (29) "Victim advocacy", assisting the victim of a crime and his
106 dependents to acquire services from existing community resources.

107 2. As used in sections 565.024 and 565.060, RSMo, and sections 595.010
108 to 595.075, the term "alcohol-related traffic offense" means those offenses defined
109 by sections 577.001, 577.010, and 577.012, RSMo, and any county or municipal
110 ordinance which prohibits operation of a motor vehicle while under the influence
111 of alcohol.

595.015. 1. The [division of workers' compensation] **department of**
2 **public safety** shall, pursuant to the provisions of sections 595.010 to 595.075,
3 have jurisdiction to determine and award compensation to, or on behalf of, victims
4 of crimes. The [division of workers' compensation] **department of public safety**
5 may pay directly to the provider of the services compensation for medical or
6 funeral expenses, or expenses for other services as described in section 595.030,
7 incurred by the claimant. The [division] **department** is not required to provide

8 compensation in any case, nor is it required to award the full amount
9 claimed. The [division] **department** shall make its award of compensation based
10 upon independent verification obtained during its investigation.

11 2. Such claims shall be made by filing an application for compensation
12 with the [division of workers' compensation] **department of public safety**. The
13 application form shall be furnished by the [division] **department** and the
14 signature shall be notarized. The application shall include:

15 (1) The name and address of the victim;

16 (2) If the claimant is not the victim, the name and address of the claimant
17 and relationship to the victim, the names and addresses of the victim's
18 dependents, if any, and the extent to which each is so dependent;

19 (3) The date and nature of the crime or attempted crime on which the
20 application for compensation is based;

21 (4) The date and place where, and the law enforcement officials to whom,
22 notification of the crime was given;

23 (5) The nature and extent of the injuries sustained by the victim, the
24 names and addresses of those giving medical and hospital treatment to the victim
25 and whether death resulted;

26 (6) The loss to the claimant or a dependent resulting from the injury or
27 death;

28 (7) The amount of benefits, payments or awards, if any, payable from any
29 source which the claimant or dependent has received or for which the claimant
30 or dependent is eligible as a result of the injury or death;

31 (8) Releases authorizing the surrender to the [division] **department** of
32 reports, documents and other information relating to the matters specified under
33 this section; and

34 (9) Such other information as the [division] **department** determines is
35 necessary.

36 3. In addition to the application, the [division] **department** may require
37 that the claimant submit materials substantiating the facts stated in the
38 application.

39 4. If the [division] **department** finds that an application does not contain
40 the required information or that the facts stated therein have not been
41 substantiated, it shall notify the claimant in writing of the specific additional
42 items of information or materials required and that the claimant has thirty days
43 from the date of mailing in which to furnish those items to the [division]

44 **department.** Unless a claimant requests and is granted an extension of time by
45 the [division] **department**, the [division] **department** shall reject with prejudice
46 the claim of the claimant for failure to file the additional information or materials
47 within the specified time.

48 5. The claimant may file an amended application or additional
49 substantiating materials to correct inadvertent errors or omissions at any time
50 before the [division] **department** has completed its consideration of the original
51 application.

52 6. The claimant, victim or dependent shall cooperate with law enforcement
53 officials in the apprehension and prosecution of the offender in order to be
54 eligible, or the [division] **department** has found that the failure to cooperate was
55 for good cause.

56 7. Any state or local agency, including a prosecuting attorney or law
57 enforcement agency, shall make available without cost to the fund, all reports,
58 files and other appropriate information which the [division] **department** requests
59 in order to make a determination that a claimant is eligible for an award
60 pursuant to sections 595.010 to 595.075.

595.020. 1. Except as hereinafter provided, the following persons shall be
2 eligible for compensation pursuant to sections 595.010 to 595.075:

- 3 (1) A victim of a crime;
- 4 (2) In the case of a sexual assault victim:
- 5 (a) A relative of the victim requiring counseling in order to better assist
6 the victim in his recovery; and
- 7 (3) In the case of the death of the victim as a direct result of the crime:
- 8 (a) A dependent of the victim;
- 9 (b) Any member of the family who legally assumes the obligation, or who
10 pays the medical or burial expenses incurred as a direct result thereof; and
- 11 (c) A survivor of the victim requiring counseling as a direct result of the
12 death of the victim.

13 2. An offender or an accomplice of an offender shall in no case be eligible
14 to receive compensation with respect to a crime committed by the offender. No
15 victim or dependent shall be denied compensation solely because he is a relative
16 of the offender or was living with the offender as a family or household member
17 at the time of the injury or death. However, the [division] **department** may
18 award compensation to a victim or dependent who is a relative, family or
19 household member of the offender only if the [division] **department** can

20 reasonably determine the offender will receive no substantial economic benefit or
21 unjust enrichment from the compensation.

22 3. No compensation of any kind may be made to a victim or intervenor
23 injured while confined in any federal, state, county, or municipal jail, prison or
24 other correctional facility, including house arrest.

25 4. No compensation of any kind may be made to a victim who has been
26 finally adjudicated and found guilty, in a criminal prosecution under the laws of
27 this state, of two felonies within the past ten years, of which one or both involves
28 illegal drugs or violence. The [division] **department** may waive this restriction
29 if it determines that the interest of justice would be served otherwise.

30 5. In the case of a claimant who is not otherwise ineligible pursuant to
31 subsection 4 of this section, who is incarcerated as a result of a conviction of a
32 crime not related to the incident upon which the claim is based at the time of
33 application, or at any time following the filing of the application:

34 (1) The [division] **department** shall suspend all proceedings and
35 payments until such time as the claimant is released from incarceration;

36 (2) The [division] **department** shall notify the applicant at the time the
37 proceedings are suspended of the right to reactivate the claim within six months
38 of release from incarceration. The notice shall be deemed sufficient if mailed to
39 the applicant at the applicant's last known address;

40 (3) The claimant shall file an application to request that the case be
41 reactivated not later than six months after the date the claimant is released from
42 incarceration. Failure to file such request within the six-month period shall serve
43 as a bar to any recovery.

44 6. Victims of crime who are not residents of the state of Missouri may be
45 compensated only when federal funds are available for that
46 purpose. Compensation for nonresident victims shall terminate when federal
47 funds for that purpose are no longer available.

48 7. A Missouri resident who suffers personal physical injury or, in the case
49 of death, a dependent of the victim or any member of the family who legally
50 assumes the obligation, or who pays the medical or burial expenses incurred as
51 a direct result thereof, in another state, possession or territory of the United
52 States may make application for compensation in Missouri if:

53 (1) The victim of the crime would be compensated if the crime had
54 occurred in the state of Missouri;

55 (2) The place that the crime occurred is a state, possession or territory of

56 the United States, or location outside of the United States that is covered and
57 defined in 18 U.S.C. section 2331, that does not have a crime victims'
58 compensation program for which the victim is eligible and which provides at least
59 the same compensation that the victim would have received if he had been injured
60 in Missouri.

595.025. 1. A claim for compensation may be filed by a person eligible for
2 compensation or, if the person is an incapacitated or disabled person, or a minor,
3 by the person's spouse, parent, conservator, or guardian.

4 2. A claim shall be filed not later than two years after the occurrence of
5 the crime or the discovery of the crime upon which it is based.

6 3. Each claim shall be filed in person or by mail. The [division of workers'
7 compensation] **department of public safety** shall investigate such claim, prior
8 to the opening of formal proceedings. The claimant shall be notified of the date
9 and time of any hearing on such claim. In determining the amount of
10 compensation for which a claimant is eligible, the [division] **department** shall
11 consider the facts stated on the application filed pursuant to section 595.015, and:

12 (1) Need not consider whether or not the alleged assailant has been
13 apprehended or brought to trial or the result of any criminal proceedings against
14 that person; however, if any person is convicted of the crime which is the basis
15 for an application for compensation, proof of the conviction shall be conclusive
16 evidence that the crime was committed;

17 (2) Shall determine the amount of the loss to the claimant, or the victim's
18 survivors or dependents;

19 (3) Shall determine the degree or extent to which the victim's acts or
20 conduct provoked, incited, or contributed to the injuries or death of the victim.

21 4. The claimant may present evidence and testimony on his own behalf or
22 may retain counsel. The [division of workers' compensation] **department of**
23 **public safety** may, as part of any award entered under sections 595.010 to
24 595.075, determine and allow reasonable attorney's fees, which shall not exceed
25 fifteen percent of the amount awarded as compensation under sections 595.010
26 to 595.075, which fee shall be paid out of, but not in addition to, the amount of
27 compensation, to the attorney representing the claimant. No attorney for the
28 claimant shall ask for, contract for or receive any larger sum than the amount so
29 allowed.

30 5. The person filing a claim shall, prior to any hearing thereon, submit
31 reports, if available, from all hospitals, physicians or surgeons who treated or

32 examined the victim for the injury for which compensation is sought. If, in the
33 opinion of the [division of workers' compensation] **department of public safety**,
34 an examination of the injured victim and a report thereon, or a report on the
35 cause of death of the victim, would be of material aid, the [division of workers'
36 compensation] **department of public safety** may appoint a duly qualified,
37 impartial physician to make such examination and report.

38 6. Each and every payment shall be exempt from attachment, garnishment
39 or any other remedy available to creditors for the collection of a debt.

40 7. Payments of compensation shall not be made directly to any person
41 legally incompetent to receive them but shall be made to the parent, guardian or
42 conservator for the benefit of such minor, disabled or incapacitated person.

595.027. 1. Upon request by the [division] **department** for verification
2 of injuries of victims, medical providers shall submit the information requested
3 by the [division] **department** within twenty working days of the request at no
4 cost to the fund.

5 2. For purposes of this section, "medical providers" means physicians,
6 dentists, clinical psychologists, optometrists, podiatrists, registered nurses,
7 physician's assistants, chiropractors, physical therapists, hospitals, ambulatory
8 surgical centers, and nursing homes.

9 3. Failure to submit the information as required by this section shall be
10 an infraction.

595.030. 1. No compensation shall be paid unless the claimant has
2 incurred an out-of-pocket loss of at least fifty dollars or has lost two continuous
3 weeks of earnings or support from gainful employment. "Out-of-pocket loss" shall
4 mean unreimbursed or unreimbursable expenses or indebtedness reasonably
5 incurred for medical care or other services, including psychiatric, psychological
6 or counseling expenses, necessary as a result of the crime upon which the claim
7 is based, except that the amount paid for psychiatric, psychological or counseling
8 expenses per eligible claim shall not exceed two thousand five hundred dollars.

9 2. No compensation shall be paid unless the [division of workers'
10 compensation] **department of public safety** finds that a crime was committed,
11 that such crime directly resulted in personal physical injury to, or the death of,
12 the victim, and that police records show that such crime was promptly reported
13 to the proper authorities. In no case may compensation be paid if the police
14 records show that such report was made more than forty-eight hours after the
15 occurrence of such crime, unless the [division of workers' compensation]

16 **department of public safety** finds that the report to the police was delayed for
17 good cause. If the victim is under eighteen years of age such report may be made
18 by the victim's parent, guardian or custodian; by a physician, a nurse, or hospital
19 emergency room personnel; by the division of family services personnel; or by any
20 other member of the victim's family.

21 3. No compensation shall be paid for medical care if the service provider
22 is not a medical provider as that term is defined in section 595.027, and the
23 individual providing the medical care is not licensed by the state of Missouri or
24 the state in which the medical care is provided.

25 4. No compensation shall be paid for psychiatric treatment or other
26 counseling services, including psychotherapy, unless the service provider is a:

27 (1) Physician licensed pursuant to chapter 334, RSMo, or licensed to
28 practice medicine in the state in which the service is provided;

29 (2) Psychologist licensed pursuant to chapter 337, RSMo, or licensed to
30 practice psychology in the state in which the service is provided;

31 (3) Clinical social worker licensed pursuant to chapter 337, RSMo; or

32 (4) Professional counselor licensed pursuant to chapter 337, RSMo.

33 5. Any compensation paid pursuant to sections 595.010 to 595.075 for
34 death or personal injury shall be in an amount not exceeding out-of-pocket loss,
35 together with loss of earnings or support from gainful employment, not to exceed
36 two hundred dollars per week, resulting from such injury or death. In the event
37 of death of the victim, an award may be made for reasonable and necessary
38 expenses actually incurred for preparation and burial not to exceed five thousand
39 dollars.

40 6. Any compensation for loss of earnings or support from gainful
41 employment shall be in an amount equal to the actual loss sustained not to
42 exceed two hundred dollars per week; provided, however, that no award pursuant
43 to sections 595.010 to 595.075 shall exceed twenty-five thousand dollars. If two
44 or more persons are entitled to compensation as a result of the death of a person
45 which is the direct result of a crime or in the case of a sexual assault, the
46 compensation shall be apportioned by the [division of workers' compensation]
47 **department of public safety** among the claimants in proportion to their loss.

48 7. The method and timing of the payment of any compensation pursuant
49 to sections 595.010 to 595.075 shall be determined by the [division] **department**.

595.035. 1. For the purpose of determining the amount of compensation
2 payable pursuant to sections 595.010 to 595.075, the [division of workers'

3 compensation] **department of public safety** shall, insofar as practicable,
4 formulate standards for the uniform application of sections 595.010 to 595.075,
5 taking into consideration the provisions of sections 595.010 to 595.075, the rates
6 and amounts of compensation payable for injuries and death pursuant to other
7 laws of this state and of the United States, excluding pain and suffering, and the
8 availability of funds appropriated for the purpose of sections 595.010 to 595.075.
9 All decisions of the [division of workers' compensation] **department of public**
10 **safety** on claims heard pursuant to sections 595.010 to 595.075 shall be in
11 writing, setting forth the name of the claimant, the amount of compensation and
12 the reasons for the decision. The [division of workers' compensation]
13 **department of public safety** shall immediately notify the claimant in writing
14 of the decision and shall forward to the state treasurer a certified copy of the
15 decision and a warrant for the amount of the claim. The state treasurer, upon
16 certification by the commissioner of administration, shall, if there are sufficient
17 funds in the crime victims' compensation fund, pay to or on behalf of the claimant
18 the amount determined by the [division] **department**.

19 2. The crime victims' compensation fund is not a state health program and
20 is not intended to be used as a primary payor to other health care assistance
21 programs, but is a public, quasi-charitable fund whose fundamental purpose is to
22 assist victims of violent crimes through a period of financial hardship, as a payor
23 of last resort. Accordingly, any compensation paid pursuant to sections 595.010
24 to 595.075 shall be reduced by the amount of any payments, benefits or awards
25 received or to be received as a result of the injury or death:

26 (1) From or on behalf of the offender;

27 (2) Under private or public insurance programs, including champus,
28 Medicare, Medicaid and other state or federal programs, but not including any life
29 insurance proceeds; or

30 (3) From any other public or private funds, including an award payable
31 pursuant to the workers' compensation laws of this state.

32 3. In determining the amount of compensation payable, the [division of
33 workers' compensation] **department of public safety** shall determine whether,
34 because of the victim's consent, provocation, incitement or negligence, the victim
35 contributed to the infliction of the victim's injury or death, and shall reduce the
36 amount of the compensation or deny the claim altogether, in accordance with such
37 determination; provided, however, that the [division of workers' compensation]
38 **department of public safety** may disregard the responsibility of the victim for

39 his or her own injury where such responsibility was attributable to efforts by the
40 victim to aid a victim, or to prevent a crime or an attempted crime from occurring
41 in his or her presence, or to apprehend a person who had committed a crime in
42 his or her presence or had in fact committed a felony.

43 4. In determining the amount of compensation payable pursuant to
44 sections 595.010 to 595.070, monthly Social Security disability or retirement
45 benefits received by the victim shall not be considered by the [division]
46 **department** as a factor for reduction of benefits.

47 5. The [division] **department** shall not be liable for payment of
48 compensation for any out-of-pocket expenses incurred more than three years
49 following the date of the occurrence of the crime upon which the claim is based.

595.036. [1.] Any [of the parties] **party** to a decision of the [division of
2 workers' compensation] **department of public safety** on a claim heard under
3 the provisions of sections 595.010 to 595.070 may, within thirty days following the
4 date of notification or mailing of such decision, file a petition with the [labor and
5 industrial relations commission] **administrative hearing commission under**
6 **the provisions of section 621.060, RSMo**, to have such decision reviewed by
7 the commission. [The commission may allow or deny a petition for review. If a
8 petition is allowed, the commission may affirm, reverse, or set aside the decision
9 of the division of workers' compensation on the basis of the evidence previously
10 submitted in such case or may take additional evidence or may remand the
11 matter to the division of workers' compensation with directions. The commission
12 shall promptly notify the parties of its decision and the reasons therefor.

13 2. Any petition for review filed pursuant to subsection 1 of this section
14 shall be deemed to be filed as of the date endorsed by the United States Postal
15 Service on the envelope or container in which such petition is received.

16 3. Any party who is aggrieved by a final decision of the labor and
17 industrial relations commission pursuant to the provisions of subsections 1 and
18 2 of this section may seek judicial review thereof, as provided in sections 536.100
19 to 536.140, RSMo.]

595.037. 1. All information submitted to the [division] **department** and
2 any hearing of the [division] **department** on a claim filed pursuant to sections
3 595.010 to 595.070 shall be open to the public except for the following claims
4 which shall be deemed closed and confidential:

5 (1) A claim in which the alleged assailant has not been brought to trial
6 and disclosure of the information or a public hearing would adversely affect either

7 the apprehension, or the trial, of the alleged assailant;

8 (2) A claim in which the offense allegedly perpetrated against the victim
9 is rape, sodomy or sexual abuse and it is determined by the [division]
10 **department** to be in the best interest of the victim or of the victim's dependents
11 that the information be kept confidential or that the public be excluded from the
12 hearing;

13 (3) A claim in which the victim or alleged assailant is a minor; or

14 (4) A claim in which any record or report obtained by the [division]
15 **department**, the confidentiality of which is protected by any other law, shall
16 remain confidential subject to such law.

17 2. The [division] **department**, by separate order, may close any record,
18 report or hearing if it determines that the interest of justice would be frustrated
19 rather than furthered if such record or report was disclosed or if the hearing was
20 open to the public.

595.040. 1. Acceptance of any compensation under sections 595.010 to
2 595.075 shall subrogate this state, to the extent of such compensation paid, to any
3 right or right of action accruing to the claimant or to the victim to recover
4 payments on account of losses resulting from the crime with respect to which the
5 compensation has been paid. The attorney general may enforce the subrogation,
6 and he shall bring suit to recover from any person to whom compensation is paid,
7 to the extent of the compensation actually paid under sections 595.010 to 595.075,
8 any amount received by the claimant from any source exceeding the actual loss
9 to the victim.

10 2. The [division] **department** shall have a lien on any compensation
11 received by the claimant, in addition to compensation received under provisions
12 of sections 595.010 to 595.075, for injuries or death resulting from the incident
13 upon which the claim is based. The claimant shall retain, as trustee for the
14 [division] **department**, so much of the recovered funds as necessary to reimburse
15 the Missouri crime victims' compensation fund to the extent that compensation
16 was awarded to the claimant from that fund.

17 3. If a claimant initiates any legal proceeding to recover restitution or
18 damages related to the crime upon which the claim is based, or if the claimant
19 enters into negotiations to receive any proceeds in settlement of a claim for
20 restitution or damages related to the crime, the claimant shall give the [division]
21 **department** written notice within fifteen days of the filing of the action or
22 entering into negotiations. The [division] **department** may intervene in the

23 proceeding of a complainant to recover the compensation awarded. If a claimant
24 fails to give such written notice to the [division] **department** within the stated
25 time period, or prior to any attempt by claimant to reach a negotiated settlement
26 of claims for recovery of damages related to the crime upon which the claim is
27 based, the [division's] **department's** right of subrogation to receive or recover
28 funds from claimant, to the extent that compensation was awarded by the
29 [division] **department**, shall not be reduced in any amount or percentage by the
30 costs incurred by claimant attributable to such legal proceedings or settlement,
31 including, but not limited to, attorney's fees, investigative cost or cost of court. If
32 such notice is given, attorney fees may be awarded in an amount not to exceed
33 fifteen percent of the amount subrogated to the [division] **department**.

34 4. Whenever compensation is awarded to a claimant who is entitled to
35 restitution from a criminal defendant, the [division] **department** may initiate
36 restitution hearings in such criminal proceedings or intervene in the same. The
37 [division] **department** shall be entitled to receive restitution in such proceedings
38 to the extent compensation was awarded; provided, however, the [division]
39 **department** shall be exempt from the payment of any fees or other charges for
40 the recording of restitution orders in the offices of the judges of probate. The
41 claimant shall notify this [division] **department** when restitution is
42 ordered. Failure to notify the [division] **department** will result in possible
43 forfeiture of any amount already received from the [division] **department**.

44 5. Whenever the [division] **department** shall deem it necessary to
45 protect, maintain or enforce the [division's] **department's** right to subrogation
46 or to exercise any of its powers or to carry out any of its duties or responsibilities,
47 the attorney general may initiate legal proceedings or intervene in legal
48 proceedings as the [division's] **department's** legal representative.

595.045. 1. There is established in the state treasury the "Crime Victims'
2 Compensation Fund". A surcharge of seven dollars and fifty cents shall be
3 assessed as costs in each court proceeding filed in any court in the state in all
4 criminal cases including violations of any county ordinance or any violation of
5 criminal or traffic laws of the state, including an infraction and violation of a
6 municipal ordinance; except that no such fee shall be collected in any proceeding
7 in any court when the proceeding or the defendant has been dismissed by the
8 court or when costs are to be paid by the state, county, or municipality. A
9 surcharge of seven dollars and fifty cents shall be assessed as costs in a juvenile
10 court proceeding in which a child is found by the court to come within the

11 applicable provisions of subdivision (3) of subsection 1 of section 211.031, RSMo.

12 2. Notwithstanding any other provision of law to the contrary, the moneys
13 collected by clerks of the courts pursuant to the provisions of subsection 1 of this
14 section shall be collected and disbursed in accordance with sections 488.010 to
15 488.020, RSMo, and shall be payable to the director of the department of revenue.

16 3. The director of revenue shall deposit annually the amount of two
17 hundred fifty thousand dollars to the state forensic laboratory account
18 administered by the department of public safety to provide financial assistance
19 to defray expenses of crime laboratories if such analytical laboratories are
20 registered with the federal Drug Enforcement Agency or the Missouri department
21 of health and senior services. Subject to appropriations made therefor, such funds
22 shall be distributed by the department of public safety to the crime laboratories
23 serving the courts of this state making analysis of a controlled substance or
24 analysis of blood, breath or urine in relation to a court proceeding.

25 4. The remaining funds collected under subsection 1 of this section shall
26 be denoted to the payment of an annual appropriation for the administrative and
27 operational costs of the office for victims of crime and, if a statewide automated
28 crime victim notification system is established pursuant to section 650.310, RSMo,
29 to the monthly payment of expenditures actually incurred in the operation of such
30 system. Additional remaining funds shall be subject to the following provisions:

31 (1) On the first of every month, the director of revenue or the director's
32 designee shall determine the balance of the funds in the crime victims'
33 compensation fund available to satisfy the amount of compensation payable
34 pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

35 (2) Beginning on September 1, 2004, and on the first of each month, the
36 director of revenue or the director's designee shall deposit fifty percent of the
37 balance of funds available to the credit of the crime victims' compensation fund
38 and fifty percent to the services to victims' fund established in section 595.100.

39 5. The director of revenue or such director's designee shall at least
40 monthly report the moneys paid pursuant to this section into the crime victims'
41 compensation fund and the services to victims fund to the [division of workers'
42 compensation and the] department of public safety[, respectively].

43 6. The moneys collected by clerks of municipal courts pursuant to
44 subsection 1 of this section shall be collected and disbursed as provided by
45 sections 488.010 to 488.020, RSMo. Five percent of such moneys shall be payable
46 to the city treasury of the city from which such funds were collected. The

47 remaining ninety-five percent of such moneys shall be payable to the director of
48 revenue. The funds received by the director of revenue pursuant to this
49 subsection shall be distributed as follows:

50 (1) On the first of every month, the director of revenue or the director's
51 designee shall determine the balance of the funds in the crime victims'
52 compensation fund available to satisfy the amount of compensation payable
53 pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

54 (2) Beginning on September 1, 2004, and on the first of each month the
55 director of revenue or the director's designee shall deposit fifty percent of the
56 balance of funds available to the credit of the crime victims' compensation fund
57 and fifty percent to the services to victims' fund established in section 595.100.

58 7. These funds shall be subject to a biennial audit by the Missouri state
59 auditor. Such audit shall include all records associated with crime victims'
60 compensation funds collected, held or disbursed by any state agency.

61 8. In addition to the moneys collected pursuant to subsection 1 of this
62 section, the court shall enter a judgment in favor of the state of Missouri, payable
63 to the crime victims' compensation fund, of sixty-eight dollars upon a plea of
64 guilty or a finding of guilt for a class A or B felony; forty-six dollars upon a plea
65 of guilty or finding of guilt for a class C or D felony; and ten dollars upon a plea
66 of guilty or a finding of guilt for any misdemeanor under Missouri law except for
67 those in chapter 252, RSMo, relating to fish and game, chapter 302, RSMo,
68 relating to drivers' and commercial drivers' license, chapter 303, RSMo, relating
69 to motor vehicle financial responsibility, chapter 304, RSMo, relating to traffic
70 regulations, chapter 306, RSMo, relating to watercraft regulation and licensing,
71 and chapter 307, RSMo, relating to vehicle equipment regulations. Any clerk of
72 the court receiving moneys pursuant to such judgments shall collect and disburse
73 such crime victims' compensation judgments in the manner provided by sections
74 488.010 to 488.020, RSMo. Such funds shall be payable to the state treasury and
75 deposited to the credit of the crime victims' compensation fund.

76 9. The clerk of the court processing such funds shall maintain records of
77 all dispositions described in subsection 1 of this section and all dispositions where
78 a judgment has been entered against a defendant in favor of the state of Missouri
79 in accordance with this section; all payments made on judgments for
80 alcohol-related traffic offenses; and any judgment or portion of a judgment
81 entered but not collected. These records shall be subject to audit by the state
82 auditor. The clerk of each court transmitting such funds shall report separately

83 the amount of dollars collected on judgments entered for alcohol-related traffic
84 offenses from other crime victims' compensation collections or services to victims
85 collections.

86 10. The department of revenue shall maintain records of funds
87 transmitted to the crime victims' compensation fund by each reporting court and
88 collections pursuant to subsection 16 of this section and shall maintain separate
89 records of collection for alcohol-related offenses.

90 11. The state courts administrator shall include in the annual report
91 required by section 476.350, RSMo, the circuit court caseloads and the number of
92 crime victims' compensation judgments entered.

93 12. All awards made to injured victims under sections 595.010 to 595.105
94 and all appropriations for administration of sections 595.010 to 595.105, except
95 sections 595.050 and 595.055, shall be made from the crime victims' compensation
96 fund. Any unexpended balance remaining in the crime victims' compensation
97 fund at the end of each biennium shall not be subject to the provision of section
98 33.080, RSMo, requiring the transfer of such unexpended balance to the ordinary
99 revenue fund of the state, but shall remain in the crime victims' compensation
100 fund. In the event that there are insufficient funds in the crime victims'
101 compensation fund to pay all claims in full, all claims shall be paid on a pro rata
102 basis. If there are no funds in the crime victims' compensation fund, then no
103 claim shall be paid until funds have again accumulated in the crime victims'
104 compensation fund. When sufficient funds become available from the fund,
105 awards which have not been paid shall be paid in chronological order with the
106 oldest paid first. In the event an award was to be paid in installments and some
107 remaining installments have not been paid due to a lack of funds, then when
108 funds do become available that award shall be paid in full. All such awards on
109 which installments remain due shall be paid in full in chronological order before
110 any other postdated award shall be paid. Any award pursuant to this subsection
111 is specifically not a claim against the state, if it cannot be paid due to a lack of
112 funds in the crime victims' compensation fund.

113 13. When judgment is entered against a defendant as provided in this
114 section and such sum, or any part thereof, remains unpaid, there shall be
115 withheld from any disbursement, payment, benefit, compensation, salary, or other
116 transfer of money from the state of Missouri to such defendant an amount equal
117 to the unpaid amount of such judgment. Such amount shall be paid forthwith to
118 the crime victims' compensation fund and satisfaction of such judgment shall be

119 entered on the court record. Under no circumstances shall the general revenue
120 fund be used to reimburse court costs or pay for such judgment. The director of
121 the department of corrections shall have the authority to pay into the crime
122 victims' compensation fund from an offender's compensation or account the
123 amount owed by the offender to the crime victims' compensation fund, provided
124 that the offender has failed to pay the amount owed to the fund prior to entering
125 a correctional facility of the department of corrections.

126 14. All interest earned as a result of investing funds in the crime victims'
127 compensation fund shall be paid into the crime victims' compensation fund and
128 not into the general revenue of this state.

129 15. Any person who knowingly makes a fraudulent claim or false
130 statement in connection with any claim hereunder is guilty of a class A
131 misdemeanor.

132 16. [Any gifts, contributions, grants or federal funds specifically given to
133 the division for the benefit of victims of crime shall be credited to the crime
134 victims' compensation fund. Payment or expenditure of moneys in such funds
135 shall comply with any applicable federal crime victims' compensation laws, rules,
136 regulations or other applicable federal guidelines] **The department may**
137 **receive gifts and contributions for the benefit of victims of crime. These**
138 **contributions shall be credited to the crime victim compensation fund**
139 **and used solely for compensating victims under the provisions of**
140 **sections 595.010 to 595.075.**

595.060. The director shall promulgate rules and regulations necessary
2 to implement the provisions of sections 595.010 to 595.070 as provided in this
3 section and chapter 536, RSMo. In the performance of its functions under
4 sections 595.010 to 595.070, the [division] **department** is authorized to
5 promulgate rules pursuant to chapter 536, RSMo, prescribing the procedures to
6 be followed in the filing of applications and the proceedings under sections
7 595.010 to 595.070. No rule or portion of a rule promulgated under the authority
8 of this chapter shall become effective unless it has been promulgated pursuant to
9 the provisions of section 536.024, RSMo.

621.060. 1. Any person seeking compensation under the provisions
2 **of sections 595.100 to 595.070, RSMo, who is aggrieved by the decision of**
3 **the department of public safety regarding his or her compensation claim**
4 **may seek review by the administrative hearing commission of the**
5 **department's decision.**

6 **2. The procedures applicable to the processing of such hearings**
7 **and determinations shall be those established by chapter 536,**
8 **RSMo. Decisions of the administrative hearing commission under this**
9 **section shall be binding subject to appeal by either party.**

Section B. Because of the need to ensure safe and efficient administration
2 of the approval and licensing of personnel, methods, and devices for the testing
3 of blood alcohol content, the repeal and reenactment of sections 306.114, 306.117,
4 577.020, 577.026, 577.037, and 577.208 of this act is deemed necessary for the
5 immediate preservation of the public health, welfare, peace and safety, and is
6 hereby declared to be an emergency act within the meaning of the constitution,
7 and the repeal and reenactment of sections 306.114, 306.117, 577.020, 577.026,
8 577.037, and 577.208 of this act shall be in full force and effect upon its passage
9 and approval, or July 1, 2006, whichever later occurs.

✓

Bill

Copy