

FIRST REGULAR SESSION

SENATE BILL NO. 128

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Pre-filed December 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0167S.011

AN ACT

To repeal sections 306.114, 306.117, 577.020, 577.026, 577.037, and 577.208, RSMo, and to enact in lieu thereof six new sections relating to state highways and transportation commission authority to approve license personnel, methods, and devices for testing of blood alcohol content, with an emergency clause.

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

Section A. Sections 306.114, 306.117, 577.020, 577.026, 577.037, and
2 577.208, RSMo, are repealed and six new sections enacted in lieu thereof, to be
3 known as sections 306.114, 306.117, 577.020, 577.026, 577.037, and 577.208, to
4 read as follows:

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

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

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 provisions of section 306.111 or 306.112 the amount of alcohol or drugs in the person's blood at the time of the act alleged as shown by any chemical analysis of the person's blood, breath, urine, or saliva is admissible in evidence and the provisions of subdivision (5) of section 491.060, RSMo, shall not prevent the admissibility or introduction of such evidence if otherwise admissible. Evidence of alcohol in a person's blood shall be given the following effect:

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

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

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

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

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

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

577.020. 1. Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent to, subject to the provisions of sections 577.019 to 577.041, a chemical test or tests of the person's breath, blood, saliva or urine for the purpose of determining the alcohol or drug content of the person's blood pursuant to the following circumstances:

(1) If the person is arrested for any offense arising out of acts which the 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, or 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 or serious physical injury as
33 defined in section 565.002, RSMo.

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

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

39 3. Chemical analysis of the person's breath, blood, saliva, or urine to be
40 considered valid pursuant to the provisions of sections 577.019 to 577.041 shall
41 be performed according to methods approved by the [state department of health
42 and senior services] **highways and transportation commission** by licensed
43 medical personnel or by a person possessing a valid permit issued by the [state
44 department of health and senior services] **highways and transportation**

45 **commission** for this purpose.

46 4. The [state department of health and senior services] **highways and**
47 **transportation commission** shall approve satisfactory techniques, devices,
48 equipment, or methods to be considered valid pursuant to the provisions of
49 sections 577.019 to 577.041 and shall establish standards to ascertain the
50 qualifications and competence of individuals to conduct analyses and to issue
51 permits which shall be subject to termination or revocation by the [state
52 department of health and senior services] **highways and transportation**
53 **commission**.

54 5. The person tested may have a physician, or a qualified technician,
55 chemist, registered nurse, or other qualified person at the choosing and expense
56 of the person to be tested, administer a test in addition to any administered at
57 the direction of a law enforcement officer. The failure or inability to obtain an
58 additional test by a person shall not preclude the admission of evidence relating
59 to the test taken at the direction of a law enforcement officer.

60 6. Upon the request of the person who is tested, full information
61 concerning the test shall be made available to such person. Full information is
62 limited to the following:

- 63 (1) The type of test administered and the procedures followed;
64 (2) The time of the collection of the blood or breath sample or urine
65 analyzed;
66 (3) The numerical results of the test indicating the alcohol content of the
67 blood and breath and urine;
68 (4) The type and status of any permit which was held by the person who
69 performed the test;
70 (5) If the test was administered by means of a breath-testing instrument,
71 the date of performance of the most recent required maintenance of such
72 instrument.

73 Full information does not include manuals, schematics, or software of the
74 instrument used to test the person or any other material that is not in the actual
75 possession of the state. Additionally, full information does not include
76 information in the possession of the manufacturer of the test instrument.

77 7. Any person given a chemical test of the person's breath pursuant to
78 subsection 1 of this section or a field sobriety test may be videotaped during any
79 such test at the direction of the law enforcement officer. Any such video
80 recording made during the chemical test pursuant to this subsection or a field
81 sobriety test shall be admissible as evidence at either any trial of such person for

82 either a violation of any state law or county or municipal ordinance, or any
83 license revocation or suspension proceeding pursuant to the provisions of chapter
84 302, 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,**
24 **and the department of health and senior services and its employees,**
25 **officers, and agents shall no longer be responsible for those powers,**
26 **duties, and 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.

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, section A of this act is deemed necessary for the
4 immediate preservation of the public health, welfare, peace and safety, and is
5 hereby declared to be an emergency act within the meaning of the constitution,
6 and section A of this act shall be in full force and effect upon its passage and
7 approval, or July 1, 2007, whichever later occurs.

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