

FIRST REGULAR SESSION

SENATE BILL NO. 137

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIFTON.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0494S.011

AN ACT

To repeal sections 302.574 and 479.500, RSMo, and to enact in lieu thereof two new sections relating to driver's license revocation proceedings for refusals to submit to chemical tests, with existing penalty provisions.

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

Section A. Sections 302.574 and 479.500, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 302.574 and 479.500, to read as follows:

302.574. 1. If a person who was operating a vehicle refuses upon the request of the officer to submit to any chemical test under section 577.041, the officer shall, on behalf of the director of revenue, serve the notice of license revocation personally upon the person and shall take possession of any license to operate a vehicle issued by this state which is held by that person. The officer shall issue a temporary permit, on behalf of the director of revenue, which is valid for fifteen days and shall also give the person notice of his or her right to file a petition for review to contest the license revocation.

2. Such officer shall make a certified report under penalties of perjury for making a false statement to a public official. The report shall be forwarded to the director of revenue and shall include the following:

(1) That the officer has:

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

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

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

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

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

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

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

27 (5) Copies of the notice of revocation, the fifteen-day temporary permit,
28 and the notice of the right to file a petition for review. The notices and permit
29 may be combined in one document; and

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

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

38 4. If a person's license has been revoked because of the person's refusal
39 to submit to a chemical test, such person may petition for a hearing before a
40 circuit division or associate division of the court in the county in which the arrest
41 or stop occurred. **Pursuant to local court rule promulgated pursuant to**
42 **section 15 of article V of the Missouri Constitution, the case may also**
43 **be assigned to a traffic judge pursuant to section 479.500.** The person
44 may request such court to issue an order staying the revocation until such time
45 as the petition for review can be heard. If the court, in its discretion, grants such
46 stay, it shall enter the order upon a form prescribed by the director of revenue
47 and shall send a copy of such order to the director. Such order shall serve as
48 proof of the privilege to operate a motor vehicle in this state and the director
49 shall maintain possession of the person's license to operate a motor vehicle until
50 termination of any revocation under this section. Upon the person's request, the
51 clerk of the court shall notify the prosecuting attorney of the county and the
52 prosecutor shall appear at the hearing on behalf of the director of revenue. At
53 the hearing, the court shall determine only:

54 (1) Whether the person was arrested or stopped;

55 (2) Whether the officer had:

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

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

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

66 (3) Whether the person refused to submit to the test.

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

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

71 7. No person who has had a license to operate a motor vehicle suspended
72 or revoked under the provisions of this section shall have that license reinstated
73 until such person has participated in and successfully completed a substance
74 abuse traffic offender program defined in section 302.010, or a program
75 determined to be comparable by the department of mental health. Assignment
76 recommendations, based upon the needs assessment as described in subdivision
77 (24) of section 302.010, shall be delivered in writing to the person with written
78 notice that the person is entitled to have such assignment recommendations
79 reviewed by the court if the person objects to the recommendations. The person
80 may file a motion in the associate division of the circuit court of the county in
81 which such assignment was given, on a printed form provided by the state courts
82 administrator, to have the court hear and determine such motion under the
83 provisions of chapter 517. The motion shall name the person or entity making
84 the needs assessment as the respondent and a copy of the motion shall be served
85 upon the respondent in any manner allowed by law. Upon hearing the motion,
86 the court may modify or waive any assignment recommendation that the court
87 determines to be unwarranted based upon a review of the needs assessment, the
88 person's driving record, the circumstances surrounding the offense, and the
89 likelihood of the person committing a similar offense in the future, except that

90 the court may modify but [may] **shall** not waive the assignment to an education
91 or rehabilitation program of a person determined to be a prior or persistent
92 offender as defined in section 577.001, or of a person determined to have operated
93 a motor vehicle with a blood alcohol content of fifteen-hundredths of one percent
94 or more by weight. Compliance with the court determination of the motion shall
95 satisfy the provisions of this section for the purpose of reinstating such person's
96 license to operate a motor vehicle. The respondent's personal appearance at any
97 hearing conducted under this subsection shall not be necessary unless directed
98 by the court.

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

116 9. Any administrator who fails to remit to the division of [alcohol and
117 drug abuse] **behavioral health** of the department of mental health the
118 supplemental fees and interest for all persons enrolled in the program under this
119 section shall be subject to a penalty equal to the amount of interest accrued on
120 the supplemental fees due to the division under this section. If the supplemental
121 fees, interest, and penalties are not remitted to the division of [alcohol and drug
122 abuse] **behavioral health** of the department of mental health within six months
123 of the due date, the attorney general of the state of Missouri shall initiate
124 appropriate action for the collection of said fees and accrued interest. The court
125 shall assess attorneys' fees and court costs against any delinquent program.

126 10. Any person who has had a license to operate a motor vehicle revoked
127 under this section and who has a prior alcohol-related enforcement contact, as
128 defined in section 302.525, shall be required to file proof with the director of
129 revenue that any motor vehicle operated by the person is equipped with a
130 functioning, certified ignition interlock device as a required condition of license
131 reinstatement. Such ignition interlock device shall further be required to be
132 maintained on all motor vehicles operated by the person for a period of not less
133 than six months immediately following the date of reinstatement. If the monthly
134 monitoring reports show that the ignition interlock device has registered any
135 confirmed blood alcohol concentration readings above the alcohol setpoint
136 established by the department of transportation or that the person has tampered
137 with or circumvented the ignition interlock device within the last three months
138 of the six-month period of required installation of the ignition interlock device,
139 then the period for which the person [must] **shall** maintain the ignition interlock
140 device following the date of reinstatement shall be extended until the person has
141 completed three consecutive months with no violations as described in this
142 section. If the person fails to maintain such proof with the director as required
143 by this section, the license shall be rerevoked until proof as required by this
144 section is filed with the director, and the person shall be guilty of a class A
145 misdemeanor.

146 11. The revocation period of any person whose license and driving
147 privilege has been revoked under this section and who has filed proof of financial
148 responsibility with the department of revenue in accordance with chapter 303 and
149 is otherwise eligible shall be terminated by a notice from the director of revenue
150 after one year from the effective date of the revocation. Unless proof of financial
151 responsibility is filed with the department of revenue, the revocation shall remain
152 in effect for a period of two years from its effective date. If the person fails to
153 maintain proof of financial responsibility in accordance with chapter 303, the
154 person's license and driving privilege shall be rerevoked.

155 12. A person commits the offense of failure to maintain proof with the
156 Missouri department of revenue if, when required to do so, he or she fails to file
157 proof with the director of revenue that any vehicle operated by the person is
158 equipped with a functioning, certified ignition interlock device or fails to file proof
159 of financial responsibility with the department of revenue in accordance with
160 chapter 303. The offense of failure to maintain proof with the Missouri
161 department of revenue is a class A misdemeanor.

479.500. 1. In the twenty-first judicial circuit, a majority of the circuit
2 judges, en banc, may establish a traffic court, which shall be a division of the
3 circuit court, and may authorize the appointment of not more than three
4 municipal judges who shall be known as traffic judges. The traffic judges shall
5 be appointed by a traffic court judicial commission consisting of the presiding
6 judge of the circuit, who shall be the chair, one circuit judge elected by the circuit
7 judges, one associate circuit judge elected by the associate circuit judges of the
8 circuit, and two members appointed by the county executive of St. Louis County,
9 each of whom shall represent one of the two political parties casting the highest
10 number of votes at the next preceding gubernatorial election. The procedures and
11 operations of the traffic court judicial commission shall be established by circuit
12 court rule.

13 2. Traffic judges may be authorized to act as commissioners to hear in the
14 first instance nonfelony violations of state law involving motor vehicles, and such
15 other offenses as may be provided by circuit court rule. Traffic judges may also
16 be authorized to hear in the first instance violations of county and municipal
17 ordinances involving motor vehicles, and other county ordinance violations, as
18 provided by circuit court rule.

19 3. In the event that a county municipal court is established pursuant to
20 section 66.010 which takes jurisdiction of county ordinance violations the circuit
21 court may then authorize the appointment of no more than two traffic judges
22 authorized to hear municipal ordinance violations other than county ordinance
23 violations, and to act as commissioner to hear in the first instance nonfelony
24 violations of state law involving motor vehicles, and such other offenses as may
25 be provided by rule. These traffic court judges also may be authorized to act as
26 commissioners to hear in the first instance petitions to review decisions of the
27 department of revenue or the director of revenue filed pursuant to sections
28 302.309 and 302.311 and, prior to January 1, 2002, pursuant to sections 302.535
29 and 302.750.

30 4. After January 1, 2002, traffic judges, in addition to the authority
31 provided in subsection 3 of this section, may be authorized by local court rule
32 adopted pursuant to Article V, Section 15 of the Missouri Constitution to conduct
33 proceedings pursuant to sections 302.535, **302.574**, and 302.750, subject to
34 procedures that preserve a meaningful hearing before a judge of the circuit court,
35 as follows:

36 (1) Conduct the initial call docket and accept uncontested dispositions of

37 petitions to review;

38 (2) The petitioner shall have the right to the de novo hearing before a
39 judge of the circuit court, except that, at the option of the petitioner, traffic judges
40 may hear in the first instance such petitions for review.

41 5. In establishing a traffic court, the circuit may be divided into such
42 sectors as may be established by a majority of the circuit and associate circuit
43 judges, en banc. The traffic court in each sector shall hear those cases arising
44 within the territorial limits of the sector unless a case arising within another
45 sector is transferred as provided by operating procedures.

46 6. Traffic judges shall be licensed to practice law in this state and shall
47 serve at the pleasure of a majority of the circuit and associate circuit judges, en
48 banc, and shall be residents of St. Louis County, and shall receive from the state
49 as annual compensation an amount equal to one-third of the annual compensation
50 of an associate circuit judge. Each judge shall devote approximately one-third of
51 his working time to the performance of his duties as a traffic judge. Traffic
52 judges shall not accept or handle cases in their practice of law which are
53 inconsistent with their duties as a traffic judge and shall not be a judge or
54 prosecutor for any other court. Traffic judges shall not be considered state
55 employees and shall not be members of the state employees' or judicial retirement
56 system or be eligible to receive any other employment benefit accorded state
57 employees or judges.

58 7. A majority of the judges, en banc, shall establish operating procedures
59 for the traffic court which shall provide for regular sessions in the evenings after
60 6:00 p.m. and for Saturday or other sessions as efficient operation and
61 convenience to the public may require. Proceedings in the traffic court, except
62 when a judge is acting as a commissioner pursuant to this section, shall be
63 conducted as provided in supreme court rule 37. The hearing shall be before a
64 traffic judge without jury, and the judge shall assume an affirmative duty to
65 determine the merits of the evidence presented and the defenses of the defendant
66 and may question parties and witnesses. In the event a jury trial is requested,
67 the cause shall be certified to the circuit court for trial by jury as otherwise
68 provided by law. Clerks and computer personnel shall be assigned as needed for
69 the efficient operation of the court.

70 8. In establishing operating procedure, provisions shall be made for
71 appropriate circumstances whereby defendants may enter not guilty pleas and
72 obtain trial dates by telephone or written communication without personal

73 appearance, or to plead guilty and deliver by mail or electronic transfer or other
74 approved method the specified amount of the fine and costs as otherwise provided
75 by law, within a specified period of time.

76 9. Operating procedures shall be provided for electronic recording of
77 proceedings, except that if adequate recording equipment is not provided at
78 county expense, then, in that event, a person aggrieved by a judgment of a traffic
79 judge or commissioner shall have the right of a trial de novo. The procedures for
80 perfecting the right of a trial de novo shall be the same as that provided under
81 sections 512.180 to 512.320, except that the provisions of subsection 2 of section
82 512.180 shall not apply to such cases.

83 10. The circuit court shall only have the authority to appoint two
84 commissioners with the jurisdiction provided in subsection 3 of this section.

85 11. All costs to establish and operate a county municipal court under
86 section 66.010 and this section shall be borne by such county.

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Bill

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