

SECOND REGULAR SESSION

# SENATE BILL NO. 836

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

Read 1st time January 27, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

3645S.021

## AN ACT

To repeal sections 302.309, 478.003, 478.009, 479.010, 577.010, 577.012, 577.023, and 577.041, RSMo, and to enact in lieu thereof eleven new sections relating to intoxication-related offenses, with penalty provisions.

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

Section A. Sections 302.309, 478.003, 478.009, 479.010, 577.010, 577.012, 577.023, and 577.041, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 302.309, 478.003, 478.007, 478.009, 479.010, 577.010, 577.012, 577.023, 577.041, 577.700, and 577.725, to read as follows:

302.309. 1. Whenever any license is suspended pursuant to sections 302.302 to 302.309, the director of revenue shall return the license to the operator immediately upon the termination of the period of suspension and upon compliance with the requirements of chapter 303, RSMo.

2. Any operator whose license is revoked pursuant to these sections, upon the termination of the period of revocation, shall apply for a new license in the manner prescribed by law.

3. (1) All circuit courts [or], the director of revenue, **or a commissioner operating under section 478.007** shall have jurisdiction to hear applications and make eligibility determinations granting limited driving privileges. Any application may be made in writing to the director of revenue and the person's reasons for requesting the limited driving privilege shall be made therein.

(2) When any court of record having jurisdiction or the director of revenue finds that an operator is required to operate a motor vehicle in connection with any of the following:

(a) A business, occupation, or employment;

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

- 17 (b) Seeking medical treatment for such operator;  
18 (c) Attending school or other institution of higher education;  
19 (d) Attending alcohol or drug treatment programs;  
20 (e) Seeking the required services of a certified ignition interlock device

21 provider; or

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

29 (3) An operator may make application to the proper court in the county  
30 in which such operator resides or in the county in which is located the operator's  
31 principal place of business or employment. Any application for a limited driving  
32 privilege made to a circuit court shall name the director as a party defendant and  
33 shall be served upon the director prior to the grant of any limited privilege, and  
34 shall be accompanied by a copy of the applicant's driving record as certified by  
35 the director. Any applicant for a limited driving privilege shall have on file with  
36 the department of revenue proof of financial responsibility as required by chapter  
37 303, RSMo. Any application by a person who transports persons or property as  
38 classified in section 302.015 may be accompanied by proof of financial  
39 responsibility as required by chapter 303, RSMo, but if proof of financial  
40 responsibility does not accompany the application, or if the applicant does not  
41 have on file with the department of revenue proof of financial responsibility, the  
42 court or the director has discretion to grant the limited driving privilege to the  
43 person solely for the purpose of operating a vehicle whose owner has complied  
44 with chapter 303, RSMo, for that vehicle, and the limited driving privilege must  
45 state such restriction. When operating such vehicle under such restriction the  
46 person shall carry proof that the owner has complied with chapter 303, RSMo, for  
47 that vehicle.

48 (4) No limited driving privilege shall be issued to any person otherwise  
49 eligible under the provisions of paragraph (a) of subdivision (6) of this subsection  
50 on a license revocation resulting from a conviction under subdivision (9) of  
51 subsection 1 of section 302.302, or a license denial under paragraph (a) or (b) of  
52 subdivision (8) of this subsection, until the applicant has filed proof with the

53 department of revenue that any motor vehicle operated by the person is equipped  
54 with a functioning, certified ignition interlock device as a required condition of  
55 limited driving privilege.

56 (5) The court order or the director's grant of the limited or restricted  
57 driving privilege shall indicate the termination date of the privilege, which shall  
58 be not later than the end of the period of suspension or revocation. A copy of any  
59 court order shall be sent by the clerk of the court to the director, and a copy shall  
60 be given to the driver which shall be carried by the driver whenever such driver  
61 operates a motor vehicle. The director of revenue upon granting a limited driving  
62 privilege shall give a copy of the limited driving privilege to the applicant. The  
63 applicant shall carry a copy of the limited driving privilege while operating a  
64 motor vehicle. A conviction which results in the assessment of points pursuant  
65 to section 302.302, other than a violation of a municipal stop sign ordinance  
66 where no accident is involved, against a driver who is operating a vehicle  
67 pursuant to a limited driving privilege terminates the privilege, as of the date the  
68 points are assessed to the person's driving record. If the date of arrest is prior  
69 to the issuance of the limited driving privilege, the privilege shall not be  
70 terminated. Failure of the driver to maintain proof of financial responsibility, as  
71 required by chapter 303, or to maintain proof of installation of a functioning,  
72 certified ignition interlock device, as applicable, shall terminate the  
73 privilege. The director shall notify by ordinary mail the driver whose privilege  
74 is so terminated.

75 (6) Except as provided in subdivision (8) of this subsection, no person is  
76 eligible to receive a limited driving privilege who at the time of application for a  
77 limited driving privilege has previously been granted such a privilege within the  
78 immediately preceding five years, or whose license has been suspended or revoked  
79 for the following reasons:

80 (a) A conviction of violating the provisions of section 577.010 or 577.012,  
81 RSMo, or any similar provision of any federal or state law, or a municipal or  
82 county law where the judge in such case was an attorney and the defendant was  
83 represented by or waived the right to an attorney in writing, until the person has  
84 completed the first thirty days of a suspension or revocation imposed pursuant  
85 to this chapter;

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

88 (c) Ineligibility for a license because of the provisions of subdivision (1),

89 (2), (4), (5), (6), (7), (8), (9), (10) or (11) of section 302.060;

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

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

97 (f) Violation more than once of the provisions of section 577.041, RSMo,  
98 or a similar implied consent law of any other state; or

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

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

111 (8) (a) Provided that pursuant to the provisions of this section, the  
112 applicant is not otherwise ineligible for a limited driving privilege, a circuit court  
113 or the director may, in the manner prescribed in this subsection, allow a person  
114 who has had such person's license to operate a motor vehicle revoked where that  
115 person cannot obtain a new license for a period of ten years, as prescribed in  
116 subdivision (9) of section 302.060, to apply for a limited driving privilege  
117 pursuant to this subsection if such person has served at least three years of such  
118 disqualification or revocation. Such person shall present evidence satisfactory to  
119 the court or the director that such person has not been convicted of any offense  
120 related to alcohol, controlled substances or drugs during the preceding three  
121 years and that the person's habits and conduct show that the person no longer  
122 poses a threat to the public safety of this state.

123 (b) Provided that pursuant to the provisions of this section, the applicant  
124 is not otherwise ineligible for a limited driving privilege or convicted of

125 involuntary manslaughter while operating a motor vehicle in an intoxicated  
126 condition, a circuit court or the director may, in the manner prescribed in this  
127 subsection, allow a person who has had such person's license to operate a motor  
128 vehicle revoked where that person cannot obtain a new license for a period of five  
129 years because of two convictions of driving while intoxicated, as prescribed in  
130 subdivision (10) of section 302.060, to apply for a limited driving privilege  
131 pursuant to this subsection if such person has served at least two years of such  
132 disqualification or revocation. Such person shall present evidence satisfactory to  
133 the court or the director that such person has not been convicted of any offense  
134 related to alcohol, controlled substances or drugs during the preceding two years  
135 and that the person's habits and conduct show that the person no longer poses a  
136 threat to the public safety of this state. Any person who is denied a license  
137 permanently in this state because of an alcohol-related conviction subsequent to  
138 a restoration of such person's driving privileges pursuant to subdivision (9) of  
139 section 302.060 shall not be eligible for limited driving privilege pursuant to the  
140 provisions of this subdivision.

141 **(9) A DWI docket or court established pursuant to section 478.007**  
142 **may grant a limited driving privilege to a participant in the program,**  
143 **even if the person is otherwise ineligible for a limited driving privilege**  
144 **due to a revocation pursuant to subsection 2 of section 302.525 as set**  
145 **forth in paragraph (g) of subdivision (6) of this subsection or the person**  
146 **cannot apply for a limited driving privilege for at least two years**  
147 **pursuant to paragraph (b) of subdivision (8) of this subsection,**  
148 **provided the participant is not otherwise ineligible for a limited**  
149 **driving privilege due to another provision of law.**

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

158 5. The director of revenue shall promulgate rules and regulations  
159 necessary to carry out the provisions of this section. Any rule or portion of a rule,  
160 as that term is defined in section 536.010, RSMo, that is created under the

161 authority delegated in this section shall become effective only if it complies with  
162 and is subject to all of the provisions of chapter 536, RSMo, and, if applicable,  
163 section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
164 and if any of the powers vested with the general assembly pursuant to chapter  
165 536, RSMo, to review, to delay the effective date or to disapprove and annul a  
166 rule are subsequently held unconstitutional, then the grant of rulemaking  
167 authority and any rule proposed or adopted after August 28, 2001, shall be  
168 invalid and void.

478.003. In any judicial circuit of this state, a majority of the judges of the  
2 circuit court may designate a judge to hear cases arising in the circuit subject to  
3 the provisions of sections 478.001 to [478.006] **478.007**. In lieu thereof and  
4 subject to appropriations or other funds available for such purpose, a majority of  
5 the judges of the circuit court may appoint a person or persons to act as drug  
6 court commissioners. Each commissioner shall be appointed for a term of four  
7 years, but may be removed at any time by a majority of the judges of the circuit  
8 court. The qualifications and compensation of the commissioner shall be the  
9 same as that of an associate circuit judge. If the compensation of a commissioner  
10 appointed pursuant to this section is provided from other than state funds, the  
11 source of such fund shall pay to and reimburse the state for the actual costs of  
12 the salary and benefits of the commissioner. The commissioner shall have all the  
13 powers and duties of a circuit judge, except that any order, judgment or decree  
14 of the commissioner shall be confirmed or rejected by an associate circuit or  
15 circuit judge by order of record entered within the time the judge could set aside  
16 such order, judgment or decree had the same been made by the judge. If so  
17 confirmed, the order, judgment or decree shall have the same effect as if made by  
18 the judge on the date of its confirmation.

**478.007. 1. Any circuit court may establish a docket or court to  
2 provide an alternative for the judicial system to dispose of cases in  
3 which a person has pleaded guilty to driving while intoxicated or  
4 driving with excessive blood alcohol content and:**

5 **(1) The person was operating a motor vehicle with at least  
6 fifteen-hundredths of one percent or more by weight of alcohol in such  
7 person's blood; or**

8 **(2) The person has pleaded guilty to or has been found guilty of  
9 a previous intoxication-related traffic offense as defined by section  
10 577.023.**

11           **2. This docket or court shall combine judicial supervision, drug**  
12 **testing, and treatment of DWI court participants. Any fees received by**  
13 **a court from a defendant as payment for treatment programs shall not**  
14 **be considered court costs, charges, or fines. This docket or court may**  
15 **operate in conjunction with a drug court established pursuant to**  
16 **sections 478.001 to 478.006.**

478.009. 1. In order to coordinate the allocation of resources available to  
2 drug courts **and the dockets or courts established by section 478.007**  
3 throughout the state, there is hereby established a "Drug **and DWI Courts**  
4 Coordinating Commission" in the judicial department. The drug **and DWI courts**  
5 coordinating commission shall consist of one member selected by the director of  
6 the department of corrections; one member selected by the director of the  
7 department of social services; one member selected by the director of the  
8 department of mental health; one member selected by the director of the  
9 department of public safety; one member selected by the state courts  
10 administrator; and three members selected by the supreme court. The supreme  
11 court shall designate the chair of the commission. The commission shall  
12 periodically meet at the call of the chair; evaluate resources available for  
13 assessment and treatment of persons assigned to drug courts **and DWI courts**  
14 or for operation of drug **and DWI courts**; secure grants, funds and other property  
15 and services necessary or desirable to facilitate drug **and DWI court** operation;  
16 and allocate such resources among the various drug **and DWI courts** operating  
17 within the state.

18           2. There is hereby established in the state treasury a "Drug **and DWI**  
19 **Court Resources Fund**", which shall be administered by the drug **and DWI courts**  
20 coordinating commission. Funds available for allocation or distribution by the  
21 drug **and DWI courts** coordinating commission may be deposited into the drug  
22 **and DWI court resources fund**. Notwithstanding the provisions of section 33.080,  
23 RSMo, to the contrary, moneys in the drug **and DWI court resources fund** shall  
24 not be transferred or placed to the credit of the general revenue fund of the state  
25 at the end of each biennium, but shall remain deposited to the credit of the drug  
26 **and DWI court resources fund**.

479.010. **Except as provided in section 577.023 or section 577.700,**  
2 violations of municipal ordinances shall be heard and determined only before  
3 divisions of the circuit court as hereinafter provided in this chapter. "Heard and  
4 determined", for purposes of this chapter, shall mean any process under which

5 the court in question retains the final authority to make factual determinations  
6 pertaining to allegations of a municipal ordinance violation, including, but not  
7 limited to, the use of a system of administrative adjudication as provided in  
8 section 479.011, preliminary to a determination by appeal to the court in  
9 question.

577.010. 1. A person commits the crime of "driving while intoxicated" if  
2 he operates a motor vehicle while in an intoxicated or drugged condition.

3 2. Driving while intoxicated is for the first offense, a class B  
4 misdemeanor. No person convicted of or pleading guilty to the offense of driving  
5 while intoxicated shall be granted a suspended imposition of sentence for such  
6 offense, unless such person shall be placed on probation for a minimum of two  
7 years. **However, no person who operated a motor vehicle with fifteen-**  
8 **hundredths of one percent or more by weight of alcohol in such**  
9 **person's blood shall be granted such suspended imposition of**  
10 **sentence. For such first offense, if the individual operated the motor**  
11 **vehicle with fifteen-hundredths to twenty-hundredths of one percent by**  
12 **weight of alcohol in such person's blood, the required term of**  
13 **imprisonment shall be not less than forty-eight hours unless the**  
14 **individual participates and successfully completes a program under a**  
15 **DWI court or docket created under section 478.007. For such first**  
16 **offense, if the individual operated the motor vehicle with greater than**  
17 **twenty-hundredths of one percent by weight of alcohol in such person's**  
18 **blood, the required term of imprisonment shall be not less than five**  
19 **days unless the individual participates and successfully completes a**  
20 **program under a DWI court or docket created under section 478.007.**

577.012. 1. A person commits the crime of "driving with excessive blood  
2 alcohol content" if such person operates a motor vehicle in this state with  
3 eight-hundredths of one percent or more by weight of alcohol in such person's  
4 blood.

5 2. As used in this section, percent by weight of alcohol in the blood shall  
6 be based upon grams of alcohol per one hundred milliliters of blood or two  
7 hundred ten liters of breath and may be shown by chemical analysis of the  
8 person's blood, breath, saliva or urine. For the purposes of determining the  
9 alcoholic content of a person's blood under this section, the test shall be  
10 conducted in accordance with the provisions of sections 577.020 to 577.041.

11 3. For the first offense, driving with excessive blood alcohol content is a

12 class B misdemeanor. **No person who operated a motor vehicle with**  
13 **fifteen-hundredths of one percent or more by weight of alcohol in such**  
14 **person's blood shall be granted suspended imposition of sentence. For**  
15 **such first offense, if the individual operated the motor vehicle with**  
16 **fifteen-hundredths to twenty-hundredths of one percent by weight of**  
17 **alcohol in such person's blood, the required term of imprisonment shall**  
18 **be not less than forty-eight hours unless the individual participates and**  
19 **successfully completes a program under a DWI court or docket created**  
20 **under section 478.007. For such first offense, if the individual operated**  
21 **the motor vehicle with greater than twenty-hundredths of one percent**  
22 **by weight of alcohol in such person's blood, the required term of**  
23 **imprisonment shall be not less than five days unless the individual**  
24 **participates and successfully completes a program under a DWI court**  
25 **or docket created under section 478.007.**

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

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

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

6 (b) Has pleaded guilty to or has been found guilty of one or more  
7 intoxication-related traffic offense and, in addition, any of the following:  
8 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section  
9 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where  
10 the underlying felony is an intoxication-related traffic offense; or assault in the  
11 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or  
12 assault of a law enforcement officer in the second degree under subdivision (4) of  
13 subsection 1 of section 565.082, RSMo;

14 (2) A "chronic offender" is:

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

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

23 of a law enforcement officer in the second degree under subdivision (4) of  
24 subsection 1 of section 565.082, RSMo; or

25 (c) A person who has pleaded guilty to or has been found guilty of two or  
26 more intoxication-related traffic offenses and, in addition, any of the following:  
27 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section  
28 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where  
29 the underlying felony is an intoxication-related traffic offense; assault in the  
30 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or  
31 assault of a law enforcement officer in the second degree under subdivision (4) of  
32 subsection 1 of section 565.082, RSMo;

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

39 (4) An "intoxication-related traffic offense" is driving while intoxicated,  
40 driving with excessive blood alcohol content, involuntary manslaughter pursuant  
41 to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo, murder in the  
42 second degree under section 565.021, RSMo, where the underlying felony is an  
43 intoxication-related traffic offense, assault in the second degree pursuant to  
44 subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law  
45 enforcement officer in the second degree pursuant to subdivision (4) of subsection  
46 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in  
47 violation of state law or a county or municipal ordinance;

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

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

51 (b) A person who has pleaded guilty to or has been found guilty of  
52 involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of  
53 section 565.024, RSMo, assault in the second degree pursuant to subdivision (4)  
54 of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in  
55 the second degree pursuant to subdivision (4) of subsection 1 of section 565.082,  
56 RSMo; and

57 (6) A "prior offender" is a person who has pleaded guilty to or has been  
58 found guilty of one intoxication-related traffic offense, where such prior offense

59 occurred within five years of the occurrence of the intoxication-related traffic  
60 offense for which the person is charged.

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

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

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

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

73           6. No state[, ] or county[, or municipal] court shall suspend the imposition  
74 of sentence as to a prior offender, persistent offender, aggravated offender, or  
75 chronic offender under this section nor sentence such person to pay a fine in lieu  
76 of a term of imprisonment, section 557.011, RSMo, to the contrary  
77 notwithstanding. No prior offender shall be eligible for parole or probation until  
78 he or she has served a minimum of [five] **ten** days imprisonment, unless as a  
79 condition of such parole or probation such person performs at least thirty days of  
80 community service under the supervision of the court in those jurisdictions which  
81 have a recognized program for community service **or the offender participates**  
82 **in a program established pursuant to section 478.007**. No persistent  
83 offender shall be eligible for parole or probation until he or she has served a  
84 minimum of [ten] **thirty** days imprisonment, unless as a condition of such parole  
85 or probation such person performs at least sixty days of community service under  
86 the supervision of the court **or the offender participates in a program**  
87 **established pursuant to section 478.007**. No aggravated offender shall be  
88 eligible for parole or probation until he or she has served a minimum of sixty  
89 days imprisonment. No chronic offender shall be eligible for parole or probation  
90 until he or she has served a minimum of two years imprisonment. In addition to  
91 any other terms or conditions of probation, the court shall consider, as a condition  
92 of probation for any person who pleads guilty to or is found guilty of an  
93 intoxication-related traffic offense, requiring the offender to abstain from  
94 consuming or using alcohol or any products containing alcohol as demonstrated

95 by continuous alcohol monitoring or by verifiable breath alcohol testing performed  
96 a minimum of four times per day as scheduled by the court for such duration as  
97 determined by the court, but not less than ninety days. The court may, in  
98 addition to imposing any other fine, costs, or assessments provided by law,  
99 require the offender to bear any costs associated with continuous alcohol  
100 monitoring or verifiable breath alcohol testing.

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

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

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

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

112 **After finding a person to be a prior offender, persistent offender,**  
113 **aggravated offender, or chronic offender as described under this**  
114 **subsection and subsection 16 of this section, if the court is municipal,**  
115 **it shall transfer the case to the appropriate circuit court with**  
116 **jurisdiction for further proceedings.**

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

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

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

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

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

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

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

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

135           16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an  
136 intoxication-related traffic offense shall be heard and determined by the trial  
137 court out of the hearing of the jury prior to the submission of the case to the jury,  
138 and shall include but not be limited to evidence of convictions received by a  
139 search of the records of the Missouri uniform law enforcement system maintained  
140 by the Missouri state highway patrol. After hearing the evidence, the court shall  
141 enter its findings thereon. A plea of guilty or a finding of guilt followed by  
142 incarceration, a fine, a suspended imposition of sentence, suspended execution of  
143 sentence, probation or parole or any combination thereof in any  
144 intoxication-related traffic offense in a state, county or municipal court or any  
145 combination thereof, shall be treated as a prior plea of guilty or finding of guilt  
146 for purposes of this section.

577.041. 1. If a person under arrest, or who has been stopped pursuant  
2 to subdivision (2) or (3) of subsection 1 of section 577.020, refuses upon the  
3 request of the officer to submit to any test allowed pursuant to section 577.020,  
4 then none shall be given and evidence of the refusal shall be admissible in a  
5 proceeding pursuant to section 565.024, 565.060, or 565.082, RSMo, or section  
6 577.010 or 577.012. The request of the officer shall include the reasons of the  
7 officer for requesting the person to submit to a test and also shall inform the  
8 person that evidence of refusal to take the test may be used against such person  
9 and that the person's license shall be immediately revoked upon refusal to take  
10 the test. If a person when requested to submit to any test allowed pursuant to  
11 section 577.020 requests to speak to an attorney, the person shall be granted  
12 twenty minutes in which to attempt to contact an attorney. If upon the  
13 completion of the twenty-minute period the person continues to refuse to submit  
14 to any test, it shall be deemed a refusal. In this event, the officer shall, on behalf  
15 of the director of revenue, serve the notice of license revocation personally upon  
16 the person and shall take possession of any license to operate a motor vehicle  
17 issued by this state which is held by that person. The officer shall issue a  
18 temporary permit, on behalf of the director of revenue, which is valid for fifteen  
19 days and shall also give the person a notice of such person's right to file a  
20 petition for review to contest the license revocation.

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

24           (1) That the officer has:

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

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

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

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

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

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

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

42           (6) Any license to operate a motor vehicle which the officer has taken into  
43 possession.

44           3. Upon receipt of the officer's report, the director shall revoke the license  
45 of the person refusing to take the test for a period of [one year] **two years**; or if  
46 the person is a nonresident, such person's operating permit or privilege shall be  
47 revoked for [one year] **two years**; or if the person is a resident without a license  
48 or permit to operate a motor vehicle in this state, an order shall be issued  
49 denying the person the issuance of a license or permit for a period of [one year]  
50 **two years**.

51           4. If a person's license has been revoked because of the person's refusal  
52 to submit to a chemical test, such person may petition for a hearing before a  
53 circuit or associate circuit court in the county in which the arrest or stop  
54 occurred. The person may request such court to issue an order staying the  
55 revocation until such time as the petition for review can be heard. If the court,  
56 in its discretion, grants such stay, it shall enter the order upon a form prescribed

57 by the director of revenue and shall send a copy of such order to the  
58 director. Such order shall serve as proof of the privilege to operate a motor  
59 vehicle in this state and the director shall maintain possession of the person's  
60 license to operate a motor vehicle until termination of any revocation pursuant  
61 to this section. Upon the person's request the clerk of the court shall notify the  
62 prosecuting attorney of the county and the prosecutor shall appear at the hearing  
63 on behalf of the director of revenue. At the hearing the court shall determine  
64 only:

- 65 (1) Whether or not the person was arrested or stopped;
- 66 (2) Whether or not the officer had:
  - 67 (a) Reasonable grounds to believe that the person was driving a motor  
68 vehicle while in an intoxicated or drugged condition; or
  - 69 (b) Reasonable grounds to believe that the person stopped, being under  
70 the age of twenty-one years, was driving a motor vehicle with a blood alcohol  
71 content of two-hundredths of one percent or more by weight; or
  - 72 (c) Reasonable grounds to believe that the person stopped, being under the  
73 age of twenty-one years, was committing a violation of the traffic laws of the  
74 state, or political subdivision of the state, and such officer had reasonable  
75 grounds to believe, after making such stop, that the person had a blood alcohol  
76 content of two-hundredths of one percent or greater; and
- 77 (3) Whether or not the person refused to submit to the test.

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

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

82 7. No person who has had a license to operate a motor vehicle suspended  
83 or revoked pursuant to the provisions of this section shall have that license  
84 reinstated until such person has participated in and successfully completed a  
85 substance abuse traffic offender program defined in section 577.001, or a program  
86 determined to be comparable by the department of mental health or the  
87 court. Assignment recommendations, based upon the needs assessment as  
88 described in subdivision [(22)] **(23)** of section 302.010, RSMo, shall be delivered  
89 in writing to the person with written notice that the person is entitled to have  
90 such assignment recommendations reviewed by the court if the person objects to  
91 the recommendations. The person may file a motion in the associate division of  
92 the circuit court of the county in which such assignment was given, on a printed

93 form provided by the state courts administrator, to have the court hear and  
94 determine such motion pursuant to the provisions of chapter 517, RSMo. The  
95 motion shall name the person or entity making the needs assessment as the  
96 respondent and a copy of the motion shall be served upon the respondent in any  
97 manner allowed by law. Upon hearing the motion, the court may modify or waive  
98 any assignment recommendation that the court determines to be unwarranted  
99 based upon a review of the needs assessment, the person's driving record, the  
100 circumstances surrounding the offense, and the likelihood of the person  
101 committing a like offense in the future, except that the court may modify but may  
102 not waive the assignment to an education or rehabilitation program of a person  
103 determined to be a prior or persistent offender as defined in section 577.023, or  
104 of a person determined to have operated a motor vehicle with fifteen-hundredths  
105 of one percent or more by weight in such person's blood. Compliance with the  
106 court determination of the motion shall satisfy the provisions of this section for  
107 the purpose of reinstating such person's license to operate a motor vehicle. The  
108 respondent's personal appearance at any hearing conducted pursuant to this  
109 subsection shall not be necessary unless directed by the court.

110           8. The fees for the substance abuse traffic offender program, or a portion  
111 thereof to be determined by the division of alcohol and drug abuse of the  
112 department of mental health, shall be paid by the person enrolled in the  
113 program. Any person who is enrolled in the program shall pay, in addition to any  
114 fee charged for the program, a supplemental fee to be determined by the  
115 department of mental health for the purposes of funding the substance abuse  
116 traffic offender program defined in section 302.010, RSMo, and section  
117 577.001. The administrator of the program shall remit to the division of alcohol  
118 and drug abuse of the department of mental health on or before the fifteenth day  
119 of each month the supplemental fee for all persons enrolled in the program, less  
120 two percent for administrative costs. Interest shall be charged on any unpaid  
121 balance of the supplemental fees due the division of alcohol and drug abuse  
122 pursuant to this section and shall accrue at a rate not to exceed the annual rates  
123 established pursuant to the provisions of section 32.065, RSMo, plus three  
124 percentage points. The supplemental fees and any interest received by the  
125 department of mental health pursuant to this section shall be deposited in the  
126 mental health earnings fund which is created in section 630.053, RSMo.

127           9. Any administrator who fails to remit to the division of alcohol and drug  
128 abuse of the department of mental health the supplemental fees and interest for

129 all persons enrolled in the program pursuant to this section shall be subject to a  
130 penalty equal to the amount of interest accrued on the supplemental fees due the  
131 division pursuant to this section. If the supplemental fees, interest, and penalties  
132 are not remitted to the division of alcohol and drug abuse of the department of  
133 mental health within six months of the due date, the attorney general of the state  
134 of Missouri shall initiate appropriate action of the collection of said fees and  
135 interest accrued. The court shall assess attorney fees and court costs against any  
136 delinquent program.

137 10. Any person who has had a license to operate a motor vehicle revoked  
138 more than once for violation of the provisions of this section shall be required to  
139 file proof with the director of revenue that any motor vehicle operated by the  
140 person is equipped with a functioning, certified ignition interlock device as a  
141 required condition of license reinstatement. Such ignition interlock device shall  
142 further be required to be maintained on all motor vehicles operated by the person  
143 for a period of not less than six months immediately following the date of  
144 reinstatement. If the person fails to maintain such proof with the director as  
145 required by this section, the license shall be rerevoked and the person shall be  
146 guilty of a class A misdemeanor.

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

**577.700. 1. For a first time offense under section 577.010 or  
2 577.012, a municipal court shall make a preliminary finding that the  
3 defendant operated a vehicle with not less than fifteen-hundredths of  
4 one percent by weight of alcohol in such person's blood if:**

5 **(1) The indictment or information, original or amended, or the  
6 information in lieu of an indictment pleads all essential facts  
7 warranting a finding that the defendant operated a vehicle with not**

8 less than fifteen-hundredths of one percent by weight of alcohol in such  
9 person's blood;

10 (2) Evidence is introduced that establishes sufficient facts  
11 pleaded to warrant a finding beyond a reasonable doubt that the  
12 defendant operated a vehicle with not less than fifteen-hundredths of  
13 one percent by weight of alcohol in such person's blood;

14 (3) The court makes a finding of fact that warrants a finding  
15 beyond a reasonable doubt by the court that the defendant operated a  
16 vehicle with not less than fifteen-hundredths of one percent by weight  
17 of alcohol in such person's blood.

18 2. For a first time offense under section 577.010 or 577.012, a  
19 municipal court shall make a preliminary finding that the defendant  
20 refused to submit to any test as described under section 577.041 if:

21 (1) The indictment or information, original or amended, or the  
22 information in lieu of an indictment pleads all essential facts  
23 warranting a finding that the defendant refused to submit to any test  
24 as described under section 577.041;

25 (2) Evidence is introduced that establishes sufficient facts  
26 pleaded to warrant a finding beyond a reasonable doubt that the  
27 defendant refused to submit to any test as described under section  
28 577.041;

29 (3) The court makes a finding of fact that warrants a finding  
30 beyond a reasonable doubt by the court that the defendant refused to  
31 submit to any test as described under subsection 3 of section 577.041.

32 3. If the municipal court makes a preliminary finding that the  
33 defendant operated a vehicle with not less than fifteen-hundredths of  
34 one percent by weight of alcohol in such person's blood or refused to  
35 submit to any test as described under section 577.041, it shall transfer  
36 the case to the appropriate circuit court with jurisdiction for further  
37 proceedings.

577.725. 1. All law enforcement agencies and prosecuting or  
2 circuit attorneys of the state shall provide all relevant information  
3 regarding intoxication-related traffic offenses, as defined in section  
4 577.023, committed in their jurisdictions to the highway patrol's driving  
5 while intoxicated tracking system (DWITS). For the purposes of this  
6 section, the term "all relevant information" shall include any  
7 information requested by the highway patrol's DWITS database. Any

8 law enforcement agency or prosecuting or circuit attorney's office that  
9 fails to enter all relevant information into DWITS as required by this  
10 section may have its appropriated state funds withheld by the  
11 governor.

12 2. The highway patrol shall collect and analyze information  
13 received through the DWITS website. Not less than once a year, the  
14 highway patrol shall issue accountability reports to agencies and  
15 offices informing them of their compliance or non-compliance with this  
16 section.

Unofficial ✓

Bill

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