

FIRST REGULAR SESSION

# SENATE BILL NO. 499

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Read 1st time February 28, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2196S.011

## AN ACT

To repeal section 577.012, RSMo, and to enact in lieu thereof one new section relating to the offense of driving with prohibited blood alcohol or drug content, with penalty provisions.

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

Section A. Section 577.012, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 577.012, to read as follows:

577.012. 1. A person commits the offense of driving with [excessive]  
2 **prohibited** blood alcohol **or drug** content if such person operates:

3 (1) A vehicle while having eight-hundredths of one percent or more by  
4 weight of alcohol in his or her blood; or

5 (2) A commercial motor vehicle while having four one-hundredths of one  
6 percent or more by weight of alcohol in his or her blood; **or**

7 **(3) A vehicle while any amount of a controlled substance is**  
8 **present in the person, as measured in the person's blood, urine, or**  
9 **saliva.**

10 2. **In any prosecution under this section, evidence of the results**  
11 **of analysis of a specimen of the defendant's blood, breath, urine, or**  
12 **saliva is admissible upon proof of a proper foundation. The presence**  
13 **of a controlled substance established by the results of analysis of a**  
14 **specimen of the defendant's blood or urine withdrawn after the**  
15 **defendant was operating a motor vehicle is presumed to show the**  
16 **presence of such controlled substance or other drug in the defendant**  
17 **at the time of operating vehicle.** As used in this section, percent by weight  
18 of alcohol in the blood shall be based upon grams of alcohol per one hundred

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

19 milliliters of blood or two hundred ten liters of breath and may be shown by  
20 chemical analysis of the person's blood, breath, saliva or urine. For the purposes  
21 of determining the alcoholic content of a person's blood under this section, the  
22 test shall be conducted in accordance with the provisions of sections 577.020 to  
23 577.041.

24 3. The offense of driving with [excessive] **prohibited** blood alcohol **or**  
25 **drug** content is:

26 (1) A class B misdemeanor;

27 (2) A class A misdemeanor if the defendant is alleged and proved to be a  
28 prior offender;

29 (3) A class E felony if the defendant is alleged and proved to be a  
30 persistent offender;

31 (4) A class D felony if the defendant is alleged and proved to be an  
32 aggravated offender;

33 (5) A class C felony if the defendant is alleged and proved to be a chronic  
34 offender;

35 (6) A class B felony if the defendant is alleged and proved to be a habitual  
36 offender.

37 4. A person found guilty of the offense of driving with [an excessive]  
38 **prohibited** blood alcohol **or drug** content as a first offense shall not be granted  
39 a suspended imposition of sentence:

40 (1) Unless such person shall be placed on probation for a minimum of two  
41 years; or

42 (2) In a circuit where a DWI court or docket created under section 478.007  
43 or other court-ordered treatment program is available, and where the offense was  
44 committed with fifteen-hundredths of one percent or more by weight of alcohol in  
45 such person's blood, unless the individual participates in and successfully  
46 completes a program under such DWI court or docket or other court-ordered  
47 treatment program.

48 5. If a person is not granted a suspended imposition of sentence for the  
49 reasons described in subsection 4 of this section:

50 (1) If the individual operated the vehicle with fifteen-hundredths to  
51 twenty-hundredths of one percent by weight of alcohol in such person's blood, the  
52 required term of imprisonment shall be not less than forty-eight hours;

53 (2) If the individual operated the vehicle with greater than  
54 twenty-hundredths of one percent by weight of alcohol in such person's blood, the

55 required term of imprisonment shall be not less than five days.

56           6. If a person is found guilty of a second or subsequent offense of driving  
57 with an [excessive] **prohibited** blood alcohol **or drug** content, the court may  
58 order the person to submit to a period of continuous alcohol monitoring or  
59 verifiable breath alcohol testing performed a minimum of four times per day as  
60 a condition of probation.

61           7. A person found guilty of driving with [excessive] **prohibited** blood  
62 alcohol **or drug** content:

63           (1) As a prior offender, persistent offender, aggravated offender, chronic  
64 offender or habitual offender shall not be granted a suspended imposition of  
65 sentence or be sentenced to pay a fine in lieu of a term of imprisonment, section  
66 557.011 to the contrary notwithstanding;

67           (2) As a prior offender shall not be granted parole or probation until he  
68 or she has served a minimum of ten days imprisonment:

69           (a) Unless as a condition of such parole or probation such person performs  
70 at least thirty days of community service under the supervision of the court in  
71 those jurisdictions which have a recognized program for community service; or

72           (b) The offender participates in and successfully completes a program  
73 established under section 478.007 or other court-ordered treatment program, if  
74 available, and as part of either program, the offender performs at least thirty  
75 days of community service under the supervision of the court;

76           (3) As a persistent offender shall not be granted parole or probation until  
77 he or she has served a minimum of thirty days imprisonment:

78           (a) Unless as a condition of such parole or probation such person performs  
79 at least sixty days of community service under the supervision of the court in  
80 those jurisdictions which have a recognized program for community service; or

81           (b) The offender participates in and successfully completes a program  
82 established under section 478.007 or other court-ordered treatment program, if  
83 available, and as part of either program, the offender performs at least sixty days  
84 of community service under the supervision of the court;

85           (4) As an aggravated offender shall not be eligible for parole or probation  
86 until he or she has served a minimum of sixty days imprisonment;

87           (5) As a chronic or habitual offender shall not be eligible for parole or  
88 probation until he or she has served a minimum of two years imprisonment; and

89           (6) Any probation or parole granted under this subsection may include a  
90 period of continuous alcohol monitoring or verifiable breath alcohol testing

91 performed a minimum of four times per day.

92 **8. When charged with a violation of subdivision (3) of subsection**  
93 **1 of this section, a person may assert, as an affirmative defense, that**  
94 **the controlled substance present in the person's blood or urine was**  
95 **prescribed or dispensed for the person and was taken in accordance**  
96 **with the directions of a practitioner and the labeling directions of the**  
97 **pharmacy.**

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