

SECOND REGULAR SESSION

# SENATE BILL NO. 766

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3554S.011

## AN ACT

To repeal sections 302.505, 302.510, 302.541, 302.545, 302.592, 302.700, 304.585, 478.007, 544.155, 577.001, 577.012, 577.021, and 577.037, RSMo, and to enact in lieu thereof thirteen new sections 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. Sections 302.505, 302.510, 302.541, 302.545, 302.592, 302.700, 304.585, 478.007, 544.155, 577.001, 577.012, 577.021, and 577.037, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 302.505, 302.510, 302.541, 302.545, 302.592, 302.700, 304.585, 478.007, 544.155, 577.001, 577.012, 577.021, and 577.037, to read as follows:

302.505. 1. The department shall suspend or revoke the license of any person upon its determination that the person was arrested upon probable cause to believe such person was driving a motor vehicle while the alcohol concentration in the person's blood, breath, or urine was eight-hundredths of one percent or more by weight, based on the definition of alcohol concentration in section 302.500, or where such person was less than twenty-one years of age when stopped and was stopped upon probable cause to believe such person was driving while intoxicated in violation of section 577.010, or driving with **[excessive] prohibited blood alcohol or drug** content in violation of section 577.012, or upon probable cause to believe such person violated a state, county or municipal traffic offense and such person was driving with a blood alcohol content of two-hundredths of one percent or more by weight.

2. The department shall make a determination of these facts on the basis of the report of a law enforcement officer required in section 302.510, and this

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

15 determination shall be final unless a hearing is requested and held. If a hearing  
16 is held, the department shall review the matter and make a final determination  
17 on the basis of evidence received at the hearing.

18 3. The determination of these facts by the department is independent of  
19 the determination of the same or similar facts in the adjudication of any criminal  
20 charges arising out of the same occurrence. The disposition of those criminal  
21 charges shall not affect any suspension or revocation under this section.

302.510. 1. Except as provided in subsection 3 of this section, a law  
2 enforcement officer who arrests any person for a violation of any state statute  
3 related to driving while intoxicated or for a violation of a county or municipal  
4 ordinance prohibiting driving while intoxicated or a county or municipal  
5 alcohol-related traffic offense, and in which the alcohol concentration in the  
6 person's blood, breath, or urine was eight-hundredths of one percent or more by  
7 weight or two-hundredths of one percent or more by weight for anyone less than  
8 twenty-one years of age, **or in which the person's blood or urine or saliva**  
9 **show the presence of a controlled substance**, shall forward to the  
10 department a certified report of all information relevant to the enforcement  
11 action, including information which adequately identifies the arrested person, a  
12 statement of the officer's grounds for belief that the person violated any state  
13 statute related to driving while intoxicated or was less than twenty-one years of  
14 age and was driving with two-hundredths of one percent or more by weight of  
15 alcohol in the person's blood, or a county or municipal ordinance prohibiting  
16 driving while intoxicated or a county or municipal alcohol-related traffic offense,  
17 a report of the results of any chemical tests which were conducted, and a copy of  
18 the citation and complaint filed with the court.

19 2. The report required by this section shall be certified under penalties  
20 of perjury for making a false statement to a public official and made on forms  
21 supplied by the department or in a manner specified by regulations of the  
22 department.

23 3. A county or municipal ordinance prohibiting driving while intoxicated  
24 or a county or municipal alcohol-related traffic offense may not be the basis for  
25 suspension or revocation of a driver's license pursuant to sections 302.500 to  
26 302.540, unless the arresting law enforcement officer, other than an elected peace  
27 officer or official, has been licensed by the director of the department of public  
28 safety pursuant to the provisions of chapter 590.

302.541. 1. In addition to other fees required by law, any person who has

2 had a license to operate a motor vehicle suspended or revoked following a  
3 determination, pursuant to section 302.505, or section 302.410, 302.574, 577.010,  
4 or 577.012, or any county or municipal ordinance, where the defendant was  
5 represented by or waived the right to an attorney, that such person was driving  
6 while intoxicated or with a blood alcohol content of eight-hundredths of one  
7 percent or more by weight or **with any amount of a controlled substance**  
8 **present in the person or**, where such person was at the time of the arrest less  
9 than twenty-one years of age and was driving with a blood alcohol content of  
10 two-hundredths of one percent or more by weight, shall pay an additional fee of  
11 twenty-five dollars prior to the reinstatement or reissuance of the license.

12         2. Any person less than twenty-one years of age whose driving privilege  
13 has been suspended or revoked solely for a first determination pursuant to  
14 sections 302.500 to 302.540 that such person was driving a motor vehicle with  
15 two-hundredths of one percent or more blood alcohol content is exempt from filing  
16 proof of financial responsibility with the department of revenue in accordance  
17 with chapter 303 as a prerequisite for reinstatement of driving privileges or  
18 obtaining a restricted driving privilege as provided by section 302.525.

302.545. 1. Any person who is less than twenty-one years of age and  
2 whose driving privilege has been suspended or revoked, for a first determination  
3 under sections 302.500 to 302.540, that such person was driving with  
4 two-hundredths of one percent of blood alcohol content, shall have all official  
5 records and all recordations maintained by the department of revenue of such  
6 suspension or revocation expunged two years after the date of such suspension  
7 or revocation, or when such person attains the age of twenty-one, whichever date  
8 first occurs. Such expungement shall be performed by the department of revenue  
9 without need of a court order. No records shall be expunged if the person was  
10 found guilty or pled guilty to operating a commercial motor vehicle, as defined in  
11 section 302.700, or if the person was holding a commercial driver's license at the  
12 time of the offense, with a blood alcohol content of at least four-hundredths of one  
13 percent.

14         2. The provisions of this section shall not apply to any person whose  
15 license is suspended or revoked for a second or subsequent time pursuant to  
16 subsection 1 of this section or who is convicted of any alcohol-related driving  
17 offense before the age of twenty-one including, but not limited to:

- 18             (1) Driving while intoxicated pursuant to section 577.010; or  
19             (2) Driving with [excessive] **prohibited** blood alcohol **or drug** content

20 pursuant to section 577.012.

302.592. 1. A record of the disposition in any court proceeding involving  
2 any criminal offense, infraction, or ordinance violation related to the operation  
3 of a vehicle while intoxicated or with an [excessive] **prohibited** blood alcohol **or**  
4 **drug** content shall be forwarded to the department of revenue, within seven days  
5 by the clerk of the court in which the proceeding was held. The records shall be  
6 forwarded by the department of revenue, within fifteen days of receipt, to the  
7 Missouri state highway patrol and shall be entered by the highway patrol in the  
8 Missouri uniform law enforcement system records. Dispositions that shall be  
9 reported are guilty pleas, findings of guilt, suspended imposition of sentence,  
10 suspended execution of sentence, probation, conditional sentences, sentences of  
11 confinement, and any other such dispositions that may be required under state  
12 or federal regulations. The record forwarded by the clerk shall clearly state the  
13 name of the court, the court case number, the name, address, and motor vehicle  
14 operator's or chauffeur's license number of the person who is the subject of the  
15 proceeding, the code or number identifying the particular arrest, and any court  
16 action or requirements pertaining thereto.

17 2. All records received by the Missouri state highway patrol or the  
18 department of revenue under the provisions of this section shall be entered in the  
19 Missouri uniform law enforcement system records and maintained by the  
20 Missouri state highway patrol. Records placed in the Missouri uniform law  
21 enforcement system under the provisions of this section shall be made available  
22 to any law enforcement officer in this state, any prosecuting or circuit attorney  
23 in this state, or to any judge of a municipal or state court upon request.

24 3. A person commits the offense of refusal to furnish records of disposition  
25 if he or she is required to furnish records to the Missouri state highway patrol or  
26 department of revenue under this section and purposely refuses to furnish such  
27 records. The offense of refusal to furnish records of disposition is a class D  
28 misdemeanor.

302.700. 1. Sections 302.700 to 302.780 may be cited as the "Uniform  
2 Commercial Driver's License Act".

3 2. When used in sections 302.700 to 302.780, the following words and  
4 phrases mean:

5 (1) "Alcohol", any substance containing any form of alcohol, including, but  
6 not limited to, ethanol, methanol, propanol and isopropanol;

7 (2) "Alcohol concentration", the number of grams of alcohol per one

8 hundred milliliters of blood or the number of grams of alcohol per two hundred  
9 ten liters of breath or the number of grams of alcohol per sixty-seven milliliters  
10 of urine;

11 (3) "CDL driver", a person holding or required to hold a commercial  
12 driver's license (CDL);

13 (4) "CDLIS driver record", the electronic record of the individual  
14 commercial driver's status and history stored by the state of record as part of the  
15 Commercial Driver's License Information System (CDLIS) established under 49  
16 U.S.C. Section 31309, et seq.;

17 (5) "CDLIS motor vehicle record (CDLIS MVR)", a report generated from  
18 the CDLIS driver record which meets the requirements for access to CDLIS  
19 information and is provided by states to users authorized in 49 CFR 384, subject  
20 to the provisions of the Driver Privacy Protection Act, 18 U.S.C. Sections 2721 to  
21 2725, et seq.;

22 (6) "Commercial driver's instruction permit", a commercial learner's  
23 permit issued to an individual by a state or other jurisdiction of domicile in  
24 accordance with the standards contained in 49 CFR 383, which, when carried  
25 with a valid driver's license issued by the same state or jurisdiction, authorizes  
26 the individual to operate a class of commercial motor vehicle when accompanied  
27 by a holder of a valid commercial driver's license for purposes of behind-the-wheel  
28 training. When issued to a commercial driver's license holder, a commercial  
29 learner's permit serves as authorization for accompanied behind-the-wheel  
30 training in a commercial motor vehicle for which the holder's current commercial  
31 driver's license is not valid;

32 (7) "Commercial driver's license (CDL)", a license issued by this state or  
33 other jurisdiction of domicile in accordance with 49 CFR 383 which authorizes the  
34 individual to operate a class of commercial motor vehicle;

35 (8) "Commercial driver's license downgrade", occurs when:

36 (a) A driver changes the self-certification to interstate, but operates  
37 exclusively in transportation or operation excepted from 49 CFR 391, as provided  
38 in 49 CFR 390.3(f), 391.2, 391.68, or 398.3;

39 (b) A driver changes the self-certification to intrastate only, if the driver  
40 qualifies under the state's physical qualification requirements for intrastate only;

41 (c) A driver changes the self-certification to intrastate, but operating  
42 exclusively in transportation or operations excepted from all or part of the state  
43 driver qualification requirements; or

44 (d) The state removes the commercial driver's license privilege from the  
45 driver's license;

46 (9) "Commercial driver's license information system (CDLIS)", the  
47 information system established pursuant to the Commercial Motor Vehicle Safety  
48 Act of 1986 (Title XII of Pub. Law 99-570) to serve as a clearinghouse for locating  
49 information related to the licensing and identification of commercial motor vehicle  
50 drivers;

51 (10) "Commercial motor vehicle", a motor vehicle or combination of motor  
52 vehicles used in commerce to transport passengers or property:

53 (a) If the vehicle has a gross combination weight rating or gross  
54 combination weight of twenty-six thousand one or more pounds, whichever is  
55 greater, inclusive of a towed unit which has a gross vehicle weight rating or gross  
56 vehicle weight of more than ten thousand pounds, whichever is greater;

57 (b) If the vehicle has a gross vehicle weight rating or gross vehicle weight  
58 of twenty-six thousand one or more pounds, whichever is greater;

59 (c) If the vehicle is designed to transport sixteen or more passengers,  
60 including the driver; or

61 (d) If the vehicle is transporting hazardous materials and is required to  
62 be placarded under the Hazardous Materials Transportation Act (46 U.S.C.  
63 Section 1801, et seq.);

64 (11) "Controlled substance", any substance so classified under Section  
65 102(6) of the Controlled Substances Act (21 U.S.C. Section 802(6)), and includes  
66 all substances listed in Schedules I through V of 21 CFR 1308, as they may be  
67 revised from time to time;

68 (12) "Conviction", an unvacated adjudication of guilt, including pleas of  
69 guilt and nolo contendere, or a determination that a person has violated or failed  
70 to comply with the law in a court of original jurisdiction or an authorized  
71 administrative proceeding, an unvacated forfeiture of bail or collateral deposited  
72 to secure the person's appearance in court, the payment of a fine or court cost, or  
73 violation of a condition of release without bail, regardless of whether the penalty  
74 is rebated, suspended or prorated, including an offense for failure to appear or  
75 pay;

76 (13) "Director", the director of revenue or his authorized representative;

77 (14) "Disqualification", any of the following three actions:

78 (a) The suspension, revocation, or cancellation of a commercial driver's  
79 license or commercial driver's instruction permit;

80 (b) Any withdrawal of a person's privileges to drive a commercial motor  
81 vehicle by a state, Canada, or Mexico as the result of a violation of federal, state,  
82 county, municipal, or local law relating to motor vehicle traffic control or  
83 violations committed through the operation of motor vehicles, other than parking,  
84 vehicle weight, or vehicle defect violations;

85 (c) A determination by the Federal Motor Carrier Safety Administration  
86 that a person is not qualified to operate a commercial motor vehicle under 49  
87 CFR 383.52 or 391;

88 (15) "Drive", to drive, operate or be in physical control of a commercial  
89 motor vehicle;

90 (16) "Driver", any person who drives, operates, or is in physical control of  
91 a motor vehicle, or who is required to hold a commercial driver's license;

92 (17) "Driver applicant", an individual who applies to obtain, transfer,  
93 upgrade, or renew a commercial driver's license or commercial driver's instruction  
94 permit in this state;

95 (18) "Driving under the influence of alcohol", the commission of any one  
96 or more of the following acts:

97 (a) Driving a commercial motor vehicle with the alcohol concentration of  
98 four one-hundredths of a percent or more as prescribed by the Secretary or such  
99 other alcohol concentration as may be later determined by the Secretary by  
100 regulation;

101 (b) Driving a commercial or noncommercial motor vehicle while  
102 intoxicated in violation of any federal or state law, or in violation of a county or  
103 municipal ordinance;

104 (c) Driving a commercial or noncommercial motor vehicle with excessive  
105 **or prohibited** blood alcohol content in violation of any federal or state law, or  
106 in violation of a county or municipal ordinance;

107 (d) Refusing to submit to a chemical test in violation of section 302.574,  
108 section 302.750, any federal or state law, or a county or municipal ordinance; or

109 (e) Having any state, county or municipal alcohol-related enforcement  
110 contact, as defined in subsection 3 of section 302.525; provided that any  
111 suspension or revocation pursuant to section 302.505, committed in a  
112 noncommercial motor vehicle by an individual twenty-one years of age or older  
113 shall have been committed by the person with an alcohol concentration of at least  
114 eight-hundredths of one percent or more, or in the case of an individual who is  
115 less than twenty-one years of age, shall have been committed by the person with

116 an alcohol concentration of at least two-hundredths of one percent or more, and  
117 if committed in a commercial motor vehicle, a concentration of four-hundredths  
118 of one percent or more;

119 (19) "Driving under the influence of a controlled substance", the  
120 commission of any one or more of the following acts in a commercial or  
121 noncommercial motor vehicle:

122 (a) Driving a commercial or noncommercial motor vehicle while under the  
123 influence of any substance so classified under Section 102(6) of the Controlled  
124 Substances Act (21 U.S.C. Section 802(6)), including any substance listed in  
125 Schedules I through V of 21 CFR 1308, as they may be revised from time to time;

126 (b) Driving a commercial or noncommercial motor vehicle while in a  
127 drugged condition in violation of any federal or state law or in violation of a  
128 county or municipal ordinance; or

129 (c) Refusing to submit to a chemical test in violation of section 302.574,  
130 section 302.750, any federal or state law, or a county or municipal ordinance;

131 (20) "Electronic device", includes but is not limited to a cellular telephone,  
132 personal digital assistant, pager, computer, or any other device used to input,  
133 write, send, receive, or read text;

134 (21) "Employer", any person, including the United States, a state, or a  
135 political subdivision of a state, who owns or leases a commercial motor vehicle or  
136 assigns a driver to operate such a vehicle;

137 (22) "Endorsement", an authorization on an individual's commercial  
138 driver's license or commercial learner's permit required to permit the individual  
139 to operate certain types of commercial motor vehicles;

140 (23) "Farm vehicle", a commercial motor vehicle controlled and operated  
141 by a farmer used exclusively for the transportation of agricultural products, farm  
142 machinery, farm supplies, or a combination of these, within one hundred fifty  
143 miles of the farm, other than one which requires placarding for hazardous  
144 materials as defined in this section, or used in the operation of a common or  
145 contract motor carrier, except that a farm vehicle shall not be a commercial motor  
146 vehicle when the total combined gross weight rating does not exceed twenty-six  
147 thousand one pounds when transporting fertilizers as defined in subdivision (29)  
148 of this subsection;

149 (24) "Fatality", the death of a person as a result of a motor vehicle  
150 accident;

151 (25) "Felony", any offense under state or federal law that is punishable by

152 death or imprisonment for a term exceeding one year;

153 (26) "Foreign", outside the fifty states of the United States and the  
154 District of Columbia;

155 (27) "Gross combination weight rating" or "GCWR", the value specified by  
156 the manufacturer as the loaded weight of a combination (articulated) vehicle. In  
157 the absence of a value specified by the manufacturer, GCWR will be determined  
158 by adding the GVWR of the power unit and the total weight of the towed unit and  
159 any load thereon;

160 (28) "Gross vehicle weight rating" or "GVWR", the value specified by the  
161 manufacturer as the loaded weight of a single vehicle;

162 (29) "Hazardous materials", any material that has been designated as  
163 hazardous under 49 U.S.C. Section 5103 and is required to be placarded under  
164 subpart F of CFR 172 or any quantity of a material listed as a select agent or  
165 toxin in 42 CFR 73. Fertilizers, including but not limited to ammonium nitrate,  
166 phosphate, nitrogen, anhydrous ammonia, lime, potash, motor fuel or special fuel,  
167 shall not be considered hazardous materials when transported by a farm vehicle  
168 provided all other provisions of this definition are followed;

169 (30) "Imminent hazard", the existence of a condition that presents a  
170 substantial likelihood that death, serious illness, severe personal injury, or a  
171 substantial endangerment to health, property, or the environment may occur  
172 before the reasonably foreseeable completion date of a formal proceeding begins  
173 to lessen the risk of that death, illness, injury, or endangerment;

174 (31) "Issuance", the initial licensure, license transfers, license renewals,  
175 and license upgrades;

176 (32) "Manual transmission" (also known as a stick shift, stick, straight  
177 drive or standard transmission), a transmission utilizing a driver-operated clutch  
178 that is activated by a pedal or lever and a gear-shift mechanism operated either  
179 by hand or foot. All other transmissions, whether semiautomatic or automatic,  
180 will be considered automatic for the purposes of the standardized restriction code;

181 (33) "Medical examiner", a person who is licensed, certified, or registered,  
182 in accordance with applicable state laws and regulations, to perform physical  
183 examinations. The term includes, but is not limited to, doctors of medicine,  
184 doctors of osteopathy, physician assistants, advanced practice nurses, and doctors  
185 of chiropractic;

186 (34) "Medical variance", when a driver has received one of the following  
187 that allows the driver to be issued a medical certificate:

188 (a) An exemption letter permitting operation of a commercial motor  
189 vehicle under 49 CFR 381, Subpart C or 49 CFR 391.64;

190 (b) A skill performance evaluation certificate permitting operation of a  
191 commercial motor vehicle under 49 CFR 391.49;

192 (35) "Mobile telephone", a mobile communication device that is classified  
193 as or uses any commercial mobile radio service, as defined in the regulations of  
194 the Federal Communications Commission, 47 CFR 20.3, but does not include  
195 two-way or citizens band radio services;

196 (36) "Motor vehicle", any self-propelled vehicle not operated exclusively  
197 upon tracks;

198 (37) "Noncommercial motor vehicle", a motor vehicle or combination of  
199 motor vehicles not defined by the term commercial motor vehicle in this section;

200 (38) "Out of service", a temporary prohibition against the operation of a  
201 commercial motor vehicle by a particular driver, or the operation of a particular  
202 commercial motor vehicle, or the operation of a particular motor carrier;

203 (39) "Out-of-service order", a declaration by an authorized enforcement  
204 officer of a federal, state, Canadian, Mexican or any local jurisdiction, that a  
205 driver, or a commercial motor vehicle, or a motor carrier operation, is out of  
206 service under 49 CFR 386.72, 392.5, 392.9a, 395.13, or 396.9, or comparable laws,  
207 or the North American Standard Out-of-Service Criteria;

208 (40) "School bus", a commercial motor vehicle used to transport  
209 preprimary, primary, or secondary school students from home to school, from  
210 school to home, or to and from school-sponsored events. School bus does not  
211 include a bus used as a common carrier as defined by the Secretary;

212 (41) "Secretary", the Secretary of Transportation of the United States;

213 (42) "Serious traffic violation", driving a commercial motor vehicle in such  
214 a manner that the driver receives a conviction for the following offenses or driving  
215 a noncommercial motor vehicle when the driver receives a conviction for the  
216 following offenses and the conviction results in the suspension or revocation of  
217 the driver's license or noncommercial motor vehicle driving privilege:

218 (a) Excessive speeding, as defined by the Secretary by regulation;

219 (b) Careless, reckless or imprudent driving which includes, but shall not  
220 be limited to, any violation of section 304.016, any violation of section 304.010,  
221 or any other violation of federal or state law, or any county or municipal  
222 ordinance while driving a commercial motor vehicle in a willful or wanton  
223 disregard for the safety of persons or property, or improper or erratic traffic lane

224 changes, or following the vehicle ahead too closely, but shall not include careless  
225 and imprudent driving by excessive speed;

226 (c) A violation of any federal or state law or county or municipal ordinance  
227 regulating the operation of motor vehicles arising out of an accident or collision  
228 which resulted in death to any person, other than a parking violation;

229 (d) Driving a commercial motor vehicle without obtaining a commercial  
230 driver's license in violation of any federal or state or county or municipal  
231 ordinance;

232 (e) Driving a commercial motor vehicle without a commercial driver's  
233 license in the driver's possession in violation of any federal or state or county or  
234 municipal ordinance. Any individual who provides proof to the court which has  
235 jurisdiction over the issued citation that the individual held a valid commercial  
236 driver's license on the date that the citation was issued shall not be guilty of this  
237 offense;

238 (f) Driving a commercial motor vehicle without the proper commercial  
239 driver's license class or endorsement for the specific vehicle group being operated  
240 or for the passengers or type of cargo being transported in violation of any federal  
241 or state law or county or municipal ordinance;

242 (g) Violating a state or local law or ordinance on motor vehicle traffic  
243 control prohibiting texting while driving a commercial motor vehicle;

244 (h) Violating a state or local law or ordinance on motor vehicle traffic  
245 control restricting or prohibiting the use of a hand-held mobile telephone while  
246 driving a commercial motor vehicle; or

247 (i) Any other violation of a federal or state law or county or municipal  
248 ordinance regulating the operation of motor vehicles, other than a parking  
249 violation, as prescribed by the Secretary by regulation;

250 (43) "State", a state of the United States, including the District of  
251 Columbia;

252 (44) "Tank vehicle", any commercial motor vehicle that is designed to  
253 transport any liquid or gaseous materials within a tank or tanks having an  
254 individual rated capacity of more than one hundred nineteen gallons and an  
255 aggregate rated capacity of one thousand gallons or more that is either  
256 permanently or temporarily attached to the vehicle or the chassis. A commercial  
257 motor vehicle transporting an empty storage container tank, not designed for  
258 transportation, with a rated capacity of one thousand gallons or more, that is  
259 temporarily attached to a flatbed trailer is not considered a tank vehicle;

260 (45) "Texting", manually entering alphanumeric text into, or reading text  
261 from, an electronic device. This action includes but is not limited to short  
262 message service, emailing, instant messaging, commanding or requesting access  
263 to a website, pressing more than a single button to initiate or terminate a voice  
264 communication using a mobile telephone, or engaging in any other form of  
265 electronic text retrieval or entry, for present or future communication. Texting  
266 does not include:

267 (a) Inputting, selecting, or reading information on a global positioning  
268 system or navigation system;

269 (b) Pressing a single button to initiate or terminate a voice communication  
270 using a mobile telephone; or

271 (c) Using a device capable of performing multiple functions (e.g., fleet  
272 management systems, dispatching devices, smart phones, citizens band radios,  
273 music players) for a purpose that is not otherwise prohibited in this part;

274 (46) "United States", the fifty states and the District of Columbia.

304.585. 1. A person shall be deemed to commit the offense of  
2 "endangerment of a highway worker" upon conviction for any of the following  
3 when the offense occurs within a construction zone or work zone, as defined in  
4 section 304.580:

5 (1) Exceeding the posted speed limit by fifteen miles per hour or more;

6 (2) Passing in violation of subsection 4 of section 304.582;

7 (3) Failure to stop for a work zone flagman or failure to obey traffic  
8 control devices erected in the construction zone or work zone for purposes of  
9 controlling the flow of motor vehicles through the zone;

10 (4) Driving through or around a work zone by any lane not clearly  
11 designated to motorists for the flow of traffic through or around the work zone;

12 (5) Physically assaulting, or attempting to assault, or threatening to  
13 assault a highway worker in a construction zone or work zone, with a motor  
14 vehicle or other instrument;

15 (6) Intentionally striking, moving, or altering barrels, barriers, signs, or  
16 other devices erected to control the flow of traffic to protect workers and motorists  
17 in the work zone for a reason other than avoidance of an obstacle, an emergency,  
18 or to protect the health and safety of an occupant of the motor vehicle or of  
19 another person; or

20 (7) Committing any of the following offenses for which points may be  
21 assessed under section 302.302:

- 22 (a) Leaving the scene of an accident in violation of section 577.060;
- 23 (b) Careless and imprudent driving in violation of subsection 4 of section
- 24 304.016;
- 25 (c) Operating without a valid license in violation of subdivision (1) or (2)
- 26 of subsection 1 of section 302.020;
- 27 (d) Operating with a suspended or revoked license;
- 28 (e) Driving while in an intoxicated condition or under the influence of
- 29 controlled substances or drugs or driving with [an excessive] **prohibited** blood
- 30 alcohol **or drug** content;
- 31 (f) Any felony involving the use of a motor vehicle.

32 2. Upon conviction or a plea of guilty for committing the offense of

33 endangerment of a highway worker under subsection 1 of this section if no injury

34 or death to a highway worker resulted from the offense, in addition to any other

35 penalty authorized by law, the person shall be subject to a fine of not more than

36 one thousand dollars and shall have four points assessed to his or her driver's

37 license under section 302.302.

38 3. A person shall be deemed to commit the offense of "aggravated

39 endangerment of a highway worker" upon conviction or a plea of guilty for any

40 offense under subsection 1 of this section when such offense occurs in a

41 construction zone or work zone as defined in section 304.580 and results in the

42 injury or death of a highway worker. Upon conviction or a plea of guilty for

43 committing the offense of aggravated endangerment of a highway worker, in

44 addition to any other penalty authorized by law, the person shall be subject to a

45 fine of not more than five thousand dollars if the offense resulted in injury to a

46 highway worker and ten thousand dollars if the offense resulted in death to a

47 highway worker. In addition, such person shall have twelve points assessed to

48 their driver's license under section 302.302 and shall be subject to the provisions

49 of section 302.304 regarding the revocation of the person's license and driving

50 privileges.

51 4. Except for the offense established under subdivision (6) of subsection

52 1 of this section, no person shall be deemed to commit the offense of

53 endangerment of a highway worker except when the act or omission constituting

54 the offense occurred when one or more highway workers were in the construction

55 zone or work zone.

56 5. No person shall be cited or convicted for endangerment of a highway

57 worker or aggravated endangerment of a highway worker, for any act or omission

58 otherwise constituting an offense under subsection 1 of this section, if such act  
59 or omission resulted in whole or in part from mechanical failure of the person's  
60 vehicle or from the negligence of another person or a highway worker.

61           6. (1) Notwithstanding any provision of this section or any other law to  
62 the contrary, the director of the department of revenue or his or her agent shall  
63 order the revocation of a driver's license upon its determination that an  
64 individual holding such license was involved in a physical accident where his or  
65 her negligent acts or omissions contributed to his or her vehicle striking a  
66 highway worker within a designated construction zone or work zone where  
67 department of transportation guidelines involving notice and signage were  
68 properly implemented. The department shall make its determination of these  
69 facts on the basis of the report of a law enforcement officer investigating the  
70 incident and this determination shall be final unless a hearing is requested and  
71 held as provided under subdivision (2) of this subsection. Upon its determination  
72 that the facts support a license revocation, the department shall issue a notice of  
73 revocation which shall be mailed to the person at the last known address shown  
74 on the department's records. The notice is deemed received three days after  
75 mailing unless returned by postal authorities. The notice of revocation shall  
76 clearly specify the reason and statutory grounds for the revocation, the effective  
77 date of the revocation which shall be at least fifteen days from the date the  
78 department issued its order, the right of the person to request a hearing, and the  
79 date by which the request for a hearing must be made.

80           (2) An individual who received notice of revocation from the department  
81 under this section may seek reinstatement by either:

82           (a) Taking and passing the written and driving portions of the driver's  
83 license examination, in which case the individual's driver's license shall be  
84 immediately reinstated; or

85           (b) Petitioning for a hearing before a circuit division or associate division  
86 of the court in the county in which the work zone accident occurred. The  
87 individual may request such court to issue an order staying the revocation until  
88 such time as the petition for review can be heard. If the court, in its discretion,  
89 grants such stay, it shall enter the order upon a form prescribed by the director  
90 of revenue and shall send a copy of such order to the director. Such order shall  
91 serve as proof of the privilege to operate a motor vehicle in this state, and the  
92 director shall maintain possession of the person's license to operate a motor  
93 vehicle until the termination of any suspension under this subsection. The clerk

94 of the court shall notify the prosecuting attorney of the county, and the prosecutor  
95 shall appear at the hearing on behalf of the director of revenue. At the hearing,  
96 the court shall determine only:

97 a. Whether the person was involved in a physical accident where his or  
98 her vehicle struck a highway worker within a designated construction or work  
99 zone;

100 b. Whether the department of transportation guidelines involving notice  
101 and signage were properly implemented in such work zone; and

102 c. Whether the investigating officer had probable cause to believe the  
103 person's negligent acts or omissions contributed to his or her vehicle striking a  
104 highway worker.

105 If the court determines subparagraph a., b., or c. of this paragraph not to be in  
106 the affirmative, the court shall order the director to reinstate the license or  
107 permit to drive.

108 (3) The department of revenue administrative adjudication to reinstate  
109 a driver's license that was revoked under this subsection, and any evidence  
110 provided to the department related to such adjudication, shall not be produced  
111 by subpoena or any other means and made available as evidence in any other  
112 administrative action, civil case, or criminal prosecution. The court's  
113 determinations issued under this section, and the evidence provided to the court  
114 relating to such determinations, shall not be produced by subpoena or any other  
115 means and made available in any other administrative action, civil case, or  
116 criminal prosecution. Nothing in this subdivision shall be construed to prevent  
117 the department from providing information to the system authorized under 49  
118 U.S.C. Section 31309, or any successor federal law, pertaining to the licensing,  
119 identification, and disqualification of operators of commercial motor vehicles.

478.007. 1. Any circuit court may establish a DWI court within the  
2 treatment court division to provide an alternative for the judicial system to  
3 dispose of cases in which a person has pleaded guilty to driving while intoxicated  
4 or driving with [excessive] **prohibited** blood alcohol **or drug** 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 person's  
7 blood; or

8 (2) The person has previously pleaded guilty to or has been found guilty  
9 of one or more intoxication-related traffic offenses as defined by section 577.001;  
10 or

11 (3) The person has two or more previous alcohol-related enforcement  
12 contacts as defined in section 302.525.

13 2. This court shall combine judicial supervision, drug or alcohol testing,  
14 continuous alcohol monitoring, or verifiable breath alcohol testing, substance  
15 abuse traffic offender program compliance, and treatment of DWI court  
16 participants. The court may assess any and all necessary costs for participation  
17 in DWI court against the participant. Any money received from such assessed  
18 costs by a court from a defendant shall not be considered court costs, charges, or  
19 fines. This court shall operate in conjunction with a treatment court established  
20 pursuant to sections 478.001 to 478.009.

21 3. If the division of probation and parole is otherwise unavailable to assist  
22 in the judicial supervision of any person who wishes to enter a DWI court, a  
23 court-approved private probation service may be utilized by the DWI court to fill  
24 the division's role. In such case, any and all necessary additional costs may be  
25 assessed against the participant. No person shall be rejected from participating  
26 in DWI court solely for the reason that the person does not reside in the city or  
27 county where the applicable DWI court is located but the DWI court can base  
28 acceptance into a treatment court program on its ability to adequately provide  
29 services for the person or handle the additional caseload.

544.155. 1. Any member of a duly organized state, county, or municipal  
2 peace unit of another state of the United States who enters this state in fresh  
3 pursuit, and continues within this state in such fresh pursuit, of a person in order  
4 to arrest such person on the ground that such person is believed to have  
5 committed a felony or the crime of driving while intoxicated or driving with  
6 [excessive] **prohibited** blood alcohol **or drug** content in such other state, shall  
7 have the same authority to arrest and hold such person in custody, as has any  
8 member of any duly organized state, county, or municipal peace unit of this state,  
9 to arrest and hold in custody a person on the ground that such person is believed  
10 to have committed a felony or the crime of driving while intoxicated or driving  
11 with [excessive] **prohibited** blood alcohol **or drug** content in this state;  
12 provided, the rights extended by this subsection shall be extended only to those  
13 states granting these same rights to peace officers of this state who may be in  
14 fresh pursuit of suspected criminals in such reciprocating states.

15 2. If an arrest is made in this state by an officer of another state in  
16 accordance with the provisions of subsection 1 of this section, the arresting officer  
17 shall, without unnecessary delay, take the person arrested before a judge of a

18 court of competent jurisdiction in the county in which the arrest was made, who  
19 shall conduct a hearing for the purpose of determining the lawfulness of the  
20 arrest. If the judge determines that the arrest was lawful, the judge shall order  
21 the person arrested to await, for a reasonable time, the issuance of an extradition  
22 warrant by the governor of this state, or admit such person to bail for such  
23 purpose. If the judge determines that the arrest was unlawful the judge shall  
24 discharge the person arrested.

25 3. Subsection 1 of this section shall not be construed so as to make  
26 unlawful any arrest in this state which would otherwise be lawful.

27 4. For the purpose of this section, the word "state" includes the District  
28 of Columbia.

29 5. The term "fresh pursuit", as used in this section, includes fresh pursuit  
30 as defined by the common law, and also the pursuit of a person who has  
31 committed a felony or the crime of driving while intoxicated or driving with  
32 [excessive] **prohibited** blood alcohol **or drug** content or who is reasonably  
33 suspected of having committed a felony or the crime of driving while intoxicated  
34 or driving with [excessive] **prohibited** blood alcohol **or drug** content. It shall  
35 also include the pursuit of a person suspected of having committed a supposed  
36 felony or the crime of driving while intoxicated or driving with [excessive]  
37 **prohibited** blood alcohol **or drug** content, though no felony or the crime of  
38 driving while intoxicated or driving with [excessive] **prohibited** blood alcohol **or**  
39 **drug** content has actually been committed, if there is reasonable ground for  
40 believing that a felony or the crime of driving while intoxicated or driving with  
41 [excessive] **prohibited** blood alcohol **or drug** content has been  
42 committed. Fresh pursuit, as used therein, shall not necessarily imply instant  
43 pursuit, but pursuit without unreasonable delay.

44 6. This section may be cited as the "Uniform Law on Fresh Pursuit".

577.001. As used in this chapter, the following terms mean:

2 (1) "Aggravated offender", a person who has been found guilty of:

3 (a) Three or more intoxication-related traffic offenses committed on  
4 separate occasions; or

5 (b) Two or more intoxication-related traffic offenses committed on separate  
6 occasions where at least one of the intoxication-related traffic offenses is an  
7 offense committed in violation of any state law, county or municipal ordinance,  
8 any federal offense, or any military offense in which the defendant was operating  
9 a vehicle while intoxicated and another person was injured or killed;

- 10 (2) "Aggravated boating offender", a person who has been found guilty of:  
11 (a) Three or more intoxication-related boating offenses; or  
12 (b) Two or more intoxication-related boating offenses committed on  
13 separate occasions where at least one of the intoxication-related boating offenses  
14 is an offense committed in violation of any state law, county or municipal  
15 ordinance, any federal offense, or any military offense in which the defendant was  
16 operating a vessel while intoxicated and another person was injured or killed;
- 17 (3) "All-terrain vehicle", any motorized vehicle manufactured and used  
18 exclusively for off-highway use which is fifty inches or less in width, with an  
19 unladen dry weight of one thousand pounds or less, traveling on three, four or  
20 more low pressure tires, with a seat designed to be straddled by the operator, or  
21 with a seat designed to carry more than one person, and handlebars for steering  
22 control;
- 23 (4) "Court", any circuit, associate circuit, or municipal court, including  
24 traffic court, but not any juvenile court or treatment court;
- 25 (5) "Chronic offender", a person who has been found guilty of:  
26 (a) Four or more intoxication-related traffic offenses committed on  
27 separate occasions; or  
28 (b) Three or more intoxication-related traffic offenses committed on  
29 separate occasions where at least one of the intoxication-related traffic offenses  
30 is an offense committed in violation of any state law, county or municipal  
31 ordinance, any federal offense, or any military offense in which the defendant was  
32 operating a vehicle while intoxicated and another person was injured or killed;  
33 or  
34 (c) Two or more intoxication-related traffic offenses committed on separate  
35 occasions where both intoxication-related traffic offenses were offenses committed  
36 in violation of any state law, county or municipal ordinance, any federal offense,  
37 or any military offense in which the defendant was operating a vehicle while  
38 intoxicated and another person was injured or killed;
- 39 (6) "Chronic boating offender", a person who has been found guilty of:  
40 (a) Four or more intoxication-related boating offenses; or  
41 (b) Three or more intoxication-related boating offenses committed on  
42 separate occasions where at least one of the intoxication-related boating offenses  
43 is an offense committed in violation of any state law, county or municipal  
44 ordinance, any federal offense, or any military offense in which the defendant was  
45 operating a vessel while intoxicated and another person was injured or killed; or

46 (c) Two or more intoxication-related boating offenses committed on  
47 separate occasions where both intoxication-related boating offenses were offenses  
48 committed in violation of any state law, county or municipal ordinance, any  
49 federal offense, or any military offense in which the defendant was operating a  
50 vessel while intoxicated and another person was injured or killed;

51 (7) "Continuous alcohol monitoring", automatically testing breath, blood,  
52 or transdermal alcohol concentration levels and tampering attempts at least once  
53 every hour, regardless of the location of the person who is being monitored, and  
54 regularly transmitting the data. Continuous alcohol monitoring shall be  
55 considered an electronic monitoring service under subsection 3 of section 217.690;

56 (8) "Controlled substance", a drug, substance, or immediate precursor in  
57 schedules I to V listed in section 195.017;

58 (9) "Drive", "driving", "operates" or "operating", physically driving or  
59 operating a vehicle or vessel;

60 (10) "Flight crew member", the pilot in command, copilots, flight  
61 engineers, and flight navigators;

62 (11) "Habitual offender", a person who has been found guilty of:

63 (a) Five or more intoxication-related traffic offenses committed on  
64 separate occasions; or

65 (b) Four or more intoxication-related traffic offenses committed on  
66 separate occasions where at least one of the intoxication-related traffic offenses  
67 is an offense committed in violation of any state law, county or municipal  
68 ordinance, any federal offense, or any military offense in which the defendant was  
69 operating a vehicle while intoxicated and another person was injured or killed;  
70 or

71 (c) Three or more intoxication-related traffic offenses committed on  
72 separate occasions where at least two of the intoxication-related traffic offenses  
73 were offenses committed in violation of any state law, county or municipal  
74 ordinance, any federal offense, or any military offense in which the defendant was  
75 operating a vehicle while intoxicated and another person was injured or killed;

76 (12) "Habitual boating offender", a person who has been found guilty of:

77 (a) Five or more intoxication-related boating offenses; or

78 (b) Four or more intoxication-related boating offenses committed on  
79 separate occasions where at least one of the intoxication-related boating offenses  
80 is an offense committed in violation of any state law, county or municipal  
81 ordinance, any federal offense, or any military offense in which the defendant was

- 82 operating a vessel while intoxicated and another person was injured or killed; or  
83 (c) Three or more intoxication-related boating offenses committed on  
84 separate occasions where at least two of the intoxication-related boating offenses  
85 were offenses committed in violation of any state law, county or municipal  
86 ordinance, any federal offense, or any military offense in which the defendant was  
87 operating a vessel while intoxicated and another person was injured or killed; or  
88 (d) While boating while intoxicated, the defendant acted with criminal  
89 negligence to:
- 90 a. Cause the death of any person not a passenger in the vessel operated  
91 by the defendant, including the death of an individual that results from the  
92 defendant's vessel leaving the water; or  
93 b. Cause the death of two or more persons; or  
94 c. Cause the death of any person while he or she has a blood alcohol  
95 content of at least eighteen-hundredths of one percent by weight of alcohol in  
96 such person's blood;
- 97 (13) "Intoxicated" or "intoxicated condition", when a person is under the  
98 influence of alcohol, a controlled substance, or drug, or any combination thereof;  
99 (14) "Intoxication-related boating offense", operating a vessel while  
100 intoxicated; boating while intoxicated; operating a vessel with excessive blood  
101 alcohol content or an offense in which the defendant was operating a vessel while  
102 intoxicated and another person was injured or killed in violation of any state law,  
103 county or municipal ordinance, any federal offense, or any military offense;
- 104 (15) "Intoxication-related traffic offense", driving while intoxicated,  
105 driving with [excessive] **prohibited** blood alcohol **or drug** content, driving  
106 under the influence of alcohol or drugs in violation of a state law, county or  
107 municipal ordinance, any federal offense, or any military offense, or an offense in  
108 which the defendant was operating a vehicle while intoxicated and another person  
109 was injured or killed in violation of any state law, county or municipal ordinance,  
110 any federal offense, or any military offense;
- 111 (16) "Law enforcement officer" or "arresting officer", includes the  
112 definition of law enforcement officer in section 556.061 and military policemen  
113 conducting traffic enforcement operations on a federal military installation under  
114 military jurisdiction in the state of Missouri;
- 115 (17) "Operate a vessel", to physically control the movement of a vessel in  
116 motion under mechanical or sail power in water;
- 117 (18) "Persistent offender", a person who has been found guilty of:

118 (a) Two or more intoxication-related traffic offenses committed on separate  
119 occasions; or

120 (b) One intoxication-related traffic offense committed in violation of any  
121 state law, county or municipal ordinance, federal offense, or military offense in  
122 which the defendant was operating a vehicle while intoxicated and another person  
123 was injured or killed;

124 (19) "Persistent boating offender", a person who has been found guilty of:

125 (a) Two or more intoxication-related boating offenses committed on  
126 separate occasions; or

127 (b) One intoxication-related boating offense committed in violation of any  
128 state law, county or municipal ordinance, federal offense, or military offense in  
129 which the defendant was operating a vessel while intoxicated and another person  
130 was injured or killed;

131 (20) "Prior offender", a person who has been found guilty of one  
132 intoxication-related traffic offense, where such prior offense occurred within five  
133 years of the occurrence of the intoxication-related traffic offense for which the  
134 person is charged;

135 (21) "Prior boating offender", a person who has been found guilty of one  
136 intoxication-related boating offense, where such prior offense occurred within five  
137 years of the occurrence of the intoxication-related boating offense for which the  
138 person is charged.

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 the vehicle.** As used in this section, percent by  
18 weight of alcohol in the blood shall be based upon grams of alcohol per one  
19 hundred milliliters of blood or two hundred ten liters of breath and may be shown  
20 by chemical analysis of the person's blood, breath, saliva or urine. For the  
21 purposes of determining the alcoholic content of a person's blood under this  
22 section, the test shall be conducted in accordance with the provisions of sections  
23 577.020 to 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.**

577.021. 1. Any state, county or municipal law enforcement officer who  
2 is certified pursuant to chapter 590 may, prior to arrest, administer a chemical  
3 test to any person suspected of operating a [vehicle,] vessel[,] or aircraft or acting  
4 as a flight crew member of an aircraft while in an intoxicated condition or with  
5 an excessive blood alcohol content, **or operating a vehicle while in an**  
6 **intoxicated condition or with prohibited blood alcohol or drug content.**

7 2. Any state, county, or municipal law enforcement officer who is certified  
8 under chapter 590 shall make all reasonable efforts to administer a chemical test  
9 to any person suspected of operating a vehicle or vessel involved in a collision or  
10 accident which resulted in a fatality or serious physical injury as defined in  
11 section 556.061.

12 3. A test administered pursuant to this section shall be admissible as  
13 evidence of probable cause to arrest and as exculpatory evidence, but shall not be  
14 admissible as evidence of blood alcohol **or drug** content. The provisions of  
15 sections 577.019 and 577.020 shall not apply to a test administered prior to arrest  
16 pursuant to this section.

577.037. 1. Upon the trial of any person for any criminal offense or  
2 violations of county or municipal ordinances, or in any license suspension or  
3 revocation proceeding pursuant to the provisions of chapter 302, arising out of  
4 acts alleged to have been committed by any person while operating a vehicle,  
5 vessel, or aircraft, or acting as a flight crew member of any aircraft, while in an  
6 intoxicated condition or with an excessive blood alcohol content **or prohibited**  
7 **blood alcohol or drug content**, the amount of alcohol **or a controlled**  
8 **substance** in the person's blood at the time of the act, as shown by any chemical  
9 analysis of the person's blood, breath, saliva, or urine, is admissible in evidence  
10 and the provisions of subdivision (5) of section 491.060 shall not prevent the

11 admissibility or introduction of such evidence if otherwise admissible.

12           2. If a chemical analysis of the defendant's breath, blood, saliva, or urine  
13 demonstrates there was **any amount of a controlled substance or was**  
14 eight-hundredths of one percent or more by weight of alcohol in the person's  
15 blood, this shall be prima facie evidence that the person was intoxicated at the  
16 time the specimen was taken. If a chemical analysis of the defendant's breath,  
17 blood, saliva, or urine demonstrates that there was less than eight-hundredths  
18 of one percent of alcohol in the defendant's blood, any charge alleging a criminal  
19 offense related to the operation of a vehicle, vessel, or aircraft while in an  
20 intoxicated condition shall be dismissed with prejudice unless one or more of the  
21 following considerations cause the court to find a dismissal unwarranted:

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

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

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

30           3. Percent by weight of alcohol in the blood shall be based upon grams of  
31 alcohol per one hundred milliliters of blood or grams of alcohol per two hundred  
32 ten liters of breath.

33           4. The foregoing provisions of this section shall not be construed as  
34 limiting the introduction of any other competent evidence bearing upon the  
35 question of whether the person was intoxicated.

36           5. A chemical analysis of a person's breath, blood, saliva or urine, in order  
37 to give rise to the presumption or to have the effect provided for in subsection 2  
38 of this section, shall have been performed as provided in sections 577.020 to  
39 577.041 and in accordance with methods and standards approved by the state  
40 department of health and senior services.

✓