

FIRST REGULAR SESSION

# HOUSE BILL NO. 663

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES LIPKE AND GOODMAN (Co-sponsors).

Read 1<sup>st</sup> time March 12, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2069L.011

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### AN ACT

To repeal section 577.041, RSMo, and to enact in lieu thereof one new section relating to intoxication-related traffic offenses.

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

Section A. Section 577.041, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 577.041, to read as follows:

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

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

17 petition for review to contest the license revocation.

18           2. The officer shall make a sworn report to the director of revenue, which shall include  
19 the following:

20           (1) That the officer has:

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

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

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

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

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

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

33           (5) Copies of the notice of revocation, the fifteen-day temporary permit and the notice  
34 of the right to file a petition for review, which notices and permit may be combined in one  
35 document; [and]

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

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

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

53 (1) Whether or not the person was arrested or stopped;

54 (2) Whether or not the officer had:

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

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

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

64 (3) Whether or not the person refused to submit to the test.

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

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

69 7. No person who has had a license to operate a motor vehicle suspended or revoked  
70 pursuant to the provisions of this section shall have that license reinstated until such person has  
71 participated in and successfully completed a substance abuse traffic offender program defined  
72 in section 577.001, or a program determined to be comparable by the department or the court.  
73 Assignment recommendations, based upon the needs assessment as described in subdivision (22)  
74 of section 302.010, RSMo, shall be delivered in writing to the person with written notice that the  
75 person is entitled to have such assignment recommendations reviewed by the court if the person  
76 objects to the recommendations. The person may file a motion in the associate division of the  
77 circuit court of the county in which such assignment was given, on a printed form provided by  
78 the state courts administrator, to have the court hear and determine such motion pursuant to the  
79 provisions of chapter 517, RSMo. The motion shall name the person or entity making the needs  
80 assessment as the respondent and a copy of the motion shall be served upon the respondent in  
81 any manner allowed by law. Upon hearing the motion, the court may modify or waive any  
82 assignment recommendation that the court determines to be unwarranted based upon a review  
83 of the needs assessment, the person's driving record, the circumstances surrounding the offense,  
84 and the likelihood of the person committing a like offense in the future, except that the court may  
85 modify but may not waive the assignment to an education or rehabilitation program of a person  
86 determined to be a prior or persistent offender as defined in section 577.023, or of a person  
87 determined to have operated a motor vehicle with fifteen-hundredths of one percent or more by  
88 weight in such person's blood. Compliance with the court determination of the motion shall

89 satisfy the provisions of this section for the purpose of reinstating such person's license to operate  
90 a motor vehicle. The respondent's personal appearance at any hearing conducted pursuant to this  
91 subsection shall not be necessary unless directed by the court.

92         8. The fees for the substance abuse traffic offender program, or a portion thereof to be  
93 determined by the division of alcohol and drug abuse of the department of mental health, shall  
94 be paid by the person enrolled in the program. Any person who is enrolled in the program shall  
95 pay, in addition to any fee charged for the program, a supplemental fee of sixty dollars. The  
96 administrator of the program shall remit to the division of alcohol and drug abuse of the  
97 department of mental health the supplemental fee for all persons enrolled in the program, less  
98 two percent for administrative costs. The supplemental fees received by the department of  
99 mental health pursuant to this section shall be deposited in the mental health earnings fund which  
100 is created in section 630.053, RSMo.

101         **9. Even though a person has refused to submit to any test allowed pursuant to**  
102 **subdivision (2) or (3) of subsection 1 of section 577.020, blood, saliva, or urine may still be**  
103 **collected from such person if the officer has a valid search warrant for such blood, saliva,**  
104 **or urine. The fact that such evidence was obtained through the use of a search warrant**  
105 **does not negate the person's refusal to submit to any test and such person shall still have**  
106 **his or her license revoked pursuant to subsection 3 of this section for refusal to submit to**  
107 **any test.**