

SECOND REGULAR SESSION

HOUSE BILL NO. 1133

92ND GENERAL ASSEMBLY

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

Read 1st time January 15, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3742L.011

AN ACT

To repeal sections 302.060, 302.309, 302.321, 302.541, 577.023, 577.041, and 577.500, RSMo, and to enact in lieu thereof seven new sections relating to intoxication-related traffic offenses, with penalty provisions.

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

Section A. Sections 302.060, 302.309, 302.321, 302.541, 577.023, 577.041, and 577.500, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 302.060, 302.309, 302.321, 302.541, 577.023, 577.041, and 577.500, to read as follows:

302.060. The director shall not issue any license and shall immediately deny any driving privilege:

(1) To any person who is under the age of eighteen years, if such person operates a motor vehicle in the transportation of persons or property as classified in section 302.015;

(2) To any person who is under the age of sixteen years, except as hereinafter provided;

(3) To any person whose license has been suspended, during such suspension, or to any person whose license has been revoked, until the expiration of one year after such license was revoked;

(4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;

(5) To any person who has previously been adjudged to be incapacitated and who at the time of application has not been restored to partial capacity;

(6) To any person who, when required by this law to take an examination, has failed to pass such examination;

(7) To any person who has an unsatisfied judgment against such person, as defined in

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.

15 chapter 303, RSMo, until such judgment has been satisfied or the financial responsibility of such
16 person, as defined in section 303.120, RSMo, has been established;

17 (8) To any person whose application shows that the person has been convicted within
18 one year prior to such application of violating the laws of this state relating to failure to stop after
19 an accident and to disclose the person's identity or driving a motor vehicle without the owner's
20 consent;

21 (9) To any person who has been convicted more than twice of violating state law, or a
22 county or municipal ordinance where [the judge in such cases was an attorney and] the defendant
23 was represented by or waived the right to an attorney in writing, relating to [driving while
24 intoxicated] **an intoxication-related traffic offense as defined in section 577.023, RSMo**;
25 except that, after the expiration of ten years from the date of conviction of the last offense of
26 violating such law or ordinance relating to [driving while intoxicated] **an intoxication-related**
27 **traffic offense as defined in section 577.023, RSMo**, a person who was so convicted may
28 petition the circuit court of the county in which such last conviction was rendered and the court
29 shall review the person's habits and conduct since such conviction. If the court finds that the
30 petitioner has not been convicted of any **intoxication-related traffic** offense [related to alcohol,
31 controlled substances or drugs] **as defined in section 577.023, RSMo**, during the preceding ten
32 years and that the petitioner's habits and conduct show such petitioner to no longer pose a threat
33 to the public safety of this state, the court may order the director to issue a license to the
34 petitioner if the petitioner is otherwise qualified pursuant to the provisions of sections 302.010
35 to 302.540. No person may obtain a license pursuant to the provisions of this subdivision
36 through court action more than one time;

37 (10) To any person who has been convicted twice within a five-year period of violating
38 state law, or a county or municipal ordinance where [the judge in such cases was an attorney and]
39 the defendant was represented by or waived the right to an attorney in writing, [of driving while
40 intoxicated] **relating to an intoxication-related traffic offense as defined in section 577.023,**
41 **RSMo**, or who has been convicted **once within a five-year period** of the crime of involuntary
42 manslaughter while operating a motor vehicle in an intoxicated condition. The director shall not
43 issue a license to such person for five years from the date such person was convicted for
44 involuntary manslaughter while operating a motor vehicle in an intoxicated condition or [for
45 driving while intoxicated] for the second time **for an intoxication-related traffic offense as**
46 **defined in section 577.023, RSMo**. Any person who has been denied a license for two
47 convictions of [driving while intoxicated] **an intoxication-related traffic offense as defined**
48 **in section 577.023, RSMo**, prior to July 27, 1989, shall have the person's license issued, upon
49 application, unless the two convictions occurred within a five-year period, in which case, no
50 license shall be issued to the person for five years from the date of the second conviction;

51 (11) To any person who is otherwise disqualified pursuant to the provisions of sections
52 302.010 to 302.780, chapter 303, RSMo, or section 544.046, RSMo;

53 (12) To any person who is under the age of eighteen years, if such person's parents or
54 legal guardians file a certified document with the department of revenue stating that the director
55 shall not issue such person a driver's license. Each document filed by the person's parents or
56 legal guardians shall be made upon a form furnished by the director and shall include identifying
57 information of the person for whom the parents or legal guardians are denying the driver's
58 license. The document shall also contain identifying information of the person's parents or legal
59 guardians. The document shall be certified by the parents or legal guardians to be true and
60 correct. This provision shall not apply to any person who is legally emancipated. The parents
61 or legal guardians may later file an additional document with the department of revenue which
62 reinstates the person's ability to receive a driver's license.

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

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

7 3. (1) All circuit courts or the director of revenue shall have jurisdiction to hear
8 applications and make eligibility determinations granting limited driving privileges. Any
9 application may be made in writing to the director of revenue and the person's reasons for
10 requesting the limited driving privilege shall be made therein.

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

- 13 (a) A business, occupation, or employment;
- 14 (b) Seeking medical treatment for such operator;
- 15 (c) Attending school or other institution of higher education;
- 16 (d) Attending alcohol or drug treatment programs; or
- 17 (e) Any other circumstance the court or director finds would create an undue hardship
18 on the operator;

19
20 the court or director may grant such limited driving privilege as the circumstances of the case
21 justify if the court or director finds undue hardship would result to the individual, and while so
22 operating a motor vehicle within the restrictions and limitations of the limited driving privilege
23 the driver shall not be guilty of operating a motor vehicle without a valid license.

24 (3) An operator may make application to the proper court in the county in which such

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

40 (4) The court order or the director's grant of the limited driving privilege shall indicate
41 the termination date of the privilege, which shall be not later than the end of the period of
42 suspension or revocation. A copy of any court order shall be sent by the clerk of the court to the
43 director, and a copy shall be given to the driver which shall be carried by the driver whenever
44 such driver operates a motor vehicle. The director of revenue upon granting a limited driving
45 privilege shall give a copy of the limited driving privilege to the applicant. The applicant shall
46 carry a copy of the limited driving privilege while operating a motor vehicle. A conviction
47 which results in the assessment of points pursuant to section 302.302, other than a violation of
48 a municipal stop sign ordinance where no accident is involved, against a driver who is operating
49 a vehicle pursuant to a limited driving privilege terminates the privilege, as of the date the points
50 are assessed to the person's driving record. If the date of arrest is prior to the issuance of the
51 limited driving privilege, the privilege shall not be terminated. The director shall notify by
52 ordinary mail the driver whose privilege is so terminated.

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

57 (a) A conviction of violating the provisions of section 577.010 or 577.012, RSMo, or any
58 similar provision of any federal or state law, or a municipal or county law where [the judge in
59 such case was an attorney and] the defendant was represented by or waived the right to an
60 attorney in writing, until the person has completed the first thirty days of a suspension or

61 revocation imposed pursuant to this chapter;

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

63 (c) Ineligibility for a license because of the provisions of subdivision (1), (2), (4), (5),
64 (6), (7), (8), (9), (10) or (11) of section 302.060;

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

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

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

73 (g) Disqualification of a commercial driver's license pursuant to sections 302.700 to
74 302.780, however, nothing in this subsection shall prevent a person holding a commercial
75 driver's license who is suspended or revoked as a result of an action occurring while not driving
76 a commercial motor vehicle or driving for pay, but while driving in an individual capacity as an
77 operator of a personal vehicle from applying for a limited driving privilege to operate a
78 commercial vehicle, if otherwise eligible for such limited privilege; or

79 (h) Due to a suspension pursuant to subsection 2 of section 302.525 and who has not
80 completed the first thirty days of such suspension, provided the person is not otherwise ineligible
81 for a limited driving privilege; or due to a revocation pursuant to subsection 2 of section 302.525
82 if such person has not completed such revocation.

83 (6) (a) Provided that pursuant to the provisions of this section, the applicant is not
84 otherwise ineligible for a limited driving privilege, a circuit court or the director may, in the
85 manner prescribed in this subsection, allow a person who has had such person's license to operate
86 a motor vehicle revoked where that person cannot obtain a new license for a period of ten years,
87 as prescribed in subdivision (9) of section 302.060, to apply for a limited driving privilege
88 pursuant to this subsection if such person has served at least three years of such disqualification
89 or revocation. Such person shall present evidence satisfactory to the court or the director that
90 such person has not been convicted of any offense related to alcohol, controlled substances or
91 drugs during the preceding three years and that the person's habits and conduct show that the
92 person no longer poses a threat to the public safety of this state.

93 (b) Provided that pursuant to the provisions of this section, the applicant is not otherwise
94 ineligible for a limited driving privilege or convicted of involuntary manslaughter while
95 operating a motor vehicle in an intoxicated condition, a circuit court or the director may, in the
96 manner prescribed in this subsection, allow a person who has had such person's license to operate

97 a motor vehicle revoked where that person cannot obtain a new license for a period of five years
98 because of two convictions of [driving while intoxicated] **an intoxication-related traffic**
99 **offense as defined in section 577.023, RSMo**, as prescribed in subdivision (10) of section
100 302.060, to apply for a limited driving privilege pursuant to this subsection if such person has
101 served at least two years of such disqualification or revocation. Such person shall present
102 evidence satisfactory to the court or the director that such person has not been convicted of any
103 offense related to alcohol, controlled substances or drugs during the preceding two years and that
104 the person's habits and conduct show that the person no longer poses a threat to the public safety
105 of this state. Any person who is denied a license permanently in this state because of an
106 [alcohol-related conviction] **intoxication-related traffic offense as defined in section 577.023,**
107 **RSMo**, subsequent to a restoration of such person's driving privileges pursuant to subdivision
108 (9) of section 302.060 shall not be eligible for limited driving privilege pursuant to the provisions
109 of this subdivision.

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

117 5. The director of revenue shall promulgate rules and regulations necessary to carry out
118 the provisions of this section. Any rule or portion of a rule, as that term is defined in section
119 536.010, RSMo, that is created under the authority delegated in this section shall become
120 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,
121 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
122 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,
123 RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently
124 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
125 after August 28, 2001, shall be invalid and void.

302.321. 1. A person commits the crime of driving while revoked if [he] **such person**
2 operates a motor vehicle on a highway when [his] **such person's** license or driving privilege has
3 been canceled, suspended, or revoked under the laws of this state or any other state and acts with
4 criminal negligence with respect to knowledge of the fact that [his] **such person's** driving
5 privilege has been canceled, suspended, or revoked.

6 2. Any person convicted of driving while revoked is guilty of a class A misdemeanor.
7 Any person with no prior alcohol-related enforcement contacts as defined in section 302.525,

8 convicted a fourth or subsequent time of driving while revoked or a county or municipal
9 ordinance of driving while suspended or revoked where [the judge in such case was an attorney
10 and] the defendant was represented by or waived the right to an attorney in writing, and where
11 the prior three driving-while-revoked offenses occurred within ten years of the date of occurrence
12 of the present offense [and where the person received and served a sentence of ten days or more
13 on such previous offenses]; and any person with a prior alcohol-related enforcement contact as
14 defined in section 302.525, convicted a third or subsequent time of driving while revoked or a
15 county or municipal ordinance of driving while suspended or revoked where [the judge in such
16 case was an attorney and] the defendant was represented by or waived the right to an attorney in
17 writing, and where the prior two driving-while-revoked offenses occurred within ten years of the
18 date of occurrence of the present offense [and where the person received and served a sentence
19 of ten days or more on such previous offenses] is guilty of a class D felony. No court shall
20 suspend the imposition of sentence as to such a person nor sentence such person to pay a fine in
21 lieu of a term of imprisonment, nor shall such person be eligible for parole or probation until [he]
22 **such person** has served a minimum of forty-eight consecutive hours of imprisonment, unless as
23 a condition of such parole or probation, such person performs at least ten days involving at least
24 forty hours of community service under the supervision of the court in those jurisdictions which
25 have a recognized program for community service. Driving while revoked is a class D felony
26 on the second or subsequent conviction pursuant to section 577.010, RSMo, or a fourth or
27 subsequent conviction for any other offense.

302.541. 1. In addition to other fees required by law, any person who has had a license
2 to operate a motor vehicle suspended or revoked following a determination, pursuant to section
3 302.505, or section 577.010, 577.012, 577.041 or 577.510, RSMo, or any county or municipal
4 ordinance, where [the judge in such case was an attorney and] the defendant was represented by
5 or waived the right to an attorney, that such person was driving while intoxicated or with a blood
6 alcohol content of eight-hundredths of one percent or more by weight or, where such person was
7 at the time of the arrest less than twenty-one years of age and was driving with a blood alcohol
8 content of two-hundredths of one percent or more by weight, shall pay an additional fee of
9 twenty-five dollars prior to the reinstatement or reissuance of the license.

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

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

2 (1) An "intoxication-related traffic offense" is driving while intoxicated, driving with
3 excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) of
4 subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4)
5 of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second
6 degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo, or driving under
7 the influence of alcohol or drugs in violation of state law or a county or municipal ordinance,
8 where [the judge in such case was an attorney and] the defendant was represented by or waived
9 the right to an attorney in writing;

10 (2) A "persistent offender" is one of the following:

11 (a) A person who has pleaded guilty to or has been found guilty of two or more
12 intoxication-related traffic offenses, where such two or more offenses occurred within ten years
13 of the occurrence of the intoxication-related traffic offense for which the person is charged;

14 (b) A person who has pleaded guilty to or has been found guilty of involuntary
15 manslaughter pursuant to subsection 1 of section 565.024, RSMo, assault in the second degree
16 pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law
17 enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section
18 565.082, RSMo; and

19 (3) A "prior offender" is a person who has pleaded guilty to or has been found guilty of
20 one intoxication-related traffic offense, where such prior offense occurred within five years of
21 the occurrence of the intoxication-related traffic offense for which the person is charged.

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

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

28 4. No court shall suspend the imposition of sentence as to a prior or persistent offender
29 under this section nor sentence such person to pay a fine in lieu of a term of imprisonment,
30 section 557.011, RSMo, to the contrary notwithstanding. No prior offender shall be eligible for
31 parole or probation until he **or she** has served a minimum of five days imprisonment, unless as
32 a condition of such parole or probation such person performs at least [thirty days] **eighty hours**
33 of community service, **within six months** under the supervision of the court in those
34 jurisdictions which have a recognized program for community service. No persistent offender
35 shall be eligible for parole or probation until he or she has served a minimum of ten days
36 imprisonment, unless as a condition of such parole or probation such person performs at least
37 [sixty days] **one hundred sixty hours** of community service, **within one year**, under the

38 supervision of the court.

39 5. The court shall find the defendant to be a prior offender or persistent offender, if:

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

43 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding
44 beyond a reasonable doubt the defendant is a prior offender or persistent offender; and

45 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt
46 by the court that the defendant is a prior offender or persistent offender.

47 6. In a jury trial, the facts shall be pleaded, established and found prior to submission to
48 the jury outside of its hearing.

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

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

53 9. The defendant may waive proof of the facts alleged.

54 10. Nothing in this section shall prevent the use of presentence investigations or
55 commitments.

56 11. At the sentencing hearing both the state and the defendant shall be permitted to
57 present additional information bearing on the issue of sentence.

58 12. The pleas or findings of guilty shall be prior to the date of commission of the present
59 offense.

60 13. The court shall not instruct the jury as to the range of punishment or allow the jury,
61 upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of
62 prior offenders or persistent offenders.

63 14. Evidence of prior convictions shall be heard and determined by the trial court out of
64 the hearing of the jury prior to the submission of the case to the jury, and shall include but not
65 be limited to evidence of convictions received by a search of the records of the Missouri uniform
66 law enforcement system maintained by the Missouri state highway patrol. After hearing the
67 evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal
68 or county ordinance in a county or municipal court for driving while intoxicated or a conviction
69 or a plea of guilty or a finding of guilty followed by a suspended imposition of sentence,
70 suspended execution of sentence, probation or parole or any combination thereof in a state court
71 shall be treated as a prior conviction.

577.041. 1. **Except as provided in subsection 9 of this section,** if a person under
2 arrest, or who has been stopped pursuant to subdivision (2) or (3) of subsection 1 of section

3 577.020, refuses upon the request of the officer to submit to any test allowed pursuant to section
4 577.020, then none shall be given and evidence of the refusal shall be admissible in a proceeding
5 pursuant to section 565.024 or 565.060, RSMo, or section 577.010 or 577.012. The request of
6 the officer shall include the reasons of the officer for requesting the person to submit to a test and
7 also shall inform the person that evidence of refusal to take the test may be used against such
8 person and that the person's license shall be immediately revoked upon refusal to take the test.
9 If a person when requested to submit to any test allowed pursuant to section 577.020 requests
10 to speak to an attorney, the person shall be granted twenty minutes in which to attempt to contact
11 an attorney. If upon the completion of the twenty-minute period the person continues to refuse
12 to submit to any test, it shall be deemed a refusal. In this event, the officer shall, on behalf of the
13 director of revenue, serve the notice of license revocation personally upon the person and shall
14 take possession of any license to operate a motor vehicle issued by this state which is held by that
15 person. The officer shall issue a temporary permit, on behalf of the director of revenue, which
16 is valid for fifteen days and shall also give the person a notice of such person's right to file a
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 of mental
73 health or the court. Assignment recommendations, based upon the needs assessment as
74 described in subdivision (22) of section 302.010, RSMo, shall be delivered in writing to the

75 person with written notice that the person is entitled to have such assignment recommendations
76 reviewed by the court if the person objects to the recommendations. The person may file a
77 motion in the associate division of the circuit court of the county in which such assignment was
78 given, on a printed form provided by the state courts administrator, to have the court hear and
79 determine such motion pursuant to the provisions of chapter 517, RSMo. The motion shall name
80 the person or entity making the needs assessment as the respondent and a copy of the motion
81 shall be served upon the respondent in any manner allowed by law. Upon hearing the motion,
82 the court may modify or waive any assignment recommendation that the court determines to be
83 unwarranted based upon a review of the needs assessment, the person's driving record, the
84 circumstances surrounding the offense, and the likelihood of the person committing a like
85 offense in the future, except that the court may modify but may not waive the assignment to an
86 education or rehabilitation program of a person determined to be a prior or persistent offender
87 as defined in section 577.023, or of a person determined to have operated a motor vehicle with
88 fifteen-hundredths of one percent or more by weight in such person's blood. Compliance with
89 the court determination of the motion shall satisfy the provisions of this section for the purpose
90 of reinstating such person's license to operate a motor vehicle. The respondent's personal
91 appearance at any hearing conducted pursuant to this subsection shall not be necessary unless
92 directed by the court.

93 8. The fees for the substance abuse traffic offender program, or a portion thereof to be
94 determined by the division of alcohol and drug abuse of the department of mental health, shall
95 be paid by the person enrolled in the program. Any person who is enrolled in the program shall
96 pay, in addition to any fee charged for the program, a supplemental fee to be determined by the
97 department of mental health for the purposes of funding the substance abuse traffic offender
98 program defined in section 302.010, RSMo, and section 577.001. The administrator of the
99 program shall remit to the division of alcohol and drug abuse of the department of mental health
100 on or before the fifteenth day of each month the supplemental fee for all persons enrolled in the
101 program, less two percent for administrative costs. Interest shall be charged on any unpaid
102 balance of the supplemental fees due the division of alcohol and drug abuse pursuant to this
103 section and shall accrue at a rate not to exceed the annual rates established pursuant to the
104 provisions of section 32.065, RSMo, plus three percentage points. The supplemental fees and
105 any interest received by the department of mental health pursuant to this section shall be
106 deposited in the mental health earnings fund which is created in section 630.053, RSMo.

107 9. Any administrator who fails to remit to the division of alcohol and drug abuse of the
108 department of mental health the supplemental fees and interest for all persons enrolled in the
109 program pursuant to this section shall be subject to a penalty equal to the amount of interest
110 accrued on the supplemental fees due the division pursuant to this section. If the supplemental

111 fees, interest, and penalties are not remitted to the division of alcohol and drug abuse of the
112 department of mental health within six months of the due date, the attorney general of the state
113 of Missouri shall initiate appropriate action of the collection of said fees and interest accrued.
114 The court shall assess attorney fees and court costs against any delinquent program.

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

577.500. 1. A court of competent jurisdiction shall, upon a plea of guilty, conviction or
2 finding of guilt, or, if the court is a juvenile court, upon a finding of fact that the offense was
3 committed by a juvenile, enter an order suspending or revoking the driving privileges of any
4 person determined to have committed one of the following offenses and who, at the time said
5 offense was committed, was under twenty-one years of age:

6 (1) Any alcohol related traffic offense in violation of state law or a county or, beginning
7 July 1, 1992, municipal ordinance, where [the judge in such case was an attorney and] the
8 defendant was represented by or waived the right to an attorney in writing;

9 (2) Any offense in violation of state law or, beginning July 1, 1992, a county or
10 municipal ordinance, where [the judge in such case was an attorney and] the defendant was
11 represented by or waived the right to an attorney in writing, involving the possession or use of
12 alcohol, committed while operating a motor vehicle;

13 (3) Any offense involving the possession or use of a controlled substance as defined in
14 chapter 195, RSMo, in violation of the state law or, beginning July 1, 1992, a county or
15 municipal ordinance, where [the judge in such case was an attorney and] the defendant was
16 represented by or waived the right to an attorney in writing;

17 (4) Any offense involving the alteration, modification or misrepresentation of a license
18 to operate a motor vehicle in violation of section 311.328, RSMo;

19 (5) Any offense in violation of state law or, beginning July 1, 1992, a county or
20 municipal ordinance, where [the judge in such case was an attorney and] the defendant was
21 represented by or waived the right to an attorney in writing, involving the possession or use of
22 alcohol for a second time; except that a determination of guilt or its equivalent shall have been
23 made for the first offense and both offenses shall have been committed by the person when the
24 person was under eighteen years of age.

25 2. The court shall require the surrender to it of any license to operate a motor vehicle

26 then held by any person against whom a court has entered an order suspending or revoking
27 driving privileges under subsection 1 of this section.

28 3. The court, if other than a juvenile court, shall forward to the director of revenue the
29 order of suspension or revocation of driving privileges and any licenses acquired under
30 subsection 2 of this section.

31 4. (1) The court, if a juvenile court, shall forward to the director of revenue the order
32 of suspension or revocation of driving privileges and any licenses acquired under subsection 2
33 of this section for any person sixteen years of age or older, the provision of chapter 211, RSMo,
34 to the contrary notwithstanding.

35 (2) The court, if a juvenile court, shall hold the order of suspension or revocation of
36 driving privileges for any person less than sixteen years of age until thirty days before the
37 person's sixteenth birthday, at which time the juvenile court shall forward to the director of
38 revenue the order of suspension or revocation of driving privileges, the provision of chapter 211,
39 RSMo, to the contrary notwithstanding.

40 5. The period of suspension for a first offense under this section shall be ninety days.
41 Any second or subsequent offense under this section shall result in revocation of the offender's
42 driving privileges for one year.