

SECOND REGULAR SESSION

HOUSE BILL NO. 1258

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COOPER (155).

Read 1st time January 26, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4246L.011

AN ACT

To repeal section 306.114, RSMo, and to enact in lieu thereof one new section relating to portable chemical tests.

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

Section A. Section 306.114, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 306.114, to read as follows:

306.114. 1. No person convicted of or pleading guilty to a violation of section 306.111 or 306.112 shall be granted a suspended imposition of sentence, unless such person is placed on probation for a minimum of two years and a record of the conviction or plea of guilty is entered into the records of the Missouri uniform law enforcement system maintained by the Missouri state highway patrol.

2. Chemical tests of a person's blood, breath, or saliva to be considered valid under the provisions of sections 306.111 to 306.119 shall be performed according to methods and devices approved by the department of health and senior services by licensed medical personnel or by a person possessing a valid permit issued by the department of health and senior services for this purpose. **In addition, any state, county, or municipal law enforcement officer who is certified pursuant to chapter 590, RSMo, may, prior to arrest, administer a portable chemical test to any person suspected of operating any vessel in violation of section 306.111 or 306.112. A portable chemical test shall be admissible as evidence of probable cause to arrest and as exculpatory evidence, but shall not be admissible as evidence of blood alcohol content. The provisions of section 306.116 shall not apply to a test administered prior to arrest pursuant to this section.**

3. The department of health and senior services shall approve satisfactory techniques, devices, equipment, or methods to conduct tests required by sections 306.111 to 306.119, and

19 shall establish standards as to the qualifications and competence of individuals to conduct
20 analyses and to issue permits which shall be subject to termination, suspension or revocation by
21 the department of health and senior services.

22 4. A licensed physician, registered nurse, or trained medical technician, acting at the
23 request and direction of a law enforcement officer, shall withdraw blood for the purpose of
24 determining the alcohol content of the blood, unless the medical personnel, in the exercise of
25 good faith medical judgment, believes such procedure would endanger the life or health of the
26 person in custody. Blood may be withdrawn only by such medical personnel, but such restriction
27 shall not apply to the taking of a breath test or a saliva specimen. In withdrawing blood for the
28 purpose of determining the alcohol content in the blood, only a previously unused and sterile
29 needle and sterile vessel shall be used and the withdrawal shall otherwise be in strict accord with
30 accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior
31 to a venapuncture. Upon the request of the person who is tested, full information concerning the
32 test taken at the direction of the law enforcement officer shall be made available to him.

33 5. No person who administers any test pursuant to the provisions of sections 306.111 to
34 306.119 upon the request of a law enforcement officer, no hospital in or with which such person
35 is employed or is otherwise associated or in which such test is administered, and no other person,
36 firm, or corporation by whom or with which such person is employed or is in any way associated,
37 shall be civilly liable for damages to the person tested, except for negligence in administering
38 of the test or for willful and wanton acts or omissions.

39 6. Any person who is dead, unconscious or who is otherwise in a condition rendering
40 him incapable of refusing to take a test as provided in sections 306.111 to 306.119 shall be
41 deemed not to have withdrawn the consent provided by section 306.116 and the test or tests may
42 be administered.