

FIRST REGULAR SESSION

HOUSE BILL NO. 641

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PEARCE (Sponsor), WILDBERGER, PAGE, McGHEE, BIVINS, BROWN (30), SCHAD, KRAUS, DUSENBERG, BROWN (50), MOORE AND DEEKEN (Co-sponsors).

Read 1st time February 24, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1354L.01I

AN ACT

To repeal sections 302.510, 302.530, and 577.041, RSMo, and to enact in lieu thereof three new sections relating to administrative driving while intoxicated enhancements.

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

Section A. Sections 302.510, 302.530, and 577.041, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 302.510, 302.530, and 577.041, to read as follows:

302.510. 1. Except as provided in subsection 3 of this section, a law enforcement officer who arrests any person for a violation of any state statute related to driving while intoxicated or for a violation of a county or municipal ordinance prohibiting driving while intoxicated or a county or municipal alcohol-related traffic offense, and in which the alcohol concentration in the person's blood, breath, or urine was eight-hundredths of one percent or more by weight or two-hundredths of one percent or more by weight for anyone less than twenty-one years of age, shall forward to the department a [verified] **certified** report of all information relevant to the enforcement action, including information which adequately identifies the arrested person, a statement of the officer's grounds for belief that the person violated any state statute related to driving while intoxicated or was less than twenty-one years of age and was driving with two-hundredths of one percent or more by weight of alcohol in the person's blood, or a county or municipal ordinance prohibiting driving while intoxicated or a county or municipal alcohol-related traffic offense, a report of the results of any chemical tests which were conducted, and a copy of the citation and complaint filed with the court.

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

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

18 3. A county or municipal ordinance prohibiting driving while intoxicated or a county or
19 municipal alcohol-related traffic offense may not be the basis for suspension or revocation of a
20 driver's license pursuant to sections 302.500 to 302.540, unless the arresting law enforcement
21 officer, other than an elected peace officer or official, has been [certified] **licensed** by the director
22 of the department of public safety pursuant to the provisions of [sections 590.100 to 590.180]
23 **chapter 590, RSMo.**

 302.530. 1. Any person who has received a notice of suspension or revocation may
2 make a request within fifteen days of receipt of the notice for a review of the department's
3 determination at a hearing. If the person's driver's license has not been previously surrendered,
4 it [shall] **may** be surrendered at the time the request for a hearing is made.

5 2. At the time the request for a hearing is made, if it appears from the record that the
6 person is the holder of a valid driver's license issued by this state, and that the driver's license has
7 been surrendered [as required], the department shall issue a temporary permit which shall be
8 valid until the scheduled date for the hearing. The department may later issue an additional
9 temporary permit or permits in order to stay the effective date of the suspension or revocation
10 until the final order is issued following the hearing, as required by section 302.520.

11 3. The hearing may be held by telephone, or if requested by the person, such person's
12 attorney or representative, in the county where the arrest was made. The hearing shall be
13 conducted by examiners who are licensed to practice law in the state of Missouri and who are
14 employed by the department on a part-time or full-time basis as the department may determine.

15 4. The sole issue at the hearing shall be whether by a preponderance of the evidence the
16 person was driving a vehicle pursuant to the circumstances set out in section 302.505. The
17 burden of proof shall be on the state to adduce such evidence. If the department finds the
18 affirmative of this issue, the suspension or revocation order shall be sustained. If the department
19 finds the negative of the issue, the suspension or revocation order shall be rescinded.

20 5. The procedure at such hearing shall be conducted in accordance with chapter 536,
21 RSMo, [not otherwise in conflict] **except when chapter 536, RSMo, conflicts** with sections
22 302.500 to 302.540. **A report certified under subsection 2 of section 302.510 shall be**
23 **admissible in a like manner as a verified report as evidence of the facts stated therein and**
24 **any provision of chapter 536, RSMo, to the contrary shall not apply.**

25 6. The department shall promptly notify[, by certified letter,] the person of its decision
26 including the reasons for that decision. Such notification shall include a notice advising the
27 person that the department's decision shall be final within fifteen days from the date [of

28 certification of the letter] **such notice was mailed** unless the person challenges the department's
29 decision within that time period by filing an appeal in the circuit court in the county where the
30 arrest occurred.

31 7. Unless the person, within fifteen days after being notified [by certified letter] of the
32 department's decision, files an appeal for judicial review pursuant to section 302.535, the
33 decision of the department shall be final.

34 8. The director may adopt any rules and regulations necessary to carry out the provisions
35 of this section.

577.041. 1. If a person under arrest, or who has been stopped pursuant to subdivision
2 (2) or (3) of subsection 1 of section 577.020, refuses upon the request of the officer to submit to
3 any test allowed pursuant to section 577.020, then none shall be given and evidence of the refusal
4 shall be admissible in a proceeding pursuant to section 565.024 or 565.060, RSMo, or section
5 577.010 or 577.012. The request of the officer shall include the reasons of the officer for
6 requesting the person to submit to a test and also shall inform the person that evidence of refusal
7 to take the test may be used against such person and that the person's license shall be
8 immediately revoked upon refusal to take the test. If a person when requested to submit to any
9 test allowed pursuant to section 577.020 requests to speak to an attorney, the person shall be
10 granted twenty minutes in which to attempt to contact an attorney. If upon the completion of the
11 twenty-minute period the person continues to refuse to submit to any test, it shall be deemed a
12 refusal. In this event, the officer shall, on behalf of the director of revenue, serve the notice of
13 license revocation personally upon the person and shall take possession of any license to operate
14 a motor vehicle issued by this state which is held by that person. The officer shall issue a
15 temporary permit, on behalf of the director of revenue, which is valid for fifteen days and shall
16 also give the person a notice of such person's right to file a petition for review to contest the
17 license revocation.

18 2. The officer shall make a [sworn report to the director of revenue, which] **certified**
19 **report under penalties of perjury for making a false statement to a public official. The**
20 **report shall be forwarded to the director of revenue and** shall include the following:

21 (1) That the officer has:

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

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

27 (c) Reasonable grounds to believe that the person stopped, being under the age of
28 twenty-one years, was committing a violation of the traffic laws of the state, or political

29 subdivision of the state, and such officer has reasonable grounds to believe, after making such
30 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater;

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

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

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

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

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

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

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

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

55 (2) Whether or not the officer had:

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

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

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

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

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

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

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

94 8. The fees for the substance abuse traffic offender program, or a portion thereof to be
95 determined by the division of alcohol and drug abuse of the department of mental health, shall
96 be paid by the person enrolled in the program. Any person who is enrolled in the program shall
97 pay, in addition to any fee charged for the program, a supplemental fee to be determined by the
98 department of mental health for the purposes of funding the substance abuse traffic offender
99 program defined in section 302.010, RSMo, and section 577.001. The administrator of the
100 program shall remit to the division of alcohol and drug abuse of the department of mental health

101 on or before the fifteenth day of each month the supplemental fee for all persons enrolled in the
102 program, less two percent for administrative costs. Interest shall be charged on any unpaid
103 balance of the supplemental fees due the division of alcohol and drug abuse pursuant to this
104 section and shall accrue at a rate not to exceed the annual rates established pursuant to the
105 provisions of section 32.065, RSMo, plus three percentage points. The supplemental fees and
106 any interest received by the department of mental health pursuant to this section shall be
107 deposited in the mental health earnings fund which is created in section 630.053, RSMo.

108 9. Any administrator who fails to remit to the division of alcohol and drug abuse of the
109 department of mental health the supplemental fees and interest for all persons enrolled in the
110 program pursuant to this section shall be subject to a penalty equal to the amount of interest
111 accrued on the supplemental fees due the division pursuant to this section. If the supplemental
112 fees, interest, and penalties are not remitted to the division of alcohol and drug abuse of the
113 department of mental health within six months of the due date, the attorney general of the state
114 of Missouri shall initiate appropriate action of the collection of said fees and interest accrued.
115 The court shall assess attorney fees and court costs against any delinquent program.