

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 35

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE PLOCHER.

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D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 577.037, RSMo, and to enact in lieu thereof one new section relating to the admission of chemical test results in intoxication-related proceedings, with an emergency clause.

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

Section A. Section 577.037, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 577.037, to read as follows:

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

2. If a chemical analysis of the defendant's breath, blood, saliva, or urine demonstrates there was eight-hundredths of one percent or more by weight of alcohol in the person's blood, this shall be prima facie evidence that the person was intoxicated at the time the specimen was taken. If a chemical analysis of the defendant's breath, blood, saliva, or urine demonstrates that there was less than eight-hundredths of one percent of alcohol in the defendant's blood, any

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 charge alleging a criminal offense related to the operation of a vehicle, vessel, or aircraft while  
16 in an intoxicated condition shall be dismissed with prejudice unless one or more of the following  
17 considerations cause the court to find a dismissal unwarranted:

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

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

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

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

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

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

34 **6. For any criminal offense, violation of a county or municipal ordinance, or in any**  
35 **license suspension or revocation proceeding under the provisions of chapter 302 arising out**  
36 **of acts alleged to have been committed by any person while operating a vehicle, vessel, or**  
37 **aircraft, or acting as a flight crew member of any aircraft, while in an intoxicated condition**  
38 **or with an excessive blood alcohol content occurring on or between the dates of December**  
39 **30, 2012, and April 4, 2014, notwithstanding any other provision of law or regulation, a**  
40 **relevant chemical analysis of a person's breath shall be admissible in all proceedings after**  
41 **the effective date of this section if the standard simulator solutions used to verify and**  
42 **calibrate evidential breath analyzers had a vapor concentration within five percent of the**  
43 **following values:**

44 (1) **One-tenth of one percent;**

45 (2) **Eight-hundredths of one percent; or**

46 (3) **Four-hundredths of one percent;**

47 **and otherwise were in accordance with methods and standards approved by the**  
48 **department of health and senior services. This provision is a procedural rule and applies**  
49 **to all actions in progress whether commenced before or after the effective date of this**  
50 **section. Such chemical breath analysis shall be admissible in all proceedings after the**

51 **effective date of this section even if the offense occurred before the effective date of this**  
52 **section.**

53 **7. It is the intent of the legislature to reverse, overturn, and abrogate earlier case**  
54 **law interpretations related to the admissibility of chemical breath analyses to include, but**  
55 **not be limited to, holdings in *Stiers v. Dir. of Revenue*, 477 S.W.3d 611, (Mo. 2016); and**  
56 ***Stiers v. Dir. of Revenue*, ED 101407, 2015 WL 343310 (Mo.App. E.D. Jan. 27, 2015).**

Section B. Because of the need to protect the public from the danger of intoxication  
2 related offenses in this state and to hold accountable those who endanger their fellow citizens,  
3 section A of this act is deemed necessary for the immediate preservation of the public health,  
4 welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of  
5 the constitution, and section A of this act shall be in full force and effect upon its passage and  
6 approval.

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