

SECOND REGULAR SESSION

HOUSE BILL NO. 1742

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES STEVENSON (Sponsor), BRINGER, COX,
KELLY AND FISCHER (107) (Co-sponsors).

4578L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 302.309, 302.525, 479.020, 577.010, 577.012, 577.023, and 577.041, RSMo, and to enact in lieu thereof eight new sections relating to driving while intoxicated, with penalty provisions.

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

Section A. Sections 302.309, 302.525, 479.020, 577.010, 577.012, 577.023, and
2 577.041, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as
3 sections 302.309, 302.525, 479.020, 577.005, 577.010, 577.012, 577.023, and 577.041, to read
4 as follows:

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;

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.

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;
17 (e) Seeking the required services of a certified ignition interlock device provider; or
18 (f) Any other circumstance the court or director finds would create an undue hardship
19 on the operator; the court or director may grant such limited driving privilege as the
20 circumstances of the case justify if the court or director finds undue hardship would result to the
21 individual, and while so operating a motor vehicle within the restrictions and limitations of the
22 limited driving privilege the driver shall not be guilty of operating a motor vehicle without a
23 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) No limited driving privilege shall be issued to any person otherwise eligible under
41 the provisions of paragraph (a), **(e), or (g)** of subdivision (6) of this subsection [on a license
42 revocation resulting from a conviction under subdivision (9) of subsection 1 of section 302.302,]
43 **whose driving record shows one or more prior alcohol-related enforcement contacts as**
44 **defined in subsection 3 of section 302.525, or a license denial under paragraph (h) or (i) of**
45 **subdivision (6) of this subsection,** or a license denial under paragraph (a) or (b) of subdivision
46 (8) of this subsection, until the applicant has filed proof with the department of revenue that any
47 motor vehicle operated by the person is equipped with a functioning, certified ignition interlock
48 device as a required condition of limited driving privilege.

49 (5) The court order or the director's grant of the limited or restricted driving privilege
50 shall indicate the termination date of the privilege, which shall be not later than the end of the
51 period of suspension or revocation. A copy of any court order shall be sent by the clerk of the
52 court to the director, and a copy shall be given to the driver which shall be carried by the driver
53 whenever such driver operates a motor vehicle. The director of revenue upon granting a limited
54 driving privilege shall give a copy of the limited driving privilege to the applicant. The applicant
55 shall carry a copy of the limited driving privilege while operating a motor vehicle. A conviction
56 which results in the assessment of points pursuant to section 302.302, other than a violation of
57 a municipal stop sign ordinance where no accident is involved, against a driver who is operating
58 a vehicle pursuant to a limited driving privilege terminates the privilege, as of the date the points
59 are assessed to the person's driving record. If the date of arrest is prior to the issuance of the
60 limited driving privilege, the privilege shall not be terminated. Failure of the driver to maintain
61 proof of financial responsibility, as required by chapter 303, or to maintain proof of installation
62 of a functioning, certified ignition interlock device, as applicable, shall terminate the privilege.
63 The director shall notify by ordinary mail the driver whose privilege is so terminated.

64 (6) Except as provided in subdivision (8) of this subsection, no person is eligible to
65 receive a limited driving privilege who at the time of application for a limited driving privilege
66 has previously been granted such a privilege within the immediately preceding five years, or
67 whose license has been suspended or revoked for the following reasons:

68 (a) A conviction [of violating the provisions of] , **plea of guilty, or finding of guilt**
69 **under** section 577.010 or 577.012, RSMo, **not including any conviction, plea of guilty, or**
70 **finding of guilt for an offense listed in paragraph (h) of this subsection**, or any similar
71 provision of any federal or state law, or a municipal or county law where the judge in such case
72 was an attorney and the defendant was represented by or waived the right to an attorney in
73 writing, until the person has completed the first thirty days of a suspension or revocation imposed
74 pursuant to this chapter;

75 (b) A conviction [of] , **plea of guilty, or finding of guilt for** any felony in the
76 commission of which a motor vehicle was used;

77 (c) Ineligibility for a license because of the provisions of subdivision (1), (2), (4), (5),
78 (6), (7), (8), (9), (10) or (11) of section 302.060;

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

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

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

87 (g) Due to a suspension pursuant to subsection 2 of section 302.525 and who has not
88 completed the first thirty days of such suspension, provided the person is not otherwise ineligible
89 for a limited driving privilege; or due to a revocation pursuant to subsection 2 of section 302.525
90 if such person has not completed such revocation; **or**

91 **(h) A conviction, finding of guilt, or plea of guilty for violating section 577.010 when**
92 **the person's blood alcohol content is fifteen-hundredths of one percent or more by weight**
93 **of alcohol in such person's blood or any similar provision of any other state or federal law,**
94 **until the person has completed the first ninety days of a suspension or revocation imposed**
95 **under this chapter, followed immediately by a two hundred seventy-five day period of**
96 **restricted driving privilege as defined in section 302.010 and issued by the director of**
97 **revenue.**

98 (7) No person who possesses a commercial driver's license shall receive a limited driving
99 privilege issued for the purpose of operating a commercial motor vehicle if such person's driving
100 privilege is suspended, revoked, canceled, denied, or disqualified. Nothing in this section shall
101 prohibit the issuance of a limited driving privilege for the purpose of operating a noncommercial
102 motor vehicle provided that pursuant to the provisions of this section, the applicant is not
103 otherwise ineligible for a limited driving privilege.

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

114 (b) Provided that pursuant to the provisions of this section, the applicant is not otherwise
115 ineligible for a limited driving privilege or convicted of involuntary manslaughter while
116 operating a motor vehicle in an intoxicated condition, a circuit court or the director may, in the
117 manner prescribed in this subsection, allow a person who has had such person's license to operate
118 a motor vehicle revoked where that person cannot obtain a new license for a period of five years
119 because of two [convictions] **offenses** of driving while intoxicated, as prescribed in subdivision
120 (10) of section 302.060, to apply for a limited driving privilege pursuant to this subsection if

121 such person has served at least two years of such disqualification or revocation. Such person
122 shall present evidence satisfactory to the court or the director that such person has not been
123 convicted of, **pled guilty to, or been found guilty of** any offense related to alcohol, controlled
124 substances or drugs during the preceding two years and that the person's habits and conduct show
125 that the person no longer poses a threat to the public safety of this state. Any person who is
126 denied a license permanently in this state because of an alcohol-related conviction, **plea of**
127 **guilty, or finding of guilt** subsequent to a restoration of such person's driving privileges
128 pursuant to subdivision (9) of section 302.060 shall not be eligible for limited driving privilege
129 pursuant to the provisions of this subdivision.

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

137 5. The director of revenue shall promulgate rules and regulations necessary to carry out
138 the provisions of this section. Any rule or portion of a rule, as that term is defined in section
139 536.010, RSMo, that is created under the authority delegated in this section shall become
140 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,
141 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
142 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,
143 RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently
144 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
145 after August 28, 2001, shall be invalid and void.

302.525. 1. The license suspension or revocation shall become effective fifteen days
2 after the subject person has received the notice of suspension or revocation as provided in section
3 302.520, or is deemed to have received the notice of suspension or revocation by mail as
4 provided in section 302.515. If a request for a hearing is received by or postmarked to the
5 department within that fifteen-day period, the effective date of the suspension or revocation shall
6 be stayed until a final order is issued following the hearing; provided, that any delay in the
7 hearing which is caused or requested by the subject person or counsel representing that person
8 without good cause shown shall not result in a stay of the suspension or revocation during the
9 period of delay.

10 2. The period of license suspension or revocation under this section shall be as follows:

11 (1) If the person's driving record shows no prior alcohol-related enforcement contacts
12 during the immediately preceding five years, the period of suspension shall be thirty days after
13 the effective date of suspension, followed by a sixty-day period of restricted driving privilege as
14 defined in section 302.010 and issued by the director of revenue. The restricted driving privilege
15 shall not be issued until he or she has filed proof of financial responsibility with the department
16 of revenue, in accordance with chapter 303, RSMo, and is otherwise eligible. In no case shall
17 restricted driving privileges be issued pursuant to this section or section 302.535 until the person
18 has completed the first thirty days of a suspension under this section;

19 (2) The period of revocation shall be one year if the person's driving record shows one
20 or more prior alcohol-related enforcement contacts during the immediately preceding five years;

21 (3) **If the person was operating a motor vehicle when the person's blood alcohol**
22 **content was fifteen-hundredths of one percent or more by weight of alcohol in such**
23 **person's blood, and the person's driving record shows no prior alcohol-related enforcement**
24 **contacts during the immediately preceding five years, the period of revocation shall be for**
25 **a period of ninety days, followed immediately by a two hundred seventy-five day period**
26 **of restricted driving privilege as defined in section 302.010 and issued by the director of**
27 **revenue.**

28 (4) In no case shall restricted driving privileges be issued under this section to any person
29 whose driving record shows one or more prior alcohol-related enforcement contacts until the
30 person has completed the first thirty days of a suspension under [this section] **subdivision (1)**
31 **of this subsection, or the first ninety days of a revocation under subdivision (3) of this**
32 **subsection** and has filed proof with the department of revenue that any motor vehicle operated
33 by the person is equipped with a functioning, certified ignition interlock device as a required
34 condition of the restricted driving privilege. If the person fails to maintain such proof the
35 restricted driving privilege shall be terminated.

36 3. For purposes of this section, "alcohol-related enforcement contacts" shall include any
37 suspension or revocation under sections 302.500 to 302.540, any suspension or revocation
38 entered in this or any other state for a refusal to submit to chemical testing [under an implied
39 consent law], and any conviction, **finding of guilt, or plea of guilty** in this or any other state for
40 a violation which involves driving while intoxicated, driving while under the influence of drugs
41 or alcohol, [or] driving a vehicle while having an unlawful alcohol concentration, **or refusing**
42 **to submit to a chemical test.**

43 4. Where a license is suspended or revoked under this section and the person is also
44 convicted, **found guilty, or pled guilty** on charges arising out of the same occurrence for a
45 violation of section 577.010 or 577.012, RSMo, or for a violation of any county or municipal
46 ordinance prohibiting driving while intoxicated or alcohol-related traffic offense, both the

47 suspension or revocation under this section and any other suspension or revocation arising from
48 such convictions shall be imposed, but the period of suspension or revocation under sections
49 302.500 to 302.540 shall be credited against any other suspension or revocation arising from
50 such convictions, and the total period of suspension or revocation shall not exceed the longer of
51 the two suspension or revocation periods.

52 5. Any person who has had a license to operate a motor vehicle revoked under this
53 section or suspended under this section with one or more prior alcohol-related enforcement
54 contacts showing on their driver record shall be required to file proof with the director of revenue
55 that any motor vehicle operated by that person is equipped with a functioning, certified ignition
56 interlock device as a required condition of reinstatement. The ignition interlock device shall
57 further be required to be maintained on all motor vehicles operated by the person for a period of
58 not less than six months immediately following the date of reinstatement. If the person fails to
59 maintain such proof with the director, the license shall be resuspended or revoked, as applicable.

479.020. 1. Any city, town or village, including those operating under a constitutional
2 or special charter, may, and cities with a population of four hundred thousand or more shall,
3 provide by ordinance or charter for the selection, tenure and compensation of a municipal judge
4 or judges consistent with the provisions of this chapter who shall have original jurisdiction to
5 hear and determine all violations against the ordinances of the municipality. The method of
6 selection of municipal judges shall be provided by charter or ordinance. Each municipal judge
7 shall be selected for a term of not less than two years as provided by charter or ordinance.

8 2. Except where prohibited by charter or ordinance, the municipal judge may be a
9 part-time judge and may serve as municipal judge in more than one municipality.

10 3. No person shall serve as a municipal judge of any municipality with a population of
11 seven thousand five hundred or more or of any municipality in a county of the first class with a
12 charter form of government unless the person is licensed to practice law in this state unless, prior
13 to January 2, 1979, such person has served as municipal judge of that same municipality for at
14 least two years.

15 4. Notwithstanding any other statute, a municipal judge need not be a resident of the
16 municipality or of the circuit in which the municipal judge serves except where ordinance or
17 charter provides otherwise. Municipal judges shall be residents of Missouri.

18 5. Judges selected under the provisions of this section shall be municipal judges of the
19 circuit court and shall be divisions of the circuit court of the circuit in which the municipality,
20 or major geographical portion thereof, is located. The judges of these municipal divisions shall
21 be subject to the rules of the circuit court which are not inconsistent with the rules of the supreme
22 court. The presiding judge of the circuit shall have general administrative authority over the
23 judges and court personnel of the municipal divisions within the circuit.

24 6. No municipal judge shall hold any other office in the municipality which the
25 municipal judge serves as judge. The compensation of any municipal judge and other court
26 personnel shall not be dependent in any way upon the number of cases tried, the number of guilty
27 verdicts reached or the amount of fines imposed or collected.

28 7. Municipal judges shall be at least twenty-one years of age. No person shall serve as
29 municipal judge after that person has reached that person's seventy-fifth birthday.

30 8. Within six months after selection for the position, each municipal judge who is not
31 licensed to practice law in this state shall satisfactorily complete the course of instruction for
32 municipal judges prescribed by the supreme court. **The course of instruction shall include a
33 review of state laws on intoxication-related offenses as defined in section 577.023 and
34 jurisdictional issues related to such offenses as well as reporting requirements for courts
35 under section 577.005, and required assessment for offenders under the substance abuse
36 traffic offender program (SATOP).** The state courts administrator shall certify to the supreme
37 court the names of those judges who satisfactorily complete the prescribed course. If a municipal
38 judge fails to complete satisfactorily the prescribed course within six months after the municipal
39 judge's selection as municipal judge, the municipal judge's office shall be deemed vacant and
40 such person shall not thereafter be permitted to serve as a municipal judge, nor shall any
41 compensation thereafter be paid to such person for serving as municipal judge.

**577.005. 1. Each law enforcement agency shall enter into the driving while
2 intoxicated tracking system (DWITS) information for intoxication-related traffic offenses,
3 as defined in section 577.023.**

4 **2. Each county prosecuting attorney and municipal prosecutor shall enter into
5 DWITS any charges relating to arrests or summons for intoxication-related offenses, as
6 defined in section 577.023.**

7 **3. Each circuit court and municipal court shall enter into DWITS any dispositions
8 of charges filed under subsection 2 of this section.**

9 **4. The Missouri state highway patrol shall gather the data received into DWITS
10 and maintain regular accountability reports of alcohol-related arrests, charges, and
11 dispositions.**

12 **5. The Missouri state highway patrol shall, as part of its reporting duties, report
13 to the department of public safety and the governor any agency that fails to submit
14 information required under this section.**

15 **6. The governor may withhold any state funds to an agency that fails to comply
16 with this section.**

17 **7. The highway patrol may adopt any rules necessary to carry out the provisions
18 of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that**

19 is created under the authority delegated in this section shall become effective only if it
20 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
21 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
22 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
23 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
24 grant of rulemaking authority and any rule proposed or adopted after August 28, 2010,
25 shall be invalid and void.

577.010. 1. A person commits the crime of "driving while intoxicated" if he operates
2 a motor vehicle while in an intoxicated or drugged condition.

3 2. Driving while intoxicated is for the first offense, a class B misdemeanor, **unless the**
4 **person's blood alcohol content is fifteen-hundredths of one percent or more by weight of**
5 **alcohol in such person's blood in which case it is a class A misdemeanor.** No person
6 convicted of or pleading guilty to the offense of driving while intoxicated shall be granted a
7 suspended imposition of sentence for such offense, unless such person shall be placed on
8 probation for a minimum of two years.

9 **3. A person who pleads guilty to the crime of driving while intoxicated and is**
10 **granted a suspended imposition of sentence may not later withdraw that plea.**

577.012. 1. A person commits the crime of "driving with excessive blood alcohol
2 content" if such person operates a motor vehicle in this state with eight-hundredths of one
3 percent or more by weight of alcohol in such person's blood.

4 2. As used in this section, percent by weight of alcohol in the blood shall be based upon
5 grams of alcohol per one hundred milliliters of blood or two hundred ten liters of breath and may
6 be shown by chemical analysis of the person's blood, breath, saliva or urine. For the purposes
7 of determining the alcoholic content of a person's blood under this section, the test shall be
8 conducted in accordance with the provisions of sections 577.020 to 577.041.

9 3. For the first offense, driving with excessive blood alcohol content is a class B
10 misdemeanor.

11 **4. A person who pleads guilty to driving with excessive blood alcohol content and**
12 **is granted a suspended imposition of sentence may not later withdraw that plea.**

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

2 (1) An "aggravated offender" is a person who:

3 (a) Has pleaded guilty to or has been found guilty of three or more intoxication-related
4 traffic offenses; or

5 (b) Has pleaded guilty to or has been found guilty of one or more intoxication-related
6 traffic offense and, in addition, any of the following: involuntary manslaughter under
7 subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree

8 under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic
9 offense; or assault in the second degree under subdivision (4) of subsection 1 of section 565.060,
10 RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of
11 subsection 1 of section 565.082, RSMo;

12 (2) A "chronic offender" is:

13 (a) A person who has pleaded guilty to or has been found guilty of four or more
14 intoxication-related traffic offenses; or

15 (b) A person who has pleaded guilty to or has been found guilty of, on two or more
16 separate occasions, any combination of the following: involuntary manslaughter under
17 subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree
18 under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic
19 offense; assault in the second degree under subdivision (4) of subsection 1 of section 565.060,
20 RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of
21 subsection 1 of section 565.082, RSMo; or

22 (c) A person who has pleaded guilty to or has been found guilty of two or more
23 intoxication-related traffic offenses and, in addition, any of the following: involuntary
24 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in
25 the second degree under section 565.021, RSMo, where the underlying felony is an
26 intoxication-related traffic offense; assault in the second degree under subdivision (4) of
27 subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second
28 degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

29 (3) "Continuous alcohol monitoring", automatically testing breath, blood, or transdermal
30 alcohol concentration levels and tampering attempts at least once every hour, regardless of the
31 location of the person who is being monitored, and regularly transmitting the data. Continuous
32 alcohol monitoring shall be considered an electronic monitoring service under subsection 3 of
33 section 217.690, RSMo;

34 (4) An "intoxication-related traffic offense" is driving while intoxicated, driving with
35 excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) or (3) of
36 subsection 1 of section 565.024, RSMo, murder in the second degree under section 565.021,
37 RSMo, where the underlying felony is an intoxication-related traffic offense, assault in the
38 second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of
39 a law enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of
40 section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state
41 law or a county or municipal ordinance;

42 (5) A "persistent offender" is one of the following:

43 (a) A person who has pleaded guilty to or has been found guilty of two or more
44 intoxication-related traffic offenses;

45 (b) A person who has pleaded guilty to or has been found guilty of involuntary
46 manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo,
47 assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060,
48 RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (4) of
49 subsection 1 of section 565.082, RSMo; and

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

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

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

59 4. Any person who pleads guilty to or is found guilty of a violation of section 577.010
60 or section 577.012 who is alleged and proved to be an aggravated offender shall be guilty of a
61 class C felony.

62 5. Any person who pleads guilty to or is found guilty of a violation of section 577.010
63 or section 577.012 who is alleged and proved to be a chronic offender shall be guilty of a class
64 B felony.

65 6. No state, county, or municipal court shall suspend the imposition of sentence as to a
66 prior offender, persistent offender, aggravated offender, or chronic offender under this section
67 nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo,
68 to the contrary notwithstanding. No prior offender shall be eligible for parole or probation until
69 he or she has served a minimum of five days imprisonment, unless as a condition of such parole
70 or probation such person performs at least thirty days of community service under the
71 supervision of the court in those jurisdictions which have a recognized program for community
72 service. No persistent offender shall be eligible for parole or probation until he or she has served
73 a minimum of ten days imprisonment, unless as a condition of such parole or probation such
74 person performs at least sixty days of community service under the supervision of the court. No
75 aggravated offender shall be eligible for parole or probation until he or she has served a
76 minimum of sixty days imprisonment. No chronic offender shall be eligible for parole or
77 probation until he or she has served a minimum of two years imprisonment. In addition to any
78 other terms or conditions of probation, the court shall consider, as a condition of probation for

79 any person who pleads guilty to or is found guilty of an intoxication-related traffic offense,
80 requiring the offender to abstain from consuming or using alcohol or any products containing
81 alcohol as demonstrated by continuous alcohol monitoring or by verifiable breath alcohol testing
82 performed a minimum of four times per day as scheduled by the court for such duration as
83 determined by the court, but not less than ninety days. The court may, in addition to imposing
84 any other fine, costs, or assessments provided by law, require the offender to bear any costs
85 associated with continuous alcohol monitoring or verifiable breath alcohol testing.

86 7. The state, county, or municipal court shall find the defendant to be a prior offender,
87 persistent offender, aggravated offender, or chronic offender if:

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

91 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding
92 beyond a reasonable doubt the defendant is a prior offender, persistent offender, aggravated
93 offender, or chronic offender; and

94 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt
95 by the court that the defendant is a prior offender, persistent offender, aggravated offender, or
96 chronic offender.

97 8. In a jury trial, the facts shall be pleaded, established and found prior to submission to
98 the jury outside of its hearing.

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

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

103 11. The defendant may waive proof of the facts alleged.

104 12. Nothing in this section shall prevent the use of presentence investigations or
105 commitments.

106 13. At the sentencing hearing both the state, county, or municipality and the defendant
107 shall be permitted to present additional information bearing on the issue of sentence.

108 14. The pleas or findings of guilt shall be prior to the date of commission of the present
109 offense.

110 15. The court shall not instruct the jury as to the range of punishment or allow the jury,
111 upon a finding of guilt, to assess and declare the punishment as part of its verdict in cases of
112 prior offenders, persistent offenders, aggravated offenders, or chronic offenders.

113 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an
114 intoxication-related traffic offense shall be heard and determined by the trial court out of the

115 hearing of the jury prior to the submission of the case to the jury, and shall include but not be
116 limited to evidence [of convictions] received by a search of the records of the Missouri uniform
117 law enforcement system **to include criminal history records from the central repository or**
118 **records from the driving while intoxicated tracking system (DWITS)** maintained by the
119 Missouri state highway patrol **or the certified driving record maintained by the Missouri**
120 **department of revenue.** After hearing the evidence, the court shall enter its findings thereon.
121 A plea of guilty or a finding of guilt followed by incarceration, a fine, a suspended imposition
122 of sentence, suspended execution of sentence, probation or parole or any combination thereof
123 in any intoxication-related traffic offense in a state, county or municipal court or any
124 combination thereof, shall be treated as a prior plea of guilty or finding of guilt for purposes of
125 this section.

126 **17. Any person who has been convicted of, pled guilty to, or has been found guilty**
127 **of an "intoxication-related traffic offense" as defined in this section, whether sentence is**
128 **imposed or suspended, shall have the record of the offense assessed to his or her driving**
129 **record by the director of revenue.**

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
4 refusal shall be admissible in a proceeding pursuant to section 565.024, 565.060, or 565.082,
5 RSMo, or section 577.010 or 577.012 **or 577.020.** The request of the officer shall include:

6 (1) The reasons of the officer for requesting the person to submit to a test [and also shall
7 inform the person] ;

8 (2) **That the failure to submit to the test is a class A misdemeanor;**

9 (3) That evidence of refusal to take the test may be used against such person **in a**
10 **subsequent criminal or administrative action;** and

11 (4) That the person's license shall be immediately revoked upon refusal to take the test.
12

13 If a person when requested to submit to any test allowed pursuant to section 577.020 requests
14 to speak to an attorney, the person shall be granted twenty minutes in which to attempt to contact
15 an attorney. If upon the completion of the twenty-minute period the person continues to refuse
16 to submit to any test, it shall be deemed a refusal. In this event, the officer shall, on behalf of the
17 director of revenue, serve the notice of license revocation personally upon the person and shall
18 take possession of any license to operate a motor vehicle issued by this state which is held by that
19 person. The officer shall issue a temporary permit, on behalf of the director of revenue, which
20 is valid for fifteen days and shall also give the person a notice of such person's right to file a
21 petition for review to contest the license revocation.

22 2. The officer shall make a certified report under penalties of perjury for making a false
23 statement to a public official. The report shall be forwarded to the director of revenue and shall
24 include the following:

25 (1) That the officer has:

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

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

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

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

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

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

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

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

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

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

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

59 (2) Whether or not the officer had:

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

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

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

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

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

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

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

94 Compliance with the court determination of the motion shall satisfy the provisions of this section
95 for the purpose of reinstating such person's license to operate a motor vehicle. The respondent's
96 personal appearance at any hearing conducted pursuant to this subsection shall not be necessary
97 unless directed by the court.

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

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

120 10. Any person who has had a license to operate a motor vehicle **suspended or** revoked
121 [more than once] for violation of the provisions of this section **whose driving record shows one**
122 **or more prior alcohol-related enforcement contacts as defined in subsection 3 of section**
123 **302.525 or who has had a license to operate a motor vehicle suspended or revoked for**
124 **driving while intoxicated under section 577.010 when classified as a class A misdemeanor**
125 shall be required to file proof with the director of revenue that any motor vehicle operated by the
126 person is equipped with a functioning, certified ignition interlock device as a required condition
127 of license reinstatement. Such ignition interlock device shall further be required to be
128 maintained on all motor vehicles operated by the person for a period of not less than six months
129 immediately following the date of reinstatement. If the person fails to maintain such proof with

130 the director as required by this section, the license shall be rerevoked and the person shall be
131 guilty of a class A misdemeanor.

132 11. The revocation period of any person whose license and driving privilege has been
133 revoked under this section and who has filed proof of financial responsibility with the
134 department of revenue in accordance with chapter 303, RSMo, and is otherwise eligible, shall
135 be terminated by a notice from the director of revenue after one year from the effective date of
136 the revocation. Unless proof of financial responsibility is filed with the department of revenue,
137 the revocation shall remain in effect for a period of two years from its effective date. If the
138 person fails to maintain proof of financial responsibility in accordance with chapter 303, RSMo,
139 the person's license and driving privilege shall be rerevoked and the person shall be guilty of a
140 class A misdemeanor.

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