

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill No. 2332, Page 33, Section 577.011, Line 7,
2 by inserting after all of said section and line the following:

3
4 "577.037. 1. Upon the trial of any person for any criminal offense or violations of county
5 or municipal ordinances, or in any license suspension or revocation proceeding pursuant to the
6 provisions of chapter 302, arising out of acts alleged to have been committed by any person while
7 operating a vehicle, vessel, or aircraft, or acting as a flight crew member of any aircraft, while in an
8 intoxicated condition or with an excessive blood alcohol content, the amount of alcohol in the
9 person's blood at the time of the act, as shown by any chemical analysis of the person's blood,
10 breath, saliva, or urine, is admissible in evidence and the provisions of subdivision (5) of section
11 491.060 shall not prevent the admissibility or introduction of such evidence if otherwise admissible.

12 2. If a chemical analysis of the defendant's breath, blood, saliva, or urine demonstrates there
13 was eight-hundredths of one percent or more by weight of alcohol in the person's blood, this shall be
14 prima facie evidence that the person was intoxicated at the time the specimen was taken. If a
15 chemical analysis of the defendant's breath, blood, saliva, or urine demonstrates that there was less
16 than eight-hundredths of one percent of alcohol in the defendant's blood, any charge alleging a
17 criminal offense related to the operation of a vehicle, vessel, or aircraft while in an intoxicated
18 condition or with an excessive blood alcohol content shall be dismissed with prejudice unless one or
19 more of the following considerations cause the court to find a dismissal unwarranted:

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

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

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

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

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

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

36 6. For any criminal offense or violations of county or municipal ordinances, or in any

Standing Action Taken _____ Date _____

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1 license suspension or revocation proceeding pursuant to the provisions of chapter 302, arising out of
 2 acts alleged to have been committed by any person while operating a vehicle, vessel, or aircraft, or
 3 acting as a flight crew member of any aircraft, while in an intoxicated condition or with an
 4 excessive blood alcohol content occurring on or between the dates of December 30, 2012, and April
 5 4, 2014, notwithstanding any other provision of law or regulation, a relevant chemical analysis of a
 6 person's breath shall be admissible in all proceedings after the effective date of this act, if the
 7 standard simulator solutions used to verify and calibrate evidential breath analyzers, had a vapor
 8 concentration within five percent of the following values:

9 (1) 0.10%;

10 (2) 0.08%; or

11 (3) 0.04%;

12 and otherwise was in accordance with methods and standards approved by the state department of
 13 health and senior services. This provision is a procedural rule and applies to all actions in progress
 14 whether commenced before or after the effective date of this act. Such chemical breath analysis
 15 shall be admissible in all proceedings after the effective date of this act even if the offense occurred
 16 before the effective date of this act.

17 7. It is the intent of the legislature to reverse, overturn and abrogate earlier case law
 18 interpretations related to the admissibility of chemical breath analyses to include, but not be limited
 19 to, holdings in Stiers v. Dir. of Revenue, No. SC4840 (Mo. Jan. 12, 2016); and Stiers v. Dir. of
 20 Revenue, ED 101407, 2015 WL 343310 (Mo.App. E.D. Jan. 27, 2015).

21 577.037. 1. Upon the trial of any person for violation of any of the provisions of section
 22 565.024, or section 565.060, or section 577.010 or 577.012, or upon the trial of any criminal action
 23 or violations of county or municipal ordinances or in any license suspension or revocation
 24 proceeding pursuant to the provisions of chapter 302 arising out of acts alleged to have been
 25 committed by any person while driving a motor vehicle while in an intoxicated condition, the
 26 amount of alcohol in the person's blood at the time of the act alleged as shown by any chemical
 27 analysis of the person's blood, breath, saliva or urine is admissible in evidence and the provisions of
 28 subdivision (5) of section 491.060 shall not prevent the admissibility or introduction of such
 29 evidence if otherwise admissible. If there was eight-hundredths of one percent or more by weight of
 30 alcohol in the person's blood, this shall be prima facie evidence that the person was intoxicated at
 31 the time the specimen was taken.

32 2. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one
 33 hundred milliliters of blood or grams of alcohol per two hundred ten liters of breath.

34 3. The foregoing provisions of this section shall not be construed as limiting the
 35 introduction of any other competent evidence bearing upon the question whether the person was
 36 intoxicated.

37 4. A chemical analysis of a person's breath, blood, saliva or urine, in order to give rise to the
 38 presumption or to have the effect provided for in subsection 1 of this section, shall have been
 39 performed as provided in sections 577.020 to 577.041 and in accordance with methods and
 40 standards approved by the state department of health and senior services.

41 5. Any charge alleging a violation of section 577.010 or 577.012 or any county or municipal
 42 ordinance prohibiting driving while intoxicated or driving under the influence of alcohol shall be
 43 dismissed with prejudice if a chemical analysis of the defendant's breath, blood, saliva, or urine
 44 performed in accordance with sections 577.020 to 577.041 and rules promulgated thereunder by the
 45 state department of health and senior services demonstrate that there was less than eight-hundredths
 46 of one percent of alcohol in the defendant's blood unless one or more of the following
 47 considerations cause the court to find a dismissal unwarranted:

48 (1) There is evidence that the chemical analysis is unreliable as evidence of the defendant's

1 intoxication at the time of the alleged violation due to the lapse of time between the alleged
2 violation and the obtaining of the specimen;

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

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

7 6. For any criminal offense or violations of county or municipal ordinances, or in any
8 license suspension or revocation proceeding pursuant to the provisions of chapter 302, arising out of
9 acts alleged to have been committed by any person while operating a vehicle, vessel, or aircraft, or
10 acting as a flight crew member of any aircraft, while in an intoxicated condition or with an
11 excessive blood alcohol content occurring on or between the dates of December 30, 2012, and April
12 4, 2014, notwithstanding any other provision of law or regulation, a relevant chemical analysis of a
13 person's breath shall be admissible in all proceedings after the effective date of this act, if the
14 standard simulator solutions used to verify and calibrate evidential breath analyzers, had a vapor
15 concentration within five percent of the following values:

16 (1) 0.10%;

17 (2) 0.08%; or

18 (3) 0.04%;

19 and otherwise was in accordance with methods and standards approved by the state department of
20 health and senior services. This provision is a procedural rule and applies to all actions in progress
21 whether commenced before or after the effective date of this act. Such chemical breath analysis
22 shall be admissible in all proceedings after the effective date of this act even if the offense occurred
23 before the effective date of this act.

24 7. It is the intent of the legislature to reverse, overturn and abrogate earlier case law
25 interpretations related to the admissibility of chemical breath analyses to include, but not be limited
26 to, holdings in Stiers v. Dir. of Revenue, No. SC4840 (Mo. Jan. 12, 2016); and Stiers v. Dir. of
27 Revenue, ED 101407, 2015 WL 343310 (Mo.App. E.D. Jan. 27, 2015).

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

33 Section C. If any provision of section A of this act or the application thereof to anyone or to
34 any circumstance is held invalid, the remainder of the provisions of section A of this act and the
35 application of such provisions to others or other circumstances shall not be affected thereby."; and

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37 Further amend said bill by amending the title, enacting clause, and intersectional references
38 accordingly.
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