

FIRST REGULAR SESSION

# HOUSE BILL NO. 467

91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SMITH.

Read 1<sup>st</sup> time January 22, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1405L.011

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## AN ACT

To repeal section 302.530, RSMo 2000, relating to administrative procedure, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 302.530, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 302.530, to read as follows:

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

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

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

4. The sole issue at the hearing shall be whether by a preponderance of the evidence the person was driving a vehicle pursuant to the circumstances set out in section 302.505. The burden of proof shall be on the state to adduce such evidence. If the department finds the 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19 finds the negative of the issue, the suspension or revocation order shall be rescinded.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 with sections 302.500 to 302.540. **The person shall be entitled**  
22 **to examine all available evidence before the hearing. At the hearing, the person may**  
23 **present any facts relevant to the person's defense. The person may subpoena and examine**  
24 **witnesses, including the law enforcement officer or blood alcohol concentration analyzer,**  
25 **to attend the hearing or participate in a telephonic hearing, by requesting a subpoena from**  
26 **the department at least five working days before the hearing. Any witness may be cross-**  
27 **examined during the hearing. No suspension or revocation order may be issued in any case**  
28 **where the person has timely requested the department to subpoena a law enforcement**  
29 **officer or blood alcohol concentration analyzer and such witness does not appear and**  
30 **testify.**

31           6. The department shall promptly notify, by certified letter, the person of its decision  
32 including the reasons for that decision. Such notification shall include a notice advising the  
33 person that the department's decision shall be final within fifteen days from the date of  
34 certification of the letter unless the person challenges the department's decision within that time  
35 period by filing an appeal in the circuit court in the county where the arrest occurred.

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

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