

FIRST REGULAR SESSION

HOUSE BILL NO. 537

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SATER (Sponsor), PAGE,
DENISON AND CUNNINGHAM (86) (Co-sponsors).

Read 1st time February 15, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1439L.011

AN ACT

To repeal sections 306.112, 306.114, 306.116, 306.117, 306.119, 306.140, and 306.147, RSMo, and to enact in lieu thereof seven new sections relating to watercraft regulations, with penalty provisions.

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

Section A. Sections 306.112, 306.114, 306.116, 306.117, 306.119, 306.140, and
2 306.147, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as
3 sections 306.112, 306.114, 306.116, 306.117, 306.119, 306.140, and 306.147, to read as
4 follows:

306.112. 1. A person commits the crime of operating a vessel with excessive blood
2 alcohol content if [he] **such person** operates a vessel on the Mississippi River, Missouri River
3 or the lakes of this state with ten-hundredths of one percent or more by weight of alcohol in [his]
4 **such person's** blood.

2. As used in this section, percent by weight of alcohol in the blood shall be based upon
6 grams of alcohol per one hundred milliliters of blood and may be shown by chemical analysis
7 of the person's blood, breath, **urine**, or saliva.

3. Any person convicted of operating a vessel with excessive blood alcohol content is
9 guilty of a class B misdemeanor upon conviction for the first violation, guilty of a class A
10 misdemeanor upon conviction for the second violation, and guilty of a class D felony for
11 conviction for the third and subsequent violations.

306.114. 1. No person convicted of or pleading guilty to a violation of section 306.111

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.

2 or 306.112 shall be granted a suspended imposition of sentence, unless such person is placed on
3 probation for a minimum of two years and a record of the conviction or plea of guilty is entered
4 into the records of the Missouri uniform law enforcement system maintained by the Missouri
5 state highway patrol.

6 2. Chemical tests of a person's blood, breath, **urine**, or saliva to be considered valid
7 under the provisions of sections 306.111 to 306.119 shall be performed according to methods
8 and devices approved by the department of health and senior services by licensed medical
9 personnel or by a person possessing a valid permit issued by the department of health and senior
10 services for this purpose. In addition, any state, county, or municipal law enforcement officer
11 who is certified pursuant to chapter 590, RSMo, may, prior to arrest, administer a portable
12 chemical test to any person suspected of operating any vessel in violation of section 306.111 or
13 306.112. A portable chemical test shall be admissible as evidence of probable cause to arrest and
14 as exculpatory evidence, but shall not be admissible as evidence of blood alcohol content. The
15 provisions of section 306.116 shall not apply to a test administered prior to arrest pursuant to this
16 section.

17 3. The department of health and senior services shall approve satisfactory techniques,
18 devices, equipment, or methods to conduct tests required by sections 306.111 to 306.119, and
19 shall establish standards as to the qualifications and competence of individuals to conduct
20 analyses and to issue permits which shall be subject to termination, suspension or revocation by
21 the department of health and senior services.

22 4. A licensed physician, registered nurse, or trained medical technician, acting at the
23 request and direction of a law enforcement officer, shall withdraw blood for the purpose of
24 determining the alcohol content of the blood, unless the medical personnel, in the exercise of
25 good faith medical judgment, believes such procedure would endanger the life or health of the
26 person in custody. Blood may be withdrawn only by such medical personnel, but such restriction
27 shall not apply to the taking of a breath test or a **urine or** saliva specimen. In withdrawing blood
28 for the purpose of determining the alcohol content in the blood, only a previously unused and
29 sterile needle and sterile vessel shall be used and the withdrawal shall otherwise be in strict
30 accord with accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing
31 the skin prior to a venapuncture. Upon the request of the person who is tested, full information
32 concerning the test taken at the direction of the law enforcement officer shall be made available
33 to [him] **such person**.

34 5. No person who administers any test pursuant to the provisions of sections 306.111 to
35 306.119 upon the request of a law enforcement officer, no hospital in or with which such person
36 is employed or is otherwise associated or in which such test is administered, and no other person,
37 firm, or corporation by whom or with which such person is employed or is in any way associated

38 shall be civilly liable for damages to the person tested, except for negligence in administering
39 of the test or for willful and wanton acts or omissions.

40 6. Any person who is dead, unconscious or who is otherwise in a condition rendering
41 [him] **such person** incapable of refusing to take a test as provided in sections 306.111 to 306.119
42 shall be deemed not to have withdrawn the consent provided by section 306.116 and the test or
43 tests may be administered.

 306.116. 1. Any person who operates a vessel upon the Mississippi River, Missouri
2 River or the lakes of this state shall be deemed to have given consent to, subject to the provisions
3 of sections 306.111 to 306.119, a chemical test or tests of [his] **such person's** breath, blood,
4 **urine**, or saliva for the purpose of determining the alcohol or drug content of [his] **such person's**
5 blood if arrested for any offense arising out of acts which the arresting law enforcement officer
6 had reasonable grounds to believe were committed while the person was operating a vessel upon
7 the Mississippi River, Missouri River or lakes of this state in violation of section 306.111 or
8 306.112. The test shall be administered at the direction of the arresting law enforcement officer
9 whenever the person has been arrested for the offense.

10 2. The implied consent to submit to the chemical tests listed in subsection 1 of this
11 section shall be limited to not more than two such tests arising from the same arrest, incident,
12 or charge.

13 3. The person tested may have a physician, or a qualified technician, chemist, registered
14 nurse, or other qualified person of [his own] **such person's** choosing and at [his] **such person's**
15 expense administer a test in addition to any administered at the direction of a law enforcement
16 officer. The failure or inability to obtain an additional test by a person shall not preclude the
17 admission of evidence relating to the test taken at the direction of a law enforcement officer.

18 4. Upon the request of the person who is tested, full information concerning the test shall
19 be made available to [him] **such person**.

 306.117. 1. Upon the trial of any person for violation of any of the provisions of section
2 306.111 or 306.112 the amount of alcohol or drugs in the person's blood at the time of the act
3 alleged as shown by any chemical analysis of the person's blood, breath, **urine**, or saliva is
4 admissible in evidence and the provisions of subdivision (5) of section 491.060, RSMo, shall not
5 prevent the admissibility or introduction of such evidence if otherwise admissible. Evidence of
6 alcohol in a person's blood shall be given the following effect:

7 (1) If there was five-hundredths of one percent or less by weight of alcohol in [his] **such**
8 **person's** blood, it shall be presumed that the person was not intoxicated at the time the specimen
9 was obtained;

10 (2) If there was in excess of five-hundredths of one percent but less than ten-hundredths
11 of one percent by weight of alcohol in [his] **such person's** blood, the fact shall not give rise to

12 any presumption that the person was or was not intoxicated, but the fact may be considered with
13 other competent evidence in determining whether the person was intoxicated;

14 (3) If there was ten-hundredths of one percent or more by weight of alcohol in the
15 person's blood, this shall be prima facie evidence that the person was intoxicated at the time the
16 specimen was taken.

17 2. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per
18 one hundred milliliters of blood.

19 3. A chemical analysis of a person's breath, blood, **urine**, or saliva, in order to give rise
20 to the presumption or to have the effect provided for in subsection 1 of this section, shall have
21 been performed as provided in sections 306.111 to 306.119 and in accordance with methods and
22 standards approved by the department of health and senior services.

23 4. The provisions of this section shall not be construed as limiting the introduction of
24 any other competent evidence bearing upon the question whether the person was intoxicated or
25 under the influence of a controlled substance, or drug, or a combination of either or both with
26 or without alcohol.

306.119. 1. If an arresting officer requests a person under arrest to submit to a chemical
2 test, such request shall include the reasons of the officer for requesting the person to submit to
3 a test and shall inform the person that he **or she** may refuse such request but that [his] **such**
4 **person's** refusal may be used as evidence against him **or her**. If a person refuses a test as
5 provided in this subsection, no test shall be given.

6 2. If a person refuses to submit to a chemical test of [his] **such person's** breath, blood,
7 **urine**, or saliva and that person stands trial for the crimes provided in section 306.111 or
8 306.112, such refusal may be admissible into evidence at the trial.

306.140. 1. It shall be the duty of the operator of a watercraft involved in a collision,
2 accident, or other casualty, so far as [he] **the operator** can do so without serious danger to [his
3 own] **the operator's** watercraft, crew and passengers, to render to other persons affected by the
4 collision, accident, or other casualty, assistance as may be practicable and as may be necessary
5 in order to save them from or minimize any danger caused by the collision, accident, or other
6 casualty, and also to give his **or her** name, address, and identification of his **or her** watercraft
7 in writing to any person injured and to the owner of any property damaged in the collision,
8 accident, or other casualty.

9 2. In the case of collision, accident, or other casualty involving a watercraft, the operator
10 thereof, if the collision, accident, or other casualty results in death or injury to a person or
11 damage to property in excess of [two] **five** hundred dollars, shall file with the Missouri state
12 water patrol a full description of the collision, accident, or other casualty, including such
13 information as the patrol may, by regulation, require.

306.147. 1. As used in this section, the term "muffler" means a sound suppression device or system designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and which prevents excessive or unusual noise.

2. Effective January 1, 1996, a person shall not manufacture, sell or offer for sale or operate in this state any motorboat manufactured after that date that exceeds the noise level of 90dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005. All motorboats manufactured prior to January 1, 1996, shall not exceed eighty-six decibels on an A-weighted scale when subjected to a sound level test as prescribed by SAE J34 when measured from a distance of fifty or more feet from the motorboat.

3. No person shall remove, alter or otherwise modify in any way a muffler or muffler system in a manner which will prevent it from being operated in accordance with this section. Nothing in this section shall preclude a person from removing, altering or modifying a muffler or muffler system so long as the muffler or muffler system continues to comply with subsection 2 of this section. This section shall not be construed so as to prohibit the use of any exhaust system or device, including but not limited to those not discharging water with exhaust gases, so long as the device or system is in compliance with subsection 2 of this section.

4. Effective January 1, 1996, a person shall not manufacture, nor shall any person sell or offer for sale any motorboat which is manufactured after January 1, 1996, which is equipped with a muffler or muffler system which does not comply with this section. **No motorboat shall be equipped with any electrical or mechanical device or switch that when manipulated in any manner would allow the muffler or exhaust system to emit a noise level that exceeds the maximums in subsection 2 of this section.** The subsection shall not apply to power vessels designed, manufactured and sold for the sole purpose of competing in racing events and for no other purpose. Any such exemption or exception shall be documented in every sale agreement and shall be formally acknowledged by signature on the part of both the buyer and the seller. Copies of such agreement shall be maintained by both parties. A copy of such agreement shall be kept on board whenever the motorboat is operated. Any motorboat sold under this exemption may only be operated on the waters of this state in accordance with subsection 6 of this section.

5. As of January 1, 1996, every manufacturer which delivers a new motorboat for sale in this state shall certify, if the purchaser or dealer makes a request in writing, that the decibel level of the motorboat engine, muffler and exhaust system, as delivered to any licensed dealer in this state, does not exceed the noise level of 90dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005. Such certificate of decibel level from the manufacturer shall be given by the dealer to the purchaser of the new motorboat if the motorboat is sold for use upon the waters of this state. The purchaser shall sign a statement acknowledging receipt of the certificate of decibel level which shall be supplied by the dealer. The dealer shall

37 represent by affidavit whether or not the engine or muffler system of the new motorboat being
38 sold has been altered or modified in any way.

39 6. The provisions of this section shall not apply to motorboats registered and actually
40 participating in a racing event or tune-up periods for such racing events or to a motorboat being
41 operated by a boat or engine manufacturer for the purpose of testing or development. The
42 operator of any motorboat operated upon the waters of this state for the purpose of a tune-up for
43 a sanctioned race or for testing or development by a boat or engine manufacturer shall at all times
44 have in such operator's possession and produce on demand by a law enforcement officer a test
45 permit issued by the state water patrol. For the purpose of races or racing events, such race shall
46 only be sanctioned when conducted in accordance with and approved by the United States Coast
47 Guard or this state.

48 7. Any officer authorized to enforce the provisions of this section who has probable
49 cause to believe that a motorboat is not in compliance with the noise levels established in this
50 section may direct the operator of such motorboat to submit the motorboat to an on-site test to
51 measure noise levels, with the officer on board if such officer chooses, and the operator shall
52 comply with such request. The owner of any motorboat which violates any provision of this
53 section shall have sixty days from the date of the violation to bring the motorboat into
54 compliance with the provisions of this section. Thereafter, it shall be the owner's responsibility
55 to have the motorboat tested by the state water patrol. If the motorboat fails the state water patrol
56 test, the owner shall immediately moor the motorboat and shall keep the motorboat moored until
57 the state water patrol certifies that the motorboat is in compliance with the provisions of this
58 section. Any person who fails to comply with a request or direction of an officer made pursuant
59 to this subsection is guilty of a class C misdemeanor. Nothing in this subsection shall be
60 construed to limit the officer's ability to enforce this section and to issue citations to the owner
61 or operator of any motorboat during the sixty-day compliance period.

62 8. Any officer who conducts motorboat sound level tests as provided in this section shall
63 be qualified in motorboat noise testing by the department of public safety. Such qualifications
64 shall include but may not be limited to the selection of the measurement site, and the calibration
65 and use of noise testing equipment in accordance with the testing procedure prescribed by SAE
66 J2005 and SAE J34.

67 9. Unless otherwise indicated, any person who knowingly violates this section is guilty
68 of an infraction for a first offense with a penalty not to exceed one hundred dollars, is guilty of
69 an infraction for a second offense with a penalty not to exceed two hundred dollars, and is guilty
70 of an infraction for a third or subsequent offense with a penalty not to exceed three hundred
71 dollars.

72 10. This section shall only apply to the waters of the Mississippi River, the waters of the

73 Missouri River, and lakes with an aggregate shoreline in excess of one hundred sixty miles. This
74 section shall not apply to motorboats not intended for use in this state.