

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1715
94TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, April 24, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4105S.05C

AN ACT

To repeal sections 304.157, 306.010, 306.015, 306.100, 306.111, 306.112, 306.114, 306.117, 306.124, 306.125, 306.132, 306.147, 306.163, 306.190, 306.221, 306.228, 565.024, 565.082, 577.023, and 577.080, RSMo, and to enact in lieu thereof twenty-one new sections relating to watercraft, with penalty provisions and an emergency clause for a certain section.

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

Section A. Sections 304.157, 306.010, 306.015, 306.100, 306.111, 306.112, 306.114, 306.117, 306.124, 306.125, 306.132, 306.147, 306.163, 306.190, 306.221, 306.228, 565.024, 565.082, 577.023, and 577.080, RSMo, are repealed and twenty-one new sections enacted in lieu thereof, to be known as sections 304.157, 306.010, 306.015, 306.100, 306.111, 306.112, 306.114, 306.117, 306.118, 306.124, 306.125, 306.132, 306.147, 306.163, 306.190, 306.221, 306.228, 565.024, 565.082, 577.023, and 577.080, to read as follows:

304.157. 1. If a person abandons property, as defined in section 304.001, on any real property owned by another without the consent of the owner or person in possession of the property, at the request of the person in possession of the real property, any member of the state highway patrol, state water patrol, sheriff, or other law enforcement officer within his jurisdiction may authorize a towing company to remove such abandoned property from the property in the following circumstances:

(1) The abandoned property is left unattended for more than forty-eight hours; or

(2) In the judgment of a law enforcement officer, the abandoned property constitutes a safety hazard or unreasonably interferes with the use of the real

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 property by the person in possession.

13 2. A local government agency may also provide for the towing of motor
14 vehicles **or vessels** from real property under the authority of any local ordinance
15 providing for the towing of vehicles **or vessels** which are derelict, junk, scrapped,
16 disassembled or otherwise harmful to the public health under the terms of the
17 ordinance. Any local government agency authorizing a tow under this subsection
18 shall report the tow to the local law enforcement agency within two hours with
19 a crime inquiry and inspection report pursuant to section 304.155.

20 3. Neither the law enforcement officer, local government agency nor
21 anyone having custody of abandoned property under his or her direction shall be
22 liable for any damage to such abandoned property occasioned by a removal
23 authorized by this section other than damages occasioned by negligence or by
24 willful or wanton acts or omissions.

25 4. The owner of real property or lessee in lawful possession of the real
26 property or the property or security manager of the real property may authorize
27 a towing company to remove abandoned property or property parked in a
28 restricted or assigned area without authorization by a law enforcement officer
29 only when the owner, lessee or property or security manager of the real property
30 is present. A property or security manager must be a full-time employee of a
31 business entity. An authorization to tow pursuant to this subsection may be
32 made only under any of the following circumstances:

33 (1) There is displayed, in plain view at all entrances to the property, a
34 sign not less than seventeen by twenty-two inches in size, with lettering not less
35 than one inch in height, prohibiting public parking and indicating that
36 unauthorized abandoned property or property parked in a restricted or assigned
37 area will be removed at the owner's expense, disclosing the maximum fee for all
38 charges related to towing and storage, and containing the telephone number of
39 the local traffic law enforcement agency where information can be obtained or a
40 twenty-four-hour staffed emergency information telephone number by which the
41 owner of the abandoned property or property parked in a restricted or assigned
42 area may call to receive information regarding the location of such owner's
43 property;

44 (2) The abandoned property is left unattended on owner-occupied
45 residential property with four residential units or less, and the owner, lessee or
46 agent of the real property in lawful possession has notified the appropriate law
47 enforcement agency, and ten hours have elapsed since that notification; or

48 (3) The abandoned property is left unattended on private property, and
49 the owner, lessee or agent of the real property in lawful possession of real
50 property has notified the appropriate law enforcement agency, and ninety-six
51 hours have elapsed since that notification.

52 5. Pursuant to this section, any owner or lessee in lawful possession of
53 real property that requests a towing company to tow abandoned property without
54 authorization from a law enforcement officer shall at that time complete an
55 abandoned property report which shall be considered a legal declaration subject
56 to criminal penalty pursuant to section 575.060, RSMo. The report shall be in the
57 form designed, printed and distributed by the director of revenue and shall
58 contain the following:

59 (1) The year, model, make and abandoned property identification number
60 of the property and the owner and any lienholders, if known;

61 (2) A description of any damage to the abandoned property noted by
62 owner, lessee or property or security manager in possession of the real property;

63 (3) The license plate or registration number and the state of issuance, if
64 available;

65 (4) The physical location of the property and the reason for requesting the
66 property to be towed;

67 (5) The date the report is completed;

68 (6) The printed name, address and phone number of the owner, lessee or
69 property or security manager in possession of the real property;

70 (7) The towing company's name and address;

71 (8) The signature of the towing operator;

72 (9) The signature of the owner, lessee or property or security manager
73 attesting to the facts that the property has been abandoned for the time required
74 by this section and that all statements on the report are true and correct to the
75 best of the person's knowledge and belief and that the person is subject to the
76 penalties for making false statements;

77 (10) Space for the name of the law enforcement agency notified of the
78 towing of the abandoned property and for the signature of the law enforcement
79 official receiving the report; and

80 (11) Any additional information the director of revenue deems
81 appropriate.

82 6. Any towing company which tows abandoned property without
83 authorization from a law enforcement officer pursuant to subsection 4 of this

84 section shall deliver a copy of the abandoned property report to the local law
85 enforcement agency having jurisdiction over the location from which the
86 abandoned property was towed. The copy may be produced and sent by facsimile
87 machine or other device which produces a near exact likeness of the print and
88 signatures required, but only if the law enforcement agency receiving the report
89 has the technological capability of receiving such copy and has registered the
90 towing company for such purpose. The registration requirements shall not apply
91 to law enforcement agencies located in counties of the third or fourth
92 classification. The report shall be delivered within two hours if the tow was made
93 from a signed location pursuant to subdivision (1) of subsection 4 of this section,
94 otherwise the report shall be delivered within twenty-four hours.

95 7. The law enforcement agency receiving such abandoned property report
96 must record the date on which the abandoned property report is filed with such
97 agency and shall promptly make an inquiry into the national crime information
98 center and any statewide Missouri law enforcement computer system to
99 determine if the abandoned property has been reported as stolen. The law
100 enforcement agency shall enter the information pertaining to the towed property
101 into the statewide law enforcement computer system, and an officer shall sign the
102 abandoned property report and provide the towing company with a signed
103 copy. The department of revenue may design and sell to towing companies
104 informational brochures outlining owner or lessee of real property obligations
105 pursuant to this section.

106 8. The law enforcement agency receiving notification that abandoned
107 property has been towed by a towing company shall search the records of the
108 department of revenue and provide the towing company with the latest owner and
109 lienholder information, **if available**, on the abandoned property, and if the tower
110 has online access to the department of revenue's records, the tower shall comply
111 with the requirements of section 301.155, RSMo. If the abandoned property is not
112 claimed within ten working days, the towing company shall send a copy of the
113 abandoned property report signed by a law enforcement officer to the department
114 of revenue.

115 9. If any owner or lessee of real property knowingly authorizes the
116 removal of abandoned property in violation of this section, then the owner or
117 lessee shall be deemed guilty of a class C misdemeanor.

306.010. As used in this chapter the following terms mean:

2 (1) "Motorboat", any vessel propelled by machinery, whether or not such

3 machinery is a principal source of propulsion;

4 (2) "Operate", to navigate or otherwise use a motorboat or a vessel;

5 (3) "Operator", the person who operates or has charge of the navigation
6 or use of a vessel;

7 (4) "Owner", a person other than a lienholder, having the property in or
8 title to a motorboat. The term includes a person entitled to the use or possession
9 of a motorboat subject to an interest of another person, reserved or created by
10 agreement and securing payment or performance of an obligation, but the term
11 excludes a lessee under a lease not intended as security;

12 (5) "Parasailing", the towing of any person equipped with a parachute or
13 kite equipment by any watercraft operating on the waters of this state;

14 (6) "Personal watercraft", a class of vessel, which is less than sixteen feet
15 in length, propelled by machinery which is designed to be operated by a person
16 sitting, standing or kneeling on the vessel, rather than being operated by a
17 person sitting or standing inside the vessel;

18 (7) **"Skiing", any activity that involves a person or persons being**
19 **towed by a vessel, including but not limited to waterskiing, wake**
20 **boarding, wake surfing, knee boarding, and tubing;**

21 (8) "Vessel", every motorboat and every description of motorized
22 watercraft, and any watercraft more than twelve feet in length which is powered
23 by sail alone or by a combination of sail and machinery, used or capable of being
24 used as a means of transportation on water, but not any watercraft having as the
25 only means of propulsion a paddle or oars;

26 [(8)] (9) "Watercraft", any boat or craft, including a vessel, used or
27 capable of being used as a means of transport on waters;

28 [(9)] (10) "Waters of this state", any waters within the territorial limits
29 of this state and lakes constructed or maintained by the United States Army
30 Corps of Engineers except bodies of water owned by a person, corporation,
31 association, partnership, municipality or other political subdivision, public water
32 supply impoundments, and except drainage ditches constructed by a drainage
33 district, but the term does include any body of water which has been leased to or
34 owned by the state department of conservation.

306.015. 1. The owner of a vessel kept within this state shall cause it to
2 be registered in the office of the director of revenue who shall issue a certificate
3 of title for the same.

4 2. The owner of any vessel acquired or brought into the state shall file his

5 application for title within sixty days after it is acquired or brought into this
6 state. The director of revenue may grant extensions of time for titling to any
7 person in deserving cases.

8 3. The fee for the certificate of title shall be seven dollars fifty cents and
9 shall be paid to the director of revenue at the time of making application. If
10 application for certificate of title is not made within sixty days after the vessel
11 is acquired or brought into the state, a delinquency penalty fee of ten dollars for
12 each thirty days of delinquency, not to exceed a total of thirty dollars, shall be
13 imposed. If the director of revenue learns that any person has failed to make
14 application for certificate of title within sixty days after acquiring or bringing into
15 the state a vessel or has sold a vessel without obtaining a certificate of title, he
16 shall cancel the registration of all motorboats, vessels, and watercraft registered
17 in the name of the person, either as sole owner or as co-owner, and shall notify
18 the person that the cancellation will remain in force until the person pays the
19 delinquency penalty fee provided in this section together with all fees, charges,
20 and payments which he should have paid in connection with the certificate of title
21 of the vessel.

22 **4. In the event of a sale or transfer of ownership of a vessel or**
23 **outboard motor for which a certificate of ownership or manufacturer's**
24 **statement of origin has been issued, the holder of such certificate shall**
25 **endorse on the same an assignment thereof, with warranty of title in**
26 **form printed thereon, and prescribed by the director of revenue, with**
27 **a statement of all liens or encumbrances on such vessel or outboard**
28 **motor, and deliver the same to the buyer at the time of delivery to the**
29 **buyer of such vessel or outboard motor; provided that, when the**
30 **transfer of a vessel or outboard motor occurs within a corporation**
31 **which holds a license to operate as a motor vehicle or boat dealer**
32 **under sections 301.550 to 301.573, RSMo, and this section, the**
33 **provisions of subdivision (3) of subsection 6 of section 144.070, RSMo,**
34 **shall not apply.**

 306.100. 1. For the purpose of this section, vessels shall be divided into
2 four classes as follows:

- 3 (1) Class A, less than sixteen feet in length;
- 4 (2) Class 1, at least sixteen and less than twenty-six feet in length;
- 5 (3) Class 2, at least twenty-six and less than forty feet in length;
- 6 (4) Class 3, forty feet and over.

7 2. All vessels shall display from sunset to sunrise the following lights
8 when under way, and during such time no other lights [which may be mistaken
9 for those prescribed], **continuous spotlights or docking lights, or other**
10 **nonprescribed lights** shall be exhibited:

11 (1) Vessels of classes A and 1:

12 (a) A bright white light aft to show all around the horizon;

13 (b) A combined light in the forepart of the vessel and lower than the white
14 light aft, showing green to starboard and red to port, so fixed as to throw the
15 light from right ahead to two points (22 1/2 degrees) abaft the beam on their
16 respective sides.

17 (2) Vessels of classes 2 and 3:

18 (a) A bright white light in the forepart of the vessel as near the stem as
19 practicable, so constructed as to show the unbroken light over an arc of the
20 horizon of twenty points (225 degrees) of the compass, so fixed as to throw the
21 light ten points (112 1/2 degrees) on each side of the vessel; namely, from right
22 ahead to two points (22 1/2 degrees) abaft the beam on either side;

23 (b) A bright white light aft to show all around the horizon and higher
24 than the white light forward;

25 (c) On the starboard side a green light so constructed as to show an
26 unbroken light over an arc of the horizon of ten points (112 1/2 degrees) of the
27 compass, so fixed as to throw the light from right ahead to two points (22 1/2
28 degrees) abaft the beam on the starboard side; on the port side a red light so
29 constructed as to show an unbroken light over an arc of the horizon of ten points
30 (112 1/2 degrees) of the compass, so fixed as to throw the light from right ahead
31 to two points (22 1/2 degrees) abaft the beam on the portside. The side lights
32 shall be fitted with inboard screens so set as to prevent these lights from being
33 seen across the bow.

34 (3) Vessels of classes A and 1 when propelled by sail alone shall exhibit
35 the combined light prescribed by this section and a twelve point (135 degree)
36 white light aft. Vessels of classes 2 and 3, when so propelled, shall exhibit the
37 colored side lights, suitably screened, prescribed by this section and a twelve
38 point (135 degree) white light aft.

39 (4) All vessels between the hours of sunset and sunrise that are not under
40 way, moored at permanent dockage or attached to an immovable object on shore
41 so that they do not extend more than fifty feet from the shore shall display one
42 three-hundred-sixty-degree white light visible three hundred sixty degrees around

43 the horizon.

44 (5) Every white light prescribed by this section shall be of such character
45 as to be visible at a distance of at least two miles. Every colored light prescribed
46 by this section shall be of such character as to be visible at a distance of at least
47 one mile. The word "visible" in this subsection, when applied to lights, shall
48 mean visible on a dark night with clear atmosphere.

49 (6) When propelled by sail and machinery every vessel shall carry the
50 lights required by this section for a motorboat propelled by machinery only.

51 3. Any watercraft not defined as a vessel shall, from sunset to sunrise,
52 carry, ready at hand, a lantern or flashlight showing a white light which shall be
53 exhibited in sufficient time to avert collision.

54 4. Any vessel may carry and exhibit the lights required by the federal
55 regulations for preventing collisions at sea, in lieu of the lights required by
56 subsection 2 of this section.

57 5. All other watercraft over sixty-five feet in length and those propelled
58 solely by wind effect on the sail shall display lights prescribed by federal
59 regulations.

60 6. Any watercraft used by a person engaged in the act of sport fishing is
61 not required to display any lights required by this section if no other vessel is
62 within the immediate vicinity of the first vessel, the vessel is using an electric
63 trolling motor and the vessel is within fifty feet of the shore.

64 7. Every vessel, except those in class A, shall have on board at least one
65 wearable personal flotation device of type I, II or III for each person on board and
66 each person being towed who is not wearing one. Every such vessel shall also
67 have on board at least one type IV throwable personal flotation device.

68 8. All class A motorboats and all watercraft traveling on the waters of this
69 state shall have on board at least one type I, II, III or IV personal flotation device
70 for each person on board and each person being towed who is not wearing one.

71 9. All lifesaving devices required by subsections 7 and 8 of this section
72 shall be United States Coast Guard approved, in serviceable condition and so
73 placed as to be readily accessible.

74 10. Every vessel which is carrying or using flammable or toxic fluid in any
75 enclosure for any purpose, and which is not an entirely open vessel, shall have
76 an efficient natural or mechanical ventilation system which must be capable of
77 removing resulting gases prior to and during the time the vessel is occupied by
78 any person.

79 11. Motorboats shall carry on board at least the following United States
80 Coast Guard approved fire extinguishers:

81 (1) Every class A and every class 1 motorboat carrying or using gasoline
82 or any other flammable or toxic fluid, one B1 type fire extinguisher;

83 (2) Every class 2 motorboat, one B2 or two B1 type fire extinguishers;

84 (3) Every class 3 motorboat:

85 (a) Three B1 type fire extinguishers; or

86 (b) One B2 type and one B1 type fire extinguisher; or

87 (c) A fixed fire extinguishing system and one B2 type fire extinguisher; or

88 (d) A fixed fire extinguishing system and two B1 type fire extinguishers.

89 12. All class 1 and 2 motorboats and vessels shall have a sounding device.
90 All class 3 motorboats and vessels shall have at least a sounding device and one
91 bell.

92 13. No person shall operate any watercraft which is not equipped as
93 required by this section.

94 14. A Missouri state water patrol officer may direct the operator of any
95 watercraft being operated without sufficient personal flotation devices,
96 fire-fighting devices or in an overloaded or other unsafe condition or manner to
97 take whatever immediate and reasonable steps are necessary for the safety of
98 those aboard when, in the judgment of the officer, such operation creates a
99 hazardous condition. The officer may direct the operator to return the watercraft
100 to the nearest safe mooring and to remain there until the situation creating the
101 hazardous condition is corrected.

102 15. A Missouri state water patrol officer may remove any unmanned or
103 unattended watercraft from the water when, in the judgment of the officer, the
104 watercraft creates a hazardous condition.

105 **16. Nothing in this section shall prohibit the use of additional**
106 **specialized lighting used in the act of sport fishing.**

306.111. 1. A person commits the crime of negligent operation of a vessel
2 if when operating a vessel [on the Mississippi River, Missouri River or the lakes
3 this state] he **or she** acts with criminal negligence, as defined in subsection 5 of
4 section 562.016, RSMo, to cause physical injury to any other person or damage
5 to the property of any other person. A person convicted of negligent operation of
6 a vessel is guilty of a class B misdemeanor upon conviction for the first violation,
7 guilty of a class A misdemeanor upon conviction for the second violation, and
8 guilty of a class D felony for conviction for the third and subsequent violations.

9 2. A person commits the crime of operating a vessel while intoxicated if
10 he **or she** operates a vessel on the Mississippi River, Missouri River or the lakes
11 of this state while in an intoxicated condition. [A person convicted of] Operating
12 a vessel while intoxicated is [guilty of] a class B misdemeanor [upon conviction
13 for the first violation, guilty of a class A misdemeanor upon conviction for the
14 second violation, and guilty of a class D felony for conviction for the third and
15 subsequent violations].

16 3. A person commits the crime of involuntary manslaughter with a vessel
17 if, while in an intoxicated condition, he **or she** operates any vessel [on the
18 Mississippi River, Missouri River or the lakes of this state] and, when so
19 operating, acts with criminal negligence to cause the death of any
20 person. Involuntary manslaughter with a vessel is a class C felony.

21 4. A person commits the crime of assault with a vessel in the second
22 degree if, while in an intoxicated condition, he **or she** operates any vessel [on the
23 Mississippi River, Missouri River or the lakes of this state] and, when so
24 operating, acts with criminal negligence to cause physical injury to any other
25 person. Assault with a vessel in the second degree is a class D felony.

26 5. For purposes of this section, a person is in an intoxicated condition
27 when he **or she** is under the influence of alcohol, a controlled substance or drug,
28 or any combination thereof.

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

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

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

306.114. 1. No person convicted of or pleading guilty to a violation of
2 section 306.111 or 306.112 shall be granted a suspended imposition of sentence,
3 unless such person is placed on probation for a minimum of two years and a
4 record of the conviction or plea of guilty is entered into the records of the

5 Missouri uniform law enforcement system maintained by the Missouri state
6 highway patrol.

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

20 3. The department of health and senior services shall approve satisfactory
21 techniques, devices, equipment, or methods to conduct tests required by sections
22 306.111 to 306.119, and shall establish standards as to the qualifications and
23 competence of individuals to conduct analyses and to issue permits which shall
24 be subject to termination, suspension or revocation by the department of health
25 and senior services.

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

40 5. No person who administers any test pursuant to the provisions of

41 sections 306.111 to 306.119 upon the request of a law enforcement officer, no
42 hospital in or with which such person is employed or is otherwise associated or
43 in which such test is administered, and no other person, firm, or corporation by
44 whom or with which such person is employed or is in any way associated shall be
45 civilly liable for damages to the person tested, except for negligence in
46 administering of the test or for willful and wanton acts or omissions.

47 6. Any person who is dead, unconscious or who is otherwise in a condition
48 rendering such person incapable of refusing to take a test as provided in sections
49 306.111 to 306.119 shall be deemed not to have withdrawn the consent provided
50 by section 306.116 and the test or tests may be administered.

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

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

11 (2) If there was in excess of five-hundredths of one percent but less than
12 ~~[ten-hundredths]~~ **eight-hundredths** of one percent by weight of alcohol in such
13 person's blood, the fact shall not give rise to any presumption that the person was
14 or was not intoxicated, but the fact may be considered with other competent
15 evidence in determining whether the person was intoxicated;

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

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

21 3. A chemical analysis of a person's breath, blood, urine, or saliva, in
22 order to give rise to the presumption or to have the effect provided for in
23 subsection 1 of this section, shall have been performed as provided in sections
24 306.111 to 306.119 and in accordance with methods and standards approved by
25 the department of health and senior services.

26 4. The provisions of this section shall not be construed as limiting the

27 introduction of any other competent evidence bearing upon the question whether
28 the person was intoxicated or under the influence of a controlled substance, or
29 drug, or a combination of either or both with or without alcohol.

**306.118. 1. For purposes of this section, unless the context
2 clearly indicates otherwise, the following terms mean:**

3 (1) "Aggravated offender", a person who:

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

**6 (b) Has pleaded guilty to or has been found guilty of one or more
7 intoxication-related boating offenses and any of the following:
8 involuntary manslaughter under subsection 3 of section 306.111; assault
9 with a vessel in the second degree under subsection 4 of section
10 306.111, or assault of a law enforcement officer in the second degree
11 under subdivision (4) of subsection 1 of section 565.082, RSMo;**

12 (2) "Chronic offender":

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

**15 (b) A person who has pleaded guilty to or has been found guilty
16 of, on two or more separate occasions, any combination of the
17 following: involuntary manslaughter under subsection 3 of section
18 306.111; assault with a vessel in the second degree under subsection 4
19 of section 306.111; or assault of a law enforcement officer in the second
20 degree under subdivision (4) of subsection 1 of section 565.082, RSMo;
21 or**

**22 (c) A person who has pleaded guilty to or has been found guilty
23 of two or more intoxication-related boating offenses and any of the
24 following: involuntary manslaughter under subsection 3 of section
25 306.111; assault with a vessel in the second degree under subsection 4
26 of section 306.111; or assault of a law enforcement officer in the second
27 degree under subdivision (4) of subsection 1 of section 565.082, RSMo;**

**28 (3) "Intoxication-related boating offense", operating a vessel
29 while intoxicated under subsection 2 of section 306.111; operating a
30 vessel with excessive blood alcohol content under section 306.112;
31 involuntary manslaughter under subsection 3 of section 306.111; assault
32 with a vessel in the second degree under subsection 4 of section
33 306.111; any violation of subsection 2 of section 306.110; or assault of a
34 law enforcement officer in the second degree under subdivision (4) of**

35 subsection 1 of section 565.082, RSMo;

36 (4) "Persistent offender", one of the following:

37 (a) A person who has pleaded guilty to or has been found guilty
38 of two or more intoxication-related boating offenses;

39 (b) A person who has pleaded guilty to or has been found guilty
40 of involuntary manslaughter under subsection 3 of section 306.111,
41 assault in the second degree under subsection 4 of section 306.111,
42 assault of a law enforcement officer in the second degree under
43 subdivision (4) of subsection 1 of section 565.082, RSMo;

44 (5) "Prior offender", a person who has pleaded guilty to or has
45 been found guilty of one intoxication-related boating offense, where
46 such prior offense occurred within five years of the occurrence of the
47 intoxication-related boating offense for which the person is charged.

48 2. Any person who pleads guilty to or is found guilty of a
49 violation of subsection 2 of section 306.110, section 306.111, or section
50 306.112, who is alleged and proved to be a prior offender shall be guilty
51 of a class A misdemeanor.

52 3. Any person who pleads guilty to or is found guilty of a
53 violation of subsection 2 of section 306.110, section 306.111, or section
54 306.112, who is alleged and proved to be a persistent offender shall be
55 guilty of a class D felony.

56 4. Any person who pleads guilty to or is found guilty of a
57 violation of subsection 2 of section 306.110, section 306.111, or section
58 306.112, who is alleged and proved to be an aggravated offender shall
59 be guilty of a class C felony.

60 5. Any person who pleads guilty to or is found guilty of a
61 violation of subsection 2 of section 306.110, section 306.111, or section
62 306.112 who is alleged and proved to be a chronic offender shall be
63 guilty of a class B felony.

64 6. No state, county, or municipal court shall suspend the
65 imposition of sentence as to a prior offender, persistent offender,
66 aggravated offender, or chronic offender under this section, nor
67 sentence such person to pay a fine in lieu of a term of imprisonment,
68 notwithstanding the provisions of section 557.011, RSMo, to the
69 contrary notwithstanding. No prior offender shall be eligible for parole
70 or probation until he or she has served a minimum of five days
71 imprisonment, unless as a condition of such parole or probation such

72 person performs at least thirty days of community service under the
73 supervision of the court in those jurisdictions which have a recognized
74 program for community service. No persistent offender shall be eligible
75 for parole or probation until he or she has served a minimum of ten
76 days imprisonment, unless as a condition of such parole or probation
77 such person performs at least sixty days of community service under
78 the supervision of the court. No aggravated offender shall be eligible
79 for parole or probation until he or she has served a minimum of sixty
80 days imprisonment. No chronic offender shall be eligible for parole or
81 probation until he or she has served a minimum of two years
82 imprisonment.

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

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

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

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

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

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

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

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

106 12. Nothing in this section shall prevent the use of presentence
107 investigations or commitments.

108 13. At the sentencing hearing both the state, county, or

109 **municipality and the defendant shall be permitted to present additional**
110 **information bearing on the issue of sentence.**

111 **14. The pleas or findings of guilty shall be prior to the date of**
112 **commission of the present offense.**

113 **15. The court shall not instruct the jury as to the range of**
114 **punishment or allow the jury, upon a finding of guilty, to assess and**
115 **declare the punishment as part of its verdict in cases of prior offenders,**
116 **persistent offenders, aggravated offenders, or chronic offenders.**

306.124. 1. (1) "Aids to navigation" means buoys, beacons or other fixed
2 objects in the water which are used to mark obstructions to navigation or to direct
3 navigation through safe channels.

4 (2) "Regulatory markers" means any anchored or fixed markers in or on
5 the water or signs on the shore or on bridges over the water other than aids to
6 navigation and shall include but not be limited to bathing markers, speed zone
7 markers, information markers, danger zone markers, boat keep-out areas, and
8 mooring buoys.

9 2. The Missouri state water patrol after a public hearing pursuant to
10 notice thereof published not less than ten days prior thereto in each county to be
11 affected may provide for the uniform marking of the water areas in this state
12 through the placement of aids to navigation and regulatory markers. The
13 Missouri state water patrol shall establish a marking system compatible with the
14 system of aids to navigation prescribed by the United States Coast Guard. No
15 city, county, or person shall mark or obstruct the water of this state in any
16 manner so as to endanger the operation of watercraft or conflict with the marking
17 system prescribed by the state water patrol.

18 3. Whenever, due to any actual or imminent man-made or natural
19 disaster, the navigation or use of any waters of this state presents an
20 unreasonable danger to persons or property, the Missouri state water patrol may,
21 with the consent of the director of the department of public safety, close such
22 waters [by the placement of regulatory markers].

23 4. The operation of any watercraft within prohibited areas that are
24 marked shall be prima facie evidence of negligent operation.

25 5. It shall be unlawful for any person to operate a watercraft on the
26 waters of this state in a manner other than that prescribed or permitted by
27 regulatory markers.

28 6. No person shall moor or fasten a watercraft to or willfully damage,

29 tamper, remove, obstruct, or interfere with any aid to navigation or regulatory
30 marker established pursuant to sections 306.010 to 306.126.

306.125. 1. Every person shall operate a motorboat, vessel or watercraft
2 in a careful and prudent manner and at a rate of speed so as not to endanger the
3 property of another or the life or limb of any person and shall exercise the highest
4 degree of care.

5 2. No person shall operate a motorboat, vessel or watercraft at any time
6 from a half-hour after sunset until an hour before sunrise the following day at a
7 speed exceeding thirty miles per hour. [This subsection shall only apply to the
8 waters of the Mississippi River, the waters of the Missouri River, and lakes with
9 an aggregate shoreline in excess of one hundred sixty miles.]

10 3. Vessels shall not be operated within one hundred feet of any dock, pier,
11 occupied anchored boat or buoyed restricted area on any lake at a speed in excess
12 of slow-no wake speed.

13 4. Subsection 1 of this section shall not apply to a motorboat or other boat
14 race authorized under section 306.130.

306.132. 1. Any person operating a watercraft on the waters of this state
2 shall stop such watercraft upon a signal of any member of the Missouri state
3 water patrol and obey any other reasonable signal or direction of such member
4 of the Missouri state water patrol given in directing the movement of traffic on
5 the waters of this state.

6 2. Any person operating a watercraft upon the waters of this state shall
7 immediately stop or position such watercraft in such a way as to give the
8 right-of-way on the water to any emergency watercraft, as established by the
9 Missouri state water patrol, when such emergency watercraft gives an audible
10 signal by siren or gives a visible signal by having at least one lighted lamp
11 exhibiting a red or blue light visible under normal atmospheric conditions from
12 a distance of five hundred feet to the front of such emergency watercraft.

13 3. **Vessels shall not be operated at a speed in excess of slow no-**
14 **wake speed within one hundred feet of any emergency vessel that has**
15 **red or blue lighting displayed.**

16 4. Any person who violates the provisions of this section is guilty of a
17 class C misdemeanor.

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

4 or unusual noise.

5 2. Effective January 1, 1996, a person shall not manufacture, sell or offer
6 for sale or operate in this state any motorboat manufactured after that date that
7 exceeds the noise level of 90dB(A) when subjected to a stationary sound level test
8 as prescribed by SAE J2005. All motorboats manufactured prior to January 1,
9 1996, shall not exceed eighty-six decibels on an A-weighted scale when subjected
10 to a sound level test as prescribed by SAE J34 when measured from a distance
11 of fifty or more feet from the motorboat.

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

21 4. No motorboat shall be equipped with any electrical or mechanical
22 device or switch that when manipulated in any manner would allow the muffler
23 or exhaust system to emit a noise level that exceeds the maximums in subsection
24 2 of this section.

25 5. Effective January 1, 1996, a person shall not manufacture, nor shall
26 any person sell or offer for sale any motorboat which is manufactured after
27 January 1, 1996, which is equipped with a muffler or muffler system which does
28 not comply with this section. The subsection shall not apply to power vessels
29 designed, manufactured and sold for the sole purpose of competing in racing
30 events and for no other purpose. Any such exemption or exception shall be
31 documented in every sale agreement and shall be formally acknowledged by
32 signature on the part of both the buyer and the seller. Copies of such agreement
33 shall be maintained by both parties. A copy of such agreement shall be kept on
34 board whenever the motorboat is operated. Any motorboat sold under this
35 exemption may only be operated on the waters of this state in accordance with
36 subsection 7 of this section.

37 6. As of January 1, 1996, every manufacturer which delivers a new
38 motorboat for sale in this state shall certify, if the purchaser or dealer makes a
39 request in writing, that the decibel level of the motorboat engine, muffler and

40 exhaust system, as delivered to any licensed dealer in this state, does not exceed
41 the noise level of 90dB(A) when subjected to a stationary sound level test as
42 prescribed by SAE J2005. Such certificate of decibel level from the manufacturer
43 shall be given by the dealer to the purchaser of the new motorboat if the
44 motorboat is sold for use upon the waters of this state. The purchaser shall sign
45 a statement acknowledging receipt of the certificate of decibel level which shall
46 be supplied by the dealer. The dealer shall represent by affidavit whether or not
47 the engine or muffler system of the new motorboat being sold has been altered or
48 modified in any way.

49 7. The provisions of this section shall not apply to motorboats registered
50 and actually participating in a racing event or tune-up periods for such racing
51 events or to a motorboat being operated by a boat or engine manufacturer for the
52 purpose of testing or development. The operator of any motorboat operated upon
53 the waters of this state for the purpose of a tune-up for a sanctioned race or for
54 testing or development by a boat or engine manufacturer shall at all times have
55 in such operator's possession and produce on demand by a law enforcement officer
56 a test permit issued by the state water patrol. For the purpose of races or racing
57 events, such race shall only be sanctioned when conducted in accordance with and
58 approved by the United States Coast Guard or this state.

59 8. Any officer authorized to enforce the provisions of this section who has
60 probable cause to believe that a motorboat is not in compliance with the noise
61 levels established in this section may direct the operator of such motorboat to
62 submit the motorboat to an on-site test to measure noise levels, with the officer
63 on board if such officer chooses, and the operator shall comply with such
64 request. The owner of any motorboat which violates any provision of this section
65 shall have sixty days from the date of the violation to bring the motorboat into
66 compliance with the provisions of this section. Thereafter, it shall be the owner's
67 responsibility to have the motorboat tested by the state water patrol. If the
68 motorboat fails the state water patrol test, the owner shall immediately moor the
69 motorboat and shall keep the motorboat moored until the state water patrol
70 certifies that the motorboat is in compliance with the provisions of this
71 section. Any person who fails to comply with a request or direction of an officer
72 made pursuant to this subsection is guilty of a class C misdemeanor. Nothing in
73 this subsection shall be construed to limit the officer's ability to enforce this
74 section and to issue citations to the owner or operator of any motorboat during
75 the sixty-day compliance period.

76 9. Any officer who conducts motorboat sound level tests as provided in
77 this section shall be qualified in motorboat noise testing by the department of
78 public safety. Such qualifications shall include but may not be limited to the
79 selection of the measurement site, and the calibration and use of noise testing
80 equipment in accordance with the testing procedure prescribed by SAE J2005 and
81 SAE J34.

82 10. Unless otherwise indicated, any person who knowingly violates this
83 section is guilty of an infraction for a first offense with a penalty not to exceed
84 one hundred dollars, is guilty of an infraction for a second offense with a penalty
85 not to exceed two hundred dollars, and is guilty of an infraction for a third or
86 subsequent offense with a penalty not to exceed three hundred dollars.

87 11. [This section shall only apply to the waters of the Mississippi River,
88 the waters of the Missouri River, and lakes with an aggregate shoreline in excess
89 of one hundred sixty miles.] This section shall not apply to motorboats not
90 intended for use in this state.

 306.163. 1. The governor, by and with the advice and consent of the
2 senate, shall appoint a commissioner of the Missouri state water patrol to serve
3 at the pleasure of the governor. The commissioner shall take and subscribe an
4 oath of office to perform the commissioner's duties faithfully and
5 impartially. **The commissioner appointed by the governor shall have at
6 least ten years of experience in law enforcement similar to the duties
7 exercised by uniformed officers of the state water patrol or at least five
8 years of experience as a uniformed officer of the state water patrol.**

9 2. The commissioner shall prescribe rules for instruction and discipline
10 and make administrative rules and regulations and fix the hours of duty for the
11 members of the patrol. The commissioner shall have charge of the office of the
12 patrol, shall be custodian of the records of the patrol, and shall direct the
13 day-to-day activities of the officers, patrolmen and office personnel.

14 3. The commissioner shall be given a certificate of appointment, a copy of
15 which shall be filed with the secretary of state, granting him or her all the powers
16 of a peace officer to enforce all the laws of this state within the jurisdiction of the
17 water patrol as listed in section 306.165, provided that he has completed a law
18 enforcement training course which meets the standards established in chapter
19 590, RSMo.

20 4. In the absence, or upon the disability, of the commissioner, or at the
21 time the commissioner designates, the lieutenant colonel shall assume the duties

22 of the commissioner. In case of the disability of the commissioner and the
23 lieutenant colonel, the governor may designate a major as acting commissioner
24 and when so designated, the acting commissioner shall have all the powers and
25 duties of the commissioner.

306.190. 1. The provisions of this chapter and of other applicable laws of
2 this state shall govern the operation, equipment, numbering and all other matters
3 relating thereto whenever any watercraft shall be operated on the waters of this
4 state, or when any activity regulated by this chapter shall take place thereon; but
5 nothing in this chapter shall be construed to prevent the adoption of any
6 ordinance or local law relating to operation and equipment of watercraft the
7 provisions of which are identical to the provisions of this chapter, amendments
8 thereto or regulations issued thereunder; except that the ordinances or local laws
9 shall be operative only so long as and to the extent that they continue to be
10 identical to provisions of this chapter, amendments thereto or regulations issued
11 thereunder.

12 2. Any city or subdivision of this state may adopt special rules and
13 regulations with reference to the operation of watercraft on any waters owned by
14 the city or political subdivision.

15 3. The provisions of this chapter shall not apply to farm ponds not
16 commercially operated for boating purposes.

17 4. **No city or political subdivision of this state shall adopt special**
18 **rules and regulations with reference to restricting the operation of**
19 **personal watercraft on waters of this state.**

306.221. 1. No person shall operate or otherwise position a vessel or other
2 object or any person in such manner as to obstruct or impede the normal flow of
3 traffic on the [lakes] waters of this state.

4 2. Any person who violates subsection 1 of this section is guilty upon the
5 first conviction of a class C misdemeanor and upon the second and any
6 subsequent conviction of a class B misdemeanor.

306.228. 1. The commissioner may appoint from within the membership
2 not more than one assistant commissioner, two majors, nine captains, nine
3 lieutenants, and one director of radio, each of whom shall have the same
4 qualifications as the commissioner, and such additional force of sergeants,
5 corporals and patrolmen[, so that the total number of members of the patrol shall
6 not exceed ninety-nine officers and patrolmen] and such numbers of radio
7 personnel as the commissioner deems necessary.

8 2. In case of a national emergency the commissioner may name additional
9 patrolmen and radio personnel in a number sufficient to replace, temporarily,
10 patrolmen and radio personnel called into military services.

11 3. Applicants shall not be discriminated against because of race, creed,
12 color, national origin, religion or sex.

 565.024. 1. A person commits the crime of involuntary manslaughter in
2 the first degree if he or she:

3 (1) Recklessly causes the death of another person; or

4 (2) While in an intoxicated condition operates a motor vehicle **or vessel**
5 in this state and, when so operating, acts with criminal negligence to cause the
6 death of any person; or

7 (3) While in an intoxicated condition operates a motor vehicle **or vessel**
8 in this state, and, when so operating, acts with criminal negligence to:

9 (a) Cause the death of any person not a passenger in the vehicle **or**
10 **vessel** operated by the defendant, including the death of an individual that
11 results from the defendant's vehicle leaving a highway, as defined by section
12 301.010, RSMo, or the highway's right-of-way; **or vessel leaving the water; or**

13 (b) Cause the death of two or more persons; or

14 (c) Cause the death of any person while he or she has a blood alcohol
15 content of at least eighteen-hundredths of one percent by weight of alcohol in
16 such person's blood; or

17 (4) Operates a motor vehicle in violation of subsection 2 of section
18 304.022, RSMo, and when so operating, acts with criminal negligence to cause the
19 death of any person authorized to operate an emergency vehicle, as defined in
20 section 304.022, RSMo, while such person is in the performance of official duties;

21 **(5) Operates a vessel in violation of subsections 1 and 2 of**
22 **section 306.132, RSMo, and when so operating acts with criminal**
23 **negligence to cause the death of any person authorized to operate an**
24 **emergency watercraft, as defined in section 306.132, RSMo, while such**
25 **person is in the performance of official duties.**

26 2. Involuntary manslaughter in the first degree under subdivision (1) or
27 (2) of subsection 1 of this section is a class C felony. Involuntary manslaughter
28 in the first degree under subdivision (3) of subsection 1 of this section is a class
29 B felony. A second or subsequent violation of subdivision (3) of subsection 1 of
30 this section is a class A felony. For any violation of subdivision (3) of subsection
31 1 of this section, the minimum prison term which the defendant must serve shall

32 be eighty-five percent of his or her sentence. Any violation of [subdivision]
33 **subdivisions (4) and (5)** of subsection 1 of this section is a class B felony.

34 3. A person commits the crime of involuntary manslaughter in the second
35 degree if he acts with criminal negligence to cause the death of any person.

36 4. Involuntary manslaughter in the second degree is a class D felony.

565.082. 1. A person commits the crime of assault of a law enforcement
2 officer, emergency personnel, or probation and parole officer in the second degree
3 if such person:

4 (1) Knowingly causes or attempts to cause physical injury to a law
5 enforcement officer, emergency personnel, or probation and parole officer by
6 means of a deadly weapon or dangerous instrument;

7 (2) Knowingly causes or attempts to cause physical injury to a law
8 enforcement officer, emergency personnel, or probation and parole officer by
9 means other than a deadly weapon or dangerous instrument;

10 (3) Recklessly causes serious physical injury to a law enforcement officer,
11 emergency personnel, or probation and parole officer; or

12 (4) While in an intoxicated condition or under the influence of controlled
13 substances or drugs, operates a motor vehicle **or vessel** in this state and when
14 so operating, acts with criminal negligence to cause physical injury to a law
15 enforcement officer, emergency personnel, or probation and parole officer;

16 (5) Acts with criminal negligence to cause physical injury to a law
17 enforcement officer, emergency personnel, or probation and parole officer by
18 means of a deadly weapon or dangerous instrument;

19 (6) Purposely or recklessly places a law enforcement officer, emergency
20 personnel, or probation and parole officer in apprehension of immediate serious
21 physical injury; or

22 (7) Acts with criminal negligence to create a substantial risk of death or
23 serious physical injury to a law enforcement officer, emergency personnel, or
24 probation and parole officer.

25 2. As used in this section, "emergency personnel" means any paid or
26 volunteer firefighter, emergency room or trauma center personnel, or emergency
27 medical technician as defined in subdivisions (15), (16), and (17) of section
28 190.100, RSMo.

29 3. Assault of a law enforcement officer, emergency personnel, or probation
30 and parole officer in the second degree is a class B felony unless committed
31 pursuant to subdivision (2), (5), (6), or (7) of subsection 1 of this section in which

32 case it is a class C felony.

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

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

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

6 (b) Has pleaded guilty to or has been found guilty of one or more
7 intoxication-related traffic offense and, in addition, any of the following:
8 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section
9 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where
10 the underlying felony is an intoxication-related traffic offense; or assault in the
11 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or
12 assault of a law enforcement officer in the second degree under subdivision (4) of
13 subsection 1 of section 565.082, RSMo;

14 (2) A "chronic offender" is:

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

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

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

33 (3) An "intoxication-related traffic offense" is driving while intoxicated,
34 driving with excessive blood alcohol content, involuntary manslaughter pursuant
35 to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo, murder in the

36 second degree under section 565.021, RSMo, where the underlying felony is an
37 intoxication-related traffic offense, assault in the second degree pursuant to
38 subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law
39 enforcement officer in the second degree pursuant to subdivision (4) of subsection
40 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in
41 violation of state law or a county or municipal ordinance, where the defendant
42 was represented by or waived the right to an attorney in writing;

43 (4) A "persistent offender" is one of the following:

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

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

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

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

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

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

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

68 6. No state, county, or municipal court shall suspend the imposition of
69 sentence as to a prior offender, persistent offender, aggravated offender, or
70 chronic offender under this section nor sentence such person to pay a fine in lieu
71 of a term of imprisonment, section 557.011, RSMo, to the contrary

72 notwithstanding. No prior offender shall be eligible for parole or probation until
73 he or she has served a minimum of five days imprisonment, unless as a condition
74 of such parole or probation such person performs at least thirty days of
75 community service under the supervision of the court in those jurisdictions which
76 have a recognized program for community service. No persistent offender shall
77 be eligible for parole or probation until he or she has served a minimum of ten
78 days imprisonment, unless as a condition of such parole or probation such person
79 performs at least sixty days of community service under the supervision of the
80 court. No aggravated offender shall be eligible for parole or probation until he
81 or she has served a minimum of sixty days imprisonment. No chronic offender
82 shall be eligible for parole or probation until he or she has served a minimum of
83 two years imprisonment.

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

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

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

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

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

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

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

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

102 12. Nothing in this section shall prevent the use of presentence
103 investigations or commitments.

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

107 14. The pleas or findings of guilty shall be prior to the date of commission

108 of the present offense.

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

113 16. Evidence of a prior [convictions] **plea of guilty or finding of guilty**
114 **in an intoxication-related traffic offense** shall be heard and determined by
115 the trial court out of the hearing of the jury prior to the submission of the case
116 to the jury, and shall include but not be limited to evidence of convictions
117 received by a search of the records of the Missouri uniform law enforcement
118 system maintained by the Missouri state highway patrol. After hearing the
119 evidence, the court shall enter its findings thereon. A [conviction of a violation
120 of a municipal or county ordinance in a county or municipal court for driving
121 while intoxicated or a conviction or a] plea of guilty or a finding of guilty followed
122 by **incarceration**, a suspended imposition of sentence, suspended execution of
123 sentence, probation or parole or any combination thereof in **any intoxication-**
124 **related traffic offense in a state, county or municipal court or any**
125 **combination thereof**, shall be treated as a prior [conviction] **plea of guilty**
126 **or finding of guilty for purposes of this section.**

 577.080. 1. A person commits the crime of abandoning a motor vehicle,
2 **vessel**, or trailer if he abandons any motor vehicle, **vessel**, or trailer on the
3 right-of-way of any public road or state highway or on or in any of the waters in
4 this state or on the banks of any stream, or on any land or water owned, operated
5 or leased by the state, any board, department, agency or commission thereof, or
6 any political subdivision thereof or on any land or water owned, operated or
7 leased by the federal government or on any private real property owned by
8 another without his consent.

9 2. For purposes of this section, the last owner of record of a motor vehicle,
10 **vessel**, or trailer found abandoned and not shown to be transferred pursuant to
11 sections 301.196 and 301.197, RSMo, shall be deemed prima facie to have been
12 the owner of such motor vehicle, **vessel**, or trailer at the time it was abandoned
13 and to have been the person who abandoned the motor vehicle, **vessel**, or trailer
14 or caused or procured its abandonment. The registered owner of the abandoned
15 motor vehicle, **vessel**, or trailer shall not be subject to the penalties provided by
16 this section if the motor vehicle, **vessel**, or trailer was in the care, custody, or
17 control of another person at the time of the violation. In such instance, the owner

18 shall submit such evidence in an affidavit permitted by the court setting forth the
19 name, address, and other pertinent information of the person who leased, rented,
20 or otherwise had care, custody, or control of the motor vehicle, **vessel**, or trailer
21 at the time of the alleged violation. The affidavit submitted pursuant to this
22 subsection shall be admissible in a court proceeding adjudicating the alleged
23 violation and shall raise a rebuttable presumption that the person identified in
24 the affidavit was in actual control of the motor vehicle, **vessel**, or trailer. In such
25 case, the court has the authority to terminate the prosecution of the summons
26 issued to the owner and issue a summons to the person identified in the affidavit
27 as the operator. If the motor vehicle, **vessel**, or trailer is alleged to have been
28 stolen, the owner of the motor vehicle, **vessel**, or trailer shall submit proof that
29 a police report was filed in a timely manner indicating that the vehicle **or vessel**
30 was stolen at the time of the alleged violation.

31 3. Abandoning a motor vehicle, **vessel**, or trailer is a class A
32 misdemeanor.

33 4. Any person convicted pursuant to this section shall be civilly liable for
34 all reasonable towing, storage, and administrative costs associated with the
35 abandonment of the motor vehicle, **vessel**, or trailer. Any reasonable towing,
36 storage, and administrative costs in excess of the value of the abandoned motor
37 vehicle, **vessel**, or trailer that exist at the time the motor vehicle **or vessel** is
38 transferred pursuant to section 304.156, RSMo, shall remain the liability of the
39 person convicted pursuant to this section so long as the towing company, as
40 defined in chapter 304, RSMo, provided the title owner and lienholders, as
41 ascertained by the department of revenue records, a notice within the time frame
42 and in the form as described in subsection 1 of section 304.156, RSMo.

 Section B. Because of the need to protect public safety and ensure that
2 persons guilty of multiple intoxication-related traffic offenses receive an
3 appropriate sentence, the repeal and reenactment of section 577.023 is deemed
4 necessary for the immediate preservation of the public health, welfare, peace and
5 safety, and is hereby declared to be an emergency act within the meaning of the
6 constitution, and the repeal and reenactment of section 577.023 of this act shall
7 be in full force and effect upon its passage and approval.

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