

SECOND REGULAR SESSION

# HOUSE BILL NO. 2627

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PLOCHER.

6616H.011

D. ADAM CRUMBLISS, Chief Clerk

## AN ACT

To repeal section 577.037 as enacted by house bill no. 1371, ninety-seventh general assembly, second regular session, and section 577.037 as enacted by house bill nos. 302 & 38, ninety-first general assembly, first regular session, RSMo, and to enact in lieu thereof one new section relating to admission of chemical test results in intoxication related proceedings, with an emergency clause.

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

Section A. Section 577.037 as enacted by house bill no. 1371, ninety-seventh general assembly, second regular session, and section 577.037 as enacted by house bill nos. 302 & 38, ninety-first general assembly, first regular session, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 577.037, to read as follows:

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

2. If a chemical analysis of the defendant's breath, blood, saliva, or urine demonstrates there was eight-hundredths of one percent or more by weight of alcohol in the person's blood, this shall be prima facie evidence that the person was intoxicated at the time the specimen was

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.

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

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

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

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

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

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

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

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

45 (1) 0.10%;

46 (2) 0.08%; or

47 (3) 0.04%;

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

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

577.037. 1. Upon the trial of any person for violation of any of the provisions of section  
2 565.024, or section 565.060, or section 577.010 or 577.012, or upon the trial of any criminal  
3 action or violations of county or municipal ordinances or in any license suspension or revocation  
4 proceeding pursuant to the provisions of chapter 302 arising out of acts alleged to have been  
5 committed by any person while driving a motor vehicle while in an intoxicated condition, the  
6 amount of alcohol in the person's blood at the time of the act alleged as shown by any chemical  
7 analysis of the person's blood, breath, saliva or urine is admissible in evidence and the provisions  
8 of subdivision (5) of section 491.060 shall not prevent the admissibility or introduction of such  
9 evidence if otherwise admissible. If there was eight-hundredths of one percent or more by weight  
10 of alcohol in the person's blood, this shall be prima facie evidence that the person was  
11 intoxicated at the time the specimen was taken.

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

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

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

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

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

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

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

35 **6. For any criminal offense or violations of county or municipal ordinances, or in**  
36 **any license suspension or revocation proceeding pursuant to the provisions of chapter 302,**  
37 **arising out of acts alleged to have been committed by any person while operating a vehicle,**  
38 **vessel, or aircraft, or acting as a flight crew member of any aircraft, while in an intoxicated**  
39 **condition or with an excessive blood alcohol content occurring on or between the dates of**  
40 **December 30, 2012, and April 4, 2014, notwithstanding any other provision of law or**  
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50 **to all actions in progress whether commenced before or after the effective date of this act.**  
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55 **not be limited to, holdings in Stiers v. Dir. of Revenue, No. SC4840 (Mo. Jan. 12, 2016); and**  
56 **Stiers v. Dir. of Revenue, ED 101407, 2015 WL 343310 (Mo.App. E.D. Jan. 27, 2015).**

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

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