

FIRST REGULAR SESSION

HOUSE BILL NO. 191

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

0174H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 302.535 and 302.574, RSMo, and to enact in lieu thereof two new sections relating to administrative procedures for driver's license suspension or revocation, with penalty provisions.

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

Section A. Sections 302.535 and 302.574, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 302.535 and 302.574, to read as follows:

302.535. 1. Any person aggrieved by a decision of the department may file a petition
2 for trial de novo by the circuit court. The burden of proof shall be on the state to adduce the
3 evidence. Such trial shall be conducted pursuant to the Missouri rules of civil procedure and not
4 as an appeal of an administrative decision pursuant to chapter 536. The petition shall be filed
5 in the circuit court of the county where the arrest occurred. **Upon the person's petition for trial
6 de novo, the clerk of the court shall notify the prosecuting attorney of the county, and the
7 prosecutor shall appear at the trial on behalf of the director of revenue.** The case shall be
8 decided by the judge sitting without a jury. Until January 1, 2002, the presiding judge of the
9 circuit court may assign a traffic judge, pursuant to section 479.500, RSMo 1994, a circuit judge
10 or an associate circuit judge to hear such petition. After January 1, 2002, pursuant to local court
11 rule pursuant to Article V, Section 15 of the Missouri Constitution, the case may be assigned to
12 a circuit judge or an associate circuit judge, or to a traffic judge pursuant to section 479.500.

13 2. The filing of a petition for trial de novo shall not result in a stay of the suspension or
14 revocation order. A restricted driving privilege as defined in section 302.010 shall be issued in
15 accordance with subsection 2 of section 302.525, if the person's driving record shows no prior

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.

16 alcohol-related enforcement contact during the immediately preceding five years. Such restricted
17 driving privilege shall terminate on the date of the disposition of the petition for trial de novo.

18 3. In addition to the restricted driving privilege as permitted in subsection 2 of this
19 section, the department may upon the filing of a petition for trial de novo issue a restricted
20 driving privilege as defined in section 302.010. In determining whether to issue such a restrictive
21 driving privilege, the department shall consider the number and the seriousness of prior
22 convictions and the entire driving record of the driver.

23 4. Such time of restricted driving privilege pending disposition of trial de novo shall be
24 counted toward any time of restricted driving privilege imposed pursuant to section 302.525.
25 Nothing in this subsection shall be construed to prevent a person from maintaining his restricted
26 driving privilege for an additional sixty days in order to meet the conditions imposed by section
27 302.540 for reinstating a person's driver's license.

302.574. 1. If a person who was operating a vehicle refuses upon the request of the
2 officer to submit to any chemical test under section 577.041, the officer shall, on behalf of the
3 director of revenue, serve the notice of license revocation personally upon the person and shall
4 take possession of any license to operate a vehicle issued by this state which is held by that
5 person. The officer shall issue a temporary permit, on behalf of the director of revenue, which
6 is valid for fifteen days and shall also give the person notice of his or her right to file a petition
7 for review to contest the license revocation.

8 2. Such officer shall make a certified report under penalties of perjury for making a false
9 statement to a public official. The report shall be forwarded to the director of revenue and shall
10 include the following:

11 (1) That the officer has:

12 (a) Reasonable grounds to believe that the arrested person was driving a motor vehicle
13 while in an intoxicated condition; or

14 (b) Reasonable grounds to believe that the person stopped, being under the age of
15 twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths
16 of one percent or more by weight; or

17 (c) Reasonable grounds to believe that the person stopped, being under the age of
18 twenty-one years, was committing a violation of the traffic laws of the state, or political
19 subdivision of the state, and such officer has reasonable grounds to believe, after making such
20 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater;

21 (2) That the person refused to submit to a chemical test;

22 (3) Whether the officer secured the license to operate a motor vehicle of the person;

23 (4) Whether the officer issued a fifteen-day temporary permit;

24 (5) Copies of the notice of revocation, the fifteen-day temporary permit, and the notice
25 of the right to file a petition for review. The notices and permit may be combined in one
26 document; and

27 (6) Any license, which the officer has taken into possession, to operate a motor vehicle.

28 3. Upon receipt of the officer's report, the director shall revoke the license of the person
29 refusing to take the test for a period of one year; or if the person is a nonresident, such person's
30 operating permit or privilege shall be revoked for one year; or if the person is a resident without
31 a license or permit to operate a motor vehicle in this state, an order shall be issued denying the
32 person the issuance of a license or permit for a period of one year.

33 4. If a person's license has been revoked because of the person's refusal to submit to a
34 chemical test, such person may petition for a hearing before a circuit division or associate
35 division of the court in the county in which the arrest or stop occurred. The person may request
36 such court to issue an order staying the revocation until such time as the petition for review can
37 be heard. If the court, in its discretion, grants such stay, it shall enter the order upon a form
38 prescribed by the director of revenue and shall send a copy of such order to the director. Such
39 order shall serve as proof of the privilege to operate a motor vehicle in this state and the director
40 shall maintain possession of the person's license to operate a motor vehicle until termination of
41 any revocation under this section. ~~Upon the person's request, the clerk of the court shall notify~~
42 ~~the prosecuting attorney of the county and the prosecutor shall~~ **The director of revenue, or an**
43 **attorney designated by the director, shall** appear at the hearing on behalf of the ~~director~~
44 **department** of revenue. At the hearing, the court shall determine only:

45 (1) Whether the person was arrested or stopped;

46 (2) Whether the officer had:

47 (a) Reasonable grounds to believe that the person was driving a motor vehicle while in
48 an intoxicated or drugged condition; or

49 (b) Reasonable grounds to believe that the person stopped, being under the age of
50 twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths
51 of one percent or more by weight; or

52 (c) Reasonable grounds to believe that the person stopped, being under the age of
53 twenty-one years, was committing a violation of the traffic laws of the state, or political
54 subdivision of the state, and such officer had reasonable grounds to believe, after making such
55 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater; and

56 (3) Whether the person refused to submit to the test.

57 5. If the court determines any issue not to be in the affirmative, the court shall order the
58 director to reinstate the license or permit to drive.

59 6. Requests for review as provided in this section shall go to the head of the docket of
60 the court wherein filed.

61 7. No person who has had a license to operate a motor vehicle suspended or revoked
62 under the provisions of this section shall have that license reinstated until such person has
63 participated in and successfully completed a substance abuse traffic offender program defined
64 in section 302.010, or a program determined to be comparable by the department of mental
65 health. Assignment recommendations, based upon the needs assessment as described in
66 subdivision (24) of section 302.010, shall be delivered in writing to the person with written
67 notice that the person is entitled to have such assignment recommendations reviewed by the court
68 if the person objects to the recommendations. The person may file a motion in the associate
69 division of the circuit court of the county in which such assignment was given, on a printed form
70 provided by the state courts administrator, to have the court hear and determine such motion
71 under the provisions of chapter 517. The motion shall name the person or entity making the
72 needs assessment as the respondent and a copy of the motion shall be served upon the respondent
73 in any manner allowed by law. Upon hearing the motion, the court may modify or waive any
74 assignment recommendation that the court determines to be unwarranted based upon a review
75 of the needs assessment, the person's driving record, the circumstances surrounding the offense,
76 and the likelihood of the person committing a similar offense in the future, except that the court
77 may modify but may not waive the assignment to an education or rehabilitation program of a
78 person determined to be a prior or persistent offender as defined in section 577.001, or of a
79 person determined to have operated a motor vehicle with a blood alcohol content of
80 fifteen-hundredths of one percent or more by weight. Compliance with the court determination
81 of the motion shall satisfy the provisions of this section for the purpose of reinstating such
82 person's license to operate a motor vehicle. The respondent's personal appearance at any hearing
83 conducted under this subsection shall not be necessary unless directed by the court.

84 8. The fees for the substance abuse traffic offender program, or a portion thereof, to be
85 determined by the division of alcohol and drug abuse of the department of mental health, shall
86 be paid by the person enrolled in the program. Any person who is enrolled in the program shall
87 pay, in addition to any fee charged for the program, a supplemental fee to be determined by the
88 department of mental health for the purposes of funding the substance abuse traffic offender
89 program defined in section 302.010. The administrator of the program shall remit to the division
90 of alcohol and drug abuse of the department of mental health on or before the fifteenth day of
91 each month the supplemental fee for all persons enrolled in the program, less two percent for
92 administrative costs. Interest shall be charged on any unpaid balance of the supplemental fees
93 due to the division of alcohol and drug abuse under this section, and shall accrue at a rate not to
94 exceed the annual rates established under the provisions of section 32.065, plus three percentage

95 points. The supplemental fees and any interest received by the department of mental health
96 under this section shall be deposited in the mental health earnings fund, which is created in
97 section 630.053.

98 9. Any administrator who fails to remit to the division of alcohol and drug abuse of the
99 department of mental health the supplemental fees and interest for all persons enrolled in the
100 program under this section shall be subject to a penalty equal to the amount of interest accrued
101 on the supplemental fees due to the division under this section. If the supplemental fees, interest,
102 and penalties are not remitted to the division of alcohol and drug abuse of the department of
103 mental health within six months of the due date, the attorney general of the state of Missouri
104 shall initiate appropriate action for the collection of said fees and accrued interest. The court
105 shall assess attorneys' fees and court costs against any delinquent program.

106 10. Any person who has had a license to operate a motor vehicle revoked under this
107 section and who has a prior alcohol-related enforcement contact, as defined in section 302.525,
108 shall be required to file proof with the director of revenue that any motor vehicle operated by the
109 person is equipped with a functioning, certified ignition interlock device as a required condition
110 of license reinstatement. Such ignition interlock device shall further be required to be
111 maintained on all motor vehicles operated by the person for a period of not less than six months
112 immediately following the date of reinstatement. If the monthly monitoring reports show that
113 the ignition interlock device has registered any confirmed blood alcohol concentration readings
114 above the alcohol setpoint established by the department of transportation or that the person has
115 tampered with or circumvented the ignition interlock device within the last three months of the
116 six-month period of required installation of the ignition interlock device, then the period for
117 which the person must maintain the ignition interlock device following the date of reinstatement
118 shall be extended until the person has completed three consecutive months with no violations
119 as described in this section. If the person fails to maintain such proof with the director as
120 required by this section, the license shall be rerevoked until proof as required by this section is
121 filed with the director, and the person shall be guilty of a class A misdemeanor.

122 11. The revocation period of any person whose license and driving privilege has been
123 revoked under this section and who has filed proof of financial responsibility with the
124 department of revenue in accordance with chapter 303 and is otherwise eligible shall be
125 terminated by a notice from the director of revenue after one year from the effective date of the
126 revocation. Unless proof of financial responsibility is filed with the department of revenue, the
127 revocation shall remain in effect for a period of two years from its effective date. If the person
128 fails to maintain proof of financial responsibility in accordance with chapter 303, the person's
129 license and driving privilege shall be rerevoked.

130 12. A person commits the offense of failure to maintain proof with the Missouri
131 department of revenue if, when required to do so, he or she fails to file proof with the director
132 of revenue that any vehicle operated by the person is equipped with a functioning, certified
133 ignition interlock device or fails to file proof of financial responsibility with the department of
134 revenue in accordance with chapter 303. The offense of failure to maintain proof with the
135 Missouri department of revenue is a class A misdemeanor.

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