

FIRST REGULAR SESSION

SENATE BILL NO. 158

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0352S.011

AN ACT

To repeal section 577.037, 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Section A. Section 577.037, RSMo, is repealed and one new section
2 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
2 violations of county or municipal ordinances, or in any license suspension or
3 revocation proceeding pursuant to the provisions of chapter 302, arising out of
4 acts alleged to have been committed by any person while operating a vehicle,
5 vessel, or aircraft, or acting as a flight crew member of any aircraft, while in an
6 intoxicated condition or with an excessive blood alcohol content, the amount of
7 alcohol in the person's blood at the time of the act, as shown by any chemical
8 analysis of the person's blood, breath, saliva, or urine, is admissible in evidence
9 and the provisions of subdivision (5) of section 491.060 shall not prevent the
10 admissibility or introduction of such evidence if otherwise admissible.

11 2. If a chemical analysis of the defendant's breath, blood, saliva, or urine
12 demonstrates there was eight-hundredths of one percent or more by weight of
13 alcohol in the person's blood, this shall be prima facie evidence that the person
14 was intoxicated at the time the specimen was taken. If a chemical analysis of the
15 defendant's breath, blood, saliva, or urine demonstrates that there was less than
16 eight-hundredths of one percent of alcohol in the defendant's blood, any charge
17 alleging a criminal offense related to the operation of a vehicle, vessel, or aircraft
18 while in an intoxicated condition shall be dismissed with prejudice unless one or
19 more of the following considerations cause the court to find a dismissal

20 unwarranted:

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

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

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

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

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

35 5. A chemical analysis of a person's breath, blood, saliva or urine, in order
36 to give rise to the presumption or to have the effect provided for in subsection 2
37 of this section, shall have been performed as provided in sections 577.020 to
38 577.041 and in accordance with methods and standards approved by the state
39 department of health and senior services.

40 **6. For any criminal offense or violations of county or municipal**
41 **ordinances, or in any license suspension or revocation proceeding**
42 **pursuant to the provisions of chapter 302, arising out of acts alleged to**
43 **have been committed by any person while operating a vehicle, vessel,**
44 **or aircraft, or acting as a flight crew member of any aircraft, while in**
45 **an intoxicated condition or with an excessive blood alcohol content**
46 **occurring on or between the dates of December 30, 2012, and April 4,**
47 **2014, notwithstanding any other provision of law or regulation, a**
48 **relevant chemical analysis of a person's breath shall be admissible in**
49 **all proceedings after the effective date of this act, if the standard**
50 **simulator solutions used to verify and calibrate evidential breath**
51 **analyzers, had a vapor concentration within five percent of the**
52 **following values:**

53 (1) 0.10%;

54 (2) 0.08%; or

55 (3) 0.04%;

56 and otherwise was in accordance with methods and standards approved
57 by the state department of health and senior services. This provision
58 is a procedural rule and applies to all actions in progress whether
59 commenced before or after the effective date of this act. Such chemical
60 breath analysis shall be admissible in all proceedings after the effective
61 date of this act even if the offense occurred before the effective date of
62 this act.

63 7. It is the intent of the legislature to reverse, overturn and
64 abrogate earlier case law interpretations related to the admissibility
65 of chemical breath analyses to include, but not be limited to, holdings
66 in *Stiers v. Dir. of Revenue*, No. SC4840 (Mo. Jan. 12, 2016); and *Stiers*
67 *v. Dir. of Revenue*, ED 101407, 2015 WL 343310 (Mo. App. E.D. Jan. 27,
68 2015).

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

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