

SECOND REGULAR SESSION

# SENATE BILL NO. 1014

98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR DIXON.

Read 1st time February 2, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6308S.011

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## 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.

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*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-  
2 seventh general assembly, second regular session, and section 577.037 as enacted  
3 by house bill nos. 302 & 38, ninety-first general assembly, first regular session,  
4 RSMo, are repealed and one new section enacted in lieu thereof, to be known as  
5 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 or with an excessive blood alcohol content shall  
19 be dismissed with prejudice unless one or more of the following considerations  
20 cause the court to find a dismissal 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).**

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

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

17 3. The foregoing provisions of this section shall not be construed as  
18 limiting the introduction of any other competent evidence bearing upon the

19 question whether the person was intoxicated.

20 4. A chemical analysis of a person's breath, blood, saliva or urine, in order  
21 to give rise to the presumption or to have the effect provided for in subsection 1  
22 of this section, shall have been performed as provided in sections 577.020 to  
23 577.041 and in accordance with methods and standards approved by the state  
24 department of health and senior services.

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

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

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

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

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

55           **(1) 0.10%;**

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59 **by the state department of health and senior services. This provision**  
60 **is a procedural rule and applies to all actions in progress whether**  
61 **commenced before or after the effective date of this act. Such chemical**  
62 **breath analysis shall be admissible in all proceedings after the effective**  
63 **date of this act even if the offense occurred before the effective date of**  
64 **this act.**

65           **7. It is the intent of the legislature to reverse, overturn and**  
66 **abrogate earlier case law interpretations related to the admissibility**  
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69 **v. Dir. of Revenue, ED 101407, 2015 WL 343310 (Mo.App. E.D. Jan. 27,**  
70 **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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