# CHAPTER XVII. - DEPARTMENT OF REVENUE ADMINISTRATIVE LICENSE ACTIONS

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# DEPARTMENT OF REVENUE ADMINISTRATIVE LICENSE ACTIONS

## 17.1 SCOPE OF CHAPTER

This chapter will cover various types of driver's license suspension, revocation and denial actions that may be imposed by the Department of Revenue. The different actions resulting in a loss of driver's license consist of two main types: alcohol- and non-alcohol-related actions. The non-alcohol-related driver's license loss may be the result of the accumulation of points for moving violations; nonappearance or unpaid tickets in this or another state; failure to maintain insurance; failure of pay child support; or incompetency to continue to drive. The alcohol-related loss of driver's license may result from driving with a blood alcohol content in excess of the legal limit; for refusal to submit to alcohol testing; from the court ordering a loss under the abuse and lose provisions; and from multiple convictions relating to driving while intoxicated. This chapter will also discuss the reinstatement requirements for getting relicensed after a loss, the availability of limited driving privileges, when ignition interlock is applicable and what information is available relating to driving records under the privacy provisions. It will also cover the provisions of new legislation effective July 1, 2009, requiring the filing of proof of installation of approved Ignition Interlock device as a condition for reinstatement of licensure and for issuance of limited and restricted driving privileges for certain repeat alcohol offenders.

# NON-ALCOHOL-RELATED ACTIONS

## 17.2 ASSESSMENT OF POINTS

The assessment of points on a driver's license is governed by Sections 302.302 and 302.304, RSMo. Points are assessed only on convictions for moving violations. A moving violation is defined as one where, at the time of the violation, the motor vehicle involved is in motion. The term does not include the driving of a motor vehicle without a valid motor vehicle registration or violations of Section 304.170 to 304.240, RSMo inclusive, relating to the sizes and weights of vehicles. Section 302.302, RSMo also excludes from moving violations equipment violations such as driving without headlights, brake lights or having defective equipment. A conviction for failure to produce an insurance card on demand, state law (§ 303.024, RSMo), or municipal violation, however, is considered a moving violation, resulting in the assessment of four points upon receipt of the conviction record.

Section 302.020, RSMo provides that a state charge of driving without a valid driver's license for a third or subsequent offense will be a Class D felony. However, only convictions under state law may be counted toward the three convictions. In addition, enhanced point assessment is mandated for repeat state law convictions for driving without a driver's license. The first conviction will be assessed two points, the second four points, and the third six points. Municipal ordinance violations for driving without a driver's license were *not* included in the enhanced point provisions and will still result in a two-point assessment.

Under section 302.321, RSMo the crime of driving while suspended or revoked includes persons whose privilege to drive has been canceled, suspended or revoked under the laws of this state or *any other state*. Municipal ordinance violations may also count toward enhancing the criminal

penalty to a felony for repeat violations if it is shown that the defendant was represented or waived the right to counsel. A fourth conviction of driving while suspended or revoked may be a felony if the prior three convictions for driving while suspended or revoked occurred within ten years of the present offense and the person received and served a sentence of ten days ore more on such previous offenses. A third conviction of driving while suspended or revoked may be a felony if there is a prior alcohol-related enforcement contact and the prior two offenses occurred within ten years of the occurrence of the present offense and the person received and served a sentence of ten days or more on such previous offenses.

**Conviction:** Points are only assessed based on a conviction. A conviction is the final outcome at the time of sentencing or a forfeiture of bail or collateral deposited to secure a defendants appearance in court. The forfeiture of bail is considered a conviction whether entered in Missouri or out-of-state. See Section 302.010(3), RSMo and Pryor v. David, 436 S.W. 2d 3 (Mo. 1969). A suspended imposition of sentence (SIS) is *not* a conviction for point assessment purposes since sentence is not imposed. A suspended execution of sentence (SES) *is* considered a conviction for point assessment purposes since sentence is entered but the execution is delayed.

**Point Assessment Mandated:** All convictions of moving violations are subject to point assessment. Once a conviction is received the director is mandated to assess points and has no discretion to disregard the conviction based on delay in receipt or age. Jennings v. Director of Revenue, 986 S.W.2d 513 (Mo.App. 1999); Rudd v. David, 444 S.W.2d 457 (Mo. 1969).

**Point Accumulation:** Pursuant to Section 302.304.2, RSMo points are *accumulated* based on date of conviction. Section 302.304.2, RSMo. Points, however, cannot be assessed until receipt of the conviction from the court, at which time the appropriate number of points are assessed as required in Section 302.302, RSMo. Total point accumulation is calculated using conviction date, allowing for credit for any safe driving reduction, if any. If sufficient points are accumulated, a suspension or revocation notice is then issued. The notice of suspension or revocation notifies the driver thirty days in advance that the suspension or revocation will take place. The suspension or revocation does not begin from the date of conviction. Any suspension or revocation action commences or is effective only after the Director of Revenue receives the record of conviction and mails notice thereof to the driver. Harper v. Director of Revenue, 118 S.W.3d 195 (Mo. App. 2003). Only the Director of Revenue, not the court, can assess points and suspend or revoke the driver's license for point accumulation. Jennings, 986 S.W.2d at 515.

**Safe Driving Reduction:** Section 302.306, RSMo provides for a safe driving point reduction for each full year of operation without conviction for a moving violation. The total point accumulation is reduced by one-third for the first full year, one-half for the second full year and all remaining points are removed the third full year of safe driving. However, no safe driving reduction is given during a period of suspension or revocation, even if the suspension or revocation is non-point related. Senn v. Director of Revenue, 674 S.W.2D 43 (Mo.App. 1984); Creech v. Director of Revenue, 886 S.W.2d 111 (Mo.App. 1994). There is also *no* point reduction during periods of limited driving privileges. (See the Missouri Department of Revenue Drivers License Bureau Point System Violation Description Table following this chapter.)

## 17.3 REVIEW OF POINT SUSPENSION / REVOCATION

**Jurisdiction:** Section 302.311, RSMo provides that a petition for review of any action

suspending, revoking, denying or withholding a license may be filed in the circuit court of the county of petitioner's residence, within thirty days after notice of the action. The 30-day period is jurisdictional and no three-day mail rule applies to review of administrative decisions. Howard v. Director of Revenue, 202 S.W.3d 612 (Mo. App. 2006); Smith v. Director of Revenue, 179 S.W.3d 310 (Mo. App. 2005). Welch v. Director of Revenue, 859 S.W. 2d, 230 (Mo.App. 1993). A driver must file a petition to review in the circuit court within thirty (30) days of the date of mailing of the notice of suspension or revocation by the Director of Revenue. McInerney v. Director of Revenue,12 S.W.3d 403 (Mo. App. 2000); Gilbert v. Director of Revenue, 974 S.W.2d 655 (Mo. App. 1998). Section 302.311 is the exclusive method of review of an action of the director in suspending or revoking a driver's license and no extraordinary remedies are available. Nash v. Director of Revenue, 856 S.W. 2d 112 (Mo.App. 1993).

**No collateral attack:** The issue on review of the suspension or revocation action is whether the director correctly assessed points based on the conviction record(s) received. The petition cannot be used to collaterally attack the validity of the underlying convictions. If a conviction is to be attacked, it must be appealed or attacked directly in the rendering court. Stokes v. Director of Revenue, 796 S.W.2d 887 (Mo.App. 1990); James v. Director of Revenue, 893 S.W.2d 406 (Mo.App. 1995).

## 17.4 POINT ASSESSMENT FOR SPEEDING

**Criteria:** Section 304.009, RSMo provides that any state charge of speeding five miles per hour or less over the posted speed limit is an infraction. Section 304.009.2, RSMo additionally provides that no points shall be assessed to a driver's record for such a conviction.
The same five-mile per hour criterion is used for municipal and state court convictions.

## 17.5 DRIVING WHILE SUSPENDED / REVOKED AND LICENSE REINSTATMENT

**License Reinstatement is Not Automatic:** A person who resumes driving after a point suspension or revocation without reinstatement may be convicted of driving while suspended or revoked. The suspension or revocation will continue beyond its original period for a two-year period unless the person reinstates driving privileges. State v. Counts, 783 S.W. 2d 181 (Mo.App. 1990). An out-of-state driver whose privileges are suspended or revoked in Missouri can likewise be charged with driving while suspended or revoked in Missouri, even if the person possesses an otherwise valid, unrevoked license from another state. State v. Bray, 774 S.W. 2d 555 (Mo.App. 1989); State v. Hulse, 774 S.W. 2d 556 (Mo.App. 1989).

The penalty under state law for driving while one's license is suspended or revoked was enhanced so that a fourth conviction will be a class D felony and if there are prior alcohol contacts, the second or third conviction may be charged as a felony. Municipal alcohol-related convictions may be considered in making the decision to enhance the penalty for driving while one's license is suspended or revoked, and prior municipal convictions for driving while one's license is suspended or revoked may be used for enhancement if the judge was an attorney and the defendant was represented or waived the right to counsel. To be used for enhancement prior offenses must have occurred within 10 years of the present offense and the defendant must have received and served a sentence of 10 days or more.

**Point Reduction on Reinstatement:** Upon reinstatement of a suspension/revocation for points, accumulated points will be reduced to four. Subsequent point accumulation is calculated from the date of reinstatement using the four points assessed on that date. A new suspension or revocation may be generated prior to reinstatement when additional points are accumulated during an existing period of suspension or revocation. Creech v. Director of Revenue, 886 S.W. 2d 111 (Mo.App. 1994); Wright v. Director of Revenue, 849 S.W. 2d 148 (Mo.App. 1993).

If a person has been revoked for a one-year period for excessive point accumulation, he or she must, in addition to completing all reinstatement requirements, take and pass the complete Missouri driver's examination in order to have his or her license restored.

## 17.6 FAILURE TO APPEAR

All municipalities and all state courts may forward license suspension information to the Department of Revenue for persons who have committed moving violations and fail to appear or pay the fines or court costs assessed. The failure to appear provisions may be used even if the offender originally appeared and entered an installment plan to pay the fine and costs. If the offender defaults on payment, the court may begin the failure to appear process.

**Criteria:** Section 302.341, RSMo provides that the offender must be a Missouri resident and must be charged with a moving violation. Therefore, if the original charge is amended to be a non-moving violation prior to the offender failing to appear or to pay the court costs and fines, the charge no longer qualifies for the failure to appear sanctions.

**Notice:** The court is charged with providing notice to the defendant by ordinary mail at the last address shown on the court records that the court will order the Director of Revenue to suspend the defendants driving privileges if the charges are not disposed of and fully paid within 30 days from the date of mailing. If the defendant fails to timely dispose of the charges after notice, the court shall then notify the director of the failure and of the pending charges against the defendant. The suspension remains in effect until the court requests the withdrawal of the suspension *or* the offender disposes of the charges with the court and/or pays the applicable court costs and fines and receives documentation from the court that the matter is resolved. Unlike other license suspension or revocation actions, the notice from the director that the license is being suspended will **postdate** the suspension or revocation action.

**Reinstatement:** The offender may take the court documentation and a $20 reinstatement fee to have the failure to appear suspension reinstated at any local license office. No proof of insurance is required to reinstate a failure to appear suspension.

Forms the court may use to provide notice to the citizen and to the Department of Revenue are available from the Driver's License Bureau. Any court requiring information or forms should contact the Missouri Department of Revenue, Driver's License Bureau, P.O. Box 200, Jefferson City, Missouri 65105 or by referring to its Web site at www.dor.mo.gov.

## 17.7 NONRESIDENT VIOLATOR SUSPENSIONS (NRVC)

**Statutory reference:** Section 544.046, RSMo provides that the state of Missouri will suspend

the driving privileges of any Missouri licensee who fails to comply with a traffic citation issued in another state. Likewise, Missouri courts — both municipal and state — may complete notification forms for out-of-state license holders charged with traffic citations in Missouri.

**Indefinite suspension:** Like the in-state failure to appear suspension, the nonresident violator suspension is an *indefinite* suspension that continues until proof of compliance is submitted to the department and the $20 reinstatement fee is paid. Once the driver has proof from the court that the citation is satisfied this can be taken to the local license office with the reinstatement fee and the suspension reinstated.

**Notice:** When a nonresident violator notice is received from another state the Department of Revenue sends notice to the Missouri driver. The driver is notified that he or she must submit proof that he or she has complied with the other state's traffic citation within 30 days or his or her driver's license will be suspended. If compliance is not received within the 30-day period, the suspension becomes effective, and continues indefinitely until compliance is shown.

The compact has been determined not to violate the supremacy clause found in Article I, Section 10 of the United States Constitution, in that it does not tend to increase the political power of the state or infringe on the supremacy of the United States. State v. Kurt, 802 S.W. 2d 954 (Mo banc 1991).

## 17.8 MOTOR VEHICLE FINANCIAL RESPONSIBILITY (§§ 303.010 – 303.370, RSMO)

**Applicability:** All owners of motor vehicles are strictly liable for maintaining financial responsibility on their vehicles. Koehr v. Director of Revenue, 863 S.W. 2d 663 (Mo.App. 1993). The definition of owner includes the title holder as well as the possessor pursuant to a conditional sale agreement or lease with an option to purchase. See Section 303.020(9), RSMo. All vehicles which are registered **or required to be registered** are subject to the mandatory insurance provisions. Section 303.025, RSMo.

Owners of motor vehicles in the state of Missouri are required to maintain liability coverage for at least the statutory minimum (§ 303.020(1), RSMo). Current requirements are $25,000 bodily injury or death, one person/one accident; $50,000 bodily injury or death total/one accident; and $10,000 property damage/one accident. "Financial Responsibility" may be demonstrated by filing with or producing for the Director of Revenue the following:

1. An insurance identification card (303.024) – card issued by insurance company;
2. A surety bond (303.230) –evidenced by card issued by Department of Revenue;
3. Cash or securities deposited in the amount of $60,000 with state treasurer (303.240) – evidenced by card issued by Department of Revenue;
4. Certificate of self insurance with agreement to pay for damages caused in an accident (303.220) – evidenced by card issued by Department of Revenue.

**Noncompliance**: The Department of Revenue may become aware of noncompliance with the mandatory insurance requirements through accident reports, sampling or citations issued pursuant to Section 303.024, RSMo for failure to exhibit an insurance identification card.

**Suspension Periods and Reinstatement Requirements:** The following is a summary of the mandatory insurance enforcement process from the stop of a driver by a law enforcement officer, to conviction or disposition by the court, under the provisions of § 303.025, RSMo:

**§ 303.025**

Owners of motor vehicles registered *or required to be registered* in Missouri are required to maintain financial responsibility. This is s strict liability — no mens rea required. Non-owner operators, *with knowledge* that the owner has no insurance, are also liable. A motor vehicle which is inoperable or being stored (and is *not registered*) is exempt.

When an officer stops an individual, the officer encounters one of two situations:

1. The driver *has* coverage, but doesn't have proof in his possession OR
2. The driver doesn't have proof/doesn't have coverage.

In either situation, the officer **should issue** a citation. It is a Class C misdemeanor. Where this occurs, the driver has to go to court. Once at court, the following may:

**§ 303.025.3**

1. If driver can show proof he or she had insurance coverage ON THE DATE CITED for the offense, he or she cannot be found guilty. The case should be dismissed.

2. If, however, the driver is *convicted* of the offense (remember, strict liability for the owner), the court *shall*, in addition to any other punishment, notify the Director of Revenue of such conviction AND do **one** of the following:

    1. **Enter an Order of Suspension** as of the date of the court order. Court takes or requires surrender of license at time the order entered. Court sends order and license to the Director of Revenue. The director records on the individual's driver record a suspension effective the date of court order.

       Length of suspension:

       **First Offense:** Indefinite (as little as 0 days). The license suspension continues *until* the reinstatement requirements met (i.e., proof of insurance/insurance identification card produced to the director* and payment of a $20 reinstatement fee). The driver must thereafter maintain proof of insurance, as applicable, for three (3) years from date of suspension.

       **Second Offense:** 90-day license suspension, $200 reinstatement fee; proof of insurance/insurance identification card produced to the director (3 years)*.

       **Third Offense:** One-year revocation; $400 reinstatement fee; proof of insurance/insurance identification card produced to the director (3 years)*.

* SR-22/other proof of insurance filing required *only* in circumstances where an accident is involved; an accident report is filed with the director; and one of the vehicles involved in the accident was uninsured.

Where required, failure *to maintain* a required proof of insurance filing with the director will result in re-suspension or revocation of license until proof is filed *or* the three-year filing period has expired. Usually this is triggered by notification to the director by an insurance company of a lapse in the policy.

**AND/OR**

2. The court forwards a record of conviction (if convicted of §303.025, RSMo offense) to the Director of Revenue. The director will assess 4 points to individual's Missouri Driver Record. See § 302.302.1(13), RSMo.

**OR**

3. **Enter an Order of Supervision as per § 302.303**, in lieu of an assessment of points [see § 302.303 for definition of "court ordered supervision"— requires finding or plea of guilty on offense, with deferred sentence/order for supervision of defendant [Department of Revenue form used].

Both a conviction and an Order of Supervision can be entered. Only *state* courts can enter Orders of Suspension or Orders of Supervision. One advantage of an Order for Supervision is that no points are assessed, and the record is not to be released to any "outside source." See § 302.303, which refers specifically to "violations of section 303.025."

**Notice:** Once the director receives and processes an accident report indicating a lack of insurance, the director will issue notice by certified mail requiring proof of insurance be provided within 33 days or the driver's license will be suspended. If no proof that the motor vehicle was insured on the date of the accident is furnished to the director *or* an administrative hearing requested within that period, then the director will enter a suspension of driving privileges and registration plates.

**Accident Report Requirement:** Section 303.040, RSMo requires motorists involved in accidents, with (or as) an uninsured motorist where there is personal injury *or* $500 or more in property damage, to file an accident report with the Director of Revenue. Report forms are available from the Driver's License Bureau, as well as most police departments and insurance companies. Failure to file a report results in a suspension pursuant to Section 303.370, RSMo. The suspension will continue until the required report is filed or a period of one year elapses.

**Hearings:** Administrative hearings to review suspension for not having insurance are conducted in accordance with Chapter 536. In person hearings are held in Jefferson City, Missouri, but hearings will be conducted by telephone unless an in person hearing is requested. Evidence may be submitted by affidavit in lieu of making a personal appearance. 12 CSR 10-23.030(8)(C). Requests for hearing must be postmarked by the compliance date on the notice or hearing or the request will be denied and judicial review precluded. Renfro v. Director of Revenue, 810 S.W.

2d 723 (Mo.App. 1994).

**Review:** Final decisions are issued within 90 days of the date of the hearing request. These decisions are issued by certified mail and are considered to be notices of suspension pursuant to Section 303.041, RSMo if suspension action is ordered. Further appeal is to the circuit court of the county of residence.

**Judgment Suspensions:** Pursuant to Sections 303.090 and 303.100, RSMo a motorist who fails to satisfy a judgment resulting from a motor vehicle accident within 60 days is subject to suspension of his or her driver's license. This suspension remains in effect for the lifetime of the judgment, which is normally ten years, unless the judgment is revived. The licensee is not eligible for limited driving privileges. Section 302.309.3(5)(c), RSMo. The judgment can be satisfied by full payment or by entering an installment agreement.

**Reinstatement:** To be reinstated the driver must pay a $20.00 reinstatement fee and maintain proof of insurance for two years, after showing satisfaction of the judgment.

## 17.9 CITATION FOR EXAMINATION (UNQUALIFIED/INCOMPETENT DRIVER)

**Retesting Requirements:** The director may request that a driver be retested or submit to medical examination pursuant to reports received from law enforcement, courts, medical personnel, certain family members, or field office personnel. Section 302.291, RSMo provides that the director may require retesting when there is good cause to believe the person is unqualified or incompetent to operate a vehicle, even prior to any license renewal date. The report must contain factual information based on personal observation of the person or their medical condition rather than just opinion in order for the director to act. Nagel v. Director of Revenue, 180 S.W.3d 90 (Mo. App. 2005); Singer v. Director of Revenue, 771 S.W. 2D 375 (Mo.App. 1989); Bopp v. Director of Revenue, 617 S.W. 2d 100 (Mo.App. 1981).

The director may also require retesting at the time of license renewal if the information provided in the application, record of convictions or other records maintained by the director for the applicant show that there is good cause to request retesting. If the director has reasonable grounds to believe that an applicant is suffering from some known physical or mental ailment which would interfere with the applicant's fitness to operate a motor vehicle safely, the director may require that the examinations include a mental or physical examination. See Section 302.173.1, RSMo. Requests to submit to examination are mailed by the director to the last address of record. The licensee is given 30 days to complete the required testing.

**Reporting:** Department of Revenue Form 4319 can be used to complete a report of an unfit or unqualified driver. This report form is available through the Driver's License Bureau in Jefferson City, Missouri, local license offices, or online at www.dor.mo.gov. Municipal courts may use this form to report offenders who appear in court and by their actions or the facts presented to the court may require retesting.

**Failure of testing or refusal to test:** If the driver does not complete the required tests or fails to demonstrate competence on any tests administered, the director may then suspend or revoke the driver's license. The suspension or revocation action is then reviewable in the circuit court in the

county of residence. See Section 302.311, RSMo.

### 17.10 CHILD SUPPORT ENFORCEMENT SUSPENSION

**Statutory reference:** Section 454.1008, RSMo provides that the director must suspend the driver's license of a licensee whom the circuit court or the Director of the Division of Child Support Enforcement has ordered be suspended for a child support arrearage. Hearings regarding these types of suspensions are handled by the court or Division of Child Support Enforcement prior to the director being forwarded the order to suspend the license.

**Not eligible for limited privileges:** No limited driving privileges may be granted pursuant to Section 302.309, RSMo by the director or the court for a child support arrearage suspension. See Section 454.1010.9, RSMo. The only relief available from the suspension is through the circuit court or by the Director of the Division of Child Support Enforcement, who may issue a stay of the suspension in cases where "significant hardship" is shown.

**Driving while suspended:** If the licensee continues to drive and is charged with driving while suspended while under this suspension the appropriate section to charge the violation would be Sections 302.321, RSMo or 454.1008.5, RSMo or corresponding municipal ordinance.

**Reinstatement:** Requires a showing of compliance by the licensee from the circuit court or the Division of Child Support Enforcement, and payment of a $20 reinstatement fee.

## ALCOHOL-RELATED ACTIONS

### 17.11 ABUSE AND LOSE

**Provisions for those under age 21:** Courts, including municipal courts where the defendant is represented by or waives the right to counsel, are required to enter an abuse and lose order on pleas of guilty or convictions for certain alcohol- or drug-related offenses. If the court orders that a driver is subject to the abuse and lose provisions of Section 577.500, RSMo the action will be shown on the driving record as an "Abuse and Lose" suspension or revocation. The Director of Revenue will enter the suspension or revocation *effective on the date of the court order*. Because the department is using the court order date, the effective date of the suspension or revocation will always predate the entry of the order on the driving record.

The court shall require the surrender of and forward to the director any driver license, intermediate license or permit held by the person against whom an order has been entered. For offenders less than 16 years of age, a juvenile court is required to hold the order until 30 days before the person's 16th birthday, and then forward the order to the department. The length of the suspension or revocation is determined by Section 577.500.

**Application:**

**577.500.1**

90-day suspension, 1st offense; 1-year revocation, 2nd or subsequent

Offenses involving a minor *and* **motor vehicle operation**:

(1) Alcohol-related traffic offenses — DWI, BAC (state law *and* municipal ordinance if represented by an attorney or waived in writing)

(2) Possession or use of alcohol while operating a motor vehicle (state law *and* municipal ordinance if represented by attorney or waived in writing).

Offenses involving a minor with *no* **vehicle operation**:

(3) Possession or use of a controlled substance (Chap. 195 def.), (state law; *and* municipal if represented by attorney or waived in writing).

(4) Altercation, modification or misrepresentation of a driver license (§ 311.328).

(5) Possession or use of alcohol for a second time where a determination of guilt was made on the1st offense; both offenses occurred while person under 18 years of age.

**577.500.2** (§ 311.325 "Minor in Possession" offenses—*no* vehicle operation)

**1st Offense**: 30-day suspension, **2nd:** 90-day suspension, **3rd/subsequent:** one-year revocation

Applies to a person under the age of twenty-one years who:

-Purchases any "intoxicating liquor" as defined in 311.020;
-Attempts to purchase any intoxicating liquor;
-Has in his or her possession any intoxicating liquor;
-Is "visibly intoxicated" as defined by 577.001; or
-Has a BAC of more than .02% ("possession by consumption").

**Provisions for those age 21 and over:** The court is also required to order a revocation of the driver's license for licensees over the age of 21 at the time of offense, who plead guilty or are convicted of any offense involving the possession or use of a controlled substance, as defined in chapter 195, RSMo, while operating a motor vehicle. The period of revocation for a first offense is one year. See Section 577.505, RSMo.

**Notice and Appeal rights:** The suspension or revocation orders are forwarded to the Director of Revenue for immediate entry on the driving record. Once the order is received by the director, the suspension or revocation is entered as of the date of the court order without further notification or hearing. There are *no* Section 302.311, RSMo appeal rights are available for these suspension or revocation actions. Cross v. Director of Revenue, 861 S.W.2d 214 (Mo.App. 1993). Any appeal of the court order must be by direct appeal.

**Court order required:** The director enters an abuse and lose suspension or revocation *only* pursuant to and upon receipt of a court order. There is no credit of time for time served on an Abuse and Lose action to any other license suspension or revocation action.

**Required information for abuse and lose to apply:** The age of the driver is not required to be stated in the information charging the underlying alcohol- or drug-related offense and the failure to charge abuse and lose as part of the underlying offense does not violate due process. State v. Rehm, 821 S.W. 2d 127 (Mo.App. 1992); State v. Stokes, 814 S.W. 2d 702 (Mo.App. 1991). It is likewise not necessary to advise the defendant of the intent to seek abuse and lose as part of the plea negotiations. State ex rel. Lee v. Bailey, 817 S.W.2d 287 (Mo.App. 1991).

**No double jeopardy:** Since the suspension or revocation of a driver's license for abuse and lose is a civil penalty, it does not constitute double jeopardy. State v. Rehm, 821 S.W. 2d 127 (Mo.App. 1992).

## 17.12 IGNITION INTERLOCK DEVICES

**Statutory requirements:** Pursuant to Section 577.600, RSMo a court *may* require offenders who plead guilty or are found guilty of a first offense (includes SIS disposition) of driving while intoxicated, driving with excessive blood alcohol content or driving under the influence of alcohol or drugs, to not operate a motor vehicle during a period of probation unless the vehicle is equipped with a functioning ignition interlock device. The court is *required* to order the use of and ignition interlock device during a period of probation granted to any person found guilty of a second or subsequent offense.

For offenders who are found guilty of or who plead guilty to a second or subsequent intoxication-related traffic offense, Section 577.600, RSMo currently mandates that a court shall require that such offenders shall not operate a motor vehicle unless the vehicle is equipped with a functioning ignition interlock device for a period of not less than one month from the date of reinstatement of their license. **NOTE:** Effective July 1, 2009, courts must order installation of the device for a period of not less than **six months** from the date of reinstatement. Further, a court granting limited driving privileges to an applicant with a second or subsequent intoxication-related offense *must* require the use of an ignition interlock device on all vehicles operated by the person during the term of the limited privilege.

**Department of Revenue action:** Currently, the Department of Revenue does not monitor whether courts are ordering installation when required, or whether the device is actually being installed. Under Section 577.606, RSMo, the department merely enters on the offender's driver record the interlock requirement and the duration, as indicated within the court order. Where an interlock device should have — but was not — ordered as a condition of a limited driving privilege, the department will file a motion to amend the order to include the interlock requirement.

**Sanctions for violating the requirement:** The director will enter a one-year revocation for any first time plea of guilty or finding of guilty entered for not using the ignition interlock device, where required. A plea or finding of guilt regarding a second violation will result in a five-year revocation of license.

****New Provisions Effective July 1, 2009:** Pursuant to SB 930/947, effective July 1, 2009, the Director of Revenue will now have the authority to require the filing of proof of installation of

an ignition interlock device upon conviction for certain alcohol-related offenses as a condition of reinstatement of license or for the issuance of restricted or limited driving privileges. These provisions are in addition to the current court-ordered requirements found in Section 577.600, RSMo, which will remain in effect. As noted above, effective July 1, 2009, courts will now be required to order installation for a minimum six-month period from the date of reinstatement.

**Application:** The new law requires a licensee to file proof of installation of an ignition interlock device with the Director of Revenue as follows for:

**License Reinstatement on:**

Section 302.060 (9), RSMo—Ten-Year minimum denial
Section 302.060(10), RSMo—Five-Year denial
Section 302.304.17, RSMo—Point revocation (triggered by a second or subsequent alcohol or drug –related traffic offense);
Section 302.525.5, RSMo—Administrative Alcohol (.08% and .02%) revocation;
Section 302.525.5, RSMo--Administrative Alcohol suspension, where licensee has a prior "alcohol related enforcement contact," as defined by Section 302.525.3, RSMo of record.
Section 577.041.10, RSMo—Second or subsequent Missouri Chemical Refusal revocation;

**Limited Driving Privilege issuance*** (Section 302.309, RSMo):

One-year Point revocation, where the revocation is the result of a second or subsequent alcohol or drug related traffic conviction;

Five Year Denial;

Ten-Year Minimum Denial.

(*Where otherwise eligible under Section 302.309, RSMo)

**Restricted Driving Privilege issuance**:

Point Suspension, Section 302.304, RSMo (*only* where prior "alcohol-related enforcement contact" of record)

Adminstrative Alcohol Suspension, Section 302.525, RSMo (*only* where prior "alcohol related enforcement contact" of record)

**"Alcohol-Related Enforcment contact"** is defined by Section 302.525.2(3) to include:

-A DWI, BAC or DUI conviction (in or out of state)
-A Chemical Refusal action (in or out of state)
-A Missouri Administrative Alcohol suspension or revocation
-Driving while under the influence of drugs or alcohol conviction

**Interlock requirement for reinstatement:** For reinstatement of a license following certain alcohol-related license suspension, revocation or denial actions, the new law requires the licensee to file proof of installation of a functioning, approved ignition interlock device with the director. This process is expected to be similar to how the current proof of financial responsibility/SR-22 filing requirement is administered. This filing must additionally be maintained for a period of six (6) months following *the date of reinstatement* (not the date the licensee *is eligible* for reinstatement). The filing is to be done electronically by the approved ignition interlock provider or installer, on behalf of the licensee.

**Failure to maintain proof of interlock installation:** Once proof of installation is filed with the director for license reinstatement, if the licensee fails to maintain proof of installation, the motorist's license will be re-suspended for the balance of the six-month period. If the licensee fails to maintain proof as required for a restricted or limited privilege, the privilege will be terminated. Notice by the director and an opportunity to cure the lapse will be given prior.

## 17.13 LICENSE DENIALS

**Statutory requirements:** Section 302.060(9), RSMo provides for a 10-year minimum license denial period and Section 302.060(10), RSMo requires a five-year minimum license denial period for repeat alcohol-related offenders.

### A. FIVE-YEAR LICENSE DENIAL:

**Statutory requirements:** Section 302.060(10), RSMo provides that two convictions of driving while intoxicated *within five years of each other* will trigger a five year license denial period. The five-year period begins on the date of the second conviction of driving while intoxicated. This provision specifically requires that out-of-state driving while intoxicated convictions be combined with qualifying municipal or Missouri state court convictions to trigger the ineligibility period. Municipal convictions for driving while intoxicated *prior to July 1, 1992*, are *not* used to trigger a five-year ineligibility period. A licensee who has been convicted for the crime of involuntary manslaughter while operating a motor vehicle in an intoxicated condition may also be denied licensure for a five-year period under section 302.060(10), RSMo.

**Reinstatement:** Currently, the driver is reinstated on the five-year anniversary date from the date of the last DWI conviction, if otherwise eligible. Effective July 1, 2009, however, the driver will now be required to file with the Director of Revenue proof of installation of an ignition interlock device for reinstatement, which must be also be maintained for a period of six (6) months following the date of reinstatement.

### B. TEN-YEAR LICENSE DENIAL

**Statutory requirements:** Section 302.060(9), RSMo provides that three or more convictions, in any combination, of driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter involving driving while intoxicated or vehicular assault involving driving while intoxicated will trigger a ten year minimum license denial period. The driving while intoxicated or driving with excessive blood alcohol content convictions may be municipal

convictions if it is shown that the defendant was represented or waived the right to counsel. A record of conviction that had the "yes" box checked for representation by counsel held to be sufficient to establish attorney representation for purposes of the ten-year license denial action. Bowers v. Director of Revenue, 193 S.W.3d 887 (Mo. App. 2006). *Municipal convictions* for driving while intoxicated or driving with excessive blood alcohol content *entered prior to July 1, 1992* are not used to trigger a ten-year license ineligibility period, nor are state law BAC convictions had prior to that date.

**Application for Reinstatement:** At the expiration of 10 years from the date of conviction of the last offense of the alcohol-related offense, the person may petition the circuit court *of the county in which such last conviction was rendered* for an order of reinstatement. The court is required to review the person's habits and conduct since the last alcohol-related conviction. If the court finds that the petitioner has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding ten years and that his habits and conduct show him to no longer pose a threat in the public safety, the court may order the director to issue a license to the petitioner if he is otherwise eligible under the provisions of Sections 302.010 to 302.540, RSMo. No person may obtain a license under the provisions of Section 302.060(9), RSMo more than once. Effective July 1, 2009, a driver will be required to file with the Director of Revenue proof of installation of an ignition interlock device for reinstatement, which must also be maintained for a period of six month following the date of reinstatement.

## 17.14 IMPLIED CONSENT—CHEMICAL REFUSAL PROVISIONS

**Presumption of consent:** Section 577.020 states that any person who operates a motor vehicle upon the public highways of this state is deemed to have given his/her consent to a chemical test or tests of his/her breath, blood, urine or saliva for the purpose of determining the alcohol or drug content of his/her blood. It has been specifically held that the implied consent provision of Section 577.020 is not limited solely to operation on highways; an arrest made on a parking lot will support a revocation. Betram v. Director of Revenue, 930 S.W. 2d 7 (Mo.App. 1996); Peeler v. Director of Revenue, 934 S.W. 2d 329 (Mo.App. 1996).

**Number of tests:** No more than two tests may be required from any one incident. However, the two tests do not include a test done on a portable breath-testing device. Justice v. Director of Revenue, 890 S.W. 2d 728 (Mo.App. 1995). If there is an insufficient sample to suffice for the test a motorist may still be subject to revocation for refusing a blood test after three unsuccessful attempts at a breath test. Snow v. Director of Revenue, 935 S.W.2d 383 (Mo.App. 1996); Freeman v. Director of Revenue, 113 S.W.3d 307 (Mo. App. 2003). It must be shown, however, that the subject failed to blow as instructed. Bogart v. Director of Revenue, 185 S.W.3d 286 (Mo. App. 2006); Yasulik v. Director of Revenue, 118 S.W.3d 279 (Mo. App. 2003). A subject may be deemed to have refused a blood test even after submitting to a breath test. Smock v. Director of Revenue, 128 S.W.3d 643 (Mo. App. S.D. 2004).

**Implied Consent Warning:** The arresting officer must inform the licensee of the request, that the evidence of refusal may be used against him/her in a criminal prosecution and that the his/her license shall or shall immediately be revoked if he/she refuses. A warning substantially in the language of the statute will suffice if it conveys to the driver that his/her license will be revoked upon refusal. Teson v. Director of Revenue, 937 S.W.2d 195 (Mo. 1996).

**Chemical Refusal action is separate from criminal charge:** Driving while intoxicated and refusal to submit to chemical testing are separate violations, even when arising out of the same incident, and can, therefore, result in separate periods of revocation/suspension. There is no credit of time given between any suspension or revocation triggered due to an accumulation of points from the criminal conviction and the revocation triggered due to the refusal to submit to testing. Greenwood v. Director of Revenue, 5 S.W.3d 604 (Mo. App. 1999); Brown v. Director of Revenue, 772 S.W. 2d 398 (Mo.App. 1989). A driver may still be revoked for refusal even though s/he is acquitted of driving while intoxicated. Tolen v. Missouri Department of Revenue, 564 S.W.2d 601 (Mo. 1978). A finding of no probable cause in the criminal case of driving while intoxicated is not res judicata in the separate refusal case. Borchelt v. Director of Revenue, 806 S.W.2d 95 (Mo.App. 1991).

**Evidence of refusal:** Evidence that the driver refused to submit to a chemical test can be admitted in a criminal trial and used as evidence of guilt for driving while intoxicated. State v. McCarty, 875 S.W. 2d 622 (Mo.App. 1994). This is true for municipal driving while intoxicated trials as well as state charges. However, failure to warn the driver that his/her refusal may be used against him/her in a criminal proceeding will prevent the use of the evidence at the criminal trial. The refusal evidence may be used in the refusal revocation review even without the warning. Barnhart v. McNeill, 775 S.W. 2d 259 (Mo.App. 1989). Section 577.041, RSMo has also been amended to permit evidence of a refusal to test to be admissible in manslaughter and assault with a motor vehicle driving while intoxicated cases.

**Notice:** If the person, after receiving the warning, refuses to submit to the requested test(s), the officer shall on behalf of the Director of Revenue, serve the notice of license revocation personally upon the arrested person and take possession of any license to operate issued by this state held by the person. The arresting officer will then issue a 15 day driving permit and give the person arrested a notice of his right to file a petition for review to contest his license revocation. The arresting officer will then file a sworn report with the Director of Revenue, stating that s/he has reasonable grounds to believe that the person was driving while intoxicated and that the person refused to take the test.

**Review:** The person seeking review of the directors action must file a petition for review as provided by section 302.311, RSMo in the county of arrest within 30 days of the date the notice of revocation was served or mailed by the director. Romans v. Director of Revenue, 783 S.W.2d 894 (Mo. banc 1990); Turpin v. Director of Revenue, 876 S.W. 2d 54 (Mo.App. 1994). If the petition is filed in the wrong county, the court cannot transfer it to the proper court once the thirty-day filing period has elapsed. Woolbright v. Director of Revenue, 891 S.W. 2D 860 (Mo.App. 1995).

**Exclusionary rule:** The court may not use the exclusionary rule to find that an illegal arrest (municipal officer outside of the city limits) prevents the evidence of the refusal from being admitted because the exclusionary rule does not apply to civil proceedings, which include the review of a driver's license suspension or revocation. Sullins v. Director of Revenue, 893 S.W. 2d 848 (Mo.App. 1995).

**No automatic stay without order:** If the driver does not obtain a stay order from the trial court,

the revocation will not be stayed by the Department of Revenue. The driver will not have his driver's license returned even after a stay order is issued but must use the stay order as his authority to drive.

**Issues on review:** At the hearing the court may determine whether the person was arrested, whether or not the arresting officer had reasonable grounds to believe that the person was driving while intoxicated, and whether or not the person refused to submit to testing.

Reasonable grounds is synonymous with probable cause and may be observed by the officer after the stop of the vehicle. Gelsheimer v. Director of Revenue, 845 S.W. 2d 107 (Mo.App. 1993). Proof that the person was driving may be direct or may be established by circumstantial evidence. Stenzel v. Director of Revenue, 536 S.W. 2d 163 (Mo.App. 1976); Delaney v. Director of Revenue, 657 S.W. 2d 354 (Mo.App. 1983).

**What constitutes refusal:** A volitional failure to do what is necessary for the test to be performed is a refusal. Spradling v. Deimeke, 528 S.W.2d 759 (Mo. 1975). A refusal can be verbal or may occur in nonverbal ways such as an insufficient blow and blowing around the mouthpiece. White v. Director of Revenue, 784 S.W. 2d 861 (Mo App. 1990); Benson v. Director of Revenue, 937 S.W.2d 768 (Mo.App. 1997). Failing to blow properly into a breath testing instrument is a refusal. Tarlton v. Director of Revenue, 201 S.W.3d 564 (Mo. App. 2006); Sutton v. Director of Revenue, 20 S.W.3d 918 (Mo. App. 2000). Failure to provide a complete breath sample may constitute a refusal, even when the digital readout on the instrument reflects a BAC over the legal limit. Freeman v. Director of Revenue, 113 S.W.3d 307 (Mo. App. 2003); Bogart v. Director of Revenue, 185 S.W.3d 286 (Mo. App. 2000). However, evidence merely showing that the subject stopped blowing before giving a complete sample is insufficient to establish a refusal, absent a showing that the subject failed to blow as instructed. Yarsulik v. Director of Revenue, 118 S.W.3d 279 (Mo. App. 2003).

Consent to take the test cannot be conditioned on certain events such as having attorney present, arresting officer not being present, choosing the test to be given, or using the bathroom first. Spradling v. Deimeke, 528 S.W. 2d 759 (Mo. 1975); Rains v. King, 695 S.W. 2d 523 (Mo.App. 1985); Borgen v. Director of Revenue, 877 S.W. 2d 172 (Mo.App. 1994); Rogers v. Director of Revenue, 184 S.W.3d 137 (Mo. App. 2006). A qualified or conditional consent constitutes a refusal, unless the condition is to talk to counsel, as required under the "20-minute" rule. However, asking to contact a lawyer but then refusing to contact one constitutes a refusal. Roberts v. Wilson, 97 S.W.3d 487 (Mo. App. 2002).

**Right to counsel:** Driver has no *constitutional* right to counsel prior to the test, however, Section 577.041, RSMo provides a limited, statutory right to consult with an attorney prior to the test. This is commonly known as the "20-minute rule." If a driver, when requested to submit to a chemical test, requests to speak to an attorney, he or she shall be granted 20 minutes in which to attempt to contact an attorney. The subject must specifically request to talk to an attorney to trigger the 20 minute rule. *Akers v. Director of Revenue*, 193 S.W.3d 325 (Mo. App. 2006); Moody v. Director of Revenue, 14 S.W.3d 729 (Mo. App. 2000). If after the expiration of 20 minutes the driver continues to refuse to submit to a chemical, it shall be deemed a refusal. If the subject abandons attempts to contact counsel before the 20 minutes are up, the officer may proceed with the test or refusal. Schmidt v. Director of Revenue, 48 S.W.3d 688 (Mo. App.

2001); Wall v. Lohman, 902 S.W.2d 329 (Mo.App. 1995). However, the evidence must clearly show that the subject abandoned attempts to contact counsel. Krakover v. Director of Revenue, 128 S.W.3d 589 (Mo. App. 2004). It is not necessary to wait out the balance of the 20 minute period if the subject completes a phone call, then unequivocally refuses the test. Hunter v. Director of Revenue, 75 S.W.3d 299 (Mo. App. 2002). Nor must an officer wait out the balance of the 20 minutes if the subject agrees to take the test. Crabtree v. Director of Revenue, 65 S.W.3d 557 (Mo. App. 2002); Dotzauer v. Director of Revenue, 131 S.W.3d 371 (Mo. App. 2004). If the evidence does not reflect that either the subject affirmatively abandoned his attempts to contact an attorney *or* that 20 minutes had elapsed since the request, the refusal will be deemed invalid. Bacandreas v. Director of Revenue, 99 S.W.3d 497 (Mo. App. 2003); Keim v. Director of Revenue, 86 S.W.3d 177 (Mo. App. 2002); Foster v. Director of Revenue, 186 S.W.3d 928 (Mo. App. 2006).

## 17.15 ADMINISTRATIVE ALCOHOL SUSPENSION AND REVOCATION ACTIONS

**When action applies:** For those **over the age of 21,** the administrative alcohol suspension or revocation process is triggered when there is a *alcohol-related arrest* where the driver is operating a motor vehicle with a blood alcohol content of .08% or more. For drivers **under the age of 21**, the process is triggered when there is a *stop for a traffic violation* and upon testing the driver has a blood alcohol content of .02% or more. The director is not required to show that the initial stop is lawful, only that there was probable cause to believe the driver committed an alcohol-related traffic offense such as driving while intoxicated or driving with excessive blood alcohol content. Gordon v. Director of Revenue, 896 S.W.2d 737 (Mo.App. 1995); Lambert v. Director of Revenue, 897 S.W.2d 204 (Mo.App. 1995).

**Notice of Suspension or Revocation:** Notice of suspension or revocation is to be served on the motorist by the arresting officer at the time of arrest (where a test result is available). If the officer does not obtain the test results immediately (such as in a blood test case), the director will serve notice by mail. This notice from the Department of Revenue is deemed received three days after mailing. Griffit v. Director of Revenue, 786 S.W. 2d 183 (Mo.App. 1990). The fact that the arresting officer mistakenly gave the motorist a refusal notice instead of an administrative alcohol notice did not affect the validity of the suspension, where the motorist was not prejudiced and there was no affirmative misconduct on the part of the officer. Oliphant v. Director of Revenue, 938 S.W. 2d 345 (Mo.App. 1997). Extended delay in serving notice does not affect the validity of the Administrative alcohol case where there is no prejudice to the motorist. Whitworth v. Director of Revenue, 953 S.W. 2d 142 (Mo.App. 1997); Olivo v. Director of Revenue, 950 S.W. 2d 327 (Mo.App. 1997). Any error in the implied consent warning made by the officer does not affect the admissibility of the BAC result as the officer does not have to inform the driver of the consequences of refusing *if* the motorist consents to the test. Mullen v. Director of Revenue, 891 S.W. 2d 562 (Mo.App. 1995). The rationale here is that the driver is not subject to the civil sanction for refusing to take the test.

**Hearing:** All administrative hearings are conducted by the Department of Revenue, General Counsel's Office, utilizing licensed attorney hearing officers. A hearing request *must* be postmarked or received by the Department of Revenue within 15 days of the date of notice. The request for hearing must indicate whether an in-person or telephone hearing is desired. If an in-person hearing is not requested, a telephone hearing will be scheduled and no request to change to an in person hearing will be permitted. There is no longer the requirement that the driver's

license be surrendered as a prerequisite for hearing. See, Sections 302.525 and 302.530, RSMo; 12 CSR 10-24.030. The driver has full driving privileges pending the outcome of any hearing (unless otherwise suspended or revoked), as the department issues a temporary driving privilege (TDP) upon receipt of a hearing request. The temporary privilege is valid throughout the hearing process and serves as the driver's license in lieu of the original. A driver must completely exhaust all administrative remedies by completing the hearing process before proceeding to circuit court for any trial de novo appeal of the hearing decision. Marquart v. Director of Revenue, 896 S.W.2d 716 (Mo.App. 1995).

**Certification of officer:** All arrests for violating **county or municipal ordinance** relating to driving while intoxicated require that the officer be certified as a peace officer in the state under Chapter 590, RSMo. The officer may testify to his own qualifications and a permit is not required to be offered in evidence to prove the certification. Cooley v. Director of Revenue, 896 S.W.2d 468 (Mo. banc 1995); Roach v. Director of Revenue, 941 S.W.2d 27 (Mo.App. 1997). This showing is *not* required for any state law violations.

**Exclusionary rule:** Because the administrative alcohol hearing and trial de novo are civil in nature, the exclusionary rule does not apply, and an illegal stop or arrest does not operate to exclude evidence relating to the arrest/intoxication. Riche v. Director of Revenue, 987 S.W.2d 331 (Mo. banc 1999); Kimber v. Director of Revenue, 817 S.W. 2d 627 (Mo.App. 1991).

**Trial de novo:** A petition for trial de novo to review the administrative action must be filed in the circuit court of the county of arrest *within fifteen days of the date of mailing* of the administrative hearing decision by the Director of Revenue. See, Section 302.530.7, RSMo. The petition must be filed in the county of arrest to invoke the jurisdiction of the court. Pool v. Director of Revenue, 824 S.W. 2d 515 (Mo.App. 1992). The trial de novo is governed by the Missouri rules of civil procedure and *not* as an appeal of an administrative decision under Chapter 536, RSMo.

**No Stay or Limited Privileges:** There is no stay, restricted or limited driving privileges available during the first 30 days of the suspension — commonly referred to as the "30-day hard walk." See, 12 CSR 10-24.020. The filing of the petition for trial de novo *does not stay* the suspension or revocation action, either. See, Section 302.535.2, RSMo. Courts cannot grant limited privileges to those ineligible under statute, and a writ of prohibition is authorized for those that do. Conrad v. Director of Revenue, 20 S.W.3d 607 (Mo. App. 2000); State ex rel. Director of Revenue v. Mobley, 49 S.W.3d 178 (Mo. banc 2001); State ex rel. Director of Revenue v. Ash, 173 S.W.3d 388 (Mo. App. 2005). In the case of a suspension, a restricted driving privilege will be issued at the end of the 30-day suspension period. No restricted or limited driving privilege will be issued during the entire period of a one-year administrative revocation. See, Sections 302.525 and 302.535, RSMo12 CSR 10-24.020.

**Burden of Proof:** The director bears the burden of establishing by a preponderance of the evidence that the driver was arrested for an alcohol-related traffic offense and that the driver was tested in accordance with Department of Health regulations which produced a test result either .08% or more for those age 21 years or more, or .02% for those under the age of 21, stopped for a traffic violation, by a preponderance of the evidence. McDaniel v. Director of Revenue, 989 S.W.2d 688 (Mo. App. 1999).

**Breath Test Foundation:** The Director of Revenue must lay a foundation for admission of the breath result. This includes proof that the test was performed following the Department of Health and Senior Services approved techniques and methods; by an operator holding a valid permit to operate the test device; and that the test was administered on a device approved by the department. Coyle v. Director of Revenue, 181 S.W.3d 62 (Mo. banc 2005); 19 CSR 25-30.011-.060. Once the director establishes a *prima facie* case for admission of the test result, the burden of production shifts to the motorist to present evidence which raises a "genuine issue of fact" which challenges the presumption that the test result is valid, or that his or her blood alcohol concentration did not exceed the legal limit. Walker v. Director of Revenue, 137 S.W.3d 444 (Mo. banc 2004); Verdoorn v. Director of Revenue, 119 S.W.3d 543 (Mo. banc 2003); Singleton v. Director of Revenue, 120 S.W.3d 218 (Mo. App. 2003). Where a proper and timely objection is made to the admission of a breath test result, the maintenance of the breath testing device becomes an issue, and the director is required to prove that the device used was maintained 35 days or less prior to the date of arrest. This showing is predicated, however, only upon a motorist's timely and proper objection to admission of the test result, either at administrative hearing or trial de novo. Sellenreik v. Director of Revenue, 826 S.W.2d 338 (Mo. banc 1992); Kern v. Director of Revenue, 936 S. 2d 860 (Mo.App. 1997); Bollinger v. Director of Revenue, 936 S.W. 2d 870 (Mo.App. 1997). The appropriate maintenance report may be offered as a department business record under Section 302.312, RSMo as such proof. The qualifications of the person who conducted the maintenance check may be proven by his or her Type II permit number and expiration date, reflected on the maintenance report. Smith v. Director of Revenue, 948 S.W. 2d 219 (Mo.App. 1997).

**Fifteen Minute Observation Period (breath tests):** Immediately prior to the administration of an evidentiary breath test, the test administrator is required to observe the subject for a period of at least 15 minutes to insure the dissipation of any residual mouth alcohol that may possibly affect the validity of the test result. 19 CSR 25-060. However, where a subject objects to the admission of a breath test result on this basis, he is required to either show that he or she did something proscribed by the regulations (i.e., smoked, vomited, oral intake) during the 15 minute period *or* that something otherwise affected the accuracy of the test. Merely asserting that the officer did not properly conduct the observation period is not sufficient. Coyle v. Director of Revenue, 181 S.W.3d 62 (Mo. banc 2005); Bhakta v. Director of Revenue, 182 S.W.3d 662 (Mo. App. 2005); Gholson v. Director of Revenue, 215 S.W.3d 229 (Mo. App. W.D. 2007); Vanderpool v. Director of Revenue, 226 S.W.3d 108 (Mo. banc 2007).

**Blood test foundation:** Where the blood alcohol concentration is to be proven by the result of a test performed on a sample of blood, absolute and literal compliance with the requirements of Section 577.029, RSMo must be shown by the state. Nesbitt v. Director of Revenue, 982 S.W.2d 783 (Mo. App. 1998); State v. Setter, 763 S.W.2d 228 (Mo. App. W.D. 1988). This includes a showing that the blood was drawn by either a licensed physician, registered nurse, or "trained medical technician," at the place of their employment, and at the request of a law enforcement officer. Section 577.029, RSMo. A paramedic who drew blood at an accident scene was deemed to be "at the place of his employment," as required by Section 577.029, RSMo. Smith v. Director of Revenue, 77 S.W.3d 120 (Mo. App. 2002). A blood drawer's statement on the Alcohol Influence Report was held to be sufficient to prove the qualifications of the blood drawer and compliance with Section 577.029, RSMo requirements. Francis v. Director of Revenue, 85 S.W.3d 56 (Mo. App. 2002). A blood sample cannot be drawn after a refusal under the "exigent

circumstances" exception. Murphy v. Director of Revenue, 170 S.W.3d 507 (Mo. App. 2005). However, a blood sample can be drawn pursuant to a warrant, even though the subject has refused to submit to testing. State v. Smith, 134 S.W.3d 35 (Mo. App. 2004).

**Proof of driving**: The director may use circumstantial evidence to prove the "driving" element. Rogers v. Director of Revenue, 947 S.W. 2d 475 (Mo.App. 1997); Kleffner v. Director of Revenue, 956 S.W.2d 446 (Mo.App. 1996).

**Periods of loss**: Driving privileges are suspended for 30 days followed by a 60 day restricted driving period *if* the driver's record shows no alcohol-related enforcement contacts within the previous five years if the driver is otherwise eligible. If there is no petition for trial de novo filed the petitioner must file proof of financial responsibility (SR-22 or similar) with the director prior to being issued a 60-day restricted privilege. Driving privileges are revoked for one year if the driver's record shows one or more "alcohol-related enforcement contacts" as defined in Section 302.525.3, RSMo within the previous five years. An alcohol-related enforcement contact is defined to include convictions for driving while intoxicated, driving with excessive blood alcohol content, or driving under the influence of drugs; prior Missouri administrative alcohol suspension or revocation actions; and both Missouri and out-of-state chemical refusals to submit to testing.

## 17.16 LIMITED DRIVING PRIVILEGES

**Jurisdiction**: The granting or denial of limited driving privileges during a period of license suspension, revocation or denial is governed by Section 302.309, RSMo. Application for such privileges may be made either with the circuit court in the county of residence or employment or to the Director of Revenue. For applicants who choose to apply to the director, application forms are available at all local Department of Revenue offices as well as the main offices in Jefferson City, Missouri, and on the Department's Web site at www.dor.mo.gov. All denials of limited driving privileges by the director may be appealed within 30 days of the denial notice to the circuit court in the county of the applicant's residence or employment. The sole issue for the court on appeal is whether the director correctly denied the limited driving privileges in accordance with Section 302.309, RSMo.

**Applications procedures:** The applicant for limited driving privileges must be a resident of Missouri or be employed in Missouri. Additionally, the applicant must have had a valid Missouri license prior to the suspension, revocation or denial action for which the limited privileges apply. An out-of-state resident cannot move to Missouri and apply for limited driving privileges from this state to cover the period of the out-of-state suspension or revocation. The applicant must submit a completed application form and have proof of insurance on file with the director. The applicant is not required to submit a driving record since that information is already available to the director. It takes approximately seven to 10 working days for the director to process the application and issue an order either granting or denying limited driving privileges. The orders are mailed to the applicant by ordinary mail.

**Ineligibility:** Section 302.309.3(5), RSMo provides the statutory grounds for ineligibility for limited driving privileges. There are approximately 20 different grounds for denying limited privileges set out in this section. The most common grounds for denial of such privileges are set forth in the chart "Mandatory Denial of Limited Driving Privileges." As you will note, many of

the ineligibility reasons relate to alcohol offenses or repeat alcohol offenses or offenses of a serious nature such as felony convictions involving the use of a motor vehicle or unpaid judgments. The director screens applications for limited driving privileges in accordance with the statutory grounds for ineligibility.

## 17.17 REINSTATEMENT REQUIREMENTS

The chart below lists the different types of license suspension and revocation actions and the various requirements that apply to each type of action for reinstatement. In examining the chart you will note that the actions which are based on chapters 302 or 303, RSMo require proof of financial responsibility prior to reinstatement and for a two or three year period following reinstatement. If the suspension action is not based on chapter 302 or 303, RSMo financial responsibility is not normally required for reinstatement. Also, some suspension actions based on chapter 302, RSMo such as instate failure to appear and zero tolerance first offense, specifically provide that such proof is not required for reinstatement. Normally, all reinstatement requirements must be delivered to the Driver's License Bureau in Jefferson City, Missouri, rather than a local office. The exception to this is instate failure to appear and nonresident violator compact suspensions which can be reinstated at any local license office if the driver first obtains proof of compliance from the court.

## SUSPENSION/REVOCATION REINSTATEMENT REQUIREMENTS

| NON-ALCOHOL-RELATED POINTS<br>302.304, RSMo | ALCOHOL-RELATED POINTS<br>302.304 AND 302.541, RSMo |
|---|---|
| $20.00 Reinstatement Fee | $45.00 Reinstatement Fee |
| Proof of Financial Responsibility<br>(SR-22) for 2 years | Proof of Financial Responsibility (SR-22) for 2 years;<br><br>SATOP (Substance Abuse Traffic Offender Program)<br><br>(**Effective July 1, 2009** — Proof of Ignition Interlock installation for 6 months from reinstatement on suspension or revocation resulting from conviction for a 2nd or subsequent alcohol- or drug-related traffic offense. Section 302.304.17, RSMo) |

| ZERO TOLERANCE<br>(.02% or more/minors)<br>&<br>ADMINISTRATIVE ALCOHOL<br>(.08% or more)<br>302.304, 302.540 and 302.541 RSMo. | JUDGMENT<br>302.281 and 302.304 RSMo. |
|---|---|
| $45.00 Reinstatement Fee | Pay judgment in full or enter into court approved installment agreement |
| *An SR-22 is not required on a <u>first</u> offense zero tolerance, but is required on any subsequent offense.<br>Proof of Financial Responsibility<br>(SR-22) for 2 years | $20.00 Reinstatement Fee |
| SATOP (Substance Abuse Traffic Offender Program)<br><br>(**Effective July 1, 2009** — Proof of Ignition Interlock installation for 6 months from reinstatement for all revocations; and for any suspension, where prior alcohol-related enforcement contact at any time on driver record. Section 302.525.5, RSMo). | Proof of Financial Responsibility (SR-22) for 2 years |

| ABUSE & LOSE 577.520 and 302.541 RSMo. | NON-RESIDENT VIOLATOR 302.304 and 544.046 RSMo. | REFUSAL 577.041 AND 302.541 RSMo. |
|---|---|---|
| $45.00 Reinstatement Fee | Proof of Compliance (Paid receipt from Court) | $45.00 Reinstatement Fee |
| SATOP (Substance Abuse Traffic Offender Program) | $20.00 Reinstatement Fee | SATOP (Substance Abuse Traffic Offender Program)<br><br>(**Effective July 1, 2009—** Proof of Financial Responsibility (SR-22) for 2 years, **and** proof of Ignition Interlock installation for 6 months from reinstatement on 2nd or subsequent Chemical Refusal only) |

| IN-STATE FAILURE TO APPEAR SUSPENSION (FACT) * 302.341 RSMo. | MANDATORY INSURANCE 303.043, 303.041 AND 303.044 RSMo. | CHILD SUPPORT ARREAGE SUSPENSION 454.1000 RSMo. |
|---|---|---|
| Proof of Compliance (payment or satisfy violation with court) | 1st Offense - $20.00 Reinstatement Fee and<br>Proof of Financial Responsibility | $20.00 Reinstatement Fee |
| $20.00 Reinstatement Fee | 2nd Offense - $200.00 Reinstatement Fee and<br>Proof of Financial Responsibility | Proof of Compliance |
| *These suspensions only can be reinstated through the local Department of Revenue branch or fee offices | 3rd Offense - $400.00 Reinstatement Fee and<br>Proof of Financial Responsibility | |
| | If license and license plates are not timely surrendered, late surrender fees ($25 - $300 max.) | |
| | Proof of financial responsibility (SR-22) for 3 years | |

## 17.18 DRIVER'S PRIVACY REQUIREMENTS

**Applicable statutes:** The federal Driver's Privacy Protection Act, 18 USC 2721, and Sections 32.091 and 32.092, RSMo provide that personal information contained on motor vehicle records, including driver's license records, are confidential with limited exceptions for disclosure. Missouri adopted the federal provisions and the exceptions. Personal information is defined in both federal and state law to include information which identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the five digit zip code), telephone number and medical and disability in formation, but does not include information on vehicular accidents, driving violations, and driver's status. The Department of Revenue takes this obligation of privacy very seriously.

**Exceptions allowing disclosure:** There are exceptions contained in both federal and state law allowing a requestor who qualifies within an exception to obtain personal information from driving and motor vehicle records. The requestor falling within an exemption must apply in advance for an approved access number ("Security Access Code," DOR Form 5091) to use in obtaining such records or must establish that the requestor is within an appropriate exemption each time a request for information is made. Forms to complete for individual record requests or for an approved number can be obtained from the Driver's License or Motor Vehicle Bureaus in Jefferson City, Missouri, or on its Web site at www.dor.mo.gov. Municipal courts or prosecutors desiring such information qualify within the exemption for use in connection with any civil or

criminal proceeding in local court or agency, however, must have an approve security access code in the name of the individual requesting records containing personal information.

**Considerations:** It is important to remember that the only information that is protected pursuant to the privacy provisions is the personal information concerning the driver. The status of the driver's license and all conviction and suspension/revocation information will still appear on the record. Driving records which block the personal information ("redacted" records) will still be available if the inquirer is only trying to establish the validity of the license or the actions contained on the driving record.

## 17.19 DEPARTMENT OF REVENUE RECORDS

**Statutory provisions:** Section 302.312, RSMo provides for the admission of Department of Revenue records properly certified by a custodian of record in all courts in the state or administrative proceedings without any further foundation being required. There is no seven-day advance notice requirement, and the records are deemed to be self-proving. Neer v. Director of Revenue, 204 S.W.3d 315 (Mo. App. 2006); McFall v. Director of Revenue, 162 S.W.3d 526 (Mo. App. 2005). Police reports submitted to the Department of Revenue have been determined to be business records of the department. Helton v. Director of Revenue, 944 S.W. 2d 306 (Mo.App. 1997), as well as out-of-state records of convictions filed with the department by another state. Friedrich v. Director of Revenue, 124 S.W.3d 30 (Mo. App. 2004).

## 17.20 CONCLUSION

This chapter is intended as a general outline or guide for understanding Department of Revenue driver's license suspension and revocation actions. It is not all encompassing but will hopefully provide some assistance is dealing with these cases. As always, the best source of information concerning an issue you need to have clarified may be direct contact with the Department of Revenue, or by visiting its Web site at www.dor.mo.gov.