

HOUSE BILL NO. 706

INTRODUCED BY S. GREEF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DRIVING UNDER THE INFLUENCE LAWS; CREATING AN ADMINISTRATIVE LICENSE SUSPENSION FOR A SECOND OR THIRD OFFENSE AND A REQUIREMENT TO WEAR A TRANSDERMAL ALCOHOL MONITORING DEVICE; INCREASING MANDATORY JAIL TIME AND REQUIRING MENTAL HEALTH ASSESSMENTS FOR SECOND AND THIRD OFFENSES; EXTENDING THE SUSPENSION PERIOD FOR SECOND AND SUBSEQUENT IMPLIED CONSENT; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 61-5-205, 61-5-206, 61-8-402, 61-8-714, AND 61-8-732, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Administrative license suspension and monitoring for second and subsequent offenses -- operation of noncommercial vehicle by person with alcohol concentration of 0.08 or more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more.

(1) It is unlawful and punishable as provided in 61-8-442, 61-8-722, 61-8-723, and 61-8-731 through 61-8-734 for a person to drive or be in actual physical control of:

- (a) a noncommercial vehicle on the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.08 or more; or
- (b) a commercial motor vehicle on the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.04 or more.

(2) The administrative penalty is, on a second or third conviction of a violation of 61-8-401, 61-8-406, or 61-8-411:

- (a) an automatic license suspension for a period of 2 years. After successfully completing 6 months of suspension the court may grant a probationary license; and
- (b) a requirement to wear a transdermal alcohol monitoring device for a period of 2 years.



1 **Section 2.** Section 61-5-205, MCA, is amended to read:

2 **"61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration**
3 **of action -- exceptions.** (1) The department shall revoke an individual's driver's license or driving privilege if
4 the department receives notice from a court or another licensing jurisdiction that the individual has been
5 convicted of any of the following offenses:

6 (a) negligent homicide resulting from the operation of a motor vehicle;

7 (b) any felony in the commission of which a motor vehicle is used;

8 (c) failure to stop and render aid as required under the laws of this state in the event of a motor
9 vehicle accident resulting in the death or personal injury of another;

10 (d) perjury or the making of a false affidavit or statement under oath to the department under this
11 chapter or under any other law relating to the ownership or operation of motor vehicles;

12 (e) fleeing from or eluding a peace officer; or

13 (f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

14 (2) The department shall suspend an individual's driver's license or driving privilege if the department
15 receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the
16 following offenses:

17 (a) a driving offense under 61-8-401, 61-8-406, or 61-8-411;

18 (b) three reckless driving offenses committed within a period of 12 months; or

19 (c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor
20 vehicle was used in the commission of the offense.

21 (3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1
22 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony
23 conviction under 61-7-103.

24 (4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must
25 be for a period of 1 year.

26 (b) (i) Except as provided in subsection (4)(b)(ii), A suspension under subsection (2)(a) must be for
27 the period set forth in 61-5-208.

28 (ii) A suspension under subsection (2)(a) for a second or third conviction must be for the period set



1 forth under [section 1].

2 (c) A suspension under subsection (2)(c) must be for one of the following periods:

- 3 (i) 30 days for a first offense;
 4 (ii) 6 months for a second offense; and
 5 (iii) 1 year for a third or subsequent offense."

6

7 **Section 3.** Section 61-5-206, MCA, is amended to read:

8 **"61-5-206. Authority of department to suspend or revoke license or driving privilege -- right to**

9 **hearing.** (1) The department may suspend or revoke the driver's license or driving privilege of a driver without
 10 preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

- 11 (a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;
 12 (b) has falsified the licensee's date of birth on the application for a driver's license;
 13 (c) is under 21 years of age and has altered the licensee's or another's driver's license, identification
 14 card, or tribal identification card to obtain alcohol; ~~or~~
 15 (d) has authorized another to use the licensee's driver's license, identification card, or tribal
 16 identification card to obtain alcohol; ~~;~~ or
 17 (e) has committed a violation of [section 1].

18 (2) If the department suspends or revokes a driver's license under 61-5-207, [section 1], or this
 19 section or reinstates a license suspension or revocation upon conviction or forfeiture of bail not vacated of any
 20 traffic violation by a person who holds a probationary driver's license under 61-2-302, the department shall
 21 immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an
 22 opportunity for a hearing as early as practical, within 20 days after receipt of the request, in the county in which
 23 the licensee resides unless the department and the licensee agree that the hearing may be held in some other
 24 county. At the hearing, the department through its authorized agent may administer oaths and may issue
 25 subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a
 26 reexamination of the licensee. At the hearing, the department shall either rescind its order of suspension or
 27 revocation or, for good cause, may affirm, reduce, or extend the period of suspension or revocation of the
 28 license."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Section 4. Section 61-8-402, MCA, is amended to read:

"61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 or 61-8-465;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage;

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(C) in violation of 61-8-465.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5), but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing

1 request and confirming that the person refused to submit to one or more tests requested and designated by the
2 peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in
3 subsection (8).

4 (5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or
5 this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or
6 the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205,
7 61-8-401, 61-8-406, or 61-8-411 or a similar statute in another jurisdiction, the officer may apply for a search
8 warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

9 (6) (a) An arrested person who refuses to submit to one or more tests as provided in subsection (4)
10 shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue
11 account established pursuant to subsection (6)(b).

12 (b) There is a blood-draw search warrant processing account in the state special revenue fund
13 established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection
14 (6) must be deposited in the account and may be used only for the purpose of providing forensic analysis of a
15 driver's blood to determine the presence of alcohol or drugs.

16 (c) The department shall adopt rules establishing procedures for the collection, distribution, and strict
17 accountability of any funds received pursuant to this section.

18 (7) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
19 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
20 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing
21 provided in 61-8-403.

22 (8) (a) Except as provided in subsection (8)(b), the following suspension periods are applicable upon
23 refusal to submit to one or more tests:

24 (i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary
25 license;

26 (ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the
27 records of the department, a suspension of ~~1 year~~ 2 years with no provision for a restricted probationary
28 license.

1 (b) If a person who refuses to submit to one or more tests under this section is the holder of a
2 commercial driver's license, in addition to any action taken against the driver's noncommercial driving
3 privileges, the department shall:

4 (i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

5 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,
6 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person
7 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior
8 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same
9 effect as a previous testing refusal for purposes of this subsection (8)(b).

10 (9) A nonresident driver's license seized under this section must be sent by the department to the
11 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
12 more tests.

13 (10) The department may recognize the seizure of a license of a tribal member by a peace officer
14 acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or
15 reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or
16 regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions
17 occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the
18 department under this subsection is not reviewable under 61-8-403.

19 (11) A suspension under this section is subject to review as provided in this part.

20 (12) This section does not apply to tests, samples, and analyses of blood or breath used for purposes
21 of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an
22 offense not in this part, or performed pursuant to a search warrant.

23 (13) This section does not prohibit the release of information obtained from tests, samples, and
24 analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

25
26 **Section 5.** Section 61-8-714, MCA, is amended to read:

27 **"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.**

28 (1) (a) Except as provided in subsection (4) or (5), a person convicted of a first violation of 61-8-401 shall be

1 punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not
2 less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the
3 vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48
4 consecutive hours or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000.

5 (b) The mandatory minimum imprisonment term may not be served under home arrest and may not
6 be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
7 person's physical or mental well-being.

8 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year
9 pending successful completion of court-ordered chemical dependency assessment, education, or treatment by
10 the person.

11 (2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-
12 401 shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for not less
13 than ~~7~~ 30 days or more than 1 year, except that if one or more passengers under 16 years of age were in the
14 vehicle at the time of the offense, the person shall be punished by a fine of not less than \$2,400 or more than
15 \$4,000 and by imprisonment for not less than ~~44~~ 45 days or more than 1 year.

16 (b) The mandatory minimum imprisonment term may not be served under home arrest and may not
17 be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
18 person's physical or mental well-being.

19 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year
20 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-
21 732. The person shall wear a transdermal monitoring device when they have been released from imprisonment.

22 (3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-401
23 shall be punished by imprisonment for a term of not less than ~~30~~ 45 days or more than 1 year and by a fine of
24 not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in
25 the vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than
26 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

27 (b) The mandatory minimum imprisonment term may not be served under home arrest and may not
28 be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the

1 person's physical or mental well-being.

2 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year
3 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-
4 732. The person shall wear a transdermal monitoring device when they have been released from imprisonment.

5 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
6 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an
7 excessive alcohol concentration, driving under the influence of delta-9-tetrahydrocannabinol, or aggravated
8 driving under the influence.

9 (5) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall
10 be punished as provided in 61-8-465."

11

12 **Section 6.** Section 61-8-732, MCA, is amended to read:

13 **"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
14 **concentration -- assessment, education, and treatment required.** (1) In addition to the punishments
15 provided in 61-8-465, 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a
16 violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 shall complete:

17 (a) a chemical dependency assessment;

18 (b) for a first conviction, except as provided in subsection (8)(b), a chemical dependency education
19 course; and

20 (c) for a second or third conviction for a violation of 61-8-401, 61-8-406, or 61-8-411, a mental health
21 assessment and the requirement to follow all treatment recommendations of the assessment; and

22 ~~(e)(d)~~ on a second or subsequent conviction for a violation of 61-8-401, 61-8-406, or 61-8-411, except
23 a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program
24 under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

25 (2) The sentencing judge may, in the judge's discretion, require the defendant to complete the
26 chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or
27 completed before sentencing, the judge shall order the chemical dependency assessment as part of the
28 sentence.

1 (3) The chemical dependency assessment and the chemical dependency education course must be
2 completed at a treatment program approved by the department of public health and human services and must
3 be conducted by a licensed addiction counselor. Approved programs must be evidence-based programs. The
4 defendant may attend a treatment program of the defendant's choice as long as the treatment services are
5 provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the education
6 course, and chemical dependency treatment and may use health insurance to cover the costs when possible.

7 (4) The assessment must describe the defendant's level of addiction, if any, and contain a
8 recommendation as to education, treatment, or both. The assessment must conform to quality standards
9 required by the department of public health and human services. A defendant who disagrees with the initial
10 assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction
11 counselor or a program approved by the department of public health and human services.

12 (5) The treatment provided to the defendant at a treatment program must be at a level appropriate to
13 the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to
14 diagnosis and patient placement rules adopted by the department of public health and human services. The
15 rules must include evidence-based treatment programs or courses approved by the department that are likely
16 to reduce recidivism. Upon determination, the court shall order the defendant's appropriate level of treatment. If
17 more than one counselor makes a determination as provided in this subsection, the court shall order an
18 appropriate level of treatment based upon the determination of one of the counselors.

19 (6) Each counselor providing education or treatment shall, at the commencement of the education or
20 treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or
21 treatment program. If the defendant fails to attend the course or treatment program, the counselor shall notify
22 the court of the failure.

23 (7) A court or counselor may not require attendance at a self-help program other than at an "open
24 meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help
25 programs.

26 (8) (a) Chemical dependency treatment must be ordered for a first-time offender convicted of a
27 violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 upon a finding of moderate or severe alcohol or drug use
28 disorder made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by

1 the department of public health and human services.

2 (b) If treatment is ordered under subsection (8)(a) for a first-time offender, the offender may not also
3 be required to attend a chemical dependency education course.

4 (9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5)
5 must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the
6 program.

7 (b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the
8 court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence,
9 and may include additional monthly monitoring for up to an additional 1 year.

10 (10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714
11 and orders the person to complete chemical dependency treatment under this section, the judge retains
12 jurisdiction to impose any suspended sentence for up to 1 year."

13
14 **NEW SECTION. Section 7. Appropriation.** There is appropriated \$5,000 from the state general fund
15 to the department of corrections for the biennium beginning July 2, 2021, for the purposes described in [this
16 act].

17 - END -