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As of: March 29, 2010 (2:03pm)

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**** Bill No. ****

Introduced By *****

By Request of the Law and Justice Interim Committee

A Bill for an Act entitled: "An Act revising penalties for minors who violate alcohol-related statutes; providing that a minor who violates alcohol-related statutes may not obtain a driver's license until the minor is 18 years old; providing that the driver's license of a minor who has a driver's license at the time of the violation of an alcohol-related statute shall be suspended until the minor is 18 years old; amending sections 45-5-624, 61-5-105, 61-5-205, 61-5-208, and 61-8-410, MCA; and providing an immediate effective date and an applicability date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance -- interference with sentence or court order. (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. A person may not be arrested for or charged with the offense solely because the person was at a place where other persons were possessing or consuming alcoholic beverages. A person does not commit the offense if the person consumes or gains possession of an alcoholic beverage because it was lawfully

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supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) ~~(a)~~ In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted under this section:

~~(i)~~(a) for the first offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:

~~(A)~~(i) shall be ordered to perform 20 hours of community service;

~~(B)~~(ii) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available; and

~~(C)~~(iii) if the person has a driver's license, ~~must have the license confiscated by the court for 30 days, except as provided in subsection (2)(b)~~ the court shall order the license suspended for the period set forth in 61-5-208(2)(d);

~~(ii)~~(b) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:

~~(A)~~(i) shall be ordered to perform 40 hours of community service;

~~(B)~~(ii) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available;

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~~(C)(iii)~~ if the person has a driver's license, ~~must have the license confiscated by the court for 6 months, except as provided in subsection (2)(b)~~ the court shall order the license suspended for the period set forth in 61-5-208(2)(d); and

~~(D)(iv)~~ shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8);

~~(iii)(c)~~ for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900, shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available, and shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8). If the person has a driver's license, the court shall ~~confiscate the license for 6 months, except as provided in subsection (2)(b)~~ order the license suspended for the period provided set forth in 61-5-208(2)(d).

~~(b) If the convicted person fails to complete the community-based substance abuse course and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a second offense, and 12 months for a third or subsequent offense.~~

~~(c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection (2)(b).~~

(3) A person 18 years of age or older who is convicted of

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the offense of possession of an intoxicating substance:

(a) for a first offense:

(i) shall be fined an amount not less than \$100 or more than \$300;

(ii) shall be ordered to perform 20 hours of community service; and

(iii) shall be ordered to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9);

(b) for a second offense:

(i) shall be fined an amount not less than \$200 or more than \$600;

(ii) shall be ordered to perform 40 hours of community service; and

(iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;

(c) for a third or subsequent offense:

(i) shall be fined an amount not less than \$300 or more than \$900;

(ii) shall be ordered to perform 60 hours of community service;

(iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the sentencing

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court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of public

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health and human services if treatment is ordered under subsection (8).

(8) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance shall be ordered to complete a chemical dependency assessment.

(b) The assessment must be completed at a treatment program that meets the requirements of subsection (9) and must be conducted by a licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any resulting treatment.

(c) The assessment must describe the person's level of abuse or dependency, if any, and contain a recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed addiction counselor or program that meets the requirements of subsection (9).

(d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon the determination, the court shall order the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

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(e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to attend the treatment program, the counselor shall notify the court of the failure.

(f) The court shall report to the department of public health and human services the name of any person who is convicted under this section. The department of public health and human services shall maintain a list of those persons who have been convicted under this section. This list must be made available upon request to peace officers and to any court.

(9) (a) A community-based substance abuse information course required under subsection (2) (a) (i) (B), (2) (a) (ii) (B), (2) (a) (iii), or (3) (a) (iii) must be:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(b) An alcohol information course required under subsection (3) (b) (iii) or (3) (c) (iii) must be provided at an alcohol treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

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(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(c) A chemical dependency assessment required under subsection (8) must be completed at a treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(10) Information provided or statements made by a person under 21 years of age to a health care provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also extends to a person who helps the victim obtain medical or other assistance or report the offense to law enforcement personnel. (See compiler's comments for contingent termination of certain text.)"

{Internal References to 45-5-624:

ok 16-3-301

ok 16-3-323

ok 16-6-314

ok 41-5-215

ok 41-5-216}

Section 2. Section 61-5-105, MCA, is amended to read:

"61-5-105. Who may not be licensed. The department may not

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issue a license under this chapter to a person:

(1) who is under 16 years of age unless:

(a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or

(b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;

(2) who is under 18 years of age if the person has been convicted of a violation of 45-5-624, 61-8-401, 61-8-406, or 61-8-410. If a person under 18 years of age has a license at the time of the violation of 45-5-624, 61-8-401, 61-8-406, or 61-8-410, the license shall be suspended for the period set forth in 61-5-208(2)(d).

~~(2)~~(3) whose license or driving privilege is currently suspended, revoked, or canceled or who is disqualified from operating a commercial motor vehicle in this or any state, as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309;

~~(3)~~(4) who is addicted to the use of alcohol or narcotic drugs;

~~(4)~~(5) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;

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~~(5)~~(6) who is required by this chapter to take an examination;

~~(6)~~(7) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;

~~(7)~~(8) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may, in its discretion, issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations;

~~(8)~~(9) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway;

~~(9)~~(10) who is not a resident of or domiciled in Montana except as provided in 61-5-103(3); or

~~(10)~~(11) who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law. The department may not accept as a primary source of identification a driver's license issued by a state if the state does not require that a driver licensed in

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that state be lawfully present in the United States under federal law."

{Internal References to 61-5-105:

ok 15-30-2618

ok 61-5-106

ok 61-5-107

ok 61-5-125

ok 61-5-201}

Section 3. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration of action -- exceptions. (1)

The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

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

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

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

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

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

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

(2) The department shall suspend an individual's driver's

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license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or operating a motor vehicle with a blood alcohol concentration of 0.08 or more;

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

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

(d) a violation of 45-5-624 by a person under 18 years of age who has a driver's license at the time of the offense.

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

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

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b) or 61-5-208(2)(d).

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

(i) 30 days for a first offense;

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- (ii) 6 months for a second offense; and
- (iii) 1 year for a third or subsequent offense."

{Internal References to 61-5-205:

ok 61-2-107

ok 61-5-218

ok 61-7-103

ok 61-8-734}

Section 4. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months, except as provided in (2) (d). Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or

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subsequent offense within 5 years of the first offense, the department shall suspend the license or driving privilege of the person for a period of 1 year, except as provided in (2)d), and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2) (b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(d) When the license of a person under the age of 18 is suspended for a violation of 45-5-624, 61-8-401, 61-8-406, or 61-8-410, the department shall suspend the driver's license of the person until the person reaches 18 years of age or for the period set out in subsection (2) (b), whichever is longer.

(3) (a) Except as provided in subsection (3) (b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

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(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5) (b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5) (a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

{*Internal References to 61-5-208:*

A 61-5-205 ok 61-8-734}

Section 5. Section 61-8-410, MCA, is amended to read:

"61-8-410. Operation of vehicle by person under twenty-one with alcohol concentration of 0.02 or more. (1) It is unlawful for a person under the age of 21 who has an alcohol concentration

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of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state open to the public. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

(2) Upon a first conviction under this section, a person shall be punished by a fine of not less than \$100 or more than \$500.

(3) Upon a second conviction under this section, a person shall be punished by a fine of not less than \$200 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not more than 10 days.

(4) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not less than \$300 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not less than 24 consecutive hours or more than 60 days.

(5) In addition to the punishment provided in this section, regardless of disposition:

(a) the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in 61-8-732 as ordered by the court; and

(b) except as provided in 61-5-208(2)(d), the department shall suspend the person's driver's license for 90 days upon the first conviction, 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or probationary driver's license may not be issued during the suspension period until the person has paid a license

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reinstatement fee in accordance with 61-2-107 ~~and, if the person was under the age of 18 at the time of the offense, has completed at least 30 days of the suspension period.~~

(6) A conviction under this section may not be counted as a prior conviction under 61-8-401 or 61-8-406."

{Internal References to 61-8-410:

ok 46-16-130	ok 61-5-212	ok 61-8-401	ok 61-8-402
ok 61-8-403	ok 61-8-404	ok 61-8-409	ok 61-8-409}

NEW SECTION. **Section 6. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 7. {standard} Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

- END -

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