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As of: August 23, 2010 (12:11pm)

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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 the laws relating to drivers' implied consent to blood or breath tests that determine the presence of alcohol or drugs; revising penalties for refusal to submit to a test; allowing the state to require a test upon refusal and allowing the admission of the test results into evidence; amending sections 61-5-105, 61-8-402, and 61-8-409, MCA; and providing an immediate effective date, an applicability date, and a retroactive applicability date."

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

Section 1. Section 61-5-105, MCA, is amended to read:

"61-5-105. Who may not be licensed. The department may not 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) whose license or driving privilege is currently suspended, revoked, or canceled or who is disqualified from

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1 operating a commercial motor vehicle in this or any state, as
2 evidenced by an ineligible status report from the national driver
3 register, established under 49 U.S.C. 30302, or from the
4 commercial driver's license information system, established under
5 49 U.S.C. 31309;

6 (3) who is addicted to the use of alcohol or narcotic
7 drugs;

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

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

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

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

27 (8) who lacks the functional ability, due to a physical or

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1 mental disability or limitation, to safely operate a motor
2 vehicle on the highway;

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

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

12 (11) who is prohibited from receiving a license under 61-8-
13 402 or 61-8-409."

14 { *Internal References to 61-5-105:*
15 *ok 15-30-2618 ok 61-5-106 ok 61-5-107 ok 61-5-125*
16 *ok 61-5-201 }*

17

18 **Section 2.** Section 61-8-402, MCA, is amended to read:

19 **"61-8-402. Blood Implied consent -- blood or breath tests**
20 **for alcohol, drugs, or both -- refusal to submit to test --**
21 **administrative license suspension.** (1) A person who operates or

22 is in actual physical control of a vehicle upon ways of this
23 state open to the public is considered to have given consent to a
24 test or tests of the person's blood or breath for the purpose of
25 determining any measured amount or detected presence of alcohol
26 or drugs in the person's body.

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

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1 (i) the officer has reasonable grounds to believe that the
2 person has been driving or has been in actual physical control of
3 a vehicle upon ways of this state open to the public while under
4 the influence of alcohol, drugs, or a combination of the two and
5 the person has been placed under arrest for a violation of
6 61-8-401;

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

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

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

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

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

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

22 (4) If an arrested person refuses to submit to one or more
23 tests requested and designated by the officer as provided in
24 subsection (2), ~~the refused test or tests may not be given, but~~
25 the officer shall, on behalf of the department, immediately seize
26 the person's driver's license. The peace officer shall
27 immediately forward the license to the department, along with a

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1 report certified under penalty of law stating which of the
2 conditions set forth in subsection (2)(a) provides the basis for
3 the testing request and confirming that the person refused to
4 submit to one or more tests requested and designated by the peace
5 officer. Upon receipt of the report, the department shall suspend
6 the license for the period provided in subsection (6).

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

13 (6) (a) Except as provided in subsection (6)(b), the
14 following suspension periods are applicable upon refusal to
15 submit to one or more tests:

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

18 (ii) upon a second or subsequent refusal ~~within 5 years of a~~
19 ~~previous refusal, as determined from the records of the~~
20 ~~department,~~ a suspension of ~~1 year~~ 10 years with no provision for
21 a restricted probationary license and a fine of \$5,000;

22 (iii) if the person has one or more prior convictions for a
23 violation of 45-5-106, 45-5-205, 61-8-401, or 61-8-406, a
24 suspension of 10 years with no provision for a restricted
25 probationary license and a fine of \$5,000.

26 (b) If a person who refuses to submit to one or more tests
27 under this section is the holder of a commercial driver's

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1 license, in addition to any action taken against the driver's
2 noncommercial driving privileges, the department shall:

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

5 (ii) upon a second or subsequent refusal, suspend the
6 person's commercial driver's license for life, subject to
7 department rules adopted to implement federal rules allowing for
8 license reinstatement, if the person is otherwise eligible, upon
9 completion of a minimum suspension period of 10 years. If the
10 person has a prior conviction of a major offense listed in
11 61-8-802(2) arising from a separate incident, the conviction has
12 the same effect as a previous testing refusal for purposes of
13 this subsection (6)(b).

14 (7) A nonresident driver's license seized under this
15 section must be sent by the department to the licensing authority
16 of the nonresident's home state with a report of the
17 nonresident's refusal to submit to one or more tests.

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

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1 (9) A suspension under this section is subject to review as
2 provided in this part.

3 (10) This section does not apply to blood and breath tests,
4 samples, and analyses used for purposes of medical treatment or
5 care of an injured motorist or related to a lawful seizure for a
6 suspected violation of an offense not in this part.

7 (11) If the person does not have a valid Montana driver's
8 license or driving privilege at the time of refusal, the person
9 may not be issued a Montana driver's license for:

10 (a) 1 year, upon a first refusal under this subsection
11 (11); and

12 (b) 10 years, upon a second or subsequent refusal under
13 this subsection (11).

14 (12) If a person under arrest refuses to submit to one or
15 more tests requested and designated by the officer as provided in
16 subsection (2), the test may be administered as provided in 61-8-
17 405 and evidence obtained from the test is admissible as provided
18 in 61-8-404."

19 {*Internal References to 61-8-402:*
20 *ok 61-2-107 ok 61-5-212 ok 61-5-212 ok 61-5-218*
21 *ok 61-8-101 * ok 61-8-409 ok 61-8-409 ok 61-8-409*
22 *ok 61-8-409 ok 61-8-409 ok 61-8-733 }*

23
24 **Section 3.** Section 61-8-409, MCA, is amended to read:

25 **"61-8-409. Preliminary alcohol screening test.** (1) A person
26 who operates or is in actual physical control of a vehicle upon
27 ways of this state open to the public is considered to have given
28 consent to a preliminary alcohol screening test of the person's

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1 breath, for the purpose of estimating the person's alcohol
2 concentration, upon the request of a peace officer who has a
3 particularized suspicion that the person was driving or in actual
4 physical control of a vehicle upon ways of this state open to the
5 public while under the influence of alcohol or in violation of
6 61-8-410.

7 (2) The person's obligation to submit to a test under
8 61-8-402 is not satisfied by the person submitting to a
9 preliminary alcohol screening test pursuant to this section.

10 (3) The peace officer shall inform the person of the right
11 to refuse the test and that the refusal to submit to the
12 preliminary alcohol screening test will result in the suspension
13 for up to ~~1 year~~ 10 years of that person's driver's license and
14 the possible ineligibility to receive a driver's license for up
15 to 10 years.

16 (4) If the person refuses to submit to a test under this
17 section, ~~a test will not be given. However,~~ the refusal is
18 sufficient cause to suspend the person's driver's license as
19 provided in 61-8-402.

20 (5) A hearing as provided for in 61-8-403 must be
21 available. The issues in the hearing must be limited to
22 determining whether a peace officer had a particularized
23 suspicion that the person was driving or in actual physical
24 control of a vehicle upon ways of this state open to the public
25 while under the influence of alcohol or in violation of 61-8-410
26 and whether the person refused to submit to the test.

27 (6) The provisions of 61-8-402(3) through (8) that do not

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1 conflict with this section are applicable to refusals under this
2 section. If a person refuses a test requested under 61-8-402 and
3 this section for the same incident, the department may not
4 consider each a separate refusal for purposes of suspension under
5 61-8-402.

6 (7) A test may not be conducted or requested under this
7 section unless both the peace officer and the instrument used to
8 conduct the preliminary alcohol screening test have been
9 certified by the department pursuant to rules adopted under the
10 authority of 61-8-405(5).

11 (8) If the person does not have a valid Montana driver's
12 license or driving privilege at the time of refusal, the person
13 may not be issued a Montana driver's license for:

14 (a) 1 year, upon a first refusal under this subsection (8);
15 and

16 (b) 10 years, upon a second or subsequent refusal under
17 this subsection (8)."

18 {Internal References to 61-8-409:
19 ok 61-5-212 ok 61-5-212 ok 61-8-733 }

20
21 NEW SECTION. Section 4. {standard} Effective date. [This
22 act] is effective on passage and approval.

23
24 NEW SECTION. Section 5. {standard} Applicability. [This
25 act] applies to offenses committed on or after [the effective
26 date of this act].

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