

1 HOUSE BILL NO. 263

2 INTRODUCED BY L. JENT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE OPTION OF A PERSON WHOSE DRIVER'S
5 LICENSE WAS SUSPENDED FOR REFUSAL TO SUBMIT TO AN ALCOHOL OR DRUG TEST TO
6 CHALLENGE THE SUSPENSION IN THE COUNTY OF THE PERSON'S RESIDENCE; REQUIRING THE
7 CHALLENGE TO BE MADE IN THE COUNTY IN WHICH THE ARREST OCCURRED; AMENDING SECTION
8 61-8-403, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

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12 **Section 1.** Section 61-8-403, MCA, is amended to read:

13 **"61-8-403. Right of appeal to court.** (1) Within 30 days after notice of the right to a hearing has
14 been given by a peace officer, a person may file a petition to challenge the license suspension or
15 revocation in the district court in the county where the ~~person resides or in the county where the~~ arrest
16 was made.

17 (2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10
18 days' written notice of the hearing to the county attorney of the county where the ~~appeal is filed~~ arrest
19 was made and to the city attorney if the incident leading to the suspension or revocation resulted in a
20 charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If
21 the county attorney and the city attorney cannot agree on who will represent the state, the county
22 attorney shall represent the state.

23 (3) Upon request of the petitioner, the court may order the department to return the seized license
24 or issue a stay of the suspension or revocation action pending the hearing.

25 (4) (a) The court shall take testimony and examine the facts of the case, except that the issues
26 are limited to whether:

27 (i) a peace officer had reasonable grounds to believe that the person had been driving or was in
28 actual physical control of a vehicle upon ways of this state open to the public while under the influence
29 of alcohol, drugs, or a combination of the two and the person was placed under arrest for violation of
30 61-8-401;

1 (ii) the person is under ~~the age of~~ 21 years of age and was placed under arrest for a violation of
2 61-8-410;

3 (iii) the officer had probable cause to believe that the person was driving or in actual physical
4 control of a vehicle in violation of 61-8-401 and the person was involved in a motor vehicle accident or
5 collision resulting in property damage, bodily injury, or death; and

6 (iv) the person refused to submit to one or more tests designated by the officer.

7 (b) Based on the ~~above~~ issues in subsection (4)(a) and no others, the court shall determine
8 whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension
9 or revocation.

10 (5) This section does not grant a right of appeal to a state court if a driver's license is initially
11 seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing
12 of motor vehicle operators."

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14 NEW SECTION. Section 2. Applicability. [This act] applies to implied consent tests refused after
15 [the effective date of this act].

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