

## 1 SENATE BILL NO. 334

2 INTRODUCED BY L. GROSFIELD

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO ESTABLISH  
5 BY ADMINISTRATIVE RULE A DRIVER REHABILITATION AND IMPROVEMENT PROGRAM; REQUIRING  
6 THAT THE RULES PROVIDE FOR THE DEPARTMENT TO CONTRACT WITH QUALIFIED PRIVATE ENTITIES  
7 FOR OPERATION OF THE PROGRAM COURSES; ALLOWING THE DEPARTMENT TO COLLECT FEES FROM  
8 PARTICIPANTS IN THE PROGRAM COURSES TO OFFSET EXPENSES INCURRED BY THE DEPARTMENT  
9 IN ADMINISTERING THE PROGRAM AND CONTRACTING WITH PRIVATE ENTITIES; ALLOWING THE  
10 DEPARTMENT TO SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH  
11 CERTAIN DRIVER REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; DEFINING "DRIVER  
12 IN NEED OF REHABILITATION AND IMPROVEMENT"; REQUIRING THE DEPARTMENT TO NOTIFY A  
13 PERSON WHO HAS BEEN DECLARED A DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT;  
14 AMENDING SECTIONS 61-2-302, 61-5-206, 61-11-203, 61-11-204, AND 61-13-104, MCA; AND  
15 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16

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

18

19 **Section 1.** Section 61-2-302, MCA, is amended to read:

20 **"61-2-302. Establishment of driver rehabilitation and improvement program -- department to**  
21 **contract with private entities -- participation by offending drivers.** (1) (a) The department ~~may~~ shall  
22 establish by administrative rules a driver rehabilitation and improvement program or programs that may  
23 consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes  
24 and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper  
25 driving attitudes, habits, and techniques.

26 (b) The rules must:27 (i) provide for the local program courses to be operated by private entities;28 (ii) develop a procedure for certifying private entities as driver rehabilitation and improvement  
29 course providers;30 (iii) establish the criteria that private entities must meet in order to be certified by the department;

1 and

2 (iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live  
3 in areas where a course is not offered.

4 (2) Official participation in the driver rehabilitation and improvement program is limited to those  
5 persons whose license to operate a motor vehicle in the state of Montana is:

6 (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state  
7 or, unless otherwise provided by the sentencing court, a violation of 45-5-624; ~~or~~

8 (b) revoked and they have:

9 (i) completed at least 3 months of a 1-year revocation or, if revocation is for a second or  
10 subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance  
11 with the ignition interlock device restriction imposed under 61-5-208; or

12 (ii) completed 1 year of a 3-year revocation; and

13 (iii) met the requirements for reobtaining a Montana driver's license; ~~or~~

14 (c) subject to suspension as provided in 61-11-204(3).

15 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of  
16 Montana, the enforcement of any suspension or revocation order that constitutes the basis for any  
17 person's participation in the driver rehabilitation and improvement program provided for in this section may  
18 be stayed if that person complies with the requirements established for the driver rehabilitation and  
19 improvement program and meets the eligibility requirements of subsection (2).

20 (4) In the event that a person's driver's license has been surrendered before the person's selection  
21 for participation in the driver rehabilitation and improvement program, the license may be returned upon  
22 receipt of the person's agreement to participate in the program.

23 (5) The stay of enforcement of any suspension or revocation order must be terminated and the  
24 order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation  
25 and improvement program or fails to meet the attendance or other requirements established for  
26 participation in the program.

27 (6) This part does not create a right to be included in any program established under this part.

28 (7) The department and the entity with which the department contracts under subsection (1)(b)  
29 ~~may shall~~ establish ~~a schedule of fees~~ separate fee schedules that may be charged to those persons  
30 participating in the driver improvement and rehabilitation program. The fees must be collected separately

1 by the department and by the entity with which the department contracts under subsection (1)(b).

2 (8) The fees collected by the department under subsection (7) must be used to help defray costs  
 3 of maintaining the program incurred by the department in administering the program and in contracting  
 4 with private entities as provided in subsection (1). The department may not use the fees collected under  
 5 subsection (7) for any other purpose.

6 ~~(8)~~(9) A person may be referred to this program by a driver improvement analyst, city judge,  
 7 justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the  
 8 department.

9 ~~(9)~~(10) The department may issue a restricted probationary license to any person who enrolls and  
 10 participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license  
 11 under this section, the licensee is subject to the restrictions set forth on the license.

12 ~~(10)~~(11) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of  
 13 the restrictions imposed on a restricted license issued to the person under this section."

14

15 **Section 2.** Section 61-5-206, MCA, is amended to read:

16 **"61-5-206. Authority of department to suspend license or driving privilege or issue probationary**  
 17 **license.** (1) The department may suspend the driver's license or driving privilege of a driver without  
 18 preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

19 (a) has been involved as a driver in any accident resulting in the death or personal injury of another  
 20 or serious property damage;

21 (b) has been convicted with such frequency of serious offenses against traffic regulations  
 22 governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the  
 23 safety of other persons on the highways;

24 (c) is ~~an~~ a habitually reckless or negligent driver of a motor vehicle;

25 (d) is incompetent to drive a motor vehicle;

26 (e) has committed or permitted an unlawful or fraudulent use of the license as specified in  
 27 61-5-302;

28 (f) has committed an offense in another state ~~which~~ that if committed in this state would be  
 29 grounds for suspension or revocation;

30 (g) has falsified the licensee's date of birth on the application for a driver's license;

1 (h) is under 21 years of age and has altered the licensee's or another's driver's license or  
 2 identification card to obtain alcohol; ~~or~~

3 (i) has authorized another to use the licensee's driver's license or identification card to obtain  
 4 alcohol; or

5 (j) has been declared a driver in need of rehabilitation and improvement, as defined in 61-11-203,  
 6 and has failed to enroll in or successfully complete, within 90 days of notice, a driver rehabilitation and  
 7 improvement course or other appropriate course determined by the department as provided in 61-11-204.

8 (2) However, the department may, ~~in its discretion and~~ in lieu of suspending the license or driving  
 9 privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its  
 10 records or other sufficient evidence that the licensee's driving record ~~is such as~~ would authorize  
 11 suspension as provided in subsection (1). Upon issuance of a probationary license, the licensee is subject  
 12 to the restrictions set forth in the probationary license. The licensee's driving privilege may be suspended  
 13 upon conviction or forfeiture of bail not vacated of any traffic violation during the period of probation. The  
 14 licensee shall surrender to the department all driver's licenses that have been issued to the licensee before  
 15 the probationary license may be issued. The licensee's refusal or neglect to surrender the licenses upon  
 16 demand is grounds for suspending all licenses. Probationary licenses may be issued for a period not to  
 17 exceed 12 months.

18 (3) Upon suspending the license of any person or upon placing the person on probation, as  
 19 authorized in this section, the department shall immediately notify the licensee in writing and upon the  
 20 licensee's request shall afford the licensee an opportunity for a hearing as early as practical, ~~within not to~~  
 21 ~~exceed~~ 20 days after receipt of the request, in the county in which the licensee resides unless the  
 22 department and the licensee agree that the hearing may be held in some other county. At the hearing, the  
 23 department through its authorized agent may administer oaths and may issue subpoenas for the  
 24 attendance of witnesses and the production of relevant books and papers and may require a reexamination  
 25 of the licensee. At the hearing, the department shall either rescind its order of suspension or probation,  
 26 or, for good cause, may affirm, reduce, or extend the period of probation or suspension of the license."

27

28 **Section 3.** Section 61-11-203, MCA, is amended to read:

29 **"61-11-203. Definitions.** As used in this part, the following definitions apply:

30 (1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or

1 nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person  
2 charged with having committed any offense relating to the use or operation of a motor vehicle that is  
3 prohibited by law, ordinance, or administrative order.

4 (2) "Driver in need of rehabilitation and improvement" means a person who within a 2-year period  
5 accumulates 18 or more conviction points according to the schedule specified in subsection (3).

6 ~~(2)~~(3) "Habitual traffic offender" means any person who within a 3-year period accumulates 30  
7 or more conviction points according to the schedule specified in this subsection:

8 (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

9 (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle,  
10 or negligent vehicular assault, 12 points;

11 (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in  
12 the commission of which a motor vehicle is used, 12 points;

13 (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or  
14 operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

15 (e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

16 (f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any  
17 person to stop at the scene of the accident and give the required information and assistance, as defined  
18 in 61-7-105, 8 points;

19 (g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop  
20 at the scene of the accident and give the required information or failure to otherwise report an accident  
21 in violation of the law, 4 points;

22 (h) reckless driving, 5 points;

23 (i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

24 (j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302,  
25 5 points;

26 (k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not  
27 apply to operating a motor vehicle within a period of 180 days from the date the license expired);

28 (l) speeding, except as provided in 61-8-725(2), 3 points;

29 (m) all other moving violations, 2 points.

30 ~~(3)~~(4) There may not be multiple application of cumulative points when two or more charges are

1 filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only  
2 the number of points for the specific conviction carrying the highest points is chargeable against that  
3 defendant.

4 ~~(4)~~(5) "License" means any type of license or permit to operate a motor vehicle.

5 ~~(5)~~(6) "Moving violation" means a violation of a traffic regulation of this state or another  
6 jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle  
7 upon a highway, as the term is defined in 61-1-201.

8 ~~(6)~~(7) A traffic regulation includes any provision governing motor vehicle operation, equipment,  
9 safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions  
10 governing vehicle registration or local parking."

11

12 **Section 4.** Section 61-11-204, MCA, is amended to read:

13 **"61-11-204. Department's duties.** (1) If the records maintained by the department show that a  
14 person's driving record brings the person within the definition of a habitual traffic offender, the department  
15 shall:

16 (a) declare the person a habitual traffic offender;

17 (b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

18 (c) notify the person in writing of the declaration and revocation.

19 (2) The notice must be sent by first-class mail to the most current address on record with the  
20 department. The notice must include a certified reproduction of the person's driving record as contained  
21 in the computer storage device used by the department for recordkeeping. The notice must inform the  
22 person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is  
23 complete upon mailing.

24 (3) If the records maintained by the department show that a person's driving record brings the  
25 person within the definition of a driver in need of rehabilitation and improvement, the department shall:

26 (a) declare the person a driver in need of rehabilitation and improvement;

27 (b) notify the person that unless the person enrolls in and successfully completes, within 90 days  
28 of notification, a certified driver rehabilitation and improvement course, as provided in 61-2-302, the  
29 person's driver's license will be suspended for a period not to exceed 6 months OR UNTIL THE PERSON HAS  
30 SUCCESSFULLY COMPLETED THE COURSE, WHICHEVER OCCURS FIRST;

1 (c) provide the person with a list of certified driver rehabilitation and improvement courses and  
 2 information about how the person may comply with the provisions of this subsection (3) if a driver  
 3 rehabilitation and improvement program does not exist near the person's residence; and

4 (d) send the notice as provided in subsection (2).

5 (4) If the person fails to enroll in a certified driver rehabilitation and improvement program or fails  
 6 to successfully complete the program or an appropriate substitute within 90 days, the department may  
 7 suspend the person's driver's license as provided in 61-5-206 FOR A PERIOD NOT TO EXCEED 6 MONTHS OR UNTIL  
 8 THE PERSON HAS SUCCESSFULLY COMPLETED THE COURSE, WHICHEVER OCCURS FIRST."

9

10 **Section 5.** Section 61-13-104, MCA, is amended to read:

11 **"61-13-104. Penalty -- no record permitted.** (1) A driver who violates 61-13-103 ~~must~~ shall be  
 12 fined \$20, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or  
 13 61-8-711. A violation of 61-13-103 may not be counted as a moving violation for purposes of suspending  
 14 a driver's license under 61-11-203(2)(m)(3)(m). Bond for this offense is \$20, and ~~no~~ a jail sentence may  
 15 not be imposed.

16 (2) ~~No~~ A violation of 61-13-103 may not be recorded or charged against the driver's record of a  
 17 person violating 61-13-103, ~~and no~~

18 (3) An insurance company ~~shall~~ may not hold a violation of 61-13-103 against the insured, ~~and~~  
 19 ~~there may be no~~ or increase in the insured's premiums due to a violation of 61-13-103."

20

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

22

- END -