

1 HOUSE BILL NO. 191

2 INTRODUCED BY S. GALLUS, BECK, COCCHIARELLA, EGGERS, HARRINGTON, KEANE, LASLOVICH,
3 MCCARTHY, SHEA

4 BY REQUEST OF THE ATTORNEY GENERAL

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MINOR IN POSSESSION LAWS;
7 REVISING REQUIREMENTS REGARDING SUSPENSION OF DRIVER'S LICENSES IN RELATION TO MINOR
8 IN POSSESSION VIOLATIONS; ELIMINATING THE REQUIREMENT THAT MINOR IN POSSESSION
9 CONVICTIONS BE REPORTED TO THE DEPARTMENT OF JUSTICE OR SHOWN ON DRIVER RECORDS
10 UNLESS THE CONVICTING COURT SPECIFICALLY ORDERS SUSPENSION OF THE DRIVER'S LICENSE OF
11 A PERSON UNDER 18 YEARS OF AGE; ~~CLARIFYING THAT PRIOR CONVICTIONS ARE INCLUDED IN~~
12 ~~DETERMINING THE APPROPRIATE SENTENCE~~ REQUIRING THE DEPARTMENT OF JUSTICE TO REMOVE
13 FROM ITS DRIVERS' RECORDS REFERENCES TO CONVICTIONS OF PERSONS UNDER 21 YEARS OF AGE
14 FOR POSSESSION OF AN INTOXICATING SUBSTANCE; AMENDING SECTIONS 45-5-624, AND 61-2-302,
15 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 **Section 1.** Section 45-5-624, MCA, is amended to read:

20 **"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance -- interference**
21 **with sentence or court order.** (1) A person under 21 years of age commits the offense of possession of
22 an intoxicating substance if the person knowingly consumes or has in the person's possession an
23 intoxicating substance. A person does not commit the offense if the person consumes or gains possession
24 of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of
25 employment it is necessary to possess alcoholic beverages.

26 (2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years
27 of age who is convicted of the offense of possession of an intoxicating substance:

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

29 ~~(i) must have the person's driver's license confiscated by the court for not less than 30 days and~~
30 ~~not more than 90 days and shall be ordered not to drive during that period if the person was driving or was~~

1 ~~otherwise in actual physical control of a motor vehicle when the offense occurred;~~

2 ~~(ii)(A)~~ shall be ordered to perform community service if a community service program is available;

3 and

4 ~~(iii)(B)~~ shall be ordered to complete and pay, either directly with money or indirectly through
5 court-ordered community service, if any is available, all costs of participation in a community-based
6 substance abuse information course, if one is available;

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

8 ~~(i) must have the person's driver's license suspended for not less than 60 days and not more than~~
9 ~~120 days;~~

10 ~~(ii)(A)~~ shall be ordered to perform community service if a community service program is available;

11 and

12 ~~(iii)(B)~~ shall be ordered to complete and pay, either directly with money or indirectly through
13 court-ordered community service, if any is available, all costs of participation in a community-based
14 substance abuse information course, if one is available;

15 ~~(e)(iii)~~ for a third or subsequent offense, shall be fined an amount not less than \$300 or more than
16 \$500 and:

17 ~~———(i) must have the person's driver's license suspended for not less than 120 days and not more~~
18 ~~than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor~~
19 ~~vehicle when the offense occurred, must have the person's driver's license revoked for 1 year or until the~~
20 ~~person reaches the age of 18, whichever occurs last;~~

21 ~~———(ii)~~ shall be ordered to complete and pay, either directly with money or indirectly through
22 court-ordered community service, if any is available, all costs of participation in a community-based
23 substance abuse information course, if one is available, which may include alcohol or drug treatment, or
24 both, approved by the department of public health and human services, if determined by the court to be
25 appropriate.

26 (b) In addition to the penalties provided in subsection (2)(a), the court may order suspension of
27 the offender's driver's license. The duration of the suspension must be set forth by court order and may
28 not be less than 60 days or more than 1 year. Upon recommendation from the court, a restricted
29 probationary driver's license under 61-2-302 may be issued during the suspension period after the person
30 has completed at least 30 days of the suspension period.

1 (3) ~~(a)~~ A person 18 years of age or older who is convicted of the offense of possession of an
2 intoxicating substance:

3 ~~(a)(i)(A)~~ for a first offense, shall be fined an amount not to exceed \$50 and shall be ordered to
4 perform community service if a community service program is available;

5 ~~(b)(ii)(B)~~ for a second offense, shall be fined an amount not to exceed \$100 and:

6 ~~(i)~~ shall be ordered to perform community service if a community service program is available; ~~and~~

7 ~~(ii) must have the person's driver's license suspended for not more than 60 days if the person was~~
8 ~~driving or otherwise in actual physical control of a motor vehicle when the offense occurred;~~

9 ~~(c)(iii)(C)~~ for a third or subsequent offense, shall be fined an amount not to exceed \$200 and:

10 ~~(i)(A)(i)~~ shall be ordered to perform community service if a community service program is available;

11 ~~(ii) must have the person's driver's license suspended for not more than 120 days if the person~~
12 ~~was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;~~

13 ~~(iii)(B)(ii)~~ shall be ordered to complete an alcohol information course at an alcohol treatment
14 program approved by the department of public health and human services, which may, in the sentencing
15 court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol
16 or drug treatment, or both; and

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

19 ~~(b) For the purpose of determining the appropriate penalty under this subsection (3), the court shall~~
20 ~~include any prior convictions under this section committed while the person was under 18 years of age.~~

21 (4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating
22 substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of
23 attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$50 if the person
24 was 18 years of age or older at the time that the offense was committed or \$100 if the person was under
25 18 years of age at the time that the offense was committed.

26 (5) A defendant who fails to comply with a sentence and is under 21 years of age and was under
27 18 years of age when the defendant failed to comply must be transferred to the youth court. If
28 proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated
29 as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment
30 under 41-5-1512.

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

5 (7) A conviction or youth court adjudication under this section ~~must~~ may not be reported by the
 6 court to the department of justice under 61-11-101 ~~for the purpose of keeping a record of the number of~~
 7 ~~offenses committed but may not be considered part of the person's driving record for insurance purposes~~
 8 ~~unless a second or subsequent conviction or adjudication under this section occurs~~ suspension of the
 9 offender's driver's license is ordered by the court pursuant to subsection (2)(b). (See compiler's comments
 10 for contingent termination of certain text.)"

11

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

13 **"61-2-302. Establishment of driver rehabilitation and improvement program -- participation by**
 14 **offending drivers.** (1) The department may establish by administrative rules a driver rehabilitation and
 15 improvement program or programs that may consist of classroom instruction in rules of the road, driving
 16 techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other
 17 subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

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

20 (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state
 21 or, unless otherwise provided by the sentencing court, ~~a violation of 45-5-624~~ is suspended under
 22 45-5-624(2)(b); or

23 (b) revoked and they have:

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

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

28 (iii) met the requirements for reobtaining a Montana driver's license.

29 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of
 30 Montana, the enforcement of any suspension or revocation order that constitutes the basis for any

1 person's participation in the driver rehabilitation and improvement program provided for in this section may
 2 be stayed if that person complies with the requirements established for the driver improvement program
 3 and meets the eligibility requirements of subsection (2).

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

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

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

12 (7) The department may establish a schedule of fees that may be charged those persons
 13 participating in the driver improvement and rehabilitation program. The fees must be used to help defray
 14 costs of maintaining the program.

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

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

21 (10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the
 22 restrictions imposed on a restricted license issued to the person under this section."
 23

24 **NEW SECTION. SECTION 3. REMOVAL FROM DRIVERS' RECORDS OF REFERENCES TO CONVICTIONS OF PERSONS**
 25 **UNDER 21 YEARS OF AGE FOR POSSESSION OF INTOXICATING SUBSTANCE. WITHIN 30 DAYS AFTER [THE EFFECTIVE DATE**
 26 **OF THIS ACT], THE DEPARTMENT OF JUSTICE SHALL REMOVE FROM DRIVERS' RECORDS THAT MAY BE RELEASED UNDER**
 27 **61-11-105 ALL REFERENCES TO CONVICTIONS FOR VIOLATIONS OF 45-5-624 THAT WERE PREVIOUSLY REPORTED TO THE**
 28 **DEPARTMENT.**

29
 30 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

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2 NEW SECTION. **Section 5. Applicability.** [This act] applies to offenses committed on or after [the
3 effective date of this act].

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