

## 1 SENATE BILL NO. 123

2 INTRODUCED BY B. GLASER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REVOCATION, UNTIL THE AGE OF 18, OF THE  
5 DRIVER'S LICENSE OF A MINOR CONVICTED FOR THE THIRD TIME OF POSSESSION OF ALCOHOL OR  
6 DRUGS; REQUIRING A FINE AND DRIVER'S LICENSE REVOCATION UNTIL 18 YEARS OF AGE IF A MINOR  
7 IS CONVICTED OF DRIVING UNDER THE INFLUENCE OR WITH AN ILLEGAL ALCOHOL CONTENT;  
8 REQUIRING FORFEITURE OF THE VEHICLE THAT THE PERSON WAS DRIVING UPON A FIRST OFFENSE  
9 OF DRIVING UNDER THE INFLUENCE OR WITH AN ILLEGAL ALCOHOL CONTENT IF PERSONAL INJURY  
10 TO OR DAMAGE IN EXCESS OF \$300 TO PROPERTY OF ANOTHER PERSON RESULTED FROM A MOTOR  
11 VEHICLE ACCIDENT FOR WHICH THE CONVICTED PERSON WAS PARTLY OR WHOLLY AT FAULT; AND  
12 AMENDING SECTIONS 45-5-624, 61-8-723, AND 61-8-733, MCA."

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

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

17 **"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance -- interference**  
18 **with sentence or court order.** (1) A person under 21 years of age commits the offense of possession of an  
19 intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating  
20 substance. A person does not commit the offense if the person consumes or gains possession of the beverage  
21 because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is  
22 necessary to possess alcoholic beverages.

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

25 (i) for the first offense, shall be fined an amount not to exceed \$150 and:

26 (A) may be ordered to perform community service; and

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

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

1 (A) may be ordered to perform community service; and

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

5 (iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$500  
6 and shall be ordered to complete and pay, either directly with money or indirectly through court-ordered  
7 community service, all costs of participation in a community-based substance abuse information course, if one  
8 is available, which may include alcohol or drug treatment, or both, approved by the department of public health  
9 and human services, if determined by the court to be appropriate.

10 (b) In addition to the penalties provided in subsection (2)(a);:

11 (i) upon a first or second conviction, the court may order suspension of the offender's driver's license.  
12 The duration of the suspension must be set forth by court order and may not be less than 60 days or more than  
13 1 year. Upon recommendation from the court, a restricted probationary driver's license under 61-2-302 may be  
14 issued during the suspension period after the person has completed at least 30 days of the suspension period.

15 (ii) upon a third conviction, the court shall order the offender's driver's license revoked until the offender  
16 reaches 18 years of age and the offender may not be issued a new license after the offender reaches 18 years  
17 of age unless the offender presents to the driver's license examination office certification that the offender has  
18 taken at least 10 hours of instruction on the effects of driving under the influence of alcohol or drugs.

19 (3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating  
20 substance:

21 (a) for a first offense, shall be fined an amount not to exceed \$150 and may be ordered to perform  
22 community service;

23 (b) for a second offense, shall be fined an amount not to exceed \$200 and may be ordered to perform  
24 community service;

25 (c) for a third or subsequent offense, shall be fined an amount not to exceed \$300 and:

26 (i) may be ordered to perform community service;

27 (ii) shall be ordered to complete an alcohol information course at an alcohol treatment program approved  
28 by the department of public health and human services, which may, in the sentencing court's discretion and upon  
29 recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

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

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

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

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

13 (7) A conviction or youth court adjudication under this section may not be reported by the court to the  
 14 department of justice under 61-11-101 unless suspension of the offender's driver's license is ordered by the  
 15 court pursuant to subsection (2)(b). (See compiler's comments for contingent termination of certain text.)"  
 16

17 **Section 2.** Section 61-8-723, MCA, is amended to read:

18 **"61-8-723. Offenses committed by persons under the age of eighteen.** (1) A person under 18 years  
 19 of age who is convicted of an offense under this title, except an offense under 61-8-401 or 61-8-406, shall not  
 20 be punished by incarceration, but shall be punished by:

21 (1)(a) a fine not to exceed the fine that could be imposed on ~~him~~ the person if ~~he~~ the person were an  
 22 adult, provided except that such the person may not be imprisoned for failure to pay ~~such~~ the fine;

23 (2)(b) revocation of ~~his~~ the person's driver's license by the court or suspension of the license for a period  
 24 set by the court;

25 (3)(c) impoundment by a law enforcement officer designated by the court of the motor vehicle operated  
 26 by the person for a period of time not exceeding 60 days if the court finds that ~~he~~ the person either owns the  
 27 vehicle or is the only person who uses the vehicle; or

28 (4)(d) any combination of subsections (1)(a) through (3) (1)(c).

29 (2) A person under 18 years of age who is convicted of an offense under 61-8-401 or 61-8-406 shall  
 30 not be punished by incarceration, but shall be punished by:

1 (a) a fine not to exceed the fine that could be imposed on the person if the person were an adult, except  
 2 that the person may not be imprisoned for failure to pay the fine;

3 (b) revocation of the person's driver's license by the court until the person is 18 years of age, and the  
 4 person may not be issued a new license after the person reaches 18 years of age unless the person presents  
 5 to the driver's license examination office certification that the person has taken at least 10 hours of instruction  
 6 on the effects of driving under the influence of alcohol or drugs; and

7 (c) seizure and disposition under 61-8-421 of the motor vehicle operated by the person at the time of  
 8 the offense if personal injury to or damage in excess of \$300 to property of another person resulted from a motor  
 9 vehicle accident for which the person was partly or wholly at fault that occurred while the person was in violation  
 10 of 61-8-401 or 61-8-406."

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 12 **Section 3.** Section 61-8-733, MCA, is amended to read:

13 **"61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
 14 **concentration -- forfeiture of vehicle.** (1) (a) On a first conviction of a violation of 61-8-401 or 61-8-406, if  
 15 personal injury to or damage in excess of \$300 to property of another person resulted from a motor vehicle  
 16 accident for which the convicted person was partly or wholly at fault that occurred while the convicted person  
 17 was in violation of 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and  
 18 61-8-722 and any other penalty imposed by law, shall order the motor vehicle operated by the convicted person  
 19 at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

20 (b) On the ~~third~~ second or subsequent conviction of a violation of 61-8-401 or 61-8-406, the court, in  
 21 addition to the punishments provided in 61-8-714 and 61-8-722 and any other penalty imposed by law, shall  
 22 order the motor vehicle ~~owned and~~ operated by the person at the time of the offense to be seized and subjected  
 23 to the procedure provided under 61-8-421.

24 (2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier  
 25 is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented  
 26 to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission  
 27 established by the owner to have been committed or omitted by a person other than the owner while the vehicle  
 28 was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state  
 29 or the United States.

30 (3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest

1 if the person did not know and could not have reasonably known of the unlawful possession, use, or other act  
2 on which the forfeiture is sought."

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