

SENATE BILL NO. 308

INTRODUCED BY C. LARSEN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF REFUSAL TO SUBMIT TO A BLOOD OR BREATH TEST FOR THE PURPOSE OF DETERMINING ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL OR DRUGS IN THE PERSON'S BODY WHEN REQUESTED BY A PEACE OFFICER; PROVIDING PENALTIES; AND AMENDING SECTION 61-8-402, MCA."

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

NEW SECTION. **Section 1. Offense of refusal to submit to blood or breath test.** An arrested person who purposely or knowingly refuses to submit to a test of the person's blood or breath as authorized by 61-8-402 when requested by a peace officer commits the offense of refusal to submit to a blood or breath test and upon conviction shall be punished as provided in [section 2 or 3].

NEW SECTION. **Section 2. Penalty for refusal to submit to blood or breath test for alcohol, drugs, or both -- first through third offense.** (1) A person convicted of a violation of [section 1] shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than \$300 or more than \$1,000. The initial 24 hours of the imprisonment term must be served and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. Notwithstanding the provisions of 46-18-201(2), except for the initial 24 hours of the imprisonment term, the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

(2) On a second conviction of a violation of [section 1], the person shall be punished by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended. Notwithstanding the provisions of 46-18-201(2), except for the initial 5 days of the imprisonment term, the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a



1 chemical dependency treatment program by the person.

2 (3) On the third conviction of a violation of [section 1], the person shall be punished by imprisonment for
3 a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or more than \$5,000.
4 At least 48 hours of the imprisonment term must be served and served consecutively and may not be served
5 under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be
6 suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending
7 successful completion of a chemical dependency treatment program by the person.

8
9 **NEW SECTION. Section 3. Penalty for refusal to submit to blood or breath test for alcohol, drugs,**
10 **or both -- fourth or subsequent offense.** (1) On a fourth or subsequent conviction of a violation of [section 1],
11 the person is guilty of a felony and shall be punished by:

12 (a) a sentence to the department of corrections for placement in an appropriate correctional facility or
13 program for a term of 13 months. The court shall order that if the person successfully completes a residential
14 chemical dependency treatment program operated or approved by the department of corrections, the remainder
15 of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence
16 may not be deferred or suspended, and the person is not eligible for parole.

17 (b) a sentence to either the department of corrections or the Montana state prison or Montana women's
18 prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term
19 imposed under subsection (1)(a); and

20 (c) a fine in an amount of not less than \$1,000 or more than \$10,000.

21 (2) The department of corrections may place an offender sentenced under subsection (1)(a) in a
22 residential chemical dependency treatment program operated or approved by the department of corrections or
23 in a state prison.

24 (3) The court shall, as a condition of probation, order:

25 (a) that the person abide by the standard conditions of probation promulgated by the department of
26 corrections;

27 (b) a person who is financially able to pay the costs of imprisonment, probation, and chemical
28 dependency treatment under this section;

29 (c) that the person may not frequent an establishment where alcoholic beverages are served;

30 (d) that the person may not consume alcoholic beverages;

1 (e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

2 (f) that the person enter in and remain in an aftercare treatment program for the entirety of the
3 probationary period;

4 (g) that the person submit to random or routine drug and alcohol testing; and

5 (h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition
6 interlock device, as defined in 61-8-102.

7 (4) The sentencing judge shall, as a condition of sentence, order a person who is financially able to pay
8 the costs of incarceration, probation, and chemical dependency treatment under this section.

9 (5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions
10 during the period of probation. Reasonable restrictions or conditions may include:

11 (a) payment of a fine as provided in 46-18-231;

12 (b) payment of costs as provided in 46-18-232 and 46-18-233;

13 (c) payment of costs of assigned counsel as provided in 46-8-113;

14 (d) community service;

15 (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
16 protection of society; or

17 (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).

18 (6) Following initial placement of an offender in a chemical dependency treatment program under
19 subsection (2), the department of corrections may, at its discretion, place the offender in another facility or
20 program.

21 (7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and
22 46-23-1031 apply to a person sentenced pursuant to this section.

23

24 **Section 4.** Section 61-8-402, MCA, is amended to read:

25 **"61-8-402. Blood or breath tests for alcohol, drugs, or both.** (1) A person who operates or is in actual
26 physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a
27 test or tests of the person's blood or breath for the purpose of determining any measured amount or detected
28 presence of alcohol or drugs in the person's body.

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

30 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual

1 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,
2 or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

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

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

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

8 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in
9 45-2-101, or death.

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

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

13 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer
14 as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the
15 department, immediately seize the person's driver's license. The peace officer shall immediately forward the
16 license to the department, along with a report certified under penalty of law stating which of the conditions set
17 forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to
18 submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the
19 department shall suspend the license for the period provided in subsection (6).

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

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

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

27 (ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the
28 records of the department, a suspension of 1 year with no provision for a restricted probationary license.

29 (b) If a person who refuses to submit to one or more tests under this section is the holder of a
30 commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges,

1 the department shall:

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

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

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

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

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

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

21 (11) An arrested person who is requested to submit to one or more tests designated by an officer as
22 provided in subsection (2) must be informed that refusal to submit to the test or tests constitutes a separate
23 offense as provided in [sections 1 through 3]."

24
25 **NEW SECTION. Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as an
26 integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 1].

27 (2) [Sections 2 and 3] are intended to be codified as an integral part of Title 61, chapter 8, part 7, and
28 the provisions of Title 61, chapter 8, part 7, apply to [sections 2 and 3].

29 - END -