

1 SENATE BILL NO. 367

2 INTRODUCED BY S. MALEK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DRIVING UNDER
5 THE INFLUENCE OF ALCOHOL OR DRUGS; REVISING THE PENALTIES FOR DRIVING UNDER THE
6 INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING THE COURT WITH ALTERNATIVE METHODS FOR
7 MONITORING COMPLIANCE WHEN RECOMMENDING A RESTRICTED OR PROBATIONARY LICENSE;
8 IMPOSING STANDARDS AND REPORTING REQUIREMENTS RELATED TO IGNITION INTERLOCK
9 DEVICES; AMENDING SECTIONS 61-8-410, 61-8-421, 61-8-441, 61-8-465, AND 61-8-733, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 61-8-410, MCA, is amended to read:

15 **"61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of**
16 **0.02 or more.** (1) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more
17 to drive or be in actual physical control of a vehicle upon ways of this state open to the public. Absolute liability,
18 as provided for in 45-2-104, is imposed for a violation of this section.

19 (2) Upon a first conviction under this section, a person shall be punished by a fine of not less than \$100
20 or more than \$500; and the court shall suspend the person's driver's license for not less than 180 days. The court
21 may order the person to be assessed for alcohol and drug addiction and order the person to comply with any
22 education and treatment program or process recommended. The court may order the person to participate in the
23 24/7 sobriety program provided for in Title 44, chapter 4, part 12, or another alcohol and drug monitoring program
24 or process. The court may recommend that a restricted or probationary license be issued to the person after 30
25 days if the following conditions are met:

26 (a) the person pays the required reinstatement fee in accordance with 61-2-107; and
27 (b) the court orders the person to participate in and comply with all the provisions of the 24/7 sobriety
28 program as provided in Title 44, chapter 4, part 12. If testing at a central location pursuant to the requirements
29 of the 24/7 sobriety program is impractical, the court may impose one or more of the following penalties:

30 (i) require the person to wear a continuous or transdermal alcohol monitoring device that allows timely

1 sanctions to be applied by the court;

2 (ii) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device
3 and require compliance with the ignition interlock device reporting requirements provided in 61-8-441;

4 (iii) require the person to use an alternative court-approved alcohol detection device or process.

5 (3) Upon a second conviction under this section, a person shall be punished by a fine of not less than
6 \$200 or more than \$500 ~~and, if the person is 18 years of age or older, by incarceration for not more than 10 days.~~
7 and the court shall suspend the person's driver's license for not less than 1 year. The court shall order the person
8 to be assessed for alcohol and drug addiction and order the person to comply with all education and treatment
9 programs recommended. The court shall order the person to participate in the 24/7 sobriety program or another
10 alcohol and drug monitoring program or process. The court may recommend that a restricted or probationary
11 license be issued to the person after 60 days if the following conditions are met:

12 (a) the person pays the required reinstatement fee in accordance with 61-2-107; and

13 (b) the court orders the person to participate in and comply with all the provisions of the 24/7 sobriety
14 program provided for in Title 44, chapter 4, part 12. If testing at a central location pursuant to the requirements
15 of the 24/7 sobriety program is impractical, the court may impose one or more of the following penalties:

16 (i) require the person to wear a continuous or transdermal alcohol monitoring device that allows timely
17 sanctions to be applied by the court;

18 (ii) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device
19 and require compliance with the ignition interlock device reporting requirements provided in 61-8-441;

20 (iii) require the person to use an alternative court-approved alcohol detection device or process.

21 (4) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not
22 less than \$300 or more than \$500 ~~and, if the person is 18 years of age or older, by incarceration for not less than~~
23 ~~24 consecutive hours or more than 60 days.~~ the court shall suspend the person's driver's license for 1 year or
24 until the person reaches 21 years of age, whichever is longer. The court shall order the person to be assessed
25 for alcohol or drug addiction and order the person to comply with all education and treatment programs
26 recommended. The court shall order the person to participate in the 24/7 sobriety program or another alcohol and
27 drug monitoring program or process. The court may recommend that a restricted or probationary license be
28 issued to the person after 60 days if the following conditions are met:

29 (a) the person pays the required reinstatement fee in accordance with 61-2-107; and

30 (b) the court orders the person to participate in and comply with all the provisions of the 24/7 sobriety

1 program provided for in Title 44, chapter 4, part 12. If testing at a central location pursuant to the requirements
 2 of the 24/7 sobriety program is impractical, the court may impose one or more of the following penalties:

3 (i) require the person to wear a continuous or transdermal alcohol monitoring device that allows timely
 4 sanctions to be applied by the court;

5 (ii) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device
 6 and require compliance with the ignition interlock device reporting requirements provided in 61-8-441;

7 (iii) require the person to use an alternative court-approved alcohol detection device or process.

8 ~~———(5) In addition to the punishment provided in this section, regardless of disposition:~~

9 ~~———(a) the person shall comply with the chemical dependency education course and chemical dependency~~
 10 ~~treatment provisions in 61-8-732 as ordered by the court; and~~

11 ~~———(b) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6~~
 12 ~~months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or~~
 13 ~~probationary driver's license may not be issued during the suspension period until the person has paid a license~~
 14 ~~reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the~~
 15 ~~offense, has completed at least 30 days of the suspension period.~~

16 ~~(6)(5)~~ A conviction under this section may not be counted as a prior conviction under 61-8-401 or
 17 61-8-406."

18

19 **Section 2.** Section 61-8-421, MCA, is amended to read:

20 **"61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-8-733 must be seized by the
 21 arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2.
 22 Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

23 (2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days
 24 after the seizure of the motor vehicle.

25 (3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner
 26 of the motor vehicle may rebut the presumption by proving a defense under 61-8-733~~(2)~~(3) or by proving that the
 27 owner was not convicted of a second or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that
 28 the convicted person owns the motor vehicle jointly with another person.

29 (4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first
 30 to the holders of security interests who have presented proper proof of their claims, up to the amount of the

1 interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the
2 arresting agency.

3 (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle
4 to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the
5 motor vehicle.

6 (5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return
7 of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section
8 but is found by the court to be without fault."
9

10 **Section 3.** Section 61-8-441, MCA, is amended to read:

11 **"61-8-441. Department rules regarding ignition interlock devices -- ignition interlock device**
12 **provider requirements -- reporting requirements.** (1) The department shall adopt rules providing for the
13 approval of ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

14 (2) The department's rules must be based upon federal standards issued for similar devices.

15 (3) An ignition interlock device that is approved by the department must also:

16 (a) be designed so it does not impede safe operation of the vehicle;

17 (b) ~~correlate well with the level established for alcohol impairment~~ be calibrated to prevent a person from
18 starting a vehicle if that person registers a blood alcohol concentration of 0.02 or greater;

19 (c) work accurately and reliably in an unsupervised environment and under extreme weather conditions;

20 (d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration
21 equivalence;

22 (e) resist tampering and show evidence of tampering if it is attempted;

23 (f) be difficult to circumvent;

24 (g) minimize inconvenience of a sober user;

25 (h) operate reliably over the range of automobile environments and in connection with various
26 manufacturing standards; and

27 (i) be manufactured by a person who is adequately insured for product liability.

28 (4) An ignition interlock device provider shall include in any lease agreement for an ignition interlock
29 device a warning that a person who knowingly tampers with, circumvents, or otherwise misuses the device is
30 subject to criminal prosecution.

1 (5) As part of the sentence ordered by the court, the person may be required to provide a deep lung
2 breath sample to be recorded by the ignition interlock device a specified number of times in each 24-hour period
3 even if the person does not intend to start the vehicle and drive somewhere.

4 (6) A person who has been ordered to install an ignition interlock device on a vehicle shall bring the
5 vehicle to the ignition interlock device provider for calibration and data collection every 30 days. The ignition
6 interlock device provider shall grant the person a 7-day grace period for the required calibration and data
7 collection.

8 (7) The court shall ensure the following reporting requirements are met:

9 (a) The court shall designate the name and address of the person or entity to whom the ignition interlock
10 device provider sends the reports described in subsections (7)(b) through (7)(d).

11 (b) The ignition interlock device provider shall report the following events within 5 days of the occurrence
12 of the event:

13 (i) the date of installation of the ignition interlock device;

14 (ii) each event when the vehicle fails to start because the device records a blood alcohol concentration
15 of 0.02 or greater;

16 (iii) each event when the device records a blood alcohol concentration of greater than 0.00 and less than
17 0.02;

18 (iv) any attempt by a person to circumvent, tamper with, or disable the ignition interlock device.

19 (c) The ignition interlock device provider shall provide a report at least once every 37 days that includes
20 the number of events actually recorded as compared to the number of events expected to be recorded by the
21 device.

22 (d) The ignition interlock device provider shall report the date the ignition interlock device is removed.

23 (8) Failure to comply with these requirements may result in the immediate suspension of the person's
24 driver's license, imprisonment, the extension of the period for which the ignition interlock device must be installed,
25 or the required use of an additional or alternative court-approved alcohol detection device or process."

26
27 **Section 4.** Section 61-8-465, MCA, is amended to read:

28 **"61-8-465. Aggravated DUI.** (1) A person commits the offense of aggravated driving under the influence
29 if the person is in violation of 61-8-401 or 61-8-406 and at the time of the offense:

30 (a) the person's blood alcohol concentration is 0.16 or more;

1 (b) the person is under the order of a court or the department to equip any motor vehicle the person
2 operates with an approved ignition interlock device;

3 (c) the person is under the order of a court to participate in the 24/7 sobriety program provided for in Title
4 44, chapter 4, part 12;

5 (d) the person is under the order of a court to use a continuous or transdermal alcohol monitoring device
6 or another court-approved alcohol detection device or process;

7 ~~(e)~~(e) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result
8 of a prior violation of 61-8-401, 61-8-402, or 61-8-406;

9 ~~(f)~~(f) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's
10 driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the
11 commission of the present offense; or

12 ~~(g)~~(g) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205,
13 61-8-401, 61-8-406, or this section within 3 years of the commission of the present offense, or two or more prior
14 convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401,
15 61-8-406, or this section within 7 years of the commission of the present offense.

16 (2) A person convicted of the offense of aggravated driving under the influence shall be punished by:

17 (a) a fine of not less than \$1,000 and not more than \$5,000; and

18 (b) a term of imprisonment of not more than 1 year, part of which may be suspended, except for the
19 mandatory minimum sentences set forth in 61-8-714.

20 (3) During the suspended sentence imposed by the court under subsection (2)(b):₁

21 ~~(a)~~ the person is subject to all conditions of the suspended sentence imposed by the court, including
22 mandatory participation in drug or DUI courts ~~if available~~; or the 24/7 sobriety program as provided in Title 44,
23 chapter 4, part 12. If testing at a central location pursuant to the requirements of the 24/7 sobriety program is
24 impractical, the court may impose one or more of the following penalties:

25 ~~—— (b) the person is subject to all conditions of the 24/7 sobriety program if available and if imposed by the~~
26 ~~court; and~~

27 (a) require the person to wear a continuous or transdermal alcohol monitoring device that allows timely
28 sanctions to be applied by the court;

29 (b) require the person to use an alternative court-approved alcohol detection device or process.

30 ~~(c)~~(4) if l the person violates any condition of the suspended sentence or any treatment requirement,

1 the court may impose the remainder of any imprisonment term that was imposed and suspended.

2 ~~(4)~~(5) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section."

3

4 **Section 5.** Section 61-8-733, MCA, is amended to read:

5 **"61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol**

6 **concentration -- forfeiture of vehicle.** (1) On the second or subsequent conviction of a violation of 61-8-401

7 or 61-8-406 or a second or subsequent conviction under 61-5-212 when the reason for the suspension or

8 revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under

9 the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state

10 for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be

11 driving under the influence, the court, in addition to the punishments provided in 61-5-212, 61-8-714, and

12 61-8-722 and any other penalty imposed by law, shall: impose one or more of the following penalties

13 ~~(a)~~ if recommending that a probationary license be issued to the person:

14 (a) require the person to participate in and comply with all the conditions of the 24/7 sobriety program

15 as provided in Title 44, chapter 4, part 12;

16 (b) when testing at a central location pursuant to the requirements of the 24/7 sobriety program is

17 impractical, the court shall impose one or more of the following penalties:

18 (i) require the person to wear a continuous or transdermal alcohol monitoring device that allows timely

19 sanctions to be applied by the court;

20 (ii) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device

21 during the probationary period and require the person to pay the reasonable cost of leasing, installing, and

22 maintaining the device; or compliance with the ignition interlock device reporting requirements provided in

23 61-8-441;

24 (iii) require the person to use an alternative court-approved alcohol detection device or process.

25 (b) If the court is not recommending that a probationary license be issued to the person, the court may

26 order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the

27 procedure provided under 61-8-421.

28 (2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier

29 is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to

30 or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established

1 by the owner to have been committed or omitted by a person other than the owner while the vehicle was
2 unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the
3 United States.

4 (3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest
5 if the person did not know and could not have reasonably known of the unlawful possession, use, or other act
6 on which the forfeiture is sought."

7

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

9

10 NEW SECTION. **Section 7. Applicability.** [This act] applies to offenses committed on or after [the
11 effective date of this act].

12

- END -