

HOUSE BILL NO. 289
INTRODUCED BY B. NEWMAN

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING IT A CRIME FOR A DRIVER TO REFUSE TO SUBMIT TO A BLOOD OR BREATH TEST; IMPOSING A CHARGE, IN ADDITION TO THE FINE, FOR COMMISSION OF THAT CRIME; INCREASING THE LICENSE REINSTATEMENT FEE FOR A DRIVER WHO REFUSES TO SUBMIT TO A BLOOD OR BREATH TEST; PROVIDING THAT IN CERTAIN CASES A TEST MAY BE ADMINISTERED BY FORCE IF THE DRIVER REFUSES TO SUBMIT TO A TEST; INCREASING THE LICENSE SUSPENSION OR REVOCATION PERIOD FOR A DRIVER REFUSING TO SUBMIT TO A TEST; CHANGING THE PROCEDURE ON APPEAL OF A LICENSE SUSPENSION OR REVOCATION FOR A TEST REFUSAL; PROVIDING THAT IN A TRIAL FOR DRIVING UNDER THE INFLUENCE OR WITH AN ILLEGAL ALCOHOL OR DRUG CONTENT IN THE BODY A TEST RELIED UPON BY A DOCTOR OR PERSON OPERATING UNDER A DOCTOR'S DIRECTION FOR RENDERING AID OR TREATMENT IS COMPETENT EVIDENCE; AND AMENDING SECTIONS 46-18-236, 61-2-107, 61-8-402, 61-8-403, 61-8-404, AND 61-8-409, MCA."

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

NEW SECTION. **Section 1. Refusal to take blood or breath test.** A person who refuses to take a test that is properly requested under 61-8-402 or 61-8-409 commits the offense of refusal to take a blood or breath test. Absolute liability, as referred to in 45-2-104, is imposed for refusal to take a properly requested test. A person convicted of refusal to take a blood or breath test shall be imprisoned for not more than 6 months, fined an amount not less than \$100 or more than \$500, or both. On a second conviction, the person shall be imprisoned for not more than 1 year, fined an amount not less than \$300 or more than \$1,000, or both. On a third or subsequent conviction, the person shall be imprisoned for not more than 5 years, fined an amount not more than \$50,000, or both.

Section 2. Section 46-18-236, MCA, is amended to read:

"46-18-236. Imposition of charge upon conviction or forfeiture -- administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

- (a) \$15 for each misdemeanor charge;
- (b) the greater of \$20 or 10% of the fine levied for each felony charge; and
- (c) an additional \$25 for each misdemeanor and felony charge under Title 45, 61-8-401, ~~or 61-8-406,~~

or [section 1].

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified

in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1."

Section 3. Section 61-2-107, MCA, is amended to read:

"61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.

(1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of \$100 for a suspension or revocation under 61-5-205 and \$500 for a suspension or revocation under 61-8-402 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit the fees collected under subsection (1) in the general fund. One-half of the fees must be appropriated and used for funding county drinking and driving prevention programs as provided in 61-2-108."

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

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

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

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

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

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death.

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

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

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

(b) If a person has been involved in a motor vehicle accident or collision resulting in serious bodily injury or death, has three or more convictions under 61-8-401 or 61-8-406 or a similar statute of another state, or has had the person's privilege to drive suspended or revoked in this or any other state, the officer shall request a test as provided in subsection (4)(a). If the person refuses a test, the officer shall proceed as provided in subsection (4)(a), shall inform the person that the person does not have the right to refuse a test, and may, if the person still refuses a test, provide for the administration of a test by force, if necessary.

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 7 days following the date of issuance, and shall provide the driver with written notice of the license suspension or revocation and the right to a hearing provided in 61-8-403.

(6) The following suspension and revocation periods are applicable upon refusal to submit to one or more tests:

(a) upon a first refusal, a suspension of ~~6 months~~ 1 year with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal or if the person's privilege to drive is under suspension or revocation in this or any other state, as determined from the records of the department, a revocation of ~~4 year~~ 3 years with no provision for a restricted probationary license.

(7) A nonresident driver's license seized under this section must be sent by the department to the

licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

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

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

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

Section 5. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. (1) Within ~~30~~ 7 days after notice of the right to a hearing has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the district court in the county where the arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice of the hearing to the county attorney of the county where the arrest was made and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

~~(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing. If requested by either party, the hearing must be held within 30 days of the seizure of the license, except that the court may for good cause shown grant one 30-day extension. A court granting a 30-day extension may also for good cause shown grant one 30-day extension of the person's temporary driving privilege.~~

(4) (a) The court shall take testimony and examine the facts of the case, except that the issues are limited to whether:

(i) a peace officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,

or a combination of the two and the person was placed under arrest for violation of 61-8-401;

(ii) the person is under 21 years of age and was placed under arrest for a violation of 61-8-410;

(iii) the officer had probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person was involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death; and

(iv) the person refused to submit to one or more tests designated by the officer.

(b) Based on the issues in subsection (4)(a) and no others, the court shall determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation.

(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators."

Section 6. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible -- conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person

is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs. Competent evidence includes but is not limited to any test for alcohol, drugs, or a combination of alcohol and drugs relied upon by a physician or a person operating under the direction of a physician in rendering necessary aid or treatment to the tested person."

Section 7. Section 61-8-409, MCA, is amended to read:

"61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test, except as provided in 61-8-402(4)(b), and that the refusal to submit to the preliminary alcohol screening test will result in the ~~suspension~~ ~~or~~ revocation for up to ~~4-year~~ 3 years of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given, except as provided in 61-8-402(4)(b). However, the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3) through (8) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension or revocation under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

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

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