

## HOUSE BILL NO. 289

INTRODUCED BY NEWMAN, PARKER

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 SANCTIONS IMPOSED UPON 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, BY PROVIDING A REBUTTABLE INFERENCE THAT A PERSON WHO REFUSES A TEST IS UNDER THE INFLUENCE; AND AMENDING SECTION ~~61-8-401~~ 61-8-404, MCA."~~

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

**Section 1.** 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. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(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."

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