

SENATE BILL NO. 13  
INTRODUCED BY MAHLUM  
BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT SUBSTITUTING 0.08 FOR 0.10 IN THE LAWS RELATING TO DRIVING UNDER THE INFLUENCE AND DRIVING WITH AN ILLEGAL ALCOHOL CONCENTRATION IN THE BODY; REDUCING THE BLOOD ALCOHOL CONCENTRATION FROM 0.18 TO 0.16 FOR PURPOSES OF REQUIRING AN IGNITION INTERLOCK DEVICE; AMENDING SECTIONS 61-5-205, 61-5-208, 61-8-401, 61-8-406, 61-8-442, AND 61-11-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 61-5-205, MCA, is amended to read:

**"61-5-205. Mandatory revocation or suspension of license upon proper authority.** (1) The department upon proper authority shall revoke the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final:

- (a) negligent homicide resulting from the operation of a motor vehicle;
  - (b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of ~~0.10~~ 0.08 or more;
  - (c) any felony in the commission of which a motor vehicle is used;
  - (d) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
  - (e) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;
  - (f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or
  - (g) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.
- (2) The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for a theft offense

under 45-6-301 when the conviction or forfeiture has become final if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. The suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or subsequent offense."

**Section 2.** Section 61-5-208, MCA, is amended to read:

**"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required on second or subsequent offense.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of ~~0.10~~ 0.08 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, upon issuance of any restricted probationary license during the period of revocation, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device. If the 1-year period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required

chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for a person convicted of any offense that makes mandatory the revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

**Section 3.** Section 61-8-401, MCA, is amended to read:

**"61-8-401. Driving under influence of alcohol or drugs.** (1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's

blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than ~~0.10~~ 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of ~~0.10~~ 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

**Section 4.** Section 61-8-406, MCA, is amended to read:

**"61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of ~~0.10~~ 0.08 or more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more.** (1) It is unlawful and punishable as provided in 61-8-442, 61-8-722, 61-8-723, and 61-8-731 through 61-8-734 for any person to drive or be in actual physical control of:

(a) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is ~~0.10~~ 0.08 or more; or

(b) a commercial motor vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.04 or more.

(2) Absolute liability, as provided in 45-2-104, will be imposed for a violation of this section."

**Section 5.** Section 61-8-442, MCA, is amended to read:

**"61-8-442. Driving under the influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device discretionary on first offense.** (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court may restrict a defendant to driving only a motor vehicle equipped with a functioning ignition interlock device and require the defendant to pay the reasonable cost of leasing, installing, and maintaining the device if:

- (a) the court determines that approved ignition interlock devices are reasonably available;
- (b) the defendant's blood alcohol concentration at the time of the arrest was ~~0.18%~~ 0.16 or greater; and
- (c) the defendant has not been previously convicted of a violation of 61-8-401 or 61-8-406.

(2) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(3) The duration of a restriction imposed under this section must run parallel to the time period for suspension of the driver's license of the defendant in accordance with 61-2-107, 61-5-205, and 61-5-208 and must be monitored by the department."

**Section 6.** Section 61-11-203, MCA, is amended to read:

**"61-11-203. Definitions.** As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.

(2) "Driver in need of rehabilitation and improvement" means a person who within a 2-year period accumulates 18 or more conviction points according to the schedule specified in subsection (3).

(3) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

- (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;
- (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;
- (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;
- (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation

of a motor vehicle by a person with alcohol concentration of ~~0.10~~ 0.08 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

(4) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(5) "License" means any type of license or permit to operate a motor vehicle.

(6) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

(7) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

**NEW SECTION. SECTION 7. CODE COMMISSIONER INSTRUCTION.** THE CODE COMMISSIONER IS AUTHORIZED AND INSTRUCTED TO CHANGE "0.10" TO "0.08" IN ANY LEGISLATION ENACTED BY THE 2003 LEGISLATURE THAT CONTAINS A REFERENCE TO AN ALCOHOL CONCENTRATION OF 0.10 IN A PERSON'S BODY.

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

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