

HOUSE BILL NO. 208
INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING BUT NOT REQUIRING A COURT TO ORDER THE SEIZURE AND FORFEITURE OF A MOTOR VEHICLE DRIVEN BY AN INDIVIDUAL IN A FIRST OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 61-8-442 AND 61-8-733, MCA."

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

Section 1. Section 61-8-442, MCA, is amended to read:

"61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device. (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition and if a probationary license is recommended by the court, the court may, for a person convicted of a first offense under 61-8-401 or 61-8-406;

(a) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(b) order the vehicle operated during the offense seized and forfeited pursuant to 61-8-733.

(2) If a person is convicted of a second or subsequent violation of 61-8-401 or 61-8-406, in addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall order that each motor vehicle owned by the person at the time of the offense be either:

(a) seized and subjected to the forfeiture procedure provided under 61-8-421; or

(b) during the 12-month period beginning with the end of the period of driver's license revocation, equipped with a functioning ignition interlock device and require the person to pay the reasonable cost of leasing, installing, and maintaining the device.

(3) 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.

(4) The duration of a restriction imposed under this section must be monitored by the department."

Section 2. Section 61-8-733, MCA, is amended to read:

"61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- forfeiture of vehicle. (1) (a) On a first conviction for a violation of 61-8-401 or 61-8-406, if personal injury to another person or damage in excess of \$1,000 to property resulted from a motor vehicle accident for which the convicted person was partly or wholly at fault occurred while the convicted person was in violation of 61-8-401 or 61-8-406, the court may, in addition to the punishments provided in 61-8-442, 61-8-714, and 61-8-722, order the vehicle operated by the person at the time of the offense to be seized and forfeited pursuant to this subsection (1).

(b) Before ordering a vehicle seized and forfeited pursuant to this subsection (1), the court shall hold a hearing to determine if the vehicle should be retained by the offender and any family member, in the interests of the offender and the public. After the hearing, the court shall make findings of fact, including:

(i) whether and how allowing the offender and any family member to retain the vehicle will benefit the offender, any family member, and the public;

(ii) whether any, and if so what, conditions should be imposed on the offender's retention of the vehicle and how long any condition should be imposed; and

(iii) whether any, and if so what, conditions for rehabilitation of the offender should be imposed and the source of payment for rehabilitation.

(c) If it appears that the offender may not be the owner of the vehicle and that the vehicle may be stolen, the court shall, in the hearing, determine whether the vehicle was stolen. If the vehicle was stolen, the court shall refer the issue to the county attorney for prosecution, return the vehicle to the actual or beneficial owner, or both.

(d) If the court determines that the vehicle should not be retained by the offender and any family member, in the interests of the offender and the public, the court shall order the vehicle seized and forfeited pursuant to the procedure provided in 61-8-421.

(+)(2) On the second or subsequent conviction of a violation of 61-8-401 or 61-8-406 or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under 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 for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the court, in addition to the punishments provided in 61-5-212, 61-8-714, and 61-8-722 and any other penalty imposed by law, shall order that each motor vehicle owned by the person at the time of the offense be either seized and subjected to the procedure provided under 61-8-421 or equipped with an ignition interlock device as

provided under 61-8-442.

~~(2)~~(3) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

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

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