

HOUSE BILL NO. 423

INTRODUCED BY K. PETERSON, LANGE

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE DRIVER'S LICENSE SUSPENSION PERIOD AND PROVIDING FOR OTHER INCREASED PENALTIES, FEES, AND REQUIREMENTS FOR A FIRST AND SUBSEQUENT REFUSAL OF A BLOOD, BREATH, OR OTHER PRELIMINARY ALCOHOL SCREENING TEST; AND AMENDING SECTIONS 61-2-107, 61-8-402, AND 61-8-409, MCA."

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

Section 1. 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 \$200~~ 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; the following fees:

(a) for a license suspended or revoked pursuant to 61-5-205, a reinstatement fee of \$200;

(b) for a license suspended or revoked pursuant to 61-8-402, a reinstatement fee of \$200, unless a reinstatement fee of \$1,000 applies pursuant to 61-8-402(7), in which case the \$1,000 reinstatement fee must be paid.

(2) The department shall deposit one-half of the fees collected under subsection (1) in the general fund and the other half in an account in the state special revenue fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108."

Section 2. 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:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage; or

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, 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) 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, 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).

(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 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(6) (a) Except as provided in subsection (6)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

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

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges,

as required by subsection (7)(c), the department shall:

- (i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and
- (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (6)(b).

(7) (a) In addition to the suspension provided for in subsection (6) and in accordance with any rules of the department, for a person refusing for a first and subsequent time to take the test:

(i) the person shall enroll in and successfully complete, DURING THE PERIOD FOR WHICH THE PERSON'S LICENSE IS SUSPENDED, a chemical dependency assessment program, a chemical dependency education program, and, if the assessment program indicates a chemical dependency, a chemical dependency treatment program; and

(ii) each vehicle owned by the person at the time that the person refused to submit to the test must be equipped, DURING THE PERIOD FOR WHICH THE PERSON'S LICENSE IS SUSPENDED, with an ignition interlock device.

(b) In addition to the suspension provided for in subsection (6) and the requirements of subsection (7)(a), a person refusing for a second and subsequent time to take the test shall, upon becoming eligible for the return of the person's license, pay a reinstatement fee of \$1,000, to be paid and disbursed as provided in 61-2-107.

(c) The requirements of this subsection (7) apply to a person's noncommercial driver's privilege upon a refusal by the person to submit to one or more tests while operating a commercial motor vehicle.

~~(7)(8)~~ 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)(9)~~ 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)(10)~~ A suspension under this section is subject to review as provided in this part.

~~(10)(11)~~ 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 3. 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 and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for ~~up to~~ 1 year 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. However, the refusal is sufficient cause to suspend 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 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)."

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