

SENATE BILL NO. 144
INTRODUCED BY J. SHOCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING IMPOUNDMENT OF LICENSE PLATES UPON SECOND OR SUBSEQUENT CONVICTIONS FOR DRIVING UNDER THE INFLUENCE; PROVIDING FOR A SPECIAL LICENSE PLATE UPON IMPOUNDMENT TO IDENTIFY THE CONVICTIONS TO LAW ENFORCEMENT; AND AMENDING SECTION 61-8-402, MCA."

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

NEW SECTION. Section 1. Impoundment of license plates for convictions of driving under influence -- eligibility for special plates. (1) Upon receipt of a person's conviction of or forfeiture of bail not vacated for a second or subsequent offense under 61-8-406 or 61-8-409 or upon receipt of a peace officer's report under 61-8-402 or 61-8-409, the department shall immediately issue and mail to the person a copy of an order impounding the license plates of all motor vehicles owned or co-owned at the time of the receipt of the notice of impoundment. A copy of the order must be mailed at the same time to the sheriff of the county in which the person resides. Within 5 days of the receipt of the order, the person shall surrender to the county sheriff the license plates of all motor vehicles owned or co-owned by the person.

(2) A person who is the sole owner or co-owner of a motor vehicle for which the plates have been impounded may apply to the department for special license plates to be used for a period of not less than 5 years. The lettering of the license plates must include the letters "DUI" with no other characters represented by a letter of the alphabet, followed by a designated series of numbers that identify the motor vehicle as one for which the original plates have been impounded under this section. In order to ensure that no other plates resemble this designation, the department may:

(a) not issue any plates containing the letters DUI in subsequent order through a random numbering system;

(b) not issue any plates to a person requesting the letters DUI in subsequent order for plates commonly called "personalized plates".

(3) The fee for the special DUI plates is equal to the full cost of regular plates plus \$50.

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) and shall issue an order impounding the person's license plates under [section 1].

(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 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, 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 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."

NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to [section 1].

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