

1 HOUSE BILL NO. 276

2 INTRODUCED BY C. EDMUNDS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO IMPOUNDMENT OF
5 LICENSE PLATES AND CONVICTION OF DRIVING UNDER THE INFLUENCE; REQUIRING THE
6 IMPOUNDMENT OF LICENSE PLATES UPON CONVICTION OF DRIVING UNDER THE INFLUENCE OF
7 ALCOHOL OR DRUGS OR VIOLATION OF THE IMPLIED CONSENT LAW; PROVIDING FOR SPECIAL
8 LICENSE PLATES FOR THOSE CONVICTED OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR
9 DRUGS OR VIOLATION OF THE IMPLIED CONSENT LAW; REQUIRING THE USE OF THE SPECIAL
10 LICENSE PLATES ON ANY VEHICLE OPERATED BY A PERSON CONVICTED OF DRIVING UNDER THE
11 INFLUENCE OF ALCOHOL OR DRUGS OR VIOLATION OF THE IMPLIED CONSENT LAW; PROVIDING
12 PENALTIES; AMENDING SECTION 61-8-402, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN
13 APPLICABILITY DATE."

14

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

16

17 NEW SECTION. **Section 1. Impoundment of license plates for conviction of driving under**
18 **influence of alcohol or drugs -- eligibility for special plates.** (1) Upon receipt of a person's conviction of or
19 forfeiture of bail not vacated for an offense under 61-8-401, 61-8-406, 61-8-409, 61-8-442, or 61-8-465 or upon
20 receipt of a peace officer's report under 61-8-402 or 61-8-409, the department shall immediately issue and mail
21 to the person a copy of an order impounding the license plates of all motor vehicles owned or co-owned by the
22 person at the time of the receipt of the notice of impoundment. A copy of the order must be mailed at the same
23 time to the sheriff of the county in which the person resides. Within 5 days of receiving the order, the person shall
24 surrender to the county sheriff the license plates of all motor vehicles owned or co-owned by the person.

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

1 any kind that contain the letters "DUI".

2 (3) The fee for the special DUI plates is equal to the full cost of regular plates plus \$100.

3 (4) (a) Except as provided in subsection (4)(b), a person whose license plates have been impounded
4 under subsection (1) may not operate a motor vehicle without the special license plates provided for in this
5 section.

6 (b) Subsection (4)(a) does not apply to a vehicle used in the performance of the person's job duties
7 unless the vehicle being used is part of a compensation package and is available for the person's use at all times.

8 (5) A person who fails to comply with this section shall be punished by:

9 (a) a fine of not less than \$300 or more than \$1,000 for a first offense;

10 (b) a fine of not less than \$600 or more than \$2,500 for a second offense; and

11 (c) a fine of not less than \$1,000 or more than \$5,000 for a third or subsequent offense.

12 (6) The department may adopt rules to implement this section.

13

14 **Section 2.** Section 61-8-402, MCA, is amended to read:

15 **"61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit**
16 **to test -- administrative license suspension.** (1) A person who operates or is in actual physical control of a
17 vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the
18 person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol
19 or drugs in the person's body.

20 (2) (a) The test or tests must be administered at the direction of a peace officer when:

21 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual
22 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,
23 or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 or 61-8-465;

24 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

25 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of
26 a vehicle:

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

29 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in
30 45-2-101, or death; or

1 (C) in violation of 61-8-465.

2 (b) The arresting or investigating officer may designate which test or tests are administered.

3 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of
4 refusal is considered not to have withdrawn the consent provided by subsection (1).

5 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer
6 as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5),
7 but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace
8 officer shall immediately forward the license to the department, along with a report certified under penalty of law
9 stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and
10 confirming that the person refused to submit to one or more tests requested and designated by the peace officer.
11 Upon receipt of the report, the department shall suspend the license for the period provided in subsection (7) and
12 shall issue an order impounding the person's license plates under [section 1].

13 (5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this
14 section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the
15 arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205,
16 61-8-401, or 61-8-406 or a similar statute in another jurisdiction, the officer may apply for a search warrant to be
17 issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

18 (6) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
19 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
20 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing
21 provided in 61-8-403.

22 (7) (a) Except as provided in subsection (7)(b), the following suspension periods are applicable upon
23 refusal to submit to one or more tests:

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

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

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

30 (i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

1 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,
2 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person
3 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior
4 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same
5 effect as a previous testing refusal for purposes of this subsection (7)(b).

6 (8) A nonresident driver's license seized under this section must be sent by the department to the
7 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
8 more tests.

9 (9) The department may recognize the seizure of a license of a tribal member by a peace officer acting
10 under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating
11 a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation
12 requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred
13 within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department
14 under this subsection is not reviewable under 61-8-403.

15 (10) A suspension under this section is subject to review as provided in this part.

16 (11) This section does not apply to tests, samples, and analyses of blood or breath used for purposes
17 of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an
18 offense not in this part, or performed pursuant to a search warrant.

19 (12) This section does not prohibit the release of information obtained from tests, samples, and analyses
20 of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

21
22 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
23 integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to [section 1].

24
25 **NEW SECTION. Section 4. Effective date.** [This act] is effective July 1, 2013.

26
27 **NEW SECTION. Section 5. Applicability.** [This act] applies to proceedings begun after [the effective
28 date of this act].

29 - END -