

## 1 HOUSE BILL NO. 478

2 INTRODUCED BY D. HARVEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DRIVING UNDER THE INFLUENCE LAWS;  
5 PROVIDING THAT BREATH ANALYSIS IS INCLUDED IN THE POSSIBLE EXPENDITURES FOR THE  
6 BLOOD-DRAW SEARCH WARRANT PROCESSING ACCOUNT; AND AMENDING SECTION 61-8-402,  
7 MCA."

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

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11 **Section 1.** Section 61-8-402, MCA, is amended to read:

12 **"61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to**  
13 **submit to test -- administrative license suspension.** (1) A person who operates or is in actual physical  
14 control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or  
15 tests of the person's blood or breath for the purpose of determining any measured amount or detected  
16 presence of alcohol or drugs in the person's body.

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

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

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

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

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

27 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-  
28 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4 refusal is considered not to have withdrawn the consent provided by subsection (1).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  
6 officer as provided in subsection (2), the refused test or tests may not be given except as provided in  
7 subsection (5), but the officer shall, on behalf of the department, immediately seize the person's driver's license.  
8 The peace officer shall immediately forward the license to the department, along with a report certified under  
9 penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing  
10 request and confirming that the person refused to submit to one or more tests requested and designated by the  
11 peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in  
12 subsection (8).

13 (5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or  
14 this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or  
15 the 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, 61-8-406, or 61-8-411 or a similar statute in another jurisdiction, the officer may apply for a search  
17 warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

18 (6) (a) An arrested person who refuses to submit to one or more tests as provided in subsection (4)  
19 shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue  
20 account established pursuant to subsection (6)(b).

21 (b) There is a blood-draw search warrant processing account in the state special revenue fund  
22 established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection  
23 (6) must be deposited in the account and may be used only for the purpose of providing forensic analysis of a  
24 driver's blood or breath to determine the presence of alcohol or drugs.

25 (c) The department shall adopt rules establishing procedures for the collection, distribution, and strict  
26 accountability of any funds received pursuant to this section.

27 (7) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a  
28 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of

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

3 (8) (a) Except as provided in subsection (8)(b), the following suspension periods are applicable upon  
4 refusal to submit to one or more tests:

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

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

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

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

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

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

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

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

28 (12) This section does not apply to tests, samples, and analyses of blood or breath used for purposes

1 of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an  
2 offense not in this part, or performed pursuant to a search warrant.

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

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