

1 HOUSE BILL NO. 592

2 INTRODUCED BY J. READ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ABSOLUTE LIABILITY LAWS; LIMITING
5 THE APPLICATION OF ABSOLUTE LIABILITY; REDUCING THE FINES THAT MAY BE IMPOSED FOR
6 CERTAIN ABSOLUTE LIABILITY OFFENSES; REMOVING ABSOLUTE LIABILITY FROM CERTAIN
7 OFFENSES IMPOSING ABSOLUTE LIABILITY PURSUANT TO FINES; EXPLAINING THE PURPOSE OF
8 TRAFFIC OFFENSES; AMENDING ABSOLUTE LIABILITY FOR CERTAIN DRIVING UNDER THE
9 INFLUENCE CHARGES; AND AMENDING SECTIONS 10-1-1516, 45-2-103, 45-2-104, 61-2-101, 61-8-401,
10 61-8-406, 61-8-410, 61-8-465, AND 67-7-304, MCA."
11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13

14 **Section 1.** Section 10-1-1516, MCA, is amended to read:

15 **"10-1-1516. Penalty.** A person who violates the provisions of this part or the regulations adopted
16 under 10-1-1505 is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each
17 day that the violation is not remedied after the governing body has given notification of the violation and held a
18 hearing on the violation. The criminal penalty is a fine of \$500 pursuant to 45-2-104."
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20 **Section 2.** Section 45-2-103, MCA, is amended to read:

21 **"45-2-103. General requirements of criminal act and mental state.** (1) Except for deliberate
22 homicide as defined in 45-5-102(1)(b) or an offense that involves absolute liability as limited by 45-2-104 and
23 the policy outlined in 61-2-101(2), a person is not guilty of an offense unless, with respect to each element
24 described by the statute defining the offense, a person acts while having one of the mental states of knowingly,
25 negligently, or purposely.

26 (2) In deliberate homicide under 45-5-102(1)(b), the offender must act while having the mental state
27 of purposely or knowingly only as to the underlying felony referred to in 45-5-102(1)(b).

28 (3) The existence of a mental state may be inferred from the acts of the accused and the facts and

1 circumstances connected with the offense.

2 (4) If the statute defining an offense prescribes a particular mental state with respect to the offense as
3 a whole without distinguishing among the elements of the offense, the prescribed mental state applies to each
4 element.

5 (5) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or
6 application of the statute defining an offense is not an element of the offense unless the statute clearly defines it
7 as an element.

8 (6) A person's reasonable belief that the person's conduct does not constitute an offense is a defense
9 if:

10 (a) the offense is defined by an administrative regulation or order that is not known to the person and
11 has not been published or otherwise made reasonably available to the person and if the person could not have
12 acquired the knowledge by the exercise of due diligence pursuant to facts known to the person;

13 (b) the person acts in reliance upon a statute that later is determined to be invalid;

14 (c) the person acts in reliance upon an order or opinion of the Montana supreme court or a United
15 States appellate court later overruled or reversed; or

16 (d) the person acts in reliance upon an official interpretation of the statute, regulation, or order
17 defining the offense made by a public officer or agency legally authorized to interpret the statute.

18 (7) If a person's reasonable belief is a defense under subsection (6), nevertheless the person may be
19 convicted of an included offense of which the person would be guilty if the law were as the person believed it to
20 be.

21 (8) A defense based upon this section is an affirmative defense."
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23 **Section 3.** Section 45-2-104, MCA, is amended to read:

24 "**45-2-104. Absolute liability.** A person may be guilty of an offense without having, as to each
25 element of the offense, one of the mental states of knowingly, negligently, or purposely only if the offense is
26 punishable by a fine not exceeding ~~\$500~~ \$50 or the statute defining the offense clearly indicates a legislative
27 purpose to impose absolute liability for the conduct described."
28

1 **Section 4.** Section 61-2-101, MCA, is amended to read:

2 **"61-2-101. Purpose.** (1) To promote public safety, health, and welfare and to reduce traffic deaths,
3 injuries, and property losses resulting from traffic accidents, it is in the public interest to establish a highway
4 traffic safety program and provide for its administration. It is in the public interest to implement, modernize, and
5 improve the following traffic safety activities: driver performance, including but not limited to driver education,
6 driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental;
7 driver licensing; pedestrian performance; establish an effective accident record system, including traffic
8 accident investigation to determine the probable cause of accidents, injuries, and deaths; improve and establish
9 a system of vehicle registration, vehicle operation, and vehicle inspection; assist in the improving of highway
10 design and maintenance, including lighting, markings, and surface treatment to improve safety; establish an
11 effective traffic control system; promote the adoption of uniform vehicle laws; provide for surveillance of traffic
12 for detection and correction of high or potentially high accident locations; establish emergency services,
13 including but not limited to communications, medical or mechanical assistance, and ambulance service for
14 injured persons; and establish an effective compilation and storage program of reports and records through
15 electronic data processing.

16 (2) It is not the purpose of traffic safety in Montana to punish traffic offenses in which the mental state
17 of knowingly, purposely, or negligently is not applied. Mental state and the lack of a victim in the offense must
18 be considered in traffic offenses."

19

20 **Section 5.** Section 61-8-401, MCA, is amended to read:

21 **"61-8-401. Driving under influence of alcohol or drugs -- definitions.** (1) It is unlawful and
22 punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the
23 influence of:

24 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the
25 public;

26 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

27 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

28 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within

1 this state.

2 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use
3 alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating
4 subsection (1).

5 (3) (a) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
6 combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

7 (b) Subject to 61-8-440, as used in this part, "vehicle" has the meaning provided in 61-1-101, except
8 that the term does not include a bicycle.

9 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been
10 committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol,
11 the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's
12 blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following
13 inferences:

14 (a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person
15 was not under the influence of alcohol.

16 (b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact
17 may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact
18 may be considered with other competent evidence in determining the guilt or innocence of the person.

19 (c) If there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the
20 person was under the influence of alcohol. The inference is rebuttable.

21 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
22 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of
23 alcohol and drugs.

24 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-411,
25 61-8-465, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with
26 the word "state" in 61-8-406, 61-8-411, 61-8-465, and subsection (1) of this section changed to read
27 "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the
28 imposition of the fines and penalties provided in the ordinance.

1 (7) ~~Absolute~~ (a) Except as provided in subsection (7)(b), absolute liability as provided in 45-2-104 is
2 imposed for a violation of this section.

3 (b) Absolute liability as provided in 45-2-104 is not imposed on a person who passed a field sobriety
4 test and from whom a sample of the person's blood or breath was drawn or taken within a reasonable time after
5 the alleged act with an alcohol concentration less than 0.08."

6

7 **Section 6.** Section 61-8-406, MCA, is amended to read:

8 **"61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or**
9 **more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more.** (1) It is
10 unlawful and punishable as provided in 61-8-442, 61-8-722, 61-8-723, and 61-8-731 through 61-8-734 for any
11 person to drive or be in actual physical control of:

12 (a) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol
13 concentration, as shown by analysis of the person's blood, breath, or urine, is 0.08 or more; or

14 (b) a commercial motor vehicle upon the ways of this state open to the public while the person's
15 alcohol concentration, as shown by analysis of the person's blood or breath, is 0.04 or more.

16 (2) ~~Absolute~~ (a) Except as provided in subsection (2)(b), absolute liability, as provided in 45-2-104,
17 will be imposed for a violation of this section.

18 (b) Absolute liability as provided in 45-2-104 is not imposed on a person who passed a field sobriety
19 test and from whom a sample of the person's blood or breath was drawn or taken within a reasonable time after
20 the alleged violation of subsection (1)(a) with an alcohol concentration of less than 0.08."

21

22 **Section 7.** Section 61-8-410, MCA, is amended to read:

23 **"61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of**
24 **0.02 or more.** (1) (a) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or
25 more to drive or be in actual physical control of a vehicle upon ways of this state open to the public. ~~Absolute~~
26 Except as provided in subsection (1)(b), absolute liability, as provided for in 45-2-104, is imposed for a violation
27 of this section.

28 (b) Absolute liability as provided in 45-2-104 is not imposed on a person who passed a field sobriety

1 test and from whom a sample of the person's blood or breath was drawn or taken within a reasonable time after
2 the alleged act with an alcohol concentration less than 0.02.

3 (2) Upon a first conviction under this section, a person shall be punished by a fine of not less than
4 \$100 or more than \$500.

5 (3) Upon a second conviction under this section, a person shall be punished by a fine of not less than
6 \$200 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not more than 10
7 days.

8 (4) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of
9 not less than \$300 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not less
10 than 24 consecutive hours or more than 60 days.

11 (5) In addition to the punishment provided in this section, regardless of disposition:

12 (a) the person shall comply with the chemical dependency education course and chemical
13 dependency treatment provisions in 61-8-732 as ordered by the court; and

14 (b) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6
15 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or
16 probationary driver's license may not be issued during the suspension period until the person has paid a license
17 reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the
18 offense, has completed at least 30 days of the suspension period.

19 (6) A conviction under this section may not be counted as a prior conviction under 61-8-401 or 61-8-
20 406."

21

22 **Section 8.** Section 61-8-465, MCA, is amended to read:

23 **"61-8-465. Aggravated DUI.** (1) A person commits the offense of aggravated driving under the
24 influence if the person is in violation of 61-8-401, 61-8-406, or 61-8-411 and:

25 (a) the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.16
26 or more;

27 (b) the person is under the order of a court or the department to equip any motor vehicle the person
28 operates with an approved ignition interlock device;

1 (c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of
2 a prior violation of 61-8-401, 61-8-402, 61-8-406, or 61-8-411;

3 (d) the person refuses to provide a breath sample as required in 61-8-402 and the person's driver's
4 license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the
5 commission of the present offense; or

6 (e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-
7 401, 61-8-406, 61-8-411, or this section within 10 years of the commission of the present offense or has two or
8 more prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-
9 8-401, 61-8-406, or 61-8-411.

10 (2) Except as provided in subsection (6), a person convicted of a first violation of the offense of
11 aggravated driving under the influence shall be punished by:

12 (a) a fine of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle
13 at the time of the offense, a fine of \$2,000; and

14 (b) a term of imprisonment for not less than 48 hours or more than 1 year, except that if one or more
15 passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not
16 less than 72 consecutive hours.

17 (3) (a) Except as provided in subsection (6), a person convicted of a second violation of the offense
18 of aggravated driving under the influence shall be punished by:

19 (i) a fine of \$2,500, except that if one or more passengers under 16 years of age were in the vehicle
20 at the time of the offense, a fine of \$5,000; and

21 (ii) a term of imprisonment for not less than 15 days or more than 1 year, except that if one or more
22 passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not
23 less than 45 days.

24 (b) Except for the minimum term of imprisonment provided in subsection (3)(a)(ii), the mandatory
25 minimum imprisonment term may be suspended pending successful completion of court-ordered chemical
26 dependency assessment, education, or treatment by the person.

27 (c) The mandatory minimum imprisonment term may not be served under home arrest and may not
28 be suspended unless the judge finds the imposition of the imprisonment sentence will pose a risk to the

1 person's physical or mental well-being.

2 (4) (a) Except as provided in subsection (6), a person convicted of a third violation of the offense of
3 aggravated driving under the influence shall be punished by:

4 (i) a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle
5 at the time of the offense, a fine of \$10,000; and

6 (ii) a term of imprisonment for not less than 40 consecutive days or more than 1 year, except that if
7 one or more passengers under 16 years of age were in the vehicle at the time of the offense, a term of
8 imprisonment for not less than 90 consecutive days.

9 (b) Except for the minimum term of imprisonment provided in subsection (4)(a)(ii), the mandatory
10 minimum imprisonment term may be suspended pending successful completion of court-ordered chemical
11 dependency assessment, education, or treatment by the person.

12 (c) The mandatory minimum imprisonment term may not be served under home arrest and may not
13 be suspended unless the judge finds the imposition of the imprisonment sentence will pose a risk to the
14 person's physical or mental well-being.

15 (5) During the suspended sentence imposed by the court under subsection (3)(b) or (4)(b):

16 (a) the person is subject to all conditions of the suspended sentence imposed by the court, including
17 mandatory participation in drug or DUI courts if available;

18 (b) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program if available
19 and if imposed by the court; and

20 (c) if the person violates any condition of the suspended sentence or any treatment requirement, the
21 court may impose the remainder of any imprisonment term that was imposed and suspended.

22 (6) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
23 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs, with an excessive
24 alcohol concentration, or under the influence of delta-9-tetrahydrocannabinol or aggravated driving under the
25 influence.

26 (7) ~~Absolute~~ (a) Except as provided in subsection (7)(b), absolute liability, as provided for in 45-2-
27 104, is imposed for a violation of this section.

28 (b) Absolute liability as provided for in 45-2-104 is not imposed on a person charged with aggravated

1 DUI pursuant to subsection (1)(a) of this section and who passed a field sobriety test and from whom a sample
2 of the person's blood or breath was drawn or taken within a reasonable time after the alleged act with an
3 alcohol concentration less than 0.16."
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5 **Section 9.** Section 67-7-304, MCA, is amended to read:

6 **"67-7-304. Penalty.** A person who violates the provisions of this chapter or the regulations adopted
7 under 67-7-203 is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each
8 day that the violation is not remedied after the governing body has given notification of the violation and held a
9 hearing on the violation. The criminal penalty is a fine of \$500, ~~pursuant to 45-2-104.~~"

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- END -