

1 HOUSE BILL NO. 681  
2 INTRODUCED BY M. YAKAWICH  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE COLLECTION OF BREATH,  
5 BLOOD, URINE, AND OTHER BODILY FLUID SAMPLES FROM A PERSON SUSPECTED OF DRIVING  
6 UNDER THE INFLUENCE; REQUIRING THAT THE SAMPLE BE COLLECTED WITHOUT UNREASONABLE  
7 DELAY AFTER ESTABLISHING PARTICULARIZED SUSPICION OR PROBABLE CAUSE, OR OBTAINING A  
8 SEARCH WARRANT; ALLOWING A PEACE OFFICER TO REQUEST A SEARCH WARRANT FOR A BLOOD  
9 SAMPLE IF THE PEACE OFFICER HAS PROBABLE CAUSE THAT A PERSON WAS UNDER THE  
10 INFLUENCE OF DRUGS, ALCOHOL, OR BOTH AND WAS INVOLVED IN AN ACCIDENT OR COLLISION  
11 THAT RESULTED IN SERIOUS BODILY INJURY OR DEATH; ALLOWING A PEACE OFFICER TO USE  
12 REASONABLE FORCE TO OBTAIN A SAMPLE WHEN A SEARCH WARRANT IS ISSUED FOR THE  
13 SAMPLE; AND AMENDING SECTION 61-8-1016, MCA."  
14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
16

17 **Section 1.** Section 61-8-1016, MCA, is amended to read:

18 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to**  
19 **submit to test -- administrative license suspension.** (1) (a) A person who operates or is in actual physical  
20 control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is considered to  
21 have given consent to a test or tests of the person's blood or breath for the purpose of determining any  
22 measured amount or detected presence of alcohol or drugs in the person's body.

23 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test  
24 of the person's breath for the purpose of estimating the person's alcohol concentration.

25 (c) A preliminary alcohol screening test may not be conducted or requested under this section  
26 unless both the peace officer and the instrument used to conduct the test have been certified by the department  
27 pursuant to rules adopted under the authority of 61-8-1019(5).

28 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person

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1 submitting to a preliminary alcohol screening test pursuant to this section.

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

3 (i) the peace officer has particularized suspicion to believe that the person has been driving or has  
4 been in actual physical control of a vehicle upon ways of this state open to the public while under the influence  
5 of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under  
6 the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the  
7 influence in 61-8-1001;

8 (ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe  
9 that the person has been driving or in actual physical control of a vehicle in violation of 61-8-1002(1)(e); or

10 (iii) the peace officer has probable cause to believe that the person was driving or in actual  
11 physical control of a vehicle or commercial motor vehicle:

12 (A) in violation of driving under the influence, as provided in 61-8-1002, and the person has been  
13 placed under arrest;

14 (B) in violation of driving under the influence as provided in 61-8-1002, and the person has been  
15 involved in a motor vehicle crash or collision resulting in property damage;

16 (C) and the person has been involved in a motor vehicle accident or collision resulting in serious  
17 bodily injury, as defined in 45-2-101, or death; or

18 (D) in violation of driving under the influence as provided in 61-8-1002 and meets the definition of  
19 aggravated driving under the influence in 61-8-1001.

20 (b) A peace officer may designate which test or tests are administered.

21 (c) The peace officer shall inform the person of the right to refuse the test and that the refusal to  
22 submit to the test will result in the suspension for up to 1 year of that person's driver's license.

23 (d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be  
24 limited to determining whether a peace officer had a particularized suspicion that the person was in violation of  
25 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and  
26 whether the person refused to submit to the test.

27 (e) If a person refuses a preliminary alcohol screening test and another test during the same  
28 incident, the department may not consider each a separate refusal for purposes of suspension of the person's

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1 driver's license.

2 (f) Except as provided in subsection (5), a sample of breath-~~er~~, blood, oral fluid, or other bodily  
3 substance provided for a test under this subsection (2) must be obtained without unreasonable delay after an  
4 officer establishes particularized suspicion or probable cause.

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

7 (4) (a) If an arrested person refuses to submit to one or more tests requested and designated by  
8 the peace officer, the refused test or tests may not be given unless:

9 (i) the person has refused to provide a breath, blood, urine, or other bodily substance in a prior  
10 investigation in this state or under a substantially similar statute in another jurisdiction; ~~or~~

11 (ii) the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-  
12 106, 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets the definition of  
13 aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or a  
14 similar statute in another jurisdiction; ~~or~~

15 (iii) the peace officer has probable cause to believe that a person was driving or in actual physical  
16 control of a vehicle or commercial motor vehicle while under the influence of alcohol, drugs, or a combination of  
17 the two, and the person was involved in a motor vehicle accident or collision resulting in serious bodily injury, as  
18 defined in 45-2-101, or death.

19 (b) (i) Upon the person's refusal to provide the breath, blood, urine, or other bodily substance  
20 requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a search  
21 warrant to be issued pursuant to 46-5-224 to collect a sample of the person's breath, blood, urine, or other  
22 bodily substance for testing.

23 (ii) After a search warrant is issued, a peace officer may use reasonable force to facilitate the  
24 collection of the sample. The sample must be obtained without unreasonable delay after the warrant is issued.

25 (c) (i) Upon the person's refusal to provide a breath, blood, urine, or other bodily substance, the  
26 peace officer shall, on behalf of the department, immediately seize the person's driver's license. The peace  
27 officer shall immediately forward the license to the department, along with a report certified under penalty of law  
28 stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and

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1 confirming that the person refused to submit to one or more tests requested and designated by the peace  
2 officer. Upon receipt of the report, the department shall suspend the license for the period provided in 61-8-  
3 1032.

4 (ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a  
5 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of  
6 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as  
7 provided in 61-8-1017.

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

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

14 (6) This section does not prohibit the release of information obtained from tests, samples, and  
15 analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-1019(6)."

16 - END -