

HOUSE BILL NO. 339

INTRODUCED BY D. LOGE, D. FERN, R. FITZGERALD, N. DURAM

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MOTOR VEHICLE LAWS TO REGULATE VEHICLES WITH AUTOMATED DRIVING SYSTEMS; PROVIDING FOR PRESUMPTIONS OF LIABILITY; PROVIDING THAT DUI LAWS APPLY TO OPERATING AN AUTONOMOUS VEHICLE; PROHIBITING USE OF FULLY AUTONOMOUS VEHICLES ON HIGHWAYS UNTIL RULEMAKING IS COMPLETE; PROHIBITING PLATOONING ON HIGHWAYS UNTIL RULEMAKING IS COMPLETE; DEFINING TERMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 61-8-1001, 61-8-1002, 61-8-1016, AND 61-8-1018, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 7], the following definitions

apply:

- (1) "Automated driving system" means, unless the context clearly indicates otherwise, the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether the automated driving system is limited to a specific operational design domain.
- (2) "Developer or manufacturer" means any entity in the chain of manufacture of a vehicle with an automated driving system, including entities in the chain of manufacture of the automated driving system.
- (3) (a) "Dynamic driving task" means all of the real-time operational and tactical functions required to operate a motor vehicle in highway traffic, including:
 - (i) lateral vehicle motion control through steering;
 - (ii) longitudinal motion control through acceleration and deceleration;
 - (iii) monitoring the driving environment through object and event detection, recognition, classification, and response preparation;
 - (iv) object and event response execution;

1 (v) maneuver planning; and

2 (vi) enhancing the conspicuousness of the vehicle with lights, signals, and gestures.

3 (b) The term does not include strategic functions such as trip scheduling and selection of
4 destinations and waypoints.

5 (4) "Fallback-ready user" means the user of a vehicle equipped with an engaged level 3 automated
6 driving system who is a human driver who is responsible to operate the vehicle if a system failure occurs or the
7 automated driving system issues a request to intervene.

8 (5) "Human driver" means a natural person with a valid driver's license to operate a motor vehicle
9 of the proper class for the motor vehicle being operated and who performs in real time all or part of the dynamic
10 driving task.

11 (6) "Level 1 automated driving system" means a system that provides to a driver one of the
12 following:

13 (a) braking and accelerating support; or

14 (b) steering support.

15 (7) "Level 2 automated driving system" means a system that provides to a driver both of the
16 following:

17 (a) braking and accelerating support; and

18 (b) steering support.

19 (8) "Level 3 automated driving system" means an automated driving system feature that:

20 (a) has the capability to perform on a sustained basis the entire dynamic driving task within its
21 operational design domain; and

22 (b) requires a fallback-ready user to operate the vehicle after receiving a request to intervene or in
23 response to a system failure.

24 (9) "Level 4 automated driving system" means an automated driving system feature that, without
25 any expectation a human user will respond to a request to intervene, has the capability to perform:

26 (a) on a sustained basis the entire dynamic driving task within its operational design domain; and

27 (b) any maneuvers necessary to achieve a minimal risk condition in response to:

28 (i) an exit from the operational design domain of the automated driving system; or

1 (ii) a system failure.

2 (10) "Level 5 automated driving system" means an automated driving system feature that, without
3 any expectation a human user will respond to a request to intervene, has the capability to perform:

4 (a) on a sustained basis the entire dynamic driving task under all conditions that can reasonably
5 be managed by a human driver; and

6 (b) any maneuvers necessary to respond to a system failure.

7 (11) "Minimal risk condition" means a condition to which a user or an automated driving system
8 brings a motor vehicle to reduce the risk of a crash when a trip cannot or should not be completed.

9 (12) "Object and event detection" and "object and event response" mean the subtasks of the
10 dynamic driving tasks that include:

11 (a) monitoring the driving environment; and

12 (b) executing an appropriate response to perform the dynamic driving task.

13 (13) "Operate" means the activities performed in order to perform the entire dynamic driving task for
14 a motor vehicle, including testing of an automated driving system, by:

15 (a) a human driver; or

16 (b) an engaged automated driving system.

17 (14) "Operational design domain" means the operating conditions under which an automated driving
18 system or a feature of an automated driving system is specifically designed to function, including:

19 (a) speed range, environmental, geographical, and time-of-day restrictions; or

20 (b) the requisite presence or absence of certain traffic or roadway characteristics.

21 (15) "Operator" means:

22 (a) a human driver who operates a vehicle; or

23 (b) an automated driving system that operates a vehicle.

24 (16) "Platooning" means operating partially or fully autonomous motor vehicles that are trailers,
25 trucks, or truck tractors, as defined in 61-1-101, to travel on a highway at electronically coordinated speeds in a
26 unified manner at a following distance that is closer than would be reasonable and prudent without the use of
27 the technology.

28 (17) "Public highways of this state" has the meaning provided in 60-1-201.

1 (18) "Request to intervene" means the notification by an automated driving system to a fallback-
2 ready user indicating that the fallback-ready user should promptly begin or resume operation of the vehicle.

3 (19) "System failure" means a malfunction in a vehicle system that prevents the automated driving
4 system from reliably performing the portion of the dynamic driving task on a sustained basis, including the
5 complete dynamic driving task, that the automated driving system would otherwise perform.

6 (20) "User" means:

- 7 (a) a human driver;
- 8 (b) a passenger; or
- 9 (c) a fallback-ready user.

10

11 **NEW SECTION. Section 2. Autonomous vehicles and liability.** (1) Except for providing rebuttable
12 presumptions of liability in [sections 3 through 5], nothing in [sections 1 through 7] may be construed to alter
13 generally applicable laws regarding liability, including but not limited to the provisions of Title 27.

14 (2) Nothing in [sections 1 through 7] may be construed to limit the ability of a person or entity in the
15 chain of manufacture or sale to seek indemnification or allocation of liability through contract.

16 (3) The rebuttable presumptions established in [sections 3 through 5] may be overcome on a
17 showing of:

- 18 (a) failure to properly maintain an automated driving system; or
- 19 (b) other admissible evidence.

20

21 **NEW SECTION. Section 3. Presumption of liability -- level 1 and level 2 systems.** There is a
22 rebuttable presumption that the human driver of a vehicle equipped with a level 1 or level 2 automated driving
23 system is liable for damages to persons or property caused by the operation of the vehicle and for penalties
24 associated with traffic regulations violated by the operation of the vehicle.

25

26 **NEW SECTION. Section 4. Presumptions of liability -- level 3 system.** (1) There is a rebuttable
27 presumption that the developer or manufacturer of a vehicle using a level 3 automated driving system is liable
28 for damages to persons or property caused by the operation of the vehicle and for penalties associated with

1 traffic regulations violated by the operation of the vehicle:

2 (a) prior to a request to intervene or a system failure; or

3 (b) resulting immediately from a system failure.

4 (2) There is a rebuttable presumption that the human driver or fallback-ready user of a vehicle
5 using a level 3 automated driving system is liable for physical harm caused by the vehicle after:

6 (a) a request to intervene; or

7 (b) failing to respond timely to a system failure.

8

9 **NEW SECTION. Section 5. Presumption of liability -- level 4 and level 5 systems.** There is a
10 rebuttable presumption that the developer or manufacturer of a vehicle using a level 4 or level 5 automated
11 driving system is liable for damages to persons or property caused by the operation of the vehicle and for
12 penalties associated with traffic regulations violated by the operation of the vehicle.

13

14 **NEW SECTION. Section 6. Level 4 and level 5 automated driving systems prohibited except as**
15 **regulated -- rulemaking authority.** (1) Level 4 and level 5 automated driving systems may not be used on
16 public highways of this state except as provided by department of transportation rulemaking.

17 (2) The department of transportation shall adopt rules regarding the use of level 4 and level 5
18 automated driving systems on public highways of this state. During the rulemaking process, the department
19 shall consider:

20 (a) prohibiting the use of level 4 and level 5 automated driving systems on public highways of this
21 state during unsafe atmospheric or road conditions;

22 (b) imposing conditions on the use of level 4 and level 5 automated driving systems on public
23 highways of this state with high pedestrian use;

24 (c) requiring developers or manufacturers of level 4 and level 5 automated driving systems to
25 certify that atmospheric, demographic, geographic, pedestrian, road, vehicle, and zoological conditions
26 common in the state have been considered in the development of the system as a condition of use of the public
27 highways of this state;

28 (d) conditions to impose on testing level 4 and level 5 automated driving systems on the public

1 highways of this state; and

2 (e) conditions to impose generally on the use of level 4 and level 5 automated driving systems on
3 the public highways of this state.

4

5 **NEW SECTION. Section 7. Vehicle platooning prohibited except as regulated -- rulemaking**

6 **authority.** (1) Vehicle platooning on public highways of this state is prohibited except under the circumstances
7 allowed by department of transportation rulemaking.

8 (2) The department of transportation shall adopt rules regarding vehicle platooning on public
9 highways of this state. During the rulemaking process, the department shall consider:

10 (a) prohibiting platooning on public highways of this state during unsafe atmospheric or road
11 conditions;

12 (b) conditions to impose on platooning on public highways of this state with high pedestrian use;

13 (c) requiring developers or manufacturers of platooning vehicles to certify that atmospheric,
14 demographic, geographic, pedestrian, road, vehicle, and zoological conditions common in the state have been
15 considered in the development of the platooning vehicles as a condition of use of the public highways of this
16 state;

17 (d) conditions to impose on testing platooning vehicles on the public highways of this state; and

18 (e) conditions to impose generally on platooning vehicles on public highways of this state,
19 including limiting the number of vehicles that may platoon together.

20

21 **Section 8.** Section 61-8-1001, MCA, is amended to read:

22 **"61-8-1001. Definitions.** As used in this part, unless the context requires otherwise and unless a
23 different meaning plainly is required, the following definitions apply:

24 (1) "Aggravated driving under the influence" means a person is in violation of 61-8-1002(1)(a),
25 (1)(b), (1)(c), or (1)(d) and:

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

28 (b) the person is under the order of a court or the department to equip any motor vehicle the

1 person operates with an approved ignition interlock device;

2 (c) the person's driver's license or privilege to drive is suspended, cancelled, or revoked as a result
3 of a prior violation of driving under the influence, including a violation of 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d),
4 an offense that meets the definition of aggravated driving under the influence, or a similar offense under
5 previous laws of this state or the laws of another state; or

6 (d) the person refuses to give a breath sample as required in 61-8-1016 and the person's driver's
7 license or privilege to drive was suspended, cancelled, or revoked under the provisions of an implied consent
8 statute.

9 (2) "Alcoholic beverage" means a compound produced for human consumption as a drink that
10 contains 0.5% or more of alcohol by volume.

11 (3) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of
12 alcohol per 210 liters of breath, including as used in 16-6-305, 23-2-535, 45-5-207, 67-1-211, and this title.

13 (4) "Bus" means a motor vehicle with a manufacturer's rated seating capacity of 11 or more
14 passengers, including the driver.

15 (5) "Camper" has the meaning provided in 61-1-101.

16 (6) "Commercial motor vehicle" has the meaning provided in 61-1-101.

17 (7) (a) "Conducting" means:

18 (i) engaging or disengaging a platooning vehicle or an automated driving system, other than a
19 level 5 automated driving system; or

20 (ii) performing or failing to perform any function that moves or stops a platooning vehicle or a
21 vehicle with an automated driving system, other than a level 5 automated driving system;

22 (b) As used in this subsection (7), "automated driving system", "level 5 automated driving system",
23 and "platooning" have the meanings provided in [section 1].

24 ~~(7)(8)~~ "Drug" means any substance that when taken into the human body can impair a person's ability
25 to operate a vehicle safely. The term includes the meanings provided in 50-32-101(6), (7), and (14).

26 ~~(8)(9)~~ "DUI court" means any court that has established a special docket for handling cases involving
27 persons convicted under 61-8-1007 or 61-8-1008 and that implements a program of incentives and sanctions
28 intended to assist a participant to complete treatment ordered pursuant to 61-8-1009 and to end the

1 participant's criminal behavior associated with the use of alcohol or drugs.

2 ~~(9)~~(10) "Highway" has the meaning provided in 61-1-101, including the shoulders of the highway.

3 ~~(10)~~(11) "Motor home" has the meaning provided in 61-1-101.

4 ~~(11)~~(12) "Motor vehicle" has the meaning provided in 61-1-101.

5 ~~(12)~~(13) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that
6 contains any amount of an alcoholic beverage and that is open or has a broken seal or the contents of which
7 are partially removed.

8 ~~(13)~~(14) "Passenger area" means the area designed to seat the driver and passengers while a motor
9 vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a
10 passenger is seated in the vehicle, including an unlocked glove compartment.

11 ~~(14)~~(15) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
12 combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

13 ~~(15)~~(16) "Vehicle" has the meaning provided in 61-1-101, except that the term does not include a
14 bicycle."

15

16 **Section 9.** Section 61-8-1002, MCA, is amended to read:

17 **"61-8-1002. Driving under influence.** (1) A person commits the offense of driving under the influence
18 if the person drives, is conducting, or is in actual physical control of:

19 (a) a vehicle or a commercial motor vehicle upon the ways of this state open to the public while
20 under the influence of alcohol, any drug, or a combination of alcohol and any drug;

21 (b) a noncommercial vehicle upon the ways of this state open to the public while the person's
22 alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.08 or
23 more;

24 (c) a commercial motor vehicle within this state while the person's alcohol concentration, as shown
25 by analysis of the person's blood, breath, or other bodily substance, is 0.04 or more;

26 (d) a noncommercial vehicle or commercial motor vehicle within this state while the person's delta-
27 9-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood or
28 other bodily substance, is 5 ng/ml or more; or

1 (e) a vehicle within this state when the person is under 21 years of age at the time of the offense
2 while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily
3 substance, is 0.02 or more.

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

9 (a) if there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the
10 person was not under the influence of alcohol;

11 (b) if there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact
12 may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact
13 may be considered with other competent evidence in determining the guilt or innocence of the person; and

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

16 (3) The provisions of subsection (2) do not limit the introduction of any other competent evidence
17 bearing on the issue of whether the person was under the influence of alcohol, drugs, or a combination of
18 alcohol and drugs.

19 (4) Each municipality in this state is given authority to enact this section, with the word "state"
20 changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance
21 and the imposition of the fines and penalties provided in the ordinance.

22 (5) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

23 (6) When the same acts may establish the commission of an offense under subsection (1), a
24 person charged with the conduct may be prosecuted for a violation of another relevant subsection under
25 subsection (1). However, the person may be convicted of only one offense under this section or of a similar
26 offense under previous laws of this state."

27

28 **Section 10.** Section 61-8-1016, MCA, is amended to read:

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

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

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

11 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person
12 submitting to a preliminary alcohol screening test pursuant to this section.

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

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

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

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

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

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

28 (C) and the person has been involved in a motor vehicle accident or collision resulting in serious

1 bodily injury, as defined in 45-2-101, or death; or

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

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

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

7 (d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be
8 limited to determining whether a peace officer had a particularized suspicion that the person was in violation of
9 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and
10 whether the person refused to submit to the test.

11 (e) If a person refuses a preliminary alcohol screening test and another test during the same
12 incident, the department may not consider each a separate refusal for purposes of suspension of the person's
13 driver's license.

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

16 (4) (a) If an arrested person refuses to submit to one or more tests requested and designated by
17 the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath,
18 blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute
19 in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-
20 104, 45-5-106, 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets the
21 definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of
22 this state or a similar statute in another jurisdiction.

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

26 (c) (i) Upon the person's refusal to provide a breath, blood, urine, or other bodily substance, the
27 peace officer shall, on behalf of the department, immediately seize the person's driver's license. The peace
28 officer shall immediately forward the license to the department, along with a report certified under penalty of law

1 stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and
 2 confirming that the person refused to submit to one or more tests requested and designated by the peace
 3 officer. Upon receipt of the report, the department shall suspend the license for the period provided in 61-8-
 4 1032.

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

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

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

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

17

18 **Section 11.** Section 61-8-1018, MCA, is amended to read:

19 **"61-8-1018. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal
 20 action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving
 21 under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the
 22 influence in 61-8-1001, a similar offense under previous laws of this state or the laws of another state, or 61-8-
 23 805:

24 (a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of
 25 alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is
 26 admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or
 27 drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of 61-8-
 28 1002(1)(a) based on the presence of a drug or drugs in the person unless some other competent evidence

1 exists that tends to establish that the person was under the influence of a drug or drugs while driving,
2 conducting, or in actual physical control of a motor vehicle within this state.

3 (b) a report of the facts and results of one or more tests of a person's blood or breath is admissible
4 in evidence if:

5 (i) a breath test or preliminary alcohol screening test was performed by a person certified by the
6 forensic sciences division of the department to administer the test; or

7 (ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a
8 laboratory exempt from certification under the rules of the department and the blood was withdrawn from the
9 person by a person competent to do so under 61-8-1019(1); and

10 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a
11 person is admissible in evidence if it was made by a person trained by the department or by a person who has
12 received training recognized by the department.

13 (2) If the person under arrest refused to submit to one or more tests under 61-8-1016, whether or
14 not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action
15 or proceeding arising out of acts alleged to have been committed while the person was driving, conducting, or
16 in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of
17 alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person
18 was under the influence. The inference is rebuttable.

19 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
20 on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol
21 and drugs."
22

23 NEW SECTION. Section 12. Codification instruction. [Sections 1 through 7] are intended to be
24 codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1
25 through 7].
26

27 NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 2023.
28

