

Unofficial Draft Copy

As of: March 29, 2010 (2:03pm)

LC1j05

**** Bill No. ****

Introduced By *****

By Request of the Law and Justice Interim Committee

A Bill for an Act entitled: "An Act revising the laws relating to driving under the influence of alcohol or drugs; providing that driving with any amount of a dangerous drug or its metabolite in a person's body is a violation; providing an exemption for prescription drugs; amending sections 61-8-406, 61-8-714, and 61-8-722, MCA; and providing an immediate effective date and an applicability date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-406, MCA, is amended to read:

"61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or more or with drugs -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more or with drugs. (1) It is 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 person to drive or be in actual physical control of:

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

(b) a commercial motor vehicle upon the ways of this state

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open to the public while the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.04 or more; or

(c) a noncommercial vehicle or a commercial motor vehicle upon the ways of this state open to the public while there is any dangerous drug or its metabolite in the person's body, as shown by analysis of the person's blood, breath, or urine.

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

(3) A person using a drug as prescribed by a medical practitioner, as defined in 37-2-101, is not guilty of violating subsection (1)(c)."

{Internal References to 61-8-406:

- ok 45-5-106 ok 46-16-130 ok 46-18-236 ok 46-18-236
- ok 61-5-208 ok 61-5-212 ok 61-5-212 ok 61-8-401
- ok 61-8-401 ok 61-8-404 ok 61-8-408 ok 61-8-408
- ok 61-8-408 ok 61-8-410 ok 61-8-421 ok 61-8-442
- ok 61-8-442 ok 61-8-722 ok 61-8-722 ok but ???61-8-722
- ok 61-8-731 ok 61-8-731 ok 61-8-731 ok 61-8-731
- ok 61-8-732 ok 61-8-732 ok 61-8-732 ok 61-8-733
- ok 61-8-733 ok 61-8-734 ok 61-8-734 ok 61-8-734
- ok 61-8-805}

Section 2. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense. (1) Except as provided in subsection (4), a person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time

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of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 12 months and by a fine of not less than \$600 or more than \$2,000. The initial 24 hours of the imprisonment term must be served and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) Except as provided in subsection (4), on a second conviction, the person shall be punished by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than 6 months, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for not less than 14 days or more than 12 months. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended. Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the

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person.

(3) Except as provided in subsection (4), on the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than 12 months and by a fine of not less than \$2,000 or more than \$10,000. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 ~~for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.~~"

{Internal References to 61-8-714:

ok 61-8-401 ok 61-8-401 ok 61-8-442 ok 61-8-442
ok 61-8-732 ok 61-8-732 ok 61-8-733 all ok 61-8-734
61-8-734 61-8-734 61-8-734 61-8-734
61-8-734}

Section 3. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration or drugs -- first through third offense. (1) Except

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as provided in subsection (4), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 20 days and by a fine of not less than \$600 or more than \$2,000.

(2) Except as provided in subsection (4), on a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 5 days, to be served in the county jail and not on home arrest, or more than 30 days and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days, which may not be served on home arrest, or more than 60 days and by a fine of not less than \$1,200 or more than \$2,000. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended.

(3) Except as provided in subsection (4), on a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 10 days, to be served in the county jail and not on home arrest, or more than 6 months and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 20 days, which may not be

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served on home arrest, or more than 12 months and by a fine of not less than \$2,000 or more than \$10,000. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 ~~for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.~~"

{Internal References to 61-8-722:

ok 61-8-401	ok 61-8-406	ok 61-8-442	ok 61-8-442
ok 61-8-732	ok 61-8-733	all ok 61-8-734	61-8-734
61-8-734	61-8-734	61-8-734	61-8-734}

NEW SECTION. **Section 4. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. {standard} Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

- END -

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