

HOUSE BILL NO. 467

INTRODUCED BY S. KELLY, S. KLAKKEN, B. MITCHELL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DUI LAWS; INCLUDING THE USE OF ORAL FLUID FOR DUI TESTING; AND AMENDING SECTIONS 61-8-806, 61-8-1001, 61-8-1002, AND 61-8-1016, MCA."

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

Section 1. Section 61-8-806, MCA, is amended to read:

"61-8-806. Blood, ~~and breath,~~ and oral fluid tests of commercial vehicle operators -- procedure -- suspension. (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to one or more tests of the person's blood, ~~or breath,~~ or oral fluid for the purpose of determining a measured amount or detected presence of alcohol in the person's body if the person is requested to submit to the test or tests by a peace officer who has reasonable grounds to believe that the person was driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while having a measured alcohol concentration or detected presence of alcohol. The peace officer may designate the blood, ~~or breath,~~ or oral fluid test or tests to be administered and may request that the person submit to a preliminary alcohol screening test before a blood, breath, oral fluid, or urine test is taken.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a person refuses to submit to one or more tests designated by the officer, the test or tests may not be given, but the officer shall immediately seize the person's commercial driver's license and forward the license to the department, along with a report certified under penalty of law that the officer had reasonable grounds to believe that the person was driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having a measurable alcohol concentration or detected presence of alcohol and that the person had refused to submit to one or more tests upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection

1 (5).

2 (4) Upon seizure of a person's commercial driver's license, the peace officer shall issue, on behalf
3 of the department, a temporary 5-day noncommercial driving permit, effective 12 hours after the time of
4 issuance, and shall provide the person with written notice of the license suspension and the right to a hearing
5 under 61-8-808.

6 (5) Upon receipt of the officer's certified report, the department shall suspend the person's
7 commercial driver's license, with no provision for a restricted probationary commercial driver's license, for:

8 (a) 1 year, upon a first refusal, except that if the violation occurred in a commercial motor vehicle
9 transporting placardable hazardous materials, the suspension for a first refusal must be for 3 years;

10 (b) life, upon a second or subsequent refusal at any time as determined from the records of the
11 department, subject to department rules adopted to implement federal rules allowing for driver rehabilitation and
12 license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension. If the
13 person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the
14 conviction has the same effect as a previous testing refusal for purposes of this subsection (5)(b)."

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16 **Section 2.** Section 61-8-1001, MCA, is amended to read:

17 **"61-8-1001. Definitions.** As used in this part, unless the context requires otherwise and unless a
18 different meaning plainly is required, the following definitions apply:

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

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

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

25 (c) the person's driver's license or privilege to drive is suspended, cancelled, or revoked as a result
26 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),
27 an offense that meets the definition of aggravated driving under the influence, or a similar offense under
28 previous laws of this state or the laws of another state; or

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

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

(3) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of 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.

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

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

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

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

(8) "DUI court" means any court that has established a special docket for handling cases involving persons convicted under 61-8-1007 or 61-8-1008 and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to 61-8-1009 and to end the participant's criminal behavior associated with the use of alcohol or drugs.

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

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

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

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

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

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

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

Section 3. Section 61-8-1002, MCA, is amended to read:

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

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

(b) 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, oral fluid, or other bodily substance, is 0.08 or more;

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

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

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

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

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

(b) if there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact

1 may be considered with other competent evidence in determining the guilt or innocence of the person; and

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

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

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

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

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

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16 **Section 4.** Section 61-8-1016, MCA, is amended to read:

17 **"61-8-1016. Implied consent -- blood, ~~or~~ breath, or oral fluid tests for alcohol, blood or oral fluid**
18 **for drugs, or testing for both -- alcohol and drugs using recognized methods for each -- 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, or oral fluid for the purpose of determining
22 any measured amount or detected presence of alcohol or blood or oral fluid for the purpose of determining any
23 measured amount or detected presence of drugs in the person's body.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (e) If a person refuses a preliminary alcohol screening test and another test during the same

1 incident, the department may not consider each a separate refusal for purposes of suspension of the person's
2 driver's license.

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

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

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

15 (c) (i) On the person's refusal to provide a breath, blood, urine, oral fluid, or other bodily
16 substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license.
17 The peace officer shall immediately forward the license to the department, along with a report certified under
18 penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing
19 request and confirming that the person refused to submit to one or more tests requested and designated by the
20 peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in
21 61-8-1032.

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

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

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

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

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