

HOUSE BILL 130

Introduced by Fagg

1/09	Introduced
1/09	Referred to Judiciary
1/10	First Reading
1/15	Hearing
1/15	Committee Report--Bill Not Passed as Amended
1/17	Adverse Committee Report Adopted

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2 INTRODUCED BY HOUSE BILL NO. 130  
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4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE DRIVER'S  
5 LICENSE SUSPENSION AND REVOCATION PERIODS FOR REFUSAL OF A  
6 DRIVER TO SUBMIT TO A CHEMICAL TEST OF HIS BLOOD, BREATH, OR  
7 URINE; AND AMENDING SECTION 61-8-402, MCA."

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

10 **Section 1.** Section 61-8-402, MCA, is amended to read:

11 **\*61-8-402. Chemical blood, breath, or urine tests. (1)**  
12 Any person who operates a vehicle upon ways of this state  
13 open to the public shall be deemed to have given consent,  
14 subject to the provisions of 61-8-401, to a chemical test of  
15 his blood, breath, or urine for the purpose of determining  
16 the alcoholic content of his blood if arrested by a peace  
17 officer for driving or in actual physical control of a  
18 vehicle while under the influence of alcohol. The test shall  
19 be administered at the direction of a peace officer having  
20 reasonable grounds to believe the person to have been  
21 driving or in actual physical control of a vehicle upon ways  
22 of this state open to the public while under the influence  
23 of alcohol. The arresting officer may designate which one of  
24 the aforesaid tests shall be administered.

25 (2) Any person who is unconscious or who is otherwise

1 in a condition rendering him incapable of refusal shall be  
2 deemed not to have withdrawn the consent provided by  
3 subsection (1) of this section.

4 (3) If a resident driver under arrest refuses upon the  
5 request of a peace officer to submit to a chemical test  
6 designated by the arresting officer as provided in  
7 subsection (1) of this section, none shall be given, but the  
8 officer shall, on behalf of the department, immediately  
9 seize his driver's license. The peace officer shall forward  
10 the license to the department, along with a sworn report  
11 that he had reasonable grounds to believe the arrested  
12 person had been driving or was in actual physical control of  
13 a vehicle upon ways of this state open to the public, while  
14 under the influence of alcohol and that the person had  
15 refused to submit to the test upon the request of the peace  
16 officer. Upon receipt of the report, the department shall  
17 suspend the license for the period provided in subsection  
18 (5).

19 (4) Upon seizure of a resident driver's license, the  
20 peace officer shall issue, on behalf of the department, a  
21 temporary driving permit, which is valid for 72 hours after  
22 the time of issuance.

23 (5) The following suspension and revocation periods are  
24 applicable upon refusal to submit to a chemical test:

25 (a) upon a first refusal, a suspension of 90-days 6



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1 months with no provision for a restricted probationary  
2 license;

3 (b) upon a second or subsequent refusal within 5 years  
4 of a previous refusal, as determined from the records of the  
5 department, a revocation of ~~1-year~~ 2 years with no provision  
6 for a restricted probationary license.

7 (6) Like refusal by a nonresident shall be subject to  
8 suspension by the department in like manner, and the same  
9 temporary driving permit shall be issued to nonresidents.

10 (7) All such suspensions are subject to review as  
11 hereinafter provided."

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