

HOUSE BILL NO. 559

INTRODUCED BY FAGG, VAN VALKENBURG, O'KEEFE  
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE HOUSE

FEBRUARY 1, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FEBRUARY 2, 1991                   FIRST READING.

FEBRUARY 21, 1991                  COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 22, 1991                  PRINTING REPORT.

FEBRUARY 23, 1991                  SECOND READING, DO PASS.

FEBRUARY 25, 1991                  ENGROSSING REPORT.

FEBRUARY 26, 1991                  THIRD READING, PASSED.  
AYES, 98; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 27, 1991                  INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FIRST READING.

APRIL 4, 1991                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

APRIL 5, 1991                    SECOND READING, CONCURRED IN.

APRIL 6, 1991                    THIRD READING, CONCURRED IN.  
AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 6, 1991                    RECEIVED FROM SENATE.

APRIL 9, 1991                    SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

APRIL 11, 1991

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 16, 1991

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 25, 1991

CONFERENCE COMMITTEE REPORTED.

SECOND READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

THIRD READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

IN THE SENATE

APRIL 29, 1991

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 29, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 559  
 2 INTRODUCED BY Jerry Van Valkenburg  
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 6 CLARIFY THE LAWS RELATING TO OPERATING MOTOR VEHICLES,  
 7 BOATS, AND AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR  
 8 DRUGS; AND AMENDING SECTIONS 23-2-523, 23-2-535, 45-5-205,  
 9 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406,  
 10 61-8-714, 61-8-722, 61-8-805, 61-8-806, 61-11-101, AND  
 11 67-1-211, MCA."  
 12

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

14 **Section 1.** Section 61-8-401, MCA, is amended to read:

15 "61-8-401. Persons under the influence of alcohol or  
 16 drugs. (1) It is unlawful and punishable as provided in  
 17 61-8-714 and 61-8-723 for any person who is under the  
 18 influence of:

- 19 (a) alcohol to drive or be in actual physical control
- 20 of a vehicle upon the ways of this state open to the public;
- 21 (b) a narcotic dangerous drug to drive or be in actual
- 22 physical control of a vehicle within this state;
- 23 (c) any other drug to drive or be in actual physical
- 24 control of a vehicle within this state; or
- 25 (d) alcohol and any dangerous or other drug to drive or

1 be in actual physical control of a vehicle within this  
 2 state.

3 (2) The fact that any person charged with a violation  
 4 of subsection (1) is or has been entitled to use alcohol or  
 5 such a drug under the laws of this state does not constitute  
 6 a defense against any charge of violating subsection (1).

7 (3) "Under the influence" means that as a result of  
 8 taking into the body alcohol, drugs, or any combination  
 9 thereof, a person's ability to safely operate a motor  
 10 vehicle has been diminished.

11 (4) Upon the trial of any civil or criminal action or  
 12 proceeding arising out of acts alleged to have been  
 13 committed by any person driving or in actual physical  
 14 control of a vehicle while under the influence of alcohol,  
 15 the concentration of alcohol in the ~~person's blood~~ person at  
 16 the time alleged, as shown by ~~chemical~~ analysis of the  
 17 person's blood, urine, or ~~breath, or other bodily substance,~~  
 18 shall give rise to the following ~~presumptions~~ inferences:

- 19 (a) If there was at that time an alcohol concentration
- 20 of 0.05 or less, it ~~shall~~ may be ~~presumed~~ inferred that the
- 21 person was not under the influence of alcohol.
- 22 (b) If there was at that time an alcohol concentration
- 23 in excess of 0.05 but less than 0.10, that fact shall not
- 24 give rise to any ~~presumption~~ inference that the person was
- 25 or was not under the influence of alcohol but such fact may



1 be considered with other competent evidence in determining  
2 the guilt or innocence of the person.

3 (c) If there was at that time an alcohol concentration  
4 of 0.10 or more, it ~~shall~~ may be presumed ~~inferred~~ that the  
5 person was under the influence of alcohol. ~~Such presumption~~  
6 The inference is rebuttable.

7 (5) The provisions of subsection (4) do not limit the  
8 introduction of any other competent evidence bearing upon  
9 the issue of whether the person was under the influence of  
10 alcohol, drugs, or a combination of the two.

11 (6) Each municipality in this state is given authority  
12 to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and  
13 subsections (1) through (5) of this section, with the word  
14 "state" in 61-8-406 and subsection (1) of this section  
15 changed to read "municipality", as an ordinance and is given  
16 jurisdiction of the enforcement of the ordinance and of the  
17 imposition of the fines and penalties therein provided.

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

20 **Section 2.** Section 61-8-402, MCA, is amended to read:

21 "~~61-8-402. Chemical---blood~~ Blood, breath, or urine  
22 tests. (1) Any person who operates or is in actual physical  
23 control of a vehicle upon ways of this state open to the  
24 public shall be deemed to have given consent, subject to the  
25 provisions of 61-8-401, to a ~~chemical~~ test or tests of his

1 blood, breath, or urine for the purpose of determining the  
2 ~~alcoholic content of his blood~~ any measured amount or  
3 detected presence of alcohol, drugs, or a combination of the  
4 two in his body if arrested by a peace officer for driving  
5 or for being in actual physical control of a vehicle while  
6 under the influence of alcohol, drugs, or a combination of  
7 the two. The test or tests shall be administered at the  
8 direction of a peace officer having reasonable grounds to  
9 believe the person to have been driving or in actual  
10 physical control of a vehicle upon ways of this state open  
11 to the public, while under the influence of alcohol, drugs,  
12 or a combination of the two. The arresting officer may  
13 designate which ~~one of the aforesaid~~ test or tests shall be  
14 administered. A person may not be given more than two tests  
15 unless the person chooses to have a test as provided in  
16 61-8-405(2).

17 (2) Any person who is unconscious or who is otherwise  
18 in a condition rendering him incapable of refusal shall be  
19 deemed not to have withdrawn the consent provided by  
20 subsection (1) of this section.

21 (3) If a ~~resident~~ driver under arrest refuses upon the  
22 request of a peace officer to submit to a ~~chemical~~ test or  
23 tests designated by the arresting officer as provided in  
24 subsection (1) ~~of this section~~, none shall be given, but the  
25 officer shall, on behalf of the department, immediately

1 seize his driver's license. The peace officer shall forward  
 2 the license to the department, along with a sworn report  
 3 that he had reasonable grounds to believe the arrested  
 4 person had been driving or was in actual physical control of  
 5 a vehicle upon ways of this state open to the public, while  
 6 under the influence of alcohol, drugs, or a combination of  
 7 the two, and that the person had refused to submit to the  
 8 test or tests upon the request of the peace officer. Upon  
 9 receipt of the report, the department shall suspend the  
 10 license for the period provided in subsection (5).

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

15 (5) The following suspension and revocation periods are  
 16 applicable upon refusal to submit to a chemical test or  
 17 tests:

18 (a) upon a first refusal, a suspension of 90 days with  
 19 no provision for a restricted probationary license;

20 (b) upon a second or subsequent refusal within 5 years  
 21 of a previous refusal, as determined from the records of the  
 22 department, a revocation of 1 year with no provision for a  
 23 restricted probationary license.

24 (6) Like-refusal-by-a A nonresident driver's license  
 25 seized under this section shall must be subject--to

1 suspension sent by the department ~~in-like-manner,--and--the~~  
 2 ~~same---temporary---driving---permit---shall---be---issued---to~~  
 3 nonresidents to the licensing authority of the nonresident's  
 4 home state with a report of the nonresident's refusal to  
 5 submit to a test.

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

8 **Section 3.** Section 61-8-403, MCA, is amended to read:

9 **"61-8-403. Right of appeal to court.** The department  
 10 shall immediately notify any person whose license or  
 11 privilege to drive has been suspended or revoked, as  
 12 hereinbefore authorized, in writing and such person shall  
 13 have the right to file a petition within 30 days thereafter  
 14 for a hearing in the matter in the district court in the  
 15 county wherein such person resides or in the district court  
 16 in the county in which this arrest was made. Such court is  
 17 hereby vested with jurisdiction and it shall be its duty to  
 18 set the matter for hearing upon 10 days' written notice to  
 19 the county attorney of the county wherein the appeal is  
 20 filed and such county attorney shall represent the state,  
 21 and thereupon the court shall take testimony and examine  
 22 into the facts of the case, except that the issues shall be  
 23 limited to whether a peace officer had reasonable grounds to  
 24 believe the person had been driving or was in actual  
 25 physical control of a vehicle upon ways of this state open

1 to the public, while under the influence of alcohol, drugs,  
 2 or a combination of the two, whether the person was placed  
 3 under arrest, and whether such person refused to submit to  
 4 the test or tests. The court shall thereupon determine  
 5 whether the petitioner is entitled to a license or is  
 6 subject to suspension as heretofore provided."

7 **Section 4.** Section 61-8-404, MCA, is amended to read:

8 **"61-8-404. Evidence admissible -- conditions of**  
 9 **admissibility.** (1) Upon the trial of any criminal action or  
 10 other proceeding arising out of acts alleged to have been  
 11 committed by any person in violation of 61-8-401 or  
 12 61-8-406:

13 (a) evidence of the any measured amount or detected  
 14 presence of amount of alcohol, drugs, or a combination of  
 15 the two in the person's blood person at the time of the act  
 16 alleged, as shown by a chemical an analysis of his blood,  
 17 breath, or urine, is admissible; and

18 (b) a report of the facts and results of any chemical  
 19 test or tests of a person's blood, breath, or urine  
 20 administered under 61-8-402 is admissible in evidence if:

21 (i) the breath analysis-report test was prepared--and  
 22 verified performed by the a person who performed the test  
 23 certified by the forensic sciences division of the  
 24 department to administer breath tests or the blood or urine  
 25 test was a laboratory analysis and the analysis was done in

1 a laboratory operated by the department of-justice or by any  
 2 other laboratory or facility certified or exempt from  
 3 certification under the rules of the department; and

4 (ii) the--report--was--prepared--in--accordance-with-any  
 5 applicable-rules-of-the-department;--and

6 (iii) if the test was on a blood sample, the person  
 7 withdrawing the blood must-have-been was competent to do so  
 8 under 61-8-405(1).

9 (2) If the person under arrest refused to submit to the  
 10 test or tests as hereinabove provided in this section, proof  
 11 of refusal shall-be is admissible in any criminal action or  
 12 proceeding arising out of acts alleged to have been  
 13 committed while the person was driving or in actual physical  
 14 control of a vehicle upon the ways of this state open to the  
 15 public, while under the influence of alcohol, drugs, or a  
 16 combination of the two.

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

21 **Section 5.** Section 61-8-405, MCA, is amended to read:

22 **"61-8-405. Administration of tests.** (1) Only a  
 23 physician or registered nurse or other qualified person  
 24 under the supervision and direction of a physician or  
 25 registered nurse acting at the request of a peace officer

1 may withdraw blood for the purpose of determining ~~alcoholic~~  
 2 content any measured amount or detected presence of alcohol,  
 3 drugs, or a combination of the two in the person. This  
 4 limitation does not apply to the taking of breath or urine  
 5 specimens.

6 (2) The person tested under arrest may, at his own  
 7 expense, have a physician or registered nurse of his own  
 8 choosing administer a test, in addition to any administered  
 9 at the direction of a peace officer, for the purpose of  
 10 determining ~~the amount of alcohol in his blood~~ any measured  
 11 amount or detected presence of alcohol, drugs, or a  
 12 combination of the two in the person at the time alleged, as  
 13 shown by ~~chemical~~ analysis of his blood, breath, or urine.  
 14 The failure or inability to obtain an additional test by a  
 15 person does not preclude the admissibility in evidence of  
 16 the test or tests taken at the direction of a peace officer.

17 (3) Upon the request of the person tested, full  
 18 information concerning the test or tests taken at the  
 19 direction of the peace officer must be made available to him  
 20 or his attorney.

21 (4) No physician or registered nurse or other qualified  
 22 person under the supervision and direction of a physician or  
 23 registered nurse shall incur any civil or criminal liability  
 24 as a result of the proper administering of a blood test when  
 25 requested in writing by a peace officer to administer such a

1 test.

2 (5) If the a test given under 61-8-402 or 61-8-806 is a  
 3 ~~chemical~~ test of urine, the person tested must be given such  
 4 privacy in the taking of the urine specimen as will ~~insure~~  
 5 ensure the accuracy integrity of the specimen and, at the  
 6 same time, maintain the dignity of the individual involved.

7 (6) The department ~~of justice~~ in cooperation with any  
 8 appropriate agency shall adopt uniform rules for the giving  
 9 of ~~blood-alcohol~~ tests and may require certification of  
 10 training to administer the tests as considered necessary."

11 **Section 6.** Section 61-8-406, MCA, is amended to read:

12 "61-8-406. Operation of vehicle by a person with  
 13 alcohol concentration of 0.10 or more. It is unlawful and  
 14 punishable as provided in 61-8-722 and 61-8-723 for any  
 15 person to drive or be in actual physical control of a  
 16 vehicle upon the ways of this state open to the public while  
 17 the person's alcohol concentration in his, as shown by  
 18 analysis of the person's blood, breath, or urine, is 0.10 or  
 19 more. Absolute liability as provided in 45-2-104 will be  
 20 imposed for a violation of this section."

21 **Section 7.** Section 61-8-714, MCA, is amended to read:

22 "61-8-714. Penalty for driving under the influence of  
 23 alcohol or drugs. (1) A person convicted of a violation of  
 24 61-8-401 shall be punished by imprisonment in the county  
 25 jail for not less than 24 consecutive hours or more than 60

1 days and shall be punished by a fine of not less than \$100  
 2 or more than \$500. The jail sentence may not be suspended  
 3 unless the judge finds that the imposition of the jail  
 4 sentence will pose a risk to the defendant's physical or  
 5 mental well-being.

6 (2) On a second conviction, he shall be punished by a  
 7 fine of not less than \$300 or more than \$500 and by  
 8 imprisonment for not less than 7 days, at least 48 hours of  
 9 which must be served consecutively, or more than 6 months.  
 10 Three days of the jail sentence may not be suspended unless  
 11 the judge finds that the imposition of the jail sentence  
 12 will pose a risk to the defendant's physical or mental  
 13 well-being.

14 (3) On the third or subsequent conviction, he shall be  
 15 punished by imprisonment for a term of not less than 30  
 16 days, at least 48 hours of which must be served  
 17 consecutively, or more than 1 year, and by a fine of not  
 18 less than \$500 or more than \$1,000. Notwithstanding any  
 19 provision to the contrary providing for suspension of  
 20 execution of a sentence imposed under this subsection, the  
 21 imposition or execution of the first 10 days of the jail  
 22 sentence imposed for a third or subsequent offense that  
 23 occurred within 5 years of the first offense may not be  
 24 deferred or suspended.

25 (4) In addition to the punishment provided in this

1 section, regardless of disposition, the defendant shall  
 2 complete an alcohol information course at an alcohol  
 3 treatment program approved by the department of  
 4 institutions, which may, in the sentencing court's  
 5 discretion and upon recommendation of a certified chemical  
 6 dependency counselor, include alcohol or drug treatment, or  
 7 both. On conviction of a second or subsequent offense under  
 8 this section, in addition to the punishment provided in this  
 9 section, regardless of disposition, the defendant shall  
 10 complete an alcohol information course at an alcohol  
 11 treatment program approved by the department of  
 12 institutions, which must include alcohol or drug treatment,  
 13 or both. Each counselor providing education or treatment  
 14 shall, at the commencement of the education or treatment,  
 15 notify the court that the defendant has been enrolled in a  
 16 course or treatment program. If the defendant fails to  
 17 attend the course or the treatment program, the counselor  
 18 shall notify the court of the failure. As long as the  
 19 alcohol information course and treatment program are  
 20 approved as provided in this subsection, the defendant may  
 21 attend the information course and treatment program of his  
 22 choice. The treatment provided to the defendant at a  
 23 treatment program must be at a level appropriate to his  
 24 alcohol problem, as determined by the judge based upon the  
 25 recommendation from the certified chemical dependency

1 counselor.

2 (5) For the purpose of determining the number of  
3 convictions under this section, "conviction" means a final  
4 conviction, as defined in 45-2-101, in this state,  
5 conviction for a violation of a similar statute in another  
6 state, or a forfeiture of bail or collateral deposited to  
7 secure the defendant's appearance in court in this state or  
8 another state, which forfeiture has not been vacated. An  
9 offender is considered to have been previously convicted for  
10 the purposes of ~~this-section~~ sentencing if less than 5 years  
11 have elapsed between the commission of the present offense  
12 and a previous conviction. If there has been no additional  
13 conviction for an offense under this section for a period of  
14 5 years after a prior conviction hereunder, then all records  
15 and data relating to the prior conviction are confidential  
16 criminal justice information as defined in 44-5-103 and  
17 public access to the information may only be obtained by  
18 district court order upon good cause shown.

19 (6) For the purpose of calculating subsequent  
20 convictions under this section, a conviction for a violation  
21 of 61-8-406 also constitutes a conviction for a violation of  
22 61-8-401."

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

24 "61-8-722. Penalty for driving with excessive blood  
25 alcohol concentration. (1) A person convicted of a violation

1 of 61-8-406 shall be punished by imprisonment for not more  
2 than 10 days and shall be punished by a fine of not less  
3 than \$100 or more than \$500.

4 (2) On a second conviction of a violation of 61-8-406,  
5 he shall be punished by imprisonment for not less than 48  
6 consecutive hours or more than 30 days and by a fine of not  
7 less than \$300 or more than \$500.

8 (3) On a third or subsequent conviction of a violation  
9 of 61-8-406, he shall be punished by imprisonment for not  
10 less than 48 consecutive hours or more than 6 months and by  
11 a fine of not less than \$500 or more than \$1,000.

12 (4) The provisions of 61-5-205(2), 61-5-208(2), and  
13 61-11-203(2)(d) relating to revocation and suspension of  
14 driver's licenses shall apply to any conviction under  
15 61-8-406.

16 (5) In addition to the punishment provided in this  
17 section, regardless of disposition, the defendant shall  
18 complete an alcohol information course at an alcohol  
19 treatment program approved by the department of  
20 institutions, which may include alcohol or drug treatment,  
21 or both, if considered necessary by the counselor conducting  
22 the program. Each counselor providing such education or  
23 treatment shall, at the commencement of the education or  
24 treatment, notify the court that the defendant has been  
25 enrolled in a course or treatment program. If the defendant

1 fails to attend the course or the treatment program, the  
2 counselor shall notify the court of the failure.

3 (6) For the purpose of determining the number of  
4 convictions under this section, "conviction" means a final  
5 conviction, as defined in 45-2-101, in this state or a  
6 similar statute in another state or a forfeiture of bail or  
7 collateral deposited to secure the defendant's appearance in  
8 court in this state or another state, which forfeiture has  
9 not been vacated. An offender is considered to have been  
10 previously convicted for the purposes of ~~this--section~~  
11 sentencing if less than 5 years have elapsed between the  
12 commission of the present offense and a previous conviction.  
13 If there has been no additional conviction for an offense  
14 under this section for a period of 5 years after a prior  
15 conviction hereunder, then such prior offense shall be  
16 expunged from the defendant's record."

17 **Section 9.** Section 61-8-805, MCA, is amended to read:

18 "61-8-805. Suspension for operating a commercial  
19 vehicle with a blood alcohol concentration of 0.04 or more  
20 -- hearing. (1) A person whose blood alcohol concentration  
21 is 0.04 or more while he drives or is in actual physical  
22 control of a commercial motor vehicle is subject to the  
23 suspension of his commercial vehicle operator's endorsement.  
24 If the department receives a sworn report from a peace  
25 officer that the person was operating a commercial motor

1 vehicle while his blood alcohol concentration was 0.04 or  
2 more, the department shall suspend the driver's commercial  
3 vehicle operator's endorsement:

4 (a) for 1 year, with no provision for a restricted  
5 probationary license or endorsement, upon receipt of the  
6 first report, except that if the offense occurred in a  
7 commercial motor vehicle transporting hazardous materials,  
8 the suspension must be for 3 years; and

9 (b) for 10 years, with no provision for a restricted  
10 probationary license or endorsement, upon receipt of a  
11 second or subsequent report at any time as determined from  
12 the records of the department.

13 (2) A peace officer who determines that a commercial  
14 motor vehicle operator's blood alcohol concentration is 0.04  
15 or more shall place the commercial motor vehicle operator  
16 out of service as mandated by federal regulations for 24  
17 hours.

18 (3) The fact that any person charged with a violation  
19 of the provisions of subsection (1) is entitled to use  
20 alcohol under the laws of Montana is not a defense against  
21 any charge of violating the provisions of subsection (1).

22 (4) The department shall immediately notify in writing  
23 any person whose commercial vehicle operator's endorsement  
24 is suspended under this section. The person ~~suspended~~ has  
25 the right to file a petition within 30 days after the notice

1 is given for a hearing in the matter in the district court  
 2 in the county in which the finding of blood alcohol  
 3 concentration was made. The court has jurisdiction and shall  
 4 set the matter for hearing upon 10 days' written notice to  
 5 the county attorney of the county in which the appeal is  
 6 filed. The county attorney shall represent the state. The  
 7 court shall take testimony and examine the facts of the  
 8 case, except that the issue is limited to whether the person  
 9 was driving or had actual physical control of a commercial  
 10 motor vehicle while his blood alcohol concentration was 0.04  
 11 or more. The court shall determine whether the petitioner is  
 12 entitled to a commercial vehicle operator's endorsement or  
 13 is subject to suspension as provided in this section. The  
 14 provisions of 61-8-404 apply to any proceedings under this  
 15 section."

16 **Section 10.** Section 61-8-806, MCA, is amended to read:

17 "**61-8-806.** ~~Chemical-blood~~ Blood, breath, or urine tests  
 18 of commercial vehicle operators -- procedure -- suspension.

19 (1) A person who operates a commercial motor vehicle upon  
 20 the ways of this state open to the public is considered to  
 21 have given consent, subject to the provisions of 61-8-401  
 22 and 61-8-805, to a ~~chemical~~ test of his blood, breath, or  
 23 urine for the purpose of determining ~~the alcohol content of~~  
 24 his blood any measured amount of alcohol in his body if he  
 25 is requested to submit to the test by a peace officer having

1 reasonable grounds to believe the person to have been  
 2 driving or in actual physical control of a commercial motor  
 3 vehicle upon the ways of this state open to the public while  
 4 his blood alcohol concentration was 0.04 or more. The peace  
 5 officer may designate a blood, breath, or urine test to be  
 6 administered.

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

10 (3) If a commercial motor vehicle operator who is a  
 11 resident of Montana refuses upon the request of a peace  
 12 officer to submit to a ~~chemical~~ test designated by the  
 13 officer as provided in subsection (1), the test may not be  
 14 given. On behalf of the department, the officer shall  
 15 immediately seize the person's driver's license showing the  
 16 commercial vehicle operator's endorsement and forward the  
 17 license to the department, along with a sworn report that he  
 18 had reasonable grounds to believe the person had been  
 19 driving or was in actual physical control of a commercial  
 20 motor vehicle upon ways of this state open to the public  
 21 while having a blood an alcohol concentration of 0.04 or  
 22 more and that the person had refused to submit to the test  
 23 upon the request of the officer. Upon receipt of the report,  
 24 the department shall suspend the license for a period  
 25 provided in subsection (5).

1 (4) Upon seizure of a resident's driver's license  
2 showing a commercial vehicle operator's endorsement, the  
3 peace officer shall issue, on behalf of the department, a  
4 temporary driving permit without the commercial vehicle  
5 operator's endorsement. The temporary driving permit is  
6 valid for 72 hours after issuance.

7 (5) If a commercial motor vehicle operator refuses to  
8 submit to a ~~chemical~~ test as provided in subsection (3), the  
9 department shall suspend his commercial vehicle operator's  
10 endorsement:

11 (a) upon first refusal, for 1 year, with no provision  
12 for a restricted probationary license or endorsement, except  
13 that if the offense occurred in a commercial motor vehicle  
14 transporting hazardous materials, the suspension for a first  
15 refusal must be for 3 years;

16 (b) upon a second or subsequent refusal at any time as  
17 determined from the records of the department, for 10 years,  
18 with no provision for a restricted probationary license or  
19 endorsement.

20 (6) A nonresident commercial motor vehicle operator who  
21 refuses to submit to a ~~chemical~~ test as provided in  
22 subsection (3) is subject to suspension by the department as  
23 provided in subsection (5) and ~~may receive~~ must be given  
24 a temporary driving permit as provided in subsection (4)."

25 **Section 11.** Section 61-11-101, MCA, is amended to read:

1 "61-11-101. Report of convictions and suspension or  
2 revocation of driver's licenses -- surrender of licenses.

3 (1) Whenever any person is convicted of any offense for  
4 which chapter 5 makes mandatory the suspension or revocation  
5 of the driver's license of the person by the department, the  
6 court in which such conviction is had shall require the  
7 surrender to it of all driver's licenses then held by the  
8 person so convicted. The court shall thereupon, within 5  
9 days, forward the license to the department and at the same  
10 time forward a record of such conviction to the department,  
11 providing that if such person does not possess a driver's  
12 license the court shall so indicate in its report to the  
13 department.

14 (2) Every court having jurisdiction over offenses  
15 committed under any act of this state or municipal ordinance  
16 regulating the operation of motor vehicles on highways shall  
17 forward, within 5 days, to the department a record of the  
18 conviction or forfeiture of bail, not vacated, of any person  
19 in the court for a violation of any such laws, other than  
20 regulations governing standing or parking, and may recommend  
21 the suspension of the driver's license of the person so  
22 convicted. The court may also recommend that the department  
23 issue a restricted probationary license ~~in--lieu-of-the~~  
24 ~~suspension-required-in-61-5-200(2)~~ on the condition that the  
25 individual comply with the requirement that he attend and

1 ~~complete a driver improvement school or~~ an alcohol treatment  
 2 ~~program--if--one-is-available~~ information course as provided  
 3 in 61-8-714 and 61-8-722. The department shall issue a  
 4 restricted probationary license unless the person otherwise  
 5 is not entitled to a Montana driver's license. Upon issuance  
 6 of a probationary license, the licensee is subject to the  
 7 restrictions set forth thereon and may not operate a vehicle  
 8 in violation of those restrictions.

9 (3) Any court or other agency of this state, or a  
 10 subdivision thereof, which has jurisdiction to take any  
 11 action suspending, revoking, or otherwise limiting a license  
 12 to drive shall report any such action and the adjudication  
 13 upon which it is based to the department within 5 days on  
 14 forms furnished by the department."

15 **Section 12.** Section 23-2-523, MCA, is amended to read:

16 "23-2-523. Prohibited operation and mooring --  
 17 enforcement. (1) No person may operate or knowingly permit  
 18 any person to operate any motorboat or vessel or manipulate  
 19 any water skis, surfboard, or similar device or other  
 20 contrivance in a reckless or negligent manner so as to  
 21 endanger the life, limb, or property of any person.

22 (2) No person may operate any motorboat, including a  
 23 sailboat propelled by a motor of any kind, or manipulate any  
 24 water skis, surfboard, or similar device attached to a  
 25 motorboat while under the influence of alcohol, or drugs, or

1 a combination of the two.

2 (3) It is unlawful for the owner of any motorboat or  
 3 vessel or any person having such in charge or in control to  
 4 authorize or knowingly permit the same to be operated by any  
 5 person who by reason of physical or mental disability is  
 6 incapable of operating such watercraft under the prevailing  
 7 circumstances.

8 (4) No person may operate or knowingly permit any  
 9 person to operate any motorboat or vessel at a rate of speed  
 10 greater than will permit such person, in the exercise of  
 11 reasonable care, to bring the vessel to a stop within the  
 12 assured clear distance ahead. However, nothing in this part  
 13 is intended to prevent the operator of a vessel actually  
 14 competing in a regatta which is sanctioned by an appropriate  
 15 governmental unit from attempting to attain high speeds on a  
 16 marked racing course.

17 (5) No person may make a reckless approach to,  
 18 departure from, or passage by a dock, ramp, diving board, or  
 19 float.

20 (6) Skiers being pulled by motorboats must have on  
 21 their person a life preserver, buoyant vest, or ski belt.

22 (7) No person may moor a vessel to any of the buoys or  
 23 beacons placed in any waters of this state by the authority  
 24 of the United States, an agency of the United States, or the  
 25 department or in any manner hang on with a vessel to such

1 buoy or beacon, except in the act of maintenance work on  
2 such buoy or beacon, nor may any person deface, remove, or  
3 destroy any such buoy, beacon, or other authorized  
4 navigational marker maintained in the waters of this state.

5 (8) If an officer whose duty it is to enforce the  
6 sections of this law observes a vessel being used without  
7 sufficient lifesaving or firefighting devices or in an  
8 overloaded or other unsafe condition and in his judgment  
9 such use creates an especially hazardous condition, he may  
10 direct the operator to take whatever immediate and  
11 reasonable steps would be necessary for the safety of those  
12 aboard the vessel, including directing the operator to  
13 return to mooring or launching site and to remain there  
14 until the situation creating the hazard is corrected or  
15 ended."

16 **Section 13.** Section 23-2-535, MCA, is amended to read:

17 "23-2-535. ~~Blood---alcohol~~ Alcohol concentration  
18 standards -- drug detection -- evidence admissible --  
19 administration of tests. (1) The presumptions inferences  
20 contained in 61-8-401(3)(4) apply to any criminal action or  
21 proceeding arising out of acts alleged to have been  
22 committed in violation of 23-2-523(2).

23 (2) Evidence of the any measured amount or detected  
24 presence of alcohol, drugs, or a combination of the two in a  
25 person's--blood person at the time of the act alleged, as

1 shown by analysis of the person's blood, breath, or urine,  
2 and any other competent evidence bearing on the question of  
3 whether the person was under the influence of alcohol,  
4 drugs, or a combination of the two at the time of the act  
5 alleged is admissible in any criminal action or proceeding  
6 arising out of acts alleged to have been committed in  
7 violation of 23-2-523(2).

8 (3) If a person charged with violation of 23-2-523(2)  
9 refuses to submit to a chemical test or tests of his blood,  
10 breath, or urine for the purpose of determining the  
11 alcoholic--content--of--his--blood any measured amount or  
12 detected presence of alcohol, drugs, or a combination of the  
13 two, none will be given, but proof of refusal is admissible  
14 in any criminal action or proceeding arising out of acts  
15 alleged to have been committed in violation of 23-2-523(2).

16 (4) The provisions relating to administration of tests  
17 provided in 61-8-405 and the definition of blood alcohol  
18 concentration provided in 61-8-407 apply to any testing done  
19 to determine-the-blood-alcohol--concentration--of a person  
20 charged with violation of 23-2-523(2).

21 (5) As used in 23-2-523(2), the term "under the  
22 influence" shall have the meaning provided in 61-8-401(3)."

23 **Section 14.** Section 45-5-205, MCA, is amended to read:

24 "45-5-205. **Negligent vehicular assault -- penalty.** (1)  
25 If a person operates a motor vehicle in a negligent manner

1 and he is driving while under the influence of alcohol, or  
 2 drugs a dangerous drug, any other drug, or any combination  
 3 of the three, as provided for in 61-8-401(1), and his  
 4 conduct is the cause of bodily injury to another, he commits  
 5 the offense of negligent vehicular assault.

6 (2) A person convicted of the offense of negligent  
 7 vehicular assault shall be fined an amount not to exceed  
 8 \$1,000 or imprisoned in the county jail for a term not to  
 9 exceed 1 year, or both."

10 **Section 15.** Section 67-1-211, MCA, is amended to read:

11 "67-1-211. ~~Blood alcohol~~ Alcohol ~~concentration~~  
 12 ~~standards -- evidence admissible -- administration of tests.~~

13 (1) If a person acting or attempting to act as a crewmember  
 14 of an aircraft has ~~a blood an~~ an alcohol concentration of 0.04%  
 15 by weight or more as defined in 61-8-407, it may be inferred  
 16 that the person is conclusively-presumed-to-be under the  
 17 influence of alcohol ~~or--drugs~~ and is in violation of  
 18 67-1-204.

19 (2) Evidence of the any measured amount or detected  
 20 presence of alcohol, drugs, or a combination of the two in a  
 21 person's blood the person at the time of the act alleged  
 22 under subsection (1) and any other competent evidence  
 23 bearing on the question of whether the person was under the  
 24 influence of alcohol, drugs, or a combination of the two at  
 25 the time of the act alleged is admissible in any criminal

1 action or proceeding arising out of acts alleged to have  
 2 been committed in violation of 67-1-204.

3 (3) In any criminal action or proceeding arising out of  
 4 acts alleged to have been committed in violation of  
 5 67-1-204, the court or jury may consider federal regulations  
 6 governing aeronautics.

7 (4) A person who operates an aircraft over the lands  
 8 and waters of this state is considered to have given consent  
 9 to a ~~chemical~~ test or tests of his blood, breath, or urine  
 10 for the purpose of determining the any measured amount or  
 11 detected presence of alcohol, or drug-content-of-his-blood  
 12 drugs, or a combination of the two in his body if arrested  
 13 by a peace officer for operating, attempting to operate, or  
 14 being in actual physical control of an aircraft while under  
 15 the influence of alcohol, or drugs, or a combination of the  
 16 two. The test or tests must be administered at the direction  
 17 of a peace officer who has reasonable grounds to believe the  
 18 person was operating, attempting to operate, or in actual  
 19 physical control of an aircraft while under the influence of  
 20 alcohol, or drugs, or a combination of the two. The  
 21 arresting officer may designate which one of the aforesaid  
 22 tests must be administered. A person who is unconscious or  
 23 who is otherwise in a condition rendering him incapable of  
 24 refusal is considered not to have withdrawn the consent  
 25 provided by this subsection.

1       (5) If a person charged with violation of 67-1-204  
2 refuses to submit to a chemical test or tests of his blood,  
3 breath, or urine for the purpose of determining ~~the alcohol~~  
4 content-of any measured amount or detected presence of  
5 alcohol, drugs, or any combination of the two in his blood  
6 body, none will be given, but proof of refusal is admissible  
7 in any criminal action or proceeding arising out of acts  
8 alleged to have been committed in violation of 67-1-204.

9       (6) The provisions relating to administration of tests  
10 provided in 61-8-405 and the definition of alcohol  
11 concentration provided in 61-8-407 apply to any testing done  
12 to determine any measured amount or detected presence of  
13 alcohol, drugs, or a combination of the two in a person and  
14 the blood alcohol concentration of a person charged with  
15 violation of 67-1-204."

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 559

INTRODUCED BY FAGG, VAN VALKENBURG, O'KEEFE

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO OPERATING MOTOR VEHICLES, BOATS, AND AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 23-2-523, 23-2-535, 45-5-205, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-714, 61-8-722, 61-8-805, 61-8-806, 61-11-101, AND 67-1-211, MCA."

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

**Section 1.** Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 and 61-8-723 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a narcotic dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or

be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

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

(4) 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's blood person at the time alleged, as shown by chemical analysis of the person's blood, urine, or breath, or other bodily substance, shall give rise to the following presumptions inferences:

(a) If there was at that time an alcohol concentration of 0.05 or less, it shall may be presumed inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption inference that the person was or was not under the influence of alcohol but such fact may



1 be considered with other competent evidence in determining  
2 the guilt or innocence of the person.

3 (c) If there was at that time an alcohol concentration  
4 of 0.10 or more, it ~~shall~~ may be presumed inferred that the  
5 person was under the influence of alcohol. Such presumption  
6 The inference is rebuttable.

7 (5) The provisions of subsection (4) do not limit the  
8 introduction of any other competent evidence bearing upon  
9 the issue of whether the person was under the influence of  
10 alcohol, drugs, or a combination of the two.

11 (6) Each municipality in this state is given authority  
12 to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and  
13 subsections (1) through (5) of this section, with the word  
14 "state" in 61-8-406 and subsection (1) of this section  
15 changed to read "municipality", as an ordinance and is given  
16 jurisdiction of the enforcement of the ordinance and of the  
17 imposition of the fines and penalties therein provided.

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

20 **Section 2.** Section 61-8-402, MCA, is amended to read:

21 "~~61-8-402. Chemical---blood~~ Blood, breath, or urine  
22 tests. (1) Any person who operates or is in actual physical  
23 control of a vehicle upon ways of this state open to the  
24 public shall be deemed to have given consent, subject to the  
25 provisions of 61-8-401, to a ~~chemical~~ test or-tests of his

1 blood, breath, or urine for the purpose of determining the  
2 ~~alcoholic content of his blood~~ any measured amount or  
3 detected presence of alcohol, drugs, or a combination of the  
4 two in his body if arrested by a peace officer for driving  
5 or for being in actual physical control of a vehicle while  
6 under the influence of alcohol, drugs, or a combination of  
7 the two. The test ~~or-tests~~ shall be administered at the  
8 direction of a peace officer having reasonable grounds to  
9 believe the person to have been driving or in actual  
10 physical control of a vehicle upon ways of this state open  
11 to the public, while under the influence of alcohol, drugs,  
12 or a combination of the two. The arresting officer may  
13 designate which ~~one of the aforesaid test~~ or tests shall be  
14 administered. ~~A person may not be given more than two tests~~  
15 ~~unless the person chooses to have a test as provided in~~  
16 ~~61-8-405(2).~~

17 (2) Any person who is unconscious or who is otherwise  
18 in a condition rendering him incapable of refusal shall be  
19 deemed not to have withdrawn the consent provided by  
20 subsection (1) of this section.

21 (3) If a resident driver under arrest refuses upon the  
22 request of a peace officer to submit to a ~~chemical~~ test or  
23 tests designated by the arresting officer as provided in  
24 subsection (1) ~~of this section,~~ none shall be given, but the  
25 officer shall, on behalf of the department, immediately

1 seize his driver's license. The peace officer shall forward  
 2 the license to the department, along with a sworn report  
 3 that he had reasonable grounds to believe the arrested  
 4 person had been driving or was in actual physical control of  
 5 a vehicle upon ways of this state open to the public, while  
 6 under the influence of alcohol, drugs, or a combination of  
 7 the two, and that the person had refused to submit to the  
 8 test ~~or--tests~~ upon the request of the peace officer. Upon  
 9 receipt of the report, the department shall suspend the  
 10 license for the period provided in subsection (5).

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

15 (5) The following suspension and revocation periods are  
 16 applicable upon refusal to submit to a ~~chemical~~ test ~~or~~  
 17 tests:

18 (a) upon a first refusal, a suspension of 90 days with  
 19 no provision for a restricted probationary license;

20 (b) upon a second or subsequent refusal within 5 years  
 21 of a previous refusal, as determined from the records of the  
 22 department, a revocation of 1 year with no provision for a  
 23 restricted probationary license.

24 (6) ~~Like-refusal-by-a~~ A nonresident driver's license  
 25 seized under this section shall ~~must~~ be ~~subject--to~~

1 ~~suspension sent~~ by the department ~~in-like--manner,--and--the~~  
 2 ~~same---temporary---driving---permit---shall---be---issued---to~~  
 3 ~~nonresidents to the licensing authority of the nonresident's~~  
 4 ~~home state with a report of the nonresident's refusal to~~  
 5 ~~submit to a test.~~

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

8 **Section 3.** Section 61-8-403, MCA, is amended to read:

9 "61-8-403. Right of appeal to court. The department  
 10 shall immediately notify any person whose license or  
 11 privilege to drive has been suspended or revoked, as  
 12 hereinbefore authorized, in writing and such person shall  
 13 have the right to file a petition within 30 days thereafter  
 14 for a hearing in the matter in the district court in the  
 15 county wherein such person resides or in the district court  
 16 in the county in which this arrest was made. Such court is  
 17 hereby vested with jurisdiction and it shall be its duty to  
 18 set the matter for hearing upon 10 days' written notice to  
 19 the county attorney of the county wherein the appeal is  
 20 filed and such county attorney shall represent the state,  
 21 and thereupon the court shall take testimony and examine  
 22 into the facts of the case, except that the issues shall be  
 23 limited to whether a peace officer had reasonable grounds to  
 24 believe the person had been driving or was in actual  
 25 physical control of a vehicle upon ways of this state open

1 to the public, while under the influence of alcohol, drugs,  
 2 or a combination of the two, whether the person was placed  
 3 under arrest, and whether such person refused to submit to  
 4 the test ~~or--tests~~. The court shall thereupon determine  
 5 whether the petitioner is entitled to a license or is  
 6 subject to suspension as heretofore provided."

7 **Section 4.** Section 61-8-404, MCA, is amended to read:

8 **"61-8-404. Evidence admissible -- conditions of**  
 9 **admissibility.** (1) Upon the trial of any criminal action or  
 10 other proceeding arising out of acts alleged to have been  
 11 committed by any person in violation of 61-8-401 or  
 12 61-8-406:

13 (a) evidence of the any measured amount or detected  
 14 presence of amount-of alcohol, drugs, or--a--combination--of  
 15 the--two in the person's blood ~~person~~ at the time of the act  
 16 alleged, as shown by a ~~chemical~~ an analysis of his blood,  
 17 breath, or urine, is admissible; and

18 (b) a report of the facts and results of any ~~chemical~~  
 19 test ~~or--tests~~ of a person's blood, breath, or urine  
 20 administered under 61-8-402 is admissible in evidence if:

21 (i) the breath analysis-report test was ~~prepared--and~~  
 22 verified performed by the a person who performed the test  
 23 certified by the forensic sciences division of the  
 24 department to administer breath tests or the blood or urine  
 25 test was a laboratory analysis and the analysis was done in

1 a laboratory operated by the department ~~of-justice~~ or by any  
 2 other laboratory or facility certified or exempt from  
 3 certification under the rules of the department; and

4 (ii) ~~the--report--was--prepared--in--accordance-with-any~~  
 5 ~~applicable-rules-of-the-department--and~~

6 ~~if~~ if the test was on a blood sample, the person  
 7 withdrawing the blood ~~must-have-been~~ was competent to do so  
 8 under 61-8-405(1).

9 (2) If the person under arrest refused to submit to the  
 10 test ~~or-tests~~ as hereinabove provided in this section, proof  
 11 of refusal ~~shall-be~~ is admissible in any criminal action or  
 12 proceeding arising out of acts alleged to have been  
 13 committed while the person was driving or in actual physical  
 14 control of a vehicle upon the ways of this state open to the  
 15 public, while under the influence of alcohol, drugs, or a  
 16 combination of the two.

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

21 **Section 5.** Section 61-8-405, MCA, is amended to read:

22 **"61-8-405. Administration of tests.** (1) Only a  
 23 physician or registered nurse or other qualified person  
 24 under the supervision and direction of a physician or  
 25 registered nurse acting at the request of a peace officer

1 may withdraw blood for the purpose of determining alcoholic  
 2 content any measured amount or detected presence of alcohol  
 3 drugs, or a combination of the two in the person. This  
 4 limitation does not apply to the taking of breath or urine  
 5 specimens.

6 (2) The person tested under arrest may, at his own  
 7 expense, have a physician or registered nurse of his own  
 8 choosing administer a test, in addition to any administered  
 9 at the direction of a peace officer, for the purpose of  
 10 determining the amount of alcohol in his blood any measured  
 11 amount or detected presence of alcohol, drugs, or a  
 12 combination of the two in the person at the time alleged, as  
 13 shown by chemical analysis of his blood, breath, or urine.  
 14 The failure or inability to obtain an additional test by a  
 15 person does not preclude the admissibility in evidence of  
 16 the test or tests taken at the direction of a peace officer.

17 (3) Upon the request of the person tested, full  
 18 information concerning the test or tests taken at the  
 19 direction of the peace officer must be made available to him  
 20 or his attorney.

21 (4) No physician or registered nurse or other qualified  
 22 person under the supervision and direction of a physician or  
 23 registered nurse shall incur any civil or criminal liability  
 24 as a result of the proper administering of a blood test when  
 25 requested in writing by a peace officer to administer such a

1 test.

2 (5) If the a test given under 61-8-402 or 61-8-806 is a  
 3 chemical test of urine, the person tested must be given such  
 4 privacy in the taking of the urine specimen as will insure  
 5 ensure the accuracy integrity of the specimen and, at the  
 6 same time, maintain the dignity of the individual involved.

7 (6) The department of justice in cooperation with any  
 8 appropriate agency shall adopt uniform rules for the giving  
 9 of blood-alcohol tests and may require certification of  
 10 training to administer the tests as considered necessary."

11 **Section 6.** Section 61-8-406, MCA, is amended to read:

12 "61-8-406. Operation of vehicle by a person with  
 13 alcohol concentration of 0.10 or more. It is unlawful and  
 14 punishable as provided in 61-8-722 and 61-8-723 for any  
 15 person to drive or be in actual physical control of a  
 16 vehicle upon the ways of this state open to the public while  
 17 the person's alcohol concentration in his, as shown by  
 18 analysis of the person's blood, breath, or urine, is 0.10 or  
 19 more. Absolute liability as provided in 45-2-104 will be  
 20 imposed for a violation of this section."

21 **Section 7.** Section 61-8-714, MCA, is amended to read:

22 "61-8-714. Penalty for driving under the influence of  
 23 alcohol or drugs. (1) A person convicted of a violation of  
 24 61-8-401 shall be punished by imprisonment in the county  
 25 jail for not less than 24 consecutive hours or more than 60

1 days and shall be punished by a fine of not less than \$100  
 2 or more than \$500. The jail sentence may not be suspended  
 3 unless the judge finds that the imposition of the jail  
 4 sentence will pose a risk to the defendant's physical or  
 5 mental well-being.

6 (2) On a second conviction, he shall be punished by a  
 7 fine of not less than \$300 or more than \$500 and by  
 8 imprisonment for not less than 7 days, at least 48 hours of  
 9 which must be served consecutively, or more than 6 months.  
 10 Three days of the jail sentence may not be suspended unless  
 11 the judge finds that the imposition of the jail sentence  
 12 will pose a risk to the defendant's physical or mental  
 13 well-being.

14 (3) On the third or subsequent conviction, he shall be  
 15 punished by imprisonment for a term of not less than 30  
 16 days, at least 48 hours of which must be served  
 17 consecutively, or more than 1 year, and by a fine of not  
 18 less than \$500 or more than \$1,000. Notwithstanding any  
 19 provision to the contrary providing for suspension of  
 20 execution of a sentence imposed under this subsection, the  
 21 imposition or execution of the first 10 days of the jail  
 22 sentence imposed for a third or subsequent offense that  
 23 occurred within 5 years of the first offense may not be  
 24 deferred or suspended.

25 (4) In addition to the punishment provided in this

1 section, regardless of disposition, the defendant shall  
 2 complete an alcohol information course at an alcohol  
 3 treatment program approved by the department of  
 4 institutions, which may, in the sentencing court's  
 5 discretion and upon recommendation of a certified chemical  
 6 dependency counselor, include alcohol or drug treatment, or  
 7 both. On conviction of a second or subsequent offense under  
 8 this section, in addition to the punishment provided in this  
 9 section, regardless of disposition, the defendant shall  
 10 complete an alcohol information course at an alcohol  
 11 treatment program approved by the department of  
 12 institutions, which must include alcohol or drug treatment,  
 13 or both. Each counselor providing education or treatment  
 14 shall, at the commencement of the education or treatment,  
 15 notify the court that the defendant has been enrolled in a  
 16 course or treatment program. If the defendant fails to  
 17 attend the course or the treatment program, the counselor  
 18 shall notify the court of the failure. As long as the  
 19 alcohol information course and treatment program are  
 20 approved as provided in this subsection, the defendant may  
 21 attend the information course and treatment program of his  
 22 choice. The treatment provided to the defendant at a  
 23 treatment program must be at a level appropriate to his  
 24 alcohol problem, as determined by the judge based upon the  
 25 recommendation from the certified chemical dependency

1 counselor.

2 (5) For the purpose of determining the number of  
3 convictions under this section, "conviction" means a final  
4 conviction, as defined in 45-2-101, in this state,  
5 conviction for a violation of a similar statute in another  
6 state, or a forfeiture of bail or collateral deposited to  
7 secure the defendant's appearance in court in this state or  
8 another state, which forfeiture has not been vacated. An  
9 offender is considered to have been previously convicted for  
10 the purposes of ~~this-section~~ sentencing if less than 5 years  
11 have elapsed between the commission of the present offense  
12 and a previous conviction. If there has been no additional  
13 conviction for an offense under this section for a period of  
14 5 years after a prior conviction hereunder, then all records  
15 and data relating to the prior conviction are confidential  
16 criminal justice information as defined in 44-5-103 and  
17 public access to the information may only be obtained by  
18 district court order upon good cause shown.

19 (6) For the purpose of calculating subsequent  
20 convictions under this section, a conviction for a violation  
21 of 61-8-406 also constitutes a conviction for a violation of  
22 61-8-401."

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

24 "61-8-722. Penalty for driving with excessive blood  
25 alcohol concentration. (1) A person convicted of a violation

1 of 61-8-406 shall be punished by imprisonment for not more  
2 than 10 days and shall be punished by a fine of not less  
3 than \$100 or more than \$500.

4 (2) On a second conviction of a violation of 61-8-406,  
5 he shall be punished by imprisonment for not less than 48  
6 consecutive hours or more than 30 days and by a fine of not  
7 less than \$300 or more than \$500.

8 (3) On a third or subsequent conviction of a violation  
9 of 61-8-406, he shall be punished by imprisonment for not  
10 less than 48 consecutive hours or more than 6 months and by  
11 a fine of not less than \$500 or more than \$1,000.

12 (4) The provisions of 61-5-205(2), 61-5-208(2), and  
13 61-11-203(2)(d) relating to revocation and suspension of  
14 driver's licenses shall apply to any conviction under  
15 61-8-406.

16 (5) In addition to the punishment provided in this  
17 section, regardless of disposition, the defendant shall  
18 complete an alcohol information course at an alcohol  
19 treatment program approved by the department of  
20 institutions, which may include alcohol or drug treatment,  
21 or both, if considered necessary by the counselor conducting  
22 the program. Each counselor providing such education or  
23 treatment shall, at the commencement of the education or  
24 treatment, notify the court that the defendant has been  
25 enrolled in a course or treatment program. If the defendant

1 fails to attend the course or the treatment program, the  
2 counselor shall notify the court of the failure.

3 (6) For the purpose of determining the number of  
4 convictions under this section, "conviction" means a final  
5 conviction, as defined in 45-2-101, in this state or a  
6 similar statute in another state or a forfeiture of bail or  
7 collateral deposited to secure the defendant's appearance in  
8 court in this state or another state, which forfeiture has  
9 not been vacated. An offender is considered to have been  
10 previously convicted for the purposes of ~~this--section~~  
11 sentencing if less than 5 years have elapsed between the  
12 commission of the present offense and a previous conviction.  
13 If there has been no additional conviction for an offense  
14 under this section for a period of 5 years after a prior  
15 conviction hereunder, then such prior offense shall be  
16 expunged from the defendant's record."

17 **Section 9.** Section 61-8-805, MCA, is amended to read:

18 **"61-8-805. Suspension for operating a commercial**  
19 **vehicle with a blood alcohol concentration of 0.04 or more**  
20 **-- hearing.** (1) A person whose blood alcohol concentration  
21 is 0.04 or more while he drives or is in actual physical  
22 control of a commercial motor vehicle is subject to the  
23 suspension of his commercial vehicle operator's endorsement.  
24 If the department receives a sworn report from a peace  
25 officer that the person was operating a commercial motor

1 vehicle while his blood alcohol concentration was 0.04 or  
2 more, the department shall suspend the driver's commercial  
3 vehicle operator's endorsement:

4 (a) for 1 year, with no provision for a restricted  
5 probationary license or endorsement, upon receipt of the  
6 first report, except that if the offense occurred in a  
7 commercial motor vehicle transporting hazardous materials,  
8 the suspension must be for 3 years; and

9 (b) for 10 years, with no provision for a restricted  
10 probationary license or endorsement, upon receipt of a  
11 second or subsequent report at any time as determined from  
12 the records of the department.

13 (2) A peace officer who determines that a commercial  
14 motor vehicle operator's blood alcohol concentration is 0.04  
15 or more shall place the commercial motor vehicle operator  
16 out of service as mandated by federal regulations for 24  
17 hours.

18 (3) The fact that any person charged with a violation  
19 of the provisions of subsection (1) is entitled to use  
20 alcohol under the laws of Montana is not a defense against  
21 any charge of violating the provisions of subsection (1).

22 (4) The department shall immediately notify in writing  
23 any person whose commercial vehicle operator's endorsement  
24 is suspended under this section. The person suspended has  
25 the right to file a petition within 30 days after the notice

1 is given for a hearing in the matter in the district court  
 2 in the county in which the finding of ~~blood~~ alcohol  
 3 concentration was made. The court has jurisdiction and shall  
 4 set the matter for hearing upon 10 days' written notice to  
 5 the county attorney of the county in which the appeal is  
 6 filed. The county attorney shall represent the state. The  
 7 court shall take testimony and examine the facts of the  
 8 case, except that the issue is limited to whether the person  
 9 was driving or had actual physical control of a commercial  
 10 motor vehicle while his ~~blood~~ alcohol concentration was 0.04  
 11 or more. The court shall determine whether the petitioner is  
 12 entitled to a commercial vehicle operator's endorsement or  
 13 is subject to suspension as provided in this section. The  
 14 provisions of 61-8-404 apply to any proceedings under this  
 15 section."

16 **Section 10.** Section 61-8-806, MCA, is amended to read:

17 "~~61-8-806. Chemical-blood~~ Blood, breath, or urine tests  
 18 of commercial vehicle operators -- procedure -- suspension.

19 (1) A person who operates a commercial motor vehicle upon  
 20 the ways of this state open to the public is considered to  
 21 have given consent, subject to the provisions of 61-8-401  
 22 and 61-8-805, to a ~~chemical~~ test of his blood, breath, or  
 23 urine for the purpose of determining ~~the alcohol-content-of~~  
 24 his blood any measured amount of alcohol in his body if he  
 25 is requested to submit to the test by a peace officer having

1 reasonable grounds to believe the person to have been  
 2 driving or in actual physical control of a commercial motor  
 3 vehicle upon the ways of this state open to the public while  
 4 his ~~blood~~ alcohol concentration was 0.04 or more. The peace  
 5 officer may designate a blood, breath, or urine test to be  
 6 administered.

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

10 (3) If a commercial motor vehicle operator who is a  
 11 resident of Montana refuses upon the request of a peace  
 12 officer to submit to a ~~chemical~~ test designated by the  
 13 officer as provided in subsection (1), the test may not be  
 14 given. On behalf of the department, the officer shall  
 15 immediately seize the person's driver's license showing the  
 16 commercial vehicle operator's endorsement and forward the  
 17 license to the department, along with a sworn report that he  
 18 had reasonable grounds to believe the person had been  
 19 driving or was in actual physical control of a commercial  
 20 motor vehicle upon ways of this state open to the public  
 21 while having a ~~blood~~ an alcohol concentration of 0.04 or  
 22 more and that the person had refused to submit to the test  
 23 upon the request of the officer. Upon receipt of the report,  
 24 the department shall suspend the license for a period  
 25 provided in subsection (5).

1 (4) Upon seizure of a resident's driver's license  
2 showing a commercial vehicle operator's endorsement, the  
3 peace officer shall issue, on behalf of the department, a  
4 temporary driving permit without the commercial vehicle  
5 operator's endorsement. The temporary driving permit is  
6 valid for 72 hours after issuance.

7 (5) If a commercial motor vehicle operator refuses to  
8 submit to a ~~chemical~~ test as provided in subsection (3), the  
9 department shall suspend his commercial vehicle operator's  
10 endorsement:

11 (a) upon first refusal, for 1 year, with no provision  
12 for a restricted probationary license or endorsement, except  
13 that if the offense occurred in a commercial motor vehicle  
14 transporting hazardous materials, the suspension for a first  
15 refusal must be for 3 years;

16 (b) upon a second or subsequent refusal at any time as  
17 determined from the records of the department, for 10 years,  
18 with no provision for a restricted probationary license or  
19 endorsement.

20 (6) A nonresident commercial motor vehicle operator who  
21 refuses to submit to a ~~chemical~~ test as provided in  
22 subsection (3) is subject to suspension by the department as  
23 provided in subsection (5) and may receive must be given a  
24 temporary driving permit as provided in subsection (4)."

25 **Section 11.** Section 61-11-101, MCA, is amended to read:

1 **"61-11-101. Report of convictions and suspension or**  
2 **revocation of driver's licenses -- surrender of licenses.**

3 (1) Whenever any person is convicted of any offense for  
4 which chapter 5 makes mandatory the suspension or revocation  
5 of the driver's license of the person by the department, the  
6 court in which such conviction is had shall require the  
7 surrender to it of all driver's licenses then held by the  
8 person so convicted. The court shall thereupon, within 5  
9 days, forward the license to the department and at the same  
10 time forward a record of such conviction to the department,  
11 providing that if such person does not possess a driver's  
12 license the court shall so indicate in its report to the  
13 department.

14 (2) Every court having jurisdiction over offenses  
15 committed under any act of this state or municipal ordinance  
16 regulating the operation of motor vehicles on highways shall  
17 forward, within 5 days, to the department a record of the  
18 conviction or forfeiture of bail, not vacated, of any person  
19 in the court for a violation of any such laws, other than  
20 regulations governing standing or parking, and may recommend  
21 the suspension of the driver's license of the person so  
22 convicted. The court may also recommend that the department  
23 issue a restricted probationary license ~~in--lieu-of-the~~  
24 ~~suspension-required-in-61-5-208(2)~~ on the condition that the  
25 individual comply with the requirement that he attend and

1 ~~complete a driver improvement school or~~ an alcohol treatment  
 2 ~~program--if--one-is-available~~ information course as provided  
 3 in 61-8-714 and 61-8-722. The department shall issue a  
 4 restricted probationary license unless the person otherwise  
 5 is not entitled to a Montana driver's license. Upon issuance  
 6 of a probationary license, the licensee is subject to the  
 7 restrictions set forth thereon and may not operate a vehicle  
 8 in violation of those restrictions.

9 (3) Any court or other agency of this state, or a  
 10 subdivision thereof, which has jurisdiction to take any  
 11 action suspending, revoking, or otherwise limiting a license  
 12 to drive shall report any such action and the adjudication  
 13 upon which it is based to the department within 5 days on  
 14 forms furnished by the department."

15 **Section 12.** Section 23-2-523, MCA, is amended to read:

16 **"23-2-523. Prohibited operation and mooring --**  
 17 **enforcement.** (1) No person may operate or knowingly permit  
 18 any person to operate any motorboat or vessel or manipulate  
 19 any water skis, surfboard, or similar device or other  
 20 contrivance in a reckless or negligent manner so as to  
 21 endanger the life, limb, or property of any person.

22 (2) No person may operate any motorboat, including a  
 23 sailboat propelled by a motor of any kind, or manipulate any  
 24 water skis, surfboard, or similar device attached to a  
 25 motorboat while under the influence of alcohol, or drugs, or

1 a combination of the two.

2 (3) It is unlawful for the owner of any motorboat or  
 3 vessel or any person having such in charge or in control to  
 4 authorize or knowingly permit the same to be operated by any  
 5 person who by reason of physical or mental disability is  
 6 incapable of operating such watercraft under the prevailing  
 7 circumstances.

8 (4) No person may operate or knowingly permit any  
 9 person to operate any motorboat or vessel at a rate of speed  
 10 greater than will permit such person, in the exercise of  
 11 reasonable care, to bring the vessel to a stop within the  
 12 assured clear distance ahead. However, nothing in this part  
 13 is intended to prevent the operator of a vessel actually  
 14 competing in a regatta which is sanctioned by an appropriate  
 15 governmental unit from attempting to attain high speeds on a  
 16 marked racing course.

17 (5) No person may make a reckless approach to,  
 18 departure from, or passage by a dock, ramp, diving board, or  
 19 float.

20 (6) Skiers being pulled by motorboats must have on  
 21 their person a life preserver, buoyant vest, or ski belt.

22 (7) No person may moor a vessel to any of the buoys or  
 23 beacons placed in any waters of this state by the authority  
 24 of the United States, an agency of the United States, or the  
 25 department or in any manner hang on with a vessel to such

1 buoy or beacon, except in the act of maintenance work on  
2 such buoy or beacon, nor may any person deface, remove, or  
3 destroy any such buoy, beacon, or other authorized  
4 navigational marker maintained in the waters of this state.

5 (8) If an officer whose duty it is to enforce the  
6 sections of this law observes a vessel being used without  
7 sufficient lifesaving or firefighting devices or in an  
8 overloaded or other unsafe condition and in his judgment  
9 such use creates an especially hazardous condition, he may  
10 direct the operator to take whatever immediate and  
11 reasonable steps would be necessary for the safety of those  
12 aboard the vessel, including directing the operator to  
13 return to mooring or launching site and to remain there  
14 until the situation creating the hazard is corrected or  
15 ended."

16 **Section 13.** Section 23-2-535, MCA, is amended to read:

17 "23-2-535. ~~Blood---alcohol~~ Alcohol concentration  
18 standards -- drug detection -- evidence admissible --  
19 administration of tests. (1) The presumptions inferences  
20 contained in 61-8-401~~(3)~~(4) apply to any criminal action or  
21 proceeding arising out of acts alleged to have been  
22 committed in violation of 23-2-523(2).

23 (2) Evidence of the any measured amount or detected  
24 presence of alcohol, drugs, or a combination of the two in a  
25 person's blood person at the time of the act alleged, as

1 shown by analysis of the person's blood, breath, or urine,  
2 and any other competent evidence bearing on the question of  
3 whether the person was under the influence of alcohol,  
4 drugs, or a combination of the two at the time of the act  
5 alleged is admissible in any criminal action or proceeding  
6 arising out of acts alleged to have been committed in  
7 violation of 23-2-523(2).

8 (3) If a person charged with violation of 23-2-523(2)  
9 refuses to submit to a ~~chemical~~ test or tests of his blood,  
10 breath, or urine for the purpose of determining the  
11 alcoholic--content--of--his--blood any measured amount or  
12 detected presence of alcohol, drugs, or a combination of the  
13 two, none will be given, but proof of refusal is admissible  
14 in any criminal action or proceeding arising out of acts  
15 alleged to have been committed in violation of 23-2-523(2).

16 (4) The provisions relating to administration of tests  
17 provided in 61-8-405 and the definition of ~~blood~~ alcohol  
18 concentration provided in 61-8-407 apply to any testing done  
19 to ~~determine the blood alcohol concentration~~ of a person  
20 charged with violation of 23-2-523(2).

21 (5) As used in 23-2-523(2), the term "under the  
22 influence" shall have the meaning provided in 61-8-401(3)."

23 **Section 14.** Section 45-5-205, MCA, is amended to read:

24 "45-5-205. Negligent vehicular assault -- penalty. (1)  
25 If a person operates a motor vehicle in a negligent manner

1 and he is driving while under the influence of alcohol, or  
 2 drugs a dangerous drug, any other drug, or any combination  
 3 of the three, as provided for in 61-8-401(1), and his  
 4 conduct is the cause of bodily injury to another, he commits  
 5 the offense of negligent vehicular assault.

6 (2) A person convicted of the offense of negligent  
 7 vehicular assault shall be fined an amount not to exceed  
 8 \$1,000 or imprisoned in the county jail for a term not to  
 9 exceed 1 year, or both."

10 **Section 15.** Section 67-1-211, MCA, is amended to read:

11 "~~67-1-211. Blood alcohol~~ Alcohol concentration  
 12 ~~standards -- evidence admissible -- administration of tests.~~

13 (1) If a person acting or attempting to act as a crewmember  
 14 of an aircraft has ~~a blood an~~ an alcohol concentration of 0.04%  
 15 by weight or more as defined in 61-8-407, it may be inferred  
 16 that the person is conclusively-presumed-to-be under the  
 17 influence of alcohol ~~or--drugs~~ and is in violation of  
 18 67-1-204.

19 (2) Evidence of the any measured amount or detected  
 20 presence of alcohol, ~~drugs, or a combination of the two~~ in a  
 21 person's blood the person at the time of the act alleged  
 22 under subsection (1) and any other competent evidence  
 23 bearing on the question of whether the person was under the  
 24 influence of alcohol, drugs, or a combination of the two at  
 25 the time of the act alleged is admissible in any criminal

1 action or proceeding arising out of acts alleged to have  
 2 been committed in violation of 67-1-204.

3 (3) In any criminal action or proceeding arising out of  
 4 acts alleged to have been committed in violation of  
 5 67-1-204, the court or jury may consider federal regulations  
 6 governing aeronautics.

7 (4) A person who operates an aircraft over the lands  
 8 and waters of this state is considered to have given consent  
 9 to a ~~chemical test or-tests~~ test or tests of his blood, breath, or urine  
 10 for the purpose of determining the any measured amount or  
 11 detected presence of alcohol, or drug-content-of-his-blood  
 12 ~~drugs, or a combination of the two~~ in his body if arrested  
 13 by a peace officer for operating, attempting to operate, or  
 14 being in actual physical control of an aircraft while under  
 15 the influence of alcohol, or drugs, or a combination of the  
 16 two. The test ~~or-tests~~ test or tests must be administered at the direction  
 17 of a peace officer who has reasonable grounds to believe the  
 18 person was operating, attempting to operate, or in actual  
 19 physical control of an aircraft while under the influence of  
 20 alcohol, or drugs, or a combination of the two. The  
 21 arresting officer may designate which one of the aforesaid  
 22 tests must be administered. A person who is unconscious or  
 23 who is otherwise in a condition rendering him incapable of  
 24 refusal is considered not to have withdrawn the consent  
 25 provided by this subsection.

1       (5) If a person charged with violation of 67-1-204  
2 refuses to submit to a ~~chemical~~ test or-tests of his blood,  
3 breath, or urine for the purpose of determining ~~the-alcohol~~  
4 content-of any measured amount or detected presence of  
5 alcohol,--drugs,--or-any-combination-of-the-two in his blood  
6 body, none will be given, but proof of refusal is admissible  
7 in any criminal action or proceeding arising out of acts  
8 alleged to have been committed in violation of 67-1-204.

9       (6) The provisions relating to administration of tests  
10 provided in 61-8-405 and the definition of alcohol  
11 concentration provided in 61-8-407 apply to any testing done  
12 to determine any measured amount or detected presence of  
13 alcohol,--drugs,--or-a-combination-of-the-two in a person and  
14 the ~~blood~~ alcohol concentration of a person charged with  
15 violation of 67-1-204."

-End-

## HOUSE BILL NO. 559

INTRODUCED BY FAGG, VAN VALKENBURG, O'KEEFE

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO OPERATING MOTOR VEHICLES, BOATS, AND AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 23-2-523, 23-2-535, 45-5-205, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-714, 61-8-722, 61-8-805, 61-8-806, 61-11-101, AND 67-1-211, MCA."

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

**Section 1.** Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 and 61-8-723 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a narcotic dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or

be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

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

(4) 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's blood~~ person at the time alleged, as shown by ~~chemical~~ analysis of the person's blood, urine, or breath, ~~or other bodily substance~~, shall give rise to the following ~~presumptions~~ inferences:

(a) If there was at that time an alcohol concentration of 0.05 or less, it ~~shall~~ may be ~~presumed~~ inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any ~~presumption~~ inference that the person was or was not under the influence of alcohol but such fact may

1 be considered with other competent evidence in determining  
 2 the guilt or innocence of the person.

3 (c) If there was at that time an alcohol concentration  
 4 of 0.10 or more, it ~~shall~~ may be presumed inferred that the  
 5 person was under the influence of alcohol. ~~Such presumption~~  
 6 The inference is rebuttable.

7 (5) The provisions of subsection (4) do not limit the  
 8 introduction of any other competent evidence bearing upon  
 9 the issue of whether the person was under the influence of  
 10 alcohol, drugs, or a combination of the two.

11 (6) Each municipality in this state is given authority  
 12 to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and  
 13 subsections (1) through (5) of this section, with the word  
 14 "state" in 61-8-406 and subsection (1) of this section  
 15 changed to read "municipality", as an ordinance and is given  
 16 jurisdiction of the enforcement of the ordinance and of the  
 17 imposition of the fines and penalties therein provided.

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

20 **Section 2.** Section 61-8-402, MCA, is amended to read:

21 "~~61-8-402. Chemical---blood~~ Blood, breath, or urine  
 22 tests. (1) Any person who operates or is in actual physical  
 23 control of a vehicle upon ways of this state open to the  
 24 public shall be deemed to have given consent, subject to the  
 25 provisions of 61-8-401, to a ~~chemical~~ test or-tests of his

1 blood, breath, or urine for the purpose of determining ~~the~~  
 2 ~~alcoholic-content--of--his--blood~~ any measured amount or  
 3 detected presence of alcohol, drugs, or a combination of the  
 4 two in his body if arrested by a peace officer for driving  
 5 or for being in actual physical control of a vehicle while  
 6 under the influence of alcohol, drugs, or a combination of  
 7 the two. The test ~~or-tests~~ shall be administered at the  
 8 direction of a peace officer having reasonable grounds to  
 9 believe the person to have been driving or in actual  
 10 physical control of a vehicle upon ways of this state open  
 11 to the public, while under the influence of alcohol, drugs,  
 12 or a combination of the two. The arresting officer may  
 13 designate which ~~one-of-the-aforsaid~~ test or tests shall be  
 14 administered. ~~A-person-may-not-be-given-more-than-two-tests~~  
 15 ~~unless-the-person-chooses-to-have--a--test--as--provided--in~~  
 16 ~~61-8-405(2):~~

17 (2) Any person who is unconscious or who is otherwise  
 18 in a condition rendering him incapable of refusal shall be  
 19 deemed not to have withdrawn the consent provided by  
 20 subsection (1) of this section.

21 (3) If a resident driver under arrest refuses upon the  
 22 request of a peace officer to submit to a ~~chemical~~ test or  
 23 tests designated by the arresting officer as provided in  
 24 subsection (1) ~~of this section,~~ none shall be given, but the  
 25 officer shall, on behalf of the department, immediately

1 seize his driver's license. The peace officer shall forward  
 2 the license to the department, along with a sworn report  
 3 that he had reasonable grounds to believe the arrested  
 4 person had been driving or was in actual physical control of  
 5 a vehicle upon ways of this state open to the public, while  
 6 under the influence of alcohol, drugs, or a combination of  
 7 the two, and that the person had refused to submit to the  
 8 test ~~or--tests~~ upon the request of the peace officer. Upon  
 9 receipt of the report, the department shall suspend the  
 10 license for the period provided in subsection (5).

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

15 (5) The following suspension and revocation periods are  
 16 applicable upon refusal to submit to a ~~chemical~~ test or  
 17 tests:

18 (a) upon a first refusal, a suspension of 90 days with  
 19 no provision for a restricted probationary license;

20 (b) upon a second or subsequent refusal within 5 years  
 21 of a previous refusal, as determined from the records of the  
 22 department, a revocation of 1 year with no provision for a  
 23 restricted probationary license.

24 (6) ~~like-refusal-by-a~~ A nonresident driver's license  
 25 seized under this section shall must be subject--to

1 ~~suspension sent~~ by the department ~~in-like-manner,--and--the~~  
 2 ~~same---temporary---driving---permit---shall---be---issued---to~~  
 3 ~~nonresidents to the licensing authority of the nonresident's~~  
 4 ~~home state with a report of the nonresident's refusal to~~  
 5 ~~submit to a test.~~

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

8 **Section 3.** Section 61-8-403, MCA, is amended to read:

9 "61-8-403. Right of appeal to court. The department  
 10 shall immediately notify any person whose license or  
 11 privilege to drive has been suspended or revoked, as  
 12 hereinbefore authorized, in writing and such person shall  
 13 have the right to file a petition within 30 days thereafter  
 14 for a hearing in the matter in the district court in the  
 15 county wherein such person resides or in the district court  
 16 in the county in which this arrest was made. Such court is  
 17 hereby vested with jurisdiction and it shall be its duty to  
 18 set the matter for hearing upon 10 days' written notice to  
 19 the county attorney of the county wherein the appeal is  
 20 filed and such county attorney shall represent the state,  
 21 and thereupon the court shall take testimony and examine  
 22 into the facts of the case, except that the issues shall be  
 23 limited to whether a peace officer had reasonable grounds to  
 24 believe the person had been driving or was in actual  
 25 physical control of a vehicle upon ways of this state open

1 to the public, while under the influence of alcohol, drugs,  
 2 or a combination of the two, whether the person was placed  
 3 under arrest, and whether such person refused to submit to  
 4 the test ~~or--tests~~. The court shall thereupon determine  
 5 whether the petitioner is entitled to a license or is  
 6 subject to suspension as heretofore provided."

7 **Section 4.** Section 61-8-404, MCA, is amended to read:

8 **"61-8-404. Evidence admissible -- conditions of**  
 9 **admissibility.** (1) Upon the trial of any criminal action or  
 10 other proceeding arising out of acts alleged to have been  
 11 committed by any person in violation of 61-8-401 or  
 12 61-8-406:

13 (a) evidence of the any measured amount or detected  
 14 presence of amount-of alcohol, drugs, or--a--combination--of  
 15 the--two in the ~~person's blood~~ person at the time of the act  
 16 alleged, as shown by a chemical an analysis of his blood,  
 17 breath, or urine, is admissible; and

18 (b) a report of the facts and results of any chemical  
 19 test ~~or--tests~~ of a person's blood, breath, or urine  
 20 administered under 61-8-402 is admissible in evidence if:

21 (i) the breath ~~analysis-report~~ test was ~~prepared--and~~  
 22 verified performed by the a person who performed the test  
 23 certified by the forensic sciences division of the  
 24 department to administer breath tests or the blood or urine  
 25 test was a laboratory analysis and the analysis was done in

1 a laboratory operated by the department ~~of-justice~~ or by any  
 2 other laboratory or facility certified or exempt from  
 3 certification under the rules of the department; and

4 (ii) ~~the--report--was--prepared--in--accordance-with-any~~  
 5 ~~applicable-rules-of-the-department;--and~~

6 ~~(iii)~~ if the test was on a blood sample, the person  
 7 withdrawing the blood ~~must-have-been~~ was competent to do so  
 8 under 61-8-405(1).

9 (2) If the person under arrest refused to submit to the  
 10 test ~~or-tests~~ as heretofore provided in this section, proof  
 11 of refusal ~~shall-be~~ is admissible in any criminal action or  
 12 proceeding arising out of acts alleged to have been  
 13 committed while the person was driving or in actual physical  
 14 control of a vehicle upon the ways of this state open to the  
 15 public, while under the influence of alcohol, drugs, or a  
 16 combination of the two.

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

21 **Section 5.** Section 61-8-405, MCA, is amended to read:

22 **"61-8-405. Administration of tests.** (1) Only a  
 23 physician or registered nurse or other qualified person  
 24 under the supervision and direction of a physician or  
 25 registered nurse acting at the request of a peace officer

1 may withdraw blood for the purpose of determining alcoholic  
 2 content any measured amount or detected presence of alcohol,  
 3 drugs, or a combination of the two in the person. This  
 4 limitation does not apply to the taking of breath or urine  
 5 specimens.

6 (2) The person tested under arrest may, at his own  
 7 expense, have a physician or registered nurse of his own  
 8 choosing administer a test, in addition to any administered  
 9 at the direction of a peace officer, for the purpose of  
 10 determining the amount of alcohol in his blood any measured  
 11 amount or detected presence of alcohol, drugs, or a  
 12 combination of the two in the person at the time alleged, as  
 13 shown by chemical analysis of his blood, breath, or urine.  
 14 The failure or inability to obtain an additional test by a  
 15 person does not preclude the admissibility in evidence of  
 16 the test or tests taken at the direction of a peace officer.

17 (3) Upon the request of the person tested, full  
 18 information concerning the test or tests taken at the  
 19 direction of the peace officer must be made available to him  
 20 or his attorney.

21 (4) No physician or registered nurse or other qualified  
 22 person under the supervision and direction of a physician or  
 23 registered nurse shall incur any civil or criminal liability  
 24 as a result of the proper administering of a blood test when  
 25 requested in writing by a peace officer to administer such a

1 test.

2 (5) If the a test given under 61-8-402 or 61-8-806 is a  
 3 chemical test of urine, the person tested must be given such  
 4 privacy in the taking of the urine specimen as will insure  
 5 ensure the accuracy integrity of the specimen and, at the  
 6 same time, maintain the dignity of the individual involved.

7 (6) The department of justice in cooperation with any  
 8 appropriate agency shall adopt uniform rules for the giving  
 9 of blood-alcohol tests and may require certification of  
 10 training to administer the tests as considered necessary."

11 **Section 6.** Section 61-8-406, MCA, is amended to read:

12 "61-8-406. Operation of vehicle by a person with  
 13 alcohol concentration of 0.10 or more. It is unlawful and  
 14 punishable as provided in 61-8-722 and 61-8-723 for any  
 15 person to drive or be in actual physical control of a  
 16 vehicle upon the ways of this state open to the public while  
 17 the person's alcohol concentration in his, as shown by  
 18 analysis of the person's blood, breath, or urine, is 0.10 or  
 19 more. Absolute liability as provided in 45-2-104 will be  
 20 imposed for a violation of this section."

21 **Section 7.** Section 61-8-714, MCA, is amended to read:

22 "61-8-714. Penalty for driving under the influence of  
 23 alcohol or drugs. (1) A person convicted of a violation of  
 24 61-8-401 shall be punished by imprisonment in the county  
 25 jail for not less than 24 consecutive hours or more than 60

1 days and shall be punished by a fine of not less than \$100  
 2 or more than \$500. The jail sentence may not be suspended  
 3 unless the judge finds that the imposition of the jail  
 4 sentence will pose a risk to the defendant's physical or  
 5 mental well-being.

6 (2) On a second conviction, he shall be punished by a  
 7 fine of not less than \$300 or more than \$500 and by  
 8 imprisonment for not less than 7 days, at least 48 hours of  
 9 which must be served consecutively, or more than 6 months.  
 10 Three days of the jail sentence may not be suspended unless  
 11 the judge finds that the imposition of the jail sentence  
 12 will pose a risk to the defendant's physical or mental  
 13 well-being.

14 (3) On the third or subsequent conviction, he shall be  
 15 punished by imprisonment for a term of not less than 30  
 16 days, at least 48 hours of which must be served  
 17 consecutively, or more than 1 year, and by a fine of not  
 18 less than \$500 or more than \$1,000. Notwithstanding any  
 19 provision to the contrary providing for suspension of  
 20 execution of a sentence imposed under this subsection, the  
 21 imposition or execution of the first 10 days of the jail  
 22 sentence imposed for a third or subsequent offense that  
 23 occurred within 5 years of the first offense may not be  
 24 deferred or suspended.

25 (4) In addition to the punishment provided in this

1 section, regardless of disposition, the defendant shall  
 2 complete an alcohol information course at an alcohol  
 3 treatment program approved by the department of  
 4 institutions, which may, in the sentencing court's  
 5 discretion and upon recommendation of a certified chemical  
 6 dependency counselor, include alcohol or drug treatment, or  
 7 both. On conviction of a second or subsequent offense under  
 8 this section, in addition to the punishment provided in this  
 9 section, regardless of disposition, the defendant shall  
 10 complete an alcohol information course at an alcohol  
 11 treatment program approved by the department of  
 12 institutions, which must include alcohol or drug treatment,  
 13 or both. Each counselor providing education or treatment  
 14 shall, at the commencement of the education or treatment,  
 15 notify the court that the defendant has been enrolled in a  
 16 course or treatment program. If the defendant fails to  
 17 attend the course or the treatment program, the counselor  
 18 shall notify the court of the failure. As long as the  
 19 alcohol information course and treatment program are  
 20 approved as provided in this subsection, the defendant may  
 21 attend the information course and treatment program of his  
 22 choice. The treatment provided to the defendant at a  
 23 treatment program must be at a level appropriate to his  
 24 alcohol problem, as determined by the judge based upon the  
 25 recommendation from the certified chemical dependency

1 counselor.

2 (5) For the purpose of determining the number of  
3 convictions under this section, "conviction" means a final  
4 conviction, as defined in 45-2-101, in this state,  
5 conviction for a violation of a similar statute in another  
6 state, or a forfeiture of bail or collateral deposited to  
7 secure the defendant's appearance in court in this state or  
8 another state, which forfeiture has not been vacated. An  
9 offender is considered to have been previously convicted for  
10 the purposes of ~~this section~~ sentencing if less than 5 years  
11 have elapsed between the commission of the present offense  
12 and a previous conviction. If there has been no additional  
13 conviction for an offense under this section for a period of  
14 5 years after a prior conviction hereunder, then all records  
15 and data relating to the prior conviction are confidential  
16 criminal justice information as defined in 44-5-103 and  
17 public access to the information may only be obtained by  
18 district court order upon good cause shown.

19 (6) For the purpose of calculating subsequent  
20 convictions under this section, a conviction for a violation  
21 of 61-8-406 also constitutes a conviction for a violation of  
22 61-8-401."

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

24 "61-8-722. Penalty for driving with excessive blood  
25 alcohol concentration. (1) A person convicted of a violation

1 of 61-8-406 shall be punished by imprisonment for not more  
2 than 10 days and shall be punished by a fine of not less  
3 than \$100 or more than \$500.

4 (2) On a second conviction of a violation of 61-8-406,  
5 he shall be punished by imprisonment for not less than 48  
6 consecutive hours or more than 30 days and by a fine of not  
7 less than \$300 or more than \$500.

8 (3) On a third or subsequent conviction of a violation  
9 of 61-8-406, he shall be punished by imprisonment for not  
10 less than 48 consecutive hours or more than 6 months and by  
11 a fine of not less than \$500 or more than \$1,000.

12 (4) The provisions of 61-5-205(2), 61-5-208(2), and  
13 61-11-203(2)(d) relating to revocation and suspension of  
14 driver's licenses shall apply to any conviction under  
15 61-8-406.

16 (5) In addition to the punishment provided in this  
17 section, regardless of disposition, the defendant shall  
18 complete an alcohol information course at an alcohol  
19 treatment program approved by the department of  
20 institutions, which may include alcohol or drug treatment,  
21 or both, if considered necessary by the counselor conducting  
22 the program. Each counselor providing such education or  
23 treatment shall, at the commencement of the education or  
24 treatment, notify the court that the defendant has been  
25 enrolled in a course or treatment program. If the defendant

1 fails to attend the course or the treatment program, the  
2 counselor shall notify the court of the failure.

3 (6) For the purpose of determining the number of  
4 convictions under this section, "conviction" means a final  
5 conviction, as defined in 45-2-101, in this state or a  
6 similar statute in another state or a forfeiture of bail or  
7 collateral deposited to secure the defendant's appearance in  
8 court in this state or another state, which forfeiture has  
9 not been vacated. An offender is considered to have been  
10 previously convicted for the purposes of ~~this section~~  
11 sentencing if less than 5 years have elapsed between the  
12 commission of the present offense and a previous conviction.  
13 If there has been no additional conviction for an offense  
14 under this section for a period of 5 years after a prior  
15 conviction hereunder, then such prior offense shall be  
16 expunged from the defendant's record."

17 **Section 9.** Section 61-8-805, MCA, is amended to read:

18 "61-8-805. Suspension for operating a commercial  
19 vehicle with a blood alcohol concentration of 0.04 or more  
20 -- hearing. (1) A person whose blood alcohol concentration  
21 is 0.04 or more while he drives or is in actual physical  
22 control of a commercial motor vehicle is subject to the  
23 suspension of his commercial vehicle operator's endorsement.  
24 If the department receives a sworn report from a peace  
25 officer that the person was operating a commercial motor

1 vehicle while his blood alcohol concentration was 0.04 or  
2 more, the department shall suspend the driver's commercial  
3 vehicle operator's endorsement:

4 (a) for 1 year, with no provision for a restricted  
5 probationary license or endorsement, upon receipt of the  
6 first report, except that if the offense occurred in a  
7 commercial motor vehicle transporting hazardous materials,  
8 the suspension must be for 3 years; and

9 (b) for 10 years, with no provision for a restricted  
10 probationary license or endorsement, upon receipt of a  
11 second or subsequent report at any time as determined from  
12 the records of the department.

13 (2) A peace officer who determines that a commercial  
14 motor vehicle operator's blood alcohol concentration is 0.04  
15 or more shall place the commercial motor vehicle operator  
16 out of service as mandated by federal regulations for 24  
17 hours.

18 (3) The fact that any person charged with a violation  
19 of the provisions of subsection (1) is entitled to use  
20 alcohol under the laws of Montana is not a defense against  
21 any charge of violating the provisions of subsection (1).

22 (4) The department shall immediately notify in writing  
23 any person whose commercial vehicle operator's endorsement  
24 is suspended under this section. The person suspended has  
25 the right to file a petition within 30 days after the notice

1 is given for a hearing in the matter in the district court  
 2 in the county in which the finding of ~~blood~~ alcohol  
 3 concentration was made. The court has jurisdiction and shall  
 4 set the matter for hearing upon 10 days' written notice to  
 5 the county attorney of the county in which the appeal is  
 6 filed. The county attorney shall represent the state. The  
 7 court shall take testimony and examine the facts of the  
 8 case, except that the issue is limited to whether the person  
 9 was driving or had actual physical control of a commercial  
 10 motor vehicle while his ~~blood~~ alcohol concentration was 0.04  
 11 or more. The court shall determine whether the petitioner is  
 12 entitled to a commercial vehicle operator's endorsement or  
 13 is subject to suspension as provided in this section. The  
 14 provisions of 61-8-404 apply to any proceedings under this  
 15 section."

16 **Section 10.** Section 61-8-806, MCA, is amended to read:

17 **"61-8-806. ~~Chemical-blood~~ Blood, breath, or urine tests**  
 18 **of commercial vehicle operators -- procedure -- suspension.**  
 19 (1) A person who operates a commercial motor vehicle upon  
 20 the ways of this state open to the public is considered to  
 21 have given consent, subject to the provisions of 61-8-401  
 22 and 61-8-805, to a ~~chemical~~ test of his blood, breath, or  
 23 urine for the purpose of determining the ~~alcohol-content-of~~  
 24 ~~his-blood~~ any measured amount of alcohol in his body if he  
 25 is requested to submit to the test by a peace officer having

1 reasonable grounds to believe the person to have been  
 2 driving or in actual physical control of a commercial motor  
 3 vehicle upon the ways of this state open to the public while  
 4 his ~~blood~~ alcohol concentration was 0.04 or more. The peace  
 5 officer may designate a blood, breath, or urine test to be  
 6 administered.

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

10 (3) If a commercial motor vehicle operator who is a  
 11 resident of Montana refuses upon the request of a peace  
 12 officer to submit to a ~~chemical~~ test designated by the  
 13 officer as provided in subsection (1), the test may not be  
 14 given. On behalf of the department, the officer shall  
 15 immediately seize the person's driver's license showing the  
 16 commercial vehicle operator's endorsement and forward the  
 17 license to the department, along with a sworn report that he  
 18 had reasonable grounds to believe the person had been  
 19 driving or was in actual physical control of a commercial  
 20 motor vehicle upon ways of this state open to the public  
 21 while having a ~~blood~~ an alcohol concentration of 0.04 or  
 22 more and that the person had refused to submit to the test  
 23 upon the request of the officer. Upon receipt of the report,  
 24 the department shall suspend the license for a period  
 25 provided in subsection (5).

1 (4) Upon seizure of a resident's driver's license  
2 showing a commercial vehicle operator's endorsement, the  
3 peace officer shall issue, on behalf of the department, a  
4 temporary driving permit without the commercial vehicle  
5 operator's endorsement. The temporary driving permit is  
6 valid for 72 hours after issuance.

7 (5) If a commercial motor vehicle operator refuses to  
8 submit to a ~~chemical~~ test as provided in subsection (3), the  
9 department shall suspend his commercial vehicle operator's  
10 endorsement:

11 (a) upon first refusal, for 1 year, with no provision  
12 for a restricted probationary license or endorsement, except  
13 that if the offense occurred in a commercial motor vehicle  
14 transporting hazardous materials, the suspension for a first  
15 refusal must be for 3 years;

16 (b) upon a second or subsequent refusal at any time as  
17 determined from the records of the department, for 10 years,  
18 with no provision for a restricted probationary license or  
19 endorsement.

20 (6) A nonresident commercial motor vehicle operator who  
21 refuses to submit to a ~~chemical~~ test as provided in  
22 subsection (3) is subject to suspension by the department as  
23 provided in subsection (5) and ~~may receive~~ must be given a  
24 temporary driving permit as provided in subsection (4)."

25 **Section 11.** Section 61-11-101, MCA, is amended to read:

1 **"61-11-101. Report of convictions and suspension or**  
2 **revocation of driver's licenses -- surrender of licenses.**

3 (1) Whenever any person is convicted of any offense for  
4 which chapter 5 makes mandatory the suspension or revocation  
5 of the driver's license of the person by the department, the  
6 court in which such conviction is had shall require the  
7 surrender to it of all driver's licenses then held by the  
8 person so convicted. The court shall thereupon, within 5  
9 days, forward the license to the department and at the same  
10 time forward a record of such conviction to the department,  
11 providing that if such person does not possess a driver's  
12 license the court shall so indicate in its report to the  
13 department.

14 (2) Every court having jurisdiction over offenses  
15 committed under any act of this state or municipal ordinance  
16 regulating the operation of motor vehicles on highways shall  
17 forward, within 5 days, to the department a record of the  
18 conviction or forfeiture of bail, not vacated, of any person  
19 in the court for a violation of any such laws, other than  
20 regulations governing standing or parking, and may recommend  
21 the suspension of the driver's license of the person so  
22 convicted. The court may also recommend that the department  
23 issue a restricted probationary license ~~in--liea-of-the~~  
24 ~~suspension-required-in-61-5-200(2)~~ on the condition that the  
25 individual comply with the requirement that he attend and

1 ~~complete a driver-improvement-school-or~~ an alcohol treatment  
 2 ~~program--if--one-is-available~~ information course as provided  
 3 ~~in 61-8-714 and 61-8-722.~~ The department shall issue a  
 4 restricted probationary license unless the person otherwise  
 5 is not entitled to a Montana driver's license. Upon issuance  
 6 of a probationary license, the licensee is subject to the  
 7 restrictions set forth thereon and may not operate a vehicle  
 8 in violation of those restrictions.

9 (3) Any court or other agency of this state, or a  
 10 subdivision thereof, which has jurisdiction to take any  
 11 action suspending, revoking, or otherwise limiting a license  
 12 to drive shall report any such action and the adjudication  
 13 upon which it is based to the department within 5 days on  
 14 forms furnished by the department."

15 **Section 12.** Section 23-2-523, MCA, is amended to read:

16 **"23-2-523. Prohibited operation and mooring --**  
 17 **enforcement.** (1) No person may operate or knowingly permit  
 18 any person to operate any motorboat or vessel or manipulate  
 19 any water skis, surfboard, or similar device or other  
 20 contrivance in a reckless or negligent manner so as to  
 21 endanger the life, limb, or property of any person.

22 (2) No person may operate any motorboat, including a  
 23 sailboat propelled by a motor of any kind, or manipulate any  
 24 water skis, surfboard, or similar device attached to a  
 25 motorboat while under the influence of alcohol, or drugs, or

1 a combination of the two.

2 (3) It is unlawful for the owner of any motorboat or  
 3 vessel or any person having such in charge or in control to  
 4 authorize or knowingly permit the same to be operated by any  
 5 person who by reason of physical or mental disability is  
 6 incapable of operating such watercraft under the prevailing  
 7 circumstances.

8 (4) No person may operate or knowingly permit any  
 9 person to operate any motorboat or vessel at a rate of speed  
 10 greater than will permit such person, in the exercise of  
 11 reasonable care, to bring the vessel to a stop within the  
 12 assured clear distance ahead. However, nothing in this part  
 13 is intended to prevent the operator of a vessel actually  
 14 competing in a regatta which is sanctioned by an appropriate  
 15 governmental unit from attempting to attain high speeds on a  
 16 marked racing course.

17 (5) No person may make a reckless approach to,  
 18 departure from, or passage by a dock, ramp, diving board, or  
 19 float.

20 (6) Skiers being pulled by motorboats must have on  
 21 their person a life preserver, buoyant vest, or ski belt.

22 (7) No person may moor a vessel to any of the buoys or  
 23 beacons placed in any waters of this state by the authority  
 24 of the United States, an agency of the United States, or the  
 25 department or in any manner hang on with a vessel to such

1 buoy or beacon, except in the act of maintenance work on  
2 such buoy or beacon, nor may any person deface, remove, or  
3 destroy any such buoy, beacon, or other authorized  
4 navigational marker maintained in the waters of this state.

5 (8) If an officer whose duty it is to enforce the  
6 sections of this law observes a vessel being used without  
7 sufficient lifesaving or firefighting devices or in an  
8 overloaded or other unsafe condition and in his judgment  
9 such use creates an especially hazardous condition, he may  
10 direct the operator to take whatever immediate and  
11 reasonable steps would be necessary for the safety of those  
12 aboard the vessel, including directing the operator to  
13 return to mooring or launching site and to remain there  
14 until the situation creating the hazard is corrected or  
15 ended."

16 **Section 13.** Section 23-2-535, MCA, is amended to read:

17 "23-2-535. ~~Blood---alcohol~~ Alcohol concentration  
18 ~~standards -- drug detection -- evidence admissible --~~  
19 ~~administration of tests. (1) The presumptions inferences~~  
20 ~~contained in 61-8-401(3)(4) apply to any criminal action or~~  
21 ~~proceeding arising out of acts alleged to have been~~  
22 ~~committed in violation of 23-2-523(2).~~

23 (2) Evidence of the any measured amount or detected  
24 presence of alcohol, drugs, or a combination of the two in a  
25 person's blood person at the time of the act alleged, as

1 shown by analysis of the person's blood, breath, or urine,  
2 and any other competent evidence bearing on the question of  
3 whether the person was under the influence of alcohol,  
4 drugs, or a combination of the two at the time of the act  
5 alleged is admissible in any criminal action or proceeding  
6 arising out of acts alleged to have been committed in  
7 violation of 23-2-523(2).

8 (3) If a person charged with violation of 23-2-523(2)  
9 refuses to submit to a ~~chemical test~~ or tests of his blood,  
10 breath, or urine for the purpose of determining the  
11 ~~alcoholic content of his blood~~ any measured amount or  
12 detected presence of alcohol, drugs, or a combination of the  
13 two, none will be given, but proof of refusal is admissible  
14 in any criminal action or proceeding arising out of acts  
15 alleged to have been committed in violation of 23-2-523(2).

16 (4) The provisions relating to administration of tests  
17 provided in 61-8-405 and the definition of blood alcohol  
18 concentration provided in 61-8-407 apply to any testing done  
19 ~~to determine the blood alcohol concentration of~~ a person  
20 charged with violation of 23-2-523(2).

21 (5) As used in 23-2-523(2), the term "under the  
22 influence" shall have the meaning provided in 61-8-401(3)."

23 **Section 14.** Section 45-5-205, MCA, is amended to read:

24 "45-5-205. Negligent vehicular assault -- penalty. (1)  
25 If a person operates a motor vehicle in a negligent manner

1 and he is driving while under the influence of alcohol, or  
 2 drugs a dangerous drug, any other drug, or any combination  
 3 of the three, as provided for in 61-8-401(1), and his  
 4 conduct is the cause of bodily injury to another, he commits  
 5 the offense of negligent vehicular assault.

6 (2) A person convicted of the offense of negligent  
 7 vehicular assault shall be fined an amount not to exceed  
 8 \$1,000 or imprisoned in the county jail for a term not to  
 9 exceed 1 year, or both."

10 **Section 15.** Section 67-1-211, MCA, is amended to read:

11 "67-1-211. ~~Blood alcohol~~ Alcohol concentration  
 12 standards -- evidence admissible -- administration of tests.

13 (1) If a person acting or attempting to act as a crewmember  
 14 of an aircraft has ~~a blood an~~ alcohol concentration of 0.04%  
 15 by weight or more as defined in 61-8-407, it may be inferred  
 16 that the person is conclusively-presumed-to-be under the  
 17 influence of alcohol ~~or--drugs~~ and is in violation of  
 18 67-1-204.

19 (2) Evidence of the any measured amount or detected  
 20 presence of alcohol, drugs, or a combination of the two in a  
 21 person's blood the person at the time of the act alleged  
 22 under subsection (1) and any other competent evidence  
 23 bearing on the question of whether the person was under the  
 24 influence of alcohol, drugs, or a combination of the two at  
 25 the time of the act alleged is admissible in any criminal

1 action or proceeding arising out of acts alleged to have  
 2 been committed in violation of 67-1-204.

3 (3) In any criminal action or proceeding arising out of  
 4 acts alleged to have been committed in violation of  
 5 67-1-204, the court or jury may consider federal regulations  
 6 governing aeronautics.

7 (4) A person who operates an aircraft over the lands  
 8 and waters of this state is considered to have given consent  
 9 to a ~~chemical~~ test or-tests of his blood, breath, or urine  
 10 for the purpose of determining the any measured amount or  
 11 detected presence of alcohol, or drug-content-of-his-blood  
 12 drugs, or a combination of the two in his body if arrested  
 13 by a peace officer for operating, attempting to operate, or  
 14 being in actual physical control of an aircraft while under  
 15 the influence of alcohol, or drugs, or a combination of the  
 16 two. The test or-tests must be administered at the direction  
 17 of a peace officer who has reasonable grounds to believe the  
 18 person was operating, attempting to operate, or in actual  
 19 physical control of an aircraft while under the influence of  
 20 alcohol, or drugs, or a combination of the two. The  
 21 arresting officer may designate which one of the aforesaid  
 22 tests must be administered. A person who is unconscious or  
 23 who is otherwise in a condition rendering him incapable of  
 24 refusal is considered not to have withdrawn the consent  
 25 provided by this subsection.

1 (5) If a person charged with violation of 67-1-204  
2 refuses to submit to a ~~chemical~~ test ~~or-tests~~ of his blood,  
3 breath, or urine for the purpose of determining ~~the-alcohol~~  
4 ~~content-of any measured amount or detected presence of~~  
5 ~~alcohol,--drugs,--or-any-combination-of-the-two~~ in his blood  
6 body, none will be given, but proof of refusal is admissible  
7 in any criminal action or proceeding arising out of acts  
8 alleged to have been committed in violation of 67-1-204.

9 (6) The provisions relating to administration of tests  
10 provided in 61-8-405 and the definition of alcohol  
11 concentration provided in 61-8-407 apply to any testing done  
12 to determine any measured amount or detected presence of  
13 alcohol,--drugs,--or-a-combination-of-the-two in a person and  
14 the ~~blood~~ alcohol concentration of a person charged with  
15 violation of 67-1-204."

-End-

SENATE STANDING COMMITTEE REPORT

Page 2 of 2  
April 4, 1991

Page 1 of 2  
April 4, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 559 (third reading copy -- blue), respectfully report that House Bill No. 559 be amended and as so amended be concurred in:

1. Page 3, line 25.  
Page 4, lines 7 and 23.  
Page 5, lines 8 and 17.  
Page 7, lines 4 and 19.  
Page 8, line 10.  
Page 9, lines 16 and 18.  
Page 24, line 9.  
Page 26, lines 9 and 16.  
Page 27, line 2.  
Following: "~~tests~~"  
Insert: "or tests"

2. Page 4, line 4.  
Page 7, line 15.  
Page 9, lines 3 and 12.  
Page 23, line 24.  
Page 24, line 13.  
Page 25, line 20.  
Page 26, line 12.  
Page 27, lines 5 and 13.  
Following: "~~two~~"  
Insert: ", drugs, or a combination of the two"

3. Page 4, line 12.  
Following: "."  
Insert: "A drug test may be performed under this section only if the arresting officer has reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of the state open to the public, while under the influence of drugs or a combination of alcohol and drugs or if a test for the presence of alcohol results in the arresting officer possessing reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of drugs or a combination of alcohol or drugs."

4. Page 4, line 16.

Following: "~~—~~"

Insert: "A person may not be required to provide more than two bodily substance samples under this section."

5. Page 7, line 17.

Following: "admissible"

Strike: ";"

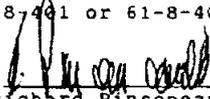
Following: "and"

Insert: ". A positive test result may not, in itself, prove that the person was under the influence of that drug at the time he was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in his person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state."

6. Page 9, line 6.

Strike: "under arrest"

Insert: "cited for a violation of 61-8-401 or 61-8-406"

Signed:   
Richard Pinsoneault, Chairman

*Jan 4-4-91*  
Ad. Coord.

*SB 4-4 6:15*  
Sec. of Senate

711646SC.Sji

SENATE  
HB 559

## 1 HOUSE BILL NO. 559

2 INTRODUCED BY FAGG, VAN VALKENBURG, O'KEEFE

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6 CLARIFY THE LAWS RELATING TO OPERATING MOTOR VEHICLES,  
7 BOATS, AND AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR  
8 DRUGS; AND AMENDING SECTIONS 23-2-523, 23-2-535, 45-5-205,  
9 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406,  
10 61-8-714, 61-8-722, 61-8-805, 61-8-806, 61-11-101, AND  
11 67-1-211, MCA."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 61-8-401, MCA, is amended to read:

15 "61-8-401. Persons under the influence of alcohol or  
16 drugs. (1) It is unlawful and punishable as provided in  
17 61-8-714 and 61-8-723 for any person who is under the  
18 influence of:

19 (a) alcohol to drive or be in actual physical control  
20 of a vehicle upon the ways of this state open to the public;

21 (b) a narcotic dangerous drug to drive or be in actual  
22 physical control of a vehicle within this state;

23 (c) any other drug to drive or be in actual physical  
24 control of a vehicle within this state; or

25 (d) alcohol and any dangerous or other drug to drive or

1 be in actual physical control of a vehicle within this  
2 state.

3 (2) The fact that any person charged with a violation  
4 of subsection (1) is or has been entitled to use alcohol or  
5 such a drug under the laws of this state does not constitute  
6 a defense against any charge of violating subsection (1).

7 (3) "Under the influence" means that as a result of  
8 taking into the body alcohol, drugs, or any combination  
9 thereof, a person's ability to safely operate a motor  
10 vehicle has been diminished.

11 (4) Upon the trial of any civil or criminal action or  
12 proceeding arising out of acts alleged to have been  
13 committed by any person driving or in actual physical  
14 control of a vehicle while under the influence of alcohol,  
15 the concentration of alcohol in the ~~person's blood~~ person at  
16 the time alleged, as shown by ~~chemical~~ analysis of the  
17 person's blood, urine, or breath, ~~or other bodily substance,~~  
18 shall give rise to the following ~~presumptions~~ inferences:

19 (a) If there was at that time an alcohol concentration  
20 of 0.05 or less, it ~~shall~~ may be ~~presumed~~ inferred that the  
21 person was not under the influence of alcohol.

22 (b) If there was at that time an alcohol concentration  
23 in excess of 0.05 but less than 0.10, that fact shall not  
24 give rise to any ~~presumption~~ inference that the person was  
25 or was not under the influence of alcohol but such fact may

1 be considered with other competent evidence in determining  
2 the guilt or innocence of the person.

3 (c) IF there was at that time an alcohol concentration  
4 of 0.10 or more, it ~~shall~~ may be presumed inferred that the  
5 person was under the influence of alcohol. ~~Such presumption~~  
6 The inference is rebuttable.

7 (5) The provisions of subsection (4) do not limit the  
8 introduction of any other competent evidence bearing upon  
9 the issue of whether the person was under the influence of  
10 alcohol, drugs, or a combination of the two.

11 (6) Each municipality in this state is given authority  
12 to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and  
13 subsections (1) through (5) of this section, with the word  
14 "state" in 61-8-406 and subsection (1) of this section  
15 changed to read "municipality", as an ordinance and is given  
16 jurisdiction of the enforcement of the ordinance and of the  
17 imposition of the fines and penalties therein provided.

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

20 **Section 2.** Section 61-8-402, MCA, is amended to read:

21 "~~61-8-402. Chemical---~~ Blood, breath, or urine  
22 tests. (1) Any person who operates or is in actual physical  
23 control of a vehicle upon ways of this state open to the  
24 public shall be deemed to have given consent, subject to the  
25 provisions of 61-8-401, to a ~~chemical~~ test or-tests OR TESTS

1 of his blood, breath, or urine for the purpose of  
2 determining ~~the alcoholic content of his blood~~ any measured  
3 amount or detected presence of alcohol--- drugs,---or---a  
4 combination---of---the-two, DRUGS, OR A COMBINATION OF THE TWO  
5 in his body if arrested by a peace officer for driving or  
6 for being in actual physical control of a vehicle while  
7 under the influence of alcohol, drugs, or a combination of  
8 the two. The test ~~or-tests~~ OR TESTS shall be administered at  
9 the direction of a peace officer having reasonable grounds  
10 to believe the person to have been driving or in actual  
11 physical control of a vehicle upon ways of this state open  
12 to the public, while under the influence of alcohol, drugs,  
13 or a combination of the two. A DRUG TEST MAY BE PERFORMED  
14 UNDER THIS SECTION ONLY IF THE ARRESTING OFFICER HAS  
15 REASONABLE GROUNDS TO BELIEVE THE PERSON TO HAVE BEEN  
16 DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE UPON WAYS  
17 OF THE STATE OPEN TO THE PUBLIC, WHILE UNDER THE INFLUENCE  
18 OF DRUGS OR A COMBINATION OF ALCOHOL AND DRUGS OR IF A TEST  
19 FOR THE PRESENCE OF ALCOHOL RESULTS IN THE ARRESTING OFFICER  
20 POSSESSING REASONABLE GROUNDS TO BELIEVE THE PERSON TO HAVE  
21 BEEN DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE UPON  
22 WAYS OF THIS STATE OPEN TO THE PUBLIC, WHILE UNDER THE  
23 INFLUENCE OF DRUGS OR A COMBINATION OF ALCOHOL OR DRUGS. The  
24 arresting officer may designate which ~~one-of-the-aforesaid~~  
25 test or tests shall be administered. ~~A--person--may--not--be~~

1 ~~given more than two tests unless the person chooses to have~~  
 2 ~~a test as provided in 61-8-405(2);~~ A PERSON MAY NOT BE  
 3 ~~REQUIRED TO PROVIDE MORE THAN TWO BODILY SUBSTANCE SAMPLES~~  
 4 ~~UNDER THIS SECTION.~~

5 (2) Any person who is unconscious or who is otherwise  
 6 in a condition rendering him incapable of refusal shall be  
 7 deemed not to have withdrawn the consent provided by  
 8 subsection (1) of this section.

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

25 (4) Upon seizure of a resident driver's license, the

1 peace officer shall issue, on behalf of the department, a  
 2 temporary driving permit, which is valid for 72 hours after  
 3 the time of issuance.

4 (5) The following suspension and revocation periods are  
 5 applicable upon refusal to submit to a ~~chemical test or~~  
 6 ~~tests~~ OR TESTS:

7 (a) upon a first refusal, a suspension of 90 days with  
 8 no provision for a restricted probationary license;

9 (b) upon a second or subsequent refusal within 5 years  
 10 of a previous refusal, as determined from the records of the  
 11 department, a revocation of 1 year with no provision for a  
 12 restricted probationary license.

13 (6) ~~bike refusal by a~~ A nonresident driver's license  
 14 seized under this section shall must be subject--to  
 15 suspension sent by the department ~~in like manner, and the~~  
 16 ~~same temporary driving permit shall be issued to~~  
 17 nonresidents to the licensing authority of the nonresident's  
 18 home state with a report of the nonresident's refusal to  
 19 submit to a test.

20 (7) All such suspensions are subject to review as  
 21 hereinafter provided."

22 **Section 3.** Section 61-8-403, MCA, is amended to read:

23 "61-8-403. Right of appeal to court. The department  
 24 shall immediately notify any person whose license or  
 25 privilege to drive has been suspended or revoked, as

1 hereinbefore authorized, in writing and such person shall  
 2 have the right to file a petition within 30 days thereafter  
 3 for a hearing in the matter in the district court in the  
 4 county wherein such person resides or in the district court  
 5 in the county in which this arrest was made. Such court is  
 6 hereby vested with jurisdiction and it shall be its duty to  
 7 set the matter for hearing upon 10 days' written notice to  
 8 the county attorney of the county wherein the appeal is  
 9 filed and such county attorney shall represent the state,  
 10 and thereupon the court shall take testimony and examine  
 11 into the facts of the case, except that the issues shall be  
 12 limited to whether a peace officer had reasonable grounds to  
 13 believe the person had been driving or was in actual  
 14 physical control of a vehicle upon ways of this state open  
 15 to the public, while under the influence of alcohol, drugs,  
 16 or a combination of the two, whether the person was placed  
 17 under arrest, and whether such person refused to submit to  
 18 the test ~~or--tests~~ OR TESTS. The court shall thereupon  
 19 determine whether the petitioner is entitled to a license or  
 20 is subject to suspension as heretofore provided."

21 **Section 4.** Section 61-8-404, MCA, is amended to read:

22 "**61-8-404. Evidence admissible -- conditions of**  
 23 **admissibility.** (1) Upon the trial of any criminal action or  
 24 other proceeding arising out of acts alleged to have been  
 25 committed by any person in violation of 61-8-401 or

1 61-8-406:

2 (a) evidence of the any measured amount or detected  
 3 presence of amount--of alcohol, drugs, or a combination of  
 4 the two, DRUGS, OR A COMBINATION OF THE TWO in the person's  
 5 blood person at the time of the act alleged, as shown by a  
 6 chemical an analysis of his blood, breath, or urine, is  
 7 admissible,--and. A POSITIVE TEST RESULT MAY NOT, IN ITSELF,  
 8 PROVE THAT THE PERSON WAS UNDER THE INFLUENCE OF THAT DRUG  
 9 AT THE TIME HE WAS IN CONTROL OF A MOTOR VEHICLE. A PERSON  
 10 MAY NOT BE CONVICTED OF A VIOLATION OF 61-8-401 BASED UPON  
 11 THE PRESENCE OF A DRUG OR DRUGS IN HIS PERSON UNLESS SOME  
 12 OTHER COMPETENT EVIDENCE EXISTS THAT TENDS TO ESTABLISH THAT  
 13 THE PERSON WAS UNDER THE INFLUENCE OF A DRUG OR DRUGS WHILE  
 14 DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE  
 15 WITHIN THIS STATE.

16 (b) a report of the facts and results of any chemical  
 17 test ~~or-tests~~ OR TESTS of a person's blood, breath, or urine  
 18 administered under 61-8-402 is admissible in evidence if:

19 (i) the breath ~~analysis--report~~ test was prepared ~~and~~  
 20 verified performed by the a person who--performed--the--test  
 21 certified by the forensic sciences division of the  
 22 department to administer breath tests or the blood or urine  
 23 test was a laboratory analysis and the analysis was done in  
 24 a laboratory operated by the department ~~of-justice~~ or by any  
 25 other laboratory or facility certified or exempt from

1 certification under the rules of the department; and

2 (ii) ~~the report was prepared in accordance with any~~  
3 ~~applicable rules of the department; and~~

4 (iii) if the test was on a blood sample, the person  
5 withdrawing the blood ~~must have been~~ was competent to do so  
6 under 61-8-405(1).

7 (2) If the person under arrest refused to submit to the  
8 test ~~or tests~~ OR TESTS as ~~hereina~~ provided in this  
9 section, proof of refusal ~~shall be~~ is admissible in any  
10 criminal action or proceeding arising out of acts alleged to  
11 have been committed while the person was driving or in  
12 actual physical control of a vehicle upon the ways of this  
13 state open to the public, while under the influence of  
14 alcohol, drugs, or a combination of the two.

15 (3) The provisions of this part do not limit the  
16 introduction of any other competent evidence bearing on the  
17 question of whether the person was under the influence of  
18 alcohol, drugs, or a combination of the two."

19 **Section 5.** Section 61-8-405, MCA, is amended to read:

20 **"61-8-405. Administration of tests.** (1) Only a  
21 physician or registered nurse or other qualified person  
22 under the supervision and direction of a physician or  
23 registered nurse acting at the request of a peace officer  
24 may withdraw blood for the purpose of determining ~~alcoholic~~  
25 content any measured amount or detected presence of alcohol,

1 drugs, or a combination of the two, DRUGS, OR A COMBINATION  
2 OF THE TWO in the person. This limitation does not apply to  
3 the taking of breath or urine specimens.

4 (2) The person tested under arrest CITED FOR A  
5 VIOLATION OF 61-8-401 OR 61-8-406 may, at his own expense,  
6 have a physician or registered nurse of his own choosing  
7 administer a test, in addition to any administered at the  
8 direction of a peace officer, for the purpose of determining  
9 the amount of alcohol in his blood any measured amount or  
10 detected presence of alcohol, drugs, or a combination of the  
11 two, DRUGS, OR A COMBINATION OF THE TWO in the person at the  
12 time alleged, as shown by ~~chemical~~ analysis of his blood,  
13 breath, or urine. The failure or inability to obtain an  
14 additional test by a person does not preclude the  
15 admissibility in evidence of the test ~~or tests~~ OR TESTS  
16 taken at the direction of a peace officer.

17 (3) Upon the request of the person tested, full  
18 information concerning the test ~~or tests~~ OR TESTS taken at  
19 the direction of the peace officer must be made available to  
20 him or his attorney.

21 (4) No physician or registered nurse or other qualified  
22 person under the supervision and direction of a physician or  
23 registered nurse shall incur any civil or criminal liability  
24 as a result of the proper administering of a blood test when  
25 requested in writing by a peace officer to administer such a

1 test.

2 (5) If the a test given under 61-8-402 or 61-8-806 is a  
3 ~~chemical~~ test of urine, the person tested must be given such  
4 privacy in the taking of the urine specimen as will ~~insure~~  
5 ensure the accuracy integrity of the specimen and, at the  
6 same time, maintain the dignity of the individual involved.

7 (6) The department ~~of justice~~ in cooperation with any  
8 appropriate agency shall adopt uniform rules for the giving  
9 of ~~blood--alcohol~~ tests and may require certification of  
10 training to administer the tests as considered necessary."

11 **Section 6.** Section 61-8-406, MCA, is amended to read:

12 "**61-8-406. Operation of vehicle by a person with**  
13 **alcohol concentration of 0.10 or more.** It is unlawful and  
14 punishable as provided in 61-8-722 and 61-8-723 for any  
15 person to drive or be in actual physical control of a  
16 vehicle upon the ways of this state open to the public while  
17 the person's alcohol concentration in his, as shown by  
18 analysis of the person's blood, breath, or urine, is 0.10 or  
19 more. Absolute liability as provided in 45-2-104 will be  
20 imposed for a violation of this section."

21 **Section 7.** Section 61-8-714, MCA, is amended to read:

22 "**61-8-714. Penalty for driving under the influence of**  
23 **alcohol or drugs.** (1) A person convicted of a violation of  
24 61-8-401 shall be punished by imprisonment in the county  
25 jail for not less than 24 consecutive hours or more than 60

1 days and shall be punished by a fine of not less than \$100  
2 or more than \$500. The jail sentence may not be suspended  
3 unless the judge finds that the imposition of the jail  
4 sentence will pose a risk to the defendant's physical or  
5 mental well-being.

6 (2) On a second conviction, he shall be punished by a  
7 fine of not less than \$300 or more than \$500 and by  
8 imprisonment for not less than 7 days, at least 48 hours of  
9 which must be served consecutively, or more than 6 months.  
10 Three days of the jail sentence may not be suspended unless  
11 the judge finds that the imposition of the jail sentence  
12 will pose a risk to the defendant's physical or mental  
13 well-being.

14 (3) On the third or subsequent conviction, he shall be  
15 punished by imprisonment for a term of not less than 30  
16 days, at least 48 hours of which must be served  
17 consecutively, or more than 1 year, and by a fine of not  
18 less than \$500 or more than \$1,000. Notwithstanding any  
19 provision to the contrary providing for suspension of  
20 execution of a sentence imposed under this subsection, the  
21 imposition or execution of the first 10 days of the jail  
22 sentence imposed for a third or subsequent offense that  
23 occurred within 5 years of the first offense may not be  
24 deferred or suspended.

25 (4) In addition to the punishment provided in this

1 section, regardless of disposition, the defendant shall  
 2 complete an alcohol information course at an alcohol  
 3 treatment program approved by the department of  
 4 institutions, which may, in the sentencing court's  
 5 discretion and upon recommendation of a certified chemical  
 6 dependency counselor, include alcohol or drug treatment, or  
 7 both. On conviction of a second or subsequent offense under  
 8 this section, in addition to the punishment provided in this  
 9 section, regardless of disposition, the defendant shall  
 10 complete an alcohol information course at an alcohol  
 11 treatment program approved by the department of  
 12 institutions, which must include alcohol or drug treatment,  
 13 or both. Each counselor providing education or treatment  
 14 shall, at the commencement of the education or treatment,  
 15 notify the court that the defendant has been enrolled in a  
 16 course or treatment program. If the defendant fails to  
 17 attend the course or the treatment program, the counselor  
 18 shall notify the court of the failure. As long as the  
 19 alcohol information course and treatment program are  
 20 approved as provided in this subsection, the defendant may  
 21 attend the information course and treatment program of his  
 22 choice. The treatment provided to the defendant at a  
 23 treatment program must be at a level appropriate to his  
 24 alcohol problem, as determined by the judge based upon the  
 25 recommendation from the certified chemical dependency

1 counselor.

2 (5) For the purpose of determining the number of  
 3 convictions under this section, "conviction" means a final  
 4 conviction, as defined in 45-2-101, in this state,  
 5 conviction for a violation of a similar statute in another  
 6 state, or a forfeiture of bail or collateral deposited to  
 7 secure the defendant's appearance in court in this state or  
 8 another state, which forfeiture has not been vacated. An  
 9 offender is considered to have been previously convicted for  
 10 the purposes of ~~this-section~~ sentencing if less than 5 years  
 11 have elapsed between the commission of the present offense  
 12 and a previous conviction. If there has been no additional  
 13 conviction for an offense under this section for a period of  
 14 5 years after a prior conviction hereunder, then all records  
 15 and data relating to the prior conviction are confidential  
 16 criminal justice information as defined in 44-5-103 and  
 17 public access to the information may only be obtained by  
 18 district court order upon good cause shown.

19 (6) For the purpose of calculating subsequent  
 20 convictions under this section, a conviction for a violation  
 21 of 61-8-406 also constitutes a conviction for a violation of  
 22 61-8-401."

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

24 "61-8-722. Penalty for driving with excessive blood  
 25 alcohol concentration. (1) A person convicted of a violation

1 of 61-8-406 shall be punished by imprisonment for not more  
2 than 10 days and shall be punished by a fine of not less  
3 than \$100 or more than \$500.

4 (2) On a second conviction of a violation of 61-8-406,  
5 he shall be punished by imprisonment for not less than 48  
6 consecutive hours or more than 30 days and by a fine of not  
7 less than \$300 or more than \$500.

8 (3) On a third or subsequent conviction of a violation  
9 of 61-8-406, he shall be punished by imprisonment for not  
10 less than 48 consecutive hours or more than 6 months and by  
11 a fine of not less than \$500 or more than \$1,000.

12 (4) The provisions of 61-5-205(2), 61-5-208(2), and  
13 61-11-203(2)(d) relating to revocation and suspension of  
14 driver's licenses shall apply to any conviction under  
15 61-8-406.

16 (5) In addition to the punishment provided in this  
17 section, regardless of disposition, the defendant shall  
18 complete an alcohol information course at an alcohol  
19 treatment program approved by the department of  
20 institutions, which may include alcohol or drug treatment,  
21 or both, if considered necessary by the counselor conducting  
22 the program. Each counselor providing such education or  
23 treatment shall, at the commencement of the education or  
24 treatment, notify the court that the defendant has been  
25 enrolled in a course or treatment program. If the defendant

1 fails to attend the course or the treatment program, the  
2 counselor shall notify the court of the failure.

3 (6) For the purpose of determining the number of  
4 convictions under this section, "conviction" means a final  
5 conviction, as defined in 45-2-101, in this state or a  
6 similar statute in another state or a forfeiture of bail or  
7 collateral deposited to secure the defendant's appearance in  
8 court in this state or another state, which forfeiture has  
9 not been vacated. An offender is considered to have been  
10 previously convicted for the purposes of this--section  
11 sentencing if less than 5 years have elapsed between the  
12 commission of the present offense and a previous conviction.  
13 If there has been no additional conviction for an offense  
14 under this section for a period of 5 years after a prior  
15 conviction hereunder, then such prior offense shall be  
16 expunged from the defendant's record."

17 **Section 9.** Section 61-8-805, MCA, is amended to read:

18 "61-8-805. Suspension for operating a commercial  
19 vehicle with a blood alcohol concentration of 0.04 or more  
20 -- hearing. (1) A person whose blood alcohol concentration  
21 is 0.04 or more while he drives or is in actual physical  
22 control of a commercial motor vehicle is subject to the  
23 suspension of his commercial vehicle operator's endorsement.  
24 If the department receives a sworn report from a peace  
25 officer that the person was operating a commercial motor

1 vehicle while his blood alcohol concentration was 0.04 or  
 2 more, the department shall suspend the driver's commercial  
 3 vehicle operator's endorsement:

4 (a) for 1 year, with no provision for a restricted  
 5 probationary license or endorsement, upon receipt of the  
 6 first report, except that if the offense occurred in a  
 7 commercial motor vehicle transporting hazardous materials,  
 8 the suspension must be for 3 years; and

9 (b) for 10 years, with no provision for a restricted  
 10 probationary license or endorsement, upon receipt of a  
 11 second or subsequent report at any time as determined from  
 12 the records of the department.

13 (2) A peace officer who determines that a commercial  
 14 motor vehicle operator's blood alcohol concentration is 0.04  
 15 or more shall place the commercial motor vehicle operator  
 16 out of service as mandated by federal regulations for 24  
 17 hours.

18 (3) The fact that any person charged with a violation  
 19 of the provisions of subsection (1) is entitled to use  
 20 alcohol under the laws of Montana is not a defense against  
 21 any charge of violating the provisions of subsection (1).

22 (4) The department shall immediately notify in writing  
 23 any person whose commercial vehicle operator's endorsement  
 24 is suspended under this section. The person suspended has  
 25 the right to file a petition within 30 days after the notice

1 is given for a hearing in the matter in the district court  
 2 in the county in which the finding of blood alcohol  
 3 concentration was made. The court has jurisdiction and shall  
 4 set the matter for hearing upon 10 days' written notice to  
 5 the county attorney of the county in which the appeal is  
 6 filed. The county attorney shall represent the state. The  
 7 court shall take testimony and examine the facts of the  
 8 case, except that the issue is limited to whether the person  
 9 was driving or had actual physical control of a commercial  
 10 motor vehicle while his blood alcohol concentration was 0.04  
 11 or more. The court shall determine whether the petitioner is  
 12 entitled to a commercial vehicle operator's endorsement or  
 13 is subject to suspension as provided in this section. The  
 14 provisions of 61-8-404 apply to any proceedings under this  
 15 section."

16 **Section 10.** Section 61-8-806, MCA, is amended to read:

17 "~~61-8-806. Chemical-blood blood~~, breath, or urine tests  
 18 of commercial vehicle operators -- procedure -- suspension.  
 19 (1) A person who operates a commercial motor vehicle upon  
 20 the ways of this state open to the public is considered to  
 21 have given consent, subject to the provisions of 61-8-401  
 22 and 61-8-805, to a ~~chemical~~ test of his blood, breath, or  
 23 urine for the purpose of determining the ~~alcohol~~-content--of  
 24 ~~his--blood~~ any measured amount of alcohol in his body if he  
 25 is requested to submit to the test by a peace officer having

1 reasonable grounds to believe the person to have been  
 2 driving or in actual physical control of a commercial motor  
 3 vehicle upon the ways of this state open to the public while  
 4 his blood alcohol concentration was 0.04 or more. The peace  
 5 officer may designate a blood, breath, or urine test to be  
 6 administered.

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

10 (3) If a commercial motor vehicle operator who is a  
 11 resident of Montana refuses upon the request of a peace  
 12 officer to submit to a ~~chemical~~ test designated by the  
 13 officer as provided in subsection (1), the test may not be  
 14 given. On behalf of the department, the officer shall  
 15 immediately seize the person's driver's license showing the  
 16 commercial vehicle operator's endorsement and forward the  
 17 license to the department, along with a sworn report that he  
 18 had reasonable grounds to believe the person had been  
 19 driving or was in actual physical control of a commercial  
 20 motor vehicle upon ways of this state open to the public  
 21 while having a blood an alcohol concentration of 0.04 or  
 22 more and that the person had refused to submit to the test  
 23 upon the request of the officer. Upon receipt of the report,  
 24 the department shall suspend the license for a period  
 25 provided in subsection (5).

1 (4) Upon seizure of a resident's driver's license  
 2 showing a commercial vehicle operator's endorsement, the  
 3 peace officer shall issue, on behalf of the department, a  
 4 temporary driving permit without the commercial vehicle  
 5 operator's endorsement. The temporary driving permit is  
 6 valid for 72 hours after issuance.

7 (5) If a commercial motor vehicle operator refuses to  
 8 submit to a ~~chemical~~ test as provided in subsection (3), the  
 9 department shall suspend his commercial vehicle operator's  
 10 endorsement:

11 (a) upon first refusal, for 1 year, with no provision  
 12 for a restricted probationary license or endorsement, except  
 13 that if the offense occurred in a commercial motor vehicle  
 14 transporting hazardous materials, the suspension for a first  
 15 refusal must be for 3 years;

16 (b) upon a second or subsequent refusal at any time as  
 17 determined from the records of the department, for 10 years,  
 18 with no provision for a restricted probationary license or  
 19 endorsement.

20 (6) A nonresident commercial motor vehicle operator who  
 21 refuses to submit to a ~~chemical~~ test as provided in  
 22 subsection (3) is subject to suspension by the department as  
 23 provided in subsection (5) and may receive must be given a  
 24 temporary driving permit as provided in subsection (4)."

25 **Section 11.** Section 61-11-101, MCA, is amended to read:

1       "61-11-101. Report of convictions and suspension or  
 2       revocation of driver's licenses -- surrender of licenses.  
 3       (1) Whenever any person is convicted of any offense for  
 4       which chapter 5 makes mandatory the suspension or revocation  
 5       of the driver's license of the person by the department, the  
 6       court in which such conviction is had shall require the  
 7       surrender to it of all driver's licenses then held by the  
 8       person so convicted. The court shall thereupon, within 5  
 9       days, forward the license to the department and at the same  
 10      time forward a record of such conviction to the department,  
 11      providing that if such person does not possess a driver's  
 12      license the court shall so indicate in its report to the  
 13      department.

14      (2) Every court having jurisdiction over offenses  
 15      committed under any act of this state or municipal ordinance  
 16      regulating the operation of motor vehicles on highways shall  
 17      forward, within 5 days, to the department a record of the  
 18      conviction or forfeiture of bail, not vacated, of any person  
 19      in the court for a violation of any such laws, other than  
 20      regulations governing standing or parking, and may recommend  
 21      the suspension of the driver's license of the person so  
 22      convicted. The court may also recommend that the department  
 23      issue a restricted probationary license ~~in--lieu--of--the~~  
 24      suspension-required-in-61-5-200(2) on the condition that the  
 25      individual comply with the requirement that he attend and

1      ~~complete a driver-improvement-school-or~~ an alcohol treatment  
 2      ~~program-if-one-is-available~~ information course as provided  
 3      in 61-8-714 and 61-8-722. The department shall issue a  
 4      restricted probationary license unless the person otherwise  
 5      is not entitled to a Montana driver's license. Upon issuance  
 6      of a probationary license, the licensee is subject to the  
 7      restrictions set forth thereon and may not operate a vehicle  
 8      in violation of those restrictions.

9      (3) Any court or other agency of this state, or a  
 10     subdivision thereof, which has jurisdiction to take any  
 11     action suspending, revoking, or otherwise limiting a license  
 12     to drive shall report any such action and the adjudication  
 13     upon which it is based to the department within 5 days on  
 14     forms furnished by the department."

15           **Section 12.** Section 23-2-523, MCA, is amended to read:  
 16           "**23-2-523. Prohibited operation and mooring --**  
 17           **enforcement.** (1) No person may operate or knowingly permit  
 18           any person to operate any motorboat or vessel or manipulate  
 19           any water skis, surfboard, or similar device or other  
 20           contrivance in a reckless or negligent manner so as to  
 21           endanger the life, limb, or property of any person.

22           (2) No person may operate any motorboat, including a  
 23           sailboat propelled by a motor of any kind, or manipulate any  
 24           water skis, surfboard, or similar device attached to a  
 25           motorboat while under the influence of alcohol, or drugs, or

1 a combination of the two.

2 (3) It is unlawful for the owner of any motorboat or  
 3 vessel or any person having such in charge or in control to  
 4 authorize or knowingly permit the same to be operated by any  
 5 person who by reason of physical or mental disability is  
 6 incapable of operating such watercraft under the prevailing  
 7 circumstances.

8 (4) No person may operate or knowingly permit any  
 9 person to operate any motorboat or vessel at a rate of speed  
 10 greater than will permit such person, in the exercise of  
 11 reasonable care, to bring the vessel to a stop within the  
 12 assured clear distance ahead. However, nothing in this part  
 13 is intended to prevent the operator of a vessel actually  
 14 competing in a regatta which is sanctioned by an appropriate  
 15 governmental unit from attempting to attain high speeds on a  
 16 marked racing course.

17 (5) No person may make a reckless approach to,  
 18 departure from, or passage by a dock, ramp, diving board, or  
 19 float.

20 (6) Skiers being pulled by motorboats must have on  
 21 their person a life preserver, buoyant vest, or ski belt.

22 (7) No person may moor a vessel to any of the buoys or  
 23 beacons placed in any waters of this state by the authority  
 24 of the United States, an agency of the United States, or the  
 25 department or in any manner hang on with a vessel to such

1 buoy or beacon, except in the act of maintenance work on  
 2 such buoy or beacon, nor may any person deface, remove, or  
 3 destroy any such buoy, beacon, or other authorized  
 4 navigational marker maintained in the waters of this state.

5 (8) If an officer whose duty it is to enforce the  
 6 sections of this law observes a vessel being used without  
 7 sufficient lifesaving or firefighting devices or in an  
 8 overloaded or other unsafe condition and in his judgment  
 9 such use creates an especially hazardous condition, he may  
 10 direct the operator to take whatever immediate and  
 11 reasonable steps would be necessary for the safety of those  
 12 aboard the vessel, including directing the operator to  
 13 return to mooring or launching site and to remain there  
 14 until the situation creating the hazard is corrected or  
 15 ended."

16 **Section 13.** Section 23-2-535, MCA, is amended to read:

17 "23-2-535. ~~Blood~~ Alcohol concentration  
 18 standards -- drug detection -- evidence admissible --  
 19 administration of tests. (1) The presumptions inferences  
 20 contained in 61-8-401(3)(4) apply to any criminal action or  
 21 proceeding arising out of acts alleged to have been  
 22 committed in violation of 23-2-523(2).

23 (2) Evidence of the any measured amount or detected  
 24 presence of alcohol, drugs, or a combination of the two,  
 25 DRUGS, OR A COMBINATION OF THE TWO in a person's blood

1 person at the time of the act alleged, as shown by analysis  
 2 of the person's blood, breath, or urine, and any other  
 3 competent evidence bearing on the question of whether the  
 4 person was under the influence of alcohol, drugs, or a  
 5 combination of the two at the time of the act alleged is  
 6 admissible in any criminal action or proceeding arising out  
 7 of acts alleged to have been committed in violation of  
 8 23-2-523(2).

9 (3) If a person charged with violation of 23-2-523(2)  
 10 refuses to submit to a chemical test or tests OR TESTS of  
 11 his blood, breath, or urine for the purpose of determining  
 12 the alcoholic content of his blood any measured amount or  
 13 detected presence of alcohol, drugs, or a combination of the  
 14 two, DRUGS, OR A COMBINATION OF THE TWO, none will be given,  
 15 but proof of refusal is admissible in any criminal action or  
 16 proceeding arising out of acts alleged to have been  
 17 committed in violation of 23-2-523(2).

18 (4) The provisions relating to administration of tests  
 19 provided in 61-8-405 and the definition of blood alcohol  
 20 concentration provided in 61-8-407 apply to any testing done  
 21 to determine the blood alcohol concentration of a person  
 22 charged with violation of 23-2-523(2).

23 (5) As used in 23-2-523(2), the term "under the  
 24 influence" shall have the meaning provided in 61-8-401(3)."

25 **Section 14.** Section 45-5-205, MCA, is amended to read:

1 "45-5-205. Negligent vehicular assault -- penalty. (1)  
 2 If a person operates a motor vehicle in a negligent manner  
 3 and he is driving while under the influence of alcohol, or  
 4 drugs a dangerous drug, any other drug, or any combination  
 5 of the three, as provided for in 61-8-401(1), and his  
 6 conduct is the cause of bodily injury to another, he commits  
 7 the offense of negligent vehicular assault.

8 (2) A person convicted of the offense of negligent  
 9 vehicular assault shall be fined an amount not to exceed  
 10 \$1,000 or imprisoned in the county jail for a term not to  
 11 exceed 1 year, or both."

12 **Section 15.** Section 67-1-211, MCA, is amended to read:

13 "67-1-211. Blood alcohol Alcohol concentration  
 14 standards -- evidence admissible -- administration of tests.

15 (1) If a person acting or attempting to act as a crewmember  
 16 of an aircraft has a blood an alcohol concentration of 0.04%  
 17 by weight or more as defined in 61-8-407, it may be inferred  
 18 that the person is conclusively presumed to be under the  
 19 influence of alcohol or--drugs and is in violation of  
 20 67-1-204.

21 (2) Evidence of the any measured amount or detected  
 22 presence of alcohol, drugs, or a combination of the two,  
 23 DRUGS, OR A COMBINATION OF THE TWO in a person's blood the  
 24 person at the time of the act alleged under subsection (1)  
 25 and any other competent evidence bearing on the question of

1 whether the person was under the influence of alcohol,  
2 drugs, or a combination of the two at the time of the act  
3 alleged is admissible in any criminal action or proceeding  
4 arising out of acts alleged to have been committed in  
5 violation of 67-1-204.

6 (3) In any criminal action or proceeding arising out of  
7 acts alleged to have been committed in violation of  
8 67-1-204, the court or jury may consider federal regulations  
9 governing aeronautics.

10 (4) A person who operates an aircraft over the lands  
11 and waters of this state is considered to have given consent  
12 to a ~~chemical test~~ or-tests OR TESTS of his blood, breath,  
13 or urine for the purpose of determining the any measured  
14 amount or detected presence of alcohol, or drug--content--of  
15 his--blood ~~drugs,--or-a-combination-of-the-two,~~ DRUGS, OR A  
16 COMBINATION OF THE TWO in his body if arrested by a peace  
17 officer for operating, attempting to operate, or being in  
18 actual physical control of an aircraft while under the  
19 influence of alcohol, ~~or drugs, or a combination of the two.~~  
20 The test ~~or--tests~~ OR TESTS must be administered at the  
21 direction of a peace officer who has reasonable grounds to  
22 believe the person was operating, attempting to operate, or  
23 in actual physical control of an aircraft while under the  
24 influence of alcohol, ~~or drugs, or a combination of the two.~~  
25 The arresting officer may designate which one of the

1 aforesaid tests must be administered. A person who is  
2 unconscious or who is otherwise in a condition rendering him  
3 incapable of refusal is considered not to have withdrawn the  
4 consent provided by this subsection.

5 (5) If a person charged with violation of 67-1-204  
6 refuses to submit to a ~~chemical test~~ or-tests OR TESTS of  
7 his blood, breath, or urine for the purpose of determining  
8 ~~the--alcohol content--of~~ any measured amount or detected  
9 presence of alcohol, ~~drugs, or any combination of--the--two,~~  
10 DRUGS, OR A COMBINATION OF THE TWO in his ~~blood~~ body, none  
11 will be given, but proof of refusal is admissible in any  
12 criminal action or proceeding arising out of acts alleged to  
13 have been committed in violation of 67-1-204.

14 (6) The provisions relating to administration of tests  
15 provided in 61-8-405 and the definition of alcohol  
16 concentration provided in 61-8-407 apply to any testing done  
17 to determine any measured amount or detected presence of  
18 alcohol, ~~drugs, or a combination of--the--two,~~ DRUGS, OR A  
19 COMBINATION OF THE TWO in a person and the ~~blood~~ alcohol  
20 concentration of a person charged with violation of  
21 67-1-204."

-End-

Conference Committee  
on House Bill 559  
Report No. 1, April 25, 1991

4/25/91  
4:30 PM  
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April 25, 1991  
Page 2 of 2

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 559 met and considered Senate committee on Judiciary amendments, dated April 4, 1991, and recommend that House Bill 559 (reference copy -- salmon) be amended as follows:

1. Page 3, line 25.  
Page 4, line 8.  
Page 5, lines 11 and 21.  
Page 6, line 6.  
Page 7, line 18.  
Page 8, line 17.  
Page 9, line 8.  
Page 10, lines 15 and 18.  
Page 25, line 10.  
Page 27, lines 12 and 20.  
Page 28, line 6.  
Strike: "OR TESTS"

2. Page 4, line 4.  
Page 8, line 4.  
Page 10, lines 1 and 2.  
Page 10, line 11.  
Page 24, line 25.  
Page 25, line 14.  
Page 26, line 23.  
Page 27, lines 15 and 16.  
Page 28, line 10.  
Page 28, lines 18 and 19.  
Strike: ", DRUGS, OR A COMBINATION OF THE TWO"

3. Page 4, lines 13 through 23.  
Strike: "A" on line 13 through "DRUGS." on line 23

4. Page 5, lines 2 through 4.  
Strike: "A" on line 2 through end of line 4

5. Page 8, lines 7 through 15.  
Strike: "A" on line 7 through end of line 15

6. Page 10, lines 4 and 5.  
Strike: "CITED FOR A VIOLATION OF 61-8-401 OR 61-8-406"

And this Conference Committee report be adopted.

For the House:

For the Senate:

<u>James J. Whalen</u> Rep. Whalen, Chair	<u>René P. Pinsonneault</u> Sen. Pinsonneault, Chair
<u>Bruce A. Measner</u> Rep. Measner	<u>Sen. Grosfield</u> Sen. Grosfield
<u>Russell C. Fagg (Reluctantly)</u> Rep. Fagg	<u>Wm. Yellowtail</u> Sen. Yellowtail

ADOPT

REJECT

891115CC.HSF

CCR #1  
HB 559  
891115CC.HSF



AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO OPERATING MOTOR VEHICLES, BOATS, AND AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 23-2-523, 23-2-535, 45-5-205, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-714, 61-8-722, 61-8-805, 61-8-806, 61-11-101, AND 67-1-211, MCA.

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

Section 1. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs.

(1) It is unlawful and punishable as provided in 61-8-714 and 61-8-723 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a narcotic dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking

into the body alcohol, drugs, or any combination thereof, a person's ability to safely operate a motor vehicle has been diminished.

(4) 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's--blood~~ person at the time alleged, as shown by chemical analysis of the person's blood, urine, or breath, ~~or other---bodily---substance~~, shall give rise to the following ~~presumptions~~ inferences:

(a) If there was at that time an alcohol concentration of 0.05 or less, it ~~shall~~ may be presumed inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any ~~presumption~~ inference that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it ~~shall~~ may be presumed inferred that the person was under the influence of alcohol. ~~Such-presumption~~ The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the

introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of the two.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided. -

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

Section 2. Section 61-8-402, MCA, is amended to read:

"61-8-402. ~~Chemical--blood~~ Blood, breath, or urine tests. (1) Any person who operates or is in actual physical control of a vehicle upon ways of this state open to the public shall be deemed to have given consent, subject to the provisions of 61-8-401, to a ~~chemical~~ test of his blood, breath, or urine for the purpose of ~~determining the-alcoholic-content-of-his-blood~~ any measured amount or detected presence of alcohol in his body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a

vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which ~~one-of-the-aforsaid~~ test or tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

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

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

issuance.

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

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

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

(6) ~~like-refusal-by-a~~ A nonresident driver's license seized under this section shall must be subject-to-suspension sent by the department in--like-manner,--and-the-same-temporary-driving-permit shall-be-issued-to-nonresidents to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to a test.

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

Section 3. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. The department shall immediately notify any person whose license or privilege to drive has been suspended or revoked, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person resides or in the district court in the county in which this arrest was made. Such

court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 10 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, whether the person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided."

Section 4. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible -- conditions of admissibility. (1) Upon the trial of any criminal action or other proceeding arising out of acts alleged to have been committed by any person in violation of 61-8-401 or 61-8-406:

(a) evidence of the any measured amount or detected presence of amount--of alcohol in the person's-blood person at the time of the act alleged, as shown by a ~~chemical~~ an analysis of his blood, breath, or urine, is admissible; and

(b) a report of the facts and results of any ~~chemical~~ test of a person's blood, breath, or urine administered under 61-8-402 is

admissible in evidence if:

(i) ~~the breath analysis-report test was prepared-and-verified performed by the a person who-performed-the-test certified by the forensic sciences division of the department to administer breath tests or the blood or urine test was a laboratory analysis and the analysis was done in a laboratory operated by the department of justice or by any other laboratory or facility certified or exempt from certification under the rules of the department; and~~

~~(ii) the-report-was-prepared-in-accordance-with-any-applicable rules-of-the-department; and~~

~~if the test was on a blood sample, the person withdrawing the blood must-have-been was competent to do so under 61-8-405(1).~~

(2) If the person under arrest refused to submit to the test as hereinabove provided in this section, proof of refusal shall be is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two.

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

Section 5. Section 61-8-405, MCA, is amended to read:

**\*61-8-405. Administration of tests.** (1) Only a physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining alcoholic--content any measured amount or detected presence of alcohol in the person. This limitation does not apply to the taking of breath or urine specimens.

(2) The person tested may, at his own expense, have a physician or registered nurse of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining the-amount-of--alcohol--in his--blood any measured amount or detected presence of alcohol in the person at the time alleged, as shown by chemical analysis of his blood, breath, or urine. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer must be made available to him or his attorney.

(4) No physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(5) If the a test given under 61-8-402 or 61-8-806 is a

chemical test of urine, the person tested must be given such privacy in the taking of the urine specimen as will ~~insure~~ ensure the accuracy integrity of the specimen and, at the same time, maintain the dignity of the individual involved.

(6) The department of--justice in cooperation with any appropriate agency shall adopt uniform rules for the giving of ~~blood--alcohol~~ tests and may require certification of training to administer the tests as considered necessary."

Section 6. Section 61-8-406, MCA, is amended to read:

"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more. It is unlawful and punishable as provided in 61-8-722 and 61-8-723 for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while the person's alcohol concentration in his, as shown by analysis of the person's blood, breath, or urine, is 0.10 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

Section 7. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under the influence of alcohol or drugs. (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than \$100 or more than \$500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or

mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, and by a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this

section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course and treatment program are approved as provided in this subsection, the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of ~~this section~~ sentencing if less than 5 years have elapsed between the commission of the present offense

and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then all records and data relating to the prior conviction are confidential criminal justice information as defined in 44-5-103 and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401."

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

"61-8-722. Penalty for driving with excessive blood alcohol concentration. (1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

(2) On a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than \$300 or more than \$500.

(3) On a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than \$500 or more than \$1,000.

(4) The provisions of 61-5-205(2), 61-5-208(2), and

61-11-203(2)(d) relating to revocation and suspension of driver's licenses shall apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this-section sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the

defendant's record."

Section 9. Section 61-8-805, MCA, is amended to read:

"61-8-805. Suspension for operating a commercial vehicle with a--blood alcohol concentration of 0.04 or more -- hearing. (1) A person whose blood alcohol concentration is 0.04 or more while he drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of his commercial vehicle operator's endorsement. If the department receives a sworn report from a peace officer that the person was operating a commercial motor vehicle while his blood alcohol concentration was 0.04 or more, the department shall suspend the driver's commercial vehicle operator's endorsement:

(a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension must be for 3 years; and

(b) for 10 years, with no provision for a restricted probationary license or endorsement, upon receipt of a second or subsequent report at any time as determined from the records of the department.

(2) A peace officer who determines that a commercial motor vehicle operator's blood alcohol concentration is 0.04 or more shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions of subsection (1).

(4) The department shall immediately notify in writing any person whose commercial vehicle operator's endorsement is suspended under this section. The person suspended has the right to file a petition within 30 days after the notice is given for a hearing in the matter in the district court in the county in which the finding of blood alcohol concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county in which the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether the person was driving or had actual physical control of a commercial motor vehicle while his blood alcohol concentration was 0.04 or more. The court shall determine whether the petitioner is entitled to a commercial vehicle operator's endorsement or is subject to suspension as provided in this section. The provisions of 61-8-404 apply to any proceedings under this section."

Section 10. Section 61-8-806, MCA, is amended to read:

"61-8-806. ~~Chemical--blood~~ Blood, breath, or urine 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, subject to the provisions of 61-8-401 and 61-8-805, to a ~~chemical~~ test of his blood, breath, or urine for the purpose of determining ~~the alcohol-content-of-his-blood~~ any measured amount of alcohol in his body if he is requested to submit to the test by a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while his blood alcohol concentration was 0.04 or more. The peace officer may designate a blood, breath, or urine test to be administered.

(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 commercial motor vehicle operator who is a resident of Montana refuses upon the request of a peace officer to submit to a ~~chemical~~ test designated by the officer as provided in subsection (1), the test may not be given. On behalf of the department, the officer shall immediately seize the person's driver's license showing the commercial vehicle operator's endorsement and forward the license to the department, along with a sworn report that he had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having a ~~blood~~ an alcohol concentration of 0.04 or more and that the person had refused to submit to the test upon

the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a resident's driver's license showing a commercial vehicle operator's endorsement, the peace officer shall issue, on behalf of the department, a temporary driving permit without the commercial vehicle operator's endorsement. The temporary driving permit is valid for 72 hours after issuance.

(5) If a commercial motor vehicle operator refuses to submit to a chemical test as provided in subsection (3), the department shall suspend his commercial vehicle operator's endorsement:

(a) upon first refusal, for 1 year, with no provision for a restricted probationary license or endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension for a first refusal must be for 3 years;

(b) upon a second or subsequent refusal at any time as determined from the records of the department, for 10 years, with no provision for a restricted probationary license or endorsement.

(6) A nonresident commercial motor vehicle operator who refuses to submit to a chemical test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and ~~may receive~~ must be given a temporary driving permit as provided in subsection (4)."

Section 11. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender of licenses. (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory the suspension or revocation of the driver's license of the person by the department, the court in which such conviction is had shall require the surrender to it of all driver's licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward the license to the department and at the same time forward a record of such conviction to the department, providing that if such person does not possess a driver's license the court shall so indicate in its report to the department.

(2) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a violation of any such laws, other than regulations governing standing or parking, and may recommend the suspension of the driver's license of the person so convicted. The court may also recommend that the department issue a restricted probationary license ~~in lieu of the suspension--required--in--61-5-208(2)~~ on the condition that the individual comply with the requirement that he attend and complete a driver-improvement-school or an alcohol treatment-program-if-one is-available information course as provided in 61-8-714 and

61-8-722. The department shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee is subject to the restrictions set forth thereon and may not operate a vehicle in violation of those restrictions.

(3) Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report any such action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department."

Section 12. Section 23-2-523, MCA, is amended to read:

"23-2-523. Prohibited operation and mooring -- enforcement.

(1) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person may operate any motorboat, including a sailboat propelled by a motor of any kind, or manipulate any water skis, surfboard, or similar device attached to a motorboat while under the influence of alcohol, or drugs, or a combination of the two.

(3) It is unlawful for the owner of any motorboat or vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating

such watercraft under the prevailing circumstances.

(4) No person may operate or knowingly permit any person to operate any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) No person may make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest, or ski belt.

(7) No person may moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor may any person deface, remove, or destroy any such buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment such use creates an

especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended."

Section 13. Section 23-2-535, MCA, is amended to read:

"23-2-535. ~~Blood--alcohol~~ Alcohol concentration standards -- drug detection -- evidence admissible -- administration of tests.

(1) The ~~presumptions inferences~~ contained in 61-8-401~~(3)~~(4) apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of the any measured amount or detected presence of alcohol in a ~~person's blood~~ person at the time of the act alleged, as shown by analysis of the person's blood, breath, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a ~~chemical~~ test of his blood, breath, or urine for the purpose of determining ~~the alcoholic content of his blood~~ any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action

or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-405 and the definition of blood alcohol concentration provided in 61-8-407 apply to any testing done to ~~determine the blood alcohol concentration of~~ a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" shall have the meaning provided in 61-8-401(3)."

Section 14. ~~Section 45-5-205,~~ MCA, is amended to read:

"45-5-205. Negligent vehicular assault -- penalty. (1) If a person operates a motor vehicle in a negligent manner and he is driving while under the influence of alcohol, ~~or drugs~~ a dangerous drug, any other drug, or any combination of the three, as provided for in 61-8-401(1), and his conduct is the cause of bodily injury to another, he commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed \$1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both."

Section 15. Section 67-1-211, MCA, is amended to read:

"67-1-211. ~~Blood alcohol~~ Alcohol concentration standards -- evidence admissible -- administration of tests. (1) If a person acting or attempting to act as a crewmember of an aircraft has a blood an alcohol concentration of 0.04% by weight or more as

defined in 61-8-407, it may be inferred that the person is ~~conclusively--presumed--to--be~~ under the influence of alcohol or drugs and is in violation of 67-1-204.

(2) Evidence of the any measured amount or detected presence of alcohol in ~~a person's blood~~ the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a ~~chemical~~ test of his blood, breath, or urine for the purpose of determining the any measured amount or detected presence of alcohol or drug-content-of-his-blood in his body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, or drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while

under the influence of alcohol, or drugs, or a combination of the two. The arresting officer may designate which one of the aforesaid tests must be administered. A person who is unconscious or who is otherwise in a condition rendering him incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with violation of 67-1-204 refuses to submit to a ~~chemical~~ test of his blood, breath, or urine for the purpose of determining the ~~alcohol content of~~ any measured amount or detected presence of alcohol in his blood body, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-405 and the definition of alcohol concentration provided in 61-8-407 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the blood alcohol concentration of a person charged with violation of 67-1-204."