

HOUSE BILL 766

Introduced by Fagg

2/12	Introduced
2/12	Referred to Judiciary
2/12	First Reading
2/12	Fiscal Note Requested
2/16	Fiscal Note Received
2/18	Fiscal Note Printed
2/21	Hearing
2/22	Tabled in Committee

1 HOUSE BILL NO. 766  
2 INTRODUCED BY Jess

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MAXIMUM  
5 TERM OF IMPRISONMENT FOR CERTAIN ALCOHOL-RELATED MOTOR  
6 VEHICLE OFFENSES; AND AMENDING SECTIONS 61-8-714 AND  
7 61-8-722, MCA."  
8

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

10 **Section 1.** Section 61-8-714, MCA, is amended to read:

11 "61-8-714. Penalty for driving under the influence of  
12 alcohol or drugs. (1) A person convicted of a violation of  
13 61-8-401 shall be punished by imprisonment in the county  
14 jail for not less than 24 consecutive hours or more than 60  
15 days 6 months and shall be punished by a fine of not less  
16 than \$100 or more than \$500. The jail sentence may not be  
17 suspended unless the judge finds that the imposition of the  
18 jail sentence will pose a risk to the defendant's physical  
19 or mental well-being.

20 (2) On a second conviction, he shall be punished by a  
21 fine of not less than \$300 or more than \$500 and by  
22 imprisonment for not less than 7 days, at least 48 hours of  
23 which must be served consecutively, or more than 6 months.  
24 Three days of the jail sentence may not be suspended unless  
25 the judge finds that the imposition of the jail sentence

1 will pose a risk to the defendant's physical or mental  
2 well-being.

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

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

1 institutions, which must include alcohol or drug treatment,  
 2 or both. Each counselor providing education or treatment  
 3 shall, at the commencement of the education or treatment,  
 4 notify the court that the defendant has been enrolled in a  
 5 course or treatment program. If the defendant fails to  
 6 attend the course or the treatment program, the counselor  
 7 shall notify the court of the failure. As long as the  
 8 alcohol information course and treatment program are  
 9 approved as provided in this subsection, the defendant may  
 10 attend the information course and treatment program of his  
 11 choice. The treatment provided to the defendant at a  
 12 treatment program must be at a level appropriate to his  
 13 alcohol problem, as determined by the judge based upon the  
 14 recommendation from the certified chemical dependency  
 15 counselor.

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

1 previous conviction. If there has been no additional  
 2 conviction for an offense under this section for a period of  
 3 5 years after a prior conviction hereunder, then all records  
 4 and data relating to the prior conviction are confidential  
 5 criminal justice information as defined in 44-5-103 and  
 6 public access to the information may only be obtained by  
 7 district court order upon good cause shown.

8 (6) For the purpose of calculating subsequent  
 9 convictions under this section, a conviction for a violation  
 10 of 61-8-406 also constitutes a conviction for a violation of  
 11 61-8-401."

12 **Section 2.** Section 61-8-722, MCA, is amended to read:

13 "61-8-722. Penalty for driving with excessive blood  
 14 alcohol concentration. (1) A person convicted of a violation  
 15 of 61-8-406 shall be punished by imprisonment for not more  
 16 than ~~10-days~~ 6 months and shall be punished by a fine of not  
 17 less than \$100 or more than \$500.

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

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

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

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

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

1 present offense and a previous conviction. If there has been  
2 no additional conviction for an offense under this section  
3 for a period of 5 years after a prior conviction hereunder,  
4 then such prior offense shall be expunged from the  
5 defendant's record."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0766, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill increases the maximum term of imprisonment for certain alcohol-related motor vehicle offenses.

ASSUMPTIONS:


1. The Highway Patrol reimburses local jail expenses for incarcerations due to arrests by patrol officers. Currently, the general experience is that judges, on first offense DUI convictions, provide the minimum jail sentence. If this experience continues, the fiscal impact would be minimal or none. However, the fiscal impact on the Department of Justice is dependent upon the actions of judges, making it difficult to estimate accurately.
2. The Department of Justice currently pays an average of \$35 per day for incarceration of Highway Patrol prisoners, and this average will not change as a result of this bill.

FISCAL IMPACT:

None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

None.

  
\_\_\_\_\_  
ROD SUNDSTED, BUDGET DIRECTOR                      DATE  
Office of Budget and Program Planning                      7-15-91

  
\_\_\_\_\_  
RUSSELL FAGG, PRIMARY SPONSOR                      DATE  
2/18/91

Fiscal Note for HB0766, as introduced

HB 766