

1 House BILL NO. 134
2 INTRODUCED BY Scull

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
5 32-2142.1, R.C.M. 1947, TO CREATE A PRESUMPTION OF
6 INTOXICATION AND TO REMOVE THE POWER OF THE MONTANA HIGHWAY
7 PATROL BOARD TO SUSPEND A DRIVER'S LICENSE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 32-2142.1, R.C.M. 1947, is amended
11 to read as follows:

12 "32-2142.1. Chemical blood, breath, or urine tests.

13 (a) Any person who operates a motor vehicle upon the public
14 highways of this state shall be deemed to have given
15 consent, subject to the provisions of section 32-2142,
16 R.C.M. 1947, to a chemical test of his blood, breath, or
17 urine for the purpose of determining the alcoholic content
18 of his blood if arrested by a peace officer for driving or
19 in actual physical control of a motor vehicle while under
20 the influence of intoxicating liquor. The test shall be
21 administered at the direction of a peace officer having
22 reasonable grounds to believe ~~the~~ that the person ~~to have~~
23 been was driving or in ~~actual-physical~~ control of a motor
24 vehicle upon the public highways of this state while under
25 the influence of intoxicating liquor. The arresting officer

1 may designate which one of the aforesaid tests shall be
2 administered.

3 (b) Any person who is unconscious or who is otherwise
4 in a condition rendering him incapable of refusal, shall be
5 deemed not to have withdrawn the consent provided by
6 paragraph (a) of this section.

7 (c) If a person under arrest refuses upon the request
8 of a peace officer to submit to a the chemical test
9 designated by the arresting officer as provided in paragraph
10 (a) of this section, none shall be given, but ~~the Montana~~
11 ~~highway patrol board, upon the receipt of a sworn report~~
12 upon testimony of the peace officer that he had reasonable
13 grounds to believe the arrested person had been driving or
14 was in ~~actual-physical~~ control of a motor vehicle upon the
15 public highways of this state while under the influence of
16 intoxicating liquor and that the person had refused to
17 submit to the test upon the request of the peace officer,
18 ~~shall suspend the license or driving privilege of such~~
19 ~~person on the highways of this state for a period of sixty~~
20 ~~(60) days. If refusal by a nonresident shall be subject~~
21 ~~to suspension by the board in like manner. All such~~
22 ~~suspensions are subject to review as hereinafter provided.~~
23 it shall be presumed, in any criminal prosecution under this
24 chapter, that the defendant was under the influence of
25 intoxicating liquor at the time of the arrest.

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1 (d) In addition to the presumption created in
2 subsection (c) above, in any criminal prosecution under this
3 chapter the judge, upon determining that the defendant
4 wrongfully withheld consent to the chemical test designated
5 by the arresting officer, may fine the defendant up to one
6 hundred dollars (\$100) or require suspension of the
7 defendants driving privileges for up to sixty (60) days, or
8 may impose both fine and suspension of driving privileges.

9 The power of the court to impose a fine or require
10 suspension of driving privileges hereunder shall not require
11 a conviction in the principal criminal prosecution."

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Approved by Committee
on Judiciary

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INTRODUCED BY JAMES MOORE, SCULLY

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arresting officer may designate which one of the aforesaid tests shall be administered.

(b) 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 paragraph (a) of this section.

(c) If a person under arrest refuses upon the request of a peace officer to submit to a the chemical test designated by the arresting officer as provided in paragraph

(a) of this section, none shall be given, but ~~the-Montana highway-patrol-board,-upon-the-receipt--of--a--sworn--report upon testimony~~ of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in ~~actual--physical~~ ACTUAL PHYSICAL control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the peace officer, ~~shall-suspend-the-license-or-driving--privilege--of such--person--on--the-highways-of-this-state-for-a-period-of sixty-(60)-days,-like-refusal-by--a--nonresident--shall-be subject-to-suspension-by-the-board-in-like-manner,-All-such suspensions--are-subject-to-review-as-hereinafter-provided, it shall be presumed, in any criminal prosecution under this chapter, that the defendant was under the influence of intoxicating liquor at the time of the arrest.~~

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2 subsection (c) above, in any criminal prosecution under this
3 chapter the judge, upon determining that the defendant
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5 by the arresting officer, may fine the defendant up to one
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state while under the influence of intoxicating liquor. The arresting officer may designate which one of the aforesaid tests shall be administered.

(b) 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 paragraph (a) of this section.

(c) If a person under arrest refuses upon the request of a peace officer to submit to ~~a~~ the chemical test designated by the arresting officer as provided in paragraph (a) of this section, none shall be given, ~~but, the Montana highway patrol board, upon the receipt of a sworn report upon--testimony of the peace officer~~ UPON PROOF that he THE PEACE OFFICER had reasonable grounds to believe the arrested person had been driving or was in ~~actual--physical~~ ACTUAL PHYSICAL control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the peace officer, ~~shall--suspend--the license--or--driving--privilege--of--such--person--on--the--highways of--this--state--for--a--period--of--sixty--(60)--days,--like--refusal by--a--nonresident--shall--be--subject--to--suspension--by--the--board in--like--manner,--All--such--suspensions--are--subject--to--review as--hereinafter--provided. it--shall--be--presumed,--in--any criminal--prosecution--under--this--chapter,--that--the--defendant~~

1 was under the influence of intoxicating liquor at the time
2 of the arrest.

3 (d) In addition to the presumption created in
4 subsection (e) above, in any criminal prosecution under this
5 chapter the judge, upon determining that the defendant
6 wrongfully withheld consent to the chemical test designated
7 by the arresting officer, may fine the defendant up to one
8 hundred dollars (\$100) or require suspension of the
9 defendant's driving privileges for up to sixty (60) days, or
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 16 PHYSICAL control of a motor vehicle upon the public highways
 17 of this state while under the influence of intoxicating
 18 liquor and that the person had refused to submit to the test
 19 upon the request of the peace officer, ~~shall suspend the~~
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 21 ~~of this state for a period of sixty (60) days. Like refusal~~
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13 ~~a conviction in the principal criminal prosecution."~~

-End-

March 13, 1975

SENATE COMMITTEE ON JUDICIARY
AMENDMENTS TO HOUSE BILL NO. 134

That House Bill No. 134, third reading, be amended as follows:

1. Amend page 3, section 1, lines 7 and 8.
Following: "officer,"
Strike: "may fine the defendant up to one hundred dollars
(\$100) or"
Insert: "shall"
2. Amend page 3, section 1, line 9.
Following: "for"
Strike: "up to"
3. Amend page 3, section 1, lines 9 and 10.
Following: "days"
Strike: ", or may impose both fine and suspension of
driving privileges"
4. Amend page 3, section 1, line 11.
Following: "to"
Strike: "impose a fine or"

AND AS SO AMENDED, BE NOT CONCURRED IN