

Member *David*
 1 *Edna Knopp* *W. J. Brock* *John* *of Bath*
 2 INTRODUCED BY *Edna Knopp* *W. J. Brock* *John* *of Bath*
 3 *Brand* *Johnston* *Hand* *League* *Smith*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A *Bill*
 5 MANDATORY MINIMUM SENTENCE OF IMPRISONMENT OF 10 DAYS, THE *Bill*
 6 IMPOSITION OR EXECUTION OF WHICH MAY NOT BE DEFERRED OR *Bill*
 7 SUSPENDED, FOR PERSONS CONVICTED OF A THIRD OR SUBSEQUENT *Bill*
 8 OFFENSE OF DRIVING UNDER THE INFLUENCE OF INTOXICATING *Bill*
 9 LIQUOR OR DRUGS; AMENDING SECTION 32-2142, R.C.M. 1947."
 10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 32-2142, R.C.M. 1947, is amended to
 13 read as follows:
 14 "32-2142. Persons under the influence of intoxicating
 15 liquor or of drugs. (a) It is unlawful and punishable as
 16 provided in paragraph (d) of this section for any person who
 17 is under the influence of intoxicating liquor to drive or be
 18 in actual physical control of any motor vehicle upon the
 19 highways of this state.
 20 (b) In any criminal prosecution for a violation
 21 paragraph (a) of this section relating to driving a vehicle
 22 while under the influence of intoxicating liquor, the amount
 23 of alcohol in the defendant's blood at the time alleged as
 24 shown by chemical analysis of the defendant's blood, urine,
 25 breath or other bodily substance, shall give rise to the

following presumptions:
 1. If there was at that time 0.05 per cent or less by
 weight of alcohol in the defendant's blood it shall be
 presumed that the defendant was not under the influence of
 intoxicating liquor:
 2. If there was at that time in excess of 0.05 per
 cent out less than 0.10 per cent by weight of alcohol in the
 defendant's blood, such fact shall not give rise to any
 presumption that the defendant was or was not under the
 influence of intoxicating liquor, but such fact may be
 considered with other competent evidence in determining the
 guilt or innocence of the defendant:
 3. If there was at that time 0.10 per cent or more by
 weight of alcohol in the defendant's blood, it shall be
 presumed that the defendant was under the influence of
 intoxicating liquor:
 4. Per cent by weight of alcohol in the blood shall be
 based upon grams of alcohol per one hundred (100) cubic
 centimeters of blood:
 5. The foregoing provisions of paragraph (b) shall not
 be construed as limiting the introduction of any other
 competent evidence bearing upon the question whether or not
 the defendant was under the influence of intoxicating
 liquor.
 (c) It is unlawful and punishable as provided in

INTRODUCED BILL

HB 260

1 paragraph (d) of this section for any person who is an
 2 habitual user of or under the influence of any narcotic drug
 3 or who is under the influence of any other drug to a degree
 4 which renders him incapable of safely driving a motor
 5 vehicle to drive a motor vehicle within this state. The fact
 6 that any person charged with a violation of this paragraph
 7 is or has been entitled to use such a drug under the laws of
 8 this state shall not constitute a defense against any charge
 9 of violating this paragraph.

10 (d) Every person who is convicted of a violation of
 11 this section shall be punished by imprisonment in the county
 12 or city jail for not more than six (6) months or by a fine
 13 of not less than one hundred dollars (\$100.00) or more than
 14 five hundred dollars (\$500.00) or by both such fine and
 15 imprisonment. On a second conviction he shall be punished by
 16 imprisonment in the county or city jail for not less than
 17 ten (10) days nor more than six (6) months, to which may be
 18 added, at the discretion of the court a fine of not less
 19 than three hundred dollars (\$300.00) nor more than five
 20 hundred dollars (\$500.00). On the third or subsequent
 21 conviction he shall be punished by imprisonment for a term
 22 of not less than thirty (30) days nor more than one (1)
 23 year, to which may be added at the discretion of the court a
 24 fine of not less than five hundred dollars (\$500.00) nor
 25 more than one thousand dollars (\$1,000.00). The imposition

1 or execution of the first 10 days of the jail sentence
 2 imposed for a third or subsequent offense may not be
 3 deferred or suspended.

4 (e) Each and every municipality in this state is
 5 hereby given authority to enact the foregoing paragraphs
 6 (a), (b), (c) and (d) of this section, with the word "state"
 7 in the first sentence of paragraphs (a) and (c) changed in
 8 each instance to read "municipality," as an ordinance, and
 9 is hereby given jurisdiction of the enforcement of said
 10 ordinance, and of the imposition of the fines and penalties
 11 therein provided.

12 (f) The board shall forthwith revoke the license or
 13 permit to drive and operating privilege and any nonresident
 14 operating privilege of any person upon receiving a record of
 15 such person's conviction or forfeiture of bail not vacated
 16 under this section."

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 260

INTRODUCED BY GOULD, ELLIS, UNDERDAL, COX, KENNY, BRAND,
HAND, KANDUCH, JOHNSTON, TEAGUE, SOUTH, SEIFERT, STOBIE,
CONROY, LORY, FRATES, MEYER, BARRETT, EUDAILY, LUND, WOOD,
FEOA, RAMIREZ, PORTER, HARRINGTON, MENAHAN, DAVIS, McLANE,
NATHE, HURWITZ, TOWER, KENNERLY, SMITH, ELLERD, KVAALEN,
COLBURN, HIRSCH, DASSINGER, CURTISS, ELLISON, MOORE, WYRICK,
MARKS, MULAR, BURNETT, FABREGA, O'KEEFE, FAGG, KROPP, ROTH,
SEVERSON, J. GUNDERSON, KEYSER, JENSEN, AAGESON, TURNER,
VINGER, R. BAETH, ERNST, LIEN, MANUEL, STAIGMILLER, HANSEN,
SIVERTSEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A MANDATORY
MINIMUM SENTENCE OF IMPRISONMENT OF 10 DAYS, THE IMPOSITION OR
EXECUTION OF WHICH MAY NOT BE DEFERRED OR SUSPENDED, FOR PERSONS
CONVICTED OF A THIRD OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE
INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; AMENDING SECTION
32-2142, R.C.M. 1947."

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

Section 1. Section 32-2142, R.C.M. 1947, is amended to read
as follows:

"32-2142. Persons under the influence of intoxicating liquor
or of drugs. (a) It is unlawful and punishable as provided in
paragraph (d) of this section for any person who is under the

influence of intoxicating liquor to drive or be in actual physical
control of any motor vehicle upon the highways of this state.

(b) In any criminal prosecution for a violation of paragraph
(a) of this section relating to driving a vehicle while under the
influence of intoxicating liquor, the amount of alcohol in the
defendant's blood at the time alleged as shown by chemical
analysis of the defendant's blood, urine, breath or other bodily
substance, shall give rise to the following presumptions:

1. If there was at that time 0.05 per cent or less by weight
of alcohol in the defendant's blood it shall be presumed that the
defendant was not under the influence of intoxicating liquor:

2. If there was at that time in excess of 0.05 per cent but
less than 0.10 per cent by weight of alcohol in the defendant's
blood, such fact shall not give rise to any presumption that the
defendant was or was not under the influence of intoxicating
liquor, but such fact may be considered with other competent
evidence in determining the guilt or innocence of the defendant:

3. If there was at that time 0.10 per cent or more by weight
of alcohol in the defendant's blood, it shall be presumed that the
defendant was under the influence of intoxicating liquor:

4. Per cent by weight of alcohol in the blood shall be based
upon grams of alcohol per one hundred (100) cubic centimeters of
blood:

5. The foregoing provisions of paragraph (b) shall not be
construed as limiting the introduction of any other competent

1 evidence bearing upon the question whether or not the defendant
2 was under the influence of intoxicating liquor.

3 (c) It is unlawful and punishable as provided in paragraph
4 (d) of this section for any person who is an habitual user of or
5 under the influence of any narcotic drug or who is under the
6 influence of any other drug to a degree which renders him
7 incapable of safely driving a motor vehicle to drive a motor
8 vehicle within this state. The fact that any person charged with a
9 violation of this paragraph is or has been entitled to use such a
10 drug under the laws of this state shall not constitute a defense
11 against any charge of violating this paragraph.

12 (d) Every person who is convicted of a violation of this
13 section shall be punished by imprisonment in the county or city
14 jail for not more than six (6) months or by a fine of not less
15 than one hundred dollars (\$100.00) or more than five hundred
16 dollars (\$500.00) or by both such fine and imprisonment. On a
17 second conviction he shall be punished by imprisonment in the
18 county or city jail for not less than ten (10) days nor more than
19 six (6) months, to which may be added, at the discretion of the
20 court a fine of not less than three hundred dollars (\$300.00) nor
21 more than five hundred dollars (\$500.00). On the third or
22 subsequent conviction he shall be punished by imprisonment for a
23 term of not less than thirty (30) days nor more than one (1) year,
24 to which may be added at the discretion of the court a fine of not
25 less than five hundred dollars (\$500.00) nor more than one

1 thousand dollars (\$1,000.00). ~~THE NOTWITHSTANDING ANY PROVISION TO~~
2 ~~THE CONTRARY PROVIDING FOR SUSPENSION OF EXECUTION OF A SENTENCE~~
3 ~~IMPOSED UNDER THIS SUBSECTION, THE imposition or execution of the~~
4 ~~first 10 days of the jail sentence imposed for a third or~~
5 ~~subsequent offense THAT OCCURRED WITHIN 5 YEARS OF THE FIRST~~
6 ~~OFFENSE may not be deferred or suspended.~~

7 (e) Each and every municipality in this state is hereby
8 given authority to enact the foregoing paragraphs (a), (b), (c)
9 and (d) of this section, with the word "state" in the first
10 sentence of paragraphs (a) and (c) changed in each instance to
11 read "municipality," as an ordinance, and is hereby given
12 jurisdiction of the enforcement of said ordinance, and of the
13 imposition of the fines and penalties therein provided.

14 (f) The board shall forthwith revoke the license or permit
15 to drive and operating privilege and any nonresident operating
16 privilege of any person upon receiving a record of such person's
17 conviction or forfeiture of bail not vacated under this section."

-End-

HOUSE BILL NO. 260

INTRODUCED BY GOULD, ELLIS, UNDERDAL, COX, KENNY, BRAND,
 HAND, KANDUCH, JOHNSTON, TEAGUE, SOUTH, SEIFERT, STOBIE,
 CONROY, LORY, FRATES, MEYER, BARRETT, EUDAILY, LUND, WOOD,
 FEDA, RAMIREZ, PORTER, HARRINGTON, MENAHAN, DAVIS, McLANE,
 NATHE, HURWITZ, TOWER, KENNERLY, SMITH, ELLERD, KVAALEN,
 COLBURN, HIRSCH, DASSINGER, CURTISS, ELLISON, MOORE, WYRICK,
 MARKS, MULAR, BURNETT, FABREGA, O'KEEFE, FAGG, KROPP, ROTH,
 SEVERSON, J. GUNDERSON, KEYSER, JENSEN, AAGESON, TURNER,
 VINGER, R. BAETH, ERNST, LIEN, MANUEL, STAIGMILLER, HANSEN,

SIVERTSEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A MANDATORY
 MINIMUM SENTENCE OF IMPRISONMENT OF 10 DAYS, THE IMPOSITION OR
 EXECUTION OF WHICH MAY NOT BE DEFERRED OR SUSPENDED, FOR PERSONS
 CONVICTED OF A THIRD OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE
 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; AMENDING SECTION
 32-2142, R.C.M. 1947."

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

Section 1. Section 32-2142, R.C.M. 1947, is amended to read
 as follows:

"32-2142. Persons under the influence of intoxicating liquor
 or of drugs. (a) It is unlawful and punishable as provided in
 paragraph (d) of this section for any person who is under the

influence of intoxicating liquor to drive or be in actual physical
 control of any motor vehicle upon the highways of this state.

(b) In any criminal prosecution for a violation of paragraph
 (a) of this section relating to driving a vehicle while under the
 influence of intoxicating liquor, the amount of alcohol in the
 defendant's blood at the time alleged as shown by chemical
 analysis of the defendant's blood, urine, breath or other bodily
 substance, shall give rise to the following presumptions:

1. If there was at that time 0.05 per cent or less by weight
 of alcohol in the defendant's blood it shall be presumed that the
 defendant was not under the influence of intoxicating liquor:

2. If there was at that time in excess of 0.05 per cent but
 less than 0.10 per cent by weight of alcohol in the defendant's
 blood, such fact shall not give rise to any presumption that the
 defendant was or was not under the influence of intoxicating
 liquor, but such fact may be considered with other competent
 evidence in determining the guilt or innocence of the defendant:

3. If there was at that time 0.10 per cent or more by weight
 of alcohol in the defendant's blood, it shall be presumed that the
 defendant was under the influence of intoxicating liquor:

4. Per cent by weight of alcohol in the blood shall be based
 upon grams of alcohol per one hundred (100) cubic centimeters of
 blood:

5. The foregoing provisions of paragraph (b) shall not be
 construed as limiting the introduction of any other competent

1 evidence bearing upon the question whether or not the defendant
 2 was under the influence of intoxicating liquor.

3 (c) It is unlawful and punishable as provided in paragraph
 4 (d) of this section for any person who is an habitual user of or
 5 under the influence of any narcotic drug or who is under the
 6 influence of any other drug to a degree which renders him
 7 incapable of safely driving a motor vehicle to drive a motor
 8 vehicle within this state. The fact that any person charged with a
 9 violation of this paragraph is or has been entitled to use such a
 10 drug under the laws of this state shall not constitute a defense
 11 against any charge of violating this paragraph.

12 (d) Every person who is convicted of a violation of this
 13 section shall be punished by imprisonment in the county or city
 14 jail for not more than six (6) months or by a fine of not less
 15 than one hundred dollars (\$100.00) or more than five hundred
 16 dollars (\$500.00) or by both such fine and imprisonment. On a
 17 second conviction he shall be punished by imprisonment in the
 18 county or city jail for not less than ten (10) days nor more than
 19 six (6) months, to which may be added, at the discretion of the
 20 court a fine of not less than three hundred dollars (\$300.00) nor
 21 more than five hundred dollars (\$500.00). On the third or
 22 subsequent conviction he shall be punished by imprisonment for a
 23 term of not less than thirty (30) days nor more than one (1) year,
 24 to which may be added at the discretion of the court a fine of not
 25 less than five hundred dollars (\$500.00) nor more than one

1 thousand dollars (\$1,000.00). ~~THE NOTWITHSTANDING ANY PROVISION TO~~
 2 ~~THE CONTRARY PROVIDING FOR SUSPENSION OF EXECUTION OF A SENTENCE~~
 3 ~~IMPOSED UNDER THIS SUBSECTION, THE imposition or execution of the~~
 4 ~~first 10 days of the jail sentence imposed for a third or~~
 5 ~~subsequent offense THAT OCCURRED WITHIN 5 YEARS OF THE FIRST~~
 6 ~~OFFENSE may not be deferred or suspended.~~

7 (e) Each and every municipality in this state is hereby
 8 given authority to enact the foregoing paragraphs (a), (b), (c)
 9 and (d) of this section, with the word "state" in the first
 10 sentence of paragraphs (a) and (c) changed in each instance to
 11 read "municipality," as an ordinance, and is hereby given
 12 jurisdiction of the enforcement of said ordinance, and of the
 13 imposition of the fines and penalties therein provided.

14 (f) The board shall forthwith revoke the license or permit
 15 to drive and operating privilege and any nonresident operating
 16 privilege of any person upon receiving a record of such person's
 17 conviction or forfeiture of bail not vacated under this section."

-End-

HOUSE BILL NO. 260

1 INTRODUCED BY GOULD, ELLIS, UNDERDAL, COX, KENNY, BRAND,
 2 HAND, KANDUCH, JOHNSTON, TEAGUE, SOUTH, SEIFERT, STUBIE,
 3 CONROY, LORY, FRATES, MEYER, BARRETT, EUDAILY, LUND, WOOD,
 4 FEDA, RAMIREZ, PORTER, HARRINGTON, MENAHAN, DAVIS, McLANE,
 5 NATHE, HURWITZ, TOWER, KENNERLY, SMITH, ELLERD, KVAALLEN,
 6 COLBURN, HIRSCH, DASSINGER, CURTISS, ELLISON, MOORE, WYRICK,
 7 MARKS, MULAR, BURNETT, FABREGA, O'KEEFE, FAGG, KROPP, ROTH,
 8 SEVERSON, J. GUNDERSON, KEYSER, JENSEN, AAGESON, TURNER,
 9 VINGER, R. BAETH, ERNST, LIEN, MANUEL, STAIGHILLER, HANSEN,
 10 SIVERTSEN
 11

12
 13 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A
 14 MANDATORY MINIMUM SENTENCE OF IMPRISONMENT OF 10 DAYS, THE
 15 IMPOSITION OR EXECUTION OF WHICH MAY NOT BE DEFERRED OR
 16 SUSPENDED, FOR PERSONS CONVICTED OF A THIRD OR SUBSEQUENT
 17 OFFENSE OF DRIVING UNDER THE INFLUENCE OF INTOXICATING
 18 LIQUOR OR DRUGS; AMENDING SECTION 32-2142, R.C.M. 1947."
 19

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

21 Section 1. Section 32-2142, R.C.M. 1947, is amended to
 22 read as follows:

23 "32-2142. Persons under the influence of intoxicating
 24 liquor or of drugs. (a) It is unlawful and punishable as
 25 provided in paragraph (d) of this section for any person who

1 is under the influence of intoxicating liquor to drive or be
 2 in actual physical control of any motor vehicle upon the
 3 highways of this state.

4 (b) In any criminal prosecution for a violation of
 5 paragraph (a) of this section relating to driving a vehicle
 6 while under the influence of intoxicating liquor, the amount
 7 of alcohol in the defendant's blood at the time alleged as
 8 shown by chemical analysis of the defendant's blood, urine,
 9 breath or other bodily substance, shall give rise to the
 10 following presumptions:

11 1. If there was at that time 0.05 per cent or less by
 12 weight of alcohol in the defendant's blood it shall be
 13 presumed that the defendant was not under the influence of
 14 intoxicating liquor:

15 2. If there was at that time in excess of 0.05 per
 16 cent but less than 0.10 per cent by weight of alcohol in the
 17 defendant's blood, such fact shall not give rise to any
 18 presumption that the defendant was or was not under the
 19 influence of intoxicating liquor, but such fact may be
 20 considered with other competent evidence in determining the
 21 guilt or innocence of the defendant:

22 3. If there was at that time 0.10 per cent or more by
 23 weight of alcohol in the defendant's blood, it shall be
 24 presumed that the defendant was under the influence of
 25 intoxicating liquor:

REFERENCE BILL

1 4. Per cent by weight of alcohol in the blood shall be
2 based upon grams of alcohol per one hundred (100) cubic
3 centimeters of blood:

4 5. The foregoing provisions of paragraph (b) shall not
5 be construed as limiting the introduction of any other
6 competent evidence bearing upon the question whether or not
7 the defendant was under the influence of intoxicating
8 liquor.

9 (c) It is unlawful and punishable as provided in
10 paragraph (d) of this section for any person who is an
11 habitual user of or under the influence of any narcotic drug
12 or who is under the influence of any other drug to a degree
13 which renders him incapable of safely driving a motor
14 vehicle to drive a motor vehicle within this state. The fact
15 that any person charged with a violation of this paragraph
16 is or has been entitled to use such a drug under the laws of
17 this state shall not constitute a defense against any charge
18 of violating this paragraph.

19 (d) Every person who is convicted of a violation of
20 this section shall be punished by imprisonment in the county
21 or city jail for not more than six (6) months or by a fine
22 of not less than one hundred dollars (\$100.00) or more than
23 five hundred dollars (\$500.00) or by both such fine and
24 imprisonment. On a second conviction he shall be punished by
25 imprisonment in the county or city jail for not less than

1 ten (10) days nor more than six (6) months, to which may be
2 added, at the discretion of the court a fine of not less
3 than three hundred dollars (\$300.00) nor more than five
4 hundred dollars (\$500.00). On the third or subsequent
5 conviction he shall be punished by imprisonment for a term
6 of not less than thirty (30) days nor more than one (1)
7 year, to which may be added at the discretion of the court a
8 fine of not less than five hundred dollars (\$500.00) nor
9 more than one thousand dollars (\$1,000.00). ~~the~~
10 NOTWITHSTANDING ANY PROVISION TO THE CONTRARY PROVIDING FOR
11 SUSPENSION OF EXECUTION OF A SENTENCE IMPOSED UNDER THIS
12 SUBSECTION, THE imposition or execution of the first 10 days
13 of the jail sentence imposed for a third or subsequent
14 offense THAT OCCURRED WITHIN 5 YEARS OF THE FIRST OFFENSE
15 may not be deferred or suspended.

16 (e) Each and every municipality in this state is
17 hereby given authority to enact the foregoing paragraphs
18 (a), (b), (c) and (d) of this section, with the word "state"
19 in the first sentence of paragraphs (a) and (c) changed in
20 each instance to read "municipality," as an ordinance, and
21 is hereby given jurisdiction of the enforcement of said
22 ordinance, and of the imposition of the fines and penalties
23 therein provided.

24 (f) The board shall forthwith revoke the license or
25 permit to drive and operating privilege and any nonresident

HB 0260/02

1 operating privilege of any person upon receiving a record of
2 such person's conviction or forfeiture of bail not vacated
3 under this section."

-End-