

SENATE BILL NO. 111

INTRODUCED BY STIMATZ

BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE SENATE

January 13, 1981	Introduced and referred to Committee on Judiciary.
January 21, 1981	Committee recommend bill do pass as amended. Report adopted.
January 22, 1981	Bill printed and placed on members' desks.
January 23, 1981	Second reading, do pass.
January 24, 1981	Considered correctly engrossed.
January 26, 1981	Third reading, passed. Transmitted to House.

IN THE HOUSE

January 27, 1981	Introduced and referred to Committee on Judiciary.
March 5, 1981	Committee recommended bill be concurred in. Report adopted.
March 7, 1981	Second reading, concurred in.
March 10, 1981	Third reading, concurred in. Ayes, 35; Noes, 12.

IN THE SENATE

March 11, 1981	Returned from House. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 *Amend* BILL NO. *111*
 2 INTRODUCED BY *Strom*
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE DRIVING
 6 UNDER INFLUENCE LAWS BY PROVIDING THAT QUALIFIED PERSONS
 7 ACTING UNDER THE SUPERVISION AND DIRECTION OF A PHYSICIAN OR
 8 A REGISTERED NURSE MAY WITHDRAW BLOOD FOR THE PURPOSE OF
 9 DETERMINING ALCOHOL CONTENT UNDER THE IMPLIED CONSENT LAW;
 10 BY EXTENDING PROTECTION FROM CIVIL OR CRIMINAL LIABILITY TO
 11 SUCH PERSONS; AND BY CHANGING "INTOXICATING LIQUOR" TO
 12 "ALCOHOL"; AMENDING SECTIONS 61-8-402, 61-8-403, 61-8-404,
 13 AND 61-8-405, MCA."
 14

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

16 Section 1. Section 61-8-402, MCA, is amended to read:
 17 "61-8-402. Chemical blood, breath, or urine tests. (1)
 18 Any person who operates a motor vehicle upon the public
 19 highways of this state shall be deemed to have given
 20 consent, subject to the provisions of 61-8-401, to a
 21 chemical test of his blood, breath, or urine for the purpose
 22 of determining the alcoholic content of his blood if
 23 arrested by a peace officer for driving or in actual
 24 physical control of a motor vehicle while under the
 25 influence of ~~intoxicating-liquor~~ alcohol. The test shall be

1 administered at the direction of a peace officer having
 2 reasonable grounds to believe the person to have been
 3 driving or in actual physical control of a motor vehicle
 4 upon the public highways of this state while under the
 5 influence of ~~intoxicating-liquor~~ alcohol. The arresting
 6 officer may designate which one of the aforesaid tests shall
 7 be administered.

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

12 (3) If a person under arrest refuses upon the request
 13 of a peace officer to submit to a chemical test designated
 14 by the arresting officer as provided in subsection (1) of
 15 this section, none shall be given, but the division, upon
 16 the receipt of a sworn report of the peace officer that he
 17 had reasonable grounds to believe the arrested person had
 18 been driving or was in actual physical control of a motor
 19 vehicle upon the public highways of this state while under
 20 the influence of ~~intoxicating-liquor~~ alcohol and that the
 21 person had refused to submit to the test upon the request of
 22 the peace officer, shall suspend the license or driving
 23 privilege of such person on the highways of this state for a
 24 period of 60 days. Like refusal by a nonresident shall be
 25 subject to suspension by the division in like manner. All

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 SB 111

1 such suspensions are subject to review as hereinafter
2 provided."

3 Section 2. Section 61-8-403, MCA, is amended to read:

4 "61-8-403. Right of appeal to court. The division
5 shall immediately notify any person whose license or
6 privilege to drive has been suspended, as hereinbefore
7 authorized, in writing and such person shall have the right
8 to file a petition within 30 days thereafter for a hearing
9 in the matter in the district court in the county wherein
10 such person shall reside. Such court is hereby vested with
11 jurisdiction and it shall be its duty to set the matter for
12 hearing upon 30 days' written notice to the county attorney
13 of the county wherein the appeal is filed and such county
14 attorney shall represent the state, and thereupon the court
15 shall take testimony and examine into the facts of the case,
16 except that the issues shall be limited to whether a peace
17 officer had reasonable grounds to believe the person had
18 been driving or was in actual physical control of a vehicle
19 upon the public highways while under the influence of
20 ~~intoxicating-liquor alcohol~~, whether the person was placed
21 under arrest, and whether such person refused to submit to
22 the test. The court shall thereupon determine whether the
23 petitioner is entitled to a license or is subject to
24 suspension as heretofore provided."

25 Section 3. Section 61-8-404, MCA, is amended to read:

1 "61-8-404. Evidence admissible. (1) Upon the trial of
2 any criminal action or proceeding arising out of acts
3 alleged to have been committed by any person while driving
4 or in actual physical control of a motor vehicle while under
5 the influence of ~~intoxicating-liquor alcohol~~, evidence of
6 the amount of alcohol in the person's blood at the time of
7 the act alleged as shown by a chemical analysis of his
8 blood, breath, or urine is admissible.

9 (2) If the person under arrest refused to submit to
10 the test as hereinabove provided, proof of refusal shall be
11 admissible in any criminal action or proceeding arising out
12 of acts alleged to have been committed while the person was
13 driving or in actual physical control of a motor vehicle
14 upon the public highways while under the influence of
15 ~~intoxicating-liquor alcohol~~.

16 (3) The provisions of this part do not limit the
17 introduction of any other competent evidence bearing on the
18 question of whether the person was under the influence of
19 ~~intoxicating-liquor alcohol~~."

20 Section 4. Section 61-8-405, MCA, is amended to read:

21 "61-8-405. Administration of tests. (1) Only a
22 physician or registered nurse or other qualified person
23 under the supervision and direction of a physician or
24 registered nurse acting at the request of a peace officer
25 may withdraw blood for the purpose of determining the

1 alcoholic content therein. This limitation shall not apply
2 to the taking of breath or urine specimens.

3 (2) The person tested may, at his own expense, have a
4 physician or registered nurse of his own choosing administer
5 a test, in addition to any administered at the direction of
6 a peace officer, for the purpose of determining the amount
7 of alcohol in his blood at the time alleged as shown by
8 chemical analysis of his blood, breath, or urine. The
9 failure or inability to obtain an additional test by a
10 person shall not preclude the admissibility in evidence of
11 the test taken at the direction of a peace officer.

12 (3) Upon the request of the person tested full
13 information concerning the test taken at the direction of
14 the peace officer shall be made available to him or his
15 attorney.

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

22 (5) If the test given under 61-8-402 is a chemical
23 test of urine, the person tested shall be given such privacy
24 in the taking of the urine specimen as will insure the
25 accuracy of the specimen and, at the same time, maintain the

1 dignity of the individual involved.

2 (6) The division of motor vehicles in cooperation with
3 the state board of health and environmental sciences, or any
4 other appropriate agency, shall adopt uniform standards for
5 the giving of blood alcohol tests and may require
6 certification of training to administer such tests as deemed
7 necessary."

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Approved by Committee
on Judiciary

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9 DETERMINING ALCOHOL CONTENT UNDER THE IMPLIED CONSENT LAW;
10 BY EXTENDING PROTECTION FROM CIVIL OR CRIMINAL LIABILITY TO
11 SUCH PERSONS BY CHANGING THE REFERENCE TO THE RULE-MAKING
12 BODY; AND BY CHANGING "INTOXICATING LIQUOR" TO "ALCOHOL";
13 AMENDING SECTIONS 61-8-402, 61-8-403, 61-8-404, AND
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22 chemical test of his blood, breath, or urine for the purpose
23 of determining the alcoholic content of his blood if
24 arrested by a peace officer for driving or in actual
25 physical control of a motor vehicle while under the

1 influence of ~~intoxicating-liquor~~ alcohol. The test shall be
2 administered at the direction of a peace officer having
3 reasonable grounds to believe the person to have been
4 driving or in actual physical control of a motor vehicle
5 upon the public highways of this state while under the
6 influence of ~~intoxicating-liquor~~ alcohol. The arresting
7 officer may designate which one of the aforesaid tests shall
8 be administered.
9 (2) Any person who is unconscious or who is otherwise
10 in a condition rendering him incapable of refusal, shall be
11 deemed not to have withdrawn the consent provided by
12 subsection (1) of this section.
13 (3) If a person under arrest refuses upon the request
14 of a peace officer to submit to a chemical test designated
15 by the arresting officer as provided in subsection (1) of
16 this section, none shall be given, but the division, upon
17 the receipt of a sworn report of the peace officer that he
18 had reasonable grounds to believe the arrested person had
19 been driving or was in actual physical control of a motor
20 vehicle upon the public highways of this state while under
21 the influence of ~~intoxicating-liquor~~ alcohol and that the
22 person had refused to submit to the test upon the request of
23 the peace officer, shall suspend the license or driving
24 privilege of such person on the highways of this state for a
25 period of 60 days. Like refusal by a nonresident shall be

1 subject to suspension by the division in like manner. All
2 such suspensions are subject to review as hereinafter
3 provided."

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10 in the matter in the district court in the county wherein
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11 the test as hereinabove provided, proof of refusal shall be
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18 introduction of any other competent evidence bearing on the
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1 may withdraw blood for the purpose of determining the
2 alcoholic content therein. This limitation shall not apply
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4 (2) The person tested may, at his own expense, have a
5 physician or registered nurse of his own choosing administer
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23 (5) If the test given under 61-8-402 is a chemical
24 test of urine, the person tested shall be given such privacy
25 in the taking of the urine specimen as will insure the

1 accuracy of the specimen and, at the same time, maintain the
2 dignity of the individual involved.

3 (6) The division of motor vehicles in cooperation with
4 the ~~state board of health and environmental sciences~~
5 DIVISION OF FORENSIC SCIENCES, or any other appropriate
6 agency, shall adopt uniform standards RULES for the giving
7 of blood alcohol tests and may require certification of
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