

HOUSE BILL NO. 278

Introduced: 01/17/83

Referred to Committee on Judiciary: 01/17/83

Hearing: 1/25/83

Report: 02/21/83, Do Pass, As Amended

Rereferred to Committee on Judiciary: 02/23/83

Died in Committee

1 *Connelly* *House* BILL NO. *275* *Kocher*  
 2 INTRODUCED BY *Demetrius Vincent Seibert*  
*Monahan* *Demetrius* *Connelly* *Backus* *Jones*  
*Pack* *George* *Bengton* *Harmon* *J. Brown*  
 3 A BILL FOR AN ACT ENTITLED "AN ACT TO PROHIBIT THE  
 4 ISSUANCE OF A RESTRICTED PROBATIONARY DRIVER'S LICENSE TO  
 5 ANY PERSON WHOSE LICENSE HAS BEEN SUSPENDED FOR CONVICTION  
 6 OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING  
 7 SECTIONS 61-2-302 AND 61-11-101, MCA." *Stall* *Walters*  
*Do* *Walters* *Walters* *Walters* *Walters*  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 61-2-302, MCA, is amended to read:

12 "61-2-302. Establishment of driver improvement program  
 13 — participation by offending drivers. (1) The department of  
 14 justice may establish by administrative rules a driver  
 15 rehabilitation and improvement program or programs which may  
 16 consist of classroom instruction in rules of the road,  
 17 driving techniques, defensive driving, driver attitudes and  
 18 habits, actual on-the-road driver's training, and other such  
 19 subjects or tasks designed to contribute to proper driving  
 20 attitudes, habits, and techniques.

21 (2) Official participation in such driver  
 22 rehabilitation and improvement program is limited to those  
 23 persons whose license to operate a motor vehicle in the  
 24 state of Montana is:

25 (a) subject to suspension or revocation as a result of

1 a violation of the traffic laws of this state; or

2 (b) revoked and they have:

3 (i) completed at least 3 months of a 1-year  
 4 revocation; or

5 (ii) completed 1 year of a 3-year revocation; and

6 (iii) have met the requirements for reobtaining a  
 7 Montana driver's license.

8 (3) Notwithstanding ~~subject to the provisions of~~  
 9 ~~subsection (1) and notwithstanding~~ any provision of this  
 10 part inconsistent with any other law of the state of  
 11 Montana, the enforcement of any suspension or revocation  
 12 order which constitutes the basis for any person's  
 13 participation in the driver rehabilitation and improvement  
 14 program provided for herein may be stayed if that person  
 15 complies with the requirements established for the driver  
 16 improvement program and meets the eligibility requirements  
 17 of subsection (2).

18 (4) ~~In subject to the provisions of subsection (1).~~ In  
 19 the event a person's driver's license has been surrendered  
 20 prior to his selection for participation in the driver  
 21 rehabilitation and improvement program, the license may be  
 22 returned upon receipt of his agreement to participate in the  
 23 program.

24 (5) The stay of enforcement of any suspension or  
 25 revocation order shall be terminated and the order of

suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) Nothing in this part creates a right to be included in any program established under this part.

(7) The department of justice may establish a schedule of fees which may be charged those persons participating in the driver improvement and rehabilitation program, which fees shall be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, judge of a district court of the state, or a hearing examiner of the department of justice.

~~(9) No person convicted of driving while under the influence of alcohol or drugs in violation of 61-5-201 is eligible for a stay in any revocation or suspension order resulting from his conviction and the license of any person so convicted may not be returned to the offender prior to completion of the term of revocation or suspension.~~

Section 2. 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 revocation of the operator's or chauffeur's license of such person by the division, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward the license to the division and at the same time forward a record of such conviction to the division, providing that if such person does not possess a driver's license the court shall so indicate in its report to the division.

(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 division 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 operator's or chauffeur's license of the person so convicted. ~~The court may also recommend that the division issue a restricted probationary license in lieu of the suspension required in 61-5-208(2) on the condition that the individual attend a driver improvement school or an alcohol treatment program if one is available. The division shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana operator's or~~

1 chauffeur's licenses

2 {3} Any court or other agency of this state, or a  
3 subdivision thereof, which has jurisdiction to take any  
4 action suspending, revoking, or otherwise limiting a license  
5 to drive shall report any such action and the adjudication  
6 upon which it is based to the division within 5 days on  
7 forms furnished by the division."

-End-

Approved by Committee  
on Judiciary

## HOUSE BILL NO. 278

INTRODUCED BY KEMMIS, KEYSER, VINCENT, SEIFERT, KADAS,  
CONNELLY, CURTISS, METCALF, VELEBER, KENNERLY, MANUEL,  
MENAHAN, PECK, HEMSTAD, FABREGA, BENGTSON, O'CONNELL,  
J. HAMMOND, BACHINI, FARRIS, J. BROWN, FAGG, ROUSH,  
DOZIER, HAND, PISTORIA, WALDRON, HANSEN, NORDTVEOT,  
DRISCOLL, MUELLER, BLISS, COMPTON, SWITZER, MARKS, HART

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE  
ISSUANCE OF A RESTRICTED PROBATIONARY DRIVER'S LICENSE TO  
ANY PERSON WHOSE LICENSE HAS BEEN SUSPENDED FOR CONVICTION  
OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS;  
~~INCREASING, IN CERTAIN INSTANCES, THE PERIOD OF SUSPENSION~~  
~~OF THE DRIVER'S LICENSE OF A PERSON REFUSING TO SUBMIT TO A~~  
~~CHEMICAL TEST; EXPANDING THE GEOGRAPHICAL APPLICATION OF THE~~  
~~LAWS PROHIBITING DRIVING UNDER THE INFLUENCE OF ALCOHOL;~~  
AMENDING SECTIONS 61-2-302, 61-8-101, 61-8-401 THROUGH  
61-8-404, AND 61-11-101, MCA."

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

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver improvement program  
-- participation by offending drivers. (1) The department of  
justice may establish by administrative rules a driver  
rehabilitation and improvement program or programs which may

consist of classroom instruction in rules of the road,  
driving techniques, defensive driving, driver attitudes and  
habits, actual on-the-road driver's training, and other such  
subjects or tasks designed to contribute to proper driving  
attitudes, habits, and techniques.

(2) Official participation in such driver  
rehabilitation and improvement program is limited to those  
persons whose license to operate a motor vehicle in the  
state of Montana is:

(a) subject to suspension or revocation as a result of  
a violation of the traffic laws of this state; or

(b) revoked and they have:

(i) completed at least 3 months of a 1-year  
revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) have met the requirements for reobtaining a  
Montana driver's license.

(3) ~~Notwithstanding Subject to the provisions of~~  
~~subsection (2) and notwithstanding~~ any provision of this  
part inconsistent with any other law of the state of  
Montana, the enforcement of any suspension or revocation  
order which constitutes the basis for any person's  
participation in the driver rehabilitation and improvement  
program provided for herein may be stayed if that person  
complies with the requirements established for the driver

1 improvement program and meets the eligibility requirements  
2 of subsection (2).

3 (4) ~~In Subject to the provisions of subsection (9), in~~  
4 the event a person's driver's license has been surrendered  
5 prior to his selection for participation in the driver  
6 rehabilitation and improvement program, the license may be  
7 returned upon receipt of his agreement to participate in the  
8 program.

9 (5) The stay of enforcement of any suspension or  
10 revocation order shall be terminated and the order of  
11 suspension or revocation enforced if a person declines to  
12 participate in the driver rehabilitation and improvement  
13 program or fails to meet the attendance or other  
14 requirements established for participation in the program.

15 (6) Nothing in this part creates a right to be  
16 included in any program established under this part.

17 (7) The department of justice may establish a schedule  
18 of fees which may be charged those persons participating in  
19 the driver improvement and rehabilitation program, which  
20 fees shall be used to help defray costs of maintaining the  
21 program.

22 (8) A person may be referred to this program by a  
23 driver improvement analyst, city judge, justice of the  
24 peace, judge of a district court of the state, or a hearing  
25 examiner of the department of justice.

1 ~~(9) No person convicted TWO OR MORE TIMES of driving~~  
2 ~~while under the influence of alcohol or drugs in violation~~  
3 ~~of 61-8-401 is eligible for a stay in any revocation or~~  
4 ~~suspension order resulting from his THE SECOND OR SUBSEQUENT~~  
5 ~~conviction, and the license of any person so convicted may~~  
6 ~~not be returned to the offender prior to completion of the~~  
7 ~~term of revocation or suspension."~~

8 SECTION 2. SECTION 61-8-101, MCA, IS AMENDED TO READ:

9 "61-8-101. Application -- exceptions. (1) As used in  
10 this chapter, "ways of the state open to the public" means  
11 any highway, road, alley, lane, parking area, or other  
12 public or private place adapted and fitted for public travel  
13 that is in common use by the public with the express or  
14 implied consent of the owner.

15 (1) The provisions of this chapter relating to the  
16 operation of vehicles refer exclusively to the operation of  
17 vehicles upon highways except:

18 (a) where a different place is specifically referred  
19 to in a given section;

20 (b) the provisions of 61-8-301 and 61-8-401, with  
21 regard to operating a vehicle while under the influence of  
22 drugs, shall apply upon highways--and--elsewhere--throughout  
23 the ways of the state open to the public.

24 (2) The operation of motor vehicles directly across  
25 the public roads and highways of this state, especially as

required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

SECTION 3. 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~~ttt~~ for any person who is under the influence of:

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

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

(c) any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use such a drug

under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) In any criminal prosecution for a violation of subsection (1) of this section relating to driving a vehicle while under the influence of alcohol, 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:

(a) If there was at that time 0.05% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of alcohol.

(b) If there was at that time in excess of 0.05% but less than 0.10% by weight of alcohol in the defendant's blood, that fact shall not give rise to any presumption that the defendant 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 defendant.

(c) If there was at that time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of alcohol.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.

(5) Each municipality in this state is given authority to enact 61-8-714 and subsections (1) through (4) of this section with the word "state" in 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."

~~SECTION 4. SECTION 61-8-402, MCA, IS AMENDED TO READ:~~

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon the public highways ways of this the 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 if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol. 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 motor vehicle upon the public-highways ways of this the state open to the public, while under the influence of alcohol. The arresting officer may designate which one of the aforesaid 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 person 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 division, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public-highways ways of this the state open to the public, while under the influence of alcohol 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 60 days in accordance with subsection (4).

~~(4) Suspension under this section must be for the following time periods:~~

~~(a) If the person's driving record shows no prior refusals to submit to a chemical test pursuant to this section, his license must be suspended for 60 days.~~

~~(b) If the person's driving record shows a prior refusal to submit to a chemical test pursuant to this section, his license must be suspended for 1 year. Like refusal by a nonresident shall be subject to suspension by~~



the division in like manner. All such suspensions are subject to review as hereinafter provided."

SECTION 5. SECTION 61-8-403, MCA, IS AMENDED TO READ:

"61-8-403. Right of appeal to court. The division shall immediately notify any person whose license or privilege to drive has been suspended, 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 shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 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 the ~~public--highways ways of the state open to the public~~, while under the influence of alcohol, 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 6. SECTION 61-8-404, MCA, IS AMENDED TO READ:

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

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be 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 motor vehicle upon the ~~public--highways ways of the state open to the public~~ while under the influence of alcohol.

(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."

Section 7. 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 revocation of the operator's or chauffeur's license of such person by the

1 division, the court in which such conviction is had shall  
 2 require the surrender to it of all operator's and  
 3 chauffeur's licenses then held by the person so convicted.  
 4 The court shall thereupon, within 5 days, forward the  
 5 license to the division and at the same time forward a  
 6 record of such conviction to the division, providing that if  
 7 such person does not possess a driver's license the court  
 8 shall so indicate in its report to the division.

9 (2) Every court having jurisdiction over offenses  
 10 committed under any act of this state or municipal ordinance  
 11 regulating the operation of motor vehicles on highways shall  
 12 forward, within 5 days, to the division a record of the  
 13 conviction or forfeiture of bail, not vacated, of any person  
 14 in the court for a violation of any such laws, other than  
 15 regulations governing standing or parking, and may recommend  
 16 the suspension of the operator's or chauffeur's license of  
 17 the person so convicted. ~~The court may also recommend that~~  
 18 ~~the division issue a restricted probationary license in lieu~~  
 19 ~~of the suspension required in 61-5-208(2) on the condition~~  
 20 ~~that the individual attend a driver improvement school or an~~  
 21 ~~alcohol treatment program if one is available. The division~~  
 22 ~~shall issue a restricted probationary license unless the~~  
 23 ~~person otherwise is not entitled to a Montana operator's or~~  
 24 ~~chauffeur's license.~~

25 (3) Any court or other agency of this state, or a

1 subdivision thereof, which has jurisdiction to take any  
 2 action suspending, revoking, or otherwise limiting a license  
 3 to drive shall report any such action and the adjudication  
 4 upon which it is based to the division within 5 days on  
 5 forms furnished by the division."

-End-