

HOUSE BILL NO. 540

INTRODUCED BY VINCENT, WINSLOW, KEMMIS, BERGENE, ADDY

IN THE HOUSE

January 27, 1983	Introduced and referred to Committee on Judiciary.
February 1, 1983	On motion by Chief Sponsor, Representative Addy was added as a sponsor to the bill.
February 18, 1983	Committee recommend bill do pass as amended. Report adopted.
February 19, 1983	Bill printed and placed on members' desks.
February 21, 1983	Second reading, do pass as amended.
February 23, 1983	Correctly engrossed.
	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Judiciary.
March 25, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	On motion rules suspended to consider HB 540 on second and third reading next Legislative Day.
March 28, 1983	Second reading, concurred in as amended.
	Third reading, concurred in. Ayes, 45; Noes, 2.

## IN THE HOUSE

March 28, 1983

Returned to House with amendments.

April 1, 1983

Second reading, pass consideration.

On motion, Senate amendments taken from second reading and referred to Committee on Judiciary.

April 6, 1983

Committee recommend Senate amendments not be concurred in.

April 7, 1983

Second reading, amendments not concurred in.

April 8, 1983

On motion, Free Conference Committee requested and appointed.

April 20, 1983

Free Conference Committee reported.

Second reading, report adopted.

Third reading, report adopted.

April 21, 1983

Free Conference Committee report adopted by Senate.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 540  
 2 INTRODUCED BY Vincent Winslow Kammis Brogne  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND EXTENDING  
 5 THE GEOGRAPHICAL APPLICATION OF THE LAWS PROHIBITING DRIVING  
 6 UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; MAKING IT AN  
 7 OFFENSE TO DRIVE A MOTOR VEHICLE WITH A BLOOD ALCOHOL  
 8 CONCENTRATION OF MORE THAN .10; PROVIDING FOR THE  
 9 ADMISSIBILITY OF EVIDENCE; AMENDING SECTIONS 61-8-101 AND  
 10 61-8-401 THROUGH 61-8-404, MCA; AND PROVIDING AN IMMEDIATE  
 11 EFFECTIVE DATE."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 61-8-101, MCA, is amended to read:  
 15 "61-8-101. Application -- exceptions. (1) The  
 16 provisions of this chapter relating to the operation of  
 17 vehicles refer exclusively to the operation of vehicles upon  
 18 highways except:

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

21 (b) the provisions of 61-8-301 and 61-8-401, with  
 22 regard to operating a vehicle while under the influence of  
 23 alcohol or drugs, shall apply upon ~~highways and elsewhere~~  
 24 throughout anywhere within the state.

25 (2) The operation of motor vehicles directly across

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

12 Section 2. Section 61-8-401, MCA, is amended to read:

13 "61-8-401. Persons under the influence of alcohol or  
 14 drugs. (1) It is unlawful and punishable as provided in  
 15 61-8-714(1) for any person ~~who is to drive or be in actual~~  
 16 physical control of a motor vehicle anywhere within this  
 17 state while the alcohol concentration in his blood, breath,  
 18 or urine is .10 or more.

19 (2) It is unlawful and punishable as provided in  
 20 61-8-714(1) for any person to drive or be in actual physical  
 21 control of a motor vehicle anywhere within this state while  
 22 under the influence of:

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

25 (b) a narcotic drug ~~to drive or be in actual physical~~

~~control of a motor vehicle within this state; or~~

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

(c) alcohol and any drug to a degree that renders him incapable of safely driving a motor vehicle.

~~(2)(3)~~ The fact that any person charged with a violation of subsection (1) or (2) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1) or (2).

~~(3)(4) 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~~ Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the defendant's person's blood, urine, or breath at the time alleged, as shown by chemical analysis of the defendant's person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time an alcohol concentration of 0.05% or less by weight of alcohol in the defendant's

blood, it shall be presumed that the defendant person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration 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 person 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 person.

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

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person 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.~~

(6) For purposes of this section, "alcohol concentration" means either grams of alcohol per hundred milliliters of blood, grams of alcohol per 210 liters of breath, or grams of alcohol per 75.3 milliliters of urine.

(7) A charge or citation for driving under the

1 influence of alcohol or drugs includes any offense included  
 2 in this section.

3 ~~{5}{8}~~ Each municipality in this state is given  
 4 authority to enact 61-8-714 and subsections (1) through ~~{4}~~  
 5 ~~{6}~~ of this section, with the word "state" in subsection  
 6 subsections (1) and (2) of this section changed to read  
 7 "municipality", as an ordinance and is given jurisdiction of  
 8 the enforcement of the ordinance and of the imposition of  
 9 the fines and penalties therein provided."

10 Section 3. Section 61-8-402, MCA, is amended to read:

11 "61-8-402. Chemical blood, breath, or urine tests. (1)  
 12 Any person who operates a motor vehicle ~~upon the public~~  
 13 ~~highways of anywhere within~~ this state shall be deemed to  
 14 have given consent, subject to the provisions of 61-8-401,  
 15 to a chemical test of his blood, breath, or urine for the  
 16 purpose of determining the alcoholic content of his blood if  
 17 arrested by a peace officer for driving or in actual  
 18 physical control of a motor vehicle while under the  
 19 influence of alcohol. The test shall be administered at the  
 20 direction of a peace officer having reasonable grounds to  
 21 believe the person to have been driving or in actual  
 22 physical control of a motor vehicle ~~upon the public highways~~  
 23 ~~of anywhere within~~ this state while under the influence of  
 24 alcohol. The arresting officer may designate which one of  
 25 the aforesaid tests shall be administered.

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

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

21 Section 4. Section 61-8-403, MCA, is amended to read:

22 "61-8-403. Right of appeal to court. The division  
 23 shall immediately notify any person whose license or  
 24 privilege to drive has been suspended, as hereinbefore  
 25 authorized, in writing and such person shall have the right

1 to file a petition within 30 days thereafter for a hearing  
 2 in the matter in the district court in the county wherein  
 3 such person shall reside. Such court is hereby vested with  
 4 jurisdiction and it shall be its duty to set the matter for  
 5 hearing upon 30 10 days' written notice to the county  
 6 attorney of the county wherein the appeal is filed and such  
 7 county attorney shall represent the state, and thereupon the  
 8 court shall take testimony and examine into the facts of the  
 9 case, except that the issues shall be limited to whether a  
 10 peace officer had reasonable grounds to believe the person  
 11 had been driving or was in actual physical control of a  
 12 vehicle ~~upon the public highways anywhere within this state~~  
 13 while under the influence of alcohol, whether the person was  
 14 placed under arrest, and whether such person refused to  
 15 submit to the test. The court shall thereupon determine  
 16 whether the petitioner is entitled to a license or is  
 17 subject to suspension as heretofore provided."

18 Section 5. Section 61-8-404, MCA, is amended to read:  
 19 "61-8-404. Evidence admissible ~~under the~~ conditions of  
 20 admissibility. (1) Upon the trial of any criminal action or  
 21 other proceeding arising out of acts alleged to have been  
 22 committed by any person while driving or in actual physical  
 23 control of a motor vehicle while under the influence of  
 24 alcohol, and notwithstanding any other rule or statute  
 25 pertaining to the admissibility of evidence:

1 (a) evidence of the amount of alcohol in the person's  
 2 blood at the time of the act alleged as shown by a chemical  
 3 analysis of his blood, breath, or urine is admissible; and  
 4 (b) a report of the facts and results of any chemical  
 5 test of a person's blood, breath, or urine administered  
 6 under 61-8-402 is admissible in evidence if:  
 7 (i) the report was prepared and verified by the person  
 8 who performed the test;  
 9 (ii) the test was on a blood sample and the person  
 10 withdrawing the blood was competent to do so under  
 11 61-8-405(1) and verified in writing on the report that he  
 12 withdrew the sample;  
 13 (iii) the test was a laboratory analysis and the  
 14 analysis was done in a laboratory operated by the department  
 15 of justice or by any other laboratory or facility certified  
 16 or exempt from certification under the rules of the  
 17 department; and  
 18 (iv) the report was prepared in accordance with any  
 19 applicable rules of the department.  
 20 (2) Unless the accused or his attorney notifies the  
 21 prosecuting attorney at least 10 days before the trial or  
 22 hearing of his intention to call the person who performed  
 23 the chemical test or prepared the report of the facts and  
 24 results of the test as a witness, the accused waives any  
 25 right to request that the person who performed the test

1 testify in person at trial.

2       ~~(2)~~(3) If the person under arrest refused to submit to  
3 the test as hereinabove provided, proof of refusal shall be  
4 admissible in any criminal action or proceeding arising out  
5 of acts alleged to have been committed while the person was  
6 driving or in actual physical control of a motor vehicle  
7 upon the public highways while under the influence of  
8 alcohol.

9       ~~(3)~~(4) The provisions of this part do not limit the  
10 introduction of any other competent evidence bearing on the  
11 question of whether the person was under the influence of  
12 alcohol."

13       NEW SECTION. Section 6. Severability. If a part of  
14 this act is invalid, all valid parts that are severable from  
15 the invalid part remain in effect. If a part of this act is  
16 invalid in one or more of its applications, the part remains  
17 in effect in all valid applications that are severable from  
18 the invalid applications.

19       NEW SECTION. Section 7. Effective date. This act is  
20 effective on passage and approval.

-End-

Approved by Committee  
on Judiciary

## HOUSE BILL NO. 540

INTRODUCED BY VINCENT, WINSLOW, KEMMIS, BERGENE, ADDY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND EXTENDING THE GEOGRAPHICAL APPLICATION OF THE LAWS PROHIBITING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; MAKING IT AN OFFENSE TO DRIVE A MOTOR VEHICLE WITH A BLOOD ALCOHOL CONCENTRATION OF MORE THAN .10 ~~AND PROVIDING PENALTIES FOR THAT OFFENSE~~; PROVIDING FOR THE ADMISSIBILITY OF EVIDENCE; AMENDING SECTIONS 61-8-101, AND 61-8-401 THROUGH 61-8-404, ~~AND 61-8-714~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 61-8-101, MCA, is amended to read:

"61-8-101. Application -- exceptions. (1) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

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

(b) the provisions of 61-8-301 and 61-8-401, with regard to operating a vehicle while under the influence of alcohol or drugs, shall apply upon highways and elsewhere throughout ~~anywhere within~~ the state.

(2) The operation of motor vehicles directly across 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 2. 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(1) for any person who ~~is to drive or be in actual physical control of a motor vehicle anywhere within this state while the alcohol concentration in his blood, breath, or urine is .10 or more.~~

~~(2) It is unlawful and punishable as provided in 61-8-714(1) for any person to drive or be in actual physical control of a motor vehicle anywhere within this state while under the influence of:~~

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

(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 ~~that~~ renders him  
incapable of safely driving a motor vehicle ~~to drive or be~~  
~~in actual physical control of a motor vehicle within this~~  
state; or

(c) alcohol and any drug to a degree that renders him  
incapable of safely driving a motor vehicle.

(2)(2) The fact that any person charged with a  
violation of subsection (1) or (2) is or has been entitled  
to use alcohol or such a drug under the laws of this state  
does not constitute a defense against any charge of  
violating subsection (1) or (2).

(3)(4) ~~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 upon the~~  
~~trial of any civil or criminal action or proceeding arising~~  
~~out of acts alleged to have been committed by any person~~  
~~driving or in actual physical control of a vehicle while~~  
~~under the influence of alcohol, the concentration of alcohol~~  
~~in the defendant's person's blood, urine, or breath at the~~  
~~time alleged, as shown by chemical analysis of the~~  
~~defendant's person's blood, urine, breath, or other bodily~~  
~~substance, shall give rise to the following presumptions:~~

(a) If there was at that time an alcohol concentration

of 0.05% or less by weight of alcohol in the defendant's  
blood, it shall be presumed that the defendant person was  
not under the influence of alcohol.

(b) If there was at that time an alcohol concentration  
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 person 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 person.

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

(5) The provisions of subsection (4) do not limit the  
introduction of any other competent evidence bearing upon  
the issue of whether the person 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.

(6) For purposes of this section, "alcohol  
concentration" means either grams of alcohol per hundred  
milliliters of blood, grams of alcohol per 210 liters of

1 ~~breath, or grams of alcohol per 75.3 milliliters of urine.~~  
 2 ~~(7) A charge or citation for driving under the~~  
 3 ~~influence of alcohol or drugs includes any offense included~~  
 4 ~~in this section.~~

5 ~~††(8) Each municipality in this state is given~~  
 6 ~~authority to enact 61-8-714 and subsections (1) through ††~~  
 7 ~~(6) of this section, with the word "state" in subsection~~  
 8 ~~subsections (1) and (2) of this section changed to read~~  
 9 ~~"municipality", as an ordinance and is given jurisdiction of~~  
 10 ~~the enforcement of the ordinance and of the imposition of~~  
 11 ~~the fines and penalties therein provided."~~

12 Section 3. Section 61-8-402, MCA, is amended to read:  
 13 "61-8-402. Chemical blood, breath, or urine tests. (1)  
 14 Any person who operates a motor vehicle ~~upon the public~~  
 15 ~~highways of anywhere within~~ this state shall be deemed to  
 16 have given consent, subject to the provisions of 61-8-401,  
 17 to a chemical test of his blood, breath, or urine for the  
 18 purpose of determining the alcoholic content of his blood if  
 19 arrested by a peace officer for driving or in actual  
 20 physical control of a motor vehicle while under the  
 21 influence of alcohol. The test shall be administered at the  
 22 direction of a peace officer having reasonable grounds to  
 23 believe the person to have been driving or in actual  
 24 physical control of a motor vehicle ~~upon the public highways~~  
 25 ~~of anywhere within~~ this state while under the influence of

1 alcohol. The arresting officer may designate which one of  
 2 the aforesaid tests shall be administered.

3 (2) 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 subsection (1) of this section.

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

23 Section 4. Section 61-8-403, MCA, is amended to read:  
 24 "61-8-403. Right of appeal to court. The division  
 25 shall immediately notify any person whose license or

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

20 Section 5. Section 61-8-404, MCA, is amended to read:

21 "61-8-404. Evidence admissible ~~under the~~ conditions of  
 22 admissibility. (1) Upon the trial of any criminal action or  
 23 other proceeding arising out of acts alleged to have been  
 24 committed by any person while driving or in actual physical  
 25 control of a motor vehicle while under the influence of

1 alcohol, ~~and notwithstanding any other rule or statute~~  
 2 ~~pertaining to the admissibility of evidence:~~

3 (a) evidence of the amount of alcohol in the person's  
 4 blood at the time of the act alleged as shown by a chemical  
 5 analysis of his blood, breath, or urine is admissible; ~~and~~

6 (b) ~~a report of the facts and results of any chemical~~  
 7 ~~test of a person's blood, breath, or urine administered~~  
 8 ~~under 61-8-402 is admissible in evidence if:~~

9 (i) ~~the report was prepared and verified by the person~~  
 10 ~~who performed the test;~~

11 (ii) ~~the test was on a blood sample and the person~~  
 12 ~~withdrawing the blood was competent to do so under~~  
 13 ~~61-8-405(1) and verified in writing on the report that he~~  
 14 ~~withdrew the sample;~~

15 (iii) ~~the test was a laboratory analysis and the~~  
 16 ~~analysis was done in a laboratory operated by the department~~  
 17 ~~of justice or by any other laboratory or facility certified~~  
 18 ~~or exempt from certification under the rules of the~~  
 19 ~~department; and~~

20 (iv) ~~the report was prepared in accordance with any~~  
 21 ~~applicable rules of the department.~~

22 (2) ~~Unless the accused or his attorney notifies the~~  
 23 ~~prosecuting attorney at least 10 days before the trial or~~  
 24 ~~hearing of his intention to call the person who performed~~  
 25 ~~the chemical test or prepared the report of the facts and~~

1 ~~results of the test as a witness, the accused waives any~~  
 2 ~~right to request that the person who performed the test~~  
 3 ~~testify in person at trial.~~

4       ~~†2†(2)~~ If the person under arrest refused to submit to  
 5 the test as hereinabove provided, proof of refusal shall be  
 6 admissible in any criminal action or proceeding arising out  
 7 of acts alleged to have been committed while the person was  
 8 driving or in actual physical control of a motor vehicle  
 9 upon the public highways while under the influence of  
 10 alcohol.

11       ~~†3†(4)~~ The provisions of this part do not limit the  
 12 introduction of any other competent evidence bearing on the  
 13 question of whether the person was under the influence of  
 14 alcohol."

15       ~~SECTION 6. SECTION 61-8-714, MCA, IS AMENDED TO READ:~~

16       ~~"61-8-714. Penalty Penalties for driving with~~  
 17 ~~excessive blood alcohol concentration and for driving while~~  
 18 ~~intoxicated. (1) (a) A person convicted of a violation of~~  
 19 ~~61-8-401(1) shall be punished by imprisonment in the county~~  
 20 ~~jail for not more than 10 days and shall be punished by a~~  
 21 ~~fine of not more than \$500.~~

22       ~~(b) On a second conviction of a violation of~~  
 23 ~~61-8-401(1), he shall be punished by imprisonment in the~~  
 24 ~~county jail for not more than 30 days and by a fine of not~~  
 25 ~~more than \$500.~~

1       ~~(c) On a third or subsequent conviction of a violation~~  
 2 ~~of 61-8-401(1), he shall be punished by imprisonment in the~~  
 3 ~~county jail for not more than 6 months and by a fine of not~~  
 4 ~~more than \$1,000.~~

5       ~~†21--(a)~~ A person convicted of a violation of  
 6 61-8-401~~(2)~~ may, in the discretion of the court, be punished  
 7 by imprisonment in the county jail for up to 24 hours, and  
 8 shall be punished by a fine of not less than \$100 or more  
 9 than \$500. The jail sentence may not be suspended unless the  
 10 judge finds that the imposition of the jail sentence will  
 11 pose a risk to the defendant's physical or mental  
 12 well-being.

13       ~~†2†(b)~~ On a second conviction of a violation of  
 14 61-8-401~~(2)~~, he shall be punished by a fine of not less than  
 15 \$300 or more than \$500 and by imprisonment for not less than  
 16 7 days or more than 30 days. Three days of the jail sentence  
 17 may not be suspended unless the judge finds that the  
 18 imposition of the jail sentence will pose a risk to the  
 19 defendant's physical or mental well-being.

20       ~~†3†(c)~~ On the third or subsequent conviction of a  
 21 violation of 61-8-401~~(2)~~, he shall be punished by  
 22 imprisonment for a term of not less than 30 days or more  
 23 than 1 year, to which may be added, in the discretion of the  
 24 court, a fine of not less than \$500 or more than \$1,000.  
 25 Notwithstanding any provision to the contrary providing for

1 suspension of execution of a sentence imposed under this  
 2 subsection, the imposition or execution of the first 10 days  
 3 of the jail sentence imposed for a third or subsequent  
 4 offense that occurred within 5 years of the first offense  
 5 may not be deferred or suspended.

6 ~~†4†(1)~~ In addition to the punishment provided in this  
 7 section, regardless of disposition, the defendant shall  
 8 complete an alcohol information course at an alcohol  
 9 treatment program approved by the department of  
 10 institutions, which may include alcohol or drug treatment,  
 11 or both, if considered necessary by the counselor conducting  
 12 the program. Each counselor providing such education or  
 13 treatment shall, at the commencement of the education or  
 14 treatment, notify the court that the defendant has been  
 15 enrolled in a course or treatment program. If the defendant  
 16 fails to attend the course or the treatment program, the  
 17 counselor shall notify the court of the failure.

18 ~~†5†(4)~~ For the purpose of determining the number of  
 19 convictions under this section, "conviction" means a final  
 20 conviction, as defined in 45-2-101, or a forfeiture of bail  
 21 or collateral deposited to secure the defendant's appearance  
 22 in court, 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 such prior  
 4 offense shall be expunged from the defendant's record."

5 ~~NEW\_SECTION.~~ Section 7. Severability. If a part of  
 6 this act is invalid, all valid parts that are severable from  
 7 the invalid part remain in effect. If a part of this act is  
 8 invalid in one or more of its applications, the part remains  
 9 in effect in all valid applications that are severable from  
 10 the invalid applications.

11 ~~NEW\_SECTION.~~ Section 8. Effective date. This act is  
 12 effective on passage and approval.

-End-

## HOUSE BILL NO. 540

INTRODUCED BY VINCENT, WINSLOW, KEMMIS, BERGENE, ADDY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ~~AND--EXTENDING~~  
~~THE-GEOGRAPHICAL-APPLICATION-OF~~ THE LAWS PROHIBITING DRIVING  
UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; MAKING IT AN  
OFFENSE TO DRIVE A MOTOR VEHICLE WITH A BLOOD ALCOHOL  
CONCENTRATION OF MORE THAN .10 ~~AND-PROVIDING-PENALTIES-FOR~~  
~~THAT-LICENSEE~~; PROVIDING FOR THE ADMISSIBILITY OF EVIDENCE;  
AMENDING SECTIONS 61-8-101, ~~AND~~ 61-8-401 THROUGH  
61-8-404, ~~AND-61-8-714~~, MCA; AND PROVIDING AN IMMEDIATE  
EFFECTIVE DATE."

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

Section 1. Section 61-8-101, MCA, is amended to read:

"61-8-101. Application -- exceptions. ~~(1) AS USED IN~~  
~~THIS CHAPTER, "WAYS OF THE STATE OPEN TO THE PUBLIC" MEANS~~  
~~ANY HIGHWAY, ROAD, ALLEY, LANE, PARKING AREA, OR OTHER~~  
~~PUBLIC OR PRIVATE PLACE ADAPTED AND FITTED FOR PUBLIC TRAVEL~~  
~~THAT IS IN COMMON USE BY THE PUBLIC WITH THE EXPRESS OR~~  
~~IMPLIED CONSENT OF THE OWNER.~~

~~(1)(2)~~ The provisions of this chapter relating to the  
operation of vehicles refer exclusively to the operation of  
vehicles upon highways except:

(a) where a different place is specifically referred

to in a given section;

(b) the provisions of 61-8-301 and 61-8-401, with  
regard to operating a vehicle while under the influence of  
alcohol ~~or~~ drugs, shall apply upon ~~highways and elsewhere~~  
throughout ~~anywhere within the state~~ UPON THE WAYS OF THE  
STATE OPEN TO THE PUBLIC.

~~(2)(3)~~ The operation of motor vehicles directly across  
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 2. 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(1) 61-8-714~~ for any person ~~who is to drive or be in~~  
~~actual physical control of a motor vehicle anywhere within~~  
~~this state UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC~~  
~~while the alcohol concentration in his blood, breath, or~~

1 ~~urine is .10 or more.~~

2 ~~(2) It is unlawful and punishable as provided in~~  
 3 ~~61-8-714 for any person to drive or~~  
 4 ~~be in actual physical control of a motor vehicle anywhere~~  
 5 ~~within this state UPON THE WAYS OF THE STATE OPEN TO THE~~  
 6 ~~PUBLIC, while under the influence of:~~

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

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

11 ~~(c) any other drug to a degree which that renders him~~  
 12 ~~incapable of safely driving a motor vehicle to drive or be~~  
 13 ~~in actual physical control of a motor vehicle within this~~  
 14 ~~state; or~~

15 ~~(d) alcohol and any drug to a degree that renders him~~  
 16 ~~incapable of safely driving a motor vehicle.~~

17 ~~(2)(3) The fact that any person charged with a~~  
 18 ~~violation of subsection (1) or (2) is or has been entitled~~  
 19 ~~to use alcohol or such a drug under the laws of this state~~  
 20 ~~does not constitute a defense against any charge of~~  
 21 ~~violating subsection (1) or (2).~~

22 ~~(3)(4) In any criminal prosecution for a violation of~~  
 23 ~~subsection (1) of this section relating to driving a vehicle~~  
 24 ~~while under the influence of alcohol, the amount upon the~~  
 25 ~~trial of any civil or criminal action or proceeding arising~~

1 ~~out of acts alleged to have been committed by any person~~  
 2 ~~driving or in actual physical control of a vehicle while~~  
 3 ~~under the influence of alcohol, the concentration of alcohol~~  
 4 ~~in the defendant's person's blood, urine, or breath at the~~  
 5 ~~time alleged, as shown by chemical analysis of the~~  
 6 ~~defendant's person's blood, urine, breath, or other bodily~~  
 7 ~~substance, shall give rise to the following presumptions:~~

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

12 ~~(b) If there was at that time an alcohol concentration~~  
 13 ~~in excess of 0.05% but less than 0.10% by weight of alcohol~~  
 14 ~~in the defendant's blood, that fact shall not give rise to~~  
 15 ~~any presumption that the defendant person was or was not~~  
 16 ~~under the influence of alcohol but such fact may be~~  
 17 ~~considered with other competent evidence in determining the~~  
 18 ~~guilt or innocence of the defendant person.~~

19 ~~(c) If there was at that time an alcohol concentration~~  
 20 ~~of 0.10% or more by weight of alcohol in the defendant's~~  
 21 ~~blood, it shall be presumed that the defendant person was~~  
 22 ~~under the influence of alcohol. SUCH PRESUMPTION IS~~  
 23 ~~REBUTTABLE.~~

24 ~~(5) The provisions of subsection (4) do not limit the~~  
 25 ~~introduction of any other competent evidence bearing upon~~

1 ~~the issue of whether the person was under the influence of~~  
2 ~~alcohol.~~

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

6 ~~(6) For purposes of this section, "alcohol~~  
7 ~~concentration" means either grams of alcohol per hundred~~  
8 ~~milliliters of blood, grams of alcohol per 210 liters of~~  
9 ~~breath, or grams of alcohol per 75.3 milliliters of urine.~~

10 ~~(7) A charge or citation for driving under the~~  
11 ~~influence of alcohol or drugs includes any offense included~~  
12 ~~in this section.~~

13 ~~(5)(8) Each municipality in this state is given~~  
14 ~~authority to enact 61-8-714 and subsections (1) through (4)~~  
15 ~~(6) of this section, with the word "state" in subsection~~  
16 ~~subsections (1) and (2) of this section changed to read~~  
17 ~~"municipality", as an ordinance and is given jurisdiction of~~  
18 ~~the enforcement of the ordinance and of the imposition of~~  
19 ~~the fines and penalties therein provided."~~

20 Section 3. Section 61-8-402, MCA, is amended to read:

21 "61-8-402. Chemical blood, breath, or urine tests. (1)  
22 Any person who operates a motor vehicle upon the public  
23 highways of anywhere within this state UPON THE WAYS OF THE  
24 STATE OPEN TO THE PUBLIC shall be deemed to have given  
25 consent, subject to the provisions of 61-8-401, to a

1 chemical test of his blood, breath, or urine for the purpose  
2 of determining the alcoholic content of his blood if  
3 arrested by a peace officer for driving or in actual  
4 physical control of a motor vehicle while under the  
5 influence of alcohol. The test shall be administered at the  
6 direction of a peace officer having reasonable grounds to  
7 believe the person to have been driving or in actual  
8 physical control of a motor vehicle upon the public highways  
9 of anywhere within this state UPON THE WAYS OF THE STATE  
10 OPEN TO THE PUBLIC, while under the influence of alcohol.  
11 The arresting officer may designate which one of the  
12 aforesaid tests shall be administered.

13 (2) Any person who is unconscious or who is otherwise  
14 in a condition rendering him incapable of refusal shall be  
15 deemed not to have withdrawn the consent provided by  
16 subsection (1) of this section.

17 (3) If a person under arrest refuses upon the request  
18 of a peace officer to submit to a chemical test designated  
19 by the arresting officer as provided in subsection (1) of  
20 this section, none shall be given, but the division, upon  
21 the receipt of a sworn report of the peace officer that he  
22 had reasonable grounds to believe the arrested person had  
23 been driving or was in actual physical control of a motor  
24 vehicle upon the public highways of anywhere within this  
25 state UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC, while

1 under the influence of alcohol and that the person had  
 2 refused to submit to the test upon the request of the peace  
 3 officer, shall suspend FOR A PERIOD OF 60 DAYS the license  
 4 or driving privilege of such person ~~on--the--highways--of~~  
 5 ~~anywhere--within--this--state--for--a--period--of--60--days~~ UPON THE  
 6 WAYS OF THE STATE OPEN TO THE PUBLIC. Like refusal by a  
 7 nonresident shall be subject to suspension by the division  
 8 in like manner. All such suspensions are subject to review  
 9 as hereinafter provided."

10 Section 4. Section 61-8-403, MCA, is amended to read:

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

1 vehicle ~~upon the public highways anywhere within this state~~  
 2 UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC, while under  
 3 the influence of alcohol, whether the person was placed  
 4 under arrest, and whether such person refused to submit to  
 5 the test. The court shall thereupon determine whether the  
 6 petitioner is entitled to a license or is subject to  
 7 suspension as heretofore provided."

8 Section 5. Section 61-8-404, MCA, is amended to read:

9 "61-8-404. Evidence admissible ~~== conditions of~~  
 10 admissibility. (1) Upon the trial of any criminal action or  
 11 other proceeding arising out of acts alleged to have been  
 12 committed by any person while driving or in actual physical  
 13 control of a motor vehicle while under the influence of  
 14 alcohol, and notwithstanding any other rule or statute  
 15 pertaining to the admissibility of evidence:

16 (a) evidence of the amount of alcohol in the person's  
 17 blood at the time of the act alleged as shown by a chemical  
 18 analysis of his blood, breath, or urine is admissible; and

19 (b) a report of the facts and results of any chemical  
 20 test of a person's blood, breath, or urine administered  
 21 under 61-8-402 is admissible in evidence if:

22 (i) the report was prepared and verified by the person  
 23 who performed the test;

24 (ii) the test was on a blood sample and the person  
 25 withdrawing the blood was competent to do so under

1 ~~61-8-405(1) and verified in writing on the report that he~~  
2 ~~withdraw the sample:~~

3 ~~(iii) the test was a laboratory analysis and the~~  
4 ~~analysis was done in a laboratory operated by the department~~  
5 ~~of justice or by any other laboratory or facility certified~~  
6 ~~or exempt from certification under the rules of the~~  
7 ~~department; and~~

8 ~~(iv) the report was prepared in accordance with any~~  
9 ~~applicable rules of the department.~~

10 ~~(2) Unless the accused or his attorney notifies the~~  
11 ~~prosecuting attorney at least 10 days before the trial or~~  
12 ~~hearing of his intention to call the person who performed~~  
13 ~~the chemical test or prepared the report of the facts and~~  
14 ~~results of the test as a witness, the accused waives any~~  
15 ~~right to request that the person who performed the test~~  
16 ~~testify in person at trial.~~

17 ~~(2)(3) If the person under arrest refused to submit to~~  
18 ~~the test as hereinabove provided, proof of refusal shall be~~  
19 ~~admissible in any criminal action or proceeding arising out~~  
20 ~~of acts alleged to have been committed while the person was~~  
21 ~~driving or in actual physical control of a motor vehicle~~  
22 ~~upon the public highways WAYS OF THE STATE OPEN TO THE~~  
23 ~~PUBLIC, while under the influence of alcohol.~~

24 ~~(3)(4) The provisions of this part do not limit the~~  
25 ~~introduction of any other competent evidence bearing on the~~

1 question of whether the person was under the influence of  
2 alcohol."

3 ~~SECTION 6--SECTION 61-8-714-MCA-IS AMENDED TO READ:~~  
4 ~~"61-8-714--Penalty Penalties--for--driving--with~~  
5 ~~excessive blood alcohol concentration and for driving while~~  
6 ~~intoxicated--(1) (a) A person convicted of a violation of~~  
7 ~~61-8-401(a) shall be punished by imprisonment in the county~~  
8 ~~jail for not more than 10 days and shall be punished by a~~  
9 ~~fine of not more than \$500.~~

10 ~~(b) On a second conviction of a violation of~~  
11 ~~61-8-401(a) he shall be punished by imprisonment in the~~  
12 ~~county jail for not more than 30 days and by a fine of not~~  
13 ~~more than \$500.~~

14 ~~(c) On a third or subsequent conviction of a violation~~  
15 ~~of 61-8-401(a) he shall be punished by imprisonment in the~~  
16 ~~county jail for not more than 6 months and by a fine of not~~  
17 ~~more than \$1000.~~

18 ~~(2) (a) A person convicted of a violation of~~  
19 ~~61-8-401(2) may, in the discretion of the court, be punished~~  
20 ~~by imprisonment in the county jail for up to 24 hours and~~  
21 ~~shall be punished by a fine of not less than \$100 or more~~  
22 ~~than \$500. The jail sentence may not be suspended unless the~~  
23 ~~judge finds that the imposition of the jail sentence will~~  
24 ~~pose a risk to the defendant's physical or mental~~  
25 ~~well-being.~~

1       ~~(2)(b) On a second conviction of a violation of~~  
 2       ~~§1-812, he shall be punished by a fine of not less than~~  
 3       ~~\$500 or more than \$500 and by imprisonment for not less than~~  
 4       ~~7 days or more than 30 days. Three days of the jail sentence~~  
 5       ~~may not be suspended unless the judge finds that the~~  
 6       ~~imposition of the jail sentence will pose a risk to the~~  
 7       ~~defendant's physical or mental well-being.~~

8       ~~(3)(c) On the third or subsequent conviction of a~~  
 9       ~~violation of §1-812, he shall be punished by~~  
 10       ~~imprisonment for a term of not less than 30 days or more~~  
 11       ~~than 1 year to which may be added in the discretion of the~~  
 12       ~~court a fine of not less than \$500 or more than \$1,000.~~  
 13       ~~Notwithstanding any provision to the contrary providing for~~  
 14       ~~suspension of execution of a sentence imposed under this~~  
 15       ~~subsection, the imposition or execution of the first 10 days~~  
 16       ~~of the jail sentence imposed for a third or subsequent~~  
 17       ~~offense that occurred within 5 years of the first offense~~  
 18       ~~may not be deferred or suspended.~~

19       ~~(4)(d) In addition to the punishment provided in this~~  
 20       ~~section, regardless of disposition, the defendant shall~~  
 21       ~~complete an alcohol information course at an alcohol~~  
 22       ~~treatment program approved by the department of~~  
 23       ~~institutions, which may include alcohol or drug treatment~~  
 24       ~~or both if considered necessary by the counselor conducting~~  
 25       ~~the program. Each counselor providing such education or~~

1       ~~treatment shall at the commencement of the education or~~  
 2       ~~treatment notify the court that the defendant has been~~  
 3       ~~enrolled in a course or treatment program. If the defendant~~  
 4       ~~fails to attend the course or the treatment program, the~~  
 5       ~~counselor shall notify the court of the failure.~~

6       ~~(5)(e) For the purpose of determining the number of~~  
 7       ~~convictions under this section, "conviction" means a final~~  
 8       ~~conviction as defined in 45-2-101 or a forfeiture of bail~~  
 9       ~~or collateral deposited to secure the defendant's appearance~~  
 10       ~~in court which forfeiture has not been vacated. An~~  
 11       ~~offender is considered to have been previously convicted for~~  
 12       ~~the purposes of this section if less than 5 years have~~  
 13       ~~elapsed between the commission of the present offense and a~~  
 14       ~~previous conviction if there has been no additional~~  
 15       ~~conviction for an offense under this section for a period of~~  
 16       ~~5 years after a prior conviction hereunder, then such prior~~  
 17       ~~offense shall be expunged from the defendant's records."~~

18       ~~NEW SECTION. Section 6. Severability. If a part of~~  
 19       ~~this act is invalid, all valid parts that are severable from~~  
 20       ~~the invalid part remain in effect. If a part of this act is~~  
 21       ~~invalid in one or more of its applications, the part remains~~  
 22       ~~in effect in all valid applications that are severable from~~  
 23       ~~the invalid applications.~~

24       ~~NEW SECTION. Section 7. Effective date. This act is~~  
 25       ~~effective on passage and approval.~~

HB 0540/03

-End-

March 25, 1983

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 540 be amended as follows:

1. Page 2, lines 19 through 25 and page 3, line 1.  
Strike: Page 2, lines 19 through 25 and page 3, line 1.  
Insert: "NEW SECTION. Section 2. Operation of motor vehicle with alcohol concentration of 0.10 or more. It is unlawful and punishable as provided in 61-8-714 for any person to drive or be in actual physical control of a motor vehicle upon the ways of the state open to the public while the alcohol concentration in his blood, breath, or urine is 0.10 or more.
2. Page 3, lines 2 through 14.  
Strike: page 3, lines 2 through 14.  
Insert: "Section 3. Section 61-8-401 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(1) for any person who is under the influence of:  
(a) alcohol to drive to be in actual physical control of a motor vehicle upon the highways-of-this-state ways of 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; or"
3. Page 3, line 15.  
Strike: "(c)"  
Insert: "(d)"
4. Page 3, line 16.  
Following: "vehicle"  
Insert: "to drive or be in actual physical control of a motor vehicle within this state"
5. Page 3, line 17.  
Strike: "(3)"  
Insert: "(2)"
6. Page 3, line 18.  
Strike: "or (2)"
7. Page 3, line 21.  
Strike: "or (2)"
8. Page 3, line 22.  
Strike: "(4)"  
Insert: "(3)"

SENATE STANDING COMMITTEE REPORT  
Judiciary - House Bill No. 540  
March 25, 1983  
Page 2

9. Page 4, line 24.

Strike: "(5)"

Insert: "(4)"

Following: "subsection"

Strike: "(4)"

Insert: "(3)"

10. Page 5, lines 6 through 12.

Strike: subsections 6 and 7

ReNUMBER: subsequent subsection

11. Page 5, line 15.

Strike: "(6)"

Insert: "(4)"

12. Page 5, line 16.

Strike: "subsections" and "and (2)"

Insert: "subsection" before "(1)"

13. Page 5, following line 19.

Insert: "NEW SECTION. Section 4. Definition of alcohol concentration. For purposes of [Sections 2 and 3], 'alcohol concentration' means either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath, or grams of alcohol per 75.3 milliliters of urine."

14. Page 8, lines 12 through 14.

Following: "person" in line 12

Strike: "while driving or in actual physical control of a motor vehicle while under the influence of alcohol,"

Insert: "in violation of [Section 2 or Section 3 of this Act]."

March 28, 1983

SENATE COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 540 be amended as follows:

1. Page 5, line 1.  
Following: "blood"  
Strike: ", urine, or breath"
2. Page 5, line 2.  
Following: "chemical"  
Insert: "chemical"
3. Page 8, lines 8 and 9.  
Strike: remainder of line 8 through "PUBLIC" on line 9  
Insert: "on the highways of this state"
4. Page 9, line 17.  
Following: "This Act"  
Strike: remainder of line 17 through "evidence" line 19

March 28, 1983

SENATE COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 540 be amended as follows:

1. Page 10, line 3.  
Strike: subsection (ii) in its entirety  
ReNUMBER: subsequent subsections
2. Page 10, line 13.  
Following: line 13  
Insert: "[3(iv)] If the test was on a blood sample, it must comply with subparagraphs (i-iii) of this subsection, and in addition, the person withdrawing the blood must have been competent to do so under section 61-8-405(1)."  
ReNUMBER: subsequent subsections

March 28, 1983

SENATE COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 540 be amended as follows:

1. Page 2, line 4.  
Strike: "alcohol or"  
Strike: "shall"
2. Page 2, lines 5 and 6.  
Strike: "UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC."  
Insert: "anywhere within this state;  
(c) the provisions of 61-8-301 and 61-8-401, with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public."
3. Page 3, line 16.  
Following: "vehicle"  
Insert: "by a person"
4. Page 6.  
Following: line 16  
Insert: "THERE IS A NEW MCA SECTION THAT READS:  
"Section 4. Multiple convictions prohibited. When the same acts may establish the commission of an offense under both [section 2] and 61-8-401, a person charged with such conduct may be prosecuted for a violation of both [section 2] and 61-8-401. However, he may only be convicted of an offense under either [section 2] or 61-8-401."  
ReNUMBER: subsequent sections accordingly
5. Page 6, line 19.  
Strike: "sections 2"  
Insert: "section 2]"  
Strike: "3]"  
Insert: "61-8-401"
6. Page 9, line 17.  
Following: "SECTION 2"  
Insert: "1"  
Strike: "3 OF THIS ACT]"  
Insert: "61-8-401"

March 28, 1983

Senate Committee or the Whole Amendment

That House Bill No. 540 be amended as follows:

1. Page 11, line 6.

Following: line 6

Insert: "THERE IS A NEW MCA SECTION WHICH READS: Section 8. Penalty for driving with excessive blood alcohol concentration.

(1) A person convicted of a violation of (Section 2) shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not more than \$500.

(2) On a second conviction of a violation of (Section 2) he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than \$100 or more than \$500.

(3) On a third or subsequent conviction of a violation of (Section 2) he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than \$300 or more than \$1,000.

(4) In addition to the above, the provisions of Sections 61-5-205 (2), 61-5-208(2) and 61-11-203 relating to revocation and suspension of driver's licenses shall apply to any conviction under (Section 2).

March 28, 1983

COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 540 be amended as follows:

1. Page 10, lines 14 through 20.

Strike: subsection (2) in its entirety

renumber: subsequent subsections.

## HOUSE BILL NO. 540

INTRODUCED BY VINCENT, WINSLOW, KEMMIS, BERGENE, ADDY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ~~AND--EXTENDING~~  
~~THE-GEOGRAPHICAL-APPLICATION-OF~~ THE LAWS PROHIBITING DRIVING  
 UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; MAKING IT AN  
 OFFENSE TO DRIVE A MOTOR VEHICLE WITH A BLOOD ALCOHOL  
 CONCENTRATION OF MORE THAN .10 ~~AND-PROVIDING-PENALTIES-FOR~~  
~~THAT-OFFENSE~~; PROVIDING FOR THE ADMISSIBILITY OF EVIDENCE;  
 AMENDING SECTIONS 61-8-101, ~~AND~~ AND 61-8-401 THROUGH  
 61-8-404, ~~AND-61-8-714~~, MCA; AND PROVIDING AN IMMEDIATE  
 EFFECTIVE DATE."

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

Section 1. Section 61-8-101, MCA, is amended to read:

"61-8-101. Application -- exceptions. (1) AS USED IN  
THIS CHAPTER, "WAYS OF THE STATE OPEN TO THE PUBLIC" MEANS  
ANY HIGHWAY, ROAD, ALLEY, LANE, PARKING AREA, OR OTHER  
PUBLIC OR PRIVATE PLACE ADAPTED AND FITTED FOR PUBLIC TRAVEL  
THAT IS IN COMMON USE BY THE PUBLIC WITH THE EXPRESS OR  
IMPLIED CONSENT OF THE OWNER.

(2) The provisions of this chapter relating to the  
 operation of vehicles refer exclusively to the operation of  
 vehicles upon highways except:

(a) where a different place is specifically referred

to in a given section;

(b) the provisions of 61-8-301 and 61-8-401, with  
 regard to operating a vehicle while under the influence of  
~~alcohol--or~~ drugs, shall apply upon highways and elsewhere  
 throughout ~~anywhere within the state upon the ways of the~~  
~~state open to the public~~ ANYWHERE WITHIN THIS STATE;

(C) THE PROVISIONS OF 61-8-301 AND 61-8-401, WITH  
REGARD TO OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF  
ALCOHOL, APPLY UPON ALL WAYS OF THIS STATE OPEN TO THE  
PUBLIC.

(2)(3) The operation of motor vehicles directly across  
 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 2. 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~~

1 61-8-714(1) 61-8-714 for any person who is to drive or be in  
2 actual physical control of a motor vehicle anywhere within  
3 this state upon the ways of the state open to the public  
4 while the alcohol concentration in his blood, breath, or  
5 urine is .10 or more.

6 (2) It is unlawful and punishable as provided in  
7 61-8-714(1) 61-8-714(2) 61-8-714 for any person to drive or  
8 be in actual physical control of a motor vehicle anywhere  
9 within this state upon the ways of the state open to the  
10 public while under the influence of:

11 (a) alcohol to drive or be in actual physical control  
12 of a motor vehicle upon the highways of this state;

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

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

19 THERE IS A NEW MCA SECTION THAT READS:

20 Section 2. Operation of motor vehicle BY A PERSON with  
21 alcohol concentration of 0.10 or more. It is unlawful and  
22 punishable as provided in 61-8-714 for any person to drive  
23 or be in actual physical control of a motor vehicle upon the  
24 ways of the state open to the public while the alcohol  
25 concentration in his blood, breath, or urine is 0.10 or

1 more.

2 Section 3. Section 61-8-401, MCA, is amended to read:

3 "61-8-401. Persons under the influence of alcohol or  
4 drugs. (1) It is unlawful and punishable as provided in  
5 61-8-714(1) for any person who is under the influence of:

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

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

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

15 (1) alcohol and any drug to a degree that renders  
16 him incapable of safely driving a motor vehicle TO DRIVE OR  
17 BE IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WITHIN THIS  
18 STATE.

19 (2)(3)(2) The fact that any person charged with a  
20 violation of subsection (1) or (2) is or has been entitled  
21 to use alcohol or such a drug under the laws of this state  
22 does not constitute a defense against any charge of  
23 violating subsection (1) or (2).

24 (3)(4)(3) In any criminal prosecution for a violation  
25 of subsection (1) of this section relating to driving a

1 vehicle--white--under--the--influence-of-alcohol--the-amount  
 2 Upon the trial of any civil or criminal action or proceeding  
 3 arising out of acts alleged to have been committed by any  
 4 person driving or in actual physical control of a vehicle  
 5 while under the influence of alcohol, the concentration of  
 6 alcohol in the defendant's person's blood, ~~urine, or breath~~  
 7 at the time alleged, as shown by chemical ~~CHEMICAL~~ analysis  
 8 of the defendant's person's blood, urine, breath, or other  
 9 bodily substance, shall give rise to the following  
 10 presumptions:

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

15 (b) If there was at that time an alcohol concentration  
 16 in excess of 0.05% but less than 0.10% by-weight-of-alcohol  
 17 in-the-defendant's-blood, that fact shall not give rise to  
 18 any presumption that the defendant person was or was not  
 19 under the influence of alcohol but such fact may be  
 20 considered with other competent evidence in determining the  
 21 guilt or innocence of the defendant person.

22 (c) If there was at that time an alcohol concentration  
 23 of 0.10% or more by-weight-of--alcohol--in--the--defendant's  
 24 blood, it shall be presumed that the defendant person was  
 25 under the influence of alcohol. ~~SUCH PRESUMPTION IS~~

1 REBUTTABLE.

2 ~~†††††~~ The provisions of subsection ~~†††~~ ~~†††~~ do not  
 3 limit the introduction of any other competent evidence  
 4 bearing upon the issue of whether the person was under the  
 5 influence of alcohol.

6 ~~†††~~ Percent-by-weight-of-alcohol-in-the-blood-shall-be  
 7 based-upon-grams-of-alcohol-per--100--cubic--centimeters--of  
 8 blood.

9 ~~†††~~ For-----purposes-----of-----this-----section-----"alcohol  
 10 concentration" means either grams of alcohol per hundred  
 11 milliliters of blood, or grams of alcohol per 210 liters of  
 12 breath, or grams of alcohol per 15.3 milliliters of urine.  
 13 ~~†††~~ A charge or citation for driving under the  
 14 influence of alcohol or drugs includes any offense included  
 15 in this section.

16 ~~†††††~~ ~~†††~~ Each municipality in this state is given  
 17 authority to enact 61-8-714 and subsections (1) through ~~†††~~  
 18 ~~†††~~ ~~†††~~ of this section, with the word "state" in subsection  
 19 subsections SUBSECTION (1) and ~~†††~~ of this section changed  
 20 to read "municipality", as an ordinance and is given  
 21 jurisdiction of the enforcement of the ordinance and of the  
 22 imposition of the fines and penalties therein provided."

23 THERE IS A NEW MCA SECTION THAT READS:

24 Section 4. Multiple convictions prohibited. When the  
 25 same acts may establish the commission of an offense under

1 both [section 2] and 61-8-401, a person charged with such  
2 conduct may be prosecuted for a violation of both [section  
3 2] and 61-8-401. However, he may only be convicted of an  
4 offense under either [section 2] or 61-8-401.

5 THERE IS A NEW MCA SECTION THAT READS:

6 Section 5. Definition of alcohol concentration. For  
7 purposes of ~~[sections 2]~~ SECTION 2 and ~~3]~~ 61-8-401, "alcohol  
8 concentration" means either grams of alcohol per 100  
9 milliliters of blood, grams of alcohol per 210 liters of  
10 breath, or grams of alcohol per 75.3 milliliters of urine.

11 Section 6. Section 61-8-402, MCA, is amended to read:

12 "61-8-402. Chemical blood, breath, or urine tests. (1)  
13 Any person who operates a motor vehicle ~~upon--the--public~~  
14 ~~highways--of anywhere--within--this--state~~ UPON THE WAYS OF THE  
15 STATE OPEN TO THE PUBLIC shall be deemed to have given  
16 consent, subject to the provisions of 61-8-401, to a  
17 chemical test of his blood, breath, or urine for the purpose  
18 of determining the alcoholic content of his blood if  
19 arrested by a peace officer for driving or in actual  
20 physical control of a motor vehicle while under the  
21 influence of alcohol. The test shall be administered at the  
22 direction of a peace officer having reasonable grounds to  
23 believe the person to have been driving or in actual  
24 physical control of a motor vehicle ~~upon--the--public--highways~~  
25 ~~of anywhere--within--this--state~~ UPON THE WAYS OF THE STATE

1 OPEN TO THE PUBLIC, while under the influence of alcohol.  
2 The arresting officer may designate which one of the  
3 aforesaid tests shall be administered.

4 (2) Any person who is unconscious or who is otherwise  
5 in a condition rendering him incapable of refusal shall be  
6 deemed not to have withdrawn the consent provided by  
7 subsection (1) of this section.

8 (3) If a person under arrest refuses upon the request  
9 of a peace officer to submit to a chemical test designated  
10 by the arresting officer as provided in subsection (1) of  
11 this section, none shall be given, but the division, upon  
12 the receipt of a sworn report of the peace officer that he  
13 had reasonable grounds to believe the arrested person had  
14 been driving or was in actual physical control of a motor  
15 vehicle ~~upon--the--public--highways--of anywhere--within--this~~  
16 ~~state~~ UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC, while  
17 under the influence of alcohol and that the person had  
18 refused to submit to the test upon the request of the peace  
19 officer, shall suspend FOR A PERIOD OF 60 DAYS the license  
20 or driving privilege of such person ~~on--the--highways--of~~  
21 ~~anywhere--within--this--state--for--a--period--of--60--days~~ UPON THE  
22 WAYS OF THE STATE OPEN TO THE PUBLIC ON THE HIGHWAYS OF THIS  
23 STATE. Like refusal by a nonresident shall be subject to  
24 suspension by the division in like manner. All such  
25 suspensions are subject to review as hereinafter provided."

Section 7. 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 10 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 anywhere within this state UPON THE HAYS 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 8. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible ~~on~~ conditions of

admissibility. (1) Upon the trial of any criminal action or other 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, IN VIOLATION OF [SECTION 2] OR 3-OF-THIS-ACT 61-8-401 and notwithstanding any other rule or statute pertaining to the admissibility of evidence:

(a) 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; and

(b) a report of the facts and results of any chemical test of a person's blood, breath, or urine administered under 61-8-402 is admissible in evidence if:

(i) the report was prepared and verified by the person who performed the test;

(ii) the test was on a blood sample and the person withdrawing the blood was competent to do so under 61-8-405; and verified in writing on the report that he withdrew the sample;

(iii) the test was a laboratory analysis and the analysis was done in a laboratory operated by the department of justice or by any other laboratory or facility certified or exempt from certification under the rules of the department; and

(iv) the report was prepared in accordance with

1 any applicable rules of the department; AND  
 2 (iv) IF THE TEST WAS ON A BLOOD SAMPLE, IT MUST COMPLY  
 3 WITH (1)(B)(I) THROUGH (1)(B)(III) OF THIS SECTION, AND IN  
 4 ADDITION, THE PERSON WITHDRAWING THE BLOOD MUST HAVE BEEN  
 5 COMPETENT TO DO SO UNDER 61-8-405(1).

6 ~~(2) Unless the accused or his attorney notifies the~~  
 7 ~~prosecuting attorney at least 10 days before the trial or~~  
 8 ~~hearing of his intention to call the person who performed~~  
 9 ~~the chemical test or prepared the report of the facts and~~  
 10 ~~results of the test as a witness, the accused waives any~~  
 11 ~~right to request that the person who performed the test~~  
 12 ~~testify in person at trial.~~

13 ~~(2)(3)(2)~~ If the person under arrest refused to submit  
 14 to the test as hereinabove provided, proof of refusal shall  
 15 be admissible in any criminal action or proceeding arising  
 16 out of acts alleged to have been committed while the person  
 17 was driving or in actual physical control of a motor vehicle  
 18 upon the public highways ~~WAYS OF THE STATE OPEN TO THE~~  
 19 ~~PUBLIC~~ while under the influence of alcohol.

20 ~~(3)(4)(3)~~ The provisions of this part do not limit the  
 21 introduction of any other competent evidence bearing on the  
 22 question of whether the person was under the influence of  
 23 alcohol."

24 THERE IS A NEW MCA SECTION THAT READS:

25 Section 9. Penalty for driving with excessive blood

1 alcohol concentration. (1) A person convicted of a violation  
 2 of [section 2] shall be punished by imprisonment for not  
 3 more than 10 days and shall be punished by a fine of not  
 4 more than \$500.

5 (2) On a second conviction of a violation of [section  
 6 2], he shall be punished by imprisonment for not less than  
 7 48 consecutive hours or more than 30 days and by a fine of  
 8 not less than \$100 or more than \$500.

9 (3) On a third or subsequent conviction of a violation  
 10 of [section 2], he shall be punished by imprisonment for not  
 11 less than 48 consecutive hours or more than 6 months and by  
 12 a fine of not less than \$300 or more than \$1,000.

13 (4) In addition to the above, the provisions of  
 14 61-5-205(2) and 61-5-208(2) relating to revocation and  
 15 suspension of driver's licenses shall apply to any  
 16 conviction under [section 2].

17 ~~SECTION 4x--SECTION 61-8-714x MCA-15-AMENDED TO READ:~~

18 ~~"61-8-714x--Penalty Penalties--for--driving--with~~  
 19 ~~excessive blood alcohol concentration and for driving while~~  
 20 ~~intoxicated--(1) (a) A person convicted of a violation of~~  
 21 ~~61-8-714(1) shall be punished by imprisonment in the county~~  
 22 ~~jail for not more than 10 days and shall be punished by a~~  
 23 ~~fine of not more than \$500.~~

24 ~~(b) On a second conviction of a violation of~~  
 25 ~~61-8-714(1) he shall be punished by imprisonment in the~~

1 county-jail-for-not-more-than-30-days-and-by-a-fine-of-not  
 2 more-than-\$500;  
 3 (c) If a third or subsequent conviction of a violation  
 4 of 61-9-401, he shall be punished by imprisonment in the  
 5 county-jail-for-not-more-than-6-months-and-by-a-fine-of-not  
 6 more-than-\$1000;  
 7 (2) (a) A person convicted of a violation of  
 8 61-9-401 may, in the discretion of the court, be punished  
 9 by imprisonment in the county-jail-for-up-to-24-hours-and  
 10 shall be punished by a fine of not less than \$100 or more  
 11 than \$500. The jail sentence may not be suspended unless the  
 12 judge finds that the imposition of the jail sentence will  
 13 pose a risk to the defendant's physical or mental  
 14 well-being.  
 15 (2) (b) On a second conviction of a violation of  
 16 61-9-401, he shall be punished by a fine of not less than  
 17 \$300 or more than \$500 and by imprisonment for not less than  
 18 7-days-or-more-than-30-days. Three days of the jail sentence  
 19 may not be suspended unless the judge finds that the  
 20 imposition of the jail sentence will pose a risk to the  
 21 defendant's physical or mental well-being.  
 22 (3) (a) On the third or subsequent conviction of a  
 23 violation of 61-9-401, he shall be punished by  
 24 imprisonment for a term of not less than 30 days or more  
 25 than 1-year, to which may be added, in the discretion of the

1 court, a fine of not less than \$500 or more than \$1000.  
 2 Notwithstanding any provision to the contrary providing for  
 3 suspension of execution of a sentence imposed under this  
 4 subsection, the imposition or execution of the first 10 days  
 5 of the jail sentence imposed for a third or subsequent  
 6 offense that occurred within 5 years of the first offense  
 7 may not be deferred or suspended.  
 8 (4) (a) In addition to the punishment provided in this  
 9 section, regardless of disposition, the defendant shall  
 10 complete an alcohol information course at an alcohol  
 11 treatment program approved by the department of  
 12 institutions, which may include alcohol or drug treatment,  
 13 or both, if considered necessary by the counselor conducting  
 14 the program. Each counselor providing such education or  
 15 treatment shall, at the commencement of the education or  
 16 treatment, notify the court that the defendant has been  
 17 enrolled in a course or treatment program. If the defendant  
 18 fails to attend the course or the treatment program, the  
 19 counselor shall notify the court of the failure.  
 20 (5) (a) For the purpose of determining the number of  
 21 convictions under this section, "conviction" means a final  
 22 conviction as defined in 45-2-101 or a forfeiture of bond  
 23 or collateral deposited to secure the defendant's appearance  
 24 in court, which forfeiture has not been vacated. An  
 25 offender is considered to have been previously convicted for

1 the--purposes--of--this--section--if--less-than-5-years-have  
2 elapsed-between-the-commission-of-the-present-offense-and--a  
3 previous---conviction---if--there--has--been--no--additional  
4 conviction-for-an-offense-under-this-section-for-a-period-of  
5 5-years-after-a-prior-conviction-hereunder--then-such--prior  
6 offense-shall-be-expunged-from-the-defendant's-records"

7       NEW\_SECTION. Section 10. Severability. If a part of  
8 this act is invalid, all valid parts that are severable from  
9 the invalid part remain in effect. If a part of this act is  
10 invalid in one or more of its applications, the part remains  
11 in effect in all valid applications that are severable from  
12 the invalid applications.

13       NEW\_SECTION. Section 11. Effective date. This act is  
14 effective on passage and approval.

-End-

## FREE CONFERENCE COMMITTEE

## HOUSE BILL NO. 540

(Report No. 1)

MR. SPEAKER:

We, your Free Conference Committee on House Bill 540 met on April 19, 1983, and considered:

House Bill 540, reference copy (salmon);

Senate Standing Committee (Judiciary) amendment of March 25, 1983; and

Senate Committee of the Whole amendments (five sets) of March 28, 1983.

We respectfully recommend as follows:

That the Senate recede from Senate Standing Committee Report Amendment number 1;

That the House accede to Senate Standing Committee Report Amendment numbers 2 through 14;

That the House accede to Senate Committee of the Whole Amendments as follows: First Set, numbers 1 through 4; Second Set, number 1; Third Set, numbers 1 through 6; Fifth Set, number 1; and

That the Senate recede from Senate committee of the Whole Amendment Second Set, number 2; Senate Committee of the Whole Amendment Fourth Set, number 1; and

That House Bill 540 be further amended as specified in the CLERICAL INSTRUCTIONS; and

That this Free Conference Committee report be adopted.

CLERICAL INSTRUCTIONS FOR REFERENCE COPY (SALMON)

1. Title, line 10.  
Following: "SECTIONS"  
Insert: "61-5-205, 61-5-208,"  
Following: "61-8-101"  
Strike: "AND"  
Insert: " , "

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2. Title, line 11.  
Following: "61-8-404,"  
Insert: "AND 61-11-203"

Following: "MCA"  
Strike: "; AND" through "DATE" on line 12.

3. Page 1. following enacting clause.  
Insert: "Section 1. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation of license upon proper authority. The division upon proper authority shall revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of alcohol or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, or a combination thereof except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more ;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) perjury or the making of a false affidavit or statement under oath to the division under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months."

Section 2. Section 61-5-208, MCA is amended to read:

"61-5-208. Period of suspension or revocation. (1) The division may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have such license or privilege

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renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, the person may make application for a new license as provided by law but the division may not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of the person that it is safe to grant the privilege of driving a motor vehicle on the public highways. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or a narcotic drug or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, or a combination thereof, or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the division shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the division shall revoke the license or driving privilege of the person for a period of 1 year.

(3) The period for all revocations made mandatory by 61-5-205 shall be 1 year except as provided in subsection (2) of this section.

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license commences from date of conviction or forfeiture of bail."

Renumber: subsequent sections.

4. Page 1, lines 20 and 21.  
Strike: "WITH" through "OWNER"

5. Page 3, line 22.  
Strike: "61-8-714"  
Insert: "[section 11]"

6. Page 6, line 17.  
Following: "61-8-714"  
Insert: ", [section 4], [section 6], [section 11],"

7. Page 6, line 19.  
Following: "subsections"  
Insert: "[section 4]" and"

Chairman.

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8. Page 7, line 1.  
Strike: "2"  
Insert: "4"

9. Page 7, line 3.  
Strike: "2"  
Insert: "4"

10. Page 7, line 4.  
Strike: "2"  
Insert: "4"

11. Page 7, line 7.  
Strike: "2"  
Insert: "4"

12. Page 10, line 5.  
Strike: "2"  
Insert: "4"

13. Page 10, lines 14 through 24.  
Strike: subsections (i) and (II) in their entirety.  
Insert: "(i) the breath analysis report was prepared and verified by the person who performed the test or the blood or urine test was a laboratory analysis and the analysis was done in a laboratory operated by the department of justice or by any other laboratory or facility certified or exempt from certification under the rules of the department; and"  
Renumber: subsequent subsections

14. Page 11, lines 2 through 4.  
Following: "SAMPLE"  
Strike: "IT" through "ADDITION,"

15. Page 12, line 2.  
Strike: "2"  
Insert: "4"

16. Page 12, line 3.  
Following: "not"  
Insert: "less than \$100 or"

17. Page 12, line 6.  
Strike: "2"  
Insert: "4"

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18. Page 12, line 8.

Strike: "\$100"

Insert: "\$300"

19. Page 12, line 10.

Strike: "2"

Insert: "4"

20. Page 12, line 12.

Strike: "\$300"

Insert: "\$500"

21. Page 12, line 13.

Strike: "In addition to the above, the"

Insert: "The"

22. Page 12, line 14.

Following: "61-5-205(2)"

Strike: "and"

Insert: ", "

Following: "61-5-208(2)"

Insert: ", and 61-11-203(2)(d)"

23. Page 12, line 16.

Strike: "2"

Insert: "4"

24. Page 12, following line 16.

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

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have

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

Section 12. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide or negligent homicide resulting from operation of a motor vehicle, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

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- (h) reckless driving, 5 points;
- (i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;
- (j) operating a motor vehicle without a license to do so, 2 points (this subsection (j) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);
- (k) speeding, 3 points;
- (l) all other moving violations, 2 points. There shall be no multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.
- (3) "License" means any type of license or permit to operate a motor vehicle."

25. Page 15, lines 13 and 14.

Strike: section 11 in its entirety

Insert: "Section 14. Codification instruction. Sections 4, 6, and 11 are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to sections 4, 6, and 11."

For the House:

*Kelly Addy*  
ADDY, Chairman

*Vincent*  
VINCENT

*Henry Keyser*  
KEYSER

For the Senate:

*Turnage*  
TURNAGE, Chairman

*Joseph H. Mazurek*  
MAZUREK

*Galt*  
GALT

Chairman

## 1 HOUSE BILL NO. 540

2 INTRODUCED BY VINCENT, WINSLOW, KEMMIS, BERGENE, ADDY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ~~AND--EXTENDING~~  
5 ~~THE-GEOGRAPHICAL-APPLICATION-OF~~ THE LAWS PROHIBITING DRIVING  
6 UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; MAKING IT AN  
7 OFFENSE TO DRIVE A MOTOR VEHICLE WITH A BLOOD ALCOHOL  
8 CONCENTRATION OF MORE THAN .10 ~~AND-PROVIDING-PENALTIES-FOR~~  
9 ~~THAT-OFFENSE~~; PROVIDING FOR THE ADMISSIBILITY OF EVIDENCE;  
10 AMENDING SECTIONS ~~61-5-205, 61-5-208, 61-8-101, AND AND,~~  
11 ~~61-8-401 THROUGH 61-8-404, AND 61-11-203, AND 61-8-714, MCA,~~  
12 ~~AND-PROVIDING-AN-IMMEDIATE-EFFECTIVE-DATE."~~

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:15 SECTION 1. SECTION 61-5-205, MCA, IS AMENDED TO READ:

16 "61-5-205. Mandatory revocation of license upon proper  
17 authority. The division upon proper authority shall revoke  
18 the license or operating privilege of any operator or  
19 chauffeur upon receiving a record of such operator's or  
20 chauffeur's conviction or forfeiture of bail not vacated of  
21 any of the following offenses, when such conviction or  
22 forfeiture has become final:

23 (1) negligent homicide resulting from the operation of  
24 a motor vehicle;

25 (2) driving a motor vehicle while under the influence

1 of alcohol or narcotic drug, or willfully or knowingly under  
2 the influence of any other drug to a degree which renders  
3 him incapable of safely driving a motor vehicle, or a  
4 combination thereof except as provided in 61-5-208, or  
5 operation of a motor vehicle by a person with a blood  
6 alcohol concentration of 0.10 or more;

7 (3) any felony in the commission of which a motor  
8 vehicle is used;

9 (4) failure to stop and render aid as required under  
10 the laws of this state in the event of a motor vehicle  
11 accident resulting in the death or personal injury of  
12 another;

13 (5) perjury or the making of a false affidavit or  
14 statement under oath to the division under this chapter or  
15 under any other law relating to the ownership or operation  
16 of motor vehicles;

17 (6) conviction or forfeiture of bail not vacated, upon  
18 three charges of reckless driving committed within a period  
19 of 12 months."

20 SECTION 2. SECTION 61-5-208, MCA, IS AMENDED TO READ:

21 "61-5-208. Period of suspension or revocation. (1) The  
22 division may not suspend or revoke a driver's license or  
23 privilege to drive a motor vehicle on the public highways  
24 for a period of more than 1 year, except as permitted under  
25 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

1 (2) Any person whose license or privilege to drive a  
 2 motor vehicle on the public highways has been suspended or  
 3 revoked is not entitled to have such license or privilege  
 4 renewed or restored unless the revocation was for a cause  
 5 which has been removed, except that after the expiration of  
 6 the period of such revocation or suspension, the person may  
 7 make application for a new license as provided by law but  
 8 the division may not then issue a new license unless and  
 9 until it is satisfied after investigation of character,  
 10 habits, and driving ability of the person that it is safe to  
 11 grant the privilege of driving a motor vehicle on the public  
 12 highways. When any person is convicted or forfeits bail or  
 13 collateral not vacated for the offense of operating or being  
 14 in actual physical control of a motor vehicle while under  
 15 the influence of alcohol or a narcotic drug or knowingly or  
 16 willingly under the influence of any other drug to a degree  
 17 which renders him incapable of safely driving a motor  
 18 vehicle, or a combination thereof, or for the offense of  
 19 operation of a motor vehicle by a person with alcohol  
 20 concentration of 0.10 or more, the division shall, upon  
 21 receiving a report of such conviction or forfeiture of bail  
 22 or collateral not vacated, suspend the license or driving  
 23 privilege of the person for a period of 6 months. Upon  
 24 receiving a report of a conviction or forfeiture of bail or  
 25 collateral for a second, third, or subsequent offense within

1 5 years of the first offense, the division shall revoke the  
 2 license or driving privilege of the person for a period of 1  
 3 year.

4 (3) The period for all revocations made mandatory by  
 5 61-5-205 shall be 1 year except as provided in subsection  
 6 (2) of this section.

7 (4) The period of revocation for any person convicted  
 8 of any offense which makes mandatory the revocation of the  
 9 operator's or chauffeur's license commences from date of  
 10 conviction or forfeiture of bail."

11 Section 3. Section 61-8-101, MCA, is amended to read:

12 "61-8-101. Application -- exceptions. (1) AS USED IN  
 13 THIS CHAPTER, "WAYS OF THE STATE OPEN TO THE PUBLIC" MEANS  
 14 ANY HIGHWAY, ROAD, ALLEY, LANE, PARKING AREA, OR OTHER  
 15 PUBLIC OR PRIVATE PLACE ADAPTED AND FITTED FOR PUBLIC TRAVEL  
 16 THAT IS IN COMMON USE BY THE PUBLIC WITH THE EXPRESS OR  
 17 IMPLIED CONSENT OF THE OWNER.

18 ~~††(2)~~ The provisions of this chapter relating to the  
 19 operation of vehicles refer exclusively to the operation of  
 20 vehicles upon highways except:

21 (a) where a different place is specifically referred  
 22 to in a given section;

23 (b) the provisions of 61-8-301 and 61-8-401, with  
 24 regard to operating a vehicle while under the influence of  
 25 ~~alcohol or~~ drugs, shall apply upon ~~highways and elsewhere~~

1 throughout anywhere--within--the-state UPON--THE--WAYS--OF--THE  
2 STATE--OPEN--TO--THE--PUBLIC ANYWHERE WITHIN THIS STATE;

3 (C) THE PROVISIONS OF 61-8-301 AND 61-8-401, WITH  
4 REGARD TO OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF  
5 ALCOHOL, APPLY UPON ALL WAYS OF THIS STATE OPEN TO THE  
6 PUBLIC.

7 (2)(3) The operation of motor vehicles directly across  
8 the public roads and highways of this state, especially as  
9 required in the transportation of natural resource products,  
10 including agricultural products and livestock, shall not be  
11 considered to be the operation of such vehicles on the  
12 public roads and highways of this state provided that such  
13 crossings are adequately marked with warning signs or  
14 devices. Such crossings are subject to provisions relating  
15 to stopping before entry and to restoration of any damage as  
16 may reasonably be prescribed by the state or local agency in  
17 control of safety of operation of the public highway  
18 involved."

19 Section 2. Section 61-8-401, MCA, is amended to read:

20 "61-8-401. Persons under the influence of alcohol or  
21 drugs--(1) it is unlawful and punishable as provided in  
22 61-8-714(1) 61-8-714 for any person who is to drive or be in  
23 actual physical control of a motor vehicle anywhere within  
24 this state UPON--THE--WAYS--OF--THE--STATE--OPEN--TO--THE--PUBLIC  
25 while the alcohol concentration in his blood, breath, or

1 urine is .10 or more.

2 (2) it is unlawful and punishable as provided in  
3 61-8-714(1) 61-8-714(2) 61-8-714 for any person to drive or  
4 be in actual physical control of a motor vehicle anywhere  
5 within this state UPON--THE--WAYS--OF--THE--STATE--OPEN--TO--THE  
6 PUBLIC while under the influence of:

7 (a) alcohol to drive or be in actual physical control  
8 of a motor vehicle upon the highways of this state;

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

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

15 THERE IS A NEW MCA SECTION THAT READS:

16 Section 4. Operation of motor vehicle BY A PERSON with  
17 alcohol concentration of 0.10 or more. It is unlawful and  
18 punishable as provided in 61-8-714 [SECTION 11] for any  
19 person to drive or be in actual physical control of a motor  
20 vehicle upon the ways of the state open to the public while  
21 the alcohol concentration in his blood, breath, or urine is  
22 0.10 or more.

23 Section 5. Section 61-8-401, MCA, is amended to read:

24 "61-8-401. Persons under the influence of alcohol or  
25 drugs. (1) It is unlawful and punishable as provided in

1 61-8-714~~11~~ for any person who is under the influence of:

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

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

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

11 ~~11(1) alcohol and any drug to a degree that renders~~  
12 ~~him incapable of safely driving a motor vehicle TO DRIVE OR~~  
13 ~~BE IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WITHIN THIS~~  
14 ~~STATE.~~

15 ~~12(2) The fact that any person charged with a~~  
16 ~~violation of subsection (1) or 121 is or has been entitled~~  
17 ~~to use alcohol or such a drug under the laws of this state~~  
18 ~~does not constitute a defense against any charge of~~  
19 ~~violating subsection (1) or 121.~~

20 ~~13(3) In any criminal prosecution for a violation~~  
21 ~~of subsection (1) of this section relating to driving a~~  
22 ~~vehicle while under the influence of alcohol, the amount~~  
23 ~~upon the trial of any civil or criminal action or proceeding~~  
24 ~~arising out of acts alleged to have been committed by any~~  
25 ~~person driving or in actual physical control of a vehicle~~

1 ~~while under the influence of alcohol, the concentration of~~  
2 ~~alcohol in the defendant's person's blood, urine, or breath~~  
3 ~~at the time alleged, as shown by chemical CHEMICAL analysis~~  
4 ~~of the defendant's person's blood, urine, breath, or other~~  
5 ~~bodily substance, shall give rise to the following~~  
6 ~~presumptions:~~

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

11 (b) If there was at that time ~~an alcohol concentration~~  
12 ~~in excess of 0.05% but less than 0.10% by weight of alcohol~~  
13 ~~in the defendant's blood, that fact shall not give rise to~~  
14 ~~any presumption that the defendant person was or was not~~  
15 ~~under the influence of alcohol but such fact may be~~  
16 ~~considered with other competent evidence in determining the~~  
17 ~~guilt or innocence of the defendant person.~~

18 (c) If there was at that time ~~an alcohol concentration~~  
19 ~~of 0.10% or more by weight of alcohol in the defendant's~~  
20 ~~blood, it shall be presumed that the defendant person was~~  
21 ~~under the influence of alcohol. SUCH PRESUMPTION IS~~  
22 ~~REBUTTABLE.~~

23 ~~14(4) The provisions of subsection 141 (3) do not~~  
24 ~~limit the introduction of any other competent evidence~~  
25 ~~bearing upon the issue of whether the person 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.~~

~~(4) For purposes of this section, "alcohol concentration" means either grams of alcohol per hundred milliliters of blood, grams of alcohol per 210 liters of breath, or grams of alcohol per 75.3 milliliters of urine.~~

~~(5) A charge or citation for driving under the influence of alcohol or drugs includes any offense included in this section.~~

~~(5)(b)(2) Each municipality in this state is given authority to enact 61-8-714, [SECTION 4], [SECTION 6], [SECTION 11], and subsections (1) through (4) (4) of this section, with the word "state" in subsection subsections [SECTION 4], AND SUBSECTION (1) and (2) 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."~~

THERE IS A NEW MCA SECTION THAT READS:

Section 6. Multiple convictions prohibited. When the same acts may establish the commission of an offense under both [section 2 4] and 61-8-401, a person charged with such conduct may be prosecuted for a violation of both [section 2

4] and 61-8-401. However, he may only be convicted of an offense under either [section 2 4] or 61-8-401.

THERE IS A NEW MCA SECTION THAT READS:

Section 7. Definition of alcohol concentration. For purposes of [sections--2 SECTION 2 4] and 3] 61-8-401, "alcohol concentration" means either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath, or grams of alcohol per 75.3 milliliters of urine.

Section 8. 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--of anywhere--within--this--state UPON THE WAYS OF 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 of anywhere--within--this--state UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC, while under the influence of alcohol. The arresting officer may designate which one of the

1 aforesaid tests shall be administered.

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

6 (3) If a person under arrest refuses upon the request  
7 of a peace officer to submit to a chemical test designated  
8 by the arresting officer as provided in subsection (1) of  
9 this section, none shall be given, but the division, upon  
10 the receipt of a sworn report of the peace officer that he  
11 had reasonable grounds to believe the arrested person had  
12 been driving or was in actual physical control of a motor  
13 vehicle ~~upon the public highways of anywhere within this~~  
14 ~~state UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC,~~ while  
15 under the influence of alcohol and that the person had  
16 refused to submit to the test upon the request of the peace  
17 officer, shall suspend ~~FOR A PERIOD OF 60 DAYS~~ the license  
18 or driving privilege of such person ~~on the highways of~~  
19 ~~anywhere within this state for a period of 60 days UPON THE~~  
20 ~~WAYS OF THE STATE OPEN TO THE PUBLIC ON THE HIGHWAYS OF THIS~~  
21 ~~STATE.~~ Like refusal by a nonresident shall be subject to  
22 suspension by the division in like manner. All such  
23 suspensions are subject to review as hereinafter provided."

24 Section 9. Section 61-8-403, MCA, is amended to read:

25 "61-8-403. Right of appeal to court. The division

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

22 Section 10. Section 61-8-404, MCA, is amended to read:

23 "61-8-404. Evidence admissible ~~on~~ conditions of  
24 admissibility. (1) Upon the trial of any criminal action or  
25 other proceeding arising out of acts alleged to have been

1 committed by any person while driving or in actual physical  
2 control of a motor vehicle while under the influence of  
3 alcohol IN VIOLATION OF [SECTION 2 4] OR 2-OF-THE-ACF  
4 61-8-401 and notwithstanding any other rule or statute  
5 pertaining to the admissibility of evidence:

6 (a) evidence of the amount of alcohol in the person's  
7 blood at the time of the act alleged as shown by a chemical  
8 analysis of his blood, breath, or urine is admissible; and

9 (b) a report of the facts and results of any chemical  
10 test of a person's blood, breath, or urine administered  
11 under 61-8-402 is admissible in evidence if:

12 (i) the report was prepared and verified by the person  
13 who performed the test;

14 (ii) the test was on a blood sample and the person  
15 withdrawing the blood was competent to do so under  
16 61-8-405; and verified in writing on the report that he  
17 withdrew the sample;

18 (iii) the test was a laboratory analysis and the  
19 analysis was done in a laboratory operated by the department  
20 of justice or by any other laboratory or facility certified  
21 or exempt from certification under the rules of the  
22 department; and

23 (1) THE BREATH ANALYSIS REPORT WAS PREPARED AND  
24 VERIFIED BY THE PERSON WHO PERFORMED THE TEST OR THE BLOOD  
25 OR URINE TEST WAS A LABORATORY ANALYSIS AND THE ANALYSIS WAS

1 DONE IN A LABORATORY OPERATED BY THE DEPARTMENT OF JUSTICE  
2 OR BY ANY OTHER LABORATORY OR FACILITY CERTIFIED OR EXEMPT  
3 FROM CERTIFICATION UNDER THE RULES OF THE DEPARTMENT; AND

4 (iv) (iii) the report was prepared in accordance  
5 with any applicable rules of the department; AND

6 (v) (iii) IF THE TEST WAS ON A BLOOD SAMPLE, IT MUST  
7 COMPLY WITH (i) (b) THROUGH (i) (d) OF THIS SECTION,  
8 AND IN ADDITION, THE PERSON WITHDRAWING THE BLOOD MUST HAVE  
9 BEEN COMPETENT TO DO SO UNDER 61-8-405(1).

10 (2) Unless the accused or his attorney notifies the  
11 prosecuting attorney at least 10 days before the trial or  
12 hearing of his intention to call the person who performed  
13 the chemical test or prepared the report of the facts and  
14 results of the test as a witness, the accused waives any  
15 right to request that the person who performed the test  
16 testify in person at trial.

17 (2) (2) If the person under arrest refused to submit  
18 to the test as hereinabove provided, proof of refusal shall  
19 be admissible in any criminal action or proceeding arising  
20 out of acts alleged to have been committed while the person  
21 was driving or in actual physical control of a motor vehicle  
22 upon the public highways WAYS OF THE STATE OPEN TO THE  
23 PUBLIC, while under the influence of alcohol.

24 (3) (4) The provisions of this part do not limit the  
25 introduction of any other competent evidence bearing on the

question of whether the person was under the influence of alcohol."

THERE IS A NEW MCA SECTION THAT READS:

Section 11. Penalty for driving with excessive blood alcohol concentration. (1) A person convicted of a violation of [section 2 4] shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not LESS THAN \$100 OR more than \$500.

(2) On a second conviction of a violation of [section 2 4], he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than \$100 \$300 or more than \$500.

(3) On a third or subsequent conviction of a violation of [section 2 4], he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than \$300 \$500 or more than \$1,000.

(4) ~~In addition to the above, the~~ THE provisions of 61-5-205(2), and 61-5-208(2), AND 61-11-203(2)(D) relating to revocation and suspension of driver's licenses shall apply to any conviction under [section 2 4].

(5) IN ADDITION TO THE PUNISHMENT PROVIDED IN THIS SECTION, REGARDLESS OF DISPOSITION, THE DEFENDANT SHALL COMPLETE AN ALCOHOL INFORMATION COURSE AT AN ALCOHOL TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF INSTITUTIONS, WHICH MAY INCLUDE ALCOHOL OR DRUG TREATMENT,

OR 30TH, IF CONSIDERED NECESSARY BY THE COUNSELOR CONDUCTING THE PROGRAM. EACH COUNSELOR PROVIDING SUCH EDUCATION OR TREATMENT SHALL, AT THE COMMENCEMENT OF THE EDUCATION OR TREATMENT, NOTIFY THE COURT THAT THE DEFENDANT HAS BEEN ENROLLED IN A COURSE OR TREATMENT PROGRAM. IF THE DEFENDANT FAILS TO ATTEND THE COURSE OR THE TREATMENT PROGRAM, THE COUNSELOR SHALL NOTIFY THE COURT OF THE FAILURE.

(6) FOR THE PURPOSE OF DETERMINING THE NUMBER OF CONVICTIONS UNDER THIS SECTION, "CONVICTION" MEANS A FINAL CONVICTION, AS DEFINED IN 45-2-101, OR A FORFEITURE OF BAIL OR COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE IN COURT, WHICH FORFEITURE HAS NOT BEEN VACATED. AN OFFENDER IS CONSIDERED TO HAVE BEEN PREVIOUSLY CONVICTED FOR THE PURPOSES OF THIS SECTION IF LESS THAN 5 YEARS HAVE ELAPSED BETWEEN THE COMMISSION OF THE PRESENT OFFENSE AND A PREVIOUS CONVICTION. IF THERE HAS BEEN NO ADDITIONAL CONVICTION FOR AN OFFENSE UNDER THIS SECTION FOR A PERIOD OF 5 YEARS AFTER A PRIOR CONVICTION HEREUNDER, THEN SUCH PRIOR OFFENSE SHALL BE EXPUNGED FROM THE DEFENDANT'S RECORD.

~~SECTION 6. SECTION 61-8-714 MAY BE AMENDED TO READ:~~

~~61-8-714. Penalty Penalties for driving with excessive blood alcohol concentration and for driving while intoxicated. (1) (a) A person convicted of a violation of 61-8-714 shall be punished by imprisonment in the county jail for not more than 10 days and shall be punished by a~~

1 fine-of-not-more-than-\$500.

2 ~~but--an--a--second--conviction--of--a--violation--of~~

3 ~~61-8-40111x he shall be punished by imprisonment in the~~

4 ~~county jail for not more than 30 days and by a fine of not~~

5 ~~more than \$500.~~

6 ~~but--an--a--third--or--subsequent--conviction--of--a--violation~~

7 ~~of--61-8-40111x he shall be punished by imprisonment in the~~

8 ~~county jail for not more than 6 months and by a fine of not~~

9 ~~more than \$1000.~~

10 ~~(2) (a) A person convicted of a violation of~~

11 ~~61-8-40112 may in the discretion of the court be punished~~

12 ~~by imprisonment in the county jail for up to 24 hours and~~

13 ~~shall be punished by a fine of not less than \$100 or more~~

14 ~~than \$500. The jail sentence may not be suspended unless the~~

15 ~~judge finds that the imposition of the jail sentence will~~

16 ~~pose a risk to the defendant's physical or mental~~

17 ~~well-being.~~

18 ~~(2) (b) An a second conviction of a violation of~~

19 ~~61-8-40112x he shall be punished by a fine of not less than~~

20 ~~\$300 or more than \$500 and by imprisonment for not less than~~

21 ~~7 days or more than 30 days. Three days of the jail sentence~~

22 ~~may not be suspended unless the judge finds that the~~

23 ~~imposition of the jail sentence will pose a risk to the~~

24 ~~defendant's physical or mental well-being.~~

25 ~~(2) (c) An the third or subsequent conviction of a~~

1 violation of 61-8-40121x he shall be punished by

2 imprisonment for a term of not less than 30 days or more

3 than 1 year to which may be added in the discretion of the

4 court a fine of not less than \$500 or more than \$1000.

5 Notwithstanding any provision to the contrary providing for

6 suspension of execution of a sentence imposed under this

7 subsection the imposition or execution of the first 10 days

8 of the jail sentence imposed for a third or subsequent

9 offense that occurred within 5 years of the first offense

10 may not be deferred or suspended.

11 (4) (2) In addition to the punishment provided in this

12 section regardless of disposition the defendant shall

13 complete an alcohol information course at an alcohol

14 treatment program approved by the department of

15 institutions which may include alcohol or drug treatment

16 or both if considered necessary by the counselor conducting

17 the programs. Each counselor providing such education or

18 treatment shall at the commencement of the education or

19 treatment notify the court that the defendant has been

20 enrolled in a course or treatment program. If the defendant

21 fails to attend the course or the treatment program the

22 counselor shall notify the court of the failure.

23 (5) (1) For the purpose of determining the number of

24 convictions under this section "conviction" means a final

25 conviction as defined in 45-2-101x or a forfeiture of bail

~~or collateral deposited to secure the defendant's appearance in court which forfeiture has not been vacated; an offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction if there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder; then such prior offense shall be expunged from the defendant's records"~~

SECTION 12, SECTION 61-11-203, MCA, IS AMENDED TO READ:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation

of a motor vehicle, 15 points;

(b) mitigated deliberate homicide or negligent homicide resulting from operation of a motor vehicle, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest

1 in violation of the law, 5 points;  
 2 (j) operating a motor vehicle without a license to do  
 3 so, 2 points (this subsection (j) does not apply to  
 4 operating a motor vehicle within a period of 180 days from  
 5 the date the license expired);  
 6 (k) speeding, 3 points;  
 7 (l) all other moving violations, 2 points. There shall  
 8 be no multiple application of cumulative points when two or  
 9 more charges are filed involving a single occurrence. If  
 10 there are two or more convictions involving a single  
 11 occurrence, only the number of points for the specific  
 12 conviction carrying the highest points shall be chargeable  
 13 against that defendant.  
 14 (3) "License" means any type of license or permit to  
 15 operate a motor vehicle."  
 16 ~~NEW SECTION.~~ Section 13. Severability. If a part of  
 17 this act is invalid, all valid parts that are severable from  
 18 the invalid part remain in effect. If a part of this act is  
 19 invalid in one or more of its applications, the part remains  
 20 in effect in all valid applications that are severable from  
 21 the invalid applications.  
 22 ~~NEW SECTION.~~ ~~Section 14.~~ ~~Effective dates.~~ ~~This act is~~  
 23 ~~effective on passage and approval.~~  
 24 SECTION 14. CODIFICATION INSTRUCTION. SECTIONS 4, 6,  
 25 AND 11 ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF

1 TITLE 61, CHAPTER 8, AND THE PROVISIONS OF TITLE 61, CHAPTER  
 2 8, APPLY TO SECTIONS 4, 6, AND 11.

-End-