HOUSE BILL NO. 808

Introduced: 02/15/83

Referred to Committee on Judiciary: 02/15/83

Hearing: 2/18/83

Report: 02/19/83, Do Pass, As Amended

2nd Reading: 02/22/83, Do Pass, As Amended

3rd Reading: 02/23/83, Do Pass

Transmitted to Senate: 2/23/83

Referred to Committee on Judiciary: 3/1/83

Hearing: 3/15/83

Died in Senate Committee

	House	BILL	NO.	808
INTRODUCED BY	Kitelmon			

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN ARRESTING OFFICER TO IMMEDIATELY SUSPEND THE ORIVER'S LICENSE OF A PERSON REFUSING TO SUBMIT TO A CHEMICAL TEST; INCREASING THE PERIOD OF SUSPENSION; REQUIRING THE ISSUANCE OF A TEMPORARY OCCUPATIONAL LICENSE IN CERTAIN INSTANCES; ALLOWING APPEAL OF THE SUSPENSION TO BE FILED IN THE DISTRICT COURT OF THE COUNTY IN WHICH THE ARREST WAS MADE; AMENDING SECTIONS 61-8-402 AND 61-8-403+ MCA+*

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

Section 1. 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 this state 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 this state while under the influence of alcohol. The
arresting officer may designate which one of the aforesaid
tests shall be administered.

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who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

9 (3) If a person resident driver under arrest refuses
10 upon the request of a peace officer to submit to a chemical
11 test designated by the arresting officer as provided in
12 subsection (1) of this section, none shall be given, but the
13 division, upon the receipt of officer, on behalf of the
14 division, shall immediately suspend the person's driver's
15 license by taking possession of the license and issuing the
16 person:

1al a written notice of suspension; and

(b) a dated receipt and temporary driver's permit on a document entitled "receipt and temporary driver's permit".

(4) The notice of suspension must clearly state that the person's license is suspended at the expiration of the period of temporary licensure provided in subsection (51) that the license remains suspended for a period of 6 months unless a temporary occupational license is requested and issued by the division under the provisions of subsection

-2- INTRODUCED BILL

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1	(7) and that the suspension is subject to review as
5	orovided_in_61-8-403.
3	(5) (a) The receipt and temporary permit issued by the
4	officer_must_show:
5	<pre>fil_that possession of the driver's license was taken;</pre>
6	fill the name and address of the driver:
7	fill the date and time that possession of the license
8	was_taken_by_the_officer:
9	(iv) that the person arrested may drive on the
10	authority of the receipt and permit for a period of 48 hours
11	from the time possession of the license was taken; and
12	(v) that the driver's license has been mailed to the
13	division in accordance with subsection (6).

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expiration.

16) The arresting officer shall mail the driver's licenseria copy of the notice of suspensions and a copy of the receipt and permit to the divisions along with a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcohols and that the person had refused to submit to the test upon the request of the peace officer, shall-suspend-the-license

(b) The receipt and permit issued under this section

is a valid operator's permit from the time of issuance until

or--driving-privilege-of-such-person-on-the-highways-of-this 1 state-for-a-period-of-60-days and that the officer took 3 possession of the person's license in accordance with this section-171 A license seized by an officer under this section is suspended for 6 months from the date of expiration of the 7 temporary permit issued under this section, subject to review as provided in 61-8-403. However, a person whose license has been suspended under this section may apply to 10 the division at any time for a temporary occupational 11 license by submitting a sworn affigavit to the division on 12 which that person must state facts showing that the license 13 is essential to his occupation or business and that 14 suspension of the license will cause extreme hardship to that person. If the division finds that extreme bardship 15 16 will be caused by suspension of the license. it shall issue 17 a temporary occupational license only for the purposes and 18 hours of employment as shown in the application. The 19 decision of the division is final and not subject to appeal 20 or reviews 21 [8] Eike-refusel Refusal by a nonresident shell-be to 22 submit to a chemical test is subject to suspension by the division officer in like manner. In such cases seizure of 24 the license is not required. but the same notice and receipt 25 and temporary permit must be issued.

491 All such suspensions are subject to review as hereinafter provided.**

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Section 2. Section 61-8-403. MCA, is amended to read: "al-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 shell-reside resides or in the district court in the county in which the arrest was made. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual obvical control of a vehicle upon the public highways 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.*

STATE OF MONTANA

REQUEST NO. 441-83

FISCAL NOTE

Form BD-15

					ived <u>February</u>					
or	House	Bill	808	pı	ursuant to Title 5,	Chapter 4, Page	t 2 of the	Montana Code A	Annotated (MCA).	
					his Fiscal Note is a					
of	the Legislatu	ure upor	reques	t.						

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 808 allows an arresting officer to immediately suspend the driver's license of a person refusing to submit to a chemical test and increases the period of suspension.

ASSUMPTIONS:

- 1) It is estimated that 1,500 additional probationary driver licenses will be issued each year.
- 2) A half-time general office clerk will be required to handle the additional workload.

FISCAL IMPACT:

Personal Services:	<u>FY 84</u>	FY 85	Total <u>Biennium</u>
Half-time general office clerk G6-2 + 20%	\$ 6,555	\$ 6,555	\$ 13,110
Total Expenses	\$ 6,555	\$ 6,555	\$ 13,110

FISCAL NOTE 14:FF/1

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2 - 9 - 83

HB 0808/02

HB 0808/02

Approved by Committee on Judiciary

?	INTRODUCED BY KITSELMAN
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4	A BILL FOR AN ACT ENTITLED: "AN ACT ALLOHING AN ARRESTING
5	OFFICER TO IMMEDIATELY SUSPEND THE DRIVER'S LICENSE OF A
5	PERSON REFUSING TO SUBMIT TO A CHEMICAL TEST; INCREASING. IN
7	CERTAIN_INSTANCES. THE PERIOD OF SUSPENSION; REQUIRING THE
3	ISSUANCEOFATEMPORARYOCCUPATIONALLIGENSE-IN-CERTAIN
•	THETANEES EXPANDING THE GEOGRAPHICAL APPLICATION OF THE LAWS
)	PROHIBITING ORIVING UNDER THE INFLUENCE OF ALCOHOL: ALLOWING
l	APPEAL OF THE SUSPENSION TO BE FILED IN THE DISTRICT COURT
2	OF THE COUNTY IN WHICH THE ARREST WAS HADE; AMENDING
3	SECTIONS 61-8-482-AND-61-8-483 61-8-101 AND 61-8-401 IHROUGH
÷	61-8-404+ MCA-
5	
,	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
7	SECTION 1. SECTION 61-8-101. MCA. 15 AMENDED TO READ:
3	#61-8-101. Application exceptions. (1) As used in
7	this chapter. "ways of the state open to the public" means
)	any biobway: road: alley: lane: parking area. or other
l	public or private place adapted and fitted for public travel
2	that is in common use by the public with the express or
3	implied_consent_of_the_owner.
,	11121 The provisions of this chapter relating to the
5	operation of vehicles refer exclusively to the operation of

HOUSE BILL NO. 808

3	to in a given section;
4	(b) the provisions of 61-8-301 and 61-8-401, with
5	regard to operating a vehicle while under the influence of
6	drugs, shall apply upon highways—and—elsewhere—throughout
7	the ways of the state open to the public.
В	t2)(3) The operation of motor vehicles directly across
9	the public roads and highways of this state, especially as
10	required in the transportation of natural resource products,
11	including agricultural products and livestock, shall not be
12	considered to be the operation of such vehicles on the
13	public roads and highways of this state provided that such
14	crossings are adequately marked with warning signs or
15	devices. Such crossings are subject to provisions relating
16	to stopping before entry and to restoration of any damage as
17	may reasonably be prescribed by the state or local agency in
18	control of safety of operation of the public highway

SECTION 2. SECTION 61-8-401. MCA. IS AMENDED TO READ:

#61-8-401. Persons under the influence of alcohol or

(a) alcohol to drive or be in actual physical control

drugs. (1) It is unlawful and punishable as provided in

of a motor vehicle upon the highways ways of this the state

61-8-714+17 for any person who is under the influence of:

(a) where a different place is specifically referred

vehicles upon highways except:

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involved.**

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open to the public;

- (b) a narcotic drug to drive or be in actual physical control of a motor vehicle within this state; or
- (c) any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state.
- (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).
- (3) In any criminal prosecution for a violation of subsection (1) of this section relating to driving a vehicle while under the influence of alcohol, the amount of alcoholin the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:
- (a) If there was at that time 0.05% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of alcohol.
- (b) If there was at that time in excess of 0.05% but less than 0.10% by weight of alcohol in the defendant's blood, that fact shall not give rise to any presumption that the defendant was or was not under the influence of alcohol.

- but such fact may be considered with other competent
 evidence in determining the guilt or innocence of the
 defendant.
 - (c) If there was at that time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of alcohol.
 - (4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.
 - (5) Each municipality in this state is given authority to enact 61-8-714 and subsections (1) through (4) of this section with the word "state" in subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided."
 - Section 3. 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-this 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

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- the influence of alcohol. The test shall be administered at the direction of a seace 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-this WAYS OF THE state OPEN TO THE PUBLIC while under the influence of alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.
- (2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemen not to have withdrawn the consent provided by subsection (1) of this section.
- (3) If a person resident driver under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the division--pon-the-receipt-of officer._on_behalf_of_the division, shall immediately suspend the person's driver's license by taking possession of the license and issuing the person:
 - (a) a written notice of suspension; and
- (b) a dated receipt and temporary driver's permit on a document entitled "receipt and temporary driver's permit". [41 The notice of suspension must clearly state that the person's license is suspended at the expiration of the

period of temporary licensure provided in subsection 151.

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1	that the license remains suspended for a period of 6-menths
2	unissiantemporary.oscupationallienasinianicequestadinan
3	issued <u>bythedivision-under_the-provisions_of</u> _subsection
4	171 60 DAYS OR 1 YEAR AS PROVIDED IN SUBSECTION (71. and
5	that the suspension is subject to review as provided in
6	61-8-403 _*

- 7 (5) (a) The receipt and temporary permit issued by the 8 officer must show:
- 9 (i) that possession of the driver's license was taken;
- 10 (ii) the name and address of the driver:
- fill the date and time that possession of the license 11 12 was taken by the officer:
- 13 (iv) that the person arrested may drive on the 14 authority of the receipt and permit for a period of 48 hours
- from the time possession of the license was taken; and 16 (v)_that the driver's license has been mailed to the
- division in accordance with subsection 161. 18 (b) The receipt and permit issued under this section is a valid operator's permit from the time of issuance until
- 20 expiration.

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21 (6) The arresting officer shall mail the driver's 22 licenses a copy of the notice of suspensions and a copy of 23 the receipt and permit to the division: along with a sworn report of the peace officer that he had reasonable grounds 25 to believe the arrested person had been driving or was in

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actual physical control of a motor vehicle upon the public highways-of-this MAYS OF THE state OPEN TO THE PUBLIC while under the influence of alcohols and that the person had refused to submit to the test upon the request of the peace officer, shall—suspend-the-license or-driving-privilege-of such-person-on-the-highways-of-this-state-for-a-period-of-60 days and that the officer took possession of the person's license in accordance with this section-

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(7)._A__license seized-by-on-officer-under-this-section is=suspended=for=6-months=from-the-date-of-expiration-of-the temporaty-permit--issued--under--this--section--subject--to review-mas-rerovided-min-m61-0-403---Movevery-o-person-whose license-bas-been-suspended-under-this-section-eav--only--to the division of sometime for or temperary occupational ticsuse=br=tubmitting=g-sworn-offiderit=to-the--division==on which-shot-occson-must-state-facts-showing-that-the-license is--sassatiol--to--bis--occupation--oc--business--and---that <u> auanenaion-cof-che-ligenae-will-couse-extreme-hordabio-to</u> thetreesenwif-the-division--finds--thet--extrems--herdship will-re-caused-by-suspension-of-the-licensey-it-shell-issue s_temporary_occupational_license_only_for_the__auroases__und bours_ref_resolowsest--es_sboup_rin_the--eselication=-The decision-of-the-division-is-final-ond-pet-subject-to--socoal DE-TEXTON SUSPENSION UNDER THIS SECTION MUST BE FOR THE **EDLLOWING TIME PERIODS:**

141 IF THE PERSON'S DRIVING RECORD SHOWS NO PRIOR REFUSALS IO SUBMIT TO A CHEMICAL TEST PURSUANI ID THIS SECTION. HIS LICENSE MUST BE SUSPENDED FOR 60 DAYS. 18) IF THE PERSON'S DRIVING RECORD SHOWS A PRIOR REFUSAL TO SUBMIT TO A CHEMICAL IEST PURSUANT TO THIS SECTION. HIS LICENSE MUST BE SUSPENDED FOR 1 YEAR. (8) Like-refusel Refusal by a nonresident shall-be to submit to a chemical test is subject to suspension by the division Officer in like manner. In such cases seizure of 10 the license is not required, but the same notice and receipt 11 and temporary permit must be issued. 12 191 All such suspensions are subject to review as hereinafter provided." 14 Section 4. Section 61-8-403, MCA, is amended to read: 15 *61-8-403. Right of appeal to court. The division 16 shall immediately notify any person whose license or 17 privilege to drive has been suspended, as hereinbefore 18 authorized, in writing and such person small have the right to file a petition within 30 days thereafter for a hearing 19 20 in the matter in the district court in the county wherein 21 such person shall-reside resides or in the district court in 22 the county in which the arrest was made. Such court is 23 hereby vested with jurisdiction and it shall be its duty to 24 set the matter for hearing upon 30 days written notice to

the county attorney of the county wherein the appeal is

1 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 3 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 while under the influence of alcohol, whether the person was 7 placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine 10 whether the petitioner is entitled to a license or is subject to suspension as heretofore provided." 11

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24 25 SECTION 5. SECTION 61-8-404. MCA. IS AMENDED TO READ:

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

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle

- upon the public-highways ways of the state open to the
- 2 <u>public</u> while under the influence of alcohol.

alcohol."

3 (3) The provisions of this part do not limit the 4 introduction of any other competent evidence bearing on the 5 question of whether the person was under the influence of

-End-

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1	HOUSE BILL NO. 808
2	INTRODUCED BY KITSELMAN
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4	A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN ARRESTING
5	OFFICER TO IMMEDIATELY SUSPEND THE DRIVER'S LICENSE OF
6	PERSON REFUSING TO SUBMIT TO A CHEMICAL TEST; INCREASING. IN
7	CEBIALY_INSTANCES: THE PERIOD OF SUSPENSION; REQUERENGTHE
8	ISSUANCEOFATEMPORARYOCCUPATIONALLICENSE-IN-CERTAIN
9	*HSTANCES EXPANDING_THE_GEOGRAPHICAL_APPLICATION_DE_THE_LAWS
10	PROHIBITING_ORIVING_UNDER_THE_INELUENCE_OF_ALCOHOL; ALLOWING
11	APPEAL OF THE SUSPENSION TO BE FILED IN THE DISTRICT COURT
12	OF THE COUNTY IN WHICH THE ARREST WAS MADE; AMENDING
13	SECTIONS 61-0-402-AND-61-8-403 61-8-101 AND 61-8-401 THROUGH
14	61=8=904, MCA.M
15	
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17	SECTION 1. SECTION 61-8-101. MCA. IS AMENDED TO READ:
18	*61-8-101. Application exceptions. [1] As used in
19	this chapter. "ways of the state open to the public" means
20	any highways roads alleys lanes parking areas or other
21	public or private place adapted and fitted for public travel
22	that is in common use by the oublic with the express or
23	implied_consent_of_the_owner.

titll The provisions of this chapter relating to the

operation of vehicles refer exclusively to the operation of

(a) where a different blace is specifically telefite
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 o
drugs, shall apply upon highwaysandelsewherethroughou
the ways of the state open to the public.
(2)(3) The operation of motor vehicles directly acros
the public roads and highways of this state, especially a
required in the transportation of natural resource products
including agricultural products and livestock, shall not b
considered to be the operation of such vehicles on th
public roads and highways of this state provided that such
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devices. Such crossings are subject to provisions relation
to stopping before entry and to restoration of any damage a
may reasonably be prescribed by the state or local agency i
control of safety of operation of the public highwa
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

vehicles upon nighways except:

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of a motor vehicle upon the highways ways of this the state

(a) alcohol to drive or be in actual physical control

61-8-714(1) for any person who is under the influence of:

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- (b) a narcotic drug to drive or he in actual physical control of a motor vehicle within this state; or
- (c) any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state.
- (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).
- (3) In any criminal prosecution for a violation of subsection (1) of this section relating to driving a vehicle while under the influence of alcohol, the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, wrine, breath, or other bodily substance, shall give rise to the following presumptions:
- (a) If there was at that time 0.05% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of alcohol.
- (b) If there was at that time in excess of 0.052 but less than 0.102 by weight of although in the adefendant's blood, that fact shall not give rise to any present to that the adefendant was or was not mader the antiques of alcohol

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but such fact may be considered with other competent
evidence in determining the guilt or innocence of the
defendant.

- 4 (c) If there was at that time 0.10% or more by weight 5 of alcohol in the defendant*s blood, it shall be presumed 6 that the defendant was under the influence of alcohol.
 - (4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.
 - (5) Each municipality in this state is given authority to enact 61-8-714 and subsections (1) through (4) of this section with the word "state" in subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided."
 - Section 3. Section 61-8-402, NGA, is emended to read:

 #61-8-402. Chemical blood, breath, or urine tests. (1)

 Any person who operates a motor vehicle upon the public

 highways-of-this HAYS.DE_THE state OPEN_TO_THE_PUBLIC shall

 be desmed 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
i	to believe the person to have been driving or in actual
+	physical control of a motor vehicle upon the public-highways
	of-this WAYS DE THE state OPEN TO THE PUBLIC while under the
	influence of alcohol. The arresting officer may designate
	which one of the aforesaid tests shall be administered.

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- (2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.
- (3) If a person resident driver under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the division-upon-the-receipt-of officers on behalf of the division. shall immediately suspend the person's driver's license by taking possession of the license and Issuing the personi

(a) a written notice of suspension; and

document entitled "receipt and temporary driver's permit". 23 (4) The notice of Suspension must clearly state that the person's license is suspended at the expiration of the 25 period of temporary licensure provided in subsection (5).

(b) a dated receipt and temporary driver's permit on a

1	that the license remains suspended for a period of 6-menths
2	untesa=q=temporory=occupationol==license==ia==coqueated==qoc
3	iasued==bx==tha==dixision=undec=the=provisiona=of=aubasction
4	t7: 60 DAYS OR 1 YEAR AS PROVIDED IN SUBSECTION (1): and
5	that the suspension is subject to review as provided in
6	61-8-4 <u>03</u> .
7	(5)_(a) The receipt and temporary permit issued by the
8	officer_must_show:
9	(i)_that possession of the driver's license was taken:
0	(ii)_the_name_and_address_of_the_driver:
1	(iii) the date and time that possession of the license
.2	was_taken_bx_the_officer:
13	(iv) that the person arrested may drive on the
14	authority of the receipt and permit for a period of 48 hours
5	from the time possession of the license was taken: and
.6	(y) that the driver's license has been mailed to the
.7	division in accordance with subsection [6]:
8	(b) _ Ibe _ receipt _ and permit_issued_under_this_section
9	is a valid operator's permit from the time of issuance until
20	expiration.
?1	161 The arresting officer shall mail the driver's

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license. a copy of the notice of suspension, and a copy of

the receipt and permit to the division, along with a sworn

report of the peace officer that he had reasonable grounds

to believe the arrested person had been driving or was in

actual physical control of a motor vehicle upon the public highways-of-this WAYS DE IME state OPEN TO IME PUBLIC while under the influence of alcohol, and that the person had refused to submit to the test upon the request of the peace officer, shall-suspend-the-license-or-driving-privilege-of such-person-on-the-highways-of-this-state-for-o-period-of-60 days and that the officer took possession of the person's license in accordance with this section.

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171 A license setsem-by-on-officer-under-this-section iz: surrended-for: 6: months-from the-date-of-exptration-of-the temporary-nermif--isaued--under--this--sectiony--subject--to ferier-es-perovided--in-poi-0-463--deweyer--a-person-whose licenia has been suspended woder this section was - and -----to the mityle ign = pix = pix = pix = for = e = teaverer x occupational Figense-brandmitting-arawora-offiderit-to-the--division--on which this person was trained as facts though the training the conse iangeagetidin-ip-his-occupation-or-business-and--that suspension refrather licenser will remande the contract of the second contract of the secon that mersons if the division of indepthatement come that is with-be-coused-by-suspension-of-the-licenses-it-shell-issue artemporary-occupational-license-only-for-the--approxes--and hours-referencies/formations-random-rin-rineradomitention-rine decision of the sivision is final and not subject to septal OF TENTON SUSPENSION UNDER THE SECTION HAS BE FOR THE **EOLLOWING TIME PERIDOS:**

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(A) IF THE PERSON'S DRIVING RECORD SHOWS NO PRIOR 1 REFUSALS TO SUBMIT TO A CHEMICAL TEST PURSUANT TO THIS SECTION WITHIN THE 5 YEARS IMMEDIATELY PRECEDING THE REGUSAL IN QUESTION, HIS LICENSE MUSI BE SUSPENDED FOR 60 DAYS. (B) IF THE PERSON'S DRIVING RECORD SHOWS A PRIOR 5 REFUSAL TO SUBMIT TO A CHEMICAL TEST PURSUANT TO THIS SECTION WITHIN THE 5 YEARS IMMEDIATELY PRECEDING THE REEUSAL IN QUESTION. HIS LICENSE MUST BE SUSPENDED FOR 1 YEAR. 9 18) tike-refusel Refusal by a nonresident shoft-be to submit to a chemical test is subject to suspension by the 10 division officer in like manner. In such cases selzure of 11 the license is not regulred, but the same notice and receipt 12 13 and temporary permit must be issued. (9) All such suspensions are subject to review as 14 15 hereinafter provided.* 16 Section 4. Section 61-8-403. MCA. is amended to read: 17 *61-B-403. Right of appeal to court. The division 18 shall immediately notify any person whose license or 19 privilege to drive has been suspended, as hereinbefore authorized, in writing and such person shall have the right 20 to file a petition within 30 days thereafter for a hearing 21 in the matter in the district court in the county wherein 22 23 such person shaft-reside resides or in the district court in the county in which the arrest was made. Such court is 24

hereby vested with jurisdiction and it shall be its duty to

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1 set the matter for hearing upon 30 days' written notice to the county attorney of the county wherein the appeal is 3 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 7 believe the person had been driving or was in actual physical control of a vehicle upon the public highways while 9 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 12 whether the petitioner is entitled to a license or is 13 subject to suspension as heretofore provided."

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SECTION 5. SECTION 61-8-404. MCA. IS AMENDED TO READ: *61-8-404. Evidence admissible. (1) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of alcohol, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is adrissible.

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out 1 of acts alleged to have been committed while the person was 2 driving or in actual physical control of a motor vehicle 3 upon the public-highways ways of the state open to the public while under the influence of alcohol.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the 7 question of whether the person was under the influence of alcohol."

-End-