

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 Kibelman

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN ARRESTING OFFICER TO IMMEDIATELY SUSPEND THE DRIVER'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who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(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 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".

(1) 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 (5), 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

(7) and that the suspension is subject to review as provided in 61-8-403.

(5) (a) The receipt and temporary permit issued by the officer must show:

(i) that possession of the driver's license was taken;

(ii) the name and address of the driver;

(iii) the date and time that possession of the license was taken by the officer;

(iv) that the person arrested may drive on the authority of the receipt and permit for a period of 48 hours from the time possession of the license was taken; and

(v) that the driver's license has been mailed to the division in accordance with subsection (6).

(b) The receipt and permit issued under this section is a valid operator's permit from the time of issuance until expiration.

(6) The arresting officer shall mail the driver's 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 state while under the influence of alcohol, and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license

or driving privilege of such person on the highways of this state for a period of 60 days and that the officer took possession of the person's license in accordance with this section.

(7) A license seized by an officer under this section is suspended for 6 months from the date of expiration of the 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 the division at any time for a temporary occupational license by submitting a sworn affidavit to the division on which that person must state facts showing that the license is essential to his occupation or business and that suspension of the license will cause extreme hardship to that person. If the division finds that extreme hardship will be caused by suspension of the license, it shall issue a temporary occupational license only for the purposes and hours of employment as shown in the application. The decision of the division is final and not subject to appeal or review.

(8) Like refusal 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 the license is not required, but the same notice and receipt and temporary permit must be issued.

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

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

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

-End-

STATE OF MONTANA

REQUEST NO. 441-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 16, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 808 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

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.

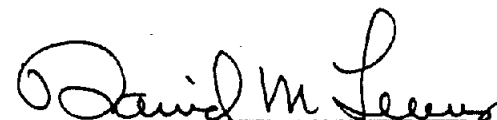
ASSUMPTIONS:

- 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:

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

FISCAL NOTE 14:FF/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-19-83

Approved by Committee
on Judiciary

HOUSE BILL NO. 808

INTRODUCED BY KITSELMAN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN ARRESTING OFFICER TO IMMEDIATELY SUSPEND THE DRIVER'S LICENSE OF A PERSON REFUSING TO SUBMIT TO A CHEMICAL TEST; INCREASING, IN CERTAIN INSTANCES, THE PERIOD OF SUSPENSION; REQUIRING--THE ISSUANCE--OF--A--TEMPORARY--OCCUPATIONAL--LICENSE--IN--CERTAIN INSTANCES EXPANDING THE GEOGRAPHICAL APPLICATION OF THE LAWS PROHIBITING DRIVING UNDER THE INFLUENCE OF ALCOHOL; 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 61-8-101 AND 61-8-401 THROUGH 61-8-404, MCA."

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 drugs, shall apply upon highways--and--elsewhere--throughout the ways of the state open to the public.

(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 for any person who is under the influence of:

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

1 ~~open to the public;~~

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

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

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

12 (3) In any criminal prosecution for a violation of
13 subsection (1) of this section relating to driving a vehicle
14 while under the influence of alcohol, the amount of alcohol
15 in the defendant's blood at the time alleged, as shown by
16 chemical analysis of the defendant's blood, urine, breath,
17 or other bodily substance, shall give rise to the following
18 presumptions:

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

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

1 but such fact may be considered with other competent
2 evidence in determining the guilt or innocence of the
3 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.

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

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

17 Section 3. Section 61-8-402, MCA, is amended to read:
18 "61-8-402. Chemical blood, breath, or urine tests. (1)
19 Any person who operates a motor vehicle upon the public
20 highways of this ~~WAYS OF THE~~ state OPEN TO THE PUBLIC shall
21 be deemed to have given consent, subject to the provisions
22 of 61-8-401, to a chemical test of his blood, breath, or
23 urine for the purpose of determining the alcoholic content
24 of his blood if arrested by a peace officer for driving or
25 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 OPEN TO THE PUBLIC while under the influence of alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.

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

(3) If a person 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 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".~~

(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 (5).~~

~~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 (7) 60 DAYS OR 1 YEAR AS PROVIDED IN SUBSECTION (7), and that the suspension is subject to review as provided in 61-8-403.~~

~~(5) (a) The receipt and temporary permit issued by the officer must show:~~

~~(i) that possession of the driver's license was taken;~~

~~(ii) the name and address of the driver;~~

~~(iii) the date and time that possession of the license was taken by the officer;~~

~~(iv) that the person arrested may drive on the authority of the receipt and permit for a period of 48 hours from the time possession of the license was taken; and~~

~~(v) that the driver's license has been mailed to the division in accordance with subsection (6).~~

~~(b) The receipt and permit issued under this section is a valid operator's permit from the time of issuance until expiration.~~

~~(6) The arresting officer shall mail the driver's 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 state OPEN TO THE PUBLIC while under the influence of alcohol, and that the person had refused to submit to the test upon the request of the peace officer, shall ~~suspend the license or driving privilege of such person on the highways of this state for a period of 60 days and that the officer took possession of the person's license in accordance with this section.~~

~~(7) A license seized by an officer under this section is suspended for 6 months from the date of expiration of the 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 the division at any time for a temporary occupational license by submitting a sworn affidavit to the division on which that person must state facts showing that the license is essential to his occupation or business and that suspension of the license will cause extreme hardship to that person. If the division finds that extreme hardship will be caused by suspension of the license, it shall issue a temporary occupational license only for the purposes and hours of employment as shown in the application. The decision of the division is final and not subject to appeal or review.~~ SUSPENSION UNDER THIS SECTION MUST BE FOR THE FOLLOWING TIME PERIODS:

(1) IF THE PERSON'S DRIVING RECORD SHOWS NO PRIOR REFUSALS TO SUBMIT TO A CHEMICAL TEST PURSUANT TO THIS SECTION, HIS LICENSE MUST BE SUSPENDED FOR 60 DAYS.

(2) IF THE PERSON'S DRIVING RECORD SHOWS A PRIOR REFUSAL TO SUBMIT TO A CHEMICAL TEST PURSUANT TO THIS SECTION, HIS LICENSE MUST BE SUSPENDED FOR 1 YEAR.

~~(3) Like refusal~~ 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 the license is not required, but the same notice and receipt and temporary permit must be issued.

(2) All such suspensions are subject to review as hereinafter provided."

Section 4. 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 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

1 filed and such county attorney shall represent the state,
 2 and thereupon the court shall take testimony and examine
 3 into the facts of the case, except that the issues shall be
 4 limited to whether a peace officer had reasonable grounds to
 5 believe the person had been driving or was in actual
 6 physical control of a vehicle upon the public highways while
 7 under the influence of alcohol, whether the person was
 8 placed under arrest, and whether such person refused to
 9 submit to the test. The court shall thereupon determine
 10 whether the petitioner is entitled to a license or is
 11 subject to suspension as heretofore provided."

12 ~~SECTION 5. SECTION 61-8-404, MCA, IS AMENDED TO READ:~~
 13 "61-8-404. Evidence admissible. (1) Upon the trial of
 14 any criminal action or proceeding arising out of acts
 15 alleged to have been committed by any person while driving
 16 or in actual physical control of a motor vehicle while under
 17 the influence of alcohol, evidence of the amount of alcohol
 18 in the person's blood at the time of the act alleged as
 19 shown by a chemical analysis of his blood, breath, or urine
 20 is admissible.

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

1 upon the public--highways ways of the state open to the
 2 public while under the influence of 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
 6 alcohol."

-End-

HOUSE BILL NO. 808

INTRODUCED BY KITSELMAN

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(2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of

vehicles upon highways except:

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

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3 control of a motor vehicle within this state; or

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

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

12 (3) In any criminal prosecution for a violation of
13 subsection (1) of this section relating to driving a vehicle
14 while under the influence of alcohol, the amount of alcohol
15 in the defendant's blood at the time alleged, as shown by
16 chemical analysis of the defendant's blood, urine, breath,
17 or other bodily substance, shall give rise to the following
18 presumptions:

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

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

1 but such fact may be considered with other competent
2 evidence in determining the guilt or innocence of the
3 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.

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8 based upon grams of alcohol per 100 cubic centimeters of
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11 to enact 61-8-714 and subsections (1) through (4) of this
12 section with the word "state" in subsection (1) of this
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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 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".

(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 (5).

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 61-8-403. 61-8-403.

(5) (a) The receipt and temporary permit issued by the officer must show:

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(ii) the name and address of the driver;

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(v) that the driver's license has been mailed to the division in accordance with subsection (6).

(b) The receipt and permit issued under this section is a valid operator's permit from the time of issuance until expiration.

(6) The arresting officer shall mail the driver's 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 state OPEN TO THE PUBLIC while under the influence of alcohol, and that the person had refused to submit to the test upon the request of the peace officer, shall--suspend-the-license-or-driving-privilege-of such person on the highways of this state for a period of 60 days and that the officer took possession of the person's license in accordance with this section.

(7) ~~A license seized by an officer under this section is suspended for 6 months from the date of expiration of the 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 the division at any time for a temporary occupational license by submitting a sworn affidavit to the division on which that person must state facts showing that the license is essential to his occupation or business and that suspension of the license will cause extreme hardship to that person. If the division finds that extreme hardship will be caused by suspension of the license, it shall issue a temporary occupational license only for the purposes and hours of employment as shown in the application. The decision of the division is final and not subject to appeal or review.~~ SUSPENSION UNDER THIS SECTION MUST BE FOR THE FOLLOWING TIME PERIODS:

(A) IF THE PERSON'S DRIVING RECORD SHOWS NO PRIOR REFUSALS TO SUBMIT TO A CHEMICAL TEST PURSUANT TO THIS SECTION WITHIN THE 5 YEARS IMMEDIATELY PRECEDING THE REFUSAL IN QUESTION, HIS LICENSE MUST BE SUSPENDED FOR 60 DAYS.

(B) IF THE PERSON'S DRIVING RECORD SHOWS A PRIOR REFUSAL TO SUBMIT TO A CHEMICAL TEST PURSUANT TO THIS SECTION WITHIN THE 5 YEARS IMMEDIATELY PRECEDING THE REFUSAL IN QUESTION, HIS LICENSE MUST BE SUSPENDED FOR 1 YEAR.

(8) Like refusal 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 the license is not required, but the same notice and receipt and temporary permit must be issued.

(9) All such suspensions are subject to review as hereinafter provided."

Section 4. 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 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

1 set the matter for hearing upon 30 days' written notice to
 2 the county attorney of the county wherein the appeal is
 3 filed and such county attorney shall represent the state,
 4 and thereupon the court shall take testimony and examine
 5 into the facts of the case, except that the issues shall be
 6 limited to whether a peace officer had reasonable grounds to
 7 believe the person had been driving or was in actual
 8 physical control of a vehicle upon the public highways while
 9 under the influence of alcohol, whether the person was
 10 placed under arrest, and whether such person refused to
 11 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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 16 any criminal action or proceeding arising out of acts
 17 alleged to have been committed by any person while driving
 18 or in actual physical control of a motor vehicle while under
 19 the influence of alcohol, evidence of the amount of alcohol
 20 in the person's blood at the time of the act alleged as
 21 shown by a chemical analysis of his blood, breath, or urine
 22 is admissible.

23 (2) If the person under arrest refused to submit to
 24 the test as hereinabove provided, proof of refusal shall be
 25 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~~
 4 ~~public~~ while under the influence of alcohol.

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

-End-