

HOUSE BILL NO. 845

Introduced: 02/15/83

Referred to Committee on Judiciary: 02/15/83

Hearing: 2/18/83

Died in Committee

1 House BILL NO. 845
2 INTRODUCED BY Remmers
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT DETERRING DRUNK DRIVING
6 BY REQUIRING THE DIVISION OF MOTOR VEHICLES OF THE
7 DEPARTMENT OF JUSTICE TO SUSPEND OR REVOKE, WITHOUT REGARD
8 TO RELATED CRIMINAL CHARGES, THE DRIVING PRIVILEGES OF ANY
9 PERSON ARRESTED FOR OPERATING A MOTOR VEHICLE WHILE UNDER
10 THE INFLUENCE OF ALCOHOL WHOSE ALCOHOL CONCENTRATION IS 0.10
11 OR GREATER; GRANTING THE ARRESTING OFFICER AUTHORITY TO
12 SEIZE THE DRIVER'S LICENSE; PROVIDING NOTICE OF SUSPENSION
13 OR REVOCATION OF DRIVING PRIVILEGES AND OPPORTUNITY FOR
14 HEARING OR PETITION TO THE DISTRICT COURT; PROVIDING FOR A
15 TEMPORARY DRIVING PERMIT; PROHIBITING THE GRANTING OF A
16 RESTRICTED PROBATIONARY LICENSE DURING THE FIRST 90 DAYS OF
17 ANY SUSPENSION OR REVOCATION; SPECIFYING PERIODS OF
18 SUSPENSION AND REVOCATION; PROVIDING THAT SUSPENSION OR
19 REVOCATION UNDER THIS ACT AND FOR CRIMINAL CONVICTION
20 ARISING OUT OF THE SAME OCCURRENCE MUST RUN CONCURRENTLY;
21 PROVIDING FOR A REINSTATEMENT FEE; AND PROVIDING FOR AN
22 ADMINISTRATIVE HEARING AND JUDICIAL REVIEW."
23
24 WHEREAS, the State of Montana has a legitimate interest
25 in ensuring highway safety and has a paramount

1 responsibility to safeguard its citizens and all users of
2 its highways, streets, and roads by abating serious traffic
3 threats to motorists and pedestrians alike; and
4 WHEREAS, intoxicated drivers are involved in over half
5 of all fatal highway accidents nationwide, cause an
6 excessive loss of life and property, and pose a grave hazard
7 to public safety that has reached epidemic proportions; and
8 WHEREAS, to date, remedial action to remove problem
9 drivers from the roads by withdrawing their driving
10 privileges has generally been limited to suspension or
11 revocation of drivers' licenses after a criminal conviction
12 for driving while under the influence of alcohol; and
13 WHEREAS, criminal convictions for driving while under
14 the influence are not always quick and certain because of
15 overcrowded court dockets, reduction of charges in plea
16 bargaining, and other factors that allow problem drivers to
17 continue to operate motor vehicles for appreciable periods
18 of time before suspension or revocation of drivers' licenses
19 or that deprive the State of its power to suspend
20 altogether; and
21 WHEREAS, the deterrent effect of postconviction
22 suspension or revocation of driving privileges is often lost
23 because of lengthy delays between the occurrence of the
24 illegal act and its ultimate consequences; and
25 WHEREAS, to date, the State has acted to summarily

1 suspend the driving privileges of only those drivers who
 2 refuse to submit to a chemical sobriety test following
 3 arrest for driving while under the influence and has not
 4 taken similar action against those who, by test results
 5 indicating a dangerous blood alcohol concentration, show
 6 themselves to be a clear threat to public safety.

7 THEREFORE, it is the intent of the Legislature to
 8 establish a fair, efficient, prompt, and certain method of
 9 removing drivers from the road who, by driving with
 10 dangerously high alcohol concentrations, reveal themselves
 11 to be a threat to themselves and others.

12

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

14 Section 1. Definitions. In [sections 1 through 11],
 15 the following definitions apply:

16 (1) "Administrator" means the administrator of the
 17 division of motor vehicles.

18 (2) "Alcohol concentration" means either grams of
 19 alcohol per 100 milliliters of blood, grams of alcohol per
 20 210 liters of breath, or grams of alcohol per 75.3
 21 milliliters of urine.

22 (3) "Driver's license" means a license to drive a
 23 motor vehicle issued under the laws of this state and the
 24 certificate issued by the department that provides evidence
 25 of the license.

1 (4) "License" means any driver's license or any other
 2 license, permit, or privilege to drive a motor vehicle
 3 issued under or granted by the laws of this state. The term
 4 includes any temporary license or instruction permit; a
 5 restricted probationary license; the privilege of any person
 6 to drive a motor vehicle, whether or not the person holds a
 7 valid driver's license; and, except as otherwise provided, a
 8 nonresident operating privilege.

9 (5) "State" means a state, territory, or possession of
 10 the United States, the District of Columbia, the
 11 Commonwealth of Puerto Rico, or any province of Canada.

12 (6) "Ways of this state open to the public" means any
 13 highway, road, alley, lane, parking area, or other public or
 14 private place adapted and fitted for public travel that is
 15 in common use by the public with the express or implied
 16 consent of the owner.

17 Section 2. Suspension on administrative determination.

18 (1) The division shall suspend or revoke, as provided in
 19 [sections 1 through 11], the license of any person upon its
 20 determination that the person drove or was in actual
 21 physical control of a vehicle upon the ways of this state
 22 open to the public while the alcohol concentration of the
 23 person's blood, breath, or urine was 0.10 or more.

24 (2) The division shall make its determination on the
 25 basis of chemical test results and on the basis of the

1 report of the arresting peace officer required by [section
2 3]. The division's determination is final unless a hearing
3 is requested and held.

4 (3) The determination of these facts by the division
5 is independent of any determination of the same or similar
6 facts in the adjudication of any criminal charge arising out
7 of the same occurrence. The disposition of the criminal
8 charge does not affect any suspension or revocation under
9 this section.

10 Section 3. Reports by peace officer and testing
11 laboratory. (1) A peace officer who arrests any person for
12 violation of 61-8-401 shall, by the close of the next
13 business day following the date of arrest, forward to the
14 division a report of all information relevant to the arrest,
15 including information which adequately identifies the
16 arrested person, a statement of the officer's grounds for
17 believing that the person violated 61-8-401, and the results
18 of any chemical tests that were conducted if those results
19 are available to the officer. Failure of the officer to
20 forward the report to the division as required by this
21 section does not affect the validity of any subsequent
22 action taken by the division under [sections 1 through 11].

23 (2) Any certified or exempt laboratory or a facility
24 or laboratory operated by the department of justice
25 performing an analysis of a blood, breath, or urine sample

1 of the arrested person to determine the alcohol
2 concentration shall forward the results of its analysis or
3 testing to the division as soon as those results become
4 available.

5 (3) The reports required by this section must be made
6 on forms supplied by the division or in a manner specified
7 by rules of the division.

8 Section 4. Notice of suspension or revocation by
9 division. (1) Upon receipt of the reports required under
10 [section 3], the division shall make the determination
11 required by [section 2]. If the division determines to
12 suspend or revoke the license and the arresting officer has
13 not served notice of suspension or revocation upon the
14 person under [section 5], the division shall serve the
15 notice by mailing it to the person at his last-known address
16 shown by the division's records. The notice is considered to
17 have been received 3 days after mailing.

18 (2) The notice of suspension or revocation must state
19 as to the suspension or revocation the statutory grounds for
20 the action, the effective date of the action, the length of
21 time of the suspension or revocation, that the person has a
22 right to either request a hearing under [section 8] or
23 petition the district court under [section 10(2)], the
24 procedure for requesting a hearing or petitioning the court,
25 and the date by which either the request for hearing must be

1 made or the petition must be filed.

2 Section 5. Notice of suspension or revocation served
3 by peace officer -- temporary permit. (1) If the chemical
4 test results of the alcohol concentration of a person's
5 blood are available to the peace officer while the arrested
6 person is still in custody and those results show an alcohol
7 concentration of 0.10 or more, the officer shall, on behalf
8 of the division, serve the notice of suspension or
9 revocation personally on the arrested person.

10 (2) If the peace officer serves the notice of
11 suspension or revocation, the officer shall seize and the
12 arrested person shall surrender immediately to the officer
13 any license issued under the authority of this state. If the
14 officer issues a notice of suspension or revocation, the
15 officer shall, on behalf of the division, issue a temporary
16 driving permit to the arrested person unless that person is
17 ineligible for such a license under the laws of this state
18 and rules of the department of justice. A temporary permit
19 issued under this subsection is valid for 10 days after the
20 date of issuance.

21 (3) The arresting officer shall forward to the
22 division a copy of the completed notice of suspension or
23 revocation form, any license seized under this section, and
24 the officer's report required under [section 3].

25 (4) The division shall provide law enforcement

1 agencies with forms for notices of suspension or revocation
2 and for temporary permits.

3 Section 6. Effective date of suspension or revocation
4 -- period of suspension. (1) The license suspension or
5 revocation provided for in [sections 1 through 11] is
6 effective 10 days after the person either actually receives
7 the notice of suspension or revocation or is considered to
8 have received the notice of suspension or revocation by
9 mail, whichever is sooner. If the division receives a
10 written request for a hearing under [section 8] or waiver of
11 such hearing and notice of intent to file a petition under
12 [section 10(2)] within that 10-day period, the division must
13 stay the effective date of the suspension or revocation
14 until a final order is issued following the hearing or until
15 the time for filing a petition under [section 10(2)] has
16 expired, except that any delay in the administrative hearing
17 that is caused or requested by such person or his counsel
18 may not result in a stay of the suspension or revocation
19 during the period of delay.

20 (2) A license suspension or revocation under [sections
21 1 through 11] must be for the following time periods:

22 (a) If the person's driving record shows no prior
23 alcohol- or drug-related enforcement contacts during the 5
24 years immediately preceding the arrest in question, his
25 license must be suspended for 90 days.

1 (b) If the person's driving record shows one or more
2 prior alcohol- or drug-related enforcement contacts during
3 the 5 years immediately preceding the arrest in question,
4 his license must be revoked for 1 year.

5 (3) For purposes of this section, "alcohol- or
6 drug-related enforcement contacts" includes:

7 (a) any suspension or revocation under [sections 1
8 through 11] or under a similar law in any other state or on
9 an Indian reservation or under federal law applying to
10 federal military reservations or national parks providing
11 for suspension or revocation of driving privileges upon a
12 determination that the person drove or was in physical
13 control of a motor vehicle while having a proscribed alcohol
14 concentration or blood alcohol content or that the person
15 drove or was in physical control of a motor vehicle while
16 under the influence of alcohol, drugs, or a combination of
17 alcohol and drugs;

18 (b) any suspension or revocation entered in this or
19 any other state or on an Indian reservation or imposed under
20 federal law applying to federal military reservations or
21 national parks for a refusal to submit to chemical testing
22 under an implied consent law; or

23 (c) any conviction entered in this or any other state
24 or an Indian reservation or imposed under federal law
25 applying to federal military reservations or national parks

1 for a violation that involved driving while having an
2 unlawful alcohol concentration or while under the influence
3 of alcohol or drugs or the combined influence of alcohol and
4 drugs.

5 (4) If a license is suspended or revoked under
6 [sections 1 through 11] and the person is also convicted on
7 a criminal charge arising out of the same occurrence for a
8 violation of 61-8-401, both the suspension or revocation
9 under this section and the suspension or revocation under
10 61-5-205 and 61-5-208 must be imposed and the periods of
11 suspension or revocation or of suspension and revocation
12 shall run concurrently and the total period must be equal to
13 the longer of the two periods.

14 Section 7. Restoration of license. (1) No license may
15 be restored and no restricted probationary license may be
16 issued during the first 90 days of any suspension or
17 revocation mandated by [sections 1 through 11].

18 (2) Upon expiration of any period of suspension or
19 revocation imposed under [sections 1 through 11] or upon
20 issuance of any restricted license following a suspension or
21 revocation under [sections 1 through 11], the division may
22 impose a reinstatement fee before issuing a new license in
23 order to defray the costs of administering [sections 1
24 through 11]. All fees collected under this subsection must
25 be deposited in the driver rehabilitation account maintained

1 by the division.

2 Section 8. Request for or waiver of hearing. (1) A
3 person who receives a notice of suspension or revocation may
4 make a written request for a review of the division's
5 determination at a hearing. However, if the person intends
6 to challenge only the scientific reliability of the
7 prescribed chemical testing procedures, instruments, or
8 devices used to determine the alcohol concentration of his
9 blood, he may waive the hearing and petition the district
10 court in accordance with [section 10(2)]. If the person has
11 not previously surrendered his Montana license, he shall do
12 so at the time the request for or the waiver of a hearing is
13 made. The failure at any time after notice of suspension or
14 revocation to surrender a license issued by this state
15 constitutes a waiver of the right to a hearing.

16 (2) A person shall request or waive a hearing within
17 10 days after receiving the notice of suspension or
18 revocation or after being considered to have received the
19 notice by mail, whichever is sooner. If the division does
20 not receive a written request for a hearing or waiver of a
21 hearing and notice of intention to file a petition under
22 [section 10(2)] within the 10-day period, the right to an
23 administrative hearing and the right to a stay of the
24 suspension or revocation under [section 6] are waived.

25 (3) The division may consider a request for a hearing

1 or waiver and notice received after expiration of the 10-day
2 period only if the request or waiver and notice is
3 accompanied by the applicant's verified statement explaining
4 the failure to make a timely request for a hearing or timely
5 file the waiver and notice. If the division finds that the
6 person was unable to make a timely request or timely file
7 the waiver and notice because he lacked actual notice of the
8 suspension or revocation, because he was physically
9 incapacitated due to hospitalization, or because of any
10 other good cause, the division shall waive the period of
11 limitation, reopen the matter, and grant the hearing request
12 or issue the stay pending filing of a petition under
13 [section 10(2)]. If an administrative hearing is granted
14 under this subsection, neither the division nor any court
15 may stay the suspension or revocation pending issuance of
16 the final order following the hearing.

17 (4) The division shall, unless the person is
18 ineligible under the laws of this state and rules of the
19 department of justice, issue a temporary permit to any
20 person who has requested a hearing or filed a waiver and
21 notice in a timely manner unless that person has failed to
22 surrender his driver's license. The temporary permit is
23 valid until the scheduled date for the hearing. If
24 necessary, the division may later issue an additional
25 temporary permit or permits in order to stay the effective

1 date of the suspension or revocation until the final order
2 is issued.

3 (5) The hearing must be scheduled to be held on a date
4 no later than 20 days after the request for hearing is
5 filed. The division shall provide written notice of the time
6 and place of the hearing to the party requesting the hearing
7 at least 7 days prior to the scheduled hearing unless the
8 parties agree to waive this requirement.

9 Section 9. Hearing. (1) The hearing must be held in
10 the county where the arrest occurred unless the parties
11 agree to a different location.

12 (2) The presiding hearing officer must be the
13 administrator of the division or his authorized
14 representative. The hearing officer shall administer oaths
15 and affirmations, examine witnesses, take testimony, receive
16 relevant evidence, issue subpoenas, regulate the course and
17 conduct of the hearing, and make a final ruling.

18 (3) The sole issues at the hearing are:

19 (a) whether the arresting peace officer had reasonable
20 grounds to believe that the person drove or was in physical
21 control of a motor vehicle in violation of 61-8-401;

22 (b) whether the person was arrested for violating
23 61-8-401; and

24 (c) whether the chemical test results indicate an
25 alcohol concentration of 0.10 or greater.

1 (4) The person requesting the hearing may call
2 witnesses on his own behalf and cross-examine witnesses
3 against him and may be represented by counsel.

4 (5) If the hearing officer finds in the affirmative on
5 all of the issues specified in subsection (3) by a
6 preponderance of the evidence, he shall sustain the
7 suspension or revocation order. If he finds in the negative
8 on any of these issues, he shall rescind the suspension or
9 revocation order. The scientific reliability of prescribed
10 chemical testing procedures, instruments, and devices may
11 not be raised or considered at the hearing but must be
12 determined by the district court upon the filing of a
13 petition under [subsection (1) or (2) of section 10]. This
14 subsection does not prevent a person from raising the issue
15 at the administrative hearing of whether those procedures,
16 instruments, or devices were properly used in his case.

17 (6) The hearing must be recorded. The hearing officer
18 shall render his decision in writing and shall provide a
19 copy to the person who requested the hearing.

20 (7) Failure of a person to appear at a hearing he has
21 requested, unless based on just cause, constitutes waiver of
22 the right to a hearing.

23 Section 10. Judicial review. (1) Within 30 days of the
24 issuance of the final determination of the division
25 following an administrative hearing, a person aggrieved by

1 the determination may petition the district court in the
2 county in which the division maintains its principal offices
3 for review of the determination of the division and the
4 scientific reliability of the prescribed chemical testing
5 procedures, instruments, or devices used to determine the
6 alcohol concentration of his blood.

7 (2) If the administrative hearing has been waived, a
8 petition for review of the issue of the scientific
9 reliability of the prescribed chemical testing procedures,
10 instruments, or devices may be filed within 20 days after
11 the expiration of the time for waiving the administrative
12 hearing under [section 8].

13 (3) Upon the filing of a petition for judicial review
14 of the determination of the division under subsection (1)
15 that raises the issue of the scientific reliability of the
16 prescribed chemical testing procedures, instruments, or
17 devices or upon the waiver of the administrative hearing and
18 the filing of a petition for review under subsection (2),
19 the district court shall review de novo the scientific
20 reliability of the prescribed chemical testing procedures,
21 instruments, or devices used to determine the alcohol
22 concentration in the petitioner's blood.

23 (4) Except as provided in subsection (3), the review
24 must be based only on the record, without taking additional
25 testimony. If the court finds that the division exceeded its

1 constitutional or statutory authority, erroneously
2 interpreted the law, acted in an arbitrary and capricious
3 manner, or made a determination that is not supported by
4 substantial evidence, the court may reverse the division's
5 determination. If the court finds by a preponderance of the
6 evidence that the prescribed chemical testing procedures,
7 instruments, or devices were unreliable in any substantial
8 way, it may reverse the suspension or revocation and order
9 that the license be reinstated.

10 (5) The filing of a petition for judicial review under
11 subsection (1) or (2) does not result in an automatic stay
12 of the suspension or revocation order. The court may grant a
13 stay of the order only upon motion and hearing and upon a
14 finding that:

15 (a) there is a reasonable probability that the
16 petitioner will prevail upon the merits; and

17 (b) the petitioner will suffer irreparable harm if the
18 order is not stayed.

19 Section 11. Administrative hearings -- procedure. (1)
20 The Montana Administrative Procedure Act does not apply to
21 proceedings under [sections 8 through 10] relating to the
22 administrative hearing and to judicial review.

23 (2) The Montana Rules of Evidence do not apply to
24 administrative hearings held under [sections 8 and 9]. Only
25 evidence relevant to the issues specified in [section 9(3)]

1 may be offered at the hearing. Investigative reports,
2 including chemical test results, prepared by or for the
3 arresting officer, by or for other investigating law
4 enforcement personnel, or by or for the division are
5 admissible at the administrative hearing.

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

12 Section 13. Codification instruction. Sections 1
13 through 11 are intended to be codified as an integral part
14 of Title 61, chapter 8, part 4, and the provisions of Title
15 61, chapters 1 and 8, apply to sections 1 through 11.

-End-

STATE OF MONTANA

REQUEST NO. 446-83

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 845 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

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 845 deters drunk driving by suspending or revoking the driving privileges of any person arrested while under the influence of alcohol; provides an opportunity for a hearing; and provides for a reinstatement fee.

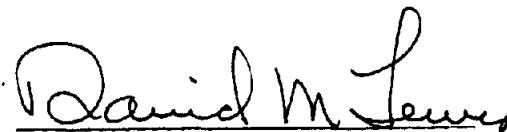
ASSUMPTIONS:

- 1) There were approximately 4,000 DUI arrests in 1982.
- 2) The proposed legislation will likely increase DUI arrests by 2,000.
- 3) It is estimated that 2,400 persons arrested for DUI will request a hearing.
- 4) A drivers license reinstatement fee of \$25 is suggested.
- 5) It is estimated that 4,800 persons will pay the \$25 reinstatement fee.

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>	<u>Total Biennium</u>
Expenditures:			
Personal Expenses:			
4 driver examiners G11-2 + 20%	\$56,682*	\$75,576	\$132,258
2 office clerks G6-2 + 20%	23,598	31,464	55,062
Equipment:			
6 typewriters (4 portable)	3,200	-0-	3,200
4 recorders	2,100	-0-	2,100
4 exam kits	2,000	-0-	2,000
training material	500	-0-	500
Travel & per diem	5,400*	7,200	12,600
Training - 2 weeks	2,400	500	2,900
Printing	400	-0-	400
TOTAL EXPENSES	<u>\$96,280</u>	<u>\$114,740</u>	<u>\$211,020</u>

(Continued)



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-19-83

REVENUE:

	<u>FY84</u>	<u>FY85</u>	<u>Biennnium</u>
4800 persons per year to have license reinstated & pay a \$25.00 fee. During first year only 17% of the probationary periods will come up for reinstatement.	\$20,400	\$120,000	\$140,000

* calculated at 3/4 year.

** use highway patrol trade-in vehicles

FISCAL NOTE 16: J/2

HB 845