

SENATE BILL NO. 260
INTRODUCED BY HALLIGAN

IN THE SENATE

January 22, 1983	Introduced and referred to Committee on Judiciary.
January 24, 1983	Fiscal Note requested.
January 27, 1983	Committee recommend bill do pass. Report adopted.
January 28, 1983	Fiscal Note returned. Bill printed and placed on members' desks.
January 29, 1983	Second reading, do pass.
January 31, 1983	Correctly engrossed.
February 1, 1983	Third reading, passed. Ayes, 48; Noes, 0. Transmitted to House.

IN THE HOUSE

February 2, 1983	Introduced and referred to Committee on Judiciary.
March 22, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1983	Second reading, concurred in.
March 25, 1983	Third reading, concurred in.

IN THE SENATE

March 26, 1983	Returned to Senate with amendments.
March 31, 1983	Second reading, amendments not concurred in. Ayes, 49; Noes, 0.

March 31, 1983

On motion, Conference
Committee requested and
appointed.

April 6, 1983

Conference Committee reported.

April 7, 1983

Second reading, report
adopted.

April 8, 1983

Third reading, report adopted.
Ayes, 46; Noes, 0.

April 20, 1983

Conference Committee report
adopted by House.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. 260
 2 INTRODUCED BY *Kelly*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND THE LAWS
 5 RELATING TO THE OPERATION OF A MOTOR VEHICLE WHILE UNDER THE
 6 INFLUENCE OF ALCOHOL TO ROADS AND PARKING AREAS ADAPTED FOR
 7 PUBLIC TRAVEL AND USED BY THE PUBLIC WITH THE CONSENT OF THE
 8 OWNER; AMENDING SECTIONS 61-8-101 AND 61-8-401 THROUGH
 9 61-8-404, MCA."

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

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

13 "61-8-101. Application — exceptions. (1) The
 14 provisions of this chapter relating to the operation of
 15 vehicles refer exclusively to the operation of vehicles upon
 16 highways except:

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

19 (b) the provisions of 61-8-301 and 61-8-401(1)(b),
 20 (1)(c), and (2) with regard to operating a vehicle while
 21 under the influence of drugs; and
 22 elsewhere throughout the state;

23 (c) the provisions of 61-8-401, except subsections
 24 (1)(b), (1)(c), and (2) thereof, and 61-8-402 through
 25 61-8-405 apply upon all ways of this state open to the

1 public. For the purposes of this section and 61-8-401
 2 through 61-8-404, "ways of this state open to the public"
 3 means any highway, road, alley, lane, parking area, or other
 4 public or private place adapted and fitted for public travel
 5 that is in common use by the public with the express or
 6 implied consent of the owner.

7 (2) 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 or on ways of this
 13 state open to the public, provided that such crossings are
 14 adequately marked with warning signs or devices. Such
 15 crossings are subject to provisions relating to stopping
 16 before entry and to restoration of any damage as may
 17 reasonably be prescribed by the state or local agency in
 18 control of safety of operation of the public highway
 19 involved."

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

21 "61-8-401. Persons under the influence of alcohol or
 22 drugs. (1) It is unlawful and punishable as provided in
 23 61-8-714(1) for any person who is under the influence of:

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

1 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.

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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~~ ~~ways~~ of this state ~~open to the public~~ shall be
21 deemed to have given consent, subject to the provisions of
22 61-8-401, to a chemical test of his blood, breath, or urine
23 for the purpose of determining the alcoholic content of his
24 blood if arrested by a peace officer for driving or in
25 actual physical control of a motor vehicle while under the

1 influence of alcohol. The test shall be administered at the
2 direction of a peace officer having reasonable grounds to
3 believe the person to have been driving or in actual
4 physical control of a motor vehicle upon ways of this state
5 open to the public highways of this state while under the
6 influence of alcohol. The arresting officer may designate
7 which one of the aforesaid tests shall be administered.

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

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

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

3 Section 4. 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. Such court is hereby vested with
11 jurisdiction and it shall be its duty to set the matter for
12 hearing upon 30 days' written notice to the county attorney
13 of the county wherein the appeal is filed and such county
14 attorney shall represent the state, and thereupon the court
15 shall take testimony and examine into the facts of the case,
16 except that the issues shall be limited to whether a peace
17 officer had reasonable grounds to believe the person had
18 been driving or was in actual physical control of a vehicle
19 upon ways of this state open to the public highways while
20 under the influence of alcohol, whether the person was
21 placed under arrest, and whether such person refused to
22 submit to the test. The court shall thereupon determine
23 whether the petitioner is entitled to a license or is
24 subject to suspension as heretofore provided."

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

1 "61-3-404. Evidence admissible. (1) Upon the trial of
2 any criminal action or proceeding arising out of acts
3 alleged to have been committed by any person while driving
4 or in actual physical control of a motor vehicle while under
5 the influence of alcohol, evidence of the amount of alcohol
6 in the person's blood at the time of the act alleged as
7 shown by a chemical analysis of his blood, breath, or urine
8 is admissible.

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

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

-End-

STATE OF MONTANA

REQUEST NO. 222-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 24, 19 83, there is hereby submitted a Fiscal Note for Senate Bill 260 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:

Senate Bill 260 extends the laws relating to the operation of a motor vehicle while under the influence of alcohol to roads and parking areas adapted for public travel and used by the public with the consent of the owner.

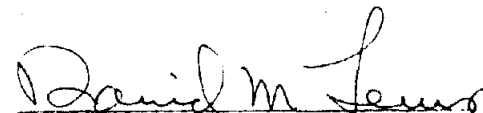
ASSUMPTIONS:

- 1) DWI arrests will increase by 10 per cent.
- 2) Extra workload to administer driver license revocations and suspensions will be absorbed within the Driver Improvement Bureau.

FISCAL IMPACT:

None.

FISCAL NOTE 6:Z/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-28-83

Approved by committee
on Judiciary

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22 elsewhere throughout the state;

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-End-

HOUSE JUDICIARY COMMITTEE

AMENDMENTS TO SENATE BILL 260

March 21, 1983

Third Reading Copy (blue)

BE AMENDED AS FOLLOWS:

1. Title, line 7.

Following: "PUBLIC"

Strike: "WITH" through "OWNER" on line 8.

2. Page 1, line 21.

Following: "upon"

Strike: "highways" through "state" on line 22

Insert: "all ways of this state open to the public"

3. Page 2, line 5.

Following: "public"

Strike: "with" through "owner"
on line 6.

4. Page 3, line 3.

Following: "vehicle"

Strike: "within this state"

Insert: "upon ways of this state open to the public"

5. Page 3, line 6.

Following: "vehicle"

Strike: "within this state"

Insert: "upon ways of this state open to the public"

SENATE BILL NO. 260
INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND THE LAWS RELATING TO THE OPERATION OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL TO ROADS AND PARKING AREAS ADAPTED FOR PUBLIC TRAVEL AND USED BY THE PUBLIC WITH-THE-CONSENT-OF-THE OWNER; AMENDING SECTIONS 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) 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~~(1)(b)1~~
~~(1)(c)1 and (2)1~~ with regard to operating a vehicle while under the influence of drugs, shall apply upon highways and elsewhere throughout the state ALL WAYS OF THIS STATE OPEN TO THE PUBLIC;

~~(c) the provisions of 61-8-401, except subsections (1)(b)1, (1)(c)1, and (2)1 thereof, and 61-8-402 through~~

~~61-8-405 apply upon all ways of this state open to the public. For the purposes of this section and 61-8-401 through 61-8-404, "ways of this 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 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 or on ways of this state open to the public, 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 under the influence of:

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

1 of a motor vehicle upon ~~the-highways ways~~ of this state ~~open~~
2 ~~to the public~~;

3 (b) a narcotic drug to drive or be in actual physical
4 control of a motor vehicle ~~within-this-state~~ UPON WAYS OF
5 THIS STATE OPEN TO THE PUBLIC; or

6 (c) any other drug to a degree which renders him
7 incapable of safely driving a motor vehicle to drive or be
8 in actual physical control of a motor vehicle ~~within--this~~
9 ~~state~~ UPON WAYS OF THIS STATE OPEN TO THE PUBLIC.

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

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

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

24 (b) If there was at that time in excess of 0.05% but
25 less than 0.10% by weight of alcohol in the defendant's

1 blood, that fact shall not give rise to any presumption that
2 the defendant was or was not under the influence of alcohol
3 but such fact may be considered with other competent
4 evidence in determining the guilt or innocence of the
5 defendant.

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

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

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

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

20 "61-8-402. Chemical blood, breath, or urine tests. (1)
21 Any person who operates a motor vehicle upon ~~the-public~~
22 ~~highways ways~~ of this state ~~open to the public~~ shall be
23 deemed to have given consent, subject to the provisions of
24 61-8-401, to a chemical test of his blood, breath, or urine
25 for the purpose of determining the alcoholic content of his

1 blood if arrested by a peace officer for driving or in
 2 actual physical control of a motor vehicle while under the
 3 influence of alcohol. The test shall be administered at the
 4 direction of a peace officer having reasonable grounds to
 5 believe the person to have been driving or in actual
 6 physical control of a motor vehicle upon ways of this state
 7 open to the public highways ~~of this state~~ while under the
 8 influence of alcohol. The arresting officer may designate
 9 which one of the aforesaid tests shall be administered.

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

14 (3) If a person under arrest refuses upon the request
 15 of a peace officer to submit to a chemical test designated
 16 by the arresting officer as provided in subsection (1) of
 17 this section, none shall be given, but the division, upon
 18 the receipt of a sworn report of the peace officer that he
 19 had reasonable grounds to believe the arrested person had
 20 been driving or was in actual physical control of a motor
 21 vehicle upon ways of this state open to the public highways
 22 ~~of this state~~ while under the influence of alcohol and that
 23 the person had refused to submit to the test upon the
 24 request of the peace officer, shall suspend the license or
 25 driving privilege of such person on the highways of this

1 state for a period of 60 days. Like refusal by a nonresident
 2 shall be subject to suspension by the division in like
 3 manner. All such suspensions are subject to review as
 4 hereinafter provided."

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

1 subject to suspension as heretofore provided."

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

3 "61-8-404. Evidence admissible. (1) Upon the trial of
4 any criminal action or proceeding arising out of acts
5 alleged to have been committed by any person while driving
6 or in actual physical control of a motor vehicle while under
7 the influence of alcohol, evidence of the amount of alcohol
8 in the person's blood at the time of the act alleged as
9 shown by a chemical analysis of his blood, breath, or urine
10 is admissible.

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

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

-End-

SENATE BILL NO. 260

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(c) the provisions of 61-8-401, except subsections (1)(b)1, (1)(c)1, and (2)1 thereof, and 61-8-402 through

~~61-8-405 apply upon all ways of this state open to the public. For the purposes of this section and 61-8-401 through 61-8-404, "ways of this 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 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 or on ways of this state open to the public 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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12 of subsection (1) is or has been entitled to use such a drug
13 under the laws of this state does not constitute a defense
14 against any charge of violating subsection (1).

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