

SENATE BILL NO. 313

INTRODUCED BY HALLIGAN, CHRISTIAENS, BERG
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE SENATE

January 28, 1983	Introduced and referred to Committee on Judiciary.
February 18, 1983	Committee recommend bill do pass as amended. Report adopted.
February 19, 1983	Bill printed and placed on members' desks.
February 21, 1983	Second reading, do pass as amended.
February 22, 1983	Correctly engrossed.
February 23, 1983	Third reading, passed. Ayes, 46; Noes, 3. Transmitted to House.

IN THE HOUSE

February 28, 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 as amended.
March 25, 1983	Third reading, concurred in.

IN THE SENATE

March 26, 1983

Returned to Senate with
amendments.

April 8, 1983

Second reading, amendments
concurred in.

April 11, 1983

Third reading, amendments
concurred in. Ayes, 49;
Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

1 *State* BILL NO. 313
 2 INTRODUCED BY *Holman*
 3 *Berg* BY REQUEST OF THE DEPARTMENT OF JUSTICE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN ARRESTING
 6 OFFICER TO IMMEDIATELY SUSPEND OR REVOKE THE DRIVER'S
 7 LICENSE OF ANY PERSON REFUSING TO SUBMIT TO A CHEMICAL TEST;
 8 PROVIDING A PERIOD OF REVOCATION AND INCREASING THE PERIOD
 9 OF SUSPENSION; AND REDUCING THE TIME FOR NOTICE OF AN APPEAL
 10 OF SUSPENSION TO THE COUNTY ATTORNEY; AMENDING SECTIONS
 11 61-8-402 AND 61-8-403, MCA."
 12

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

14 Section 1. Section 61-8-402, MCA, is amended to read:

15 "61-8-402. Chemical blood, breath, or urine tests. (1)

16 Any person who operates a motor vehicle upon the public
 17 highways of this state shall be deemed to have given
 18 consent, subject to the provisions of 61-8-401, to a
 19 chemical test of his blood, breath, or urine for the purpose
 20 of determining the alcoholic content of his blood if
 21 arrested by a peace officer for driving or in actual
 22 physical control of a motor vehicle while under the
 23 influence of alcohol. The test shall be administered at the
 24 direction of a peace officer having reasonable grounds to
 25 believe the person to have been driving or in actual

1 physical control of a motor vehicle upon the public highways
 2 of this state while under the influence of alcohol. The
 3 arresting officer may designate which one of the aforesaid
 4 tests shall be administered.

5 (2) Any person who is unconscious or who is otherwise
 6 in a condition rendering him incapable of refusal shall be
 7 deemed not to have withdrawn the consent provided by
 8 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 shall, on behalf of~~
 14 ~~the division, suspend or revoke the license or driving~~
 15 ~~privilege of the resident driver by immediately seizing his~~
 16 ~~driver's license. The peace officer shall forward the~~
 17 ~~license to the division, along with a sworn report of--the~~
 18 ~~peace officer~~ that he had reasonable grounds to believe the
 19 arrested person had been driving or was in actual physical
 20 control of a motor vehicle upon the public highways of this
 21 state while under the influence of alcohol and that the
 22 person had refused to submit to the test upon the request of
 23 the peace officer, ~~shall suspend the license or driving~~
 24 ~~privilege of such person on the highways of this state for a~~
 25 ~~period of 60 days.~~

(4) Upon seizure of a resident driver's license, the peace officer shall issue, on behalf of the division, a notice of suspension or revocation and a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicable upon refusal to submit to a chemical test:

(a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the division, a revocation of 1 year with application for a restricted probationary license allowed after 6 months of revocation have been served.

(6) Like refusal by a nonresident shall be subject to suspension by the division in like manner, and the same notice and temporary driving permit shall be issued to nonresidents.

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

Section 2. 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 or revoked, as hereinbefore authorized, in writing and such person shall

have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon ~~30~~ 10 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways 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."

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 313

INTRODUCED BY HALLIGAN, CHRISTIAENS, BERG

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN ARRESTING OFFICER TO IMMEDIATELY SUSPEND OR REVOKE SEIZE THE DRIVER'S LICENSE OF ANY PERSON REFUSING TO SUBMIT TO A CHEMICAL TEST; PROVIDING A PERIOD OF REVOCATION AND FOR SUSPENSION OR REVOCATION OF THE LICENSE BY THE MOTOR VEHICLE DIVISION; INCREASING THE PERIOD OF SUSPENSION; AND REDUCING THE TIME FOR NOTICE OF AN APPEAL OF SUSPENSION TO THE COUNTY ATTORNEY; 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 shall, on behalf of the division, suspend or revoke the license of driving privilege of the resident driver by immediately seizing SEIZE his driver's license. The peace officer shall forward the license 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

1 state--for--a-period-of-60-days. UPON RECEIPT OF THE REQUEST,
2 THE DIVISION SHALL SUSPEND THE LICENSE FOR THE PERIOD
3 PROVIDED IN SUBSECTION (51).

4 (41) Upon seizure of a resident driver's license, the
5 peace officer shall issue, on behalf of the division, a
6 notice--of--suspension--or--revocation--and--a temporary driving
7 permit, which is valid for 12 hours after the time of
8 issuance.

9 (51) The following suspension and revocation periods
10 are applicable upon refusal to submit to a chemical test:

11 (a) Upon a first refusal, a suspension of 6 months 20
12 DAYS with no provision for a restricted probationary
13 license;

14 (b) Upon a second or subsequent refusal within 5 years
15 of a previous refusal, as determined from the records of the
16 division, a revocation of 1-year 6 MONTHS with application
17 for a restricted probationary license allowed after 6 months
18 of revocation have been served.

19 (6) Like refusal by a nonresident shall be subject to
20 suspension by the division in like manner, and the same
21 notice--and--temporary driving permit shall be issued to
22 nonresidents.

23 (7) All such suspensions are subject to review as
24 hereinafter provided."

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

1 "61-8-403. Right of appeal to court. The division
2 shall immediately notify any person whose license or
3 privilege to drive has been suspended or revoked, as
4 hereinbefore authorized, in writing and such person shall
5 have the right to file a petition within 30 days thereafter
6 for a hearing in the matter in the district court in the
7 county wherein such person shall reside. Such court is
8 hereby vested with jurisdiction and it shall be its duty to
9 set the matter for hearing upon 30 10 days' written notice
10 to the county attorney of the county wherein the appeal is
11 filed and such county attorney shall represent the state,
12 and thereupon the court shall take testimony and examine
13 into the facts of the case, except that the issues shall be
14 limited to whether a peace officer had reasonable grounds to
15 believe the person had been driving or was in actual
16 physical control of a vehicle upon the public highways while
17 under the influence of alcohol, whether the person was
18 placed under arrest, and whether such person refused to
19 submit to the test. The court shall thereupon determine
20 whether the petitioner is entitled to a license or is
21 subject to suspension as heretofore provided."

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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 shall, on behalf of the division, suspend or revoke the license or driving privilege of the resident driver by~~ immediately seizing ~~SEIZE~~ his driver's license. The peace officer shall forward the license 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. UPON RECEIPT OF THE REPORT,
THE DIVISION SHALL SUSPEND THE LICENSE FOR THE PERIOD
PROVIDED IN SUBSECTION (5).

(4) Upon seizure of a resident driver's license, the
peace officer shall issue, on behalf of the division, a
notice--of--suspension--or--revocation--and--a temporary driving
permit, which is valid for 72 hours after the time of
issuance.

(5) The following suspension and revocation periods
are applicable upon refusal to submit to a chemical test:

(a) upon a first refusal, a suspension of 6 months 90
DAYS with no provision for a restricted probationary
license;

(b) upon a second or subsequent refusal within 5 years
of a previous refusal, as determined from the records of the
division, a revocation of 1-year 6 MONTHS with application
NO PROVISION for a restricted probationary license allowed
after 6 months of revocation have been served.

(6) Like refusal by a nonresident shall be subject to
suspension by the division in like manner, and the same
notice--and--temporary TEMPORARY driving permit shall be
issued to nonresidents.

(7) All such suspensions are subject to review as
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shall immediately notify any person whose license or
privilege to drive has been suspended or revoked, as
hereinbefore authorized, in writing and such person shall
have the right to file a petition within 30 days thereafter
for a hearing in the matter in the district court in the
county wherein such person shall reside. Such court is
hereby vested with jurisdiction and it shall be its duty to
set the matter for hearing upon 30 10 days' written notice
to the county attorney of the county wherein the appeal is
filed and such county attorney shall represent the state,
and thereupon the court shall take testimony and examine
into the facts of the case, except that the issues shall be
limited to whether a peace officer had reasonable grounds to
believe the person had been driving or was in actual
physical control of a vehicle upon the public highways 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."

-End-

HOUSE JUDICIARY COMMITTEE

AMENDMENTS TO SENTATE BILL 313

March 22, 1983

Third Reading Copy (blue)

1. Title, line 7.
Following: "PERSON"
Strike: "REFUSING"
Insert: "DRIVING UPON WAYS OF THIS STATE OPEN TO THE PUBLIC WHO REFUSES"
2. Title, line 10
Following: "SUSPENSIONS"
Insert: "PROVIDING THAT AN APPEAL OF SUSPENSION MAY BE FILED IN THE
DISTRICT COURT IN THE COUNTY IN WHICH THE ARREST WAS MADE AS WELL
AS IN THE DISTRICT COURT IN THE COUNTY OF THE DRIVER'S RESIDENCE;"
3. Page 1, line 17.
Strike: "the" through "state" on line 18.
Insert: "ways of this state open to the public"
4. Page 2, line 2.
Strike: "the" through "state" on line 3.
Insert: "ways of this state open to the public"
5. Page 2, line 21.
Strike: "the" through "state" on line 22
Insert: "ways of this state open to the public"
6. Page 4, line 7.
Following: "person"
Strike: "shall reside"
Insert: "resides or in the district court in the county in which
this arrest was made"
7. Page 4, line 16.
Following: "upon"
Strike: "the public highways"
Insert: "ways of this state open to the public"

AND AS AMENDED
BE CONCURRED IN

March 23, 1983

HOUSE COMMITTEE OF THE WHOLE AMENDMENTS TO SENATE BILL 313,
THIRD READING COPY (BLUE)

Page 3, line 16

Strike: "6 MONTHS"

Insert: "1 year"

ADOPT

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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 HAYS 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 officer shall, on behalf of the division, suspend or revoke the license or driving privilege of the resident driver by immediately seizing SEIZE his driver's license. The peace officer shall forward the license to the division, along with a sworn report of the peace officer that he had reasonable grounds to believe

1 the arrested person had been driving or was in actual
2 physical control of a motor vehicle upon the public highways
3 of this state ~~WAYS OF THIS STATE OPEN TO THE PUBLIC~~ while
4 under the influence of alcohol and that the person had
5 refused to submit to the test upon the request of the peace
6 officer ~~shall suspend the license or driving privilege of~~
7 ~~such person on the highways of this state for a period of 60~~
8 ~~days. UPON RECEIPT OF THE REPORT, THE DIVISION SHALL SUSPEND~~
9 ~~THE LICENSE FOR THE PERIOD PROVIDED IN SUBSECTION (5).~~

10 ~~(4) Upon seizure of a resident driver's license, the~~
11 ~~peace officer shall issue, on behalf of the division, a~~
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19 ~~license;~~

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21 ~~of a previous refusal, as determined from the records of the~~
22 ~~division, a revocation of 1 year 6 MONTHS 1 YEAR with~~
23 ~~application NO PROVISION for a restricted probationary~~
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11 hereinbefore authorized, in writing and such person shall
12 have the right to file a petition within 30 days thereafter
13 for a hearing in the matter in the district court in the
14 county wherein such person ~~shall reside~~ RESIDES OR IN THE
15 DISTRICT COURT IN THE COUNTY IN WHICH THIS ARREST WAS MADE.
16 Such court is hereby vested with jurisdiction and it shall
17 be its duty to set the matter for hearing upon 30 10 days'
18 written notice to the county attorney of the county wherein
19 the appeal is filed and such county attorney shall represent
20 the state, and thereupon the court shall take testimony and
21 examine into the facts of the case, except that the issues
22 shall be limited to whether a peace officer had reasonable
23 grounds to believe the person had been driving or was in
24 actual physical control of a vehicle upon the ~~public~~
25 highways WAYS OF THIS STATE OPEN TO THE PUBLIC while under

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

-End-