

HOUSE BILL NO. 50

1/07 Introduced  
1/07 Referred to Judiciary  
1/10 Hearing  
1/12 Adverse Committee Report  
1/14 Bill Killed

1                    HOUSE    BILL NO.    50  
 2  INTRODUCED BY   KITSELMAN

3  
 4  A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE TRANSPORTATION  
 5  OR POSSESSION OF AN ALCOHOLIC BEVERAGE IN AN OPEN CONTAINER  
 6  IN A MOTOR VEHICLE AN OFFENSE; TO PROVIDE FOR PENALTIES; AND  
 7  AMENDING SECTIONS 61-8-401, 61-8-408, AND 61-11-203, MCA."

8  
 9  BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10           NEW SECTION. Section 1. Transportation or possession  
 11 of an alcoholic beverage in a motor vehicle. (1) As used in  
 12 [sections 1 and 2], the following definitions apply:

13           (a) "Alcoholic beverage" means a compound produced and  
 14 sold for human consumption as a drink that contains more  
 15 than .5% of alcohol by volume.

16           (b) "Passenger area" means that portion of a motor  
 17 vehicle which is primarily designed for or is adapted or  
 18 devoted to the carrying of passengers, including an area of  
 19 the motor vehicle that is readily accessible to the driver  
 20 or a passenger.

21           (2) Except as provided in subsection (3), no driver or  
 22 passenger may transport, carry, possess, or have any  
 23 alcoholic beverage within the passenger area of a motor  
 24 vehicle upon the ways of this state open to the public  
 25 except in the original container with the seal unbroken.

1           (3) This section does not apply to the passengers on a  
 2 chartered bus when it is being used for purposes for which  
 3 chartered buses ordinarily are used or in a recreational  
 4 vehicle as defined in 61-1-132. However, the driver of such  
 5 a vehicle may not consume or have an alcoholic beverage in  
 6 or about the driver's area. Any evidence of alcoholic  
 7 consumption by the driver is prima facie evidence of the  
 8 driver's failure to comply with this section.

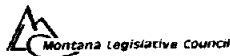
9           (4) The exemption of chartered buses in subsection (3)  
 10 does not apply to any chartered bus being used for school  
 11 purposes.

12           NEW SECTION. Section 2. Penalty for transporting an  
 13 alcoholic beverage in a motor vehicle. (1) A person  
 14 convicted of a violation of [section 1] shall be punished by  
 15 a fine of not less than \$100 or more than \$500.

16           (2) On a second conviction, he shall be punished by a  
 17 fine of not less than \$300 or more than \$500.

18           (3) On the third or subsequent conviction, he shall be  
 19 punished by a fine of not less than \$500 or more than  
 20 \$1,000.

21           (4) For the purpose of determining the number of  
 22 convictions under this section, "conviction" means a final  
 23 conviction, as defined in 45-2-101, or a forfeiture of bail  
 24 or collateral deposited to secure the defendant's appearance  
 25 in court, which forfeiture has not been vacated. An offender



1 is considered to have been previously convicted for the  
 2 purposes of this section if less than 5 years have elapsed  
 3 between the commission of the present offense and a previous  
 4 conviction. If there has been no additional conviction for  
 5 an offense under this section for 5 years after a prior  
 6 conviction hereunder, then the prior offense shall be  
 7 expunged from the defendant's record.

8 Section 3. Section 61-8-401, MCA, is amended to read:

9 "61-8-401. Persons under the influence of alcohol or  
 10 drugs. (1) It is unlawful and punishable as provided in  
 11 61-8-714 for any person who is under the influence of:

12 (a) alcohol to drive or be in actual physical control  
 13 of a motor vehicle upon the ways of this state open to the  
 14 public;

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

17 (c) any other drug to a degree which renders him  
 18 incapable of safely driving a motor vehicle to drive or be  
 19 in actual physical control of a motor vehicle within this  
 20 state; or

21 (d) alcohol and any drug to a degree that renders him  
 22 incapable of safely driving a motor vehicle to drive or be  
 23 in actual physical control of a motor vehicle within this  
 24 state.

25 (2) The fact that any person charged with a violation

1 of subsection (1) is or has been entitled to use alcohol or  
 2 such a drug under the laws of this state does not constitute  
 3 a defense against any charge of violating subsection (1).

4 (3) Upon the trial of any civil or criminal action or  
 5 proceeding arising out of acts alleged to have been  
 6 committed by any person driving or in actual physical  
 7 control of a vehicle while under the influence of alcohol,  
 8 the concentration of alcohol in the person's blood at the  
 9 time alleged, as shown by chemical analysis of the person's  
 10 blood, urine, breath, or other bodily substance, shall give  
 11 rise to the following presumptions:

12 (a) If there was at that time an alcohol concentration  
 13 of 0.05 or less, it shall be presumed that the person was  
 14 not under the influence of alcohol.

15 (b) If there was at that time an alcohol concentration  
 16 in excess of 0.05 but less than 0.10, that fact shall not  
 17 give rise to any presumption that the person was or was not  
 18 under the influence of alcohol but such fact may be  
 19 considered with other competent evidence in determining the  
 20 guilt or innocence of the person.

21 (c) If there was at that time an alcohol concentration  
 22 of 0.10 or more, it shall be presumed that the person was  
 23 under the influence of alcohol. Such presumption is  
 24 rebuttable.

25 (4) The provisions of subsection (3) do not limit the

1 introduction of any other competent evidence bearing upon  
2 the issue of whether the person was under the influence of  
3 alcohol.

4 (5) Each municipality in this state is given authority  
5 to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, [sections 1  
6 and 2], and subsections (1) through (4) of this section,  
7 with the word "state" in 61-8-406, [section 1], and  
8 subsection (1) of this section changed to read  
9 "municipality", as an ordinance and is given jurisdiction of  
10 the enforcement of the ordinance and of the imposition of  
11 the fines and penalties therein provided."

12 Section 4. Section 61-8-408, MCA, is amended to read:  
13 "61-8-408. Multiple convictions prohibited. (1) When  
14 the same acts may establish the commission of an offense  
15 under both 61-8-401 and 61-8-406, a person charged with such  
16 conduct may be prosecuted for a violation of both 61-8-401  
17 and 61-8-406. However, he may only be convicted of an  
18 offense under either 61-8-401 or 61-8-406.

19 (2) When a driver is charged with a violation of  
20 61-8-401 or 61-8-406 as a result of his arrest for a  
21 violation of [section 1], he may only be convicted of an  
22 offense under 61-8-401 or 61-8-406."

23 Section 5. Section 61-11-203, MCA, is amended to read:  
24 "61-11-203. Definitions. As used in this part, the  
25 following definitions apply:

1 (1) "Conviction" means a finding of guilt by duly  
2 constituted judicial authority, a plea of guilty, or a  
3 forfeiture of bail, bond, or other security deposited to  
4 secure appearance by a person charged with having committed  
5 any offense relating to the use or operation of a motor  
6 vehicle which is prohibited by law, ordinance, or  
7 administrative order.

8 (2) "Habitual traffic offender" means any person who  
9 within a 3-year period accumulates 30 or more conviction  
10 points according to the schedule specified in this  
11 subsection:

12 (a) deliberate homicide resulting from the operation  
13 of a motor vehicle, 15 points;

14 (b) mitigated deliberate homicide or negligent  
15 homicide resulting from operation of a motor vehicle, 12  
16 points;

17 (c) any offense punishable as a felony under the motor  
18 vehicle laws of Montana or any felony in the commission of  
19 which a motor vehicle is used, 12 points;

20 (d) driving while under the influence of intoxicating  
21 liquor or narcotics or drugs of any kind or operation of a  
22 motor vehicle by a person with alcohol concentration of 0.10  
23 or more, 10 points;

24 (e) operating a motor vehicle while his license to do  
25 so has been suspended or revoked, 6 points;

1 (f) failure of the driver of a motor vehicle involved  
 2 in an accident resulting in death or injury to any person to  
 3 stop at the scene of the accident and give the required  
 4 information and assistance, as defined in 61-7-105, 8  
 5 points;

6 (g) willful failure of the driver involved in an  
 7 accident resulting in property damage of \$250 to stop at the  
 8 scene of the accident and give the required information or  
 9 to otherwise fail to report an accident in violation of the  
 10 law, 4 points;

11 (h) driving when an alcoholic beverage in an open  
 12 container is present in the passenger area of the motor  
 13 vehicle, as defined in [section 1], 5 points;

14 ~~(h)~~(i) reckless driving, 5 points;

15 ~~(i)~~(j) illegal drag racing or engaging in a speed  
 16 contest in violation of the law, 5 points;

17 ~~(j)~~(k) operating a motor vehicle without a license to  
 18 do so, 2 points (this subsection ~~(j)~~ (k) does not apply to  
 19 operating a motor vehicle within a period of 180 days from  
 20 the date the license expired);

21 ~~(k)~~(l) speeding, 3 points;

22 ~~(l)~~(m) all other moving violations, 2 points. There  
 23 shall be no multiple application of cumulative points when  
 24 two or more charges are filed involving a single occurrence.  
 25 If there are two or more convictions involving a single

1 occurrence, only the number of points for the specific  
 2 conviction carrying the highest points shall be chargeable  
 3 against that defendant.

4 (3) "License" means any type of license or permit to  
 5 operate a motor vehicle."

6 NEW SECTION. Section 6. Codification instruction. (1)  
 7 Section 1 is intended to be codified as an integral part of  
 8 Title 61, chapter 8, part 4, and the provisions of Title 61  
 9 apply to section 1.

10 (2) Section 2 is intended to be codified as an  
 11 integral part of Title 61, chapter 8, part 7, and the  
 12 provisions of Title 61 apply to section 2.

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