

HOUSE BILL NO. 390

INTRODUCED BY CODY

IN THE HOUSE

January 23, 1985	Introduced and referred to Committee on Judiciary.
January 31, 1985	Committee recommend bill do pass. Report adopted.
February 1, 1985	Bill printed and placed on members' desks.
February 2, 1985	Second reading, do pass as amended.
February 4, 1985	Correctly engrossed.
February 5, 1985	Third reading, passed. Ayes, 86; Noes, 14.
	Transmitted to Senate.

IN THE SENATE

February 7, 1985	Introduced and referred to Committee on Judiciary.
March 6, 1985	Committee recommend bill be concurred in. Report adopted.
March 7, 1985	Second reading, concurred in.
March 9, 1985	Third reading, concurred in. Ayes, 46; Noes, 2.
	Returned to House.

IN THE HOUSE

March 11, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1                    HOUSE BILL NO. 390  
 2 INTRODUCTION BY Anthony G. Udys  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE LAW ON  
 5 DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS TO INCLUDE  
 6 ALL VEHICLES; AMENDING SECTIONS 61-1-103, 61-8-401,  
 7 61-8-402, 61-8-404, AND 61-8-406, MCA."

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

10        Section 1. Section 61-1-103, MCA, is amended to read:  
 11        "61-1-103. Vehicle. "Vehicle" means every device in,  
 12 upon, or by which any person or property may be transported  
 13 or drawn upon a public highway, except devices moved by  
 14 animal power or used exclusively upon stationary rails or  
 15 tracks. However, in chapters 3 and 4, the term means "motor  
 16 vehicle" as defined in this part; and in chapter 8, part 4,  
 17 the term includes devices moved by animal power."

18        Section 2. Section 61-8-401, MCA, is amended to read:  
 19        "61-8-401. Persons under the influence of alcohol or  
 20 drugs. (1) It is unlawful and punishable as provided in  
 21 61-8-714 for any person who is under the influence of:

22        (a) alcohol to drive or be in actual physical control  
 23 of a motor vehicle upon the ways of this state open to the  
 24 public;

25        (b) a narcotic drug to drive or be in actual physical

1 control of a motor vehicle within this state;

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

6        (d) alcohol and any drug to a degree that 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.

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

14        (3) Upon the trial of any civil or criminal action or  
 15 proceeding arising out of acts alleged to have been  
 16 committed by any person driving or in actual physical  
 17 control of a vehicle while under the influence of alcohol,  
 18 the concentration of alcohol in the person's blood at the  
 19 time alleged, as shown by chemical analysis of the person's  
 20 blood, urine, breath, or other bodily substance, shall give  
 21 rise to the following presumptions:

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

25        (b) If there was at that time an alcohol concentration

1 in excess of 0.05 but less than 0.10, that fact shall not  
 2 give rise to any presumption that the person was or was not  
 3 under the influence of alcohol but such fact may be  
 4 considered with other competent evidence in determining the  
 5 guilt or innocence of the person.

6 (c) If there was at that time an alcohol concentration  
 7 of 0.10 or more, it shall be presumed that the person was  
 8 under the influence of alcohol. Such presumption is  
 9 rebuttable.

10 (4) The provisions of subsection (3) do not limit the  
 11 introduction of any other competent evidence bearing upon  
 12 the issue of whether the person was under the influence of  
 13 alcohol.

14 (5) Each municipality in this state is given authority  
 15 to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and  
 16 subsections (1) through (4) of this section, with the word  
 17 "state" in 61-8-406 and subsection (1) of this section  
 18 changed to read "municipality", as an ordinance and is given  
 19 jurisdiction of the enforcement of the ordinance and of the  
 20 imposition of the fines and penalties therein provided."

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

22 "61-8-402. Chemical blood, breath, or urine tests. (1)  
 23 Any person who operates a motor vehicle upon ways of this  
 24 state open to the public shall be deemed to have given  
 25 consent, subject to the provisions of 61-8-401, to a

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

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

16 (3) If a resident driver under arrest refuses upon the  
 17 request of a peace officer to submit to a chemical test  
 18 designated by the arresting officer as provided in  
 19 subsection (1) of this section, none shall be given, but the  
 20 officer shall, on behalf of the division, immediately seize  
 21 his driver's license. The peace officer shall forward the  
 22 license to the division, along with a sworn report that he  
 23 had reasonable grounds to believe the arrested person had  
 24 been driving or was in actual physical control of a motor  
 25 vehicle upon ways of this state open to the public, while

1 under the influence of alcohol and that the person had  
2 refused to submit to the test upon the request of the peace  
3 officer. Upon receipt of the report, the division shall  
4 suspend the license for the period provided in subsection  
5 (5).

6 (4) Upon seizure of a resident driver's license, the  
7 peace officer shall issue, on behalf of the division, a  
8 temporary driving permit, which is valid for 72 hours after  
9 the time of issuance.

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

12 (a) upon a first refusal, a suspension of 90 days with  
13 no provision for a restricted probationary 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 with no provision for a  
17 restricted probationary license.

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

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

23 Section 4. Section 61-8-404, MCA, is amended to read:

24 "61-8-404. Evidence admissible -- conditions of  
25 admissibility. (1) Upon the trial of any criminal action or

1 other proceeding arising out of acts alleged to have been  
2 committed by any person in violation of 61-8-401 or  
3 61-8-406:

4 (a) evidence of the amount of alcohol in the person's  
5 blood at the time of the act alleged, as shown by a chemical  
6 analysis of his blood, breath, or urine, is admissible; and

7 (b) a report of the facts and results of any chemical  
8 test of a person's blood, breath, or urine administered  
9 under 61-8-402 is admissible in evidence if:

10 (i) the breath analysis report was prepared and  
11 verified by the person who performed the test or the blood  
12 or urine test was a laboratory analysis and the analysis was  
13 done in a laboratory operated by the department of justice  
14 or by any other laboratory or facility certified or exempt  
15 from certification under the rules of the department; and

16 (ii) the report was prepared in accordance with any  
17 applicable rules of the department; and

18 (iii) if the test was on a blood sample, the person  
19 withdrawing the blood must have been competent to do so  
20 under 61-8-405(1).

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 ways of this state open to the public, while under  
2 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."

7 Section 5. Section 61-8-406, MCA, is amended to read:

8 "61-8-406. Operation of motor vehicle by a person with  
9 alcohol concentration of 0.10 or more. It is unlawful and  
10 punishable as provided in 61-8-722 for any person to drive  
11 or be in actual physical control of a motor vehicle upon the  
12 ways of this state open to the public while the alcohol  
13 concentration in his blood, breath, or urine is 0.10 or  
14 more."

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

1                    HOUSE BILL NO. 390  
2    INTRODUCED BY ALAN J. GILG  
3

4    A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE LAW ON  
5    DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS TO INCLUDE  
6    ALL VEHICLES; AMENDING SECTIONS 61-1-103, 61-8-401,  
7    61-8-402, 61-8-404, AND 61-8-406, MCA."

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

10            Section 1. Section 61-1-103, MCA, is amended to read:

11            "61-1-103. Vehicle. "Vehicle" means every device in,  
12    upon, or by which any person or property may be transported  
13    or drawn upon a public highway, except devices moved by  
14    animal power or used exclusively upon stationary rails or  
15    tracks. However, in chapters 3 and 4, the term means "motor  
16    vehicle" as defined in this part; and in chapter 8, part 4,  
17    the term includes devices moved by animal power."

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

19            "61-8-401. Persons under the influence of alcohol or  
20    drugs. (1) It is unlawful and punishable as provided in  
21    61-8-714 for any person who is under the influence of:

22            (a) alcohol to drive or be in actual physical control  
23    of a motor vehicle upon the ways of this state open to the  
24    public;

25            (b) a narcotic drug to drive or be in actual physical

1    control of a motor vehicle within this state:

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

6            (d) alcohol and any drug to a degree that 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.

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

14            (3) Upon the trial of any civil or criminal action or  
15    proceeding arising out of acts alleged to have been  
16    committed by any person driving or in actual physical  
17    control of a vehicle while under the influence of alcohol,  
18    the concentration of alcohol in the person's blood at the  
19    time alleged, as shown by chemical analysis of the person's  
20    blood, urine, breath, or other bodily substance, shall give  
21    rise to the following presumptions:

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

25            (b) If there was at that time an alcohol concentration



1 in excess of 0.05 but less than 0.10, that fact shall not  
 2 give rise to any presumption that the person was or was not  
 3 under the influence of alcohol but such fact may be  
 4 considered with other competent evidence in determining the  
 5 guilt or innocence of the person.

6 (c) If there was at that time an alcohol concentration  
 7 of 0.10 or more, it shall be presumed that the person was  
 8 under the influence of alcohol. Such presumption is  
 9 rebuttable.

10 (4) The provisions of subsection (3) do not limit the  
 11 introduction of any other competent evidence bearing upon  
 12 the issue of whether the person was under the influence of  
 13 alcohol.

14 (5) Each municipality in this state is given authority  
 15 to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and  
 16 subsections (1) through (4) of this section, with the word  
 17 "state" in 61-8-406 and subsection (1) of this section  
 18 changed to read "municipality", as an ordinance and is given  
 19 jurisdiction of the enforcement of the ordinance and of the  
 20 imposition of the fines and penalties therein provided."

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

22 "61-8-402. Chemical blood, breath, or urine tests. (1)  
 23 Any person who operates a motor vehicle upon ways of this  
 24 state open to the public shall be deemed to have given  
 25 consent, subject to the provisions of 61-8-401, to a

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

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

16 (3) If a resident driver under arrest refuses upon the  
 17 request of a peace officer to submit to a chemical test  
 18 designated by the arresting officer as provided in  
 19 subsection (1) of this section, none shall be given, but the  
 20 officer shall, on behalf of the division, immediately seize  
 21 his driver's license. The peace officer shall forward the  
 22 license to the division, along with a sworn report that he  
 23 had reasonable grounds to believe the arrested person had  
 24 been driving or was in actual physical control of a motor  
 25 vehicle upon ways of this state open to the public, while



1 under the influence of alcohol and that the person had  
2 refused to submit to the test upon the request of the peace  
3 officer. Upon receipt of the report, the division shall  
4 suspend the license for the period provided in subsection  
5 (5).

6 (4) Upon seizure of a resident driver's license, the  
7 peace officer shall issue, on behalf of the division, a  
8 temporary driving permit, which is valid for 72 hours after  
9 the time of issuance.

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

12 (a) upon a first refusal, a suspension of 90 days with  
13 no provision for a restricted probationary 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 with no provision for a  
17 restricted probationary license.

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

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

23 Section 4. Section 61-8-404, MCA, is amended to read:

24 "61-8-404. Evidence admissible -- conditions of  
25 admissibility. (1) Upon the trial of any criminal action or

1 other proceeding arising out of acts alleged to have been  
2 committed by any person in violation of 61-8-401 or  
3 61-8-406:

4 (a) evidence of the amount of alcohol in the person's  
5 blood at the time of the act alleged, as shown by a chemical  
6 analysis of his blood, breath, or urine, is admissible; and

7 (b) a report of the facts and results of any chemical  
8 test of a person's blood, breath, or urine administered  
9 under 61-8-402 is admissible in evidence if:

10 (i) the breath analysis report was prepared and  
11 verified by the person who performed the test or the blood  
12 or urine test was a laboratory analysis and the analysis was  
13 done in a laboratory operated by the department of justice  
14 or by any other laboratory or facility certified or exempt  
15 from certification under the rules of the department; and

16 (ii) the report was prepared in accordance with any  
17 applicable rules of the department; and

18 (iii) if the test was on a blood sample, the person  
19 withdrawing the blood must have been competent to do so  
20 under 61-8-405(1).

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 ways of this state open to the public, while under  
2 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."

7 Section 5. Section 61-8-406, MCA, is amended to read:

8 "61-8-406. Operation of motor vehicle by a person with  
9 alcohol concentration of 0.10 or more. It is unlawful and  
10 punishable as provided in 61-8-722 for any person to drive  
11 or be in actual physical control of a motor vehicle upon the  
12 ways of this state open to the public while the alcohol  
13 concentration in his blood, breath, or urine is 0.10 or  
14 more."

-End-

1 HOUSE BILL NO. 390

2 INTRODUCED BY CODY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE LAW ON  
5 DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS TO INCLUDE  
6 ALL VEHICLES; AMENDING SECTIONS 61-1-103, 61-8-401,  
7 61-8-402, 61-8-404, AND 61-8-406, MCA."

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

10 Section 1. Section 61-1-103, MCA, is amended to read:

11 "61-1-103. Vehicle. "Vehicle" means every device in,  
12 upon, or by which any person or property may be transported  
13 or drawn upon a public highway, except devices moved by  
14 animal power or used exclusively upon stationary rails or  
15 tracks. However, in chapters 3 and 4, the term means "motor  
16 vehicle" as defined in this part; and in chapter 8, part 4,  
17 ~~the term includes devices moved by animal power~~ THIS TERM  
18 DOES NOT INCLUDE A BICYCLE AS DEFINED IN 61-1-123."

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

20 "61-8-401. Persons under the influence of alcohol or  
21 drugs. (1) It is unlawful and punishable as provided in  
22 61-8-714 for any person who is under the influence of:

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

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

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

7 (d) alcohol and any drug to a degree that renders him  
8 incapable of safely driving a motor vehicle to drive or be  
9 in actual physical control of a motor vehicle within this  
10 state.

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

15 (3) Upon the trial of any civil or criminal action or  
16 proceeding arising out of acts alleged to have been  
17 committed by any person driving or in actual physical  
18 control of a vehicle while under the influence of alcohol,  
19 the concentration of alcohol in the person's blood at the  
20 time alleged, as shown by chemical analysis of the person's  
21 blood, urine, breath, or other bodily substance, shall give  
22 rise to the following presumptions:

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

1 (b) If there was at that time an alcohol concentration  
 2 in excess of 0.05 but less than 0.10, that fact shall not  
 3 give rise to any presumption that the person was or was not  
 4 under the influence of alcohol but such fact may be  
 5 considered with other competent evidence in determining the  
 6 guilt or innocence of the person.

7 (c) If there was at that time an alcohol concentration  
 8 of 0.10 or more, it shall be presumed that the person was  
 9 under the influence of alcohol. Such presumption is  
 10 rebuttable.

11 (4) The provisions of subsection (3) do not limit the  
 12 introduction of any other competent evidence bearing upon  
 13 the issue of whether the person was under the influence of  
 14 alcohol.

15 (5) Each municipality in this state is given authority  
 16 to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and  
 17 subsections (1) through (4) of this section, with the word  
 18 "state" in 61-8-406 and subsection (1) of this section  
 19 changed to read "municipality", as an ordinance and is given  
 20 jurisdiction of the enforcement of the ordinance and of the  
 21 imposition of the fines and penalties therein provided."

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

23 "61-8-402. Chemical blood, breath, or urine tests. (1)  
 24 Any person who operates a motor vehicle upon ways of this  
 25 state open to the public shall be deemed to have given

1 consent, subject to the provisions of 61-8-401, to a  
 2 chemical test of his blood, breath, or urine for the purpose  
 3 of determining the alcoholic content of his blood if  
 4 arrested by a peace officer for driving or in actual  
 5 physical control of a motor vehicle while under the  
 6 influence of alcohol. The test shall be administered at the  
 7 direction of a peace officer having reasonable grounds to  
 8 believe the person to have been driving or in actual  
 9 physical control of a motor vehicle upon ways of this state  
 10 open to the public while under the influence of alcohol. The  
 11 arresting officer may designate which one of the aforesaid  
 12 tests shall be administered.

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

17 (3) If a resident driver under arrest refuses upon the  
 18 request of a peace officer to submit to a chemical test  
 19 designated by the arresting officer as provided in  
 20 subsection (1) of this section, none shall be given, but the  
 21 officer shall, on behalf of the division, immediately seize  
 22 his driver's license. The peace officer shall forward the  
 23 license to the division, along with a sworn report that he  
 24 had reasonable grounds to believe the arrested person had  
 25 been driving or was in actual physical control of a motor

1 vehicle upon ways of this state open to the public, while  
 2 under the influence of alcohol and that the person had  
 3 refused to submit to the test upon the request of the peace  
 4 officer. Upon receipt of the report, the division shall  
 5 suspend the license for the period provided in subsection  
 6 (5).

7 (4) Upon seizure of a resident driver's license, the  
 8 peace officer shall issue, on behalf of the division, a  
 9 temporary driving permit, which is valid for 72 hours after  
 10 the time of issuance.

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

13 (a) upon a first refusal, a suspension of 90 days with  
 14 no provision for a restricted probationary license;

15 (b) upon a second or subsequent refusal within 5 years  
 16 of a previous refusal, as determined from the records of the  
 17 division, a revocation of 1 year with no provision for a  
 18 restricted probationary license.

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

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

24 Section 4. Section 61-8-404, MCA, is amended to read:

25 "61-8-404. Evidence admissible -- conditions of

1 admissibility. (1) Upon the trial of any criminal action or  
 2 other proceeding arising out of acts alleged to have been  
 3 committed by any person in violation of 61-8-401 or  
 4 61-8-406:

5 (a) evidence of the amount of alcohol in the person's  
 6 blood at the time of the act alleged, as shown by a chemical  
 7 analysis of his blood, breath, or urine, is admissible; and

8 (b) a report of the facts and results of any chemical  
 9 test of a person's blood, breath, or urine administered  
 10 under 61-8-402 is admissible in evidence if:

11 (i) the breath analysis report was prepared and  
 12 verified by the person who performed the test or the blood  
 13 or urine test was a laboratory analysis and the analysis was  
 14 done in a laboratory operated by the department of justice  
 15 or by any other laboratory or facility certified or exempt  
 16 from certification under the rules of the department; and

17 (ii) the report was prepared in accordance with any  
 18 applicable rules of the department; and

19 (iii) if the test was on a blood sample, the person  
 20 withdrawing the blood must have been competent to do so  
 21 under 61-8-405(1).

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

1 driving or in actual physical control of a motor vehicle  
2 upon the ways of this state open to the public, while under  
3 the influence of alcohol.

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

8 Section 5. Section 61-8-406, MCA, is amended to read:

9 "61-8-406. Operation of motor vehicle by a person with  
10 alcohol concentration of 0.10 or more. It is unlawful and  
11 punishable as provided in 61-8-722 for any person to drive  
12 or be in actual physical control of a motor vehicle upon the  
13 ways of this state open to the public while the alcohol  
14 concentration in his blood, breath, or urine is 0.10 or  
15 more."

-End-

1 HOUSE BILL NO. 390  
 2 INTRODUCED BY CODY  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE LAW ON  
 5 DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS TO INCLUDE  
 6 ALL VEHICLES; AMENDING SECTIONS 61-1-103, 61-8-401,  
 7 61-8-402, 61-8-404, AND 61-8-406, MCA."  
 8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 10 Section 1. Section 61-1-103, MCA, is amended to read:  
 11 "61-1-103. Vehicle. "Vehicle" means every device in,  
 12 upon, or by which any person or property may be transported  
 13 or drawn upon a public highway, except devices moved by  
 14 animal power or used exclusively upon stationary rails or  
 15 tracks. However, in chapters 3 and 4, the term means "motor  
 16 vehicle" as defined in this part; and in chapter 8, part 4,  
 17 ~~the term includes devices moved by animal power~~ THIS TERM  
 18 DOES NOT INCLUDE A BICYCLE AS DEFINED IN 61-1-123."  
 19 Section 2. Section 61-8-401, MCA, is amended to read:  
 20 "61-8-401. Persons under the influence of alcohol or  
 21 drugs. (1) It is unlawful and punishable as provided in  
 22 61-8-714 for any person who is under the influence of:  
 23 (a) alcohol to drive or be in actual physical control  
 24 of a motor vehicle upon the ways of this state open to the  
 25 public;

1 (b) a narcotic drug to drive or be in actual physical  
 2 control of a motor vehicle within this state;  
 3 (c) any other drug to a degree which renders him  
 4 incapable of safely driving a motor vehicle to drive or be  
 5 in actual physical control of a motor vehicle within this  
 6 state; or  
 7 (d) alcohol and any drug to a degree that renders him  
 8 incapable of safely driving a motor vehicle to drive or be  
 9 in actual physical control of a motor vehicle within this  
 10 state.  
 11 (2) The fact that any person charged with a violation  
 12 of subsection (1) is or has been entitled to use alcohol or  
 13 such a drug under the laws of this state does not constitute  
 14 a defense against any charge of violating subsection (1).  
 15 (3) Upon the trial of any civil or criminal action or  
 16 proceeding arising out of acts alleged to have been  
 17 committed by any person driving or in actual physical  
 18 control of a vehicle while under the influence of alcohol,  
 19 the concentration of alcohol in the person's blood at the  
 20 time alleged, as shown by chemical analysis of the person's  
 21 blood, urine, breath, or other bodily substance, shall give  
 22 rise to the following presumptions:  
 23 (a) If there was at that time an alcohol concentration  
 24 of 0.05 or less, it shall be presumed that the person was  
 25 not under the influence of alcohol.



1 (b) If there was at that time an alcohol concentration  
 2 in excess of 0.05 but less than 0.10, that fact shall not  
 3 give rise to any presumption that the person was or was not  
 4 under the influence of alcohol but such fact may be  
 5 considered with other competent evidence in determining the  
 6 guilt or innocence of the person.

7 (c) If there was at that time an alcohol concentration  
 8 of 0.10 or more, it shall be presumed that the person was  
 9 under the influence of alcohol. Such presumption is  
 10 rebuttable.

11 (4) The provisions of subsection (3) do not limit the  
 12 introduction of any other competent evidence bearing upon  
 13 the issue of whether the person was under the influence of  
 14 alcohol.

15 (5) Each municipality in this state is given authority  
 16 to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and  
 17 subsections (1) through (4) of this section, with the word  
 18 "state" in 61-8-406 and subsection (1) of this section  
 19 changed to read "municipality", as an ordinance and is given  
 20 jurisdiction of the enforcement of the ordinance and of the  
 21 imposition of the fines and penalties therein provided."

22 Section 3. Section 61-8-402, MCA, is amended to read:  
 23 "61-8-402. Chemical blood, breath, or urine tests. (1)  
 24 Any person who operates a motor vehicle upon ways of this  
 25 state open to the public shall be deemed to have given

1 consent, subject to the provisions of 61-8-401, to a  
 2 chemical test of his blood, breath, or urine for the purpose  
 3 of determining the alcoholic content of his blood if  
 4 arrested by a peace officer for driving or in actual  
 5 physical control of a motor vehicle while under the  
 6 influence of alcohol. The test shall be administered at the  
 7 direction of a peace officer having reasonable grounds to  
 8 believe the person to have been driving or in actual  
 9 physical control of a motor vehicle upon ways of this state  
 10 open to the public while under the influence of alcohol. The  
 11 arresting officer may designate which one of the aforesaid  
 12 tests shall be administered.

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

17 (3) If a resident driver under arrest refuses upon the  
 18 request of a peace officer to submit to a chemical test  
 19 designated by the arresting officer as provided in  
 20 subsection (1) of this section, none shall be given, but the  
 21 officer shall, on behalf of the division, immediately seize  
 22 his driver's license. The peace officer shall forward the  
 23 license to the division, along with a sworn report that he  
 24 had reasonable grounds to believe the arrested person had  
 25 been driving or was in actual physical control of a motor



1 vehicle upon ways of this state open to the public, while  
 2 under the influence of alcohol and that the person had  
 3 refused to submit to the test upon the request of the peace  
 4 officer. Upon receipt of the report, the division shall  
 5 suspend the license for the period provided in subsection  
 6 (5).

7 (4) Upon seizure of a resident driver's license, the  
 8 peace officer shall issue, on behalf of the division, a  
 9 temporary driving permit, which is valid for 72 hours after  
 10 the time of issuance.

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

13 (a) upon a first refusal, a suspension of 90 days with  
 14 no provision for a restricted probationary license;

15 (b) upon a second or subsequent refusal within 5 years  
 16 of a previous refusal, as determined from the records of the  
 17 division, a revocation of 1 year with no provision for a  
 18 restricted probationary license.

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

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

24 Section 4. Section 61-8-404, MCA, is amended to read:  
 25 "61-8-404. Evidence admissible -- conditions of

1 admissibility. (1) Upon the trial of any criminal action or  
 2 other proceeding arising out of acts alleged to have been  
 3 committed by any person in violation of 61-8-401 or  
 4 61-8-406:

5 (a) evidence of the amount of alcohol in the person's  
 6 blood at the time of the act alleged, as shown by a chemical  
 7 analysis of his blood, breath, or urine, is admissible; and

8 (b) a report of the facts and results of any chemical  
 9 test of a person's blood, breath, or urine administered  
 10 under 61-8-402 is admissible in evidence if:

11 (i) the breath analysis report was prepared and  
 12 verified by the person who performed the test or the blood  
 13 or urine test was a laboratory analysis and the analysis was  
 14 done in a laboratory operated by the department of justice  
 15 or by any other laboratory or facility certified or exempt  
 16 from certification under the rules of the department; and

17 (ii) the report was prepared in accordance with any  
 18 applicable rules of the department; and

19 (iii) if the test was on a blood sample, the person  
 20 withdrawing the blood must have been competent to do so  
 21 under 61-8-405(1).

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

1 driving or in actual physical control of a motor vehicle  
2 upon the ways of this state open to the public, while under  
3 the influence of alcohol.

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

8 Section 5. Section 61-8-406, MCA, is amended to read:

9 "61-8-406. Operation of motor vehicle by a person with  
10 alcohol concentration of 0.10 or more. It is unlawful and  
11 punishable as provided in 61-8-722 for any person to drive  
12 or be in actual physical control of a motor vehicle upon the  
13 ways of this state open to the public while the alcohol  
14 concentration in his blood, breath, or urine is 0.10 or  
15 more."

-End-