

HOUSE BILL NO. 726

2/08 Introduced
2/08 Referred to Judiciary
2/19 Hearing
2/19 Committee Report-Bill Do Pass
2/21 2nd Reading Pass As Amended
2/22 3rd Reading Pass

Transmitted to Senate

3/04 Referred to Judiciary
3/11 Hearing
3/13 Adverse Committee Report
3/13 Bill Killed

1 shall surrender to the division all driver licenses
 2 theretofore issued to him before such probationary license
 3 shall be issued. His refusal or neglect to surrender such
 4 licenses, upon demand, shall be ground for suspending all
 5 such licenses. Probationary licenses may be issued for a
 6 period not to exceed 12 months.

7 (3) Upon suspending the license of any person or upon
 8 placing such person on probation, as hereinbefore in this
 9 section authorized, the division shall immediately notify
 10 the licensee in writing and upon his request shall afford
 11 him an opportunity for a hearing as early as practical
 12 within not to exceed 20 days after receipt of such request
 13 in the county wherein the licensee resides unless the
 14 division and the licensee agree that such hearing may be
 15 held in some other county. Upon such hearing the division
 16 through its duly authorized agent may administer oaths and
 17 may issue subpoenas for the attendance of witnesses and the
 18 production of relevant books and papers and may require a
 19 reexamination of the licensee. Upon such hearing the
 20 division shall either rescind its order of suspension or
 21 probation, or, good cause appearing therefor, may affirm,
 22 reduce, or extend the period of probation or suspension of
 23 such license.

24 (4) The provisions of subsection (3) do not apply to a
 25 probationary license ordered to be issued by a district

1 court pursuant to 61-8-403(2)."

2 Section 2. Section 61-8-402, MCA, is amended to read:
 3 "61-8-402. Chemical blood, breath, or urine tests. (1)
 4 Any person who operates a motor vehicle upon ways of this
 5 state open to the public shall be deemed to have given
 6 consent, subject to the provisions of 61-8-401, to a
 7 chemical test of his blood, breath, or urine for the purpose
 8 of determining the alcoholic content of his blood if
 9 arrested by a peace officer for driving or in actual
 10 physical control of a motor vehicle while under the
 11 influence of alcohol. The test shall be administered at the
 12 direction of a peace officer having reasonable grounds to
 13 believe the person to have been driving or in actual
 14 physical control of a motor vehicle upon ways of this state
 15 open to the public while under the influence of alcohol. The
 16 arresting officer may designate which one of the aforesaid
 17 tests shall be administered.

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

22 (3) If a resident driver under arrest refuses upon the
 23 request of a peace officer to submit to a chemical test
 24 designated by the arresting officer as provided in
 25 subsection (1) of this section, none shall be given, but the

1 officer shall, on behalf of the division, immediately seize
 2 his driver's license. The peace officer shall forward the
 3 license to the division, along with a sworn report that he
 4 had reasonable grounds to believe the arrested person had
 5 been driving or was in actual physical control of a motor
 6 vehicle upon ways of this state open to the public, while
 7 under the influence of alcohol and that the person had
 8 refused to submit to the test upon the request of the peace
 9 officer. Upon receipt of the report, the division shall
 10 suspend the license for the period provided in subsection
 11 (5).

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

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

18 (a) upon a first refusal, a suspension of 90 days with
 19 no provision for a restricted probationary license, unless
 20 ordered by a court pursuant to 61-8-403(2);

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

25 (6) Like refusal by a nonresident shall be subject to

1 suspension by the division in like manner, and the same
 2 temporary driving permit shall be issued to nonresidents.

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

5 Section 3. Section 61-8-403, MCA, is amended to read:

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

1 test. The court shall thereupon determine whether the
2 petitioner is entitled to a license or is subject to
3 suspension as heretofore provided.

4 (2) (a) A person whose license is suspended pursuant
5 to 61-8-402 for a first refusal to submit to a chemical test
6 for the purpose of determining the alcoholic content of his
7 blood may apply to the district court in the county where he
8 resides for an order directing the division to issue a
9 restricted probationary license to him. If the court finds
10 that the petitioner will abide by the terms of a restricted
11 probationary license and that the public will be adequately
12 protected, it may order the division to issue such a
13 license. The court may direct the division to impose such
14 restrictions on the probationary license as it considers
15 proper.

16 (b) A person who is found guilty of violating the
17 terms of a restricted probationary license issued pursuant
18 to subsection (2)(a) shall be punished as provided for in
19 61-8-14(3).

20 (c) The time limits provided in subsection (1) apply
21 to an appeal under this subsection (2)."

22 NEW SECTION. Section 4. Extension of authority. Any
23 existing authority of the division of motor vehicles to make
24 rules on the subject of the provisions of this act is
25 extended to the provisions of this act.

1 NEW SECTION. Section 5. Effective date. This act is
2 effective on passage by the legislature, approval by the
3 governor, and receipt by the secretary of state of a written
4 certificate of approval from the U.S. department of
5 transportation. The secretary of state shall attach a copy
6 of the certificate to the enrolled bill enacting this act
7 and send a copy of the certificate to the department of
8 justice, division of motor vehicles, and the code
9 commissioner.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 726
2 INTRODUCED BY J. J. ...

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING DISTRICT
5 COURTS AUTHORITY TO AUTHORIZE THE ISSUANCE OF A RESTRICTED
6 PROBATIONARY DRIVER'S LICENSE TO A PERSON ON HIS FIRST
7 REFUSAL TO SUBMIT TO A CHEMICAL TEST FOR DETERMINING THE
8 ALCOHOLIC CONTENT OF HIS BLOOD; PROVIDING THAT A VIOLATION
9 OF THE TERMS OF SUCH LICENSE IS PUNISHABLE IN THE SAME
10 MANNER AS A THIRD CONVICTION FOR DRIVING UNDER THE INFLUENCE
11 OF ALCOHOL OR DRUGS; AMENDING SECTIONS 61-5-206, 61-8-402,
12 AND 61-8-403, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

15 Section 1. Section 61-5-206, MCA, is amended to read:

16 "61-5-206. Authority of division to suspend license or
17 driving privilege or issue probationary license. (1) The
18 division is hereby authorized to suspend the license or
19 driving privilege of an operator or chauffeur without
20 preliminary hearing upon a showing by its records or other
21 sufficient evidence that the licensee:

22 (a) has been involved as a driver in any accident
23 resulting in the death or personal injury of another or
24 serious property damage;

25 (b) has been convicted with such frequency of serious

1 offenses against traffic regulations governing the movement
2 of vehicles as to indicate a disrespect for traffic laws and
3 a disregard for the safety of other persons on the highways;

4 (c) is an habitually reckless or negligent driver of a
5 motor vehicle;

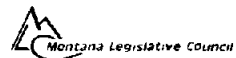
6 (d) is incompetent to drive a motor vehicle;

7 (e) has permitted an unlawful or fraudulent use of
8 such license as specified in 61-5-302;

9 (f) has committed an offense in another state which if
10 committed in this state would be grounds for suspension or
11 revocation; or

12 (g) has falsified his date of birth on his application
13 for a driver's license.

14 (2) However, the division shall if ordered by a court
15 or may, in its discretion, and in lieu of such suspension of
16 license or driving privilege, issue a probationary license
17 to an operator or chauffeur, without preliminary hearing,
18 upon a showing by its records or other sufficient evidence
19 that the licensee's driving record is such as would
20 authorize suspension as provided in subsection (1) hereof.
21 Upon issuance of a probationary license the licensee shall
22 be subject to the restrictions set forth thereon. The
23 licensee's driving privilege may be suspended upon
24 conviction or forfeiture of bail not vacated of any traffic
25 violation during the period of such probation. The licensee



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 23 request of a peace officer to submit to a chemical test
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 11 petition within 30 days thereafter for a hearing in the
 12 matter in the district court in the county wherein such
 13 person resides or in the district court in the county in
 14 which this arrest was made. Such court is hereby vested with
 15 jurisdiction and it shall be its duty to set the matter for
 16 hearing upon 10 days' written notice to the county attorney
 17 of the county wherein the appeal is filed and such county
 18 attorney shall represent the state, and thereupon the court
 19 shall take testimony and examine into the facts of the case,
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 25 arrest, and whether such person refused to submit to the

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3 suspension as heretofore provided.

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5 to 61-8-402 for a first refusal to submit to a chemical test
6 for the purpose of determining the alcoholic content of his
7 blood may apply to the district court in the county where he
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9 restricted probationary license to him. If the court finds
10 that the petitioner will abide by the terms of a restricted
11 probationary license and that the public will be adequately
12 protected, it may order the division to issue such a
13 license. The court may direct the division to impose such
14 restrictions on the probationary license as it considers
15 proper.

16 (b) A person who is found guilty of violating the
17 terms of a restricted probationary license issued pursuant
18 to subsection (2)(a) shall be punished as provided for in
19 61-8-714(3).

20 (c) The time limits provided in subsection (1) apply
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23 existing authority of the division of motor vehicles to make
24 rules on the subject of the provisions of this act is
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7 and send a copy of the certificate to the department of
8 justice, division of motor vehicles, and the code
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-End-

HOUSE BILL NO. 726
INTRODUCED BY GOULD

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING DISTRICT COURTS AUTHORITY TO AUTHORIZE THE ISSUANCE OF A RESTRICTED PROBATIONARY DRIVER'S LICENSE TO A PERSON ON HIS FIRST REFUSAL TO SUBMIT TO A CHEMICAL TEST FOR DETERMINING THE ALCOHOLIC CONTENT OF HIS BLOOD; PROVIDING THAT A VIOLATION OF THE TERMS OF SUCH LICENSE IS PUNISHABLE IN THE SAME MANNER AS A THIRD CONVICTION FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTIONS 61-5-206, 61-8-402 AND 61-8-403, MCA; AND PROVIDING AN EFFECTIVE DATE."

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offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(c) is an habitually reckless or negligent driver of a motor vehicle;

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(g) has falsified his date of birth on his application for a driver's license;

(2) However, the division shall if ordered by a court or may, in its discretion, and in lieu of such suspension of license or driving privilege, issue a probationary license to an operator or chauffeur, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record is such as would authorize suspension as provided in subsection (1) hereof. Upon issuance of a probationary license the licensee shall be subject to the restrictions set forth thereon. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of such probation. The licensee



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 2 theretofore---issued---to---him---before---such---probationary---license
 3 shall---be---issued---His---refusal---or---neglect---to---surrender---such
 4 licenses,---upon---demand,---shall---be---ground---for---suspending---all
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