

SENATE BILL NO. 125

1/16 Introduced  
1/16 Referred to Judiciary  
1/25 Tabled in Committee

1 Senate BILL NO. 125  
 2 INTRODUCED BY M. Ball

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR TESTS TO  
 5 DETECT DRUG USE BY PERSONS CHARGED WITH COMMITTING THE  
 6 OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS;  
 7 AMENDING SECTIONS 61-8-402 THROUGH 61-8-405, MCA."

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

10 Section 1. Section 61-8-402, MCA, is amended to read:  
 11 "61-8-402. Chemical blood, breath, or urine tests. (1)  
 12 Any person who operates a motor vehicle ~~upon ways of this~~  
 13 ~~state open to the public within this state~~ shall be deemed  
 14 to have given consent, subject to the provisions of  
 15 61-8-401, to a chemical test of his blood, breath, or urine  
 16 for the purpose of determining the alcoholic or drug content  
 17 of his blood if arrested by a peace officer for ~~driving or~~  
 18 ~~in actual physical control of a motor vehicle while under~~  
 19 ~~the influence of alcohol~~ commission of an offense under  
 20 61-8-401. The test shall be administered at the direction of  
 21 a peace officer having reasonable grounds to believe the  
 22 person ~~to have been driving or in actual physical control of~~  
 23 ~~a motor vehicle upon ways of this state open to the public~~  
 24 ~~while under the influence of alcohol~~ has committed an  
 25 offense under 61-8-401. The arresting officer may designate

1 which one of the aforesaid tests shall be administered.

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 4 deemed not to have withdrawn the consent provided by  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

6 (3) If a resident driver under arrest refuses upon the  
 7 request of a peace officer to submit to a chemical test  
 8 designated by the arresting officer as provided in  
 9 subsection (1) of this section, none shall be given, but the  
 10 officer shall, on behalf of the division, immediately seize  
 11 his driver's license. The peace officer shall forward the  
 12 license to the division, along with a sworn report that he  
 13 had reasonable grounds to believe the arrested person had  
 14 ~~been driving or was in actual physical control of a motor~~  
 15 ~~vehicle upon ways of this state open to the public, while~~  
 16 ~~under the influence of alcohol~~ committed an offense under  
 17 61-8-401 and that the person had refused to submit to the  
 18 test upon the request of the peace officer. Upon receipt of  
 19 the report, the division shall suspend the license for the  
 20 period provided in subsection (5).

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

25 (5) The following suspension and revocation periods



1 are applicable upon refusal to submit to a chemical test:

2 (a) upon a first refusal, a suspension of 90 days with

3 no provision for a restricted probationary license;

4 (b) upon a second or subsequent refusal within 5 years

5 of a previous refusal, as determined from the records of the

6 division, a revocation of 1 year with no provision for a

7 restricted probationary license.

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

9 suspension by the division in like manner, and the same

10 temporary driving permit shall be issued to nonresidents.

11 (7) All such suspensions are subject to review as

12 hereinafter provided."

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

14 "61-8-403. Right of appeal to court. The division

15 shall immediately notify any person whose license or

16 privilege to drive has been suspended or revoked, as

17 hereinbefore authorized, in writing and such person shall

18 have the right to file a petition within 30 days thereafter

19 for a hearing in the matter in the district court in the

20 county wherein such person resides or in the district court

21 in the county in which this arrest was made. Such court is

22 hereby vested with jurisdiction and it shall be its duty to

23 set the matter for hearing upon 10 days' written notice to

24 the county attorney of the county wherein the appeal is

25 filed and such county attorney shall represent the state,

1 and thereupon the court shall take testimony and examine

2 into the facts of the case, except that the issues shall be

3 limited to whether a peace officer had reasonable grounds to

4 believe the person had ~~been--driving--or--was--in--actual~~

5 ~~physical--control--of--a--vehicle--upon--ways--of--this--state--open~~

6 ~~to--the--public,--while--under--the--influence--of--alcohol~~

7 committed an offense under 61-8-401, whether the person was

8 placed under arrest, and whether such person refused to

9 submit to the test. The court shall thereupon determine

10 whether the petitioner is entitled to a license or is

11 subject to suspension as heretofore provided."

12 Section 3. Section 61-8-404, MCA, is amended to read:

13 "61-8-404. Evidence admissible -- conditions of

14 admissibility. (1) Upon the trial of any criminal action or

15 other proceeding arising out of acts alleged to have been

16 committed by any person in violation of 61-8-401 or

17 61-8-406:

18 (a) evidence of the amount of alcohol or drugs in the

19 person's blood at the time of the act alleged, as shown by a

20 chemical analysis of his blood, breath, or urine, is

21 admissible; and

22 (b) a report of the facts and results of any chemical

23 test of a person's blood, breath, or urine administered

24 under 61-8-402 is admissible in evidence if:

25 (i) the breath analysis report was prepared and

1 verified by the person who performed the test or the blood  
2 or urine test was a laboratory analysis and the analysis was  
3 done in a laboratory operated by the department of justice  
4 or by any other laboratory or facility certified or exempt  
5 from certification under the rules of the department; and

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

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

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-the-ways-of-this-state-open-to-the-public-while--under~~  
17 ~~the-influence-of-alcohol~~ in violation of 61-8-401.

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 or any drug."

22 Section 4. Section 61-8-405, MCA, is amended to read:  
23 "61-8-405. Administration of tests. (1) Only a  
24 physician or registered nurse or other qualified person  
25 under the supervision and direction of a physician or

1 registered nurse acting at the request of a peace officer  
2 may withdraw blood for the purpose of determining the  
3 alcoholic or drug content therein. This limitation shall not  
4 apply to the taking of breath or urine specimens.

5 (2) The person tested may, at his own expense, have a  
6 physician or registered nurse of his own choosing administer  
7 a test, in addition to any administered at the direction of  
8 a peace officer, for the purpose of determining the amount  
9 of alcohol or any drug in his blood at the time alleged as  
10 shown by chemical analysis of his blood, breath, or urine.  
11 The failure or inability to obtain an additional test by a  
12 person shall not preclude the admissibility in evidence of  
13 the test taken at the direction of a peace officer.

14 (3) Upon the request of the person tested full  
15 information concerning the test taken at the direction of  
16 the peace officer shall be made available to him or his  
17 attorney.

18 (4) No physician or registered nurse or other  
19 qualified person under the supervision and direction of a  
20 physician or registered nurse shall incur any civil or  
21 criminal liability as a result of the proper administering  
22 of a blood test when requested in writing by a peace officer  
23 to administer such a test.

24 (5) If the test given under 61-8-402 is a chemical  
25 test of urine, the person tested shall be given such privacy

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1 in the taking of the urine specimen as will insure the  
2 accuracy of the specimen and, at the same time, maintain the  
3 dignity of the individual involved.

4 (6) The division of motor vehicles in cooperation with  
5 the division of forensic sciences, or any other appropriate  
6 agency, shall adopt uniform rules for the giving of blood  
7 alcohol or drug tests and may require certification of  
8 training to administer such tests as deemed necessary."

9 NEW SECTION. Section 5. Extension of authority. Any  
10 existing authority of the division of motor vehicles to make  
11 rules on the subject of the provisions of this act is  
12 extended to the provisions of this act.

-End-