

SENATE BILL NO. 381

2/09 Introduced
2/11 Referred to Judiciary
2/19 Hearing
2/22 Tabled in Committee

1 Senate BILL NO. 381
2 INTRODUCED BY W. Leach

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF
5 AGGRAVATED DRIVING UNDER THE INFLUENCE; PROVIDING PENALTIES;
6 AND AMENDING SECTIONS 61-5-205, 61-5-208, 61-8-401, AND
7 61-8-714, MCA."

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

10 Section 1. Section 61-8-401, MCA, is amended to read:

11 "61-8-401. Persons under the influence of alcohol or
12 drugs. (1) It is unlawful and punishable as provided in
13 61-8-714 for any person who is under the influence of:

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

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

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

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

1 state.

2 (2) A person commits the offense of aggravated driving
3 under the influence and is punishable as provided in
4 61-8-714(4) if, while he is violating subsection (1)(a), he:

5 (a) is driving 20 or more miles an hour above the
6 speed limit;

7 (b) has a blood alcohol concentration of 0.23 or
8 higher;

9 (c) is also in violation of 61-8-301; or

10 (d) causes injury to the person or property of
11 another.

12 ~~(2)~~(3) The fact that any person charged with a
13 violation of subsection (1) or (2) is or has been entitled
14 to use alcohol or such a drug under the laws of this state
15 does not constitute a defense against any charge of
16 violating subsection (1) or (2).

17 ~~(3)~~(4) Upon the trial of any civil or criminal action
18 or proceeding arising out of acts alleged to have been
19 committed by any person driving or in actual physical
20 control of a vehicle while under the influence of alcohol,
21 the concentration of alcohol in the person's blood at the
22 time alleged, as shown by chemical analysis of the person's
23 blood, urine, breath, or other bodily substance, shall give
24 rise to the following presumptions:

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



1 of 0.05 or less, it shall be presumed that the person was
2 not under the influence of alcohol.

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

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

13 †4†(5) The provisions of subsection †3† (4) do not
14 limit the introduction of any other competent evidence
15 bearing upon the issue of whether the person was under the
16 influence of alcohol.

17 †5†(6) Each municipality in this state is given
18 authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722,
19 and subsections (1) through †4† (5) of this section, with
20 the word "state" in 61-8-406 and subsection (1) of this
21 section changed to read "municipality", as an ordinance and
22 is given jurisdiction of the enforcement of the ordinance
23 and of the imposition of the fines and penalties therein
24 provided."

25 Section 2. Section 61-8-714, MCA, is amended to read:

1 "61-8-714. Penalty for driving under the influence of
2 alcohol or drugs or aggravated driving under the influence.

3 (1) A person convicted of a violation of 61-8-401(1) shall
4 be punished by imprisonment in the county jail for not less
5 than 24 consecutive hours or more than 60 days, and shall be
6 punished by a fine of not less than \$100 or more than \$500.
7 The jail sentence may not be suspended unless the judge
8 finds that the imposition of the jail sentence will pose a
9 risk to the defendant's physical or mental well-being.

10 (2) On a second conviction under 61-8-401(1), he shall
11 be punished by a fine of not less than \$300 or more than
12 \$500 and by imprisonment for not less than 7 days, at least
13 48 hours of which must be served consecutively, or more than
14 6 months. Three days of the jail sentence may not be
15 suspended unless the judge finds that the imposition of the
16 jail sentence will pose a risk to the defendant's physical
17 or mental well-being.

18 (3) On the third or subsequent conviction under
19 61-8-401(1), he shall be punished by imprisonment for a term
20 of not less than 30 days, at least 48 hours of which must be
21 served consecutively, or more than 1 year, to which may be
22 added, in the discretion of the court, a fine of not less
23 than \$500 or more than \$1,000. Notwithstanding any provision
24 to the contrary providing for suspension of execution of a
25 sentence imposed under this subsection, the imposition or

1 execution of the first 10 days of the jail sentence imposed
2 for a third or subsequent offense that occurred within 5
3 years of the first offense may not be deferred or suspended.

4 (4) A person convicted of a violation of 61-8-401(2)
5 shall be punished by imprisonment for not less than 10 days
6 or more than 6 months and by a fine of not less than \$600 or
7 more than \$1,500.

8 ~~(4)~~(5) In addition to the punishment provided in this
9 section, regardless of disposition, the defendant shall
10 complete an alcohol information course at an alcohol
11 treatment program approved by the department of
12 institutions, which may include alcohol or drug treatment,
13 or both, if considered necessary by the counselor conducting
14 the program. Each counselor providing such education or
15 treatment shall, at the commencement of the education or
16 treatment, notify the court that the defendant has been
17 enrolled in a course or treatment program. If the defendant
18 fails to attend the course or the treatment program, the
19 counselor shall notify the court of the failure.

20 ~~(5)~~(6) For the purpose of determining the number of
21 convictions under this section, "conviction" means a final
22 conviction, as defined in 45-2-101, or a forfeiture of bail
23 or collateral deposited to secure the defendant's appearance
24 in court, which forfeiture has not been vacated. An
25 offender is considered to have been previously convicted for

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

7 Section 3. Section 61-5-205, MCA, is amended to read:

8 "61-5-205. Mandatory revocation of license upon proper
9 authority. The division upon proper authority shall revoke
10 the license or operating privilege of any operator or
11 chauffeur upon receiving a record of such operator's or
12 chauffeur's conviction or forfeiture of bail not vacated of
13 any of the following offenses, when such conviction or
14 forfeiture has become final:

15 (1) negligent homicide resulting from the operation of
16 a motor vehicle;

17 (2) driving a motor vehicle while under the influence
18 of alcohol or narcotic drug, or willfully or knowingly under
19 the influence of any other drug to a degree which renders
20 him incapable of safely driving a motor vehicle, aggravated
21 driving under the influence, or a combination thereof except
22 as provided in 61-5-208, or operation of a motor vehicle by
23 a person with a blood alcohol concentration of 0.10 or more;

24 (3) any felony in the commission of which a motor
25 vehicle is used;

1 (4) failure to stop and render aid as required under
 2 the laws of this state in the event of a motor vehicle
 3 accident resulting in the death or personal injury of
 4 another;

5 (5) perjury or the making of a false affidavit or
 6 statement under oath to the division under this chapter or
 7 under any other law relating to the ownership or operation
 8 of motor vehicles;

9 (6) conviction or forfeiture of bail not vacated upon
 10 three charges of reckless driving committed within a period
 11 of 12 months."

12 Section 4. Section 61-5-208, MCA, is amended to read:

13 "61-5-208. Period of suspension or revocation. (1) The
 14 division may not suspend or revoke a driver's license or
 15 privilege to drive a motor vehicle on the public highways
 16 for a period of more than 1 year, except as permitted under
 17 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

18 (2) Any person whose license or privilege to drive a
 19 motor vehicle on the public highways has been suspended or
 20 revoked is not entitled to have such license or privilege
 21 renewed or restored unless the revocation was for a cause
 22 which has been removed, except that after the expiration of
 23 the period of such revocation or suspension, the person may
 24 make application for a new license as provided by law but
 25 the division may not then issue a new license unless and

1 until it is satisfied, after investigation of character,
 2 habits, and driving ability of the person, that it is safe
 3 to grant the privilege of driving a motor vehicle on the
 4 public highways. When any person is convicted or forfeits
 5 bail or collateral not vacated for the offense of operating
 6 or being in actual physical control of a motor vehicle while
 7 under the influence of alcohol or a narcotic drug or
 8 knowingly or willingly under the influence of any other drug
 9 to a degree which renders him incapable of safely driving a
 10 motor vehicle, or a combination thereof, or for the offense
 11 of operation of a motor vehicle by a person with alcohol
 12 concentration of 0.10 or more, the division shall, upon
 13 receiving a report of such conviction or forfeiture of bail
 14 or collateral not vacated, suspend the license or driving
 15 privilege of the person for a period of 6 months. Upon
 16 receiving a report of a conviction or forfeiture of bail or
 17 collateral for a second, third, or subsequent offense within
 18 5 years of the first offense, the division shall revoke the
 19 license or driving privilege of the person for a period of 1
 20 year. If the offense was aggravated driving under the
 21 influence, the license or driving privilege must be revoked
 22 for from 1 to 3 years.

23 (3) The period for all revocations made mandatory by
 24 61-5-205 shall be 1 year except as provided in subsection
 25 (2) of this section.

1 (4) The period of revocation for any person convicted
2 of any offense which makes mandatory the revocation of the
3 operator's or chauffeur's license commences from date of
4 conviction or forfeiture of bail."

5 NEW SECTION. Section 5. Extension of authority. Any
6 existing authority of the department of justice, division of
7 motor vehicles, to make rules on the subject of the
8 provisions of this act is extended to the provisions of this
9 act.

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