

HB 668 INTRODUCED BY VINCENT
CONVICTION FOR DUI OR PER SE CONSTITUTES CONVICTION
OF THE OTHER

2/09 INTRODUCED
2/09 REFERRED TO JUDICIARY
2/17 HEARING
2/24 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/24 2ND READING NOT PASSED 61 39

1 House BILL NO. 668
2 INTRODUCED BY Vincent

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE DRIVING
5 UNDER THE INFLUENCE AND PER SE PENALTY STATUTES RELATING TO
6 ALCOHOL- OR DRUG-RELATED DRIVING OFFENSES TO PROVIDE THAT A
7 CONVICTION UNDER ONE CONSTITUTES A CONVICTION UNDER THE
8 OTHER; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA."

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

11 Section 1. Section 61-8-714, MCA, is amended to read:

12 "61-8-714. Penalty for driving under the influence of
13 alcohol or drugs. (1) A person convicted of a violation of
14 61-8-401 shall be punished by imprisonment in the county
15 jail for not less than 24 consecutive hours or more than 60
16 days, and shall be punished by a fine of not less than \$100
17 or more than \$500. The jail sentence may not be suspended
18 unless the judge finds that the imposition of the jail
19 sentence will pose a risk to the defendant's physical or
20 mental well-being.

21 (2) On a second conviction, he shall be punished by a
22 fine of not less than \$300 or more than \$500 and by
23 imprisonment for not less than 7 days, at least 48 hours of
24 which must be served consecutively, or more than 6 months.
25 Three days of the jail sentence may not be suspended unless

1 the judge finds that the imposition of the jail sentence
2 will pose a risk to the defendant's physical or mental
3 well-being.

4 (3) On the third or subsequent conviction, he shall be
5 punished by imprisonment for a term of not less than 30
6 days, at least 48 hours of which must be served
7 consecutively, or more than 1 year, to which may be added,
8 in the discretion of the court, a fine of not less than \$500
9 or more than \$1,000. Notwithstanding any provision to the
10 contrary providing for suspension of execution of a sentence
11 imposed under this subsection, the imposition or execution
12 of the first 10 days of the jail sentence imposed for a
13 third or subsequent offense that occurred within 5 years of
14 the first offense may not be deferred or suspended.

15 (4) In addition to the punishment provided in this
16 section, regardless of disposition, the defendant shall
17 complete an alcohol information course at an alcohol
18 treatment program approved by the department of
19 institutions, which may include alcohol or drug treatment,
20 or both, if considered necessary by the counselor conducting
21 the program. Each counselor providing such education or
22 treatment shall, at the commencement of the education or
23 treatment, notify the court that the defendant has been
24 enrolled in a course or treatment program. If the defendant
25 fails to attend the course or the treatment program, the



1 counselor shall notify the court of the failure.

2 (5) For the purpose of determining the number of
3 convictions under this section, "conviction" means a final
4 conviction, as defined in 45-2-101, in this state or a
5 similar statute in another state or a forfeiture of bail or
6 collateral deposited to secure the defendant's appearance in
7 court in this state or another state, which forfeiture has
8 not been vacated. An offender is considered to have been
9 previously convicted for the purposes of this section if
10 less than 5 years have elapsed between the commission of the
11 present offense and a previous conviction. If there has been
12 no additional conviction for an offense under this section
13 for a period of 5 years after a prior conviction hereunder,
14 then such prior offense shall be expunged from the
15 defendant's record.

16 (6) For the purpose of calculating subsequent
17 convictions, a conviction for violation of 61-8-406 also
18 constitutes a conviction of 61-8-401."

19 Section 2. Section 61-8-722, MCA, is amended to read:

20 "61-8-722. Penalty for driving with excessive blood
21 alcohol concentration. (1) A person convicted of a violation
22 of 61-8-406 shall be punished by imprisonment for not more
23 than 10 days and shall be punished by a fine of not less
24 than \$100 or more than \$500.

25 (2) ~~On a second conviction of a violation of 61-8-406,~~

1 ~~he shall be punished by imprisonment for not less than 48~~
2 ~~consecutive hours or more than 30 days and by a fine of not~~
3 ~~less than \$300 or more than \$500. Second or subsequent~~
4 ~~convictions of 61-8-406 shall be treated under 61-8-714.~~

5 ~~(3) On a third or subsequent conviction of a violation~~
6 ~~of 61-8-406, he shall be punished by imprisonment for not~~
7 ~~less than 48 consecutive hours or more than 6 months and by~~
8 ~~a fine of not less than \$500 or more than \$1,000.~~

9 ~~(4)(3)~~ The provisions of 61-5-205(2), 61-5-208(2), and
10 61-11-203(2)(d) relating to revocation and suspension of
11 driver's licenses shall apply to any conviction under
12 61-8-406.

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

25 ~~(6)(5)~~ For the purpose of determining the number of

1 convictions under this section, "conviction" means a final
2 conviction, as defined in 45-2-101, in this state or a
3 similar statute in another state or a forfeiture of bail or
4 collateral deposited to secure the defendant's appearance in
5 court in this state or another state, which forfeiture has
6 not been vacated. An offender is considered to have been
7 previously convicted for the purposes of this section if
8 less than 5 years have elapsed between the commission of the
9 present offense and a previous conviction. If there has been
10 no additional conviction for an offense under this section
11 for a period of 5 years after a prior conviction hereunder,
12 then such prior offense shall be expunged from the
13 defendant's record.

14 (6) For the purpose of calculating subsequent
15 convictions, a conviction for violation of 61-8-401 also
16 constitutes a conviction of 61-8-406."

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