

HOUSE BILL NO. 425

INTRODUCED BY VINCENT, BROOKE, CLARK, SPAETH

IN THE HOUSE

JANUARY 25, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 26, 1989	FIRST READING.
FEBRUARY 13, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 14, 1989	PRINTING REPORT.
FEBRUARY 15, 1989	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 16, 1989	ENGROSSING REPORT.
FEBRUARY 17, 1989	THIRD READING, PASSED. AYES, 87; NOES, 8.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 18, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 20, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 21, 1989	SECOND READING, PASS CONSIDERATION.
MARCH 22, 1989	SECOND READING, CONCURRED IN.
MARCH 27, 1989	THIRD READING, CONCURRED IN. AYES, 29; NOES, 20.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 30, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 31, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *425*
2 INTRODUCED BY *Vincent Burke Clark Smith*
3
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 KEEP A
7 SUSPENSION IN EFFECT UNTIL TREATMENT IS COMPLETED; TO
8 PROVIDE THAT, FOR THE PURPOSE OF CALCULATING THE NUMBER OF
9 CONVICTIONS, A CONVICTION UNDER ONE OFFENSE CONSTITUTES A
10 CONVICTION UNDER THE OTHER AND TO PROVIDE THAT, EXCEPT FOR
11 THE FIRST OFFENSE, THE PENALTIES IN THE TWO STATUTES ARE THE
12 SAME; TO CLARIFY WHEN AN OFFENDER IS CONSIDERED TO HAVE A
13 PREVIOUS CONVICTION; TO DELETE A REQUIREMENT THAT RECORDS BE
14 EXPUNGED; AND AMENDING SECTIONS 61-5-208, 61-8-714, AND
15 61-8-722, MCA."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 61-5-208, MCA, is amended to read:

19 "61-5-208. Period of suspension or revocation. (1) The
20 department may not suspend or revoke a driver's license,
21 commercial vehicle operator's endorsement, or privilege to
22 drive a motor vehicle on the public highways for a period of
23 more than 1 year, except as permitted under subsection (2)
24 of this section, 61-5-207, 61-5-212, 61-6-123, and
25 61-11-211.

1 (2) Any person whose license, commercial vehicle
2 operator's endorsement, or privilege to drive a motor
3 vehicle on the public highways has been suspended or revoked
4 is not entitled to have such the license, endorsement, or
5 privilege renewed or restored unless the revocation was for
6 a cause which has been removed, except that after the
7 expiration of the period of such the revocation or
8 suspension, the person may make application for a new
9 license or endorsement as provided by law but the department
10 may not then issue a new license or endorsement unless and
11 until it is satisfied, after investigation of the driving
12 ability of the person and upon a showing by its records or
13 other sufficient evidence, that the person is eligible to be
14 licensed to drive in this state. When any person is
15 convicted or forfeits bail or collateral not vacated for the
16 offense of operating or being in actual physical control of
17 a motor vehicle while under the influence of alcohol or any
18 drug or a combination thereof or for the offense of
19 operation of a motor vehicle by a person with alcohol
20 concentration of 0.10 or more, the department shall, upon
21 receiving a report of such conviction or forfeiture of bail
22 or collateral not vacated, suspend the license, including
23 any commercial vehicle operator's endorsement, or driving
24 privilege of the person for a period of 6 months, except
25 that if the person is required to complete a treatment

course or program, the suspension remains in effect until the course or program is completed. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license, ~~including--any~~ commercial vehicle operator's endorsement, or driving privilege of the person for a period of 1 year, except that if the person is required to complete a treatment course or program, the revocation remains in effect until the course or program is completed.

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

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

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

"61-8-714. Penalty for driving under the influence of alcohol or drugs. (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days, and shall be punished by a fine of not less than \$100 or more than \$500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail

sentence will pose a risk to the defendant's physical or mental well-being.

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

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

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of

institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

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

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of

61-8-401."

Section 3. Section 61-8-722, MCA, is amended to read:

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

(2) On a second conviction ~~of a violation of 61-8-406,~~ he shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 consecutive hours of which must be served consecutively, or more than ~~30 days and by a fine of not less than \$300 or more than \$500~~ 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On a third or subsequent conviction ~~of a violation of 61-8-406,~~ he shall be punished by imprisonment for a term of not less than 30 days, at least 48 consecutive hours or more than 6 months of which must be served consecutively, or more than 1 year, and by a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a

1 third or subsequent offense that occurred within 5 years of
 2 the first offense may not be deferred or suspended.

3 (4) The provisions of 61-5-205(2), 61-5-208(2), and
 4 61-11-203(2)(d), relating to revocation and suspension of
 5 driver's licenses, shall apply to any conviction under
 6 61-8-406.

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

19 (6) For the purpose of determining the number of
 20 convictions under this section, "conviction" means a final
 21 conviction, as defined in 45-2-101, in this state, or
 22 conviction for a violation of a similar statute in another
 23 state, or a forfeiture of bail or collateral deposited to
 24 secure the defendant's appearance in court in this state or
 25 another state, which forfeiture has not been vacated. An

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

8 (7) For the purpose of calculating subsequent
 9 convictions under this section, a conviction for a violation
 10 of 61-8-401 also constitutes a conviction of 61-8-406."

11 **NEW SECTION. Section 4. Extension of authority.** Any
 12 existing authority to make rules on the subject of the
 13 provisions of [this act] is extended to the provisions of
 14 [this act].

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 425

INTRODUCED BY VINCENT, BROOKE, CLARK, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE DRIVING UNDER THE INFLUENCE AND PER SE PENALTY STATUTES RELATING TO ALCOHOL--OR--DRUG-RELATED--DRIVING--OFFENSES; TO KEEP A DRIVER'S LICENSE SUSPENSION FOR A SECOND OR SUBSEQUENT OFFENSE IN EFFECT UNTIL TREATMENT AN ALCOHOL INFORMATION COURSE AND TREATMENT, IF TREATMENT IS ALSO ORDERED, IS COMPLETED; TO PROVIDE THAT, FOR THE PURPOSE OF CALCULATING THE NUMBER OF CONVICTIONS FOR PURPOSES OF THE DUI PENALTY SECTION, A CONVICTION UNDER--ONE OF A PER SE OFFENSE CONSTITUTES A CONVICTION UNDER THE OTHER--AND--TO PROVIDE THAT, EXCEPT FOR THE FIRST OFFENSE, THE PENALTIES IN THE TWO STATUTES ARE THE SAME DUI OFFENSE SECTION; TO CLARIFY WHEN AN A DUI OFFENDER IS CONSIDERED TO HAVE A REVIOUS CONVICTION; TO DELETE A REQUIREMENT THAT DUI RECORDS BE EXPUNGED; AND AMENDING SECTIONS 61-5-208, AND 61-8-714, AND 61-8-722, MCA."

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

Section 1. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation. (1) The department may not suspend or revoke a driver's license, commercial vehicle operator's endorsement, or privilege to

drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under subsection (2) of this section, 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

(2) Any person whose license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have such the license, endorsement, or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such the revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not then issue a new license or endorsement unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in this state. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination thereof or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of such conviction or forfeiture of bail

1 or collateral not vacated, suspend the license, including
 2 any commercial vehicle operator's endorsement, or driving
 3 privilege of the person for a period of 6 months; ~~except~~
 4 ~~that if the person is required to complete a treatment~~
 5 ~~course or program, the suspension remains in effect until~~
 6 ~~the course or program is completed.~~ Upon receiving a report
 7 of a conviction or forfeiture of bail or collateral for a
 8 second, third, or subsequent offense within 5 years of the
 9 first offense, the department shall revoke the license,
 10 ~~including any commercial vehicle operator's endorsement, or~~
 11 ~~driving privilege of the person for a period of 1 year,~~
 12 ~~except that if the person is required to complete a~~
 13 ~~treatment course or program, the revocation remains in~~
 14 ~~effect until the course or program is completed 1-YEAR~~
 15 ~~PERIOD PASSES AND THE PERSON HAS NOT COMPLETED AN ALCOHOL~~
 16 ~~INFORMATION COURSE, TREATMENT, OR BOTH, AS ORDERED BY THE~~
 17 ~~SENTENCING COURT, THE LICENSE REVOCATION REMAINS IN EFFECT~~
 18 ~~UNTIL THE COURSE, TREATMENT, OR BOTH ARE COMPLETED.~~

19 (3) The period for all revocations made mandatory by
 20 61-5-205 shall be 1 year except as provided in subsection
 21 (2) of this section.

22 (4) The period of revocation for any person convicted
 23 of any offense which makes mandatory the revocation of the
 24 driver's license commences from date of conviction or
 25 forfeiture of bail."

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

2 **"61-8-714. Penalty for driving under the influence of**
 3 **alcohol or drugs.** (1) A person convicted of a violation of
 4 61-8-401 shall be punished by imprisonment in the county
 5 jail for not less than 24 consecutive hours or more than 60
 6 days; and shall be punished by a fine of not less than \$100
 7 or more than \$500. The jail sentence may not be suspended
 8 unless the judge finds that the imposition of the jail
 9 sentence will pose a risk to the defendant's physical or
 10 mental well-being.

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

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

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

5 (4) In addition to the punishment provided in this
6 section, regardless of disposition, the defendant shall
7 complete an alcohol information course at an alcohol
8 treatment program approved by the department of
9 institutions, which may, IN THE SENTENCING COURT'S
10 DISCRETION AND UPON RECOMMENDATION OF A PROGRAM COUNSELOR,
11 include alcohol or drug treatment, or both; ~~if considered~~
12 ~~necessary by the counselor conducting the program.~~ ON
13 CONVICTION OF A SECOND OR SUBSEQUENT OFFENSE UNDER THIS
14 SECTION, IN ADDITION TO THE PUNISHMENT PROVIDED IN THIS
15 SECTION, REGARDLESS OF DISPOSITION, THE DEFENDANT SHALL
16 COMPLETE AN ALCOHOL INFORMATION COURSE AT AN ALCOHOL
17 TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF
18 INSTITUTIONS, WHICH MUST INCLUDE ALCOHOL OR DRUG TREATMENT
19 OR BOTH. 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 (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
3 conviction for a violation of a similar statute in another
4 state, or a forfeiture of bail or collateral deposited to
5 secure the defendant's appearance in court in this state or
6 another state, which forfeiture has not been vacated. An
7 offender is considered to have been previously convicted for
8 the purposes of this section if less than 5 years have
9 elapsed between the commission of the present offense and a
10 previous conviction. ~~if there has been no additional~~
11 conviction for an offense under this section for a period of
12 5 years after a prior conviction hereunder, then such prior
13 offense shall be expunged from the defendant's record.

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

18 **~~Section 3.~~** ~~Section 61-8-722, MCA, is amended to read:~~

19 "61-8-722. ~~Penalty for driving with excessive blood~~
20 ~~alcohol concentration. (1) A person convicted of a~~
21 ~~violation of 61-8-406 shall be punished by imprisonment for~~
22 ~~not more than 10 days and shall be punished by a fine of not~~
23 ~~less than \$100 or more than \$500.~~

24 (2) ~~On a second conviction of a violation of 61-8-406,~~
25 ~~he shall be punished by a fine of not less than \$300 or more~~

1 than \$500 and by imprisonment for not less than 7 days, at
 2 least 48 consecutive hours of which must be served
 3 consecutively, or more than 30 days and by a fine of not
 4 less than \$300 or more than \$500 6 months. Three days of the
 5 jail sentence may not be suspended unless the judge finds
 6 that the imposition of the jail sentence will pose a risk to
 7 the defendant's physical or mental well-being.

8 {3} On a third or subsequent conviction of a violation
 9 of 61-8-406, he shall be punished by imprisonment for a term
 10 of not less than 30 days, at least 48 consecutive hours or
 11 more than 6 months of which must be served consecutively, or
 12 more than 1 year, and by a fine of not less than \$500 or
 13 more than \$1,000. Notwithstanding any provision to the
 14 contrary providing for suspension of execution of a sentence
 15 imposed under this subsection, the imposition or execution
 16 of the first 10 days of the jail sentence imposed for a
 17 third or subsequent offense that occurred within 5 years of
 18 the first offense may not be deferred or suspended.

19 {4} The provisions of 61-5-205(2), 61-5-208(2), and
 20 61-11-203(2)(d) relating to revocation and suspension of
 21 driver's licenses shall apply to any conviction under
 22 61-8-406.

23 {5} In addition to the punishment provided in this
 24 section, regardless of disposition, the defendant shall
 25 complete an alcohol information course at an alcohol

1 treatment program approved by the department of
 2 institutions, which may include alcohol or drug treatment,
 3 or both, if considered necessary by the counselor conducting
 4 the program. Each counselor providing such education or
 5 treatment shall, at the commencement of the education or
 6 treatment, notify the court that the defendant has been
 7 enrolled in a course or treatment program. If the defendant
 8 fails to attend the course or the treatment program, the
 9 counselor shall notify the court of the failure.

10 {6} For the purpose of determining the number of
 11 convictions under this section, "conviction" means a final
 12 conviction as defined in 45-2-101, in this state, or
 13 conviction for a violation of a similar statute in another
 14 state, or a forfeiture of bail or collateral deposited to
 15 secure the defendant's appearance in court in this state or
 16 another state, which forfeiture has not been vacated. An
 17 offender is considered to have been previously convicted for
 18 the purposes of this section if less than 5 years have
 19 elapsed between the commission of the present offense and a
 20 previous conviction. If there has been no additional
 21 conviction for an offense under this section for a period of
 22 5 years after a prior conviction hereunder, then such prior
 23 offense shall be expunged from the defendant's record.

24 {7} For the purpose of calculating subsequent
 25 convictions under this section, a conviction for a violation

1 ~~of-6i-8-40i-also-constitutes-a-conviction-of-6i-8-406r⁴~~

2 NEW SECTION. **Section 3.** Extension of authority. Any
3 existing authority to make rules on the subject of the
4 provisions of [this act] is extended to the provisions of
5 [this act].

-End-

HOUSE BILL NO. 425

INTRODUCED BY VINCENT, BROOKE, CLARK, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE DRIVING UNDER THE INFLUENCE AND PER SE PENALTY STATUTES RELATING TO ALCOHOL OR DRUG RELATED DRIVING OFFENSES; TO KEEP A DRIVER'S LICENSE SUSPENSION FOR A SECOND OR SUBSEQUENT OFFENSE IN EFFECT UNTIL TREATMENT AN ALCOHOL INFORMATION COURSE AND TREATMENT, IF TREATMENT IS ALSO ORDERED, IS COMPLETED; TO PROVIDE THAT, FOR THE PURPOSE OF CALCULATING THE NUMBER OF CONVICTIONS FOR PURPOSES OF THE DUI PENALTY SECTION, A CONVICTION UNDER ONE OF A PER SE OFFENSE CONSTITUTES A CONVICTION UNDER THE OTHER AND TO PROVIDE THAT, EXCEPT FOR THE FIRST OFFENSE, THE PENALTIES IN THE TWO STATUTES ARE THE SAME DUI OFFENSE SECTION; TO CLARIFY WHEN AN A DUI OFFENDER IS CONSIDERED TO HAVE A PREVIOUS CONVICTION; TO DELETE A REQUIREMENT THAT DUI RECORDS BE EXPUNGED; AND AMENDING SECTIONS 61-5-208, AND 61-8-714, AND 61-8-722, MCA."

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

Section 1. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation. (1) The department may not suspend or revoke a driver's license, commercial vehicle operator's endorsement, or privilege to

drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under subsection (2) of this section, 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

(2) Any person whose license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have such the license, endorsement, or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such the revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not then issue a new license or endorsement unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in this state. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination thereof or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of such conviction or forfeiture of bail

1 or collateral not vacated, suspend the license, including
 2 any commercial vehicle operator's endorsement, or driving
 3 privilege of the person for a period of 6 months ~~except~~
 4 ~~that if the person is required to complete a treatment~~
 5 ~~course or program, the suspension remains in effect until~~
 6 ~~the course or program is completed.~~ Upon receiving a report
 7 of a conviction or forfeiture of bail or collateral for a
 8 second, third, or subsequent offense within 5 years of the
 9 first offense, the department shall revoke the license,
 10 ~~including any commercial vehicle operator's endorsement, or~~
 11 ~~driving privilege of the person for a period of 1 year,~~
 12 ~~except that if the person is required to complete a~~
 13 ~~treatment course or program, the revocation remains in~~
 14 ~~effect until the course or program is completed~~ 1-YEAR
 15 PERIOD PASSES. AND THE PERSON HAS NOT COMPLETED AN ALCOHOL
 16 INFORMATION COURSE, TREATMENT, OR BOTH, AS ORDERED BY THE
 17 SENTENCING COURT, THE LICENSE REVOCATION REMAINS IN EFFECT
 18 UNTIL THE COURSE, TREATMENT, OR BOTH ARE COMPLETED.

19 (3) The period for all revocations made mandatory by
 20 61-5-205 shall be 1 year except as provided in subsection
 21 (2) of this section.

22 (4) The period of revocation for any person convicted
 23 of any offense which makes mandatory the revocation of the
 24 driver's license commences from date of conviction or
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1 **Section 2.** Section 61-8-714, MCA, is amended to read:

2 "61-8-714. Penalty for driving under the influence of
 3 alcohol or drugs. (1) A person convicted of a violation of
 4 61-8-401 shall be punished by imprisonment in the county
 5 jail for not less than 24 consecutive hours or more than 60
 6 days, and shall be punished by a fine of not less than \$100
 7 or more than \$500. The jail sentence may not be suspended
 8 unless the judge finds that the imposition of the jail
 9 sentence will pose a risk to the defendant's physical or
 10 mental well-being.

11 (2) On a second conviction, he shall be punished by a
 12 fine of not less than \$300 or more than \$500 and by
 13 imprisonment for not less than 7 days, at least 48 hours of
 14 which must be served consecutively, or more than 6 months.
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 16 the judge finds that the imposition of the jail sentence
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 20 punished by imprisonment for a term of not less than 30
 21 days, at least 48 hours of which must be served
 22 consecutively, or more than 1 year, ~~to which may be added,~~
 23 ~~in the discretion of the court,~~ and by a fine of not less
 24 than \$500 or more than \$1,000. Notwithstanding any provision
 25 to the contrary providing for suspension of execution of a

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

5 (4) In addition to the punishment provided in this
6 section, regardless of disposition, the defendant shall
7 complete an alcohol information course at an alcohol
8 treatment program approved by the department of
9 institutions, which may, IN THE SENTENCING COURT'S
10 DISCRETION AND UPON RECOMMENDATION OF A PROGRAM COUNSELOR,
11 include alcohol or drug treatment, or both; if considered
12 necessary by the counselor conducting the program. ON
13 CONVICTION OF A SECOND OR SUBSEQUENT OFFENSE UNDER THIS
14 SECTION, IN ADDITION TO THE PUNISHMENT PROVIDED IN THIS
15 SECTION, REGARDLESS OF DISPOSITION, THE DEFENDANT SHALL
16 COMPLETE AN ALCOHOL INFORMATION COURSE AT AN ALCOHOL
17 TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF
18 INSTITUTIONS, WHICH MUST INCLUDE ALCOHOL OR DRUG TREATMENT
19 OR BOTH. 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 (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
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4 state, or a forfeiture of bail or collateral deposited to
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6 another state, which forfeiture has not been vacated. An
7 offender is considered to have been previously convicted for
8 the purposes of this section if less than 5 years have
9 elapsed between the commission of the present offense and a
10 previous conviction. If there has been no additional
11 conviction for an offense under this section for a period of
12 5 years after a prior conviction hereunder, then such prior
13 offense shall be expunged from the defendant's record. IF
14 THERE HAS BEEN NO ADDITIONAL CONVICTION FOR AN OFFENSE UNDER
15 THIS SECTION FOR A PERIOD OF 5 YEARS AFTER A PRIOR
16 CONVICTION HEREUNDER, THEN SUCH PRIOR OFFENSE SHALL BE
17 EXPUNGED FROM THE DEFENDANT'S RECORD.

18 (6) For the purpose of calculating subsequent
19 convictions under this section, a conviction for a violation
20 of 61-8-406 also constitutes a conviction for a violation of
21 61-8-401."

22 ~~Section 3. Section 61-8-722, MCA, is amended to read:~~
23 ~~"61-8-722. Penalty for driving with excessive blood~~
24 ~~alcohol concentration. (1) A person convicted of a~~
25 ~~violation of 61-8-406 shall be punished by imprisonment for~~

1 not more than 10 days and shall be punished by a fine of not
 2 less than \$100 or more than \$500.
 3 {2}--On a second conviction of a violation of 61-8-406,
 4 he shall be punished by a fine of not less than \$300 or more
 5 than \$500 and by imprisonment for not less than 7 days, at
 6 least 48 consecutive hours of which must be served
 7 consecutively, or more than 30 days and by a fine of not
 8 less than \$300 or more than \$500 6 months. Three days of the
 9 jail sentence may not be suspended unless the judge finds
 10 that the imposition of the jail sentence will pose a risk to
 11 the defendant's physical or mental well-being.
 12 {3}--On a third or subsequent conviction of a violation
 13 of 61-8-406, he shall be punished by imprisonment for a term
 14 of not less than 30 days, at least 48 consecutive hours or
 15 more than 6 months of which must be served consecutively, or
 16 more than 1 year, and by a fine of not less than \$500 or
 17 more than \$1,000. Notwithstanding any provision to the
 18 contrary providing for suspension of execution of a sentence
 19 imposed under this subsection, the imposition or execution
 20 of the first 10 days of the jail sentence imposed for a
 21 third or subsequent offense that occurred within 5 years of
 22 the first offense may not be deferred or suspended.
 23 {4}--The provisions of 61-5-205{2}, 61-5-208{2}, and
 24 61-11-203{2}{d}, relating to revocation and suspension of
 25 driver's licenses, shall apply to any conviction under

1 61-8-406.
 2 {5}--In addition to the punishment provided in this
 3 section, regardless of disposition, the defendant shall
 4 complete an alcohol information course at an alcohol
 5 treatment program approved by the department of
 6 institutions, which may include alcohol or drug treatment,
 7 or both, if considered necessary by the counselor conducting
 8 the program. Each counselor providing such education or
 9 treatment shall, at the commencement of the education or
 10 treatment, notify the court that the defendant has been
 11 enrolled in a course or treatment program. If the defendant
 12 fails to attend the course or the treatment program, the
 13 counselor shall notify the court of the failure.
 14 {6}--For the purpose of determining the number of
 15 convictions under this section, "conviction" means a final
 16 conviction as defined in 45-2-101, in this state, or
 17 conviction for a violation of a similar statute in another
 18 state, or a forfeiture of bail or collateral deposited to
 19 secure the defendant's appearance in court in this state or
 20 another state, which forfeiture has not been vacated. An
 21 offender is considered to have been previously convicted for
 22 the purposes of this section if less than 5 years have
 23 elapsed between the commission of the present offense and a
 24 previous conviction, if there has been no additional
 25 conviction for an offense under this section for a period of

1 5--years-after-a-prior-conviction-hereunder,-then-such-prior
2 offense-shall-be-expunged-from-the-defendant's-record,

3 ~~{7)--For--the--purpose--of--calculating--subsequent~~
4 ~~convictions-under-this-section,-a-conviction-for-a-violation~~
5 ~~of-61-8-401-also-constitutes-a-conviction-of-61-8-406."~~

6 NEW SECTION. **Section 3.** Extension of authority. Any
7 existing authority to make rules on the subject of the
8 provisions of [this act] is extended to the provisions of
9 [this act].

-End-

SENATE STANDING COMMITTEE REPORT

March 20, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 425 (third reading copy -- blue), respectfully report that HB 425 be amended and as so amended be concurred in:

Sponsor: Vincent ()

1. Title, lines 17 and 18.

Following: "CONVICTION;" on line 17

Strike: remainder of line 17 through "EXPUNGED" on line 18

Insert: "PROVIDING THAT DUI PRIOR CONVICTION RECORDS MAY NOT BE
EXPUNGED; RESTRICTING ACCESS TO THE RECORDS"

2. Page 5, line 10.

Strike: "PROGRAM"

Insert: "certified chemical dependency"

3. Page 5, line 24.

Following: "failure."

Insert: "As long as the alcohol information course and treatment program are approved as provided in this subsection, the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor."

4. Page 6, lines 16 and 17.

Following: "THEN" on line 16

Strike: remainder of line 16 through "RECORD" on line 17

Insert: "all records and data relating to the prior conviction are confidential criminal justice information as defined in 44-5-103 and public access to the information may only be obtained by district court order upon good cause shown"

AND AS AMENDED BE CONCURRED IN

Signed:


Bruce D. Crippen, Chairman

HB 425

SENATE

1 HOUSE BILL NO. 425

2 INTRODUCED BY VINCENT, BROOKE, CLARK, SPAETH

3
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 KEEP A
7 DRIVER'S LICENSE SUSPENSION FOR A SECOND OR SUBSEQUENT
8 OFFENSE IN EFFECT UNTIL ~~TREATMENT~~ AN ALCOHOL INFORMATION
9 COURSE AND TREATMENT, IF TREATMENT IS ALSO ORDERED, IS
10 COMPLETED; TO PROVIDE THAT, FOR THE PURPOSE OF CALCULATING
11 THE NUMBER OF CONVICTIONS FOR PURPOSES OF THE DUI PENALTY
12 SECTION, A CONVICTION UNDER ONE OF A PER SE OFFENSE
13 CONSTITUTES A CONVICTION UNDER THE OTHER AND TO PROVIDE
14 THAT, EXCEPT FOR THE FIRST OFFENSE, THE PENALTIES IN THE TWO
15 STATUTES ARE THE SAME DUI OFFENSE SECTION; TO CLARIFY WHEN
16 AN A DUI OFFENDER IS CONSIDERED TO HAVE A PREVIOUS
17 CONVICTION; TO DELETE A REQUIREMENT THAT DUI RECORDS BE
18 EXPUNGED PROVIDING THAT DUI PRIOR CONVICTION RECORDS MAY NOT
19 BE EXPUNGED; RESTRICTING ACCESS TO THE RECORDS; AND AMENDING
20 SECTIONS 61-5-208, AND 61-8-714, AND 61-8-722, MCA."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:23 **Section 1.** Section 61-5-208, MCA, is amended to read:24 "61-5-208. Period of suspension or revocation. (1) The
25 department may not suspend or revoke a driver's license,

1 commercial vehicle operator's endorsement, or privilege to
2 drive a motor vehicle on the public highways for a period of
3 more than 1 year, except as permitted under subsection (2)
4 of this section, 61-5-207, 61-5-212, 61-6-123, and
5 61-11-211.

6 (2) Any person whose license, commercial vehicle
7 operator's endorsement, or privilege to drive a motor
8 vehicle on the public highways has been suspended or revoked
9 is not entitled to have such the license, endorsement, or
10 privilege renewed or restored unless the revocation was for
11 a cause which has been removed, except that after the
12 expiration of the period of such the revocation or
13 suspension, the person may make application for a new
14 license or endorsement as provided by law but the department
15 may not then issue a new license or endorsement unless and
16 until it is satisfied, after investigation of the driving
17 ability of the person and upon a showing by its records or
18 other sufficient evidence, that the person is eligible to be
19 licensed to drive in this state. When any person is
20 convicted or forfeits bail or collateral not vacated for the
21 offense of operating or being in actual physical control of
22 a motor vehicle while under the influence of alcohol or any
23 drug or a combination thereof or for the offense of
24 operation of a motor vehicle by a person with alcohol
25 concentration of 0.10 or more, the department shall, upon

1 receiving a report of such conviction or forfeiture of bail
 2 or collateral not vacated, suspend the license, including
 3 any commercial vehicle operator's endorsement, or driving
 4 privilege of the person for a period of 6 months; ~~except~~
 5 ~~that if the person is required to complete a treatment~~
 6 ~~course or program, the suspension remains in effect until~~
 7 ~~the course or program is completed.~~ Upon receiving a report
 8 of a conviction or forfeiture of bail or collateral for a
 9 second, third, or subsequent offense within 5 years of the
 10 first offense, the department shall revoke the license,
 11 including any commercial vehicle operator's endorsement, or
 12 driving privilege of the person for a period of 1 year,
 13 except that if the ~~person is required to complete a~~
 14 ~~treatment course or program, the revocation remains in~~
 15 ~~effect until the course or program is completed~~ 1-YEAR
 16 PERIOD PASSES AND THE PERSON HAS NOT COMPLETED AN ALCOHOL
 17 INFORMATION COURSE, TREATMENT, OR BOTH, AS ORDERED BY THE
 18 SENTENCING COURT, THE LICENSE REVOCATION REMAINS IN EFFECT
 19 UNTIL THE COURSE, TREATMENT, OR BOTH ARE COMPLETED.

20 (3) The period for all revocations made mandatory by
 21 61-5-205 shall be 1 year except as provided in subsection
 22 (2) of this section.

23 (4) The period of revocation for any person convicted
 24 of any offense which makes mandatory the revocation of the
 25 driver's license commences from date of conviction or

1 forfeiture of bail."

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

3 "61-8-714. Penalty for driving under the influence of
 4 alcohol or drugs. (1) A person convicted of a violation of
 5 61-8-401 shall be punished by imprisonment in the county
 6 jail for not less than 24 consecutive hours or more than 60
 7 days; and shall be punished by a fine of not less than \$100
 8 or more than \$500. The jail sentence may not be suspended
 9 unless the judge finds that the imposition of the jail
 10 sentence will pose a risk to the defendant's physical or
 11 mental well-being.

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

20 (3) On the third or subsequent conviction, he shall be
 21 punished by imprisonment for a term of not less than 30
 22 days, at least 48 hours of which must be served
 23 consecutively, or more than 1 year, ~~to which may be added,~~
 24 ~~in the discretion of the court,~~ and by a fine of not less
 25 than \$500 or more than \$1,000. Notwithstanding any provision

1 to the contrary providing for suspension of execution of a
 2 sentence imposed under this subsection, the imposition or
 3 execution of the first 10 days of the jail sentence imposed
 4 for a third or subsequent offense that occurred within 5
 5 years of the first offense may not be deferred or suspended.

6 (4) In addition to the punishment provided in this
 7 section, regardless of disposition, the defendant shall
 8 complete an alcohol information course at an alcohol
 9 treatment program approved by the department of
 10 institutions, which may, IN THE SENTENCING COURT'S
 11 DISCRETION AND UPON RECOMMENDATION OF A PROGRAM CERTIFIED
 12 CHEMICAL DEPENDENCY COUNSELOR, include alcohol or drug
 13 treatment, or both, ~~if considered necessary by the counselor~~
 14 ~~conducting the program.~~ ON CONVICTION OF A SECOND OR
 15 SUBSEQUENT OFFENSE UNDER THIS SECTION, IN ADDITION TO THE
 16 PUNISHMENT PROVIDED IN THIS SECTION, REGARDLESS OF
 17 DISPOSITION, THE DEFENDANT SHALL COMPLETE AN ALCOHOL
 18 INFORMATION COURSE AT AN ALCOHOL TREATMENT PROGRAM APPROVED
 19 BY THE DEPARTMENT OF INSTITUTIONS, WHICH MUST INCLUDE
 20 ALCOHOL OR DRUG TREATMENT OR BOTH. Each counselor providing
 21 such education or treatment shall, at the commencement of
 22 the education or treatment, notify the court that the
 23 defendant has been enrolled in a course or treatment
 24 program. If the defendant fails to attend the course or the
 25 treatment program, the counselor shall notify the court of

1 the failure. AS LONG AS THE ALCOHOL INFORMATION COURSE AND
 2 TREATMENT PROGRAM ARE APPROVED AS PROVIDED IN THIS
 3 SUBSECTION, THE DEFENDANT MAY ATTEND THE INFORMATION COURSE
 4 AND TREATMENT PROGRAM OF HIS CHOICE. THE TREATMENT PROVIDED
 5 TO THE DEFENDANT AT A TREATMENT PROGRAM MUST BE AT A LEVEL
 6 APPROPRIATE TO HIS ALCOHOL PROBLEM, AS DETERMINED BY THE
 7 JUDGE BASED UPON THE RECOMMENDATION FROM THE CERTIFIED
 8 CHEMICAL DEPENDENCY COUNSELOR.

9 (5) For the purpose of determining the number of
 10 convictions under this section, "conviction" means a final
 11 conviction, as defined in 45-2-101, in this state, or
 12 conviction for a violation of a similar statute in another
 13 state, or a forfeiture of bail or collateral deposited to
 14 secure the defendant's appearance in court in this state or
 15 another state, which forfeiture has not been vacated. An
 16 offender is considered to have been previously convicted for
 17 the purposes of this section if less than 5 years have
 18 elapsed between the commission of the present offense and a
 19 previous conviction. ~~if there has been no additional~~
 20 ~~conviction for an offense under this section for a period of~~
 21 ~~5 years after a prior conviction hereunder, then such prior~~
 22 ~~offense shall be expunged from the defendant's record.~~ IF
 23 THERE HAS BEEN NO ADDITIONAL CONVICTION FOR AN OFFENSE UNDER
 24 THIS SECTION FOR A PERIOD OF 5 YEARS AFTER A PRIOR
 25 CONVICTION HEREUNDER, THEN ~~SUCH PRIOR OFFENSE SHALL BE~~

EXPUNGED FROM THE DEFENDANT'S RECORD ALL RECORDS AND DATA RELATING TO THE PRIOR CONVICTION ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION AS DEFINED IN 44-5-103 AND PUBLIC ACCESS TO THE INFORMATION MAY ONLY BE OBTAINED BY DISTRICT COURT ORDER UPON GOOD CAUSE SHOWN.

{6} For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401."

Section 3. Section 61-8-722, MCA, is amended to read:

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

(2) On a second conviction of a violation of 61-8-406, he shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 consecutive hours of which must be served consecutively, or more than 30 days and by a fine of not less than \$300 or more than \$500 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On a third or subsequent conviction of a violation

of 61-8-406, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 consecutive hours or more than 6 months of which must be served consecutively, or more than 1 year, and by a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

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

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

1 counselor shall notify the court of the failure.
2 {6}--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
5 conviction for a violation of a similar statute in another
6 state or a forfeiture of bail or collateral deposited to
7 secure the defendant's appearance in court in this state or
8 another state, which forfeiture has not been vacated. An
9 offender is considered to have been previously convicted for
10 the purposes of this section if less than 5 years have
11 elapsed between the commission of the present offense and a
12 previous conviction, if there has been no additional
13 conviction for an offense under this section for a period of
14 5 years after a prior conviction hereunder, then such prior
15 offense shall be expunged from the defendant's record.
16 {7}--For the purpose of calculating subsequent
17 convictions under this section, a conviction for a violation
18 of 61-8-401 also constitutes a conviction of 61-8-406."

19 NEW SECTION. **Section 3.** Extension of authority. Any
20 existing authority to make rules on the subject of the
21 provisions of [this act] is extended to the provisions of
22 [this act].

-End-