

HOUSE BILL 396

Introduced by Whalen, et al.

1/30	Introduced
1/30	Referred to Judiciary
1/30	Fiscal Note Requested
1/30	First Reading
2/03	Fiscal Note Received
2/04	Hearing
2/05	Fiscal Note Printed
2/09	Committee Report--Bill Passed as Amended
2/13	2nd Reading Passed
2/16	3rd Reading Passed
	Transmitted to Senate
2/20	First Reading
2/20	Referred to Judiciary
3/19	Hearing
3/26	Tabled in Committee

1 House BILL NO. 396
2 INTRODUCED BY Whalen Menahan
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT
5 DEPARTMENT OF JUSTICE AND COURT RECORDS OF A SUSPENSION OF
6 THE DRIVER'S LICENSE OF A PERSON FOR REFUSAL TO SUBMIT TO A
7 BLOOD ALCOHOL CONTENT TEST CONSTITUTE CONFIDENTIAL CRIMINAL
8 JUSTICE INFORMATION AND MAY BE DISCLOSED TO THE PUBLIC ONLY
9 BY COURT ORDER ON A SHOWING OF GOOD CAUSE; PROVIDING THAT
10 THE SUSPENSION MAY NOT BE USED TO DENY, LIMIT, OR RAISE THE
11 PREMIUM ON MOTOR VEHICLE LIABILITY INSURANCE; AND AMENDING
12 SECTION 61-8-402, MCA."

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

15 **Section 1.** Section 61-8-402, MCA, is amended to read:

16 "61-8-402. Blood, breath, or urine tests. (1) Any
17 person who operates or is in actual physical control of a
18 vehicle upon ways of this state open to the public ~~shall--be~~
19 deemed is considered to have given consent, subject to the
20 provisions of 61-8-401, to a test of his the person's blood,
21 breath, or urine for the purpose of determining any measured
22 amount or detected presence of alcohol in his the person's
23 body if arrested by a peace officer for driving or for being
24 in actual physical control of a vehicle while under the
25 influence of alcohol, drugs, or a combination of the two.

1 The test ~~shall~~ must be administered at the direction of a
2 peace officer having reasonable grounds to believe the
3 person to have been driving or in actual physical control of
4 a vehicle upon ways of this state open to the public, while
5 under the influence of alcohol, drugs, or a combination of
6 the two. The arresting officer may designate which test or
7 tests ~~shall~~ must be administered.

8 (2) Any person who is unconscious or who is otherwise
9 in a condition rendering him the person incapable of refusal
10 ~~shall--be--deemed~~ is considered not to have withdrawn the
11 consent provided by subsection (1) of this section.

12 (3) If a driver under arrest refuses upon the request
13 of a peace officer to submit to a test designated by the
14 arresting officer as provided in subsection (1), ~~none--shall~~
15 a test may not be given, but the officer shall, on behalf of
16 the department, immediately seize his the person's driver's
17 license. The peace officer shall forward the license to the
18 department, along with a sworn report that he the peace
19 officer had reasonable grounds to believe the arrested
20 person had been driving or was in actual physical control of
21 a vehicle upon ways of this state open to the public, while
22 under the influence of alcohol, drugs, or a combination of
23 the two, and that the person had refused to submit to the
24 test upon the request of the peace officer. Upon receipt of
25 the report, the department shall suspend the license for the

1 period provided in subsection (5).

2 (4) Upon seizure of a driver's license, the peace
3 officer shall issue, on behalf of the department, a
4 temporary driving permit, which is valid for 72 hours after
5 the time of issuance.

6 (5) The following suspension and revocation periods are
7 applicable upon refusal to submit to a test:

8 (a) upon a first refusal, a suspension of 90 days with
9 no provision for a restricted probationary license;

10 (b) upon a second or subsequent refusal within 5 years
11 of a previous refusal, as determined from the records of the
12 department, a revocation of 1 year with no provision for a
13 restricted probationary license.

14 (6) A nonresident driver's license seized under this
15 section must be sent by the department to the licensing
16 authority of the nonresident's home state with a report of
17 the nonresident's refusal to submit to a test.

18 (7) All such suspensions are subject to review as
19 hereinafter provided in this part.

20 (8) Department and court records of suspension of the
21 license for refusal to submit to a test constitute
22 confidential criminal justice information, as defined in
23 44-5-103, and public access to the records may only be
24 obtained by a district court order upon good cause shown."

25 **NEW SECTION. Section 2. Effect of license suspension**

1 for refusal to take test for driving under the influence. An
2 insurer may not use a driver's license suspension for
3 failure to take a test under 61-8-402 as a basis for
4 denying, limiting, charging a higher premium for, or raising
5 the premium on motor vehicle liability insurance, whether or
6 not the driver is convicted of an underlying offense under
7 61-8-401 or 61-8-406.

8 **NEW SECTION. Section 3. Codification instruction.**
9 [Section 2] is intended to be codified as an integral part
10 of Title 33, chapter 23, part 2, and the provisions of Title
11 33, chapter 23, part 2, apply to [section 2].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0396, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act providing that Department of Justice and court records of a suspension of the driver's license of a person for refusal to submit to a blood alcohol content test constitute confidential criminal justice information and may be disclosed to the public only by court order on a showing of good cause.

ASSUMPTIONS:

1. The proposed bill will have minimal fiscal impact on the Department of Justice.
2. The proposed bill will have no fiscal impact on the state judicial system
3. The fiscal impact, if any, on the insurance industry in Montana is not subject to reasonable estimate.

FISCAL IMPACT:

Minimal.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Minimal.



2-2-93

DAVE LEWIS, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

2-5-93

TIMOTHY WHALEN, PRIMARY SPONSOR

DATE

Fiscal Note for HB0396, as introduced

HB 396

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 396

INTRODUCED BY WHALEN, MENAHAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT DEPARTMENT OF JUSTICE AND COURT RECORDS OF A SUSPENSION OF THE DRIVER'S LICENSE OF A PERSON FOR REFUSAL TO SUBMIT TO A BLOOD ALCOHOL CONTENT TEST CONSTITUTE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION AND MAY BE DISCLOSED TO THE PUBLIC ONLY BY COURT ORDER ON A SHOWING OF GOOD CAUSE; PROVIDING THAT THE SUSPENSION MAY NOT BE USED TO DENY, LIMIT, OR RAISE THE PREMIUM ON MOTOR VEHICLE LIABILITY INSURANCE; AND AMENDING SECTION 61-8-402, MCA."

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

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood, breath, or urine tests. (1) Any person who operates or is in actual physical control of a vehicle upon ways of this state open to the public ~~shall--be~~ deemed is considered to have given consent, subject to the provisions of 61-8-401, to a test of his the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in his the person's body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two.

The test ~~shall~~ must be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which test or tests ~~shall~~ must be administered.

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

(3) If a driver under arrest refuses upon the request of a peace officer to submit to a test designated by the arresting officer as provided in subsection (1), ~~none--shall~~ a test may not be given, but the officer shall, on behalf of the department, immediately seize his the person's driver's license. The peace officer shall forward the license to the department, along with a sworn report that he the peace officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, and that the person had refused to submit to the test upon the request of the peace officer. Upon receipt of the report, the department shall suspend the license for the

period provided in subsection (5).

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

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

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

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

(6) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to a test.

(7) All such suspensions are subject to review as hereinafter provided in this part.

(8) Department UNLESS AND UNTIL THERE IS A CONVICTION ON THE CHARGE IN RELATION TO WHICH THE TEST WAS REQUESTED THAT HAS BECOME FINAL, DEPARTMENT and court records of suspension of the license for refusal to submit to a test constitute confidential criminal justice information, as defined in 44-5-103, and public access to the records may

only be obtained by a district court order upon good cause shown."

NEW SECTION. Section 2. Effect of license suspension for refusal to take test for driving under the influence. An insurer may not use a driver's license suspension for failure to take a test under 61-8-402 as a basis for denying, limiting, charging a higher premium for, or raising the premium on motor vehicle liability insurance, whether or not--the-driver-is-convicted IF THERE IS NO FINAL CONVICTION of an underlying offense under 61-8-401 or 61-8-406.

NEW SECTION. Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 33, chapter 23, part 2, and the provisions of Title 33, chapter 23, part 2, apply to [section 2].

-End-

HOUSE BILL NO. 396

INTRODUCED BY WHELEN, MENAHAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT DEPARTMENT OF JUSTICE AND COURT RECORDS OF A SUSPENSION OF THE DRIVER'S LICENSE OF A PERSON FOR REFUSAL TO SUBMIT TO A BLOOD ALCOHOL CONTENT TEST CONSTITUTE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION AND MAY BE DISCLOSED TO THE PUBLIC ONLY BY COURT ORDER ON A SHOWING OF GOOD CAUSE; PROVIDING THAT THE SUSPENSION MAY NOT BE USED TO DENY, LIMIT, OR RAISE THE PREMIUM ON MOTOR VEHICLE LIABILITY INSURANCE; AND AMENDING SECTION 61-8-402, MCA."

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

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood, breath, or urine tests. (1) Any person who operates or is in actual physical control of a vehicle upon ways of this state open to the public ~~shall--be deemed~~ is considered to have given consent, subject to the provisions of 61-8-401, to a test of his the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in his the person's body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two.

The test ~~shall~~ must be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which test or tests ~~shall~~ must be administered.

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

(3) If a driver under arrest refuses upon the request of a peace officer to submit to a test designated by the arresting officer as provided in subsection (1), ~~none--shall~~ a test may not be given, but the officer shall, on behalf of the department, immediately seize his the person's driver's license. The peace officer shall forward the license to the department, along with a sworn report that he the peace officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, and that the person had refused to submit to the test upon the request of the peace officer. Upon receipt of the report, the department shall suspend the license for the

period provided in subsection (5).

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

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

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

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

(6) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to a test.

(7) All such suspensions are subject to review as hereinafter provided in this part.

(8) Department UNLESS AND UNTIL THERE IS A CONVICTION ON THE CHARGE IN RELATION TO WHICH THE TEST WAS REQUESTED THAT HAS BECOME FINAL, DEPARTMENT and court records of suspension of the license for refusal to submit to a test constitute confidential criminal justice information, as defined in 44-5-103, and public access to the records may

only be obtained by a district court order upon good cause shown."

NEW SECTION. Section 2. Effect of license suspension for refusal to take test for driving under the influence. An insurer may not use a driver's license suspension for failure to take a test under 61-8-402 as a basis for denying, limiting, charging a higher premium for, or raising the premium on motor vehicle liability insurance--whether or not--the-driver-is-convicted IF THERE IS NO FINAL CONVICTION of an underlying offense under 61-8-401 or 61-8-406.

NEW SECTION. Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 33, chapter 23, part 2, and the provisions of Title 33, chapter 23, part 2, apply to [section 2].

-End-