

HOUSE BILL NO. 483
INTRODUCED BY TOOLE, FAGG

IN THE HOUSE

FEBRUARY 5, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
FEBRUARY 19, 1993	SECOND READING, DO PASS.
	ON MOTION, REREFERRED TO COMMITTEE ON APPROPRIATIONS.
FEBRUARY 20, 1993	ENGROSSING REPORT.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
MARCH 17, 1993	PRINTING REPORT.
MARCH 25, 1993	SECOND READING, DO PASS.
	ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING.
	THIRD READING, PASSED. AYES, 88; NOES, 11.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 26, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON HIGHWAYS & TRANSPORTATION.
	FIRST READING.
APRIL 13, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 14, 1993	SECOND READING, CONCURRED IN.

APRIL 15, 1993

THIRD READING, CONCURRED IN.
AYES, 34; NOES, 13.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 16, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 483
2 INTRODUCED BY David Erik Jorgensen
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON
5 OPERATING A VEHICLE UPON THE WAYS OF THE STATE OPEN TO THE
6 PUBLIC CONSENTS TO MORE THAN ONE TEST FOR THE PRESENCE OF
7 ALCOHOL OR DRUGS; PROVIDING THAT AN ALCOHOL TEST BE GIVEN
8 FIRST AND THAT A DRUG TEST MAY NOT BE GIVEN IF THE ALCOHOL
9 TEST IS FAILED; AND AMENDING SECTIONS 61-8-402, 61-8-403,
10 61-8-404, AND 61-8-405, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

14 "61-8-402. Blood, breath, or urine tests. (1) Any
15 person who operates or is in actual physical control of a
16 vehicle upon ways of this state open to the public ~~shall--be~~
17 deemed is considered to have given consent, subject to the
18 provisions of 61-8-401, to a test or tests of his the
19 person's blood, breath, or urine for the purpose of
20 determining any measured amount or detected presence of
21 alcohol in his the person's body if arrested by a peace
22 officer for driving or for being in actual physical control
23 of a vehicle while under the influence of alcohol, drugs, or
24 a combination of the two. The test or tests shall must be
25 administered at the direction of a peace officer having

1 reasonable grounds to believe the person to have been
2 driving or in actual physical control of a vehicle upon ways
3 of this state open to the public, while under the influence
4 of alcohol, drugs, or a combination of the two. The
5 arresting officer may designate which test or tests ~~shall--be~~
6 are administered. A test for alcohol must be given first,
7 whether or not that test also tests for drugs, and if the
8 test shows an alcohol concentration of 0.10 or more, a test
9 for drugs may not be given.

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

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

1 submit to the test or tests upon the request of the peace
2 officer. Upon receipt of the report, the department shall
3 suspend the license for the period provided in subsection
4 (5).

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

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

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

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

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

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

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

24 "61-8-403. Right of appeal to court. The department
25 shall immediately notify any person whose license or

1 privilege to drive has been suspended or revoked,--as
2 hereinbefore--authorized, in writing, and such the person
3 ~~shall have~~ has the right to file a petition within 30 days
4 thereafter after notice for a hearing in the matter in the
5 district court in the county wherein--such in which the
6 person resides or in the district court in the county in
7 which this arrest was made. Such The court is--hereby--vested
8 with has jurisdiction and it shall be--its-duty-to set the
9 matter for hearing upon 10 days' written notice to the
10 county attorney of the county wherein in which the appeal is
11 filed, and such the county attorney shall represent the
12 state--and--thereupon--the. The court shall take testimony and
13 examine into the facts of the case, except that the issues
14 ~~shall are~~ are be limited to whether a peace officer had
15 reasonable grounds to believe the person had been driving or
16 was in actual physical control of a vehicle upon ways of
17 this state open to the public, while under the influence of
18 alcohol, drugs, or a combination of the two, whether the
19 person was placed under arrest, and whether such the person
20 refused to submit to the test or tests. The court shall
21 thereupon determine whether the petitioner is entitled to a
22 license or is subject to suspension as--heretofore--provided."

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

24 "61-8-404. Evidence admissible -- conditions of
25 admissibility. (1) Upon the trial of any criminal action or

1 other proceeding arising out of acts alleged to have been
2 committed by any person in violation of 61-8-401 or
3 61-8-406:

4 (a) evidence of any measured amount or detected
5 presence of alcohol in the person at the time of the act
6 alleged, as shown by an analysis of his the person's blood,
7 breath, or urine, is admissible; and

8 (b) a report of the facts and results of any test or
9 tests of a person's blood, breath, or urine administered
10 under 61-8-402 is admissible in evidence if:

11 (i) the breath test was performed by a person certified
12 by the forensic sciences division of the department to
13 administer breath tests or the blood or urine test was a
14 laboratory analysis and the analysis was done in a
15 laboratory operated by the department or by any other
16 laboratory or facility certified or exempt from
17 certification under the rules of the department; and

18 (ii) the test was on a blood sample, the person
19 withdrawing the blood was competent to do so under
20 61-8-405(1).

21 (2) If the person under arrest refused to submit to the
22 test or tests as provided in this section, proof of refusal
23 is admissible in any criminal action or proceeding arising
24 out of acts alleged to have been committed while the person
25 was driving or in actual physical control of a vehicle upon

1 the ways of this state open to the public, while under the
2 influence of alcohol, drugs, or a combination of the two.

3 (3) The provisions of this part do not limit the
4 introduction of any other competent evidence bearing on the
5 question of whether the person was under the influence of
6 alcohol, drugs, or a combination of the two."

7 **Section 4.** Section 61-8-405, MCA, is amended to read:

8 "61-8-405. Administration of tests. (1) Only a
9 physician or registered nurse or other qualified person
10 under the supervision and direction of a physician or
11 registered nurse acting at the request of a peace officer
12 may withdraw blood for the purpose of determining any
13 measured amount or detected presence of alcohol in the
14 person. This limitation does not apply to the taking of
15 breath or urine specimens.

16 (2) The person may, at his the person's own expense,
17 have a physician or registered nurse of his the person's own
18 choosing administer a test, in addition to any administered
19 at the direction of a peace officer, for the purpose of
20 determining any measured amount or detected presence of
21 alcohol in the person at the time alleged, as shown by
22 analysis of his the person's blood, breath, or urine. The
23 failure or inability to obtain an additional test by a
24 person does not preclude the admissibility in evidence of
25 the test or tests taken at the direction of a peace officer.

1 (3) Upon the request of the person tested, full
2 information concerning the test or tests taken at the
3 direction of the peace officer must be made available to him
4 the person or his the person's attorney.

5 (4) No A physician or registered nurse or other
6 qualified person under the supervision and direction of a
7 physician or registered nurse ~~shall~~ does not incur any civil
8 or criminal liability as a result of the proper
9 administering of a blood test when requested in writing by a
10 peace officer to administer such a test.

11 (5) If a test given under 61-8-402 or 61-8-806 is a
12 test of urine, the person tested must be given such privacy
13 in the taking of the urine specimen as that will ensure the
14 integrity of the specimen and, at the same time, maintain
15 the dignity of the individual involved.

16 (6) The department in cooperation with any appropriate
17 agency shall adopt uniform rules for the giving of tests and
18 may require certification of training to administer the
19 tests as considered necessary."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 483

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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--be~~ are administered. A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an alcohol concentration of 0.10 or more, a test for drugs may not be given.

(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 or tests 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

1 submit to the test or tests upon the request of the peace
2 officer. Upon receipt of the report, the department shall
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6 officer shall issue, on behalf of the department, a
7 temporary driving permit, which is valid for 72 hours after
8 the time of issuance.

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10 applicable upon refusal to submit to a test or tests:

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16 restricted probationary license.

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18 section must be sent by the department to the licensing
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8 ~~with has~~ jurisdiction and it shall ~~be its duty to~~ set the
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13 EXISTS THAT TENDS TO ESTABLISH THAT THE PERSON WAS UNDER THE
14 INFLUENCE OF A DRUG OR DRUGS WHILE DRIVING OR IN ACTUAL
15 PHYSICAL CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE.

16 (b) a report of the facts and results of any test or
17 tests of a person's blood, breath, or urine administered
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19 (i) the breath test was performed by a person certified
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25 certification under the rules of the department; and

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10 influence of alcohol, drugs, or a combination of the two.

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THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

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(ii) the test was on a blood sample, the person withdrawing the blood was competent to do so under 61-8-405(1).

(2) If the person under arrest refused to submit to the test or tests as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two."

Section 4. Section 61-8-405, MCA, is amended to read:

"61-8-405. Administration of tests. (1) Only a physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining any measured amount or detected presence of alcohol in the person. This limitation does not apply to the taking of breath or urine specimens.

(2) The person may, at his the person's own expense, have a physician or registered nurse of his the person's own

1 choosing administer a test, in addition to any administered
 2 at the direction of a peace officer, for the purpose of
 3 determining any measured amount or detected presence of
 4 alcohol OR DRUGS in the person at the time alleged, as shown
 5 by analysis of his the person's blood, breath, or urine. The
 6 failure or inability to obtain an additional test by a
 7 person does not preclude the admissibility in evidence of
 8 the test or tests taken at the direction of a peace officer.

9 (3) Upon the request of the person tested, full
 10 information concerning the test or tests taken at the
 11 direction of the peace officer must be made available to him
 12 the person or his the person's attorney.

13 (4) No A physician or registered nurse or other
 14 qualified person under the supervision and direction of a
 15 physician or registered nurse shall does not incur any civil
 16 or criminal liability as a result of the proper
 17 administering of a blood test when requested in writing by a
 18 peace officer to administer such a test.

19 (5) If a test given under 61-8-402 or 61-8-806 is a
 20 test of urine, the person tested must be given such privacy
 21 in the taking of the urine specimen as that will ensure the
 22 integrity of the specimen and, at the same time, maintain
 23 the dignity of the individual involved.

24 (6) The department in cooperation with any appropriate
 25 agency shall adopt uniform rules for the giving of tests and

1 may require certification of training to administer the
 2 tests as considered necessary."

-End-