

SENATE BILL NO. 189

INTRODUCED BY

Weldon Harding

Henry Ruess

BY REQUEST OF THE DEPARTMENT OF JUSTICE

Judy Munsick

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING NOTICE AT THE TIME OF SEIZURE OF A DRIVER'S LICENSE BY A PEACE OFFICER OF A RIGHT TO A HEARING UPON SUSPENSION OR REVOCATION OF THE LICENSE; EXTENDING THE EFFECTIVE PERIOD FOR A TEMPORARY DRIVING PERMIT FROM 72 HOURS TO 5 DAYS; AUTHORIZING A DISTRICT COURT TO STAY SUSPENSION OR REVOCATION ACTION PENDING THE HEARING; AUTHORIZING THE DEPARTMENT OF JUSTICE TO SUSPEND OR REVOKE A DRIVER'S LICENSE THAT IS SEIZED BY A TRIBAL PEACE OFFICER; AMENDING SECTIONS 61-8-402 AND 61-8-403, MCA; AND PROVIDING EFFECTIVE DATES."

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 A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent, subject to the provisions of 61-8-401, to a test or tests of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in 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 or tests must be administered at the direction of a peace officer having who has reasonable grounds to believe that the person ~~to have~~ has been driving or has been 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 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 A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1) ~~of this section.~~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

1 designated by the arresting officer as provided in subsection (1), a test may not be given, but the officer
 2 shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall
 3 immediately forward the license to the department, along with a sworn report noting that the peace officer
 4 had reasonable grounds to believe that the arrested person had been driving or was in actual physical
 5 control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs,
 6 or a combination of the two, and noting that the person ~~had~~ refused to submit to the test or tests upon the
 7 request of the peace officer. Upon receipt of the report, the department shall suspend the license for the
 8 period provided in subsection (5).

9 (4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department,
 10 a temporary driving permit, which is valid for ~~72 hours after the time of~~ 5 days following the date of
 11 issuance and shall provide the driver with written notice of the license suspension or revocation and the
 12 right to a hearing provided in 61-8-403.

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

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

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

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

22 (7) A driver's license seized within the exterior boundaries of a federally recognized Indian
 23 reservation in this state by a peace officer acting under the authority of a tribal government with jurisdiction
 24 over the reservation may be received and acted upon by the department if:

25 (a) the tribal government has adopted an ordinance substantially similar to the provisions of this
 26 section; and

27 (b) the department and the tribal government have entered into a state-tribal cooperative agreement
 28 pursuant to Title 18, chapter 11, part 1.

29 ~~(7)~~ (8) All suspensions are subject to review as provided in this part."
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1 **Section 2.** Section 61-8-403, MCA, is amended to read:

2 "**61-8-403. Right of appeal to court.** ~~(1) The department shall immediately notify in writing any~~
 3 ~~person whose license or privilege to drive has been suspended or revoked, and the person may file a~~
 4 ~~petition within~~ Within 30 days after notice for of the right to a hearing on the matter has been given by a
 5 peace officer, a person may file a petition to challenge the license suspension or revocation in the district
 6 court in the county in which where the person resides or in the district court in the county in which this
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8 (2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10
 9 days' written notice of the hearing to the county attorney of the county in which where the appeal is filed
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 12 county attorney and the city attorney cannot agree on who will represent the state, the county attorney
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14 (3) Upon request of the petitioner, the court may order the department to return the seized license
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21 (ii) the person was placed under arrest; and whether

22 (iii) the person refused to submit to the test or tests.

23 (b) The court shall determine whether the petitioner is entitled to a license or whether the
 24 petitioner's license is subject to suspension or revocation."

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 26 **NEW SECTION. Section 3. Notification of tribal governments.** The secretary of state shall send
 27 a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal
 28 chairperson of the Little Shell tribe.

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 30 **NEW SECTION. Section 4. Effective dates.** (1) [Section 1(7), section 3, and this section] are

1 effective on passage and approval.

2 (2) [Section 1(1) through (6) and (8) and section 2] are effective October 1, 1995.

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 2 ~~pursuant to Title 18, chapter 11, part 1.~~

3 (7) THE DEPARTMENT MAY RECOGNIZE THE SEIZURE OF A LICENSE OF A TRIBAL MEMBER BY
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2 (ii) the person was placed under arrest; ~~and whether~~

3 (iii) the person refused to submit to the test or tests.

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5 petitioner's license is subject to suspension or revocation."

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7 NEW SECTION. Section 3. Notification of tribal governments. The secretary of state shall send
8 a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal
9 chairperson of the Little Shell tribe.

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-END-



HOUSE STANDING COMMITTEE REPORT

March 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 189 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Hurdle

And, that such amendments read:

1. Page 3, line 9.

Following: "STATE."

Insert: "Action by the department under this subsection is not reviewable under 61-8-403."

2. Page 4, line 6.

Insert: "(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators."

-END-

SB 189

Committee Vote:

Yes 16, No 1.

3/13 mw

HOUSE

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 9 INDIAN RESERVATION IN THIS STATE. ACTION BY THE DEPARTMENT UNDER THIS SUBSECTION IS
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 15 ~~person whose license or privilege to drive has been suspended or revoked, and the person may file a~~
 16 ~~petition within~~ Within 30 days after notice for of the right to a hearing on the matter has been given by a
 17 peace officer, a person may file a petition to challenge the license suspension or revocation in the district
 18 court in the county in which where the person resides or in the district court in the county in which this
 19 where the arrest was made.

20 (2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10
 21 days' written notice of the hearing to the county attorney of the county in which where the appeal is filed
 22 and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in
 23 a city or municipal court, and the. The county attorney or city attorney may represent the state. If the
 24 county attorney and the city attorney cannot agree on who will represent the state, the county attorney
 25 shall represent the state.

26 (3) Upon request of the petitioner, the court may order the department to return the seized license
 27 or issue a stay of the suspension or revocation action pending the hearing.

28 (4) (a) The court shall take testimony and examine the facts of the case, except that the issues are
 29 limited to whether:

30 (i) a peace officer had reasonable grounds to believe that the person had been driving or was in

1 actual physical control of a vehicle upon ways of this state open to the public while under the influence of
2 alcohol, drugs, or a combination of the two; ~~whether~~

3 (ii) the person was placed under arrest; ~~and whether~~

4 (iii) the person refused to submit to the test or tests.

5 (b) The court shall determine whether the petitioner is entitled to a license or whether the
6 petitioner's license is subject to suspension or revocation.

7 (5) THIS SECTION DOES NOT GRANT A RIGHT OF APPEAL TO A STATE COURT IF A DRIVER'S
8 LICENSE IS INITIALLY SEIZED, SUSPENDED, OR REVOKED PURSUANT TO A TRIBAL LAW OR
9 REGULATION THAT REQUIRES ALCOHOL OR DRUG TESTING OF MOTOR VEHICLE OPERATORS."

10

11 NEW SECTION. Section 3. Notification of tribal governments. The secretary of state shall send
12 a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal
13 chairperson of the Little Shell tribe.

14

15 NEW SECTION. Section 4. Effective dates. (1) [Section 1(7), section 3, and this section] are
16 effective on passage and approval.

17 (2) [Section 1(1) through (6) and (8) and section 2] are effective October 1, 1995.

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