

1 SENATE BILL NO. 106

2 INTRODUCED BY VAN VALKENBURG

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DRIVING UNDER THE INFLUENCE LAWS
 6 WITH RESPECT TO THE TESTS USED TO DETECT, ESTIMATE, AND MEASURE ALCOHOL OR DRUGS, OR
 7 BOTH, IN A PERSON'S BODY; AUTHORIZING ADMISSION OF PRELIMINARY ALCOHOL SCREENING TEST
 8 RESULTS AND PHYSICAL, PSYCHOMOTOR, AND PHYSIOLOGICAL ASSESSMENTS OF ALCOHOL OR
 9 DRUG PRESENCE OR IMPAIRMENT IN DRIVING UNDER THE INFLUENCE AND OTHER PROCEEDINGS,
 10 INCLUDING CERTAIN CRIMINAL PROSECUTIONS AND CIVIL PROCEEDINGS IN WHICH ALCOHOL OR
 11 DRUG-PRESENCE OR IMPAIRMENT IS AT ISSUE; ELIMINATING USE OF URINE TESTING UNDER THE
 12 IMPLIED CONSENT LAW; PERMITTING SUBMISSION OF CERTIFIED, RATHER THAN SWORN,
 13 STATEMENTS FROM PEACE OFFICERS CONCERNING TESTING REFUSALS; AUTHORIZING USE OF BLOOD
 14 OR BREATH ANALYSIS TEST RESULTS IN CERTAIN CRIMINAL PROSECUTIONS AND CIVIL ACTIONS;
 15 AND AMENDING SECTIONS 61-8-401, 61-8-402, 61-8-404, 61-8-405, 61-8-407, 61-8-409, 61-8-805,
 16 AND 61-8-806, MCA."

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

19
 20 **Section 1.** Section 61-8-401, MCA, is amended to read:

21 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable, as
 22 provided in 61-8-714, ~~and 61-8-723~~ for ~~any~~ a person who is under the influence of:

23 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
 24 to the public;

25 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

26 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

27 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
 28 within this state.

29 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
 30 use alcohol or ~~such~~ a drug under the laws of this state does not constitute a defense against any charge

1 of violating subsection (1).

2 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
3 combination ~~thereof~~ of alcohol and drugs, a person's ability to safely operate a motor vehicle has been
4 diminished.

5 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
6 been committed by any person driving or in actual physical control of a vehicle while under the influence
7 of alcohol, the concentration of alcohol in the person at the time ~~alleged~~ of a test, as shown by analysis
8 of a sample of the person's blood, urine, or breath drawn or taken within a reasonable time after the alleged
9 act, ~~shall give~~ gives rise to the following inferences:

10 (a) If there was at that time an alcohol concentration of ~~0.05~~ 0.04 or less, it may be inferred that
11 the person was not under the influence of alcohol.

12 (b) If there was at that time an alcohol concentration in excess of ~~0.05~~ 0.04 but less than 0.10,
13 that fact ~~shall~~ may not give rise to any inference that the person was or was not under the influence of
14 alcohol, but ~~such~~ the fact may be considered with other competent evidence in determining the guilt or
15 innocence of the person.

16 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
17 person was under the influence of alcohol. The inference is rebuttable.

18 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
19 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination
20 of ~~the two~~ alcohol and drugs.

21 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410,
22 61-8-714, 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406
23 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction
24 of the enforcement of the ordinance and of the imposition of the fines and penalties ~~therein~~ provided in the
25 ordinance.

26 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
27

28 **Section 2.** Section 61-8-402, MCA, is amended to read:

29 **"61-8-402. Blood, or breath, or urine tests for alcohol, drugs, or both.** (1) A person who operates
30 or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have

1 given consent, ~~subject to the provisions of 61-8-401,~~ to a test or tests of the person's blood, or breath,
 2 ~~or urine~~ for the purpose of determining any measured amount or detected presence of alcohol or drugs in
 3 the person's body if arrested by a peace officer for driving or for being in actual physical control of a vehicle
 4 while under the influence of alcohol, drugs, or a combination of ~~the two~~ alcohol and drugs. The test or tests
 5 must be administered at the direction of a peace officer who has reasonable grounds to believe that the
 6 person has been driving or has been in actual physical control of a vehicle upon ways of this state open
 7 to the public while under the influence of alcohol, drugs, or a combination of the two. The arresting officer
 8 may designate which test or tests are administered. ~~A test for alcohol must be given first, whether or not~~
 9 ~~that test also tests for drugs, and if the test shows an alcohol concentration of 0.10 or more, a test for~~
 10 ~~drugs may not be given.~~

11 (2) A person who is unconscious or who is otherwise in a condition rendering the person incapable
 12 of refusal is considered not to have withdrawn the consent provided by subsection (1).

13 (3) If ~~a driver under arrest~~ an arrested person refuses ~~upon the request of a peace officer~~ to submit
 14 to ~~a test or~~ one or more tests requested and designated by the arresting officer as provided in subsection
 15 (1), ~~a~~ the refused test or tests may not be given, but the officer shall, on behalf of the department,
 16 immediately seize the person's driver's license. The peace officer shall immediately forward the license to
 17 the department, along with a ~~sworn~~ report certified under penalty of law noting that the peace officer had
 18 reasonable grounds to believe that the arrested person had been driving or was in actual physical control
 19 of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a
 20 combination of ~~the two~~ alcohol and drugs and noting that the person refused to submit to ~~the test or~~ one
 21 or more tests upon the request of requested and designated by the peace officer. Upon receipt of the
 22 report, the department shall suspend the license for the period provided in subsection (5).

23 (4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department,
 24 a temporary driving permit, which is valid for 5 days following the date of issuance and shall provide the
 25 driver with written notice of the license suspension or revocation and the right to a hearing provided in
 26 61-8-403.

27 (5) The following suspension and revocation periods are applicable upon refusal to submit to ~~a test~~
 28 ~~or~~ one or more tests:

29 (a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary
 30 license;

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

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

6 (7) The department may recognize the seizure of a license of a tribal member by a peace officer
7 acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking,
8 or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law
9 or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the
10 actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state.
11 Action by the department under this subsection is not reviewable under 61-8-403.

12 (8) ~~All suspensions are~~ A suspension under this section is subject to review as provided in this part.

13 (9) This section does not apply to blood and breath tests, samples, and analyses used for purposes
14 of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation
15 of an offense not in this part."

16
17 **Section 3.** Section 61-8-404, MCA, is amended to read:

18 "**61-8-404. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of ~~any~~ a criminal
19 action or other proceeding arising out of acts alleged to have been committed by ~~any~~ a person in violation
20 of 61-8-401, ~~or~~ 61-8-406, 61-8-410, or 61-8-805:

21 (a) evidence of any measured amount or detected presence of alcohol, ~~or~~ drugs, or a combination
22 of alcohol and drugs in the person at the time of the act alleged, as shown by an analysis of the person's
23 blood, or breath, ~~or urine,~~ is admissible. A positive test result does not, in itself, prove that the person was
24 under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person
25 may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person
26 unless some other competent evidence exists that tends to establish that the person was under the
27 influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

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

30 (i) ~~the~~ a breath test or preliminary alcohol screening test was performed by a person certified by

1 the forensic sciences division of the department to administer ~~breath tests or~~ the test;

2 (ii) the a blood or urine test sample was a laboratory analysis and the analysis was done analyzed
 3 in a laboratory operated or certified by the department or by any other or in a laboratory or facility certified
 4 or exempt from certification under the rules of the department; and

5 (iii) the test was on a blood sample, the person withdrawing and the blood was withdrawn from the
 6 person by a person competent to do so under 61-8-405(1).

7 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a
 8 person is admissible in evidence if it was for alcohol and was made by a person trained by the department
 9 or if it was for drugs and was made by a person certified by the department.

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

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

18

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

20 **"61-8-405. Administration of tests.** (1) Only a physician or registered nurse, or other qualified
 21 person acting under the supervision and direction of a physician or registered nurse ~~acting,~~ may, at the
 22 request of a peace officer, ~~may~~ withdraw blood for the purpose of determining any measured amount or
 23 detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation
 24 does not apply to the taking sampling of breath ~~or urine specimens.~~

25 (2) ~~The person may, at the person's own expense, have a physician or registered nurse of the~~
 26 ~~person's own choosing administer a test, in~~ In addition to any test administered at the direction of a peace
 27 officer, a person may request that an independent blood sample be drawn by a physician or registered nurse
 28 for the purpose of determining any measured amount or detected presence of alcohol, or drugs, or any
 29 combination of alcohol and drugs in the person ~~at the time alleged, as shown by analysis of the person's~~
 30 blood, breath, or urine. The cost of an independent blood test is the sole responsibility of the person

1 requesting the test. The failure or inability to obtain an additional independent test by a person does not
 2 preclude the admissibility in evidence of ~~the any test or tests taken~~ given at the direction of a peace officer.

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

5 (4) A physician or registered nurse, or other qualified person acting under the supervision and
 6 direction of a physician or registered nurse, does not incur any civil or criminal liability as a result of the
 7 proper administering of a blood test when requested in writing by a peace officer to administer a test.

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

11 ~~(6)(5)~~ The department in cooperation with any appropriate agency shall adopt uniform rules for the
 12 giving of tests and may require certification of training to administer the tests as considered necessary."
 13

14 **Section 5.** Section 61-8-407, MCA, is amended to read:

15 "**61-8-407. Definition of alcohol concentration.** For purposes of 16-6-305, ~~61-8-401, and~~
 16 ~~61-8-406 and this chapter,~~ "alcohol concentration" means either grams of alcohol per 100 milliliters of
 17 blood, or grams of alcohol per 210 liters of breath, ~~or grams of alcohol per 75.3 milliliters of urine."~~
 18

19 **Section 6.** Section 61-8-409, MCA, is amended to read:

20 "**61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical
 21 control of a vehicle upon ways of this state open to the public is considered to have given consent to a
 22 preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol
 23 concentration, upon the request of a peace officer who has a particularized suspicion that the person was
 24 driving or in actual physical control of a vehicle upon ways of this state open to the public while under the
 25 influence of alcohol or in violation of 61-8-410.

26 ~~(2) The results of a screening test may be used for determining whether probable cause exists to~~
 27 ~~believe a person has violated 61-8-401, 61-8-406, or 61-8-410.~~

28 ~~(3)(2)~~ The person's obligation to submit to a test under 61-8-402 is not satisfied by the person
 29 submitting to a preliminary alcohol screening test pursuant to this section.

30 ~~(4)(3)~~ The peace officer shall inform the person of the right to refuse the test and that the refusal

1 to submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1
2 year of that person's driver's license.

3 ~~(5)~~(4) If the person refuses to submit to a test under this section, a test will not be given. However,
4 the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

5 ~~(6)~~(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be
6 limited to determining whether a peace officer had a particularized suspicion that the person was driving
7 or in actual physical control of a vehicle upon ways of this state open to the public while under the
8 influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

9 ~~(7)~~(6) The provisions of 61-8-402(2) through (7) that do not conflict with this section are applicable
10 to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the
11 same incident, the department may not consider each a separate refusal for purposes of suspension or
12 revocation under 61-8-402.

13 ~~(8)~~(7) A test may not be conducted or requested under this section unless both the peace officer
14 and the instrument used to conduct the preliminary alcohol screening test have been certified by the
15 department pursuant to rules adopted under the authority of 61-8-405~~(6)~~(5)."

16

17 **Section 7.** Section 61-8-805, MCA, is amended to read:

18 "61-8-805. **Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or**
19 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in
20 actual physical control of a commercial motor vehicle is subject to the suspension of the person's
21 commercial driver's license. If the department receives a ~~sworn~~ report certified under penalty of law from
22 a peace officer that the person was operating a commercial motor vehicle while the person's alcohol
23 concentration was 0.04 or more, the department shall suspend the person's commercial driver's license:

24 (a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt
25 of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous
26 materials, the suspension must be for 3 years; and

27 (b) for life, with no provision for a restricted probationary license or endorsement, upon receipt of
28 a second or subsequent report at any time as determined from the records of the department, unless a
29 restricted license or endorsement is allowed by federal rules governing commercial drivers.

30 (2) A peace officer who determines that a commercial motor vehicle operator has any measured

1 amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle
 2 shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24
 3 hours.

4 (3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled
 5 to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions
 6 of subsection (1).

7 (4) The department shall immediately notify in writing any person whose commercial driver's
 8 license is suspended under this section. The person may file a petition within 30 days after the notice is
 9 given for a hearing in the matter in the district court in the county in which the finding of alcohol
 10 concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days'
 11 written notice to the county attorney of the county in which the appeal is filed. The county attorney shall
 12 represent the state. The court shall take testimony and examine the facts of the case, except that the issue
 13 is limited to whether the person was driving or had actual physical control of a commercial motor vehicle
 14 while the person's alcohol concentration was 0.04 or more. The court shall determine whether the
 15 petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this section.
 16 The provisions of 61-8-404 apply to any proceedings under this section."

17

18 **Section 8.** Section 61-8-806, MCA, is amended to read:

19 **"61-8-806. Blood, and breath, ~~or urine~~ tests of commercial vehicle operators -- procedure --**
 20 **suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to
 21 the public is considered to have given consent, ~~subject to the provisions of 61-8-401 and 61-8-805,~~ to a
 22 ~~test~~ one or more tests of the operator's blood, or breath, ~~or urine~~ for the purpose of determining any
 23 measured or detected amount of alcohol in the operator's body if the operator is requested to submit to
 24 the test or tests by a peace officer having reasonable grounds to believe the person to have been driving
 25 or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public
 26 while having any measurable or detectable alcohol concentration. The peace officer may designate a the
 27 ~~blood, or~~ breath, or urine test or tests to be administered.

28 (2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have
 29 withdrawn the consent provided in subsection (1).

30 (3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request

1 of a peace officer to submit to ~~a test~~ one or more tests designated by the officer as provided in subsection
2 (1), the test or tests may not be given. On behalf of the department, the officer shall immediately seize the
3 person's commercial driver's license and forward the license to the department, along with a ~~sworn~~
4 certified under penalty of law that the officer had reasonable grounds to believe that the person had been
5 driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the
6 public while having any measurable or detectable alcohol concentration and that the person had refused
7 to submit to ~~the test~~ one or more tests upon the request of the officer. Upon receipt of the report, the
8 department shall suspend the license for a period provided in subsection (5).

9 (4) Upon seizure of a resident's commercial driver's license, the peace officer shall issue, on behalf
10 of the department, a temporary noncommercial driving permit. The temporary driving permit is valid for 72
11 hours after issuance.

12 (5) If a commercial motor vehicle operator refuses to submit to ~~a test~~ one or more tests as provided
13 in subsection (3), the department shall suspend the operator's commercial driver's license:

14 (a) upon first refusal, for 1 year, with no provision for a restricted probationary license or
15 endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous
16 materials, the suspension for a first refusal must be for 3 years;

17 (b) upon a second or subsequent refusal at any time as determined from the records of the
18 department, for life, with no provision for a restricted probationary license or endorsement unless allowed
19 by federal rules governing commercial drivers.

20 (6) A nonresident commercial motor vehicle operator who refuses to submit to ~~a test~~ one or more
21 tests as provided in subsection (3) is subject to suspension by the department as provided in subsection
22 (5) and must be given a temporary driving permit as provided in subsection (4)."

23 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0106, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to revise driving under the influence laws with respect to the tests used to detect, estimate, and measure alcohol or drugs, or both, in a person's body.

ASSUMPTIONS:

1. Currently law enforcement is conducting an average of 7500 breath test analyses statewide. These are done with an intoxilyzer. The Department of Justice, Forensic Science Division receives an average of 886 blood/alcohol requests from law enforcement per year. The average total of tests conducted by law enforcement is 8386 per year. If 5 percent of these were analyzed for drugs at the request of law enforcement, the Forensic Science Division would be running tests on 420 cases (8386 x 5% = 420).
2. In order to complete one analysis for drugs the average staff personnel time is nine hours. With 420 cases to run and nine hours per case, if all cases were run individually it would take 3780 hours (420 cases x 9 hours = 3780). The lab is able to batch runs, saving staff time by approximately one half. An additional 1.00 FTE, grade 17, would be needed to handle this work load with personal service costs of \$50,628 per year.
3. All 420 cases would be tested by the lab for volatiles and emit drug screen at \$15 per case or \$6,300 (420 x \$15). A study completed at the Forensic Science Division shows approximately 40 percent of the alcohol tests run by law enforcement have other drugs on board. To further test 40 percent of the 420 cases there is a cost of \$155 per case (420 x 40% = 168, and 168 x \$155 = \$26,040). The total cost would be \$32,340 (\$6,300 + \$26,040) for testing.
4. Operating expenses for the additional 1.00 FTE are estimated at \$2,500 (telephone, supplies, and travel).
5. The analysis to be performed requires the following instruments: Gas Chromatograph NPD (GC/NPD), Gas Chromatograph MS (GC/MS), and a Syva Emit. The lab is currently using its GC/NPD and GC/MS to full capacity; therefore, new equipment would have to be purchased: GC/NPD = \$48,000 and GC/MS = \$85,000.
6. The Motor Vehicle Division would need \$550 for printing of forms as required by this bill each year of the biennium.

FISCAL IMPACT:

<u>Forensic Science Division:</u>	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Personal Services	50,628	50,628
Operating Expense	34,840	34,840
Equipment	<u>133,000</u>	<u>0</u>
Total	218,468	85,468
<u>Funding:</u>		
General Fund (01)	218,468	85,468
<u>Motor Vehicle Division:</u>		
Operating Expenses	550	550
<u>Funding:</u>		
General Fund (01)	550	550
<u>Net Impact on Fund Balance:</u> (Revenue minus expense)		
General Fund (01)	(219,018)	(86,018)

(Continued)

Dave Lewis 1-10-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Fred Van Valkenburg 1-13-97
 FRED VAN VALKENBURG, PRIMARY SPONSOR DATE

Fiscal Note for SB0106, as introduced

SB 106

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

A study at the Forensic Science Division shows that when someone is stopped by law enforcement for DUI, 40 percent of these people have other drugs on board. Current law only allows further drug tests if the alcohol level is below 0.10 gm/100 ml whole blood. This legislation would allow further drug testing at the officer's discretion.

APPROVED BY COM
ON JUDICIARY

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2 INTRODUCED BY VAN VALKENBURG

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DRIVING UNDER THE INFLUENCE LAWS
6 WITH RESPECT TO THE TESTS USED TO DETECT, ESTIMATE, AND MEASURE ALCOHOL OR DRUGS, OR
7 BOTH, IN A PERSON'S BODY; AUTHORIZING ADMISSION OF PRELIMINARY ALCOHOL SCREENING TEST
8 RESULTS AND PHYSICAL, PSYCHOMOTOR, AND PHYSIOLOGICAL ASSESSMENTS OF ALCOHOL OR
9 DRUG PRESENCE OR IMPAIRMENT IN DRIVING UNDER THE INFLUENCE AND OTHER PROCEEDINGS,
10 INCLUDING CERTAIN CRIMINAL PROSECUTIONS AND CIVIL PROCEEDINGS IN WHICH ALCOHOL OR
11 DRUG-PRESENCE OR IMPAIRMENT IS AT ISSUE; ELIMINATING USE OF URINE TESTING UNDER THE
12 IMPLIED CONSENT LAW; PERMITTING SUBMISSION OF CERTIFIED, RATHER THAN SWORN,
13 STATEMENTS FROM PEACE OFFICERS CONCERNING TESTING REFUSALS; AUTHORIZING USE OF BLOOD
14 OR BREATH ANALYSIS TEST RESULTS IN CERTAIN CRIMINAL PROSECUTIONS AND CIVIL ACTIONS;
15 AND AMENDING SECTIONS 61-5-212, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-407,
16 61-8-409, 61-8-805, AND 61-8-806, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1920 **SECTION 1. SECTION 61-5-212, MCA, IS AMENDED TO READ:**

21 **"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering**
22 **vehicle inoperable.** (1) A person who drives a motor vehicle or commercial motor vehicle on any public
23 highway of this state at a time when the person's privilege to do so is suspended or revoked in this state
24 or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for
25 not less than 2 days or more than 6 months and may be fined not more than \$500.

26 (2) The department upon receiving a record of the conviction of any person under this section upon
27 a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the
28 period of suspension or revocation for an additional like period.

29 (3) The vehicle owned and operated at the time of an offense under this section by a person whose
30 driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402~~(5)~~, 61-8-406,

1 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the
2 county sheriff of the convicted person's county of residence for a period of 30 days.

3 (4) The sentencing court shall order the action provided for under subsection (3) and shall specify
4 the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or
5 rendered inoperable by the sheriff within 10 days after the conviction.

6 (5) A convicted person is responsible for all costs associated with actions taken under subsection
7 (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection
8 (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a
9 joint owner who is determined to be without fault.

10 (6) A court may not suspend or defer imposition of penalties provided by this section."
11

12 **Section 2.** Section 61-8-401, MCA, is amended to read:

13 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable, as
14 provided in 61-8-714, ~~and 61-8-723~~ for any a person who is under the influence of:

15 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
16 to the public;

17 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

18 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

19 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
20 within this state.

21 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
22 use alcohol or ~~use~~ a drug under the laws of this state does not constitute a defense against any charge
23 of violating subsection (1).

24 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
25 combination ~~thereof~~ of alcohol and drugs, a person's ability to safely operate a motor vehicle has been
26 diminished.

27 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
28 been committed by any person driving or in actual physical control of a vehicle while under the influence
29 of alcohol, the concentration of alcohol in the person at the time ~~alleged~~ of a test, as shown by analysis
30 of a sample of the person's blood, urine, or breath drawn or taken within a reasonable time after the alleged

1 ~~act, shall give~~ gives rise to the following inferences:

2 (a) If there was at that time an alcohol concentration of ~~0.05~~ 0.04 or less, it may be inferred that
3 the person was not under the influence of alcohol.

4 (b) If there was at that time an alcohol concentration in excess of ~~0.05~~ 0.04 but less than 0.10,
5 that fact ~~shall~~ may not give rise to any inference that the person was or was not under the influence of
6 alcohol, but ~~such~~ the fact may be considered with other competent evidence in determining the guilt or
7 innocence of the person.

8 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
9 person was under the influence of alcohol. The inference is rebuttable.

10 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
11 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination
12 of ~~the two~~ alcohol and drugs.

13 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410,
14 61-8-714, 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406
15 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction
16 of the enforcement of the ordinance and of the imposition of the fines and penalties ~~therein~~ provided in the
17 ordinance.

18 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
19

20 **Section 3.** Section 61-8-402, MCA, is amended to read:

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

27 (2) (A) The test or tests must be administered at the direction of a peace officer ~~who~~ WHEN:

28 (I) THE OFFICER has reasonable grounds to believe that the person has been driving or has been
29 in actual physical control of a vehicle upon ways of this state open to the public while under the influence
30 of alcohol, drugs, or a combination of the two AND THE PERSON HAS BEEN PLACED UNDER ARREST FOR

1 A VIOLATION OF 61-8-401;

2 (II) THE PERSON IS UNDER THE AGE OF 21 AND HAS BEEN PLACED UNDER ARREST FOR A
3 VIOLATION OF 61-8-410; OR

4 (III) THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON WAS DRIVING OR IN
5 ACTUAL PHYSICAL CONTROL OF A VEHICLE IN VIOLATION OF 61-8-401 AND THE PERSON HAS BEEN
6 INVOLVED IN A MOTOR VEHICLE ACCIDENT OR COLLISION RESULTING IN PROPERTY DAMAGE, BODILY
7 INJURY, OR DEATH.

8 (B) The arresting OR INVESTIGATING officer may designate which test or tests are administered.
9 ~~A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows~~
10 ~~an alcohol concentration of 0.10 or more, a test for drugs may not be given.~~

11 ~~(2)(3)~~ A person who is unconscious or who is otherwise in a condition rendering the person
12 incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

13 ~~(3)(4)~~ If a ~~driver under arrest~~ an arrested person refuses ~~upon the request of a peace officer~~ to
14 submit to ~~a test or one or more tests requested and~~ designated by the ~~arresting~~ officer as provided in
15 subsection ~~(4)~~ (2), a the refused test or tests may not be given, but the officer shall, on behalf of the
16 department, immediately seize the person's driver's license. The peace officer shall immediately forward
17 the license to the department, along with a ~~sworn~~ report certified under penalty of law ~~noting that the~~
18 ~~peace officer had reasonable grounds to believe that the arrested person had been driving or was in actual~~
19 ~~physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol,~~
20 ~~drugs, or a combination of the two alcohol and drugs and noting~~ STATING WHICH OF THE CONDITIONS
21 SET FORTH IN SUBSECTION (2)(A) PROVIDES THE BASIS FOR THE TESTING REQUEST AND CONFIRMING
22 that the person refused to submit to ~~the test or one or more tests upon the request of~~ requested and
23 designated by the peace officer. Upon receipt of the report, the department shall suspend the license for
24 the period provided in subsection ~~(5)~~ (6).

25 ~~(4)(5)~~ Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department,
26 a temporary driving permit, which is valid for 5 days following the date of issuance and shall provide the
27 driver with written notice of the license suspension or revocation and the right to a hearing provided in
28 61-8-403.

29 ~~(5)(6)~~ The following suspension and revocation periods are applicable upon refusal to submit to
30 ~~a test or one or more tests:~~

1 (a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary
2 license;

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

5 ~~(6)~~(7) A nonresident driver's license seized under this section must be sent by the department to
6 the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit
7 to ~~a test of~~ one or more tests.

8 ~~(7)~~(8) The department may recognize the seizure of a license of a tribal member by a peace officer
9 acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking,
10 or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law
11 or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the
12 actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state.
13 Action by the department under this subsection is not reviewable under 61-8-403.

14 ~~(8)~~(9) ~~All suspensions are~~ A suspension under this section is subject to review as provided in this
15 part.

16 ~~(9)~~(10) This section does not apply to blood and breath tests, samples, and analyses used for
17 purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected
18 violation of an offense not in this part."

19

20 **SECTION 4. SECTION 61-8-403, MCA, IS AMENDED TO READ:**

21 **"61-8-403. Right of appeal to court.** (1) Within 30 days after notice of the right to a hearing has
22 been given by a peace officer, a person may file a petition to challenge the license suspension or revocation
23 in the district court in the county where the person resides or in the county where the arrest was made.

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

30 (3) Upon request of the petitioner, the court may order the department to return the seized license

1 or issue a stay of the suspension or revocation action pending the hearing.

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

4 (i) a peace officer had reasonable grounds to believe that the person had been driving or was in
5 actual physical control of a vehicle upon ways of this state open to the public while under the influence of
6 alcohol, drugs, or a combination of the two and the person was placed under arrest for violation of
7 61-8-401;

8 (ii) the person ~~was placed under arrest; and~~ is under the age of 21 and was placed under arrest for
9 a violation of 61-8-410;

10 (iii) the officer had probable cause to believe that the person was driving or in actual physical
11 control of a vehicle in violation of 61-8-401 and the person was involved in a motor vehicle accident or
12 collision resulting in property damage, bodily injury, or death; and

13 ~~(iii)(iv)~~ (iv) the person refused to submit to ~~the test of~~ one or more tests designated by the officer.

14 (b) ~~The~~ Based on the above issues and no others, the court shall determine whether the petitioner
15 is entitled to a license or whether the petitioner's license is subject to suspension or revocation.

16 (5) This section does not grant a right of appeal to a state court if a driver's license is initially
17 seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing
18 of motor vehicle operators."
19

20 **Section 5.** Section 61-8-404, MCA, is amended to read:

21 "**61-8-404. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of ~~any~~ a criminal
22 action or other proceeding arising out of acts alleged to have been committed by ~~any~~ a person in violation
23 of 61-8-401, ~~or~~ 61-8-406, 61-8-410, or 61-8-805:

24 (a) evidence of any measured amount or detected presence of alcohol, ~~or~~ drugs, or a combination
25 of alcohol and drugs in the person at the time of the act alleged, as shown by an analysis of the person's
26 blood, or ~~breath, or urine,~~ is admissible. A positive test result does not, in itself, prove that the person was
27 under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person
28 may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person
29 unless some other competent evidence exists that tends to establish that the person was under the
30 influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

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

3 (i) ~~the a~~ a breath test or preliminary alcohol screening test was performed by a person certified by
4 the forensic sciences division of the department to administer ~~breath tests or the test;~~

5 (ii) ~~the a~~ a blood or urine test sample was ~~a laboratory analysis and the analysis was done~~ analyzed
6 in a laboratory operated or certified by the department ~~or by any other~~ or in a laboratory or facility certified
7 ~~or exempt from certification under the rules of the department; and~~

8 (iii) ~~the test was on a blood sample, the person withdrawing~~ and the blood was withdrawn from the
9 person by a person competent to do so under 61-8-405(1).

10 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a
11 person is admissible in evidence if it was for alcohol and was made by a person trained by the department
12 or if it was for drugs and was made by a person certified BY A PERSON WHO HAS RECEIVED TRAINING
13 RECOGNIZED by the department.

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

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

22
23 **Section 6.** Section 61-8-405, MCA, is amended to read:

24 **"61-8-405. Administration of tests.** (1) Only a physician or registered nurse, or other qualified
25 person acting under the supervision and direction of a physician or registered nurse acting, may, at the
26 request of a peace officer, ~~may~~ withdraw blood for the purpose of determining any measured amount or
27 detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation
28 does not apply to the taking sampling of breath or urine specimens.

29 (2) ~~The person may, at the person's own expense, have a physician or registered nurse of the~~
30 ~~person's own choosing administer a test, in~~ In addition to any test administered at the direction of a peace

1 officer, a person may request that an independent blood sample be drawn by a physician or registered nurse
 2 for the purpose of determining any measured amount or detected presence of alcohol, ~~or drugs, or any~~
 3 combination of alcohol and drugs in the person ~~at the time alleged, as shown by analysis of the person's~~
 4 ~~blood, breath, or urine.~~ THE PEACE OFFICER MAY NOT UNREASONABLY IMPEDE THE PERSON'S RIGHT
 5 TO OBTAIN AN INDEPENDENT BLOOD TEST. THE OFFICER MAY BUT HAS NO DUTY TO TRANSPORT
 6 THE PERSON TO A MEDICAL FACILITY OR OTHERWISE ASSIST THE PERSON IN OBTAINING THE TEST.
 7 The cost of an independent blood test is the sole responsibility of the person requesting the test. The
 8 failure or inability to obtain an ~~additional~~ independent test by a person does not preclude the admissibility
 9 in evidence of ~~the any test or tests taken~~ given at the direction of a peace officer.

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

12 (4) A physician or registered nurse, or other qualified person acting under the supervision and
 13 direction of a physician or registered nurse, does not incur any civil or criminal liability as a result of the
 14 proper administering of a blood test when requested in writing by a peace officer to administer a test.

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

18 ~~(6)(5)~~ The department in cooperation with any appropriate agency shall adopt uniform rules for the
 19 giving of tests and may require certification of training to administer the tests as considered necessary."
 20

21 **Section 7.** Section 61-8-407, MCA, is amended to read:

22 "**61-8-407. Definition of alcohol concentration.** For purposes of 16-6-305, ~~61-8-401, and~~
 23 ~~61-8-406 and this chapter,~~ "alcohol concentration" means either grams of alcohol per 100 milliliters of
 24 blood, or grams of alcohol per 210 liters of breath, ~~or grams of alcohol per 75.3 milliliters of urine."~~

26 **Section 8.** Section 61-8-409, MCA, is amended to read:

27 "**61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical
 28 control of a vehicle upon ways of this state open to the public is considered to have given consent to a
 29 preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol
 30 concentration, upon the request of a peace officer who has a particularized suspicion that the person was

1 driving or in actual physical control of a vehicle upon ways of this state open to the public while under the
2 influence of alcohol or in violation of 61-8-410.

3 ~~(2) The results of a screening test may be used for determining whether probable cause exists to~~
4 ~~believe a person has violated 61-8-401, 61-8-406, or 61-8-410.~~

5 ~~(3)~~(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person
6 submitting to a preliminary alcohol screening test pursuant to this section.

7 ~~(4)~~(3) The peace officer shall inform the person of the right to refuse the test and that the refusal
8 to submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1
9 year of that person's driver's license.

10 ~~(5)~~(4) If the person refuses to submit to a test under this section, a test will not be given. However,
11 the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

12 ~~(6)~~(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be
13 limited to determining whether a peace officer had a particularized suspicion that the person was driving
14 or in actual physical control of a vehicle upon ways of this state open to the public while under the
15 influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

16 ~~(7)~~(6) The provisions of 61-8-402~~(2)~~ through ~~(7)~~ (3) THROUGH (8) that do not conflict with this
17 section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402
18 and this section for the same incident, the department may not consider each a separate refusal for
19 purposes of suspension or revocation under 61-8-402.

20 ~~(8)~~(7) A test may not be conducted or requested under this section unless both the peace officer
21 and the instrument used to conduct the preliminary alcohol screening test have been certified by the
22 department pursuant to rules adopted under the authority of 61-8-405~~(6)~~(5)."
23

24 **Section 9.** Section 61-8-805, MCA, is amended to read:

25 **"61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or**
26 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in
27 actual physical control of a commercial motor vehicle is subject to the suspension of the person's
28 commercial driver's license. If the department receives a ~~sworn~~ report certified under penalty of law from
29 a peace officer that the person was operating a commercial motor vehicle while the person's alcohol
30 concentration was 0.04 or more, the department shall suspend the person's commercial driver's license:

1 (a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt
 2 of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous
 3 materials, the suspension must be for 3 years; and

4 (b) for life, with no provision for a restricted probationary license or endorsement, upon receipt of
 5 a second or subsequent report at any time as determined from the records of the department, unless a
 6 restricted license or endorsement is allowed by federal rules governing commercial drivers.

7 (2) A peace officer who determines that a commercial motor vehicle operator has any measured
 8 amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle
 9 shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24
 10 hours.

11 (3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled
 12 to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions
 13 of subsection (1).

14 (4) The department shall immediately notify in writing any person whose commercial driver's
 15 license is suspended under this section. The person may file a petition within 30 days after the notice is
 16 given for a hearing in the matter in the district court in the county in which the finding of alcohol
 17 concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days'
 18 written notice to the county attorney of the county in which the appeal is filed. The county attorney shall
 19 represent the state. The court shall take testimony and examine the facts of the case, except that the issue
 20 is limited to whether the person was driving or had actual physical control of a commercial motor vehicle
 21 while the person's alcohol concentration was 0.04 or more. The court shall determine whether the
 22 petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this section.
 23 The provisions of 61-8-404 apply to any proceedings under this section."
 24

25 **Section 10.** Section 61-8-806, MCA, is amended to read:

26 **"61-8-806. Blood, and breath, ~~or urine~~ tests of commercial vehicle operators -- procedure --**
 27 **suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to
 28 the public is considered to have given consent, ~~subject to the provisions of 61-8-401 and 61-8-806,~~ to a
 29 ~~test~~ one or more tests of the operator's blood, or breath, ~~or urine~~ for the purpose of determining any
 30 measured or detected amount of alcohol in the operator's body if the operator is requested to submit to

1 the test or tests by a peace officer having reasonable grounds to believe the person to have been driving
2 or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public
3 while having any measurable or detectable alcohol concentration. The peace officer may designate a the
4 blood, or breath, or urine test or tests to be administered.

5 (2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have
6 withdrawn the consent provided in subsection (1).

7 (3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request
8 of a peace officer to submit to ~~a test~~ one or more tests designated by the officer as provided in subsection
9 (1), the test or tests may not be given. On behalf of the department, the officer shall immediately seize the
10 person's commercial driver's license and forward the license to the department, along with a ~~sworn~~ report
11 certified under penalty of law that the officer had reasonable grounds to believe that the person had been
12 driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the
13 public while having any measurable or detectable alcohol concentration and that the person had refused
14 to submit to ~~the test~~ one or more tests upon the request of the officer. Upon receipt of the report, the
15 department shall suspend the license for a period provided in subsection (5).

16 (4) Upon seizure of a resident's commercial driver's license, the peace officer shall issue, on behalf
17 of the department, a temporary noncommercial driving permit. The temporary driving permit is valid for 72
18 hours after issuance.

19 (5) If a commercial motor vehicle operator refuses to submit to ~~a test~~ one or more tests as provided
20 in subsection (3), the department shall suspend the operator's commercial driver's license:

21 (a) upon first refusal, for 1 year, with no provision for a restricted probationary license or
22 endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous
23 materials, the suspension for a first refusal must be for 3 years;

24 (b) upon a second or subsequent refusal at any time as determined from the records of the
25 department, for life, with no provision for a restricted probationary license or endorsement unless allowed
26 by federal rules governing commercial drivers.

27 (6) A nonresident commercial motor vehicle operator who refuses to submit to ~~a test~~ one or more
28 tests as provided in subsection (3) is subject to suspension by the department as provided in subsection
29 (5) and must be given a temporary driving permit as provided in subsection (4)."

30 -END-

1 SENATE BILL NO. 106

2 INTRODUCED BY VAN VALKENBURG

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DRIVING UNDER THE INFLUENCE LAWS
6 WITH RESPECT TO THE TESTS USED TO DETECT, ESTIMATE, AND MEASURE ALCOHOL OR DRUGS, OR
7 BOTH, IN A PERSON'S BODY; AUTHORIZING ADMISSION OF PRELIMINARY ALCOHOL SCREENING TEST
8 RESULTS AND PHYSICAL, PSYCHOMOTOR, AND PHYSIOLOGICAL ASSESSMENTS OF ALCOHOL OR
9 DRUG PRESENCE OR IMPAIRMENT IN DRIVING UNDER THE INFLUENCE AND OTHER PROCEEDINGS,
10 INCLUDING CERTAIN CRIMINAL PROSECUTIONS AND CIVIL PROCEEDINGS IN WHICH ALCOHOL OR
11 DRUG-PRESENCE OR IMPAIRMENT IS AT ISSUE; ELIMINATING USE OF URINE TESTING UNDER THE
12 IMPLIED CONSENT LAW; PERMITTING SUBMISSION OF CERTIFIED, RATHER THAN SWORN,
13 STATEMENTS FROM PEACE OFFICERS CONCERNING TESTING REFUSALS; AUTHORIZING USE OF BLOOD
14 OR BREATH ANALYSIS TEST RESULTS IN CERTAIN CRIMINAL PROSECUTIONS AND CIVIL ACTIONS;
15 AND AMENDING SECTIONS 61-5-212, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-407,
16 61-8-409, 61-8-805, AND 61-8-806, MCA."

17

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1 SENATE BILL NO. 106

2 INTRODUCED BY VAN VALKENBURG

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DRIVING UNDER THE INFLUENCE LAWS
6 WITH RESPECT TO THE TESTS USED TO DETECT, ESTIMATE, AND MEASURE ALCOHOL OR DRUGS, OR
7 BOTH, IN A PERSON'S BODY; AUTHORIZING ADMISSION OF PRELIMINARY ALCOHOL SCREENING TEST
8 RESULTS AND PHYSICAL, PSYCHOMOTOR, AND PHYSIOLOGICAL ASSESSMENTS OF ALCOHOL OR
9 DRUG PRESENCE OR IMPAIRMENT IN DRIVING UNDER THE INFLUENCE AND OTHER PROCEEDINGS,
10 INCLUDING CERTAIN CRIMINAL PROSECUTIONS AND CIVIL PROCEEDINGS IN WHICH ALCOHOL OR
11 DRUG-PRESENCE OR IMPAIRMENT IS AT ISSUE; ELIMINATING USE OF URINE TESTING UNDER THE
12 IMPLIED CONSENT LAW; PERMITTING SUBMISSION OF CERTIFIED, RATHER THAN SWORN,
13 STATEMENTS FROM PEACE OFFICERS CONCERNING TESTING REFUSALS; AUTHORIZING USE OF BLOOD
14 OR BREATH ANALYSIS TEST RESULTS IN CERTAIN CRIMINAL PROSECUTIONS AND CIVIL ACTIONS;
15 AND AMENDING SECTIONS 61-5-212, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-407,
16 61-8-409, 61-8-805, AND 61-8-806, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1920 **SECTION 1. SECTION 61-5-212, MCA, IS AMENDED TO READ:**

21 "61-5-212. **Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering**
22 **vehicle inoperable.** (1) A person who drives a motor vehicle or commercial motor vehicle on any public
23 highway of this state at a time when the person's privilege to do so is suspended or revoked in this state
24 or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for
25 not less than 2 days or more than 6 months and may be fined not more than \$500.

26 (2) The department upon receiving a record of the conviction of any person under this section upon
27 a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the
28 period of suspension or revocation for an additional like period.

29 (3) The vehicle owned and operated at the time of an offense under this section by a person whose
30 driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402~~(5)~~, 61-8-406,

1 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the
2 county sheriff of the convicted person's county of residence for a period of 30 days.

3 (4) The sentencing court shall order the action provided for under subsection (3) and shall specify
4 the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or
5 rendered inoperable by the sheriff within 10 days after the conviction.

6 (5) A convicted person is responsible for all costs associated with actions taken under subsection
7 (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection
8 (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a
9 joint owner who is determined to be without fault.

10 (6) A court may not suspend or defer imposition of penalties provided by this section."
11

12 **Section 2.** Section 61-8-401, MCA, is amended to read:

13 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable, as
14 provided in 61-8-714, ~~and 61-8-723~~ for any a person who is under the influence of:

15 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
16 to the public;

17 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

18 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

19 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
20 within this state.

21 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
22 use alcohol or ~~such~~ a drug under the laws of this state does not constitute a defense against any charge
23 of violating subsection (1).

24 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
25 combination ~~thereof~~ of alcohol and drugs, a person's ability to safely operate a motor vehicle has been
26 diminished.

27 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
28 been committed by any person driving or in actual physical control of a vehicle while under the influence
29 of alcohol, the concentration of alcohol in the person at the time ~~alleged~~ of a test, as shown by analysis
30 of a sample of the person's blood, urine, or breath drawn or taken within a reasonable time after the alleged

1 ~~act, shall give~~ gives rise to the following inferences:

2 (a) If there was at that time an alcohol concentration of ~~0.05~~ 0.04 or less, it may be inferred that
3 the person was not under the influence of alcohol.

4 (b) If there was at that time an alcohol concentration in excess of ~~0.05~~ 0.04 but less than 0.10,
5 that fact ~~shall~~ may not give rise to any inference that the person was or was not under the influence of
6 alcohol, but ~~such~~ the fact may be considered with other competent evidence in determining the guilt or
7 innocence of the person.

8 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
9 person was under the influence of alcohol. The inference is rebuttable.

10 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
11 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination
12 of ~~the two~~ alcohol and drugs.

13 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410,
14 61-8-714, 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406
15 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction
16 of the enforcement of the ordinance and of the imposition of the fines and penalties ~~therein~~ provided in the
17 ordinance.

18 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
19

20 **Section 3.** Section 61-8-402, MCA, is amended to read:

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

27 (2) (A) The test or tests must be administered at the direction of a peace officer ~~who~~ WHEN:

28 (I) THE OFFICER has reasonable grounds to believe that the person has been driving or has been
29 in actual physical control of a vehicle upon ways of this state open to the public while under the influence
30 of alcohol, drugs, or a combination of the two AND THE PERSON HAS BEEN PLACED UNDER ARREST FOR

1 A VIOLATION OF 61-8-401;

2 (II) THE PERSON IS UNDER THE AGE OF 21 AND HAS BEEN PLACED UNDER ARREST FOR A
3 VIOLATION OF 61-8-410; OR

4 (III) THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON WAS DRIVING OR IN
5 ACTUAL PHYSICAL CONTROL OF A VEHICLE IN VIOLATION OF 61-8-401 AND THE PERSON HAS BEEN
6 INVOLVED IN A MOTOR VEHICLE ACCIDENT OR COLLISION RESULTING IN PROPERTY DAMAGE, BODILY
7 INJURY, OR DEATH.

8 (B) The arresting OR INVESTIGATING officer may designate which test or tests are administered.
9 ~~A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows~~
10 ~~an alcohol concentration of 0.10 or more, a test for drugs may not be given.~~

11 ~~(2)(3)~~ A person who is unconscious or who is otherwise in a condition rendering the person
12 incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

13 ~~(3)(4)~~ If ~~a driver under arrest~~ an arrested person refuses ~~upon the request of a peace officer~~ to
14 submit to ~~a test or one or more tests requested and~~ requested and designated by the arresting officer as provided in
15 subsection ~~(4)~~ (2), a the refused test or tests may not be given, but the officer shall, on behalf of the
16 department, immediately seize the person's driver's license. The peace officer shall immediately forward
17 the license to the department, along with a ~~sworn~~ report certified under penalty of law ~~noting that the~~
18 ~~peace officer had reasonable grounds to believe that the arrested person had been driving or was in actual~~
19 ~~physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol,~~
20 ~~drugs, or a combination of the two alcohol and drugs and noting~~ STATING WHICH OF THE CONDITIONS
21 SET FORTH IN SUBSECTION (2)(A) PROVIDES THE BASIS FOR THE TESTING REQUEST AND CONFIRMING
22 that the person refused to submit to ~~the test or one or more tests upon the request of~~ requested and
23 designated by the peace officer. Upon receipt of the report, the department shall suspend the license for
24 the period provided in subsection ~~(5)~~ (6).

25 ~~(4)(5)~~ Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department,
26 a temporary driving permit, which is valid for 5 days following the date of issuance and shall provide the
27 driver with written notice of the license suspension or revocation and the right to a hearing provided in
28 61-8-403.

29 ~~(5)(6)~~ The following suspension and revocation periods are applicable upon refusal to submit to
30 ~~a test or one or more tests:~~

1 (a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary
2 license;

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

5 ~~(6)(7)~~ A nonresident driver's license seized under this section must be sent by the department to
6 the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit
7 to ~~a test or~~ one or more tests.

8 ~~(7)(8)~~ The department may recognize the seizure of a license of a tribal member by a peace officer
9 acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking,
10 or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law
11 or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the
12 actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state.
13 Action by the department under this subsection is not reviewable under 61-8-403.

14 ~~(8)(9)~~ ~~All suspensions are~~ A suspension under this section is subject to review as provided in this
15 part.

16 ~~(9)(10)~~ This section does not apply to blood and breath tests, samples, and analyses used for
17 purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected
18 violation of an offense not in this part."

19

20 **SECTION 4. SECTION 61-8-403, MCA, IS AMENDED TO READ:**

21 "61-8-403. **Right of appeal to court.** (1) Within 30 days after notice of the right to a hearing has
22 been given by a peace officer, a person may file a petition to challenge the license suspension or revocation
23 in the district court in the county where the person resides or in the county where the arrest was made.

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

30 (3) Upon request of the petitioner, the court may order the department to return the seized license

1 or issue a stay of the suspension or revocation action pending the hearing.

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

4 (i) a peace officer had reasonable grounds to believe that the person had been driving or was in
5 actual physical control of a vehicle upon ways of this state open to the public while under the influence of
6 alcohol, drugs, or a combination of the two and the person was placed under arrest for violation of
7 61-8-401;

8 (ii) the person ~~was placed under arrest; and~~ is under the age of 21 and was placed under arrest for
9 a violation of 61-8-410;

10 (iii) the officer had probable cause to believe that the person was driving or in actual physical
11 control of a vehicle in violation of 61-8-401 and the person was involved in a motor vehicle accident or
12 collision resulting in property damage, bodily injury, or death; and

13 ~~(iii)~~(iv) the person refused to submit to the test or one or more tests designated by the officer.

14 (b) ~~The~~ Based on the above issues and no others, the court shall determine whether the petitioner
15 is entitled to a license or whether the petitioner's license is subject to suspension or revocation.

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

19

20 **Section 5.** Section 61-8-404, MCA, is amended to read:

21 **"61-8-404. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of ~~any~~ a criminal
22 action or other proceeding arising out of acts alleged to have been committed by ~~any~~ a person in violation
23 of 61-8-401, ~~or~~ 61-8-406, 61-8-410, or 61-8-805:

24 (a) evidence of any measured amount or detected presence of alcohol, ~~or~~ drugs, or a combination
25 of alcohol and drugs in the person at the time of the act alleged, as shown by an analysis of the person's
26 blood, or breath, ~~or urine,~~ is admissible. A positive test result does not, in itself, prove that the person was
27 under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person
28 may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person
29 unless some other competent evidence exists that tends to establish that the person was under the
30 influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

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

3 (i) ~~the a~~ a breath test or preliminary alcohol screening test was performed by a person certified by
4 the forensic sciences division of the department to administer ~~breath tests or~~ the test;

5 (ii) ~~the a~~ a blood or urine test sample was ~~a laboratory analysis and the analysis was done~~ analyzed
6 in a laboratory operated or certified by the department ~~or by any other~~ or in a laboratory or facility certified
7 ~~or exempt from certification under the rules of the department; and~~

8 (iii) ~~the test was on a blood sample, the person withdrawing and~~ the blood was withdrawn from the
9 person by a person competent to do so under 61-8-405(1).

10 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a
11 person is admissible in evidence if it was for alcohol and was made by a person trained by the department
12 or if it was for drugs and was made by a person certified BY A PERSON WHO HAS RECEIVED TRAINING
13 RECOGNIZED by the department.

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

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

22
23 **Section 6.** Section 61-8-405, MCA, is amended to read:

24 **"61-8-405. Administration of tests.** (1) Only a physician or registered nurse, or other qualified
25 person acting under the supervision and direction of a physician or registered nurse acting, may, at the
26 request of a peace officer, ~~may~~ withdraw blood for the purpose of determining any measured amount or
27 detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation
28 does not apply to the ~~taking~~ sampling of breath ~~or urine specimens.~~

29 (2) ~~The person may, at the person's own expense, have a physician or registered nurse of the~~
30 ~~person's own choosing administer a test, in~~ In addition to any test administered at the direction of a peace

1 officer, a person may request that an independent blood sample be drawn by a physician or registered nurse
 2 for the purpose of determining any measured amount or detected presence of alcohol, ~~or drugs, or any~~
 3 combination of alcohol and drugs in the person ~~at the time alleged, as shown by analysis of the person's~~
 4 blood, breath, or urine. THE PEACE OFFICER MAY NOT UNREASONABLY IMPEDE THE PERSON'S RIGHT
 5 TO OBTAIN AN INDEPENDENT BLOOD TEST. THE OFFICER MAY BUT HAS NO DUTY TO TRANSPORT
 6 THE PERSON TO A MEDICAL FACILITY OR OTHERWISE ASSIST THE PERSON IN OBTAINING THE TEST.
 7 The cost of an independent blood test is the sole responsibility of the person requesting the test. The
 8 failure or inability to obtain an ~~additional~~ independent test by a person does not preclude the admissibility
 9 in evidence of the any test ~~or tests taken~~ given at the direction of a peace officer.

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

12 (4) A physician or registered nurse, or other qualified person acting under the supervision and
 13 direction of a physician or registered nurse, does not incur any civil or criminal liability as a result of the
 14 proper administering of a blood test when requested in writing by a peace officer to administer a test.

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

18 ~~(6)(5)~~ The department in cooperation with any appropriate agency shall adopt uniform rules for the
 19 giving of tests and may require certification of training to administer the tests as considered necessary."
 20

21 **Section 7.** Section 61-8-407, MCA, is amended to read:

22 "**61-8-407. Definition of alcohol concentration.** For purposes of 16-6-305, ~~61-8-401, and~~
 23 ~~61-8-406~~ and this chapter, "alcohol concentration" means either grams of alcohol per 100 milliliters of
 24 blood, or grams of alcohol per 210 liters of breath, ~~or grams of alcohol per 75.3 milliliters of urine."~~
 25

26 **Section 8.** Section 61-8-409, MCA, is amended to read:

27 "**61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical
 28 control of a vehicle upon ways of this state open to the public is considered to have given consent to a
 29 preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol
 30 concentration, upon the request of a peace officer who has a particularized suspicion that the person was

1 driving or in actual physical control of a vehicle upon ways of this state open to the public while under the
2 influence of alcohol or in violation of 61-8-410.

3 ~~(2) The results of a screening test may be used for determining whether probable cause exists to~~
4 ~~believe a person has violated 61-8-401, 61-8-406, or 61-8-410.~~

5 ~~(3)(2)~~ The person's obligation to submit to a test under 61-8-402 is not satisfied by the person
6 submitting to a preliminary alcohol screening test pursuant to this section.

7 ~~(4)(3)~~ The peace officer shall inform the person of the right to refuse the test and that the refusal
8 to submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1
9 year of that person's driver's license.

10 ~~(5)(4)~~ If the person refuses to submit to a test under this section, a test will not be given. However,
11 the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

12 ~~(6)(5)~~ A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be
13 limited to determining whether a peace officer had a particularized suspicion that the person was driving
14 or in actual physical control of a vehicle upon ways of this state open to the public while under the
15 influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

16 ~~(7)(6)~~ The provisions of 61-8-402~~(2) through (7)~~ (3) THROUGH (8) that do not conflict with this
17 section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402
18 and this section for the same incident, the department may not consider each a separate refusal for
19 purposes of suspension or revocation under 61-8-402.

20 ~~(8)(7)~~ A test may not be conducted or requested under this section unless both the peace officer
21 and the instrument used to conduct the preliminary alcohol screening test have been certified by the
22 department pursuant to rules adopted under the authority of 61-8-405~~(6)(5)~~." (5).

23

24 **Section 9.** Section 61-8-805, MCA, is amended to read:

25 **"61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or**
26 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in
27 actual physical control of a commercial motor vehicle is subject to the suspension of the person's
28 commercial driver's license. If the department receives a ~~sworn~~ report certified under penalty of law from
29 a peace officer that the person was operating a commercial motor vehicle while the person's alcohol
30 concentration was 0.04 or more, the department shall suspend the person's commercial driver's license:

1 (a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt
 2 of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous
 3 materials, the suspension must be for 3 years; and

4 (b) for life, with no provision for a restricted probationary license or endorsement, upon receipt of
 5 a second or subsequent report at any time as determined from the records of the department, unless a
 6 restricted license or endorsement is allowed by federal rules governing commercial drivers.

7 (2) A peace officer who determines that a commercial motor vehicle operator has any measured
 8 amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle
 9 shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24
 10 hours.

11 (3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled
 12 to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions
 13 of subsection (1).

14 (4) The department shall immediately notify in writing any person whose commercial driver's
 15 license is suspended under this section. The person may file a petition within 30 days after the notice is
 16 given for a hearing in the matter in the district court in the county in which the finding of alcohol
 17 concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days'
 18 written notice to the county attorney of the county in which the appeal is filed. The county attorney shall
 19 represent the state. The court shall take testimony and examine the facts of the case, except that the issue
 20 is limited to whether the person was driving or had actual physical control of a commercial motor vehicle
 21 while the person's alcohol concentration was 0.04 or more. The court shall determine whether the
 22 petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this section.
 23 The provisions of 61-8-404 apply to any proceedings under this section."
 24

25 **Section 10.** Section 61-8-806, MCA, is amended to read:

26 "**61-8-806. Blood, and breath, ~~or urine~~ tests of commercial vehicle operators -- procedure --**
 27 **suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to
 28 the public is considered to have given consent, ~~subject to the provisions of 61-8-401 and 61-8-805,~~ to a
 29 ~~test~~ one or more tests of the operator's blood, or breath, ~~or urine~~ for the purpose of determining any
 30 measured or detected amount of alcohol in the operator's body if the operator is requested to submit to

1 the test or tests by a peace officer having reasonable grounds to believe the person to have been driving
2 or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public
3 while having any measurable or detectable alcohol concentration. The peace officer may designate a the
4 blood, or breath, or urine test or tests to be administered.

5 (2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have
6 withdrawn the consent provided in subsection (1).

7 (3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request
8 of a peace officer to submit to ~~a test~~ one or more tests designated by the officer as provided in subsection
9 (1), the test or tests may not be given. On behalf of the department, the officer shall immediately seize the
10 person's commercial driver's license and forward the license to the department, along with a ~~sworn~~
11 certified under penalty of law that the officer had reasonable grounds to believe that the person had been
12 driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the
13 public while having any measurable or detectable alcohol concentration and that the person had refused
14 to submit to ~~the test~~ one or more tests upon the request of the officer. Upon receipt of the report, the
15 department shall suspend the license for a period provided in subsection (5).

16 (4) Upon seizure of a resident's commercial driver's license, the peace officer shall issue, on behalf
17 of the department, a temporary noncommercial driving permit. The temporary driving permit is valid for 72
18 hours after issuance.

19 (5) If a commercial motor vehicle operator refuses to submit to ~~a test~~ one or more tests as provided
20 in subsection (3), the department shall suspend the operator's commercial driver's license:

21 (a) upon first refusal, for 1 year, with no provision for a restricted probationary license or
22 endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous
23 materials, the suspension for a first refusal must be for 3 years;

24 (b) upon a second or subsequent refusal at any time as determined from the records of the
25 department, for life, with no provision for a restricted probationary license or endorsement unless allowed
26 by federal rules governing commercial drivers.

27 (6) A nonresident commercial motor vehicle operator who refuses to submit to ~~a test~~ one or more
28 tests as provided in subsection (3) is subject to suspension by the department as provided in subsection
29 (5) and must be given a temporary driving permit as provided in subsection (4)."

30

-END-

1 SENATE BILL NO. 106

2 INTRODUCED BY VAN VALKENBURG

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DRIVING UNDER THE INFLUENCE LAWS
6 WITH RESPECT TO THE TESTS USED TO DETECT, ESTIMATE, AND MEASURE ALCOHOL OR DRUGS, OR
7 BOTH, IN A PERSON'S BODY; AUTHORIZING ADMISSION OF PRELIMINARY ALCOHOL SCREENING TEST
8 RESULTS AND PHYSICAL, PSYCHOMOTOR, AND PHYSIOLOGICAL ASSESSMENTS OF ALCOHOL OR
9 DRUG PRESENCE OR IMPAIRMENT IN DRIVING UNDER THE INFLUENCE AND OTHER PROCEEDINGS,
10 INCLUDING CERTAIN CRIMINAL PROSECUTIONS AND CIVIL PROCEEDINGS IN WHICH ALCOHOL OR
11 DRUG-PRESENCE OR IMPAIRMENT IS AT ISSUE; ELIMINATING USE OF URINE TESTING UNDER THE
12 IMPLIED CONSENT LAW; PERMITTING SUBMISSION OF CERTIFIED, RATHER THAN SWORN,
13 STATEMENTS FROM PEACE OFFICERS CONCERNING TESTING REFUSALS; AUTHORIZING USE OF BLOOD
14 OR BREATH ANALYSIS TEST RESULTS IN CERTAIN CRIMINAL PROSECUTIONS AND CIVIL ACTIONS;
15 AND AMENDING SECTIONS 61-5-212, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-407,
16 61-8-409, 61-8-805, AND 61-8-806, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1920 **SECTION 1. SECTION 61-5-212, MCA, IS AMENDED TO READ:**

21 **"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering**
22 **vehicle inoperable.** (1) A person who drives a motor vehicle or commercial motor vehicle on any public
23 highway of this state at a time when the person's privilege to do so is suspended or revoked in this state
24 or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for
25 not less than 2 days or more than 6 months and may be fined not more than \$500.

26 (2) The department upon receiving a record of the conviction of any person under this section upon
27 a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the
28 period of suspension or revocation for an additional like period.

29 (3) The vehicle owned and operated at the time of an offense under this section by a person whose
30 driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402~~(5)~~, 61-8-406,

1 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the
2 county sheriff of the convicted person's county of residence for a period of 30 days.

3 (4) The sentencing court shall order the action provided for under subsection (3) and shall specify
4 the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or
5 rendered inoperable by the sheriff within 10 days after the conviction.

6 (5) A convicted person is responsible for all costs associated with actions taken under subsection
7 (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection
8 (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a
9 joint owner who is determined to be without fault.

10 (6) A court may not suspend or defer imposition of penalties provided by this section."
11

12 **Section 2.** Section 61-8-401, MCA, is amended to read:

13 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable, as
14 provided in 61-8-714, ~~and 61-8-723~~ for ~~any~~ a person who is under the influence of:

15 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
16 to the public;

17 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

18 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

19 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
20 within this state.

21 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
22 use alcohol or ~~such~~ a drug under the laws of this state does not constitute a defense against any charge
23 of violating subsection (1).

24 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
25 combination ~~thereof~~ of alcohol and drugs, a person's ability to safely operate a motor vehicle has been
26 diminished.

27 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
28 been committed by any person driving or in actual physical control of a vehicle while under the influence
29 of alcohol, the concentration of alcohol in the person at the time ~~alleged~~ of a test, as shown by analysis
30 of a sample of the person's blood, urine, or breath drawn or taken within a reasonable time after the alleged

1 ~~act, shall give~~ gives rise to the following inferences:

2 (a) If there was at that time an alcohol concentration of ~~0.05~~ 0.04 or less, it may be inferred that
3 the person was not under the influence of alcohol.

4 (b) If there was at that time an alcohol concentration in excess of ~~0.05~~ 0.04 but less than 0.10,
5 that fact ~~shall~~ may not give rise to any inference that the person was or was not under the influence of
6 alcohol, but ~~such~~ the fact may be considered with other competent evidence in determining the guilt or
7 innocence of the person.

8 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
9 person was under the influence of alcohol. The inference is rebuttable.

10 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
11 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination
12 of ~~the two~~ alcohol and drugs.

13 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410,
14 61-8-714, 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406
15 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction
16 of the enforcement of the ordinance and of the imposition of the fines and penalties ~~therein~~ provided in the
17 ordinance.

18 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
19

20 **Section 3.** Section 61-8-402, MCA, is amended to read:

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

27 (2) (A) The test or tests must be administered at the direction of a peace officer ~~who~~ WHEN:

28 (I) THE OFFICER has reasonable grounds to believe that the person has been driving or has been
29 in actual physical control of a vehicle upon ways of this state open to the public while under the influence
30 of alcohol, drugs, or a combination of the two AND THE PERSON HAS BEEN PLACED UNDER ARREST FOR

1 A VIOLATION OF 61-8-401;

2 (II) THE PERSON IS UNDER THE AGE OF 21 AND HAS BEEN PLACED UNDER ARREST FOR A
3 VIOLATION OF 61-8-410; OR

4 (III) THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON WAS DRIVING OR IN
5 ACTUAL PHYSICAL CONTROL OF A VEHICLE IN VIOLATION OF 61-8-401 AND THE PERSON HAS BEEN
6 INVOLVED IN A MOTOR VEHICLE ACCIDENT OR COLLISION RESULTING IN PROPERTY DAMAGE, BODILY
7 INJURY, OR DEATH.

8 (B) The arresting OR INVESTIGATING officer may designate which test or tests are administered.
9 ~~A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows~~
10 ~~an alcohol concentration of 0.10 or more, a test for drugs may not be given.~~

11 ~~(2)(3)~~ A person who is unconscious or who is otherwise in a condition rendering the person
12 incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

13 ~~(3)(4)~~ If ~~a driver under arrest~~ an arrested person refuses ~~upon the request of a peace officer~~ to
14 submit to ~~a test of~~ one or more tests requested and designated by the ~~arresting~~ officer as provided in
15 subsection ~~(4)~~ (2), a the refused test or tests may not be given, but the officer shall, on behalf of the
16 department, immediately seize the person's driver's license. The peace officer shall immediately forward
17 the license to the department, along with a ~~sworn~~ report certified under penalty of law ~~noting that the~~
18 ~~peace officer had reasonable grounds to believe that the arrested person had been driving or was in actual~~
19 ~~physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol,~~
20 ~~drugs, or a combination of the two alcohol and drugs and noting~~ STATING WHICH OF THE CONDITIONS
21 SET FORTH IN SUBSECTION (2)(A) PROVIDES THE BASIS FOR THE TESTING REQUEST AND CONFIRMING
22 that the person refused to submit to ~~the test of~~ one or more tests upon the request of requested and
23 designated by the peace officer. Upon receipt of the report, the department shall suspend the license for
24 the period provided in subsection ~~(5)~~ (6).

25 ~~(4)(5)~~ Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department,
26 a temporary driving permit, which is valid for 5 days following the date of issuance and shall provide the
27 driver with written notice of the license suspension or revocation and the right to a hearing provided in
28 61-8-403.

29 ~~(5)(6)~~ The following suspension and revocation periods are applicable upon refusal to submit to
30 ~~a test of~~ one or more tests:

1 (a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary
2 license;

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

5 ~~(6)(7)~~ A nonresident driver's license seized under this section must be sent by the department to
6 the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit
7 to ~~a test or one or more~~ tests.

8 ~~(7)(8)~~ The department may recognize the seizure of a license of a tribal member by a peace officer
9 acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking,
10 or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law
11 or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the
12 actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state.
13 Action by the department under this subsection is not reviewable under 61-8-403.

14 ~~(8)(9)~~ ~~All suspensions are~~ A suspension under this section is subject to review as provided in this
15 part.

16 ~~(9)(10)~~ This section does not apply to blood and breath tests, samples, and analyses used for
17 purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected
18 violation of an offense not in this part."

19

20 **SECTION 4. SECTION 61-8-403, MCA, IS AMENDED TO READ:**

21 **"61-8-403. Right of appeal to court.** (1) Within 30 days after notice of the right to a hearing has
22 been given by a peace officer, a person may file a petition to challenge the license suspension or revocation
23 in the district court in the county where the person resides or in the county where the arrest was made.

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

30 (3) Upon request of the petitioner, the court may order the department to return the seized license

1 or issue a stay of the suspension or revocation action pending the hearing.

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

4 (i) a peace officer had reasonable grounds to believe that the person had been driving or was in
5 actual physical control of a vehicle upon ways of this state open to the public while under the influence of
6 alcohol, drugs, or a combination of the two and the person was placed under arrest for violation of
7 61-8-401;

8 (ii) the person ~~was placed under arrest, and~~ is under the age of 21 and was placed under arrest for
9 a violation of 61-8-410;

10 (iii) the officer had probable cause to believe that the person was driving or in actual physical
11 control of a vehicle in violation of 61-8-401 and the person was involved in a motor vehicle accident or
12 collision resulting in property damage, bodily injury, or death; and

13 ~~(iii)~~(iv) the person refused to submit to the test or one or more tests designated by the officer.

14 (b) ~~The~~ Based on the above issues and no others, the court shall determine whether the petitioner
15 is entitled to a license or whether the petitioner's license is subject to suspension or revocation.

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

19

20 **Section 5.** Section 61-8-404, MCA, is amended to read:

21 "**61-8-404. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of ~~any~~ a criminal
22 action or other proceeding arising out of acts alleged to have been committed by ~~any~~ a person in violation
23 of 61-8-401, ~~or~~ 61-8-406, 61-8-410, or 61-8-805:

24 (a) evidence of any measured amount or detected presence of alcohol, ~~or~~ drugs, or a combination
25 of alcohol and drugs in the person at the time of the act alleged, as shown by an analysis of the person's
26 blood, or breath, ~~or urine,~~ is admissible. A positive test result does not, in itself, prove that the person was
27 under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person
28 may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person
29 unless some other competent evidence exists that tends to establish that the person was under the
30 influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

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

3 (i) ~~the~~ a breath test or preliminary alcohol screening test was performed by a person certified by
 4 the forensic sciences division of the department to administer ~~breath tests or the test;~~

5 (ii) ~~the~~ a blood or urine test sample was a ~~laboratory analysis and the analysis was done~~ analyzed
 6 in a laboratory operated or certified by the department ~~or by any other~~ or in a laboratory or facility certified
 7 ~~or exempt from certification under the rules of the department; and~~

8 (iii) ~~the test was on a blood sample, the person withdrawing and the blood was withdrawn from the~~
 9 person by a person competent to do so under 61-8-405(1).

10 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a
 11 person is admissible in evidence if it was for alcohol and was made by a person trained by the department
 12 or if it was for drugs and was made by a person certified BY A PERSON WHO HAS RECEIVED TRAINING
 13 RECOGNIZED by the department.

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

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

22
 23 **Section 6.** Section 61-8-405, MCA, is amended to read:

24 "**61-8-405. Administration of tests.** (1) Only a physician or registered nurse, or other qualified
 25 person acting under the supervision and direction of a physician or registered nurse ~~acting,~~ may, at the
 26 request of a peace officer, ~~may~~ withdraw blood for the purpose of determining any measured amount or
 27 detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation
 28 does not apply to the taking sampling of breath ~~or urine specimens.~~

29 (2) ~~The person may, at the person's own expense, have a physician or registered nurse of the~~
 30 ~~person's own choosing administer a test, in~~ In addition to any test administered at the direction of a peace

1 officer, a person may request that an independent blood sample be drawn by a physician or registered nurse
 2 for the purpose of determining any measured amount or detected presence of alcohol, ~~or~~ drugs, or any
 3 combination of alcohol and drugs in the person at the time alleged, as shown by analysis of the person's
 4 blood, breath, or urine. THE PEACE OFFICER MAY NOT UNREASONABLY IMPEDE THE PERSON'S RIGHT
 5 TO OBTAIN AN INDEPENDENT BLOOD TEST. THE OFFICER MAY BUT HAS NO DUTY TO TRANSPORT
 6 THE PERSON TO A MEDICAL FACILITY OR OTHERWISE ASSIST THE PERSON IN OBTAINING THE TEST.
 7 The cost of an independent blood test is the sole responsibility of the person requesting the test. The
 8 failure or inability to obtain an ~~additional~~ independent test by a person does not preclude the admissibility
 9 in evidence of the ~~any~~ test ~~or tests taken~~ given at the direction of a peace officer.

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

12 (4) A physician or registered nurse, or other qualified person acting under the supervision and
 13 direction of a physician or registered nurse, does not incur any civil or criminal liability as a result of the
 14 proper administering of a blood test when requested in writing by a peace officer to administer a test.

15 ~~(5) If a test given under 61-8-402 or 61-8-306 is a test of urine, the person tested must be given~~
 16 ~~privacy in the taking of the urine specimen that will ensure the integrity of the specimen and, at the same~~
 17 ~~time, maintain the dignity of the individual involved.~~

18 ~~(6)~~(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the
 19 giving of tests and may require certification of training to administer the tests as considered necessary."
 20

21 **Section 7.** Section 61-8-407, MCA, is amended to read:

22 "61-8-407. **Definition of alcohol concentration.** For purposes of 16-6-305, ~~61-8-401, and~~
 23 ~~61-8-406~~ and this chapter, "alcohol concentration" means either grams of alcohol per 100 milliliters of
 24 blood, or grams of alcohol per 210 liters of breath, ~~or grams of alcohol per 75.3 milliliters of urine."~~
 25

26 **Section 8.** Section 61-8-409, MCA, is amended to read:

27 "61-8-409. **Preliminary alcohol screening test.** (1) A person who operates or is in actual physical
 28 control of a vehicle upon ways of this state open to the public is considered to have given consent to a
 29 preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol
 30 concentration, upon the request of a peace officer who has a particularized suspicion that the person was

1 driving or in actual physical control of a vehicle upon ways of this state open to the public while under the
2 influence of alcohol or in violation of 61-8-410.

3 ~~(2) The results of a screening test may be used for determining whether probable cause exists to~~
4 ~~believe a person has violated 61-8-401, 61-8-406, or 61-8-410.~~

5 ~~(3)(2)~~ The person's obligation to submit to a test under 61-8-402 is not satisfied by the person
6 submitting to a preliminary alcohol screening test pursuant to this section.

7 ~~(4)(3)~~ The peace officer shall inform the person of the right to refuse the test and that the refusal
8 to submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1
9 year of that person's driver's license.

10 ~~(5)(4)~~ If the person refuses to submit to a test under this section, a test will not be given. However,
11 the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

12 ~~(6)(5)~~ A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be
13 limited to determining whether a peace officer had a particularized suspicion that the person was driving
14 or in actual physical control of a vehicle upon ways of this state open to the public while under the
15 influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

16 ~~(7)(6)~~ The provisions of 61-8-402~~(2) through (7)~~ (3) THROUGH (8) that do not conflict with this
17 section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402
18 and this section for the same incident, the department may not consider each a separate refusal for
19 purposes of suspension or revocation under 61-8-402.

20 ~~(8)(7)~~ A test may not be conducted or requested under this section unless both the peace officer
21 and the instrument used to conduct the preliminary alcohol screening test have been certified by the
22 department pursuant to rules adopted under the authority of 61-8-405~~(6)(5)~~."

23
24 **Section 9.** Section 61-8-805, MCA, is amended to read:

25 **"61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or**
26 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in
27 actual physical control of a commercial motor vehicle is subject to the suspension of the person's
28 commercial driver's license. If the department receives a ~~sworn~~ report certified under penalty of law from
29 a peace officer that the person was operating a commercial motor vehicle while the person's alcohol
30 concentration was 0.04 or more, the department shall suspend the person's commercial driver's license:

1 (a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt
2 of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous
3 materials, the suspension must be for 3 years; and

4 (b) for life, with no provision for a restricted probationary license or endorsement, upon receipt of
5 a second or subsequent report at any time as determined from the records of the department, unless a
6 restricted license or endorsement is allowed by federal rules governing commercial drivers.

7 (2) A peace officer who determines that a commercial motor vehicle operator has any measured
8 amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle
9 shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24
10 hours.

11 (3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled
12 to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions
13 of subsection (1).

14 (4) The department shall immediately notify in writing any person whose commercial driver's
15 license is suspended under this section. The person may file a petition within 30 days after the notice is
16 given for a hearing in the matter in the district court in the county in which the finding of alcohol
17 concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days'
18 written notice to the county attorney of the county in which the appeal is filed. The county attorney shall
19 represent the state. The court shall take testimony and examine the facts of the case, except that the issue
20 is limited to whether the person was driving or had actual physical control of a commercial motor vehicle
21 while the person's alcohol concentration was 0.04 or more. The court shall determine whether the
22 petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this section.
23 The provisions of 61-8-404 apply to any proceedings under this section."
24

25 **Section 10.** Section 61-8-806, MCA, is amended to read:

26 **"61-8-806. Blood, and breath, or urine tests of commercial vehicle operators -- procedure --**
27 **suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to
28 the public is considered to have given consent, ~~subject to the provisions of 61-8-401 and 61-8-806,~~ to a
29 ~~test~~ one or more tests of the operator's blood, or breath, ~~or urine~~ for the purpose of determining any
30 measured or detected amount of alcohol in the operator's body if the operator is requested to submit to

1 the test or tests by a peace officer having reasonable grounds to believe the person to have been driving
2 or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public
3 while having any measurable or detectable alcohol concentration. The peace officer may designate a the
4 blood, or breath, or urine test or tests to be administered.

5 (2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have
6 withdrawn the consent provided in subsection (1).

7 (3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request
8 of a peace officer to submit to ~~a test~~ one or more tests designated by the officer as provided in subsection
9 (1), the test or tests may not be given. On behalf of the department, the officer shall immediately seize the
10 person's commercial driver's license and forward the license to the department, along with a ~~sworn~~ report
11 certified under penalty of law that the officer had reasonable grounds to believe that the person had been
12 driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the
13 public while having any measurable or detectable alcohol concentration and that the person had refused
14 to submit to ~~the test~~ one or more tests upon the request of the officer. Upon receipt of the report, the
15 department shall suspend the license for a period provided in subsection (5).

16 (4) Upon seizure of a resident's commercial driver's license, the peace officer shall issue, on behalf
17 of the department, a temporary noncommercial driving permit. The temporary driving permit is valid for 72
18 hours after issuance.

19 (5) If a commercial motor vehicle operator refuses to submit to ~~a test~~ one or more tests as provided
20 in subsection (3), the department shall suspend the operator's commercial driver's license:

21 (a) upon first refusal, for 1 year, with no provision for a restricted probationary license or
22 endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous
23 materials, the suspension for a first refusal must be for 3 years;

24 (b) upon a second or subsequent refusal at any time as determined from the records of the
25 department, for life, with no provision for a restricted probationary license or endorsement unless allowed
26 by federal rules governing commercial drivers.

27 (6) A nonresident commercial motor vehicle operator who refuses to submit to ~~a test~~ one or more
28 tests as provided in subsection (3) is subject to suspension by the department as provided in subsection
29 (5) and must be given a temporary driving permit as provided in subsection (4)."

30 -END-