

SENATE BILL NO. 400

INTRODUCED BY R. WEBB

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF REFUSAL TO SUBMIT TO A BLOOD OR BREATH TEST FOR THE PURPOSE OF DETERMINING THE PRESENCE OF ALCOHOL OR DRUGS IN THE PERSON'S BODY; PROVIDING PENALTIES; AMENDING SECTION 61-8-402, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Offense of refusal to submit to blood or breath test.** An arrested person who purposely or knowingly refuses to submit to a test of the person's blood or breath as authorized by 61-8-402 and 61-8-806, when requested by a peace officer, commits the offense of refusal to submit to a blood or breath test and upon conviction shall be punished as provided in [section 2].

NEW SECTION. **Section 2. Penalty for refusal to submit to blood or breath test for alcohol, drugs, or both.** (1) (a) A person convicted of a first violation of [section 1] shall be punished by imprisonment for not less than 24 consecutive hours or more than 3 months and by a fine of not less than \$300 or more than \$1,000.

(b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) (a) On a second conviction of a violation of [section 1], the person shall be punished by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than 6 months.

(b) At least 48 consecutive hours of the imprisonment sentence must be served and may not be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(3) (a) On a third conviction of a violation of [section 1], the person shall be punished by imprisonment

1 for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or more than \$5,000.

2 (b) At least 72 consecutive hours of the imprisonment term must be served and may not be served under
3 home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be
4 suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending
5 successful completion of a chemical dependency treatment program by the person.

6 (4) On a fourth or subsequent conviction of a violation of [section 1], the person is guilty of a felony and
7 shall be punished as provided in 61-8-731.

8

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

10 **"61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit**
11 **to test -- administrative license suspension.** (1) A person who operates or is in actual physical control of a
12 vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the
13 person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol
14 or drugs in the person's body.

15 (2) (a) The test or tests must be administered at the direction of a peace officer when:

16 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual
17 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,
18 or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 or 61-8-465;

19 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

20 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of
21 a vehicle:

22 (A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision
23 resulting in property damage;

24 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in
25 45-2-101, or death; or

26 (C) in violation of 61-8-465.

27 (b) The arresting or investigating officer may designate which test or tests are administered.

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

30 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer

1 as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5),
2 but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace
3 officer shall immediately forward the license to the department, along with a report certified under penalty of law
4 stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and
5 confirming that the person refused to submit to one or more tests requested and designated by the peace officer.
6 Upon receipt of the report, the department shall suspend the license for the period provided in subsection (7).

7 (5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this
8 section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the
9 arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205,
10 61-8-401, 61-8-406, or 61-8-411 or a similar statute in another jurisdiction, the officer may apply for a search
11 warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

12 (6) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
13 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
14 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing
15 provided in 61-8-403.

16 (7) (a) Except as provided in subsection (7)(b), the following suspension periods are applicable upon
17 refusal to submit to one or more tests:

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

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

21 (b) If a person who refuses to submit to one or more tests under this section is the holder of a
22 commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges,
23 the department shall:

24 (i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

25 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,
26 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person
27 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior
28 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same
29 effect as a previous testing refusal for purposes of this subsection (7)(b).

30 (8) A nonresident driver's license seized under this section must be sent by the department to the

1 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
2 more tests.

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

9 (10) A suspension under this section is subject to review as provided in this part.

10 (11) This section does not apply to tests, samples, and analyses of blood or breath used for purposes
11 of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an
12 offense not in this part, or performed pursuant to a search warrant.

13 (12) This section does not prohibit the release of information obtained from tests, samples, and analyses
14 of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6).

15 (13) An arrested person who is requested to submit to one or more tests designated by an officer as
16 provided in subsection (2) must be informed that refusal to submit to the test or tests constitutes a separate
17 offense as provided in [sections 1 and 2]."

18
19 **NEW SECTION. Section 4. Codification instruction.** (1) [Section 1] is intended to be codified as an
20 integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 1].

21 (2) [Section 2] is intended to be codified as an integral part of Title 61, chapter 8, part 7, and the
22 provisions of Title 61, chapter 8, part 7, apply to [section 2].

23
24 **NEW SECTION. Section 5. Applicability.** [This act] applies to offenses committed on or after [the
25 effective date of this act].

26 - END -