

## 1 HOUSE BILL NO. 637

2 INTRODUCED BY S. MALEK

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATED TO DRIVING UNDER THE  
5 INFLUENCE OF ALCOHOL OR DRUGS; RESTRICTING A PERSON CONVICTED OF DRIVING UNDER THE  
6 INFLUENCE OF ALCOHOL OR DRUGS OR DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION OR  
7 WHO REFUSES TO SUBMIT TO A BLOOD OR BREATH TEST WHEN SUSPECTED OF DRIVING UNDER  
8 THE INFLUENCE OF ALCOHOL OR DRUGS TO DRIVING ONLY A MOTOR VEHICLE EQUIPPED WITH AN  
9 IGNITION INTERLOCK DEVICE OR REQUIRING THE PERSON TO PARTICIPATE IN A SOBRIETY  
10 PROGRAM IN CERTAIN CASES; INCREASING DRIVER'S LICENSE REINSTATEMENT FEES AND  
11 ALLOCATING A PORTION OF THE FEES TO THE DEPARTMENT OF JUSTICE FOR PAYMENT OF COSTS  
12 FOR INSTALLING, LEASING, AND MAINTAINING INTERLOCK DEVICES FOR PERSONS DETERMINED TO  
13 BE INDIGENT; PROVIDING A PENALTY FOR NONCOMPLIANCE WITH INTERLOCK OR SOBRIETY  
14 PROGRAM RESTRICTIONS; ELIMINATING FORFEITURE OF VEHICLE PROVISIONS RELATED TO THE  
15 OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR DRIVING WITH EXCESSIVE  
16 ALCOHOL CONCENTRATION; AMENDING SECTIONS 61-2-107, 61-5-218, 61-8-401, 61-8-402, 61-8-406,  
17 61-8-422, 61-8-440, AND 61-8-442, MCA; REPEALING SECTIONS 61-8-421 AND 61-8-733, MCA; AND  
18 PROVIDING AN EFFECTIVE DATE."

19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21  
22 **Section 1.** Section 61-2-107, MCA, is amended to read:

23 **"61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.**

24 (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or  
25 revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the  
26 department a fee of ~~\$200~~ \$300 in addition to any other fines, forfeitures, and penalties assessed as a result of  
27 conviction for a violation of the traffic laws of the state.

28 (2) The department shall deposit ~~one-half~~ one-third of the fees collected under subsection (1) in the  
29 general fund, ~~and the other half~~ one-third of the fees in an account in the state special revenue fund to be used  
30 for funding county drinking and driving prevention programs as provided in 61-2-108, and one-third of the fees

1 in the account established in [section 9]."

2

3 **Section 2.** Section 61-5-218, MCA, is amended to read:

4 **"61-5-218. License reinstatement fee following license suspension or revocation.** (1) Except as  
5 provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving  
6 privilege has been suspended or revoked shall pay a reinstatement fee of ~~\$400~~ \$200 to the department to have  
7 the driver's license or driving privilege reinstated.

8 (2) (a) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205  
9 or 61-8-402 shall pay a reinstatement fee as required by 61-2-107.

10 (b) A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be  
11 reinstated without payment of a reinstatement fee.

12 (c) The reinstatement fee required under subsection (1) must be waived by the department when a court  
13 notifies the department that the person has satisfied the requirements of 61-5-214(2) and the court has  
14 determined that the person is indigent under the standards set forth in 47-1-111.

15 (3) The department shall deposit one-half of the fees collected under subsection (1) in the general fund  
16 and one-half in the account established in [section 9]."

17

18 **Section 3.** Section 61-8-401, MCA, is amended to read:

19 **"61-8-401. Driving under influence of alcohol or drugs -- definitions.** (1) It is unlawful and  
20 punishable, as provided in 61-8-442, 61-8-714, ~~and 61-8-731 through 61-8-732, and~~ 61-8-734, for a person who  
21 is under the influence of:

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

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

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

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

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

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

3 (b) Subject to 61-8-440, as used in this part, "vehicle" has the meaning provided in 61-1-101, except that  
4 the term does not include a bicycle.

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

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

12 (b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may  
13 not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be  
14 considered with other competent evidence in determining the guilt or innocence of the person.

15 (c) If there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person  
16 was under the influence of alcohol. The inference is rebuttable.

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

20 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-714,  
21 61-8-722, 61-8-731 ~~through~~, 61-8-732, and 61-8-734, and subsections (1) through (5) of this section, with the  
22 word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and  
23 is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided  
24 in the ordinance.

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

27 **Section 4.** Section 61-8-402, MCA, is amended to read:

28 **"61-8-402. Blood or breath tests for alcohol, drugs, or both.** (1) A person who operates or is in actual  
29 physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a  
30 test or tests of the person's blood or breath for the purpose of determining any measured amount or detected

1 presence of alcohol or drugs in the person's body.

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

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

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

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

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

11 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in  
12 45-2-101, or death.

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

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

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

23 (b) The department shall approve the person to drive only a vehicle equipped with an interlock device  
24 if the department receives notification from an interlock device provider that an ignition interlock device approved  
25 pursuant to 61-8-441 has been installed in the vehicle that the person will be driving during the term of the  
26 suspension and the person has paid the fee required in 61-2-107.

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

1 (6) (a) Except as provided in subsection (6)(b), the following suspension periods are applicable upon  
2 refusal to submit to one or more tests:

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

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

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

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

10 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,  
11 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person  
12 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior  
13 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same  
14 effect as a previous testing refusal for purposes of this subsection (6)(b).

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

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

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

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

28

29 **Section 5.** Section 61-8-406, MCA, is amended to read:

30 **"61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or**

1 **more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more.** (1) It is  
 2 unlawful and punishable as provided in 61-8-442, 61-8-722, 61-8-723, ~~and 61-8-731 through 61-8-732, and~~  
 3 61-8-734 for any person to drive or be in actual physical control of:

4 (a) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol  
 5 concentration, as shown by analysis of the person's blood, breath, or urine, is 0.08 or more; or

6 (b) a commercial motor vehicle upon the ways of this state open to the public while the person's alcohol  
 7 concentration, as shown by analysis of the person's blood or breath, is 0.04 or more.

8 (2) Absolute liability, as provided in 45-2-104, will be imposed for a violation of this section."  
 9

10 **Section 6.** Section 61-8-422, MCA, is amended to read:

11 **"61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or**  
 12 **forfeiture -- penalty.** (1) It is unlawful for the owner of a vehicle subject to seizure under 61-5-212 ~~or seizure and~~  
 13 ~~forfeiture under 61-8-733~~ to transfer, sell, or encumber the owner's interest in that vehicle from the time of the  
 14 owner's arrest or the filing of the underlying charge until the time that the underlying charge is dismissed, the  
 15 owner is acquitted of the underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court,  
 16 or the underlying charge is otherwise terminated.

17 (2) The prohibition against transfer of title may not be stayed pending the determination of an appeal  
 18 from the conviction on the underlying charge.

19 (3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned in the  
 20 county jail for not more than 2 years, fined an amount not more than \$20,000, or both."  
 21

22 **Section 7.** Section 61-8-440, MCA, is amended to read:

23 **"61-8-440. Ignition interlock device or sobriety program restrictions -- assisting in starting and**  
 24 **operating -- circumventing -- penalty penalties.** (1) It is unlawful for a person who is ~~subject to a restriction~~  
 25 restricted to driving only a motor vehicle equipped with an ignition interlock device under 61-8-402 or 61-8-442  
 26 to operate a motor vehicle not equipped with an ignition interlock device.

27 (2) A person may not knowingly assist a person who is restricted to the use of an ignition interlock device  
 28 to start and operate the restricted person's motor vehicle.

29 (3) A person may not knowingly circumvent the operation of an ignition interlock device.

30 (4) (a) A person convicted of a violation of this section shall be punished by a fine of not more than \$500

1 or by imprisonment for not more than 6 months or both.

2 (5) This section does not apply if:

3 (a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition  
4 interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and

5 (b) the person subject to the restriction does not operate the motor vehicle.

6 (6) If the department is notified by a court or probation officer that a person is not complying with a  
7 restriction imposed pursuant to 61-8-402 or 61-8-442, the department shall revoke the person's driving privileges."

8

9 **Section 8.** Section 61-8-442, MCA, is amended to read:

10 "**61-8-442. ~~Driving under influence of alcohol or drugs -- driving with excessive alcohol~~**  
11 **~~concentration -- ignition~~ Ignition interlock device restrictions -- sobriety program requirements.** (1) In  
12 addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition and if a probationary  
13 license is recommended by the court, the court ~~may~~ shall, for a person convicted of ~~a first~~ an offense under  
14 61-8-401 or 61-8-406;:

15 (a) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device  
16 during the probationary period and require the person to pay, except as provided in [section 9], the reasonable  
17 cost of leasing, installing, and maintaining the device; or

18 (b) require the person to participate in a sobriety program.

19 ~~———— (2) If a person is convicted of a second or subsequent violation of 61-8-401 or 61-8-406, in addition to~~  
20 ~~the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall:~~

21 ~~———— (a) if recommending that a probationary license be issued to the person, restrict the person to driving~~  
22 ~~only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and~~  
23 ~~require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or~~

24 ~~———— (b) order that each motor vehicle owned by the person at the time of the offense be seized and subjected~~  
25 ~~to the forfeiture procedure provided under 61-8-421.~~

26 ~~(3)(2)~~ Any restriction imposed under this section must be included in a report of the conviction made by  
27 the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained  
28 by the department in accordance with 61-11-102.

29 ~~(4)(3)~~ The duration of a restriction imposed under this section must be monitored by the department.

30 (4) For the purposes of this section, "sobriety program" means a court-ordered program that requires

1 a participant to submit to daily breath tests or to be monitored electronically through a remote device capable of  
2 detecting the person's consumption of alcohol."

3  
4 **NEW SECTION. Section 9. Ignition interlock device account -- indigence determination.** (1) There  
5 is an account in the state special revenue fund to the credit of the department to be used for the purposes of this  
6 section.

7 (2) If a person is determined by a court to be indigent under the provisions of subsection (3), the  
8 department shall pay from the account established in subsection (1) the cost of installing, leasing, and maintaining  
9 an ignition interlock device required pursuant to 61-8-442.

10 (3) The court shall determine a person to be indigent for the purposes of this section if the person is  
11 participating in any of the following programs:

- 12 (a) temporary assistance for needy families;  
13 (b) the supplemental nutritional assistance program; or  
14 (c) supplemental security income.

15  
16 **NEW SECTION. Section 10. Repealer.** The following sections of the Montana Code Annotated are  
17 repealed:

- 18 61-8-421. Forfeiture procedure.  
19 61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration --  
20 forfeiture of vehicle.

21  
22 **NEW SECTION. Section 11. Codification instruction.** [Section 9] is intended to be codified as an  
23 integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 9].

24  
25 **NEW SECTION. Section 12. Effective date.** [This act] is effective July 1, 2011.

26 - END -