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SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

1 1001."

2

3 **Section 2.** Section 61-8-1010, MCA, is amended to read:

4 **"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug**

5 **monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including 61-
6 8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar
7 offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may,
8 regardless of disposition and if a probationary license is recommended by the court, require the person to
9 comply with the conditions listed in subsection (2)(a) or (2)(b).

10 (2) On a second or subsequent conviction for a violation of driving under the influence, including
11 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a
12 similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the
13 reason for the suspension or revocation was that the person was convicted of a violation of driving under the
14 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in
15 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension
16 was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by
17 a peace officer who believed that the person might be driving under the influence, in addition to the
18 punishments listed in 61-8-1002 and 61-8-1007, the court shall ~~require the person:~~

19 (a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for
20 in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program
21 and to pay the fees associated with the program;

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

25 (c) order that each motor vehicle owned by the person at the time of the offense be seized and
26 subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common
27 carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the
28 owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be

1 forfeited under this section for any act or omission established by the owner to have been committed or omitted
2 by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the
3 owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a
4 security interest is subject to the secured person's interest if the person did not know and could not have
5 reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

6 (3) All court-approved alcohol or drug detection testing programs allowed under this section are
7 required to use the state's data management system pursuant to 44-4-1203."

8

9 **Section 3.** Section 61-8-1016, MCA, is amended to read:

10 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or**
11 **testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test --**

12 **administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle
13 or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent
14 to a test or tests of the person's blood or breath for the purpose of determining any measured amount or
15 detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or
16 detected presence of drugs in the person's body.

17 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test
18 of the person's breath for the purpose of estimating the person's alcohol concentration.

19 (c) A preliminary alcohol screening test may not be conducted or requested under this section
20 unless both the peace officer and the instrument used to conduct the test have been certified by the department
21 pursuant to rules adopted under the authority of 61-8-1019(5).

22 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person
23 submitting to a preliminary alcohol screening test pursuant to this section.

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

25 (i) the peace officer has particularized suspicion to believe that the person has been driving or has
26 been in actual physical control of a vehicle upon ways of this state open to the public while under the influence
27 of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under
28 the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the

1 under the influence. The inference is rebuttable.

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

5

6 **Section 5.** Section 61-8-1019, MCA, is amended to read:

7 **"61-8-1019. Administration of tests.** (1) Only a licensed physician, registered nurse, or other
8 qualified person acting under the supervision and direction of a physician or registered nurse may, at the
9 request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected
10 presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not
11 apply to the sampling of breath or oral fluid.

12 (2) In addition to any test administered at the direction of a peace officer, a person may request
13 that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining
14 any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the
15 person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test.
16 The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the
17 person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person
18 requesting the test. The failure or inability to obtain an independent test by a person does not preclude the
19 admissibility in evidence of any test given at the direction of a peace officer.

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

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

25 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the
26 giving of tests and may require certification of training to administer the tests as considered necessary.

27 (6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets
28 the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a

1 sample of blood, breath, oral fluid, urine, or other bodily substance is taken from that person for any reason, a
2 portion of that sample sufficient for analysis must be provided to a peace officer if requested for law
3 enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."
4

5 **Section 6.** Section 61-8-1032, MCA, is amended to read:

6 **"61-8-1032. Mandatory suspension of license following certain implied consent action.** (1) The
7 department shall suspend an individual's driver license if the department receives a report for an implied
8 consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an
9 individual has refused a test or tests of the person's blood, breath, oral fluid, urine, or other bodily substance for
10 determining any measured amount or detected presence of alcohol or drugs in the person's body.

11 (2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on
12 the public highways has been suspended may not have the license or privilege renewed or restored until the
13 revocation or suspension duration has been completed.

14 (b) The department shall apply the appropriate sanction to the driver based on the reported
15 conviction and prior offenses.

16 (c) The driver shall pay all reinstatement and administrative fees owed to the department before a
17 driver's license or privilege to drive is restored.

18 (d) The duration of the suspension commences from the date of violation.

19 (e) If a person refuses tests for the same incident, the department may not consider each a
20 separate refusal for purposes of suspension.

21 (f) The department may not issue a probationary license during the suspension issued under this
22 part.

23 (3) (a) A person who has an implied consent violation shall pay the department an administrative
24 fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection
25 (3)(b).

26 (b) There is a blood-draw search warrant processing account in the state special revenue fund
27 established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection

28 (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or