

SENATE BILL NO. 204

INTRODUCED BY J. TREBAS, K. ZOLNIKOV, M. HOPKINS, K. REGIER, W. MCKAMEY, D. ZOLNIKOV, D.

EMRICH, J. KARLEN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO DRIVING UNDER THE
INFLUENCE; PROVIDING AN AFFIRMATIVE DEFENSE IF A VEHICLE IS SAFELY OFF THE ROADWAY;
PROVIDING A DEFINITION OF "ACTUAL PHYSICAL CONTROL"; AND AMENDING SECTION 61-8-1001 61-
8-1002, MCA."

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

Section 1. ~~Section 61-8-1001, MCA, is amended to read:~~

~~"61-8-1001. Definitions. As used in this part, unless the context requires otherwise and unless a
different meaning plainly is required, the following definitions apply:~~

~~(1) (a) "Actual physical control" means a person is operating or driving a motor vehicle on the
public roads and highways of this state.~~

~~(b) The term does not include:~~

~~(i) when a person is seated in any seat, including the driver's seat, of a motor vehicle and:~~

~~(A) the engine of the motor vehicle is in operation but the motor vehicle is not in a gear that allows
self-propulsion; or~~

~~(B) the motor vehicle is disabled and incapable of self-propelled movement, except when the motor
vehicle is disabled as a result of a collision when the person was operating or driving the motor vehicle; or~~

~~(ii) when a person is propelling a disabled motor vehicle on the public roads and highways of this
state by means other than self-propulsion from the engine.~~

~~(1)(2) "Aggravated driving under the influence" means a person is in violation of 61-8-1002(1)(a),
(1)(b), (1)(c), or (1)(d) and:~~

~~(a) the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other
bodily substance, is 0.16 or more;~~

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~~(b) — the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;~~

~~(c) — the person's driver's license or privilege to drive is suspended, cancelled, or revoked as a result of a prior violation of driving under the influence, including a violation of 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence, or a similar offense under previous laws of this state or the laws of another state; or~~

~~(d) — the person refuses to give a breath sample as required in 61-8-1016 and the person's driver's license or privilege to drive was suspended, cancelled, or revoked under the provisions of an implied consent statute.~~

~~(2)(3) "Alcoholic beverage" means a compound produced for human consumption as a drink that contains 0.5% or more of alcohol by volume.~~

~~(3)(4) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath, including as used in 16-6-305, 23-2-535, 45-5-207, 67-1-211, and this title.~~

~~(4)(5) "Bus" means a motor vehicle with a manufacturer's rated seating capacity of 11 or more passengers, including the driver.~~

~~(5)(6) "Camper" has the meaning provided in 61-1-101.~~

~~(6)(7) "Commercial motor vehicle" has the meaning provided in 61-1-101.~~

~~(7)(8) "Drug" means any substance that when taken into the human body can impair a person's ability to operate a vehicle safely. The term includes the meanings provided in 50-32-101(6), (7), and (14).~~

~~(8)(9) "DUI court" means any court that has established a special docket for handling cases involving persons convicted under 61-8-1007 or 61-8-1008 and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to 61-8-1009 and to end the participant's criminal behavior associated with the use of alcohol or drugs.~~

~~(9)(10) "Highway" has the meaning provided in 61-1-101, including the shoulders of the highway.~~

~~(10)(11) "Motor home" has the meaning provided in 61-1-101.~~

~~(11)(12) "Motor vehicle" has the meaning provided in 61-1-101.~~

~~(12)(13) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that contains any amount of an alcoholic beverage and that is open or has a broken seal or the contents of which~~

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~~are partially removed.~~

~~(13)(14) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a passenger is seated in the vehicle, including an unlocked glove compartment.~~

~~(14)(15) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.~~

~~(15)(16) "Vehicle" has the meaning provided in 61-1-101, except that the term does not include a bicycle."~~

Section 1. Section 61-8-1002, MCA, is amended to read:

"61-8-1002. Driving under influence. (1) A person commits the offense of driving under the influence if the person drives or is in actual physical control of:

(a) a vehicle or a commercial motor vehicle upon the ways of this state open to the public while under the influence of alcohol, any drug, or a combination of alcohol and any drug;

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

(c) a commercial motor vehicle within this state while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.04 or more;

(d) a noncommercial vehicle or commercial motor vehicle within this state while the person's delta-9-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood or other bodily substance, is 5 ng/ml or more; or

(e) a vehicle within this state when the person is under 21 years of age at the time of the offense while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.02 or more.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the

person's blood, breath, or other bodily substance drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

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

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

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

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

(4) Each municipality in this state is given authority to enact this section, with the word "state" changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and the imposition of the fines and penalties provided in the ordinance.

(5) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

(6) When the same acts may establish the commission of an offense under subsection (1), a person charged with the conduct may be prosecuted for a violation of another relevant subsection under subsection (1). However, the person may be convicted of only one offense under this section or of a similar offense under previous laws of this state.

(7) A person charged with a violation for being in actual physical control of a vehicle under this section may assert an affirmative defense, which the defendant must prove by a preponderance of the evidence, that the person moved the vehicle safely off the roadway prior to being pursued by a law enforcement officer. The court may not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus hearing in the case of the defendant's intent to assert the affirmative defense."

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