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HOUSE BILL NO. 541

2 INTRODUCED BY S. KELLY, S. KLAKKEN, T. SHARP, E. BYRNE, A. REGIER, J. ETCHART, G. KMETZ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO DRIVING UNDER THE
5 INFLUENCE; ADDING DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL AND A CERTAIN
6 CONTROLLED SUBSTANCE SUBSTANCES AS AN OFFENSE; PROVIDING PENALTIES; AND AMENDING
7 SECTIONS 61-8-1002 AND 61-8-1007, MCA."

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

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

12 **"61-8-1002. Driving under influence.** (1) A person commits the offense of driving under the influence
13 if the person drives or is in actual physical control of:

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

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

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

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

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

27 (f) a noncommercial vehicle or commercial motor vehicle within this state while under the
28 influence of alcohol and a controlled substance as designated in Schedules I through V AND II of Title 50,

1 chapter 32, part 2, EXCLUDING MARIJUANA, THAT IS NOT PRESCRIBED TO THE PERSON. For the purposes of this
2 subsection (1)(f), marijuana is not considered a controlled substance.

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

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

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

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

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

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

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

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

26

27 **Section 2.** Section 61-8-1007, MCA, is amended to read:

28 **"61-8-1007. Penalty for driving under influence -- first through third offenses.** (1) (a) Except as

1 provided in subsection (1)(b) or (1)(c), a person convicted of a violation of 61-8-1002(1)(a) shall be punished as
2 follows:

3 (i) for a first violation, by imprisonment for not less than 24 consecutive hours or more than 6
4 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under
5 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for
6 not less than 48 consecutive hours or more than 1 year and by a fine of not less than \$1,200 or more than
7 \$2,000;

8 (ii) for a second violation, by imprisonment for not less than 7 days or more than 1 year and by a
9 fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age
10 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 14
11 days or more than 1 year and a fine of not less than \$2,400 or more than \$4,000; or

12 (iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a
13 fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age
14 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60
15 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

16 (b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided
17 in 61-8-1008.

18 (c) If the person has a prior conviction or pending charge for a violation of driving under the
19 influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this
20 state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-
21 1001, the person shall be punished as provided in subsection (4) (5).

22 (d) The mandatory minimum imprisonment term may not be served under home arrest and may
23 not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
24 person's physical or mental well-being.

25 (e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year
26 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-
27 1009. During any suspended portion of sentence imposed by the court:

28 (i) the person is subject to all conditions of the suspended sentence imposed by the court,

1 including mandatory participation in drug or DUI courts, if available;

2 (ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if

3 available and if imposed by the court; and

4 (iii) if the person violates any condition of the suspended sentence or any treatment requirement,

5 the court may impose the remainder of any imprisonment term that was imposed and suspended.

6 (2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of 61-8-

7 1002(1)(b), (1)(c), or (1)(d) shall be punished as follows:

8 (i) for a first violation, by imprisonment for not more than 6 months and by a fine of not less than

9 \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at

10 the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine

11 of not less than \$1,200 or more than \$2,000;

12 (ii) for a second violation, by imprisonment for not less than 5 days or more than 1 year and by a

13 fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age

14 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10

15 days or more than 1 year and by a fine of not less than \$2,400 or more than \$4,000; or

16 (iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a

17 fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age

18 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60

19 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

20 (b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided

21 in 61-8-1008.

22 (c) If the person has a prior conviction or pending charge for a violation of driving under the

23 influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this

24 state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-

25 1001, the person shall be punished as provided in subsection (4) (5).

26 (d) The mandatory minimum imprisonment term may not be served under home arrest and may

27 not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the

28 person's physical or mental well-being.

4 (i) the person is subject to all conditions of the suspended sentence imposed by the court,
5 including mandatory participation in drug or DUI courts, if available;

6 (ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if
7 available and if imposed by the court; and

10 (3) (a) A person convicted of a violation of 61-8-1002(1)(e) shall be punished as follows:

19 (iv) In addition to the punishment provided in this section, regardless of disposition:

20 (A) the person shall comply with the chemical dependency education course and chemical
21 dependency treatment provisions in 61-8-1009 as ordered by the court; and

22 (B) the department shall suspend the person's driver's license for 90 days upon the first conviction,
23 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or
24 probationary driver's license may not be issued during the suspension period until the person has paid a license
25 reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the
26 offense, has completed at least 30 days of the suspension period.

27 (b) A conviction under this section may not be counted as a prior offense or conviction under 61-8-
28 1007, 61-8-1008, and 61-8-1011.

1 (4) (a) A person convicted of a violation of 61-8-1002(1)(f) is guilty of a felony and shall be
2 punished as follows:

3 (i) on a first conviction under this section, a person shall be punished in accordance with 61-8-
4 1008(1)(a)(i) and (1)(a)(ii);

5 (ii) on a second conviction under this section, a person shall be punished by a fine of not less than
6 \$5,000 or more than \$10,000, and by imprisonment in the state prison for a term of not more than 10 years.

7 The person is not eligible for a deferred imposition of sentence.

8 (iii) on a third or subsequent conviction under this section, the person shall be punished by a fine of
9 not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not more than
10 25 years. The person is not eligible for a deferred imposition of sentence.

11 (4)(5) (a) A person convicted of a violation under 61-8-1002 charged as aggravated driving under the
12 influence, as defined in 61-8-1001, shall be punished as follows:

13 (i) for a first violation, by imprisonment for not less than 2 days or more than 1 year and by a fine
14 of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the
15 offense, the person shall be punished by imprisonment for not less than 4 consecutive days or more than 1
16 year and by a fine of \$2,000;

17 (ii) for a second violation, by imprisonment for not less than 15 days or more than 1 year and by a
18 fine of \$2,500, except that if one or more passengers under 16 years of age were in the vehicle at the time of
19 the offense, the person shall be punished by imprisonment for not less than 45 days or more than 1 year and by
20 a fine of \$5,000; or

21 (iii) for a third violation, by imprisonment for not less than 40 consecutive days or more than 1 year
22 and by a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the
23 time of the offense, the person shall be punished by imprisonment for not less than 90 consecutive days or
24 more than 1 year and by a fine of \$10,000.

25 (b) The mandatory minimum imprisonment term may not be served under home arrest and may
26 not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
27 person's physical or mental well-being.

28 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year

1 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-
2 1009. During any suspended portion of sentence imposed by the court:

3 (i) the person is subject to all conditions of the suspended sentence imposed by the court,

4 including mandatory participation in drug or DUI courts, if available;

5 (ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if

6 available and if imposed by the court; and

7 (iii) if the person violates any condition of the suspended sentence or any treatment requirement,

8 the court may impose the remainder of any imprisonment term that was imposed and suspended.

9 (d) If the person has a prior conviction under 45-5-106, the person shall be punished as provided
10 in 61-8-1008.

11 (5)(6) In addition to the punishment provided in this section, regardless of disposition, the person
12 shall comply with the chemical dependency education course and chemical dependency treatment provisions in
13 61-8-1009 as ordered by the court.

14 (6)(7) A person punished pursuant to this section is subject to mandatory revocation or suspension of
15 the person's driver's license as provided in chapter 5."

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