

HOUSE BILL NO. 541

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

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

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

**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 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; or

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

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

(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."

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

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