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(New Draft of H.P. 2136, L.D.2053)
(EMERGENCY)
SECOND REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document **No. 2138**

H. P. 2309 House of Representatives, April 1, 1982
Reported by Representative Hobbins from the Committee on
Judiciary and printed under Joint Rules No. 2. EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-TWO

**AN ACT to Clarify the 1981 Amendments
Relating to the Operating Under the Influence
and Habitual Offender Laws.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the First Regular Session of the 110th Legislature, in 1981, passed a comprehensive group of Acts designed to strengthen the laws for preventing persons under the influence of intoxicating liquor or with blood-alcohol level in excess of 0.10% from operating motor vehicles; and

Whereas, certain amendments are necessary to clarify various matters under the new laws, including the relationship between the criminal and civil offenses and the jurisdiction of the juvenile court; and

1 Whereas, it is essential to the proper enforcement of
2 the operating under the influence or with excessive
3 blood-alcohol laws that these matters be clarified as
4 quickly as possible; and

5 Whereas, in the judgment of the Legislature, these
6 facts create an emergency within the meaning of the Consti-
7 tution of Maine and require the following legislation as
8 immediately necessary for the preservation of the public
9 peace, health and safety; now, therefore,

10 Be it enacted by the People of the State of Maine as follows:

11 Sec. 1. 15 MRSA §757, as amended by PL 1979, c. 252,
12 is repealed and the following enacted in its place:

13 §757. Allegation of prior conviction when sentenced
14 enhanced; procedure

15 1. Allegation required. Except as otherwise provided
16 by law, a prior conviction shall be specially alleged if the
17 sentencing provision of any crime requires that a present
18 sentence be enhanced because the defendant has been previ-
19 ously convicted of a specified crime. A sentence is
20 enhanced within the meaning of this section only if the
21 maximum sentence which may be imposed is increased or a
22 mandatory minimum nonsuspendable sentence must be imposed.
23 The prior conviction may be alleged as part of a count in
24 the complaint, information or indictment alleging the prin-
25 cipal offense or may be alleged in an ancillary complaint,
26 information or indictment. An ancillary charging instrument
27 may be filed with the court at any time prior to the imposi-
28 tion of the sentence on the principal offense and sentencing
29 shall be continued until after there has been an opportunity
30 to obtain an indictment if an indictment is required for the
31 allegation of the prior conviction or adjudication.

32 2. Procedure. In a trial to a jury in which the prior
33 conviction is for an offense which is identical to the cur-
34 rent principal offense or is sufficiently similar that
35 knowledge of the fact that defendant has been convicted of
36 the prior offense may, in the determination of the presiding
37 justice, unduly influence the ability of the jury to deter-
38 mine guilt fairly, the allegation of the prior conviction or
39 adjudication shall not be read to a jury until after convic-
40 tion of the principal offense, nor shall the defendant be
41 tried on the issue of whether he was previously adjudicated
42 or convicted until after conviction of the principal
43 offense, unless the prior conviction has been admitted into

1 evidence for another reason. The jury which found the
2 defendant guilty of the current principal offense shall
3 determine whether the defendant was convicted of the prior
4 alleged offense unless that jury has been discharged prior
5 to the filing of an ancillary charging instrument.

6 3. Identity. If the name and date of birth of the
7 person charged with the current principal offense are the
8 same as those of the person who has been convicted or adju-
9 dicated of the prior offense, it shall be presumed that the
10 person charged with the current principal offense is the
11 same person as that person convicted or adjudicated of the
12 prior offense.

13 Sec. 2. 15 MRSA §3103, sub-§1, ¶A, as amended by PL
14 1977, c. 664, §11, is further amended to read:

15 A. Conduct which, if committed by an adult, would be
16 defined as criminal by Title 17-A, the Maine Criminal
17 Code, or by any other criminal statute outside that
18 code, including any rule or regulation under a statute,
19 except for those provisions of Titles 12 and 29, not
20 specifically included in ~~paragraph~~ paragraphs E and F;

21 Sec. 3. 15 MRSA §3103, sub-§1, ¶D, as amended by PL
22 1979, c. 681, §6, is further amended to read:

23 D. If a juvenile is adjudicated to have committed an
24 action described in paragraph B or C, willful refusal
25 to pay a resulting fine or willful violation of the
26 terms of a resulting probation; and

27 Sec. 4. 15 MRSA §3103, sub-§1, ¶E, as amended by PL
28 1979, c. 663, §116, is further amended to read:

29 E. Offenses involving the operation or attempted oper-
30 ation of ~~any motor vehicle,~~ a snowmobile or watercraft
31 while under the influence of intoxicating liquor or
32 drugs, as defined in Title 29, section 1312, and in
33 Title 12, section 2073 7801, subsection 2 9, and
34 section 7827, subsection 9, respectively; and

35 Sec. 5. 15 MRSA §3103, sub-§1, ¶F is enacted to read:

36 F. The criminal violation of operating a motor vehicle
37 under the influence of intoxicating liquor or drugs or
38 with an excessive blood-alcohol level, as defined in
39 Title 29, section 1312-B.

40 Sec. 6. 15 MRSA §3301, sub-§1, ¶B, as amended by PL
41 1981, c. 204, §1, is further amended to read:

1 B. Make whatever informal adjustment is practicable
2 without a petition, provided that this paragraph does
3 not apply when the juvenile is accused of having com-
4 mitted a juvenile crime pursuant to section 3103, sub-
5 section 1, paragraph E; or

6 **Sec. 7. 15 MRSA §3301, sub-§7 is enacted to read:**

7 7. Nonapplication of section. The provisions of this
8 section do not apply to a juvenile charged with the juvenile
9 crime defined in section 3103, subsection 1, paragraph F,
10 and a petition may be filed without recommendation by an
11 intake worker. The provisions of section 3203 apply in the
12 case of a juvenile charged with the juvenile crime defined
13 in section 3103, subsection 1, paragraph F.

14 **Sec. 8. 15 MRSA §3308, sub-§6, 2nd ¶, as enacted by PL**
15 **1981, c. 204, §2, is amended to read:**

16 Nothing in this Part may be construed to limit the authority
17 of the Secretary of State, pursuant to Title 29, section
18 1312, to suspend a person's license or permit and privilege
19 to operate a motor vehicle, right to operate a motor vehicle
20 or right to apply for or obtain a license.

21 **Sec. 9. 15 MRSA §3314, sub-§3 is enacted to read:**

22 3. Disposition for violation of section 3103, subsec-
23 tion 1, paragraph F. When a juvenile has been adjudicated
24 as having committed the juvenile crime under section 3103,
25 subsection 1, paragraph F, the court may impose any of the
26 dispositional alternatives contained in subsection 1. Any
27 incarceration which is imposed may be part of a disposition
28 pursuant to subsection 1, paragraph F or H. Any incarcer-
29 ation in a county jail shall be in a county jail designated
30 by the Department of Corrections as a place for the secure
31 detention of juveniles. In addition, the juvenile's license
32 or permit to operate a motor vehicle, right to operate a
33 motor vehicle or right to apply for or obtain a license
34 shall be suspended by the court for a period of 180 days.
35 The period of suspension shall not be suspended by the
36 court. The court shall give notice of the suspension and
37 take physical custody of an operator's license or permit as
38 provided in Title 29, section 2241-H. The court shall
39 immediately transmit a certified abstract of the suspension
40 to the Secretary of State. A further suspension may be
41 imposed by the Secretary of State pursuant to Title 29,
42 section 1312-D, subsection 1-A.

43 **Sec. 10. 29 MRSA §58, as last amended by PL 1977, c.**
44 **184, §2, is further amended to read:**

1 §58. Certificate as evidence

2 Notwithstanding any other provision of law or rule of
3 evidence, the certificate of the Secretary of State or his
4 deputy, under seal of the State, shall be received in any
5 court in this State as prima facie evidence of the issuance,
6 suspension or revocation of any operator's license or any
7 certificate of registration of any vehicle any fact stated
8 in the certificate or documents attached thereto.

9 Sec. 11. 29 MRSA §59, as amended by PL 1971, c. 360,
10 §6, is further amended to read:

11 §59. Facsimile signature of Secretary of State

12 A facsimile of the signature of the Secretary of State
13 imprinted by or at his direction upon any precept on any
14 certificate described in section 58 or on any notice to sus-
15 pend or revoke any certificate of registration or any li-
16 cence issued to any person to operate a motor vehicle shall
17 have the same validity as his written signature and shall be
18 admissible in court.

19 Sec. 12. 29 MRSA §1312, first ¶, as amended by PL
20 1981, c. 475, §2, is further amended to read:

21 Any person who operates or attempts to operate a motor
22 vehicle within this State shall be deemed to have given con-
23 sent have the duty to submit to a chemical test to determine
24 his blood-alcohol level by analysis of his blood or breath,
25 if there is probable cause to believe he has operated or
26 attempted to operate a motor vehicle while under the influ-
27 ence of intoxicating liquor. The duty to submit to a
28 blood-alcohol test includes the duty to complete either a
29 blood or breath test.

30 Sec. 13. 29 MRSA §1312, 2nd ¶, 2nd sentence, as
31 enacted by PL 1971, c. 547, is amended to read:

32 At his the request of a person selecting a blood test, the
33 he may have a test of his blood may be administered by a
34 physician of his choice, if reasonably available.

35 Sec. 14. 29 MRSA §1312, sub-§1, first sentence, as
36 amended by PL 1981, c. 468, §5, is further amended to read:

37 Before any test specified is given, the law enforcement
38 officer shall inform the person as to whom there is probable
39 cause and who is arrested or summonsed that, if he revokes
40 his implied consent fails to comply with the duty to submit

1 to and complete a chemical test by refusing to permit a test
2 to determine the level of blood-alcohol at the direction of
3 the law enforcement officer, his license or permit to oper-
4 ate, his right to operate or his right to apply for or
5 obtain a license will be suspended for 180 days, and the
6 revocation of consent failure to comply with the duty to
7 submit to a blood-alcohol test shall be admissible in evi-
8 dence against him at any trial for operating under the
9 influence of intoxicating liquor.

10 Sec. 15. 29 MRSA §1312, sub-§2, first ¶, as repealed
11 and replaced by PL 1981, c. 468, §6, is amended to read:

12 If a person as to whom there is probable cause ~~revokes his~~
13 ~~implied consent to a chemical test by refusing upon the~~
14 ~~request of a law enforcement officer fails to comply with~~
15 ~~the duty to submit to a chemical test to determine his~~
16 ~~blood-alcohol level by analysis of his blood or breath upon~~
17 ~~the request of a law enforcement officer, no test may be~~
18 ~~given. The Secretary of State, upon the receipt of a writ-~~
19 ~~ten statement under oath from a law enforcement officer,~~
20 ~~stating that the officer had probable cause to believe that~~
21 ~~a person was operating or attempting to operate a motor~~
22 ~~vehicle while under the influence of intoxicating liquor,~~
23 ~~and that the person had revoked his consent by refusing~~
24 ~~failed to comply with the duty to submit to a chemical test~~
25 ~~to determine the blood-alcohol level by analysis of his~~
26 ~~blood or breath, shall immediately notify the person, in~~
27 ~~writing, as provided in section 2241, that his license or~~
28 ~~permit, and his privilege right to operate and his right to~~
29 ~~apply for or obtain a license have been suspended. The sus-~~
30 ~~pension shall be for a period of 180 days. The written~~
31 ~~statement shall be sent to the Secretary of State within 72~~
32 ~~hours of the revocation of consent failure to comply with~~
33 ~~the duty to submit to the blood-alcohol test, excluding~~
34 ~~Saturdays, Sundays and holidays. If the statement is not~~
35 ~~sent within this time period, it shall not affect the Secre-~~
36 ~~tary of State's authority to suspend a person's license~~
37 ~~State shall nevertheless impose the suspension for revoking~~
38 ~~his prior implied consent by refusing failing to comply with~~
39 ~~the duty to submit to a test, unless the delay has preju-~~
40 ~~diced the person's ability to prepare or participate in the~~
41 ~~hearing described in this subsection.~~

42 Sec. 16. 29 MRSA §1312, sub-§2, 3rd and 4th ¶¶, as
43 amended by PL 1981, c. 475, §4, are amended to read:

44 The scope of such a hearing shall cover whether there was
45 probable cause to believe that the individual was either
46 attempting to operate or was operating under the influence

1 of intoxicating liquor and whether he ~~revoked his prior~~
2 ~~implied consent by refusing~~ failed to comply with the duty
3 to submit to one of the blood-alcohol tests upon the request
4 of a law enforcement officer. Any suspension in effect
5 shall be removed if, after hearing, it is determined that
6 the person who ~~refused to permit~~ failed to submit to the
7 test would not have refused failed to submit but for the
8 failure of the law enforcement officer to give either or
9 both of the warnings required by subsection 1.

10 If it is determined, after hearing ~~when such is requested,~~
11 ~~that there was not probable cause to believe that such~~
12 ~~person was either attempting to operate or was operating~~
13 ~~under the influence of intoxicating liquor or that the~~
14 ~~person did not revoke his implied consent to permit fail to~~
15 ~~comply with the duty to submit to a chemical blood-alcohol~~
16 ~~test to determine his blood-alcohol level by analysis of his~~
17 ~~blood or breath,~~ any suspension in effect shall be removed
18 immediately.

19 Sec. 17. 29 MRSA §1312, sub-§3, first sentence, as
20 amended by PL 1981, c. 475, §5, is further amended to read:

21 Any person, whose license, permit or ~~privilege~~ right to
22 operate or right to apply for or obtain a license is sus-
23 pending for ~~revoking his implied consent~~ failing to comply
24 with the duty to submit to a chemical test to determine his
25 blood-alcohol level by analysis of his blood or breath at
26 the direction of a law enforcement officer claiming to have
27 had probable cause to believe that the person operated or
28 attempted to operate while under the influence of intoxicat-
29 ing liquor, shall have the right to file a petition in the
30 Superior Court in the county where he resides, or in
31 Kennebec County, to review the order of suspension by the
32 Secretary of State by the same procedure as is provided in
33 section 2242.

34 Sec. 18. 29 MRSA §1312, sub-§6, first ¶, as amended by
35 PL 1975, c. 293, §4, is further amended to read:

36 Persons conducting ~~chemical~~ analysis of blood or breath for
37 the purpose of determining the blood-alcohol level shall be
38 certified for this purpose by the Department of Human Ser-
39 vices under certification standards to be set by that
40 department.

41 Sec. 19. 29 MRSA §1312, sub-§6, 2nd and 3rd ¶¶, as
42 last amended by PL 1981, c. 475, §6, are further amended to
43 read:

1 Only a duly licensed physician, registered nurse or a person
2 certified by the Department of Human Services under certifi-
3 cation standards to be set by that department, acting at the
4 request of a law enforcement officer, may draw a specimen of
5 blood for the purpose of determining the blood-alcohol level
6 of a person who has not ~~revoked his implied consent~~ is com-
7 plying with the duty to submit to a blood-alcohol test and
8 who has selected a blood test. This limitation shall not
9 apply to the taking of breath specimens.

10 A law enforcement officer may take a sample specimen of the
11 breath of any person whom he has probable cause to believe
12 has operated or attempted to operate a motor vehicle while
13 under the influence of intoxicating liquor and who ~~has not~~
14 ~~revoked his implied consent~~ is complying with the duty to
15 submit to a blood-alcohol test and who has selected a breath
16 test, the sample specimen to be submitted to the Department
17 of Human Services or a person certified by the Department of
18 Human Services for the purpose of conducting chemical tests
19 of the sample specimen to determine the blood-alcohol level
20 thereof.

21 **Sec. 20.** 29 MRSA §1312, sub-§6, 5th ¶, as repealed and
22 replaced by PL 1981, c. 458, §1, is amended by adding after
23 the first sentence a new sentence to read:

24 The procedures for the operation and testing of
25 self-contained breath-alcohol testing apparatuses shall be
26 as provided by regulation promulgated by the Department of
27 Human Services.

28 **Sec. 21.** 29 MRSA §1312, sub-§6, 6th ¶, as last amended
29 by PL 1981, c. 475, §6, is further amended by adding at the
30 end a new paragraph to read:

31 Failure to comply with any provisions of this subsection or
32 with any regulations promulgated in this subsection shall
33 not, by itself, result in the exclusion of evidence of
34 blood-alcohol level, unless the evidence is determined to be
35 not sufficiently reliable.

36 **Sec. 22.** 29 MRSA §1312, sub-§6, 7th ¶, 2nd sentence,
37 as enacted by PL 1977, c. 603, is amended to read:

38 It is also the intent of the Legislature that local law
39 enforcement departments may be equipped, according to local
40 needs, with either type of breath-testing equipment, as de-
41 scribed in paragraphs 3 and 4 this section, as provided by
42 the Department of ~~Transportation~~ Public Safety and approved
43 by the Department of Human Services.

1 **Sec. 23. 29 MRSA §1312, sub-§8, 5th ¶**, as last amended
2 by PL 1981, c. 475, §8, is further amended to read:

3 The revocation of a person's implied consent to a chemical
4 test by refusing to allow the taking of a sample specimen as
5 authorized failure of a person to comply with the duty re-
6 quired by this section to submit to a blood-alcohol test
7 shall be admissible in evidence on the issue of whether that
8 person was under the influence of intoxicating liquor. If
9 the law enforcement officer having probable cause to believe
10 that the person operated or attempted to operate a motor
11 vehicle under the influence of intoxicating liquor fails to
12 give either of the warnings required under subsection 1, the
13 revocation of the person's implied consent by refusing to
14 submit to a chemical failure of the person to comply with
15 the duty to submit to a blood-alcohol test shall not be
16 admissible. If a revocation of consent failure to submit
17 to a blood-alcohol test is not admitted into evidence, the
18 court may inform the jury of the fact that no test result is
19 available.

20 **Sec. 24. 29 MRSA §1312, sub-§8, 6th ¶**, as enacted by
21 PL 1979, c. 701, §33, is amended to read:

22 If a test result is not available for a reason other than
23 revocation of consent failing to comply with the duty to
24 submit to a blood-alcohol test, the unavailability and the
25 reason shall be admissible in evidence.

26 **Sec. 25. 29 MRSA §1312, sub-§8-A**, as enacted by PL
27 1981, c. 468, §7-A, is amended to read:

28 **8-A. Statements by accused.** Any statement by a defen-
29 dant that he was the operator of a motor vehicle, which he
30 is accused of operating in violation of this section or
31 former subsection 10, section 1312-B or section 1312-C,
32 shall be admissible in a proceeding under this section
33 former subsection 10, section 1311 or 1312-B or 1312-C, if
34 it was made voluntarily and is otherwise admissible under
35 the United States Constitution or the Constitution of Maine.
36 The statement may constitute sufficient proof by itself,
37 without further proof of corpus delicti, that the motor
38 vehicle was operated and was operated by the defendant.

39 **Sec. 26. 29 MRSA §1312, sub-§11, ¶¶ A and B**, as
40 amended by PL 1981, c. 475, §9, are further amended to read:

41 **A.** After a person has been charged with a violation of
42 this section operating or attempting to operate a motor
43 vehicle under the influence of intoxicating liquor or

1 drugs or with a blood-alcohol level of 0.10% or more,
2 the investigating or arresting officer shall investi-
3 gate to determine whether the charged person has any
4 prior convictions under ~~this section~~ former subsection
5 10 or section 1312-B or an adjudication under section
6 1312-C. As part of his investigation, the officer
7 shall make the necessary inquiries of the Secretary of
8 State.

9 B. Any A law enforcement officer authorized to arrest
10 for violations of this section may arrest, without a
11 warrant, any person the officer has probable cause to
12 believe has violated this section operated or attempted
13 to operate a motor vehicle while under the influence of
14 intoxicating liquor or drugs if the arrest occurs
15 within a period following the offense reasonably likely
16 to result in the obtaining of probative evidence of
17 blood-alcohol level.

18 **Sec. 27.** 29 MRSA §1312, sub-§11, ¶C, as enacted by PL
19 1977, c. 626, §3, is repealed.

20 **Sec. 28.** 29 MRSA §1312-B, sub-§1-A is enacted to read:

21 1-A. Pleading and proof. The alternatives defined in
22 subsection 1, paragraphs A and B may be pleaded in the
23 alternative. The State may, but shall not be required to,
24 elect prior to submission of the factfinder.

25 **Sec. 29.** 29 MRSA §1312-B, sub-§2, ¶C, as enacted by PL
26 1981, c. 468, §10, is amended to read:

27 C. Upon conviction, the court shall suspend the defen-
28 dant's ~~privilege~~ license or permit to operate, right to
29 operate a motor vehicle and right to apply for or
30 obtain a license for a specified period, which shall
31 not be less than of 90 days nor more than one year.
32 The minimum period of suspension shall not be suspended
33 by the court. The court shall give notice of the sus-
34 pension and take physical custody of an operator's li-
35 cence as provided in section 2241-H. The Secretary of
36 State may impose an additional period of suspension as
37 provided in section 1312-D, subsection 1-A, and may
38 extend any period of suspension until satisfaction of
39 any conditions imposed pursuant to section 1312-D, sub-
40 section 3.

41 **Sec. 30.** 29 MRSA §1312-B, sub-§§3 and 4 are enacted to
42 read:

1 3. Sentencing procedure. In determining the appropri-
2 ate sentence, the court shall consider the record of convic-
3 tions for criminal traffic offenses and adjudications of
4 traffic infractions of the defendant. The court may rely
5 upon oral representations based on records maintained by the
6 courts, by the State Bureau of Identification or by the
7 Secretary of State, including telecommunications of records
8 maintained by the Secretary of State. If the defendant dis-
9 putes the accuracy of any representation concerning a con-
10 viction or adjudication the court shall grant a continuance
11 for the purposes of determining the accuracy of the record.

12 4. Juvenile crime. References in this Title to this
13 section shall be deemed also to refer to the juvenile crime
14 stated in Title 15, section 3103, subsection 1, paragraph F,
15 and to the disposition, including a suspension, for that
16 juvenile crime as provided in Title 15, section 3314, sub-
17 section 3, except as otherwise provided or except where the
18 context clearly requires otherwise.

19 Sec. 31. 29 MRSA §1312-C, sub-§2-A is enacted to read:

20 2-A. Pleading and proof. The alternatives defined in
21 subsection 2, paragraphs A and B may be pleaded in the
22 alternative. The State may, but shall not be required to,
23 elect prior to submission to the fact finder.

24 Sec. 32. 29 MRSA §1312-C, sub-§4, as enacted by PL
25 1981, c. 468, §11, is repealed and the following enacted in
26 its place:

27 4. Suspension. The license or permit to operate,
28 right to operate a motor vehicle or right to apply for or
29 obtain a license of any person adjudicated guilty of violat-
30 ing subsection 2 shall be suspended by the court for a
31 period of 45 days. The period of suspension shall not be
32 suspended by the court. The court shall give notice of the
33 suspension and shall take physical custody of an operator's
34 license or permit as provided in section 2241-H. The Secre-
35 tary of State may impose an additional period of suspension,
36 as provided in section 1312-D, subsection 1-A, and may
37 extend any period of suspension until satisfaction of any
38 conditions imposed by him pursuant to section 1312-D, sub-
39 section 3.

40 Sec. 33. 29 MRSA §1312-C, sub-§5, ¶¶ A, B and C, as
41 enacted by PL 1981, c. 468, §11, are amended to read:

42 A. Was tested as having a blood-alcohol level in
43 excess of 0.20% or more;

1 B. Was driving more than 30 miles an hour in excess of
2 the speed limit by 30 miles an hour or more during the
3 operation which resulted in the prosecution for oper-
4 ating under the influence or with a blood-alcohol level
5 of 0.10% or more;

6 C. Attempted Eluded or attempted to elude an officer,
7 as defined in section 2501-A, subsection 3, during the
8 operation which resulted in the prosecution for oper-
9 ating under the influence or with a blood-alcohol level
10 of 0.10% or more; or

11 **Sec. 34. 29 MRSA §1312-C, sub-§7, ¶B, as enacted by PL**
12 **1981, c. 468, §11, is amended to read:**

13 B. Had revoked his implied consent failed to comply
14 with the duty to submit to take a blood or breath test
15 by refusing to take one within immediately preceding 6
16 years immediately preceding the operation which
17 resulted in the prosecution for operating under the
18 influence or with a blood-alcohol level of 0.10% or
19 more.

20 **Sec. 35. 29 MRSA §1312-D, sub-§1, as enacted by PL**
21 **1981, c. 468, §12, is amended to read:**

22 1. Recording and notice by Secretary of State. On
23 receipt of an attested copy of the court record of a suspen-
24 sion or revocation of the privilege of operating a person's
25 license, right to operate a motor vehicle or right to apply
26 for or obtain a license or of a conviction or adjudication
27 under section 1312-B or 1312-C, the Secretary of State shall
28 immediately record the suspension of the person's license or
29 permit and privilege to operate a motor vehicle and shall
30 send written notice of the suspension of the court to the
31 person suspended. If the court fails to suspend the li-
32 cence, right to operate a motor vehicle, or right to apply
33 for or obtain a license of any person convicted under
34 section 1312-B or adjudicated as having violated section
35 1312-C, or the juvenile crime defined by Title 15, section
36 3103, subsection 1, paragraph F, the Secretary of State
37 shall suspend those rights for the periods specified in sec-
38 tions 1312-B, 1312-C and Title 15, section 3314, subsection
39 3, respectively, and shall send written notice of the sus-
40 pension as provided in this subsection.

41 **Sec. 36. 29 MRSA §1312-D, sub-§1-A is enacted to read:**

42 1-A. Additional suspension. The Secretary of State
43 may suspend the license, the right to operate a motor vehi-

1 cle or the right to apply for or obtain a license of any
2 person adjudicated of having violated section 1312-C for an
3 additional period of up to 135 days beyond the 45-day period
4 of suspension required under section 1312-C, subsection 4.

5 The Secretary of State may suspend the license, the right to
6 operate or the right to apply for or obtain a license of any
7 person, including a juvenile, convicted under section 1312-B
8 for an additional period of up to 275 days beyond the 90
9 days required under section 1312-B, subsection 2, paragraph
10 C, or up to 185 days beyond the 180 days required under
11 Title 15, section 3314, subsection 3, and if the person has
12 been previously convicted or adjudicated under the former
13 section 1312, subsection 10 or section 1312-B or section
14 1312-C, the Secretary of State shall impose a further sus-
15 pension of not less than 90 days.

16 Notice of any additional suspension pursuant to this subsec-
17 tion shall be given as provided in subsection 1.

18 Sec. 37. 29 MRSA §1312-D, sub-§§2 and 3, as enacted by
19 PL 1981, c. 468, §12, are amended to read:

20 2. Education and treatment programs. Following the
21 expiration of 2/3 of the total period of suspension ordered
22 by the court under imposed pursuant to subsection 1 and 1-A,
23 section 1312-B, subsection 2, paragraph C, or section
24 1312-C, subsection 4, or Title 15, section 3314, the Secre-
25 tary of State may issue a license or permit to the person if
26 he receives written notice that the person has satisfactorily
27 completed the alcohol education program of the
28 Department of Human Services or and, when required, has
29 satisfactorily completed an alcohol treatment or rehabilita-
30 tion program approved or licensed by the department.

31 3. Restricted licenses. After certification under
32 subsection 2 or after completion of the suspension imposed
33 by the court pursuant to this section and section 1312-B,
34 1312-C or Title 15, section 3314, the Secretary of State may
35 issue the license or permit with whatever conditions, res-
36 trictions or terms he deems advisable, having in mind the
37 safety of the public and the welfare of the petitioner,
38 including, but not limited to, successful completion of the
39 alcohol education program of the Department of Human Ser-
40 vices, if the petitioner has not already done so under sub-
41 section 2. The license or permit may contain the condition
42 that the person abstain from the use of intoxicating liquor
43 or drugs.

44 Sec. 38. 29 MRSA §1312-D, sub-§5, as enacted by PL
45 1981, c. 468, §12, is amended to read:

1 5. Restricted licenses for suspension for failure to
2 comply with duty to submit to blood-alcohol test. The
3 Secretary of State may issue a restricted license or permit
4 to any person whose license or permit has been suspended for
5 a first revocation of implied consent by refusing failure to
6 comply with the duty to submit to a blood-alcohol test under
7 section 1312, subsection 2, if the conditions of issuing
8 after issuance following a conviction or adjudication under
9 section 1312-B or 1312-C are met by the person and a period
10 of suspension of not less than 90 days has elapsed.

11 **Sec. 39.** 29 MRSA §1312-D, sub-§§7 and 8, as enacted by
12 PL 1981, c. 468, §12, are amended to read:

13 7. Suspension in effect during appeal. If any person
14 convicted or adjudicated of a violation of section 1312-B or
15 1312-C appeals the judgment or adjudication, the license or
16 permit and privilege to operate a motor vehicle shall be
17 suspended suspension imposed shall remain in effect during
18 the time an appeal is pending, unless the court orders
19 otherwise, or unless the Secretary of State restores the li-
20 cence, permit or privilege to operate pending decision on
21 the appeal.

22 8. Consecutive suspensions. Any suspension under pur-
23 suant to this section or the former section 1312, subsection
24 10 or section 1312-B or 1312-C shall run consecutively with
25 be consecutive to any suspension imposed under section 1312,
26 subsection 2, for revocation of implied consent by refusing
27 failing to comply with the duty to submit to a chemical test
28 to determine blood-alcohol level by analysis of blood or
29 breath.

30 **Sec. 40.** 29 MRSA §1314, sub-§2-A is enacted to read:

31 2-A. Statements by accused. The provisions of section
32 1312, subsection 8-A, shall apply to prosecutions under this
33 section.

34 **Sec. 41.** 29 MRSA §1314, sub-§3, as enacted by PL 1981,
35 c. 468, §13, is amended to read:

36 3. Penalties. Driving to endanger is a Class E crime.
37 In addition, any person found guilty shall as part of the
38 sentence receive a mandatory suspension of his license or
39 permit to operate a motor vehicle, right to operate a motor
40 vehicle or right to apply for or obtain a license for not
41 less than 30 days nor more than 180 days, which minimum
42 shall not be suspended. The court shall give notice of the
43 suspension and take physical custody of an operator's li-

1 cense as provided in section 2241-H. If the court fails to
2 impose a suspension as provided in this section, the Secre-
3 tary of State shall impose the minimum period of suspension
4 and may impose up to the maximum period of suspension and
5 shall give notice as provided in section 1312-D, subsection
6 1.

7 **Sec. 42.** 29 MRSA §2184, sub-§1, as repealed and
8 replaced by PL 1981, c. 468, §14, is repealed and the fol-
9 lowing enacted in its place:

10 1. Offense; penalty. No person may operate a motor
11 vehicle on any public highway of this State at a time when
12 his license or permit to operate, his right to operate or
13 his right to apply for or obtain a license or permit has
14 been suspended or revoked, except for a revocation as an
15 habitual offender under chapter 18-A or former chapter 18,
16 when that person:

17 A. Has received written notice of a suspension or
18 revocation pursuant to section 1312-D, subsection 1, or
19 section 2241-H or other written notice from the Secre-
20 tary of State;

21 B. Has been orally informed of the suspension or revo-
22 cation by a law enforcement officer who is aware of the
23 information as a result of records maintained by the
24 Secretary of State, including those obtainable by tele-
25 communications;

26 C. Has actual knowledge of his suspension or revoca-
27 tion;

28 D. Is a person to whom written notice was sent by
29 ordinary mail at the last known address shown by the
30 records maintained by the Secretary of State; or

31 E. Has failed to appear in court pursuant to any
32 notice or order specified in section 2301-A.

33 Violation of this section is a Class D crime, provided that,
34 notwithstanding Title 17-A, section 1301, the maximum fine
35 shall be \$2,500.

36 **Sec. 43.** 29 MRSA §2184, sub-§§1-A and 1-B are enacted
37 to read:

38 1-A. Minimum mandatory sentences for certain suspen-
39 sions. In the event the suspension was for a conviction for
40 a violation of former section 1312, subsection 10 or section

1 1312-B or an adjudication for a violation of section 1312-C
2 or for a failure to comply with the duty to submit for a
3 blood-alcohol test under section 1312, subsection 2, the
4 court shall impose a minimum fine of \$350, which minimum
5 shall not be suspended; a term of imprisonment which shall
6 be for not less than 7 consecutive days, which minimum shall
7 not be suspended; and a mandatory suspension of license or
8 permit or right to operate a motor vehicle, or right to
9 apply for or obtain a license, for not less than one year
10 nor more than 3 years consecutive to the original suspen-
11 sion, which minimum period shall not be suspended. The re-
12 quirements of Title 15, section 757, of a separate reading
13 of the allegation and a separate trial shall not apply to a
14 proceeding under this subsection. The court shall give
15 notice of the suspension and shall take physical custody of
16 an operator's license or permit as provided in section
17 2241-H.

18 If the court fails to impose a suspension as provided in
19 this subsection, the Secretary of State shall impose the
20 minimum one-year suspension and may impose up to 3 years of
21 suspension and give notice as provided in section 1312-D,
22 subsection 1.

23 The minimum mandatory sentences of this subsection shall
24 apply only to the original period of suspension imposed by
25 the court or by the Secretary of State, or as extended by
26 the Secretary of State pursuant to section 1312-D, subsec-
27 tion 1-A. The minimum mandatory sentences of this subsec-
28 tion shall not apply to any extension of the original sus-
29 pension, including an extension pursuant to section 1312-B,
30 subsection 2, paragraph C, or section 1312-C, subsection 4,
31 imposed for the purpose of compelling compliance with condi-
32 tions for the restoration of a license or right to operate,
33 or to an extension pursuant to section 2241-D for failure to
34 pay a reinstatement fee.

35 1-B. Statements by accused. The provisions of section
36 1312, subsection 8-A, shall apply in a prosecution pursuant
37 to this section.

38 **Sec. 44.** 29 MRSA §2241-H, first and 2nd ¶¶, as enacted
39 by PL 1981, c. 468, §15, are amended to read:

40 In the case of any conviction or adjudication under
41 former section 1312, subsection 10, section 1312-B, 1312-C,
42 1314 or for any offense for which the suspension of a li-
43 cence or the right to operate a motor vehicle or the right
44 to apply for or obtain a license is required by law or in
45 any case in which the court suspends a license under section

1 2305, the court shall inform the defendant of the suspension
2 and the defendant shall acknowledge this notice in writing
3 on a form to be provided by the court. The court, as part
4 of its sentence, notwithstanding any appeal unless the
5 defendant appeals and a stay of execution of the suspension
6 is granted, shall take the any license certificate of issued
7 by this State from the person convicted or adjudicated or
8 any license certificate issued by another state, foreign
9 country or province from the person convicted or adjudicated
10 if that person is residing, domiciled or employed in this
11 State. The court, as part of its sentence, unless the
12 defendant appeals and a stay of execution of the suspension
13 is granted, may take from the person convicted or adjudi-
14 cated any license certificate issued by another state or
15 foreign country or province if the person is not residing,
16 domiciled or employed in this State. The court shall forward
17 the license certificate, a copy of the sentence and the ac-
18 knowledgment of notice by mail to the Secretary of State.

19 The court, upon reasonable cause shown, may allow ~~the~~ a
20 convicted or adjudicated person, who does not have the li-
21 cence certificate in his possession at the time of sentenc-
22 ing, up to 96 hours to surrender his license certificate.

23 Sec. 45. 29 MRSA §2241-I, as enacted by PL 1981, c.
24 468, §15-A, is amended to read:

25 §2241-I. Surrender of suspended license to law enforcement
26 officer

27 In the event that a law enforcement officer, in the
28 course of stopping or detaining a motor vehicle, obtains
29 from the operator of the motor vehicle a State of Maine li-
30 cence which or a license issued by another state, foreign
31 country or province when, according to records of the Secre-
32 tary of State which are available by telecommunications,
33 that person's license or right to operate in this State is
34 under suspension or revocation, the officer shall retain
35 physical custody of the license and shall transmit the li-
36 cence, together with a report stating the circumstances
37 under which it was obtained, to the Secretary of State.

38 Sec. 46. 29 MRSA §2292, sub-§1, ¶E, as enacted by PL
39 1979, c. 10, §2, is amended to read:

40 E. Wilfully operating Operating a motor vehicle with-
41 out a license to do so;

42 Sec. 47. 29 MRSA §2292, sub-§1, ¶¶H and I, as enacted
43 by PL 1979, c. 10, §2, are amended to read:

1 H. Failure of the driver of a motor vehicle involved
2 in an accident resulting in the death or injury of any
3 person to stop close to the scene of the accident and
4 report his identity; or

5 I. Failure of the driver of a motor vehicle involved
6 in an accident resulting only in damage to an attended
7 or unattended vehicle or other property to stop close
8 to the scene of the accident and report his identity or
9 otherwise report the accident-;

10 **Sec. 48. 29 MRSA §2292, sub-§1, ¶¶J and K are enacted**
11 **to read:**

12 J. Eluding an officer, as defined by section 2501-A,
13 subsection 3; or

14 K. Passing a roadblock, as defined by section 2501-A,
15 subsection 4.

16 **Sec. 49. 29 MRSA §2296, as last amended by PL 1981, c.**
17 **475, §10, is further amended to read:**

18 §2296. Relief from habitual offender status

19 At the expiration of one year from the date of the
20 revocation under this chapter, or by the Superior Court
21 under former chapter 18, a person whose license or right to
22 operate a motor vehicle has been revoked may petition the
23 Secretary of State for relief from his habitual offender
24 status. Petitions for relief shall be presented to the
25 Secretary of State, including petitions brought by persons
26 whose revocation was by the Superior Court under former
27 chapter 18. No petition for relief by a person revoked
28 under former chapter 18 may be presented to the Superior
29 Court. Upon petition, the Secretary of State in his discre-
30 tion, after determining that the public safety will not be
31 endangered, may relieve the person from his status as an
32 habitual offender, and, subject to the other provisions of
33 law relating to the issuance of operators' license licenses,
34 permits and privileges to operate, including the financial
35 responsibility requirements of section 782, may issue the
36 person the privilege to operate a motor vehicle in this
37 State upon such terms and conditions as he may prescribe.

38 The Secretary of State shall not issue the privilege to
39 operate a motor vehicle in this State to any person whose
40 license or privilege to operate has been revoked if a charge
41 against that person under section 2298 is pending. If the
42 Secretary of State subsequently determines that a license or

1 privilege to operate was issued to a person against whom a
2 charge under section 2298 was pending, he shall, without
3 hearing, immediately reinstate the revocation of the license
4 or privilege to operate and shall provide notice of the
5 reinstatement of revocation.

6 Subject to the longer extension of the habitual
7 offender status required under section 2298, no license or
8 privilege to operate a motor vehicle in this State may be
9 issued to a person who has been convicted of a violation of
10 section 2298 for a period of at least one year following the
11 conviction. If the person's license or privilege to operate
12 has been restored during pendency of the prosecution under
13 section 2298 or following conviction, the Secretary of State
14 shall immediately reinstate the revocation, without hearing,
15 of the license or privilege to operate and provide notice
16 thereof. The reinstatement of revocation shall continue for
17 a period of at least one year following the conviction.

18 **Sec. 50.** 29 MRSA §2298, 2nd ¶, first sentence, as
19 enacted by PL 1981, c. 468, §18, is amended to read:

20 If the person is defined as a an habitual offender
21 under section 2292, subsection 1, and one or more of the
22 convictions or adjudications defining him as an habitual
23 offender is pursuant to section 2292, subsection 1, para-
24 graph B, the following mandatory minimum penalties penalty,
25 which shall not be suspended, shall be imposed: A minimum
26 fine of ~~not less than~~ \$1,000 and a minimum term of imprison-
27 ment of not less than 60 days.

28 **Sec. 51.** 29 MRSA §2298, 2nd ¶, as enacted by PL 1981,
29 c. 468, §18, is further amended by adding after the first
30 sentence a new sentence to read:

31 The requirements of Title 15, section 757, of separate
32 reading of the allegation and a separate trial shall not
33 apply to sentencing pursuant to this provision.

34 **Sec. 52.** 29 MRSA §2300, sub-§3-A is enacted to read:

35 3-A. Uniform Traffic Ticket and Complaint as sum-
36 mons. A Uniform Traffic Ticket and Complaint, when served
37 upon a person by a law enforcement officer, shall act as a
38 summons to appear in court, on the date specified in the
39 ticket, for a violation of any provision of this Title.

40 **Sec. 53.** 29 MRSA §2301-A, first ¶, as last amended by
41 PL 1979, c. 573, §3, is further amended to read:

1 If a person fails to appear in court on the day speci-
2 fied in response to a Uniform Traffic Ticket and Complaint,
3 a summons, a condition of bail or order of court for any
4 violation of any provision of this Title, or in response to
5 a Uniform Traffic Ticket and Complaint or for any further
6 appearance ordered by the court, including one for the pay-
7 ment of a fine, either in person or by counsel, the court
8 may shall suspend his license or suspend permit, his right
9 to operate motor vehicles in this State and the right to
10 apply for or obtain a license. The effective date of the
11 suspension shall be governed by section 2241-E.

12 Sec. 54. 29 MRSA §2301-A, 2nd ¶, as last amended by PL
13 1979, c. 573, §3, is repealed.

14 Sec. 55. 29 MRSA §2302, 2nd sentence, as enacted by PL
15 1975, c. 430, §55, is amended to read:

16 The District Court shall have original and concurrent juris-
17 diction with the Superior Court over all prosecutions for
18 any other violations of this Title, except Class C or
19 greater crimes, in which case, District Court jurisdiction
20 shall be subject to Title 4, section 152.

21 Sec. 56. 29 MRSA §2306, as amended by PL 1981, c. 468,
22 §21, is further amended to read:

23 §2306. Execution of suspension stayed during appeal

24 If ~~any~~ a person adjudicated to have committed a traffic
25 infraction, except for a violation of section 1312-C, shall
26 appeal appeals from the judgment and sentence adjudication
27 of the trial court, the execution of any suspension imposed
28 on of his license or right to operate a motor vehicle shall
29 be stayed until adjudication disposition on appeal or with-
30 drawal of the appeal, unless good cause is shown why he
31 should not be allowed to retain his license and or right to
32 operate. A stay of execution of any suspension imposed pur-
33 suant to section 1312-C shall be governed by section 1312-D.

34 **Emergency clause.** In view of the emergency cited in
35 the preamble, this Act shall take effect when approved.

36 STATEMENT OF FACT

37 Section 1, in conjunction with sections 30, 43 and 51,
38 states those occasions when the relatively cumbersome proce-
39 dure of a bifurcated trial is necessary for the purpose of
40 proving that a person has been previously convicted of a

1 prior identical or similar offense, including operating
2 under the influence or with excessive blood-alcohol. These
3 provisions restrict that cumbersome procedure only to those
4 occasions when it is truly necessary.

5 Sections 2 through 5 make clear that the Juvenile Court
6 has jurisdiction only over criminal operating under the
7 influence or with excessive blood-alcohol charges.

8 Sections 6 and 7 retain the policy, enacted last year,
9 that informal adjustment may not be used in cases of
10 OUI-EBA, but also eliminate the entire intake process in
11 determinations of whether a juvenile petition should be
12 filed, which served no remaining purpose and only caused
13 delays.

14 Section 8 makes clear that the juvenile code imposes no
15 limitation on the Secretary of State's authority to suspend
16 not only in OUI-EBA cases, but in all Title 29 cases. It
17 also makes clear that suspension may be imposed as to 3 sep-
18 arate "rights." This change is important for purposes of
19 conformity and is discussed further under section 15.

20 Section 9 sets forth the Juvenile Court's sentencing
21 power for violations of the juvenile crime of criminal
22 OUI-EBA. There is no mandatory fine or mandatory jail term,
23 although both may be imposed. A juvenile, however, will be
24 suspended for 180 days rather than the 90 days for an adult.

25 Sections 10 and 11 facilitate the entry into evidence
26 of records of the Secretary of State.

27 Section 12 makes no substantive change in the law.
28 However, it introduces to the statute an important concept
29 stated in State v. Plante, Me., 417 A.2d 991 (1980): That
30 "implied consent" in fact describes a duty by the citizen
31 who is driving to submit to a test if there is probable
32 cause and that there is no "right" to refuse. This impor-
33 tant conceptual change is made throughout the statute. (See
34 sections 13-23, 34)

35 Section 13 makes a language change purely for purposes
36 of clarity.

37 Section 14. See section 12.

38 Section 15. See section 12. This section also makes
39 clear that upon a suspension, the Secretary of State may
40 impose any or all of the following suspensions: (1) A
41 Maine operator's license; (2) the right to operate, that

1 is, the right of an out-of-state driver who has an out-
2 of-state license to operate in the State; and (3) the right
3 of any person to apply for and, if successful, obtain a li-
4 cense. The various provisions in Title 29 concerning sus-
5 pension were extremely inconsistent in their reference as to
6 what was subject to suspension. The purpose here is both to
7 clarify and to make these provisions consistent with each
8 other. (See also sections 8, 9, 14, 35, 36, 39, 41, 42, 43,
9 44, 45, 53) A final change in this section clarifies the
10 Secretary of State's duty concerning suspension where delay
11 in sending in the failure to comply has occurred.

12 Section 16. See section 12. Section 16 also makes
13 clear that the license suspension for failure to comply with
14 the duty to submit to a blood-alcohol test applies in the
15 case of attempted operation as well as actual operation,
16 thus fixing what is clearly an oversight in the present law.

17 Section 17. See section 15.

18 Section 18 makes a technical change in the terms used
19 to refer to tests of blood-alcohol level.

20 Section 19. See section 12

21 Section 20 is designed to ensure more reliable test
22 results with self-contained breath testing apparatuses.

23 Section 21 relates to using blood-alcohol level test
24 results as evidence.

25 Section 22 makes technical changes in the terms used to
26 refer to equipment to test blood-alcohol level and the
27 department that supplies that equipment to localities.

28 Section 23-24. See section 12.

29 Section 25 makes clear that the rule enacted by this
30 section last year applies to all prosecutions for operating
31 under the influence or with excessive blood alcohol, not
32 just those under section 1312-B.

33 Section 26, in paragraph A, makes clear that an inves-
34 tigating officer must attempt to find a prior record of
35 OUI-EBA whenever the person has a new charge. In paragraph
36 B the amendment makes clear that the power to arrest on
37 probable cause applies to the general offense of OUI-EBA and
38 not to violations of "this section," the definition of the
39 crime having been removed from section 1312.

1 Section 27 repeals the statute which permitted a police
2 officer to offer a breath test to any person operating a
3 motor vehicle involved in an accident or operated in viola-
4 tion of the traffic laws.

5 Section 28 makes clear that operating under the influ-
6 ence and operating with a blood-alcohol level in excess of
7 0.10% may be pleaded and proved alternatively, that both
8 alternatives may be submitted to the jury but that the jury
9 need not be confused by 2 alternatives if the prosecution
10 believes that its evidence is such that it desires to rely
11 on only one.

12 Section 29. See section 15. Since few courts seemed
13 to be exercising the discretion under the original provision
14 to suspend for a period between 90 days and a year, this
15 power is returned to the Secretary of State, where it may be
16 applied uniformly. See section 36. In the 2nd amendment,
17 reference is made to Title 29, section 2241-H in order to
18 assure that procedures mandated there are followed under
19 this section.

20 Section 30 makes clear the procedures to be followed at
21 sentencing under Title 29, section 1312-B. Section 30 also
22 makes clear that provisions in this Title relating to prose-
23 cutions, convictions and suspensions under section 1312-B
24 apply to juvenile prosecutions for criminal OUI-EBA as well.

25 Section 31. See section 28.

26 Section 32. See section 29. This section also adds
27 the provision, omitted by oversight, that the suspension of
28 a license or right to operate or apply may not be suspended
29 by the court.

30 Section 33. Paragraph A makes clear that the
31 blood-alcohol level which, if present, requires criminal
32 prosecution is 0.20% or more and not more than 0.20%, that
33 is, 0.21%. This change makes this provision consistent with
34 those which define the crime and the civil violations them-
35 selves, 0.10% or more. Paragraph B makes a similar change
36 as to exceeding the speed limit by 30 mph or more. The
37 second amendment in this paragraph makes the description of
38 the operating under the influence or with excessive
39 blood-alcohol offense accurate. Paragraph C changes
40 referred crime to "eluding." The crime itself is defined as
41 including an attempt. It also changes the description of
42 the operating under the influence or with excessive
43 blood-alcohol offense.

1 Section 34. See section 12. The second amendment
2 clarifies what 6-year period is being referred to.

3 Section 35. See section 15. The second amendment
4 recognizes the fact that courts may and in fact have,
5 through oversight, neglected to enter suspensions. This
6 provision provides that in such an event the Secretary of
7 State shall order the suspension.

8 Section 36. As explained under section 29, see also
9 section 32, the power to impose suspensions beyond the basic
10 minimums of 45 days (civil) and 90 days (criminal) is trans-
11 ferred to the Secretary of State. This section implements
12 that transfer. The basic total suspension periods, criminal,
13 one year, civil, 180 days, remain the same. In the
14 case of a second operating under the influence or excessive
15 blood-alcohol conviction or adjudication, the Secretary of
16 State must suspend for an additional 90 days. Section 36
17 also gives the Secretary of State the same power to impose
18 an additional period of suspension upon juveniles as upon
19 adults, for a total period not to exceed a year.

20 Section 37. The changes in this section merely conform
21 these provisions to take account of the changes in sections
22 29, 32 and 36.

23 Section 38. See section 12.

24 Section 39. As to section 1312-D, subsection 7, see
25 section 15 of this bill. In section 1312-D, subsection 8,
26 the first amendment makes clear that consecutive suspension
27 periods for a conviction or adjudication for operating under
28 the influence or with excessive blood-alcohol and for fail-
29 ing to comply with the duty to submit to a blood-alcohol
30 test apply to all operating under the influence or with
31 excessive blood-alcohol convictions or adjudications,
32 including those under the old law. See also section 12.

33 Section 40 extends the rule of section 1312, subsection
34 8-A, to prosecutions for driving to endanger.

35 Section 41. See section 15. The 2nd amendment makes
36 reference to those provisions of section 2241-H, seizure of
37 license, and section 1312-D, imposition of suspension by
38 Secretary of State if court fails to do so.

39 Section 42 substantially amends the crime of operating
40 after suspension to make clear, for the first time, what is
41 required in the nature of notice to the person suspended or
42 knowledge by the person suspended, or both. The present

1 statute is completely silent on the matter and could be read
2 to impose strict liability, regardless of notice or knowl-
3 edge. However, judges have imposed a variety of different
4 standards. There has never been a case decided by the Law
5 Court imposing a uniform standard. Title 29, section 2184,
6 subsection 1, paragraphs A to E, state 5 different alterna-
7 tive requirements which will satisfy the notice or knowledge
8 requirement. These provisions range from actual knowledge
9 or actual receipt of notice to those imposing liability if
10 the defendant ought to have known of the suspension. A 2nd
11 change eliminates the mandatory \$350 fine which, in last
12 year's bill, was applied to violations of all suspensions,
13 not just suspensions for operating under the influence or
14 with excessive blood-alcohol.

15 Section 43. For purposes of convenience and because of
16 greater elaboration, the provisions concerning minimum
17 mandatory sentences for operating after suspension, when the
18 suspension is for operating under the influence or with
19 excessive blood-alcohol cases, are moved to a new subsection
20 1-A. No changes are made in the amounts of the penalties.
21 The provision discussed under section 36 is applied to this
22 section. The final paragraph makes clear that the minimum
23 mandatory penalties apply only to the original suspension
24 for the operating under the influence or with excessive
25 blood-alcohol cases and not to extensions of that period for
26 failure to pay a reinstatement fee or failure to comply with
27 other conditions of reinstatement. As to subsection 1-B,
28 see section 40.

29 Section 44 clarifies several procedures under Title 29,
30 section 2241-H. (1) It makes clear that the procedures
31 apply to convictions under the old law. (2) It conforms
32 the language of suspensions to that in section 12. (3) It
33 makes clear that the seizure of a license is not required if
34 a stay of execution is issued under section 1312-D, subsec-
35 tion 7, thus removing a conflict with that provision. (4)
36 It clarifies when the court must and when the court may
37 seize an out-of-state license. (5) The last paragraph is
38 amended to give the only valid reason for the court to allow
39 96 hours to surrender a license.

40 Section 45 makes clear that a law enforcement officer
41 must seize any license, Maine or out-of-state, if the
42 person's license or right to operate in the State is sus-
43 pended.

44 Section 46 conforms the description of this crime, in
45 the list of those offenses which will give rise to habitual
46 offender status, to the actual definition of the crime,

1 there being no "wilfull" requirement for operating a motor
2 vehicle without a license.

3 Section 47 makes punctuation changes in implementation
4 of section 48.

5 Section 48 adds these 2 serious crimes to the list of
6 habitual offender offenses.

7 Section 49 makes clear that all petitions for rein-
8 statement of the privilege to operate must be presented to
9 the Secretary of State, including habitual offender
10 revocations imposed by the Superior Court under the old law.
11 The amendment to the 2nd paragraph closes a loophole. Last
12 year's amendment made clear that if a person had driven in
13 violation of the revocation, he may not obtain a license
14 while the criminal proceeding charging the violation of that
15 revocation was pending. The amendment makes clear that if
16 the privilege of operating is mistakenly restored, it must
17 be revoked again. The 3rd paragraph imposes a minimum one-
18 year extension of any revocation if the person has been con-
19 victed of driving in violation of the revocation.

20 Sections 50 and 51 reinstate language which was
21 intended to be included last year and which was approved by
22 the Judiciary Committee. In its absence, an ambiguity was
23 created as to the number of operating under the influence or
24 with excessive blood-alcohol convictions required, as part
25 of the 3 convictions necessary for habitual offender status,
26 to invoke rise to the mandatory sentencing provisions. As
27 to the new last sentence, see section 1. Section 50 also
28 deletes the minimum mandatory fine.

29 Section 52 corrects an omission. Other provisions in
30 this section provide that a Uniform Traffic Ticket and Com-
31 plaint serves as a complaint. This amendment provides that
32 it acts as a summons.

33 Section 53. The first changes are for purposes of
34 clarity and consistency. See also section 15. The last
35 sentence is designed to make sure there is an adequate
36 period of time to provide notice of the suspension.

37 Section 54. The second paragraph of this subsection is
38 repealed because it is redundant with the first paragraph.

39 Section 55 makes clear that the District Court has no
40 authority to try a person for a Class C crime.

1 Section 56 makes appropriate changes in wording without
2 substantive effect. The last sentence makes clear that the
3 one traffic infraction of operating under the influence or
4 with excessive blood-alcohol cases, under section 1312-C, is
5 governed by section 1312-D rather than this section.