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**Report of the Working Group
on
Marijuana and Driving**



**Presented to the
Joint Standing Committee on Criminal Justice and Public Safety
December 15, 2015**

**Prepared by the Department of the Secretary of State
Bureau of Motor Vehicles**

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Executive Summary

On June 9, 2015, the Joint Standing Committee on Criminal Justice and Public Safety requested the Honorable Matthew Dunlap, Secretary of State, to convene a broadly representative working group to study preliminary non-evidentiary breath testing devices for alcohol and blood tests for delta-9-tetrahydrocannabinol, THC, which is the primary psychoactive compound in marijuana, relating to the operation of motor vehicles. The Secretary of State convened a group of stakeholders in the fall of 2015. The Working Group met four times in September and October of 2015 and corresponded by e-mail in between meetings.

The working group specifically discussed and reviewed an abundance of materials regarding the effects of marijuana on the safe operation of motor vehicles, the advisability and efficacy of establishing an impairment level for THC, the detection times for THC in a person's blood, the use of authorized medical marijuana and driving, the ability of Drug Recognition Experts (DRE) to identify persons impaired by THC, other state approaches to penalize operation of motor vehicles while under the influence of THC and law enforcement use of preliminary non-evidentiary breath testing devices for alcohol to assist in the identification of intoxicated drivers.

A majority of the Working Group makes the following recommendations for statutory changes:

- Proof that a person has a THC level of 5 nanograms or more of THC per milliliter of whole blood gives rise to permissible inference that the person is under the influence of intoxicants.

- Proof that a person has a THC level of 2 nanograms or more of THC per milliliter of whole blood and an alcohol level of 0.05 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath gives rise to a permissible inference that the person is under the influence of intoxicants.
- The juvenile provisional license issued to a person who has not yet attained 21 years of age include the condition that the person not operate a motor vehicle with a THC level of more than 0.00 nanograms per milliliter of whole blood except that, it is an affirmative defense that the THC level resulted from marijuana use in compliance with the Maine Medical Use of Marijuana Act.
- The juvenile provisional license issued to a person who has not yet attained 21 years of age must be suspended administratively by the Secretary of State for a period of at least one year unless the person demonstrates that the THC level resulted from marijuana use in compliance with the Maine Medical Use of Marijuana Act.
- A law enforcement officer who reasonably believes that a person has been operating a motor vehicle under the influence of intoxicants may request that the person submit to a preliminary breath test to determine the person's alcohol level, which, in addition to other relevant evidence, the officer may use to determine whether there is probable cause to believe that person was operating a motor vehicle while under the influence of intoxicants.

The Working Group makes the following other recommendations:

- The number of specially trained DREs be increased.

- The Advanced Roadside Impaired Driving Enforcement Program (ARIDE) be incorporated into the basic law enforcement training program.
- Increased public education be provided concerning the dangers of driving a motor vehicle while under the influence of THC.
- Additional study be conducted on impairment levels for THC for operating motor vehicles.

Minority positions/recommendations:

- Working Group member John Pelletier, representing the Maine Criminal Law Advisory Commission, recommends that the nanogram level for THC that gives rise to a permissible inference that a person is under the influence should be set at 7 rather than 5. Mr. Pelletier believes that the science linking any particular nanogram level of THC to impaired driving is uncertain. While some studies find a strong link, others fail to demonstrate any statistical link between THC in the blood and increased crash risk. The science with respect to alcohol, on the other hand, uniformly demonstrates a strong connection between impairment by alcohol and increased crash risk. In fact, there is a growing consensus that many, if not most, people suffer impairment and present an increased crash risk at levels well below .08, the current legal limit in Maine.

As such, current Maine law errs on the high side with respect to the legal limit for alcohol, for which the science is certain. Mr. Pelletier believes that, similarly, the nanogram level for THC should also err on the high side. The science is much less certain regarding THC than it is with respect to alcohol and, Mr. Pelletier believes,

this uncertainty should cause the Legislature to act conservatively as it undertakes regulation of THC levels in the blood for the first time.

- Recommendation by Wayne Foote (Maine Association of Criminal Defense Lawyers), David Boyer (Maine Director of the Marijuana Policy Project) and Becky DeKeuster (Director of Community & Education, Wellness Connection of Maine). In order to protect the rights of lawful marijuana users and avoid false convictions, any changes to the marijuana OUI laws must be based on science. At this time the scientific community is divided regarding the level of THC in a person's blood that causes impairment. Moreover, that scientific community is in agreement that regular users of marijuana are less likely to be impaired at THC levels that would cause impairment in occasional users of marijuana. The current state of research shows that permitting OUI convictions based on a 5 nanogram level, without other concurrent evidence of impairment, will result in false convictions. To avoid these false convictions we recommend the Legislature consider a standard that requires actual evidence of impairment before a person at a level of 5 nanograms or above can be convicted of OUI. That proposal is:

29-A MRSA § 2432 (3-A)

Level of THC in whole blood of 5 nanograms or greater. Proof that a person has a THC level of 5 nanograms or more of THC per milliliter of whole blood, together with other evidence of impairment, gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person is under the influence of intoxicants.

The underlined portion reflects our proposed addition.

Similarly, the majority proposal relating to the combination of alcohol and THC should also require evidence of impairment before a conviction can occur. Our proposal is:

29-A MRSA § 2432 (3-B)

Level of THC and alcohol in combination. Proof that a person has a THC level of 2 nanograms or more of THC per milliliter of whole blood and an alcohol level of 0.05 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath, together with other evidence of impairment, gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person is under the influence of intoxicants.

It is expected that prosecutors and law enforcement will object to the requirement that evidence of impairment be shown. During Workgroup sessions prosecutors frequently referred to cases where evidence of impairment was unavailable due to accident injuries preventing DRE evaluations. Establishing the ability to convict based solely on THC levels was seen by prosecutors as necessary to obtain convictions where they otherwise lacked sufficient evidence to convict someone. The Maine Association of Criminal Defense Lawyers believes this dilution of proof to be unjust. Our society, through the Maine and United States Constitutions, demands proof of guilt beyond a reasonable doubt before we can imprison a person. Laws that circumvent those values by eliminating the need for actual evidence of guilt must be avoided. The goal of justice is not to obtain convictions at any cost, but to convict only when there is compelling and competent evidence. Allowing a person to be convicted of impaired driving without proof of impairment is unjust.

Background Information

Persons who operate motor vehicles while under the influence of THC, delta-9-tetrahydrocannabinol, the primary psychoactive compound found in marijuana, are a public highway safety concern. Existing state law, according to prosecutors, law enforcement and others, is inadequate to identify and punish individuals who drive while impaired by THC. Those concerns led the Secretary of State to submit legislation to the first regular session of 127th Maine Legislature on April 14, 2015, specifically Legislative Document Number 1320, “An Act To Amend the Motor Vehicle Laws,” sections 10-15. The bill proposed making the operation of a motor vehicle while having a THC level of 5 nanograms or more per milliliter of blood a criminal offense, authorized the Secretary of State to suspend administratively the driver’s license of a person who operated a motor vehicle with an illegal THC level in the blood and sanctioned the use of approved non-evidentiary preliminary breath-testing devices by law enforcement officers in determining whether a person operated a motor vehicle under the influence of intoxicants.

The bill was referred to the Joint Standing Committee on Transportation, which voted to request the Joint Standing Committee on Criminal Justice and Public Safety to review and make recommendations back to the Transportation Committee regarding sections 10-15 of the bill. On June 9, 2015, the Criminal Justice and Public Safety Committee requested the Honorable Matthew Dunlap, Secretary of State, to convene a broadly representative working group to study preliminary breath testing devices for alcohol and blood tests for THC and make recommendations to the Committee by December 15, 2015.

The Secretary of State convened a working group comprised of representatives from the Maine Association of Criminal Defense Lawyers, Criminal Law Advisory Commission, Legalize

Maine, Maine Marijuana Policy Project, Medical Marijuana Caregivers of Maine, Association of Concerned Growers, Maine Association of Dispensary Operators, Maine Prosecutors Association, Maine Sheriffs Association, Maine Chiefs of Police Association, Northern New England Poison Control Center, Department of Public Safety and the Department of the Secretary as well as a District Attorney and a Drug Recognition Expert. The working group met four times during September and October of 2015 and shared and reviewed 89 articles, studies, and reports concerning marijuana and driving. The working group specifically reviewed and discussed scientific and non-scientific articles and studies (experimental, epidemiological, meta-analysis and interviews/surveys) examining the effects of marijuana on driving, the efficacy of establishing an impairment level for THC, the ability of Drug Recognition Experts to identify persons impaired by THC, detection times for THC in the blood and law enforcement use of preliminary breath testing devices to assist in the identification of intoxicated drivers. The working group also examined impairment levels established by other jurisdictions and discussed the impact of such levels on authorized medical marijuana users.

The science concerning the establishment of impairment levels for THC is not as conclusive as the science is for alcohol impairment levels. Primarily as the result of the state of this science, the working group was unable to make a unanimous recommendation designating a specific THC level establishing impairment. However, a majority of the membership of the working group supported adoption of a statute providing that proof that a person has a THC level of 5 nanograms or more of THC per milliliter of whole blood gives rise to a permissible inference that the person is under the influence of marijuana. Other members suggested that proof of a THC level of 7 nanograms was a more appropriate level warranting a permissible

inference of intoxication or that proof of a THC level of 5 nanograms together with other evidence of impairment justified an inference a person was under the influence of intoxicants.

The working group reached consensus that persons under the age of 21 years should be subject to a license condition proscribing the operation of a motor vehicle with a THC level of more than 0.00 nanograms in whole blood unless the person demonstrates that the THC level resulted from marijuana use in compliance with the Maine Medical Use of Marijuana. Violation of the condition may result in both criminal and administrative license suspension actions.

A majority of the working group also supported a law that provides proof that a person has a THC level of 2 or more nanograms in whole blood and an alcohol level of 0.05 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath gives rise to a permissible inference that the person is under the influence of intoxicants. Other members suggested that those THC and alcohol levels together with other evidence of impairment gives rise to a permissible inference of intoxication.

The working group also unanimously supported the use of approved preliminary breath alcohol testing devices by law enforcement officers in determining whether a person operated a motor vehicle under the influence of intoxicants and suggested the number of specially trained Drug Recognition Experts be increased, the ARIDE Program be incorporated into the basic law enforcement training program, increased public education be provided concerning the dangers of driving under the influence of THC and an additional study be conducted on impairment levels for operating motor vehicles with THC in the blood.

Formal Request to Establish Working Group and Related Documents

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KIMBERLEY C. ROSEN, DISTRICT 1
D. WILLIAM DIAMOND, DISTRICT 28

KAREN NADEAU-DRIELEN, LEGISLATIVE ASSISTANT
DARLENE SIMONEAU, COMMITTEE CLERK



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JAMES S. GILLWAY, DISTRICT 16
BRADLEE THOMAS FARRIN, DISTRICT 17
BRANDY HOBBS, DISTRICT 18

STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
COMMITTEE ON TRANSPORTATION

TO: Kimberly C. Rosen, Senate Chair
Lori A. Fowle, Speaker of the House
Joint Standing Committee on Criminal Justice and Public Safety

FROM: Ronald F. Collins, Senate Chair *Ronald F. Collins*
Andrew J. McLean, House Chair *Andrew J. McLean*
Joint Standing Committee on Transportation

DATE: May 13, 2015

RE: Request to review and make recommendations to the Transportation Committee regarding Sections 10-15 of LD 1320, An Act to Amend the Motor Vehicle Laws

The Joint Standing Committee on Transportation respectfully requests that that Joint Standing Committee on Criminal Justice and Public Safety please review and make recommendations back to the Transportation Committee regarding proposed Sections 10-15 of LD 1320, An Act to Amend the Motor Vehicle Laws. These sections make operation of a motor vehicle while under the influence of THC (marijuana) a criminal offense with related penalties, including suspensions and also create new authority for law enforcement to use preliminary breath testing devices to screen drivers for intoxicants.

Specifically, the sections that we ask you to review do the following.

- Sections 10 and 11 of the bill make the operation of a motor vehicle while having a delta-9-tetrahydrocannabinol, or THC, level of 5 nanograms or more per milliliter of blood a criminal offense with penalties, like those for operating under the influence of alcohol or other drugs.
- Section 12 establishes levels for determining evidentiary weights of THC. Section 12 also authorizes law enforcement's use of preliminary breath testing devices to screen whether motor vehicle operators are under the influence of intoxicants.
- Section 13 excepts THC or its metabolite from the current provision regarding reports of drug recognition experts (Title 29-A §2453-A, sub-§2).
- Section 14 authorizes the Secretary of State to suspend administratively the license of a person who operates a motor vehicle with a THC level of 5 nanograms or more per milliliter of blood.

- Section 15 allows for the same option of installation of an ignition interlock device in a vehicle of a person whose license is suspended for operating under the influence of THC, as for operating under the influence of alcohol or the influence of other drugs.

In your review, you will see that these proposals involve significant policy changes, which are similar to those that you review in your work on OUI, OAS and other criminal driving-related legislation. It is for this reason that we ask you to please review these proposals and make your recommendations to us. Currently, we have tabled LD 1320 in committee, as we await your recommendations. We know that you, too, are very busy and appreciate your time and effort weighing in on these policy questions. Our staff will make sure that your members receive copies of the bill and related materials from the public hearing and work session.

As you know, the deadline for voting bills is next Friday, May 22nd. We would like to schedule a work session to finish work on LD 1320 on Tuesday, May 19th or alternatively, Thursday, May 21st. Please let us know if you have questions. We thank you again for your assistance with this important matter and look forward to hearing from you.

- c: Members, Joint Standing Committees on Transportation and Criminal Justice and Public Safety

SENATE

KIMBERLEY C. ROSEN, DISTRICT 3, CHAIR
DAVID C. BURNS, DISTRICT 1
STAN GERZOFSKY, DISTRICT 2

JANE ORBETON, SENIOR LEGISLATIVE ANALYST
CURTIS BENTLEY, LEGISLATIVE ANALYST
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STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

June 9, 2015

Mathew Dunlap, Secretary of State
Office of the Secretary of State
148 State House Station
Augusta, ME 04333-0148

Re: Impaired driving: preliminary breath tests for alcohol and blood testing for THC level

Dear Secretary of State Dunlap,

During the First Regular Session of the Legislature the Joint Standing Committee on Criminal Justice and Public Safety (CJPS) reviewed sections 10 through 15 of LD 1320, An Act to Amend the Motor Vehicle Laws. We are writing as chairs of the Criminal Justice and Public Safety Committee to request that you convene a working group on preliminary breath tests for alcohol and blood tests for THC levels.

CJPS members concluded their review of sections 10 through 15 with a vote to request that the Secretary of State convene a broadly representative working group to study preliminary breath tests and THC tests. CJPS members ask that the working group review scientific literature, consult with law enforcement officials, prosecutors and defense attorneys and other interested parties and make recommendations to the CJPS Committee by December 15, 2015.

The CJPS Committee suggests that the working group be broadly representative but, out of concern for the fiscal impact, not include legislators as members. We attach testimony from Representative Diane Russell which, in its last paragraph, recommends organizations that can be expected to have expertise and interest in these issues and that could be helpful to the working group. In addition CJPS Committee members suggest that you invite representatives of the Maine Association of Criminal Defense Lawyers, the Maine Association of District Attorneys, Paul McCarrier for Legalize Maine at legalizemaine@gmail.com, and Laura Harper for the Maine Association of Dispensary Operators, at laura@mooscriidgeassociates.com.

We look forward to receiving the report and recommendations in December. Thank you.

Sincerely,

Sen. Kimberley C. Rosen
Senate Chair

Rep. Lori A. Fowle
House Chair

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**Rep. Diane Russell Testimony Regarding
"LD 1320: An Act To Amend the Motor Vehicle Laws"
Neither For Nor Against**

Senator Collins, Representative McLean and distinguished members of the esteemed Transportation Committee, thank you for the opportunity to submit testimony to you neither for nor against LD 1320, "An Act To Amend the Motor Vehicle Laws."

My name is Diane Russell. I represent District 39 in the Maine House, representing the good people of Munjoy Hill, Downtown Portland and the beautiful Casco Bay Islands.

As many of you are aware, I have been working to move Maine away from an era of marijuana prohibition and toward a system of responsible regulation and taxation. Because of this, I've been following the research on the subject closely for a number of years, including of course, the issue of impairment.

My testimony relates specifically to the section of the agency bill regarding setting a nanogram standard to measure impairment by marijuana. I fundamentally support the goal of removing impaired drivers off the roads for the purpose of safety. That said, I have concerns about the proposed 5 nanogram of TetraHydroCannabinol (THC) per milliliter of blood standard. Although several states have adopted it, my concern is that this measurement metric it is not based in science.

When Colorado passed a referendum to regulate adult use marijuana, a concern arose about how to address the potential for an increased number of drivers impaired from marijuana. And, that issue is not without merit as evidence does show that the number of drivers impaired by marijuana is currently 12 percent in Colorado. Lawmakers reviewed the issue and created a 5 nanogram blood level. While I understand that lawmakers felt compelled to do something, the standard was not, and is not, based in science. Therefore, I caution our own Legislature from making a similar mistake.

The 2011 Drug Recognition Expert School Student Manual states: "Toxicology has some important limitations. One limitation is that, with the exception of alcohol, toxicology cannot produce 'per se' proof of drug impairment. That is, the chemist can't analyze the blood or urine and come up with a number that 'proves' the person was or wasn't impaired."

More recently, a 2014 study from the National Highway Traffic Safety Administration (NHTSA) published a white paper, "Understanding the Limitations of Drug Test

District 39 Portland (part)

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Information, Reporting, and Testing Practices in Fatal Crashes." In it, NHTSA stated, "Current knowledge about the effects of drugs other than alcohol on driving performance is insufficient to make judgments about connections between drug use, driving performance, and crash risk."

They went on to say, "It is difficult to establish a relationship between a person's THC blood or plasma concentration and performance impairing effects. ... It is inadvisable to try and predict effects based on blood THC concentrations alone."

One of the specific challenges with measuring marijuana impairment is that THC breaks down differently than alcohol, and is in one's system significantly longer. An individual could have THC in their system, although any impairment may have long since have passed.

This is particularly important as it relates to medical marijuana patients. There's a very real chance under this proposal that patients who use marijuana to treat a variety of legal ailments--and are driving sober--may still have THC in their system that could turn into a criminal charge.

There is a very real concern about the potential for an increased number of impaired driving as marijuana becomes more accessible by individuals of age to drive. However, we should not rush to judgment without a broad basis of facts, lest we pass public policy that may be difficult to change in the future. Further, we should be reviewing this as part of all approved drugs, including opiates which account for a significant percentage of impaired drivers.

Proposal

I therefore request the committee consider creating a non-legislative study commission to examine the science, and develop recommendations in accordance with the established science. The study commission should be authorized to review:

1. What have other states have done, and why;
2. What is the established science on the issue of measuring impairment for various drugs;
3. What new products may be coming onto the market that might aid law enforcement?

Suggested groups who should be represented include a Drug Recognition Expert, the Maine Chiefs of Police, Maine Sheriffs Association, ACLU of Maine, Marijuana Policy Project, Maine Association of Dispensary Operators, and the Medical Marijuana Caregivers of Maine. + MEOST



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

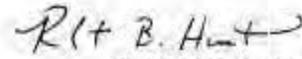
No. 1320

H.P. 898

House of Representatives, April 14, 2015

An Act To Amend the Motor Vehicle Laws

Submitted by the Secretary of State pursuant to Joint Rule 204.
Reference to the Committee on Transportation suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative McLEAN of Gorham.
Cosponsored by Senator ROSEN of Hancock and
Representatives: DOORE of Augusta, GILLWAY of Searsport, GOLDEN of Lewiston,
HOGAN of Old Orchard Beach, PARRY of Arundel, POWERS of Naples, Senator
HASKELL of Cumberland.

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

2 **Sec. 1. 29-A MRSA §101, sub-§55**, as enacted by PL 1993, c. 683, Pt. A, §2 and
3 affected by Pt. B, §5, is amended to read:

4 **55. Pickup truck.** "Pickup truck" means a truck with a registered gross vehicle
5 weight of ~~6,000~~ 10,000 pounds or less.

6 **Sec. 2. 29-A MRSA §457, sub-§7**, as amended by PL 1999, c. 790, Pt. C, §1 and
7 affected by §19, is further amended to read:

8 **7. Registration fee.** The fee for registration of ~~an antique auto~~; a horseless carriage
9 or antique motorcycle is \$15. The fee for registration of a street rod or antique auto is
10 \$30.

11 **Sec. 3. 29-A MRSA §501, sub-§1**, as amended by PL 2011, c. 356, §6, is further
12 amended to read:

13 **1. Automobiles; pickup trucks.** The fee for an automobile, a pickup truck
14 registered for 6,000 pounds or less or a sport utility vehicle used for the conveyance of
15 passengers or interchangeably for passengers or property is \$35. The fee for a pickup
16 truck registered for more than 6,000 pounds but no more than 10,000 pounds is \$37.

17 An automobile or sport utility vehicle used for the conveyance of passengers or property
18 is a "combination" vehicle and may be issued a special plate with the word "combination"
19 instead of "Vacationland." A passenger vehicle used under contract with the State, a
20 municipality or a school district to transport students must be designated as
21 "combination." A vehicle owned or operated by parents or legal guardians is exempt
22 from this subsection.

23 Commercial plates may not be issued for or displayed on an automobile.

24 A sport utility vehicle may be registered either as an automobile or a truck. A sport
25 utility vehicle with a gross vehicle weight or combined gross vehicle weight in excess of
26 10,000 pounds and used in the furtherance of a commercial enterprise must be registered
27 as a truck according to its actual gross weight as provided in section 504.

28 The gross weight of a pickup truck registered as provided by this subsection may not
29 exceed ~~6,000~~ 10,000 pounds. An owner of a pickup truck who operates the pickup truck
30 with a gross weight in excess of ~~6,000~~ 10,000 pounds or the pickup truck drawing a
31 semitrailer with a combined gross weight in excess of ~~6,000~~ 10,000 pounds must register
32 the truck as provided in section 504.

33 ~~A combination of vehicles consisting of a pickup truck as defined in section 101,~~
34 ~~subsection 55 and a semitrailer with a registered weight of 2,000 pounds or less may be~~
35 ~~operated at the combined gross weight of the pickup truck and the semitrailer.~~

36 A combination of vehicles consisting of a motor vehicle and a camp trailer is not required
37 to be registered for the gross weight of the combination.

38 Beginning July 1, 2009, \$10 of the fee must be transferred on a quarterly basis by the
39 Treasurer of State to the TransCap Trust Fund established by Title 30-A, section 6006-G.

1 **Sec. 4. 29-A MRSA §1256, sub-§1**, as amended by PL 2013, c. 606, §2, is
2 further amended to read:

3 **1. Educational need.** A person seeking to qualify for a special restricted license
4 based on educational need must file an application. If the applicant qualifies under
5 paragraph A, and has completed a minimum of ~~70~~ 35 hours of driving, including ~~40~~ 5
6 hours of night driving, while accompanied by a parent, guardian or licensed driver at least
7 20 years of age, a special restricted license must be issued to the applicant. A person
8 issued a special restricted license must complete a minimum of 35 additional hours of
9 driving, including 5 additional hours of night driving, while accompanied by a parent,
10 guardian or licensed driver at least 20 years of age in order to qualify for a provisional
11 license without restriction.

12 A. An application must include:

13 (1) A signed notarized statement from the applicant and the applicant's parent or
14 guardian that:

15 (a) No readily available alternative means of transportation exists; and

16 (b) Use of a motor vehicle is necessary for transportation to and from a
17 public secondary school, a private secondary school approved for attendance
18 purposes by the Commissioner of Education or a career and technical
19 education center or region that the applicant is attending;

20 (2) A verification of school attendance; and

21 (3) A statement by the principal of the school of the lack of a readily available
22 alternative means of transportation.

23 B. A special restricted license issued pursuant to this subsection only authorizes the
24 holder to operate a motor vehicle between the holder's residence and school unless
25 accompanied by a licensed driver who meets the requirements of section 1304,
26 subsection 1, paragraph E, subparagraphs (1) to (4).

27 **Sec. 5. 29-A MRSA §1256, sub-§2**, as amended by PL 2013, c. 606, §3, is
28 further amended to read:

29 **2. Employment need.** A person seeking to qualify for a special restricted license
30 based on employment need must file an application. If the applicant qualifies under
31 paragraph A, and has completed a minimum of ~~70~~ 35 hours of driving, including ~~40~~ 5
32 hours of night driving, while accompanied by a parent, guardian or licensed driver at least
33 20 years of age, a special restricted license must be issued to the applicant. A person
34 issued a special restricted license must complete a minimum of 35 additional hours of
35 driving, including 5 additional hours of night driving, while accompanied by a parent,
36 guardian or licensed driver at least 20 years of age in order to qualify for a provisional
37 license without restriction.

38 A. An application must include:

39 (1) A signed, notarized statement from the applicant and the applicant's parent or
40 guardian that:

1 (a) No readily available alternative means of transportation exists; and
2 (b) Use of a motor vehicle is necessary for transportation to, from or in
3 connection with employment of the applicant; and
4 (2) A verification of employment by the employer.

5 B. A special restricted license issued pursuant to this subsection only authorizes the
6 holder to operate a motor vehicle between the holder's residence, school and place of
7 employment and other places necessary in direct connection with that employment
8 unless accompanied by a licensed driver who meets the requirements of section 1304,
9 subsection 1, paragraph E, subparagraphs (1) to (4).

10 **Sec. 6. 29-A MRSA §1307, sub-§4**, as amended by PL 2013, c. 381, Pt. B, §17,
11 is further amended to read:

12 **4. Cancellation of examination appointment.** If an examination requires an
13 appointment and the applicant does not keep that appointment, the Secretary of State shall
14 assess an additional \$30 fee for a Class A ~~or~~, Class B or Class C commercial examination
15 and \$20 for a bus, school bus or Class C ~~noncommercial~~ examination at the time of
16 reappointment for examination. If the applicant notifies the Department of the Secretary
17 of State, Bureau of Motor Vehicles, Driver Examination Section of cancellation at least
18 48 hours prior to the examination, the Secretary of State shall waive the additional fee.

19 **Sec. 7. 29-A MRSA §1405, sub-§3**, as amended by PL 2013, c. 381, Pt. B, §23,
20 is repealed and the following enacted in its place:

21 **3. Fee.** The fee for a duplicate registration certificate is \$2. The fee for a duplicate
22 learner's permit, duplicate license or duplicate nondriver identification card is \$5.

23 **Sec. 8. 29-A MRSA §1912, sub-§2**, as enacted by PL 1993, c. 683, Pt. A, §2 and
24 affected by PL B, §5, is amended to read:

25 **2. Cutouts prohibited.** ~~Except as provided in subsection 5,~~ a muffler or exhaust
26 system may not be equipped with a cutout, bypass or similar device.

27 **Sec. 9. 29-A MRSA §1912, sub-§5**, as repealed and replaced by PL 2003, c. 452,
28 Pt. Q, §23 and affected by PL X, §2, is repealed.

29 **Sec. 10. 29-A MRSA §2401, sub-§12-A** is enacted to read:

30 **12-A. THC.** "THC" means delta-9-tetrahydrocannabinol.

31 **Sec. 11. 29-A MRSA §2411, sub-§1-A, ¶A**, as amended by PL 2009, c. 447,
32 §37, is further amended to read:

33 A. Operates a motor vehicle:
34 (1) While under the influence of intoxicants; ~~or~~
35 (2) While having an alcohol level of 0.08 grams or more of alcohol per 100
36 milliliters of blood or 210 liters of breath; ~~or~~

1 ~~(3) While testing a THC level of 5 nanograms or more per milliliter in blood,~~

2 **Sec. 12. 29-A MRSA §§2432-A and 2432-B are enacted to read:**

3 **§2432-A. THC level; evidentiary weight**

4 ~~1. **Level less than 2 nanograms.** If a person has a THC level of less than 2~~
5 ~~nanograms per milliliter in blood, it is prima facie evidence that the person is not under~~
6 ~~the influence of THC.~~

7 ~~2. **Level of 2 nanograms and less than 5 nanograms.** If a person has a THC level~~
8 ~~of 2 nanograms but less than 5 nanograms per milliliter in blood, it is admissible~~
9 ~~evidence, but not prima facie, indicating whether or not that person is under the influence~~
10 ~~of THC to be considered with other competent evidence.~~

11 ~~3. **Level of 5 nanograms or greater.** If a person has a THC level of 5 nanograms or~~
12 ~~more per milliliter in blood, the person is presumed to be under the influence of THC.~~

13 **§2432-B. Preliminary breath testing devices**

14 ~~1. **Use of preliminary breath testing devices permitted.** A law enforcement~~
15 ~~officer who possesses basic certification as a full-time law enforcement officer, pursuant~~
16 ~~to Title 25, section 2804-C, subsection 1, who reasonably believes that a person has been~~
17 ~~operating a motor vehicle under the influence of intoxicants, without making an arrest,~~
18 ~~may request that the person submit to a preliminary breath test to determine the person's~~
19 ~~alcohol level, which, in addition to other relevant evidence, the officer may use to~~
20 ~~determine whether there is probable cause to believe that person was operating a motor~~
21 ~~vehicle while under the influence of intoxicants.~~

22 ~~2. **Approved devices; training.** A law enforcement officer may only administer a~~
23 ~~preliminary breath test using a preliminary breath test device that has been approved by~~
24 ~~the National Highway Traffic Safety Administration and evaluated by the Department of~~
25 ~~Health and Human Services. Prior to administering a preliminary breath test using an~~
26 ~~approved device, an officer must be properly trained in the use of the device through a~~
27 ~~training course approved by the Maine Criminal Justice Academy Board of Trustees.~~

28 ~~3. **Admissibility of results.** Results of a test administered pursuant to this section~~
29 ~~are admissible in evidence in any court or administrative hearing in determining probable~~
30 ~~cause for operating a motor vehicle while under the influence.~~

31 ~~4. **Failure as evidence.** Failure of a person to submit to a preliminary breath test is~~
32 ~~not admissible in evidence on the issue of whether a person was operating under the~~
33 ~~influence of intoxicants. Any other evidence bearing on the issue of whether the person~~
34 ~~was operating under the influence of intoxicants is admissible, even if a person fails to~~
35 ~~submit to a preliminary breath test or the results of such a test are not available for any~~
36 ~~reason.~~

1 5. Preliminary breath test not mandatory; subsequent test for intoxicants
2 permitted. A preliminary breath test is not mandatory and a law enforcement officer's
3 request to submit to such a test may be declined. A person who submits to a preliminary
4 breath test also, upon a law enforcement officer's request, shall submit to and complete a
5 chemical test to determine alcohol level and drug concentration as required by this Title.

6 **Sec. 13. 29-A MRSA §2453-A, sub-§2**, as enacted by PL 2011, c. 335, §5, is
7 amended to read:

8 **2. Report of drug recognition expert.** A drug recognition expert certified in
9 accordance with section 2526 who has probable cause to believe that a person was
10 operating a motor vehicle under the influence of a specific category of drug, a
11 combination of specific categories of drugs or a combination of alcohol and one or more
12 specific categories of drugs, except for THC or its metabolite, shall send to the Secretary
13 of State a report, under oath on a form approved by the Secretary of State, of all relevant
14 information, including, but not limited to, the following:

- 15 A. Information adequately identifying the person who is the subject of the report;
16 and
17 B. The grounds the drug recognition expert had for probable cause to believe the
18 person operated a motor vehicle while under the influence of drugs.

19 Section 2481, subsections 2 and 3 apply to the report submitted by the drug recognition
20 expert.

21 **Sec. 14. 29-A MRSA §2453-B** is enacted to read:

22 **§2453-B. Suspension on administrative determination; operating under the**
23 **influence of THC**

24 **1. Purpose.** The purpose of this section is:

- 25 A. To provide maximum safety for all persons who travel on or otherwise use the
26 public ways; and
27 B. To remove quickly from public ways those persons who have shown themselves
28 to be a safety hazard by operating a motor vehicle while under the influence of THC.

29 **2. Report of drug recognition expert.** A drug recognition expert certified in
30 accordance with section 2526 who has probable cause to believe that a person was
31 operating a motor vehicle under the influence of THC shall send to the Secretary of State
32 a report, under oath on a form approved by the Secretary of State, of all relevant
33 information, including, but not limited to, the following:

- 34 A. Information adequately identifying the person who is the subject of the report;
35 and
36 B. The grounds the drug recognition expert had for probable cause to believe the
37 person operated a motor vehicle while under the influence of THC.

38 Section 2481, subsections 2 and 3 apply to the report submitted by the drug recognition
39 expert.

1 3. Drug test. The person who analyzed the drug contained in the blood of the person
2 who is the subject of the drug recognition expert's report under subsection 2 shall send the
3 test result certificate to the Secretary of State.

4 4. Suspension. The Secretary of State shall immediately suspend a license of a
5 person determined to have operated a motor vehicle under the influence of THC.

6 5. Period of suspension. The following periods of suspension apply.

7 A. The same suspension period applies as if the person were convicted for OUI.

8 B. If a person's license is also suspended for an OUI conviction arising out of the
9 same occurrence, the period of time the license has been suspended pursuant to this
10 section prior to the conviction must be deducted from the period of time of a court-
11 imposed suspension.

12 6. Stay of suspension. If, within 10 days from the effective date of the suspension,
13 the Secretary of State receives a request in writing for a hearing in accordance with
14 section 2483, the suspension is stayed until a hearing is held and a decision is issued.

15 7. Hearing. The scope of the hearing must include whether:

16 A. The person operated a motor vehicle with a THC level of 5 nanograms or more
17 per milliliter in blood; and

18 B. There was probable cause to believe that the person was operating a motor vehicle
19 while under the influence of THC.

20 8. Restoration of license. Restoration of any license or permit to operate, right to
21 operate a motor vehicle and right to apply for or obtain a license suspended under this
22 section must be in accordance with sections 2503 to 2506.

23 **Sec. 15. 29-A MRSA §2508, sub-§1,** as amended by PL 2013, c. 187, §2 and c.
24 389, §3 and affected by §7, is further amended to read:

25 1. Installation of ignition interlock device. Notwithstanding the periods of
26 suspension pursuant to section 2411 or 2451, subsection 3, the Secretary of State may
27 reinstate the license of a person convicted of a violation of section 2411, except for a
28 violation of section 2411, subsection 1-A, paragraph D, subparagraph (1-A), or whose
29 license is suspended by the Secretary of State pursuant to section 2453 or 2453-A (or
30 2453-B if the person satisfies all other conditions for license reinstatement and installs an
31 ignition interlock device approved by the Secretary of State in the motor vehicle the
32 person operates, under the following conditions:

33 A. The license of a person with 2 OUI offenses may be reinstated after 9 months of
34 the suspension period has run if the person has installed for a period of 2 years an
35 ignition interlock device approved by the Secretary of State in the motor vehicle the
36 person operates.

37 A-1. The license of a person with one OUI offense may be reinstated after 30 days of
38 the suspension period has run if the person has installed for a period of 150 days or
39 the length of time remaining for a suspension imposed pursuant to section 2411,

1 subsection 5, paragraph A, subparagraph (2), whichever is shorter, an ignition
2 interlock device approved by the Secretary of State in the motor vehicle the person
3 operates.
4 B. The license of a person with 3 OUI offenses may be reinstated after 3 years of the
5 suspension period has run if the person has installed for a period of 3 years an
6 ignition interlock device approved by the Secretary of State in the motor vehicle the
7 person operates.
8 C. The license of a person with 4 or more OUI offenses may be reinstated after 4
9 years of the suspension period has run if the person has installed for a period of 4
10 years an ignition interlock device approved by the Secretary of State in the motor
11 vehicle the person operates.
12 D. The license of a person convicted of a violation of section 2411, subsection 1-A,
13 paragraph D, subparagraph (1) or a person whose driver's license is suspended by the
14 Secretary of State pursuant to section 2453 or 2453-A for a period specified by
15 section 2411, subsection 5, paragraph D-1 may be reinstated after 3 years of the
16 suspension period has run if the person has installed for a period of 3 years an
17 ignition interlock device approved by the Secretary of State in the motor vehicle the
18 person operates.
19 A person whose license is reinstated pursuant to this subsection shall pay an
20 administrative fee of \$50 to the Secretary of State, in addition to the fee required by
21 section 2486, subsection 1-A.

22 SUMMARY

23 This bill amends the motor vehicle laws to:

- 24 1. Increase the gross weight requirements for pickup trucks from 6,000 pounds to
25 10,000 pounds so pickup trucks under 10,001 pounds can be registered with passenger-
26 type plates;
- 27 2. Increase the registration fee for antique autos from \$15 to \$30;
- 28 3. Discontinue the muffler bypass permit as this permit is obsolete;
- 29 4. Clarify that the cancellation fee for all commercial examinations, including a
30 Class C commercial examination, is \$30;
- 31 5. Increase the fee for duplicate learner's permits from \$2 to \$5 to support the costs
32 associated with issuance. A federal rule effective July 8, 2015 requires that a commercial
33 driver's license permit be issued with the same security features as a base license. This
34 will require a card-type permit to be issued with the same associated costs for production;
35 and
- 36 6. Apply the same requirements of driving time needed in order to be eligible for a
37 special restricted license for educational and employment needs as exists in current law
38 for medical needs.

1 This bill also makes the operation of a motor vehicle while having a delta-9-
2 tetrahydrocannabinol, or THC, level of 5 nanograms or more per milliliter of blood a
3 criminal offense, authorizes the Secretary of State to suspend administratively the license
4 of a person who operates a motor vehicle with a THC level of 5 nanograms or more per
5 milliliter of blood and sanctions the use of approved preliminary breath-testing devices by
6 law enforcement officers in determining whether a person operated a motor vehicle under
7 the influence of intoxicants.

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Proposed Legislation Implementing Working Group Recommendations

Sec. 1. 29-A MRSA §2401, sub-§12-A is enacted to read:

12-A. THC. “THC” means delta-9-tetrahydrocannabinol.

Sec. 2. 29-A MRSA §2432 is amended to read:

§2432. Alcohol level; THC Level; confirmed positive drug or metabolite test results; evidentiary weight.

Sec. 3. 29-A MRSA §2432, sub-§3-A is enacted to read:

3-A. Level of THC in whole blood of 5 nanograms or greater. Proof that a person has a THC level of 5 nanograms or more of THC per milliliter of whole blood gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person is under the influence of intoxicants.

Sec. 4. 29-A MRSA §2432, sub-§3-B is enacted to read:

3-B. Level of THC and alcohol in combination. Proof that a person has a THC level of 2 nanograms or more of THC per milliliter of whole blood and an alcohol level of 0.05 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person is under the influence of intoxicants.

Sec. 5. 29-A MRSA §2432-A is enacted to read:

§2432-A. Preliminary breath testing devices

1. Use of preliminary breath testing devices permitted. A law enforcement officer who possesses basic certification as a full-time law enforcement officer, pursuant to Title 25, section 2804-C, subsection 1, who reasonably believes that a person has been operating a motor vehicle under the influence of intoxicants, without making an arrest, may request that the person submit to a preliminary breath test to determine the person’s alcohol level, which, in addition to other relevant evidence, the officer may use to determine whether there is probable cause to believe that person was operating a motor vehicle while under the influence of intoxicants.

2. Approved devices; training. A law enforcement officer may only administer a preliminary breath test using a preliminary breath test device that has been approved by the National Highway Traffic Safety Administration and evaluated by the Department of Health and Human Services. Prior to administering a preliminary breath test using an approved device, an officer must be properly trained in the use of the device through a training course approved by the Maine Criminal Justice Academy Board of Trustees.

3. Admissibility of results. Results of a test administered pursuant to this section are admissible in evidence in any court or administrative hearing in determining probable cause for operating a motor vehicle while under the influence.

4. Failure as evidence. Failure of a person to submit to a preliminary breath test is not admissible in evidence on the issue of whether a person was operating under the influence of intoxicants. Any other evidence bearing on the issue of whether the person was operating under the influence of intoxicants is admissible, even if a person fails to submit to a preliminary breath test or the results of such a test are not available for any reason.

5. Preliminary breath test not mandatory; subsequent test for intoxicants permitted. A preliminary breath test is not mandatory and a law enforcement officer's request to submit to such a test may be declined. A person who submits to a preliminary breath test is not relieved of the duty to submit to and complete a further test pursuant to subchapter 4.

Sec. 6. 29-A MRSA §2472(1) is amended to read:

1. Licensee not yet 21 years of age. A license issued to a person who has not yet attained the age of 21 years is a provisional license for a period of 2 years following the date of issue or until the holder attains 21 years of age, whichever occurs last. That license remains in force as a nonprovisional license to the next normal expiration date. A license issued by another jurisdiction to a person who has not yet attained the age of 21 years is a provisional license for the purpose of operating a motor vehicle within this State.

A license of a person who has not yet attained 21 years of age includes the condition that the person not operate a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. When a person who has not yet attained 21 years of age operates a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath, the provisions of section 1251, subsection 1, paragraph B apply.

A license of a person who has not yet attained 21 years of age includes the condition that the person not operate a motor vehicle with a THC level of more than 0.00 nanograms per milliliter of whole blood. When a person who has not yet attained 21 years of age operates a motor vehicle with a THC level of more than 0.00 nanograms per milliliter of whole blood, the provisions of section 1251, subsection 1, paragraph B apply, except that, it is an affirmative

defense that the THC level resulted from marijuana use in compliance with Title 22, chapter 558-C, The Maine Medical Use of Marijuana Act.

Sec. 7. 29-A MRSA §2472(3) is amended to read:

3. Suspension for OUI conviction, certain alcohol or THC level or operating under the influence of drugs. The Secretary of State shall suspend, without preliminary hearing, a juvenile provisional license of a person who:

A. Receives an OUI conviction;

B. Operates a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath; ~~or~~

C. ~~Operates a motor vehicle under the influence of drugs.~~ Operates a motor vehicle with a THC level of more than 0.00 nanograms per milliliter of whole blood unless the person demonstrates that the THC level resulted from marijuana use in compliance with Title 22, chapter 558-C, The Maine Medical Use of Marijuana Act; or

D. Operates a motor vehicle under the influence of drugs.

Sec. 8. 29-A MRSA §2472(3-A) is amended to read:

3-A. Juvenile provisional license; suspension for OUI conviction or certain alcohol or THC level. Unless a longer period of suspension applies, the Secretary of State shall suspend, without preliminary hearing, a juvenile provisional license pursuant to subsection 3 for the following periods:

A. One year for a first offense, and

B. Two years for a 2nd offense.

If the Secretary of State determines that the person operated the motor vehicle at the time of the offense with a passenger under 21 years of age, an additional suspension period of 180 days must be imposed.

Sec. 9. 29-A MRSA §2472(4) is amended to read:

4. Duty to submit to test. A person under 21 years of age who operates a motor vehicle shall submit to a chemical test if there is probable cause to believe that person has operated a

motor vehicle with an alcohol level of more and 0.00 grams per 100 milliliter of blood or 210 liters of breath or with a THC level of more than 0.00 nanograms per milliliter of whole blood or while under the influence of a specific category of drug, a combination of specific categories of drugs or a combination of alcohol and one or more specific categories of drugs. The provisions of subchapter 4 apply, except the suspension is:

- A. Eighteen months for the first refusal; and
- B. Thirty months for a 2nd or subsequent refusal.

If the Secretary of State determines that the person operated the motor vehicle at the time of the offense with a passenger under 21 years of age, an additional suspension period of 180 days must be imposed.

Sec. 10. 29-A MRSA §2472(5) is amended to read:

5. Hearing; stay; issues. If a hearing is requested in accordance with section 2483, the suspension under subsection 3, paragraph B, ~~or C~~ or D is stayed pending the outcome of the hearing. The scope of a hearing must include whether:

- A. There was probable cause to believe that the person was under 21 years of age and operated a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath or with a THC level of more than 0.00 nanograms per milliliter of whole blood or while under the influence of a specific category of drug, a combination of specific categories of drugs or a combination of alcohol and one or more specific categories of drugs;
- B. The person operated a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath or with a THC level of more than 0.00 nanograms per milliliter of whole blood unless the person demonstrates that the THC level resulted from marijuana use in compliance with Title 22, chapter 558-C, The Maine Medical Use of Marijuana Act or with a confirmed positive blood or urine test for a drug or its metabolite and was under the influence of the confirmed drug; and
- C. The person was under 21 years of age.

Sec. 11. 29-A MRSA §2503(1) is amended to read:

1. Administrative suspension; work-restricted license. On receipt of a petition for a work-restricted license from a person under suspension pursuant to section 2453, section 2453-A

or section 2472, subsection 3, paragraph B, ~~C~~ or D for a first offense, the Secretary of State may stay a suspension during the statutory suspension period and issue a work-restricted license, if the petitioner shows by clear and convincing evidence that:

A. As determined by the Secretary of State, a license is necessary to operate a motor vehicle:

(1) Between the residence and a place of employment or in the scope of employment, or both; or

(2) Between the residence and an educational facility attended by the petitioner if the suspension is under section 2472, subsection 3, paragraph B, ~~C~~ or D for a first offense;

B. No alternative means of transportation is available, and

C. The petitioner has not, within 10 years, been under suspension for an OUI offense or pursuant to section 2453 or 2453-A.

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