

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
New draft of: S. P. 614, L. D. 1902  
SECOND REGULAR SESSION

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ONE HUNDRED AND EIGHTH LEGISLATURE

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**Legislative Document**

**No. 2138**

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S. P. 696

In Senate, February 9, 1978

Reported by Sen. Curtis from Penobscot. From the Committee on Judiciary and printed under Joint Rules No. 2.

MAY M. ROSS, Secretary

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-EIGHT

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**AN ACT to Revise the Statute on Operating a Motor Vehicle While under the  
Influence of Intoxicating Liquor or Drugs.**

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

Whereas, an inconsistency between 2 bills enacted by the Legislature has made it impossible to carry out the legislative intent with regard to mandatory driver education courses for persons convicted of operating a motor vehicle while under the influence of liquor or drugs; and

Whereas, in the judgement of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore

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

**Sec. 1. 29 MRSA § 1312, sub-§ 10**, as last amended by PL 1977, c. 438 and c. 481, § 21, and as repealed and replaced by PL 1977, c. 498, § 1, is repealed and the following enacted in its place:

## 10. Penalties

A. Notwithstanding the provisions of Title 17-A, section 4-A, any person who, while under the influence of intoxicating liquor or drugs, operates or attempts to operate a motor vehicle within this State shall be punished, on his first conviction, by a fine of not more than \$1,000 or by imprisonment for not more than 90 days, or by both.

B. Notwithstanding the provisions of Title 17-A, section 4-A, any person who is convicted a 2nd time shall be punished by imprisonment for not less than either 24 or 48 consecutive hours or for not more than 6 months. In addition, such a person shall be punished by a fine of not less than \$250 and not more than \$2,000. The minimum term of imprisonment, of either 24 or 48 consecutive hours, as the court determines, shall not be suspended unless the court sets forth in detail in writing the reasons why, having regard to the nature and circumstances of the violation and the history and character of the defendant, it is of the opinion that exceptional features of the case justify the imposition of a sentence other than imprisonment. The court shall order the minimum term of imprisonment to be served, at a time that will cause the least disruption to the convicted person's employment and other personal affairs, but that is within 30 days of the date of conviction. The minimum term of imprisonment may be served in either a county jail or local lockup, as the court shall direct. This paragraph regarding the minimum term of imprisonment for a 2nd conviction shall apply only if the State alleges the prior conviction in accordance with Title 15, section 757; provided that the certified copy of the prior conviction from the office of the Secretary of State shall be admitted in evidence as proof of the prior conviction.

C. Notwithstanding the provisions of Title 17-A, section 4-A, any person convicted a 3rd or subsequent time shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than 6 months, or by both.

D. For the purposes of this section, a prior conviction of operating or attempting to operate while under the influence of intoxicating liquor or drugs shall be considered a prior conviction if it occurred within a 6-year period of the date of the most recent conviction.

E. Except for the purpose specified in paragraph B, it shall not be necessary to comply with the procedures set out in Title 15, section 757, to establish prior convictions under this section. After a conviction, the court shall conduct an inquiry to determine whether or not the defendant has been convicted of any offenses which are considered to be prior offenses for the purposes of this section. Certified copies of the record of prior conviction or convictions from the Secretary of State or any court of record shall be admissible. On receipt of a copy and being satisfied that the defendant is the person named in that certified copy, the court shall treat the present conviction as a subsequent conviction and sentence the defendant accordingly.

**Sec. 2. 29 MRSA § 1312, sub-§ 10-A is enacted to read:**

**10-A. Suspension of license.**

**A. On receipt of an attested copy of the court record of a conviction, the Secretary of State shall immediately suspend the person's license or permit and privilege to operate a motor vehicle. The suspension shall be for the following minimum periods from the date of suspension:**

- (1) In the case of a first conviction, 30 days;**
- (2) In case of a 2nd conviction, 6 months; and**
- (3) In case of a 3rd or subsequent conviction, 2 years.**

**B. After the minimum suspension period, the Secretary of State may issue a license or permit to the person if:**

- (1) In case of a first conviction, the secretary receives written notice that the person has satisfactorily completed the alcohol education program of the Department of Human Services;**
- (2) In case of a 2nd conviction, the secretary receives written notice that the person has satisfactorily completed the education program, and, if required by the Department of Human Services, has also satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department; and**
- (3) In case of a 3rd or subsequent conviction, if the person petitions the secretary for a license or permit after the period of minimum suspension and if the person presents clear and convincing evidence that he has satisfactorily completed an alcohol or drug treatment program approved or licensed by the Department of Human Services and that he has abstained from the use of intoxicating liquor or drugs for a period of 2 years immediately prior to the date of the petition.**

**C. The Secretary of State may issue the license or permit with whatever conditions, restrictions or terms he deems advisable, having in mind the safety of the public and the welfare of the petitioner. In the case of a 3rd or subsequent conviction, the license or permit may contain the condition that the person continue to abstain from the use of intoxicating liquor or drugs.**

**D. The Secretary of State may also issue a restricted license or permit to any person whose license or permit has been suspended for a first refusal under subsection 2, if the conditions of issuing after a first conviction are met by the person.**

**E. The Department of Human Services may charge a registration fee not to exceed \$40 to participants in the education program, which shall be applied to defraying the expenses of the program.**

**F. If any person convicted for a violation of this section appeals the judgment or sentence of a court, the license or permit and privilege to operate a motor vehicle shall be suspended during the time an appeal is pending, unless the court shall otherwise order, or unless the Secretary of State shall restore the license, permit or privilege to operate pending decision on the appeal.**

**G. Any suspension under this section shall run consecutively to any suspension imposed for refusal to submit to a chemical test to determine blood-alcohol level by analysis of blood or breath.**

**Sec. 3. 29 MRSA § 1312, sub-§ 11, as enacted by PL 1977, c. 498, § 2, is repealed and the following enacted in its place:**

**11. Accidents and officers duties.**

**A. After making an arrest for a violation of this section, the arresting officer shall investigate to determine whether the arrested person has any prior convictions under this section. As part of his investigation, the arresting officer shall make the necessary inquiries of the Secretary of State. If the arresting officer determines that the arrested person has a prior conviction, he shall cause to be issued a complaint for a 2nd violation in accordance with subsection 10, paragraph B.**

**B. Any officer authorized to arrest for violations of this section may arrest, without a warrant, any person involved in a motor vehicle accident, if the officer has probable cause to believe that that person has violated this section.**

**C. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this Title shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If the test indicates that the operator has consumed alcohol, the police officer may require the operator to submit to a chemical test in the manner set forth in this section.**

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