

MAINE STATE LEGISLATURE

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Office of the Secretary of the Senate.

Filed December 20, 1978 under Joint Rule 21 by Senator-Elect Samuel W. Collins, Jr. of Knox. To be printed and delivered to the 109th Maine Legislature.

MAY M. ROSS, Secretary of the Senate

Presented by Senator-Elect Collins of Knox

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Strengthen and Streamline the Habitual Offender Law.

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

Whereas, more than 700 habitual offender cases were presented during the last fiscal year; and

Whereas, there is often a delay of over a year in simply scheduling and processing habitual offender complaints before the Superior Court; and

Whereas, the cost to the State in fees for filing complaints and services of process alone were in excess of \$9,000 and the cost for attorneys' time and travel far exceed that sum; and

Whereas, the experiences of the last few years have demonstrated that the habitual offender law has placed an extraordinary and unnecessary burden on the entire Superior Court system; and

Whereas, in the judgment 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Sec. 1. 29 MRSA c. 18, as enacted by PL 1971, c. 410 and as amended, is repealed.

Sec. 2. 29 MRSA c. 18-A is enacted to read:

CHAPTER 18-A
HABITUAL OFFENDERS

§ 2291. Declaration of policy

It is declared to be the public policy of Maine:

1. Safety. To provide maximum safety for all persons who travel or otherwise use the public highways of the State;

2. Privileges denied. To deny the privilege of operating motor vehicles on these highways to persons who by their conduct and record have demonstrated their indifference for the safety and welfare of others and their disrespect for the laws of the State of Maine and for the orders of Maine courts and administrative agencies; and

3. Discourage repetition. To discourage repeated violations by individuals and to impose increased added deprivation of the privilege to operate motor vehicles upon habitual offenders who repeatedly violate traffic laws.

§ 2292. Definition

An habitual offender is any person, resident or nonresident, whose record, as maintained in the office of the Secretary of State, shows that the person has accumulated convictions or adjudications for separate and distinct offenses described in subsection 1, 2 or 3, committed within a 5-year period, provided that where more than one included offense is committed within a one-day period, multiple offenses shall be treated for the purposes of this chapter as one offense:

1. Three or more convictions. Three or more convictions or adjudications, singularly or in combination, of any of the following separate and distinct offenses arising out of separate acts:

- A. Homicide resulting from the operation of a motor vehicle;**
- B. Operating or attempting to operate while under the influence of intoxicating liquor or drugs;**
- C. Driving or operating a motor vehicle in a reckless manner or in such a manner as to endanger any person or property;**
- D. Operating a motor vehicle when the operator's license, permit or privilege to operate a motor vehicle has been suspended or revoked;**
- E. Willfully operating a motor vehicle without a license to do so;**

F. Knowingly making any false affidavit or swearing or affirming falsely to any manner or thing required by the motor vehicle laws or as to information required in the administration of these laws;

G. Commission of any offense punishable by a maximum term of imprisonment equal to or exceeding one year under the motor vehicle laws of Maine or any offense punishable by a maximum term of imprisonment equal to or exceeding one year in the commission of which a motor vehicle is used;

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

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

2. Ten or more convictions or adjudications. Ten or more convictions or adjudications of separate and distinct offenses involving moving violations, singularly or in combination, in the operation of a motor vehicle which are required to be reported to the Secretary of State.

3. Inclusions. The offenses included in subsections 1 and 2 shall be deemed to include offenses under any federal law, any law of another state or any valid town, city or county ordinance substantially conforming to the aforesaid state statutory provisions.

4. Exception. When all of a person's convictions or adjudications are based on the offense of operating a motor vehicle when his license, permit or privilege to operate has been suspended or revoked and the original suspension or revocation is based upon a failure to give or thereafter maintain proof of financial responsibility, then that person shall not be an habitual offender.

§ 2293. Immediate revocation

The Secretary of State shall revoke, without preliminary hearing, the license, permit or privilege to operate a motor vehicle of any person defined as an habitual offender as set forth in section 2292.

§ 2294. Hearing procedure

1. Hearing on request. Any person whose license, permit or privilege to operate has been revoked pursuant to section 2293 may, within 30 days of notice thereof, request a hearing to show cause why his license should not be revoked. Pending the hearing, the revocation shall be stayed.

2. Issues. If after hearing, the Secretary of State or his deputy finds that the person is not the same person named in the transcript or abstract and that the person's record does not bring him within the definition of an habitual offender, as set forth in section 2292, then the revocation shall be rescinded, but if the

Secretary of State finds that the person is the same person named in the transcript or abstract and that the person's record brings him within the definition of an habitual offender, then the Secretary of State or his deputy shall find the person to be an habitual offender and the revocation shall be invoked.

3. **Presumptions.** At the hearing the Secretary of State or his deputy may take official notice of the transcript or abstracts. If the name and date of birth of the person requesting the hearing is the same as the name and date of birth of the person who is named in the transcript or abstracts, then the abstracts shall be prima facie evidence of that person's identity. The transcripts or abstracts shall also be prima facie evidence that the person named therein was duly convicted or adjudicated by the court, wherein the conviction or adjudication was made, of each offense shown by the transcripts or abstracts, and if the person shall deny any of the facts as stated, he shall have the burden of proving that those facts are untrue.

§ 2295. Prohibition

No license or permit to operate a motor vehicle shall be issued to an habitual offender for a period of one year from the date of the revocation and until such time as the financial responsibility requirements as set forth in section 782 are met.

§ 2296. Relief from habitual offender status

At the expiration of one year from the date of the revocation under this chapter, a person whose license has been so revoked may petition the Secretary of State for relief from his habitual offender status. Upon petition, the Secretary of State in his discretion, after determining that public safety will not be endangered, may relieve the person from his status as an habitual offender, and, subject to the other provisions of law relating to the issuance of operators' license, permits and privileges to operate, may issue the person the privilege to operate a motor vehicle in this State upon such terms and conditions as he may prescribe.

§ 2297. Appeal

After a hearing, an appeal may be taken to Superior Court for a judicial review of a determination under this chapter as provided by section 2242.

§ 2298. Penalty

It shall be unlawful for any person to operate any motor vehicle in this State while the revocation prohibiting its operation remains in effect. Any person found to be an habitual offender under this chapter who is thereafter convicted of operating a motor vehicle in this State while the revocation prohibiting operation is in effect shall have committed a Class C crime.

If the name of the person being prosecuted under this section is the same as the habitual offender whose privilege to operate has been revoked, that person shall have the burden of proving that he is not the same person whose license was revoked under this chapter.

§ 2299. Existing law

Notwithstanding Title 4, section 1151, subsection 2 and Title 5, sections 10003 and 10051, the Secretary of State is granted the authority to revoke the privilege to operate consistent with this chapter.

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

STATEMENT OF FACT

The purpose of this legislation is to reduce burdens on the courts and on state attorneys by shifting responsibility for habitual offender determination and license suspensions from the Superior Court to the Secretary of State. Under the law, the Secretary of State would make habitual offender determinations in an administrative proceeding. There would still be a right of appeal to the courts.