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ONE HUNDRED AND NINTH LEGISLATURE

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H. P. 1667 House of Representatives, January 8, 1980

Referred to the Committee on Transportation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk of the House

Presented by Mr. Davies of Orono.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Revise and Clarify Certain Provisions of the Motor Vehicle Laws.

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

Sec. 1. 29 MRSA § 341, sub-§ 10-A is enacted to read:

10-A. Used motor vehicle. "Used motor vehicle" means a motor vehicle that either has been once registered or is not covered by a manufacturer's new car warranty.

Sec. 2. 29 MRSA § 342, first sentence, as amended by PL 1975, c. 478, § 6, is further amended to read:

No person shall engage in the business of buying, selling, **exchanging** or offering to negotiate a sale of any vehicle without having been issued a license under this subchapter.

Sec. 3. 29 MRSA § 342, 2nd ¶, as repealed and replaced by PL 1977, c. 564, § 106, is amended to read:

A person is "engaged in the business of buying, selling, **exchanging** or offering to negotiate the sale of a vehicle" if that person buys motor vehicles for the purpose of resale, sells or offers to negotiate the sale of more than 5 motor vehicles in any 12-month period, or displays or permits the display of 3 or more

motor vehicles for sale at any one time or within any 30-day period upon premises owned or controlled by him, unless that person has owned and registered each vehicle for at least 6 months.

Sec. 4. 29 MRSA § 342, as last amended by PL 1977, c. 564, § 106, is further amended by adding a new paragraph at the end to read:

Financial institutions, including banks, savings and loan associations and credit unions which are state or federally chartered, are exempted from this section when selling vehicles repossessed pursuant to chapter 21.

Sec. 5. 29 MRSA § 343, sub-§ 1, ¶B, as repealed and replaced by PL 1977, c. 694, § 493, is amended to read:

B. Repair department, **licensed as an inspection station by the State Police according to the requirements of section 2512 or 2511,** for the repair of **at least** 2 vehicles simultaneously;

Sec. 6. 29 MRSA § 343, sub-§ 1, ¶E, as repealed and replaced by PL 1977, c. 694, § 493, is amended to read:

E. At least one mechanic, who may be the owner, who has a thorough knowledge of the vehicles being handled **and who is licensed as a certified inspection mechanic by the State Police according to the requirements of section 2511.**

Sec. 7. 29 MRSA § 343, sub-§ 2, as enacted by PL 1977, c. 694, § 493, is repealed.

Sec. 7-A. 29 MRSA § 343, sub-§ 3 is enacted to read:

3. Penalty. Failure to comply with this section shall be a Class E crime.

Sec. 7-B. 29 MRSA § 355, sub-§ 7 is enacted to read:

7. Invoice. Invoice disclosing from whom vehicle was obtained. If vehicle was obtained from another dealer, the dealer's name must be disclosed.

Sec. 8. 29 MRSA § 355, last ¶, as amended by PL 1975, c. 546, § 2, is further amended to read:

Such ~~record~~ **records** shall at all times be available for inspection by the Secretary of State, or his duly authorized agents or duly authorized members of law enforcement agencies or representatives of the Attorney General's office. A copy of the records, except the information required by ~~subsection~~ **subsections 6 and 7,** shall be filed with the Secretary of State's office immediately following the sale or disposition of the vehicle.

Sec. 9. 29 MRSA § 1312, sub-§ 1, as repealed and replaced by PL 1971, c. 547, is amended to read:

1. Prerequisites to tests. Before any test specified is given, the law enforcement officer shall inform the arrested person ~~of the consequences of his~~

~~refusal~~ **that if he revokes his implied consent to a chemical test by refusing** to permit a test at the direction of the law enforcement officer, **his license will be suspended for 90 days or more, as provided in subsection 2, and the revocation of consent will be admitted in evidence against him at any trial for operating under the influence of intoxicating liquor, as provided in subsection 8.**

~~If the law enforcement officer fails to comply with this prerequisite, any~~ **No** test results **or revocation of consent** shall be ~~inadmissible~~ **excluded** as evidence in any proceeding before any administrative officer or court of this State **as a result of the failure of the law enforcement officer to comply with this prerequisite. The only effects of the failure of the officer to comply with this prerequisite shall be as provided in subsections 2 and 8.**

Sec. 10. 29 MRSA § 1312, sub-§ 2, as amended by PL 1975, c. 770, § 154, is further amended to read:

2. Hearing. If a person under arrest ~~refuses~~ **revokes his implied consent to a chemical test by refusing** upon the request of a law enforcement officer to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, none shall be given. The Secretary of State, upon the receipt of a written statement under oath, within 20 days of the date, of the arrest of a person for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, and that such person had ~~refused~~ **revoked his consent by refusing** to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, shall immediately notify the person, in writing, as provided in section 2241, that his license or permit and his privilege to operate have been suspended. Such suspension shall be for a period of 3 months for a first ~~refusal~~ **revocation of consent** under this or any prior implied consent provision under Maine law. If such ~~refusal~~ **revocation of consent** is a 2nd or subsequent ~~refusal~~ **revocation of consent** under this or any prior implied consent provision under Maine law, such suspension shall be for a period of 6 months.

If such person desires to have a hearing, he shall notify the Secretary of State within 10 days, in writing, of such desire. Any suspension shall remain in effect pending the outcome of such hearing, if requested.

The scope of such a hearing shall cover whether the individual was lawfully placed under arrest and whether he ~~refused~~ **revoked his prior implied consent by refusing** to submit to one of the tests upon the request of a law enforcement officer. **Any suspension in effect shall be removed if, after hearing, it is determined that the arrested person who refused to permit the test would not have refused but for the failure of the law enforcement officer to give either or both of the warnings required by subsection 1.**

If it is determined, after hearing when such is requested, that such person was not arrested or did not ~~refuse~~ **revoke his implied consent** to permit a chemical test to determine his blood-alcohol level by analysis of his blood or breath, any suspension in effect shall be removed immediately.

Sec. 11. 29 MRSA § 1312, sub-§ 3, as repealed and replaced by PL 1971, c. 547, is amended to read:

3. Review. Any person, whose license, permit or privilege to operate is suspended for ~~refusal~~ **revoking his implied consent** to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath at the direction of a law enforcement officer after having been arrested for operating or attempting to operate while under the influence of intoxicating liquor, shall have the right to file a petition in the Superior Court in the county where he resides, or in Kennebec County, to review the order of suspension by the Secretary of State by the same procedure as is provided in section 2242.

Sec. 12. 29 MRSA § 1312, sub-§ 8, last ¶, as amended by PL 1979, c. 422, § 1, is further amended to read:

The ~~refusal~~ **revocation** of a ~~person~~ **person's implied consent to a chemical test by refusing** to allow the taking of a sample specimen as authorized by this section shall be admissible in evidence~~ but only to show that the test was not taken and that no results are available for that reason~~ **on the issue of whether that person was under the influence of intoxicating liquor. Any failure of the arresting law enforcement officer to give either or both of the warnings required by subsection 1 shall also be admissible in evidence.**

Sec. 13. 29 MRSA § 1312, sub-§ 10, ¶ D, as repealed and replaced by PL 1977, c. 626, § 1, is amended to read:

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~~ **more** recent ~~conviction~~ **offense**.

Sec. 13-A. 29 MRSA § 2292, sub-§ 5 is enacted to read:

5. Computation. In computing the number of convictions and adjudications, all convictions and adjudications must result from offenses occurring subsequent to March 2, 1974, and at least one of the convictions or adjudications must result from an offense occurring subsequent to March 2, 1979.

Sec. 14. 29 MRSA § 2442, sub-§ 1, as amended by PL 1977, c. 294, § 16, is further amended to read:

1. Penalty. A person who, with fraudulent intent:

A. Alters, forges or counterfeits a certificate of title;

B. Alters or forges an assignment of a certificate of title, or an assignment or release of a security interest, on a certificate of title or a form the Secretary of State prescribes;

C. Has possession of or uses a certificate of title knowing it to have been altered, forged or counterfeited; ~~or~~

D. Uses a false or fictitious name or address, or makes a material false statement, or fails to disclose a security interest, or conceals any other material fact, in an application for a certificate of title; **or**

E. Sells or exchanges, offers to sell or exchange or gives away any certificate of title or any manufacturer's vehicle identification number plate of any vehicle; shall be ~~punished by a fine of not less than $500, nor more than $1,000, or by imprisonment for not less than one year nor more than 5 years, or by both~~ **guilty of a Class D crime**.

Sec. 15. 29 MRSA § 2442, sub-§ 2 is enacted to read:

2. Examination of identification numbers; impounding of vehicle. Any motor vehicle inspector whose duty it is to enforce chapter 5, subchapter III-A, and chapter 21, may examine the identification numbers of any vehicle. It shall be unlawful for any person to fail or refuse to allow the examination.

When an inspector has reasonable grounds to believe that the identification numbers are fictitious or altered, or that a violation of law has taken place, he may at any time impound the vehicle and hold it until the violation has cleared.

Neither the State, nor political subdivisions thereof, nor the inspector shall be liable for any damage or loss that may result from the impoundment.

Sec. 16. Application. The provisions of this bill concerning the effect of the failure of a law enforcement officer to properly warn an arrested person of suspension of license or the evidentiary use of revocations of consent shall apply to trials and administrative hearings which occur after the effective date of this bill although the arrest, test or revocation of consent occurred before the effective date.

STATEMENT OF FACT

There is a strong possibility that "consequences of the refusal," as stated in present Title 29, section 1312, susection 1, will be construed to include the evidentiary use of a refusal, enacted as part of subsection 8 by P. L. 1979, c. 422, effective September 14, 1979, as well as the original consequence of license suspension. If so, the failure to provide a warning of the evidentiary consequence will result in exclusion from evidence of any blood or breath test taken from the driver because of the exclusionary rule in subsection 1. Few, if any, law enforcement officers have given such a warning, and a great many tests administered since September 14, 1979 may be excluded.

The subsection 1 exclusionary rule is not sound policy. The implied consent law in general, the substantially longer license suspension for revocation of consent ("refusal") (90 days) than for first offense conviction (1 month), and the warning requirement itself are all designed with the purpose of strongly encouraging arrested persons to take a blood or breath test. It is surely ironic that when an arrested person nevertheless takes a test, despite the failure of the law

enforcement officer to warn him or her of all possible consequences, that the test should then be excluded from evidence in a criminal trial. This bill attempts to enact more appropriate, less drastic effects for failure to properly warn an arrested person, effects which still encourage the giving of those warnings.

This bill has several purposes:

1. To provide that a warning of the evidentiary use of a revocation of consent shall be given along with a warning of the suspension;

2. To provide for a warning that a suspension of 90 days or more may result from a revocation of consent, without requiring the officer to explain details about 2nd or subsequent revocations of consent;

3. To eliminate the **per se** automatic exclusionary rule or Title 29, section 1312, subsection 1, when an arrested person does not take a test;

4. To provide that failure to properly warn an arrested person of the consequences of revocation of implied consent, when the person does not take a test, may in some instances result in a license not being suspended and will be admissible in evidence to rebut any inference arising from the revocation of implied consent;

5. To conform the conceptual framework of Title 29, section 1312, subsections 1 to 3, to the principle established at the outset of the statute: That failure to take a test, presently but incorrectly characterized as a "refusal," is actually a revocation of the consent implied by the act of driving; and

6. To provide that revocation of a consent (a "refusal") is admissible on the issue of whether the arrested person was under the influence, the most logical inference of such a revocation. The original limitation in Title 29, section 1312, subsection 8, requires a limiting instruction to a jury which carries too great a risk of not being followed.