

# MAINE STATE LEGISLATURE

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1 (Governor's Bill)  
2 (EMERGENCY)  
3 SECOND REGULAR SESSION  
4

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5 ONE HUNDRED AND TENTH LEGISLATURE  
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7 **Legislative Document**

**No. 2053**

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9 H. P. 2136 House of Representatives, March 4, 1982  
Referred to the Committee on Judiciary. Sent up for concurrence  
and ordered printed.

EDWIN H. PERT, Clerk

10 Presented by Representative Joyce of Portland.

Cosponsors: Senator Devoe of Penobscot and Representative  
O'Rourke of Camden.

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11  
12 **STATE OF MAINE**  
13

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14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-TWO  
16

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17 **AN ACT to Clarify the 1981 Amendments**  
18 **Relating to the Operating Under the Influence**  
19 **and Habitual Offender Laws.**  
20

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

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

29 Whereas, certain amendments are necessary to clarify  
30 various matters under the new laws, including the relation-  
31 ship between the criminal and civil offenses and the juris-  
32 diction 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12 is repealed and the following enacted in its place: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, subsection 2, and section 7827,  
34 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, or may be inde-  
29 pendent of subsection 1. Any incarceration in a county jail  
30 shall be in a county jail designated by the Department of  
31 Corrections as a place for the secure detention of juve-  
32 niles. In addition, the juvenile's license or permit to  
33 operate a motor vehicle, right to operate a motor vehicle or  
34 right to apply for or obtain a license shall be suspended by  
35 the court for a period of 180 days. The period of suspen-  
36 sion shall not be suspended by the court. The court shall  
37 give notice of the suspension and take physical custody of  
38 an operator's license or permit as provided in Title 29,  
39 section 2241-H. The court shall immediately transmit a cer-  
40 tified abstract of the suspension to the Secretary of State.  
41 A further suspension may be imposed by the Secretary of  
42 State pursuant to Title 29, 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, 2nd and 3rd ¶¶, as**  
35 **last amended by PL 1981, c. 475, §6, are further amended to**  
36 **read:**

37 Only a duly licensed physician, registered nurse, registered  
38 physician assistant or a person certified by the Department  
39 of Human Services under certification standards to be set by  
40 that department, acting at the request of a law enforcement  
41 officer, may draw a specimen of blood for the purpose of  
42 determining the blood-alcohol level of a person who ~~has not~~  
43 ~~revoked his implied consent~~ is complying with the duty to  
44 submit to a blood-alcohol test and who has selected a blood  
45 test. This limitation shall not apply to the taking of  
46 breath specimens.



1 A law enforcement officer may take a sample specimen of the  
2 breath of any person whom he has probable cause to believe  
3 has operated or attempted to operate a motor vehicle while  
4 under the influence of intoxicating liquor and who ~~has not~~  
5 ~~revoked his implied consent~~ is complying with the duty to  
6 submit to a blood-alcohol test and who has selected a breath  
7 test, the sample specimen to be submitted to the Department  
8 of Human Services or a person certified by the Department of  
9 Human Services for the purpose of conducting chemical tests  
10 of the sample specimen to determine the blood-alcohol level  
11 thereof.

12 **Sec. 19.** 29 MRSA §1312, sub-§6, 5th ¶, as repealed and  
13 replaced by PL 1981, c. 458, §1, is amended by adding after  
14 the first sentence a new sentence to read:

15 The law enforcement officer shall require the person to  
16 submit to 2 or more testing procedures to constitute a com-  
17 pleted test.

18 **Sec. 20.** 29 MRSA §1312, sub-§8, 5th ¶, as last amended  
19 by PL 1981, c. 475, §8, is further amended to read:

20 The revocation of a person's implied consent to a chemical  
21 test by refusing to allow the taking of a sample specimen as  
22 authorized failure of a person to comply with the duty re-  
23 quired by this section to submit to a blood-alcohol test  
24 shall be admissible in evidence on the issue of whether that  
25 person was under the influence of intoxicating liquor. If  
26 the law enforcement officer having probable cause to believe  
27 that the person operated or attempted to operate a motor  
28 vehicle under the influence of intoxicating liquor fails to  
29 give either of the warnings required under subsection 1, the  
30 revocation of the person's implied consent by refusing to  
31 submit to a chemical failure of the person to comply with  
32 the duty to submit to a blood-alcohol test shall not be  
33 admissible. If a revocation of consent failure to submit  
34 to a blood-alcohol test is not admitted into evidence, the  
35 court may inform the jury of the fact that no test result is  
36 available.

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

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

43 **Sec. 22.** 29 MRSA §1312, sub-§8-A, as enacted by PL  
44 1981, c. 468, §7-A, is amended to read:

1           8-A. Statements by accused. Any statement by a defen-  
2 dant that he was the operator of a motor vehicle, which he  
3 is accused of operating in violation of ~~this section or~~  
4 former subsection 10, section 1312-B or section 1312-C,  
5 shall be admissible in a proceeding under this section  
6 former subsection 10, section 1311 or 1312-B or 1312-C, if  
7 it was made voluntarily and is otherwise admissible under  
8 the United States Constitution or the Constitution of Maine.  
9 The statement may constitute sufficient proof by itself,  
10 without further proof of corpus delicti, that the motor  
11 vehicle was operated and was operated by the defendant.

12           Sec. 23. 29 MRSA §1312, sub-§11, ¶¶ A and B, as  
13 amended by PL 1981, c. 475, §9, are further amended to read:

14           A. After a person has been charged with a violation of  
15 this section operating or attempting to operate a motor  
16 vehicle under the influence of intoxicating liquor or  
17 drugs or with a blood-alcohol level of 0.10% or more,  
18 the investigating or arresting officer shall investi-  
19 gate to determine whether the charged person has any  
20 prior convictions under this section former subsection  
21 10 or section 1312-B or an adjudication under section  
22 1312-C. As part of his investigation, the officer  
23 shall make the necessary inquiries of the Secretary of  
24 State.

25           B. Any A law enforcement officer authorized to arrest  
26 for violations of this section may arrest, without a  
27 warrant, any person the officer has probable cause to  
28 believe has violated this section operated or attempted  
29 to operate a motor vehicle while under the influence of  
30 intoxicating liquor or drugs if the arrest occurs  
31 within a period following the offense reasonably likely  
32 to result in the obtaining of probative evidence of  
33 blood-alcohol level.

34           Sec. 24. 29 MRSA §1312, sub-§11, ¶C, as enacted by PL  
35 1977, c. 626, §3, is amended to read:

36           C. Every If a law enforcement officer has reasonable  
37 grounds, amounting to an articulable suspicion although  
38 not constituting probable cause, that a person oper-  
39 ating has operated a motor vehicle which has been  
40 involved in an accident or which is operated in viola-  
41 tion of any of the provisions of this Title shall, at  
42 the request of a police officer, in violation of sec-  
43 tions 1312-B, 1314 or 2501-A, he may require that  
44 person to submit to a preliminary breath test to be ad-  
45 ministered by the police officer designed to determine

1 whether a person has been consuming alcohol. If the  
2 preliminary breath test indicates that the operator has  
3 consumed alcohol, the police law enforcement officer  
4 may require the operator to submit to a chemical test  
5 designed to determine the blood-alcohol level in the  
6 manner set forth in this section.

7 **Sec. 25.** 29 MRSA §1312-B, sub-§1-A is enacted to read:

8 1-A. Pleading and proof. The alternatives defined in  
9 subsection 1, paragraphs A and B may be pleaded in the  
10 alternative. The State may, but shall not be required to,  
11 elect prior to submission of the factfinder.

12 **Sec. 26.** 29 MRSA §1312-B, sub-§2, ¶C, as enacted by PL  
13 1981, c. 468, §10, is amended to read:

14 C. Upon conviction, the court shall suspend the defend-  
15 ant's privilege license or permit to operate, right to  
16 operate a motor vehicle and right to apply for or  
17 obtain a license for a specified period, which shall  
18 not be less than of 90 days nor more than one year.  
19 The minimum period of suspension shall not be suspended  
20 by the court. The court shall give notice of the sus-  
21 pension and take physical custody of an operator's li-  
22 cence as provided in section 2241-H. The Secretary of  
23 State may impose an additional period of suspension as  
24 provided in section 1312-D, subsection 1-A.

25 **Sec. 27.** 29 MRSA §1312-B, sub-§§3 and 4 are enacted to  
26 read:

27 3. Sentencing procedure. In determining the appropri-  
28 ate sentence, the court shall consider the record of convic-  
29 tions for criminal traffic offenses and adjudications of  
30 traffic infractions of the defendant. The court may rely  
31 upon oral representations based on records maintained by the  
32 courts, by the State Bureau of Identification or by the  
33 Secretary of State, including telecommunications of records  
34 maintained by the Secretary of State. If the defendant dis-  
35 putes the accuracy of any representation concerning a con-  
36 viction or adjudication the court shall grant a continuance  
37 for the purposes of determining the accuracy of the record.

38 4. Juvenile crime. References in this Title to this  
39 section shall be deemed also to refer to the juvenile crime  
40 stated in Title 15, section 3103, subsection 1, paragraph F,  
41 and to the disposition, including a suspension, for that  
42 juvenile crime as provided in Title 15, section 3314, sub-  
43 section 3, except as otherwise provided or except where the  
44 context clearly requires otherwise.

1           Sec. 28. 29 MRSA §1312-C, sub-§2-A is enacted to read:

2           2-A. Pleading and proof. The alternatives defined in  
3 subsection 2, paragraphs A and B may be pleaded in the  
4 alternative. The State may, but shall not be required to,  
5 elect prior to submission to the factfinder.

6           Sec. 29. 29 MRSA §1312-C, sub-§4, as enacted by PL  
7 1981, c. 468, §11, is repealed and the following enacted in  
8 its place:

9           4. Suspension. The license or permit to operate,  
10 right to operate a motor vehicle or right to apply for or  
11 obtain a license of any person adjudicated guilty of violat-  
12 ing subsection 2 shall be suspended by the court for a  
13 period of 45 days. The period of suspension shall not be  
14 suspended by the court. The court shall give notice of the  
15 suspension and shall take physical custody of an operator's  
16 license or permit as provided in section 2241-H. The Secre-  
17 tary of State may impose an additional period of suspension,  
18 as provided in section 1312-D, and may extend any period of  
19 suspension until satisfaction of any conditions imposed by  
20 him pursuant to section 1312-D, subsection 3.

21           Sec. 30. 29 MRSA §1312-C, sub-§5, ¶¶ A, B and C, as  
22 enacted by PL 1981, c. 468, §11, are amended to read:

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

25           B. Was driving more than 30 miles an hour in excess of  
26 the speed limit by 30 miles an hour or more during the  
27 operation which resulted in the prosecution for operat-  
28 ing under the influence or with a blood-alcohol level  
29 of 0.10% or more;

30           C. Attempted Eluded or attempted to elude an officer,  
31 as defined in section 2501-A, subsection 3, during the  
32 operation which resulted in the prosecution for operat-  
33 ing under the influence or with a blood-alcohol level  
34 of 0.10% or more; or

35           Sec. 31. 29 MRSA §1312-C, sub-§7, ¶B, as enacted by PL  
36 1981, c. 468, §11, is amended to read:

37           B. Had revoked his implied consent failed to comply  
38 with the duty to submit to take a blood or breath test  
39 by refusing to take one within immediately preceding 6  
40 years immediately preceding the operation which  
41 resulted in the prosecution for operating under the

1 influence or with a blood-alcohol level of 0.10% or  
2 more.

3 **Sec. 32.** 29 MRSA §1312-D, sub-§1, as enacted by PL  
4 1981, c. 468, §12, is amended to read:

5 1. Recording and notice by Secretary of State. On  
6 receipt of an attested copy of the court record of a suspen-  
7 sion or revocation of the privilege of operating a person's  
8 license, right to operate a motor vehicle or right to apply  
9 for or obtain a license or of a conviction or adjudication  
10 under section 1312-B or 1312-C, the Secretary of State shall  
11 immediately record the suspension of the person's license or  
12 permit and privilege to operate a motor vehicle and shall  
13 send written notice of the suspension of the court to the  
14 person suspended. If the court fails to suspend the li-  
15 cence, right to operate a motor vehicle, or right to apply  
16 for or obtain a license of any person convicted under  
17 section 1312-B or adjudicated as having violated section  
18 1312-C, or the juvenile crime defined by Title 15, section  
19 3103, subsection 1, paragraph F, the Secretary of State  
20 shall suspend those rights for the periods specified in sec-  
21 tions 1312-B, 1312-C and Title 15, section 3314, subsection  
22 3, respectively, and shall send written notice of the sus-  
23 pension as provided in this subsection.

24 **Sec. 33.** 29 MRSA §1312-D, sub-§1-A is enacted to read:

25 1-A. Additional suspension. The Secretary of State  
26 may suspend the license, the right to operate a motor vehi-  
27 cle or the right to apply for or obtain a license of any  
28 person adjudicated of having violated section 1312-C for an  
29 additional period of up to 135 days beyond the 45-day period  
30 of suspension required under section 1312-C, subsection 4.

31 The Secretary of State may suspend the license, the right to  
32 operate or the right to apply for or obtain a license of any  
33 person, including a juvenile, convicted under section 1312-B  
34 for an additional period of up to 275 days beyond the 90  
35 days required under section 1312-B, subsection 2, paragraph  
36 C, or up to 185 days beyond the 180 days required under  
37 Title 15, section 3314, subsection 3, and if the person has  
38 been previously convicted or adjudicated under the former  
39 section 1312, subsection 10 or section 1312-B or section  
40 1312-C, the Secretary of State shall impose a further sus-  
41 pension of not less than 90 days.

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

1           **Sec. 34. 29 MRSA §1312-D, sub-§§2 and 3,** as enacted by  
2 PL 1981, c. 468, §12, are amended to read:

3           2. Education and treatment programs. Following the  
4 expiration of 2/3 of the total period of suspension ordered  
5 by the court under imposed pursuant to subsection 1 and 1-A,  
6 section 1312-B, subsection 2, paragraph C, or section  
7 1312-C, subsection 4, or Title 15, section 3314, the Secretary  
8 of State may issue a license or permit to the person if  
9 he receives written notice that the person has satisfactorily  
10 completed the alcohol education program of the  
11 Department of Human Services or has satisfactorily completed  
12 an alcohol treatment or rehabilitation program approved or  
13 licensed by the department.

14           3. Restricted licenses. After certification under  
15 subsection 2 or after completion of the suspension imposed  
16 by the court pursuant to this section and section 1312-B,  
17 1312-C or Title 15, section 3314, the Secretary of State may  
18 issue the license or permit with whatever conditions, re-  
19 strictions or terms he deems advisable, having in mind the  
20 safety of the public and the welfare of the petitioner,  
21 including, but not limited to, successful completion of the  
22 alcohol education program of the Department of Human Ser-  
23 vices, if the petitioner has not already done so under sub-  
24 section 2. The license or permit may contain the condition  
25 that the person abstain from the use of intoxicating liquor  
26 or drugs.

27           **Sec. 35. 29 MRSA §1312-D, sub-§5,** as enacted by PL  
28 1981, c. 468, §12, is amended to read:

29           5. Restricted licenses for suspension for failure to  
30 comply with duty to submit to blood-alcohol test. The  
31 Secretary of State may issue a restricted license or permit  
32 to any person whose license or permit has been suspended for  
33 a first revocation of implied consent by refusing failure to  
34 comply with the duty to submit to a blood-alcohol test under  
35 section 1312, subsection 2, if the conditions of issuing  
36 after issuance following a conviction or adjudication under  
37 section 1312-B or 1312-C are met by the person and a period  
38 of suspension of not less than 90 days has elapsed.

39           **Sec. 36. 29 MRSA §1312-D, sub-§§7 and 8,** as enacted by  
40 PL 1981, c. 468, §12, are amended to read:

41           7. Suspension in effect during appeal. If any person  
42 convicted or adjudicated of a violation of section 1312-B or  
43 1312-C appeals the judgment or adjudication, the license or  
44 permit and privilege to operate a motor vehicle shall be

1 suspended suspension imposed shall remain in effect during  
2 the time an appeal is pending, unless the court orders  
3 otherwise, or unless the Secretary of State restores the li-  
4 cence, permit or privilege to operate pending decision on  
5 the appeal.

6 8. Consecutive suspensions. Any suspension under pur-  
7 suant to this section or the former section 1312, subsection  
8 10 or section 1312-B or 1312-C shall run consecutively with  
9 be consecutive to any suspension imposed under section 1312,  
10 subsection 2, for revocation of implied consent by refusing  
11 failing to comply with the duty to submit to a chemical test  
12 to determine blood-alcohol level by analysis of blood or  
13 breath.

14 **Sec. 37. 29 MRSA §1314, sub-§2-A is enacted to read:**

15 2-A. Statements by accused. The provisions of section  
16 1312, subsection 8-A, shall apply to prosecutions under this  
17 section.

18 **Sec. 38. 29 MRSA §1314, sub-§3, as enacted by PL 1981,**  
19 **c. 468, §13, is amended to read:**

20 3. Penalties. Driving to endanger is a Class E crime.  
21 In addition, any person found guilty shall as part of the  
22 sentence receive a mandatory suspension of his license or  
23 permit to operate a motor vehicle, right to operate a motor  
24 vehicle or right to apply for or obtain a license for not  
25 less than 30 days nor more than 180 days, which minimum  
26 shall not be suspended. The court shall give notice of the  
27 suspension and take physical custody of an operator's li-  
28 cence as provided in section 2241-H. If the court fails to  
29 impose a suspension as provided in this section, the Secre-  
30 tary of State shall impose the minimum period of suspension  
31 and may impose up to the maximum period of suspension and  
32 shall give notice as provided in section 1312-D, subsection  
33 1.

34 **Sec. 39. 29 MRSA §2184, sub-§1, as repealed and**  
35 **replaced by PL 1981, c. 468, §14, is repealed and the fol-**  
36 **lowing enacted in its place:**

37 1. Offense; penalty. No person may operate a motor  
38 vehicle on any public highway of this State at a time when  
39 his license or permit to operate, his right to operate or  
40 his right to apply for or obtain a license or permit has  
41 been suspended or revoked, except for a revocation as an  
42 habitual offender under chapter 18-A or former chapter 18,  
43 when that person:

1 A. Has received written notice of a suspension or  
2 revocation pursuant to section 1312-D, subsection 1, or  
3 section 2241-H or other written notice from the Secretary of State;  
4

5 B. Has actual knowledge of his suspension or revoca-  
6 tion;

7 C. Is a person whom written notice was sent by ordi-  
8 nary mail at the last known address shown by the  
9 records maintained by the Secretary of State; or

10 D. Has failed to appear in court pursuant to any  
11 notice or order specified in section 2301-A.

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

15 **Sec. 40. 29 MRSA §2184, sub-§§1-A and 1-B are enacted**  
16 **to read:**

17 1-A. Minimum mandatory sentences for certain suspen-  
18 sions. In the event the suspension was for a conviction for  
19 a violation of former section 1312, subsection 10 or section  
20 1312-B or an adjudication for a violation of section 1312-C  
21 or for a failure to comply with the duty to submit for a  
22 blood-alcohol test under section 1312, subsection 2, the  
23 court shall impose a minimum fine of \$350, which minimum  
24 shall not be suspended; a term of imprisonment which shall  
25 be for not less than 7 consecutive days, which minimum shall  
26 not be suspended; and a mandatory suspension of license or  
27 permit or right to operate a motor vehicle, or right to  
28 apply for or obtain a license, for not less than one year  
29 nor more than 3 years consecutive to the original suspen-  
30 sion, which minimum period shall not be suspended. The re-  
31 quirements of Title 15, section 757, of a separate reading  
32 of the allegation and a separate trial shall not apply to a  
33 proceeding under this subsection. The court shall give  
34 notice of the suspension and shall take physical custody of  
35 an operator's license or permit as provided in section  
36 2241-H.

37 If the court fails to impose a suspension as provided in  
38 this subsection, the Secretary of State shall impose the  
39 minimum one-year suspension and may impose up to 3 years of  
40 suspension and give notice as provided in section 1312-D,  
41 subsection 1.



1 The minimum mandatory sentences of this subsection shall  
2 apply only to the original period of suspension imposed by  
3 the court or by the Secretary of State, or as extended by  
4 the Secretary of State pursuant to section 1312-D, subsec-  
5 tion 1-A. The minimum mandatory sentences of this subsec-  
6 tion shall not apply to any extension of the original sus-  
7 pension, including an extension pursuant to section 1312-C,  
8 subsection 4, imposed for the purpose of compelling compli-  
9 ance with conditions for the restoration of a license or  
10 right to operate, or to an extension pursuant to section  
11 2241-D for failure to pay a reinstatement fee.

12 1-B. Statements by accused. The provisions of section  
13 1312, subsection 8-A, shall apply in a prosecution pursuant  
14 to this section.

15 **Sec. 41. 29 MRSA §2241-H, first and 2nd ¶¶, as enacted**  
16 **by PL 1981, c. 468, §15, are amended to read:**

17 In the case of any conviction or adjudication under  
18 former section 1312, subsection 10, section 1312-B, 1312-C,  
19 1314 or for any offense for which the suspension of a li-  
20 cence or the right to operate a motor vehicle or the right  
21 to apply for or obtain a license is required by law or in  
22 any case in which the court suspends a license under section  
23 2305, the court shall inform the defendant of the suspension  
24 and the defendant shall acknowledge this notice in writing  
25 on a form to be provided by the court. The court, as part  
26 of its sentence, notwithstanding any appeal unless the  
27 defendant appeals and a stay of execution of the suspension  
28 is granted, shall take the any license certificate of issued  
29 by this State from the person convicted or adjudicated or  
30 any license certificate issued by another state, foreign  
31 country or province from the person convicted or adjudicated  
32 if that person is residing, domiciled or employed in this  
33 State. The court, as part of its sentence, unless the  
34 defendant appeals and a stay of execution of the suspension  
35 is granted, may take from the person convicted or adjudi-  
36 cated any license certificate issued by another state or  
37 foreign country or province if the person is not residing,  
38 domiciled or employed in this State. The court shall forward  
39 the license certificate, a copy of the sentence and the ac-  
40 knowledgment of notice by mail to the Secretary of State.

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

45 **Sec. 42. 29 MRSA §2241-I, as enacted by PL 1981, c.**  
46 **468, §15-A, is amended to read:**

1 §2241-I. Surrender of suspended license to law enforcement  
2 officer

3 In the event that a law enforcement officer, in the  
4 course of stopping or detaining a motor vehicle, obtains  
5 from the operator of the motor vehicle a State of Maine li-  
6 cense ~~which~~ or a license issued by another state, foreign  
7 country or province when, according to records of the Secre-  
8 tary of State which are available by telecommunications,  
9 that person's license or right to operate in this State is  
10 under suspension or revocation, the officer shall retain  
11 physical custody of the license and shall transmit the li-  
12 cense, together with a report stating the circumstances  
13 under which it was obtained, to the Secretary of State.

14 Sec. 43. 29 MRSA §2292, sub-§1, ¶E, as enacted by PL  
15 1979, c. 10, §2, is amended to read:

16 E. Wilfully operating ~~Operating~~ a motor vehicle with-  
17 out a license to do so;

18 Sec. 44. 29 MRSA §2292, sub-§1, ¶¶H and I, as enacted  
19 by PL 1979, c. 10, §2, are amended to read:

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

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

29 Sec. 45. 29 MRSA §2292, sub-§1, ¶¶J and K are enacted  
30 to read:

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

33 K. Passing a roadblock, as defined by section 2501-A,  
34 subsection 4.

35 Sec. 46. 29 MRSA §2296, as last amended by PL 1981, c.  
36 475, §10, is further amended to read:

37 §2296. Relief from habitual offender status

1        At the expiration of one year from the date of the  
2        revocation under this chapter, or by the Superior Court  
3        under former chapter 18, a person whose license or right to  
4        operate a motor vehicle has been revoked may petition the  
5        Secretary of State for relief from his habitual offender  
6        status. Petitions for relief shall be presented to the  
7        Secretary of State, including petitions brought by persons  
8        whose revocation was by the Superior Court under former  
9        chapter 18. No petition for relief by a person revoked  
10       under former chapter 18 may be presented to the Superior  
11       Court. Upon petition, the Secretary of State in his discre-  
12       tion, after determining that the public safety will not be  
13       endangered, may relieve the person from his status as an  
14       habitual offender, and, subject to the other provisions of  
15       law relating to the issuance of operators' license licenses,  
16       permits and privileges to operate, including the financial  
17       responsibility requirements of section 782, may issue the  
18       person the privilege to operate a motor vehicle in this  
19       State upon such terms and conditions as he may prescribe.

20       The Secretary of State shall not issue the privilege to  
21       operate a motor vehicle in this State to any person whose  
22       license or privilege to operate has been revoked if a charge  
23       against that person under section 2298 is pending. If the  
24       Secretary of State subsequently determines that a license or  
25       privilege to operate was issued to a person against whom a  
26       charge under section 2298 was pending, he shall, without  
27       hearing, immediately reinstate the revocation of the license  
28       or privilege to operate and shall provide notice of the  
29       reinstatement of revocation.

30       Subject to the longer extension of the habitual  
31       offender status required under section 2298, no license or  
32       privilege to operate a motor vehicle in this State may be  
33       issued to a person who has been convicted of a violation of  
34       section 2298 for a period of at least one year following the  
35       conviction. If the person's license or privilege to operate  
36       has been restored during pendency of the prosecution under  
37       section 2298 or following conviction, the Secretary of State  
38       shall immediately reinstate the revocation, without hearing,  
39       of the license or privilege to operate and provide notice  
40       thereof. The reinstatement of revocation shall continue for  
41       a period of at least one year following the conviction.

42       **Sec. 47. 29 MRSA §2298, 2nd ¶, first sentence, as**  
43       **enacted by PL 1981, c. 468, §18, is amended to read:**

44       If the person is defined as a an habitual offender  
45       under section 2292, subsection 1, and one or more of the  
46       convictions or adjudications defining him as an habitual

1 offender is pursuant to section 2292, subsection 1, para-  
2 graph B, the following mandatory minimum penalties, which  
3 shall not be suspended, shall be imposed: A minimum fine of  
4 not less than \$1,000 \$500 and a minimum term of imprisonment  
5 of not less than 60 days.

6       **Sec. 48. 29 MRSA §2298, 2nd ¶**, as enacted by PL 1981,  
7 c. 468, §18, is further amended by adding after the first  
8 sentence a new sentence to read:

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

12       **Sec. 49. 29 MRSA §2300, sub-§3-A** is enacted to read:

13       3-A. Uniform Traffic Ticket and Complaint as sum-  
14 mons. A Uniform Traffic Ticket and Complaint, when served  
15 upon a person by a law enforcement officer, shall act as a  
16 summons to appear in court, on the date specified in the  
17 ticket, for a violation of any provision of this Title.

18       **Sec. 50. 29 MRSA §2301-A, first ¶**, as last amended by  
19 PL 1979, c. 573, §3, is further amended to read:

20       If a person fails to appear in court on the day speci-  
21 fied in response to a Uniform Traffic Ticket and Complaint,  
22 a summons, a condition of bail or order of court for any  
23 violation of any provision of this Title, or in response to  
24 a Uniform Traffic Ticket and Complaint or for any further  
25 appearance ordered by the court, including one for the pay-  
26 ment of a fine, either in person or by counsel, the court  
27 may shall suspend his license or suspend permit, his right  
28 to operate motor vehicles in this State and the right to  
29 apply for or obtain a license. The effective date of the  
30 suspension shall be governed by section 2241-E.

31       **Sec. 51. 29 MRSA §2301-A, 2nd ¶**, as last amended by PL  
32 1979, c. 573, §3, is repealed.

33       **Sec. 52. 29 MRSA §2302, 2nd sentence**, as enacted by PL  
34 1975, c. 430, §55, is amended to read:

35 The District Court shall have original and concurrent juris-  
36 isdiction with the Superior Court over all prosecutions for  
37 any other violations of this Title, except Class C or  
38 greater crimes, in which case, District Court jurisdiction  
39 shall be subject to Title 4, section 152.

40       **Sec. 53. 29 MRSA §2306**, as amended by PL 1981, c. 468,  
41 §21, is further amended to read:

1 §2306. Execution of suspension stayed during appeal

2 If ~~any~~ a person adjudicated to have committed a traffic  
3 infraction, except for a violation of section 1312-C, shall  
4 ~~appeal~~ appeals from the judgment and sentence adjudication  
5 of the trial court, the execution of any suspension ~~imposed~~  
6 ~~on~~ of his license or right to operate a motor vehicle shall  
7 be stayed until ~~adjudication~~ disposition on appeal or with-  
8 drawal of the appeal, unless good cause is shown why he  
9 should not be allowed to retain his license ~~and~~ or right to  
10 operate. A stay of execution of any suspension imposed pur-  
11 suant to section 1312-C shall be governed by section 1312-D.

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

14 STATEMENT OF FACT

15 Section 1, in conjunction with sections 27, 40 and 48,  
16 states those occasions when the relatively cumbersome proce-  
17 dure of a bifurcated trial is necessary for the purpose of  
18 proving that a person has been previously convicted of a  
19 prior identical or similar offense, including operating  
20 under the influence or with excessive blood-alcohol. These  
21 provisions restrict that cumbersome procedure only to those  
22 occasions when it is truly necessary.

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

26 Sections 6 and 7 retain the policy, enacted last year,  
27 that informal adjustment may not be used in cases of  
28 OUI-EBA, but also eliminate the entire intake process, which  
29 served no remaining purpose and only caused delays.

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

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

1 Sections 10 and 11 facilitate the entry into evidence  
2 of records of the Secretary of State.

3 Section 12 makes no substantive change in the law.  
4 However, it introduces to the statute an important concept  
5 stated in State v. Plante, Me., 417 A.2d 991 (1980): That  
6 "implied consent" in fact describes a duty by the citizen  
7 who is driving to submit to a test if there is probable  
8 cause and that there is no "right" to refuse. This impor-  
9 tant conceptual change is made throughout the statute. (See  
10 sections 13-20, 31)

11 Section 13 makes a language change purely for purposes  
12 of clarity.

13 Section 14. See section 12.

14 Section 15. See section 12. This section also makes  
15 clear that upon a suspension, the Secretary of State may  
16 impose any or all of the following suspensions: (1) A  
17 Maine operator's license; (2) the right to operate, that  
18 is, the right of an out-of-state driver who has an out-  
19 of-state license to operate in the State; and (3) the right  
20 of any person to apply for and, if successful, obtain a li-  
21 cense. The various provisions in Title 29 concerning sus-  
22 pension were extremely inconsistent in their reference as to  
23 what was subject to suspension. The purpose here is both to  
24 clarify and to make these provisions consistent with each  
25 other. (See also sections 8, 9, 14, 32, 33, 36, 38, 39, 40,  
26 41, 42, 50) A final change in this section clarifies the  
27 Secretary of State's duty concerning suspension where delay  
28 in sending in the failure to comply has occurred.

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

34 Section 17. See section 15.

35 Section 18. See section 12

36 Section 19 is designed to ensure more reliable test  
37 results with self-contained breath testing apparatuses.

38 Section 20-21. See section 12.

39 Section 22 makes clear that the rule enacted by this  
40 section last year applies to all prosecutions for operating

1 under the influence or with excessive blood alcohol, not  
2 just those under section 1312-B.

3 Section 23, in paragraph A, makes clear that an inves-  
4 tigating officer must attempt to find a prior record of  
5 OUI-EBA whenever the person has a new charge. In paragraph  
6 B the amendment makes clear that the power to arrest on  
7 probable cause applies to the general offense of OUI-EBA and  
8 not to violations of "this section," the definition of the  
9 crime having been removed from section 1312.

10 Section 24 states a more appropriate standard than that  
11 stated in the present provision for requiring a person to  
12 take a "screening test." It also makes clear that the test  
13 required under this section is in fact only a screening test  
14 and not the blood-alcohol test described previously in  
15 section 1312.

16 Section 25 makes clear that operating under the influ-  
17 ence and operating with a blood-alcohol level in excess of  
18 0.10% may be pleaded and proved alternatively, that both  
19 alternatives may be submitted to the jury but that the jury  
20 need not be confused by 2 alternatives if the prosecution  
21 believes that its evidence is such that it desires to rely  
22 on only one.

23 Section 26. See section 15. Since few courts seemed  
24 to be exercising the discretion under the original provision  
25 to suspend for a period between 90 days and a year, this  
26 power is returned to the Secretary of State, where it may be  
27 applied uniformly. See section 33. In the 2nd amendment,  
28 reference is made to Title 29, section 2241-H in order to  
29 assure that procedures mandated there are followed under  
30 this section.

31 Section 27 makes clear the procedures to be followed at  
32 sentencing under Title 29, section 1312-B. Section 27 also  
33 makes clear that provisions in this Title relating to prose-  
34 cutions, convictions and suspensions under section 1312-B  
35 apply to juvenile prosecutions for criminal OUI-EBA as well.

36 Section 28. See section 25.

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

41 Section 30. Paragraph A makes clear that the  
42 blood-alcohol level which, if present, requires criminal

1 prosecution is 0.20% or more and not more than 0.20%, that  
2 is, 0.21%. This change makes this provision consistent with  
3 those which define the crime and the civil violations them-  
4 selves, 0.10% or more. Paragraph B makes a similar change  
5 as to exceeding the speed limit by 30 mph or more. The  
6 second amendment in this paragraph makes the description of  
7 the operating under the influence or with excessive  
8 blood-alcohol offense accurate. Paragraph C changes  
9 referred crime to "eluding." The crime itself is defined as  
10 including an attempt. It also changes the description of  
11 the operating under the influence or with excessive  
12 blood-alcohol offense.

13 Section 31. See section 12. The second amendment  
14 clarifies what 6-year period is being referred to.

15 Section 32. See section 15. The second amendment  
16 recognizes the fact that courts may and in fact have,  
17 through oversight, neglected to enter suspensions. This  
18 provision provides that in such an event the Secretary of  
19 State shall order the suspension.

20 Section 33. As explained under section 26, see also  
21 section 29, the power to impose suspensions beyond the basic  
22 minimums of 45 days (civil) and 90 days (criminal) is trans-  
23 ferred to the Secretary of State. This section implements  
24 that transfer. The basic total suspension periods, crimi-  
25 nal, one year, civil, 180 days, remain the same. In the  
26 case of a second operating under the influence or excessive  
27 blood-alcohol conviction or adjudication, the Secretary of  
28 State must suspend for an additional 90 days. Section 33  
29 also gives the Secretary of State the same power to impose  
30 an additional period of suspension upon juveniles as upon  
31 adults, for a total period not to exceed a year.

32 Section 34. The changes in this section merely conform  
33 these provisions to take account of the changes in sections  
34 26, 29 and 33.

35 Section 35. See section 12.

36 Section 36. As to section 1312-D, subsection 7, see  
37 section 15 of this bill. In section 1312-D, subsection 8,  
38 the first amendment makes clear that consecutive suspension  
39 periods for a conviction or adjudication for operating under  
40 the influence or with excessive blood-alcohol and for fail-  
41 ing to comply with the duty to submit to a blood-alcohol  
42 test apply to all operating under the influence or with  
43 excessive blood-alcohol convictions or adjudications,  
44 including those under the old law. See also section 12.



1 Section 37 extends the rule of section 1312, subsection  
2 8-A, to prosecutions for driving to endanger.

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

7 Section 39 substantially amends the crime of operating  
8 after suspension to make clear, for the first time, what is  
9 required in the nature of notice to the person suspended or  
10 knowledge by the person suspended, or both. The present  
11 statute is completely silent on the matter and could be read  
12 to impose strict liability, regardless of notice or knowl-  
13 edge. However, judges have imposed a variety of different  
14 standards. There has never been a case decided by the Law  
15 Court imposing a uniform standard. Title 29, section 2184,  
16 subsection 1, paragraphs A to D, state 4 different alterna-  
17 tive requirements which will satisfy the notice or knowledge  
18 requirement. These provisions range from actual knowledge  
19 or actual receipt of notice to those imposing liability if  
20 the defendant ought to have known of the suspension. A 2nd  
21 change eliminates the mandatory \$350 fine which, in last  
22 year's bill, was applied to violations of all suspensions,  
23 not just suspensions for operating under the influence or  
24 with excessive blood-alcohol.

25 Section 40. For purposes of convenience and because of  
26 greater elaboration, the provisions concerning minimum  
27 mandatory sentences for operating after suspension, when the  
28 suspension is for operating under the influence or with  
29 excessive blood-alcohol cases, are moved to a new subsection  
30 1-A. No changes are made in the amounts of the penalties.  
31 The provision discussed under section 33 is applied to this  
32 section. The final paragraph makes clear that the minimum  
33 mandatory penalties apply only to the original suspension  
34 for the operating under the influence or with excessive  
35 blood-alcohol cases and not to extensions of that period for  
36 failure to pay a reinstatement fee or failure to comply with  
37 other conditions of reinstatement. As to subsection 1-B,  
38 see section 37.

39 Section 41 clarifies several procedures under Title 29,  
40 section 2241-H. (1) It makes clear that the procedures  
41 apply to convictions under the old law. (2) It conforms  
42 the language of suspensions to that in section 12. (3) It  
43 makes clear that the seizure of a license is not required if  
44 a stay of execution is issued under section 1312-D, subsec-  
45 tion 7, thus removing a conflict with that provision. (4)  
46 It clarifies when the court must and when the court may

1 seize an out-of-state license. (5) The last paragraph is  
2 amended to give the only valid reason for the court to allow  
3 96 hours to surrender a license.

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

8 Section 43 conforms the description of this crime, in  
9 the list of those offenses which will give rise to habitual  
10 offender status, to the actual definition of the crime,  
11 there being no "wilfull" requirement for operating a motor  
12 vehicle without a license.

13 Section 44 makes punctuation changes in implementation  
14 of section 45.

15 Section 45 adds these 2 serious crimes to the list of  
16 habitual offender offenses.

17 Section 46 makes clear that all petitions for rein-  
18 statement of the privilege to operate must be presented to  
19 the Secretary of State, including habitual offender  
20 revocations imposed by the Superior Court under the old law.  
21 The amendment to the 2nd paragraph closes a loophole. Last  
22 year's amendment made clear that if a person had driven in  
23 violation of the revocation, he may not obtain a license  
24 while the criminal proceeding charging the violation of that  
25 revocation was pending. The amendment makes clear that if  
26 the privilege of operating is mistakenly restored, it must  
27 be revoked again. The 3rd paragraph imposes a minimum one-  
28 year extension of any revocation if the person has been con-  
29 victed of driving in violation of the revocation.

30 Sections 47 and 48 reinstate language which was  
31 intended to be included last year and which was approved by  
32 the Judiciary Committee. In its absence, an ambiguity was  
33 created as to the number of operating under the influence or  
34 with excessive blood-alcohol convictions required, as part  
35 of the 3 convictions necessary for habitual offender status,  
36 to invoke rise to the mandatory sentencing provisions. As  
37 to the new last sentence, see section 1. Section 47 also  
38 changes the minimum mandatory fine from \$1,000 to \$500.

39 Section 49 corrects an omission. Other provisions in  
40 this section provide that a Uniform Traffic Ticket and Com-  
41 plaint serves as a complaint. This amendment provides that  
42 it acts as a summons.

1 Section 50. The first changes are for purposes of  
2 clarity and consistency. See also section 15. The last  
3 sentence is designed to make sure there is an adequate  
4 period of time to provide notice of the suspension.

5 Section 51. The second paragraph of this subsection is  
6 repealed because it is redundant with the first paragraph.

7 Section 52 makes clear that the District Court has no  
8 authority to try a person for a Class C crime.

9 Section 53 makes appropriate changes in wording without  
10 substantive effect. The last sentence makes clear that the  
11 one traffic infraction of operating under the influence or  
12 with excessive blood-alcohol cases, under section 1312-C, is  
13 governed by section 1312-D rather than this section.

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