

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1672, L.D. 2314, Bill, "An Act to Increase the Penalty for Vehicular Manslaughter and to Remove the Habitual Drunk Driver Offender from the Highways"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 17-A MRSA §203, sub-§3, ¶A, as enacted by PL 1989, c. 505, §2, is repealed and the following enacted in its place:

A. It is a defense to a prosecution of a manslaughter based upon the reckless or criminally negligent operation of a motor vehicle, which reduces the crime to a Class B crime, that the death of the victim resulted from conduct that would otherwise be defined only as a civil violation or civil infraction; and

Sec. 2. 17-A MRSA §203, sub-§3-A, as amended by PL 1987, c. 678, §1, is repealed.

Sec. 3. 17-A MRSA §1301, sub-§1, as amended by PL 1977, c. 510, §§83 to 85, is repealed.

Sec. 4. 17-A MRSA §1301, sub-§1-A is enacted to read:

1-A. A natural person who has been convicted of a Class A, Class B, Class C, Class D or Class E crime may be sentenced to pay a fine, unless the statute that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person must be sentenced to the imprisonment and required to pay the fine authorized in that statute. Subject to these sentences and to section 1302, the fine may not exceed:

- A. \$25,000 for a Class A crime;
- B. \$10,000 for a Class B crime;

2 C. \$2,500 for a Class C crime;

4 D. \$1,000 for a Class D crime;

6 E. \$500 for a Class E crime; and

8 F. Regardless of the classification of the crime, any
10 higher amount that does not exceed twice the pecuniary gain
 derived from the crime by the defendant.

12 Sec. 5. 17-A MRSA §1322, sub-§3, as amended by PL 1989, c.
14 188, is further amended to read:

16 3. **Economic loss.** "Economic loss" includes economic
18 detriment consisting of property loss, allowable expense, work
20 loss, replacement services loss and, if injury causes death,
22 dependent's economic loss and dependent's replacement services
 loss. Noneconomic detriment is not loss. Economic detriment is
 loss although caused by pain and suffering or physical
 impairment. "Economic loss" includes expenses of an emergency
 response by any public agency.

24 A. **Allowable-expense.** "Allowable expense" means reasonable
26 charges incurred for reasonably needed products, services
28 and accommodations, including those for medical care,
30 rehabilitation, rehabilitative occupational training and
32 other remedial treatment and care, and nonmedical remedial
34 care and treatment rendered in accordance with a recognized
36 religious method of healing. The term includes reasonable
38 and customary charges incurred for expenses in any way
 related to funeral, cremation and burial. It does not
 include that portion of a charge for a room in a hospital,
 clinic, convalescent or nursing home, or any other
 institution engaged in providing nursing care and related
 services, in excess of a reasonable and customary charge for
 semiprivate accommodations, unless other accommodations are
 medically required.

40 B. ~~Dependent's-economic-loss.~~ "Dependent's economic loss"
42 means loss after decedent's death of contributions of things
44 of economic value to his the decedent's dependents, not
46 including services they would have received from the
 decedent if he the decedent had not suffered the fatal
 injury, less expenses of the dependents avoided by reason of
 decedent's death.

48 C. ~~Dependent's--replacement--services--loss.~~ "Dependent's
50 replacement loss" means loss reasonably incurred by
52 dependents after decedent's death in obtaining ordinary and
 necessary services in lieu of those the decedent would have
 performed for their benefit if he the decedent had not

2 suffered the fatal injury, less expenses of the dependents
avoided by reason of decedent's death and not subtracted in
4 calculating dependent's economic loss.

6 C-1. "Expense of an emergency response" means reasonable
costs incurred by a public agency in reasonably making an
appropriate emergency response to the incident, but only
includes those costs directly arising because of the
response to the particular incident. Reasonable costs
include the costs of providing police, firefighting, rescue
and emergency medical services at the scene of the incident,
as well as the compensation for the personnel responding to
the incident. "Public agency" means the State or any
county, municipality, district or public authority located,
in whole or in part, within this State that provides or may
provide police, firefighting, ambulance or other emergency
services.

18 D. ~~Property--loss.~~ "Property loss" means the value of
20 property taken from the victim, or of property destroyed or
otherwise broken or harmed. A property loss shall-include
22 includes the value of taxes or other obligations due to the
government that have not been paid.

24 E. ~~Replacement-services-loss.~~ "Replacement services loss"
26 means expenses reasonably incurred in obtaining ordinary and
necessary services in lieu of those the injured person would
28 have performed, not for income but for the benefit of
himself the injured person or his the injured person's
30 family, if he the injured person had not been injured.

32 F. ~~Work-loss.~~ "Work loss" means loss of income from work
the injured person would have performed if he the injured
34 person had not been injured and expenses reasonably incurred
by him the injured person in obtaining services in lieu of
36 those he the injured person would have performed for income,
reduced by any income for substitute work actually performed
38 by him the injured person or by income he the injured person
would have earned in available appropriate substitute work
40 he the injured person was capable of performing but
unreasonably failed to undertake.

42 **Sec. 6. 29 MRSA §1312-B, sub-§2-A, as enacted by PL 1987, c.**
44 **791, §20, is amended to read:**

46 **2-A. Aggravated punishment category.** If the State pleads
and proves that, while operating a motor vehicle in violation of
48 this section, the actor in fact caused serious bodily injury as
defined in Title 17-A, section 2, subsection 23, to another
50 person or in fact caused the death of another person, the
sentencing class for the offense in subsection 1 is a Class C

2 crime. The minimum penalties specified in subsection 2 shall
3 apply, but the minimum period of suspension shall be is 18 months
4 unless a longer minimum period otherwise applies.

5 If the State pleads and proves that, while operating a motor
6 vehicle in violation of this section, the actor had been
7 previously convicted of 3 or more violations of former section
8 1312, subsection 10, former section 1312-B or this section within
9 a 6-year period, the sentencing class for the offense in
10 subsection 1 is a Class C crime. The minimum penalties specified
11 in subsection 2 apply, but the minimum fine is \$1,000.

12 Sec. 7. 29 MRSA §§1312-G and 1312-H, as enacted by PL 1987,
13 c. 791, §23, are repealed.

14 Sec. 8. 29 MRSA §1312-I is enacted to read:

15 §1312-I. Forfeiture of motor vehicles in certain
16 operating-under-the-influence cases

17 1. Forfeiture of motor vehicles upon conviction of
18 operating under the influence and operating after suspension or
19 revocation. As a part of every judgment of conviction and
20 sentence imposed, a motor vehicle used by a defendant who is the
21 sole owner-operator of that motor vehicle and who is convicted of
22 operating or attempting to operate that motor vehicle under the
23 influence of alcohol or drugs or while having 0.08% or more by
24 weight of alcohol in the blood, and when the defendant is also
25 convicted of a simultaneous offense of operating after suspension
26 or revocation when the underlying suspension or revocation was
27 imposed as a result of a prior conviction for operating under the
28 influence of alcohol or drugs or while having 0.08% by weight of
29 alcohol in the blood, must be forfeited to the State. The court
30 shall order the forfeiture unless another person can satisfy the
31 court prior to the judgment and by a preponderance of the
32 evidence that the other person had a right to possess that motor
33 vehicle, to the exclusion of the defendant, at the time of the
34 offense.

35 The Attorney General shall adopt rules in accordance with Title
36 5, chapter 375, governing the disposition to state, county and
37 municipal agencies of motor vehicles forfeited under this section.

38 2. Seizure of vehicle of owner-operator. Any motor vehicle
39 operated by a sole owner is subject to seizure by any law
40 enforcement officer authorized to enforce the motor vehicle laws
41 of this State when:

42 A. The owner-operator operates or attempts to operate that
43 motor vehicle under the influence of intoxicating liquor or
44 drugs or while having 0.08% of alcohol by weight in the
45 blood; and

2 B. The owner-operator is under suspension or revocation as
4 a result of a previous conviction of operating under the
 influence of alcohol or drugs or while having 0.08% of
 alcohol by weight in the blood.

6
8 3. Bona fide lienholders. A forfeiture under this section
 of a motor vehicle encumbered by a perfected bona fide security
10 interest is subject to the interest of the secured party if the
 party neither had knowledge of nor consented to the act upon
 which the right of forfeiture is based.

12
14 4. Preliminary order or process; exceptions. The court may
 issue, at the request of the attorney for the State, ex parte,
16 any preliminary order or process necessary to seize or secure the
 motor vehicle for which forfeiture is or will be sought and to
18 provide for its custody. That order may include an order to a
 financial institution or to any fiduciary or bailee to require
20 that entity to impound a motor vehicle in its possession or
 control and to release it only upon further order of the court.
22 The court shall issue process for seizure of the property only
 upon a showing of probable cause. The application for process
24 and the issuance, execution and return of process are subject to
 applicable state law. Criminal complaints of operating under the
26 influence and operating after suspension must be filed against
 the owner-operator prior to issuance of a preliminary order
28 under this subsection. Any motor vehicle subject to forfeiture
 under this section may be seized upon process, except that
 seizure without process may be made when:

30 A. The seizure is incident to an arrest with probable cause
32 for a violation of section 1312-B; or

34 B. The property subject to seizure has been the subject of
36 a prior judgment in favor of the State in a forfeiture
 proceeding under this section or any other provision of law.

38 5. Reports. Every officer, department or agency seizing
 any vehicle subject to forfeiture under subsection 1 shall file a
40 report of seizure with the Attorney General or a district
 attorney having jurisdiction over the vehicle. This report must
42 be filed within 21 days from the date of seizure. The report
 must be labeled "Vehicle Report" and include:

44 A. A description of the vehicle;

46 B. The place and date of seizure;

48 C. The name and address of the owner or operator of the
50 vehicle at the time of seizure; and

2 D. The name and address of any other person who appears to
have an ownership interest in the vehicle.

4 6. Storage of seized motor vehicles. Any motor vehicle
seized under this section must be held in secure storage by the
6 seizing agency or at the direction of the prosecuting official
until disposition of the underlying criminal charges. The State
8 shall assume all costs of storage of any vehicles not ordered
forfeited upon the disposition of the underlying criminal charges.

10 7. Records of seized motor vehicles. Every officer,
12 department or agency having custody of a motor vehicle subject to
forfeiture under subsection 1 or having disposed of the motor
14 vehicle shall maintain complete records showing:

16 A. From whom the motor vehicle was received;

18 B. Under what authority the motor vehicle was held,
received or disposed;

20 C. To whom the motor vehicle was delivered; and

22 D. The date and manner of destruction or disposition of the
24 motor vehicle.

26 **Sec. 9. 29 MRSA §2241-H, as amended by PL 1987, c. 39, is**
28 **further amended to read:**

30 **§2241-H. Notice of suspension by court; surrender of license to**
court

32 In the case of any conviction or adjudication under former
34 section 1312, subsection 10, section 1312-B, 1312-C, 1314 or for
any offense for which the suspension of a license or the right to
36 operate a motor vehicle or the right to apply for or obtain a
license is required by law the court shall also suspend the
38 defendant's right to register a motor vehicle and the
registration certificate and plates issued by this State to the
40 defendant for that motor vehicle, or in any case in which the
court suspends a license under section 2305, the court may also
42 suspend the defendant's right to register a motor vehicle and the
registration certificate and plates issued by this State to the
44 defendant for that motor vehicle, and the court shall inform the
defendant of the ~~suspension~~ suspensions and the defendant shall
46 acknowledge this notice in writing on a form to be provided by
the court. The court, as part of its sentence, unless the
48 defendant appeals and a stay of execution of the suspension is
granted, shall take any license certificate issued by this State
50 from the person convicted or adjudicated or any license
certificate issued by another state, foreign country or province
52 from the person convicted or adjudicated if that person is
residing, domiciled or employed in this State. The court, as part

2 of its sentence, unless the defendant appeals and a stay of
3 execution of the suspension is granted, may take from the person
4 convicted or adjudicated any license certificate issued by
5 another state or foreign country or province if the person is not
6 residing, domiciled or employed in this State. At sentencing,
7 the court, upon reasonable cause shown, may stay the ~~suspension~~
8 ~~of the license or a right to operate a motor vehicle~~ suspensions
9 for a period not to exceed 4 hours from the time of sentencing.
10 The court may issue such evidence of that stay as it ~~deems~~
11 determines necessary. The court shall forward the license
12 certificate, a copy of the sentence and the acknowledgment of
13 notice by mail to the Secretary of State, and the court shall
14 order the defendant to return the suspended registration
15 certificate and plates to the Secretary of State. The Secretary
16 of State shall return the certificate of registration and plates
17 to the defendant when the defendant's license and operating and
18 registration privileges have been restored.

19 Notwithstanding the court order suspending the defendant's
20 right to register a motor vehicle, registration certificate and
21 plates, the Secretary of State may restore only the registration
22 certificate and plates for reissuance, without fee during the
23 remaining term of the registration, to a spouse or other family
24 member of the defendant upon receipt of an affidavit, on a form
25 prescribed by the Secretary of State, authorizing the spouse or
26 other family member to register the motor vehicle in the name of
27 the spouse or other family member.

28 The court, upon reasonable cause shown, may allow a
29 convicted or adjudicated person, who does not have the license
30 certificate in his that person's possession at the time of
31 sentencing, up to 96 hours to surrender his that person's license
32 certificate.

33 Notwithstanding section 2241-E, the period of suspension
34 shall ~~commence~~ commences immediately upon announcement of
35 sentence. Two additional days of suspension shall must be added
36 to the period for each day beyond any extension granted that the
37 convicted or adjudicated person fails to surrender his that
38 person's license to the court.

39 Refusal to sign the acknowledgment of notice or unexcused
40 failure to surrender a license certificate within any period of
41 extension shall ~~be~~ is a misdemeanor.

2 Sec. 10. 29 MRSA §2241-I, as amended by PL 1981, c. 679, §46,
is further amended to read:

4 **§2241-I. Surrender of suspended license and registration
certificate and plates to law enforcement officer**

6
8 In the event that a law enforcement officer, in the course
of stopping or detaining a motor vehicle, obtains from the
operator of the motor vehicle a State of Maine license or
10 registration certificate, or a license issued by another state,
foreign country or province when, according to records of the
12 Secretary of State which are available by telecommunications,
that person's license ~~or,~~ right to operate in this State or
14 registration certificate is under suspension or revocation, the
officer shall ~~retain-physical-custody-of~~ confiscate the suspended
16 or revoked license, registration certificate or plates and shall
transmit the license confiscated items, together with a report
18 stating the circumstances under which ~~it was~~ they were obtained,
to the Secretary of State.
20

22 **FISCAL NOTE**

24 If enacted, this bill would make vehicular manslaughter a
Class A crime. The average sentence length would increase,
26 resulting in an increase in the annual cost to the State for this
class of offender beginning in 1995. Based on the current daily
28 cost per prisoner, the annual cost to the State would increase
from \$423,400 in 1990 to \$1,524,240 in the year 2008 when the
30 full impact will be realized. This amount does not include the
costs for additional bed space to imprison the additional
32 offenders or costs due to inflation.

34 This bill will allow for the seizure of a motor vehicle.
The Department of Public Safety may incur additional costs as a
36 result of vehicle towing and storage and increased administrative
costs to maintain the required records. The Department of Public
38 Safety has indicated it can absorb these costs.

40 The Judicial Department will absorb, within its budgeted
resources, the additional costs associated with an increase in
42 the number of cases filed as a result of this bill.'

44
46 **STATEMENT OF FACT**

48 This amendment replaces the bill.

50 This amendment makes vehicular manslaughter a Class A crime
unless the death resulted from conduct which would otherwise be
52 defined only as a civil violation or civil infraction.

2 This amendment revises the maximum fine provisions to allow
4 courts to fine natural persons, as opposed to organizations, up
6 to \$25,000 as part of the sentence for committing a Class A
crime. Courts currently have no authority to impose fines for
Class A crimes.

8 This amendment includes emergency response expenses in the
10 types of restitution which courts may order upon conviction.

12 This amendment makes 4th and subsequent
14 operating-under-the-influence offenses Class C crimes, with a
16 minimum fine of \$1,000. Currently, 3rd and subsequent
operating-under-the-influence offenses are Class D crimes, with a
minimum fine of \$750.

18 The current provisions regarding forfeiture of motor
20 vehicles upon operating under the influence while operating after
22 suspension for operating under the influence are repealed and
24 replaced. The new provision requires forfeiture of a motor
vehicle when the sole owner is the operator and the operator is
convicted of operating under the influence while operating after
suspension for an operating-under-the-influence offense.

26 This amendment requires the court to suspend the
28 registration and license plates when the person is convicted of
operating under the influence and the person's license is
30 suspended. The person must turn in the registration and plates
32 to the Secretary of State. The Secretary of State may reissue
the registration and plates without fee to the spouse or other
family member of the suspended person if the proper documentation
is provided.

34 This amendment allows a law enforcement officer to
36 confiscate the revoked registration and plates if the person has
not turned them in to the Secretary of State.

38 This amendment also adds a fiscal note.