

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1166

H.P. 809

House of Representatives, March 8, 2005

An Act To Impose More Stringent Penalties for Driving after Drinking

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DUPREY of Hampden.
Cosponsored by Senator SNOWE-MELLO of Androscoggin and
Representatives: CEBRA of Naples, GREELEY of Levant, ROBINSON of Raymond.

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

2
4 **Sec. 1. 29-A MRSA §2411, sub-§1-A, ¶A**, as enacted by PL 2003, c. 452, Pt. Q, §78 and affected by Pt. X, §2, is amended to read:

6 **1-A. Offense.** A person commits OUI if that person:

8 A. Operates a motor vehicle:

10 (1) While under the influence of intoxicants; or

12 (2) While having a blood-alcohol level of 0.08% or more to 0.199%;

14 **Sec. 2. 29-A MRSA §2411, sub-§§1-B and 1-C** are enacted to read:

16 **1-B. Operating while impaired.** A person commits the offense of operating while impaired if that person operates a motor vehicle while having a blood-alcohol level of 0.04% to 0.0799%. Operating while impaired is a Class E crime.

22 **1-C. Operating while inebriated.** A person commits the offense of operating while inebriated if that person operates a motor vehicle while having a blood-alcohol level of 0.2% or more. Operating while inebriated is a Class D crime.

26 **Sec. 3. 29-A MRSA §2411, sub-§5**, as amended by PL 2003, c. 673, Pt. TT, §4 and c. 689, Pt. B, §6, is further amended to read:

30 **5. Penalties.** Except as otherwise provided, violation of this section is a Class D crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. The following minimum penalties apply and may not be suspended:

34 A. For a person having no previous OUI offenses within a 10-year period:

38 (1) ~~- A- Notwithstanding the provisions of Title 17-A, chapter 53, a fine of not less than \$500, -except- that if the person failed to submit to a test, a fine of not less than \$600~~ \$1,000 and not more than \$2,500;

42 (2) A court-ordered suspension of a driver's license for a period of 90 30 days; and

44 (3) A period of incarceration ~~as follows:~~ of not less than 72 hours;

(a) -- Not less than 48 hours when the person:

(i) -- Was tested as having a blood alcohol level of 0.15% or more;

(ii) -- Was exceeding the speed limit by 30 miles per hour or more;

(iii) -- Eluded or attempted to elude an officer; or

(iv) -- Was operating with a passenger under 21 years of age; and

(b) -- Not less than 96 hours when the person failed to submit to a test at the request of a law enforcement officer;

B. For a person having one previous OUI offense within a 10-year period:

(1) -A- Notwithstanding the provisions of Title 17-A, chapter 53, a fine of not less than \$700, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$900 \$1,000 and not more than \$2,500;

(2) A period of incarceration of not less than 7 days, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 12 days;

(3) A court-ordered suspension of a driver's license for a period of 18 months; and

(4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle;

C. For a person having 2 previous OUI offenses within a 10-year period:

(1) -A- Notwithstanding the provisions of Title 17-A, chapter 53, a fine of not less than \$1,100, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$1,400 and not more than \$2,500;

(2) A period of incarceration of not less than 30 days, except that if the person failed to submit to a

2 test at the request of a law enforcement officer, a
period of incarceration of not less than 40 days;

4 (3) A court-ordered suspension of a driver's license
for a period of 4 years; and

6 (4) In accordance with section 2416, a court-ordered
8 suspension of the person's right to register a motor
vehicle;

10 D. For a person having 3 or more previous OUI offenses
12 within a 10-year period, which is a Class C crime:

14 (1) A fine of not less than \$2,100, except that if the
16 person failed to submit to a test at the request of a
law enforcement officer, a fine of not less than \$2,500;

18 (2) A period of incarceration of not less than 6
20 months, except that if the person failed to submit to a
test at the request of a law enforcement officer, a
22 period of incarceration of not less than 6 months and
20 days;

24 (3) A court-ordered suspension of a driver's license
for a period of 6 years; and

26 (4) In accordance with section 2416, a court-ordered
28 suspension of the person's right to register a motor
vehicle;

30 D-1. A violation of subsection 1-A, paragraph D is a Class
32 C crime, which is a strict liability crime as defined in
Title 17-A, section 34, subsection 4-A. The sentence must
34 include a period of incarceration of not less than 6 months,
a fine of not less than \$2,100 and a court-ordered
36 suspension of a driver's license for a period of 6 years.
These penalties may not be suspended;

38 E. If a law enforcement officer failed to provide the
40 warnings required by section 2521, subsection 3, the
increase in minimum penalties required because of a refusal
42 to submit to a test is not mandatory;

44 F. For a person sentenced under paragraph B, C ~~or~~, D or I,
46 the court shall order the defendant to participate in the
alcohol and other drug program of the Department of Health
and Human Services, Office of Substance Abuse. The court
48 may waive the program pursuant to Title 5, section 20073-B,
if the court finds that the defendant has completed an

2 alcohol or other drug treatment program subsequent to the
date of the offense; and

4 G. The court shall order an additional period of license
suspension of 275 days for a person sentenced under
6 paragraph A, B, C, D ~~or~~ D-1 or I if the person was
operating the motor vehicle at the time of the offense with
8 a passenger under 21 years of age;

10 H. For a person convicted of a violation of subsection 1-B,
12 a fine of \$500 and 6 demerit points on the operator's
license record; and

14 I. For a person convicted of a violation of subsection 1-C:

16 (1) A fine of not less than \$2,500;

18 (2) A period of incarceration of not less than 3
months;

20 (3) A court-ordered suspension of a driver's license
22 for a period of 6 months; and

24 (4) In accordance with section 2416, a court-ordered
26 suspension of the person's right to register a motor
vehicle.

28 **Sec. 4. 29-A MRSA §2431, sub-§2, ¶¶B and G,** as enacted by PL
1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, are amended to
30 read:

32 B. A person qualified to operate -a- an electronic or other
self-contained, breath-alcohol testing apparatus may issue a
34 certificate stating the results of the analysis.

36 G. The results of -a- an electronic or other self-contained
breath-alcohol apparatus test is prima facie evidence of
38 blood-alcohol level.

40 **Sec. 5. 29-A MRSA §2431, sub-§2, ¶¶H and I,** as enacted by PL
1993, c. 683, Pt. A, §2 and affected by Pt. B, §5 and amended by
42 PL 2003, c. 689, Pt. B, §6, are further amended to read:

44 H. Evidence that the electronic or other self-contained
breath-alcohol testing equipment bearing bore the Department
46 of Health and Human Services' stamp of approval is prima
facie evidence that the equipment was approved by the
48 Department of Health and Human Services.

50 I. Evidence that materials used in operating or checking

2 the operation of the electronic or other self-contained
4 breath-alcohol testing equipment bore a statement of the
6 manufacturer or of the Department of Health and Human
Services is prima facie evidence that the materials were of
the composition and quality stated.

8 **Sec. 6. 29-A MRSA §2431, sub-§2, ¶K,** as amended by PL 2001, c.
361, §32, is further amended to read:

10 K. The prosecution is not required to produce expert
12 testimony regarding the functioning of an electronic or
14 other self-contained breath-alcohol testing apparatus before
test results are admissible, if sufficient evidence is
offered to satisfy paragraphs H and I.

16 SUMMARY

18 This bill amends the OUI laws in the following ways:

20 1. It creates the offense of operating while impaired:
22 operating a motor vehicle with a blood-alcohol level of 0.04% to
0.0799%;

24 2. It creates the offense of operating while inebriated:
26 operating a motor vehicle with a blood-alcohol level of 0.20% or
higher;

28 3. It sets penalties for the offenses of operating while
30 impaired and operating while inebriated and increases the fine
and length of incarceration for OUI; and

32 4. It authorizes the use of electronic field sobriety tests
34 and allows these tests to be admissible in court.