

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1906

H.P. 1347

House of Representatives, January 4, 2006

An Act To Safeguard Maine's Highways

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Transportation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CURLEY of Scarborough.
Cosponsored by Senator BARTLETT of Cumberland, Senator DIAMOND of Cumberland and
Representatives: MAKAS of Lewiston, NASS of Acton, Senators: DAVIS of Piscataquis,
TURNER of Cumberland.

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

2
4 **Sec. 1. 29-A MRSA §2411, sub-§5, ¶D-1**, as amended by PL 2003, c. 673, Pt. TT, §4, is further amended to read:

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

14 **Sec. 2. 29-A MRSA §2411, sub-§5, ¶D-2** is enacted to read:

16 D-2. A violation of subsection 1-A, paragraph D, subparagraph (2) is a Class B crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. The sentence must include a period of incarceration of not less than 5 years, a fine of not less than \$2,100 and a court-ordered suspension of a driver's license for a period of 10 years. These penalties may not be suspended;

26 **Sec. 3. 29-A MRSA §2411, sub-§5, ¶G**, as amended by PL 2003, c. 452, Pt. Q, §82 and affected by Pt. X, §2, is further amended to read:

30 G. The court shall order an additional period of license suspension of 275 days for a person sentenced under paragraph A, B, C, D ~~or~~ D-1 or D-2 if the person was operating the motor vehicle at the time of the offense with a passenger under 21 years of age.

36 **Sec. 4. 29-A MRSA §2412-A, sub-§3, ¶B**, as amended by PL 2003, c. 673, Pt. TT, §5, is repealed and the following enacted in its place:

40 B. If the suspension was not for an OUI offense, and except as provided in paragraph C, the minimum fine for a first offense is \$250, which may not be suspended by the court. The minimum fine for 2nd and subsequent offenses is \$500, which may not be suspended by the court.

46 **Sec. 5. 29-A MRSA §2412-A, sub-§3, ¶C** is enacted to read:

48 C. If the suspension for which a violator is being penalized pursuant to subsection 1-A was imposed pursuant to section 2465, subsection 2, the person must be sentenced to a term of imprisonment, which may not be suspended, as follows:

2 (1) For operating during the one-year license
4 suspension imposed pursuant to section 2465, subsection
6 2, paragraph A, not less than 180 consecutive days.
 The sentencing class for this offense is a Class D
 crime;

8 (2) For operating during the 3-year license suspension
10 imposed pursuant to section 2465, subsection 2,
12 paragraph B, not less than 2 years. The sentencing
 class for this offense is a Class C crime; and

14 (3) For operating during the 5-year license suspension
16 imposed pursuant to section 2465, subsection 2,
 paragraph C, not less than 5 years. The sentencing
 class for this offense is a Class B crime.

18 The penalties imposed pursuant to this paragraph are in
20 addition to the penalties specified in section 2465,
 subsection 2.

22 **Sec. 6. 29-A MRSA §2422**, as repealed and replaced by PL 1997,
24 c. 417, §1, is amended to read:

26 **§2422. Impoundment of motor vehicles for OUI and OAS**

28 **1. Impoundment of vehicle.** A motor vehicle may be seized
 if it is used by a person arrested for a violation of:

30 A. Section 2411; or

32 B. ~~Section 2412-A, when the suspension or revocation was~~
34 ~~for OUI or an OUI offense.~~

36 **2. Storage.** If a motor vehicle is seized, it must be held
 in secure storage by the seizing agency or at the direction of
 the arresting law enforcement officer.

38 **3. Release of vehicle.** The motor vehicle may not be
40 ~~released after at least an 8-hour period and payment of any~~
42 ~~towing and storage fees, until:~~

44 A. If impounded for a violation of section 2411, after at
 least an 8-hour period and payment of any towing and storage
 fees; or

46 B. If impounded for a violation of section 2412-A, after
48 the reinstatement of the operator's driver's license and

2 payment of any towing and storage fees, unless another
4 person satisfies the court by a preponderance of the
6 evidence that the other person had a right to possess that
8 motor vehicle, to the exclusion of the defendant, at the
10 time of the violation.

12 4. Preliminary order. At the request of the State, the
14 court may issue, ex parte, a preliminary order to impound a motor
16 vehicle subject to impoundment and to provide for custody of that
18 motor vehicle. That order may include an order to a financial
20 institution or to any fiduciary or bailee to impound the vehicle
22 in its possession or control and to release the vehicle only on
24 further order of the court.

26 The court may issue an order only on a showing of probable cause
28 and after criminal complaints of OAS have been filed against the
30 owner-operator.

32 The application, issuance, execution and return of an order are
34 subject to applicable state law.

36 A law enforcement officer may impound a motor vehicle without
38 court order when the seizure is incident to an arrest for OAS.

40 5. Reports. An officer, department or agency seizing a
42 vehicle shall file a report of impoundment with the Attorney
44 General or a district attorney having jurisdiction over the
46 vehicle. The report must be:

48 A. Filed within 21 days of the date of impoundment; and

50 B. Labeled "Vehicle Report" and include, without limitation:

(1) A description of the vehicle;

(2) The place and date the vehicle was seized for
impoundment;

(3) The name and address of the owner or operator of
the vehicle at the time of seizure;

(4) The name and address of any other person who
appears to have an ownership interest in the vehicle;
and

(5) The place where the vehicle is being held.

52 6. Rules. The Attorney General shall adopt routine
54 technical rules as defined in Title 5, chapter 375, subchapter
56 2-A for the disposition of impounded vehicles.

2 **Sec. 7. 29-A MRSA §2458, sub-§2, ¶T**, as enacted by PL 2005, c.
433, §24 and affected by §28, is amended to read:

4 T. Has failed to comply with the provisions of Title 36,
6 chapter 457 or 459; ~~or~~

8 **Sec. 8. 29-A MRSA §2458, sub-§2, ¶U**, as enacted by PL 2005, c.
433, §24 and affected by §28, is amended to read:

10 U. Has failed to provide the information required in
12 section 401, subsection 2~~+~~; ~~or~~

14 **Sec. 9. 29-A MRSA §2458, sub-§2, ¶V** is enacted to read:

16 V. Has had 3 or more license suspensions within a 3-year
18 period. For purposes of this paragraph, a suspension has
20 occurred within a 3-year period if the date of the
suspension is 3 years or less from the date of the new
conduct that is penalized.

22 **Sec. 10. 29-A MRSA §2464** is enacted to read:

24 **§2464. Contributing to accident after suspension or revocation**

26 **1. Accident involving injury; penalty.** A person who, while
28 knowingly operating with a suspended or revoked license, is
30 involved in an accident that results in bodily injury to another
32 person, regardless of fault, commits a Class C crime. The
minimum sentence of imprisonment, which may not be suspended, is
3 years. For purposes of this subsection, "bodily injury" has
the same meaning as in Title 17-A, section 2, subsection 5.

34 **2. Accident involving death; penalty.** Except in the case
36 of a violation of section 2454 or 2456, a person who, while
38 knowingly operating with a suspended or revoked license, is
40 involved in an accident that results in the death of another
person, regardless of fault, commits a Class B crime. The
minimum sentence of imprisonment, which may not be suspended, is
5 years.

42 **3. License suspension.** The Secretary of State shall
44 immediately suspend the license of a person who violates
46 subsection 1 or 2. Notwithstanding any provision of law that
48 imposes a period of license suspension shorter than that
specified in this subsection, a person who violates this section
is subject to the following period of license suspension:

50 A. For a violation of subsection 1, 5 years; and

2 B. For a violation of subsection 2, 10 years.

4 The period of suspension imposed pursuant to this subsection is
6 consecutive to any suspension previously imposed by the Secretary
8 of State or the court pursuant to this chapter.

10 4. Effect of conviction for different offense. This
12 section does not apply if the person is convicted or adjudicated
14 of a violation of section 2454 or 2456.

16 **Sec. 11. 29-A MRSA §2465** is enacted to read:

18 **§2465. Multiple non-OUI offense license suspensions**

20 1. Multiple license suspensions. A person whose license is
22 suspended 3 or more times in a 3-year period for reasons not
24 related to the offense of operating under the influence commits a
26 civil violation and is subject to the penalties as specified in
28 this section.

30 2. Additional license suspension; fine. A person who
32 violates this section is subject to an additional license
34 suspension and a fine, neither of which may be suspended, as
36 follows:

38 A. For 3 license suspensions not related to an OUI offense
40 within a 3-year period, a license suspension of one year and
42 a fine of \$1,000;

44 B. For at least 4 but not more than 6 license suspensions
46 not related to an OUI offense within a 3-year period, a
48 license revocation of 6 years and a fine of \$2,000, plus an
 additional \$1,000 for each license suspension after the 4th;
 and

C. For more than 6 license suspensions not related to an
 OUI offense within a 3-year period, a license suspension of
 10 years and a fine of \$5,000.

3. Calculating prior suspension. For purposes of this
 section, a suspension has occurred within a 3-year period if the
 date of the suspension is 3 years or less from the date of the
 new conduct that is penalized.

Sec. 12. 29-A MRSA §2606, sub-§3 is enacted to read:

3. Length of confiscation. The Secretary of State shall
 confiscate the license of a person whose license has been
 suspended for the duration of the suspension, including any

2 additional suspension imposed for a violation of OAS pursuant to
3 section 2412-A.

4
6 **SUMMARY**

8 This bill provides stricter penalties for operating after
9 license suspension, or OAS.

10 1. It establishes a graduated penalty scale for license
11 suspensions not related to the offense of operating under the
12 influence that occur within a 3-year period, beginning with a
13 license suspension of one year and a \$1,000 fine for 3
14 suspensions within a 3-year period and increasing to a license
15 suspension of 10 years and a \$5,000 fine for 7 or more license
16 suspensions within a 3-year period.

18 2. It provides for mandatory incarceration, which may not
19 be suspended, if the person is convicted of OAS while that
20 person's license was suspended due to multiple suspensions. The
21 length of the incarceration is graduated, beginning with 180 days
22 for OAS after suspension for 3 suspensions and increasing to a
23 Class B crime, punishable by 5 years incarceration, for OAS after
24 suspension for 7 or more license suspensions within a 3-year
25 period.

26 3. It amends the current law that allows a vehicle to be
27 impounded when the driver has operated a motor vehicle while
28 under the influence to allow a motor vehicle also to be impounded
29 for an OAS offense. The vehicle impounded for an OAS offense may
30 be released only after the offender's driver's license has been
31 reinstated and the impound fees have been paid.

34 4. It creates the new crime of contributing to an accident
35 after license suspension or revocation. If a person whose
36 license has been suspended or revoked is involved in an accident,
37 regardless of fault, and that accident results in bodily injury
38 or death of another person, the person operating after suspension
39 commits a Class C crime in the case of bodily injury or a Class B
40 crime in the case of death. The Class C crime is punishable by a
41 minimum sentence of 3 years' imprisonment and an additional
42 license suspension of 5 years. The Class B crime is punishable
43 by a minimum sentence of imprisonment of 5 years and an
44 additional license suspension of 10 years. The new crime does
45 not apply if the person is convicted of the crime of operating
46 under the influence and causing the death or bodily injury of
47 another person, which is increased from a Class C to a Class B
48 crime.

2 5. It requires the Secretary of State to confiscate the
license of a person who is convicted of OAS for the duration of
4 the suspension, including any additional suspension imposed for
OAS.