

MAINE STATE LEGISLATURE

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Date: 3-7-08

(Filing No. S- 446)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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STATE OF MAINE

SENATE

123RD LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 266, L.D. 856, Bill, "An Act To Reduce Drunk Driving"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 29-A MRSA §2401, sub-§5-A, as repealed by PL 1999, c. 470, §27, is reenacted to read:

5-A. Ignition interlock device. "Ignition interlock device" means a device that connects a breath analyzer to a motor vehicle's ignition system. The analyzer monitors the concentration of alcohol in the breath of any person who attempts to start the motor vehicle by using the ignition system. The device prevents the vehicle from starting unless the person provides a breath sample with a concentration of alcohol that is below a preset level.

Sec. 2. 29-A MRSA §2411, sub-§5, as amended by PL 2005, c. 606, Pt. A, §§2 to 4, is further amended to read:

5. Penalties. Except as otherwise provided in this section and section 2508, 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:

- A. For a person having no previous OUI offenses within a 10-year period:
 - (1) 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;
 - (2) A court-ordered suspension of a driver's license for a period of 90 days; and
 - (3) A period of incarceration as follows:
 - (a) Not less than 48 hours when the person:
 - (i) Was tested as having a blood-alcohol level of 0.15% or more;

COMMITTEE AMENDMENT

2025

COMMITTEE AMENDMENT "A" to S.P. 266, L.D. 856

- 1 (ii) Was exceeding the speed limit by 30 miles per hour or more;
- 2 (iii) Eluded or attempted to elude an officer; or
- 3 (iv) Was operating with a passenger under 21 years of age; and
- 4 (b) Not less than 96 hours when the person failed to submit to a test at the
- 5 request of a law enforcement officer;
- 6 B. For a person having one previous OUI offense within a 10-year period:
- 7 (1) A fine of not less than \$700, except that if the person failed to submit to a test
- 8 at the request of a law enforcement officer, a fine of not less than \$900;
- 9 (2) A period of incarceration of not less than 7 days, except that if the person
- 10 failed to submit to a test at the request of a law enforcement officer, a period of
- 11 incarceration of not less than 12 days;
- 12 (3) A court-ordered suspension of a driver's license for a period of ~~18 months~~ 3
- 13 years; and
- 14 (4) In accordance with section 2416, a court-ordered suspension of the person's
- 15 right to register a motor vehicle;
- 16 C. For a person having 2 previous OUI offenses within a 10-year period, which is a
- 17 Class C crime:
- 18 (1) A fine of not less than \$1,100, except that if the person failed to submit to a
- 19 test at the request of a law enforcement officer, a fine of not less than \$1,400;
- 20 (2) A period of incarceration of not less than 30 days, except that if the person
- 21 failed to submit to a test at the request of a law enforcement officer, a period of
- 22 incarceration of not less than 40 days;
- 23 (3) A court-ordered suspension of a driver's license for a period of ~~4 years~~ 6
- 24 years; and
- 25 (4) In accordance with section 2416, a court-ordered suspension of the person's
- 26 right to register a motor vehicle;
- 27 D. For a person having 3 or more previous OUI offenses within a 10-year period,
- 28 which is a Class C crime:
- 29 (1) A fine of not less than \$2,100, except that if the person failed to submit to a
- 30 test at the request of a law enforcement officer, a fine of not less than \$2,500;
- 31 (2) A period of incarceration of not less than 6 months, except that if the person
- 32 failed to submit to a test at the request of a law enforcement officer, a period of
- 33 incarceration of not less than 6 months and 20 days;
- 34 (3) A court-ordered suspension of a driver's license for a period of 6 years; ~~and~~
- 35 (4) In accordance with section 2416, a court-ordered suspension of the person's
- 36 right to register a motor vehicle; and

RWS

COMMITTEE AMENDMENT "A" to S.P. 266, L.D. 856

1 (5) In accordance with section 2508, installation of an ignition interlock device
2 in the motor vehicle the person operates for a period of 4 years after the period of
3 suspension has run;

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

9 D-2. A violation of subsection 1-A, paragraph D, subparagraph (1-A) or (2) is a
10 Class B crime, which is a strict liability crime as defined in Title 17-A, section 34,
11 subsection 4-A. The sentence must include a period of incarceration of not less than 6
12 months, a fine of not less than \$2,100 and a court-ordered suspension of a driver's
13 license for a period of 10 years. These penalties may not be suspended;

14 E. If a law enforcement officer failed to provide the warnings required by section
15 2521, subsection 3, the increase in minimum penalties required because of a refusal
16 to submit to a test is not mandatory;

17 F. For a person sentenced under paragraph B, C or D, the court shall order the
18 defendant to participate in the alcohol and other drug program of the Department of
19 Health and Human Services, Office of Substance Abuse. The court may waive the
20 program pursuant to Title 5, section 20073-B, if the court finds that the defendant has
21 completed an alcohol or other drug treatment program subsequent to the date of the
22 offense; and

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

26 **Sec. 3. 29-A MRSA §2412-A, sub-§7** is enacted to read:

27 **7. Ignition interlock device.** As a condition of license reinstatement, the Secretary
28 of State, pursuant to section 2508, may require a person subject to the minimum
29 mandatory sentencing provisions of subsection 3 to have installed in the motor vehicle
30 the person operates for a period of up to 2 years an ignition interlock device approved by
31 the Secretary of State.

32 **Sec. 4. 29-A MRSA §2486, sub-§1**, as amended by PL 2001, c. 463, §3 and
33 affected by §7, is further amended to read:

34 **1. Reinstatement fee for suspensions other than for OUI or failure to submit to**
35 **a test.** Before a suspension for any reason other than OUI or failure to submit to a test is
36 terminated and a license or certificate reinstated, a fee of \$35, in addition to the regular
37 license fee, must be paid to the Secretary of State.

38 **Sec. 5. 29-A MRSA §2486, sub-§1-A** is enacted to read:

39 **1-A. Reinstatement fee for suspensions for OUI or failure to submit to a test.**
40 Before a suspension for OUI or failure to submit to a test is terminated and a license or
41 certificate reinstated, a fee of \$50, in addition to the regular license fee, must be paid to
42 the Secretary of State.

COMMITTEE AMENDMENT

RWS

COMMITTEE AMENDMENT "A" to S.P. 266, L.D. 856

1 **Sec. 6. 29-A MRSA §2508** is enacted to read:

2 **§2508. Ignition interlock device**

3 **1. Installation of ignition interlock device.** Notwithstanding the periods of
4 suspension pursuant to section 2411, the Secretary of State may reinstate the license of a
5 person convicted of more than one violation of section 2411 if the person satisfies all
6 other conditions for license reinstatement and installs an ignition interlock device
7 approved by the Secretary of State in the motor vehicle the person operates, under the
8 following conditions.

9 A. The license of a person with 2 OUI offenses may be reinstated after 9 months of
10 the suspension period has run if the person has installed for a period of 2 years an
11 ignition interlock device approved by the Secretary of State in the motor vehicle the
12 person operates.

13 B. The license of a person with 3 OUI offenses may be reinstated after 3 years of the
14 suspension period has run if the person has installed for a period of 3 years an
15 ignition interlock device approved by the Secretary of State in the motor vehicle the
16 person operates.

17 C. The license of a person with 4 or more OUI offenses may be reinstated after the
18 expiration of the period of suspension if the person has installed for a period of 4
19 years an ignition interlock device approved by the Secretary of State in the motor
20 vehicle the person operates.

21 **2. Crime; penalty.** A person whose license is reinstated pursuant to section 2412-A,
22 subsection 7 or this section may not:

23 A. Operate a motor vehicle without an ignition interlock device; or

24 B. Tamper with, disconnect or disable an ignition interlock device or circumvent the
25 operation of an ignition interlock device.

26 Violation of this subsection is a Class E crime, which is a strict liability crime as defined
27 in Title 17-A, section 34, subsection 4-A. The sentence must include a period of
28 incarceration of not less than 7 days and a fine of not less than \$500. These penalties
29 may not be suspended.

30 **3. Other restrictions; penalty.** Other restrictions are set out in this subsection.

31 A. A person whose license is reinstated pursuant to section 2412-A, subsection 7 or
32 this section may not request or solicit another person to blow into or otherwise
33 activate an ignition interlock device for the purpose of providing the person with an
34 operable motor vehicle.

35 B. A person may not:

36 (1) Rent, lease or lend a motor vehicle without an ignition interlock device to
37 another person the person knows or should know is restricted to the operation of
38 a motor vehicle with an ignition interlock device;

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COMMITTEE AMENDMENT "A" to S.P. 266, L.D. 856

1 (2) Blow into or otherwise activate an ignition interlock device for the purpose
2 of providing a person restricted to the operation of a motor vehicle with an
3 ignition interlock device with an operable motor vehicle; or

4 (3) Tamper with or circumvent the operation of an ignition interlock device.

5 **4. Penalty.** Notwithstanding section 1251, a violation of subsection 3 is a traffic
6 infraction. The Secretary of State shall suspend the license of any person reinstated
7 pursuant to section 2412-A, subsection 7 or this section who is adjudicated of the traffic
8 infraction described in this section or whom the Secretary of State determines has
9 violated any condition or restriction of license reinstatement. The periods of license
10 suspension are:

11 A. For a person reinstated pursuant to section 2412-A, subsection 7, one year; and

12 B. For a person reinstated pursuant to this section, 2 years if the person has 2 OUI
13 offenses, 4 years if the person has 3 OUI offenses and 6 years if the person has 4 or
14 more OUI offenses.

15 A person whose license is suspended pursuant to this subsection is not entitled to the
16 issuance of any type of license until the suspension period has expired.

17 **Sec. 7. 29-A MRSA §2551-A, sub-§1, ¶A,** as enacted by PL 2005, c. 606, Pt. A,
18 §7, is amended to read:

19 A. The person has accumulated 3 or more convictions or adjudications for distinct
20 offenses described below arising out of separate acts committed within a 5-year
21 period:

22 (1) Homicide resulting from the operation of a motor vehicle;

23 (2) OUI conviction;

24 (3) Driving to endanger, in violation of section 2413;

25 (4) Operating after suspension or revocation, in violation of section 2412-A;

26 (5) Operating without a license;

27 (6) Operating after revocation, in violation of former section 2557, section
28 2557-A or section 2558;

29 (7) Knowingly making a false affidavit or swearing or affirming falsely in a
30 statement required by this Title or as to information required in the administration
31 of this Title;

32 (8) A Class A, B, C or D offense in which a motor vehicle is used;

33 (9) Failure to report an accident involving injury or death, in violation of section
34 2252;

35 (10) Failure to report an accident involving property damage, in violation of
36 section 2253, 2254 or 2255;

37 (11) Eluding an officer, in violation of section 2414;

R.S.

COMMITTEE AMENDMENT "A" to S.P. 266, L.D. 856

- 1 (12) Passing a roadblock, in violation of section 2414, subsection 4; ~~and~~
- 2 (13) Operating a motor vehicle at a speed that exceeds the maximum speed limit
- 3 by 30 miles per hour or more; ~~or~~ and
- 4 (14) For a person whose license is reinstated pursuant to section 2412-A,
- 5 subsection 7 or section 2508, operating a motor vehicle without an ignition
- 6 interlock device; tampering with or circumventing the operation of an ignition
- 7 interlock device; or requesting or soliciting another person to blow into or
- 8 otherwise activate an ignition interlock device for the purpose of providing the
- 9 person with an operable motor vehicle; or

10 **Sec. 8. Application.** This Act applies only to OUI offenses as defined in the
11 Maine Revised Statutes, Title 29-A, section 2401, subsection 8 occurring after August 31,
12 2008.

13 **Sec. 9. Appropriations and allocations.** The following appropriations and
14 allocations are made.

15 **SECRETARY OF STATE, DEPARTMENT OF**

16 **Administration - Motor Vehicles 0077**

17 Initiative: Allocates funds for an Office Associate II position and related costs to
18 administer a program to reinstate, within the suspension period, licenses of persons with 2
19 or more OUI offenses who install ignition interlock devices on their motor vehicles.

20	21 HIGHWAY FUND	22 2007-08	23 2008-09
24	POSITIONS - LEGISLATIVE	0.000	1.000
25	COUNT		
26	Personal Services	\$0	\$51,844
27	All Other	\$0	\$7,119
		\$0	\$58,963

28 **Sec. 10. Effective date.** This Act takes effect September 1, 2008.'

29 **SUMMARY**

30 This amendment replaces the bill. The amendment increases license suspension
31 periods for OUI offenses. The amendment allows the Secretary of State to reinstate the
32 license of a person with 2 OUI offenses after 9 months of the 3-year suspension period
33 has run if the person installs an ignition interlock device on the motor vehicle the person
34 operates for a period of 2 years and the person also satisfies all other requirements for
35 license reinstatement imposed by the Secretary of State. The amendment also allows the
36 Secretary of State to reinstate the license of a person with 3 OUI offenses after 3 years of
37 the 6-year suspension period has run if the person installs an ignition interlock device on
38 the motor vehicle the person operates for a period of 3 years and the person also satisfies

COMMITTEE AMENDMENT

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COMMITTEE AMENDMENT "A" to S.P. 266, L.D. 856

1 all other requirements for license reinstatement imposed by the Secretary of State. A
2 person with 4 or more OUI offenses must have an ignition interlock device installed on
3 the motor vehicle the person operates for a period of 4 years after the full period of
4 license suspension has expired and must also satisfy all other requirements for license
5 reinstatement imposed by the Secretary of State in order to have a license reinstated.

6 As in the bill, the amendment defines an ignition interlock device as a device that
7 connects a breath analyzer to a motor vehicle's ignition system. The analyzer monitors
8 the concentration of alcohol in the breath of any person who attempts to start the motor
9 vehicle by using the ignition system. The device prevents the vehicle from starting unless
10 the person provides a breath sample with a concentration of alcohol that is below a preset
11 level.

12 The amendment specifies that a person whose license is reinstated contingent upon
13 installation of an ignition interlock device and who operates a motor vehicle without an
14 ignition interlock device or tampers with, disconnects or disables an ignition interlock
15 device or circumvents the operation of an ignition interlock device commits a Class E
16 crime, which is a strict liability crime as defined in the Maine Revised Statutes, Title
17 17-A, section 34, subsection 4-A. The sentence for this crime must include a period of
18 incarceration of not less than 7 days and a fine of not less than \$500. These penalties
19 may not be suspended. All other violations involving ignition interlock devices are traffic
20 infractions.

21 The amendment removes from the bill the proposed increased motor vehicle liability
22 insurance requirement for persons seeking early reinstatement of a driver's license by
23 participating in the ignition interlock device program.

24 The amendment increases the license reinstatement fee from \$35 to \$50 for persons
25 whose suspension is for OUI or failure to submit to a test.

26 The amendment provides that a person may be classified as an habitual offender if
27 the person's license is reinstated contingent on use of an ignition interlock device and that
28 person operates a motor vehicle without an ignition interlock device; tampers with or
29 circumvents the operation of an ignition interlock device; or requests or solicits another
30 person to blow into or otherwise activate an ignition interlock device for the purpose of
31 providing the person with an operable motor vehicle.

32 The amendment adds an application section, which specifies that this Act applies
33 only to OUI offenses occurring after August 31, 2008. The amendment also adds an
34 effective date of September 1, 2008, which gives the Secretary of State time to contract
35 with an ignition interlock device vendor and prepare to administer and enforce the new
36 program. The amendment adds an appropriations and allocations section.

37 **FISCAL NOTE REQUIRED**
38 **(See attached)**



123rd MAINE LEGISLATURE

LD 856

LR 165(02)

An Act To Reduce Drunk Driving

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Criminal Justice and Public Safety
Fiscal Note Required: Yes

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Net Cost (Savings)				
Highway Fund	\$0	(\$103,587)	(\$106,276)	(\$104,818)
Appropriations/Allocations				
Highway Fund	\$0	\$58,963	\$56,274	\$57,732
Revenue				
Highway Fund	\$0	\$162,550	\$162,550	\$162,550

Fiscal Detail and Notes

Allocates \$58,963 in Highway Funds for fiscal year 2008-09 to the Bureau of Motor Vehicles within the Secretary of State for an Office Associate II position and related costs to administer a program to reinstate, within the suspension period, licenses of persons with two or more OUI offenses who install an ignition interlock device on their motor vehicle. This allocation is covered by an increase of \$162,550 in Highway Fund revenues resulting from an increase of \$15 in the license reinstatement fee for suspension for OUI or failure to submit to a test.