

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

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Legislative Document

No. 1674

S.P. 579

March 22, 2007

An Act To Amend the Habitual Offender and Felony Operating Under the Influence Laws

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DIAMOND of Cumberland.
Cosponsored by Representatives: GREELEY of Levant, SYKES of Harrison.

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

2 **Sec. 1. 4 MRSA §164-A**, as enacted by PL 1991, c. 549, §4 and as affected by §17
3 is amended to read:

4 **§164-A. Acceptance of fine and guilty plea**

5 The clerk of each division may accept a guilty plea to a criminal traffic offense upon
6 payment of a fine and surcharge in accordance with a schedule of offenses and fines
7 established by the Chief Judge. That schedule may not include the offense described in
8 Title 29-A, section 2412-A. A person tendering payment of a fine without filing a signed
9 waiver is deemed to have read and waived that person's rights, to understand that
10 tendering payment is deemed a waiver and has the same effect as a judgment of the court
11 and to understand that the record of the judgment will be sent to the Secretary of State.

12 **Sec. 2. 29-A MRSA §2411, sub-§1-A, ¶D**, as amended by PL 2005, c. 606, Pt.
13 A, §1, is further amended to read:

14 D. Violates paragraph A, B or C and:

15 (1) In fact causes serious bodily injury as defined in Title 17-A, section 2,
16 subsection 23 to another person;

17 (1-A) In fact causes the death of another person; or

18 (2) Has either a prior conviction for a Class B or C crime under this section or
19 former Title 29, section 1312-B or a prior criminal homicide conviction involving
20 or resulting from the operation of a motor vehicle while under the influence of
21 intoxicating liquor or drugs or with a blood-alcohol level of 0.08% or greater.

22 Notwithstanding section 2402 and Title 17-A, section 9-A, subsection 3, for purposes
23 of this paragraph the date of each prior conviction may precede the commission of
24 the offense being enhanced by more than 10 years.

25 **Sec. 3. 29-A MRSA §2412-A, sub-§1-B** is enacted to read:

26 **1-B. Aggravated punishment category.** Operating while license suspended or
27 revoked is a Class C crime, which is a strict liability crime as defined in Title 17-A,
28 section 34, subsection 4-A, when the license was suspended or revoked pursuant to
29 section 2454 or upon a conviction or juvenile court adjudication under section 2411,
30 subsection 5, paragraph D-2 or upon a conviction or juvenile court adjudication under
31 section 2464, subsection 2.

32 **Sec. 4. 29-A MRSA §2412-A, sub-§3, ¶B**, as amended by PL 2003, c. 673, Pt.
33 TT, §5, is further amended to read:

34 B. For all other suspensions, the minimum fine for a first offense within a 10-year
35 period is \$250, which may not be suspended by the court. The minimum fine for 2nd
36 and subsequent offenses within a 10-year period is \$500, which may not be
37 suspended by the court.

1 **Sec. 5. 29-A MRSA §2454, sub-§1**, as enacted by PL 1995, c. 368, Pt. AAA,
2 §19, is amended to read:

3 **1. Minimum revocation.** Subject to the longer period of revocation provided in
4 subsection 2, the license of any person who, as a result of the operation of a motor vehicle
5 in such a manner as to cause the death of any person, is convicted of criminal homicide or
6 an attempt of criminal homicide, or who is adjudicated to have committed a juvenile
7 offense of criminal homicide or an attempt of criminal homicide, must be revoked
8 immediately by the ~~Secretary of State upon receipt of an attested copy of the court~~
9 ~~records, without further hearing;~~ court for a period of at least 5 years. The court shall
10 within 5 days notify the Secretary of State of the conviction or adjudication by
11 forwarding an attested copy of the court records. The Secretary of State may then impose
12 the longer period of revocation provided in subsection 2.

13 **Sec. 6. 29-A MRSA §2557-A, sub-§1, ¶B**, as enacted by PL 2005, c. 606, Pt. A,
14 §11, is amended to read:

15 B. After having one or more prior Class C convictions for violating former Title 29,
16 section 2298, former section 2557, this section or section 2558, violates section 2412-
17 A.

18 **Sec. 7. 29-A MRSA §2557-A, sub-§2**, as enacted by PL 2005, c. 606, Pt. A, §11,
19 is repealed and the following enacted in its place:

20 **2. Penalties.** The following penalties apply.

21 A. A person is guilty of a Class D crime if the person violates subsection 1 and at the
22 time the person had not been convicted for operating after revocation under this
23 section; section 2411; former section 2557; former Title 29, section 2298; or former
24 Title 29, section 1312-B within the previous 10 years. The minimum fine for a Class
25 D crime under this paragraph is \$500 and the minimum term of imprisonment is 30
26 days, neither of which may be suspended by the court.

27 B. A person is guilty of a Class C crime if the person violates subsection 1 and the
28 person has one conviction for operating after revocation under this section; section
29 2411; former section 2557; former Title 29, section 2298; or former Title 29, section
30 1312-B within the previous 10 years. The minimum fine for a Class C crime under
31 this paragraph is \$1,000 and the minimum term of imprisonment is 6 months, neither
32 of which may be suspended by the court.

33 C. A person is guilty of a Class C crime if the person violates subsection 1 and the
34 person has 2 convictions for operating after revocation under this section; section
35 2411; former section 2557; former Title 29, section 2298; or former Title 29, section
36 1312-B within the previous 10 years. The minimum fine for a Class C crime under
37 this paragraph is \$1,000 and the minimum term of imprisonment is 9 months plus a
38 day, neither of which may be suspended by the court.

39 D. A person is guilty of a Class C crime if the person violates subsection 1 and the
40 person has 3 or more convictions for operating after revocation under this section;
41 section 2411; former section 2557; former Title 29, section 2298; or former Title 29,
42 section 1312-B within the previous 10 years. The minimum fine for a Class C crime

1 under this paragraph is \$1,000 and the minimum term of imprisonment is 2 years,
2 neither of which may be suspended by the court.

3 **Sec. 8. 29-A MRSA §2557-A, sub-§3-A** is enacted to read:

4 **3-A. Multiple offenses or violations.** For the purposes of this section, when more
5 than one offense or violation described in this section arises from the same incident, the
6 offenses or violations are treated as one offense or violation.

7 **Sec. 9. 29-A MRSA §2558, sub-§2, ¶C,** as enacted by PL 2005, c. 606, Pt. A,
8 §12, is amended to read:

9 C. A person who violates subsection 1 and at the time has 2 convictions for
10 violating this section, section 2411, former section 2557 or section 2557-A within the
11 previous 10 years commits a Class C crime for which a minimum fine of \$2,000 and
12 a minimum term of imprisonment of 2 years must be imposed, neither of which may
13 be suspended by the court.

14 **Sec. 10. 29-A MRSA §2558, sub-§2, ¶D,** as enacted by PL 2005, c. 606, Pt. A,
15 §12, is amended to read:

16 D. A person who violates subsection 1 and at the time has 3 or more convictions for
17 violating this section, section 2411, former section 2557 or section 2557-A within the
18 previous 10 years commits a Class C crime for which a minimum fine of \$3,000 and
19 a term of imprisonment of 5 years must be imposed, neither of which may be
20 suspended by the court.

21 **Sec. 11. 29-A MRSA §2558, sub-§3-A** is enacted to read:

22 **3-A. Multiple offenses or violations.** For the purposes of this section, when more
23 than one offense or violation described in this section arises from the same incident, the
24 offenses or violations are treated as one offense or violation.

25 SUMMARY

26 The bill makes several changes in the laws applying to persons driving with
27 suspended or revoked licenses or persons charged with the most serious driving offenses,
28 such as felony operating under the influence (OUI) and manslaughter.

29 1. It provides that a driver charged with operating after suspension (OAS) will not be
30 authorized to plead guilty to the court clerk without a formal court appearance, and must
31 appear before a judge for sentencing. The judge will then impose a sentence based upon
32 the driver's record and the circumstances of the offense.

33 2. It amends the Maine Revised Statutes, Title 29-A, section 2411, subsection 1-A,
34 paragraph D in response to a recent court decision. In State v. Dwayne B. Stevens, 2007
35 ME 5, the Maine Supreme Judicial Court determined that Title 29-A, section 2411,
36 subsection 1-A, paragraph D has a 10-year limitation on the use of prior convictions for
37 manslaughter and Class B or C operating under the influence. To address that
38 determination, this bill specifies that Title 17-A, section 9-A governs the use of prior

1 convictions when determining a sentence, except that, for the purposes of the offenses in
2 Title 29-A, section 2411, subsection 1-A, paragraph D, the date of each prior conviction
3 may precede the commission of the offense being enhanced by more than 10 years. The
4 section also incorporates a reference to the new Class B OUI offense enacted in 2006.

5 3. It increases the sentencing class in OAS for drivers whose licenses have been
6 suspended as a result of convictions in which a death resulted: Class A manslaughter,
7 Class B OUI and Class B OAS. Under current law the OAS offense is only a Class E
8 crime.

9 4. It clarifies that a court looks back 10 years in determining whether to impose the
10 mandatory fines applying to ordinary OAS cases.

11 5. It gives courts authority to revoke the driver's license as part of the sentence for
12 an adult or juvenile manslaughter defendant. Under current law only the Secretary of
13 State may revoke a driver's license upon a manslaughter conviction. The court will be
14 authorized to revoke a license for at least a 5-year period, but must also notify the
15 Secretary of State, who may revoke the license for a longer period under Title 29-A,
16 section 2454, subsection 2.

17 6. It clarifies a provision that was added by Public Law 2005, chapter 606. The
18 current language in Title 29-A, section 2557-A, subsection 1, paragraph B would subject
19 a driver to prosecution for a Class C habitual offender offense even if the driver's
20 previous record did not include such a conviction and the person's license is currently
21 suspended instead of revoked as a habitual offender. The intent of the Public Law 2005,
22 chapter 606 change was to specify that once a person is a felon, meaning the most serious
23 habitual offender under the driving laws, the person continues to be a significant offender
24 under those laws even when the person's license is suspended rather than revoked. The
25 language in the bill makes this clear.

26 7. It rewrites the sentencing provisions of the habitual offender statute to make them
27 consistent with the format in the aggravated operating after habitual offender revocation
28 law added by Public Law 2005, chapter 606, while adding references to former Title 29-
29 A, section 2557 that were inadvertently omitted from chapter 606.

30 8. It amends Title 29-A, sections 2557-A and 2558 to make the treatment of multiple
31 offenses consistent with other prior conviction language. The bill adds language to each
32 section to specify that when more than one offense or violation arises from the same
33 incident, the offense or violations are treated as one offense.

34 9. It adds a reference to Title 29-A, section 2411 in 2 portions of the aggravated
35 habitual offender laws enacted in Public Law 2005, chapter 606. A reference to prior
36 OUI conviction was included in one sentencing provision of chapter 606 but
37 inadvertently omitted from other provisions.