

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



STATE LAW LIBRARY
AUGUSTA, MAINE

124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1447

S.P. 532

In Senate, April 7, 2009

An Act Clarifying the Manner in Which a Person's Alcohol Level Is Determined under Maine Law

Submitted by the Department of Public Safety pursuant to Joint Rule 204.
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.

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

2 **Sec. 1. 5 MRSA §3360, sub-§3, ¶E**, as amended by PL 2003, c. 243, §1, is
3 further amended to read:

4 E. Operating under the influence of intoxicating liquor or drugs or with an
5 excessive ~~blood-alcohol~~ alcohol level, as described in Title 29-A, section 2411;

6 **Sec. 2. 6 MRSA §202, sub-§11**, as enacted by PL 1993, c. 467, §3, is amended to
7 read:

8 **11. Operating an aircraft under the influence or with excessive alcohol level.**
9 For any person to operate or attempt to operate an aircraft under the influence of
10 intoxicating liquor or drugs or a combination of liquor and drugs or with an excessive
11 ~~blood-alcohol~~ alcohol level. Notwithstanding section 203, a person is guilty of a Class D
12 crime if that person operates or attempts to operate an aircraft:

13 A. While under the influence of intoxicating liquor or drugs or a combination of
14 liquor and drugs; or

15 B. While having ~~0.04% or more by weight of alcohol in that person's blood~~ an
16 alcohol level of 0.04 grams or more of alcohol per 100 milliliters of blood or 210
17 liters of breath; and

18 **Sec. 3. 6 MRSA §204**, as enacted by PL 1993, c. 467, §4, is amended to read:

19 **§204. Implied consent to chemical tests**

20 A person who operates or attempts to operate an aircraft within this State has a duty
21 to submit to chemical testing to determine that person's ~~blood-alcohol~~ alcohol level and
22 drug concentration by analysis of blood, breath or urine if there is probable cause to
23 believe that the person has operated or attempted to operate an aircraft while under the
24 influence of intoxicating liquor or drugs. The duty to submit to a chemical test includes
25 the duty to complete either a blood, breath or urine test. Tests and procedures applicable
26 in determining whether a person is under the influence are governed by section 205.

27 **Sec. 4. 6 MRSA §205**, as enacted by PL 1993, c. 467, §4 and amended by PL
28 2003, c. 689, Pt. B, §6, is further amended to read:

29 **§205. Operating an aircraft under the influence or with an excessive alcohol level;**
30 **tests and procedures**

31 **1. Blood or breath test.** If the law enforcement officer has probable cause to
32 believe a person operated or attempted to operate an aircraft while under the influence of
33 intoxicating liquor or drugs, then the officer shall inform the person that a breath test will
34 be administered, unless, in the determination of the officer, it is unreasonable for a breath
35 test to be administered, in which case another chemical test must be administered. When
36 a blood test is required, the test may be administered by a physician of the accused's
37 choice, at the request of the accused and if reasonably available. The law enforcement

1 officer may determine which type of breath test, as described in subsection 5, will be
2 administered.

3 **2. Prerequisites to tests.** Before any test is given, the law enforcement officer shall
4 inform the person to be tested that, if that person fails to comply with the duty to submit
5 to and complete the required chemical test at the direction of the officer, that person
6 commits a civil violation for which the person may be required to pay a civil forfeiture of
7 up to \$500. The officer shall also inform the person that the failure to comply with the
8 duty to submit to chemical tests is admissible as evidence against that person at any trial
9 for operating under the influence of intoxicating liquor or drugs.

10 No test results may be excluded as evidence in a proceeding before an administrative
11 officer or court of this State as a result of the failure of the law enforcement officer to
12 comply with these prerequisites. The only effects of the failure of the officer to comply
13 with the prerequisites are as provided in subsection 7.

14 **3. Results of test.** Upon the request of the person who submits to a chemical test or
15 tests at the request of a law enforcement officer, full information concerning the test or
16 tests must be made available to that person or that person's attorney by the law
17 enforcement officer.

18 **4. Alcohol level.** The following ~~percentages by weight~~ quantities of alcohol in the
19 defendant's blood or breath have the following evidentiary effects.

20 A. ~~If there was the defendant, at the time alleged, 0.02% or less by weight of~~
21 ~~alcohol in the defendant's blood had an alcohol level of 0.02 grams or less of alcohol~~
22 ~~per 100 milliliters of blood or 210 liters of breath, it is prima facie evidence that the~~
23 ~~defendant was not under the influence of intoxicating liquor.~~

24 B. ~~If there was the defendant, at the time alleged, in excess of 0.02% but less than~~
25 ~~0.04% by weight of alcohol in the defendant's blood had an alcohol level of more~~
26 ~~than 0.02 grams but less than 0.04 grams of alcohol per 100 milliliters of blood or~~
27 ~~210 liters of breath, it is relevant evidence, but it is not to be given prima facie effect~~
28 ~~in indicating whether or not the defendant was under the influence of intoxicating~~
29 ~~liquor within the meaning of this section, but that fact may be considered with other~~
30 ~~competent evidence in determining whether or not the defendant was under the~~
31 ~~influence of intoxicating liquor.~~

32 C. For purposes of evidence in proceedings other than those arising under section
33 202, subsection 11, it is presumed that a person was under the influence of
34 intoxicating liquor when that person has a ~~blood alcohol level of 0.04% or more by~~
35 ~~weight~~ an alcohol level of 0.04 grams or more of alcohol per 100 milliliters of blood
36 or 210 liters of breath.

37 D. ~~Percent by weight of alcohol in the blood is based upon grams of alcohol per~~
38 ~~100 milliliters of blood.~~

39 **5. Administration of tests.** Persons conducting analyses of blood, breath or urine
40 for the purpose of determining the ~~blood alcohol~~ alcohol level or drug concentration must
41 be certified for this purpose by the Department of Health and Human Services under
42 certification standards set by that department.

1 Only a duly licensed physician, registered physician's assistant, registered nurse or a
2 person certified by the Department of Health and Human Services under certification
3 standards set by that department, acting at the request of a law enforcement officer, may
4 draw a specimen of blood to determine the ~~blood-alcohol~~ alcohol level or drug
5 concentration of a person who is complying with the duty to submit to a chemical test.
6 This limitation does not apply to the taking of breath specimens. When a person draws a
7 specimen of blood at the request of a law enforcement officer, that person may issue a
8 certificate that states that the person is in fact a duly licensed or certified person as
9 required by this subsection and that the person followed the proper procedure for drawing
10 a specimen of blood to determine the ~~blood-alcohol~~ alcohol level or drug concentration.
11 That certificate, when duly signed and sworn to by the person, is admissible as evidence
12 in any court of the State. It is prima facie evidence that the person was duly licensed or
13 certified and that the person followed the proper procedure for drawing a specimen for
14 chemical testing, unless, with 10 days' written notice to the prosecution, the defendant
15 requests that the person testify as to licensure or certification, or the procedure for
16 drawing the specimen of blood.

17 A law enforcement officer may take a sample specimen of the breath or urine of any
18 person whom the officer has probable cause to believe operated or attempted to operate
19 an aircraft while under the influence of intoxicating liquor or drugs and who is complying
20 with the duty to submit to and complete a ~~chemical~~ chemical test. The sample specimen
21 must be submitted to the Department of Health and Human Services or a person certified
22 by the Department of Health and Human Services for the purpose of conducting chemical
23 tests of the sample specimen to determine the ~~blood-alcohol~~ alcohol level or drug
24 concentration of that sample.

25 Only equipment approved by the Department of Health and Human Services may be used
26 by a law enforcement officer to take a sample specimen of the defendant's breath or urine
27 for submission to the Department of Health and Human Services or a person certified by
28 the Department of Health and Human Services for the purpose of conducting tests of the
29 sample specimen to determine the ~~blood-alcohol~~ alcohol level or drug concentration of
30 that sample. Approved equipment must have a stamp of approval affixed by the
31 Department of Health and Human Services. Evidence that the equipment was in a sealed
32 carton bearing the stamp of approval must be accepted in court as prima facie evidence
33 that the equipment was approved by the Department of Health and Human Services for
34 use by the law enforcement officer to take the sample specimen of the defendant's breath
35 or urine.

36 As an alternative to the method of breath testing described in this subsection, a law
37 enforcement officer may test the breath of any person whom the officer has probable
38 cause to believe operated or attempted to operate an aircraft while under the influence of
39 intoxicating liquor or drugs, by use of a self-contained, breath-alcohol testing apparatus to
40 determine the ~~blood-alcohol~~ person's alcohol level, provided as long as the testing
41 apparatus is reasonably available. The procedures for the operation and testing of self-
42 contained, breath-alcohol testing apparatuses must be as provided by rule adopted by the
43 Department of Health and Human Services. The result of any such test must be accepted
44 as prima facie evidence of the ~~blood-alcohol~~ alcohol level of a person in any court.

45 Approved self-contained, breath-alcohol testing apparatuses must have a stamp of
46 approval affixed by the Department of Health and Human Services after periodic testing.

1 That stamp of approval is valid for a limited period of no more than one year. Testimony
2 or other evidence that the equipment was bearing the stamp of approval must be accepted
3 in court as prima facie evidence that the equipment was approved by the Department of
4 Health and Human Services for use by the law enforcement officer to collect and analyze
5 a sample specimen of the defendant's breath.

6 Failure to comply with any provision of this subsection or with any rule adopted under
7 this subsection does not, by itself, result in the exclusion of evidence of ~~blood-alcohol~~
8 alcohol level or drug concentration, unless the evidence is determined to be not
9 sufficiently reliable.

10 Testimony or other evidence that any materials used in operating or checking the
11 operation of the equipment were bearing a statement of the manufacturer or of the
12 Department of Health and Human Services must be accepted in court as prima facie
13 evidence that the materials were of a composition and quality as stated.

14 A person certified by the Maine Criminal Justice Academy, under certification standards
15 set by the academy, as qualified to operate approved self-contained, breath-alcohol
16 testing apparatuses may operate those apparatuses to collect and analyze a sample
17 specimen of a defendant's breath.

18 **6. Liability.** No physician, physician's assistant, registered nurse, person certified by
19 the Department of Health and Human Services or hospital or other health care provider in
20 the exercise of due care is liable in damages or otherwise for any act done or omitted in
21 performing the act of collecting or withdrawing specimens of blood at the request of a
22 law enforcement officer pursuant to this section.

23 **7. Evidence.** The drug concentration in the defendant's blood or ~~percentage by~~
24 ~~weight of alcohol in the defendant's blood~~ alcohol level at the time alleged, as shown by
25 the chemical analysis of the defendant's blood, breath or urine or by results of a self-
26 contained, breath-alcohol testing apparatus authorized by subsection 5 is admissible in
27 evidence.

28 When a person, certified under subsection 5, conducts a chemical analysis of blood or
29 breath to determine ~~blood-alcohol~~ alcohol level, the person may issue a certificate stating
30 the results of the analysis. That certificate, when duly signed and sworn to by the
31 certified person, is admissible in evidence in any court of the State. It is prima facie
32 evidence that the person taking a specimen of blood or urine was a person authorized by
33 subsection 5; that the equipment, chemicals and other materials used in the taking of the
34 blood or urine specimen or a breath sample were of a quality appropriate for the purpose
35 of producing reliable test results; that any equipment, chemicals or materials required by
36 subsection 5 to be approved by the Department of Health and Human Services were in
37 fact approved; that the sample tested by the person certified under subsection 5 was in
38 fact the same sample taken from the defendant; and that the drug concentration in the
39 defendant's blood or ~~percentage by weight of alcohol in the defendant's blood~~ alcohol
40 level was, at the time the blood or breath sample was taken, as stated in the certificate,
41 unless with 10 days' written notice to the prosecution, the defendant requests that a
42 qualified witness testify as to any of the matters as to which the certificate constitutes
43 prima facie evidence. The notice must specify those matters concerning which the
44 defendant requests testimony.

1 A person certified under subsection 5 as qualified to operate a self-contained, breath-
2 alcohol testing apparatus to determine the ~~blood-alcohol~~ alcohol level may issue a
3 certificate stating the results of the analysis. That certificate, when duly signed and sworn
4 to by the certified person, is admissible in evidence in any court of the State. It is prima
5 facie evidence that the ~~percentage by weight of alcohol in the~~ defendant's blood alcohol
6 level was, at the time the breath sample was taken, as stated in the certificate, unless, with
7 10 days' written notice to the prosecution, the defendant requests that the operator or
8 other qualified witness testify as to the results of the analysis.

9 Transfer of sample specimens to and from a laboratory for purposes of analysis is by
10 certified or registered mail and, when so made, is deemed to comply with all
11 requirements regarding the continuity of custody of physical evidence.

12 The failure of a person to comply with the duty to submit to and complete a chemical test
13 under section 204 is admissible in evidence on the issue of whether that person was under
14 the influence of intoxicating liquor or drugs. If the law enforcement officer having
15 probable cause to believe that the person operated or attempted to operate an aircraft
16 while under the influence of intoxicating liquor or drugs fails to give either of the
17 warnings required under subsection 2, the failure of the person to comply with the duty to
18 submit to a chemical test is not admissible, except when a test was required pursuant to
19 subsection 11. If a failure to submit to and complete a chemical test is not admitted into
20 evidence, the court may inform the jury of the fact that no test result is available.

21 If a test result is not available for a reason other than failing to comply with the duty to
22 submit to and complete a chemical test, the unavailability and the reason are admissible
23 in evidence.

24 **8. Statements by accused.** Any statement by a defendant that the defendant was the
25 operator of an aircraft that the defendant is accused of operating in violation of section
26 202, subsection 11 is admissible if it was made voluntarily and is otherwise admissible
27 under the United States Constitution or the Constitution of Maine. The statement may
28 constitute sufficient proof by itself, without further proof of corpus delicti, that the
29 aircraft was operated and was operated by the defendant.

30 **9. Payment for tests.** Persons authorized to take specimens of blood at the direction
31 of a law enforcement officer and persons authorized to perform chemical tests of
32 specimens of blood or breath must be paid from the Highway Fund.

33 **10. Accidents and officer's duties.** The law enforcement officer has the following
34 duties.

35 A. After a person has been charged with operating or attempting to operate an
36 aircraft while under the influence of intoxicating liquor or drugs or with an excessive
37 ~~blood-alcohol~~ alcohol level, the investigating or arresting officer shall investigate to
38 determine whether the charged person has any previous convictions of a violation of
39 section 202, subsection 11 or adjudications for failure to comply with the duty to
40 submit to and complete a chemical test under section 204. As part of that
41 investigation, the officer shall review the records maintained by the courts, the
42 department, the State Bureau of Identification or the Secretary of State, including
43 telecommunications of records maintained by the Secretary of State.

1 B. A law enforcement officer may arrest, without a warrant, any person whom the
2 officer has probable cause to believe operated or attempted to operate an aircraft
3 while under the influence of intoxicating liquor or drugs if the arrest occurs within a
4 period following the offense reasonably likely to result in the obtaining of probative
5 evidence of ~~blood-alcohol~~ an alcohol level or drug concentration.

6 C. A law enforcement officer shall report the results of a chemical test
7 administered, or the refusal of a person to submit to a chemical test, pursuant to this
8 section to the Federal Aviation Administration.

9 **11. Fatalities.** Notwithstanding any other provision of this section, an operator of an
10 aircraft who is involved in an aircraft accident that results in the death of a person must
11 submit to and complete a chemical test to determine that person's ~~blood-alcohol~~ alcohol
12 level or drug concentration by analysis of blood, breath or urine. A law enforcement
13 officer may determine which type of test will be administered. The result of a test taken
14 pursuant to this subsection is not admissible at trial unless the court is satisfied that
15 probable cause exists, independent of the test result, to believe that the operator was
16 under the influence of intoxicating liquor or drugs or had an excessive ~~blood-alcohol~~
17 alcohol level.

18 **Sec. 5. 12 MRSA §10701, sub-§1-A,** as enacted by PL 2003, c. 655, Pt. B, §74
19 and affected by §422, is amended to read:

20 **1-A. Prohibition.** Prohibitions against hunting and operating under the influence are
21 as follows.

22 A. A person may not hunt wild animals or wild birds:

23 (1) While under the influence of intoxicating liquor or drugs or a combination of
24 liquor and drugs;

25 (2) If 21 years of age or older, while having ~~0.08% or more by weight of alcohol~~
26 ~~in that person's blood~~ 0.08 grams or more of alcohol per 100 milliliters of blood
27 or 210 liters of breath; or

28 (3) If less than 21 years of age, while having ~~any amount of alcohol in that~~
29 ~~person's blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of
30 blood or 210 liters of breath.

31 B. A person may not operate or attempt to operate a watercraft:

32 (1) While under the influence of intoxicating liquor or drugs or a combination of
33 liquor and drugs;

34 (2) If 21 years of age or older, while having ~~0.08% or more by weight of alcohol~~
35 ~~in that person's blood~~ 0.08 grams or more of alcohol per 100 milliliters of blood
36 or 210 liters of breath; or

37 (3) If less than 21 years of age, while having ~~any amount of alcohol in the~~
38 ~~blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210
39 liters of breath.

40 C. A person may not operate or attempt to operate a snowmobile:

- 1 (1) While under the influence of intoxicating liquor or drugs or a combination of
2 liquor and drugs;
- 3 (2) If 21 years of age or older, while having ~~0.08% or more by weight of alcohol~~
4 ~~in that person's blood~~ 0.08 grams or more of alcohol per 100 milliliters of blood
5 or 210 liters of breath; or
- 6 (3) If less than 21 years of age, while having ~~any amount of alcohol in the blood~~
7 ~~an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters~~
8 ~~of breath.~~ of breath.

9 D. A person may not operate or attempt to operate an ATV:

- 10 (1) While under the influence of intoxicating liquor or drugs or a combination of
11 liquor and drugs;
- 12 (2) If 21 years of age or older, while having ~~0.08% or more by weight of alcohol~~
13 ~~in that person's blood~~ 0.08 grams or more of alcohol per 100 milliliters of blood
14 or 210 liters of breath; or
- 15 (3) If less than 21 years of age, while having ~~any amount of alcohol in the~~
16 ~~blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210
17 liters of breath.

18 **Sec. 6. 12 MRSA §10701, sub-§3, ¶A**, as affected by PL 2003, c. 614, §9 and
19 amended by c. 655, Pt. B, §75 and affected by §422, is further amended to read:

20 A. In the case of a person having no previous convictions of a violation of
21 subsection 1-A within the previous 6-year period, the fine may not be less than \$400.
22 If that person was adjudicated within the previous 6-year period for failure to comply
23 with the duty to submit to and complete a ~~blood-alcohol~~ an alcohol test under section
24 10702, subsection 1, the fine may not be less than \$500. A conviction under this
25 paragraph must include a period of incarceration of not less than 48 hours, none of
26 which may be suspended, when the person:

- 27 (1) Was tested as having a ~~blood-alcohol~~ an alcohol level of ~~0.15% or more~~ 0.15
28 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath;
- 29 (2) Failed or refused to stop upon request or signal of an officer in uniform,
30 pursuant to section 6953 or 10651, during the operation that resulted in
31 prosecution for operating under the influence or with a ~~blood-alcohol~~ an alcohol
32 ~~level of 0.08% or more~~ 0.08 grams or more of alcohol per 100 milliliters of blood
33 or 210 liters of breath; or
- 34 (3) Failed to submit to a chemical test to determine that person's ~~blood-alcohol~~
35 alcohol level or drug concentration, requested by a law enforcement officer on
36 the occasion that resulted in the conviction.

37 **Sec. 7. 12 MRSA §10701, sub-§3, ¶B**, as affected by PL 2003, c. 614, §9 and
38 amended by c. 655, Pt. B, §75 and affected by §422, is further amended to read:

39 B. In the case of a person having one previous conviction of a violation of
40 subsection 1-A within the previous 6-year period, the fine may not be less than \$600.
41 If that person was adjudicated within the previous 6-year period for failure to comply

1 with the duty to submit to and complete a ~~blood-alcohol~~ an alcohol level or drug
2 concentration test under section 10702, subsection 1, the fine may not be less than
3 \$800. A conviction under this paragraph must include a period of incarceration of
4 not less than 7 days, none of which may be suspended.

5 **Sec. 8. 12 MRSA §10701, sub-§3, ¶C**, as affected by PL 2003, c. 614, §9 and
6 amended by c. 655, Pt. B, §75 and affected by §422, is further amended to read:

7 C. In the case of a person having 2 or more previous convictions of violations of
8 subsection 1-A within the previous 6-year period, the fine may not be less than
9 \$1,000. If that person was adjudicated within the previous 6-year period for failure to
10 comply with the duty to submit to and complete a ~~blood-alcohol~~ an alcohol level or
11 drug concentration test under section 10702, subsection 1, the fine may not be less
12 than \$1,300. A conviction under this paragraph must include a period of
13 incarceration of not less than 30 days, none of which may be suspended.

14 **Sec. 9. 12 MRSA §10702, sub-§1**, as affected by PL 2003, c. 614, §9 and
15 repealed and replaced by c. 655, Pt. B, §76 and affected by §422, is amended to read:

16 **1. Duty to submit.** A person who hunts wild animals or wild birds or operates or
17 attempts to operate a watercraft, snowmobile or ATV within this State has a duty to
18 submit to a test to determine that person's ~~blood-alcohol~~ alcohol level or drug
19 concentration by analysis of blood, breath or urine if there is probable cause to believe
20 that the person is hunting wild animals or wild birds or operating or attempting to operate
21 a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or
22 drugs. The duty to submit to a ~~blood-alcohol~~ an alcohol level or drug concentration test
23 includes the duty to complete either a blood, breath or urine test or any combination of
24 those tests. Tests and procedures for determining whether a person is under the influence
25 of intoxicating liquor or drugs are governed by section 10703.

26 **Sec. 10. 12 MRSA §10702, sub-§2**, as affected by PL 2003, c. 614, §9 and
27 repealed and replaced by c. 655, Pt. B, §76 and affected by §422, is amended to read:

28 **2. Failure to comply with duty to submit.** A person shall submit to and complete a
29 ~~blood-alcohol~~ an alcohol level or drug concentration test, or both, when requested to do
30 so by a law enforcement officer who has probable cause to believe that the person hunted
31 or operated or attempted to operate a watercraft, snowmobile or ATV while under the
32 influence of intoxicating liquor or drugs.

33 **Sec. 11. 12 MRSA §10703, sub-§4**, as affected by PL 2003, c. 614, §9 and
34 amended by c. 655, Pt. B, §78 and affected by §422, is further amended to read:

35 **4. Alcohol level.** The following ~~percentages by weight~~ quantities of alcohol in the
36 defendant's blood or breath have the following evidentiary effect.

37 A. If ~~there was~~, at the time alleged, ~~0.05% or less by weight of alcohol in the blood~~
38 of a defendant who was 21 years of age or older at the time of arrest had an alcohol
39 level of 0.05 grams or less of alcohol per 100 milliliters of blood or 210 liters of
40 breath, it is prima facie evidence that the defendant was not under the influence of
41 intoxicating liquor.

1 B. If ~~there was, at the time alleged, in excess of 0.05% but less than 0.08% by~~
2 ~~weight of alcohol in the blood of a defendant who was 21 years of age or older at the~~
3 ~~time of the arrest~~ had an alcohol level of 0.05 grams of alcohol or more but less than
4 0.08 grams of alcohol per 100 milliliters of blood or 210 liters of breath, it is relevant
5 evidence, but it is not to be given prima facie effect in indicating whether or not the
6 defendant was under the influence of intoxicating liquor within the meaning of this
7 section, but that fact may be considered with other competent evidence in
8 determining whether or not the defendant was under the influence of intoxicating
9 liquor.

10 C. For purposes of evidence in proceedings other than those arising under section
11 10701, subsection 1-A, it is presumed that a person was under the influence of
12 intoxicating liquor when that person has:

13 (1) For a person 21 years of age or older, ~~a blood alcohol~~ an alcohol level of
14 0.08% or more by weight 0.08 grams or more of alcohol per 100 milliliters of
15 blood or 210 liters of breath; and

16 (2) For a person less than 21 years of age, ~~any amount of alcohol in the blood~~ an
17 alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of
18 breath.

19 ~~D. Percent by weight of alcohol in the blood is based upon grams of alcohol per~~
20 ~~100 milliliters of blood.~~

21 **Sec. 12. 12 MRSA §10703, sub-§5**, as enacted by PL 2003, c. 414, Pt. A, §2 and
22 affected by c. 614, §9 and amended by c. 689, Pt. B, §6, is further amended to read:

23 **5. Administration of tests.** Persons conducting analyses of blood, breath or urine
24 for the purpose of determining ~~the blood alcohol~~ an alcohol level or drug concentration
25 must be certified for each purpose by the Department of Health and Human Services
26 under certification standards set by that department.

27 A. Only a duly licensed physician, registered physician's assistant, registered nurse
28 or a person certified by the Department of Health and Human Services under
29 certification standards set by that department, acting at the request of a law
30 enforcement officer, may draw a specimen of blood to determine ~~the blood alcohol~~
31 an alcohol level or drug concentration of a person who is complying with the duty to
32 submit to a chemical test. This limitation does not apply to the taking of breath or
33 urine specimens. When a person draws a specimen of blood at the request of a law
34 enforcement officer, that person may issue a certificate that states that the person is in
35 fact a duly licensed or certified person as required by this subsection and that the
36 person followed the proper procedure for drawing a specimen of blood to determine
37 ~~the blood alcohol~~ an alcohol level or drug concentration. That certificate, when duly
38 signed and sworn to by the person, is admissible as evidence in any court of the State.
39 It is prima facie evidence that the person was duly licensed or certified and that the
40 person followed the proper procedure for drawing a specimen of blood for chemical
41 testing, unless, with 10 days' written notice to the prosecution, the defendant requests
42 that the person testify as to licensure or certification, or the procedure for drawing the
43 specimen of blood.

- 1 B. A law enforcement officer may take a sample specimen of the breath or urine of
2 any person whom the officer has probable cause to believe hunted wild animals or
3 wild birds or operated or attempted to operate a watercraft, snowmobile or ATV
4 while under the influence of intoxicating liquor or drugs and who is complying with
5 the duty to submit to and complete a chemical test. The sample specimen must be
6 submitted to the Department of Health and Human Services or a person certified by
7 the Department of Health and Human Services for the purpose of conducting
8 chemical tests of the sample specimen to determine ~~the blood-alcohol~~ an alcohol
9 level or drug concentration of that sample.
- 10 C. Only equipment approved by the Department of Health and Human Services
11 may be used by a law enforcement officer to take a sample specimen of the
12 defendant's breath or urine for submission to the Department of Health and Human
13 Services or a person certified by the Department of Health and Human Services for
14 the purpose of conducting tests of the sample specimen to determine ~~the blood-~~
15 ~~alcohol~~ an alcohol level or drug concentration of that sample. Approved equipment
16 must have a stamp of approval affixed by the Department of Health and Human
17 Services. Evidence that the equipment was in a sealed carton bearing the stamp of
18 approval must be accepted in court as prima facie evidence that the equipment was
19 approved by the Department of Health and Human Services for use by the law
20 enforcement officer to take the sample specimen of the defendant's breath or urine.
- 21 D. As an alternative to the method of breath testing described in this subsection, a
22 law enforcement officer may test the breath of any person whom the officer has
23 probable cause to believe hunted wild birds or wild animals or operated or attempted
24 to operate a watercraft, snowmobile or ATV while under the influence of intoxicating
25 liquor, by use of a self-contained, breath-alcohol testing apparatus to determine ~~the~~
26 ~~blood-alcohol~~ an alcohol level, ~~provided as long as~~ the testing apparatus is reasonably
27 available. The procedures for the operation and testing of self-contained, breath-
28 alcohol testing apparatuses must be as provided by rule adopted by the Department of
29 Health and Human Services. The result of any such test must be accepted as prima
30 facie evidence of ~~the blood-alcohol~~ an alcohol level in any court.
- 31 E. Approved self-contained, breath-alcohol testing apparatuses must have a stamp
32 of approval affixed by the Department of Health and Human Services after periodic
33 testing. That stamp of approval is valid for a limited period of no more than one year.
34 Testimony or other evidence that the equipment was bearing the stamp of approval
35 must be accepted in court as prima facie evidence that the equipment was approved
36 by the Department of Health and Human Services for use by the law enforcement
37 officer to collect and analyze a sample specimen of the defendant's breath.
- 38 F. Failure to comply with any provision of this subsection or with any rule adopted
39 under this subsection does not, by itself, result in the exclusion of evidence of ~~blood-~~
40 ~~alcohol~~ an alcohol level or drug concentration, unless the evidence is determined to
41 be not sufficiently reliable.
- 42 G. Testimony or other evidence that any materials used in operating or checking the
43 operation of the equipment were bearing a statement of the manufacturer or of the
44 Department of Health and Human Services must be accepted in court as prima facie
45 evidence that the materials were of a composition and quality as stated.

1 H. A person certified by the Maine Criminal Justice Academy, under certification
2 standards set by the academy, as qualified to operate approved self-contained, breath-
3 alcohol testing apparatuses may operate those apparatuses to collect and analyze a
4 sample specimen of a defendant's breath.

5 **Sec. 13. 12 MRSA §10703, sub-§7**, as enacted by PL 2003, c. 414, Pt. A, §2 and
6 affected by c. 614, §9 and amended by c. 689, Pt. B, §6, is further amended to read:

7 **7. Evidence.** ~~The percentage by weight of alcohol in the~~ defendant's blood alcohol
8 level at the time alleged and the concentration of drugs at the time alleged, as shown by
9 the chemical analysis of the defendant's blood, breath or urine or by any test authorized
10 by subsection 5 is admissible in evidence.

11 A. When a person certified under subsection 5 conducts a chemical analysis of
12 blood, breath or urine to determine ~~blood alcohol~~ an alcohol level or drug
13 concentration, the person conducting the analysis may issue a certificate stating the
14 results of the analysis. That certificate, when duly signed and sworn to by the
15 certified person, is admissible in evidence in any court of the State. It is prima facie
16 evidence that the person taking a specimen of blood or urine was a person authorized
17 by subsection 5; that the equipment, chemicals and other materials used in the taking
18 of the blood or urine specimen or a breath sample were of a quality appropriate for
19 the purpose of producing reliable test results; that any equipment, chemicals or
20 materials required by subsection 5 to be approved by the Department of Health and
21 Human Services were in fact approved; that the sample tested by the person certified
22 under subsection 5 was in fact the same sample taken from the defendant; and that the
23 drug concentration in the defendant's blood or ~~percentage by weight of alcohol in the~~
24 defendant's blood alcohol level was, at the time the blood, breath or urine sample was
25 taken, as stated in the certificate, unless with 10 days' written notice to the
26 prosecution, the defendant requests that a qualified witness testify as to any of the
27 matters as to which the certificate constitutes prima facie evidence. The notice must
28 specify those matters concerning which the defendant requests testimony.

29 B. A person certified under subsection 5 as qualified to operate a self-contained,
30 breath-alcohol testing apparatus to determine ~~the blood alcohol~~ an alcohol level may
31 issue a certificate stating the results of the analysis. That certificate, when duly
32 signed and sworn to by the certified person, is admissible in evidence in any court of
33 the State. It is prima facie evidence that ~~the percentage by weight of alcohol in the~~
34 defendant's blood alcohol level was, at the time the breath sample was taken, as stated
35 in the certificate, unless, with 10 days' written notice to the prosecution, the defendant
36 requests that the operator or other qualified witness testify as to the results of the
37 analysis.

38 C. Transfer of sample specimens to and from a laboratory for purposes of analysis
39 must be by certified or registered mail and, when so made, is deemed to comply with
40 all requirements regarding the continuity of custody of physical evidence.

41 D. The failure of a person to comply with the duty to submit to and complete a
42 chemical test under section 10702, subsection 1 is admissible in evidence on the issue
43 of whether that person was under the influence of intoxicating liquor or drugs. If the
44 law enforcement officer having probable cause to believe that the person hunted wild

1 animals or wild birds or operated or attempted to operate a watercraft, snowmobile or
2 ATV while under the influence of intoxicating liquor or drugs fails to give either of
3 the warnings required under subsection 2, the failure of the person to comply with the
4 duty to submit to a chemical test is not admissible, except when a test was required
5 pursuant to subsection 11. If a failure to submit to and complete a chemical test is
6 not admitted into evidence, the court may inform the jury of the fact that a test result
7 is not available.

8 E. If a test result is not available for a reason other than a person's failure to comply
9 with the duty to submit to and complete a chemical test, the unavailability and the
10 reason are admissible in evidence.

11 **Sec. 14. 12 MRSA §10703, sub-§10, ¶A**, as affected by PL 2003, c. 614, §9 and
12 amended by c. 655, Pt. B, §80 and affected by §422, is further amended to read:

13 A. After a person has been charged with hunting wild animals or wild birds or with
14 operating or attempting to operate a watercraft, snowmobile or ATV while under the
15 influence of intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~ alcohol
16 level, the investigating or arresting officer shall investigate to determine whether the
17 charged person has any previous convictions of a violation of section 10701,
18 subsection 1-A or adjudications for failure to comply with the duty to submit to and
19 complete a chemical test under section 10702, subsection 1. As part of that
20 investigation, the officer shall review the records maintained by the courts, the State
21 Bureau of Identification, the Secretary of State, including telecommunications of
22 records maintained by the Secretary of State, or the department.

23 **Sec. 15. 12 MRSA §10703, sub-§11**, as enacted by PL 2003, c. 414, Pt. A, §2
24 and affected by c. 614, §9, is amended to read:

25 **11. Fatalities.** Notwithstanding any other provision of this section, any person
26 hunting wild animals or wild birds who is involved in a hunting accident or any operator
27 of a watercraft, snowmobile or ATV who is involved in a watercraft, snowmobile or ATV
28 accident that results in the death of any person must submit to and complete chemical
29 tests to determine that person's ~~blood-alcohol~~ alcohol level or other chemical use by
30 analysis of blood, breath or urine. A law enforcement officer may determine which types
31 of tests will be administered. The results of tests taken pursuant to this subsection are not
32 admissible at trial unless the court is satisfied that probable cause exists, independent of
33 the test results, to believe that the hunter or operator was under the influence of
34 intoxicating liquor or drugs or had an excessive ~~blood-alcohol~~ alcohol level.

35 **Sec. 16. 15 MRSA §3103, sub-§1, ¶F**, as amended by PL 2003, c. 410, §5, is
36 further amended to read:

37 F. The criminal violation of operating a motor vehicle under the influence of
38 intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~ alcohol level, as
39 defined in Title 29-A, section 2411, and offenses defined in Title 29-A as Class B or
40 C crimes;

41 **Sec. 17. 16 MRSA §357, 2nd ¶**, as amended by PL 2007, c. 63, §1, is further
42 amended to read:

1 Notwithstanding this section, the result of a laboratory or any other test kept by a
2 hospital or other medical facility that reflects ~~blood-alcohol~~ an alcohol level, a detectable
3 urine-drug level, and a detectable blood-drug level may not be excluded as evidence in a
4 criminal or civil proceeding by reason of any claim of confidentiality or privilege and
5 may be admitted ~~provided that~~ as long as the result is relevant and reliable evidence if the
6 proceeding is one in which the operator of a motor vehicle, snowmobile, all-terrain
7 vehicle or watercraft is alleged to have operated under the influence of intoxicating liquor
8 or drugs and the court is satisfied that probable cause exists to believe that the operator
9 committed the offense charged.

10 **Sec. 18. 17-A MRSA §1057, sub-§1, ¶B**, as enacted by PL 1989, c. 917, §2, is
11 amended to read:

12 B. While under the influence of intoxicating liquor or drugs or a combination of
13 liquor and drugs or with an excessive ~~blood-alcohol~~ alcohol level, the person
14 possesses a firearm in a licensed establishment.

15 **Sec. 19. 17-A MRSA §1057, sub-§4**, as enacted by PL 1989, c. 917, §2, is
16 amended to read:

17 4. A law enforcement officer who has probable cause to believe that a person has
18 violated subsection 1, paragraph B, may require that person to submit to chemical testing
19 to determine ~~blood-alcohol~~ an alcohol level or drug concentration. If the court is satisfied
20 that the law enforcement officer had probable cause to believe that the defendant was in
21 violation of subsection 1, paragraph B, and that the person was informed of the
22 requirement to submit to chemical testing, the person's failure to comply with the
23 requirement to submit to chemical testing is admissible evidence on the issue of whether
24 that person was under the influence of intoxicating liquor or drugs.

25 **Sec. 20. 17-A MRSA §1057, sub-§5**, as amended by PL 1995, c. 65, Pt. A, §57
26 and affected by §153 and Pt. C, §15, is further amended to read:

27 5. For purposes of this section, "under the influence of intoxicating liquor or drugs
28 or a combination of liquor and drugs or with an excessive ~~blood-alcohol~~ alcohol level"
29 has the same meaning as "under the influence of intoxicants" as defined in Title 29-A,
30 section 2401, subsection 13. "Excessive ~~blood-alcohol~~ alcohol level" means ~~0.08% or~~
31 ~~more by weight of alcohol in the blood~~ an alcohol level of 0.08 grams or more of alcohol
32 per 100 milliliters of blood or 210 liters of breath. Standards, tests and procedures
33 applicable in determining whether a person is under the influence or has an excessive
34 ~~blood-alcohol~~ alcohol level within the meaning of this section are those applicable
35 pursuant to Title 29-A, sections 2411 and 2431; except that the suspension of a permit to
36 carry concealed firearms issued pursuant to Title 25, chapter 252, or of the authority of a
37 private investigator licensed to carry a concealed firearm pursuant to Title 32, chapter 89,
38 is as provided in those chapters.

39 **Sec. 21. 22 MRSA §567, sub-§1**, as amended by PL 1999, c. 62, §3, is further
40 amended to read:

1 **1. Acceptable data.** Except as provided in this subsection, 6 months after the
2 adoption of rules specified in subsection 2, certification is required of any commercial,
3 industrial, municipal, state or federal laboratory that analyzes water, soil, air, solid or
4 hazardous waste, or radiological samples for the use of programs of the department or the
5 Department of Environmental Protection, except as provided under chapter 411, the
6 Maine Medical Laboratory Act; Title 26, chapter 7, subchapter ~~III-A~~ 3-A, Substance
7 Abuse Testing; and Title 29-A, section 2524, administration of tests to determine ~~blood-~~
8 ~~alcohol~~ an alcohol level or drug concentration.

9 A laboratory operated by a waste discharge facility licensed pursuant to Title 38, section
10 413 may analyze waste discharges for total suspended solids, settleable solids, biological
11 or biochemical oxygen demand, chemical oxygen demand, pH, chlorine residual, fecal
12 coliform, E. coli, conductivity, color, temperature and dissolved oxygen without being
13 certified under this section. The exception provided under this paragraph applies to a
14 laboratory testing its own samples for pollutants listed in its permit or license;
15 pretreatment samples; and samples from other wastewater treatment plants for up to 60
16 days per year. The time period provided in this paragraph, which is a maximum period
17 for each treatment plant for which analysis is provided, may be extended by
18 memorandum of agreement between the Department of Environmental Protection and the
19 Health and Environmental Testing Laboratory.

20 **Sec. 22. 24-A MRSA §2303-A**, as amended by PL 1995, c. 65, Pt. A, §67 and
21 affected by §153 and Pt. C, §15, is further amended to read:

22 **§2303-A. Surcharge**

23 No An insurer may not surcharge a motor vehicle insurance policy based on a motor
24 vehicle operator's license suspension when that suspension is pursuant to Title 29-A,
25 section 2472, subsection 3, paragraph B, except in accordance with this section. If the
26 person had a ~~blood-alcohol~~ an alcohol level of at least 0.05%, ~~but less than 0.08% by~~
27 ~~weight~~ 0.05 grams or more of alcohol but less than 0.08 grams of alcohol per 100
28 milliliters of blood or 210 liters of breath, the surcharge is limited to 20%. If the person
29 had a ~~blood-alcohol~~ an alcohol level of at least 0.02% ~~but less than 0.05% by weight~~ 0.02
30 grams of alcohol but less than 0.05 grams of alcohol per 100 milliliters of blood or 210
31 liters of breath, the surcharge is limited to 10%. If the policy covers multiple vehicles,
32 the surcharge may be applied only to that portion of the rate attributable to a single
33 vehicle.

34 **Sec. 23. 25 MRSA §1541, sub-§4-A, ¶A**, as enacted by PL 1999, c. 260, Pt. B,
35 §2 and affected by §18, is amended to read:

36 A. Fingerprints and other criminal history record information pertinent to the
37 identification of individuals who have been arrested as fugitives from justice or who
38 have been arrested or charged with any criminal offense under the laws of this State
39 except a violation of Title 12 or 29-A that is a Class D or E crime other than an
40 alcohol-related or drug-related offense. For purposes of this paragraph, an "alcohol-
41 related or drug-related offense" is a Class D crime that involves hunting while under
42 the influence of intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~
43 alcohol level or the operation or attempted operation of a motorcraft, all-terrain

1 vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor
2 or drugs or with an excessive ~~blood-alcohol~~ alcohol level. The commanding officer
3 may collect and maintain fingerprints and other criminal history record information
4 that may be related to other criminal offenses or to the performance of the
5 commanding officer's obligations under state laws and under agreements with
6 agencies of the United States or any other jurisdiction; and

7 **Sec. 24. 25 MRSA §1547**, as repealed and replaced by PL 1999, c. 260, Pt. B, §17
8 and affected by §18, is amended to read:

9 **§1547. Courts to submit criminal records to the State Bureau of Identification**

10 At the conclusion of a juvenile court proceeding or at the conclusion of a prosecution
11 for a criminal offense except a violation of Title 12 or Title 29-A that is a Class D or E
12 crime other than a Class D crime that involves hunting while under the influence of
13 intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~ alcohol level or the
14 operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor
15 vehicle while under the influence of intoxicating liquor or drugs or with an excessive
16 ~~blood-alcohol~~ alcohol level, the court shall transmit to the State Bureau of Identification
17 an abstract duly authorized on forms provided by the bureau.

18 **Sec. 25. 25 MRSA §2005, sub-§1, ¶D**, as enacted by PL 1989, c. 917, §13, is
19 amended to read:

20 D. For conduct that occurred after a permit was issued, that the permit holder was
21 convicted of operating a motor vehicle, snowmobile, ATV or watercraft while under
22 the influence of intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~
23 alcohol level and, by a preponderance of the evidence, that at the time of the offense
24 the permit holder was in possession of a loaded firearm; or

25 **Sec. 26. 26 MRSA §682, sub-§7**, as amended by PL 2001, c. 556, §1 and PL
26 2003, c. 689, Pt. B, §6, is further amended to read:

27 **7. Substance abuse test.** "Substance abuse test" means any test procedure designed
28 to take and analyze body fluids or materials from the body for the purpose of detecting
29 the presence of substances of abuse. The term does not include tests designed to
30 determine ~~blood-alcohol concentration~~ the alcohol levels from a sample of an individual's
31 breath.

32 A. "Screening test" means an initial substance abuse test performed through the use
33 of immunoassay technology, or a test technology of similar or greater accuracy and
34 reliability approved by the Department of Health and Human Services under rules
35 adopted under section 687, and that is used as a preliminary step in detecting the
36 presence of substances of abuse.

37 (1) A screening test of an applicant's urine or saliva may be performed at the
38 point of collection through the use of a noninstrumented point of collection test
39 device approved by the federal Food and Drug Administration. Section 683,
40 subsection 5-A governs the use of such tests.

1 B. "Confirmation test" means a 2nd substance abuse test performed through the use
2 of gas chromatography-mass spectrometry that is used to verify the presence of a
3 substance of abuse indicated by an initial positive screening test result.

4 (1) The Department of Health and Human Services may recommend to the joint
5 standing committee of the Legislature having jurisdiction over labor matters that
6 other testing technologies be authorized for use in confirmation tests if the
7 department finds those technologies to be of equal or greater accuracy and
8 reliability than gas chromatography-mass spectrometry.

9 **Sec. 27. 29-A MRSA §1253, sub-§2, ¶D**, as enacted by PL 1993, c. 683, Pt. A,
10 §2 and affected by Pt. B, §5, is amended to read:

11 D. Protect public safety by removing from public ways a commercial driver who
12 has:

13 (1) Operated or attempted to operate a commercial vehicle while having ~~0.04%~~
14 ~~or more by weight of alcohol in that driver's blood~~ an alcohol level of 0.04 grams
15 or more of alcohol per 100 milliliters of blood or 210 liters of breath;

16 (2) Refused to submit to or complete a lawfully requested test to determine
17 ~~blood-alcohol~~ that driver's alcohol level; or

18 (3) Operated or attempted to operate a motor vehicle while under the influence
19 of intoxicating liquor or drugs; and

20 **Sec. 28. 29-A MRSA §1253, sub-§5**, as enacted by PL 1993, c. 683, Pt. A, §2
21 and affected by Pt. B, §5, is amended to read:

22 **5. Operation with an alcohol level of 0.04 grams or more or under the influence**
23 **of intoxicating liquor or drugs.** The Secretary of State shall suspend, without
24 preliminary hearing, the commercial license of a person who has operated or attempted to
25 operate a commercial motor vehicle while having ~~0.04% or more by weight of alcohol in~~
26 ~~the blood~~ an alcohol level of 0.04 grams or more of alcohol per 100 milliliters of blood or
27 210 liters of breath or while under the influence of intoxicating liquor or drugs.

28 The period of suspension must satisfy the regulations adopted by the United States
29 Secretary of Transportation under the Commercial Motor Vehicle Safety Act of 1986,
30 Public Law 99-570, Title XII.

31 **Sec. 29. 29-A MRSA §1404, sub-§2**, as amended by PL 2005, c. 606, Pt. B, §4,
32 is further amended to read:

33 **2. Prior convictions.** A person convicted of operating under the influence of
34 intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~ alcohol level, as defined
35 in section 2453, subsection 2, within 10 years of the date the license is issued, reissued or
36 returned after a period of suspension bears a coded notation of that fact.

37 The Secretary of State may, at the request of a licensee, remove the coded notation from
38 the license of a person convicted for a first operating-under-the-influence offense as
39 defined in section 2453, subsection 2 after 6 years from the date of the conviction if the
40 person has not been convicted or adjudicated of the offense of speeding more than 15

1 miles per hour over the maximum speed limit or any offense described under section
2 2551-A, subsection 1, paragraph A or had a license suspended or revoked within that 6-
3 year period.

4 **Sec. 30. 29-A MRSA §1551, sub-§9**, as enacted by PL 1993, c. 683, Pt. A, §2
5 and affected by Pt. B, §5, is amended to read:

6 **9. OUI.** "OUI" means operating under the influence of intoxicants or with an
7 excessive ~~blood-alcohol~~ alcohol level.

8 **Sec. 31. 29-A MRSA §1653, sub-§1**, as enacted by PL 1993, c. 683, Pt. A, §2
9 and affected by Pt. B, §5, is amended to read:

10 **1. Liability.** An owner or person having control of a motor vehicle who, having
11 knowledge or reason to know that a person is under the influence of intoxicating liquor or
12 drugs or has a ~~blood-alcohol~~ an alcohol level of ~~.08% or more by weight of alcohol in the~~
13 ~~blood~~ 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath,
14 permits that person to operate that motor vehicle is jointly and severally liable with that
15 person for damages caused by the negligence of the person.

16 **Sec. 32. 29-A MRSA §2401, sub-§2**, as enacted by PL 1993, c. 683, Pt. A, §2
17 and affected by Pt. B, §5, is amended to read:

18 **2. Alcohol level.** "~~Blood-alcohol~~ Alcohol level" means ~~a stated percentage by~~
19 ~~weight of alcohol in the blood, based on grams of alcohol per 100 milliliters of blood~~
20 either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of
21 breath.

22 **Sec. 33. 29-A MRSA §2401, sub-§3**, as amended by PL 1995, c. 368, Pt. AAA,
23 §3, is further amended to read:

24 **3. Chemical test or test.** "Chemical test" or "test" means a test or tests used to
25 determine ~~blood-alcohol~~ alcohol level or drug concentration by analysis of blood, breath
26 or urine.

27 **Sec. 34. 29-A MRSA §2401, sub-§8**, as amended by PL 1995, c. 482, Pt. A, §26,
28 is further amended to read:

29 **8. OUI.** "OUI" means operating under the influence of intoxicants or with an
30 excessive ~~blood-alcohol~~ alcohol level under section 2411, 2453, 2454, 2456, 2457 or
31 2472.

32 **Sec. 35. 29-A MRSA §2401, sub-§9, ¶E**, as amended by PL 1995, c. 65, Pt. A,
33 §113 and affected by §153 and Pt. C, §15, is further amended to read:

34 E. In a tribal court of the Penobscot Nation or the Passamaquoddy Tribe, a court of
35 the United States or a court of a state that is not a party to the compact, an offense for
36 which punishment includes the possibility of incarceration, whether or not actually
37 imposed, and the elements of the offense as provided in the law of that jurisdiction
38 include operation of a motor vehicle while intoxicated, impaired or under the

1 influence of alcohol, intoxicating liquor or drugs or with a level of ~~blood alcohol~~
2 alcohol sufficient for conviction under the laws of that jurisdiction; or

3 **Sec. 36. 29-A MRSA §2404**, as enacted by PL 1993, c. 683, Pt. A, §2 and
4 affected by Pt. B, §5, is amended to read:

5 **§2404. Owner liable for damage by impaired operator**

6 An owner or person having control over a motor vehicle who, having knowledge or
7 reason to know that a person under the influence of intoxicants has a ~~blood alcohol~~ an
8 alcohol level of ~~.08% or more by weight of alcohol in the blood~~ 0.08 grams or more of
9 alcohol per 100 milliliters of blood or 210 liters of breath, permits that person to operate
10 that motor vehicle is jointly and severally liable with that person for damages caused by
11 the negligence of the person. This section is not in derogation of, does not limit and does
12 not diminish any cause of action or right of recovery that is or may become available
13 under the common law.

14 **Sec. 37. 29-A MRSA §2411, sub-§1-A, ¶A**, as enacted by PL 2003, c. 452, Pt.
15 Q, §78 and affected by Pt. X, §2, is amended to read:

16 A. Operates a motor vehicle:

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

18 (2) While having a ~~blood alcohol~~ an alcohol level of ~~0.08% or more~~ 0.08 grams
19 or more of alcohol per 100 milliliters of blood or 210 liters of breath;

20 **Sec. 38. 29-A MRSA §2411, sub-§1-A, ¶D**, as amended by PL 2005, c. 606, Pt.
21 A, §1, is further amended to read:

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

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

25 (1-A) In fact causes the death of another person; or

26 (2) Has either a prior conviction for a Class C crime under this section or former
27 Title 29, section 1312-B or a prior criminal homicide conviction involving or
28 resulting from the operation of a motor vehicle while under the influence of
29 intoxicating liquor or drugs or with a ~~blood alcohol~~ an alcohol level of ~~0.08% or~~
30 ~~greater~~ 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of
31 breath.

32 **Sec. 39. 29-A MRSA §2411, sub-§2**, as amended by PL 2003, c. 452, Pt. Q, §79
33 and affected by Pt. X, §2, is further amended to read:

34 **2. Pleading and proof.** The alternatives outlined in subsection 1-A, paragraph A
35 may be pleaded in the alternative. The State is not required to elect between the
36 alternatives prior to submission to the fact finder. In a prosecution under subsection 1-A,
37 paragraph D, the State need not prove that the defendant's condition of being under the
38 influence of intoxicants or having a ~~blood alcohol~~ an alcohol level of ~~0.08% or more~~ 0.08
39 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath caused the

1 serious bodily injury or death alleged. The State must prove only that the defendant's
2 operation caused the serious bodily injury or death. The court shall apply Title 17-A,
3 section 33 in assessing any causation under this section.

4 **Sec. 40. 29-A MRSA §2411, sub-§4**, as enacted by PL 1993, c. 683, Pt. A, §2
5 and affected by Pt. B, §5, is amended to read:

6 **4. Arrest.** A law enforcement officer may arrest, without a warrant, a person the
7 officer has probable cause to believe has operated a motor vehicle while under the
8 influence of intoxicants if the arrest occurs within a period following the offense
9 reasonably likely to result in the obtaining of probative evidence of ~~blood-alcohol~~ an
10 alcohol level or drug concentration.

11 **Sec. 41. 29-A MRSA §2411, sub-§5, ¶A**, as amended by PL 2003, c. 673, Pt.
12 TT, §4, is further amended to read:

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

14 (1) A fine of not less than \$500, except that if the person failed to submit to a
15 test, a fine of not less than \$600;

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

17 (3) A period of incarceration as follows:

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

19 (i) Was tested as having a ~~blood-alcohol~~ an alcohol level of ~~0.15% or~~
20 ~~more 0.15 grams or more of alcohol per 100 milliliters of blood or 210~~
21 liters of breath;

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

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

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

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

27 **Sec. 42. 29-A MRSA §2411, sub-§7**, as enacted by PL 1993, c. 683, Pt. A, §2
28 and affected by Pt. B, §5, is amended to read:

29 **7. Surcharge.** A surcharge must be charged for a conviction under this section. The
30 surcharge is \$30, except that, when the person operated or attempted to operate a motor
31 vehicle while under the influence of drugs or a combination of liquor and drugs, the
32 surcharge is \$125. For the purposes of collection procedures, the surcharge is considered
33 a fine. Notwithstanding section 2602, this surcharge accrues to the Highway Fund for the
34 purpose of covering the costs associated with the administration and analysis of ~~blood-~~
35 alcohol level tests.

36 **Sec. 43. 29-A MRSA §2421, sub-§2**, as enacted by PL 1993, c. 683, Pt. A, §2
37 and affected by Pt. B, §5, is amended to read:

1 **2. Seizure of vehicle of owner-operator.** A motor vehicle operated by a sole owner
2 is subject to seizure by a law enforcement officer when:

3 A. The owner-operator operates or attempts to operate that motor vehicle under the
4 influence of intoxicating liquor or drugs or while having ~~0.08% of alcohol by weight~~
5 in the blood an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of
6 blood or 210 liters of breath; and

7 B. The owner-operator is under suspension or revocation as a result of a previous
8 conviction of operating under influence of alcohol or drugs or while having ~~0.08% of~~
9 ~~alcohol by weight in the blood~~ an alcohol level of 0.08 grams or more of alcohol per
10 100 milliliters of blood or 210 liters of breath.

11 **Sec. 44. 29-A MRSA §2431, sub-§1,** as enacted by PL 1993, c. 683, Pt. A, §2
12 and affected by Pt. B, §5, is amended to read:

13 **1. Test results.** Test results showing a drug ~~concentrations~~ concentration or ~~blood-~~
14 ~~alcohol~~ alcohol level at the time alleged are admissible in evidence. Failure to comply
15 with the provisions of sections 2521 and 2523 may not, by itself, result in the exclusion of
16 evidence of ~~blood-alcohol~~ alcohol level or drug concentration, unless the evidence is
17 determined to be not sufficiently reliable.

18 **Sec. 45. 29-A MRSA §2431, sub-§2, ¶A,** as enacted by PL 1993, c. 683, Pt. A,
19 §2 and affected by Pt. B, §5, is amended to read:

20 A. A person certified in accordance with section 2524 conducting a chemical
21 analysis of blood, breath or urine to determine ~~blood-alcohol~~ an alcohol level or drug
22 concentration may issue a certificate stating the results of the analysis.

23 **Sec. 46. 29-A MRSA §2431, sub-§2, ¶C,** as enacted by PL 1993, c. 683, Pt. A,
24 §2 and affected by Pt. B, §5 and amended by PL 2003, c. 689, Pt. B, §6, is further
25 amended to read:

26 C. A certificate issued in accordance with paragraph A or B, when duly signed and
27 sworn, is prima facie evidence that:

- 28 (1) The person taking the specimen was authorized to do so;
- 29 (2) Equipment, chemicals and other materials used in the taking of the specimen
30 were of a quality appropriate for the purpose of producing reliable test results;
- 31 (3) Equipment, chemicals or materials required to be approved by the
32 Department of Health and Human Services were in fact approved;
- 33 (4) The sample tested was in fact the same sample taken from the defendant; and
- 34 (5) The ~~blood-alcohol~~ alcohol level or drug concentration in the blood of the
35 defendant at the time the sample was taken was as stated in the certificate.

36 **Sec. 47. 29-A MRSA §2431, sub-§2, ¶G,** as enacted by PL 1993, c. 683, Pt. A,
37 §2 and affected by Pt. B, §5, is amended to read:

1 G. The results of a self-contained breath-alcohol apparatus test is prima facie
2 evidence of ~~blood-alcohol~~ an alcohol level.

3 **Sec. 48. 29-A MRSA §2432**, as enacted by PL 1993, c. 683, Pt. A, §2 and
4 affected by Pt. B, §5, is amended to read:

5 **§2432. Alcohol level; evidentiary weight**

6 **1. Level less than 0.05 grams.** If a person has a ~~blood-alcohol~~ an alcohol level of
7 ~~0.05% or less~~ 0.05 grams or less of alcohol per 100 milliliters of blood or 210 liters of
8 breath, it is prima facie evidence that that person is not under the influence of alcohol.

9 **2. Level greater than 0.05 grams and less than 0.08 grams.** If a person has a
10 ~~blood-alcohol~~ an alcohol level in excess of 0.05%, ~~but less than 0.08%~~ 0.05 grams of
11 alcohol but less than 0.08 grams of alcohol per 100 milliliters of blood or 210 liters of
12 breath, it is relevant evidence, but not prima facie, indicating whether or not that person is
13 under the influence of intoxicants to be considered with other competent evidence.

14 **3. Level of 0.08 grams or greater.** In proceedings other than under section 2411, a
15 person is presumed to be under the influence of intoxicants if that person has a ~~blood-~~
16 ~~alcohol~~ an alcohol level of ~~0.08% or more~~ 0.08 grams or more of alcohol per 100
17 milliliters of blood or 210 liters of breath.

18 **Sec. 49. 29-A MRSA §2453**, as amended by PL 2003, c. 434, §29 and affected by
19 §37, is further amended to read:

20 **§2453. Suspension on administrative determination; excessive alcohol level**

21 **1. Purpose.** The purpose of this section is:

22 A. To provide maximum safety for all persons who travel on or otherwise use the
23 public ways; and

24 B. To remove quickly from public ways those persons who have shown themselves
25 to be a safety hazard by operating a motor vehicle with an excessive ~~blood-alcohol~~
26 alcohol level.

27 **2. Definition.** For the purposes of this section, "operating a motor vehicle with an
28 excessive ~~blood-alcohol~~ alcohol level" means operating a motor vehicle with a ~~blood-~~
29 ~~alcohol~~ an alcohol level of ~~0.08% or more~~ 0.08 grams or more of alcohol per 100
30 milliliters of blood or 210 liters of breath.

31 **3. Suspension.** The Secretary of State shall immediately suspend a license of a
32 person determined to have operated a motor vehicle with an excessive ~~blood-alcohol~~
33 alcohol level.

34 **4. Drug and alcohol program.** The Secretary of State may not suspend a license
35 solely because a person has not satisfactorily completed an alcohol and drug program, as
36 defined in subchapter ~~1~~ 1. This limitation does not affect statutory restoration authority.

1 **5. Stay.** If, within 10 days from the effective date of the suspension, the Secretary of
2 State receives a request in writing for a hearing in accordance with section 2483, the
3 suspension is stayed until a hearing is held and a decision is issued.

4 **6. Period of suspension.** The following periods of suspension apply.

5 A. The same suspension period applies as if the person were convicted of OUI.

6 C. If a person's license is also suspended for an OUI conviction arising out of the
7 same occurrence, the period of time the license has been suspended under this section
8 prior to the conviction must be deducted from the period of time of a court-imposed
9 suspension.

10 D. The period of suspension is a minimum and the Secretary of State may suspend
11 the license for an additional period under section 2451, subsection 3.

12 **7. Restoration of license.** The Secretary of State may issue a license or permit as
13 follows.

14 A. Restoration of any license or permit to operate, right to operate a motor vehicle
15 and right to apply for or obtain a license suspended under this section must be in
16 accordance with sections 2502 to 2506.

17 **8. Hearing.** The scope of the hearing must include whether:

18 A. The person operated a motor vehicle with an excessive ~~blood-alcohol~~ alcohol
19 level; and

20 B. There was probable cause to believe that the person was operating a motor
21 vehicle with an excessive ~~blood-alcohol~~ alcohol level.

22 **Sec. 50. 29-A MRSA §2455, sub-§1**, as amended by PL 1995, c. 645, Pt. B, §20,
23 is further amended to read:

24 **1. Report by district attorney.** The district attorney shall forward a report to the
25 Secretary of State when any person is convicted of a criminal homicide or adjudicated to
26 have committed a juvenile offense of criminal homicide as the result of that person's
27 operation of a motor vehicle when:

28 A. The person was operating under the influence of intoxicating liquor or drugs, or
29 with ~~a blood-alcohol~~ an alcohol level of 0.08% or greater 0.08 grams or more of
30 alcohol per 100 milliliters of blood or 210 liters of breath;

31 B. The person had not attained the legal drinking age and was operating a motor
32 vehicle with ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00
33 grams per 100 milliliters of blood or 210 liters of breath;

34 C. There was probable cause to believe that the person was operating under the
35 influence of intoxicating liquor or drugs and failed to comply with that person's duty
36 to submit to and complete required chemical testing; or

37 D. There was probable cause to believe that the person had not attained the legal
38 drinking age and was operating a motor vehicle with ~~any amount of alcohol in the~~
39 ~~blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210

1 liters of breath and failed to comply with the duty to submit to and complete a test to
2 determine ~~blood-alcohol~~ alcohol level.

3 **Sec. 51. 29-A MRSA §2456, sub-§1, ¶B**, as enacted by PL 1993, c. 683, Pt. A,
4 §2 and affected by Pt. B, §5, is amended to read:

5 B. While having a ~~blood-alcohol~~ an alcohol level of ~~0.08% or more~~ more than 0.08
6 grams per 100 milliliters of blood or 210 liters of breath; or

7 **Sec. 52. 29-A MRSA §2456, sub-§3, ¶B**, as enacted by PL 1993, c. 683, Pt. A,
8 §2 and affected by Pt. B, §5, is amended to read:

9 B. The person, at that time, had an excessive ~~blood-alcohol~~ alcohol level, or was
10 under the influence of intoxicants or may be penalized for failure to submit to
11 required chemical testing; and

12 **Sec. 53. 29-A MRSA §2457, sub-§1, ¶B**, as amended by PL 1995, c. 368, Pt.
13 AAA, §20, is further amended to read:

14 B. As the Secretary of State determines, has operated a motor vehicle while having
15 ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100
16 milliliters of blood or 210 liters of breath.

17 **Sec. 54. 29-A MRSA §2457, sub-§2**, as amended by PL 1995, c. 368, Pt. AAA,
18 §21, is further amended to read:

19 **2. Duty to submit to test.** A person who operates a motor vehicle with a conditional
20 license shall submit to a test if there is probable cause to believe that person holds a
21 conditional license and operated a motor vehicle with ~~any amount of alcohol in the blood~~
22 an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of
23 breath. The other provisions of subchapter IV 4 apply, except the suspension must be for
24 a period of not less than 2 years.

25 **Sec. 55. 29-A MRSA §2457, sub-§3, ¶C**, as enacted by PL 1993, c. 683, Pt. A,
26 §2 and affected by Pt. B, §5, is amended to read:

27 C. If a person is determined to have operated a motor vehicle with a ~~blood-alcohol~~
28 an alcohol level of ~~0.08% or more~~ 0.08 grams or more of alcohol per 100 milliliters
29 of blood or 210 liters of breath and both this section and section 2453 apply, the
30 longer period of suspension applies.

31 **Sec. 56. 29-A MRSA §2457, sub-§4**, as amended by PL 1995, c. 368, Pt. AAA,
32 §22, is further amended to read:

33 **4. Hearing; stay; issues.** If a hearing is requested in accordance with section 2483,
34 the suspension under subsection 1, paragraph B is stayed pending the outcome of the
35 hearing. The scope of the hearing must include whether:

36 A. The person operated a motor vehicle with ~~any amount of alcohol in the blood~~ an
37 alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of
38 breath;

1 B. There was probable cause to believe that the person was operating with ~~any~~
2 ~~amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100
3 milliliters of blood or 210 liters of breath; and

4 C. The person held a conditional license.

5 **Sec. 57. 29-A MRSA §2472, sub-§1**, as amended by PL 2005, c. 433, §26 and
6 affected by §28, is further amended to read:

7 **1. Licensee not yet 21 years of age.** A license issued to a person who has not yet
8 attained the age of 21 years is a provisional license for a period of 2 years following the
9 date of issue or until the holder attains 21 years of age, whichever occurs last. That
10 license remains in force as a nonprovisional license to the next normal expiration date. A
11 license issued by another jurisdiction to a person who has not yet attained the age of 21
12 years is a provisional license for the purpose of operating a motor vehicle within this
13 State.

14 A license of a person who has not yet attained 21 years of age includes the condition that
15 the person not operate a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol
16 level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. When a
17 person who has not yet attained 21 years of age operates a motor vehicle with ~~any amount~~
18 ~~of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of
19 blood or 210 liters of breath, the provisions of section 1251, subsection 1, paragraph B
20 apply.

21 **Sec. 58. 29-A MRSA §2472, sub-§3**, as amended by PL 1997, c. 737, §17, is
22 further amended to read:

23 **3. Suspension for OUI conviction or certain alcohol level.** The Secretary of State
24 shall suspend, without preliminary hearing, a juvenile provisional license of a person
25 who:

26 A. Receives an OUI conviction; or

27 B. Operates a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol
28 level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath.

29 **Sec. 59. 29-A MRSA §2472, sub-§3-A**, as enacted by PL 1997, c. 737, §18, is
30 amended to read:

31 **3-A. Juvenile provisional license; suspension for OUI conviction or certain**
32 **alcohol level.** Unless a longer period of suspension applies, the Secretary of State shall
33 suspend, without a preliminary hearing, a juvenile provisional license pursuant to
34 subsection 3 for the following periods:

35 A. One year for a first offense; and

36 B. Two years for a 2nd offense.

37 If the Secretary of State determines that the person operated the motor vehicle at the time
38 of the offense with a passenger under 21 years of age, an additional suspension period of
39 180 days must be imposed.

1 **Sec. 60. 29-A MRSA §2472, sub-§4**, as amended by PL 1997, c. 737, §19, is
2 further amended to read:

3 **4. Duty to submit to test.** A person under 21 years of age who operates a motor
4 vehicle shall submit to a chemical test if there is probable cause to believe that person has
5 operated a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol level of
6 more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. The provisions
7 of subchapter ~~IV~~ 4 apply, except the suspension is:

- 8 A. Eighteen months for the first refusal; and
- 9 B. Thirty months for a 2nd or subsequent refusal.

10 If the Secretary of State determines that the person operated the motor vehicle at the time
11 of the offense with a passenger under 21 years of age, an additional suspension period of
12 180 days must be imposed.

13 **Sec. 61. 29-A MRSA §2472, sub-§5, ¶A**, as amended by PL 1995, c. 26, §2, is
14 further amended to read:

- 15 A. There was probable cause to believe that the person was under 21 years of age
16 and operated a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol
17 level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath;

18 **Sec. 62. 29-A MRSA §2472, sub-§5, ¶B**, as amended by PL 1995, c. 26, §2, is
19 further amended to read:

- 20 B. The person operated a motor vehicle with ~~any amount of alcohol in the blood~~ an
21 alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of
22 breath; and

23 **Sec. 63. 29-A MRSA §2481, sub-§1**, as corrected by RR 1995, c. 2, §73, is
24 amended to read:

25 **1. Report of officer.** A law enforcement officer who has probable cause to believe a
26 person has violated the terms of a conditional driver's license, commercial driver's license
27 or provisional license or committed an OUI offense shall send to the Secretary of State a
28 report of all relevant information, including, but not limited to, the following:

- 29 A. Information adequately identifying the person charged;
- 30 B. The ground that the officer had for probable cause to believe that the person
31 violated the terms of a conditional driver's license, commercial driver's license or
32 provisional license or committed an OUI offense;
- 33 C. A certificate of the results of ~~blood-alcohol~~ alcohol level tests conducted on a
34 self-contained breath-alcohol testing apparatus; and
- 35 D. If a person fails to submit to a test, the law enforcement officer's report may be
36 limited to a written statement under oath stating that the officer had probable cause to
37 believe that the person violated the terms of a conditional driver's license, commercial
38 driver's license or provisional license, or committed an OUI offense and failed to
39 submit to a test.

1 The report must be under oath and on a form approved by the Secretary of State.

2 If the ~~blood-alcohol~~ alcohol level test was not analyzed by a law enforcement officer, the
3 person who analyzed the results shall send a copy of that certificate to the Secretary of
4 State.

5 **Sec. 64. 29-A MRSA §2482, sub-§2, ¶F**, as amended by PL 1997, c. 776, §50,
6 is further amended to read:

7 F. If the suspension or revocation is based on a report under section 2481, that a
8 copy of the report of the law enforcement officer and any ~~blood-alcohol~~ alcohol test
9 certificate will be provided to the person upon request to the Secretary of State.

10 **Sec. 65. 29-A MRSA §2506**, as amended by PL 2001, c. 671, §31, is further
11 amended to read:

12 **§2506. Conditional license**

13 A license, including a nonresident's operating privilege, issued to a person with an
14 OUI conviction must be issued on the condition that the person not operate a motor
15 vehicle with ~~any amount of alcohol in the person's blood~~ an alcohol level of more than
16 0.00 grams per 100 milliliters of blood or 210 liters of breath for the following periods
17 from the license reinstatement date: on first conviction, one year; and on a 2nd or
18 subsequent conviction, 10 years. The provisions of sections 1251, subsection 1 and 2457
19 apply.

20 **Sec. 66. 29-A MRSA §2521, sub-§1**, as enacted by PL 1993, c. 683, Pt. A, §2
21 and affected by Pt. B, §5, is amended to read:

22 **1. Mandatory submission to test.** If there is probable cause to believe a person has
23 operated a motor vehicle while under the influence of intoxicants, that person shall
24 submit to and complete a test to determine ~~blood-alcohol~~ an alcohol level and drug
25 concentration by analysis of blood, breath or urine.

26 **Sec. 67. 29-A MRSA §2522, sub-§1**, as amended by PL 2003, c. 565, §1, is
27 further amended to read:

28 **1. Mandatory submission to test.** If there is probable cause to believe that death
29 has occurred or will occur as a result of an accident, an operator of a motor vehicle
30 involved in the motor vehicle accident shall submit to a chemical test, as defined in
31 section 2401, subsection 3, to determine ~~blood-alcohol~~ an alcohol level or drug
32 concentration in the same manner as for OUI.

33 **Sec. 68. 29-A MRSA §2523, sub-§1**, as enacted by PL 1993, c. 683, Pt. A, §2
34 and affected by Pt. B, §5, is amended to read:

35 **1. Mandatory submission to test.** A person who operates a commercial motor
36 vehicle shall submit to a test to determine ~~the blood-alcohol~~ that person's alcohol level or
37 drug concentration if there is probable cause to believe that the person has operated a
38 commercial motor vehicle while having a ~~blood-alcohol~~ an alcohol level of 0.04% ~~or~~

1 ~~more 0.04 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath or~~
2 while under the influence of drugs.

3 **Sec. 69. 29-A MRSA §2523, sub-§3, ¶A**, as enacted by PL 1993, c. 683, Pt. A,
4 §2 and affected by Pt. B, §5, is amended to read:

5 A. There is probable cause to believe the person operated a commercial motor
6 vehicle while under the influence of drugs or with ~~a blood-alcohol~~ an alcohol level of
7 ~~.04% or more by weight of alcohol~~ 0.04 grams or more of alcohol per 100 milliliters
8 of blood or 210 liters of breath;

9 **Sec. 70. 29-A MRSA §2524, sub-§4**, as enacted by PL 1993, c. 683, Pt. A, §2
10 and affected by Pt. B, §5 and amended by PL 2003, c. 689, Pt. B, §6, is further amended
11 to read:

12 **4. Chemical tests on breath and urine specimens.** A sample specimen of breath or
13 urine may be submitted to the Department of Health and Human Services or a person
14 certified by the Department of Health and Human Services for the purpose of conducting
15 chemical tests to determine ~~blood-alcohol~~ alcohol level or drug concentration.

16 **Sec. 71. 29-A MRSA §2524, sub-§5**, as enacted by PL 1993, c. 683, Pt. A, §2
17 and affected by Pt. B, §5 and amended by PL 2003, c. 689, Pt. B, §6, is further amended
18 to read:

19 **5. Equipment for taking specimens.** Only equipment having a stamp of approval
20 affixed by the Department of Health and Human Services may be used to take a sample
21 specimen of breath or urine, except that a self-contained, breath-alcohol testing apparatus
22 if reasonably available may be used to determine the ~~blood-alcohol~~ alcohol level.

23 Approved testing apparatus must have a stamp of approval affixed by the Department of
24 Health and Human Services after periodic testing. That stamp is valid for no more than
25 one year.

26 SUMMARY

27 Current law regarding operating while under the influence of alcohol specifies, in
28 most occurrences, a blood-alcohol level. This bill clarifies that the presence and level of
29 alcohol may be determined by using breath or blood testing.