

MAINE STATE LEGISLATURE

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No. 988

H.P. 683

House of Representatives, March 18, 2015

An Act To Create the Crime of Operating While Fatigued

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

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative GUERIN of Glenburn. (BY REQUEST)

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

2 **Sec. 1. 29-A MRSA §2415-A** is enacted to read:

3 **§2415-A. Operating while fatigued**

4 **1. Fatigued driving.** A person commits operating while fatigued if that person:

5 **A. Operates a motor vehicle:**

6 **(1) While having been without sleep for a period of 24 consecutive hours;**

7 **(2) While having been without sleep for 24 consecutive hours and is in the state**
8 **of sleep; or**

9 **(3) While the person's ability or alertness is so impaired by fatigue as to make it**
10 **unsafe to begin or continue to operate a motor vehicle;**

11 **B. Violates paragraph A and:**

12 **(1) Has one previous operating while fatigued offense within a 10-year period;**

13 **(2) Has 2 previous operating while fatigued offenses within a 10-year period; or**

14 **(3) Has 3 or more operating while fatigued offenses within a 10-year period; or**

15 **C. Violates paragraph A or B and:**

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

18 **(2) In fact causes the death of another person; or**

19 **(3) Has either a prior conviction for a Class B or Class C crime under this**
20 **section or a prior criminal homicide conviction involving or resulting from the**
21 **operation of a motor vehicle while operating while fatigued. For purposes of this**
22 **subparagraph, the 10-year limitation specified in section 2402 and Title 17-A,**
23 **section 9-A, subsection 3 does not apply to the prior criminal homicide**
24 **conviction.**

25 **2. Penalties.** Except as provided in paragraphs C, D, E and F, violation of this
26 **section is a Class D crime, which is a strict liability crime as defined in Title 17-A,**
27 **section 34, subsection 4-A. The following minimum penalties apply and may not be**
28 **suspended:**

29 **A. For a person having no operating while fatigued offenses within a 10-year period:**

30 **(1) A fine of not less than \$500;**

31 **(2) A court-ordered suspension of a driver's license for a period of 150 days; and**

32 **(3) A period of incarceration as follows:**

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

34 **(i) Was exceeding the speed limit by 30 miles per hour or more;**

35 **(ii) Eluded or attempted to elude an officer; or**

- 1 (iii) Was operating with a passenger under 21 years of age;
- 2 B. For a person having one previous operating while fatigued offense within a 10-
3 year period:
- 4 (1) A fine of not less than \$700;
- 5 (2) A period of incarceration of not less than 7 days;
- 6 (3) A court-ordered suspension of a driver's license for a period of 3 years; and
- 7 (4) In accordance with section 2416, a court-ordered suspension of the person's
8 right to register a motor vehicle;
- 9 C. For a person having 2 previous operating while fatigued offenses within a 10-year
10 period, which is a Class C crime:
- 11 (1) A fine of not less than \$1,100;
- 12 (2) A period of incarceration of not less than 30 days;
- 13 (3) A court-ordered suspension of a driver's license for a period of 6 years; and
- 14 (4) In accordance with section 2416, a court-ordered suspension of the person's
15 right to register a motor vehicle;
- 16 D. For a person having 3 or more previous operating while fatigued offenses within a
17 10-year period, which is a Class C crime:
- 18 (1) A fine of not less than \$2,100;
- 19 (2) A period of incarceration of not less than 6 months;
- 20 (3) A court-ordered suspension of a driver's license for a period of 8 years; and
- 21 (4) In accordance with section 2416, a court-ordered suspension of the person's
22 right to register a motor vehicle;
- 23 E. A violation of subsection 1, paragraph C, subparagraph (1) is a Class C crime,
24 which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.
25 The sentence must include a period of incarceration of not less than 6 months, a fine
26 of not less than \$2,100 and a court-ordered suspension of a driver's license for a
27 period of 6 years. These penalties may not be suspended;
- 28 F. A violation of subsection 1, paragraph C, subparagraph (2) or (3) is a Class B
29 crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection
30 4-A. The sentence must include a period of incarceration of not less than 6 months, a
31 fine of not less than \$2,100 and a court-ordered suspension of a driver's license for a
32 period of 10 years. These penalties may not be suspended; and
- 33 G. The court shall order an additional period of license suspension of 275 days for a
34 person sentenced under paragraph A, B or C if the person was operating the motor
35 vehicle at the time of the offense with a passenger under 21 years of age.
- 36 **3. Notice and custody.** The court shall give notice of a license suspension and shall
37 take physical custody of a defendant's driver's license, except when the defendant
38 demonstrates that the defendant's license was previously restored by the Secretary of

1 State following an administrative suspension under section 2456 for operating while
2 fatigued based on the same facts and circumstances giving rise to the court-ordered
3 suspension.

4 **4. Surcharge.** A surcharge must be charged for a conviction under this section. The
5 surcharge is \$30. For the purposes of collection procedures, the surcharge is considered a
6 fine.

7 **5. Juvenile crime.** References in this Title to this section include the juvenile crime
8 in Title 15, section 3103, subsection 1, paragraph F and the disposition, including a
9 suspension, for that juvenile crime in Title 15, section 3314, subsection 3, except as
10 otherwise provided or except where the context clearly requires otherwise.

11 **Sec. 2. 29-A MRSA §2416, sub-§1,** as amended by PL 1995, c. 368, Pt. AAA,
12 §13, is further amended to read:

13 **1. Required registration suspension; return of certificate and plates.** The court
14 shall suspend the right to register a motor vehicle and all registration certificates and
15 plates issued by the Secretary of State to any person convicted for a violation of section
16 2411 or 2415-A who has a previous conviction for OUI or for operating while fatigued
17 within the 10-year period defined by section 2402. The Secretary of State shall return the
18 certificate of registration and plates to the defendant when the defendant's license and
19 registration privileges have been restored.

20 **Sec. 3. 29-A MRSA §2453-B** is enacted to read:

21 **§2453-B. Suspension on administrative determination; operating while fatigued**

22 **1. Definition.** For the purposes of this section, "operating while fatigued" means
23 operating a motor vehicle:

24 A. While having been without sleep for a period of 24 consecutive hours;

25 B. While having been without sleep for 24 consecutive hours and in the state of
26 sleep; or

27 C. With ability or alertness so impaired by fatigue as to make it unsafe to begin or
28 continue to operate a motor vehicle.

29 **2. Suspension.** The Secretary of State shall immediately suspend a driver's license
30 of a person determined to have committed operating while fatigued.

31 **3. Period of suspension.** The following periods of suspension apply.

32 A. The same suspension period applies as if the person were convicted of OUI,
33 including suspension periods for multiple offenses within a 10-year period and other
34 aggravating factors.

35 B. If a person's license is also suspended for an OUI conviction arising out of the
36 same occurrence, the period of time the license has been suspended under this section
37 prior to the conviction must be deducted from the period of time of a court-imposed
38 suspension.

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

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

6 **5. Hearing.** The scope of a hearing requested by a person in accordance with
7 section 2483 must include whether:

8 A. The person operated a motor vehicle while fatigued; and

9 B. There was probable cause to believe that the person was operating a motor vehicle
10 while fatigued.

11 **6. Restoration of license.** Restoration of any license or permit to operate, right to
12 operate a motor vehicle and right to apply for or obtain a license suspended under this
13 section must be in accordance with sections 2502 to 2506.

14 **Sec. 4. 29-A MRSA §2456, sub-§1,** as amended by PL 2009, c. 447, §51, is
15 further amended to read:

16 **1. Suspension.** The Secretary of State shall immediately suspend the license of a
17 person who negligently operates a motor vehicle in a manner as to cause the death of a
18 person:

19 A. While under the influence of intoxicants;

20 B. While having an alcohol level of more than 0.08 grams per 100 milliliters of
21 blood or 210 liters of breath; ~~or~~

22 C. Who subsequently fails to submit to a test subject to penalty under section 2521-;
23 or

24 D. While operating while fatigued.

25 **Sec. 5. 29-A MRSA §2456, sub-§3, ¶B,** as amended by PL 2009, c. 447, §52, is
26 further amended to read:

27 B. The person, at that time, had an excessive alcohol level, ~~or~~ was under the
28 influence of intoxicants ~~or~~, may be penalized for failure to submit to required
29 chemical testing or was operating while fatigued; and

30 **Sec. 6. 29-A MRSA §2472, sub-§3,** as amended by PL 2011, c. 335, §6, is
31 further amended to read:

32 **3. Suspension for OUI conviction, certain alcohol level, operating under the**
33 **influence of drugs or operating while fatigued.** The Secretary of State shall suspend,
34 without preliminary hearing, a juvenile provisional license of a person who:

35 A. Receives an OUI conviction;

36 B. Operates a motor vehicle with an alcohol level of more than 0.00 grams per 100
37 milliliters of blood or 210 liters of breath; ~~or~~

- 1 C. Operates a motor vehicle under the influence of drugs; or
- 2 D. Operates a motor vehicle while fatigued.

3 **Sec. 7. 29-A MRSA §2472, sub-§5-A** is enacted to read:

4 **5-A. Hearing; stay; issues.** If a hearing is requested in accordance with section
5 2483, the suspension under subsection 3, paragraph D is stayed pending the outcome of
6 the hearing. The scope of a hearing must include whether:

7 A. There was probable cause to believe that the person was under 21 years of age
8 and operated a motor vehicle while fatigued; or

9 B. The person operated a motor vehicle while fatigued; and

10 C. The person was under 21 years of age.

11 **SUMMARY**

12 This bill creates the new crime of operating while fatigued. A person commits the
13 crime of operating while fatigued if that person operates a motor vehicle while having
14 been without sleep for a period of 24 consecutive hours; while having been without sleep
15 for 24 consecutive hours and is in the state of sleep; or while the person's ability or
16 alertness is so impaired by fatigue as to make it unsafe to begin or continue to operate a
17 motor vehicle. The criminal and administrative penalties for operating while fatigued are
18 consistent with criminal and administrative penalties for operating under the influence,
19 including the application of those penalties to juveniles.