

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 762

H.P. 567

House of Representatives, February 12, 2019

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**An Act To Bring Maine's Laws Concerning Implied Consent in  
Operating a Motor Vehicle into Compliance with Recent Opinions  
of the United States Supreme Court**

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative TALBOT ROSS of Portland.  
Cosponsored by Representatives: ACKLEY of Monmouth, CARDONE of Bangor,  
DAUGHTRY of Brunswick, MAXMIN of Nobleboro, MOONEN of Portland, PLUECKER of  
Warren, STOVER of Boothbay, TIPPING of Orono.

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

2 **Sec. 1. 5 MRSA §20071, sub-§1**, as amended by PL 1999, c. 448, §1, is further  
3 amended to read:

4 **1. Alcohol-related or other drug-related motor vehicle incident.** "Alcohol-related  
5 or other drug-related motor vehicle incident" means a conviction or administrative action  
6 resulting in the suspension of a motor vehicle operator's license for a violation under  
7 former Title 29, section 1311-A; Title 29, section 1312, subsection 10-A; Title 29, section  
8 1312-C; Title 29, section 1312-B; Title 29, section 1313-B; Title 29, section 2241,  
9 subsection 1, paragraph N; Title 29, section 2241-G, subsection 2, paragraph B,  
10 subparagraph (2); or Title 29, section 2241-J; Title 29-A, section 1253; Title 29-A,  
11 section 2411; Title 29-A, section 2453; Title 29-A, section 2454, subsection 2; Title  
12 29-A, section 2456; Title 29-A, section 2457; Title 29-A, section 2472, subsection 3,  
13 paragraph B and subsection 4; Title 29-A, section 2503; or Title 29-A, sections 2521 to  
14 2523; ~~or Title 29-A, section 2525~~ or the rules adopted by the Department of the Secretary  
15 of State for the suspension of commercial drivers' licenses.

16 **Sec. 2. 29-A MRSA §2401, sub-§5**, as amended by PL 1995, c. 368, Pt. AAA,  
17 §4, is further amended to read:

18 **5. Failure to submit to a test, fails to submit to a test or failed to submit to a test.**  
19 "Failure to submit to a test," "fails to submit to a test" or "failed to submit to a test" means  
20 failure to comply with the duty to submit to and complete a ~~chemical~~ breath test under  
21 section 2521 ~~or 2525~~.

22 **Sec. 3. 29-A MRSA §2472, sub-§4**, as amended by PL 2011, c. 335, §7, is  
23 further amended to read:

24 **4. Duty to submit to test.** A person under 21 years of age who operates a motor  
25 vehicle shall submit to a ~~chemical~~ breath test if there is probable cause to believe that  
26 person has operated a motor vehicle with an alcohol level of more than 0.00 grams per  
27 ~~100 milliliters of blood or~~ 210 liters of breath or while under the influence of a specific  
28 category of drug, a combination of specific categories of drugs or a combination of  
29 alcohol and one or more specific categories of drugs. The provisions of subchapter 4  
30 apply, except the suspension is:

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

33 If the Secretary of State determines that the person operated the motor vehicle at the time  
34 of the offense with a passenger under 21 years of age, an additional suspension period of  
35 180 days must be imposed.

36 **Sec. 4. 29-A MRSA §2521**, as amended by PL 2013, c. 459, §§7 and 8, is further  
37 amended to read:

1           **§2521. Implied consent to breath tests**

2           **1. Mandatory submission to test.** If there is probable cause to believe a person has  
3 operated a motor vehicle while under the influence of intoxicants, that person shall  
4 submit to and complete a test to determine an alcohol level and the presence of a drug or  
5 drug metabolite by analysis of blood, breath or urine.

6           **2. Type of test.** A law enforcement officer shall administer a breath test unless, in  
7 that officer's determination, a breath test is unreasonable.

8 ~~If a breath test is determined to be unreasonable, another chemical test must be~~  
9 ~~administered in place of a breath test.~~

10 ~~For a blood test the operator may choose a physician, if reasonably available.~~

11           **3. Warnings.** Neither a refusal to submit to a test nor a failure to complete a test  
12 may be used for any of the purposes specified in paragraph A, B or C unless the person  
13 has first been told that the refusal or failure will:

- 14           A. Result in suspension of that person's driver's license for a period up to 6 years;
- 15           B. Be admissible in evidence at a trial for operating under the influence of  
16 intoxicants; and
- 17           C. Be considered an aggravating factor at sentencing if the person is convicted of  
18 operating under the influence of intoxicants that, in addition to other penalties, will  
19 subject the person to a mandatory minimum period of incarceration.

20           **4. Exclusion as evidence.** A test result may not be excluded as evidence in a  
21 proceeding before an administrative officer or court solely as a result of the failure of the  
22 law enforcement officer to comply with the notice of subsection 3.

23           **5. Suspension for refusal.** The Secretary of State shall immediately suspend the  
24 license of a person who fails to submit to and complete a test.

25           **6. Period of suspension.** Except when a longer period of suspension is otherwise  
26 provided by law, the suspension is for a period of 275 days for the first refusal, 18 months  
27 for a 2nd refusal, 4 years for a 3rd refusal and 6 years for a 4th refusal.

28           **7. Decision.** A suspension must be removed if, after hearing pursuant to section  
29 2483, it is determined that the person would not have failed to submit but for the failure  
30 of the law enforcement officer to give the warnings required by subsection 3.

31           **8. Issues.** If a hearing is requested in accordance with section 2483, in addition to  
32 specific issues required by a specific offense, the scope of the hearing must include  
33 whether:

- 34           A. There was probable cause to believe the person operated a motor vehicle while  
35 under the influence of intoxicants;
- 36           B. The person was informed of the consequences of failing to submit to a test; and
- 37           C. The person failed to submit to a test.

