

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**  
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

**SECOND SPECIAL SESSION**

September 25, 1981

AND

**THIRD SPECIAL SESSION**

December 9, 1981

AND

**SECOND REGULAR SESSION**

January 6, 1982 to April 13, 1982

AND AT THE

**FOURTH SPECIAL SESSION**

April 28, 1982 to April 29, 1982

AND AT THE

**FIFTH SPECIAL SESSION**

May 13, 1982

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 164, SUBSECTION 6.

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J.S. McCarthy Co.  
Augusta, Maine  
1981

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
SECOND AND THIRD SPECIAL SESSIONS

and

SECOND REGULAR SESSION

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FOURTH AND FIFTH SPECIAL SESSIONS

of the

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1981

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financial assistance to qualified students enrolled at the university through the Maine Health and Higher Educational Facilities Authority and a student loan corporation, the following provisions shall apply to the University of Maine.

1. Issuance of bonds. The Board of Trustees of the University of Maine may provide, by resolution, at one time or from time to time, for the issuance of revenue bonds and other obligations and to loan the proceeds thereof to one or more student loan corporations formed by the board for the purposes of this chapter. Revenue bonds and other obligations issued by the board of trustees shall be issued in the name of the University of Maine, shall be issued in accordance with this chapter and shall be subject to the same limitations and have the same exemptions as other bonds or obligations issued under this chapter.

2. Powers. In addition to any other powers granted by private and special legislation or general law, the board of trustees shall have the same powers as the Maine Health and Higher Educational Facilities Authority, to the extent those powers are necessary to meet the purposes of this chapter.

3. Security. Revenue bonds and other obligations issued under this chapter may be secured in such fashion as the board of trustees, in its discretion, deems appropriate. Revenue bonds and other obligations issued by the board of trustees under this chapter shall not constitute a debt or liability of the State, of any municipality or political subdivision of the State or a pledge of the faith and credit of the State or of any municipality or political subdivision, and shall contain on their face a statement to that effect.

Effective July 13, 1982.

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## CHAPTER 679

H.P. 2309 - L.D. 2138

AN ACT to Clarify the 1981 Amendments  
Relating to the Operating Under the Influence  
and Habitual Offender Laws.

Emergency preamble. Whereas, Acts of the Legislature

do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the First Regular Session of the 110th Legislature, in 1981, passed a comprehensive group of Acts designed to strengthen the laws for preventing persons under the influence of intoxicating liquor or with blood-alcohol level in excess of 0.10% from operating motor vehicles; and

Whereas, certain amendments are necessary to clarify various matters under the new laws, including the relationship between the criminal and civil offenses and the jurisdiction of the juvenile court; and

Whereas, it is essential to the proper enforcement of the operating under the influence or with excessive blood-alcohol laws that these matters be clarified as quickly as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 15 MRSA §757, as amended by PL 1979, c. 252, is repealed and the following enacted in its place:

§757. Allegation of prior conviction when sentenced enhanced; procedure

1. Allegation required. Except as otherwise provided by law, a prior conviction shall be specially alleged if the sentencing provision of any crime requires that a present sentence be enhanced because the defendant has been previously convicted of a specified crime. A sentence is enhanced within the meaning of this section only if the maximum sentence which may be imposed is increased or a mandatory minimum nonsuspendable sentence must be imposed. The prior conviction may be alleged as part of a count in the complaint, information or indictment alleging the principal offense or may be alleged in an ancillary complaint, information or indictment. An ancillary charging instrument may be filed with the court at any time prior to the imposition of the sentence on the principal offense and sentencing shall be continued until after there has been an opportunity to obtain an indictment if an indictment is required for the allegation of the prior conviction or adjudication.

2. Procedure. In a trial to a jury in which the prior conviction is for an offense which is identical to the current principal offense or is sufficiently similar that knowledge of the fact that defendant has been convicted of the prior offense may, in the determination of the presiding justice, unduly influence the ability of the jury to determine guilt fairly, the allegation of the prior conviction or adjudication shall not be read to a jury until after conviction of the principal offense, nor shall the defendant be tried on the issue of whether he was previously adjudicated or convicted until after conviction of the principal offense, unless the prior conviction has been admitted into evidence for another reason. The jury which found the defendant guilty of the current principal offense shall determine whether the defendant was convicted of the prior alleged offense unless that jury has been discharged prior to the filing of an ancillary charging instrument.

3. Identity. If the name and date of birth of the person charged with the current principal offense are the same as those of the person who has been convicted or adjudicated of the prior offense, it shall be presumed that the person charged with the current principal offense is the same person as that person convicted or adjudicated of the prior offense.

Sec. 2. 15 MRSA §3103, sub-§1, ¶A, as amended by PL 1977, c. 664, §11, is further amended to read:

A. Conduct which, if committed by an adult, would be defined as criminal by Title 17-A, the Maine Criminal Code, or by any other criminal statute outside that code, including any rule or regulation under a statute, except for those provisions of Titles 12 and 29, not specifically included in ~~paragraph~~ paragraphs E and F;

Sec. 3. 15 MRSA §3103, sub-§1, ¶D, as amended by PL 1979, c. 681, §6, is further amended to read:

D. If a juvenile is adjudicated to have committed an action described in paragraph B or C, willful refusal to pay a resulting fine or willful violation of the terms of a resulting probation; and

Sec. 4. 15 MRSA §3103, sub-§1, ¶E, as amended by PL 1979, c. 663, §116, is further amended to read:

E. Offenses involving the operation or attempted operation of any motor vehicle, a snowmobile or watercraft while under the influence of intoxicating liquor or drugs, as defined in Title 29, section 1312, and in Title 12, section 2073 7801, subsection 2 9, and

section 7827, subsection 9, respectively; and

Sec. 5. 15 MRSA §3103, sub-§1, ¶F is enacted to read:

F. The criminal violation of operating a motor vehicle under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, as defined in Title 29, section 1312-B.

Sec. 6. 15 MRSA §3301, sub-§1, ¶B, as amended by PL 1981, c. 204, §1, is further amended to read:

B. Make whatever informal adjustment is practicable without a petition, provided that this paragraph does not apply when the juvenile is accused of having committed a juvenile crime pursuant to section 3103, subsection 1, paragraph E; or

Sec. 7. 15 MRSA §3301, sub-§7 is enacted to read:

7. Nonapplication of section. The provisions of this section do not apply to a juvenile charged with the juvenile crime defined in section 3103, subsection 1, paragraph F, and a petition may be filed without recommendation by an intake worker. The provisions of section 3203 apply in the case of a juvenile charged with the juvenile crime defined in section 3103, subsection 1, paragraph F.

Sec. 8. 15 MRSA §3308, sub-§6, 2nd ¶, as enacted by PL 1981, c. 204, §2, is amended to read:

Nothing in this Part may be construed to limit the authority of the Secretary of State, pursuant to Title 29, section 1312, to suspend a person's license or permit and privilege to operate a motor vehicle, right to operate a motor vehicle or right to apply for or obtain a license.

Sec. 9. 15 MRSA §3314, sub-§3 is enacted to read:

3. Disposition for violation of section 3103, subsection 1, paragraph F. When a juvenile has been adjudicated as having committed the juvenile crime under section 3103, subsection 1, paragraph F, the court may impose any of the dispositional alternatives contained in subsection 1. Any incarceration which is imposed may be part of a disposition pursuant to subsection 1, paragraph F or H. Any incarceration in a county jail shall be in a county jail designated by the Department of Corrections as a place for the secure detention of juveniles. In addition, the juvenile's license or permit to operate a motor vehicle, right to operate a motor vehicle or right to apply for or obtain a license shall be suspended by the court for a period of 180 days. The period of suspension shall not be suspended by the

court. The court shall give notice of the suspension and take physical custody of an operator's license or permit as provided in Title 29, section 2241-H. The court shall immediately transmit a certified abstract of the suspension to the Secretary of State. A further suspension may be imposed by the Secretary of State pursuant to Title 29, section 1312-D, subsection 1-A.

Sec. 10. 29 MRSA §58, as last amended by PL 1977, c. 184, §2, is further amended to read:

§58. Certificate as evidence

Notwithstanding any other provision of law or rule of evidence, the certificate of the Secretary of State or his deputy, under seal of the State, shall be received in any court in this State as prima facie evidence of the issuance, suspension or revocation of any operator's license or any certificate of registration of any vehicle any fact stated in the certificate or documents attached thereto.

Sec. 11. 29 MRSA §59, as amended by PL 1971, c. 360, §6, is further amended to read:

§59. Facsimile signature of Secretary of State

A facsimile of the signature of the Secretary of State imprinted by or at his direction upon any precept on any certificate described in section 58 or on any notice to suspend or revoke any certificate of registration or any license issued to any person to operate a motor vehicle shall have the same validity as his written signature and shall be admissible in court.

Sec. 12. 29 MRSA §1312, first ¶, as amended by PL 1981, c. 475, §2, is further amended to read:

Any person who operates or attempts to operate a motor vehicle within this State shall be deemed to have given consent have the duty to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, if there is probable cause to believe he has operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor. The duty to submit to a blood-alcohol test includes the duty to complete either a blood or breath test.

Sec. 13. 29 MRSA §1312, 2nd ¶, 2nd sentence, as enacted by PL 1971, c. 547, is amended to read:

At his the request of a person selecting a blood test, the



he may have a test of his blood may be administered by a physician of his choice, if reasonably available.

Sec. 14. 29 MRSA §1312, sub-§1, first sentence, as amended by PL 1981, c. 468, §5, is further amended to read:

Before any test specified is given, the law enforcement officer shall inform the person as to whom there is probable cause and who is arrested or summonsed that, if he revokes his implied consent fails to comply with the duty to submit to and complete a chemical test by refusing to permit a test to determine the level of blood-alcohol at the direction of the law enforcement officer, his license or permit to operate, his right to operate or his right to apply for or obtain a license will be suspended for 180 days, and the revocation of consent failure to comply with the duty to submit to a blood-alcohol test shall be admissible in evidence against him at any trial for operating under the influence of intoxicating liquor.

Sec. 15. 29 MRSA §1312, sub-§2, first ¶, as repealed and replaced by PL 1981, c. 468, §6, is amended to read:

If a person as to whom there is probable cause revokes his implied consent to a chemical test by refusing upon the request of a law enforcement officer fails to comply with the duty to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath upon the request of a law enforcement officer, no test may be given. The Secretary of State, upon the receipt of a written statement under oath from a law enforcement officer, stating that the officer had probable cause to believe that a person was operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, and that the person had revoked his consent by refusing failed to comply with the duty to submit to a chemical test to determine the blood-alcohol level by analysis of his blood or breath, shall immediately notify the person, in writing, as provided in section 2241, that his license or permit, and his privilege right to operate and his right to apply for or obtain a license have been suspended. The suspension shall be for a period of 180 days. The written statement shall be sent to the Secretary of State within 72 hours of the revocation of consent failure to comply with the duty to submit to the blood-alcohol test, excluding Saturdays, Sundays and holidays. If the statement is not sent within this time period, it shall not affect the Secretary of State's authority to suspend a person's license. State shall nevertheless impose the suspension for revoking his prior implied consent by refusing failing to comply with the duty to submit to a test, unless the delay has prejudiced the person's ability to prepare or participate in the

hearing described in this subsection.

Sec. 16. 29 MRSA §1312, sub-§2, 3rd and 4th ¶¶, as amended by PL 1981, c. 475, §4, are amended to read:

The scope of such a hearing shall cover whether there was probable cause to believe that the individual was either attempting to operate or was operating under the influence of intoxicating liquor and whether he revoked his prior implied consent by refusing failed to comply with the duty to submit to one of the blood-alcohol tests upon the request of a law enforcement officer. Any suspension in effect shall be removed if, after hearing, it is determined that the person who refused to permit failed to submit to the test would not have refused failed to submit but for the failure of the law enforcement officer to give either or both of the warnings required by subsection 1.

If it is determined, after hearing when such is requested, that there was not probable cause to believe that such person was either attempting to operate or was operating under the influence of intoxicating liquor or that the person did not revoke his implied consent to permit fail to comply with the duty to submit to a chemical blood-alcohol test to determine his blood-alcohol level by analysis of his blood or breath, any suspension in effect shall be removed immediately.

Sec. 17. 29 MRSA §1312, sub-§3, first sentence, as amended by PL 1981, c. 475, §5, is further amended to read:

Any person, whose license, permit or privilege right to operate or right to apply for or obtain a license is suspended for revoking his implied consent failing to comply with the duty to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath at the direction of a law enforcement officer claiming to have had probable cause to believe that the person operated or attempted to operate while under the influence of intoxicating liquor, shall have the right to file a petition in the Superior Court in the county where he resides, or in Kennebec County, to review the order of suspension by the Secretary of State by the same procedure as is provided in section 2242.

Sec. 18. 29 MRSA §1312, sub-§6, first ¶, as amended by PL 1975, c. 293, §4, is further amended to read:

Persons conducting chemical analysis of blood or breath for the purpose of determining the blood-alcohol level shall be certified for this purpose by the Department of Human Services under certification standards to be set by that

department.

Sec. 19. 29 MRSA §1312, sub-§6, 2nd ¶, first sentence, as amended by PL 1981, c. 615, §1, is further amended to read:

Only a duly licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Human Services under certification standards to be set by that department, acting at the request of a law enforcement officer, may draw a specimen of blood for the purpose of determining the blood-alcohol level of a person who has not revoked his implied consent is complying with the duty to submit to a blood-alcohol test and who has selected a blood test.

Sec. 20. 29 MRSA §1312, sub-§6, 3rd ¶, as amended by PL 1981, c. 475, §6, is further amended to read:

A law enforcement officer may take a sample specimen of the breath of any person whom he has probable cause to believe has operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor and who has not revoked his implied consent is complying with the duty to submit to a blood-alcohol test and who has selected a breath test, the sample specimen to be submitted to the Department of Human Services or a person certified by the Department of Human Services for the purpose of conducting chemical tests of the sample specimen to determine the blood-alcohol level thereof.

Sec. 21. 29 MRSA §1312, sub-§6, 5th ¶, as repealed and replaced by PL 1981, c. 458, §1, is amended by adding after the first sentence a new sentence to read:

The procedures for the operation and testing of self-contained breath-alcohol testing apparatuses shall be as provided by regulation promulgated by the Department of Human Services.

Sec. 22. 29 MRSA §1312, sub-§6, 6th ¶, as last amended by PL 1981, c. 475, §6, is further amended by adding at the end a new paragraph to read:

Failure to comply with any provisions of this subsection or with any regulations promulgated in this subsection shall not, by itself, result in the exclusion of evidence of blood-alcohol level, unless the evidence is determined to be not sufficiently reliable.

Sec. 23. 29 MRSA §1312, sub-§6, 7th ¶, 2nd sentence, as enacted by PL 1977, c. 603, is amended to read:

It is also the intent of the Legislature that local law enforcement departments may be equipped, according to local needs, with either type of breath-testing equipment, as described in paragraphs 3 and 4 this section, as provided by the Department of Transportation Public Safety and approved by the Department of Human Services.

Sec. 24. 29 MRSA §1312, sub-§8, 5th ¶, as last amended by PL 1981, c. 475, §8, is further amended to read:

The revocation of a person's implied consent to a chemical test by refusing to allow the taking of a sample specimen as authorized failure of a person to comply with the duty required by this section to submit to a blood-alcohol test shall be admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor. If the law enforcement officer having probable cause to believe that the person operated or attempted to operate a motor vehicle under the influence of intoxicating liquor fails to give either of the warnings required under subsection 1, the revocation of the person's implied consent by refusing to submit to a chemical failure of the person to comply with the duty to submit to a blood-alcohol test shall not be admissible. If a revocation of consent failure to submit to a blood-alcohol test is not admitted into evidence, the court may inform the jury of the fact that no test result is available.

Sec. 25. 29 MRSA §1312, sub-§8, 6th ¶, as enacted by PL 1979, c. 701, §33, is amended to read:

If a test result is not available for a reason other than revocation of consent failing to comply with the duty to submit to a blood-alcohol test, the unavailability and the reason shall be admissible in evidence.

Sec. 26. 29 MRSA §1312, sub-§8-A, as enacted by PL 1981, c. 468, §7-A, is amended to read:

8-A. Statements by accused. Any statement by a defendant that he was the operator of a motor vehicle, which he is accused of operating in violation of this section or former subsection 10, section 1312-B or section 1312-C, shall be admissible in a proceeding under this section former subsection 10, section 1311 or 1312-B or 1312-C, if it was made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of Maine. The statement may constitute sufficient proof by itself, without further proof of corpus delicti, that the motor vehicle was operated and was operated by the defendant.

Sec. 27. 29 MRSA §1312, sub-§11, ¶¶ A and B, as

amended by PL 1981, c. 475, §9, are further amended to read:

A. After a person has been charged with a violation of this section operating or attempting to operate a motor vehicle under the influence of intoxicating liquor or drugs or with a blood-alcohol level of 0.10% or more, the investigating or arresting officer shall investigate to determine whether the charged person has any prior convictions under this section former subsection 10 or section 1312-B or an adjudication under section 1312-C. As part of his investigation, the officer shall make the necessary inquiries of the Secretary of State.

B. Any A law enforcement officer authorized to arrest for violations of this section may arrest, without a warrant, any person the officer has probable cause to believe has violated this section operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor or drugs if the arrest occurs within a period following the offense reasonably likely to result in the obtaining of probative evidence of blood-alcohol level.

Sec. 28. 29 MRSA §1312, sub-§11, ¶C, as enacted by PL 1977, c. 626, §3, is repealed.

Sec. 29. 29 MRSA §1312-B, sub-§1-A is enacted to read:

1-A. Pleading and proof. The alternatives defined in subsection 1, paragraphs A and B may be pleaded in the alternative. The State may, but shall not be required to, elect prior to submission of the fact finder.

Sec. 30. 29 MRSA §1312-B, sub-§2, ¶C, as enacted by PL 1981, c. 468, §10, is amended to read:

C. Upon conviction, the court shall suspend the defendant's privilege license or permit to operate, right to operate a motor vehicle and right to apply for or obtain a license for a specified period, which shall not be less than of 90 days nor more than one year. The minimum period of suspension shall not be suspended by the court. The court shall give notice of the suspension and take physical custody of an operator's license as provided in section 2241-H. The Secretary of State may impose an additional period of suspension as provided in section 1312-D, subsection 1-A, and may extend any period of suspension until satisfaction of any conditions imposed pursuant to section 1312-D, subsection 3.

Sec. 31. 29 MRSA §1312-B, sub-§§3 and 4 are enacted to read:

3. Sentencing procedure. In determining the appropriate sentence, the court shall consider the record of convictions for criminal traffic offenses and adjudications of traffic infractions of the defendant. The court may rely upon oral representations based on records maintained by the courts, by the State Bureau of Identification or by the Secretary of State, including telecommunications of records maintained by the Secretary of State. If the defendant disputes the accuracy of any representation concerning a conviction or adjudication the court shall grant a continuance for the purposes of determining the accuracy of the record.

4. Juvenile crime. References in this Title to this section shall be deemed also to refer to the juvenile crime stated in Title 15, section 3103, subsection 1, paragraph F, and to the disposition, including a suspension, for that juvenile crime as provided in Title 15, section 3314, subsection 3, except as otherwise provided or except where the context clearly requires otherwise.

Sec. 32. 29 MRSA §1312-C, sub-§2-A is enacted to read:

2-A. Pleading and proof. The alternatives defined in subsection 2, paragraphs A and B may be pleaded in the alternative. The State may, but shall not be required to, elect prior to submission to the fact finder.

Sec. 33. 29 MRSA §1312-C, sub-§4, as enacted by PL 1981, c. 468, §11, is repealed and the following enacted in its place:

4. Suspension. The license or permit to operate, right to operate a motor vehicle or right to apply for or obtain a license of any person adjudicated guilty of violating subsection 2 shall be suspended by the court for a period of 45 days. The period of suspension shall not be suspended by the court. The court shall give notice of the suspension and shall take physical custody of an operator's license or permit as provided in section 2241-H. The Secretary of State may impose an additional period of suspension, as provided in section 1312-D, subsection 1-A, and may extend any period of suspension until satisfaction of any conditions imposed by him pursuant to section 1312-D, subsection 3.

Sec. 34. 29 MRSA §1312-C, sub-§5, ¶¶ A, B and C, as enacted by PL 1981, c. 468, §11, are amended to read:

A. Was tested as having a blood-alcohol level in

excess of 0.20% or more;

B. Was driving more than 30 miles an hour in excess of the speed limit by 30 miles an hour or more during the operation which resulted in the prosecution for operating under the influence or with a blood-alcohol level of 0.10% or more;

C. Attempted Eluded or attempted to elude an officer, as defined in section 2501-A, subsection 3, during the operation which resulted in the prosecution for operating under the influence or with a blood-alcohol level of 0.10% or more; or

Sec. 35. 29 MRSA §1312-C, sub-§7, ¶B, as enacted by PL 1981, c. 468, §11, is amended to read:

B. Had revoked his implied consent failed to comply with the duty to submit to take a blood or breath test by refusing to take one within the immediately preceding 6 years immediately preceding the operation which resulted in the prosecution for operating under the influence or with a blood-alcohol level of 0.10% or more.

Sec. 36. 29 MRSA §1312-D, sub-§1, as enacted by PL 1981, c. 468, §12, is amended to read:

1. Recording and notice by Secretary of State. On receipt of an attested copy of the court record of a suspension or revocation of the privilege of operating a person's license, right to operate a motor vehicle or right to apply for or obtain a license or of a conviction or adjudication under section 1312-B or 1312-C, the Secretary of State shall immediately record the suspension of the person's license or permit and privilege to operate a motor vehicle and shall send written notice of the suspension of the court to the person suspended. If the court fails to suspend the license, right to operate a motor vehicle, or right to apply for or obtain a license of any person convicted under section 1312-B or adjudicated as having violated section 1312-C, or the juvenile crime defined by Title 15, section 3103, subsection 1, paragraph F, the Secretary of State shall suspend those rights for the periods specified in sections 1312-B, 1312-C and Title 15, section 3314, subsection 3, respectively, and shall send written notice of the suspension as provided in this subsection.

Sec. 37. 29 MRSA §1312-D, sub-§1-A is enacted to read:

1-A. Additional suspension. The Secretary of State may suspend the license, the right to operate a motor vehi-

cle or the right to apply for or obtain a license of any person adjudicated of having violated section 1312-C for an additional period of up to 135 days beyond the 45-day period of suspension required under section 1312-C, subsection 4.

The Secretary of State may suspend the license, the right to operate or the right to apply for or obtain a license of any person, including a juvenile, convicted under section 1312-B for an additional period of up to 275 days beyond the 90 days required under section 1312-B, subsection 2, paragraph C, or up to 185 days beyond the 180 days required under Title 15, section 3314, subsection 3, and if the person has been previously convicted or adjudicated under the former section 1312, subsection 10 or section 1312-B or section 1312-C, the Secretary of State shall impose a further suspension of not less than 90 days.

Notice of any additional suspension pursuant to this subsection shall be given as provided in subsection 1.

Sec. 38. 29 MRSA §1312-D, sub-§§2 and 3, as enacted by PL 1981, c. 468, §12, are amended to read:

2. Education and treatment programs. Following the expiration of 2/3 of the total period of suspension ordered by the court under imposed pursuant to subsection 1 and 1-A, section 1312-B, subsection 2, paragraph C, or section 1312-C, subsection 4, or Title 15, section 3314, the Secretary of State may issue a license or permit to the person if he receives written notice that the person has satisfactorily completed the alcohol education program of the Department of Human Services or and, when required, has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department.

3. Restricted licenses. After certification under subsection 2 or after completion of the suspension imposed by the court pursuant to this section and section 1312-B, 1312-C or Title 15, section 3314, the Secretary of State may issue the license or permit with whatever conditions, restrictions or terms he deems advisable, having in mind the safety of the public and the welfare of the petitioner, including, but not limited to, successful completion of the alcohol education program of the Department of Human Services, if the petitioner has not already done so under subsection 2. The license or permit may contain the condition that the person abstain from the use of intoxicating liquor or drugs.

Sec. 39. 29 MRSA §1312-D, sub-§5, as enacted by PL 1981, c. 468, §12, is amended to read:



5. Restricted licenses for suspension for failure to comply with duty to submit to blood-alcohol test. The Secretary of State may issue a restricted license or permit to any person whose license or permit has been suspended for a first revocation of implied consent by refusing failure to comply with the duty to submit to a blood-alcohol test under section 1312, subsection 2, if the conditions of issuing after issuance following a conviction or adjudication under section 1312-B or 1312-C are met by the person and a period of suspension of not less than 90 days has elapsed.

**Sec. 40.** 29 MRSA §1312-D, sub-§§7 and 8, as enacted by PL 1981, c. 468, §12, are amended to read:

7. Suspension in effect during appeal. If any person convicted or adjudicated of a violation of section 1312-B or 1312-C appeals the judgment or adjudication, the license or permit and privilege to operate a motor vehicle shall be suspended suspension imposed shall remain in effect during the time an appeal is pending, unless the court orders otherwise, or unless the Secretary of State restores the license, permit or privilege to operate pending decision on the appeal.

8. Consecutive suspensions. Any suspension under pursuant to this section or the former section 1312, subsection 10 or section 1312-B or 1312-C shall ~~run~~ be consecutive to any suspension imposed under section 1312, subsection 2, for revocation of implied consent by refusing failing to comply with the duty to submit to a chemical test to determine blood-alcohol level by analysis of blood or breath.

**Sec. 41.** 29 MRSA §1314, sub-§2-A is enacted to read:

2-A. Statements by accused. The provisions of section 1312, subsection 8-A, shall apply to prosecutions under this section.

**Sec. 42.** 29 MRSA §1314, sub-§3, as enacted by PL 1981, c. 468, §13, is amended to read:

3. Penalties. Driving to endanger is a Class E crime. In addition, any person found guilty shall as part of the sentence receive a mandatory suspension of his license or permit to operate a motor vehicle, right to operate a motor vehicle or right to apply for or obtain a license for not less than 30 days nor more than 180 days, which minimum shall not be suspended. The court shall give notice of the suspension and take physical custody of an operator's license as provided in section 2241-H. If the court fails to impose a suspension as provided in this section, the Secre-

tary of State shall impose the minimum period of suspension and may impose up to the maximum period of suspension and shall give notice as provided in section 1312-D, subsection 1.

Sec. 43. 29 MRSA §2184, sub-§1, as repealed and replaced by PL 1981, c. 468, §14, is repealed and the following enacted in its place:

1. Offense; penalty. No person may operate a motor vehicle on any public highway of this State at a time when his license or permit to operate, his right to operate or his right to apply for or obtain a license or permit has been suspended or revoked, except for a revocation as an habitual offender under chapter 18-A or former chapter 18, when that person:

A. Has received written notice of a suspension or revocation pursuant to section 1312-D, subsection 1, or section 2241-H or other written notice from the Secretary of State;

B. Has been orally informed of the suspension or revocation by a law enforcement officer who is aware of the information as a result of records maintained by the Secretary of State, including those obtainable by telecommunications;

C. Has actual knowledge of his suspension or revocation;

D. Is a person to whom written notice was sent by ordinary mail at the last known address shown by the records maintained by the Secretary of State; or

E. Has failed to appear in court pursuant to any notice or order specified in section 2301-A.

Violation of this section is a Class D crime, provided that, notwithstanding Title 17-A, section 1301, the maximum fine shall be \$2,500.

Sec. 44. 29 MRSA §2184, sub-§§1-A and 1-B are enacted to read:

1-A. Minimum mandatory sentences for certain suspensions. In the event the suspension was for a conviction for a violation of former section 1312, subsection 10 or section 1312-B or an adjudication for a violation of section 1312-C or for a failure to comply with the duty to submit for a blood-alcohol test under section 1312, subsection 2, the court shall impose a minimum fine of \$350, which minimum

shall not be suspended; a term of imprisonment which shall be for not less than 7 consecutive days, which minimum shall not be suspended; and a mandatory suspension of license or permit or right to operate a motor vehicle, or right to apply for or obtain a license, for not less than one year nor more than 3 years consecutive to the original suspension, which minimum period shall not be suspended. The requirements of Title 15, section 757, of a separate reading of the allegation and a separate trial shall not apply to a proceeding under this subsection. The court shall give notice of the suspension and shall take physical custody of an operator's license or permit as provided in section 2241-H.

If the court fails to impose a suspension as provided in this subsection, the Secretary of State shall impose the minimum one-year suspension and may impose up to 3 years of suspension and give notice as provided in section 1312-D, subsection 1.

The minimum mandatory sentences of this subsection shall apply only to the original period of suspension imposed by the court or by the Secretary of State, or as extended by the Secretary of State pursuant to section 1312-D, subsection 1-A. The minimum mandatory sentences of this subsection shall not apply to any extension of the original suspension, including an extension pursuant to section 1312-B, subsection 2, paragraph C, or section 1312-C, subsection 4, imposed for the purpose of compelling compliance with conditions for the restoration of a license or right to operate, or to an extension pursuant to section 2241-D for failure to pay a reinstatement fee.

1-B. Statements by accused. The provisions of section 1312, subsection 8-A, shall apply in a prosecution pursuant to this section.

**Sec. 45.** 29 MRSA §2241-H, first and 2nd ¶¶, as enacted by PL 1981, c. 468, §15, are amended to read:

In the case of any conviction or adjudication under former section 1312, subsection 10, section 1312-B, 1312-C, 1314 or for any offense for which the suspension of a license or the right to operate a motor vehicle or the right to apply for or obtain a license is required by law or in any case in which the court suspends a license under section 2305, the court shall inform the defendant of the suspension and the defendant shall acknowledge this notice in writing on a form to be provided by the court. The court, as part of its sentence, notwithstanding any appeal unless the defendant appeals and a stay of execution of the suspension is granted, shall take the any license certificate of issued

by this State from the person convicted or adjudicated or any license certificate issued by another state, foreign country or province from the person convicted or adjudicated if that person is residing, domiciled or employed in this State. The court, as part of its sentence, unless the defendant appeals and a stay of execution of the suspension is granted, may take from the person convicted or adjudicated any license certificate issued by another state or foreign country or province if the person is not residing, domiciled or employed in this State. The court shall forward the license certificate, a copy of the sentence and the acknowledgment of notice by mail to the Secretary of State.

The court, upon reasonable cause shown, may allow the a convicted or adjudicated person, who does not have the license certificate in his possession at the time of sentencing, up to 96 hours to surrender his license certificate.

Sec. 46. 29 MRSA §2241-I, as enacted by PL 1981, c. 468, §15-A, is amended to read:

§2241-I. Surrender of suspended license to law enforcement officer

In the event that a law enforcement officer, in the course of stopping or detaining a motor vehicle, obtains from the operator of the motor vehicle a State of Maine license ~~which~~ or a license issued by another state, foreign country or province when, according to records of the Secretary of State which are available by telecommunications, that person's license or right to operate in this State is under suspension or revocation, the officer shall retain physical custody of the license and shall transmit the license, together with a report stating the circumstances under which it was obtained, to the Secretary of State.

Sec. 47. 29 MRSA §2292, sub-§1, ¶E, as enacted by PL 1979, c. 10, §2, is amended to read:

E. Wilfully operating Operating a motor vehicle without a license to do so;

Sec. 48. 29 MRSA §2292, sub-§1, ¶¶H and I, as enacted by PL 1979, c. 10, §2, are amended to read:

H. Failure of the driver of a motor vehicle involved in an accident resulting in the death or injury of any person to stop close to the scene of the accident and report his identity; or

I. Failure of the driver of a motor vehicle involved in an accident resulting only in damage to an attended

or unattended vehicle or other property to stop close to the scene of the accident and report his identity or otherwise report the accident;

Sec. 49. 29 MRSA §2292, sub-§1, ~~¶¶J~~ and K are enacted to read:

J. Eluding an officer, as defined by section 2501-A, subsection 3; or

K. Passing a roadblock, as defined by section 2501-A, subsection 4.

Sec. 50. 29 MRSA §2292, sub-§2, as enacted by PL 1979, c. 10, §2, is repealed.

Sec. 51. 29 MRSA §2292, sub-§3, as enacted by PL 1979, c. 10, §2, is amended to read:

3. Inclusions. The offenses included in subsections subsection 1 and 2 shall be deemed to include offenses under any federal law, any law of another state or any valid town, city or county ordinance substantially conforming to the aforesaid state statutory provisions provision.

Sec. 52. 29 MRSA §2296, as last amended by PL 1981, c. 475, §10, is further amended to read:

§2296. Relief from habitual offender status

At the expiration of one year from the date of the revocation under this chapter, or by the Superior Court under former chapter 18, a person whose license or right to operate a motor vehicle has been revoked may petition the Secretary of State for relief from his habitual offender status. Petitions for relief shall be presented to the Secretary of State, including petitions brought by persons whose revocation was by the Superior Court under former chapter 18. No petition for relief by a person revoked under former chapter 18 may be presented to the Superior Court. Upon petition, the Secretary of State in his discretion, after determining that the public safety will not be endangered, may relieve the person from his status as an habitual offender, and, subject to the other provisions of law relating to the issuance of operators' license licenses, permits and privileges to operate, including the financial responsibility requirements of section 782, may issue the person the privilege to operate a motor vehicle in this State upon such terms and conditions as he may prescribe.

The Secretary of State shall not issue the privilege to operate a motor vehicle in this State to any person whose

license or privilege to operate has been revoked if a charge against that person under section 2298 is pending. If the Secretary of State subsequently determines that a license or privilege to operate was issued to a person against whom a charge under section 2298 was pending, he shall, without hearing, immediately reinstate the revocation of the license or privilege to operate and shall provide notice of the reinstatement of revocation.

Subject to the longer extension of the habitual offender status required under section 2298, no license or privilege to operate a motor vehicle in this State may be issued to a person who has been convicted of a violation of section 2298 for a period of at least one year following the conviction. If the person's license or privilege to operate has been restored during pendency of the prosecution under section 2298 or following conviction, the Secretary of State shall immediately reinstate the revocation, without hearing, of the license or privilege to operate and provide notice thereof. The reinstatement of revocation shall continue for a period of at least one year following the conviction.

Sec. 53. 29 MRSA §2296-A, sub-§§1 and 2, as enacted by PL 1981, c. 468, §17-B, are amended to read:

1. New convictions. Within a 5-year period following the restoration pursuant to section 2296, the person has committed one offense described in section 2292, subsection 1, ~~or 3 or more offenses described in section 2292, subsection 2,~~ or the equivalent number of offenses described in section 2292, subsection 3, for which there is one or more convictions or adjudications; or

2. Continued liability. The person has committed an offense, described in section 2292, subsection 1, 2 or 3, at any time following restoration, for which there is a conviction or adjudication and, within 5 years preceding the date of the commission of that offense, the person's record shows accumulated convictions or adjudications, including the latest conviction or adjudication, which result in that person being defined as a an habitual offender pursuant to section 2292.

Sec. 54. 29 MRSA §2298, 2nd ¶, first sentence, as enacted by PL 1981, c. 468, §18, is amended to read:

If the person is defined as a an habitual offender under section 2292, subsection 1, and one or more of the convictions or adjudications defining him as an habitual offender is pursuant to section 2292, subsection 1, paragraph B, the following mandatory minimum ~~penalties~~ penalty, which shall not be suspended, shall be imposed: A ~~minimum~~

fine of not less than \$1,000 and a minimum term of imprisonment of not less than 60 days.

Sec. 55. 29 MRSA §2298, 2nd ¶, as enacted by PL 1981, c. 468, §18, is further amended by adding after the first sentence a new sentence to read:

The requirements of Title 15, section 757, of separate reading of the allegation and a separate trial shall not apply to sentencing pursuant to this provision.

Sec. 56. 29 MRSA §2300, sub-§3-A is enacted to read:

3-A. Uniform Traffic Ticket and Complaint as summons. A Uniform Traffic Ticket and Complaint, when served upon a person by a law enforcement officer, shall act as a summons to appear in court, on the date specified in the ticket, for a violation of any provision of this Title.

Sec. 57. 29 MRSA §2301-A, first ¶, as last amended by PL 1979, c. 573, §3, is further amended to read:

If a person fails to appear in court on the day specified in response to a Uniform Traffic Ticket and Complaint, a summons, a condition of bail or order of court for any violation of any provision of this Title, or in response to a Uniform Traffic Ticket and Complaint or for any further appearance ordered by the court, including one for the payment of a fine, either in person or by counsel, the court may shall suspend his license or suspend permit, his right to operate motor vehicles in this State and the right to apply for or obtain a license. The effective date of the suspension shall be governed by section 2241-E.

Sec. 58. 29 MRSA §2301-A, 2nd ¶, as last amended by PL 1979, c. 573, §3, is repealed.

Sec. 59. 29 MRSA §2302, 2nd sentence, as enacted by PL 1975, c. 430, §55, is amended to read:

The District Court shall have original and concurrent jurisdiction with the Superior Court over all prosecutions for any other violations of this Title, except Class C or greater crimes, in which case, District Court jurisdiction shall be subject to Title 4, section 152.

Sec. 60. 29 MRSA §2306, as amended by PL 1981, c. 468, §21, is further amended to read:

§2306. Execution of suspension stayed during appeal

If any a person adjudicated to have committed a traffic

infraction, except for a violation of section 1312-C, ~~shall~~ appeal appeals from the judgment and sentence adjudication of the trial court, the execution of any suspension ~~imposed~~ on of his license and right to operate a motor vehicle shall be stayed until adjudication disposition on appeal or withdrawal of the appeal, unless good cause is shown why he should not be allowed to retain his license ~~and~~ or right to operate. A stay of execution of any suspension imposed pursuant to section 1312-C shall be governed by section 1312-D.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 15, 1982.

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## CHAPTER 680

H.P. 1794 - L.D. 1784

### AN ACT to Define the Raising of Seeds as Agricultural Production under the Sales and Use Tax Law.

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

36 MRSA §2013, sub-§1, ¶A, as enacted by PL 1977, c. 686, §5, is repealed and the following enacted in its place:

A. "Agricultural production" means commercial production of crops for human and animal consumption, the commercial production of seed to be used primarily to raise crops for nourishment of humans or animals and production of livestock.

Effective July 13, 1982.

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