

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST SPECIAL SESSION

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ONE HUNDRED AND FOURTEENTH LEGISLATURE

August 21, 1989 to August 22, 1989

3. Term of office. Except for the initially appointed members, members shall serve 4-year staggered terms and shall serve until a successor is appointed and qualified.

A. Of the 6 members of the board first appointed, 2 shall serve for terms expiring June 30, 1991, 2 shall serve for terms expiring June 30, 1992, and 2 shall serve for terms expiring June 30, 1993. All the initial appointments shall be effective no later than January 15, 1990.

B. A member of the board shall be eligible to serve not more than 2 full consecutive terms, provided that terms expiring on or before June 30, 1993, are not considered full terms. All full terms shall expire on June 30th of the 4th year of the term.

C. Any member of the board may be removed by the Governor for cause.

4. Organization. Each year the board shall elect from among its members a chair, vice-chair and any other officers it requires. The board shall meet at the call of the chair or at the request of 3 of its members. Five members shall constitute a quorum and no official action of the board may be taken unless supported by at least 4 members of the board.

5. Compensation. Each member of the board shall be compensated by the authority in accordance with Title 5, chapter 379, following approval of expenses by the chief executive officer.

6. Policies. The Higher Education Students Financial Assistance Board shall, from time to time, recommend to the members of the authority the adoption, amendment or repeal of rules, policies or administrative procedures for carrying out this subchapter.

Sec. 9. Transition provision. Prior to the appointment and qualification of at least 5 members of the Higher Education Students Financial Assistance Board, hiring of a director of the Division of Higher Education Students Financial Assistance of the Finance Authority of Maine may be done by the chief executive officer of the Finance Authority of Maine in consultation with the Student Financial Aid Transition Advisory Committee established by Public Law 1989, chapter 559. Subsequent legislation pursuant to Public Law 1989, chapter 559 will further provide protection for the jobs and benefits of current employees of the Department of Educational and Cultural Services, Bureau of School Management, Division of Higher Education Services, who are transferred to the Finance Authority of Maine.

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

Effective August 23, 1989.

CHAPTER 599

S.P. 685 - L.D. 1806

An Act Providing for the Immediate Enforcement of Laws Governing the Operation of a Watercraft While Under the Influence

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it is necessary that this legislation be enacted as an emergency so that the law can take effect during the present recreational season; 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. 12 MRSA §7801, sub-§9, as amended by PL 1981, c. 698, §74, is repealed and the following enacted in its place:

9. Operating watercraft while under the influence or with excessive blood-alcohol level. A person is guilty of a criminal violation if that person operates or attempts to operate any watercraft:

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

B. While having 0.08% or more by weight of alcohol in that person's blood.

Sec. 2. 12 MRSA §7801, sub-§9-A is enacted to read:

9-A. Failure to comply with duty to submit. A person is guilty of failure to comply with the duty to submit to and complete a blood-alcohol test under section 7802 if that person refuses to submit to or fails to complete a blood-alcohol test when requested to do so by a law enforcement officer:

A. Who has probable cause to believe that the person operated or attempted to operate a watercraft while under the influence of intoxicating liquor; or

B. When the person was the operator of a watercraft involved in a watercraft accident which results in the death of any person, as provided in section 7912, subsection 11.

Sec. 3. 12 MRSA §7802 is enacted to read:

§7802. Implied consent to chemical tests

Any person who operates or attempts to operate a watercraft within this State shall have the duty to submit to a test to determine that person's blood-alcohol level by analysis of blood or breath, if there is probable cause to believe that person has operated or attempted to operate a watercraft 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. Tests and procedures applicable in determining whether a person is under the influence are governed by section 7912.

Sec. 4. 12 MRSA §7901, sub-§§13 and 14 are enacted to read:

13. Penalties for operating or attempting to operate a watercraft while under the influence or with an excessive blood-alcohol level. The offense defined in section 7801, subsection 9, is a Class D crime. In determining an appropriate sentence, refusal to submit to a chemical test shall in every case be an aggravating factor. In the following cases the following minimum penalties shall apply.

A. Except as provided in paragraph B, in the case of a person having no previous convictions of a violation of section 7801, subsection 9, and having no previous adjudications of failure to comply with the duty to submit to and complete a blood-alcohol test under section 7802, within a 6-year period, the fine shall not be less than \$300. Beginning July 1, 1990, the penalties provided in this paragraph may not be suspended.

B. In the case of a person having no previous convictions of a violation of section 7801, subsection 9, and having no previous adjudications of failure to comply with the duty to submit to and complete a blood-alcohol test under section 7802, within a 6-year period, the fine shall not be less than \$300 and the sentence shall include a period of incarceration of not less than 48 hours, which penalties may not be suspended, when the person:

(1) Was tested as having a blood-alcohol level of 0.15% or more;

(2) Failed or refused to stop upon request or signal of an officer in uniform, as defined in section 6953 or 7060, during the operation which resulted in prosecution for operating under the influence or with a blood-alcohol level of 0.08% or more; or

(3) Failed to submit to a chemical test to determine that person's blood-alcohol level, at the request of a law enforcement officer on the occasion which resulted in the conviction.

C. In the case of a person having one previous conviction of a violation of section 7801, subsection 9, or one previous adjudication of failure to comply with the duty to submit to and complete a blood-alcohol test under section 7802, within a 6-year period, the fine shall not be less than \$500 and the sentence shall include a period of incarceration of not less than 7 days, which penalties may not be suspended.

D. In the case of a person having 2 or more previous convictions of violations of section 7801, subsection 9, or adjudications of failure to comply with the duty to submit to and complete a blood-alcohol test under section 7802, within a 6-year period, the fine shall not be less than \$750 and the sentence shall include a period of incarceration of not less than 30 days, which penalties may not be suspended.

E. In addition to the penalties provided under paragraphs C and D, the court may order the defendant to participate in the alcohol and other drug education, evaluation and treatment programs for multiple offenders administered by the Department of Human Services, as defined in Title 22, chapter 1602.

F. The penalties provided under paragraphs B, C, D and, beginning July 1, 1990, paragraph A, shall not be suspended by the court.

G. If the State pleads and proves that, while operating a watercraft in violation of this section, the actor in fact caused serious bodily injury as defined in Title 17-A, section 2, subsection 23, to another person or in fact caused the death of another person, the sentencing class for the offense in section 7801, subsection 9, is a Class C crime. The minimum penalties specified in this subsection shall apply, but the minimum period of suspension shall be 18 months unless a longer minimum period otherwise applies.

The alternatives defined in section 7801, subsection 9, 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.

For purposes of this section, a prior conviction has occurred within the 6-year period if the date of docket entry by the clerk of a judgment of conviction or adjudication is 6 years or less from the date of the new conduct which is penalized or for which the penalty is or may be enhanced.

In determining the appropriate sentence, the court shall consider the defendant's record of convictions for operating under the influence and for failure to comply with the duty to submit. The court may rely upon oral representations based on records maintained by the courts, by the State Bureau of Identification, by the Secretary of

State, including telecommunications of records maintained by the Secretary of State, or by the Department of Inland Fisheries and Wildlife. 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.

References in this Title to this section shall be determined also to refer to the juvenile crime stated in Title 15, section 3103, subsection 1, paragraph E 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 when the context clearly requires otherwise.

14. Penalties for failure to comply with duty to submit. The offense defined in section 7801, subsection 9-A, is a civil violation for which a forfeiture of up to \$500 may be adjudged.

Sec. 5. 12 MRSA §7912 is enacted to read:

§7912. Tests and procedures for operating under the influence or with an excessive blood-alcohol level

1. Blood or breath test. If the law enforcement officer has probable cause to believe a person operated or attempted to operate a watercraft while under the influence of intoxicating liquor, then the officer shall inform the person that a breath test will be administered, unless, in the determination of the officer, it is unreasonable for a breath test to be administered, in which case a blood test shall be administered. When a blood test is required, the test may be administered by a physician of the accused's choice, at the request of the accused and if reasonably available. The law enforcement officer may determine which type of breath test, as described in subsection 5, is to be administered.

2. Prerequisites to tests. Before any test is given, the law enforcement officer shall inform the person to be tested that, if that person fails to comply with the duty to submit to and complete a blood-alcohol test to determine the level of blood-alcohol at the direction of the officer, that person will be committing a civil violation for which the person may be required to pay a civil forfeiture of up to \$500. The officer shall also inform the person that the failure to comply with the duty to submit to a blood-alcohol test shall be admissible in evidence against that person at any trial for operating under the influence of intoxicating liquor.

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

3. Results of test. Upon the request of the person who submits to a chemical test or tests at the request of

a law enforcement officer, full information concerning the test or tests shall be made available to that person or that person's attorney by the law enforcement officer.

4. Blood-alcohol level. The following percentages by weight of alcohol in the defendant's blood shall have the following evidentiary effect.

A. If there was, at the time alleged, 0.05% or less by weight of alcohol in the defendant's blood, it is prima facie evidence that the defendant was not under the influence of intoxicating liquor.

B. If there was, at the time alleged, in excess of 0.05% but less than 0.08% by weight of alcohol in the defendant's blood, it is relevant evidence, but it is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor within the meaning of this section, but that fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of intoxicating liquor.

C. For purposes of evidence in proceedings other than those arising under section 7801, subsection 9, it shall be presumed that a person was under the influence of intoxicating liquor when that person has a blood-alcohol level of 0.08% or more by weight.

D. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood.

5. Administration of tests. Persons conducting analyses 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.

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 to determine the blood-alcohol level of a person who is complying with the duty to submit to a blood-alcohol test. This limitation shall not apply to the taking of breath specimens. When a person draws a specimen of blood at the request of a law enforcement officer, that person may issue a certificate which states that the person is in fact a duly licensed or certified person as required by this paragraph and that the person followed the proper procedure for drawing a specimen of blood to determine the blood-alcohol level. That certificate, when duly signed and sworn to by the person, shall be admissible in evidence in any court of the State. It is prima facie evidence that the person was duly licensed or certified and that the person followed the proper procedure for drawing a specimen of blood to determine the blood-alcohol level, unless, with 10-days' written notice to the prosecution, the defendant requests that the person testify as to licen-

sure or certification, or the procedure for drawing the specimen of blood.

A law enforcement officer may take a sample specimen of the breath of any person whom the officer has probable cause to believe operated or attempted to operate a watercraft while under the influence of intoxicating liquor and who is complying with the duty to submit to and complete a blood-alcohol test. The sample specimen shall 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 of that sample.

Only equipment approved by the Department of Human Services shall be used by a law enforcement officer to take a sample specimen of the defendant's breath for submission to the Department of Human Services or a person certified by the Department of Human Services for the purpose of conducting tests of the sample specimen to determine the blood-alcohol level of that sample. Approved equipment shall have a stamp of approval affixed by the Department of Human Services. Evidence that the equipment was in a sealed carton bearing the stamp of approval shall be accepted in court as prima facie evidence that the equipment was approved by the Department of Human Services for use by the law enforcement officer to take the sample specimen of the defendant's breath.

As an alternative to the method of breath testing described in this subsection, a law enforcement officer may test the breath of any person, whom the officer has probable cause to believe operated or attempted to operate a watercraft while under the influence of intoxicating liquor, by use of a self-contained, breath-alcohol testing apparatus to determine the blood-alcohol level, provided the testing apparatus is reasonably available. The procedures for the operation and testing of self-contained, breath-alcohol testing apparatuses shall be as provided by rule adopted by the Department of Human Services. The result of any such test shall be accepted as prima facie evidence of the blood-alcohol level in any court.

Approved self-contained, breath-alcohol testing apparatuses shall have a stamp of approval affixed by the Department of Human Services after periodic testing. That stamp of approval shall be valid for a limited period of no more than one year. Testimony or other evidence that the equipment was bearing the stamp of approval shall be accepted in court as prima facie evidence that the equipment was approved by the Department of Human Services for use by the law enforcement officer to collect and analyze a sample specimen of the defendant's breath.

Failure to comply with any provision of this subsection or with any rule adopted under 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.

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

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

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

7. Evidence. The percentage by weight of alcohol in the defendant's blood at the time alleged, as shown by the chemical analysis of the defendant's blood or breath or by results of a self-contained, breath-alcohol testing apparatus authorized by subsection 5, shall be admissible in evidence.

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

A person certified under subsection 5, as qualified to operate a self-contained, breath-alcohol testing apparatus to determine the blood-alcohol level, may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, shall be admissible in evidence in any court of the State. It shall be prima facie evidence that the percentage by weight of alcohol in the defendant's blood was, at the

time the breath sample was taken, as stated in the certificate, unless, with 10-days' written notice to the prosecution, the defendant requests that the operator or other qualified witness testify as to the results of the analysis.

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

The failure of a person to comply with the duty to submit to and complete a blood-alcohol test under section 7802 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 watercraft under the influence of intoxicating liquor fails to give either of the warnings required under subsection 2, the failure of the person to comply with the duty to submit to a blood-alcohol test shall not be admissible, except when a test was required pursuant to subsection 11. If a failure to submit to and complete a blood-alcohol test is not admitted into evidence, the court may inform the jury of the fact that no test result is available.

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

8. Statements by accused. Any statement by a defendant that the defendant was the operator of a watercraft, which the defendant is accused of operating in violation of section 7801, subsection 9, shall be admissible 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 watercraft was operated and was operated by the defendant.

9. Payment for tests. Persons authorized to take specimens of blood at the direction of a law enforcement officer and persons authorized to perform chemical tests of specimens of blood or breath shall be paid from the General Fund or from dedicated revenues of the Department of Inland Fisheries and Wildlife when a law enforcement officer of the Department of Inland Fisheries and Wildlife authorizes the chemical tests. The Department of Marine Resources shall pay for chemical tests authorized by marine patrol officers with funds available within that department.

10. Accidents and officer's duties. The law enforcement officer shall have the following duties.

A. After a person has been charged with operating or attempting to operate a watercraft under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, the investigating or arresting officer shall investigate to determine

whether the charged person has any previous convictions of a violation of section 7801, subsection 9, or adjudications for failure to comply with the duty to submit to and complete a blood-alcohol test under section 7802. As part of that investigation, the officer shall review the records maintained by the courts, the State Bureau of Identification, the Secretary of State, including telecommunications of records maintained by the Secretary of State, or the Department of Inland Fisheries and Wildlife.

B. A law enforcement officer may arrest, without a warrant, any person whom the officer has probable cause to believe operated or attempted to operate a watercraft 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.

11. Watercraft fatality. Notwithstanding any other provision of this section, each operator of a watercraft involved in a watercraft accident which results in the death of any person shall submit to and complete a test to determine that person's blood-alcohol level by analysis of blood or breath. A law enforcement officer may determine which type of test shall be administered. The result of a test taken pursuant to this paragraph is not admissible at trial unless the court is satisfied that probable cause exists, independent of the test result, to believe that the operator was under the influence of intoxicating liquor or drugs or had an excessive blood-alcohol level.

12. Aid in enforcement among municipalities. Except as otherwise prohibited by municipal charter or ordinance, municipalities may, in the manner provided by Title 30-A, section 2674, enter into agreements regarding mutual aid in enforcing laws governing the operation of a watercraft while under the influence.

Sec. 6. 15 MRSA §3103, sub-§1, ¶E, as amended by PL 1985, c. 214, §1, is further amended to read:

E. Offenses involving the operation or attempted operation of a ~~snowmobile~~ or watercraft or snowmobile while under the influence of intoxicating liquor or drugs, as defined in Title 12, section 7801, subsection 9, and section 7827, subsection 9, respectively, and offenses involving failing to aid an injured person or to report a hunting accident as defined in Title 12, section 7406, subsection 15; and

Sec. 7. 15 MRSA §3301, sub-§7, as amended by PL 1985, c. 737, Pt. A, §38, is further amended to read:

7. Nonapplication of section. The provisions of this section do not apply to a juvenile charged with either of the juvenile ~~crime~~ crimes defined in section 3103, subsection 1, paragraph E or F, and a petition may be filed without recommendation by a juvenile caseworker. The provisions of section 3203-A apply in the case of a juvenile

charged with either of the juvenile ~~crime~~ crimes defined in section 3103, subsection 1, paragraph E or F.

Sec. 8. 15 MRSA §3314, sub-§3, as enacted by PL 1981, c. 679, §9, is repealed and the following enacted in its place:

3. Disposition for violation of section 3103, subsection 1, paragraph E or F. When a juvenile has been adjudicated as having committed the juvenile crime under section 3103, subsection 1, paragraph E or 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.

A. For an adjudication under section 3103, subsection 1, paragraph F, 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. 9. Report. The Commissioner of Inland Fisheries and Wildlife shall report to the Legislature on the effectiveness of the law governing the operation of a watercraft while under the influence by February 1, 1991.

Sec. 10. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
MARINE RESOURCES, DEPARTMENT OF		
Bureau of Marine Patrol		
All Other	\$2,000	\$3,000
Provides funds for anticipated breath test kits, blood test kits and required laboratory analyses.		

Sec. 11. Allocation. The following funds are allocated from funds dedicated to the Department of Inland Fisheries and Wildlife to carry out the purposes of this Act.

	1989-90	1990-91
INLAND FISHERIES AND WILDLIFE, DEPARTMENT OF		

**Enforcement Operations -
Inland Fisheries and Wildlife**

All Other	\$5,550	\$6,750
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Provides funds for anticipated breath test kits, blood test kits and required analyses. In addition, this allocation provides funds for anticipated classroom costs and travel expenses associated with the training for the required breath-alcohol test.

Sec. 12. PL 1989, c. 539 is repealed.

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

Effective August 23, 1989.

CHAPTER 600

S.P. 687 - L.D. 1808

An Act Concerning Errors and Inconsistencies in the Laws of Maine

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Acts of this and previous Legislatures have resulted in certain technical errors and inconsistencies in the laws of Maine; and

Whereas, these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and

Whereas, it is vitally necessary that these uncertainties and this confusion be resolved in order to prevent any injustice or hardship to the citizens of Maine; 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:

PART A

Sec. 1. 4 MRSA §951, as amended by PL 1989, c. 501, Pt. L, §1, is further amended to read: