

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION
July 29, 2005

SECOND REGULAR SESSION
January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 28, 2005

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 23, 2006

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

Penmor Lithographers
Lewiston, Maine
2006

~~12004-I~~ 12004-G, subsection ~~74-A-1~~ 30-C, shall evaluate telecommunications relay services in this State and provide advice to providers of telecommunications relay services.

Sec. 6. 35-A MRSA §8704, sub-§5, as enacted by PL 1989, c. 851, §7, is amended to read:

5. Powers and duties. The advisory council shall evaluate telecommunications relay services in this State and shall advise providers of telecommunications relay services regarding telecommunications relay service matters, including, but not limited to, the development of training standards and an evaluation of the service being provided, including the quality and availability of that service. The advisory council may enter into contracts with telecommunications relay service providers for the purpose of providing telecommunications relay services.

See title page for effective date.

CHAPTER 606

H.P. 1347 - L.D. 1906

An Act To Safeguard Maine's Highways

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

PART A

Sec. A-1. 29-A MRSA §2411, sub-§1-A, ¶D, as amended by PL 2003, c. 633, §8, is further amended to read:

D. Violates paragraph A, B or C and:

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

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

(2) Has either a prior conviction for a Class C crime under this section or former Title 29, section 1312-B or a prior criminal homicide conviction involving or resulting from the operation of a motor vehicle while under the influence of intoxicating liquor or drugs or with a blood-alcohol level of 0.08% or greater.

Sec. A-2. 29-A MRSA §2411, sub-§5, ¶D-1, as amended by PL 2003, c. 673, Pt. TT, §4, is further amended to read:

D-1. A violation of subsection 1-A, paragraph D, subparagraph (1) is a Class C crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. The sentence must include a period of incarceration of not less than 6 months, a fine of not less than \$2,100 and a court-ordered suspension of a driver's license for a period of 6 years. These penalties may not be suspended;

Sec. A-3. 29-A MRSA §2411, sub-§5, ¶D-2 is enacted to read:

D-2. A violation of subsection 1-A, paragraph D, subparagraph (1-A) or (2) is a Class B crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. The sentence must include a period of incarceration of not less than 6 months, a fine of not less than \$2,100 and a court-ordered suspension of a driver's license for a period of 10 years. These penalties may not be suspended;

Sec. A-4. 29-A MRSA §2411, sub-§5, ¶G, as amended by PL 2003, c. 452, Pt. Q, §82 and affected by Pt. X, §2, is further amended to read:

G. The court shall order an additional period of license suspension of 275 days for a person sentenced under paragraph A, B, C, D ~~or~~ D-1 or D-2 if the person was operating the motor vehicle at the time of the offense with a passenger under 21 years of age.

Sec. A-5. 29-A MRSA §2464 is enacted to read:

§2464. Causing serious bodily injury or death while license is suspended or revoked

1. Accident involving injury; penalty. A person who, while knowingly operating with a suspended or revoked license, in fact causes serious bodily injury as defined in Title 17-A, section 2, subsection 23 to another person commits a Class C crime.

2. Accident involving death; penalty. A person who, while knowingly operating with a suspended or revoked license, in fact causes the death of another person commits a Class B crime.

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

4. License suspension. Upon receipt of notice of conviction, the Secretary of State shall immediately suspend the license of a person who violates subsec-

tion 1 or 2. Notwithstanding any provision of law that imposes a period of license suspension shorter than that specified in this subsection, a person who violates this section is subject to the following period of license suspension:

A. For a violation of subsection 1, 5 years; and

B. For a violation of subsection 2, 10 years.

The period of suspension imposed pursuant to this subsection is consecutive to any suspension previously imposed by the Secretary of State or the court pursuant to this chapter.

Sec. A-6. 29-A MRSA §2551, as amended by PL 2001, c. 514, §1, is repealed.

Sec. A-7. 29-A MRSA §2551-A is enacted to read:

§2551-A. Habitual offender

1. Habitual offender defined. An habitual offender is a person whose record, as maintained by the Secretary of State, shows that:

A. The person has accumulated 3 or more convictions or adjudications for distinct offenses described below arising out of separate acts committed within a 5-year period:

(1) Homicide resulting from the operation of a motor vehicle;

(2) OUI conviction;

(3) Driving to endanger, in violation of section 2413;

(4) Operating after suspension or revocation, in violation of section 2412-A;

(5) Operating without a license;

(6) Operating after revocation, in violation of former section 2557, section 2557-A or section 2558;

(7) Knowingly making a false affidavit or swearing or affirming falsely in a statement required by this Title or as to information required in the administration of this Title;

(8) A Class A, B, C or D offense in which a motor vehicle is used;

(9) Failure to report an accident involving injury or death, in violation of section 2252;

(10) Failure to report an accident involving property damage, in violation of section 2253, 2254 or 2255;

(11) Eluding an officer, in violation of section 2414;

(12) Passing a roadblock, in violation of section 2414, subsection 4; and

(13) Operating a motor vehicle at a speed that exceeds the maximum speed limit by 30 miles per hour or more; or

B. The person has accumulated 10 or more convictions or adjudications for moving violations arising out of separate acts committed within a 5-year period.

2. Inclusions. The offenses included in subsection 1 include offenses under former Title 29, a federal law, a law of another state and a municipal ordinance substantially conforming to the statutory violations.

3. Offenses not included. The following convictions are not included under subsection 1, paragraph A:

A. A conviction of operating a motor vehicle without a license if the license had expired and was not suspended or revoked; and

B. A conviction of operating after suspension when the suspension is based upon a failure to pay child support.

4. Multiple offenses or violations. For the purposes of this section, when more than one offense or violation described in this section arises from the same incident, the offenses or violations are treated as one offense or violation.

Sec. A-8. 29-A MRSA §2554, sub-§3, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

3. Operating after habitual offender revocation. The Secretary of State may not restore a license if a charge under former section 2557, section 2557-A or section 2558 is pending. If the Secretary of State subsequently determines that a license has been restored when a charge under former section 2557, section 2557-A or section 2558 was pending, the Secretary of State shall, without hearing, immediately reinstate the revocation and provide notice of the reinstatement. A license may not be issued to a person who has been convicted of a violation of former section 2557, section 2557-A or section 2558 for a period of at least one year following the conviction or longer as provided under former section 2557, section 2557-A or section 2558.

Sec. A-9. 29-A MRSA §2556, sub-§4, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

4. Ineligibility. A person is not eligible for a work-restricted license if habitual offender status is based on a conviction or adjudication under former section 2551, section 2551-A, subsection 1, paragraph A, subparagraph (1) or, former section 2557, section 2557-A or section 2558 or the revocation is issued pursuant to section 2555.

Sec. A-10. 29-A MRSA §2557, as amended by PL 2003, c. 673, Pt. TT, §§6 and 7, is repealed.

Sec. A-11. 29-A MRSA §2557-A is enacted to read:

§2557-A. Operating after habitual offender revocation

1. Operating after habitual offender revocation. A person commits operating after habitual offender revocation if that person:

A. Operates a motor vehicle on a public way, as defined in Title 17-A, section 505, subsection 2, when that person's license to operate a motor vehicle has been revoked under this subchapter or former Title 29, chapter 18-A and that person:

(1) Has received written notice of the revocation from the Secretary of State;

(2) Has been orally informed of the revocation by a law enforcement officer;

(3) Has actual knowledge of the revocation;
or

(4) Is a person to whom written notice was sent in accordance with section 2482 or former Title 29, section 2241, subsection 4;
or

B. After having one or more prior convictions for violating former section 2557, this section or section 2558, violates section 2412-A.

2. Penalties. The following penalties apply.

A. A person is guilty of a Class D crime if the person violates subsection 1 and:

(1) The person has not been convicted for operating after revocation under this section or under former Title 29, section 2298 within the previous 10 years; and

(2) The person has not been convicted for violating section 2411 or former Title 29, section 1312-B within the previous 10 years.

The minimum fine for a Class D crime under this paragraph is \$500 and the minimum term of im-

prisonment is 30 days, neither of which may be suspended by the court.

B. A person is guilty of a Class C crime if the person violates subsection 1 and:

(1) The person has one conviction for operating after revocation under this section or under former Title 29, section 2298 within the previous 10 years; or

(2) The person has one conviction for violating section 2411 or former Title 29, section 1312-B within the previous 10 years.

The minimum fine for a Class C crime under this paragraph is \$1,000 and the minimum term of imprisonment is 6 months, neither of which may be suspended by the court.

C. A person is guilty of a Class C crime if the person violates subsection 1 and:

(1) The person has 2 convictions for operating after revocation under this section or under former Title 29, section 2298 within the previous 10 years; or

(2) The person has 2 convictions for violating section 2411 or former Title 29, section 1312-B within the previous 10 years.

The minimum fine for a Class C crime under this paragraph is \$1,000 and the minimum term of imprisonment is 9 months plus a day, neither of which may be suspended by the court.

D. A person is guilty of a Class C crime if the person violates subsection 1 and:

(1) The person has 3 or more convictions for operating after revocation under this section or under former Title 29, section 2298 within the previous 10 years; or

(2) The person has 3 or more convictions for violating section 2411 or former Title 29, section 1312-B within the previous 10 years.

The minimum fine for a Class C crime under this paragraph is \$1,000 and the minimum term of imprisonment is 2 years, neither of which may be suspended by the court.

3. Strict liability. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

4. Relief from habitual offender status. The Secretary of State may not grant relief from habitual offender status under section 2554 until at least 3 years

have passed after the original date scheduled for eligibility to apply for relief of that status.

5. Presumption of identity. If the name and date of birth of a person being prosecuted are the same as those of the habitual offender whose privilege to operate has been suspended, it is prima facie evidence that it is the same person.

6. Notice to Secretary of State. A law enforcement officer who has arrested a person for or charged a person with violating this section shall notify the Secretary of State of that action.

Sec. A-12. 29-A MRSA §2558 is enacted to read:

§2558. Aggravated operating after habitual offender revocation

1. Crime. A person is guilty of aggravated operating after habitual offender revocation if that person violates section 2557-A and at the time of the violation the person commits one or more of the following:

- A. OUI in violation of section 2411;
- B. Driving to endanger in violation of section 2413;
- C. Eluding an officer in violation of section 2414;
- D. Passing a roadblock in violation of section 2414, subsection 4; and
- E. Operating a motor vehicle at a speed that exceeds the maximum speed limit by 30 miles per hour or more.

2. Penalties. The following penalties apply.

A. A person who violates subsection 1 commits a Class D crime for which a minimum fine of \$500 and a minimum term of imprisonment of 6 months must be imposed, neither of which may be suspended by the court.

B. A person who violates subsection 1 and at the time has one conviction for violating this section, section 2411, former section 2557 or section 2557-A within the previous 10 years commits a Class C crime for which a minimum fine of \$1,000 and a minimum term of imprisonment of one year must be imposed, neither of which may be suspended by the court.

C. A person who violates subsection 1 and at the time has 2 convictions for violating this section, former section 2557 or section 2557-A within the previous 10 years commits a Class C crime for which a minimum fine of \$2,000 and a minimum

term of imprisonment of 2 years must be imposed, neither of which may be suspended by the court.

D. A person who violates subsection 1 and at the time has 3 or more convictions for violating this section, former section 2557 or section 2557-A within the previous 10 years commits a Class C crime for which a minimum fine of \$3,000 and a term of imprisonment of 5 years must be imposed, neither of which may be suspended by the court.

3. Strict liability. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

4. Relief from habitual offender status. The Secretary of State may not grant relief from habitual offender status under section 2554 until at least 3 years have passed after the original date scheduled for eligibility to apply for relief of that status.

5. Presumption of identity. If the name and date of birth of a person being prosecuted are the same as those of the habitual offender whose privilege to operate has been suspended, it is prima facie evidence that it is the same person.

6. Notice to Secretary of State. A law enforcement officer who has arrested a person for or charged a person with violating this section shall notify the Secretary of State of that action.

Sec. A-13. 29-A MRSA §2606, sub-§3 is enacted to read:

3. Confiscation of suspended licenses. The Secretary of State shall take reasonable actions to confiscate suspended licenses.

Sec. A-14. Report regarding impact on county jails. The joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters shall request the Maine Sheriff's Association to report by January 30, 2007 to the committee regarding the impact of the increased motor vehicle penalties pursuant to this Act on the county jail population and to provide suggestions for changes, if necessary. The committee may report out a bill regarding these suggested changes to the First Regular Session of the 123rd Legislature.

PART B

Sec. B-1. 17-A MRSA §1349, as amended by PL 2005, c. 265, §15, is further amended to read:

§1349. Eligibility for sentence alternative that includes period of administrative release

1. A person who has been convicted of a Class D or Class E crime or a Class C crime under Title 29-A, former section 2557, section 2557-A or section 2558 may be sentenced to a sentence alternative under section 1152 that includes a period of administrative release, unless:

A. The statute that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person must be sentenced to the imprisonment and required to pay the fine authorized therein;

B. The court sentences the person to a sentencing alternative under section 1152 that includes a period of probation; or

C. The court finds that such a sentence would diminish the gravity of the crime for which that person was convicted.

Sec. B-2. 17-A MRSA §1349-B, sub-§1, as amended by PL 2005, c. 265, §17, is further amended to read:

1. The court may sentence a person to a term of imprisonment not to exceed the maximum term authorized for the Class D or Class E crime or the Class C crime under Title 29-A, former section 2557, section 2557-A or section 2558, suspend the term of imprisonment in whole or in part and accompany the suspension with a period of administrative release not to exceed the one year authorized under section 1349-A, subsection 1.

Sec. B-3. 29-A MRSA §1357, sub-§2, §A, as amended by PL 2005, c. 174, §1, is further amended to read:

A. A person may not provide advanced driver education unless licensed by the Secretary of State. An instructor license is valid for 3 years from the date of issuance. An applicant for an instructor license must meet the following requirements.

(1) The person is at least 21 years of age and has a high school diploma or its equivalent.

(2) The person has at least 4 years of driving experience as a licensed operator and possesses a valid driver's license.

(3) The person has not been convicted for a moving criminal traffic offense within the last 3 years, except for operating without a

driver's license if the license was expired less than 5 years and operating with an expired registration.

(4) The person has not been designated as an accident-prone driver pursuant to section 1308 within the last year.

(5) The person has not had a driver's license suspended or revoked within the last 6 years pursuant to ~~sections~~ section 2411, 2453, 2454, 2456, 2457, 2472, 2521, 2525, 2554, or 2555 ~~or, former section 2557 or section 2557-A or 2558~~.

(6) The person has not been convicted within the last 10 years for any crimes for which more than one year of incarceration may be ordered.

(7) The person must have at least one year of training, education or experience in driver education, driver evaluation, assessment or testing or teaching defensive driving.

Sec. B-4. 29-A MRSA §1404, sub-§2, as amended by PL 1997, c. 617, §1, is further amended to read:

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

The Secretary of State may, at the request of a licensee, remove the coded notation from the license of a person convicted for a first operating-under-the-influence offense as defined in section 2453, subsection 2 after 6 years from the date of the conviction if the person has not been convicted or adjudicated of the offense of speeding more than 15 miles per hour over the maximum speed limit or any offense described under ~~section 2551~~ section 2551-A, subsection 1, paragraph A or had a license suspended or revoked within that 6-year period.

Sec. B-5. 29-A MRSA §2431, sub-§4, as amended by PL 1997, c. 776, §46, is further amended to read:

4. Statements by accused. A statement by a person as to name or date of birth, or the name or date of birth contained on a driver's license surrendered by that person, is admissible in a proceeding under this Title.

A statement of the person's name or date of birth constitutes sufficient proof by itself, without further proof of corpus delicti.

A statement by a defendant that the defendant was the operator of a motor vehicle is admissible in a proceeding under ~~sections~~ section 2411, section 2412-A and, former section 2557, section 2557-A or section 2558, if it is 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 by the defendant.

Sec. B-6. 29-A MRSA §2555, sub-§§1 and 2, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, are amended to read:

1. New convictions. Within a 5-year period of the restoration, the person commits a new offense under ~~section 2551~~. 2551-A, subsection 1, paragraph A; or

2. Continued liability. The person commits a new offense under ~~section 2551~~ 2551-A, subsection 1, paragraph A and, within 5 years preceding the date of that new offense, the person's record shows accumulated convictions or adjudications, including the new offense, which results in that ~~person~~ person's being defined as an habitual offender under ~~section 2551~~ 2551-A, subsection 1, paragraph A.

Sec. B-7. 29-A MRSA §2556, sub-§5, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

5. Eligibility. If a conviction is based on ~~former section 2551 or section 2551-A, subsection 1, paragraph B~~, the person must have completed the period of suspension required for the OUI conviction and the Secretary of State must have received written notice that the person has satisfactorily completed the alcohol and drug program.

See title page for effective date.

CHAPTER 607

H.P. 1297 - L.D. 1857

An Act Relating to the Assessment of Property Taxes on Time-share Property

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

Sec. 1. 33 MRSA §593, sub-§2, as amended by PL 1987, c. 358, §1, is further amended to read:

2. Time-share estates as separate estates.

Each time-share estate constitutes for all purposes a separate estate in real property. Each time-share estate ~~shall~~ must be separately assessed and taxed. In addition to other factors relevant to the valuation of a time-share estate considered by the assessor, the assessor may consider the real property value of the time-share estate declared in the declaration of value, if any, submitted under Title 36, section 4641-D. The filing and discharge of tax liens on more than one time-share estate owned by the same person are governed by Title 36, section 942-A.

Sec. 2. 33 MRSA §593, sub-§5, as amended by PL 2003, c. 229, §1, is further amended to read:

5. Escrow account. If the managing entity collects money for taxes, it shall maintain an escrow account with a financial institution licensed by the State, and deposit any money collected or received for taxes in the escrow account within 10 days after collection or receipt. The escrow account must be established in the names of both the managing entity and the municipality in which the time-share estates are located. No withdrawal may be made from the escrow account without the written agreement of the municipality.

Prior to the delinquency date established by the municipality in which the time-share estates are located, the managing entity shall pay to the municipal tax collector all money deposited in the escrow account for the purpose of tax payment. If the amount paid from the escrow account is not sufficient to discharge all taxes and tax-related costs, due and owing, the managing entity shall ~~pay the difference~~ and place a lien on those time-share estates whose owners have not contributed to the escrow account as provided in section 594, and, if pay the outstanding amount no later than 30 days after the date it has collected the taxes and costs from the delinquent owner or has foreclosed the lien and sold the time-share estate to a new owner or 10 months from the date of commitment, whichever is earlier. If requested by the municipality, the managing entity shall provide a list identifying those owners and their interests, including the periods of ownership, to the municipal tax collector, who may then proceed to collect the taxes on those interests as allowed by law.

If the tax collector and treasurer use the lien procedure described in Title 36, sections 942, 942-A and 943 to collect delinquent taxes on time-share estates, whenever a notice called for by Title 36, section 942, 942-A or 943 is sent to a time-share estate owner, the tax collector and treasurer shall give to the managing entity or leave at the managing entity's last and usual place of abode or send to the managing entity by certified mail, return receipt requested, either a copy of the notice sent to the time-share estate owner or a