

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

SECOND REGULAR SESSION
January 2, 2008 to March 31, 2008

FIRST SPECIAL SESSION
April 1, 2008 to April 18, 2008

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 2008

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 18, 2008

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

Penmor Lithographers
Lewiston, Maine
2008

CHAPTER 531
S.P. 266 - L.D. 856

**An Act To Reduce Drunk
Driving**

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

Sec. 1. 29-A MRSA §2401, sub-§5-A, as repealed by PL 1999, c. 470, §27, is reenacted to read:

5-A. Ignition interlock device. "Ignition interlock device" means a device that connects a breath analyzer to a motor vehicle's ignition system. The analyzer monitors the concentration of alcohol in the breath of any person who attempts to start the motor vehicle by using the ignition system. The device prevents the vehicle from starting unless the person provides a breath sample with a concentration of alcohol that is below a preset level.

Sec. 2. 29-A MRSA §2411, sub-§5, as amended by PL 2005, c. 606, Pt. A, §§2 to 4, is further amended to read:

5. Penalties. Except as otherwise provided in this section and section 2508, violation of this section is a Class D crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. The following minimum penalties apply and may not be suspended:

A. For a person having no previous OUI offenses within a 10-year period:

- (1) A fine of not less than \$500, except that if the person failed to submit to a test, a fine of not less than \$600;
- (2) A court-ordered suspension of a driver's license for a period of 90 days; and
- (3) A period of incarceration as follows:
 - (a) Not less than 48 hours when the person:
 - (i) Was tested as having a blood-alcohol level of 0.15% or more;
 - (ii) Was exceeding the speed limit by 30 miles per hour or more;
 - (iii) Eluded or attempted to elude an officer; or
 - (iv) Was operating with a passenger under 21 years of age; and
 - (b) Not less than 96 hours when the person failed to submit to a test at the request of a law enforcement officer;

B. For a person having one previous OUI offense within a 10-year period:

(1) A fine of not less than \$700, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$900;

(2) A period of incarceration of not less than 7 days, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 12 days;

(3) A court-ordered suspension of a driver's license for a period of ~~18 months~~ 3 years; and

(4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle;

C. For a person having 2 previous OUI offenses within a 10-year period, which is a Class C crime:

(1) A fine of not less than \$1,100, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$1,400;

(2) A period of incarceration of not less than 30 days, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 40 days;

(3) A court-ordered suspension of a driver's license for a period of ~~4 years~~ 6 years; and

(4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle;

D. For a person having 3 or more previous OUI offenses within a 10-year period, which is a Class C crime:

(1) A fine of not less than \$2,100, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$2,500;

(2) A period of incarceration of not less than 6 months, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 6 months and 20 days;

(3) A court-ordered suspension of a driver's license for a period of 6 years; ~~and~~

(4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle; and

(5) In accordance with section 2508, installation of an ignition interlock device in the motor vehicle the person operates for a period of 4 years after the period of suspension has run;

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;

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;

E. If a law enforcement officer failed to provide the warnings required by section 2521, subsection 3, the increase in minimum penalties required because of a refusal to submit to a test is not mandatory;

F. For a person sentenced under paragraph B, C or D, the court shall order the defendant to participate in the alcohol and other drug program of the Department of Health and Human Services, Office of Substance Abuse. The court may waive the program pursuant to Title 5, section 20073-B, if the court finds that the defendant has completed an alcohol or other drug treatment program subsequent to the date of the offense; and

G. The court shall order an additional period of license suspension of 275 days for a person sentenced under paragraph A, B, C, D, 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. 3. 29-A MRSA §2412-A, sub-§7 is enacted to read:

7. Ignition interlock device. As a condition of license reinstatement, the Secretary of State, pursuant to section 2508, may require a person subject to the minimum mandatory sentencing provisions of subsection 3 to have installed in the motor vehicle the person operates for a period of up to 2 years an ignition interlock device approved by the Secretary of State.

Sec. 4. 29-A MRSA §2486, sub-§1, as amended by PL 2001, c. 463, §3 and affected by §7, is further amended to read:

1. Reinstatement fee for suspensions other than for OUI or failure to submit to a test. Before a suspension for any reason other than OUI or failure to submit to a test is terminated and a license or certifi-

cate reinstated, a fee of \$35, in addition to the regular license fee, must be paid to the Secretary of State.

Sec. 5. 29-A MRSA §2486, sub-§1-A is enacted to read:

1-A. Reinstatement fee for suspensions for OUI or failure to submit to a test. Before a suspension for OUI or failure to submit to a test is terminated and a license or certificate reinstated, a fee of \$50, in addition to the regular license fee, must be paid to the Secretary of State.

Sec. 6. 29-A MRSA §2508 is enacted to read:

§2508. Ignition interlock device

1. Installation of ignition interlock device. Notwithstanding the periods of suspension pursuant to section 2411, the Secretary of State may reinstate the license of a person convicted of more than one violation of section 2411 if the person satisfies all other conditions for license reinstatement and installs an ignition interlock device approved by the Secretary of State in the motor vehicle the person operates, under the following conditions.

A. The license of a person with 2 OUI offenses may be reinstated after 9 months of the suspension period has run if the person has installed for a period of 2 years an ignition interlock device approved by the Secretary of State in the motor vehicle the person operates.

B. The license of a person with 3 OUI offenses may be reinstated after 3 years of the suspension period has run if the person has installed for a period of 3 years an ignition interlock device approved by the Secretary of State in the motor vehicle the person operates.

C. The license of a person with 4 or more OUI offenses may be reinstated after the expiration of the period of suspension if the person has installed for a period of 4 years an ignition interlock device approved by the Secretary of State in the motor vehicle the person operates.

2. Crime; penalty. A person whose license is reinstated pursuant to section 2412-A, subsection 7 or this section may not:

A. Operate a motor vehicle without an ignition interlock device; or

B. Tamper with, disconnect or disable an ignition interlock device or circumvent the operation of an ignition interlock device.

Violation of this subsection is a Class E 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 7 days and a fine of not less than \$500. These penalties may not be suspended.

3. Other restrictions; penalty. Other restrictions are set out in this subsection.

A. A person whose license is reinstated pursuant to section 2412-A, subsection 7 or this section may not request or solicit another person to blow into or otherwise activate an ignition interlock device for the purpose of providing the person with an operable motor vehicle.

B. A person may not:

(1) Rent, lease or lend a motor vehicle without an ignition interlock device to another person the person knows or should know is restricted to the operation of a motor vehicle with an ignition interlock device;

(2) Blow into or otherwise activate an ignition interlock device for the purpose of providing a person restricted to the operation of a motor vehicle with an ignition interlock device with an operable motor vehicle; or

(3) Tamper with or circumvent the operation of an ignition interlock device.

4. Penalty. Notwithstanding section 1251, a violation of subsection 3 is a traffic infraction. The Secretary of State shall suspend the license of any person reinstated pursuant to section 2412-A, subsection 7 or this section who is adjudicated of the traffic infraction described in this section or whom the Secretary of State determines has violated any condition or restriction of license reinstatement. The periods of license suspension are:

A. For a person reinstated pursuant to section 2412-A, subsection 7, one year; and

B. For a person reinstated pursuant to this section, 2 years if the person has 2 OUI offenses, 4 years if the person has 3 OUI offenses and 6 years if the person has 4 or more OUI offenses.

A person whose license is suspended pursuant to this subsection is not entitled to the issuance of any type of license until the suspension period has expired.

Sec. 7. 29-A MRSA §2551-A, sub-§1, ¶A, as enacted by PL 2005, c. 606, Pt. A, §7, is amended to read:

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~~ and

(14) For a person whose license is reinstated pursuant to section 2412-A, subsection 7 or section 2508, operating a motor vehicle without an ignition interlock device; tampering with or circumventing the operation of an ignition interlock device; or requesting or soliciting another person to blow into or otherwise activate an ignition interlock device for the purpose of providing the person with an operable motor vehicle; or

Sec. 8. Application. This Act applies only to OUI offenses as defined in the Maine Revised Statutes, Title 29-A, section 2401, subsection 8 occurring after August 31, 2008.

Sec. 9. Appropriations and allocations. The following appropriations and allocations are made.

SECRETARY OF STATE, DEPARTMENT OF Administration - Motor Vehicles 0077

Initiative: Allocates funds for an Office Associate II position and related costs to administer a program to reinstate, within the suspension period, licenses of persons with 2 or more OUI offenses who install ignition interlock devices on their motor vehicles.

HIGHWAY FUND	2007-08	2008-09
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POSITIONS -	0.000	1.000
LEGISLATIVE COUNT		
Personal Services	\$0	\$51,844
All Other	\$0	\$7,119
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HIGHWAY FUND TOTAL	\$0	\$58,963

Sec. 10. Effective date. This Act takes effect September 1, 2008.

Effective September 1, 2008.

CHAPTER 532

H.P. 1475 - L.D. 2089

An Act To Allow Certain Assistance to Guides and Hunters

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

Sec. 1. 12 MRSA §12861 is enacted to read:

§12861. Transportation of guide's clients by unlicensed person

Notwithstanding section 10001, subsection 28 and Title 29-A, section 552, a person licensed to guide hunters under this chapter may employ the services of a person not licensed as a guide to transport hunters along a public or private road in a motor vehicle for the sole purpose of delivering those hunters to a predetermined destination prior to or at the conclusion of the time those hunters are engaged in hunting. For purposes of this section, "motor vehicle" does not include a snowmobile or an all-terrain vehicle.

1. Prohibition. A person, while transporting hunters pursuant to this section, may not:

- A. Engage in hunting;
- B. Transport hunting equipment for that person's own use unless that hunting equipment is fastened in a case;
- C. Accompany hunters into the fields or forests; or
- D. Assist in hunting activities, including, but not limited to, accompanying hunters to a hunting stand or bait site, searching for wounded animals or locating, retrieving or field dressing harvested animals.

2. Penalty and vicarious liability. This subsection applies to violations of subsection 1.

A. A person who violates subsection 1 commits a Class E crime. When a person is convicted of violating subsection 1, the guide employing that

person must be issued a warning by a law enforcement officer, as defined in Title 25, section 2801-A, subsection 5.

B. A person licensed as a guide who receives 3 or more warnings pursuant to paragraph A within a 5-year period commits a civil violation for which a fine of not less than \$100 and not more than \$500 may be adjudged. The commissioner may suspend the guide license of a person adjudicated of a violation of this paragraph for a period of up to one year.

C. A person licensed as a guide who violates paragraph B after having been adjudicated as having committed 3 or more civil violations under this Part within a 5-year period commits a Class E crime.

3. Repeal. This section is repealed July 31, 2010.

See title page for effective date.

CHAPTER 533

H.P. 1390 - L.D. 1952

An Act To Streamline the Administration of Significant Vernal Pool Habitat Protection

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

Whereas, the determination of whether or not a vernal pool habitat is significant for the purposes of the Natural Resources Protection Act is necessary to ensure proper protection of the resource; and

Whereas, the timeframe for making a determination of whether a vernal pool habitat is not significant and therefore not protected under the Natural Resources Protection Act needs to be expanded prior to the commencement of the next field determination season; and

Whereas, in order to reduce confusion, clarification of the specific types of rare species that must be evaluated in determining whether a vernal pool habitat is significant is needed prior to the commencement of the next field determination 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,