

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act Clarifying the Manner in Which a Person's Alcohol Level Is Determined under Maine Law**

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

**Sec. 1. 5 MRSA §3360, sub-§3, ¶E**, as amended by PL 2003, c. 243, §1, is further amended to read:

E. Operating under the influence of intoxicating liquor or drugs or with an excessive ~~blood-~~alcohol level, as described in Title 29-A, section 2411;

**Sec. 2. 6 MRSA §202, sub-§11**, as enacted by PL 1993, c. 467, §3, is amended to read:

**11. Operating an aircraft under the influence or with excessive alcohol level.** For any person to operate or attempt to operate an aircraft under the influence of intoxicating liquor or drugs or a combination of liquor and drugs or with an excessive alcohol level. Notwithstanding section 203, a person is guilty of a Class D crime if that person operates or attempts to operate an aircraft:

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

B. While having ~~0.04% or more by weight of alcohol in that person's blood~~an alcohol level of 0.04 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; and

**Sec. 3. 6 MRSA §204**, as enacted by PL 1993, c. 467, §4, is amended to read:

### **§ 204. Implied consent to chemical tests**

A person who operates or attempts to operate an aircraft within this State has a duty to submit to chemical testing to determine that person's ~~blood-~~alcohol level and drug concentration by analysis of blood, breath or urine if there is probable cause to believe that the person has operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs. The duty to submit to a chemical test includes the duty to complete either a blood, breath or urine test. Tests and procedures applicable in determining whether a person is under the influence are governed by section 205.

**Sec. 4. 6 MRSA §205**, as enacted by PL 1993, c. 467, §4 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

### **§ 205. Operating an aircraft under the influence or with an excessive alcohol level; tests and procedures**

**1. Blood or breath test.** If the law enforcement officer has probable cause to believe a person operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs, 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 another chemical test

must 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, will 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 the required chemical test at the direction of the officer, that person commits 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 chemical tests is admissible as evidence against that person at any trial for operating under the influence of intoxicating liquor or drugs.

No test results may be excluded as evidence in a proceeding before an 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 are 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 must be made available to that person or that person's attorney by the law enforcement officer.

**4. Alcohol level.** The following ~~percentages by weight~~quantities of alcohol in the defendant's blood or breath have the following evidentiary effects.

A. ~~If there was the defendant, at the time alleged, 0.02% or less by weight of alcohol in the defendant's blood~~had an alcohol level of 0.02 grams or less of alcohol per 100 milliliters of blood or 210 liters of breath, it is prima facie evidence that the defendant was not under the influence of intoxicating liquor.

B. ~~If there was the defendant, at the time alleged, in excess of 0.02% but less than 0.04% by weight of alcohol in the defendant's blood~~had an alcohol level of more than 0.02 grams but less than 0.04 grams of alcohol per 100 milliliters of blood or 210 liters of breath, 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 202, subsection 11, it is presumed that a person was under the influence of intoxicating liquor when that person has ~~a blood-alcohol level of 0.04% or more by weight~~an alcohol level of 0.04 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.

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

**5. Administration of tests.** Persons conducting analyses of blood, breath or urine for the purpose of determining the ~~blood-alcohol~~alcohol level or drug concentration must be certified for this purpose by the Department of Health and Human Services under certification standards set by that department.

Only a duly licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Health and Human Services under certification standards 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 or drug concentration of a person who is complying with the duty to submit to a chemical test. This limitation does 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 that states that the person is in fact a duly licensed or certified person as required by this subsection and that the person followed the proper procedure for drawing a specimen of blood to determine the ~~blood-alcohol~~alcohol level or drug concentration. That certificate, when duly signed and sworn to by the person, is admissible as 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 for chemical testing, unless, with 10 days' written notice to the prosecution, the defendant requests that the person testify as to licensure or certification, or the procedure for drawing the specimen of blood.

A law enforcement officer may take a sample specimen of the breath or urine of any person whom the officer has probable cause to believe operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs and who is complying with the duty to submit to and complete a ~~chemical~~chemical test. The sample specimen must be submitted to the Department of Health and Human Services or a person certified by the Department of Health and Human Services for the purpose of conducting chemical tests of the sample specimen to determine the ~~blood-alcohol~~alcohol level or drug concentration of that sample.

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

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 an aircraft while under the influence of intoxicating liquor or drugs, by use of a self-contained, breath-alcohol testing apparatus to determine the ~~blood-alcohol~~person's alcohol level, provided as long as the testing apparatus is reasonably available. The procedures for the operation and testing of self-

contained, breath-alcohol testing apparatuses must be as provided by rule adopted by the Department of Health and Human Services. The result of any such test must be accepted as prima facie evidence of the ~~blood-alcohol~~alcohol level of a person in any court.

Approved self-contained, breath-alcohol testing apparatuses must have a stamp of approval affixed by the Department of Health and Human Services after periodic testing. That stamp of approval is valid for a limited period of no more than one year. Testimony or other evidence that the equipment was bearing the stamp of approval must be accepted in court as prima facie evidence that the equipment was approved by the Department of Health and 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 does not, by itself, result in the exclusion of evidence of ~~blood-alcohol~~alcohol level or drug concentration, 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 Health and Human Services must 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 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 Health and Human Services or hospital or other health care provider in the exercise of due care is 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 drug concentration in the defendant's blood or ~~percentage by weight of alcohol in the defendant's blood~~alcohol level at the time alleged, as shown by the chemical analysis of the defendant's blood, breath or urine or by results of a self-contained, breath-alcohol testing apparatus authorized by subsection 5 is admissible in evidence.

When a person, certified under subsection 5, conducts a chemical analysis of blood or breath to determine ~~blood-alcohol~~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, is admissible in evidence in any court of the State. It is prima facie evidence that the person taking a specimen of blood or urine was a person authorized by subsection 5; that the equipment, chemicals and other materials used in the taking of the blood or urine 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 Health and 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 drug concentration in the defendant's blood or percentage by weight of alcohol in the defendant's blood alcohol level 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 must 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~~ alcohol level may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, is admissible in evidence in any court of the State. It is prima facie evidence that the ~~percentage by weight of alcohol in the defendant's blood~~ alcohol level 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 is by certified or registered mail and, when so made, is 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 chemical test under section 204 is admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor or drugs. If the law enforcement officer having probable cause to believe that the person operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs 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 chemical test is not admissible, except when a test was required pursuant to subsection 11. If a failure to submit to and complete a chemical 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 chemical test, the unavailability and the reason are admissible in evidence.

**8. Statements by accused.** Any statement by a defendant that the defendant was the operator of an aircraft that the defendant is accused of operating in violation of section 202, subsection 11 is 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 aircraft 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 must be paid from the Highway Fund.

**10. Accidents and officer's duties.** The law enforcement officer has the following duties.

A. After a person has been charged with operating or attempting to operate an aircraft while under the influence of intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~alcohol level, the investigating or arresting officer shall investigate to determine whether the charged person has any previous convictions of a violation of section 202, subsection 11 or adjudications for failure to comply with the duty to submit to and complete a chemical test under section 204. As part of that investigation, the officer shall review the records maintained by the courts, the department, the State Bureau of Identification or the Secretary of State, including telecommunications of records maintained by the Secretary of State.

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 an aircraft 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~~an alcohol level or drug concentration.

C. A law enforcement officer shall report the results of a chemical test administered, or the refusal of a person to submit to a chemical test, pursuant to this section to the Federal Aviation Administration.

**11. Fatalities.** Notwithstanding any other provision of this section, an operator of an aircraft who is involved in an aircraft accident that results in the death of a person must submit to and complete a chemical test to determine that person's ~~blood-alcohol~~alcohol level or drug concentration by analysis of blood, breath or urine. A law enforcement officer may determine which type of test will be administered. The result of a test taken pursuant to this subsection 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~~alcohol level.

**Sec. 5. 12 MRSA §10701, sub-§1-A,** as enacted by PL 2003, c. 655, Pt. B, §74 and affected by §422, is amended to read:

**1-A. Prohibition.** Prohibitions against hunting and operating under the influence are as follows.

A. A person may not hunt wild animals or wild birds:

(1) While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;

(2) If 21 years of age or older, while having ~~0.08% or more by weight of alcohol in that person's blood~~0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; or

(3) If less than 21 years of age, while having ~~any amount of alcohol in that person's blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath.

B. A person may not operate or attempt to operate a watercraft:

(1) While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;

(2) If 21 years of age or older, while having ~~0.08% or more by weight of alcohol in that person's blood~~ 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; or

(3) If less than 21 years of age, while having ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath.

C. A person may not operate or attempt to operate a snowmobile:

(1) While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;

(2) If 21 years of age or older, while having ~~0.08% or more by weight of alcohol in that person's blood~~ 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; or

(3) If less than 21 years of age, while having ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath.

D. A person may not operate or attempt to operate an ATV:

(1) While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;

(2) If 21 years of age or older, while having ~~0.08% or more by weight of alcohol in that person's blood~~ 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; or

(3) If less than 21 years of age, while having ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath.

**Sec. 6. 12 MRSA §10701, sub-§3, ¶A**, as affected by PL 2003, c. 614, §9 and amended by c. 655, Pt. B, §75 and affected by §422, is further amended to read:

A. In the case of a person having no previous convictions of a violation of subsection 1-A within the previous 6-year period, the fine may not be less than \$400. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete a blood-

~~alcohol~~ alcohol test under section 10702, subsection 1, the fine may not be less than \$500. A conviction under this paragraph must include a period of incarceration of not less than 48 hours, none of which may be suspended, when the person:

(1) Was tested as having a ~~blood-alcohol~~ alcohol level of ~~0.15% or more~~ 0.15 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath;

(2) Failed or refused to stop upon request or signal of an officer in uniform, pursuant to section 6953 or 10651, during the operation that resulted in prosecution for operating under the influence or with a ~~blood-alcohol~~ alcohol level of ~~0.08% or more~~ 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; or

(3) Failed to submit to a chemical test to determine that person's ~~blood-alcohol~~ alcohol level or drug concentration, requested by a law enforcement officer on the occasion that resulted in the conviction.

**Sec. 7. 12 MRSA §10701, sub-§3, ¶B**, as affected by PL 2003, c. 614, §9 and amended by c. 655, Pt. B, §75 and affected by §422, is further amended to read:

B. In the case of a person having one previous conviction of a violation of subsection 1-A within the previous 6-year period, the fine may not be less than \$600. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete a ~~blood-alcohol~~ alcohol level or drug concentration test under section 10702, subsection 1, the fine may not be less than \$800. A conviction under this paragraph must include a period of incarceration of not less than 7 days, none of which may be suspended.

**Sec. 8. 12 MRSA §10701, sub-§3, ¶C**, as affected by PL 2003, c. 614, §9 and amended by c. 655, Pt. B, §75 and affected by §422, is further amended to read:

C. In the case of a person having 2 or more previous convictions of violations of subsection 1-A within the previous 6-year period, the fine may not be less than \$1,000. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete a ~~blood-alcohol~~ alcohol level or drug concentration test under section 10702, subsection 1, the fine may not be less than \$1,300. A conviction under this paragraph must include a period of incarceration of not less than 30 days, none of which may be suspended.

**Sec. 9. 12 MRSA §10702, sub-§1**, as affected by PL 2003, c. 614, §9 and repealed and replaced by c. 655, Pt. B, §76 and affected by §422, is amended to read:

**1. Duty to submit.** A person who hunts wild animals or wild birds or operates or attempts to operate a watercraft, snowmobile or ATV within this State has a duty to submit to a test to determine that person's ~~blood-alcohol~~ alcohol level or drug concentration by analysis of blood, breath or urine if there is probable cause to believe that the person is hunting wild animals or wild birds or operating or attempting to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs. The



duty to submit to a ~~blood-alcohol~~ alcohol level or drug concentration test includes the duty to complete either a blood, breath or urine test or any combination of those tests. Tests and procedures for determining whether a person is under the influence of intoxicating liquor or drugs are governed by section 10703.

**Sec. 10. 12 MRSA §10702, sub-§2**, as affected by PL 2003, c. 614, §9 and repealed and replaced by c. 655, Pt. B, §76 and affected by §422, is amended to read:

**2. Failure to comply with duty to submit.** A person shall submit to and complete a ~~blood-alcohol~~ alcohol level or drug concentration test, or both, when requested to do so by a law enforcement officer who has probable cause to believe that the person hunted or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs.

**Sec. 11. 12 MRSA §10703, sub-§4**, as affected by PL 2003, c. 614, §9 and amended by c. 655, Pt. B, §78 and affected by §422, is further amended to read:

**4. Alcohol level.** The following ~~percentages by weight~~ quantities of alcohol in the defendant's blood or breath have the following evidentiary effect.

A. If there was, at the time alleged, ~~0.05% or less by weight of alcohol in the blood of a defendant who was 21 years of age or older at the time of arrest~~ had an alcohol level of 0.05 grams or less of alcohol per 100 milliliters of blood or 210 liters of breath, 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 blood of a defendant who was 21 years of age or older at the time of the arrest~~ had an alcohol level of 0.05 grams of alcohol or more but less than 0.08 grams of alcohol per 100 milliliters of blood or 210 liters of breath, 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 10701, subsection 1-A, it is presumed that a person was under the influence of intoxicating liquor when that person has:

(1) For a person 21 years of age or older, a ~~blood-alcohol~~ alcohol level of 0.08% or more by weight 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; and

(2) For a person less than 21 years of age, ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath.

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

**Sec. 12. 12 MRSA §10703, sub-§5**, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9 and amended by c. 689, Pt. B, §6, is further amended to read:

**5. Administration of tests.** Persons conducting analyses of blood, breath or urine for the purpose of determining the ~~blood-alcohol~~ alcohol level or drug concentration must be certified for each purpose by the Department of Health and Human Services under certification standards set by that department.

A. Only a duly licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Health and Human Services under certification standards set by that department, acting at the request of a law enforcement officer, may draw a specimen of blood to determine the ~~blood-alcohol~~ alcohol level or drug concentration of a person who is complying with the duty to submit to a chemical test. This limitation does not apply to the taking of breath or urine specimens. When a person draws a specimen of blood at the request of a law enforcement officer, that person may issue a certificate that states that the person is in fact a duly licensed or certified person as required by this subsection and that the person followed the proper procedure for drawing a specimen of blood to determine the ~~blood-alcohol~~ alcohol level or drug concentration. That certificate, when duly signed and sworn to by the person, is admissible as 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 for chemical testing, unless, with 10 days' written notice to the prosecution, the defendant requests that the person testify as to licensure or certification, or the procedure for drawing the specimen of blood.

B. A law enforcement officer may take a sample specimen of the breath or urine of any person whom the officer has probable cause to believe hunted wild animals or wild birds or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs and who is complying with the duty to submit to and complete a chemical test. The sample specimen must be submitted to the Department of Health and Human Services or a person certified by the Department of Health and Human Services for the purpose of conducting chemical tests of the sample specimen to determine the ~~blood-alcohol~~ alcohol level or drug concentration of that sample.

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

D. 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 hunted wild birds or wild animals or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor, by use of a self-contained, breath-alcohol testing apparatus to determine the ~~blood-alcohol~~ alcohol level, provided as long as the testing apparatus is reasonably available. The procedures for the operation and testing of self-contained, breath-alcohol

testing apparatuses must be as provided by rule adopted by the Department of Health and Human Services. The result of any such test must be accepted as prima facie evidence of the ~~blood-alcohol~~ alcohol level in any court.

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

F. Failure to comply with any provision of this subsection or with any rule adopted under this subsection does not, by itself, result in the exclusion of evidence of ~~blood-alcohol~~ alcohol level or drug concentration, unless the evidence is determined to be not sufficiently reliable.

G. 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 Health and Human Services must be accepted in court as prima facie evidence that the materials were of a composition and quality as stated.

H. A person certified by the Maine Criminal Justice Academy, under certification standards 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.

**Sec. 13. 12 MRSA §10703, sub-§7**, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9 and amended by c. 689, Pt. B, §6, is further amended to read:

**7. Evidence.** The ~~percentage by weight of alcohol in the~~ defendant's ~~blood~~alcohol level at the time alleged and the concentration of drugs at the time alleged, as shown by the chemical analysis of the defendant's blood, breath or urine or by any test authorized by subsection 5 is admissible in evidence.

A. When a person certified under subsection 5 conducts a chemical analysis of blood, breath or urine to determine ~~blood-alcohol~~ alcohol level or drug concentration, the person conducting the analysis may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, is admissible in evidence in any court of the State. It is prima facie evidence that the person taking a specimen of blood or urine was a person authorized by subsection 5; that the equipment, chemicals and other materials used in the taking of the blood or urine 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 Health and 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 drug concentration in the defendant's blood or ~~percentage by weight of alcohol in the~~ defendant's ~~blood~~alcohol level was, at the time the blood, breath or urine 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 must specify those matters concerning which the defendant requests testimony.

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

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

D. The failure of a person to comply with the duty to submit to and complete a chemical test under section 10702, subsection 1 is admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor or drugs. If the law enforcement officer having probable cause to believe that the person hunted wild animals or wild birds or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs 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 chemical test is not admissible, except when a test was required pursuant to subsection 11. If a failure to submit to and complete a chemical test is not admitted into evidence, the court may inform the jury of the fact that a test result is not available.

E. If a test result is not available for a reason other than a person's failure to comply with the duty to submit to and complete a chemical test, the unavailability and the reason are admissible in evidence.

**Sec. 14. 12 MRSA §10703, sub-§10, ¶A**, as affected by PL 2003, c. 614, §9 and amended by c. 655, Pt. B, §80 and affected by §422, is further amended to read:

A. After a person has been charged with hunting wild animals or wild birds or with operating or attempting to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~ alcohol level, the investigating or arresting officer shall investigate to determine whether the charged person has any previous convictions of a violation of section 10701, subsection 1-A or adjudications for failure to comply with the duty to submit to and complete a chemical test under section 10702, subsection 1. 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.

**Sec. 15. 12 MRSA §10703, sub-§11**, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, is amended to read:

**11. Fatalities.** Notwithstanding any other provision of this section, any person hunting wild animals or wild birds who is involved in a hunting accident or any operator of a watercraft, snowmobile or ATV who is involved in a watercraft, snowmobile or ATV accident that results in the death of any person must submit to and complete chemical tests to determine that person's ~~blood-alcohol~~ alcohol level

or other chemical use by analysis of blood, breath or urine. A law enforcement officer may determine which types of tests will be administered. The results of tests taken pursuant to this subsection are not admissible at trial unless the court is satisfied that probable cause exists, independent of the test results, to believe that the hunter or operator was under the influence of intoxicating liquor or drugs or had an excessive ~~blood-alcohol~~alcohol level.

**Sec. 16. 15 MRSA §3103, sub-§1, ¶F**, as amended by PL 2003, c. 410, §5, is further amended 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~~alcohol level, as defined in Title 29-A, section 2411, and offenses defined in Title 29-A as Class B or C crimes;

**Sec. 17. 16 MRSA §357, 2nd ¶**, as amended by PL 2007, c. 63, §1, is further amended to read:

Notwithstanding this section, the result of a laboratory or any other test kept by a hospital or other medical facility that reflects ~~blood-alcohol~~an alcohol level, a detectable urine-drug level; and a detectable blood-drug level may not be excluded as evidence in a criminal or civil proceeding by reason of any claim of confidentiality or privilege and may be admitted ~~provided that~~as long as the result is relevant and reliable evidence if the proceeding is one in which the operator of a motor vehicle, snowmobile, all-terrain vehicle or watercraft is alleged to have operated under the influence of intoxicating liquor or drugs and the court is satisfied that probable cause exists to believe that the operator committed the offense charged.

**Sec. 18. 17-A MRSA §1057, sub-§1, ¶B**, as enacted by PL 1989, c. 917, §2, is amended to read:

B. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs or with an excessive ~~blood-alcohol~~alcohol level, the person possesses a firearm in a licensed establishment.

**Sec. 19. 17-A MRSA §1057, sub-§4**, as enacted by PL 1989, c. 917, §2, is amended to read:

4. A law enforcement officer who has probable cause to believe that a person has violated subsection 1, paragraph B, may require that person to submit to chemical testing to determine ~~blood-alcohol~~an alcohol level or drug concentration. If the court is satisfied that the law enforcement officer had probable cause to believe that the defendant was in violation of subsection 1, paragraph B, and that the person was informed of the requirement to submit to chemical testing, the person's failure to comply with the requirement to submit to chemical testing is admissible evidence on the issue of whether that person was under the influence of intoxicating liquor or drugs.

**Sec. 20. 17-A MRSA §1057, sub-§5**, as amended by PL 1995, c. 65, Pt. A, §57 and affected by §153 and Pt. C, §15, is further amended to read:

5. For purposes of this section, "under the influence of intoxicating liquor or drugs or a combination of liquor and drugs or with an excessive ~~blood-alcohol~~alcohol level" has the same meaning as "under the influence of intoxicants" as defined in Title 29-A, section 2401, subsection 13. "Excessive ~~blood-alcohol~~alcohol level" means 0.08% or more by weight of alcohol in the bloodan alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. Standards, tests and

procedures applicable in determining whether a person is under the influence or has an excessive ~~blood-alcohol~~alcohol level within the meaning of this section are those applicable pursuant to Title 29-A, sections 2411 and 2431; except that the suspension of a permit to carry concealed firearms issued pursuant to Title 25, chapter 252, or of the authority of a private investigator licensed to carry a concealed firearm pursuant to Title 32, chapter 89, is as provided in those chapters.

**Sec. 21. 22 MRSA §567, sub-§1**, as amended by PL 1999, c. 62, §3, is further amended to read:

**1. Acceptable data.** Except as provided in this subsection, 6 months after the adoption of rules specified in subsection 2, certification is required of any commercial, industrial, municipal, state or federal laboratory that analyzes water, soil, air, solid or hazardous waste, or radiological samples for the use of programs of the department or the Department of Environmental Protection, except as provided under chapter 411, the Maine Medical Laboratory Act; Title 26, chapter 7, subchapter ~~III-A~~3-A, Substance Abuse Testing; and Title 29-A, section 2524, administration of tests to determine ~~blood-alcohol~~an alcohol level or drug concentration.

A laboratory operated by a waste discharge facility licensed pursuant to Title 38, section 413 may analyze waste discharges for total suspended solids, settleable solids, biological or biochemical oxygen demand, chemical oxygen demand, pH, chlorine residual, fecal coliform, E. coli, conductivity, color, temperature and dissolved oxygen without being certified under this section. The exception provided under this paragraph applies to a laboratory testing its own samples for pollutants listed in its permit or license; pretreatment samples; and samples from other wastewater treatment plants for up to 60 days per year. The time period provided in this paragraph, which is a maximum period for each treatment plant for which analysis is provided, may be extended by memorandum of agreement between the Department of Environmental Protection and the Health and Environmental Testing Laboratory.

**Sec. 22. 24-A MRSA §2303-A**, as amended by PL 1995, c. 65, Pt. A, §67 and affected by §153 and Pt. C, §15, is further amended to read:

### **§ 2303-A.Surcharge**

~~No~~An insurer may not surcharge a motor vehicle insurance policy based on a motor vehicle operator's license suspension when that suspension is pursuant to Title 29-A, section 2472, subsection 3, paragraph B, except in accordance with this section. If the person had a ~~blood-alcohol~~an alcohol level of at least 0.05%, ~~but less than 0.08% by weight~~0.05 grams or more of alcohol but less than 0.08 grams of alcohol per 100 milliliters of blood or 210 liters of breath, the surcharge is limited to 20%. If the person had a ~~blood-alcohol~~an alcohol level of at least 0.02% ~~but less than 0.05% by weight~~0.02 grams of alcohol but less than 0.05 grams of alcohol per 100 milliliters of blood or 210 liters of breath, the surcharge is limited to 10%. If the policy covers multiple vehicles, the surcharge may be applied only to that portion of the rate attributable to a single vehicle.

**Sec. 23. 25 MRSA §1541, sub-§4-A, ¶A**, as enacted by PL 1999, c. 260, Pt. B, §2 and affected by §18, is amended to read:

A. Fingerprints and other criminal history record information pertinent to the identification of individuals who have been arrested as fugitives from justice or who have been arrested or charged with any criminal offense under the laws of this State except a violation of Title 12 or 29-A that is a Class D or E crime other than an alcohol-related or drug-related offense. For purposes of this paragraph, an "alcohol-related or drug-related offense" is a Class D crime that involves hunting while under the influence of intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~alcohol level or the operation or attempted operation of a motorcraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~alcohol level. The commanding officer may collect and maintain fingerprints and other criminal history record information that may be related to other criminal offenses or to the performance of the commanding officer's obligations under state laws and under agreements with agencies of the United States or any other jurisdiction; and

**Sec. 24. 25 MRSA §1547**, as repealed and replaced by PL 1999, c. 260, Pt. B, §17 and affected by §18, is amended to read:

### **§ 1547. Courts to submit criminal records to the State Bureau of Identification**

At the conclusion of a juvenile court proceeding or at the conclusion of a prosecution for a criminal offense except a violation of Title 12 or Title 29-A that is a Class D or E crime other than a Class D crime that involves hunting while under the influence of intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~alcohol level or the operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~alcohol level, the court shall transmit to the State Bureau of Identification an abstract duly authorized on forms provided by the bureau.

**Sec. 25. 25 MRSA §2005, sub-§1, ¶D**, as enacted by PL 1989, c. 917, §13, is amended to read:

D. For conduct that occurred after a permit was issued, that the permit holder was convicted of operating a motor vehicle, snowmobile, ATV or watercraft while under the influence of intoxicating liquor or drugs or with an excessive ~~blood-alcohol~~alcohol level and, by a preponderance of the evidence, that at the time of the offense the permit holder was in possession of a loaded firearm; or

**Sec. 26. 26 MRSA §682, sub-§7**, as amended by PL 2001, c. 556, §1 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

**7. Substance abuse test.** "Substance abuse test" means any test procedure designed to take and analyze body fluids or materials from the body for the purpose of detecting the presence of substances of abuse. The term does not include tests designed to determine ~~blood-alcohol concentration~~the alcohol levels from a sample of an individual's breath.

A. "Screening test" means an initial substance abuse test performed through the use of immunoassay technology, or a test technology of similar or greater accuracy and reliability approved by the Department of Health and Human Services under rules adopted under section 687, and that is used as a preliminary step in detecting the presence of substances of abuse.

(1) A screening test of an applicant's urine or saliva may be performed at the point of collection through the use of a noninstrumented point of collection test device approved by the federal Food and Drug Administration. Section 683, subsection 5-A governs the use of such tests.

B. "Confirmation test" means a 2nd substance abuse test performed through the use of gas chromatography-mass spectrometry that is used to verify the presence of a substance of abuse indicated by an initial positive screening test result.

(1) The Department of Health and Human Services may recommend to the joint standing committee of the Legislature having jurisdiction over labor matters that other testing technologies be authorized for use in confirmation tests if the department finds those technologies to be of equal or greater accuracy and reliability than gas chromatography-mass spectrometry.

**Sec. 27. 29-A MRSA §1253, sub-§2, ¶D**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

D. Protect public safety by removing from public ways a commercial driver who has:

(1) Operated or attempted to operate a commercial vehicle while having ~~0.04% or more by weight of alcohol in that driver's blood~~ an alcohol level of 0.04 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath;

(2) Refused to submit to or complete a lawfully requested test to determine ~~blood-alcohol~~ that driver's alcohol level; or

(3) Operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor or drugs; and

**Sec. 28. 29-A MRSA §1253, sub-§5**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**5. Operation with an alcohol level of 0.04 grams or more or under the influence of intoxicating liquor or drugs.** The Secretary of State shall suspend, without preliminary hearing, the commercial license of a person who has operated or attempted to operate a commercial motor vehicle while having ~~0.04% or more by weight of alcohol in the blood~~ an alcohol level of 0.04 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath or while under the influence of intoxicating liquor or drugs.

The period of suspension must satisfy the regulations adopted by the United States Secretary of Transportation under the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, Title XII.



**Sec. 29. 29-A MRSA §1404, sub-§2**, as amended by PL 2005, c. 606, Pt. B, §4, 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~~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-A, subsection 1, paragraph A or had a license suspended or revoked within that 6-year period.

**Sec. 30. 29-A MRSA §1551, sub-§9**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**9. OUI.** "OUI" means operating under the influence of intoxicants or with an excessive ~~blood-alcohol~~alcohol level.

**Sec. 31. 29-A MRSA §1653, sub-§1**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**1. Liability.** An owner or person having control of a motor vehicle who, having knowledge or reason to know that a person is under the influence of intoxicating liquor or drugs or has a ~~blood-alcohol~~an alcohol level of ~~.08% or more by weight of alcohol in the blood~~0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath, permits that person to operate that motor vehicle is jointly and severally liable with that person for damages caused by the negligence of the person.

**Sec. 32. 29-A MRSA §2401, sub-§2**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**2. Alcohol level.** "~~Blood-alcohol~~Alcohol level" means a ~~stated percentage by weight of alcohol in the blood, based on grams of alcohol per 100 milliliters of blood~~either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

**Sec. 33. 29-A MRSA §2401, sub-§3**, as amended by PL 1995, c. 368, Pt. AAA, §3, is further amended to read:

**3. Chemical test or test.** "Chemical test" or "test" means a test or tests used to determine ~~blood-alcohol~~alcohol level or drug concentration by analysis of blood, breath or urine.

**Sec. 34. 29-A MRSA §2401, sub-§8**, as amended by PL 1995, c. 482, Pt. A, §26, is further amended to read:

**8. OUI.** "OUI" means operating under the influence of intoxicants or with an excessive ~~blood-~~alcohol level under section 2411, 2453, 2454, 2456, 2457 or 2472.

**Sec. 35. 29-A MRSA §2401, sub-§9, ¶E,** as amended by PL 1995, c. 65, Pt. A, §113 and affected by §153 and Pt. C, §15, is further amended to read:

E. In a tribal court of the Penobscot Nation or the Passamaquoddy Tribe, a court of the United States or a court of a state that is not a party to the compact, an offense for which punishment includes the possibility of incarceration, whether or not actually imposed, and the elements of the offense as provided in the law of that jurisdiction include operation of a motor vehicle while intoxicated, impaired or under the influence of alcohol, intoxicating liquor or drugs or with a level of ~~blood-~~alcohol sufficient for conviction under the laws of that jurisdiction; or

**Sec. 36. 29-A MRSA §2404,** as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

#### **§ 2404. Owner liable for damage by impaired operator**

An owner or person having control over a motor vehicle who, having knowledge or reason to know that a person under the influence of intoxicants has a ~~blood-alcohol~~alcohol level of ~~.08% or more by weight of alcohol in the blood~~0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath, permits that person to operate that motor vehicle is jointly and severally liable with that person for damages caused by the negligence of the person. This section is not in derogation of, does not limit and does not diminish any cause of action or right of recovery that is or may become available under the common law.

**Sec. 37. 29-A MRSA §2411, sub-§1-A, ¶A,** as enacted by PL 2003, c. 452, Pt. Q, §78 and affected by Pt. X, §2, is amended to read:

A. Operates a motor vehicle:

(1) While under the influence of intoxicants; or

(2) While having a ~~blood-alcohol~~alcohol level of ~~0.08% or more~~0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath;

**Sec. 38. 29-A MRSA §2411, sub-§1-A, ¶D,** as amended by PL 2005, c. 606, Pt. A, §1, 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;

(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~~ alcohol level of 0.08% or greater ~~0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.~~

**Sec. 39. 29-A MRSA §2411, sub-§2**, as amended by PL 2003, c. 452, Pt. Q, §79 and affected by Pt. X, §2, is further amended to read:

**2. Pleading and proof.** The alternatives outlined in subsection 1-A, paragraph A may be pleaded in the alternative. The State is not required to elect between the alternatives prior to submission to the fact finder. In a prosecution under subsection 1-A, paragraph D, the State need not prove that the defendant's condition of being under the influence of intoxicants or having a ~~blood-alcohol~~ alcohol level of 0.08% or more ~~0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath~~ caused the serious bodily injury or death alleged. The State must prove only that the defendant's operation caused the serious bodily injury or death. The court shall apply Title 17-A, section 33 in assessing any causation under this section.

**Sec. 40. 29-A MRSA §2411, sub-§4**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**4. Arrest.** A law enforcement officer may arrest, without a warrant, a person the officer has probable cause to believe has operated a motor vehicle while under the influence of intoxicants if the arrest occurs within a period following the offense reasonably likely to result in the obtaining of probative evidence of ~~blood-alcohol~~ alcohol level or drug concentration.

**Sec. 41. 29-A MRSA §2411, sub-§5, ¶A**, as amended by PL 2003, c. 673, Pt. TT, §4, is further amended to read:

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~~ alcohol level of 0.15% or more ~~0.15 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath;~~

(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;

**Sec. 42. 29-A MRSA §2411, sub-§7**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**7. Surcharge.** A surcharge must be charged for a conviction under this section. The surcharge is \$30, except that, when the person operated or attempted to operate a motor vehicle while under the influence of drugs or a combination of liquor and drugs, the surcharge is \$125. For the purposes of collection procedures, the surcharge is considered a fine. Notwithstanding section 2602, this surcharge accrues to the Highway Fund for the purpose of covering the costs associated with the administration and analysis of ~~blood-alcohol~~alcohol level tests.

**Sec. 43. 29-A MRSA §2421, sub-§2**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**2. Seizure of vehicle of owner-operator.** A motor vehicle operated by a sole owner is subject to seizure by a law enforcement officer when:

A. The owner-operator operates or attempts to operate that motor vehicle under the influence of intoxicating liquor or drugs or while having ~~0.08% of alcohol by weight in the blood~~an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; and

B. The owner-operator is under suspension or revocation as a result of a previous conviction of operating under influence of alcohol or drugs or while having ~~0.08% of alcohol by weight in the blood~~an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.

**Sec. 44. 29-A MRSA §2431, sub-§1**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**1. Test results.** Test results showing a ~~drug concentration~~drug concentration or ~~blood-alcohol~~alcohol level at the time alleged are admissible in evidence. Failure to comply with the provisions of sections 2521 and 2523 may not, by itself, result in the exclusion of evidence of ~~blood-alcohol~~alcohol level or drug concentration, unless the evidence is determined to be not sufficiently reliable.

**Sec. 45. 29-A MRSA §2431, sub-§2, ¶A**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

A. A person certified in accordance with section 2524 conducting a chemical analysis of blood, breath or urine to determine ~~blood-alcohol~~alcohol level or drug concentration may issue a certificate stating the results of the analysis.

**Sec. 46. 29-A MRSA §2431, sub-§2, ¶C**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

C. A certificate issued in accordance with paragraph A or B, when duly signed and sworn, is prima facie evidence that:

(1) The person taking the specimen was authorized to do so;

(2) Equipment, chemicals and other materials used in the taking of the specimen were of a quality appropriate for the purpose of producing reliable test results;

(3) Equipment, chemicals or materials required to be approved by the Department of Health and Human Services were in fact approved;

(4) The sample tested was in fact the same sample taken from the defendant; and

(5) The ~~blood-alcohol~~alcohol level or drug concentration in the blood of the defendant at the time the sample was taken was as stated in the certificate.

**Sec. 47. 29-A MRSA §2431, sub-§2, ¶G**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

G. The results of a self-contained breath-alcohol apparatus test is prima facie evidence of ~~blood-alcohol~~alcohol level.

**Sec. 48. 29-A MRSA §2432**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

### **§ 2432. Alcohol level; evidentiary weight**

**1. Level less than 0.05 grams.** If a person has a ~~blood-alcohol~~alcohol level of ~~0.05% or less~~0.05 grams or less of alcohol per 100 milliliters of blood or 210 liters of breath, it is prima facie evidence that that person is not under the influence of alcohol.

**2. Level greater than 0.05 grams and less than 0.08 grams.** If a person has a ~~blood-alcohol~~alcohol level in excess of ~~0.05%~~0.05 grams of alcohol but less than 0.08 grams of alcohol per 100 milliliters of blood or 210 liters of breath, it is relevant evidence, but not prima facie, indicating whether or not that person is under the influence of intoxicants to be considered with other competent evidence.

**3. Level of 0.08 grams or greater.** In proceedings other than under section 2411, a person is presumed to be under the influence of intoxicants if that person has a ~~blood-alcohol~~alcohol level of ~~0.08% or more~~0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.

**Sec. 49. 29-A MRSA §2453**, as amended by PL 2003, c. 434, §29 and affected by §37, is further amended to read:

**§ 2453. Suspension on administrative determination; excessive alcohol level**

**1. Purpose.** The purpose of this section is:

- A. To provide maximum safety for all persons who travel on or otherwise use the public ways; and
- B. To remove quickly from public ways those persons who have shown themselves to be a safety hazard by operating a motor vehicle with an excessive ~~blood-alcohol~~alcohol level.

**2. Definition.** For the purposes of this section, "operating a motor vehicle with an excessive ~~blood-alcohol~~alcohol level" means operating a motor vehicle with a ~~blood-alcohol~~alcohol level of ~~0.08% or more~~0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.

**3. Suspension.** The Secretary of State shall immediately suspend a license of a person determined to have operated a motor vehicle with an excessive ~~blood-alcohol~~alcohol level.

**4. Drug and alcohol program.** The Secretary of State may not suspend a license solely because a person has not satisfactorily completed an alcohol and drug program, as defined in subchapter H1. This limitation does not affect statutory restoration authority.

**5. Stay.** If, within 10 days from the effective date of the suspension, the Secretary of State receives a request in writing for a hearing in accordance with section 2483, the suspension is stayed until a hearing is held and a decision is issued.

**6. Period of suspension.** The following periods of suspension apply.

- A. The same suspension period applies as if the person were convicted of OUI.
- C. If a person's license is also suspended for an OUI conviction arising out of the same occurrence, the period of time the license has been suspended under this section prior to the conviction must be deducted from the period of time of a court-imposed suspension.
- D. The period of suspension is a minimum and the Secretary of State may suspend the license for an additional period under section 2451, subsection 3.

**7. Restoration of license.** The Secretary of State may issue a license or permit as follows.

- A. Restoration of any license or permit to operate, right to operate a motor vehicle and right to apply for or obtain a license suspended under this section must be in accordance with sections 2502 to 2506.

**8. Hearing.** The scope of the hearing must include whether:

- A. The person operated a motor vehicle with an excessive ~~blood-alcohol~~alcohol level; and
- B. There was probable cause to believe that the person was operating a motor vehicle with an excessive ~~blood-alcohol~~alcohol level.

**Sec. 50. 29-A MRSA §2455, sub-§1**, as amended by PL 1995, c. 645, Pt. B, §20, is further amended to read:

**1. Report by district attorney.** The district attorney shall forward a report to the Secretary of State when any person is convicted of a criminal homicide or adjudicated to have committed a juvenile offense of criminal homicide as the result of that person's operation of a motor vehicle when:

- A. The person was operating under the influence of intoxicating liquor or drugs, or with a ~~blood-alcohol~~an alcohol level of 0.08% or greater0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath;
- B. The person had not attained the legal drinking age and was operating a motor vehicle with ~~any amount of alcohol in the blood~~an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath;
- C. There was probable cause to believe that the person was operating under the influence of intoxicating liquor or drugs and failed to comply with that person's duty to submit to and complete required chemical testing; or
- D. There was probable cause to believe that the person had not attained the legal drinking age and was operating a motor vehicle with ~~any amount of alcohol in the blood~~an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath and failed to comply with the duty to submit to and complete a test to determine ~~blood-alcohol~~alcohol level.

**Sec. 51. 29-A MRSA §2456, sub-§1, ¶B**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

- B. While having a ~~blood-alcohol~~an alcohol level of 0.08% or moremore than 0.08 grams per 100 milliliters of blood or 210 liters of breath; or

**Sec. 52. 29-A MRSA §2456, sub-§3, ¶B**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

- B. The person, at that time, had an excessive ~~blood-alcohol~~alcohol level, or was under the influence of intoxicants or may be penalized for failure to submit to required chemical testing; and

**Sec. 53. 29-A MRSA §2457, sub-§1, ¶B**, as amended by PL 1995, c. 368, Pt. AAA, §20, is further amended to read:

B. As the Secretary of State determines, has operated a motor vehicle while having ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath.

**Sec. 54. 29-A MRSA §2457, sub-§2**, as amended by PL 1995, c. 368, Pt. AAA, §21, is further amended to read:

**2. Duty to submit to test.** A person who operates a motor vehicle with a conditional license shall submit to a test if there is probable cause to believe that person holds a conditional license and operated a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. The other provisions of subchapter IV4 apply, except the suspension must be for a period of not less than 2 years.

**Sec. 55. 29-A MRSA §2457, sub-§3, ¶C**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

C. If a person is determined to have operated a motor vehicle with ~~a blood-alcohol~~ an alcohol level of 0.08% or more 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath and both this section and section 2453 apply, the longer period of suspension applies.

**Sec. 56. 29-A MRSA §2457, sub-§4**, as amended by PL 1995, c. 368, Pt. AAA, §22, is further amended to read:

**4. Hearing; stay; issues.** If a hearing is requested in accordance with section 2483, the suspension under subsection 1, paragraph B is stayed pending the outcome of the hearing. The scope of the hearing must include whether:

A. The person operated a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath;

B. There was probable cause to believe that the person was operating with ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath; and

C. The person held a conditional license.

**Sec. 57. 29-A MRSA §2472, sub-§1**, as amended by PL 2005, c. 433, §26 and affected by §28, is further amended to read:

**1. Licensee not yet 21 years of age.** A license issued to a person who has not yet attained the age of 21 years is a provisional license for a period of 2 years following the date of issue or until the holder attains 21 years of age, whichever occurs last. That license remains in force as a nonprovisional license to the next normal expiration date. A license issued by another jurisdiction to a person who has not yet attained the age of 21 years is a provisional license for the purpose of operating a motor vehicle within this State.



A license of a person who has not yet attained 21 years of age includes the condition that the person not operate a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. When a person who has not yet attained 21 years of age operates a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath, the provisions of section 1251, subsection 1, paragraph B apply.

**Sec. 58. 29-A MRSA §2472, sub-§3**, as amended by PL 1997, c. 737, §17, is further amended to read:

**3. Suspension for OUI conviction or certain alcohol level.** The Secretary of State shall suspend, without preliminary hearing, a juvenile provisional license of a person who:

- A. Receives an OUI conviction; or
- B. Operates a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath.

**Sec. 59. 29-A MRSA §2472, sub-§3-A**, as enacted by PL 1997, c. 737, §18, is amended to read:

**3-A. Juvenile provisional license; suspension for OUI conviction or certain alcohol level.** Unless a longer period of suspension applies, the Secretary of State shall suspend, without a preliminary hearing, a juvenile provisional license pursuant to subsection 3 for the following periods:

- A. One year for a first offense; and
- B. Two years for a 2nd offense.

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

**Sec. 60. 29-A MRSA §2472, sub-§4**, as amended by PL 1997, c. 737, §19, is further amended to read:

**4. Duty to submit to test.** A person under 21 years of age who operates a motor vehicle shall submit to a chemical test if there is probable cause to believe that person has operated a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. The provisions of subchapter ~~IV~~4 apply, except the suspension is:

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

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

**Sec. 61. 29-A MRSA §2472, sub-§5, ¶A**, as amended by PL 1995, c. 26, §2, is further amended to read:

A. There was probable cause to believe that the person was under 21 years of age and operated a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath;

**Sec. 62. 29-A MRSA §2472, sub-§5, ¶B**, as amended by PL 1995, c. 26, §2, is further amended to read:

B. The person operated a motor vehicle with ~~any amount of alcohol in the blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath; and

**Sec. 63. 29-A MRSA §2481, sub-§1**, as corrected by RR 1995, c. 2, §73, is amended to read:

**1. Report of officer.** A law enforcement officer who has probable cause to believe a person has violated the terms of a conditional driver's license, commercial driver's license or provisional license or committed an OUI offense shall send to the Secretary of State a report of all relevant information, including, but not limited to, the following:

A. Information adequately identifying the person charged;

B. The ground that the officer had for probable cause to believe that the person violated the terms of a conditional driver's license, commercial driver's license or provisional license or committed an OUI offense;

C. A certificate of the results of ~~blood-alcohol~~ alcohol level tests conducted on a self-contained breath-alcohol testing apparatus; and

D. If a person fails to submit to a test, the law enforcement officer's report may be limited to a written statement under oath stating that the officer had probable cause to believe that the person violated the terms of a conditional driver's license, commercial driver's license or provisional license, or committed an OUI offense and failed to submit to a test.

The report must be under oath and on a form approved by the Secretary of State.

If the ~~blood-alcohol~~ alcohol level test was not analyzed by a law enforcement officer, the person who analyzed the results shall send a copy of that certificate to the Secretary of State.

**Sec. 64. 29-A MRSA §2482, sub-§2, ¶F**, as amended by PL 1997, c. 776, §50, is further amended to read:

F. If the suspension or revocation is based on a report under section 2481, that a copy of the report of the law enforcement officer and any ~~blood-alcohol~~ alcohol test certificate will be provided to the person upon request to the Secretary of State.

**Sec. 65. 29-A MRSA §2506**, as amended by PL 2001, c. 671, §31, is further amended to read:

## § 2506. Conditional license

A license, including a nonresident's operating privilege, issued to a person with an OUI conviction must be issued on the condition that the person not operate a motor vehicle with ~~any amount of alcohol in the person's blood~~ an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath for the following periods from the license reinstatement date: on first conviction, one year; and on a 2nd or subsequent conviction, 10 years. The provisions of sections 1251, subsection 1 and 2457 apply.

**Sec. 66. 29-A MRSA §2521, sub-§1**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

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

**Sec. 67. 29-A MRSA §2522, sub-§1**, as amended by PL 2003, c. 565, §1, is further amended to read:

**1. Mandatory submission to test.** If there is probable cause to believe that death has occurred or will occur as a result of an accident, an operator of a motor vehicle involved in the motor vehicle accident shall submit to a chemical test, as defined in section 2401, subsection 3, to determine ~~blood-alcohol~~ alcohol level or drug concentration in the same manner as for OUI.

**Sec. 68. 29-A MRSA §2523, sub-§1**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**1. Mandatory submission to test.** A person who operates a commercial motor vehicle shall submit to a test to determine ~~the blood-alcohol~~ that person's alcohol level or drug concentration if there is probable cause to believe that the person has operated a commercial motor vehicle while having a ~~blood-alcohol~~ alcohol level of ~~0.04% or more~~ 0.04 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath or while under the influence of drugs.

**Sec. 69. 29-A MRSA §2523, sub-§3, ¶A**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

A. There is probable cause to believe the person operated a commercial motor vehicle while under the influence of drugs or with a ~~blood-alcohol~~ alcohol level of ~~.04% or more by weight of alcohol~~ 0.04 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath;

**Sec. 70. 29-A MRSA §2524, sub-§4**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

**4. Chemical tests on breath and urine specimens.** A sample specimen of breath or urine may be submitted to the Department of Health and Human Services or a person certified by the Department of Health and Human Services for the purpose of conducting chemical tests to determine ~~blood-alcohol~~ alcohol level or drug concentration.

**Sec. 71. 29-A MRSA §2524, sub-§5**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

**5. Equipment for taking specimens.** Only equipment having a stamp of approval affixed by the Department of Health and Human Services may be used to take a sample specimen of breath or urine, except that a self-contained, breath-alcohol testing apparatus if reasonably available may be used to determine the ~~blood-alcohol~~alcohol level.

Approved testing apparatus must have a stamp of approval affixed by the Department of Health and Human Services after periodic testing. That stamp is valid for no more than one year.

### SUMMARY

Current law regarding operating while under the influence of alcohol specifies, in most occurrences, a blood-alcohol level. This bill clarifies that the presence and level of alcohol may be determined by using breath or blood testing.