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Legislative Document

No. 637

S.P. 199

In Senate, February 7, 2019

An Act Regarding Motor Vehicle Operation and Drug Use

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CYRWAY of Kennebec.
Cosponsored by Representative RYKERSON of Kittery and
Senators: CLAXTON of Androscoggin, FARRIN of Somerset, TIMBERLAKE of
Androscoggin, Representatives: ARATA of New Gloucester, BRADSTREET of Vassalboro,
JOHANSEN of Monticello, PICKETT of Dixfield, STROM of Pittsfield.

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

2 **Sec. 1. 5 MRSA §20071, sub-§1**, as amended by PL 1999, c. 448, §1, is further
3 amended to read:

4 **1. Alcohol-related or other drug-related motor vehicle incident.** "Alcohol-related
5 or other drug-related motor vehicle incident" means a conviction or administrative action
6 resulting in the suspension of a motor vehicle operator's license for a violation under
7 former Title 29, section 1311-A; Title 29, section 1312, subsection 10-A; Title 29, section
8 1312-C; Title 29, section 1312-B; Title 29, section 1313-B; Title 29, section 2241,
9 subsection 1, paragraph N; Title 29, section 2241-G, subsection 2, paragraph B,
10 subparagraph (2); Title 29, section 2241-J; Title 29-A, section 1253; Title 29-A, section
11 2411; Title 29-A, section 2453; Title 29-A, section 2454, subsection 2; Title 29-A,
12 section 2456; Title 29-A, section 2457; Title 29-A, section 2472, subsection 3, paragraph
13 B, C or D and subsection 4; Title 29-A, section 2503; Title 29-A, sections 2521 to 2523;
14 or Title 29-A, section 2525 or the rules adopted by the Department of the Secretary of
15 State for the suspension of commercial drivers' licenses.

16 **Sec. 2. 29-A MRSA §2112-B** is enacted to read:

17 **§2112-B. Open container; using marijuana in a vehicle prohibited**

18 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
19 following terms have the following meanings.

20 A. "Open container" means a receptacle that contains any amount of marijuana or
21 consumable products made from marijuana and has a broken seal or a receptacle from
22 which the contents have been partially removed.

23 B. "Passenger area" means the area designed to seat the operator and passengers
24 while a vehicle is in operation and any area readily accessible to the operator or a
25 passenger, including, but not limited to, the glove compartment, while the operator
26 and passengers are in their seated positions.

27 C. "Public way" means a way, including a right-of-way, owned and maintained by
28 the State, a county or a municipality over which the general public has a right to pass.

29 **2. Violation.** The operator of a vehicle on a public way commits a traffic infraction
30 if the operator or a passenger in the passenger area of the vehicle:

31 A. Consumes marijuana or a marijuana product;

32 B. Possesses an open container; or

33 C. Possesses marijuana or a marijuana product that has been placed in a container
34 labeled by the manufacturer of the container as containing a nonmarijuana substance.

35 **3. Exceptions.** An operator of a vehicle is not in violation of this section if:

36 A. The operator or a passenger possesses an open container in a vehicle not equipped
37 with a trunk if the open container is located behind the last upright seat of the vehicle
38 or in an area not normally occupied by the operator or passenger; or

1 B. A passenger possesses an open container or a passenger consumes marijuana or a
2 marijuana product in the living quarters of a motor home, trailer, semitrailer or truck
3 camper.

4 **Sec. 3. 29-A MRSA §2401, sub-§12-A** is enacted to read:

5 **12-A. THC level.** "THC level" means the amount, in nanograms, of delta-9-
6 tetrahydrocannabinol contained in a milliliter of whole blood.

7 **Sec. 4. 29-A MRSA §2432**, as amended by PL 2013, c. 459, §4, is further
8 amended to read:

9 **§2432. Alcohol level; confirmed positive drug or metabolite test results; evidentiary**
10 **weight**

11 **1. Level less than 0.05 grams.** If Except as provided in subsection 1-A, if a person
12 has an alcohol level of 0.05 grams or less of alcohol per 100 milliliters of blood or 210
13 liters of breath, it is prima facie evidence that that person is not under the influence of
14 alcohol.

15 **1-A. Level less than 0.05 grams with confirmed presence of drug or drug**
16 **metabolite.** If a person has an alcohol level of 0.05 grams or less of alcohol per 100
17 milliliters of blood or 210 liters of breath and has a trace amount of any drug or the
18 metabolite of any drug within the person's blood or urine in accordance with the drug
19 reporting rules, standards, procedures and protocols adopted by the Department of Health
20 and Human Services, it is admissible evidence, but not prima facie, indicating whether
21 that person is under the influence of intoxicants, to be considered with other competent
22 evidence.

23 **2. Level greater than 0.05 grams and less than 0.08 grams.** If Except as provided
24 in subsection 2-A, if a person has an alcohol level in excess of 0.05 grams of alcohol but
25 less than 0.08 grams of alcohol per 100 milliliters of blood or 210 liters of breath, it is
26 admissible evidence, but not prima facie, indicating whether ~~or not~~ that person is under
27 the influence of intoxicants, to be considered with other competent evidence, including
28 evidence of a confirmed positive drug or metabolite test result.

29 **2-A. Level greater than 0.05 grams and less than 0.08 grams with confirmed**
30 **presence of drug or drug metabolite.** Proof that a person has an alcohol level in excess
31 of 0.05 grams of alcohol but less than 0.08 grams of alcohol per 100 milliliters of blood
32 or 210 liters of breath and has a trace amount of any drug or the metabolite of any drug
33 within the person's blood or urine in accordance with the drug reporting rules, standards,
34 procedures and protocols adopted by the Department of Health and Human Services gives
35 rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the
36 person is under the influence of intoxicants.

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

1 **4. Confirmed presence of drug or drug metabolite.** If Except as provided in
2 subsection 1-A or 2-A, if a person has a trace amount of any drug or the ~~metabolites~~
3 metabolite of any drug within the person's blood or urine in accordance with the drug
4 reporting rules, standards, procedures and protocols adopted by the Department of Health
5 and Human Services, it is admissible evidence, but not prima facie, indicating whether
6 that person is under the influence of intoxicants, to be considered with other competent
7 evidence, including evidence of alcohol level.

8 **Sec. 5. 29-A MRSA §2472**, as amended by PL 2017, c. 229, §36, is further
9 amended to read:

10 **§2472. Juvenile provisional license**

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

18 A license of a person who has not yet attained 21 years of age includes the condition that
19 the person not operate a motor vehicle with an alcohol level of more than 0.00 grams per
20 100 milliliters of blood or 210 liters of breath. When a person who has not yet attained
21 21 years of age operates a motor vehicle with an alcohol level of more than 0.00 grams
22 per 100 milliliters of blood or 210 liters of breath, the provisions of section 1251,
23 subsection 1, paragraph B apply.

24 A license of a person who has not yet attained 21 years of age includes the condition that
25 the person not operate a motor vehicle with a THC level of more than 0.00 nanograms.
26 When a person who has not yet attained 21 years of age operates a motor vehicle with a
27 THC level of more than 0.00 nanograms, the provisions of section 1251, subsection 1,
28 paragraph B apply.

29 **2. Suspension terms for moving violations.** If a person who has not yet attained
30 the age of 21 years is convicted or adjudicated of a moving motor vehicle violation that
31 occurred within 2 years from the date of issue of a juvenile provisional license, the
32 Secretary of State shall suspend the license:

- 33 A. For 30 days on the 1st offense;
34 B. For 180 days on the 2nd offense; and
35 C. For one year on the 3rd or subsequent offense.

36 If requested, the Secretary of State shall provide an opportunity for hearing on the
37 suspension as soon as practicable. After hearing, the Secretary of State, for good cause
38 shown, may continue, modify or rescind the suspension. An individual who has not yet
39 attained the age of 18 years does not have a right to a hearing.

1 **2-A. Driver improvement program.** A person whose license is suspended pursuant
2 to subsection 2 shall complete a minimum of 4 hours of a driver improvement program
3 approved by the Secretary of State before the suspension may be terminated.

4 **2-B. Reexamination.** The holder of a juvenile provisional license convicted of an
5 offense listed in section 2551-A, subsection 1, paragraph A, as limited by section 2551-A,
6 subsection 3, must successfully complete an examination as prescribed by the Secretary
7 of State within 90 days after that license is restored. Failure to successfully complete the
8 examination results in a subsequent suspension.

9 **3. Suspension for OUI conviction, certain alcohol or THC level or operating**
10 **under the influence of drugs.** The Secretary of State shall suspend, without preliminary
11 hearing, a juvenile provisional license of a person who:

12 A. Receives an OUI conviction;

13 B. Operates a motor vehicle with an alcohol level of more than 0.00 grams per 100
14 milliliters of blood or 210 liters of breath; ~~or~~

15 C. Operates a motor vehicle under the influence of drugs; or

16 D. Operates a motor vehicle with a THC level of more than 0.00 nanograms.

17 **3-A. Juvenile provisional license; suspension for OUI conviction or certain**
18 **alcohol or THC level.** Unless a longer period of suspension applies, the Secretary of
19 State shall suspend, without a preliminary hearing, a juvenile provisional license pursuant
20 to subsection 3 for the following periods:

21 A. One year for a first offense; and

22 B. Two years for a 2nd offense.

23 If the Secretary of State determines that the person operated the motor vehicle at the time
24 of the offense with a passenger under 21 years of age, an additional suspension period of
25 180 days must be imposed.

26 **4. Duty to submit to test.** A person under 21 years of age who operates a motor
27 vehicle shall submit to a chemical test if there is probable cause to believe that person has
28 operated a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters
29 of blood or 210 liters of breath or with a THC level of more than 0.00 nanograms or
30 while under the influence of a specific category of drug, a combination of specific
31 categories of drugs or a combination of alcohol and one or more specific categories of
32 drugs. The provisions of subchapter 4 apply, except the suspension is:

33 A. Eighteen months for the first refusal; and

34 B. Thirty months for a 2nd or subsequent refusal.

35 If the Secretary of State determines that the person operated the motor vehicle at the time
36 of the offense with a passenger under 21 years of age, an additional suspension period of
37 180 days must be imposed.

1 **5. Hearing; stay; issues.** If a hearing is requested in accordance with section 2483,
2 the suspension under subsection 3, paragraph B or C or D is stayed pending the outcome
3 of the hearing. The scope of a hearing must include whether:

4 A. There was probable cause to believe that the person was under 21 years of age
5 and operated a motor vehicle with an alcohol level of more than 0.00 grams per 100
6 milliliters of blood or 210 liters of breath or with a THC level of more than 0.00
7 nanograms or while under the influence of a specific category of drug, a combination
8 of specific categories of drugs or a combination of alcohol and one or more specific
9 categories of drugs;

10 B. The person operated a motor vehicle with an alcohol level of more than 0.00
11 grams per 100 milliliters of blood or 210 liters of breath or with a THC level of more
12 than 0.00 nanograms or with a confirmed positive blood or urine test for a drug or its
13 metabolite and was under the influence of the confirmed drug; and

14 C. The person was under 21 years of age.

15 **6. Restoration of license.** If a person's license has been suspended under subsection
16 3 for a first offense, the Secretary of State may issue a license if:

17 A. One half of the suspension period has expired; and

18 B. The Secretary of State has received notice that the person has completed the
19 alcohol and other drug program of the Department of Health and Human Services.

20 A 2nd or subsequent offender may be issued a license following the completion of the
21 period of suspension if the Secretary of State has received notice that the person has
22 completed the alcohol and other drug program of the Department of Health and Human
23 Services.

24 **7. Reinstatement fee for suspensions for major offenses.** Before a suspension
25 issued to the holder of a license issued pursuant to this section resulting from a conviction
26 or adjudication listed in section 2551-A, subsection 1, paragraph A, as limited by section
27 2551-A, subsection 3, is terminated and a license reinstated, a fee of \$200 must be paid to
28 the Secretary of State and the holder must complete any community service imposed by a
29 court, up to 60 hours.

30 **Sec. 6. 29-A MRSA §2503, sub-§1,** as amended by PL 2011, c. 335, §12, is
31 further amended to read:

32 **1. Administrative suspension; work-restricted license.** On receipt of a petition for
33 a work-restricted license from a person under suspension pursuant to section 2453,
34 section 2453-A or section 2472, subsection 3, paragraph B or C or D for a first offense,
35 the Secretary of State may stay a suspension during the statutory suspension period and
36 issue a work-restricted license, if the petitioner shows by clear and convincing evidence
37 that:

38 A. As determined by the Secretary of State, a license is necessary to operate a motor
39 vehicle:

- 1 (1) Between the residence and a place of employment or in the scope of
2 employment, or both; or
- 3 (2) Between the residence and an educational facility attended by the petitioner
4 if the suspension is under section 2472, subsection 3, paragraph B ~~or~~ C or D for
5 a first offense;
- 6 B. No alternative means of transportation is available; and
- 7 C. The petitioner has not, within 10 years, been under suspension for an OUI offense
8 or pursuant to section 2453 or 2453-A.

9 **SUMMARY**

10 This bill does the following:

- 11 1. It allows as admissible evidence indicating whether a person is operating a motor
12 vehicle under the influence of intoxicants whether the person has an alcohol level of 0.05
13 grams or less of alcohol per 100 milliliters of blood or 210 liters of breath and has a trace
14 amount of any drug or the metabolite of any drug within the person's blood or urine;
- 15 2. It establishes a permissible inference of operating under the influence of
16 intoxicants when a person operates a motor vehicle and has an alcohol level in excess of
17 0.05 grams of alcohol but less than 0.08 grams of alcohol per 100 milliliters of blood or
18 210 liters of breath and has a trace amount of any drug or the metabolite of any drug
19 within the person's blood or urine;
- 20 3. It establishes a 0.00 nanogram level for THC for a person under 21 years of age
21 who is operating a motor vehicle; and
- 22 4. It creates a new traffic infraction for a person who consumes marijuana or a
23 marijuana product in a vehicle, possesses an open container of marijuana or a marijuana
24 product in the passenger area of a vehicle or possesses marijuana or a marijuana product
25 that has been placed in a container labeled by the manufacturer of the container as
26 containing a nonmarijuana substance.