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Department of the Secretary of State Bureau of Motor Vehicles

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JOINT STANDING COMMITTEE ON TRANSPORTATION

L.D. 96 "An Act to Amend the Motor Vehicles and Traffic Law Governing Mandatory Driver's License Suspension for Refusing Testing for Drugs or a Combination of Drugs and Alcohol"

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Senator Beebe-Center, Representative Hasenfus, and members of the Committee on Criminal Justice and Public Safety, I am Shenna Bellows of Manchester, Secretary of State, and I am here to testify in opposition to L.D. 96, "An Act to Amend the Motor Vehicles and Traffic Law Governing Mandatory Driver's License Suspension for Refusing Testing for Drugs or a Combination of Drugs and Alcohol."

The Secretary of State and Bureau of Motor Vehicles appreciate and share the Department of Public Safety's commitment to making Maine roadways safe. We take seriously the Legislature's charge to provide maximum safety on the public ways by quickly removing from those ways people who have shown themselves to be a safety hazard by operating a motor vehicle while under the influence of intoxicants. Indeed, in 2023, BMV imposed more than 3000 administrative OUI-related suspensions.

Along with that focus on public safety, we are also aware how critical driving privileges are to enable people to effectively participate in society. And we are keenly aware of our inherent duty to ensure that those whose driving privileges are suspended receive due process – an opportunity to challenge the evidence against them and ensure that proper protocols and standards are met — and that the criteria used to make license suspension decisions are fair.

A major concern for us is that this proposal would create two different probable cause standards for administrative drug suspensions based on whether the driver submits to a chemical test. As we see it, the standard for requiring someone to take a test should be consistent. In addition, we see lowering the probable cause standard for these drug refusal cases as posing civil liberty concerns. We also believe that moving toward lower standards may have the long-term effect of imperiling the viability of administrative license suspensions overall.

In cases that have chemical tests, under Title 29-A, section 2453-A, administrative suspensions are only imposed when a specially trained drug recognition expert (DRE) determines the category of drug creating the alleged impairment. A DRE is trained to evaluate numerous factors to rule out medical conditions and identify the specific type of drug or drugs affecting the driver. If an officer without DRE training demands a chemical test and the driver submits, no administrative suspension will be imposed because the requisite probable cause was not developed and there is no evidence to connect whatever drug may have been in the driver's system with the signs of impairment. Under this proposal, a driver who does not submit to a chemical test to determine the presence of drugs could be suspended based on the opinion of an officer who is not well-trained in drug impairment detection.

It is important to understand that an OUI-drug case typically involves two chemical tests. The officer who makes the stop will generally administer a breath test to determine whether alcohol is responsible for the perceived impairment. If that test shows an alcohol level below the .08 standard and that officer believes there may be other impairing substances affecting the driver, a DRE is called in to perform the evaluation for possible drug impairment. If the DRE develops probable cause for a category of drug, the driver is then required to take an additional chemical test, either urine or blood, to determine the presence of a drug or its metabolite. If a driver refuses to submit to the initial breath test, BMV already imposes a refusal suspension. It is only in the cases where alcohol has been ruled out as a sufficient cause of impairment and the driver refuses to submit to the second test where the DRE determination of a category of drug is currently required to impose an administrative refusal suspension. This proposal would create a refusal suspension in those cases where the driver fails to submit to the second test without a drug recognition evaluation.

In response to the proposed amendment, we find the language ambiguous and are not sure it changes current law. To the extent it is construed that way, our concerns with the original bill remain. One additional concern is the elimination the word "chemical" from the language about failure to submit to a test. While the refusal suspension has always attached to the failure to submit to a chemical test, we already find some officers confuse this with a duty to submit to various field sobriety test. Our concern is that this would further that confusion.

While we recognize that drug-impaired driving is a serious problem, and cases where a driver refuses to submit to a chemical test can be challenging, we believe the current law strikes the right balance between protecting public safety and protecting drivers' rights. Thank you for your consideration. I would be happy to answer any questions that you have.