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CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 567, L.D. 762, Bill, “An Act To Bring Maine's Laws Concerning Implied Consent in Operating a Motor Vehicle into Compliance with Recent Opinions of the United States Supreme Court”

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Consent by a Motor Vehicle Operator to a Blood Test'

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 29-A MRSA §2401, sub-§11, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

11. OUI offense. "OUI offense" means an OUI conviction or suspension for failure to submit to a test except that refusal to submit to a blood test at the request of a law enforcement officer in the absence of a warrant does not constitute an OUI offense for the purpose of requiring the imposition or enhancement of a mandatory minimum sentence of incarceration.

Sec. 2. 29-A MRSA §2411, sub-§5, ¶A, as amended by PL 2013, c. 389, §1 and affected by §7, 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 150 days; and
 - (3) A period of incarceration as follows:
 - (a) Not less than 48 hours when the person:
 - (i) Was tested as having an alcohol level of 0.15 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath;

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- 1 (ii) Was exceeding the speed limit by 30 miles per hour or more;
- 2 (iii) Eluded or attempted to elude an officer; or
- 3 (iv) Was operating with a passenger under 21 years of age; and
- 4 (b) Not less than 96 hours when the person failed to comply with the request
- 5 of a law enforcement officer to submit to a blood test at the request of a law
- 6 enforcement officer authorized by a warrant, a breath test or a urine test;

7 **Sec. 3. 29-A MRSA §2411, sub-§5, ¶¶B and C**, as amended by PL 2007, c.
8 531, §2 and affected by §10, are further amended to read:

- 9 B. For a person having one previous OUI offense within a 10-year period:
- 10 (1) A fine of not less than \$700, except that if the person failed to submit to a test
- 11 at the request of a law enforcement officer, a fine of not less than \$900;
- 12 (2) A period of incarceration of not less than 7 days, except that if the person
- 13 failed to comply with the request of a law enforcement officer to submit to a
- 14 blood test at the request of a law enforcement officer authorized by a warrant, a
- 15 breath test or a urine test, a period of incarceration of not less than 12 days;
- 16 (3) A court-ordered suspension of a driver's license for a period of 3 years; and
- 17 (4) In accordance with section 2416, a court-ordered suspension of the person's
- 18 right to register a motor vehicle;
- 19 C. For a person having 2 previous OUI offenses within a 10-year period, which is a
- 20 Class C crime:
- 21 (1) A fine of not less than \$1,100, except that if the person failed to submit to a
- 22 test at the request of a law enforcement officer, a fine of not less than \$1,400;
- 23 (2) A period of incarceration of not less than 30 days, except that if the person
- 24 failed to comply with the request of a law enforcement officer to submit to a
- 25 blood test at the request of a law enforcement officer authorized by a warrant, a
- 26 breath test or a urine test, a period of incarceration of not less than 40 days;
- 27 (3) A court-ordered suspension of a driver's license for a period of 6 years; and
- 28 (4) In accordance with section 2416, a court-ordered suspension of the person's
- 29 right to register a motor vehicle;

30 **Sec. 4. 29-A MRSA §2411, sub-§5, ¶D**, as amended by PL 2013, c. 187, §1, is
31 further amended to read:

- 32 D. For a person having 3 or more previous OUI offenses within a 10-year period,
- 33 which is a Class C crime:
- 34 (1) A fine of not less than \$2,100, except that if the person failed to submit to a
- 35 test at the request of a law enforcement officer, a fine of not less than \$2,500;
- 36 (2) A period of incarceration of not less than 6 months, except that if the person
- 37 failed to comply with the request of a law enforcement officer to submit to a

1 blood test at the request of a law enforcement officer authorized by a warrant, a
2 breath test or a urine test, a period of incarceration of not less than 6 months and
3 20 days;

4 (3) A court-ordered suspension of a driver's license for a period of 8 years; and

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

7 **Sec. 5. 29-A MRSA §2521, sub-§3**, as amended by PL 1997, c. 357, §1, is
8 further amended to read:

9 **3. Warnings.** Neither a refusal to submit to a test nor a failure to complete a test
10 may be used for any of the purposes specified in paragraph A, B or C unless the person
11 has first been told that the refusal or failure will:

12 A. Result in suspension of that person's driver's license for a period up to 6 years;

13 B. Be admissible in evidence at a trial for operating under the influence of
14 intoxicants except that, when the person has refused or failed to submit to a blood test
15 in the absence of a warrant, the refusal or failure is not admissible in evidence at trial;
16 and

17 C. Be considered an aggravating factor at sentencing if the person is convicted of
18 operating under the influence of intoxicants that, in addition to other penalties, will
19 subject the person to a mandatory minimum period of incarceration except that
20 refusal to submit to a blood test in the absence of a warrant does not subject the
21 person to a mandatory minimum period of incarceration.'

22 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
23 section number to read consecutively.

24 SUMMARY

25 This amendment replaces the bill and provides a new title. The amendment amends
26 the criminal operating under the influence statutes for motor vehicle operators to:

27 1. Provide that refusal to submit to a blood test at the request of a law enforcement
28 officer in the absence of a warrant is not a ground for imposition of a mandatory period of
29 incarceration, does not constitute an operating under the influence offense for the purpose
30 of requiring the imposition or enhancement of a mandatory minimum sentence of
31 incarceration and is not admissible in evidence at a hearing or trial; and

32 2. Add to the warning given to a person being asked to submit to a test a statement
33 that refusal to submit to a blood test at the request of a law enforcement officer in the
34 absence of a warrant is not a ground for imposition of a mandatory period of
35 incarceration.