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Legislative Document

No. 1628

S.P. 661

In Senate, March 1, 2016

An Act To Strengthen the Laws on Operating a Motor Vehicle under the Influence of Intoxicants

Reported by Senator ROSEN of Hancock for the Joint Standing Committee on Criminal Justice and Public Safety pursuant to Joint Order 2015, S.P. 631.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

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 paragraphs B, C and D and subsection 4; Title 29-A, section 2503; Title 29-A, sections
14 2521 to 2523; or Title 29-A, section 2525 or the rules adopted by the Department of the
15 Secretary of State for the suspension of commercial drivers' licenses.

16 **Sec. 2. 29-A MRSA §2401, sub-§12-A** is enacted to read:

17 **12-A. THC level.** "THC level" means the amount, in nanograms, of delta-9-
18 tetrahydrocannabinol contained in a milliliter of blood.

19 **Sec. 3. 29-A MRSA §2432**, as amended by PL 2013, c. 459, §4, is further
20 amended to read:

21 **§2432. Alcohol level; THC level; confirmed positive drug or metabolite test results;**
22 **evidentiary weight**

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

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

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

35 **4. Confirmed presence of drug or drug metabolite.** If a person has a trace amount
36 of any drug or the metabolites of any drug within the person's blood or urine in
37 accordance with the drug reporting rules, standards, procedures and protocols adopted by
38 the Department of Health and Human Services, it is admissible evidence, but not prima

1 facie, indicating whether that person is under the influence of intoxicants to be considered
2 with other competent evidence, including evidence of alcohol level.

3 **5. THC level of 5 nanograms or greater.** Proof that a person has a THC level of 5
4 nanograms or more gives rise to a permissible inference under the Maine Rules of
5 Evidence, Rule 303 that the person is under the influence of intoxicants.

6 **6. Level of THC and alcohol in combination.** Proof that a person has a THC level
7 of 2 nanograms or more and an alcohol level of 0.05 grams or more of alcohol per 100
8 milliliters of blood or 210 liters of breath gives rise to a permissible inference under the
9 Maine Rules of Evidence, Rule 303 that the person is under the influence of intoxicants.

10 **Sec. 4. 29-A MRSA §2432-A** is enacted to read:

11 **§2432-A. Preliminary breath testing devices**

12 **1. Use of preliminary breath testing devices permitted.** A law enforcement
13 officer who possesses basic certification as a full-time law enforcement officer pursuant
14 to Title 25, section 2804-C, subsection 1 who reasonably believes that a person has been
15 operating a motor vehicle under the influence of intoxicants may request, without making
16 an arrest, that the person submit to a preliminary breath test to determine the person's
17 alcohol level, which, in addition to other relevant evidence, the officer may use to
18 determine whether there is probable cause to believe that person was operating a motor
19 vehicle while under the influence of intoxicants.

20 **2. Approved devices; training.** A law enforcement officer may administer a
21 preliminary breath test only using a preliminary breath testing device that has been
22 approved by the National Highway Traffic Safety Administration and evaluated by the
23 Department of Health and Human Services. Prior to administering a preliminary breath
24 test using an approved device, an officer must be properly trained in the use of the device
25 through a training course approved by the Board of Trustees of the Maine Criminal
26 Justice Academy.

27 **3. Admissibility of results.** A result of a test administered pursuant to this section is
28 admissible in evidence in any court or administrative hearing in determining whether
29 there is probable cause to believe a person was operating a motor vehicle while under the
30 influence of intoxicants.

31 **4. Failure as evidence.** Failure of a person to submit to a preliminary breath test is
32 not admissible in evidence on the issue of whether a person was operating under the
33 influence of intoxicants. Any other evidence bearing on the issue of whether the person
34 was operating under the influence of intoxicants is admissible, even if a person fails to
35 submit to a preliminary breath test or the results of such a test are not available for any
36 reason.

37 **5. Preliminary breath test not mandatory; subsequent test for intoxicants**
38 **permitted.** A preliminary breath test is not mandatory, and a law enforcement officer's
39 request to submit to such a test may be declined. A person who submits to a preliminary

1 breath test is not relieved of the duty to submit to and complete a further test pursuant to
2 subchapter 4.

3 **Sec. 5. 29-A MRSA §2472**, as amended by PL 2013, c. 496, §16, is further
4 amended to read:

5 **§2472. Juvenile provisional license**

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

13 A license of a person who has not yet attained 21 years of age includes the condition that
14 the person not operate a motor vehicle with an alcohol level of more than 0.00 grams per
15 100 milliliters of blood or 210 liters of breath. When a person who has not yet attained
16 21 years of age operates a motor vehicle with an alcohol level of more than 0.00 grams
17 per 100 milliliters of blood or 210 liters of breath, the provisions of section 1251,
18 subsection 1, paragraph B apply.

19 A license of a person who has not yet attained 21 years of age includes the condition that
20 the person not operate a motor vehicle with a THC level of more than 0.00 nanograms.
21 When a person who has not yet attained 21 years of age operates a motor vehicle with a
22 THC level of more than 0.00 nanograms, the provisions of section 1251, subsection 1,
23 paragraph B apply, except that it is an affirmative defense that the THC level resulted
24 from marijuana use in compliance with Title 22, chapter 558-C.

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

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

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

36 **2-A. Driver improvement program.** A person whose license is suspended pursuant
37 to subsection 2 shall complete a minimum of 4 hours of a driver improvement program
38 approved by the Secretary of State before the suspension may be terminated.

39 **2-B. Reexamination.** The holder of a juvenile provisional license convicted of an
40 offense listed in section 2551-A, subsection 1, paragraph A, as limited by section 2551-A,

1 subsection 3, must successfully complete an examination pursuant to section 1301,
2 subsection 4 as prescribed by the Secretary of State within 90 days after that license is
3 restored. Failure to successfully complete the examination results in a subsequent
4 suspension.

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

8 A. Receives an OUI conviction;

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

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

12 D. Operates a motor vehicle with a THC level of more than 0.00 nanograms unless
13 the person demonstrates that the THC level resulted from marijuana use in
14 compliance with Title 22, chapter 558-C.

15 **3-A. Juvenile provisional license; suspension for OUI conviction or certain**
16 **alcohol or THC level.** Unless a longer period of suspension applies, the Secretary of
17 State shall suspend, without a preliminary hearing, a juvenile provisional license pursuant
18 to subsection 3 for the following periods:

19 A. One year for a first offense; and

20 B. Two years for a 2nd offense.

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

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

31 A. Eighteen months for the first refusal; and

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

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

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

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

7 B. The person operated a motor vehicle with an alcohol level of more than 0.00
8 grams per 100 milliliters of blood or 210 liters of breath or with a THC level of more
9 than 0.00 nanograms unless the person demonstrates that the THC level resulted from
10 marijuana use in compliance with Title 22, chapter 558-C or with a confirmed
11 positive blood or urine test for a drug or its metabolite and was under the influence of
12 the confirmed drug; and

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

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

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

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

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

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

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

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

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

39 (1) Between the residence and a place of employment or in the scope of
40 employment, or both; or

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

7

SUMMARY

8 This bill contains the recommendations of the majority of the Working Group on
9 Marijuana and Driving that was convened in 2015 by the Secretary of State. This bill is
10 submitted by the Joint Standing Committee on Criminal Justice and Public Safety in
11 order to begin consideration by the committee of the recommendations of the working
12 group. The bill does the following:

13 1. It establishes a permissible inference of operating under the influence of
14 intoxicants when a person operates a motor vehicle and has a level of delta-9-
15 tetrahydrocannabinol, or THC, of 5 nanograms or more per milliliter of blood;

16 2. It establishes a permissible inference of operating under the influence of
17 intoxicants when a person operates a motor vehicle and has a level of THC of 2
18 nanograms or more per milliliter of blood and an alcohol level of 0.05 grams or more of
19 alcohol per 100 milliliters of blood or 210 liters of breath;

20 3. It establishes a 0.00 nanogram level for THC for a person under 21 years of age
21 and provides an affirmative defense for marijuana use in compliance with the Maine
22 Medical Use of Marijuana Act; and

23 4. It permits a qualified law enforcement officer, without making an arrest, to request
24 that a person who the officer reasonably believes has been operating under the influence
25 take a preliminary breath test for alcohol level and allows the results to be used to
26 determine whether there is probable cause to believe the person was operating under the
27 influence.