

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FOURTEEN

H.P. 1161 - L.D. 1590

An Act To Amend the Operating-under-the-influence Laws

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, current law regarding penalties for operating under the influence of alcohol or other intoxicants is not consistent and may result in different suspension periods and reinstatement fees for persons convicted of operating under the influence; and

Whereas, Public Law 2013, chapter 389 enacted an additional fee for persons installing ignition interlock devices; and

Whereas, the law could be interpreted to impose an additional fee for the reinstatement of a license suspended for operating under the influence on a person who installs an ignition interlock device; and

Whereas, it is necessary to clarify the law promptly to ensure all citizens are treated equally; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 29-A MRSA §2401, sub-§3, as amended by PL 2009, c. 447, §33, is further amended to read:

3. Chemical test or test. "Chemical test" or "test" means a test or tests used to determine alcohol level or the presence of a drug concentration or drug metabolite by analysis of blood, breath or urine.

Sec. 2. 29-A MRSA §2411, sub-§4, as amended by PL 2009, c. 447, §40, is further 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 an alcohol level or the presence of a drug concentration or drug metabolite.

Sec. 3. 29-A MRSA §2431, sub-§2, as amended by PL 2009, c. 447, §§45 to 47, is further amended to read:

2. Analysis of blood, breath and urine. The following provisions apply to the analysis of blood, breath and urine, and the use of that analysis as evidence.

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

B. A person qualified to operate a self-contained, breath-alcohol testing apparatus may issue a certificate stating the results of the analysis.

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~~ Materials used in the taking of the specimen were of a quality appropriate for the purpose of producing reliable test results as determined by the Department of Health and Human Services;

(3) ~~Equipment, chemicals or materials~~ 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 alcohol level or the presence of a drug concentration or drug metabolite in the blood or urine of the defendant at the time the sample was taken was as stated in the certificate.

D. With 10 days written notice to the prosecution, the defendant may request that a qualified witness testify to the matters of which the certificate constitutes prima facie evidence. The notice must specify those matters concerning which the defendant requests testimony. The certificate is not prima facie evidence of those matters.

E. A person drawing a specimen of blood may issue a certificate that states that the person is in fact ~~duly licensed or certified~~ qualified under section 2524 and that the proper procedure for drawing a specimen of blood was followed. That certificate, when signed and sworn to by the person, is prima facie evidence of its contents unless, with 10 days' written notice to the prosecution, the defendant requests that the person testify.

F. Evidence that the ~~breath or~~ urine sample was in a sealed carton bearing the Department of Health and Human Services' stamp of approval is prima facie evidence that the equipment was approved by the Department of Health and Human Services.

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

H. Evidence that the self-contained breath-alcohol testing equipment bearing the Department of Health and Human Services' stamp of approval is prima facie evidence that the equipment was approved by the Department of Health and Human Services.

I. Evidence that materials used in operating or checking the operation of the self-contained breath-alcohol testing equipment bore a statement of the manufacturer or of the Department of Health and Human Services is prima facie evidence that the materials were of the composition and quality stated.

J. Transfer of sample specimens to and from a laboratory for purposes of analysis by certified or registered mail complies with all requirements regarding the continuity of custody of physical evidence.

K. The prosecution is not required to produce expert testimony regarding the functioning of self-contained breath-alcohol testing apparatus before test results are admissible, if sufficient evidence is offered to satisfy paragraphs H and I.

Sec. 4. 29-A MRSA §2432, sub-§4, as enacted by PL 2011, c. 335, §4, is amended to read:

4. Confirmed presence of drug or drug metabolite. If a person has a trace amount of any drug or the metabolites of any drug at ~~detectable concentration levels~~ within the person's blood or urine in accordance with the drug reporting rules, standards, procedures and protocols adopted by the Department of Health and Human Services, it is admissible evidence, but not prima facie, indicating whether that person is under the influence of intoxicants to be considered with other competent evidence, including evidence of alcohol level.

Sec. 5. 29-A MRSA §2451, sub-§3, as amended by PL 2009, c. 54, §§1 to 3 and affected by c. 415, Pt. C, §§2 and 3, is further amended to read:

3. Suspension period. Unless a longer period of suspension is otherwise provided by law and imposed by the court, the Secretary of State shall suspend the license of a person convicted of OUI for the following minimum periods:

A. ~~Ninety~~ One hundred fifty days, if the person has one OUI conviction within a 10-year period;

B. Three years, if the person has 2 OUI offenses within a 10-year period; ~~or~~

C. Six years, if the person has 3 ~~or more~~ OUI offenses within a 10-year period; ~~or~~

E. Eight years, if the person has 4 or more OUI offenses within a 10-year period.

For the purposes of this subsection, a conviction or suspension has occurred within a 10-year period if the date of the new conduct is within 10 years of a date of suspension or a docket entry of judgment of conviction.

Sec. 6. 29-A MRSA §2486, sub-§1-A, as amended by PL 2013, c. 389, §2, is further amended to read:

1-A. Reinstatement fee for suspensions for OUI or failure to submit to a test. Except as provided in section 2472, subsection 7, before a suspension for OUI or failure to submit to a test is terminated and a license or certificate reinstated, a fee of \$50 must be paid to the Secretary of State. ~~If a license is reinstated pursuant to section 2508, subsection 1, the reinstatement fee is \$100.~~

Sec. 7. 29-A MRSA §2521, sub-§1, as amended by PL 2009, c. 447, §66, is further 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 an alcohol level and the presence of a drug concentration or drug metabolite by analysis of blood, breath or urine.

Sec. 8. 29-A MRSA §2521, sub-§2, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

2. Type of test. A law enforcement officer shall administer a breath test unless, in that officer's determination, a breath test is unreasonable.

~~The law enforcement officer may determine which type of breath test is to be administered.~~

~~Another~~ If a breath test is determined to be unreasonable, another chemical test must be administered in place of a breath test.

For a blood test the operator may choose a physician, if reasonably available.

Sec. 9. 29-A MRSA §2522, sub-§1, as amended by PL 2009, c. 447, §67, 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 an alcohol level or the presence of a drug concentration or drug metabolite in the same manner as for OUI.

Sec. 10. 29-A MRSA §2523, sub-§1, as amended by PL 2009, c. 447, §68, is further amended to read:

1. Mandatory submission to test. A person who operates a commercial motor vehicle shall submit to a test to determine that person's alcohol level or the presence of a drug concentration or drug metabolite if there is probable cause to believe that the person has operated a commercial motor vehicle while having 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 drugs.

Sec. 11. 29-A MRSA §2524, as amended by PL 2009, c. 447, §§70 and 71, is further amended to read:

§2524. Administration of tests

1. Persons qualified to draw blood for blood tests. Only a physician, registered physician's assistant, registered nurse, or person whose occupational license or training allows that person to draw blood samples ~~or a person certified by the Department of Health and Human Services~~ may draw a specimen of blood for the purpose of determining the blood-alcohol level or the presence of a drug concentration or drug metabolite.

2. Persons qualified to analyze blood for blood tests. A person conducting an analysis of blood-alcohol level or the presence of a drug concentration or drug metabolite must be certified by the Department of Health and Human Services.

3. Persons qualified to operate and analyze breath tests. A person certified by the Maine Criminal Justice Academy as qualified to operate an approved self-contained, breath-alcohol testing apparatus may operate an apparatus to collect and analyze a sample specimen of breath.

4. Chemical tests on blood and urine specimens. A sample specimen of ~~breath~~ blood 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 alcohol level or the presence of a drug concentration or drug metabolite.

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

Approved breath-alcohol 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.

6. Procedures for operation and testing of testing apparatus. The Department of Health and Human Services shall establish, by rule, the procedures for the operation and testing of testing apparatus.

Sec. 12. 29-A MRSA §2528, 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:

§2528. Liability

A physician, physician's assistant, registered nurse, ~~person certified by the Department of Health and Human Services~~ whose occupational license or training allows that person to draw blood, hospital or other health care provider in the exercise of due care is not liable for an act done or omitted in collecting or withdrawing specimens of blood at the request of a law enforcement officer pursuant to this chapter.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.