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Legislative Document

No. 1135

S.P. 463

In Senate, March 18, 2025

An Act to Permit the Use of Oral Fluid Testing in Determining the Intoxication of Drivers, Aircraft Operators and Hunters

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 NUTTING of Oakland and
Senators: BALDACCI of Penobscot, TIMBERLAKE of Androscoggin, Representatives:
ARDELL of Monticello, BUNKER of Farmington, HASENFUS of Readfield, LAJOIE of
Lewiston, MCINTYRE of Lowell, PERKINS of Dover-Foxcroft.

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

2 **Sec. 1. 6 MRSA §204**, as amended by PL 2009, c. 447, §3, is further amended to
3 read:

4 **§204. Implied consent to chemical tests**

5 A person who operates or attempts to operate an aircraft within this State has a duty to
6 submit to chemical testing to determine that person's alcohol level and drug concentration
7 by analysis of blood, breath ~~or~~, urine or oral fluid if there is probable cause to believe that
8 the person has operated or attempted to operate an aircraft while under the influence of
9 intoxicating liquor or drugs. The duty to submit to a chemical test includes the duty to
10 complete either a blood, breath ~~or~~, urine or oral fluid test. Tests and procedures applicable
11 in determining whether a person is under the influence are governed by section 205.

12 **Sec. 2. 6 MRSA §205, sub-§5**, as amended by PL 2019, c. 627, Pt. B, §1, is further
13 amended to read:

14 **5. Administration of tests.** Persons conducting analyses of blood, breath ~~or~~, urine or
15 oral fluid for the purpose of determining the alcohol level or drug concentration must be
16 certified for this purpose by the Department of Health and Human Services under
17 certification standards set by that department.

18 Only a duly licensed physician, licensed physician assistant, registered nurse or a person
19 certified by the Department of Health and Human Services under certification standards set
20 by that department, acting at the request of a law enforcement officer, may draw a specimen
21 of blood to determine the alcohol level or drug concentration of a person who is complying
22 with the duty to submit to a chemical test. This limitation does not apply to the taking of
23 breath specimens. When a person draws a specimen of blood at the request of a law
24 enforcement officer, that person may issue a certificate that states that the person is in fact
25 a duly licensed or certified person as required by this subsection and that the person
26 followed the proper procedure for drawing a specimen of blood to determine the alcohol
27 level or drug concentration. That certificate, when duly signed and sworn to by the person,
28 is admissible as evidence in any court of the State. It is prima facie evidence that the person
29 was duly licensed or certified and that the person followed the proper procedure for drawing
30 a specimen for chemical testing, unless, with 10 days' written notice to the prosecution, the
31 defendant requests that the person testify as to licensure or certification, or the procedure
32 for drawing the specimen of blood.

33 A law enforcement officer may take a sample specimen of the breath ~~or~~, urine or oral fluid
34 of any person whom the officer has probable cause to believe operated or attempted to
35 operate an aircraft while under the influence of intoxicating liquor or drugs and who is
36 complying with the duty to submit to and complete a chemical test. The sample specimen
37 must be submitted to the Department of Health and Human Services or a person certified
38 by the Department of Health and Human Services for the purpose of conducting chemical
39 tests of the sample specimen to determine the alcohol level or drug concentration of that
40 sample.

41 Only equipment approved by the Department of Health and Human Services may be used
42 by a law enforcement officer to take a sample specimen of the defendant's breath ~~or~~, urine
43 or oral fluid for submission to the Department of Health and Human Services or a person
44 certified by the Department of Health and Human Services for the purpose of conducting

1 tests of the sample specimen to determine the alcohol level or drug concentration of that
2 sample. Approved equipment must have a stamp of approval affixed by the Department of
3 Health and Human Services. Evidence that the equipment was in a sealed carton bearing
4 the stamp of approval must be accepted in court as prima facie evidence that the equipment
5 was approved by the Department of Health and Human Services for use by the law
6 enforcement officer to take the sample specimen of the defendant's breath or, urine or oral
7 fluid.

8 As an alternative to the method of breath testing described in this subsection, a law
9 enforcement officer may test the breath of any person whom the officer has probable cause
10 to believe operated or attempted to operate an aircraft while under the influence of
11 intoxicating liquor or drugs, by use of a self-contained, breath-alcohol testing apparatus to
12 determine the person's alcohol level, as long as the testing apparatus is reasonably available.
13 The procedures for the operation and testing of self-contained, breath-alcohol testing
14 apparatuses must be as provided by rule adopted by the Department of Health and Human
15 Services. The result of any such test must be accepted as prima facie evidence of the
16 alcohol level of a person in any court.

17 Approved self-contained, breath-alcohol testing apparatuses must have a stamp of approval
18 affixed by the Department of Health and Human Services after periodic testing. That stamp
19 of approval is valid for a limited period of no more than one year. Testimony or other
20 evidence that the equipment was bearing the stamp of approval must be accepted in court
21 as prima facie evidence that the equipment was approved by the Department of Health and
22 Human Services for use by the law enforcement officer to collect and analyze a sample
23 specimen of the defendant's breath.

24 Failure to comply with any provision of this subsection or with any rule adopted under this
25 subsection does not, by itself, result in the exclusion of evidence of alcohol level or drug
26 concentration, unless the evidence is determined to be not sufficiently reliable.

27 Testimony or other evidence that any materials used in operating or checking the operation
28 of the equipment were bearing a statement of the manufacturer or of the Department of
29 Health and Human Services must be accepted in court as prima facie evidence that the
30 materials were of a composition and quality as stated.

31 A person certified by the Maine Criminal Justice Academy, under certification standards
32 set by the academy, as qualified to operate approved self-contained, breath-alcohol testing
33 apparatuses may operate those apparatuses to collect and analyze a sample specimen of a
34 defendant's breath.

35 **Sec. 3. 6 MRSA §205, sub-§7**, as amended by PL 2009, c. 447, §4, is further
36 amended to read:

37 **7. Evidence.** The drug concentration in the defendant's blood or the defendant's
38 alcohol level at the time alleged, as shown by the chemical analysis of the defendant's
39 blood, breath or, urine or oral fluid or by results of a self-contained, breath-alcohol testing
40 apparatus authorized by subsection 5 is admissible in evidence.

41 When a person, certified under subsection 5, conducts a chemical analysis of blood or
42 breath to determine alcohol level, the person may issue a certificate stating the results of
43 the analysis. That certificate, when duly signed and sworn to by the certified person, is
44 admissible in evidence in any court of the State. It is prima facie evidence that the person

1 taking a specimen of blood ~~or~~, urine or oral fluid was a person authorized by subsection 5;
2 that the equipment, chemicals and other materials used in the taking of the blood ~~or~~, urine
3 or oral fluid specimen or a breath sample were of a quality appropriate for the purpose of
4 producing reliable test results; that any equipment, chemicals or materials required by
5 subsection 5 to be approved by the Department of Health and Human Services were in fact
6 approved; that the sample tested by the person certified under subsection 5 was in fact the
7 same sample taken from the defendant; and that the drug concentration in the defendant's
8 blood or the defendant's alcohol level was, at the time the blood or breath sample was taken,
9 as stated in the certificate, unless with 10 days' written notice to the prosecution, the
10 defendant requests that a qualified witness testify as to any of the matters as to which the
11 certificate constitutes prima facie evidence. The notice must specify those matters
12 concerning which the defendant requests testimony.

13 A person certified under subsection 5 as qualified to operate a self-contained, breath-
14 alcohol testing apparatus to determine the alcohol level may issue a certificate stating the
15 results of the analysis. That certificate, when duly signed and sworn to by the certified
16 person, is admissible in evidence in any court of the State. It is prima facie evidence that
17 the defendant's alcohol level was, at the time the breath sample was taken, as stated in the
18 certificate, unless, with 10 days' written notice to the prosecution, the defendant requests
19 that the operator or other qualified witness testify as to the results of the analysis.

20 Transfer of sample specimens to and from a laboratory for purposes of analysis is by
21 certified or registered mail and, when so made, is deemed to comply with all requirements
22 regarding the continuity of custody of physical evidence.

23 The failure of a person to comply with the duty to submit to and complete a chemical test
24 under section 204 is admissible in evidence on the issue of whether that person was under
25 the influence of intoxicating liquor or drugs. If the law enforcement officer having
26 probable cause to believe that the person operated or attempted to operate an aircraft while
27 under the influence of intoxicating liquor or drugs fails to give either of the warnings
28 required under subsection 2, the failure of the person to comply with the duty to submit to
29 a chemical test is not admissible, except when a test was required pursuant to subsection
30 11. If a failure to submit to and complete a chemical test is not admitted into evidence, the
31 court may inform the jury of the fact that no test result is available.

32 If a test result is not available for a reason other than failing to comply with the duty to
33 submit to and complete a chemical test, the unavailability and the reason are admissible in
34 evidence.

35 **Sec. 4. 6 MRSA §205, sub-§11**, as amended by PL 2009, c. 447, §4, is further
36 amended to read:

37 **11. Fatalities.** Notwithstanding any other provision of this section, an operator of an
38 aircraft who is involved in an aircraft accident that results in the death of a person must
39 submit to and complete a chemical test to determine that person's alcohol level or drug
40 concentration by analysis of blood, breath ~~or~~, urine or oral fluid. A law enforcement officer
41 may determine which type of test will be administered. The result of a test taken pursuant
42 to this subsection is not admissible at trial unless the court is satisfied that probable cause
43 exists, independent of the test result, to believe that the operator was under the influence of
44 intoxicating liquor or drugs or had an excessive alcohol level.

1 **Sec. 5. 12 MRSA §10702, sub-§1**, as amended by PL 2009, c. 447, §9, is further
2 amended to read:

3 **1. Duty to submit.** A person who hunts wild animals or wild birds or operates or
4 attempts to operate a watercraft, snowmobile or ATV within this State has a duty to submit
5 to a test to determine that person's alcohol level or drug concentration by analysis of blood,
6 breath or urine or oral fluid if there is probable cause to believe that the person is hunting
7 wild animals or wild birds or operating or attempting to operate a watercraft, snowmobile
8 or ATV while under the influence of intoxicating liquor or drugs. The duty to submit to an
9 alcohol level or drug concentration test includes the duty to complete either a blood, breath
10 or urine or oral fluid test or any combination of those tests. Tests and procedures for
11 determining whether a person is under the influence of intoxicating liquor or drugs are
12 governed by section 10703.

13 **Sec. 6. 12 MRSA §10703, sub-§5**, as amended by PL 2019, c. 627, Pt. B, §2, is
14 further amended to read:

15 **5. Administration of tests.** Persons conducting analyses of blood, breath or urine or
16 oral fluid for the purpose of determining an alcohol level or drug concentration must be
17 certified for each purpose by the Department of Health and Human Services under
18 certification standards set by that department.

19 A. Only a physician, licensed physician assistant, registered nurse or person whose
20 occupational license or training allows that person to draw blood samples may draw a
21 specimen of blood for the purpose of determining the blood-alcohol level or the
22 presence of a drug or drug metabolite. This limitation does not apply to the taking of
23 breath or urine specimens. When a person draws a specimen of blood at the request of
24 a law enforcement officer, that person may issue a certificate that states that the person
25 is in fact a duly licensed or certified person as required by this subsection and that the
26 person followed the proper procedure for drawing a specimen of blood to determine an
27 alcohol level or drug concentration. That certificate, when duly signed and sworn to
28 by the person, is admissible as evidence in any court of the State. It is prima facie
29 evidence that the person was duly licensed or certified and that the person followed the
30 proper procedure for drawing a specimen of blood for chemical testing, unless, with 10
31 days' written notice to the prosecution, the defendant requests that the person testify as
32 to licensure or certification, or the procedure for drawing the specimen of blood.

33 B. A law enforcement officer may take a sample specimen of the breath or urine or
34 oral fluid of any person whom the officer has probable cause to believe hunted wild
35 animals or wild birds or operated or attempted to operate a watercraft, snowmobile or
36 ATV while under the influence of intoxicating liquor or drugs and who is complying
37 with the duty to submit to and complete a chemical test. The sample specimen must
38 be submitted to the Department of Health and Human Services or a person certified by
39 the Department of Health and Human Services for the purpose of conducting chemical
40 tests of the sample specimen to determine an alcohol level or drug concentration of that
41 sample.

42 C. Only equipment approved by the Department of Health and Human Services may
43 be used by a law enforcement officer to take a sample specimen of the defendant's
44 breath or urine or oral fluid for submission to the Department of Health and Human
45 Services or a person certified by the Department of Health and Human Services for the

1 purpose of conducting tests of the sample specimen to determine an alcohol level or
2 drug concentration of that sample. Approved equipment must have a stamp of approval
3 affixed by the Department of Health and Human Services. Evidence that the equipment
4 was in a sealed carton bearing the stamp of approval must be accepted in court as prima
5 facie evidence that the equipment was approved by the Department of Health and
6 Human Services for use by the law enforcement officer to take the sample specimen of
7 the defendant's breath ~~or~~, urine or oral fluid.

8 D. As an alternative to the method of breath testing described in this subsection, a law
9 enforcement officer may test the breath of any person whom the officer has probable
10 cause to believe hunted wild birds or wild animals or operated or attempted to operate
11 a watercraft, snowmobile or ATV while under the influence of intoxicating liquor, by
12 use of a self-contained, breath-alcohol testing apparatus to determine an alcohol level,
13 as long as the testing apparatus is reasonably available. The procedures for the
14 operation and testing of self-contained, breath-alcohol testing apparatuses must be as
15 provided by rule adopted by the Department of Health and Human Services. The result
16 of any such test must be accepted as prima facie evidence of an alcohol level in any
17 court.

18 E. Approved self-contained, breath-alcohol testing apparatuses must have a stamp of
19 approval affixed by the Department of Health and Human Services after periodic
20 testing. That stamp of approval is valid for a limited period of no more than one year.
21 Testimony or other evidence that the equipment was bearing the stamp of approval
22 must be accepted in court as prima facie evidence that the equipment was approved by
23 the Department of Health and Human Services for use by the law enforcement officer
24 to collect and analyze a sample specimen of the defendant's breath.

25 F. Failure to comply with any provision of this subsection or with any rule adopted
26 under this subsection does not, by itself, result in the exclusion of evidence of an
27 alcohol level or drug concentration, unless the evidence is determined to be not
28 sufficiently reliable.

29 G. Testimony or other evidence that any materials used in operating or checking the
30 operation of the equipment were bearing a statement of the manufacturer or of the
31 Department of Health and Human Services must be accepted in court as prima facie
32 evidence that the materials were of a composition and quality as stated.

33 H. A person certified by the Maine Criminal Justice Academy, under certification
34 standards set by the academy, as qualified to operate approved self-contained, breath-
35 alcohol testing apparatuses may operate those apparatuses to collect and analyze a
36 sample specimen of a defendant's breath.

37 **Sec. 7. 12 MRSA §10703, sub-§7**, as amended by PL 2023, c. 228, §4, is further
38 amended to read:

39 **7. Evidence.** The defendant's alcohol level at the time alleged and the concentration
40 of drugs at the time alleged, as shown by the chemical analysis of the defendant's blood,
41 breath ~~or~~, urine or oral fluid or by any test authorized by subsection 5 is admissible in
42 evidence.

43 A. When a person certified under subsection 5 conducts a chemical analysis of blood,
44 breath ~~or~~, urine or oral fluid to determine an alcohol level or drug concentration, the

1 person conducting the analysis may issue a certificate stating the results of the analysis.
2 That certificate, when duly signed and sworn to by the certified person, is admissible
3 in evidence in any court of the State. It is prima facie evidence that the person taking
4 a specimen of blood or urine or oral fluid was a person authorized by subsection 5;
5 that the equipment, chemicals and other materials used in the taking of the blood or
6 urine or oral fluid specimen or a breath sample were of a quality appropriate for the
7 purpose of producing reliable test results; that any equipment, chemicals or materials
8 required by subsection 5 to be approved by the Department of Health and Human
9 Services were in fact approved; that the sample tested by the person certified under
10 subsection 5 was in fact the same sample taken from the defendant; and that the drug
11 concentration in the defendant's blood or the defendant's alcohol level was, at the time
12 the blood, breath or urine or oral fluid sample was taken, as stated in the certificate,
13 unless with 10 days' written notice to the prosecution, the defendant requests that a
14 qualified witness testify as to any of the matters as to which the certificate constitutes
15 prima facie evidence. The notice must specify those matters concerning which the
16 defendant requests testimony.

17 B. A person certified under subsection 5 as qualified to operate a self-contained,
18 breath-alcohol testing apparatus to determine an alcohol level may issue a certificate
19 stating the results of the analysis. That certificate, when duly signed and sworn to by
20 the certified person, is admissible in evidence in any court of the State. It is prima facie
21 evidence that the defendant's alcohol level was, at the time the breath sample was taken,
22 as stated in the certificate, unless, with 10 days' written notice to the prosecution, the
23 defendant requests that the operator or other qualified witness testify as to the results
24 of the analysis.

25 C. Transfer of sample specimens to and from a laboratory for purposes of analysis
26 must be by certified or registered mail and, when so made, is deemed to comply with
27 all requirements regarding the continuity of custody of physical evidence.

28 D. The failure of a person to comply with the duty to submit to and complete a
29 chemical test under section 10702, subsection 1 is admissible in evidence on the issue
30 of whether that person was under the influence of intoxicating liquor or drugs. If the
31 law enforcement officer having probable cause to believe that the person hunted wild
32 animals or wild birds or operated or attempted to operate a watercraft, snowmobile or
33 ATV while under the influence of intoxicating liquor or drugs fails to give either of the
34 warnings required under subsection 2, the failure of the person to comply with the duty
35 to submit to a chemical test is not admissible. If a failure to submit to and complete a
36 chemical test is not admitted into evidence, the court may inform the jury of the fact
37 that a test result is not available.

38 E. If a test result is not available for a reason other than a person's failure to comply
39 with the duty to submit to and complete a chemical test, the unavailability and the
40 reason are admissible in evidence.

41 **Sec. 8. 16 MRSA §357, 2nd ¶**, as amended by PL 2011, c. 335, §1, is further
42 amended to read:

43 Notwithstanding this section, the result of a laboratory or any other test kept by a
44 hospital or other medical facility that reflects an alcohol level, a detectable urine-drug level,
45 a detectable blood-drug level, a detectable oral fluid-drug level or a drug concentration of

1 either blood ~~or~~, urine or oral fluid may not be excluded as evidence in a criminal or civil
2 proceeding by reason of any claim of confidentiality or privilege and may be admitted as
3 long as the result is relevant and reliable evidence if the proceeding is one in which the
4 operator of a motor vehicle, snowmobile, all-terrain vehicle or watercraft is alleged to have
5 operated under the influence of intoxicating liquor or drugs and the court is satisfied that
6 probable cause exists to believe that the operator committed the offense charged.

7 **Sec. 9. 29-A MRSA §2401, sub-§3**, as amended by PL 2013, c. 459, §1, is further
8 amended to read:

9 **3. Chemical test or test.** "Chemical test" or "test" means a test or tests used to
10 determine alcohol level or the presence of a drug or drug metabolite by analysis of blood,
11 breath ~~or~~, urine or oral fluid.

12 **Sec. 10. 29-A MRSA §2431, sub-§1**, as amended by PL 2011, c. 335, §3, is further
13 amended to read:

14 **1. Test results.** Test results showing a confirmed positive drug or metabolite presence
15 in blood ~~or~~, urine or oral fluid or alcohol level at the time alleged are admissible in evidence.
16 Failure to comply with the provisions of sections 2521 and 2523 may not, by itself, result
17 in the exclusion of evidence of alcohol level or confirmed positive drug or metabolite
18 presence, unless the evidence is determined to be not sufficiently reliable.

19 **Sec. 11. 29-A MRSA §2431, sub-§2**, as amended by PL 2021, c. 204, §1, is further
20 amended to read:

21 **2. Analysis of blood, breath ~~and~~, urine and oral fluid.** The following provisions
22 apply to the analysis of blood, breath ~~and~~, urine and oral fluid, and the use of that analysis
23 as evidence.

24 A. A laboratory certified or licensed in accordance with section 2524 conducting a
25 chemical analysis of blood, breath ~~or~~, urine or oral fluid to determine an alcohol level
26 or the presence of a drug or drug metabolite may issue a certificate stating the results
27 of the analysis.

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

30 C. A certificate issued in accordance with paragraph A or B, when duly signed and
31 sworn, is prima facie evidence that:

32 (2) Materials used in the taking of the specimen were of a quality appropriate for
33 the purpose of producing reliable test results;

34 (3) Materials required to be approved by the Department of Health and Human
35 Services were in fact approved;

36 (4) The sample tested was in fact the same sample taken from the defendant; and

37 (5) The alcohol level or the presence of a drug or drug metabolite in the blood ~~or~~,
38 urine or oral fluid of the defendant at the time the sample was taken was as stated
39 in the certificate.

40 D. With 10 days written notice to the prosecution, the defendant may request that a
41 qualified witness testify to the matters of which the certificate constitutes prima facie

1 evidence. The notice must specify those matters concerning which the defendant
2 requests testimony. The certificate is not prima facie evidence of those matters.

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

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

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

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

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

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

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

26 **Sec. 12. 29-A MRSA §2432, sub-§4**, as amended by PL 2013, c. 459, §4, is further
27 amended to read:

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

34 **Sec. 13. 29-A MRSA §2453-A, sub-§3**, as enacted by PL 2011, c. 335, §5, is
35 amended to read:

36 **3. Drug test.** The person who analyzed the drug or its metabolite in the blood ~~or~~, urine
37 or oral fluid of the person who is the subject of the drug recognition expert's report under
38 subsection 2 shall send a copy of a confirmed positive test result certificate to the Secretary
39 of State.

40 **Sec. 14. 29-A MRSA §2453-A, sub-§7, ¶A**, as enacted by PL 2011, c. 335, §5, is
41 amended to read:

1 A. The person operated a motor vehicle with a confirmed positive blood or, urine or
2 oral fluid test for a drug or its metabolite;

3 **Sec. 15. 29-A MRSA §2472, sub-§5, ¶B**, as amended by PL 2011, c. 335, §8, is
4 further amended to read:

5 B. The person operated a motor vehicle with an alcohol level of more than 0.00 grams
6 per 100 milliliters of blood or 210 liters of breath or with a confirmed positive blood
7 or, urine or oral fluid test for a drug or its metabolite and was under the influence of
8 the confirmed drug; and

9 **Sec. 16. 29-A MRSA §2521, sub-§1**, as amended by PL 2013, c. 459, §7, is further
10 amended to read:

11 **1. Mandatory submission to test.** If there is probable cause to believe a person has
12 operated a motor vehicle while under the influence of intoxicants, that person shall submit
13 to and complete a test to determine an alcohol level and the presence of a drug or drug
14 metabolite by analysis of blood, breath or, urine or oral fluid.

15 **Sec. 17. 29-A MRSA §2524, sub-§4**, as amended by PL 2019, c. 368, §4, is further
16 amended to read:

17 **4. Chemical tests on blood and, urine and oral fluid specimens.** A sample specimen
18 of blood or, urine or oral fluid may be submitted to the Department of Health and Human
19 Services or to a laboratory qualified pursuant to subsection 2 for the purpose of conducting
20 chemical tests to determine alcohol level or the presence of a drug or drug metabolite.

21 **Sec. 18. 29-A MRSA §2524, sub-§5**, as amended by PL 2019, c. 368, §5, is further
22 amended to read:

23 **5. Equipment for taking specimens.** For purposes of this section, collection kits
24 having a stamp of approval affixed by the Department of Health and Human Services may
25 be used to take a sample specimen of blood or, urine or oral fluid. A sample specimen of
26 blood or, urine or oral fluid may also be taken in any collection tube of the type normally
27 used in a laboratory qualified pursuant to subsection 2. The fact that a laboratory qualified
28 pursuant to subsection 2 supplied the collection tube is prima facie evidence that the
29 collection tube is the type of tube normally used in such a laboratory. Alternatively, a self-
30 contained, breath-alcohol testing apparatus if reasonably available may be used to
31 determine the alcohol level.

32 Approved breath-alcohol testing apparatus must have a stamp of approval affixed by the
33 Department of Health and Human Services after periodic testing. That stamp is valid for
34 no more than one year.

35 **Sec. 19. 29-A MRSA §2525, sub-§1**, as amended by PL 2011, c. 335, §14, is
36 further amended to read:

37 **1. Submission to test required.** If a drug recognition expert has probable cause to
38 believe that a person is under the influence of a specific category of drug, a combination of
39 specific categories of drugs or a combination of alcohol and one or more specific categories
40 of drugs, that person must submit to a blood or, urine or oral fluid test selected by the drug
41 recognition expert to confirm that person's category of drug use and determine the presence
42 of the drug.

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SUMMARY

This bill permits the use of oral fluid testing in determining the intoxication of drivers, aircraft operators and hunters.