

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1491

6  
7 S.P. 562

In Senate, May 9, 1985

8 Reference to the Committee on Judiciary suggested and ordered printed.

9 JOY J. O'BRIEN, Secretary of the Senate

10 Presented by Senator Carpenter of Aroostook.

Cosponsored by Representative Priest of Brunswick, Representative Paul of Sanford and Representative Foster of Ellsworth.

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE  
16

17 AN ACT to Amend the Offenses for Operating  
18 under the Influence.  
19

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

22 Sec. 1. 29 MRSA §1312-B, sub-§2, as amended by  
23 PL 1983, c. 501, §3, is repealed and the following  
24 enacted in its place:

25 2. Classification of offense. The offense de-  
26 finied in subsection 1 is classified as:

27 A. A Class D crime when the defendant:

28 (1) Is testing as having a blood-alcohol  
29 level of 0.15% or more;

30 (2) Is driving in excess of the speed limit  
31 by 30 miles an hour or more during the oper-  
32 ation which results in the prosecution for  
33 operating under the influence or with a  
34 blood-alcohol level of 0.10% or more;

1                   (3) Eludes or attempts to elude an officer,  
2                   as defined in section 2501-A, subsection 3,  
3                   during the operation which results in the  
4                   prosecution for operating under the influ-  
5                   ence or with a blood-alcohol level of 0.10%  
6                   or more; or

7                   (4) Had been convicted of a violation of  
8                   former section 1312, subsection 10, para-  
9                   graph A, former section 1312-B, subsection  
10                   2, section 1312-B or whose license or privi-  
11                   lege to operate was suspended for failure to  
12                   comply with the duty to submit to and com-  
13                   plete a test to determine the level of  
14                   blood-alcohol under section 1312 within a  
15                   6-year period; or

16           B. A Class E crime when the defendant:

17                   (1) Is operating under the influence of in-  
18                   toximating liquor or drugs or a combination  
19                   of liquor or drugs; or

20                   (2) Is operating with a blood-alcohol level  
21                   of 0.10% or more, but less than 0.15%.

22           Sec. 2. 29 MRSA §1312-B, sub-§2-A is enacted to  
23           read:

24                   2-A. Penalties. The penalties for the offense  
25                   defined in subsection 1, and classified in subsection  
26                   2, shall be as follows:

27           A. For Class D crime:

28                   (1) The fine shall not be less than \$350  
29                   for the first conviction, nor less than  
30                   \$1,000 for the 2nd conviction, which fine  
31                   may not be suspended;

32                   (2) The sentence shall include a period of  
33                   incarceration of not less than 48 consecu-  
34                   tive hours for the first conviction, nor  
35                   less than 30 days for the 2nd conviction,  
36                   which sentence may not be suspended;

1                   (3) Upon conviction, the court shall sus-  
2                   pend the defendant's license or permit to  
3                   operate, right to operate a motor vehicle  
4                   and right to apply for or obtain a license  
5                   for a period of 90 days for the first con-  
6                   viction and for a period of 2 years for the  
7                   2nd conviction; and

8                   (4) Fines, sentencings and suspensions for  
9                   a 2nd conviction under this section shall  
10                  apply to any person previously convicted of  
11                  violating section 1312, subsection 10, sec-  
12                  tion 1312-B, subsection 2, or whose license  
13                  or privilege to operate was suspended for  
14                  failure to comply with the duty to submit to  
15                  and complete a test to determine the level  
16                  of blood-alcohol under section 1312 within a  
17                  6-year period;

18                  B. For a Class E crime:

19                   (1) The fine for any conviction shall not  
20                   be less than \$250 nor more than \$500;

21                   (2) Violation of this section shall not re-  
22                   sult in imprisonment; and

23                   (3) Upon conviction, the court shall sus-  
24                   pend the defendant's license or permit to  
25                   operate, right to operate a motor vehicle  
26                   and right to apply for or obtain a license  
27                   for a period of 45 days.

28                  The period of suspension, under paragraphs A and B,  
29                  shall not be suspended by the court. The court shall  
30                  give notice of the suspension and take physical cus-  
31                  tody of the operator's license as provided in section  
32                  2241-H. The Secretary of State may impose an addi-  
33                  tional period of suspension as provided in section  
34                  1312-D, subsection 1-A, or may extend any period of  
35                  suspension until satisfaction of any conditions im-  
36                  posed pursuant to section 1312-D, subsection 3.

37                  Sec. 3. 29 MRSA §1312-C, as amended by PL 1983,  
38                  c. 850, §2, is repealed.

39                  Sec. 4. 29 MRSA §1312-D, as amended by PL 1983,  
40                  c. 850, §3, is further amended to read:

1 §1312-D. Provisions regarding suspensions imposed  
2 pursuant to conviction under sections  
3 1312-B

4 1. Recording and notice by Secretary of State.

5 On receipt of an attested copy of the court record of  
6 a suspension of a person's license, right to operate  
7 a motor vehicle or right to apply for or obtain a li-  
8 cense or of a conviction ~~or adjudication~~ under sec-  
9 tion 1312-B ~~or 1312-C~~, the Secretary of State shall  
10 immediately record the suspension and shall send  
11 written notice of the suspension of the court to the  
12 person suspended. If the court fails to suspend the  
13 license, right to operate a motor vehicle, or right  
14 to apply for or obtain a license of any person con-  
15 victed under section 1312-B ~~or adjudicated as having~~  
16 ~~violated section 1312-C~~, or the juvenile crime de-  
17 fined by Title 15, section 3103, subsection 1, para-  
18 graph F, the Secretary of State shall suspend those  
19 rights for the period specified in ~~sections~~ section  
20 1312-B, ~~1312-C~~ and Title 15, section 3314, subsection  
21 3, respectively, and shall send written notice of the  
22 suspension as provided in this subsection.

23 1-A. Additional suspension. The Secretary of  
24 State may suspend the license, the right to operate a  
25 motor vehicle or the right to apply for or obtain a  
26 license of any person adjudicated convicted of having  
27 violated section 1312-C 1312-B for an additional pe-  
28 riod of up to 135 days beyond the 45-day period of  
29 suspension required under section ~~1312-C~~, ~~subsection~~  
30 4 1312-B, subsection 2-A, paragraph B, subparagraph  
31 3.

32 The Secretary of State may suspend the license, the  
33 right to operate or the right to apply for or obtain  
34 a license of any person, including a juvenile, con-  
35 victed for a first offense within a 6-year period un-  
36 der section 1312-B for an additional period of up to  
37 275 days beyond the 90 days required under section  
38 1312-B, subsection 2, paragraph C subsection 2-A,  
39 paragraph A, subparagraph 3, or up to 185 days beyond  
40 the 180 days required under Title 15, section 3314,  
41 subsection 3.

42 Notice of any additional suspension pursuant to this  
43 subsection shall be given as provided in subsection  
44 1.

1           2. Education and treatment programs. Following  
2 the expiration of 2/3 of the total period suspension  
3 imposed pursuant to subsection 1 and 1-A, section  
4 1312-B, ~~section 1312-C~~ former section 1312-B, sub-  
5 section 2 or Title 15, section 3314, the Secretary of  
6 State may issue a license or permit to the person if  
7 he receives written notice that the person has satis-  
8 factorily completed the alcohol education program of  
9 the Department of Human Services and, when required,  
10 has satisfactorily completed an alcohol treatment or  
11 rehabilitation program approved or licensed by the  
12 department.

13           3. Restricted licenses. After certification under  
14 subsection 2, the Secretary of State may issue  
15 the license or permit with whatever conditions, re-  
16 strictions or terms he deems advisable, having in  
17 mind the safety of the public and the welfare of the  
18 petitioner. Following the expiration of the total  
19 period of suspension imposed pursuant to subsections  
20 1 and 1-A, section 1312-B ~~or 1312-C~~, or Title 15,  
21 section 3314, the Secretary of State may issue a li-  
22 cense or permit, subject to the conditions, restric-  
23 tions or terms he deems advisable, to the person if  
24 the Secretary of State has received or when he re-  
25 ceives written notice that the person has satisfacto-  
26 rily completed the alcohol educational program of the  
27 Department of Human Services and, when required, has  
28 satisfactorily completed an alcohol treatment or re-  
29 habilitation program approved or licensed by the de-  
30 partment. The license or permit may contain the  
31 condition that the person abstain from the use of in-  
32 toxicating liquor or drugs. Any license or permit  
33 issued under subsection 2 or under this subsection  
34 shall be restricted to use for travel to an alcohol  
35 education or treatment program or to employment if  
36 the amount of the total period of suspension which  
37 has expired is less than 90 days. Any such license  
38 or permit issued shall remain restricted until the  
39 amount of time the license or permit was actually  
40 suspended plus the amount of time the restricted li-  
41 cense or permit has been issued equals a minimum of  
42 90 days.

43           4. Special restricted licenses for participation  
44 in programs. Notwithstanding any other provision of  
45 law, the Secretary of State may issue a temporary re-

1       stricted license to a person suspended under section  
2       1312-B ~~or 1312-E~~ for the purpose of allowing that  
3       person to participate in the alcohol education pro-  
4       gram of the Department of Human Services or in any  
5       other program under subsection 2 or 3.

6           5. Restricted licenses for suspension for fail-  
7       ure to comply with duty to submit to blood-alcohol  
8       test. The Secretary of State may issue a restricted  
9       license or permit to any person whose license or per-  
10      mit has been suspended for a first failure to comply  
11      with the duty to submit to a blood-alcohol test under  
12      section 1312, subsection 2, if the conditions of is-  
13      suanace following a conviction or adjudication under  
14      section 1312-B ~~or 1312-E~~ are met by the person and a  
15      period of suspension of not less than 90 days has  
16      elapsed.

17          6. Fee. The Department of Human Services may  
18      charge a registration fee, not to exceed \$75, to par-  
19      ticipants in the education program, which shall be  
20      applied to defraying the expenses of the program.  
21      The department shall submit to the joint standing  
22      committee of the Legislature having jurisdiction over  
23      appropriations a report presenting an itemized de-  
24      scription of the operating budget of the educational  
25      program. The report shall be submitted no later than  
26      January 1, 1985.

27          7. Suspension in effect during appeal. If any  
28      person suspended under section 1311-A or convicted or  
29      adjudicated of a violation of section 1312-B ~~or~~  
30      ~~1312-E~~ appeals the judgment or adjudication or admin-  
31      istrative determination of the Secretary of State,  
32      the suspension imposed shall remain in effect during  
33      the time an appeal is pending, unless the court or-  
34      ders otherwise, or unless the Secretary of State  
35      restores the license, permit or privilege to operate  
36      pending decision on the appeal.

37          8. Consecutive suspensions. Any suspension pur-  
38      suant to this section or the former section 1312,  
39      subsection 10 or section 1312-B or ~~1312-E~~ former sec-  
40      tion 1312-B, subsection 2 shall be consecutive to any  
41      suspension imposed under section 1312, subsection 2,  
42      for failing to comply with the duty to submit to a  
43      test to determine blood-alcohol level by analysis of  
44      blood or breath.

1           9. Proof of financial responsibility. In the  
2 case of any person previously convicted of violating  
3 subsection 10 of former section 1312; convicted of  
4 violating former section 1312-B, subsection 2; con-  
5 victed of violating section 1312-B; adjudicated  
6 guilty of violating section 1312-C; or convicted of  
7 violating Title 15, section 3103, subsection 1, para-  
8 graph F, within a 6-year period of the most recent  
9 conviction or adjudication of any of these viola-  
10 tions, the Secretary of State shall not reinstate  
11 that person's license, right to operate or right to  
12 apply for or obtain a license until that person has  
13 complied with the financial responsibility provisions  
14 of section 782.

15

#### STATEMENT OF FACT

16           The purpose of this bill is to amend the sections  
17 of the Maine Revised Statutes, Title 29, which refer  
18 to the penalties for operating a motor vehicle while  
19 under the influence of intoxicating liquor or drugs.

20           This bill repeals and replaces the Maine Revised  
21 Statutes, Title 29, section 1312-B, subsection 2.  
22 The criteria for the classification of the violation  
23 as a Class D or Class E crime and the resulting pen-  
24 alties are stated.

25           This bill repeals the Maine Revised Statutes, Ti-  
26 tle 29, section 1312-C, which was found to be uncon-  
27 stitutional by the Supreme Judicial Court.

28           This bill amends the Maine Revised Statutes, Ti-  
29 tle 29, section 1312-D, to delete references to the  
30 Maine Revised Statutes, Title 29, section 1312-B,  
31 subsection 2 and section 1312-C. The Maine Revised  
32 Statutes, Title 29, section 1312-D, refers to provi-  
33 sions regarding suspensions imposed pursuant to con-  
34 victions under the other sections.

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