

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 17

S. P. 11

Office of the Clerk of the House

Filed December 15, 1966, under Joint Rule No. 6. To be printed and delivered to the Senate of the 103rd Legislature.

JEROME G. PLANTE, Clerk

Presented by Senator Ross of Piscataquis.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Providing for Implied Consent Law for Operators of Motor Vehicles.

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

Sec. 1. R. S., T. 29, § 1312-A, additional. Title 29 of the Revised Statutes is amended by adding a new section 1312-A, to read as follows:

§ 1312-A. Revocation of license in event of refusal to submit to chemical tests

1. **Consent.** Any person who operates a motor vehicle upon the public highways of this State shall be deemed to have given consent, subject to section 1312, to a chemical test or tests of his blood, breath, urine or saliva for the purpose of determining the alcoholic content of his blood, if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered at the direction of a police officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public ways of this State while under the influence of intoxicating liquor. The law enforcement agency by which such officer is employed shall designate which of the tests shall be administered.

2. —When not withdrawn. Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection 1 and the test or tests may be administered, subject to section 1312.

3. **Refusal if under arrest.** If a person under arrest refuses upon the request of a police officer to submit to a chemical test designated by the law enforcement agency as provided in subsection 1, none shall be given, but the depart-

ment upon the receipt of a sworn report of the police officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the police officer, shall revoke his license or permit to drive, or any nonresident operating privilege; or if the person is a resident without a license or permit to operate a motor vehicle in this State, the department shall deny to the person the issuance of a license or permit for a period of 6 months after the date of the alleged violation, subject to review as provided.

4. **Hearing.** Upon revoking the license or permit to drive or nonresident operating privilege of any person, or upon determining that the issuance of a license or permit shall be denied to the person, as in this section directed, the department shall immediately notify the person in writing and upon his request shall afford him an opportunity for a hearing in the same manner and under the same conditions as provided in section 2241 for notification and hearings in the cases of discretionary suspension, except that the scope of such a hearing for the purposes of this section shall cover the issues of whether a police officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor, whether the person was placed under arrest and whether he refused to submit to the test upon request of the officer. Whether the person was informed that his privilege to drive would be revoked or denied if he refused to submit to the test shall not be an issue. The department shall order that the revocation or determination that there should be a denial of issuance either be rescinded or sustained.

5. **Review.** If the revocation or determination that there should be a denial of issuance is sustained after such a hearing, the person whose license or permit to drive or nonresident privilege has been revoked, or to whom a license or permit is denied, under this section, shall have the right to file a petition in the appropriate court to review the final order of revocation or denial by the department in the same manner and under the same conditions as is provided in section 2242 in the cases of discretionary revocations and denials.

6. **Notification to nonresident's state.** When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this State has been revoked, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

7. **Results of tests.** Upon the request of the person who was tested, the results of such test shall be made available to him.

8. **Who may withdraw blood.** Only a physician acting at the request of a police officer can withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of a urine, saliva or breath specimen.

9. **Physician of person tested.** The person tested shall be permitted at his own expense to have a physician of his own choosing administer a chemical

test in addition to the one administered at the direction of the police officer and the results of such test shall be made available, upon request, to the police officer.

Sec. 2. R. S., T. 29, § 1312, amended. The 8th sentence of section 1312 of Title 29 of the Revised Statutes is repealed, as follows:

~~The failure of a person accused of this offense to have tests made to determine the weight of alcohol in his blood shall not be admissible in evidence against him.~~