

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1339

H. P. 1030

House of Representatives, March 12, 1969

Referred to Committee on Judiciary. Sent up for concurrence and 1,000 ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Birt of East Millinocket.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

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 R. S., T. 29, § 1312, repealed and replaced. Section 1312 of Title 29 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

§ 1312. Implied consent to chemical tests; operation while intoxicated or impaired; penalties

Any person who operates a motor vehicle or attempts to operate a motor vehicle within this State shall be deemed to have given consent to a chemical test of the blood alcohol level of his blood, breath or urine for the purpose of determining the alcoholic content of his blood, if arrested for operating or attempting to operate a motor vehicle while intoxicated by the use of intoxicating liquor or drugs or while his mental or physical faculties are impaired by the use of intoxicating liquor or drugs. He shall be informed by a law enforcement officer of the tests available to him, and said accused shall select and designate one of the tests. The person tested shall be permitted to have a physician of his own choosing and at his own expense administer a chemical test of the blood alcohol level of his breath, blood or urine in addition to the test administered at the direction of the law enforcement officer.

1. Prerequisites to tests. Before any test specified is given, the law enforcement officer shall inform the arrested person of his right to have a similar test or tests made by a physician of his own choosing, afford him an opportunity to request such additional test and inform him of the con-

sequences of his refusal to permit a test at the direction of the law enforcement officer. If the law enforcement officer fails to comply with this section, the test shall be inadmissible as evidence in any proceeding before any administrative officer or court of this State.

2. **Hearing.** If a person under arrest refuses upon the request of a law enforcement officer to submit to one of the tests as provided in this section, none shall be given. The Secretary of State, upon the receipt of a report of the arrest for operating or attempting to operate a motor vehicle within this State while his mental or physical faculties are impaired by the use of intoxicating liquor or drugs or while intoxicated by the use of intoxicating liquor or drugs and that the person had refused to submit to one of the tests shall immediately notify the person in writing to appear for a hearing. A hearing shall be held in the same manner and under the same conditions as provided in section 2241. The scope of such a hearing shall cover the issues of whether the person was placed under arrest and whether he refused to submit to one of the tests upon the request of a law enforcement officer. If it is determined that such person was arrested and did refuse to take a chemical test of his blood, breath or urine, the Secretary of State shall order a suspension of the person's license and privilege to operate, not to exceed 6 months.

3. **Review.** The person, whose license and privilege to operate is suspended under subsection 2, shall have the right to file a petition in the Superior Court in the county where he resides or in Kennebec County to review the final order of suspension by the Secretary of State in the same manner and under the same conditions as is provided in section 2242. Pending final decision on appeal, the license or permit to operate shall not be suspended.

4. **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 suspended, the Secretary of State 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.

5. **Results of tests.** Upon the request of the person who was tested, the results of such test shall be given to him as soon as available.

6. **Blood-alcohol level.**

A. If there was at the time alleged, 0.05% or less by weight of alcohol in the defendant's blood, it is prima facie evidence that the defendant's mental or physical faculties were not impaired by the use of intoxicating liquor or drugs; nor was he intoxicated by the use of intoxicating liquors or drugs, within the meaning of this section.

B. If there was at the time alleged in excess of 0.05%, but less than 0.10% by weight of alcohol in the defendant's blood, it is relevant evidence, but it is not to be given prima facie effect in indicating whether or not the defendant's mental or physical faculties were impaired by the use of intoxicating liquor or drugs within the meaning of this section, but such

fact may be considered with other competent evidence in determining whether the mental or physical faculties of the defendant were impaired; and such fact is prima facie evidence that the defendant was not intoxicated by the use of intoxicating liquor or drugs within the meaning of this section.

C. If there was at the time alleged 0.10% or more, but less than 0.15% by weight of alcohol in the defendant's blood, it is prima facie evidence that the defendant's mental or physical faculties were impaired by the use of intoxicating liquor or drugs within the meaning of this section, and such fact is prima facie evidence that the defendant was not intoxicated by the use of intoxicating liquor or drugs within the meaning of this section.

D. Evidence that there was, at the time alleged, 0.15% or more, by weight of alcohol in the defendant's blood is prima facie evidence that the defendant was intoxicated by the use of intoxicating liquor or drugs within the meaning of this section.

7. Administration of tests. Persons administering and conducting chemical tests of blood, breath or urine shall be certified for this purpose by the Department of Health and Welfare under certification standards to be set by that department's rules and regulations. A duly licensed physician or registered nurse, acting at the request of a law enforcement officer with the consent of the defendant, may collect specimens of blood only for the purpose of determining the alcohol content therein.

8. Plea of guilty to operating or attempting to operate a motor vehicle while impaired. No person charged with operating or attempting to operate while intoxicated may plead guilty to the lesser offense of operating or attempting to operate while impaired unless he has submitted to one, or more, of the foregoing chemical tests and the results thereof were less than 0.15% by weight of alcohol in the defendant's blood at the time of the alleged offense.

9. Evidence. The court shall admit evidence of the percentage by weight of alcohol in the defendant's blood at the time alleged, as shown by a chemical analysis of his breath, blood or urine.

10. Payment of tests. All such tests conducted by direction of a law enforcement officer made to determine the weight of alcohol in the blood shall be paid for from the General Fund.

11. Penalties.

A. Whoever shall operate or attempt to operate a motor vehicle within this State while his mental or physical faculties are impaired by the use of intoxicating liquor or drugs, upon conviction, shall be punished by a fine of not more than \$300 or by imprisonment for not more than 90 days, or by both.

The license and privilege to operate motor vehicles of any person convicted of violating this paragraph for the first time shall be suspended for 3 months immediately by the Secretary of State upon receipt of an attested copy of the court record, without further hearing.

If any person found guilty of violation of this paragraph shall appeal from the judgment and sentence of the trial court, his license and privilege to operate a motor vehicle in this State shall be suspended during the time an appeal is pending, unless the trial court shall otherwise order, or unless the Secretary of State, after a hearing, shall restore the license and privilege pending decision on the appeal; provided that in all cases of first finding of guilt under this paragraph the license and privilege to operate a motor vehicle shall not be suspended during the time an appeal is pending.

Any person convicted of a 2nd violation of this paragraph shall have his license and privilege to operate a motor vehicle in this State suspended in the manner provided for a period of one year, provided that after the expiration of 6 months from the date of such suspension, he may petition the Secretary of State for a license or permit and the Secretary of State, after hearing and after his determination that public safety will not be endangered by issuing a new license, may issue such license or permit, with or without conditions thereto attached.

Any person convicted of a 3rd or subsequent violation of this paragraph shall not be licensed again or permitted to operate a motor vehicle in this State for 2 years from the date of suspension, except that one year from the date of such suspension, he may petition the Secretary of State for a restoration of his license or permit and after hearing the Secretary of State may issue a license or permit to the petitioner, with or without conditions and restrictions and under such terms as he may deem equitable, having in mind the safety of the public and the welfare of the petitioner and his immediate dependents.

B. Whoever shall operate or attempt to operate a motor vehicle within this State while intoxicated by the use of intoxicating liquor or drugs, upon conviction, shall be punished by a fine of not less than \$150 nor more than \$500, or by imprisonment for not more than 6 months, or by both. Any person convicted of a 2nd or subsequent offense shall be punished by a fine of not less than \$200 nor more than \$1,000 or by imprisonment for not more than 11 months, or by both.

The license and privilege to operate motor vehicles of any person found guilty of violating this paragraph shall be suspended immediately by the Secretary of State upon receipt of an attested copy of the court records, without further hearing.

If any person found guilty of violation of this paragraph shall appeal from the judgment and sentence of the trial court, his license and privilege to operate a motor vehicle in this State shall be suspended during the time an appeal is pending, unless the trial court shall otherwise order, or unless the Secretary of State, after a hearing, shall restore the license and privilege pending decision on the appeal; provided that in all cases of first finding of guilt under this paragraph the license and privilege to operate a motor vehicle shall not be suspended during the time an appeal is pending.

No person whose license and privilege to operate a motor vehicle has been suspended upon first conviction of violating this paragraph shall be licensed

again or permitted to operate a motor vehicle for one year, except that, after the expiration of 6 months from the date of such suspension, he may petition the Secretary of State for a license or permit, who, after hearing and after his determination that public safety will not be endangered by issuing a new license, may issue such license or permit, with or without conditions thereto attached.

Upon a 2nd conviction of a violation of this paragraph, such person shall not be licensed again or permitted to operate a motor vehicle in this State for 2 years from the date of suspension, except that after 15 months from the date of such suspension, he may petition the Secretary of State for a license or permit and the Secretary of State, after hearing and determination, may issue a license or permit to the petitioner, with such conditions as he shall deem necessary to protect the public safety.

Upon a 3rd conviction of a violation of this paragraph, such person shall not be licensed again or permitted to operate a motor vehicle in this State for 5 years from the date of suspension, except that after 3 years from the date of such last suspension, he may petition the Secretary of State for a license or permit, and the Secretary of State (after hearing, may issue a license or permit with such conditions attached as he shall deem necessary to protect the public safety.

Upon any subsequent conviction of a violation of this paragraph, the license or permit shall terminate and no subsequent license or permit shall be granted to such person, except that a person who has had 4 convictions under this paragraph may petition the Secretary of State for a special license and the Secretary of State, after being satisfied beyond a reasonable doubt that the said petitioner has refrained from all use of intoxicating liquor for a period of 5 years next preceding the day of hearing on said petition, may issue a special permit or license conditioned upon continued nonuse of intoxicating liquor and such other conditions as he may deem proper.

C. In allegations charging 2nd or subsequent offenses under either paragraphs A or B, a certified copy of the records of prior convictions from the office of the Secretary of State shall be admitted in evidence as proof of the prior conviction or convictions.

Sec. 2. R. S., T. 29, § 1312-A, repealed. Section 1312-A of Title 29 of the Revised Statutes, as enacted by chapter 546 of the public laws of 1967, is repealed.