

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1422

H. P. 1027

House of Representatives, March 9, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Lund of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Revising the Implied Consent Law for Operators of Motor Vehicles.

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

R. S., T. 29, § 1312, repealed and replaced. Section 1312 of Title 29 of the Revised Statutes, as repealed and replaced by section 1 of chapter 439 of the public laws of 1969, is repealed and the following enacted in place thereof:

§ 1312. Implied consent to chemical tests; operation under the influence of intoxicating liquor; penalties

Any person who operates or attempts to operate a motor vehicle within this State shall be deemed to have given consent to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, if arrested for operating or attempting to operate a motor vehicle while at all under the influence of intoxicating liquor.

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.

1. Prerequisites to tests. Before any test specified is given, the law enforcement officer shall inform the arrested person of the consequences 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 prerequisite, any test results 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 a chemical test to determine his blood-alcohol level by analysis of his blood or breath, none shall be given. The Secretary

of State, upon the receipt of a sworn report of the arrest of a person for operating or attempting to operate a motor vehicle while at all under the influence of intoxicating liquor, and that such person had refused to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, shall immediately notify the person, in writing, as provided in section 2241 that his license or permit and his privilege to operate have been suspended. Such suspension shall be for a period of 3 months for a first refusal under this or any prior implied consent provision under Maine law. If such refusal is a 2nd or subsequent refusal under this or any prior implied consent provision under Maine law, such suspension shall be for a period of 6 months. If such person desires to have a hearing, he shall notify the Secretary of State within 10 days, in writing, of such desire. Any suspension shall remain in effect pending the outcome of such hearing, if requested.

The scope of such a hearing shall cover whether the individual was lawfully 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, after hearing when such is requested, that such person was not arrested or did not refuse to permit a chemical test to determine his blood-alcohol level by analysis of his blood or breath, any suspension in effect shall be removed immediately.

3. Review. Any person, whose license, permit or privilege to operate is suspended for refusal to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath at the direction of a law enforcement officer after having been arrested for operating or attempting to operate while at all under the influence of intoxicating liquor, 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 order of suspension by the Secretary of State by the same procedure as is provided in section 2242.

4. Results of test. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney by the law enforcement officer.

5. 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 was not at all under the influence of intoxicating liquor.

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 was at all under the influence of intoxicating liquor within the meaning of this section, but such fact may be considered with other competent evidence in determining whether or not the defendant was at all under the influence of intoxicating liquor.

C. If there was, at the time alleged, 0.10% or more by weight of alcohol in the defendant's blood, it is prima facie evidence that the defendant was at

all under the influence of intoxicating liquor within the meaning of this section.

D. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood.

6. Administration of tests. Persons conducting chemical analysis of blood or breath for the purpose of determining the blood-alcohol level shall be certified for this purpose by the Department of Health and Welfare under certification standards to be set by that department.

A written certificate, identifying the sample and containing the results of the test to determine the blood-alcohol level of the sample made by the Department of Health and Welfare shall be admissible in evidence in any court of this State in any proceeding and when admitted shall be prima facie evidence that the blood or breath sample identified therein contained the blood-alcohol level indicated. Such written certificate shall be attested by the person actually performing the test.

Only a duly licensed physician, registered nurse or a person certified by the Department of Health and Welfare under certification standards to be set by that department, acting at the request of a law enforcement officer, with the consent of the defendant, may draw a specimen of blood for the purpose of determining the blood-alcohol level thereof. This limitation shall not apply to the taking of breath specimens.

A law enforcement officer, with the consent of the person from whom the sample is to be taken, may take a sample specimen of the breath of any person arrested for operating or attempting to operate a motor vehicle while at all under the influence of intoxicating liquor, said sample specimen to be submitted to the Department of Health and Welfare or a person certified by the Department of Health and Welfare for the purpose of conducting chemical tests of the sample specimen to determine the blood-alcohol level thereof.

Only such equipment as is approved by the Department of Health and Welfare shall be used by a law enforcement officer to take a sample specimen of the defendant's breath.

7. Liability. No physician, registered nurse or person certified by the Department of Health and Welfare shall be liable in damages or otherwise for any act done or omitted to be done in performing the act of collecting or withdrawing specimens of blood at the request of a law enforcement officer pursuant to this section. No person administering or conducting chemical tests to determine blood-alcohol level by analysis of blood or breath shall be held liable in damages or otherwise for any act reasonably done or omitted to be done in administering or conducting said test pursuant to this section.

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

9. Payment for tests. Persons authorized to take specimens of blood at the direction of a law enforcement officer and persons authorized to perform

chemical tests of specimens of blood or breath shall be paid from the General Fund.

10. Penalties.

A. Whoever shall operate or attempt to operate a motor vehicle within this State while at all under the influence of intoxicating liquor or drugs, upon conviction for a first offense, shall be punished by a fine of not more than \$200 or by imprisonment for not more than 90 days, or by both; and whoever is convicted of a 2nd or subsequent offense shall be punished by a fine of not less than \$200 nor more than \$1000, or by imprisonment for not more than 11 months, or by both. The license or permit and privilege to operate of any person convicted of a first violation of this section shall be immediately suspended for 6 months by the Secretary of State upon receipt of an attested copy of the court record of such conviction.

If any person found guilty of a violation of this section shall appeal from the judgment or sentence of a court, the operator's license or permit and privilege to operate a motor vehicle in this State shall be suspended during the time an appeal is pending, unless such court shall otherwise order, or unless the Secretary of State, after hearing, shall restore the license, permit or privilege to operate pending decision on the appeal.

Any person convicted of a 2nd violation of this section shall have his license or permit and privilege to operate a motor vehicle in this State suspended for a period of one year.

Any person convicted of a 3rd violation of this section shall have his license or permit and privilege to operate a motor vehicle in this State suspended for a period of 3 years, except that such person may petition the Secretary of State for a hearing to consider whether his license should be restored after 2 years from the date of said suspension of his license, permit or privilege to operate a motor vehicle. The Secretary of State, after hearing, may restore the license and privilege to operate a motor vehicle, with or without conditions or restrictions, and under such terms as he may deem advisable, having in mind the safety of the public and the welfare of the petitioner.

Any person convicted of a 4th or subsequent violation of this section shall have his license or permit and privilege to operate suspended and no subsequent license or permit or privilege to operate shall be granted to such person, except that such person may petition the Secretary of State after 5 years from the date of said suspension for a special license or the privilege to operate, and the Secretary of State, after being satisfied beyond a reasonable doubt that the petitioner has refrained from the use of intoxicating liquor or drugs for a period of 5 years next preceding the date of hearing on said petition, may issue a license, permit or grant the privilege to operate, conditioned upon the continued nonuse of intoxicating liquor or drugs and such other conditions as he may deem proper.

For the purposes of this section, prior convictions of operating or attempting to operate while under the influence of intoxicating liquor, operating

or attempting to operate while impaired by the use of intoxicating liquor, or operating or attempting to operate while intoxicated by the use of intoxicating liquor, shall be considered prior convictions of operating or attempting to operate at all under the influence of intoxicating liquor, regardless of the date of such conviction.

For the purpose of this section, prior convictions of operating or attempting to operate while under the influence of drugs, operating or attempting to operate while impaired by the use of drugs, or operating or attempting to operate while intoxicated by the use of drugs, shall be considered prior convictions of operating or attempting to operate under the influence of drugs, regardless of the date of such conviction.

Any suspension of a license, permit and privilege to operate for conviction under this section shall run consecutively to any suspension imposed for refusal to submit to a chemical test to determine blood-alcohol level by analysis of blood or breath.

B. Any officer authorized to arrest for violations of this section may arrest, without a warrant, any person involved in a motor vehicle accident, if the officer has probable cause to believe that such person has violated this section.

C. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this Title shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that the operator has consumed alcohol, the police officer may require such operator to submit to a chemical test in the manner set forth in this section.

D. In alleging a prior conviction under this section, Title 15, section 757, shall not apply. After a conviction for violation of this section the court shall conduct an inquiry to determine whether or not the defendant has been convicted of any offenses which are considered to be prior offenses for the purposes of this section. Certified copies of the record of a prior conviction or convictions from the Secretary of State or any court of record shall be admissible and upon receipt of any such copy and upon being satisfied that the defendant is the person named in that certified copy, the court shall treat the present conviction as a subsequent conviction and sentence the defendant accordingly.

STATEMENT OF FACT

The purpose of this bill is to create a broadened Implied Consent Law in regard to the drinking driver, including the addition of chemical testing of blood-alcohol level by analysis of breath.