

MAINE STATE LEGISLATURE

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EMERGENCY
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 720

S. P. 251

In Senate, February 9, 1981

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator Gill of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Ensure the Admissibility of Results of Self-contained, Breath-alcohol Testing Apparatuses.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Legislature in 1977 passed amendments to the Revised Statutes, Title 29, section 1312, designed to insure the use of self-contained, breath-alcohol testing apparatuses and to ensure the admissibility of the results of those tests in evidence in court; and

Whereas, a wide variety of claims are being made in the courts in this State that the results of such tests should not be admissible in evidence or, if admissible, are without probative weight under the present statute and in the absence of substantial and impractical amounts of expert testimony; and

Whereas, self-contained, breath-alcohol testing apparatuses are in widespread use in the State at the present time and many tests have been performed with them in cases which are pending trial; and

Whereas, it is important to the proper enforcement of the operating under the influence of alcohol law that these test results be admissible in evidence; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following

legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 29 MRSA § 1312, sub-§ 6, 5th ¶, as enacted by PL 1977, c. 603, is repealed and the following enacted in its place:

As an alternative to the method of breath testing described in this subsection, a law enforcement officer may test the breath of any person whom there is probable cause to believe has operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor and who has chosen a breath test, by use of a self-contained, breath-alcohol testing apparatus to determine the blood-alcohol level, provided the testing apparatus is reasonably available. The result of any such test shall be accepted as prima facie evidence of the blood-alcohol level in any court or administrative proceeding.

Sec. 2. 29 MRSA § 1312, sub-§ 6, 6th ¶, 3rd sentence, as enacted by PL 1977, c. 603, is amended to read:

Evidence Testimony or other evidence that the equipment was bearing the stamp of approval shall be accepted in court as prima facie evidence that the equipment was approved by the Department of Human Services for use by the law enforcement officer to collect and analyze a sample specimen of the defendant's breath and that the equipment was operating properly.

Sec. 3. 29 MRSA § 1312, sub-§ 6, 6th ¶, as enacted by PL 1977, c. 603, is amended by adding at the end a new sentence to read:

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

Sec. 4. 29 MRSA § 1312, sub-§ 6, as last amended by PL 1977, c. 603, is further amended by adding at the end a new paragraph to read:

A person certified by the Maine Criminal Justice Academy, under certification standards to be set by the academy, as qualified to operate approved self-contained, breath-alcohol testing apparatuses may operate those apparatuses for the purpose of collecting and analyzing a sample specimen of defendants' breath.

Sec. 5. 29 MRSA § 1312, sub-§ 8, first ¶, as repealed and replaced by PL 1971, c. 547, is amended to read:

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, or by results of a self-contained, breath-alcohol testing apparatus authorized by subsection 6, shall be admissible in evidence.

Sec. 6. 29 MRSA § 1312, sub-§ 8, as last amended by PL 1979, c. 701, § 33, is further amended by adding after the 2nd paragraph a new paragraph to read:

A person certified under subsection 6, as qualified to operate a self-contained, breath-alcohol testing apparatus for the purpose of determining blood-alcohol level, may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, shall be admissible in evidence in any court of the State. It shall be prima facie evidence that the self-contained, breath-alcohol testing apparatus was operating properly and that the percentage by weight of alcohol in the blood of the defendant was, at the time the breath sample was taken, as stated in the certificate, unless with 10-days written notice to the prosecution, the defendant requests that the operator or other qualified witnesses testify as to the results of the chemical analysis.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

This bill is designed to overcome current challenges to the admissibility of test results from self-contained, breath-alcohol testing apparatuses in operating under the influence of intoxicating liquor cases. It is designed to ensure: (1) That the results are in fact admissible; (2) That they carry the same probative weight as traditional blood and breath tests; and (3) That they may be admitted efficiently and with a minimum number of foundation witnesses. As under current provisions concerning the admissibility of traditional blood and breath tests and the need to call a chemist as a witness, defendant may insist that those witnesses actually appear on giving adequate notice to the prosecution.