

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1124

H. P. 948

House of Representatives, March 5, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Nelson of Portland.

STATE OF MAINE

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

AN ACT to Enhance Public Safety through the Authorization of Suspension of Licenses.

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

Sec. 1. 29 MRSA § 1312, sub-§ 1, first ¶, as repealed and replaced by PL 1979, c. 701, § 32, is amended by adding at the end a new sentence to read:

The law enforcement officer shall also inform the arrested person that, if he submits to a chemical test, his license may be suspended for 90 days or until disposition of the court case resulting from the arrest if the test results indicate that there was, at the time alleged, 0.10% or more by weight of alcohol in the arrested person's blood.

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

2-A. Blood-alcohol level hearing. If a person submits to a chemical test as provided in this section to determine his blood-alcohol level by analysis of his blood or breath and if there was, at the time alleged, 0.10% or more by weight of alcohol in that person's blood, the individual, as certified under subsection 6, who conducted the chemical analysis determining the blood-alcohol level shall immediately submit to the Secretary of State a certificate indicating the results of that analysis. That certificate, when duly signed and sworn to by that certified person, shall be admissible in evidence in a hearing conducted by the Secretary of State.

Upon receipt of the certificate indicating that the weight of alcohol in a person's blood was 0.10% or more, the Secretary of State may immediately suspend the license or permit and privilege to operate of the person named in the certificate. If the Secretary of State suspends a person's license or permit and privilege to operate pursuant to this subsection, he shall immediately notify the person, in writing, as provided in section 2241. The suspension shall be for a period of 3 months or until disposition of the court case resulting from the arrest, whichever comes first.

If that person desires to have a hearing, he shall notify the Secretary of State within 10 days, in writing, of that desire. A hearing shall be available as soon as possible upon request of that person. Any suspension shall remain in effect pending the outcome of the hearing, if requested.

The scope of a hearing shall cover whether there was probable cause for the arrest, whether the individual is the same person named in the certificate and whether the certificate indicated a blood-alcohol level of 0.10% or more. The Secretary of State shall take official notice of the signed and sworn certificate as submitted by the person who conducted the chemical analysis. If the name and date of birth of the person requesting the hearing is the same as the name and birth of the person named in the certificate, that certificate shall be prima facie evidence of that person's identity. If the person denies that he is the same person named in the certificate, he shall have the burden of proving that he is not the same person.

If it is determined, after hearing when such is requested, that there was probable cause for the arrest, that the individual is the same person named in the certificate and that the certificate indicated a blood-alcohol level of 0.10% or more, the suspension shall remain in effect. If a contrary determination is reached, any suspension in effect shall be removed immediately.

Sec. 3. 29 MRSA § 1312, sub-§ 3, as repealed and replaced by PL 1979, c. 701, § 32, is amended by adding at the end a new sentence to read:

The same procedure for review applies to a person whose license, permit or privilege to operate has been suspended as a result of submission to a chemical test following an arrest for operating or attempting to operate while under the influence of intoxicating liquor when the test results indicate a blood-alcohol level of 0.10% or more.

Sec. 4. 29 MRSA § 1312, sub-§ 8, 2nd ¶, 2nd sentence, as enacted by PL 1979, c. 422, § 1, is amended to read:

That certificate, when duly signed and sworn to by the certified person, shall be admissible in evidence in any court of the State or any administrative hearing within the State.

Sec. 5. 29 MRSA § 1312, sub-§ 10-A, ¶ D, as enacted by PL 1977, c. 626, § 2, is amended to read:

D. The Secretary of State may also issue a restricted license or permit to any person whose license or permit has been suspended ~~for a first refusal under subsection 2 for chemical test results indicating a blood-alcohol level of 0.10% or more under subsection 2-A~~, if the conditions of issuing after a first conviction are met by the person and the person demonstrates good cause to justify the issuance of a restricted license.

STATEMENT OF FACT

Under the existing statutory scheme, the Secretary of State has authority to suspend a license or permit to operate if that person refuses to submit to a chemical test to determine his blood-alcohol level. At present, there is no provision which allows the Secretary of State to protect public interest by suspending a person's license or permit to operate if that person submits to a chemical test and the test results indicate a blood-alcohol level of 0.10% or more. If a person has a blood-alcohol level of 0.10% or more, it is prima facie evidence that he is under the influence of intoxicating liquor. The instant legislation is intended to enhance public safety by allowing the Secretary of State to immediately suspend the license or permit of any person who has been found to be operating or attempting to operate with a blood-alcohol level of 0.10% or more, pending court trial of that offense. Immediate suspension is particularly important in those accident cases which involve serious personal injury or death. This legislation is designed to remedy the present system which encourages tactics which delay trials resulting from arrests for operating under the influence of intoxicating liquor.