

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1456

H. P. 1231

House of Representatives, March 24, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Davies of Orono.

Cosponsor: Representative Thompson of South Portland.

STATE OF MAINE

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

AN ACT Concerning Operation of a Motor Vehicle while under the Influence of Intoxicating Liquor.

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

Sec. 1. 29 MRSA § 1312, first ¶, as repealed and replaced by PL 1971 c. 547, is amended to read:

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~~ cited for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor.

Sec. 2. 29 MRSA § 1312, sub-§ 1, first ¶, as last repealed and replaced by PL 1979, c. 701, § 32, is amended to read:

Before any test specified is given, the law enforcement officer shall inform the ~~arrested~~ cited person that if he revokes his implied consent to a chemical test by refusing to permit a test at the direction of the law enforcement officer, his license will be suspended for 90 days or more, and the revocation of consent shall be admissible in evidence against him at any trial for operating under the influence of intoxicating liquor.

Sec. 3. 29 MRSA § 1312, sub-§ 2, first ¶, first and 2nd sentences, as repealed and replaced by PL 1979, c. 701, § 32, are amended to read:

If a person ~~under arrest~~ cited for a violation of this section revokes his implied consent to a chemical test by refusing 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 written statement under oath, within 20 days of the date, of the ~~arrest~~ citing of a person for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, and that such person had revoked his consent by refusing to submit to a chemical test to determine this 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.

Sec. 4. 29 MRSA § 1312, sub-§ 2, 3rd and 4th ¶¶, as repealed and replaced by PL 1979, c. 701, § 32, are amended to read:

The scope of such a hearing shall cover whether the individual was lawfully ~~placed under arrest~~ cited and whether he revoked his prior implied consent by refusing to submit to one of the tests upon the request of a law enforcement officer. Any suspension in effect shall be removed if, after hearing, it is determined that the ~~arrested~~ cited person who refused to permit the test would not have refused but for the failure of the law enforcement officer to give either or both of the warnings required by subsection 1.

If it is determined, after hearing when such is requested, that such person was not ~~arrested~~ cited or did not revoke his implied consent 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.

Sec. 5. 29 MRSA § 1312, sub-§ 3, as last repealed and replaced by PL 1979, c. 701, § 32, is amended to read:

3. Review. Any person, whose license, permit or privilege to operate is suspended for revoking his implied consent 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~~ cited for operating or attempting to operate while 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.

Sec. 6. 29 MRSA § 1312, sub-§ 6, 3rd ¶, as amended by PL 1975, c. 293, § 4, is amended to read:

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~~ cited for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, ~~said~~ the sample specimen to be submitted to the

Department of Human Services or a person certified by the Department of Human Services for the purpose of conducting chemical tests of the sample specimen to determine the blood-alcohol level thereof.

Sec. 7. 29 MRSA § 1312, sub-§ 6, 5th ¶, as enacted by PL 1977, c. 603, is amended to read:

As an alternative to the method of breath testing described in ~~the 3rd~~ paragraph-3, a law enforcement officer, with the consent of the person upon whom the test is to be made, may test the breath of any person ~~arrested~~ cited for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, by use of a self-contained, breath-alcohol testing apparatus to determine the blood-alcohol level, provided the testing apparatus is reasonably available.

Sec. 8. 29 MRSA § 1312, sub-§ 8, 4th ¶, 2nd sentence, as repealed and replaced by PL 1979, c. 701, § 33, is amended to read:

If the ~~arresting~~ law enforcement officer ~~delivering the uniform traffic ticket and complaint~~ fails to give either of the warnings required under subsection 1, the revocation of the person's implied consent by refusing to submit to a chemical test shall not be ~~admissable~~ admissible.

Sec. 9. 29 MRSA § 1312, sub-§ 10, as last amended by PL 1979, c. 422, §§ 1-3, is repealed and the following enacted in its place:

10. Penalties. The following provisions apply to penalties.

A. Any person who, while under the influence of intoxicating liquor or drugs, operates or attempts to operate a motor vehicle within this State commits a traffic infraction, for which a fine not to exceed \$250 may be imposed, or for which, in the case of a 2nd or subsequent violation, a fine not to exceed \$500 may be imposed. For purposes of this section, a prior adjudication of operating or attempting to operate while under the influence of intoxicating liquor or drugs shall be considered a prior violation if it occurred within a 6-year period of the date of the most recent adjudication. Prior adjudications include convictions under prior versions of this statute.

B. After a person has been adjudged to have violated this section, the court shall conduct an inquiry to determine whether or not the defendant has been convicted of any offenses, or adjudged to have committed any violations, which are considered to be prior violations for purposes of this section. Certified copies of the record of prior convictions or adjudications from the Secretary of State or any court of record shall be admissible. On receipt of a copy and being satisfied that the defendant is the person named in that certified copy, the court shall treat the present adjudication as a subsequent adjudication and impose a fine accordingly. The court may be satisfied of the identity of the defendant with the person named if the name and date of birth are the same.

Sec. 10. 29 MRSA § 1312, sub-§ 10-A, ¶ A, as amended by PL 1979, c. 422, § 4, is further amended to read:

A. On receipt of an attested copy of the court record of a ~~conviction~~ **an adjudication of a violation of this section**, the Secretary of State shall immediately suspend the person's license or permit and privilege to operate a motor vehicle. The suspension shall be for the following minimum periods from the date of suspension:

(1) In case of a first ~~conviction~~ **adjudication**, 30 days;

(1-A) In the case of a first ~~conviction~~ **adjudication** when that operation involved an accident causing personal injury to another person, 6 months;

(2) In case of a 2nd ~~conviction~~ **adjudication**, 6 months; and

(3) In case of a 3rd or subsequent ~~conviction~~ **adjudication**, 2 years.

Sec. 11. 29 MRSA § 1312, sub-§ 10-A, ¶ B, as last amended by PL 1979, c. 422, § 6, is further amended to read:

B. After the minimum suspension period, the Secretary of State may issue a license or permit to the person if:

(1) In case of a first ~~conviction~~ **adjudication**, the secretary receives written notice that the person has satisfactorily completed the alcohol education program of the Department of Human Services and, if required by the Department of Human Services, has also satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department;

(2) In case of a 2nd ~~conviction~~ **adjudication**, the secretary receives written notice that the person has satisfactorily completed the education program, and, if required by the Department of Human Services, has also satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department; and

(3) In case of a 3rd or subsequent ~~conviction~~ **adjudication**, if the person petitions the secretary for a license or permit after the period of minimum suspension and if the person presents clear and convincing evidence that he has satisfactorily completed an alcohol or drug treatment program approved or licensed by the Department of Human Services and that he has abstained from the use of intoxicating liquor or drugs for a period of 2 years immediately prior to the date of the petition.

Sec. 12. 29 MRSA § 1312, sub-§ 10-A, ¶¶ C, D and F, as enacted by PL 1977, c. 626, § 2, are amended to read:

C. The Secretary of State may issue the license or permit with whatever conditions, restrictions or terms he deems advisable, having in mind the safety of the public and the welfare of the petitioner. In the case of a 3rd or subsequent ~~conviction~~ **adjudication**, the license or permit may contain the condition that the person continue to abstain from the use of intoxicating liquor or drugs.

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, if the conditions of issuing after a first ~~conviction~~ adjudication are met by the person.

F. If any person ~~convicted for a violation of~~ **adjudged to have violated** this section appeals the judgment ~~or sentence~~ of a court, the license or permit and privilege to operate a motor vehicle shall be suspended during the time an appeal is pending, unless the court shall otherwise order, or unless the Secretary of State shall restore the license, permit or privilege to operate pending decision on the appeal.

Sec. 13. 29 MRSA § 1312, sub-§ 10-A, ¶ H is enacted to read:

H. In determining whether an adjudication is a first, 2nd, 3rd or subsequent adjudication under this subsection, a prior adjudication or conviction shall be counted if it meets the requirements of subsection 10, paragraph A.

Sec. 14. 29 MRSA § 1312, sub-§ 11, as repealed and replaced by PL 1977, c. 626, § 3, is repealed and the following enacted in its place:

11. Accidents. 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 the test indicates that the operator has consumed alcohol, the police officer may require the operator to submit to a chemical test in the manner set forth in this section.

STATEMENT OF FACT

The purpose of this bill is to make operating under the influence of intoxicating liquor a traffic infraction rather than a criminal offense.