

MAINE STATE LEGISLATURE

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(New Draft of H.P. 830, L.D. 1068)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1749

H.P. 1319

House of Representatives, June 10, 1983

Reported by the Majority from the Committee on Judiciary and printed under Joint Rule 2.

Original bill presented by Representative Davis of Monmouth. Cosponsored by Representative Higgins of Scarborough, Representative Macomber of South Portland and Senator Diamond of Cumberland.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

AN ACT to Provide for Swifter Disposition
of Drunk Driving Cases.

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

Sec. 1. 29 MRSA §1311-A is enacted to read:

§1311-A. Suspension on administrative determination for operating with an excessive blood-alcohol level

1. Purpose. The purpose of this section is:

A. To provide maximum safety for all persons who travel or otherwise use the public highways of the State; and

B. To remove quickly from the public highways of this State those persons who have shown them-

1 selves to be a safety hazard by operating or
2 attempting to operate a motor vehicle with an
3 excessive blood-alcohol level.

4 2. Suspension. The Secretary of State shall
5 make the determination of suspension as follows.

6 A. The Secretary of State shall suspend the li-
7 cence or permit to operate, right to operate a
8 motor vehicle and right to apply for or obtain a
9 license of any person upon his determination that
10 the person operated or attempted to operate a
11 motor vehicle with an excessive blood-alcohol
12 level.

13 B. The Secretary of State shall make a determi-
14 nation on the basis of the information required
15 in subsection 3, and this determination shall be
16 final unless a hearing is requested and held. If
17 a hearing is held, the Secretary of State shall
18 review the matter and make a final determination
19 on the basis of evidence received at the hearing.

20 C. The determination of these facts by the
21 Secretary of State is independent of the determi-
22 nation of the same or similar facts in the adju-
23 dicatation of any civil or criminal charges arising
24 out of the same occurrence. The disposition of
25 those civil or criminal charges shall not affect
26 any suspension under this section.

27 3. Report by law enforcement officer. A law
28 enforcement officer shall forward a report to the
29 Secretary of State as follows.

30 A. A law enforcement officer who arrests or sum-
31 mons any person for operating or attempting to
32 operate a motor vehicle with an excessive
33 blood-alcohol level, shall immediately forward to
34 the Secretary of State a report, under oath of
35 all information relevant to the enforcement ac-
36 tion, including information which adequately
37 identifies the person so arrested or summonsed, a
38 statement of the officer's grounds for belief
39 that the person committed the offense of oper-
40 ating or attempting to operate a motor vehicle
41 with an excessive blood-alcohol level, a certifi-

1 cate under section 1312, subsection 8 of the
2 results of any blood-alcohol tests by a
3 self-contained breath-alcohol testing apparatus
4 which were conducted, and a copy of the uniform
5 traffic ticket filed with the court.

6 B. The report required in this subsection shall
7 be made on forms supplied by the Secretary of
8 State.

9 C. If the blood-alcohol test was not analyzed by
10 a law enforcement officer, the person who ana-
11 lyzed the results shall cause a copy of his cer-
12 tificate under section 1312, subsection 8, to be
13 sent to the Secretary of State.

14 4. Notice of suspension. The notice of suspen-
15 sion by the Secretary of State shall be made as fol-
16 lows.

17 A. Upon receipt of the information required in
18 subsection 3, the Secretary of State shall make
19 the determination described in subsection 2. If
20 the Secretary of State determines that the person
21 is subject to license suspension, he shall
22 immediately issue a notice of suspension.

23 B. The notice of suspension shall be sent by
24 regular mail to the person at the last known ad-
25 dress on record at the Division of Motor Vehi-
26 cles, and to the address provided in the report
27 of the law enforcement officer if that address
28 differs from the address of record. The notice
29 is deemed received 3 days after mailing, unless
30 returned by postal authorities.

31 C. The notice of suspension shall clearly spec-
32 ify the reason and statutory grounds for the sus-
33 pension, the effective date of the suspension,
34 the right of the person to request a hearing, the
35 procedure for requesting a hearing and the date
36 by which that request for a hearing shall be
37 made.

38 5. Effective date and period of suspension. The
39 effective date and period of suspension are deter-
40 mined as follows.

1 A. The effective date of the suspension issued
2 under this section shall be in accordance with
3 section 2241-E. If a written request for a hear-
4 ing is received by the Secretary of State, the
5 effective date of the suspension shall be stayed
6 until a final order is issued following the hear-
7 ing, provided that any delay in the hearing which
8 is caused or requested by the subject person or
9 counsel representing that person shall not result
10 in a stay of the suspension during the period of
11 delay.

12 B. The period of license suspension for a person
13 the Secretary of State has determined to have
14 operated or attempted to operate a motor vehicle
15 with an excessive blood-alcohol level for a first
16 or subsequent offense shall be the same suspen-
17 sion period as if the person was convicted or ad-
18 judicated of a violation of section 1312-B,
19 1312-C or Title 15, section 3103, subsection 1,
20 paragraph F.

21 C. Where a person's license is suspended under
22 this section and is also suspended after having
23 been adjudicated or convicted on charges arising
24 out of the same occurrence for a violation of
25 section 1312-B, 1312-C or Title 15, section 3103,
26 subsection 1, paragraph F, the periods of suspen-
27 sion shall run concurrently. The periods of sus-
28 pension are intended to be minimum periods of
29 suspension and the Secretary of State may suspend
30 the license for the additional periods as pro-
31 vided in section 1312-D, subsection 1-A.

32 6. Restoration of license. The Secretary of
33 State may issue a license or permit as follows.

34 A. Restoration of any license or permit to oper-
35 ate, right to operate a motor vehicle and right
36 to apply for or obtain a license suspended under
37 this section shall be in accordance with section
38 1312-D, subsections 2 to 4.

39 7. Request for hearing. A person who has
40 received notice of suspension may request a hearing
41 as follows.

1 A. Any person who has received a notice of sus-
2 suspension under this section may make a written
3 request for a review of the determination of the
4 Secretary of State at a hearing.

5 B. The request for a hearing shall be made
6 within 10 days from the effective date of the
7 suspension. If a written request for a hearing
8 is made after the 10-day period and the Secretary
9 of State finds that the person was unable to make
10 a timely request due to lack of actual notice of
11 the suspension or due to factors of physical
12 incapacity, the Secretary of State shall waive
13 the period of limitation, reopen the matter and
14 grant the hearing request, except, in such a
15 case, a stay of the suspension pending the hear-
16 ing shall not be granted.

17 8. Hearing. The hearing and notice shall be as
18 follows.

19 A. The hearing and notice shall be as provided
20 in section 2241, subsection 3.

21 B. The sole issue at the hearing shall be
22 whether by a preponderance of the evidence there
23 was probable cause to believe that the person was
24 operating or attempting to operate with an exces-
25 sive blood-alcohol level. If it is determined,
26 after hearing, that there was not probable cause
27 to believe that the person operated or attempted
28 to operate a motor vehicle with an excessive
29 blood-alcohol level, the suspension shall be
30 removed immediately.

31 Sec. 2. 29 MRSA §1312-D, sub-§7, as amended by
32 PL 1981, c. 679, §40, is further amended to read:

33 7. Suspension in effect during appeal. If any
34 person suspended under section 1311-A or convicted or
35 adjudicated of a violation of section 1312-B or
36 1312-C appeals the judgment or adjudication or admin-
37 istrative determination of the Secretary of State,
38 the suspension imposed shall remain in effect during
39 the time an appeal is pending, unless the court
40 orders otherwise, or unless the Secretary of State
41 restores the license, permit or privilege to operate
42 pending decision on the appeal.

1 Sec. 3. 29 MRSA §2241-D, sub-§1, as amended by
2 PL 1981, c. 456, Pt. A, §96, is further amended to
3 read:

4 1. Fee. Notwithstanding any other provisions of
5 ~~Title 29~~ this Title, before a mandatory suspension, a
6 mandatory revocation or a suspension ordered by the
7 Secretary of State or a court of a person's driving
8 privilege may be terminated or reinstated, there
9 shall be paid to the Secretary of State a fee of \$20
10 \$25 which shall be in addition to the regular regis-
11 tration or license fee.

12 Sec. 4. Effective date. This Act shall take
13 effect on January 1, 1984.

14 STATEMENT OF FACT

15 The purpose of this new draft is to provide for a
16 rapid and certain means of removing drunk drivers
17 from our highways through determination in an admin-
18 istrative proceeding. There would still be the right
19 of appeal to the courts. This will tend to avoid
20 situations where persons charged with operating under
21 the influence are not brought to trial quickly, due
22 to a backlog of court cases or delaying tactics used
23 by the defendant.

24 Section 1 of this new draft provides that the li-
25 cense of any person shall be suspended for operating
26 or attempting to operate with an excessive
27 blood-alcohol level, based upon the administrative
28 determination of the Secretary of State. The deter-
29 mination of the Secretary of State is based upon a
30 report submitted to him by a law enforcement officer
31 who arrested or summonsed the person. The determi-
32 nation by the Secretary of State is independent of
33 any adjudication on civil or criminal charges arising
34 out of the same offense. A law enforcement officer
35 who arrests or summons a person for operating with an
36 excessive blood-alcohol level must forward to the
37 Secretary of State a report, under oath, of all
38 information relevant to the enforcement action. That
39 information includes the identity of the person
40 arrested or summonsed, a statement for the officer's
41 grounds for belief that the person was operating

1 under the influence and any blood-alcohol tests and
2 other relevant information. The Secretary of State
3 will have to have a blood-alcohol test result of .10%
4 or more to suspend a license under this new draft.

5 Any suspension issued under Title 29, section
6 1311-A by the Secretary of State will be for the same
7 term as provided in the current operating under the
8 influence law. If a person is adjudicated or con-
9 victed of that same operating under the influence
10 violation in a court, the suspension ordered by the
11 court will run concurrently with the suspension of
12 the Secretary of State.

13 A provision is made for the suspended person to
14 request a hearing on the determination of the Secre-
15 tary of State.

16 The provisions of section 1 of this new draft
17 have been drafted in accordance with the Model Revo-
18 cation on Administrative Determination Law of the
19 United States Department of Transportation, National
20 Highway Traffic Safety Administration. Six states
21 have already enacted this type of legislation.

22 Section 2 amends the current operating under the
23 influence statute to conform to the provisions of
24 Title 29, section 1311-A.

25 Section 3 increases the reinstatement fee to \$25
26 for the purpose of using these additional funds to
27 pay the costs of extra administrative hearings that
28 the Secretary of State will have to conduct when
29 licenses are suspended under the provisions of this
30 new draft.

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