

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 (New Draft of S.P. 587, L.D. 1706)

2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND ELEVENTH LEGISLATURE
5

6 Legislative Document

No. 1753

8 S.P. 618

In Senate, June 9, 1983

9 Reported by Senator Trafton of Androscoggin from the Committee on
10 Judiciary and printed under Joint Rule 2.

11 Original bill presented by Senator Trafton of Androscoggin. Cosponsored
by Representative Drinkwater of Belfast.

JOY J. O'BRIEN, Secretary of the Senate

12
13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-THREE
17

18 AN ACT Relating to the Period
19 of License Suspension for Drivers
20 Convicted or Adjudicated of Operating
21 Under the Influence.
22

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

25 Sec. 1. 29 MRSA §1312, sub-§1, as amended by PL
26 1981, c. 679, §14, is further amended to read:

27 1. Prerequisites to tests. Before any test
28 specified is given, the law enforcement officer shall
29 inform the person as to whom there is probable cause
30 that, if he fails to comply with the duty to submit
31 to and complete a test to determine the level of
32 blood-alcohol at the direction of the law enforcement
33 officer, his license or permit to operate, his right
34 to operate or his right to apply for or obtain a li-
35 cense will be suspended for 180 days, ~~and~~ or, in the

1 case of a 2nd or subsequent failure to submit to and
2 complete that test within a 6-year period, one year.
3 The officer should also inform the person that the
4 failure to comply with the duty to submit to a
5 blood-alcohol test shall be admissible in evidence
6 against him at any trial for operating under the
7 influence of intoxicating liquor.

8 No test results ~~shall~~ may be excluded as evidence in
9 any proceeding before any administrative officer or
10 court of this State as a result of the failure of the
11 law enforcement officer to comply with this prerequi-
12 site. The only effects of the failure of the officer
13 to comply with this prerequisite shall be as provided
14 in subsections 2 and 8.

15 Sec. 2. 29 MRSA §1312, sub-§2, as amended by PL
16 1981, c. 679, §§15 and 16, is further amended to
17 read:

18 2. Hearing. If a person as to whom there is
19 probable cause fails to comply with the duty to
20 submit to a test to determine his blood-alcohol level
21 by analysis of his blood or breath upon the request
22 of a law enforcement officer, no test may be given.
23 The Secretary of State, upon the receipt of a written
24 statement under oath from a law enforcement officer,
25 stating that the officer had probable cause to
26 believe that a person was operating or attempting to
27 operate a motor vehicle while under the influence of
28 intoxicating liquor, and that the person failed to
29 comply with the duty to submit to a test to determine
30 the blood-alcohol level by anaylsis of his blood or
31 breath, shall immediately notify the person, in writ-
32 ing, as provided in section 2241, that his license or
33 permit, his right to operate and his right to apply
34 for or obtain a license have been suspended. The sus-
35 pension shall be for a period of 180 days the first
36 time the person fails to comply with the duty to
37 submit to the test and one year for each subsequent
38 failure to comply with the duty to submit to the test
39 within a 6-year period. The written statement shall
40 be sent to the Secretary of State within 72 hours of
41 the failure to comply with the duty to submit to the
42 blood-alcohol test, excluding Saturdays, Sundays and
43 holidays. If the statement is not sent within this
44 time period, the Secretary of State shall neverthe-

1 less impose the suspension for failing to comply
2 with the duty to submit to a test, unless the delay
3 has prejudiced the person's ability to prepare or
4 participate in the hearing described in this subsection.
5

6 If such person desires to have a hearing, he shall
7 notify the Secretary of State within 10 days, in
8 writing, of such desire. Any suspension shall remain
9 in effect pending the outcome of such hearing, if
10 requested.

11 The scope of such a hearing shall cover whether there
12 was probable cause to believe that the individual was
13 either attempting to operate or was operating under
14 the influence of intoxicating liquor and whether he
15 failed to comply with the duty to submit to one of
16 the blood-alcohol tests upon the request of a law
17 enforcement officer. Any suspension in effect shall
18 be removed if, after hearing, it is determined that
19 the person who failed to submit to the test would not
20 have failed to submit but for the failure of the law
21 enforcement officer to give either or both of the
22 warnings required by subsection 1.

23 If it is determined, after hearing, that there was
24 not probable cause to believe that such person was
25 either attempting to operate or was operating under
26 the influence of intoxicating liquor or that the
27 person did not fail to comply with the duty to submit
28 to a blood-alcohol test, any suspension in effect
29 shall be removed immediately.

30 If it is determined, after a hearing, that any suspension
31 in effect should be removed, the Secretary of
32 State shall delete any record of the suspension and
33 any record of his revocation of consent from that
34 person's driving record.

35 For the purposes of this section, a prior refusal or
36 revocation of consent to submit to a chemical test
37 shall be a prior refusal or revocation of consent if
38 it occurred within a 6-year period of the date of the
39 most recent refusal or revocation of consent.

40 Sec. 3. 29 MRSA §1312-B, sub-§2, ¶C, as amended
41 by PL 1981, c. 679, §30, is further amended to read:

1 C. Upon conviction, the court shall suspend the
2 defendant's license or permit to operate, right
3 to operate a motor vehicle and right to apply for
4 or obtain a license for a period of 90 days for a
5 first offense. In the case of a person previ-
6 ously convicted of violating subsection 10 of
7 former section 1312, this section or section
8 1312-C within a 6-year period or whose license
9 was suspended for failure to comply with the duty
10 to submit to and complete a test to determine the
11 level of blood-alcohol under section 1312 within
12 a 6-year period, the suspension shall be for a
13 period of one year. The period of suspension
14 shall not be suspended by the court. The court
15 shall give notice of the suspension and take
16 physical custody of an operator's license as pro-
17 vided in section 2241-H. The Secretary of State
18 may impose an additional period of suspension as
19 provided in section 1312-D, subsection 1-A, and
20 may extend any period of suspension until satis-
21 faction of any conditions imposed pursuant to
22 section 1312-D, subsection 3.

23 Sec. 4. 29 MRSA §1312-D, sub-§1-A, as enacted by
24 PL 1981, c. 679, §37, is amended to read:

25 1-A. Additional suspension. The Secretary of
26 State may suspend the license, the right to operate a
27 motor vehicle or the right to apply for or obtain a
28 license of any person adjudicated of having violated
29 section 1312-C for an additional period of up to 135
30 days beyond the 45-day period of suspension required
31 under section 1312-C, subsection 4.

32 The Secretary of State may suspend the license, the
33 right to operate or the right to apply for or obtain
34 a license of any person, including a juvenile, con-
35 victed for a first offense within a 6-year period
36 under section 1312-B for an additional period of up
37 to 275 days beyond the 90 days required under section
38 1312-B, subsection 2, paragraph C, or up to 185 days
39 beyond the 180 days required under Title 15, section
40 3314, subsection 3, and if the person has been previ-
41 ously convicted or adjudicated under the former
42 section 1312, subsection 10 or section 1312-B or
43 section 1312-C, the Secretary of State shall impose a
44 further suspension of not less than 90 days.

1 Notice of any additional suspension pursuant to this
2 subsection shall be given as provided in subsection
3 1.

4 Sec. 5. 29 MRSA §1312-D, sub-§3, as amended by
5 PL 1981, c. 679, §38, is further amended to read:

6 3. Restricted licenses. After certification
7 under subsection 2 or after completion of the suspen-
8 sion imposed pursuant to this section and section
9 1312-B, 1312-C or Title 15, section 3314, the Secre-
10 tary of State may issue the license or permit with
11 whatever conditions, restrictions or terms he deems
12 advisable, having in mind the safety of the public
13 and the welfare of the petitioner, including, but not
14 limited to, successful completion of the alcohol edu-
15 cation program of the Department of Human Services,
16 if the petitioner has not already done so under sub-
17 section 2. The license or permit may contain the con-
18 dition that the person abstain from the use of intox-
19 icating liquor or drugs. Any license or permit
20 issued under subsection 2 or under this subsection
21 shall be restricted to use for travel to an alcohol
22 education or treatment program or to employment if
23 the amount of the total period of suspension which
24 has expired is less than 90 days. Any such license
25 or permit issued shall remain restricted until the
26 amount of time the license or permit was actually
27 suspended plus the amount of time the restricted li-
28 cence or permit has been issued equals a minimum of
29 90 days.

30 STATEMENT OF FACT

31 This new draft conforms the language to the
32 intent of the bill, that is to meet the qualifica-
33 tions for the federal incentive grant funding, United
34 States Public Law 97-364. It amends the penalties
35 for a 2nd alcohol-related offense to one year suspen-
36 sion and it requires a total of 90 days suspension or
37 restricted license for a civil violation.

38 4378060983