

MAINE STATE LEGISLATURE

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(EMERGENCY)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 2134

H.P. 1612

House of Representatives, February 27, 1984

Referred to the Committee on Judiciary. Ordered printed and sent up for concurrence.

EDWIN H. PERT, Clerk

Presented by Representative Hayden of Durham.

Cosponsors: Representative Drinkwater of Belfast, Senator Violette of Aroostook and Representative Carrier of Westbrook.

STATE OF MAINE

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

AN ACT to Amend the Law Concerning
Suspensions of Drivers' Licenses on
Administrative Determination of
Blood-alcohol Content.

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

Whereas, the 90-day period may not terminate until spring of 1984; and

Whereas, the Secretary of State would process a substantial number of administrative suspensions of drivers' licenses based on blood-alcohol determinations prior to termination of the 90-day period; and

Whereas, administrative suspensions by the Secretary of State are appealable to Superior Court; and

1 Whereas, amendment of statutes governing the
2 scope of administrative review by the Secretary of
3 State could ease appellate review in Superior Court;
4 and

5 Whereas, in the judgment of the Legislature,
6 these facts create an emergency within the meaning of
7 the Constitution of Maine and require the following
8 legislation as immediately necessary for the preser-
9 vation of the public peace, health and safety; now,
10 therefore,

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

13 Sec. 1. 29 MRSA §1311-A, sub-§8, as enacted by
14 PL 1983, c. 505, §1, is repealed and the following
15 enacted in its place:

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

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

20 B. The scope of the hearing shall cover whether
21 there was probable cause to believe that the per-
22 son was operating or attempting to operate a mo-
23 tor vehicle with an excessive blood-alcohol level
24 and whether he had an excessive blood-alcohol
25 level. A certificate duly signed and sworn to,
26 pursuant to section 1312, subsection 8, shall be
27 prima facie proof of facts stated therein and
28 that the person taking a specimen of blood or
29 breath was a person authorized by section 1312,
30 subsection 6; that the equipment, chemicals and
31 other materials used in the taking of the blood
32 specimen or a breath sample were of a quality ap-
33 propriate for the purpose of producing reliable
34 test results; that any equipment, chemicals or
35 materials required by section 1312, subsection 6,
36 to be approved by the Department of Human Ser-
37 vices were in fact approved; that the sample
38 tested by the person certified under section
39 1312, subsection 6, was in fact the same sample
40 taken; and that the percentage by weight of alco-

1 hol in the blood was, at the time the blood or
2 breath sample was taken, as stated in the certif-
3 icate.

4 Sec. 2. 29 MRSA §2241-G, sub-§2, ¶B, as enacted
5 by PL 1983, c. 478, is repealed and the following en-
6 acted in its place:

7 B. The Secretary of State shall suspend for a
8 minimum period of one year, without preliminary
9 hearing, the license of any person under 20 years
10 of age:

11 (1) As to whom there is received a record
12 of conviction or adjudication for violation
13 of section 1312-B or 1312-C or Title 15,
14 section 3103, subsection 1, paragraph F; or

15 (2) As to whom there is received the result
16 of a test to determine his blood-alcohol
17 level which shows the presence of 0.02% or
18 more by weight of alcohol in his blood.

19 Any person not having attained the age of 20
20 years who operates or attempts to operate a motor
21 vehicle within this State shall, in addition to
22 the requirements of section 1312, have the duty
23 to submit to a test to determine his
24 blood-alcohol level by analysis of his blood or
25 breath, if there is probable cause to believe he
26 has operated or attempted to operate a motor ve-
27 hicle while having 0.02% or more by weight of al-
28 cohol in his blood. The provisions of section
29 1312 shall apply, except that in all cases prob-
30 able cause shall be to believe that the person
31 was operating or attempting to operate a motor
32 vehicle while having 0.02% or more by weight of
33 alcohol in his blood and that the suspension for
34 failing to comply with the duty to submit to the
35 test shall be for a period of one year.

36 The provisions of section 1312, subsection 6,
37 shall apply, except that probable cause shall be
38 to believe that the person was operating or at-
39 tempting to operate a motor vehicle while having
40 0.02% or more by weight of alcohol in his blood.

1 The Secretary of State, upon receipt of both a
2 written statement under oath from a law enforce-
3 ment officer that the officer had probable cause
4 to believe that a person was operating or at-
5 tempting to operate a motor vehicle while having
6 0.02% or more by weight of alcohol in his blood
7 and the result of a blood-alcohol test taken un-
8 der this section which shows the presence of
9 0.02% or more by weight of alcohol in his blood,
10 and which is certified pursuant to section 1312,
11 subsection 8, shall immediately notify the per-
12 son, in writing, as provided in section 2241,
13 that his license has been suspended. The suspen-
14 sion shall be for a period of one year. The
15 written statement shall be sent to the Secretary
16 of State, within 72 hours of receipt by the offi-
17 cer, of the results of the test, excluding Satur-
18 days, Sundays and holidays, provided that if the
19 statement is not sent within this time period,
20 the Secretary of State shall nevertheless impose
21 the suspension upon receipt, unless the delay has
22 prejudiced the person's ability to prepare for or
23 participate in the hearing. If a person, whose
24 license is suspended, desires to have a hearing,
25 he shall notify the Secretary of State in writing
26 within 10 days from the effective date of the
27 suspension. The suspension shall remain in ef-
28 fect pending the hearing.

29 The scope of the hearing shall cover whether
30 there was probable cause to believe that the per-
31 son was attempting to operate or was operating a
32 motor vehicle after having consumed intoxicating
33 liquor and whether he had consumed intoxicating
34 liquor as indicated by a blood-alcohol test re-
35 sult of 0.02% or more by weight. A certificate
36 duly signed and sworn to, pursuant to section
37 1312, subsection 8, shall be prima facie proof of
38 facts stated therein and that the person taking a
39 specimen of blood or breath was a person autho-
40 rized by section 1312, subsection 6; that the
41 equipment, chemicals and other materials used in
42 the taking of the blood specimen or a breath sam-
43 ple were of a quality appropriate for the purpose
44 of producing reliable test results; that any
45 equipment, chemicals or materials required by
46 section 1312, subsection 6, to be approved by the

1 Department of Human Services were in fact ap-
2 proved; that the sample tested by the person cer-
3 tified under section 1312, subsection 6, was in
4 fact the same sample taken; and that the percent-
5 age by weight of alcohol in the blood was, at the
6 time the blood or breath sample was taken, as
7 stated in the certificate.

8 Any person, whose license is suspended under this
9 section on the basis of a blood-alcohol test,
10 shall have the right to file a petition in the
11 Superior Court in the county where he resides, or
12 in Kennebec County, to review the order of sus-
13 pension by the Secretary of State by the same
14 procedure as is provided in section 2242. If the
15 court rescinds the suspension, it shall also or-
16 der the Secretary of State to delete any record
17 of the suspension.

18 Emergency clause. In view of the emergency cited
19 in the preamble, this Act shall take effect when ap-
20 proved.

21 STATEMENT OF FACT

22 The Revised Statutes, Title 29, sections 1311-A
23 and 2241-G, presently allow for suspension of a
24 driver's license upon determination that there was
25 probable cause to believe operation or attempted op-
26 eration of a motor vehicle with a specified
27 blood-alcohol content. The Secretary of State acts
28 in part on the basis of information in certificates
29 prepared pursuant to the Revised Statutes, Title 29,
30 section 1312, subsection 8. The purpose of this bill
31 is to amend the Revised Statutes, Title 29, sections
32 1311-A and 2241-G to make clear legislative intent
33 that the facts stated in certificates prepared pursu-
34 ant to the Revised Statutes, Title 29, section 1312,
35 subsection 8, be given prima facie weight in hearings
36 before the Secretary of State and that administrative
37 use of such certificates be consistent with their use
38 in courts.

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