

# MAINE STATE LEGISLATURE

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(EMERGENCY)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

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Legislative Document

No. 2431

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H.P. 1838

House of Representatives, April 3, 1984

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

EDWIN H. PERT, Clerk

Presented by Representative Hayden of Durham.

Cosponsors: Representative Foster of Ellsworth, Senator Trafton of Androscoggin and Representative Davis of Monmouth.

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STATE OF MAINE

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

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

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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 the summer of 1984; and

Whereas, pursuant to the Revised Statutes, Title 29, sections 1311-A and 2241-G, the Secretary of State is expected to process a substantial number of administrative suspensions of drivers' licenses of teenagers and adults based on blood-alcohol determinations prior to termination of the 90-day period; and

1           Whereas, persons whose drivers' licenses are sus-  
2           pended are presently afforded an opportunity for a  
3           hearing before the Secretary of State pursuant to the  
4           Revised Statutes, Title 29, section 1311-A, subsec-  
5           tion 8 and section 2241-G, subsection 2, paragraph B;  
6           and

7           Whereas, in the judgment of the Legislature, the  
8           statutes governing the scope of administrative hear-  
9           ings by the Secretary of State should be amended to  
10          make it clear that the Secretary of State may consid-  
11          er at the hearing all the elements of the proscribed  
12          conduct; and

13          Whereas, in the judgment of the Legislature, ad-  
14          ditional amendments to the statutes are necessary to  
15          insure a speedy, efficient and fair administrative  
16          suspension procedure; and

17          Whereas, in the judgment of the Legislature,  
18          these facts create an emergency within the meaning of  
19          the Constitution of Maine and require the following  
20          legislation as immediately necessary for the preser-  
21          vation of the public peace, health and safety; now,  
22          therefore,

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

25                Sec. 1. 29 MRSA §2241-G, sub-§2, ¶¶B, C, D, E  
26                and F, as enacted by PL 1983, c. 478, are repealed  
27                and the following enacted in their place:

28                B. Except where a longer period of suspension is  
29                otherwise provided by law, the Secretary of State  
30                shall suspend for a period of 90 days, without pre-  
31                liminary hearing, the provisional license of any per-  
32                son who has not attained his 20th birthday:

33                       (1) As to whom there is received a record  
34                       of conviction or adjudication for violation  
35                       of section 1312-B or 1312-C or Title 15,  
36                       section 3103, subsection 1, paragraph F; or

37                       (2) As to whom he determines has operated  
38                       or attempted to operate a motor vehicle

1                   while having 0.02% or more by weight of al-  
2                   cohol in his blood.

3                   C. Any person not having attained his 20th  
4                   birthday who operates or attempts to operate a  
5                   motor vehicle within this State shall have the  
6                   duty to submit to a test to determine his  
7                   blood-alcohol level by analysis of his blood or  
8                   breath, if there is probable cause to believe he  
9                   has operated or attempted to operate a motor ve-  
10                  hicle while having 0.02% or more by weight of al-  
11                  cohol in his blood. The provisions of section  
12                  1312 shall apply, except that in all cases proba-  
13                  ble cause shall be to believe that the person was  
14                  operating or attempting to operate a motor vehi-  
15                  cle while having 0.02% or more by weight of alco-  
16                  hol in his blood.

17                  D. The Secretary of State shall make the deter-  
18                  mination of suspension as follows:

19                   (1) The Secretary of State shall suspend  
20                   the provisional license of any person who  
21                   has not attained his 20th birthday, and the  
22                   right to apply for or obtain a license of  
23                   any such person upon his determination that  
24                   the person operated or attempted to operate  
25                   a motor vehicle with 0.02% or more by weight  
26                   of alcohol in the blood. The suspension  
27                   shall be for a minimum period of 90 days and  
28                   shall continue until satisfaction of any  
29                   conditions imposed pursuant to paragraph I  
30                   and section 1312-D, subsection 1-A.

31                   (2) The Secretary of State shall make a de-  
32                   termination on the basis of the information  
33                   required in paragraph E and this determina-  
34                   tion shall be final unless a hearing is re-  
35                   quested and held. If a hearing is held, the  
36                   Secretary of State shall review the matter  
37                   and make a final determination on the basis  
38                   of evidence received at the hearing.

39                   (3) The determination of these facts by the  
40                   Secretary of State is independent of the de-  
41                   termination of the same or similar facts in  
42                   the adjudication of any civil or criminal

1 charges arising out of the same occurrence.  
2 The disposition of those civil or criminal  
3 charges shall not affect any suspension un-  
4 der this section. Statements made by the li-  
5 censee at the hearing before the Secretary  
6 of State shall not be introduced by the  
7 State in its case in chief in any prosecu-  
8 tion for violation of section 1312-B, 1312-C  
9 or Title 15, section 3103, subsection 1,  
10 paragraph F, arising out of the same occur-  
11 rence.

12 E. A law enforcement officer shall forward a re-  
13 port to the Secretary of State as follows.

14 (1) A law enforcement officer who had prob-  
15 able cause to believe any person who had not  
16 attained his 20th birthday was operating or  
17 attempting to operate a motor vehicle with  
18 0.02% or more by weight of alcohol in the  
19 blood shall immediately forward to the Sec-  
20 retary of State a report, under oath of all  
21 information relevant to the enforcement ac-  
22 tion, including information which adequately  
23 identifies the person, a statement of the  
24 officer's grounds for belief that the person  
25 committed the offense of operating or at-  
26 tempting to operate a motor vehicle while  
27 having 0.02% or more by weight of alcohol in  
28 the blood, and a certificate under section  
29 1312, subsection 8, of the result of any  
30 blood-alcohol test by a self-contained  
31 breath-alcohol testing apparatus which was  
32 conducted and which shows the presence of  
33 0.02% or more by weight of alcohol in the  
34 blood.

35 (2) The report required in this subsection  
36 shall be made on forms supplied by or ap-  
37 proved by the Secretary of State.

38 (3) If the blood-alcohol test was not ana-  
39 lyzed by a law enforcement officer, the per-  
40 son who analyzed the results shall cause a  
41 copy of his certificate under section 1312,  
42 subsection 8, to be sent to the Secretary of  
43 State.

1 F. The notice of suspension by the Secretary of  
2 State shall be made as follows.

3 (1) Upon receipt of the information re-  
4 quired in paragraph E, the Secretary of  
5 State shall make the determination described  
6 in paragraph D. If the Secretary of State  
7 determines that the person is subject to li-  
8 cence suspension, he shall immediately issue  
9 a notice of suspension.

10 (2) The notice of suspension shall be sent  
11 by regular mail to the person at the last  
12 known address on record at the Division of  
13 Motor Vehicles, or to the address provided  
14 in the report of the law enforcement officer  
15 if that address differs from the address of  
16 record.

17 (3) The notice of suspension shall clearly  
18 specify the reason and statutory grounds for  
19 the suspension. The effective date of the  
20 suspension, the right of the person to re-  
21 quest a hearing, the procedure for request-  
22 ing a hearing and the date by which that re-  
23 quest for a hearing shall be made.

24 G. Effective date and period of suspension.

25 (1) Any suspension imposed shall be effec-  
26 tive on a specified date not less than 10  
27 days after the mailing of the notification  
28 of suspension by the Secretary of State. If  
29 a person whose license is suspended desires  
30 to have a hearing, he shall so notify the  
31 Secretary of State, in writing, within 10  
32 days from the effective date of the suspen-  
33 sion. The suspension shall be stayed for 10  
34 days from the effective date of the suspen-  
35 sion. If, within 10 days from the effective  
36 date of the suspension, the Secretary of  
37 State is notified, in writing, of a request  
38 for a hearing, the suspension shall be  
39 stayed until a hearing is held and a deci-  
40 sion is issued. The Secretary of State shall  
41 conduct a hearing and issue a decision with-  
42 in 30 days from the date of receipt of a

1 written request for hearing. Failure by the  
2 Secretary of State to conduct a hearing and  
3 issue a decision within the 30-day period  
4 shall result in an extension of the stay of  
5 the Secretary of State's suspension order  
6 until such time as a hearing is conducted  
7 and a decision issued. Notwithstanding this  
8 subsection, there shall be no stay of sus-  
9 pension during the period of any delay of  
10 hearing which is caused or requested by the  
11 petitioner.

12 (2) When a person's license is suspended  
13 under this section and is also suspended af-  
14 ter having been adjudicated or convicted on  
15 charges arising out of the same occurrence  
16 for a violation of section 1312-B or 1312-C  
17 or Title 15, section 3103, subsection 1,  
18 paragraph F, the period of time his license  
19 has been suspended under this section prior  
20 to the adjudication or conviction shall be  
21 deducted from the period of time of any  
22 court-imposed suspension ordered pursuant to  
23 section 1312-B or 1312-C or Title 15, sec-  
24 tion 3103, subsection 1, paragraph F. The  
25 periods of suspension are intended to be  
26 minimum periods of suspension and the Secre-  
27 tary of State may suspend the license for  
28 the additional periods as provided in sec-  
29 tion 1312-D, subsection 1-A and may extend  
30 any period of suspension until satisfaction  
31 of any conditions imposed pursuant to para-  
32 graph I.

33 H. Upon receipt by the Secretary of State of a  
34 petition for a work-restricted license by any  
35 person whose license or right to operate a motor  
36 vehicle has been suspended pursuant to paragraph  
37 B, subparagraph (2), the Secretary of State may  
38 stay the suspension during the statutory period  
39 and issue a work-restricted license. The issuance  
40 of such a license shall be conditioned upon a  
41 showing by the petitioner by clear and convincing  
42 evidence that such a license is necessary to op-  
43 erate a motor vehicle between the residence and a  
44 place of employment or to operate a motor vehicle  
45 in the scope of employment, or both, as deter-

1 mined by the Secretary of State and that no al-  
2 ternative means of transportation is available.

3 I. The Secretary of State may issue a license or  
4 permit following the expiration of the total pe-  
5 riod of suspension imposed pursuant to this sec-  
6 tion, subject to conditions, restrictions or  
7 terms he deems advisable, if he receives written  
8 notice that the person has satisfactorily com-  
9 pleted the alcohol education program of the De-  
10 partment of Human Services and, when required,  
11 has satisfactorily completed an alcohol treatment  
12 or rehabilitation program approved or licensed by  
13 the department.

14 J. A person who has received notice of suspen-  
15 sion may request a hearing as follows.

16 (1) Any person who has received a notice of  
17 suspension under this section may make a  
18 written request for a review of the determi-  
19 nation of the Secretary of State at a hear-  
20 ing.

21 (2) The request for hearing shall be made  
22 within 10 days from the effective date of  
23 the suspension. If a written request for a  
24 hearing is made after such date and the Sec-  
25 retary of State finds that the person was  
26 unable to make a timely request due to lack  
27 of actual notice of the suspension or due to  
28 factors of physical incapacity, the Secre-  
29 tary of State shall waive the period of lim-  
30 itation, reopen the matter and grant the  
31 hearing request, except, in such a case, a  
32 stay of suspension pending the hearing shall  
33 not be granted.

34 K. The hearing and notice shall be as follows.

35 (1) The hearing and notice shall be as pro-  
36 vided in section 2241, subsection 3.

37 (2) The scope of the hearing shall include:

38 (a) Whether there was probable cause  
39 to believe that the person had not at-



1           tained his 20th birthday and that the  
2           person was operating or attempting to  
3           operate a motor vehicle while having  
4           0.02% or more by weight of alcohol in  
5           his blood;

6           (b) Whether the person operated or at-  
7           tempted to operate a motor vehicle;

8           (c) Whether at such time the person  
9           had 0.02% or more by weight of alcohol  
10           in his blood; and

11           (d) Whether at such time the person  
12           had not attained his 20th birthday.

13           (3) A certificate duly signed and sworn to  
14           pursuant to section 1312, subsection 8,  
15           shall be prima facie proof of facts stated  
16           therein and that the person taking a speci-  
17           men of blood or breath was authorized by  
18           section 1312, subsection 6, that the equip-  
19           ment, chemicals and other materials used in  
20           the taking of the blood specimen or a breath  
21           sample were of a quality appropriate for the  
22           purpose of producing reliable test results,  
23           that any equipment, chemicals or materials  
24           required by section 1312, subsection 6, to  
25           be approved by the Department of Human Ser-  
26           vices were in fact approved, that the sample  
27           tested by the person certified under section  
28           1312, subsection 6, was in fact the same  
29           sample taken and that the percentage by  
30           weight of alcohol in the blood was, at the  
31           time the blood or breath sample was taken,  
32           as stated in the certificate.

33           (4) If it is determined after hearing that  
34           there was not the requisite probable cause  
35           for blood-alcohol test administration or  
36           that the person had attained his 20th birth-  
37           day at the time of operation or attempted  
38           operation or that the person did not operate  
39           or attempt to operate a motor vehicle while  
40           having 0.02% or more by weight of alcohol in  
41           his blood, the suspension shall be removed  
42           immediately and the Secretary of State shall  
43           delete any record of the suspension.

1                   (5) Any person whose license is suspended  
2                   under this section on the basis of a  
3                   blood-alcohol test may, within 30 days after  
4                   receipt of the decision, appeal to the Super-  
5                   rior Court for judicial review as provided  
6                   in Title 5, sections 11001 to 11008. If the  
7                   court rescinds the suspension, it shall also  
8                   order the Secretary of State to delete any  
9                   record of the suspension.

10                   L. Any suspension pursuant to this section or  
11                   license reissued after suspension pursuant to  
12                   paragraph I may extend beyond the person's 20th  
13                   birthday to allow for completion of the total  
14                   suspension period or to continue the period of  
15                   conditions, restrictions or terms imposed on a  
16                   license reissued pursuant to paragraph I.

17                   M. The Secretary of State may promulgate whatev-  
18                   er rules are necessary to carry out the purposes  
19                   of this section.

20                   N. In the event that a person who has not at-  
21                   tained his 20th birthday is determined to have  
22                   operated or attempted to operate a motor vehicle  
23                   while having 0.10% or more of alcohol in the  
24                   blood such that both this subsection and section  
25                   1311-A apply, this section shall govern to the  
26                   exclusion of section 1311-A, except that section  
27                   1311-A shall apply to any person who has not at-  
28                   tained his 20th birthday who has 6 years prior to  
29                   the alleged violation of this section been adju-  
30                   dicated or convicted on charges for violation of  
31                   section 1312-B, 1312-C or Title 15, section 3103,  
32                   subsection 1, paragraph F or former section 1312,  
33                   subsection 10.

34                   Sec. 2. 29 MRSA §1311-A, as enacted by PL 1983,  
35                   c. 505, §1, is repealed and the following enacted in  
36                   its place:

37                   §1311-A. Suspension on administrative determination  
38                   for operating with an excessive  
39                   blood-alcohol level

40                   1. Purpose. The purpose of this section is:

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

4           B. To remove quickly from the public highways of  
5           this State those persons who have shown them-  
6           selves to be a safety hazard by operating or at-  
7           tempting to operate a motor vehicle with an ex-  
8           cessive blood-alcohol level.

9           1-A. Definition. For the purposes of this sec-  
10          tion, "operating or attempting to operate a motor ve-  
11          hicle with an excessive blood-alcohol level" means  
12          operating or attempting to operate a motor vehicle  
13          while having 0.10% or more by weight of alcohol in  
14          the blood.

15          2. Suspension. The Secretary of State shall  
16          make the determination of suspension as follows.

17          A. The Secretary of State shall suspend the li-  
18          cence or permit to operate, right to operate a  
19          motor vehicle and right to apply for or obtain a  
20          license of any person upon his determination that  
21          the person operated or attempted to operate a mo-  
22          tor vehicle with an excessive blood-alcohol lev-  
23          el.

24          B. The Secretary of State shall make a determi-  
25          nation on the basis of the information required  
26          in subsection 3, and this determination shall be  
27          final unless a hearing is requested and held. If  
28          a hearing is held, the Secretary of State shall  
29          review the matter and make a final determination  
30          on the basis of evidence received at the hearing.

31          C. Except as provided in paragraph D, the de-  
32          termination of these facts by the Secretary of  
33          State is independent of the determination of the  
34          same or similar facts in the adjudication of any  
35          civil or criminal charges arising out of the same  
36          occurrence. The disposition of those civil or  
37          criminal charges shall not affect any suspension  
38          under this section. Statements made by the li-  
39          cencee at the hearing before the Secretary of  
40          State shall not be introduced by the State in its  
41          case in chief in any prosecution for violation of

1 section 1312-B, 1312-C or Title 15, section 3103,  
2 subsection 1, paragraph F, arising out of the  
3 same occurrence.

4 D. Upon receipt of notice from the court, pursu-  
5 ant to section 1312-C, subsection 4-A, the Secre-  
6 tary of State shall immediately remove the sus-  
7 pension of any person who is adjudicated not to  
8 have committed under section 1312-C, subsection  
9 2, paragraph B, the traffic infraction of operat-  
10 ing or attempting to operate a motor vehicle  
11 while having 0.10% or more by weight of alcohol  
12 in his blood.

13 3. Report by law enforcement officer. A law en-  
14 forcement officer shall forward a report to the Sec-  
15 retary of State as follows.

16 A. A law enforcement officer who arrests or sum-  
17 mons any person for operating or attempting to  
18 operate a motor vehicle with an excessive  
19 blood-alcohol level shall immediately forward to  
20 the Secretary of State a report, under oath of  
21 all information relevant to the enforcement ac-  
22 tion, including information which adequately  
23 identifies the person arrested or summonsed, a  
24 statement of the officer's grounds for belief  
25 that the person committed the offense of operat-  
26 ing or attempting to operate a motor vehicle with  
27 an excessive blood-alcohol level, and a certifi-  
28 cate under section 1312, subsection 8, of the re-  
29 sults of any blood-alcohol tests by a  
30 self-contained breath-alcohol testing apparatus  
31 which were conducted.

32 B. The report required in this subsection shall  
33 be made on forms supplied by or approved by the  
34 Secretary of State.

35 C. If the blood-alcohol test was not analyzed by  
36 a law enforcement officer, the person who ana-  
37 lyzed the results shall cause a copy of his cer-  
38 tificate under section 1312, subsection 8, to be  
39 sent to the Secretary of State.

40 4. Notice of suspension. The notice of suspen-  
41 sion by the Secretary of State shall be made as fol-  
42 lows.

1 A. Upon receipt of the information required in  
2 subsection 3, the Secretary of State shall make  
3 the determination described in subsection 2. If  
4 the Secretary of State determines that the person  
5 is subject to license suspension, he shall imme-  
6 diately issue a notice of suspension.

7 B. The notice of suspension shall be sent by  
8 regular mail to the person at the last known ad-  
9 dress on record at the Division of Motor Vehi-  
10 cles, or to the address provided in the report of  
11 the law enforcement officer if that address dif-  
12 fers from the address of record. The notice is  
13 deemed received 3 days after mailing, unless re-  
14 turned by postal authorities.

15 C. The notice of suspension shall clearly speci-  
16 fy the reason and statutory grounds for the sus-  
17 pension, the effective date of the suspension,  
18 the right of the person to request a hearing, the  
19 procedure for requesting a hearing and the date  
20 by which that request for a hearing shall be  
21 made.

22 5. Effective date and period of suspension. The  
23 effective date and period of suspension are deter-  
24 mined as follows.

25 A. Any suspension imposed shall be effective on  
26 a specified date not less than 10 days after the  
27 mailing of the notification of suspension by the  
28 Secretary of State. If a person whose license is  
29 suspended desires to have a hearing, he shall so  
30 notify the Secretary of State, in writing, within  
31 10 days from the effective date of the suspen-  
32 sion. The suspension shall be stayed for 10 days  
33 from the effective date of the suspension. If,  
34 within 10 days from the effective date of the  
35 suspension, the Secretary of State is notified,  
36 in writing, of a request for a hearing, the sus-  
37 pension shall be stayed until a hearing is held  
38 and a decision is issued. The Secretary of State  
39 shall conduct a hearing and issue a decision  
40 within 30 days from the date of receipt of a  
41 written request for hearing. Failure by the Sec-  
42 retary of State to conduct a hearing and issue a  
43 decision within such 30-day period shall result

1 in an extension of the stay of the Secretary of  
2 State's suspension order until such time as a  
3 hearing is conducted and a decision issued. Not-  
4 withstanding this subsection, there shall be no  
5 stay of suspension during the period of any delay  
6 in hearing which is caused or requested by the  
7 petitioner.

8 B. The period of license suspension for a person  
9 the Secretary of State has determined to have op-  
10 erated or attempted to operate a motor vehicle  
11 with an excessive blood-alcohol level for a first  
12 or subsequent offense shall be not less than 45  
13 days.

14 C. When a person's license is suspended under  
15 this section and is also suspended after having  
16 been adjudicated or convicted on charges arising  
17 out of the same occurrence for a violation of  
18 section 1312-B, 1312-C, or Title 15, section  
19 3103, subsection 1, paragraph F, the period of  
20 time his license has been suspended under this  
21 section prior to the adjudication or conviction  
22 shall be deducted from the period of time any  
23 court-imposed suspension ordered pursuant to sec-  
24 tion 1312-B, 1312-C, or Title 15, section 3103,  
25 subsection 1, paragraph F. The periods of sus-  
26 pension are intended to be minimum periods of  
27 suspension and the Secretary of State may suspend  
28 the license for the additional periods as pro-  
29 vided in section 1312-D, subsection 1-A.

30 5-A. Work-restricted license. Upon receipt by  
31 the Secretary of State of a petition for a  
32 work-restricted license by any person whose license  
33 or right to operate a motor vehicle has been sus-  
34 pending pursuant to this section, the Secretary of  
35 State may stay the suspension during a statutory sus-  
36 pension period and issue a work-restricted license.  
37 The issuance of such a license shall be conditioned  
38 upon a showing by the petitioner by clear and con-  
39 vincing evidence that such a license is necessary to  
40 operate a motor vehicle between the residence and a  
41 place of employment or to operate a motor vehicle in  
42 the scope of employment, or both, as determined by  
43 the Secretary of State and that no alternative means  
44 of transportation is available.

1           6. Restoration of license. The Secretary of  
2 State may issue a license or permit as follows.

3           A. Restoration of any license or permit to oper-  
4 ate, right to operate a motor vehicle and right  
5 to apply for or obtain a license suspended under  
6 this section shall be in accordance with section  
7 1312-D, subsections 2 to 4.

8           7. Request for hearing. A person who has re-  
9 ceived notice of suspension may request a hearing as  
10 follows.

11           A. Any person who has received a notice of sus-  
12 pension under this section may make a written re-  
13 quest for a review of the determination of the  
14 Secretary of State at a hearing.

15           B. The request for a hearing shall be made with-  
16 in 10 days from the effective date of the suspen-  
17 sion. If a written request for a hearing is made  
18 after the 10-day period and the Secretary of  
19 State finds that the person was unable to make a  
20 timely request due to lack of actual notice of  
21 the suspension or due to factors of physical in-  
22 capacity, the Secretary of State shall waive the  
23 period of limitation, reopen the matter and grant  
24 the hearing request, except, in such a case, a  
25 stay of the suspension pending the hearing shall  
26 not be granted.

27           8. Hearing. The hearing and notice shall be as  
28 follows.

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

31           B. The scope of the hearing shall include:

32           (1) Whether there was probable cause to be-  
33 lieve that the person was operating or at-  
34 tempting to operate a motor vehicle while  
35 having 0.10% or more by weight of alcohol in  
36 his blood;

37           (2) Whether the person operated or at-  
38 tempted to operate a motor vehicle; and

1                   (3) Whether at the time the person had  
2                   0.10% or more by weight of alcohol in his  
3                   blood.

4                   C. A certificate duly signed and sworn to pursu-  
5                   ant to section 1312, subsection 8, shall be prima  
6                   facie proof of facts stated therein and that the  
7                   person taking a specimen of blood or breath was  
8                   authorized by section 1312, subsection 6, that  
9                   the equipment, chemicals and other materials used  
10                   in the taking of the blood specimen or breath  
11                   sample were of a quality appropriate for the pur-  
12                   pose of producing reliable test results that any  
13                   equipment, chemicals or materials required by  
14                   section 1312, subsection 6, to be approved by the  
15                   Department of Human Services were in fact ap-  
16                   proved, that the sample tested by the person cer-  
17                   tified under section 1312, subsection 6, was in  
18                   fact the same sample taken and that the percent-  
19                   age by weight of alcohol in the blood was, at the  
20                   time the blood or breath sample was taken, as  
21                   stated in the certificate.

22                   D. If it is determined after hearing that there  
23                   was not the requisite probable cause for  
24                   blood-alcohol test administration or that the  
25                   person did not operate or attempt to operate a  
26                   motor vehicle while having 0.10% or more by  
27                   weight of alcohol in his blood, the suspension  
28                   shall be removed immediately and the Secretary of  
29                   State shall delete any record of the suspension.

30                   E. Any person whose license is suspended under  
31                   this section on the basis of blood-alcohol test  
32                   may, within 30 days after receipt of the deci-  
33                   sion, appeal to the Superior Court for judicial  
34                   review, as provided in Title 5, sections 11001 to  
35                   11008. If the court rescinds the suspension, it  
36                   shall also order the Secretary of State to delete  
37                   any record of the suspension.

38                   Sec. 3. 29 MRSA §1312-C, sub-§4-A is enacted to  
39                   read:

40                   4-A. Notice of adjudication. The court shall  
41                   give notice to the Secretary of State of any adjudi-  
42                   cation finding the person did not commit the traffic



1 infraction of operating or attempting to operate a  
2 motor vehicle while having 0.10% or more by weight of  
3 alcohol in his blood.

4 **Emergency clause.** In view of the emergency cited  
5 in the preamble, this Act shall take effect when ap-  
6 proved.

7 STATEMENT OF FACT

8 Section 1 - The Revised Statutes, Title 29, sec-  
9 tion 2241-G, presently allows for suspension of a  
10 teenager's driver's license by the Secretary of  
11 State, upon receipt of a law enforcement officer's  
12 probable cause statement and blood-alcohol test re-  
13 sults showing 0.02% or more by weight in the blood,  
14 0.02% being the scientific standard chosen to indi-  
15 cate consumption. The requirement for probable cause  
16 to believe operation or attempted operation of a mo-  
17 tor vehicle while having 0.02% or more by weight of  
18 alcohol in the blood is equivalent to a requirement  
19 for probable cause to believe operation or attempted  
20 operation of a motor vehicle after consumption of in-  
21 toxicating liquor. One purpose of this bill is to  
22 clarify the legislative intent regarding the issues  
23 to be considered at a hearing reviewing an initial  
24 suspension order, so as to make clear that the Secre-  
25 tary of State may consider at the hearing evidence  
26 relevant to:

27 1. Probable cause;

28 2. Whether the person operated or attempted to  
29 operate a motor vehicle;

30 3. Whether at such time the person had 0.02% or  
31 more by weight of alcohol in his blood; and

32 4. Whether at such time the person had not at-  
33 tained his 20th birthday.

34 Blood-alcohol test results used by the Secretary  
35 of State when acting pursuant to the Revised Stat-  
36 utes, Title 29, section 2241-G, are certified pursu-  
37 ant to the Revised Statutes, Title 29, section 1312,  
38 subsection 8. This bill makes clear legislative in-

1 tent that, considering the established reliability of  
2 blood-alcohol testing procedures used by law enforce-  
3 ment officials in Maine, the facts stated in certifi-  
4 cates prepared pursuant to the Revised Statutes, Ti-  
5 tle 29, section 1312, subsection 8, are to be given  
6 prima facie weight in hearings before the Secretary  
7 of State.

8 The Revised Statutes, Title 29, section 2241-G,  
9 presently does not permit the Secretary of State to  
10 issue restricted licenses even where the loss of li-  
11 cense would mean severe and unavoidable hardship to  
12 the licensee. This bill gives the Secretary of State  
13 the discretion to issue restricted licenses for the  
14 limited purposes of travel in connection with work  
15 where the licensee shows by clear and convincing evi-  
16 dence that such a license is necessary.

17 The Revised Statutes, Title 29, section 2241-G,  
18 presently requires a minimum suspension period of one  
19 year. This bill reduces the suspension period to 90  
20 days to bring the suspension period more in line with  
21 the suspension period for drivers over 20.

22 The bill also:

23 1. Provides an automatic stay of the suspension  
24 upon written request for hearing pending hearing and  
25 decision after hearing;

26 2. Makes statements made by a licensee at the  
27 administrative hearing inadmissible in the state's  
28 case in the chief in a subsequent civil or criminal  
29 prosecution for operating under the influence based  
30 on the same occurrence;

31 3. Provides for a credit of the time of adminis-  
32 trative suspension against a court imposed suspension  
33 for criminal or civil OUI based upon the same occur-  
34 rence; and

35 4. Provides that teenage drivers whose  
36 blood-alcohol content is determined to be in excess  
37 of 0.10% will receive at least the mandatory minimum  
38 90-day suspensions applicable to teenage licensees.

1           Section 2 - This bill clarifies legislative in-  
2           tent regarding the scope of the adult administrative  
3           hearing pursuant to the Revised Statutes, Title 29,  
4           section 1311-A, so as to make clear that the Secre-  
5           tary State may consider at the administrative hearing  
6           all of the elements of the proscribed conduct. These  
7           elements include:

- 8           1. Probable cause;
- 9           2. Operation or attempted operation; and
- 10          3. Blood-alcohol in excess of 0.10%.

11           Blood-alcohol test results used by the Secretary  
12           of State when acting pursuant to the Revised Stat-  
13           utes, Title 29, section 1311-A, are certified pursu-  
14           ant to the Revised Statutes, Title 29, section 1312,  
15           subsection 8. This bill makes clear legislative in-  
16           tent that, considering the established reliability of  
17           blood-alcohol testing procedures used by law enforce-  
18           ment officers in Maine, the facts stated in certifi-  
19           cates prepared pursuant to the Revised Statutes, Ti-  
20           tle 29, section 1312, subsection 8, are to be given  
21           prima facie weight in hearings before the Secretary  
22           of State.

23           This bill requires the removal of any administra-  
24           tive suspension upon receipt of notification by the  
25           Secretary of State that the person has been adjudi-  
26           cated innocent of the traffic infraction of operation  
27           or attempted operations of a motor vehicle while hav-  
28           ing 0.10% or more by weight of alcohol in the blood  
29           pursuant to the Revised Statutes, Title 29, section  
30           1312-C, subsection 2, paragraph B.

31           Following the amendments to the Revised Statutes,  
32           Title 29, section 2241-G, this bill also makes state-  
33           ments made by a licensee at the administrative hear-  
34           ing inadmissible in the state's case in chief in a  
35           subsequent civil or criminal prosecution for operat-  
36           ing under the influence based upon the same occur-  
37           rence. In addition, the bill provides a credit of  
38           the time of administrative suspension against a court  
39           imposed suspension based upon the same occurrence.

1           Section 3 - This bill requires the court to noti-  
2 fy the Secretary of State in the event a person is  
3 adjudicated not to have committed the infraction of  
4 operation or attempted operation of a motor vehicle  
5 while having 0.10% or more by weight of alcohol in  
6 the blood. That notification is necessary to enable  
7 the Secretary of State to remove any administrative  
8 suspension in effect based upon the same occurrence.

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