

# MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1838, L.D. 2431)

2 (EMERGENCY)

3 SECOND REGULAR SESSION  
4

5 ONE HUNDRED AND ELEVENTH LEGISLATURE  
6

7 Legislative Document

No. 2476

8  
9 H.P. 1874

House of Representatives, April 24, 1984

10 Reported by Representative Hobbins from the Committee on Judiciary  
and printed under Joint Rule 2.

11 Original bill presented by Representative Hayden of Durham.

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

EDWIN H. PERT, Clerk

13  
14 STATE OF MAINE  
15

16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-FOUR  
18

19 AN ACT to Amend the Law Concerning  
20 Suspensions of Drivers' Licenses on  
21 Administrative Determination of Blood-alcohol  
22 Content.  
23

24 Emergency preamble. Whereas, Acts of the Legis-  
25 lature do not become effective until 90 days after  
26 adjournment unless enacted as emergencies; and

27 Whereas, the 90-day period may not terminate un-  
28 til the summer of 1984; and

29 Whereas, pursuant to the Revised Statutes, Title  
30 29, sections 1311-A and 2241-G, the Secretary of  
31 State is expected to process a substantial number of  
32 administrative suspensions of drivers' licenses of  
33 teenagers and adults based on blood-alcohol determi-  
34 nations prior to termination of the 90-day period;  
35 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 §1311-A, as enacted by PL 1983,  
26      c. 505, §1, is repealed and the following enacted in  
27      its place:

28      §1311-A. Suspension on administrative determination  
29      for operating with an excessive  
30      blood-alcohol level

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

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

35      B. To remove quickly from the public highways of  
36      this State those persons who have shown them-  
37      selves to be a safety hazard by operating or at-

1        tempting to operate a motor vehicle with an ex-  
2        cessive blood-alcohol level.

3        1-A. Definition. For the purposes of this sec-  
4        tion, "operating or attempting to operate a motor ve-  
5        hicle with an excessive blood-alcohol level" means  
6        operating or attempting to operate a motor vehicle  
7        while having 0.10% or more by weight of alcohol in  
8        the blood.

9        2. Suspension. The Secretary of State shall  
10       make the determination of suspension as follows.

11       A. The Secretary of State shall suspend the li-  
12       cence or permit to operate, right to operate a  
13       motor vehicle and right to apply for or obtain a  
14       license of any person upon his determination that  
15       the person operated or attempted to operate a mo-  
16       tor vehicle with an excessive blood-alcohol lev-  
17       el.

18       B. The Secretary of State shall make a determi-  
19       nation on the basis of the information required  
20       in subsection 3, and this determination shall be  
21       final unless a hearing is requested and held. If  
22       a hearing is held, the Secretary of State shall  
23       review the matter and make a final determination  
24       on the basis of evidence received at the hearing.

25       C. Except as provided in paragraph D, the de-  
26       termination of these facts by the Secretary of  
27       State is independent of the determination of the  
28       same or similar facts in the adjudication of any  
29       civil or criminal charges arising out of the same  
30       occurrence. The disposition of those civil or  
31       criminal charges shall not affect any suspension  
32       under this section. Statements made by the li-  
33       cencee at the hearing before the Secretary of  
34       State shall not be introduced by the State in its  
35       case in chief in any prosecution for violation of  
36       section 1312-B, 1312-C or Title 15, section 3103,  
37       subsection 1, paragraph F, arising out of the  
38       same occurrence.

39       D. Upon receipt of notice from the court, pursu-  
40       ant to section 1312-C, subsection 4-A, the Secre-  
41       tary of State shall immediately remove the sus-

pension of any person who is adjudicated not to have committed under section 1312-C, subsection 2, paragraph B, the traffic infraction of operating or attempting to operate a motor vehicle while having 0.10% or more by weight of alcohol in his blood or of any person who has had such a charge against him dismissed.

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

A. A law enforcement officer who arrests or summons any person for operating or attempting to operate a motor vehicle with an excessive blood-alcohol level shall immediately forward to the Secretary of State a report, under oath of all information relevant to the enforcement action, including information which adequately identifies the person arrested or summonsed, a statement of the officer's grounds for belief that the person committed the offense of operating or attempting to operate a motor vehicle with an excessive blood-alcohol level, and a certificate under section 1312, subsection 8, of the results of any blood-alcohol tests by a self-contained breath-alcohol testing apparatus which were conducted.

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

C. If the blood-alcohol test was not analyzed by a law enforcement officer, the person who analyzed the results shall cause a copy of his certificate under section 1312, subsection 8, to be sent to the Secretary of State.

4. Notice of suspension. The notice of suspension by the Secretary of State shall be made as follows.

A. Upon receipt of the information required in subsection 3, the Secretary of State shall make the determination described in subsection 2. If the Secretary of State determines that the person

1 is subject to license suspension, he shall imme-  
2 diately issue a notice of suspension.

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

11 C. The notice of suspension shall clearly speci-  
12 fy the reason and statutory grounds for the sus-  
13 pension, the effective date of the suspension,  
14 the right of the person to request a hearing, the  
15 procedure for requesting a hearing and the date  
16 by which that request for a hearing shall be  
17 made. The notice of suspension shall also clear-  
18 ly state that a copy of the report of the law en-  
19 forcement officer under subsection 3, paragraph  
20 A, and a copy of the blood-alcohol test certifi-  
21 cate under subsection 3, paragraph A or C, will  
22 be provided to the person upon request to the  
23 Secretary of State.

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

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

retary of State to conduct a hearing and issue a decision within such 30-day period shall result in an extension of the stay of the Secretary of State's suspension order until such time as a hearing is conducted and a decision issued. Notwithstanding this subsection, there shall be no stay of suspension during the period of any delay in hearing which is caused or requested by the petitioner.

B. The period of license suspension for a person who the Secretary of State has determined to have operated or attempted to operate a motor vehicle with an excessive blood-alcohol level for a first or subsequent offense shall be the same suspension period as if the person was convicted or adjudicated of a violation of section 1312-B, 1312-C or Title 15, section 3103, subsection 1, paragraph F.

C. When a person's license is suspended under this section and is also suspended after having been adjudicated or convicted on charges arising out of the same occurrence for a violation of section 1312-B, 1312-C, or Title 15, section 3103, subsection 1, paragraph F, the period of time his license has been suspended under this section prior to the adjudication or conviction shall be deducted from the period of time any court-imposed suspension ordered pursuant to section 1312-B, 1312-C, or Title 15, section 3103, subsection 1, paragraph F. The periods of suspension are intended to be minimum periods of suspension and the Secretary of State may suspend the license for the additional periods as provided in section 1312-D, subsection 1-A.

5-A. Work-restricted license. Upon receipt by the Secretary of State of a petition for a work-restricted license by any person whose license or right to operate a motor vehicle has been suspended pursuant to this section, the Secretary of State may stay the suspension during a statutory suspension period and issue a work-restricted license. The issuance of such a license shall be conditioned upon a showing by the petitioner by clear and convincing evidence that such a license is necessary to

1 operate a motor vehicle between the residence and a  
2 place of employment or to operate a motor vehicle in  
3 the scope of employment, or both, as determined by  
4 the Secretary of State and that no alternative means  
5 of transportation is available.

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

8 A. Restoration of any license or permit to oper-  
9 ate, right to operate a motor vehicle and right  
10 to apply for or obtain a license suspended under  
11 this section shall be in accordance with section  
12 1312-D, subsections 2 to 4.

13 7. Request for hearing. A person who has re-  
14 ceived notice of suspension may request a hearing as  
15 follows.

16 A. Any person who has received a notice of sus-  
17 pension under this section may make a written re-  
18 quest for a review of the determination of the  
19 Secretary of State at a hearing.

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

32 8. Hearing. The hearing and notice shall be as  
33 follows.

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

36 B. The scope of the hearing shall include wheth-  
37 er, by a preponderance of the evidence:



1           (1) There was probable cause to believe  
2           that the person was operating or attempting  
3           to operate a motor vehicle while having  
4           0.10% or more by weight of alcohol in his  
5           blood;

6           (2) The person operated or attempted to op-  
7           erate a motor vehicle; and

8           (3) At the time the person had 0.10% or  
9           more by weight of alcohol in his blood.

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

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

36          E. Any person whose license is suspended under  
37          this section on the basis of blood-alcohol test  
38          may, within 30 days after receipt of the deci-  
39          sion, appeal to the Superior Court for judicial  
40          review, as provided in Title 5, sections 11001 to  
41          11008. If the court rescinds the suspension, it  
42          shall also order the Secretary of State to delete  
43          any record of the suspension.

1           Sec. 2. 29 MRSA §1312-C, sub-§4-A is enacted to  
2 read:

3           4-A. Notice of adjudication. The court shall  
4 give notice to the Secretary of State of any adjudi-  
5 cation finding the person did not commit the traffic  
6 infraction of operating or attempting to operate a  
7 motor vehicle while having 0.10% or more by weight of  
8 alcohol in his blood or of any dismissal of such a  
9 charge against the person.

10          Sec. 3. 29 MRSA §1312-D, sub-§3, as amended by  
11 PL 1983, c. 501, §5, is further amended to read:

12          3. Restricted licenses. After certification under  
13 subsection 2 or after completion of the suspen-  
14 sion imposed pursuant to this section and section  
15 1312-B, 1312-C or Title 15, section 3314, the Secre-  
16 tary of State may issue the license or permit with  
17 whatever conditions, restrictions or terms he deems  
18 advisable, having in mind the safety of the public  
19 and the welfare of the petitioner, including, but not  
20 limited to, successful completion of the alcohol edu-  
21 cation program of the Department of Human Services,  
22 if the petitioner has not already done so under sub-  
23 section 2. Following the expiration of the total pe-  
24 riod of suspension imposed pursuant to subsections 1  
25 and 1-A, section 1312-B or 1312-C, or Title 15, sec-  
26 tion 3314, the Secretary of State may issue a license  
27 or permit, subject to the conditions, restrictions or  
28 terms he deems advisable, to the person if the Secre-  
29 tary of State has received or when he receives writ-  
30 ten notice that the person has satisfactorily com-  
31 pleted the alcohol educational program of the Depart-  
32 ment of Human Services and, when required, has satis-  
33 factorily completed an alcohol treatment or rehabili-  
34 tation program approved or licensed by the depart-  
35 ment. The license or permit may contain the condi-  
36 tion that the person abstain from the use of intoxi-  
37 cating liquor or drugs. Any license or permit issued  
38 under subsection 2 or under this subsection shall be  
39 restricted to use for travel to an alcohol education  
40 or treatment program or to employment if the amount  
41 of the total period of suspension which has expired  
42 is less than 90 days. Any such license or permit is-  
43 sued shall remain restricted until the amount of time  
44 the license or permit was actually suspended plus the

1 amount of time the restricted license or permit has  
2 been issued equals a minimum of 90 days.

3 Sec. 4. 29 MRSA §2241-G, sub-§2, ¶¶B, C, D, E  
4 and F, as enacted by PL 1983, c. 478, are repealed  
5 and the following enacted in their place:

6 B. Except where a longer period of suspension is  
7 otherwise provided by law, the Secretary of State  
8 shall suspend for a period of one year, without pre-  
9 liminary hearing, the provisional license of any per-  
10 son who has not attained his 20th birthday:

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 he determines has operated  
16 or attempted to operate a motor vehicle  
17 while having 0.02% or more by weight of al-  
18 cohol in his blood.

19 C. Any person not having attained his 20th  
20 birthday who operates or attempts to operate a  
21 motor vehicle within this State shall have the  
22 duty to submit to a test to determine his  
23 blood-alcohol level by analysis of his blood or  
24 breath, if there is probable cause to believe he  
25 has operated or attempted to operate a motor ve-  
26 hicle while having 0.02% or more by weight of al-  
27 cohol in his blood. The provisions of section  
28 1312 shall apply, except that in all cases proba-  
29 ble cause shall be to believe that the person was  
30 operating or attempting to operate a motor vehi-  
31 cle while having 0.02% or more by weight of alco-  
32 hol in his blood and that the person had not at-  
33 tained his 20th birthday, and except that suspen-  
34 sion for failing to comply with the duty to sub-  
35 mit to the test shall be for a period of one  
36 year.

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

39 (1) The Secretary of State shall suspend  
40 the provisional license of any person who

1 has not attained his 20th birthday, and the  
2 right to apply for or obtain a license of  
3 any such person upon his determination that  
4 the person operated or attempted to operate  
5 a motor vehicle with 0.02% or more by weight  
6 of alcohol in the blood. The suspension  
7 shall be for a period of one year and shall  
8 continue until satisfaction of any condi-  
9 tions imposed pursuant to paragraph I or O.

10 (2) The Secretary of State shall make a de-  
11 termination on the basis of the information  
12 required in paragraph E and this determina-  
13 tion shall be final unless a hearing is re-  
14 quested and held. If a hearing is held, the  
15 Secretary of State shall review the matter  
16 and make a final determination on the basis  
17 of evidence received at the hearing.

18 (3) The determination of these facts by the  
19 Secretary of State is independent of the de-  
20 termination of the same or similar facts in  
21 the adjudication of any civil or criminal  
22 charges arising out of the same occurrence.  
23 The disposition of those civil or criminal  
24 charges shall not affect any suspension un-  
25 der this section. Statements made by the li-  
26 censee at the hearing before the Secretary  
27 of State shall not be introduced by the  
28 State in its case in chief in any prosecu-  
29 tion for violation of section 1312-B, 1312-C  
30 or Title 15, section 3103, subsection 1,  
31 paragraph F, arising out of the same occur-  
32 rence.

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

35 (1) A law enforcement officer who had prob-  
36 able cause to believe any person who had not  
37 attained his 20th birthday was operating or  
38 attempting to operate a motor vehicle with  
39 0.02% or more by weight of alcohol in the  
40 blood shall immediately forward to the Sec-  
41 retary of State a report, under oath of all  
42 information relevant to the enforcement ac-  
43 tion, including information which adequately

1 identifies the person, a statement of the  
2 officer's grounds for belief that the person  
3 committed the offense of operating or at-  
4 tempting to operate a motor vehicle while  
5 having 0.02% or more by weight of alcohol in  
6 the blood, and a certificate under section  
7 1312, subsection 8, of the result of any  
8 blood-alcohol test by a self-contained  
9 breath-alcohol testing apparatus which was  
10 conducted and which shows the presence of  
11 0.02% or more by weight of alcohol in the  
12 blood.

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

16 (3) If the blood-alcohol test was not ana-  
17 lyzed by a law enforcement officer, the per-  
18 son who analyzed the results shall cause a  
19 copy of his certificate under section 1312,  
20 subsection 8, to be sent to the Secretary of  
21 State.

22 F. The notice of suspension by the Secretary of  
23 State shall be made as follows.

24 (1) Upon receipt of the information re-  
25 quired in paragraph E, the Secretary of  
26 State shall make the determination described  
27 in paragraph D. If the Secretary of State  
28 determines that the person is subject to li-  
29 cense suspension, he shall immediately issue  
30 a notice of suspension.

31 (2) The notice of suspension shall be sent  
32 by regular mail to the person at the last  
33 known address on record at the Division of  
34 Motor Vehicles, or to the address provided  
35 in the report of the law enforcement officer  
36 if that address differs from the address of  
37 record.

38 (3) The notice of suspension shall clearly  
39 specify the reason and statutory grounds for  
40 the suspension, the effective date of the  
41 suspension, the right of the person to re-

1                    request a hearing, the procedure for request-  
2                    ing a hearing and the date by which that re-  
3                    quest for a hearing shall be made. The no-  
4                    tice of suspension shall also clearly state  
5                    that a copy of the report of the law en-  
6                    forcement officer under paragraph E, subpar-  
7                    agraph (1), and a copy of the blood-alcohol  
8                    test certificate under paragraph E, subpara-  
9                    graph (1) or (3), will be provided to the  
10                  person upon request to the Secretary of  
11                  State.

12                  G. Effective date and period of suspension.

13                  (1) Any suspension imposed shall be effec-  
14                  tive on a specified date not less than 10  
15                  days after the mailing of the notification  
16                  of suspension by the Secretary of State. If  
17                  a person whose license is suspended desires  
18                  to have a hearing, he shall so notify the  
19                  Secretary of State, in writing, within 10  
20                  days from the effective date of the suspen-  
21                  sion. The suspension shall be stayed for 10  
22                  days from the effective date of the suspen-  
23                  sion. If, within 10 days from the effective  
24                  date of the suspension, the Secretary of  
25                  State is notified, in writing, of a request  
26                  for a hearing, the suspension shall be  
27                  stayed until a hearing is held and a deci-  
28                  sion is issued. The Secretary of State shall  
29                  conduct a hearing and issue a decision with-  
30                  in 30 days from the date of receipt of a  
31                  written request for hearing. Failure by the  
32                  Secretary of State to conduct a hearing and  
33                  issue a decision within the 30-day period  
34                  shall result in an extension of the stay of  
35                  the Secretary of State's suspension order  
36                  until such time as a hearing is conducted  
37                  and a decision issued. Notwithstanding this  
38                  subsection, there shall be no stay of sus-  
39                  pension during the period of any delay of  
40                  hearing which is caused or requested by the  
41                  petitioner.

42                  (2) When a person's license is suspended  
43                  under this section and is also suspended af-  
44                  ter having been adjudicated or convicted on

1 charges arising out of the same occurrence  
2 for a violation of section 1312-B or 1312-C  
3 or Title 15, section 3103, subsection 1,  
4 paragraph F, the period of time his license  
5 has been suspended under this section prior  
6 to the adjudication or conviction shall be  
7 deducted from the period of time of any  
8 court-imposed suspension ordered pursuant to  
9 section 1312-B or 1312-C or Title 15, sec-  
10 tion 3103, subsection 1, paragraph F.

11 H. Upon receipt by the Secretary of State of a  
12 petition for a work-restricted license by any  
13 person whose license or right to operate a motor  
14 vehicle has been suspended pursuant to paragraph  
15 B, subparagraph (2), the Secretary of State may  
16 stay the suspension during the statutory period  
17 and issue a work-restricted license. The issuance  
18 of such a license shall be conditioned upon a  
19 showing by the petitioner by clear and convincing  
20 evidence that such a license is necessary to op-  
21 erate a motor vehicle between the residence and a  
22 place of employment or to operate a motor vehicle  
23 in the scope of employment, or both, as deter-  
24 mined by the Secretary of State and that no al-  
25 ternative means of transportation is available.

26 I. Following the expiration of 1/2 of the total  
27 period of suspension imposed pursuant to para-  
28 graph B, the Secretary of State may issue a pro-  
29 visional license, subject to the conditions, re-  
30 strictions or terms he deems advisable, to the  
31 person if the Secretary of State receives written  
32 notice that the person has satisfactorily com-  
33 pleted the alcohol educational program of the De-  
34 partment of Human Services and, when required,  
35 has satisfactorily completed an alcohol treatment  
36 or rehabilitation program approved or licensed by  
37 the department.

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

40 (1) Any person who has received a notice of  
41 suspension under this section may make a  
42 written request for a review of the determi-  
43 nation of the Secretary of State at a hear-  
44 ing.

1                   (2) The request for hearing shall be made  
2                   within 10 days from the effective date of  
3                   the suspension. If a written request for a  
4                   hearing is made after such date and the Sec-  
5                   retary of State finds that the person was  
6                   unable to make a timely request due to lack  
7                   of actual notice of the suspension or due to  
8                   factors of physical incapacity, the Secre-  
9                   tary of State shall waive the period of lim-  
10                  itation, reopen the matter and grant the  
11                  hearing request, except, in such a case, a  
12                  stay of suspension pending the hearing shall  
13                  not be granted.

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

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

17                   (2) The scope of the hearing shall include  
18                   whether, by a preponderance of the evidence:

19                           (a) There was probable cause to be-  
20                           lieve that the person had not attained  
21                           his 20th birthday and that the person  
22                           was operating or attempting to operate  
23                           a motor vehicle while having 0.02% or  
24                           more by weight of alcohol in his blood;

25                           (b) The person operated or attempted  
26                           to operate a motor vehicle;

27                           (c) At such time the person had 0.02%  
28                           or more by weight of alcohol in his  
29                           blood; and

30                           (d) At such time the person had not  
31                           attained his 20th birthday.

32                   (3) A certificate duly signed and sworn to  
33                   pursuant to section 1312, subsection 8,  
34                   shall be prima facie proof of facts stated  
35                   therein and that the person taking a speci-  
36                   men of blood or breath was authorized by  
37                   section 1312, subsection 6, that the equip-  
38                   ment, chemicals and other materials used in  
39                   the taking of the blood specimen or a breath



1 sample were of a quality appropriate for the  
2 purpose of producing reliable test results,  
3 that any equipment, chemicals or materials  
4 required by section 1312, subsection 6, to  
5 be approved by the Department of Human Ser-  
6 vices were in fact approved, that the sample  
7 tested by the person certified under section  
8 1312, subsection 6, was in fact the same  
9 sample taken and that the percentage by  
10 weight of alcohol in the blood was, at the  
11 time the blood or breath sample was taken,  
12 as stated in the certificate.

13 (4) If it is determined after hearing that  
14 there was not the requisite probable cause  
15 for blood-alcohol test administration or  
16 that the person had attained his 20th birth-  
17 day at the time of operation or attempted  
18 operation or that the person did not operate  
19 or attempt to operate a motor vehicle while  
20 having 0.02% or more by weight of alcohol in  
21 his blood, the suspension shall be removed  
22 immediately and the Secretary of State shall  
23 delete any record of the suspension.

24 (5) Any person whose license is suspended  
25 under this section on the basis of a  
26 blood-alcohol test may, within 30 days after  
27 receipt of the decision, appeal to the Supe-  
28 rior Court for judicial review as provided  
29 in Title 5, sections 11001 to 11008. If the  
30 court rescinds the suspension, it shall also  
31 order the Secretary of State to delete any  
32 record of the suspension.

33 L. Any suspension pursuant to this section or  
34 license reissued after suspension pursuant to  
35 paragraph I may extend beyond the person's 20th  
36 birthday to allow for completion of the total  
37 suspension period or to continue the period of  
38 conditions, restrictions or terms imposed on a  
39 license reissued pursuant to paragraph I.

40 M. The Secretary of State may promulgate whatev-  
41 er rules are necessary to carry out the purposes  
42 of this section.

1 N. In the event that a person who has not at-  
2 tained his 20th birthday is determined to have  
3 operated or attempted to operate a motor vehicle  
4 while having 0.10% or more of alcohol in the  
5 blood such that both this subsection and section  
6 1311-A apply, this section shall govern to the  
7 exclusion of section 1311-A.

8 O. Following the expiration of the total period  
9 of suspension imposed pursuant to paragraph B,  
10 the Secretary of State may issue a provisional  
11 license, subject to the conditions, restrictions  
12 or terms he deems advisable, to the person if the  
13 Secretary of State has received or when he re-  
14 ceives written notice that the person has satis-  
15 factorily completed the alcohol educational pro-  
16 gram of the Department of Human Services and,  
17 when required, has satisfactorily completed an  
18 alcohol treatment or rehabilitation program ap-  
19 proved or licensed by the department.

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

#### 23 STATEMENT OF FACT

24 This new draft makes the following changes in the  
25 original bill.

26 The original bill reduced the current one-year  
27 license suspension under the teen drinking laws to 90  
28 days. This new draft replaces the 90-day proposed  
29 suspension period with the current one-year suspen-  
30 sion period.

31 The new draft requires the notice of license sus-  
32 pension sent by the Secretary of State to persons who  
33 have violated the teen drinking laws or the law per-  
34 mitting administrative suspension of adult licenses  
35 for driving with an excessive blood-alcohol level to  
36 include new information. These notices must state  
37 that a copy of the law enforcement officer's report  
38 and a copy of the blood-alcohol test certificate are  
39 available to the person from the Secretary of State.

The new draft retains a provision of current law permitting the Secretary of State to issue a license to a person under 20 years of age whose license has been suspended under the teen drinking laws if 1/2 of the suspension period has expired and the person has completed an alcohol educational program.

The new draft makes it clear that, if a person whose license is suspended under the teen drinking laws or the law permitting the administrative suspension of adult licenses requests a hearing, the standard of proof at the hearing by the Secretary of State will be by a preponderance of the evidence.

The new draft provides that all persons under 20 years of age and adults whose licenses are suspended under any of the drinking and driving laws must complete an alcohol educational program before their licenses may be restored after the expiration of the suspension period.

The original bill provided for the suspension of a license for a minimum of 45 days upon an administrative determination of driving with an excessive blood-alcohol level. The new draft replaces this provision with the language of the current law, which requires the administrative suspension of a license to coincide with the suspension periods imposed for the traffic infraction or criminal violation of drunk driving.

The original bill requires the court to notify the Secretary of State if a person is adjudicated not to have committed a drunk driving traffic infraction. Upon such a notification, the Secretary of State will restore the administratively suspended license of the person. The new draft adds that restoration must also occur if the Secretary of State is informed by the court that the drunk driving traffic infraction charge has been suspended.

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