

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 100

6
7 H.P. 75

House of Representatives, January 17, 1985

8 Reference to the Committee on Legal Affairs. Sent up for concurrence
9 and ordered printed

10 EDWIN H. PERT, Clerk

Presented by Representative Coles of Harpswell.

Cosponsored by Senator Gauvreau of Androscoggin, Representative
McHenry of Madawaska and Representative Priest of Brunswick.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Strengthen the Laws Relating to
18 Operating Under the Influence.
19

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

22 Sec. 1. 29 MRSA §1312-B, sub-§2, ¶C, as amended
23 by PL 1983, c. 501, §3, is further amended to read:

24 C. Upon conviction, the court shall suspend the
25 defendant's license or permit to operate, right
26 to operate a motor vehicle and right to apply for
27 or obtain a license for a period of 90 days for a
28 first offense. In the case of a person previous-
29 ly convicted of violating subsection 10 of former
30 section 1312, this section or section 1312-C
31 within a 6-year period or whose license was sus-
32 pended for failure to comply with the duty to
33 submit to and complete a test to determine the
34 level of blood-alcohol under section 1312 within
35 a 6-year period, the suspension shall be for a
36 period of one year. If that person has been pre-

1 viously convicted 2 or more times, the suspension
2 shall be for a period of 2 years. The period of
3 suspension shall not be suspended by the court.
4 The court shall give notice of the suspension and
5 take physical custody of an operator's license as
6 provided in section 2241-H. The Secretary of
7 State may impose an additional period of suspen-
8 sion as provided in section 1312-D, subsection
9 1-A, and may extend any period of suspension un-
10 til satisfaction of any conditions imposed pursu-
11 ant to section 1312-D, subsection 3.

12 Sec. 2. 29 MRSA §1312-D, sub-§1, as amended by
13 PL 1981, c. 679, §36, is further amended to read:

14 1. Recording and notice by Secretary of State.
15 On receipt of an attested copy of the court record of
16 a suspension of a person's license, right to operate
17 a motor vehicle or right to apply for or obtain a li-
18 cence or of a conviction or adjudication under sec-
19 tion 1312-B or 1312-C, the Secretary of State shall
20 immediately record the suspension and shall send
21 written notice of the suspension of the court to the
22 person suspended and to the registered owner of the
23 vehicle used in the violation. Notice to the owner
24 shall include the name and address of the person sus-
25 pended, the date of the suspension and its duration,
26 and a prominent warning as to consequences of that
27 suspension under sections 1312-E and 1312-F. If the
28 court fails to suspend the license, right to operate
29 a motor vehicle, or right to apply for or obtain a
30 license of any person convicted under section 1312-B
31 or adjudicated as having violated section 1312-C, or
32 the juvenile crime defined by Title 15, section 3103,
33 subsection 1, paragraph F, the Secretary of State
34 shall suspend those rights for the period specified
35 in sections 1312-B, 1312-C and Title 15, section
36 3314, subsection 3, respectively, and shall send
37 written notice of the suspension as provided in this
38 subsection.

39 Sec. 3. 29 MRSA §§1312-E, 1312-F and 1312-G are
40 enacted to read:

41 §1312-E. Forfeiture of motor vehicles operated while
42 under the influence

1 1. Property forfeited. A motor vehicle shall be
2 subject to forfeiture to the State, and all property
3 rights therein shall be in the State, if it is oper-
4 ated by a person in violation of section 1312-B and
5 the person operating it has been twice previously
6 convicted of violating subsection 10 of the former
7 section 1312 or of violating section 1312-B, or any
8 combination of either, within a 6-year period and:

9 A. The vehicle is registered in the name of the
10 convicted operator; or

11 B. If the vehicle is registered in another
12 person's name, that other person:

13 (1) Knowingly permitted the operator to op-
14 erate the vehicle;

15 (2) Knew that the operator's license was
16 under suspension; and

17 (3) Knew that the operator had been previ-
18 ously twice convicted of violating subsec-
19 tion 10 of former section 1312 or section
20 1312-B or any combination of either.

21 2. Jurisdiction. Vehicles subject to forfeiture
22 under subsection 1 shall be declared forfeited by any
23 court having jurisdiction over the property or having
24 final jurisdiction over any related criminal proceed-
25 ing brought under any provision of this chapter.

26 3. Exceptions. The court shall order forfeiture
27 of all vehicles subject to forfeiture under subsec-
28 tion 1, except as follows.

29 A. No conveyance used by any person as a common
30 carrier in the transaction of business as a com-
31 mon carrier may be forfeited unless it appears
32 that the owner or other person in charge of that
33 conveyance was a consenting party or privy to a
34 violation of section 1312-B.

35 B. No conveyance may be forfeited by reason of
36 any act or omission established by the owner
37 thereof to have been committed or omitted by any
38 person other than the owner while the conveyance

1 was unlawfully in the possession of a person oth-
2 er than the owner in violation of the criminal
3 laws of the United States, or of this State or of
4 any state.

5 C. No conveyance may be subject to forfeiture
6 unless the owner thereof knew that the conveyance
7 was used to violate section 1312-B. Notice
8 mailed by the Secretary of State to the regis-
9 tered owner of a motor vehicle under section
10 1312-D, subsection 1, shall be prima facie evi-
11 dence that the owner knew that the operator's li-
12 cence or right to operate was under suspension
13 for the period stated in that notice. Two or
14 more notices shall be prima facie evidence that
15 the owner knew that the operator had been con-
16 vinced twice or more for violations of subsection
17 10 of former section 1312 or section 1312-B.

18 4. Petition; order. A district attorney or the
19 Attorney General may petition the District Court or
20 Superior Court in the name of the State in the nature
21 of a proceeding in rem to order forfeiture of prop-
22 erty subject to forfeiture under subsection 1. The pe-
23 tion shall be filed in the court having jurisdic-
24 tion over the property. The proceeding shall be
25 deemed a civil suit, in which the State shall have
26 the burden of proving all material facts by a prepon-
27 derance of the evidence and the owner of the property
28 or other person claiming thereunder shall have such
29 burden as to all exceptions set forth in subsection
30 3. The court shall order the State to give notice by
31 certified or registered mail or hand delivered by a
32 deputy sheriff to the owner of the property and to
33 such other person as appears to have an interest
34 therein and shall promptly, but not less than 2 weeks
35 after notice, hold a hearing on the petition. At
36 that hearing, the court shall hear evidence and make
37 findings of fact and enter conclusions of law, and
38 shall thereupon issue a final order, from which the
39 parties shall have the right of appeal. The final
40 order shall provide for disposition of the property
41 by the State or any subdivision thereof in any manner
42 not prohibited by law, including official use by an
43 authorized law enforcement or other public agency, or
44 sale at public auction or by competitive bidding.
45 The proceeds of any such sale shall be used to pay

1 the reasonable expenses of the forfeiture proceed-
2 ings, seizure, storage, maintenance of custody, ad-
3 vertising and notice, and to pay any bona fide secu-
4 rity interest therein, and the balance, if any, shall
5 be deposited in the State Treasury, or the treasury
6 of the county or municipality making the seizure.

7 5. Preliminary order. The court may issue at
8 the request of the State ex parte any preliminary or-
9 der or process as is necessary to seize or secure the
10 property for which forfeiture is sought and to pro-
11 vide for its custody. Process for seizure of that
12 property shall issue only upon a showing of probable
13 cause. The application therefor and the issuance,
14 execution and return thereof shall be subject to the
15 provisions of applicable state law. Any property
16 subject to forfeiture under this section may be
17 seized upon process, except that seizure without pro-
18 cess may be made when:

19 A. The seizure is incident to an arrest with
20 probable cause or a search under a valid search
21 warrant or an inspection under a valid adminis-
22 trative inspection warrant; or

23 B. The property subject to seizure has been the
24 subject of a prior judgment in favor of the State
25 in a forfeiture proceeding under this section.

26 6. Ineffective conveyance. A transfer of regis-
27 tration or ownership from a person charged with a vi-
28 olation of section 1312-B to a member of his immedi-
29 ate family living in the same household after his ar-
30 rest for that charge and before final adjudication on
31 that charge shall be presumed null and void for the
32 purpose of this section.

33 §1312-F. Allowing a person under suspension to oper-
34 ate a motor vehicle

35 1. Offense. A person commits a civil offense
36 under this section if he permits another person to
37 operate or attempt to operate a motor vehicle regis-
38 tered in his name knowing that that other person's
39 license or right to operate a motor vehicle has been
40 suspended under section 1311-A, 1312-B, 1312-C or
41 1312-D.

