

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 420

7 S.P. 153

In Senate, February 5, 1985

8 Reference to the Committee on Judiciary suggested and ordered printed.

9 JOY J. O'BRIEN, Secretary of the Senate

10 Presented by Senator Webster of Franklin.

Cosponsored by Senator Hichens of York, Representative Randall of
East Machias and Representative Bragg of Sidney.

12 STATE OF MAINE
13

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

17 AN ACT Relating to the Legal Blood-alcohol
18 Level under Maine's Operating under
19 the Influence Laws.
20

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

23 Sec. 1. 29 MRSA §1311-A, sub-§1-A, as repealed
24 and replaced by PL 1983, c. 850, §1, is amended to
25 read:

26 1-A. Definition. For the purposes of this sec-
27 tion, "operating or attempting to operate a motor ve-
28 hicle with an excessive blood-alcohol level" means
29 operating or attempting to operate a motor vehicle
30 while having ~~0-10%~~ 0.08% or more by weight of alcohol
31 in the blood.

32 Sec. 2. 29 MRSA §1311-A, sub-§2, ¶D, as enacted
33 by PL 1983, c. 850, §1, is amended to read:

1 D. Upon receipt of notice from the court, pursu-
2 ant to section 1312-C, subsection 4-A, the Secre-
3 tary of State shall immediately remove the sus-
4 pension of any person who is adjudicated not to
5 have committed under section 1312-C, subsection
6 2, paragraph B, the traffic infraction of operat-
7 ing or attempting to operate a motor vehicle
8 while having ~~0-10%~~ 0.08% or more by weight of al-
9cohol in his blood or of any person who has had
10 such a charge against him dismissed.

11 Sec. 3. 29 MRSA §1311-A, sub-§8, as repealed and
12 replaced by PL 1983, c. 850, §1, is amended to read:

13 8. Hearing. The hearing and notice shall be as
14 follows.

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

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

19 (1) There was probable cause to believe
20 that the person was operating or attempting
21 to operate a motor vehicle while having
22 ~~0-10%~~ 0.08% or more by weight of alcohol in
23 his blood;

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

26 (3) At the time the person had ~~0-10%~~ 0.08%
27 or more by weight of alcohol in his blood.

28 C. A certificate duly signed and sworn to pursu-
29 ant to section 1312, subsection 8, shall be prima
30 facie proof of facts stated therein and that the
31 person taking a specimen of blood or breath was
32 authorized by section 1312, subsection 6, that
33 the equipment, chemicals and other materials used
34 in the taking of the blood specimen or breath
35 sample were of a quality appropriate for the pur-
36 pose of producing reliable test results that any
37 equipment, chemicals or materials required by
38 section 1312, subsection 6, to be approved by the
39 Department of Human Services were in fact ap-

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

7 D. If it is determined after hearing that there
8 was not the requisite probable cause for
9 blood-alcohol test administration or that the
10 person did not operate or attempt to operate a
11 motor vehicle while having ~~0-10%~~ 0.08% or more by
12 weight of alcohol in his blood, the suspension
13 shall be removed immediately and the Secretary of
14 State shall delete any record of the suspension.

15 E. Any person whose license is suspended under
16 this section on the basis of blood-alcohol test
17 may, within 30 days after receipt of the deci-
18 sion, appeal to the Superior Court for judicial
19 review, as provided in Title 5, sections 11001 to
20 11008. If the court rescinds the suspension, it
21 shall also order the Secretary of State to delete
22 any record of the suspension.

23 Sec. 4. 29 MRSA §1312, sub-§5, as amended by PL
24 1981, c. 468, §7, is further amended to read:

25 5. Blood-alcohol level.

26 A. If there was, at the time alleged, 0.05% or
27 less by weight of alcohol in the defendant's
28 blood, it is prima facie evidence that the de-
29 fendant was not under the influence of intoxicat-
30 ing liquor.

31 B. If there was, at the time alleged, in excess
32 of 0.05%, but less than ~~0-10%~~ 0.08% by weight of
33 alcohol in the defendant's blood, it is relevant
34 evidence, but it is not to be given prima facie
35 effect in indicating whether or not the defendant
36 was under the influence of intoxicating liquor
37 within the meaning of this section, but such fact
38 may be considered with other competent evidence
39 in determining whether or not the defendant was
40 under the influence of intoxicating liquor.

1 C. For purposes of evidence in proceedings other
2 than those arising under section 1312-B or
3 1312-C, it shall be presumed that a person was
4 under the influence of intoxicating liquor when
5 he has a blood-alcohol level of ~~0-10%~~ 0.08% or
6 more by weight.

7 D. Percent by weight of alcohol in the blood
8 shall be based upon grams of alcohol per one hun-
9 dred milliliters of blood.

10 Sec. 5. 29 MRSA §1312, sub-§11, ¶A, as amended
11 by PL 1981, c. 679, §27, is further amended to read:

12 A. After a person has been charged with operat-
13 ing or attempting to operate a motor vehicle un-
14 der the influence of intoxicating liquor or drugs
15 or with a blood-alcohol level of ~~0-10%~~ 0.08% or
16 more, the investigating or arresting officer
17 shall investigate to determine whether the
18 charged person has any prior convictions under
19 former subsection 10 or section 1312-B or an ad-
20 judication under section 1312-C. As part of his
21 investigation, the officer shall make the neces-
22 sary inquiries of the Secretary of State.

23 Sec. 6. 29 MRSA §1312-B, sub-§1, ¶B, as enacted
24 by PL 1981, c. 468, §10, is amended to read:

25 B. While having ~~0-10%~~ 0.08% or more by weight of
26 alcohol in his blood.

27 Sec. 7. 29 MRSA §1312-C, sub-§2, ¶B, as enacted
28 by PL 1981, c. 468, §11, is amended to read:

29 B. While having ~~0-10%~~ 0.08% or more by weight of
30 alcohol in his blood.

31 Sec. 8. 29 MRSA §1312-C, sub-§5, ¶¶B and C, as
32 amended by PL 1981, c. 679, §34, are further amended
33 to read:

34 B. Was driving in excess of the speed limit by
35 30 miles an hour or more during the operation
36 which resulted in the prosecution for operating
37 under the influence or with a blood-alcohol level
38 of ~~0-10%~~ 0.08% or more;

1 C. Eluded or attempted to elude an officer, as
2 defined in section 2501-A, subsection 3, during
3 the operation which resulted in the prosecution
4 for operating under the influence or with a
5 blood-alcohol level of ~~0-10%~~ 0.08% or more; or

6 Sec. 9. 29 MRSA §1312-C, sub-§7, ¶B, as amended
7 by PL 1981, c. 679. §35, is further amended to read:

8 B. Had failed to comply with the duty to submit
9 to take a blood or breath test within the 6 years
10 immediately preceding the operation which re-
11 sulted in the prosecution for operating under the
12 influence or with a blood-alcohol level of ~~0-10%~~
13 0.08% or more.

14 Sec. 10. 29 MRSA §2241-G, sub-§2, ¶N, as enacted
15 by PL 1983, c. 850, §4, is amended to read:

16 N. In the event that a person who has not at-
17 tained his 20th birthday is determined to have
18 operated or attempted to operate a motor vehicle
19 while having ~~0-10%~~ 0.08% or more of alcohol in
20 the blood such that both this subsection and sec-
21 tion 1311-A apply, this section shall govern to
22 the exclusion of section 1311-A.

23 Sec. 11. 29 MRSA §2292, sub-§1, ¶B, as amended
24 by PL 1981, c. 468, §16, is further amended to read:

25 B. Operating or attempting to operate while un-
26 der the influence of intoxicating liquor or drugs
27 or with a blood-alcohol level of ~~0-10%~~ 0.08% or
28 more;

29 STATEMENT OF FACT

30 The purpose of this bill is to set 0.08% as the
31 legal blood-alcohol level under Maine's Operating Un-
32 der the Influence law.

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