

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 720

6
7 H.P. 515

House of Representatives, February 26, 1985

8 Reference to the Committee on Transportation suggested and ordered
9 printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Bost of Orono.

11 Cosponsored by Representative Carroll of Gray, Senator Erwin of
Oxford and Senator Gauvreau of Androscoggin.

12 STATE OF MAINE
13

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

17 AN ACT to Require All New Drivers to Complete
18 an Approved Defensive Driving Course.
19

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

22 29 MRSA §2241-G, as amended by PL 1983, c. 850,
23 §4, is further amended to read:

24 §2241-G. Provisional license

25 1. Licensee 20 years of age and older. The orig-
26 inal state license issued to a new applicant 20 years
27 of age and older shall be a provisional license for a
28 period of one year following the date of issue and
29 shall remain in force as a nonprovisional license to
30 the next normal expiration date. If a person is con-
31 victed of or adjudicated to have committed a motor
32 vehicle moving violation while in possession of a
33 provisional license on the first offense, the license
34 shall be suspended for 30 days. If he is convicted
35 of or adjudicated to have committed a 2nd moving vio-

1 lation, his license shall be suspended for 60 days
2 and if he is convicted of or adjudicated to have com-
3 mitted a 3rd moving violation, the license shall be
4 suspended to the 2nd birthday next following the date
5 of issue or for 90 days, whichever shall be the
6 longer period of time. In these cases, a hearing may
7 be requested of the Secretary of State, and the Sec-
8 retary of State shall afford the provisional licensee
9 opportunity for hearing as soon as practicable after
10 receipt of the request. Upon the hearing, the Secre-
11 tary of State, for good cause shown, may continue,
12 modify or rescind the suspension. This subsection
13 shall not prevail when a person is convicted of or
14 adjudicated to have committed an offense which car-
15 ries a suspension or revocation period greater than
16 that prescribed in this subsection. All persons
17 holding a provisional license under this subsection
18 shall complete a defensive driving course, as ap-
19 proved by the Secretary of State, within 2 years of
20 issuance of the provisional license. Failure to com-
21 plete a defensive driving course may result in loss
22 of license. All drivers 20 years of age or older
23 holding valid drivers' licenses on November 1, 1985,
24 are exempt from this licensing requirement.

25 2. Licensee under 20 years of age. The original
26 license or any renewal license issued to an applicant
27 under 20 years of age shall be a provisional license
28 for a period of one year following the date of issue
29 or until the licensee attains the age of 20 years of
30 age, whichever occurs last. Upon expiration of the
31 provisionary term, the license shall remain in force
32 as a nonprovisional license to the next normal expi-
33 ration date. Any license issued by any other juris-
34 diction to a person who has not yet attained the age
35 of 20 years shall be construed to be a provisional
36 license for the purpose of operating a motor vehicle
37 within this State. All drivers under the age of 20
38 years shall complete a defensive driving course, as
39 approved by the Secretary of State, within 2 years of
40 the issuance of an initial license. Failure to com-
41 plete a defensive driving course may result in loss
42 of license. All drivers under the age of 20 years
43 holding valid drivers' licenses on November 1, 1985,
44 are exempt from this licensing requirement.

1 A. During the first year from the date of issue
2 of the provisional license, if a person is con-
3 victed of or adjudicated to have committed a mo-
4 tor vehicle moving violation, on the first of-
5 fense, the license shall be suspended for 30
6 days. If he is convicted of or adjudicated to
7 have committed a 2nd moving violation, his li-
8 cense shall be suspended for 60 days and if he is
9 convicted of or adjudicated to have committed a
10 3rd moving violation, the license shall be sus-
11 pended to the 2nd birthday next following the
12 date of issue or for 90 days, whichever shall be
13 the longer period of time. In these cases, a
14 hearing may be requested of the Secretary of
15 State, and the Secretary of State shall afford
16 the provisional licensee opportunity for hearing
17 as soon as practicable after receipt of the re-
18 quest. Upon the hearing, the Secretary of State,
19 for good cause shown, may continue, modify or re-
20 scind the suspension. This paragraph shall not
21 prevail when a person is convicted of or adjudi-
22 cated to have committed an offense which carries
23 a suspension or revocation period greater than
24 that prescribed in this paragraph.

25 B. Except where a longer period of suspension is
26 otherwise provided by law, the Secretary of State
27 shall suspend for a period of one year, without
28 preliminary hearing, the provisional license of
29 any person who has not attained his 20th birth-
30 day:

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

35 (2) As to whom he determines has operated
36 or attempted to operate a motor vehicle
37 while having 0.02% or more by weight of al-
38 cohool in his blood.

39 C. Any person not having attained his 20th
40 birthday who operates or attempts to operate a
41 motor vehicle within this State shall have the
42 duty to submit to a test to determine his
43 blood-alcohol level by analysis of his blood or

1 breath, if there is probable cause to believe he
2 has operated or attempted to operate a motor ve-
3 hicle while having 0.02% or more by weight of al-
4 cohol in his blood. The provisions of section
5 1312 shall apply, except that in all cases proba-
6 ble cause shall be to believe that the person was
7 operating or attempting to operate a motor vehi-
8 cle while having 0.02% or more by weight of alco-
9 hol in his blood and that the person had not at-
10 tained his 20th birthday, and except that suspen-
11 sion for failing to comply with the duty to sub-
12 mit to the test shall be for a period of one
13 year.

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

16 (1) The Secretary of State shall suspend
17 the provisional license of any person who
18 has not attained his 20th birthday, and the
19 right to apply for or obtain a license of
20 any such person upon his determination that
21 the person operated or attempted to operate
22 a motor vehicle with 0.02% or more by weight
23 of alcohol in the blood. The suspension
24 shall be for a period of one year and shall
25 continue until satisfaction of any condi-
26 tions imposed pursuant to paragraph I or O.

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

35 (3) The determination of these facts by the
36 Secretary of State is independent of the de-
37 termination of the same or similar facts in
38 the adjudication of any civil or criminal
39 charges arising out of the same occurrence.
40 The disposition of those civil or criminal
41 charges shall not affect any suspension un-
42 der this section. Statements made by the li-
43 censee at the hearing before the Secretary

1 of State shall not be introduced by the
2 State in its case in chief in any prosecu-
3 tion for violation of section 1312-B, 1312-C
4 or Title 15, section 3103, subsection 1,
5 paragraph F, arising out of the same occur-
6 rence.

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

9 (1) A law enforcement officer who had prob-
10 able cause to believe any person who had not
11 attained his 20th birthday was operating or
12 attempting to operate a motor vehicle with
13 0.02% or more by weight of alcohol in the
14 blood shall immediately forward to the Sec-
15 retary of State a report, under oath of all
16 information relevant to the enforcement ac-
17 tion, including information which adequately
18 identifies the person, a statement of the
19 officer's grounds for belief that the person
20 committed the offense of operating or at-
21 tempting to operate a motor vehicle while
22 having 0.02% or more by weight of alcohol in
23 the blood, and a certificate under section
24 1312, subsection 8, of the result of any
25 blood-alcohol test by a self-contained
26 breath-alcohol testing apparatus which was
27 conducted and which shows the presence of
28 0.02% or more by weight of alcohol in the
29 blood.

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

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

39 F. The notice of suspension by the Secretary of
40 State shall be made as follows.

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

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

15 (3) The notice of suspension shall clearly
16 specify the reason and statutory grounds for
17 the suspension, the effective date of the
18 suspension, the right of the person to re-
19 quest a hearing, the procedure for request-
20 ing a hearing and the date by which that re-
21 quest for a hearing shall be made. The no-
22 tice of suspension shall also clearly state
23 that a copy of the report of the law en-
24 forcement officer under paragraph E, subpar-
25 agraph (1), and a copy of the blood-alcohol
26 test certificate under paragraph E, subpara-
27 graph (1) or (3), will be provided to the
28 person upon request to the Secretary of
29 State.

30 G. Effective date and period of suspension.

31 (1) Any suspension imposed shall be effec-
32 tive on a specified date not less than 10
33 days after the mailing of the notification
34 of suspension by the Secretary of State. If
35 a person whose license is suspended desires
36 to have a hearing, he shall so notify the
37 Secretary of State, in writing, within 10
38 days from the effective date of the suspen-
39 sion. The suspension shall be stayed for 10
40 days from the effective date of the suspen-
41 sion. If, within 10 days from the effective
42 date of the suspension, the Secretary of
43 State is notified, in writing, of a request

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

17
18
19
20
21
22
23
24
25
26
27
28
29

30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

for a hearing, the suspension shall be stayed until a hearing is held and a decision is issued. The Secretary of State shall conduct a hearing and issue a decision within 30 days from the date of receipt of a written request for hearing. Failure by the Secretary of State to conduct a hearing and issue a decision within the 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 of hearing which is caused or requested by the petitioner.

(2) 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 or 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 of any court-imposed suspension ordered pursuant to section 1312-B or 1312-C or Title 15, section 3103, subsection 1, paragraph F.

H. 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 paragraph B, subparagraph (2), the Secretary of State may stay the suspension during the statutory 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 operate a motor vehicle between the residence and a place of employment or to operate a motor vehicle in the scope of employment, or both, as determined by the Secretary of State and that no alternative means of transportation is available.

1 I. Following the expiration of 1/2 of the total
2 period of suspension imposed pursuant to para-
3 graph B, the Secretary of State may issue a pro-
4 visional license, subject to the conditions, re-
5 strictions or terms he deems advisable, to the
6 person if the Secretary of State receives written
7 notice that the person has satisfactorily com-
8 pleted the alcohol educational program of the De-
9 partment of Human Services and, when required,
10 has satisfactorily completed an alcohol treatment
11 or rehabilitation program approved or licensed by
12 the department.

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

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

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

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

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

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

38 (a) There was probable cause to be-
39 lieve that the person had not attained
40 his 20th birthday and that the person

1 was operating or attempting to operate
2 a motor vehicle while having 0.02% or
3 more by weight of alcohol in his blood;

4 (b) The person operated or attempted
5 to operate a motor vehicle;

6 (c) At such time the person had 0.02%
7 or more by weight of alcohol in his
8 blood; and

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

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

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

27 O. Following the expiration of the total period
28 of suspension imposed pursuant to paragraph B,
29 the Secretary of State may issue a provisional
30 license, subject to the conditions, restrictions
31 or terms he deems advisable, to the person if the
32 Secretary of State has received or when he re-
33 ceives written notice that the person has satis-
34 factorily completed the alcohol educational pro-
35 gram of the Department of Human Services and,
36 when required, has satisfactorily completed an
37 alcohol treatment or rehabilitation program ap-
38 proved or licensed by the department.

1

STATEMENT OF FACT

2 The purpose of this bill is to require all per-
3 sons who obtain a driver's license after November 1,
4 1985, to complete a defensive driving course which
5 will include substance abuse education. The Maine
6 Revised Statutes, Title 23, section 4208, authorizes
7 the Department of Public Safety to charge a registra-
8 tion fee of \$15 to participants of the defensive
9 driving course to cover the cost of administration,
10 audio-visual equipment, texts, student workbooks,
11 etc., for conducting the courses, therefore, with
12 this program being self-sufficient there is no fiscal
13 note attached to this bill.

14

0863010385