

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 970

6
7 H.P. 684

House of Representatives, March 8, 1985

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

10 EDWIN H. PERT, Clerk

Presented by Representative Hillock of Gorham.

11 Cosponsored by Representative Rolde of York and Senator Perkins of
Hancock.

12 STATE OF MAINE
13

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

17 AN ACT Concerning the Forfeiture of Vehicles
18 of Persons Operating after License
19 Suspension who are Operating under the
20 Influence.
21

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

24 Sec. 1. 29 MRSA §1312, sub-§2, as amended by PL
25 1983, c. 501, §2, is further amended to read:

26 2. Hearing. If a person as to whom there is
27 probable cause fails to comply with the duty to sub-
28 mit to a test to determine his blood-alcohol level by
29 analysis of his blood or breath upon the request of a
30 law enforcement officer, no test may be given. The
31 Secretary of State, upon the receipt of a written
32 statement under oath from a law enforcement officer,
33 stating that the officer had probable cause to be-
34 lieve that a person was operating or attempting to
35 operate a motor vehicle while under the influence of
36 intoxicating liquor, and that the person failed to

1 comply with the duty to submit to a test to determine
2 the blood-alcohol level by analysis of his blood or
3 breath, shall immediately notify the person, in writ-
4 ing, as provided in section 2241, that his license or
5 permit, his right to operate and his right to apply
6 for or obtain a license have been suspended. The sus-
7 pension shall be for a period of 180 days the first
8 time the person fails to comply with the duty to sub-
9 mit to the test and one year for each subsequent
10 failure to comply with the duty to submit to the test
11 within a 6-year period. The written statement shall
12 be sent to the Secretary of State within 72 hours of
13 the failure to comply with the duty to submit to the
14 blood-alcohol test, excluding Saturdays, Sundays and
15 holidays. If the statement is not sent within this
16 time period, the Secretary of State shall neverthe-
17 less impose the suspension for failing to comply
18 with the duty to submit to a test, unless the delay
19 has prejudiced the person's ability to prepare or
20 participate in the hearing described in this subsec-
21 tion.

22 If such person desires to have a hearing, he shall
23 notify the Secretary of State within 10 days, in
24 writing, of such desire. Any suspension shall remain
25 in effect pending the outcome of such hearing, if re-
26 quested.

27 The scope of such a hearing shall cover whether there
28 was probable cause to believe that the individual was
29 either attempting to operate or was operating under
30 the influence of intoxicating liquor and whether he
31 failed to comply with the duty to submit to one of
32 the blood-alcohol tests upon the request of a law en-
33 forcement officer. Any suspension in effect shall be
34 removed if, after hearing, it is determined that the
35 person who failed to submit to the test would not
36 have failed to submit but for the failure of the law
37 enforcement officer to give either or both of the
38 warnings required by subsection 1.

39 If it is determined, after hearing, that there was
40 not probable cause to believe that such person was
41 either attempting to operate or was operating under
42 the influence of intoxicating liquor or that the per-
43 son did not fail to comply with the duty to submit to
44 a blood-alcohol test, any suspension in effect shall
45 be removed immediately.

1 If it is determined, after a hearing, that any sus-
2 pension in effect should be removed, the Secretary of
3 State shall delete any record of the suspension and
4 any record of his revocation of consent from that
5 person's driving record.

6 For the purposes of this section, a prior refusal or
7 revocation of consent to submit to a chemical test
8 shall be a prior refusal or revocation of consent if
9 it occurred within a 6-year period of the date of the
10 most recent refusal or revocation of consent.

11 After any hearing held pursuant to this subsection in
12 which a suspension is upheld or after the expiration
13 of the 10-day period for requesting a hearing when no
14 hearing is held, the Secretary of State shall publish
15 a notice of the suspension in a newspaper of general
16 circulation in the county where the person resides.

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

19 1. Recording and notice by Secretary of State.
20 On receipt of an attested copy of the court record of
21 a suspension of a person's license, right to operate
22 a motor vehicle or right to apply for or obtain a li-
23 cense or of a conviction or adjudication under sec-
24 tion 1312-B or 1312-C, the Secretary of State shall
25 immediately record the suspension and shall send
26 written notice of the suspension of the court to the
27 person suspended and shall publish a notice of the
28 suspension in a newspaper of general circulation in
29 the county where the person resides. If the court
30 fails to suspend the license, right to operate a mo-
31 tor vehicle, or right to apply for or obtain a li-
32 cense of any person convicted under section 1312-B or
33 adjudicated as having violated section 1312-C, or the
34 juvenile crime defined by Title 15, section 3103,
35 subsection 1, paragraph F, the Secretary of State
36 shall suspend those rights for the period specified
37 in sections 1312-B, 1312-C and Title 15, section
38 3314, subsection 3, respectively, and shall send
39 written notice of the suspension as provided in this
40 subsection and shall publish a notice of the suspen-
41 sion in a newspaper of general circulation in the
42 county where the person resides.

1 Sec. 3. 29 MRSA §1312-D, sub-§1-A, as amended by
2 PL 1983, c. 501, §4, is further amended to read:

3 1-A. Additional suspension. The Secretary of
4 State may suspend the license, the right to operate a
5 motor vehicle or the right to apply for or obtain a
6 license of any person adjudicated of having violated
7 section 1312-C for an additional period of up to 135
8 days beyond the 45-day period of suspension required
9 under section 1312-C, subsection 4.

10 The Secretary of State may suspend the license, the
11 right to operate or the right to apply for or obtain
12 a license of any person, including a juvenile, con-
13 victed for a first offense within a 6-year period un-
14 der section 1312-B for an additional period of up to
15 275 days beyond the 90 days required under section
16 1312-B, subsection 2, paragraph C, or up to 185 days
17 beyond the 180 days required under Title 15, section
18 3314, subsection 3.

19 Notice of any additional suspension pursuant to this
20 subsection shall be given and published as provided
21 in subsection 1.

22 Sec. 4. 29 MRSA §2184-A is enacted to read:

23 §2184-A. Forfeiture of motor vehicle

24 1. Forfeiture. A motor vehicle shall be subject
25 to forfeiture to the State, and all property rights
26 in the motor vehicle shall be in the State, if:

27 A. It is operated by a person in violation of
28 section 2184 when the suspension was for a con-
29 viction for a violation of former section 1312,
30 subsection 10 or section 1312-B or an adjudica-
31 tion for a violation of section 1312-C or for a
32 failure to comply with the duty to submit for a
33 blood-alcohol test under section 1312, subsection
34 2 and that person:

35 (1) Operates the vehicle in violation of
36 section 1312-B; or

37 (2) Fails to comply with the duty to submit
38 to a test to determine the blood-alcohol

1 level at the request of a law enforcement
2 officer who had probable cause to believe
3 that the person was operating or attempting
4 to operate the vehicle while under the in-
5 fluence of intoxicating liquor; and

6 B. The vehicle is:

7 (1) Registered in the name of that person;
8 or

9 (2) Registered in the name of another per-
10 son and that other person:

11 (a) Permitted the operator to operate
12 the vehicle; and

13 (b) Knew that the operator's license
14 was under suspension. There is a re-
15 buttable presumption that the owner
16 knew that the operator's license was
17 under suspension if notice of that sus-
18 pension was published pursuant to sec-
19 tion 1312, subsection 2 or section
20 1312-D, subsection 1 or 1-A.

21 2. Jurisdiction. A vehicle subject to forfei-
22 ture under subsection 1, shall be declared forfeited
23 upon a conviction of a violation of section 2184, and
24 upon a finding that the other requirements set out in
25 subsection 1, have been met, by a court having juris-
26 isdiction over the property or having final jurisdic-
27 tion over any related criminal proceeding.

28 3. Petition; order. A district attorney or the
29 Attorney General may petition the District Court or
30 the Superior Court in the name of the State in the
31 nature of a proceeding in rem to order forfeiture of
32 property subject to forfeiture under subsection 1.
33 The petition shall be filed in the court having ju-
34 risdiction over the property. The proceeding shall
35 be deemed a civil suit, in which the State shall have
36 the burden of proving all material facts by a prepon-
37 derance of the evidence. The court shall order the
38 State to give notice by certified or registered mail
39 or hand delivered by a deputy sheriff to the owner of
40 the property and to such other persons as appear to

1 have an interest in that property and shall promptly,
2 but not less than 2 weeks after notice, hold a hear-
3 ing on the petition. The court shall order the State
4 to give notice of the hearing by publication at least
5 2 weeks prior to the hearing in a newspaper of gener-
6 al circulation in the county where the person re-
7 sides. At that hearing, the court shall hear evi-
8 dence and make findings of fact and enter conclusions
9 of law, and shall issue a final order, from which the
10 parties shall have a right of appeal. The final or-
11 der shall provide for disposition of the property by
12 the State or any subdivision of the State in a manner
13 not prohibited by law, including sale at public auc-
14 tion or by competitive bidding. From the proceeds of
15 any such sale shall be paid the reasonable expenses
16 of the forfeiture proceedings, seizure, storage,
17 maintenance of custody, advertising and notice and
18 any bona fide security interest in the property.

19 4. Ineffective conveyance. A transfer of regis-
20 tration or ownership of a vehicle from a person
21 charged with a violation of section 2184 shall not
22 prevent any forfeiture pursuant to this section.

23 STATEMENT OF FACT

24 The purpose of this bill is to provide for the
25 forfeiture of a motor vehicle when the following lim-
26 ited circumstances are met:

27 1. The person is convicted of operating after
28 suspension, which suspension was based upon a prior
29 conviction of operating under the influence or fail-
30 ure to comply with a blood-alcohol level test; and

31 2. The person is convicted of operating under
32 the influence or fails to submit to a blood-alcohol
33 level test.

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