

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1276

6
7 S.P. 473

In Senate, April 9, 1985

8 Referred to the Committee on Legal Affairs. Sent down for concurrence
9 and ordered printed.

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

Presented by Senator Gauvreau of Androscoggin.

Cosponsored by Senator Chalmers of Knox.

11
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 Suspension of Motor
18 Vehicle Licenses for Refusal of
19 Chemical Test.
20

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

23 29 MRSA §1312, sub-§2, as amended by PL 1983, c.
24 501, §2, is further amended to read:

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

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

21 When a person's license is suspended under this sec-
22 tion and is also suspended after having been adjudi-
23 cated or convicted on charges arising out of the same
24 occurrence for a violation of section 1312-B, 1312-C,
25 or Title 15, section 3103, subsection 1, paragraph F,
26 the period of time his license has been suspended un-
27 der this section prior to the adjudication or convic-
28 tion shall be deducted from the period of time of any
29 court-imposed suspension ordered pursuant to section
30 1312-B, 1312-C, or Title 15, section 3103, subsection
31 1, paragraph F. Any period of time remaining on a
32 suspension imposed pursuant to this section at the
33 time of adjudication or conviction shall be served
34 concurrently with any court-imposed period of suspen-
35 sion.

36 If such person desires to have a hearing, he shall
37 notify the Secretary of State within 10 days, in
38 writing, of such desire. Any suspension shall remain
39 in effect pending the outcome of such hearing, if re-
40 quested.

41 The scope of such a hearing shall cover whether there
42 was probable cause to believe that the individual was
43 either attempting to operate or was operating under
44 the influence of intoxicating liquor and whether he

1 failed to comply with the duty to submit to one of
2 the blood-alcohol tests upon the request of a law en-
3 forcement officer. Any suspension in effect shall be
4 removed if, after hearing, it is determined that the
5 person who failed to submit to the test would not
6 have failed to submit but for the failure of the law
7 enforcement officer to give either or both of the
8 warnings required by subsection 1.

9 If it is determined, after hearing, that there was
10 not probable cause to believe that such person was
11 either attempting to operate or was operating under
12 the influence of intoxicating liquor or that the per-
13 son did not fail to comply with the duty to submit to
14 a blood-alcohol test, any suspension in effect shall
15 be removed immediately.

16 If it is determined, after a hearing, that any sus-
17 pension in effect should be removed, the Secretary of
18 State shall delete any record of the suspension and
19 any record of his revocation of consent from that
20 person's driving record.

21 For the purposes of this section, a prior refusal or
22 revocation of consent to submit to a chemical test
23 shall be a prior refusal or revocation of consent if
24 it occurred within a 6-year period of the date of the
25 most recent refusal or revocation of consent.

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STATEMENT OF FACT

2 A holder of a motor vehicle license in the State
3 is deemed to have given his implied consent to chemi-
4 cal tests to determine their blood-alcohol level if
5 there is probable cause to believe he has operated or
6 attempted to operate under the influence of intoxi-
7 cating liquor. The duty includes the duty to submit
8 to either a blood or breath test. Refusal to submit
9 to a chemical test triggers a mandatory 180-day li-
10 cense suspension for first refusals and a one-year
11 license suspension for all subsequent refusals. A mo-
12 torist adjudicated of civil operating under the in-
13 fluence must receive a 45-day license suspension by
14 the court and the Secretary of State may extend the
15 suspension period up to 135 days. A person convicted
16 of criminal operating under the influence of intoxi-
17 cating liquor receives a mandatory 90-day license
18 suspension from the court and is subject to an addi-
19 tional 275-day suspension by the Secretary of State ,
20 or 180 days for juvenile offenders. The license sus-
21 pensions imposed by the court and Secretary of State
22 are in addition to the mandatory license suspensions
23 attributable to the refusal to submit to the chemical
24 test.

25 This cumulative suspension feature of our implied
26 consent law provides a strong disincentive for motor-
27 ists charged with operating under the influence to
28 enjoy their constitutional right to a trial. It is
29 not uncommon in the state courts for a delay of 6
30 months or more between the date an offense is charged
31 and the time of trial. There is strong pressure on
32 the defendants to admit the charge or plead guilty in
33 order to minimize the impact of the cumulative sus-
34 pension feature of our law, even if the defendant be-
35 lieves in his innocence and desires a trial to deter-
36 mine his guilt or innocence.

37 This bill retains the deterrent effect of our im-
38 plied consent law, while relieving motorists from the
39 penalty of insisting upon their day in court. Motor-
40 ists adjudicated to have violated the operating under
41 the influence laws are credited the license suspen-
42 sion period attributable to imposition of the implied
43 consent law against court and administrative suspen-

1 sions imposed subsequent to trial. It should be noted
2 that the state law provides for a similar concurrent
3 type of license suspension in the case of those mo-
4 torists whose licenses are suspended in advance of
5 trial due to excessive blood-alcohol levels which are
6 .10% or more in the case of adults and .02% or more
7 in the case of motorists under 20 years of age.

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