

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1295

7 H.P. 900

House of Representatives, April 10, 1985

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

10 EDWIN H. PERT, Clerk

Presented by Representative Brown of Livermore Falls.
Cospponsored by Representative Davis of Monmouth.

12 STATE OF MAINE
13

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

17 AN ACT Concerning Blood Tests for Certain
18 Drivers Involved in Motor Vehicle Accidents.
19

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

22 29 MRSA §1312, sub-§6, as amended by PL 1981, c.
23 679, §§18 to 23, is further amended to read:

24 6. Administration of tests. Persons conducting
25 analysis of blood or breath for the purpose of deter-
26 mining the blood-alcohol level shall be certified for
27 this purpose by the Department of Human Services un-
28 der certification standards to be set by that depart-
29 ment.

30 Only a duly licensed physician, registered
31 physician's assistant, registered nurse or a person
32 certified by the Department of Human Services under
33 certification standards to be set by that department,
34 acting at the request of a law enforcement officer,
35 may draw a specimen of blood for the purpose of de-

1 termining the blood-alcohol level of a person who is
2 complying with the duty to submit to a blood-alcohol
3 test and who has selected a blood test. This limita-
4 tion shall not apply to the taking of breath speci-
5 mens.

6 A law enforcement officer may take a sample specimen
7 of the breath of any person whom he has probable
8 cause to believe has operated or attempted to operate
9 a motor vehicle while under the influence of intoxi-
10 cating liquor and who is complying with the duty to
11 submit to a blood-alcohol test and who has selected a
12 breath test, the sample specimen to be submitted to
13 the Department of Human Services or a person certi-
14 fied by the Department of Human Services for the pur-
15 pose of conducting chemical tests of the sample spec-
16 imen to determine the blood-alcohol level thereof.

17 Only such equipment as is approved by the Department
18 of Human Services shall be used by a law enforcement
19 officer to take a sample specimen of the defendant's
20 breath for submission to the Department of Human Ser-
21 vices or a person certified by the Department of Hu-
22 man Services for the purpose of conducting tests of
23 the sample specimen to determine the blood-alcohol
24 level thereof. Approved equipment shall have a stamp
25 of approval affixed by the Department of Human Ser-
26 vices. Evidence that the equipment was in a sealed
27 carton bearing the stamp of approval shall be ac-
28 cepted in court as prima facie evidence that the
29 equipment was approved by the Department of Human
30 Services for use by the law enforcement officer to
31 take the sample specimen of the defendant's breath.

32 As an alternative to the method of breath testing de-
33 scribed in this subsection, a law enforcement officer
34 may test the breath of any person whom there is prob-
35 able cause to believe has operated or attempted to
36 operate a motor vehicle while under the influence of
37 intoxicating liquor and who has chosen a breath test,
38 by use of a self-contained, breath-alcohol testing
39 apparatus to determine the blood-alcohol level, pro-
40 vided the testing apparatus is reasonably available.
41 The procedures for the operation and testing of
42 self-contained breath-alcohol testing apparatuses
43 shall be as provided by regulation promulgated by the
44 Department of Human Services. The result of any such

1 test shall be accepted as prima facie evidence of the
2 blood-alcohol level in any court.

3 Approved self-contained, breath-alcohol testing appa-
4 ratus shall have a stamp of approval affixed by the
5 Department of Human Services after periodic testing.
6 That stamp of approval shall be valid for a limited
7 period of no more than 1 year. Testimony or other
8 evidence that the equipment was bearing the stamp of
9 approval shall be accepted in court as prima facie
10 evidence that the equipment was approved by the De-
11 partment of Human Services for use by the law en-
12 forcement officer to collect and analyze a sample
13 specimen of the defendant's breath.

14 Failure to comply with any provisions of this subsec-
15 tion or with any regulations promulgated in this
16 subsection shall not, by itself, result in the exclu-
17 sion of evidence of blood-alcohol level, unless the
18 evidence is determined to be not sufficiently reli-
19 able.

20 It is the intent of the Legislature that savings re-
21 alized through the use of self-contained
22 breath-alcohol testing equipment shall be used for
23 programs in the area of highway safety, with priority
24 to be given to programs involving alcohol education
25 and rehabilitation. It is also the intent of the Leg-
26 islature that local law enforcement departments may
27 be equipped, according to local needs, with
28 breath-testing equipment, as described in this sec-
29 tion, as provided by the Department of Public Safety
30 and approved by the Department of Human Services.
31 Testimony or other evidence that any materials used
32 in operating or checking the operation of the equip-
33 ment were bearing a statement of the manufacturer or
34 of the Department of Human Services shall be accepted
35 in court as prima facie evidence that the materials
36 were of a composition and quality as stated.

37 A person certified by the Maine Criminal Justice
38 Academy, under certification standards to be set by
39 the academy, as qualified to operate approved
40 self-contained, breath-alcohol testing apparatuses
41 may operate those apparatuses for the purpose of col-
42 lecting and analyzing a sample specimen of defend-
43 ants' breath.

1 Notwithstanding this subsection, a specimen of blood
2 may be drawn without the consent of the defendant
3 when:

4 A. The defendant is involved in a motor vehicle
5 accident;

6 B. There is probable cause to believe that the
7 defendant was, at the time of the accident, oper-
8 ating or attempting to operate a motor vehicle
9 while under the influence of intoxicating liquor;
10 and

11 C. At the time the specimen is taken, the de-
12 fendant is unconscious or unable to give or deny
13 his consent to the taking of the specimen.

14 STATEMENT OF FACT

15 The purpose of this bill is to permit blood spec-
16 imens to be taken without the defendant's consent to
17 determine the defendant's blood-alcohol level in
18 cases where the defendant is:

19 1. Involved in a motor vehicle accident;

20 2. There is probable cause that the defendant
21 was operating under the influence; and

22 3. The defendant is unconscious or unable to
23 give consent to the test.

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