

MAINE STATE LEGISLATURE

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L.D. 1491

(Filing No. S- 260)

STATE OF MAINE
SENATE
112TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 562, L.D. 1491, Bill, "AN ACT to Amend the Offenses for Operating under the Influence."

Amend the bill by striking out all of sections 1 and 2 and inserting in their place the following:

'Sec. 1. 29 MRSA §1312, 2nd ¶, as amended by PL 1981, c. 679, §13, is repealed and the following enacted in its place:

He shall be informed by a law enforcement officer that a breath test will be administered, unless, in the determination of the law enforcement officer, it is unreasonable for a breath test to be administered, in which case a blood test shall be administered. When a blood test is required, the test may be administered by a physician of the accused's choice, at the request of the accused and if reasonably available. The law enforcement officer may determine which type of breath test, as described in subsection 6, is to be administered.

Sec. 2. 29 MRSA §1312, sub-§6, as amended by PL 1981, c. 679, §§18 to 23, is further amended to read:

6. Administration of tests. Persons conducting analysis of blood or breath for the purpose of determining the blood-alcohol level shall be certified for this purpose by the Department of Human Services under certification standards to be set by that department.

Only a duly licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Human Services under certification standards to be set by that department,

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1 acting at the request of a law enforcement officer,
2 may draw a specimen of blood for the purpose of de-
3 termining the blood-alcohol level of a person who is
4 complying with the duty to submit to a blood-alcohol
5 test ~~and who has selected a blood test~~. This limita-
6 tion shall not apply to the taking of breath speci-
7 mens.

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

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

34 As an alternative to the method of breath testing de-
35 scribed in this subsection, a law enforcement officer
36 may test the breath of any person whom there is prob-
37 able cause to believe has operated or attempted to
38 operate a motor vehicle while under the influence of
39 intoxicating liquor ~~and who has chosen a breath test~~,

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1 by use of a self-contained, breath-alcohol testing
2 apparatus to determine the blood-alcohol level, pro-
3 vided the testing apparatus is reasonably available.
4 The procedures for the operation and testing of
5 self-contained breath-alcohol testing apparatuses
6 shall be as provided by regulation promulgated by the
7 Department of Human Services. The result of any such
8 test shall be accepted as prima facie evidence of the
9 blood-alcohol level in any court.

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

21 Failure to comply with any provisions of this subsec-
22 tion or with any regulations promulgated in this
23 subsection shall not, by itself, result in the exclu-
24 sion of evidence of blood-alcohol level, unless the
25 evidence is determined to be not sufficiently reli-
26 able.

27 It is the intent of the Legislature that savings re-
28 alized through the use of self-contained
29 breath-alcohol testing equipment shall be used for
30 programs in the area of highway safety, with priority
31 to be given to programs involving alcohol education
32 and rehabilitation. It is also the intent of the Leg-
33 islature that local law enforcement departments may
34 be equipped, according to local needs, with
35 breath-testing equipment, as described in this sec-
36 tion, as provided by the Department of Public Safety
37 and approved by the Department of Human Services.
38 Testimony or other evidence that any materials used
39 in operating or checking the operation of the equip-

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1 ment were bearing a statement of the manufacturer or
2 of the Department of Human Services shall be accepted
3 in court as prima facie evidence that the materials
4 were of a composition and quality as stated.

5 A person certified by the Maine Criminal Justice
6 Academy, under certification standards to be set by
7 the academy, as qualified to operate approved
8 self-contained, breath-alcohol testing apparatuses
9 may operate those apparatuses for the purpose of col-
10 lecting and analyzing a sample specimen of defend-
11 ants' breath.

12 Sec. 3. 29 MRSA §1312, sub-§7, as amended by PL
13 1981, c. 615, §2, is further amended to read:

14 7. Liability. No physician, physician's assist-
15 ant, registered nurse ~~or~~, person certified by the De-
16 partment of Human Services or hospital or other
17 health care provider in the exercise of due care
18 ~~shall~~ may be liable in damages or otherwise for any
19 act done or omitted to be done in performing the act
20 of collecting or withdrawing specimens of blood at
21 the request of a law enforcement officer pursuant to
22 this section.

23 Sec. 4. 29 MRSA §1312-B, sub-§2, as amended by
24 PL 1983, c. 501, §3, is repealed and the following
25 enacted in its place:

26 2. Penalties. The offense defined in subsection
27 1 is a Class D crime, provided that in the following
28 cases the following minimum penalties shall apply.

29 A. Except as provided in paragraph B, in the
30 case of a person having no previous convictions
31 of a violation of former section 1312, subsection
32 10, former section 1312-B or this section and
33 having no previous suspension of license or priv-
34 ilege to operate for failure to comply with the
35 duty to submit to and complete a test to deter-
36 mine the level of blood-alcohol under section

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1 1312 within a 6-year period, the fine shall not
2 be less than \$300 and the court shall suspend the
3 defendant's license or permit to operate, right
4 to operate a motor vehicle and right to apply for
5 and obtain a license for a period of 90 days,
6 which penalties may not be suspended.

7 B. In the case of a person having no previous
8 convictions of a violation of former section
9 1312, subsection 10, former section 1312-B, or
10 this section and having no previous suspension of
11 license or privilege to operate for failure to
12 comply with the duty to submit to and complete a
13 test to determine the level of blood-alcohol un-
14 der section 1312 within a 6-year period, the fine
15 shall not be less than \$300, the sentence shall
16 include a period of incarceration of not less
17 than 48 hours and the court shall suspend the de-
18 fendant's license or permit to operate, right to
19 operate a motor vehicle and right to apply for
20 and obtain a license for a period of 90 days,
21 which penalties may not be suspended, when the
22 person:

23 (1) Was tested as having a blood-alcohol
24 level of 0.15% or more;

25 (2) Was driving in excess of the speed lim-
26 it by 30 miles an hour or more during the
27 operation which resulted in the prosecution
28 for operating under the influence or with a
29 blood-alcohol level of 0.10% or more; or

30 (3) Eluded or attempted to elude an offi-
31 cer, as defined in section 2501-A, subsec-
32 tion 3, during the operation which resulted
33 in prosecution for operating under the in-
34 fluence or with a blood-alcohol level of
35 0.10% or more.

36 C. In the case of a person having one previous
37 conviction of a violation of former section 1312,

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1 subsection 10, former section 1312-B or this sec-
2 tion, or having at least one previous suspension
3 for failure to comply with the duty to submit to
4 and complete a test to determine the level of
5 blood-alcohol under section 1312 within a 6-year
6 period, the fine shall not be less than \$500, the
7 sentence shall include a period of incarceration
8 of not less than 7 days and the court shall sus-
9 pend the defendant's license or permit to oper-
10 ate, right to operate a motor vehicle and right
11 to apply for and obtain a license for a period of
12 one year, which penalties may not be suspended.

13 D. In the case of a person having 2 or more pre-
14 vious convictions of violations of former section
15 1312, subsection 10, former section 1312-B or
16 this section, within a 6-year period, the fine
17 shall not be less than \$750, the sentence shall
18 include a period of incarceration of not less
19 than 30 days and the court shall suspend the de-
20 fendant's license or permit to operate, right to
21 operate a motor vehicle and right to apply for
22 and obtain a license for a period of 2 years,
23 which penalties may not be suspended.

24 E. The penalties provided under paragraphs A, B,
25 C and D shall not be suspended by the court. The
26 court shall give notice of the suspension and
27 take physical custody of the operator's license
28 as provided in section 2241-H. The Secretary of
29 State may impose an additional period of suspen-
30 sion as provided in section 1312-D, subsection
31 1-A, or may extend any period of suspension until
32 satisfaction of any conditions imposed pursuant
33 to section 1312-D, subsection 3.'

34 Further amend the bill in section 4 in that part
35 designated "§1312-D." in subsection 1-A, first para-
36 graph in the last 2 lines (page 4, lines 30 and 31 in
37 L.D.) by striking out the following: "subsection 2-A,
38 paragraph B, subparagraph 3" and inserting in its
39 place the following: 'subsection 2'

OFR.

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1 Further amend the bill in section 4 in that part
2 designated "§1312-D." in subsection 1-A, 2nd para-
3 graph in the 4th line (page 4, line 35 in L.D.) by
4 striking out the following: "for a first offense
5 within a 6-year period" and inserting in its place
6 the following: '~~for a first offense within a 6-year~~
7 ~~period~~' and in the 6th line (page 4, line 37 in L.D.)
8 by striking out the following: "90 days" and insert-
9 ing in its place the following: '90 days suspension
10 periods'

11 Further amend the bill in section 4 in that part
12 designated "§1312-D." in subsection 1-A, 2nd para-
13 graph in the 7th and 8th lines (page 4, lines 38 and
14 39 in L.D.) by striking out the following: "subsec-
15 tion 2-A, paragraph A, subparagraph 3" and inserting
16 in its place the following: 'subsection 2'

17 Further amend the bill by renumbering the sec-
18 tions to read consecutively.

19 STATEMENT OF FACT

20 This amendment changes current operating under
21 the influence blood-alcohol testing procedures. A
22 breath test is the primary test and is to be adminis-
23 tered in all cases except where, in the law enforce-
24 ment officer's opinion, it would be unreasonable to
25 do so. This would include a medical condition of the
26 person stopped or the unavailability of the breath
27 test at the particular time. In such cases, a blood
28 test will be administered.

29 The amendment includes hospitals and other health
30 care providers in the group of persons who may not be
31 held liable for the exercise of due care when taking
32 a blood sample at the request of a law enforcement
33 officer. Negligence on the part of the hospital will
34 still give rise to liability if any injuries occur.

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1 The amendment also changes the penalties for op-
2 erating under the influence. The maximum penalties
3 are a fine of \$1,000 and imprisonment for up to a
4 year. The minimum penalties are as follows:

5 1. First offense without aggravating circum-
6 stances:

7 A. Not less than a \$300 fine;

8 B. Ninety-day license suspension; and

9 C. The court may impose a sentence of up to 364
10 days, but there is no mandatory minimum term of
11 incarceration.

12 2. First offense with aggravating circumstances,
13 blood-alcohol level of 0.15% or more; speeding 30
14 miles an hour above the speed limit; or eluding an
15 officer:

16 A. Not less than a \$300 fine;

17 B. Not less than 48 hours incarceration; and

18 C. Ninety-day license suspension.

19 3. Second offense:

20 A. Not less than a \$500 fine;

21 B. Not less than 7 days incarceration; and

22 C. One-year license suspension.

