

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 312

S.P. 117

In Senate, February 9, 1987

Reference to the Committee on Transportation suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate  
Presented by Senator GAUVREAU of Androscoggin.

Cosponsored by Representative MARSANO of Belfast,  
Representative CONLEY of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT Relating to the Suspension of Motor  
2 Vehicle Licenses for Refusal of  
3 Chemical Tests.  
4

5 Be it enacted by the People of the State of Maine as  
6 follows:

7 29 MRSA §1312, sub-§2, as amended by PL 1983, c.  
8 501, §2, is further amended to read:

9 2. Hearing. If a person as to whom there is  
10 probable cause fails to comply with the duty to sub-  
11 mit to a test to determine his blood-alcohol level by  
12 analysis of his blood or breath upon the request of a  
13 law enforcement officer, no test may be given. The  
14 Secretary of State, upon the receipt of a written  
15 statement under oath from a law enforcement officer,  
16 stating that the officer had probable cause to be-

1 lieve that a person was operating or attempting to  
2 operate a motor vehicle while under the influence of  
3 intoxicating liquor, and that the person failed to  
4 comply with the duty to submit to a test to determine  
5 the blood-alcohol level by analysis of his blood or  
6 breath, shall immediately notify the person, in writ-  
7 ing, as provided in section 2241, that his license or  
8 permit, his right to operate and his right to apply  
9 for or obtain a license have been suspended. The sus-  
10 pension shall be for a period of 180 days the first  
11 time the person fails to comply with the duty to sub-  
12 mit to the test and one year for each subsequent  
13 failure to comply with the duty to submit to the test  
14 within a 6-year period. The written statement shall  
15 be sent to the Secretary of State within 72 hours of  
16 the failure to comply with the duty to submit to the  
17 blood-alcohol test, excluding Saturdays, Sundays and  
18 holidays. If the statement is not sent within this  
19 time period, the Secretary of State shall neverthe-  
20 less impose the suspension for failing to comply  
21 with the duty to submit to a test, unless the delay  
22 has prejudiced the person's ability to prepare or  
23 participate in the hearing described in this subsection.  
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25 When a person's license is suspended under this sec-  
26 tion and is also suspended after having been adjudi-  
27 cated or convicted on charges arising out of the same  
28 occurrence for a violation of section 1312-B, former  
29 section 1312-C, or Title 15, section 3103, subsection  
30 1, paragraph F, the period of time his license has  
31 been suspended under this section prior to the adju-  
32 dications or conviction shall be deducted from the pe-  
33 riod of time of any court-imposed suspension ordered  
34 pursuant to section 1312-B, former section 1312-C, or  
35 Title 15, section 3103, subsection 1, paragraph F.  
36 Any period of time remaining on a suspension imposed  
37 pursuant to this section at the time of adjudication  
38 or conviction shall be served concurrently with any  
39 court-imposed period of suspension.

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

1 The scope of such a hearing shall cover whether there  
2 was probable cause to believe that the individual was  
3 either attempting to operate or was operating under  
4 the influence of intoxicating liquor and whether he  
5 failed to comply with the duty to submit to one of  
6 the blood-alcohol tests upon the request of a law en-  
7 forcement officer. Any suspension in effect shall be  
8 removed if, after hearing, it is determined that the  
9 person who failed to submit to the test would not  
10 have failed to submit but for the failure of the law  
11 enforcement officer to give either or both of the  
12 warnings required by subsection 1.

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

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

25 For the purposes of this section, a prior refusal or  
26 revocation of consent to submit to a chemical test  
27 shall be a prior refusal or revocation of consent if  
28 it occurred within a 6-year period of the date of the  
29 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 considered to have given his implied consent to  
4 chemical tests to determine their blood-alcohol level  
5 if there is probable cause to believe he has operated  
6 or attempted to operate under the influence of intoxicating liquor. The duty includes the duty to submit  
7 to either a blood or breath test. Refusal to submit  
8 to a chemical test triggers a mandatory 180-day license suspension for first refusals and a one-year  
9 license suspension for all subsequent refusals. A motorist adjudicated of civil operating under the influence must receive a 45-day license suspension by the court and the Secretary of State may extend the  
10 suspension period for up to 135 days. A person convicted of criminal operating under the influence of  
11 intoxicating liquor receives a mandatory 90-day license suspension from the court and is subject to an  
12 additional 275-day suspension by the Secretary of State, or 180 days for juvenile offenders. The license suspensions imposed by the court and Secretary  
13 of State are in addition to the mandatory license suspensions attributable to the refusal to submit to  
14 the chemical test.  
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25           This cumulative suspension feature of our implied consent law provides a strong disincentive for motorists charged with operating under the influence to enjoy their constitutional right to a trial. It is not uncommon in the state courts for a delay of 6  
26 months or more between the date an offense is charged and the time of trial. There is strong pressure on  
27 the defendants to admit the charge or plead guilty in order to minimize the impact of the cumulative suspension  
28 feature of our law, even if the defendant believes in his innocence and desires a trial to determine his guilt or innocence.  
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37           This bill retains the deterrent effect of our implied consent law, while relieving motorists from the penalty of insisting upon their day in court. Motorists adjudicated to have violated the operating under the influence laws are credited the license suspension period attributable to imposition of the implied consent law against court and administrative suspension.  
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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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