

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 971

H.P. 720 House of Representatives, March 26, 1987
Reference to the Committee on Legal Affairs suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative HILLOCK of Gorham.

STATE OF MAINE

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

1 AN ACT Concerning the Forfeiture of Vehicles
2 of Persons Operating after License
3 Suspension Who are Operating Under the
4 Influence.
5

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

8 Sec. 1. 29 MRSA §1312, sub-§2, as amended by PL
9 1983, c. 501, §2, is further amended to read:

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

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

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

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

43 If it is determined, after hearing, that there was
44 not probable cause to believe that such person was

1 either attempting to operate or was operating under
2 the influence of intoxicating liquor or that the per-
3 son did not fail to comply with the duty to submit to
4 a blood-alcohol test, any suspension in effect shall
5 be removed immediately.

6 If it is determined, after a hearing, that any sus-
7 pension in effect should be removed, the Secretary of
8 State shall delete any record of the suspension and
9 any record of his revocation of consent from that
10 person's driving record.

11 For the purposes of this section, a prior refusal or
12 revocation of consent to submit to a chemical test
13 shall be a prior refusal or revocation of consent if
14 it occurred within a 6-year period of the date of the
15 most recent refusal or revocation of consent.

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

22 Sec. 2. 29 MRSA §1312-D, sub-§1, as amended by
23 PL 1985, c. 412, §6, is further amended to read:

24 1. Recording and notice by Secretary of State.
25 On receipt of an attested copy of the court record of
26 a suspension of a person's license, right to operate
27 a motor vehicle or right to apply for or obtain a li-
28 cense or of a conviction under section 1312-B, the
29 Secretary of State shall immediately record the sus-
30 pension and shall send written notice of the suspen-
31 sion of the court to the person suspended. The Sec-
32 retary of State shall publish a notice of the suspen-
33 sion in a newspaper of general circulation in the
34 county where the person resides. If the court fails
35 to suspend the license, right to operate a motor ve-
36 hicle, or right to apply for or obtain a license of
37 any person convicted under section 1312-B, or the ju-
38 venile crime defined by Title 15, section 3103, sub-
39 section 1, paragraph F, the Secretary of State shall
40 suspend those rights for the period specified in sec-
41 tion 1312-B and Title 15, section 3314, subsection 3,
42 respectively, and shall send written notice of the

1 suspension as provided in this subsection. The Sec-
2 retary of State shall publish a notice of the suspen-
3 sion in a newspaper of general circulation in the
4 county where the person resides.

5 Sec. 3. 29 MRSA §1312-D, sub-§1-A, as amended by
6 PL 1985, c. 412, §6, is further amended to read:

7 1-A. Additional suspension. The Secretary of
8 State may suspend the license, the right to operate a
9 motor vehicle or the right to apply for or obtain a
10 license of any person convicted of violating section
11 1312-B for an additional period of up to 135 days be-
12 yond the 45-day period of suspension required under
13 section 1312-B, subsection 2.

14 The Secretary of State may suspend the license, the
15 right to operate or the right to apply for or obtain
16 a license of any person, including a juvenile, con-
17 victed under section 1312-B for an additional period
18 of up to 275 days beyond the suspension periods re-
19 quired under section 1312-B, subsection 2, or up to
20 185 days beyond the 180 days required under Title 15,
21 section 3314, subsection 3.

22 Notice of any additional suspension pursuant to this
23 subsection shall be given and published as provided
24 in subsection 1.

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

26 §2184-A. Forfeiture of motor vehicle

27 1. Forfeiture. A motor vehicle shall be subject
28 to forfeiture to the State and all property rights in
29 the motor vehicle shall be in the State, if:

30 A. It is operated by a person in violation of
31 section 2184 when the suspension was for a con-
32 viction for a violation of former section 1312,
33 subsection 10, or section 1312-B or for a failure
34 to comply with the duty to submit for a
35 blood-alcohol test under section 1312, subsection
36 2, and that person:

37 (1) Operates the vehicle in violation of
38 section 1312-B; or

1 (2) Fails to comply with the duty to submit
2 to a test to determine the blood-alcohol
3 level at the request of a law enforcement
4 officer who had probable cause to believe
5 that the person was operating or attempting
6 to operate the vehicle while under the in-
7 fluence of intoxicating liquor; and

8 B. The vehicle is:

9 (1) Registered in the name of that person;
10 or

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

13 (a) Permitted the operator to operate
14 the vehicle; and

15 (b) Knew that the operator's license
16 was under suspension. There is a re-
17 buttable presumption that the owner
18 knew that the operator's license was
19 under suspension if notice of that sus-
20 pension was published pursuant to sec-
21 tion 1312, subsection 2 or section
22 1312-D, subsection 1 or 1-A.

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

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

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

23 4. Ineffective conveyance. A transfer of regis-
24 tration or ownership of a vehicle from a person
25 charged with a violation of section 2184 shall not
26 prevent any forfeiture pursuant to this section.

27 STATEMENT OF FACT

28 The purpose of this bill is to provide for the
29 forfeiture of a motor vehicle when the following lim-
30 ited circumstances are met.

31 1. The person is convicted of operating after
32 suspension, because of operating a vehicle under the
33 influence of liquor or drugs, which suspension was
34 based upon a prior conviction of operating under the
35 influence or failure to comply with a blood-alcohol
36 level test.

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

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