

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1618

H.P. 1188 House of Representatives, May 18, 1987  
Reference to the Committee on Legal Affairs suggested and  
ordered printed.

EDWIN H. PERT, Clerk  
Presented by Representative WARREN of Scarborough.

Cosponsored by Representatives MacBRIDE of Presque Isle,  
LEBOWITZ of Bangor and STEVENSON of Unity.

STATE OF MAINE

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

1 AN ACT to Clarify the Offense of Driving  
2 under the Influence of Illegal Drugs.  
3

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

6 Sec. 1. 29 MRSA c. 11, sub-c. V, first 2 lines,  
7 are repealed and the following enacted in their  
8 place:

9 SUBCHAPTER V

10 DRIVING WHILE CHEMICALLY INTOXICATED

11 Sec. 2. 29 MRSA §1311-A, as repealed and re-  
12 placed by PL 1983, c. 850, §1, is amended to read:

1 §1311-A. Suspension on administrative determination  
2 for operating with an excessive  
3 blood-alcohol level or blood-drug concen-  
4 tration

5 1. Purpose. The purpose of this section is:

6 A. To provide maximum safety for all persons who  
7 travel or otherwise use the public highways of  
8 the State; and

9 B. To remove quickly from the public highways of  
10 this State those persons who have shown them-  
11 selves to be a safety hazard by operating or at-  
12 tempting to operate a motor vehicle with an ex-  
13 cessive blood-alcohol level or blood-drug  
14 concentration.

15 1-A. Definition. For the purposes of this sec-  
16 tion, "operating or attempting to operate a motor ve-  
17 hicle with an excessive blood-alcohol level" means  
18 operating or attempting to operate a motor vehicle  
19 while having 0.10% or more by weight of alcohol in  
20 the blood. For the purposes of this section "operat-  
21 ing or attempting to operate a motor vehicle with an  
22 excessive blood-drug level" means operating or at-  
23 tempting to operate a motor vehicle while under the  
24 influence of any drug or combination of drugs to a  
25 degree which renders a person incapable of safely  
26 driving.

27 2. Suspension. The Secretary of State shall  
28 make the determination of suspension as follows.

29 A. The Secretary of State shall suspend the li-  
30 cense or permit to operate, right to operate a  
31 motor vehicle and right to apply for or obtain a  
32 license of any person upon his determination that  
33 the person operated or attempted to operate a mo-  
34 tor vehicle with an excessive blood-alcohol level  
35 or an excessive blood-drug concentration.

36 B. The Secretary of State shall make a determi-  
37 nation on the basis of the information required  
38 in subsection 3, and this determination shall be  
39 final unless a hearing is requested and held. If  
40 a hearing is held, the Secretary of State shall

1 review the matter and make a final determination  
2 on the basis of evidence received at the hearing.

3 C. Except as provided in paragraph D, the de-  
4 termination of these facts by the Secretary of  
5 State is independent of the determination of the  
6 same or similar facts in the adjudication of any  
7 civil or criminal charges arising out of the same  
8 occurrence. The disposition of those civil or  
9 criminal charges shall not affect any suspension  
10 under this section. Statements made by the li-  
11 censee at the hearing before the Secretary of  
12 State shall not be introduced by the State in its  
13 case in chief in any prosecution for violation of  
14 section 1312-B, 1312-C or Title 15, section 3103,  
15 subsection 1, paragraph F, arising out of the  
16 same occurrence.

17 D. Upon receipt of notice from the court, pursu-  
18 ant to section 1312-C, subsection 4-A, the Secre-  
19 tary of State shall immediately remove the sus-  
20 pension of any person who is adjudicated not to  
21 have committed under section 1312-C, subsection  
22 2, paragraph B, the traffic infraction of operat-  
23 ing or attempting to operate a motor vehicle  
24 while having 0.10% or more by weight of alcohol  
25 in his blood or an excessive concentration of  
26 drugs in his blood or of any person who has had  
27 such a charge against him dismissed.

28 3. Report by law enforcement officer. A law en-  
29 forcement officer shall forward a report to the Sec-  
30 retary of State as follows.

31 A. A law enforcement officer who arrests or sum-  
32 mons any person for operating or attempting to  
33 operate a motor vehicle with an excessive  
34 blood-alcohol level or blood-drug concentration  
35 shall immediately forward to the Secretary of  
36 State a report, under oath of all information  
37 relevant to the enforcement action, including in-  
38 formation which adequately identifies the person  
39 arrested or summoned, a statement of the  
40 officer's grounds for belief that the person com-  
41 mitted the offense of operating or attempting to  
42 operate a motor vehicle with an excessive  
43 blood-alcohol level, or blood-drug concentration

1 and, in the case of an excessive blood-alcohol  
2 level, a certificate under section 1312, subsec-  
3 tion 8, of the results of any blood-alcohol tests  
4 by a self-contained breath-alcohol testing appa-  
5 ratus which were conducted.

6 B. The report required in this subsection shall  
7 be made on forms supplied by or approved by the  
8 Secretary of State.

9 C. If the blood-alcohol or blood-drug test was  
10 not analyzed by a law enforcement officer, the  
11 person who analyzed the results shall cause a  
12 copy of his certificate under section 1312, sub-  
13 section 8, to be sent to the Secretary of State.

14 4. Notice of suspension. The notice of suspen-  
15 sion by the Secretary of State shall be made as fol-  
16 lows.

17 A. Upon receipt of the information required in  
18 subsection 3, the Secretary of State shall make  
19 the determination described in subsection 2. If  
20 the Secretary of State determines that the person  
21 is subject to license suspension, he shall imme-  
22 diately issue a notice of suspension.

23 B. The notice of suspension shall be sent by  
24 regular mail to the person at the last known ad-  
25 dress on record at the Division of Motor Vehi-  
26 cles, or to the address provided in the report of  
27 the law enforcement officer if that address dif-  
28 fers from the address of record. The notice is  
29 deemed received 3 days after mailing, unless re-  
30 turned by postal authorities.

31 C. The notice of suspension shall clearly speci-  
32 fy the reason and statutory grounds for the sus-  
33 pension, the effective date of the suspension,  
34 the right of the person to request a hearing, the  
35 procedure for requesting a hearing and the date  
36 by which that request for a hearing shall be  
37 made. The notice of suspension shall also clear-  
38 ly state that a copy of the report of the law en-  
39 forcement officer under subsection 3, paragraph  
40 A, and when applicable a copy of the  
41 blood-alcohol or blood-drug test certificate un-

1 der subsection 3, paragraph A or C, will be pro-  
2 vided to the person upon request to the Secretary  
3 of State.

4 5. Effective date and period of suspension. The  
5 effective date and period of suspension are deter-  
6 mined as follows.

7 A. Any suspension imposed shall be effective on  
8 a specified date not less than 10 days after the  
9 mailing of the notification of suspension by the  
10 Secretary of State. If a person whose license is  
11 suspended desires to have a hearing, he shall so  
12 notify the Secretary of State, in writing, within  
13 10 days from the effective date of the suspen-  
14 sion. The suspension shall be stayed for 10 days  
15 from the effective date of the suspension. If,  
16 within 10 days from the effective date of the  
17 suspension, the Secretary of State is notified,  
18 in writing, of a request for a hearing, the sus-  
19 pension shall be stayed until a hearing is held  
20 and a decision is issued. The Secretary of State  
21 shall conduct a hearing and issue a decision  
22 within 30 days from the date of receipt of a  
23 written request for hearing. Failure by the Sec-  
24 retary of State to conduct a hearing and issue a  
25 decision within such 30-day period shall result  
26 in an extension of the stay of the Secretary of  
27 State's suspension order until such time as a  
28 hearing is conducted and a decision issued. Not-  
29 withstanding this subsection, there shall be no  
30 stay of suspension during the period of any delay  
31 in hearing which is caused or requested by the  
32 petitioner.

33 B. The period of license suspension for a person  
34 who the Secretary of State has determined to have  
35 operated or attempted to operate a motor vehicle  
36 with an excessive ~~blood-alcohol~~ blood-alcohol lev-  
37 el or blood-drug concentration for a first or  
38 subsequent offense shall be the same suspension  
39 period as if the person was convicted or adjudi-  
40 cated of a violation of section 1312-B, 1312-C or  
41 Title 15, section 3103, subsection 1, paragraph  
42 F.

1 C. When a person's license is suspended under  
2 this section and is also suspended after having  
3 been adjudicated or convicted on charges arising  
4 out of the same occurrence for a violation of  
5 section 1312-B, 1312-C, or Title 15, section  
6 3103, subsection 1, paragraph F, the period of  
7 time his license has been suspended under this  
8 section prior to the adjudication or conviction  
9 shall be deducted from the period of time any  
10 court-imposed suspension ordered pursuant to sec-  
11 tion 1312-B, 1312-C, or Title 15, section 3103,  
12 subsection 1, paragraph F. The periods of sus-  
13 pension are intended to be minimum periods of  
14 suspension and the Secretary of State may suspend  
15 the license for the additional periods as pro-  
16 vided in section 1312-D, subsection 1-A.

17 5-A. Work-restricted license. Upon receipt by  
18 the Secretary of State of a petition for a  
19 work-restricted license by any person whose license  
20 or right to operate a motor vehicle has been sus-  
21 pended pursuant to this section, the Secretary of  
22 State may stay the suspension during a statutory sus-  
23 pension period and issue a work-restricted license.  
24 The issuance of such a license shall be conditioned  
25 upon a showing by the petitioner by clear and con-  
26 vincing evidence that such a license is necessary to  
27 operate a motor vehicle between the residence and a  
28 place of employment or to operate a motor vehicle in  
29 the scope of employment, or both, as determined by  
30 the Secretary of State and that no alternative means  
31 of transportation is available.

32 6. Restoration of license. The Secretary of  
33 State may issue a license or permit as follows.

34 A. Restoration of any license or permit to oper-  
35 ate, right to operate a motor vehicle and right  
36 to apply for or obtain a license suspended under  
37 this section shall be in accordance with section  
38 1312-D, subsections 2 to 4.

39 7. Request for hearing. A person who has re-  
40 ceived notice of suspension may request a hearing as  
41 follows.

1 A. Any person who has received a notice of sus-  
2 pension under this section may make a written re-  
3 quest for a review of the determination of the  
4 Secretary of State at a hearing.

5 B. The request for a hearing shall be made with-  
6 in 10 days from the effective date of the suspen-  
7 sion. If a written request for a hearing is made  
8 after the 10-day period and the Secretary of  
9 State finds that the person was unable to make a  
10 timely request due to lack of actual notice of  
11 the suspension or due to factors of physical in-  
12 capacity, the Secretary of State shall waive the  
13 period of limitation, reopen the matter and grant  
14 the hearing request, except, in such a case, a  
15 stay of the suspension pending the hearing shall  
16 not be granted.

17 8. Hearing. The hearing and notice shall be as  
18 follows.

19 A. The hearing and notice shall be as provided  
20 in section 2241, subsection 3.

21 B. The scope of the hearing shall include wheth-  
22 er, by a preponderance of the evidence:

23 (1) There was probable cause to believe  
24 that the person was operating or attempting  
25 to operate a motor vehicle while having  
26 0.10% or more by weight of alcohol in his  
27 blood or an excessive blood-drug  
28 concentration;

29 (2) The person operated or attempted to op-  
30 erate a motor vehicle; and

31 (3) At the time the person had 0.10% or  
32 more by weight of alcohol in his blood or an  
33 excessive blood-drug concentration.

34 C. A certificate duly signed and sworn to pursu-  
35 ant to section 1312, subsection 8, shall be prima  
36 facie proof of facts stated therein and that the  
37 person taking a specimen of blood or breath was  
38 authorized by section 1312, subsection 6, that  
39 the equipment, chemicals and other materials used



1 in the taking of the blood specimen or breath  
2 sample were of a quality appropriate for the pur-  
3 pose of producing reliable test results that any  
4 equipment, chemicals or materials required by  
5 section 1312, subsection 6, to be approved by the  
6 Department of Human Services were in fact ap-  
7 proved, that the sample tested by the person cer-  
8 tified under section 1312, subsection 6, was in  
9 fact the same sample taken and that the percent-  
10 age by weight of alcohol or drugs in the blood  
11 was, at the time the blood or breath sample was  
12 taken, as stated in the certificate.

13 D. If it is determined after hearing that there  
14 was not the requisite probable cause for  
15 blood-alcohol or blood-drug test administration  
16 or that the person did not operate or attempt to  
17 operate a motor vehicle while having 0.10% or  
18 more by weight of alcohol in his blood or an ex-  
19 cessive blood-drug concentration, the suspension  
20 shall be removed immediately and the Secretary of  
21 State shall delete any record of the suspension.

22 E. Any person whose license is suspended under  
23 this section on the basis of blood-alcohol or  
24 blood-drug test may, within 30 days after receipt  
25 of the decision, appeal to the Superior Court for  
26 judicial review, as provided in Title 5, sections  
27 11001 to 11008. If the court rescinds the sus-  
28 pension, it shall also order the Secretary of  
29 State to delete any record of the suspension.

30 **Sec. 3. 29 MRSA §1312, as amended by PL 1985, c.**  
31 **412, §§1 to 3, is further amended to read:**

32 §1312. Implied consent to chemical tests; adminis-  
33 tration of test; testing procedures; use of  
34 test

35 Any person who operates or attempts to operate a  
36 motor vehicle within this State shall have the duty  
37 to submit to a test to determine his blood-alcohol  
38 level or blood-drug concentration by analysis of his  
39 blood or breath, if there is probable cause to be-  
40 lieve he has operated or attempted to operate a motor  
41 vehicle while under the influence of intoxicating li-  
42 quor or drugs. The duty to submit to a blood-alcohol

1 test includes the duty to complete either a blood or  
2 breath test.

3 He If there is probable cause to believe that a  
4 person has operated or attempted to operate a motor  
5 vehicle while under the influence of intoxicating li-  
6 quor, that person shall be informed by a law enforce-  
7 ment officer that a breath test will be adminis-  
8 tered, unless, in the determination of the law  
9 enforcement officer, it is unreasonable for a breath  
10 test to be administered, in which case a blood test  
11 shall be administered. When a blood test is re-  
12 quired, the test may be administered by a physician  
13 of the accused's choice, at the request of the ac-  
14 cusd and if reasonably available. The law enforce-  
15 ment officer may determine which type of breath test,  
16 as described in subsection 6, is to be administered.

17 1. Prerequisites to tests. Before any test spec-  
18 ified is given, the law enforcement officer shall in-  
19 form the person as to whom there is probable cause  
20 that, if he fails to comply with the duty to submit  
21 to and complete a test to determine the level of  
22 blood-alcohol or blood-drug concentration at the di-  
23 rection of the law enforcement officer, his license  
24 or permit to operate, his right to operate or his  
25 right to apply for or obtain a license will be sus-  
26 pended for 180 days or, in the case of a 2nd or sub-  
27 sequent failure to submit to and complete that test  
28 within a 6-year period, one year. The officer should  
29 also inform the person that the failure to comply  
30 with the duty to submit to a blood-alcohol or  
31 blood-drug test shall be admissible in evidence  
32 against him at any trial for operating under the in-  
33 fluence of intoxicating liquor or drugs.

34 No test results may be excluded as evidence in any  
35 proceeding before any administrative officer or court  
36 of this State as a result of the failure of the law  
37 enforcement officer to comply with this prerequisite.  
38 The only effects of the failure of the officer to  
39 comply with this prerequisite shall be as provided in  
40 subsections 2 and 8.

41 2. Hearing. If a person as to whom there is  
42 probable cause fails to comply with the duty to sub-  
43 mit to a test ~~to determine his blood-alcohol level by~~

1 ~~analysis of his blood or breath upon the request of a~~  
2 ~~law enforcement officer as provided in subsection 1,~~  
3 no test may be given. The Secretary of State, upon  
4 the receipt of a written statement under oath from a  
5 law enforcement officer, stating that the officer had  
6 probable cause to believe that a person was operating  
7 or attempting to operate a motor vehicle while under  
8 the influence of intoxicating liquor or any drug, and  
9 that the person failed to comply with the duty to  
10 submit to a test to determine the blood-alcohol level  
11 by analysis of his blood or breath, shall immediately  
12 notify the person, in writing, as provided in section  
13 2241, that his license or permit, his right to oper-  
14 ate and his right to apply for or obtain a license  
15 have been suspended. The suspension shall be for a  
16 period of 180 days the first time the person fails to  
17 comply with the duty to submit to the test and one  
18 year for each subsequent failure to comply with the  
19 duty to submit to the test within a 6-year period.  
20 The written statement shall be sent to the Secretary  
21 of State within 72 hours of the failure to comply  
22 with the duty to submit to the blood-alcohol or  
23 blood-drug test, excluding Saturdays, Sundays and  
24 holidays. If the statement is not sent within this  
25 time period, the Secretary of State shall neverthe-  
26 less impose the suspension for failing to comply  
27 with the duty to submit to a test, unless the delay  
28 has prejudiced the person's ability to prepare or  
29 participate in the hearing described in this subsec-  
30 tion.

31 If such person desires to have a hearing, he shall  
32 notify the Secretary of State within 10 days, in  
33 writing, of such desire. Any suspension shall remain  
34 in effect pending the outcome of such hearing, if re-  
35 quested.

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

1 of the law enforcement officer to give either or both  
2 of the warnings required by subsection 1.

3 If it is determined, after hearing, that there was  
4 not probable cause to believe that such person was  
5 either attempting to operate or was operating under  
6 the influence of intoxicating liquor or any drug or  
7 that the person did not fail to comply with the duty  
8 to submit to ~~a blood-alcohol-test~~ any test provided  
9 under subsection 1, any suspension in effect shall be  
10 removed immediately.

11 If it is determined, after a hearing, that any sus-  
12 pension in effect should be removed, the Secretary of  
13 State shall delete any record of the suspension and  
14 any record of his revocation of consent from that  
15 person's driving record.

16 For the purposes of this section, a prior refusal or  
17 revocation of consent to submit to a chemical test  
18 shall be a prior refusal or revocation of consent if  
19 it occurred within a 6-year period of the date of the  
20 most recent refusal or revocation of consent.

21 3. Review. Any person, whose license, permit or  
22 right to operate or right to apply for or obtain a  
23 license is suspended for failing to comply with the  
24 duty to submit to a test ~~to---determine---his~~  
25 ~~blood-alcohol---level---by---analysis---of---his---blood---or~~  
26 ~~breath---at---the---direction---of---a---law---enforcement---officer~~  
27 ~~claiming---to---have---had---probable---cause---to---believe---that~~  
28 ~~the---person---operated---or---attempted---to---operate---while---under~~  
29 ~~the---influence---of---intoxicating---liquor~~ under sub-  
30 section 1, shall have the right to file a petition in  
31 the Superior Court in the county where he resides, or  
32 in Kennebec County, to review the order of suspension  
33 by the Secretary of State by the same procedure as is  
34 provided in section 2242. If the court rescinds the  
35 suspension, it shall also order the Secretary of  
36 State to delete any record of the suspension and any  
37 record of the revocation of consent from that  
38 person's driving record.

39 4. Results of test. Upon the request of the per-  
40 son who shall submit to a chemical test or tests at  
41 the request of a law enforcement officer, full infor-  
42 mation concerning the test or tests shall be made

1 available to him or his attorney by the law enforce-  
2 ment officer.

3 5. Blood-alcohol level.

4 A. If there was, at the time alleged, 0.05% or  
5 less by weight of alcohol in the defendant's  
6 blood, it is prima facie evidence that the de-  
7 fendant was not under the influence of intoxicat-  
8 ing liquor.

9 B. If there was, at the time alleged, in excess  
10 of 0.05%, but less than 0.10% by weight of alco-  
11 hol in the defendant's blood, it is relevant evi-  
12 dence, but it is not to be given prima facie ef-  
13 fect in indicating whether or not the defendant  
14 was under the influence of intoxicating liquor  
15 within the meaning of this section, but such fact  
16 may be considered with other competent evidence  
17 in determining whether or not the defendant was  
18 under the influence of intoxicating liquor.

19 C. For purposes of evidence in proceedings other  
20 than those arising under section 1312-B or  
21 1312-C, it shall be presumed that a person was  
22 under the influence of intoxicating liquor when  
23 he has a blood-alcohol level of 0.10% or more by  
24 weight.

25 D. Percent by weight of alcohol in the blood  
26 shall be based upon grams of alcohol per one hun-  
27 dred milliliters of blood.

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

34 Only a duly licensed physician, registered  
35 physician's assistant, registered nurse or a person  
36 certified by the Department of Human Services under  
37 certification standards to be set by that department,  
38 acting at the request of a law enforcement officer,  
39 may draw a specimen of blood for the purpose of de-  
40 termining the blood-alcohol level or blood-drug

1 concentration of a person who is complying with the  
2 duty to submit to a blood-alcohol test pursuant to  
3 this section. This limitation shall not apply to the  
4 taking of breath specimens.

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

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

31 As an alternative to the method of breath testing described  
32 in this subsection, a law enforcement officer may test the  
33 breath of any person whom there is probable cause to believe  
34 has operated or attempted to operate a motor vehicle while  
35 under the influence of intoxicating liquor by use of a self-contained,  
36 breath-alcohol testing apparatus to determine the blood-alcohol  
37 level, provided the testing apparatus is reasonably available.  
38 The procedures for the operation and testing of self-contained  
39 breath-alcohol testing apparatuses shall be as provided by  
40 regulation promulgated by the Department of Human Services.  
41 The result of any such test shall be accepted as prima facie  
42 evidence of the blood-alcohol level in any court.  
43  
44  
45

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

12 Failure to comply with any provisions of this subsection  
13 or with any regulations promulgated in this  
14 subsection shall not, by itself, result in the exclu-  
15 sion of evidence of blood-alcohol level or blood-drug  
16 concentration, unless the evidence is determined to  
17 be not sufficiently reliable.

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

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

42 7. Liability. No physician, physician's assist-  
43 ant, registered nurse, person certified by the De-

1 partment of Human Services or hospital or other  
2 health care provider in the exercise of due care may  
3 be liable in damages or otherwise for any act done or  
4 omitted to be done in performing the act of collect-  
5 ing or withdrawing specimens of blood at the request  
6 of a law enforcement officer pursuant to this sec-  
7 tion.

8 8. Evidence. The blood-drug concentration or per-  
9 centage by weight of alcohol in the defendant's blood  
10 at the time alleged, as shown by the chemical analy-  
11 sis of his blood or breath, or by results of a  
12 self-contained, breath-alcohol testing apparatus au-  
13 thorized by subsection 6, shall be admissible in evi-  
14 dence.

15 When a person, certified under subsection 6, conducts  
16 a chemical analysis of blood or breath for the pur-  
17 pose of determining blood-alcohol level or blood-drug  
18 concentration, he may issue a certificate stating the  
19 results of the analysis. That certificate, when duly  
20 signed and sworn to by the certified person, shall be  
21 admissible in evidence in any court of the State. It  
22 shall be prima facie evidence that the person taking  
23 a specimen of blood was a person authorized by sub-  
24 section 6, that the equipment, chemicals and other  
25 materials used in the taking of the blood specimen or  
26 a breath sample were of a quality appropriate for the  
27 purpose of producing reliable test results, that any  
28 equipment, chemicals or materials required by subsec-  
29 tion 6 to be approved by the Department of Human Ser-  
30 vices were in fact approved, that the sample tested  
31 by the person certified under subsection 6 was in  
32 fact the same sample taken from the defendant and  
33 that the blood-drug concentration or percentage by  
34 weight of alcohol in the blood of the defendant was,  
35 at the time the blood or breath sample was taken, as  
36 stated in the certificate, unless with 10 days writ-  
37 ten notice to the prosecution, the defendant requests  
38 that a qualified witness testify as to any of the  
39 matters as to which the certificate constitutes prima  
40 facie evidence. The notice shall specify those mat-  
41 ters concerning which the defendant requests testimo-  
42 ny.

43 A person certified under subsection 6, as qualified  
44 to operate a self-contained, breath-alcohol testing



1 apparatus for the purpose of determining  
2 blood-alcohol level, may issue a certificate stating  
3 the results of the analysis. That certificate, when  
4 duly signed and sworn to by the certified person,  
5 shall be admissible in evidence in any court of the  
6 State. It shall be prima facie evidence that the per-  
7 centage by weight of alcohol in the blood of the de-  
8 fendant was, at the time the breath sample was taken,  
9 as stated in the certificate, unless, with 10-days'  
10 written notice to the prosecution, the defendant re-  
11 quests that the operator or other qualified witness  
12 testify as to the results of the analysis.

13 Transfer of sample specimens to and from a laboratory  
14 for purposes of analysis may be by certified or reg-  
15 istered mail, and when so made shall be deemed to  
16 comply with all requirements regarding the continuity  
17 of custody of physical evidence.

18 The failure of a person to comply with the duty re-  
19 quired by this section to submit to a ~~blood-alcohol~~  
20 any test under subsection 6 shall be admissible in  
21 evidence on the issue of whether that person was un-  
22 der the influence of intoxicating liquor or drugs.  
23 If the law enforcement officer having probable cause  
24 to believe that the person operated or attempted to  
25 operate a motor vehicle under the influence of intox-  
26 icating liquor or drugs fails to give either of the  
27 warnings required under subsection 1, the failure of  
28 the person to comply with the duty to submit to a  
29 ~~blood-alcohol-test~~ any test under subsection 6 shall  
30 not be admissible. If a failure to submit to a  
31 ~~blood-alcohol-test~~ any test under subsection 6 is not  
32 admitted into evidence, the court may inform the jury  
33 of the fact that no test result is available.

34 If a test result is not available for a reason other  
35 than failing to comply with the duty to submit to a  
36 ~~blood-alcohol~~ any test under subsection 6, the un-  
37 availability and the reason shall be admissible in  
38 evidence.

39 8-A. Statements by accused. Any statement by a  
40 defendant that he was the operator of a motor vehi-  
41 cle, which he is accused of operating in violation of  
42 former subsection 10, section 1312-B or 1312-C, shall  
43 be admissible in a proceeding under former subsection

1 10, section 1312-B or 1312-C, if it was made volun-  
2 tarily and is otherwise admissible under the United  
3 States Constitution or the Constitution of Maine. The  
4 statement may constitute sufficient proof by itself,  
5 without further proof of corpus delicti, that the mo-  
6 tor vehicle was operated and was operated by the de-  
7 fendant.

8 9. Payment for tests. Persons authorized to take  
9 specimens of blood at the direction of a law enforce-  
10 ment officer and persons authorized to perform

11 11. Accidents and officer's duties.

12 A. After a person has been charged with operat-  
13 ing or attempting to operate a motor vehicle un-  
14 der the influence of intoxicating liquor or drugs  
15 or with a blood-alcohol level of 0.10% or more,  
16 the investigating or arresting officer shall in-  
17 vestigate to determine whether the charged person  
18 has any prior convictions under former subsection  
19 10 or section 1312-B or an adjudication under  
20 section 1312-C. As part of his investigation, the  
21 officer shall make the necessary inquiries of the  
22 Secretary of State.

23 B. A law enforcement officer may arrest, without  
24 a warrant, any person the officer has probable  
25 cause to believe has operated or attempted to op-  
26 erate a motor vehicle while under the influence  
27 of intoxicating liquor or drugs if the arrest oc-  
28 curs within a period following the offense rea-  
29 sonably likely to result in the obtaining of  
30 probative evidence of blood-alcohol level.

31 Sec. 4. 29 MRSA §1312-B, sub-§2, as enacted by  
32 PL 1985, c. 412, §4, is further amended to read:

33 2. Penalties. The offense defined in subsection  
34 1 is a Class D crime, provided that in the following  
35 cases the following minimum penalties shall apply.

36 A. Except as provided in paragraph B, in the  
37 case of a person having no previous convictions  
38 of a violation of former section 1312, subsection  
39 10, former section 1312-B or this section and

1 having no previous suspension of license or priv-  
2 ilege to operate for failure to comply with the  
3 duty to submit to and complete a test to deter-  
4 mine the level of blood-alcohol or blood-drug  
5 concentration under section 1312 within a 6-year  
6 period, the fine shall not be less than \$300 and  
7 the court shall suspend the defendant's license  
8 or permit to operate, right to operate a motor  
9 vehicle and right to apply for and obtain a li-  
10 cense for a period of 90 days, which penalties  
11 may not be suspended.

12 B. In the case of a person having no previous  
13 convictions of a violation of former section  
14 1312, subsection 10, former section 1312-B, or  
15 this section and having no previous suspension of  
16 license or privilege to operate for failure to  
17 comply with the duty to submit to and complete a  
18 test to determine the level of blood-alcohol or  
19 blood-drug concentration under section 1312 with-  
20 in a 6-year period, the fine shall not be less  
21 than \$300, the sentence shall include a period of  
22 incarceration of not less than 48 hours and the  
23 court shall suspend the defendant's license or  
24 permit to operate, right to operate a motor vehi-  
25 cle and right to apply for and obtain a license  
26 for a period of 90 days, which penalties may not  
27 be suspended, when the person:

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

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

35 (3) Eluded or attempted to elude an offi-  
36 cer, as defined in section 2501-A, subsec-  
37 tion 3, during the operation which resulted  
38 in prosecution for operating under the in-  
39 fluence or with a blood-alcohol level of  
40 0.10% or more.

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

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 or blood-drug concentration under  
6 section 1312 within a 6-year period, the fine  
7 shall not be less than \$500, the sentence shall  
8 include a period of incarceration of not less  
9 than 7 days and the court shall suspend the de-  
10 fendant's license or permit to operate, right to  
11 operate a motor vehicle and right to apply for  
12 and obtain a license for a period of one year,  
13 which penalties may not be suspended.

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

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

35 **Sec. 5. 29 MRSA §1312-D, sub-§2, as amended by**  
36 **PL 1985, c. 412, §6, is further amended to read:**

37 2. Education and treatment programs. Following  
38 the expiration of 2/3 of the total period suspension  
39 imposed pursuant to subsection 1 and 1-A, section  
40 1312-B, former section 1312-B, subsection 2 or Title  
41 15, section 3314, the Secretary of State may issue a  
42 license or permit to the person if he receives writ-  
43 ten notice that the person has satisfactorily com-

1 pleted ~~the~~ alcohol a substance abuse education pro-  
2 gram of the Department of Human Services and, when  
3 required, has satisfactorily completed ~~an alcohol~~ a  
4 substance abuse treatment or rehabilitation program  
5 approved or licensed by the department.

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

8 5. Restricted licenses for suspension for fail-  
9 ure to comply with duty to submit to blood-alcohol or  
10 blood-drug test. The Secretary of State may issue a  
11 restricted license or permit to any person whose li-  
12 cense or permit has been suspended for a first fail-  
13 ure to comply with the duty to submit to a  
14 blood-alcohol test or a blood-drug test under section  
15 1312, subsection 2, if the conditions of issuance  
16 following a conviction or adjudication under section  
17 1312-B are met by the person and a period of suspen-  
18 sion of not less than 90 days has elapsed.

19 Sec. 7. 29 MRSA §1312-D, sub-§8, as amended by  
20 PL 1985, c. 412, §6, is further amended to read:

21 8. Consecutive suspensions. Any suspension pur-  
22 suant to this section or the former section 1312,  
23 subsection 10 or section 1312-B or former section  
24 1312-B, subsection 2 shall be consecutive to any sus-  
25 pension imposed under section 1312, subsection 2, for  
26 failing to comply with the duty to submit to a test  
27 to determine blood-alcohol level by analysis of blood  
28 or breath or blood-drug concentration by analysis of  
29 blood.

30 Sec. 8. 29 MRSA §1313-A, sub-§1, ¶C, as enacted  
31 by PL 1985, c. 331, is amended to read:

32 C. There was probable cause to believe that the  
33 person was operating under the influence of in-  
34 toxicating liquor or drugs and failed to comply  
35 with his duty to submit to and complete a test to  
36 determine his blood-alcohol level or blood-drug  
37 concentration; or

38 Sec. 9. 29 MRSA §1313-A, sub-§2, as enacted by  
39 PL 1985, c. 331, is amended to read:

1           2. Content of report. The report required in  
2 subsection 1 shall contain all relevant facts which  
3 formed the basis for the conviction of adjudication,  
4 including blood-alcohol and blood-drug test results  
5 if available.

6           Sec. 10. 29 MRSA §1318 is enacted to read:

7           §1318. Chemical tests in fatal crashes

8           1. Mandatory blood tests. When an accident re-  
9 sults in the death of any driver or pedestrian within  
10 4 hours of the accident, the Medical Examiner or of-  
11 ficial performing life functions shall withdraw blood  
12 or any other bodily substance from the deceased driv-  
13 er or pedestrian so the amount of alcohol or drugs in  
14 his blood can be determined. When possible, the  
15 withdrawal shall occur within 8 hours of death.

16           2. Age restrictions. Subsection 1 shall not re-  
17 quire withdrawing blood or any other bodily substance  
18 from a driver or pedestrian who is less than 16 years  
19 of age at the time of his death.

20           3. Testing procedures. The Medical Examiner, or  
21 official performing like functions, or an approved  
22 laboratory shall analyze the blood or other substance  
23 to determine the amount of alcohol or drug in the  
24 driver's or pedestrian's blood.

25           4. Reporting of tests. The results of the anal-  
26 ysis required by this section shall be reported to  
27 the Department of Human Services and may be used by  
28 state and local officials only for statistical pur-  
29 poses that do not reveal the identity of the deceased  
30 person. Nothing in this subsection should restrict  
31 the tests as evidence in criminal or civil proceed-  
32 ings.

33           5. Standards of testing. Withdrawal of blood or  
34 another bodily substance and its analysis shall com-  
35 ply with requirements of the Department of Human Ser-  
36 vices.

1

STATEMENT OF FACT

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This bill amends the operating under the influence law to include operating under the influence of drugs as an offense under the law. The bill also clarifies the implied consent and penalty provisions and requires mandatory blood testing of individuals involved in fatal automobile accidents.

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