

MAINE STATE LEGISLATURE

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L.D. 2395

(Filing No. H- 669)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395,
Bill, "AN ACT to Strengthen the Drunk Driving Laws."

Amend the bill by striking out everything after
the enacting clause and inserting in its place the
following:

'Sec. 1. 15 MRSA §152, as amended by PL 1979,
c. 663, §87, is further amended to read:

§152. Fresh pursuit defined

The term "fresh pursuit" as used in this chapter
includes fresh pursuit as defined by the common law,
and the pursuit of a person who has committed a crime
punishable by a maximum term of imprisonment equal to
or exceeding one year or, who is reasonably
suspected of having committed such a crime or who is
reasonably suspected of operating a motor vehicle
while under the influence of intoxicating liquor or
drugs. It shall include the pursuit of a person
suspected of having committed a supposed crime
punishable by a maximum term of imprisonment equal to
or exceeding one year, though no such crime has
actually been committed, if there is reasonable ground
for believing that such a crime has been committed.
Fresh pursuit as used herein in this chapter shall
not necessarily imply instant pursuit, but pursuit
without unreasonable delay.

Sec. 2. 15 MRSA §154, as amended by PL 1979, c.

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 663, §88, is further amended to read:

2 §154. Arrest; exception

3 Any member of a duly organized state, county or
4 municipal police unit of another state of the United
5 States, who enters this State in fresh pursuit and
6 continues within this State in such fresh pursuit of a
7 person in order to arrest him on the ground that he is
8 believed to have committed, in such other state, a
9 crime punishable by a maximum term of imprisonment
10 equal to or exceeding one year or to have operated a
11 motor vehicle while under the influence of
12 intoxicating liquor or drugs in such other state,
13 shall have the same authority to arrest and hold such
14 person in custody as has any member of any duly
15 organized state, county or municipal police unit of
16 this State to arrest and hold in custody a person on
17 the ground that he is believed to have committed such
18 a crime or operated a motor vehicle while under the
19 influence of intoxicating liquor or drugs in this
20 State. This section shall not be construed so as to
21 make unlawful any arrest in this State which would
22 otherwise be lawful.

23 **Sec. 3.** 16 MRSA §357, as amended by PL 1973, c.
24 788, §66, is further amended by adding at the end a
25 new paragraph to read:

26 Notwithstanding this section, the result of a
27 laboratory or any other test kept by a hospital or
28 other medical facility, which reflects blood-alcohol
29 concentration, shall not be excluded as evidence in a
30 criminal or civil proceeding by reason of any claim of
31 confidentiality or privilege and may be admitted
32 provided that the result is relevant and reliable
33 evidence if the proceeding is one in which the
34 operator of a motor vehicle or watercraft is alleged
35 to have operated under the influence of intoxicating
36 liquor or drugs.

37 **Sec. 4.** 29 MRSA §540-A, as amended by PL 1985,
38 c. 539, §6, is repealed and the following enacted in
39 its place:

40 §540-A. Coded licenses

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 1. Under 21 years of age. The Secretary of State
2 shall provide that licenses issued to persons under 21
3 years of age be distinctive, either by being printed
4 with a different color than for those issued to
5 persons 21 years of age or older or by some other
6 appropriate distinguishing mark or code.

7 2. Prior convictions. The Secretary of State
8 shall provide that the license of a person who has
9 been convicted of operating under the influence of
10 intoxicating liquor, drugs or with an excessive
11 blood-alcohol level within 6 years prior to the date
12 the license is issued, reissued or returned after a
13 period of suspension, shall bear a coded notation
14 indicating that fact. For purposes of this
15 subsection, a conviction of operating under the
16 influence of intoxicating liquor, drugs or with an
17 excessive blood-alcohol level has the same meaning as
18 specified in section 2241-J, subsection 12.

19 Sec. 5. 29 MRSA §1311-A, sub-§1-A, as repealed
20 and replaced by PL 1983, c. 850, §1, is amended to
21 read:

22 1-A. Definition. For the purposes of this
23 section, "operating or attempting to operate a motor
24 vehicle with an excessive blood-alcohol level" means
25 operating or attempting to operate a motor vehicle
26 while having ~~0-10%~~ 0.08% or more by weight of
27 alcohol in the blood.

28 Sec. 6. 29 MRSA §1311-A, sub-§3, 1A, as
29 repealed and replaced by PL 1983, c. 850, §1, is
30 amended to read:

31 A. A law enforcement officer who arrests or,
32 summons or conducts an investigation which results
33 in criminal charges against any person for
34 operating or attempting to operate a motor vehicle
35 with an excessive blood-alcohol level shall
36 immediately forward to the Secretary of State a
37 report, under oath of all information relevant to
38 the enforcement action, including information
39 which adequately identifies the person arrested
40 or, summonsed or charged, a statement of the

1 officer's grounds for belief that the person
2 committed the offense of operating or attempting
3 to operate a motor vehicle with an excessive
4 blood-alcohol level, and a certificate under
5 section 1312, subsection 8, of the results of any
6 blood-alcohol tests by a self-contained
7 breath-alcohol testing apparatus which were
8 conducted.

9 Sec. 7. 29 MRSA §1311-A, sub-§5-A, as repealed
10 and replaced by PL 1983, c. 850, §1, is amended to
11 read:

12 5-A. Work-restricted license. Upon receipt by
13 the Secretary of State of a petition for a
14 work-restricted license by any person whose license or
15 right to operate a motor vehicle has been suspended
16 pursuant to this section, the Secretary of State may
17 stay the suspension during a statutory suspension
18 period and issue a work-restricted license. The
19 issuance of such a license shall be conditioned upon a
20 showing by the petitioner by clear and convincing
21 evidence that such a license is necessary to operate a
22 motor vehicle between the residence and a place of
23 employment or to operate a motor vehicle in the scope
24 of employment, or both, as determined by the Secretary
25 of State and, that no alternative means of
26 transportation is available, and that the
27 petitioner has not, within 6 years, been suspended:

28 A. For failing to comply with the duty to submit
29 to and complete a chemical test to determine
30 blood-alcohol level;

31 B. Pursuant to this section; or

32 C. For a conviction of operating under the
33 influence of intoxicating liquor or drugs or with
34 an excessive blood-alcohol level or the
35 corresponding juvenile offense.

36 Sec. 8. 29 MRSA §1311-A, sub-§8, 1B, as
37 repealed and replaced by PL 1983, c. 850, §1, is
38 amended to read:

39 B. The scope of the hearing shall include

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 whether, by a preponderance of the evidence:

2 (1) There was probable cause to believe that
3 the person was operating or attempting to
4 operate a motor vehicle while having ~~0-10%~~
5 0.08% or more by weight of alcohol in his
6 blood;

7 (2) The person operated or attempted to
8 operate a motor vehicle; and

9 (3) At the time the person had ~~0-10%~~
10 0.08% or more by weight of alcohol in his
11 blood.

12 **Sec. 9. 29 MRSA §1311-A, sub-§8, ¶D, as**
13 **repealed and replaced by PL 1983, c. 850, §1, is**
14 **amended to read:**

15 D. If it is determined after hearing that there
16 was not the requisite probable cause for
17 blood-alcohol test administration or that the
18 person did not operate or attempt to operate a
19 motor vehicle while having ~~0-10%~~ 0.08% or more
20 by weight of alcohol in his blood, the suspension
21 shall be removed immediately and the Secretary of
22 State shall delete any record of the suspension.

23 **Sec. 10. 29 MRSA §1312, sub-§1, as amended by**
24 **PL 1983, c. 501, §1, is further amended to read:**

25 1. Prerequisites to tests. Before any test
26 specified is given, the law enforcement officer shall
27 inform the person as to whom there is probable cause
28 that, if he fails to comply with the duty to submit to
29 and complete a test to determine the level of
30 blood-alcohol at the direction of the law enforcement
31 officer, his license or permit to operate, his right
32 to operate or his right to apply for or obtain a
33 license will be suspended for ~~180 days or~~, in the
34 case of a 2nd or subsequent failure to submit to and
35 complete that test within a 6-year period, one year
36 and the period of suspension shall be a minimum of 6
37 months and may be as long as 3 years. The officer
38 should also inform the person that the failure to
39 comply with the duty to submit to a blood-alcohol test

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 shall be admissible in evidence against him at any
2 trial for operating under the influence of
3 intoxicating liquor.

4 No test results may be excluded as evidence in any
5 proceeding before any administrative officer or court
6 of this State as a result of the failure of the law
7 enforcement officer to comply with this prerequisite.
8 The only effects of the failure of the officer to
9 comply with this prerequisite shall be as provided in
10 subsections 2 and 8.

11 Sec. 11. 29 MRSA §1312, sub-§2, as amended by
12 PL 1983, c. 501, §2, is further amended to read:

13 2. Hearing. If a person as to whom there is
14 probable cause fails to comply with the duty to submit
15 to a test to determine his blood-alcohol level by
16 analysis of his blood or breath upon the request of a
17 law enforcement officer, no test may be given. The
18 Secretary of State, upon the receipt of a written
19 statement under oath from a law enforcement officer,
20 stating that the officer had probable cause to believe
21 that a person was operating or attempting to operate a
22 motor vehicle while under the influence of
23 intoxicating liquor, and that the person failed to
24 comply with the duty to submit to a test to determine
25 the blood-alcohol level by ~~anayisis~~ analysis of his
26 blood or breath, shall immediately notify the person,
27 in writing, as provided in section 2241, that his
28 license or permit, his right to operate and his right
29 to apply for or obtain a license have been suspended.
30 The suspension shall be for a period of 180 days the
31 first time the person fails to comply with the duty to
32 submit to the test and one year for each subsequent
33 failure to comply with the duty to submit to the test
34 within a 6-year period. The written statement shall
35 be sent to the Secretary of State within 72 hours of
36 the failure to comply with the duty to submit to the
37 blood-alcohol test, excluding Saturdays, Sundays and
38 holidays. If the statement is not sent within this
39 time period, the Secretary of State shall nevertheless
40 impose the suspension for failing to comply with the
41 duty to submit to a test, unless the delay has
42 prejudiced the person's ability to prepare or
43 participate in the hearing described in this

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 subsection.

2 If such person desires to have a hearing, he shall
3 notify the Secretary of State within 10 days, in
4 writing, of such desire. Any suspension shall remain
5 in effect pending the outcome of such hearing, if
6 requested.

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

19 If it is determined, after hearing, that there was not
20 probable cause to believe that such person was either
21 attempting to operate or was operating under the
22 influence of intoxicating liquor or that the person
23 did not fail to comply with the duty to submit to a
24 blood-alcohol test, any suspension in effect shall be
25 removed immediately.

26 If it is determined, after a hearing, that any
27 suspension in effect should be removed, the Secretary
28 of State shall delete any record of the suspension and
29 any record of his revocation of consent from that
30 person's driving record.

31 For the purposes of this section, a prior refusal or
32 revocation of consent to submit to a chemical test
33 shall be a prior refusal or revocation of consent if
34 it occurred within a 6-year period of the date of the
35 most recent refusal or revocation of consent.

36 **Sec. 12.** 29 MRSA §1312, sub-§5, ¶B, as repealed
37 and replaced by PL 1971, c. 547, is amended to read:

38 B. If there was, at the time alleged, in excess
39 of 0.05%, but less than ~~0.10%~~ 0.08% by weight

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 of alcohol in the defendant's blood, it is
2 relevant evidence, but it is not to be given prima
3 facie effect in indicating whether or not the
4 defendant was under the influence of intoxicating
5 liquor within the meaning of this section, but
6 such fact may be considered with other competent
7 evidence in determining whether or not the
8 defendant was under the influence of intoxicating
9 liquor.

10 Sec. 13. 29 MRSA §1312, sub-§5, ¶C, as repealed
11 and replaced by PL 1981, c. 468, §7, is amended to
12 read:

13 C. For purposes of evidence in proceedings other
14 than those arising under section 1312-B or 1312-C,
15 it shall be presumed that a person was under the
16 influence of intoxicating liquor when he has a
17 blood-alcohol level of ~~0-10%~~ 0.08% or more by
18 weight.

19 Sec. 14. 29 MRSA §1312, sub-§6, as amended by
20 PL 1985, c. 412, §2, is further amended to read:

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

27 Only a duly licensed physician, registered physician's
28 assistant, registered nurse or a person certified by
29 the Department of Human Services under certification
30 standards to be set by that department, acting at the
31 request of a law enforcement officer, may draw a
32 specimen of blood for the purpose of determining the
33 blood-alcohol level of a person who is complying with
34 the duty to submit to a blood-alcohol test. This
35 limitation shall not apply to the taking of breath
36 specimens. When a person draws a specimen of blood at
37 the request of a law enforcement officer, that person
38 may issue a certificate which states that the person
39 is in fact a duly licensed or certified person as
40 required by this paragraph and that the person

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 followed the proper procedure for drawing a specimen
2 of blood for the purpose of determining the
3 blood-alcohol level. That certificate, when duly
4 signed and sworn to by the person, shall be admissible
5 in evidence in any court of the State. It is prima
6 facie evidence that the person was duly licensed or
7 certified and that the person followed the proper
8 procedure for drawing a specimen of blood for the
9 purpose of determining the blood-alcohol level,
10 unless, with 10-days' written notice to the
11 prosecution, the defendant requests that the person
12 testify as to licensure or certification, or the
13 procedure for drawing the specimen of blood.

14 A law enforcement officer may take a sample specimen
15 of the breath of any person whom he has probable cause
16 to believe has operated or attempted to operate a
17 motor vehicle while under the influence of
18 intoxicating liquor and who is complying with the duty
19 to submit to a blood-alcohol test, the sample specimen
20 to be submitted to the Department of Human Services or
21 a person certified by the Department of Human Services
22 for the purpose of conducting chemical tests of the
23 sample specimen to determine the blood-alcohol level
24 thereof.

25 Only such equipment as is approved by the Department
26 of Human Services shall be used by a law enforcement
27 officer to take a sample specimen of the defendant's
28 breath for submission to the Department of Human
29 Services or a person certified by the Department of
30 Human Services for the purpose of conducting tests of
31 the sample specimen to determine the blood-alcohol
32 level thereof. Approved equipment shall have a stamp
33 of approval affixed by the Department of Human
34 Services. Evidence that the equipment was in a sealed
35 carton bearing the stamp of approval shall be accepted
36 in court as prima facie evidence that the equipment
37 was approved by the Department of Human Services for
38 use by the law enforcement officer to take the sample
39 specimen of the defendant's breath.

40 As an alternative to the method of breath testing
41 described in this subsection, a law enforcement
42 officer may test the breath of any person whom there
43 is probable cause to believe has operated or attempted

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

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

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

23 Failure to comply with any provisions of this
24 subsection or with any regulations promulgated in
25 this subsection shall not, by itself, result in the
26 exclusion of evidence of blood-alcohol level, unless
27 the evidence is determined to be not sufficiently
28 reliable.

29 It is the intent of the Legislature that savings
30 realized through the use of self-contained
31 breath-alcohol testing equipment shall be used for
32 programs in the area of highway safety, with priority
33 to be given to programs involving alcohol education
34 and rehabilitation. It is also the intent of the
35 Legislature that local law enforcement departments may
36 be equipped, according to local needs, with
37 breath-testing equipment, as described in this
38 section, as provided by the Department of Public
39 Safety and approved by the Department of Human
40 Services. Testimony or other evidence that any
41 materials used in operating or checking the operation
42 of the equipment were bearing a statement of the
43 manufacturer or of the Department of Human Services

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 shall be accepted in court as prima facie evidence
2 that the materials were of a composition and quality
3 as stated.

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

11 Sec. 15. 29 MRSA §1312, sub-§8, as amended by
12 PL 1981, c. 679, §§24 and 25, is further amended to
13 read:

14 8. Evidence. The percentage by weight of alcohol
15 in the defendant's blood at the time alleged, as shown
16 by the chemical analysis of his blood or breath, or by
17 results of a self-contained, breath-alcohol testing
18 apparatus authorized by subsection 6, shall be
19 admissible in evidence.

20 When a person, certified under subsection 6, conducts
21 a chemical analysis of blood or breath for the purpose
22 of determining blood-alcohol level, he may issue a
23 certificate stating the results of the analysis. That
24 certificate, when duly signed and sworn to by the
25 certified person, shall be admissible in evidence in
26 any court of the State. It shall be prima facie
27 evidence that the person taking a specimen of blood
28 was a person authorized by subsection 6, that the
29 equipment, chemicals and other materials used in the
30 taking of the blood specimen or a breath sample were
31 of a quality appropriate for the purpose of producing
32 reliable test results, that any equipment, chemicals
33 or materials required by subsection 6 to be approved
34 by the Department of Human Services were in fact
35 approved, that the sample tested by the person
36 certified under subsection 6 was in fact the same
37 sample taken from the defendant and that the
38 percentage by weight of alcohol in the blood of the
39 defendant was, at the time the blood or breath sample
40 was taken, as stated in the certificate, unless with
41 10 days written notice to the prosecution, the
42 defendant requests that a qualified witness testify as

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 to any of the matters as to which the certificate
2 constitutes prima facie evidence. The notice shall
3 specify those matters concerning which the defendant
4 requests testimony.

5 A person certified under subsection 6, as qualified to
6 operate a self-contained, breath-alcohol testing
7 apparatus for the purpose of determining blood-alcohol
8 level, may issue a certificate stating the results of
9 the analysis. That certificate, when duly signed and
10 sworn to by the certified person, shall be admissible
11 in evidence in any court of the State. It shall be
12 prima facie evidence that the percentage by weight of
13 alcohol in the blood of the defendant was, at the time
14 the breath sample was taken, as stated in the
15 certificate, unless, with 10-days' written notice to
16 the prosecution, the defendant requests that the
17 operator or other qualified witness testify as to the
18 results of the analysis.

19 Transfer of sample specimens to and from a laboratory
20 for purposes of analysis may be by certified or
21 registered mail, and when so made shall be deemed to
22 comply with all requirements regarding the continuity
23 of custody of physical evidence.

24 The failure of a person to comply with the duty
25 required by this section to submit to a blood-alcohol
26 test shall be ~~admissable~~ admissible in evidence on
27 the issue of whether that person was under the
28 influence of intoxicating liquor. If the law
29 enforcement officer having probable cause to believe
30 that the person operated or attempted to operate a
31 motor vehicle under the influence of intoxicating
32 liquor fails to give either of the warnings required
33 under subsection 1, the failure of the person to
34 comply with the duty to submit to a blood-alcohol test
35 shall not be admissible, except where a test was
36 required pursuant to subsection 11, paragraph D. If a
37 failure to submit to a blood-alcohol test is not
38 admitted into evidence, the court may inform the jury
39 of the fact that no test result is available.

40 If a test result is not available for a reason other
41 than failing to comply with the duty to submit to a
42 blood-alcohol test, the unavailability and the reason

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 shall be ~~admissable~~ admissible in evidence.

2 Sec. 16. 29 MRSA §1312, sub-§11, ¶A, as amended
3 by PL 1981, c. 679, §27, is further amended to read:

4 A. After a person has been charged with operating
5 or attempting to operate a motor vehicle under the
6 influence of intoxicating liquor or drugs or with
7 a blood-alcohol level of ~~0-10%~~ 0.08% or more,
8 the investigating or arresting officer shall
9 investigate to determine whether the charged
10 person has any prior convictions under former
11 section 1312, subsection 10, former section 1312-B
12 or section 1312-B or an adjudication under
13 section ~~1312-E~~ and has any previous suspensions
14 of license or privilege to operate for failure to
15 comply with the duty to submit to and complete a
16 test to determine the level of blood-alcohol. As
17 part of his investigation, the officer shall make
18 the necessary inquiries of the Secretary of State.

19 Sec. 17. 29 MRSA §1312, sub-§11, ¶D is enacted
20 to read:

21 D. Notwithstanding any other provision of this
22 section, each operator of a motor vehicle involved
23 in a motor vehicle accident which results in the
24 death of any person shall submit to and complete a
25 test to determine that person's blood-alcohol
26 level by analysis of such blood or breath. A law
27 enforcement officer may determine which type of
28 test shall be administered and shall report any
29 failure of a person to submit to or complete a
30 test at the officer's request to the Secretary of
31 State by written statement under oath.

32 The Secretary of State shall suspend, for a period
33 of one year, the license or permit to operate,
34 right to operate a motor vehicle and right to
35 apply for or obtain a license, pursuant to section
36 2241, subsection 1, paragraph N, of any person who
37 fails to submit to or complete a test. The scope
38 of any hearing the Secretary of State holds
39 pursuant to section 2241 shall include whether
40 there was probable cause to believe that the
41 person was the operator of a motor vehicle

1 involved in a motor vehicle fatality and whether
2 that person failed to submit to or complete a test
3 to determine the blood-alcohol level.

4 Sec. 18. 29 MRSA §1312-B, sub-§1, ¶B, as
5 enacted by PL 1981, c. 468, §10, is amended to read:

6 B. While having ~~0-10%~~ 0.08% or more by weight
7 of alcohol in his blood.

8 Sec. 19. 29 MRSA §1312-B, sub-§2, as amended by
9 PL 1987, c. 536, §§5 and 11, is further amended to
10 read:

11 2. Penalties. The offense defined in subsection
12 1 is a Class D crime, provided that in. In the
13 determination of an appropriate sentence, refusal to
14 submit to a chemical test shall in every case be an
15 aggravating factor. In the following cases the
16 following minimum penalties shall apply.

17 A. Except as provided in paragraph B, in the case
18 of a person having no previous convictions of a
19 violation of former section 1312, subsection 10,
20 former section 1312-B or this section and having
21 no previous suspension of license or privilege to
22 operate for failure to comply with the duty to
23 submit to and complete a test to determine the
24 level of blood-alcohol under section 1312 within a
25 6-year period, the fine shall not be less than
26 \$300 and the court shall suspend the defendant's
27 license or permit to operate, right to operate a
28 motor vehicle and right to apply for and obtain a
29 license for a period of 90 days, which penalties
30 may not be suspended.

31 B. In the case of a person having no previous
32 convictions of a violation of former section 1312,
33 subsection 10, former section 1312-B, or this
34 section and having no previous suspension of
35 license or privilege to operate for failure to
36 comply with the duty to submit to and complete a
37 test to determine the level of blood-alcohol under
38 section 1312 within a 6-year period, the fine
39 shall not be less than \$300, the sentence shall
40 include a period of incarceration of not less than

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 48 hours and the court shall suspend the
2 defendant's license or permit to operate, right to
3 operate a motor vehicle and right to apply for and
4 obtain a license for a period of 90 days, which
5 penalties may not be suspended, when the person:

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

8 (2) Was driving in excess of the speed limit
9 by 30 miles an hour or more during the
10 operation which resulted in the prosecution
11 for operating under the influence or with a
12 blood-alcohol level of ~~0.10%~~ 0.08% or
13 more; ~~or~~

14 (3) Eluded or attempted to elude an officer,
15 as defined in section 2501-A, subsection 3,
16 during the operation which resulted in
17 prosecution for operating under the influence
18 or with a blood-alcohol level of ~~0.10%~~
19 0.08% or more; ~~or~~

20 (4) Failed to submit to a chemical test for
21 the determination of that person's blood-
22 alcohol level, at the request of a law
23 enforcement officer on the occasion which
24 resulted in the conviction.

25 C. In the case of a person having one previous
26 conviction of a violation of former section 1312,
27 subsection 10, former section 1312-B or this
28 section, or having at least one previous
29 suspension for failure to comply with the duty to
30 submit to and complete a test to determine the
31 level of blood-alcohol under section 1312 within a
32 6-year period, the fine shall not be less than
33 \$500, the sentence shall include a period of
34 incarceration of not less than 7 days and the
35 court shall suspend the defendant's license or
36 permit to operate, right to operate a motor
37 vehicle and right to apply for and obtain a
38 license for a period of one year, which penalties
39 may not be suspended.

40 D. In the case of a person having 2 or more

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 previous convictions of violations of former
2 section 1312, subsection 10, former section 1312-B
3 or this section, within a 6-year period, the fine
4 shall not be less than \$750, the sentence shall
5 include a period of incarceration of not less than
6 30 days and the court shall suspend the
7 defendant's license or permit to operate, right to
8 operate a motor vehicle and right to apply for and
9 obtain a license for a period of 2 years, which
10 penalties may not be suspended.

11 B-i. In addition to the penalties provided
12 under paragraphs E and B, the court shall order
13 the defendant to participate in the alcohol and
14 other drug education, evaluation and treatment
15 program for multiple offenders administered by the
16 Department of Human Services, as defined in Title
17 22, chapter 1602. The court may waive the
18 multiple offender intervention program under Title
19 22, section 7203, subsection 3, paragraph A, if
20 the court finds that the defendant has completed a
21 residential treatment program, or its equivalent,
22 ~~subsequent-to-the-date-of-the-offense.~~

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

33 F. For purposes of this section, a prior
34 conviction has occurred within the 6-year period
35 provided if the date of docket entry by the clerk
36 of a judgment of conviction or adjudication is 6
37 years or less from the date of the new conduct
38 which is penalized or for which the penalty is or
39 may be enhanced.

40 G. For the purposes of this section, a previous
41 suspension of license or privilege for failure to
42 comply with the duty to submit to and complete a

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 test to determine the level of blood alcohol under
2 section 1312 has occurred within the 6-year period
3 if the date of the suspension is 6 years or less
4 from the date of the new conduct which is
5 penalized or for which the penalty is or may be
6 enhanced.

7 Sec. 20. 29 MRSA §1312-B, sub-§2-A is enacted
8 to read:

9 2-A. Aggravated punishment category. If the
10 State pleads and proves that, while operating a motor
11 vehicle in violation of this section, the actor in
12 fact caused serious bodily injury as defined in Title
13 17-A, section 2, subsection 23, to another person or
14 in fact caused the death of another person, the
15 sentencing class for the offense in subsection 1 is a
16 Class C crime. The minimum penalties specified in
17 subsection 2 shall apply, but the minimum period of
18 suspension shall be 18 months unless a longer minimum
19 period otherwise applies.

20 Sec. 21. 29 MRSA §1312-B, sub-§3, as enacted by
21 PL 1981, c. 679, §31, is amended to read:

22 3. Sentencing procedure. ~~In~~ Notwithstanding
23 the provisions of Title 15, section 757, in
24 determining the appropriate sentence, the court shall
25 consider the record of convictions for criminal
26 traffic offenses and, adjudications of traffic
27 infractions and suspensions of license or privilege to
28 operate for failure to comply with the duty to submit
29 to and complete a test to determine the level of blood
30 alcohol of the defendant. The court may rely upon
31 oral representations based on records maintained by
32 the courts, by the State Bureau of Identification or
33 by the Secretary of State, including
34 telecommunications of records maintained by the
35 Secretary of State. If the defendant disputes the
36 accuracy of any representation concerning a conviction
37 or adjudication, the court shall grant a continuance
38 for the purposes of determining the accuracy of the
39 record.

40 Sec. 22. 29 MRSA §1312-D, sub-§11 is enacted to
41 read:

1 11. Conditional license. Any license or permit
2 to operate a motor vehicle issued by the Secretary of
3 State to any person adjudicated or convicted of
4 operating under the influence of intoxicating liquor
5 or drugs or with an excessive blood-alcohol level, in
6 addition to any other condition or restriction which
7 the Secretary of State may by law impose, shall within
8 6 years of the date of the conviction be a conditional
9 license, issued on the condition that the person not
10 operate a motor vehicle after having consumed
11 intoxicating liquor. The provisions of section 2241-J
12 shall apply.

13 **Sec. 23. 29 MRSA §§1312-G and 1312-H are**
14 **enacted to read:**

15 §1312-G. Forfeiture of motor vehicles in certain
16 operating-under-the-influence cases

17 1. Seizure. Any person operating or attempting
18 to operate a motor vehicle while under the influence
19 of intoxicating liquor or drugs or with 0.08% or more
20 by weight of alcohol in the blood and who was
21 previously convicted or adjudicated of such offense
22 and is still under suspension or revocation as a
23 result of that previous conviction or adjudication is
24 subject to the seizure of that motor vehicle by any
25 law enforcement officer authorized to enforce the
26 motor vehicle laws of this State. Any officer making
27 such a seizure shall, within 7 days of the seizure and
28 at the direction of the attorney for the State, return
29 the vehicle or file with the court a complaint against
30 the vehicle. No complaint may be filed against a
31 vehicle unless the operator of the vehicle on the
32 occasion of its seizure had an ownership interest in
33 that vehicle. The complaint shall describe the
34 vehicle, recite the name of the owner and the date and
35 place of its seizure, shall summarize the violation of
36 law which is alleged to have occurred and shall pray
37 for a decree of forfeiture of the vehicle. The
38 complaint shall be heard and the seized vehicle
39 disposed of according to subsection 5.

40 2. Immediate hearing on hardship claim. Any owner
41 aggrieved by the seizure of the motor vehicle by a law

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 enforcement officer under subsection 1 may petition
2 the District Court of the district in which the
3 vehicle was seized for the release of that vehicle on
4 the grounds that retention of the vehicle constitutes
5 hardship. An owner who claims hardship shall provide
6 the court, to the extent possible in writing and in
7 every case under oath, with the facts which constitute
8 hardship.

9 The court shall permit, but shall not require, the law
10 enforcement officer to be present and the attorney for
11 the State to be heard. The only issue at the hardship
12 hearing is whether such hardship exists. The hardship
13 standards of subsection 4, paragraph F, apply.

14 3. Election options. Unless a vehicle has
15 already been returned to an owner, at the arraignment
16 the owner-operator shall specify whether the
17 owner-operator surrenders the seized vehicle to the
18 State; will seek to sell the vehicle; or, waiving any
19 claim for damage other than intentional damage by an
20 agent of the law enforcement agency seizing or storing
21 the vehicle, asks that the State impound the vehicle
22 until the owner-operator's right to operate in this
23 State has been restored. Unless the owner-operator
24 has surrendered the vehicle to the State, the
25 owner-operator may change the election at any time by
26 notifying the Chief of the Maine State Police, in
27 writing, of the new election. Any vehicle impounded
28 at the request of the owner-operator shall be deemed
29 abandoned if not claimed by an owner within 30 days
30 after the owner-operator's right to operate in this
31 State is restored. If the owner-operator surrenders
32 the vehicle to the State or asks that the State
33 impound the vehicle, the State shall pay the costs of
34 towing and storage. If the owner-operator seeks to
35 sell the vehicle, the owner-operator is responsible
36 for paying the towing and storage costs, and the
37 vehicle will be released only upon proof of sale.
38 Under any election, the court shall also suspend the
39 owner-operator's right to register a motor vehicle in
40 this State until the operator's license is restored.

41 4. Preliminary order or process. The court may
42 issue, at the request of the attorney for the State,

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 ex parte, any preliminary order or process necessary
2 to seize or secure the motor vehicle for which
3 forfeiture is or will be sought and to provide for its
4 custody. That order may include an order to a
5 financial institution or to any fiduciary or bailee to
6 require that entity to impound a motor vehicle in its
7 possession or control and not to release it except
8 upon further order of the court. Process for seizure
9 of the property shall issue only upon a showing of
10 probable cause. The application for process and the
11 issuance, execution and return of process shall be
12 subject to applicable Maine law. A complaint against
13 the vehicle shall thereafter be filed. Any motor
14 vehicle subject to forfeiture under this section may
15 be seized upon process, except that seizure without
16 process may be made when:

17 A. The seizure is incident to an arrest with
18 probable cause for a violation of section 1312-B;
19 or

20 B. The property subject to seizure has been the
21 subject of a prior judgment in favor of the State
22 in a forfeiture proceeding under this section or
23 any other provision of law.

24 5. Forfeiture of motor vehicles seized under this
25 provision. Unless the vehicle has been returned to an
26 owner or the owner-operator has made an election under
27 subsection 3, whenever a complaint has been filed, the
28 following procedure shall apply.

29 A. The judge shall fix a time for the hearing of
30 the complaint and shall issue notice of the
31 complaint to the operator, any other owner as
32 listed on the vehicle registration, all persons or
33 entities who have title to the vehicle and to any
34 lienholders registered with the Secretary of
35 State, citing them to appear at the time and place
36 set for hearing and show cause why the seized
37 motor vehicle should not be declared forfeited, by
38 causing a true and attested copy of the complaint
39 and notice to be sent to them at least 10 days
40 before the day on which the complaint is
41 returnable. Copies shall be served on common
42 carriers.

1 B. Default proceedings shall be held in the same
2 manner as default proceedings in any other civil
3 actions, except that service of motions and
4 affidavits related to default proceedings need not
5 be served upon any person who has not answered or
6 otherwise defended in the action.

7 C. If any person appears and claims the vehicle
8 or any interest in the vehicle, as having a right
9 to possession of the vehicle at the time when it
10 was seized, that person shall file with the court
11 a claim in writing stating:

12 (1) The right so claimed;

13 (2) The foundation of the claim;

14 (3) The vehicle so claimed by vehicle
15 identification number, license plate or other
16 specific description; and

17 (4) If such a claim is made, the facts which
18 constitute hardship.

19 If any person so makes claim, that person shall be
20 admitted as a party to the process.

21 D. There shall be no discovery other than under
22 the Maine Rules of Civil Procedure, Rule 36,
23 except by order of the court upon a showing of
24 substantial need. Any order permitting discovery
25 shall set forth in detail the areas in which
26 substantial need has been shown and the extent to
27 which discovery may take place.

28 E. All forfeiture proceedings are civil and in
29 the nature of proceedings in rem. At the hearing,
30 the court shall proceed to determine the truth of
31 the allegations in the claim and complaint and
32 hear any pertinent evidence offered by the State
33 or claimant. If the attorney for the State proves
34 by a preponderance of the evidence the operative
35 facts specified in subsection 1, the court shall
36 declare the vehicle forfeited to the State unless
37 the claimant proves by a preponderance of the

1 evidence the operative facts specified in
2 paragraph C and undue hardship as specified in
3 paragraph F. In every case in which the court may
4 order forfeiture, the court shall nevertheless
5 permit the owner or owners of the vehicle the same
6 election as is permitted the owner-operator under
7 subsection 3.

8 F. If the claimant demonstrates by a
9 preponderance of the evidence that the hardship to
10 persons other than the operator caused by loss of
11 use of the motor vehicle significantly outweighs
12 the deterrent value to that operator and in
13 general of such forfeiture and significantly
14 outweighs any risk to the public of the operator's
15 continued access to the vehicle, the court may
16 order the vehicle returned to the claimant
17 outright or on any terms deemed appropriate. The
18 value of the seized motor vehicle is not a factor
19 in the determination of hardship. Ownership of
20 another motor vehicle by the operator or claimant
21 or a member of the family or household of either
22 shall be evidence of the absence of hardship.

23 G. If the vehicle is forfeited to the State under
24 paragraph B or E, the vehicle shall be subject to
25 bona fide security interests on file with the
26 Secretary of State or the corresponding officer in
27 the State of registration or title on the date the
28 vehicle was seized. If the vehicle is ordered
29 returned to the claimant, the court shall provide
30 the claimant a written order commanding the
31 officer to release the vehicle to the claimant
32 within 48 hours after demand. In either case, any
33 costs of towing and storage up to the date the
34 forfeiture is declared or the vehicle ordered
35 released shall be borne by the State.

36 H. At the direction of the attorney for the
37 State, forfeited vehicles shall be subject to
38 public sale or released to the lienholder with a
39 right of possession. The proceeds of sale shall
40 be used to defray the expenses of towing, storage
41 and sale; any surplus may be retained by the
42 prosecutorial district in a special account to
43 defray the expenses of other forfeitures. Any

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 amount over \$5,000 in the special account of any
2 prosecutorial district shall be returned to the
3 General Fund.

4 I. The Attorney General shall provide or approve
5 forms for all cases arising under this section.

6 6. Applicability. For purposes of this section,
7 suspension or revocation is as a result of a
8 conviction or adjudication of operating under the
9 influence of intoxicating liquor or drugs, or with an
10 excessive blood-alcohol level if, on the date that
11 person operated or attempted to operate the vehicle
12 subject to forfeiture, the period of suspension
13 imposed by the court or the Secretary of State upon
14 such conviction or adjudication, including the full
15 term of any revocation as habitual offender if the 3rd
16 or subsequent conviction or adjudication was for that
17 offense, had not expired, even if the operator was
18 also under suspension or revocation for additional
19 reasons. If the individual is under suspension solely
20 because of failure to file proof of insurance or to
21 pay the reinstatement fee, the vehicle is not subject
22 to forfeiture.

23 7. Rules. The Chief of the Maine State Police
24 shall adopt rules governing the transportation,
25 storage and release of vehicles seized under this
26 section.

27 §1312-H. Motor Vehicle Forfeiture Account

28 1. Establishment. Notwithstanding any other
29 provision of law, there is established the Motor
30 Vehicle Forfeiture Account in each prosecutorial
31 district in an amount not to exceed \$5,000 to be
32 administered by the district attorney and to be used
33 solely for the purpose of paying expenses of
34 forfeiture proceedings, seizure, storage, maintenance
35 of custody, advertising and notice on motor vehicles
36 forfeited pursuant to section 1312-G.

37 2. Funding. The Motor Vehicle Forfeiture Account
38 in each prosecutorial district shall be funded by the
39 proceeds of the sale of motor vehicles forfeited
40 pursuant to section 1312-G. Whenever a motor vehicle

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 is forfeited and the proceeds of the public auction
2 are recovered by the State, the district attorney
3 shall determine whether the proceeds or a portion of
4 the proceeds shall be deposited in the Motor Vehicle
5 Forfeiture Account for the district attorney's
6 prosecutorial district, but in no event may the
7 account exceed \$5,000. Any proceeds of a motor
8 vehicle forfeiture not deposited in the Motor Vehicle
9 Forfeiture Account shall be deposited in the General
10 Fund. Any unexpended balance in the Motor Vehicle
11 Forfeiture Account of a prosecutorial district
12 established by this section shall not lapse, but shall
13 be carried forward into the next year.

14 3. Review by district attorney. The district
15 attorney shall regularly review the Motor Vehicle
16 Forfeiture Account and the expenses of the
17 prosecutorial district in connection with the
18 forfeiture of motor vehicles and shall determine
19 whether any funds in the account shall be transferred
20 to the General Fund.

21 4. Audit. Every district attorney shall have an
22 annual audit made by the Department of Audit or by a
23 certified public accountant selected by the district
24 attorney of the Motor Vehicle Forfeiture Account for
25 the district attorney's prosecutorial district,
26 covering the last complete fiscal year.

27 If the auditor finds, in the course of the audit,
28 evidence of improper transactions, incompetency in
29 keeping accounts or handling funds, failure to comply
30 with this section or any other improper practice of
31 financial administration, the auditor shall report the
32 same to the Attorney General immediately.

33 **Sec. 24. 29 MRSA §1313-B is enacted to read:**

34 §1313-B. Causing death; suspension after
35 administrative determination

36 1. Suspension. If the Secretary of State is
37 satisfied that a person, while under the influence of
38 intoxicating liquor or drugs or while having 0.08% or
39 more by weight of alcohol in that person's blood or
40 having refused to submit to a chemical test if for

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 such a refusal the person may be penalized under
2 section 1312, operated a motor vehicle in such a
3 manner as to cause the death of any person, the
4 Secretary of State shall immediately suspend that
5 operator's license, permit or right to operate. The
6 period of suspension shall be 3 years, consecutive to
7 any suspension imposed by the Secretary of State for
8 refusal to take a chemical test.

9 2. Notice of suspension; regular or certified
10 mail. The notice of suspension may be sent by regular
11 or certified mail to the person at the last known
12 address on record at the Division of Motor Vehicles,
13 or to the address provided in the report of the law
14 enforcement officer if that address differs from the
15 address of record. The notice of suspension may be
16 served in hand.

17 3. Notice of suspension; reason and statutory
18 grounds for suspension. The notice of suspension
19 shall clearly specify the reason and statutory grounds
20 for the suspension, the effective date of the
21 suspension, the right of the person to request a
22 hearing, the procedure for requesting a hearing and
23 the date by which that request for hearing shall be
24 made. The notice of suspension shall also clearly
25 state that a copy of the report of the law enforcement
26 officer which formed the basis of the decision to
27 suspend and a copy of any blood-alcohol test
28 certificate submitted will be provided to the person
29 upon request to the Secretary of State.

30 4. Request for hearing. The person suspended
31 may, within 10 days, make a written request for a
32 hearing. The suspension shall not be stayed pending
33 the hearing.

34 5. Hearing; issues. The only issues at the
35 hearing are whether, by a preponderance of the
36 evidence, the person suspended operated a motor
37 vehicle, whether his operation caused the death of
38 another person, and whether on that occasion the
39 operator was under the influence of intoxicating
40 liquor or drugs, had an excessive blood-alcohol level
41 or may be penalized for his refusal to submit to a
42 chemical test to determine his blood-alcohol level.

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1. The provisions of section 1311-A, subsection 8,
2 paragraph C apply.

3 6. Secretary of State; determination. The
4 determination of these facts by the Secretary of State
5 is independent of the determination of the same or
6 similar facts in the adjudication of any criminal or
7 civil charges arising out of the same occurrence. The
8 disposition of those criminal or civil charges shall
9 not affect the fact or length of suspension under this
10 section. Statements made by the licensee at the
11 hearing before the Secretary of State shall not be
12 introduced by the State in its case in chief in any
13 prosecution for a violation of section 1312-B; Title
14 15, section 3103, subsection 1, paragraph F; or of a
15 Class B violation of Title 17-A, section 203, arising
16 out of the same occurrence.

17 7. Suspension. If a person whose license, permit
18 or right to operate was suspended pursuant to
19 subsection 1 is subsequently convicted of an offense
20 and section 1313 applies, the length of any period of
21 suspension actually served under this section shall
22 apply to the period of revocation imposed pursuant to
23 section 1313. If a court of record in a civil tort
24 proceeding affirmatively determines that that person
25 was not at fault, the Secretary of State shall
26 terminate any suspension imposed under this section
27 upon receipt of a certified copy of the civil judgment
28 entered by the court.

29 Sec. 25. 29 MRSA §2184, sub-§1, as repealed and
30 replaced by PL 1981, c. 679, §43, is amended to read:

31 1. Offense; penalty. No person may operate a
32 motor vehicle on any public highway or way in this
33 State at a time when his license or permit to operate,
34 his right to operate or his right to apply for or
35 obtain a license or permit has been suspended or
36 revoked, except for a revocation as an habitual
37 offender under chapter 18-A or former chapter 18, when
38 that person:

39 A. Has received written notice of a suspension or
40 revocation pursuant to section 1312-D, subsection
41 1, or section 2241-H or other written notice from

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

- 1 the Secretary of State;
- 2 B. Has been orally informed of the suspension or
3 revocation by a law enforcement officer who is
4 aware of the information as a result of records
5 maintained by the Secretary of State, including
6 those obtainable by telecommunications;
- 7 C. Has actual knowledge of his suspension or
8 revocation;
- 9 D. Is a person to whom written notice was sent by
10 ordinary mail at the last known address shown by
11 the records maintained by the Secretary of State;
12 or
- 13 E. Has failed to appear in court pursuant to any
14 notice or order specified in section 2301-A.
- 15 Violation of this section is a Class D crime, provided
16 that, notwithstanding Title 17-A, section 1301, the
17 maximum fine shall be \$2,500.
- 18 **Sec. 26. 29 MRSA §2241, sub-§1, ¶K, as amended**
19 **by PL 1983, c. 455, §28, is further amended to read:**
- 20 K. Is subject to action of the Secretary of State
21 pursuant to section 55-B or section 2378,
22 subsection 1; or
- 23 **Sec. 27. 29 MRSA §2241, sub-§1, ¶M, as enacted**
24 **by PL 1985, c. 520, §3, is amended to read:**
- 25 M. Has failed to provide, pursuant to section
26 246, proof of payment of the use tax imposed by
27 the United States Internal Revenue Code of 1954,
28 Section 4481, within time periods established by
29 federal statute and regulations promulgated
30 pursuant to federal statute; or
- 31 **Sec. 28. 29 MRSA §2241, sub-§1, ¶N is enacted**
32 **to read:**
- 33 N. Has failed to submit to or complete a test to
34 determine the blood-alcohol level pursuant to
35 section 1312, subsection 11, paragraph D.

1 Sec. 29. 29 MRSA §2241-J is enacted to read:

2 §2241-J. Special provisions pertaining to persons
3 convicted of operating under the influence
4 or with excessive blood-alcohol levels

5 1. Suspension. Except where a longer period of
6 suspension is otherwise provided by law, the Secretary
7 of State shall suspend for a period of one year,
8 without preliminary hearing, the conditional license
9 or right to operate of any person who has within the
10 previous 6 years been convicted of operating under the
11 influence of intoxicating liquor or drugs, or with an
12 excessive blood-alcohol level as to whom:

13 A. There is received a record of conviction of
14 operating under the influence of intoxicating
15 liquor or drugs or with an excessive blood-alcohol
16 level; or

17 B. The Secretary of State determines has operated
18 or attempted to operate a motor vehicle while
19 having 0.02% or more by weight of alcohol in the
20 blood.

21 2. Duty to submit to test. Any person who,
22 within the previous 6 years has been convicted of
23 operating under the influence of intoxicating liquor
24 or drugs or with an excessive blood-alcohol level who
25 operates or attempts to operate a motor vehicle within
26 this State, shall have the duty to submit to a test to
27 determine the blood-alcohol level by analysis of that
28 person's blood or breath, if there is probable cause
29 to believe he operated or attempted to operate a motor
30 vehicle while having 0.02% or more by weight of
31 alcohol in the blood. Section 1312 shall apply,
32 except that in all cases probable cause shall be to
33 believe that the person was operating or attempting to
34 operate a motor vehicle while having 0.02% or more by
35 weight of alcohol in the blood and that the person has
36 been so convicted, and except that suspension for
37 failing to comply with the duty to submit to the test
38 shall be for a period of not less than 2 years.

39 3. Secretary of State; determination. The

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 Secretary of State shall make the determination of
2 suspension as follows.

3 A. The Secretary of State shall suspend the
4 license or right to operate of any person who has
5 been previously convicted as specified in
6 subsection 12 and the right to apply for or obtain
7 a license of any such person, upon the Secretary
8 of State's determination that the person operated
9 or attempted to operate a motor vehicle with 0.02%
10 or more by weight of alcohol in the blood. The
11 suspension shall be for a period of one year and
12 shall continue until satisfaction of any
13 conditions which the Secretary of State is
14 authorized to impose, or which are imposed by any
15 court as a result of any motor vehicle conviction.

16 B. The Secretary of State shall make a
17 determination on the basis of the information
18 required in subsection 4 and this determination
19 shall be final unless a hearing is requested and
20 held. If a hearing is held, the Secretary of
21 State shall review the matter and make a final
22 determination on the basis of evidence received at
23 the hearing.

24 C. The determination of these facts by the
25 Secretary of State is independent of the
26 determination of the same or similar facts in the
27 adjudication of any civil or criminal charges
28 arising out of the same occurrence. The
29 disposition of those civil or criminal charges
30 shall not affect any suspension under this
31 section. Statements made by the licensee at the
32 hearing before the Secretary of State shall not be
33 introduced by the State in its case in chief in
34 any prosecution for a violation of section 1312-B
35 or Title 15, section 3103, subsection 1, paragraph
36 F, arising out of the same occurrence.

37 4. Report. A law enforcement officer shall
38 forward a report to the Secretary of State as follows.

39 A. A law enforcement officer who has probable
40 cause to believe that any person who has within
41 the previous 6 years been convicted of operating

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 under the influence of intoxicating liquor or
2 drugs, or with an excessive blood-alcohol level,
3 was operating or attempting to operate a motor
4 vehicle with 0.02% or more by weight of alcohol in
5 the blood shall immediately forward to the
6 Secretary of State a report, under oath, of all
7 information relevant to the enforcement action,
8 including information which adequately identifies
9 the person, a statement of the officer's grounds
10 for belief that the person had been so convicted,
11 had operated or attempted to operate a motor
12 vehicle while having 0.02% or more by weight of
13 alcohol in the blood and a certificate under
14 section 1312, subsection 8 of the result of any
15 blood-alcohol test by a self-contained
16 breath-alcohol testing apparatus which was
17 conducted and which shows the presence of 0.02% or
18 more by weight of alcohol in the blood.

19 B. The report required in this subsection shall
20 be made on forms supplied by or approved by the
21 Secretary of State.

22 C. If the blood-alcohol test was not analyzed by
23 a law enforcement officer, the person who analyzed
24 the results shall cause a copy of the person's
25 certificate under section 1312, subsection 8, to
26 be sent to the Secretary of State.

27 5. Notice. The notice of suspension by the
28 Secretary of State shall be made as follows.

29 A. Upon receipt of the information required in
30 subsection 4, the Secretary of State shall make
31 the determination described in subsection 3. If
32 the Secretary of State determines that the person
33 is subject to license suspension, the Secretary of
34 State shall immediately issue a notice of
35 suspension.

36 B. The notice of suspension shall be sent by
37 regular mail to the person at the last known
38 address on record at the Division of Motor
39 Vehicles, or to the address provided in the report
40 of the law enforcement officer if that address
41 differs from the address of record.

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 C. The notice of suspension shall clearly specify
2 the reason and statutory grounds for the
3 suspension, the effective date of the suspension,
4 the right of the person to request a hearing, the
5 procedure for requesting a hearing and the date by
6 which that request for hearing shall be made. The
7 notice of suspension shall also clearly state that
8 a copy of the report of the law enforcement
9 officer under subsection 4, paragraph A and a copy
10 of the blood-alcohol test certificate under
11 subsection 4, paragraph A or C, shall be provided
12 to the person upon request to the Secretary of
13 State.

14 6. Effective date; period of suspension. The
15 effective date and period of suspension is as follows.

16 A. Any suspension imposed shall be effective on a
17 specified date not less than 10 days after the
18 mailing of the notification of suspension by the
19 Secretary of State. If a person whose license is
20 suspended desires to have a hearing, that person
21 shall notify the Secretary of State, in writing,
22 within 10 days from the effective date of the
23 suspension. The suspension shall be stayed for 10
24 days from the effective date of the suspension.
25 If, within 10 days from the effective date of the
26 suspension, the Secretary of State is notified, in
27 writing, of a request for a hearing, the
28 suspension shall be stayed until a hearing is held
29 and a decision is issued. The Secretary of State
30 shall conduct a hearing and issue a decision
31 within 30 days from the date of receipt of a
32 written request for hearing. Failure by the
33 Secretary of State to conduct a hearing and issue
34 a decision within the 30-day period shall result
35 in an extension of the stay of the Secretary of
36 State's suspension order until such time as a
37 hearing is conducted and a decision issued.
38 Notwithstanding this subsection, there shall be no
39 stay of suspension during the period of any delay
40 of hearing which is caused or requested by the
41 petitioner.

42 B. Unless the suspension is for a refusal to take

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 the chemical test when a person's license is
2 suspended under this section and is also suspended
3 after having been adjudicated or convicted on
4 charges arising out of the same occurrence for a
5 violation of section 1312-B or Title 15, section
6 3103, subsection 1, paragraph F, the period of
7 time that person's license has been suspended
8 under this section prior to the adjudication or
9 conviction shall be deducted from the period of
10 time of any court-imposed suspension ordered
11 pursuant to section 1312-B or Title 15, section
12 3103, subsection 1, paragraph F. If such
13 suspension is for the person's refusal to submit
14 to the required test, any period of suspension
15 imposed by the court or by the Secretary of State
16 as a result of adjudication or conviction shall be
17 consecutive to the period of suspension imposed
18 for refusal.

19 7. Hearing requested. A person who has received
20 notice of suspension may request a hearing as follows.

21 A. Any person who has received a notice of
22 suspension under this section may make a written
23 request for a review of the determination of the
24 Secretary of State at a hearing.

25 B. The request for hearing shall be made within
26 10 days from the effective date of the
27 suspension. If a written request for a hearing is
28 made after such date and the Secretary of State
29 finds that the person was unable to make a timely
30 request due to lack of actual notice of the
31 suspension or due to factors of physical
32 incapacity, the Secretary of State shall waive the
33 period of limitation, reopen the matter and grant
34 the hearing request, except, in such a case, a
35 stay of suspension pending the hearing shall not
36 be granted.

37 8. Hearing and notice. The hearing and notice
38 shall be as follows.

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

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 B. The scope of the hearing shall include
2 whether, by a preponderance of the evidence:

3 (1) There was probable cause to believe that
4 the person had been convicted of operating
5 under the influence of intoxicating liquor or
6 drugs or with an excessive blood-alcohol
7 level, and that the person was operating or
8 attempting to operate a motor vehicle while
9 having 0.02% or more by weight of alcohol in
10 the blood;

11 (2) The person operated or attempted to
12 operate a motor vehicle;

13 (3) At such time the person had 0.02% or
14 more by weight of alcohol in the blood; and

15 (4) Within 6 years prior to such date the
16 person had been convicted of operating under
17 the influence of intoxicating liquor or drugs
18 or with an excessive blood-alcohol level.

19 C. A certificate duly signed and sworn to
20 pursuant to section 1312, subsection 8, shall be
21 prima facie proof of facts stated in the
22 certificate and that the person taking a specimen
23 of blood or breath was authorized by section 1312,
24 subsection 6, that the equipment, chemicals and
25 other materials used in the taking of the blood
26 specimen or a breath sample were of a quality
27 appropriate for the purpose of producing reliable
28 test results, that any equipment, chemicals or
29 materials required by section 1312, subsection 6,
30 to be approved by the Department of Human Services
31 were in fact approved, that the sample tested by
32 the person certified under section 1312,
33 subsection 6, was in fact the same sample taken,
34 and that the percentage by weight of alcohol in
35 the blood was, at the time the blood or breath
36 sample was taken, as stated in the certificate.

37 D. If it is determined after hearing that there
38 was not the requisite probable cause for
39 blood-alcohol test administration or that the
40 person had not been so convicted within 6 years of

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 the date of operation or attempted operation or
2 that the person did not operate or attempt to
3 operate a motor vehicle while having 0.02% or more
4 by weight of alcohol in the blood, the suspension
5 shall be removed immediately and the Secretary of
6 State shall delete any record of the suspension.

7 E. Any person whose license is suspended under
8 this section on the basis of a blood-alcohol test
9 may, within 30 days after receipt of the decision,
10 appeal to the Superior Court for judicial review
11 as provided in Title 5, sections 11001 to 11008.
12 If the court rescinds the suspension, it shall
13 also order the Secretary of State to delete any
14 record of the suspension.

15 9. Rules. The Secretary of State may promulgate,
16 in accordance with the Maine Administrative Procedure
17 Act, Title 5, chapter 375, whatever rules are
18 necessary to carry out the purposes of this section.

19 10. Longer period of suspension. If a person
20 subject to this section is determined to have operated
21 or attempted to operate a motor vehicle while having
22 0.08% or more of alcohol in the blood such that both
23 this section and section 1311-A apply, the longer
24 period of suspension shall apply.

25 11. Conditional license. Following the
26 expiration of the aggregate periods of suspension
27 imposed pursuant to this section, otherwise imposed by
28 the Secretary of State, and ordered by any court, the
29 Secretary of State may issue a conditional license to
30 the person, subject to the conditions, restrictions or
31 terms the Secretary of State deems advisable, if the
32 Secretary of State has received written notice that
33 the person has satisfactorily completed the alcohol
34 educational program of the Department of Human
35 Services and, when required, has satisfactorily
36 completed an alcohol treatment or rehabilitation
37 program approved or licensed by the Department of
38 Human Services.

39 12. Conviction. For purposes of this section, a
40 conviction of operating under the influence of
41 intoxicating liquor, drugs or with excessive

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 blood-alcohol level includes:

2 A. A conviction of a violation of section 1312-B
3 or of former section 1312, subsection 10, or of
4 succeeding criminal provisions for such conduct;

5 B. A conviction, in any jurisdiction which is or
6 becomes a party to the Driver License Compact of
7 any offense described in the compact, article IV,
8 subsection 1, paragraph B, or of an offense which
9 is similar as provided by article IV, subsection 3;

10 C. An adjudication or other determination made
11 under the juvenile law of this State or of another
12 jurisdiction for conduct which, if committed by an
13 adult, would have been a conviction included in
14 this subsection, including the conduct to which
15 Title 15, section 3103, subsection 1, paragraph F,
16 refers; and

17 D. A conviction for such conduct in a court of
18 the United States or a court of a state which is
19 not a party to the compact, provided that the
20 punishment for that offense includes the
21 possibility of incarceration, whether or not
22 actually imposed on that occasion, and the
23 elements of the offense as provided in the law of
24 that jurisdiction include operation or attempted
25 operation of a motor vehicle while intoxicated,
26 impaired or under the influence of alcohol,
27 intoxicating liquor, drugs or with a level of
28 blood-alcohol sufficient for conviction under the
29 laws of that jurisdiction.

30 13. Prior conviction. For purposes of this
31 section, a prior conviction has occurred within the
32 6-year period provided if the date of docket entry by
33 the clerk of a judgment of conviction or adjudication
34 is 6 years or less from the date of the new conduct
35 which is penalized or for which the penalty is or may
36 be enhanced.

37 Sec. 30. 29 MRSA §2292, sub-§1, ¶B, as amended
38 by PL 1981, c. 468, §16, is further amended to read:

39 B. Operating or attempting to operate while under

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 the influence of intoxicating liquor or drugs or
2 with a blood-alcohol level of ~~0-10%~~ 0.08% or
3 more;

4 FISCAL NOTE

5 This bill will inevitably increase the burden on
6 the court system, the county jails and the Department
7 of Corrections. However, because there is no way to
8 determine accurately the increase in
9 operating-under-the-influence cases being adjudicated,
10 the exact fiscal impact cannot be determined. An
11 increase of undetermined amount in General Fund
12 revenues generated from the fines may also be expected.

13 The Driver Education Evaluation Program of the
14 Department of Human Services will also see an
15 increased caseload, but fees charged for services
16 should cover the additional costs.

17 It is anticipated that this bill would have a
18 minimal financial impact on the Department of Public
19 Safety, Bureau of State Police, the exact amount of
20 which cannot be determined at this time. It is
21 anticipated that any additional costs to the Attorney
22 General's office can be absorbed within existing
23 resources.'

24 STATEMENT OF FACT

25 The purpose of this amendment is to make specific
26 language changes to clarify the current law and the
27 provisions proposed by the original bill, as well as
28 revise the provisions for removing a crucial enabling
29 tool for multi-offenders of the drunk and drugged
30 driving laws.

31 Sections 1 and 2 of the amendment permit law

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 enforcement officers from other states, primarily New
2 Hampshire, to continue pursuit of drunk drivers into
3 the State. These changes are necessary to permit Maine
4 officers to pursue into New Hampshire and are
5 consistent with Law Court decisions permitting pursuit
6 for operating under the influence across
7 jurisdictional boundaries within this State.
8 Necessary language clarifications are made in the
9 amendment.

10 Section 3 permits the use, in criminal
11 proceedings, of laboratory or other medical tests
12 which reflect blood-alcohol concentration and are part
13 of hospital records. The amendment clarifies that the
14 test results will be available only when relevant and
15 reliable. It also clarifies that the results will be
16 available in civil as well as criminal proceedings in
17 which the operator is alleged to have operated a motor
18 vehicle or boat while under the influence.

19 Section 4 reenacts existing language providing for
20 a coded license after judicial determination of
21 operating under the influence. Revised language adds
22 juvenile offenders and those convicted out of state to
23 those who will be issued coded licenses, deletes the
24 requirement that the Secretary of State create
25 regulations and revise awkward language.

26 Sections 5, 8, 9, 12, 13, 16, 18, 19 and 30
27 implement the blood-alcohol level reduction from the
28 current 0.10% to 0.08%.

29 Section 6 requires law enforcement officers to
30 submit the required information to the Secretary of
31 State for administrative suspension under the Maine
32 Revised Statutes, Title 29, section 1311-A in the same
33 manner for those subsequently charged as is presently
34 required for those drivers who are arrested or
35 summonsed. Currently, persons alleged to have
36 operated a motor vehicle while under the influence of
37 intoxicating liquor may be charged later rather than
38 immediately arrested or summonsed for the offense.

39 Section 7 removes the possibility of a
40 work-restricted license for those who test high for
41 alcohol after previously having been suspended for a

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 high test, a refusal or an actual
2 operating-under-the-influence conviction. The
3 amendment clarifies the language to be more
4 understandable.

5 Section 10 simplifies the elements of the warning
6 which must be given by the law enforcement officer to
7 permit penalizing a refusal.

8 Section 11 deletes language which may be
9 misleading in light of State v. Baker, 502 A.2d 489
10 (Me. 1985).

11 Sections 17 and 26 to 28 require the operator of
12 any motor vehicle involved in a fatality to submit to
13 a chemical test to determine the blood-alcohol level.

14 Section 14 of the amendment allows a licensed and
15 certified person to issue a certificate as to
16 credentials and that that person drew a specimen of
17 blood correctly from a person charged with operating
18 under the influence. The creation of the certificate
19 should reduce the necessity of making these
20 individuals testify at the trial of the persons from
21 whom they drew the specimens.

22 Section 19 amends the Maine Revised Statutes,
23 Title 29, section 1312-B, subsection 2, to make
24 refusal an aggravating factor at sentencing. It is
25 the duty of every driver to submit to a blood or
26 breath test. Any issue of probable cause has been
27 resolved against the operator as part of the
28 conviction. Section 19 does not treat a first
29 offender who refused as leniently as one who fulfilled
30 the obligation accepted when he got behind the wheel.
31 Section 19 also adds Title 29, section 1312-B,
32 subsection 2, paragraph F, to eliminate uncertainty
33 and variations in the calculation of such periods by
34 specifying the date of judgment as the date from which
35 the "within 6 years" period is calculated for
36 operating under the influence.

37 Section 20 increases to Class C the punishment
38 category for operating under the influence when an
39 operator under the influence causes death or serious
40 bodily injury to another.

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 Section 21 has been added to delete the necessity
2 of the State having to allege a separate or ancillary
3 complaint where there is a prior conviction or refusal
4 which will affect sentencing when a person is
5 subsequently convicted of operating under the
6 influence. The section also requires the court to
7 consider previous test-refusal suspensions as well as
8 convictions when sentencing.

9 Section 22 of the amendment provides that all
10 returned licenses, for 6 years following an
11 operating-under-the-influence conviction, will be
12 conditioned upon not driving after consumption of
13 alcohol. It provides notice of a new, lower blood
14 test standard, .02%, to be applied to such licensees.

15 Section 23 as amended removes the enabling tool of
16 the operator's motor vehicle in certain serious
17 situations. For the provision to apply:

18 1. The operator must have been convicted of
19 operating under the influence and still be under
20 suspension as a result of that conviction; and

21 2. The operator must again be under the
22 influence. In essence, the operator is committing 2
23 crimes at once, operating after suspension and
24 operating under the influence, after already being
25 convicted for similar behavior, operating under the
26 influence. It is estimated that only about 75 persons
27 a year could possibly fall into this classification.
28 This provision applies only to vehicles operated by
29 their owners.

30 When the above requirements are met, the motor
31 vehicle being operated is subject to seizure by the
32 law enforcement officer. Once the vehicle is seized,
33 there is a right to an immediate hardship hearing
34 before the District Court for the district in which
35 the vehicle was seized. The court may release the
36 vehicle at that time if the owner convinces that court
37 that hardship would be caused by the seizure and
38 subsequent disposition of the vehicle.

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 At the arraignment hearing on the criminal charge,
2 the owner-operator has 3 options concerning the
3 disposition of the vehicle. First, the owner-operator
4 can choose to sell the vehicle. The owner-operator
5 will be responsible for paying the towing and storage
6 costs, and the new owner must produce proof of
7 ownership before the vehicle will be released. The
8 2nd option available to the owner-operator is to
9 request that the State impound the vehicle until the
10 operator's license is restored. In this case, the
11 State will pay towing and storage costs, and the State
12 will store the vehicles in State Police parking lots.
13 The 3rd option is for the owner-operator simply to
14 forfeit or allow the car to be forfeited to the
15 State. In all cases, the court would also suspend the
16 owner-operator's right to register additional vehicles
17 in this State until the driver's license is restored.
18 The Chief or the Bureau of the State Police will adopt
19 rules governing the transportation, storage and
20 release of vehicles seized under these provisions. If
21 the vehicle is forfeited, it would be surrendered to a
22 lienholder or sold. Secured interests are protected.
23 Section 23 also sets up a Motor Vehicle Forfeiture
24 Account, akin to the current Extradition Account, in
25 each prosecutorial district. Similar annual auditing
26 and reporting requirements are imposed. There is a
27 \$5,000 limit on the amount in each account.

28 Section 24 of the amendment provides an increased
29 period of administrative suspension of license to 3
30 years if, while operating under the influence, with
31 excessive blood-alcohol or having refused a chemical
32 test, the operator caused a fatality. This section
33 combines current administrative proceedings for
34 preconviction suspension for operating under the
35 influence or refusal and "at fault" determinations in
36 reportable accidents. It provides for the suspension
37 to be terminated if the operator prevails in a civil
38 tort claim. The amendment clarifies that the
39 Secretary of State is required to suspend the license.

40 Section 25 of the amendment amends "public
41 highway" to "public way," thus conforming to the
42 language in the corresponding penalty provision for
43 habitual offenders.

COMMITTEE AMENDMENT "A" to H.P. 1746, L.D. 2395

1 Section 29 of the amendment requires a driver who
2 has been convicted of operating under the influence
3 within the prior 6 years to submit to a blood or
4 breath test if the law enforcement officer has
5 probable cause to believe that the driver has .02% or
6 more by weight of alcohol in the blood. Unless the
7 driver violates another provision, no crime has been
8 committed, but the driver will be administratively
9 suspended for one year if the test result is 0.02% or
10 more. A refusal results in an administrative
11 suspension for 2 years. Maine enacted the Driver
12 License Compact in 1963. In addition, out-of-state
13 convictions encompassed by the compact may be the
14 basis for issuing a coded license under section 540-A.

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5327040588

Reported by the Committee on Legal Affairs
Reproduced and distributed under the direction of the Clerk of the
House
4/12/88

(Filing No. H-669)