

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2395

H.P. 1746 House of Representatives, March 1, 1988
Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative PRIEST of Brunswick.
Cosponsored by Representatives HILLOCK of Gorham, HUSSEY
of Milo and Senator PERKINS of Hancock.

STATE OF MAINE

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

1 **AN ACT to Strengthen the Drunk Driving Laws.**
2

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

5 **Sec. 1.** 15 MRSa §152, as amended by PL 1979, c.
6 663, §87, is further amended to read:

7 §152. Fresh pursuit defined

1 The term "fresh pursuit" as used in this chapter
2 includes fresh pursuit as defined by the common law,
3 and the pursuit of a person who has committed a crime
4 punishable by a maximum term of imprisonment equal to
5 or exceeding one year, or of operating a motor vehicle
6 under the influence of intoxicating liquor, or who is
7 reasonably suspected of having committed such a
8 crime. It shall include the pursuit of a person
9 suspected of having committed a supposed crime
10 punishable by a maximum term of imprisonment equal to
11 or exceeding one year or of operating under the
12 influence, though no such crime has actually been
13 committed, if there is reasonable ground for believing
14 that such a crime has been committed. Fresh pursuit
15 as used herein in this chapter shall not
16 necessarily imply instant pursuit, but pursuit without
17 unreasonable delay.

18 Sec. 2. 15 MRSA §154, as amended by PL 1979, c.
19 663, §88, is further amended to read:

20 §154. Arrest; exception

21 Any member of a duly organized state, county or
22 municipal police unit of another state of the United
23 States, who enters this State in fresh pursuit and
24 continues within this State in such fresh pursuit of a
25 person in order to arrest him on the ground that he is
26 believed to have committed, in such other state, a
27 crime punishable by a maximum term of imprisonment
28 equal to or exceeding one year or of operating a motor
29 vehicle under the influence of intoxicating liquor,
30 shall have the same authority to arrest and hold such
31 person in custody as has any member of any duly
32 organized state, county or municipal police unit of
33 this State to arrest and hold in custody a person on
34 the ground that he is believed to have committed such
35 a crime in this State. This section shall not be
36 construed so as to make unlawful any arrest in this
37 State which would otherwise be lawful.

38 Sec. 3. 16 MRSA §357, as amended by PL 1973, c.
39 788, §66, is further amended by adding at the end a
40 new paragraph to read:

1 Notwithstanding this section, the results of
2 laboratory or other tests which reflect blood alcohol
3 concentration are admissible as evidence in any
4 criminal proceeding and shall not be excluded as
5 evidence in such a proceeding by reason of any claim
6 of confidentiality or privilege.

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

10 §540-A. Coded licenses

11 1. Under 21 years of age. The Secretary of State
12 shall provide that licenses issued to persons under 21
13 years of age be distinctive, either by being printed
14 with a different color than for those issued to
15 persons 21 years of age or older or by some other
16 appropriate distinguishing mark or code.

17 2. Prior convictions. The Secretary of State
18 shall provide that the license of a person who has
19 been convicted of operating under the influence of
20 intoxicating liquor, drugs or with an excessive blood
21 alcohol level within 6 years prior to the date the
22 license is issued, reissued or returned after a period
23 of suspension, shall bear a coded notation indicating
24 that fact. For purposes of this subsection, a
25 conviction of operating under the influence of
26 intoxicating liquor, drugs or with an excessive blood-
27 alcohol level has the same meaning as specified in
28 section 2241-J, subsection 12.

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

32 1-A. Definition. For the purposes of this
33 section, "operating or attempting to operate a motor
34 vehicle with an excessive blood-alcohol level" means
35 operating or attempting to operate a motor vehicle
36 while having \geq 0.08% or more by weight of
37 alcohol in the blood.

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

4 A. A law enforcement officer who arrests or,
5 summons or conducts an investigation which results
6 in criminal charges against any person for
7 operating or attempting to operate a motor vehicle
8 with an excessive blood-alcohol level shall
9 immediately forward to the Secretary of State a
10 report, under oath of all information relevant to
11 the enforcement action, including information
12 which adequately identifies the person arrested
13 or, summonsed or charged, a statement of the
14 officer's grounds for belief that the person
15 committed the offense of operating or attempting
16 to operate a motor vehicle with an excessive
17 blood-alcohol level, and a certificate under
18 section 1312, subsection 8, of the results of any
19 blood-alcohol tests by a self-contained
20 breath-alcohol testing apparatus which were
21 conducted.

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

25 5-A. Work-restricted license. Upon receipt by
26 the Secretary of State of a petition for a
27 work-restricted license by any person whose license or
28 right to operate a motor vehicle has been suspended
29 pursuant to this section, the Secretary of State may
30 stay the suspension during a statutory suspension
31 period and issue a work-restricted license. The
32 issuance of such a license shall be conditioned upon a
33 showing by the petitioner by clear and convincing
34 evidence that such a license is necessary to operate a
35 motor vehicle between the residence and a place of
36 employment or to operate a motor vehicle in the scope
37 of employment, or both, as determined by the Secretary
38 of State and, that no alternative means of
39 transportation is available, and that the petitioner
40 has not, within 6 years, previously been suspended for
41 refusing to submit to a chemical test, for having

1 0.08% or more by weight of alcohol in the blood or
2 after conviction of operating under the influence of
3 intoxicating liquor or drugs or with an excessive
4 blood-alcohol level.

5 **Sec. 8.** 29 MRSA §1312, sub-§1, as amended by PL
6 1983, c. 501, §1, is further amended to read:

7 1. Prerequisites to tests. Before any test
8 specified is given, the law enforcement officer shall
9 inform the person as to whom there is probable cause
10 that, if he fails to comply with the duty to submit to
11 and complete a test to determine the level of
12 blood-alcohol at the direction of the law enforcement
13 officer, his license or permit to operate, his right
14 to operate or his right to apply for or obtain a
15 license will be suspended for ~~100~~ 180 days or, in the
16 case of a 2nd or subsequent failure to submit to and
17 complete that test within a 6-year period, one year
18 and the period of suspension shall be a minimum of 6
19 months and may be as long as 3 years. The officer
20 should also inform the person that the failure to
21 comply with the duty to submit to a blood-alcohol test
22 shall be admissible in evidence against him at any
23 trial for operating under the influence of
24 intoxicating liquor.

25 No test results may be excluded as evidence in any
26 proceeding before any administrative officer or court
27 of this State as a result of the failure of the law
28 enforcement officer to comply with this prerequisite.
29 The only effects of the failure of the officer to
30 comply with this prerequisite shall be as provided in
31 subsections 2 and 8.

32 **Sec. 9.** 29 MRSA §1312, sub-§2, as amended by PL
33 1983, c. 501, §2, is further amended to read:

34 2. Hearing. If a person as to whom there is
35 probable cause fails to comply with the duty to submit
36 to a test to determine his blood-alcohol level by
37 analysis of his blood or breath upon the request of a
38 law enforcement officer, no test may be given. The
39 Secretary of State, upon the receipt of a written
40 statement under oath from a law enforcement officer,

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

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

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

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

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

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

18 **Sec. 10.** 29 MRSA §1312, sub-§5, ¶B, as repealed
19 and replaced by PL 1971, c. 547, is amended to read:

20 B. If there was, at the time alleged, in excess
21 of 0.05%, but less than ~~0.10%~~ 0.08% by weight
22 of alcohol in the defendant's blood, it is
23 relevant evidence, but it is not to be given prima
24 facie effect in indicating whether or not the
25 defendant was under the influence of intoxicating
26 liquor within the meaning of this section, but
27 such fact may be considered with other competent
28 evidence in determining whether or not the
29 defendant was under the influence of intoxicating
30 liquor.

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

34 C. For purposes of evidence in proceedings other
35 than those arising under section 1312-B or 1312-C,
36 it shall be presumed that a person was under the
37 influence of intoxicating liquor when he has a
38 blood-alcohol level of ~~0.10%~~ 0.08% or more by
39 weight.

1 **Sec. 12. 29 MRSA §1312, sub-§8,** as amended by
2 PL 1981, c. 679, §§24 and 25, is further amended to
3 read:

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

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

37 A person certified under subsection 6, as qualified to
38 operate a self-contained, breath-alcohol testing
39 apparatus for the purpose of determining blood-alcohol
40 level, may issue a certificate stating the results of
41 the analysis. That certificate, when duly signed and

1 sworn to by the certified person, shall be admissible
2 in evidence in any court of the State. It shall be
3 prima facie evidence that the percentage by weight of
4 alcohol in the blood of the defendant was, at the time
5 the breath sample was taken, as stated in the
6 certificate, unless, with 10-days' written notice to
7 the prosecution, the defendant requests that the
8 operator or other qualified witness testify as to the
9 results of the analysis.

10 Transfer of sample specimens to and from a laboratory
11 for purposes of analysis may be by certified or
12 registered mail, and when so made shall be deemed to
13 comply with all requirements regarding the continuity
14 of custody of physical evidence.

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

31 If a test result is not available for a reason other
32 than failing to comply with the duty to submit to a
33 blood-alcohol test, the unavailability and the reason
34 shall be ~~admissable~~ admissible in evidence.

35 **Sec. 13. 29 MRSa §1312, sub-§11, ¶A, as amended**
36 **by PL 1981, c. 679, §27, is further amended to read:**

37 **A.** After a person has been charged with operating
38 or attempting to operate a motor vehicle under the
39 influence of intoxicating liquor or drugs or with
40 a blood-alcohol level of ~~0-10%~~ 0.08% or more,

1 the investigating or arresting officer shall
2 investigate to determine whether the charged
3 person has any prior convictions under former
4 subsection 10 or section 1312-B or an adjudication
5 under section 1312-C. As part of his
6 investigation, the officer shall make the
7 necessary inquiries of the Secretary of State.

8 Sec. 14. 29 MRSA §1312, sub-§11, ¶D is enacted
9 to read:

10 D. Notwithstanding any other provision of this
11 section, each operator of a motor vehicle involved
12 in a motor vehicle accident which results in the
13 death of any person shall submit to and complete a
14 test to determine that person's blood-alcohol
15 level by analysis of such blood or breath. A law
16 enforcement officer may determine which type of
17 test shall be administered and shall report any
18 failure of a person to submit to or complete a
19 test at the officer's request to the Secretary of
20 State by written statement under oath.

21 The Secretary of State shall suspend, for a period
22 of one year, the license or permit to operate,
23 right to operate a motor vehicle and right to
24 apply for or obtain a license, pursuant to section
25 2241, subsection 1, paragraph N, of any person who
26 fails to submit to or complete a test. The scope
27 of any hearing the Secretary of State holds
28 pursuant to section 2241 shall include whether
29 there was probable cause to believe that the
30 person was the operator of a motor vehicle
31 involved in a motor vehicle fatality and whether
32 that person failed to submit to or complete a test
33 to determine the blood-alcohol level.

34 Sec. 15. 29 MRSA §1312-B, sub-§1, ¶B, as
35 enacted by PL 1981, c. 468, §10, is amended to read:

36 B. While having ~~0.10%~~ 0.08% or more by weight
37 of alcohol in his blood.

38 Sec. 16. 29 MRSA §1312-B, sub-§2, as amended by
39 PL 1987, c. 536, §§5 and 11, is further amended to

1 read:

2 2. Penalties. The offense defined in subsection
3 1 is a Class D crime, provided that in. In the
4 determination of an appropriate sentence, refusal to
5 submit to a chemical test shall in every case be an
6 aggravating factor. In the following cases the
7 following minimum penalties shall apply.

8 A. Except as provided in paragraph B, in the case
9 of a person having no previous convictions of a
10 violation of former section 1312, subsection 10,
11 former section 1312-B or this section and having
12 no previous suspension of license or privilege to
13 operate for failure to comply with the duty to
14 submit to and complete a test to determine the
15 level of blood-alcohol under section 1312 within a
16 6-year period, the fine shall not be less than
17 \$300 and the court shall suspend the defendant's
18 license or permit to operate, right to operate a
19 motor vehicle and right to apply for and obtain a
20 license for a period of 90 days, which penalties
21 may not be suspended.

22 B. In the case of a person having no previous
23 convictions of a violation of former section 1312,
24 subsection 10, former section 1312-B, or this
25 section and having no previous suspension of
26 license or privilege to operate for failure to
27 comply with the duty to submit to and complete a
28 test to determine the level of blood-alcohol under
29 section 1312 within a 6-year period, the fine
30 shall not be less than \$300, the sentence shall
31 include a period of incarceration of not less than
32 48 hours and the court shall suspend the
33 defendant's license or permit to operate, right to
34 operate a motor vehicle and right to apply for and
35 obtain a license for a period of 90 days, which
36 penalties may not be suspended, when the person:

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

39 (2) Was driving in excess of the speed limit
40 by 30 miles an hour or more during the

1 operation which resulted in the prosecution
2 for operating under the influence or with a
3 blood-alcohol level of ~~0.10%~~ 0.08% or
4 more; or

5 (3) Eluded or attempted to elude an officer,
6 as defined in section 2501-A, subsection 3,
7 during the operation which resulted in
8 prosecution for operating under the influence
9 or with a blood-alcohol level of ~~0.10%~~
10 0.08% or more; or

11 (4) Failed to submit to a chemical test for
12 the determination of his blood-alcohol level,
13 at the request of a law enforcement officer
14 on the occasion which resulted in the
15 conviction.

16 C. In the case of a person having one previous
17 conviction of a violation of former section 1312,
18 subsection 10, former section 1312-B or this
19 section, or having at least one previous
20 suspension for failure to comply with the duty to
21 submit to and complete a test to determine the
22 level of blood-alcohol under section 1312 within a
23 6-year period, the fine shall not be less than
24 \$500, the sentence shall include a period of
25 incarceration of not less than 7 days and the
26 court shall suspend the defendant's license or
27 permit to operate, right to operate a motor
28 vehicle and right to apply for and obtain a
29 license for a period of one year, which penalties
30 may not be suspended.

31 D. In the case of a person having 2 or more
32 previous convictions of violations of former
33 section 1312, subsection 10, former section 1312-B
34 or this section, within a 6-year period, the fine
35 shall not be less than \$750, the sentence shall
36 include a period of incarceration of not less than
37 30 days and the court shall suspend the
38 defendant's license or permit to operate, right to
39 operate a motor vehicle and right to apply for and
40 obtain a license for a period of 2 years, which
41 penalties may not be suspended.

1 D-1. In addition to the penalties provided
2 under paragraphs C and B, the court shall order
3 the defendant to participate in the alcohol and
4 other drug education, evaluation and treatment
5 program for multiple offenders administered by the
6 Department of Human Services, as defined in Title
7 22, chapter 1602. The court may waive the
8 multiple offender intervention program under Title
9 22, section 7203, subsection 3, paragraph A, if
10 the court finds that the defendant has completed a
11 residential treatment program, or its equivalent,
12 subsequent-to-the-date-of-the-offense.

13 E. The penalties provided under paragraphs A, B,
14 C and D shall not be suspended by the court. The
15 court shall give notice of the suspension and take
16 physical custody of the operator's license as
17 provided in section 2241-H. The Secretary of
18 State may impose an additional period of
19 suspension as provided in section 1312-D,
20 subsection 1-A, or may extend any period of
21 suspension until satisfaction of any conditions
22 imposed pursuant to section 1312-D, subsection 3.

23 F. For purposes of this section, a prior
24 conviction has occurred within the 6-year period
25 provided if the date of docket entry by the clerk
26 of a judgment of conviction or adjudication is 6
27 years or less from the date of the new conduct
28 which is penalized or for which the penalty is or
29 may be enhanced.

30 **Sec. 17. 29 MRSA §1312-B, sub-§2-A is enacted**
31 **to read:**

32 2-A. Aggravated punishment category. If the
33 State pleads and proves that, while operating a motor
34 vehicle in violation of this section, the actor in
35 fact caused serious bodily injury as defined in Title
36 17-A, section 2, subsection 23, to another person or
37 in fact caused the death of another person, the
38 sentencing class for the offense in subsection 1 is a
39 Class C crime. The minimum penalties specified in
40 subsection 2 shall apply, but the minimum period of

1 suspension shall be 18 months unless a longer minimum
2 period otherwise applies.

3 **Sec. 18.** 29 MRSA §1312-D, sub-§11 is enacted to
4 read:

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

17 **Sec. 19.** 29 MRSA §§1312-G and 1312-H are
18 enacted to read:

19 §1312-G. Forfeiture of motor vehicles in certain
20 operating-under-the-influence cases

21 **1. Seizure.** Any motor vehicle operated or
22 attempted to be operated by a person under the
23 influence of intoxicating liquor or drugs or with
24 0.08% or more by weight of alcohol in the blood who
25 was previously convicted or adjudicated of such
26 offense and the operator is, in fact, still under
27 suspension or revocation as a result of that previous
28 conviction or adjudication is subject to seizure by
29 any law enforcement officer authorized to enforce the
30 motor vehicle laws of this State. Any officer making
31 such a seizure shall, within 7 days of the seizure and
32 at the direction of the attorney for the State, return
33 the vehicle or file with the court a complaint against
34 the vehicle. The complaint shall describe the
35 vehicle, recite the name of the owner and the date and
36 place of its seizure, shall summarize the violation of
37 law which is alleged to have occurred and shall pray
38 for a decree of forfeiture of the vehicle. The
39 complaint shall be heard and the seized vehicle
40 disposed of according to subsection 3.

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

19 A. The seizure is incident to an arrest with
20 probable cause for a violation of section 1312-B;
21 and

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

26 3. Forfeiture of motor vehicles seized under this
27 provision. 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, the owner as listed on
32 the vehicle registration, all persons or entities
33 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

1 returnable. Copies shall be served on common
2 carriers.

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

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

14 (1) The right so claimed;

15 (2) The foundation of the claim;

16 (3) The vehicle so claimed by vehicle
17 identification number, license plate or other
18 specific description and either subparagraph
19 (4) or (5);

20 (4) That the operator's status was not known
21 to the claimant or that the vehicle was
22 operated without the claimant's knowledge or
23 consent; and

24 (5) The facts which constitute hardship.

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

27 D. There shall be no discovery other than under
28 the Maine Rules of Civil Procedure, Rule 36,
29 except by order of the court upon a showing of
30 substantial need. Any order permitting discovery
31 shall set forth in detail the areas in which
32 substantial need has been shown and the extent to
33 which discovery may take place.

34 E. All forfeiture proceedings are civil and in
35 the nature of proceedings in rem. At the hearing,

1 the court shall proceed to determine the truth of
2 the allegations in the claim and complaint and
3 hear any pertinent evidence offered by the State
4 or claimant. If the attorney for the State proves
5 by a preponderance of the evidence the operative
6 facts specified in subsection 1, the court shall
7 declare the vehicle forfeited to the State unless
8 the claimant proves by a preponderance of the
9 evidence the operative facts specified in
10 paragraph C or undue hardship as specified in
11 paragraph F.

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

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

41 H. At the direction of the attorney for the
42 State, forfeited vehicles shall be subject to

1 public sale or released to the lienholder with a
2 right of possession. The proceeds of sale shall
3 be used to defray the expenses of towing, storage
4 and sale; any surplus may be retained by the
5 prosecutorial district in a special account to
6 defray the expenses of other forfeitures. Any
7 amount over \$5,000 in the special account of any
8 prosecutorial district shall be returned to the
9 General Fund.

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

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

29 §1312-H. Motor Vehicle Forfeiture Account

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

39 2. Funding. The Motor Vehicle Forfeiture Account
40 in each prosecutorial district shall be funded by the

1 proceeds of the sale of motor vehicles forfeited
2 pursuant to section 1312-G. Whenever a motor vehicle
3 is forfeited and the proceeds of the public auction
4 are recovered by the State, the district attorney
5 shall determine whether the proceeds or a portion of
6 the proceeds shall be deposited in the Motor Vehicle
7 Forfeiture Account for the district attorney's
8 prosecutorial district, but in no event may the
9 account exceed \$5,000. Any proceeds of a motor
10 vehicle forfeiture not deposited in the Motor Vehicle
11 Forfeiture Account shall be deposited in the General
12 Fund. Any unexpended balance in the Motor Vehicle
13 Forfeiture Account of a prosecutorial district
14 established by this section shall not lapse, but shall
15 be carried forward into the next year.

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

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

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

35 Sec. 20. 29 MRSA §1313-B is enacted to read:

36 §1313-B. Causing death; suspension after
37 administrative determination

38 1. Suspension. If the Secretary of State is
39 satisfied that a person, while under the influence of

1 intoxicating liquor or drugs or while having 0.08% or
2 more by weight of alcohol in that person's blood or
3 having refused to submit to a chemical test if for
4 such a refusal the person may be penalized under
5 section 1312, operated a motor vehicle in such a
6 manner as to cause the death of any person, the
7 Secretary of State may immediately suspend that
8 operator's license, permit or right to operate. The
9 period of suspension shall be 3 years, consecutive to
10 any suspension imposed by the Secretary of State for
11 refusal to take a chemical test.

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

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

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

37 5. Hearing; issues. The only issues at the
38 hearing are whether, by a preponderance of the
39 evidence, the person suspended operated a motor
40 vehicle, whether his operation caused the death of
41 another person, and whether on that occasion the

1 operator was under the influence of intoxicating
2 liquor or drugs, had an excessive blood-alcohol level
3 or may be penalized for his refusal to submit to a
4 chemical test to determine his blood-alcohol level.
5 The provisions of section 1311-A, subsection 8,
6 paragraph C apply.

7 6. Secretary of State; determination. The
8 determination of these facts by the Secretary of State
9 is independent of the determination of the same or
10 similar facts in the adjudication of any criminal or
11 civil charges arising out of the same occurrence. The
12 disposition of those criminal or civil charges shall
13 not affect the fact or length of suspension under this
14 section. Statements made by the licensee at the
15 hearing before the Secretary of State shall not be
16 introduced by the State in its case in chief in any
17 prosecution for a violation of section 1312-B; Title
18 15, section 3103, subsection 1, paragraph F; or of a
19 Class B violation of Title 17-A, section 203, arising
20 out of the same occurrence.

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

33 Sec. 21. 29 MRSA §2184, sub-§1, as repealed and
34 replaced by PL 1981, c. 679, §43, is amended to read:

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

1 that person:

2 A. Has received written notice of a suspension or
3 revocation pursuant to section 1312-D, subsection
4 1, or section 2241-H or other written notice from
5 the Secretary of State;

6 B. Has been orally informed of the suspension or
7 revocation by a law enforcement officer who is
8 aware of the information as a result of records
9 maintained by the Secretary of State, including
10 those obtainable by telecommunications;

11 C. Has actual knowledge of his suspension or
12 revocation;

13 D. Is a person to whom written notice was sent by
14 ordinary mail at the last known address shown by
15 the records maintained by the Secretary of State;
16 or

17 E. Has failed to appear in court pursuant to any
18 notice or order specified in section 2301-A.

19 Violation of this section is a Class D crime, provided
20 that, notwithstanding Title 17-A, section 1301, the
21 maximum fine shall be \$2,500.

22 Sec. 22. 29 MRSA §2241, sub-§1, ¶K, as amended
23 by PL 1983, c. 455, §28, is further amended to read:

24 K. Is subject to action of the Secretary of State
25 pursuant to section 55-B or section 2378,
26 subsection 1; or

27 Sec. 23. 29 MRSA §2241, sub-§1, ¶M, as enacted
28 by PL 1985, c. 520, §3, is amended to read:

29 M. Has failed to provide, pursuant to section
30 246, proof of payment of the use tax imposed by
31 the United States Internal Revenue Code of 1954,
32 Section 4481, within time periods established by
33 federal statute and regulations promulgated
34 pursuant to federal statute; or

1 **Sec. 24.** 29 MRSA §2241, sub-§1, ¶N is enacted
2 to read:

3 N. Has failed to submit to or complete a test to
4 determine the blood-alcohol level pursuant to
5 section 1312, subsection 11, paragraph D.

6 **Sec. 25.** 29 MRSA §2241-J is enacted to read:

7 §2241-J. Special provisions pertaining to persons
8 convicted of operating under the influence
9 or with excessive blood-alcohol levels

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

18 A. There is received a record of conviction of
19 operating under the influence of intoxicating
20 liquor or drugs or with an excessive blood-alcohol
21 level; or

22 B. The Secretary of State determines has operated
23 or attempted to operate a motor vehicle while
24 having 0.02% or more by weight of alcohol in the
25 blood.

26 2. Duty to submit to test. Any person who,
27 within the previous 6 years has been convicted of
28 operating under the influence of intoxicating liquor
29 or drugs or with an excessive blood-alcohol level who
30 operates or attempts to operate a motor vehicle within
31 this State, shall have the duty to submit to a test to
32 determine the blood-alcohol level by analysis of that
33 person's blood or breath, if there is probable cause
34 to believe he operated or attempted to operate a motor
35 vehicle while having 0.02% or more by weight of
36 alcohol in the blood. Section 1312 shall apply,
37 except that in all cases probable cause shall be to
38 believe that the person was operating or attempting to

1 operate a motor vehicle while having 0.02% or more by
2 weight of alcohol in the blood and that the person has
3 been so convicted, and except that suspension for
4 failing to comply with the duty to submit to the test
5 shall be for a period of not less than 2 years.

6 3. Secretary of State; determination. The
7 Secretary of State shall make the determination of
8 suspension as follows.

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

22 B. The Secretary of State shall make a
23 determination on the basis of the information
24 required in subsection 4 and this determination
25 shall be final unless a hearing is requested and
26 held. If a hearing is held, the Secretary of
27 State shall review the matter and make a final
28 determination on the basis of evidence received at
29 the hearing.

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

1 F, arising out of the same occurrence.

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

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

25 B. The report required in this subsection shall
26 be made on forms supplied by or approved by the
27 Secretary of State.

28 C. If the blood-alcohol test was not analyzed by
29 a law enforcement officer, the person who analyzed
30 the results shall cause a copy of the person's
31 certificate under section 1312, subsection 8, to
32 be sent to the Secretary of State.

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

35 A. Upon receipt of the information required in
36 subsection 4, the Secretary of State shall make
37 the determination described in subsection 3. If
38 the Secretary of State determines that the person
39 is subject to license suspension, the Secretary of

1 State shall immediately issue a notice of
2 suspension.

3 B. The notice of suspension shall be sent by
4 regular mail to the person at the last known
5 address on record at the Division of Motor
6 Vehicles, or to the address provided in the report
7 of the law enforcement officer if that address
8 differs from the address of record.

9 C. The notice of suspension shall clearly specify
10 the reason and statutory grounds for the
11 suspension, the effective date of the suspension,
12 the right of the person to request a hearing, the
13 procedure for requesting a hearing and the date by
14 which that request for hearing shall be made. The
15 notice of suspension shall also clearly state that
16 a copy of the report of the law enforcement
17 officer under subsection 4, paragraph A and a copy
18 of the blood-alcohol test certificate under
19 subsection 4, paragraph A or C, shall be provided
20 to the person upon request to the Secretary of
21 State.

22 6. Effective date; period of suspension. The
23 effective date and period of suspension is as follows.

24 A. Any suspension imposed shall be effective on a
25 specified date not less than 10 days after the
26 mailing of the notification of suspension by the
27 Secretary of State. If a person whose license is
28 suspended desires to have a hearing, that person
29 shall notify the Secretary of State, in writing,
30 within 10 days from the effective date of the
31 suspension. The suspension shall be stayed for 10
32 days from the effective date of the suspension.
33 If, within 10 days from the effective date of the
34 suspension, the Secretary of State is notified, in
35 writing, of a request for a hearing, the
36 suspension shall be stayed until a hearing is held
37 and a decision is issued. The Secretary of State
38 shall conduct a hearing and issue a decision
39 within 30 days from the date of receipt of a
40 written request for hearing. Failure by the
41 Secretary of State to conduct a hearing and issue

1 a decision within the 30-day period shall result
2 in an extension of the stay of the Secretary of
3 State's suspension order until such time as a
4 hearing is conducted and a decision issued.
5 Notwithstanding this subsection, there shall be no
6 stay of suspension during the period of any delay
7 of hearing which is caused or requested by the
8 petitioner.

9 B. Unless the suspension is for a refusal to take
10 the chemical test when a person's license is
11 suspended under this section and is also suspended
12 after having been adjudicated or convicted on
13 charges arising out of the same occurrence for a
14 violation of section 1312-B or Title 15, section
15 3103, subsection 1, paragraph F, the period of
16 time that person's license has been suspended
17 under this section prior to the adjudication or
18 conviction shall be deducted from the period of
19 time of any court-imposed suspension ordered
20 pursuant to section 1312-B or Title 15, section
21 3103, subsection 1, paragraph F. If such
22 suspension is for the person's refusal to submit
23 to the required test, any period of suspension
24 imposed by the court or by the Secretary of State
25 as a result of adjudication or conviction shall be
26 consecutive to the period of suspension imposed
27 for refusal.

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

30 A. Any person who has received a notice of
31 suspension under this section may make a written
32 request for a review of the determination of the
33 Secretary of State at a hearing.

34 B. The request for hearing shall be made within
35 10 days from the effective date of the
36 suspension. If a written request for a hearing is
37 made after such date and the Secretary of State
38 finds that the person was unable to make a timely
39 request due to lack of actual notice of the
40 suspension or due to factors of physical
41 incapacity, the Secretary of State shall waive the
42 period of limitation,

1 reopen the matter and grant the hearing request,
2 except, in such a case, a stay of suspension
3 pending the hearing shall not be granted.

4 8. Hearing and notice. The hearing and notice
5 shall be as follows.

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

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

10 (1) There was probable cause to believe that
11 the person had been convicted of operating
12 under the influence of intoxicating liquor or
13 drugs or with an excessive blood-alcohol
14 level, and that the person was operating or
15 attempting to operate a motor vehicle while
16 having 0.02% or more by weight of alcohol in
17 the blood;

18 (2) The person operated or attempted to
19 operate a motor vehicle;

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

22 (4) Within 6 years prior to such date the
23 person had been convicted of operating under
24 the influence of intoxicating liquor or drugs
25 or with an excessive blood-alcohol level.

26 C. A certificate duly signed and sworn to
27 pursuant to section 1312, subsection 8, shall be
28 prima facie proof of facts stated in the
29 certificate and that the person taking a specimen
30 of blood or breath was authorized by section 1312,
31 subsection 6, that the equipment, chemicals and
32 other materials used in the taking of the blood
33 specimen or a breath sample were of a quality
34 appropriate for the purpose of producing reliable
35 test results, that any equipment, chemicals or
36 materials required by section 1312, subsection 6,
37 to be approved by the Department of Human Services

1 were in fact approved, that the sample tested by
2 the person certified under section 1312,
3 subsection 6, was in fact the same sample taken,
4 and that the percentage by weight of alcohol in
5 the blood was, at the time the blood or breath
6 sample was taken, as stated in the certificate.

7 D. If it is determined after hearing that there
8 was not the requisite probable cause for
9 blood-alcohol test administration or that the
10 person had not been so convicted within 6 years of
11 the date of operation or attempted operation or
12 that the person did not operate or attempt to
13 operate a motor vehicle while having 0.02% or more
14 by weight of alcohol in the blood, the suspension
15 shall be removed immediately and the Secretary of
16 State shall delete any record of the suspension.

17 E. Any person whose license is suspended under
18 this section on the basis of a blood-alcohol test
19 may, within 30 days after receipt of the decision,
20 appeal to the Superior Court for judicial review
21 as provided in Title 5, sections 11001 to 11008.
22 If the court rescinds the suspension, it shall
23 also order the Secretary of State to delete any
24 record of the suspension.

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

29 10. Longer period of suspension. If a person
30 subject to this section is determined to have operated
31 or attempted to operate a motor vehicle while having
32 0.08% or more of alcohol in the blood such that both
33 this section and section 1311-A apply, the longer
34 period of suspension shall apply.

35 11. Provisional license. Following the
36 expiration of the aggregate periods of suspension
37 imposed pursuant to this section, otherwise imposed by
38 the Secretary of State, and ordered by any court, the
39 Secretary of State may issue a provisional license to
40 the person, subject to the conditions, restrictions or

1 terms the Secretary of State deems advisable, if the
2 Secretary of State has received written notice that
3 the person has satisfactorily completed the alcohol
4 educational program of the Department of Human
5 Services and, when required, has satisfactorily
6 completed an alcohol treatment or rehabilitation
7 program approved or licensed by the Department of
8 Human Services.

9 12. Conviction. For purposes of this section, a
10 conviction of operating under the influence of
11 intoxicating liquor, drugs or with excessive
12 blood-alcohol level includes:

13 A. A conviction of a violation of section 1312-B
14 or of former section 1312, subsection 10, or of
15 succeeding criminal provisions for such conduct;

16 B. A conviction, in any jurisdiction which is or
17 becomes a party to the Driver License Compact of
18 any offense described in the compact, article IV,
19 subsection 1, paragraph B, or of an offense which
20 is similar as provided by article IV, subsection 3;

21 C. An adjudication or other determination made
22 under the juvenile law of this State or of another
23 jurisdiction for conduct which, if committed by an
24 adult, would have been a conviction included in
25 this subsection, including the conduct to which
26 Title 15, section 3103, subsection 1, paragraph F,
27 refers; and

28 D. A conviction for such conduct in a court of
29 the United States or a court of a state which is
30 not a party to the compact, provided that the
31 punishment for that offense includes the
32 possibility of incarceration, whether or not
33 actually imposed on that occasion, and the
34 elements of the offense as provided in the law of
35 that jurisdiction include operation or attempted
36 operation of a motor vehicle while intoxicated,
37 impaired or under the influence of alcohol,
38 intoxicating liquor, drugs or with a level of
39 blood-alcohol sufficient for conviction under the
40 laws of that jurisdiction.

1 13. Prior conviction. For purposes of this
2 section, a prior conviction has occurred within the
3 6-year period provided if the date of docket entry by
4 the clerk of a judgment of conviction or adjudication
5 is 6 years or less from the date of the new conduct
6 which is penalized or for which the penalty is or may
7 be enhanced.

8 Sec. 26. 29 MRSA §2292, sub-§1, ¶B, as amended
9 by PL 1981, c. 468, §16, is further amended to read:

10 B. Operating or attempting to operate while under
11 the influence of intoxicating liquor or drugs or
12 with a blood-alcohol level of $\pm 0.08\%$ 0.08% or
13 more;

14 STATEMENT OF FACT

15 Sections 1 and 2 permit law enforcement officers
16 from other states, primarily New Hampshire, to
17 continue pursuit of drunk drivers into the State.
18 These changes are necessary to permit Maine officers
19 to pursue into New Hampshire and are consistent with
20 Law Court decisions permitting pursuit for operating
21 under the influence across jurisdictional boundaries
22 within this State.

23 Section 3 permits the use, in criminal
24 proceedings, of laboratory or other medical tests
25 which reflect blood-alcohol concentration and are part
26 of hospital records.

27 Section 4 reenacts existing language providing for
28 a coded license after judicial determination of
29 operating under the influence. Revised language adds
30 juvenile offenders and those convicted out of state to
31 those who will be issued coded licenses, deletes the
32 requirement that the Secretary of State create
33 regulations and revises awkward language.

34 Sections 5, 10, 11, 13, 15, 16 and 26 implement
35 the blood-alcohol level reduction from the current
36 0.10% to 0.08%.

1 Section 6 requires law enforcement officers to
2 submit the required information to the Secretary of
3 State for administrative suspension under the Maine
4 Revised Statutes, Title 29, section 1311-A in the same
5 manner for those subsequently charged as is presently
6 required for those drivers who are arrested or
7 summoned. Currently, persons alleged to have operated
8 a motor vehicle while under the influence of
9 intoxicating liquor may be charged later rather than
10 immediately arrested or summoned for the offense.

11 Section 7 removes the possibility of a
12 work-restricted license for those who test high for
13 alcohol after previously having been suspended for a
14 high test, a refusal or an actual
15 operating-under-the-influence conviction.

16 Section 8 simplifies the elements of the warning
17 which must be given by the law enforcement officer to
18 permit penalizing a refusal.

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

21 Sections 12, 14 and 22 to 24 require the operator
22 of any motor vehicle involved in a fatality to submit
23 to a chemical test to determine his blood-alcohol
24 level.

25 Section 16 amends Title 29, section 1312-B,
26 subsection 2 in the beginning of the subsection and
27 in paragraph B, subparagraph (4) to make refusal an
28 aggravating factor at sentencing. It is the duty of
29 every driver to submit to a blood or breath test. Any
30 issue of probable cause has been resolved against the
31 operator as part of the conviction. Section 16 does
32 not treat a first offender who refused as leniently as
33 one who fulfilled the obligation he accepted when he
34 got behind the wheel. Section 16 also adds Title 29,
35 section 1312-B, subsection 2, paragraph F to
36 eliminate uncertainty and variations in the
37 calculation of such periods by specifying the date of
38 judgment as the date from which the "within 6 years"
39 period is calculated for operating under the influence.

1 Section 17 increases to Class C the punishment
2 category for operating under the influence when an
3 operator under the influence causes death or serious
4 bodily injury to another.

5 Section 18 provides that all returned licenses,
6 for 6 years following an operating-under-the-influence
7 conviction, will be conditioned upon not driving after
8 consumption of alcohol. It provides notice of a new,
9 lower blood test standard, .02%, to be applied to such
10 licensees.

11 Section 19 authorizes the seizure of a motor
12 vehicle operated by one again under the influence who
13 is still under suspension for a previous
14 operating-under-the-influence or excessive
15 blood-alcohol conviction. If the driver took the
16 vehicle without the owner's consent or the owner
17 loaned it without knowing that the driver was under
18 suspension, the car is returned to the owner. There
19 is also a provision for return of the vehicle to the
20 owner in hardship situations. If the vehicle is
21 forfeited, it would be surrendered to a lienholder or
22 sold. Secured interests are protected. Section 19
23 sets up a Motor Vehicle Forfeiture Account, akin to
24 the current Extradition Account, in each prosecutorial
25 district. Similar annual auditing and reporting
26 requirements are imposed. There is a \$5,000 limit on
27 the amount in each account.

28 Section 20 provides an increased period of
29 administrative suspension of license, to 3 years, if,
30 while operating under the influence, with excessive
31 blood-alcohol, or having refused a chemical test, the
32 operator caused a fatality. This section combines
33 current administrative proceedings for preconviction
34 suspension for operating under the influence or
35 refusal and "at fault" determinations in reportable
36 accidents. It provides for the suspension to be
37 terminated if the operator prevails in a civil tort
38 claim.

39 Section 21 amends "public highway" to "public
40 way", thus conforming to the language in the

1 corresponding penalty provision for habitual offenders.

2 Section 25 requires a driver who has been
3 convicted of operating under the influence within the
4 prior 6 years to submit to a blood or breath test if
5 the law enforcement officer has probable cause to
6 believe that the driver has .02% or more by weight of
7 alcohol in his blood. Unless the driver violates
8 another provision, no crime has been committed, but he
9 will be administratively suspended for one year if the
10 test result is 0.02% or more. A refusal results in an
11 administrative suspension for 2 years. Maine enacted
12 the Drivers License Compact in 1963. It is codified
13 in Title 29 as chapter 7, subchapter III. In
14 addition, out-of-state convictions encompassed by the
15 compact may be the basis for issuing a coded license
16 under section 540-A.

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