

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 253

H.P. 188

House of Representatives, February 16, 1989

Reference to the Committee on Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PRIEST of Brunswick.

Cosponsored by Representative BEGLEY of Waldoboro, Senator MATTHEWS of Kennebec and Representative CARROLL of Southwest Harbor.

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STATE OF MAINE

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

---

An Act to Change the Definition of Blood-alcohol Level.

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1       **Be it enacted by the People of the State of Maine as follows:**

3           **Sec. 1. 15 MRSA §3103, sub-§1, ¶F,** as amended by PL 1985, c.  
214, §2, is further amended to read:

5           F. The criminal violation of operating a motor vehicle  
7           under the influence of intoxicating liquor or drugs or with  
an excessive ~~blood-alcohol-level~~ alcohol concentration, as  
9           defined in Title 29, section 1312-B and offenses defined in  
Title 29 as Class B or C crimes.

11           **Sec. 2. 29 MRSA §1, sub-§1-A-1** is enacted to read:

13           1-A-1. Alcohol concentration. "Alcohol concentration"  
15           means grams of alcohol per 100 milliliters of blood or grams of  
alcohol per 210 liters of breath.

17           **Sec. 3. 29 MRSA §540-A, sub-§2,** as repealed and replaced by PL  
19           1987, c. 791, §4, is amended to read:

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

33           **Sec. 4. 29 MRSA §1311-A, sub-§1, ¶B,** as repealed and replaced  
by PL 1983, c. 850, §1, is amended to read:

35           B. To remove quickly from the public highways of this State  
37           those persons who have shown themselves to be a safety  
hazard by operating or attempting to operate a motor vehicle  
39           with an excessive ~~blood-alcohol-level~~ alcohol concentration.

41           **Sec. 5. 29 MRSA §1311-A, sub-§1-A,** as amended by PL 1987, c.  
791, §5, is further amended to read:

43           1-A. **Definition.** For the purposes of this section,  
45           "operating or attempting to operate a motor vehicle with an  
excessive ~~blood-alcohol-level~~ alcohol concentration" means  
47           operating or attempting to operate a motor vehicle while having  
0.08% 0.08 or more ~~by weight of alcohol in the blood~~ grams of  
49           alcohol per 100 milliliters of blood or grams of alcohol per 210  
liters of breath.

51           **Sec. 6. 29 MRSA §1311-A, sub-§2, ¶A,** as repealed and

1 replaced by PL 1983, c. 850, §1, is amended to read:

3 A. The Secretary of State shall suspend the license or  
5 permit to operate, right to operate a motor vehicle and  
7 right to apply for or obtain a license of any person upon  
9 his the Secretary of State's determination that the person  
operated or attempted to operate a motor vehicle with an  
excessive ~~blood-alcohol-level~~ alcohol concentration.

11 **Sec. 7. 29 MRSA §1311-A, sub-§3, ¶A**, as amended by PL 1987, c.  
791, §6, is further amended to read:

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

29 **Sec. 8. 29 MRSA §1311-A, sub-§3, ¶C**, as repealed and replaced  
31 by PL 1983, c. 850, §1, is amended to read:

33 C. If the ~~blood-alcohol~~ alcohol concentration test was not  
35 analyzed by a law enforcement officer, the person who  
analyzed the results shall cause a copy of his the  
37 certificate under section 1312, subsection 8, to be sent to  
the Secretary of State.

39 **Sec. 9. 29 MRSA §1311-A, sub-§4, ¶C**, as repealed and replaced  
41 by PL 1983, c. 850, §1, is amended to read:

43 C. The notice of suspension shall clearly specify the  
reason and statutory grounds for the suspension, the  
45 effective date of the suspension, the right of the person to  
request a hearing, the procedure for requesting a hearing  
and the date by which that request for a hearing shall be  
47 made. The notice of suspension shall also clearly state  
that a copy of the report of the law enforcement officer  
49 under subsection 3, paragraph A, and a copy of the  
~~blood-alcohol~~ alcohol concentration test certificate under  
51 subsection 3, paragraph A or C, will be provided to the  
person upon request to the Secretary of State.

1  
3       **Sec. 10. 29 MRSA §1311-A, sub-5, ¶B**, as repealed and replaced  
by PL 1983, c. 850, §1, is amended to read:

5       B. The period of license suspension for a person who the  
7       Secretary of State has determined to have operated or  
attempted to operate a motor vehicle with an excessive  
9       ~~blood-alcohol-level~~ alcohol concentration for a first or  
subsequent offense shall be the same suspension period as if  
11       the person was convicted or adjudicated of a violation of  
section 1312-B, 1312-C or Title 15, section 3103, subsection  
1, paragraph F.

13  
15       **Sec. 11. 29 MRSA §1311-A, sub-§5-A, ¶¶A and C**, as enacted by PL  
1987, c. 791, §7, are amended to read:

17       A. For failing to comply with the duty to submit to and  
complete a chemical test to determine ~~blood-alcohol-level~~  
19       alcohol concentration;

21       C. For a conviction of operating under the influence of  
intoxicating liquor or drugs or with an excessive  
23       ~~blood-alcohol-level~~ alcohol concentration or the  
corresponding juvenile offense.

25  
27       **Sec. 12. 29 MRSA §1311-A, sub-§8, ¶B**, as amended by PL 1987, c.  
791, §8, is further amended to read:

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

31               (1) There was probable cause to believe that the  
33               person was operating or attempting to operate a motor  
vehicle while having 0.08% 0.08 or more ~~by weight of~~  
35               ~~alcohol in his blood~~ grams of alcohol per 100  
milliliters of blood or grams of alcohol per 210 liters  
37               of breath;

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

41               (3) At the time the person had 0.08% 0.08 or more by  
43               ~~weight of alcohol in his blood~~ grams of alcohol per 100  
milliliters of blood or grams of alcohol per 210 liters  
45               of breath.

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

49       C. A certificate duly signed and sworn to pursuant to  
51       section 1312, subsection 8, shall be prima facie proof of  
facts stated therein and that the person taking a specimen

1 of blood or breath was authorized by section 1312,  
3 subsection 6, that the equipment, chemicals and other  
5 materials used in the taking of the blood specimen or breath  
7 sample were of a quality appropriate for the purpose of  
9 producing reliable test results, that any equipment,  
11 chemicals or materials required by section 1312, subsection  
13 6, to be approved by the Department of Human Services were  
15 in fact approved, that the sample tested by the person  
17 certified under section 1312, subsection 6, was in fact the  
same sample taken and that the ~~percentage-by-weight-of~~  
alcohol-in-the-blood number of grams of alcohol per 100  
milliliters of blood or grams of alcohol per 210 liters of  
breath was, at the time the blood or breath sample was  
taken, as stated in the certificate.

15 **Sec. 14. 29 MRSA §1311-A, sub-§8, ¶D,** as amended by PL 1987,  
17 c. 791, §9, is further amended to read:

19 D. If it is determined after hearing that there was not the  
21 requisite probable cause for ~~blood-alcohol~~ alcohol  
concentration test administration or that the person did not  
23 operate or attempt to operate a motor vehicle while having  
25 ~~0.08% 0.08 or more by-weight-of-alcohol-in-his-blood~~ grams  
of alcohol per 100 milliliters of blood or grams of alcohol  
per 210 liters of breath, the suspension shall be removed  
27 immediately and the Secretary of State shall delete any  
record of the suspension.

29 **Sec. 15. 29 MRSA §1311-A, sub-§8, ¶E,** as repealed and replaced  
31 by PL 1983, c. 850, §1, is amended to read:

33 E. Any person whose license is suspended under this section  
35 on the basis of ~~blood-alcohol~~ an alcohol concentration test  
37 may, within 30 days after receipt of the decision, appeal to  
the Superior Court for judicial review, as provided in Title  
5, sections 11001 to 11008. If the court rescinds the  
suspension, it shall also order the Secretary of State to  
delete any record of the suspension.

39 **Sec. 16. 29 MRSA §1312,** as amended by PL 1987, c. 791, §17,  
41 is further amended to read:

43 **§1312. Implied consent to chemical tests; general provisions**  
45 **applicable to prosecution for operating under the**  
**influence of intoxicating liquor or drugs or with**  
47 **excessive alcohol concentration**

49 Any person who operates or attempts to operate a motor  
vehicle within this State shall have the duty to submit to a test  
to determine ~~his--blood-alcohol--level~~ the person's alcohol  
51 concentration by analysis of ~~his~~ the person's blood or breath, if  
there is probable cause to believe he that the person has

1 operated or attempted to operate a motor vehicle while under the  
influence of intoxicating liquor. The duty to submit to a  
3 ~~blood-alcohol~~ an alcohol concentration test includes the duty to  
complete either a blood or breath test.

5  
6 He ~~The~~ accused shall be informed by a law enforcement  
7 officer that a breath test will be administered, unless, in the  
determination of the law enforcement officer, it is unreasonable  
9 for a breath test to be administered, in which case a blood test  
shall be administered. When a blood test is required, the test  
11 may be administered by a physician of the accused's choice, at  
the request of the accused and if reasonably available. The law  
13 enforcement officer may determine which type of breath test, as  
described in subsection 6, is to be administered.

15  
16 1. **Prerequisites to tests.** Before any test specified is  
17 given, the law enforcement officer shall inform the person as to  
whom there is probable cause that, if he ~~he~~ the person fails to  
19 comply with the duty to submit to and complete a test to  
determine the ~~level-of-blood-alcohol~~ alcohol concentration at the  
21 direction of the law enforcement officer, ~~his~~ the person's  
license or permit to operate, ~~his~~ right to operate or ~~his~~ right  
23 to apply for or obtain a license will be suspended and the period  
of suspension shall be a minimum of 6 months and may be as long  
25 as 3 years. The officer should also inform the person that the  
failure to comply with the duty to submit to a ~~blood-alcohol~~ an  
27 alcohol concentration test shall be admissible in evidence  
against ~~him~~ that person at any trial for operating under the  
29 influence of intoxicating liquor.

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

37  
38 2. **Hearing.** The Secretary of State, upon the receipt of a  
39 written statement under oath from a law enforcement officer,  
stating that the officer had probable cause to believe that a  
41 person was operating or attempting to operate a motor vehicle  
while under the influence of intoxicating liquor, and that the  
43 person failed to comply with the duty to submit to a test to  
determine the ~~blood-alcohol--level~~ alcohol concentration by  
45 analysis of ~~his~~ blood or breath, shall immediately notify the  
person, in writing, as provided in section 2241, that ~~his~~ the  
47 person's license or permit, ~~his~~ right to operate and ~~his~~ right to  
apply for or obtain a license have been suspended. The  
49 suspension shall be for a period of 180 days the first time the  
person fails to comply with the duty to submit to the test and  
51 one year for each subsequent failure to comply with the duty to  
submit to the test within a 6-year period. The written statement

1 shall be sent to the Secretary of State within 72 hours of the  
2 failure to comply with the duty to submit to the ~~bleed-alcohol~~  
3 alcohol concentration test, excluding Saturdays, Sundays and  
4 holidays. If the statement is not sent within this time period,  
5 the Secretary of State shall nevertheless impose the suspension  
6 for failing to comply with the duty to submit to a test, unless  
7 the delay has prejudiced the person's ability to prepare or  
8 participate in the hearing described in this subsection.

9  
10 If such the person desires to have a hearing, he the person shall  
11 notify the Secretary of State within 10 days, in writing, of such  
12 that desire. Any suspension shall remain in effect pending the  
13 outcome of such the hearing, if requested.

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

26  
27 If it is determined, after hearing, that there was not probable  
28 cause to believe that such the person was either attempting to  
29 operate or was operating under the influence of intoxicating  
30 liquor or that the person did not fail to comply with the duty to  
31 submit to a ~~bleed-alcohol~~ an alcohol concentration test, any  
32 suspension in effect shall be removed immediately.

33  
34 If it is determined, after a hearing, that any suspension in  
35 effect should be removed, the Secretary of State shall delete any  
36 record of the suspension and any record of his the revocation of  
37 consent from that person's driving record.

38  
39 For the purposes of this section, a prior refusal or revocation  
40 of consent to submit to a chemical test shall be a prior refusal  
41 or revocation of consent if it occurred within a 6-year period of  
42 the date of the most recent refusal or revocation of consent.

43  
44 3. Review. Any person, whose license, permit or right to  
45 operate or right to apply for or obtain a license is suspended  
46 for failing to comply with the duty to submit to a test to  
47 determine his ~~bleed-alcohol~~ the person's alcohol concentration  
48 level by analysis of his blood or breath at the direction of a  
49 law enforcement officer claiming to have had probable cause to  
50 believe that the person operated or attempted to operate while  
51 under the influence of intoxicating liquor, shall have the right  
to file a petition in the Superior Court in the county where he



1 the person resides, or in Kennebec County, to review the order of  
2 suspension by the Secretary of State by the same procedure as is  
3 provided in section 2242. If the court rescinds the suspension,  
4 it shall also order the Secretary of State to delete any record  
5 of the suspension and any record of the revocation of consent  
6 from that person's driving record.

7  
8 4. Results of test. Upon the request of the person who  
9 shall ~~submit~~ submits to a chemical test or tests at the request  
10 of a law enforcement officer, full information concerning the  
11 test or tests shall be made available to ~~him~~ the person or ~~his~~  
12 the person's attorney by the law enforcement officer.

13  
14 5. Alcohol concentration. The following alcohol  
15 concentrations shall have the following evidentiary effects.

16  
17 A. If ~~there was~~ the defendant had, at the time alleged,  
18 0.05% an alcohol concentration of 0.05 or less ~~by weight of~~  
19 ~~alcohol in the defendant's blood~~, it is prima facie evidence  
20 that the defendant was not under the influence of  
21 intoxicating liquor.

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

32  
33 C. For purposes of evidence in proceedings other than those  
34 arising under section 1312-B ~~or 1312-C~~, it shall be presumed  
35 that a person was under the influence of intoxicating liquor  
36 when he the person has ~~a blood alcohol level of 0.08%~~ an  
37 alcohol concentration of 0.08 or more by weight.

38  
39 D. ~~Percent by weight of alcohol in the blood~~ Alcohol  
40 concentration shall be based upon grams of alcohol per one  
41 hundred milliliters of blood or grams of alcohol per 210  
42 liters of breath.

43  
44 6. Administration of tests. Persons conducting analysis of  
45 blood or breath for the purpose of determining the ~~blood alcohol~~  
46 ~~level~~ alcohol concentration shall be certified for this purpose  
47 by the Department of Human Services under certification standards  
48 to be set by that department.

49  
50 Only a duly licensed physician, registered physician's assistant,  
51 registered nurse or a person certified by the Department of Human  
Services under certification standards to be set by that

1 department, acting at the request of a law enforcement officer,  
2 may draw a specimen of blood for the purpose of determining the  
3 ~~blood-alcohol--level~~ alcohol concentration of a person who is  
4 complying with the duty to submit to a ~~blood-alcohol~~ an alcohol  
5 concentration test. This limitation shall not apply to the taking  
6 of breath specimens. When a person draws a specimen of blood at  
7 the request of a law enforcement officer, that person may issue a  
8 certificate which states that the person is in fact a duly  
9 licensed or certified person as required by this paragraph and  
10 that the person followed the proper procedure for drawing a  
11 specimen of blood for the purpose of determining the  
12 ~~blood-alcohol--level~~ alcohol concentration. That certificate,  
13 when duly signed and sworn to by the person, shall be admissible  
14 in evidence in any court of the State. It is prima facie  
15 evidence that the person was duly licensed or certified and that  
16 the person followed the proper procedure for drawing a specimen  
17 of blood for the purpose of determining the ~~blood-alcohol--level~~  
18 alcohol concentration, unless, with 10-days' written notice to  
19 the prosecution, the defendant requests that the person testify  
20 as to licensure or certification, or the procedure for drawing  
21 the specimen of blood.

23 A law enforcement officer may take a sample specimen of the  
24 breath of any person whom he the officer has probable cause to  
25 believe has operated or attempted to operate a motor vehicle  
26 while under the influence of intoxicating liquor and who is  
27 complying with the duty to submit to a ~~blood-alcohol~~ an alcohol  
28 concentration test, the sample specimen to be submitted to the  
29 Department of Human Services or a person certified by the  
30 Department of Human Services for the purpose of conducting  
31 chemical tests of the sample specimen to determine the  
32 ~~blood-alcohol--level--thereof~~ alcohol concentration of that sample.

33  
34 Only such equipment as is approved by the Department of Human  
35 Services shall be used by a law enforcement officer to take a  
36 sample specimen of the defendant's breath for submission to the  
37 Department of Human Services or a person certified by the  
38 Department of Human Services for the purpose of conducting tests  
39 of the sample specimen to determine the ~~blood-alcohol--level~~  
40 ~~thereof~~ alcohol concentration of that sample. Approved equipment  
41 shall have a stamp of approval affixed by the Department of Human  
42 Services. Evidence that the equipment was in a sealed carton  
43 bearing the stamp of approval shall be accepted in court as prima  
44 facie evidence that the equipment was approved by the Department  
45 of Human Services for use by the law enforcement officer to take  
46 the sample specimen of the defendant's breath.

47  
48 As an alternative to the method of breath testing described in  
49 this subsection, a law enforcement officer may test the breath of  
50 any person whom there is probable cause to believe has operated  
51 or attempted to operate a motor vehicle while under the influence  
of intoxicating liquor by use of a self-contained, breath-alcohol

1 testing apparatus to determine the ~~blood-alcohol-level~~ alcohol  
2 concentration, provided the testing apparatus is reasonably  
3 available. The procedures for the operation and testing of  
4 self-contained, breath-alcohol testing apparatuses shall be as  
5 provided by regulation promulgated by the Department of Human  
6 Services. The result of any such test shall be accepted as prima  
7 facie evidence of the ~~blood-alcohol-level~~ alcohol concentration  
8 in any court.

9  
10 Approved self-contained, breath-alcohol testing apparatus  
11 apparatuses shall have a stamp of approval affixed by the  
12 Department of Human Services after periodic testing. That stamp  
13 of approval shall be valid for a limited period of no more than  
14 one year. Testimony or other evidence that the equipment was  
15 bearing the stamp of approval shall be accepted in court as prima  
16 facie evidence that the equipment was approved by the Department  
17 of Human Services for use by the law enforcement officer to  
18 collect and analyze a sample specimen of the defendant's breath.

19  
20 Failure to comply with any provisions of this subsection or with  
21 any regulations promulgated in this subsection shall not, by  
22 itself, result in the exclusion of evidence of ~~blood-alcohol~~  
23 level alcohol concentration, unless the evidence is determined to  
24 be not sufficiently reliable.

25  
26 It is the intent of the Legislature that savings realized through  
27 the use of self-contained, breath-alcohol testing equipment shall  
28 be used for programs in the area of highway safety, with priority  
29 ~~to--be~~ given to programs involving alcohol education and  
30 rehabilitation. It is also the intent of the Legislature that  
31 local law enforcement departments may be equipped, according to  
32 local needs, with breath-testing equipment, as described in this  
33 section, as provided by the Department of Public Safety and  
34 approved by the Department of Human Services. Testimony or other  
35 evidence that any materials used in operating or checking the  
36 operation of the equipment were bearing a statement of the  
37 manufacturer or of the Department of Human Services shall be  
38 accepted in court as prima facie evidence that the materials were  
39 of a composition and quality as stated.

40  
41 A person certified by the Maine Criminal Justice Academy, under  
42 certification standards to be set by the academy, as qualified to  
43 operate approved self-contained, breath-alcohol testing  
44 apparatuses may operate those apparatuses for the purpose of  
45 collecting and analyzing a sample specimen of ~~defendants'~~ a  
46 defendant's breath.

47  
48 **7. Liability.** No physician, physician's assistant,  
49 registered nurse, person certified by the Department of Human  
50 Services or hospital or other health care provider in the  
51 exercise of due care may be liable in damages or otherwise for  
any act done or omitted ~~to--be--done~~ in performing the act of

1 collecting or withdrawing specimens of blood at the request of a  
law enforcement officer pursuant to this section.

3  
8. Evidence. The ~~percentage--by--weight--of~~ alcohol  
5 concentration in the defendant's blood or breath at the time  
alleged, as shown by the chemical analysis of his blood or  
7 breath, or by results of a self-contained, breath-alcohol testing  
apparatus authorized by subsection 6, shall be admissible in  
9 evidence.

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

35 A person certified under subsection 6, as qualified to operate a  
self-contained, breath-alcohol testing apparatus for the purpose  
37 of determining ~~blood-alcohol--level~~ alcohol concentration, may  
issue a certificate stating the results of the analysis. That  
39 certificate, when duly signed and sworn to by the certified  
person, shall be admissible in evidence in any court of the  
41 State. It shall be prima facie evidence that the ~~percentage-by~~  
~~weight--of~~ alcohol concentration in the ~~blood~~ breath of the  
43 defendant was, at the time the breath sample was taken, as stated  
in the certificate, unless, with 10-days' written notice to the  
45 prosecution, the defendant requests that the operator or other  
qualified witness testify as to the results of the analysis.

47  
49 Transfer of sample specimens to and from a laboratory for  
purposes of analysis may be by certified or registered mail, and  
when so made shall be deemed to comply with all requirements  
51 regarding the continuity of custody of physical evidence.

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

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

37 **8-A. Statements by accused.** Any statement by a defendant  
39 that he the defendant was the operator of a motor vehicle, which  
41 he the defendant is accused of operating in violation of former  
43 subsection 10, or section 1312-B ~~or 1312-C~~, shall be admissible  
45 in a proceeding under former subsection 10, or section 1312-B ~~or~~  
47 1312-C, if it was made voluntarily and is otherwise admissible  
49 under the United States Constitution or the Constitution of  
51 Maine. The statement may constitute sufficient proof by itself,  
without further proof of corpus delicti, that the motor vehicle  
was operated and was operated by the defendant.

**9. Payment for tests.** Persons authorized to take specimens  
of blood at the direction of a law enforcement officer and  
persons authorized to perform chemical tests of specimens of  
blood or breath shall be paid from the General Fund.

**11. Accidents and officer's duties.** The law enforcement officer shall have the following duties.

A. After a person has been charged with operating or  
attempting to operate a motor vehicle while under the  
influence of intoxicating liquor or drugs or with a  
~~blood-alcohol-level~~ an alcohol concentration of 0.08% 0.08  
or more, the investigating or arresting officer shall  
investigate to determine whether the charged person has any  
prior convictions under former section 1312, subsection 10,  
former section 1312-B or section 1312-B and has any previous  
suspensions of license or privilege to operate for failure  
to comply with the duty to submit to and complete a test to  
determine the level of ~~blood-alcohol~~ or alcohol  
concentration. As part of his the investigation, the  
officer shall make the necessary inquiries of the Secretary

1 of State.

3 B. A law enforcement officer may arrest, without a warrant,  
5 any person the officer has probable cause to believe has  
7 the influence of intoxicating liquor or drugs if the arrest  
9 occurs within a period following the offense reasonably  
likely to result in the obtaining of probative evidence of  
~~blood-alcohol-level~~ alcohol concentration.

11 D. Notwithstanding any other provision of this section,  
13 each operator of a motor vehicle involved in a motor vehicle  
15 accident which results in the death of any person shall  
17 submit to and complete a test to determine that person's  
19 ~~blood-alcohol--level~~ alcohol concentration by analysis of  
21 such blood or breath. A law enforcement officer may  
23 determine which type of test shall be administered and shall  
25 report any failure of a person to submit to or complete a  
test at the officer's request to the Secretary of State by  
written statement under oath. The result of a test taken  
pursuant to this paragraph is not admissible at trial unless  
the court is satisfied that probable cause exists,  
independent of such the test result, to believe that the  
operator was under the influence of intoxicating liquor or  
drugs or had excessive ~~blood-alcohol---~~ alcohol  
concentration.

27 The Secretary of State shall suspend, for a period of one  
29 year, the license or permit to operate, right to operate a  
31 motor vehicle and right to apply for or obtain a license,  
33 pursuant to section 2241, subsection 1, paragraph N, of any  
35 person who fails to submit to or complete a test. The scope  
37 of any hearing the Secretary of State holds pursuant to  
section 2241 shall include whether there was probable cause  
to believe that the person was the operator of a motor  
vehicle involved in a motor vehicle fatality and whether  
that person failed to submit to or complete a test to  
determine the ~~blood-alcohol-level~~ alcohol concentration. If  
39 the person shows, after hearing, that he the person was not  
under the influence of intoxicating liquor or drugs or that  
41 he did not negligently cause the death, then any suspension  
shall be removed immediately.

43 12. Prearrest breath test. A law enforcement officer  
45 having an articulable suspicion that a person has operated or  
47 attempted to operate a motor vehicle in violation of section  
49 1311-A, 1312-B, 2241-G or 2241-J, without making an arrest, may  
51 request that that person submit to a preliminary breath test to  
be administered by the officer by the use of a prearrest breath  
tester or apparatus. Completion of a preliminary breath test  
does not relieve a person of the duty to submit to or complete an  
alcohol concentration test pursuant to the other provisions of

1 this section, section 2241-G or 2241-J. The results of a  
3 preliminary breath test, if administered, may be considered in  
5 the establishment of probable cause that the person operated or  
attempted to operate a motor vehicle in violation of section  
1311-A, 1312-B, 2241-G or 2241-J.

7 **Sec. 17. 29 MRSA §1312-B, sub-§1, ¶B**, as amended by PL 1987, c.  
9 791, §18, is further amended to read:

11 B. While having ~~0.08%~~ an alcohol concentration of 0.08 or  
more ~~by-weight-of-alcohol-in-his-bleed~~.

13 **Sec. 18. 29 MRSA §1312-B, sub-§2, ¶A**, as repealed and replaced  
15 by PL 1985, c. 412, §4, is amended to read:

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

29 **Sec. 19. 29 MRSA §1312-B, sub-§2, ¶B**, as amended by PL 1987, c.  
31 791, §19, is further amended to read:

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

47 (1) Was tested as having a ~~bleed-alcohol-level~~ an  
alcohol concentration of ~~0.15%~~ 0.15 or more;

49 (2) Was driving in excess of the speed limit by 30  
51 miles an hour or more during the operation which  
resulted in the prosecution for operating under the  
influence or with a ~~bleed-alcohol-level~~ an alcohol

1                    concentration of 0.08% 0.08 or more;

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

9                    (4) Failed to submit to a chemical test for the  
11 determination of that person's ~~blood-alcohol-level~~  
alcohol concentration, at the request of a law  
13 enforcement officer on the occasion which resulted in  
the conviction.

15                    **Sec. 20. 29 MRSA §1312-B, sub-§2, ¶C**, as repealed and replaced  
by PL 1985, c. 412, §4, is amended to read:

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

31                    **Sec. 21. 29 MRSA §1312-B, sub-§2 ¶G**, as enacted by PL 1987, c.  
33 791, §19, is amended to read:

35                    G. For the purposes of this section, a previous suspension  
of license of privilege for failure to comply with the duty  
37 to submit to and complete a test to determine the level of  
blood alcohol or alcohol concentration under section 1312  
39 has occurred within the 6-year period if the date of the  
suspension is 6 years or less from the date of the new  
41 conduct which is penalized or for which the penalty is or  
may be enhanced.

43                    **Sec. 22. 29 MRSA §1312-D, sub-§§5 and 8**, as amended by PL 1985,  
45 c. 412, §6, are further amended to read:

47                    5. **Restricted licenses for suspension for failure to comply**  
with duty to submit to alcohol concentration test. The Secretary  
49 of State may issue a restricted license or permit to any person  
whose license or permit has been suspended for a first failure to  
51 comply with the duty to submit to a ~~blood-alcohol-~~ an alcohol  
concentration test under section 1312, subsection 2, if the



1 conditions of issuance following a conviction or adjudication  
2 under section 1312-B are met by the person and a period of  
3 suspension of not less than 90 days has elapsed.

5 **8. Consecutive suspensions.** Any suspension pursuant to this  
6 section or the former section 1312, subsection 10 or section  
7 1312-B or former section 1312-B, subsection 2 shall be  
8 consecutive to any suspension imposed under section 1312,  
9 subsection 2, for failing to comply with the duty to submit to a  
10 test to determine ~~blood-alcohol-level~~ alcohol concentration by  
11 analysis of blood or breath.

13 **Sec. 23. 29 MRSA §1312-D, sub-§11,** as amended by PL 1987, c.  
14 861, §§24 and 25, is further amended to read:

15 **11. Conditional license.** In addition to any other  
16 condition which the Secretary of State may by law impose, any  
17 license or permit to operate a motor vehicle issued by the  
18 Secretary of State to any person adjudicated or convicted of  
19 operating under the influence of intoxicating liquor or drugs or  
20 with an excessive ~~blood-alcohol-level~~ alcohol concentration shall  
21 be issued on the condition that the person not operate a motor  
22 vehicle after having consumed intoxicating liquor for the  
23 following periods: ~~On~~ on first conviction or adjudication, one  
24 year from license reinstatement date; and on a 2nd or subsequent  
25 conviction or adjudication, 6 years from date of conviction. The  
26 provisions of section 2241-J shall apply.

29 **Sec. 24. 29 MRSA §1312-G, sub-§§1 and 6,** as enacted by PL 1987,  
30 c. 791, §23, are amended to read:

31 **1. Seizure.** Any person operating or attempting to operate  
32 a motor vehicle while under the influence of intoxicating liquor  
33 or drugs or with ~~0.08%~~ an alcohol concentration of 0.08 or more  
34 ~~by--weight--of--alcohol~~ in the blood or breath and who was  
35 previously convicted or adjudicated of such offense and is still  
36 under suspension or revocation as a result of that previous  
37 conviction or adjudication is subject to the seizure of that  
38 motor vehicle by any law enforcement officer authorized to  
39 enforce the motor vehicle laws of this State. Any officer making  
40 such a seizure shall, within 7 days of the seizure and at the  
41 direction of the attorney for the State, return the vehicle or  
42 file with the court a complaint against the vehicle. No  
43 complaint may be filed against a vehicle unless the operator of  
44 the vehicle on the occasion of its seizure had an ownership  
45 interest in that vehicle. The complaint shall describe the  
46 vehicle, recite the name of the owner and the date and place of  
47 its seizure, shall summarize the violation of law which is  
48 alleged to have occurred and shall pray for a decree of  
49 forfeiture of the vehicle. The complaint shall be heard and the  
50 seized vehicle disposed of according to subsection 5.

1           6. **Applicability.** For purposes of this section, suspension  
or revocation is as a result of a conviction or adjudication of  
3 operating under the influence of intoxicating liquor or drugs, or  
with an excessive ~~blood-alcohol-level~~ alcohol concentration if,  
5 on the date that person operated or attempted to operate the  
vehicle subject to forfeiture, the period of suspension imposed  
7 by the court or the Secretary of State upon such conviction or  
adjudication had not expired, even if the operator was also under  
9 suspension or revocation for additional reasons. If the  
individual is under suspension solely because of failure to file  
11 proof of insurance or to pay the reinstatement fee, the vehicle  
is not subject to forfeiture.

13           **Sec. 25. 29 MRSA §1313-A, sub-§§1 and 2,** as enacted by PL 1985,  
15 c. 331, are amended to read:

17           1. **Report by district attorney.** The district attorney  
shall forward a report to the Secretary of State when any person  
19 is convicted of a criminal homicide or adjudicated to have  
committed a juvenile offense of criminal homicide as the result  
21 of his operation of a motor vehicle when:

23           A. The person was operating under the influence of  
intoxicating liquor or drugs;

25           B. The person had not attained the legal drinking age and  
27 was operating a motor vehicle while having ~~-.02%~~ .02 or more  
by ~~weight of alcohol in his blood~~ grams of alcohol per 100  
29 milliliters of blood or grams of alcohol per 210 liters of  
breath;

31           C. There was probable cause to believe that the person was  
33 operating under the influence of intoxicating liquor and  
failed to comply with ~~his~~ the duty to submit to and complete  
35 a test to determine ~~his blood alcohol level~~ the person's  
alcohol concentration; or

37           D. There was probable cause to believe that the person had  
39 not attained the legal drinking age and was operating a  
motor vehicle while having ~~-.02%~~ .02 or more by ~~weight of~~  
41 ~~alcohol in his blood~~ grams of alcohol per 100 milliliters of  
blood or grams of alcohol per 210 liters of breath and  
43 failed to comply with ~~his~~ the duty to submit to and complete  
a test to determine ~~his blood alcohol level~~ the person's  
45 alcohol concentration.

47           2. **Content of report.** The report required in subsection 1  
shall contain all relevant facts which formed the basis for the  
49 conviction or adjudication, including ~~blood-alcohol~~ alcohol  
concentration test results if available.

51           **Sec. 26. 29 MRSA §1313-B, sub-§§1, 3 and 5,** as enacted by

1 PL 1987, c. 791, §24, are amended to read:

3 1. **Suspension.** If the Secretary of State is satisfied that  
4 a person, while under the influence of intoxicating liquor or  
5 drugs or while having ~~0.08%~~ 0.08 or more ~~by-weight-of-alcohol-in~~  
6 ~~that-person's-blood~~ grams of alcohol per 100 milliliters of blood  
7 or grams of alcohol per 210 liters of breath or having refused to  
8 submit to a chemical test if for ~~such-a~~ that refusal the person  
9 may be penalized under section 1312, negligently operated a motor  
10 vehicle in such a manner as to cause the death of any person, the  
11 Secretary of State shall immediately suspend that operator's  
12 license, permit or right to operate. The period of suspension  
13 shall be 3 years, consecutive to any suspension imposed by the  
14 Secretary of State for refusal to take a chemical test.

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

26 5. **Hearing; issues.** The only issues at the hearing are  
27 whether, by a preponderance of the evidence, the person suspended  
28 operated a motor vehicle, whether the person's negligent  
29 operation caused the death of another person, and whether on that  
30 occasion the operator was under the influence of intoxicating  
31 liquor or drugs, had an excessive ~~blood-alcohol-level~~ alcohol  
32 concentration or may be penalized for ~~his~~ refusal to submit to a  
33 chemical test to determine ~~his-blood-alcohol-level~~ the person's  
34 alcohol concentration. The provisions of section 1311-A,  
35 subsection 8, paragraph C apply.

36 **Sec. 27. 29 MRSA §1863**, as enacted by PL 1981, c. 468, §13-A,  
37 is amended to read:

38 **§1863. Owner liable for damage by impaired operator**

39 Every owner or person having control over a motor vehicle  
40 who, having knowledge or reason to know that a person under the  
41 influence of intoxicating liquor or drugs or a combination  
42 thereof of both or has a ~~blood-alcohol-level~~ an alcohol  
43 concentration of ~~10%~~ 0.08 or more by weight of alcohol in the  
44 blood, permits that person to operate that motor vehicle shall be  
45 jointly and severally liable with ~~such~~ that person for any  
46 damages caused by the negligence of the person operating ~~such~~  
47 that vehicle while under the influence or while that person has a

1 ~~bleed-alcohol-level~~ an alcohol concentration of ~~±10%~~ 0.08 or  
3 more. This section shall not be in derogation of nor limit nor  
diminish any cause of action or right of recovery which is or may  
become available under the common law of this State.

5  
7 **Sec. 28. 29 MRSA §2241, sub-§1, ¶N,** as enacted by PL 1987, c.  
791, §28, is amended to read:

9 N. Has failed to submit to or complete a test to determine  
11 the ~~bleed-alcohol-level~~ alcohol concentration pursuant to  
section 1312, subsection 11, paragraph D.

13 **Sec. 29. 29 MRSA §2241-G, sub-§2, ¶B** is amended to read:

15 B. Except where when a longer period of suspension is  
17 otherwise provided by law, the Secretary of State shall  
suspend for a period of one year, without preliminary  
19 hearing, the provisional license of any person who has not  
attained ~~his-21st-birthday~~ 21 years of age:

21 (1) As to whom there is received a record of  
conviction or adjudication for violation of section  
23 1312-B ~~or-1312-C~~ or Title 15, section 3103, subsection  
1, paragraph F; or

25 (2) As to whom ~~he~~ the Secretary of State determines  
27 has operated or attempted to operate a motor vehicle  
while having ~~0.02%~~ an alcohol concentration of 0.02 or  
29 more ~~by-weight-of-alcohol-in-his-blood~~.

31 **Sec. 30. 29 MRSA §2241-G, sub-§2, ¶¶C, D and E,** as amended by  
PL 1985, c. 402, §9, are further amended to read:

33 C. Any person not having attained ~~his-21st-birthday~~ 21  
35 years of age who operates or attempts to operate a motor  
vehicle within this State shall have the duty to submit to a  
37 test to determine ~~his--bleed-alcohol--level~~ the person's  
alcohol concentration by analysis of his blood or breath, if  
39 there is probable cause to believe he the person has  
operated or attempted to operate a motor vehicle while  
41 having ~~0.02%~~ an alcohol concentration of 0.02 or more by  
~~weight-of-alcohol-in-his-blood~~. The provisions of section  
43 1312 shall apply, except that in all cases probable cause  
shall be to believe that the person was operating or  
45 attempting to operate a motor vehicle while having ~~0.02%~~ an  
alcohol concentration of 0.02 or more ~~by-weight-of-alcohol~~  
47 ~~in-his-blood~~ and that the person had not attained ~~his-21st~~  
birthday 21 years of age, and except that suspension for  
49 failing to comply with the duty to submit to the test shall  
be for a period of one year.

51 D. The Secretary of State shall make the determination of

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suspension as follows.

(1) The Secretary of State shall suspend the provisional license of any person who has not attained ~~his-21st-birthday~~ 21 years of age, and the right to apply for or obtain a license of ~~any-such~~ that person upon ~~his~~ the Secretary of State's determination that the person operated or attempted to operate a motor vehicle with ~~0.02%~~ an alcohol concentration of 0.02 or more ~~by-weight-of-alcohol-in-the-blood~~. The suspension shall be for a period of one year and shall continue until satisfaction of any conditions imposed pursuant to paragraph I or O.

(2) The Secretary of State shall make a determination on the basis of the information required in paragraph E and this determination shall be final unless a hearing is requested and held. If a hearing is held, the Secretary of State shall review the matter and make a final determination on the basis of evidence received at the hearing.

(3) The determination of these facts by the Secretary of State is independent of the determination of the same or similar facts in the adjudication of any ~~civil~~ or criminal charges arising out of the same occurrence. The disposition of those ~~civil--or~~ criminal charges shall not affect any suspension under this section. Statements made by the licensee at the hearing before the Secretary of State shall not be introduced by the State in its case in chief in any prosecution for violation of section 1312-B, ~~--1312-C~~ or Title 15, section 3103, subsection 1, paragraph F, arising out of the same occurrence.

E. A law enforcement officer shall forward a report to the Secretary of State as follows.

(1) A law enforcement officer who had probable cause to believe any person who had not attained ~~his-21st-birthday~~ 21 years of age was operating or attempting to operate a motor vehicle with ~~0.02%~~ an alcohol concentration of 0.02 or more ~~by-weight-of-alcohol-in-the-blood~~ shall immediately forward to the Secretary of State a report, under oath of all information relevant to the enforcement action, including information which adequately identifies the person, a statement of the officer's grounds for belief that the person committed the offense of operating or attempting to operate a motor vehicle while having ~~0.02%~~ an alcohol concentration of 0.02 or more ~~by-weight-of-alcohol-in-the--blood~~, and a certificate under section 1312,

1 subsection 8, of the result of any ~~bleed-alcohol~~  
2 alcohol concentration test by a self-contained,  
3 breath-alcohol testing apparatus which was conducted  
4 and which shows the presence of 0.02% an alcohol  
5 concentration of 0.02 or more ~~by weight of alcohol in~~  
6 ~~the blood.~~

7  
8 (2) The report required in this subsection shall be  
9 made on forms supplied by or approved by the Secretary  
10 of State.

11 (3) If the ~~bleed-alcohol~~ alcohol concentration test  
12 was not analyzed by a law enforcement officer, the  
13 person who analyzed the results shall cause a copy of  
14 his the certificate under section 1312, subsection 8,  
15 to be sent to the Secretary of State.

16  
17 **Sec. 31. 29 MRSA §2241-G, sub-§2, ¶G,** as enacted by PL 1983,  
18 c. 850, §4, is amended to read:

19  
20 G. Effective date and period of suspension.

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

45  
46 (2) When a person's license is suspended under this  
47 section and is also suspended after having been  
48 adjudicated or convicted on charges arising out of the  
49 same occurrence for a violation of section 1312-B or  
50 1312-C or Title 15, section 3103, subsection 1,  
51 paragraph F, the period of time his the person's

1 license has been suspended under this section prior to  
3 the adjudication or conviction shall be deducted from  
5 the period of time of any court-imposed suspension  
ordered pursuant to section 1312-B ~~or 1312-C~~ or Title  
15, section 3103, subsection 1, paragraph F.

7 **Sec. 32. 29 MRSA §2241-G, sub-§2, ¶¶K and N**, as amended by PL  
1985, c. 402, §9, are further amended to read:

9 K. The hearing and notice shall be as follows.

11 (1) The hearing and notice shall be as provided in  
13 section 2241, subsection 3.

15 (2) The scope of the hearing shall include whether, by  
17 a preponderance of the evidence:

19 (a) There was probable cause to believe that the  
21 person had not attained ~~his 21st birthday~~ 21 years  
23 of age and that the person was operating or  
attempting to operate a motor vehicle while having  
0.02% an alcohol concentration of 0.02 or more by  
~~weight of alcohol in his blood;~~

25 (b) The person operated or attempted to operate a  
27 motor vehicle;

29 (c) At such time the person had 0.02% an alcohol  
concentration of 0.02 or more ~~by weight of alcohol~~  
~~in his blood;~~ and

31 (d) At such time the person had not attained his  
33 ~~21st birthday~~ 21 years of age.

35 (3) A certificate duly signed and sworn to pursuant to  
37 section 1312, subsection 8, shall be prima facie proof  
of facts stated therein in the certificate and that the  
39 person taking a specimen of blood or breath was  
authorized by section 1312, subsection 6, that the  
41 equipment, chemicals and other materials used in the  
taking of the blood specimen or a breath sample were of  
43 a quality appropriate for the purpose of producing  
reliable test results, that any equipment, chemicals or  
45 materials required by section 1312, subsection 6, to be  
approved by the Department of Human Services were in  
47 fact approved, that the sample tested by the person  
certified under section 1312, subsection 6, was in fact  
49 the same sample taken and that the percentage by weight  
of alcohol in the blood was, at the time the blood or  
51 breath sample was taken, as stated in the certificate.

(4) If it is determined after hearing that there was

1 not the requisite probable cause for ~~blood-alcohol~~ an  
3 alcohol concentration test administration or that the  
5 person had attained ~~his-21st-birthday~~ 21 years of age  
7 at the time of operation or attempted operation or that  
9 the person did not operate or attempt to operate a  
11 motor vehicle while having ~~0.02%~~ an alcohol  
13 concentration of 0.02 or more ~~by-weight-of-alcohol-in~~  
15 ~~his-blood~~, the suspension shall be removed immediately  
17 and the Secretary of State shall delete any record of  
19 the suspension.

11 (5) Any person whose license is suspended under this  
13 section on the basis of a ~~blood-alcohol~~ an alcohol  
15 concentration test may, within 30 days after receipt of  
17 the decision, appeal to the Superior Court for judicial  
19 review as provided in Title 5, sections 11001 to 11008.  
If the court rescinds the suspension, it shall also  
order the Secretary of State to delete any record of  
the suspension.

21 N. ~~In-the-event-that~~ If a person who has not attained his  
23 ~~21st-birthday~~ 21 years of age is determined to have operated  
25 or attempted to operate a motor vehicle while having ~~0.10%~~  
27 an alcohol concentration of 0.08 or more ~~of-alcohol-in-the~~  
~~blood~~ such that both this subsection and section 1311-A  
apply, this section shall govern to the exclusion of section  
1311-A.

29 **Sec. 33. 29 MRSA §2241-J, sub-§1**, as enacted by PL 1987, c.  
791, §29, is amended to read:

31  
33 1. **Suspension.** Except where a longer period of suspension  
35 is otherwise provided by law, the Secretary of State shall  
suspend for a period of one year, without preliminary hearing,  
the conditional license or right to operate of any person as to  
whom:

37  
39 A. There is received a record of conviction of operating  
under the influence of intoxicating liquor or drugs or with  
an excessive ~~blood-alcohol-level~~ alcohol concentration; or

41  
43 B. The Secretary of State determines has operated or  
45 attempted to operate a motor vehicle during the period of  
the conditional license while having ~~0.05%~~ an alcohol  
concentration of 0.05 or more ~~by-weight-of-alcohol-in-the~~  
~~blood~~.

47  
49 **Sec. 34. 29 MRSA §2241-J, sub-§2**, as amended by PL 1987, c.  
861, §§26 and 27, is further amended to read:

51 2. **Duty to submit to test.** Any person who operates or  
attempts to operate a motor vehicle within this State, during the



1 period of a conditional license, shall have the duty to submit to  
2 a test to determine the ~~blood-alcohol-level~~ alcohol concentration  
3 by analysis of that person's blood or breath, if there is  
4 probable cause to believe he the person operated or attempted to  
5 operate a motor vehicle while having 0.05% an alcohol  
6 concentration of 0.05 or more ~~by-weight-of-alcohol-in-the-blood~~.  
7 Section 1312 shall apply, except that in all cases probable cause  
8 shall be to believe that the person was operating or attempting  
9 to operate a motor vehicle while having 0.05% an alcohol  
10 concentration of 0.05 or more ~~by-weight-of-alcohol-in-the-blood~~  
11 and that the person has been convicted of an offense which makes  
12 the operator's license, permit or right to operate a conditional  
13 one, and except that suspension for failing to comply with the  
14 duty to submit to the test shall be for a period of not less than  
15 2 years.

17 **Sec. 35. 29 MRSA §2241-J, sub-§4, ¶¶A and C,** as enacted by PL  
18 1987, c. 791, §29, are amended to read:

19  
20 A. A law enforcement officer who has probable cause to  
21 believe that any person who, during the period of a  
22 conditional license, was operating or attempting to operate  
23 a motor vehicle with 0.05% an alcohol concentration of 0.05  
24 or more ~~by-weight-of-alcohol-in-the-blood~~ shall immediately  
25 forward to the Secretary of State a report, under oath, of  
26 all information relevant to the enforcement action,  
27 including information which adequately identifies the  
28 person, a statement of the officer's grounds for belief that  
29 the person had been so convicted, had operated or attempted  
30 to operate a motor vehicle while having 0.05% an alcohol  
31 concentration of 0.05 or more ~~by-weight-of-alcohol-in-the~~  
32 ~~blood~~ and a certificate under section 1312, subsection 8 of  
33 the result of any ~~blood-alcohol~~ alcohol concentration test  
34 by a self-contained, breath-alcohol testing apparatus which  
35 was conducted and which shows the presence of 0.05% an  
36 alcohol concentration of 0.05 or more ~~by-weight-of-alcohol~~  
37 ~~in-the-blood~~.

38  
39 C. If the ~~blood-alcohol~~ alcohol concentration test was not  
40 analyzed by a law enforcement officer, the person who  
41 analyzed the results shall cause a copy of the person's  
42 certificate under section 1312, subsection 8, to be sent to  
43 the Secretary of State.

44 **Sec. 36. 29 MRSA §2241-J, sub-§5, ¶C,** as enacted by PL 1987, c.  
45 791, §29, is amended to read:

46  
47 C. The notice of suspension shall clearly specify the  
48 reason and statutory grounds for the suspension, the  
49 effective date of the suspension, the right of the person to  
50 request a hearing, the procedure for requesting a hearing  
51 and the date by which that request for hearing shall be

1 made. The notice of suspension shall also clearly state  
3 that a copy of the report of the law enforcement officer  
5 under subsection 4, paragraph A and a copy of the  
7 ~~blood-alcohol~~ alcohol concentration test certificate under  
subsection 4, paragraph A or C, shall be provided to the  
person upon request to the Secretary of State.

9 **Sec. 37. 29 MRSA §2241-J, sub-§8, ¶¶B, C, D and E,** as enacted by  
PL 1987, c. 791, §29, are amended to read:

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

13 (1) There was probable cause to believe that the  
15 person had been convicted of operating under the  
17 influence of intoxicating liquor or drugs or with an  
excessive ~~blood-alcohol--level~~ alcohol concentration,  
19 and that the person was operating or attempting to  
operate a motor vehicle while having 0.05% an alcohol  
21 concentration of 0.05 or more ~~by weight of alcohol in~~  
~~the blood;~~

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

25 (3) At such time the person had 0.05% an alcohol  
27 concentration of 0/05 or more ~~by weight of alcohol in~~  
~~the blood;~~ and

29 (4) Had a conditional license under section 1312-D,  
31 subsection 11.

33 C. A certificate duly signed and sworn to pursuant to  
35 section 1312, subsection 8, shall be prima facie proof of  
facts stated in the certificate and that the person taking a  
37 specimen of blood or breath was authorized by section 1312,  
subsection 6, that the equipment, chemicals and other  
39 materials used in the taking of the blood specimen or a  
breath sample were of a quality appropriate for the purpose  
41 of producing reliable test results, that any equipment,  
chemicals or materials required by section 1312, subsection  
43 6, to be approved by the Department of Human Services were  
in fact approved, that the sample tested by the person  
45 certified under section 1312, subsection 6, was in fact the  
same sample taken, and that the ~~percentage by weight of~~  
47 ~~alcohol in the blood~~ alcohol concentration was, at the time  
the blood or breath sample was taken, as stated in the  
49 certificate.

51 D. If it is determined after hearing that there was not the  
requisite probable cause for ~~blood-alcohol~~ alcohol  
concentration test administration or that the person did not

1 have a conditional license at the date of operation or  
3 attempted operation or that the person did not operate or  
attempt to operate a motor vehicle while having 0.05% an  
5 alcohol concentration of 0.05 or more ~~by-weight-of-alcohol~~  
~~in-the-bleed~~, the suspension shall be removed immediately  
7 and the Secretary of State shall delete any record of the  
suspension.

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

17 **Sec. 38. 29 MRSA §2241-J, sub-§§10 and 12**, as enacted by PL  
1987, c. 791, §29, are amended to read:

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

27 12. Conviction. For purposes of this section, a conviction  
of operating under the influence of intoxicating liquor, drugs or  
29 with an excessive bleed-alcohol--level alcohol concentration  
includes:

31  
33 A. A conviction of a violation of section 1312-B or of  
former section 1312, subsection 10, or of succeeding  
35 criminal provisions for such conduct;

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

41  
43 C. An adjudication or other determination made under the  
juvenile law of this State or of another jurisdiction for  
conduct which, if committed by an adult, would have been a  
45 conviction included in this subsection, including the  
conduct to which Title 15, section 3103, subsection 1,  
47 paragraph F, refers; and

49 D. A conviction for such conduct in a court of the United  
States or a court of a state which is not a party to the  
51 compact, provided that the punishment for that offense  
includes the possibility of incarceration, whether or not

1 actually imposed on that occasion, and the elements of the  
2 offense as provided in the law of that jurisdiction include  
3 operation or attempted operation of a motor vehicle while  
4 intoxicated, impaired or under the influence of alcohol,  
5 intoxicating liquor, drugs or with ~~a level of blood alcohol~~  
6 an alcohol concentration sufficient for conviction under the  
7 laws of that jurisdiction.

9 **Sec. 39. 29 MRSA §2292, sub-§1, ¶B,** as amended by PL 1987, c.  
10 791, §30, is further amended to read:

11 B. Operating or attempting to operate while under the  
12 influence of intoxicating liquor or drugs or with a  
13 ~~blood alcohol level~~ an alcohol concentration of 0.08% 0.08  
14 or more;

17

### STATEMENT OF FACT

19

20 This bill changes the definition of "blood-alcohol level" to  
21 "alcohol concentration" throughout the operating-under-the-  
22 influence laws.

23

24 Blood-alcohol level is a percentage based on grams of  
25 alcohol per 100 milliliters of blood, whereas alcohol  
26 concentration is based on grams of alcohol per 100 milliliters of  
27 blood or grams of alcohol per 210 liters of breath. This change  
28 reduces the need to convert the result of a breath test to the  
29 equivalent of a blood test. The preference now is for breath  
30 tests to be administered. This bill simplifies the terminology.

31

32 This bill also allows a law enforcement officer to request  
33 that a person voluntarily take a preliminary breath test if the  
34 person is suspected of operating or attempting to operate a motor  
35 vehicle while under the influence, with an alcohol concentration  
36 of 0.05 or more after having been convicted of operating under  
37 the influence or with an alcohol concentration of 0.02 or more if  
38 the person is less than 21 years of age. The preliminary testing  
39 device would only be used if the officer had an articulable  
40 suspicion that a violation had occurred. The results of a test,  
41 if administered, could be used in the establishment of probable  
42 cause. Taking a preliminary breath test would not relieve the  
43 alleged violator of the duty to submit to any test now required  
44 by law.