

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50
52

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 814, L.D. 1126, Bill, "An Act to Enhance Enforcement of the Driving Under the Influence of Alcohol and Drug Laws"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

Sec. 1. 29 MRSA §1310 is enacted to read:

§1310. Provisions of general applicability

1. Under the influence of intoxicating liquor or drugs. For purposes of this subchapter and chapter 17, "under the influence of intoxicating liquor or drugs" includes being under the influence of alcohol, a drug other than alcohol, any combination of drugs other than alcohol, or any combination of alcohol and one or more drugs other than alcohol.

2. Chemical test. For purposes of this subchapter and chapter 17, "chemical test" means any test used to determine blood-alcohol level or drug concentration by analysis of blood, breath or urine.

Sec. 2. 29 MRSA §1311-A, sub-§5-A, ¶A, as enacted by PL 1987, c. 791, §7, is amended to read:

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

Sec. 3. 29 MRSA §1312, as amended by PL 1989, c. 514, §§16 and 25, is further amended to read:

§1312. Implied consent to chemical tests; general provisions applicable to prosecution for operating under the influence of intoxicating liquor or drugs or with excessive blood-alcohol

Any person who operates or attempts to operate a motor vehicle within this State shall have the duty to submit to a-test

2 chemical testing to determine ~~his~~ the person's blood-alcohol
level and drug concentration by analysis of ~~his~~ blood or a breath
4 or urine, if there is probable cause to believe ~~he~~ the person has
operated or attempted to operate a motor vehicle while under the
influence of intoxicating liquor or drugs. The duty to submit to
6 a ~~blood-alcohol~~ chemical test includes the duty to complete
~~either~~ a blood or a breath or urine test.

8
10 He The person shall be informed by a law enforcement
officer that a breath test will be administered, unless, in the
determination of the law enforcement officer, it is unreasonable
12 for a breath test to be administered, in which case ~~a blood~~
another chemical test shall be administered. When a blood test
14 is required, the test may be administered by a physician of the
accused's choice, at the request of the accused and if reasonably
16 available. The law enforcement officer may determine which type
of breath test, as described in subsection 6, is to be
18 administered.

20 1. **Prerequisites to tests.** Before any test specified is
given, the law enforcement officer shall inform the person as to
22 whom there is probable cause that, if ~~he~~ the person fails to
comply with the duty to submit to and complete ~~a test to~~
24 ~~determine the level of blood-alcohol~~ the required chemical tests
at the direction of the law enforcement officer, ~~his~~ that
26 person's license or permit to operate, ~~his~~ right to operate or
~~his~~ right to apply for or obtain a license will be suspended and
28 the period of suspension shall ~~will~~ be a minimum of 6 months and
may be as long as 3 years. The officer should also inform the
30 person that the failure to comply with the duty to submit to a
~~blood-alcohol test shall be~~ chemical tests is admissible in
32 evidence against ~~him~~ that person at any trial for operating under
the influence of intoxicating liquor or drugs.

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

42 2. **Hearing.** The Secretary of State, upon the receipt of a
written statement under oath from a law enforcement officer,
44 stating that the officer had probable cause to believe that a
person was operating or attempting to operate a motor vehicle
46 while under the influence of intoxicating liquor or drugs, and
that the person failed to comply with the duty to submit to a
48 chemical test to determine the blood-alcohol level by analysis of
~~his blood or breath~~, shall immediately notify the person, in
50 writing, as provided in section 2241, that ~~his~~ the person's
license or permit, ~~his~~ right to operate and ~~his~~ right to apply
52 for or obtain a license have been suspended. The suspension

2 shall-be-for is a period of 180 days the first time the person
3 fails to comply with the duty to submit to the test and one year
4 for each subsequent failure to comply with the duty to submit to
5 the test within a 6-year period. The written statement shall be
6 sent to the Secretary of State within 72 hours of the failure to
7 comply with the duty to submit to the ~~bleed-aleehel~~ chemical
8 test, excluding Saturdays, Sundays and holidays. If the
9 statement is not sent within this time period, the Secretary of
10 State shall nevertheless impose the suspension for failing to
11 comply with the duty to submit to a test, unless the delay has
12 prejudiced the person's ability to prepare or participate in the
13 hearing described in this subsection.

14 If such person desires to have a hearing, ~~he~~ that person shall
15 notify the Secretary of State within 10 days, in writing, of such
16 desire. Any suspension ~~shall-remain~~ remains in effect pending
17 the outcome of such hearing, if requested.

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

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

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

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

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 chemical test
47 ~~to-determine-his-blood-alcohol-level-by-analysis-of-his-blood-or~~

2 breath at the direction of a law enforcement officer claiming to
3 have had probable cause to believe that the person operated or
4 attempted to operate while under the influence of intoxicating
5 liquor ~~or drugs~~, shall ~~have~~ has the right to file a petition in
6 the Superior Court in the county where ~~he~~ the person resides, or
7 in Kennebec County, to review the order of suspension by the
8 Secretary of State by the same procedure as is provided in
9 section 2242. If the court rescinds the suspension, it shall also
10 order the Secretary of State to delete any record of the
11 suspension and any record of the revocation of consent from that
12 person's driving record.

13
14 **4. Results of test.** Upon the request of the person who
15 shall ~~submit~~ submitted to a chemical test or tests at the request
16 of a law enforcement officer, full information concerning the
17 test or tests shall be made available to ~~him~~ that person or his
18 the person's attorney by the law enforcement officer.

19
20 **5. Blood-alcohol level.**

21
22 A. If there was, at the time alleged, 0.05% or less by
23 weight of alcohol in the defendant's blood, it is prima
24 facie evidence that the defendant was not under the
25 influence of intoxicating liquor.

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

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

42
43 D. Percent by weight of alcohol in the blood shall be based
44 upon grams of alcohol per one hundred milliliters of blood.

45
46 **6. Administration of tests.** Persons conducting analysis of
47 blood ~~or~~ breath or urine for the purpose of determining the
48 blood-alcohol level ~~shall~~ or drug concentration must be certified
49 for ~~this~~ each purpose by the Department of Human Services under
50 certification standards to be set by that department.

51
52 Only a duly licensed physician, registered physician's assistant,
53 registered nurse or a person certified by the Department of Human

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

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

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

50 As an alternative to the method of breath testing described in
51 this subsection, a law enforcement officer may test the breath of
52 any person whom there is probable cause to believe has operated
or attempted to operate a motor vehicle while under the influence

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

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

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

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

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

46 6-A. Drug impairment assessment. If a law enforcement
47 officer certified as a drug recognition technician by the Maine
48 Criminal Justice Academy conducts a drug impairment assessment,
49 the officer's testimony about that assessment is admissible in
50 court as evidence of operating under the influence of
51 intoxicating liquors or drugs. If the drug recognition
52

2 technician has probable cause to believe that a person is under
4 the influence of a drug other than alcohol, any combination of
6 drugs other than alcohol or any combination of alcohol and one
8 or more drugs other than alcohol, that person has a duty to
submit to and complete a blood or urine test selected by the drug
recognition technician to determine that person's drug
concentration. This subsection is effective March 1, 1991. This
subsection is repealed June 1, 1995.

10 6-B. Rules. No later than November 1, 1990, the Department
12 of Human Services shall adopt rules regulating sample collection
14 and testing procedures the department finds necessary or
desirable to ensure accurate and reliable testing and to protect
the privacy of the person providing the sample. The rules must
include:

16 A. Standards for determining when a sample is to be
18 reported as negative, based upon standards specific to the
20 type and sensitivity of the test and the drug or category of
drug screened;

22 B. A requirement that only a law enforcement officer or law
24 enforcement agency employee of the same sex as the person
26 providing the sample, or a health care practitioner, may
observe the giving of a urine sample;

28 C. A requirement that a urine sample may be collected only
within a law enforcement or health care facility; and

30 D. A requirement that, at the request and expense of the
32 person charged with a violation of section 1312-B,
34 subsection 1, paragraph A, the department shall segregate a
portion of the sample collected pursuant to section 1312,
subsection 6-A for that person's own testing.

36 The department may establish rules governing the format in which
38 the test results are reported. At the time of adoption, the
40 department shall furnish the joint standing committee of the
Legislature having jurisdiction over legal affairs with a copy
for review of rules adopted under this subsection.

42 7. Liability. No physician, physician's assistant,
44 registered nurse, person certified by the Department of Human
46 Services or hospital or other health care provider in the
48 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
collecting or withdrawing specimens of blood at the request of a
law enforcement officer pursuant to this section.

50 8. Evidence. The drug concentration or percentage by
52 weight of alcohol in the defendant's blood at the time alleged,
as shown by the chemical analysis of his that person's blood or

2 breath or urine, or by results of a self-contained,
breath-alcohol testing apparatus authorized by subsection 6,
4 shall-be is admissible in evidence.

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

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

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

46 The failure of a person to comply with the duty required by this
48 section to submit to a ~~bleed-alcohol~~ chemical test shall be
admissible in evidence on the issue of whether that person was
50 under the influence of intoxicating liquor or drugs. If the law
enforcement officer having probable cause to believe that the
52 person operated or attempted to operate a motor vehicle under the

influence of intoxicating liquor or drugs fails to give either of the warnings required under subsection 1, the failure of the person to comply with the duty to submit to ~~a blood-alcohol test~~ the chemical tests shall not be admissible, except where when a test was required pursuant to subsection 11, paragraph D. If a failure to submit to a ~~blood-alcohol~~ chemical test is not admitted into evidence, the court may inform the jury of the fact that no test result is available.

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

8-A. Statements by accused. Any statement by a defendant that he the defendant was the operator of a motor vehicle, which he the defendant is accused of operating in violation of former subsection 10, or section 1312-B ~~or 1312-C~~, shall be admissible in a proceeding under former subsection 10, or section 1312-B ~~or 1312-C~~, if it was made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of 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 ~~ehemieal~~ blood-alcohol tests of specimens of blood or breath shall be paid from the General Fund.

11. Accidents and officer's duties.

A. After a person has been charged with operating or attempting to operate a motor vehicle under the influence of intoxicating liquor or drugs or with a blood-alcohol level of 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 chemical test to determine the level of blood-alcohol or drug concentration. As part of his the investigation, the officer shall make the necessary inquiries of the Secretary of State.

B. A law enforcement officer may arrest, without a warrant, any person the officer has probable cause to believe has operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor or drugs if the arrest occurs within a period following the offense reasonably

2 likely to result in the obtaining of probative evidence of
blood-alcohol level or drug concentration.

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

20 The Secretary of State shall suspend, for a period of one
22 year, the license or permit to operate, right to operate a
motor vehicle and right to apply for or obtain a license,
24 pursuant to section 2241, subsection 1, paragraph N, of any
person who fails to submit to or complete a test. The scope
26 of any hearing the Secretary of State holds pursuant to
section 2241 ~~shall--include~~ includes whether there was
28 probable cause to believe that the person was the operator
of a motor vehicle involved in a motor vehicle fatality and
30 whether that person failed to submit to or complete a ~~test~~
chemical tests to determine the blood-alcohol level or drug
32 concentration. If the person shows, after hearing, that he
the person was not under the influence of intoxicating
34 liquor or drugs or that he the person did not negligently
cause the death, then any suspension shall be removed
36 immediately.

38 **12. Implied consent to chemical tests for operators of**
commercial motor vehicles. Any person who operates or attempts
40 to operate a commercial motor vehicle within the State ~~shall have~~
has the duty to submit to and complete a test to determine the
42 blood-alcohol level by analysis of blood or breath, if there is
probable cause to believe that the person has operated or
44 attempted to operate a commercial motor vehicle while having
0.04% or more by weight of alcohol in the blood. The provisions
46 of this section shall apply, except that in all cases probable
cause shall be to believe that the person was operating or
48 attempting to operate a commercial motor vehicle while having
0.04% or more by weight of alcohol in the blood and except that
50 the suspension for failing to comply with the duty to submit to
and complete the test ~~shall--be~~ is for a period of one year,
52 unless the person was operating or attempting to operate a
commercial motor vehicle containing hazardous materials, in which

2 case the suspension ~~shall-be~~ is for a period of 3 years or, in
the case of a 2nd or subsequent failure to submit to a test, a
4 permanent suspension.

6 When a person's commercial driver's license is suspended under
this section and is also suspended after the person has been
8 adjudicated or convicted on charges arising out of the same
occurrence for a violation of section 1312-B, the period of time
10 that the person's commercial driver's license has been suspended
under this section prior to the adjudication or conviction shall
12 be deducted from the period of time of any suspension of the
commercial driver's license ordered by the court or imposed by
the Secretary of State.

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

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

30 **Sec. 5. 29 MRSA §1312-B, sub-§2, ¶B,** as amended by PL 1987, c.
32 791, §19, is further amended to read:

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

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

50 (2) Was driving in excess of the speed limit by 30
52 miles an hour or more during the operation which

2 resulted in the prosecution for operating under the
influence or with a blood-alcohol level of 0.08% or
4 more;

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

10 (4) Failed to submit to a chemical test for the
12 determination of that person's blood-alcohol level or
drug concentration, at the request of a law enforcement
14 officer on the occasion which resulted in the
conviction.

16 **Sec. 6. 29 MRSA §1312-B, sub-§2, ¶C**, as repealed and replaced
18 by PL 1985, c. 412, §4, is amended to read:

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

34 **Sec. 7. 29 MRSA §1312-B, sub-§2, ¶G**, as enacted by PL 1987, c.
791, §19, is amended to read:

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

46 **Sec. 8. 29 MRSA §1312-D, sub-§5**, as amended by PL 1985, c.
48 412, §6, is further amended to read:

50 **5. Restricted licenses for suspension for failure to comply**
with duty to submit to chemical test. The Secretary of State may
issue a restricted license or permit to any person whose license
52 or permit has been suspended for a first failure to comply with

2 the duty to submit to a ~~blood-alcohol~~ chemical test under section
4 1312, subsection 2, if the conditions of issuance following a
6 conviction or adjudication under section 1312-B are met by the
8 person and a period of suspension of not less than 90 days has
10 elapsed.

12 **Sec. 9. 29 MRSA §1312-D, sub-§5**, as amended by PL 1989, c.
14 514, §§17 and 25, is further amended to read:

16 **5. Restricted licenses for suspension for failure to comply**
18 **with duty to submit to chemical test.** The Secretary of State may
20 issue a restricted license or permit to any person whose license
22 or permit has been suspended for a first failure to comply with
the duty to submit to a ~~blood-alcohol~~ chemical test under section
1312, subsection 2, if the conditions of issuance following a
conviction or adjudication under section 1312-B are met by the
person and a period of suspension of not less than 90 days has
elapsed. This subsection does not apply to any suspension of a
commercial motor vehicle driver's license or permit to operate
for failure to submit to and complete a test to determine the
blood-alcohol level pursuant to section 1312, subsection 12.

24 **Sec. 10. 29 MRSA §1312-D, sub-§8**, as amended by PL 1985, c.
26 412, §6, is further amended to read:

28 **8. Consecutive suspensions.** Any suspension pursuant to
30 this section or the former section 1312, subsection 10 or section
32 1312-B or former section 1312-B, subsection 2 ~~shall--be~~ is
consecutive to any suspension imposed under section 1312,
subsection 2, for failing to comply with the duty to submit to a
~~test to determine blood alcohol level by analysis of blood or~~
breath chemical testing required by this subchapter and chapter
17.

34 **Sec. 11. 19 MRSA §1312-I** is enacted to read:

36 **§1312-I. Drug recognition technicians**

38 **1. Drug recognition technician training program. No later**
40 **than November 1, 1990, the board of trustees of the Maine**
42 **Criminal Justice Academy shall establish:**

44 **A. A program that meets the National Highway Traffic Safety**
46 **Administration guidelines for training and certification of**
drug recognition technicians; and

48 **B. Eligibility standards for admission of law enforcement**
50 **officers to the program that are consistent with National**
Highway Traffic Safety Administration guidelines and that
ensure that trainees are:

2 (1) Law enforcement officers who have demonstrated
4 proficiency and experience in standardized field
6 sobriety testing and the ability to complete the
 training and function as drug recognition technicians;
 and

8 (2) Employed by law enforcement agencies that have the
10 facilities, equipment and other resources necessary for
 the effective functioning of drug recognition
 technicians.

12 2. Selection of trainees. The Commissioner of Public
14 Safety shall select for training as drug recognition technicians
 members of the State Police and other law enforcement officers
16 who meet the eligibility requirements.

18 3. Qualifications. Only those law enforcement officers who
20 successfully complete the training and certification program
 established under this section may conduct drug impairment
 assessments and offer testimony as drug recognition technicians
22 under section 1312, subsection 6-A.

24 **Sec. 12. 29 MRSA §1313-A, sub-§1, ¶C,** as enacted by PL 1985,
 c. 331, is amended to read:

26 C. There was probable cause to believe that the person was
28 operating under the influence of intoxicating liquor or
 drugs and failed to comply with his that person's duty to
30 submit to and complete a ~~test to determine his blood alcohol~~
 level required chemical testing; or

32 **Sec. 13. 29 MRSA §1313-A, sub-§2,** as enacted by PL 1985, c.
34 331, is amended to read:

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

40 **Sec. 14. 29 MRSA §1313-B, sub-§3,** as enacted by PL 1987, c.
42 791, §24, is amended to read:

44 3. **Notice of suspension; reason and statutory grounds for**
 suspension. The notice of suspension shall clearly specify the
46 reason and statutory grounds for the suspension, the effective
 date of the suspension, the right of the person to request a
48 hearing, the procedure for requesting a hearing and the date by
 which that request for hearing shall be made. The notice of
50 suspension shall also clearly state that a copy of the report of
 the law enforcement officer ~~which that~~ formed the basis of the
 decision to suspend and a copy of any ~~blood-alcohol~~ chemical test

2 certificate ~~certificates~~ submitted will be provided to the person upon request to the Secretary of State.

4 Sec. 15. 29 MRSA §1313-B, sub-§5, as enacted by PL 1987, c. 791, §24, is amended to read:

6
8 5. **Hearing; issues.** The only issues at the hearing are whether, by a preponderance of the evidence, the person suspended operated a motor vehicle, whether the person's negligent operation caused the death of another person, and whether on that occasion the operator was under the influence of intoxicating liquor or drugs, had an excessive blood-alcohol level or may be penalized for his refusal to submit to a required chemical test ~~to determine his blood-alcohol-level~~ testing. The provisions of section 1311-A, subsection 8, paragraph C apply.

16
18 Sec. 16. **Allocation.** The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

20 1990-91

22 **HUMAN SERVICES, DEPARTMENT OF**

24 **Bureau of Health**

26	Positions	(.5)
	Personal Services	\$5,346
28	All Other	5,500
	Capital Expenditures	590

30 Provides funds for a part-time Chemist II
32 position in the Public Health Laboratory
34 effective March 1, 1991, supplies and related expenses.

36 **DEPARTMENT OF HUMAN SERVICES**
38 **TOTAL** \$11,436

40 Sec. 17. **Effective date; repeal.** Section 9 of this Act takes effect on January 1, 1991. Section 8 of this Act is repealed January 1, 1991.

44 **FISCAL NOTE**

46 It is anticipated that dedicated revenue to the Department
48 of Human Services will increase approximately \$11,436 in fiscal year 1990-91 from fees charged by the Public Health Laboratory to perform the required testing. The fee per test will be based upon the cost per sample taken and will be charged to the

2 appropriate district attorney's office responsible for
prosecuting the case and will have to be absorbed by county
government.

4
6 Also, it is anticipated that federal funds from the National
Highway Traffic Safety Administration will be available in fiscal
year 1990-91 to purchase a gas chromatography-mass spectrometry
8 machine for the Public Health Laboratory. This bill will
increase the workload on the current equipment, which is
10 approximately 11 years old, and necessitates the purchase of
another machine to ensure the means to conduct the tests. The
12 National Highway Traffic Safety Administration will provide the
trainers and course materials for the drug recognition technician
14 training at no cost to the State. Federal funds will be
available for other related training costs. An allocation of
16 these funds will be necessary once the grant has been awarded.
In addition, it is anticipated that National Highway Traffic
18 Safety funds will be available for the purchase of test kits
needed to conduct chemical testing. The Criminal Justice Academy
20 will establish the training program within its resources.'

22 **STATEMENT OF FACT**

24
26 By defining some often-used phrases in the Maine Revised
Statutes, Title 29, section 1310, this amendment simplifies some
awkward language in the original bill. This amendment does not
28 change the requirement for probable cause prior to obtaining a
blood or urine specimen and testing for drugs. It does not alter
30 the requirement that the Department of Human Services promulgate
rules regulating test procedures, licensing of labs or persons
32 doing the analyses, reporting of results and setting of minimum
concentrations before a drug analyses can be reported as
34 positive. This amendment requires the department to adopt rules
aimed at providing maximum protection of the rights of privacy of
36 individuals who give blood or urine samples. In addition, the
amendment postpones the effective date of provisions authorizing
38 drug recognition technicians to request blood or urine samples to
March 1, 1991, to allow time for adoption of rules governing
40 collection and handling of samples.

42 The amendment requires the Maine Criminal Justice Academy to
establish a program that meets guidelines established by the
44 National Highway Traffic Safety Administration for training and
certification of drug recognition technicians. In addition, the
46 amendment requires the academy to set standards for admission to
the program. This amendment specifies that standards must ensure
48 that only law enforcement officers who have skill, training and
experience in enforcing operating-under-the-influence laws and
50 who are employed by a law enforcement agency with the necessary
facilities, equipment and other resources are eligible for
52 training as drug recognition technicians. The Commissioner of

COMMITTEE AMENDMENT "A" to H.P. 814, L.D. 1126

2 Public Safety shall select eligible law enforcement officers to
receive drug recognition technician training.

4 This amendment also provides for statewide deployment of
6 drug recognition technicians by removing provisions in the
original bill establishing a pilot project.

8 This amendment provides that a drug recognition technician
10 may request a blood or urine test for drugs even if a breath test
indicates the suspect has a blood-alcohol level at or over 0.08%.

12 Lastly, this amendment adds an allocation and a fiscal note.

Reported by the Committee on Legal Affairs
Reproduced and distributed under the direction of the Clerk of the
House
2/12/90 (Filing No. H-775)