

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2314

H.P. 1672

House of Representatives, February 12, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Judiciary suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative PARADIS of Augusta.

Cosponsored by Senator BUSTIN of Kennebec, Representative NORTON of Winthrop and Representative GRAHAM of Houlton.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act to Increase the Penalty for Vehicular Manslaughter and to
Remove the Habitual Drunk Driver Offender from the Highways.**

(AFTER DEADLINE)



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

2
3 Sec. 1. 17-A MRSA §203, sub-§3, ¶A, as enacted by PL 1989, c.
4 505, §2, is repealed.

6 Sec. 2. 17-A MRSA §203, sub-§3-A, as amended by PL 1987, c.
7 678, §1, is repealed.

8
9 Sec. 3. 29 MRSA §101-A is enacted to read:

10 **§101-A. Registration**

12 In order to register a vehicle under this subchapter, a
13 person must possess a valid operator's license, and may not be
14 under suspension.

16 Sec. 4. 29 MRSA §1312-B, sub-§2, ¶A, as repealed and replaced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

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

32 Sec. 5. 29 MRSA §1312-B, sub-§2, ¶B, as amended by PL 1987, c.
33 791, §19, is further amended to read:

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

50 (1) Was tested as having a blood-alcohol level of
51 0.15% or more;

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

12 (3) Eluded or attempted to elude an officer, as
14 defined in section 2501-A, subsection 3, during the
16 operation which resulted in prosecution for operating
18 under the influence or with a blood-alcohol level of
20 0.08% or more; or

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

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

34 C. In the case of a person having one previous conviction
36 of a violation of former section 1312, subsection 10, former
38 section 1312-B or this section, or having at least one
40 previous suspension for failure to comply with the duty to
42 submit to and complete a test to determine the level of
44 blood-alcohol under section 1312 within a 6-year 10-year
46 period, the fine shall not be less than \$500, the sentence
shall include a period of incarceration of not less than 7
days 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 one
year, which penalties may not be suspended.

34 D. In the case of a person having 2 ~~or more~~ previous
36 convictions of violations of former section 1312, subsection
38 10, former section 1312-B or this section, within a 6-year
40 10-year period, the fine shall not be less than \$750, the
42 sentence shall include a period of incarceration of not less
44 than 30 days and the court shall suspend the defendant's
46 license or permit to operate, right to operate a motor
vehicle and right to apply for and obtain a license for a
period of 2 years, which penalties may not be suspended. In
the case of a person having 3 or more previous convictions
or violations of former section 1312, subsection 10, former
section 1312-B, or this section, within a 10-year period the
fine must not be less than \$1,000.

48 **Sec. 7. 29 MRSA §1312-B, sub-§2, ¶¶F and G, as enacted by PL**
50 **1987, c. 791, §19, are amended to read:**

52 F. For purposes of this section, a prior conviction has
occurred within the 6-year 10-year period provided, if the

2 date of docket entry by the clerk of a judgment of
conviction or adjudication is ~~6-years~~ 10-years or less from
4 the date of the new conduct which is penalized or for which
the penalty is or may be enhanced.

6 G. For the purposes of this section, a previous suspension
of license of privilege for failure to comply with the duty
8 to submit to and complete a test to determine the level of
blood alcohol under section 1312 has occurred within the
10 ~~6-year~~ 10-year period if the date of the suspension is ~~6~~
years 10 years or less from the date of the new conduct
12 which is penalized or for which the penalty is or may be
enhanced.

14 **Sec. 8. 29 MRSA §1312-B, sub-§2-A**, as enacted by PL 1987, c.
16 791, §20, is amended to read:

18 **2-A. Aggravated punishment category.** If the State pleads
and proves that, while operating a motor vehicle in violation of
20 this section, the actor in fact caused serious bodily injury as
defined in Title 17-A, section 2, subsection 23, to another
22 person or in fact caused the death of another person, the
sentencing class for the offense in subsection 1 is a Class C
24 crime. If the State pleads and proves that, while operating a
motor vehicle in violation of this section, the actor had been
26 previously convicted of 3 or more violations of former section
1312, subsection 10, former section 1312-B, or this section,
28 within a 10-year period, the sentencing class for the offense in
subsection 1 is a Class B crime. The minimum penalties specified
30 in subsection 2 shall apply, but the minimum period of suspension
shall be 18 months unless a longer minimum period otherwise
32 applies.

34 **Sec. 9. 29 MRSA §1312-G**, as enacted by PL 1987, c. 791, §23,
is amended to read:

36 **§1312-G. Forfeiture of motor vehicles in certain operating-**
38 **~~under-the-influence~~ cases**

40 **1. Seizure of vehicle of owner-operator.** Any person
operating or attempting to operate a motor vehicle while under
42 the influence of intoxicating liquor or drugs or with 0.08% or
more by weight of alcohol in the blood and who was previously
44 convicted or adjudicated of such offense and is still under
suspension or revocation as a result of that previous conviction
46 or adjudication is subject to the seizure of that motor vehicle
by any law enforcement officer authorized to enforce the motor
48 vehicle laws of this State. Any officer making such a seizure
shall, within 7 days of the seizure and at the direction of the
50 attorney for the State, return the vehicle or file with the court
a complaint against the vehicle. No complaint may be filed under
52 this subsection against a vehicle unless the operator of the

2 vehicle on the occasion of its seizure had an ownership interest
3 in that vehicle. The complaint shall describe the vehicle,
4 recite the name of the owner and the date and place of its
5 seizure, shall summarize the violation of law which is alleged to
6 have occurred and shall pray for a decree of forfeiture of the
7 vehicle. The complaint shall be heard and the seized vehicle
8 disposed of according to subsection 5.

10 1-A. Seizure of vehicle lent to and driven by impaired
11 operator. A registered owner of a motor vehicle who knowingly
12 permits another person to operate or attempt to operate that
13 motor vehicle while that other person is under the influence of
14 intoxicating liquor or drugs or with 0.08% or more by weight of
15 alcohol in the blood and who was previously convicted or
16 adjudicated of such offense and is still under suspension or
17 revocation as a result of that previous conviction or
18 adjudication is subject to the seizure of that motor vehicle by
19 any law enforcement officer authorized to enforce the motor
20 vehicle laws. Any officer making such a seizure shall, within 7
21 days of the seizure and at the direction of the attorney for the
22 State, return the vehicle or file with the court a complaint
23 against the vehicle. The complaint must describe the vehicle,
24 recite the name of the owner and the date and place of its
25 seizure, summarize the violation of law that is alleged to have
26 occurred and pray for a decree of forfeiture of the vehicle. The
27 complaint must be heard and the seized vehicle disposed of
28 according to subsection 5.

30 **2. Immediate hearing on family hardship claim.** Any owner
31 aggrieved by the seizure of the motor vehicle by a law
32 enforcement officer under subsection 1 or subsection 1-A may
33 petition the District Court of the district in which the vehicle
34 was seized for the release of that vehicle on the grounds that
35 retention of the vehicle constitutes a hardship to the members of
36 the owner's family. An owner who claims hardship shall provide
37 the court, to the extent possible in writing and in every case
38 under oath, with the facts which constitute hardship.

40 The court shall permit, but shall not require, the law
41 enforcement officer to be present and the attorney for the State
42 to be heard. The only issue at the hardship hearing is whether
43 such hardship exists. The hardship standards of subsection 4,
44 paragraph F, apply. The court shall nevertheless order the
45 vehicle released to any co-owner who was not the operator if that
46 co-owner was not previously notified of a prior seizure of that
47 vehicle.

48 **3. Election options.** Unless a vehicle has already been
49 returned to an owner, at the arraignment the ~~owner-operator~~ owner
50 shall specify whether the ~~owner-operator~~ owner surrenders the
51 seized vehicle to the State; will seek to sell the vehicle; or,
52 in the case of seizure under subsection 1, waiving any claim for

2 damage other than intentional damage by an agent of the law
3 enforcement agency seizing or storing the vehicle, asks that the
4 State impound the vehicle until the ~~owner-operator's~~ owner's
5 right to operate in this State has been restored. Unless the
6 ~~owner-operator~~ owner has surrendered the vehicle to the State,
7 the ~~owner-operator~~ owner may change the election at any time by
8 notifying the Chief of the Maine State Police, in writing, of the
9 new election. Any vehicle impounded at the request of the
10 ~~owner-operator~~ owner shall be deemed abandoned if not claimed by
11 an owner within 30 days after the ~~owner-operator's~~ owner's right
12 to operate in this State is restored. If the ~~owner-operator~~
13 owner surrenders the vehicle to the State or asks that the State
14 impound the vehicle, the State owner shall pay the costs of
15 towing and storage. If the ~~owner-operator~~ owner seeks to sell
16 the vehicle, the ~~owner-operator~~ owner is responsible for paying
17 the towing and storage costs, and the vehicle will be released
18 only upon proof of sale. Under In the case of seizure under
19 subsection 1, under any election, the court shall also suspend
20 the ~~owner-operator's~~ owner's right to register a motor vehicle in
21 this State until the ~~operator's~~ owner's license is restored.

22 **4. Preliminary order or process.** The court may issue, at
23 the request of the attorney for the State, ex parte, any
24 preliminary order or process necessary to seize or secure the
25 motor vehicle for which forfeiture is or will be sought and to
26 provide for its custody. That order may include an order to a
27 financial institution or to any fiduciary or bailee to require
28 that entity to impound a motor vehicle in its possession or
29 control and not to release it except upon further order of the
30 court. Process for seizure of the property shall issue only upon
31 a showing of probable cause. The application for process and the
32 issuance, execution and return of process shall be subject to
33 applicable Maine law. A complaint against the vehicle shall
34 thereafter be filed. Any motor vehicle subject to forfeiture
35 under this section may be seized upon process, except that
36 seizure without process may be made when:

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

39 B. The property subject to seizure has been the subject of
40 a prior judgment in favor of the State in a forfeiture
41 proceeding under this section or any other provision of law.

42 **5. Forfeiture of motor vehicles seized under this**
43 **provision.** Unless the vehicle has been returned to an owner or
44 the ~~owner-operator~~ owner has made an election under subsection 3,
45 whenever a complaint has been filed, the following procedure
46 shall apply.

47 A. The judge shall fix a time for the hearing of the
48 complaint and shall issue notice of the complaint to the
49
50
51
52

operator, any other owner as listed on the vehicle registration, all persons or entities who have title to the vehicle and to any lienholders registered with the Secretary of State, citing them to appear at the time and place set for hearing and show cause why the seized motor vehicle should not be declared forfeited, by causing a true and attested copy of the complaint and notice to be sent to them at least 10 days before the day on which the complaint is returnable. Copies shall be served on common carriers.

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

C. If any person other than the owner described in subsection 1-A appears and claims the vehicle or any interest in the vehicle, as having a right to possession of the vehicle at the time when it was seized, that person shall file with the court a claim in writing stating:

- (1) The right so claimed;
- (2) The foundation of the claim;
- (3) The vehicle so claimed by vehicle identification number, license plate or other specific description; and
- (4) If such a claim is made, the facts which constitute hardship.

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

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

E. All forfeiture proceedings are civil and in the nature of proceedings in rem. At the hearing, the court shall proceed to determine the truth of the allegations in the claim and complaint and hear any pertinent evidence offered by the State or claimant. If the attorney for the State proves by a preponderance of the evidence the operative facts specified in subsection 1, the court shall declare the vehicle forfeited to the State unless the claimant proves by a preponderance of the evidence the operative facts specified in paragraph C and undue hardship as specified in

2 paragraph F. In every case in which the court may order
forfeiture, the court shall, nevertheless, permit the owner
4 or owners of the vehicle the same election as is permitted
the-~~owner-operator~~ under subsection 3.

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

20 G. If the vehicle is forfeited to the State under paragraph
B or E, the vehicle shall be subject to documented bona fide
22 security interests on the date the vehicle was seized. If
the vehicle is ordered returned to the claimant, the court
24 shall provide the claimant a written order commanding the
officer to release the vehicle to the claimant within 48
26 hours after demand. In either case, any costs of towing and
storage up to the date the forfeiture is declared or the
28 vehicle ordered released shall be borne by the State.

30 H. At the direction of the attorney for the State,
forfeited vehicles shall be subject to public sale or
32 released to the lienholder with a right of possession. The
proceeds of sale shall be used to defray the expenses of
34 towing, storage and sale; any surplus may be retained by the
prosecutorial district in a special account to defray the
36 expenses of other forfeitures. Any amount over \$5,000 in
the special account of any prosecutorial district shall be
38 returned to the General Fund.

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

44 **6. Applicability.** For purposes of this section, suspension
or revocation is as a result of a conviction or adjudication of
46 operating under the influence of intoxicating liquor or drugs, or
with an excessive blood-alcohol level if, on the date that person
48 operated or attempted to operate the vehicle subject to
forfeiture, the period of suspension imposed by the court or the
50 Secretary of State upon such conviction or adjudication had not
expired, even if the operator was also under suspension or
52 revocation for additional reasons. If the individual is under

2 suspension solely because of failure to file proof of insurance
or to pay the reinstatement fee, the vehicle is not subject to
3 forfeiture.

4
5 **7. Rules.** The Chief of the Maine State Police shall adopt
6 rules governing the transportation, storage and release of
vehicles seized under this section.

8
9 **Sec. 10. 29 MRSA c. 11, sub-c. V-A is enacted to read:**

10
11 **SUBCHAPTER V-A**

12
13 **COSTS OF EMERGENCY RESPONSE**

14
15 **§1321. Definitions**

16
17 As used in this subchapter, unless the context otherwise
18 indicates, the following terms have the following meanings.

19
20 1. **Expense of an emergency response.** "Expense of an
21 emergency response" means reasonable costs incurred by a public
22 agency in reasonably making an appropriate emergency response to
23 the incident, but only includes those costs directly arising
24 because of the response to the particular incident. Reasonable
25 costs include the costs of providing police, firefighting, rescue
26 and emergency medical services at the scene of the incident, as
27 well as the salaries of the personnel responding to the incident.

28
29 2. **Intentionally wrongful conduct.** "Intentionally wrongful
30 conduct" means conduct intended to injure another person or
31 property.

32
33 3. **Public agency.** "Public agency" means the State, and any
34 city, county, municipal corporation, district or public authority
35 located, in whole or in part, within this State that provides or
36 may provide firefighting, police, ambulance, medical or other
37 emergency services.

38
39 **§1322. Negligent operation of motor vehicle; influence of**
40 **alcoholic beverage or drug; intentional wrongful conduct;**
41 **liability**

42
43 Any person who is under the influence of an alcoholic
44 beverage or any drug, or the combined influence of an alcoholic
45 beverage and any drug, whose negligent operation of a motor
46 vehicle caused by that influence proximately causes any incident
47 resulting in an appropriate emergency response, and any person
48 whose intentionally wrongful conduct proximately causes any
49 incident resulting in an appropriate emergency response, is
50 liable for the expense of an emergency response by a public
51 agency to the incident.

2 §1323. Negligent operation of boat or vessel; influence of
3 alcoholic beverage or drug; intentional wrongful conduct;
4 liability

5 Any person who is under the influence of an alcoholic
6 beverage or any drug, or the combined influence of an alcoholic
7 beverage and any drug, whose negligent operation of any boat or
8 vessel caused by that influence proximately causes any incident
9 resulting in an appropriate emergency response, and any person
10 whose intentionally wrongful conduct proximately causes any
11 incident resulting in an appropriate emergency response, is
12 liable for the expense of an emergency response by a public
13 agency to the incident.

14 §1324. Negligent operation of civil aircraft; influence of
15 alcoholic beverage or drug; intentional wrongful conduct;
16 liability

17 Any person who is under the influence of an alcoholic
18 beverage or any drug, or the combined influence of an alcoholic
19 beverage and any drug, whose negligent operation of a civil
20 aircraft caused by that influence proximately causes any incident
21 resulting in an appropriate emergency response, and any person
22 whose intentionally wrongful conduct proximately causes any
23 incident resulting in an appropriate emergency response, is
24 liable for the expense of an emergency response by a public
25 agency to the incident.

26 §1325. Influence of alcoholic beverage or drug; inability to
27 operate motor vehicle, boat or vessel or aircraft;
28 presumptions

29 For purposes of this subchapter, a person is under the
30 influence of an alcoholic beverage or any drug, or the combined
31 influence of an alcoholic beverage and any drug, when as a result
32 of drinking an alcoholic beverage or using a drug, or both, that
33 person's physical or mental abilities are impaired to a degree
34 that the person no longer has the ability to operate a motor
35 vehicle, boat or vessel or aircraft with the caution
36 characteristic of a sober person of ordinary prudence under the
37 same or similar circumstances.

38 §1326. Charge against person liable; collection of debt;
39 insurance

40 The expense of an emergency response is a charge against the
41 person liable for expenses under this subchapter. The charge
42 constitutes a debt of that person and is collectible by the
43 public agency incurring those costs in the same manner as in the
44 case of an obligation under a contract, expressed or implied,
45 except that liability for the expenses provided for in this

2 subchapter is not insurable and no insurance policy may provide
3 or pay for the expenses.

4 **§1327. Limit on liability**

6 A person's liability under this subchapter for the expense
7 of an emergency response may not exceed \$1,000 for a particular
8 incident.

10 **§1328. Admissibility of evidence in criminal proceedings**

12 Any testimony, admission or any other statement made by the
13 defendant in any proceeding brought pursuant to this subchapter,
14 or any evidence derived from the testimony, admission or other
15 statement may not be admitted or otherwise used in any criminal
16 proceeding arising out of the same incident.

18 **Sec. 11. 29 MRSA §2241-H,** as amended by PL 1987, c. 39, is
19 further amended by adding after the first paragraph a new
20 paragraph to read:

22 The court, as part of its sentence, unless the defendant
23 appeals and a stay of execution of the suspension is granted,
24 shall take any registration plates issued by this State from the
25 person under suspension. The Secretary of State shall notify all
26 adults residing in the same household as a person under
27 suspension that it is illegal to permit the person, while under
28 suspension, to operate a vehicle. The spouse of a person under
29 suspension may reregister the family vehicle in the spouse's own
30 name. The person under suspension may designate on forms
31 provided by the Secretary of State another adult to take
32 possession and control of the motor vehicle, pending the
33 restoration of the person's license to operate. These forms must
34 clearly state that the owner of the vehicle is prohibited from
35 operating the vehicle until the restoration of the person's
36 license, that the person under suspension and the designee will
37 be informed of the restoration in writing, and that it is illegal
38 to operate a motor vehicle while under suspension.

40
41 **STATEMENT OF FACT**

42
43 This bill makes the following changes to the laws governing
44 operating under the influence.

46 1. It changes the classification of manslaughter resulting
47 from the reckless or criminally negligent operation of a motor
48 vehicle from a Class B to a Class A crime.

50 2. It requires that a person wishing to register a motor
51 vehicle have a valid operator's license and not be under
52 suspension.

2 3. It increases from 6 to 10 years the period during which
4 a suspension due to a refusal to submit to a blood-alcohol test
is considered in determining the sentence for a person convicted
of operating under the influence.

6 4. It increases to \$1,000 the fine for a person having 3 or
8 more previous convictions for operating under the influence.

10 5. It increases to Class B the sentencing class for causing
12 serious bodily injury while operating under the influence if the
operator had 3 or more prior convictions of operating under the
influence.

14 6. It allows the seizure of a motor vehicle lent to and
16 driven by a person who is under the influence of drugs or alcohol.

18 7. It requires that any person who, due to intoxication
20 from alcohol or drugs, causes an accident be financially
responsible for the cost of the resulting emergency response.

22 8. It allows the court to take physical custody of any
24 registration plates issued to a person who is under suspension.