

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)

LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 1980 to June 19, 1981

AND AT THE

FIRST SPECIAL SESSION
August 3, 1981

**PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED, TITLE
3, SECTION 164, SUBSECTION 6.**

K.J. Printing Co.
Augusta, Maine
1981

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND TENTH LEGISLATURE

1981

During any proceeding initiated by a public utility by a filing pursuant to section 64 or 298, the commission may approve, temporarily, any undisputed amounts of a requested rate increase or rate decrease. The amounts temporarily approved shall be filed by the utility as a temporary schedule which shall be effective from the date of approval of the temporary schedule until the issuance of the final order in the section 64 proceeding.

The utility shall notify each customer of the rate increase allowed under this section. The notice shall be mailed with the first bill mailed to each customer after the date of approval and shall state the following:

1. Amount of increase. The amount of increase allowed under this section;
2. Statement. The fact that that rate increase allowed under this section was undisputed;
3. Amount of remaining disputed portion. The amount of the remaining disputed portion of the requested rate increase; and
4. Disputed portion will be decided. If available, an estimate of the date when the disputed portion will be decided.

Effective September 18, 1981

CHAPTER 468

H. P. 1585 — L. D. 1681

AN ACT to Reform the Statutes Relating to Driving under the Influence of Intoxicating Liquor or Drugs.

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

Sec. 1. 22 MRSA § 7106, sub-§ 2, ¶ E, sub-¶ ¶ (5) and (6), as enacted by PL 1973, c. 566, § 1, are amended to read:

(5) The United States Social Security Act; and

(6) The United States Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (~~P.L. 91-616~~), Public Law 91-616, and similar Acts; and

Sec. 2. 22 MRSA § 7106, sub-§ 2, ¶ F is enacted to read:

F. Making a separate written report to the Chief Justice, the Governor and the Legislature not later than March 1st of each year, commencing with 1982, on the

enforcement of laws relating to drinking and driving during the preceding calendar year. The report shall contain at least the following information:

- (1) The number, by county, of arrests for operating under the influence or operating with an excessive blood-alcohol level;
- (2) The number, by county, of criminal complaints filed for operating under the influence;
- (3) The number, by county, of criminal complaints filed for operating with an excessive blood-alcohol level;
- (4) The number, by county, of complaints filed for the traffic infraction of operating under the influence;
- (5) The number, by county, of complaints filed for the traffic infraction of operating with an excessive blood-alcohol level;
- (6) The number, by county, of revocations of implied consent;
- (7) The number, by county, of operating after suspension and habitual offender arrests;
- (8) Rates of conviction, guilty pleas to lesser charges and dismissals by county for these offenses;
- (9) The rates of successful completion of the Driver Education Evaluation Program and rates of recidivism for individuals completing the Driver Education Evaluation Program;
- (10) The number, by county, of persons whose licenses were suspended; and
- (11) The average fine, jail sentence and period of license suspension, by county, for each category of offense.

The office may call upon the assistance of the Department of Public Safety, the State Court Administrator, the office of the Secretary of State and the district attorneys in preparing these reports.

Sec. 2-A. 29 MRSA § 540, 2nd ¶, as amended by PL 1973, c. 625, § 188, is repealed.

Sec. 3. 29 MRSA § 540-A is enacted to read:

§ 540-A. Coded licenses

1. Under 18 years of age. The Secretary of State shall by regulation provide that licenses for persons under 18 years of age shall be distinctive, either by being

printed with a different color than for those issued to persons 18 years of age or older or by some other appropriate distinguishing mark or code.

2. **Prior convictions.** The Secretary of State shall by regulation provide that the license of a person who has been convicted or adjudicated of violating former section 1312, subsection 10, or section 1312-B or 1312-C within 6 years prior to the effective date of the license shall bear a coded notation indicating that fact.

Sec. 4. 29 MRSA § 1311, as last amended by PL 1973, c. 236, is repealed.

Sec. 5. 29 MRSA § 1312, sub-§ 1, first sentence, as last repealed and replaced by PL 1979, c. 701, § 32, is amended to read:

Before any test specified is given, the law enforcement officer shall inform the arrested person as to whom there is probable cause and who is arrested or summonsed that, if he revokes his implied consent to a chemical test by refusing to permit a test at the direction of the law enforcement officer, his license will be suspended for 90 180 days ~~or more~~, and the revocation of consent shall be admissible in evidence against him at any trial for operating under the influence of intoxicating liquor.

Sec. 6. 29 MRSA § 1312, sub-§ 2, first ¶, as repealed and replaced by PL 1979, c. 701, § 32, is repealed and the following enacted in its place:

If a person as to whom there is probable cause revokes his implied consent to a chemical test by refusing upon the request of a law enforcement officer to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, no test may be given. The Secretary of State, upon the receipt of a written statement under oath from a law enforcement officer, stating that the officer had probable cause to believe that a person was operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, and that the person had revoked his consent by refusing to submit to a chemical test to determine the blood-alcohol level by analysis of his blood or breath, shall immediately notify the person, in writing, as provided in section 2241, that his license or permit and his privilege to operate have been suspended. The suspension shall be for a period of 180 days. The written statement shall be sent to the Secretary of State within 72 hours of the revocation of consent, excluding Saturdays, Sundays and holidays. If the statement is not sent within this time period, it shall not affect the Secretary of State's authority to suspend a person's license for revoking his prior implied consent by refusing to submit to a test, unless the delay has prejudiced the person's ability to prepare or participate in the hearing described in this subsection.

Sec. 7. 29 MRSA § 1312, sub-§ 5, ¶C, as repealed and replaced by PL 1971, c. 547, is repealed and the following enacted in its place:

C. For purposes of evidence in proceedings other than those arising under section 1312-B or 1312-C, it shall be presumed that a person was under the

influence of intoxicating liquor when he has a blood-alcohol level of 0.10% or more by weight.

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

8-A. Statements by accused. Any statement by a defendant that he was the operator of a motor vehicle, which he is accused of operating in violation of this section or section 1312-B, shall be admissible in a proceeding under this section, section 1311 or 1312-B, 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.

Sec. 8. 29 MRSA § 1312, sub-§ 10, as last amended by PL 1979, c. 422, §§ 1-3, is repealed.

Sec. 9. 29 MRSA § 1312, sub-§ 10-A, as last amended by PL 1979, c. 695, is repealed.

Sec. 10. 29 MRSA § 1312-B is enacted to read:

§ 1312-B. Criminal violation of operation under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level; penalties

1. Offense. A person is guilty of a criminal violation under this section if he operates or attempts to operate a motor vehicle:

A. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs; or

B. While having 0.10% or more by weight of alcohol in his blood.

2. Penalties. The offense defined in subsection 1 is a Class D crime, provided that:

A. The fine for any conviction shall not be less than \$350, which fine shall not be suspended;

B. The sentence for any conviction shall include a period of incarceration of not less than 48 consecutive hours, which sentence shall not be suspended; and

C. Upon conviction, the court shall suspend the defendant's privilege to operate a motor vehicle for a specified period, which shall not be less than 90 days nor more than one year. The minimum period shall not be suspended.

Sec. 11. 29 MRSA § 1312-C is enacted to read:

§ 1312-C. Traffic infraction of operating under the influence of intoxicating

liquor or drugs or with an excessive blood-alcohol level; fine and suspension

1. Election of charge. When a person has been arrested or summonsed under section 1312 for a violation of section 1312-B, the attorney for the State may elect to charge the defendant with the traffic infraction of operating under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level under this section. The determination of the attorney for the State, under provisions of subsections 5 and 7, that a person should be prosecuted under either this section or under section 1312-B shall not be subject to review.

2. Traffic infraction defined. A person commits a traffic infraction under this section if he operates or attempts to operate a motor vehicle:

- A. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs; or
- B. While having 0.10% or more by weight of alcohol in his blood.

3. Fine. The traffic infraction of operating under the influence of intoxicating liquor or drugs or operating with an excessive blood-alcohol level is a violation for which a fine of not less than \$250 nor more than \$500 may be adjudged. The minimum fine shall not be suspended.

4. Suspension. The privilege to operate a motor vehicle of any person adjudicated guilty of violating subsection 2 shall be suspended by the court for a specified period, which shall not be less than 45 days nor more than 180 days, provided that the Secretary of State may extend the period until satisfaction of any conditions imposed by him pursuant to section 1312-D, subsection 3.

5. In lieu of criminal violation. The attorney for the State shall not elect to charge a violation of subsection 2 in lieu of criminal prosecution under section 1312-B with respect to any defendant who:

- A. Was tested as having a blood-alcohol level in excess of 0.20%;
- B. Was driving more than 30 miles an hour in excess of the speed limit during the operation which resulted in the prosecution for operating under the influence;
- C. Attempted to elude an officer, as defined in section 2501-A, subsection 3, during the operation which resulted in the prosecution for operating under the influence; or
- D. Had been convicted of a violation of former section 1312, subsection 10, paragraph A, convicted of a violation of section 1312-B, or adjudicated guilty of a traffic infraction under this section within the 6 years immediately preceding the date of the commission of the new offense.

6. **Construction.** The matter set out in subsections 5 and 7 are not elements of the offense and are not subject to proof or disproof as prerequisites or conditions for conviction or adjudication under this section or section 1312-B.

7. **Other circumstances.** The attorney for the State may elect to charge a violation of section 1312-B, in lieu of civil prosecution under this section, in any other circumstances. These circumstances include, but are not limited to, when the defendant:

A. **During the course of the operation which resulted in the prosecution for operating under the influence:**

- (1) Was operating between one and 30 miles an hour in excess of the speed limit;
- (2) Failed to stop for an officer, as defined in section 2501-A, subsection 2;
- (3) Was involved in a traffic accident; or
- (4) Committed any other moving violation which the attorney for the State believes warrants criminal prosecution; or

B. **Had revoked his implied consent to take a blood or breath test by refusing to take one within the immediately preceding 6 years.**

The discretion of the attorney for the State under this subsection shall not be subject to review.

Sec. 12. 29 MRSA § 1312-D is enacted to read:

§ 1312-D. **Provisions regarding suspensions imposed pursuant to conviction or adjudication under sections 1312-B and 1312-C**

1. **Recording and notice by Secretary of State.** On receipt of an attested copy of the court record of a suspension or revocation of the privilege of operating a motor vehicle under section 1312-B or 1312-C, the Secretary of State shall immediately record the suspension of the person's license or permit and privilege to operate a motor vehicle and shall send written notice of the suspension of the court to the person suspended.

2. **Education and treatment programs.** Following the expiration of 2/3 of the suspension ordered by the court under section 1312-B, subsection 2, paragraph C, or section 1312-C, subsection 4, the Secretary of State may issue a license or permit to the person if he receives written notice that the person has satisfactorily completed the alcohol education program of the Department of Human Services or has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department.

3. **Restricted licenses.** After certification under subsection 2 or after completion of the suspension imposed by the court, the Secretary of State may issue the license or permit with whatever conditions, restrictions or terms he deems advisable, having in mind the safety of the public and the welfare of the petitioner, including, but not limited to, successful completion of the alcohol education program of the Department of Human Services, if the petitioner has not already done so under subsection 2. The license or permit may contain the condition that the person abstain from the use of intoxicating liquor or drugs.

4. **Special restricted licenses for participation in programs.** Notwithstanding any other provision of law, the Secretary of State may issue a temporary restricted license to a person suspended under section 1312-B or 1312-C for the purpose of allowing that person to participate in the alcohol education program of the Department of Human Services or in any other program under subsection 2 or 3.

5. **Restricted licenses for revocation of implied consent suspension.** The Secretary of State may issue a restricted license or permit to any person whose license or permit has been suspended for a first revocation of implied consent by refusing to submit to a test under section 1312, subsection 2, if the conditions of issuing after conviction are met by the person and a period of suspension of not less than 90 days has elapsed.

6. **Fee.** The Department of Human Services may charge a registration fee, not to exceed \$50, to participants in the education program, which shall be applied to defraying the expenses of the program.

7. **Suspension in effect during appeal.** If any person convicted or adjudicated of a violation of section 1312-B or 1312-C appeals the judgment or adjudication, the license or permit and privilege to operate a motor vehicle shall be suspended during the time an appeal is pending, unless the court orders otherwise, or unless the Secretary of State restores the license, permit or privilege to operate pending decision on the appeal.

8. **Consecutive suspensions.** Any suspension under section 1312-B or 1312-C shall run consecutively with any suspension imposed under section 1312, subsection 2, for revocation of implied consent by refusing to submit to a chemical test to determine blood-alcohol level by analysis of blood or breath.

Sec. 13. 29 MRSA § 1314, as last amended by PL 1975, c. 731, § 52, is repealed and the following enacted in its place:

§ 1314. **Driving to endanger**

1. **Definition.** A person is guilty of driving to endanger if, with criminal negligence, as defined in Title 17-A, he drives a motor vehicle in any place in such a manner that a person, including the driver or passenger in the motor vehicle being driven, or the property of another, is endangered.

2. **Allegation of facts constituting criminally negligent driving to endanger.** In

pleading under this section, it is not necessary to allege specifically the facts which constitute criminal negligence.

3. Penalties. Driving to endanger is a Class E crime. In addition, any person found guilty shall as part of the sentence receive a mandatory suspension of license or permit to operate a motor vehicle for not less than 30 days nor more than 180 days, which minimum shall not be suspended.

Sec. 13-A. 29 MRSA § 1863 is enacted to read:

§ 1863. Owner liable for damage by impaired operator

Every owner or person having control over a motor vehicle who, having knowledge or reason to know that a person under the influence of intoxicating liquor or drugs or a combination thereof or has a blood-alcohol level of .10% or more by weight of alcohol in the blood, permits that person to operate that motor vehicle shall be jointly and severally liable with such person for any damages caused by the negligence of the person operating such vehicle while under the influence or while that person has a blood-alcohol level of .10% or 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.

Sec. 14. 29 MRSA § 2184, sub-§ 1, as enacted by PL 1975, c. 770, § 159, is repealed and the following enacted in its place:

1. Offense; penalty. It is a Class D crime for any person to operate a motor vehicle on any public highway of this State at a time when his license, permit or privilege to operate has been suspended or revoked, except for a revocation for an habitual offender under chapter 18-A or former chapter 18, provided that, notwithstanding Title 17-A, section 1301, the maximum fine shall be \$2,500 and the minimum fine shall be not less than \$350, which minimum shall not be suspended. In the event the suspension was for a conviction for a violation of section 1312 or 1312-B or for a revocation of implied consent by refusing to take a test to test blood-alcohol level under section 1312, subsection 2, there shall also be imposed a term of imprisonment which shall be for not less than 7 consecutive days, which minimum shall not be suspended, and a mandatory additional suspension or revocation of license or permit to operate a motor vehicle of not less than one year nor more than 3 years beyond the original date scheduled for the termination of the original suspension or revocation.

Sec. 15. 29 MRSA § 2241-H is enacted to read:

§ 2241-H. Notice of suspension by court; surrender of license to court

In the case of any conviction or adjudication under section 1312-B, 1312-C, 1314 or for any offense for which the suspension of the right to operate a motor vehicle is required by law or in any case in which the court suspends a license under section 2305, the court shall inform the defendant of the suspension and the

defendant shall acknowledge this notice in writing on a form to be provided by the court. The court, as part of its sentence, notwithstanding any appeal, shall take the license certificate of the person convicted or adjudicated. The court shall forward the license certificate, a copy of the sentence and the acknowledgment of notice by mail to the Secretary of State.

The court, upon reasonable cause shown, may allow the convicted or adjudicated person up to 96 hours to surrender his license certificate.

Notwithstanding section 2241-E, the period of suspension shall commence immediately upon announcement of sentence. Two additional days of suspension shall be added to the period for each day beyond any extension granted that the convicted or adjudicated person fails to surrender his license to the court.

Refusal to sign the acknowledgment of notice or unexcused failure to surrender a license certificate within any period of extension shall be a misdemeanor.

Sec. 15-A. 29 MRSA § 2241-I is enacted to read:

§ 2241-I. Surrender of suspended license to law enforcement officer

In the event that a law enforcement officer, in the course of stopping or detaining a motor vehicle, obtains from the operator of the motor vehicle a license which is under suspension, the officer shall retain physical custody of the license and shall transmit the license, together with a report stating the circumstances under which it was obtained, to the Secretary of State.

Sec. 16. 29 MRSA § 2292, sub-§ 1, ¶ B, as enacted by PL 1979, c. 10, § 2, is amended to read:

B. Operating or attempting to operate while under the influence of intoxicating liquor or drugs or with a blood-alcohol level of 0.10% or more;

Sec. 17. 29 MRSA § 2295, as enacted by PL 1979, c. 10, § 2, is repealed and the following enacted in its place:

§ 2295. Duration of revocation

The revocation under section 2293 shall be indefinite, provided that in no event shall a license or permit to operate a motor vehicle be issued to a habitual offender until the minimum periods specified in section 2296.

Sec. 17-A. 29 MRSA § 2296, as enacted by PL 1979, c. 10, § 2, is amended by adding at the end a new paragraph to read:

The Secretary of State shall not issue the privilege to operate a motor vehicle in this State to any person whose license has been revoked if a charge against that person under section 2298 is pending.

Sec. 17-B. 29 MRSA § 2296-A is enacted to read:

§ 2296-A. Revocation following restoration

The Secretary of State shall revoke, as provided in sections 2293 and 2294, the license, permit or privilege to operate a motor vehicle of any person whose privilege to operate a motor vehicle in this State has been restored pursuant to section 2296 when:

1. **New convictions.** Within a 5-year period following the restoration pursuant to section 2296, the person has committed one offense described in section 2292, subsection 1, or 3 or more offenses described in section 2292, subsection 2, or the equivalent number of offenses described in section 2292, subsection 3, for which there is one or more convictions or adjudications; or

2. **Continued liability.** The person has committed an offense, described in section 2292, subsection 1, 2 or 3, at any time following restoration, for which there is a conviction or adjudication and, within 5 years preceding the date of the commission of that offense, the person's record shows accumulated convictions or adjudications, including the latest conviction or adjudication, which result in that person being defined as a habitual offender pursuant to section 2292.

Sec. 18. 29 MRSA § 2298, as amended by PL 1979, c. 541, Pt. B, § 34, is further amended by adding after the first paragraph a new paragraph to read:

If the person is defined as a habitual offender under section 2292, subsection 1, paragraph B, the following mandatory minimum penalties, which shall not be suspended, shall be imposed: A minimum fine of not less than \$1,000 and a minimum term of imprisonment of not less than 60 days. Notwithstanding Title 17-A, section 1301, the maximum fine shall be \$5,000. In addition, the Secretary of State shall not grant relief from habitual offender status pursuant to section 2296 until a period of not less than 3 years beyond the original date scheduled for eligibility to apply for relief of that status.

Sec. 19. 29 MRSA § 2298-A is enacted to read:

§ 2298-A. Notice to Secretary of State of criminal proceeding under section 2298

A law enforcement officer, who has arrested or charged a person under section 2298 with having operated a motor vehicle in this State while the revocation prohibiting operation is in effect, shall cause notice of the arrest or proceeding to be given to the Secretary of State.

Sec. 20. 29 MRSA § 2301, first sentence, as amended by PL 1975, c. 731, § 76-A is amended to read:

Whoever is arrested for violation of any provisions of this Title, except those of sections ~~1312~~ 1312-A, 1312-B, 2181 and 2185, shall be given an immediate trial if he

shall so demand of the officer making the arrest, but if for any reason it is impracticable to do so, the officer making the arrest shall immediately take the prisoner before some bail commissioner, who before admitting him to bail, shall require him to give his name, his place of residence, the number of his license to operate a motor vehicle and the registration number of the motor vehicle operated at the time of his arrest, and shall make a record thereof on the bail bond, and may take his personal recognizance for his appearance in court on a specified day, not less than 2 days thereafter if requested by the person arrested; or such officer in like cases may accept the personal recognizance of such person for his appearance.

Sec. 21. 29 MRSA § 2306, as enacted by PL 1975, c. 430, § 60, is amended to read:

§ 2306. Execution of suspension stayed during appeal

If any person adjudicated to have committed a traffic infraction, **except for a violation of section 1312-C**, shall appeal from the judgment and sentence of the trial court, the execution of any suspension imposed on his license and right to operate a motor vehicle shall be stayed until adjudication on appeal or withdrawal of the appeal, unless good cause is shown why he should not be allowed to retain his license and right to operate.

Effective September 18, 1981

CHAPTER 469

H. P. 1576 — L. D. 1678

AN ACT to Reform the Regulation of Carriers of Passengers and Freight.

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

Sec. 1. 13-A MRSA § 103, sub-§ 8 is enacted to read:

8. The validity of any corporate act by any railroad or railroad company and of any incorporation, prior to the effective date of this subsection, shall be determined with reference to the law then in effect. The validity of any provision of the articles or bylaws of a railroad or railroad company existing on the effective date of this subsection shall be determined with reference to the law which was in effect when the article or bylaw was adopted. A provision of the articles or bylaws which was valid under the law in existence at the time the provision was adopted shall remain in effect, notwithstanding any contrary provision of this Title, until repealed or amended by voluntary act of the railroad or railroad company, but any amendment thereof shall be adopted by the procedures set out in this Title and shall, as amended, conform to the requirements of this Title.