

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

SECOND SPECIAL SESSION

November 18, 1983

AND AT THE

SECOND REGULAR SESSION

January 4, 1984 to April 25, 1984

AND AT THE

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J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND ELEVENTH LEGISLATURE
JANUARY 4, 1984 TO APRIL 25, 1984

CHAPTER 850

H.P. 1874 - L.D. 2476

**AN ACT to Amend the Law Concerning
Suspensions of Drivers' Licenses on
Administrative Determination of Blood-alcohol
Content.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 90-day period may not terminate until the summer of 1984; and

Whereas, pursuant to the Revised Statutes, Title 29, sections 1311-A and 2241-G, the Secretary of State is expected to process a substantial number of administrative suspensions of drivers' licenses of teenagers and adults based on blood-alcohol determinations prior to termination of the 90-day period; and

Whereas, persons whose drivers' licenses are suspended are presently afforded an opportunity for a hearing before the Secretary of State pursuant to the Revised Statutes, Title 29, section 1311-A, subsection 8 and section 2241-G, subsection 2, paragraph B; and

Whereas, in the judgment of the Legislature, the statutes governing the scope of administrative hearings by the Secretary of State should be amended to make it clear that the Secretary of State may consider at the hearing all the elements of the proscribed conduct; and

Whereas, in the judgment of the Legislature, additional amendments to the statutes are necessary to insure a speedy, efficient and fair administrative suspension procedure; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 29 MRSA §1311-A, as enacted by PL 1983, c. 505, §1, is repealed and the following enacted in its place:

§1311-A. Suspension on administrative determination for operating with an excessive blood-alcohol level

1. Purpose. The purpose of this section is:

A. To provide maximum safety for all persons who travel or otherwise use the public highways of the State; and

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

1-A. Definition. For the purposes of this section, "operating or attempting to operate a motor vehicle with an excessive blood-alcohol level" means operating or attempting to operate a motor vehicle while having 0.10% or more by weight of alcohol in the blood.

2. Suspension. The Secretary of State shall make the determination of suspension as follows.

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

B. The Secretary of State shall make a determination on the basis of the information required in subsection 3, and this determination shall be final unless a hearing is requested and held. If a hearing is held, the Secretary of State shall review the matter and make a final determination on the basis of evidence received at the hearing.

C. Except as provided in paragraph D, the determination of these facts by the Secretary of State is independent of the determination of the same or similar facts in the adjudication of any civil or criminal charges arising out of the same occurrence. The disposition of those civil or criminal charges shall not affect any suspension under this section. Statements made by the li-

censee at the hearing before the Secretary of State shall not be introduced by the State in its case in chief in any prosecution for violation of section 1312-B, 1312-C or Title 15, section 3103, subsection 1, paragraph F, arising out of the same occurrence.

D. Upon receipt of notice from the court, pursuant to section 1312-C, subsection 4-A, the Secretary of State shall immediately remove the suspension of any person who is adjudicated not to have committed under section 1312-C, subsection 2, paragraph B, the traffic infraction of operating or attempting to operate a motor vehicle while having 0.10% or more by weight of alcohol in his blood or of any person who has had such a charge against him dismissed.

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

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

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

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

4. Notice of suspension. The notice of suspension by the Secretary of State shall be made as follows.

A. Upon receipt of the information required in subsection 3, the Secretary of State shall make the determination described in subsection 2. If the Secretary of State determines that the person is subject to license suspension, he shall immediately issue a notice of suspension.

B. The notice of suspension shall be sent by regular mail to the person at the last known address on record at the Division of Motor Vehicles, or to the address provided in the report of the law enforcement officer if that address differs from the address of record. The notice is deemed received 3 days after mailing, unless returned by postal authorities.

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

5. Effective date and period of suspension. The effective date and period of suspension are determined as follows.

A. Any suspension imposed shall be effective on a specified date not less than 10 days after the mailing of the notification of suspension by the Secretary of State. If a person whose license is suspended desires to have a hearing, he shall so notify the Secretary of State, in writing, within 10 days from the effective date of the suspension. The suspension shall be stayed for 10 days from the effective date of the suspension. If, within 10 days from the effective date of the suspension, the Secretary of State is notified, in writing, of a request for a hearing, the suspension shall be stayed until a hearing is held and a decision is issued. The Secretary of State shall conduct a hearing and issue a decision within 30 days from the date of receipt of a written request for hearing. Failure by the Secretary of State to conduct a hearing and issue a decision within such 30-day period shall result

in an extension of the stay of the Secretary of State's suspension order until such time as a hearing is conducted and a decision issued. Notwithstanding this subsection, there shall be no stay of suspension during the period of any delay in hearing which is caused or requested by the petitioner.

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

C. When a person's license is suspended under this section and is also suspended after having been adjudicated or convicted on charges arising out of the same occurrence for a violation of section 1312-B, 1312-C, or Title 15, section 3103, subsection 1, paragraph F, the period of time his license has been suspended under this section prior to the adjudication or conviction shall be deducted from the period of time any court-imposed suspension ordered pursuant to section 1312-B, 1312-C, or Title 15, section 3103, subsection 1, paragraph F. The periods of suspension are intended to be minimum periods of suspension and the Secretary of State may suspend the license for the additional periods as provided in section 1312-D, subsection 1-A.

5-A. Work-restricted license. Upon receipt by the Secretary of State of a petition for a work-restricted license by any person whose license or right to operate a motor vehicle has been suspended pursuant to this section, the Secretary of State may stay the suspension during a statutory suspension period and issue a work-restricted license. The issuance of such a license shall be conditioned upon a showing by the petitioner by clear and convincing evidence that such a license is necessary to operate a motor vehicle between the residence and a place of employment or to operate a motor vehicle in the scope of employment, or both, as determined by the Secretary of State and that no alternative means of transportation is available.

6. Restoration of license. The Secretary of State may issue a license or permit as follows.

A. Restoration of any license or permit to operate, right to operate a motor vehicle and right to apply for or obtain a license suspended under this section shall be in accordance with section 1312-D, subsections 2 to 4.

7. Request for hearing. A person who has received notice of suspension may request a hearing as follows.

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

B. The request for a hearing shall be made within 10 days from the effective date of the suspension. If a written request for a hearing is made after the 10-day period and the Secretary of State finds that the person was unable to make a timely request due to lack of actual notice of the suspension or due to factors of physical incapacity, the Secretary of State shall waive the period of limitation, reopen the matter and grant the hearing request, except, in such a case, a stay of the suspension pending the hearing shall not be granted.

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

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

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

(1) There was probable cause to believe that the person was operating or attempting to operate a motor vehicle while having 0.10% or more by weight of alcohol in his blood;

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

(3) At the time the person had 0.10% or more by weight of alcohol in his blood.

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

authorized by section 1312, subsection 6, that the equipment, chemicals and other materials used in the taking of the blood specimen or breath sample were of a quality appropriate for the purpose of producing reliable test results that any equipment, chemicals or materials required by section 1312, subsection 6, to be approved by the Department of Human Services were in fact approved, that the sample tested by the person certified under section 1312, subsection 6, was in fact the same sample taken and that the percentage by weight of alcohol in the blood was, at the time the blood or breath sample was taken, as stated in the certificate.

D. If it is determined after hearing that there was not the requisite probable cause for blood-alcohol test administration or that the person did not operate or attempt to operate a motor vehicle while having 0.10% or more by weight of alcohol in his blood, the suspension shall be removed immediately and the Secretary of State shall delete any record of the suspension.

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

Sec. 2. 29 MRSA §1312-C, sub-§4-A is enacted to read:

4-A. Notice of adjudication. The court shall give notice to the Secretary of State of any adjudication finding the person did not commit the traffic infraction of operating or attempting to operate a motor vehicle while having 0.10% or more by weight of alcohol in his blood or of any dismissal of such a charge against the person.

Sec. 3. 29 MRSA §1312-D, sub-§3, as amended by PL 1983, c. 501, §5, is further amended to read:

3. Restricted licenses. After certification under subsection 2 ~~or after completion of the suspension imposed pursuant to this section and section 1312-B, 1312-C or Title 15, section 3314~~, 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. Following the expiration of the total period of suspension imposed pursuant to subsections 1 and 1-A, section 1312-B or 1312-C, or Title 15, section 3314, the Secretary of State may issue a license or permit, subject to the conditions, restrictions or terms he deems advisable, to the person if the Secretary of State has received or when he receives written notice that the person has satisfactorily completed the alcohol educational program of the Department of Human Services and, when required, has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department. The license or permit may contain the condition that the person abstain from the use of intoxicating liquor or drugs. Any license or permit issued under subsection 2 or under this subsection shall be restricted to use for travel to an alcohol education or treatment program or to employment if the amount of the total period of suspension which has expired is less than 90 days. Any such license or permit issued shall remain restricted until the amount of time the license or permit was actually suspended plus the amount of time the restricted license or permit has been issued equals a minimum of 90 days.

Sec. 4. 29 MRSA §2241-G, sub-§2, ¶¶B, C, D, E and F, as enacted by PL 1983, c. 478, are repealed and the following enacted in their place:

B. Except where a longer period of suspension is otherwise provided by law, the Secretary of State shall suspend for a period of one year, without preliminary hearing, the provisional license of any person who has not attained his 20th birthday:

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

(2) As to whom he determines has operated or attempted to operate a motor vehicle while having 0.02% or more by weight of alcohol in his blood.

C. Any person not having attained his 20th birthday who operates or attempts to operate a motor vehicle within this State shall have the

duty to submit to a test to determine his blood-alcohol level by analysis of his blood or breath, if there is probable cause to believe he has operated or attempted to operate a motor vehicle while having 0.02% or more by weight of alcohol in his blood. The provisions of section 1312 shall apply, except that in all cases probable cause shall be to believe that the person was operating or attempting to operate a motor vehicle while having 0.02% or more by weight of alcohol in his blood and that the person had not attained his 20th birthday, and except that suspension for failing to comply with the duty to submit to the test shall be for a period of one year.

D. The Secretary of State shall make the determination of suspension as follows:

(1) The Secretary of State shall suspend the provisional license of any person who has not attained his 20th birthday, and the right to apply for or obtain a license of any such person upon his determination that the person operated or attempted to operate a motor vehicle with 0.02% or more by weight of alcohol in the blood. The suspension shall be for a period of one year and shall continue until satisfaction of any conditions imposed pursuant to paragraph I or O.

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

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

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

(1) A law enforcement officer who had probable cause to believe any person who had not attained his 20th birthday was operating or attempting to operate a motor vehicle with 0.02% or more by weight of alcohol in the blood shall immediately forward to the Secretary of State a report, under oath of all information relevant to the enforcement action, including information which adequately identifies the person, a statement of the officer's grounds for belief that the person committed the offense of operating or attempting to operate a motor vehicle while having 0.02% or more by weight of alcohol in the blood, and a certificate under section 1312, subsection 8, of the result of any blood-alcohol test by a self-contained breath-alcohol testing apparatus which was conducted and which shows the presence of 0.02% or more by weight of alcohol in the blood.

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

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

F. The notice of suspension by the Secretary of State shall be made as follows.

(1) Upon receipt of the information required in paragraph E, the Secretary of State shall make the determination described in paragraph D. If the Secretary of State determines that the person is subject to license suspension, he shall immediately issue a notice of suspension.

(2) The notice of suspension shall be sent by regular mail to the person at the last known address on record at the Division of Motor Vehicles, or to the address provided in the report of the law enforcement officer if that address differs from the address of record.

(3) The notice of suspension shall clearly specify the reason and statutory grounds for the suspension, the effective date of the suspension, the right of the person to request a hearing, the procedure for requesting a hearing and the date by which that request for a hearing shall be made. The notice of suspension shall also clearly state that a copy of the report of the law enforcement officer under paragraph E, subparagraph (1), and a copy of the blood-alcohol test certificate under paragraph E, subparagraph (1) or (3), will be provided to the person upon request to the Secretary of State.

G. Effective date and period of suspension.

(1) Any suspension imposed shall be effective on a specified date not less than 10 days after the mailing of the notification of suspension by the Secretary of State. If a person whose license is suspended desires to have a hearing, he shall so notify the Secretary of State, in writing, within 10 days from the effective date of the suspension. The suspension shall be stayed for 10 days from the effective date of the suspension. If, within 10 days from the effective date of the suspension, the Secretary of State is notified, in writing, of a request for a hearing, the suspension shall be stayed until a hearing is held and a decision is issued. The Secretary of State shall conduct a hearing and issue a decision within 30 days from the date of receipt of a written request for hearing. Failure by the Secretary of State to conduct a hearing and issue a decision within the 30-day period shall result in an extension of the stay of the Secretary of State's suspension order until such time as a hearing is conducted and a decision issued. Notwithstanding this subsection, there shall be no stay of suspension during the period of any delay of hearing which is caused or requested by the petitioner.

(2) When a person's license is suspended under this section and is also suspended after having been adjudicated or convicted on charges arising out of the same occurrence for a violation of section 1312-B or 1312-C

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

H. Upon receipt by the Secretary of State of a petition for a work-restricted license by any person whose license or right to operate a motor vehicle has been suspended pursuant to paragraph B, subparagraph (2), the Secretary of State may stay the suspension during the statutory period and issue a work-restricted license. The issuance of such a license shall be conditioned upon a showing by the petitioner by clear and convincing evidence that such a license is necessary to operate a motor vehicle between the residence and a place of employment or to operate a motor vehicle in the scope of employment, or both, as determined by the Secretary of State and that no alternative means of transportation is available.

I. Following the expiration of 1/2 of the total period of suspension imposed pursuant to paragraph B, the Secretary of State may issue a provisional license, subject to the conditions, restrictions or terms he deems advisable, to the person if the Secretary of State receives written notice that the person has satisfactorily completed the alcohol educational program of the Department of Human Services and, when required, has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department.

J. A person who has received notice of suspension may request a hearing as follows.

(1) Any person who has received a notice of suspension under this section may make a written request for a review of the determination of the Secretary of State at a hearing.

(2) The request for hearing shall be made within 10 days from the effective date of the suspension. If a written request for a hearing is made after such date and the Secretary of State finds that the person was unable to make a timely request due to lack of actual notice of the suspension or due to

factors of physical incapacity, the Secretary of State shall waive the period of limitation, reopen the matter and grant the hearing request, except, in such a case, a stay of suspension pending the hearing shall not be granted.

K. The hearing and notice shall be as follows.

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

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

(a) There was probable cause to believe that the person had not attained his 20th birthday and that the person was operating or attempting to operate a motor vehicle while having 0.02% or more by weight of alcohol in his blood;

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

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

(d) At such time the person had not attained his 20th birthday.

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

(4) If it is determined after hearing that there was not the requisite probable cause for blood-alcohol test administration or that the person had attained his 20th birthday at the time of operation or attempted operation or that the person did not operate or attempt to operate a motor vehicle while having 0.02% or more by weight of alcohol in his blood, the suspension shall be removed immediately and the Secretary of State shall delete any record of the suspension.

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

L. Any suspension pursuant to this section or license reissued after suspension pursuant to paragraph I may extend beyond the person's 20th birthday to allow for completion of the total suspension period or to continue the period of conditions, restrictions or terms imposed on a license reissued pursuant to paragraph I.

M. The Secretary of State may promulgate whatever rules are necessary to carry out the purposes of this section.

N. In the event that a person who has not attained his 20th birthday is determined to have operated or attempted to operate a motor vehicle while having 0.10% or more of alcohol in the blood such that both this subsection and section 1311-A apply, this section shall govern to the exclusion of section 1311-A.

O. Following the expiration of the total period of suspension imposed pursuant to paragraph B, the Secretary of State may issue a provisional license, subject to the conditions, restrictions or terms he deems advisable, to the person if the Secretary of State has received or when he receives written notice that the person has satisfactorily completed the alcohol educational program of the Department of Human Services and, when required, has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective May 2, 1984.

CHAPTER 851

H.P. 1817 - L.D. 2407

AN ACT to Provide a Sales Tax Exemption
for Certain Residential Facilities.

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

36 MRSA §1760, sub-§46 is enacted to read:

46. Residential facilities for medical patients and their families. Incorporated nonprofit organizations providing temporary residential accommodations to pediatric patients suffering from critical illness or disease, such as cancer, or who are accident victims, and adult patients with cancer, or the families of the patients.

Effective July 25, 1984.

CHAPTER 852

H.P. 1864 - L.D. 2468

AN ACT to Promote the Distillation of
Ethanol for Use as an Internal Combustion
Engine Fuel.

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

Sec. 1. 10 MRSA §1457 is enacted to read:

§1457. Ethanol enhanced motor fuel

1. Prohibition. No distributor, franchisor or refiner may impose any condition, restriction, agreement or understanding that unreasonably discriminates