

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1984 to June 20, 1985
Chapters 384-End

AND AT THE

FIRST SPECIAL SESSION

November 13, 1985

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine
1985

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND TWELFTH LEGISLATURE

1985

lienholders of all rights, title and interest in the vehicle.

B. After the notification, the Secretary of State may, in his discretion, dispose of the vehicle at a public auction.

Sec. 23. 29 MRSA §2452, as amended by PL 1983, c. 818, §28, is further amended to read:

§2452. License fees

The initial application for a license under this subchapter shall be accompanied by a ~~20~~ 150 nonrefundable application fee. The application fee for every license issued under this subchapter shall be ~~50~~ 150, except those businesses licensed by the Secretary of State as new car, used car and equipment dealers pursuant to chapter 5, subchapter III-A, will be exempt from an additional ~~50~~ 150 license fee.

Sec. 24. Allocation. The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

	<u>1985-86</u>	<u>1986-87</u>
<u>SECRETARY OF STATE,</u>		
<u>DEPARTMENT OF</u>		
Division of Motor Vehicles		
Administration, Motor Vehicle		
Positions	(15)	(15)
Personal Services	\$236,299	\$334,518
All Other	70,486	93,981
Capital Expenditures	<u>41,156</u>	<u> </u>
Total	\$347,941	\$428,499

Effective September 19, 1985.

CHAPTER 402

S.P. 332 - L.D. 820

AN ACT to Establish Age 21 Years as the Legal Age to Purchase or Consume Alcoholic Beverages and to Deter Drinking and Driving by Minors.

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

Whereas, prompt raising of the legal age for the purchase, transportation, possession or consumption of alcoholic beverages to age 21 years will reduce alcohol related highway deaths in Maine; 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. 28 MRSA §2, sub-§11, as amended by PL 1977, c. 23, §1, is further amended to read:

11. Minor. "Minor" shall mean means a person who has not attained his ~~20th~~ 21st birthday.

Sec. 2. 28 MRSA §201, as amended by PL 1983, c. 79, §1, is further amended to read:

§201. Eligibility

No license may be issued to any natural person unless ~~such~~ that person is at least ~~20~~ 21 years of age and is a citizen of the United States and of this State. A part-time license, as authorized by law, may be issued to any natural person who is at least ~~20~~ 21 years of age and is a citizen of the United States. No license may be issued to a partnership or to an association unless all persons having an interest therein are at least ~~20~~ 21 years of age and are citizens of the United States and of this State. A part-time license, as authorized by law, may be issued to a partnership or association if all persons having an interest therein are at least ~~20~~ 21 years of age and are citizens of the United States. No license may be issued to any corporation unless it shall be incorporated under the laws of this State or authorized to transact business in this State. No license may be issued to a corporation any of the principal officers of which would not personally be eligible for a liquor license because such officer had had a license for sale of liquor revoked. No person, who is not at the time of the offense the holder of a liquor license, convicted of violating any of the laws of this State or the United States with respect

to manufacture, transportation, importation, possession or sale of intoxicating liquor may be granted a license for sale of liquor for a period of 5 years from the date of such conviction, and no person who sells liquor of a greater alcoholic content than authorized by his license may be considered the holder of a license for the purposes of this sentence. No clerk, servant or agent of a licensee, who is convicted of sale of liquor on Sunday, may himself be granted a license for sale of liquor for a period not exceeding 5 years from the date of such conviction. No person whose license for sale of liquor expires pending an appeal from conviction of a violation of law forbidding sale of intoxicating liquor on Sunday, by himself or his clerk, servant or agent, on his licensed premises, may, after subsequent final conviction of himself, clerk, servant or agent be eligible for a liquor license for a period not exceeding 5 years from the date of such final conviction. No license may be issued in which any law enforcement official benefits financially either directly or indirectly.

Sec. 3. 28 M RSA §303, as amended by PL 1983, c. 81, is further amended to read:

§303. Credit sales; sales to certain persons restricted

No licensee by himself, clerk, servant or agent ~~shall~~ may sell or offer to sell any liquor except for cash, excepting credits extended by a hotel or club to bona fide registered guests or members; and excepting credits extended by a hotel or class A restaurant to the holder of a credit card which authorizes such holder to charge goods or credits. ~~No~~ A right of action ~~shall~~ does not exist to collect claims for credits extended contrary to this section. Nothing herein contained ~~shall~~ prohibit ~~prohibits~~ a licensee from giving credit to a purchaser for the actual price charged for packages or original containers as a credit on any sale, or from paying the amount actually charged for packages or original containers.

No licensee by himself, clerk, servant or agent ~~shall~~ may sell, offer to sell or furnish any liquor to any person on a passbook or store order, or receive from any person any goods, wares, merchandise or other articles in exchange for liquor, except only such packages or original containers as were originally purchased from such licensee by the person returning the same. No licensee, by himself, clerk,

servant or agent entitled to sell malt liquor or table wine not to be consumed on the premises, ~~shall~~ may sell, furnish, give or deliver such malt liquor or table wine to any person visibly intoxicated, to any mentally ill person, to a known habitual drunkard, to any pauper, to persons of known intemperate habits or to any minor ~~under the age of 20 years as defined in section 2, subsection 11.~~ No licensee by himself, clerk, servant or agent ~~shall~~ may sell, furnish, give, serve or permit to be served any liquor to be consumed on the premises to any person visibly intoxicated, to any mentally ill person, to a known habitual drunkard, to any pauper, to persons of known intemperate habits or to any minor ~~under the age of 20 years.~~ Any licensee who accepts an order or receives payment for liquor from a minor shall be considered as in violation of this paragraph.

Any person under the age of 20 years minor who purchases any intoxicating liquor or any person under the age of 20 years minor who consumes any intoxicating liquor or has on his or her person any intoxicating liquor in any on-sale premises, or who presents or offers to any licensee, his agent or employee any written or oral evidence of age which is false, fraudulent or not actually his own, or who has a false identification card in his possession, or sells, furnishes or gives a false identification card to a minor or who uses a false identification card, for the purpose of ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure, the serving of any intoxicating liquor, or to gain access to a licensed premise when minors are not allowed or who has any intoxicating liquor in his possession, except in the scope of his or her employment on any street or highway, or in any public place or in any automobile, or in his own home in the presence of a parent or guardian, commits a civil violation for which a forfeiture may be adjudged of no less than \$100 nor more than \$300 for the first offense; not less than \$200 nor more than \$500 for the 2nd offense, none of which may be suspended; and \$500 for the 3rd and subsequent offenses, none of which may be suspended. When a person is adjudged to have committed his first offense under this section, the judge shall inform that person that the forfeitures for the 2nd and subsequent offenses are mandatory and cannot be suspended. Failure to inform the first offender that subsequent forfeitures are mandatory is not a ground for suspension of any subsequent forfeiture. If a minor is charged with illegal possession under this section, he may not be charged with illegal transportation. No minor may be charged with

more than one offense under this section in any given instance ~~wherein~~ in which the same set of facts is involved.

Sec. 4. 28 MRSA §751-A, as amended by PL 1985, c. 133, §1, is further amended to read:

§751-A. Payment for sales in retail stores

For the purpose of receiving payment at the check-out counters for the sale of malt liquor or table wine in retail stores, the age of the employee receiving the payment shall not be under 17 years of age, ~~provided that in any event~~ unless an employee who is ~~of legal drinking age as provided in this Title~~ 18 years of age or older is present in the retail store in a supervisory capacity.

Sec. 5. 28 MRSA §852, first ¶, as amended by PL 1985, c. 133, §2, is repealed and the following enacted in its place:

No licensee for the sale of liquor to be consumed on licensed premises may employ any person under the age of 17 years in the direct handling or selling of liquor on the premises where the liquor is sold, unless an employee who is 18 years of age or older is present in a supervisory capacity.

Sec. 6. 28 MRSA §1001, as amended by PL 1977, c. 23, §§7 and 8, is further amended to read:

§1001. Transportation restricted

No person under the age of ~~20~~ 21 years ~~shall~~ may knowingly transport or knowingly permit to be transported any intoxicating liquor in a motor vehicle under his control except in the scope of his or her employment, or at the request of his or her parent or guardian.

If a minor is charged with illegal transportation under this section, he may not be charged with illegal possession.

No person under the age of ~~20~~ 21 years ~~shall~~ may be convicted of any offense under this section if intoxicating liquors are found outside the passenger or driver's section of a motor vehicle under his control unless said person has actual knowledge of the presence of said liquors. The trunk or locked glove compartment of any vehicle shall not be construed under this section to be within the passenger or driver's section thereof.

Any violation of this section shall be a traffic infraction.

Sec. 7. 28 MRSA §1060, first ¶, as repealed and replaced by PL 1981, c. 506, §2, is amended to read:

Any resident of the State or nonresident in the State ~~20~~ 21 years of age or over may make application to the Secretary of State for an official state nondriver identification card under Title 5, section 89, upon a form provided by the Secretary of State. The application form shall include, directly above the signature line, the following notice to the applicant: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under Title 17-A, punishable by confinement of up to one year or by monetary fine of up to \$500, or by both." The Secretary of State, upon receipt of an application and such supporting documents and information as he may require, shall issue an identification card to the applicant bearing his photograph, together with his name, address, date of birth and such other information and identification as he may deem necessary. The identification card issued under this section shall not be valid until signed by the applicant. The fee for an identification card shall be \$2.

Sec. 8. 29 MRSA §2241-G, sub-§1, as enacted by PL 1983, c. 478, is amended to read:

1. Licensee 21 years of age and older. The original state license issued to a new applicant ~~20~~ 21 years of age and older shall be a provisional license for a period of one year following the date of issue and shall remain in force as a nonprovisional license to the next normal expiration date. If a person is convicted of or adjudicated to have committed a motor vehicle moving violation while in possession of a provisional license on the first offense, the license shall be suspended for 30 days. If he is convicted of or adjudicated to have committed a 2nd moving violation, his license shall be suspended for 60 days and if he is convicted of or adjudicated to have committed a 3rd moving violation, the license shall be suspended to the 2nd birthday next following the date of issue or for 90 days, whichever shall be the longer period of time. In these cases, a hearing may be requested of the Secretary of State, and the Secretary of State shall afford the provisional licensee opportunity for hearing as soon as practicable after receipt of the request. Upon the hearing, the Secretary of State, for good cause shown, may continue, modify or rescind the suspension. This subsection

shall not prevail when a person is convicted of or adjudicated to have committed an offense which carries a suspension or revocation period greater than that prescribed in this subsection.

Sec. 9. 29 MRSA §2241-G, sub-§2, as amended by PL 1983, c. 850, §4, is further amended to read:

2. Licensee under 21 years of age. The original license or any renewal license issued to an applicant under ~~20~~ 21 years of age shall be a provisional license for a period of one year following the date of issue or until the licensee attains the age of ~~20~~ 21 years of age, whichever occurs last. Upon expiration of the provisional term, the license shall remain in force as a nonprovisional license to the next normal expiration date. Any license issued by any other jurisdiction to a person who has not yet attained the age of ~~20~~ 21 years shall be construed to be a provisional license for the purpose of operating a motor vehicle within this State.

A. During the first year from the date of issue of the provisional license, if a person is convicted of or adjudicated to have committed a motor vehicle moving violation, on the first offense, the license shall be suspended for 30 days. If he is convicted of or adjudicated to have committed a 2nd moving violation, his license shall be suspended for 60 days and if he is convicted of or adjudicated to have committed a 3rd moving violation, the license shall be suspended to the 2nd birthday next following the date of issue or for 90 days, whichever shall be the longer period of time. In these cases, a hearing may be requested of the Secretary of State, and the Secretary of State shall afford the provisional licensee opportunity for hearing as soon as practicable after receipt of the request. Upon the hearing, the Secretary of State, for good cause shown, may continue, modify or rescind the suspension. This paragraph shall not prevail when a person is convicted of or adjudicated to have committed an offense which carries a suspension or revocation period greater than that prescribed in this paragraph.

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~~ 21st 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~~ 21st 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~~ 21st 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~~ 21st 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~~ 21st 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. Upon receipt by the Secretary of State of a petition for a restricted license for employment or education purposes 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 restricted license if no alternate means of transportation is available as follows:

(1) A work-restricted license may be issued and shall be conditioned upon a showing by a petitioner by clear and convincing evidence that such a license is necessary to operate a motor vehicle between the residence and

place of employment or to operate a motor vehicle in the scope of employment, or both.

(2) A restricted license to operate a motor vehicle for educational purposes may be issued and 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 an educational facility attended by the petitioner.

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.

(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~~ 21st 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~~ 21st 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.

Sec. 10. Transition. A person who has attained the age of 20 years prior to June 1, 1985, is hereby granted all of the rights accorded by this Act to persons who are 21 years of age or older.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect July 1,

1985, except for sections 4 and 5 which shall become effective 90 days following adjournment.

Effective September 19, 1985, unless otherwise indicated.

CHAPTER 403

H.P. 673 - L.D. 956

AN ACT to Make Supplemental Allocations from
the Highway Fund and Changing Certain
Provisions of the Law Necessary for
the Proper Operation of State
Government for the Fiscal Years
Ending June 30, 1986, and
June 30, 1987.

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 after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses will become due and payable on or immediately after July 1, 1985; 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:

PART A

Sec. 1. 25 MRSA §1502, as amended by PL 1979, c. 51, §1, is further amended by adding after the 2nd paragraph a new paragraph to read:

The State Police may provide patrol services to the Maine Turnpike. The Chief of the State Police may charge the Maine Turnpike Authority for these services. Revenues received are allocated for the purpose of funding the cost of patrolling the Maine Turnpike.