

# 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.

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

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**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

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1752, subsection 7, attachments and equipment for the production of field and orchard crops; new or used machinery and equipment used in production of milk and in animal husbandry and production of livestock, including poultry; or

(2) New or used watercraft used directly and primarily for commercial fishing; and nets, traps; cables, tackle and related equipment necessary to the operation of a commercial fishing venture, but excluding motor vehicles as defined in section 1752, subsection 7.

Sec. 2. 36 MRSA §2013, sub-§3, as enacted by PL 1979, c. 190, is amended to read:

3. Exemption for large purchase after certification. No sales tax shall may be paid on the purchase of a single item of machinery or equipment with a sales price in excess of \$5,000 \$1,000, if the purchaser has the certification of the State Tax Assessor that the sales tax if paid by the purchaser would have been refundable under the provisions of this section he is engaged in commercial agricultural production or commercial fishing, and that he may purchase depreciable machinery and equipment without paying Maine sales tax. The seller is required to obtain a copy of the certificate together with an affidavit as prescribed by the State Tax Assessor, to be maintained in the seller's records, attesting to the qualification of the purchase for exemption pursuant to this section. In order to qualify for this exemption, the depreciable machinery or equipment must be suited only for use directly in commercial agricultural production or commercial fishing.

Effective September 19, 1985.

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## CHAPTER 412

S.P. 562 - L.D. 1491

AN ACT to Amend the Offenses for Operating  
under the Influence.

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

Sec. 1. 29 MRSA §1312, 2nd ¶, as amended by PL 1981, c. 679, §13, is repealed and the following enacted in its place:

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

Sec. 2. 29 MRSA §1312, sub-§6, as amended by PL 1981, c. 679, §§18 to 23, is further amended to read:

6. Administration of tests. Persons conducting analysis of blood or breath for the purpose of determining the blood-alcohol level shall be certified for this purpose by the Department of Human Services under certification standards to be set by that department.

Only a duly licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Human Services under certification standards to be set by that department, acting at the request of a law enforcement officer, may draw a specimen of blood for the purpose of determining the blood-alcohol level of a person who is complying with the duty to submit to a blood-alcohol test and who has selected a blood test. This limitation shall not apply to the taking of breath specimens.

A law enforcement officer may take a sample specimen of the breath of any person whom he has probable cause to believe has operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor and who is complying with the duty to submit to a blood-alcohol test and who has selected a breath test, the sample specimen to be submitted to the Department of Human Services or a person certified by the Department of Human Services for the purpose of conducting chemical tests of the sample specimen to determine the blood-alcohol level thereof.

Only such equipment as is approved by the Department of Human Services shall be used by a law enforcement officer to take a sample specimen of the defendant's

breath for submission to the Department of Human Services or a person certified by the Department of Human Services for the purpose of conducting tests of the sample specimen to determine the blood-alcohol level thereof. Approved equipment shall have a stamp of approval affixed by the Department of Human Services. Evidence that the equipment was in a sealed carton bearing the stamp of approval shall be accepted in court as prima facie evidence that the equipment was approved by the Department of Human Services for use by the law enforcement officer to take the sample specimen of the defendant's breath.

As an alternative to the method of breath testing described in this subsection, a law enforcement officer may test the breath of any person whom there is probable cause to believe has operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor and who has chosen a breath test, by use of a self-contained, breath-alcohol testing apparatus to determine the blood-alcohol level, provided the testing apparatus is reasonably available. The procedures for the operation and testing of self-contained breath-alcohol testing apparatuses shall be as provided by regulation promulgated by the Department of Human Services. The result of any such test shall be accepted as prima facie evidence of the blood-alcohol level in any court.

Approved self-contained, breath-alcohol testing apparatus shall have a stamp of approval affixed by the Department of Human Services after periodic testing. That stamp of approval shall be valid for a limited period of no more than 1 year. Testimony or other evidence that the equipment was bearing the stamp of approval shall be accepted in court as prima facie evidence that the equipment was approved by the Department of Human Services for use by the law enforcement officer to collect and analyze a sample specimen of the defendant's breath.

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

It is the intent of the Legislature that savings realized through the use of self-contained breath-alcohol testing equipment shall be used for programs in the area of highway safety, with priority to be given to programs involving alcohol education

and rehabilitation. It is also the intent of the Legislature that local law enforcement departments may be equipped, according to local needs, with breath-testing equipment, as described in this section, as provided by the Department of Public Safety and approved by the Department of Human Services. Testimony or other evidence that any materials used in operating or checking the operation of the equipment were bearing a statement of the manufacturer or of the Department of Human Services shall be accepted in court as prima facie evidence that the materials were of a composition and quality as stated.

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

Sec. 3. 29 MRSA §1312, sub-§7, as amended by PL 1981, c. 615, §2, is further amended to read:

7. Liability. No physician, physician's assistant, registered nurse ~~or~~, person certified by the Department of Human Services or hospital or other health care provider in the exercise of due care ~~shall~~ may be liable in damages or otherwise for any act done or omitted to be done in performing the act of collecting or withdrawing specimens of blood at the request of a law enforcement officer pursuant to this section.

Sec. 4. 29 MRSA §1312-B, sub-§2, as amended by PL 1983, c. 501, §3, is repealed and the following enacted in its place:

2. Penalties. The offense defined in subsection 1 is a Class D crime, provided that in the following cases the following minimum penalties shall apply.

A. Except as provided in paragraph B, in the case of a person having no previous convictions of a violation of former section 1312, subsection 10, former section 1312-B or this section and having no previous suspension of license or privilege to operate for failure to comply with the duty to submit to and complete a test to determine the level of blood-alcohol under section 1312 within a 6-year period, the fine shall not be less than \$300 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 90 days, which penalties may not be suspended.

B. In the case of a person having no previous convictions of a violation of former section 1312, subsection 10, former section 1312-B, or this section and having no previous suspension of license or privilege to operate for failure to comply with the duty to submit to and complete a test to determine the level of blood-alcohol under section 1312 within a 6-year period, the fine shall not be less than \$300, the sentence shall include a period of incarceration of not less than 48 hours 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 90 days, which penalties may not be suspended, when the person:

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

(2) Was driving in excess of the speed limit by 30 miles an hour or more during the operation which resulted in the prosecution for operating under the influence or with a blood-alcohol level of 0.10% or more; or

(3) Eluded or attempted to elude an officer, as defined in section 2501-A, subsection 3, during the operation which resulted in prosecution for operating under the influence or with a blood-alcohol level of 0.10% or more.

C. In the case of a person having one previous conviction of a violation of former section 1312, subsection 10, former section 1312-B or this section, or having at least one previous suspension for failure to comply with the duty to submit to and complete a test to determine the level of blood-alcohol under section 1312 within a 6-year 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.

D. In the case of a person having 2 or more previous convictions of violations of former section



1312, subsection 10, former section 1312-B or this section, within a 6-year period, the fine shall not be less than \$750, the sentence shall include a period of incarceration of not less than 30 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 2 years, which penalties may not be suspended.

E. The penalties provided under paragraphs A, B, C and D shall not be suspended by the court. The court shall give notice of the suspension and take physical custody of the operator's license as provided in section 2241-H. The Secretary of State may impose an additional period of suspension as provided in section 1312-D, subsection 1-A, or may extend any period of suspension until satisfaction of any conditions imposed pursuant to section 1312-D, subsection 3.

Sec. 5. 29 MRSA §1312-C, as amended by PL 1983, c. 850, §2, is repealed.

Sec. 6. 29 MRSA §1312-D, as amended by PL 1983, c. 850, §3, is further amended to read:

§1312-D. Provisions regarding suspensions imposed pursuant to conviction under sections 1312-B

1. Recording and notice by Secretary of State. On receipt of an attested copy of the court record of a suspension of a person's license, right to operate a motor vehicle or right to apply for or obtain a license or of a conviction ~~or adjudication~~ under section 1312-B ~~or 1312-E~~, the Secretary of State shall immediately record the suspension and shall send written notice of the suspension of the court to the person suspended. If the court fails to suspend the license, right to operate a motor vehicle, or right to apply for or obtain a license of any person convicted under section 1312-B ~~or adjudicated as having violated section 1312-E~~, or the juvenile crime defined by Title 15, section 3103, subsection 1, paragraph F, the Secretary of State shall suspend those rights for the period specified in ~~sections~~ section 1312-B, 1312-E and Title 15, section 3314, subsection 3, respectively, and shall send written notice of the suspension as provided in this subsection.

1-A. Additional suspension. The Secretary of State may suspend the license, the right to operate a

motor vehicle or the right to apply for or obtain a license of any person ~~adjudicated~~ convicted of ~~having violated section 1312-C~~ violating section 1312-B for an additional period of up to 135 days beyond the 45-day period of suspension required under section ~~1312-C, subsection 4~~ 1312-B, subsection 2.

The Secretary of State may suspend the license, the right to operate or the right to apply for or obtain a license of any person, including a juvenile, convicted ~~for a first offense within a 6-year period~~ under section 1312-B for an additional period of up to 275 days beyond the 90 days suspension periods required under section 1312-B, subsection 2, paragraph C subsection 2, or up to 185 days beyond the 180 days required under Title 15, section 3314, subsection 3.

Notice of any additional suspension pursuant to this subsection shall be given as provided in subsection 1.

2. Education and treatment programs. Following the expiration of  $\frac{2}{3}$  of the total period suspension imposed pursuant to subsection 1 and 1-A, section 1312-B, ~~section 1312-C former section 1312-B, subsection 2~~ or Title 15, section 3314, 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 and, when required, has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department.

3. Restricted licenses. After certification under subsection 2, 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. 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.

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-E 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 suspension for failure to comply with duty to submit to blood-alcohol test. The Secretary of State may issue a restricted license or permit to any person whose license or permit has been suspended for a first failure to comply with the duty to submit to a blood-alcohol test under section 1312, subsection 2, if the conditions of issuance following a conviction or adjudication under section 1312-B or 1312-E 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 \$75, to participants in the education program, which shall be applied to defraying the expenses of the program. The department shall submit to the joint standing committee of the Legislature having jurisdiction over appropriations a report presenting an itemized description of the operating budget of the educational program. The report shall be submitted no later than January 1, 1985.

7. Suspension in effect during appeal. If any person suspended under section 1311-A or convicted or adjudicated of a violation of section 1312-B or 1312-E appeals the judgment or adjudication or administrative determination of the Secretary of State, the suspension imposed shall remain in effect 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 pursuant to this section or the former section 1312, subsection 10 or section 1312-B or ~~1312-C~~ former section 1312-B, subsection 2 shall be consecutive to any suspension imposed under section 1312, subsection 2, for failing to comply with the duty to submit to a test to determine blood-alcohol level by analysis of blood or breath.

9. Proof of financial responsibility. In the case of any person previously convicted of violating subsection 10 of former section 1312; convicted of violating former section 1312-B, subsection 2; convicted of violating section 1312-B; adjudicated guilty of violating section 1312-C; or convicted of violating Title 15, section 3103, subsection 1, paragraph F, within a 6-year period of the most recent conviction or adjudication of any of these violations, the Secretary of State shall not reinstate that person's license, right to operate or right to apply for or obtain a license until that person has complied with the financial responsibility provisions of section 782.

Effective September 19, 1985.

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## CHAPTER 413

S.P. 618 - L.D. 1629

AN ACT Relating to Cumberland County Budget Process.

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

30 MRSA c. 12 is enacted to read:

### CHAPTER 12

#### CUMBERLAND COUNTY BUDGET

##### §1651. Budget; appropriations; approval

Notwithstanding sections 2, 252 and 253, in Cumberland County the county commissioners may appropriate money, according to a budget, which must be approved by a majority of the county commissioners.

##### §1652. Interim budget