

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

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

Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
and
SECOND REGULAR SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

C. Violation of this chapter or of any rule of the board.

3. Reinstatement. The board, for reasons it determines sufficient, may reinstate any person whose license has been revoked, providing 6 or more members of the board vote in favor of that reissuance.

§4150. Fees

1. Amount. Application fees for licenses or renewals may be established by the board in amounts which are reasonable and necessary, but not to exceed \$200.

2. Multiple licenses. The board may waive part or all of a fee or establish a special fee for individuals receiving more than one license.

3. Deposit of fees. All fees received by the board shall be paid to the Treasurer of State and deposited into the General Fund.

Sec. 3. Report. The board shall report to the joint standing committee of the Legislature having jurisdiction over business legislation no later than February 15, 1989, on the necessity and desirability of licensing brake-men, flagmen or other railroad personnel deemed necessary to be licensed by the board.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1988-89

PROFESSIONAL AND BUSINESS REGULATION, DEPARTMENT OF

Board of Licensure of Railroad Personnel

Positions	(1)
Personal Services	\$20,000
All Other	8,000

Total \$28,000

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved, except that the Maine Revised Statutes, Title 32, section 4148, subsections 1 and 2, shall take effect on December 15, 1988.

Effective April 28, 1988, unless otherwise indicated.

CHAPTER 791

H.P. 1746 — L.D. 2395

AN ACT to Strengthen the Drunk Driving Laws.

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

Sec. 1. 15 MRSA §152, as amended by PL 1979, c. 663, §87, is further amended to read:

§152. Fresh pursuit defined

The term "fresh pursuit" as used in this chapter includes fresh pursuit as defined by the common law, and the pursuit of a person who has committed a crime punishable by a maximum term of imprisonment equal to or exceeding one year or, who is reasonably suspected of having committed such a crime or who is reasonably suspected of operating a motor vehicle while under the influence of intoxicating liquor or drugs. It shall include the pursuit of a person suspected of having committed a supposed crime punishable by a maximum term of imprisonment equal to or exceeding one year, though no such crime has actually been committed, if there is reasonable ground for believing that such a crime has been committed. Fresh pursuit as used herein in this chapter shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

Sec. 2. 15 MRSA §154, as amended by PL 1979, c. 663, §88, is further amended to read:

§154. Arrest; exception

Any member of a duly organized state, county or municipal police unit of another state of the United States, who enters this State in fresh pursuit and continues within this State in such fresh pursuit of a person in order to arrest him on the ground that he is believed to have committed, in such other state, a crime punishable by a maximum term of imprisonment equal to or exceeding one year or to have operated a motor vehicle while under the influence of intoxicating liquor or drugs in such other state, shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county or municipal police unit of this State to arrest and hold in custody a person on the ground that he is believed to have committed such a crime or operated a motor vehicle while under the influence of intoxicating liquor or drugs in this State. This section shall not be construed so as to make unlawful any arrest in this State which would otherwise be lawful.

Sec. 3. 16 MRSA §357, as amended by PL 1973, c. 788, §66, is further amended by adding at the end a new paragraph to read:

Notwithstanding this section, the result of a laboratory or any other test kept by a hospital or other medical facility, which reflects blood-alcohol concentration, shall not be excluded as evidence in a criminal or civil proceeding by reason of any claim of confidentiality or privilege and may be admitted provided that the result is relevant and reliable evidence if the proceeding is one in which the operator of a motor vehicle or watercraft is alleged to have operated under the influence of intoxicating liquor or drugs, and the court is satisfied that probable cause exists to believe that the operator committed the offense charged.

Sec. 4. 29 MRSA §540-A, as amended by PL 1985, c. 539, §6, is repealed and the following enacted in its place:

§540-A. Coded licenses

1. Under 21 years of age. The Secretary of State shall provide that licenses issued to persons under 21 years of age be distinctive, either by being printed with a different color than for those issued to persons 21 years of age or older or by some other appropriate distinguishing mark or code.

2. Prior convictions. The Secretary of State shall provide that the license of a person who has been convicted of operating under the influence of intoxicating liquor, drugs or with an excessive blood-alcohol level within 6 years prior to the date the license is issued, reissued or returned after a period of suspension, shall bear a coded notation indicating that fact. For purposes of this subsection, a conviction of operating under the influence of intoxicating liquor, drugs or with an excessive blood-alcohol level has the same meaning as specified in section 2241-J, subsection 12.

Sec. 5. 29 MRSA §1311-A, sub-§1-A, as repealed and replaced by PL 1983, c. 850, §1, is amended to read:

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%~~ 0.08% or more by weight of alcohol in the blood.

Sec. 6. 29 MRSA §1311-A, sub-§3, ¶A, as repealed and replaced by PL 1983, c. 850, §1, is amended to read:

A. A law enforcement officer who arrests or, summons or conducts an investigation which results in criminal charges against 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 or charged, 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.

Sec. 7. 29 MRSA §1311-A, sub-§5-A, as repealed and replaced by PL 1983, c. 850, §1, is amended to read:

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 dur-

ing 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, and that the petitioner has not, within 6 years, been suspended:

A. For failing to comply with the duty to submit to and complete a chemical test to determine blood-alcohol level;

B. Pursuant to this section; or

C. For a conviction of operating under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level or the corresponding juvenile offense.

Sec. 8. 29 MRSA §1311-A, sub-§8, ¶B, as repealed and replaced by PL 1983, c. 850, §1, is amended to read:

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%~~ 0.08% 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%~~ 0.08% or more by weight of alcohol in his blood.

Sec. 9. 29 MRSA §1311-A, sub-§8, ¶D, as repealed and replaced by PL 1983, c. 850, §1, is amended to read:

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%~~ 0.08% 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.

Sec. 10. 29 MRSA §1312, sub-§1, as amended by PL 1983, c. 501, §1, is further amended to read:

1. Prerequisites to tests. Before any test specified is given, the law enforcement officer shall inform the person as to whom there is probable cause that, if he fails to comply with the duty to submit to and complete a test to determine the level of blood-alcohol at the direction of the law enforcement officer, his license or permit to operate, his right to operate or his right to apply for or obtain a license will be suspended ~~for 180 days or, in the~~

~~case of a 2nd or subsequent failure to submit to and complete that test within a 6-year period, one year and the period of suspension shall be a minimum of 6 months and may be as long as 3 years.~~ The officer should also inform the person that the failure to comply with the duty to submit to a blood-alcohol test shall be admissible in evidence against him at any trial for operating under the influence of intoxicating liquor.

No test results may be excluded as evidence in any proceeding before any administrative officer or court of this State as a result of the failure of the law enforcement officer to comply with this prerequisite. The only effects of the failure of the officer to comply with this prerequisite shall be as provided in subsections 2 and 8.

Sec. 11. 29 MRSA §1312, sub-§2, as amended by PL 1983, c. 501, §2, is further amended to read:

2. Hearing. ~~If a person as to whom there is probable cause fails to comply with the duty to submit to a test to determine his blood-alcohol level by analysis of his blood or breath upon the request of a law enforcement officer, 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 failed to comply with the duty to submit to a test to determine the blood-alcohol level by ~~analysis~~ analysis of his blood or breath, shall immediately notify the person, in writing, as provided in section 2241, that his license or permit, his right to operate and his right to apply for or obtain a license have been suspended. The suspension shall be for a period of 180 days the first time the person fails to comply with the duty to submit to the test and one year for each subsequent failure to comply with the duty to submit to the test within a 6-year period. The written statement shall be sent to the Secretary of State within 72 hours of the failure to comply with the duty to submit to the blood-alcohol test, excluding Saturdays, Sundays and holidays. If the statement is not sent within this time period, the Secretary of State shall nevertheless impose the suspension for failing to comply with the duty 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.

If such person desires to have a hearing, he shall notify the Secretary of State within 10 days, in writing, of such desire. Any suspension shall remain in effect pending the outcome of such hearing, if requested.

The scope of such a hearing shall cover whether there was probable cause to believe that the individual was either attempting to operate or was operating under the influence of intoxicating liquor and whether he failed to comply with the duty to submit to one of the blood-alcohol tests upon the request of a law enforcement officer. Any suspension in effect shall be removed if, after hearing, it is determined that the person who failed

to submit to the test would not have failed to submit but for the failure of the law enforcement officer to give either or both of the warnings required by subsection 1.

If it is determined, after hearing, that there was not probable cause to believe that such person was either attempting to operate or was operating under the influence of intoxicating liquor or that the person did not fail to comply with the duty to submit to a blood-alcohol test, any suspension in effect shall be removed immediately.

If it is determined, after a hearing, that any suspension in effect should be removed, the Secretary of State shall delete any record of the suspension and any record of his revocation of consent from that person's driving record.

For the purposes of this section, a prior refusal or revocation of consent to submit to a chemical test shall be a prior refusal or revocation of consent if it occurred within a 6-year period of the date of the most recent refusal or revocation of consent.

Sec. 12. 29 MRSA §1312, sub-§5, ¶B, as repealed and replaced by PL 1971, c. 547, is amended to read:

B. If there was, at the time alleged, in excess of 0.05%, but less than ~~0.10%~~ 0.08% by weight of alcohol in the defendant's blood, it is relevant evidence, but it is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor within the meaning of this section, but such fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of intoxicating liquor.

Sec. 13. 29 MRSA §1312, sub-§5, ¶C, as repealed and replaced by PL 1981, c. 468, §7, is amended to read:

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%~~ 0.08% or more by weight.

Sec. 14. 29 MRSA §1312, sub-§6, as amended by PL 1985, c. 412, §2, 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 sub-

mit to a blood-alcohol test. This limitation shall not apply to the taking of breath specimens. When a person draws a specimen of blood at the request of a law enforcement officer, that person may issue a certificate which states that the person is in fact a duly licensed or certified person as required by this paragraph and that the person followed the proper procedure for drawing a specimen of blood for the purpose of determining the blood-alcohol level. That certificate, when duly signed and sworn to by the person, shall be admissible in evidence in any court of the State. It is prima facie evidence that the person was duly licensed or certified and that the person followed the proper procedure for drawing a specimen of blood for the purpose of determining the blood-alcohol level, unless, with 10-days' written notice to the prosecution, the defendant requests that the person testify as to licensure or certification, or the procedure for drawing the specimen of blood.

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, 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 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 appara-

tus 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 \pm one 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. 15. 29 MRSA §1312, sub-§8, as amended by PL 1981, c. 679, §§24 and 25, is further amended to read:

8. Evidence. The percentage by weight of alcohol in the defendant's blood at the time alleged, as shown by the chemical analysis of his blood or breath, or by results of a self-contained, breath-alcohol testing apparatus authorized by subsection 6, shall be admissible in evidence.

When a person, certified under subsection 6, conducts a chemical analysis of blood or breath for the purpose of determining blood-alcohol level, he may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, shall be admissible in evidence in any court of the State. It shall be prima facie evidence that the person taking a specimen of blood was a person authorized by 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 pur-

pose of producing reliable test results, that any equipment, chemicals or materials required by subsection 6 to be approved by the Department of Human Services were in fact approved, that the sample tested by the person certified under subsection 6 was in fact the same sample taken from the defendant and that the percentage by weight of alcohol in the blood of the defendant was, at the time the blood or breath sample was taken, as stated in the certificate, unless with 10 days written notice to the prosecution, the defendant requests that a qualified witness testify as to any of the matters as to which the certificate constitutes prima facie evidence. The notice shall specify those matters concerning which the defendant requests testimony.

A person certified under subsection 6, as qualified to operate a self-contained, breath-alcohol testing apparatus for the purpose of determining blood-alcohol level, may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, shall be admissible in evidence in any court of the State. It shall be prima facie evidence that the percentage by weight of alcohol in the blood of the defendant was, at the time the breath sample was taken, as stated in the certificate, unless, with 10-days' written notice to the prosecution, the defendant requests that the operator or other qualified witness testify as to the results of the analysis.

Transfer of sample specimens to and from a laboratory for purposes of analysis may be by certified or registered mail, and when so made shall be deemed to comply with all requirements regarding the continuity of custody of physical evidence.

The failure of a person to comply with the duty required by this section to submit to a blood-alcohol test shall be ~~admissible~~ admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor. If the law enforcement officer having probable cause to believe that the person operated or attempted to operate a motor vehicle under the influence of intoxicating liquor fails to give either of the warnings required under subsection 1, the failure of the person to comply with the duty to submit to a blood-alcohol test shall not be admissible, except where a test was required pursuant to subsection 11, paragraph D. If a failure to submit to a blood-alcohol test is not admitted into evidence, the court may inform the jury of the fact that no test result is available.

If a test result is not available for a reason other than failing to comply with the duty to submit to a blood-alcohol test, the unavailability and the reason shall be ~~admissible~~ admissible in evidence.

Sec. 16. 29 MRSA §1312, sub-§11, ¶A, as amended by PL 1981, c. 679, §27, is further amended to read:

A. After a person has been charged with operating or attempting to operate a motor vehicle under the influence of intoxicating liquor or drugs or with a blood-

alcohol level of ~~0.10%~~ 0.08% or more, the investigating or arresting officer shall investigate to determine whether the charged person has any prior convictions under former section 1312, subsection 10, former section 1312-B or section 1312-B ~~or an adjudication under section 1312-C~~ and has any previous suspensions 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. As part of his investigation, the officer shall make the necessary inquiries of the Secretary of State.

Sec. 17. 29 MRSA §1312, sub-§11, ¶D is enacted to read:

D. Notwithstanding any other provision of this section, each operator of a motor vehicle involved in a motor vehicle accident which results in the death of any person shall submit to and complete a test to determine that person's blood-alcohol level by analysis of such blood or breath. A law enforcement officer may determine which type of test shall be administered and shall report any failure of a person to submit to or complete a test at the officer's request to the Secretary of State by written statement under oath. The result of a test taken pursuant to this paragraph is not admissible at trial unless the court is satisfied that probable cause exists, independent of such test result, to believe that the operator was under the influence of intoxicating liquor or drugs or had excessive blood-alcohol level.

The Secretary of State shall suspend, for a period of one year, the license or permit to operate, right to operate a motor vehicle and right to apply for or obtain a license, pursuant to section 2241, subsection 1, paragraph N, of any person who fails to submit to or complete a test. The scope of any hearing the Secretary of State holds pursuant to section 2241 shall include whether there was probable cause to believe that the person was the operator of a motor vehicle involved in a motor vehicle fatality and whether that person failed to submit to or complete a test to determine the blood-alcohol level. If the person shows, after hearing, that he was not under the influence of intoxicating liquor or drugs or that he did not negligently cause the death, then any suspension shall be removed immediately.

Sec. 18. 29 MRSA §1312-B, sub-§1, ¶B, as enacted by PL 1981, c. 468, §10, is amended to read:

B. While having ~~0.10%~~ 0.08% or more by weight of alcohol in his blood.

Sec. 19. 29 MRSA §1312-B, sub-§2, as amended by PL 1987, c. 536, §§5 and 11, is further amended to read:

2. Penalties. The offense defined in subsection 1 is a Class D crime, ~~provided that in~~. In the determination of an appropriate sentence, refusal to submit to a chemical test shall in every case be an aggravating factor. 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%~~ 0.08% 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%~~ 0.08% or more; or

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

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.

~~D-1. In addition to the penalties provided under paragraphs C and D, the court shall order the defendant to participate in the alcohol and other drug education, evaluation and treatment program for multiple offenders administered by the Department of Human Services, as defined in Title 22, chapter 1602. The court may waive the multiple offender intervention program under Title 22, section 7203, subsection 3, paragraph A, if the court finds that the defendant has completed a residential treatment program, or its equivalent, subsequent to the date of the offense.~~

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.

F. For purposes of this section, a prior conviction has occurred within the 6-year period provided if the date of docket entry by the clerk of a judgment of conviction or adjudication is 6 years or less from the date of the new conduct which is penalized or for which the penalty is or may be enhanced.

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

Sec. 20. 29 MRSA §1312-B, sub-§2-A is enacted to read:

2-A. Aggravated punishment category. If the State pleads and proves that, while operating a motor vehicle in violation of this section, the actor in fact caused serious bodily injury as defined in Title 17-A, section 2, subsection 23, to another person or in fact caused the death of another person, the sentencing class for the offense

in subsection 1 is a Class C crime. The minimum penalties specified in subsection 2 shall apply, but the minimum period of suspension shall be 18 months unless a longer minimum period otherwise applies.

Sec. 21. 29 MRSA §1312-B, sub-§3, as enacted by PL 1981, c. 679, §31, is amended to read:

3. Sentencing procedure. ~~In~~ Notwithstanding the provisions of Title 15, section 757, in determining the appropriate sentence, the court shall consider the record of convictions for criminal traffic offenses and, adjudications of traffic infractions and suspensions 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 of the defendant. The court may rely upon oral representations based on records maintained by the courts, by the State Bureau of Identification or by the Secretary of State, including telecommunications of records maintained by the Secretary of State. If the defendant disputes the accuracy of any representation concerning a conviction or adjudication, the court shall grant a continuance for the purposes of determining the accuracy of the record.

Sec. 22. 29 MRSA §1312-D, sub-§11 is enacted to read:

11. Conditional license. Any license or permit to operate a motor vehicle issued by the Secretary of State to any person adjudicated or convicted of operating under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, in addition to any other condition or restriction which the Secretary of State may by law impose, issued on the condition that the person not operate a motor vehicle after having consumed intoxicating liquor, for the following periods: On first conviction or adjudication, one year from license reinstatement date; and on a 2nd or subsequent conviction or adjudication, 6 years from date of conviction. The provisions of section 2241-J shall apply.

Sec. 23. 29 MRSA §§1312-G and 1312-H are enacted to read:

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

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

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

2. Immediate hearing on hardship claim. Any owner aggrieved by the seizure of the motor vehicle by a law enforcement officer under subsection 1 may petition the District Court of the district in which the vehicle was seized for the release of that vehicle on the grounds that retention of the vehicle constitutes hardship. An owner who claims hardship shall provide the court, to the extent possible in writing and in every case under oath, with the facts which constitute hardship.

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

3. Election options. Unless a vehicle has already been returned to an owner, at the arraignment the owner-operator shall specify whether the owner-operator surrenders the seized vehicle to the State; will seek to sell the vehicle; or, waiving any claim for damage other than intentional damage by an agent of the law enforcement agency seizing or storing the vehicle, asks that the State impound the vehicle until the owner-operator's right to operate in this State has been restored. Unless the owner-operator has surrendered the vehicle to the State, the owner-operator may change the election at any time by notifying the Chief of the Maine State Police, in writing, of the new election. Any vehicle impounded at the request of the owner-operator shall be deemed abandoned if not claimed by an owner within 30 days after the owner-operator's right to operate in this State is restored. If the owner-operator surrenders the vehicle to the State or asks that the State impound the vehicle, the State shall pay the costs of towing and storage. If the owner-operator seeks to sell the vehicle, the owner-operator is responsible for paying the towing and storage costs, and the vehicle will be released only upon proof of sale. Under any election, the court shall also suspend the owner-operator's right to register a motor vehicle in this State until the operator's license is restored.

4. Preliminary order or process. The court may issue, at the request of the attorney for the State, ex parte, any preliminary order or process necessary to seize or secure the motor vehicle for which forfeiture is or will be sought and to provide for its custody. That order may include an order to a financial institution or to any fiduciary or bailee to require that entity to impound a

motor vehicle in its possession or control and not to release it except upon further order of the court. Process for seizure of the property shall issue only upon a showing of probable cause. The application for process and the issuance, execution and return of process shall be subject to applicable Maine law. A complaint against the vehicle shall thereafter be filed. Any motor vehicle subject to forfeiture under this section may be seized upon process, except that seizure without process may be made when:

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

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

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

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

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

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

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

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

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

E. All forfeiture proceedings are civil and in the nature of proceedings in rem. At the hearing, the court shall proceed to determine the truth of the allegations in the claim and complaint and hear any pertinent evidence offered by the State or claimant. If the attorney for the State proves by a preponderance of the evidence the operative facts specified in subsection 1, the court shall declare the vehicle forfeited to the State unless the claimant proves by a preponderance of the evidence the operative facts specified in paragraph C and undue hardship as specified in paragraph F. In every case in which the court may order forfeiture, the court shall, nevertheless, permit the owner or owners of the vehicle the same election as is permitted the owner-operator under subsection 3.

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

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

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

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

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

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

§1312-H. Motor Vehicle Forfeiture Account

1. Establishment. Notwithstanding any other provision of law, there is established the Motor Vehicle Forfeiture Account in each prosecutorial district in an amount not to exceed \$5,000 to be administered by the district attorney and to be used solely for the purpose of paying expenses of forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice on motor vehicles forfeited pursuant to section 1312-G.

2. Funding. The Motor Vehicle Forfeiture Account in each prosecutorial district shall be funded by the proceeds of the sale of motor vehicles forfeited pursuant to section 1312-G. Whenever a motor vehicle is forfeited and the proceeds of the public auction are recovered by the State, the district attorney shall determine whether the proceeds or a portion of the proceeds shall be deposited in the Motor Vehicle Forfeiture Account for the district attorney's prosecutorial district, but in no event may the account exceed \$5,000. Any proceeds of a motor vehicle forfeiture not deposited in the Motor Vehicle Forfeiture Account shall be deposited in the General Fund. Any unexpended balance in the Motor Vehicle Forfeiture Account of a prosecutorial district established by this section shall not lapse, but shall be carried forward into the next year.

3. Review by district attorney. The district attorney shall regularly review the Motor Vehicle Forfeiture Account and the expenses of the prosecutorial district in connection with the forfeiture of motor vehicles and shall determine whether any funds in the account shall be transferred to the General Fund.

4. Audit. Every district attorney shall have an annual audit made by the Department of Audit or by a certified public accountant selected by the district attorney of the Motor Vehicle Forfeiture Account for the district attorney's prosecutorial district, covering the last complete fiscal year.

If the auditor finds, in the course of the audit, evidence of improper transactions, incompetency in keeping accounts or handling funds, failure to comply with this section or any other improper practice of financial administration, the auditor shall report the same to the Attorney General immediately.

Sec. 24. 29 MRSA §1313-B is enacted to read:

§1313-B. Causing death; suspension after administrative determination

1. Suspension. If the Secretary of State is satisfied that a person, while under the influence of intoxicating liquor or drugs or while having 0.08% or more by weight of alcohol in that person's blood or having refused to submit to a chemical test if for such a refusal the person may be penalized under section 1312, negligently operated a motor vehicle in such a manner as to cause the death of any person, the Secretary of State shall immediately suspend that operator's license, permit or right to operate. The period of suspension shall be 3 years, consecutive to any suspension imposed by the Secretary of State for refusal to take a chemical test.

2. Notice of suspension; regular or certified mail. The notice of suspension may be sent by regular or certified 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 of suspension may be served in hand.

3. Notice of suspension; reason and statutory grounds for suspension. 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 hearing shall be made. The notice of suspension shall also clearly state that a copy of the report of the law enforcement officer which formed the basis of the decision to suspend and a copy of any blood-alcohol test certificate submitted will be provided to the person upon request to the Secretary of State.

4. Request for hearing. The person suspended may, within 10 days, make a written request for a hearing. The suspension shall not be stayed pending the hearing.

5. Hearing; issues. The only issues at the hearing are whether, by a preponderance of the evidence, the person suspended operated a motor vehicle, whether the person's negligent operation caused the death of another person, and whether on that occasion the operator was under the influence of intoxicating liquor or drugs, had an excessive blood-alcohol level or may be penalized for his refusal to submit to a chemical test to determine his blood-alcohol level. The provisions of section 1311-A, subsection 8, paragraph C apply.

6. Secretary of State; determination. The determi-

nation of these facts by the Secretary of State is independent of the determination of the same or similar facts in the adjudication of any criminal charges or civil infractions arising out of the same occurrence. The disposition of those criminal charges or civil infractions shall not affect the fact or length of 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 a violation of section 1312-B; Title 15, section 3103, subsection 1, paragraph F; or of a Class B violation of Title 17-A, section 203, arising out of the same occurrence.

7. Suspension. If a person whose license, permit or right to operate was suspended pursuant to subsection 1 is subsequently convicted of an offense and section 1313 applies, the length of any period of suspension actually served under this section shall apply to the period of revocation imposed pursuant to section 1313. If a court of record in a civil tort proceeding determines that that person did not negligently cause the death of the other person, the Secretary of State shall terminate any suspension imposed under this section upon receipt of a certified copy of the civil judgment entered by the court.

Sec. 25. 29 MRSA §2184, sub-§1, as repealed and replaced by PL 1981, c. 679, §43, is amended to read:

1. Offense; penalty. No person may operate a motor vehicle on any public highway or way in this State at a time when his license or permit to operate, his right to operate or his right to apply for or obtain a license or permit has been suspended or revoked, except for a revocation as an habitual offender under chapter 18-A or former chapter 18, when that person:

A. Has received written notice of a suspension or revocation pursuant to section 1312-D, subsection 1, or section 2241-H or other written notice from the Secretary of State;

B. Has been orally informed of the suspension or revocation by a law enforcement officer who is aware of the information as a result of records maintained by the Secretary of State, including those obtainable by telecommunications;

C. Has actual knowledge of his suspension or revocation;

D. Is a person to whom written notice was sent by ordinary mail at the last known address shown by the records maintained by the Secretary of State; or

E. Has failed to appear in court pursuant to any notice or order specified in section 2301-A.

Violation of this section is a Class D crime, provided that, notwithstanding Title 17-A, section 1301, the maximum fine shall be \$2,500.

Sec. 26. 29 MRSA §2241, sub-§1, ¶K, as amended by

PL 1983, c. 455, §28, is further amended to read:

K. Is subject to action of the Secretary of State pursuant to section 55-B or section 2378, subsection 1; or

Sec. 27. 29 MRSA §2241, sub-§1, ¶M, as enacted by PL 1985, c. 520, §3, is amended to read:

M. Has failed to provide, pursuant to section 246, proof of payment of the use tax imposed by the United States Internal Revenue Code of 1954, Section 4481, within time periods established by federal statute and regulations promulgated pursuant to federal statute; or

Sec. 28. 29 MRSA §2241, sub-§1, ¶N is enacted to read:

N. Has failed to submit to or complete a test to determine the blood-alcohol level pursuant to section 1312, subsection 11, paragraph D.

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

§2241-J. Special provisions pertaining to persons convicted of operating under the influence or with excessive blood-alcohol levels

1. Suspension. 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 conditional license or right to operate of any person as to whom:

A. There is received a record of conviction of operating under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level; or

B. The Secretary of State determines has operated or attempted to operate a motor vehicle during the period of the conditional license while having 0.05% or more by weight of alcohol in the blood.

2. Duty to submit to test. Any person who operates or attempts to operate a motor vehicle within this State, during the period of a conditional license, shall have the duty to submit to a test to determine the blood-alcohol level by analysis of that person's blood or breath, if there is probable cause to believe he operated or attempted to operate a motor vehicle while having 0.05% or more by weight of alcohol in the blood. 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 0.05% or more by weight of alcohol in the blood and that the person has been so convicted, and except that suspension for failing to comply with the duty to submit to the test shall be for a period of not less than 2 years.

3. Secretary of State; determination. The Secretary of State shall make the determination of suspension as follows.

A. The Secretary of State shall suspend the license or right to operate of any person who has been previously convicted as specified in subsection 12 and the right to apply for or obtain a license of any such person, upon the Secretary of State's determination that the person operated or attempted to operate a motor vehicle with 0.05% 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 which the Secretary of State is authorized to impose, or which are imposed by any court as a result of any motor vehicle conviction.

B. The Secretary of State shall make a determination on the basis of the information required in subsection 4 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. 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 a violation of section 1312-B or Title 15, section 3103, subsection 1, paragraph F, arising out of the same occurrence.

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

A. A law enforcement officer who has probable cause to believe that any person who, during the period of a conditional license, was operating or attempting to operate a motor vehicle with 0.05% 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 had been so convicted, had operated or attempted to operate a motor vehicle while having 0.05% 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 0.05% or more by weight of alcohol in the blood.

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 the person's certificate under section 1312, subsection 8, to be sent to the

Secretary of State.

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

A. Upon receipt of the information required in subsection 4, the Secretary of State shall make the determination described in subsection 3. If the Secretary of State determines that the person is subject to license suspension, the Secretary of State 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.

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 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 4, paragraph A and a copy of the blood-alcohol test certificate under subsection 4, paragraph A or C, shall be provided to the person upon request to the Secretary of State.

6. Effective date; period of suspension. The effective date and period of suspension is 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, that person shall 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.

B. Unless the suspension is for a refusal to take the chemical test 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 Ti-

title 15, section 3103, subsection 1, paragraph F, the period of time that person's 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 Title 15, section 3103, subsection 1, paragraph F. If such suspension is for the person's refusal to submit to the required test, any period of suspension imposed by the court or by the Secretary of State as a result of adjudication or conviction shall be consecutive to the period of suspension imposed for refusal.

7. Hearing requested. 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 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.

8. Hearing and notice. 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 had been convicted of operating under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, and that the person was operating or attempting to operate a motor vehicle while having 0.05% or more by weight of alcohol in the blood;

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

(3) At such time the person had 0.05% or more by weight of alcohol in the blood; and

(4) Had a conditional license under section 1312-D, subsection 11.

C. A certificate duly signed and sworn to pursuant to section 1312, subsection 8, shall be prima facie proof of facts stated in the certificate 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.

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 have a conditional license at the date of operation or attempted operation or that the person did not operate or attempt to operate a motor vehicle while having 0.05% or more by weight of alcohol in the 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 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.

9. Rules. The Secretary of State may promulgate, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, whatever rules are necessary to carry out the purposes of this section.

10. Longer period of suspension. If a person subject to this section is determined to have operated or attempted to operate a motor vehicle while having 0.08% or more of alcohol in the blood such that both this section and section 1311-A apply, the longer period of suspension shall apply.

11. Conditional license. Following the expiration of the aggregate periods of suspension imposed pursuant to this section, otherwise imposed by the Secretary of State, and ordered by any court, the Secretary of State may issue a conditional license to the person, subject to the conditions, restrictions or terms the Secretary of State deems advisable, if the Secretary of State has received 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 of Human Services.

12. Conviction. For purposes of this section, a conviction of operating under the influence of intoxicating liquor, drugs or with excessive blood-alcohol level includes:

A. A conviction of a violation of section 1312-B or of former section 1312, subsection 10, or of succeeding criminal provisions for such conduct;

B. A conviction, in any jurisdiction which is or becomes a party to the Driver License Compact of any offense described in the compact, article IV, subsection 1, paragraph B, or of an offense which is similar as provided by article IV, subsection 3;

C. An adjudication or other determination made under the juvenile law of this State or of another jurisdiction for conduct which, if committed by an adult, would have been a conviction included in this subsection, including the conduct to which Title 15, section 3103, subsection 1, paragraph F, refers; and

D. A conviction for such conduct in a court of the United States or a court of a state which is not a party to the compact, provided that the punishment for that offense includes the possibility of incarceration, whether or not actually imposed on that occasion, and the elements of the offense as provided in the law of that jurisdiction include operation or attempted operation of a motor vehicle while intoxicated, impaired or under the influence of alcohol, intoxicating liquor, drugs or with a level of blood-alcohol sufficient for conviction under the laws of that jurisdiction.

13. Prior conviction. For purposes of this section, a prior conviction has occurred within the 6-year period provided if the date of docket entry by the clerk of a judgment of conviction or adjudication is 6 years or less from the date of the new conduct which is penalized or for which the penalty is or may be enhanced.

14. Work-restricted license. Upon receipt by the Secretary of State of a petition for a restricted license for employment purposes by any person whose license or right to operate a motor vehicle has been suspended under subsection 1, paragraph B, following a first offense of a violation of section 1312-B, 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: 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. The issuance of a work-restricted license under this subsection is contingent upon the completion of an alcohol treatment or rehabilitation program. The Secretary of State shall suspend, without preliminary hearing, the work-restricted license of any person who is adjudicated or convicted of any violation of this Title committed during the period when a work-restricted license has been issued or who violates any restriction or condition contained on the license.

Sec. 30. 29 MRSA §2292, sub-§1, ¶B, as amended by PL 1981, c. 468, §16, is further 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%~~ 0.08% or more;

Sec. 31. **Allocation.** The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

1988-89

SECRETARY OF STATE, DEPARTMENT OF THE

Administration — Motor Vehicles

Positions	(1)
Personal Services	\$11,575
Capital Expenditures	400

Total \$11,975

Provides funds for one clerk typist III to administer the provisions of the reduced criteria for operating a motor vehicle under the influence of intoxicating liquor for first and subsequent offenders.

Effective August 4, 1988.

CHAPTER 792

H.P. 1933 — L.D. 2634

AN ACT to Require Application and Approval for Railroads to Receive Financial Assistance from the State and to Require Notice of Major Modifications in Rail Service.

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

Sec. 1. 23 MRSA §4211-A is enacted to read:

§4211-A. Application for financial assistance

1. Annual application and approval required. Any person, corporation, partnership or other business entity which provides railroad transportation for compensation in the State, or seeks to acquire or construct additional rail lines in the State, shall apply to the Department of Transportation for the privilege of receiving financial assistance from the State, for the year in question. Financial assistance from the State is defined as grants, loans, subsidies, tax exemptions, cost reimbursement for maintenance of railroad crossings or payments from other sources. The applicant may not receive the financial assistance unless the application is approved.

2. Criteria. In determining approval for an application under this section, the department shall consider, among other matters:

A. The need for this rail service;

B. The effect of the rail service upon the health, safe-