

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

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

Effective April 3, 1990.

CHAPTER 783

S.P. 923 - L.D. 2332

An Act to Amend the Minimum Standards for Planting Laws

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

Whereas, potatoes will be planted within 60 days of adjournment; and

Whereas, the benefits received by the State as a result of the certified seed potato program depend on the continued cooperation of farmers with the Department of Agriculture, Food and Rural Resources; and

Whereas, this cooperation is threatened under existing circumstances; 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:

7 MRSA §951-A, last ¶, as enacted by PL 1979, c. 532, §1, is amended to read:

Each grower shall keep records of seed planted by variety and by fields during the growing season and report planting records as may be requested by the commissioner. Notwithstanding Title 1, chapter 13, records pertaining to minimum standards for planting received or kept by the Department of Agriculture, Food and Rural Resources are confidential and not available for inspection. The confidential status terminates when the records are subpoenaed as evidence in any proceeding to enforce a provision of this section, or in any prosecution for a criminal violation. A grower may authorize in writing the disclosure of records pertaining to minimum standards for planting.

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

Effective April 3, 1990.

CHAPTER 784

H.P. 814 - L.D. 1126

An Act to Enhance Enforcement of the Driving Under the Influence of Alcohol and Drug Laws

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

Sec. 1. 29 MRSA §1310 is enacted to read:

§1310. Provisions of general applicability

1. Under the influence of intoxicating liquor or drugs. For purposes of this subchapter and chapter 17, "under the influence of intoxicating liquor or drugs" includes being under the influence of alcohol, a drug other than alcohol, any combination of drugs other than alcohol, or any combination of alcohol and one or more drugs other than alcohol.

2. Chemical test. For purposes of this subchapter and chapter 17, "chemical test" means any test used to determine blood-alcohol level or drug concentration by analysis of blood, breath or urine.

3. Drugs. For purposes of this subchapter and chapter 17, "drugs" means scheduled drugs as defined under Title 17-A, section 1101.

Sec. 2. 29 MRSA §1311-A, sub-§5-A, ¶A, as enacted by PL 1987, c. 791, §7, is amended to read:

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

Sec. 3. 29 MRSA §1312, as amended by PL 1989, c. 514, §§16 and 25, is further amended to read:

§1312. Implied consent to chemical tests; general provisions applicable to prosecution for operating under the influence of intoxicating liquor or drugs or with excessive blood-alcohol

Any person who operates or attempts to operate a motor vehicle within this State shall have the duty to submit to ~~a test~~ chemical testing to determine ~~his~~ the person's blood-alcohol level and drug concentration by analysis of ~~his~~ the person's blood or , breath or urine, if there is probable cause to believe ~~he~~ the person has operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor or drugs. The duty to submit to a ~~blood-alcohol~~ chemical test includes the duty to complete ~~either~~ a blood or , breath or urine test.

~~He~~ The person 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 admin-

istered, in which case a ~~blood~~ another chemical 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.

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~~ the person fails to comply with the duty to submit to and complete a ~~test to determine the level of blood alcohol~~ the required chemical tests at the direction of the law enforcement officer, ~~his~~ that person's license or permit to operate, ~~his~~ that person's right to apply for or obtain a license will be suspended and the period of suspension ~~shall~~ will 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~~ chemical tests is admissible in evidence against ~~him~~ that person at any trial for operating under the influence of intoxicating liquor or drugs.

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~~ are as provided in subsections 2 and 8.

2. Hearing. 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 or drugs, and that the person failed to comply with the duty to submit to a chemical test ~~to determine the blood alcohol level by analysis of his blood or breath~~, shall immediately notify the person, in writing, as provided in section 2241, that ~~his~~ the person's license or permit, ~~his~~ that person's right to operate and ~~his~~ that person's right to apply for or obtain a license have been suspended. The suspension ~~shall be for~~ is 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~~ chemical 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~~ that person shall notify the Secretary of State within 10 days, in writing, of such desire. Any suspension ~~shall remain~~ remains in effect pending the outcome of such hearing, if requested.

The scope of such a hearing ~~shall cover~~ is to determine whether there was probable cause to believe that the individual was either attempting to operate or was operating under the influence of intoxicating liquor or drugs and whether ~~he~~ that individual failed to comply with the duty to submit to one of the ~~blood alcohol~~ chemical 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 drugs or that the person did not fail to comply with the duty to submit to a ~~blood alcohol~~ chemical 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~~ that person's 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~~ is 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.

3. Review. Any person, whose license, permit or right to operate or right to apply for or obtain a license is suspended for failing to comply with the duty to submit to a chemical test ~~to determine his blood alcohol level by analysis of his blood or breath~~ at the direction of a law enforcement officer claiming to have had probable cause to believe that the person operated or attempted to operate while under the influence of intoxicating liquor or drugs, ~~shall have~~ has the right to file a petition in the Superior Court in the county where ~~he~~ the person resides, or in Kennebec County, to review the order of suspension by the Secretary of State by the same procedure as is provided in section 2242. If the court rescinds the suspension, it shall also order the Secretary of State to delete any record of the suspension and any record of the revocation of consent from that person's driving record.

4. Results of test. Upon the request of the person who ~~shall submit~~ submitted to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to ~~him~~ that person or ~~his~~ the person's attorney by the law enforcement officer.

5. Blood-alcohol level.

A. If there was, at the time alleged, 0.05% or less by weight of alcohol in the defendant's blood, it is prima facie evidence that the defendant was not under the influence of intoxicating liquor.

B. If there was, at the time alleged, in excess of 0.05%, but less than 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.

C. For purposes of evidence in proceedings other than those arising under section 1312-B or 1312-C, it ~~shall be~~ is presumed that a person ~~was~~ is under the influence of intoxicating liquor when ~~he~~ that person has a blood-alcohol level of 0.08% or more by weight.

D. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood.

6. Administration of tests. Persons conducting analysis of blood ~~or~~ breath or urine for the purpose of determining the blood-alcohol level ~~shall~~ or drug concentration must be certified for ~~this~~ each 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 or drug concentration of a person who is complying with the duty to submit to a ~~blood-alcohol~~ chemical test. This limitation ~~shall~~ does not apply to the taking of breath or urine 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 or drug concentration. That certificate, when duly signed and sworn to by the person, ~~shall be~~ is 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;~~ chemical testing 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 or urine of any person whom ~~he~~ the officer has probable cause to believe has operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor or drugs and who is complying with the duty to submit to a ~~blood-alcohol~~ chemical 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 or drug concentration thereof.

Only ~~such~~ that 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 or urine 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 or drug concentration thereof. Approved equipment ~~shall~~ must 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 or urine.

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 or drugs 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 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 or drug concentration, 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. Testi-

mony 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.

6-A. Drug impairment assessment. If a law enforcement officer certified as a drug recognition technician by the Maine Criminal Justice Academy conducts a drug impairment assessment, the officer's testimony about that assessment is admissible in court as evidence of operating under the influence of intoxicating liquors or drugs. If the drug recognition technician has probable cause to believe that a person is under the influence of a specific category of drug other than alcohol, any combination of specific categories of drugs other than alcohol or any combination of alcohol and one or more specific categories of drugs other than alcohol, that person has a duty to submit to and complete a blood or urine test selected by the drug recognition technician to confirm that person's category of drug use and determine its concentration. This subsection is effective March 1, 1991. This subsection is repealed June 1, 1995.

6-B. Rules. No later than November 1, 1990, the Department of Human Services shall adopt rules regulating sample collection and testing procedures the department finds necessary or desirable to ensure accurate and reliable testing and to protect the privacy of the person providing the sample. The rules must include:

A. Standards for determining when a sample is to be reported as negative, based upon standards specific to the type and sensitivity of the test and the drug or category of drug screened;

B. A requirement that only a law enforcement officer or law enforcement agency employee of the same sex as the person providing the sample, or a health care practitioner, may observe the giving of a urine sample;

C. A requirement that a urine sample may be collected only within a law enforcement or health care facility; and

D. A requirement that, at the request and expense of the person charged with a violation of section 1312-B, subsection 1, paragraph A, the department shall segregate a portion of the sample collected pursuant to section 1312, subsection 6-A for that person's own testing.

The department may establish rules governing the format in which the test results are reported. At the time of

adoption, the department shall furnish the joint standing committee of the Legislature having jurisdiction over legal affairs with a copy for review of rules adopted under this subsection.

7. Liability. No physician, physician's assistant, registered nurse, person certified by the Department of Human Services or hospital or other health care provider in the exercise of due care 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.

8. Evidence. The drug concentration or percentage by weight of alcohol in the defendant's blood at the time alleged, as shown by the chemical analysis of his that person's blood or , breath or urine, or by results of a self-contained, breath-alcohol testing apparatus authorized by subsection 6, shall be is 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~~ the analyst 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~~ is 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 or urine 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 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 drug concentration or percentage by weight of alcohol in the blood of the defendant was, at the time the blood ~~or~~ , breath or urine sample was taken, as stated in the certificate, unless with 10 ~~days~~ 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'~~ 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~~ chemical test shall be admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor or drugs. 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 or drugs 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~~ the chemical tests shall not be admissible, except ~~where~~ when a test was required pursuant to subsection 11, paragraph D. If a failure to submit to a ~~blood-alcohol~~ chemical 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~~ chemical test, the unavailability and the reason shall be admissible in evidence.

8-A. Statements by accused. Any statement by a defendant that ~~he the defendant~~ was the operator of a motor vehicle, which ~~he the defendant~~ is accused of operating in violation of former subsection 10; or section 1312-B ~~or 1312-C~~, shall be admissible in a proceeding under former subsection 10; or section 1312-B ~~or 1312-C~~, if it was made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of Maine. The statement may constitute sufficient proof by itself, without further proof of corpus delicti, that the motor vehicle was operated and was operated by the defendant.

9. Payment for tests. Persons authorized to take specimens of blood at the direction of a law enforcement officer and persons authorized to perform ~~chemical~~ blood-alcohol tests of specimens of blood or breath shall be paid from the General Fund.

11. Accidents and officer's duties.

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 0.08% 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 and has any previous suspensions of license or privilege to operate for failure to comply with the duty to submit to and complete a chemical test to determine the level of blood-alcohol or drug concentration. As part of ~~his~~ the investigation, the officer shall make the necessary inquiries of the Secretary of State.

B. A law enforcement officer may arrest, without a warrant, any person the officer has probable cause to believe has operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor or drugs if the arrest occurs within a period following the offense reasonably likely to result in the obtaining of probative evidence of blood-alcohol level or drug concentration.

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 chemical test to determine that person's blood-alcohol level or drug concentration by analysis of ~~such blood or~~ breath or urine. 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~~ includes 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~~ chemical tests to determine the blood-alcohol level or drug concentration. If the person shows, after hearing, that ~~he the person~~ was not under the influence of intoxicating liquor or drugs or that ~~he the person~~ did not negligently cause the death, then any suspension shall be removed immediately.

12. Implied consent to chemical tests for operators of commercial motor vehicles. Any person who operates or attempts to operate a commercial motor vehicle within the State ~~shall have~~ has the duty to submit to and complete a test to determine the blood-alcohol level by analysis of blood or breath, if there is probable cause to believe that the person has operated or attempted to operate a commercial motor vehicle while having 0.04% or more by weight of alcohol in the blood. The provisions of this section ~~shall~~ apply, except that in all cases probable cause shall be to believe that the person was operating or attempting to operate a commercial motor vehicle while having 0.04% or more by weight of alcohol in the blood and except that the suspension for failing to comply with the duty to submit to and complete the test ~~shall be~~ is for a period of one year, unless the person was operating or attempting to operate a commer-

cial motor vehicle containing hazardous materials, in which case the suspension ~~shall be~~ is for a period of 3 years or, in the case of a 2nd or subsequent failure to submit to a test, a permanent suspension.

When a person's commercial driver's license is suspended under this section and is also suspended after the person has been adjudicated or convicted on charges arising out of the same occurrence for a violation of section 1312-B, the period of time that the person's commercial driver's license has been suspended under this section prior to the adjudication or conviction shall be deducted from the period of time of any suspension of the commercial driver's license ordered by the court or imposed by the Secretary of State.

Sec. 4. 29 MRSA §1312-B, sub-§1-B is enacted to read:

1-B. Ignorance. Evidence that a person is ignorant of the effects of a lawfully used prescription drug is an affirmative defense to operating under the influence of that drug.

Sec. 5. 29 MRSA §1312-B, sub-§2, ¶A, as repealed and replaced by PL 1985, c. 412, §4, is amended to read:

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~~ chemical testing under section 1312 within a 6-year period, the fine ~~shall~~ may 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.

Sec. 6. 29 MRSA §1312-B, sub-§2, ¶B, as amended by PL 1987, c. 791, §19, is further amended to read:

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~~ chemical testing under section 1312 within a 6-year period, the fine ~~shall~~ may 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 0.08% or more;

(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 0.08% or more; or

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

Sec. 7. 29 MRSA §1312-B, sub-§2, ¶C, as repealed and replaced by PL 1985, c. 412, §4, is amended to read:

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~~ chemical testing to determine the level of blood-alcohol or drug concentration under section 1312 within a 6-year period, the fine ~~shall~~ may 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.

Sec. 8. 29 MRSA §1312-B, sub-§2, ¶G, as enacted by PL 1987, c. 791, §19, is amended to read:

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~~ chemical testing 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. 9. 29 MRSA §1312-D, sub-§5, as amended by PL 1985, c. 412, §6, is further amended to read:

5. **Restricted licenses for suspension for failure to comply with duty to submit to chemical 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~~ chemical test under section 1312, subsection 2, if the conditions of issuance following a conviction or adjudication under section 1312-B are met by the person and a period of suspension of not less than 90 days has elapsed.

Sec. 10. 29 MRSA §1312-D, sub-§5, as amended by PL 1989, c. 514, §§17 and 25, is further amended to read:

5. Restricted licenses for suspension for failure to comply with duty to submit to chemical 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~~ chemical test under section 1312, subsection 2, if the conditions of issuance following a conviction or adjudication under section 1312-B are met by the person and a period of suspension of not less than 90 days has elapsed. This subsection does not apply to any suspension of a commercial motor vehicle driver's license or permit to operate for failure to submit to and complete a test to determine the blood-alcohol level pursuant to section 1312, subsection 12.

Sec. 11. 29 MRSA §1312-D, sub-§8, as amended by PL 1985, c. 412, §6, is further amended to read:

8. Consecutive suspensions. Any suspension pursuant to this section or the former section 1312, subsection 10 or section 1312-B or former section 1312-B, subsection 2 ~~shall be~~ is 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~~ chemical testing required by this subchapter and chapter 17.

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

§1312-I. Drug recognition technicians

1. Drug recognition technician training program. No later than November 1, 1990, the board of trustees of the Maine Criminal Justice Academy shall establish:

A. A program that meets the National Highway Traffic Safety Administration guidelines for training and certification of drug recognition technicians; and

B. Eligibility standards for admission of law enforcement officers to the program that are consistent with National Highway Traffic Safety Administration guidelines and that ensure that trainees are:

(1) Law enforcement officers who have demonstrated proficiency and experience in standardized field sobriety testing and the ability to complete the training and function as drug recognition technicians; and

(2) Employed by law enforcement agencies that have the facilities, equipment and other resources necessary for the effective functioning of drug recognition technicians.

2. Selection of trainees. The Commissioner of Public Safety shall select for training as drug recognition technicians members of the State Police and other law enforcement officers who meet the eligibility requirements.

3. Qualifications. Only those law enforcement officers who successfully complete the training and certification program established under this section may conduct drug impairment assessments and offer testimony as drug recognition technicians under section 1312, subsection 6-A.

Sec. 13. 29 MRSA §1313-A, sub-§1, ¶C, as enacted by PL 1985, c. 331, is amended to read:

C. There was probable cause to believe that the person was operating under the influence of intoxicating liquor or drugs and failed to comply with ~~his~~ that person's duty to submit to and complete ~~a test to determine his blood-alcohol level~~ required chemical testing; or

Sec. 14. 29 MRSA §1313-A, sub-§2, as enacted by PL 1985, c. 331, is amended to read:

2. Content of report. The report required in subsection 1 shall contain all relevant facts which formed the basis for the conviction of adjudication, including ~~blood-alcohol~~ chemical test results if available.

Sec. 15. 29 MRSA §1313-B, sub-§3, as enacted by PL 1987, c. 791, §24, is amended to read:

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~~ that formed the basis of the decision to suspend and a copy of any ~~blood-alcohol~~ chemical test ~~certificate~~ certificates submitted will be provided to the person upon request to the Secretary of State.

Sec. 16. 29 MRSA §1313-B, sub-§5, as enacted by PL 1987, c. 791, §24, is amended to read:

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 required chemical test to determine his blood alcohol level testing. The provisions of section 1311-A, subsection 8, paragraph C apply.

Sec. 17. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

1990-91

HUMAN SERVICES, DEPARTMENT OF

Bureau of Health

Positions	(.5)
Personal Services	\$5,346
All Other	5,500
Capital Expenditures	590

Provides funds for a part-time Chemist II position in the Public Health Laboratory effective March 1, 1991, supplies and related expenses.

DEPARTMENT OF HUMAN SERVICES
TOTAL \$11,436

Sec. 18. Effective date; repeal. That part of section 3 of this Act that amends the Maine Revised Statutes, Title 29, section 1312, subsection 12, takes effect on January 1, 1991. Section 9 of this Act is repealed January 1, 1991. Section 10 of this Act takes effect on January 1, 1991.

See title page for effective date, unless otherwise indicated.

CHAPTER 785

S.P. 895 - L.D. 2277

An Act to Create an Appeals Procedure for the State Bidding Process

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

Whereas, the procurement of materials and services through competitive bidding is essential to the State for achieving the greatest efficiency and economy; and

Whereas, clear and consistent standards governing the competitive bidding process are necessary to ensure an effective competitive bidding process; and

Whereas, the right of bidders aggrieved by a state contract award decision to a fair and timely appeals hearing must be ensured; 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. 5 MRSA §1816, as amended by PL 1989, c. 6; c. 9, §2; c. 104, Pt. C, §§8 and 10; and c. 501, Pt. J, §§1 to 5, is repealed.

Sec. 2. 5 MRSA c. 155, sub-c. I-A is enacted to read:

SUBCHAPTER I-A

RULES GOVERNING THE COMPETITIVE BID PROCESS

§1825-A. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Aggrieved person. "Aggrieved person" means any person who bids on a contract and who is adversely affected, financially, professionally or personally, by that contract award decision.

2. Approved equal. "Approved equal" means any goods or service other than specified in the bid proposal that in the opinion of the State Purchasing Agent is equivalent in character, quality and performance to the goods or service specified in the bid proposal.

3. Competitive bidding. "Competitive bidding" means the transmission of a written proposal or invitation to bid to at least 3 responsible suppliers that is to be replied to at a stated time. In obtaining competitive bids, if the State Purchasing Agent finds that 3 responsible bidders are not available, the State Purchasing Agent may make such exceptions to this subsection as are in the best interests of the State.

4. In-state bidder. "In-state bidder" means a person or group of persons whose principal place of business, or a branch of whose business, is located in the State.

5. Person. "Person" means any individual, business, corporation, association, firm, partnership or other organization, whether profit or nonprofit.

6. Petitioner. "Petitioner" means any person who has requested a stay of a contract award decision or a hearing of appeal.

7. Significantly vary. "Significantly vary" means to change, modify, add to, subtract from, substitute or otherwise change a proposal or invitation to bid to an extent that may affect the price of goods or services requested.