



# LAWS OF ALASKA

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Chapter No.

83

## AN ACT

Relating to chemical tests as to alcoholic content of blood when operating or driving a motor vehicle under the influence of intoxicating liquor.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 28.35 is amended by adding new sections to read:

Sec. 28.35.031. IMPLIED CONSENT. A person who operates or drives a motor vehicle in this state shall be considered to have given consent to a chemical test or tests of his breath for the purpose of determining the alcoholic content of his blood if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating or driving a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating or driving a motor vehicle in this state while under the influence of intoxicating liquor.

Sec. 28.35.032. REFUSAL TO SUBMIT TO CHEMICAL TEST.  
(a) If a person under arrest refuses the request of a law enforcement officer to submit to a chemical test of his breath as provided in sec. 31 of this chapter, after being advised by the officer that his refusal will result in the suspension, denial or revocation of his license, a chemical test shall not be given.

(b) Upon receipt of a sworn report of a law enforcement officer that a person has refused to submit to a chemical test authorized under sec. 31 of this chapter, containing a statement of the circumstances surrounding the arrest and the grounds upon which his belief was based that the person was operating a motor vehicle in violation of sec. 30 of this chapter, the department shall notify

the person that his license or nonresident privilege to drive a motor vehicle in the state is revoked or suspended, or that no original license or permit will be issued for three months. In the same notice the department shall inform the person that he may initiate a proceeding in the district court to rescind the department's action. The court proceeding shall be without jury and shall be limited to the issues of whether

(1) the arresting officer had reasonable grounds to believe the arrested person had been operating a motor vehicle in the state while under the influence of intoxicating liquor;

(2) the arrested person refused to submit to the breath test upon request of the officer after being advised that his refusal would result in the suspension, revocation, or denial of his license; and

(3) the accused defendant was informed fairly of the nature of the tests, the accuracy of the methods, machines, equipment involved, the expertise of the person administering the tests, or operator of the machines, and the accused given such other reasonable information as may be requested by him.

(c) If the issues set out in (b)(1) and (2) of this section are determined in the affirmative, the court shall sustain the action of the department. If one or more of the issues are determined in the negative, the department's action shall be rescinded. In the event that the action of the department in suspending or revoking a nonresident's privilege to operate a motor vehicle in this state is sustained by the court, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and to any state in which he has a license.

(d) If the person who refuses to submit to the chemical test authorized by sec. 31 of this section, within two years previous to his arrest, has been convicted in this or any other state of operating a motor vehicle while intoxicated, the period of suspension for his license, nonresident privilege to drive, or denial of original license shall be one year.

Sec. 28.35.033. CHEMICAL ANALYSIS OF BLOOD. (a) Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating a motor vehicle under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's breath, shall give rise to the following presumptions:

(1) If there was 0.05 per cent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of intoxicating liquor.

(2) If there was in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the person's blood, that fact shall not give rise to any

presumption that the person was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

(3) If there was 0.10 per cent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.

(b) For purposes of this section, per cent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 100 cubic centimeters of blood.

(c) The provisions of (a) of this section shall not be construed to limit the introduction of any other competent evidence bearing upon the question of whether the person was or was not under the influence of intoxicating liquor.

(d) To be considered valid under the provisions of this section the chemical analysis of the person's breath shall have been performed according to methods approved by the Department of Health and Welfare. The Department of Health and Welfare is authorized to approve satisfactory techniques, methods, and standards of training necessary to ascertain the qualifications of individuals to conduct the analysis. If it is established at trial that a chemical analysis of breath was performed according to approved methods by a person trained according to techniques, methods and standards of training approved by the Department of Health and Welfare, there is a presumption that the test results are valid and further foundation for introduction of the evidence is unnecessary.

(e) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test in addition to the test administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person does not preclude the admission of evidence relating to the test taken at the direction of a law enforcement officer; the fact that the person under arrest sought to obtain such an additional test, and failed or was unable so to do, shall likewise be admissible in evidence.

(f) Upon the request of the person who submits to a chemical test at the request of a law enforcement officer, full information concerning the test, including the results thereof, shall be made available to him or his attorney.

Sec. 28.35.034. PERIOD OF REVOCATION. A person whose license or permit to drive a motor vehicle has been suspended or revoked under the provisions of sec. 32 of this chapter shall surrender his license or permit to the department on receipt of notice of the revocation. Such person is ineligible for an operator's license or permit for three months following the date on which the license or permit was received by the department, unless the district court finds that extenuating circumstances exist

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which would cause extreme hardship, in which case the suspension or revocation may be modified or nullified. After the three months' period has expired the person may make application for a new license as provided by law.

\* Sec. 2. AS 44.62.330(a)(23) is amended to read:

(23) Department of Public Safety, as to suspension, etc., of driver's licenses except as to revocations under AS 28.35.031 - 28.35.034