

Original Sponsor: Bairne

Offered: 3/27/67
Referred: Judiciary

1 IN THE HOUSE

BY THE STATE AFFAIRS
COMMITTEE

2 CS FOR HOUSE BILL NO. 178

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to chemical tests as to alcoholic
7 content of blood when driving a motor vehicle under
8 the influence of intoxicating liquor."

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

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

11 Sec. 28.35.031. IMPLIED CONSENT. (a) Any person who operates a
12 motor vehicle in this state shall be deemed to have given consent,
13 subject to the provisions of sec. 33 of this chapter, to a chemical test
14 or tests of his blood, breath or urine for the purpose of determining
15 the alcoholic content of his blood if lawfully arrested for any offense
16 arising out of acts alleged to have been committed while the person was
17 driving or in actual physical control of a motor vehicle while under the
18 influence of intoxicating liquor. The test or tests shall be adminis-
19 tered at the direction of a law enforcement officer having reasonable
20 grounds to believe the person to have been driving or in actual physical
21 control of a motor vehicle in this state while under the influence of
22 intoxicating liquor. The Department of Public Safety shall designate
23 which of the aforesaid tests shall be administered.

24 (b) Any person who is dead, unconscious or who is otherwise in
25 a condition rendering him incapable of refusal, shall be deemed not
26 to have withdrawn the consent provided by paragraph (a) of this section,
27 and the test or tests may be administered, subject to the provisions
28 of sec. 33 of this chapter.

29 Sec. 28.35.032. REFUSAL TO SUBMIT TO CHEMICAL TEST. If a

CSHB 178 am

1 person under lawful arrest refuses upon the request of a law enforce-
2 ment officer to submit to a chemical test designated by the Depart-
3 ment of Public Safety as provided in sec. 31(e) of this chapter,
4 none shall be given; but if he does so refuse, evidence of his
5 refusal shall be admissible in any civil or criminal action or
6 proceeding arising out of acts alleged to have been committed while he
7 was driving or in actual physical control of a motor vehicle in
8 this state while under the influence of intoxicating liquor.

9 Sec. 28.35.033. CHEMICAL ANALYSIS OF BLOOD. (a) Upon the
10 trial of any civil or criminal action or proceeding arising out
11 of acts alleged to have been committed by any person while driving
12 or in actual physical control of a vehicle while under the influence
13 of intoxicating liquor, the amount of alcohol in the person's blood
14 at the time alleged as shown by chemical analysis of the person's
15 blood, urine, breath or other bodily substance shall give rise to
16 the following presumptions:

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

20 (2) If there was at that time in excess of 0.05 per cent
21 but less than 0.15 per cent by weight of alcohol in the person's
22 blood, such fact shall not give rise to any presumption that the person
23 was or was not under the influence of intoxicating liquor, but such
24 fact may be considered with other competent evidence in determining
25 whether the person was under the influence of intoxicating liquor.

26 (3) If there was at that time 0.15 per cent or more by
27 weight of alcohol in the person's blood, it shall be presumed that the
28 person was under the influence of intoxicating liquor.

29 (4) Per cent by weight of alcohol in the blood shall be

1 based upon milligrams of alcohol per 100 cubic centimeters of blood.

2 (5) The foregoing provisions of paragraph (a) shall not be
3 construed as limiting the introduction of any other competent evidence
4 bearing upon the question whether the person was under the influence
5 of intoxicating liquor.

6 (b) Chemical analyses of the person's blood, urine, breath, or
7 other bodily substance to be considered valid under the provisions of
8 this section shall have been performed according to methods approved
9 by the State Department of Health and Welfare and by an individual
10 possessing a valid permit issued by the State Department of Health and
11 Welfare for this purpose. The State Department of Health and Welfare
12 is authorized to approve satisfactory techniques or methods, to
13 ascertain the qualifications and competence of individuals to conduct
14 such analyses, and to issue permits which shall be subject to termina-
15 tion or revocation at the discretion of the State Department of Health
16 and Welfare.

17 (c) When a person shall submit to a blood test at the request of
18 a law enforcement officer under the provisions of sec. 31 of this
19 chapter, only a physician or a registered nurse (or other qualified
20 person) may withdraw blood for the purpose of determining the alcoholic
21 content therein. This limitation shall not apply to the taking of
22 breath or urine specimens.

23 (d) The person tested may have a physician, or a qualified
24 technician, chemist, registered nurse, or other qualified person of
25 his own choosing administer a chemical test or tests in addition to
26 any administered at the direction of a law enforcement officer. The
27 failure or inability to obtain an additional test by a person shall
28 not preclude the admission of evidence relating to the test or tests
29 taken at the direction of a law enforcement officer.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

(e) Upon the request of the person who shall submit 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 or his attorney.