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1 IN THE SENATE

BY THOMAS

2 SENATE BILL NO. 23

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

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

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26 to have withdrawn the consent provided by (a) of this section, and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

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

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(a) of this chapter, none
4 may be given; but if he does so refuse, evidence of his refusal shall
5 be admissible in a civil or criminal action or proceeding arising out
6 of acts alleged to have been committed while he was driving or in
7 actual physical control of a motor vehicle in this state while under
8 the influence of intoxicating liquor.

9 Sec. 28.35.033. CHEMICAL ANALYSIS OF BLOOD. (a) Upon the
10 trial of a civil or criminal action or proceeding arising out of acts
11 alleged to have been committed by a person while driving or in actual
12 physical control of a vehicle while under the influence of intoxicating
13 liquor, the amount of alcohol in the person's blood at the time
14 alleged as shown by chemical analysis of the person's blood, urine,
15 breath or other bodily substance shall give rise to the following
16 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 that
19 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 0.08 per cent by weight of alcohol in the person's
22 blood, such fact may not give rise to a 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 0.08 per cent or more by
27 weight of alcohol in the person's blood, it shall be presumed that
28 the person was under the influence of intoxicating liquor.

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

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

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

6 (d) To be considered valid under the provisions of this section
7 the chemical analyses of the person's blood, urine, breath, or other
8 bodily substance shall have been performed according to methods
9 approved by the Department of Health and Welfare and by an individual
10 possessing a valid permit issued by the Department of Health and
11 Welfare for this purpose. The Department of Health and Welfare is
12 authorized to approve satisfactory techniques or methods, to ascertain
13 the qualifications and competence of individuals to conduct such
14 analyses, and to issue permits which shall be subject to termination
15 or revocation at the discretion of the Department of Health and
16 Welfare. A person taking or analyzing a biological specimen under
17 this section is immune from liability if, at the time of taking or
18 analyzing, the person has a valid permit from the Department of Health
19 and Welfare to do so, and follows the techniques or methods approved
20 by this department.

21 (e) When a person submits to a blood test at the request of a
22 law enforcement officer under the provisions of sec. 31 of this
23 chapter, only a physician or a registered nurse (or other qualified
24 person) may withdraw blood for the purpose of determining the alcoholic
25 content. This limitation does not apply to the taking of breath or
26 urine specimens.

27 (f) The person tested may have a physician, or a qualified
28 technician, chemist, registered nurse, or other qualified person of
29 his own choosing administer a chemical test in addition to the test

1 administered at the direction of a law enforcement officer. The
2 failure or inability to obtain an additional test by a person does
3 not preclude the admission of evidence relating to the test taken at
4 the direction of a law enforcement officer.

5 (g) Upon the request of the person who submits to a chemical
6 test at the request of a law enforcement officer, full information
7 concerning the test shall be made available to him or his attorney.
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