

CS - Judiciary

Offered: 2/13/69
Referred: Judiciary

Original sponsor: Thomas

BY THE HEALTH, WELFARE AND
EDUCATION COMMITTEE

1 IN THE SENATE

2 CS FOR 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 determin-
15 ing 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 who has reasonable grounds to believe that the person was driving or
21 was in actual physical control of a motor vehicle in this state while
22 under the influence of intoxicating liquor. The Department of Public
23 Safety 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26 to have withdrawn the consent provided by (a) of this section, and the
27 test or tests may be administered, subject to the provisions of sec. 33
28 of this chapter.

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

1 person under arrest refuses the request of a peace officer to submit at
2 least to a chemical test of his breath as provided in sec. 31(a) of this
3 chapter and the acts allegedly committed while the person was operating
4 a motor vehicle under the influence of intoxicating liquor did not
5 result in an accident causing serious bodily injury or death to a
6 person other than himself, a chemical test shall not be given.

7 (b) Upon receipt of a sworn report of a peace officer that a
8 person has refused to submit to a chemical test authorized under sec.
9 31(a) of this chapter, containing a statement of the circumstances
10 surrounding the arrest and the grounds upon which his belief was
11 based that the person was operating a motor vehicle in violation of
12 sec. 30 of this chapter, the department shall suspend or revoke the
13 person's license or permit to drive, or any nonresident operating
14 privilege. If the person has not been issued a license or permit to
15 operate a motor vehicle the department may not issue him a license or
16 permit for at least six months after the date of the alleged violation,
17 except as otherwise provided in this chapter.

18 (c) The department shall immediately notify the person in writing,
19 by registered or certified mail or by personal service, of the action
20 taken under (b) of this section and shall give him a hearing if re-
21 quested in writing within 15 days of service of the notice. The hearing
22 shall be held within 20 days after receipt of the request by the depart-
23 ment and will be limited to the issues of whether the peace officer
24 had probable cause to believe the person had been operating a motor
25 vehicle in the state while under the influence of intoxicating liquor,
26 whether the person was placed under arrest, and whether he refused to
27 submit to the test upon request of the officer. Whether the person was
28 informed that his privilege to drive would be suspended or revoked or
29 denied if he refused to submit to the test shall not be in issue.

1 Based on the evidence introduced at the hearing the department shall
2 enter an order affirming or rescinding its previous action. The
3 department's final order is subject to judicial review as provided in
4 AS 44.62.560 - 570.

5 (d) In conducting a hearing under (c) of this section, the com-
6 missioner of public safety, or his duly authorized representative,
7 may administer oaths and may issue subpoenas for attendance of witnesses
8 and the production of relevant books and papers.

9 (e) When it has been finally determined under the procedures pro-
10 vided by this section that a nonresident's privilege to operate a motor
11 vehicle in this state has been suspended or revoked, the department shall
12 give information in writing of the action taken to the motor vehicle
13 administrator of the state of the person's residence and to any state
14 in which he has a license.

15 (f) If a person under arrest refuses to submit to a chemical test
16 under the provisions of sec. 31(a) of this chapter, evidence of his
17 refusal is admissible in any civil or criminal action or proceeding
18 arising out of acts alleged to have been committed while he was operat-
19 ing or driving a motor vehicle in this state while under the influence
20 of intoxicating liquor.

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

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

1 under the influence of intoxicating liquor.

2 (2) If there was in excess of 0.05 per cent but less than
3 0.10 per cent by weight of alcohol in the person's blood, that fact
4 shall not give rise to any presumption that the person was or was not
5 under the influence of intoxicating liquor, but that fact may be con-
6 sidered with other competent evidence in determining whether the person
7 was under the influence of intoxicating liquor.

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

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

14 (c) The provisions of (a) of this section shall not be construed
15 to limit the introduction of any other competent evidence bearing upon
16 the question of whether the person was under the influence of intoxi-
17 cating liquor.

18 (d) To be considered valid under the provisions of this section
19 the chemical analyses of the person's blood, urine, breath, or other
20 bodily substance shall have been performed according to methods
21 approved by the Department of Health and Welfare. The Department of
22 Health and Welfare is authorized to approve satisfactory techniques,
23 methods, and standards of training necessary to ascertain the qualifi-
24 cations of individuals to conduct the analyses.

25 (e) When a person submits to a blood test at the request of a
26 law enforcement officer under the provisions of secs. 31 and 32 of this
27 chapter, only a physician or a licensed nurse (or other qualified
28 person as determined by Department of Health and Welfare regulations)
29 may withdraw blood for the purpose of determining the alcoholic content.

1 This limitation does not apply to the taking of breath or urine speci-
2 mens.

3 (f) The person tested may have a physician, or a qualified
4 technician, chemist, registered nurse, or other qualified person of
5 his own choosing administer a chemical test in addition to the test
6 administered at the direction of a law enforcement officer. The
7 failure or inability to obtain an additional test by a person does not
8 preclude the admission of evidence relating to the test taken at the
9 direction of a law enforcement officer.

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

13 Sec. 28.35.034. PERIOD OF REVOCATION. A person whose license or
14 permit to drive a motor vehicle has been suspended or revoked under
15 the provisions of sec. 32 of this chapter shall surrender his license
16 or permit to the department on receipt of notice of the revocation.
17 Such person is ineligible for an operator's license or permit for six
18 months following the date on which the license or permit was received
19 by the department, unless the district court finds that extenuating
20 circumstances exist which would cause extreme hardship, in which case
21 the suspension or revocation may be modified or nullified. After the
22 six months' period has expired the person may make application for
23 a new license as provided by law.

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

25 (23) Department of Public Safety, as to suspension, etc., of
26 driver's licenses except as to revocations under AS 28.35.031 - 28.35.-
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