

Original sponsor: Thomas

Offered: 3/18/69  
Referred: Rules

*amw*

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 23

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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SIXTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to chemical tests as to alcoholic

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content of blood when driving a motor vehicle under the

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influence of intoxicating liquor."

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

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

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Sec. 28.35.031. IMPLIED CONSENT. A person who operates a motor

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vehicle in this state shall be considered to have given consent to a

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chemical test or tests of his breath for the purpose of determining the

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alcoholic content of his blood if lawfully arrested for an offense

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arising out of acts alleged to have been committed while the person was

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driving or in actual physical control of a motor vehicle while under the

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influence of intoxicating liquor. The test or tests shall be administered

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at the direction of a law enforcement officer who has reasonable grounds

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to believe that the person was driving or was in actual physical control

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of a motor vehicle in this state while under the influence of intoxi-

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cating liquor.

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

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person under arrest refuses the request of a peace officer to submit to

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a chemical test of his breath as provided in sec. 31 of this chapter,

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after being advised by the officer that his refusal could result in the

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suspension, denial or revocation of his license, a chemical test shall

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not be given.

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(b) Upon receipt of a sworn report of a peace officer that a per-

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son has refused to submit to a chemical test authorized under sec. 31

1 of this chapter, containing a statement of the circumstances surrounding  
2 the arrest and the grounds upon which his belief was based that the  
3 person was operating a motor vehicle in violation of sec. 30 of this  
4 chapter, the department may start proceedings in the district court to  
5 suspend or revoke the license of a resident of the state or the privi-  
6 lege of a nonresident to drive a motor vehicle in the state, or to deny  
7 the issuance of an original license or permit for three months. The  
8 issues in court are limited to whether

9 (1) the arresting officer had probable cause to believe the  
10 arrested person had been operating a motor vehicle in the state while  
11 under the influence of intoxicating liquor; and

12 (2) the arrested person refused to submit to the breath test  
13 upon request of the officer after being advised that his refusal could  
14 result in the suspension, revocation, or denial of his license.

15 (c) If the issues set out in (b)(1) and (2) of this section are  
16 determined in the affirmative, the court shall revoke or suspend the  
17 license of a resident of the state or the privilege of a nonresident to  
18 drive a motor vehicle in the state, or deny the issuance of an original  
19 license or permit for three months. In the event that a nonresident's  
20 privilege to operate a motor vehicle in this state is suspended or re-  
21 voked, the department shall give information in writing of the action  
22 taken to the motor vehicle administrator of the state of the person's  
23 residence and to any state in which he has a license.

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

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

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

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

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

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

20 (d) To be considered valid under the provisions of this section  
21 the chemical analyses of the person's breath shall have been performed  
22 according to methods approved by the Department of Health and Welfare.  
23 The Department of Health and Welfare is authorized to approve satis-  
24 factory techniques, methods, and standards of training necessary to  
25 ascertain the qualifications of individuals to conduct the analyses.

26 (e) The person tested may have a physician, or a qualified  
27 technician, chemist, registered nurse, or other qualified person of  
28 his own choosing administer a chemical test in addition to the test  
29 administered at the direction of a law enforcement officer. The

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

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

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

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

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