

Introduced: 2/18/80
Referred: Health, Education &
Social Services and Finance

1 IN THE HOUSE

BY MEEKINS

2 HOUSE BILL NO. 833

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the crime of driving while intoxi-
7 cated."

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

9 * Section 1. AS 28.35.030 is repealed and re-enacted to read:

10 Sec. 28.35.030. DRIVING WHILE INTOXICATED. (a) A person commits
11 the crime of driving while intoxicated if he operates or drives a motor
12 vehicle

13 (1) while under the influence of intoxicating liquor, de-
14 pressant, hallucinogenic, stimulant or narcotic drugs as defined in
15 AS 17.10.230(13) and AS 17.12.150(3);

16 (2) when there is 0.10 percent or more by weight of alcohol
17 in his blood or 100 milligrams or more of alcohol per 100 milliliters of
18 his blood, or when there is 0.10 grams or more of alcohol per 210 liters
19 of his breath; or

20 (3) while he is under the combined influence of intoxicating
21 liquor and another substance.

22 (b) Driving while intoxicated is a misdemeanor.

23 (c) Upon conviction under this section the court shall impose a
24 minimum sentence of imprisonment of not less than three consecutive
25 days. Upon a subsequent conviction within five years after a conviction
26 under this section, the court shall impose a minimum sentence of im-
27 prisonment of not less than 10 consecutive days. The execution of
28 sentence may not be suspended nor may probation be granted until the
29 minimum imprisonment provided in this section has been served. Im-

1 position of sentence may not be suspended, except upon the condition
2 that the defendant be imprisoned for no less than the minimum period
3 provided in this section. In addition, his operator's license shall be
4 revoked in accordance with AS 28.15.181. In addition, a person con-
5 victed under this statute shall undertake, for a term specified by the
6 court, that program of alcohol education or rehabilitation which the
7 court, after consideration of any information compiled under (d) of this
8 section, finds appropriate.

9 (d) Except as prohibited by federal law or regulation, every
10 provider of treatment programs to which persons are ordered under (c) of
11 this section shall supply the Alaska court system with the information
12 regarding the condition and treatment of those persons as the supreme
13 court may require by rule. Information compiled under this subsection
14 is confidential and may only be used by a court in sentencing a person
15 convicted under (c) of this section, or by an officer of the court in
16 preparing a presentence report for the use of the court in sentencing a
17 person convicted under (c) of this section.

18 * Sec. 2. AS 28.35.031 is amended to read:

19 Sec. 28.35.031. IMPLIED CONSENT. A person who operates or drives
20 a motor vehicle in this state shall be considered to have given consent
21 to a chemical test or tests of his breath for the purpose of determining
22 the alcoholic content of his blood or breath if lawfully arrested for an
23 offense arising out of acts alleged to have been committed while the
24 person was operating or driving a motor vehicle while intoxicated [UNDER
25 THE INFLUENCE OF INTOXICATING LIQUOR]. The test or tests shall be
26 administered at the direction of a law enforcement officer who has
27 reasonable grounds to believe that the person was operating or driving a
28 motor vehicle in this state while intoxicated [UNDER THE INFLUENCE OF
29 INTOXICATING LIQUOR].

1 * Sec. 3. AS 28.35.032(b) is amended to read:

2 (b) Upon receipt of a sworn report of a law enforcement officer
3 that a person has refused to submit to a chemical test authorized under
4 AS 28.35.031, containing a statement of the circumstances surrounding
5 the arrest and the grounds upon which his belief was based that the
6 person was operating a motor vehicle in violation of AS 28.35.030, the
7 Department of Public Safety shall notify the person that his license or
8 nonresident privilege to drive a motor vehicle in the state is revoked
9 or suspended, or that no original license or permit will be issued for
10 three months. In the same notice the department shall inform the person
11 that he may initiate a proceeding in the district court to rescind the
12 department's action. The court proceeding shall be without jury and
13 shall be limited to the issues of whether

14 (1) the arresting officer had reasonable grounds to believe
15 the arrested person had been operating a motor vehicle in the state
16 while intoxicated [UNDER THE INFLUENCE OF INTOXICATING LIQUOR];

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

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

25 * Sec. 4. AS 28.35.033(a) is amended to read:

26 (a) Upon the trial of a civil or criminal action or proceeding
27 arising out of acts alleged to have been committed by a person who was
28 driving while intoxicated [WHILE OPERATING A MOTOR VEHICLE UNDER THE
29 INFLUENCE OF INTOXICATING LIQUOR], the amount of alcohol in the person's

1 blood or breath at the time alleged [, AS SHOWN BY CHEMICAL ANALYSIS OF
2 THE PERSON'S BREATH,] shall give rise to the following presumptions:

3 (1) If there was 0.05 percent or less by weight of alcohol in
4 the person's blood, or 50 milligrams or less of alcohol per 100 milli-
5 liters of his blood, or 0.05 grams or less of alcohol per 210 liters of
6 his breath, it shall be presumed that the person was not under the
7 influence of intoxicating liquor.

8 (2) If there was in excess of 0.05 percent but less than 0.10
9 percent by weight of alcohol in the person's blood, or in excess of 50
10 but less than 100 milligrams of alcohol per 100 milliliters of his blood,
11 or in excess of 0.05 grams but less than 0.10 grams of alcohol per 210
12 liters of his breath, that fact does not give rise to any presumption
13 that the person was or was not under the influence of intoxicating
14 liquor, but that fact may be considered with other competent evidence in
15 determining whether the person was under the influence of intoxicating
16 liquor.

17 (3) [IF THERE WAS 0.10 PERCENT OR MORE BY WEIGHT OF ALCOHOL
18 IN THE PERSON'S BLOOD, IT SHALL BE PRESUMED THAT THE PERSON WAS UNDER
19 THE INFLUENCE OF INTOXICATING LIQUOR.]
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