

Original sponsor: Rules/Governor

Offered: 5/15/80
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

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HOUSE CS FOR CS FOR SENATE BILL NO. 396

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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ELEVENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to operating or driving a motor vehicle

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while under the 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 AS 28.35.030 is repealed and re-enacted to read:

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Sec. 28.35.030. DRIVING WHILE INTOXICATED. (a) A person commits

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the crime of driving while intoxicated if he operates or drives a motor
vehicle

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(1) while under the influence of intoxicating liquor, de-

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pressant, hallucinogenic, stimulant or narcotic drugs as defined in

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AS 17.10.230(13) and AS 17.12.150(3);

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(2) when there is 0.10 percent or more by weight of alcohol

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in his blood or 100 milligrams or more of alcohol per 100 milliliters of

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his blood, or when there is 0.10 grams or more of alcohol per 210 liters

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of his breath; or

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(3) while he is under the combined influence of intoxicating

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liquor and another substance.

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(b) Driving while intoxicated is a class A misdemeanor.

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(c) Upon conviction under this section the court shall impose a

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minimum sentence of imprisonment of not less than three consecutive

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days. Upon a subsequent conviction within five years after a conviction

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under this section, the court shall impose a minimum sentence of im-

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prisonment of not less than 10 consecutive days. The execution of

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sentence may not be suspended nor may probation be granted until the

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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 is amended to read:

2 Sec. 28.35.032. REFUSAL TO SUBMIT TO CHEMICAL TEST. (a) If a
3 person under arrest refuses the request of a law enforcement officer to
4 submit to a chemical test of his breath as provided in AS 28.35.031,
5 after being advised by the officer that his refusal will result in the
6 suspension, denial or revocation of his license and that the refusal may
7 be used against him in a civil or criminal action or proceeding arising
8 out of an act alleged to have been committed by him while operating or
9 driving a vehicle under the influence of intoxicating liquor, a chemical
10 test shall not be given.

11 (b) Upon receipt of a sworn report of a law enforcement officer
12 that a person has refused to submit to a chemical test authorized under
13 AS 28.35.031, containing a statement of the circumstances surrounding
14 the arrest and the grounds upon which his belief was based that the
15 person was operating or driving a motor vehicle in violation of AS 28.-
16 35.030, the Department of Public Safety shall notify the person that his
17 license or nonresident privilege to drive or operate a motor vehicle in
18 the state is revoked or suspended, or that no original license or permit
19 will be issued for three months. In the same notice the department
20 shall inform the person that he may initiate a proceeding in the district
21 court to rescind the department's action. The court proceeding shall be
22 without jury and shall be limited to the issues of whether

23 (1) the arresting officer had reasonable grounds to believe
24 the arrested person had been operating or driving a motor vehicle in the
25 state while under the influence of intoxicating liquor;

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

29 (3) the accused defendant was informed fairly of the nature

1 of the tests, the accuracy of the methods, machines, equipment involved,
2 the expertise of the person administering the tests, or operator of the
3 machines, and the accused given such other reasonable information as may
4 be requested by him.

5 (c) If the issues set out in (b)(1), (2) and (3) of this section
6 are determined in the affirmative, the court shall sustain the action of
7 the department. If one or more of the issues are determined in the
8 negative, the department's action shall be rescinded. If the action of
9 the department in suspending or revoking a nonresident's privilege to
10 operate or drive a motor vehicle in this state is sustained by the
11 court, the department shall give information in writing of the action
12 taken to the motor vehicle administrator of the state of the person's
13 residence and to any state in which he has a license.

14 (d) If the person who refuses to submit to the chemical test
15 authorized by AS 28.35.031, within two years previous to his arrest, has
16 been convicted in this or any other state of operating or driving a
17 motor vehicle while intoxicated, the period of suspension for his
18 license, nonresident privilege to drive, or denial or original license
19 shall be one year.

20 (e) The refusal of a person to submit to a chemical test of his
21 breath under (a) of this section is admissible evidence in a civil or
22 criminal action or proceeding arising out of an act alleged to have been
23 committed by the person while operating or driving a vehicle under the
24 influence of intoxicating liquor.

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 while
28 operating or driving a motor vehicle under the influence of intoxicating
29 liquor, the amount of alcohol in the person's blood or breath at the
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1 time alleged [, AS SHOWN BY CHEMICAL ANALYSIS OF THE PERSON'S BREATH,]
2 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.]

20 * Sec. 5. AS 28.35.034 is amended to read:

21 Sec. 28.35.034. PERIOD OF REVOCATION. A person whose license or
22 permit to operate or drive a motor vehicle has been suspended or revoked
23 under the provisions of AS 28.35.032 shall surrender his license or
24 permit to the department on receipt of notice of the revocation. Such a
25 person is ineligible for an operator's license or permit for three
26 months following the date on which the license or permit was received by
27 the department, unless the district court finds that extenuating
28 circumstances exist which would cause extreme hardship, in which case
29 the suspension or revocation may be modified or nullified. After the

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three months' period has expired the person may make application for a new license as provided by law.