

Introduced: 4/1/81
Referred: Judiciary

1 IN THE HOUSE

BY MEEKINS

2 HOUSE BILL NO. 438

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the administration of chemical
7 blood tests to persons arrested for certain offenses
8 involving motor vehicles."

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

10 * Section 1. AS 09.65.095(a) is amended to read:

11 (a) No civil or criminal action arising out of battery may be
12 brought against a health care provider for the act of taking a blood
13 sample if the sample is taken

14 (1) at the request of a police officer under the circum-
15 stances specified in AS 28.35.032(a) or 28.35.035 when a chemical test
16 of his blood may be administered without a person's consent or when the
17 arresting officer has a search warrant or court order authorizing the
18 taking of the blood sample; and

19 (2) without the use of excessive or unreasonable force.

20 * Sec. 2. AS 28.35.032(a) is amended to read:

21 (a) If a person under arrest refuses the request of a law enforce-
22 ment officer to submit to a chemical test of his breath as provided in
23 AS 28.35.031, after being advised by the officer that his refusal will
24 result in the suspension, denial or revocation of his license and that
25 the refusal may be used against him in a civil or criminal action or
26 proceeding arising out of an act alleged to have been committed by him
27 while operating or driving a vehicle under the influence of intoxicating
28 liquor, a chemical test of his breath shall not be given. However, if
29 the person is arrested for a crime alleged to have been committed by him

1 while operating or driving a vehicle under the influence of intoxicating
2 liquor and the crime is a homicide under AS 11.41.120(a)(1) or 11.41.130
3 or an assault under AS 11.41.210(a)(3) or 11.41.230(a)(1) or (2), a
4 chemical test of his blood may be administered without his consent if
5 the taking of the blood sample occurs before or substantially contem-
6 poraneously with his arrest and in a manner which does not violate the
7 constitutional rights of the accused.

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

9 (b) Upon receipt of a sworn report of a law enforcement officer
10 that a person has refused to submit to a chemical breath test authorized
11 under AS 28.35.031, containing a statement of the circumstances sur-
12 rounding the arrest and the grounds upon which his belief was based
13 that the person was operating or driving a motor vehicle in violation
14 of AS 28.35.030, the Department of Public Safety, regardless of whether
15 a chemical test of blood has been subsequently administered to the
16 person, shall notify the person that his license or nonresident privi-
17 lege to drive or operate a motor vehicle in the state is revoked or
18 suspended, or that no original license or permit will be issued for
19 three months. In the same notice the department shall inform the person
20 that he may initiate a proceeding in the district court to rescind the
21 department's action. The court proceeding shall be without jury and
22 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
25 the 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
4 may be requested by him.

5 * Sec. 4. AS 28.35.032(d) is amended to read:

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

12 * Sec. 5. AS 28.35.033(d) is amended to read:

13 (d) To be considered valid under the provisions of this section
14 the chemical analysis of the person's breath or blood shall have been
15 performed according to methods approved by the Department of Health and
16 Social Services. The Department of Health and Social Services is
17 authorized to approve satisfactory techniques, methods, and standards
18 of training necessary to ascertain the qualifications of individuals to
19 conduct the analysis. If it is established at trial that a chemical
20 analysis of breath or blood was performed according to approved methods
21 by a person trained according to techniques, methods and standards of
22 training approved by the Department of Health and Social Services,
23 there is a presumption that the test results are valid and further
24 foundation for introduction of the evidence is unnecessary.

25 * Sec. 6. AS 28.35 is amended by adding a new section to read:

26 Sec. 28.35.035. PERSONS INCAPABLE OF REFUSING OR TAKING TESTS. A
27 person who is unconscious or otherwise in a condition rendering him
28 incapable of refusing a chemical test of breath is considered not to
29 have withdrawn the consent furnished under AS 28.35.031 if lawfully

1 arrested for an offense arising out of acts alleged to have been com-
2 mitted while the person was operating the vehicle under the influence
3 of intoxicating liquor, and a chemical test of the breath may be admin-
4 istered. A person who is in a condition rendering him incapable of
5 being administered a chemical test of his breath may be administered a
6 chemical test of his blood without his consent if lawfully arrested for
7 an offense arising out of acts alleged to have been committed while the
8 person was operating a vehicle under the influence of intoxicating
9 liquor.