

Introduced: 4/10/81  
Referred: Judiciary

1 IN THE HOUSE

BY MEEKINS

2 SPONSOR SUBSTITUTE FOR 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 intoxicat-  
28 ing liquor, a chemical test may [SHALL] not be given except under (f)  
29 of this section.

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 breath test authorized  
4 under AS 28.35.031, containing a statement of the circumstances sur-  
5 rounding the arrest and the grounds upon which his belief was based  
6 that the person was operating or driving a motor vehicle in violation  
7 of AS 28.35.030, the Department of Public Safety, regardless of whether  
8 a chemical test of blood has been subsequently administered to the  
9 person, shall notify the person that his license or nonresident privi-  
10 lege to drive or operate a motor vehicle in the state is revoked or  
11 suspended, or that no original license or permit will be issued for  
12 three months. In the same notice the department shall inform the person  
13 that he may initiate a proceeding in the district court to rescind the  
14 department's action. The court proceeding shall be without jury and  
15 shall be limited to the issues of whether

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

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

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

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

28 (d) If the person who refuses to submit to the chemical test of  
29 his breath authorized by AS 28.35.031, within two years previous to his

1 arrest, has been convicted in this or any other state of operating or  
2 driving a motor vehicle while intoxicated, the period of suspension for  
3 his license, nonresident privilege to drive, or denial of original  
4 license shall be one year.

5 \* Sec. 5. AS 28.35.032 is amended by adding a new subsection to read:

6 (f) If a person is arrested for a crime alleged to have been  
7 committed by him while operating or driving a vehicle under the influ-  
8 ence of intoxicating liquor and the crime is a homicide under AS 11.41.-  
9 120(a)(1) or 11.41.130 or an assault under AS 11.41.210(a)(3) or 11.41.-  
10 230(a)(1) or (2), a chemical test of his blood may be administered  
11 without his consent if the taking of the blood sample occurs after or  
12 substantially contemporaneously with his arrest and in a manner which  
13 does not violate the constitutional rights of the accused.

14 \* Sec. 6. AS 28.35.033(d) is amended to read:

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

27 \* Sec. 7. AS 28.35 is amended by adding a new section to read:

28 Sec. 28.35.035. PERSONS INCAPABLE OF REFUSING OR TAKING TESTS. A  
29 person who is unconscious or otherwise in a condition rendering him

1 incapable of refusing a chemical test of breath is considered not to  
2 have withdrawn the consent furnished under AS 28.35.031 if lawfully  
3 arrested for an offense arising out of acts alleged to have been com-  
4 mitted while the person was operating the vehicle under the influence  
5 of intoxicating liquor, and a chemical test of the breath may be admin-  
6 istered. A person who is in a condition rendering him incapable of  
7 being administered a chemical test of his breath may be administered a  
8 chemical test of his blood without his consent if lawfully arrested for  
9 an offense arising out of acts alleged to have been committed while the  
10 person was operating a vehicle under the influence of intoxicating  
11 liquor.

12 \* Sec. 8. AS 28.35.260(a) is amended by adding a new paragraph to read:

13 (19) "chemical test" means a test administered to determine  
14 the amount of alcohol in a person's blood.