

Original sponsor: Meekins

Offered: 3/8/82
Referred: Finance

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 438 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act revising laws relating to revocation of drivers'
7 licenses for certain offenses, including driving while
8 intoxicated, and for refusal to take a chemical breath
9 test for alcohol, and revising the driving while intoxi-
10 cated law, and specifying procedures for chemical tests
11 of blood for alcohol."

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

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

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

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

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

23 * Sec. 2. AS 12.30.020(b) is amended by adding a new paragraph to read:

24 (7) require the person to surrender his driver's license to
25 the peace officer or to the court for a specified period of hours in
26 order to enable the arrested person to become sufficiently sober to
27 operate a motor vehicle, if the person is charged with an offense involv-
28 ing driving while intoxicated; however, if the judicial officer finds
29 probable cause to believe that the person has been convicted of an

1 offense involving driving while intoxicated within the three years
2 before his appearance, the judicial officer shall order the license held
3 by the officer or the court until the conclusion of the case charged,
4 and shall order the person not to operate any motor vehicle.

5 * Sec. 3. AS 12.30.020 is amended by adding new subsections to read:

6 (i) A person who is required to surrender his driver's license
7 under (b)(7) of this section may move the court at his next court ap-
8 pearance to review that requirement.

9 (j) "Danger to other persons and the community", as used in this
10 section, includes danger that may result from offenses against the
11 person, offenses against property, offenses against public order, and
12 offenses relating to operation of aircraft or a motor vehicle, as de-
13 fined by AS 28.35.260(a)(7).

14 * Sec. 4. AS 28.15.181 is repealed and reenacted to read:

15 Sec. 28.15.181. COURT REVOCATIONS AND LIMITATIONS. (a) The
16 following are grounds for the immediate revocation of an operator's or
17 driver's license or a nonresident privilege to drive:

18 (1) conviction of a crime under AS 11.41.100 - 11.41.250 if
19 the crime was committed while operating or driving a motor vehicle;

20 (2) a felony in the commission of which the person convicted
21 was operating or driving a motor vehicle;

22 (3) failure to stop and give aid as required under the laws
23 of this state when a motor vehicle accident results in the death or
24 personal injury of another;

25 (4) perjury or committing the crime of unsworn falsification
26 under a law relating to motor vehicles;

27 (5) operating or driving a motor vehicle while intoxicated;

28 (6) reckless driving; or

29 (7) using a motor vehicle in unlawful flight to avoid arrest

1 by a peace officer.

2 (b) A court convicting a person of an offense under (a) of this
3 section shall revoke that person's driver's license or nonresident
4 privilege to drive or shall order the denial of issuance of a driver's
5 license or permit for a period of not less than 30 days nor more than 10
6 years, except as provided in (c) and (d) of this section.

7 (c) If the person was convicted of an offense under (a) of this
8 section within five years previous to the present offense, the court
9 shall order revocation or denial of issuance of a license or permit for
10 a period of not less than one year, except as provided in (d) of this
11 section.

12 (d) If the person was convicted of an offense under (a) of this
13 section within one year previous to the present offense or if the person
14 was convicted of two or more of these offenses within the five years
15 previous to the present offense, the court shall order revocation or
16 denial of issuance of a license or a permit for not less than three
17 years.

18 (e) If the person has no prior convictions under (a) of this
19 section within five years previous to the present offense, the court
20 may, after the license has been revoked or issuance denied, issue a
21 certificate of limited driving privileges to him. The certificate may
22 restrict the person to operation of a motor vehicle only at certain
23 times, on certain days, and on certain highways and vehicular ways or
24 areas. The court may not issue a certificate of limited driving privi-
25 leges under this section unless it finds, by a preponderance of the
26 evidence, that the person's ability to earn a livelihood would be
27 severely impaired or that the availability of presently necessary health
28 care to the person or a member of his immediate family would be severely
29 impaired. If the court issues a certificate of limited driving privi-

1 leges, the revocation or denial period and the period of certification
2 shall be for not less than 60 days. Any certificate of limited driving
3 privileges may, for good cause, be cancelled by the issuing court during
4 the revocation or denial period.

5 (f) A court revoking or denying issuance of a license under (b),
6 (c), or (d) of this section shall consider a prior conviction for an
7 offense committed in another jurisdiction if that offense has elements
8 substantially identical to those of a comparable offense under (a) of
9 this section.

10 (g) A period of revocation imposed on a person by a court under
11 (a) of this section shall run consecutive to any other period of license
12 revocation or suspension imposed on that person by the court or by the
13 department.

14 * Sec. 5. AS 28.15.191(c) is amended to read:

15 (c) A court which [SUSPENDS,] revokes [,] or limits a driver's
16 license shall require the surrender of the license, and shall immediately
17 forward it to the department with the record of conviction and notifica-
18 tion of the effective date of the [SUSPENSION,] revocation or limitation
19 of driving privileges as determined under AS 28.15.181 and 28.15.211
20 [AS 28.15.211(b)].

21 * Sec. 6. AS 28.15.191(d) is repealed and reenacted to read:

22 (d) A court which issues a certificate of limited driving privi-
23 leges shall specify the period of 60 days or longer prescribed by AS 28-
24 15.181, and shall specify limitations on days, hours, routes, and pur-
25 poses of driving under the certificate. A copy of the certificate of
26 limited driving privileges shall be forwarded to the department imme-
27 diately.

28 * Sec. 7. AS 28.15.201 is amended by adding a new subsection to read:

29 (d) This section does not apply to cases in which the driver's

1 license or nonresident privilege to drive has been revoked or denial of
2 issuance of a driver's license has been ordered and a certificate of
3 limited driving privileges has been issued after revocation or denial
4 under AS 28.15.181.

5 * Sec. 8. AS 28.15.211 is repealed and reenacted to read:

6 Sec. 28.15.211. PERIODS OF SUSPENSION OR REVOCATION; OPPORTUNITY
7 FOR HEARING AND SURRENDER OF LICENSE. (a) Except for a point system
8 suspension or revocation under AS 28.15.221 - 28.15.261 and unless
9 provided otherwise by law, and unless the suspension or revocation was
10 for a cause which has been removed, a person whose driver's license or
11 privilege to drive a motor vehicle in this state has been suspended or
12 revoked may not apply for a new license nor may his driving privilege be
13 restored until the expiration of the period specified by the court or
14 the department in accordance with this title.

15 (b) A suspension or revocation of a driver's license imposed by a
16 court takes effect on the date of final judgment, except that if another
17 suspension or revocation of license is in effect on the date of final
18 judgment, the effective date of the last imposed suspension or revoca-
19 tion is at the end of the last day of the previous suspension or revoca-
20 tion.

21 (c) At the end of a period of suspension, the person whose license
22 has been suspended may apply to the department and, upon payment of the
23 proper fee, be issued a duplicate driver's license if he is otherwise
24 entitled to the license under this title.

25 (d) At the end of a period of revocation, a person whose driver's
26 license has been revoked may apply to the department for the issuance of
27 a new license, but shall submit to reexamination and pay all required
28 fees.

29 (e) At the end of a period of suspension or revocation under this

1 chapter, the department may not issue a driver's license or a duplicate
2 driver's license to the licensee until he has complied with AS 28.20
3 relating to proof of financial responsibility.

4 * Sec. 9. AS 28.35.030 is repealed and reenacted to read:

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

8 (1) while under the influence of intoxicating liquor,
9 depressant, hallucinogenic, stimulant, or narcotic drugs, as defined in
10 AS 17.10.230(13) and AS 17.12.150(3);

11 (2) when there is 0.10 percent or more by weight of alcohol
12 in his blood or 100 milligrams or more of alcohol per 100 milliliters of
13 his blood, or when there is 0.10 grams or more of alcohol per 210 liters
14 of his breath; or

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

17 (b) Driving while intoxicated is a class A misdemeanor, except
18 that the third or subsequent conviction under this section shall be a
19 class C felony and be punished according to (e) of this section.

20 (c) Upon the first conviction under this section, the court shall
21 impose a minimum sentence of imprisonment for not less than 120 consecu-
22 tive hours. Upon a subsequent offense within five years after a con-
23 viction under this section, except as provided in (d) and (e) of this
24 section, the court shall impose a minimum sentence of imprisonment of
25 not less than 20 consecutive days.

26 (d) Upon a subsequent offense within one year after a conviction
27 under this section, except as provided in (e) of this section, the court
28 shall impose a minimum sentence of imprisonment of not less than 60
29 consecutive days.

1 (e) Upon the third conviction under this section, regardless of
2 the period between convictions, the person shall be guilty of a class C
3 felony and the court shall impose a definite term of imprisonment of not
4 less than 120 consecutive days.

5 (f) The execution of sentence may not be suspended nor may proba-
6 tion be granted until the minimum imprisonment provided in this section
7 has been served. Imposition of sentence may not be suspended, except
8 upon the condition that the defendant be imprisoned for not less than
9 the minimum period provided in this section.

10 (g) A person convicted under this section shall have his operator's
11 license or nonresident privilege to drive revoked or shall be denied
12 issuance of a license, in accordance with AS 28.15.181. In addition, a
13 person convicted under this section shall undertake, for a term speci-
14 fied by the court, that program of alcohol education or rehabilitation
15 which the court, after consideration of any information compiled under
16 (j) of this section, finds appropriate.

17 (h) A court imposing a sentence of imprisonment under (c), (d), or
18 (e) of this section shall consider a prior out-of-state conviction for
19 operating or driving a motor vehicle while intoxicated if the prior
20 offense upon which the conviction is based would have been a violation
21 of this section if committed in this state.

22 (i) A person who is imprisoned for 120 consecutive hours upon a
23 first conviction under (c) of this section and who is not released from
24 imprisonment within 120 hours may not bring an action against the state
25 or a municipality or its agents, officers, or employees for damages
26 resulting from an additional period of confinement if

27 (1) the employee or employees who released the person exer-
28 cised due care and, in releasing the person, followed the standard re-
29 lease procedures of the prison facility; and

1 (2) the additional period of confinement did not exceed 12
2 hours.

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

12 * Sec. 10. AS 28.35.032(a) is amended to read:

13 (a) If a person under arrest refuses the request of a law enforce-
14 ment officer to submit to a chemical test of his breath as provided in
15 AS 28.35.031, after being advised by the officer that his refusal will
16 result in the [SUSPENSION,] denial or revocation of his license or his
17 nonresident privilege to drive, [AND] that the refusal may be used
18 against him in a civil or criminal action or proceeding arising out of
19 an act alleged to have been committed by him while operating or driving
20 a motor vehicle while intoxicated [UNDER THE INFLUENCE OF INTOXICATING
21 LIQUOR], and that the refusal is a misdemeanor, a chemical test may
22 [SHALL NOT] be given in accordance with (i) of this section.

23 * Sec. 11. AS 28.35.032(b) is amended to read:

24 (b) Upon receipt of a sworn report of a law enforcement officer
25 that a person has refused to submit to a chemical breath test authorized
26 under AS 28.35.031, containing a statement of the circumstances sur-
27 rounding the arrest and the grounds upon which his belief was based that
28 the person was operating or driving a motor vehicle in violation of
29 AS 28.35.030, the Department of Public Safety, regardless of whether

1 a chemical test of blood has been subsequently administered to the
2 person, shall notify the person that his license or nonresident privi-
3 lege to drive or operate a motor vehicle in the state is revoked [OR
4 SUSPENDED], or that no original license or permit will be issued for
5 one year, except as provided in (d) of this section [THREE MONTHS]. In
6 the same notice the department shall inform the person that he may
7 initiate a proceeding in the district court to rescind the department's
8 action. The court proceeding shall be without jury and shall be limited
9 to the issues of whether

10 (1) the arresting officer had reasonable grounds to believe
11 the arrested person had been operating or driving a motor vehicle in the
12 state while intoxicated [UNDER THE INFLUENCE OF INTOXICATING LIQUOR];

13 (2) the arrested person refused to submit to the breath test
14 upon request of the officer after being advised that his refusal would
15 result in the [SUSPENSION,] revocation [,] or denial of his license or
16 nonresident privilege to drive and that the refusal is a misdemeanor;
17 and

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

23 * Sec. 12. AS 28.35.032(d) is amended to read:

24 (d) If the person who refuses to submit to the chemical test of
25 his breath authorized by AS 28.35.031, within two years previous to his
26 arrest, has been convicted in this or any other state of operating or
27 driving a motor vehicle while intoxicated, the period of revocation
28 [SUSPENSION] for his license, nonresident privilege to drive, or denial
29 of original license shall be two years [ONE YEAR].

1 * Sec. 13. AS 28.35.032(e) is amended to read:

2 (e) The refusal of a person to submit to a chemical test of his
3 breath under (a) of this section is admissible evidence in a civil or
4 criminal action or proceeding arising out of an act alleged to have been
5 committed by the person while operating or driving a motor vehicle while
6 intoxicated [UNDER THE INFLUENCE OF INTOXICATING LIQUOR].

7 * Sec. 14. AS 28.35.032 is amended by adding new subsections to read:

8 (f) Refusal to submit to a chemical test of breath under (a) of
9 this section is a class B misdemeanor but it shall be a bar to prosecu-
10 tion for this offense if the person agrees and submits to a chemical
11 test of blood.

12 (g) Upon conviction of a person under (f) of this section, the
13 court shall impose a minimum sentence of imprisonment of not less than
14 72 consecutive hours. The sentence imposed by the court under this
15 subsection shall run consecutive to any other sentence of imprisonment
16 imposed on that person. The execution of sentence may not be suspended
17 nor may probation be granted until the minimum imprisonment provided in
18 this section has been served. Imposition of sentence may not be sus-
19 pended, except upon the condition that the defendant be imprisoned for
20 not less than the minimum period provided in this section.

21 (h) A person who is sentenced to imprisonment for 72 consecutive
22 hours under (g) of this section and who is not released from imprisonment
23 after 72 hours may not bring an action against the state or a municipal-
24 ity or its agents, officers, or employees for damages resulting from the
25 additional period of confinement if

26 (1) the employee or employees who released the person exer-
27 cised due care and, in releasing the person, followed the standard
28 release procedures of the prison facility; and

29 (2) the additional period of confinement did not exceed 12

1 hours.

2 (1) If a person is arrested for a crime alleged to have been
3 committed by him while operating or driving a motor vehicle while intox-
4 icated, a chemical test of his blood may be administered without his
5 consent.

6 * Sec. 15. AS 28.35.033(a) is amended to read:

7 (a) Upon the trial of a civil or criminal action or proceeding
8 arising out of acts alleged to have been committed by a person while
9 operating or driving a motor vehicle while intoxicated [UNDER THE INFLU-
10 ENCE OF INTOXICATING LIQUOR], the amount of alcohol in the person's
11 blood or breath at the time alleged shall give rise to the following
12 presumptions:

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

18 (2) If there was in excess of 0.05 percent but less than 0.10
19 percent by weight of alcohol in the person's blood, or in excess of 50
20 but less than 100 milligrams of alcohol per 100 milliliters of his
21 blood, or in excess of 0.05 grams but less than 0.10 grams of alcohol
22 per 210 liters of his breath, that fact does not give rise to any pre-
23 sumption that the person was or was not under the influence of intoxicat-
24 ing liquor, but that fact may be considered with other competent evidence
25 in determining whether the person was under the influence of intoxicating
26 liquor.

27 (3) (repealed)

28 (4) If there was 0.10 percent or more by weight of alcohol
29 in the person's blood, or 100 milligrams or more of alcohol per 100 mil-

1 liliters of his blood, or 0.10 grams or more of alcohol per 210 liters
2 of his breath it shall be presumed that the person was under the influ-
3 ence of intoxicating liquor.

4 * Sec. 16. AS 28.35.033(b) is amended to read:

5 (b) For purposes of this chapter [SECTION], percent by weight of
6 alcohol in the blood shall be based upon milligrams of alcohol per 100
7 cubic centimeters of blood.

8 * Sec. 17. AS 28.35.033 is amended by adding a new subsection to read:

9 (g) To be considered valid under the provisions of this section
10 the chemical analysis of the person's blood shall be performed according
11 to recognized medical practices, and if it is established at trial that
12 a chemical analysis of blood was performed according to such methods
13 there is a presumption that the test results are valid and further
14 foundation for introduction of the evidence is unnecessary.

15 * Sec. 18. AS 28.35.034 is amended to read:

16 Sec. 28.35.034. PERIOD OF REVOCATION. A person whose license or
17 permit to operate or drive a motor vehicle has been [SUSPENDED OR]
18 revoked under the provisions of AS 28.35.032 shall surrender his license
19 or permit to the department on receipt of notice of the revocation.
20 Such a person is ineligible for an operator's license or permit for
21 one year [THREE MONTHS] following the date on which the license or
22 permit was received by the department, except that if AS 28.35.032(d)
23 applies, the period of ineligibility is two years [, UNLESS THE DISTRICT
24 COURT FINDS THAT EXTENUATING CIRCUMSTANCES EXIST WHICH WOULD CAUSE
25 EXTREME HARDSHIP, IN WHICH CASE THE SUSPENSION OR REVOCATION MAY BE
26 MODIFIED OR NULLIFIED]. After the [THREE MONTHS'] period of ineli-
27 bility has expired the person may make application for a new license as
28 provided by law. During the period of ineligibility no certificate of
29 limited driving privileges may be issued and no court may order a modi-

1 fication or nullification of the revocation.

2 * Sec. 19. AS 28.35 is amended by adding a new section to read:

3 Sec. 28.35.035. PERSONS INCAPABLE OF REFUSING OR TAKING TESTS. A
4 person who is unconscious or otherwise in a condition rendering him
5 incapable of refusing a chemical test of breath, if arrested for an
6 offense arising out of acts alleged to have been committed while the
7 person was operating or driving a motor vehicle while intoxicated, is
8 nonetheless subject to a chemical test of his blood.

9 * Sec. 20. AS 28.35.260(a) is amended by adding a new paragraph to read:

10 (19) "chemical test" means a test administered to determine
11 the amount of alcohol in a person's breath or blood.