

By Mr. Jakubowicz of Pittsfield, petition of Robert F. Jakubowicz and another relative to the admissibility of evidence of refusal to submit to certain chemical tests in prosecutions involving driving while under the influence of intoxicating liquor and motor vehicle homicide. Criminal Justice.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Seven.

AN ACT PERTAINING TO THE ADMISSIBILITY OF EVIDENCE OF REFUSAL TO SUBMIT TO CERTAIN CHEMICAL TESTS IN PROSECUTIONS INVOLVING DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND MOTOR VEHICLE HOMICIDE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Paragraph (e) of subdivision (1) of section 24 of
2 chapter 90 of the General Laws, as appearing in the 1984 Official
3 Edition, is hereby further amended by striking out said paragraph
4 (e) and inserting in place thereof the following paragraph: —

5 (e) In any prosecution for a violation of paragraph (a) of this
6 subdivision or of section twenty-four G of this chapter, evidence
7 of the percentage, by weight, of alcohol in the defendant's blood
8 at the time of the alleged offense, as shown by chemical test or
9 analysis of his blood or as indicated by chemical test or analysis
10 of this breath, shall be admissible and deemed relevant to the
11 determination of the question of whether such defendant was at
12 such time under the influence of intoxicating liquor; provided,
13 however, that if such test or analysis was made by or at the
14 direction of a police officer, it was made with the consent of the
15 defendant, the results thereof were made available to him upon
16 his request, and the defendant was afforded a reasonable
17 opportunity, at his request and at his expense, to have another
18 such test or analysis made by a person or physician selected by
19 him; and provided, further, that blood shall not be withdrawn

20 from any party for the purpose of such test or analysis except by
21 a physician, registered nurse or certified medical technician. If
22 such evidence is that such percentage was five one-hundredths or
23 less, there shall be a presumption that such defendant was not
24 under the influence of intoxicating liquor, and he shall be released
25 from custody forthwith, but the officer who placed him under
26 arrest shall not be liable for false arrest, if such police officer had
27 reasonable grounds to believe that the person arrested had been
28 operating a motor vehicle upon any such way or place while under
29 the influence of intoxicating liquor; if such evidence is that such
30 percentage was more than five one-hundredths but less than ten
31 one-hundredths, there shall be no presumption; and if such
32 evidence is that such percentage was ten one-hundredths or more,
33 there shall be a presumption that such defendant was under the
34 influence of intoxicating liquor. A certificate, signed and sworn
35 to, by a chemist of the department of public safety or by a chemist
36 of a laboratory certified by said department, which contains the
37 results of an analysis made by such chemist of the percentage of
38 alcohol in such blood shall be prima facie evidence of the
39 percentage of alcohol in such blood.

40 In any prosecution for a violation of paragraph (a) of this
41 subdivision or of section twenty-four G of this chapter, evidence
42 that the defendant failed or refused to consent to a chemical test
43 or analysis of his breath shall be admissible and deemed relevant
44 to the determination of the question of whether such defendant
45 was at such time under the influence of intoxicating liquor;
46 provided, however, that the defendant is informed prior to his
47 failure or refusal to consent that his failure or refusal may be
48 admitted against him at trial in such a prosecution. No
49 presumption shall arise from this evidence but it may be
50 considered along with other matters in evidence. Evidence that
51 the defendant failed or refused to consent to the chemical test or
52 analysis shall not be admissible against him in any civil proceeding
53 other than any action by the registrar under paragraph (f) of this
54 subdivision.

1 SECTION 2. This act shall take effect upon its passage.