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**Judiciary Committee**

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**HB 3055**

**Title:** An act relating to admissibility of DUI tests.

**Brief Description:** Providing uniformity for admissibility of alcohol tests.

**Sponsors:** Representatives Holmquist, Carrell and O'Brien.

**Brief Summary of Bill**

- Makes it explicit that the implied consent law does not prevent the police from getting a search warrant for a person's breath or blood;

Removes the requirement that no breath testing device be present before a blood test may be requested by the police under certain circumstances;

Explicitly allows the required implied consent warning given at the time of arrest to be "substantially" in the language of the statute;

Expands the category of persons who may withdraw blood samples for purposes of the implied consent law; and

Sets forth in statute the criteria for admissibility of breath test evidence.

**Hearing Date:** 1/29/04

**Staff:** Bill Perry (786-7123).

**Background:**

Any person who operates a motor vehicle in this state is deemed to have given consent for a blood or breath alcohol concentration (BAC) test if he or she is arrested for driving while under the influence of alcohol or drugs (DUI). This provision in the state's motor vehicle code is known as the implied consent law.

A so-called "per se" violation of the DUI law consists of operating a motor vehicle while having a BAC of 0.08 or more for persons over the age of 21, or having a BAC of 0.02 or more for younger drivers. (The BAC measurement is of either grams of alcohol per 210 liters of breath, or grams of alcohol per 100 milliliters of blood.)

If an arresting officer has reasonable grounds to believe a driver has committed DUI, the officer may request that the driver take a BAC test. If the driver refuses the test, his or her driver's license will be administratively suspended or revoked by the Department of Licensing (DOL). If

the driver submits to the test and fails it, i.e., registers above the legal BAC limit, the DOL will also administratively suspend or revoke the license.

The arresting officer is required to inform the driver of his or her right to refuse the BAC test and of the right to have an independent test done. The officer is also required to warn the driver of some of the consequences of his or her decision regarding taking or refusing the test. Specifically, the driver must be told:

- His or her license will be revoked if the driver refuses the test; and
- His or her license will be suspended or revoked if the driver takes the test and fails it by having a BAC of over 0.08 in the case of a person 21 or older or over 0.02 in the case of a person under 21.

The implied consent law also allows the police to offer a blood test instead of a breath test under certain circumstances. The consequences for refusal of such a blood test are the same as for refusing a breath test. The circumstances under which a person may be offered a blood test instead of a breath test include:

- the driver is incapable of providing a breath test due to physical injury, incapacity, or limitation;
- the driver is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility where a breath testing instrument is not present; and
- there are reasonable grounds to believe the driver is under the influence of drugs.

The implied consent law also allows the police to administer a breath or blood test against the will of a driver under certain circumstances. These circumstances include:

- the driver is unconscious;
- the driver is under arrest for vehicular assault or homicide; and
- the driver is under arrest for DUI and was involved in an accident in which another person suffered serious bodily injury;

Withdrawal of blood for a blood test may be done only by a physician, registered nurse or qualified technician. Analysis of blood must be done in accordance with methods approved by the state toxicologist and must be done by a person with a permit from the state toxicologist.

BAC test results, or the fact of refusal to take a test, are admissible in any civil or criminal action arising out of an alleged DUI incident. Even if the test results show a BAC below 0.08 (or below 0.02 for a person under 21), the results may be introduced along with other evidence to prove that the driver was under the influence.

### **Summary of Bill:**

#### Search Warrants.

Nothing in the implied consent law prevents a police officer from getting a search warrant in order to obtain breath or blood evidence samples.

#### Absence of Breath Testing Equipment.

The absence of a breath testing device is no longer necessary before a police officer may request a blood test in lieu of a breath test when a driver is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility.

Implied Consent Warning.

The implied consent warning to be given at the time of arrest need only be "substantially" the same as the wording of the implied consent statute.

Drawing Blood.

The category of person who may withdraw blood samples is expanded to include licensed practical nurses, nursing assistants, physician assistants, first responders, emergency medical technicians, health care assistants, or any trained technician.

Admissibility of Breath Test Results.

Breath test results are admissible in a judicial or administrative proceeding if the test was performed by an instrument approved by the state toxicologist, and *prima facie* evidence is presented that:

- the test was done by a person authorized by the toxicologist;
- the person tested did not vomit, eat, drink, smoke or have any foreign substance in his or her mouth for at least 15 minutes before the test;
- the temperature of the test simulator solution was at the appropriate level as measured by a thermometer approved by the toxicologist;
- the internal standard test produced a "verified" message;
- two samples agreed to within a specified limit;
- the simulator test was within a specified range; and
- blank tests showed a .000 result.

A *prima facie* showing is one that provides evidence "of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved." Any prosecution evidence regarding the foundational facts of a breath test will be assumed to be true, and all reasonable inferences from that evidence is to be construed in a light most favorable to the prosecution.

Defense challenges to the reliability or accuracy of a breath test may not be used to prevent the introduction of the evidence once the prosecution has made a *prima facie* case. However, evidence presented by the defense in making such a challenge may be considered by the trier of fact in determining the weight to be given to the breath test results.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.