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## Judiciary Committee

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### ESSB 5819

**Title:** An act relating to operation of a vehicle, street car, rail fixed guideway system, vessel, aircraft, or other conveyance involved in an accident.

**Brief Description:** Concerning the collection of evidence of blood alcohol content from drivers involved in fatal vehicle accidents.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Finkbeiner and Kline).

#### Brief Summary of Engrossed Substitute Bill

- Requires that the operator of a motor vehicle, street car, fixed rail vehicle, vessel or aircraft that is involved in a fatal accident must submit to a test for alcohol.
- Makes it a civil infraction to refuse such a test.
- Requires hospitals to report alcohol test results to the state patrol if they show a person may have been under the influence when involved in a fatal accident.

**Hearing Date:** 4/1/03

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

#### **Background:**

##### Implied Consent Law.

Under the state's Implied Consent Law, any driver of a motor vehicle is considered to have consented to a test of his or her breath or blood for alcohol or drugs if there are reasonable grounds to believe he or she is guilty of driving under the influence. Generally, tests are to be of the breath only and are to be given only with the consent of the arrested person. However, in some cases such as where the driver is unconscious or where there has been a fatality and the driver is under arrest for vehicular homicide, a blood test may be taken against the will of the driver. Evidence obtained through a test under the Implied Consent Law is admissible in civil or criminal legal actions.

Refusing to submit to a test is not a crime, but refusal does result in the loss of driving

privileges regardless of whether criminal charges are filed and regardless of the outcome of any criminal trial if charges are filed.

The "Special Needs Exception" to the Probable Cause Requirement for a Search.

Under both the state and federal constitutions it is generally necessary for a police officer to have some individualized suspicion about a person before that person can be searched. The requirement that a police officer must have "reasonable grounds" to believe a driver is drunk before the Implied Consent Law applies is an example of a statutory recognition of these constitutional provisions.

The courts have, however, approved some types of searches even though there has been no demonstration of individualized suspicion. For example, if "special needs" exist beyond the needs of normal law enforcement, there may be justification for dispensing with the usual requirements of individualized suspicion.

Among the factors that a court may examine in determining whether a special needs search is permissible are whether:

- The search is done for some reason other than collecting evidence for a criminal prosecution;
- The type of search is a reasonable one;
- The search is conducted under circumstances in which the person has a lowered expectation of privacy;
- The reason for the search outweighs the privacy interests of the person who is being searched; and
- Obtaining a search warrant would be impracticable and would frustrate the state's interest in conducting the search.

If a search is permissible under the special needs exception, even though it has been conducted for reasons other than gaining evidence for a criminal prosecution, evidence that is collected may nonetheless be admissible in a criminal prosecution.

**Summary of Bill:**

The Legislature declares that the state has a compelling interest in preventing fatal vehicle accidents and that compelling interest creates a special need for the collection of information about drivers' alcohol concentrations in order to analyze and understand the causes of such accidents. The Legislature further declares that requiring the police to take the time to get a warrant would be impracticable and would frustrate the state's interest in the information because evidence of intoxication dissipates with time.

Any person operating a vehicle involved in a fatality accident is deemed to have consented to a test of his or her breath alcohol concentration. Refusal to submit to the test is a class 3 civil infraction subject to a fine of up to \$50. "Vehicles" include motor vehicles, street cars, light rail vehicles, vessels, and planes or trains that are not regulated by a federal agency.

Hospitals are required to send the state patrol any toxicology report that shows a hospitalized person may have been under the influence of alcohol at the time he or she was involved in a

fatality accident. The state patrol is to include this information in its annual report on vehicular accidents.

**Appropriation:** None.

**Fiscal Note:** Requested on March 27, 2003.

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