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## Judiciary Committee

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### HB 2465

**Title:** An act relating to breath test instruments approved by the state toxicologist.

**Brief Description:** Concerning breath test instruments approved by the state toxicologist.

**Sponsors:** Representatives Hurst, Rodne, Kelley, Roberts and Ericks; by request of Washington State Patrol.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Amends the statute governing when a breath test is admissible to include the use of a dry gas external standard in the breath test machines.</li></ul>
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**Hearing Date:** 1/14/10

**Staff:** Trudes Tango (786-7384).

**Background:**

The Washington State Patrol (WSP) uses an instrument called the Datamaster to test a person's breath alcohol concentration (BAC). The person is required to blow into the machine at least twice to constitute a breath test. Between the person's two samples, the machine is tested using an external standard simulator, which must produce a reading within a certain range to indicate that the machine is accurate and functioning properly. The Datamaster uses a liquid simulator solution, which is prepared by the state toxicology lab.

The Datamaster machines are no longer being manufactured. The WSP plans to use a different machine that employs a dry gas standard as an external simulator, rather than a liquid simulator solution.

The Legislature establishes criteria for the admissibility of BAC evidence. A breath test performed by an instrument approved by the state toxicologist is admissible at trial or in an

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administrative proceeding if the prosecution or the Department of Licensing produces prima facie evidence that:

- the test was done by a person authorized by the state toxicologist;
- the person tested did not vomit or have anything to eat, drink, or smoke for at least 15 minutes before the test;
- the person tested did not have any foreign substances 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 resulted in a "verified" message;
- the two breath samples agreed to within a certain range;
- the external simulator test was within a specified range; and
- all blank tests gave results of .000.

**Summary of Bill:**

The statute that lists what evidence the state must show in order for breath test results to be admissible is amended to take into consideration machines that use gas simulators as well as liquid simulator solutions.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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