
Judiciary Committee

HB 1050

Title: An act relating to operation of a vehicle, railroad, street car, vessel, or aircraft involved in a fatality.

Brief Description: Expanding implied consent to operation of a vehicle, railroad, street car, vessel, or aircraft involved in a fatality.

Sponsors: Representatives Nixon and Anderson.

Brief Summary of Bill

- Requires the operator of a motor vehicle, train, streetcar, airplane or boat to submit to a test of the alcohol or drug content of his or her blood or breath within eight hours of a fatal accident.

Hearing Date: 1/30/03

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 test (BAC) 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 the driver to take a BAC test. The officer must inform the driver of the consequences of refusing the test or of taking and failing the 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. Failure of the BAC test is sometimes referred to as an "administrative per se" violation of the DUI law. The length of the suspension or revocation escalates with successive incidents, ranging from one year for a first refusal and 90 days for a first failure, to two years for a second or subsequent refusal or failure. These administrative sanctions against a person's driving privileges are completely independent of the outcome of any criminal prosecution that may arise out of the same incident. However, BAC evidence obtained under the implied consent law may also be used as evidence in a criminal prosecution.

Generally, the implied consent law requires that BAC tests be voluntary and be taken of the breath only. However, under certain circumstances, including accidents in which serious bodily injury or death has occurred, the driver may be compelled to give a breath or blood test.

A person who causes the death of another while committing DUI is guilty of vehicular homicide.

The state's implied consent and DUI laws apply only to automobiles and have an elaborate system of procedures and penalties. However, there are prohibitions against performing certain other activities while intoxicated. For instance, it is against state law to be intoxicated while:

- operating a train or a steamboat;
- operating a vessel on water;
- driving a vehicle or animal upon a public street; or
- hunting.

Of these additional prohibitions against activities performed while intoxicated, only the prohibition against operating a vessel includes a "per se" BAC standard. The BAC limit for boating is 0.08, the same as the adult standard for motor vehicles.

Summary of Bill:

Any person who operates a vehicle, railroad, street car, or aircraft is deemed to have given consent to a BAC test if involved in a collision where:

- The death of another has ensued within eight hours; and
- The death was the proximate result of injury proximately caused by the operation of the vehicle, railroad, street car, or aircraft.

When a death has ensued, a law enforcement officer having reasonable grounds to believe the person was operating the vehicle, railroad, street car, or aircraft is to order a BAC test. The officer is also to warn the person that he or she is not to ingest drugs or alcohol for at least eight hours after the collision.

If a person refuses a test or claims to have ingested drugs or alcohol within eight hours after the collision, he or she will be presumed to have been intoxicated at the time of the collision. The person is to remain available for testing for eight hours after the collision.

Unavailability for testing creates a rebuttable presumption that the person was intoxicated at the time of the collision.

If a person's BAC is less than the legal limit of 0.08, it is evidence that may be used in determining whether the person was under the influence.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.