

SENATE BILL REPORT

SB 5523

As of February 21, 2003

Title: An act relating to operation of vehicles or vessels after taking a controlled substance.

Brief Description: Prohibiting operation of vehicles or vessels after taking schedule I or II controlled substances.

Sponsors: Senators Oke and Kline.

Brief History:

Committee Activity: Judiciary: 2/27/03.

SENATE COMMITTEE ON JUDICIARY

Staff: Aldo Melchiori (786-7439)

Background: It is negligent driving in the first degree if a person operates a motor vehicle that is negligent and likely to endanger a person or property while exhibiting the effects of consuming alcohol or an illegal drug. A defense is available if the operator was using the drug pursuant to a valid prescription. Vehicular homicide and vehicular assault may also be charged in appropriate circumstances when a person operates a motor vehicle while under the influence of alcohol or drugs.

Eight states currently have what are referred to as *per se* laws that make it a criminal offense to have a drug or metabolite in one's body while operating a motor vehicle. These are called "zero tolerance laws." Five states make it illegal for any drug addict or habitual user to drive a vehicle. The legal distinction of *per se* laws is that they do not require a showing of an association between the presence of drugs or metabolites in the operator's system and a driving impairment.

Summary of Substitute Bill: A person is guilty of driving under the influence if the person operates a motor vehicle that is involved in an accident causing injury or death to a person or property damage and the person has a schedule I or II controlled substance, metabolite, or analog in his or her body at the time. A person is guilty of being in physical control of a vehicle under the influence under the same circumstances. It is an affirmative defense to each of these provisions that the drug was being used according to a valid prescription, including directions and warnings. The affirmative defense must be proved by a preponderance of the evidence.

A person is deemed to have given consent to a blood test for determining the presence of drugs if the arresting officer has reason to believe the person operated the motor vehicle that is involved in an accident causing injury or death to a person or property damage while the person had a schedule I or II controlled substance, metabolite, or analog in his or her body at the time. All of the implied consent and driver's license suspension provisions apply.

A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if the person is convicted of driving a commercial motor vehicle that is involved in an accident causing injury or death to a person or property damage and the person has a schedule I or II controlled substance, metabolite, or analog in his or her body at the time.

A person is guilty of operating a vessel (either recreational or commercial) under the influence if the vessel is involved in an accident causing injury or death to a person or property damage and the person has a schedule I or II controlled substance, metabolite, or analog in his or her body at the time. Under either of these crimes, the fact that the person is or was entitled to use the drug does not constitute a defense.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Available.

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