

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1529/1dn
RPN:cmh&kg:jf

January 7, 1999

Kent:

I made a few minor changes in the wording of s. 346.71 (2g) (b) 1. and 2. for clarity. The remainder of this note is the same note that I sent to you in the last session.

As we discussed in our telephone conversations in response to your questions, the content of this bill may be subject to close scrutiny because the bill requires persons to submit to blood testing without their consent. The U.S. Supreme Court considers the taking of blood for the purpose of determining the presence of drugs such as alcohol as a search and therefore subject to the prohibition against unreasonable searches in Amendment IV to the U.S. Constitution. The court has permitted blood tests to determine the presence of drugs such as alcohol in some situations, such as in customs officers and high school athletes, when the court felt that the search was reasonably related to the circumstances that justified the interference. See the pages of the court decisions I sent earlier for more details.

In this bill, the circumstances are related to driving a motor vehicle, a highly regulated behavior, and the reason is to collect information to better address the use of drugs while driving, a major concern of the state. However, the persons being required to submit to the testing are not under suspicion of wrongdoing, so the major intrusion of that person's privacy by the taking of blood may incline the court to find that the search violates Amendment IV. I hesitate to say what the court would say if this issue was litigated.

I have tried to make the bill less subject to a constitutional challenge by adding implied consent language and by prohibiting the use of the information as evidence in any criminal action related to the accident.

Robert P. Nelson
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