

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4053/2dn
PJH:kjf:pg

January 17, 2006

Senator Lazich:

Please review this draft to ensure that it satisfies your intent. I have changed, slightly, the language we discussed last week in order to make the proposed law consistent with current law. Under current law, a law enforcement officer must have "probable cause" (but less than the probable cause needed to arrest) to suspect that a driver is OWI in order to request a breath test under ordinary circumstances. However, if the driver is driving a commercial vehicle or is on commercial duty time, an officer can request a test if the officer detects any presence of alcohol or drugs on the driver. I believe that this is a lower standard than the "probable cause" needed to test ordinary drivers.

Therefore, I have repeated the "detects any presence of alcohol or other drugs" language in the statute proposed for drivers involved in a serious accident. I believe that this accomplishes your intent of having a lower standard of proof before testing these drivers without running afoul of due process requirements. It is still uncertain, however, whether a court would find that the lower standard is appropriate for every driver involved in a serious accident. I do believe that this would be more acceptable than simply testing each driver without regard to any proof or suspicion of drunken or drugged driving. Please let me know if you have any questions or concerns.

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