

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2165

2007 SENATE TRANSPORTATION

SB 2165

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2165

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number: 1917

Committee Clerk Signature

*Jody Hauge*

Minutes:

**Chairman Gary Lee** opened the hearing on SB 2165 relating to the chemical test of a driver in an accident. Five committee members were present and Senator Andrist was absent.

**Senator Heitkamp** introduced the bill and told why he was sponsoring it. An incident in his district prompted him to sponsor this bill that would require a blood test to determine the alcohol concentration or the presence of other drugs or substances

**Larry Wayman**, Ransom County, testified in support of SB 2165. He told the committee that in a two week time period his family had two accidents both involving the same person running into members of his family. The first accident involved his adult son who was traveling with a stock trailer and he was hit by a driver. In his observation the driver was "wired" but the Sheriff didn't do anything even after the driver commented he didn't have insurance. Two weeks later the same driver hit Mr. Wayman and his grandson. His thirteen year old grandson died in the accident. The State Trooper said that there would be a blood test on the driver. Two days later Mr. Wayman called the Sheriff to get the results of the blood test and was told by the Sheriff that a blood test was not taken. The deputy had walked around the driver and didn't smell anything so decided he did not need a blood test. The blood test was never ordered. Mr. Wayman believes his grandson would be alive today if a blood test would have been taken

at the first accident scene and if the driver at that time would have been asked about his insurance. He should not have even been driving. Mr. Wayman feels that SB 2165 would help save some lives and asked that the committee vote in favor of SB 2165.

**Lynn Heinert**, North Dakota Department of Transportation spoke in support of SB 2165.

**Senator Potter** asked how they would decide who should be tested.

**Mr. Heinert** said that they would like to see all drivers in accidents tested.

**Senator Nething** asked if the investigating officer makes the decision. And he asked about override and if this should be covered

**Mr. Heinert** said it should be covered the way it is written but the local officials have to follow it.

**Senator Fiebiger** said that federal rules already cover the testing of commercial drivers and railroad engineers.

**Fred Wooten**, law enforcement also signed the registration in support of SB 2165.

There was no opposition and no neutral testimony.

**Senator Lee** closed the hearing on SB 2165.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2165

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number 2316

Committee Clerk Signature

*Jody Hauge*

Minutes:

**Senator Gary Lee** called the committee to order to discuss SB 2165 on January 25, 2007, at 10:35AM.

**Senator Nething** commented that there had been no opposition testimony to SB 2165.

**Senator Fiebiger** thought that this bill would be a good start.

**Senator Potter** wondered if the words probable cause made the wording in the bill toothless and if should be stronger language. Discussion followed on the testimony and the wording.

**Senator Fiebiger** said the word probable cause was strong.

**Senator Bakke** moved a do pass of SB 2165 and refer it to appropriations.

**Senator Fiebiger** seconded the motion.

The clerk took the roll. 5-0-1 Senator Andrist was absent.

**Senator Bakke** will carry the bill.

# FISCAL NOTE

Requested by Legislative Council

03/05/2007

Amendment to: SB 2165

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>			\$7,300		\$7,665	
<b>Appropriations</b>			\$7,300		\$7,665	

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill requires law enforcement to obtain blood, breath, saliva or urine from the driver in a serious accident to determine the alcohol concentration or the presence of other drugs or substances.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Currently, law enforcement may, but is not required, to compel the driver in a serious accident to provide blood, breath, saliva or urine to test for alcohol, drugs or other substances.

This bill would result in additional samples to be tested by the Crime Lab of about 40 per biennium. In addition, temporary assistance would be needed to provide current staff with some help in working with the samples.

Without additional staff, passage of this bill will result in a 10% per year increase in the turnaround time for these samples, which will extend the period in which a death certificate can be issued to approximately 59 days. This would delay action to be taken as a result of the death.

As amended, the bill's fiscal effect does not change.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Expenditures include temporary assistance and laboratory supplies. As amended, the fiscal impact of this bill remains the same.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation did not include any funding for this purpose.

As amended, the fiscal impact of this bill remains the same.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	03/05/2007

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/22/2007

Bill/Resolution No.: SB 2165

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>			\$7,300		\$7,665	
<b>Appropriations</b>			\$7,300		\$7,665	

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill requires law enforcement to obtain blood, breath, saliva or urine from the driver in a serious accident to determine the alcohol concentration or the presence of other drugs or substances.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Currently, law enforcement may, but is not required, to compel the driver in a serious accident to provide blood, breath, saliva or urine to test for alcohol, drugs or other substances.

This bill would result in additional samples to be tested by the Crime Lab of about 40 per biennium. In addition, temporary assistance would be needed to provide current staff with some help in working with the samples.

Without additional staff, passage of this bill will result in a 10% per year increase in the turnaround time for these samples, which will extend the period in which a death certificate can be issued to approximately 59 days. This would delay action to be taken as a result of the death.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Expenditures include temporary assistance and laboratory supplies.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation did not include any funding for this purpose.



<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	01/24/2007

Date: 1-25-07  
 Roll Call Vote #: 2165  
 5-0-1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO.

Senate Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number 2165

Action Taken do pass refer to Appropriations

Motion Made By Senator Bakke Seconded By Senator Fiebiger

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		Senator JoNell Bakke	✓	
V Ch John Andrist			Senator Tom Fiebiger	✓	
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Bakke

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2165: Transportation Committee (Sen. G. Lee, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2165 was rereferred to the Appropriations Committee.**

2007 SENATE APPROPRIATIONS

SB 2165

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2165

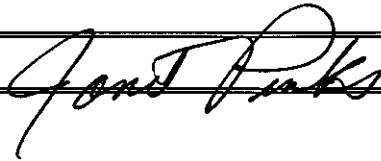
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 01/31/07

Recorder Job Number: 2355

Committee Clerk Signature



Minutes:

**Chairman Holmberg** opened the hearing on SB 2165, welcoming the students representing Mohall, Lansford and Sherwood.

**Senator Robert S. Eberle, District 28, Lehr**, introduced SB 2165, indicating he had signed on to and supports the bill because of Senator Heitkamp's influence.

**Senator Robinson** indicated Senator Heitkamp had discussed SB 2165 and indicated events that led up to the introduction of the bill.

**Senator Mathern** indicated that perhaps this should be referred to the Attorney General's budget since it is a law enforcement issue. He also wondered if it had been heard by the policies committee. The response was it had been heard by transportation.

**Chairman Holmberg** indicated the bill was straight forward enough.

**Senator Robinson moved a DO PASS on SB 2165, Senator Fischer seconded.**

**Senator Bowman** stated that if this is mandatory and we are going to pay for it that if a party is found guilty, they should pay for the test. In response, another bill was discussed as an analogy. Additional discussion took place.

**A roll call vote was taken resulting in 13 yes, 0 no, and 1 absent. The motion passed.**

**Senator Bakke will carry the bill.**

**Chairman Holmberg** closed the hearing on SB 2165.

Date: 1/31/07  
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2165

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Robinson Seconded By Fischer

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson	✓	
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) # 13 No 0

Absent 321

Floor Assignment Bakke TRN

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 31, 2007 10:56 a.m.

**Module No: SR-20-1615**  
**Carrier: Bakke**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2165: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS**  
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2165 was placed on the  
Eleventh order on the calendar.

2007 HOUSE TRANSPORTATION

SB 2165



## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2165

House Transportation Committee

Check here for Conference Committee

Hearing Date: 02-23-2007

Recorder Job Number: 3736

Committee Clerk Signature

*Lisa M Thomas*

Minutes:

**Chairman Weisz opened the hearing on SB 2165. SB 2165 relates to chemical test of a driver in an accident.**

**Senator Heitkamp** introduced the bill.

**Senator Heitkamp:** This is a companion bill to the one that relates to proof of insurance.

This bill deals with what law enforcement does in terms of an accident with serious bodily injury or death. What this bill does is it says that they are going to test blood. There were some questions raised. I think it needs to be stated. After these bills were heard in the Senate, this has been a highly visible case in the Red River Valley. It needs to be pointed out that the highway patrol was right on this all along. It also needs to be pointed out that there were questions in regards to how the local sheriff might have handled this. It is legitimate, that sheriff is no longer in office. But there were questions on how he might have handled it and that is why the bill is here. As I said when Larry called me and said I want you to put this bill in, I assumed that any trooper would do that anyway. In this particular case, the county stepped in and it didn't happen. I think he has a legitimate concern and he certainly has the right after the story you heard yesterday and what you are going to hear today. I would think that for that piece of mind that's why this bill is a good bill. Most law enforcement will say that they would

do that anyways. In certain instances that didn't happen. Something else needs to be mentioned too. I got an email from a teacher in the Enderlin school district where these children knew this young man that Larry is about to talk about. These girls were in the vehicle with him and it has really changed their lives. I sent an email back to them saying that these bills are not about fault with those girls and that they need closure on the accident as well as do Larry. Hopefully this will do something positive in the future with something bad that has happened. That is why I sponsored the bill.

**Rep. Weisz:** As I read it, all we are really doing, because the police already have the ability to compel someone now, this just mandates it, right?

**Sen. Heitkamp:** Yes. I thought about that. We debated on the phone (he and Larry Wayman). He wanted this bill this way and I thought about it in terms of you and I getting in an accident this afternoon and a trooper pulls up and he knows that there is no problem with either one of us, do you then need to be in a position where one of us or both of us have to go get blood drawn? I thought that is a pretty small price to pay.

**Rep. Weisz:** I guess now days that is not such a big thing if you are in an accident.

**Rep. Brandenburg** spoke in support of the bill.

**Rep. Brandenburg:** I am also here to support SB 2165. I really look at it as this is about making the roads safer and taking people who are impaired drivers that have drank too much or are on drugs getting them off of the road, so when there is an accident they are not out there causing another accident. I support this bill.

**Larry Wayman** spoke in support of the bill.

**Wayman:** I still have to go back to April 24<sup>th</sup> that is when it all started in 2006. I got a call at 7:15 in the morning from my son and said that this kid comes flying at me and hit me and I don't know if he's injured so I called 911 for him and I went out there. When I got there, my

son's vehicle had been and the trailer that he was pulling. The kid that hit him was going so fast that it took almost half to three-quarters of a mile for him to even stop. When the deputy sheriff came up there the kid jumped out of the pickup and he started rambling on and he was wired. The deputy kept telling him to shut up. He said "I'm sorry I caused the accident, I blacked out, I fell asleep and I don't have any insurance." They told him to shut up and get into his vehicle. Then he got my son into the vehicle. A few months later my son comes back and I thought he took the kid over to Lisbon and tested him and I talked to my son and what the deputy did was he called the father and took the kid straight home. All he did was a couple of days later, he wrote the kid up for undue care. My son was kind of angry about that and like I said he called the state trooper and talked to them and in the mean time the kid was just driving around again just raising hell. Less than a couple of weeks later I went to Enderlin school to pick my son up (I call him my son, but he is my grandson) I have raised him. We started heading out on the country road toward Shelbing and that is when all of this happened. I found out later, after all of this, I questioned the State's Attorney about what was going on and I didn't find out too much until my family and I were sitting in the court room where he was charged with vehicular homicide and four counts of reckless endangerment and Judge Gross asked the State's Attorney right out what I had been trying to find out. What were the results of the blood test? All he could say was that the highway patrol ordered it and the Sheriff stopped it because he went by the kid and couldn't smell drugs or alcohol so he deemed it not necessary. I thought this is ridiculous. This kid was known to use drugs and drink and he did what they call "Get high and fly". He didn't go to school. He was out just raising hell on vehicles. Like I said that was a hard way to find out that twice that kid skated on us. He should have been tested and would have been stopped had the local law enforcement done their job. The reason I am doing this is because as I was laying there in that vehicle holding Joe and

watched him die in my arms, I said that this can't happen to anybody else. This is not right. We need to get these people off of the road and stop them before they kill and injure other innocent children. We need to prevent anybody else from going through the hell that I've had to of losing a son, it's hard. It should be mandatory. A lot of people skate on that. The judge cannot do anything because the blood test had been stopped. Without any of this his hands are tied.

**Lynn Heinert, DOT,** spoke in support of the bill.

**Heinert:** I am before you this morning to let you know that the department is in favor of this bill. With that, if you have any questions I will try to answer them.

**There were no questions from the committee.**

**There was no further support for the bill and there was no opposition.**

**The hearing was closed.**

**Rep. Kelsch moved a DO PASS. Rep. Delmore seconded.**

**Rep. Gruchalla:** The law isn't going to change that the officer at the scene has to have probable cause to believe that the driver is driving under the influence of alcohol. That won't change. It just changes the wording from "may" to "shall". So really, in a lot of cases the officer still has the discretion to discover with the odor of alcohol or a guy is under the influence of drugs. I think we are still going to have a problem with this section. Especially in the drug area. You can't always smell drugs and some you can't tell by looking at the. If it's a commercial driver it's different. In an ideal world this should be that if you are in a serious injury accident or fatality, then you go get a test. This is better probably than what we have but it's not the final answer.

**Rep. Kelsch:** You know I think that if law enforcement would have known that if we would have had this on the books and you had a young person involved in this accident that was

rambling and you know seemed as though they were out of control regardless of whether you smelled something or not, I think that the law enforcement probably would have erred on the side you know of I'm going to get them in for a blood test rather than just "may" I think when it says "shall" you know I think that law enforcement in cases like that are probably going to err on the side of being more aggressive than they currently are. I think that you know if you'd have had a kid and granted you know some of it is you know you are nervous or you know but the description that we heard, it really sounds more to me like you know there was really something going on with that kid. Law enforcement should have noticed that it wasn't just I had an accident and I'm upset, I don't know.

**Rep. Gruchalla:** That is true, but in this case and a lot of different cases, it's because of who the kid is. In this case it happened to be a friend of the Sheriff so it was kind of a cover up. I am just saying that in standard DUI time, it is still discretionary on the officer. It doesn't say that you have to be arrested here. Now you have to be under arrest before you can get a blood test or suspicion of DUI.

**Rep. Weisz:** If you eliminate the language starting on line that there is probable cause 390801 basically what it will say is that if there is someone involved in an accident resulting in death or serious bodily injury, then law enforcement officer investigating shall compel the driver. That is an option. Is there a down side to that? That would take the discretion of probable cause out.

**Rep. Gruchalla:** I think that might be a legal question, but that would be wonderful, but I think the Attorney General might have to visit with him on that.

**Rep. Weisz:** (To Lynn Heinert): Do you have, would that language affect you guys in any way?

**Heinert:** When this bill was first introduced and from the department's standpoint, we agree with what Rep. Gruchalla is saying. The department would like to see all drivers involved in

serious bodily injury and death tested. We looked at changing probable cause to reasonable suspicion but we end up with some due process questions regarding the driver's right.

There would have to be some legislation to protect the driver's due process right.

**Rep. Weisz:** We have two choices. We can hold this bill and get the A.G.'s opinion or we can pass it out as is.

**Rep. Owens:** I understand the concern about the A.G.'s opinion but the testimony just now was talking about changing probable cause to suspicion or what not, but based on what you said Mr. Chairman, taking that out, it seems like to me that the accident involving death or serious bodily injury, you know, is the probable cause in and of itself and taking that sentence out and since driving is a privilege, it's not a right, I don't see a problem with it at all personally.

**Rep. Price:** I would like to make it however loophole frees as we can. It happened to my son-in-law and they didn't test the other driver because she was in her thirties and he was in college and obviously they assumed he is in the wrong and he just about lost both legs.

**Rep. Gruchalla:** I could go back to other times where we have gotten to the scene of an accident and the driver is gone in the ambulance, so you don't get an opportunity to look at the driver and many times you try to call the hospital to see if they smell alcohol and try to get another officer there, but by the time he is in the emergency room and as soon as they hook a tube up to him, you loose your blood because he is contaminated so you can't get a test and they don't hold a guy until you can establish if he's been drinking, so it is a big issue. This situation happens all the time so if there is way that we could get this bill to that point where you could just do that, that would be the ultimate answer.

**Rep. Weisz:** The only other option would be if we pass it out amended and then put it in conference committee. That gives us time to get to the A.G.'s office.

**Rep. Delmore:** Are they aware of any other state that has taken all of this out of there?

**Rep. Weisz:** I am getting the nod yes from Lynn Heinert.

**Heinert:** I know there are other states.

**Rep. Delmore:** That would already be in place right now would it not?

**Rep. Weisz:** Correct.

**Rep. Schmidt:** This is urgent, why don't we put an emergency clause on it?

**Rep. Gruchalla:** I think we have the same issue with getting this into place and training and stuff. The sooner the better.

**Rep. Schmidt:** We've got the people here, can we ask them?

**Rep. Weisz:** If we make the amendment, I can ask that it go into conference committee, if there is an issue with that and the emergency clause. I have no problem with attaching an emergency clause or an earlier date. Right now we need to know what the committee's wishes are.

**Rep. Thorpe:** Did you have some ideas of an amendment Rep. Price?

**Rep. Price:** We had two suggestions, reasonable suspicion or just removing the language, but I guess maybe in thinking about it maybe we should hold it. I would hate to lose the bill on the floor because of questions. I want to do it right the first time.

**Rep. Kelsch:** I'll withdraw my motion. You know I have to say I agree. I think that there are people on the floor that will be very opposed to this that you know regardless of what kind of an accident it is you know you are going to have a blood test. So I think we need to. Right.

**Rep. Weisz:** Rep. Gruchalla, I am going to ask you get together with the A.G's office about our language.

**Rep. Delmore withdrew her second.**

**The motion was withdrawn without a vote. No action was taken at this time. The hearing was closed.**

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2165

House Transportation Committee

Check here for Conference Committee

Hearing Date: 02-23-2007

Recorder Job Number: 3737

Committee Clerk Signature

*Lisa M Thomas*

Minutes:

**Chairman Weisz allowed committee discussion on SB 2165. SB 2165 relates to chemical test of a driver in an accident.**

**Rep. Heitkamp** was called back into the committee room.

**Rep. Weisz:** Do you have a problem with the amendments proposed today?

**Sen. Heitkamp:** He (Larry Wayman) wants something and to be able to walk away with something tragic and say "I did something about it". So what you do, I think some of these questions were raised on the Senate side and some of what Rep. Kelsch said was pretty accurate in terms of how you may and what you may find out. Do your homework and do what you can to get him something to remember his son. It really was his son, he raised him.

**Rep. Weisz:** To me it's not an issue because if we can do it for CDL it's hard to argue with a constitutional thing.

**Sen. Heitkamp:** It may have something to do with the federal mandate.

There was no further discussion and the committee did not take action at this time.



## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2165

House Transportation Committee

Check here for Conference Committee

Hearing Date: 03-02-2007

Recorder Job Number: 4276

Committee Clerk Signature

*Lisa M Thomas*

Minutes:

**Chairman Weisz allowed committee discussion on SB 2165. SB 2165 relates to chemical test of a driver in an accident.**

**Rep. Weisz:** For the committee's information, there was discussion with needing an A.G's opinion. I was in his office and asked him about it and he was familiar with it and as far as he was concerned there was no need for us to get an opinion if there was no issue. Obviously if we still want one, we can still request it. He said we are doing it now on CDL's and you can't have a constitutional conflict with those and it is either okay or it isn't. Since we are already doing it, it's not an issue as far as he is concerned, but again, if you are still uncomfortable we can get that opinion.

**Rep. Kelsch:** Are you talking about the probable cause part of it?

**Rep. Weisz:** Right.

**Rep. Kelsch:** Does it do anything for due process?

**Rep. Weisz:** He said there have been concerns about due process. Again as far as this being a policy issue, but not a legal issue. Obviously you can make a debate on a policy issue whether we are going beyond where we should be for due process.

**Rep. Ruby:** As I read this today and I missed testimony because I was testifying on another bill. When there is probable cause and it said they "may be compelled", and now they are going to say they "shall compel" the driver to submit. If there was probable cause, what is it really changing? If they have probable cause did they not request this?

**Rep. Gruchalla:** The change that is on here wouldn't change anything. What we have envisioned now is making it take out the probable cause part of it and just say "in a serious bodily injury or fatality accident the driver shall submit to a chemical test". We looked up the law in Illinois and it says that the driver who is involved and serious injured shall be enough to compel them to take a test. That has been through their court. We think this would get around it.

**Rep. Vigesaa: (To Rep. Gruchalla):** The term serious bodily injury is that something that is in code?

**Rep. Weisz:** It is defined in statute.

**Rep. Ruby:** I have a little problem with the seventy-three hundred dollar cost associated with it. For instance, if you have an elderly woman that is driving and she gets into an accident they are required no matter what her situation is, they are going to be required to pay the cost to test her when there is probably absolutely no indication that it would have to be done. That concerns me with requiring it in every situation when it takes away from the police officer the ability to look at the situation. If he has probable cause or any indication that he is going to do it, I'm sure they do.

**Rep. Weisz:** The grandma could be taking a combination of prescription drugs that cause an accident.

**Rep. Kelsch:** Well, Rep. Ruby was kind of going on you know this is something that I kind of talked about this weekend and trying to go through this because I know what we are trying to

