

# HOUSE RESEARCH

## Bill Summary

**FILE NUMBER:** H.F. 1035

**DATE:** April 3, 2003

**Version:** As introduced

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**Subject:** DWI Breath Testing Instruments

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### Overview

The primary change in this bill relates to establishing a clear statutory standard for when a DWI breath test is deemed deficient. A breath test is conducted in the following order: (1) a DWI suspect provides a breath sample by blowing into a tube attached to an instrument that analyzes the percentage of alcohol in the sample; (2) the instrument then runs a separate control test on a sample with a known alcohol content; and (3) the DWI suspect provides a second breath sample. The two breath samples are used to establish the alcohol concentration in the suspect's system. According to the bureau of criminal apprehension (BCA) and law enforcement officers, some DWI offenders make an effort to manipulate the results of a breath test by altering the manner in which they supply breaths for the test, such as providing a deep, powerful breath on the first sample and a very shallow, weak breath on the second sample. This bill establishes a policy that if the two samples are more than 0.02 apart in alcohol concentration, the test is deficient. According to the BCA, the tests will only be that far apart if a DWI suspect is intentionally trying to manipulate the results.

### Section

- 1 Infrared or other approved breath testing instrument.** Conforming change.
- 2 Other competent evidence admissible.** Conforming change.
- 3 Breath test using approved breath-testing instrument.** Provides that a breath test consisting of two separate, adequate breath samples within 0.02 alcohol concentration is acceptable. If the breath samples are not within 0.02, the test is deemed deficient.

**Section**

Requires the administration of a second breath test if the first one is deficient.

Provides that two deficient breath tests constitute a refusal.

**4      Impaired driving-related rules.** Provides that the commissioner may adopt expedited rules indicating the approval of DWI-related testing instruments.

**5      Flying while impaired.** Conforming change to the laws relating to flying while impaired.

**6      Admission into evidence of results of approved breath tests.** Conforming change in the chapter relating to special evidentiary rules.