

First Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 07-0699.01 Stephen Miller

SENATE BILL 07-154

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SENATE SPONSORSHIP

Morse,

HOUSE SPONSORSHIP

(None),

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Senate Committees  
Judiciary

House Committees

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A BILL FOR AN ACT

101      **CONCERNING THE AUTHORITY OF A LAW ENFORCEMENT OFFICER**  
102            **UNDER THE EXPRESS CONSENT LAW TO REQUEST A DRIVER TO**  
103            **TAKE A TEST OTHER THAN THE TEST ELECTED BY THE DRIVER**  
104            **FOR THE PURPOSE OF DETERMINING THE DRIVER'S ALCOHOL**  
105            **CONTENT.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Requires a law enforcement officer who has requested a suspected drunk driver to take a test to determine blood or breath alcohol content to request and direct the driver to take a test other than what the driver has

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

elected if the officer determines there are extraordinary circumstances that prevent the completion of the elected test within the required 2-hour time period. Specifies that the driver's decision to change the test election to comply with the officer's request shall not be deemed a refusal to submit to testing. Specifies that the failure to comply with the officer's request shall be deemed a refusal to submit to testing.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 42-4-1301.1 (2) (a), Colorado Revised Statutes, is  
3 amended, and the said 42-4-1301.1 (2) is further amended BY THE  
4 ADDITION OF A NEW PARAGRAPH, to read:

5 **42-4-1301.1. Expressed consent for the taking of blood, breath,**  
6 **urine, or saliva sample - testing.** (2) (a) (I) ~~Any~~ A person who drives  
7 ~~any~~ A motor vehicle upon the streets and highways and elsewhere  
8 throughout this state shall be required to take and complete, and to  
9 cooperate in the taking and completing of, any test or tests of ~~such~~ THE  
10 person's breath or blood for the purpose of determining the alcoholic  
11 content of the person's blood or breath when so requested and directed by  
12 a law enforcement officer having probable cause to believe that the  
13 person was driving a motor vehicle in violation of the prohibitions against  
14 DUI, DUI per se, DWAI, habitual user, or UDD. Except as otherwise  
15 provided in this section, if a person who is twenty-one years of age or  
16 older requests that ~~said~~ THE test be a blood test, then the test shall be of  
17 his or her blood; but, if ~~such~~ THE person requests that a specimen of his  
18 or her blood not be drawn, then a specimen of ~~such~~ THE person's breath  
19 shall be obtained and tested. A person who is under twenty-one years of  
20 age shall be entitled to request a blood test unless the alleged violation is  
21 UDD, in which case a specimen of ~~such~~ THE person's breath shall be  
22 obtained and tested, except as provided in subparagraph (II) of this

1 paragraph (a).

2 (II) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (a.5) OF THIS  
3 SUBSECTION (2), if a person elects either a blood test or a breath test, ~~such~~  
4 THE person shall not be permitted to change ~~such~~ THE election, and, if  
5 ~~such~~ THE person fails to take and complete, and to cooperate in the  
6 completing of, the test elected, ~~such~~ THE failure shall be deemed to be a  
7 refusal to submit to testing. If ~~such~~ THE person is unable to take, or to  
8 complete, or to cooperate in the completing of a breath test because of  
9 injuries, illness, disease, physical infirmity, or physical incapacity, or if  
10 ~~such~~ THE person is receiving medical treatment at a location at which a  
11 breath testing instrument certified by the department of public health and  
12 environment is not available, the test shall be of ~~such~~ THE person's blood.

13 (III) If a law enforcement officer requests a test under this  
14 paragraph (a), the person must cooperate with the request such that the  
15 sample of blood or breath can be obtained within two hours of the  
16 person's driving.

17 (a.5) (I) IF A LAW ENFORCEMENT OFFICER WHO REQUESTS A  
18 PERSON TO TAKE A BREATH OR BLOOD TEST UNDER PARAGRAPH (a) OF  
19 THIS SUBSECTION (2) DETERMINES THERE ARE EXTRAORDINARY  
20 CIRCUMSTANCES THAT PREVENT THE COMPLETION OF THE TEST ELECTED  
21 BY THE PERSON WITHIN THE TWO-HOUR TIME PERIOD REQUIRED BY  
22 SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (2), THE  
23 OFFICER SHALL INFORM THE PERSON OF THE EXTRAORDINARY  
24 CIRCUMSTANCES AND REQUEST AND DIRECT THE PERSON TO TAKE AND  
25 COMPLETE THE OTHER TEST DESCRIBED IN PARAGRAPH (a) OF THIS  
26 SUBSECTION (2). THE PERSON SHALL THEN BE REQUIRED TO TAKE AND  
27 COMPLETE, AND TO COOPERATE IN THE COMPLETING OF, THE OTHER TEST.

1           (II) A PERSON WHO INITIALLY REQUESTS AND ELECTS TO TAKE A  
2 BLOOD OR BREATH TEST, BUT WHO IS REQUESTED AND DIRECTED BY THE  
3 LAW ENFORCEMENT OFFICER TO TAKE THE OTHER TEST BECAUSE OF THE  
4 EXTRAORDINARY CIRCUMSTANCES DESCRIBED IN SUBPARAGRAPH (I) OF  
5 THIS PARAGRAPH (a.5), MAY CHANGE HIS OR HER ELECTION FOR THE  
6 PURPOSE OF COMPLYING WITH THE OFFICER'S REQUEST. THE CHANGE IN  
7 THE ELECTION OF WHICH TEST TO TAKE SHALL NOT BE DEEMED TO BE A  
8 REFUSAL TO SUBMIT TO TESTING.

9           (III) IF THE PERSON FAILS TO TAKE AND COMPLETE, AND TO  
10 COOPERATE IN THE COMPLETING OF, THE OTHER TEST REQUESTED BY THE  
11 LAW ENFORCEMENT OFFICER PURSUANT TO SUBPARAGRAPH (I) OF THIS  
12 PARAGRAPH (a.5), THE FAILURE SHALL BE DEEMED TO BE A REFUSAL TO  
13 SUBMIT TO TESTING.

14           (IV) (A) AS USED IN THIS PARAGRAPH (a.5), "EXTRAORDINARY  
15 CIRCUMSTANCES" MEANS CIRCUMSTANCES BEYOND THE CONTROL OF, AND  
16 NOT CREATED BY, THE LAW ENFORCEMENT OFFICER WHO REQUESTS AND  
17 DIRECTS A PERSON TO TAKE A BLOOD OR BREATH TEST IN ACCORDANCE  
18 WITH THIS SUBSECTION (2) OR THE LAW ENFORCEMENT AUTHORITY WITH  
19 WHOM THE OFFICER IS EMPLOYED.

20           (B) "EXTRAORDINARY CIRCUMSTANCES" INCLUDE, BUT SHALL NOT  
21 BE LIMITED TO, WEATHER-RELATED DELAYS, HIGH CALL VOLUME  
22 AFFECTING MEDICAL PERSONNEL, AND OTHER CIRCUMSTANCES THAT  
23 PRECLUDE THE TIMELY COLLECTION AND TESTING OF A BLOOD OR BREATH  
24 SAMPLE BY A QUALIFIED PERSON IN ACCORDANCE WITH LAW.

25           (C) "EXTRAORDINARY CIRCUMSTANCES" DO NOT INCLUDE  
26 INCONVENIENCE, A BUSY WORK LOAD ON THE PART OF THE LAW  
27 ENFORCEMENT OFFICER OR LAW ENFORCEMENT AUTHORITY, MINOR DELAY

1 THAT DOES NOT COMPROMISE THE TWO-HOUR TEST PERIOD SPECIFIED IN  
2 SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (2), OR  
3 ROUTINE CIRCUMSTANCES THAT ARE SUBJECT TO THE CONTROL OF THE  
4 LAW ENFORCEMENT OFFICER OR LAW ENFORCEMENT AUTHORITY.

5 **SECTION 2. Effective date - applicability.** This act shall take  
6 effect July 1, 2007, and shall apply to offenses committed on or after said  
7 date.

8 **SECTION 3. Safety clause.** The general assembly hereby finds,  
9 determines, and declares that this act is necessary for the immediate  
10 preservation of the public peace, health, and safety.