

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 07-0699.01 Stephen Miller

SENATE BILL 07-154

SENATE SPONSORSHIP

Morse,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

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.**

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.

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, POWER OUTAGES, MALFUNCTIONING
23 BREATH TEST EQUIPMENT, AND OTHER CIRCUMSTANCES THAT PRECLUDE
24 THE TIMELY COLLECTION AND TESTING OF A BLOOD OR BREATH SAMPLE BY
25 A QUALIFIED PERSON IN ACCORDANCE WITH LAW.

26 (C) "EXTRAORDINARY CIRCUMSTANCES" DO NOT INCLUDE
27 INCONVENIENCE, A BUSY WORK LOAD ON THE PART OF THE LAW

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

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

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