

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

**PREAMENDED**

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

LLS NO. 08-0926.01 Jerry Barry

**SENATE BILL 08-140**

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**SENATE SPONSORSHIP**

**Shaffer,**

**HOUSE SPONSORSHIP**

**Fischer,**

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**Senate Committees**

Judiciary  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING TOXICOLOGY TESTS FOLLOWING SERIOUS TRAFFIC**  
102 **ACCIDENTS.**

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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 to request and direct that a person involved in a traffic accident that results in the death or serious bodily injury of another person take a test or tests to determine the alcoholic or drug content of the person's breath, blood, saliva, or urine. Provides that, at a trial for a criminal offense, the results of the test or tests are admissible only if the court finds probable cause, independent of the test results, to believe that the person was driving a motor vehicle

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.*

while under the influence of alcohol or drugs.

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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), Colorado Revised Statutes, is  
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4       **42-4-1301.1. Expressed consent for the taking of blood, breath,**  
5 **urine, or saliva sample - testing.** (2) (c) (I) A LAW ENFORCEMENT  
6 OFFICER SHALL REQUEST AND DIRECT THAT A PERSON WHO DRIVES A  
7 MOTOR VEHICLE UPON THE STREETS AND HIGHWAYS AND ELSEWHERE  
8 THROUGHOUT THIS STATE, AND WHO, WHILE DRIVING, IS INVOLVED IN AN  
9 ACCIDENT THAT RESULTS IN DEATH OR SERIOUS BODILY INJURY, TAKE  
10 AND COMPLETE, AND COOPERATE IN THE TAKING AND COMPLETING OF, A  
11 TEST OR TESTS OF THE PERSON'S BREATH, BLOOD, SALIVA, OR URINE FOR  
12 THE PURPOSE OF DETERMINING THE ALCOHOLIC OR DRUG CONTENT OF THE  
13 PERSON'S BLOOD, BREATH, SALIVA, OR URINE. THE AUTHORITY TO  
14 REQUEST A TEST PURSUANT TO THIS SUBPARAGRAPH (I) IS IN ADDITION TO  
15 ANY OTHER AUTHORITY GIVEN TO A LAW ENFORCEMENT OFFICER.

16       (II) IF A LAW ENFORCEMENT OFFICER REQUESTS A TEST UNDER  
17 THIS PARAGRAPH (c), THE PERSON MUST COOPERATE WITH THE REQUEST  
18 SUCH THAT THE SAMPLE OF BLOOD, BREATH, SALIVA, OR URINE CAN BE  
19 OBTAINED WITHIN TWO HOURS OF THE PERSON'S DRIVING.

20       **SECTION 2.** 42-4-1301.1 (4) and (5), Colorado Revised Statutes,  
21 are amended to read:

22       **42-4-1301.1. Expressed consent for the taking of blood, breath,**  
23 **urine, or saliva sample - testing.** (4) Any driver of a commercial motor  
24 vehicle requested to submit to a test as provided in paragraph (a), or (b),  
25 OR (c) of subsection (2) of this section shall be warned by the law

1 enforcement officer requesting the test that a refusal to submit to the test  
2 shall result in an out-of-service order as defined under section 42-2-402  
3 (8) for a period of twenty-four hours and a revocation of the privilege to  
4 operate a commercial motor vehicle for one year as provided under  
5 section 42-2-126.

6 (5) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS  
7 SUBSECTION (5), the tests shall be administered at the direction of a law  
8 enforcement officer having probable cause to believe that the person had  
9 been driving a motor vehicle in violation of section 42-4-1301 and in  
10 accordance with rules ~~and regulations prescribed~~ ADOPTED by the  
11 department of public health and environment concerning the health of the  
12 person being tested and the accuracy of ~~such~~ THE testing.

13 (b) A LAW ENFORCEMENT OFFICER WHO REQUESTS A TEST OR  
14 TESTS PURSUANT TO PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION  
15 NEED NOT HAVE PROBABLE CAUSE TO BELIEVE THAT THE PERSON HAD  
16 BEEN DRIVING A MOTOR VEHICLE IN VIOLATION OF SECTION 42-4-1301,  
17 BUT THE TESTS SHALL BE IN ACCORDANCE WITH RULES ADOPTED BY THE  
18 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT CONCERNING THE  
19 HEALTH OF THE PERSON BEING TESTED AND THE ACCURACY OF THE  
20 TESTING. IN ANY TRIAL AT WHICH THE DEFENDANT IS ALLEGED TO HAVE  
21 VIOLATED SECTION 42-4-1301 OR COMMITTED CRIMINALLY NEGLIGENT  
22 HOMICIDE PURSUANT TO SECTION 18-3-105, C.R.S., VEHICULAR HOMICIDE  
23 PURSUANT TO SECTION 18-3-106 (1) (b), C.R.S., ASSAULT IN THE THIRD  
24 DEGREE PURSUANT TO SECTION 18-3-204, C.R.S., OR VEHICULAR ASSAULT  
25 PURSUANT TO SECTION 18-3-205 (1) (b), C.R.S., THE RESULTS OF A TEST  
26 OR TESTS CONDUCTED PURSUANT TO PARAGRAPH (c) OF SUBSECTION (2)  
27 OF THIS SECTION ARE ADMISSIBLE IF THE COURT, AFTER REVIEWING ALL

1 THE EVIDENCE, WHETHER GATHERED PRIOR TO, DURING, OR AFTER THE  
2 TEST, IS SATISFIED THAT PROBABLE CAUSE EXISTS, INDEPENDENT OF THE  
3 TEST RESULTS, TO BELIEVE THAT THE PERSON WAS DRIVING A MOTOR  
4 VEHICLE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.

5 **SECTION 3. Effective date - applicability.** This act shall take  
6 effect July 1, 2008, and shall apply to accidents occurring on or after said  
7 date.

8 **SECTION 4. 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.