

## CHAPTER 261

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**MOTOR VEHICLES AND TRAFFIC REGULATION**


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SENATE BILL 07-154

BY SENATOR(S) Morse, Boyd, Groff, Shaffer, and Veiga;  
 also REPRESENTATIVE(S) Riesberg, Borodkin, Carroll T., Green, and Todd.

**AN ACT**

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

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

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

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

(II) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (a.5) OF THIS SUBSECTION (2), if a person elects either a blood test or a breath test, ~~such~~ THE person shall not

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

be permitted to change ~~such~~ THE election, and, if ~~such~~ THE person fails to take and complete, and to cooperate in the completing of, the test elected, ~~such~~ THE failure shall be deemed to be a refusal to submit to testing. If ~~such~~ THE person is unable to take, or to complete, or to cooperate in the completing of a breath test because of injuries, illness, disease, physical infirmity, or physical incapacity, or if ~~such~~ THE person is receiving medical treatment at a location at which a breath testing instrument certified by the department of public health and environment is not available, the test shall be of ~~such~~ THE person's blood.

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

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

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

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

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

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

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

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

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

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

Approved: May 22, 2007