



From the Office of Sen Floyd Prozanski

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**SB 999: Preventing Drunk Driving – On behalf of Oregon Chiefs, Sheriffs and DOJ**

As part of the privilege of receiving a driver license, a person agrees in advance to submit to a breath test when requested by a law enforcement officer. This is known as “implied consent,” which exists in all 50 states. If a person refuses to take a breath test after being read implied consent, under Oregon law this refusal can be admitted in court in a subsequent criminal action, and can be used as the basis to administratively suspend a person’s driver license. Earlier this year in *State v. Banks*, the Oregon Supreme Court called into question the language of our current implied consent statute, holding that a person’s refusal to take a breath test can only be commented on when asking for a person’s physical cooperation to take a test, but may not be commented when asked to take a breath test based on a standard request for consent, which touches on a constitutional right to refuse consent. This technical distinction has rendered our current implied-consent statute unworkable.

In the aftermath of *Banks*, law enforcement cannot effectively investigate DUII and at the same time comply with the statutes the way they are currently written. This is because the language the court has called into question is statutory, and can only be modified by the legislature. If law enforcement gives the implied consent admonition required by current statute, they run afoul of the court’s ruling, leading to suppression of evidence. If they attempt to comply with the ruling, they cannot follow existing statutory requirements, leading to suppression of evidence.

**Without a change, Oregon law enforcement anticipates significant disruption to DUII prosecution across the State of Oregon.**

**SB 999 Protects the Integrity of our Anti-Drunk Driving Laws**

SB 999 brings Oregon’s implied consent laws into alignment with the Supreme Court’s decision in *Banks*, balancing the right of a defendant to refuse to consent to a search with the long standing principle that in exchange for the privilege to drive lawfully on Oregon’s roads, we commit to providing a breath sample when lawfully requested by law enforcement. This maintains the legal balance necessary to keep Oregon’s roads safe from the lethal scourge of intoxicated driving while protecting the rights of anyone stopped by law enforcement.

