

## CHAPTER 295

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**MOTOR VEHICLES AND TRAFFIC REGULATION**

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**HOUSE BILL 98-1334**

BY REPRESENTATIVES Hagedorn, Tool, Morrison, K. Alexander, Epps, Leyba, Sullivant, and Tupa.  
also SENATORS Hopper, Bishop, and Hernandez.

**AN ACT**

CONCERNING THE IMPOSITION OF INCREASED PENALTIES FOR PERSONS WHO COMMIT MULTIPLE ALCOHOL-RELATED DRIVING OFFENSES, AND, IN CONNECTION THEREWITH, ENACTING THE "PERSISTENT DRUNK DRIVER ACT OF 1998" AND MAKING AN APPROPRIATION.

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

**SECTION 1. Short title - legislative declaration.** (1) This act shall be known and may be cited as the "Persistent Drunk Driver Act of 1998".

(2) The general assembly hereby finds and declares that:

(a) Existing motor vehicle laws are not sufficient to address the problems of persistent drunk drivers, who repeatedly drink and drive and who commit multiple alcohol-related driving offenses.

(b) The relatively small number of persistent drunk drivers account for a large percentage of the total number of drinking and driving incidents, and thus such drivers pose a very serious safety hazard to the public.

(c) Many persistent drunk drivers whose drivers' licenses or driving privileges have been revoked because of alcohol-related driving violations continue to drink and drive without possessing valid licenses, and thus license suspensions and revocations will not be sufficient in themselves to reduce these kinds of offenses.

(d) Persistent drunk drivers require different kinds of punishment in order to deter their behavior, and such drivers clearly are not sufficiently deterred by the current legal system.

(e) Creating a system that will actually reduce the number of offenses committed

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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.*

by the persistent drunk drivers in the state will lead to a greater reduction in drinking and driving offenses and have a greater impact on public safety than programs that address casual drinkers.

(3) Because of the great dangers caused by persistent drunk drivers and the inability of the current system to address this problem, the general assembly hereby enacts the "Persistent Drunk Driver Act of 1998".

**SECTION 2.** 42-1-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**42-1-102. Definitions.** As used in articles 1 to 4 of this title, unless the context otherwise requires:

(68.5) "PERSISTENT DRUNK DRIVER" MEANS ANY PERSON WHO HAS BEEN CONVICTED OF OR HAD HIS OR HER DRIVER'S LICENSE REVOKED FOR TWO OR MORE ALCOHOL-RELATED DRIVING VIOLATIONS; WHO CONTINUES TO DRIVE AFTER DRIVER'S LICENSE OR DRIVING PRIVILEGE RESTRAINT HAS BEEN IMPOSED FOR ONE OR MORE ALCOHOL-RELATED DRIVING OFFENSES; OR WHO DRIVES A MOTOR VEHICLE WHILE THE AMOUNT OF ALCOHOL IN SUCH PERSON'S BLOOD, AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD OR BREATH, WAS 0.20 OR MORE GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR 0.20 OR MORE GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AT THE TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING. NOTHING IN THIS SUBSECTION (68.5) SHALL BE INTERPRETED TO AFFECT THE PENALTIES IMPOSED UNDER THIS TITLE FOR MULTIPLE ALCOHOL- OR DRUG-RELATED DRIVING OFFENSES, INCLUDING, BUT NOT LIMITED TO, PENALTIES IMPOSED FOR VIOLATIONS UNDER SECTIONS 42-2-125 (1) (g) AND (1) (i) AND 42-2-202 (2).

**SECTION 3.** 42-2-126, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**42-2-126. Revocation of license based on administrative determination.** (2.5) IF THE DEPARTMENT REVOKES A PERSON'S LICENSE PURSUANT TO SUBPARAGRAPH (I), (II), OR (III) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, THE DEPARTMENT SHALL MAIL A NOTICE TO THE OWNER OF THE MOTOR VEHICLE USED IN THE VIOLATION INFORMING THE OWNER THAT:

(a) SUCH MOTOR VEHICLE WAS DRIVEN IN AN ALCOHOL-RELATED DRIVING VIOLATION; AND

(b) ADDITIONAL ALCOHOL-RELATED VIOLATIONS INVOLVING THE MOTOR VEHICLE BY THE SAME DRIVER MAY RESULT IN A REQUIREMENT THAT THE OWNER FILE PROOF OF FINANCIAL RESPONSIBILITY UNDER THE PROVISIONS OF SECTION 42-7-406 (1.5).

**SECTION 4.** Article 3 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**42-3-130.5. Persistent drunk driver cash fund - programs to deter persistent drunk drivers.** THERE IS HEREBY CREATED IN THE STATE TREASURY THE PERSISTENT DRUNK DRIVER CASH FUND, WHICH SHALL BE COMPOSED OF MONEYS COLLECTED FOR

PENALTY SURCHARGES UNDER SECTION 42-4-1301 (9) (g) (II). THE MONEYS IN SUCH FUND ARE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO PAY THE COSTS INCURRED BY THE DEPARTMENT REGARDING PERSISTENT DRUNK DRIVERS UNDER THE PROVISIONS OF SECTIONS 42-2-126 (2.5) AND 42-7-406 (1.5) AND TO SUPPORT PROGRAMS THAT ARE INTENDED TO DETER PERSISTENT DRUNK DRIVING OR INTENDED TO EDUCATE THE PUBLIC, WITH PARTICULAR EMPHASIS ON THE EDUCATION OF YOUNG DRIVERS, REGARDING THE DANGERS OF PERSISTENT DRUNK DRIVING. THE DEPARTMENTS OF TRANSPORTATION, REVENUE, AND HUMAN SERVICES SHALL COORDINATE PROGRAMS INTENDED TO ACCOMPLISH SUCH GOALS.

**SECTION 5.** 42-4-1301 (9) (b), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**42-4-1301. Driving under the influence - driving while impaired - driving with excessive alcoholic content - tests - penalties - useful public service program - alcohol and drug driving safety program.** (9) (b) (IV) NOTWITHSTANDING THE OTHER PROVISIONS OF THIS PARAGRAPH (b), IF A PERSON IS CHARGED WITH AN OFFENSE OF DRIVING UNDER THE INFLUENCE UNDER PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND THE AMOUNT OF ALCOHOL IN SUCH PERSON'S BLOOD, AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD OR BREATH, WAS 0.20 OR MORE GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR 0.20 OR MORE GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AT THE TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING, AND IF FOR SUCH INCIDENT SUCH PERSON IS THEN CONVICTED OF THE LESSER OFFENSE OF DRIVING WHILE ABILITY IMPAIRED UNDER PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, THEN, BECAUSE OF SUCH AGGRAVATING FACTOR, SUCH PERSON IS SUBJECT TO THE PENALTIES IMPOSED BY PARAGRAPH (a) OF THIS SUBSECTION (9) FOR SUCH CONVICTION.

**SECTION 6.** 42-4-1301 (9) (g), Colorado Revised Statutes, is amended to read:

**42-4-1301. Driving under the influence - driving while impaired - driving with excessive alcoholic content - tests - penalties - useful public service program - alcohol and drug driving safety program.** (9) (g) In addition to the penalties prescribed in this subsection (9):

(I) Persons convicted of violations of subsection (1) or (2) of this section are subject to the costs imposed by section 24-4.1-119 (1) (c), C.R.S., relating to the crime victim compensation fund; AND

(II) PERSONS CONVICTED OF VIOLATIONS OF SUBSECTION (1) OR PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION ARE SUBJECT TO AN ADDITIONAL PENALTY SURCHARGE OF NOT LESS THAN TWENTY-FIVE DOLLARS AND NOT MORE THAN FIVE HUNDRED DOLLARS FOR PROGRAMS TO ADDRESS PERSISTENT DRUNK DRIVERS. ANY MONEYS COLLECTED FOR SUCH SURCHARGE SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE PERSISTENT DRUNK DRIVER CASH FUND CREATED BY SECTION 42-3-130.5.

**SECTION 7.** 42-7-406, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**42-7-406. Proof required under certain conditions.** (1.5) (a) WHENEVER THE DIRECTOR REVOKES THE LICENSE OF A PERSON UNDER SECTION 42-2-126 (2) (a) (I), (2) (a) (II), OR (2) (a) (III) FOR A SECOND OR SUBSEQUENT OFFENSE AND SUCH PERSON WAS DRIVING THE SAME VEHICLE IN TWO OR MORE OF SUCH OFFENSES BUT DID NOT OWN SUCH VEHICLE, THE DIRECTOR SHALL MAIL A NOTICE TO THE OWNER OF THE VEHICLE PURSUANT TO SECTION 42-2-119 (2). IN SUCH NOTICE, THE DIRECTOR SHALL INFORM THE OWNER THAT:

(I) THE OPERATOR OF THE MOTOR VEHICLE OWNED BY THE OWNER HAS BEEN INVOLVED IN MULTIPLE ALCOHOL-RELATED DRIVING VIOLATIONS WHILE OPERATING THE OWNER'S VEHICLE;

(II) BECAUSE OF THE RISKS TO THE PUBLIC CONNECTED WITH THE USE OF THE VEHICLE IN ALCOHOL-RELATED DRIVING VIOLATIONS, IT IS NECESSARY FOR THE MOTOR VEHICLE OWNER TO ESTABLISH PROOF OF FINANCIAL RESPONSIBILITY;

(III) WITHIN THIRTY DAYS AFTER THE DATE OF MAILING OF THE NOTICE, THE OWNER IS REQUIRED TO FILE PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE PURSUANT TO THE REQUIREMENTS OF SECTION 42-7-408 OR TO REQUEST A HEARING REGARDING THE APPLICABILITY OF THIS REQUIREMENT TO THE OWNER;

(IV) THE VEHICLE OWNER IS ENTITLED TO A HEARING AND JUDICIAL REVIEW PURSUANT TO SECTION 42-7-201;

(V) IF THE OWNER HAS NOT FILED PROOF OF FINANCIAL RESPONSIBILITY OR REQUESTED A HEARING WITHIN THIRTY DAYS AFTER THE DATE OF MAILING OF THE NOTICE, THE DEPARTMENT WILL SUSPEND THE DRIVER'S LICENSE OR NONRESIDENT OPERATING PRIVILEGE OF THE OWNER.

(b) IF PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE IS REQUIRED UNDER THIS SUBSECTION (1.5), SUCH PROOF SHALL BE MAINTAINED FOR A PERIOD OF THREE YEARS AS REQUIRED BY SECTION 42-7-408 (1) (b).

(c) THIS SUBSECTION (1.5) DOES NOT APPLY TO A MOTOR VEHICLE THAT IS:

(I) RENTED FROM A PERSON, FIRM, CORPORATION, OR OTHER BUSINESS ENTITY WHOSE PRIMARY BUSINESS IS THE RENTAL OF MOTOR VEHICLES; OR

(II) RENTED OR LOANED FROM A PERSON, FIRM, CORPORATION, OR OTHER BUSINESS ENTITY WHOSE PRIMARY BUSINESS IS OPERATION AS A MOTOR VEHICLE REPAIR FACILITY AND WHO IS PROVIDING SUCH MOTOR VEHICLE TO THE PERSON WHILE A MOTOR VEHICLE IS BEING REPAIRED.

**SECTION 8.** 16-4-103 (1) and (2), Colorado Revised Statutes, are amended to read:

**16-4-103. Fixing of bail and conditions of bail bond.** (1) (a) At the first appearance of a person in custody before a judge of a court of record, the amount of bail and type of bond shall be fixed by the judge, unless the person is subject to the provisions of section 16-4-101 (5), or an indictment, information, or complaint has theretofore been filed and the amount of bail and type of bond has been fixed upon

the return of the indictment, or filing of the information or complaint, in which event the propriety of the bond shall be subject to reappraisal. The amount of bail and type of bond shall be sufficient to assure compliance with the conditions set forth in the bail bond.

(b) IF A PERSON IS ARRESTED UNDER SECTION 42-2-138 (1) (d) (I), C.R.S., FOR DRIVING WHILE SUCH PERSON'S DRIVER'S LICENSE OR PRIVILEGE TO DRIVE, EITHER AS A RESIDENT OR NONRESIDENT, IS RESTRAINED SOLELY OR PARTIALLY BECAUSE OF A CONVICTION OF A DRIVING OFFENSE PURSUANT TO SECTION 42-4-1301 (1) OR (2) (a), C.R.S., THEN THE BAIL FOR SUCH PERSON SHALL BE TEN THOUSAND DOLLARS OR SUCH AMOUNT AS IS SET AT A BAIL HEARING.

(c) BECAUSE OF THE DANGER POSED TO THE PERSON AND TO OTHERS, A PERSON WHO IS ARRESTED FOR AN OFFENSE UNDER SECTION 42-4-1301 (1) OR (2) (a) MAY NOT ATTEND A BAIL HEARING UNTIL SUCH PERSON IS NO LONGER INTOXICATED OR UNDER THE INFLUENCE OF DRUGS. SUCH PERSON SHALL BE HELD IN CUSTODY UNTIL SUCH PERSON MAY SAFELY ATTEND SUCH HEARING.

(2) A condition of every bail bond, and the only condition for a breach of which a surety or security on the bail bond may be subjected to forfeiture, is that the released person appear to answer the charge against such person at a place and upon a date certain and at any place or upon any date to which the proceeding is transferred or continued. Further conditions of every bail bond shall be that the released person not commit any felony while at liberty on such bail bond and that the court in which the action is pending have the power to revoke the release of the defendant, to increase the bail bond, or to change any bail bond condition if it is shown that a competent court has found probable cause to believe that the defendant has committed a felony while released pending adjudication of a prior felony charge. A further condition of every bail bond in cases of domestic violence as defined in section 18-6-800.3 (1), C.R.S., shall be that the released person acknowledge the restraining order as provided in section 18-1-1001 (5), C.R.S. A FURTHER CONDITION OF EVERY BAIL BOND IN A CASE OF AN OFFENSE UNDER SECTION 42-2-138 (1) (d) (I), C.R.S., OF DRIVING WHILE SUCH PERSON'S DRIVER'S LICENSE OR PRIVILEGE TO DRIVE, EITHER AS A RESIDENT OR NONRESIDENT, IS RESTRAINED SOLELY OR PARTIALLY BECAUSE OF A CONVICTION OF A DRIVING OFFENSE PURSUANT TO SECTION 42-4-1301 (1) OR (2) (a), C.R.S., SHALL BE THAT SUCH PERSON NOT DRIVE ANY MOTOR VEHICLE DURING THE PERIOD OF SUCH DRIVING RESTRAINT. In addition, the judge may impose such additional conditions upon the conduct of the defendant as will, in the judge's opinion, render it more likely that the defendant will fulfill the other bail bond conditions. These additional conditions may include submission of the defendant to the supervision of some qualified person or organization. Any defendant whose bail bond is revoked or increased under an order entered pursuant to this section and who remains in custody must be tried on the charges on which the bail bond has been increased or revoked within ninety days after such order or within six months after the defendant's arraignment on such charges, whichever date is earlier.

**SECTION 9. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the persistent drunk driver cash fund, created in section 42-3-130.5, Colorado Revised Statutes, not otherwise appropriated, to the department of human services, for the fiscal year beginning July 1, 1998, the sum of eight hundred ten thousand eight hundred seventy-five dollars (\$810,875), or

so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of transportation, the sum of eight hundred ten thousand eight hundred seventy-five dollars (\$810,875), or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from cash funds exempt received from the department of human services out of the appropriation made in subsection (1) of this section.

**SECTION 10. Effective date - applicability.** This act shall take effect July 1, 1998, and shall apply to offenses committed on or after said date.

**SECTION 11. 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: June 1, 1998