

## CHAPTER 287

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**MOTOR VEHICLES AND TRAFFIC REGULATION**

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**HOUSE BILL 99-1279**

BY REPRESENTATIVES Hagedorn, Tool, Kaufman, Alexander, Bacon, Gagliardi, Gotlieb, Larson, Lawrence, Lee, May, Swenson, Tapia, and S. Williams;  
also SENATORS Dennis, Andrews, Musgrave, Tanner, Tebedo, and Teck.

**AN ACT**

CONCERNING PENALTIES FOR ALCOHOL-RELATED TRAFFIC OFFENSES.

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

**SECTION 1.** 42-2-125, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

**42-2-125. Mandatory revocation of license and permit.** (2.3) THE PERIOD OF REVOCATION UNDER SUBPARAGRAPH (I) OF PARAGRAPH (g) OF SUBSECTION (1) OF THIS SECTION SHALL BE FOR NOT LESS THAN ONE YEAR.

(2.4) AFTER THE EXPIRATION OF THE PERIOD OF REVOCATION PURSUANT TO THIS SECTION AND ANY SUBSEQUENTLY IMPOSED PERIODS OF REVOCATION, ANY PERSON WHOSE LICENSE IS REVOKED BECAUSE OF A VIOLATION OF SECTION 42-4-1301 (1) (a) OR (2) (a) WHICH VIOLATION OCCURRED WITHIN FIVE YEARS AFTER THE DATE OF A PREVIOUS VIOLATION FOR WHICH THERE WAS A CONVICTION UNDER SECTION 42-4-1301 (1) (a) OR (2) (a) SHALL BE REQUIRED TO HAVE A RESTRICTED LICENSE PURSUANT TO THE PROVISIONS OF 42-2-132.5.

**SECTION 2.** 42-2-126 (6) (c), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**42-2-126. Revocation of license based on administrative determination.** (6) (c) (III) ANY REVOCATION PURSUANT TO THIS SECTION SHALL RUN CONSECUTIVELY AND NOT CONCURRENTLY WITH ANY OTHER REVOCATION PURSUANT TO THIS SECTION.

**SECTION 3.** 42-4-1301 (9) (a) (II), (9) (g), and (10) (c), Colorado Revised Statutes, are amended to read:

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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.*

**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) (a) (II) Upon a conviction of a violation of paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section, which violation occurred within five years after the date of a previous violation, for which there has been a conviction, of paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section, or of section 18-3-106 (1) (b) (I) or 18-3-205 (1) (b) (I), C.R.S., the offender shall be punished by imprisonment in the county jail for not less than ninety days nor more than one year, and, in addition, the court may impose a fine of not less than five hundred dollars nor more than one thousand five hundred dollars. The minimum period of imprisonment as provided for such violation shall be mandatory, but the court may suspend up to ~~eighty-three~~ EIGHTY days of the period of imprisonment if the offender complies with the provisions of subparagraph (I) of paragraph (f) of this subsection (9). In addition to any other penalty that is imposed, every person who is convicted of a violation to which this subparagraph (II) applies shall perform not less than sixty hours nor more than one hundred twenty hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(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; AND

(III) (A) A PERSON CONVICTED OF A VIOLATION OF PARAGRAPH (a) OF SUBSECTION (1) OR OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, WHICH VIOLATION OCCURRED WITHIN FIVE YEARS AFTER THE DATE OF A PREVIOUS VIOLATION FOR WHICH THERE WAS A CONVICTION UNDER PARAGRAPH (a) OF SUBSECTION (1) OR PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, SHALL BE REQUIRED TO OBTAIN A RESTRICTED LICENSE PURSUANT TO THE PROVISIONS OF SECTION 42-2-132.5 FOR A PERIOD OF NOT LESS THAN ONE YEAR AFTER REINSTATEMENT.

(B) A PERSON CONVICTED OF A VIOLATION OF PARAGRAPH (a) OF SUBSECTION (1) OR OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, WHICH VIOLATION DID NOT OCCUR WITHIN FIVE YEARS AFTER THE DATE OF A PREVIOUS VIOLATION FOR WHICH THERE WAS A CONVICTION UNDER PARAGRAPH (a) OF SUBSECTION (1) OR PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, SHALL BE REQUIRED TO OBTAIN A RESTRICTED LICENSE PURSUANT TO THE PROVISIONS OF SECTION 42-2-132.5 FOR A PERIOD OF NOT LESS THAN SIX MONTHS AFTER REINSTATEMENT.

(10) (c) An alcohol and drug evaluation shall be conducted on all persons convicted of a violation of subsection (1) or (2) of this section, AND A COPY OF THE REPORT OF THE EVALUATION SHALL BE PROVIDED TO SUCH PERSON. The report shall be made available to and shall be considered by the court prior to sentencing unless the court proceeds to immediate sentencing pursuant to the provisions of paragraph (e) of subsection (9) of this section. The report shall contain the defendant's prior traffic record, characteristics and history of alcohol or drug problems, and amenability to rehabilitation. The report shall include a recommendation as to alcohol and drug driving safety education or treatment for the defendant. The alcohol evaluation shall be conducted and the report prepared by a person who is trained and knowledgeable in the diagnosis of chemical dependency. Such person's duties may also include appearing at sentencing and probation hearings as required, referring defendants to education and treatment agencies in accordance with orders of the court, monitoring defendants in education and treatment programs, notifying the probation department and the court of any defendant failing to meet the conditions of probation or referral to education or treatment, appearing at revocation hearings as required, and providing assistance in data reporting and program evaluation. For the purpose of this subsection (10), "alcohol and drug driving safety education or treatment" means either level I or level II education or treatment programs that are approved by the division of alcohol and drug abuse. Level I programs are to be short-term, didactic education programs. Level II programs are to be therapeutically oriented education, long-term outpatient, and comprehensive residential programs. Any defendant sentenced to level I or level II programs shall be instructed by the court to meet all financial obligations of such programs. If such financial obligations are not met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant's sentence. Nothing in this section shall prohibit treatment agencies from applying to the state for funds to recover the costs of level II treatment for defendants determined to be indigent by the court.

**SECTION 4.** Part 1 of article 2 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**42-2-132.5. Restricted licenses following alcohol conviction.** (1) FOLLOWING THE PERIOD OF REVOCATION PURSUANT TO SUBSECTION (5) OF THIS SECTION OR SECTION 42-2-125 AND ANY SUBSEQUENTLY IMPOSED PERIOD OF REVOCATION, ANY PERSON WHO HAS BEEN CONVICTED ON TWO OR MORE OCCASIONS OF AN OFFENSE UNDER SECTION 42-4-1301 (1) (a) OR (2) (a) WHICH OFFENSES WERE COMMITTED WITHIN A PERIOD OF FIVE YEARS SHALL BE REQUIRED TO HOLD A RESTRICTED LICENSE PURSUANT TO THIS SECTION FOR AT LEAST ONE YEAR PRIOR TO BEING ELIGIBLE TO OBTAIN ANY OTHER DRIVER'S LICENSE ISSUED UNDER THIS ARTICLE 2.

(2) FOLLOWING THE PERIOD OF REVOCATION PURSUANT TO SUBSECTION (5) OF THIS SECTION OR SECTION 42-2-125 AND ANY SUBSEQUENTLY IMPOSED PERIOD OF REVOCATION, ANY PERSON WHO HAS BEEN CONVICTED OF AN OFFENSE UNDER SECTION 42-4-1301 (1) (a) OR (2) (a) WHICH OFFENSE WAS NOT COMMITTED WITHIN A PERIOD OF FIVE YEARS OF AN OFFENSE UNDER SECTION 42-4-1301 (1) (a) OR (2) (a) SHALL BE REQUIRED TO HOLD A RESTRICTED LICENSE PURSUANT TO THIS SECTION FOR AT LEAST SIX MONTHS PRIOR TO BEING ELIGIBLE TO OBTAIN ANY OTHER DRIVER'S LICENSE ISSUED UNDER THIS ARTICLE 2.

(3) (a) THE DEPARTMENT SHALL ISSUE A RESTRICTED LICENSE UNDER THIS SECTION

IF THE DEPARTMENT RECEIVES FROM THE PERSON AN AFFIDAVIT STATING THAT THE PERSON HAS OBTAINED AT THE PERSON'S OWN EXPENSE A SIGNED LEASE AGREEMENT FOR THE INSTALLATION AND USE OF AN APPROVED IGNITION INTERLOCK DEVICE, AS DEFINED IN SECTION 42-2-126.1 (6), IN EACH MOTOR VEHICLE ON WHICH THE PERSON'S NAME APPEARS ON THE REGISTRATION AND ANY OTHER VEHICLE THAT THE PERSON MAY DRIVE DURING THE PERIOD OF THE RESTRICTED LICENSE. A COPY OF EACH SIGNED LEASE AGREEMENT SHALL BE ATTACHED TO THE AFFIDAVIT.

(b) THE TERMS OF THE RESTRICTED LICENSE SHALL INCLUDE THAT THE PERSON SHALL NOT DRIVE A MOTOR VEHICLE OTHER THAN A VEHICLE IN WHICH AN APPROVED IGNITION INTERLOCK DEVICE, AS DEFINED BY SECTION 42-2-126.1 (6), IS INSTALLED.

(4) (a) THE LEASING AGENCY FOR ANY APPROVED IGNITION INTERLOCK DEVICE SHALL REMIT A FILING FEE IN THE AMOUNT OF THIRTY-THREE DOLLARS FOR EACH PERSON LEASING A DEVICE TO COVER PROGRAM START-UP AND OPERATIONAL COSTS INCURRED BY THE DEPARTMENT AND THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT. THE LEASING AGENCY SHALL REMIT THE FEES TO THE STATE TREASURER, WHO SHALL CREDIT THE FEES TO THE INTERLOCK FUND, CREATED IN SECTION 42-2-126.1 (2.5).

(b) NOTWITHSTANDING THE AMOUNT SPECIFIED FOR THE FEE IN PARAGRAPH (a) OF THIS SUBSECTION (3), THE EXECUTIVE DIRECTOR OF THE DEPARTMENT BY RULE OR AS OTHERWISE PROVIDED BY LAW MAY REDUCE THE AMOUNT OF THE FEE IF NECESSARY PURSUANT TO SECTION 24-75-402 (3), C.R.S., TO REDUCE THE UNCOMMITTED RESERVES OF THE FUND TO WHICH ALL OR ANY PORTION OF THE FEE IS CREDITED. AFTER THE UNCOMMITTED RESERVES OF THE FUND ARE SUFFICIENTLY REDUCED, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT BY RULE OR AS OTHERWISE PROVIDED BY LAW MAY INCREASE THE AMOUNT OF THE FEE AS PROVIDED IN SECTION 24-75-402 (4), C.R.S.

(c) THE LEASING AGENCY SHALL CHECK THE DEVICE AT LEAST ONCE EVERY SIXTY DAYS TO ENSURE THAT THE DEVICE IS OPERATING AND THAT THERE HAS BEEN NO TAMPERING WITH THE DEVICE. IF THE LEASING AGENCY DETECTS THAT THERE HAS BEEN TAMPERING WITH THE DEVICE, THE LEASING AGENCY SHALL NOTIFY THE DEPARTMENT OF THAT FACT WITHIN FIVE DAYS OF THE DETECTION.

(5) THE LICENSE OF ANY PERSON WHO HAS OBTAINED A RESTRICTED LICENSE UNDER THE PROVISIONS OF THIS SECTION WHO VIOLATES THE TERMS OF THE RESTRICTED LICENSE OR WHO TAMPERS WITH OR DISCONNECTS AN INTERLOCK DEVICE SHALL BE REVOKED FOR A PERIOD OF NOT LESS THAN ONE YEAR FROM THE DATE THAT THE DEPARTMENT RECEIVES EVIDENCE THAT THE TERMS OF THE RESTRICTED LICENSE HAVE BEEN VIOLATED OR THE INTERLOCK DEVICE HAS BEEN TAMPERED WITH OR DISCONNECTED. THE PERSON SHALL BE ENTITLED TO A HEARING ON THE LICENSE REVOCATION.

**SECTION 5.** The introductory portion to 42-2-126.1 (1), Colorado Revised Statutes, is amended, and the said 42-2-126.1 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**42-2-126.1. Probationary licenses for persons convicted of alcohol-related driving offenses - ignition interlock devices - fees - interlock fund created -**

**violations of probationary license - repeal.** (1) EXCEPT AS PROHIBITED BY SUBSECTION (1.5) OF THIS SECTION, a person whose driver's license or provisional driver's license has been revoked because of a violation of any provision of section 42-4-1301 (1) (a), (1) (b), or (2) or has been revoked under any provision of section 42-2-125 (1) (g) or (1) (i), 42-2-126, or 42-2-202 may apply for a probationary license under the provisions of this section as follows:

(1.5) NO PERSON WHO HAS BEEN CONVICTED ON TWO OR MORE OCCASIONS OF AN OFFENSE UNDER SECTION 42-4-1301 (1) (a) OR (2) (a) FOR OFFENSES COMMITTED WITHIN A PERIOD OF FIVE YEARS SHALL BE ELIGIBLE FOR A PROBATIONARY LICENSE PURSUANT TO THIS SECTION UNTIL SUCH PERSON'S LICENSE HAS BEEN REVOKED FOR A PERIOD OF AT LEAST ONE YEAR DURING WHICH THE PERSON HAS NO VIOLATIONS UNDER THIS TITLE.

**SECTION 6.** 42-2-132 (2) (a), Colorado Revised Statutes, is amended to read:

**42-2-132. Period of suspension or revocation.** (2) (a) (I) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked is not entitled to apply for a probationary license, and, except as provided in paragraph (b) of this subsection (2) and in sections 42-2-125, 42-2-126, 42-2-138, 42-2-205, and 42-7-406, such person is not entitled to make application for a new license until the expiration of one year from the date on which the revoked license was surrendered to and received by the department; then such person may make application for a new license as provided by law.

(II) Following the period of revocation set forth in this subsection (2), the department shall not issue a new license unless and until it is satisfied that such person has demonstrated knowledge of the laws and driving ability through the appropriate motor vehicle testing process and that such person whose license was revoked pursuant to section 42-2-125 for an alcohol- or drug-related driving offense has completed not less than a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301 (10).

(III) In the case of a minor driver or a provisional driver whose license has been revoked as a result of one conviction for any offense provided for in section 42-4-1301 (1) or (2), the minor driver or provisional driver, unless otherwise required after an evaluation made by an alcohol and drug evaluation specialist certified by the division of alcohol and drug abuse, must complete a level I alcohol and drug education program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301 (10).

(IV) ANY PERSON WHOSE LICENSE OR PRIVILEGE TO DRIVE A MOTOR VEHICLE ON THE PUBLIC HIGHWAYS HAS BEEN SUSPENDED BECAUSE SUCH PERSON HAS BEEN CONVICTED ON TWO OR MORE OCCASIONS OF AN OFFENSE UNDER SECTION 42-4-1301 (1) (a) OR (2) (a) WHICH OFFENSES WERE COMMITTED WITHIN A PERIOD OF FIVE YEARS SHALL BE REQUIRED TO PRESENT AN AFFIDAVIT STATING THAT THE PERSON HAS OBTAINED AT THE PERSON'S OWN EXPENSE A SIGNED LEASE AGREEMENT FOR THE INSTALLATION AND USE OF AN APPROVED IGNITION INTERLOCK DEVICE, AS DEFINED IN SECTION 42-2-126.1 (6), IN EACH MOTOR VEHICLE ON WHICH THE PERSON'S NAME APPEARS ON THE REGISTRATION AND ANY OTHER VEHICLE THAT THE PERSON MAY

DRIVE DURING THE PERIOD OF THE RESTRICTED LICENSE AND A COPY OF EACH SIGNED LEASE AGREEMENT.

(V) The department shall take into consideration any probationary terms imposed on such person by any court in determining whether any revocation shall be continued.

**SECTION 7. Effective date - applicability.** This act shall take effect July 1, 1999, and shall apply to offenses committed on or after said date.

**SECTION 8. 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 2, 1999