

CHAPTER 347

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 09-1266

BY REPRESENTATIVE(S) McCann, Benefield, Judd, Roberts, Ryden, Schafer S., Solano, Stephens, Todd, Weissmann, Gerou, Labuda, Priola, Waller;
also SENATOR(S) Carroll M., Bacon, Hudak.

AN ACT

CONCERNING THE REPEAL OF THE LOSS OF DRIVING PRIVILEGES AS A PENALTY FOR CERTAIN CRIMES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Repeal. 18-4-501 (2) and (3), Colorado Revised Statutes, are repealed as follows:

~~**18-4-501. Criminal mischief.** (2) If the court determines on the record that the underlying factual basis for any conviction of criminal mischief pursuant to subsection (1) of this section, or adjudication as a juvenile delinquent for an act that would constitute criminal mischief pursuant to subsection (1) of this section if committed by an adult, involves defacing property as described in section 18-4-509, the offender's driver's license shall be revoked as provided in section 42-2-125, C.R.S.~~

~~(3) If the court determines on the record that the underlying factual basis for a conviction of criminal mischief pursuant to subsection (1) of this section, or adjudication as a juvenile delinquent for an act that would constitute criminal mischief pursuant to subsection (1) of this section if committed by an adult, involves damage to a motor vehicle, as defined in section 18-4-409 (1) (a), the offender's driver's license shall be revoked as provided in section 42-2-125, C.R.S.~~

SECTION 2. Repeal. 18-4-509 (2) (c), Colorado Revised Statutes, is repealed as follows:

~~**18-4-509. Defacing property - definitions.** (2) (c) In addition, upon each conviction for defacing property pursuant to paragraph (b) or (c) of subsection (1)~~

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

~~of this section, or adjudication as a juvenile delinquent for an act that would constitute defacing property pursuant to paragraph (b) of subsection (1) of this section if committed by an adult, the offender's driver's license shall be revoked as provided in section 42-2-125, C.R.S.~~

SECTION 3. Repeal. 18-5-118, Colorado Revised Statutes, is repealed as follows:

18-5-118. Offenses involving forgery of a penalty assessment notice issued to a minor under the age of eighteen years - suspension of driving privilege. In addition to any other penalty imposed by this part 1, upon each conviction, entry of a plea of guilty or nolo contendere, or receipt of a deferred sentence for an offense involving the forgery of a penalty assessment notice issued to a minor under the age of eighteen years pursuant to section 42-4-1707 or 42-4-1709, C.R.S., or adjudication as a delinquent for an act that would constitute such an offense if committed by an adult, any driver's permit, minor driver's license, or driver's license held by the offender shall be suspended as provided in section 42-2-127.4, C.R.S.

SECTION 4. Repeal. 18-18-404 (4), Colorado Revised Statutes, is repealed as follows:

18-18-404. Unlawful use of a controlled substance. (4) In addition to any other penalty imposed by this section, upon each conviction, entry of plea of guilty or nolo contendere, or receipt of a deferred sentence for a nonfelony violation of this section or adjudication as a delinquent for an act that would constitute a nonfelony violation of this section if committed by an adult, any driver's permit or minor driver's license held by the offender shall be suspended as provided in section 42-2-127.3, C.R.S.

SECTION 5. Repeal. 18-18-405 (6), Colorado Revised Statutes, is repealed as follows:

18-18-405. Unlawful distribution, manufacturing, dispensing, sale, or possession. (6) In addition to any other penalty imposed by this section, upon each conviction, entry of plea of guilty or nolo contendere, or receipt of a deferred sentence for a nonfelony violation of this section or adjudication as a delinquent for an act that would constitute a nonfelony violation of this section if committed by an adult, any driver's permit or minor driver's license held by the offender shall be suspended as provided in section 42-2-127.3, C.R.S.

SECTION 6. Repeal. 18-18-406 (12), Colorado Revised Statutes, is repealed as follows:

18-18-406. Offenses relating to marihuana and marihuana concentrate. (12) In addition to any other penalty imposed by this section, upon each conviction, entry of plea of guilty or nolo contendere, or receipt of a deferred sentence for a nonfelony violation of this section or adjudication as a delinquent for an act that would constitute a nonfelony violation of this section if committed by an adult, any driver's permit or minor driver's license held by the offender shall be suspended as provided in section 42-2-127.3, C.R.S.

SECTION 7. 10-4-628 (1) (b), Colorado Revised Statutes, is amended to read:

10-4-628. Refusal to write - changes in - cancellation - nonrenewal of policies prohibited. (1) No insurer shall cancel; fail to renew; refuse to write; reclassify an insured under; reduce coverage under, unless the reduction is part of a general reduction in coverage filed with the commissioner; or increase the premium for, unless the increase is part of a general increase in premiums filed with the commissioner, any complying policy because the applicant, insured, permissive user, or any resident of the household of the applicant or insured has:

(b) ~~Had a license revoked pursuant to section 42-2-125 (1) (n), C.R.S.; Had a license suspended pursuant to section 42-2-127.5, C.R.S., or been denied a license pursuant to section 42-2-104 (3) (f), C.R.S. based upon a conviction or adjudication under section 18-4-501 (2) or 18-4-509 (2), C.R.S.~~

SECTION 8. 42-2-125 (1) (m), (1) (n), (1) (o) (I), (3), (6) (a), and (7), Colorado Revised Statutes, are amended to read:

42-2-125. Mandatory revocation of license and permit. (1) The department shall immediately revoke the license or permit of any driver or minor driver upon receiving a record showing that such driver has:

(m) (I) ~~Been convicted of violating section 12-47-901 (1) (b) or (1) (c) C.R.S.; or section 18-13-122 (2), C.R.S., or any counterpart municipal charter or ordinance offense to such sections AND HAVING FAILED TO COMPLETE AN ALCOHOL EVALUATION OR ASSESSMENT, AN ALCOHOL EDUCATION PROGRAM, OR AN ALCOHOL TREATMENT PROGRAM ORDERED BY THE COURT IN CONNECTION WITH SUCH CONVICTION; OR~~

(II) ~~BEEN CONVICTED OF VIOLATING SECTION 12-47-901 (1) (b) OR (1) (c) OR 18-13-122 (2), C.R.S., OR ANY COUNTERPART MUNICIPAL CHARTER OR ORDINANCE OFFENSE TO SUCH SECTIONS AND HAS A PREVIOUS CONVICTION FOR SUCH OFFENSES;~~

(n) ~~Been convicted of defacing property in violation of section 18-4-509, C.R.S.; or convicted of criminal mischief in violation of section 18-4-501, C.R.S., where the court finds that the underlying factual basis of the offense involves defacing property as described in section 18-4-509, C.R.S., or any counterpart municipal charter or ordinance offense to either of said sections;~~

(o) Been:

(I) ~~Convicted of an offense described in section 18-4-501, C.R.S., or a comparable municipal charter or ordinance offense, if the court determines that the criminal mischief involves damage to a motor vehicle; or~~

(3) Upon revoking the license of any person as required by this section, the department shall immediately notify the licensee as provided in section 42-2-119 (2). Where a minor driver's license is revoked under paragraph (m) ~~or (n)~~ of subsection (1) of this section, such revocation shall not run concurrently with any previous or subsequent suspension, revocation, cancellation, or denial that is provided for by law.

~~(6) (a) Any person who has a license revoked pursuant to paragraph (m) of subsection (1) of this section shall be subject to a THE FOLLOWING revocation period that shall continue for the period of time described hereafter PERIODS:~~

~~(I) After ~~one~~ A FIRST conviction AND FAILURE TO COMPLETE AN ORDERED EVALUATION, ASSESSMENT, OR PROGRAM, ~~twenty-four hours of public service if ordered by the court, or three months;~~~~

~~(II) After a second conviction, six months;~~

~~(III) After any third or subsequent conviction, one year.~~

~~(7) Any person who has a driver's license, minor driver's license, or instruction permit revoked pursuant to paragraph (n) of subsection (1) of this section shall be subject to a revocation period which shall continue for the period of six months for each conviction.~~

SECTION 9. Repeal. 42-2-127.3, Colorado Revised Statutes, is repealed as follows:

42-2-127.3. Authority to suspend license - controlled substance violations.

~~(1) (a) Whenever the department receives notice that a person has been convicted of any felony offense provided for in section 18-18-404, 18-18-405, or 18-18-406, C.R.S., or any attempt, conspiracy, or solicitation to commit any of said offenses, the department shall immediately suspend the license of the person for a period of not less than one year, unless the provisions of section 42-2-132 (2) (b) allow for a shorter period of suspension:~~

~~(b) Whenever the department receives notice that a minor driver has been convicted of or adjudicated a delinquent under title 19, C.R.S., for any offense provided for in section 18-18-404 (1) (a) (II), 18-18-405 (2) (a) (IV) (A), or 18-18-406 (1), (3) (a) (I), or (4) (a) (I), C.R.S., or any comparable municipal charter or ordinance offense, the department shall immediately suspend the license of the person for a period of not less than one year, unless the provisions of section 42-2-132 (2) (b) allow for a shorter period of suspension:~~

~~(c) For purposes of this subsection (1), a person has been convicted when such person has been found guilty by a court or a jury, entered a plea of guilty or nolo contendere, or received a deferred sentence for an offense.~~

~~(2) (a) Upon suspending the license of any person as required by this section, the department shall immediately notify the licensee as provided in section 42-2-119 (2):~~

~~(b) Upon receipt of the notice of suspension, the licensee or the licensee's attorney may request a hearing in writing. The department, upon notice to the licensee as provided in section 42-2-119 (2), shall hold a hearing not less than thirty days after receiving such request through a hearing commissioner appointed by the executive director of the department, which hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S. The hearing shall be held at the district office of the department closest to the residence of the licensee;~~

~~except that all or part of the hearing may, at the discretion of the department, be conducted in real time, by telephone or other electronic means in accordance with section 42-1-218.5. After such hearing, the licensee may appeal the decision of the department to the district court as provided in section 42-2-135. Should a driver who has had a license suspended under this section be subsequently acquitted of the conviction which required the suspension by a court of record, the department shall immediately, in any event not later than ten days after the receipt of such notice of acquittal, reinstate said license to the driver affected, unless the license is under other restraint.~~

~~(3) (a) If there is no other statutory reason for denial of a probationary license, any individual who has had a license suspended by the department because of, at least in part, a conviction of an offense specified in subsection (1) of this section may be entitled to a probationary license for the purpose of driving for reasons of employment, education, health, compliance with the requirements of probation or suspended sentence, or alcohol and drug education or treatment. Such a probationary license shall:~~

~~(I) Contain any other restrictions as the department deems reasonable and necessary;~~

~~(II) Be subject to cancellation for violation of any such restrictions, including absences from alcohol and drug education or treatment sessions or failure to complete alcohol and drug education or treatment programs; and~~

~~(III) Be issued for the entire period of suspension.~~

~~(b) The department may refuse to issue a probationary license if the department finds that the driving record of the individual is such that the individual has sufficient points to require the suspension or revocation of a license to drive on the highways of this state pursuant to section 42-2-127, or if the department finds from the record after a hearing conducted in accordance with paragraph (b) of subsection (2) of this section that aggravating circumstances exist to indicate the individual is unsafe for driving for any purpose. In refusing to issue a probationary license, the department shall make specific findings of fact to support such refusal.~~

SECTION 10. Repeal. 42-2-127.4, Colorado Revised Statutes, is repealed as follows:

42-2-127.4. Authority to suspend license - forgery of a penalty assessment notice issued to minor under the age of eighteen years. ~~(1) (a) Whenever the department receives notice that a person has been convicted of an offense involving the forgery of a penalty assessment notice issued to a minor under the age of eighteen years or any attempt, conspiracy, or solicitation to commit said offense, the department, pursuant to section 18-5-118, C.R.S., shall immediately suspend the license of the person for a period of not less than six months.~~

~~(b) For purposes of this subsection (1), a person has been convicted when such person has been found guilty by a court or a jury, entered a plea of guilty or nolo contendere, or received a deferred sentence for an offense.~~

~~(2) (a) Upon suspension of a person's license as required by this section, the department shall immediately notify the person as provided in section 42-2-119 (2).~~

~~(b) Upon receipt of the notice of suspension, the person or the person's attorney may request a hearing in writing. The department, upon notice to the person as provided in section 42-2-119 (2), shall hold a hearing not less than thirty days after receiving such request through a hearing commissioner appointed by the executive director of the department, which hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S. The hearing shall be held at the district office of the department closest to the residence of the person, except that all or part of the hearing may, at the discretion of the department, be conducted in real time, by telephone or other electronic means in accordance with section 42-1-218.5. After such hearing, the person may appeal the decision of the department to the district court as provided in section 42-2-135. Should a person who has had a license suspended under this section be subsequently acquitted of the conviction which required the suspension by a court of record, the department shall immediately, in any event not later than ten days after the receipt of such notice of acquittal, reinstate said license to the person affected, unless the license is under other restraint.~~

~~(3) (a) If there is no other statutory reason for denial of a probationary license, any person who has had a license suspended by the department because of, at least in part, a conviction of an offense specified in subsection (1) of this section may be entitled to a probationary license for the purpose of driving for reasons of employment, education, health, or compliance with the requirements of probation. Such a probationary license shall:~~

~~(I) Contain any other restrictions as the department deems reasonable and necessary;~~

~~(II) Be subject to cancellation for violation of any such restrictions; and~~

~~(III) Be issued for the entire period of suspension.~~

~~(b) The department may refuse to issue a probationary license if the department finds that the driving record of the person is such that the person has sufficient points to require the suspension or revocation of a license to drive on the highways of this state pursuant to section 42-2-127, or if the department finds from the record after a hearing conducted in accordance with this section that aggravating circumstances exist to indicate the person is unsafe for driving for any purpose. In refusing to issue a probationary license, the department shall make specific findings of fact to support such refusal.~~

SECTION 11. Repeal. 42-2-130, Colorado Revised Statutes, is repealed as follows:

42-2-130. Mandatory surrender of license or permit for drug convictions. Immediately upon a plea of guilty or nolo contendere or a verdict of guilty by the court or a jury to or adjudication for an offense for which suspension of a license or permit is mandatory pursuant to section 42-2-127.3, the court shall require the offender to immediately surrender the offender's driver's, minor driver's, or

~~temporary driver's license or instruction permit to the court. The court shall forward to the department a notice of plea or verdict on the form prescribed by the department, together with the offender's license or permit, not later than ten days after the surrender of the license or permit. Any person who does not immediately surrender such person's license or permit to the court commits a class 2 misdemeanor traffic offense, unless such person swears or affirms under oath administered by the court and subject to the penalties of perjury that the license or permit has been lost, destroyed, or is not in said person's immediate possession. Any person who swears or affirms that the license or permit is not in the immediate possession of said person shall surrender said license or permit to the court within five days of the sworn or affirmed statement, and, if not surrendered within such time, said person commits a class 2 misdemeanor traffic offense.~~

SECTION 12. 42-2-131, Colorado Revised Statutes, is amended to read:

42-2-131. Revocation of license or permit for failing to comply with a court order relating to nondriving alcohol convictions. Upon a plea of guilty or nolo contendere or a verdict of guilty by the court or a jury to an offense ~~for which revocation of a license or permit is mandatory pursuant to section 42-2-125 (1) (m)~~ UNDER SECTION 12-47-901 (1) (b) OR (1) (c) OR 18-13-122 (2), C.R.S., OR ANY COUNTERPART MUNICIPAL CHARTER OR ORDINANCE OFFENSE TO SUCH SECTION AND UPON A FAILURE TO COMPLETE AN ALCOHOL EVALUATION OR ASSESSMENT, AN ALCOHOL EDUCATION PROGRAM, OR AN ALCOHOL TREATMENT PROGRAM ORDERED BY THE COURT IN CONNECTION WITH SUCH PLEA OR VERDICT, the court shall forward to the department a notice of plea or verdict OR SUCH FAILURE TO COMPLETE on the form prescribed by the department. Any revocation pursuant to section 42-2-125 (1) (m) shall begin when the department gives notice of ~~such~~ THE revocation to the person in accordance with section 42-2-119 (2).

SECTION 13. Repeal. 42-2-131.5, Colorado Revised Statutes, is repealed as follows:

42-2-131.5. Revocation of license or permit for convictions involving defacing property. ~~Upon a plea of guilty or nolo contendere or a verdict of guilty by the court or a jury to an offense for which revocation of a driver's license, minor driver's license, temporary driver's license, or permit is mandatory pursuant to section 42-2-125 (1) (n), the court shall forward to the department a notice of plea or verdict on the form prescribed by the department. Any revocation pursuant to section 42-2-125 (1) (n) shall begin when the department gives notice of such revocation to the person in accordance with section 42-2-119 (2).~~

SECTION 14. Repeal. 42-2-132 (2) (b), Colorado Revised Statutes, is repealed as follows:

42-2-132. Period of suspension or revocation. (2) (b) ~~Any person whose license or privilege to drive a motor vehicle on the public highways is suspended pursuant to section 42-2-127.3 for conviction of a drug offense shall have such person's driver's license suspended for a period of one year for each such conviction; except that the period of suspension shall be three months if such person has not previously been convicted of a drug offense which is grounds for driver's license or privilege suspension pursuant to section 42-2-127.3. Any suspension of a person's~~

~~driver's license for conviction of a drug offense pursuant to section 42-2-127.3 shall begin upon conviction. Each subsequent conviction for such a drug offense occurring while a person's driver's license is already revoked or suspended for such a drug offense shall extend the period of revocation or suspension for an additional year.~~

SECTION 15. 42-7-406 (1), Colorado Revised Statutes, is amended to read:

42-7-406. Proof required under certain conditions. (1) Whenever the director revokes the license of any person under section 42-2-125 or 42-2-126, or cancels any license under section 42-2-122 because of the licensee's inability to operate a motor vehicle because of physical or mental incompetence, or cancels any probationary license under section 42-2-127, the director shall not issue to or continue in effect for any such person any new or renewal of license until permitted under the motor vehicle laws of this state, and not then until and unless such person files or has filed and maintains proof of financial responsibility as provided in this article; except that persons whose licenses are canceled pursuant to section 42-2-122 (2.5), revoked pursuant to section 42-2-125 (1) (m), or ~~(1) (n)~~ revoked for a first offense under section 42-2-125 (1) (g.5) or a first offense under section 42-2-126 (3) (b) or (3) (e) ~~suspended pursuant to section 42-2-127.3 or denied pursuant to section 42-2-104 (3) (f) based upon a conviction under section 18-4-509, C.R.S., or a conviction under section 18-4-501, C.R.S., where the underlying factual basis involved defacing property, or any counterpart municipal charter or ordinance offense to either of said sections,~~ shall not be required to file proof of financial responsibility in order to be relicensed.

SECTION 16. Appropriation - adjustments to the 2009 long bill. For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2009, shall be adjusted as follows: The appropriation to the department of revenue, division of motor vehicles, driver and vehicle services, is decreased by seventeen thousand four hundred twenty-five dollars (\$17,425) cash funds and 0.4 FTE. Said sum shall be from the driver's license administrative revocation account created in section 42-2-132 (4) (b) (I) (A), Colorado Revised Statutes.

SECTION 17. Act subject to petition - effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to sentences for convictions entered on or after the applicable effective date of this act.

Approved: June 1, 2009