

CHAPTER 256

MOTOR VEHICLES AND TRAFFIC REGULATION

HOUSE BILL 97-1301

BY REPRESENTATIVES Tucker, K. Alexander, Allen, Arrington, Dean, Dyer, Epps, Faatz, George, Gotlieb, Hagedorn, June, S. Johnson, Kaufman, Kreutz, Lamborn, Lawrence, Leyba, May, McPherson, Morrison, Musgrave, Pankey, Paschall, Reeser, Schwarz, Swenson, Tool, S. Williams, Chavez, Clarke, Mace, Nichol, Tool, and T. Williams;
also SENATORS Schroeder, B. Alexander, Hopper, J. Johnson, Perlmutter, Arnold, Congrove, and Tebedo.

AN ACT

CONCERNING UNDERAGE PERSONS DRIVING WITH ALCOHOL CONTENT, AND, IN CONNECTION THEREWITH, MAKING DRIVING A MOTOR VEHICLE BY A PERSON UNDER TWENTY-ONE YEARS OF AGE WHILE HAVING A BLOOD OR BREATH ALCOHOL CONTENT OF AT LEAST 0.02 BUT LESS THAN 0.05 A TRAFFIC INFRACTION.

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

SECTION 1. 42-2-121, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

42-2-121. Records to be kept by the department - admission of records in court. (5) (a) UPON APPLICATION BY A PERSON, THE DEPARTMENT SHALL EXPUNGE ALL RECORDS CONCERNING A CONVICTION OF A PERSON FOR DRIVING ANY VEHICLE IN THIS STATE WITH AN ALCOHOL LEVEL OF AT LEAST 0.02 BUT LESS THAN 0.05 GRAMS OF ALCOHOL PER HUNDRED MILLILITERS OF BLOOD OR AT LEAST 0.02 BUT LESS THAN 0.05 GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH WHILE UNDER TWENTY-ONE YEARS OF AGE PURSUANT TO SECTION 42-4-1301 (2) (a.5) AND ANY RECORDS CONCERNING AN ADMINISTRATIVE DETERMINATION RESULTING IN A REVOCATION UNDER SECTION 42-2-126 (2) (a) (I.5) OR (2) (a) (IV) IF:

(I) SUCH PERSON PRESENTS A REQUEST FOR EXPUNGEMENT TO THE DEPARTMENT AND PROVIDES ALL INFORMATION REQUIRED BY THE DEPARTMENT TO PROCESS SUCH REQUEST;

(II) SUCH PERSON IS OVER TWENTY-ONE YEARS OF AGE AND ANY DEPARTMENT ACTION REGARDING THE OFFENSE OR ADMINISTRATIVE DETERMINATION HAS BEEN

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

CONCLUDED;

(III) THE PERSON HAS NOT BEEN CONVICTED FOR ANY OTHER OFFENSE UNDER SECTION 42-4-1301 THAT WAS COMMITTED WHILE SUCH PERSON WAS UNDER TWENTY-ONE YEARS OF AGE AND IS NOT SUBJECT TO ANY OTHER ADMINISTRATIVE DETERMINATION RESULTING IN A REVOCATION UNDER SECTION 42-2-126 (2) (a) (I.5) OR (2) (a) (IV) FOR ANY OTHER OCCURRENCE WHILE SUCH PERSON WAS UNDER TWENTY-ONE YEARS OF AGE; AND

(IV) SUCH PERSON PAYS THE FINE AND SURCHARGE FOR SUCH CONVICTION AND COMPLETES ANY OTHER REQUIREMENTS OF THE COURT WITH REGARD TO SUCH CONVICTION, INCLUDING, BUT NOT LIMITED TO, ANY ORDER TO PAY RESTITUTION TO ANY PARTY.

(b) UPON RECEIVING A REQUEST FOR EXPUNGEMENT, THE DEPARTMENT MAY DELAY CONSIDERATION OF SUCH REQUEST UNTIL SUFFICIENT TIME HAS ELAPSED TO ENSURE THAT THE PERSON IS NOT CONVICTED FOR ANY ADDITIONAL OFFENSE UNDER SECTION 42-4-1301 COMMITTED WHILE THE PERSON WAS UNDER TWENTY-ONE YEARS OF AGE AND THAT THERE IS NO ADDITIONAL ADMINISTRATIVE DETERMINATION RESULTING IN A REVOCATION UNDER SECTION 42-2-126 (2) (a) (I.5) OR (2) (a) (IV) FOR ACTIONS TAKEN WHILE THE PERSON WAS UNDER TWENTY-ONE YEARS OF AGE.

SECTION 2. 42-2-125 (1), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

(g.5) IN THE CASE OF A MINOR OR PROVISIONAL DRIVER, BEEN CONVICTED OF AN OFFENSE UNDER SECTION 42-4-1301 (2) (a.5) COMMITTED WHEN SUCH DRIVER WAS UNDER TWENTY-ONE YEARS OF AGE;

SECTION 3. 42-2-125 (1) (g) and (1) (i), Colorado Revised Statutes, 1993 Repl. Vol., as amended, are amended, and the said 42-2-125 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(g) (I) IN THE CASE OF AN ADULT DRIVER, been twice convicted of any offense provided for in section 42-4-1301 (1) or ~~(2)~~ (2) (a) for acts committed within a period of five years; ~~except that, in the case of a minor driver, said revocation shall occur after the first conviction;~~

(II) IN THE CASE OF A MINOR DRIVER OR A PROVISIONAL DRIVER, BEEN CONVICTED OF ONE OR TWO OFFENSES UNDER SECTION 42-4-1301 (1) OR (2) (a) COMMITTED WHILE SUCH DRIVER WAS UNDER TWENTY-ONE YEARS OF AGE;

(i) Been convicted of any offense provided for in section 42-4-1301 (1) or ~~(2)~~ (2)

(a) and has two previous convictions of any of such offenses. The license of any driver shall be revoked for an indefinite period and shall only be reissued upon proof to the department that said driver has completed 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) and that said driver has demonstrated knowledge of the laws and driving ability through the regular motor vehicle testing process. In no event shall such license be reissued in less than two years.

(2.5) THE PERIOD OF REVOCATION UNDER PARAGRAPH (g.5) OF SUBSECTION (1) OF THIS SECTION FOR A PERSON WHO IS LESS THAN TWENTY-ONE YEARS OF AGE AT THE TIME OF THE OFFENSE AND WHO IS CONVICTED OF DRIVING WITH AN ALCOHOL CONTENT OF AT LEAST 0.02 BUT LESS THAN 0.05 UNDER SECTION 42-4-1301 (2) (a.5) IS AS FOLLOWS:

(a) EXCEPT AS PROVIDED IN SUBSECTION (2.7) OF THIS SECTION, THREE MONTHS FOR A FIRST OFFENSE;

(b) SIX MONTHS FOR A SECOND OFFENSE;

(c) ONE YEAR FOR A THIRD OR SUBSEQUENT OFFENSE.

(2.7) (a) A PERSON WHOSE LICENSE IS REVOKED FOR A FIRST OFFENSE UNDER PARAGRAPH (g.5) OF SUBSECTION (1) OF THIS SECTION MAY REQUEST THAT, IN LIEU OF THE THREE-MONTH REVOCATION, THE PERSON'S LICENSE BE REVOKED FOR A PERIOD OF NOT LESS THAN THIRTY DAYS, TO BE FOLLOWED BY A SUSPENSION PERIOD OF SUCH LENGTH THAT THE TOTAL PERIOD OF REVOCATION AND SUSPENSION EQUALS THREE MONTHS. IF THE HEARING OFFICER APPROVES SUCH REQUEST, THE HEARING OFFICER MAY GRANT SUCH PERSON A PROBATIONARY LICENSE THAT MAY BE USED ONLY FOR THE REASONS PROVIDED IN SECTION 42-2-127 (14) (a).

(b) THE HEARING TO CONSIDER A REQUEST UNDER PARAGRAPH (a) OF THIS SUBSECTION (2.7) MAY BE HELD AT THE SAME TIME AS THE HEARING HELD UNDER SUBSECTION (4) OF THIS SECTION; EXCEPT THAT, A PROBATIONARY LICENSE MAY NOT BECOME EFFECTIVE UNTIL AT LEAST THIRTY DAYS HAVE ELAPSED SINCE THE BEGINNING OF THE REVOCATION PERIOD.

SECTION 4. 42-2-126 (2) (a) (I), (2) (a) (III), (3) (b), (5) (a), (6) (c) (I), (7) (a) (I), (9) (c) (I), and (9) (c) (III), Colorado Revised Statutes, 1993 Repl. Vol., as amended, are amended, and the said 42-2-126 (2) (a) is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS, to read:

42-2-126. Revocation of license based on administrative determination.

(2) (a) The department shall revoke the license of any person upon its determination that the person:

(I) Drove a vehicle in this state when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was 0.10 or more grams of alcohol per ONE hundred milliliters of blood or 0.10 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped driving and the time of testing, the

preponderance of the evidence must also establish that the minimum 0.10 blood or breath alcohol content was reached as a result of alcohol consumed before the person stopped driving.

(I.5) DROVE A VEHICLE IN THIS STATE WHEN SUCH PERSON WAS UNDER TWENTY-ONE YEARS OF AGE AND WHEN THE AMOUNT OF ALCOHOL, AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD OR BREATH, IN SUCH PERSON'S BLOOD WAS AT LEAST 0.02 BUT LESS THAN 0.10 GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR AT LEAST 0.02 BUT LESS THAN 0.10 GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AT THE TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING. IF THE PREPONDERANCE OF THE EVIDENCE ESTABLISHES THAT SUCH PERSON CONSUMED ALCOHOL BETWEEN THE TIME THAT THE PERSON STOPPED DRIVING AND THE TIME OF TESTING, THE PREPONDERANCE OF THE EVIDENCE MUST ALSO ESTABLISH THAT THE MINIMUM 0.02 BLOOD OR BREATH ALCOHOL CONTENT WAS REACHED AS A RESULT OF ALCOHOL CONSUMED BEFORE THE PERSON STOPPED DRIVING.

(III) Drove a commercial motor vehicle in this state when the amount of alcohol, as shown by analysis of such person's blood or breath, in such person's blood was 0.04 or more grams of alcohol per ONE hundred milliliters of blood or 0.04 OR MORE grams of alcohol per two hundred ten liters of breath at the time of driving or any time thereafter; OR

(IV) DROVE A COMMERCIAL MOTOR VEHICLE IN THIS STATE WHEN SUCH PERSON WAS UNDER TWENTY-ONE YEARS OF AGE AND WHEN THE AMOUNT OF ALCOHOL, AS SHOWN BY ANALYSIS OF SUCH PERSON'S BLOOD OR BREATH, IN SUCH PERSON'S BLOOD WAS AT LEAST 0.02 BUT LESS THAN 0.04 GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR AT LEAST 0.02 BUT LESS THAN 0.04 GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AT THE TIME OF DRIVING OR ANY TIME THEREAFTER.

(3) (b) A law enforcement officer who has probable cause to believe that a person was driving a commercial motor vehicle with a blood alcohol concentration of 0.04 or more IF THE PERSON WAS TWENTY-ONE YEARS OF AGE OR OLDER OR 0.02 OR MORE IF THE PERSON WAS UNDER TWENTY-ONE YEARS OF AGE shall forward to the department a verified report of all information relevant to the enforcement action, including information which THAT adequately identifies the person, a statement of the officer's probable cause for belief that the person committed such violation, a report of the results of any tests which THAT were conducted, and a copy of the citation and complaint, if any, filed with the court.

(5) (a) Whenever a law enforcement officer requests a person to take any test or tests as required by section 42-4-1301 (7) and such person refuses to take or to complete or to cooperate in the completing of such test or tests or whenever such test results are available to the law enforcement officer and such tests show an alcohol concentration of 0.10 or more grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or 0.10 or more grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath IF THE PERSON IS TWENTY-ONE YEARS OF AGE OR OLDER OR 0.02 OR MORE GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD AS SHOWN BY ANALYSIS OF SUCH PERSON'S BLOOD OR 0.02 OR MORE GRAMS OF ALCOHOL PER TWO HUNDRED TEN

LITERS OF BREATH AS SHOWN BY ANALYSIS OF SUCH PERSON'S BREATH IF THE PERSON IS UNDER TWENTY-ONE YEARS OF AGE and when the person who is tested or who refuses to take or to complete or to cooperate in the completing of any test or tests is still available to the law enforcement officer, the officer, acting on behalf of the department, shall serve the notice of revocation personally on such person.

(6) (c) (I) Where a license is revoked under subparagraph (I), ~~or~~ (I.5), (III), OR (IV) of paragraph (a) of subsection (2) of this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of section 42-4-1301 (1) (a) or (2), both the revocation under this section and any suspension, revocation, cancellation, or denial which results from such conviction shall be imposed, but the periods shall run concurrently, and the total period of revocation, suspension, cancellation, or denial shall not exceed the longer of the two periods.

(7) (a) The periods of revocation specified by subsection (6) of this section are intended to be minimum periods of revocation for the described conduct. No license shall be restored under any circumstances, and no probationary license shall be issued during the revocation period; except that:

(I) A person whose privilege to drive a commercial motor vehicle has been revoked because the person drove a commercial motor vehicle when the person's blood alcohol content was 0.04 or greater, but less than 0.10, grams of alcohol per ONE hundred milliliters of blood or per two hundred ten liters of breath AND WHO WAS TWENTY-ONE YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE may apply for a driver's license of another class or type as long as there is no other statutory reason to deny the person a license. Such person may not operate any commercial motor vehicle during the period of revocation of such person's privilege to operate commercial motor vehicles. The department may not issue such person a probationary license that would authorize such person to operate any commercial motor vehicle.

(9) (c) (I) Where a license is revoked under subparagraph (I) OR (I.5) of paragraph (a) of subsection (2) of this section, the sole issue at the hearing shall be whether, by a preponderance of the evidence, the person drove a vehicle in this state when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was 0.10 or more grams of alcohol per ONE hundred milliliters of blood or 0.10 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving IF THE PERSON WAS TWENTY-ONE YEARS OF AGE OR OLDER AT THE TIME OF DRIVING THE VEHICLE OR 0.02 OR MORE GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR 0.02 OR MORE GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AT THE TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING IF THE PERSON WAS UNDER TWENTY-ONE YEARS OF AGE AT THE TIME OF DRIVING THE VEHICLE. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped driving and the time that testing occurred, the preponderance of the evidence must also establish that the minimum 0.10 blood or breath alcohol content required in subparagraph (I) of paragraph (a) of subsection (2) of this section OR THE MINIMUM 0.02 BLOOD OR BREATH ALCOHOL CONTENT REQUIRED IN SUBPARAGRAPH (I.5) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION was reached as a result of alcohol consumed before the person stopped driving; or, where a license is revoked under subparagraph (II) of paragraph (a) of

subsection (2) of this section, whether the person refused to take or to complete or to cooperate in the completing of any test or tests of the person's blood, breath, saliva, or urine as required by section 42-4-1301 (7). If the presiding hearing officer finds the affirmative of the issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(III) Where a license is revoked under subparagraph (III) OR SUBPARAGRAPH (IV) of paragraph (a) of subsection (2) of this section, the sole issue at the hearing shall be whether, by a preponderance of the evidence, the person drove a commercial motor vehicle in this state when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was 0.04 or more grams of alcohol per ONE hundred milliliters of blood or 0.04 or more grams of alcohol per two hundred ten liters of breath at the time of driving or anytime thereafter FOR A PERSON TWENTY-ONE YEARS OF AGE OR OLDER OR 0.02 OR MORE GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR 0.02 OR MORE GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AT THE TIME OF DRIVING OR ANYTIME THEREAFTER FOR A PERSON UNDER TWENTY-ONE YEARS OF AGE if the preponderance of the evidence establishes that such person did not consume any alcohol between the time of driving and the time of testing. If the presiding hearing officer finds the affirmative of the issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

SECTION 5. 42-2-126 (6) (b), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS to read:

42-2-126. Revocation of license based on administrative determination.
(6) (b) (II.5) THE PERIOD OF LICENSE REVOCATION UNDER SUBPARAGRAPH (I.5) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION SHALL BE:

(A) EXCEPT AS PROVIDED IN SUBPARAGRAPH (IX) OF THIS PARAGRAPH (b), THREE MONTHS FOR A FIRST VIOLATION;

(B) SIX MONTHS FOR A SECOND VIOLATION; AND

(C) ONE YEAR FOR A THIRD OR SUBSEQUENT VIOLATION.

(VIII) THE PERIOD OF LICENSE REVOCATION FOR A VIOLATION UNDER SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF SUBSECTION (2) SHALL BE:

(A) EXCEPT AS PROVIDED IN SUBPARAGRAPH (IX) OF THIS PARAGRAPH (b), THREE MONTHS FOR A FIRST VIOLATION;

(B) SIX MONTHS FOR A SECOND VIOLATION; AND

(C) ONE YEAR FOR A THIRD OR SUBSEQUENT VIOLATION.

(IX) (A) A PERSON WHOSE LICENSE IS REVOKED FOR A FIRST OFFENSE UNDER SUBPARAGRAPH (I.5) OR (IV) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION MAY REQUEST THAT, IN LIEU OF THE THREE-MONTH REVOCATION, THE PERSON'S LICENSE BE REVOKED FOR A PERIOD OF NOT LESS THAN THIRTY DAYS, TO BE

FOLLOWED BY A SUSPENSION PERIOD OF SUCH LENGTH THAT THE TOTAL PERIOD OF REVOCATION AND SUSPENSION EQUALS THREE MONTHS. IF THE HEARING OFFICER APPROVES SUCH REQUEST, THE HEARING OFFICER MAY GRANT SUCH PERSON A PROBATIONARY LICENSE THAT MAY BE USED ONLY FOR THE REASONS PROVIDED IN SECTION 42-2-127 (14) (a).

(B) THE HEARING TO CONSIDER A REQUEST UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (IX) MAY BE HELD AT THE SAME TIME AS THE HEARING HELD UNDER SUBSECTION (8) OF THIS SECTION; EXCEPT THAT, A PROBATIONARY LICENSE MAY NOT BECOME EFFECTIVE UNTIL AT LEAST THIRTY DAYS HAVE ELAPSED SINCE THE BEGINNING OF THE REVOCATION PERIOD.

SECTION 6. 42-2-127 (5) (b), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

42-2-127. Authority to suspend license - to deny license - type of conviction - points. (5) Point system schedule:
Type of conviction Points

(b) (IV) FOR A PERSON UNDER TWENTY-ONE YEARS OF AGE, DRIVING WITH AN ALCOHOL CONTENT OF AT LEAST 0.02 BUT LESS THAN 0.05 PURSUANT TO SECTION 42-4-1301 (2) (a.5) 4

SECTION 7. 42-2-127 (9) (a), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-2-127. Authority to suspend license - to deny license - type of conviction - points. (9) (a) Whenever the department receives notice that a person has pled guilty to, or been found guilty by a court or a jury of, a violation of section 42-4-1301 (1) (a), (1) (c), or ~~(2)~~ (2) (a) and receives the license surrendered by the person to the court pursuant to section 42-2-129, the department shall immediately suspend the license of the person for a period of not less than one year. If the department is also required to enter a license revocation for a period of one year or longer under any provision of this title based on the same conviction, the suspension shall not be entered.

SECTION 8. 42-2-129, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-2-129. Mandatory surrender of license or permit for driving under the influence or with excessive alcoholic content. Upon a plea of guilty or nolo contendere, or a verdict of guilty by the court or a jury, to a violation of section 42-4-1301 (1) (a), (1) (c), or ~~(2)~~ (2) (a), OR, FOR A PERSON UNDER TWENTY-ONE YEARS OF AGE, TO A VIOLATION OF SECTION 42-4-1301 (1) (a), (1) (b), (1) (c), (2) (a), OR (2) (a.5), the court shall require the offender to immediately surrender the offender's driver's, minor driver's, provisional 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 license or permit to the court, except for good cause shown, commits a class 2 misdemeanor traffic

offense.

SECTION 9. 42-2-202 (2) (a) (I), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-2-202. Habitual offenders - frequency and type of violations. (2) (a) An habitual offender is a person having three or more convictions of any of the following separate and distinct offenses arising out of separate acts committed within a period of seven years:

(I) Driving a motor vehicle in violation of any provision of section 42-4-1301 (1) or ~~(2)~~ (2) (a);

SECTION 10. 42-2-403 (2), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

42-2-403. Department authority - rules and regulations - federal requirements. (2) (d) THE DEPARTMENT MAY NOT CONSIDER THE FOLLOWING WITH REGARD TO AN APPLICATION FROM A PERSON FOR A COMMERCIAL DRIVER'S LICENSE:

(I) A CONVICTION UNDER SECTION 42-4-1301 (2) (a.5);

(II) A LICENSE REVOCATION IMPOSED UNDER SECTION 42-2-126 (2) (a) (I.5) IF THE PERSON WAS UNDER TWENTY-ONE YEARS OF AGE AT THE TIME OF THE OFFENSE AND SUCH PERSON DROVE A MOTOR VEHICLE WHILE SUCH PERSON'S BLOOD ALCOHOL CONTENT WAS AT LEAST 0.02 BUT LESS THAN 0.05 GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR AT LEAST 0.02 BUT LESS THAN 0.05 GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH; OR

(III) A LICENSE REVOCATION IMPOSED UNDER SECTION 42-2-126 (2) (a) (IV) IF THE PERSON WAS UNDER TWENTY-ONE YEARS OF AGE AT THE TIME OF THE OFFENSE AND SUCH PERSON DROVE A COMMERCIAL MOTOR VEHICLE WHILE SUCH PERSON'S BLOOD ALCOHOL CONTENT WAS AT LEAST 0.02 BUT LESS THAN 0.04 GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR AT LEAST 0.02 BUT LESS THAN 0.04 GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH.

SECTION 11. 42-2-405 (3) (b) (II), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-2-405. Driver's license disciplinary actions - cancellations - denials. (3) A commercial driver's license shall be cancelled and such driver shall be denied from driving a commercial motor vehicle in this state for life or, if a driver of a commercial motor vehicle does not have a commercial driver's license, such person shall be denied from ever obtaining a commercial driver's license and from driving a commercial motor vehicle in this state for life, unless such cancellation or denial is otherwise reduced to a period of not less than ten years by the secretary of the United States department of transportation:

(b) If such driver commits two or more violations, or any combination arising from two incidents, of:

(II) Driving a commercial motor vehicle in this state when the amount of alcohol, as shown by analysis of such person's blood or breath, in such person's blood was 0.04 or more grams of alcohol per ONE hundred milliliters of blood or 0.04 OR MORE grams of alcohol per two hundred ten liters of breath at the time of driving or any time thereafter;

SECTION 12. 42-4-1301 (2), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH 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. (2) (a.5) IT IS A CLASS A TRAFFIC INFRACTION FOR ANY PERSON UNDER TWENTY-ONE YEARS OF AGE TO DRIVE ANY VEHICLE IN THIS STATE WHEN THE AMOUNT OF ALCOHOL, AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD OR BREATH, IN SUCH PERSON'S BLOOD IS AT LEAST 0.02 BUT LESS THAN 0.05 GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR AT LEAST 0.02 BUT LESS THAN 0.05 GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AT THE TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING.

SECTION 13. 42-4-1301 (6) and (8), Colorado Revised Statutes, 1993 Repl. Vol., as amended, are 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. (6) Following the lawful contact with a person who has been driving a vehicle, and when a law enforcement officer reasonably suspects that a person was driving a vehicle while under the influence of or while impaired by alcohol, the law enforcement officer may conduct a preliminary screening test using a device approved by the executive director of the department of public health and environment after first advising the driver that the driver may either refuse or agree to provide a sample of the driver's breath for such preliminary test; EXCEPT THAT, IF THE DRIVER IS UNDER TWENTY-ONE YEARS OF AGE, THE LAW ENFORCEMENT OFFICER MAY, AFTER PROVIDING SUCH ADVISEMENT TO THE PERSON, CONDUCT SUCH PRELIMINARY SCREENING TEST IF THE OFFICER REASONABLY SUSPECTS THAT THE PERSON HAS CONSUMED ANY ALCOHOL. The results of this preliminary screening test may be used by a law enforcement officer in determining whether probable cause exists to believe such person was driving a vehicle in violation of paragraph (a) or (b) of subsection (1) or subsection (2) of this section and whether to administer a test pursuant to paragraph (a) of subsection (7) of this section. Neither the results of such preliminary screening test nor the fact that the person refused such test shall be used in any court action except in a hearing outside of the presence of a jury, when such hearing is held to determine if a law enforcement officer had probable cause to believe that the driver committed a violation of paragraph (a) or (b) of subsection (1) or subsection (2) of this section. The results of such preliminary screening test shall be made available to the driver or the driver's attorney on request. The preliminary screening test shall not substitute for or qualify as the test or tests required by paragraph (a) of subsection (7) of this section.

(8) No court shall accept a plea of guilty to a non-alcohol-related or non-drug-related traffic offense OR GUILTY TO AN OFFENSE UNDER PARAGRAPH (a.5) OF SUBSECTION (2) OF THIS SECTION from a person charged with a violation of

subsection (1) or ~~(2)~~ (2) (a) of this section; except that the court may accept a plea of guilty to a non-alcohol-related or non-drug-related traffic offense OR TO AN OFFENSE UNDER PARAGRAPH (a.5) OF SUBSECTION (2) OF THIS SECTION upon a good faith representation by the prosecuting attorney that the attorney could not establish a prima facie case if the defendant were brought to trial on the original alcohol-related or drug-related offense.

SECTION 14. 42-4-1701 (4) (a) (I) (N), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-4-1701. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule. (4) (a) (I) Except as provided in paragraph (c) of subsection (5) of this section, every person who is convicted of, who admits liability for, or against whom a judgment is entered for a violation of any provision of this title to which the provisions of paragraph (a) or (b) of subsection (5) of this section apply shall be fined or penalized, and have a surcharge levied thereon pursuant to section 24-4.2-104 (1) (b) (I), C.R.S., in accordance with the penalty and surcharge schedule set forth in sub-subparagraphs (A) to (P) of this subparagraph (I); or, if no penalty or surcharge is specified in the schedule, the penalty for class A and class B traffic infractions shall be fifteen dollars, and the surcharge shall be two dollars. These penalties and surcharges shall apply whether the defendant acknowledges the defendant's guilt or liability in accordance with the procedure set forth by paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction or has judgment entered against the defendant by a county court magistrate. Penalties and surcharges for violating specific sections shall be as follows:

Section Violated Penalty Surcharge

(N) Other offenses:

42-4-1301 (2) (a.5)	\$ 50.00	\$ 6.00
42-4-1402	50.00	6.00
42-4-1403	15.00	2.00
42-4-1404	15.00	2.00
42-4-1406	35.00	4.00
42-4-1407	35.00	4.00
42-4-314	35.00	4.00
42-4-1408	15.00	2.00

SECTION 15. 42-4-1715 (1), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-4-1715. Convictions, judgments, and charges recorded - public inspection.

(1) (a) Every judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this article or any other law regulating the operation of vehicles on highways.

(b) (I) UPON APPLICATION BY A PERSON, THE COURT SHALL EXPUNGE ALL RECORDS CONCERNING A CONVICTION OF THE PERSON FOR DRIVING ANY VEHICLE IN THIS STATE WITH AN ALCOHOL LEVEL OF AT LEAST 0.02 BUT LESS THAN 0.05 GRAMS OF ALCOHOL

PER HUNDRED MILLILITERS OF BLOOD OR AT LEAST 0.02 BUT LESS THAN 0.05 GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH WHILE UNDER TWENTY-ONE YEARS OF AGE PURSUANT TO SECTION 42-4-1301 (2) (a.5) IF:

(A) SUCH PERSON PRESENTS A REQUEST FOR EXPUNGEMENT TO THE COURT AND PROVIDES ALL INFORMATION REQUIRED BY THE COURT TO PROCESS SUCH REQUEST;

(B) SUCH PERSON IS OVER TWENTY-ONE YEARS OF AGE AND THE COURT ACTION REGARDING THE OFFENSE HAS BEEN CONCLUDED;

(C) THE PERSON HAS NOT BEEN CONVICTED FOR ANY OTHER OFFENSE UNDER SECTION 42-4-1301 THAT WAS COMMITTED WHILE SUCH PERSON WAS UNDER TWENTY-ONE YEARS OF AGE; AND

(D) SUCH PERSON PAYS THE FINE AND SURCHARGE FOR SUCH CONVICTION AND COMPLETES ANY OTHER REQUIREMENTS OF THE COURT WITH REGARD TO SUCH CONVICTION, INCLUDING, BUT NOT LIMITED TO, ANY ORDER TO PAY RESTITUTION TO ANY PARTY.

(II) UPON RECEIVING A REQUEST FOR EXPUNGEMENT, THE COURT MAY DELAY CONSIDERATION OF SUCH REQUEST UNTIL SUFFICIENT TIME HAS ELAPSED TO ENSURE THAT THE PERSON IS NOT CONVICTED FOR ANY ADDITIONAL OFFENSE UNDER SECTION 42-4-1301 COMMITTED WHILE THE PERSON WAS UNDER TWENTY-ONE YEARS OF AGE.

SECTION 16. 42-7-406 (1), Colorado Revised Statutes, 1993 Repl. Vol., as amended, 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) OR REVOKED FOR A FIRST OFFENSE UNDER SECTION 42-2-125 (1) (g.5) OR A FIRST OFFENSE UNDER SECTION 42-2-126 (2) (a) (I.5) OR (2) (a) (IV) shall not be required to file proof of financial responsibility in order to be relicensed.

SECTION 17. 42-7-408 (1) (c), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-7-408. Proof of financial responsibility - methods of giving proof - duration - exception. (1) (c) Notwithstanding the three-year requirement in paragraph (b) of this subsection (1):

(I) If an insured has been found guilty of a driving offense pursuant to section 42-4-1301 (1) or ~~(2)~~ (2) (a) or if the insured's license has been revoked pursuant to section 42-2-125 (1) (m) or 42-2-126, OTHER THAN A REVOCATION UNDER SECTION 42-2-126 (2) (a) (I.5) OR (2) (a) (IV), only one time and no accident was

involved in such offense, proof of financial responsibility for the future shall be required to be maintained only for as long as the insured's driving privilege is ordered to be under restraint, up to a maximum of three years. The time period for maintaining the future proof of liability insurance shall begin at the time the driver reinstates his or her driving privilege.

(II) IF AN INSURED HAS BEEN FOUND GUILTY OF A SECOND OR SUBSEQUENT OFFENSE OF DRIVING WITH AN ALCOHOL CONTENT OF AT LEAST 0.02 BUT LESS THAN 0.05 WHILE UNDER TWENTY-ONE YEARS OF AGE UNDER SECTION 42-4-1301 (2) (a.5) OR IF THE INSURED'S DRIVER'S LICENSE HAS BEEN REVOKED BECAUSE OF A SECOND OR SUBSEQUENT OFFENSE PURSUANT TO SECTION 42-2-126 (2) (a) (I.5) OR (2) (a) (IV), PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE SHALL BE REQUIRED TO BE MAINTAINED ONLY FOR AS LONG AS THE INSURED'S DRIVING PRIVILEGE IS ORDERED TO BE UNDER RESTRAINT. THE TIME PERIOD FOR MAINTAINING THE FUTURE PROOF OF LIABILITY INSURANCE SHALL BEGIN AT THE TIME THE DRIVER REINSTATES HIS OR HER DRIVING PRIVILEGE.

SECTION 18. 18-3-106 (4) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-3-106. Vehicular homicide. (4) (a) If a law enforcement officer has probable cause to believe that any person was driving a motor vehicle in violation of paragraph (b) of subsection (1) of this section, such person, upon the request of the law enforcement officer, shall take, and complete, and cooperate in the completing of any test or tests of such person's blood, breath, saliva, or urine for the purpose of determining the alcoholic or drug content within his or her system. The type of test or tests shall be determined by the law enforcement officer requiring the test or tests. If such person refuses to take, or to complete, or to cooperate in the completing of any such test or tests, such test or tests may be performed at the direction of a law enforcement officer having such probable cause, without such person's authorization or consent. If any person refuses to take or complete, or cooperate in the taking or completing of any test or tests required by this paragraph (a), such person shall be subject to license revocation pursuant to the provisions of section 42-2-126 (2), C.R.S. When such test or tests show that the amount of alcohol in a person's blood was in violation of the limits provided for in section 42-2-126 (2) (a) (I), (2) (a) (I.5), (2) (a) (III), OR (2) (a) (IV), C.R.S., such person shall be subject to license revocation pursuant to the provisions of section 42-2-126, C.R.S.

SECTION 19. 18-3-205 (4) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-3-205. Vehicular assault. (4) (a) If a law enforcement officer has probable cause to believe that any person was driving a motor vehicle in violation of paragraph (b) of subsection (1) of this section, such person, upon the request of the law enforcement officer, shall take, and complete, and cooperate in the completing of any test or tests of such person's blood, breath, saliva, or urine for the purpose of determining the alcoholic or drug content within his or her system. The type of test or tests shall be determined by the law enforcement officer requiring the test or tests. If such person refuses to take, or to complete, or to cooperate in the completing of any such test or tests, such test or tests may be performed at the direction of a law enforcement officer having such probable cause, without such person's authorization

or consent. If any person refuses to take, or to complete, or to cooperate in the taking or completing of any test or tests required by this paragraph (a), such person shall be subject to license revocation pursuant to the provisions of section 42-2-126 (2), C.R.S. When such test or tests show that the amount of alcohol in a person's blood was in violation of the limits provided for in section 42-2-126 (2) (a) (I), (2) (a) (I.5), (2) (a) (III), OR (2) (a) (IV), C.R.S., such person shall be subject to license revocation pursuant to the provisions of section 42-2-126, C.R.S.

SECTION 20. Effective date - applicability. This act shall take effect July 1, 1997, and shall apply to offenses committed on or after said date.

SECTION 21. 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 3, 1997