

## CHAPTER 35

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**MOTOR VEHICLES AND TRAFFIC REGULATION**

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**HOUSE BILL 99-1026**

BY REPRESENTATIVES Fairbank, Hagedorn, and Tool;  
also SENATOR Evans.

**AN ACT**

CONCERNING PROCEDURES FOR THE REVOCATION OF DRIVERS' LICENSES.

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

**SECTION 1.** 42-2-126 (2) (a) (II), (8) (e) (II), (8) (e) (III), and (8) (e) (V), Colorado Revised Statutes, are amended, and the said 42-2-126 (8) (e) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, 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:

(II) 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), ~~or section 18-3-106 (4), or 18-3-205 (4), C.R.S.~~ **OR IF A LAW ENFORCEMENT OFFICER REQUESTS A TEST UNDER THE PROVISIONS OF SECTION 42-4-1301 (7) (a) (II), THE PERSON MUST COOPERATE WITH THE REQUEST SUCH THAT THE SAMPLE OF BLOOD OR BREATH CAN BE OBTAINED WITHIN TWO HOURS OF THE PERSON'S DRIVING.**

(8) (e) (II) The law enforcement officer who submits the documents and affidavit required by subsection (3) of this section need not be present at the hearing unless the presiding hearing officer requires that the law enforcement officer be present and the hearing officer issues a written notice for the law enforcement officer's appearance or unless the respondent or attorney for the respondent determines that the law enforcement officer should be present and serves a timely subpoena upon such officer ~~at least five days before the day of the hearing~~ **IN ACCORDANCE WITH SUBPARAGRAPH (II.5) OF THIS PARAGRAPH (e).** If the respondent notifies the department in writing at

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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.*

the time that the hearing is requested that the respondent desires the law enforcement officer's presence at the hearing, the department shall issue a written notice for the officer to appear at the hearing.

(II.5) ANY SUBPOENA SERVED UPON A LAW ENFORCEMENT OFFICER FOR ATTENDANCE AT A HEARING CONDUCTED PURSUANT TO THIS SECTION SHALL BE SERVED AT LEAST FIVE CALENDAR DAYS BEFORE THE DAY OF THE HEARING.

(III) If ~~the~~ a LAW ENFORCEMENT officer, after receiving a notice or subpoena to appear from either the department or the respondent, ~~has a conflict with~~ IS UNABLE TO APPEAR AT any original or rescheduled hearing date set by the department DUE TO A REASONABLE CONFLICT, INCLUDING BUT NOT LIMITED TO TRAINING, VACATION, OR PERSONAL LEAVE TIME, the officer or the officer's supervisor ~~may~~ SHALL contact the department NOT LESS THAN FORTY-EIGHT HOURS PRIOR TO THE HEARING and reschedule the hearing to a time when the officer will be available. If the law enforcement officer cannot appear at any original or rescheduled hearing because of medical reasons, a law enforcement emergency, another court or administrative hearing, or any other legitimate just cause as determined by the department and the officer or the officer's supervisor gives notice of such officer's inability to appear to the department prior to the dismissal of the revocation proceeding, the department shall reschedule the hearing following consultation with the officer or the officer's supervisor at the earliest possible time when the officer and the hearing officer will be available.

(V) At the time that a respondent requests a hearing, written notice shall be given to the respondent advising such respondent of the right to subpoena the law enforcement officer for the hearing, that such subpoena must be served upon the officer ~~at least five days before the day of the hearing~~, IN ACCORDANCE WITH SUBPARAGRAPH (II.5) OF THIS PARAGRAPH (e), and of the respondent's right, at the time that the respondent requests the hearing, to notify the department in writing that the respondent desires the officer's presence at the hearing, and that, upon such notification, the department shall issue a written notice for the officer to appear at the hearing. The written notice shall also state that, if the law enforcement officer does not appear at the hearing, documents and an affidavit prepared and submitted by the law enforcement officer will be used at the hearing. The written notice shall further state that the affidavit and documents submitted by the law enforcement officer may be reviewed by the respondent prior to the hearing.

**SECTION 2. Effective date - applicability.** This act shall take effect July 1, 1999, and the amendments to section 42-2-126 (8), Colorado Revised Statutes, shall apply to hearings conducted on or after said date.

**SECTION 3. 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: March 24, 1999