

CHAPTER 145

MOTOR VEHICLES AND TRAFFIC REGULATION

SENATE BILL 00-087

BY SENATORS Epps, Arnold, Evans, and Hernandez;
also REPRESENTATIVES Gotlieb, Gagliardi, Kaufman, Mace, Ragsdale, Swenson, and S. Williams.

AN ACT

CONCERNING THE ELIMINATION OF BLOOD TESTING AS AN OPTION FOR DRIVERS UNDER TWENTY-ONE YEARS OF AGE TO DETERMINE BLOOD ALCOHOL LEVELS.

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

SECTION 1. 42-2-126 (2) (a) (I.5), (2) (a) (IV), (5) (a), (9) (c) (I), and (9) (c) (III), Colorado Revised Statutes, are amended, and the said 42-2-126 (2) (a) 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:

(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~~ IN EXCESS OF 0.05 but less than 0.10 grams of alcohol per one hundred milliliters of blood or ~~at least 0.02~~ IN EXCESS OF 0.05 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~~ REQUIRED blood or breath alcohol content was reached as a result of alcohol consumed before the person stopped driving.

(I.7) 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 BREATH, SUBJECT TO SECTION 42-4-1301 (7), IN SUCH PERSON'S BLOOD WAS AT LEAST 0.02 BUT NOT IN EXCESS OF 0.05 GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD AT THE TIME OF DRIVING OR WITHIN TWO

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

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 BREATH ALCOHOL CONTENT WAS REACHED AS A RESULT OF ALCOHOL CONSUMED BEFORE THE PERSON STOPPED DRIVING.

(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 IN SUCH PERSON'S BLOOD, as shown by analysis of such person's ~~blood or breath, in such person's blood~~ SUBJECT TO SECTION 42-4-1301 (7), 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.

(5) (a) (I) 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~~ SUBJECT TO SECTION 42-4-1301 (7), AT LEAST 0.02 ~~or more~~ BUT NOT IN EXCESS OF 0.05 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.

(II) WHENEVER A LAW ENFORCEMENT OFFICER REQUESTS A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE 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 IN EXCESS OF 0.05 GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD AS SHOWN BY ANALYSIS OF SUCH PERSON'S BLOOD OR IN EXCESS OF 0.05 GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AS SHOWN BY ANALYSIS OF SUCH PERSON'S BREATH 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.

(9) (c) (I) Where a license is revoked under ~~subparagraph (I) or~~ SUBPARAGRAPHS (I), (I.5), OR (I.7) 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~~ SUBJECT TO SECTION 42-4-1301 (7), AT LEAST 0.02 ~~or more~~ BUT NOT IN EXCESS OF 0.05 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, OR IN EXCESS OF 0.05 GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR IN EXCESS OF 0.05 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~~ 0.05 blood or breath alcohol content required in subparagraph (I.5) of paragraph (a) of subsection (2) of this section, OR THE MINIMUM 0.02 BREATH ALCOHOL CONTENT REQUIRED IN SUBPARAGRAPH (I.7) 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~~ SUBJECT TO SECTION 42-4-1301 (7), 0.02 ~~or more~~ BUT LESS THAN 0.04 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, OR 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 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 2. 42-4-1301 (2) (a.5) and (7) (a) (II), Colorado Revised Statutes, 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. (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~~ SUBJECT TO SUBSECTION (7) OF THIS SECTION, is at least ~~0.02 but not more than 0.05 grams of alcohol per one hundred milliliters of blood or~~ at least 0.02 but not more than 0.05 grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving.

(7) (a) (II) (A) Any person who drives any motor vehicle upon the streets and highways and elsewhere throughout this state shall be required to take and complete, and to cooperate in the taking and completing of, any test or tests of such person's breath or blood for the purpose of determining the alcoholic content of the person's blood or breath when so requested and directed by a law enforcement officer having probable cause to believe that the person was driving a motor vehicle in violation of subsection (1) or (2) of this section. Except as otherwise provided in this section, if ~~such~~ A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER requests that said test be a blood test, then the test shall be of his or her blood; but, if such person requests that a specimen of his or her blood not be drawn, then a specimen of such person's breath shall be obtained and tested. A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE SHALL BE ENTITLED TO REQUEST A BLOOD TEST UNLESS THE ALLEGED VIOLATION IS A CLASS A TRAFFIC INFRACTION, IN WHICH CASE A SPECIMEN OF SUCH PERSON'S BREATH SHALL BE OBTAINED AND TESTED, EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II).

(B) If ~~such~~ A person elects either a blood test or a breath test, such person shall not be permitted to change such election, and, if such person fails to take and complete, and to cooperate in the completing of, the test elected, such failure shall be deemed to be a refusal to submit to testing. If such person is unable to take, or to complete, or to cooperate in the completing of a breath test because of injuries, illness, disease, physical infirmity, or physical incapacity, or if such person is receiving medical treatment at a location at which a breath testing instrument certified by the department of public health and environment is not available, the test shall be of such person's blood.

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: May 12, 2000