

CHAPTER 236

MOTOR VEHICLES AND TRAFFIC REGULATION

HOUSE BILL 04-1021

BY REPRESENTATIVE(S) Briggs, Merrifield, Carroll, Frangas, Plant, Stafford, and Williams S.;
also SENATOR(S) McElhany, Arnold, Groff, Grossman, Hanna, Isgar, Phillips, Tapia, Tupa, and Veiga.

AN ACT

CONCERNING THE CONSUMPTION OF ALCOHOL, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 42-4-1301 (2) (a), (4), (6) (a) (II), and (6) (a) (III), Colorado Revised Statutes, are amended to read:

42-4-1301. Driving under the influence - driving while impaired - driving with excessive alcoholic content - penalties. (2) (a) It is a misdemeanor for any person to drive any vehicle in this state when the person's BAC is ~~0.10~~ 0.08 or more at the time of driving or within two hours after driving. During a trial, if the state's evidence raises the issue, or if a defendant presents some credible evidence, that the defendant consumed alcohol between the time that the defendant stopped driving and the time that testing occurred, such issue shall be an affirmative defense, and the prosecution must establish beyond a reasonable doubt that the minimum ~~0.10~~ 0.08 blood or breath alcohol content required in this paragraph (a) was reached as a result of alcohol consumed by the defendant before the defendant stopped driving.

(4) No court shall accept a plea of guilty to a non-alcohol-related or non-drug-related traffic offense or guilty to the offense of UDD from a person charged with DUI, DUI per se, ~~DWAI~~, or habitual user; except that the court may accept a plea of guilty to a non-alcohol-related or non-drug-related traffic offense or to UDD 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.

(6) (a) In any prosecution for DUI or DWAI, the defendant's BAC at the time of the commission of the alleged offense or within a reasonable time thereafter gives rise to the following presumptions or inferences:

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

(II) If at such time the defendant's BAC was in excess of 0.05 but less than ~~0.10~~ 0.08, such fact gives rise to the permissible inference that the defendant's ability to operate a vehicle was impaired by the consumption of alcohol, and such fact may also be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.

(III) If at such time the defendant's BAC was ~~0.10~~ 0.08 or more, such fact gives rise to the permissible inference that the defendant was under the influence of alcohol.

SECTION 2. 42-4-1300.3 (3), Colorado Revised Statutes, is amended to read:

42-4-1300.3. Definitions. As used in this part 13, unless the context otherwise requires:

(3) "DUI per se" means driving with a BAC of ~~0.10~~ 0.08 or more, and use of the term shall incorporate by reference the offense described in section 42-4-1301 (2) (a).

SECTION 3. 18-3-106 (2) (b) and (2) (c), Colorado Revised Statutes, are amended to read:

18-3-106. Vehicular homicide. (2) In any prosecution for a violation of subsection (1) of this section, the amount of alcohol in the defendant's blood or breath at the time of the commission of the alleged offense, or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, shall give rise to the following presumptions:

(b) If there was at such time in excess of 0.05 but less than ~~0.10~~ 0.08 grams of alcohol per one hundred milliliters of blood, or if there was at such time in excess of 0.05 but less than ~~0.10~~ 0.08 grams of alcohol per two hundred ten liters of breath, such fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.

(c) If there was at such time ~~0.10~~ 0.08 or more grams of alcohol per one hundred milliliters of blood, or if there was at such time ~~0.10~~ 0.08 or more grams of alcohol per two hundred ten liters of breath, it shall be presumed that the defendant was under the influence of alcohol.

SECTION 4. 18-3-205 (2) (b) and (2) (c), Colorado Revised Statutes, are amended to read:

18-3-205. Vehicular assault. (2) In any prosecution for a violation of subsection (1) of this section, the amount of alcohol in the defendant's blood or breath at the time of the commission of the alleged offense, or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, shall give rise to the following presumptions:

(b) If there was at such time in excess of 0.05 but less than ~~0.10~~ 0.08 grams of alcohol per one hundred milliliters of blood, or if there was at such time in excess of 0.05 but less than ~~0.10~~ 0.08 grams of alcohol per two hundred ten liters of breath,

such fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.

(c) If there was at such time ~~0.10~~ 0.08 or more grams of alcohol per one hundred milliliters of blood, or if there was at such time ~~0.10~~ 0.08 or more grams of alcohol per two hundred ten liters of breath, it shall be presumed that the defendant was under the influence of alcohol.

SECTION 5. 42-2-126 (2) (a) (I), (2) (a) (I.5), (5) (a) (I), (7) (a) (I), (9) (c) (I), and (9) (c) (II), Colorado Revised Statutes, are amended 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~~ 0.08 or more grams of alcohol per one hundred milliliters of blood or ~~0.10~~ 0.08 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~~ 0.08 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 in excess of 0.05 but less than ~~0.10~~ 0.08 grams of alcohol per one hundred milliliters of blood or in excess of 0.05 but less than ~~0.10~~ 0.08 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 required blood or breath alcohol content was reached as a result of alcohol consumed before the person stopped driving.

(5) (a) (I) Whenever a law enforcement officer requests a person to take any test or tests as required by section 42-4-1301.1 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~~ 0.08 or more grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or ~~0.10~~ 0.08 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, subject to section 42-4-1301.1, at least 0.02 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.

(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~~ 0.08, 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), (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~~ 0.08 or more grams of alcohol per one hundred milliliters of blood or ~~0.10~~ 0.08 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, subject to section 42-4-1301.1, at least 0.02 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~~ 0.08 blood or breath alcohol content required in subparagraph (I) of paragraph (a) of subsection (2) of this section, the minimum 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 42-4-1301.1. 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.

(II) When the determination of the issue pursuant to this paragraph (c) is based upon an analysis of the respondent's blood or breath and evidence is offered by the respondent to show a disparity between the results of the analysis done on behalf of the law enforcement agency and the results of an analysis done on behalf of the respondent, and when a preponderance of the evidence establishes that the blood

analysis conducted on behalf of the law enforcement agency was properly conducted by a qualified person associated with a laboratory certified by the department of public health and environment using properly working testing devices or when a preponderance of the evidence establishes that the law enforcement breath test was administered using a properly working breath testing device certified by the department of public health and environment, which device was properly operated by a qualified operator, there shall be a presumption favoring the accuracy of the analysis done on behalf of the law enforcement agency if such analysis showed the amount of alcohol in the respondent's blood or breath to be ~~0.12~~ 0.096 or more grams of alcohol per hundred milliliters of blood or ~~0.12~~ 0.096 or more grams of alcohol per two hundred ten liters of breath. If the respondent offers evidence of blood or breath analysis, the respondent shall be required to state under oath the number of analyses done in addition to the one offered as evidence and the names of the laboratories that performed the analyses and the results of all analyses.

SECTION 6. 12-47-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-47-103. Definitions. As used in this article and article 46 of this title, unless the context otherwise requires:

(37.5) "TASTINGS" MEANS THE SAMPLING OF MALT, VINOUS, OR SPIRITOUS LIQUORS THAT MAY OCCUR ON THE PREMISES OF A RETAIL LIQUOR STORE LICENSEE OR LIQUOR-LICENSED DRUGSTORE LICENSEE BY ADULT PATRONS OF THE LICENSEE PURSUANT TO THE PROVISIONS OF SECTION 12-47-301 (10).

SECTION 7. 12-47-301, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-47-301. Licensing in general. (10) (a) THE PROVISIONS OF THIS SUBSECTION (10) SHALL ONLY APPLY WITHIN A COUNTY, CITY AND COUNTY, OR MUNICIPALITY IF THE GOVERNING BODY OF THE COUNTY, CITY AND COUNTY, OR MUNICIPALITY ADOPTS AN ORDINANCE OR RESOLUTION AUTHORIZING TASTINGS PURSUANT TO THIS SUBSECTION (10). THE ORDINANCE OR RESOLUTION MAY PROVIDE FOR STRICTER LIMITS THAN THIS SUBSECTION (10) ON THE NUMBER OF TASTINGS PER YEAR PER LICENSEE, THE DAYS ON WHICH TASTINGS MAY OCCUR, OR THE NUMBER OF HOURS EACH TASTING MAY LAST.

(b) A RETAIL LIQUOR STORE OR LIQUOR-LICENSED DRUGSTORE LICENSEE WHO WISHES TO CONDUCT TASTINGS MAY SUBMIT AN APPLICATION OR APPLICATION RENEWAL TO THE LOCAL LICENSING AUTHORITY. THE LOCAL LICENSING AUTHORITY MAY REJECT THE APPLICATION IF THE APPLICANT FAILS TO ESTABLISH THAT HE OR SHE IS ABLE TO CONDUCT TASTINGS WITHOUT VIOLATING THE PROVISIONS OF THIS SECTION OR CREATING A PUBLIC SAFETY RISK TO THE NEIGHBORHOOD. A LOCAL LICENSING AUTHORITY MAY ESTABLISH ITS OWN APPLICATION PROCEDURE AND MAY CHARGE A REASONABLE APPLICATION FEE.

(c) TASTINGS SHALL BE SUBJECT TO THE FOLLOWING LIMITATIONS:

(I) TASTINGS SHALL BE CONDUCTED ONLY BY A PERSON WHO HAS COMPLETED A SERVER TRAINING PROGRAM THAT MEETS THE STANDARDS ESTABLISHED BY THE

LIQUOR ENFORCEMENT DIVISION IN THE DEPARTMENT OF REVENUE AND WHO IS EITHER A RETAIL LIQUOR STORE LICENSEE OR A LIQUOR-LICENSED DRUGSTORE LICENSEE, OR AN EMPLOYEE OF A LICENSEE, AND ONLY ON A LICENSEE'S LICENSED PREMISES.

(II) THE ALCOHOL USED IN TASTINGS SHALL BE PURCHASED THROUGH A LICENSED WHOLESALER, LICENSED BREW PUB, OR WINERY LICENSED PURSUANT TO SECTION 12-47-403 AT A COST THAT IS NOT LESS THAN THE LAID-IN COST OF SUCH ALCOHOL.

(III) THE SIZE OF AN INDIVIDUAL ALCOHOL SAMPLE SHALL NOT EXCEED ONE OUNCE OF MALT OR VINOUS LIQUOR OR ONE-HALF OF ONE OUNCE OF SPIRITUOUS LIQUOR.

(IV) TASTINGS SHALL NOT EXCEED A TOTAL OF FIVE HOURS IN DURATION PER DAY, WHICH NEED NOT BE CONSECUTIVE.

(V) TASTINGS SHALL BE CONDUCTED ONLY DURING THE OPERATING HOURS IN WHICH THE LICENSEE ON WHOSE PREMISES THE TASTINGS OCCUR IS PERMITTED TO SELL ALCOHOL BEVERAGES, AND IN NO CASE EARLIER THAN 11 A.M. OR LATER THAN 7 P.M.

(VI) THE LICENSEE SHALL PROHIBIT PATRONS FROM LEAVING THE LICENSED PREMISES WITH AN UNCONSUMED SAMPLE.

(VII) THE LICENSEE SHALL PROMPTLY REMOVE ALL OPEN AND UNCONSUMED ALCOHOL BEVERAGE SAMPLES FROM THE LICENSED PREMISES OR SHALL DESTROY THE SAMPLES IMMEDIATELY FOLLOWING THE COMPLETION OF THE TASTING.

(VIII) THE LICENSEE SHALL NOT SERVE A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE OR WHO IS VISIBLY INTOXICATED.

(IX) THE LICENSEE SHALL NOT SERVE MORE THAN FOUR INDIVIDUAL SAMPLES TO A PATRON DURING A TASTING.

(X) ALCOHOL SAMPLES SHALL BE IN OPEN CONTAINERS AND SHALL BE PROVIDED TO A PATRON FREE OF CHARGE.

(XI) TASTINGS MAY OCCUR ON NO MORE THAN FOUR OF THE SIX DAYS FROM A MONDAY TO THE FOLLOWING SATURDAY, NOT TO EXCEED ONE HUNDRED FOUR DAYS PER YEAR.

(XII) NO MANUFACTURER OF SPIRITUOUS OR VINOUS LIQUORS SHALL INDUCE A LICENSEE THROUGH FREE GOODS OR FINANCIAL OR IN-KIND ASSISTANCE TO FAVOR THE MANUFACTURER'S PRODUCTS BEING SAMPLED AT A TASTING. THE LICENSEE SHALL BEAR THE FINANCIAL AND ALL OTHER RESPONSIBILITY FOR A TASTING.

(d) A VIOLATION OF A LIMITATION SPECIFIED IN THIS SUBSECTION (10) OR OF SECTION 12-47-801 BY A RETAIL LIQUOR STORE OR LIQUOR-LICENSED DRUGSTORE LICENSEE, WHETHER BY HIS OR HER EMPLOYEES, AGENTS, OR OTHERWISE, SHALL BE THE RESPONSIBILITY OF THE RETAIL LIQUOR STORE OR LIQUOR-LICENSED DRUGSTORE LICENSEE WHO IS CONDUCTING THE TASTING.

(e) A RETAIL LIQUOR STORE OR LIQUOR-LICENSED DRUGSTORE LICENSEE

CONDUCTING A TASTING SHALL BE SUBJECT TO THE SAME REVOCATION, SUSPENSION, AND ENFORCEMENT PROVISIONS AS OTHERWISE APPLY TO THE LICENSEE.

(f) NOTHING IN THIS SUBSECTION (10) SHALL AFFECT THE ABILITY OF A COLORADO WINERY LICENSED PURSUANT TO SECTION 12-47-402 OR 12-47-403 TO CONDUCT A TASTING PURSUANT TO THE AUTHORITY OF SECTION 12-47-402 (2) OR 12-47-403 (2) (e).

SECTION 8. 12-47-407 (1), Colorado Revised Statutes, is amended to read:

12-47-407. Retail liquor store license. (1) A retail liquor store license shall be issued to persons selling only malt, vinous, and spirituous liquors in sealed containers not to be consumed at the place where sold. Malt, vinous, and spirituous liquors in sealed containers shall not be sold at retail other than in retail liquor stores except as provided in section 12-47-408. In addition, retail liquor stores may sell nonfood items related to the consumption of such liquors, liquor-filled candy, and food items approved by the state licensing authority that are prepackaged, labeled, directly related to the consumption of such liquors, and are sold solely for the purpose of cocktail garnish in containers up to sixteen ounces. Nothing in this section shall be construed to authorize the sale of food items that could constitute a snack, a meal, or portion of a meal. Nothing in this section or in section 12-47-103 (31) shall be construed to prohibit the sale of items by a retail liquor store on behalf of or to benefit a charitable organization, as defined in section 39-26-102, C.R.S., or a nonprofit corporation subject to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., and determined to be exempt from federal income tax by the federal internal revenue service, if the retail liquor store does not receive compensation for any such sale. Nothing in this section shall prohibit a retail liquor store licensee, at the option of the licensee, from displaying promotional material furnished by a manufacturer or wholesaler, which material permits a customer to purchase other items from a third person if the retail liquor store licensee does not receive payment from the third person and if the ordering of the additional merchandise is done by the customer directly from the third person. NOTHING IN THIS SUBSECTION (1) SHALL PROHIBIT A RETAIL LIQUOR STORE LICENSEE FROM ALLOWING TASTINGS TO BE CONDUCTED ON HIS OR HER LICENSED PREMISES IF AN AUTHORIZATION FOR THE TASTINGS HAS BEEN GRANTED PURSUANT TO SECTION 12-47-301.

SECTION 9. 12-47-408 (1), Colorado Revised Statutes, is amended to read:

12-47-408. Liquor-licensed drugstore license. (1) A liquor-licensed drugstore license shall be issued to persons selling malt, vinous, and spirituous liquors in sealed containers not to be consumed at the place where sold. NOTHING IN THIS SUBSECTION (1) SHALL PROHIBIT A LIQUOR-LICENSED DRUGSTORE LICENSEE FROM ALLOWING TASTINGS TO BE CONDUCTED ON HIS OR HER LICENSED PREMISES IF AN AUTHORIZATION FOR THE TASTINGS HAS BEEN GRANTED PURSUANT TO SECTION 12-47-301.

SECTION 10. 12-47-411 (6) (b) (I), Colorado Revised Statutes, is amended to read:

12-47-411. Hotel and restaurant license. (6) (b) (I) Any person selling malt,

vinous, and spirituous liquors as provided in this section may purchase not more than ~~five hundred~~ ONE THOUSAND dollars' worth of such malt, vinous, and spirituous liquors during a calendar year from a retail liquor store.

SECTION 11. 12-47-901 (1) (h), (5) (i), (5) (k), and (7), Colorado Revised Statutes, are amended to read:

12-47-901. Unlawful acts - exceptions. (1) Except as provided in section 18-13-122, C.R.S., it is unlawful for any person:

(h) (I) To consume malt, vinous, or spirituous liquor in any public place except on any licensed premises permitted under this article to sell such liquor by the drink for consumption thereon; to consume any alcohol beverage upon any premises licensed to sell liquor for consumption on the licensed premises, the sale of which is not authorized by the state licensing authority; to consume alcohol beverages at any time on such premises other than such alcohol beverage as is purchased from such establishment; or to consume alcohol beverages in any public room on such premises during such hours as the sale of such beverage is prohibited under this article.

(II) Notwithstanding subparagraph (I) of this paragraph (h), it shall not be unlawful for a person who is at least twenty-one years of age to consume malt, vinous, or spirituous liquors while such person is a passenger aboard a luxury limousine, as defined in section 40-16-101 (3), C.R.S., or a charter or scenic bus, as defined in section 40-16-101 (1.3), C.R.S. Nothing in this subparagraph (II) shall be construed to authorize an owner or operator of a luxury limousine or charter or scenic bus to sell or distribute malt, vinous, or spirituous liquors without obtaining a public transportation system license pursuant to section 12-47-419.

(III) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH (h), IT SHALL NOT BE UNLAWFUL FOR ADULT PATRONS OF A RETAIL LIQUOR STORE OR LIQUOR-LICENSED DRUGSTORE LICENSEE TO CONSUME MALT, VINOUS, OR SPIRITUOUS LIQUORS ON THE LICENSED PREMISES WHEN THE CONSUMPTION IS CONDUCTED WITHIN THE LIMITATIONS OF THE LICENSEE'S LICENSE AND IS PART OF A TASTING IF AUTHORIZATION FOR THE TASTING HAS BEEN GRANTED PURSUANT TO SECTION 12-47-301.

(5) It is unlawful for any person licensed to sell at retail pursuant to this article:

(i) (I) To sell malt, vinous, or spirituous liquors in a place where the same are to be consumed, unless such place is a hotel, restaurant, tavern, racetrack, club, retail gaming tavern, or arts licensed premises or unless such place is a dining, club, or parlor car; plane; bus; or other conveyance or facility of a public transportation system.

(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH (i), IT SHALL NOT BE UNLAWFUL FOR A RETAIL LIQUOR STORE OR LIQUOR-LICENSED DRUGSTORE LICENSEE TO ALLOW TASTINGS TO BE CONDUCTED ON HIS OR HER LICENSED PREMISES IF AUTHORIZATION FOR THE TASTINGS HAS BEEN GRANTED PURSUANT TO SECTION 12-47-301.

(k) (I) To have on the licensed premises, if licensed as a retail liquor store or

liquor-licensed drugstore, any container that shows evidence of having once been opened or that contains a volume of liquor less than that specified on the label of such container; except that a person holding a retail liquor store or liquor-licensed drugstore license may have upon the licensed premises malt, vinous, or spirituous liquors in open containers, when the open containers were brought on the licensed premises by and remain solely in the possession of the sales personnel of a person licensed to sell at wholesale pursuant to this article for the purpose of sampling malt, vinous, or spirituous liquors by the retail licensee only. Nothing in this paragraph (k) shall apply to any liquor-licensed drugstore where the contents, or a portion thereof, have been used in compounding prescriptions.

(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH (k), IT SHALL NOT BE UNLAWFUL FOR A RETAIL LIQUOR STORE OR LIQUOR-LICENSED DRUGSTORE LICENSEE TO ALLOW TASTINGS TO BE CONDUCTED ON HIS OR HER LICENSED PREMISES IF AUTHORIZATION FOR THE TASTINGS HAS BEEN GRANTED PURSUANT TO SECTION 12-47-301.

(7) (a) It is unlawful for any person licensed pursuant to this article or article 46 of this title to give away fermented malt beverages for the purpose of influencing the sale of any particular kind, make, or brand of any malt beverage and to furnish or supply any commodity or article at less than its market price for said purpose, except advertising material and signs.

(b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (7), IT SHALL NOT BE UNLAWFUL FOR A RETAIL LIQUOR STORE OR LIQUOR-LICENSED DRUGSTORE LICENSEE TO ALLOW TASTINGS TO BE CONDUCTED ON HIS OR HER LICENSED PREMISES IF AUTHORIZATION FOR THE TASTINGS HAS BEEN GRANTED PURSUANT SECTION 12-47-301.

SECTION 12. 12-47-411, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-47-411. Hotel and restaurant license. (3.5) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, A HOTEL OR RESTAURANT LICENSED PURSUANT TO THIS SECTION MAY PERMIT A CUSTOMER OF THE HOTEL OR RESTAURANT TO RESEAL AND REMOVE FROM THE LICENSED PREMISES ONE OPENED CONTAINER OF PARTIALLY CONSUMED VINOUS LIQUOR PURCHASED ON THE PREMISES SO LONG AS THE ORIGINAL CONTAINER DID NOT CONTAIN MORE THAN 750 MILLILITERS OF VINOUS LIQUOR.

SECTION 13. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the driver's license administrative revocation account in the highway users tax fund, created in section 42-2-132 (4) (b), C.R.S., not otherwise appropriated, to the department of revenue, for allocation to the hearings division, for the fiscal year beginning July 1, 2004, the sum of eighty-three thousand nine hundred fifty dollars (\$83,950) and 0.4 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department, for the fiscal year beginning July 1, 2004, the sum of eight thousand three hundred

seventy-seven dollars (\$8,377) and 0.2 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 14. Part 1 of article 1 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-1-152. Appropriation to comply with section 2-2-703. (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE NECESSARY, ARE MADE IN ORDER TO IMPLEMENT H.B. 04-1021, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY:

(a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2005, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF SEVENTY-SIX THOUSAND FOUR HUNDRED FOURTEEN DOLLARS (\$76,414).

(b) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF NINETY THOUSAND THREE HUNDRED SEVEN DOLLARS (\$90,307).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF NINETEEN THOUSAND FOUR HUNDRED FORTY-FIVE DOLLARS (\$19,445).

(c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2007, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF THIRTEEN THOUSAND EIGHT HUNDRED NINETY-THREE DOLLARS (\$13,893).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2007, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF FORTY-TWO THOUSAND FOUR HUNDRED TWENTY-FIVE DOLLARS (\$42,425).

(d) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2008, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF SIXTY-NINE THOUSAND FOUR HUNDRED SIXTY-SEVEN DOLLARS (\$69,467).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2008, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE

APPROPRIATED, THE SUM OF FORTY-FIVE THOUSAND NINE HUNDRED SIXTY DOLLARS (\$45,960).

SECTION 15. 24-75-302 (2) (s) and (2) (t), Colorado Revised Statutes, as they will become effective July 1, 2004, are amended, and the said 24-75-302 (2), as it will become effective July 1, 2004, is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-75-302. Capital construction fund - capital assessment fees - calculation.

(2) As of July 1, 1988, and July 1 of each year thereafter through July 1, 2008, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer such sum out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1. The amount which shall accrue pursuant to this subsection (2) shall be as follows:

(s) On July 1, 2006, twenty-two thousand nine hundred twenty-four dollars pursuant to section 3 of H.B. 02S-1006, enacted at the third extraordinary session of the sixty-third general assembly; plus two hundred ninety-one thousand seven hundred sixty-one dollars pursuant to H.B. 03-1004, enacted at the first regular session of the sixty-fourth general assembly; plus one hundred twenty-five thousand forty-one dollars pursuant to H.B. 03-1138, enacted at the first regular session of the sixty-fourth general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 03-1213, enacted at the first regular session of the sixty-fourth general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 03-1317, enacted at the first regular session of the sixty-fourth general assembly; PLUS NINETY THOUSAND THREE HUNDRED SEVEN DOLLARS PURSUANT TO H.B. 04-1021, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY;

(t) On July 1, 2007, four hundred sixteen thousand eight hundred two dollars pursuant to H.B. 03-1004, enacted at the first regular session of the sixty-fourth general assembly; plus fifty-five thousand five hundred seventy-four dollars pursuant to H.B. 03-1317, enacted at the first regular session of the sixty-fourth general assembly; PLUS THIRTEEN THOUSAND EIGHT HUNDRED NINETY-THREE DOLLARS PURSUANT TO H.B. 04-1021, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY;

(u) ON JULY 1, 2008, SIXTY-NINE THOUSAND FOUR HUNDRED SIXTY-SEVEN DOLLARS PURSUANT TO H.B. 04-1021, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY.

SECTION 16. 24-75-302 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-75-302. Capital construction fund - capital assessment fees - calculation.

(2) As of July 1, 1988, and July 1 of each year thereafter through July 1, 2008, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer such sum out of the general fund

and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1. The amount which shall accrue pursuant to this subsection (2) shall be as follows:

(r.5) ON JULY 1, 2005, SEVENTY-SIX THOUSAND FOUR HUNDRED FOURTEEN DOLLARS PURSUANT TO H.B. 04-1021, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY;

SECTION 17. Effective date - applicability. This act shall take effect July 1, 2004, and shall apply to offenses committed on or after said date; except that, section 15 of this act shall take effect only if House Bill 04-1412 is enacted at the Second Regular Session of the Sixty-fourth General Assembly and becomes law.

SECTION 18. 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 21, 2004