

CHAPTER 170

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 05-1306

BY REPRESENTATIVE(S) Kerr, Berens, Green, Paccione, Todd, Romanoff, Coleman, Frangas, and McGihon;
also SENATOR(S) Fitz-Gerald, Groff, and Williams.

AN ACT

CONCERNING SUSPENSION OF A PERSON'S DRIVER'S LICENSE WHEN THE PERSON IS CONVICTED OF AN OFFENSE RELATED TO UNDERAGE DRINKING.

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

SECTION 1. Part 1 of article 2 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

42-2-127.6. Authority to suspend license - providing alcohol to an underage person. (1) (a) WHENEVER THE DEPARTMENT RECEIVES NOTICE THAT A PERSON, OTHER THAN A BUSINESS LICENSED PURSUANT TO ARTICLE 46, 47, OR 48 OF TITLE 12, C.R.S., OR AN EMPLOYEE OR AGENT OF THE BUSINESS ACTING IN THE SCOPE OF HIS OR HER EMPLOYMENT, HAS BEEN CONVICTED OF AN OFFENSE PURSUANT TO SECTION 12-47-901 (1) (a.5) OR (1) (k), C.R.S., THE DEPARTMENT 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 THE 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 SHALL HOLD A HEARING NOT LESS THAN THIRTY DAYS AFTER RECEIVING THE REQUEST THROUGH A HEARING COMMISSIONER APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT, WHICH HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH THE

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

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, UNLESS THE PERSON REQUESTS TO APPEAR IN PERSON AT THE HEARING. AFTER THE HEARING, THE PERSON MAY APPEAL THE DECISION OF THE DEPARTMENT TO THE DISTRICT COURT AS PROVIDED IN SECTION 42-2-135. IF A PERSON WHO HAS HAD A LICENSE SUSPENDED UNDER THIS SECTION IS SUBSEQUENTLY ACQUITTED OF THE CONVICTION THAT REQUIRED THE SUSPENSION BY A COURT OF RECORD, THE DEPARTMENT SHALL IMMEDIATELY, IN ANY EVENT NOT LATER THAN TEN DAYS AFTER THE RECEIPT OF THE 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, A PERSON WHO HAS HAD A LICENSE SUSPENDED BY THE DEPARTMENT BECAUSE OF, IN WHOLE OR IN PART, A CONVICTION OF AN OFFENSE SPECIFIED IN SUBSECTION (1) OF THIS SECTION SHALL 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 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 THE REFUSAL.

SECTION 2. 12-47-901 (1) (a), Colorado Revised Statutes, is amended, and the said 12-47-901 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, 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:

(a) To sell, serve, give away, dispose of, exchange, or deliver, or permit the sale, serving, giving, or procuring of, any alcohol beverage ~~to or for any person under the age of twenty-one years~~, to a visibly intoxicated person or to a known habitual drunkard;

(a.5) TO SELL, SERVE, GIVE AWAY, DISPOSE OF, EXCHANGE, OR DELIVER, OR PERMIT THE SALE, SERVING, GIVING, OR PROCURING OF, ANY ALCOHOL BEVERAGE TO OR FOR ANY PERSON UNDER THE AGE OF TWENTY-ONE YEARS;

SECTION 3. Effective date - applicability. This act shall take effect July 1, 2005, and shall apply to offenses committed on or after said date.

SECTION 4. 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 27, 2005