

CHAPTER 83

MOTOR VEHICLES AND TRAFFIC REGULATION

HOUSE BILL 06-1118

BY REPRESENTATIVE(S) Larson, Berens, and Rose;
also SENATOR(S) Isgar.

AN ACT

CONCERNING ACTIONS TAKEN AGAINST A PERSON LICENSED TO OPERATE A COMMERCIAL MOTOR VEHICLE THAT DENY THE PERSON THE PRIVILEGE OF OPERATING SUCH MOTOR VEHICLE.

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

SECTION 1. 42-2-126 (5) (a) (I), (5) (a) (II), (6) (b) (III), and (6) (b) (V), Colorado Revised Statutes, are amended, and the said 42-2-126 (6) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

42-2-126. Revocation of license based on administrative determination.
(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 0.08 or more grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or 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 SUFFICIENT TO WARRANT REVOCATION UNDER PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, 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 42-4-1301.1~~

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

~~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.~~

~~(6) (b) (III) The period of license revocation under subparagraph (II) of paragraph (a) of subsection (2) of this section or for a first violation under subparagraph (HH) of paragraph (a) of subsection (2) of this section shall be one year.~~

~~(III.5) THE PERIOD OF COMMERCIAL DRIVING PRIVILEGE REVOCATION UNDER SUBPARAGRAPHS (I), (I.5), (II), OR (III) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION SHALL BE THE DISQUALIFICATION PERIOD PROVIDED IN 49 CFR 383.51 IF THE PERSON WAS THE HOLDER OF A COMMERCIAL DRIVER'S LICENSE OR WAS OPERATING A COMMERCIAL VEHICLE WHEN THE VIOLATION OCCURRED.~~

~~(V) The second or subsequent revocation under subparagraph (H) or (HH) of paragraph (a) of subsection (2) of this section involving a commercial motor vehicle shall result in a cancellation or denial as provided for under section 42-2-405 (3).~~

SECTION 2. 42-2-402 (8), Colorado Revised Statutes, is amended to read:

42-2-402. Definitions. As used in this part 4, unless the context otherwise requires:

~~(8) "Out-of-service order" means a twenty-four-hour prohibition against driving a commercial motor vehicle~~ AN "OUT-OF-SERVICE ORDER" AS DEFINED BY 49 CFR 383.5.

SECTION 3. 42-2-405 (3), Colorado Revised Statutes, is amended to read:

42-2-405. Driver's license disciplinary actions - grounds for denial - suspension - revocation - disqualification. (3) For purposes of the imposition of restraints and sanctions against commercial driving privileges:

~~(a) A violation of~~ CONVICTION FOR VIOLATING section 42-4-1301 (1) or (2) (a), ~~or of a substantially similar law of any other state pertaining to drinking and driving,~~ OR AN ADMINISTRATIVE DETERMINATION OF A VIOLATION OF SECTION 42-2-126 (2) (a) (I) OR (2) (a) (I.5) shall be deemed driving under the influence; and

~~(b) A violation of~~ CONVICTION FOR VIOLATING section 42-4-706, 42-4-707, 42-4-708, ~~or of a substantially similar law of any other state pertaining to conduct at or near railroad crossings,~~ shall be deemed a railroad crossing offense.

SECTION 4. Part 4 of article 2 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

42-2-405.5. Violations of out-of-service order. (1) A PERSON WHO OPERATES A COMMERCIAL MOTOR VEHICLE IN VIOLATION OF AN OUT-OF-SERVICE ORDER COMMITS A CLASS 1 TRAFFIC MISDEMEANOR.

(2) NO COURT SHALL ACCEPT A PLEA OF GUILTY TO ANOTHER OFFENSE FROM A PERSON CHARGED WITH A VIOLATION OF SUBSECTION (1) OF THIS SECTION; EXCEPT THAT THE COURT MAY ACCEPT SUCH A PLEA UPON A GOOD FAITH REPRESENTATION BY THE PROSECUTING ATTORNEY THAT THERE IS NOT A PRIMA FACIE CASE FOR THE ORIGINAL OFFENSE.

(3) UPON RECEIPT OF NOTICE OF A CONVICTION OR DEFERRED SENTENCE UNDER SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT SHALL IMMEDIATELY SUSPEND THE COMMERCIAL DRIVER'S LICENSE FOR THE MAXIMUM PERIOD SET FORTH IN THE UNITED STATES FEDERAL REGULATIONS GOVERNING VIOLATIONS OF OUT-OF-SERVICE ORDERS FOR COMMERCIAL DRIVERS AND SECTION 42-2-403 (1).

(4) NOTICE OF SUSPENSION UNDER SUBSECTION (3) OF THIS SECTION SHALL BE MAILED TO THE PERSON BY THE DEPARTMENT IN COMPLIANCE WITH SECTION 42-2-119 (2).

(5) (a) UPON RECEIPT OF THE NOTICE OF SUSPENSION, THE PERSON MAY REQUEST A HEARING IN WRITING IF THE PERSON HAS SURRENDERED TO THE DEPARTMENT A COMMERCIAL DRIVER'S LICENSE ISSUED BY ANY STATE. THE DEPARTMENT, UPON NOTICE TO THE PERSON, SHALL HOLD A HEARING AS SOON AS PRACTICABLE AT THE DISTRICT OFFICE OF THE DEPARTMENT CLOSEST TO THE RESIDENCE OF THE PERSON; EXCEPT THAT, AT THE DISCRETION OF THE DEPARTMENT, ALL OR PART OF THE HEARING MAY BE CONDUCTED IN REAL TIME BY TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH SECTION 42-1-218.5.

(b) THE ONLY ISSUES AT SUCH HEARING ARE WHETHER THE DRIVER WAS CONVICTED OF OR RECEIVED A DEFERRED SENTENCE FOR A VIOLATION OF SUBSECTION (1) OF THIS SECTION AND THE APPROPRIATE LENGTH OF SUSPENSION. IF THE DRIVER WAS CONVICTED, THE LICENSE SHALL BE SUSPENDED. THE HEARING OFFICER MAY REDUCE THE PERIOD OF SUSPENSION BASED ON FINDINGS AT THE HEARING, INCLUDING WITHOUT LIMITATION THE CIRCUMSTANCES OF THE VIOLATION, THE PRIOR DRIVING RECORD, AND AGGRAVATING AND MITIGATING FACTORS. A HEARING OFFICER SHALL NOT REDUCE THE SUSPENSION PERIOD BELOW THE MINIMUM DISQUALIFICATION PERIOD IMPOSED BY 49 CFR 383.51.

(c) (I) THE ORDER OF THE HEARING OFFICER IS THE FINAL AGENCY ACTION AND MAY BE APPEALED UNDER SECTION 42-2-135. A PETITION FOR JUDICIAL REVIEW SHALL BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THE ORDER.

(II) JUDICIAL REVIEW SHALL BE ON THE RECORD OF THE HEARING WITHOUT TAKING ADDITIONAL TESTIMONY. IF THE COURT FINDS THAT THE DEPARTMENT EXCEEDED ITS CONSTITUTIONAL OR STATUTORY AUTHORITY, MADE AN ERRONEOUS INTERPRETATION OF THE LAW, ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER, OR MADE A DETERMINATION THAT IS UNSUPPORTED BY THE EVIDENCE IN THE RECORD, THE COURT MAY REVERSE THE DEPARTMENT'S DETERMINATION.

(III) THE COURT MAY GRANT A STAY OF THE ORDER ONLY UPON MOTION, AFTER

A HEARING, AND UPON A FINDING THAT THERE IS A REASONABLE PROBABILITY THAT THE PETITIONER WILL PREVAIL UPON THE MERITS AND THAT THE PETITIONER WILL SUFFER IRREPARABLE HARM IF THE ORDER IS NOT STAYED.

SECTION 5. 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 31, 2006