

CHAPTER 79

MOTOR VEHICLES AND TRAFFIC REGULATION

HOUSE BILL 08-1166

BY REPRESENTATIVE(S) Judd, Carroll T., McFadyen, Peniston, Summers, and Todd;
also SENATOR(S) Hagedorn, Penry, and Williams.

AN ACT

**CONCERNING CLARIFICATION OF PROVISIONS AUTHORIZING AN ADMINISTRATIVE REVOCATION OF
A DRIVING PRIVILEGE.**

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

SECTION 1. 42-2-126, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

42-2-126. Revocation of license based on administrative determination.

(1) **Legislative declaration.** THE PURPOSES OF THIS SECTION ARE:

(a) TO PROVIDE SAFETY FOR ALL PERSONS USING THE HIGHWAYS OF THIS STATE BY QUICKLY REVOKING THE DRIVER'S LICENSE OF ANY PERSON WHO HAS SHOWN HIMSELF OR HERSELF TO BE A SAFETY HAZARD BY DRIVING WITH AN EXCESSIVE AMOUNT OF ALCOHOL IN HIS OR HER BODY AND ANY PERSON WHO HAS REFUSED TO SUBMIT TO AN ANALYSIS AS REQUIRED BY SECTION 42-4-1301.1;

(b) TO GUARD AGAINST THE POTENTIAL FOR ANY ERRONEOUS DEPRIVATION OF THE DRIVING PRIVILEGE BY PROVIDING AN OPPORTUNITY FOR A FULL HEARING; AND

(c) FOLLOWING THE REVOCATION PERIOD, TO PREVENT THE RELICENSING OF A PERSON UNTIL THE DEPARTMENT IS SATISFIED THAT THE PERSON'S ALCOHOL PROBLEM IS UNDER CONTROL AND THAT THE PERSON NO LONGER CONSTITUTES A SAFETY HAZARD TO OTHER HIGHWAY USERS.

(2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "EXCESS BAC" MEANS THAT A PERSON HAD A BAC LEVEL SUFFICIENT TO

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

SUBJECT THE PERSON TO A LICENSE REVOCATION FOR EXCESS BAC 0.08, EXCESS BAC UNDERAGE, EXCESS BAC CDL, OR EXCESS BAC UNDERAGE CDL.

(b) "EXCESS BAC 0.08" MEANS THAT A PERSON DROVE A VEHICLE IN THIS STATE WHEN THE PERSON'S BAC WAS 0.08 OR MORE AT THE TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING.

(c) "EXCESS BAC CDL" MEANS THAT A PERSON DROVE A COMMERCIAL MOTOR VEHICLE IN THIS STATE WHEN THE PERSON'S BAC WAS 0.04 OR MORE AT THE TIME OF DRIVING OR AT ANY TIME THEREAFTER.

(d) "EXCESS BAC UNDERAGE" MEANS THAT A PERSON WAS UNDER THE AGE OF TWENTY-ONE YEARS AND THE PERSON DROVE A VEHICLE IN THIS STATE WHEN THE PERSON'S BAC WAS IN EXCESS OF 0.02 BUT LESS THAN 0.08 AT THE TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING.

(e) "EXCESS BAC UNDERAGE CDL" MEANS THAT A PERSON WAS UNDER THE AGE OF TWENTY-ONE YEARS AND THE PERSON DROVE A COMMERCIAL MOTOR VEHICLE IN THIS STATE WHEN THE PERSON'S BAC WAS IN EXCESS OF 0.02 BUT LESS THAN 0.04 AT THE TIME OF DRIVING OR AT ANY TIME THEREAFTER.

(f) "HEARING OFFICER" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR AN AUTHORIZED REPRESENTATIVE DESIGNATED BY THE EXECUTIVE DIRECTOR.

(g) "LICENSE" INCLUDES DRIVING PRIVILEGE.

(h) "REFUSAL" MEANS REFUSING TO TAKE OR COMPLETE, OR TO COOPERATE IN THE COMPLETING OF, A TEST OF THE PERSON'S BLOOD, BREATH, SALIVA, OR URINE AS REQUIRED BY SECTION 18-3-106 (4) OR 18-3-205 (4), C.R.S., OR SECTION 42-4-1301.1 (2).

(i) "RESPONDENT" MEANS A PERSON WHO IS THE SUBJECT OF A HEARING UNDER THIS SECTION.

(3) **Revocation of license.** (a) **Excess BAC 0.08.** (I) THE DEPARTMENT SHALL REVOKE THE LICENSE OF A PERSON FOR EXCESS BAC 0.08 FOR THREE MONTHS FOR A FIRST VIOLATION AND FOR ONE YEAR FOR A SECOND OR SUBSEQUENT VIOLATION.

(II) (A) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), A PERSON TWENTY-ONE YEARS OF AGE OR OLDER AT THE TIME OF THE VIOLATION WHOSE LICENSE IS REVOKED FOR A FIRST OFFENSE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) MAY REQUEST THAT, IN LIEU OF THE THREE-MONTH REVOCATION, THE PERSON'S LICENSE BE REVOKED FOR A PERIOD OF NOT LESS THAN THIRTY DAYS, TO BE FOLLOWED BY A SUSPENSION PERIOD OF SUCH LENGTH THAT THE TOTAL PERIOD OF REVOCATION AND SUSPENSION EQUALS SIX MONTHS. IF THE HEARING OFFICER APPROVES THE REQUEST, THE HEARING OFFICER MAY GRANT THE PERSON A PROBATIONARY LICENSE THAT MAY BE USED ONLY FOR THE REASONS PROVIDED IN SECTION 42-2-127 (14) (a). IF THE PERSON IS A PERSISTENT DRUNK DRIVER, AS DEFINED IN SECTION 42-1-102 (68.5), THE PROBATIONARY LICENSE SHALL BE CONDITIONED ON THE USE OF AN APPROVED IGNITION INTERLOCK DEVICE, AS DEFINED IN SECTION 42-2-132.5 (7) (a). THE TIME

SERVED UNDER A PROBATIONARY LICENSE SHALL NOT BE CREDITED AGAINST ANY MANDATORY INTERLOCK RESTRICTION IMPOSED PURSUANT TO SECTION 42-2-132.5.

(B) THE HEARING TO CONSIDER A REQUEST UNDER THIS SUBPARAGRAPH (II) MAY BE HELD AT THE SAME TIME AS THE HEARING HELD UNDER SUBSECTION (8) OF THIS SECTION; EXCEPT THAT A PROBATIONARY LICENSE MAY NOT BECOME EFFECTIVE UNTIL AT LEAST THIRTY DAYS HAVE ELAPSED SINCE THE BEGINNING OF THE REVOCATION PERIOD.

(b) **Excess BAC underage.** (I) THE DEPARTMENT SHALL REVOKE THE LICENSE OF A PERSON FOR EXCESS BAC UNDERAGE FOR THREE MONTHS FOR A FIRST VIOLATION, FOR SIX MONTHS FOR A SECOND VIOLATION, AND FOR ONE YEAR FOR A THIRD OR SUBSEQUENT VIOLATION.

(II) (A) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), A PERSON WHOSE LICENSE IS REVOKED FOR A FIRST OFFENSE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) AND WHOSE BAC WAS NOT MORE THAN 0.05 MAY REQUEST THAT, IN LIEU OF THE THREE-MONTH REVOCATION, THE PERSON'S LICENSE BE REVOKED FOR A PERIOD OF NOT LESS THAN THIRTY DAYS, TO BE FOLLOWED BY A SUSPENSION PERIOD OF SUCH LENGTH THAT THE TOTAL PERIOD OF REVOCATION AND SUSPENSION EQUALS THREE MONTHS. IF THE HEARING OFFICER APPROVES THE REQUEST, THE HEARING OFFICER MAY GRANT THE PERSON A PROBATIONARY LICENSE THAT MAY BE USED ONLY FOR THE REASONS PROVIDED IN SECTION 42-2-127 (14) (a).

(B) THE HEARING TO CONSIDER A REQUEST UNDER THIS SUBPARAGRAPH (II) MAY BE HELD AT THE SAME TIME AS THE HEARING HELD UNDER SUBSECTION (8) OF THIS SECTION; EXCEPT THAT A PROBATIONARY LICENSE MAY NOT BECOME EFFECTIVE UNTIL AT LEAST THIRTY DAYS HAVE ELAPSED SINCE THE BEGINNING OF THE REVOCATION PERIOD.

(c) **Refusal.** THE DEPARTMENT SHALL REVOKE THE LICENSE OF A PERSON FOR REFUSAL FOR ONE YEAR FOR A FIRST VIOLATION, TWO YEARS FOR A SECOND VIOLATION AND THREE YEARS FOR A THIRD OR SUBSEQUENT VIOLATION; EXCEPT THAT THE PERIOD OF REVOCATION SHALL BE AT LEAST THREE YEARS IF THE PERSON WAS DRIVING A COMMERCIAL MOTOR VEHICLE THAT WAS TRANSPORTING HAZARDOUS MATERIALS AS DEFINED IN SECTION 42-2-402 (7).

(d) **Excess BAC CDL.** THE DEPARTMENT SHALL REVOKE FOR THE DISQUALIFICATION PERIOD PROVIDED IN 49 CFR 383.51 THE COMMERCIAL DRIVING PRIVILEGE OF A PERSON WHO WAS THE HOLDER OF A COMMERCIAL DRIVER'S LICENSE OR WAS DRIVING A COMMERCIAL MOTOR VEHICLE FOR A VIOLATION OF EXCESS BAC 0.08, EXCESS BAC CDL, OR REFUSAL.

(e) **Excess BAC underage CDL.** THE DEPARTMENT SHALL REVOKE THE COMMERCIAL DRIVING PRIVILEGE OF A PERSON FOR EXCESS BAC UNDERAGE CDL FOR THREE MONTHS FOR A FIRST VIOLATION, SIX MONTHS FOR A SECOND VIOLATION, AND ONE YEAR FOR A THIRD OR SUBSEQUENT VIOLATION.

(4) **Multiple restraints and conditions on driving privileges.** (a) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH (a), A REVOCATION IMPOSED

PURSUANT TO THIS SECTION SHALL RUN CONSECUTIVELY AND NOT CONCURRENTLY WITH ANY OTHER REVOCATION IMPOSED PURSUANT TO THIS SECTION.

(II) IF A LICENSE IS REVOKED FOR EXCESS BAC AND THE PERSON IS ALSO CONVICTED ON CRIMINAL CHARGES ARISING OUT OF THE SAME OCCURRENCE FOR DUI, DUI PER SE, DWAI, OR UDD, BOTH THE REVOCATION UNDER THIS SECTION AND ANY SUSPENSION, REVOCATION, CANCELLATION, OR DENIAL THAT RESULTS FROM THE CONVICTION SHALL BE IMPOSED, BUT THE PERIODS SHALL RUN CONCURRENTLY, AND THE TOTAL PERIOD OF REVOCATION, SUSPENSION, CANCELLATION, OR DENIAL SHALL NOT EXCEED THE LONGER OF THE TWO PERIODS.

(III) IF A LICENSE IS REVOKED FOR REFUSAL, THE REVOCATION SHALL NOT RUN CONCURRENTLY, IN WHOLE OR IN PART, WITH ANY PREVIOUS OR SUBSEQUENT SUSPENSIONS, REVOCATIONS, OR DENIALS THAT MAY BE PROVIDED FOR BY LAW, INCLUDING BUT NOT LIMITED TO ANY SUSPENSION, REVOCATION, OR DENIAL THAT RESULTS FROM A CONVICTION OF CRIMINAL CHARGES ARISING OUT OF THE SAME OCCURRENCE FOR A VIOLATION OF SECTION 42-4-1301. ANY REVOCATION FOR REFUSAL SHALL NOT PRECLUDE OTHER ACTION THAT THE DEPARTMENT IS REQUIRED TO TAKE IN THE ADMINISTRATION OF THIS TITLE.

(IV) THE REVOCATION OF THE COMMERCIAL DRIVING PRIVILEGE UNDER EXCESS BAC CDL MAY RUN CONCURRENTLY WITH ANOTHER REVOCATION PURSUANT TO THIS SECTION ARISING OUT OF THE SAME INCIDENT.

(b) (I) THE PERIODS OF REVOCATION SPECIFIED IN SUBSECTION (3) OF THIS SECTION ARE INTENDED TO BE MINIMUM PERIODS OF REVOCATION FOR THE DESCRIBED CONDUCT. A LICENSE SHALL NOT BE RESTORED UNDER ANY CIRCUMSTANCES, AND A PROBATIONARY LICENSE SHALL NOT BE ISSUED, DURING THE REVOCATION PERIOD.

(II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), A PERSON WHOSE PRIVILEGE TO DRIVE A COMMERCIAL MOTOR VEHICLE HAS BEEN REVOKED BECAUSE OF EXCESS BAC CDL 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. THE DEPARTMENT MAY NOT ISSUE THE PERSON A PROBATIONARY LICENSE THAT WOULD AUTHORIZE THE PERSON TO OPERATE A COMMERCIAL MOTOR VEHICLE.

(c) UPON THE EXPIRATION OF THE PERIOD OF REVOCATION UNDER THIS SECTION, IF A PERSON'S LICENSE IS STILL SUSPENDED ON OTHER GROUNDS, THE PERSON MAY SEEK A PROBATIONARY LICENSE AS AUTHORIZED BY SECTION 42-2-127 (14) SUBJECT TO THE REQUIREMENTS OF PARAGRAPH (d) OF THIS SUBSECTION (4).

(d) (I) FOLLOWING A LICENSE REVOCATION, THE DEPARTMENT SHALL NOT ISSUE A NEW LICENSE OR OTHERWISE RESTORE THE DRIVING PRIVILEGE UNLESS THE DEPARTMENT IS SATISFIED, AFTER AN INVESTIGATION OF THE CHARACTER, HABITS, AND DRIVING ABILITY OF THE PERSON, THAT IT WILL BE SAFE TO GRANT THE PRIVILEGE OF DRIVING A MOTOR VEHICLE ON THE HIGHWAYS TO THE PERSON; EXCEPT THAT THE DEPARTMENT MAY NOT REQUIRE A PERSON TO UNDERGO SKILLS OR KNOWLEDGE TESTING PRIOR TO ISSUANCE OF A NEW LICENSE OR RESTORATION OF

THE PERSON'S DRIVING PRIVILEGE IF THE PERSON'S LICENSE WAS REVOKED FOR A FIRST VIOLATION OF EXCESS BAC 0.08 OR EXCESS BAC UNDERAGE.

(II) (A) IF A PERSON WAS DETERMINED TO BE DRIVING WITH EXCESS BAC AND THE PERSON HAD A BAC THAT WAS 0.17 OR MORE OR IF THE PERSON'S DRIVING RECORD OTHERWISE INDICATES A DESIGNATION AS A PERSISTENT DRUNK DRIVER AS DEFINED IN SECTION 42-1-102 (68.5), THE DEPARTMENT SHALL REQUIRE THE PERSON TO COMPLETE A LEVEL II ALCOHOL AND DRUG EDUCATION AND TREATMENT PROGRAM CERTIFIED BY THE DIVISION OF ALCOHOL AND DRUG ABUSE PURSUANT TO SECTION 42-4-1301.3 AS A CONDITION TO RESTORING DRIVING PRIVILEGES TO THE PERSON AND, UPON THE RESTORATION OF DRIVING PRIVILEGES, SHALL REQUIRE THE PERSON TO HOLD A RESTRICTED LICENSE REQUIRING THE USE OF AN IGNITION INTERLOCK DEVICE PURSUANT TO SECTION 42-2-132.5 (1) (b.5).

(B) IF A PERSON SEEKING REINSTATEMENT IS REQUIRED TO COMPLETE, BUT HAS NOT YET COMPLETED, A LEVEL II ALCOHOL AND DRUG EDUCATION AND TREATMENT PROGRAM, THE PERSON SHALL FILE WITH THE DEPARTMENT PROOF OF CURRENT ENROLLMENT IN A LEVEL II ALCOHOL AND DRUG EDUCATION AND TREATMENT PROGRAM CERTIFIED BY THE DIVISION OF ALCOHOL AND DRUG ABUSE PURSUANT TO SECTION 42-4-1301.3, ON A FORM APPROVED BY THE DEPARTMENT.

(5) **Actions of law enforcement officer.** (a) IF A LAW ENFORCEMENT OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT A PERSON SHOULD BE SUBJECT TO LICENSE REVOCATION FOR EXCESS BAC OR REFUSAL, THE LAW ENFORCEMENT OFFICER SHALL FORWARD TO THE DEPARTMENT AN AFFIDAVIT CONTAINING INFORMATION RELEVANT TO THE LEGAL ISSUES AND FACTS THAT SHALL BE CONSIDERED BY THE DEPARTMENT TO DETERMINE WHETHER THE PERSON'S LICENSE SHOULD BE REVOKED AS PROVIDED IN SUBSECTION (3) OF THIS SECTION. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT SHALL SPECIFY TO LAW ENFORCEMENT AGENCIES THE FORM OF THE AFFIDAVIT TO BE USED UNDER THIS PARAGRAPH (a) AND THE TYPES OF INFORMATION NEEDED IN THE AFFIDAVIT AND MAY SPECIFY ANY ADDITIONAL DOCUMENTS OR COPIES OF DOCUMENTS NEEDED BY THE DEPARTMENT TO MAKE ITS DETERMINATION IN ADDITION TO THE AFFIDAVIT. THE AFFIDAVIT SHALL BE DATED, SIGNED, AND SWORN TO BY THE LAW ENFORCEMENT OFFICER UNDER PENALTY OF PERJURY, BUT NEED NOT BE NOTARIZED OR SWORN TO BEFORE ANY OTHER PERSON.

(b) (I) A LAW ENFORCEMENT OFFICER, ON BEHALF OF THE DEPARTMENT, SHALL PERSONALLY SERVE A NOTICE OF REVOCATION ON A PERSON WHO IS STILL AVAILABLE TO THE LAW ENFORCEMENT OFFICER IF THE LAW ENFORCEMENT OFFICER DETERMINES THAT, BASED ON A REFUSAL OR ON TEST RESULTS AVAILABLE TO THE LAW ENFORCEMENT OFFICER, THE PERSON'S LICENSE IS SUBJECT TO REVOCATION FOR EXCESS BAC OR REFUSAL.

(II) WHEN A LAW ENFORCEMENT OFFICER SERVES A NOTICE OF REVOCATION, THE LAW ENFORCEMENT OFFICER SHALL TAKE POSSESSION OF ANY DRIVER'S LICENSE ISSUED BY THIS STATE OR ANY OTHER STATE THAT THE PERSON HOLDS. WHEN THE LAW ENFORCEMENT OFFICER TAKES POSSESSION OF A VALID DRIVER'S LICENSE ISSUED BY THIS STATE OR ANY OTHER STATE, THE LAW ENFORCEMENT OFFICER, ACTING ON BEHALF OF THE DEPARTMENT, SHALL ISSUE A TEMPORARY PERMIT THAT IS VALID FOR SEVEN DAYS AFTER THE DATE OF ISSUANCE.

(III) A COPY OF THE COMPLETED NOTICE OF REVOCATION FORM, A COPY OF ANY COMPLETED TEMPORARY PERMIT FORM, AND ANY DRIVER'S, MINOR DRIVER'S, OR TEMPORARY DRIVER'S LICENSE OR ANY INSTRUCTION PERMIT TAKEN INTO POSSESSION UNDER THIS SECTION SHALL BE FORWARDED TO THE DEPARTMENT BY THE LAW ENFORCEMENT OFFICER ALONG WITH AN AFFIDAVIT AS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (5) AND ANY ADDITIONAL DOCUMENTS OR COPIES OF DOCUMENTS AS DESCRIBED IN SAID PARAGRAPH (a).

(IV) THE DEPARTMENT SHALL PROVIDE TO LAW ENFORCEMENT AGENCIES FORMS FOR NOTICE OF REVOCATION AND FOR TEMPORARY PERMITS. THE LAW ENFORCEMENT AGENCIES SHALL USE THE FORMS FOR THE NOTICE OF REVOCATION AND FOR TEMPORARY PERMITS AND SHALL FOLLOW THE FORM AND PROVIDE THE INFORMATION FOR AFFIDAVITS AS PROVIDED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5).

(V) A LAW ENFORCEMENT OFFICER SHALL NOT ISSUE A TEMPORARY PERMIT TO A PERSON WHO IS ALREADY DRIVING WITH A TEMPORARY PERMIT ISSUED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

(6) Initial determination and notice of revocation. (a) UPON RECEIPT OF AN AFFIDAVIT OF A LAW ENFORCEMENT OFFICER AND THE RELEVANT DOCUMENTS REQUIRED BY PARAGRAPH (a) OF SUBSECTION (5) OF THIS SECTION, THE DEPARTMENT SHALL DETERMINE WHETHER THE PERSON'S LICENSE SHOULD BE REVOKED UNDER SUBSECTION (3) OF THIS SECTION. THE DETERMINATION SHALL BE BASED UPON THE INFORMATION CONTAINED IN THE AFFIDAVIT AND THE RELEVANT DOCUMENTS SUBMITTED TO THE DEPARTMENT, AND THE DETERMINATION SHALL BE FINAL UNLESS A HEARING IS REQUESTED AND HELD AS PROVIDED IN SUBSECTION (8) OF THIS SECTION. THE DETERMINATION OF THESE FACTS BY THE DEPARTMENT IS INDEPENDENT OF THE DETERMINATION OF A COURT OF THE SAME OR SIMILAR FACTS IN THE ADJUDICATION OF ANY CRIMINAL CHARGES ARISING OUT OF THE SAME OCCURRENCE. THE DISPOSITION OF THE CRIMINAL CHARGES SHALL NOT AFFECT ANY REVOCATION UNDER THIS SECTION.

(b)(I) IF THE DEPARTMENT DETERMINES THAT THE PERSON IS SUBJECT TO LICENSE REVOCATION, THE DEPARTMENT SHALL ISSUE A NOTICE OF REVOCATION IF A NOTICE HAS NOT ALREADY BEEN SERVED UPON THE PERSON BY THE LAW ENFORCEMENT OFFICER AS PROVIDED IN PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION. A NOTICE OF REVOCATION SHALL CLEARLY SPECIFY THE REASON AND STATUTORY GROUNDS FOR THE REVOCATION, THE EFFECTIVE DATE OF THE REVOCATION, THE RIGHT OF THE PERSON TO REQUEST A HEARING, THE PROCEDURE FOR REQUESTING A HEARING, AND THE DATE BY WHICH A REQUEST FOR A HEARING MUST BE MADE.

(II) IN SENDING A NOTICE OF REVOCATION, THE DEPARTMENT SHALL MAIL THE NOTICE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 42-2-119 (2) TO THE PERSON AT THE LAST-KNOWN ADDRESS SHOWN ON THE DEPARTMENT'S RECORDS, IF ANY, AND TO ANY ADDRESS PROVIDED IN THE LAW ENFORCEMENT OFFICER'S AFFIDAVIT IF THAT ADDRESS DIFFERS FROM THE ADDRESS OF RECORD. THE NOTICE SHALL BE DEEMED RECEIVED THREE DAYS AFTER MAILING.

(c) IF THE DEPARTMENT DETERMINES THAT THE PERSON IS NOT SUBJECT TO LICENSE REVOCATION, THE DEPARTMENT SHALL NOTIFY THE PERSON OF ITS

DETERMINATION AND SHALL RESCIND ANY ORDER OF REVOCATION SERVED UPON THE PERSON BY THE LAW ENFORCEMENT OFFICER.

(d) A LICENSE REVOCATION SHALL BECOME EFFECTIVE SEVEN DAYS AFTER THE PERSON HAS RECEIVED THE NOTICE OF REVOCATION AS PROVIDED IN SUBSECTION (5) OF THIS SECTION OR IS DEEMED TO HAVE RECEIVED THE NOTICE OF REVOCATION BY MAIL AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (6). IF THE DEPARTMENT RECEIVES A WRITTEN REQUEST FOR A HEARING PURSUANT TO SUBSECTION (7) OF THIS SECTION WITHIN THAT SAME SEVEN-DAY PERIOD AND THE DEPARTMENT ISSUES A TEMPORARY PERMIT PURSUANT TO PARAGRAPH (d) OF SUBSECTION (7) OF THIS SECTION, THE EFFECTIVE DATE OF THE REVOCATION SHALL BE STAYED UNTIL A FINAL ORDER IS ISSUED FOLLOWING THE HEARING; EXCEPT THAT ANY DELAY IN THE HEARING THAT IS CAUSED OR REQUESTED BY THE PERSON OR COUNSEL REPRESENTING THE PERSON SHALL NOT RESULT IN A STAY OF THE REVOCATION DURING THE PERIOD OF DELAY.

(7) **Request for hearing.** (a) A PERSON WHO HAS RECEIVED A NOTICE OF REVOCATION MAY MAKE A WRITTEN REQUEST FOR A REVIEW OF THE DEPARTMENT'S DETERMINATION AT A HEARING. THE REQUEST MAY BE MADE ON A FORM AVAILABLE AT EACH OFFICE OF THE DEPARTMENT.

(b) A PERSON MUST REQUEST A HEARING IN WRITING WITHIN SEVEN DAYS AFTER THE DAY THE PERSON RECEIVES THE NOTICE OF REVOCATION AS PROVIDED IN SUBSECTION (5) OF THIS SECTION OR IS DEEMED TO HAVE RECEIVED THE NOTICE BY MAIL AS PROVIDED IN PARAGRAPH (b) OF SUBSECTION (6) OF THIS SECTION. IF THE DEPARTMENT DOES NOT RECEIVE THE WRITTEN REQUEST FOR A HEARING WITHIN THE SEVEN-DAY PERIOD, THE RIGHT TO A HEARING IS WAIVED, AND THE DETERMINATION OF THE DEPARTMENT THAT IS BASED ON THE DOCUMENTS AND AFFIDAVIT REQUIRED BY SUBSECTION (5) OF THIS SECTION BECOMES FINAL.

(c) IF A PERSON SUBMITS A WRITTEN REQUEST FOR A HEARING AFTER EXPIRATION OF THE SEVEN-DAY PERIOD AND IF THE REQUEST IS ACCOMPANIED BY THE PERSON'S VERIFIED STATEMENT EXPLAINING THE FAILURE TO MAKE A TIMELY REQUEST FOR A HEARING, THE DEPARTMENT SHALL RECEIVE AND CONSIDER THE REQUEST. IF THE DEPARTMENT FINDS THAT THE PERSON WAS UNABLE TO MAKE A TIMELY REQUEST DUE TO LACK OF ACTUAL NOTICE OF THE REVOCATION OR DUE TO FACTORS OF PHYSICAL INCAPACITY SUCH AS HOSPITALIZATION OR INCARCERATION, THE DEPARTMENT SHALL WAIVE THE PERIOD OF LIMITATION, REOPEN THE MATTER, AND GRANT THE HEARING REQUEST. IN SUCH A CASE, THE DEPARTMENT SHALL NOT GRANT A STAY OF THE REVOCATION PENDING ISSUANCE OF THE FINAL ORDER FOLLOWING THE HEARING.

(d) AT THE TIME A PERSON REQUESTS A HEARING PURSUANT TO THIS SUBSECTION (7), IF IT APPEARS FROM THE RECORD THAT THE PERSON IS THE HOLDER OF A VALID DRIVER'S OR MINOR DRIVER'S LICENSE OR OF AN INSTRUCTION PERMIT OR OF A TEMPORARY PERMIT ISSUED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION AND THAT THE LICENSE OR PERMIT HAS BEEN SURRENDERED, THE DEPARTMENT SHALL STAY THE EFFECTIVE DATE OF THE REVOCATION AND ISSUE A TEMPORARY PERMIT THAT SHALL BE VALID UNTIL THE SCHEDULED DATE FOR THE HEARING. IF NECESSARY, THE DEPARTMENT MAY LATER EXTEND THE TEMPORARY PERMIT OR ISSUE AN ADDITIONAL TEMPORARY PERMIT IN ORDER TO STAY THE

EFFECTIVE DATE OF THE REVOCATION UNTIL THE FINAL ORDER IS ISSUED FOLLOWING THE HEARING, AS REQUIRED BY SUBSECTION (8) OF THIS SECTION. IF THE PERSON NOTIFIES THE DEPARTMENT IN WRITING AT THE TIME THAT THE HEARING IS REQUESTED THAT THE PERSON DESIRES THE LAW ENFORCEMENT OFFICER'S PRESENCE AT THE HEARING, THE DEPARTMENT SHALL ISSUE A WRITTEN NOTICE FOR THE LAW ENFORCEMENT OFFICER TO APPEAR AT THE HEARING. A LAW ENFORCEMENT OFFICER WHO IS REQUIRED TO APPEAR AT A HEARING MAY, AT THE DISCRETION OF THE HEARING OFFICER, APPEAR IN REAL TIME BY TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH SECTION 42-1-218.5.

(e) AT THE TIME THAT A PERSON REQUESTS A HEARING, THE DEPARTMENT SHALL PROVIDE TO THE PERSON WRITTEN NOTICE ADVISING THE PERSON:

(I) OF THE RIGHT TO SUBPOENA THE LAW ENFORCEMENT OFFICER FOR THE HEARING AND THAT THE SUBPOENA MUST BE SERVED UPON THE LAW ENFORCEMENT OFFICER AT LEAST FIVE CALENDAR DAYS PRIOR TO THE HEARING;

(II) OF THE PERSON'S RIGHT AT THAT TIME TO NOTIFY THE DEPARTMENT IN WRITING THAT THE PERSON DESIRES THE LAW ENFORCEMENT OFFICER'S PRESENCE AT THE HEARING AND THAT, UPON RECEIVING THE NOTIFICATION, THE DEPARTMENT SHALL ISSUE A WRITTEN NOTICE FOR THE LAW ENFORCEMENT OFFICER TO APPEAR AT THE HEARING;

(III) THAT, IF THE LAW ENFORCEMENT OFFICER IS NOT REQUIRED TO APPEAR AT THE HEARING, DOCUMENTS AND AN AFFIDAVIT PREPARED AND SUBMITTED BY THE LAW ENFORCEMENT OFFICER WILL BE USED AT THE HEARING; AND

(IV) THAT THE AFFIDAVIT AND DOCUMENTS SUBMITTED BY THE LAW ENFORCEMENT OFFICER MAY BE REVIEWED BY THE PERSON PRIOR TO THE HEARING.

(f) 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.

(8) **Hearing.** (a) (I) THE HEARING SHALL BE SCHEDULED TO BE HELD AS QUICKLY AS PRACTICABLE BUT NOT MORE THAN SIXTY DAYS AFTER THE DATE THE DEPARTMENT RECEIVES THE REQUEST FOR A HEARING; EXCEPT THAT, IF A HEARING IS RESCHEDULED BECAUSE OF THE UNAVAILABILITY OF A LAW ENFORCEMENT OFFICER OR THE HEARING OFFICER IN ACCORDANCE WITH SUBPARAGRAPH (III) OR (IV) OF THIS PARAGRAPH (a), THE HEARING MAY BE RESCHEDULED MORE THAN SIXTY DAYS AFTER THE DATE THE DEPARTMENT RECEIVES THE REQUEST FOR THE HEARING, AND THE DEPARTMENT SHALL CONTINUE ANY TEMPORARY DRIVING PRIVILEGES HELD BY THE PERSON UNTIL THE DATE TO WHICH THE HEARING IS RESCHEDULED. AT LEAST TEN DAYS PRIOR TO THE SCHEDULED OR RESCHEDULED HEARING, THE DEPARTMENT SHALL PROVIDE IN THE MANNER SPECIFIED IN SECTION 42-2-119 (2) A WRITTEN NOTICE OF THE TIME AND PLACE OF THE HEARING TO THE RESPONDENT UNLESS THE PARTIES AGREE TO WAIVE THIS REQUIREMENT. NOTWITHSTANDING THE PROVISIONS OF SECTION 42-2-119, THE LAST-KNOWN ADDRESS OF THE RESPONDENT FOR PURPOSES OF NOTICE FOR ANY HEARING PURSUANT TO THIS SECTION SHALL BE THE ADDRESS STATED ON THE HEARING REQUEST FORM.

(II) A LAW ENFORCEMENT OFFICER WHO SUBMITS THE DOCUMENTS AND AFFIDAVIT REQUIRED BY SUBSECTION (5) OF THIS SECTION NEED NOT BE PRESENT AT THE HEARING UNLESS THE 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 THE RESPONDENT'S ATTORNEY DETERMINES THAT THE LAW ENFORCEMENT OFFICER SHOULD BE PRESENT AND SERVES A TIMELY SUBPOENA UPON THE LAW ENFORCEMENT OFFICER IN ACCORDANCE WITH PARAGRAPH (f) OF SUBSECTION (7) OF THIS SECTION.

(III) IF A LAW ENFORCEMENT OFFICER, AFTER RECEIVING A NOTICE OR SUBPOENA TO APPEAR FROM EITHER THE DEPARTMENT OR THE RESPONDENT, IS UNABLE TO APPEAR AT THE ORIGINAL OR RESCHEDULED HEARING DATE DUE TO A REASONABLE CONFLICT, INCLUDING BUT NOT LIMITED TO TRAINING, VACATION, OR PERSONAL LEAVE TIME, THE LAW ENFORCEMENT OFFICER OR THE LAW ENFORCEMENT OFFICER'S SUPERVISOR SHALL CONTACT THE DEPARTMENT NOT LESS THAN FORTY-EIGHT HOURS PRIOR TO THE HEARING AND RESCHEDULE THE HEARING TO A TIME WHEN THE LAW ENFORCEMENT OFFICER WILL BE AVAILABLE. IF THE LAW ENFORCEMENT OFFICER CANNOT APPEAR AT THE 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 LAW ENFORCEMENT OFFICER OR THE LAW ENFORCEMENT OFFICER'S SUPERVISOR GIVES NOTICE OF THE LAW ENFORCEMENT 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 LAW ENFORCEMENT OFFICER OR THE LAW ENFORCEMENT OFFICER'S SUPERVISOR AT THE EARLIEST POSSIBLE TIME WHEN THE LAW ENFORCEMENT OFFICER AND THE HEARING OFFICER WILL BE AVAILABLE.

(IV) IF A HEARING OFFICER CANNOT APPEAR AT AN ORIGINAL OR RESCHEDULED HEARING BECAUSE OF MEDICAL REASONS, A LAW ENFORCEMENT EMERGENCY, ANOTHER COURT OR ADMINISTRATIVE HEARING, OR ANY OTHER LEGITIMATE, JUST CAUSE, THE HEARING OFFICER OR THE DEPARTMENT MAY RESCHEDULE THE HEARING AT THE EARLIEST POSSIBLE TIME WHEN THE LAW ENFORCEMENT OFFICER AND THE HEARING OFFICER WILL BE AVAILABLE.

(b) THE HEARING SHALL BE HELD IN THE DISTRICT OFFICE NEAREST TO WHERE THE VIOLATION OCCURRED, UNLESS THE PARTIES AGREE TO A DIFFERENT LOCATION; 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.

(c) THE DEPARTMENT SHALL CONSIDER ALL RELEVANT EVIDENCE AT THE HEARING, INCLUDING THE TESTIMONY OF ANY LAW ENFORCEMENT OFFICER AND THE REPORTS OF ANY LAW ENFORCEMENT OFFICER THAT ARE SUBMITTED TO THE DEPARTMENT. THE REPORT OF A LAW ENFORCEMENT OFFICER SHALL NOT BE REQUIRED TO BE MADE UNDER OATH, BUT THE REPORT SHALL IDENTIFY THE LAW ENFORCEMENT OFFICER MAKING THE REPORT. THE DEPARTMENT MAY CONSIDER EVIDENCE CONTAINED IN AFFIDAVITS FROM PERSONS OTHER THAN THE RESPONDENT, SO LONG AS THE AFFIDAVITS INCLUDE THE AFFIANT'S HOME OR WORK ADDRESS AND PHONE NUMBER AND ARE DATED, SIGNED, AND SWORN TO BY THE AFFIANT UNDER

PENALTY OF PERJURY. THE AFFIDAVIT NEED NOT BE NOTARIZED OR SWORN TO BEFORE ANY OTHER PERSON.

(d) THE HEARING OFFICER SHALL HAVE AUTHORITY TO:

(I) ADMINISTER OATHS AND AFFIRMATIONS;

(II) COMPEL WITNESSES TO TESTIFY OR PRODUCE BOOKS, RECORDS, OR OTHER EVIDENCE;

(III) EXAMINE WITNESSES AND TAKE TESTIMONY;

(IV) RECEIVE AND CONSIDER ANY RELEVANT EVIDENCE NECESSARY TO PROPERLY PERFORM THE HEARING OFFICER'S DUTIES AS REQUIRED BY THIS SECTION;

(V) TAKE JUDICIAL NOTICE AS DEFINED BY RULE 201 OF ARTICLE II OF THE COLORADO RULES OF EVIDENCE, SUBJECT TO THE PROVISIONS OF SECTION 24-4-105 (8), C.R.S., WHICH SHALL INCLUDE:

(A) JUDICIAL NOTICE OF GENERAL, TECHNICAL, OR SCIENTIFIC FACTS WITHIN THE HEARING OFFICER'S KNOWLEDGE;

(B) JUDICIAL NOTICE OF APPROPRIATE AND RELIABLE SCIENTIFIC AND MEDICAL INFORMATION CONTAINED IN STUDIES, ARTICLES, BOOKS, AND TREATISES; AND

(C) JUDICIAL NOTICE OF CHARTS PREPARED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PERTAINING TO THE MAXIMUM BAC LEVELS THAT PEOPLE CAN OBTAIN THROUGH THE CONSUMPTION OF ALCOHOL WHEN THE CHARTS ARE BASED UPON THE MAXIMUM ABSORPTION LEVELS POSSIBLE OF DETERMINED AMOUNTS OF ALCOHOL CONSUMED IN RELATIONSHIP TO THE WEIGHT AND GENDER OF THE PERSON CONSUMING THE ALCOHOL;

(VI) ISSUE SUBPOENAS DUCES TECUM TO PRODUCE BOOKS, DOCUMENTS, RECORDS, OR OTHER EVIDENCE;

(VII) ISSUE SUBPOENAS FOR THE ATTENDANCE OF WITNESSES;

(VIII) TAKE DEPOSITIONS, OR CAUSE DEPOSITIONS OR INTERROGATORIES TO BE TAKEN;

(IX) REGULATE THE COURSE AND CONDUCT OF THE HEARING; AND

(X) MAKE A FINAL RULING ON THE ISSUES.

(e) WHEN AN ANALYSIS OF THE RESPONDENT'S BAC IS CONSIDERED AT A HEARING:

(I) IF THE RESPONDENT ESTABLISHES, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE RESPONDENT CONSUMED ALCOHOL BETWEEN THE TIME THAT THE RESPONDENT STOPPED DRIVING AND THE TIME OF TESTING, THE PREPONDERANCE OF THE EVIDENCE MUST ALSO ESTABLISH THAT THE MINIMUM REQUIRED BAC WAS

REACHED AS A RESULT OF ALCOHOL CONSUMED BEFORE THE RESPONDENT STOPPED DRIVING; AND

(II) IF THE EVIDENCE OFFERED BY THE RESPONDENT SHOWS 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 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, THERE SHALL BE A PRESUMPTION FAVORING THE ACCURACY OF THE ANALYSIS DONE ON BEHALF OF THE LAW ENFORCEMENT AGENCY IF THE ANALYSIS SHOWED THE BAC TO BE 0.096 OR MORE. IF THE RESPONDENT OFFERS EVIDENCE OF BLOOD 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.

(f) THE HEARING SHALL BE RECORDED. THE HEARING OFFICER SHALL RENDER A DECISION IN WRITING, AND THE DEPARTMENT SHALL PROVIDE A COPY OF THE DECISION TO THE RESPONDENT.

(g) IF THE RESPONDENT FAILS TO APPEAR WITHOUT JUST CAUSE, THE RIGHT TO A HEARING SHALL BE WAIVED, AND THE DETERMINATION OF THE DEPARTMENT WHICH IS BASED UPON THE DOCUMENTS AND AFFIDAVIT REQUIRED IN SUBSECTION (5) OF THIS SECTION SHALL BECOME FINAL.

(9) **Appeal.** (a) WITHIN THIRTY DAYS AFTER THE DEPARTMENT ISSUES ITS FINAL DETERMINATION UNDER THIS SECTION, A PERSON AGGRIEVED BY THE DETERMINATION SHALL HAVE THE RIGHT TO FILE A PETITION FOR JUDICIAL REVIEW IN THE DISTRICT COURT IN THE COUNTY OF THE PERSON'S RESIDENCE.

(b) JUDICIAL REVIEW OF THE DEPARTMENT'S DETERMINATION SHALL BE ON THE RECORD 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.

(c) A FILING OF A PETITION FOR JUDICIAL REVIEW SHALL NOT RESULT IN AN AUTOMATIC STAY OF THE REVOCATION ORDER. THE COURT MAY GRANT A STAY OF THE ORDER ONLY UPON A MOTION AND HEARING AND UPON A FINDING THAT THERE IS A REASONABLE PROBABILITY THAT THE PERSON WILL PREVAIL UPON THE MERITS AND THAT THE PERSON WILL SUFFER IRREPARABLE HARM IF THE ORDER IS NOT STAYED.

(10) **Notice to vehicle owner.** IF THE DEPARTMENT REVOKES A PERSON'S LICENSE PURSUANT TO PARAGRAPH (a), (c), OR (d) OF SUBSECTION (3) OF THIS SECTION, THE DEPARTMENT SHALL MAIL A NOTICE TO THE OWNER OF THE MOTOR VEHICLE USED IN THE VIOLATION INFORMING THE OWNER THAT:

(a) THE MOTOR VEHICLE WAS DRIVEN IN AN ALCOHOL-RELATED DRIVING VIOLATION; AND

(b) ADDITIONAL ALCOHOL-RELATED VIOLATIONS INVOLVING THE MOTOR VEHICLE BY THE SAME DRIVER MAY RESULT IN A REQUIREMENT THAT THE OWNER FILE PROOF OF FINANCIAL RESPONSIBILITY UNDER THE PROVISIONS OF SECTION 42-7-406 (1.5).

(11) **Applicability of "State Administrative Procedure Act"**. THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., SHALL APPLY TO THIS SECTION TO THE EXTENT IT IS CONSISTENT WITH SUBSECTIONS (7), (8), AND (9) OF THIS SECTION RELATING TO ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW.

SECTION 2. 42-1-102, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

42-1-102. Definitions. As used in articles 1 to 4 of this title, unless the context otherwise requires:

(8.5) "BAC" MEANS EITHER:

(a) A PERSON'S BLOOD ALCOHOL CONTENT, EXPRESSED IN GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD; OR

(b) A PERSON'S BREATH ALCOHOL CONTENT, EXPRESSED IN GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AS SHOWN BY ANALYSIS OF THE PERSON'S BREATH.

(27.3) "DUI" MEANS DRIVING UNDER THE INFLUENCE, AS DEFINED IN SECTION 42-4-1301 (1) (f), AND USE OF THE TERM SHALL INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301 (1) (a).

(27.5) "DUI PER SE" MEANS DRIVING WITH A BAC OF 0.08 OR MORE, AND USE OF THE TERM SHALL INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301 (2) (a).

(27.7) "DWAI" MEANS DRIVING WHILE ABILITY IMPAIRED, AS DEFINED IN SECTION 42-4-1301 (1) (g), AND USE OF THE TERM SHALL INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301 (1) (b).

(41.7) "HABITUAL USER" SHALL INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301 (1) (c).

(109.7) "UDD" MEANS UNDERAGE DRINKING AND DRIVING, AND USE OF THE TERM SHALL INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301 (2) (a.5).

SECTION 3. 18-3-106 (4) (a), Colorado Revised Statutes, is amended to read:

18-3-106. Vehicular homicide. (4) (a) If a law enforcement officer has probable cause to believe that any person was driving a motor vehicle in violation

of paragraph (b) of subsection (1) of this section, ~~such~~ THE person, upon the request of the law enforcement officer, shall take, and complete, and cooperate in the completing of any test or tests of ~~such~~ THE person's blood, breath, saliva, or urine for the purpose of determining the alcoholic or drug content within his or her system. The type of test or tests shall be determined by the law enforcement officer requiring the test or tests. If ~~such~~ THE person refuses to take, or to complete, or to cooperate in the completing of any ~~such~~ test or tests, ~~such~~ THE test or tests may be performed at the direction of a law enforcement officer having ~~such~~ probable cause, without ~~such~~ THE person's authorization or consent. If any person refuses to take or complete, or cooperate in the taking or completing of any test or tests required by this paragraph (a), ~~such~~ THE person shall be subject to license revocation pursuant to the provisions of ~~section 42-2-126 (2)~~ SECTION 42-2-126 (3), C.R.S. When ~~such~~ THE test or tests show that the amount of alcohol in a person's blood was in violation of the limits provided for in ~~section 42-2-126 (2) (a) (I), (2) (a) (I.5), (2) (a) (III), or (2) (a) (IV)~~ SECTION 42-2-126 (3) (a), (3) (b), (3) (d), OR (3) (e), C.R.S., ~~such~~ THE person shall be subject to license revocation pursuant to the provisions of section 42-2-126, C.R.S.

SECTION 4. 18-3-205 (4) (a), Colorado Revised Statutes, is amended to read:

18-3-205. Vehicular assault. (4) (a) If a law enforcement officer has probable cause to believe that any person was driving a motor vehicle in violation of paragraph (b) of subsection (1) of this section, ~~such~~ THE person, upon the request of the law enforcement officer, shall take, and complete, and cooperate in the completing of any test or tests of ~~such~~ THE person's blood, breath, saliva, or urine for the purpose of determining the alcoholic or drug content within his or her system. The type of test or tests shall be determined by the law enforcement officer requiring the test or tests. If ~~such~~ THE person refuses to take, or to complete, or to cooperate in the completing of any ~~such~~ test or tests, ~~such~~ THE test or tests may be performed at the direction of a law enforcement officer having ~~such~~ probable cause, without ~~such~~ THE person's authorization or consent. If any person refuses to take, or to complete, or to cooperate in the taking or completing of any test or tests required by this paragraph (a), ~~such~~ THE person shall be subject to license revocation pursuant to the provisions of ~~section 42-2-126 (2)~~ SECTION 42-2-126 (3), C.R.S. When ~~such~~ THE test or tests show that the amount of alcohol in a person's blood was in violation of the limits provided for in ~~section 42-2-126 (2) (a) (I), (2) (a) (I.5), (2) (a) (III), or (2) (a) (IV)~~ SECTION 42-2-126 (3) (a), (3) (b), (3) (d), OR (3) (e), C.R.S., ~~such~~ THE person shall be subject to license revocation pursuant to the provisions of section 42-2-126, C.R.S.

SECTION 5. 42-2-121 (2) (b), the introductory portion to 42-2-121 (5) (a), and 42-2-121 (5) (a) (III) and (5) (b), Colorado Revised Statutes, are amended to read:

42-2-121. Records to be kept by department - admission of records in court. (2) (b) The department shall also keep a separate file of all abstracts of court records of dismissals of ~~charges of violations of section 42-4-1301 (1) or (2)~~ DUI, DUI PER SE, DWAI, HABITUAL USER, AND UDD CHARGES and all abstracts of records in cases where the original charges were for ~~violations of section 42-4-1301 (1) or (2)~~ DUI, DUI PER SE, DWAI, HABITUAL USER, AND UDD and the convictions were for non-alcohol- or non-drug-related traffic offenses. This file shall be made available only to criminal justice agencies, as defined in section 24-72-302 (3),

C.R.S.

(5) (a) Upon application by a person, the department shall expunge all records concerning a conviction of a person for ~~driving any vehicle in this state UDD with an alcohol level~~ A BAC of at least 0.02 but not more than 0.05 ~~grams of alcohol per 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 while under twenty-one years of age pursuant to section 42-4-1301 (2) (a.5)~~ and any records concerning an administrative determination resulting in a revocation under ~~section 42-2-126 (2) (a) (1.5) or (2) (a) (IV)~~ SECTION 42-2-126 (3) (b) OR (3) (e) if:

(III) The person has not been convicted for any other ~~offense under section 42-4-1301~~ DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD OFFENSE that was committed while such person was under twenty-one years of age and is not subject to any other administrative determination resulting in a revocation under section 42-2-126 for any other occurrence while such person was under twenty-one years of age; and

(b) Upon receiving a request for expungement, the department may delay consideration of ~~such~~ THE request until sufficient time has elapsed to ensure that the person is not convicted for any additional offense under section 42-4-1301 committed while the person was under twenty-one years of age and that there is no additional administrative determination resulting in a revocation under ~~section 42-2-126 (2) (a) (1.5) or (2) (a) (IV)~~ SECTION 42-2-126 (3) (b) OR (3) (e) for actions taken while the person was under twenty-one years of age.

SECTION 6. 42-2-122 (1) (i), Colorado Revised Statutes, is amended to read:

42-2-122. Department may cancel license - limited license for physical or mental limitations. (1) The department has the authority to cancel, deny, or deny the reissuance of any driver's or minor driver's license upon determining that the licensee was not entitled to the issuance thereof for any of the following reasons:

(i) Failure of the person to complete a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3, as required by ~~section 42-2-126 (7)~~ SECTION 42-2-126 (4) (d) (II) (A) or 42-2-132 (2) (a) (II). ~~Such~~ THE failure shall be documented pursuant to section 42-2-144.

SECTION 7. 42-2-125 (1) (g), (1) (g.5), and (1) (i), Colorado Revised Statutes, are amended to read:

42-2-125. Mandatory revocation of license and permit. (1) The department shall immediately revoke the license or permit of any driver or minor driver upon receiving a record showing that such driver has:

(g) (I) Been twice convicted of ~~any offense provided for in section 42-4-1301 (1) or (2) (a)~~ DUI, DUI PER SE, DWAI, OR HABITUAL USER for acts committed within a period of five years;

(II) In the case of a minor driver, been convicted of ~~an offense under section~~

~~42-4-1301 (1) or (2) (a)~~ DUI, DUI PER SE, DWAI, OR HABITUAL USER committed while such driver was under twenty-one years of age;

(g.5) In the case of a minor driver, been convicted of ~~an offense under section 42-4-1301 (2) (a.5)~~ UDD committed when such driver was under twenty-one years of age;

(i) Been convicted of ~~any offense provided for in section 42-4-1301 (1) or (2) (a)~~ DUI, DUI PER SE, DWAI, OR HABITUAL USER and has two previous convictions of any of such offenses. The license of any driver shall be revoked for an indefinite period and shall only be reissued upon proof to the department that said driver has completed a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3 and that said driver has demonstrated knowledge of the laws and driving ability through the regular motor vehicle testing process. In no event shall such license be reissued in less than two years.

SECTION 8. 42-2-126.5 (8), Colorado Revised Statutes, is amended to read:

42-2-126.5. Revocation of license based on administrative actions taken under tribal law - repeal. (8) When a person whose license is revoked under this section has completed the terms and conditions of the tribal revocation order, the tribe shall provide the person with written notification of ~~such~~ THE completion and shall also send written notice to the department. When the department receives the tribe's written notification of ~~such~~ THE completion, the person may seek reinstatement of his or her Colorado driving privileges. ~~Such~~ THE person must comply with ~~sections 42-2-126 (7) (c)~~ SECTIONS 42-2-126 (4) (d), 42-2-132, and 42-7-406 to obtain a new license or otherwise restore his or her Colorado driving privileges.

SECTION 9. 42-2-127 (1) (a), (5) (b), (6) (b), (8) (b) (I), and (9) (a), Colorado Revised Statutes, are amended to read:

42-2-127. Authority to suspend license - to deny license - type of conviction - points. (1) (a) Except as provided in paragraph (b) of subsection (8) of this section, the department has the authority to suspend the license of any driver who, in accordance with the schedule of points set forth in this section, has been convicted of traffic violations resulting in the accumulation of twelve points or more within any twelve consecutive months or eighteen points or more within any twenty-four consecutive months, or, in the case of a minor driver eighteen years of age or older, who has accumulated nine points or more within any twelve consecutive months, or twelve points or more within any twenty-four consecutive months, or fourteen points or more for violations occurring after reaching the age of eighteen years, or, in the case of a minor driver under the age of eighteen years, who has accumulated more than five points within any twelve consecutive months or more than six points for violations occurring prior to reaching the age of eighteen years; except that the accumulation of points causing the subsection to suspension of the license of a chauffeur who, in the course of employment, has as a principal duty the operation of a motor vehicle shall be sixteen points in one year, twenty-four points in two years, or twenty-eight points in four years, if all the points are accumulated while said chauffeur is in the course of employment. Any provision

of this section to the contrary notwithstanding, the license of a chauffeur who is convicted of a violation of section 42-4-1301 (1) or (2) DUI, DUI PER SE, DWAI, HABITUAL USER, UDD, or leaving the scene of an accident shall be suspended in the same manner as if the offense occurred outside the course of employment. Whenever a minor driver under the age of eighteen years receives a summons for a traffic violation, the minor's parent or legal guardian or, if the minor is without parents or guardian, the person who signed the minor driver's application for a license shall immediately be notified by the court from which such THE summons was issued.

(5) Point system schedule:

| Type of conviction | Points |
|--|--------|
| (b) (I) Driving while under the influence or with an excessive alcoholic content pursuant to section 42-4-1301 (1) (a) or (2) DUI OR DUI PER SE. | 12 |
| (II) Driving while under the influence of any controlled substance pursuant to section 42-4-1301 (1) (c) HABITUAL USER. | 12 |
| (III) Driving while ability is impaired pursuant to section 42-4-1301 (1) (b) DWAI. | 8 |
| (IV) For a person under twenty-one years of age, driving with an alcohol content of at least 0.02 but not more than 0.05 pursuant to section 42-4-1301 (2) (a.5) UDD. | 4 |

(6) (b) For the purposes of this article, a plea of no contest accepted by the court or the forfeiture of any bail or collateral deposited to secure a defendant's appearance in court or the failure to appear in court by a defendant charged with a violation of section 42-4-1301 (1) (a), (1) (c), or (2) DUI, DUI PER SE, HABITUAL USER, OR UDD who has been issued a summons and notice to appear pursuant to section 42-4-1707 as evidenced by records forwarded to the department in accordance with the provisions of section 42-2-124 shall be considered as a conviction.

(8) (b) (I) If the department's records indicate that a driver has accumulated a sufficient number of points to cause a suspension under subsection (1) of this section and the driver is subject to a current or previous license restraint with a determined reinstatement date for the same offense or conviction that caused the driver to accumulate sufficient points to warrant suspension, the department may not order a point suspension of the license of the driver unless the license or driving privilege of the driver was revoked pursuant to section 42-2-126 (2) (a) (H) SECTION 42-2-126 (3) (c).

(9) (a) Whenever the department receives notice that a person has pled guilty to, or been found guilty by a court or a jury of, a violation of section 42-4-1301 (1) (a), (1) (c), or (2) (a) DUI, DUI PER SE, OR HABITUAL USER, and receives the license surrendered by the person to the court pursuant to section 42-2-129, the department shall immediately suspend the license of the person for a period of not less than one year. If the department is also required to enter a license revocation for a period of

one year or longer under any provision of this title based on the same conviction, the suspension shall not be entered.

SECTION 10. 42-2-129, Colorado Revised Statutes, is amended to read:

42-2-129. Mandatory surrender of license or permit for driving under the influence or with excessive alcoholic content. Upon a plea of guilty or nolo contendere, or a verdict of guilty by the court or a jury, to ~~a violation of section 42-4-1301 (1) (a), (1) (c), or (2) (a)~~ DUI, DUI PER SE, OR HABITUAL USER, or, for a person under twenty-one years of age, to ~~a violation of section 42-4-1301 (1) (a), (1) (b), (1) (c), (2) (a), or (2) (a.5)~~ DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD, the court shall require the offender to immediately surrender the offender's driver's, minor driver's, or temporary driver's license or instruction permit to the court. The court shall forward to the department a notice of plea or verdict, on the form prescribed by the department, together with the offender's license or permit, not later than ten days after the surrender of the license or permit. Any person who does not immediately surrender ~~such~~ THE license or permit to the court, except for good cause shown, commits a class 2 misdemeanor traffic offense.

SECTION 11. 42-2-132 (2) (a) (II) (B), (2) (a) (II) (C), (2) (a) (III), and (2) (a) (IV), Colorado Revised Statutes, are amended to read:

42-2-132. Period of suspension or revocation. (2) (a) (II) (B) If the person was determined to be in violation of ~~section 42-2-126 (2) (a) (I)~~ SECTION 42-2-126 (3) (a) and the person had a blood alcohol level, as shown by analysis of such person's blood or breath, BAC that was 0.17 or more ~~grams of alcohol per one hundred milliliters of blood or 0.17 or more grams of alcohol per two hundred ten liters of breath~~ at the time of driving or within two hours after driving; or if the person's driving record otherwise indicates a designation as a persistent drunk driver as defined in section 42-1-102 (68.5), the department shall require ~~such~~ THE person to complete a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3.

(C) ~~If the total period of license restraint under this subparagraph (II) is not sufficient to allow for the completion of A PERSON SEEKING REINSTATEMENT HAS NOT COMPLETED REQUIRED level II alcohol and drug education and treatment, or the documentation of completion of such education and treatment is incomplete at the time of reinstatement, THE PERSON SHALL FILE WITH THE DEPARTMENT proof of current enrollment in a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3, on a form approved by the department. shall be filed with the department.~~

(III) In the case of a minor driver whose license has been revoked as a result of one conviction for ~~any offense provided for in section 42-4-1301 (1) or (2)~~ DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD, the minor driver, unless otherwise required after an evaluation made ~~by an alcohol and drug evaluation specialist certified by the division of alcohol and drug abuse; PURSUANT TO SECTION 42-4-1301.3,~~ must complete a level I alcohol and drug education program certified by the division of alcohol and drug abuse. ~~pursuant to section 42-4-1301.3.~~

(IV) Any person whose license or privilege to drive a motor vehicle on the public

highways has been revoked under section 42-2-125 (1) (g) (I) or (1) (i) or 42-2-203 where the revocation was due in part to a ~~violation of section 42-4-1301~~ DUI, DUI PER SE, DWAI, OR HABITUAL USER CONVICTION shall be required to present an affidavit stating that the person has obtained at the person's own expense a signed lease agreement for the installation and use of an approved ignition interlock device, as defined in section 42-2-132.5 (7), in each motor vehicle on which the person's name appears on the registration and any other vehicle that the person may drive during the period of the restricted license and a copy of each signed lease agreement.

SECTION 12. 42-2-132.5 (1) (a), (1) (b.5), (1) (c), and (1.5) (a), Colorado Revised Statutes, are amended to read:

42-2-132.5. Mandatory and voluntary restricted licenses following alcohol conviction. (1) The following persons shall be required to hold a restricted license pursuant to this section for at least one year prior to being eligible to obtain any other driver's license issued under this article:

(a) Any person who has been convicted on two or more occasions of DUI or DUI per se, ~~as defined in section 42-4-1300.3~~, which offenses were committed within a period of five years and one of the offenses occurred on or after July 1, 1999, and on or before June 30, 2000;

(b.5) Any person whose license has been revoked pursuant to the provisions of section 42-2-126 when the person's ~~blood alcohol level, as shown by analysis of the person's blood or breath~~, BAC was 0.17 or more ~~grams of alcohol per one hundred milliliters of blood or 0.17 or more grams of alcohol per two hundred ten liters of breath~~ at the time of driving or within two hours after driving;

(c) Any person whose privilege to drive was revoked under section 42-2-203 where the revocation was due in part because of a ~~violation of section 42-4-1301~~ DUI, DUI PER SE, DWAI, OR HABITUAL USER CONVICTION and one of the offenses giving rise to the revocation occurred on or after July 1, 2000; or

(1.5) (a) A person whose privilege to drive has been revoked for more than one year because of a ~~violation of any provision of section 42-4-1301 (1) (a), (1) (b), or (2)~~ DUI, DUI PER SE, OR DWAI CONVICTION or has been revoked for more than one year under any provision of section 42-2-126 may voluntarily apply for an early reinstatement with a restricted license under the provisions of this section after the person's privilege to drive has been revoked for one year. The restrictions imposed pursuant to this section shall remain in effect for the longer of one year or the total time period remaining on the license restraint prior to early reinstatement.

SECTION 13. 42-2-138 (1) (a) and (1) (d), Colorado Revised Statutes, are amended to read:

42-2-138. Driving under restraint - penalty. (1) (a) Any person who drives a motor vehicle or off-highway vehicle upon any highway of this state with knowledge that ~~such~~ THE person's license or privilege to drive, either as a resident or a nonresident, is under restraint for any reason other than conviction of ~~an alcohol-related driving offense pursuant to section 42-4-1301 (1) or (2)~~ DUI, DUI

PER SE, DWAI, HABITUAL USER, OR UDD is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than five days nor more than six months, and, in the discretion of the court, a fine of not less than fifty dollars nor more than five hundred dollars may be imposed. The minimum sentence imposed by this paragraph (a) shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part, or reduce or suspend the fine under this paragraph (a); but, in a case where the defendant is convicted although the defendant established that he or she had to drive the motor vehicle in violation of this paragraph (a) because of an emergency, the mandatory jail sentence or the fine, if any, shall not apply, and the court may impose a sentence of imprisonment in the county jail for a period of not more than six months and a fine of not more than five hundred dollars. Such minimum sentence need not be five consecutive days but may be served during any thirty-day period.

(d) (I) A person who drives a motor vehicle or off-highway vehicle upon any highway of this state with knowledge that ~~such~~ THE person's license or privilege to drive, either as a resident or nonresident, is restrained under ~~section 42-2-126 (2) (a)~~ SECTION 42-2-126 (3), is restrained solely or partially because of a conviction of ~~a driving offense pursuant to section 42-4-1301 (1) or (2)~~ DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD, or is restrained in another state solely or partially because of an alcohol-related driving offense is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days nor more than one year and, in the discretion of the court, by a fine of not less than five hundred dollars nor more than one thousand dollars. Upon a second or subsequent conviction, ~~such~~ THE person shall be punished by imprisonment in the county jail for not less than ninety days nor more than two years and, in the discretion of the court, by a fine of not less than five hundred dollars nor more than three thousand dollars. The minimum county jail sentence imposed by this subparagraph (I) shall be mandatory, and the court shall not grant probation or a suspended sentence thereof; but, in a case where the defendant is convicted although the defendant established that he or she had to drive the motor vehicle in violation of this subparagraph (I) because of an emergency, the mandatory jail sentence, if any, shall not apply, and, for a first conviction, the court may impose a sentence of imprisonment in the county jail for a period of not more than one year and, in the discretion of the court, a fine of not more than one thousand dollars, and, for a second or subsequent conviction, the court may impose a sentence of imprisonment in the county jail for a period of not more than two years and, in the discretion of the court, a fine of not more than three thousand dollars.

(II) In any trial for a violation of subparagraph (I) of this paragraph (d), a duly authenticated copy of the record of the defendant's former convictions and judgments for ~~an alcohol-related driving offense pursuant to section 42-4-1301 (1) or (2)~~ DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD or an alcohol-related offense committed in another state from any court of record or a certified copy of the record of any denial or revocation of the defendant's driving privilege under ~~section 42-2-126 (2) (a)~~ SECTION 42-2-126 (3) from the department shall be prima facie evidence of ~~such~~ THE convictions, judgments, denials, or revocations and may be used in evidence against ~~such~~ THE defendant. Identification photographs and fingerprints that are part of the record of ~~such~~ THE former convictions, judgments, denials, or revocations and ~~such~~ THE defendant's incarceration after sentencing for any of ~~such~~ THE former convictions, judgments, denials, or revocations shall be

prima facie evidence of the identity of ~~such~~ THE defendant and may be used in evidence against the defendant.

SECTION 14. 42-2-144 (1), Colorado Revised Statutes, is amended to read:

42-2-144. Reporting by certified level II alcohol and drug education and treatment providers - notice of administrative remedies against a driver's license - rules. (1) The department shall require all providers of level II alcohol and drug education and treatment programs certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3 to provide quarterly reports to the department about each person who is enrolled and who has filed proof of such enrollment with the department as required by ~~section 42-2-126 (7) (c) (HH)~~ SECTION 42-2-126 (4) (d) (II).

SECTION 15. 42-2-202 (2) (a) (I), Colorado Revised Statutes, is amended to read:

42-2-202. Habitual offenders - frequency and type of violations. (2) (a) An habitual offender is a person having three or more convictions of any of the following separate and distinct offenses arising out of separate acts committed within a period of seven years:

~~(I) Driving a motor vehicle in violation of any provision of section 42-4-1301 (1) or (2) (a) DUI, DUI PER SE, DWAI, OR HABITUAL USER;~~

SECTION 16. 42-2-206 (1) (b) (I) (A) and (1) (b) (I) (B), Colorado Revised Statutes, are amended to read:

42-2-206. Driving after revocation prohibited. (1) (b) (I) A person commits the crime of aggravated driving with a revoked license if he or she is found to be an habitual offender and thereafter operates a motor vehicle in this state while the revocation of the department prohibiting such operation is in effect and, as a part of the same criminal episode, also commits any of the following offenses:

~~(A) Driving under the influence, as described in section 42-4-1301 (1) (a) DUI OR DUI PER SE;~~

~~(B) Driving while ability impaired, as described in section 42-4-1301 (1) (b) DWAI;~~

SECTION 17. 42-2-403 (2) (d), Colorado Revised Statutes, is amended to read:

42-2-403. Department authority - rules - federal requirements. (2) (d) The department may not consider the following with regard to an application from a person for a commercial driver's license:

(I) A conviction ~~under section 42-4-1301 (2) (a.5)~~ FOR UDD;

(II) A license revocation imposed under ~~section 42-2-126 (2) (a) (I.5)~~ SECTION 42-2-126 (3) (b) if the person was under twenty-one years of age at the time of the offense and such person drove a motor vehicle while such person's ~~blood alcohol~~

~~content BAC was 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; or~~

~~(III) A license revocation imposed under section 42-2-126 (2) (a) (IV) SECTION 42-2-126 (3) (e) if the person was under twenty-one years of age at the time of the offense and such person drove a commercial motor vehicle while such person's blood alcohol content BAC 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.~~

SECTION 18. 42-2-405 (3) (a), 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 conviction for ~~violating section 42-4-1301 (1) or (2) (a) DUI, DUI PER SE, DWAI, OR HABITUAL USER,~~ or 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) (1.5) SECTION 42-2-126 (3) (a) OR (3) (b)~~ shall be deemed driving under the influence; and

SECTION 19. 42-3-303 (1) (a), Colorado Revised Statutes, is amended to read:

42-3-303. Persistent drunk driver cash fund - programs to deter persistent drunk drivers. (1) There is hereby created in the state treasury the persistent drunk driver cash fund, which shall be composed of moneys collected for penalty surcharges under section 42-4-1301 (7) (d) (II). The moneys in such fund are subject to annual appropriation by the general assembly:

(a) To pay the costs incurred by the department concerning persistent drunk drivers under ~~sections 42-2-126 (2.5) SECTIONS 42-2-126 (10) and 42-7-406 (1.5);~~

SECTION 20. 42-4-1701 (3) (a) (II) (A), Colorado Revised Statutes, is amended to read:

42-4-1701. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule. (3) (a) (II) (A) Except as provided in subsections (4) and (5) of this section and in sections 42-4-1301 (7), ~~42-4-1301.2 (2);~~ 42-4-1301.3, and 42-4-1301.4, misdemeanor traffic offenses are divided into two classes which are distinguished from one another by the following penalties which are authorized upon conviction:

| Class | Minimum Sentence | Maximum Sentence |
|--------------|--|---|
| 1 | Ten days imprisonment, or \$100 fine, or both. | One year imprisonment, or \$1000 fine, or both. |
| 2 | Ten days imprisonment, | Ninety days imprisonment, |

or \$10 fine, or both.

or \$300 fine, or both.

SECTION 21. 42-4-1702 (1), Colorado Revised Statutes, is amended to read:

42-4-1702. Alcohol- or drug-related traffic offenses - collateral attack.

(1) Except as otherwise provided in paragraph (b) of this subsection (1), no person against whom a judgment has been entered for ~~a violation of section 42-4-1301 (1) or (2)~~ DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD shall collaterally attack the validity of that judgment unless such attack is commenced within six months after the date of entry of the judgment.

SECTION 22. 42-4-1705 (1) (c) and (3), Colorado Revised Statutes, are amended to read:

42-4-1705. Person arrested to be taken before the proper court.

(1) Whenever a person is arrested for any violation of this article punishable as a misdemeanor, the arrested person shall be taken without unnecessary delay before a county judge who has jurisdiction of such offense as provided by law, in any of the following cases:

(c) When the person is arrested and charged with ~~a violation of section 42-4-1301 (1) (a), (1) (c), or (2)~~ DUI, DUI PER SE, HABITUAL USER, OR UDD;

(3) Any other provision of law to the contrary notwithstanding, a police officer may place a person who has been arrested and charged with ~~a violation of section 42-4-1301 (1) (a) or (2)~~ DUI, DUI PER SE, OR UDD and who has been given a written notice or summons to appear in court as provided in section 42-4-1707 in a state-approved treatment facility for alcoholism even though entry or other record of such arrest and charge has been made. Such placement shall be governed by part 3 of article 1 of title 25, C.R.S., except where in conflict with this section.

SECTION 23. The introductory portion to 42-4-1715 (1) (b) (I) and 42-4-1715 (1) (b) (II) and (4) (a) (II), Colorado Revised Statutes, are amended to read:

42-4-1715. Convictions, judgments, and charges recorded - public inspection. (1) (b) (I) Upon application by a person, the court shall expunge all records concerning a conviction of the person for ~~driving any vehicle in this state with an alcohol level~~ UDD WITH A BAC of at least 0.02 but not more than 0.05 ~~grams of alcohol per 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 while under twenty-one years of age pursuant to section 42-4-1301 (2) (a.5)~~ if:

(II) Upon receiving a request for expungement, the court may delay consideration of such request until sufficient time has elapsed to ensure that the person is not convicted for any additional offense ~~under section 42-4-1301~~ OF DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD committed while the person was under twenty-one years of age.

(4) (a) Every court of record shall also forward a like report to the department:

(II) Upon the dismissal of a charge for ~~a violation of section 42-4-1301 (1) or (2)~~

DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD or if the original charge was for ~~a violation of section 42-4-1301 (1) or (2)~~ DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD and the conviction was for a non-alcohol- or non-drug-related traffic offense.

SECTION 24. 42-7-406 (1) and the introductory portion to 42-7-406 (1.5) (a), Colorado Revised Statutes, are amended to read:

42-7-406. Proof required under certain conditions. (1) Whenever the director revokes the license of any person under section 42-2-125 or 42-2-126, or cancels any license under section 42-2-122 because of the licensee's inability to operate a motor vehicle because of physical or mental incompetence, or cancels any probationary license under section 42-2-127, the director shall not issue to or continue in effect for any such person any new or renewal of license until permitted under the motor vehicle laws of this state, and not then until and unless such person files or has filed and maintains proof of financial responsibility as provided in this article; except that persons whose licenses are canceled pursuant to section 42-2-122 (2.5), revoked pursuant to section 42-2-125 (1) (m) or (1) (n), revoked for a first offense under section 42-2-125 (1) (g.5) or a first offense under ~~section 42-2-126 (2) (a) (1.5) or (2) (a) (IV)~~ SECTION 42-2-126 (3) (b) OR (3) (e), suspended pursuant to section 42-2-127.3 or denied pursuant to section 42-2-104 (3) (f) based upon a conviction under section 18-4-509, C.R.S., or a conviction under section 18-4-501, C.R.S., where the underlying factual basis involved defacing property, or any counterpart municipal charter or ordinance offense to either of said sections, shall not be required to file proof of financial responsibility in order to be relicensed.

(1.5) (a) Whenever the director revokes the license of a person under ~~section 42-2-126 (2) (a) (I), (2) (a) (II), or (2) (a) (III)~~ SECTION 42-2-126 (3) (a), (3) (c), OR (3) (d) for a second or subsequent offense and such person was driving the same vehicle in two or more of such offenses but did not own such vehicle, the director shall mail a notice to the owner of the vehicle pursuant to section 42-2-119 (2). In such notice, the director shall inform the owner that:

SECTION 25. 42-7-408 (1) (c), Colorado Revised Statutes, is amended to read:

42-7-408. Proof of financial responsibility - methods of giving proof - duration - exception. (1) (c) Notwithstanding the three-year requirement in paragraph (b) of this subsection (1):

(I) If an insured has been found guilty of ~~a driving offense pursuant to section 42-4-1301 (1) or (2) (a)~~ DUI, DUI PER SE, DWAI, OR HABITUAL USER or if the insured's license has been revoked pursuant to section 42-2-126, other than a revocation under ~~section 42-2-126 (2) (a) (1.5) or (2) (a) (IV)~~ SECTION 42-2-126 (3) (b) OR (3) (e), only one time and no accident was involved in such offense, proof of financial responsibility for the future shall be required to be maintained only for as long as the insured's driving privilege is ordered to be under restraint, up to a maximum of three years. The time period for maintaining the future proof of liability insurance shall begin at the time the driver reinstates his or her driving privilege.

(II) If an insured has been found guilty of a second or subsequent offense of

~~driving with an alcohol content~~ UDD WITH A BAC of at least 0.02 but not more than 0.05 ~~while under twenty-one years of age under section 42-4-1301 (2) (a.5) or if the insured's driver's license has been revoked because of a second or subsequent offense pursuant to section 42-2-126 (2) (a) (I.5) or (2) (a) (IV)~~ SECTION 42-2-126 (3) (b) OR (3) (e), proof of financial responsibility for the future shall be required to be maintained only for as long as the insured's driving privilege is ordered to be under restraint. The time period for maintaining the future proof of liability insurance shall begin at the time the driver reinstates his or her driving privilege.

SECTION 26. Repeal. 42-4-1300.3 and 42-4-1301.2, Colorado Revised Statutes, are repealed.

SECTION 27. Effective date. This act shall take effect July 1, 2008.

SECTION 28. 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, 2008