

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 08-0693.01 Jerry Barry

HOUSE BILL 08-1166

HOUSE SPONSORSHIP

Judd,

SENATE SPONSORSHIP

Hagedorn,

House Committees
Transportation & Energy

Senate Committees
Transportation

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Repeals and reenacts, with amendments, the statute authorizing the department of revenue to revoke a person's driver's license due to the presence of alcohol or drugs in the person's system or the person's refusal to take a test to determine whether there is alcohol or drugs in the person's system.

Relocates definitions relating to drug- and alcohol-related offenses.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unamended
March 12, 2008

HOUSE
3rd Reading Unamended
February 5, 2008

HOUSE
Amended 2nd Reading
February 4, 2008

Makes conforming amendments.

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

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3 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

4 **42-2-126. Revocation of license based on administrative**
5 **determination. (1) Legislative declaration.** THE PURPOSES OF THIS
6 SECTION ARE:

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

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

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

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

22 (a) "EXCESS BAC" MEANS THAT A PERSON HAD A BAC LEVEL
23 SUFFICIENT TO SUBJECT THE PERSON TO A LICENSE REVOCATION FOR
24 EXCESS BAC 0.08, EXCESS BAC UNDERAGE, EXCESS BAC CDL, OR
25 EXCESS BAC UNDERAGE CDL.

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

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

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

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

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

20 (g) "LICENSE" INCLUDES DRIVING PRIVILEGE.

21 (h) "REFUSAL" MEANS REFUSING TO TAKE OR COMPLETE, OR TO
22 COOPERATE IN THE COMPLETING OF, A TEST OF THE PERSON'S BLOOD,
23 BREATH, SALIVA, OR URINE AS REQUIRED BY SECTION 18-3-106 (4) OR
24 18-3-205 (4), C.R.S., OR SECTION 42-4-1301.1 (2).

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

27 (3) **Revocation of license.** (a) **Excess BAC 0.08.** (I) THE

1 DEPARTMENT SHALL REVOKE THE LICENSE OF A PERSON FOR EXCESS BAC
2 0.08 FOR THREE MONTHS FOR A FIRST VIOLATION AND FOR ONE YEAR FOR
3 A SECOND OR SUBSEQUENT VIOLATION.

4 (II) (A) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH
5 (I) OF THIS PARAGRAPH (a), A PERSON TWENTY-ONE YEARS OF AGE OR
6 OLDER AT THE TIME OF THE VIOLATION WHOSE LICENSE IS REVOKED FOR
7 A FIRST OFFENSE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) MAY
8 REQUEST THAT, IN LIEU OF THE THREE-MONTH REVOCATION, THE PERSON'S
9 LICENSE BE REVOKED FOR A PERIOD OF NOT LESS THAN THIRTY DAYS, TO
10 BE FOLLOWED BY A SUSPENSION PERIOD OF SUCH LENGTH THAT THE TOTAL
11 PERIOD OF REVOCATION AND SUSPENSION EQUALS SIX MONTHS. IF THE
12 HEARING OFFICER APPROVES THE REQUEST, THE HEARING OFFICER MAY
13 GRANT THE PERSON A PROBATIONARY LICENSE THAT MAY BE USED ONLY
14 FOR THE REASONS PROVIDED IN SECTION 42-2-127 (14) (a). IF THE PERSON
15 IS A PERSISTENT DRUNK DRIVER, AS DEFINED IN SECTION 42-1-102 (68.5),
16 THE PROBATIONARY LICENSE SHALL BE CONDITIONED ON THE USE OF AN
17 APPROVED IGNITION INTERLOCK DEVICE, AS DEFINED IN SECTION
18 42-2-132.5 (7) (a). THE TIME SERVED UNDER A PROBATIONARY LICENSE
19 SHALL NOT BE CREDITED AGAINST ANY MANDATORY INTERLOCK
20 RESTRICTION IMPOSED PURSUANT TO SECTION 42-2-132.5.

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

27 (b) **Excess BAC underage.** (I) THE DEPARTMENT SHALL REVOKE

1 THE LICENSE OF A PERSON FOR EXCESS BAC UNDERAGE FOR THREE
2 MONTHS FOR A FIRST VIOLATION, FOR SIX MONTHS FOR A SECOND
3 VIOLATION, AND FOR ONE YEAR FOR A THIRD OR SUBSEQUENT VIOLATION.

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

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

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

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

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

11 (4) **Multiple restraints and conditions on driving privileges.**

12 (a) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH (a), A
13 REVOCATION IMPOSED PURSUANT TO THIS SECTION SHALL RUN
14 CONSECUTIVELY AND NOT CONCURRENTLY WITH ANY OTHER REVOCATION
15 IMPOSED PURSUANT TO THIS SECTION.

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

24 (III) IF A LICENSE IS REVOKED FOR REFUSAL, THE REVOCATION
25 SHALL NOT RUN CONCURRENTLY, IN WHOLE OR IN PART, WITH ANY
26 PREVIOUS OR SUBSEQUENT SUSPENSIONS, REVOCATIONS, OR DENIALS THAT
27 MAY BE PROVIDED FOR BY LAW, INCLUDING BUT NOT LIMITED TO ANY

1 SUSPENSION, REVOCATION, OR DENIAL THAT RESULTS FROM A CONVICTION
2 OF CRIMINAL CHARGES ARISING OUT OF THE SAME OCCURRENCE FOR A
3 VIOLATION OF SECTION 42-4-1301. ANY REVOCATION FOR REFUSAL SHALL
4 NOT PRECLUDE OTHER ACTION THAT THE DEPARTMENT IS REQUIRED TO
5 TAKE IN THE ADMINISTRATION OF THIS TITLE.

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

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

15 (II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF
16 THIS PARAGRAPH (b), A PERSON WHOSE PRIVILEGE TO DRIVE A
17 COMMERCIAL MOTOR VEHICLE HAS BEEN REVOKED BECAUSE OF EXCESS
18 BAC CDL AND WHO WAS TWENTY-ONE YEARS OF AGE OR OLDER AT THE
19 TIME OF THE OFFENSE MAY APPLY FOR A DRIVER'S LICENSE OF ANOTHER
20 CLASS OR TYPE AS LONG AS THERE IS NO OTHER STATUTORY REASON TO
21 DENY THE PERSON A LICENSE. THE DEPARTMENT MAY NOT ISSUE THE
22 PERSON A PROBATIONARY LICENSE THAT WOULD AUTHORIZE THE PERSON
23 TO OPERATE A COMMERCIAL MOTOR VEHICLE.

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

1 OF PARAGRAPH (d) OF THIS SUBSECTION (4).

2 (d) (I) FOLLOWING A LICENSE REVOCATION, THE DEPARTMENT
3 SHALL NOT ISSUE A NEW LICENSE OR OTHERWISE RESTORE THE DRIVING
4 PRIVILEGE UNLESS THE DEPARTMENT IS SATISFIED, AFTER AN
5 INVESTIGATION OF THE CHARACTER, HABITS, AND DRIVING ABILITY OF THE
6 PERSON, THAT IT WILL BE SAFE TO GRANT THE PRIVILEGE OF DRIVING A
7 MOTOR VEHICLE ON THE HIGHWAYS TO THE PERSON; EXCEPT THAT THE
8 DEPARTMENT MAY NOT REQUIRE A PERSON TO UNDERGO SKILLS OR
9 KNOWLEDGE TESTING PRIOR TO ISSUANCE OF A NEW LICENSE OR
10 RESTORATION OF THE PERSON'S DRIVING PRIVILEGE IF THE PERSON'S
11 LICENSE WAS REVOKED FOR A FIRST VIOLATION OF EXCESS BAC 0.08 OR
12 EXCESS BAC UNDERAGE.

13 (II) (A) IF A PERSON WAS DETERMINED TO BE DRIVING WITH
14 EXCESS BAC AND THE PERSON HAD A BAC THAT WAS 0.17 OR MORE OR
15 IF THE PERSON'S DRIVING RECORD OTHERWISE INDICATES A DESIGNATION
16 AS A PERSISTENT DRUNK DRIVER AS DEFINED IN SECTION 42-1-102 (68.5),
17 THE DEPARTMENT SHALL REQUIRE THE PERSON TO COMPLETE A LEVEL II
18 ALCOHOL AND DRUG EDUCATION AND TREATMENT PROGRAM CERTIFIED BY
19 THE DIVISION OF ALCOHOL AND DRUG ABUSE PURSUANT TO SECTION
20 42-4-1301.3 AS A CONDITION TO RESTORING DRIVING PRIVILEGES TO THE
21 PERSON AND, UPON THE RESTORATION OF DRIVING PRIVILEGES, SHALL
22 REQUIRE THE PERSON TO HOLD A RESTRICTED LICENSE REQUIRING THE USE
23 OF AN IGNITION INTERLOCK DEVICE PURSUANT TO SECTION 42-2-132.5 (1)
24 (b.5).

25 (B) IF A PERSON SEEKING REINSTATEMENT IS REQUIRED TO
26 COMPLETE, BUT HAS NOT YET COMPLETED, A LEVEL II ALCOHOL AND DRUG
27 EDUCATION AND TREATMENT PROGRAM, THE PERSON SHALL FILE WITH THE

1 DEPARTMENT PROOF OF CURRENT ENROLLMENT IN A LEVEL II ALCOHOL
2 AND DRUG EDUCATION AND TREATMENT PROGRAM CERTIFIED BY THE
3 DIVISION OF ALCOHOL AND DRUG ABUSE PURSUANT TO SECTION
4 42-4-1301.3, ON A FORM APPROVED BY THE DEPARTMENT.

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

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

1 REFUSAL.

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

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

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

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

1 PARAGRAPH (b).

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

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

27 (II) IN SENDING A NOTICE OF REVOCATION, THE DEPARTMENT

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

7 (c) IF THE DEPARTMENT DETERMINES THAT THE PERSON IS NOT
8 SUBJECT TO LICENSE REVOCATION, THE DEPARTMENT SHALL NOTIFY THE
9 PERSON OF ITS DETERMINATION AND SHALL RESCIND ANY ORDER OF
10 REVOCATION SERVED UPON THE PERSON BY THE LAW ENFORCEMENT
11 OFFICER.

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

26 (7) **Request for hearing.** (a) A PERSON WHO HAS RECEIVED A
27 NOTICE OF REVOCATION MAY MAKE A WRITTEN REQUEST FOR A REVIEW OF

1 THE DEPARTMENT'S DETERMINATION AT A HEARING. THE REQUEST MAY
2 BE MADE ON A FORM AVAILABLE AT EACH OFFICE OF THE DEPARTMENT.

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

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

25 (d) AT THE TIME A PERSON REQUESTS A HEARING PURSUANT TO
26 THIS SUBSECTION (7), IF IT APPEARS FROM THE RECORD THAT THE PERSON
27 IS THE HOLDER OF A VALID DRIVER'S OR MINOR DRIVER'S LICENSE OR OF AN

1 INSTRUCTION PERMIT OR OF A TEMPORARY PERMIT ISSUED PURSUANT TO
2 PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION AND THAT THE
3 LICENSE OR PERMIT HAS BEEN SURRENDERED, THE DEPARTMENT SHALL
4 STAY THE EFFECTIVE DATE OF THE REVOCATION AND ISSUE A TEMPORARY
5 PERMIT THAT SHALL BE VALID UNTIL THE SCHEDULED DATE FOR THE
6 HEARING. IF NECESSARY, THE DEPARTMENT MAY LATER EXTEND THE
7 TEMPORARY PERMIT OR ISSUE AN ADDITIONAL TEMPORARY PERMIT IN
8 ORDER TO STAY THE EFFECTIVE DATE OF THE REVOCATION UNTIL THE
9 FINAL ORDER IS ISSUED FOLLOWING THE HEARING, AS REQUIRED BY
10 SUBSECTION (8) OF THIS SECTION. IF THE PERSON NOTIFIES THE
11 DEPARTMENT IN WRITING AT THE TIME THAT THE HEARING IS REQUESTED
12 THAT THE PERSON DESIRES THE LAW ENFORCEMENT OFFICER'S PRESENCE
13 AT THE HEARING, THE DEPARTMENT SHALL ISSUE A WRITTEN NOTICE FOR
14 THE LAW ENFORCEMENT OFFICER TO APPEAR AT THE HEARING. A LAW
15 ENFORCEMENT OFFICER WHO IS REQUIRED TO APPEAR AT A HEARING MAY,
16 AT THE DISCRETION OF THE HEARING OFFICER, APPEAR IN REAL TIME BY
17 TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH SECTION
18 42-1-218.5.

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

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

26 (II) OF THE PERSON'S RIGHT AT THAT TIME TO NOTIFY THE
27 DEPARTMENT IN WRITING THAT THE PERSON DESIRES THE LAW

1 ENFORCEMENT OFFICER'S PRESENCE AT THE HEARING AND THAT, UPON
2 RECEIVING THE NOTIFICATION, THE DEPARTMENT SHALL ISSUE A WRITTEN
3 NOTICE FOR THE LAW ENFORCEMENT OFFICER TO APPEAR AT THE HEARING;

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

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

11 (f) ANY SUBPOENA SERVED UPON A LAW ENFORCEMENT OFFICER
12 FOR ATTENDANCE AT A HEARING CONDUCTED PURSUANT TO THIS SECTION
13 SHALL BE SERVED AT LEAST FIVE CALENDAR DAYS BEFORE THE DAY OF
14 THE HEARING.

15 (8) **Hearing.** (a) (I) THE HEARING SHALL BE SCHEDULED TO BE
16 HELD AS QUICKLY AS PRACTICABLE BUT NOT MORE THAN SIXTY DAYS
17 AFTER THE DATE THE DEPARTMENT RECEIVES THE REQUEST FOR A
18 HEARING; EXCEPT THAT, IF A HEARING IS RESCHEDULED BECAUSE OF THE
19 UNAVAILABILITY OF A LAW ENFORCEMENT OFFICER OR THE HEARING
20 OFFICER IN ACCORDANCE WITH SUBPARAGRAPH (III) OR (IV) OF THIS
21 PARAGRAPH (a), THE HEARING MAY BE RESCHEDULED MORE THAN SIXTY
22 DAYS AFTER THE DATE THE DEPARTMENT RECEIVES THE REQUEST FOR THE
23 HEARING, AND THE DEPARTMENT SHALL CONTINUE ANY TEMPORARY
24 DRIVING PRIVILEGES HELD BY THE PERSON UNTIL THE DATE TO WHICH THE
25 HEARING IS RESCHEDULED. AT LEAST TEN DAYS PRIOR TO THE SCHEDULED
26 OR RESCHEDULED HEARING, THE DEPARTMENT SHALL PROVIDE IN THE
27 MANNER SPECIFIED IN SECTION 42-2-119 (2) A WRITTEN NOTICE OF THE

1 TIME AND PLACE OF THE HEARING TO THE RESPONDENT UNLESS THE
2 PARTIES AGREE TO WAIVE THIS REQUIREMENT. NOTWITHSTANDING THE
3 PROVISIONS OF SECTION 42-2-119, THE LAST-KNOWN ADDRESS OF THE
4 RESPONDENT FOR PURPOSES OF NOTICE FOR ANY HEARING PURSUANT TO
5 THIS SECTION SHALL BE THE ADDRESS STATED ON THE HEARING REQUEST
6 FORM.

7 (II) A LAW ENFORCEMENT OFFICER WHO SUBMITS THE DOCUMENTS
8 AND AFFIDAVIT REQUIRED BY SUBSECTION (5) OF THIS SECTION NEED NOT
9 BE PRESENT AT THE HEARING UNLESS THE HEARING OFFICER REQUIRES
10 THAT THE LAW ENFORCEMENT OFFICER BE PRESENT AND THE HEARING
11 OFFICER ISSUES A WRITTEN NOTICE FOR THE LAW ENFORCEMENT OFFICER'S
12 APPEARANCE OR UNLESS THE RESPONDENT OR THE RESPONDENT'S
13 ATTORNEY DETERMINES THAT THE LAW ENFORCEMENT OFFICER SHOULD
14 BE PRESENT AND SERVES A TIMELY SUBPOENA UPON THE LAW
15 ENFORCEMENT OFFICER IN ACCORDANCE WITH PARAGRAPH (f) OF
16 SUBSECTION (7) OF THIS SECTION.

17 (III) IF A LAW ENFORCEMENT OFFICER, AFTER RECEIVING A NOTICE
18 OR SUBPOENA TO APPEAR FROM EITHER THE DEPARTMENT OR THE
19 RESPONDENT, IS UNABLE TO APPEAR AT THE ORIGINAL OR RESCHEDULED
20 HEARING DATE DUE TO A REASONABLE CONFLICT, INCLUDING BUT NOT
21 LIMITED TO TRAINING, VACATION, OR PERSONAL LEAVE TIME, THE LAW
22 ENFORCEMENT OFFICER OR THE LAW ENFORCEMENT OFFICER'S SUPERVISOR
23 SHALL CONTACT THE DEPARTMENT NOT LESS THAN FORTY-EIGHT HOURS
24 PRIOR TO THE HEARING AND RESCHEDULE THE HEARING TO A TIME WHEN
25 THE LAW ENFORCEMENT OFFICER WILL BE AVAILABLE. IF THE LAW
26 ENFORCEMENT OFFICER CANNOT APPEAR AT THE ORIGINAL OR
27 RESCHEDULED HEARING BECAUSE OF MEDICAL REASONS, A LAW

1 ENFORCEMENT EMERGENCY, ANOTHER COURT OR ADMINISTRATIVE
2 HEARING, OR ANY OTHER LEGITIMATE, JUST CAUSE AS DETERMINED BY THE
3 DEPARTMENT, AND THE LAW ENFORCEMENT OFFICER OR THE LAW
4 ENFORCEMENT OFFICER'S SUPERVISOR GIVES NOTICE OF THE LAW
5 ENFORCEMENT OFFICER'S INABILITY TO APPEAR TO THE DEPARTMENT
6 PRIOR TO THE DISMISSAL OF THE REVOCATION PROCEEDING, THE
7 DEPARTMENT SHALL RESCHEDULE THE HEARING FOLLOWING
8 CONSULTATION WITH THE LAW ENFORCEMENT OFFICER OR THE LAW
9 ENFORCEMENT OFFICER'S SUPERVISOR AT THE EARLIEST POSSIBLE TIME
10 WHEN THE LAW ENFORCEMENT OFFICER AND THE HEARING OFFICER WILL
11 BE AVAILABLE.

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

19 (b) THE HEARING SHALL BE HELD IN THE DISTRICT OFFICE NEAREST
20 TO WHERE THE VIOLATION OCCURRED, UNLESS THE PARTIES AGREE TO A
21 DIFFERENT LOCATION; EXCEPT THAT, AT THE DISCRETION OF THE
22 DEPARTMENT, ALL OR PART OF THE HEARING MAY BE CONDUCTED IN REAL
23 TIME, BY TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH
24 SECTION 42-1-218.5.

25 (c) THE DEPARTMENT SHALL CONSIDER ALL RELEVANT EVIDENCE
26 AT THE HEARING, INCLUDING THE TESTIMONY OF ANY LAW ENFORCEMENT
27 OFFICER AND THE REPORTS OF ANY LAW ENFORCEMENT OFFICER THAT ARE

1 SUBMITTED TO THE DEPARTMENT. THE REPORT OF A LAW ENFORCEMENT
2 OFFICER SHALL NOT BE REQUIRED TO BE MADE UNDER OATH, BUT THE
3 REPORT SHALL IDENTIFY THE LAW ENFORCEMENT OFFICER MAKING THE
4 REPORT. THE DEPARTMENT MAY CONSIDER EVIDENCE CONTAINED IN
5 AFFIDAVITS FROM PERSONS OTHER THAN THE RESPONDENT, SO LONG AS
6 THE AFFIDAVITS INCLUDE THE AFFIANT'S HOME OR WORK ADDRESS AND
7 PHONE NUMBER AND ARE DATED, SIGNED, AND SWORN TO BY THE AFFIANT
8 UNDER PENALTY OF PERJURY. THE AFFIDAVIT NEED NOT BE NOTARIZED OR
9 SWORN TO BEFORE ANY OTHER PERSON.

10 (d) THE HEARING OFFICER SHALL HAVE AUTHORITY TO:

11 (I) ADMINISTER OATHS AND AFFIRMATIONS;

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

14 (III) EXAMINE WITNESSES AND TAKE TESTIMONY;

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

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

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

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

26 (C) JUDICIAL NOTICE OF CHARTS PREPARED BY THE DEPARTMENT
27 OF PUBLIC HEALTH AND ENVIRONMENT PERTAINING TO THE MAXIMUM

1 BAC LEVELS THAT PEOPLE CAN OBTAIN THROUGH THE CONSUMPTION OF
2 ALCOHOL WHEN THE CHARTS ARE BASED UPON THE MAXIMUM ABSORPTION
3 LEVELS POSSIBLE OF DETERMINED AMOUNTS OF ALCOHOL CONSUMED IN
4 RELATIONSHIP TO THE WEIGHT AND GENDER OF THE PERSON CONSUMING
5 THE ALCOHOL;

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

8 (VII) ISSUE SUBPOENAS FOR THE ATTENDANCE OF WITNESSES;

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

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

12 (X) MAKE A FINAL RULING ON THE ISSUES.

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

15 (I) IF THE RESPONDENT ESTABLISHES, BY A PREPONDERANCE OF
16 THE EVIDENCE, THAT THE RESPONDENT CONSUMED ALCOHOL BETWEEN
17 THE TIME THAT THE RESPONDENT STOPPED DRIVING AND THE TIME OF
18 TESTING, THE PREPONDERANCE OF THE EVIDENCE MUST ALSO ESTABLISH
19 THAT THE MINIMUM REQUIRED BAC WAS REACHED AS A RESULT OF
20 ALCOHOL CONSUMED BEFORE THE RESPONDENT STOPPED DRIVING; AND

21 (II) IF THE EVIDENCE OFFERED BY THE RESPONDENT SHOWS A
22 DISPARITY BETWEEN THE RESULTS OF THE ANALYSIS DONE ON BEHALF OF
23 THE LAW ENFORCEMENT AGENCY AND THE RESULTS OF AN ANALYSIS DONE
24 ON BEHALF OF THE RESPONDENT, AND A PREPONDERANCE OF THE
25 EVIDENCE ESTABLISHES THAT THE BLOOD ANALYSIS CONDUCTED ON
26 BEHALF OF THE LAW ENFORCEMENT AGENCY WAS PROPERLY CONDUCTED
27 BY A QUALIFIED PERSON ASSOCIATED WITH A LABORATORY CERTIFIED BY

1 THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT USING PROPERLY
2 WORKING TESTING DEVICES, THERE SHALL BE A PRESUMPTION FAVORING
3 THE ACCURACY OF THE ANALYSIS DONE ON BEHALF OF THE LAW
4 ENFORCEMENT AGENCY IF THE ANALYSIS SHOWED THE BAC TO BE 0.096
5 OR MORE. IF THE RESPONDENT OFFERS EVIDENCE OF BLOOD ANALYSIS,
6 THE RESPONDENT SHALL BE REQUIRED TO STATE UNDER OATH THE
7 NUMBER OF ANALYSES DONE IN ADDITION TO THE ONE OFFERED AS
8 EVIDENCE AND THE NAMES OF THE LABORATORIES THAT PERFORMED THE
9 ANALYSES AND THE RESULTS OF ALL ANALYSES.

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

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

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

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

1 RECORD, THE COURT MAY REVERSE THE DEPARTMENT'S DETERMINATION.

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

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

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

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

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

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

27 **42-1-102. Definitions.** As used in articles 1 to 4 of this title,

1 unless the context otherwise requires:

2 (8.5) "BAC" MEANS EITHER:

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

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

9 (27.3) "DUI" MEANS DRIVING UNDER THE INFLUENCE, AS DEFINED
10 IN SECTION 42-4-1301 (1) (f), AND USE OF THE TERM SHALL INCORPORATE
11 BY REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301 (1) (a).

12 (27.5) "DUI PER SE" MEANS DRIVING WITH A BAC OF 0.08 OR
13 MORE, AND USE OF THE TERM SHALL INCORPORATE BY REFERENCE THE
14 OFFENSE DESCRIBED IN SECTION 42-4-1301 (2) (a).

15 (27.7) "DWAI" MEANS DRIVING WHILE ABILITY IMPAIRED, AS
16 DEFINED IN SECTION 42-4-1301 (1) (g), AND USE OF THE TERM SHALL
17 INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION
18 42-4-1301 (1) (b).

19 (41.7) "HABITUAL USER" SHALL INCORPORATE BY REFERENCE THE
20 OFFENSE DESCRIBED IN SECTION 42-4-1301 (1) (c).

21 (109.7) "UDD" MEANS UNDERAGE DRINKING AND DRIVING, AND
22 USE OF THE TERM SHALL INCORPORATE BY REFERENCE THE OFFENSE
23 DESCRIBED IN SECTION 42-4-1301 (2) (a.5).

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

26 **18-3-106. Vehicular homicide.** (4) (a) If a law enforcement
27 officer has probable cause to believe that any person was driving a motor

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

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

22 **18-3-205. Vehicular assault.** (4) (a) If a law enforcement officer
23 has probable cause to believe that any person was driving a motor vehicle
24 in violation of paragraph (b) of subsection (1) of this section, ~~such~~ THE
25 person, upon the request of the law enforcement officer, shall take, and
26 complete, and cooperate in the completing of any test or tests of ~~such~~ THE
27 person's blood, breath, saliva, or urine for the purpose of determining the

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

16 **SECTION 5.** 42-2-121 (2) (b), the introductory portion to
17 42-2-121 (5) (a), and 42-2-121 (5) (a) (III) and (5) (b), Colorado Revised
18 Statutes, are amended to read:

19 **42-2-121. Records to be kept by department - admission of**
20 **records in court.** (2) (b) The department shall also keep a separate file
21 of all abstracts of court records of dismissals of ~~charges of violations of~~
22 ~~section 42-4-1301 (1) or (2)~~ DUI, DUI PER SE, DWAI, HABITUAL USER,
23 AND UDD CHARGES and all abstracts of records in cases where the
24 original charges were for ~~violations of section 42-4-1301 (1) or (2)~~ DUI,
25 DUI PER SE, DWAI, HABITUAL USER, AND UDD and the convictions were
26 for non-alcohol- or non-drug-related traffic offenses. This file shall be
27 made available only to criminal justice agencies, as defined in section

1 24-72-302 (3), C.R.S.

2 (5) (a) Upon application by a person, the department shall
3 expunge all records concerning a conviction of a person for ~~driving any~~
4 ~~vehicle in this state~~ UDD with an alcohol level A BAC of at least 0.02 but
5 not more than 0.05 ~~grams of alcohol per hundred milliliters of blood or~~
6 ~~at least 0.02 but not more than 0.05 grams of alcohol per two hundred ten~~
7 ~~liters of breath while under twenty-one years of age pursuant to section~~
8 ~~42-4-1301 (2) (a.5)~~ and any records concerning an administrative
9 determination resulting in a revocation under ~~section 42-2-126 (2) (a)~~
10 ~~(I.5) or (2) (a) (IV)~~ SECTION 42-2-126 (3) (b) OR (3) (e) if:

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

18 (b) Upon receiving a request for expungement, the department
19 may delay consideration of ~~such~~ THE request until sufficient time has
20 elapsed to ensure that the person is not convicted for any additional
21 offense under section 42-4-1301 committed while the person was under
22 twenty-one years of age and that there is no additional administrative
23 determination resulting in a revocation under ~~section 42-2-126 (2) (a)~~
24 ~~(I.5) or (2) (a) (IV)~~ SECTION 42-2-126 (3) (b) OR (3) (e) for actions taken
25 while the person was under twenty-one years of age.

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

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

6 (i) Failure of the person to complete a level II alcohol and drug
7 education and treatment program certified by the division of alcohol and
8 drug abuse pursuant to section 42-4-1301.3, as required by ~~section~~
9 ~~42-2-126 (7)~~ SECTION 42-2-126 (4) (d) (II) (A) or 42-2-132 (2) (a) (II).
10 ~~Such~~ THE failure shall be documented pursuant to section 42-2-144.

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

13 **42-2-125. Mandatory revocation of license and permit.**

14 (1) The department shall immediately revoke the license or permit of any
15 driver or minor driver upon receiving a record showing that such driver
16 has:

17 (g) (I) Been twice convicted of ~~any offense provided for in section~~
18 ~~42-4-1301 (1) or (2) (a)~~ DUI, DUI PER SE, DWAI, OR HABITUAL USER for
19 acts committed within a period of five years;

20 (II) In the case of a minor driver, been convicted of ~~an offense~~
21 ~~under section 42-4-1301 (1) or (2) (a)~~ DUI, DUI PER SE, DWAI, OR
22 HABITUAL USER committed while such driver was under twenty-one years
23 of age;

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

27 (i) Been convicted of ~~any offense provided for in section~~

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

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

12 **42-2-126.5. Revocation of license based on administrative**
13 **actions taken under tribal law - repeal.** (8) When a person whose
14 license is revoked under this section has completed the terms and
15 conditions of the tribal revocation order, the tribe shall provide the person
16 with written notification of ~~such~~ THE completion and shall also send
17 written notice to the department. When the department receives the
18 tribe's written notification of ~~such~~ THE completion, the person may seek
19 reinstatement of his or her Colorado driving privileges. ~~Such~~ THE person
20 must comply with ~~sections 42-2-126 (7) (c)~~ SECTIONS 42-2-126 (4) (d),
21 42-2-132, and 42-7-406 to obtain a new license or otherwise restore his
22 or her Colorado driving privileges.

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

25 **42-2-127. Authority to suspend license - to deny license - type**
26 **of conviction - points.** (1) (a) Except as provided in paragraph (b) of
27 subsection (8) of this section, the department has the authority to suspend

1 the license of any driver who, in accordance with the schedule of points
2 set forth in this section, has been convicted of traffic violations resulting
3 in the accumulation of twelve points or more within any twelve
4 consecutive months or eighteen points or more within any twenty-four
5 consecutive months, or, in the case of a minor driver eighteen years of age
6 or older, who has accumulated nine points or more within any twelve
7 consecutive months, or twelve points or more within any twenty-four
8 consecutive months, or fourteen points or more for violations occurring
9 after reaching the age of eighteen years, or, in the case of a minor driver
10 under the age of eighteen years, who has accumulated more than five
11 points within any twelve consecutive months or more than six points for
12 violations occurring prior to reaching the age of eighteen years; except
13 that the accumulation of points causing the subjection to suspension of
14 the license of a chauffeur who, in the course of employment, has as a
15 principal duty the operation of a motor vehicle shall be sixteen points in
16 one year, twenty-four points in two years, or twenty-eight points in four
17 years, if all the points are accumulated while said chauffeur is in the
18 course of employment. Any provision of this section to the contrary
19 notwithstanding, the license of a chauffeur who is convicted of a violation
20 of section ~~42-4-1301(1) or (2)~~ DUI, DUI PER SE, DWAI, HABITUAL USER,
21 UDD, or leaving the scene of an accident shall be suspended in the same
22 manner as if the offense occurred outside the course of employment.
23 Whenever a minor driver under the age of eighteen years receives a
24 summons for a traffic violation, the minor's parent or legal guardian or,
25 if the minor is without parents or guardian, the person who signed the
26 minor driver's application for a license shall immediately be notified by
27 the court from which ~~such~~ THE summons was issued.

1 (5) Point system schedule:

2 Type of conviction Points

3 (b) (I) ~~Driving while under the influence or with an excessive~~
4 ~~alcoholic content pursuant to section 42-4-1301 (1) (a) or (2) DUI OR~~
5 ~~DUI PER SE 12~~

6 (II) ~~Driving while under the influence of any controlled substance~~
7 ~~pursuant to section 42-4-1301 (1) (c) HABITUAL USER 12~~

8 (III) ~~Driving while ability is impaired pursuant to section~~
9 ~~42-4-1301 (1) (b) DWAI 8~~

10 (IV) ~~For a person under twenty-one years of age, driving with an~~
11 ~~alcohol content of at least 0.02 but not more than 0.05 pursuant to section~~
12 ~~42-4-1301 (2) (a.5) UDD 4~~

13 (6) (b) For the purposes of this article, a plea of no contest
14 accepted by the court or the forfeiture of any bail or collateral deposited
15 to secure a defendant's appearance in court or the failure to appear in
16 court by a defendant charged with a violation of section 42-4-1301 (1)
17 (a), (1) (c), or (2) DUI, DUI PER SE, HABITUAL USER, OR UDD who has
18 been issued a summons and notice to appear pursuant to section
19 42-4-1707 as evidenced by records forwarded to the department in
20 accordance with the provisions of section 42-2-124 shall be considered
21 as a conviction.

22 (8) (b) (I) If the department's records indicate that a driver has
23 accumulated a sufficient number of points to cause a suspension under
24 subsection (1) of this section and the driver is subject to a current or
25 previous license restraint with a determined reinstatement date for the
26 same offense or conviction that caused the driver to accumulate sufficient
27 points to warrant suspension, the department may not order a point

1 suspension of the license of the driver unless the license or driving
2 privilege of the driver was revoked pursuant to ~~section 42-2-126 (2) (a)~~
3 ~~(H)~~ SECTION 42-2-126 (3) (c).

4 (9) (a) Whenever the department receives notice that a person has
5 pled guilty to, or been found guilty by a court or a jury of, ~~a violation of~~
6 ~~section 42-4-1301 (1) (a), (1) (c), or (2) (a)~~ DUI, DUI PER SE, OR
7 HABITUAL USER, and receives the license surrendered by the person to the
8 court pursuant to section 42-2-129, the department shall immediately
9 suspend the license of the person for a period of not less than one year.
10 If the department is also required to enter a license revocation for a period
11 of one year or longer under any provision of this title based on the same
12 conviction, the suspension shall not be entered.

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

15 **42-2-129. Mandatory surrender of license or permit for**
16 **driving under the influence or with excessive alcoholic content.** Upon
17 a plea of guilty or nolo contendere, or a verdict of guilty by the court or
18 a jury, to ~~a violation of section 42-4-1301 (1) (a), (1) (c), or (2) (a)~~ DUI,
19 DUI PER SE, OR HABITUAL USER, or, for a person under twenty-one years
20 of age, to ~~a violation of section 42-4-1301 (1) (a), (1) (b), (1) (c), (2) (a),~~
21 ~~or (2) (a.5)~~ DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD, the court
22 shall require the offender to immediately surrender the offender's driver's,
23 minor driver's, or temporary driver's license or instruction permit to the
24 court. The court shall forward to the department a notice of plea or
25 verdict, on the form prescribed by the department, together with the
26 offender's license or permit, not later than ten days after the surrender of
27 the license or permit. Any person who does not immediately surrender

1 ~~such~~ THE license or permit to the court, except for good cause shown,
2 commits a class 2 misdemeanor traffic offense.

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

5 **42-2-132. Period of suspension or revocation.** (2) (a) (II) (B) If
6 the person was determined to be in violation of ~~section 42-2-126 (2) (a)~~
7 ~~(H)~~ SECTION 42-2-126 (3) (a) and the person had a ~~blood alcohol level, as~~
8 ~~shown by analysis of such person's blood or breath,~~ BAC that was 0.17
9 or more ~~grams of alcohol per one hundred milliliters of blood or 0.17 or~~
10 ~~more grams of alcohol per two hundred ten liters of breath~~ at the time of
11 driving or within two hours after driving; or if the person's driving record
12 otherwise indicates a designation as a persistent drunk driver as defined
13 in section 42-1-102 (68.5), the department shall require ~~such~~ THE person
14 to complete a level II alcohol and drug education and treatment program
15 certified by the division of alcohol and drug abuse pursuant to section
16 42-4-1301.3.

17 (C) ~~If the total period of license restraint under this subparagraph~~
18 ~~(H) is not sufficient to allow for the completion of~~ A PERSON SEEKING
19 REINSTATEMENT HAS NOT COMPLETED REQUIRED level II alcohol and drug
20 education and treatment, ~~or the documentation of completion of such~~
21 ~~education and treatment is incomplete at the time of reinstatement,~~ THE
22 PERSON SHALL FILE WITH THE DEPARTMENT proof of current enrollment
23 in a level II alcohol and drug education and treatment program certified
24 by the division of alcohol and drug abuse pursuant to section
25 42-4-1301.3, on a form approved by the department. ~~shall be filed with~~
26 ~~the department.~~

27 (III) In the case of a minor driver whose license has been revoked

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

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

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

21 **42-2-132.5. Mandatory and voluntary restricted licenses**
22 **following alcohol conviction.** (1) The following persons shall be
23 required to hold a restricted license pursuant to this section for at least
24 one year prior to being eligible to obtain any other driver's license issued
25 under this article:

26 (a) Any person who has been convicted on two or more occasions
27 of DUI or DUI per se, ~~as defined in section 42-4-1300.3,~~ which offenses

1 were committed within a period of five years and one of the offenses
2 occurred on or after July 1, 1999, and on or before June 30, 2000;

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

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

14 (1.5) (a) A person whose privilege to drive has been revoked for
15 more than one year because of a ~~violation of any provision of section~~
16 ~~42-4-1301 (1) (a), (1) (b), or (2)~~ DUI, DUI PER SE, OR DWAI CONVICTION
17 or has been revoked for more than one year under any provision of
18 section 42-2-126 may voluntarily apply for an early reinstatement with a
19 restricted license under the provisions of this section after the person's
20 privilege to drive has been revoked for one year. The restrictions
21 imposed pursuant to this section shall remain in effect for the longer of
22 one year or the total time period remaining on the license restraint prior
23 to early reinstatement.

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

26 **42-2-138. Driving under restraint - penalty.** (1)(a) Any person
27 who drives a motor vehicle or off-highway vehicle upon any highway of

1 this state with knowledge that ~~such~~ THE person's license or privilege to
2 drive, either as a resident or a nonresident, is under restraint for any
3 reason other than conviction of ~~an alcohol-related driving offense~~
4 ~~pursuant to section 42-4-1301 (1) or (2)~~ DUI, DUI PER SE, DWAI,
5 HABITUAL USER, OR UDD is guilty of a misdemeanor and, upon
6 conviction thereof, shall be punished by imprisonment in the county jail
7 for not less than five days nor more than six months, and, in the discretion
8 of the court, a fine of not less than fifty dollars nor more than five
9 hundred dollars may be imposed. The minimum sentence imposed by this
10 paragraph (a) shall be mandatory, and the court shall not grant probation
11 or a suspended sentence, in whole or in part, or reduce or suspend the fine
12 under this paragraph (a); but, in a case where the defendant is convicted
13 although the defendant established that he or she had to drive the motor
14 vehicle in violation of this paragraph (a) because of an emergency, the
15 mandatory jail sentence or the fine, if any, shall not apply, and the court
16 may impose a sentence of imprisonment in the county jail for a period of
17 not more than six months and a fine of not more than five hundred
18 dollars. Such minimum sentence need not be five consecutive days but
19 may be served during any thirty-day period.

20 (d) (I) A person who drives a motor vehicle or off-highway
21 vehicle upon any highway of this state with knowledge that ~~such~~ THE
22 person's license or privilege to drive, either as a resident or nonresident,
23 is restrained under ~~section 42-2-126 (2) (a)~~ SECTION 42-2-126 (3), is
24 restrained solely or partially because of a conviction of ~~a driving offense~~
25 ~~pursuant to section 42-4-1301 (1) or (2)~~ DUI, DUI PER SER, DWAI,
26 HABITUAL USER, OR UDD, or is restrained in another state solely or
27 partially because of an alcohol-related driving offense is guilty of a

1 misdemeanor and, upon conviction thereof, shall be punished by
2 imprisonment in the county jail for not less than thirty days nor more than
3 one year and, in the discretion of the court, by a fine of not less than five
4 hundred dollars nor more than one thousand dollars. Upon a second or
5 subsequent conviction, ~~such~~ THE person shall be punished by
6 imprisonment in the county jail for not less than ninety days nor more
7 than two years and, in the discretion of the court, by a fine of not less than
8 five hundred dollars nor more than three thousand dollars. The minimum
9 county jail sentence imposed by this subparagraph (I) shall be mandatory,
10 and the court shall not grant probation or a suspended sentence thereof;
11 but, in a case where the defendant is convicted although the defendant
12 established that he or she had to drive the motor vehicle in violation of
13 this subparagraph (I) because of an emergency, the mandatory jail
14 sentence, if any, shall not apply, and, for a first conviction, the court may
15 impose a sentence of imprisonment in the county jail for a period of not
16 more than one year and, in the discretion of the court, a fine of not more
17 than one thousand dollars, and, for a second or subsequent conviction, the
18 court may impose a sentence of imprisonment in the county jail for a
19 period of not more than two years and, in the discretion of the court, a
20 fine of not more than three thousand dollars.

21 (II) In any trial for a violation of subparagraph (I) of this
22 paragraph (d), a duly authenticated copy of the record of the defendant's
23 former convictions and judgments for ~~an alcohol-related driving offense~~
24 ~~pursuant to section 42-4-1301 (1) or (2) DUI, DUI PER SE, DWAI,~~
25 HABITUAL USER, OR UDD or an alcohol-related offense committed in
26 another state from any court of record or a certified copy of the record of
27 any denial or revocation of the defendant's driving privilege under ~~section~~

1 ~~42-2-126(2)(a)~~ SECTION 42-2-126(3) from the department shall be prima
2 facie evidence of ~~such~~ THE convictions, judgments, denials, or
3 revocations and may be used in evidence against ~~such~~ THE defendant.
4 Identification photographs and fingerprints that are part of the record of
5 ~~such~~ THE former convictions, judgments, denials, or revocations and ~~such~~
6 THE defendant's incarceration after sentencing for any of ~~such~~ THE former
7 convictions, judgments, denials, or revocations shall be prima facie
8 evidence of the identity of ~~such~~ THE defendant and may be used in
9 evidence against the defendant.

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

12 **42-2-144. Reporting by certified level II alcohol and drug**
13 **education and treatment providers - notice of administrative**
14 **remedies against a driver's license - rules.** (1) The department shall
15 require all providers of level II alcohol and drug education and treatment
16 programs certified by the division of alcohol and drug abuse pursuant to
17 section 42-4-1301.3 to provide quarterly reports to the department about
18 each person who is enrolled and who has filed proof of such enrollment
19 with the department as required by ~~section 42-2-126(7)(c)(HH)~~ SECTION
20 42-2-126(4)(d)(II).

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

23 **42-2-202. Habitual offenders - frequency and type of**
24 **violations.** (2)(a) An habitual offender is a person having three or more
25 convictions of any of the following separate and distinct offenses arising
26 out of separate acts committed within a period of seven years:

27 (I) ~~Driving a motor vehicle in violation of any provision of section~~

1 ~~42-4-1301 (1) or (2) (a)~~ DUI, DUI PER SE, DWAI, OR HABITUAL USER;

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

4 **42-2-206. Driving after revocation prohibited.** (1) (b) (I) A
5 person commits the crime of aggravated driving with a revoked license
6 if he or she is found to be an habitual offender and thereafter operates a
7 motor vehicle in this state while the revocation of the department
8 prohibiting such operation is in effect and, as a part of the same criminal
9 episode, also commits any of the following offenses:

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

12 (B) ~~Driving while ability impaired, as described in section~~
13 ~~42-4-1301 (1) (b)~~ DWAI;

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

16 **42-2-403. Department authority - rules - federal requirements.**

17 (2) (d) The department may not consider the following with regard to an
18 application from a person for a commercial driver's license:

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

20 (II) A license revocation imposed under ~~section 42-2-126 (2) (a)~~
21 ~~(1.5)~~ SECTION 42-2-126 (3) (b) if the person was under twenty-one years
22 of age at the time of the offense and such person drove a motor vehicle
23 while such person's ~~blood alcohol content~~ BAC was at least 0.02 but not
24 more than 0.05; ~~grams of alcohol per one hundred milliliters of blood or~~
25 ~~at least 0.02 but not more than 0.05 grams of alcohol per two hundred ten~~
26 ~~liters of breath;~~ or

27 (III) A license revocation imposed under ~~section 42-2-126 (2) (a)~~

1 ~~(FV)~~ SECTION 42-2-126 (3) (e) if the person was under twenty-one years
2 of age at the time of the offense and such person drove a commercial
3 motor vehicle while such person's ~~blood alcohol content~~ BAC was at least
4 0.02 but less than 0.04. ~~grams of alcohol per one hundred milliliters of~~
5 ~~blood or at least 0.02 but less than 0.04 grams of alcohol per two hundred~~
6 ~~ten liters of breath.~~

7 **SECTION 18.** 42-2-405 (3) (a), Colorado Revised Statutes, is
8 amended to read:

9 **42-2-405. Driver's license disciplinary actions - grounds for**
10 **denial - suspension - revocation - disqualification.** (3) For purposes
11 of the imposition of restraints and sanctions against commercial driving
12 privileges:

13 (a) A conviction for ~~violating section 42-4-1301 (1) or (2) (a)~~
14 ~~DUI, DUI PER SE, DWAI, OR HABITUAL USER,~~ or a substantially similar
15 law of any other state pertaining to drinking and driving, or an
16 administrative determination of a violation of ~~section 42-2-126 (2) (a) (F)~~
17 ~~or (2) (a) (F.5)~~ SECTION 42-2-126 (3) (a) OR (3) (b) shall be deemed
18 driving under the influence; and

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

21 **42-3-303. Persistent drunk driver cash fund - programs to**
22 **deter persistent drunk drivers.** (1) There is hereby created in the state
23 treasury the persistent drunk driver cash fund, which shall be composed
24 of moneys collected for penalty surcharges under section 42-4-1301 (7)
25 (d) (II). The moneys in such fund are subject to annual appropriation by
26 the general assembly:

27 (a) To pay the costs incurred by the department concerning

1 persistent drunk drivers under ~~sections 42-2-126(2.5)~~ SECTIONS 42-2-126
2 (10) and 42-7-406 (1.5);

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

5 **42-4-1701. Traffic offenses and infractions classified -**
6 **penalties - penalty and surcharge schedule.** (3) (a) (II) (A) Except as
7 provided in subsections (4) and (5) of this section and in sections
8 42-4-1301 (7), ~~42-4-1301.2(2)~~, 42-4-1301.3, and 42-4-1301.4,
9 misdemeanor traffic offenses are divided into two classes which are
10 distinguished from one another by the following penalties which are
11 authorized upon conviction:

12	Class	Minimum	Maximum
13		Sentence	Sentence
14	1	Ten days imprisonment, 15 or \$100 fine, or both.	One year imprisonment, or \$1000 fine, or both.
16	2	Ten days imprisonment, 17 or \$10 fine, or both.	Ninety days imprisonment, or \$300 fine, or both.

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

20 **42-4-1702. Alcohol- or drug-related traffic offenses - collateral**
21 **attack.** (1) Except as otherwise provided in paragraph (b) of this
22 subsection (1), no person against whom a judgment has been entered for
23 ~~a violation of section 42-4-1301 (1) or (2)~~ DUI, DUI PER SE, DWAI,
24 HABITUAL USER, OR UDD shall collaterally attack the validity of that
25 judgment unless such attack is commenced within six months after the
26 date of entry of the judgment.

27 **SECTION 22.** 42-4-1705 (1) (c) and (3), Colorado Revised

1 Statutes, are amended to read:

2 **42-4-1705. Person arrested to be taken before the proper**
3 **court.** (1) Whenever a person is arrested for any violation of this article
4 punishable as a misdemeanor, the arrested person shall be taken without
5 unnecessary delay before a county judge who has jurisdiction of such
6 offense as provided by law, in any of the following cases:

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

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

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

21 **42-4-1715. Convictions, judgments, and charges recorded -**
22 **public inspection.** (1) (b) (I) Upon application by a person, the court
23 shall expunge all records concerning a conviction of the person for
24 ~~driving any vehicle in this state with an alcohol level UDD WITH A BAC~~
25 ~~of at least 0.02 but not more than 0.05 grams of alcohol per hundred~~
26 ~~milliliters of blood or at least 0.02 but not more than 0.05 grams of~~
27 ~~alcohol per two hundred ten liters of breath while under twenty-one years~~

1 of age pursuant to ~~section 42-4-1301 (2) (a.5)~~ if:

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

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

9 (II) Upon the dismissal of a charge for ~~a violation of section~~
10 ~~42-4-1301 (1) or (2)~~ DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD
11 or if the original charge was for ~~a violation of section 42-4-1301 (1) or (2)~~
12 DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD and the conviction
13 was for a non-alcohol- or non-drug-related traffic offense.

14 **SECTION 24.** 42-7-406 (1) and the introductory portion to
15 42-7-406 (1.5) (a), Colorado Revised Statutes, are amended to read:

16 **42-7-406. Proof required under certain conditions.**

17 (1) Whenever the director revokes the license of any person under
18 section 42-2-125 or 42-2-126, or cancels any license under section
19 42-2-122 because of the licensee's inability to operate a motor vehicle
20 because of physical or mental incompetence, or cancels any probationary
21 license under section 42-2-127, the director shall not issue to or continue
22 in effect for any such person any new or renewal of license until
23 permitted under the motor vehicle laws of this state, and not then until
24 and unless such person files or has filed and maintains proof of financial
25 responsibility as provided in this article; except that persons whose
26 licenses are canceled pursuant to section 42-2-122 (2.5), revoked pursuant
27 to section 42-2-125 (1) (m) or (1) (n), revoked for a first offense under

1 section 42-2-125 (1) (g.5) or a first offense under ~~section 42-2-126 (2) (a)~~
2 ~~(I.5) or (2) (a) (IV)~~ SECTION 42-2-126 (3) (b) OR (3) (e), suspended
3 pursuant to section 42-2-127.3 or denied pursuant to section 42-2-104 (3)
4 (f) based upon a conviction under section 18-4-509, C.R.S., or a
5 conviction under section 18-4-501, C.R.S., where the underlying factual
6 basis involved defacing property, or any counterpart municipal charter or
7 ordinance offense to either of said sections, shall not be required to file
8 proof of financial responsibility in order to be relicensed.

9 (1.5) (a) Whenever the director revokes the license of a person
10 under ~~section 42-2-126 (2) (a) (I), (2) (a) (II), or (2) (a) (III)~~ SECTION
11 42-2-126 (3) (a), (3) (c), OR (3) (d) for a second or subsequent offense and
12 such person was driving the same vehicle in two or more of such offenses
13 but did not own such vehicle, the director shall mail a notice to the owner
14 of the vehicle pursuant to section 42-2-119 (2). In such notice, the
15 director shall inform the owner that:

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

18 **42-7-408. Proof of financial responsibility - methods of giving**
19 **proof - duration - exception.** (1) (c) Notwithstanding the three-year
20 requirement in paragraph (b) of this subsection (1):

21 (I) If an insured has been found guilty of ~~a driving offense~~
22 ~~pursuant to section 42-4-1301 (1) or (2) (a)~~ DUI, DUI PER SE, DWAI, OR
23 HABITUAL USER or if the insured's license has been revoked pursuant to
24 section 42-2-126, other than a revocation under ~~section 42-2-126 (2) (a)~~
25 ~~(I.5) or (2) (a) (IV)~~ SECTION 42-2-126 (3) (b) OR (3) (e), only one time and
26 no accident was involved in such offense, proof of financial responsibility
27 for the future shall be required to be maintained only for as long as the

1 insured's driving privilege is ordered to be under restraint, up to a
2 maximum of three years. The time period for maintaining the future
3 proof of liability insurance shall begin at the time the driver reinstates his
4 or her driving privilege.

5 (II) If an insured has been found guilty of a second or subsequent
6 offense of ~~driving with an alcohol content~~ UDD WITH A BAC of at least
7 0.02 but not more than 0.05 ~~while under twenty-one years of age under~~
8 ~~section 42-4-1301 (2) (a.5)~~ or if the insured's driver's license has been
9 revoked because of a second or subsequent offense pursuant to ~~section~~
10 ~~42-2-126 (2) (a) (I.5) or (2) (a) (IV)~~ SECTION 42-2-126 (3) (b) OR (3) (e),
11 proof of financial responsibility for the future shall be required to be
12 maintained only for as long as the insured's driving privilege is ordered
13 to be under restraint. The time period for maintaining the future proof of
14 liability insurance shall begin at the time the driver reinstates his or her
15 driving privilege.

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

18 **SECTION 27. Effective date.** This act shall take effect July 1,
19 2008.

20 **SECTION 28. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.