ARTICLE 4
REGULATION OF VEHICLES AND TRAFFIC

Cross references: For exemption of members of the military forces from traffic regulation, see § 28-3-504; for disposition of fines and penalties under this article, see § 42-1-217; for crimes that involve the operation of motor vehicles, also see §§ 18-3-106, 18-3-205, 18-4-409, 18-4-512, 18-9-107, and 18-9-114 to 18-9-116.5.

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PART 1
TRAFFIC REGULATION - GENERALLY

42-4-101. Short title.

Parts 1 to 3, 5 to 19, and 21 of this article, part 1 of article 2 of this title, and part 5 of article 5 of title 43, C.R.S., shall be known and may be cited as the "Uniform Safety Code of 1935".


ANNOTATION


42-4-102. Legislative declaration.

The general assembly recognizes the many conflicts which presently exist between the state's traffic laws and many of the municipal traffic codes, which conflicts lead to uncertainty in the movement of traffic on the state's highways and streets. These conflicts are compounded by the fact that today's Americans are extremely mobile and that while this state enjoys a large influx of traffic from many areas, there is some lack of uniformity existing between the "rules of the road" of this state and those of other states of the nation. The general assembly, therefore, declares it the purpose of this article to alleviate these conflicts and lack of uniformity by conforming, as nearly as possible, certain of the traffic laws of this state with the recommendations of the national committee of uniform traffic laws and ordinances as set forth in the committee's "Uniform Vehicle Code".


42-4-103. Scope and effect of article - exceptions to provisions.

(1) This article constitutes the uniform traffic code throughout the state and in all political subdivisions and municipalities therein.

(2) The provisions of this article relating to the operation of vehicles and the movement of pedestrians refer exclusively to the use of streets and highways except:

(a) Where a different place is specifically referred to in a given section;

(b) For provisions of sections 42-2-128, 42-4-1301 to 42-4-1303, 42-4-1401, 42-4-1402, and 42-4-1413 and part 16 of this article which shall apply upon streets and highways and elsewhere throughout the state.

Statutes and rules of the road are designed to govern traffic upon highways, that are prepared for use as such, for public convenience and safety, and are applicable only to permanent lines of travel. They have no application to parts of a road under construction, where changing conditions would not permit orderly travel under established rules. Curtis v. Lawley, 140 Colo. 476, 346 P.2d 579 (1959).

This section does not determine scope of implied consent law; its provisions apply only when an operator is driving on a public highway. State, Motor Vehicle Div. v. Dayhoff, 199 Colo. 363, 609 P.2d 119 (1980).

Traffic regulation as function of local government. It is generally held that the individual regulation pertaining to the establishment of one-way streets, posting of stop signs, installation of traffic signals, establishment of varying speed limits, and all regulations governing movements of vehicles, streetcars, and of pedestrians on streets and sidewalks is the primary function of local government. Retallack v. Police Court, 142 Colo. 214, 351 P.2d 884 (1960).

Local authorities are given express power to supplement the state traffic statutes where it is apparent that local control may be necessary in addition to state control. City of Aurora v. Mitchell, 144 Colo. 526, 357 P.2d 923 (1960).


42-4-104. Adoption of traffic control manual.

The department of transportation shall adopt a manual and specifications for a uniform system of traffic control devices consistent with the provisions of this article for use upon highways within this state. Such uniform system shall correlate with and insofar as possible conform to the system set forth in the most recent edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways" and other related standards issued or endorsed by the federal highway administrator. For compliance with this section, the said department shall either publish and distribute a state manual and specifications approved by the transportation commission or shall, by the issuance of a traffic control manual supplement approved by the transportation commission, adopt the said national manual and other related standards subject to such exceptions, additions, and adaptations as are necessary for lawful and uniform application in this state. Said state manual or supplement shall be made available to all municipal and county road authorities and to other concerned agencies in the state.


Editor's note: This section is similar to former § 42-4-501 as it existed prior to 1994.

ANNOTATION

The speed limit starts at the physical location of the sign and continues to be in effect until it ends at the next different speed limit sign pursuant to the manual adopted by the department of transportation pursuant to this section. Shafron v. Cooke, 190 P.3d 812 (Colo. App. 2008).

42-4-105. Local traffic control devices.
Local authorities in their respective jurisdictions shall place and maintain such traffic control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this article or local traffic ordinances or to regulate, warn, or guide traffic, subject in the case of state highways to the provisions of sections 42-4-110 and 43-2-135 (1) (g), C.R.S. All such traffic control devices shall conform to the state manual and specifications for statewide uniformity as provided in section 42-4-104.


Editor's note: This section is similar to former § 42-4-503 (1) as it existed prior to 1994, and the former § 42-4-105 was relocated to § 42-4-107.

ANNOTATION

Annotator's note. Since § 42-4-105 is similar to § 42-4-503 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.


42-4-106. Who may restrict right to use highways.

(1) Local authorities with respect to highways under their jurisdiction may by ordinance or resolution prohibit the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway, for a total period of not to exceed ninety days in any one calendar year, whenever any said highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced.

(2) The local authority enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the permissible weights.

(3) Local authorities, with respect to highways under their jurisdiction, may also, by ordinance or resolution, prohibit the operation of trucks or commercial vehicles on designated highways or may impose limitations as to the weight thereof, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

(4) The department of transportation shall likewise have authority as granted in this section to local authorities to determine by resolution and to impose restrictions as to the weight of vehicles operated upon any highway under the jurisdiction of said department, and such restrictions shall be effective when signs giving notice thereof are erected upon the highways or portion of any highway affected by such resolution.

(5) (a) (I) The department of transportation shall also have authority to close any portion of a state highway to public travel or to prohibit the use thereof unless motor vehicles using the same are equipped with tire chains, four-wheel drive with adequate tires for the existing conditions, or snow tires with a "mud and snow" or all weather rating from the manufacturer having a tread of sufficient abrasive or skid-resistant design or composition and depth to provide adequate traction under existing driving conditions during storms or when other dangerous driving conditions exist.
or during construction or maintenance operations whenever the department considers such closing or restriction of use necessary for the protection and safety of the public. Such prohibition or restriction of use shall be effective when signs, including temporary or electronic signs, giving notice thereof are erected upon such portion of said highway, and it shall be unlawful to proceed in violation of such notice. The Colorado state patrol shall cooperate with the department of transportation in the enforcement of any such closing or restriction of use. "Tire chains", as used in this subsection (5), means metal chains which consist of two circular metal loops, one on each side of the tire, connected by not less than nine evenly spaced chains across the tire tread and any other traction devices differing from such metal chains in construction, material, or design but capable of providing traction equal to or exceeding that of such metal chains under similar conditions. The operator of a commercial vehicle with four or more drive wheels other than a bus shall affix tire chains to at least four of the drive wheel tires of such vehicle when such vehicle is required to be equipped with tire chains under this subsection (5). The operator of a bus shall affix tire chains to at least two of the drive wheel tires of such vehicle when such vehicle is required to be equipped with tire chains under this subsection (5).

(II) Any person who operates a motor vehicle in violation of restrictions imposed by the department of transportation or the state patrol under subparagraph (I) of this paragraph (a), where the result of the violation is an incident that causes the closure of a travel lane in one or both directions, shall be subject to an enhanced penalty as set forth in section 42-4-1701 (4) (a) (I) (F).

(III) A person who violates subparagraph (I) of this paragraph (a) while operating a commercial vehicle shall be subject to an enhanced penalty as set forth in section 42-4-1701 (4) (a) (I) (F).

(IV) A person who violates subparagraph (I) of this paragraph (a) while operating a commercial vehicle and the violation causes a closure in a travel lane shall be subject to an enhanced penalty as set forth in section 42-4-1701 (4) (a) (I) (F).

(V) If a fine is enhanced under subparagraphs (III) and (IV) of this paragraph (a), the portion of the fine that exceeds the fine imposed under subparagraph (I) for an enhancement under subparagraph (III), or subparagraph (II) for an enhancement under subparagraph (IV), that is allocated to the state by sections 42-1-217 and 43-4-205, C.R.S., shall be transferred to the state treasurer, who shall deposit it in the highway construction workers' safety account within the highway users tax fund created by section 42-4-1701 (4) (c) (II) (B), to be continuously appropriated to the department of transportation for work zone safety equipment, signs, and law enforcement.

(VI) Subparagraphs (III) and (IV) of this paragraph (a) shall not apply to a tow operator who is towing a motor vehicle or traveling to a site from which a motor vehicle shall be towed.

(VII) The Colorado department of transportation shall identify an appropriate place for commercial vehicles to apply chains, if necessary, to comply with subparagraph (I) of this paragraph (a) and provide adequate notice to commercial vehicle operators of such places.

(b) The transportation commission may promulgate rules to implement the provisions of this subsection (5).
(6) (a) The department of transportation and local authorities, within their respective jurisdictions, may, for the purpose of road construction and maintenance, temporarily close to through traffic or to all vehicular traffic any highway or portion thereof for a period not to exceed a specified number of workdays for project completion and shall, in conjunction with any such road closure, establish appropriate detours or provide for an alternative routing of the traffic affected when, in the opinion of said department or concerned local authorities, as evidenced by resolution or ordinance, such temporary closing of the highway or portion thereof and such rerouting of traffic is necessary for traffic safety and for the protection of work crews and road equipment. Such temporary closing of the highway or portion thereof and the routing of traffic along other roads shall not become effective until official traffic control devices are erected giving notice of the restrictions, and, when such devices are in place, no driver shall disobey the instructions or directions thereof.

(b) Local authorities, within their respective jurisdictions, may provide for the temporary closing to vehicular traffic of any portion of a highway during a specified period of the day for the purpose of celebrations, parades, and special local events or civic functions when in the opinion of said authorities such temporary closing is necessary for the safety and protection of persons who are to use that portion of the highway during the temporary closing.

(c) The department of transportation, local municipal authorities, and local county authorities shall enter into agreements with one another for the establishment, signing, and marking of appropriate detours and alternative routes which jointly affect state and local road systems and which are necessary to carry out the provisions of paragraphs (a) and (b) of this subsection (6). Any temporary closing of a street which is a state highway and any rerouting of state highway traffic shall have the approval of the department of transportation before such closing and rerouting becomes effective.

(7) (a) The transportation commission may also by resolution and within the reasonable exercise of the police power of the state adopt rules and regulations concerning the operation of any motor vehicle in any tunnel which is a part of the state highway system.

(b) In promulgating such rules and regulations, the transportation commission shall consider the regulations of the public utilities commission and the United States department of transportation relating to the transportation of dangerous articles and may prohibit or regulate the operation of any motor vehicle which transports any article, deemed to be dangerous, in any tunnel which is a part of the state highway system.

(8) (a) Except as provided in paragraph (b) of this subsection (8), a person who violates any provision of this section commits a class B traffic infraction.

(b) A person who violates paragraph (a) of subsection (5) of this section while operating a commercial vehicle commits a class B traffic infraction and shall be punished as provided in section 42-4-1701 (4) (a) (I) (F); except that this paragraph (b) shall not apply to a tow operator who is towing a motor vehicle or traveling to a site from which a motor vehicle shall be towed.

Editor's note: This section is similar to former § 42-4-410 as it existed prior to 1994, and the former § 42-4-106 was relocated to § 42-4-108.

Cross references: For the penalty for a class B traffic infraction, see § 42-4-1701 (3)(a)(l).

ANNOTATION

Annotator's note. Since § 42-4-106 is similar to § 42-4-410 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

A town was empowered by the Colorado constitution to adopt an ordinance that restricted truck traffic on two major streets in the town. Carl Ainsworth, Inc. v. Town of Morrison, 189 Colo. 223, 539 P.2d 1267 (1975).


This section allows the board of county commissioners to adopt resolutions prohibiting the operation of through traffic by vehicles upon certain county roads in residential areas since it is a "local authority" under section 42-1-102(38). Asphalt Paving Co. v. Bd. of County Comm'r's, 162 Colo. 254, 425 P.2d 289 (1967).

There is nothing illegal about a state general assembly delegating powers local in nature to local governmental units, provided that the proper constitutional tests are met as to maintaining a separation of powers and nonabrogation of proper responsibility. Asphalt Paving Co. v. Bd. of County Comm'r's, 162 Colo. 254, 425 P.2d 289 (1967).

Only local authorities are in a position to determine which streets in a residential area need to be regulated in a "reasonable" manner, or would know about these problems in any detail. It is essential that there be some control for the public welfare in certain neighborhoods of such matters as heavy truck weights which are unsuitable on certain types of roads, excessive noise, congestion, and air pollution, as well as speed regulation. Asphalt Paving Co. v. Bd. of County Comm'r's, 162 Colo. 254, 425 P.2d 289 (1967).

Standard of reasonable exercise of police power applies. In addition to guidelines for standards set forth in this section, by virtue of section 42-4-109, the further standard of reasonable exercise of police power applies. Asphalt Paving Co. v. Bd. of County Comm'r's, 162 Colo. 254, 425 P.2d 289 (1967).

Discretion relating to police regulation may be validly delegated without restrictions. As a qualification of the general rule, where the discretion to be exercised relates to police regulations for the protection of public morals, health, safety, or general welfare, and it is impracticable to fix standards without destroying the flexibility necessary to enable the administrative officials to carry out the legislative will, legislation delegating such discretion without such restrictions may be valid. Asphalt Paving Co. v. Bd. of County Comm'r's, 162 Colo. 254, 425 P.2d 289 (1967).

Reasonableness of classification. Where the regulations apply equally to all trucks in transit through designated residential areas except for those needed for local deliveries, this is a reasonable classification for the protection of the health and safety of such neighborhoods and is based upon a justifiable distinction that is not in the least arbitrary. Asphalt Paving Co. v. Bd. of County Comm'r's, 162 Colo. 254, 425 P.2d 289 (1967).


42-4-107. Obedience to police officers.
No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control, or regulate traffic. Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense.


Editor's note: This section is similar to former § 42-4-105 as it existed prior to 1994, and the former § 42-4-107 was relocated to § 42-4-109.

Cross references: For the penalty for a class 2 misdemeanor traffic offense, see § 42-4-1701 (3)(a)(II).

ANNOTATION

Annotator's note. Since § 42-4-107 is similar to § 42-4-105 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.


42-4-108. Public officers to obey provisions - exceptions for emergency vehicles.

(1) The provisions of this article applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or other political subdivision of the state, subject to such specific exceptions as are set forth in this article with reference to authorized emergency vehicles.

(2) The driver of an authorized emergency vehicle, when responding to an emergency call, or when in pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions stated in this article. The driver of an authorized emergency vehicle may:

(a) Park or stand, irrespective of the provisions of this title;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the lawful speeds set forth in section 42-4-1101 (2) or exceed the maximum lawful speed limits set forth in section 42-4-1101 (8) so long as said driver does not endanger life or property;

(d) Disregard regulations governing directions of movement or turning in specified directions.

(3) The exemptions and conditions provided in paragraphs (b) to (d), in their entirety, of subsection (2) of this section for an authorized emergency vehicle shall continue to apply to section 24-10-106 (1) (a), C.R.S., only when such vehicle is making use of audible or visual signals meeting the requirements of section 42-4-213, and the exemption granted in paragraph (a) of subsection (2) of this section shall apply only when such vehicle is making use of visual signals meeting the requirements of section 42-4-213 unless using such visual signals would cause an obstruction to the normal flow of traffic; except that an authorized emergency vehicle
being operated as a police vehicle while in actual pursuit of a suspected violator of any provision of this title need not display or make use of audible or visual signals so long as such pursuit is being made to obtain verification of or evidence of the guilt of the suspected violator. Nothing in this section shall be construed to require an emergency vehicle to make use of audible signals when such vehicle is not moving, whether or not the vehicle is occupied.

(4) The provisions of this section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of such driver's reckless disregard for the safety of others.

(5) The state motor vehicle licensing agency shall designate any particular vehicle as an authorized emergency vehicle upon a finding that the designation of that vehicle is necessary to the preservation of life or property or to the execution of emergency governmental functions. Such designation shall be in writing, and the written designation shall be carried in the vehicle at all times, but failure to carry the written designation shall not affect the status of the vehicle as an authorized emergency vehicle.


ANNOTATION

Annotator's note. Since § 42-4-108 is similar to § 42-4-106 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included in the annotations to this section.

Proper standard under subsection (2) for determining whether an emergency vehicle operator was responding to an emergency call is an objective standard from the perspective of the reasonable emergency vehicle operator. Courts must decide whether the emergency vehicle operator reasonably believed that he or she was responding to an emergency based on information he or she knew or should have known. Corsentino v. Cordova, 4 P.3d 1082 (Colo. 2000).

Proper standard under subsection (2)(c) for determining whether an emergency vehicle driver endangered life or property while speeding is to ask whether the emergency vehicle operator's speed created an unreasonable risk of injury or damage to life or property. Courts should limit their inquiry to the relationship between the conduct of the emergency operator prior to the accident and the circumstances surrounding the conduct and important factors include, but are not limited to, the legal speed limit in the area, the speed at which the operator was driving, the conditions of the road, and the type of area in which the operator was driving. Corsentino v. Cordova, 4 P.3d 1082 (Colo. 2000).

Firefighters and city immune from liability when an eight-foot section of hard suction hose came loose from the truck and plaintiff drove over the hose, causing personal injury and damage to the car, because the fire truck was responding to a fire alarm and was using its emergency lights and sirens. City of Grand Junction v. Sisneros, 957 P.2d 1026 (Colo. 1998).


Running a red light without slowing down is not within the provisions of subsection (2)(b). Therefore, the government may be held liable for an accident resulting from such conduct. Tunget v. Bd. of County Comm'rs, 992 P.2d 650 (Colo. App. 1999).
Under the emergency vehicle exception provided for by subsection (2)(c) of this section and § 24-10-106 (1)(a), a trial court must find that a police officer who exceeded the speed limit in pursuit of a fleeing crime suspect did not endanger life or property before granting immunity from a lawsuit resulting from a pursuit-related traffic accident. Case remanded where the trial court dismissed the lawsuit for lack of subject matter jurisdiction based on sovereign immunity without making such a finding. Quintana v. City of Westminster, 8 P.3d 527 (Colo. App. 2000).

The general assembly chose not to apply the conditions of subsection (2) of this section to the indemnification provisions of § 24-10-110 (1)(b)(II) because this section refers only to section 24-10-106 (1)(a). A public entity does not have immunity if an operator of an emergency vehicle speeds and endangers life or property in violation of subsection (2)(c) of this section, but the public entity is liable for any claims against the operator of the emergency vehicle. Only when the operator's acts causing the injuries are willful and wanton is the operator personally liable. Consentino v. Cordova, 4 P.3d 1082 (Colo. 2000).

Public entity and its employees immune from tort liability if employee operating police vehicle while in actual pursuit of a suspected violator of title 42, even if the employee is not using the vehicle’s emergency lights or sirens, if the pursuit is made to obtain verification of or evidence of the guilt of the suspected violator. Tidwell v. City & County of Denver, 62 P.3d 1020 (Colo. App. 2002), rev’d on other grounds, 83 P.3d 75 (Colo. 2003).

Police officer was engaged in a pursuit within the provisions of subsection (3) when the driver of a car fled the scene in a clear attempt to avoid arrest or further investigation and the officer followed the car. Tidwell v. City & County of Denver, 83 P.3d 75 (Colo. 2003).

Police officer’s pursuit was not investigatory in nature when the officer already had authority to stop and arrest the driver of a car and the officer was pursuing the driver of the car for that reason. Therefore the officer was required to activate his emergency signals in order for the city to claim the protection of governmental immunity under the Governmental Immunity Act. Tidwell v. City & County of Denver, 83 P.3d 75 (Colo. 2003).

Police officer’s alleged conduct could be viewed as reckless and conscience-shocking for purposes of 42 U.S.C. § 1983. Police officer's alleged conduct, particularly his decision to speed against a red light through an intersection on a major boulevard without slowing down or activating his siren in non-emergency circumstances, all in violation of state law and police regulations, could be viewed as reckless and conscience-shocking. Williams v. City & County of Denver, 99 F.3d 1009 (10th Cir. 1996).

Dismissal of claim based on simple negligence in operation of an emergency vehicle was proper, since standard of care created in subsection (4) is "reckless disregard". Zapp v. Kukuris, 847 P.2d 150 (Colo. App. 1992).


42-4-109. Low-power scooters, animals, skis, skates, and toy vehicles on highways.

(1) A person riding a low-power scooter upon a roadway where low-power scooter travel is permitted shall be granted all of the rights and shall be subject to all of the duties and penalties applicable to the driver of a vehicle as set forth in this article except those provisions of this article that, by their very nature, can have no application.

(2) A person riding a low-power scooter shall not ride other than upon or astride a permanent and regular seat attached thereto.
(3) No low-power scooter shall be used to carry more persons at one time than the number for which it is designed and equipped.

(4) No person riding upon any low-power scooter, coaster, roller skates, sled, or toy vehicle shall attach the same or himself or herself to any vehicle upon a roadway.

(5) A person operating a low-power scooter upon a roadway shall ride as close to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(6) Persons riding low-power scooters upon a roadway shall not ride more than two abreast.

(6.5) A person under the age of eighteen years may not operate or carry a passenger who is under eighteen years of age on a low-power scooter unless the person and the passenger are wearing protective helmets in accordance with the provisions of section 42-4-1502 (4.5).

(7) For the sake of uniformity and bicycle, electrical assisted bicycle, and low-power scooter safety throughout the state, the department in cooperation with the department of transportation shall prepare and make available to all local jurisdictions for distribution to bicycle, electrical assisted bicycle, and low-power scooter riders a digest of state regulations explaining and illustrating the rules of the road, equipment requirements, and traffic control devices that are applicable to such riders and their bicycles, electrical assisted bicycles, or low-power scooters. Local authorities may supplement this digest with a leaflet describing any additional regulations of a local nature that apply within their respective jurisdictions.

(8) Persons riding or leading animals on or along any highway shall ride or lead such animals on the left side of said highway, facing approaching traffic. This shall not apply to persons driving herds of animals along highways.

(9) No person shall use the highways for traveling on skis, toboggans, coasting sleds, skates, or similar devices. It is unlawful for any person to use any roadway of this state as a sled or ski course for the purpose of coasting on sleds, skis, or similar devices. It is also unlawful for any person upon roller skates or riding in or by means of any coaster, toy vehicle, or similar device to go upon any roadway except while crossing a highway in a crosswalk, and when so crossing such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. This subsection (9) does not apply to any public way which is set aside by proper authority as a play street and which is adequately roped off or otherwise marked for such purpose.

(10) Every person riding or leading an animal or driving any animal-drawn conveyance upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this article, except those provisions of this article which by their very nature can have no application.

(11) Where suitable bike paths, horseback trails, or other trails have been established on the right-of-way or parallel to and within one-fourth mile of the right-of-way of heavily traveled streets and highways, the department of transportation may, subject to the provisions of section 43-2-135, C.R.S., by resolution or order entered in its minutes, and local authorities may, where suitable bike paths, horseback trails, or other trails have been established on the right-of-way or parallel to it within four hundred fifty feet of the right-of-way of heavily traveled streets, by
ordinance, determine and designate, upon the basis of an engineering and traffic investigation, those heavily traveled streets and highways upon which shall be prohibited any bicycle, electrical assisted bicycle, animal rider, animal-drawn conveyance, or other class or kind of nonmotorized traffic that is found to be incompatible with the normal and safe movement of traffic, and, upon such a determination, the department of transportation or local authority shall erect appropriate official signs giving notice thereof; except that, with respect to controlled access highways, section 42-4-1010 (3) shall apply. When such official signs are erected, no person shall violate any of the instructions contained thereon.

(12) The parent of any child or guardian of any ward shall not authorize or knowingly permit any child or ward to violate any provision of this section.

(13) (a) Except as otherwise provided in paragraph (b) of this subsection (13), any person who violates a provision of this section commits a class B traffic infraction.

(b) Any person who violates subsection (6.5) of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-107 as it existed prior to 1994, and the former § 42-4-109 was relocated to § 42-4-111.

Cross references: For use of snowmobiles on highways, see §§ 33-14-110 to 33-14-112; for the penalty for a class B traffic infraction, see § 42-4-1701 (3)(a)(I).

ANNOTATION

Annotator's note. Since § 42-4-109 is similar to § 42-4-107 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.

One killed while violating this section is guilty of contributory negligence. Plaintiff's deceased son in sledding down the county road violated the provisions of this section and as a matter of law was guilty of contributory negligence barring recovery in an action for wrongful death. Sullivan v. Davis, 172 Colo. 490, 474 P.2d 218 (1970).

42-4-109.5. Low-speed electric vehicles.

(1) (a) A low-speed electric vehicle may be operated only on a roadway that has a speed limit equal to or less than thirty-five miles per hour; except that it may be operated to directly cross a roadway that has a speed limit greater than thirty-five miles per hour at an at-grade crossing to continue traveling along a roadway with a speed limit equal to or less than thirty-five miles per hour.

(b) Notwithstanding paragraph (a) of this subsection (1), a low-speed electric vehicle may be operated on a state highway that has a speed limit equal to forty miles per hour or cross a roadway with a speed limit equal to forty miles per hour to cross at-grade, if:
(I) Such roadway's lane width is eleven feet or greater;

(II) Such roadway provides two or more lanes in either direction; and

(III) The department determines, in consultation with local government and law enforcement, upon the basis of a traffic investigation, survey, appropriate design standards, or projected volumes, that the operation of a low-speed electric vehicle on the roadway poses no substantial safety risk or hazard to motorists, bicyclists, pedestrians, or other persons.

c) The department may waive the necessity of a traffic investigation or survey pursuant to section 42-4-1102 or may conduct a traffic investigation or survey to determine where low-speed electric vehicles can be driven safely on state highways or portions thereof. The department shall conduct this traffic investigation or survey using existing appropriations.

(2) No person shall operate a low-speed electric vehicle on a limited-access highway.

(3) Any person who violates subsection (1) or (2) of this section commits a class B traffic infraction.

(4) [Deleted by amendment, L. 2009, (SB 09-075), ch. 418, p. 2321, § 5, effective August 5, 2009.]

(5) The Colorado department of transportation may regulate the operation of a low-speed electric vehicle on a state highway located outside of a municipality. The regulation shall take effect when the Colorado department of transportation places an appropriate sign that provides adequate notice of the regulation.


42-4-109.6. Class B low-speed electric vehicles - effective date - rules.

(1) A class B low-speed electric vehicle may be operated only on a roadway that has a speed limit equal to or less than forty-five miles per hour; except that it may be operated to directly cross a roadway that has a speed limit greater than forty-five miles per hour at an at-grade crossing to continue traveling along a roadway with a speed limit equal to or less than forty-five miles per hour.

(2) No person shall operate a class B low-speed electric vehicle on a limited-access highway.

(3) Any person who violates subsection (1) or (2) of this section commits a class B traffic infraction.

(4) For the purposes of this section, "class B low-speed electric vehicle" means a low-speed electric vehicle that is capable of traveling at greater than twenty-five miles per hour but less than forty-five miles per hour.

(5) (a) The department of revenue shall not register or issue a title for a class B low-speed electric vehicle until after the United States department of transportation, through the national highway traffic safety administration, has adopted a federal motor vehicle safety standard for
low-speed electric vehicles that authorizes operation at greater than twenty-five miles per hour but less than forty-five miles per hour.

(b) After the United States department of transportation, through the national highway traffic safety administration, has adopted a federal motor vehicle safety standard for low-speed electric vehicles that authorizes operation at greater than twenty-five miles per hour but less than forty-five miles per hour, the department of revenue shall promulgate rules authorizing the operation of class B low-speed electric vehicles in compliance with this section and shall notify the revisor of statutes in writing. Upon the promulgation of rules authorizing the operation of such vehicles, subsections (1) to (3) of this section shall take effect.

6 The Colorado department of transportation may regulate the operation of a class B low-speed electric vehicle on a state highway located outside of a municipality. The regulation shall take effect when the Colorado department of transportation places an appropriate sign that provides adequate notice of the regulation.

Source: L. 2009: Entire section added, (SB 09-075), ch. 418, p. 2322, § 6, effective August 5.

L. 2010: (1) amended, (HB 10-1422), ch. 419, p. 2125, § 186, effective August 11.

42-4-110. Provisions uniform throughout state.

(1) The provisions of this article shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein. Cities and counties, incorporated cities and towns, and counties shall regulate and enforce all traffic and parking restrictions on streets which are state highways as provided in section 43-2-135 (1) (g), C.R.S., and all local authorities may enact and enforce traffic regulations on other roads and streets within their respective jurisdictions. All such regulations shall be subject to the following conditions and limitations:

(a) All local authorities may enact, adopt, or enforce traffic regulations which cover the same subject matter as the various sections of this article and such additional regulations as are included in section 42-4-111, except as otherwise stated in paragraphs (c) to (e) of this subsection (1).

(b) All local authorities may, in the manner prescribed in article 16 of title 31, C.R.S., or in article 15 of title 30, C.R.S., adopt by reference all or any part of a model traffic code which embodies the rules of the road and vehicle requirements set forth in this article and such additional regulations as are provided for in section 42-4-111; except that, in the case of state highways, any such additional regulations shall have the approval of the department of transportation.

(c) No local authority shall adopt, enact, or enforce on any street which is a state highway any ordinance, rule, or resolution which alters or changes the meaning of any of the "rules of the road" or is otherwise in conflict with the provisions of this article. For the purpose of this section, the "rules of the road" shall be construed to mean any of the regulations on the operation of vehicles set forth in this article which drivers throughout the state are required to obey without the benefit or necessity of official traffic control devices as declared in section 42-4-603 (2).

(d) In no event shall local authorities have the power to enact by ordinance regulations governing the driving of vehicles by persons under the influence of alcohol or of a controlled...
substance, as defined in section 18-18-102 (5), C.R.S., or under the influence of any other drug to a degree that renders any such person incapable of safely operating a vehicle, or whose ability to operate a vehicle is impaired by the consumption of alcohol or by the use of a controlled substance, as defined in section 18-18-102 (5), C.R.S., or any other drug, the registration of vehicles and the licensing of drivers, the duties and obligations of persons involved in traffic accidents, and vehicle equipment requirements in conflict with the provisions of this article; but said local authorities within their respective jurisdictions shall enforce the state laws pertaining to these subjects, and in every charge of violation the complaint shall specify the section of state law under which the charge is made and the state court having jurisdiction.

(e) Pursuant to section 43-2-135 (1) (g), C.R.S., no regulation of a local authority shall apply to or become effective for any streets which are state highways, including any part of the national system of interstate and defense highways, until such regulation has been presented to and approved in writing by the department of transportation; except that such regulations shall become effective on such streets sixty days after receipt for review by the department of transportation if not disapproved in writing by said department during that sixty-day period.

(2) The municipal courts have jurisdiction over violations of traffic regulations enacted or adopted by municipalities. However, the provisions of sections 42-4-1701, 42-4-1705, and 42-4-1707 shall not be applicable to municipalities, except for the provisions of section 42-4-1701 (4) (e) (II).

(3) No person convicted of or pleading guilty to a violation of a municipal traffic ordinance shall be charged or tried in a state court for the same or a similar offense.

(4) (a) Any municipality, city, county, or city and county located within the program area of the AIR program area as defined in section 42-4-304 may adopt ordinances or resolutions pertaining to the enforcement of the emissions control inspection requirements set forth in section 42-4-310.

(b) An officer coming upon an unattended vehicle in the program area which is in apparent violation of an ordinance or resolution adopted as authorized in paragraph (a) of this subsection (4) may place upon such vehicle a penalty assessment notice indicating the offense and directing the owner or operator of such vehicle to remit the penalty assessment as set forth in such ordinance to the local jurisdiction in whose name the penalty assessment notice was issued.

(c) The aggregate amount of fines, penalties, or forfeitures collected pursuant to ordinances or resolutions adopted as authorized in paragraph (a) of this subsection (4) shall be retained by the local jurisdiction in whose name such penalty notice was issued.

(5) The general assembly declares that the adjudication of class A and class B traffic infractions through the county court magistrate system was not intended to create a conflict between the provisions of this article and municipal ordinances covering the same subject matter as this article nor was it intended to require or prohibit the decriminalization of municipal ordinances covering the same subject matter as this article. Municipalities may continue to enforce violations of such ordinances through municipal court even though similar state offenses are enforced through the magistrate system established under this article.

Editor's note: This section is similar to former § 42-4-108 as it existed prior to 1994, and the former § 42-4-110 was relocated to § 42-4-112.

Cross references: For the penalty for class A and class B traffic infractions, see § 42-4-1701 (3)(a)(I).

ANNOTATION


Annotator's note. Since § 42-4-110 is similar to § 42-4-108 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

The provisions of this section recognize the necessity for certain supplemental municipal traffic regulations and are a specific grant of authority to other than home-rule cities to impose additional controls not in conflict therewith where deemed locally necessary. City of Aurora v. Mitchell, 144 Colo. 526, 357 P.2d 923 (1960).

Authority for home-rule city to regulate traffic constitutional. The authority for a home-rule city to regulate traffic speeds and penalize offenders is not found in the laws of the general assembly, but rather, is a matter of state constitutional law, under § 6 of art. XX, Colo. Const. People v. Hizhniak, 195 Colo. 427, 579 P.2d 1131 (1978).

State statute superseded by local ordinance in home-rule city. Assuming without deciding that a careless driving ordinance lacks conformity with the state statute, the latter is inoperative within the limits of the home-rule city. The ordinance has preempted the field in a "local and municipal matter" and the statutes of the state have been "superseded" by the ordinance adopted by the city. City of Aurora v. Mitchell, 144 Colo. 526, 357 P.2d 923 (1960); People ex rel. City of Aurora v. Thompson, 165 Colo. 172, 437 P.2d 537 (1968).

Under the home-rule amendment, once a matter is determined to be a matter of local and municipal concern, any local ordinance in a home-rule city addressing the matter will supersede a conflicting state statute. People v. Hizhniak, 195 Colo. 427, 579 P.2d 1131 (1978).

Local authority under subsection (1)(c). As to those streets which are not state highways, a local authority may, pursuant to subsection (1)(c), adopt and enforce a local traffic ordinance which is in conflict with a state statutory traffic regulation covering the same subject matter. Mobell v. City & County of Denver, 671 P.2d 433 (Colo. App. 1983).

Procedural protections. Subsection (2) does no more than grant a municipality the authority to prosecute violations of its traffic ordinances through its own court system under a penalty scheme of its own choosing, but always consistent with the procedural protections accorded a defendant charged with violating a state statute proscribing the same conduct. City of Greenwood Vill. v. Fleming, 643 P.2d 511 (Colo. 1982).

"The same or similar offenses". Careless driving in violation of a municipal ordinance and driving under the influence in violation of a state statute do not constitute "the same or similar offenses" under subsection (3). Martinez v. People, 174 Colo. 365, 484 P.2d 792 (1971).
42-4-110.5. Automated vehicle identification systems.

(1) The general assembly hereby finds and declares that the enforcement of traffic laws through the use of automated vehicle identification systems under this section is a matter of statewide concern and is an area in which uniform state standards are necessary.

(1.5) Except for the authorization contained in subsection (1.7) of this section, nothing in this section shall apply to a violation detected by an automated vehicle identification device for driving twenty-five miles per hour or more in excess of the reasonable and prudent speed or twenty-five miles per hour or more in excess of the maximum speed limit of seventy-five miles per hour detected by the use of an automated vehicle identification device.

(1.7) (a) Upon request from the department of transportation, the department of public safety shall utilize an automated vehicle identification system to detect speeding violations under part 11 of this article within a highway maintenance, repair, or construction zone designated pursuant to section 42-4-614 (1) (a), if the department of public safety complies with subsections (2) to (6) of this section. An automated vehicle identification system shall not be used under this subsection (1.7) unless maintenance, repair, or construction is occurring at the time the system is being used. The department of public safety may contract with a vendor to implement this subsection (1.7). If the department of public safety contracts with a vendor, the contract shall incorporate the processing elements specified by the department of public safety. The department of public safety may contract with the vendor to notify violators, collect and remit the penalties and surcharges to the state treasury less the vendor's expenses, reconcile payments against outstanding violations, implement collection efforts, and notify the department of public safety of unpaid violations for possible referral to the judicial system. No penalty assessment or summons and complaint for a violation detected by an automated vehicle identification system under this subsection (1.7) shall be forwarded to the department for processing.

(b) The department of transportation shall reimburse the department of public safety for the direct and indirect costs of complying with this subsection (1.7).

(2) A municipality may adopt an ordinance authorizing the use of an automated vehicle identification system to detect violations of traffic regulations adopted by the municipality, or the state, a county, a city and county, or a municipality may utilize an automated vehicle identification system to detect traffic violations under state law, subject to the following conditions and limitations:

(a) (I) (Deleted by amendment, L. 2002, p. 570, § 1, effective May 24, 2002.)

(II) If the state, a county, a city and county, or a municipality detects any alleged violation of a municipal traffic regulation or a traffic violation under state law through the use of an automated vehicle identification system, then the state, county, city and county, or municipality shall serve the penalty assessment notice or summons and complaint for the alleged violation on the defendant no later than ninety days after the alleged violation occurred. If a penalty assessment notice or summons and complaint for a violation detected using an automated vehicle identification system are not served within ninety days of the alleged violation, the penalty assessment notice or summons and complaint shall be void.

(II) If the state, a county, a city and county, or a municipality determines that an automated vehicle identification system is inoperable, then the state, county, city and county, or municipality shall not serve the penalty assessment notice or summons and complaint for the alleged violation on the defendant.

(II) If the state, a county, a city and county, or a municipality determines that an automated vehicle identification system is inoperable, then the state, county, city and county, or municipality shall not serve the penalty assessment notice or summons and complaint for the alleged violation on the defendant.

(II) If the state, a county, a city and county, or a municipality determines that an automated vehicle identification system is inoperable, then the state, county, city and county, or municipality shall not serve the penalty assessment notice or summons and complaint for the alleged violation on the defendant.
identification system is personally served, the state, a county, a city and county, or a municipality may only charge the actual costs of service of process that shall be no more than the amount usually charged for civil service of process.

(b) Notwithstanding any other provision of the statutes to the contrary, the state, a county, a city and county, or a municipality may not report to the department any conviction or entry of judgment against a defendant for violation of a municipal traffic regulation or a traffic violation under state law if the violation was detected through the use of an automated vehicle identification system.

(c) The state, a county, a city and county, or a municipality may not report to the department any outstanding judgment or warrant for purposes of section 42-2-107 (5) or 42-2-118 (3) based upon any violation or alleged violation of a municipal traffic regulation or traffic violation under state law detected through the use of an automated vehicle identification system.

(d) (I) The state, a county, a city and county, or a municipality may not use an automated vehicle identification system to detect a violation of part 11 of this article or a local speed ordinance unless there is posted an appropriate temporary sign in a conspicuous place not fewer than three hundred feet before the area in which the automated vehicle identification device is to be used notifying the public that an automated vehicle identification device is in use immediately ahead. The requirement of this subparagraph (I) shall not be deemed satisfied by the posting of a permanent sign or signs at the borders of a county, city and county, or municipality, nor by the posting of a permanent sign in an area in which an automated vehicle identification device is to be used, but this subparagraph (I) shall not be deemed a prohibition against the posting of such permanent signs.

(II) Except as provided in subparagraph (I) of this paragraph (d), an automated vehicle identification system designed to detect disobedience to a traffic control signal or another violation of this article or a local traffic ordinance shall not be used unless the state, county, city and county, or municipality using such system conspicuously posts a sign notifying the public that an automated vehicle identification device is in use immediately ahead. The sign shall:

(A) Be placed in a conspicuous place not fewer than two hundred feet nor more than five hundred feet before the automated vehicle identification system; and

(B) Use lettering that is at least four inches high for upper case letters and two and nine-tenths inches high for lower case letters.

(e) The state, a county, a city and county, or a municipality may not require a registered owner of a vehicle to disclose the identity of a driver of the vehicle who is detected through the use of an automated vehicle identification system. However, the registered owner may be required to submit evidence that the owner was not the driver at the time of the alleged violation.

(f) The state, a county, a city and county, or a municipality shall not issue a penalty assessment notice or summons for a violation detected using an automated vehicle identification system unless, at the time the violation is alleged to have occurred, an officer or employee of the state, the county, the city and county, or the municipality is present during the operation of the automated vehicle identification device; except that this paragraph (f) shall not apply to an
automated vehicle identification system designed to detect violations for disobedience to a traffic control signal.

(g) (I) The state, a county, a city and county, or a municipality shall not issue a penalty assessment notice or summons for a violation detected using an automated vehicle identification system unless the violation occurred within a school zone, as defined in section 42-4-615; within a residential neighborhood; within a maintenance, construction, or repair zone designated pursuant to section 42-4-614; or along a street that borders a municipal park.

(II) For purposes of this paragraph (g), unless the context otherwise requires, "residential neighborhood" means any block on which a majority of the improvements along both sides of the street are residential dwellings and the speed limit is thirty-five miles per hour or less.

(III) This paragraph (g) shall not apply to an automated vehicle identification system designed to detect disobedience to a traffic control signal.

(3) The department has no authority to assess any points against a license under section 42-2-127 upon entry of a conviction or judgment for a violation of a municipal traffic regulation or a traffic violation under state law if the violation was detected through the use of an automated vehicle identification system. The department may not keep any record of such violation in the official records maintained by the department under section 42-2-121.

(4) (a) If the state, a county, a city and county, or a municipality detects a speeding violation of less than ten miles per hour over the reasonable and prudent speed under a municipal traffic regulation or under state law through the use of an automated vehicle identification system and the violation is the first violation by such driver that the state, county, city and county, or municipality has detected using an automated vehicle identification system, then the state, county, city and county, or municipality shall mail such driver a warning regarding the violation and the state, county, city and county, or municipality may not impose any penalty or surcharge for such first violation.

(b) (I) If the state, a county, a city and county, or a municipality detects a second or subsequent speeding violation under a municipal traffic regulation or under state law by a driver, or a first such violation by the driver if the provisions of paragraph (a) of this subsection (4) do not apply, through the use of an automated vehicle identification system, then, except as may be permitted in subparagraph (II) of this paragraph (b), the maximum penalty that the state, county, city and county, or municipality may impose for such violation, including any surcharge, is forty dollars.

(II) If any violation described in subparagraph (I) of this paragraph (b) occurs within a school zone, as defined in section 42-4-615, the maximum penalty that may be imposed shall be doubled.

(III) Subparagraph (I) of this paragraph (b) shall not apply within a maintenance, construction, or repair zone designated pursuant to section 42-4-614.

(4.5) If the state, a county, a city and county, or a municipality detects a violation under a municipal traffic regulation or under state law for disobedience to a traffic control signal through the use of an automated vehicle identification system, the maximum penalty that the state, a
county, a city and county, or a municipality may impose for such violation, including any surcharge, is seventy-five dollars.

(4.7) If a driver fails to pay a penalty imposed for a violation detected using an automated vehicle identification device, the state, a county, a city and county, or a municipality shall not attempt to enforce such a penalty by immobilizing the driver's vehicle.

(5) If the state, a county, a city and county, or a municipality has established an automated vehicle identification system for the enforcement of municipal traffic regulations or state traffic laws, then no portion of any fine collected through the use of such system may be paid to the manufacturer or vendor of the automated vehicle identification system equipment. The compensation paid by the state, county, city and county, or municipality for such equipment shall be based upon the value of such equipment and may not be based upon the number of traffic citations issued or the revenue generated by such equipment.

(6) As used in this section, the term "automated vehicle identification system" means a system whereby:

(a) A machine is used to automatically detect a violation of a traffic regulation and simultaneously record a photograph of the vehicle, the operator of the vehicle, and the license plate of the vehicle; and

(b) A penalty assessment notice or summons and complaint is issued to the registered owner of the motor vehicle.

Source: L. 97: Entire section added, p. 1667, § 1, effective June 5. L. 99: (1.5) and (4.5) added and (2), (4), and (5) amended, p. 612, § 1, effective May 17. L. 2002: (2)(a), (2)(d), and (4.5) amended and (2)(f), (2)(g), and (4.7) added, pp. 570, 572, §§ 1, 2, effective May 24. L. 2004: (2)(d) amended, p. 351, § 1, effective August 4. L. 2008: (1.5) and (2)(g)(I) amended and (1.7) and (4)(b)(III) added, pp. 2080, 2081, §§ 4, 5, effective June 3. L. 2009: (2)(d) amended, (SB 09-222), ch. 150, p. 629, § 1, effective August 5.

Cross references: Section 1 of chapter 412, Session Laws of Colorado 2008, provides that the act amending subsections (1.5) and (2)(g)(I) and enacting subsections (1.7) and (4)(b)(III) shall be known and may be cited as the "Charles Mather Highway Safety Act".

ANNOTATION

This section supersedes conflicting provisions of municipal ordinances. Regulation of automated vehicle identification systems to enforce traffic laws is a matter of mixed local and state concern. In the event of conflict, state law prevails. City of Commerce City v. State, 40 P.3d 1273 (Colo. 2002).

42-4-111. Powers of local authorities.

(1) This article shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, except those streets and highways that are parts of the state highway system that are subject to section 43-2-135, C.R.S., from:
(a) Regulating or prohibiting the stopping, standing, or parking of vehicles, consistent with the provisions of this article;

(b) Establishing parking meter zones where it is determined upon the basis of an engineering and traffic investigation that the installation and operation of parking meters is necessary to aid in the regulation and control of the parking of vehicles during the hours and on the days specified on parking meter signs;

(c) Regulating traffic by means of police officers or official traffic control devices, consistent with the provisions of this article;

(d) Regulating or prohibiting processions or assemblages on the highways, consistent with the provisions of this article;

(e) Designating particular highways or roadways for use by traffic moving in one direction, consistent with the provisions of this article;

(f) Designating any highway as a through highway or designating any intersection as a stop or yield intersection, consistent with the provisions of this article;

(g) Designating truck routes and restricting the use of highways, consistent with the provisions of this article;

(h) Regulating the operation of bicycles or electrical assisted bicycles and requiring the registration and licensing of same, including the requirement of a registration fee, consistent with the provisions of this article;

(i) Altering or establishing speed limits, consistent with the provisions of this article;

(j) Establishing speed limits for vehicles in public parks, consistent with the provisions of this article;

(k) Determining and designating streets, parts of streets, or specific lanes thereon upon which vehicular traffic shall proceed in one direction during one period and the opposite direction during another period of the day, consistent with the provisions of this article;

(l) Regulating or prohibiting the turning of vehicles, consistent with the provisions of this article;

(m) Designating no-passing zones, consistent with the provisions of this article;

(n) Prohibiting or regulating the use of controlled-access roadways by nonmotorized traffic or other kinds of traffic, consistent with the provisions of this article;

(o) Establishing minimum speed limits, consistent with the provisions of this article;

(p) Designating hazardous railroad crossings, consistent with the provisions of this article;

(q) Designating and regulating traffic on play streets, consistent with the provisions of this article;

(r) Prohibiting or restricting pedestrian crossing, consistent with the provisions of this article;
(s) Regulating the movement of traffic at school crossings by official traffic control devices or by duly authorized school crossing guards, consistent with the provisions of this article;

(t) Regulating persons propelling push carts;

(u) Regulating persons upon skates, coasters, sleds, or similar devices, consistent with the provisions of this article;

(v) Adopting such temporary or experimental regulations as may be necessary to cover emergencies or special conditions;

(w) Adopting such other traffic regulations as are provided for by this article;

(x) Closing a street or portion thereof temporarily and establishing appropriate detours or an alternative routing for the traffic affected, consistent with the provisions of this article;

(y) Regulating the local movement of traffic or the use of local streets where such is not provided for in this article;

(z) Regulating the operation of low-power scooters, consistent with the provisions of this article; except that local authorities shall be prohibited from establishing any requirements for the registration and licensing of low-power scooters;

(aa) Regulating the operation of low-speed electric vehicles, including, without limitation, establishing a safety inspection program, on streets and highways under their jurisdiction by resolution or ordinance of the governing body, if such regulation is consistent with the provisions of this title;

(bb) Authorizing and regulating the operation of golf cars on roadways by resolution or ordinance of the governing body, if the authorization or regulation is consistent with this title and does not authorize:

(I) An unlicensed driver of a golf car to carry a passenger who is under twenty-one years of age;

(II) Operation of a golf car by a person under sixteen years of age; or

(III) Operation of a golf car on a state highway;

(cc) Authorizing, prohibiting, or regulating the use of an EPAMD on a roadway, sidewalk, bike path, or pedestrian path consistent with section 42-4-117 (1) and (3);

(dd) Authorizing the use of the electrical motor on an electrical assisted bicycle on a bike or pedestrian path;

(ee) Enacting the idling standards in conformity with section 42-14-103.

(2) No ordinance or regulation enacted under paragraph (a), (b), (e), (f), (g), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (v), (x), (y), (aa), or (cc) of subsection (1) of this section shall be effective until official signs or other traffic control devices conforming to standards as required by section 42-4-602 and giving notice of such local traffic regulations are placed upon or at the entrances to the highway or part thereof affected as may be most appropriate.
(3) (a) A board of county commissioners may by resolution authorize the use of designated portions of unimproved county roads within the unincorporated portion of the county for motor vehicles participating in timed endurance events and for such purposes shall make such regulations relating to the use of such roads and the operation of vehicles as are consistent with public safety in the conduct of such event and with the cooperation of county law enforcement officials.

(b) Such resolution by a board of county commissioners and regulations based thereon shall designate the specific route which may be used in such event, the time limitations imposed upon such use, any necessary restrictions in the use of such route by persons not participating in such event, special regulations concerning the operation of vehicles while participating in such event in which case any provisions of this article to the contrary shall not apply to such event, and such requirements concerning the sponsorship of any such event as may be reasonably necessary to assure adequate responsibility therefor.


Editor's note: (1) This section is similar to former § 42-4-109 as it existed prior to 1994, and the former § 42-4-111 was relocated to § 42-4-113.

(2) Amendments to the introductory portion to subsection (1) by Senate Bill 09-075 and House Bill 09-1026 were harmonized.

Cross references: For powers and duties of the Colorado state patrol, see part 2 of article 33.5 of title 24.

ANNOTATION


Annotator's note. Since § 42-4-111 is similar to § 42-4-109 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

State may delegate powers local in nature to local governmental units. In the absence of any constitutional prohibition, there is nothing illegal about a general assembly delegating powers local in nature to local governmental units, provided that the proper constitutional tests are met as to maintaining a separation of powers and nonabrogation of proper responsibility. Asphalt Paving Co. v. Bd. of County Comm'rs, 162 Colo. 254, 425 P.2d 289 (1967).

Municipal ordinance of local concern supersedes conflicting state statute. Under the home-rule amendment, once a matter is determined to be a matter of local and municipal concern, any local ordinance in a home-rule city addressing the matter will supersede a conflicting state statute. People v. Hizhniak, 195 Colo. 427, 579 P.2d 1131 (1978).
Authority for home-rule city to regulate traffic speeds and penalize offenders is not found in the laws of the general assembly, but rather, is a matter of state constitutional law, under § 6 of art. XX, Colo. Const. People v. Hizniak, 195 Colo. 427, 579 P.2d 1131 (1978).

Regulation of speed is not solely a matter of statewide concern. Wiggins v. McAuliffe, 144 Colo. 363, 356 P.2d 487 (1960).

This section permits all local authorities to regulate the speed of vehicles even though the state has its own statutes thereon except those highways designated as connecting links in the state highway system. Wiggins v. McAuliffe, 144 Colo. 363, 356 P.2d 487 (1960).

This section does not give municipality the right to punish. This section recognizes the power of municipalities to regulate in particular areas of traffic and acknowledges the right of a municipality to regulate on subjects such as parking of vehicles, flow of traffic through control signs, creation of one-way streets, regulating speed and traffic at intersections, but it does not specifically approve the right of a municipality to punish the operator of a vehicle who drives without a license. Consequently, we must conclude that this authority has been preempted by the state and has been withheld from a municipality. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

Validity of legislation giving unrestricted discretion to local police. As a qualification of the general rule, where the discretion to be exercised relates to police regulations for the protection of public morals, health, safety, or general welfare, and it is impracticable to fix standards without destroying the flexibility necessary to enable the administrative officials to carry out the legislative will, legislation delegating such discretion without such restrictions may be valid. Asphalt Paving Co. v. Bd. of County Comm'rs, 162 Colo. 254, 425 P.2d 289 (1967).

The general assembly has specifically excluded implements of husbandry from the scope of powers of local authorities to regulate vehicles on county roads. Bd. of County Comm'rs of Logan County v. Vandemoer, 205 P.3d 423 (Colo. App. 2008).

42-4-112. Noninterference with the rights of owners of realty.

Subject to the exception provided in section 42-4-103 (2), nothing in this article shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this article, or from otherwise regulating such use as may seem best to such owner.


Editor's note: This section is similar to former § 42-4-110 as it existed prior to 1994, and the former § 42-4-112 was relocated to § 42-4-1211.

42-4-113. Appropriations for administration of article.

The general assembly shall make appropriations from the highway users tax fund for the expenses of the administration of this article.


Editor's note: This section is similar to former § 42-4-111 as it existed prior to 1994, and the former § 42-4-113 was relocated to § 42-4-1405.

42-4-114. Removal of traffic hazards.
(1) The department of transportation and local authorities, within their respective jurisdictions, may by written notice sent by certified mail require the owner of real property abutting on the right-of-way of any highway, sidewalk, or other public way to trim or remove, at the expense of said property owner, any tree limb or any shrub, vine, hedge, or other plant which projects beyond the property line of such owner onto or over the public right-of-way and thereby obstructs the view of traffic, obscures any traffic control device, or otherwise constitutes a hazard to drivers or pedestrians.

(2) It is the duty of the property owner to remove any dead, overhanging boughs of trees located on the premises of such property owner that endanger life or property on the public right-of-way.

(3) In the event that any property owner fails or neglects to trim or remove any such tree limb or any such shrub, vine, hedge, or other plant within ten days after receipt of written notice from said department or concerned local authority to do so, said department or local authority may do or cause to be done the necessary work incident thereto, and said property owner shall reimburse the state or local authority for the cost of the work performed.


42-4-115. Information on traffic law enforcement - collection - profiling - annual report - repeal. (Repealed)

Source: L. 2001: Entire section added, p. 933, § 1, effective June 5.

Editor's note: Subsection (4) provided for the repeal of this section, effective January 1, 2004. (See L. 2001, p. 933.)

42-4-116. Restrictions for minor drivers - definitions.

(1) (a) Except as provided in paragraph (c) of this subsection (1), a minor driver shall not operate a motor vehicle containing a passenger who is under twenty-one years of age and who is not a member of the driver's immediate family until such driver has held a valid driver's license for at least six months.

(b) Except as provided in paragraph (c) of this subsection (1), a minor driver shall not operate a motor vehicle containing more than one passenger who is under twenty-one years of age and who is not a member of the driver's immediate family until such driver has held a valid driver's license for at least one year.

(c) Paragraphs (a) and (b) of this subsection (1) shall not apply if:

(I) The motor vehicle contains the minor's parent or legal guardian or other responsible adult described in section 42-2-108;

(II) The motor vehicle contains an adult twenty-one years of age or older who currently holds a valid driver's license and has held such license for at least one year;

(III) The passenger who is under twenty-one years of age is in the vehicle on account of a medical emergency;
(IV) All passengers who are under twenty-one years of age are members of the driver's immediate family and all such passengers are wearing a seatbelt.

(2) (a) Except as provided in paragraph (b) of this subsection (2), a minor driver shall not operate a motor vehicle between 12 midnight and 5 a.m. until such driver has held a driver's license for at least one year.

(b) This subsection (2) shall not apply if:

(I) The motor vehicle contains the minor's parent or legal guardian or other responsible adult described in section 42-2-108;

(II) The motor vehicle contains an adult twenty-one years of age or older who currently holds a valid driver's license and has held such license for at least one year;

(III) The minor is driving to school or a school-authorized activity when the school does not provide adequate transportation, so long as the driver possesses a signed statement from the school official containing the date the activity will occur;

(IV) The minor is driving on account of employment when necessary, so long as the driver possesses a signed statement from the employer verifying employment;

(V) The minor is driving on account of a medical emergency; or

(VI) The minor is an emancipated minor.

(3) A violation of this section is a traffic infraction, and, upon conviction, the violator may be punished as follows:

(a) By the imposition of not less than eight hours nor more than twenty-four hours of community service for a first offense and not less than sixteen hours nor more than forty hours of community service for a subsequent offense;

(b) By the levying of a fine of not more than fifty dollars for a first offense, a fine of not more than one hundred dollars for a second offense, and a fine of one hundred fifty dollars for a subsequent offense;

(c) By an assessment of two license suspension points pursuant to section 42-2-127 (5) (kk).

(4) For the purposes of this section:

(a) "Emancipated minor" means an individual under eighteen years of age whose parents or guardian has surrendered parental responsibilities, custody, and the right to the care and earnings of such person, and are no longer under a duty to support such person.

(b) "Minor driver" means a person who is operating a motor vehicle and who is under eighteen years of age.

(5) No driver in a motor vehicle shall be cited for a violation of this section unless such driver was stopped by a law enforcement officer for an alleged violation of articles 1 to 4 of this title other than a violation of this section.
42-4-117. Personal mobility devices.

(1) A rider of an EPAMD shall have all the same rights and duties as an operator of any other vehicle under this article, except as to those provisions that by their nature have no application.

(2) Unless prohibited under section 42-4-111 (1) (cc), an EPAMD may be operated on a roadway in conformity with vehicle use.

(3) An EPAMD shall not be operated:

   (a) On a limited-access highway;

   (b) On a bike or pedestrian path; or

   (c) At a speed of greater than twelve and one-half miles per hour.

(4) A person who violates this section commits a class B traffic infraction.


Cross references: For the penalty for class B traffic infractions, see § 42-4-1701 (3)(a)(I).

42-4-118. Establishment of wildlife crossing zones - report.

(1) The department of transportation created in section 43-1-103, C.R.S., in consultation with both the Colorado state patrol created pursuant to section 24-33.5-201, C.R.S., and the division of parks and wildlife created pursuant to section 33-9-104, C.R.S., in the department of natural resources, may establish areas within the public highways of the state as wildlife crossing zones.

(2) (a) If the department of transportation establishes an area within a public highway of the state as a wildlife crossing zone, the department of transportation may erect signs:

   (I) Identifying the zone in accordance with the provisions of section 42-4-616; and

   (II) Establishing a lower speed limit for the portion of the highway that lies within the zone.

   (b) Notwithstanding the provisions of paragraph (a) of this subsection (2) to the contrary, the department of transportation shall not establish a lower speed limit for more than one hundred miles of the public highways of the state that have been established as wildlife crossing zones.

(3) (a) The department of transportation may establish an area within the federal highways of the state as a wildlife crossing zone if the department of transportation receives authorization from the federal government.

   (b) If the department of transportation establishes an area within the federal highways of the state as a wildlife crossing zone pursuant to paragraph (a) of this subsection (3), the department of transportation may erect signs:

   (I) Identifying the zone in accordance with the provisions of section 42-4-616; and
(II) Establishing a lower speed limit for the portion of the highway that lies within the zone.

(4) If the department of transportation erects a new wildlife crossing zone sign pursuant to subsection (2) or (3) of this section, it shall ensure that the sign indicates, in conformity with the state traffic control manual, that increased traffic penalties are in effect within the wildlife crossing zone. For the purposes of this section, it shall be sufficient that the sign states "increased penalties in effect".

(5) In establishing a lower speed limit within a wildlife crossing zone, the department of transportation shall give due consideration to factors including, but not limited to, the following:

(a) The percentage of traffic accidents that occur within the area that involve the presence of wildlife on the public highway;

(b) The relative levels of traffic congestion and mobility in the area; and

(c) The relative numbers of traffic accidents that occur within the area during the daytime and evening hours and involve the presence of wildlife on the public highway.

(6) As used in this section, unless the context otherwise requires, "wildlife" shall have the same meaning as "big game" as set forth in section 33-1-102 (2), C.R.S.

(7) Repealed.

(8) Notwithstanding any other provision of this section, the department of transportation shall not establish any area of any interstate highway as a wildlife crossing zone.

Source: L. 2010: Entire section added, (HB 10-1238), ch. 393, p. 1866, § 1, effective September 1.

Editor's note: Subsection (7)(b) provided for the repeal of subsection (7), effective March 2, 2012. (See L. 2010, p. 1866.)
PART 2
EQUIPMENT

Cross references: For the penalty for class A and class B traffic infractions, see § 42-4-1701 (3)(a)(I).

42-4-201. Obstruction of view or driving mechanism - hazardous situation.

(1) No person shall drive a vehicle when it is so loaded or when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(2) No person shall knowingly drive a vehicle while any passenger therein is riding in any manner which endangers the safety of such passenger or others.

(3) A person shall not drive a motor vehicle equipped with a video display visible to the driver while the motor vehicle is in motion. This subsection (3) does not prohibit the usage of a computer, data terminal, or safety equipment in a motor vehicle so long as the computer, data terminal, or safety equipment is not used to display visual entertainment, including internet browsing, social media, and e-mail, to the driver while the motor vehicle is in motion.

(4) No vehicle shall be operated upon any highway unless the driver's vision through any required glass equipment is normal and unobstructed.

(5) No passenger in a vehicle shall ride in such position as to create a hazard for such passenger or others, or to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the vehicle; nor shall the driver of a vehicle permit any passenger therein to ride in such manner.

(6) No person shall hang on or otherwise attach himself or herself to the outside, top, hood, or fenders of any vehicle, or to any other portion thereof, other than the specific enclosed portion of such vehicle intended for passengers or while in a sitting position in the cargo area of a vehicle if such area is fully or partially enclosed on all four sides, while the same is in motion; nor shall the operator knowingly permit any person to hang on or otherwise attach himself or herself to the outside, top, hood, or fenders of any vehicle, or any other portion thereof, other than the specific enclosed portion of such vehicle intended for passengers or while in a sitting position in the cargo area of a vehicle if such area is fully or partially enclosed on all four sides, while the same is in motion. This subsection (6) shall not apply to parades, caravans, or exhibitions which are officially authorized or otherwise permitted by law.

(7) The provisions of subsection (6) of this section shall not apply to a vehicle owned by the United States government or any agency or instrumentality thereof, or to a vehicle owned by the state of Colorado or any of its political subdivisions, or to a privately owned vehicle when operating in a governmental capacity under contract with or permit from any governmental subdivision or under permit issued by the public utilities commission of the state of Colorado,
when in the performance of their duties persons are required to stand or sit on the exterior of the vehicle and said vehicle is equipped with adequate handrails and safeguards.

(8) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: Section 2 of chapter 111, Session Laws of Colorado 2012, provides that the act amending subsection (3) applies to offenses committed on or after July 1, 2012.

ANNOTATION

Subsection (6) of this section not exception to § 42-4-103(2). The words "while moving", used in subsection (6), do not connote any particular place and do not give rise to an exception to the application of this article to streets and highways under § 42-4-103(2). Bravo v. Wareham, 43 Colo. App. 1, 605 P.2d 58 (1979).

Submission of question of obstructed vision to jury. In an automobile accident case there would be no error in submitting to the jury a question of obstructed vision caused by the substitution of cardboard for a broken window-glass in the care of plaintiff, if proper instructions on the subject were given. Potts v. Bird, 93 Colo. 547, 27 P.2d 745 (1933).

An air freshener hanging from rearview mirror not an automatic violation of subsection (4). The air freshener must actually obstruct the driver's vision to be a violation. People v. Arias, 159 P.3d 134 (Colo. 2007).


(1) It is unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this section and sections 42-4-204 to 42-4-231 and part 3 of this article, or which is equipped in any manner in violation of said sections and part 3 or for any person to do any act forbidden or fail to perform any act required under said sections and part 3.

(2) The provisions of this section and sections 42-4-204 to 42-4-231 and part 3 of this article with respect to equipment on vehicles shall not apply to implements of husbandry or farm tractors, except as made applicable in said sections and part 3.

(3) Nothing in this article shall be construed to prohibit the use of additional parts and accessories on any vehicle, consistent with the provisions of this article.

(4) (a) Upon its approval, the department shall issue an identification plate for each vehicle, motor vehicle, trailer, or item of special mobile machinery, or similar implement of equipment, used in any type of construction business which shall, when said plate is affixed, exempt any such item of equipment, machinery, trailer, or vehicle from all or part of this section and sections 42-4-204 to 42-4-231 and part 3 of this article.
(b) The department is authorized to promulgate written rules and regulations governing the application for, issuance of, and supervision, administration, and revocation of such identification plates and exemption authority and to prescribe the terms and conditions under which said plates may be issued for each item as set forth in paragraph (a) of this subsection (4), and the department, in so doing, shall consider the safety of users of the public streets and highways and the type, nature, and use of such items set forth in paragraph (a) of this subsection (4) for which exemption is sought.

(c) Each exempt item may be moved on the roads, streets, and highways during daylight hours and at such time as vision is not less than five hundred feet. No cargo or supplies shall be hauled upon such exempt item except cargo and supplies used in normal operation of any such item.

(d) The identification plate shall be of a size and type designated and approved by the department. A fee of one dollar shall be charged and collected by the department for the issuance of each such identification plate. All such fees so collected shall be paid to the state treasurer who shall credit the same to the highway users tax fund for allocation and expenditure as specified in section 43-4-205 (5.5) (b), C.R.S.

(e) Each such identification plate shall be issued for a calendar year. Application for such identification plates shall be made by the owner, and such plates shall be issued to the owner of each such item described in paragraph (a) of this subsection (4). Whenever the owner transfers, sells, or assigns the owner's interest therein, the exemption of such item shall expire and the owner shall remove the identification plate therefrom and forward the same to the department.

(f) An owner shall report a lost or damaged identification plate to the department, and, upon application to and approval by the department, the department shall issue a replacement plate upon payment to it of a fee of fifty cents.

(g) Notwithstanding the amount specified for any fee in this subsection (4), the executive director of the department by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the department by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(5) Any person who violates any provision of this section commits a class A traffic infraction.

In the ascertainment of the legislative intent, this section must be harmonized with other sections of the act from which codified, so as to give effect to its purpose, if possible. People v. Rapini, 107 Colo. 363, 112 P.2d 551 (1941).

This section does not excuse the use of equipment on a binder in violation of subsection (3) of § 42-4-225. People v. Rapini, 107 Colo. 363, 112 P.2d 551 (1941).

42-4-203. Unsafe vehicles - spot inspections.

(1) Uniformed police officers, at any time upon reasonable cause, may require the driver of a vehicle to stop and submit such vehicle and its equipment to an inspection and such test with reference thereto as may be appropriate. The fact that a vehicle is an older model vehicle shall not alone constitute reasonable cause. In the event such vehicle is found to be in an unsafe condition or the required equipment is not present or is not in proper repair and adjustment, the officer may give a written notice and issue a summons to the driver. Said notice shall require that such vehicle be placed in safe condition and properly equipped or that its equipment be placed in proper repair and adjustment, the particulars of which shall be specified on said notice.

(2) In the event any such vehicle is, in the reasonable judgment of such police officer, in such condition that further operation would be hazardous, the officer may require, in addition to the instructions set forth in subsection (1) of this section, that the vehicle be moved at the operator's expense and not operated under its own power or that it be driven to the nearest garage or other place of safety.

(3) Every owner or driver upon receiving the notice and summons issued pursuant to subsection (1) of this section or mailed pursuant to paragraph (b) of subsection (4) of this section shall comply therewith and shall secure a certification upon such notice by a law enforcement officer that such vehicle is in safe condition and its equipment has been placed in proper repair and adjustment and otherwise made to conform to the requirements of this article. Said certification shall be returned to the owner or driver for presentation in court as provided for in subsection (4) of this section.

(4) (a) (I) Except as provided for in subparagraph (II) or subparagraph (III) of this paragraph (a), any owner receiving written notice and a summons pursuant to this section is guilty of a misdemeanor traffic offense and, upon conviction thereof, shall be punished by a fine of one hundred dollars, payable within thirty days after conviction.

(II) If the owner repairs the unsafe condition or installs or adjusts the required equipment within thirty days after issuance of the notice and summons and presents the certification required in subsection (3) of this section to the court of competent jurisdiction, the owner shall be punished by a fine of five dollars.

(III) If the owner submits to the court of competent jurisdiction within thirty days after the issuance of the summons proof that the owner has disposed of the vehicle for junk parts or immobilized the vehicle and also submits to the court the registration and license plates for the vehicle, the owner shall be punished by a fine of five dollars. If the owner wishes to relicense the vehicle in the future, the owner must obtain the certification required in subsection (3) of this section.
(b) (I) Except as provided for in subparagraph (II) of this paragraph (b), any nonowner driver receiving written notice and a summons pursuant to this section is guilty of a misdemeanor traffic offense and, upon conviction thereof, shall be punished by a fine of one hundred dollars, payable within thirty days after conviction.

(II) If the driver submits to the court of competent jurisdiction within thirty days after the issuance of the summons proof that the driver was not the owner of the car at the time the summons was issued and that the driver mailed, within five days of issuance thereof, a copy of the notice and summons by certified mail to the owner of the vehicle at the address on the registration, the driver shall be punished by a fine of five dollars.

c) Upon a showing of good cause that the required repairs or adjustments cannot be made within thirty days after issuance of the notice and summons, the court of competent jurisdiction may extend the period of time for installation or adjustment of required equipment as may appear justified.

d) The owner may, in lieu of appearance, submit to the court of competent jurisdiction, within thirty days after the issuance of the notice and summons, the certification specified in subsection (3) of this section and the fine of five dollars.


Editor's note: This section is similar to former § 42-4-306.1 as it existed prior to 1994, and the former § 42-4-203 was relocated to § 42-4-204.

42-4-204. When lighted lamps are required.

(1) Every vehicle upon a highway within this state, between sunset and sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand feet ahead, shall display lighted lamps and illuminating devices as required by this article for different classes of vehicles, subject to exceptions with respect to parked vehicles.

(2) Whenever requirement is declared by this article as to distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in subsection (1) of this section in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions, unless a different time or condition is expressly stated.

(3) Whenever requirement is declared by this article as to the mounted height of lamps or devices, it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

(4) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-203 as it existed prior to 1994, and the former § 42-4-204 was relocated to § 42-4-205.
42-4-205. Head lamps on motor vehicles.

(1) Every motor vehicle other than a motorcycle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in sections 42-4-202 and 42-4-204 to 42-4-231 and part 3 of this article where applicable.

(2) Every motorcycle shall be equipped with at least one and not more than two head lamps that shall comply with the requirements and limitations of sections 42-4-202 and 42-4-204 to 42-4-231 and part 3 of this article where applicable.

(3) Every head lamp upon every motor vehicle, including every motorcycle, shall be located at a height measured from the center of the head lamp of not more than fifty-four inches nor less than twenty-four inches, to be measured as set forth in section 42-4-204 (3).

(4) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-204 as it existed prior to 1994, and the former § 42-4-205 was relocated to § 42-4-206.

42-4-206. Tail lamps and reflectors.

(1) To be operated on a road, every motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle that is being drawn at the end of a train of vehicles must be equipped with at least one tail lamp mounted on the rear, which, when lighted as required in section 42-4-204, emits a red light plainly visible from a distance of five hundred feet to the rear; except that, in the case of a train of vehicles, only the tail lamp on the rear-most vehicle need actually be seen from the distance specified, except as provided in section 42-12-204. Furthermore, every vehicle registered in this state and manufactured or assembled after January 1, 1958, must be equipped with at least two tail lamps mounted on the rear, on the same level and as widely spaced laterally as practicable, which, when lighted as required in section 42-4-204, comply with this section.

(2) Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two inches nor less than twenty inches, to be measured as set forth in section 42-4-204 (3).

(3) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

(4) To be operated on a road, every motor vehicle must carry on the rear, either as part of a tail lamp or separately, one red reflector meeting the requirements of this section; except that
vehicles of the type mentioned in section 42-4-207 must be equipped with reflectors as required by law unless otherwise provided in section 42-12-204.

(5) Every new motor vehicle sold and operated on and after January 1, 1958, upon a highway shall carry on the rear, whether as a part of the tail lamps or separately, two red reflectors; except that every motorcycle shall carry at least one reflector meeting the requirements of this section, and vehicles of the type mentioned in section 42-4-207 shall be equipped with reflectors as required in those sections applicable thereto.

(6) Every reflector shall be mounted on the vehicle at a height of not less than twenty inches nor more than sixty inches, measured as set forth in section 42-4-204 (3) and shall be of such size and characteristics and so mounted as to be visible at night from all distances within three hundred fifty feet to one hundred feet from such vehicle when directly in front of lawful upper beams and head lamps; except that visibility from a greater distance is required by law of reflectors on certain types of vehicles.

(7) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-205 as it existed prior to 1994, and the former § 42-4-206 was relocated to § 42-4-207.

ANNOTATION

Question of fact as to whether failure to clean reflectors is negligent. In an action for damages resulting from a collision between a stopped truck and an oncoming automobile, the question of whether, after passing beyond the rain area and before reaching the point of the accident, the driver of the truck had an opportunity to park off of the paved portion of the highway and again clean his reflectors and whether in failing so to do, he was guilty of negligence, at most presented a question of fact for the determination of the jury. Anderson v. Hudspeth Pine, Inc., 299 F.2d 874 (10th Cir. 1962).

Instructions as to collision with unlighted truck sufficient. In an action for damages for personal injuries resulting from an automobile colliding with an unlighted truck on the highway, instructions as to the lighting of trucks, permissible assumptions and duties of auto drivers reviewed and considered, and while not commended, are sufficient and not misleading. Gallagher Transp. Co. v. Giggey, 101 Colo. 116, 71 P.2d 1039 (1937).

42-4-207. Clearance and identification.

(1) Every vehicle designed or used for the transportation of property or for the transportation of persons shall display lighted lamps at the times mentioned in section 42-4-204 when and as required in this section.

(2) Clearance lamps. (a) Every motor vehicle or motor-drawn vehicle having a width at any part in excess of eighty inches shall be equipped with four clearance lamps located as follows:
(I) Two on the front and one at each side, displaying an amber light visible from a distance of five hundred feet to the front of the vehicle;

(II) Two on the rear and one at each side, displaying a red light visible only to the rear and visible from a distance of five hundred feet to the rear of the vehicle, which said rear clearance lamps shall be in addition to the rear red lamp required in section 42-4-206.

(b) All clearance lamps required shall be placed on the extreme sides and located on the highest stationary support; except that, when three or more identification lamps are mounted on the rear of a vehicle on the vertical center line and at the extreme height of the vehicle, rear clearance lamps may be mounted at optional height.

(c) Any trailer, when operated in conjunction with a vehicle which is properly equipped with front clearance lamps as provided in this section, may be, but is not required to be, equipped with front clearance lamps if the towing vehicle is of equal or greater width than the towed vehicle.

(d) All clearance lamps required in this section shall be of a type approved by the department.

(3) **Side marker lamps.** (a) Every motor vehicle or motor-drawn vehicle or combination of such vehicles which exceeds thirty feet in overall length shall be equipped with four side marker lamps located as follows:

(I) One on each side near the front displaying an amber light visible from a distance of five hundred feet to the side of the vehicle on which it is located;

(II) One on each side near the rear displaying a red light visible from a distance of five hundred feet to the side of the vehicle on which it is located; but the rear marker light shall not be so placed as to be visible from the front of the vehicle.

(b) Each side marker lamp required shall be located not less than fifteen inches above the level on which the vehicle stands.

(c) If the clearance lamps required by this section are of such a design as to display lights visible from a distance of five hundred feet at right angles to the sides of the vehicles, they shall be deemed to meet the requirements as to marker lamps in this subsection (3).

(d) All marker lamps required in this section shall be of a type approved by the department.

(4) **Clearance reflectors.** (a) Every motor vehicle having a width at any part in excess of eighty inches shall be equipped with clearance reflectors located as follows:

(I) Two red reflectors on the rear and one at each side, located not more than one inch from the extreme outside edges of the vehicle;

(II) All such reflectors shall be located not more than sixty inches nor less than fifteen inches above the level on which the vehicle stands.

(b) One or both of the required rear red reflectors may be incorporated within the tail lamp or tail lamps if any such tail lamps meet the location limits specified for reflectors.

(c) All such clearance reflectors shall be of a type approved by the department.
(5) Side marker reflectors. (a) Every motor vehicle or motor-drawn vehicle or combination of vehicles which exceeds thirty feet in overall length shall be equipped with four side marker reflectors located as follows:

(I) One amber reflector on each side near the front;

(II) One red reflector on each side near the rear.

(b) Each side marker reflector shall be located not more than sixty inches nor less than fifteen inches above the level on which the vehicle stands.

(c) All such side marker reflectors shall be of a type approved by the department.

(6) Any person who violates any provision of this section commits a class B traffic infraction.

(7) Nothing in this section shall be construed to supersede any federal motor vehicle safety standard established pursuant to the "National Traffic and Motor Vehicle Safety Act of 1966", Public Law 89-563, as amended.


Editor's note: This section is similar to former § 42-4-206 as it existed prior to 1994, and the former § 42-4-207 was relocated to § 42-4-208.


ANNOTATION

Annotator's note. Since § 42-4-207 is similar to § 42-4-206 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.

Situation in which noncompliance not proximate cause of collision. In an action for damages resulting from a collision between a stopped truck and an oncoming automobile, where the clearance lights of a truck went out completely with the headlights, even if their number and location did not comply with this section, such noncompliance could not have been the proximate cause of the collision. Anderson v. Hudspeth Pine, Inc., 299 F.2d 874 (10th Cir. 1962).

Where a driver of a truck was negligent in proceeding on the highway after his clearance lights had begun to flicker was an issue of fact for the jury. Anderson v. Hudspeth Pine, Inc., 299 F.2d 874 (10th Cir. 1962).

Headlights and clearance lights need not operate on separate circuits. This state does not, either by statute or regulation, require, as do some states, that headlights and clearance lights operate on separate circuits, and when delivered from the manufacturers of trucks, the headlights and clearance lights are usually on a single circuit. Anderson v. Hudspeth Pine, Inc., 299 F.2d 874 (10th Cir. 1962).

42-4-208. Stop lamps and turn signals.

(1) Every motor vehicle or motor-drawn vehicle shall be equipped with a stop light in good working order at all times and shall meet the requirements of section 42-4-215 (1).
(2) No person shall sell or offer for sale or operate on the highways any motor vehicle registered in this state and manufactured or assembled after January 1, 1958, unless it is equipped with at least two stop lamps meeting the requirements of section 42-4-215 (1); except that a motorcycle manufactured or assembled after said date shall be equipped with at least one stop lamp meeting the requirements of section 42-4-215 (1).

(3) No person shall sell or offer for sale or operate on the highways any motor vehicle, trailer, or semitrailer registered in this state and manufactured or assembled after January 1, 1958, and no person shall operate any motor vehicle, trailer, or semitrailer on the highways when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds twenty-four inches, unless it is equipped with electrical turn signals meeting the requirements of section 42-4-215 (2). This subsection (3) shall not apply to any motorcycle or low-power scooter.

(4) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-207 as it existed prior to 1994, and the former § 42-4-208 was relocated to § 42-4-209.

42-4-209. Lamp or flag on projecting load.

Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle, there shall be displayed at the extreme rear end of the load, at the time specified in section 42-4-204, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time, there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear. Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-208 as it existed prior to 1994, and the former § 42-4-209 was relocated to § 42-4-210.

42-4-210. Lamps on parked vehicles.

(1) Whenever a vehicle is lawfully parked upon a highway during the hours between sunset and sunrise and in the event there is sufficient light to reveal any person or object within a distance of one thousand feet upon such highway, no lights need be displayed upon such parked vehicle.

(2) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between sunset and sunrise and there is not sufficient light to reveal any person or object within a distance of one thousand feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more operating lamps.
meeting the following requirements: At least one lamp shall display a white or amber light visible from a distance of five hundred feet to the front of the vehicle, and the same lamp or at least one other lamp shall display a red light visible from a distance of five hundred feet to the rear of the vehicle, and the location of said lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle that is closer to passing traffic. This subsection (2) shall not apply to a low-power scooter.

(3) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

(4) Any person who violates any provision of this section commits a class B traffic infraction.

(5) This section shall not apply to low-speed electric vehicles.


Editor's note: This section is similar to former § 42-4-209 as it existed prior to 1994, and the former § 42-4-210 was relocated to § 42-4-211.

42-4-211. Lamps on farm equipment and other vehicles and equipment.

(1) Every farm tractor and every self-propelled farm equipment unit or implement of husbandry not equipped with an electric lighting system shall, at all times mentioned in section 42-4-204, be equipped with at least one lamp displaying a white light visible from a distance of not less than five hundred feet to the front of such vehicle and shall also be equipped with at least one lamp displaying a red light visible from a distance of not less than five hundred feet to the rear of such vehicle.

(2) Every self-propelled unit of farm equipment not equipped with an electric lighting system shall, at all times mentioned in section 42-4-204, in addition to the lamps required in subsection (1) of this section, be equipped with two red reflectors visible from all distances within six hundred feet to one hundred feet to the rear when directly in front of lawful upper beams of head lamps.

(3) Every combination of farm tractor and towed unit of farm equipment or implement of husbandry not equipped with an electric lighting system shall, at all times mentioned in section 42-4-204, be equipped with the following lamps:

(a) At least one lamp mounted to indicate as nearly as practicable to the extreme left projection of said combination and displaying a white light visible from a distance of not less than five hundred feet to the front of said combination;

(b) Two lamps each displaying a red light visible when lighted from a distance of not less than five hundred feet to the rear of said combination or, as an alternative, at least one lamp displaying a red light visible from a distance of not less than five hundred feet to the rear thereof and two red reflectors visible from all distances within six hundred feet to one hundred feet to the rear thereof when illuminated by the upper beams of head lamps.
(4) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry equipped with an electric lighting system shall, at all times mentioned in section 42-4-204, be equipped with two single-beam head lamps meeting the requirements of section 42-4-216 or 42-4-218, respectively, and at least one red lamp visible from a distance of not less than five hundred feet to the rear; but every such self-propelled unit of farm equipment other than a farm tractor shall have two such red lamps or, as an alternative, one such red lamp and two red reflectors visible from all distances within six hundred feet to one hundred feet when directly in front of lawful upper beams of head lamps.

(5) (a) Every combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system shall, at all times mentioned in section 42-4-204, be equipped with lamps as follows:

(I) The farm tractor element of every such combination shall be equipped as required in subsection (4) of this section.

(II) The towed unit of farm equipment or implement of husbandry element of such combination shall be equipped with two red lamps visible from a distance of not less than five hundred feet to the rear or, as an alternative, two red reflectors visible from all distances within six hundred feet to the rear when directly in front of lawful upper beams of head lamps.

(b) Said combinations shall also be equipped with a lamp displaying a white or amber light, or any shade of color between white and amber, visible from a distance of not less than five hundred feet to the front and a lamp displaying a red light visible when lighted from a distance of not less than five hundred feet to the rear.

(6) The lamps and reflectors required in this section shall be so positioned as to show from front and rear as nearly as practicable the extreme projection of the vehicle carrying them on the side of the roadway used in passing such vehicle. If a farm tractor or a unit of farm equipment, whether self-propelled or towed, is equipped with two or more lamps or reflectors visible from the front or two or more lamps or reflectors visible from the rear, such lamps or reflectors shall be so positioned that the extreme projections, both to the right and to the left of said vehicle, shall be indicated as nearly as practicable.

(7) Every vehicle, including animal-drawn vehicles and vehicles referred to in section 42-4-202 (2), not specifically required by the provisions of this article to be equipped with lamps or other lighting devices shall at all times specified in section 42-4-204 be equipped with at least one lamp displaying a white light visible from a distance of not less than five hundred feet to the front of said vehicle and shall also be equipped with two lamps displaying red lights visible from a distance of not less than five hundred feet to the rear of said vehicle or, as an alternative, one lamp displaying a red light visible from a distance of not less than five hundred feet to the rear and two red reflectors visible for distances of one hundred feet to six hundred feet to the rear when illuminated by the upper beams of head lamps.

(8) Any person who violates any provision of this section commits a class B traffic infraction.

Editor's note: This section is similar to former § 42-4-210 as it existed prior to 1994, and the former § 42-4-211 was relocated to § 42-4-212.

42-4-212. Spot lamps and auxiliary lamps.

(1) Any motor vehicle may be equipped with not more than two spot lamps, and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle.

(2) Any motor vehicle may be equipped with not more than two fog lamps mounted on the front at a height of not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that, when the vehicle is not loaded, none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the requirements of this subsection (2) may be used with lower head-lamp beams as specified in section 42-4-216 (1) (b).

(3) Any motor vehicle may be equipped with not more than two auxiliary passing lamps mounted on the front at a height of not less than twenty inches nor more than forty-two inches above the level surface upon which the vehicle stands. The provisions of section 42-4-216 shall apply to any combination of head lamps and auxiliary passing lamps.

(4) Any motor vehicle may be equipped with not more than two auxiliary driving lamps mounted on the front at a height of not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehicle stands. The provisions of section 42-4-216 shall apply to any combination of head lamps and auxiliary driving lamps.

(5) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-211 as it existed prior to 1994, and the former § 42-4-212 was relocated to § 42-4-213.

42-4-213. Audible and visual signals on emergency vehicles.

(1) Except as otherwise provided in this section or in section 42-4-222 in the case of volunteer fire vehicles and volunteer ambulances, every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this article, be equipped as a minimum with a siren and a horn. Such devices shall be capable of emitting a sound audible under normal conditions from a distance of not less than five hundred feet.

(2) Every authorized emergency vehicle, except those used as undercover vehicles by governmental agencies, shall, in addition to any other equipment and distinctive markings required by this article, be equipped with at least one signal lamp mounted as high as practicable, which shall be capable of displaying a flashing, oscillating, or rotating red light to the front and to the rear having sufficient intensity to be visible at five hundred feet in normal sunlight. In
addition to the required red light, flashing, oscillating, or rotating signal lights may be used which emit blue, white, or blue in combination with white.

(3) A police vehicle, when used as an authorized emergency vehicle, may but need not be equipped with the red lights specified in this section.

(4) Any authorized emergency vehicle, including those authorized by section 42-4-222, may be equipped with green flashing lights, mounted at sufficient height and having sufficient intensity to be visible at five hundred feet in all directions in normal daylight. Such lights may only be used at the single designated command post at any emergency location or incident and only when such command post is stationary. The single command post shall be designated by the on-scene incident commander in accordance with local or state government emergency plans. Any other use of a green light by a vehicle shall constitute a violation of this section.

(5) The use of either the audible or the visual signal equipment described in this section shall impose upon drivers of other vehicles the obligation to yield right-of-way and stop as prescribed in section 42-4-705.

(6) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-212 as it existed prior to 1994, and the former § 42-4-213 was relocated to § 42-4-215.


(1) Except as otherwise provided in this section, on or after January 1, 1978, every authorized service vehicle shall, in addition to any other equipment required by this article, be equipped with one or more warning lamps mounted as high as practicable, which shall be capable of displaying in all directions one or more flashing, oscillating, or rotating yellow lights. Only yellow and no other color or combination of colors shall be used as a warning lamp on an authorized service vehicle; except that an authorized service vehicle snowplow operated by a general purpose government may also be equipped with and use no more than two flashing, oscillating, or rotating blue lights as warning lamps. Lighted directional signs used by police and highway departments to direct traffic need not be visible except to the front and rear. Such lights shall have sufficient intensity to be visible at five hundred feet in normal sunlight.

(2) The warning lamps authorized in subsection (1) of this section shall be activated by the operator of an authorized service vehicle only when the vehicle is operating upon the roadway so as to create a hazard to other traffic. The use of such lamps shall not relieve the operator from the duty of using due care for the safety of others or from the obligation of using any other safety equipment or protective devices that are required by this article. Service vehicles authorized to operate also as emergency vehicles shall also be equipped to comply with signal requirements for emergency vehicles.

(3) Whenever an authorized service vehicle is performing its service function and is displaying lights as authorized in subsection (1) of this section, drivers of all other vehicles shall exercise more than ordinary care and caution in approaching, overtaking, or passing such service vehicles.
vehicle and, in the case of highway and traffic maintenance equipment engaged in work upon the highway, shall comply with the instructions of section 42-4-712.

(4) On or after January 1, 1978, only authorized service vehicles shall be equipped with the warning lights authorized in subsection (1) of this section.

(5) The department of transportation shall determine by rule which types of vehicles render an essential public service when operating on or along a roadway and warrant designation as authorized service vehicles under specified conditions, including, without limitation, vehicles that sell or apply chains or other equipment to motor vehicles necessary to enable compliance with section 42-4-106.

(6) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-212.5 as it existed prior to 1994, and the former § 42-4-214 was relocated to § 42-4-216.

42-4-215. Signal lamps and devices - additional lighting equipment.

(1) To be operated on a road, any motor vehicle may be equipped, and when required under this article must be equipped, with a stop lamp or lamps on the rear of the vehicle that, except as provided in section 42-12-204, display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred feet to the rear in normal sunlight, that are actuated upon application of the service (foot) brake, and that may but need not be incorporated with one or more other rear lamps. Such stop lamp or lamps may also be automatically actuated by a mechanical device when the vehicle is reducing speed or stopping. If two or more stop lamps are installed on any motor vehicle, any device actuating such lamps must be so designed and installed that all stop lamps are actuated by such device.

(2) Any motor vehicle may be equipped, and when required under this article must be equipped, with lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or to the left. The lamps showing to the front must be located on the same level and as widely spaced laterally as practicable and when in use display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than one hundred feet to the front in normal sunlight, and the lamps showing to the rear must be located at the same level and as widely spaced laterally as practicable and, except as provided in section 42-12-204, when in use must display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred feet to the rear in normal sunlight. When actuated, the lamps must indicate the intended direction of turning by flashing the light showing to the front and rear on the side toward which the turn is made.

(3) No stop lamp or signal lamp shall project a glaring or dazzling light.

(4) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.
(5) Any motor vehicle may be equipped with not more than one runningboard courtesy lamp on each side thereof, which shall emit a white or amber light without glare.

(6) Any motor vehicle may be equipped with not more than two back-up lamps either separately or in combination with other lamps, but no such back-up lamp shall be lighted when the motor vehicle is in forward motion.

(7) Any vehicle may be equipped with lamps that may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing and, when so equipped and when the vehicle is not in motion or is being operated at a speed of twenty-five miles per hour or less and at no other time, may display such warning in addition to any other warning signals required by this article. The lamps used to display such warning to the front must be mounted at the same level and as widely spaced laterally as practicable and display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display the warning to the rear must be mounted at the same level and as widely spaced laterally as practicable and, except as provided in section 42-12-204, show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights must be visible from a distance of not less than five hundred feet under normal atmospheric conditions at night.

(8) Any vehicle eighty inches or more in overall width may be equipped with not more than three identification lamps showing to the front which shall emit an amber light without glare and not more than three identification lamps showing to the rear which shall emit a red light without glare. Such lamps shall be mounted horizontally.

(9) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-213 as it existed prior to 1994, and the former § 42-4-215 was relocated to § 42-4-217.

42-4-215.5. Signal lamps and devices - street rod vehicles and custom motor vehicles. (Repealed)


Editor's note: This section was relocated to § 42-12-204 in 2011.

42-4-216. Multiple-beam road lights.

(1) Except as provided in this article, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles, other than motorcycles or low-power scooters, shall be so arranged that the driver may select at will between distributions
of light projected to different elevations, and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light or composite beam so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred fifty feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred feet ahead; and on a straight level road under any condition of loading, none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(1.5) Head lamps arranged to provide a single distribution of light not supplemented by auxiliary driving lamps shall be permitted for low-speed electric vehicles in lieu of multiple-beam, road-lighting equipment specified in this section if the single distribution of light complies with paragraph (b) of subsection (1) of this section.

(2) A new motor vehicle, other than a motorcycle or low-power scooter, that has multiple-beam road-lighting equipment, shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

(3) Any person who violates any provision of this section commits a class B traffic infraction.

Source: L. 94: Entire title amended with relocations, p. 2252, § 1, effective January 1, 1995. L. 97: (1.5) added, p. 393, § 4, effective August 6. L. 2009: (1.5) amended, (SB 09-075), ch. 418, p. 2323, § 10, effective August 5; IP(1) and (2) amended, (HB 09-1026), ch. 281, p. 1274, § 43, effective October 1.

Editor's note: This section is similar to former § 42-4-214 as it existed prior to 1994, and the former § 42-4-216 was relocated to § 42-4-218.

ANNOTATION

Law reviews. For article, "One Year Review of Torts", see 35 Dicta 53 (1958).

Annotator's note. Since § 42-4-216 is similar to § 42-2-412 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included in the annotations to this section.

Low beam intensity requirement. This section provides that all road lighting beams shall be so aimed and of such intensity as to reveal a person or vehicle at least 100 feet ahead. Union P. R. R. v. Cogburn, 136 Colo. 184, 315 P.2d 209 (1957).

High beam intensity requirement. This section provides that all motor vehicles shall be equipped with head lamps that on high beam shall furnish light of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead. Union P. R. R. v. Cogburn, 136 Colo. 184, 315 P.2d 209 (1957).

42-4-217. Use of multiple-beam lights.
(1) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in section 42-4-204, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(a) Whenever a driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light or composite beam specified in section 42-4-216 (1) (b) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(b) Whenever the driver of a vehicle follows another vehicle within two hundred feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this title other than the uppermost distribution of light specified in section 42-4-216 (1) (a).

(c) A low-speed electric vehicle may use the distribution of light authorized in section 42-4-216 (1.5).

(2) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-215 as it existed prior to 1994, and the former § 42-4-217 was relocated to § 42-4-219.

42-4-218. Single-beam road-lighting equipment.

(1) Head lamps arranged to provide a single distribution of light not supplemented by auxiliary driving lamps shall be permitted on motor vehicles manufactured and sold prior to July 15, 1936, in lieu of multiple-beam road-lighting equipment specified in section 42-4-216 if the single distribution of light complies with the following requirements and limitations:

(a) The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall, at a distance of twenty-five feet ahead, project higher than a level of five inches below the level of the center of the lamp from which it comes and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.

(b) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet.

(2) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-216 as it existed prior to 1994, and the former § 42-4-218 was relocated to § 42-4-220.
42-4-219. Number of lamps permitted.

Whenever a motor vehicle equipped with head lamps as required in this article is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of an intensity greater than three hundred candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway. Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-217 as it existed prior to 1994, and the former § 42-4-219 was relocated to § 42-4-222.

42-4-220. Low-power scooters - lighting equipment - department control - use and operation.

(1) (a) A low-power scooter when in use at the times specified in section 42-4-204 shall be equipped with a lamp on the front that shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear, of a type approved by the department, that shall be visible from all distances from fifty feet to three hundred feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.

(b) No person shall operate a low-power scooter unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred feet; except that a low-power scooter shall not be equipped with nor shall any person use upon a low-power scooter a siren or whistle.

(c) A low-power scooter shall be equipped with a brake that will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(2) (Deleted by amendment, L. 2009, (HB 09-1026), ch. 281, p. 1274, § 44, effective October 1, 2009.)

(3) (a) Any lighted lamp or illuminating device upon a motor vehicle, other than head lamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps, which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the high-intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) Repealed.

(c) This subsection (3) shall not be construed to prohibit the use on any vehicle of simultaneously flashing hazard warning lights as provided by section 42-4-215 (7).

(4) No person shall have for sale, sell, or offer for sale, for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer or for use upon any such vehicle, any head
lamp, auxiliary or fog lamp, rear lamp, signal lamp, or reflector, which reflector is required under this article, or parts of any of the foregoing which tend to change the original design or performance thereof, unless of a type which has been approved by the department.

(5) No person shall have for sale, sell, or offer for sale, for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer, any lamp or device mentioned in this section which has been approved by the department unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed.

(6) No person shall use upon any motor vehicle, trailer, or semitrailer any lamps mentioned in this section unless said lamps are mounted, adjusted, and aimed in accordance with instructions of the department.

(7) The department is authorized to approve or disapprove lighting standards and specifications for the approval of such lighting devices and their installation, adjustment, and aiming and their adjustment when in use on motor vehicles.

(8) The department is required to approve or disapprove any lighting device, of a type on which approval is specifically required in this article, within a reasonable time after such device has been submitted.

(9) The department is authorized to provide the procedure which shall be followed when any device is submitted for approval.

(10) The department upon approving any such lamp or device shall issue to the applicant a certificate of approval, together with any instructions determined by the department to be reasonably necessary.

(11) The department shall provide lists of all lamps and devices by name and type which have been approved by it.

(12) When the department has reason to believe that an approved device as being sold commercially does not comply with the requirements of this article, the executive director of the department or the director's designated representatives may, after giving thirty days' previous notice to the person holding the certificate of approval for such device in the state, conduct a hearing upon the question of compliance of said approved device. After said hearing, said executive director shall determine whether said approved device meets the requirements of this article. If said device does not meet the requirements of this article, the director shall give notice to the person holding the certificate of approval for such device in this state.

(13) If, at the expiration of ninety days after such notice, the person holding the certificate of approval for such device has failed to establish to the satisfaction of the executive director of the department that said approved device as thereafter to be sold meets the requirements of this article, said executive director shall suspend or revoke the approval issued therefor and may require that all said devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of this article, until or unless such device, at the sole expense of the applicant, shall be resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this article. The department may, at the time of the retest, purchase in the open market and submit to the testing agency one or more sets of such
approved devices, and, if such device upon such retest fails to meet the requirements of this article, the department may refuse to renew the certificate of approval of such device.

(14) Any person who violates any provision of this section commits a class B traffic infraction.


Editor’s note: This section is similar to former § 42-4-218 as it existed prior to 1994, and the former § 42-4-220 was relocated to § 42-4-223.

Cross references: For specifications for lighting of snow-removal equipment, see § 42-4-224 (4); for authorization for red lights on brand inspectors’ cars, see § 35-53-128 (3).

42-4-221. Bicycle and personal mobility device equipment.

(1) No other provision of this part 2 and no provision of part 3 of this article shall apply to a bicycle, electrical assisted bicycle, or EPAMD or to equipment for use on a bicycle, electrical assisted bicycle, or EPAMD except those provisions in this article made specifically applicable to such a vehicle.

(2) Every bicycle, electrical assisted bicycle, or EPAMD in use at the times described in section 42-4-204 shall be equipped with a lamp on the front emitting a white light visible from a distance of at least five hundred feet to the front.

(3) Every bicycle, electrical assisted bicycle, or EPAMD shall be equipped with a red reflector of a type approved by the department, which shall be visible for six hundred feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle.

(4) Every bicycle, electrical assisted bicycle, or EPAMD when in use at the times described in section 42-4-204 shall be equipped with reflective material of sufficient size and reflectivity to be visible from both sides for six hundred feet when directly in front of lawful lower beams of head lamps on a motor vehicle or, in lieu of such reflective material, with a lighted lamp visible from both sides from a distance of at least five hundred feet.

(5) A bicycle, electrical assisted bicycle, or EPAMD or its rider may be equipped with lights or reflectors in addition to those required by subsections (2) to (4) of this section.

(6) A bicycle or electrical assisted bicycle shall not be equipped with, nor shall any person use upon a bicycle or electrical assisted bicycle, any siren or whistle.

(7) Every bicycle or electrical assisted bicycle shall be equipped with a brake or brakes that will enable its rider to stop the bicycle or electrical assisted bicycle within twenty-five feet from a speed of ten miles per hour on dry, level, clean pavement.

(8) A person engaged in the business of selling bicycles or electrical assisted bicycles at retail shall not sell any bicycle or electrical assisted bicycle unless the bicycle or electrical assisted bicycle has an identifying number permanently stamped or cast on its frame.
(9) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-218.5 as it existed prior to 1994, and the former § 42-4-221 was relocated to § 42-4-224.

42-4-222. Volunteer firefighters - volunteer ambulance attendants - special lights and alarm systems.

(1) (a) All members of volunteer fire departments regularly attached to the fire departments organized within incorporated towns, counties, cities, and fire protection districts and all members of a volunteer ambulance service regularly attached to a volunteer ambulance service within an area that the ambulance service would be reasonably expected to serve may have their private automobiles equipped with a signal lamp or a combination of signal lamps capable of displaying flashing, oscillating, or rotating red lights visible to the front and rear at five hundred feet in normal sunlight. In addition to the red light, flashing, oscillating, or rotating signal lights may be used that emit white or white in combination with red lights. At least one of such signal lamps or combination of signal lamps shall be mounted on the top of the automobile. Said automobiles may be equipped with audible signal systems such as sirens, whistles, or bells. Said lights, together with any signal systems authorized by this subsection (1), may be used only as authorized by subsection (3) of this section or when a member of a fire department is responding to or attending a fire alarm or other emergency or when a member of an ambulance service is responding to an emergency requiring the member's services. Except as authorized in subsection (3) of this section, neither such lights nor such signals shall be used for any other purpose than those set forth in this subsection (1). If used for any other purpose, such use shall constitute a violation of this subsection (1), and the violator commits a class B traffic infraction.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), a member of a volunteer fire department or a volunteer ambulance service may equip his or her private automobile with the equipment described in paragraph (a) of this subsection (1) only after receiving a permit for the equipment from the fire chief of the fire department or chief executive officer of the ambulance service through which the volunteer serves.

(2) (Deleted by amendment, L. 96, p. 957, § 3, effective July 1, 1996.)

(3) A fire engine collector or member of a fire department may use the signal system authorized by subsection (1) of this section in a funeral, parade, or for other special purposes if the circumstances would not lead a reasonable person to believe that such vehicle is responding to an actual emergency.


42-4-223. Brakes.
(1) Brake equipment required:

(a) Every motor vehicle, other than a motorcycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(b) Every motorcycle and low-power scooter, when operated upon a highway, shall be equipped with at least one brake, which may be operated by hand or foot.

(c) Every trailer or semitrailer of a gross weight of three thousand pounds or more, when operated upon a highway, shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from the cab, and said brakes shall be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied. The provisions of this paragraph (c) shall not be applicable to any trailer which does not meet the definition of "commercial vehicle" as that term is defined in section 42-4-235 (1) (a) and which is owned by a farmer when transporting agricultural products produced on the owner's farm or supplies back to the farm of the owner of the trailer, tank trailers not exceeding ten thousand pounds gross weight used solely for transporting liquid fertilizer or gaseous fertilizer under pressure, or distributor trailers not exceeding ten thousand pounds gross weight used solely for transporting and distributing dry fertilizer when hauled by a truck capable of stopping within the distance specified in subsection (2) of this section.

(d) Every motor vehicle, trailer, or semitrailer constructed or sold in this state or operated upon the highways shall be equipped with service brakes upon all wheels of every such vehicle; except that:

(I) Any trailer or semitrailer of less than three thousand pounds gross weight, or any horse trailer of a capacity of two horses or less, or any trailer which does not meet the definition of "commercial vehicle" as that term is defined in section 42-4-235 (1) (a) and which is owned by a farmer when transporting agricultural products produced on the owner's farm or supplies back to the farm of the owner of the trailer, or tank trailers not exceeding ten thousand pounds gross weight used solely for transporting liquid fertilizer or gaseous fertilizer under pressure, or distributor trailers not exceeding ten thousand pounds gross weight used solely for transporting and distributing dry fertilizer when hauled by a truck capable of stopping within the distance specified by subsection (2) of this section need not be equipped with brakes, and any two-wheel motor vehicle need have brakes on only one wheel.

(II) Any truck or truck tractor, manufactured before July 25, 1980, and having three or more axles, need not have brakes on the wheels of the front or tandem steering axles if the brakes on the other wheels meet the performance requirements of subsection (2) of this section.

(III) Every trailer or semitrailer of three thousand pounds or more gross weight must have brakes on all wheels.

(e) Provisions of this subsection (1) shall not apply to manufactured homes.
(2) Performance ability of brakes:

(a) The service brakes upon any motor vehicle or combination of vehicles shall be adequate to stop such vehicle when traveling twenty miles per hour within a distance of forty feet when upon dry asphalt or concrete pavement surface free from loose material where the grade does not exceed one percent.

(b) Under the conditions stated in paragraph (a) of this subsection (2), the hand brakes shall be adequate to stop such vehicle within a distance of fifty-five feet, and said hand brake shall be adequate to hold such vehicle stationary on any grade upon which operated.

(c) Under the conditions stated in paragraph (a) of this subsection (2), the service brakes upon a motor vehicle equipped with two-wheel brakes only, when permitted under this section, shall be adequate to stop the vehicle within a distance of fifty-five feet.

(d) All braking distances specified in this section shall apply to all vehicles mentioned, whether such vehicles are not loaded or are loaded to the maximum capacity permitted under this title.

(e) All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as possible with respect to the wheels on opposite sides of the vehicle.

(2.5) The department of public safety is specifically authorized to adopt rules relating to the use of surge brakes.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


ANNOTATION

Annotator's note. Since § 42-4-223 is similar to § 42-4-220 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included in the annotations to this section.

Before an instruction concerning the adequacy of brakes may be given, although such instruction is a correct abstract statement of law, there must be evidence of defective brakes prior to or at the time of the collision, and also some evidence that this condition was the proximate cause of the accident. Prentiss v. Johnston, 119 Colo. 370, 203 P.2d 733 (1949).

42-4-224. Horns or warning devices.

(1) Every motor vehicle, when operated upon a highway, shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound, except as provided in section 42-4-213 (1) in the case of authorized emergency vehicles or as provided in section 42-4-222. The driver of a motor vehicle,
(2) No vehicle shall be equipped with nor shall any person use upon a vehicle any audible device except as otherwise permitted in this section. It is permissible but not required that any vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as a warning signal unless the alarm device is a required part of the vehicle. Nothing in this section is meant to preclude the use of audible warning devices that are activated when the vehicle is backing. Any authorized emergency vehicle may be equipped with an audible signal device under section 42-4-213 (1), but such device shall not be used except when such vehicle is operated in response to an emergency call or in the actual pursuit of a suspected violator of the law or for other special purposes, including, but not limited to, funerals, parades, and the escorting of dignitaries. Such device shall not be used for such special purposes unless the circumstances would not lead a reasonable person to believe that such vehicle is responding to an actual emergency.

(3) No bicycle, electrical assisted bicycle, or low-power scooter shall be equipped with nor shall any person use upon such vehicle a siren or whistle.

(4) Snowplows and other snow-removal equipment shall display flashing yellow lights meeting the requirements of section 42-4-214 as a warning to drivers when such equipment is in service on the highway.

(5) (a) When any snowplow or other snow-removal equipment displaying flashing yellow lights is engaged in snow and ice removal or control, drivers of all other vehicles shall exercise more than ordinary care and caution in approaching, overtaking, or passing such snowplow.

(b) The driver of a snowplow, while engaged in the removal or control of snow and ice on any highway open to traffic and while displaying the required flashing yellow warning lights as provided by section 42-4-214, shall not be charged with any violation of the provisions of this article relating to parking or standing, turning, backing, or yielding the right-of-way. These exemptions shall not relieve the driver of a snowplow from the duty to drive with due regard for the safety of all persons, nor shall these exemptions protect the driver of a snowplow from the consequences of a reckless or careless disregard for the safety of others.

(6) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-221 as it existed prior to 1994, and the former § 42-4-224 was relocated to § 42-4-227.
cut-off, bypass, or similar device. No person shall modify the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the motor of such vehicle above that emitted by the muffler originally installed on the vehicle, and such original muffler shall comply with all of the requirements of this section.

(1.5) Any commercial vehicle, as defined in section 42-4-235 (1) (a), subject to registration and operated on a highway, that is equipped with an engine compression brake device is required to have a muffler.

(2) A muffler is a device consisting of a series of chamber or baffle plates or other mechanical design for the purpose of receiving exhaust gas from an internal combustion engine and effective in reducing noise.

(3) Any person who violates subsection (1) of this section commits a class B traffic infraction. Any person who violates subsection (1.5) of this section shall, upon conviction, be punished by a fine of five hundred dollars. Fifty percent of any fine for a violation of subsection (1.5) of this section occurring within the corporate limits of a city or town, or within the unincorporated area of a county, shall be transmitted to the treasurer or chief financial officer of said city, town, or county, and the remaining fifty percent shall be transmitted to the state treasurer, credited to the highway users tax fund, and allocated and expended as specified in section 43-4-205 (5.5) (a), C.R.S.

(4) This section shall not apply to electric motor vehicles.


Editor's note: This section is similar to former § 42-4-222 as it existed prior to 1994, and the former § 42-4-225 was relocated to § 42-4-228.

42-4-226. Mirrors - exterior placements.

(1) Every motor vehicle shall be equipped with a mirror or mirrors so located and so constructed as to reflect to the driver a free and unobstructed view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

(2) Whenever any motor vehicle is not equipped with a rear window and rear side windows or has a rear window and rear side windows composed of, covered by, or treated with any material or component that, when viewed from the position of the driver, obstructs the rear view of the driver or makes such window or windows nontransparent, or whenever any motor vehicle is towing another vehicle or trailer or carrying any load or cargo or object that obstructs the rear view of the driver, such vehicle shall be equipped with an exterior mirror on each side so located with respect to the position of the driver as to comply with the visual requirement of subsection (1) of this section.

(3) Any person who violates any provision of this section commits a class B traffic infraction.
42-4-227. Windows unobstructed - certain materials prohibited - windshield wiper requirements.

(1) (a) (I) Except as otherwise provided in this paragraph (a), no person shall operate a motor vehicle registered in Colorado on which any window, except the windshield, is composed of, covered by, or treated with any material or component that presents an opaque, nontransparent, or metallic or mirrored appearance in such a way that it allows less than twenty-seven percent light transmittance. The windshield shall allow at least seventy percent light transmittance.

(II) Notwithstanding subparagraph (I) of this paragraph (a), the windows to the rear of the driver, including the rear window, may allow less than twenty-seven percent light transmittance if the front side windows and the windshield on such vehicles allow at least seventy percent light transmittance.

(III) A law enforcement vehicle may have its windows, except the windshield, treated in such a manner so as to allow less than twenty-seven percent light transmittance only for the purpose of providing a valid law enforcement service. A law enforcement vehicle with such window treatment shall not be used for any traffic law enforcement operations, including operations concerning any offense in this article. For purposes of this subparagraph (III), "law enforcement vehicle" means a vehicle owned or leased by a state or local law enforcement agency. The treatment of the windshield of a law enforcement vehicle is subject to the limits described in paragraph (b) of this subsection (1).

(b) Notwithstanding any provision of paragraph (a) of this subsection (1), nontransparent material may be applied, installed, or affixed to the topmost portion of the windshield subject to the following:

(I) The bottom edge of the material extends no more than four inches measured from the top of the windshield down;

(II) The material is not red or amber in color, nor does it affect perception of primary colors or otherwise distort vision or contain lettering that distorts or obstructs vision;

(III) The material does not reflect sunlight or headlight glare into the eyes of occupants of oncoming or preceding vehicles to any greater extent than the windshield without the material.

(c) Nothing in this subsection (1) shall be construed to prevent the use of any window which is composed of, covered by, or treated with any material or component in a manner approved by federal statute or regulation if such window was included as a component part of a vehicle at the time of the vehicle manufacture, or the replacement of any such window by such covering which meets such guidelines.
(d) No material shall be used on any window in the motor vehicle that presents a metallic or mirrored appearance.

(e) Nothing in this subsection (1) shall be construed to deny or prevent the use of certificates or other papers which do not obstruct the view of the driver and which may be required by law to be displayed.

(2) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(3) (a) Except as provided in paragraph (b) of this subsection (3), any person who violates any provision of this section commits a class B traffic infraction.

(b) Any person who installs, covers, or treats a windshield or window so that the windshield or window does not meet the requirements of paragraph (a) of subsection (1) of this section is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars.

(4) This section shall apply to all motor vehicles; except that subsection (2) of this section shall not apply to low-speed electric vehicles.


**Editor's note:** This section is similar to former § 42-4-224 as it existed prior to 1994, and the former § 42-4-227 was relocated to § 42-4-230.

**42-4-228. Restrictions on tire equipment.**

(1) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(2) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway, and it is unlawful to operate upon the highways of this state any motor vehicle, trailer, or semitrailer equipped with solid rubber tires.

(3) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberances of any material other than rubber which projects beyond the tread on the traction surface of the tire; except that, on single-tired passenger vehicles and on other single-tired vehicles with rated capacities up to and including three-fourths ton, it shall be permissible to use tires containing studs or other protuberances which do not project more than one-sixteenth of an inch beyond the tread of the traction surface of the tire; and except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway; and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.
(4) The department of transportation and local authorities in their respective jurisdictions, in their discretion, may issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this article.

(5) (a) No person shall drive or move a motor vehicle on any highway unless such vehicle is equipped with tires in safe operating condition in accordance with this subsection (5) and any supplemental rules and regulations promulgated by the executive director of the department.

(b) The executive director of the department shall promulgate such rules as the executive director deems necessary setting forth requirements of safe operating conditions for tires. These rules shall be utilized by law enforcement officers for visual inspection of tires and shall include methods for simple gauge measurement of tire tread depth.

(c) A tire shall be considered unsafe if it has:

(I) Any bump, bulge, or knot affecting the tire structure;

(II) A break which exposes a tire body cord or is repaired with a boot or patch;

(III) A tread depth of less than two thirty-twoths of an inch measured in any two tread grooves at three locations equally spaced around the circumference of the tire, or, on those tires with tread wear indicators, a tire shall be considered unsafe if it is worn to the point that the tread wear indicators contact the road in any two-tread grooves at three locations equally spaced around the circumference of the tire; except that this subparagraph (III) shall not apply to tires on a commercial vehicle as such term is defined in section 42-4-235 (1) (a); or

(IV) Such other conditions as may be reasonably demonstrated to render it unsafe.

(6) No passenger car tire shall be used on any motor vehicle which is driven or moved on any highway if such tire was designed or manufactured for nonhighway use.

(7) No person shall sell any motor vehicle for highway use unless the vehicle is equipped with tires that are in compliance with subsections (5) and (6) of this section and any rules of safe operating condition promulgated by the department.

(8) (a) Any person who violates any provision of subsection (1), (2), (3), (5), or (6) of this section commits a class A traffic infraction.

(b) Any person who violates any provision of subsection (7) of this section commits a class 2 misdemeanor traffic offense.


Editor's note: This section is similar to former § 42-4-225 as it existed prior to 1994.

Cross references: For the penalty for class 2 misdemeanor traffic offenses, see § 42-4-1701 (3)(a)(II).
Annotator's note. Since § 42-4-228 is similar to § 42-4-225 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included in the annotations to this section.

In the ascertainment of the legislative intent, this section must be harmonized with other sections of the act from which codified, so as to give effect to its purpose, if possible. People v. Rapini, 107 Colo. 363, 112 P.2d 551, 134 A.L.R. 545 (1941).

The protection of the highway being one of the objects of the act, the legislative intent must have been to achieve this object by prohibiting vehicles that would be injurious to highways. People v. Rapini, 107 Colo. 363, 112 P.2d 551, 134 A.L.R. 545 (1941).

A binder is a "vehicle" within the meaning of subsection (3) of this section, and its use in violation thereof is not excused by § 42-4-202. People v. Rapini, 107 Colo. 363, 112 P.2d 551, 134 A.L.R. 545 (1941).

42-4-229. Safety glazing material in motor vehicles.

(1) No person shall sell any new motor vehicle, nor shall any new motor vehicle be registered, unless such vehicle is equipped with safety glazing material of a type approved by the department for any required front windshield and wherever glazing material is used in doors and windows of said motor vehicle. This section shall apply to all passenger-type motor vehicles, including passenger buses and school vehicles, but, in respect to camper coaches and trucks, including truck tractors, the requirements as to safety glazing material shall apply only to all glazing material used in required front windshields and that used in doors and windows in the drivers' compartments and such other compartments as are lawfully occupied by passengers in said vehicles.

(2) The term "safety glazing materials" means such glazing materials as will reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) The department shall compile and publish a list of types of glazing material by name approved by it as meeting the requirements of this section, and the department shall not, after January 1, 1958, register any motor vehicle which is subject to the provisions of this section unless it is equipped with an approved type of safety glazing material, and the department shall suspend the registration of any motor vehicle subject to this section which is found to be not so equipped until it is made to conform to the requirements of this section.

(4) A person shall not operate a motor vehicle on a highway unless the vehicle is equipped with a front windshield as provided in this section, except as provided in section 42-4-232 (1) and except for motor vehicles registered as collector's items under section 42-12-301 or 42-12-302.

(5) Any person who violates any provision of this section commits a class B traffic infraction.

42-4-230. Emergency lighting equipment - who must carry.

(1) No motor vehicle carrying a truck license and weighing six thousand pounds or more and no passenger bus shall be operated over the highways of this state at any time without carrying in an accessible place inside or on the outside of the vehicle three bidirectional emergency reflective triangles of a type approved by the department, but the use of such equipment is not required in municipalities where there are street lights within not more than one hundred feet.

(2) Whenever a motor vehicle referred to in subsection (1) of this section is stopped upon the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver of the stopped motor vehicle shall immediately activate the vehicular hazard warning signal flashers and continue the flashing until the driver places the bidirectional emergency reflective triangles as directed in subsection (3) of this section.

(3) Except as provided in subsection (2) of this section, whenever a motor vehicle referred to in subsection (1) of this section is stopped upon the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall, as soon as possible, but in any event within ten minutes, place the bidirectional emergency reflective triangles in the following manner:

(a) One at the traffic side of the stopped vehicle, within ten feet of the front or rear of the vehicle;

(b) One at a distance of approximately one hundred feet from the stopped vehicle in the center of the traffic lane or shoulder occupied by the vehicle and in the direction toward traffic approaching in that lane; and

(c) One at a distance of approximately one hundred feet from the stopped vehicle in the opposite direction from those placed in accordance with paragraphs (a) and (b) of this subsection (3) in the center of the traffic lane or shoulder occupied by the vehicle; or

(d) If the vehicle is stopped within five hundred feet of a curve, crest of a hill, or other obstruction to view, the driver shall place the emergency equipment required by this subsection (3) in the direction of the obstruction to view at a distance of one hundred feet to five hundred feet from the stopped vehicle so as to afford ample warning to other users of the highway; or

(e) If the vehicle is stopped upon the traveled portion or the shoulder of a divided or one-way highway, the driver shall place the emergency equipment required by this subsection (3), one at a distance of two hundred feet and one at a distance of one hundred feet in a direction toward approaching traffic in the center of the lane or shoulder occupied by the vehicle, and one at the traffic side of the vehicle within ten feet of the rear of the vehicle.

Editor's note: This section is similar to former § 42-4-226 as it existed prior to 1994, and the former § 42-4-229 was relocated to § 42-4-231.
(4) No motor vehicle operating as a wrecking car at the scene of an accident shall move or attempt to move any wrecked vehicle without first complying with those sections of the law concerning emergency lighting.

(5) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-227 as it existed prior to 1994.

ANNOTATION

Annotator's note. Since § 42-4-230 is similar to § 42-4-227 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included in the annotations to this section.

Such statutes construed as giving reasonable time to comply with its requirements. Statutes requiring the operator of a vehicle which breaks down or stops on the paved portion of a highway to forthwith, or immediately, place or display torches or flares to warn oncoming traffic on the highway should be and generally are construed as giving the driver a reasonable time within which to comply with the statutory requirements. Anderson v. Hudspeth Pine, Inc., 299 F.2d 874 (10th Cir. 1962).


Lack of equipment not proximate cause of accident. The fact that the tractor and trailer were not equipped with all of the emergency equipment required by this section was not the proximate cause of the collision between a stopped truck and an automobile, if the driver of the truck had insufficient time to put out warning flares. Anderson v. Hudspeth Pine, Inc., 299 F.2d 874 (10th Cir. 1962).


42-4-231. Parking lights.

When lighted lamps are required by section 42-4-204, no vehicle shall be driven upon a highway with the parking lights lighted except when the lights are being used as signal lamps and except when the head lamps are lighted at the same time. Parking lights are those lights permitted by section 42-4-215 and any other lights mounted on the front of the vehicle, designed to be displayed primarily when the vehicle is parked. Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-229 as it existed prior to 1994, and the former § 42-4-231 was relocated to § 42-4-232.

42-4-232. Minimum safety standards for motorcycles and low-power scooters.

(1) No person shall operate any motorcycle or low-power scooter on any public highway in this state unless such person and any passenger thereon is wearing goggles or eyeglasses with lenses made of safety glass or plastic; except that this subsection (1) shall not apply to a person wearing a helmet containing eye protection made of safety glass or plastic.

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(2) The department shall adopt standards and specifications for the design of goggles and eyeglasses.

(3) Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passengers.

(4) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-231 as it existed prior to 1994, and the former § 42-4-232 was relocated to § 42-4-233.

Cross references: For regulation of motorcycles generally, see part 15 of this article.

ANNOTATION

Annotator's note. Since § 42-4-232 is similar to § 42-4-231 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included in the annotations to this section.

Although a motorcycle is a motor vehicle, the general assembly has occasionally treated it as a class apart from other motor vehicles. This was done in § 42-2-114, which requires a special licensing for the operators of motorcycles. Love v. Bell, 171 Colo. 27, 465 P.2d 118 (1970).

This section is reasonably related to the public health, safety, and welfare. Love v. Bell, 171 Colo. 27, 465 P.2d 118 (1970).

Purpose of section is within police power. The purpose of the requirement of this section that cyclists wear protective helmets is to prevent them from sustaining head injuries, and such purpose is within the police power of the state. Love v. Bell, 171 Colo. 27, 465 P.2d 118 (1970).

Because movement and travel are subject to regulation under the police power of the state, and the effect of this section is to regulate, not prohibit, movement. Love v. Bell, 171 Colo. 27, 465 P.2d 118 (1970).

This section does not create an unconstitutional burden on interstate commerce; it is not discriminatory and does not constitute special legislation prohibited by the Colorado constitution; it is not an unconstitutional burden on the freedom of movement and right to travel; and that portion of this section dealing with goggles and protective glasses is a valid exercise of the police power of the state. Love v. Bell, 171 Colo. 27, 465 P.2d 118 (1970).

The supreme court will invalidate a safety measure enacted by a state only when the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it. Love v. Bell, 171 Colo. 27, 465 P.2d 118 (1970).

42-4-233. Alteration of suspension system.

(1) No person shall operate a motor vehicle of a type required to be registered under the laws of this state upon a public highway with either the rear or front suspension system altered or changed from the manufacturer's original design except in accordance with specifications permitting such alteration established by the department. Nothing contained in this section shall
prevent the installation of manufactured heavy duty equipment to include shock absorbers and overload springs, nor shall anything contained in this section prevent a person from operating a motor vehicle on a public highway with normal wear of the suspension system if normal wear shall not affect the control of the vehicle.

(2) This section shall not apply to motor vehicles designed or modified primarily for off-highway racing purposes, and such motor vehicles may be lawfully towed on the highways of this state.

(3) Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense.


Editor's note: This section is similar to former § 42-4-232 as it existed prior to 1994, and the former § 42-4-233 was relocated to § 42-4-234.

Cross references: For the penalty for class 2 misdemeanor traffic offenses, see § 42-4-1701 (3)(a)(II).

ANNOTATION

Annotator's note. Since § 42-4-233 is similar to § 42-4-232 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1 a relevant case construing that provision has been included in the annotations to this section.

Section unconstitutional. This section's flat prohibition against any motor vehicle suspension system alteration, except the installation of heavy duty shock absorbers or springs, is unconstitutionally overbroad. People v. Von Tersch, 180 Colo. 295, 505 P.2d 5 (1973) (decided prior to 1975 amendment).

42-4-234. Slow-moving vehicles - display of emblem.

(1) (a) All machinery, equipment, and vehicles, except bicycles, electrical assisted bicycles, and other human-powered vehicles, designed to operate or normally operated at a speed of less than twenty-five miles per hour on a public highway shall display a triangular slow-moving vehicle emblem on the rear.

(b) The department shall set standards for a triangular slow-moving emblem for use on low-speed electric vehicles.

(c) Bicycles, electrical assisted bicycles, and other human-powered vehicles shall be permitted but not required to display the emblem specified in this subsection (1).

(2) The executive director of the department shall adopt standards and specifications for such emblem, position of the mounting thereof, and requirements for certification of conformance with the standards and specifications adopted by the American society of agricultural engineers concerning such emblems. The requirements of such emblem shall be in addition to any lighting device required by law.

(3) The use of the emblem required under this section shall be restricted to the use specified in subsection (1) of this section, and its use on any other type of vehicle or stationary object shall be prohibited.
(4) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: (1) This section is similar to former § 42-4-233 as it existed prior to 1994, and the former § 42-4-234 was relocated to § 42-4-235.

(2) Amendments to subsection (1) by Senate Bill 09-075 and House Bill 09-1026 were harmonized.


(1) As used in this section, unless the context otherwise requires:

(a) "Commercial vehicle" means:

(I) Any self-propelled or towed vehicle bearing an apportioned plate or having a manufacturer's gross vehicle weight rating or gross combination rating of ten thousand one pounds or more, which vehicle is used in commerce on the public highways of this state or is designed to transport sixteen or more passengers, including the driver, unless such vehicle is a school bus regulated pursuant to section 42-4-1904 or any vehicle that does not have a gross vehicle weight rating of twenty-six thousand one or more pounds and that is owned or operated by a school district so long as such school district does not receive remuneration for the use of such vehicle, not including reimbursement for the use of such vehicle;

(II) Any motor vehicle designed or equipped to transport other motor vehicles from place to place by means of winches, cables, pulleys, or other equipment for towing, pulling, or lifting, when such motor vehicle is used in commerce on the public highways of this state; and

(III) A motor vehicle that is used on the public highways and transports materials determined by the secretary of transportation to be hazardous under 49 U.S.C. sec. 5103 in such quantities as to require placarding under 49 CFR parts 172 and 173.

(b) Repealed.

(c) "Motor carrier" means every person, lessee, receiver, or trustee appointed by any court whatsoever owning, controlling, operating, or managing any commercial vehicle as defined in paragraph (a) of this subsection (1).

(2) (a) No person shall operate a commercial vehicle, as defined in subsection (1) of this section, on any public highway of this state unless such vehicle is in compliance with the rules adopted by the chief of the Colorado state patrol pursuant to subsection (4) of this section. Any person who violates the rules, including any intrastate motor carrier, shall be subject to the civil penalties authorized pursuant to 49 CFR part 386, subpart G, as such subpart existed on October 1, 2001. Persons who utilize an independent contractor shall not be liable for penalties imposed on the independent contractor for equipment, acts, and omissions within the independent contractor's control or supervision. All civil penalties collected pursuant to this article by a state
agency or by a court shall be transmitted to the state treasurer, who shall credit them to the
highway users tax fund created in section 43-4-201, C.R.S., for allocation and expenditure as
specified in section 43-4-205 (5.5) (a), C.R.S.

(b) Notwithstanding paragraph (a) of this subsection (2):

(I) Intrastate motor carriers shall not be subject to any provisions in 49 CFR, part 386,
subpart G that relate the amount of a penalty to a violator's ability to pay, and such penalties shall
be based upon the nature and gravity of the violation, the degree of culpability, and such other
matters as justice and public safety may require;

(II) When determining the assessment of a civil penalty for safety violations, the period of a
motor carrier's safety compliance history that a compliance review officer may consider shall not
exceed three years;

(III) The intrastate operation of implements of husbandry shall not be subject to the civil
penalties provided in 49 CFR, part 386, subpart G. Nothing in this subsection (2) shall be
construed to repeal, preempt, or negate any existing regulatory exemption for agricultural
operations, intrastate farm vehicle drivers, intrastate vehicles or combinations of vehicles with a
gross vehicle weight rating of not more than twenty-six thousand pounds that do not require a
commercial driver's license to operate, or any successor or analogous agricultural exemptions,
whether based on federal or state law.

(IV) This section does not apply to a motor vehicle or motor vehicle and trailer combination:

(A) With a gross vehicle weight, gross vehicle weight rating, or gross combination rating of
less than twenty-six thousand one pounds;

(B) Not operated in interstate commerce;

(C) Not transporting hazardous materials requiring placarding;

(D) Not transporting either sixteen or more passengers including the driver or eight or more
passengers for compensation; and

(E) If the motor vehicle or combination is being used solely for agricultural purposes.

(c) The Colorado state patrol shall have exclusive enforcement authority to conduct safety
compliance reviews, as defined in 49 CFR 385.3, as such section existed on October 1, 2001, and
to impose civil penalties pursuant to such reviews. Nothing in this paragraph (c) shall expand or
limit the ability of local governments to conduct roadside safety inspections.

(d) (I) Upon notice from the Colorado state patrol, the department shall, pursuant to section
42-3-120, cancel the registration of a motor carrier who fails to pay in full a civil penalty
imposed pursuant to this subsection (2) within thirty days after notification of the penalty.

(II) Repealed.

(3) Any motor carrier operating a commercial vehicle within Colorado must declare
knowledge of the rules adopted by the chief of the Colorado state patrol pursuant to subsection
(4) of this section. The declaration of knowledge shall be in writing on a form provided by the
Colorado state patrol. The form must be signed and returned by a motor carrier according to rules adopted by the chief.

(4) (a) The chief of the Colorado state patrol shall adopt rules for the operation of all commercial vehicles. In adopting the rules, the chief shall use as general guidelines the standards contained in the current rules and regulations of the United States department of transportation relating to safety regulations, qualifications of drivers, driving of motor vehicles, parts and accessories, notification and reporting of accidents, hours of service of drivers, inspection, repair and maintenance of motor vehicles, financial responsibility, insurance, and employee safety and health standards; except that rules regarding financial responsibility and insurance do not apply to a commercial vehicle as defined in subsection (1) of this section that is also subject to regulation by the public utilities commission under article 10.1 of title 40, C.R.S. On and after September 1, 2003, all commercial vehicle safety inspections conducted to determine compliance with rules promulgated by the chief pursuant to this paragraph (a) shall be performed by an enforcement official, as defined in section 42-20-103 (2), who has been certified by the commercial vehicle safety alliance, or any successor organization thereto, to perform level I inspections.

(b) The Colorado public utilities commission may enforce safety rules of the chief of the Colorado state patrol governing commercial vehicles described in subparagraphs (I) and (II) of paragraph (a) of subsection (1) of this section pursuant to his or her authority to regulate motor carriers as defined in section 40-10.1-101, C.R.S., including the issuance of civil penalties for violations of the rules as provided in section 40-7-113, C.R.S.

(5) Any person who violates a rule promulgated by the chief of the Colorado state patrol pursuant to this section or fails to comply with subsection (3) of this section commits a class 2 misdemeanor traffic offense.


Editor's note: (1) This section is similar to former § 42-4-234 as it existed prior to 1994, and the former § 42-4-235 was relocated to § 42-4-236.

(2) Subsection (2)(d)(II)(B) provided for the repeal of subsection (2)(d)(II), effective July 1, 2009. (See L. 2007, p. 857.)

(3) Section 2 of chapter 116, Session Laws of Colorado 2012, provides that the act adding subsection (2)(b)(IV) applies to offenses committed on or after August 8, 2012.

Cross references: For the penalty for class 2 misdemeanor traffic offenses, see § 42-4-1701 (3)(a)(II).

42-4-236. Child restraint systems required - definitions - exemptions.
(1) As used in this section, unless the context otherwise requires:

(a) "Child care center" means a facility required to be licensed under the "Child Care Licensing Act", article 6 of title 26, C.R.S.

(a.3) (Deleted by amendment, L. 2010, (SB 10-110), ch. 294, p. 1365, § 3, effective August 1, 2010.)

(a.5) "Child restraint system" means a specially designed seating system that is designed to protect, hold, or restrain a child in a motor vehicle in such a way as to prevent or minimize injury to the child in the event of a motor vehicle accident that is either permanently affixed to a motor vehicle or is affixed to such vehicle by a safety belt or a universal attachment system, and that meets the federal motor vehicle safety standards set forth in section 49 CFR 571.213, as amended.

(a.7) (Deleted by amendment, L. 2010, (SB 10-110), ch. 294, p. 1365, § 3, effective August 1, 2010.)

(a.8) "Motor vehicle" means a passenger car; a pickup truck; or a van, minivan, or sport utility vehicle with a gross vehicle weight rating of less than ten thousand pounds. "Motor vehicle" does not include motorcycles, low-power scooters, motorscooters, motorbicycles, motorized bicycles, and farm tractors and implements of husbandry designed primarily or exclusively for use in agricultural operations.

(b) "Safety belt" means a lap belt, a shoulder belt, or any other belt or combination of belts installed in a motor vehicle to restrain drivers and passengers, except any such belt that is physically a part of a child restraint system. "Safety belt" includes the anchorages, the buckles, and all other equipment directly related to the operation of safety belts. Proper use of a safety belt means the shoulder belt, if present, crosses the shoulder and chest and the lap belt crosses the hips, touching the thighs.

(c) "Seating position" means any motor vehicle interior space intended by the motor vehicle manufacturer to provide seating accommodation while the motor vehicle is in motion.

(2) (a) (I) Unless exempted pursuant to subsection (3) of this section and except as otherwise provided in subparagraphs (II) and (III) of this paragraph (a), every child who is under eight years of age and who is being transported in this state in a motor vehicle or in a vehicle operated by a child care center, shall be properly restrained in a child restraint system, according to the manufacturer's instructions.

(II) If the child is less than one year of age and weighs less than twenty pounds, the child shall be properly restrained in a rear-facing child restraint system in a rear seat of the vehicle.

(III) If the child is one year of age or older, but less than four years of age, and weighs less than forty pounds, but at least twenty pounds, the child shall be properly restrained in a rear-facing or forward-facing child restraint system.

(b) Unless excepted pursuant to subsection (3) of this section, every child who is at least eight years of age but less than sixteen years of age who is being transported in this state in a
motor vehicle or in a vehicle operated by a child care center, shall be properly restrained in a safety belt or child restraint system according to the manufacturer's instructions.

(c) If a parent is in the motor vehicle, it is the responsibility of the parent to ensure that his or her child or children are provided with and that they properly use a child restraint system or safety belt system. If a parent is not in the motor vehicle, it is the responsibility of the driver transporting a child or children, subject to the requirements of this section, to ensure that such children are provided with and that they properly use a child restraint system or safety belt system.

(3) Except as provided in section 42-2-105.5 (4), subsection (2) of this section does not apply to a child who:

(a) Repealed.

(b) Is less than eight years of age and is being transported in a motor vehicle as a result of a medical or other life-threatening emergency and a child restraint system is not available;

(c) Is being transported in a commercial motor vehicle, as defined in section 42-2-402 (4) (a), that is operated by a child care center;

(d) Is the driver of a motor vehicle and is subject to the safety belt requirements provided in section 42-4-237;

(e) (Deleted by amendment, L. 2011, (SB 11-227), ch. 295, p. 1399, § 1, effective June 7, 2011.)

(f) Is being transported in a motor vehicle that is operated in the business of transporting persons for compensation or hire by or on behalf of a common carrier or a contract carrier as those terms are defined in section 40-10.1-101, C.R.S., or an operator of a luxury limousine service as defined in section 40-10.1-301, C.R.S.

(4) The division of highway safety shall implement a program for public information and education concerning the use of child restraint systems and the provisions of this section.

(5) No person shall use a safety belt or child restraint system, whichever is applicable under the provisions of this section, for children under sixteen years of age in a motor vehicle unless it conforms to all applicable federal motor vehicle safety standards.

(6) Any violation of this section shall not constitute negligence per se or contributory negligence per se.

(7) (a) Except as otherwise provided in paragraph (b) of this subsection (7), any person who violates any provision of this section commits a class B traffic infraction.

(b) A minor driver under eighteen years of age who violates this section shall be punished in accordance with section 42-2-105.5 (5) (b).

(8) The fine may be waived if the defendant presents the court with satisfactory evidence of proof of the acquisition, purchase, or rental of a child restraint system by the time of the court appearance.
(9) (Deleted by amendment, L. 2010, (SB 10-110), ch. 294, p. 1365, § 3, effective August 1, 2010.)

(10) and (11) Repealed.

Source: L. 94: Entire title amended with relocations, p. 2268, § 1, effective January 1, 1995. L. 95: (1)(a), (2), (3), (5), and (8) amended and (1)(a.5) added, p. 327, § 1, effective July 1. L. 96: (1)(a) amended, p. 267, § 23, effective July 1. L. 99: IP(3) amended, p. 1382, § 7, effective July 1; (3)(a) repealed, p. 1349, § 1, effective August 4. L. 2002: (1) and (2) amended and (9) and (10) added, pp. 1215, 1217, §§ 2, 3, effective August 1, 2003. L. 2003: (2)(b) amended, p. 2358, § 1, effective June 3; (2)(b)(I) amended and (2)(b)(I.5) added, p. 560, § 1, effective August 1. L. 2006: (10) repealed, p. 1512, § 72, effective June 1; (7) amended, p. 439, § 2, effective July 1. L. 2010: (1)(a.3), (1)(a.7), (1)(b), (2), (3), (8), and (9) amended and (1)(a.8) and (11) added, (SB 10-110), ch. 294, pp. 1365, 1364, §§ 3, 2, effective August 1. L. 2011: IP(3) and (3)(e) amended, (SB 11-227), ch. 295, p. 1399, § 1, effective June 7; IP(3) and (3)(f) amended, (HB 11-1198), ch. 127, p. 426, § 27, effective August 10.

Editor's note: (1) This section is similar to former § 42-4-235 as it existed prior to 1994, and the former § 42-4-236 was relocated to § 42-4-237.

(2) Amendments to subsection (2)(b) by House Bill 03-1144 and House Bill 03-1381 were harmonized.

(3) The introductory portion to subsection (3) was amended in Senate Bill 11-227. Those amendments were superseded by the amendment of this section in House Bill 11-1198.

(4) Subsection (11)(b) provided for the repeal of subsection (11), effective August 1, 2011. (See L. 2010, p. 1367.)

Cross references: For the legislative declaration contained in the 1999 act amending the introductory portion to subsection (3), see section 1 of chapter 334, Session Laws of Colorado 1999. For the legislative declaration contained in the 2002 act amending subsections (1) and (2) and enacting subsections (9) and (10), see section 1 of chapter 301, Session Laws of Colorado 2002.

ANNOTATION

Parents, as fellow passengers in a vehicle, do not have a duty to assure that their children use seat belts nor to request that a driver drive more carefully because of their children's presence in the vehicle. Wark v. McClellan, 68 P.3d 574 (Colo. App. 2003).

42-4-237. Safety belt systems - mandatory use - exemptions - penalty.

(1) As used in this section:

(a) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the public highways, including passenger cars, station wagons, vans, taxicabs, ambulances, motor homes, and pickups. The term does not include motorcycles, low-power scooters, passenger buses, school buses, and farm tractors and implements of husbandry designed primarily or exclusively for use in agricultural operations.
(b) "Safety belt system" means a system utilizing a lap belt, a shoulder belt, or any other belt or combination of belts installed in a motor vehicle to restrain drivers and passengers, which system conforms to federal motor vehicle safety standards.

(2) Unless exempted pursuant to subsection (3) of this section, every driver of and every front seat passenger in a motor vehicle equipped with a safety belt system shall wear a fastened safety belt while the motor vehicle is being operated on a street or highway in this state.

(3) Except as provided in section 42-2-105.5, the requirement of subsection (2) of this section shall not apply to:

(a) A child required by section 42-4-236 to be restrained by a child restraint system;

(b) A member of an ambulance team, other than the driver, while involved in patient care;

(c) A peace officer as described in section 16-2.5-101, C.R.S., while performing official duties so long as the performance of said duties is in accordance with rules and regulations applicable to said officer which are at least as restrictive as subsection (2) of this section and which only provide exceptions necessary to protect the officer;

(d) A person with a physically or psychologically disabling condition whose physical or psychological disability prevents appropriate restraint by a safety belt system if such person possesses a written statement by a physician certifying the condition, as well as stating the reason why such restraint is inappropriate;

(e) A person driving or riding in a motor vehicle not equipped with a safety belt system due to the fact that federal law does not require such vehicle to be equipped with a safety belt system;

(f) A rural letter carrier of the United States postal service while performing duties as a rural letter carrier; and

(g) A person operating a motor vehicle which does not meet the definition of "commercial vehicle" as that term is defined in section 42-4-235 (1) (a) for commercial or residential delivery or pickup service; except that such person shall be required to wear a fastened safety belt during the time period prior to the first delivery or pickup of the day and during the time period following the last delivery or pickup of the day.

(4) (a) Except as otherwise provided in paragraph (b) of this subsection (4), any person who operates a motor vehicle while such person or any passenger is in violation of the requirement of subsection (2) of this section commits a class B traffic infraction. Penalties collected pursuant to this subsection (4) shall be transmitted to the appropriate authority pursuant to the provisions of section 42-1-217 (1) (e) and (2).

(b) A minor driver under eighteen years of age who violates this section shall be punished in accordance with section 42-2-105.5 (5) (b).

(5) No driver in a motor vehicle shall be cited for a violation of subsection (2) of this section unless such driver was stopped by a law enforcement officer for an alleged violation of articles 1 to 4 of this title other than a violation of this section.
(6) Testimony at a trial for a violation charged pursuant to subsection (4) of this section may include:

(a) Testimony by a law enforcement officer that the officer observed the person charged operating a motor vehicle while said operator or any passenger was in violation of the requirement of subsection (2) of this section; or

(b) Evidence that the driver removed the safety belts or knowingly drove a vehicle from which the safety belts had been removed.

(7) Evidence of failure to comply with the requirement of subsection (2) of this section shall be admissible to mitigate damages with respect to any person who was involved in a motor vehicle accident and who seeks in any subsequent litigation to recover damages for injuries resulting from the accident. Such mitigation shall be limited to awards for pain and suffering and shall not be used for limiting recovery of economic loss and medical payments.

(8) The office of transportation safety in the department of transportation shall continue its program for public information and education concerning the benefits of wearing safety belts and shall include within such program the requirements and penalty of this section.


Editor's note: This section is similar to former § 42-4-236 as it existed prior to 1994, and the former § 42-4-237 was relocated to § 42-4-1411.

Cross references: For the legislative declaration contained in the 1999 act amending the introductory portion to subsection (3), see section 1 of chapter 334, Session Laws of Colorado 1999.

ANNOTATION


Annotator's note. Since § 42-4-237 is similar to § 42-4-236 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included in the annotations to this section.

The plain language of this section indicates that "safety belt system" refers to all of the safety belts that have been installed in a motor vehicle to restrain drivers and front seat passengers. The language of this section reflects that a motor vehicle may contain any number, type, or combination of belts within its "safety belt system". The term "safety belt system" does not mean the belts at a particular seat. Rather, a "safety belt system" is comprised of the many belts contained within a motor vehicle to restrain drivers and front seat passengers. Carlson v. Ferris, 85 P.3d 504 (Colo. 2003).

Because the language of subsection (2) does not include the term "system", the general assembly intended "safety belt" to refer to the belts that have been installed in a particular seat pursuant to federal motor vehicle safety standards. Carlson v. Ferris, 85 P.3d 504 (Colo. 2003).
Drivers and front seat passengers of automobiles that have been equipped with a lap and a shoulder belt pursuant to federal motor vehicle safety standards must wear both the lap and the shoulder belt to comply with subsection (2). Carlson v. Ferris, 85 P.3d 504 (Colo. 2003).

Driver is required to fasten all safety belts included in a motor vehicle's safety belt system to comply with subsection (2) in order to defeat a claim for failure to mitigate under subsection (7). Carlson v. Ferris, 58 P.3d 1055 (Colo. App. 2002), aff'd, 85 P.3d 504 (Colo. 2003).

A jury instruction regarding the affirmative defense of failure to wear a seatbelt should be given when it can be inferred with reasonable probability that pain and suffering will occur because of the plaintiff's failure to wear a seatbelt. Anderson v. Watson, 929 P.2d 6 (Colo. App. 1996) (supreme court in Anderson v. Watson, 953 P.2d 1284 (Colo. 1998), annotated below, disagreed with the reasoning of the court of appeals).


Statements regarding how the failure to use a seat belt caused certain injuries may be admitted. Wark v. McClellan, 68 P.3d 574 (Colo. App. 2003).

Evidence sufficient to allow seat belt defense under subsection (7) where husband testified that he was wearing a seat belt and investigating officer testified that the husband had reported that he was not wearing a seat belt at time of accident. Askew v. Gerace, 851 P.2d 199 (Colo. App. 1992) (supreme court in Anderson v. Watson, 953 P.2d 1284 (Colo. 1998), annotated below, disagreed with the reasoning of the court of appeals).

Lack of seat belt use is admissible evidence at trial but only to reduce an award of damages for pain and suffering. Wark v. McClellan, 68 P.3d 574 (Colo. App. 2003).


Defendant must prove a prima facie case of seat belt nonuse before the appropriate instruction on that defense can go to the jury if the defendant chooses to raise that defense. Anderson v. Watson, 953 P.2d 1284 (Colo. 1998) (disagreeing with the reasoning of the court of appeals in Anderson v. Watson and Askew v. Gerace annotated above).


"Pain and suffering" includes all noneconomic damages. Such noneconomic damages include inconvenience, emotional stress, and impairment of the quality of life but not physical impairment and disfigurement. Pringle v. Valdez, 171 P.3d 624 (Colo. 2007).

Failure of victim to employ a seatbelt not an intervening cause that would shield or partially shield the defendant from liability for a collision that resulted in a charge of vehicular homicide. People v. Lopez, 97 P.3d 277 (Colo. App. 2004).

42-4-238. Blue and red lights - illegal use or possession.

(1) A person shall not be in actual physical control of a vehicle, except an authorized emergency vehicle as defined in section 42-1-102 (6), that the person knows contains a lamp or
device that is designed to display, or that is capable of displaying if affixed or attached to the vehicle, a red or blue light visible directly in front of the center of the vehicle.

(2) It shall be an affirmative defense that the defendant was:

(a) A peace officer as described in section 16-2.5-101, C.R.S.; or

(b) In actual physical control of a vehicle expressly authorized by a chief of police or sheriff to contain a lamp or device that is designed to display, or that is capable of displaying if affixed or attached to the vehicle, a red or blue light visible from directly in front of the center of the vehicle; or

(c) A member of a volunteer fire department or a volunteer ambulance service who possesses a permit from the fire chief of the fire department or chief executive officer of the ambulance service through which the volunteer serves to operate a vehicle pursuant to section 42-4-222 (1)(b); or

(d) A vendor who exhibits, sells, or offers for sale a lamp or device designed to display, or that is capable of displaying, if affixed or attached to the vehicle, a red or blue light; or

(e) A collector of fire engines, fire suppression vehicles, or ambulances and the vehicle to which the red or blue lamps were affixed is valued for the vehicle's historical interest or as a collector's item.

(3) A violation of this section is a class 1 misdemeanor.


42-4-239. Misuse of a wireless telephone - definitions - penalty - preemption.

(1) As used in this section, unless the context otherwise requires: (a) "Emergency" means a situation in which a person: (I) Has reason to fear for such person's life or safety or believes that a criminal act may be perpetrated against such person or another person, requiring the use of a wireless telephone while the car is moving; or (II) Reports a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is driving in a reckless, careless, or otherwise unsafe manner. (b) "Operating a motor vehicle" means driving a motor vehicle on a public highway, but "operating a motor vehicle" shall not mean maintaining the instruments of control while the motor vehicle is at rest in a shoulder lane or lawfully parked. (c) "Use" means talking on or listening to a wireless telephone or engaging the wireless telephone for text messaging or other similar forms of manual data entry or transmission. (d) "Wireless telephone" means a telephone that operates without a physical, wireline connection to the provider's equipment. The term includes, without limitation, cellular and mobile telephones. (2) A person under eighteen years of age shall not use a wireless telephone while operating a motor vehicle. (3) A person eighteen years of age or older shall not use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission while operating a motor vehicle. (4) Subsection (2) or (3) of this section shall not apply to a person who is using the wireless telephone: (a) To contact a public safety entity; or (b) During an emergency. (5) (a) A person who operates a motor vehicle
in violation of subsection (2) or (3) of this section commits a class A traffic infraction as defined in section 42-4-1701 (3), and the court or the department of revenue shall assess a fine of fifty dollars. (b) A second or subsequent violation of subsection (2) or (3) of this section shall be a class A traffic infraction as defined in section 42-4-1701 (3), and the court or the department of revenue shall assess a fine of one hundred dollars. (6) (a) An operator of a motor vehicle shall not be cited for a violation of subsection (2) of this section unless the operator was under eighteen years of age and a law enforcement officer saw the operator use, as defined in paragraph (c) of subsection (1) of this section, a wireless telephone. (b) An operator of a motor vehicle shall not be cited for a violation of subsection (3) of this section unless the operator was eighteen years of age or older and a law enforcement officer saw the operator use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission. (7) The provisions of this section shall not be construed to authorize the seizure and forfeiture of a wireless telephone, unless otherwise provided by law. (8) This section does not restrict operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the federal communications commission. (9) The general assembly finds and declares that use of wireless telephones in motor vehicles is a matter of statewide concern.

**Source:** L. 2005: Entire section added, p. 267, § 1, effective August 8. L. 2009: Entire section amended, (HB 09-1094), ch. 375, p. 2043, § 1, effective December 1.

### 42-4-240. Low-speed electric vehicle equipment requirements.

A low-speed electric vehicle shall conform with applicable federal manufacturing equipment standards. Any person who operates a low-speed electric vehicle in violation of this section commits a class B traffic infraction.

**Source:** L. 2009: Entire section added, (SB 09-075), ch. 418, p. 2325, § 15, effective August 5.

### 42-4-241. Unlawful removal of tow-truck signage - unlawful usage of tow-truck signage.

(1) (a) A person, other than a towing carrier or peace officer as described in section 16-2.5-101, C.R.S., commits the crime of unlawful removal of tow-truck signage if:

(I) A towing carrier has placed a tow-truck warning sign on the driver-side window of a vehicle to be towed or, if window placement is impracticable, in another location on the driver-side of the vehicle; and

(II) The vehicle to be towed is within fifty feet of the towing carrier vehicle; and

(III) The person removes the tow-truck warning sign from the vehicle before the tow is completed.

(b) A person commits the crime of unlawful usage of tow-truck signage if the person places a tow-truck warning sign on a vehicle when the vehicle is not in the process of being towed or when the vehicle is occupied.

(c) A towing carrier may permit an owner of the vehicle to be towed to retrieve any personal items from the vehicle before the vehicle is towed.
(2) A person who violates subsection (1) of this section commits a class 3 misdemeanor.

(3) For purposes of this section, "tow-truck warning sign" means a sign that is at least eight inches by eight inches, is either yellow or orange, and states the following:

WARNING: This vehicle is in tow. Attempting to operate or operating this vehicle may result in criminal prosecution and may lead to injury or death to you or another person.


Cross references: In 2011, this section was added by the "Allen Rose Tow-truck Safety Act". For the short title, see section 1 of chapter 298, Session Laws of Colorado 2011.
PART 3
EMISSIONS INSPECTION

42-4-301. Legislative declarations - enactment of enhanced emissions program not waiver of state right to challenge authority to require specific loaded mode transient dynamometer technology in automobile emissions testing.

(1) The general assembly hereby finds and declares that sections 42-4-301 to 42-4-316 are enacted pursuant to, and that the program created by said sections is designed to meet, the requirements of the federal "Clean Air Act", as amended by the federal "Clean Air Act Amendments of 1990", 42 U.S.C. sec. 7401 et seq., as the same is in effect on November 15, 1990.

(2) (a) The general assembly further finds and declares that:

(I) The provisions of sections 42-4-301 to 42-4-316 related to the enhanced emissions program are enacted to comply with administrative requirements of rules and regulations of the federal environmental protection agency;

(II) Insofar as such rules and regulations require the use of loaded mode transient dynamometer technology utilizing a system commonly known as the IM 240 in motor vehicle emissions testing, the general assembly finds that reliable scientific data questions the effectiveness of such technology to measure motor vehicle emissions at the high altitude of the Denver metropolitan area;

(III) Less costly automobile emission testing systems may be available which are as effective or more effective at a lower cost to consumers than the loaded mode transient dynamometer test required by the federal environmental protection agency.

(b) (I) The general assembly, therefore, declares that the enactment of sections 42-4-301 to 42-4-316 in no way forecloses or limits the rights of the general assembly or any other appropriate entity of the state of Colorado to retain legal counsel as provided by law to request the federal environmental protection agency to consider alternative automobile emission inspection technology which may relieve Colorado of the requirements of the federal rules and regulations or change such rules and regulations to require a different technology in automobile emissions testing at a substantial savings in cost to consumers and jobs for Coloradans employed in the testing of motor vehicles for emissions compliance.

(II) If the federal agency refuses to alter its policies related to this issue, the general assembly hereby declares that it or any other appropriate entity of the state of Colorado does not waive the right to bring appropriate legal action in a court of competent jurisdiction to determine the validity of the federal environmental protection agency's authority to require the use of the loaded mode transient dynamometer test for automobile emissions inspection commonly known as the IM 240 when such requirement may be in excess of the federal agency's authority under the federal "Clean Air Act Amendments of 1990".
42-4-302. Commencement of basic emissions program - authority of commission.

Notwithstanding the provisions of sections 42-4-301 to 42-4-316, if the commission is unable to implement the basic emissions program by January 1, 1994, the commission by rule and regulation shall establish the date for the commencement of said program as soon as practicable after January 1, 1994, and the provisions of sections 42-4-301 to 42-4-316 applicable to the basic emissions program shall be effective on and after the date determined by the commission by rule and regulation. Until such date, emission inspection activity in El Paso, Larimer, and Weld counties shall comply with the requirements applicable to inspection and readjustment stations in sections 42-4-301 to 42-4-316, and El Paso, Larimer, and Weld counties shall be deemed to continue to be included in the inspection and readjustment program until implementation of the basic emissions program by the commission pursuant to this section.


Editor's note: This section is similar to former § 42-4-306.5 as it existed prior to 1994.

Cross references: For the "Colorado Air Pollution Prevention and Control Act", see article 7 of title 25.

42-4-303. Sunrise review of registration of repair facilities. (Repealed)


Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 1996. (See L. 94, p. 2273.)

42-4-304. Definitions relating to automobile inspection and readjustment program.

As used in sections 42-4-301 to 42-4-316, unless the context otherwise requires:

(1) "AIR program" or "program" means the automobile inspection and readjustment program until replaced as provided in sections 42-4-301 to 42-4-316, the basic emissions program, and the enhanced emissions program established pursuant to sections 42-4-301 to 42-4-316.

(2) "Basic emissions program" means the inspection and readjustment program, established pursuant to the federal act, in the counties set forth in paragraph (b) of subsection (20) of this section.

(3) (a) "Certification of emissions control" means one of the following certifications, to be issued to the owner of a motor vehicle which is subject to the automobile inspection and readjustment program to indicate the status of inspection requirement compliance of said vehicle:

(I) "Certification of emissions waiver", indicating that the emissions of other than chlorofluorocarbons from the vehicle do not comply with the applicable emissions standards and criteria after inspection, adjustment, and emissions-related repairs in accordance with section 42-4-310.
(II) "Certification of emissions compliance", indicating that the emissions from said vehicle comply with applicable emissions and opacity standards and criteria at the time of inspection or after required adjustments or repairs.

(b) (I) The certification of emissions control will be issued to the vehicle owner at the time of sale or transfer except as provided in section 42-4-310 (1) (a) (I). The certification of emissions control will be in effect for twenty-four months for 1982 and newer model vehicles as defined in section 42-3-106 (4). Except as provided in paragraph (c) of this subsection (3), 1981 and older model vehicles and all vehicles inspected by the fleet-only air inspection stations shall be issued certifications of emissions control valid for twelve months.

(II) Except as provided in paragraph (c) of this subsection (3) and in section 42-4-309, a biennial inspection schedule shall be established for 1982 and newer model vehicles and an annual schedule shall be established for 1981 and older model vehicles.

(c) Repealed.

(d) Subject to section 42-4-310 (4), the certification of emissions control shall be obtained by the seller and transferred to the new owner at the time of vehicle sale or transfer.

(e) For purposes of this subsection (3), "sale or transfer" shall not include a change only in the legal ownership as shown on the vehicle's documents of title, whether for purposes of refinancing or otherwise, that does not entail a change in the physical possession or use of the vehicle.

(3.5) "Clean screen program" means the remote sensing system or other emission profiling system established and operated pursuant to sections 42-4-305 (12), 42-4-306 (23), 42-4-307 (10.5), and 42-4-310 (5).

(4) "Commission" means the air quality control commission, created in section 25-7-104, C.R.S.

(5) "Contractor" means any person, partnership, entity, or corporation that is awarded a contract by the state of Colorado through a competitive bid process conducted by the division in consultation with the executive director and in accordance with the "Procurement Code", articles 101 to 112 of title 24, C.R.S., and section 42-4-306, to provide inspection services for vehicles required to be inspected pursuant to section 42-4-310 within the enhanced program area, as set forth in subsection (9) of this section, to operate enhanced inspection centers necessary to perform inspections, and to operate the clean screen program within the program area.

(6) "Division" means the division of administration in the department of public health and environment.

(7) "Emissions inspector" means:

(a) An individual trained and licensed in accordance with section 42-4-308 to inspect motor vehicles at an inspection-only facility, fleet inspection station, or motor vehicle dealer test facility subject to the enhanced emissions program set forth in this part 3; or
(b) An individual employed by an enhanced inspection center who is authorized by the contractor to inspect motor vehicles subject to the enhanced emissions program set forth in this part 3 and subject to the direction of said contractor.

(8) "Emissions mechanic" means an individual licensed in accordance with section 42-4-308 to inspect and adjust motor vehicles subject to the automobile inspection and readjustment program until such program is replaced as provided in sections 42-4-301 to 42-4-316 and to the basic emissions program after such replacement.

(8.5) "Enhanced emissions inspection" means a motor vehicle emissions inspection conducted pursuant to the enhanced emissions program, including a detection of high emissions by remote sensing, an identification of high emitters, a clean screen inspection, or an inspection conducted at an enhanced inspection center.

(9) (a) "Enhanced emissions program" means the emissions inspection program established pursuant to the federal requirements set forth in the federal performance standards, 40 CFR, part 51, subpart S, in the locations set forth in paragraph (c) of subsection (20) of this section.

(b) (Deleted by amendment, L. 2009, (SB 09-003), ch. 322, p. 1714, § 1, effective June 1, 2009.)

(10) "Enhanced inspection center" means a strategically located, single- or multi-lane, high-volume, inspection-only facility operated in the enhanced emissions program area by a contractor not affiliated with any other automotive-related service, which meets the requirements of sections 42-4-305 and 42-4-306, which is equipped to enable vehicle exhaust gas and evaporative and chlorofluorocarbon emissions inspections, and which the owner or operator is authorized to operate by the executive director as an inspection-only facility.

(11) "Environmental protection agency" means the federal environmental protection agency.

(12) "Executive director" means the executive director of the department of revenue or the designee of such executive director.

(13) "Federal act" means the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq., as in effect on November 15, 1990, and any federal regulation promulgated pursuant to said act.

(14) "Federal requirements" means regulations of the environmental protection agency pursuant to the federal act.

(15) "Fleet inspection station" means a facility which meets the requirements of section 42-4-308, which is equipped to enable appropriate emissions inspections as prescribed by the commission and which the owner or operator is licensed to operate by the executive director as an inspection station for purposes of emissions testing on vehicles pursuant to section 42-4-309.

(15.5) Repealed.

(16) "Inspection and readjustment station" means:

(a) Repealed.
(b) (I) A facility within the basic emissions program area as defined in subsection (20) of this section which meets the requirements of section 42-4-308, which is equipped to enable vehicle exhaust, evaporative, and chlorofluorocarbon emissions inspections and any necessary adjustments and repairs to be performed, and which facility the owner or operator is licensed by the executive director to operate as an inspection and readjustment station.

(II) This paragraph (b) is effective January 1, 1994.

(17) (a) "Inspection-only facility" means a facility operated by an independent owner-operator within the enhanced program area as defined in subsection (20) of this section which meets the requirements of section 42-4-308 and which is equipped to enable vehicle exhaust, evaporative, and chlorofluorocarbon emissions inspections and which facility the operator is licensed to operate by the executive director as an inspection-only facility. Such inspection-only facility shall be authorized to conduct inspections on model year 1981 and older vehicles.

(b) This subsection (17) is effective January 1, 1995.

(18) "Motor vehicle", as applicable to the AIR program, includes only a motor vehicle that is operated with four wheels or more on the ground, self-propelled by a spark-ignited engine burning gasoline, gasoline blends, gaseous fuel, blends of liquid gasoline and gaseous fuels, alcohol, alcohol blends, or other similar fuels, having a personal property classification of A, B, or C pursuant to section 42-3-106, and for which registration in this state is required for operation on the public roads and highways or which motor vehicle is owned or operated or both by a nonresident who meets the requirements set forth in section 42-4-310 (1) (c). "Motor vehicle" does not include kit vehicles; vehicles registered pursuant to section 42-12-301 or 42-3-306 (4); vehicles registered pursuant to section 42-12-401 that are of model year 1975 or earlier or that have two-stroke cycle engines manufactured prior to 1980; or vehicles registered as street-rods pursuant to section 42-3-201.

(19) (a) "Motor vehicle dealer test facility" means a stationary or mobile facility which is operated by a state trade association for motor vehicle dealers which is licensed to operate by the executive director as a motor vehicle dealer test facility to conduct emissions inspections.

(b) (I) Inspections conducted pursuant to section 42-4-309 (3) by a motor vehicle dealer test facility shall only be conducted on used motor vehicles inventoried or consigned in this state for retail sale by a motor vehicle dealer licensed pursuant to article 6 of title 12, C.R.S., and which is a member of the state trade association operating the motor vehicle dealer test facility.

(II) Inspection procedures used by a motor vehicle dealer test facility pursuant to this paragraph (b) shall include a loaded mode transient dynamometer test cycle in combination with appropriate idle short tests pursuant to rules and regulations of the commission.

(20) (a) "Program area" means the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld, and the cities and counties of Broomfield and Denver, excluding the following areas and subject to paragraph (d) of this subsection (20):

(I) That portion of Adams county that is east of Kiowa creek (Range sixty-two west, townships one, two, and three south) between the Adams-Arapahoe county line and the Adams-Weld county line;
(II) That portion of Arapahoe county that is east of Kiowa creek (Range sixty-two west, townships four and five south) between the Arapahoe-Elbert county line and the Arapahoe-Adams county line;

(III) That portion of El Paso county that is east of the following boundary, defined on a south-to-north axis: From the El Paso-Pueblo county line north (upstream) along Chico creek (Ranges 63 and 64 West, Township 17 South) to Hanover road, then east along Hanover road (El Paso county route 422) to Peyton highway, then north along Peyton highway (El Paso county route 463) to Falcon highway, then west on Falcon highway (El Paso county route 405) to Peyton highway, then north on Peyton highway (El Paso county route 405) to Judge Orr road, then west on Judge Orr road (El Paso county route 108) to Elbert road, then north on Elbert road (El Paso county route 91) to the El Paso-Elbert county line;

(IV) That portion of Larimer county that is west of the boundary defined on a north-to-south axis by Range seventy-one west and north of the boundary defined on an east-to-west axis by township five north, that portion that is west of the boundary defined on a north-to-south axis by range seventy-three west, and that portion that is north of the boundary latitudinal line 40 degrees, 42 minutes, 47.1 seconds north;

(V) That portion of Weld county that is north of the boundary defined on an east-to-west axis by Weld county road 78; that portion that is east of the boundary defined on a north-to-south axis by Weld county road 43 and north of the boundary defined on an east-to-west axis by Weld county road 62; that portion that is east of the boundary defined on a north-to-south axis by Weld county road 49, south of the boundary defined on an east-to-west axis by Weld county road 62 and north of the boundary defined on an east-to-west axis by Weld county road 46; that portion that is east of the boundary defined on a north-to-south axis by Weld county road 27, south of the boundary defined on an east-to-west axis by Weld county road 46 and north of the boundary defined on an east-to-west axis by Weld county road 36; that portion that is east of the boundary defined on a north-to-south axis by Weld county road 19, south of the boundary defined on an east-to-west axis by Weld county road 19, south of the boundary defined on an east-to-west axis by Weld county road 19, south of the boundary defined on an east-to-west axis by Weld county road 20; and that portion that is east of the boundary defined on a north-to-south axis by Weld county road 39 and south of the boundary defined on an east-to-west axis by Weld county road 20.

(b) Effective January 1, 2010, the basic emissions program area shall consist of the county of El Paso, as described in paragraph (a) of this subsection (20).

(c) (I) Effective January 1, 2010, the enhanced emissions program area shall consist of the counties of Adams, Arapahoe, Boulder, Douglas, Jefferson, Larimer, and Weld, and the cities and counties of Broomfield and Denver as described in paragraph (a) of this subsection (20) and subject to paragraph (d) of this subsection (20). Notwithstanding any other provision of this section, vehicles registered in the counties of Larimer and Weld shall not be required to obtain a certificate of emissions control prior to July 1, 2010, in order to be registered or reregistered.

(II) (Deleted by amendment, L. 2003, p. 1357, § 1, effective August 6, 2003.)

(III) Only those counties included in the basic emissions program area pursuant to paragraph (b) of this subsection (20) that violate national ambient air quality standards for carbon monoxide...
or ozone as established by the environmental protection agency may, on a case-by-case basis, be incorporated into the enhanced emissions program by final order of the commission.

(d) The commission shall review the boundaries of the program area and may, by rule promulgated on or before December 31, 2011, adjust such boundaries to exclude particularly identified regions from either the basic program area, the enhanced area, or both, based on an analysis of the applicable air quality science and the effects of the program on the population living in such regions.

(21) "Registered repair facility or technician" means an automotive repair business which has registered with the division, agrees to have its emissions-related cost effectiveness monitored based on inspection data, and is periodically provided performance statistics for the purpose of improving emissions-related repairs. Specific repair effectiveness information shall subsequently be provided to motorists at the time of inspection failure.

(22) "State implementation plan" or "SIP" means the plan required by and described in section 110 (a) of the federal act.

(23) "Technical center" means any facility operated by the division or its designee to support AIR program activities including but not limited to licensed emissions inspectors or emissions mechanics, motorists, repair technicians, or small business technical assistance.

(23.5) "Vehicle" means a motor vehicle as defined in subsection (18) of this section.

(24) "Verification of emissions test" means a certificate to be attached to a motor vehicle's windshield verifying that the vehicle has been issued a valid certification of emissions control.


Editor's note: (1) This section is similar to former § 42-4-307 as it existed prior to 1994.

(2) Subsection (17) was originally numbered as § 42-4-307 (16.5), and the amendments to it in Senate Bill 94-206 were harmonized with Senate Bill 94-001; amendments to subsection (6) in House Bill 94-1029 were harmonized with Senate Bill 94-001.

(3) Subsection (16)(a)(II)(C) provided for the repeal of subsection (16)(a), effective July 1, 1995. (See L. 94, p. 2274.)
42-4-305. Powers and duties of executive director - automobile inspection and readjustment program - basic emissions program - enhanced emissions program - clean screen program - rules.

(1) (a) The executive director is authorized to issue, deny, cancel, suspend, or revoke licenses for, and shall furnish instructions to, inspection and readjustment stations, inspection-only facilities, fleet inspection stations, motor vehicle dealer test facilities, and enhanced inspection centers. The executive director shall provide all necessary forms for inspection and readjustment stations, inspection-only facilities, and fleet inspection stations. Motor vehicle dealer test facilities and enhanced inspection centers shall purchase necessary inspection forms from the vendor or vendors identified by the executive director. Said inspection and readjustment stations, inspection-only facilities, fleet inspection stations, motor vehicle dealer test facilities, and enhanced inspection centers shall be responsible for the issuance of certifications of emissions control. The executive director is authorized to furnish forms and instructions and issue or deny licenses to, or cancel, suspend, or revoke licenses of, emissions inspectors and emissions mechanics. The initial biennial fee for an inspection and readjustment station license, an inspection-only facility license, a fleet inspection station license, a motor vehicle dealer test facility license, and an enhanced inspection center authorization shall be thirty-five dollars, and the biennial renewal fee shall be twenty dollars. The initial biennial fee for issuance of an emissions inspector license or an emissions mechanic license shall be fifteen dollars, and the biennial renewal fee shall be ten dollars. The fee for each transfer of an emissions inspector license or an emissions mechanic license shall be ten dollars. The moneys received from such fees shall be deposited to the credit of the AIR account in the highway users tax fund, and such moneys shall be expended by the department of revenue only for the administration of the inspection and readjustment program upon appropriation by the general assembly.

(b) Notwithstanding the amount specified for any fee in paragraph (a) of this subsection (1), the executive director of the department by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the department by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(2) The executive director shall supervise the activities of licensed inspection and readjustment stations, inspection-only facilities, fleet inspection stations, motor vehicle dealer test facilities, authorized enhanced inspection centers, licensed emissions inspectors, and licensed emissions mechanics and shall cause inspections to be made of such stations, facilities, centers, inspectors, and mechanics and appropriate records for compliance with licensing requirements.

(3) The executive director shall require the surrender of any license issued under section 42-4-308 upon cancellation, suspension, or revocation action taken for a violation of any of the
provisions of sections 42-4-301 to 42-4-316 or of any of the regulations promulgated pursuant thereto. In any such actions affecting licenses, the executive director may conduct hearings as a result of which such action is to be taken. Any such hearing may be conducted by a hearing officer appointed at the request of the executive director in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., which shall govern the conduct of such hearings and action on said licenses, except as provided in section 42-4-312 (4).

(4) The executive director shall promulgate rules and regulations consistent with those of the commission for the administration and operation of inspection and readjustment stations, inspection-only facilities, fleet inspection stations, motor vehicle dealer test facilities, and enhanced inspection centers and for the issuance, identification, and use of certifications of emissions control and shall promulgate such rules and regulations as may be necessary to the effectiveness of the automobile inspection and readjustment program.

(5) The executive director shall promulgate rules and regulations which require that each licensed inspection and readjustment station, inspection-only facility, or enhanced inspection center post in a clearly legible fashion in a conspicuous place in such station, facility, or center the fee charged by such station, facility, or center for performing an emissions inspection and, within the basic program area, the fee charged by any such inspection and readjustment station for performing the adjustments and any repairs required for the issuance of a certification of emissions waiver.

(6) (a) The executive director shall promulgate such rules and regulations as may be necessary to implement an ongoing quality assurance program to discover, correct, and prevent fraud, waste, and abuse and to determine whether proper procedures are being followed, whether the emissions test equipment is calibrated as specified, and whether other problems exist which would impede the success of the program.

(b) (I) The department shall conduct overt performance audits as follows:

(A) At least twice per year at each inspection and readjustment station, inspection-only facility, and motor vehicle dealer test facility;

(B) At least twice per year at each fleet inspection station;

(C) At least twice per year for each test lane at each enhanced inspection center.

(II) In addition to regularly scheduled overt performance audits, the department may perform additional risk-based overt performance audits for stations and facilities employing inspectors or mechanics suspected of violating rules as a result of an audit, data analysis, or consumer complaint.

(c) (I) The department shall conduct covert audits using unmarked motor vehicles at least once per year per number of inspectors at each inspection-only facility and enhanced inspection center;

(II) In addition to regularly scheduled covert audits, the department may perform additional risk-based covert audits for stations and facilities employing inspectors or mechanics suspected of violating rules as a result of an audit, data analysis, or consumer complaint.
(d) Record audits to review the performance of inspection-only facilities, motor vehicle dealer test facilities, and enhanced inspection centers, including compliance with record-keeping and reporting requirements, shall be performed on a monthly basis.

(e) (I) The department shall perform equipment audits to verify quality control and calibration of the required test equipment as follows:

(A) At least twice per year at each inspection and readjustment station;

(B) At least twice per year on each test lane at each inspection-only facility, motor vehicle dealer test facility, and enhanced inspection center, to be performed contemporaneously with the overt performance audit;

(C) At least twice per year at each fleet inspection station.

(II) In addition to regularly scheduled equipment audits, the department may perform additional risk-based equipment audits for stations and facilities employing inspectors or mechanics suspected of violating rules as a result of an audit, data analysis, or consumer complaint.

(f) The executive director shall transfer quality assurance activity results to the department of public health and environment at least quarterly.

(7) The executive director shall implement and enforce the emissions test requirements as prescribed in section 42-4-310 by utilizing a registration denial-based enforcement program as required in the federal act including an electronic data transfer of inspection data through the use of a computer modem or similar technology for vehicle registration and program enforcement purposes. All inspection data generated at licensed inspection and readjustment stations, inspection-only facilities, fleet inspection stations, motor vehicle dealer test facilities, and enhanced inspection centers shall be provided to the department of public health and environment on a timely basis.

(8) The executive director shall, by regulation, establish a method for the owners of motor vehicles which are exempt pursuant to section 42-4-304 (20) from the AIR program to establish their entitlement to such exemption. No additional fee or charge for establishing entitlement to such exemption shall be collected by the department.

(9) The executive director shall be responsible for the issuance of certifications of emissions waiver as prescribed by section 42-4-310 and shall be responsible for the resolution of all formal public complaints concerning test results or test requirements in the most convenient and cost-effective manner possible.

(10) (a) The executive director and the department of public health and environment are authorized to enter into a contract or service agreement with a contractor to provide inspection services at enhanced inspection centers for vehicles within the enhanced program area required to be inspected pursuant to section 42-4-310. Any such contract or service agreement shall include such terms and conditions as are necessary to ensure that the contractor shall operate enhanced inspection centers in accordance with the requirements of this article and the federal act, shall include provisions establishing liquidated damages and penalties for failure to comply with the terms and conditions of the contract, and shall be in accordance with regulations
adopted by the commission and the department of revenue. Any such contract or service agreement shall include provisions specifying that inspection and readjustment stations, inspection-only facilities, fleet inspection stations, and motor vehicle dealer test facilities shall have complete access to electronic data transfer of inspection data through computer services of the contractor at a cost equal to that of enhanced inspection centers.

(b) Upon the approval of the executive director and the department of public health and environment, the contractor shall provide inspection services for vehicles within the enhanced program area required to be inspected pursuant to section 42-4-310.

(11) The executive director shall report to the transportation legislation review committee annually on the effectiveness of the quality assurance and enforcement measures contained in this section, the overall motorist compliance rates with inspections for registration denial, and the status of state implementation plan compliance pertaining to quality assurance. This annual report shall be submitted to the commission in May of each year for incorporation into appropriate annual and biennial reporting requirements. Reports shall cover the previous calendar year.

(12) The executive director shall promulgate such rules consistent with those of the commission as may be necessary for implementation, enforcement, and quality assurance and for procedures and policies that allow data collected from the clean screen program to be matched with vehicle ownership information and for such information to be transferred to county clerks and recorders. Such rules shall set forth the procedures for the executive director to inform county clerks and recorders of the emission inspection status of vehicles up for registration renewal.


Editor's note: (1) This section is similar to former § 42-4-308 as it existed prior to 1994.

(2) Amendments to subsections (6)(f), (7), and (10) by House Bill 94-1029 were harmonized with Senate Bill 94-001.

(3) Section 3 of chapter 164, Session Laws of Colorado 2012, provides that the act amending subsections (6)(b), (6)(c), and (6)(e) applies to inspections occurring on or after July 1, 2012.

42-4-306. Powers and duties of commission - automobile inspection and readjustment program - basic emissions program - enhanced emissions program - clean screen program.

(1) The commission shall develop and evaluate motor vehicle inspection and readjustment programs for the enhanced program area and basic program area and may promulgate such regulations as may be necessary to implement and maintain the necessary performance of said programs consistent with the federal act.
(2) The commission shall develop and formulate training and qualification programs for state-employed motor vehicle emissions compliance officers to include annual auditor proficiency evaluations.

(3) (a) (I) (A) The commission shall promulgate rules and regulations for the training, testing, and licensing of emissions inspectors and emissions mechanics and the licensing of inspection and readjustment stations, inspection-only facilities, fleet inspection stations, motor vehicle dealer test facilities, and the authorization of enhanced inspection centers; the standards and specifications for the approval, operation, calibration, and certification of exhaust gas and evaporative emissions measuring instrumentation or test analyzer systems; and the procedures and practices to ensure the proper performance of inspections, adjustments, and required repairs.

(B) Specifications adopted by the commission for exhaust gas measuring instrumentation in the program areas shall conform to the federal act and federal requirements, including electronic data transfer, and may include bar code capabilities.

(C) Upon the adoption of specifications for measuring instruments and test analyzer systems, the division in consultation with the executive director may let bids for the procurement of instruments that meet federal requirements or guidelines and the standards of the federal act. The invitation for bids for test analyzer systems for the basic program and the inspection-only facilities in the enhanced program shall include, but shall not be limited to, the requirements for data collection and electronic transfer of data as established by the commission, service and maintenance requirements for such instruments for the period of the contract, requirements for replacement or loan instruments in the event that the purchased or leased instruments do not function, and the initial purchase or lease price. On and after June 5, 2001, each contract for the purchase of such instruments shall have a term of no more than four years.

(II) Points of no greater than five percent shall be assigned to those respondents that make the greatest use of Colorado goods, services, and the participation of small business. Licensed inspection and readjustment stations, inspection-only facilities, fleet inspection stations, and motor vehicle dealer test facilities, if applicable, which are required to purchase commission-approved test analyzer systems shall purchase them pursuant to the bid procedure of the department of personnel.

(III) Mobile test analyzer systems for motor vehicle dealer test facilities shall comply with commission specifications developed pursuant to subparagraph (I) of this paragraph (a).

(b) (I) For the enhanced emissions program, the commission shall develop system design standards, performance standards, and contractor requirements. Upon the adoption of such criteria, the division in consultation with the executive director may, according to procedures and protocol established in the "Procurement Code", articles 101 to 112 of title 24, C.R.S., enter into a contract for the design, construction, equipment, maintenance, and operation of enhanced inspection centers to serve affected motorists. The criteria for the award of such contract shall include, but shall not be limited to, such criteria as the contractor's qualifications and experience in providing emissions inspection services, financial and personnel resources available for start-up, technical or management expertise, and capacity to satisfy such requirements for the life of the contract.
(II) Inspection procedures, equipment calibration and maintenance, and data storage and transfer shall comply with federal requirements and may include bar code capability. The system shall provide reasonable convenience to the public.

(III) Points of no greater than five percent shall be assigned to those respondents who make the greatest use of Colorado goods, services, and participation of small businesses.

(IV) On and after May 26, 1998, any contract for inspection services shall have a term of no more than five years and shall be subject to rebidding under the provisions of this paragraph (b).

(V) (A) Notwithstanding any contrary provision in the "Procurement Code", articles 101 to 112 of title 24, C.R.S., or this article, any contract for inspection services may be renewed for a term not to exceed two years, after which the contract may be renewed for a single term of up to four years or rebid; except that inspection fees during any such four-year renewal contract shall be as determined under section 42-4-311 (6).

(B) The commission shall have rule-making authority to implement any environmental protection agency-approved alternative emissions inspection services or technologies, including on-board diagnostics, so long as such inspection technologies provide SIP credits equal to or greater than those currently in the SIP.

(4) (a) The commission shall develop a program to train and examine all applicants for an emissions inspector or emissions mechanic license. Training of emissions inspectors who are employed at enhanced inspection centers within the enhanced emissions program area shall be administered by the contractor subject to the commission's oversight. Emissions mechanic training shall be performed by instructors certified in accordance with commission requirements. Training classes shall be funded by tuition charged to the participants unless private or federal funds are available for such training. The qualifications and licensing examination for emissions inspectors, excluding such inspectors at enhanced inspection centers, who shall be authorized by and under the direction of the contractor, shall include a test of the applicant's knowledge of the technical and legal requirements for emissions testing, knowledge of data and emissions testing systems, and an actual demonstration of the applicant's ability to perform emissions inspection procedures.

(b) Emissions inspector and emissions mechanic licenses shall expire two years after issuance. The commission shall establish technical standards for renewing emissions inspector and emissions mechanic licenses to include requirements for retraining on a biennial schedule.

(c) The commission shall establish minimum performance criteria for licensed emissions inspectors and emissions mechanics.

(5) The commission shall perform its duties, as provided in sections 42-4-301 to 42-4-316, with the cooperation and aid of the division.

(6) (a) The commission shall develop and adopt, and may from time to time revise, regulations providing inspection procedures for detection of tampering with emissions-related equipment and on-board diagnostic systems and emissions standards for vehicle exhaust and evaporative gases, the detection of chlorofluorocarbons, and smoke opacity, as prescribed in section 42-4-412, with which emissions standards vehicles inspected in accordance with section 42-4-310 would be required to comply prior to issuance of certification of emissions compliance.
Such inspection procedures and emissions standards shall be proven cost-effective and air pollution control-effective on the basis of detailed research conducted by the department of public health and environment in accordance with section 25-7-130, C.R.S., and shall be designed to assure compliance with the federal act, federal requirements, and the state implementation plan. Emissions standards shall be established for carbon monoxide, exhaust and evaporative hydrocarbons, oxides of nitrogen, and chlorofluorocarbons.

(b)(I) The commission shall adopt regulations which provide standards for motor vehicles and shall adopt by December 1 of each subsequent year standards for motor vehicles of one additional model year.

(II) Standards for carbon monoxide, exhaust and evaporative hydrocarbons, and oxides of nitrogen shall be no more stringent than those established pursuant to the federal act and federal requirements. The cut-points established for such standards prior to December 1, 1998, shall not be increased until on or after January 1, 2000.

(c) The commission shall recommend to the general assembly no later than December 1, 1998, adjustment or repair procedures to be followed for motor vehicles of the model year 1984 or a later model year which do not meet the applicable emissions standards. Notwithstanding the provisions of subsection (7) of this section, such recommended procedures may require the replacement or repair of emissions control components of such motor vehicles.

(d) Test procedures may authorize emissions inspectors or emissions mechanics to refuse testing of a vehicle that would be unsafe to test or that cannot physically be inspected, as specified by the commission; except that refusal to test a vehicle for such reasons shall not excuse or exempt such vehicle from compliance with all applicable requirements of this part 3.

(7)(a) The commission shall by regulation require the owner of a motor vehicle for which a certification of emissions control is required to obtain such certification. Such regulation shall provide:

(I) That a certification of emissions compliance be issued for the vehicle if, at the time of inspection or, after completion of required adjustments or repairs, the exhaust and evaporative gases and visible emissions from said vehicle comply with the applicable emissions standards adopted pursuant to subsection (6) of this section, and that applicable emissions control equipment and diagnostic systems are intact and operable, and, for model year 1995 and later vehicles, compliance with each applicable emissions-related recall campaign, or remedial action, as defined by the federal act, has been demonstrated.

(II) (A) That a certification of emissions waiver be issued for the motor vehicle if, at the time of inspection, the exhaust gas or evaporative emissions from said vehicle do not comply with the applicable emissions standards but said vehicle is adjusted or repaired by a registered repair technician or at a registered repair facility within the enhanced program area, or at a licensed inspection and repair station within the basic program area, whichever is appropriate, to motor vehicle manufacturer specifications and repair procedures as provided by regulation of the commission.

(B) Such specifications shall require that such motor vehicles be retested for exhaust gas emissions and evaporative emissions, if applicable, after such adjustments or repairs are...
performed, but, except as provided in section 42-4-310 (1) (d), no motor vehicle shall be required to receive additional repairs, maintenance, or adjustments beyond such specifications or repairs following such retest as a condition for issuance of a certification of emissions waiver.

(C) A time extension not to exceed the period of one inspection cycle may be granted in accordance with commission regulation to obtain needed repairs on a vehicle in the case of economic hardship when waiver requirements pursuant to commission regulation have not been met, but such extension may be granted only once per vehicle.

(D) Notwithstanding any provisions of this section, a temporary certificate of emissions control may be issued by state AIR program personnel for vehicles required to be repaired, if such repairs are delayed due to unavailability of needed parts.

(E) The results of the initial test, retests, and final test shall be given to the owner of the motor vehicle.

(F) The issuance of temporary certificates shall be entered into the main computer data base for the AIR program through the use of electronic records.

(G) The commission is authorized to reduce the emissions-related repair expenditure limit established in section 42-4-310 (1) (d) (III) for hydrocarbons and oxides of nitrogen if applicable federal requirements are met, and the environmental protection agency has approved a maintenance plan submitted by the state to ensure continued compliance with such federal requirements.

(b) (I) The commission shall by regulation provide that no vehicle shall be issued a certificate of emissions compliance or waiver if emissions control equipment and diagnostic or malfunction indicator systems, including microprocessor control systems, are not present, intact, and operational, if repairs were not appropriate and did not address the reason for the emissions failure, or if the vehicle emits visible smoke.

(II) The commission shall provide by regulation that no model year 1995 or later vehicle shall be issued a certificate of emissions control unless compliance with each applicable emissions-related recall campaign or remedial action, as defined in the federal act, has been demonstrated.

(8) (a) The commission may exempt motor vehicles of any make, model, or model year from the periodic inspection requirements of section 42-4-310.

(b) Pursuant to section 42-4-310 (1), the commission may increase the effective duration of certifications of emissions compliance issued for new motor vehicles without inspection.

(9) (a) (I) The commission shall continuously evaluate the entire AIR program to ensure compliance with the state implementation plan and federal law. Such evaluation shall be based on continuing research conducted by the department of public health and environment in accordance with section 25-7-130, C.R.S. Such evaluation shall include assessments of the cost-effectiveness and air pollution control-effectiveness of the program.

(II) The commission shall establish on a case-by-case basis and pursuant to final order any area of a county included in the basic emissions program area pursuant to section 42-4-304 (2)
which shall be incorporated into the enhanced emissions program because it violates national ambient air quality standards on or after January 1, 1996, as established by the environmental protection agency.

(b) Such evaluation shall include a determination of the number of motor vehicles that fail to meet the applicable emissions standards after the adjustments and repairs required by subsection (7) of this section are made. If the commission finds that a significant number of motor vehicles do not meet the applicable emissions standards after such adjustments or repairs are made, the commission shall develop recommendations designed to improve the air pollution control-effectiveness of the program in a cost-effective manner.

(c) The evaluation shall also include an assessment of the methods of controlling or reducing exhaust gas emissions from motor vehicles of the model year 1981 or a later model year that are equipped with microprocessor-based emissions control systems and on-board diagnostic systems. Such evaluation shall include, if necessary for such motor vehicles, the development of more accurate alternative procedures to include the adjustments and repairs specified in subparagraph (II) of paragraph (a) of subsection (7) of this section, and such alternative procedures may require the replacement of inoperative or malfunctioning emissions control components. Such alternative procedures shall be designed to achieve control of emissions from such motor vehicles which is equivalent to or greater than the control performance level provided by performance standards established pursuant to the federal act.

(d) Such evaluation shall also include an annual assessment of in-use vehicle emissions performance levels by random testing of a representative sample of at least one-tenth of one percent of the vehicles subject to the enhanced emissions program requirements.

(10) The commission shall develop and implement, and shall revise as necessary, inspection procedures to detect tampering, poor maintenance, mis-fueling, and contamination of emissions control systems to include proper operation of on-board diagnostic systems.

(11) (a) The commission, with the cooperation of the department of public health and environment, the department of revenue, the contractor, and the owners or operators of the inspection and readjustment stations, inspection-only facilities, and motor vehicle dealer test facilities, shall implement an ongoing project designed to inform the public concerning the operation of the program and the benefits to be derived from such program.

(b) (I) The commission shall, as part of such project and with the cooperation of the department of public health and environment, the department of revenue, the contractor, and the owners or operators of the inspection and readjustment stations and inspection-only facilities prepare and cause the distribution of consumer protection information for the benefit of the owners of vehicles required to be inspected pursuant to section 42-4-310.

(II) This information shall include an explanation of the program, the owner's responsibilities under the program, the procedures to be followed in performing the inspection, the adjustments and repairs required for vehicles to pass inspection, cost expenditure limits pursuant to section 42-4-310 (1) (d) for such adjustments or repairs, the availability of diagnostic information to aid repairs, and a listing of registered repair facilities and technicians, and the package may include information on other aspects of the program as the commission determines to be appropriate.
(c) In addition to distribution of such information, the commission shall actively seek the assistance of the electronic and print media in communicating such information to the public and shall utilize such other means and manners of disseminating the information as are likely to effectuate the purpose of the program.

(12) (a) The commission, with the cooperation of the executive director of the department of public health and environment, shall conduct or cause to be conducted research concerning the presence of pollutants in the ambient air, which research shall include continuous monitoring of ambient air quality and modeling of sources concerning their impacts on air quality. Such research shall identify pollutants in the ambient air which originate from motor vehicle exhaust gas emissions and shall identify, quantify, and evaluate the ambient air quality benefit derived from the automobile inspection and readjustment program, from the federal new motor vehicle exhaust emissions standards, and from changes in vehicle miles traveled due to economic or other factors. Each such evaluation shall be reported separately to assess the air pollution control-effectiveness and cost-effectiveness of the pollution control strategy.

(b) (I) The commission with the cooperation of the department of public health and environment shall cause to be conducted a pilot study of the feasibility and costs of implementing remote sensing emissions detection technology as a potential supplemental maintenance strategy for areas that have attained applicable standards. This pilot study shall be conducted in the metropolitan Greeley, Weld county area with results and recommendations to be made available in January, 1998.

(II) The executive director of the department of public health and environment is authorized to enter into an agreement with a contractor in accordance with section 42-4-307 (10) (a) for the purchase of equipment and any assistance necessary for this study.

(13) The commission shall identify vehicle populations contributing significantly to ambient pollution inventories utilizing mobile source computer models approved by the environmental protection agency. The commission shall develop and implement more stringent or frequent, or both, inspection criteria for those vehicles with such significant pollution contributions.

(14) (a) Consistent with section 42-4-305, the commission shall promulgate technical rules and regulations governing quality control and audit procedures to be performed by the department of revenue as provided in section 42-4-305. Such regulations shall address all technical aspects of program oversight and quality assurance to include covert and overt performance audits and state implementation plan compliance.

(b) To ensure compliance with the state implementation plan and federal requirements the commission shall promulgate technical rules and regulations to address motor vehicle fleet and motor vehicle dealer inspection protocol and quality control and audit procedures.

(15) The commission shall provide for additional enforcement of the inspection programs by encouraging the adoption of local ordinances and active participation by local law enforcement personnel, parking control, and code enforcement officers against vehicles suspected to be out of compliance with inspection requirements.

(16) (a) (I) The commission shall promulgate rules and regulations governing the issuance of emissions-related repair waivers consistent with section 42-4-310.
(II) Within the enhanced program area waivers shall only be issued by authorized state personnel and enhanced inspection center personnel specifically authorized by the executive director.

(b) The issuance of all waivers shall be controlled and accountable to the main computer database for the AIR program by electronic record to ensure that maximum allowable waiver rate limits for both program types, as defined by the federal act, are not exceeded.

(17) For the enhanced emissions program, the commission shall promulgate rules and regulations establishing a network of enhanced inspection centers and inspection-only facilities within the enhanced emissions program area consistent with the following:

(a) (I) Owners, operators, and employees of enhanced inspection centers and independent inspection-only facilities within the enhanced program area are prohibited from engaging in any motor vehicle repair, service, parts sales, or the sale or leasing of motor vehicles and are prohibited from referring vehicle owners to particular providers of motor vehicle repair services; except that minor repair of components damaged by center or facility personnel during inspection at the center or facility, such as the reconnection of hoses, vacuum lines, or other measures pursuant to commission regulation that require no more than five minutes to complete, may be undertaken at no charge to the vehicle owner or operator if authorized.

(II) The operation of a motor vehicle dealer test facility shall not be considered to be engaging in any motor vehicle repair service, parts sales, or the sale or leasing of motor vehicles by a member of the state trade association operating such motor vehicle dealer test facility.

(b) Owners, operators, and employees of enhanced inspection centers shall ensure motorists and other affected parties reasonable convenience. Inspection services shall be available prior to, during, and after normal business hours on weekdays, and at least five hours on a weekend day.

(c) Owners, operators, and employees of enhanced inspection centers shall take appropriate actions, such as opening additional lanes, to avoid exceeding average motorist wait times of greater than fifteen minutes by designing optimized single- or multi-lane high-volume throughput systems.

(d) Owners or operators of enhanced inspection centers may develop, and are encouraged to develop, and implement alternate strategies including but not limited to off-peak pricing to reduce end-of-the-month wait times.

(e) The network of enhanced inspection centers shall be located to provide adequate coverage and convenience. At a minimum, the number of enhanced inspection centers shall be equivalent to the network that existed on January 1, 2000, and the hours of operation shall be determined by the contract.

(f) Within the enhanced emissions program area the commission shall provide for the operation of licensed inspection-only facilities. Applicable facility and inspector licensing, inspection procedures, and criteria shall be pursuant to rule and regulation of the commission and compliance with federal requirements. Inspection-only facilities shall be authorized to provide inspection services for all classes of motor vehicles as defined in section 42-4-304 (18) of the model year 1981 and older. Inspection-only owners or operators, or both, shall comply with paragraph (a) of this subsection (17).
(18) For the basic emissions program, inspection stations within the basic emissions program area which are licensed in accordance with section 42-4-308 may conduct inspections or provide motor vehicle repairs as well as offer emissions inspection services.

(19) The commission shall give at least sixty days' notice to the executive director prior to conducting any rule-making hearing pursuant to this article, except where the commission finds that an emergency exists under section 24-4-103 (6), C.R.S. The executive director shall participate as a party in any such hearing. Prior to promulgating any rule under this article, the commission shall consider the potential budgetary and personnel impacts any such rule may have on the department of revenue.

(20) (a) The commission shall develop and maintain a small business technical assistance program through the automobile inspection and repair program to provide information and to aid automotive businesses and technicians. As an element of this program, the commission shall develop a voluntary program for the training of registered repair technicians, to be funded by tuition charged to the participants, unless federal or private funds are made available for such training.

(b) For the enhanced emissions program, the commission shall provide for the voluntary registration of repair facilities and repair technicians within the enhanced emissions program area. Emissions-related repair effectiveness shall be monitored and periodically reported to participating facilities and technicians. Technical assistance shall be provided to those repair technicians and repair facilities needing improvement in repair effectiveness. The commission shall require that emissions-related repair effectiveness information regarding registered repair facilities be made available to the public.

(21) (a) The commission shall investigate and develop other supplemental or alternative motor vehicle related emissions reduction strategies, including but not limited to "cash for clunkers", which may complement or enhance the performance of the AIR program. Such strategies must be creditable under the state implementation plan and be proven cost-effective.

(b) (Deleted by amendment, L. 2002, p. 870, § 5, effective August 7, 2002.)

(22) The commission shall develop rules and regulations with respect to emissions inspection procedures and standards of motor vehicles which operate on alternative motor fuels including but not limited to compressed natural gas, liquid petroleum gas, methanol, and ethanol. Such rules and regulations shall be developed for both the basic emissions program and the enhanced emissions program. The commission shall evaluate whether dual fuel motor vehicles should be inspected on both fuels and whether such vehicles shall be charged for one or two inspections.

(23) (a) The commission shall promulgate rules governing the operation of the clean screen program. Such rules shall authorize the division to commence the clean screen program in the basic emissions program area commencing as expeditiously as possible. Such rules shall authorize the division to extend, if feasible, the clean screen program to other parts of the state upon request of the lead air quality planning agencies for each respective area. Such rules shall govern operation of the clean screen program pursuant to the contract or service agreement entered into under section 42-4-307 (10.5). Such rules shall determine the percentage of the vehicle fleet targeted for the clean screen program, which percentage shall develop a target of the eligible vehicle fleet that meets air quality needs. Such rules shall specify emission levels for
vehicles in the same manner as for other vehicles in the emissions program. The commission may, upon written request of the Pikes Peak area council of governments, exclude the El Paso county portion of the basic emissions program area from the clean screen program if the department of public health and environment receives written notification from the Pikes Peak area council of governments to such effect by June 1, 2001.

(b) The rules promulgated pursuant to paragraph (a) of this subsection (23) may also authorize the division to commence the clean screen program in the enhanced emissions program area commencing January 1, 2002, or as soon thereafter as is practical. The clean screen program may be implemented in the enhanced emissions program area only if the commission makes such a determination on or after July 1, 2001.


Editor's note: (1) This section is similar to former § 42-4-309 as it existed prior to 1994.

(2) Amendments to subsections (6), (9)(a)(I), (11)(a), (11)(b)(I), and (12) by House Bill 94-1029 and amendments to subsection (17)(f) by Senate Bill 94-206 were harmonized with Senate Bill 94-001.

Cross references: For the legislative declaration contained in the 2001 act amending subsections (3)(a)(I)(C), (3)(b)(I), (17)(e), and (23) and enacting subsection (3)(b)(V), see section 1 of chapter 278, Session Laws of Colorado 2001.

42-4-307. Powers and duties of the department of public health and environment - division of administration - automobile inspection and readjustment program - basic emissions program - enhanced emissions program - clean screen program.

(1) The division shall establish and provide for the operation of a system, which may include a telephone answering service, to answer questions concerning the automobile inspection and readjustment programs from emissions inspectors, emissions mechanics, repair technicians, and the public.

(2) The division shall administer the licensing test for emissions inspectors, except for such inspectors at enhanced inspection centers, and emissions mechanics and shall oversee training.

(3) The division shall establish and operate such technical or administrative centers as may be necessary for the proper administration and ongoing support of the automobile inspection and readjustment program, for enhanced inspection centers, for the small business technical assistance program, and for the state smoking vehicle programs provided for in sections 42-4-412 to 42-4-414, and for affected motorists. The division is authorized to enter into a contract or service agreement in accordance with paragraph (a) of subsection (10) of this section for this purpose.
(4) The division shall develop and recommend to the commission, as necessary, vehicle emissions inspection procedure requirements to ensure compliance with the state implementation plan and the federal act.

(5) The division shall identify and recommend to the commission, as necessary, revisions to vehicle eligibility and the schedule of inspection frequency.

(6) (a) (I) The division shall administer, in accordance with federal requirements, the on-road remote sensing program.

(II) Pursuant to commission rule and based on confirmatory tests at an emissions technical center or emissions inspection facility that identify such vehicles as exceeding applicable emissions standards, off-cycle repairs may be required for noncomplying vehicles.

(b) Additional studies of the feasibility and appropriateness of on-road remote sensing technology as a potential emissions control strategy shall be pursued as available funding permits.

(c) The division is authorized to enter into a contract or service agreement in accordance with paragraph (a) of subsection (10) of this section for the purpose of this subsection (6).

(7) The division shall monitor and periodically report to the commission on the performance of the mobile sources state implementation plan provisions as they pertain to the basic emissions program area and the enhanced emissions program area.

(8) (a) The division shall administer the emissions inspector, emissions mechanic, and repair technician qualification and periodic requalification procedures, if applicable, and remedial training provisions in a manner consistent with department of revenue enforcement activities.

(b) The division, in consultation with the executive director, is authorized to bring enforcement actions in accordance with article 7 of title 25, C.R.S., for violations of regulations promulgated pursuant to section 42-4-306 which would cause violations of the state implementation plan.

(9) The division shall maintain inspection data from the AIR program pursuant to the federal act. Data analysis and reporting shall be submitted to the commission by the departments of public health and environment and revenue by July 1 of each year for the period of January through December of the previous year. Data analysis, state implementation plan compliance, and program performance reporting shall be submitted to the environmental protection agency by the department of public health and environment by July 1 of each year for the period of January through December of the previous year. The division shall develop and maintain the data processing system necessary for the AIR program in compliance with federal reporting requirements.

(10) (a) For the enhanced emissions program, the department of public health and environment and the executive director are authorized to enter into a contract or service agreement with a contractor to provide inspection services at enhanced inspection centers for vehicles required to be inspected pursuant to section 42-4-310 within the enhanced program area. Any such contract or service agreement shall include such terms and conditions as are necessary to ensure that such contractor will operate any such enhanced inspection center in compliance
with this article and the federal act. Any such contract or service agreement shall also include provisions establishing liquidated damages and penalties for failure to comply with the terms and conditions of the contract and shall be in accordance with regulations adopted by the commission.

(b) Upon approval by the department of public health and environment and the executive director, the contractor shall provide inspection services for vehicles within the enhanced program area required to be inspected pursuant to section 42-4-310. Notwithstanding any contrary provision in the "Procurement Code", articles 101 to 112 of title 24, C.R.S., or this article, any contract for inspection services may be renewed for a term not to exceed two years to ensure that, on or after December 31, 2001, inspection services in the enhanced program area will not be interrupted by the expiration of the previous contract, after which the contract may be renewed for a single term of up to four years as provided in section 42-4-306 (3) (b) (V) (A). Any new contract entered into or renewed after the two-year renewal shall require the contractor to provide any necessary alternative inspection services or technologies so approved.

(10.5) (a) For the clean screen program and the Denver clean screening pilot study, the department of public health and environment and the department of revenue may, pursuant to the "Procurement Code", articles 101 to 112 of title 24, C.R.S., enter into a contract with a contractor for the purchase of equipment, the collection of remote sensing and other data and operation of remote sensing and support equipment, data processing and vehicle ownership matching in cooperation with the executive director, and collection of remote sensing and other data for the Denver clean screening pilot study, including analysis of the results of such study and report preparation. Under any such contract the department of public health and environment and the department of revenue may purchase approved remote sensing and support equipment or authorize the use of a qualified contractor or contractors to purchase approved remote sensing and support equipment for use in the clean screen program. Notwithstanding any contrary provision in the "Procurement Code", articles 101 to 112 of title 24, C.R.S., the clean screen contract may be incorporated into any contract or renewed contract pursuant to subsection (10) of this section. The contractor retained pursuant to this subsection (10.5) shall be the same as the contractor retained pursuant to subsection (10) of this section. The contractor shall make one-time transfers into the clean screen fund created in section 42-3-304 (19) in a total amount necessary to cover computer programming costs associated with implementation of House Bill 01-1402, enacted at the first regular session of the sixty-third general assembly, in the following order:

(I) Up to thirty thousand dollars from the contractor's revenues;

(II) Up to thirty thousand dollars from the public relations account provided for in the contract; and

(III) Up to forty thousand dollars from the technical center account provided for in the contract.

(b) Repealed.

(11) The department of public health and environment shall conduct studies on the development, effectiveness, and cost of evolving technologies in mobile source emission inspection for consideration by March of each even-numbered year. In the event that alternative
technologies become available, cost and air quality effectiveness shall be considered prior to adoption by the commission as inspection technology.

(12) to (15) Repealed.


Editor's note: (1) This section is similar to former § 42-4-309.5 as it existed prior to 1994, and the former § 42-4-307 was relocated to § 42-4-304.

(2) Amendments to subsections (10), (11), and (12) by House Bill 94-1029 were harmonized with Senate Bill 94-001.

(3) Subsection (10.5)(b)(II) provided for the repeal of subsection (10.5)(b), effective July 1, 2001. (See L. 98, p. 893.)

Cross references: For the legislative declaration contained in the 2001 act amending subsections (6)(a), (10)(b), and (10.5)(a), see section 1 of chapter 278, Session Laws of Colorado 2001. For the legislative declaration contained in the 2006 act enacting subsections (12), (13), (14), and (15), see section 1 of chapter 225, Session Laws of Colorado 2006.

42-4-307.5. Clean screen authority - enterprise - revenue bonds.

(1) If the commission determines pursuant to section 42-4-306 (23) (b) to implement an expanded clean screen program in the enhanced emissions program area, there shall be created a clean screen authority consisting of the executive director of the department of public health and environment and executive director of the department of revenue or their designees and any necessary support staff. The authority shall constitute an enterprise for the purposes of section 20 of article X of the state constitution so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total annual revenues in grants, as defined in section 24-77-102 (7), C.R.S., from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to the provisions of this section, the authority shall not be a district for purposes of section 20 of article X of the state constitution.

(2) (a) The authority may, by resolution that meets the requirements of subsection (3) of this section, authorize and issue revenue bonds in an amount not to exceed five million dollars in the aggregate for expenses of the authority. Such bonds may be issued only after approval by both houses of the general assembly acting either by bill or joint resolution and after approval by the governor in accordance with section 39 of article V of the state constitution. Such bonds shall be payable only from moneys allocated to the authority for expenses of the division and the commission pursuant to sections 42-4-306 and 42-4-307.

(b) All bonds issued by the authority shall provide that:
(I) No holder of any such bond may compel the state or any subdivision thereof to exercise its appropriation or taxing power; and

(II) The bond does not constitute a debt of the state and is payable only from the net revenues allocated to the authority for expenses as designated in such bond.

(3) (a) Any resolution authorizing the issuance of bonds under the terms of this section shall state:

(I) The date of issuance of the bonds;

(II) A maturity date or dates during a period not to exceed thirty years from the date of issuance of the bonds;

(III) The interest rate or rates on, and the denomination or denominations of, the bonds; and

(IV) The medium of payment of the bonds and the place where the bonds will be paid.

(b) Any resolution authorizing the issuance of bonds under the terms of this section may:

(I) State that the bonds are to be issued in one or more series;

(II) State a rank or priority of the bonds; and

(III) Provide for redemption of the bonds prior to maturity, with or without premium.

(4) Any bonds issued pursuant to the terms of this section may be sold at public or private sale. If bonds are to be sold at a public sale, the authority shall advertise the sale in such manner as the authority deems appropriate. All bonds issued pursuant to the terms of this section shall be sold at a price not less than the par value thereof, together with all accrued interest to the date of delivery.

(5) Notwithstanding any provisions of law to the contrary, all bonds issued pursuant to this section are negotiable.

(6) (a) A resolution pertaining to issuance of bonds under this section may contain covenants as to:

(I) The purpose to which the proceeds of sale of the bonds may be applied and to the use and disposition thereof;

(II) Such matters as are customary in the issuance of revenue bonds including, without limitation, the issuance and lien position of other or additional bonds; and

(III) Books of account and the inspection and audit thereof.

(b) Any resolution made pursuant to the terms of this section shall be deemed a contract with the holders of the bonds, and the duties of the authority under such resolution shall be enforceable by any appropriate action in a court of competent jurisdiction.

(7) Bonds issued under this section and bearing the signatures of the authority in office on the date of the signing shall be deemed valid and binding obligations regardless of whether, prior to
delivery and payment, any or all of the persons whose signatures appear thereon have ceased to be members of the authority.

(8) (a) Except as otherwise provided in the resolution authorizing the bonds, all bonds of the same issue under this section shall have a prior and paramount lien on the net revenues pledged therefor. The authority may provide for preferential security for any bonds, both principal and interest, to be issued under this section to the extent deemed feasible and desirable by such authority over any bonds that may be issued thereafter.

(b) Bonds of the same issue or series issued under this section shall be equally and ratably secured, without priority by reason of number, date, sale, execution, or delivery, by a lien on the net revenue pledged in accordance with the terms of the resolution authorizing the bonds.

(9) The clean screen authority shall be a government-owned business that provides financial services to all entities providing inspection services, the department, and the department of public health and environment with regard to the revenues subject to section 42-3-304 (19).

(10) The clean screen authority may accept grants from any source and shall deposit such moneys in the clean screen fund created in section 42-3-304 (19).

(11) The clean screen authority may contract with the department and expend moneys from the clean screen fund for computer programming costs associated with implementation of House Bill 01-1402, enacted at the first regular session of the sixty-third general assembly. The department is authorized to expend moneys pursuant to such contract, subject to annual appropriation by the general assembly, effective the fiscal year commencing July 1, 2000.

(12) Repealed.


Editor's note: Subsection (12)(b) provided for the repeal of subsection (12), effective July 1, 2008. (See L. 2006, p. 1026.)

Cross references: For the legislative declaration contained in the 2001 act enacting this section, see section 1 of chapter 278, Session Laws of Colorado 2001. For the legislative declaration contained in the 2006 act enacting subsection (12), see section 1 of chapter 225, Session Laws of Colorado 2006.

42-4-307.7. Vehicle emissions testing - remote sensing.

(1) and (2) Repealed.

(3) The Colorado department of transportation shall work with the department of public health and environment to identify locations that may accommodate unmanned remote sensing devices without causing a safety hazard.

(4) The commission shall evaluate options for increasing the number of vehicles passing a test under the clean screen program, including, but not limited to:

(a) The reduction of the number of remote sensing measurements per vehicle;

(b) Additional remote sensing devices and sites;
(c) Expanded hours of operation; and

(d) Additional staffing.

(5) The department of public health and environment shall work with the contractor to minimize false test results and shall track and report to the commission its progress in minimizing false test results on or before March 31 of each year.

(6) The commission shall determine the criteria used for the measurement of vehicle emissions needed to comply with the clean screen program, which criteria shall include, but are not limited to, the pollutants measured, acceptable levels of the measured pollutants, and failure rates. Criteria adopted by the commission for the clean screen program shall meet environmental protection agency requirements.

(7) to (11) Repealed.

(12) Photographs of a vehicle taken by a remote sensing device in order to capture an image of a vehicle's license plate shall be limited to the rear of the vehicle. No attempts shall be made by a remote sensing device to photograph a vehicle's driver.

(13) Repealed.


Editor's note: Subsection (13)(b) provided for the repeal of subsection (13), effective December 31, 2009. (See L. 2009, p. 1717.)

Cross references: For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 225, Session Laws of Colorado 2006.

42-4-308. Inspection and readjustment stations - inspection-only facilities - fleet inspection stations - motor vehicle dealer test facilities - contractor - emissions inspectors - emissions mechanics - requirements.

(1) (a) Applications for an inspection and readjustment station license, an inspection-only facility license, a fleet inspection station license, a motor vehicle dealer test facility license, an emissions inspector license, an enhanced inspection center license, or an emissions mechanic's license shall be made on forms prescribed by the executive director.

(b) No inspection and readjustment station license, inspection-only facility license, fleet inspection station license, motor vehicle dealer test facility license, or enhanced inspection center license shall be issued unless the executive director finds that the facilities of the applicant are of adequate size and properly equipped as provided in subsection (3) of this section, that a licensed inspector or emissions mechanic, whichever is applicable, is or will be available to make such inspection, and that the inspection and readjustment procedures will be properly followed based upon established performance criteria pursuant to section 42-4-306 (4) (c).

(2) No inspection or adjustments shall be made pursuant to the automobile inspection and readjustment program nor certification of emissions control issued unless the owner or operator
of the inspection and readjustment station, inspection-only facility, fleet inspection station, motor vehicle dealer test facility, or enhanced inspection center at which such inspection is made or such adjustments or repairs are performed as required has been issued, and is then operating under, a valid inspection and readjustment station license, inspection-only facility license, fleet inspection station license, motor vehicle dealer test facility license, or a contract for an authorized enhanced inspection center and has one or more licensed emissions inspectors or emissions mechanics employed as required, one of whom shall have made the inspection for which said certification has been issued.

(3) No inspection and readjustment station license, inspection-only facility license, fleet inspection station license, motor vehicle dealer test facility license, or contractor's contract shall be issued or executed unless the station or contractor has proper equipment to meet licensing, facility, or contractor approval requirements. Such equipment shall include all test equipment approved by the commission to perform emissions inspections corresponding to the type of licensed or approved facility together with such auxiliary tools, equipment, and testing devices as are required by the commission by rule.

(4) (a) No emissions inspector license or emissions mechanic license shall be issued to any applicant unless said applicant has completed the required training, has demonstrated necessary skills and competence in the inspection of motor vehicles by passing the written certification test developed by the commission and administered by the department of public health and environment, and has demonstrated such skill and competence as a prerequisite to initial licensing by the department of revenue.

(b) The department of revenue shall monitor emissions inspector and emissions mechanic activities at inspection and readjustment stations, inspection-only facilities, fleet inspection stations, motor vehicle dealer test facilities, and enhanced inspection centers during periodic performance audits conducted as prescribed by section 42-4-305.

(c) An emissions inspector or emissions mechanic license may be revoked in accordance with section 42-4-305 if the licensee is not in compliance with the minimum performance criteria set forth by the commission or the department of revenue.

(d) Licenses shall be valid for two years.

(e) Emissions inspector and emissions mechanic license renewal shall be subject to the requirements set forth by the commission through rule and regulation.


Editor's note: (1) This section is similar to former § 42-4-310 as it existed prior to 1994, and the former § 42-4-308 was relocated to § 42-4-305.

(2) Amendments to subsection (4)(a) by House Bill 94-1029 were harmonized with Senate Bill 94-001.

42-4-309. Vehicle fleet owners - motor vehicle dealers - authority to conduct inspections - fleet inspection stations - motor vehicle dealer test facilities - contracts with licensed inspection-only entities.
(1) (a) Any person in whose name twenty or more motor vehicles, required to be inspected, are registered in this state or to whom said number of vehicles are leased for a period of not less than six continuous months and who operates a motor vehicle repair garage or shop adequately equipped and manned, as required by section 42-4-308 and the rules and regulations issued pursuant thereto, may be licensed to perform said inspections as a fleet inspection station. Said inspections shall be made by licensed emissions inspectors or emissions mechanics. Such stations shall be subject to all licensing regulations and supervision applicable to inspection and readjustment stations. Fleet inspection stations shall inspect fleet vehicles in accordance with applicable requirements pursuant to rules and regulations promulgated by the commission. No person licensed pursuant to this section may conduct emissions inspections on motor vehicles owned by employees of such person or the general public, but only on those vehicles owned or operated by the person subject to the fleet inspection requirements. Any such motor vehicles are not eligible for a certificate of emissions waiver and shall be inspected annually. The commission shall promulgate such rules as may be necessary to establish non-loaded mode static idle inspection procedures, standards, and criteria under this section.

(b) Each fleet operator licensed or operating within the enhanced program area who is also licensed to operate a fleet inspection station shall assure that a representative sample of one-half of one percent or one vehicle, whichever is greater, of such operator's vehicle fleet is inspected annually at an inspection-only facility or enhanced inspection center. An analysis of the data gathered from any such inspection shall be performed by the department of public health and environment and provided to the department of revenue to determine compliance by such fleet with the self-inspection requirements of this section. An inspection is not required prior to the sale of a motor vehicle with at least twelve months remaining before the vehicle's certification of emissions compliance expires if such certification was issued when the vehicle was new.

(2) (a) As an alternative to subsection (1) of this section, any person having twenty or more vehicles registered in this state that are required to be inspected pursuant to section 42-4-310 may contract for periodic inspection services with a contractor or an inspection-only facility. Such inspections shall be in compliance with non-fleet vehicle requirements as specified in this part 3 and shall be performed by an authorized or licensed emissions inspector who shall be subject to all requirements and oversight as applicable.

(b) Upon retail sale of any vehicle subject to fleet inspection to a party other than a fleet operator, such vehicle shall be inspected at an authorized enhanced inspection center, licensed inspection-only facility, or licensed inspection and readjustment station, as applicable. A certificate of emissions compliance shall be required as a condition of the retail sale of any such vehicle.

(3) (a) Any person licensed as a motor vehicle dealer pursuant to article 6 of title 12, C.R.S., in whose name twenty or more motor vehicles are registered or inventoried or consigned for retail sale in this state which are required to be inspected shall comply with the requirements of section 42-4-310 for the issuance of a certificate of emissions compliance at the time of the retail sale of any such vehicle.

(b) Within the enhanced emissions program, motor vehicle dealers licensed pursuant to article 6 of title 12, C.R.S., may contract for used motor vehicle inspection services by a licensed motor vehicle dealer test facility. Pursuant to regulations of the commission, inspection
procedures shall include a loaded mode transient dynamometer test cycle in combination with appropriate idle short tests pursuant to rules and regulations of the commission.

(c) 1981 and older model vehicles held in inventory and offered for retail sale by a used vehicle dealer may be inspected by a licensed inspection-only facility.

(d) Within the basic emissions program, any person licensed as a motor vehicle dealer pursuant to article 6 of title 12, C.R.S., may be licensed to conduct inspections pursuant to subsections (1) and (2) of this section.

(4) Nothing in this section shall preclude a fleet or motor vehicle dealer test facility from participating in the basic or enhanced emissions program pursuant to this part 3 with the requirements of such program being determined by the county of residence or operation.

(5) (a) Motor vehicle dealers selling any vehicle to be registered in the enhanced program area shall comply with the enhanced program requirements.

(b) Motor vehicle dealers selling any vehicle to be registered in the basic program area shall comply with the basic program requirements.

(c) If used motor vehicles for sale have been inspected by a motor vehicle dealer test facility, the motor vehicle dealer shall comply with the standards and requirements established for motor vehicle dealer test facilities.

(6) (a) On and after June 1, 1996, a motor vehicle dealer or a used motor vehicle dealer licensed pursuant to article 6 of title 12, C.R.S., that sells any vehicle subject to the provisions of the enhanced emissions program may comply with the provisions of sections 42-4-304 (3) (d) and 42-4-310 by providing the consumer of the vehicle a voucher purchased by the dealer from the contractor for the centralized enhanced emissions program, with or without charge to the consumer, up to the maximum amount charged for an emissions inspection at an enhanced inspection center. Such voucher shall cover the cost of an emissions inspection of the vehicle at an enhanced inspection center and shall entitle the consumer to such an emissions inspection.

(b) If a vehicle inspected with a voucher as authorized in this paragraph (b) fails a test at an enhanced inspection center and is returned within three business days after its purchase, the dealer, at its option, shall repair the motor vehicle to pass the emissions test, pay the consumer to obtain such repairs to pass the emissions test from a third party, or repurchase the vehicle at the vehicle's purchase price. After such payment, repair, or repurchase, a dealer shall have no further liability to the consumer for compliance with the requirements of the enhanced emissions program.

(c) The voucher to be delivered at time of sale shall set forth the conditions described in paragraph (b) of this subsection (6) on a form prescribed by the department of revenue.

(7) A motor vehicle dealer shall have a motor vehicle inspected annually pursuant to section 42-4-310, but shall not be required to have such vehicle inspected more than once a year.

42-4-310. Periodic emissions control inspection required.

(1) (a) (I) Subject to subsection (4) of this section, a motor vehicle that is required to be registered in the program area shall not be sold, registered for the first time without a certification of emissions compliance, or reregistered unless such vehicle has passed a clean screen test or has a valid certification of emissions control as required by the appropriate county. The provisions of this paragraph (a) shall not apply to motor vehicle transactions at wholesale between motor vehicle dealers licensed pursuant to article 6 of title 12, C.R.S. An inspection is not required prior to the sale of a motor vehicle with at least twelve months remaining before the vehicle's certification of emissions compliance expires if such certification was issued when the vehicle was new.

(II) (A) If title to a roadworthy motor vehicle, as defined in section 42-6-102 (15), for which a certification of emissions compliance or emissions waiver must be obtained pursuant to this paragraph (a) is being transferred to a new owner, the new owner may require at the time of sale that the prior owner provide said certification as required for the county of residence of the new owner.

(B) The new owner shall submit such certification to the department of revenue or an authorized agent thereof with application for registration of the motor vehicle.

(C) If such vehicle is being registered in the program area for the first time, the owner shall obtain any certification required for the county where registration is sought and shall submit such certification to the department of revenue or an authorized agent thereof with such owner's application for the registration of the motor vehicle. A motor vehicle being registered in the program area for the first time may be registered without an inspection or certification if the vehicle has not yet reached its fourth model year or a later model year established by the commission pursuant to section 42-4-306 (8) (b).

(b) (I) (A) Effective July 1, 1987, and until May 28, 1999, those motor vehicles that are owned by the United States government or an agency thereof or by the state of Colorado or any agency or political subdivision thereof that would be registered in the program area shall be inspected once each year, and a valid certification of emissions compliance shall be obtained.

(B) New motor vehicles owned by the United States government or an agency thereof or by the state of Colorado or any agency or political subdivision thereof that would be registered in the program area shall be issued a certification of emissions compliance without inspection that shall expire on the anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year or a later model year established by the commission pursuant to section 42-4-306 (8) (b). Prior to the expiration of such certification such vehicle shall be inspected and a certification of emissions control shall be obtained therefor.

(C) Effective May 28, 1999, 1982 and newer model motor vehicles that are owned by the United States government or an agency thereof or by the state of Colorado or any agency or...
political subdivision thereof that would be registered in the program area shall be inspected every two years, and shall be issued a certification of emissions compliance that shall be valid for twenty-four months; except that vehicles owned or operated by any agency or political subdivision that is authorized and licensed pursuant to section 42-4-309 to inspect fleet vehicles shall be inspected annually.

(D) Effective May 28, 1999, 1981 and older model motor vehicles that are owned by the United States government or an agency thereof or by the state of Colorado or any agency or political subdivision thereof that would be registered in the program area shall be inspected once each year, and shall be issued a certification of emissions compliance that shall be valid for twelve months.

(E) Any vehicle subject to this subparagraph (I) that is suspected of having an emissions problem may undergo a voluntary inspection as provided in subparagraph (IV) of paragraph (c) of this subsection (1).

(II) (A) Motor vehicle dealers shall purchase verification of emissions test forms for the sum of twenty-five cents per form from the department or persons authorized by the department to make such sales to be used only on new motor vehicles. No refund or credit shall be allowed for any unused verification of emissions test forms. New motor vehicles required under this section to have a verification of emissions test form shall be issued a certification of emissions compliance without inspection, which shall expire on the anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year or a later model year established by the commission pursuant to section 42-4-306 (8) (b). Prior to the expiration of such certification such vehicle shall pass a clean screen test or be inspected and a certification of emissions control shall be obtained therefor.

(B) 1982 and newer model motor vehicles required pursuant to this section to have a certification of emissions control shall be inspected at the time of the sale or transfer of any such vehicle and, prior to registration renewal, shall be issued a certification of emissions control that shall be valid for twenty-four months except as provided under section 42-4-309. An inspection is not required prior to the sale of a motor vehicle with at least twelve months remaining before the vehicle's certification of emissions compliance expires if such certification was issued when the vehicle was new. This sub-subparagraph (B) does not apply to the sale of a motor vehicle that is inoperable or otherwise cannot be tested in accordance with regulations promulgated by the department of revenue if the seller of the motor vehicle provides a written notice to the purchaser pursuant to the requirements of subsection (4) of this section.

(C) 1981 and older model motor vehicles required pursuant to this section to have a certification of emissions control shall be inspected at the time of the sale or transfer of any such vehicle and, prior to registration renewal, shall be issued a certification of emissions control that shall be valid for twelve months. This sub-subparagraph (C) does not apply to the sale of a motor vehicle which is inoperable or otherwise cannot be tested in accordance with regulations promulgated by the department of revenue if the seller of the motor vehicle provides a written notice to the purchaser pursuant to the requirements of subsection (4) of this section.

(III) Upon registration or renewal of registration of a motor vehicle required to have a certification of emissions control, the department shall issue a tab identifying the vehicle as requiring certification of emissions control. The tab shall be displayed from the time of
registration. The verification of emissions test shall also be displayed on the motor vehicle in a location prescribed by the department of revenue consistent with federal regulations.

(c) (I) Effective October 1, 1989, those motor vehicles owned by nonresidents who reside in either the basic or enhanced emissions program areas or by residents who reside outside the program area who are employed for at least ninety days in any twelve-month period in a program area or who are attending school in a program area, and are operated in either the basic or enhanced emissions program areas for at least ninety days, shall be inspected as required by this section and a valid certification of emissions compliance or emissions waiver shall be obtained as required for the county where said person is employed or attends school. Such nonresidents include, but are not limited to, all military personnel, temporarily assigned employees of business enterprises, and persons engaged in activities at the Olympic training center.

(II) Any person owning or operating a business and any postsecondary educational institution located in a program area shall inform all persons employed by such business or attending classes at such institution that they are employed or attending classes in a program area and are required to comply with the provisions of subparagraph (I) of this paragraph (c).

(III) Vehicles that are registered in a program area and are being operated outside such area but within another program area shall comply with all program requirements of the area where such vehicles are being operated. Vehicles registered in a program area that are being temporarily operated outside the state at the time of registration or registration renewal may apply to the department of revenue for a temporary exemption from program requirements. Upon return to the program area, such vehicles must be in compliance with all requirements within fifteen days. A temporary exemption shall not be granted if the vehicle will be operated in an emissions testing area in another state unless proof of emissions from that area is submitted.

(IV) Nothing in this section shall be deemed to prevent or shall be interpreted so as to hinder the voluntary inspection of any motor vehicle in the enhanced emissions program. A certificate of emissions control issued under the provisions of the enhanced emissions program shall be acceptable as a demonstration of compliance within the basic program for vehicle registration purposes. In order to provide motorist protection, those vehicles voluntarily inspected and that fail said inspection but that are warrantable under manufacturers' emissions control warranties pursuant to section 207 (A) and (B) of the federal act shall comply with the emissions-related repair requirements of this part 3.

(V) Motor vehicles operated in the enhanced emissions program area, and required to be inspected pursuant to subparagraph (I) of this paragraph (c), shall comply with the inspection requirements of the enhanced emissions program area and are not required to comply with the inspection requirements of the basic emissions program area.

(d) (I) Repealed.

(II) (A) For the basic emissions program, effective January 1, 1994, for businesses which operate nineteen or fewer motor vehicles and for 1981 or older private motor vehicles required to be registered in the basic emissions program area, after any adjustments or repairs required pursuant to section 42-4-306, if total expenditures of at least seventy-five dollars have been made to bring the vehicle into compliance with applicable emissions standards and the vehicle still does not meet such standards, a certification of emissions waiver shall be issued for such vehicle.
(B) (Deleted by amendment, L. 2011, (SB 11-031), ch. 86, p. 246, § 11, effective August 10, 2011.)

(III) Repealed.

(IV) For the basic emissions program, effective January 1, 1994, for businesses that operate nineteen or fewer vehicles and for private motor vehicles only of a model year 1982 or later required to be registered in the basic emissions program area, after any adjustments or repairs required pursuant to section 42-4-306, if total expenditures of at least two hundred dollars have been made to bring the vehicle into compliance with the applicable emissions standards and the vehicle still does not meet such standards, a certification of emissions waiver shall be issued for such vehicle. For vehicles not older than two years or that have not more than twenty-four thousand miles, or such period of time and mileage as established for warranty protection by amendments to federal regulations, no emissions-related repair waivers shall be issued due to the provisions and enforcement of section 207 (A) and (B) of the federal act relating to emissions control systems components and performance warranties. Vehicles that are owned by the state of Colorado or any agency or political subdivision thereof are not eligible for emissions-related repair waivers under this subparagraph (IV).

(V) Repealed.

(VI) For the enhanced emissions program, effective January 1, 1995, for businesses that operate nineteen or fewer vehicles and for private motor vehicles only of a model year 1968 and later required to be registered in the enhanced emissions program area, after any adjustments or repairs required pursuant to section 42-4-306, if total expenditures of at least four hundred fifty dollars have been made to bring the vehicle into compliance with applicable emissions standards and the vehicle does not meet such standards, a certification of emissions waiver shall be issued for such vehicle except as prescribed in subparagraph (XII) of this paragraph (d) pertaining to vehicle warranty. The four-hundred-fifty-dollar minimum expenditure may be adjusted annually by an amount not to exceed the percentage, if any, by which the consumer price index for all urban consumers (CPIU) for the Denver-Boulder metropolitan statistical area for the preceding year differs from such index for 1989. Vehicles that are owned by the state of Colorado or any agency or political subdivision thereof are not eligible for emissions-related repair waivers under this subparagraph (VI).

(VII) Repealed.

(VIII) (A) For the enhanced emissions program except as provided in sub-subparagraph (B) of this subparagraph (VIII), for businesses that operate nineteen or fewer vehicles and for private motor vehicles only of a model year 1967 or earlier required to be registered in the enhanced emissions program area, after any adjustments or repairs required under section 42-4-306, if total expenditures of at least seventy-five dollars have been made to bring the vehicle into compliance with applicable emissions standards and the vehicle still does not meet the standards, a certification of emissions waiver shall be issued for the vehicle.

(B) This subparagraph (VIII) shall apply in Boulder county, effective July 1, 1995.

(IX) (A) For the enhanced emissions program except as provided in sub-subparagraph (B) of this subparagraph (IX) effective January 1, 1995, for vehicles subject to a transient, loaded mode
dynamometer inspection procedure under the enhanced program as determined by the commission, a certificate of waiver may be issued by an authorized state representative, if after failing a retest, at which point the minimum repair cost limit of four hundred fifty dollars has not been met, a complete and documented physical and functional diagnosis of the vehicle performed at an emissions technical center indicates that no additional emissions-related repairs would be effective or needed.

(B) This subparagraph (IX) shall apply in Boulder county, effective July 1, 1995.

(X) Subject to the provisions of subparagraph (V) of this paragraph (d), a certificate of emissions control shall not be issued for vehicles in the program area exhibiting smoke or indications of tampering with or poor maintenance of emissions control systems including on-board diagnostic systems.

(XI) As used in this paragraph (d), "total expenditures" means those expenditures directly related to adjustment or repair of a motor vehicle to reduce exhaust or evaporative emissions to a level which complies with applicable emissions standards. The term does not include an inspection fee, or any costs of adjustment, repair, or replacement necessitated by the disconnection of, tampering with, or abuse of air pollution control equipment, improper fuel use, or visible smoke.

(XII) No certification of emissions waiver shall be issued for vehicles not older than two years or which have not more than twenty-four thousand miles, or are of such other age and mileage as established for warranty protection under the federal act in accordance with the provisions and enforcement of section 207 (A) and (B) of the federal act relating to emissions control component and systems performance warranties.

(2) (a) The emissions inspection required under this section shall include an analysis of tail pipe and evaporative emissions. After January 1, 1994, such inspection shall include an analysis of emissions control equipment including on-board diagnostic systems, chlorofluorocarbons, and visible smoke emissions for the basic emissions program area and the enhanced emissions program area and emissions testing that meets the performance standards set by federal requirements for the enhanced emissions program area by means of procedures specified by regulation of the commission to determine whether the motor vehicle qualifies for issuance of a certification of emissions compliance. For motor vehicles of the model year 1975 or later, not tested under a transient load on a dynamometer, said inspection shall also include a visual inspection of emissions control equipment pursuant to rules of the commission.

(b) and (c) Repealed.

(d) (I) In the basic emissions program area, effective January 1, 1994, in order to be issued a certificate of emissions waiver, appropriate adjustments and repairs must have been performed at a licensed inspection and readjustment station by a licensed emissions mechanic.

(II) In the enhanced emissions program area, effective January 1, 1995, in order to be issued a certificate of emissions waiver, appropriate adjustments and repairs must have been performed by a technician at a registered repair facility within the enhanced emissions program area.
(III) Adjustments and repairs performed by a registered repair facility and technician within the enhanced emissions program area shall be sufficient for compliance with the provisions of this paragraph (d) in the basic program area.

(3) (a) Effective July 1, 1993, any home rule city, city, town, or county shall, after holding a public hearing and receiving public comment and upon request by the governing body of such local government to the department of public health and environment and the department of revenue and after approval by the general assembly acting by bill pursuant to paragraph (e) of this subsection (3), be included in the program area established pursuant to sections 42-4-301 to 42-4-316. When such a request is made, said departments and governing body shall agree to a start-up date for the program in such area, and, on or after such date, all motor vehicles, as defined in section 42-4-304 (18), which are registered in the area shall be inspected and required to comply with the provisions of sections 42-4-301 to 42-4-316 and rules and regulations adopted pursuant thereto as if such area was included in the program area. Except as provided in paragraph (c) of this subsection (3), the department of public health and environment and the department of revenue, the executive director, and the commission shall perform all functions and exercise all powers related to the program in areas included in the program pursuant to this subsection (3) that they are otherwise required to perform under sections 42-4-301 to 42-4-316.

(b) Effective July 1, 1993, notwithstanding the provisions of section 42-4-304 (20), a local government with jurisdiction over an area excluded from the program area pursuant to section 42-4-304 (20) may request inclusion in the program area, and the exclusion under section 42-4-304 (20) shall not apply to vehicles registered within such area.

(c) Effective July 1, 1993, the inclusion pursuant to paragraph (a) or (b) of this subsection (3) of any home rule city, city, town, or county in the program area shall not be submitted to the United States environmental protection agency as a revision to the state implementation plan or otherwise included in such plan. Any governing body which requests inclusion of an area pursuant to paragraph (a) or (b) of this subsection (3) in the program area may, after a minimum period of five years, request termination of the program in such area, and the program in such area shall be terminated thirty days after the receipt by the department of revenue of such a request.

(d) Effective January 1, 1994, except for those entities included within the program area pursuant to section 42-4-304 (20), for inclusion in the program area, any home rule city, city, town, or county shall have the basic emissions program test requirements and standards implemented as its emissions inspection program.

(e) Unless a home rule city, city, town, or county violates national ambient air quality standards as established by the environmental protection agency, the inclusion pursuant to paragraph (a) or (b) of this subsection (3) of any home rule city, city, town, or county in the program area shall be contingent upon approval by the general assembly acting by bill to include any such home rule city, city, town, or county in the program area.

(4) (a) The seller of a motor vehicle that is inoperable or otherwise cannot be tested in accordance with rules promulgated by the department of revenue or that is being sold pursuant to part 18 or part 21 of this article is not required to obtain a certification of emissions control prior to the sale of the vehicle if the seller provides a written notice to the purchaser prior to completion of the sale that clearly indicates the following:
(I) The vehicle does not currently comply with the emissions requirements for the program area;

(II) The seller does not warrant that the vehicle will comply with emissions requirements; and

(III) The purchaser is responsible for complying with emissions requirements prior to registering the vehicle in the emissions program area.

(b) The department shall prepare a form to comply with the provisions of paragraph (a) of this subsection (4) and shall make such form available to dealers and other persons who are selling motor vehicles which are inoperable or otherwise cannot be tested in accordance with regulations promulgated by the department of revenue.

(c) If a motor vehicle is exempted from the requirement for obtaining a certification of emissions control prior to sale pursuant to this subsection (4), the new owner of the motor vehicle is required to obtain a certification of emissions control for such motor vehicle before registering it in the program area.

(5) (a) Notwithstanding any other provision of this section, any eligible motor vehicle registered in a clean screen program county that complies with the requirements of the clean screen program under the provisions of sections 42-4-305 (12), 42-4-306 (23), and 42-4-307 (10.5) (a), by passing the requirements of such program and applicable rules shall be deemed to have complied with the inspection requirements of this section for the applicable emissions inspection cycle. For purposes of this subsection (5), "eligible motor vehicle" means a motor vehicle, including trucks, for model years 1978 and earlier having a gross vehicle weight rating of six thousand pounds or less and for model years 1979 and newer having a gross vehicle weight rating of eight thousand five hundred pounds or less.

(b) (I) If the commission does not specify a date for the county clerks and recorders in the basic emissions program area to begin collecting emissions inspection fees at the time of registration pursuant to section 42-3-304 (19) (a), or if the contractor determines that the motor vehicle required to be registered in the basic program area has complied with the inspection requirements pursuant to this subsection (5), a notice shall be sent to the owner of the vehicle identifying the owner of the vehicle, the license plate number, and other pertinent registration information, and stating that the vehicle has successfully complied with the applicable emission requirements. Such notice shall also include a notification that the registered owner of the vehicle may return the notice to the contractor with the payment as set forth on the notice to pay for the clean screen program. Upon receipt of the payment from the motor vehicle owner, the county clerk shall be notified that the motor vehicle has complied with the inspection requirements pursuant to this subsection (5).

(II) For vehicles with registration renewals coming due on or after the dates specified by the commission for county clerks and recorders to collect emissions inspection fees at the time of registration, if the contractor determines that a motor vehicle required to be registered in the program area has complied with the inspection requirements pursuant to this subsection (5), the contractor shall send a notice to the department of revenue identifying the owner of the vehicle, the license plate number, and any other pertinent registration information, stating that the vehicle has successfully complied with the applicable emission requirements.
(c) The department shall, by contract with a private vendor or by rule, establish a procedure for a vehicle owner to obtain the necessary emissions-related documents for the registration and operation of a vehicle that has complied with the inspection requirements pursuant to this subsection (5).


Editor's note: (1) This section is similar to former § 42-4-312 as it existed prior to 1994, and the former § 42-4-310 was relocated to § 42-4-308.

(2) Amendments to subsection (3)(a) by House Bill 94-1029 were harmonized with Senate Bill 94-001.


(4) Amendments to subsection (1)(a)(I) by House Bill 03-1016 and House Bill 03-1357 were harmonized.

Cross references: For the legislative declaration contained in the 2001 act amending subsections (1)(a)(I), (1)(b)(II)(A), (1)(d)(VI), (5)(b), and (5)(c), see section 1 of chapter 278, Session Laws of Colorado 2001. For the legislative declaration contained in the 2006 act amending subsection (1)(b)(II)(A), see section 1 of chapter 225, Session Laws of Colorado 2006.

42-4-311. Operation of inspection and readjustment stations - inspection-only facilities - fleet inspection stations - motor vehicle dealer test facilities - enhanced inspection centers.

(1) (a) No inspection and readjustment station license, inspection-only facility license, fleet inspection station license, motor vehicle dealer test facility license, or enhanced inspection center contract may be assigned or transferred or used at any other than the station, facility, or center therein designated, and every such license or authorization for an enhanced inspection center shall be posted in a conspicuous place at the facility designated.

(b) Beginning January 1, 1995, no emissions inspector license or authorization shall be assigned or transferred except to a licensed inspection-only facility, fleet inspection station, or enhanced inspection center.
(c) No emissions inspector or emissions mechanic license or authorization may be assigned or transferred, nor shall the inspection and adjustment be made by such emissions inspector or emissions mechanic except at a licensed inspection and readjustment station, inspection-only facility, fleet inspection station, or motor vehicle dealer test facility or authorized enhanced inspection center.

(2) A licensed inspection and readjustment station, inspection-only facility, fleet inspection station, motor vehicle dealer test facility, or authorized enhanced inspection center shall not issue a certification of emissions control to a motor vehicle except upon forms prescribed by the executive director. Such station, facility, or center shall not issue a certification of emissions compliance or emission waiver unless the licensed or authorized emissions inspector or emissions mechanic performing the inspection determines that:

(a) The exhaust gas and, if applicable, evaporative emissions from the motor vehicle comply with the applicable emissions standards and there is no evidence of emissions system tampering nor visible smoke, in which case a certification of emissions compliance shall be issued;

(b) The exhaust gas and, if applicable, evaporative emissions from the motor vehicle do not comply with the applicable emissions standards after the adjustments and repairs required by section 42-4-306 have been performed and there is no evidence of emissions system tampering or visible smoke, in which case a certification of emissions waiver shall be issued. A fleet emission inspector shall not issue a certification of emissions waiver within the enhanced program area.

(3) (a) (I) A verification of emissions test shall be issued to a motor vehicle by a licensed inspection and readjustment station, inspection-only facility, fleet inspection station, or motor vehicle dealer test facility or authorized enhanced inspection center at the time such vehicle is issued a certification of emissions control.

(II) No verification of emissions test is required to be issued to or required for any motor vehicle that is registered as a collector's item pursuant to section 42-12-401.

(III) (A) Repealed.

(B) Commencing July 1, 2001, every inspection and readjustment station, fleet inspection station, and inspection-only facility shall monthly transmit to the department the sum of twenty-five cents per motor vehicle inspection performed by such entity pursuant to this part 3 if the motor vehicle passes such inspection or is granted a waiver. No refund or credit shall be allowed for any unused verification of emissions test forms.

(C) The contractor shall monthly transmit to the department the sum of twenty-five cents per motor vehicle inspection performed by the contractor pursuant to this part 3 if the motor vehicle passes such inspection or is granted a waiver. No refund or credit shall be allowed for any unused verification of emissions test forms.

(b) The moneys collected by the department from the sale of verification forms shall be transmitted to the state treasurer, who shall credit such moneys to the AIR account, which account is created within the highway users tax fund. Moneys from the AIR account, upon appropriation by the general assembly, shall be expended only to pay the costs of administration.
and enforcement of the automobile inspection and readjustment program by the department and
the department of public health and environment.

(4) (a) (I) A licensed inspection and readjustment station, inspection-only facility, or motor
vehicle dealer test facility shall charge a fee not to exceed fifteen dollars for the inspection of
vehicles, model year 1981 and older, at facilities licensed or authorized within either the basic or
enhanced emissions program; except that for 1982 model and newer vehicles a test facility may
charge a fee not to exceed twenty-five dollars.

(II) In no case shall any such fee exceed the maximum fee established by and posted by the
station or facility pursuant to section 42-4-305 (5) for the inspection of any motor vehicle
required to be inspected under section 42-4-310.

(b) A licensed emissions inspection and readjustment station shall charge a fee for
performing the adjustments or repairs required for issuance of a certification of emissions waiver
not to exceed the maximum charge established in section 42-4-310 and posted by the station
pursuant to section 42-4-305.

(5) The fee charged in paragraph (a) of subsection (4) or subsection (6) of this section will be
charged to all nonresident vehicle owners subject to the inspection requirement of section
42-4-310 and depending on the county of operation.

(6) (a) The fee charged for enhanced emissions inspections performed within the enhanced
emissions program area on 1982 and later motor vehicles shall not be any greater than that
determined by the contract and in no case greater than twenty-five dollars. The fee charged for
clean screen inspections performed on vehicles registered in the basic area shall not be any
greater than that determined by the contract and in no case greater than fifteen dollars. Such fee
shall not exceed the maximum fee required to be posted by the enhanced inspection center
pursuant to section 42-4-305 for the inspection of any motor vehicle required to be inspected
under section 42-4-310.

(b) During the two-year renewal of the contract entered into pursuant to section 42-4-307
(10), the commission shall hold a hearing to determine the maximum fee that may be charged
pursuant to the contract for inspections during any subsequent renewal term. Such maximum fee
shall be based on estimated actual operating costs during the life of the contract, determined
pursuant to the proceeding and an audit conducted by the office of the state auditor on the
contractor, plus a percentage to be determined by the commission, not to exceed ten percent and
not to exceed twenty-five dollars.

(c) Repealed.

(7) At least one free reinspection shall be provided for those vehicles initially failed at the
inspection and readjustment station, inspection-only facility, or enhanced inspection center
which conducted the initial inspection, within ten calendar days of such initial inspection.

Source: L. 94: (3)(b) amended, p. 2813, § 589, effective July 1; entire title amended with
relocations, p. 2304, § 1, effective January 1, 1995. L. 2001: (3)(a)(II), (4)(a), and (6) amended,
p. 1020, § 7, effective June 5. L. 2002: (4)(a) and (6)(a) amended, p. 967, § 3, effective June 1;
(4)(a) amended, p. 1285, § 1, effective September 1; (4)(a) amended, p. 968, § 4, effective
September 1. L. 2006: (6)(c) added, p. 1029, § 7, effective July 1. L. 2011: IP(2), (2)(b), and

**Editor's note:** (1) This section is similar to former § 42-4-313 as it existed prior to 1994, and the former § 42-4-311 was relocated to § 42-4-309.

(2) Amendments to subsection (3)(b) by House Bill 94-1029 were harmonized with Senate Bill 94-001.


(4) Amendments to subsection (4)(a) by sections 3 and 4 of House Bill 02-1455 were harmonized.

**Cross references:** For the legislative declaration contained in the 2001 act amending subsections (3)(a)(III), (4)(a), and (6), see section 1 of chapter 278, Session Laws of Colorado 2001. For the legislative declaration contained in the 2006 act enacting subsection (6)(c), see section 1 of chapter 225, Session Laws of Colorado 2006.

**42-4-312. Improper representation as emissions inspection and readjustment station - inspection-only facility - fleet inspection station - motor vehicle dealer test facility - enhanced inspection center.**

(1) No person shall in any manner represent any place as an inspection and readjustment station, inspection-only facility, fleet inspection station, motor vehicle dealer test facility, or enhanced inspection center or shall claim to be a licensed emissions inspector or licensed emissions mechanic unless such station, facility, center, or person has been issued and operates under a valid license issued by the department or contract with the state. If the license or contract is cancelled, suspended, or revoked, all evidence designating the station, facility, or center as a licensed inspection and readjustment station, inspection-only facility, fleet inspection station, or motor vehicle dealer test facility or authorized enhanced inspection center and indicative of licensed status of the station, facility, or center or emissions inspector or emissions mechanic shall be removed within five days after receipt of notice of such action.

(2) (a) The department shall have authority to suspend or revoke the inspection and readjustment station license, inspection-only facility license, fleet inspection license, or motor vehicle dealer test facility license or to seek termination of the contractor's contract and require surrender of said license and unused certification of emissions control forms and verification of emissions test forms held by such licensee or contractor when such station, facility, or center is not equipped as required, when such station, facility, or center is not operating from a location for which the license or contract was issued, when the approved location has been altered so that it will no longer qualify as a licensed station or facility or authorized center, or when inspections, repairs, or adjustments are not being made in accordance with applicable laws and the rules and regulations of the department or commission.

(b) The department shall also have authority to suspend or revoke the license of an emissions inspector or emissions mechanic and require surrender of said license when it determines that said inspector or mechanic is not qualified to perform the inspections, repairs, or adjustments or when inspections, repairs, or adjustments are not being made in accordance with applicable laws and the rules and regulations of the department or the commission.
(3) In addition to any other grounds for revocation or suspension, authority to suspend and revoke inspection and readjustment station licenses, inspection-only facility licenses, fleet inspection station licenses, motor vehicle dealer test facility licenses, or enhanced inspection center contracts, or to seek termination of a contractor's contract or an emissions inspector's or emissions mechanic's license and to require surrender of said licenses and unused certification of inspection forms and records of said station shall also exist upon a showing that:

(a) A vehicle which had been inspected and issued a certification of emissions compliance by said station, facility, or center or by said inspector or mechanic was in such condition that it did not, at the time of such inspection, comply with the law or the rules and regulations for issuance of such a certification; or

(b) An inspection and readjustment station, or emissions mechanic has demonstrated a pattern of issuing certifications of emissions waivers to vehicles which, at the time of issuance of such certifications, did not comply with the law or the rules and regulations for issuance of such certifications.

(4) Upon suspending the license of an inspection and readjustment station, inspection-only facility, fleet inspection station, or motor vehicle dealer test facility or an enhanced inspection center contract or of an emissions inspector or emissions mechanic as authorized in this section, the executive director shall immediately notify the licensee or contractor in writing and, upon request therefor, shall grant the licensee or contractor a hearing within thirty days after receipt of such request, such hearing to be held in the county wherein the licensee or contractor resides, unless the executive director and the licensee or contractor agree that such hearing may be held in some other county. The executive director may request a hearing officer to act in the executive director's behalf. Upon such hearing, the executive director or the hearing officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books, records, and papers. Upon such hearing, the order of suspension or revocation may be rescinded, or, for good cause shown, the suspension may be extended for such period of time as the hearing person or body may determine, not exceeding one year, or the revocation order may be affirmed or reversed. The licensee shall not perform under the license pending the hearing and decision.

(5) Upon the final cancellation or termination of a contractor's contract, the executive director shall invoke the provisions of such contract to continue service until a new contract can be secured with qualified persons as supervised by the department of revenue.


Editor's note: This section is similar to former § 42-4-314 as it existed prior to 1994, and the former § 42-4-312 was relocated to § 42-4-310.

42-4-313. Penalties.

(1) (a) No person shall make, issue, or knowingly use any imitation or deceptively similar or counterfeit certification of emissions control form.
(b) No person shall possess a certification of emissions control if such person knows the same is fictitious, or was issued for another motor vehicle, or was issued without an emissions inspection having been made when required.

(c) Any person who violates any provision of this subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(2) (a) No emissions inspector or emissions mechanic shall issue a certification of emissions control for a motor vehicle which does not qualify for the certification or verification issued.

(b) Any emissions inspector or emissions mechanic who issues a certification of emissions control in violation of paragraph (a) of this subsection (2) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(3) (a) No person shall operate a motor vehicle registered or required to be registered in this state, nor shall any person allow such a motor vehicle to be parked on public property or on private property available for public use, without such vehicle having passed any necessary emissions test. The owner of any motor vehicle that is in violation of this paragraph (a) shall be responsible for payment of any penalty imposed under this section unless such owner proves that the motor vehicle was in the possession of another person without the owner's permission at the time of the violation.

(b) (Deleted by amendment, L. 2001, p. 1025, § 11, effective June 5, 2001.)

(c) Any vehicle owner who violates any provision of this section is guilty of a misdemeanor traffic offense and, upon conviction thereof, shall be punished by a fine of fifty dollars payable within thirty days after conviction.

(d) Any nonowner driver who violates any provision of this section is guilty of a misdemeanor traffic offense and, upon conviction thereof, shall be punished by a fine of fifteen dollars, payable within thirty days after conviction.

(e) The owner or driver may, in lieu of appearance, submit to the court of competent jurisdiction, within thirty days after the issuance of the notice and summons, the certification or proof of mailing specified in this subsection (3).

(f) Any fine collected pursuant to the provisions of this subsection (3) shall be retained by the jurisdiction in whose name such penalty was assessed.

(g) Nothing in this section shall be construed to limit the authority of any municipality, city, county, or city and county to adopt and enforce an ordinance or resolution pertaining to the enforcement of emissions control inspection requirements.

(h) to (j) Repealed.

(4) (a) For the emissions program, a contractor who is awarded a contract to perform emissions inspections within the emissions program area shall be held accountable to the
department of public health and environment and the department of revenue. Any such contractor shall be subject to civil penalties in accordance with this section or article 7 of title 25, C.R.S., as appropriate, for any violation of applicable laws or rules and regulations of the department of revenue or the commission.

(b) (I) Pursuant to the provisions of article 4 of title 24, C.R.S., the executive director may suspend for a period not less than six months the license of any operator or employee operating an inspection-only facility, fleet inspection station, or motor vehicle dealer test facility or may impose an administrative fine pursuant to subparagraph (II) of this paragraph (b), or may both suspend a license and impose a fine, if any such operator or employee, inspection-only facility, fleet inspection station, or motor vehicle dealer test facility engages in any of the following:

(A) Intentionally passing a failing vehicle;

(B) Performing any test by an unlicensed inspector;

(C) Performing a test on falsified test equipment;

(D) Failing a passing vehicle;

(E) Flagrantly misusing control documents; or

(F) Engaging in a pattern of noncompliance with any regulations of the department of revenue or the commission.

(II) The contract for operation of enhanced inspection centers shall specify administrative fines to be imposed for the violations enumerated in subparagraph (I) of this paragraph (b).

(c) Pursuant to the provisions of article 4 of title 24, C.R.S., the executive director shall impose administrative fines in amounts set by the executive director of not less than twenty-five dollars and not more than one thousand dollars against any operator or employee operating an inspection and readjustment station, an inspection-only facility, or a motor vehicle dealer test facility, or any contractor operating an enhanced inspection center or clean screen contractor that engages in two or more incidents per person, station, facility, or center, of any of the following:

(I) Test data entry violations;

(II) Test sequence violations;

(III) Emission retest procedural violations;

(IV) Vehicle emissions tag replacement test procedural violations;

(V) Performing any emissions test on noncertified equipment;

(VI) Wait-time and lane availability violations;

(VII) Physical emissions test examination violations;

(VIII) Knowingly passing failing vehicles; or

(IX) Knowingly failing passing vehicles.
42-4-314. Automobile air pollution control systems - tampering - operation of vehicle - penalty.

(1) No person shall knowingly disconnect, deactivate, or otherwise render inoperable any air pollution control system which has been installed by the manufacturer of any automobile of a model year of 1968 or later, except to repair or replace a part or all of the system.

(2) No person shall operate on any highway in this state any automobile described in subsection (1) of this section knowing that any air pollution control system installed on such automobile has been disconnected, deactivated, or otherwise rendered inoperable.

(3) Any person who violates any provision of this section commits a class A traffic infraction. The department shall not assess any points under section 42-2-127 for a conviction pursuant to this section.

(4) The air quality control commission may adopt rules and regulations pursuant to sections 25-7-109 and 25-7-110, C.R.S., which permit or allow for the alteration, modification, or disconnection of manufacturer-installed air pollution control systems or manufacturer tuning specifications on motor vehicles for the purpose of controlling vehicle emissions. Nothing in this section shall prohibit the alteration or the conversion of a motor vehicle to operate on a gaseous fuel, if the resultant emissions are at levels complying with state and federal standards for that model year of motor vehicle.

(5) Nothing in this section shall be construed to prevent the adjustment or modification of motor vehicles to reduce vehicle emissions pursuant to section 215 of the federal "Clean Air Act", as amended, 42 U.S.C. sec. 7549.


Editor's note: This section is similar to former § 42-4-1210 as it existed prior to 1994, and the former § 42-4-314 was relocated to § 42-4-312.
No provision of sections 42-4-301 to 42-4-316 shall be deemed to prevent, or interpreted so as to hinder, the enforcement of any applicable motor vehicle part or emissions control systems performance warranty.


Editor's note: This section is similar to former § 42-4-315.5 as it existed prior to 1994, and the former § 42-4-315 was relocated to § 42-4-313.

42-4-316. AIR program - demonstration of compliance with ambient air quality standards and transportation conformity.

(1) If the commission and the lead air quality planning agency of any portion of the program area agree that it has been demonstrated that any portion of the program meets ambient air quality standards and transportation conformity requirements, in compliance with federal acts, the commission may specify that the AIR program will no longer apply in that portion of the program area.

(2) The legislative audit committee shall cause to be conducted performance audits of the program, including the clean screen program. The first of such audits shall be completed not later than January 1, 2000, and shall be completed not later than January 1, 2004, and January 1 of each third year thereafter. Upon completion of the audit report, the legislative audit committee shall hold a public hearing for the purposes of a review of the report.

(3) (a) (Deleted by amendment, L. 2001, p. 1022, § 9, effective June 5, 2001.)

(b) In such audits, the determination as to whether an ongoing public need for the program has been demonstrated shall take into consideration the following factors, among others:

(I) The demonstrable effect on ambient air quality of the program;

(II) The cost to the public of the program;

(III) The cost-effectiveness of the program relative to other air pollution control programs;

(IV) The need, if any, for further reduction of air pollution caused by mobile sources to attain or maintain compliance with national ambient air quality standards;

(V) The application of the program to assure compliance with legally required warranties covering air pollution control equipment.


Editor's note: Amendments to subsection (3)(a) by House Bill 94-1029 were harmonized with Senate Bill 94-001.

Cross references: For the legislative declaration contained in the 2001 act amending subsections (2) and (3)(a) and the introductory portion to subsection (3)(b), see section 1 of chapter 278, Session
42-4-316.5. Termination of vehicle emissions testing program.

The commission shall have the authority to eliminate all requirements for regularly scheduled basic or enhanced emissions inspections of motor vehicles if the commission finds that this action does not violate federal air quality standards.


Editor's note: As of publication date, the air quality control commission has made no determination as to whether the elimination of all requirements for regularly scheduled basic or enhanced emissions inspections of motor vehicles violates federal air quality standards.

Cross references: For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 225, Session Laws of Colorado 2006.

42-4-317. Purchase or lease of new motor vehicles by state agencies - clean-burning alternative fuels - definitions. (Repealed)


Editor's note: Subsection (9) provided for the repeal of this section, effective July 1, 1995. (See L. 94, p. 2312.)
PART 4
DIESEL INSPECTION PROGRAM

42-4-401. Definitions.

As used in this part 4, unless the context otherwise requires:

(1) "Certification of emissions control" means one of the following certifications, issued to the owner of a diesel vehicle which is subject to the diesel inspection program in order to indicate the status of inspection requirement compliance of such vehicle:

(a) "Certification of diesel smoke opacity compliance" is a document which indicates that the smoke emissions from the vehicle comply with applicable smoke opacity limits at the time of inspection or after required adjustments or repairs;

(b) "Certification of diesel smoke opacity waiver" is a document which indicates that the smoke emissions from the vehicle does not comply with the applicable smoke opacity limits after inspection, adjustment, and emissions related repairs.

(2) "Commission" means the air quality control commission.

(3) "Diesel emissions inspection station" means a facility which meets the requirements established by the commission, is licensed by the executive director, and is so equipped as to enable a diesel vehicle emissions-opacity inspection to be performed.

(4) "Diesel emissions inspector" means a person possessing a valid license to perform diesel emissions-opacity inspections in compliance with the requirements of the commission.

(5) "Diesel powered motor vehicle" or "diesel vehicle" as applicable to opacity inspections, includes only a motor vehicle with four wheels or more on the ground, powered by an internal combustion, compression ignition, diesel fueled engine, and also includes any motor vehicle having a personal property classification of A, B, or C, pursuant to section 42-3-106, as specified on its vehicle registration, and for which registration in this state is required for operation on the public roads and highways. "Diesel vehicle" does not include: Vehicles registered under section 42-12-301; vehicles taxed under section 42-3-306 (4); or off-the-road diesel powered vehicles or heavy construction equipment.

(6) "Executive director" means the executive director of the department of revenue or the executive director's designee.

(6.3) "Heavy-duty diesel vehicle" means a vehicle that is greater than fourteen thousand pounds gross vehicle weight rating.

(6.7) "Light-duty diesel vehicle" means a vehicle that is less than or equal to fourteen thousand pounds gross vehicle weight rating.

(7) "Opacity meter" means an optical instrument that is designed to measure the opacity of diesel exhaust gases.
(8) "Program area" means the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld, and the cities and counties of Broomfield and Denver, excluding the following areas:

(a) That portion of Adams county which is east of Kiowa creek (Range 62 West, Townships 1, 2, and 3 South) between the Adams-Arapahoe county line and the Adams-Weld county line;

(b) That portion of Arapahoe county which is east of Kiowa creek (Range 62 West, Townships 4 and 5 South) between the Arapahoe-Elbert county line and the Arapahoe-Adams county line;

(c) That portion of El Paso county which is east of the following boundary, defined on a south-to-north axis: From the El Paso-Pueblo county line north (up-stream) along Chico creek (Ranges 63 and 64 West, Township 17 South) to Hanover road, then east along Hanover road (El Paso county route 422) to Peyton highway, then north along Peyton highway (El Paso county route 463) to Falcon highway, then west on Falcon highway (El Paso county route 405) to Peyton highway, then north on Peyton highway (El Paso county route 405) to Judge Orr road, then west on Judge Orr road (El Paso county route 108) to Elbert road, then north on Elbert road (El Paso county route 91) to the El Paso-Elbert county line;

(d) That portion of Larimer county which is west of the boundary defined on a north-to-south axis by Range 71 West and that portion which is north of the boundary defined on an east-to-west axis by Township 10 North;

(e) That portion of Weld county which is outside the corporate boundaries of Greeley, Evans, La Salle, and Garden City and, in addition, is outside the following boundary: Beginning at the point of intersection of the west boundary line of section 21, township six north, range sixty-six west and state highway 392, east along state highway 392 to the point of intersection with Weld county road 37; then south along Weld county road 37 to the point of intersection with Weld county road 64; then east along Weld county road 64 to the point of intersection with Weld county road 43; then south along Weld county road 43 to the point of intersection with Weld county road 62; then east along Weld county road 62 to the point of intersection with Weld county road 49; then south along Weld county road 49 to the point of intersection with the south boundary line of section 13, township five north, range sixty-five west; then west along the south boundary line of section 13, township five north, range sixty-five west, section 14, township five north, range sixty-five west, and section 15, township five north, range sixty-five west; then, from the southwest corner of section 15, township five west, range sixty-five west, south along the east boundary line of section 21, township five north, range sixty-five west, and section 28, township five north, range sixty-five west; then west along the south boundary line of section 28, township five north, range sixty-five west; then south along the east boundary line of section 32, township five north, range sixty-five west, and section 5, township four north, range sixty-five west; then west along the south boundary line of section 5, township four north, range sixty-five west, section 6, township four north, range sixty-five west, and section 1, township four north, range sixty-six west; then north along the west boundary line of section 1, township four north, range sixty-six west, and section 36, township five north, range sixty-six west; then, from the point of intersection of the west boundary line of section 36, township five north, range sixty-six west and Weld county road 52, west along Weld county road 52 to the point of intersection with Weld county road 27; then north along Weld county road 27 to the point of intersection with the
south boundary line of section 18, township five north, range sixty-six west; then west along the south boundary line of section 18, township five north, range sixty-six west, section 13, township five north, range sixty-seven west, and section 14, township five north, range sixty-seven west; then north along the west boundary line of section 14, township five north, range sixty-seven west, section 11, township five north, range sixty-seven west, and section 2, township five north, range sixty-seven west; then east along the north boundary line of section 2, township five north, range sixty-seven west, section 14, township five north, range sixty-six west; then from the northeast corner of section 5, township five north, range sixty-six west, north along the west boundary line of section 33, township six north, range sixty-six west, section 28, township six north, range sixty-six west, and section 21, township six north, range sixty-six west, to the point of beginning.

(9) "Smoke limit" means the maximum amount of allowable smoke opacity level as established by the commission.


Editor's note: This section is similar to former § 25-7-601 as it existed prior to 1994, and the former § 42-4-401 was relocated to § 42-4-501.

42-4-402. Administration of inspection program.

The department shall have responsibility for administering the diesel inspection program in accordance with the authority exercised by the executive director under the provisions of this part 4.


Editor's note: This section is similar to former § 25-7-601.5 as it existed prior to 1994, and the former § 42-4-402 was relocated to § 42-4-502.

42-4-403. Powers and duties of the commission.

(1) The commission shall be responsible for the adoption of rules and regulations which are necessary to implement the diesel inspection program including:

(a) Regulations governing procedures for:

(I) Testing and licensing of diesel emissions inspectors;

(II) Licensure of diesel emission inspection stations;

(III) Standards and specifications for the approval, operation, calibration, and certification of exhaust smoke opacity meters;
(IV) Proper performance of diesel opacity inspections and emissions system control inspections;

(b) Issuance of the following types of certifications of emissions control by licensed diesel emission inspectors:

(I) A certification of diesel smoke opacity compliance if, at the time of inspection, the smoke opacity from a diesel vehicle is in compliance with the applicable smoke opacity limits;

(II) A certification of diesel smoke opacity waiver if, at the time of inspection, the smoke opacity from a diesel vehicle does not comply with the applicable smoke opacity limits but such vehicle is adjusted or repaired to specifications as provided by regulation of the commission;

(III) A temporary certification of diesel smoke opacity compliance for diesel vehicles required to be repaired, if such repairs are delayed due to the unavailability of needed parts. The results of the initial smoke opacity test and final test shall be given to the owner of the diesel vehicle and reported to the department of public health and environment.

(2) (a) The commission shall promulgate and from time to time revise regulations on inspection procedures and smoke opacity limits when such procedures and limits have been proven cost-effective and air pollution control-effective on the basis of best available scientific research.

(b) Smoke limits shall not require unreasonable levels of emissions performance for a properly operated and maintained diesel vehicle of a given model year and technology, and such smoke limits shall be no less than twenty percent for five seconds minimum.

(c) The commission may also develop peak smoke opacity limits, but such limits shall not be less than forty percent for less than one second.

(d) Notwithstanding any other provisions of this subsection (2), for inspections conducted between January 1, 1990, and December 31, 1990, the smoke opacity limits shall be forty percent for five seconds minimum, and no diesel vehicle shall fail the smoke opacity inspection for peak limits.

(3) (a) The commission shall annually evaluate the diesel inspection program to determine but not limit the number of diesel vehicles which fail to meet the applicable smoke opacity limits after adjustments and repairs.

(b) If the commission finds that a significant number of diesel vehicles do not meet the applicable smoke opacity limits after adjustments or repairs are made, the commission shall develop recommendations designed to improve the air pollution control-effectiveness of the diesel inspection program in a cost-effective manner and shall submit such recommendations to the general assembly.

(4) In addition to any other authority granted under this section, the commission shall adopt regulations requiring each licensed diesel emissions inspection station to post, at the station, in a clearly legible manner and in a conspicuous place, the fee which shall be charged for performing a diesel emission-opacity inspection.
(5) The commission may exempt diesel vehicles of any make, model, or model year from the provisions of the diesel inspection program when inspection would be inappropriate for such vehicles. The exemption may include diesel vehicles which are required to be registered and inspected January, 1990.

(6) (a) Notwithstanding any other provisions to the contrary, the commission shall not have authority to adopt emission standards or implement an inspection and maintenance program that would result in emission requirements or an in-use testing or compliance demonstration that would be more stringent than the emission standards and test procedures adopted by the United States environmental protection agency for the corresponding model year and class of vehicle or engine.

(b) The commission shall determine by accepted scientific analysis that any emission standards and in-use test procedures it may adopt shall be designed so that any engine or vehicle which would pass the appropriate federal certification test shall also pass the inspection and maintenance test adopted by the commission for that engine or vehicle.


Editor's note: This section is similar to former § 25-7-602 as it existed prior to 1994, and the former § 42-4-403 was relocated to § 42-4-503.

42-4-404. Powers and duties of the executive director of the department of public health and environment.

(1) (a) The executive director of the department of public health and environment, referred to in this section as the "executive director", shall develop a program for the training, testing, and retesting of diesel emissions inspectors, which program may be funded by tuition charged to the participants.

(b) Those persons who successfully complete the testing set forth in paragraph (a) of this subsection (1) shall be recommended to the department of revenue for licensure.

(2) The executive director shall instruct the department of revenue to issue a license as a diesel inspection station to one or more parties with either new or existing diesel emissions inspection facilities. Such instruction shall be based on, among other factors:

(a) Any requirements for licensure set by the commission by rule and regulation pursuant to section 42-4-403;

(b) The requirements set forth in section 42-4-407;

(c) The geographical coverage which would result for licensing the station.

(d) Repealed.

(3) (a) The executive director shall continuously evaluate the diesel emissions inspection program. Such evaluation shall be based on continuing research conducted by the department of public health and environment and other engineering data and shall include assessments of the cost-effectiveness and air pollution control effectiveness of the program.
(b) The executive director shall submit such evaluation and any recommendations for program changes to the general assembly by December 1 of each year, in order that the general assembly may annually review the diesel emissions inspection program.

(4) The executive director shall implement an ongoing project designed to inform the public concerning the operation of the diesel emissions inspection program and the benefits to be derived from such program. The executive director shall also prepare a handbook which shall explain the diesel emissions inspection program, the owner's or operator's responsibilities under the program, the licensure of stations and inspectors, and any other aspects of the program which the executive director determines would be beneficial to the public. In addition to the distribution of such handbook, the executive director shall actively seek the assistance of the electronic and print media in communicating information to the public on the operation of the inspection program and shall utilize any other means of disseminating such information which may be likely to effectuate the purpose of such program.

(5) The executive director may establish and operate technical or administrative centers, if necessary, for the proper administration of the diesel inspection program or may utilize existing centers established for the AIR program pursuant to section 42-4-307.

(6) Repealed.


Editor's note: (1) This section is similar to former § 25-7-602.5 as it existed prior to 1994, and the former § 42-4-404 was relocated to § 42-4-504.

(2) Subsection (2)(d)(II) provided for the repeal of subsection (2)(d), effective July 1, 2001. (See L. 2000, pp. 1764, 1765.)

42-4-405. Powers and duties of executive director.

(1) The executive director is authorized to issue, deny, cancel, suspend, or revoke licensure for, and shall furnish instructions and all necessary forms to, diesel emissions inspection stations and inspectors. Fees for such licenses shall be established by regulations promulgated by the executive director.

(2) The executive director shall supervise the activities of licensed diesel emissions inspection stations and inspectors and shall cause inspections to be made of such stations and records and such inspectors for compliance with licensure requirements. The accuracy of a licensed station's smoke opacity meters shall be inspected not less than once every sixty days.

(3) The executive director shall require the surrender of any license which has been issued upon the cancellation, suspension, or revocation of the license for a violation of any of the provisions or of any of the regulations of the diesel emissions inspection program established pursuant to this part 4.

(4) The executive director shall adopt regulations for the administration and operation of diesel emissions inspection stations and for the issuance, identification, and use of certifications
of emissions control and shall adopt such rules and regulations as may be necessary to improve the effectiveness of the diesel emissions inspection program.

(5) (a) On and after January 1, 1991, the executive director shall hold hearings annually concerning the maximum inspection fee in order to ascertain whether such fee provides fair compensation for performing diesel emission-opacity inspections and represents an equitable charge to the consumer for such inspection.

(b) Repealed.


Editor's note: This section is similar to former § 25-7-603 as it existed prior to 1994, and the former § 42-4-405 was relocated to § 42-4-506.

42-4-406. Requirement of certification of emissions control for registration - testing for diesel smoke opacity compliance.

(1) (a) A diesel vehicle in the program area that is registered or required to be registered pursuant to article 3 of this title, routinely operates in the program area, or is principally operated from a terminal, maintenance facility, branch, or division located within the program area shall not be sold, registered for the first time, or reregistered unless such vehicle has been issued a certification of emissions control within:

(I) The past twelve months if the motor vehicle is a heavy-duty diesel vehicle that is over ten model years old;

(II) The last twenty-four months if the motor vehicle is a heavy-duty diesel vehicle that is ten model years old or newer;

(III) The last twelve months if the motor vehicle is a light-duty diesel vehicle that is at least ten model years old or that is model year 2003 or older; or

(IV) The last twenty-four months if the motor vehicle is a light-duty diesel vehicle that is ten model years old or newer and that is model year 2004 or newer.

(b) (I) A certification of emissions control shall be issued to any diesel vehicle that has been inspected and tested pursuant to subsection (2) of this section for diesel smoke opacity compliance and was found at such time to be within the smoke opacity limits established by the commission.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), new diesel vehicles, required under this section to have a certification of emissions control, shall be issued a certification of emissions compliance without inspection or testing. Prior to the expiration of such certification, such vehicle shall be inspected and a certification of emissions control shall be obtained for diesel smoke opacity compliance. Such certificate shall expire on the earliest to occur of the following:

(A) The anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year if it is a light-duty diesel vehicle;
(B) The anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year if it is a heavy-duty diesel vehicle; or

(C) On the date of the transfer of ownership if such date is within twelve months before such certification would expire pursuant to sub-subparagraph (A) or (B) of this subparagraph (II), unless such transfer of ownership is a transfer from the lessor to the lessee.

(2) (a) On or after January 1, 1990, all heavy duty diesel vehicles in the program area not subject to the provisions of section 42-4-414, with fleets of nine or more, shall be required to be tested for diesel smoke opacity compliance at a licensed diesel inspection station by submitting to loaded mode opacity testing utilizing dynamometers or on-road tests as prescribed by the commission.

(b) Light-duty diesel vehicles in the program area shall be required to be tested for diesel smoke opacity compliance at a licensed diesel inspection station by submitting to loaded mode opacity testing utilizing dynamometers.


Editor's note: This section is similar to former § 25-7-604 as it existed prior to 1994, and the former § 42-4-406 was relocated to § 42-4-507.

42-4-407. Requirements for a diesel emission-opacity inspection - licensure as diesel emissions inspection station - licensure as emissions inspector.

(1) A diesel emission-opacity inspection shall not be performed, nor shall a certification of diesel emissions control be issued unless such inspection was performed at a licensed diesel inspection station or self-certification fleet station as defined in section 42-4-414 by a licensed diesel emissions inspector.

(2) No station shall be licensed as a diesel emissions inspection station unless the executive director finds that:

(a) The facilities of the station are of adequate size and the station is properly equipped. Such equipment shall include:

(I) A smoke opacity meter which may be owned or leased and which has been approved as being in good working order by the executive director and has been registered with the department of public health and environment;

(II) Any other equipment or testing devices which are required by rule or regulation of the commission;

(b) The owner or operator of the station has one or more licensed diesel emission inspectors employed or under contract and such inspectors are responsible for all diesel emission-opacity inspections and the issuance of all certifications of emissions control;
(c) Inspection procedures shall be properly conducted and shall include a smoke opacity inspection. For model years 1991 and newer, inspection procedures shall include evaluation of applicable emissions control systems.

(3) Applications for licensure as a diesel inspection station shall be made on forms prescribed by the executive director.

(4) No person shall be licensed as a diesel emissions inspector unless the person has demonstrated necessary skills and competence in the performance of diesel inspection by passing a qualification test developed and administered by the executive director of the department of public health and environment.


Editor's note: This section is similar to former § 25-7-605 as it existed prior to 1994, and the former § 42-4-407 was relocated to § 42-4-508.

42-4-408. Operation of diesel inspection station.

(1) (a) A licensed diesel inspection station shall issue a certification of diesel emissions control to a diesel vehicle only upon forms issued by the executive director.

(b) A certification of diesel emissions control shall be issued by a licensed diesel inspection station to a diesel vehicle only after the licensed diesel emission inspector performing the inspection determines that:

(I) The smoke opacity levels from the diesel vehicle comply with the applicable smoke opacity limits, in which case a certification of diesel emission compliance shall be issued;

(II) The smoke opacity levels from the diesel vehicle do not comply with the applicable smoke opacity limits after adjustment or repair required in accordance to commission rules have been performed, in which case a certification of diesel smoke opacity waiver shall be issued.

(2) Notwithstanding the provisions of subsection (1) of this section, no certification of diesel emissions control may be issued to a diesel vehicle of model year 1991 and newer if there is evidence of diesel emissions control system tampering.

(3) A licensed diesel emissions inspection station shall charge a fee as set by the commission for the inspection of any diesel vehicle pursuant to this section. Such fee shall be intended to encompass all costs related to the inspection, including those costs incurred by the inspection station, the department of revenue, and the department of public health and environment. No fee that is charged pursuant to this section shall exceed the posted hourly shop rate for one hour. Such fee shall be posted by the inspection station pursuant to regulations set by the commission. Personnel within the testing inspection station shall notify the owner of the diesel vehicle to be tested of the fee before commencing any testing activities.


Editor's note: This section is similar to former § 25-7-606 as it existed prior to 1994, and the former § 42-4-408 was relocated to § 42-4-509.
42-4-409. Improper representation of a diesel inspection station.

(1) The executive director shall have the authority to suspend or revoke the diesel inspection license and unused certification of diesel emissions control forms held by a licensed inspection station for the following reasons:

(a) The station is not equipped as required;

(b) The station is not operating from a location for which licensure was granted;

(c) The licensed location has been altered so that it no longer qualifies as a diesel inspection station;

(d) Diesel inspections are not being performed with applicable laws, rules, or regulations of the commission or the executive director.

(2) The executive director shall also have authority to suspend or revoke the license of a diesel emissions inspector and require surrender of such license when the executive director determines that the inspector is not qualified to perform the diesel inspection or when inspections do not comply with applicable laws and the rules and regulations of the executive director or commission.


Editor's note: This section is similar to former § 25-7-607 as it existed prior to 1994, and the former § 42-4-409 was relocated to § 42-4-510.

42-4-410. Inclusion in the diesel inspection program.

(1) (a) Any home rule city, town, or county shall be included in the diesel inspection program set forth in this part 4 upon request by the governing body of such local government to the department of revenue and the department of public health and environment.

(b) When such a request is made, the departments and governing body shall agree to a start-up date for the diesel inspection program in such areas. Such a date shall be administratively practical and agreed to by the departments.

(c) On or after the dates agreed to pursuant to paragraph (b) of this subsection (1), diesel vehicles which are registered in the area shall be inspected and shall be required to comply with the provisions of this part 4 and rules and regulations adopted pursuant thereto as if such area was included in the program area.

(2) The executive directors of the departments of revenue and health and the commission shall perform all functions and exercise all phases related to the diesel emissions inspection program that they are otherwise required to perform under this part 4 in areas included in the program pursuant to this section.


Editor's note: This section is similar to former § 25-7-608 as it existed prior to 1994, and the former § 42-4-410 was relocated to § 42-4-106.
42-4-411. Applicability of this part to heavy-duty diesel fleets of nine or more.

Diesel-powered motor vehicles subject to the provisions of section 42-4-414 shall not be subject to the diesel emissions inspection program set forth in this part 4 unless the conditions set forth in section 42-4-414 (3) (c) have been met.


Editor's note: This section is similar to former § 25-7-609 as it existed prior to 1994, and the former § 42-4-411 was relocated to § 42-4-512.

42-4-412. Air pollution violations.

(1) (a) A person commits a class 2 petty offense, as specified in section 18-1.3-503, C.R.S., if the person causes or permits the emission into the atmosphere from:

(I) Any motor vehicle, including a motorcycle, powered by gasoline or any fuel except diesel of any visible air pollutant as defined in section 25-7-103 (1.5), C.R.S.;

(II) Any diesel-powered motor vehicle, of any visible air pollutant, as defined in section 25-7-103 (1.5), C.R.S., which creates an unreasonable nuisance or danger to the public health, safety, or welfare.

(b) Violations of this section may be determined by visual observations, including the snap acceleration opacity test, or by test procedures using opacity measurements.

(c) The provisions of paragraph (a) of this subsection (1) shall not apply to emissions caused by cold engine start-up.

(2) (a) The air quality control commission shall determine the minimum emission level of visible air pollutants from diesels which shall be considered to create an unreasonable nuisance or danger to the public health, safety, and welfare. Such minimum emission level shall be based on smoke levels attainable by correctly operated and maintained in-use diesel vehicles, considering altitude and other reasonable factors affecting visible smoke levels. In no case shall such level be less than twenty percent opacity when observed for five seconds or more. On interstate highways, opacity may be observed for ten seconds. Standards for transient conditions with no time limit shall also be established. Not later than December 1, 1979, the division shall develop a training course and qualification test designed to enable peace officers and environmental officers to ascertain violations of such standards without reference to opacity levels and to distinguish between air pollutants as defined in section 25-7-103 (1.5), C.R.S., and steam or water vapor.

(b) (I) The Colorado state patrol of the department of public safety shall offer the training course and qualification test.

(II) (Deleted by amendment, L. 96, p. 1263, § 171, effective August 7, 1996.)

(3) (a) This section shall apply only to motor vehicles intended, designed, and manufactured primarily for use in carrying passengers or cargo on roads, streets, and highways.
(b) Subparagraph (II) of paragraph (a) of subsection (1) of this section shall apply to all areas of the state except the program area, which program area shall be subject to section 42-4-413.

(4) (a) Effective January 1, 1980, the offense of causing air pollution pursuant to this section, upon conviction, is punishable by a fine of twenty-five dollars.

(b) Subsequent offenses involving the same motor vehicle within one year of a conviction under the provisions of paragraph (a) of this subsection (4), upon conviction, shall be punishable by a fine of one hundred dollars.

(c) Any owner who receives a citation under the provisions of this section may continue to use the vehicle for which the offense is alleged, without restriction, until such owner's conviction.

(d) Any fines collected pursuant to the provisions of this subsection (4) shall be divided in equal amounts and transmitted to the treasurer of the local jurisdiction in whose name the penalty was assessed and to the state treasurer for credit to the general fund.


Editor's note: This section is similar to former § 18-13-110 as it existed prior to 1994.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 2002 act amending the introductory portion to subsection (1)(a), see section 1 of chapter 318, Session Laws of Colorado 2002.

42-4-413. Visible emissions from diesel-powered motor vehicles unlawful - penalty.

(1) (a) Effective January 1, 1987, no owner or operator of a diesel-powered vehicle shall cause or knowingly permit the emission from the vehicle of any visible air contaminants that exceed the emission level as described in section 42-4-412 (2) (a) within the program area.

(b) As used in this section:

(I) "Air contaminant" means any fume, odor, smoke, particulate matter, vapor, gas, or combination thereof, except water vapor or steam condensate.

(II) "Emission" means a discharge or release of one or more air contaminants into the atmosphere.

(III) "Opacity" means the degree to which an air contaminant emission obscures the view of a trained observer, expressed in percentage of the obscuration or the percentage to which transmittance of light is reduced by an air contaminant emission.

(IV) "Trained observer" means a person who is certified by the department of public health and environment as trained in the determination of opacity.
(2) (a) A police officer or other peace officer who is a trained observer, or an environmental officer employed by a local government and certified by the department of public health and environment to determine opacity, at any time upon reasonable cause, may issue a summons personally to the operator of a motor vehicle emitting visible air contaminants in violation of paragraph (a) of subsection (1) of this section.

(b) (I) Any owner or operator of a diesel-powered motor vehicle receiving the summons issued pursuant to paragraph (a) of this subsection (2) or mailed pursuant to subparagraph (II) of paragraph (d) of this subsection (2) shall comply therewith and shall secure a certification of opacity compliance from a state emissions technical center that such vehicle conforms to the requirements of this section. Said certification shall be returned to the owner or operator for presentation in court as provided in paragraph (c) of this subsection (2).

(II) A fee of not more than six dollars and fifty cents shall be charged by emission technical centers for a certification of opacity compliance inspection and the certificate of no-smoke. Such fee shall be transmitted to the state treasurer, who shall credit the same to the AIR account established in section 42-4-311 (3) (b).

(c) (I) Any owner who violates any provision of this section is guilty of a misdemeanor traffic offense and, upon conviction thereof, except as provided in subparagraph (II) of this paragraph (c), shall be punished by a fine of one hundred dollars, payable within thirty days after conviction.

(II) If the owner submits to the court of competent jurisdiction within thirty days after the issuance of the summons proof that the owner has disposed of the vehicle for junk parts or immobilized the vehicle and if the owner also submits to the court within such time the registration and license plates for the vehicle, the owner shall be punished by a fine of twenty-five dollars. If the owner wishes to relicense the vehicle in the future, the owner shall obtain the certification required in paragraph (b) of this subsection (2).

(d) (I) Any nonowner operator who violates any provision of this section is guilty of a misdemeanor traffic offense and, upon conviction thereof, except as provided in subparagraph (II) of this paragraph (d), shall be punished by a fine of one hundred dollars, payable within thirty days after conviction.

(II) If the operator submits to the court of competent jurisdiction within thirty days after the issuance of the summons proof that the operator was not the owner of the vehicle at the time the summons was issued and that the operator mailed, within five days after issuance thereof, a copy of the notice and summons by certified mail to the owner of the vehicle at the address on the registration, the operator shall be punished by a fine of twenty-five dollars.

(e) Upon a showing of good cause that compliance with this section cannot be made within thirty days after issuance of the notice and summons, the court of competent jurisdiction may extend the period of time for compliance as may appear justified.

(f) The owner or operator, in lieu of appearance, may submit to the court of competent jurisdiction, within thirty days after the issuance of the notice and summons, the certification or proof of mailing specified in this subsection (2) together with the fine of twenty-five dollars.
(3) Any fine collected pursuant to the provisions of this section shall be transmitted to the treasurer of the local jurisdiction in which the violation occurred.

Source: L. 94: (1)(b)(IV) and (2)(a) amended, p. 2814, § 592, effective July 1; entire title amended with relocations, p. 2324, § 1, effective January 1, 1995. L. 2009: (1)(a) amended, (SB 09-003), ch. 322, p. 1720, § 6, effective June 1.

Editor's note: (1) This section is similar to former § 42-4-319 as it existed prior to 1994.

(2) Amendments to subsections (1)(b)(IV) and (2)(a) by House Bill 94-1029 were harmonized with Senate Bill 94-001, effective January 1, 1995.

42-4-414. Heavy-duty diesel fleet inspection and maintenance program - penalty - rules.

(1) The commission shall develop and implement, effective January 1, 1987, a fleet inspection and maintenance program for diesel-powered motor vehicles of more than fourteen thousand pounds gross vehicle weight rating. Regional transportation district buses, state, county, and municipal vehicles, and private diesel fleets shall participate in the program through self-certification inspection procedures as developed by the commission.

(2) (a) The commission shall promulgate rules requiring owners of diesel-powered motor vehicles, registered in the program area, routinely operated in the program area or principally operated from a terminal, maintenance facility, branch, or division located within the program area, and subject to the provisions of this section, to bring such vehicles into compliance with existing opacity standards set forth in section 42-4-412. Such rules and regulations shall be strictly construed, shall require no more than normal and reasonable maintenance practices, and shall not require additional fees or loaded mode testing equipment. Owners of fleets shall test opacity standards on a periodic basis.

(b) Such test shall use an opacity meter for such vehicles that are greater than ten model years old, but may use an automated opacity metering protocol for such vehicles that are less than or equal to ten model years old and of model year 1995 or newer.

(c) Such rules shall exempt a new diesel vehicle from testing until such vehicle has reached its second model year if it is a light-duty diesel vehicle, its fourth model year if it is a heavy-duty diesel vehicle, or until the date of the transfer of ownership prior to such expiration if such transfer is within twelve months before such exemption ends.

(d) Such rules shall provide for the testing of diesel vehicles every:

(I) Twelve months unless subparagraph (II) of this paragraph (d) applies; or

(II) The last twenty-four months if such vehicle is a heavy-duty diesel vehicle, equal to or less than ten model years old, and of model year 1995 or newer.

(2.5) An owner of a fleet registered in the program area may certify to the executive director or the executive director's designee, in a form and manner required by the executive director, that a diesel vehicle registered in the program area is physically based and principally operated from a terminal, division, or maintenance facility outside the program area. Any diesel vehicle registered in the program area, but certified to be physically based and principally operated from
a terminal, division, or maintenance facility outside the program area, is exempt from this section. The commission shall promulgate rules to administer this subsection (2.5).

(3) (a) and (b) (Deleted by amendment, L. 2003, p. 1023, § 1, effective August 6, 2003.)

(c) On or after January 1, 1990, in addition to any other penalty set forth in this subsection (3), any owner who is subject to the provisions of this section and who commits an excessive violation of this section twice in a twelve-month period shall be subject to the provisions of this part 4. For purposes of this paragraph (c), "excessive violation" shall be that definition recommended by the governor's blue ribbon diesel task force in 1988 and thereafter adopted by the air quality control commission, or, if such task force does not make a recommendation, "excessive violation" shall be that definition adopted by the air quality control commission.

(4) As used in this section, "fleet" means nine or more diesel-powered motor vehicles.

Source: L. 94: (2) and (3)(b) amended, p. 2814, § 593, effective July 1; entire title amended with relocations, p. 2325, § 1, effective January 1, 1995. L. 2003: (1), (2), (3)(a), and (3)(b) amended, p. 1023, § 1, effective August 6. L. 2004: (2)(c) amended, p. 253, § 2, effective July 1. L. 2011: (2.5) added, (HB 11-1157), ch. 259, p. 1134, § 1, effective August 10.

Editor's note: (1) This section is similar to former § 42-4-320 as it existed prior to 1994.

(2) Amendments to subsections (2) and (3)(b) by House Bill 94-1029 were harmonized with Senate Bill 94-001.
PART 5
SIZE - WEIGHT - LOAD

Cross references: For penalties for class A and class B traffic infractions, see § 42-4-1701 (3)(a)(I).

42-4-501. Size and weight violations - penalty.

Except as provided in section 42-4-509, it is a traffic infraction for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in sections 42-4-502 to 42-4-512 or otherwise in violation of said sections or section 42-4-1407, except as permitted in section 42-4-510. The maximum size and weight of vehicles specified in said sections shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations, except as express authority may be granted in section 42-4-106.


Editor's note: This section is similar to former § 42-4-401 as it existed prior to 1994, and the former § 42-4-501 was relocated to § 42-4-104.

42-4-502. Width of vehicles.

(1) The total outside width of any vehicle or the load thereon shall not exceed eight feet six inches, except as otherwise provided in this section.

(2) (a) A load of loose hay, including loosely bound, round bales, whether horse drawn or by motor, shall not exceed twelve feet in width.

(b) A vehicle and trailer may transport a load of rectangular hay bales if such vehicle and load do not exceed ten feet six inches in width.

(3) It is unlawful for any person to operate a vehicle or a motor vehicle which has attached thereto in any manner any chain, rope, wire, or other equipment which drags, swings, or projects in any manner so as to endanger the person or property of another.

(4) The total outside width of buses and coaches used for the transportation of passengers shall not exceed eight feet six inches.

(5) (a) The total outside width of vehicles as included in this section shall not be construed so as to prohibit the projection beyond such width of clearance lights, rearview mirrors, or other accessories required by federal, state, or city laws or regulations.

(b) The width requirements imposed by subsection (1) of this section shall not include appurtenances on recreational vehicles, including but not limited to motor homes, travel trailers, fifth wheel trailers, camping trailers, recreational park trailers, multipurpose trailers, and truck campers, all as defined in section 24-32-902, C.R.S., so long as such recreational vehicle, including such appurtenances, does not exceed a total outside width of nine feet six inches.
(6) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-402 as it existed prior to 1994, and the former § 42-4-502 was relocated to § 42-4-601.

Cross references: For the definition of "multipurpose trailers", see § 42-1-102.

42-4-503. Projecting loads on passenger vehicles.

No passenger-type vehicle, except a motorcycle, a bicycle, or an electrical assisted bicycle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof. Any person who violates this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-403 as it existed prior to 1994, and the former § 42-4-503 was relocated to § 42-4-602.

42-4-504. Height and length of vehicles.

(1) No vehicle unladen or with load shall exceed a height of thirteen feet; except that vehicles with a height of fourteen feet six inches shall be operated only on highways designated by the department of transportation.

(2) No single motor vehicle shall exceed a length of forty-five feet extreme overall dimension, inclusive of front and rear bumpers. The length of vehicles used for the mass transportation of passengers wholly within the limits of a town, city, or municipality or within a radius of fifteen miles thereof may extend to sixty feet. The length of school buses may extend to forty feet.

(3) Buses used for the transportation of passengers between towns, cities, and municipalities in the state of Colorado may be sixty feet extreme overall length, inclusive of front and rear bumpers but shall not exceed a height of thirteen feet six inches, if such buses are equipped to conform with the load and weight limitations set forth in section 42-4-508; except that buses with a height of fourteen feet six inches which otherwise conform to the requirements of this subsection (3) shall be operated only on highways designated by the department of transportation.

(4) No combination of vehicles coupled together shall consist of more than four units, and no such combination of vehicles shall exceed a total overall length of seventy feet. Said length limitation shall not apply to unladen truck tractor-semitrailer combinations when the semitrailer is fifty-seven feet four inches or less in length or to unladen truck tractor-semitrailer-trailer combinations when the semitrailer is less than sixty feet.
combinations when the semitrailer and the trailer are each twenty-eight feet six inches or less in length. Said length limitations shall also not apply to vehicles operated by a public utility when required for emergency repair of public service facilities or properties or when operated under special permit as provided in section 42-4-510, but, in respect to night transportation, every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of such load.

(4.5) Notwithstanding the provisions of subsection (4) of this section, the following combinations of vehicles shall not exceed seventy-five feet in total overall length:

(a) Saddlemount combinations consisting of no more than four units;

(b) Laden truck tractor-semitrailer combinations; and

(c) Specialized equipment used in combination for transporting automobiles or boats. The overall length of such combination shall be exclusive of:

(I) Safety devices; however, such safety devices shall not be designed or used for carrying cargo;

(II) Automobiles or boats being transported;

(III) Any extension device that may be used for loading beyond the extreme front or rear ends of a vehicle or combination of vehicles; except that the projection of a load, including any extension devices loaded to the front of the vehicle, shall not extend more than four feet beyond the extreme front of the grill of such vehicle and no load or extension device may extend more than six feet to the extreme rear of the vehicle.

(5) The load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend beyond the front wheels of such vehicles or vehicle or the front most point of the grill of such vehicle; but a load may project not more than four feet beyond the front most point of the grill assembly of the vehicle engine compartment of such a vehicle at a point above the cab of the driver's compartment so long as that part of any load projecting ahead of the rear of the cab or driver's compartment shall be so loaded as not to obscure the vision of the driver to the front or to either side.

(6) The length limitations of vehicles and combinations of vehicles provided for in this section as they apply to vehicles being operated and utilized for the transportation of steel, fabricated beams, trusses, utility poles, and pipes shall be determined without regard to the projection of said commodities beyond the extreme front or rear of the vehicle or combination of vehicles; except that the projection of a load to the front shall be governed by the provisions of subsection (5) of this section, and no load shall project to the rear more than ten feet.

(7) Any person who violates any provision of this section commits a class B traffic infraction.

Editor's note: This section is similar to former § 42-4-404 as it existed prior to 1994, and the former § 42-4-504 was relocated to § 42-4-603.

ANNOTATION

Law reviews. For article, "Interstate Legal Barriers to Transportation in the Trans-Missouri West", see U. Colo. L. Rev. 476 (1966).

42-4-505. Longer vehicle combinations - rules.

(1) (a) Notwithstanding any other provision of this article to the contrary, the department of transportation, in the exercise of its discretion, may issue permits for the use of longer vehicle combinations. An annual permit for such use may be issued to each qualified carrier company. The carrier company shall maintain a copy of such annual permit in each vehicle operating as a longer vehicle combination; except that, if a peace officer, as described in section 16-2.5-101, C.R.S., or an authorized agent of the department of transportation may determine that the permit can be electronically verified at the time of contact, a copy of the permit need not be in each vehicle. The fee for the permit shall be two hundred fifty dollars per year.

(b) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (1), the executive director of the department by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the department by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(c) The department shall provide the option to a company filing for a permit under this section to file an express consent waiver that enables the company to designate a company representative to be a party of interest for a violation of this section. The appearance of the company representative in a court hearing without the operator when the operator has signed such waiver shall not be deemed the practice of law in violation of article 5 of title 12, C.R.S.

(2) The permits shall allow operation, over designated highways, of the following vehicle combinations of not more than three cargo units and neither fewer than six axles nor more than nine axles:

(a) An unladen truck tractor, a semitrailer, and two trailers. A semitrailer used with a converter dolly shall be considered a trailer. Semitrailers and trailers shall be of approximately equal lengths not to exceed twenty-eight feet six inches in length.

(b) An unladen truck tractor, a semitrailer, and a single trailer. A semitrailer used with a converter dolly shall be considered a trailer. Semitrailers and trailers shall be of approximately equal lengths not to exceed forty-eight feet in length. Notwithstanding any other restriction set forth in this section, such combination may have up to eleven axles when used to transport empty trailers.

(c) An unladen truck tractor, a semitrailer, and a single trailer, one trailer of which is not more than forty-eight feet long, the other trailer of which is not more than twenty-eight feet six
inches long. A semitrailer used with a converter dolly shall be considered a trailer. The shorter trailer shall be operated as the rear trailer.

(d) A truck and single trailer, having an overall length of not more than eighty-five feet, the truck of which is not more than thirty-five feet long and the trailer of which is not more than forty feet long. For the purposes of this paragraph (d), a semitrailer used with a converter dolly shall be considered a trailer.

(3) (a) The long combinations are limited to interstate highway 25, interstate highway 76, interstate highway 70 west of its intersection with state highway 13 in Garfield county, interstate highway 70 east of its intersection with U.S. 40 and state highway 26, the circumferential highways designated I-225 and I-270, and state highway 133 in Delta county from mile marker 8.9 to mile marker 9.7. The department of transportation shall promulgate rules to provide carriers with reasonable ingress to and egress from such designated highway segments.

(b) Upon action by the congress of the United States to lift the freeze imposed by the federal "Intermodal Surface Transportation Efficiency Act of 1991", Pub.L. 102-240, as amended, concerning the use of longer vehicle combinations, either by the total freeze being lifted by congress or by the approval of pilot projects to expand the use of longer vehicle combinations by the states, the department of transportation shall undertake a process to evaluate both interstate and state highways for possible authorization by the department of additional highway segments for inclusion by the general assembly in paragraph (a) of this subsection (3). During the review process, the department shall solicit input from all relevant stakeholders and shall work within existing statutory and regulatory guidelines. The department shall commence the review process within ninety days after action by congress that would allow expansion of the longer vehicle combination route network in Colorado.

(4) The department of transportation shall promulgate rules and regulations governing the issuance of the permits, including, but not limited to, selection of carriers, driver qualifications, equipment selection, hours of operation, and safety considerations; except that they shall not include hazardous materials subject to regulation by the provisions of article 20 of this title.

(5) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-404.5 as it existed prior to 1994, and the former § 42-4-505 was relocated to § 42-4-604.

42-4-506. Trailers and towed vehicles.

(1) When one vehicle is towing another, the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby, and said drawbar or other connection shall
not exceed fifteen feet from one vehicle to the other, except the connection between any two
vehicles transporting poles, pipe, machinery, or other objects of a structural nature which cannot
readily be dismembered and except connections between vehicles in which the combined lengths
of the vehicles and the connection does not exceed an overall length of fifty-five feet and the
connection is of rigid construction included as part of the structural design of the towed vehicle.

(2) When one vehicle is towing another and the connection consists of a chain, rope, or cable,
there shall be displayed upon such connection a white flag or cloth not less than twelve inches
square.

(3) Whenever one vehicle is towing another, in addition to the drawbar or other connection,
except a fifth wheel connection meeting the requirements of the department of transportation,
safety chains or cables arranged in such a way that it will be impossible for the vehicle being
towed to break loose from the vehicle towing in the event the drawbar or other connection were
to be broken, loosened, or otherwise damaged shall be used. This subsection (3) shall apply to all
motor vehicles, to all trailers, except semitrailers connected by a proper fifth wheel, and to any
dolly used to convert a semitrailer to a full trailer.

(4) Any person who violates any provision of this section commits a class B traffic
infraction.


Editor's note: This section is similar to former § 42-4-405 as it existed prior to 1994, and the former
§ 42-4-506 was relocated to § 42-4-605.

42-4-507. Wheel and axle loads.

(1) The gross weight upon any wheel of a vehicle shall not exceed the following:

(a) When the wheel is equipped with a solid rubber or cushion tire, eight thousand pounds;

(b) When the wheel is equipped with a pneumatic tire, nine thousand pounds.

(2) The gross weight upon any single axle or tandem axle of a vehicle shall not exceed the
following:

(a) When the wheels attached to said axle are equipped with solid rubber or cushion tires,
sixteen thousand pounds;

(b) Except as provided in paragraph (b.5) of this subsection (2), when the wheels attached to
a single axle are equipped with pneumatic tires, twenty thousand pounds;

(b.5) When the wheels attached to a single axle are equipped with pneumatic tires and the
vehicle or vehicle combination is a dicker derrick or bucket boom truck operated by an electric
utility on a highway that is not on the interstate system as defined in section 43-2-101 (2),
C.R.S., twenty-one thousand pounds;

(c) When the wheels attached to a tandem axle are equipped with pneumatic tires, thirty-six
thousand pounds for highways on the interstate system and forty thousand pounds for highways
not on the interstate system.
(3) (a) Vehicles equipped with a self-compactor and used solely for the transporting of trash are exempted from the provisions of paragraph (b) of subsection (2) of this section.

(b) After January 1, 1987, the provisions of this subsection (3) shall be reviewed at a joint meeting of the senate transportation committee and the house transportation and energy committee in order to determine the effects of such provisions.

(4) For the purposes of this section:

(a) A single axle is defined as all wheels, whose centers may be included within two parallel transverse vertical planes not more than forty inches apart, extending across the full width of the vehicle.

(b) A tandem axle is defined as two or more consecutive axles, the centers of which may be included between parallel vertical planes spaced more than forty inches and not more than ninety-six inches apart, extending across the full width of the vehicle.

(5) The gross weight upon any one wheel of a steel-tired vehicle shall not exceed five hundred pounds per inch of cross-sectional width of tire.

(6) Any person who drives a vehicle or owns a vehicle in violation of any provision of this section commits a class 2 misdemeanor traffic offense.


Editor's note: This section is similar to former § 42-4-406 as it existed prior to 1994, and the former § 42-4-507 was relocated to § 42-4-606.

42-4-508. Gross weight of vehicles and loads.

(1) Except as provided in subsection (1.5) of this section, no vehicle or combination of vehicles shall be moved or operated on any highway or bridge when the gross weight thereof exceeds the limits specified below:

(a) (I) The gross weight upon any one axle of a vehicle shall not exceed the limits prescribed in section 42-4-507.

(II) Subject to the limitations prescribed in section 42-4-507, the gross weight of a vehicle having two axles shall not exceed thirty-six thousand pounds.

(III) Subject to the limitations prescribed in section 42-4-507, the gross weight of a single vehicle having three or more axles shall not exceed fifty-four thousand pounds.

(b) Subject to the limitations prescribed in section 42-4-507, the maximum gross weight of any vehicle or combination of vehicles shall not exceed that determined by the formula W equals 1,000 (L plus 40), W = the gross weight in pounds, L = the length in feet between the centers of the first and last axles of such vehicle or combination of vehicles, but in computation of this formula no gross vehicle weight shall exceed eighty-five thousand pounds. For the purposes of this section, where a combination of vehicles is used, no vehicle shall carry a gross weight of less
than ten percent of the overall gross weight of the combination of vehicles; except that these
limitations shall not apply to specialized trailers of fixed public utilities whose axles may carry
less than ten percent of the weight of the combination. The limitations provided in this section
shall be strictly construed and enforced.

(c) Notwithstanding any other provisions of this section, except as may be authorized under
section 42-4-510, no vehicle or combination of vehicles shall be moved or operated on any
highway or bridge which is part of the national system of interstate and defense highways, also
known as the interstate system, when the gross weight of such vehicle or combination of vehicles
exceeds the following specified limits:

(I) Subject to the limitations prescribed in section 42-4-507, the gross weight of a vehicle
having two axles shall not exceed thirty-six thousand pounds.

(II) Subject to the limitations prescribed in section 42-4-507, the gross weight of a single
vehicle having three or more axles shall not exceed fifty-four thousand pounds.

(III) (A) Subject to the limitations prescribed in section 42-4-507, the maximum gross weight
of any vehicle or combination of vehicles shall not exceed that determined by the formula \( W = 500 [(LN/N-1) + 12N + 36] \).

(B) In using the formula in sub-subparagraph (A) of this subparagraph (III), \( W \) equals overall
gross weight on any group of two or more consecutive axles to the nearest 500 pounds, \( L \) equals
distance in feet between the extreme of any group of two or more consecutive axles, and \( N \)
equals number of axles in the group under consideration; but in computations of this formula no
gross vehicle weight shall exceed eighty thousand pounds, except as may be authorized under
section 42-4-510.

(IV) For the purposes of this subsection (1), where a combination of vehicles is used, no
vehicle shall carry a gross weight of less than ten percent of the overall gross weight of the
combination of vehicles; except that this limitation shall not apply to specialized trailers whose
specific use is to haul poles and whose axles may carry less than ten percent of the weight of the
combination.

(1.5) The gross weight limits provided in subsection (1) of this section are increased by one
thousand pounds for any vehicle or combination of vehicles if the vehicle or combination of
vehicles contains an alternative fuel system and operates on alternative fuel or both alternative
and conventional fuel. The provisions of this subsection (1.5) apply only when the vehicle or
combination of vehicles is operated on a highway that is not on the interstate system as defined
in section 43-2-101 (2), C.R.S. For the purposes of this subsection (1.5), "alternative fuel" has
the same meaning provided in section 25-7-106.8 (1) (a), C.R.S.

(2) The department upon registering any vehicle under the laws of this state, which vehicle is
designed and used primarily for the transportation of property or for the transportation of ten or
more persons, may acquire such information and may make such investigation or tests as
necessary to enable it to determine whether such vehicle may safely be operated upon the
highways in compliance with all the provisions of this article. The department shall not register
any such vehicle for a permissible gross weight exceeding the limitations set forth in sections
42-4-501 to 42-4-512 and 42-4-1407. Every such vehicle shall meet the following requirements:
(a) It shall be equipped with brakes as required in section 42-4-223;

(b) Every motor vehicle to be operated outside of business and residence districts shall have motive power adequate to propel at a reasonable speed such vehicle and any load thereon or to be drawn thereby.

(3) If the federal highway administration or the United States congress prescribes or adopts vehicle size or weight limits greater than those now prescribed by the "Federal-Aid Highway Act of 1956", which limits exceed in full or in part the provisions of section 42-4-504 or paragraph (b) or (c) of subsection (1) of this section, the transportation commission, upon determining that Colorado highways have been constructed to standards which will accommodate such additional size or weight and that the adoption of said size and weight limitations will not jeopardize any distribution of federal highway funds to the state, may adopt size and weight limits comparable to those prescribed or adopted by the federal highway administration or the United States congress and may authorize said limits to be used by owners or operators of vehicles while said vehicles are using highways within this state; but no vehicle size or weight limit so adopted by the commission shall be less in any respect than those now provided for in section 42-4-504 or paragraph (b) or (c) of subsection (1) of this section.

(4) Any person who drives a vehicle or owns a vehicle in violation of any provision of this section commits a class 2 misdemeanor traffic offense.


Editor's note: (1) This section is similar to former § 42-4-407 as it existed prior to 1994, and the former § 42-4-508 was relocated to § 42-4-607.

(2) Amendments to subsection (1)(c)(III)(B) by House Bill 94-1012 were harmonized with Senate Bill 94-001.

(3) Subsection (1)(b) was amended by Senate Bill 09-108 and was further amended by House Bill 09-1318. The amendments made by House Bill 09-1318 reversed the changes made by Senate Bill 09-108 and returned subsection (1)(b) to its original form. Both bills had an effective date of January 1, 2010, therefore, no changes are being shown in subsection (1)(b).


42-4-509. Vehicles weighed - excess removed.

(1) Any police or peace officer, as described in section 16-2.5-101, C.R.S., having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same by means of either portable or stationary scales or shall require that such vehicle be driven to the nearest public scales in the event such scales are within five miles.
(2) (a) Except as provided in paragraph (b) of this subsection (2), whenever an officer upon weighing a vehicle and load as provided in subsection (1) of this section determines that the weight is unlawful, such officer shall require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under sections 42-4-501 to 42-4-512 and 42-4-1407. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

(b) Whenever an officer upon weighing a vehicle and load as provided in subsection (1) of this section determines that the weight is unlawful and the load consists solely of either explosives or hazardous materials as defined in section 42-1-102 (32), such officer shall permit the driver of such vehicle to proceed to the driver's destination without requiring the driver to unload the excess portion of such load.

(3) Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing or who fails or refuses when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section commits a class 2 misdemeanor traffic offense.


Editor's note: This section is similar to former § 42-4-408 as it existed prior to 1994, and the former § 42-4-509 was relocated to § 42-4-608.

42-4-510. Permits for excess size and weight and for manufactured homes - rules.

(1) (a) The department of transportation, the Colorado state patrol with respect to highways under its jurisdiction, or any local authority with respect to highways under its jurisdiction may, upon application in writing and good cause being shown therefor, issue a single trip, a special, or an annual permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in this article or otherwise not in conformity with the provisions of this article upon any highway under the jurisdiction of the party granting such permit and for the maintenance of which said party is responsible; except that permits for the movement of any manufactured home shall be issued as provided in subsection (2) of this section.

(b) (I) The application for any permit shall specifically describe the vehicle and load to be operated or moved and the particular highways for which the permit to operate is requested, and whether such permit is for a single trip, a special, or an annual operation, and the time of such movement. All state permits shall be issued in the discretion of the department of transportation, subject to rules adopted by the transportation commission in accordance with this section and section 42-4-511. All local permits shall be issued in the discretion of the local authority pursuant to ordinances or resolutions adopted in accordance with section 42-4-511. Any ordinances or resolutions of local authorities shall not conflict with this section.

(II) An overweight permit issued pursuant to this section shall be available for overweight divisible loads if:
(A) The vehicle has a quad axle grouping and the maximum gross weight of the vehicle does not exceed one hundred ten thousand pounds; or

(B) The vehicle is operated in combination with a trailer or semitrailer, the trailer has two or three axles, and the maximum gross weight of the vehicle does not exceed ninety-seven thousand pounds; and

(C) The owner and operator of the motor vehicle are in compliance with the federal "Motor Carrier Safety Improvement Act of 1999", Pub.L. 106-159, as amended, as applicable to commercial vehicles; and

(D) The vehicle complies with rules promulgated by the department of transportation concerning the distribution of the load upon the vehicle's axles.

(III) A permit issued pursuant to this paragraph (b) shall not authorize the operation or movement of a motor vehicle on the interstate highway in violation of federal law.

(c) (I) A single trip or annual permit shall be issued pursuant to this section for a self-propelled fixed load crane that exceeds legal weight limits if it does not exceed the weight limits authorized by the department of transportation. A boom trailer or boom dolly shall not be permitted unless the boom trailer or boom dolly is attached to the crane in a manner and for the purpose of distributing load to meet the weight requirements established by the department. A self-propelled fixed load crane may be permitted with counterweights when a boom trailer or boom dolly is used if the counterweights do not exceed the manufacturer's rated capacity of the self-propelled fixed load crane and do not cause the vehicle to exceed permitted axle or gross weight limits. A permit issued pursuant to this paragraph (c) shall not authorize movement on interstate highways if not approved by federal law.

(II) For the purposes of this paragraph (c), "self-propelled fixed load crane" means a self-powered mobile crane designed with equipment or parts permanently attached to the body of the crane. A self-propelled fixed load crane includes, without limitation, the crane's shackles and slings.

(1.5) (a) The department of transportation may, upon application in writing or electronically made and good cause being shown therefor, issue an annual fleet permit authorizing the applicant to operate or move any two or more vehicles owned by the applicant of a size or weight of vehicle or load exceeding the maximum specified in this article or otherwise not in conformity with the provisions of this article upon any highway.

(b) The application for any annual fleet permit shall specifically describe the vehicles, loads, and estimated number of loads to be operated or moved and the particular highways for which the permit to operate is requested, as defined by rules of the department of transportation. Permits issued pursuant to this subsection (1.5) shall not authorize the operation of vehicles that exceed the maximum dimensions allowed for vehicles operating under annual permits issued pursuant to the rules of the department pertaining to transport permits for the movement of extra-legal vehicles or loads.

(c) The department shall provide the option to a company filing for a permit under this subsection (1.5) to file an express consent waiver that enables the company to designate a company representative to be a party of interest for a violation of this section. The appearance of
the company representative in a court hearing without the operator when the operator has signed such waiver shall not be deemed the practice of law in violation of article 5 of title 12, C.R.S.

(1.7) (a) The department of transportation may issue super-load permits for:

(I) A combination vehicle with a weight of five hundred thousand pounds or more that occupies two lanes to haul the load; or

(II) An unladen combination vehicle with an expandable dual-lane transport trailer that occupies two lanes.

(b) (I) The department of transportation may place restrictions on the use of a permit. A person shall obey the restrictions contained in a permit.

(II) (A) The department of transportation may refuse to issue a permit to a person who has been held by an administrative law judge to have disobeyed permit restrictions or to have violated this section or rules promulgated under this section in a hearing held in accordance with article 4 of title 24, C.R.S.

(B) The department shall create a system that tracks the compliance of permit holders and use the system to determine if a permit holder has a pattern of noncompliance. The department shall promulgate rules establishing standards to deny permits to persons who show a pattern of noncompliance, which standards include the length of time a permit is denied based upon the number and type of noncomplying events.

(III) The department of transportation shall include in a super-load permit a speed restriction, not to exceed twenty-five miles per hour on the highway and ten miles per hour on structures; except that the department of transportation may modify the speed restriction when necessary for safety or to prevent structural damage.

(c) When filing an application, an applicant for a super-load permit shall provide the department of transportation with documentation, acceptable to the department of transportation, from a third party establishing the gross weight of the load. The driver shall carry the documentation in the vehicle during the permitted move and produce, upon request, the documentation for any state agency or law enforcement personnel.

(d) The department of transportation may refuse to issue a super-load permit under this section for an unladen combination vehicle unless the applicant breaks the load down to the smallest dimensions possible. The department of transportation may refuse to issue a super-load permit under this section for an unladen vehicle unless the applicant renders the dual lane trailer into legal loads.

(e) The department of transportation, Colorado state patrol, or port of entry shall inspect the load of a super-load permit holder, at the permit holder's expense, at the nearest point where the shipment enters the state, at a location specified by the department of transportation, or at the load's point of origin to ensure compliance with the permit requirements and safety statutes and rules, including:

(I) Height, width, and length;

(II) Number of axles;
(III) Date of move;
(IV) Correct route;
(V) Documentation of load weight;
(VI) Use of signs and pilot cars; and
(VII) Weight, if the vehicle can be weighed within two hours.

(f) The department of transportation shall notify the port of entry of the permit's issuance and the location and date of the move.

(g) Repealed.

(2) (a) An authentication of paid ad valorem taxes, after notification of such movement to the county treasurer, may serve as a permit for movement of manufactured homes on public streets or highways under the county's jurisdiction. An authentication of paid ad valorem taxes from the county treasurer of the county from which the manufactured home is to be moved, after notification of such movement has been provided to the county assessor of the county to which the manufactured home is to be moved, pursuant to section 39-5-205, C.R.S., may also serve as a permit for the movement of manufactured homes from one adjoining county to an adjoining county on streets and highways under local jurisdiction. The treasurer shall issue along with the authentication of paid ad valorem taxes a transportable manufactured home permit. The treasurer may establish and collect a fee, which shall not exceed ten dollars, for issuing the authentication of paid ad valorem taxes and the transportable manufactured home permit. Such transportable manufactured home permit shall be printed on an eleven inch by six inch fluorescent orange card and shall contain the following information: The name and address of the owner of the mobile home; the name and address of the mover; the transport number of the mover, a description of the mobile home including the make, year, and identification or serial number; the county authentication number; and an expiration date. The expiration date shall be set by the treasurer, but in no event shall the expiration date be more than thirty days after the date of issue of the permit. Such transportable manufactured home permit shall be valid for a single trip only. The transportable manufactured home permit shall be prominently displayed on the rear of the mobile home during transit of the mobile home. Peace officers and local tax and assessment officials may request, and upon demand shall be shown, all moving permits, tax receipts, or certificates required by this subsection (2). Nothing in this section shall require a permit from a county treasurer for the movement of a new manufactured home. For the purposes of this section, a new manufactured home is one in transit under invoice or manufacturer's statement of origin which has not been previously occupied for residential purposes.

(b) All applications for permits to move manufactured homes over state highways shall comply with the following special provisions:

(I) Each such application shall be for a single trip, a special permit, an annual permit, or, subject to the requirements of paragraph (a) of subsection (1.5) of this section, an annual fleet permit. The application shall be accompanied by a certificate or other proof of public liability insurance in amounts of not less than one hundred thousand dollars per person and three hundred thousand dollars per accident for all manufactured homes moved within this state by the permit.
holder during the effective term of the permit. Each application for a single trip permit shall be accompanied by an authentication of paid ad valorem taxes on the used manufactured home.

(II) Holders of permits shall keep and maintain, for not less than three calendar years, records of all manufactured homes moved in whole or in part within this state, which records shall include the plate number of the towing vehicle; the year, make, serial number, and size of the unit moved, together with date of the move; the place of pickup; and the exact address of the final destination and the county of final destination and the name and address of the landowner of the final destination. These records shall be available upon request within this state for inspection by the state of Colorado or any of its ad valorem taxing governmental subdivisions.

(III) Holders of permits shall obtain an authentication of paid ad valorem taxes through the date of the move from the owner of a used manufactured home or from the county treasurer of the county from which the used manufactured home is being moved. Permit holders shall notify the county treasurer of the county from which the manufactured home is being moved of the new exact address of the final destination and the county of final destination of the manufactured home and the name and address of the landowner of the final destination, and, if within the state, the county treasurer shall forward copies of the used manufactured home tax certificate to the county assessor of the destination county. County treasurers may compute ad valorem manufactured home taxes due based upon the next preceding year's assessment prorated through the date of the move and accept payment of such as payment in full.

(IV) No owner of a manufactured home shall move the manufactured home or provide for the movement of the manufactured home without being the holder of a paid ad valorem tax certificate and a transportable manufactured home permit thereon, and no person shall assist such an owner in the movement of such owner's manufactured home, including a manufactured home dealer. Except as otherwise provided in this paragraph (b), a permit holder who moves any manufactured home within this state shall be liable for all unpaid ad valorem taxes thereon through the date of such move if movement is made prior to payment of the ad valorem taxes due on the manufactured home moved.

(V) In the event of an imminent natural or man-made disaster or emergency, including, but not limited to, rising waters, flood, or fire, the owner, owner's representative or agent, occupant, or tenant of a manufactured home or the mobile home park owner or manager, lienholder, or manufactured home dealer is specifically exempted from the need to obtain a permit pursuant to this section and may move the endangered manufactured home out of the danger area to a temporary or new permanent location and may move such manufactured home back to its original location without a permit or penalty or fee requirement. Upon any such move to a temporary location as a result of a disaster or emergency, the person making the move or such person's agent or representative shall notify the county assessor in the county to which the manufactured home has been moved, within twenty days after such move, of the date and circumstances pertaining to the move and the temporary or permanent new location of the manufactured home. If the manufactured home is moved to a new permanent location from a temporary location as a result of a disaster or emergency, a permit for such move shall be issued but no fee shall be assessed.

(3) The department of transportation, the Colorado state patrol, or any local authority is authorized to issue or withhold a permit, as provided in this section, and, if such permit is issued,
to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicles, when necessary to protect the safety of highway users, to protect the efficient movement of traffic from unreasonable interference, or to protect the highways from undue damage to the road foundations, surfaces, or structures and may require such undertaking or other security as may be deemed necessary to compensate for any injury to any highway or highway structure.

(4) The original or a copy of every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of any authority granting such permit; except that, if a peace officer, as described in section 16-2.5-101, C.R.S., or an authorized agent of the authority that granted a permit may determine that the permit can be electronically verified at the time of contact, a copy of the permit need not be carried in the vehicle or combination of vehicles to which it refers. No person shall violate any of the terms or conditions of such permit.

(5) The department of transportation or the Colorado state patrol shall, unless such action will jeopardize distribution of federal highway funds to the state, authorize the operation or movement of a vehicle or combination of vehicles on the interstate highway system of Colorado at a maximum weight of eighty-five thousand pounds.

(6) No vehicle having a permit under this section shall be remodeled, rebuilt, altered, or changed except in such a way as to conform to those specifications and limitations established in sections 42-4-501 to 42-4-507 and 42-4-1407.

(7) Any person who has obtained a valid permit for the movement of any oversize vehicle or load may attach to such vehicle or load or to any vehicle accompanying the same not more than three illuminated flashing yellow signals as warning devices.

(8) (a) The department of transportation shall have a procedure to allow those persons who are transporting loads from another state into Colorado and who would require a permit under the provisions of this section to make advance arrangements by telephone or other means of communication for the issuance of a permit if the load otherwise complies with the requirements of this section.

(b) The Colorado state patrol shall have available for issuance at each fixed port of entry weigh station permits for extralegal vehicles or loads; except that special permits for extralegal vehicles or loads that are considered extraordinary in dimensions or weight, or both, and that require additional safety precautions while in transit shall be issued only by the department of transportation. A port of entry may issue such special permits if authorized to do so by the department of transportation and under such rules as the department of transportation may establish, and may deliver from a fixed port of entry weigh station any permit issued by the department of transportation.

(c) Repealed.

(9) No permit shall be necessary for the operation of authorized emergency vehicles, public transportation vehicles operated by municipalities or other political subdivisions of the state, county road maintenance and county road construction equipment temporarily moved upon the
highway, implements of husbandry, and farm tractors temporarily moved upon the highway, including transportation of such tractors or implements by a person dealing therein to such person's place of business within the state or to the premises of a purchaser or prospective purchaser within the state; nor shall such vehicles or equipment be subject to the size and weight provisions of this part 5.

(10) The Colorado state patrol, the personnel in any port of entry weigh station, and local law enforcement officials shall verify the validity of permits issued under this section whenever feasible. Upon determination by any of such officials or by any personnel of a county assessor's or county treasurer's office indicating that a manufactured home has been moved without a valid permit, the district attorney shall investigate and prosecute any alleged violation as authorized by law.

(11) (a) The department of transportation or the Colorado state patrol may charge permit applicants permit fees as follows:

(I) For overlength, overwidth, and overheight permits on loads or vehicles which do not exceed legal weight limits:

(A) Annual permit, two hundred fifty dollars;

(B) Single trip permit, fifteen dollars;

(II) For overlength, including front or rear overhang, annual fleet permits on loads or vehicles which do not exceed legal weight limits, one thousand five hundred dollars plus fifteen dollars per fleet vehicle. For purposes of this subparagraph (II), "fleet" means any group of two or more vehicles owned by one person. This subparagraph (II) shall only apply for public utility vehicles and loads.

(III) For overweight permits for vehicles or loads exceeding legal weight limits up to two hundred thousand pounds:

(A) Annual permit, four hundred dollars;

(B) Single trip permit, fifteen dollars plus five dollars per axle;

(C) Annual fleet permits, one thousand five hundred dollars plus twenty-five dollars per vehicle to be permitted. For purposes of this sub-subparagraph (C), "fleet" means any group of two or more vehicles owned by one person. This sub-subparagraph (C) shall apply only to longer vehicle combinations as defined in section 42-4-505.

(IV) Special permits for structural, oversize, or overweight moves requiring extraordinary action or moves involving weight in excess of two hundred thousand pounds, one hundred twenty-five dollars for a permit for a single trip, including a super-load permit issued under subsection (1.7) of this section; except that a super-load permit fee is four hundred dollars;

(V) The fee for an annual fleet permit issued pursuant to subsection (1.5) or (2) of this section is three thousand dollars for a fleet of from two to ten vehicles plus three hundred dollars for each additional vehicle in the fleet;
(VI) For overweight permits for vehicles that have a quad axle grouping for divisible vehicles or loads exceeding legal weight limits issued pursuant to subparagraph (II) of paragraph (b) of subsection (1) of this section:

(A) Annual permit, five hundred dollars;

(B) Single trip permit, thirty dollars plus ten dollars per axle; and

(C) Annual fleet permits, two thousand dollars plus thirty-five dollars per vehicle to be permitted;

(D) (Deleted by amendment, L. 2009, (HB 09-1318), ch. 316, p. 1704, § 2, effective January 1, 2010.)

(VII) For overweight permits for vehicle combinations with a trailer that has two or three axles for divisible vehicles or loads exceeding legal weight limits established pursuant to sub-subparagraph (B) of subparagraph (II) of paragraph (b) of subsection (1) of this section:

(A) Annual permit, five hundred dollars;

(B) Six-month permit, two hundred fifty dollars; and

(C) Single trip permit, fifteen dollars plus ten dollars per axle.

(b) Any local authority may impose a fee, in addition to but not to exceed the amounts required in subparagraphs (I) and (III) of paragraph (a) of this subsection (11), as provided by the applicable local ordinance or resolution; and, in the case of a permit under subparagraph (IV) of paragraph (a) of this subsection (11), the amount of the fee shall not exceed the actual cost of the extraordinary action.

(12) (a) Any person holding a permit issued pursuant to this section or any person operating a vehicle pursuant to such permit who violates any provision of this section, any ordinance or resolution of a local authority, or any standards or rules or regulations promulgated pursuant to this section, except the provisions of subparagraph (IV) of paragraph (b) of subsection (2) of this section, commits a class 2 misdemeanor traffic offense.

(b) Any person who violates the provisions of subparagraph (IV) of paragraph (b) of subsection (2) of this section commits a class 2 petty offense and, upon conviction thereof, shall be fined two hundred dollars; except that, upon conviction of a second or subsequent such offense, such person commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(c) The department of transportation with regard to any state permit and the local authority with regard to a local permit may, after a hearing under section 24-4-105, C.R.S., revoke, suspend, refuse to renew, or refuse to issue any permit authorized by this section upon a finding that the holder of the permit has violated the provisions of this section, any ordinance or resolution of a local authority, or any standards or rules promulgated pursuant to this section.

(d) A driver or holder of a permit issued under subsection (1.7) of this section who fails to comply with the terms of the permit or subsection (1.7) of this section commits a class 1 misdemeanor traffic offense and shall be punished as provided in section 42-4-1701 (3) (a) (II).

Editor's note: (1) This section is similar to former § 42-4-409 as it existed prior to 1994, and the former § 42-4-510 was relocated to § 42-4-609.

(2) Amendments to subsection (12)(b) by Senate Bill 94-092 were harmonized with Senate Bill 94-001.

(3) Subsections (5) and (11)(a)(VI)(B) were amended and subsection (11)(a)(VI)(D) was added by Senate Bill 09-108. Subsections (5) and (11)(a)(VI)(B) were further amended and subsection (11)(a)(VI)(D) was deleted by House Bill 09-1318. The amendments made by House Bill 09-1318 reversed the changes made by Senate Bill 09-108 to subsections (5) and (11)(a)(VI)(B) and returned them to their original form. Both bills had an effective date of January 1, 2010, therefore, no changes are being shown in subsections (5) and (11)(a)(VI)(B) and subsection (11)(a)(VI)(D) is being shown as deleted by amendment.

(4) Subsection (1.7)(g) provided for the repeal of subsection (1.7)(g), effective July 1, 2012. (See L. 2011, p. 1029.)

Cross references: For the legislative declaration contained in the 2002 act amending subsection (12)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Subsection (9) specifies that operators of implements of husbandry are exempt from applying for permits for implements that are temporarily moved upon the highway. If the county cannot restrict temporary movement of an oversized agricultural sprinkler by denying a permit, it necessarily cannot achieve the same forbidden result via resolution. Bd. of County Comm'rs of Logan County v. Vandemoer, 205 P.3d 423 (Colo. App. 2008).

42-4-511. Permit standards - state and local.

(1) The transportation commission shall adopt such rules and regulations as are necessary for the proper administration and enforcement of section 42-4-510 with regard to state permits.

(2) (a) Any permits which may be required by local authorities shall be issued in accordance with ordinances and resolutions adopted by the respective local authorities after a public hearing at which testimony is received from affected motor vehicle owners and operators. Notice of such
public hearing shall be published in a newspaper having general circulation within the local authority's jurisdiction. Such notice shall not be less than eight days prior to the date of hearing. The publication shall not be placed in that portion of the newspaper in which legal notices or classified advertisements appear. Such notice shall state the purpose of the hearing, the time and place of the hearing, and that the general public, including motor vehicle owners and operators to be affected, may attend and make oral or written comments regarding the proposed ordinance or resolution. Notice of any subsequent hearing shall be published in the same manner as for the original hearing.

(b) At least thirty days prior to such public hearing, the local authority shall transmit a copy of the proposed ordinance or resolution to the department of transportation for its comments, and said department shall make such comments in writing to the local authority prior to such public hearing.

(c) A local authority that adopts or has adopted an ordinance or resolution governing permits for the movement of oversize or overweight vehicles or loads shall file a copy of the ordinance or resolution with the department of transportation.


Editor's note: This section is similar to former § 42-4-409.1 as it existed prior to 1994.

42-4-511.2. Authority for cooperative agreements with regional states on excess size or weight vehicles - regulations.

(1) Purpose. The purpose of this section is to authorize the negotiation and execution of agreements in cooperation with other states to:

(a) Establish a regional permit system to allow nondivisible oversize or overweight vehicles to operate between and among two or more states under one single trip permit, instead of requiring such vehicles to stop and obtain a separate permit before entering each state;

(b) Promote uniformity concerning administrative and enforcement procedures for applicable vehicle size and weight standards to facilitate regional movement of such vehicles, to eliminate unnecessary bureaucratic barriers, and to improve the highway operating environment and vehicle safety under the applicable laws of the respective states; and

(c) Encourage and utilize research that will facilitate the achievement of the purposes described in this subsection (1).

(2) Authority. (a) In addition to any other powers granted by law, the executive director of the department of transportation, or the executive director's designee, is hereby authorized to negotiate and enter into appropriate agreements with other states concerning the regional operation or movement of nondivisible oversize or overweight vehicles and to facilitate the uniform application, administration, and enforcement of applicable laws concerning such vehicles.
(b) A cooperative agreement under this section may include, but shall not be limited to, the establishment of a regional permit system authorizing the operation or movement of nondivisible oversize or overweight vehicles from one state in the region to or through another state or states in the region under a single trip permit in accordance with the applicable requirements of each of the states.

(c) For the purposes of a regional permit agreement, the department of transportation is authorized to:

(I) Delegate to other states its authority under section 42-4-510 (1) to issue permits for nondivisible oversize or overweight vehicles to operate on Colorado state highways; except that any such issuance by another state shall conform, at a minimum, to the applicable Colorado permit standards and legal requirements as described in this part 5 and to the regulations implementing this part 5. The department of transportation may also impose additional standards concerning such regional permits as it deems appropriate.

(II) Accept a delegation of authority from other states to issue permits for the operation of vehicles on the highways of such states in accordance with the applicable standards and requirements of such states, pursuant to the terms of the regional permit agreement; and

(III) Collect any fees, taxes, and penalties on behalf of other states that are parties to the regional permit agreement and to remit such fees, taxes, and penalties to such states. Such fees, taxes, and penalties shall not be considered taxes or funds of the state of Colorado for any purpose.

(d) For the purposes of a regional permit agreement, the Colorado state patrol, ports of entry, and local law enforcement authorities are authorized to enforce the terms of any regional permit concerning the operation of the permitted vehicle on state highways in Colorado. The Colorado state patrol, ports of entry, and local law enforcement authorities are also permitted to take necessary actions in Colorado to enforce the applicable requirements of the permitting state or states which shall include, but shall not be limited to, monitoring licenses and other credential usage; enforcing tax restraint, distraint, or levy orders; issuing civil citations; and conducting necessary safety and equipment inspections.

(e) The executive director of the department of transportation, or the executive director's designee, is hereby authorized to appoint employees and officials of other states as agents of the department for the limited purpose of enforcing the laws of Colorado under the terms of the cooperative agreements entered into under the provisions of this section. The executive director or the designee may promulgate such regulations as are necessary for the implementation of the provisions of this section.

(f) Any agreement entered into under the provisions of this section shall contain provisions that express the understanding that any employees and officials of any other state who enforce the laws of Colorado under the terms of such agreement, or who otherwise act under the terms of such agreement, shall not be eligible for compensation, employee rights, or benefits from the state of Colorado and shall not be considered to be employees or officials of the state of Colorado.
(g) A cooperative agreement under this section may also provide for uniformity concerning enforcement procedures, safety inspection standards, operational standards, permit and application form procedures, driver qualifications, and such other matters that may be pertinent to said matters.

(h) Notwithstanding any provision of this section to the contrary, all existing statutes and rules and regulations prescribing size or weight vehicle requirements, or relating to permits for such vehicles, shall continue to be in full force and effect until amended or repealed by law, and any cooperative agreement must comply with such statutes and rules and regulations. The transportation commission shall ratify any cooperative agreement entered into under the provisions of this section.


Editor's note: This section was originally numbered as § 42-4-409.2 as enacted by House Bill 94-1012 but has been renumbered on revision and harmonized with Senate Bill 94-001.

42-4-512. Liability for damage to highway.

(1) No person shall drive, operate, or move upon or over any highway or highway structure any vehicle, object, or contrivance in such a manner so as to cause damage to said highway or highway structure. When the damage sustained to said highway or highway structure is the result of the operating, driving, or moving of such vehicle, object, or contrivance weighing in excess of the maximum weight authorized by sections 42-4-501 to 42-4-512 and 42-4-1407, it shall be no defense to any action, either civil or criminal, brought against such person that the weight of the vehicle was authorized by special permit issued in accordance with sections 42-4-501 to 42-4-512 and 42-4-1407.

(2) Every person violating the provisions of subsection (1) of this section shall be liable for all damage which said highway or highway structure may sustain as a result thereof. Whenever the driver of such vehicle, object, or contrivance is not the owner thereof but is operating, driving, or moving such vehicle, object, or contrivance with the express or implied consent of the owner thereof, then said owner or driver shall be jointly and severally liable for any such damage. The liability for damage sustained by any such highway or highway structure may be enforced by a civil action by the authorities in control of such highway or highway structure. No satisfaction of such civil liability, however, shall be deemed to be a release or satisfaction of any criminal liability for violation of the provisions of subsection (1) of this section.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-411 as it existed prior to 1994, and the former § 42-4-512 was relocated to § 42-4-610.

ANNOTATION
Law reviews. For article, "Interstate Legal Barriers to Transportation in the Trans-Missouri West", see U. Colo. L. Rev. 476 (1966).
PART 6
SIGNS - SIGNS - MARKINGS

Cross references: For penalties for class A and class B traffic infractions, see § 42-4-1701 (3)(a)(l).

42-4-601. Department to sign highways, where.

(1) The department of transportation shall place and maintain such traffic control devices, conforming to its manual and specifications, upon state highways as it deems necessary to indicate and to carry out the provisions of this article or to regulate, warn, or guide traffic.

(2) No local authority shall place or maintain any traffic control device upon any highway under the jurisdiction of the department of transportation except by the latter's permission.


Editor's note: This section is similar to former § 42-4-502 as it existed prior to 1994, and the former § 42-4-601 was relocated to § 42-4-701.

42-4-602. Local traffic control devices.

(1) No local authority shall erect or maintain any stop sign or traffic control signal at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the department of transportation.

(2) Where practical no local authority shall maintain three traffic control signals located on a roadway so as to be within one minute's driving time (to be determined by the speed limit) from any one of the signals to the other without synchronizing the lights to enhance the flow of traffic and thereby reduce air pollution.


Editor's note: This section is similar to former § 42-4-503 as it existed prior to 1994, and the former § 42-4-602 was relocated to § 42-4-702.

ANNOTATION

Law reviews. For article, "Interstate Legal Barriers to Transportation in the Trans-Missouri West", see U. Colo. L. Rev. 476 (1966).

Annotator's note. Since § 42-4-602 is similar to § 42-4-503 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.


42-4-603. Obedience to official traffic control devices.
(1) No driver of a vehicle shall disobey the instructions of any official traffic control device including any official hand signal device placed or displayed in accordance with the provisions of this article unless otherwise directed by a police officer subject to the exceptions in this article granted the driver of an authorized emergency vehicle.

(2) No provision of this article for which official traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic control devices are required, such section shall be effective even though no devices are erected or in place.

(3) Whenever official traffic control devices are placed in position approximately conforming to the requirements of this article, such devices shall be presumed to have been so placed by the official act or direction of lawful authority unless the contrary is established by competent evidence.

(4) Any official traffic control device placed pursuant to the provisions of this article and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this article unless the contrary is established by competent evidence.

(5) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-504 as it existed prior to 1994, and the former § 42-4-603 was relocated to § 42-4-703.

42-4-604. Traffic control signal legend.

(1) If traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination as declared in the traffic control manual adopted by the department of transportation, only the colors green, yellow, and red shall be used, except for special pedestrian-control signals carrying a word or symbol legend as provided in section 42-4-802, and said lights, arrows, and combinations thereof shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green indication:

(I) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits such turn; but vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection and to pedestrians lawfully within an adjacent crosswalk at the time such signal is exhibited.

(II) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same
(III) Unless otherwise directed by a pedestrian-control signal as provided in section 42-4-802, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) Steady yellow indication:

(I) Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter.

(II) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian-control signal as provided in section 42-4-802, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown, and no pedestrian shall then start to cross the roadway.

(c) Steady red indication:

(I) Vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown; except that:

(A) Such vehicular traffic, after coming to a stop and yielding the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection, may make a right turn, unless state or local road authorities within their respective jurisdictions have by ordinance or resolution prohibited any such right turn and have erected an official sign at each intersection where such right turn is prohibited.

(B) Such vehicular traffic, when proceeding on a one-way street and after coming to a stop, may make a left turn onto a one-way street upon which traffic is moving to the left of the driver. Such turn shall be made only after yielding the right-of-way to pedestrians and other traffic proceeding as directed. No turn shall be made pursuant to this sub-subparagraph (B) if local authorities have by ordinance prohibited any such left turn and erected a sign giving notice of any such prohibition at each intersection where such left turn is prohibited.

(C) To promote uniformity in traffic regulation throughout the state and to protect the public peace, health, and safety, the general assembly declares that no local authority shall have any discretion other than is expressly provided in this subparagraph (I).

(II) Pedestrians facing a steady circular red signal alone shall not enter the roadway, unless otherwise directed by a pedestrian-control signal as provided in section 42-4-802.

(III) Vehicular traffic facing a steady red arrow signal may not enter the intersection to make the movement indicated by such arrow and, unless entering the intersection to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection.
or, if none, then before entering the intersection and shall remain standing until an indication to make the movement indicated by such arrow is shown.

(IV) Pedestrians facing a steady red arrow signal shall not enter the roadway, unless otherwise directed by a pedestrian-control signal as provided in section 42-4-802.

(d) Nonintersection signal: In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or pavement marking indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(e) Lane-use-control signals: Whenever lane-use-control signals are placed over the individual lanes of a street or highway, as declared in the traffic control manual adopted by the department of transportation, such signals shall indicate and apply to drivers of vehicles as follows:

(I) Downward-pointing green arrow (steady): A driver facing such signal may drive in any lane over which said green arrow signal is located.

(II) Yellow "X" (steady): A driver facing such signal is warned that the related green arrow movement is being terminated and shall vacate in a safe manner the lane over which said steady yellow signal is located to avoid if possible occupying that lane when the steady red "X" signal is exhibited.

(III) Yellow "X" (flashing): A driver facing such signal may use the lane over which said flashing yellow signal is located for the purpose of making a left turn or a passing maneuver, using proper caution, but for no other purpose.

(IV) Red "X" (steady): A driver facing such signal shall not drive in any lane over which said red signal is exhibited.

(2) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-505 as it existed prior to 1994, and the former § 42-4-604 was relocated to § 42-4-704.

42-4-605. Flashing signals.

(1) Whenever an illuminated flashing red or yellow signal is used in conjunction with a traffic sign or a traffic signal or as a traffic beacon, it shall require obedience by vehicular traffic as follows:

(a) When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.
(b) When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed past such signal and through the intersection or other hazardous location only with caution.

(2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad crossings shall be governed by the provisions of sections 42-4-706 to 42-4-708.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-506 as it existed prior to 1994, and the former § 42-4-605 was relocated to § 42-4-705.

42-4-606. Display of unauthorized signs or devices.

(1) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising. The provisions of this section shall not be deemed to prohibit the use of motorist services information of a general nature on official highway guide signs if such signs do not indicate the brand, trademark, or name of any private business or commercial enterprise offering the service, nor shall this section be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(2) Every such prohibited sign, signal, or marking is declared to be a public nuisance, and the authority having jurisdiction over the highway is empowered to remove the same or cause it to be removed without notice.

(3) Any person who violates any provision of this section commits a class A traffic infraction.

(4) The provisions of this section shall not be applicable to informational sites authorized under section 43-1-405, C.R.S.

(5) The provisions of this section shall not be applicable to specific information signs authorized under section 43-1-420, C.R.S.


Editor's note: This section is similar to former § 42-4-507 as it existed prior to 1994, and the former § 42-4-606 was relocated to § 42-4-706.

ANNOTATION
When used to prohibit expressive activities this section is unconstitutional on the basis it is impermissibly broad and vague. Faustin v. City and County of Denver, 104 F. Supp.2d 1280 (D. Colo. 2000).

42-4-607. Interference with official devices.

(1) (a) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, remove, or interfere with the effective operation of any official traffic control device or any railroad sign or signal or any inscription, shield, or insignia thereon or any other part thereof. Except as otherwise provided in subsection (2) of this section, any person who violates any provision of this paragraph (a) commits a class B traffic infraction.

(b) No person shall possess or sell, without lawful authority, an electronic device that is designed to cause a traffic light to change. A person who violates any provision of this paragraph (b) commits a class B traffic infraction.

(2) (a) No person shall use an electronic device, without lawful authority, that causes a traffic light to change. Except as otherwise provided in paragraph (b) of this subsection (2), a person who violates any provision of this paragraph (a) commits a class A traffic infraction.

(b) A person who violates any provision of paragraph (a) of this subsection (2) and thereby proximately causes bodily injury to another person commits a class 1 misdemeanor traffic offense. In addition to any other penalty imposed by law, the court shall impose a fine of one thousand dollars.


Editor's note: This section is similar to § 42-4-508 as it existed prior to 1994.

ANNOTATION

Annotator's note. Since § 42-4-607 is similar to § 42-4-508 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.

Subject matter preempted by state. Sections 42-4-508 and 42-4-1405 cover the subject matter of "Interference with official devices" and a driver's "Duty upon striking highway fixtures". Therefore, this field has been preempted by the state. City of Aurora v. Mitchell, 144 Colo. 526, 357 P.2d 923 (1960).

42-4-608. Signals by hand or signal device.

(1) Any stop or turn signal when required as provided by section 42-4-903 shall be given either by means of the hand and arm as provided by section 42-4-609 or by signal lamps or signal device of the type approved by the department, except as otherwise provided in subsection (2) of this section.

(2) Any motor vehicle in use on a highway shall be equipped with, and the required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds twenty-four
inches or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-509 as it existed prior to 1994, and the former § 42-4-608 was relocated to § 42-4-707.

42-4-609. Method of giving hand and arm signals.

(1) All signals required to be given by hand and arm shall be given from the left side of the vehicle in the following manner, and such signals shall indicate as follows:

(a) Left-turn, hand and arm extended horizontally;
(b) Right-turn, hand and arm extended upward;
(c) Stop or decrease speed, hand and arm extended downward.

(2) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-510 as it existed prior to 1994, and the former § 42-4-609 was relocated to § 42-4-708.

42-4-610. Unauthorized insignia.

No owner shall display upon any part of the owner's vehicle any official designation, sign, or insignia of any public or quasi-public corporation or municipal, state, or national department or governmental subdivision without authority of such agency or any insignia, badge, sign, emblem, or distinctive mark of any organization or society of which the owner is not a bona fide member or otherwise authorized to display such sign or insignia. Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-512 as it existed prior to 1994, and the former § 42-4-610 was relocated to § 42-4-710.

42-4-611. Paraplegic persons or persons with disabilities - distress flag.

(1) Any paraplegic person or person with a disability when in motor vehicle distress is authorized to display by the side of such person's disabled vehicle a white flag of approximately seven and one-half inches in width and thirteen inches in length, with the letter "D" thereon in red color with an irregular one-half inch red border. Said flag shall be of reflective material so as
to be readily discernible under darkened conditions, and said reflective material must be submitted to and approved by the department of transportation before the same is used.

(2) Any person desiring to use such display shall make application to the department, and the department may in its discretion issue to such person with a disability upon application a card that sets forth the applicant's name, address, and date of birth, the physical apparatus needed to operate a motor vehicle, if any, and any other pertinent facts that the department deems desirable, and in its discretion the department may issue a permit for the use of and issue to such person a display flag. Each such flag shall be numbered, and in the event of loss or destruction, a duplicate may be issued upon the payment of the sum of one dollar by such applicant. The department shall maintain a list of such applicants and persons to whom permits and flags have been issued and furnish a copy thereof to the Colorado state patrol upon request.

(3) Any person who is not a paraplegic person or a person with a disability who uses such flag as a signal or for any other purpose is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than three hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than ninety days, or by both such fine and imprisonment.


Editor's note: This section is similar to former § 42-4-513 as it existed prior to 1994, and the former § 42-4-611 was relocated to § 42-4-711.

42-4-612. When signals are inoperative or malfunctioning.

(1) Whenever a driver approaches an intersection and faces a traffic control signal which is inoperative or which remains on steady red or steady yellow during several time cycles, the rules controlling entrance to a through street or highway from a stop street or highway, as provided under section 42-4-703, shall apply until a police officer assumes control of traffic or until normal operation is resumed. In the event that any traffic control signal at a place other than an intersection should cease to operate or should malfunction as set forth in this section, drivers may proceed through the inoperative or malfunctioning signal only with caution, as if the signal were one of flashing yellow.

(2) Whenever a pedestrian faces a pedestrian-control signal as provided in section 42-4-802 which is inoperative or which remains on "Don't Walk" or "Wait" during several time cycles, such pedestrian shall not enter the roadway unless the pedestrian can do so safely and without interfering with any vehicular traffic.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-514 as it existed prior to 1994, and the former § 42-4-612 was relocated to § 42-4-1903.

42-4-613. Failure to pay toll established by regional transportation authority.
Any person who fails to pay a required fee, toll, rate, or charge established by a regional transportation authority created pursuant to part 6 of article 4 of title 43, C.R.S., for the privilege of traveling on or using any property included in a regional transportation system pursuant to part 6 of article 4 of title 43, C.R.S., commits a class A traffic infraction.


**Cross references:** For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 269, Session Laws of Colorado 2005.

42-4-614. Designation of highway maintenance, repair, or construction zones - signs - increase in penalties for speeding violations.

(1) (a) If maintenance, repair, or construction activities are occurring or will occur within four hours on a portion of a state highway, the department of transportation may designate such portion of the highway as a highway maintenance, repair, or construction zone. Any person who commits certain violations listed in section 42-4-1701 (4) in a maintenance, repair, or construction zone that is designated pursuant to this section is subject to the increased penalties and surcharges imposed by section 42-4-1701 (4) (c).

(b) If maintenance, repair, or construction activities are occurring or will occur within four hours on a portion of a roadway that is not a state highway, the public entity conducting the activities may designate such portion of the roadway as a maintenance, repair, or construction zone. A person who commits certain violations listed in section 42-4-1701 (4) in a maintenance, repair, or construction zone that is designated pursuant to this section is subject to the increased penalties and surcharges imposed by section 42-4-1701 (4) (c).

(2) The department of transportation or other public entity shall designate a maintenance, repair, or construction zone by erecting or placing an appropriate sign in a conspicuous place before the area where the maintenance, repair, or construction activity is taking place or will be taking place within four hours. Such sign shall notify the public that increased penalties for certain traffic violations are in effect in such zone. The department of transportation or other public entity shall erect or place a second sign after such zone indicating that the increased penalties for certain traffic violations are no longer in effect. A maintenance, repair, or construction zone begins at the location of the sign indicating that increased penalties are in effect and ends at the location of the sign indicating that the increased penalties are no longer in effect.

(3) Signs used for designating the beginning and end of a maintenance, construction, or repair zone shall conform to department of transportation requirements. The department of transportation or other public entity may display such signs on any fixed, variable, or movable stand. The department of transportation or other public entity may place such a sign on a moving vehicle if required for certain activities, including, but not limited to, highway painting work.

**Source:** L. 97: Entire section added, p. 1385, § 5, effective July 1. L. 2005: (1) and (2) amended, p. 1222, § 4, effective August 8. L. 2008: Entire section amended, p. 2078, § 2, effective June 3.
Editor's note: This section was originally numbered as § 42-4-613 in House Bill 97-1003 but has been renumbered on revision for ease of location.

Cross references: (1) In 2005, subsections (1) and (2) were amended by the "Lopez-Forrester act". For the short title and legislative declaration, see sections 1 and 2 of chapter 276, Session Laws of Colorado 2005.

(2) Section 1 of chapter 412, Session Laws of Colorado 2008, provides that the act amending this section shall be known and may be cited as the "Charles Mather Highway Safety Act".

42-4-615. School zones - increase in penalties for moving traffic violations.

(1) Any person who commits a moving traffic violation in a school zone is subject to the increased penalties and surcharges imposed by section 42-4-1701 (4) (d).

(2) For the purposes of this section, "school zone" means an area that is designated as a school zone and has appropriate signs posted indicating that the penalties and surcharges will be doubled. The state or local government having jurisdiction over the placement of traffic signs and traffic control devices in the school zone area shall designate when the area will be deemed to be a school zone for the purposes of this section. In making such designation, the state or local government shall consider when increased penalties are necessary to protect the safety of school children.

(3) This section does not apply if the penalty and surcharge for a violation has been doubled pursuant to section 42-4-614 because such violation also occurred within a highway maintenance, repair, or construction zone.

Source: L. 98: Entire section added, p. 588, § 1, effective July 1.

42-4-616. Wildlife crossing zones - increase in penalties for moving traffic violations.

(1) Except as described by subsection (4) of this section, a person who commits a moving traffic violation in a wildlife crossing zone is subject to the increased penalties and surcharges imposed by section 42-4-1701 (4) (d.5).

(2) For the purposes of this section, "wildlife crossing zone" means an area on a public highway that:

(a) Begins at a sign that conforms to the state traffic control manual, was erected by the department of transportation pursuant to section 42-4-118, and indicates that a person is about to enter a wildlife crossing zone; and

(b) Extends to:

(I) A sign that conforms to the state traffic control manual, was erected by the department of transportation pursuant to section 42-4-118, and indicates that a person is about to leave a wildlife crossing zone; or

(II) If no sign exists that complies with subparagraph (I) of this paragraph (b), the distance indicated on the sign indicating the beginning of the wildlife crossing zone; or
(III) If no sign exists that complies with subparagraph (I) or (II) of this paragraph (b), one-half mile beyond the sign indicating the beginning of the wildlife crossing zone.

(3) (a) If the department of transportation erects a sign that indicates that a person is about to enter a wildlife crossing zone pursuant to section 42-4-118, the department of transportation shall:

(I) Establish the times of day and the periods of the calendar year during which the area will be deemed to be a wildlife crossing zone for the purposes of this section; and

(II) Ensure that the sign indicates the times of day and the periods of the calendar year during which the area will be deemed to be a wildlife crossing zone for the purposes of this section.

(b) In erecting signs as described in paragraph (a) of this subsection (3), the department of transportation, pursuant to section 42-4-118, shall not erect signs establishing a lower speed limit for more than one hundred miles of the public highways of the state that have been established as wildlife crossing zones.

(4) This section shall not apply if:

(a) The person who commits a moving traffic violation in a wildlife crossing zone is already subject to increased penalties and surcharges for said violation pursuant to section 42-4-614 or 42-4-615;

(b) The sign indicating that a person is about to enter a wildlife crossing zone does not indicate that increased traffic penalties are in effect in the zone; or

(c) The person who commits a moving traffic violation in a wildlife crossing zone commits the violation during a time that the area is not deemed by the department of transportation to be a wildlife crossing zone for the purposes of this section.

PART 7
RIGHTS-OF-WAY

Cross references: For penalties for class A and class B traffic infractions, see § 42-4-1701 (3)(a)(I).

42-4-701. Vehicles approaching or entering intersection.

(1) When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(2) The foregoing rule is modified at through highways and otherwise as stated in sections 42-4-702 to 42-4-704.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-601 as it existed prior to 1994, and the former § 42-4-701 was relocated to § 42-4-801.

ANNOTATION

Law reviews. For article, "Scope of the Right-of-Way Privilege", see 19 Dicta 122 (1942).

Annotator's note. Since § 42-4-701 is similar to § 42-4-601 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

State law does not take away city's power to regulate traffic. If a city has power under the state constitution to pass ordinances regulating vehicular traffic upon its streets, it cannot be deprived of that power by the passage of a state law. And if there is a conflict between statute and ordinance the ordinance controls. City & County of Denver v. Henry, 95 Colo. 582, 38 P.2d 895 (1934); Brown v. Maier, 96 Colo. 1, 38 P.2d 905 (1934); Thomasson v. Burlington Transp. Co., 128 F.2d 355 (10th Cir. 1942).

Question of contributory negligence measured by requirements of city ordinance. Thus, in action for injuries sustained in automobile accident at an intersection, the question of plaintiff's contributory negligence must be measured by the requirements of the city ordinance relating to right-of-way at intersections and not by this section, where there was a conflict. Thomasson v. Burlington Transp. Co., 128 F.2d 355 (10th Cir. 1942).

Insufficient evidence to charge contributory negligence. To properly apply the "look but not see" rule, as a matter of law, it is elemental that the approaching vehicle must be plainly visible and that the view of it must be unobstructed. If the evidence on these points is not clear or is disputed, then it remains a fact question for the trier of the facts to resolve. The effect of these findings by the trial court is that the evidence was insufficient to charge the defendant with contributory negligence when plaintiff negligently failed to yield right-of-way. Hernandez v. Ratliff, 172 Colo. 129, 470 P.2d 579 (1970).

Need not yield right-of-way to one already at fault. A driver cannot be required to yield the right-of-way when his inability to know and act is chargeable to the lawless conduct of him who claims it. Boyd v. Close, 82 Colo. 150, 257 P. 1079 (1927); Andrus v. Hall, 93 Colo. 526, 27 P.2d 495 (1933).

Violation is question for jury. Whether or not either of the drivers or both were negligent in violating this section and whether said negligence was the proximate cause of this accident, or whether it was caused by the joint and concurrent negligence of both, are questions of fact for the jury to determine. Amos v. Remington Arms Co., 117 Colo. 399, 188 P.2d 896 (1948).


42-4-702. Vehicle turning left.

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-602 as it existed prior to 1994, and the former § 42-4-702 was relocated to § 42-4-802.

ANNOTATION

Annotator's note. Since § 42-4-702 is similar to § 42-4-602 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

The evidence clearly disclosed negligence on the part of defendants in making left turn and failed to show any contributory negligence on the part of driver of plaintiff's car which would bar recovery. Thoen v. Pub. Serv. Co., 112 Colo. 126, 146 P.2d 349 (1944).

Sufficient evidence of contributory negligence to take issue to jury. Where the defendant testified that no vehicle was within the intersection or so close thereto as to constitute an immediate hazard and that he was therefore entitled to the right-of-way as he proceeded to make his left turn, and where plaintiff testified that defendant turned directly in front of him and plaintiff had the right-of-way, there is evidence in the record from which the jury might find that the plaintiff was contributorily negligent, and the issue of contributory negligence should have gone to the jury. Eagan v. Maiselson, 142 Colo. 233, 350 P.2d 567 (1960).

42-4-703. Entering through highway - stop or yield intersection.

(1) The department of transportation and local authorities, within their respective jurisdictions, may erect and maintain stop signs, yield signs, or other official traffic control devices to designate through highways or to designate intersections or other roadway junctions at which vehicular traffic on one or more of the roadways is directed to yield or to stop and yield before entering the intersection or junction. In the case of state highways, such regulations shall be subject to the provisions of section 43-2-135 (1) (g), C.R.S.

(2) Every sign erected pursuant to subsection (1) of this section shall be a standard sign adopted by the department of transportation.
(3) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

(4) The driver of a vehicle approaching a yield sign, in obedience to such sign, shall slow to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways; except that, if a driver is involved in a collision with a vehicle in the intersection or junction of roadways after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of the driver's failure to yield right-of-way.

(5) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-603 as it existed prior to 1994, and the former § 42-4-703 was relocated to § 42-4-803.

ANNOTATION

Annotator's note. Since § 42-4-703 is similar to § 42-4-603 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.


The phrase "approaching so closely as to constitute an immediate hazard" necessarily imposes due care and caution on the part of the approaching driver under all the facts and circumstances present. Seifried v. Mosher, 129 Colo. 156, 268 P.2d 411 (1954).

Violation of a traffic statute may serve as the basis of a negligence per se determination. Subsection (3) was adopted for the public's safety and may be used as a basis for asserting negligence per se. Bullock v. Wayne, 623 F. Supp. 2d 1247 (D. Colo. 2009).

Section 42-4-1713 prevents the admission of evidence of conviction for failure to yield in violation of subsection (3) of this section. That evidence may not be introduced at trial or during summary judgment. Bullock v. Wayne, 623 F. Supp. 2d 1247 (D. Colo. 2009).

Violation is question for jury. Whether or not either of the drivers or both were negligent in violating this section and whether said negligence was the proximate cause of this accident, or whether it
was caused by the joint and concurrent negligence of both, were questions of fact for the jury to

**Negligence is generally for the jury, and always so when the measure of duty is reasonable care.** Seifried v. Mosher, 129 Colo. 156, 268 P.2d 411 (1954).


**42-4-704. Vehicle entering roadway.**

The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right-of-way to all vehicles approaching on the roadway to be entered or crossed. Any person who violates any provision of this section commits a class A traffic infraction.

**Source:** L. 94: Entire title amended with relocations, p. 2347, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 42-4-604 as it existed prior to 1994, and the former § 42-4-704 was relocated to § 42-4-804.

**Cross references:** For duty to yield when entering a roadway from a driveway or alley, see § 42-4-710.

**ANNOTATION**

**Annotator's note.** Since § 42-4-704 is similar to § 42-4-604 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

**Whether one is heading into the highway, or backing into it, he is still entering the highway.** Yockey Trucking Co. v. Handy, 128 Colo. 404, 262 P.2d 930 (1953).

**The duty of a driver backing his automobile into a street or roadway** is clearly set forth in McBride v. Woods, 124 Colo. 384, 238 P.2d 183 (1951); Yockey Trucking Co. v. Handy, 128 Colo. 404, 262 P.2d 930 (1953).

**The duty of one driving on a highway who arrives at an intersection of that highway and a private road or driveway is not the same duty of care as at an intersection of two highways.** Curtis v. Lawley, 140 Colo. 476, 346 P.2d 579 (1959).

**And despite the statutory requirement that one traveling on a public highway has the right-of-way over one entering the highway from a private road is but a reaffirmation of the rule of the road.** Curtis v. Lawley, 140 Colo. 476, 346 P.2d 579 (1959).

**Right-of-way must be used with due care.** Notwithstanding the fact the operator of a vehicle over a public road has the right-of-way over a person entering thereon from a private roadway, he must use his right in a reasonable manner; in other words, it is the duty of both parties to use due care as that term is understood at common law. Curtis v. Lawley, 140 Colo. 476, 346 P.2d 579 (1959).

**42-4-705. Operation of vehicle approached by emergency vehicle - operation of vehicle approaching stationary emergency vehicle or stationary towing carrier vehicle.**

(1) Upon the immediate approach of an authorized emergency vehicle making use of audible or visual signals meeting the requirements of section 42-4-213 or 42-4-222, the driver of every
other vehicle shall yield the right-of-way and where possible shall immediately clear the farthest left-hand lane lawfully available to through traffic and shall drive to a position parallel to, and as close as possible to, the right-hand edge or curb of a roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(2) (a) A driver in a vehicle that is approaching or passing a stationary authorized emergency vehicle that is giving a visual signal by means of flashing, rotating, or oscillating red, blue, or white lights as permitted by section 42-4-213 or 42-4-222 or a stationary towing carrier vehicle that is giving a visual signal by means of flashing, rotating, or oscillating yellow lights shall exhibit due care and caution and proceed as described in paragraphs (b) and (c) of this subsection (2).

(b) On a highway with at least two adjacent lanes proceeding in the same direction on the same side of the highway where a stationary authorized emergency vehicle or stationary towing carrier vehicle is located, the driver of an approaching or passing vehicle shall proceed with due care and caution and yield the right-of-way by moving into a lane at least one moving lane apart from the stationary authorized emergency vehicle or stationary towing carrier vehicle, unless directed otherwise by a peace officer or other authorized emergency personnel. If movement to an adjacent moving lane is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic, the driver of the approaching vehicle shall proceed in the manner described in paragraph (c) of this subsection (2).

(c) On a highway that does not have at least two adjacent lanes proceeding in the same direction on the same side of the highway where a stationary authorized emergency vehicle or stationary towing carrier vehicle is located, or if movement by the driver of the approaching vehicle into an adjacent moving lane, as described in paragraph (b) of this subsection (2), is not possible, the driver of an approaching vehicle shall reduce and maintain a safe speed with regard to the location of the stationary authorized vehicle or stationary towing carrier vehicle, weather conditions, road conditions, and vehicular or pedestrian traffic and proceed with due care and caution, or as directed by a peace officer or other authorized emergency personnel.

(2.5) (a) A driver in a vehicle that is approaching or passing a maintenance, repair, or construction vehicle that is moving at less than twenty miles per hour shall exhibit due care and caution and proceed as described in paragraphs (b) and (c) of this subsection (2.5).

(b) On a highway with at least two adjacent lanes proceeding in the same direction on the same side of the highway where a stationary or slow-moving maintenance, repair, or construction vehicle is located, the driver of an approaching or passing vehicle shall proceed with due care and caution and yield the right-of-way by moving into a lane at least one moving lane apart from the vehicle, unless directed otherwise by a peace officer or other authorized emergency personnel. If movement to an adjacent moving lane is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic, the driver of the approaching vehicle shall proceed in the manner described in paragraph (c) of this subsection (2.5).

(c) On a highway that does not have at least two adjacent lanes proceeding in the same direction on the same side of the highway where a stationary or slow-moving maintenance, repair, or construction vehicle is located, or if movement by the driver of the approaching vehicle
into an adjacent moving lane, as described in paragraph (b) of this subsection (2.5), is not possible, the driver of an approaching vehicle shall reduce and maintain a safe speed with regard to the location of the stationary or slow-moving maintenance, repair, or construction vehicle, weather conditions, road conditions, and vehicular or pedestrian traffic, and shall proceed with due care and caution, or as directed by a peace officer or other authorized emergency personnel.

(2.6) (a) A driver in a vehicle that is approaching or passing a motor vehicle where the tires are being equipped with chains on the side of the highway shall exhibit due care and caution and proceed as described in paragraphs (b) and (c) of this subsection (2.6).

(b) On a highway with at least two adjacent lanes proceeding in the same direction on the same side of the highway where chains are being applied to the tires of a motor vehicle, the driver of an approaching or passing vehicle shall proceed with due care and caution and yield the right-of-way by moving into a lane at least one moving lane apart from the vehicle, unless directed otherwise by a peace officer or other authorized emergency personnel. If movement to an adjacent moving lane is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic, the driver of the approaching vehicle shall proceed in the manner described in paragraph (c) of this subsection (2.6).

(c) On a highway that does not have at least two adjacent lanes proceeding in the same direction on the same side of the highway where chains are being applied to the tires of a motor vehicle, or if movement by the driver of the approaching vehicle into an adjacent moving lane, as described in paragraph (b) of this subsection (2.6), is not possible, the driver of an approaching vehicle shall reduce and maintain a safe speed with regard to the location of the motor vehicle where chains are being applied to the tires, weather conditions, road conditions, and vehicular or pedestrian traffic, and shall proceed with due care and caution, or as directed by a peace officer or other authorized emergency personnel.

(3) (a) Any person who violates subsection (1) of this section commits a class A traffic infraction.

(b) Any person who violates subsection (2), (2.5), or (2.6) of this section commits careless driving as described in section 42-4-1402.


Editor's note: This section is similar to former § 42-4-605 as it existed prior to 1994, and the former § 42-4-705 was relocated to § 42-4-805.

Cross references: (1) Section 1 of chapter 412, Session Laws of Colorado 2008, provides that the act enacting subsections (2.5) and (2.6) and amending subsection (3)(b) shall be known and may be cited as the "Charles Mather Highway Safety Act".

(2) In 2011, subsection (2) was amended by the "Allen Rose Tow-truck Safety Act". For the short title, see section 1 of chapter 298, Session Laws of Colorado 2011.

42-4-706. Obedience to railroad signal.
(1) Any driver of a motor vehicle approaching a railroad crossing sign shall slow down to a speed that is reasonable and safe for the existing conditions. If required to stop for a traffic control device, flagperson, or safety before crossing the railroad grade crossing, the driver shall stop at the marked stop line, if any. If no such stop line exists, the driver shall:

   (a) Stop not less than fifteen feet nor more than fifty feet from the nearest rail of the railroad grade crossing and shall not proceed until the railroad grade can be crossed safely; or

   (b) In the event the driver would not have a reasonable view of approaching trains when stopped pursuant to paragraph (a) of this subsection (1), stop before proceeding across the railroad grade crossing at the point nearest such crossing where the driver has a reasonable view of approaching trains and not proceed until the railroad grade can be crossed safely.

(2) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed, nor shall any pedestrian pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing while such gate or barrier is closed or is being opened or closed.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-606 as it existed prior to 1994, and the former § 42-4-706 was relocated to § 42-4-806.

42-4-707. Certain vehicles must stop at railroad grade crossings.

(1) Except as otherwise provided in this section, the driver of a school bus, as defined in paragraph (b) of subsection (5) of this section, carrying any schoolchild, the driver of a vehicle carrying hazardous materials that is required to be placarded in accordance with regulations issued pursuant to section 42-20-108, or the driver of a commercial vehicle, as defined in section 42-4-235, that is transporting passengers, before crossing at grade any tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train and shall not proceed until the driver can do so safely. After stopping as required in this section and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing, and the driver shall not manually shift gears while crossing the tracks.

(2) This section shall not apply at street railway grade crossings within a business district.

(3) When stopping as required at such railroad crossing, the driver shall keep as far to the right of the roadway as possible and shall not form two lanes of traffic unless the roadway is marked for four or more lanes of traffic.

(4) Subsection (1) of this section shall not apply at:
(a) (Deleted by amendment, L. 2006, p. 42, § 1, effective July 1, 2006.)

(b) Any railroad grade crossing at which traffic is regulated by a traffic control signal;

(c) Any railroad grade crossing at which traffic is controlled by a police officer or human flagperson;

(d) Any railroad crossing where state or local road authorities within their respective jurisdictions have determined that trains are not operating during certain periods or seasons of the year and have erected an official sign carrying the legend "exempt", which shall give notice when so posted that such crossing is exempt from the stopping requirement provided for in this section.

(5) For the purposes of this section:

(a) The definition of hazardous materials shall be the definition contained in the rules adopted by the chief of the Colorado state patrol pursuant to section 42-20-108.

(b) "School bus" means a school bus that is required to bear on the front and rear of such school bus the words "SCHOOL BUS" and display visual signal lights pursuant to section 42-4-1903 (2) (a).

(6) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-608 as it existed prior to 1994, and the former § 42-4-707 was relocated to § 42-4-807.

42-4-708. Moving heavy equipment at railroad grade crossing.

(1) No person shall operate or move any crawler-type tractor, steam shovel, derrick, or roller or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than nine inches above the level surface of a roadway upon or across any tracks at a railroad grade crossing without first complying with this section.

(2) Notice of any such intended crossing shall be given to a superintendent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

(3) Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad, and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(4) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagperson or otherwise of the immediate approach of a railroad train or car.
(5) Subsection (3) of this section shall not apply at any railroad crossing where state or local road authorities within their respective jurisdictions have determined that trains are not operating during certain periods or seasons of the year and have erected an official sign carrying the legend "exempt", which shall give notice when so posted that such crossing is exempt from the stopping requirement provided in this section.

(6) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-609 as it existed prior to 1994.

ANNOTATION

Annotator's note. Since § 42-4-708 is similar to § 42-4-609 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.


Last clear chance applies. A violation of this section which would otherwise preclude a party from recovering is not conclusive if the doctrine of last clear chance applies, for then violation of the statute is not the proximate cause of the accident and a negligent plaintiff may yet recover. Colo. & S. Ry. v. Duffy Storage & Moving Co., 145 Colo. 344, 361 P.2d 144 (1961).

42-4-709. Stop when traffic obstructed.

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding the indication of any traffic control signal to proceed. Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-609.5 as it existed prior to 1994, and the former § 42-4-709 was relocated to § 42-4-808.

42-4-710. Emerging from or entering alley, driveway, or building.

(1) The driver of a vehicle emerging from an alley, driveway, building, parking lot, or other place, immediately prior to driving onto a sidewalk or into the sidewalk area extending across any such alleyway, driveway, or entranceway, shall yield the right-of-way to any pedestrian upon or about to enter such sidewalk or sidewalk area extending across such alleyway, driveway, or entranceway, as may be necessary to avoid collision, and when entering the roadway shall comply with the provisions of section 42-4-704.
(2) The driver of a vehicle entering an alley, driveway, or entranceway shall yield the right-of-way to any pedestrian within or about to enter the sidewalk or sidewalk area extending across such alleyway, driveway, or entranceway.

(3) No person shall drive any vehicle other than a bicycle, electric assisted bicycle, or any other human-powered vehicle upon a sidewalk or sidewalk area, except upon a permanent or duly authorized temporary driveway.

(4) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-610 as it existed prior to 1994.

42-4-711. Driving on mountain highways.

(1) The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near to the right-hand edge of the highway as reasonably possible and, except when driving entirely to the right of the center of the roadway, shall give audible warning with the horn of such motor vehicle upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway.

(2) On narrow mountain highways with turnouts having a grade of six percent or more, ascending vehicles shall have the right-of-way over descending vehicles, except where it is more practicable for the ascending vehicle to return to a turnout.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-611 as it existed prior to 1994.

42-4-712. Driving in highway work area.

(1) The driver of a vehicle shall yield the right-of-way to any authorized vehicle or pedestrian engaged in work upon a highway within any highway construction or maintenance work area indicated by official traffic control devices.

(2) The driver of a vehicle shall yield the right-of-way to any authorized service vehicle engaged in work upon a highway whenever such vehicle displays flashing lights meeting the requirements of section 42-4-214.

(3) State and local road authorities, within their respective jurisdictions and in cooperation with law enforcement agencies, may train and appoint adult civilian personnel for special traffic duty as highway flagpersons within any highway maintenance or construction work area. Whenever such duly authorized flagpersons are wearing the badge, insignia, or uniform of their office, are engaged in the performance of their respective duties, and are displaying any official
hand signal device of a type and in the manner prescribed in the adopted state traffic control manual or supplement thereto for signaling traffic in such areas to stop or to proceed, no person shall willfully fail or refuse to obey the visible instructions or signals so displayed by such flagpersons. Any alleged willful failure or refusal of a driver to comply with such instructions or signals, including information as to the identity of the driver and the license plate number of the vehicle alleged to have been so driven in violation, shall be reported by the work area supervisor in charge at the location to the district attorney for appropriate penalizing action in a court of competent jurisdiction. Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-614 as it existed prior to 1994.

42-4-713. Yielding right-of-way to transit buses - definitions - penalty.

(1) As used in this section, unless the context otherwise requires:

(a) "Public mass transit operator" has the same meaning as in section 43-1-102 (5), C.R.S.

(b) "Transit bus" means a bus operated by a public mass transit operator.

(2) Drivers of vehicles in the same lane of traffic and behind a transit bus shall yield the right-of-way to the bus if:

(a) The driver of the transit bus, after stopping to allow passengers to board or exit, is signaling an intention to enter a traffic lane; and

(b) A yield sign as described in subsection (3) of this section is displayed and illuminated on the back of the transit bus.

(3) The yield sign referred to in paragraph (b) of subsection (2) of this section shall:

(a) Warn a driver of a vehicle behind the transit bus that the driver is required to yield when the bus is entering a traffic lane; and

(b) Be illuminated when the driver of the transit bus is attempting to enter a traffic lane.

(4) This section does not require a public mass transit operator to install yield signs as described in subsection (3) of this section on transit buses operated by the public mass transit operator.

(5) This section does not relieve a driver of a transit bus from the duty to drive with due regard for the safety of all persons using the roadway.

Source: L. 2009: Entire section added, (HB 09-1027), ch. 79, p. 287, § 1, effective August 5.
PART 8
PEDESTRIANS

Cross references: For penalties for class A and class B traffic infractions, see § 42-4-1701 (3)(a)(I).

42-4-801. Pedestrian obedience to traffic control devices and traffic regulations.

(1) A pedestrian shall obey the instructions of any official traffic control device specifically applicable to the pedestrian, unless otherwise directed by a police officer.

(2) Pedestrians shall be subject to traffic and pedestrian-control signals as provided in sections 42-4-604 and 42-4-802 (5).

(3) At all other places, pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this title.

(4) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-701 as it existed prior to 1994, and the former § 42-4-801 was relocated to § 42-4-901.

42-4-802. Pedestrians' right-of-way in crosswalks.

(1) When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(2) Subsection (1) of this section shall not apply under the conditions stated in section 42-4-803.

(3) No pedestrian shall suddenly leave a curb or other place of safety and ride a bicycle, ride an electrical assisted bicycle, walk, or run into the path of a moving vehicle that is so close as to constitute an immediate hazard.

(4) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(5) Whenever special pedestrian-control signals exhibiting "Walk" or "Don't Walk" word or symbol indications are in place, as declared in the traffic control manual adopted by the department of transportation, such signals shall indicate and require as follows:
(a) "Walk" (steady): While the "Walk" indication is steadily illuminated, pedestrians facing such signal may proceed across the roadway in the direction of the signal indication and shall be given the right-of-way by the drivers of all vehicles.

(b) "Don't Walk" (steady): While the "Don't Walk" indication is steadily illuminated, no pedestrian shall enter the roadway in the direction of the signal indication.

(c) "Don't Walk" (flashing): Whenever the "Don't Walk" indication is flashing, no pedestrian shall start to cross the roadway in the direction of such signal indication, but any pedestrian who has partly completed crossing during the "Walk" indication shall proceed to a sidewalk or to a safety island, and all drivers of vehicles shall yield to any such pedestrian.

(d) Whenever a signal system provides for the stopping of all vehicular traffic and the exclusive movement of pedestrians and "Walk" and "Don't Walk" signal indications control such pedestrian movement, pedestrians may cross in any direction between corners of the intersection offering the shortest route within the boundaries of the intersection while the "Walk" indication is exhibited, if signals and other official devices direct pedestrian movement in such manner consistent with section 42-4-803 (4).

(6) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: (1) This section is similar to former § 42-4-702 as it existed prior to 1994, and the former § 42-4-802 was relocated to § 42-4-902.

(2) Section 137 of Senate Bill 09-292 changed the effective date of subsection (3) from July 1, 2010, to October 1, 2009.

42-4-803. Crossing at other than crosswalks.

(1) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(2) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(3) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(4) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic control devices pertaining to such crossing movements.

(5) Any person who violates any provision of this section commits a class B traffic infraction.

Editor's note: This section is similar to former § 42-4-703 as it existed prior to 1994, and the former § 42-4-803 was relocated to § 42-4-903.

ANNOTATION

Law reviews. For article, "One Year Review of Torts", see 37 Dicta 67 (1960).

Annotator's note. Since § 42-4-803 is similar to § 42-4-703 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

A pedestrian "jay-walking" across a highway is required to yield the right-of-way to automobiles, and failure to do so is negligence per se. Dennis v. Johnson, 136 Colo. 357, 317 P.2d 890 (1957).

Instruction based on this section alone is erroneous. In an action by a pedestrian against a motorist for injuries allegedly occurring at an intersection, an instruction based upon subsection (1) of this section, which fails to advise a jury of the qualifications thereof contained in § 42-4-707, is erroneous. Allison v. Trustee, 140 Colo. 392, 344 P.2d 1077 (1959).

The care and caution required of an 11-year-old child, who while crossing a multiple lane highway was struck by defendant's automobile, depend on its maturity and capacity and is also dependent on the circumstances of each particular case. Schaffner v. Smith, 158 Colo. 387, 407 P.2d 23 (1965).

42-4-804. Pedestrian to use right half of crosswalk. (Repealed)


42-4-805. Pedestrians walking or traveling in a wheelchair on highways.

(1) Pedestrians walking or traveling in a wheelchair along and upon highways where sidewalks are not provided shall walk or travel only on a road shoulder as far as practicable from the edge of the roadway. Where neither a sidewalk nor road shoulder is available, any pedestrian walking or traveling in a wheelchair along and upon a highway shall walk as near as practicable to an outside edge of the roadway and, in the case of a two-way roadway, shall walk or travel only on the left side of the roadway facing traffic that may approach from the opposite direction; except that any person lawfully soliciting a ride may stand on either side of such two-way roadway where there is a view of traffic approaching from both directions.

(2) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private vehicle. For the purposes of this subsection (2), "roadway" means that portion of the road normally used by moving motor vehicle traffic.

(3) It is unlawful for any person who is under the influence of alcohol or of any controlled substance, as defined in section 18-18-102 (5), C.R.S., or of any stupefying drug to walk or be upon that portion of any highway normally used by moving motor vehicle traffic.

(4) This section applying to pedestrians shall also be applicable to riders of animals.
(5) Any city or town may, by ordinance, regulate the use by pedestrians of streets and highways under its jurisdiction to the extent authorized under subsection (6) of this section and sections 42-4-110 and 42-4-111, but no ordinance regulating such use of streets and highways in a manner differing from this section shall be effective until official signs or devices giving notice thereof have been placed as required by section 42-4-111 (2).

(6) No person shall solicit a ride on any highway included in the interstate system, as defined in section 43-2-101 (2), C.R.S., except at an entrance to or exit from such highway or at places specifically designated by the department of transportation; or, in an emergency affecting a vehicle or its operation, a driver or passenger of a disabled vehicle may solicit a ride on any highway.

(7) Pedestrians shall only be picked up where there is adequate road space for vehicles to pull off and not endanger and impede the flow of traffic.

(8) Upon the immediate approach of an authorized emergency vehicle making use of audible or visual signals meeting the requirements of section 42-4-213 or of a police vehicle properly and lawfully making use of an audible signal only, every pedestrian shall yield the right-of-way to the authorized emergency vehicle and shall leave the roadway and remain off the same until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. This subsection (8) shall not relieve the driver of an authorized emergency vehicle from the duty to use due care as provided in sections 42-4-108 (4) and 42-4-807.

(9) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-706 as it existed prior to 1994.

Cross references: For obstruction of highway or other passageway, see § 18-9-107.

42-4-806. Driving through safety zone prohibited.

No vehicle at any time shall be driven through or within a safety zone. Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-706 as it existed prior to 1994.

42-4-807. Drivers to exercise due care.

Notwithstanding any of the provisions of this article, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused or incapacitated person upon a roadway. Any person who violates any provision of this section commits a class A traffic infraction.
42-4-808. Drivers and pedestrians, other than persons in wheelchairs, to yield to persons with disabilities.

(1) Any pedestrian, other than a person in a wheelchair, or any driver of a vehicle who approaches a person who has an obviously apparent disability of blindness, deafness, or mobility impairment shall immediately come to a full stop and take such precautions before proceeding as are necessary to avoid an accident or injury to said person. A disability shall be deemed to be obviously apparent if, by way of example and without limitation, the person is using a cane or crutches, is assisted by an assistance dog, as defined in section 24-34-803 (7), C.R.S., is being assisted by another person, is in a wheelchair, or is walking with an obvious physical impairment. Any person who violates any provision of this section commits a class A traffic offense.

(2) The department has no authority to assess any points under section 42-2-127 to any pedestrian who is convicted of a violation of subsection (1) of this section.


Editor's note: This section is similar to former § 42-4-709 as it existed prior to 1994.

ANNOTATION

This section does not eliminate defenses, including comparative negligence, available to a driver of a vehicle in a civil action. McCall v. Meyers, 94 P.3d 1271 (Colo. App. 2004).
PART 9
TURNING - STOPPING

Cross references: For penalties for class A traffic infractions, see § 42-4-1701 (3)(a)(I).

42-4-901. Required position and method of turning.

(1) The driver of a motor vehicle intending to turn shall do so as follows:

(a) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Left turns. The driver of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle. Whenever practicable, the left turn shall be made to the left of the center of the intersection so as to leave the intersection or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction as such vehicle on the roadway being entered.

(c) Two-way left-turn lanes. Where a special lane for making left turns by drivers proceeding in opposite directions has been indicated by official traffic control devices in the manner prescribed in the state traffic control manual, a left turn shall not be made from any other lane, and a vehicle shall not be driven in said special lane except when preparing for or making a left turn from or into the roadway or when preparing for or making a U-turn when otherwise permitted by law.

(2) The department of transportation and local authorities in their respective jurisdictions may cause official traffic control devices to be placed and thereby require and direct that a different course from that specified in this section be traveled by turning vehicles, and, when such devices are so placed, no driver shall turn a vehicle other than as directed and required by such devices. In the case of streets which are a part of the state highway system, the local regulation shall be subject to the approval of the department of transportation as provided in section 43-2-135 (1) (g), C.R.S.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-801 as it existed prior to 1994, and the former § 42-4-901 was relocated to § 42-4-1001.

ANNOTATION

Annotator's note. Since § 42-4-901 is similar to § 42-4-801 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.

42-4-902. Limitations on turning around.

(1) No vehicle shall be turned so as to proceed in the opposite direction upon any curve or upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within such distance as is necessary to avoid interfering with or endangering approaching traffic.

(2) The driver of any vehicle shall not turn such vehicle at an intersection or any other location so as to proceed in the opposite direction unless such movement can be made in safety and without interfering with or endangering other traffic.

(3) Local and state authorities, within their respective jurisdictions, subject to the provisions of section 43-2-135 (1) (g), C.R.S., in the case of streets which are state highways, may erect "U-turn" prohibition or restriction signs at intersections or other locations where such movements are deemed to be hazardous, and, whenever official signs are so erected, no driver of a vehicle shall disobey the instructions thereof.

(4) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-802 as it existed prior to 1994, and the former § 42-4-902 was relocated to § 42-4-1002.

42-4-903. Turning movements and required signals.

(1) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section 42-4-901, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety and then only after giving an appropriate signal in the manner provided in sections 42-4-608 and 42-4-609.

(2) A signal of intention to turn right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning in urban or metropolitan areas and shall be given continuously for at least two hundred feet on all four-lane highways and other highways where the prima facie or posted speed limit is more than forty miles per hour. Such signals shall be given regardless of existing weather conditions.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in sections 42-4-608 and 42-4-609 to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(4) The signals provided for in section 42-4-608 (2) shall be used to indicate an intention to turn, change lanes, or start from a parked position and shall not be flashed on one side only on a parked or disabled vehicle or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear.
(5) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-803 as it existed prior to 1994, and the former § 42-4-903 was relocated to § 42-4-1003.

ANNOTATION

The violation of this section does not, of itself, impose liability for injuries caused by an automobile, but the person seeking to recover for such injuries must show, not only a violation, but that such was the proximate cause of the damage sustained. Barsch v. Hammond, 110 Colo. 441, 135 P.2d 519 (1943).

Evidence showing violation. Alden v. Watson, 106 Colo. 103, 102 P.2d 479 (1940).

Section relating to parking outside business inapplicable under certain circumstances when signals given. Where the condition of the traffic was such that the truck driver had the right to slow down, and even to stop, prior to making the left-hand turn, provided he gave the statutory signals, § 42-4-803, relating to parking outside of a business or residence, does not apply. Hinkle v. Union Transf. Co., 229 F.2d 403 (10th Cir. 1955).
PART 10
DRIVING - OVERTAKING - PASSING

Cross references: For penalties for class A traffic infractions, see § 42-4-1701 (3)(a)(I).

42-4-1001. Drive on right side - exceptions.

(1) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

   (a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

   (b) When an obstruction exists making it necessary to drive to the left of the center of the highway; but any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

   (c) Upon a roadway divided into three lanes for traffic under the rules applicable thereon; or

   (d) Upon a roadway restricted to one-way traffic as indicated by official traffic control devices.

   (2) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

   (3) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes or except as permitted under subsection (1) (b) of this section. However, this subsection (3) does not prohibit the crossing of the center line in making a left turn into or from an alley, private road, or driveway when such movement can be made in safety and without interfering with, impeding, or endangering other traffic lawfully using the highway.

   (4) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-901 as it existed prior to 1994, and the former § 42-4-1001 was relocated to § 42-4-1101.

ANNOTATION
Annotator's note. Since § 42-4-1001 is similar to § 42-4-901 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

Driving on the left side of the road is presumptive evidence of negligence. Globe Cereal Mills v. Scrivener, 240 F.2d 330 (10th Cir. 1956).


Violation of a statute or ordinance regulating the use of highways is negligence as a matter of law. Ankeny v. Talbot, 126 Colo. 313, 250 P.2d 1019 (1952).

But the presumption of negligence may be rebutted by evidence showing that the conduct was reasonable under the circumstances. Sanchez v. Staats, 34 Colo. App. 243, 526 P.2d 672 (1974), aff'd, 189 Colo. 228, 539 P.2d 1233 (1975).

Issues of fact. Whether conduct in driving left of the center line was reasonable under the circumstances and, if not, whether that conduct was a proximate cause of the accident are clearly issues of fact which should be left to the jury to determine. Sanchez v. Staats, 34 Colo. App. 243, 526 P.2d 672 (1974), aff'd, 189 Colo. 228, 539 P.2d 1233 (1975).

Last clear chance doctrine applicable. If violation of this section is the proximate cause of an accident, such negligent person cannot recover unless the doctrine of last clear chance is applicable. Ankeny v. Talbot, 126 Colo. 313, 250 P.2d 1019 (1952).

One of the essential conditions to application of the doctrine of last clear chance is that the person relying on the doctrine is unable to extricate himself from a position of peril. Ankeny v. Talbot, 126 Colo. 313, 250 P.2d 1019 (1952).

42-4-1002. Passing oncoming vehicles.

(1) Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and, upon roadways having width for not more than one lane of traffic in each direction, each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible.

(2) A driver shall not pass a bicyclist moving in the same direction and in the same lane when there is oncoming traffic unless the driver can simultaneously:

(a) Allow oncoming vehicles at least one-half of the main-traveled portion of the roadway in accordance with subsection (1) of this section; and

(b) Allow the bicyclist at least a three-foot separation between the right side of the driver's vehicle, including all mirrors or other projections, and the left side of the bicyclist at all times.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-902 as it existed prior to 1994, and the former § 42-4-1002 was relocated to § 42-4-1102.
ANNOTATION

Annotator's note. Since § 42-4-1002 is similar to § 42-4-902 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

This section contemplates two lines of traffic, and a main traveled roadway sufficient in width for their accommodation. The statute by its terms clearly requires the yielding, as nearly as possible, by each of two vehicles approaching each other, of at least one-half of the main traveled portion of the roadway. So far as the statute is explicit, the main traveled portion may be in the center, or on either side of the roadway. One-half of such traveled portion is exacted of each traveler, if it is possible to be given; if not, then as nearly as possible. Parrish v. Smith, 102 Colo. 250, 78 P.2d 629 (1938); Parrish v. Smith, 108 Colo. 256, 115 P.2d 647 (1941).

A situation might arise in which a strict compliance with these statutory requirements would be impossible. The reasonable provisions are indicated for roadways, and of course no fixed application thereof could be made to parts of a road under construction, where changing conditions would not permit orderly travel under established rules. Parrish v. Smith, 102 Colo. 250, 78 P.2d 629 (1938); Parrish v. Smith, 108 Colo. 256, 115 P.2d 647 (1941); Orth v. Bauer, 163 Colo. 136, 429 P.2d 279 (1967).

In a case in which strict compliance with these statutory requirements would be impossible, then the ordinary rules are suspended. An ordinarily prudent traveler with any warning at all, in approaching a place of construction is bound to know that all rules of the road are suspended, and upon entering such an area be prepared -- for his own safety and that of others -- to submit to, and be governed by, conditions as he finds them. In such circumstances he cannot rely upon written traffic rules. Parrish v. Smith, 102 Colo. 250, 78 P.2d 629 (1938); Parrish v. Smith, 108 Colo. 256, 115 P.2d 647 (1941).

Suspension of rules is question for jury. The question as to whether the physical condition of the roadway and its width were sufficient to permit a truck to yield one-half of the roadway to an automobile, as required by this section, is properly submitted to the jury. Parrish v. Smith, 108 Colo. 256, 115 P.2d 647 (1941).

Violation of section not negligence per se. Violation of this section requiring drivers to yield at least half of the roadway is not negligence per se. Sanchez v. Staats, 34 Colo. App. 243, 526 P.2d 672 (1974), aff'd, 189 Colo. 228, 539 P.2d 1233 (1975).

The rule that driving on the wrong side of the road is presumptive evidence of negligence, must be applied on a case by case basis and cannot apply to every fact situation. Orth v. Bauer, 163 Colo. 136, 429 P.2d 279 (1967).

42-4-1003. Overtaking a vehicle on the left.

(1) The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to the limitations, exceptions, and special rules stated in this section and sections 42-4-1004 to 42-4-1008:

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left of the vehicle at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) The driver of a motor vehicle overtaking a bicyclist proceeding in the same direction shall allow the bicyclist at least a three-foot separation between the right side of the driver's vehicle, including all mirrors or other projections, and the left side of the bicyclist at all times.
(c) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of the driver's vehicle until completely passed by the overtaking vehicle.

(2) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-903 as it existed prior to 1994, and the former § 42-4-1003 was relocated to § 42-4-1103.

ANNOTATION

Annotator's note. Since § 42-4-1003 is similar to § 42-4-903 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

Forward automobile not required to turn further to right. Under this section it would seem clear that where the left half of the roadway is clear and the forward automobile is on the right half thereof, the driver of the latter is not required to turn further to the right upon hearing a passing signal given by the driver of an overtaking car. Vasquez v. Morrow, 106 Colo. 540, 107 P.2d 246 (1940).

Failure to turn does not justify overtaking vehicle to drive into collision. The mere failure of the driver of an overtaken vehicle to turn to the right does not justify the operator of the overtaking vehicle to drive on into a collision with the first. Vasquez v. Morrow, 106 Colo. 540, 107 P.2d 246 (1940).

Situation in which section not applicable. Where plaintiff attempted to pass defendants' truck within 200 feet of an intersection on a four-lane, divided highway and defendants' driver attempted to make a U-turn in front of plaintiff without giving a warning signal, although plaintiff gave all signals customarily used in indicating that he was about to pass, this section did not apply and defendants' negligence was the proximate cause of a collision between the vehicles of the parties. Wilson v. Stroh, 121 Colo. 411, 216 P.2d 999 (1950).

42-4-1004. When overtaking on the right is permitted.

(1) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(a) When the vehicle overtaken is making or giving indication of making a left turn;

(b) Upon a street or highway with unobstructed pavement not occupied by parked vehicles and marked for two or more lanes of moving vehicles in each direction; or

(c) Upon a one-way street or upon any roadway on which traffic is restricted to one direction of movement where the roadway is free from obstructions and marked for two or more lanes of moving vehicles.

(1.5) The driver of a motor vehicle upon a one-way roadway with two or more marked traffic lanes, when overtaking a bicyclist proceeding in the same direction and riding on the left-hand side of the road, shall allow the bicyclist at least a three-foot separation between the left side of

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the driver's vehicle, including all mirrors or other projections, and the right side of the bicyclist at all times.

(2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-904 as it existed prior to 1994, and the former § 42-4-1004 was relocated to § 42-4-1104.

42-4-1005. Limitations on overtaking on the left.

(1) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless authorized by the provisions of this article and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completed without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and, in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching vehicle.

(2) No vehicle shall be driven on the left side of the roadway under the following conditions:

(a) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(b) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing; or

(c) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct, or tunnel.

(3) The department of transportation and local authorities are authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones. Where such signs or markings are in place to define a no-passing zone and such signs or markings are clearly visible to an ordinarily observant person, no driver shall drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(4) The provisions of this section shall not apply:
(a) Upon a one-way roadway;

(b) Under the conditions described in section 42-4-1001 (1) (b);

(c) To the driver of a vehicle turning left into or from an alley, private road, or driveway when such movement can be made in safety and without interfering with, impeding, or endangering other traffic lawfully using the highway; or

(d) To the driver of a vehicle passing a bicyclist moving the same direction and in the same lane when such movement can be made in safety and without interfering with, impeding, or endangering other traffic lawfully using the highway.

(5) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-905 as it existed prior to 1994, and the former § 42-4-1005 was relocated to § 42-4-1105.

ANNOTATION

Annotator's note. Since § 42-4-1005 is similar to § 42-4-905 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

The purpose of this section is to restrict traffic to its proper lane if, for example, the view ahead is obstructed by a grade or curve. Globe Cereal Mills v. Scrivener, 240 F.2d 330 (10th Cir. 1956).

No vehicle shall at any time be driven on the left side of the roadway when the prohibited conditions exist. This section also is clearly intended to apply to a two-way or two-lane highway for the avoidance of traffic coming from the opposite direction and does not make sensible application to two lanes for traffic all going in the same direction. Wilson v. Stroh, 121 Colo. 411, 216 P.2d 999 (1950).

Vehicles approaching an intersection must remain in or return to the right lane within 100 feet to remain free of negligence per se. Since operators of motor vehicles often make left turns at intersections and vehicles traveling in the same direction which attempt to pass the turning vehicle on its left may collide with it. This is true whether the passing vehicle is "driven to" or is "driven on" the left side of the highway; within 100, 200, or 300 feet before reaching the point of impact -- the intersection. Bd. of County Comm'rs v. F. H. Linneman, Inc., 170 Colo. 130, 459 P.2d 277 (1969).

Instruction using this section is proper. In an action for personal injuries sustained by passenger in automobile which collided with car that had negligently stopped in center of highway, it was held that evidence warranted an instruction wherein court gave this section concerning the passing of a car on the left. Jaeckel v. Funk, 111 Colo. 179, 138 P.2d 939 (1943).

42-4-1006. One-way roadways and rotary traffic islands.

(1) Upon a roadway restricted to one-way traffic, a vehicle shall be driven only in the direction designated at all or such times as shall be indicated by official traffic control devices.

(2) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.
(3) The department of transportation and local authorities with respect to highways under their respective jurisdictions may designate any roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic control devices. In the case of streets which are a part of the state highway system, the regulation shall be subject to the approval of the department of transportation pursuant to section 43-2-135 (1) (g), C.R.S.

(4) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-906 as it existed prior to 1994.

ANNOTATION

Annotator's note. Since § 42-4-1006 is similar to § 42-4-906 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.


42-4-1007. Driving on roadways laned for traffic.

(1) Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent with this section shall apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn, or where such center lane is at the time allocated exclusively to the traffic moving in the direction the vehicle is proceeding and is designated by official traffic control devices to give notice of such allocation. Under no condition shall an attempt be made to pass upon the shoulder or any portion of the roadway remaining to the right of the indicated right-hand traffic lane.

(c) Official traffic control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway, and drivers of vehicles shall obey the directions of every such device.

(d) Official traffic control devices may be installed prohibiting the changing of lanes on sections of roadway, and drivers of vehicles shall obey the directions of every such device.

(2) Any person who violates any provision of this section commits a class A traffic infraction.
42-4-1008. Following too closely.

(1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(2) The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another motor truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger; except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

(4) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-907 as it existed prior to 1994.

ANNOTATION

Annotator's note. Since § 42-4-1007 is similar to § 42-4-907 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision have been included with the annotations to this section.

Officer had reasonable suspicion that a violation of this statute occurred, thus justifying officer to stop vehicle, where vehicle moved three to four feet into another lane of traffic, essentially straddling the lane divider for several seconds. United States v. Valenzuela, 494 F.3d 886 (10th Cir.), cert. denied, 552 U.S. 1032, 128 S. Ct. 636, 169 L. Ed. 2d 411 (2007).


Violation of section not actionable negligence unless proximate cause of accident. Where the plaintiff, by his own admission was following a truck closer than 300 feet but his pickup truck was hit in the
rear by another truck, the violation of this section was not actionable negligence unless it was a proximate cause of the accident. Gossard v. Watson, 122 Colo. 271, 221 P.2d 353 (1950); Bettner v. Boring, 764 P.2d 829 (Colo. 1988).

A pickup is not a "motor truck" within the meaning of this section. Gossard v. Watson, 128 Colo. 275, 261 P.2d 502 (1953).

Evidently the general assembly in enacting this statute had in mind “motor trucks” carrying heavy weights, or designed for transporting heavy loads. Normally these are vehicles of large size used for the purpose of transporting heavy materials and merchandise, as distinguished from an ordinary automobile with a wagon-shaped body. Gossard v. Watson, 128 Colo. 275, 261 P.2d 502 (1953).

42-4-1008.5. Crowding or threatening bicyclist.

(1) The driver of a motor vehicle shall not, in a careless and imprudent manner, drive the vehicle unnecessarily close to, toward, or near a bicyclist.

(2) Any person who violates subsection (1) of this section commits careless driving as described in section 42-4-1402.


42-4-1009. Coasting prohibited.

(1) The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gears or transmission of such vehicle in neutral.

(2) The driver of a truck or bus when traveling upon a downgrade shall not coast with the clutch disengaged.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor’s note: This section is similar to former § 42-4-909 as it existed prior to 1994.

42-4-1010. Driving on divided or controlled-access highways.

(1) Whenever any highway has been divided into separate roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway, unless directed or permitted to use another roadway by official traffic control devices. No vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established, unless specifically prohibited by official signs and markings or by the provisions of section 42-4-902. However, this subsection (1) does not prohibit a left turn across a median island formed by standard pavement markings or other mountable or traversable devices as prescribed in the state traffic control manual when such movement can be made in safety and without interfering with, impeding, or endangering other traffic lawfully using the highway.

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(2) (a) No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

(b) Wherever an acceleration lane has been provided in conjunction with a ramp entering a controlled-access highway and the ramp intersection is not designated or signed as a stop or yield intersection as provided in section 42-4-703 (1), drivers may use the acceleration lane to attain a safe speed for merging with through traffic when conditions permit such acceleration with safety. Traffic so merging shall be subject to the rule governing the changing of lanes as set forth in section 42-4-1007 (1) (a).

(c) Wherever a deceleration lane has been provided in conjunction with a ramp leaving a controlled-access highway, drivers shall use such lane to slow to a safe speed for making an exit turn after leaving the mainstream of faster-moving traffic.

(3) The department of transportation may by resolution or order entered in its minutes and local authorities may by ordinance consistent with the provisions of section 43-2-135 (1) (g), C.R.S., with respect to any controlled-access highway under their respective jurisdictions, prohibit the use of any such highway by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic. The department of transportation or the local authority adopting such prohibitory regulations shall install official traffic control devices in conformity with the standards established by sections 42-4-601 and 42-4-602 at entrance points or along the highway on which such regulations are applicable. When such devices are so in place, giving notice thereof, no person shall disobey the restrictions made known by such devices. This subsection (3) shall not be construed to give the department authority to regulate pedestrian use of highways in a manner contrary to the provisions of section 42-4-805.

(4) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-910 as it existed prior to 1994.

42-4-1011. Use of runaway vehicle ramps.

(1) No person shall use a runaway vehicle ramp unless such person is in an emergency situation requiring use of the ramp to stop such person's vehicle.

(2) No person shall stop, stand, or park a vehicle on a runaway vehicle ramp or in the pathway of the ramp.

(3) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-911 as it existed prior to 1994.

42-4-1012. High occupancy vehicle (HOV) and high occupancy toll (HOT) lanes.
(1) (a) The department of transportation and local authorities, with respect to streets and highways under their respective jurisdictions, may designate exclusive or preferential lanes for vehicles that carry a specified number of persons. The occupancy level of vehicles and the time of day when lane usage is restricted to high occupancy vehicles, if applicable, shall be designated by official traffic control devices.

(b) (I) On or before July 1, 2001, the department shall issue a request for proposals to private entities for the purpose of entering into a contract with such an entity for the conversion of an existing high occupancy vehicle lane described in paragraph (a) of this subsection (1) to a high occupancy toll lane and for the purpose of entering into a contract for the operation of the high occupancy toll lane by a private entity; except that the department may convert or operate the high occupancy toll lane, or both, in the event that no proposal by a private entity for such conversion or operation, or both, is acceptable.

(II) The high occupancy toll lane shall be a lane for use by vehicles carrying less than the specified number of persons for such high occupancy vehicle lane that pay a specified toll or fee.

(III) Any contract entered into between the department and a private entity pursuant to subparagraph (I) of this paragraph (b) shall:

(A) Authorize the private entity to impose tolls for use of the high occupancy toll lane;

(B) Require that over the term of such contract only toll revenues be applied to payment of the private entity's capital outlay costs for the project, the costs associated with operations, toll collection, administration of the high occupancy toll lane, if any, and a reasonable return on investment to the private entity, as evidenced by and consistent with the returns on investment to private entities on similar public and private projects;

(C) Require that any excess toll revenue either be applied to any indebtedness incurred by the private entity with respect to the project or be paid into the state highway fund created pursuant to section 43-1-219, C.R.S., for exclusive use in the corridor where the high occupancy toll lane is located including for maintenance and enforcement purposes in the high occupancy toll lane and for other traffic congestion relieving options including transit. Such contract shall define or provide a method for calculating excess toll revenues and shall specify the amount of indebtedness that the private entity may incur and apply excess toll revenues to before such revenues must be paid into the state highway fund. It is not the intent of the general assembly that the conversion of a high occupancy vehicle lane to a high occupancy toll lane shall detract in any way from the possible provision of mass transit options by the regional transportation district or any other agency in the corridor where the high occupancy toll lane is located.

(IV) The department shall structure a variable toll or fee to ensure a level of service C and unrestricted access to the lanes at all times by eligible vehicles, including buses, carpools, and EPA certified low-emitting vehicles with a gross vehicle weight rating over ten thousand pounds.

(V) The department shall not enter into a contract for the conversion of a high occupancy vehicle lane to a high occupancy toll lane if such a conversion will result in the loss or refund of federal funds payable, available, or paid to the state for construction, reconstruction, repairs, improvement, planning, supervision, and maintenance of the state highway system and other public highways.
(VI) The department shall require the private entity entering into a contract pursuant to this section to provide such performance bond or other surety for the project as the department may reasonably require.

(c) Whenever practicable, a high occupancy toll lane described in paragraph (b) of this subsection (1) shall be physically separated from the other lanes of a street or highway so as to minimize the interference between traffic in the designated lanes and traffic in the other lanes.

(d) The department shall develop and adopt functional specifications and standards for an automatic vehicle identification system for use on high occupancy vehicle lanes, high occupancy toll lanes, any public highway constructed and operated under the provisions of part 5 of article 4 of title 43, C.R.S., and any other street or highway where tolls or charges are imposed for the privilege of traveling upon such street or highway. The specifications and standards shall ensure that:

(I) Automatic vehicle identification systems utilized by the state, municipality, or other entity having jurisdiction over the street or highway are compatible with one another;

(II) A vehicle owner shall not be required to purchase or install more than one device to use on all toll facilities;

(III) Toll facility operators have the ability to select from different manufacturers and vendors of automatic vehicle identification systems; and

(IV) There is compatibility between any automatic vehicle identification system in operation on August 4, 1999, and any automatic vehicle identification system designed and installed on and after said date; except that the operator of an automatic vehicle identification system in operation on August 4, 1999, may replace such system with a different system that is not compatible with the system in operation on August 4, 1999, subject to the approval of the department. After the department approves such replacement, the specifications and standards developed pursuant to this paragraph (d) shall be amended to require compatibility with the replacement system.

(2) A motorcycle may be operated upon high occupancy vehicle lanes pursuant to section 163 of Public Law 97-424 or upon high occupancy toll lanes, unless prohibited by official traffic control devices.

(2.5) (a) (I) Except as otherwise provided in paragraph (d) of this subsection (2.5), a motor vehicle with a gross vehicle weight of twenty-six thousand pounds or less that is either an inherently low-emission vehicle or a hybrid vehicle may be operated upon high occupancy vehicle lanes without regard to the number of persons in the vehicle and without payment of a special toll or fee. The exemption relating to hybrid vehicles shall apply only if such exemption does not affect the receipt of federal funds and does not violate any federal laws or regulations.

(II) As used in this subsection (2.5), "inherently low-emission vehicle" or "ILEV" means:

(A) A light-duty vehicle or light-duty truck, regardless of whether such vehicle or truck is part of a motor vehicle fleet, that has been certified by the federal environmental protection agency as conforming to the ILEV guidelines, procedures, and standards as published in the
(B) A heavy-duty vehicle powered by an engine that has been certified as set forth in sub-subparagraph (A) of this subparagraph (II).

(III) As used in this subsection (2.5), "hybrid vehicle" means a motor vehicle with a hybrid propulsion system that uses an alternative fuel by operating on both an alternative fuel, including electricity, and a traditional fuel.

(b) No person shall operate a vehicle upon a high occupancy vehicle lane pursuant to this subsection (2.5) unless the vehicle:

(I) Meets all applicable federal emission standards set forth in 40 CFR sec. 88.311-93, as amended from time to time, or, subject to subparagraph (I) of paragraph (a) of this subsection (2.5), is a hybrid vehicle; and

(II) Is identified by means of a circular sticker or decal at least four inches in diameter, made of bright orange reflective material, and affixed either to the windshield, to the front of the side-view mirror on the driver's side, or to the front bumper of the vehicle. Said sticker or decal shall be approved by the Colorado department of transportation.

c) The department of transportation and local authorities, with respect to streets and highways under their respective jurisdictions, shall provide information via official traffic control devices to indicate that ILEVs and, subject to subparagraph (I) of paragraph (a) of this subsection (2.5), hybrid vehicles may be operated upon high occupancy vehicle lanes pursuant to this section. Such information may, but need not, be added to existing printed signs, but as existing printed signs related to high occupancy vehicle lane use are replaced or new ones are erected, such information shall be added. In addition, whenever existing electronic signs are capable of being reprogrammed to carry such information, they shall be so reprogrammed by September 1, 2003.

d) (I) In consultation with the regional transportation district, the department of transportation and local authorities, with respect to streets and highways under their respective jurisdictions, shall, in connection with their periodic level-of-service evaluation of high occupancy vehicle lanes, perform a level-of-service evaluation of the use of high occupancy vehicle lanes by ILEVs and hybrid vehicles. If the use of high occupancy vehicle lanes by ILEVs or hybrid vehicles is determined to cause a significant decrease in the level of service for other bona fide users of such lanes, then the department of transportation or a local authority may restrict or eliminate use of such lanes by ILEVs or hybrid vehicles.

(II) If the United States secretary of transportation makes a formal determination that, by giving effect to paragraph (a) of this subsection (2.5) on a particular highway or lane, the state of Colorado would disqualify itself from receiving federal highway funds the state would otherwise qualify to receive or would be required to refund federal transportation grant funds it has already received, then said paragraph (a) shall not be effective as to such highway or lane.

(3) (a) Any person who uses a high occupancy vehicle lane in violation of restrictions imposed by the department of transportation or local authorities commits a class A traffic infraction.
(b) Any person convicted of a third or subsequent offense of paragraph (a) of this subsection (3) committed within a twelve-month period shall be subject to an increased penalty pursuant to section 42-4-1701 (4) (a) (I) (K).


Cross references: In 2009, subsection (2.5)(a)(III) was amended by the "Motor Vehicle Innovation Act". For the short title, see section 1 of chapter 416, Session Laws of Colorado 2009.

42-4-1013. Passing lane - definitions - penalty.

(1) A person shall not drive a motor vehicle in the passing lane of a highway if the speed limit is sixty-five miles per hour or more unless such person is passing other motor vehicles that are in a nonpassing lane or turning left, or unless the volume of traffic does not permit the motor vehicle to safely merge into a nonpassing lane.

(2) For the purposes of this section:

(a) "Nonpassing lane" means any lane that is to the right of the passing lane if there are two or more adjacent lanes of traffic moving in the same direction in one roadway.

(b) "Passing lane" means the farthest to the left lane if there are two or more adjacent lanes of traffic moving in the same direction in one roadway; except that, if such left lane is restricted to high occupancy vehicle use or is designed for left turns only, the passing lane shall be the lane immediately to the right of such high occupancy lane or left-turn lane.

(3) A person who violates this section commits a class A traffic infraction.

Source: L. 2004: Entire section added, p. 124, § 1, effective July 1.
PART 11
SPEED REGULATIONS

Cross references: For the penalties for class 2 misdemeanor traffic offenses and class A traffic infractions, see § 42-4-1701 (3).

42-4-1101. Speed limits.

(1) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing.

(2) Except when a special hazard exists that requires a lower speed, the following speeds shall be lawful:

(a) Twenty miles per hour on narrow, winding mountain highways or on blind curves;

(b) Twenty-five miles per hour in any business district, as defined in section 42-1-102 (11);

(c) Thirty miles per hour in any residence district, as defined in section 42-1-102 (80);

(d) Forty miles per hour on open mountain highways;

(e) Forty-five miles per hour for all single rear axle vehicles in the business of transporting trash that exceed twenty thousand pounds, where higher speeds are posted, when said vehicle is loaded as an exempted vehicle pursuant to section 42-4-507 (3);

(f) Fifty-five miles per hour on other open highways which are not on the interstate system, as defined in section 43-2-101 (2), C.R.S., and are not surfaced, four-lane freeways or expressways;

(g) Sixty-five miles per hour on surfaced, four-lane highways which are on the interstate system, as defined in section 43-2-101 (2), C.R.S., or are freeways or expressways;

(h) Any speed not in excess of a speed limit designated by an official traffic control device.

(3) No driver of a vehicle shall fail to decrease the speed of such vehicle from an otherwise lawful speed to a reasonable and prudent speed when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(4) Except as otherwise provided in paragraph (c) of subsection (8) of this section, any speed in excess of the lawful speeds set forth in subsection (2) of this section shall be prima facie evidence that such speed was not reasonable or prudent under the conditions then existing. As used in this subsection (4), "prima facie evidence" means evidence which is sufficient proof that the speed was not reasonable or prudent under the conditions then existing, and which will remain sufficient proof of such fact, unless contradicted and overcome by evidence bearing upon the question of whether or not the speed was reasonable and prudent under the conditions then existing.
(5) In every charge of violating subsection (1) of this section, the complaint, summons and complaint, or penalty assessment notice shall specify the speed at which the defendant is alleged to have driven and also the alleged reasonable and prudent speed applicable at the specified time and location of the alleged violation.

(6) The provisions of this section shall not be construed to relieve the party alleging negligence under this section in any civil action for damages from the burden of proving that such negligence was the proximate cause of an accident.

(7) Notwithstanding paragraphs (a), (b), and (c) of subsection (2) of this section, any city or town may by ordinance adopt absolute speed limits as the maximum lawful speed limits in its jurisdiction, and such speed limits shall not be subject to the provisions of subsection (4) of this section.

(8) (a) (Deleted by amendment, L. 96, p. 578, § 2, effective May 25, 1996.)

(b) Notwithstanding any other provisions of this section, no person shall drive a vehicle on a highway at a speed in excess of a maximum lawful speed limit of seventy-five miles per hour.

(c) The speed limit set forth in paragraph (b) of this subsection (8) is the maximum lawful speed limit and is not subject to the provisions of subsection (4) of this section.

(d) State and local authorities within their respective jurisdictions shall not authorize any speed limit which exceeds seventy-five miles per hour on any highway.

(e) The provisions of this subsection (8) are declared to be matters of both local and statewide concern requiring uniform compliance throughout the state.

(f) In every charge of a violation of paragraph (b) of this subsection (8), the complaint, summons and complaint, or penalty assessment notice shall specify the speed at which the defendant is alleged to have driven and also the maximum lawful speed limit of seventy-five miles per hour.

(g) Notwithstanding any other provision of this section, no person shall drive a low-power scooter on a roadway at a speed in excess of forty miles per hour. State and local authorities shall not authorize low-power scooters to exceed forty miles per hour on a roadway.

(9) The conduct of a driver of a vehicle which would otherwise constitute a violation of this section is justifiable and not unlawful when:

(a) It is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no conduct of said driver and which is of sufficient gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the consequences sought to be prevented by this section; or

(b) With respect to authorized emergency vehicles, the applicable conditions for exemption, as set forth in section 42-4-108, exist.

(10) The minimum requirement for commission of a traffic infraction or misdemeanor traffic offense under this section is the performance by a driver of prohibited conduct, which includes a
voluntary act or the omission to perform an act which said driver is physically capable of performing.

(11) It shall not be a defense to prosecution for a violation of this section that:

(a) The defendant's conduct was not performed intentionally, knowingly, recklessly, or with criminal negligence; or

(b) The defendant's conduct was performed under a mistaken belief of fact, including, but not limited to, a mistaken belief of the defendant regarding the speed of the defendant's vehicle; or

(c) The defendant's vehicle has a greater operating or fuel-conserving efficiency at speeds greater than the reasonable and prudent speed under the conditions then existing or at speeds greater than the maximum lawful speed limit.

(12) (a) A violation of driving one to twenty-four miles per hour in excess of the reasonable and prudent speed or in excess of the maximum lawful speed limit of seventy-five miles per hour is a class A traffic infraction.

(b) A violation of driving twenty-five or more miles per hour in excess of the reasonable and prudent speed or in excess of the maximum lawful speed limit of seventy-five miles per hour is a class 2 misdemeanor traffic offense; except that such violation within a maintenance, repair, or construction zone, designated pursuant to section 42-4-614, is a class 1 misdemeanor traffic offense.

(c) A violation under subsection (3) of this section is a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-1001 as it existed prior to 1994, and the former § 42-4-1101 was relocated to § 42-4-1201.

Cross references: Section 1 of chapter 412, Session Laws of Colorado 2008, provides that the act amending subsection (12) shall be known and may be cited as the "Charles Mather Highway Safety Act".

ANNOTATION

Annotator's note. Since § 42-4-1101 is similar to § 42-4-1001 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

Speeding classifications constitutional. Decision to treat higher rates of speeding as more serious making them criminal acts is within legislature's discretion and does not create a suspect class or infringe on a fundamental right. Drawing a distinction based on speed is rationally related to legislative purpose of safety and fuel conservation. People v. Lewis, 745 P.2d 668 (Colo. 1987).

It was the legislative intent of the general assembly in enacting the provisions of this section effective January 24, 1974, to fix a speed limit of 55 miles per hour for the period during which federal restrictions, as originated in the emergency highway energy conservation act, continued under the federal
aid highway amendments of 1974, until such time as the general assembly took further action. People v. Driver, 189 Colo. 276, 539 P.2d 1248 (1975).

The general assembly clearly intended to enact an enforceable 55 mile-per-hour maximum speed limit, because maintenance of federal highway funding was contingent upon enactment of such a statute. Olinyk v. People, 642 P.2d 490 (Colo. 1982).

The policy considerations behind the enactment of this section prohibiting the driving of a vehicle in excess of the maximum speed of 55 miles per hour is that a driver must be charged as a matter of public policy, with the responsibility of ensuring that his vehicle is safe, so as to minimize the risk inherent in travel on our public highways. People v. Caddy, 189 Colo. 353, 540 P.2d 1089 (1975).

**Intent to enact enforceable speed limit.** It was obviously the intention of the general assembly to enact a maximum speed limit enforceable through penal sanctions. Olinyk v. People, 642 P.2d 490 (Colo. 1982).

**Speed limit is enforceable.** Since the penalty applicable to violation of the 55 mile-per-hour speed limit charged by complaint and summons is ascertainable, the speed limit is enforceable. Olinyk v. People, 642 P.2d 490 (Colo. 1982).

**Speed should be no greater than is reasonable and prudent.** The driver of a motor vehicle must at all times so operate it as to maintain reasonable control over it, at a speed no greater than is reasonable and prudent under the conditions then existing. Bennett v. Hall, 132 Colo. 419, 290 P.2d 241 (1955); Union P. R. R. v. Snyder, 220 F.2d 388 (10th Cir. 1955); Eagan v. Maiselson, 142 Colo. 233, 350 P.2d 567 (1960); Mayer v. Sampson, 157 Colo. 278, 402 P.2d 185 (1965).

The appropriate signs erected pursuant to subsection (2) of this section indicate the speed limit starts at the physical location of the sign and continues to be in effect until the next different speed limit sign pursuant to the manual adopted by the department of transportation pursuant to § 42-4-104. Shafron v. Cooke, 190 P.3d 812 (Colo. App. 2008).

**Crime irrespective of intent or scienter.** Although the absence of a specified "culpable mental state" in this section is not conclusive on the issue, it is well settled that the general assembly may make a prohibited act a crime, irrespective of the elements of intent or scienter, when public policy so requires. People v. Caddy, 189 Colo. 353, 540 P.2d 1089 (1975).

**Offense of strict liability.** In the absence of a specified element of "criminal intent", and because of the strong public policy considerations, speeding is an offense of strict liability. People v. Caddy, 189 Colo. 353, 540 P.2d 1089 (1975).

**Lack of culpable mental state no defense.** Even though defendant presented evidence at trial that his speedometer reflected a speed 10 miles per hour below the true speed of his vehicle, and that he had no knowledge that the speedometer reading was in error, or that he should have known of the defective speedometer, his lack of a culpable mental state was not a defense to the charge of speeding. People v. Caddy, 189 Colo. 353, 540 P.2d 1089 (1975).

There is no element of mental culpability required in the speeding statute. People v. Caddy, 189 Colo. 353, 540 P.2d 1089 (1975).

**Lack of criminal intent is not a defense to a charge of speeding.** People v. Caddy, 189 Colo. 353, 540 P.2d 1089 (1975).

**Justification is recognized as an affirmative defense to the charge of speeding,** but the defendant must present credible evidence as to the specific threat of injury and the lack of a reasonable alternative other than commission of the offense. People v. Dover, 790 P.2d 834 (Colo. 1990).

**A county court has jurisdiction over the subject matter of offenses alleged to have been committed under this section.** People v. Griffith, 130 Colo. 475, 276 P.2d 559 (1954).
Violation is question for jury. In an action for damages resulting from an automobile accident, the question whether defendant was driving in excess of the statutory speed limit, and if not, whether he was driving at such a rate of speed, as would, under the circumstances constitute negligence, is for the determination of the jury. Carlson v. Millisack, 82 Colo. 491, 261 P.657 (1927); Amos v. Remington Arms Co., 117 Colo. 399, 188 P.2d 896 (1948); Eagan v. Maiselson, 142 Colo. 233, 350 P.2d 567 (1960); Western Distrib. Co. v. United States, 318 F.2d 353 (10th Cir. 1963).

Sufficiency of evidence to show violation of this section. Lorenzini v. Rucker, 95 Colo. 246, 35 P.2d 865 (1934); Alden v. Watson, 106 Colo. 103, 102 P.2d 479 (1940).

A person of reasonable intelligence may express an opinion of the speed of an automobile or other moving object coming under his observation without proof of further qualifications. Eagan v. Maiselson, 142 Colo. 233, 350 P.2d 567 (1960).

Administrator of general services administration properly delegated to the secretary of defense the authority to promulgate traffic and pedestrian regulations for military installations within the United States. Therefore secretary properly promulgated regulations adopting all traffic rules of state in which installation located and defendant could be charged with speeding in violation of this section, although charge was dismissed on other grounds. U.S. v. Boyer, 935 F. Supp. 1138 (D. Colo. 1996).


42-4-1102. Altering of speed limits.

(1) (a) Whenever the department of transportation determines upon the basis of a traffic investigation or survey or upon the basis of appropriate design standards and projected traffic volumes in the case of newly constructed highways or segments thereof that any speed specified or established as authorized under sections 42-4-1101 to 42-4-1104 is greater or less than is reasonable or safe under the road and traffic conditions at any intersection or other place or upon any part of a state highway under its jurisdiction, said department shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or upon the approaches thereto; except that no speed limit in excess of seventy-five miles per hour shall be authorized by said department.

(b) Repealed.

(2) Whenever county or municipal authorities within their respective jurisdictions determine upon the basis of a traffic investigation or survey, or upon the basis of appropriate design standards and projected traffic volumes in the case of newly constructed highways or segments thereof, that any speed specified or established as authorized under sections 42-4-1101 to 42-4-1104 is greater or less than is reasonable or safe under the road and traffic conditions at any intersection or other place or upon any part of a street or highway in its jurisdiction, said local authority shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or upon the approaches thereto. No such local authority shall have the power to alter the basic rules set forth in section 42-4-1101 (1) or in any event to authorize by resolution or ordinance a speed in excess of seventy-five miles per hour.
(3) Local municipal authorities within their respective jurisdictions shall determine upon the basis of a traffic investigation or survey the proper speed for all arterial streets and shall declare a reasonable and safe speed limit thereon which may be greater or less than the speed specified under section 42-4-1101 (2) (b) or (2) (c). Such speed limit shall not exceed seventy-five miles per hour and shall become effective when appropriate signs are erected giving notice thereof. For purposes of this subsection (3), an "arterial street" means any United States or state-numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

(4) No alteration of speed limits on state highways within cities, cities and counties, and incorporated towns shall be effective until such alteration has been approved in writing by the department of transportation. Upon the request of any incorporated city or town having a population of five thousand or less, the department of transportation shall conduct any traffic investigation or survey that is deemed to be warranted for determination of a safe and reasonable speed limit on any street or portion thereof that is a state highway. Any speed limit so determined by said department shall then become effective when declared by the local authority and made known by official signs conforming to the state traffic control manual.

(5) Whenever the department of transportation or local authorities, within their respective jurisdictions, determine upon the basis of a traffic investigation or survey that a reduced speed limit is warranted in a school or construction area or other place during certain hours or periods of the day when special or temporary hazards exist, the department or the concerned local authority may erect or display official signs of a type prescribed in the state traffic control manual giving notice of the appropriate speed limit for such conditions and stating the time or period the regulation is effective. When such signs are erected or displayed, the lawful speed limit at the particular time and place shall be that which is then indicated upon such signs; except that no such speed limit shall be less than twenty miles per hour on a state highway or other arterial street as defined in subsection (3) of this section nor less than fifteen miles per hour on any other road or street, nor shall any such reduced speed limit be made applicable at times when the special conditions for which it is imposed cease to exist. Such reduced speed limits on streets which are state highways shall be subject to the written approval of the department of transportation before becoming effective.

(6) In its discretion, a municipality, by ordinance, or a county, by resolution of the board of county commissioners, may impose and enforce stop sign regulations and speed limits, not inconsistent with the provisions of sections 42-4-1101 to 42-4-1104, upon any way which is open to travel by motor vehicles and which is privately maintained in mobile home parks, when appropriate signs giving notice of such enforcement are erected at the entrances to such ways. Unless there is an agreement to the contrary, the jurisdiction ordering the regulations shall be responsible for the erection and maintenance of the signs.

(7) Any powers granted in this section to county or municipal authorities may be exercised by such authorities or by any municipal officer or employee who is designated by ordinance to exercise such powers.

(8) The department of transportation shall not set a speed limit on interstate 70 for commercial vehicles or any other motor vehicle that differs from the highest authorized speed for
any other type of motor vehicle on the same portion of a highway by more than twenty-five miles per hour.


**Editor's note:** (1) This section is similar to former § 42-4-1002 as it existed prior to 1994, and the former § 42-4-1102 was relocated to § 42-4-1202.

(2) Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective July 1, 1998. (See L. 96, p. 579.)

**ANNOTATION**

**Annotator's note.** Since § 42-4-1102 is similar to § 42-4-1002 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

**The statute is a proper delegation of legislative authority** to department of highways with adequate safeguards to protect against an uncontrolled exercise of discretionary power. It allows for imposition of more than one speed limit for different vehicle types on a state highway or segment thereof, if this is necessary for public safety. People v. Peterson, 734 P.2d 118 (Colo. 1987).

**The regulation of speed is not solely a matter of statewide concern.** Wiggins v. McAuliffe, 144 Colo. 363, 356 P.2d 487 (1960).

**The state has not so preempted the field by statute as to exclude a city from enacting valid ordinances on the regulation of speed.** Wiggins v. McAuliffe, 144 Colo. 363, 356 P.2d 487 (1960).


**42-4-1103. Minimum speed regulation.**

(1) No person shall drive a motor vehicle on any highway at such a slow speed as to impede or block the normal and reasonable forward movement of traffic, except when a reduced speed is necessary for safe operation of such vehicle or in compliance with law.

(2) Whenever the department of transportation or local authorities within their respective jurisdictions determine, on the basis of an engineering and traffic investigation as described in the state traffic control manual, that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, said department or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle, except when necessary for safe operation or in compliance with law.

(3) Notwithstanding any minimum speed that may be authorized and posted pursuant to this section, if any person drives a motor vehicle on a highway outside an incorporated area or on any controlled-access highway at a speed less than the normal and reasonable speed of traffic under the conditions then and there existing and by so driving at such slower speed impedes or retards the normal and reasonable movement of vehicular traffic following immediately behind, then such driver shall:
(a) Where the width of the traveled way permits, drive in the right-hand lane available to traffic or on the extreme right side of the roadway consistent with the provisions of section 42-4-1001 (2) until such impeded traffic has passed by; or

(b) Pull off the roadway at the first available place where such movement can safely and lawfully be made until such impeded traffic has passed by.

(4) Wherever special uphill traffic lanes or roadside turnouts are provided and posted, drivers of all vehicles proceeding at less than the normal and reasonable speed of traffic shall use such lanes or turnouts to allow other vehicles to pass or maintain normal traffic flow.

(5) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-1003 as it existed prior to 1994.

42-4-1104. Speed limits on elevated structures.

(1) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

(2) The department of transportation upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and, if it finds that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under sections 42-4-1101 to 42-4-1104, said department shall determine and declare the maximum speed of vehicles which such structure can withstand and shall cause or permit suitable standard signs stating such maximum speed to be erected and maintained before each end of such structure in conformity with the state traffic control manual.

(3) Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by said department and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

(4) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-1004 as it existed prior to 1994, and the former § 42-4-1104 was relocated to § 42-4-1204.

42-4-1105. Speed contests - speed exhibitions - aiding and facilitating - immobilization of motor vehicle - definitions.
(1) (a) Except as otherwise provided in subsection (4) of this section, it is unlawful for a person to knowingly engage in a speed contest on a highway.

(b) For purposes of this section, "speed contest" means the operation of one or more motor vehicles to conduct a race or a time trial, including but not limited to rapid acceleration, exceeding reasonable and prudent speeds for highways and existing traffic conditions, vying for position, or performing one or more lane changes in an attempt to gain advantage over one or more of the other race participants.

(c) A person who violates any provision of this subsection (1) commits a class 1 misdemeanor traffic offense.

(2) (a) Except as otherwise provided in subsection (4) of this section, it is unlawful for a person to knowingly engage in a speed exhibition on a highway.

(b) For purposes of this section, "speed exhibition" means the operation of a motor vehicle to present a display of speed or power. "Speed exhibition" includes, but is not limited to, squealing the tires of a motor vehicle while it is stationary or in motion, rapid acceleration, rapid swerving or weaving in and out of traffic, producing smoke from tire slippage, or leaving visible tire acceleration marks on the surface of the highway or ground.

(c) A person who violates any provision of this subsection (2) commits a class 2 misdemeanor traffic offense.

(3) (a) Except as otherwise provided in subsection (4) of this section, a person shall not, for the purpose of facilitating or aiding or as an incident to any speed contest or speed exhibition upon a highway, in any manner obstruct or place a barricade or obstruction, or assist or participate in placing any such barricade or obstruction, upon a highway.

(b) A person who violates any provision of this subsection (3) commits, pursuant to section 42-4-1703, the offense that the person aided in or facilitated the commission of. Nothing in this subsection (3) shall be construed to preclude charging a person under section 42-4-1703 for otherwise being a party to the crime of engaging in a speed contest or engaging in a speed exhibition.

(4) The provisions of this section shall not apply to the operation of a motor vehicle in an organized competition according to accepted rules on a designated and duly authorized race track, race course, or drag strip.

(5) (a) In addition to a sentence imposed pursuant to this section or pursuant to any other provision of law:

(I) Upon the second conviction for an offense specified in subsection (1) or (2) of this section, or any other crime, the underlying factual basis of which has been found by the court to include an act of operating a motor vehicle in violation of subsection (1) or (2) of this section, the court may, in its discretion, order the primary law enforcement agency involved with the case to place an immobilization device on the motor vehicle or motor vehicles so operated for a period of up to fourteen days.
(II) Upon the third or subsequent conviction for an offense specified in subsection (1) or (2) of this section, or any other crime, the underlying factual basis of which has been found by the court to include an act of operating a motor vehicle in violation of subsection (1) or (2) of this section, the court may, in its discretion, order the primary law enforcement agency involved with the case to place an immobilization device on the motor vehicle or motor vehicles so operated for a period of up to thirty days but more than fourteen days.

(b) The period during which a motor vehicle may be fitted with an immobilization device pursuant to paragraph (a) of this subsection (5) shall be in addition to any period during which the motor vehicle was impounded prior to sentencing.

(c) An order issued under this subsection (5) shall state the requirements included in subsections (7) and (8) of this section.

(d) For purposes of this section, "immobilization device" means a device locked into place over a wheel of a motor vehicle that prevents the motor vehicle from being moved. "Immobilization device" includes but is not limited to a device commonly referred to as a "traffic boot" or "boot".

(6) (a) Except as otherwise provided in subsection (9) of this section, a law enforcement agency that is ordered to place an immobilization device on a motor vehicle pursuant to subsection (5) of this section shall attempt to locate the motor vehicle within its jurisdiction. The law enforcement agency may, in its discretion, attempt to locate the motor vehicle outside of its jurisdiction.

(b) Nothing in this subsection (6) shall be construed to:

(I) Prohibit a law enforcement agency from seeking the assistance of another law enforcement agency for the purpose of placing an immobilization device on a motor vehicle or removing the device in accordance with this section; or

(II) Require a law enforcement agency to expend excessive time or commit excessive staff to the task of locating a motor vehicle subject to immobilization under this section.

(c) The time spent by a law enforcement agency in locating a motor vehicle in accordance with this subsection (6) shall not alter the immobilization period ordered by the court under subsection (5) of this section.

(d) A law enforcement agency that places an immobilization device on a motor vehicle pursuant to this section shall affix a notice to the immobilized motor vehicle stating the information described in subsections (7) and (8) of this section.

(e) A peace officer who locates or attempts to locate a motor vehicle, or who places or removes, or assists with the placement or removal of, an immobilization device in accordance with the provisions of this section shall be immune from civil liability for damages, except for damages arising from willful and wanton conduct.

(7) (a) The owner of a motor vehicle immobilized under this section shall be assessed a fee of thirty-five dollars for each day the motor vehicle is ordered immobilized and, except as otherwise provided in paragraph (d) of this subsection (7), thirty-five dollars for each day up to
fourteen days after the immobilization period that the fee for the immobilization period is not paid. The owner shall pay the fee to the law enforcement agency that places the immobilization device on the motor vehicle.

(b) The owner, within fourteen days after the end of the immobilization period ordered by the court, may obtain removal of the immobilization device by the law enforcement agency that placed it by requesting the removal and paying the fee required under paragraph (a) of this subsection (7).

(c) The failure of the owner of the immobilized motor vehicle to request removal of the immobilization device and pay the fee within fourteen days after the end of the immobilization period ordered by the court or within the additional time granted by the court pursuant to paragraph (d) of this subsection (7), whichever is applicable, shall result in the motor vehicle being deemed an "abandoned motor vehicle", as defined in sections 42-4-1802 (1) (d) and 42-4-2102 (1) (d), and subject to the provisions of part 18 or 21 of this article, whichever is applicable. The law enforcement agency entitled to payment of the fee under this subsection (7) shall be eligible to recover the fee if the abandoned motor vehicle is sold, pursuant to section 42-4-1809 (2) (b.5) or 42-4-2108 (2) (a.5).

(d) Upon application of the owner of an immobilized motor vehicle, the court that ordered the immobilization may, in its discretion, grant additional time to pay the immobilization fee required under paragraph (a) of this subsection (7). If additional time is granted, the court shall notify the law enforcement agency that placed the immobilization device.

(8) (a) A person may not remove an immobilization device that is placed on a motor vehicle pursuant to this section during the immobilization period ordered by the court.

(b) No person may remove the immobilization device after the end of the immobilization period except the law enforcement agency that placed the immobilization device and that has been requested by the owner to remove the device and to which the owner has properly paid the fee required by subsection (7) of this section. Nothing in this subsection (8) shall be construed to prevent the removal of an immobilization device in order to comply with the provisions of part 18 or 21 of this article.

(c) A person who violates any provision of this subsection (8) commits a class 2 misdemeanor traffic offense.

(9) (a) A law enforcement agency that is ordered to place an immobilization device on a motor vehicle pursuant to subsection (5) of this section shall inform the court at sentencing if it is unable to comply with the court's order either because the law enforcement agency is not yet equipped with an immobilization device or because it does not have a sufficient number of immobilization devices. The court, upon being so informed, shall, in lieu of ordering immobilization, order the law enforcement agency to impound the motor vehicle for the same time period that the court initially ordered the motor vehicle to be immobilized.

(b) If a motor vehicle is ordered to be impounded pursuant to paragraph (a) of this subsection (9), the provisions of subsections (6) to (8) of this section shall not apply.

Editor's note: This section is similar to former § 42-4-1005 as it existed prior to 1994, and the former § 42-4-1105 was relocated to § 42-4-1205.

Cross references: For obstructing a highway, see § 18-9-107.

ANNOTATION

Annotator's note. Since § 42-4-1105 is similar to § 42-4-1005 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.

This section is sufficiently definite to meet the constitutional requirements of due process of law. People v. Heckard, 164 Colo. 19, 431 P.2d 1014 (1967).

Subsection (1) forbids intentional participation in operating motor vehicles competitively to test the swiftness of the vehicles involved. It further prohibits an individual's deliberate drawing of public attention to the vehicle's quality for swiftness. People v. Heckard, 164 Colo. 19, 431 P.2d 1014 (1967).

"Speed" and "acceleration" are related terms. The former refers to the act or state of moving swiftly, while "acceleration" means the act of increasing the speed. People v. Heckard, 164 Colo. 19, 431 P.2d 1014 (1967).

The speed or acceleration must occur under circumstances of a "contest" or "exhibition" on a highway. The terms employed in the instant statute give a clear and meaningful definition by virtue of their relation to each other. People v. Heckard, 164 Colo. 19, 431 P.2d 1014 (1967).

"Contest" and "exhibition" imply. A "contest" ordinarily implies a plurality of participants in a deliberate, competitive act (here of speed or acceleration), while an "exhibition" implies a person's display, for the purpose of attracting public attention, of the same acts. People v. Heckard, 164 Colo. 19, 431 P.2d 1014 (1967).

This section is prohibition of aiding or abetting the primary offense and imposes the ordinary common-law accessorial liability. People v. Heckard, 164 Colo. 19, 431 P.2d 1014 (1967).

The language of subsection (2) provides definite warning when that language is measured by common understanding and practice. People v. Heckard, 164 Colo. 19, 431 P.2d 1014 (1967).

42-4-1106. Minimum speed in left lane - interstate 70.

(1) Where the average grade is six percent or more uphill for at least one mile, no person shall operate a motor vehicle in the far left lane of traffic of interstate 70 at a speed of less than the lower of ten miles per hour below the speed limit or the minimum speed set by the department of transportation, except if:

(a) Necessary to obey traffic control devices;

(b) Necessary to exit or enter interstate 70;

(c) Weather or traffic conditions require speeds slower than the speed limit necessary under section 42-4-1101; or

(d) Necessary because of a lane closure or blockage.

(2) The department of transportation shall post signs giving the public notice of this section.
PART 12
PARKING

Cross references: For penalties for class A and class B traffic infractions, see § 42-4-1701 (3)(a)(I).

42-4-1201. Starting parked vehicle.

No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety. Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-1101 as it existed prior to 1994, and the former § 42-4-1201 was relocated to § 42-2-128.

42-4-1202. Parking or abandonment of vehicles.

(1) No person shall stop, park, or leave standing any vehicle, either attended or unattended, outside of a business or a residential district, upon the paved or improved and main-traveled part of the highway. Nothing contained in this section shall apply to the driver of any vehicle which is disabled while on the paved or improved and main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position, subject, when applicable, to the emergency lighting requirements set forth in section 42-4-230.

(2) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-1102 as it existed prior to 1994, and the former § 42-4-1202 was relocated to § 42-4-1301.

Cross references: For transfer and purge of titles of abandoned vehicles, see § 42-4-1810; for criminal penalty for abandonment of a motor vehicle, see § 18-4-512.

42-4-1203. Ski areas to install signs.

(1) Colorado ski areas shall install traffic control signs as provided in this section on both sides of that segment of every highway which is within one mile of and which leads to the recognized entrances to the ski area parking lots if it is found that:

(a) The ski area has insufficient parking capacity as evidenced by the practice of parking by motor vehicles on such highways; and

(b) Such parking constitutes a hazard to traffic or an obstacle to snow removal or the movement or passage of emergency equipment.
(2) The findings required by subsection (1) of this section shall be made by the department of transportation for the state highway system, by the chairman of the board of county commissioners for county roads, and by the chief executive officer of a municipality for a municipal street system. Such findings shall be based upon a traffic investigation.

(3) Such signs shall conform to any and all specifications of the department of transportation adopted pursuant to section 42-4-601. All such signs shall contain a statement that there is no parking allowed on a highway right-of-way so as to obstruct traffic or highway maintenance and that offending vehicles will be towed away.


Editor's note: This section is similar to former § 42-4-1103.1 as it existed prior to 1994, and the former § 42-4-1203 was relocated to § 42-4-1401.

42-4-1204. Stopping, standing, or parking prohibited in specified places.

(1) Except as otherwise provided in subsection (4) of this section, no person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or an official traffic control device, in any of the following places:

(a) On a sidewalk;
(b) Within an intersection;
(c) On a crosswalk;
(d) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless the traffic authority indicates a different length by signs or markings;
(e) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
(f) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
(g) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
(h) On any railroad tracks;
(i) On any controlled-access highway;
(j) In the area between roadways of a divided highway, including crossovers;
(k) At any other place where official signs prohibit stopping.

(2) Except as otherwise provided in subsection (4) of this section, in addition to the restrictions specified in subsection (1) of this section, no person shall stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or an official traffic control device, in any of the following places:
(a) Within five feet of a public or private driveway;
(b) Within fifteen feet of a fire hydrant;
(c) Within twenty feet of a crosswalk at an intersection;
(d) Within thirty feet upon the approach to any flashing beacon or signal, stop sign, yield sign, or traffic control signal located at the side of a roadway;
(e) Within twenty feet of the driveway entrance to any fire station or, on the side of a street opposite the entrance to any fire station, within seventy-five feet of said entrance when properly signposted;
(f) At any other place where official signs prohibit standing.

(3) In addition to the restrictions specified in subsections (1) and (2) of this section, no person shall park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device, in any of the following places:

(a) Within fifty feet of the nearest rail of a railroad crossing;
(b) At any other place where official signs prohibit parking.

(4) (a) Paragraph (a) of subsection (1) of this section shall not prohibit persons from parking bicycles or electrical assisted bicycles on sidewalks in accordance with the provisions of section 42-4-1412 (11) (a) and (11) (b).

(b) Paragraph (f) of subsection (1) of this section shall not prohibit persons from parking two or more bicycles or electrical assisted bicycles abreast in accordance with the provisions of section 42-4-1412 (11) (d).

(c) Paragraphs (a), (c), and (d) of subsection (2) of this section shall not apply to bicycles or electrical assisted bicycles parked on sidewalks in accordance with section 42-4-1412 (11) (a) and (11) (b).

(5) No person shall move a vehicle not lawfully under such person's control into any such prohibited area or away from a curb such distance as is unlawful.

(6) The department of transportation, with respect to highways under its jurisdiction, may place official traffic control devices prohibiting, limiting, or restricting the stopping, standing, or parking of vehicles on any highway where it is determined, upon the basis of a traffic investigation or study, that such stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. No person shall stop, stand, or park any vehicle in violation of the restrictions indicated by such devices.

(7) Any person who violates any provision of this section commits a class B traffic infraction; except that, if a person violates paragraph (b) of subsection (2) of this section and the violation occurs in an unincorporated area of a county, the penalty is fifty dollars.
(8) A political subdivision may not adopt or enforce an ordinance or regulation that prohibits the parking of more than one motorcycle within a space served by a single parking meter.


Editor's note: This section is similar to former § 42-4-1104 as it existed prior to 1994, and the former § 42-4-1204 was relocated to § 42-4-1402.

42-4-1205. Parking at curb or edge of roadway.

(1) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.

(2) Except as otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway in the direction of authorized traffic movement, with its right-hand wheels within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder or with its left-hand wheels within twelve inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.

(3) Local authorities may by ordinance permit angle parking on any roadway; except that angle parking shall not be permitted on any state highway unless the department of transportation has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(4) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-1105 as it existed prior to 1994, and the former § 42-4-1205 was relocated to § 42-4-1403.

42-4-1206. Unattended motor vehicle.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, and effectively setting the brake thereon, and, when standing upon any grade, said person shall turn the front wheels to the curb or side of the highway in such a manner as to prevent the vehicle from rolling onto the traveled way. Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-1106 as it existed prior to 1994, and the former § 42-4-1206 was relocated to § 42-4-1404.
42-4-1207. Opening and closing vehicle doors.

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic; nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers. Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-1107 as it existed prior to 1994, and the former § 42-4-1207 was relocated to § 42-4-1406.


(1) As used in this section:

(a) "Disability" or "disabled" means a physical impairment that meets the standards of 23 CFR 1235, which impairment is verified, in writing, by a professional. To be valid, the verifying professional shall certify to the department that the person meets the standards established by the executive director of the department.

(b) "Identifying figure" means a figure that provides notice that a person is authorized to use a reserved parking space.

(c) "Identifying license plate" means a license plate bearing an identifying figure.

(d) "Identifying placard" means a placard bearing an identifying figure.

(e) "Professional" means a physician licensed to practice medicine or practicing medicine pursuant to section 12-36-106 (3) (i), C.R.S., a podiatrist licensed under article 32 of title 12, C.R.S., or an advanced practice nurse registered pursuant to section 12-38-111.5, C.R.S.

(f) "Reserved parking space" means a parking space reserved for a person with a disability.

(2) In a jurisdiction recognizing the privilege defined by this subsection (2), a vehicle with an identifying license plate or a placard obtained pursuant to section 42-3-204 or as otherwise authorized by subsection (4) of this section may be parked in public parking areas along public streets regardless of any time limitation imposed upon parking in such area; except that a jurisdiction shall not limit such a privilege to park on any public street to less than four hours. The respective jurisdiction shall clearly post the appropriate time limits in such area. Such privilege need not apply to zones in which:

(a) Stopping, standing, or parking of all vehicles is prohibited;

(b) Only special vehicles may be parked;

(c) Parking is not allowed during specific periods of the day in order to accommodate heavy traffic.
(3) (a) A person with a disability may park in a parking space identified as being reserved for use by persons with disabilities whether on public property or private property available for public use. An identifying license plate or placard obtained pursuant to section 42-3-204 or as otherwise authorized by subsection (4) of this section shall be displayed in accordance with 23 CFR 1235 at all times on the vehicle while parked in such space.

(b) The owner of private property available for public use may request the installation of official signs identifying reserved parking spaces. Such a request shall be a waiver of any objection the owner may assert concerning enforcement of this section by peace officers of any political subdivision of this state, and the officers are hereby authorized and empowered to enforce this section, provisions of law to the contrary notwithstanding. No person shall impose restrictions on the use of disabled parking unless specifically authorized by a statute, resolution, or ordinance of the state of Colorado or a political subdivision thereof and notice of the restriction is prominently posted by a sign clearly visible at the parking space.

(c) Each parking space reserved for use by persons with disabilities whether on public property or private property shall be marked with an official upright sign, which sign may be stationary or portable, identifying such parking space as reserved for use by persons with disabilities.

(4) Persons with disabilities from states other than Colorado shall be allowed to use parking spaces for persons with disabilities in Colorado so long as such persons have valid license plates or placards from their home state that are also valid pursuant to 23 CFR 1235.

(5) It is unlawful for any person other than a person with a disability to park in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by persons with disabilities unless:

(a) Such person is parking the vehicle for the direct benefit of a person with a disability to enter or exit the vehicle while it is parked in the reserved parking space; and

(b) An identifying license plate or placard obtained pursuant to section 42-3-204 or as otherwise authorized by subsection (4) of this section is displayed in such vehicle.

(6) (a) A person who does not have a disability and who exercises the privilege defined in subsection (2) of this section or who violates subsection (5) or (10) of this section commits a class B traffic infraction punishable by a surcharge of thirty-two dollars pursuant to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1) (b) (I), C.R.S., and a minimum fine of three hundred fifty dollars, not to exceed one thousand dollars, for the first offense and a minimum fine of six hundred dollars, not to exceed one thousand dollars, for a second offense. A person who violates this subsection (6) three or more times commits a misdemeanor punishable by a minimum fine of one thousand dollars, not to exceed five thousand dollars, and not more than ten hours of community service. The state or local authority issuing a citation under this subsection (a) or any local ordinance of a substantially equivalent offense shall transfer one-half of the fine to the state treasurer, who shall credit the fine to the disabled parking education and enforcement fund created in section 42-1-226.
(b) A person who violates this subsection (6) by parking a vehicle owned by a commercial carrier, as defined in section 42-1-102 (17), shall be subject to a fine of up to twice the penalty imposed in paragraph (a) of this subsection (6).

(7) A person who does not have a disability and who uses an identifying license plate or placard in order to receive the benefits or privileges available to a person with a disability under this section commits a misdemeanor punishable by a surcharge of thirty-two dollars pursuant to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1) (b) (I), C.R.S., and a minimum fine of three hundred fifty dollars, not to exceed one thousand dollars, for the first offense and a minimum fine of six hundred dollars, not to exceed one thousand dollars, for a second offense. A person who violates this subsection (7) three or more times commits a misdemeanor punishable by a minimum fine of one thousand dollars, not to exceed five thousand dollars, and not more than ten hours of community service. The state or local authority issuing a citation under this subsection (7) or any local ordinance of a substantially equivalent offense shall transfer one-half of the fine to the state treasurer, who shall credit the fine to the disabled parking education and enforcement fund created in section 42-1-226.

(8) (a) A peace officer or authorized and uniformed parking enforcement official may check the identification of any person using an identifying license plate or placard in order to determine whether such use is authorized.

(b) A peace officer or authorized and uniformed parking enforcement official may confiscate an identifying placard that is being used in violation of this section. The peace officer shall transmit the placard to the department unless it is being held for prosecution of a violation of this section. The department shall hold a confiscated placard for thirty days and may dispose of the placard after thirty days. Upon the person with a disability signing a statement under penalty of perjury that he or she was unaware that the violator used, or intended to use, the placard in violation of this section, the department shall release the placard to the person with a disability to whom it was issued.

(c) A peace officer may investigate an allegation that a person is violating this section.

(9) Any state agency or division thereof that transports persons with disabilities may obtain an identifying placard for persons with disabilities in the same manner provided in this section for any other person. If an identifying placard is used by any employee of such state agency or division when not transporting persons with disabilities, the executive director of such agency and the offending employee shall be subject to a fine of one hundred fifty dollars. This subsection (9) applies to any corporation or independent contractor as determined by rule of the department to be eligible to transport persons with disabilities; except that the chief executive officer or an equivalent of the corporation or independent contractor and the offending employee are subject to the fine.

(10) Regardless of whether the person displays an identifying license plate or placard, it is unlawful for any person to park a vehicle so as to block reasonable access to curb ramps, passenger loading zones, or accessible routes, as identified in 28 CFR 36 (appendix A), that are clearly identified unless such person is loading or unloading a person with a disability.

(11) (a) A person who knowingly and fraudulently obtains, possesses, uses, or transfers an identifying placard issued to a person with a disability; who knowingly makes, possesses, uses,
or transfers what purports to be, but is not, an identifying placard; or who knowingly creates or uses a device intended to give the impression that it is an identifying placard when viewed from outside the vehicle is guilty of a misdemeanor and is subject to the criminal and civil penalties provided under section 42-6-139 (3) and (4).

(b) A person who knowingly and willfully receives remuneration for committing a misdemeanor pursuant to this subsection (11) is subject to twice the civil and criminal penalties that would otherwise be imposed.

(12) (a) Certification of the entry of judgment for each violation of subsection (6), (7), or (11) of this section shall be sent by the entering court to the department.

(b) (Deleted by amendment, L. 2010, (HB 10-1019), ch. 400, p. 1923, § 3, effective January 1, 2011.)

(c) Upon receipt of certification of an entry of judgment for a violation of subsection (6), (7), or (11) of this section by any person, the department shall withhold that person's vehicle registration until such time as any fines imposed for the violations have been paid.

(d) Upon receipt of certification or independent verification of an entry of judgment, the department shall revoke an identifying license plate or placard as provided in section 42-3-204 (2) (d).

(e) (Deleted by amendment, L. 2010, (HB 10-1019), ch. 400, p. 1923, § 3, effective January 1, 2011.)

(13) (a) For purposes of this subsection (13), "holder" means a person with a disability as defined in section 42-3-204 who has lawfully obtained an identifying license plate or placard issued pursuant to section 42-3-204 (2) or as otherwise authorized by subsection (4) of this section.

(b) Notwithstanding any other provision of this section to the contrary, a holder is liable for any penalty or fine as set forth in this section or section 42-3-204 or for any misuse of an identifying license plate or placard, including the use of such plate or placard by any person other than a holder, unless the holder can furnish sufficient evidence that the license plate or placard was, at the time of the violation, in the care, custody, or control of another person without the holder's knowledge or consent.

(c) A holder may avoid the liability described in paragraph (b) of this subsection (13) if, within a reasonable time after notification of the violation, the holder furnishes to the prosecutorial division of the appropriate jurisdiction the name and address of the person who had the care, custody, or control of the identifying license plate or placard at the time of the violation or the holder reports said license plate or placard lost or stolen to both the appropriate local law enforcement agency and the department.

(14) (a) A person who observes a violation of this section may submit evidence, along with a sworn statement of a violation of this section, to any law enforcement agency.

(b) No employer shall forbid an employee from reporting violations of this section. No person shall initiate or administer any disciplinary action against an employee on account of the...
employee notifying the authorities of a possible violation of this section if the employee has a

(c) No landlord shall retaliate against a tenant on account of the tenant notifying the

authorities of a possible violation of this section if the tenant has a good faith belief that a

violation has occurred.

(15) (a) No person, after using a reserved parking space that has a time limit, shall switch

motor vehicles or move the motor vehicle to another reserved parking space within one hundred

yards of the original parking space within the same eight hours in order to exceed the time limit.

(b) Parking in a time-limited reserved parking space for more than three hours for at least

three days a week for at least two weeks shall create a rebuttable presumption that the person is

violating this subsection (15).

(c) This subsection (15) does not apply to privately owned parking lots.

(d) A person who violates this subsection (15) commits a class B traffic infraction. Upon

conviction or the plea of guilty or nolo contendere for a violation of this subsection (15), the

court shall send a certification of the entry of judgment to the department. Upon receiving a

certification of entry of judgment or independent verification, the department shall revoke the

identifying license plate or placard of a person who violates this subsection (15) a second or

subsequent time pursuant to section 42-3-204 (2).

(16) (a) No person shall use parking privileges obtained by an identifying license plate or

placard for a commercial purpose unless the purpose relates to transacting business with a

business the reserved parking space is intended to serve.

(b) A person who violates this subsection (16) commits a class B traffic infraction. Upon

conviction or the plea of guilty or nolo contendere for a violation of this subsection (16), the

court shall send a certification of the entry of judgment to the department. Upon receiving a

certification of entry of judgment or independent verification, the department shall revoke the

identifying license plate or placard of a person who violates this subsection (16) a second or

subsequent time pursuant to section 42-3-204 (2).

(17) (a) A peace officer may issue a penalty assessment notice for a violation of subsection

(9), (15), or (16) of this section by sending it by certified mail to the registered owner of the

motor vehicle. The peace officer shall include in the penalty assessment notice the offense or

infraction, the time and place where it occurred, and a statement that the payment of the penalty

assessment and surcharge is due within twenty days from the issuance of the notice. Receipt of

the payment of the penalty assessment postmarked by the twentieth day after the receipt of the

penalty assessment notice by the defendant is receipt on or before the date the payment was due.

(b) If the penalty assessment and surcharge are not paid within the twenty days from the date

of mailing of the notice, the peace officer who issued the original penalty assessment notice shall

file a complaint with a court having jurisdiction and issue and serve upon the registered owner of

the vehicle a summons to appear in court at the time and place specified therein.


98: (1), IP(2), (3)(a), (4), and (7) amended, p. 216, § 2, effective August 5. L. 99: Entire section
42-4-1209. Owner liability for parking violations.

(1) In addition to any other liability provided for in this article, the owner of a motor vehicle who is engaged in the business of leasing or renting motor vehicles is liable for payment of a parking violation fine unless the owner of the leased or rented motor vehicle can furnish sufficient evidence that the vehicle was, at the time of the parking violation, in the care, custody, or control of another person. To avoid liability for payment the owner of the motor vehicle is required, within a reasonable time after notification of the parking violation, to furnish to the prosecutorial division of the appropriate jurisdiction the name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of such vehicle. As a condition to avoid liability for payment of a parking violation, any person or company who leases or rents motor vehicles to another person shall attach to the leasing or rental agreement a notice stating that, pursuant to the requirements of this section, the operator of the vehicle is liable for payment of a parking violation fine incurred when the operator has the care, custody, or control of the motor vehicle. The notice shall inform the operator that the operator's name and address shall be furnished to the prosecutorial division of the appropriate jurisdiction when a parking violation fine is incurred by the operator.

(2) The provisions of this section may be adopted by local authorities pursuant to section 42-4-110 (1).


Editor's note: This section is similar to former § 42-4-1110 as it existed prior to 1994.

42-4-1210. Designated areas on private property for authorized vehicles.

(1) The owner or lessee of any private property available for public use in the unincorporated areas of a county may request in writing that specified areas on such property be designated by the board of county commissioners for use only by authorized vehicles and that said areas, upon acceptance in writing by the board of county commissioners, shall be clearly marked by the owner or lessee with official traffic control devices, as defined in section 42-1-102 (64). Such a request shall be a waiver of any objection the owner or lessee may assert concerning enforcement of this section by peace officers of this state, and such officers are hereby authorized and empowered to so enforce this section, provisions of law to the contrary notwithstanding. When the owner or lessee gives written notice to the board of county commissioners that said request is withdrawn, and the owner or lessee removes all traffic control devices, the provisions of this section shall no longer be applicable.

(2) It is unlawful for any person to park any vehicle other than an authorized vehicle in any area designated and marked for such use as provided in this section.
(3) Any person who violates the provisions of subsection (2) of this section is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of twenty-five dollars. The disposition of fines and forfeitures shall be paid into the treasury of the county at such times and in such manner as may be prescribed by the board of county commissioners.


Editor's note: This section is similar to former § 42-4-1111 as it existed prior to 1994, and the former § 42-4-1210 was relocated to § 42-4-314.

42-4-1211. Limitations on backing.

(1) (a) The driver of a vehicle, whether on public property or private property which is used by the general public for parking purposes, shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(b) The driver of a vehicle shall not back the same upon any shoulder or roadway of any controlled-access highway.

(2) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-112 as it existed prior to 1994, and the former § 42-4-1211 was relocated to § 42-4-1304.

42-4-1212. Pay parking access for disabled.

(1) Unless the method of remuneration is reasonably accessible to a person with a disability as defined in section 42-3-204, no person who owns, operates, or manages a parking space that requires remuneration shall tow, boot, or otherwise take adverse action against a person or motor vehicle parking in such space for failure to pay the remuneration if the motor vehicle bears a placard or license plate bearing an identifying figure issued pursuant to section 42-3-204 or a similar law in another state that is valid under 23 CFR 1235.

(2) Notwithstanding any statute, resolution, or ordinance of the state of Colorado or a political subdivision thereof, parking in a space without paying the required remuneration shall not be deemed a violation of such statute, resolution, or ordinance if:

(a) The motor vehicle bears a placard or license plate bearing the identifying figure issued pursuant to section 42-3-204 or a similar law in another state that is valid under 23 CFR 1235; and

(b) The method of remuneration is not reasonably accessible to a person with a disability as defined in section 42-3-204.

(3) A law enforcement agency shall withdraw any penalty assessment notice or summons and complaint that is deemed not to be a violation under subsection (2) of this section.
(4) For the purposes of this section, "reasonably accessible" means meeting the standards of 28 CFR 36 (appendix A) or substantially similar standards.

PART 13
ALCOHOL AND DRUG OFFENSES

42-4-1300.3. Definitions. (Repealed)


42-4-1301. Driving under the influence - driving while impaired - driving with excessive alcoholic content - definitions - penalties.

(1) (a) It is a misdemeanor for any person who is under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, to drive a motor vehicle or vehicle.

(b) It is a misdemeanor for any person who is impaired by alcohol or by one or more drugs, or by a combination of alcohol and one or more drugs, to drive a motor vehicle or vehicle.

(c) It is a misdemeanor for any person who is an habitual user of any controlled substance defined in section 18-18-102 (5), C.R.S., to drive a motor vehicle, vehicle, or low-power scooter in this state.

(d) For the purposes of this subsection (1), one or more drugs shall mean all substances defined as a drug in section 27-80-203 (13), C.R.S., and all controlled substances defined in section 18-18-102 (5), C.R.S., and glue-sniffing, aerosol inhalation, and the inhalation of any other toxic vapor or vapors.

(e) The fact that any person charged with a violation of this subsection (1) is or has been entitled to use one or more drugs under the laws of this state, including, but not limited to, the medical use of marijuana pursuant to section 18-18-406.3, C.R.S., shall not constitute a defense against any charge of violating this subsection (1).

(f) "Driving under the influence" means driving a motor vehicle or vehicle when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, that affects the person to a degree that the person is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.

(g) "Driving while ability impaired" means driving a motor vehicle or vehicle when a person has consumed alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, that affects the person to the slightest degree so that the person is less able than the person ordinarily would have been, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.
(h) Pursuant to section 16-2-106, C.R.S., in charging the offense of DUI, it shall be sufficient to describe the offense charged as "drove a vehicle under the influence of alcohol or drugs or both".

(i) Pursuant to section 16-2-106, C.R.S., in charging the offense of DWAI, it shall be sufficient to describe the offense charged as "drove a vehicle while impaired by alcohol or drugs or both".

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

(a.5) (I) It is a class A traffic infraction for any person under twenty-one years of age to drive a motor vehicle or vehicle when the person's BAC, as shown by analysis of the person's breath, is at least 0.02 but not more than 0.05 at the time of driving or within two hours after driving. The court, upon sentencing a defendant pursuant to this subparagraph (I), may, in addition to any penalty imposed under a class A traffic infraction, order that the defendant perform up to twenty-four hours of useful public service, subject to the conditions and restrictions of section 18-1.3-507, C.R.S., and may further order that the defendant submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program at such defendant's own expense.

(II) A second or subsequent violation of this paragraph (a.5) shall be a class 2 traffic misdemeanor.

(b) In any prosecution for the offense of DUI per se, the defendant shall be entitled to offer direct and circumstantial evidence to show that there is a disparity between what the tests show and other facts so that the trier of fact could infer that the tests were in some way defective or inaccurate. Such evidence may include testimony of nonexpert witnesses relating to the absence of any or all of the common symptoms or signs of intoxication for the purpose of impeachment of the accuracy of the analysis of the person's blood or breath.

(c) Pursuant to section 16-2-106, C.R.S., in charging the offense of DUI per se, it shall be sufficient to describe the offense charged as "drove a vehicle with excessive alcohol content".

(3) The offenses described in subsections (1) and (2) of this section are strict liability offenses.

(4) No court shall accept a plea of guilty to a non-alcohol-related or non-drug-related traffic offense or guilty to the offense of UDD from a person charged with DUI, DUI per se, or habitual user; except that the court may accept a plea of guilty to a non-alcohol-related or non-drug-related traffic offense or to UDD upon a good faith representation by the prosecuting attorney that the attorney could not establish a prima facie case if the defendant were brought to trial on the original alcohol-related or drug-related offense.
(5) Notwithstanding the provisions of section 18-1-408, C.R.S., during a trial of any person accused of both DUI and DUI per se, the court shall not require the prosecution to elect between the two violations. The court or a jury may consider and convict the person of either DUI or DWAI, or DUI per se, or both DUI and DUI per se, or both DWAI and DUI per se. If the person is convicted of more than one violation, the sentences imposed shall run concurrently.

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

(I) If at such time the defendant's BAC was 0.05 or less, it shall be presumed that the defendant was not under the influence of alcohol and that the defendant's ability to operate a motor vehicle or vehicle was not impaired by the consumption of alcohol.

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

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

(b) The limitations of this subsection (6) shall not be construed as limiting the introduction, reception, or consideration of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol or whether or not the defendant's ability to operate a motor vehicle or vehicle was impaired by the consumption of alcohol.

(c) In all actions, suits, and judicial proceedings in any court of this state concerning alcohol-related or drug-related traffic offenses, the court shall take judicial notice of methods of testing a person's alcohol or drug level and of the design and operation of devices, as certified by the department of public health and environment, for testing a person's blood, breath, saliva, or urine to determine such person's alcohol or drug level. The department of public health and environment may, by rule, determine that, because of the reliability of the results from certain devices, the collection or preservation of a second sample of a person's blood, saliva, or urine or the collection and preservation of a delayed breath alcohol specimen is not required. This paragraph (c) shall not prevent the necessity of establishing during a trial that the testing devices used were working properly and that such testing devices were properly operated. Nothing in this paragraph (c) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

(d) If a person refuses to take or to complete, or to cooperate with the completing of, any test or tests as provided in section 42-4-1301.1 and such person subsequently stands trial for DUI or DWAI, the refusal to take or to complete, or to cooperate with the completing of, any test or tests shall be admissible into evidence at the trial, and a person may not claim the privilege against self-incrimination with regard to admission of refusal to take or to complete, or to cooperate with the completing of, any test or tests.
(e) **Involuntary blood test - admissibility.** Evidence acquired through an involuntary blood test pursuant to section 42-4-1301.1 (3) shall be admissible in any prosecution for DUI, DUI per se, DWAI, habitual user, or UDD, and in any prosecution for criminally negligent homicide pursuant to section 18-3-105, C.R.S., vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., assault in the third degree pursuant to section 18-3-204, C.R.S., or vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S.

(f) **Chemical test - admissibility.** Strict compliance with the rules and regulations prescribed by the department of public health and environment shall not be a prerequisite to the admissibility of test results at trial unless the court finds that the extent of noncompliance with a board of health rule has so impaired the validity and reliability of the testing method and the test results as to render the evidence inadmissible. In all other circumstances, failure to strictly comply with such rules and regulations shall only be considered in the weight to be given to the test results and not to the admissibility of such test results.

(g) It shall not be a prerequisite to the admissibility of test results at trial that the prosecution present testimony concerning the composition of any kit used to obtain blood, urine, saliva, or breath specimens. A sufficient evidentiary foundation concerning the compliance of such kits with the rules and regulations of the department of public health and environment shall be established by the introduction of a copy of the manufacturer's or supplier's certificate of compliance with such rules and regulations if such certificate specifies the contents, sterility, chemical makeup, and amounts of chemicals contained in such kit.

(h) In any trial for a violation of this section, the testimony of a law enforcement officer that he or she witnessed the taking of a blood specimen by a person who the law enforcement officer reasonably believed was authorized to withdraw blood specimens shall be sufficient evidence that such person was so authorized, and testimony from the person who obtained the blood specimens concerning such person's authorization to obtain blood specimens shall not be a prerequisite to the admissibility of test results concerning the blood specimens obtained.

(i) (I) Following the lawful contact with a person who has been driving a motor vehicle or vehicle and when a law enforcement officer reasonably suspects that a person was driving a motor vehicle or vehicle while under the influence of or while impaired by alcohol, the law enforcement officer may conduct a preliminary screening test using a device approved by the executive director of the department of public health and environment after first advising the driver that the driver may either refuse or agree to provide a sample of the driver's breath for such preliminary test; except that, if the driver is under twenty-one years of age, the law enforcement officer may, after providing such advisement to the person, conduct such preliminary screening test if the officer reasonably suspects that the person has consumed any alcohol.

(II) The results of this preliminary screening test may be used by a law enforcement officer in determining whether probable cause exists to believe such person was driving a motor vehicle or vehicle in violation of this section and whether to administer a test pursuant to section 42-4-1301.1 (2).

(III) Neither the results of such preliminary screening test nor the fact that the person refused such test shall be used in any court action except in a hearing outside of the presence of a jury, when such hearing is held to determine if a law enforcement officer had probable cause to
believe that the driver committed a violation of this section. The results of such preliminary screening test shall be made available to the driver or the driver's attorney on request.

(7) Repealed.

(8) A second or subsequent violation of this section committed by a person under eighteen years of age may be filed in juvenile court.


Editor's note: (1) This title was amended with relocations in 1994, effective January 1, 1995, and this section was subsequently amended with relocations in 2002, resulting in the relocation of provisions. Some portions of this section have been relocated to §§ 42-4-1301.1, 42-4-1301.2, 42-4-1301.3, and 42-4-1301.4. For a detailed comparison of this section, see the comparative tables located in the back of the index.

(2) Amendments to subsections (2.5), (3)(a)(II), (3)(b)(I), and (6) by House Bill 94-1029 were harmonized with Senate Bill 94-001.

(3) Subsections (7)(e) and (7)(f) were originally numbered as subsection (9)(h), and the amendments to it in House Bill 02-1046 were harmonized with subsections (7)(e) and (7)(f) as they appeared in Senate Bill 02-057.

Cross references: (1) For community or useful public service for persons convicted of misdemeanors, see § 18-1.3-507; for community service for juvenile offenders, see § 19-2-308; for additional costs imposed on criminal actions and traffic offenses, see §§ 24-4.1-119 and 24-4.2-104; for
provision that the operation of vehicles and the movement of pedestrians pursuant to this section apply
upon streets and highways and elsewhere throughout the state, see § 42-4-103 (2)(b); for additional costs
levied on alcohol- and drug-related traffic offenses, see § 43-4-402; for community or useful public service
for class 1 and class 2 misdemeanor traffic offenders, see § 42-4-1701; for collateral attacks of alcohol- or
drug-related traffic offenses, see § 42-4-1702.

(2) For the legislative declaration contained in the 2002 act amending subsections (7)(e) and (7)(f),
see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Analysis

I. General Consideration.
II. Presumptions.
III. Prior Convictions.
IV. Useful Public Service.

I. GENERAL CONSIDERATION.

Law reviews. For comment, "The Theory and Practice of Implied Consent in Colorado", see 47 U.
article, "Drunk Driving Laws: A Study of the Views of Colorado Trial Judges", see 14 Colo. Law. 189
DUI Primer", see 16 Colo. Law. 2179 (1987). For comment, "Greathouse: Has Colorado Abandoned the
Protectations of Garcia?", see 59 U. Colo. L. Rev. 351 (1988). For article, "Drinking and Driving: An Update
Suppression Motions", see 25 Colo. Law. 63 (April 1996). For article, "Plea Bargaining, Legislative Limits,
and the Separation of Powers", see 32 Colo. Law. 63 (March 2003).

Annotator's note. Since § 42-4-1301 is similar to § 42-4-1301 as it existed prior to its 2002
amendment and § 42-4-1202 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1,
relevant cases construing those provisions have been included in the annotations to this section.

Procedural due process violated when guilty plea to serious offense entered in summary
proceeding. In view of the serious consequences which follow the entry of a plea of guilty to driving
under the influence of alcohol, the summary disposal immediately after arrest, notwithstanding the belief
of the officer, evidenced by the fact that he filed the charge, that the accused was under the influence of
liquor, constitutes a serious deprivation of the constitutional right of the accused to a fair trial. It is
axiomatic that justice delayed is justice denied, but there are limits to the acceleration process, and the
instant procedure was so unjustifiably sudden as to constitute a violation of the constitutional guarantee of

A first-time charge of driving while ability impaired is not a petty offense. The general
assembly's placement of numerous alcohol and drug-related offenses in a single statute demonstrates an
intention to not treat first-time driving while ability impaired offenses as petty offenses. The penalties are
dependant upon circumstances that may not be known by the court at the time of arraignment. The
penalties for a first-time offense may easily exceed those of a petty offense under §16-10-109. Therefore,
defendants are not required to file with a court under §16-10-109 to obtain a trial by jury. Byrd v. Stavely,

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Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.
Failure to preserve a second sample of the defendant's blood for independent testing did not violate his due process rights under the state constitution because the test for materiality of evidence set forth in People v. Greathouse (742 P.2d 334 (Colo. 1987)) was not met. People v. Humes, 762 P.2d 665 (Colo. 1988).

Defendant, who was convicted of vehicular assault while under the influence, vehicular assault by driving recklessly, and driving under the influence, was not denied her right to procedural due process by the prosecution's failure to preserve a second sample of her breath at the time the breathalyzer test was administered to her or to keep the victim's car in storage. Defendant failed to meet the test of materiality set forth in People v. Greathouse (742 P.2d 334 (Colo. 1987)) or the test for bad faith set forth in Arizona v. Youngblood (488 U.S. 51 (1988)). People v. Acosta, 860 P.2d 1376 (Colo. App. 1993).

Challenge raised initially on appeal to supreme court not considered. An equal protection challenge to this section not raised during the license revocation review proceedings will not be considered if raised for the first time on appeal to the supreme court. Colgan v. State Dept. of Rev., 623 P.2d 871 (Colo. 1981).

Governmental purpose. The implied consent statute serves the distinct governmental purpose of facilitating citizen cooperation in achieving traffic safety by the use of the administrative sanction of revocation upon a refusal to submit to a test, while the statutory authorization for a probationary license is expressly directed towards the "alcohol and drug traffic driving education or treatment" of the convicted traffic offender. DeScala v. Motor Vehicle Div., 667 P.2d 1360 (Colo. 1983).

Legislative policy of this state has been to create a graduated scale of penalties arising from driving an automobile after the use of intoxicants. Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973).

The primary purpose of this section is to obtain scientific evidence of the amount of alcohol in the bloodstream in order to curb drunk driving through prosecution for that offense. Zahtila v. Motor Vehicle Div., 39 Colo. App. 8, 560 P.2d 847 (1977); Hess v. Tice, 43 Colo. App. 47, 598 P.2d 536 (1979).


The terms "intoxicated", "drunk", and "under the influence of intoxicating liquor" are substantially synonymous. There is no reason to allow opinion testimony by a lay witness phrased in one of these terms and to prohibit it when it is phrased in another of these terms. People v. Norman, 194 Colo. 372, 572 P.2d 819 (1977).

The terms "drive" and "drove" as used in this section and for purposes of the DUI statute include "actual physical control of a vehicle", even if the vehicle is not actually moving. Proof that a person is in actual physical control of a vehicle is sufficient to prove that the person drove the vehicle. People v. Swain, 959 P.2d 426 (Colo. 1998).

Driving a motor vehicle means exercising physical control over a motor vehicle. Although the court did not instruct the jury that it must find the vehicle was reasonably capable of being rendered operable, it did not err because there was undisputed testimony that the vehicle's alleged inoperability was a result only of a lack of fuel and a dead battery. These circumstances do not, as a matter of law, render a vehicle not reasonably capable of being rendered operable. People v. VanMatre, 190 P.3d 770 (Colo. App. 2008).


This section is not vague, indefinite, nor uncertain as there are reasonable ascertainable standards by which the guilt of an accused can be determined. Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973).
This section, when read as a whole, provides standards sufficiently precise to inform the defendant of the crime charged. Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973).

Defendant not deprived of his constitutional right to equal protection under this section since all class 2 misdemeanors do not reflect similar criminal conduct to which similar sanctions must be applied, the general assembly is entitled to establish more severe penalties for acts that it believes have greater social impact and graver consequences, and the defendant failed to prove that the mandatory sentencing scheme has impacted him differently from all other persons convicted of similar criminal conduct of driving under the influence. People v. Martinhillie, 940 P.2d 1090 (Colo. App. 1996).

For even a full reading of the penalty section of this section would not apprise the accused of the consequences of the guilty plea. If, as the charge suggests, the accused was under the influence of liquor, he could not give an effectual waiver. The fact that the accused evidenced a desire to accept the impetuous proceedings tendered does not in the present circumstances justify the summary disposition of the charge. Toland v. Strohl, 147 Colo. 577, 364 P.2d 588 (1961).

It is a misdemeanor for any person under the influence of intoxicating liquor to drive an automobile on the public highways. Solt v. People, 130 Colo. 1, 272 P.2d 638 (1954); People v. Sanchez, 173 Colo. 188, 476 P.2d 980 (1970).


Traffic laws and revocation procedures contained in §§ 42-2-122 and 42-2-203 are aimed at all drivers who operate a motor vehicle while under the influence of alcohol or while their ability is impaired, regardless of their status as alcoholics or problem drinkers. Heninger v. Charnes, 200 Colo. 194, 613 P.2d 884 (1980).

Subsection (1)(b) intended to be a less serious offense than subsection (1)(a). The penalty and presumptions of this section clearly show a legislative intent that subsection (1)(b) is a less serious offense than subsection (1)(a), and demonstrates that the general assembly intended to establish two levels of prohibited conduct. Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973).

And is a lesser included offense. Driving while one's ability is impaired due to consumption of alcohol is considered a lesser included offense of driving under the influence of intoxicating liquor if the evidence warrants. Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973).

Driving under the influence is a lesser included offense of aggravated driving after revocation. Merger principles preclude conviction for a lesser included offense of a crime for which a defendant has also been convicted in the same prosecution. People v. Mersman, 148 P.3d 199 (Colo. App. 2006).

Misdemeanor offenses under this section are not the same as the felony offenses under § 18-3-205 because the elements and the required proof for conviction are different. People v. Smith, 182 Colo. 228, 512 P.2d 269 (1973).

The misdemeanor count of driving while under the influence of intoxicating liquor is not the same offense as the felony count of inflicting bodily injury by operating an automobile in a reckless manner while under the influence of intoxicating liquor. People v. Smith, 182 Colo. 228, 512 P.2d 269 (1973).

And are not lesser included offenses. Driving under the influence of intoxicating liquor and driving while ability is impaired are not lesser included offenses of the felony charge of inflicting bodily injury while under the influence of intoxicating liquor by driving an automobile in a reckless manner. People v. Smith, 182 Colo. 228, 512 P.2d 269 (1973).

Dismissal of count under this section not bar to prosecution under § 18-3-205. The court's dismissal of a misdemeanor count under this section, which placed the defendant in jeopardy as to that
count, did not bar prosecution on felony count under § 18-3-205. People v. Smith, 182 Colo. 228, 512 P.2d 269 (1973).

**Dismissal by hearing officer not bar to subsequent action.** Absent the sworn report of the law enforcement officer, a hearing officer may dismiss a case without prejudice; and such dismissal is not on the merits and does not bar a subsequent action on the same incident. McBride v. State Dept. of Rev., 626 P.2d 760 (Colo. App. 1981).

**The refusal of nondriver to take sobriety test is not within the scope of this section.** Marin v. Colo. Dept. of Rev., 41 Colo. App. 557, 591 P.2d 1336 (1978).

**Failure of police to obtain test from unconscious victim pursuant to subsection (7)(c) does not entitle defendant to a dismissal of the charges under this section** when the defendant cannot show that the failure was in bad faith. People v. Kears, 988 P.2d 189 (Colo. App. 1999).

**Where officer made no attempt to comply with the requirements of the statute** and there were no circumstances that would have prevented compliance, trial court did not abuse its discretion by suppressing results of blood test. People v. Maclaren, 251 P.3d 578 (Colo. App. 2010).

**Section not applicable to person not driving on public highway.** The driver's license revocation provisions of this section do not apply to one who is not driving upon a public highway. Dayhoff v. State Motor Vehicle Div., 42 Colo. App. 91, 595 P.2d 1051 (1979), aff'd, 199 Colo. 363, 609 P.2d 119 (1980).

**Express consent provision not applicable to federal reservations.** The federal Assimilative Crimes Act does not assimilate the express consent provision because the provision is part of state administrative proceedings. United States v. Hopp, 943 F. Supp. 1313 (D. Colo. 1996).


Under this section, an officer may make an arrest of one who commits a moving violation and then, if he has probable cause to believe that the person is driving under the influence of alcohol, can request that the driver take a chemical test, even though he is not under arrest at the time for driving under the influence. On the other hand, the officer may, in the first instance, arrest the suspect for driving while under the influence and then request a test be taken. Johnson v. Motor Vehicle Div., 38 Colo. App. 230, 556 P.2d 488 (1976).

**Advisement form must contain reasons for believing driver under influence.** The advisement form must contain the officer's reasons for believing a driver was under the influence of alcohol and the officer may not later supplement those reasons by testimony at the implied consent hearing. Marquez v. Charnes, 632 P.2d 640 (Colo. App. 1981).

**But not reason for stopping driver.** It is not necessary for the officer to set out the reason on the advisement form for stopping a driver. Marquez v. Charnes, 632 P.2d 640 (Colo. App. 1981).

**Grounds for believing driver under the influence limited.** The grounds relied on by an officer for believing that a person was driving under the influence of alcohol must be limited to the grounds set forth in the advisement. Lucero v. Charnes, 44 Colo. App. 73, 607 P.2d 405 (1980).

**Inference that person behind wheel was driver held appropriate.** The inference drawn by a police officer, that one seated behind the wheel of, and attempting to start, a vehicle stopped in a highway travel lane was a driver thereof, was not inappropriate, and served as an adequate basis for the officer to proceed pursuant to this section. Johnson v. Motor Vehicle Div., 38 Colo. App. 230, 556 P.2d 488 (1976).

**Standard of proof necessary for conviction of driving while under the influence of intoxicating liquor is "substantially under the influence".** Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973) (decided prior to 1989 enactment of subsection (1)(f)).
Standard of intoxication in prosecution for driving while impaired is impairment to the "slightest degree". Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973) (decided prior to 1989 enactment of subsection (1)(g)).

Reasonable grounds to arrest driver. Evidence that a driver's automobile was weaving across traffic lanes and speeding, that there was an odor of alcohol on the driver's breath, and that the driver did not satisfactorily perform the roadside sobriety tests, is sufficient to support a hearing officer's finding that there existed "reasonable grounds" to believe that the driver was driving under the influence of alcohol. Hall v. Charnes, 42 Colo. App. 111, 590 P.2d 516 (1979).

Reasonable grounds to believe licensee was driving under the influence of or impaired by alcohol. Based on his own observations, the information received from the investigating officer and the fact that the licensee did not deny the written allegation in the advisement form that he had been driving a motor vehicle, the officer had reasonable grounds to believe that the licensee had been driving under the influence of or impaired by alcohol. Colo. Dept. of Rev. v. Kirke, 743 P.2d 16 (Colo. 1987) (decided under law in effect prior to 1983 amendment).

Police officer is not authorized to request and to direct an arrested driver to submit to alcohol testing absent probable cause for the DUI arrest and also for the initial stop. Peterson v. Tipton, 833 P.2d 830 (Colo. App. 1992).

Express consent provision does not apply to roadside sobriety tests. Instead it deals only with the express consent given by any driver on state roads to take a blood or breath test if a peace officer has probable cause to arrest for an alcohol driving offense. United States v. Hopp, 943 F. Supp. 1313 (D. Colo. 1996).

Failure to request suppression of test results is waiver of objection. Where defendant not only failed to request suppression of the breath test results but also stipulated to those results and permitted them to be received in evidence without objection, he has waived any right to object on appeal to the admission of this evidence, absent a showing of plain error. People v. Dee, 638 P.2d 749 (Colo. 1981).

Defective complaint does not bar prosecution. A complaint charging driving a vehicle "while under the influence of intoxicating liquor or drugs," in the disjunctive, is defective in form only, and an amendment should be allowed to cure this technical irregularity. People v. Dickinson, 197 Colo. 338, 592 P.2d 807 (1979).

Evidence held admissible. Video portion of movie film taken at the time of arrest, showing defendant's refusal to take some of the sobriety tests requested by the police and pictures of his going through one test, later was admissible in prosecution for driving under the influence regardless of fact that the sound on the film had been ordered suppressed by the court because it revealed that defendant invoked his constitutional right to remain silent. Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973).

The appellant's erratic driving behavior constituted sufficient probable cause to stop his car. Thus, the results of the roadside sobriety tests conducted by a deputy sheriff were validly included in the evidence adduced at the hearing under this section. Stream v. Heckers, 184 Colo. 149, 519 P.2d 336 (1974).

Claim that roadside sobriety test results should be suppressed from evidence after defendant voluntarily consented to performing such tests is without merit. People v. Lowe, 687 P.2d 454 (1984).

Evidence of refusal to take a blood or breath test is admissible in evidence at a revocation of license proceeding or at a trial for driving under the influence or while ability impaired, and the effect of subsection (3)(e) is to allow admission of such evidence in every case without a determination of relevancy on a case-by-case basis. Cox v. People, 735 P.2d 153 (Colo. 1987).

Weight of toxicologist's testimony is for trier of fact. The weight of a toxicologist's testimony for purposes of establishing whether the defendant was under the influence of intoxicating liquor in

**Sufficiency of foundation to admit test results as evidence.** Prima facie case for introduction of intoxilyzer test results is made when breath testing device is operated by a person certified to use the device and when it is administered in accordance with administrative rules and regulations. Aultman v. Motor Vehicle Div., Dept. of Rev., 706 P.2d 5 (Colo. App. 1985); Malone v. Dept. of Rev., 707 P.2d 363 (Colo. App. 1985).

Introduction of operational checklist and testimony that checklist procedures were followed establishes a sufficient foundation to allow admission of breath test results. State does not have to establish by current inspection and certification that breath testing device performed accurately. Aultman v. Motor Vehicle Div., Dept. of Rev., 706 P.2d 5 (Colo. App. 1985); Malone v. Dept. of Rev., 707 P.2d 363 (Colo. App. 1985).


The failure of the arresting officer to identify which particular nurse drew driver's blood and the failure to establish whether such nurse met the criteria set forth in regulations went to the weight, rather than the admissibility, of blood alcohol test results in driver's license revocation proceeding. Dye v. Charnes, 757 P.2d 1162 (Colo. App. 1988).

The delay in obtaining samples did not affect the validity or reliability of the test nor did it affect the admissibility of the test results. The "reasonable time" limitation is to ensure that the request for the test is made close enough in time to the alleged offense that the results will be relevant in the determination of defendant's sobriety at the time of the incident. People v. Emery, 812 P.2d 665 (Colo. App. 1990).

While the timeliness of the blood test may affect its accuracy, evidence which relates to the accuracy of a chemical test affects the weight to be accorded the evidence, rather than its admissibility. People v. Emery, 812 P.2d 665 (Colo. App. 1990).

No error in hearing officer's ruling that testing request made one hour and 58 minutes after the accident was within a "reasonable time". Poe v. Dept. of Rev., 859 P.2d 906 (Colo. App. 1993).

Admission of blood test results does not limit any efforts by the defendant to challenge the accuracy of the results, or the weight they are to be given. Nor does it prohibit the jury from considering any other competent evidence regarding the inference of intoxication. People v. Emery, 812 P.2d 665 (Colo. App. 1990).

Evidence held sufficient. When the toxicologist's testimony is considered together with the testimony of the two investigating officers concerning the alcoholic odor about the defendant immediately after the accident and the testimony that defendant was driving on the wrong side of the road, the evidence of defendant being under the influence of intoxicating liquor is abundant and sustains the verdict of guilty of vehicular homicide. People v. Mascarenas, 181 Colo. 268, 509 P.2d 303 (1973).

Common signs of intoxication and refusal to take a field sobriety and blood alcohol tests constitute sufficient evidence to prove that defendant drove while under the influence of alcohol. People v. Mersman, 148 P.3d 199 (Colo. App. 2006).

Odor of alcohol is not inconsistent with ability to operate a motor vehicle in compliance with Colorado law. People v. Roybal, 655 P.2d 410 (Colo. 1982).

Sufficient facts for reasonable grounds for implied consent test request. The odor of alcohol on a driver's breath, coupled with the position of his vehicle on an interstate highway, are sufficient facts

**Determining whether one is substantially under influence is jury issue.** Given the rebuttable presumptions, if chemical analysis of a defendant's blood is taken or other evidence is offered, juries of common experience can determine whether one is substantially under the influence so as to be incapable of operating a vehicle safely, as distinguished from merely driving while ability is impaired. Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973).

**Jury instruction is too broad where it does not recognize the two levels of intoxication created by the general assembly in this section.** Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973).

A **trial court's instruction on the meaning of "intoxication" is not erroneous where** it states that one drink of an intoxicating liquor might produce such a mental and physical condition as to render the defendant "under the influence" of alcohol within the meaning of the statute. Lanford v. People, 159 Colo. 36, 409 P.2d 829 (1966).

**Proper instruction defining "under the influence".** Jury should be instructed that in order for one to be found guilty of the charge of "driving while under the influence", the degree of influence must be substantial so as to render the defendant incapable of safely operating a vehicle. Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973) (decided prior to 1989 enactment of subsection (1)(f)).

It is error for an instruction to be given which defines "under the influence" as meaning anything from the slightest to the greatest effect. Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973) (decided prior to 1989 enactment of subsection (1)(f)).

The **specific statutory provisions of this section** that contain a mandatory sentencing scheme for alcohol-related driving offenses and that provide for extended treatment of the underlying cause of the criminal conduct, prevail over the general provisions of § 16-11-202. People v. Martinillie, 940 P.2d 1090 (Colo. App. 1996).

**Order revoking a driver's license for failure to submit to a chemical test was not stayed** by a subsequent district court order declining to order return of the license to the driver but granting him the privilege of driving in the course of his employment. Donelson v. Colo. Dept. of Rev., 38 Colo. App. 354, 561 P.2d 345 (1976).

**Trial court has no power to award costs to plaintiff** in a case challenging revocation of a driver's license under this section, because there is no specific statutory provision allowing for such an award. Lucero v. Charnes, 44 Colo. App. 73, 607 P.2d 405 (1980).

**Before reviewing court sets aside order of revocation as arbitrary or capricious, it must be convinced from the record as a whole that there is a manifest insufficiency of evidence to support the department's decision.** Davis v. Colo. Dept. of Rev., 623 P.2d 874 (Colo. 1981).

**Driving status of "revoked" continues until new license obtained.** Until a driver complies with the terms of a denial order and obtains a new license, his driving status as "revoked" or "denied" continues. People v. Lessar, 629 P.2d 577 (Colo. 1981).


**A county court has jurisdiction over the subject matter of offenses alleged to have been committed under this section.** People v. Griffith, 130 Colo. 475, 276 P.2d 559 (1954).

**The various degrees of intoxication under this section are all "legal intoxication" for purposes of § 523(a)(9) of the Bankruptcy Code.** Dougherty v. Brackett, 51 Bankr. 987 (Bankr. D. Colo. 1985).
Categorization of driving under the influence as a vehicular offense precludes a determination that general assembly intended to consider it a drug law offense under the habitual criminal statute (§ 16-13-101 (3)). People v. Wilczynski, 873 P.2d 10 (Colo. App. 1993).

Definition of "police officer" is not limited to state, county, or municipal personnel and the Air Force security police are law enforcement officers who can request testing pursuant to subsection (6). Eggleston v. Dept. of Rev. Motor Veh. Div., 895 P.2d 1169 (Colo. App. 1995).

County court judge did not abuse his discretion nor exceed his authority in resentencing defendant who was immediately sentenced as provided in subsection (9)(e)(I) after the judge discovered that, contrary to defendant's representations, defendant had a prior charge under this section. Walker v. Arries, 908 P.2d 1180 (Colo. App. 1995).

Vehicular homicide while driving under the influence is grave and serious per se for purposes of a proportionality review because of the grave harm caused, the death of a person, and the culpability of the defendant's conduct, choosing to drive while intoxicated. People v. Strock, 252 P.3d 1148 (Colo. App. 2010).


II. PRESUMPTIONS.

This section sets up a series of presumptions arising from the amount of alcohol in the blood. Egle v. People, 159 Colo. 217, 411 P.2d 325 (1966).

The limitations of this section shall not prevent the consideration of any other competent evidence that defendant was under the influence of intoxicating liquor. Egle v. People, 159 Colo. 217, 411 P.2d 325 (1966).

Subsection (2) authorizes only a permissive inference that defendant was under the influence of alcohol. Because of the constitutional conflicts which arise with the use of presumptions in criminal cases and because of the central purposes behind the legislature's enactment of the presumption, subsection (2)(c) is properly construed to authorize only a permissive inference that the defendant was under the influence of alcohol. Barnes v. People, 735 P.2d 869 (Colo. 1987).

Instruction which told jurors that they "must accept the presumption as if it had been factually established by the evidence" and that they could reject this presumption only if it was "rebutted by evidence to the contrary" created a mandatory and not a permissive presumption that the petitioner was under the influence of alcohol. Barnes v. People, 735 P.2d 869 (Colo. 1987).

Both subsection (2) of this section and § 18-3-106 (2) permit a jury to infer that a defendant was under the influence of alcohol if it finds that the amount of alcohol in his blood at the time of the commission of the alleged offense "or within a reasonable time thereafter," as shown by chemical
analysis of the defendant's blood, is 0.10 percent or more. People v. Emery, 812 P.2d 665 (Colo. App. 1990).

Subsection (2)(c) is very specific in limiting the use of its presumption to the misdemeanors of driving any vehicle while under the influence of intoxicating liquor and driving while ability is impaired by the consumption of alcohol. People v. Davis, 187 Colo. 16, 528 P.2d 251 (1974).

Statutory presumption of subsection (2)(c) is not applicable to a felony charge under § 18-3-106. People v. Davis, 187 Colo. 16, 528 P.2d 251 (1974).

Defendant's ability to attack validity of presumption that he was driving under the influence of alcohol when he had a blood alcohol level of .10 percent is dependent upon his ability to attack the accuracy of the machine which tested his blood alcohol level. Garcia v. District Court, 197 Colo. 38, 589 P.2d 924 (1979).

The blood alcohol test results are statutorily deemed to relate back to the alleged offense for purposes of applying the statutory inferences. People v. Emery, 812 P.2d 665 (Colo. App. 1990).

Jury could infer that the defendant was under the influence at the time of the offense where the prosecution presented evidence that approximately three hours after the accident, defendant's blood alcohol level was above the statutory percentage. Because the circumstances at issue permitted the jury to make such inference, the extrapolation evidence offered to establish a still higher blood alcohol level was neither necessary nor relevant and the admission thereof was harmless error. People v. Emery, 812 P.2d 665 (Colo. App. 1990).

Presumption that defendant was under influence specifically does not limit the introduction, reception, or consideration of other competent evidence bearing upon the question of whether or not a defendant was under the influence of intoxicating liquor. People v. Hedrick, 192 Colo. 37, 557 P.2d 378 (1976).

Thus, moving pictures and their sound are admissible. Moving pictures and their sound, which are relevant and which allegedly show the demeanor and condition of a defendant charged with driving under the influence of either alcohol or drugs, taken at the time of the arrest or soon thereafter, are admissible in evidence even though they show the defendant's refusal to take sobriety and coordination tests, when properly offered in order to show the defendant's demeanor, conduct and appearance, and to show why sobriety and coordination tests were not given. Lanford v. People, 159 Colo. 36, 409 P.2d 829 (1966).

Even if a defendant objects to the introduction and admission of movies, they still are to be admitted, provided that then the trial court must, at defendant's request, caution the jury as to the limited purpose of the evidence, and again at defendant's request, give a limiting instruction in the general charge for the same purpose. Lanford v. People, 159 Colo. 36, 409 P.2d 829 (1966).

Evidence of breath analysis results indicating a level of 0.139 grams of alcohol per 210 liters of breath and testimony of both lay witness and law enforcement agents that defendant was driving erratically before the collision and that she exhibited some symptoms of being under the influence after the collision was sufficient to establish that, at the time of the collision, defendant's physical or mental capacities had been adversely affected by her previous consumption of alcohol. People v. Acosta, 860 P.2d 1376 (Colo. App. 1993).

Jury verdict convicting defendant of driving under the influence and vehicular assault while under the influence is not inconsistent with defendant's acquittal of driving with an excessive blood or breath alcohol content since the jury could well have rejected the reliability of breath tests indicating a level of 0.139 grams of alcohol per 210 liters of breath to show beyond a reasonable doubt an excessive level of alcohol in defendant's breath but could have concluded that her mental and physical capacities had been so affected that she had been under the influence given her admission that she had consumed at least one and one-half glasses of wine. People v. Acosta, 860 P.2d 1376 (Colo. App. 1993).
III. PRIOR CONVICTIONS.

Law reviews. For article, "Joinder of Criminal Charges, Election, Duplicity", see 30 Dicta 117 (1953).

Subsections (1) and (4) of this section do not create two separate offenses. The obvious purpose of these statutory provisions is to regulate the punishment to be imposed upon the single offense of drunk driving. Righi v. People, 145 Colo. 457, 359 P.2d 656 (1961); Quintana v. People, 169 Colo. 295, 455 P.2d 210 (1969).

Subsection (4) only intended to increase punishment for substantive offense. The guilt of a substantive offense and the proof of prior convictions are clearly severable. Proof of prior convictions or the adjudication that the defendant is an habitual criminal do not involve substantive offenses, but merely provide for increased punishment of those whose prior convictions fall within the scope of these statutes. The important relation between the primary offenses and the prior convictions charged is, therefore, the sentence to be imposed, and the jury does not participate in that. Righi v. People, 145 Colo. 457, 359 P.2d 656 (1961); Quintana v. People, 169 Colo. 295, 455 P.2d 210 (1969).

Former convictions must be in separate counts of the information, and then it appears to be the accepted practice that when arraignment is had, the defendant be fully advised of these counts in the information. Heinze v. People, 127 Colo. 54, 253 P.2d 596 (1953); Quintana v. People, 169 Colo. 295, 455 P.2d 210 (1969).

The use of the proof of convictions of second or more offenses cannot obtain until guilt of the substantive offense on trial is established. Heinze v. People, 127 Colo. 54, 253 P.2d 596 (1953); Quintana v. People, 169 Colo. 295, 455 P.2d 210 (1969).

The same jury need not be utilized in both segments in the prosecution of a drunk driving charge aggravated by a charge of a prior conviction within five years. Quintana v. People, 169 Colo. 295, 455 P.2d 210 (1969).

However, proof may be offered to the same jury if a guilty verdict has been returned on the substantive count. Heinze v. People, 127 Colo. 54, 253 P.2d 596 (1953).


When the sole question on remand from an appellate court involves the proof of an alleged prior conviction, there is no reason to require the parties to retry the question of guilt of the primary offenses when the correctness of that determination is not challenged. There is nothing prejudicial involved in a limited new trial on the issue of the challenged prior conviction by a jury different from that which tried the issue of guilt of the primary offenses. Quintana v. People, 169 Colo. 295, 455 P.2d 210 (1969).

IV. USEFUL PUBLIC SERVICE.

Although the useful public service statute may not impose specific duties upon a public employee so as to allow application of the doctrine of negligence per se, under the facts of this case, a special relationship between the sheriff and offender under the program was created which brought into existence a duty on the part of the sheriff to use due care in selecting entities for whom service would be rendered and monitoring the offender's work under the program. Felger v. Bd. of County Comm'r's, 776 P.2d 1169 (Colo. App. 1989).

42-4-1301.1. Expressed consent for the taking of blood, breath, urine, or saliva sample - testing.
(1) Any person who drives any motor vehicle upon the streets and highways and elsewhere throughout this state shall be deemed to have expressed such person's consent to the provisions of this section.

(2) (a) (I) A person who drives a motor vehicle upon the streets and highways and elsewhere throughout this state shall be required to take and complete, and to cooperate in the taking and completing of, any test or tests of the person's breath or blood for the purpose of determining the alcoholic content of the person's blood or breath when so requested and directed by a law enforcement officer having probable cause to believe that the person was driving a motor vehicle in violation of the prohibitions against DUI, DUI per se, DWAI, habitual user, or UDD. Except as otherwise provided in this section, if a person who is twenty-one years of age or older requests that the test be a blood test, then the test shall be of his or her blood; but, if the person requests that a specimen of his or her blood not be drawn, then a specimen of the person's breath shall be obtained and tested. A person who is under twenty-one years of age shall be entitled to request a blood test unless the alleged violation is UDD, in which case a specimen of the person's breath shall be obtained and tested, except as provided in subparagraph (II) of this paragraph (a).

(II) Except as otherwise provided in paragraph (a.5) of this subsection (2), if a person elects either a blood test or a breath test, the person shall not be permitted to change the election, and, if the person fails to take and complete, and to cooperate in the completing of, the test elected, the failure shall be deemed to be a refusal to submit to testing. If the person is unable to take, or to complete, or to cooperate in the completing of a breath test because of injuries, illness, disease, physical infirmity, or physical incapacity, or if the person is receiving medical treatment at a location at which a breath testing instrument certified by the department of public health and environment is not available, the test shall be of the person's blood.

(III) If a law enforcement officer requests a test under this paragraph (a), the person must cooperate with the request such that the sample of blood or breath can be obtained within two hours of the person's driving.

(a.5) (I) If a law enforcement officer who requests a person to take a breath or blood test under paragraph (a) of this subsection (2) determines there are extraordinary circumstances that prevent the completion of the test elected by the person within the two-hour time period required by subparagraph (III) of paragraph (a) of this subsection (2), the officer shall inform the person of the extraordinary circumstances and request and direct the person to take and complete the other test described in paragraph (a) of this subsection (2). The person shall then be required to take and complete, and to cooperate in the completing of, the other test.

(II) A person who initially requests and elects to take a blood or breath test, but who is requested and directed by the law enforcement officer to take the other test because of the extraordinary circumstances described in subparagraph (I) of this paragraph (a.5), may change his or her election for the purpose of complying with the officer's request. The change in the election of which test to take shall not be deemed to be a refusal to submit to testing.

(III) If the person fails to take and complete, and to cooperate in the completing of, the other test requested by the law enforcement officer pursuant to subparagraph (I) of this paragraph (a.5), the failure shall be deemed to be a refusal to submit to testing.
(IV) (A) As used in this paragraph (a.5), "extraordinary circumstances" means circumstances beyond the control of, and not created by, the law enforcement officer who requests and directs a person to take a blood or breath test in accordance with this subsection (2) or the law enforcement authority with whom the officer is employed.

(B) "Extraordinary circumstances" includes, but shall not be limited to, weather-related delays, high call volume affecting medical personnel, power outages, malfunctioning breath test equipment, and other circumstances that preclude the timely collection and testing of a blood or breath sample by a qualified person in accordance with law.

(C) "Extraordinary circumstances" does not include inconvenience, a busy workload on the part of the law enforcement officer or law enforcement authority, minor delay that does not compromise the two-hour test period specified in subparagraph (III) of paragraph (a) of this subsection (2), or routine circumstances that are subject to the control of the law enforcement officer or law enforcement authority.

(b) (I) Any person who drives any motor vehicle upon the streets and highways and elsewhere throughout this state shall be required to submit to and to complete, and to cooperate in the completing of, a test or tests of such person's blood, saliva, and urine for the purpose of determining the drug content within the person's system when so requested and directed by a law enforcement officer having probable cause to believe that the person was driving a motor vehicle in violation of the prohibitions against DUI, DWAI, or habitual user and when it is reasonable to require such testing of blood, saliva, and urine to determine whether such person was under the influence of, or impaired by, one or more drugs, or one or more controlled substances, or a combination of both alcohol and one or more drugs, or a combination of both alcohol and one or more controlled substances.

(II) If a law enforcement officer requests a test under this paragraph (b), the person must cooperate with the request such that the sample of blood, saliva, or urine can be obtained within two hours of the person's driving.

(3) Any person who is required to take and to complete, and to cooperate in the completing of, any test or tests shall cooperate with the person authorized to obtain specimens of such person's blood, breath, saliva, or urine, including the signing of any release or consent forms required by any person, hospital, clinic, or association authorized to obtain such specimens. If such person does not cooperate with the person, hospital, clinic, or association authorized to obtain such specimens, including the signing of any release or consent forms, such noncooperation shall be considered a refusal to submit to testing. No law enforcement officer shall physically restrain any person for the purpose of obtaining a specimen of such person's blood, breath, saliva, or urine for testing except when the officer has probable cause to believe that the person has committed criminally negligent homicide pursuant to section 18-3-105, C.R.S., vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., assault in the third degree pursuant to section 18-3-204, C.R.S., or vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., and the person is refusing to take or to complete, or to cooperate in the completing of, any test or tests, then, in such event, the law enforcement officer may require a blood test.

(4) Any driver of a commercial motor vehicle requested to submit to a test as provided in paragraph (a) or (b) of subsection (2) of this section shall be warned by the law enforcement
officer requesting the test that a refusal to submit to the test shall result in an out-of-service order as defined under section 42-2-402 (8) for a period of twenty-four hours and a revocation of the privilege to operate a commercial motor vehicle for one year as provided under section 42-2-126.

(5) The tests shall be administered at the direction of a law enforcement officer having probable cause to believe that the person had been driving a motor vehicle in violation of section 42-4-1301 and in accordance with rules and regulations prescribed by the department of public health and environment concerning the health of the person being tested and the accuracy of such testing.

(6) (a) No person except a physician, a registered nurse, a paramedic, as certified in part 2 of article 3.5 of title 25, C.R.S., an emergency medical service provider, as defined in part 1 of article 3.5 of title 25, C.R.S., or a person whose normal duties include withdrawing blood samples under the supervision of a physician or registered nurse shall withdraw blood to determine the alcoholic or drug content of the blood for purposes of this section.

(b) No civil liability shall attach to any person authorized to obtain blood, breath, saliva, or urine specimens or to any hospital, clinic, or association in or for which such specimens are obtained as provided in this section as a result of the act of obtaining such specimens from any person submitting thereto if such specimens were obtained according to the rules and regulations prescribed by the department of public health and environment; except that this provision shall not relieve any such person from liability for negligence in the obtaining of any specimen sample.

(7) A preliminary screening test conducted by a law enforcement officer pursuant to section 42-4-1301 (6) (i) shall not substitute for or qualify as the test or tests required by subsection (2) of this section.

(8) Any person who is dead or unconscious shall be tested to determine the alcohol or drug content of the person's blood or any drug content within such person's system as provided in this section. If a test cannot be administered to a person who is unconscious, hospitalized, or undergoing medical treatment because the test would endanger the person's life or health, the law enforcement agency shall be allowed to test any blood, urine, or saliva that was obtained and not utilized by a health care provider and shall have access to that portion of the analysis and results of any tests administered by such provider that shows the alcohol or drug content of the person's blood, urine, or saliva or any drug content within the person's system. Such test results shall not be considered privileged communications, and the provisions of section 13-90-107, C.R.S., relating to the physician-patient privilege shall not apply. Any person who is dead, in addition to the tests prescribed, shall also have the person's blood checked for carbon monoxide content and for the presence of drugs, as prescribed by the department of public health and environment. Such information obtained shall be made a part of the accident report.


Editor's note: (1) This section is similar to former § 42-4-1301 (6), (7)(a), (7)(b), and (7)(c) and § 42-2-126 (2)(a)(II) as they existed prior to 2002.
(2) Section 26 of chapter 271, Session Laws of Colorado 2012, provides that the act amending subsection (6)(a) applies to acts committed on or after July 1, 2012.

ANNOTATION

Analysis

I. General Consideration.
II. Implied Consent.
III. Express Consent.
   A. Constitutionality.
   B. Purpose.
   C. Prerequisites to Testing.
   D. Testing Requirements.
   E. Multiple Samples.
   F. Refusal to Take Test.

I. GENERAL CONSIDERATION.


Annotator's note. (1) Annotations resulting from cases involving the implied consent law, which was replaced by the express consent law in 1983, have been included under this heading where appropriate and relevant.

(2) Since § 42-4-1301.1 is similar to § 42-4-1301 as it existed prior to its 2002 amendment with relocations and § 42-4-1202 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing those provisions have been included in the annotations to this section.

II. IMPLIED CONSENT.

Annotator's note. The annotations below resulted from cases involving the implied consent law, which was replaced by the express consent law in 1983, and have been included for historical purposes.

This section was known as the "implied consent law". Colo. Dept. of Rev. v. District Court ex rel. County of Adams, 172 Colo. 144, 470 P.2d 864 (1970).


The federal constitution does not prohibit the states from requiring a driver to submit to chemical testing of his blood shortly after a valid arrest. People v. Gillett, 629 P.2d 613 (Colo. 1981).

This section does not violate constitutional standards because the statute does not expressly require an evidentiary hearing on the issue of any alleged refusal to submit to some form of test to determine the alcohol content of a driver's breath or blood. The statutory requirement of a specific averment by the arresting officer that the driver refused to submit to an appropriate chemical analysis test makes the issue of refusal a question of fact, permitting the driver to present evidence contrary to such an averment and requiring the hearing officer to make a finding on such a factual issue based on all of the evidence. DuPuis v. Charnes, 668 P.2d 1 (Colo. 1983).

The failure of the implied consent statute to provide for a probationary license does not violate equal protection of the laws. DeScala v. Motor Vehicle Div., 667 P.2d 1360 (Colo. 1983).


*Probable cause is required before test may be administered.* People v. Grassi, 192 P.3d 496 (Colo. App. 2008).

**The implied consent law gave rights which were greater than those required by due process.** It specifically provided that at the time of the request to take the test, the officer shall inform the licensee orally and in writing "of his rights under the law and the probable consequences of refusal to submit to such a test". Vigil v. Motor Vehicle Div., 184 Colo. 142, 519 P.2d 332 (1974).


**Purpose of revocation penalty.** To encourage the suspected drunk driver to take a blood-alcohol test voluntarily, the implied consent statute imposed an automatic revocation penalty, with very few exceptions, on those who refused to take the test. Calvert v. State Dept. of Rev., 184 Colo. 214, 519 P.2d 341 (1974).

**Written notice required.** Former subsection (3)(b) required that the "person arrested" be given an explanation, in written form, of his rights and the probable consequences of refusing to submit to a test, in order that he may read and study the same before having to make a decision. Cantrell v. Weed, 35 Colo. App. 180, 530 P.2d 986 (1974); Cooper v. Nielson, 687 P.2d 541 (Colo. App. 1984) (decided under subsection (3) prior to 1983 repeal and reenactment).

**Such notice must be physically offered to licensee at time of test.** Under former subsection (3)(b) notice in writing had to be physically handed or offered to the licensee contemporaneously with or prior to the officer's request for the sobriety test. Cantrell v. Weed, 35 Colo. App. 180, 530 P.2d 986 (1974).

Merely affording driver the opportunity to "read along" while the officer orally recited the form containing written notice of the consequences of refusal to submit to test was not sufficient to constitute written notice under former subsection (3)(b). Cantrell v. Weed, 35 Colo. App. 180, 530 P.2d 986 (1974).

Where the arresting officer testified unequivocally that he read the advisement form to the plaintiff and offered him the opportunity to read it for himself, but that the plaintiff refused to do so, the evidence
was sufficient to support a hearing examiner's finding that the plaintiff was properly advised under former subsection (3)(b). Gilbert v. Dolan, 41 Colo. App. 173, 586 P.2d 233 (1978).

How warning should be phrased. The warning under former subsection (3)(b) had to be phrased so that a person of normal intelligence would understand the consequences of his actions. Calvert v. State Dept. of Rev., 184 Colo. 214, 519 P.2d 341 (1974).

What licensee to be informed of. The implied consent law required that the licensee be informed of both the hearing and the possibility of the revocation of the license. Vigil v. Motor Vehicle Div., 184 Colo. 142, 519 P.2d 332 (1974).

A licensee was advised of the "probable consequences of refusal" under former subsection (3)(b) if he was informed that his license "might" be revoked. Hall v. Charnes, 42 Colo. App. 111, 590 P.2d 516 (1979).

Where the motorist was given the Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 A.L.R.3d 974 (1966) warnings and he manifested his desire to call his attorney before deciding whether or not to submit to the test, but was not told that he had no such right, under these circumstances, the motorist should have been advised that the right to remain silent does not include the right to refuse to submit to the test or the right to prior consultation with an attorney. Calvert v. State Dept. of Rev., 184 Colo. 214, 519 P.2d 341 (1974).

The fact that the defendant was handcuffed and could neither touch nor feel the implied consent form when it was read to him was of no consequence where it was placed in such a position that he could, if he so desired, read it, and he was given the form as soon as practicable when his handcuffs were removed. Herren v. Motor Vehicle Div., 39 Colo. App. 146, 565 P.2d 955 (1977).

Officer was not required to orally advise a driver of his rights prior to a second request to submit to a blood alcohol test which was accompanied by a written advisement of the driver's rights. Bowker v. Charnes, 679 P.2d 1119 (Colo. App. 1984).

Notice requirements of former subsection (3)(b) were not violated by the fact that the advisement form read by an arresting officer to one stopped for suspicion of driving while intoxicated did not state that an individual could refuse to submit to a test if it would be medically inadvisable for him to do so or if the test to be given would not conform to the rules and regulations prescribed by the state board of health. Zinn v. Dolan, 41 Colo. App. 370, 588 P.2d 389 (1978).

The only valid justifications in the implied consent law for refusing the test are either that it was medically inadvisable for the licensee or that the test would not be given in compliance with proper health standards. Vigil v. Motor Vehicle Div., 184 Colo. 142, 519 P.2d 332 (1974).

The implied consent law applied only to the misdemeanor offense of driving under the influence of intoxicating liquor as defined in this section. People v. Sanchez, 173 Colo. 188, 476 P.2d 980 (1970).

The consent provision of this section applied only to misdemeanor offenses and not to felonies. People v. Acosta, 620 P.2d 55 (Colo. App. 1980).

One charged with felony could not claim consent to test was statutorily or constitutionally required. Inasmuch as this section did not extend to felonies, a defendant charged with the felony of causing injury while driving under the influence of intoxicating liquor could not claim any statutory right to refuse to take a breathalyzer test. Since consent was neither statutorily nor constitutionally required, it was immaterial whether such defendant was inadequately advised or whether his consent was uninformed. People v. Sanchez, 173 Colo. 188, 476 P.2d 980 (1970).

One could not be compelled to take a roadside sobriety test against one's wishes. People v. Helm, 633 P.2d 1071 (Colo. 1981).
Other jurisdictions, with similar implied consent laws, have unanimously found their statutes to be merely permissive and not mandatory. People v. Culp, 189 Colo. 76, 537 P.2d 746 (1975).

III. EXPRESS CONSENT.

Annotator's note. Annotations resulting from cases involving the implied consent law, which was replaced by the express consent law in 1983, have been included under this heading where appropriate and relevant.

A. Constitutionality.

Law reviews. For article, "One Year Review of Constitutional and Administrative Law", see 36 Dicta 11 (1959).


State's exercise of police power. An individual's right to use the public highways of this state is an adjunct of the constitutional right to acquire, possess, and protect property, yet such a right may be limited by a proper exercise of the police power of the state based upon a reasonable relationship to the public health, safety, and welfare. People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 301 L. Ed. 2d 656 (1972).


This section does not violate equal protection. A rational basis exists for the statute's differential treatment of individuals who receive medical treatment at locations without breath testing equipment because providing such individuals with the option of choosing a breath test would cause delays in obtaining test samples. These delays would substantially hinder the state's legitimate public safety interest in securing timely alcohol test results for individuals suspected of driving while intoxicated. Evans v. Dept. of Rev., 159 P.3d 769 (Colo. App. 2006).

This section is not unconstitutionally vague. The words and phrases of this section are readily comprehensible to persons of ordinary intelligence without further definition. The statute, in sufficiently clear terms, provides individuals with fair warning as to the circumstances under which a choice of tests is, and is not, available. Evans v. Dept. of Rev., 159 P.3d 769 (Colo. App. 2006).

The right to refuse a blood test under the implied consent (now express consent) law is a statutory right only and as such is subject to the sanction of possible suspension of one's driver's license. People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 301 L. Ed. 2d 656 (1972).

Right to refuse. Statutory, not constitutional, law provides the basis for determining whether there is any requirement that a motorist alleged to have violated drunk driving statute must be advised of right to refuse or to choose a type of blood alcohol test. Moreover, no such statutorily required advisement exists. Brewer v. Motor Vehicle Div., Dept. of Rev., 720 P.2d 564 (Colo. 1986); Smith v. Charnes, 728 P.2d 1287 (Colo. 1986); Evans v. Dept. of Rev., 159 P.3d 769 (Colo. App. 2006).

Miranda warnings are not required before the administration of a roadside sobriety test. People v. Helm, 633 P.2d 1071 (Colo. 1981); People v. Lowe, 687 P.2d 454 (Colo. 1984).

A motorist does not have a constitutional right to talk with an attorney before choosing whether to submit to the test. Calvert v. State Dept. of Rev., 184 Colo. 214, 519 P.2d 341 (1974).

Driver was not prejudiced by the failure of arresting officer to warn him that he had no right to counsel under this statute. Sauer v. Heckers, 34 Colo. App. 217, 524 P.2d 1387 (1974).
There was no duty to advise defendant that he had no right to counsel prior to deciding whether to permit a chemical test of his blood where he was given an opportunity to make a phone call and despite defendant's confusion between his fifth amendment rights to counsel and his rights under the implied consent law. Washington v. Dolan, 38 Colo. App. 414, 557 P.2d 1223 (1976).

A motorist has no right under the Colorado implied consent (now express consent) law to confer with counsel prior to deciding whether to consent to a chemical test. Drake v. Colo. Dept. of Rev., 674 P.2d 359 (Colo. 1984).

**Failure to submit to test because wanting attorney is refusal.** Generally, when a suspect does not submit to the test because he wants to talk to his attorney before deciding whether to take the test, it is deemed a refusal as a matter of law. Drake v. Colo. Dept. of Rev., 674 P.2d 359 (Colo. 1984).

It is generally true that when a suspect does not submit to the test under this section because he requests to call his attorney first, this is deemed a "refusal" as a matter of law. Calvert v. State Dept. of Rev., 184 Colo. 214, 519 P.2d 341 (1974).

**Taking of blood not violation of privilege against self-incrimination.** The privilege against self-incrimination protects an accused only from being compelled to testify against himself, or otherwise provide the state with evidence of a testimonial or communicative nature, and the withdrawal of blood and use of the analysis in a case does not involve compulsion to these ends. People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 301 L. Ed. 2d 656 (1972).

**Privilege against self-incrimination does not extend to results obtained from roadside sobriety test.** Such a test does not contravene the privilege by requiring the subject to divulge any knowledge he might have; the fact that the subject's guilt may be inferred from the results of the test goes to the probity of the testing method, not to its character as a supposed confession surrogate. People v. Ramirez, 199 Colo. 367, 609 P.2d 616 (1980).

**Statutory changes not impermissible under constitution.** The deletion of a provision for the offense of driving while ability is impaired by alcohol, and the amendments made and adopted relating to implied consent during the course of legislative proceedings, amending what is now § 42-4-1202, did not amount to an impermissible change in the purpose of the original bill so as to violate § 17 of art. V, Colo. Const. People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 301 L. Ed. 2d 656 (1972).

**Constitutional prohibition of unlawful searches and seizures and constitutional privilege against self-incrimination** are not violated when police officer requires driver to submit to a blood or breath test. People v. Bowers, 716 P.2d 471 (Colo. 1986).

**Taking of blood is not unreasonable search and seizure.** Although it has been determined that the taking of blood is an intrusion of the person and a search within the meaning of the state and federal constitutions, such is not an unreasonable search and seizure violative of the fourth amendment or § 7 of art. II, Colo. Const. People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 301 L. Ed. 2d 656 (1972).

A search warrant is not required prior to taking the tests. Stream v. Heckers, 184 Colo. 149, 519 P.2d 336 (1974).

**Taking of blood held reasonable search.** Notwithstanding the fact that the blood extraction for the purpose of administering blood-alcohol test took place in a nonmedical environment without a doctor or nurse present, where a record reveals that a highly qualified and experienced medical technologist took the blood sample in conformity with the department of health regulations and with no infringement upon the personal dignity of the defendant, the taking was well within the ambit of a reasonable search. People v. Mari, 187 Colo. 85, 528 P.2d 917 (1974).

Denial of motion to suppress results of alcohol blood test taken without consent as unlawful search and seizure affirmed. People v. Smith, 175 Colo. 212, 486 P.2d 8 (1971).
Notice through publication of statutes is sufficient. The requirements of due process in relation to the warnings under subsection (3) are satisfied by the notice which is given licensees through publication of the statutes. Vigil v. Motor Vehicle Div., 184 Colo. 142, 519 P.2d 332 (1974).

Notice given licensees through publication of express consent statute satisfies due process; licensee is presumed to know law regarding operation of motor vehicles, including consequences of refusing request for chemical testing. Dikeman v. Charnes, 739 P.2d 870 (Colo. App. 1987).

Driver was not entitled to advisement of consequences of refusing chemical test to determine blood alcohol level before he was requested by officer to submit to test. Dikeman v. Charnes, 739 P.2d 870 (Colo. App. 1987).

A person who has a license to operate a motor vehicle on the public highways is presumed to know the law regarding his use of the public highways. Vigil v. Motor Vehicle Div., 184 Colo. 142, 519 P.2d 332 (1974).

Failure to warn a driver that evidence of his refusal to take blood or breath test may be used against him at trial coupled with the subsequent use of the evidence at trial does not violate due process under the federal or state constitutions. Moreover, a refusal to take a blood or breath test is not compelled testimony entitled to protection under the state constitution. Cox v. People, 735 P.2d 153 (Colo. 1987).

Fundamental fairness does not require that officers inform suspects of the evidentiary effect of a decision whether to perform roadside sobriety maneuvers when constitutional rights or statutory consequences are not implicated by the choice. McGuire v. People, 749 P.2d 960 (Colo. 1988).

B. Purpose.

Eases administrative burden. The implied consent (now express consent) law provides the state with an easily administered, reliable method of proving intoxication in a driving under the influence case and also provides for a simple administrative remedy for revoking the driver's license of an arrested person who refuses to submit to a test. People v. Culp, 189 Colo. 76, 537 P.2d 746 (1975).

Tests not required to prove intoxication. In prosecution for driving while under the influence of intoxicating liquor, chemical tests are neither necessary nor required to prove intoxication. People v. Culp, 189 Colo. 76, 537 P.2d 746 (1975).

Evidence apart from blood alcohol tests may in and of itself be sufficient to establish guilt in a drunk driving prosecution. Garcia v. District Court, 197 Colo. 38, 589 P.2d 924 (1979).

Language of subsection (2)(d) negates the defendant's claim that he must be advised of the existence of the implied consent (now express consent) law and his rights thereunder, including his right to refuse to take the chemical test and his right to know the consequences thereof, before he can be charged with driving while intoxicated. People v. Culp, 189 Colo. 76, 537 P.2d 746 (1975).

C. Prerequisites to Testing.

Due process principles do not require the state to offer a chemical test to the motorist before charging him with driving while under the influence of intoxicating liquors. People v. Culp, 189 Colo. 76, 537 P.2d 746 (1975).

There is nothing in subsection (3) which requires that a person must be given an opportunity to take a chemical test before he can be charged with driving under the influence. People v. Culp, 189 Colo. 76, 537 P.2d 746 (1975).

The people have no duty to give the defendant any chemical test. People v. Hedrick, 192 Colo. 37, 557 P.2d 378 (1976).
The implied consent (now express consent) law neither requires the arresting officer to request a chemical test nor does it grant the driver an independent right to a test in the absence of the arresting officer's invocation of the statute. People v. Gillett, 629 P.2d 613 (Colo. 1981).

**Probable cause is required before test may be administered.** This includes a test administered to an unconscious person under subsection (8). People v. Grassi, 192 P.3d 496 (Colo. App. 2008).

**Probable cause justifies test prior to arrest and without permission.** A urine sample that is taken prior to a defendant's arrest and without his permission is not a violation of defendant's constitutional rights so long as the facts establish probable cause to make such arrest at the time the sample is taken. People v. Kokesh, 175 Colo. 206, 486 P.2d 429 (1971).

**Particularly, where necessity requires immediate test.** Where defendant was charged with felony of causing an injury while driving under the influence of intoxicating liquor, and necessity required an immediate breathalyzer test to prevent destruction of the evidence, held, under the circumstances a warrant was not required, nor was consent of defendant necessary under fourth amendment to United States constitution in order to administer breathalyzer test. People v. Sanchez, 173 Colo. 188, 476 P.2d 980 (1970).

Consent is not a prerequisite to the performance of a chemical test to determine the alcohol content of a defendant's blood when the offense charged is a felony. People v. Deadmond, 683 P.2d 763 (Colo. 1984).

**Meaning of "arrest".** The arrest referred to in this section constitutes detention by an officer such that the driver is in custody and obviously not free to leave of his own volition. Ayala v. Colo. Dept. of Rev., 43 Colo. App. 357, 603 P.2d 979 (1979).

**Driving.** Person who was in the driver's seat of an automobile which had its motor running and its parking lights on and which was located in a private parking lot was in actual physical control of the automobile and thus was driving a motor vehicle. Therefore, refusal to consent to testing violates the "express consent" provision of this section. Motor Vehicle Div. v. Warman, 763 P.2d 558 (Colo. 1988).

Person seated behind a steering wheel with the seat belt fastened with the key in the ignition turned to "on", even though the car is not running, is driving a motor vehicle. Caple v. Dept. of Rev., 804 P.2d 873 (Colo. 1990).

**Arrest is condition precedent to blood alcohol test request.** A defendant who had not been "arrested" before implementation of the implied consent (now express consent) procedure could not have his driver's license revoked for three months for failure to take a blood alcohol test because an arrest is a condition precedent to the state's request that a driver submit to a blood alcohol test. Humphrey v. Motor Vehicle Div., 674 P.2d 987 (Colo. App. 1983).


**A roadside sobriety test can only be administered when** there is probable cause to arrest the driver for driving under the influence of, or while his ability is impaired by, intoxicating liquor or other chemical substance, or when the driver voluntarily consents to perform the test. People v. Carlson, 677 P.2d 310 (Colo. 1984).

**No new probable cause and arrest are necessary at time driver is requested to provide a urine sample for drug testing;** same probable cause that supported arrest on suspicion of driving under the influence of some substance is sufficient. Halter v. Dept. of Rev., 857 P.2d 535 (Colo. App. 1993).
Once probable cause exists to arrest driver on suspicion of driving under the influence and test for presence of alcohol is negative, it is reasonable to require driver to submit to testing for presence of drugs where driver continues to exhibit evidence of intoxication. Halter v. Dept. of Rev., 857 P.2d 535 (Colo. App. 1993).

Officer is not authorized to request and to direct an arrested driver to submit to testing absent probable cause for the DUI arrest and, by implication, absent reasonable suspicion for the initial stop. Peterson v. Tipton, 833 P.2d 830 (Colo. App. 1992).

Reliance on valid arrest. Officer requesting blood test can rely on information of fellow officer in determining that a valid arrest has been made for purposes of the express consent statute. Sanger v. Colo. Dept. of Rev., 736 P.2d 431 (Colo. App. 1987).

Officer may originally arrest for moving violation. There is no proscription in this section against an officer first making an arrest for a moving violation, and then, if reasonable grounds exist to believe that the person driving is also under the influence of alcohol, personally or by fellow officer, instituting the procedures under the implied consent (now express consent) act. Renck v. Motor Vehicle Div., 636 P.2d 1294 (Colo. App. 1981).

Statute does not require police officers to ask for a defendant's consent prior to proceeding with a constitutionally proper, involuntary blood draw following a suspected vehicular assault. Section 18-3-205 (4)(a) allows a police officer to perform blood tests on a driver without his or her consent if the officer has probable cause to believe the driver has committed vehicular assault under the influence of alcohol or drugs. People v. Smith, 254 P.3d 1158 (Colo. 2011).

D. Testing Requirements.

A field test on a portable breath testing device given to the suspect prior to arrest did not constitute a chemical test within the meaning of the express consent statute, and so a revocation for refusal to submit to additional testing is supported. Davis v. Carroll, 782 P.2d 884 (Colo. App. 1989).

Purpose of board of health regulation. The regulation of the board of health as to taking tests under this section--outside of those designed to prevent injury to and to preserve the health of the individual--are designed for internal operating procedure and not for the defendant. People v. Hedrick, 192 Colo. 37, 557 P.2d 378 (1976).

Regulations promulgated pursuant to this section apply only to offenses charged under it and not to felonies charged under § 18-3-106. People v. Acosta, 620 P.2d 55 (Colo. App. 1980); People v. Nhan Dao Van, 681 P.2d 932 (Colo. 1984).


The provisions of former subsection (3)(b)(I) (currently subsection (7)(b)(I)) do not establish any minimum foundational requirements for the admissibility of test results at criminal trials or revocation hearings, but rather indicate that if the department of revenue chooses to introduce a manufacturer's or supplier's certificate of compliance for a test kit, such certificate shall constitute a sufficient evidentiary foundation. Siddall v. Dept. of Rev., 843 P.2d 85 (Colo. App. 1992); Thomas v. People, 895 P.2d 1040 (Colo. 1995) (decided under former § 42-4-1202.2 as it existed prior to the 1994 recodification of title 42).

Results of breathalyzer test were admissible in DUI proceeding where prima facie showing was made that testing device was in proper working order and was properly operated by qualified person and that test was administered in substantial compliance with department of health regulations. Thomas v. People, 895 P.2d 1040 (Colo. 1995) (decided under former § 42-4-1202 as it existed prior to the 1994 recodification of title 42).
Failure to provide certification documents as to breath test instruments went to weight of breath test results and not to their admissibility. Thomas v. People, 895 P.2d 1040 (Colo. 1995) (decided under former § 42-4-1202 as it existed prior to the 1994 recodification of title 42).

Even when the breath test is not performed in strict compliance with board of health rules, the results of such test are admissible so long as the proponent of the evidence lays a foundation which satisfies the court that the test is reliable. People v. Bowers, 716 P.2d 471 (Colo. 1986); Thomas v. People, 895 P.2d 1040 (Colo. 1995) (decided under former § 42-4-1202.2 as it existed prior to the 1994 recodification of title 42).

The "under supervision" clause in former subsection (3)(b) (currently subsection (7)(b)) is read as referring to any "normal duties" and not as a requirement that the supervision be present at the time the technician draws the blood. People v. Mari, 187 Colo. 85, 528 P.2d 917 (1974).

Former subsection (3)(b) (currently subsection (7)(b)) is not read to require on-the-spot supervision. On the contrary, if one's normal duties as a medical technologist include withdrawing blood samples while under the supervision of a physician or registered nurse, he qualified notwithstanding the fact that supervision was not present at this time. People v. Mari, 187 Colo. 85, 528 P.2d 917 (1974).

Effect of failure to apprise driver of substance of former subsection (3)(b) (currently subsection (7)(b)) provision. The provision of this section limiting the withdrawal of blood to qualified medical personnel is not of sufficient importance that an arresting officer's failure to apprise a driver of its substance immunizes the driver from the consequences of his refusal to submit to any chemical sobriety testing. Shiarla v. State, 40 Colo. App. 320, 576 P.2d 193 (1978).

Test to be taken with reasonable promptness. In order to obtain a valid test it is necessary that it be accomplished with reasonable promptness before the evidence dissipates. People v. Dee, 638 P.2d 749 (Colo. 1981).

Where delay in consenting to test. While a motorist has no right under the statute to confer with counsel prior to deciding whether he will consent to a test, where he is permitted to do so, thereafter consents to the test, and the officer is available to see that the test is administered, the primary purpose of the statute is fulfilled unless the delay will materially affect the result of the test. Zahtila v. Motor Vehicle Div., 39 Colo. App. 8, 560 P.2d 847 (1977).

Submitting to a chemical test six hours after an arrest is not sufficient compliance with this section. Cooper v. Dir. of Dept. of Rev., 42 Colo. App. 109, 593 P.2d 1382 (1979).

Burden on driver to tell officer which test driver is willing to take. When an arresting officer offers a driver his statutorily required choice between blood or breath testing, burden is on the driver to tell officer which test he is willing to take. Shumate v. Dept. of Rev., 781 P.2d 181 (Colo. App. 1989).

Officer must comply with driver's request for blood test. Former subsection (3) (currently subsection (7)) requires that when an arresting officer invokes the sanctions of the implied consent (now express consent) law by requesting a driver to submit to chemical testing, the officer has a corresponding duty to comply with the driver's request for a blood test. People v. Gillett, 629 P.2d 613 (Colo. 1981).

Inability of officer to accommodate driver's request for blood test does not constitute good cause. An officer's denial of a driver's right to select a blood test to measure sobriety because the ambulance service retained by the sheriff's office to draw blood was unavailable was not a denial for good cause under the express consent law. Riley v. People, 104 P.3d 218 (Colo. 2004).

Weather-caused delays and high-call volume, however, do not require the case to be dismissed. The police department had adequate protocol for administering requested blood test, but arresting office could not obtain the test within the required two-hour period because of extraordinary circumstances beyond his control. The court, therefore, abused its discretion by dismissing the charges. Turbyne v. People, 151 P.3d 563 (Colo. 2007).
Prosecution must present evidence that extraordinary or "non-routine" circumstances prevented medical personnel from responding to law enforcement's request for a blood test. In the absence of such evidence, defendant's right to receive a blood test violated. People v. Null, 233 P.3d 670 (Colo. 2010).

Trial court acted within its discretion when it suppressed evidence of defendant's refusal to take a breath test after medical personnel failed to respond to administer a blood test and when it dismissed the DUI charge. People v. Null, 233 P.3d 670 (Colo. 2010).

"[M]edical treatment" in subsection (2)(a)(I) is an affirmative event involving the application of medical expertise. An examination by a doctor and a nurse would meet this definition. Brodak v. Visconti, 165 P.3d 896 (Colo. App. 2007).

Because driver was receiving medical treatment at a hospital where breath testing was not available, arresting officer required him to take a blood test. Brodak v. Visconti, 165 P.3d 896 (Colo. App. 2007).

Arresting officer, not driver, has right to choose which test will be taken to determine the presence of drugs. Stanger v. Dept. of Rev., 780 P.2d 64 (Colo. App. 1989).

This section requires taking of test, not merely consenting to it and then partially taking the test, and a test that is sabotaged by the actions of the person tested is of the same legal effect as no test at all. Baker v. State Dept. of Rev., 42 Colo. App. 133, 593 P.2d 1384 (1979).

Under express consent provisions of former subsection (3) (currently subsection (7)), driver's failure to provide urine sample for drug test manifested noncooperation and unwillingness to take the test where more than two hours had elapsed since sample was requested, nearly four hours had elapsed between traffic stop and notice of revocation, driver was given several drinks of water, and driver presented no evidence of a medical condition which would affect his ability to provide requisite sample. Halter v. Dept. of Rev., 857 P.2d 535 (Colo. App. 1993).

Right of refusal of test subject to sanction of license suspension. Under the implied consent statute, the general assembly granted to the driver the right to refuse to take the chemical test, which refusal had to be honored by the arresting officer. Such right of refusal, of course, was subject to the sanction of suspension of one's operator's license. People v. Sanchez, 173 Colo. 188, 476 P.2d 980, (1970).

Test results not admissible and revocation vacated. Verification on notice form used in driver's license revocation proceeding under express consent statute did not by its terms extend to other documents required to be submitted in arresting officer's report, and thus where document purporting to identify person who drew defendant's blood for blood test was not itself verified, and where no testimony was presented which identified that person as one authorized by regulation to perform test, the test results were inadmissible and the trial court did not err in vacating order revoking driver's license. Forvilly v. State Dept. of Rev., 730 P.2d 888 (Colo. App. 1986).

Lack of evidence concerning police officer's certification to conduct an intoxilyzer test does not automatically invalidate result of that test, notwithstanding fact that result of independent test differed from result of test conducted by police officer. Colo. Dept. of Rev. v. McBroom, 753 P.2d 239 (Colo. 1988).


Driver whose license was revoked for failure to provide urine sample for drug test was not denied equal protection under this section which does not provide for alternative types of drug testing in the event of physical impairment. Halter v. Dept. of Rev., 857 P.2d 535 (Colo. App. 1993).
Normally, court must find consent given before test results admitted over defendant’s objection. Where an objection is made by a defendant to the introduction into evidence of the results of a blood alcohol test on the ground that the test was taken without his consent, the trial court, after hearing, must make a specific and affirmative finding that such consent was given before this line of testimony may with propriety be submitted to the jury for its consideration. Compton v. People, 166 Colo. 419, 444 P.2d 263 (1968).

Under express consent provisions of subsection (7), when a driver makes the required election between testing options, an arresting officer has a duty to implement the method initially elected. Lahey v. Dept. of Rev., 881 P.2d 458 (Colo. App. 1994).

A driver's election between testing options is irrevocable and the arresting officer lacks discretion to allow an arrested driver to change the testing option elected. Lahey v. Dept. of Rev., 881 P.2d 458 (Colo. App. 1994); People v. Shinaut, 940 P.2d 380 (Colo. 1997).

Erroneous accommodation of defendant's request to change type of test administered does not warrant the sanction of excluding the test results. People v. Shinaut, 940 P.2d 380 (Colo. 1997).

E. Multiple Samples.

There are no Colorado statutes which require that two samples be taken or that a sample be preserved. People v. Hedrick, 192 Colo. 37, 557 P.2d 378 (1976).

Single breath sample insufficient reason to suppress test results. Suppression of the test results is not required where only one breath sample was taken from each of the defendants. People v. Riggs, 635 P.2d 556 (Colo. 1981).

There is no duty on the state to give to the defendant any more than the results of the test. People v. Hedrick, 192 Colo. 37, 557 P.2d 378 (1976).

Test results admissible. Where there is a failure to prove that the evidence is preservable or that there was any prejudice to defendant by failure to have available to him a breath sample, the wider interests of society favor the admissibility of the test results at trial. People v. Hedrick, 192 Colo. 37, 557 P.2d 378 (1976).

F. Refusal to Take Test.

It is driver's external manifestations of unwillingness or outright refusal to take chemical test for alcohol which are relevant under express consent statute, not driver's state of mind or later recollection of events. Boom v. Charnes, 739 P.2d 868 (Colo. App. 1987), rev'd on other grounds, 766 P.2d 665 (Colo. 1988); Dikeman v. Charnes, 739 P.2d 870 (Colo. App. 1987).

Officer is not required to ascertain driver's subjective state of mind in determining whether driver consents to chemical test for alcohol; objective manifestations of driver are enough to constitute refusal. Colgan v. State Dept. of Rev., 623 P.2d 871 (Colo. 1981); Boom v. Charnes, 739 P.2d 868 (Colo. App. 1987), rev'd on other grounds, 766 P.2d 665 (Colo. 1988).

Driver's actions not to be lightly construed as refusal. An arresting officer should not lightly construe words and actions of a driver to constitute a refusal to be tested. Renck v. Motor Vehicle Div., 636 P.2d 1294 (Colo. App. 1981).

In deciding whether there was a refusal to submit to a chemical test, the trier of fact should consider the driver's words and other manifestations of willingness or unwillingness to take the test. Dolan v. Rust, 195 Colo. 173, 576 P.2d 560 (1978); Hess v. Tice, 43 Colo. App. 47, 598 P.2d 536 (1979).

It is the driver's external manifestations of unwillingness or his outright refusal to take the test which are relevant, and not the driver's state of mind or his later recollection of events. Dolan v. Rust, 195 Colo. 173, 576 P.2d 560 (1978); Hess v. Tice, 43 Colo. App. 47, 598 P.2d 536 (1979).
Automobile driver's request to speak to attorney before taking chemical test to determine blood alcohol level constituted refusal to take test as matter of law. Dikeman v. Charnes, 739 P.2d 870 (Colo. App. 1987).

Inability to decide to submit to test constitutes refusal. An inability to decide to submit to a test, after being fully advised that Miranda rights do not apply, will constitute a refusal. Stephens v. State Dept. of Rev., 671 P.2d 1348 (Colo. App. 1983).

It was reasonable for arresting officer to take driver's silence to be a refusal of testing where driver had not been unable to speak and had answered other questions but failed to speak only in response to the request to take a blood test. Poe v. Dept. of Rev., 859 P.2d 906 (Colo. App. 1993).

Arresting officer not required to compel performance of involuntary blood test where driver had not been unable to speak and had answered other questions but failed to speak only in response to the request to take a test, making it reasonable for officer to take driver's silence to be a refusal of testing. Poe v. Dept. of Rev., 859 P.2d 906 (Colo. App. 1993).

Breath test must be offered where blood test refused. That driver appeared too intoxicated to take breath test after refusing blood test did not amount to refusal to take breath test. Officer was required to offer breath test despite his conclusion that defendant was not physically able to perform test due to intoxication. Sedlmayer v. Charnes, 767 P.2d 754 (Colo. App. 1988).

Breath test suppressed as evidence as a result of officer's erroneous and coercive statement that defendant could lose his license for not taking breath test. After being unable to comply with defendant's request for a blood test, the arresting officer warned that the defendant could lose his license for failure to take a breath test. Turbyne v. People, 151 P.3d 563 (Colo. 2007).

Driver's initial refusal to take the test is sufficient grounds upon which to revoke her license. Rogers v. Charnes, 656 P.2d 1322 (Colo. App. 1982).


Subsection (2)(a)(III), unlike subsection (2)(a)(I), does not impose any condition on an officer's testing request; instead, it governs a driver's duty to cooperate. It does not provide a driver need only cooperate with requests made within two hours of driving. Rather, it requires that, if a law enforcement officer requests a test, the suspected drunk driver must cooperate with the request such that the sample of blood or breath can be obtained within two hours of the person's driving. Stumpf v. Colo. Dept. of Rev., 231 P.3d 1 (Colo. App. 2009).

Subsection (2)(a)(III) requires that drivers provide timely cooperation within a two-hour period if possible, but does not excuse their refusal beyond that period. This does not mean, however, that such requests can never give rise to revocation. Instead, requests made more than two hours after driving remain subject to the reasonable time limitation standard. Stumpf v. Colo. Dept. of Rev., 231 P.3d 1 (Colo. App. 2009).

Hearing officer properly found testing request to have been made within a reasonable time. The request was made and refused by the driver less than three and one-half hours after person's driving. A blood test conducted three and one-half hours after driving is not incapable of yielding potentially relevant evidence. Stumpf v. Colo. Dept. of Rev., 231 P.3d 1 (Colo. App. 2009).

The two-hour standard does not apply to a refusal to take a test. The refusal to take a blood alcohol test is an independent cause for revoking driver's license. Therefore, so long as the request is within a reasonable time, a refusal to take the test may result in loss of a driver's license. Stumpf v. Colo. Dept. of Rev., 231 P.3d 1 (Colo. App. 2009).

A driver's refusal to submit to a test pursuant to the implied consent (now express consent) law is not irrevocable and the driver may reconsider his decision. Zahtila v. Motor Vehicle Div., 39 Colo. App. 8, 560 P.2d 847 (1977).
But licensee must inform officer of reconsideration and consent. Although an attorney informs a police officer that she has advised her client to submit to a blood-alcohol test, unless the licensee informs the officer of his consent to the test, a prior refusal to take the test is grounds for the revocation of his license. McCampbell v. Charnes, 626 P.2d 762 (Colo. App. 1981).

After a driver has refused to submit to a test, recantation must be made to the arresting officer or other law enforcement officer in sufficient time to obtain a sample within two hours of the person's driving. The arresting officer is not obliged to wait with the suspect for two hours in case the suspect may wish to recant the refusal. If the officer has returned to duty, the refusal stands. Gallion v. Colo. Dept. of Rev., 155 P.3d 539 (Colo. App. 2006), aff'd, 171 P.3d 217 (Colo. 2007).

When licensee initially agreed to submit to blood test but then refused test, it became obligation of licensee to tell officer he was willing to consent to an alternative test. Gonzales v. State Dept. of Rev., 728 P.2d 754 (Colo. App. 1986).

Court concludes that there was not a refusal justifying revocation of license when driver retracted refusal to take blood or breath test within two and one-half hours after driving. Pierson v. Colo. Dept. of Rev., 923 P.2d 371 (Colo. App. 1996).

Even absent other driving violations, an investigatory stop is permissible when a police officer has a reasonable suspicion that the driver is committing or has committed a drunk driving offense. Peterson v. Tipton, 833 P.2d 830 (Colo. App. 1992).

Reasonable suspicion justifying initial stop was furnished by nonverbal signal of gas station clerk who had called to report intoxicated customer preparing to drive away. Peterson v. Tipton, 833 P.2d 830 (Colo. App. 1992).

Motorist's refusal to submit to blood alcohol test and breath test was not authorized by statute and was not excused by police's failure to establish statutory qualifications of blood technician to driver's satisfaction. Malveaux v. Colo. Dept. of Rev., 727 P.2d 875 (Colo. App. 1986).

In the case of a vehicular assault, in order for an officer to require a test, the motorist must first be given the opportunity to refuse consent to the test. People v. Maclaren, 251 P.3d 578 (Colo. App. 2010).

In the case of a vehicular assault, failure of an officer to obtain consent prior to subjecting a motorist to a test under this section does not require suppression of the test result or dismissal of the case. Court has broad discretion to suppress evidence or dismiss the case as a sanction for improper police conduct. People v. Maclaren, 251 P.3d 578 (Colo. App. 2010).


Motorist who had agreed to take blood alcohol test until confronted with hospital release form which did not conform with subsection (3)(b) requirements was not subject to having license revoked based solely on his not signing release form. Connolly v. Dept. of Rev., 739 P.2d 927 (Colo. App. 1987).

Refusal is prerequisite for revocation proceeding. A refusal to submit to an appropriate chemical analysis test to determine the alcohol content of breath or blood is the prerequisite for the initiation of revocation proceedings, and such proceedings are civil in nature. DuPuis v. Charnes, 668 P.2d 1 (Colo. 1983).

Finality of order of revocation. An order of revocation issued at the conclusion of a hearing is final. Judicial review must be perfected within thirty days after the date of that hearing as specified in § 42-2-127. If an appeal is not perfected within the statutory time limit, dismissal is mandated. Houston v. Dept. of Rev., 699 P.2d 15 (Colo. App. 1985).
42-4-1301.2. Refusal of test - effect on driver's license - revocation - reinstatement.
(Repealed)

Source: L. 2002: Entire section added with relocations, p. 1907, § 3, effective July 1. L. 2008:
Entire section repealed, p. 255, § 26, effective July 1.

42-4-1301.3. Alcohol and drug driving safety program.

(1) (a) Upon conviction of a violation of section 42-4-1301, the court shall sentence the
defendant in accordance with the provisions of this section and other applicable provisions of
this part 13. The court shall consider the alcohol and drug evaluation required pursuant to this
section prior to sentencing; except that the court may proceed to immediate sentencing without
considering such alcohol and drug evaluation:

(I) (A) If the defendant has no prior convictions or pending charges under this section; or
(B) If the defendant has one or more prior convictions, the prosecuting attorney and the
defendant have stipulated to such conviction or convictions; and

(II) If neither the defendant nor the prosecuting attorney objects.

(b) If the court proceeds to immediate sentencing, without considering an alcohol and drug
evaluation, the alcohol and drug evaluation shall be conducted after sentencing, and the court
shall order the defendant to complete the education and treatment program recommended in the
alcohol and drug evaluation. If the defendant disagrees with the education and treatment program
recommended in the alcohol and drug evaluation, the defendant may request the court to hold a
hearing to determine which education and treatment program should be completed by the
defendant.

(2) (Deleted by amendment, L. 2011, (HB 11-1268), ch. 267, p. 1217, § 1, effective June 2,
2011.)

(3) (a) The judicial department shall administer in each judicial district an alcohol and drug
driving safety program that provides presentence and postsentence alcohol and drug evaluations
on all persons convicted of a violation of section 42-4-1301. The alcohol and drug driving safety
program shall further provide supervision and monitoring of all such persons whose sentences or
terms of probation require completion of a program of alcohol and drug driving safety education
or treatment.

(b) The presentence and postsentence alcohol and drug evaluations shall be conducted by
such persons determined by the judicial department to be qualified to provide evaluation and
supervision services as described in this section.

(c) (I) An alcohol and drug evaluation shall be conducted on all persons convicted of a
violation of section 42-4-1301, and a copy of the report of the evaluation shall be provided to
such person. The report shall be made available to and shall be considered by the court prior to
sentencing unless the court proceeds to immediate sentencing pursuant to the provisions of
subsection (1) of this section.
(II) The report shall contain the defendant's prior traffic record, characteristics and history of alcohol or drug problems, and amenability to rehabilitation. The report shall include a recommendation as to alcohol and drug driving safety education or treatment for the defendant.

(III) The alcohol evaluation shall be conducted and the report prepared by a person who is trained and knowledgeable in the diagnosis of chemical dependency. Such person's duties may also include appearing at sentencing and probation hearings as required, referring defendants to education and treatment agencies in accordance with orders of the court, monitoring defendants in education and treatment programs, notifying the probation department and the court of any defendant failing to meet the conditions of probation or referral to education or treatment, appearing at revocation hearings as required, and providing assistance in data reporting and program evaluation.

(IV) For the purpose of this section, "alcohol and drug driving safety education or treatment" means either level I or level II education or treatment programs that are approved by the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse. Level I programs are to be short-term, didactic education programs. Level II programs are to be therapeutically oriented education, long-term outpatient, and comprehensive residential programs. Any defendant sentenced to level I or level II programs shall be instructed by the court to meet all financial obligations of such programs. If such financial obligations are not met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant's sentence. Nothing in this section shall prohibit treatment agencies from applying to the state for funds to recover the costs of level II treatment for defendants determined to be indigent by the court.

(4) (a) There is hereby created an alcohol and drug driving safety program fund in the office of the state treasurer to the credit of which shall be deposited all moneys as directed by this paragraph (a). The assessment in effect on July 1, 1998, shall remain in effect unless the judicial department and the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, have provided to the general assembly a statement of the cost of the program, including costs of administration for the past and current fiscal year to include a proposed change in the assessment. The general assembly shall then consider the proposed new assessment and approve the amount to be assessed against each person during the following fiscal year in order to ensure that the alcohol and drug driving safety program established in this section shall be financially self-supporting. Any adjustment in the amount to be assessed shall be so noted in the appropriation to the judicial department and the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, as a footnote or line item related to this program in the general appropriation bill. The state auditor shall periodically audit the costs of the programs to determine that they are reasonable and that the rate charged is accurate based on these costs. Any other fines, fees, or costs levied against such person shall not be part of the program fund. The amount assessed for the alcohol and drug evaluation shall be transmitted by the court to the state treasurer to be credited to the alcohol and drug driving safety program fund. Fees charged under sections 27-81-106 (1) and 27-82-103 (1), C.R.S., to approved alcohol and drug treatment facilities that provide level I and level II programs as provided in paragraph (c) of subsection (3) of this section shall be transmitted to the state treasurer, who shall credit the fees to the alcohol and drug driving safety program fund. Upon appropriation by the general assembly, these funds shall be
expended by the judicial department and the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, for the administration of the alcohol and drug driving safety program. In administering the alcohol and drug driving safety program, the judicial department is authorized to contract with any agency for such services as the judicial department deems necessary. Moneys deposited in the alcohol and drug driving safety program fund shall remain in said fund to be used for the purposes set forth in this section and shall not revert or transfer to the general fund except by further act of the general assembly.

(b) The judicial department shall ensure that qualified personnel are placed in the judicial districts. The judicial department and the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, shall jointly develop and maintain criteria for evaluation techniques, treatment referral, data reporting, and program evaluation.

(c) The alcohol and drug driving safety program shall cooperate in providing services to a defendant who resides in a judicial district other than the one in which the arrest was made. Alcohol and drug driving safety programs may cooperate in providing services to any defendant who resides at a location closer to another judicial district's program. The requirements of this section shall not apply to persons who are not residents of Colorado at the time of sentencing.

(d) Notwithstanding any provision of paragraph (a) of this subsection (4) to the contrary, on March 5, 2003, the state treasurer shall deduct one million dollars from the alcohol and drug driving safety program fund and transfer such sum to the general fund.

(5) The provisions of this section are also applicable to any defendant who receives a deferred prosecution in accordance with section 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section 18-1.3-102, C.R.S., and the completion of any stipulated alcohol evaluation, level I or level II education program, or level I or level II treatment program to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.

(6) An approved alcohol or drug treatment facility that provides level I or level II programs as provided in paragraph (c) of subsection (3) of this section shall not require a person to repeat any portion of an alcohol and drug driving safety education or treatment program that he or she has successfully completed while he or she was imprisoned for the current offense.


Editor's note: (1) This section is similar to former § 42-4-1301 (9)(e)(I), (9)(f)(I), (9)(f)(II), and (10) as it existed prior to 2002.

(2) Subsection (5) was originally numbered as § 42-4-1301 (10)(g), and the amendments to it in House Bill 02-1046 were harmonized with subsection (5) as it appeared in Senate Bill 02-057.
Cross references: For the legislative declaration contained in the 2002 act amending subsection (5), see section 1 of chapter 318, Session Laws of Colorado 2002.

42-4-1301.4. Useful public service - definitions - local programs - assessment of costs.

(1) This section applies to any person convicted of a violation of section 42-4-1301 and who is ordered to complete useful public service.

(2) (a) For the purposes of this section and section 42-4-1301, "useful public service" means any work that is beneficial to the public and involves a minimum of direct supervision or other public cost. "Useful public service" does not include any work that would endanger the health or safety of any person convicted of a violation of any of the offenses specified in section 42-4-1301.

(b) The sentencing court, the probation department, the county sheriff, and the board of county commissioners shall cooperate in identifying suitable work assignments. An offender sentenced to such work assignment shall complete the same within the time established by the court.

(3) There may be established in the probation department of each judicial district in the state a useful public service program under the direction of the chief probation officer. It is the purpose of the useful public service program: To identify and seek the cooperation of governmental entities and political subdivisions thereof, as well as corporations organized not for profit or charitable trusts, for the purpose of providing useful public service jobs; to interview and assign persons who have been ordered by the court to perform useful public service to suitable useful public service jobs; and to monitor compliance or noncompliance of such persons in performing useful public service assignments within the time established by the court.

(4) (a) Any general public liability insurance policy obtained pursuant to this section shall be in a sum of not less than the current limit on government liability under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(b) For the purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., "public employee" does not include any person who is sentenced pursuant to section 42-4-1301 to participate in any type of useful public service.

(c) No governmental entity shall be liable under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., or under the "Colorado Employment Security Act", articles 70 to 82 of title 8, C.R.S., for any benefits on account of any person who is sentenced pursuant to section 42-4-1301 to participate in any type of useful public service, but nothing in this paragraph (c) shall prohibit a governmental entity from electing to accept the provisions of the "Workers' Compensation Act of Colorado" by purchasing and keeping in force a policy of workers' compensation insurance covering such person.

(5) In accordance with section 42-4-1307 (14), in addition to any other penalties prescribed in this part 13, the court shall assess an amount, not to exceed one hundred twenty dollars, upon any person required to perform useful public service. Such amount shall be used by the operating agency responsible for overseeing such person's useful public service program to pay the cost of administration of the program, a general public liability policy covering such person, and, if such
person will be covered by workers' compensation insurance pursuant to paragraph (c) of subsection (4) of this section or an insurance policy providing such or similar coverage, the cost of purchasing and keeping in force such insurance coverage. Such amount shall be adjusted from time to time by the general assembly in order to ensure that the useful public service program established in this section shall be financially self-supporting. The proceeds from such amounts shall be used by the operating agency only for defraying the cost of personal services and other operating expenses related to the administration of the program and the cost of purchasing and keeping in force policies of general public liability insurance, workers' compensation insurance, or insurance providing such or similar coverage and shall not be used by the operating agency for any other purpose.

(6) The provisions of this section relating to the performance of useful public service are also applicable to any defendant who receives a deferred prosecution in accordance with section 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section 18-1.3-102, C.R.S., and the completion of any stipulated amount of useful public service hours to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.


**Editor's note:** (1) This section is similar to former § 42-4-1301 (9)(c) and (9)(i) as it existed prior to 2002.

(2) Subsection (5) was originally numbered as § 42-4-1301 (9)(i)(V), and the amendments to it in Senate Bill 02-036 were harmonized with subsection (5) as it appeared in Senate Bill 02-057. Subsection (6) was originally numbered as § 42-4-1301 (9)(c), and the amendments to it in House Bill 02-1046 were harmonized with subsection (6) as it appeared in Senate Bill 02-057.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (6), see section 1 of chapter 318, Session Laws of Colorado 2002.

**42-4-1302. Stopping of suspect.**

A law enforcement officer may stop any person who the officer reasonably suspects is committing or has committed a violation of section 42-4-1301 (1) or (2) and may require the person to give such person's name, address, and an explanation of his or her actions. The stopping shall not constitute an arrest.

**Source:** L. 94: Entire title amended with relocations, p. 2390, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 42-4-1202.1 as it existed prior to 1994, and the former § 42-4-1302 was relocated to § 42-4-1502.

**Cross references:** For provision that the operation of vehicles and the movement of pedestrians pursuant to this section apply upon streets and highways and elsewhere throughout the state, see § 42-4-103 (2)(b).
42-4-1303. Records - prima facie proof.

Official records of the department of public health and environment relating to certification of breath test instruments, certification of operators and operator instructors of breath test instruments, certification of standard solutions, and certification of laboratories shall be official records of the state, and copies thereof, attested by the executive director of the department of public health and environment or the director's deputy and accompanied by a certificate bearing the official seal for said department that the executive director or the director's deputy has custody of said records, shall be admissible in all courts of record and shall constitute prima facie proof of the information contained therein. The department seal required under this section may also consist of a rubber stamp producing a facsimile of the seal stamped upon the document.


Editor's note: (1) This section is similar to former § 42-4-1202.2 as it existed prior to 1994, and the former § 42-4-1303 was relocated to § 42-4-1503.

(2) Amendments to this section by House Bill 94-1029 were harmonized with Senate Bill 94-001.

Cross references: For provision that the operation of vehicles and the movement of pedestrians pursuant to this section apply upon streets and highways and elsewhere throughout the state, see § 42-4-103 (2)(b).
Failure to provide certification documents as to breath test instruments went to weight of breath test results and not to their admissibility. Thomas v. People, 895 P.2d 1040 (Colo. 1995) (decided under former § 42-4-1202.2 as it existed prior to the 1994 recodification of title 42).

42-4-1304. Samples of blood or other bodily substance - duties of department of public health and environment.

(1) The department of public health and environment shall establish a system for obtaining samples of blood or other bodily substance from the bodies of all pilots in command, vessel operators in command, or drivers and pedestrians fifteen years of age or older who die within four hours after involvement in a crash involving a motor vehicle, a vessel, or an aircraft. For purposes of this section, "vessel" has the meaning set forth in section 33-13-102, C.R.S. No person having custody of the body of the deceased shall perform any internal embalming procedure until a blood and urine specimen to be tested for alcohol, drug, and carbon monoxide concentrations has been taken by an appropriately trained person certified by the department of public health and environment. Whenever the driver of the vehicle cannot be immediately determined, the samples shall be obtained from all deceased occupants of the vehicle.

(2) All samples so collected shall be placed in containers of a type designed to preserve the integrity of a sample from the time of collection until it is subjected to analysis.

(3) All samples shall be tested and analyzed in the laboratories of the department of public health and environment, or in any other laboratory approved for this purpose by the department of public health and environment, to determine the amount of alcohol, drugs, and carbon monoxide contained in such samples or the amount of any other substance contained therein as deemed advisable by the department of public health and environment.

(4) The state board of health shall establish and promulgate such administrative regulations and procedures as are necessary to ensure that collection and testing of samples is accomplished to the fullest extent. Such regulations and procedures shall include but not be limited to the following:

(a) The certification of laboratories to ensure that the collection and testing of samples is performed in a competent manner; and

(b) The designation of responsible state and local officials who shall have authority and responsibility to collect samples for testing.

(5) All records of the results of such tests shall be compiled by the department of public health and environment and shall not be public information, but shall be disclosed on request to any interested party in any civil or criminal action arising out of the collision.

(6) All state and local public officials, including investigating law enforcement officers, have authority to and shall follow the procedures established by the department of public health and environment pursuant to this section, including the release of all information to the department of public health and environment concerning such samples and the testing thereof. The Colorado state patrol and the county coroners and their deputies shall assist the department of public health
and environment in the administration and collection of such samples for the purposes of this section.

(7) The office of the highway safety coordinator, the department, and the Colorado state patrol shall have access to the results of the tests of such samples taken as a result of a traffic crash for statistical analysis. The division of parks and wildlife shall have access to the results of the tests of such samples taken as a result of a boating accident for statistical analysis.

(8) Failure to perform the required duties as prescribed by this section and by the administrative regulations and procedures resulting therefrom shall be deemed punishable under section 18-8-405, C.R.S.


Editor's note: (1) This section is similar to former § 42-4-1211 as it existed prior to 1994, and the former § 42-4-1304 was relocated to § 42-4-1504.

(2) Amendments to subsection (6) by House Bill 94-1029 were harmonized with Senate Bill 94-001.

42-4-1305. Open alcoholic beverage container - motor vehicle - prohibited.

(1) Definitions. As used in this section, unless the context otherwise requires:

(a) "Alcoholic beverage" means a beverage as defined in 23 CFR 1270.3 (a).

(b) "Motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways but does not include a vehicle operated exclusively on a rail or rails.

(c) "Open alcoholic beverage container" means a bottle, can, or other receptacle that contains any amount of alcoholic beverage and:

(I) That is open or has a broken seal; or

(II) The contents of which are partially removed.

(d) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position, including but not limited to the glove compartment.

(2) (a) Except as otherwise permitted in paragraph (b) of this subsection (2), a person while in the passenger area of a motor vehicle that is on a public highway of this state or the right-of-way of a public highway of this state may not knowingly:

(I) Drink an alcoholic beverage; or

(II) Have in his or her possession an open alcoholic beverage container.

(b) The provisions of this subsection (2) shall not apply to:
(I) Passengers, other than the driver or a front seat passenger, located in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

(II) The possession by a passenger, other than the driver or a front seat passenger, of an open alcoholic beverage container in the living quarters of a house coach, house trailer, motor home, as defined in section 42-1-102 (57), or trailer coach, as defined in section 42-1-102 (106) (a);

(III) The possession of an open alcoholic beverage container in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk; or

(IV) The possession of an open alcoholic beverage container in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.

(c) A person who violates the provisions of this subsection (2) commits a class A traffic infraction and shall be punished by a fine of fifty dollars and a surcharge of seven dollars and eighty cents as provided in section 42-4-1701 (4) (a) (I) (N).

(3) Nothing in this section shall be construed to preempt or limit the authority of any statutory or home rule town, city, or city and county to adopt ordinances that are no less restrictive than the provisions of this section.


42-4-1306. Interagency task force on drunk driving - creation.

(1) The general assembly finds and declares that:

(a) Drunk and impaired driving continues to cause needless deaths and injuries, especially among young people;

(b) In 2003, there were over thirty thousand arrests for driving under the influence or driving while ability-impaired;

(c) Although Colorado has taken many measures to reduce the incidents of drunk and impaired driving, the persistent regularity of these incidents continues to be a problem, as evidenced by the case of Sonja Marie Devries who was killed in 2004 by a drunk driver who had been convicted of drunk driving on six previous occasions; and

(d) According to the federal national highway transportation safety administration, other states with a statewide interagency task force on drunk driving have seen a decrease in incidents of drunk and impaired driving.

(2) There is hereby created an interagency task force on drunk driving, referred to in this section as the "task force". The task force shall meet regularly to investigate methods of reducing the incidents of drunk and impaired driving and develop recommendations for the state of Colorado regarding the enhancement of government services, education, and intervention to prevent drunk and impaired driving.

(3) (a) The task force shall consist of:
(I) The executive director of the department of transportation or his or her designee who shall also convene the first meeting of the task force;

(II) Two representatives appointed by the executive director of the department of revenue, with the following qualifications:

(A) One representative with expertise in driver's license sanctioning; and

(B) One representative with expertise in enforcement of the state's liquor sales laws;

(III) The state court administrator or his or her designee;

(IV) The chief of the Colorado state patrol or his or her designee;

(V) The state public defender or his or her designee;

(VI) The director of the division of behavioral health in the department of human services;

(VII) The director of the division of probation services or his or her designee;

(VIII) The executive director of the department of public health and environment, or his or her designee;

(IX) The following members selected jointly by the member serving pursuant to subparagraph (I) of this paragraph (a):

(A) A representative of a statewide association of chiefs of police with experience in making arrests for drunk or impaired driving;

(B) A representative of a statewide organization of county sheriffs with experience in making arrests for drunk or impaired driving;

(C) A victim or a family member of a victim of drunk or impaired driving;

(D) A representative of a statewide organization of victims of drunk or impaired driving;

(E) A representative of a statewide organization of district attorneys with experience in prosecuting drunk or impaired driving offenses;

(F) A representative of a statewide organization of criminal defense attorneys with experience in defending persons charged with drunk or impaired driving offenses;

(G) A representative of a statewide organization that represents persons who sell alcoholic beverages for consumption on premises;

(G.5) A representative of a statewide organization that represents persons who sell alcoholic beverages for consumption off premises;

(H) A representative of a statewide organization that represents distributors of alcoholic beverages in Colorado;

(I) A manufacturer of alcoholic beverages in Colorado;
(J) A person under twenty-four years of age who is enrolled in a secondary or postsecondary school; and

(K) A representative of a statewide organization that represents alcohol and drug addiction counselors.

(b) Members selected pursuant to subparagraph (IX) of paragraph (a) of this subsection (3) shall serve terms of two years but may be selected for additional terms.

(c) Members of the task force shall not be compensated for or reimbursed for their expenses incurred in attending meetings of the task force.

(d) The initial meeting of the task force shall be convened on or before August 1, 2006, by the member serving pursuant to subparagraph (I) of paragraph (a) of this subsection (3). At the first meeting, the task force shall select a chair and vice-chair from the members serving pursuant to subparagraphs (I) to (VIII) of paragraph (a) of this subsection (3), who shall serve a term of two years but who may be reelected for additional terms.

(e) The task force shall meet not less frequently than bimonthly and may adopt policies and procedures necessary to carry out its duties.

(4) The task force shall report its findings and recommendations to the judiciary committees of the house of representatives and the senate, or any successor committees, on or before January 15, 2007, and on or before each January 15 thereafter.


42-4-1307. Penalties for traffic offenses involving alcohol and drugs - repeal.

(1) Legislative declaration. The general assembly hereby finds and declares that, for the purposes of sentencing as described in section 18-1-102.5, C.R.S., each sentence for a conviction of a violation of section 42-4-1301 shall include:

(a) A period of imprisonment, which, for a repeat offender, shall include a mandatory minimum period of imprisonment and restrictions on where and how the sentence may be served; and

(b) For a second or subsequent offender, a period of probation. The imposition of a period of probation upon the conviction of a first-time offender shall be subject to the court's discretion as described in paragraph (c) of subsection (3) and paragraph (c) of subsection (4) of this section. The purpose of probation is to help the offender change his or her behavior to reduce the risk of future violations of section 42-4-1301. If a court imposes imprisonment as a penalty for a violation of a condition of his or her probation, the penalty shall constitute a separate period of imprisonment that the offender shall serve in addition to the imprisonment component of his or her original sentence.
(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court for an offense or adjudication for an offense that would constitute a criminal offense if committed by an adult. "Conviction" also includes having received a deferred judgment and sentence or deferred adjudication; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence or deferred adjudication.

(b) "Driving under the influence" or "DUI" means driving a motor vehicle or vehicle when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, that affects the person to a degree that the person is substantially incapable, either mentally or physically, or both mentally and physically, of exercising clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.

(c) "Driving while ability impaired" or "DWAI" means driving a motor vehicle or vehicle when a person has consumed alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, that affects the person to the slightest degree so that the person is less able than the person ordinarily would have been, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.

(d) "UDD" shall have the same meaning as provided in section 42-1-102 (109.7).

(3) **First offenses - DUI, DUI per se, and habitual user.** (a) Except as otherwise provided in subsections (5) and (6) of this section, a person who is convicted of DUI, DUI per se, or habitual user shall be punished by:

(I) Imprisonment in the county jail for at least five days but no more than one year, the minimum period of which shall be mandatory; except that the court may suspend the mandatory minimum period if, as a condition of the suspended sentence, the offender undergoes a presentence or postsentence alcohol and drug evaluation and satisfactorily completes and meets all financial obligations of a level I or level II program as is determined to be appropriate by the alcohol and drug evaluation that is required pursuant to section 42-4-1301.3;

(II) A fine of at least six hundred dollars but no more than one thousand dollars, and the court shall have discretion to suspend the fine; and

(III) At least forty-eight hours but no more than ninety-six hours of useful public service, and the court shall have discretion to suspend the mandatory minimum period of performance of such service.

(b) Notwithstanding the provisions of subparagraph (I) of paragraph (a) of this subsection (3), and except as described in paragraphs (a) and (b) of subsection (5) and paragraph (a) of subsection (6) of this section, a person who is convicted of DUI or DUI per se when the person's BAC was 0.20 or more at the time of driving or within two hours after driving shall be punished by imprisonment in the county jail for at least ten days but not more than one year; except that the court shall have the discretion to employ the sentencing alternatives described in section 18-1.3-106, C.R.S.
(c) In addition to any penalty described in paragraph (a) of this subsection (3), the court may impose a period of probation that shall not exceed two years, which probation may include any conditions permitted by law.

(4) First offenses - DWAI. (a) Except as otherwise provided in subsections (5) and (6) of this section, a person who is convicted of DWAI shall be punished by:

(I) Imprisonment in the county jail for at least two days but no more than one hundred eighty days, the minimum period of which shall be mandatory; except that the court may suspend the mandatory minimum period if, as a condition of the suspended sentence, the offender undergoes a presentence or postsentence alcohol and drug evaluation and satisfactorily completes and meets all financial obligations of a level I or level II program as is determined to be appropriate by the alcohol and drug evaluation that is required pursuant to section 42-4-1301.3; and

(II) A fine of at least two hundred dollars but no more than five hundred dollars, and the court shall have discretion to suspend the fine; and

(III) At least twenty-four hours but no more than forty-eight hours of useful public service, and the court shall not have discretion to suspend the mandatory minimum period of performance of such service.

(b) Notwithstanding the provisions of subparagraph (I) of paragraph (a) of this subsection (4), and except as described in paragraphs (a) and (b) of subsection (5) and paragraph (a) of subsection (6) of this section, a person who is convicted of DWAI when the person's BAC was 0.20 or more at the time of driving or within two hours after driving shall be punished by imprisonment in the county jail for at least ten days but not more than one year; except that the court shall have the discretion to employ the sentencing alternatives described in section 18-1.3-106, C.R.S.

(c) In addition to any penalty described in paragraph (a) of this subsection (4), the court may impose a period of probation that shall not exceed two years, which probation may include any conditions permitted by law.

(5) Second offenses. (a) Except as otherwise provided in subsection (6) of this section, a person who is convicted of DUI, DUI per se, DWAI, or habitual user who, at the time of sentencing, has a prior conviction of DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d), shall be punished by:

(I) Imprisonment in the county jail for at least ten consecutive days but no more than one year; except that the court shall have discretion to employ the sentencing alternatives described in section 18-1.3-106, C.R.S. During the mandatory ten-day period of imprisonment, the person shall not be eligible for earned time or good time pursuant to section 17-26-109, C.R.S., or for trusty prisoner status pursuant to section 17-26-115, C.R.S.; except that the person shall receive credit for any time that he or she served in custody for the violation prior to his or her conviction.

(II) A fine of at least six hundred dollars but no more than one thousand five hundred dollars, and the court shall have discretion to suspend the fine;
(III) At least forty-eight hours but no more than one hundred twenty hours of useful public service, and the court shall not have discretion to suspend the mandatory minimum period of performance of the service; and

(IV) A period of probation of at least two years, which period shall begin immediately upon the commencement of any part of the sentence that is imposed upon the person pursuant to this section, and a suspended sentence of imprisonment in the county jail for one year, as described in subsection (7) of this section; except that the court shall not sentence the defendant to probation if the defendant is sentenced to the department of corrections but shall still sentence the defendant to the provisions of paragraph (b) of subsection (7) of this section. The defendant shall complete all court-ordered programs pursuant to paragraph (b) of subsection (7) of this section before the completion of his or her period of parole.

(b) If a person is convicted of DUI, DUI per se, DWAI, or habitual user and the violation occurred less than five years after the date of a previous violation for which the person was convicted of DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d), the court shall not have discretion to employ any sentencing alternatives described in section 18-1.3-106, C.R.S., during the minimum period of imprisonment described in subparagraph (I) of paragraph (a) of this subsection (5); except that a court may allow the person to participate in a program pursuant to section 18-1.3-106 (1) (a) (II), (1) (a) (IV), or (1) (a) (V), C.R.S., only if the program is available through the county in which the person is imprisoned and only for the purpose of:

(I) Continuing a position of employment that the person held at the time of sentencing for said violation;

(II) Continuing attendance at an educational institution at which the person was enrolled at the time of sentencing for said violation; or

(III) Participating in a court-ordered level II alcohol and drug driving safety education or treatment program, as described in section 42-4-1301.3 (3) (c) (IV).

(c) Notwithstanding the provisions of section 18-1.3-106 (12), C.R.S., if, pursuant to paragraph (a) or (b) of this subsection (5), a court allows a person to participate in a program pursuant to section 18-1.3-106, C.R.S., the person shall not receive one day credit against his or her sentence for each day spent in such a program, as provided in said section 18-1.3-106 (12), C.R.S.

(6) Third and subsequent offenses. (a) A person who is convicted of DUI, DUI per se, DWAI, or habitual user who, at the time of sentencing, has two or more prior convictions of DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d) shall be punished by:
(I) Imprisonment in the county jail for at least sixty consecutive days but no more than one year. During the mandatory sixty-day period of imprisonment, the person shall not be eligible for earned time or good time pursuant to section 17-26-109, C.R.S., or for trusty prisoner status pursuant to section 17-26-115, C.R.S.; except that a person shall receive credit for any time that he or she served in custody for the violation prior to his or her conviction. During the mandatory period of imprisonment, the court shall not have any discretion to employ any sentencing alternatives described in section 18-1.3-106, C.R.S.; except that the person may participate in a program pursuant to section 18-1.3-106 (1) (a) (II), (1) (a) (IV), or (1) (a) (V), C.R.S., only if the program is available through the county in which the person is imprisoned and only for the purpose of:

(A) Continuing a position of employment that the person held at the time of sentencing for said violation;

(B) Continuing attendance at an educational institution at which the person was enrolled at the time of sentencing for said violation; or

(C) Participating in a court-ordered level II alcohol and drug driving safety education or treatment program, as described in section 42-4-1301.3 (3) (c) (IV);

(II) A fine of at least six hundred dollars but no more than one thousand five hundred dollars, and the court shall have discretion to suspend the fine;

(III) At least forty-eight hours but no more than one hundred twenty hours of useful public service, and the court shall not have discretion to suspend the mandatory minimum period of performance of the service; and

(IV) A period of probation of at least two years, which period shall begin immediately upon the commencement of any part of the sentence that is imposed upon the person pursuant to this section, and a suspended sentence of imprisonment in the county jail for one year, as described in subsection (7) of this section; except that the court shall not sentence the defendant to probation if the defendant is sentenced to the department of corrections, but shall still sentence the defendant to the provisions of paragraph (b) of subsection (7) of this section. The defendant shall complete all court-ordered programs pursuant to paragraph (b) of subsection (7) of this section before the completion of his or her period of parole.

(b) Notwithstanding the provisions of section 18-1.3-106 (12), C.R.S., if, pursuant to paragraph (a) of this subsection (6), a court allows a person to participate in a program pursuant to section 18-1.3-106 (1) (a) (II), (1) (a) (IV), or (1) (a) (V), C.R.S., the person shall not receive one day credit against his or her sentence for each day spent in such a program, as provided in said section 18-1.3-106 (12), C.R.S.

(7) Probation-related penalties. When a person is sentenced to a period of probation pursuant to subparagraph (IV) of paragraph (a) of subsection (5) of this section or subparagraph (IV) of paragraph (a) of subsection (6) of this section:

(a) The court shall impose, in addition to any other condition of probation, a sentence to one year of imprisonment in the county jail, which sentence shall be suspended, and against which sentence the person shall not receive credit for any period of imprisonment to which he or she is
sentenced pursuant to subparagraph (I) of paragraph (a) of subsection (5) of this section or subparagraph (I) of paragraph (a) of subsection (6) of this section;

(b) The court:

(I) Shall include, as a condition of the person's probation, a requirement that the person complete a level II alcohol and drug driving safety education or treatment program, as described in section 42-4-1301.3 (3) (c) (IV), at the person's own expense;

(II) May impose an additional period of probation for the purpose of monitoring the person or ensuring that the person continues to receive court-ordered alcohol or substance abuse treatment, which additional period shall not exceed two years;

(III) May require that the person commence the alcohol and drug driving safety education or treatment program described in subparagraph (I) of this paragraph (b) during any period of imprisonment to which the person is sentenced;

(IV) May require the person to appear before the court at any time during the person's period of probation;

(V) May require the person to use an approved ignition interlock device, as defined in section 42-2-132.5 (9) (a), during the period of probation at the person's own expense;

(VI) May require the person to submit to continuous alcohol monitoring using such technology or devices as are available to the court for such purpose; and

(VII) May impose such additional conditions of probation as may be permitted by law.

(c) (I) The court may impose all or part of the suspended sentence described in subparagraph (IV) of paragraph (a) of subsection (5) of this section or subparagraph (IV) of paragraph (a) of subsection (6) of this section at any time during the period of probation if the person violates a condition of his or her probation. During the period of imprisonment, the person shall continue serving the probation sentence with no reduction in time for the sentence to probation. A cumulative period of imprisonment imposed pursuant to this paragraph (c) shall not exceed one year.

(II) In imposing a sentence of imprisonment pursuant to subparagraph (I) of this paragraph (c), the court shall consider the nature of the violation, the report or testimony of the probation department, the impact on public safety, the progress of the person in any court-ordered alcohol and drug driving safety education or treatment program, and any other information that may assist the court in promoting the person's compliance with the conditions of his or her probation. Any imprisonment imposed upon a person by the court pursuant to subparagraph (I) of this paragraph (c) shall be imposed in a manner that promotes the person's compliance with the conditions of his or her probation and not merely as a punitive measure.

(d) The prosecution, the person, the person's counsel, or the person's probation officer may petition the court at any time for an early termination of the period of probation, which the court may grant upon a finding of the court that:
(I) The person has successfully completed a level II alcohol and drug driving safety education or treatment program pursuant to subparagraph (I) of paragraph (b) of this subsection (7);

(II) The person has otherwise complied with the terms and conditions of his or her probation; and

(III) Early termination of the period of probation will not endanger public safety.

(8) **Ignition interlock devices.** In sentencing a person pursuant to this section, courts are encouraged to require the person to use an approved ignition interlock device, as defined in section 42-2-132.5 (9) (a), as a condition of bond, probation, and participation in programs pursuant to section 18-1.3-106, C.R.S.

(9) **Previous convictions.** (a) For the purposes of subsections (5) and (6) of this section, a person shall be deemed to have a previous conviction for DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d), if the person has been convicted under the laws of this state or under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of an act that, if committed within this state, would constitute the offense of DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d).

(b) (I) For sentencing purposes concerning convictions for second and subsequent offenses, prima facie proof of a person's previous convictions shall be established when:

(A) The prosecuting attorney and the person stipulate to the existence of the prior conviction or convictions;

(B) The prosecuting attorney presents to the court a copy of the person's driving record provided by the department of revenue or by a similar agency in another state, which record contains a reference to the previous conviction or convictions; or

(C) The prosecuting attorney presents an authenticated copy of the record of the previous conviction or judgment from a court of record of this state or from a court of any other state, the United States, or any territory subject to the jurisdiction of the United States.

(II) The court shall not proceed to immediate sentencing if the prosecuting attorney and the person have not stipulated to previous convictions or if the prosecution has requested an opportunity to obtain a driving record or a copy of a court record. The prosecuting attorney shall not be required to plead or prove any previous convictions at trial.

(10) **Additional costs and surcharges.** In addition to the penalties prescribed in this section:
(a) Persons convicted of DUI, DUI per se, DWAI, habitual user, and UDD are subject to the costs imposed by section 24-4.1-119 (1) (c), C.R.S., relating to the crime victim compensation fund;

(b) Persons convicted of DUI, DUI per se, DWAI, and habitual user are subject to a surcharge of at least one hundred dollars but no more than five hundred dollars to fund programs to reduce the number of persistent drunk drivers. The surcharge shall be mandatory, and the court shall not have discretion to suspend or waive the surcharge; except that the court may suspend or waive the surcharge if the court determines that a person is indigent. Moneys collected for the surcharge shall be transmitted to the state treasurer, who shall credit the amount collected to the persistent drunk driver cash fund created in section 42-3-303.

(c) Persons convicted of DUI, DUI per se, DWAI, habitual user, and UDD are subject to a surcharge of twenty dollars to be transmitted to the state treasurer who shall deposit moneys collected for the surcharge in the Colorado traumatic brain injury trust fund created pursuant to section 26-1-309, C.R.S.;

(d) (I) Persons convicted of DUI, DUI per se, DWAI, and habitual user are subject to a surcharge of at least one dollar but no more than ten dollars for programs to fund efforts to address alcohol and substance abuse problems among persons in rural areas. The surcharge shall be mandatory, and the court shall not have discretion to suspend or waive the surcharge; except that the court may suspend or waive the surcharge if the court determines that a person is indigent. Any moneys collected for the surcharge shall be transmitted to the state treasurer, who shall credit the same to the rural alcohol and substance abuse cash fund created in section 27-80-117 (3), C.R.S.

(II) This paragraph (d) is repealed, effective July 1, 2016, unless the general assembly extends the repeal of the rural alcohol and substance abuse prevention and treatment program created in section 27-80-117, C.R.S.

(11) Restitution. As a condition of any sentence imposed pursuant to this section, the sentenced person shall be required to make restitution in accordance with the provisions of section 18-1.3-205, C.R.S.

(12) Victim impact panels. In addition to any other penalty provided by law, the court may sentence a person convicted of DUI, DUI per se, DWAI, habitual user, or UDD to attend and pay for one appearance at a victim impact panel approved by the court, for which the fee assessed to the person shall not exceed twenty-five dollars.

(13) Alcohol and drug evaluation and supervision costs. In addition to any fines, fees, or costs levied against a person convicted of DUI, DUI per se, DWAI, habitual user, or UDD, the judge shall assess each such person for the cost of the presentence or postsentence alcohol and drug evaluation and supervision services.

(14) Public service penalty. In addition to any other penalties prescribed in this part 13, the court shall assess an amount, not to exceed one hundred twenty dollars, upon a person required to perform useful public service.
(15) If a defendant is convicted of aggravated driving with a revoked license based upon the commission of DUI, DUI per se, or DWAI pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B):

(a) The court shall convict and sentence the offender for each offense separately;

(b) The court shall impose all of the penalties for the alcohol-related driving offense, as such penalties are described in this section;

(c) The provisions of section 18-1-408, C.R.S., shall not apply to the sentences imposed for either conviction;

(d) Any probation imposed for a conviction under section 42-2-206 may run concurrently with any probation required by this section; and

(e) The department shall reflect both convictions on the defendant's driving record.


ANNOTATION

Annotator's note. For annotations relating to penalties for traffic offenses involving alcohol and drugs, formerly found in § 42-4-1301 (7) prior to the 2010 repeal of that subsection and now found in this section, see the annotations for § 42-4-1301.
PART 14
OTHER OFFENSES

Cross references: For penalties for class 1 and class 2 misdemeanor traffic offenses and class A and class B traffic infractions, see § 42-4-1701 (3)(a).

42-4-1401. Reckless driving - penalty.

(1) A person who drives a motor vehicle, bicycle, electrical assisted bicycle, or low-power scooter in such a manner as to indicate either a wanton or a willful disregard for the safety of persons or property is guilty of reckless driving. A person convicted of reckless driving of a bicycle or electrical assisted bicycle shall not be subject to the provisions of section 42-2-127.

(2) Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense. Upon a second or subsequent conviction, such person shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ten days nor more than six months, or by both such fine and imprisonment.


Editor's note: This section is similar to former § 42-4-1203 as it existed prior to 1994, and the former § 42-4-1401 was relocated to § 42-4-1601.

Cross references: For operating a vehicle in a reckless manner while eluding a peace officer, see § 18-9-116.5; for provision that the operation of vehicles and the movement of pedestrians pursuant to this section apply upon streets and highways and elsewhere throughout the state, see § 42-4-103 (2)(b).

ANNOTATION

Law reviews. For article, "One Year Review of Constitutional and Administrative Law", see 38 Dicta 154 (1961).

Annotator's note. Since § 42-4-1401 is similar to § 42-4-1203 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

A finding of knowing or wilful conduct is sufficient to establish the culpable mental state of recklessness. People v. Yanaga, 635 P.2d 925 (Colo. App. 1981).

One may be said to be guilty of wanton behavior when, although the defendant may not have deliberately intended to injure anyone, he consciously chooses a dangerous course of action which to a reasonable mind creates a strong probability that injury to others will result. Martin v. People, 179 Colo. 237, 499 P.2d 606 (1972).

Wanton and wilful disregard not equivalent of wilful or intentional injury. An allegation in a complaint that defendant was guilty of negligence consisting of wanton and wilful disregard of the rights and safety of others is not equivalent to an allegation of wilful or intentional injury. Healy v. Hewitt, 101 Colo. 92, 71 P.2d 63 (1937).
One who commits reckless driving necessarily has been guilty of careless driving, for the greater degree of negligence includes the lesser. People v. Chapman, 192 Colo. 322, 557 P.2d 1211 (1977).

Both reckless and careless driving offenses consist of two elements: (1) The act of driving a motor vehicle; and (2) the state of mind in "disregard" of or "without due regard" for safety. People v. Chapman, 192 Colo. 322, 557 P.2d 1211 (1977).

In both reckless and careless driving statutes the essence of the mental element is disregard of safety in driving. In both it is the absence of care which renders the driving criminal. People v. Chapman, 192 Colo. 322, 557 P.2d 1211 (1977).

The two offenses differ only in that the degree of negligence required is far more culpable in reckless driving than in careless driving, although it falls short of intentional wrongdoing. People v. Chapman, 192 Colo. 322, 557 P.2d 1211 (1977).


"Wanton or willful disregard" for safety under this section is essentially the same element as the "reckless" state of mind specified in §18-9-116.5. People v. Pena, 962 P.2d 285 (Colo. App. 1997).

Reckless driving is not a lesser included offense of vehicular homicide or vehicular assault. People v. Clary, 950 P.2d 654 (Colo. App. 1997).

Jury question in civil case. Whether or not either of the drivers or both were negligent in violating this section and whether said negligence was the proximate cause of this accident, or whether it was caused by the joint and concurrent negligence of both, were questions of fact for the jury to determine. Amos v. Remington Arms Co., 117 Colo. 399, 188 P.2d 896 (1948).

This section preempts municipal ordinances. Cities and towns not organized as home-rule cities may not enact or enforce any ordinance or regulation relating to motor vehicles which supersedes or attempts to nullify a comparable state statute on reckless driving. This statute makes complete provision for this offense, leaving nothing to supplement. The state having preempted the field, the ordinance must fall. Vanatta v. Town of Steamboat Springs, 146 Colo. 356, 361 P.2d 441 (1961).


42-4-1402. Careless driving - penalty.

(1) A person who drives a motor vehicle, bicycle, electrical assisted bicycle, or low-power scooter in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, is guilty of careless driving. A person convicted of careless driving of a bicycle or electrical assisted bicycle shall not be subject to the provisions of section 42-2-127.

(2) (a) Except as otherwise provided in paragraphs (b) and (c) of this subsection (2), any person who violates any provision of this section commits a class 2 misdemeanor traffic offense.

(b) If the person's actions are the proximate cause of bodily injury to another, such person commits a class 1 misdemeanor traffic offense.

(c) If the person's actions are the proximate cause of death to another, such person commits a class 1 misdemeanor traffic offense.

Editor's note: This section is similar to former § 42-4-1204 as it existed prior to 1994, and the former § 42-4-1402 was relocated to § 42-4-1602.

Cross references: For provision that the operation of vehicles and the movement of pedestrians pursuant to this section apply upon streets and highways and elsewhere throughout the state, see § 42-4-103 (2)(b).

RECENT ANNOTATIONS


ANNOTATION


Annotator's note. Since § 42-4-1402 is similar to § 42-4-1204 as it existed prior to the 1994 amendments to title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

This section is applicable and may be enforced in connection with acts of careless driving committed on private property used as a shopping center parking lot. Clark v. Bunnell, 172 Colo. 32, 470 P.2d 42 (1970); People v. Millican, 172 Colo. 561, 474 P.2d 789 (1970); People v. Erb, 173 Colo. 15, 475 P.2d 330 (1970).

This section preempts ordinance. In prosecution for violation of traffic ordinance, where this section makes complete provision for the offenses involved, leaving nothing to supplement, the ordinance must fall, the state having preempted the field. City of Aurora v. Mitchell, 144 Colo. 526, 357 P.2d 923 (1960).

One who commits reckless driving necessarily has been guilty of careless driving, for the greater degree of negligence includes the lesser. People v. Chapman, 192 Colo. 322, 557 P.2d 1211 (1977).

Both reckless and careless driving offenses consist of two elements: (1) The act of driving a motor vehicle; and (2) the state of mind in "disregard" of or "without due regard" for safety. People v. Chapman, 192 Colo. 322, 557 P.2d 1211 (1977).

In both reckless and careless driving statutes, the essence of the mental element is disregard of safety in driving. In both it is the absence of care which renders the driving criminal. People v. Chapman, 192 Colo. 322, 557 P.2d 1211 (1977).

The two offenses differ only in that the degree of negligence required is far more culpable in reckless driving than in careless driving, although it falls short of intentional wrongdoing. People v. Chapman, 192 Colo. 322, 557 P.2d 1211 (1977).

The actions of a defendant convicted of criminally negligent homicide may be the same as a person convicted under this section. The enactment by the general assembly of a specific criminal statute does not preclude prosecution under a general criminal statute unless a legislative intent to limit prosecution to
the specific statute is shown. Here no such intent is found. People v. Tow, 992 P.2d 665 (Colo. App. 1999).

A child who is in utero at the time of the careless driving offense who is subsequently born alive and dies from injuries sustained due to the offense can be a victim by virtue of the plain meaning of the statute. People v. Lage, 232 P.3d 138 (Colo. App. 2009).

Relationship of this section to probationary license regulation. Since the language of a department of revenue regulation concerning careless driving as an aggravating factor in the denial of a probationary license tracks the language of this section, a conviction under this section necessarily qualifies as an aggravating factor under the regulation. Edwards v. State Dept. of Rev., 42 Colo. App. 52, 592 P.2d 1345 (1978).

Violation of this section held to be negligence per se. Pyles-Knutzen v. Bd. of County Comm'rs, 781 P.2d 164 (Colo. App. 1989).


42-4-1403. Following fire apparatus prohibited.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-1205 as it existed prior to 1994, and the former § 42-4-1403 was relocated to § 42-4-1603.

42-4-1404. Crossing fire hose.

No vehicle shall be driven over any unprotected hose of a fire department used at any fire, alarm of fire, or practice runs or laid down on any street, private driveway, or highway without the consent of the fire department official in command. Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-1206 as it existed prior to 1994, and the former § 42-4-1404 was relocated to § 42-4-1604.

ANNOTATION


42-4-1405. Riding in trailers.

No person shall occupy a trailer while it is being moved upon a public highway. Any person who violates any provision of this section commits a class B traffic infraction.
42-4-1406. Foreign matter on highway prohibited.

(1) (a) No person shall throw or deposit upon or along any highway any glass bottle, glass, stones, nails, tacks, wire, cans, container of human waste, or other substance likely to injure any person, animal, or vehicle upon or along such highway.

(b) No person shall throw, drop, or otherwise expel a lighted cigarette, cigar, match, or other burning material from a motor vehicle upon any highway.

(2) Any person who drops, or permits to be dropped or thrown, upon any highway or structure any destructive or injurious material or lighted or burning substance shall immediately remove the same or cause it to be removed.

(3) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

(4) No person shall excavate a ditch or other aqueduct, or construct any flume or pipeline or any steam, electric, or other railway, or construct any approach to a public highway without written consent of the authority responsible for the maintenance of that highway.

(5) (a) Except as provided in paragraph (b) of this subsection (5), any person who violates any provision of this section commits a class B traffic infraction.

(b) (I) Any person who violates any provision of paragraph (b) of subsection (1) of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(II) Any person who violates paragraph (a) of subsection (1) of this section by throwing or depositing a container of human waste upon or along any highway shall be punished by a fine of five hundred dollars in lieu of the penalty and surcharge prescribed in section 42-4-1701 (4) (a) (I) (N).

(6) As used in this section:

(a) "Container" includes, but is not limited to, a bottle, a can, a box, or a diaper.

(b) "Human waste" means urine or feces produced by a human.


Editor's note: This section is similar to former § 42-4-113 as it existed prior to 1994, and the former § 42-4-1405 was relocated to § 42-4-1605.


Editor's note: This section is similar to former § 42-4-1207 as it existed prior to 1994, and the former § 42-4-1406 was relocated to § 42-4-1606.
42-4-1407. Spilling loads on highways prohibited - prevention of spilling of aggregate, trash, or recyclables.

(1) No vehicle shall be driven or moved on any highway unless such vehicle is constructed or loaded or the load thereof securely covered to prevent any of its load from blowing, dropping, sifting, leaking, or otherwise escaping therefrom; except that material may be dropped for the purpose of securing traction or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

(2) (Deleted by amendment, L. 99, p. 295, § 1, effective July 1, 1999.)

(2.4) (a) A vehicle shall not be driven or moved on a highway if the vehicle is transporting trash or recyclables unless at least one of the following conditions is met:

(I) The load is covered by a tarp or other cover in a manner that prevents the load from blowing, dropping, shifting, leaking, or otherwise escaping from the vehicle;

(II) The vehicle utilizes other technology that prevents the load from blowing, dropping, shifting, leaking, or otherwise escaping from the vehicle;

(III) The load is required to be secured under and complies with 49 CFR parts 392 and 393; or

(IV) The vehicle is loaded in such a manner or the load itself has physical characteristics such that the contents will not escape from the vehicle. Such a load may include, but is not limited to, heavy scrap metal or hydraulically compressed scrap recyclables.

(b) Paragraph (a) of this subsection (2.4) shall not apply to a motor vehicle in the process of collecting trash or recyclables within a one-mile radius of the motor vehicle's last collection point.

(2.5) (a) No vehicle shall be driven or moved on any highway for a distance of more than two miles if the vehicle is transporting aggregate material with a diameter of one inch or less unless:

(I) The load is covered by a tarp or other cover in a manner that prevents the aggregate material from blowing, dropping, sifting, leaking, or otherwise escaping from the vehicle; or

(II) The vehicle utilizes other technology that prevents the aggregate material from blowing, dropping, sifting, leaking, or otherwise escaping from the vehicle.

(b) Nothing in this subsection (2.5) shall apply to a vehicle:

(I) Operating entirely within a marked construction zone;

(II) Involved in maintenance of public roads during snow or ice removal operations; or

(III) Involved in emergency operations when requested by a law enforcement agency or an emergency response authority designated in or pursuant to section 29-22-102, C.R.S.

(2.7) For the purposes of this section:
(a) "Aggregate material" means any rock, clay, silts, gravel, limestone, dimension stone, marble, and shale; except that "aggregate material" does not include hot asphalt, including asphalt patching material, wet concrete, or other materials not susceptible to blowing.

(b) "Recyclables" means material or objects that can be reused, reprocessed, remanufactured, reclaimed, or recycled.

(c) "Trash" means material or objects that have been or are in the process of being discarded or transported.

(3) (a) Except as otherwise provided in paragraph (b) or (c) of this subsection (3), any person who violates any provision of this section commits a class B traffic infraction.

(b) Any person who violates any provision of this section while driving or moving a car or pickup truck without causing bodily injury to another person commits a class A traffic infraction.

(c) Any person who violates any provision of this section while driving or moving a car or pickup truck and thereby proximately causes bodily injury to another person commits a class 2 misdemeanor traffic offense.


Editor's note: (1) This section is similar to former § 42-4-1208 as it existed prior to 1994, and the former § 42-4-1407 was relocated to § 42-4-1607.

(2) Subsection (2.5) was originally numbered as (2) in House Bill 98-1001, but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 1998 act amending this section, see section 1 of chapter 312, Session Laws of Colorado 1998.

42-4-1407.5. Splash guards - when required.

(1) As used in this section, unless the context otherwise requires:

(a) "Splash guards" means mud flaps, rubber, plastic or fabric aprons, or other devices directly behind the rear-most wheels, designed to minimize the spray of water and other substances to the rear.

(b) "Splash guards" must, at a minimum, be wide enough to cover the full tread of the tire or tires being protected, hang perpendicular from the vehicle not more than ten inches above the surface of the street or highway when the vehicle is empty, and generally maintain their perpendicular relationship under normal driving conditions.

(2) Except as otherwise permitted in this section, no vehicle or motor vehicle shall be driven or moved on any street or highway unless the vehicle or motor vehicle is equipped with splash guards. However, vehicles and motor vehicles with splash guards that violate this section shall be
allowed to remain in service for the time necessary to continue to a place where the deficient splash guards will be replaced. Such replacement shall occur at the first reasonable opportunity.

(3) This section does not apply to:

(a) Passenger-carrying motor vehicles registered pursuant to section 42-3-306 (2);

(b) Trucks and truck tractors registered pursuant to section 42-3-306 (4) or (5) having an empty weight of ten thousand pounds or less;

(c) Trailers equipped with fenders or utility pole trailers;

(d) Vehicles while involved in chip and seal or paving operations or road widening equipment;

(e) Truck tractors or converter dollies when used in combination with other vehicles;

(f) Vehicles drawn by animals; or

(g) Bicycles or electrical assisted bicycles.

(4) Any person who violates any provision of this section commits a class B traffic infraction.

Source: L. 99: Entire section added, p. 296, § 2, effective July 1. L. 2006: (3)(a) and (3)(b) amended, p. 1512, § 75, effective June 1. L. 2009: (2) amended, (SB 09-014), ch. 136, p. 592, § 1, effective August 5; (3)(g) amended, (HB 09-1026), ch. 281, p. 1280, § 59, effective October 1. L. 2010: (3)(a) and (3)(b) amended, (SB 10-212), ch. 412, p. 2039, § 19, effective July 1.

42-4-1408. Operation of motor vehicles on property under control of or owned by parks and recreation districts.

(1) Any metropolitan recreation district, any park and recreation district organized pursuant to article 1 of title 32, C.R.S., or any recreation district organized pursuant to the provisions of part 7 of article 20 of title 30, C.R.S., referred to in this section as a "district", shall have the authority to designate areas on property owned or controlled by the district in which the operation of motor vehicles shall be prohibited. Areas in which it shall be prohibited to operate motor vehicles shall be clearly posted by a district.

(2) It is unlawful for any person to operate a motor vehicle in an area owned or under the control of a district if the district has declared the operation of motor vehicles to be prohibited in such area, as provided in subsection (1) of this section.

(3) Any person who violates any provision of this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-1212 as it existed prior to 1994, and the former § 42-4-1408 was relocated to § 42-4-1608.

42-4-1409. Compulsory insurance - penalty - legislative intent.
(1) No owner of a motor vehicle or low-power scooter required to be registered in this state shall operate the vehicle or permit it to be operated on the public highways of this state when the owner has failed to have a complying policy or certificate of self-insurance in full force and effect as required by law.

(2) No person shall operate a motor vehicle or low-power scooter on the public highways of this state without a complying policy or certificate of self-insurance in full force and effect as required by law.

(3) When an accident occurs, or when requested to do so following any lawful traffic contact or during any traffic investigation by a peace officer, no owner or operator of a motor vehicle or low-power scooter shall fail to present to the requesting officer immediate evidence of a complying policy or certificate of self-insurance in full force and effect as required by law.

(4) (a) Any person who violates the provisions of subsection (1), (2), or (3) of this section commits a class 1 misdemeanor traffic offense. The minimum fine imposed by section 42-4-1701 (3) (a) (II) (A) shall be mandatory, and the defendant shall be punished by a minimum mandatory fine of not less than five hundred dollars. The court may suspend up to one half of the fine upon a showing that appropriate insurance as required pursuant to section 10-4-619 or 10-4-624, C.R.S., has been obtained. Nothing in this paragraph (a) shall be construed to prevent the court from imposing a fine greater than the minimum mandatory fine.

(b) Upon a second or subsequent conviction under this section within a period of five years following a prior conviction under this section, in addition to any imprisonment imposed pursuant to section 42-4-1701 (3) (a) (II) (A), the defendant shall be punished by a minimum mandatory fine of not less than one thousand dollars, and the court shall not suspend such minimum fine. The court or the court collections' investigator may establish a payment schedule for a person convicted of the provisions of subsection (1), (2), or (3) of this section, and the provisions of section 16-11-101.6, C.R.S., shall apply. The court may suspend up to one half of the fine upon a showing that appropriate insurance as required pursuant to section 10-4-619 or 10-4-624, C.R.S., has been obtained.

(c) In addition to the penalties prescribed in paragraphs (a) and (b) of this subsection (4), any person convicted pursuant to this section may, at the discretion of the court, be sentenced to perform not less than forty hours of community service, subject to the provisions of section 18-1.3-507, C.R.S.

(5) Testimony of the failure of any owner or operator of a motor vehicle or low-power scooter to present immediate evidence of a complying policy or certificate of self-insurance in full force and effect as required by law, when requested to do so by a peace officer, shall constitute prima facie evidence, at a trial concerning a violation charged under subsection (1) or (2) of this section, that such owner or operator of a motor vehicle violated subsection (1) or (2) of this section.

(6) No person charged with violating subsection (1), (2), or (3) of this section shall be convicted if the person produces in court a bona fide complying policy or certificate of self-insurance that was in full force and effect as required by law at the time of the alleged violation.
(7) The owner of a motor vehicle or low-power scooter, upon receipt of an affirmation of insurance as described in section 42-3-113 (2) and (3), shall sign and date such affirmation in the space provided.

(8) (Deleted by amendment, L. 2003, p. 2648, § 7, effective July 1, 2003.)

(9) It is the intent of the general assembly that the moneys collected as fines imposed pursuant to paragraphs (a) and (b) of subsection (4) of this section are to be used for the supervision of the public highways. The general assembly determines that law enforcement agencies that patrol and maintain the public safety on public highways are supervising the public highways. The general assembly further determines that a clerk and recorder for a county is supervising the public highways through his or her enforcement of the requirements for demonstration of proof of motor vehicle insurance pursuant to section 42-3-105 (1) (d). Therefore, of the moneys collected from fines pursuant to paragraphs (a) and (b) of subsection (4) of this section, fifty percent of these moneys shall be transferred to the law enforcement agency that issued the ticket for a violation of this section. The remaining fifty percent of the moneys collected from fines for violations of paragraph (a) or (b) of subsection (4) of this section shall be transmitted to the clerk and recorder for the county in which the violation occurred.


Editor’s note: (1) This section is similar to former § 42-4-1213 as it existed prior to 1994, and the former § 42-4-1409 was relocated to § 42-4-1609.

(2) Amendments to subsections (1), (2), (3), (5), and (6) by House Bill 03-1188 and Senate Bill 03-239 were harmonized.

(3) Amendments to subsections (4)(a) and (4)(b) by House Bill 03-1188, House Bill 03-1223, and Senate Bill 03-239 were harmonized.

(4) Section 137 of Senate Bill 09-292 changed the effective date of subsections (1), (2), (3), (5), and (7) from October 1, 2009, to July 1, 2010.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4)(c), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

While the legislature has clearly not barred the holder of legal title from maintaining liability coverage, it has nevertheless compelled a conditional vendee with an immediate right of possession to provide the statutorily required coverage and subjected the vendee to personal liability and criminal sanctions for failing to do so. Sachtjen v. Am. Family Mut. Ins. Co., 49 P.3d 1146 (Colo. 2002).
It is not the prosecution's burden to prove, as an element of the offense, that an officer requested proof of insurance before an offender may be convicted under subsection (2). Rather, the prosecution's burden is to prove beyond a reasonable doubt that the offender was driving and that he or she had no insurance. People v. Martinez, 179 P.3d 23 (Colo. App. 2007).

Because subsection (6) enacts a safeguard to protect drivers who have insurance but who are unable to produce evidence of it when stopped by an officer, and since the defendant never asserted or suggested during trial that he had insurance, the evidence was sufficient to support the conclusion that defendant was guilty under subsection (2). People v. Martinez, 179 P.3d 23 (Colo. App. 2007).

Even though peace officer did not explicitly ask for proof of insurance, there was prima facie evidence of lack of insurance when defendant did not produce proof of insurance and such documentation was not found during a search of the vehicle. People v. Espinoza, 195 P.3d 1122 (Colo. App. 2008).


(1) Any person convicted of violating section 42-4-1409 (1) shall file and maintain proof of financial responsibility for the future as prescribed in sections 42-7-408 to 42-7-412. Said proof of insurance shall be maintained for a period of three years from the date of conviction.

(2) The clerk of a court or the judge of a court which has no clerk shall forward to the executive director of the department of revenue a certified record of any conviction under section 42-4-1409 (1). Upon receipt of any such certified record, the director shall give written notice to the person convicted that such person shall be required to provide proof of financial responsibility for the future for a period of three years from the date of conviction and advising such person of the manner in which proof is to be provided. If no proof as required is provided to the director within a period of twenty days from the time notice is given or if at any time when proof is required to be maintained it is not so maintained or becomes invalid, the director shall suspend the driver's license of the person from whom proof is required and shall not reinstate the license of such person until proof of financial responsibility is provided.

(3) Repealed.


ANNOTATION

Law reviews. For article, "There Must Be Fifty Ways to Lose Your (Driver's) License", see 22 Colo. Law. 2385 (1993).

42-4-1411. Use of earphones while driving.

(1) (a) No person shall operate a motor vehicle while wearing earphones.

(b) For purposes of this subsection (1), "earphones" includes any headset, radio, tape player, or other similar device which provides the listener with radio programs, music, or other recorded information through a device attached to the head and which covers all of or a portion of the
ears. "Earphones" does not include speakers or other listening devices which are built into protective headgear.

(2) Any person who violates this section commits a class B traffic infraction.


Editor's note: This section is similar to former § 42-4-237 as it existed prior to 1994, and the former § 42-4-1411 was relocated to § 42-4-1611.


(1) Every person riding a bicycle or electrical assisted bicycle shall have all of the rights and duties applicable to the driver of any other vehicle under this article, except as to special regulations in this article and except as to those provisions which by their nature can have no application. Said riders shall comply with the rules set forth in this section and section 42-4-221, and, when using streets and highways within incorporated cities and towns, shall be subject to local ordinances regulating the operation of bicycles and electrical assisted bicycles as provided in section 42-4-111.

(2) It is the intent of the general assembly that nothing contained in House Bill No. 1246, enacted at the second regular session of the fifty-sixth general assembly, shall in any way be construed to modify or increase the duty of the department of transportation or any political subdivision to sign or maintain highways or sidewalks or to affect or increase the liability of the state of Colorado or any political subdivision under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(3) No bicycle or electrical assisted bicycle shall be used to carry more persons at one time than the number for which it is designed or equipped.

(4) No person riding upon any bicycle or electrical assisted bicycle shall attach the same or himself or herself to any motor vehicle upon a roadway.

(5) (a) Any person operating a bicycle or an electrical assisted bicycle upon a roadway at less than the normal speed of traffic shall ride in the right-hand lane, subject to the following conditions:

(I) If the right-hand lane then available for traffic is wide enough to be safely shared with overtaking vehicles, a bicyclist shall ride far enough to the right as judged safe by the bicyclist to facilitate the movement of such overtaking vehicles unless other conditions make it unsafe to do so.

(II) A bicyclist may use a lane other than the right-hand lane when:

(A) Preparing for a left turn at an intersection or into a private roadway or driveway;

(B) Overtaking a slower vehicle; or

(C) Taking reasonably necessary precautions to avoid hazards or road conditions.
(III) Upon approaching an intersection where right turns are permitted and there is a dedicated right-turn lane, a bicyclist may ride on the left-hand portion of the dedicated right-turn lane even if the bicyclist does not intend to turn right.

(b) A bicyclist shall not be expected or required to:

(I) Ride over or through hazards at the edge of a roadway, including but not limited to fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards, or narrow lanes; or

(II) Ride without a reasonable safety margin on the right-hand side of the roadway.

(c) A person operating a bicycle or an electrical assisted bicycle upon a one-way roadway with two or more marked traffic lanes may ride as near to the left-hand curb or edge of such roadway as judged safe by the bicyclist, subject to the following conditions:

(I) If the left-hand lane then available for traffic is wide enough to be safely shared with overtaking vehicles, a bicyclist shall ride far enough to the left as judged safe by the bicyclist to facilitate the movement of such overtaking vehicles unless other conditions make it unsafe to do so.

(II) A bicyclist shall not be expected or required to:

(A) Ride over or through hazards at the edge of a roadway, including but not limited to fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards, or narrow lanes; or

(B) Ride without a reasonable safety margin on the left-hand side of the roadway.

(6) (a) Persons riding bicycles or electrical assisted bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(b) Persons riding bicycles or electrical assisted bicycles two abreast shall not impede the normal and reasonable movement of traffic and, on a laned roadway, shall ride within a single lane.

(7) A person operating a bicycle or electrical assisted bicycle shall keep at least one hand on the handlebars at all times.

(8) (a) A person riding a bicycle or electrical assisted bicycle intending to turn left shall follow a course described in sections 42-4-901 (1), 42-4-903, and 42-4-1007 or may make a left turn in the manner prescribed in paragraph (b) of this subsection (8).

(b) A person riding a bicycle or electrical assisted bicycle intending to turn left shall approach the turn as closely as practicable to the right-hand curb or edge of the roadway. After proceeding across the intersecting roadway to the far corner of the curb or intersection of the roadway edges, the bicyclist shall stop, as much as practicable, out of the way of traffic. After stopping, the bicyclist shall yield to any traffic proceeding in either direction along the roadway that the bicyclist had been using. After yielding and complying with any official traffic control

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device or police officer regulating traffic on the highway along which the bicyclist intends to proceed, the bicyclist may proceed in the new direction.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection (8), the transportation commission and local authorities in their respective jurisdictions may cause official traffic control devices to be placed on roadways and thereby require and direct that a specific course be traveled.

(9) (a) Except as otherwise provided in this subsection (9), every person riding a bicycle or electrical assisted bicycle shall signal the intention to turn or stop in accordance with section 42-4-903; except that a person riding a bicycle or electrical assisted bicycle may signal a right turn with the right arm extended horizontally.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the bicycle or electrical assisted bicycle before turning and shall be given while the bicycle or electrical assisted bicycle is stopped waiting to turn. A signal by hand and arm need not be given continuously if the hand is needed in the control or operation of the bicycle or electrical assisted bicycle.

(10) (a) A person riding a bicycle or electrical assisted bicycle upon and along a sidewalk or pathway or across a roadway upon and along a crosswalk shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian. A person riding a bicycle in a crosswalk shall do so in a manner that is safe for pedestrians.

(b) A person shall not ride a bicycle or electrical assisted bicycle upon and along a sidewalk or pathway or across a roadway upon and along a crosswalk where such use of bicycles or electrical assisted bicycles is prohibited by official traffic control devices or local ordinances. A person riding a bicycle or electrical assisted bicycle shall dismount before entering any crosswalk where required by official traffic control devices or local ordinances.

(c) A person riding or walking a bicycle or electrical assisted bicycle upon and along a sidewalk or pathway or across a roadway upon and along a crosswalk shall have all the rights and duties applicable to a pedestrian under the same circumstances, including, but not limited to, the rights and duties granted and required by section 42-4-802.

(d) (Deleted by amendment, L. 2005, p. 1353, § 1, effective July 1, 2005.)

(11) (a) A person may park a bicycle or electrical assisted bicycle on a sidewalk unless prohibited or restricted by an official traffic control device or local ordinance.

(b) A bicycle or electrical assisted bicycle parked on a sidewalk shall not impede the normal and reasonable movement of pedestrian or other traffic.

(c) A bicycle or electrical assisted bicycle may be parked on the road at any angle to the curb or edge of the road at any location where parking is allowed.

(d) A bicycle or electrical assisted bicycle may be parked on the road abreast of another such bicycle or bicycles near the side of the road or any location where parking is allowed in such a manner as does not impede the normal and reasonable movement of traffic.
(e) In all other respects, bicycles or electrical assisted bicycles parked anywhere on a highway shall conform to the provisions of part 12 of this article regulating the parking of vehicles.

(12) (a) Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense; except that section 42-2-127 shall not apply.

(b) Any person riding a bicycle or electrical assisted bicycle who violates any provision of this article other than this section which is applicable to such a vehicle and for which a penalty is specified shall be subject to the same specified penalty as any other vehicle; except that section 42-2-127 shall not apply.

(13) Upon request, the law enforcement agency having jurisdiction shall complete a report concerning an injury or death incident that involves a bicycle or electrical assisted bicycle on the roadways of the state, even if such accident does not involve a motor vehicle.

(14) Except as authorized by section 42-4-111, the rider of an electrical assisted bicycle shall not use the electrical motor on a bike or pedestrian path.

Source: L. 94: Entire title amended with relocations, p. 2395, § 1, effective January 1, 1995. L. 2005: (6)(a)(I), (9)(a), and (10) amended and (13) added, p. 1353, § 1, effective July 1. L. 2009: (5) and (6) R&RE, (SB 09-148), ch. 239, p. 1089, § 6, effective August 5; (1), (3), (4), IP(5), (5)(a), IP(6)(a), (6)(a)(II), (7), (8)(a), (8)(b), (9), (10)(a), (10)(b), (10)(c), (11), (12)(b), and (13) amended and (14) added, (HB 09-1026), ch. 281, p. 1281, §§ 62, 61, effective October 1; IP(5)(a), IP(5)(c), and (6) amended, (SB 09-292), ch. 369, p. 1987, § 139, effective October 1.

Editor's note: (1) This section is similar to former § 42-4-106.5 as it existed prior to 1994.

(2) Subsection (2) refers to House Bill No. 1246, enacted at the second regular session of the fifty-sixth general assembly. That bill can be found in chapter 299, Session Laws of Colorado 1988.

(3) Amendments to the introductory portion to subsection (5), subsection (5)(a), the introductory portion to subsection (6), and subsection (6)(a)(II) by House Bill 09-1026 were superseded by Senate Bill 09-148.

42-4-1413. Eluding or attempting to elude a police officer.

Any operator of a motor vehicle who the officer has reasonable grounds to believe has violated a state law or municipal ordinance, who has received a visual or audible signal such as a red light or a siren from a police officer driving a marked vehicle showing the same to be an official police, sheriff, or Colorado state patrol car directing the operator to bring the operator's vehicle to a stop, and who willfully increases his or her speed or extinguishes his or her lights in an attempt to elude such police officer, or willfully attempts in any other manner to elude the police officer, or does elude such police officer commits a class 2 misdemeanor traffic offense.


Editor's note: This section is similar to former § 42-4-1512 as it existed prior to 1994.

Cross references: For provision that the operation of vehicles and the movement of pedestrians pursuant to this section apply upon streets and highways and elsewhere throughout the state, see § 42-4-103 (2)(b).
**ANNOTATION**

*Annotator's note.* Since § 42-4-1413 is similar to § 42-4-1512 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included in the annotations to this section.

**Fleeing on foot is included in the phrase "any other manner" of eluding,** and the maxim ejusdem generis does not limit eluding to only those situations in which the operator uses the motor vehicle to elude the police officer, particularly given that § 18-9-116.5 criminalizes vehicular eluding while recklessly operating a motor vehicle. People v. Espinoza, 195 P.3d 1122 (Colo. App. 2008).


**42-4-1414. Use of dyed fuel on highways prohibited.**

(1) No person shall operate a motor vehicle upon any highway of the state using diesel fuel dyed to show that no taxes have been collected on the fuel.

(2) (a) Any person who violates subsection (1) of this section commits a class B traffic infraction.

(b) Any person who commits a second violation of subsection (1) of this section within a twelve-month period shall be subject to an increased penalty pursuant to section 42-4-1701 (4) (a) (I) (N).

(c) Any person who commits a third or subsequent violation of subsection (1) of this section within a twelve-month period shall be subject to an increased penalty pursuant to section 42-4-1701 (4) (a) (I) (N).

(3) Any person violating any provision of this section shall be subject to audit by the department regarding payment of motor fuel tax.

**Source:** L. 99: Entire section added, p. 665, § 2, effective May 18.

**42-4-1415. Radar jamming devices prohibited - penalty.**

(1) (a) No person shall use, possess, or sell a radar jamming device.

(b) No person shall operate a motor vehicle with a radar jamming device in the motor vehicle.

(2) (a) For purposes of this section, "radar jamming device" means any active or passive device, instrument, mechanism, or equipment that is designed or intended to interfere with, disrupt, or scramble the radar or laser that is used by law enforcement agencies and peace officers to measure the speed of motor vehicles. "Radar jamming device" includes but is not limited to devices commonly referred to as "jammers" or "scramblers".
(b) For purposes of this section, "radar jamming device" shall not include equipment that is legal under FCC regulations, such as a citizens' band radio, ham radio, or any other similar electronic equipment.

(3) Radar jamming devices are subject to seizure by any peace officer and may be confiscated and destroyed by order of the court in which a violation of this section is charged.

(4) A violation of subsection (1) of this section is a class 2 misdemeanor traffic offense, punishable as provided in section 42-4-1701 (3) (a) (II) (A).

(5) The provisions of subsection (1) of this section shall not apply to peace officers acting in their official capacity.


42-4-1416. Failure to present a valid transit pass or coupon - fare inspector authorization - definitions.

(1) A person commits failure to present a valid transit pass or coupon if the person occupies, rides in, or uses a public transportation vehicle without paying the applicable fare or providing a valid transit pass or coupon.

(2) A person shall not occupy, ride in, or use a public transportation vehicle without possession of proof of prior fare payment. A person shall present proof of prior fare payment upon demand of a fare inspector appointed or employed pursuant to subsection (4) of this section, a peace officer, or any other employee or agent of a public transportation entity.

(3) A violation of this section is a class B traffic infraction and is punishable by a fine of seventy-five dollars. Notwithstanding any other provision of law, fines for a violation of subsection (1) of this section shall be retained by the clerk of the court in the city and county of Denver upon receipt by the clerk for a violation occurring within that jurisdiction, or transmitted to the state judicial department if the fine is receipted by the clerk of the court of any other county.

(4) (a) Public transportation entities may appoint or employ, with the power of removal, fare inspectors as necessary to enforce the provisions of this section. The employing public transportation entity shall determine the requirements for employment as a fare inspector.

(b) A fare inspector appointed or employed pursuant to this section is authorized to enforce the provisions of this section while acting within the scope of his or her authority and in the performance of his or her duties. A fare inspector is authorized to issue a citation to a person who commits failure to provide a valid transit pass or coupon in violation of this section. The fare inspector shall issue a citation on behalf of the county in which the person occupying, riding in, or using a public transportation vehicle without paying the applicable fare is located at the time the violation is discovered. The public transportation entity whose fare inspector issued the citation shall timely deliver the citation to the clerk of the county court for the jurisdiction in which the accused person is located at the time the violation is discovered.

(5) As used in this section, unless the context otherwise requires:
(a) "Proof of prior fare payment" means:

(I) A transit pass valid for the day and time of use;

(II) A receipt showing payment of the applicable fare for use of a public transportation vehicle during the day and time specified in the receipt; or

(III) A prepaid ticket or series of tickets showing cancellation by a public transportation entity used within the day and time specified in the ticket.

(b) "Public transportation entity" means a mass transit district, a mass transit authority, or any other public entity authorized under the laws of this state to provide mass transportation services to the general public.

(c) "Public transportation vehicle" means a bus, a train, a light rail vehicle, or any other mode of transportation used by a public transportation entity to provide transportation services to the general public.

(d) "Transit pass" means any pass, coupon, transfer, card, identification, token, ticket, or other document, whether issued by a public transportation entity or issued by an employer to employees pursuant to an agreement with a public transportation entity, used to obtain public transit.

PART 15
MOTORCYCLES

Cross references: For minimum safety standards for motorcycles, see § 42-4-232; for penalties for class A traffic infractions, see § 42-4-1701 (3)(a)(I).

42-4-1501. Traffic laws apply to persons operating motorcycles - special permits.

(1) Every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this article, except as to special regulations in this article and except as to those provisions of this article which by their nature can have no application.

(2) For the purposes of a prearranged organized special event and upon a showing that safety will be reasonably maintained, the department of transportation may grant a special permit exempting the operation of a motorcycle from any requirement of this part 15.


Editor's note: This section is similar to former § 42-4-1301 as it existed prior to 1994, and the former § 42-4-1501 was relocated to § 42-4-1701.

42-4-1502. Riding on motorcycles - protective helmet.

(1) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent seat if designed for two persons or upon another seat firmly attached to the motorcycle at the rear or side of the operator.

(2) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on either side of the motorcycle.

(3) No person shall operate a motorcycle while carrying packages, bundles, or other articles which prevent the person from keeping both hands on the handlebars.

(4) No operator shall carry any person nor shall any person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

(4.5) (a) A person shall not operate or ride as a passenger on a motorcycle or low-power scooter on a roadway unless:

(I) Each person under eighteen years of age is wearing a protective helmet of a type and design manufactured for use by operators of motorcycles;

(II) The protective helmet conforms to the design and specifications set forth in paragraph (b) of this subsection (4.5); and
(b) A protective helmet required to be worn by this subsection (4.5) shall:

(I) Be designed to reduce injuries to the user resulting from head impacts and to protect the user by remaining on the user's head, deflecting blows, resisting penetration, and spreading the force of impact;

(II) Consist of lining, padding, and chin strap; and

(III) Meet or exceed the standards established in the United States department of transportation federal motor vehicle safety standard no. 218, 49 CFR 571.218, for motorcycle helmets.

(5) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-1302 as it existed prior to 1994, and the former § 42-4-1502 was relocated to § 42-4-1703.

42-4-1503. Operating motorcycles on roadways laned for traffic.

(1) All motorcycles are entitled to full use of a traffic lane, and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a traffic lane. This subsection (1) shall not apply to motorcycles operated two abreast in a single lane.

(2) The operator of a motorcycle shall not overtake or pass in the same lane occupied by the vehicle being overtaken.

(3) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(4) Motorcycles shall not be operated more than two abreast in a single lane.

(5) Subsections (2) and (3) of this section shall not apply to police officers in the performance of their official duties.

(6) Any person who violates any provision of this section commits a class A traffic infraction.


Editor's note: This section is similar to former § 42-4-1303 as it existed prior to 1994, and the former § 42-4-1503 was relocated to § 42-4-1704.

42-4-1504. Clinging to other vehicles.
No person riding upon a motorcycle shall attach himself, herself, or the motorcycle to any other vehicle on a roadway. Any person who violates any provision of this section commits a class A traffic infraction.

**Source:** L. 94: Entire title amended with relocations, p. 2399, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 42-4-1304 as it existed prior to 1994, and the former § 42-4-1504 was relocated to § 42-4-1705.
PART 16
ACCIDENTS AND ACCIDENT REPORTS

Editor's note: Section 42-4-103 (2)(b) provides that the provisions of this part 16 apply to the operation of vehicles and the movement of pedestrians upon streets and highways and elsewhere throughout the state.

Cross references: For penalties for class 1 and class 2 misdemeanor traffic offenses, see § 42-4-1701 (3)(a)(II).

42-4-1601. Accidents involving death or personal injuries - duties.

(1) The driver of any vehicle directly involved in an accident resulting in injury to, serious bodily injury to, or death of any person shall immediately stop such vehicle at the scene of such accident or as close to the scene as possible or shall immediately return to the scene of the accident. The driver shall then remain at the scene of the accident until the driver has fulfilled the requirements of section 42-4-1603 (1). Every such stop shall be made without obstructing traffic more than is necessary.

(1.5) It shall not be an offense under this section if a driver, after fulfilling the requirements of subsection (1) of this section and of section 42-4-1603 (1), leaves the scene of the accident for the purpose of reporting the accident in accordance with the provisions of sections 42-4-1603 (2) and 42-4-1606.

(2) Any person who violates any provision of this section commits:

(a) A class 1 misdemeanor traffic offense if the accident resulted in injury to any person;

(b) A class 4 felony if the accident resulted in serious bodily injury to any person;

(c) A class 3 felony if the accident resulted in the death of any person.

(3) The department shall revoke the driver's license of the person so convicted.

(4) As used in this section and sections 42-4-1603 and 42-4-1606:

(a) "Injury" means physical pain, illness, or any impairment of physical or mental condition.

(b) "Serious bodily injury" means injury that involves, either at the time of the actual injury or at a later time, a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.

Editor's note: This section is similar to former § 42-4-1401 as it existed prior to 1994, and the former § 42-4-1601 was relocated to § 42-4-1801.

RECENT ANNOTATIONS

The unit of prosecution for leaving the scene of an accident is the number of accident scenes, not the number of injured victims at those scenes; consequently, where two people were injured at a single accident scene, defendant's conviction on two counts of leaving the scene of an accident violates the constitutional prohibition against double jeopardy. People v. Arzabala, 2012 COA 99, __ P.3d __ [published June 21, 2012].

ANNOTATION

Annotator's note. Since § 42-4-1601 is similar to § 42-4-1401 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

Sentencing under this section unconstitutional. Sentencing a defendant under this section unconstitutionally denies him equal protection, because this section and § 42-4-1403 set different penalties for the same conduct. People v. Mumaugh, 644 P.2d 299 ( Colo. 1982) (decided prior to 1983 repeal of § 42-4-1403 (3)).

The distinction, if any, between "directly involved in an accident"(this section) and "involved in an accident" (§ 42-4-1403) is one without a sufficiently pragmatic difference to permit an intelligent and uniform application of the law. People v. Mumaugh, 644 P.2d 299 ( Colo. 1982) (decided prior to 1983 repeal of § 42-4-1403 (3)).

No violation of equal protection. This section does not violate equal protection of the laws because the conduct constituting a class 4 felony under this section (i.e., leaving the scene of an accident resulting in death) is distinguishable in type and degree from the conduct constituting a class 2 traffic offense under § 42-4-1406 (i.e., failing to report an accident). People v. Rickstrew, 775 P.2d 570 ( Colo. 1989).

This section and § 42-4-1402 cover accidents involving death, injuries, and property damage. City of Aurora v. Mitchell, 144 Colo. 526, 357 P.2d 923 (1960).

A county court has jurisdiction over the subject matter of offenses alleged to have been committed under this section. People v. Griffith, 130 Colo. 475, 276 P.2d 559 (1954).

Infractions of section are matters of general public concern and not purely local. The investigation and apprehension of a violator of the requirements of this and § 42-4-1403 is not exclusively a local matter. Infractions of these provisions are of general public concern. Moreover, these requirements do not necessarily relate to traffic control, but provide certain necessary actions on the part of the motorist involved to be taken after an accident occurs to protect the life and property of the injured. When these offenses are charged they come under the general police power of the state and do not necessarily relate to regulation of motor vehicle traffic of a "local or municipal" nature, although occurring in a municipality. People v. Graham, 107 Colo. 202, 110 P.2d 256 (1941).

Fault and extent of damages are not issues. This section and § 42-4-1403 do not contemplate that in a prosecution thereunder the court shall be concerned in determining where the fault lies. Nor may it be concerned about the extent of injuries to persons or damage to property resulting from an accident made the basis of such a prosecution. Those questions are referable to a prosecution under a different statute, or to a civil action for damages. It is not the accident, as such, therefore, that constitutes the offense. Weiderspon v. People, 118 Colo. 529, 198 P.2d 301 (1948).
This section creates a strict liability offense because the plain language does not require or imply a culpable mental state, the proscribed conduct does not necessarily involve a culpable mental state, and the fact that the offense is a felony is not determinative. Due process is not violated because the offense is against the public welfare. People v. Manzo, 144 P.3d 551 (Colo. 2006).

This section and § 42-4-1603 require a driver of a vehicle involved in an accident to identify himself or herself as the driver. Unless the fact is reasonably apparent from the circumstances, the driver has an affirmative duty to identify that he or she was the one driving the motor vehicle. People v. Hernandez, 250 P.3d 568 (Colo. 2010).

Applied in People v. Reyes, 42 Colo. App. 73, 589 P.2d 1385 (1979); Lumbardy v. People, 625 P.2d 1026 (Colo. 1981); Stewart v. United States, 716 F.2d 755 (10th Cir. 1982).

42-4-1602. Accident involving damage - duty.

(1) The driver of any vehicle directly involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall immediately return to and in every event shall remain at the scene of such accident, except in the circumstances provided in subsection (2) of this section, until the driver has fulfilled the requirements of section 42-4-1603. Every such stop shall be made without obstructing traffic more than is necessary. Any person who violates any provision of this subsection (1) commits a class 2 misdemeanor traffic offense.

(2) When an accident occurs on the traveled portion, median, or ramp of a divided highway and each vehicle involved can be safely driven, each driver shall move such driver's vehicle as soon as practicable off the traveled portion, median, or ramp to a frontage road, the nearest suitable cross street, or other suitable location to fulfill the requirements of section 42-4-1603.


Editor's note: This section is similar to former § 42-4-1402 as it existed prior to 1994, and the former § 42-4-1602 was relocated to § 42-4-1802.

ANNOTATION

Annotator's note. Since § 42-4-1602 is similar to § 42-4-1402 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

This section and § 42-4-1401 cover accidents involving death, injuries, and property damage. City of Aurora v. Mitchell, 144 Colo. 526, 357 P.2d 923 (1960).

Section applies only to accidents involving damage to vehicle which is driven or attended by another person. Lumbardy v. People, 625 P.2d 1026 (Colo. 1981).


42-4-1603. Duty to give notice, information, and aid.

(1) The driver of any vehicle involved in an accident resulting in injury to, serious bodily injury to, or death of any person or damage to any vehicle which is driven or attended by any person shall give the driver's name, the driver's address, and the registration number of the
vehicle he or she is driving and shall upon request exhibit his or her driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and where practical shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if the carrying is requested by the injured person.

(2) In the event that none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (1) of this section and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of subsection (1) of this section, insofar as possible on the driver's part to be performed, shall immediately report such accident to the nearest office of a duly authorized police authority as required in section 42-4-1606 and submit thereto the information specified in subsection (1) of this section.


Editor's note: This section is similar to former § 42-4-1403 as it existed prior to 1994, and the former § 42-4-1603 was relocated to § 42-4-1803.

ANNOTATION

Annotator's note. Since § 42-4-1603 is similar to § 42-4-1403 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

Same conduct covered by this section and § 42-4-1401. Sentencing a defendant under § 42-4-1401 unconstitutionally denies him equal protection, because that section and this section set different penalties for the same conduct. People v. Mumaugh, 644 P.2d 299 (Colo. 1982) (decided prior to 1983 repeal of subsection (3)).

The distinction, if any, between "directly involved in an accident" (§ 42-4-1401) and "involved in an accident" (this section) is one without a sufficiently pragmatic difference to permit an intelligent and uniform application of the law. People v. Mumaugh, 644 P.2d 299 (Colo. 1982) (decided prior to 1983 repeal of subsection (3)).

This section and § 42-4-1601 require a driver of a vehicle involved in an accident to identify himself or herself as the driver. Unless the fact is reasonably apparent from the circumstances, the driver has an affirmative duty to identify that he or she was the one driving the motor vehicle. People v. Hernandez, 250 P.3d 568 (Colo. 2010).

Applied in Lumbardy v. People, 625 P.2d 1026 (Colo. 1981); Stewart v. United States, 716 F.2d 755 (10th Cir. 1982).

42-4-1604. Duty upon striking unattended vehicle or other property.

The driver of any vehicle which collides with or is involved in an accident with any vehicle or other property which is unattended resulting in any damage to such vehicle or other property shall immediately stop and either locate and notify the operator or owner of such vehicle or other property of such fact, the driver's name and address, and the registration number of the vehicle he or she is driving or attach securely in a conspicuous place in or on such vehicle or other property a written notice giving the driver's name and address and the registration number of the vehicle
he or she is driving. The driver shall also make report of such accident when and as required in section 42-4-1606. Every stop shall be made without obstructing traffic more than is necessary. This section shall not apply to the striking of highway fixtures or traffic control devices which shall be governed by the provisions of section 42-4-1605. Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense.

**Source:** L. 94: Entire title amended with relocations, p. 2401, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 42-4-1404 as it existed prior to 1994, and the former § 42-4-1604 was relocated to § 42-4-1804.

**ANNOTATION**

**Annotator's note.** Since § 42-4-1604 is similar to § 42-4-1404 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.

**Applied** in Ruth v. County Court, 198 Colo. 6, 595 P.2d 237 (1979).

42-4-1605. Duty upon striking highway fixtures or traffic control devices.

The driver of any vehicle involved in an accident resulting only in damage to fixtures or traffic control devices upon or adjacent to a highway shall notify the road authority in charge of such property of that fact and of the driver's name and address and of the registration number of the vehicle he or she is driving and shall make report of such accident when and as required in section 42-4-1606. Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense.

**Source:** L. 94: Entire title amended with relocations, p. 2401, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 42-4-1405 as it existed prior to 1994, and the former § 42-4-1605 was relocated to § 42-4-1805.

**ANNOTATION**

**Annotator's note.** Since § 42-4-1605 is similar to § 42-4-1405 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.

**Area preempted by state.** This section covers the subject matter of a driver's "duty upon striking highway fixtures", and this field has been preempted by the state. City of Aurora v. Mitchell, 144 Colo. 526, 357 P.2d 923 (1960).

42-4-1606. Duty to report accidents.

(1) The driver of a vehicle involved in a traffic accident resulting in injury to, serious bodily injury to, or death of any person or any property damage shall, after fulfilling the requirements of sections 42-4-1602 and 42-4-1603 (1), give immediate notice of the location of such accident and such other information as is specified in section 42-4-1603 (2) to the nearest office of the duly authorized police authority and, if so directed by the police authority, shall immediately
return to and remain at the scene of the accident until said police have arrived at the scene and completed their investigation thereat.

(2) Repealed.

(3) The department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient in the opinion of the department and may require witnesses of accidents to render reports to the department.

(4) (a) (I) It is the duty of all law enforcement officers who receive notification of traffic accidents within their respective jurisdictions or who investigate such accidents either at the time of or at the scene of the accident or thereafter by interviewing participants or witnesses to submit reports of all such accidents to the department on the form provided, including insurance information received from any driver, within five days of the time they receive such information or complete their investigation. The law enforcement officer shall indicate in such report whether the inflatable restraint system in the vehicle, if any, inflated and deployed in the accident. For the purposes of this section, "inflatable restraint system" has the same meaning as set forth in 49 CFR sec. 507.208 S4.1.5.1 (b).

(II) Repealed.

(b) The law enforcement officer shall not be required to complete an investigation or file an accident report:

(I) In the case of a traffic accident involving a motor vehicle, if the law enforcement officer has a reasonable basis to believe that damage to the property of any one person does not exceed one thousand dollars and if the traffic accident does not involve injury to or death of any person; except that the officer shall complete an investigation and file a report if specifically requested to do so by one of the participants or if one of the participants cannot show proof of insurance; or

(II) In the case of a traffic accident not involving a motor vehicle, if the traffic accident does not involve serious bodily injury to or death of any person.

(5) The person in charge at any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by any bullet shall report to the nearest office of the duly authorized police authority within twenty-four hours after such motor vehicle is received, giving the vehicle identification number, registration number, and, if known, the name and address of the owner and operator of such vehicle together with any other discernible information.

(6) Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense.

Annotator's note. Since § 42-4-1606 is similar to § 42-4-1406 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

This section deals with reporting. City of Aurora v. Mitchell, 144 Colo. 526, 357 P.2d 923 (1960).

The conduct constituting a class 4 felony under § 42-4-1401 (i.e., leaving the scene of an accident resulting in death) is distinguishable in type and degree from the conduct constituting a class 2 traffic offense under this section (i.e. failing to report an accident); therefore, there is no implication of equal protection. People v. Rickstrew, 775 P.2d 570 (Colo. 1989).

This section requires that, if the accident involves injury, death, or property damage in excess of $100, the motorist file a written report with the department of revenue, and that law enforcement officers shall conduct an accident investigation and file a written report. People v. Reyes, 42 Colo. App. 73, 589 P.2d 1385 (1979).

Operator's duties in one-car accident. This section, rather than § 42-4-1402, defines the duties incumbent upon the operator of a vehicle involved in a one-car accident. Lumbardy v. People, 625 P.2d 1026 (Colo. 1981).

Driver must immediately report accident and must receive permission to leave. While this section initially grants authority to a driver to leave the scene of an accident, he must immediately report the accident to a proper authority and must receive specific permission from that authority before he is excused from any further presence at the scene of the accident. Gammon v. State Dept. of Rev., 32 Colo. App. 437, 513 P.2d 748 (1973).

But where no law enforcement officer is at automobile accident scene before driver is taken to hospital, the driver is free to wait and give notice of the accident to the nearest office of a duly authorized police authority, to be followed by a written report within 10 days. People v. Reyes, 42 Colo. App. 73, 589 P.2d 1385 (1979).

Officer who investigates accident is foreseeable plaintiff. If a driver causes an accident, it is foreseeable that public safety officers will respond to the scene, and the driver has a duty to exercise due care toward the officer consistent with the laws of negligence as applied in this state. Banyai v. Arruda, 799 P.2d 441 (Colo. App. 1990).

Violation of section included in term "leaving scene of accident". The general assembly intended that a violation of this section be included within the meaning of the term "leaving scene of accident" as used in section 42-2-123. Gammon v. State Dept. of Rev., 32 Colo. App. 437, 513 P.2d 748 (1973).

Applied in Stewart v. United States, 716 F.2d 755 (10th Cir. 1982).

42-4-1607. When driver unable to give notice or make written report.

(1) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in section 42-4-1606 (1) and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall give or cause to be given the notice not given by the driver.

(2) Repealed.

(3) Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense.
**42-4-1608. Accident report forms.**

(1) The department shall prepare and upon request supply to police departments, coroners, sheriffs, and other suitable agencies or individuals forms for accident reports required under this article, which reports shall call for sufficiently detailed information to disclose, with reference to a traffic accident, the contributing circumstances, the conditions then existing, and the persons and vehicles involved.

(2) Every required accident report shall be made on a form approved by the department, where such form is available.

**Source:** L. 94: Entire title amended with relocations, p. 2403, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 42-4-1408 as it existed prior to 1994, and the former § 42-4-1608 was relocated to § 42-4-1808.

**42-4-1609. Coroners to report.**

Every coroner or other official performing like functions shall on or before the tenth day of each month report in writing to the department the death of any person within such official's jurisdiction during the preceding calendar month as the result of an accident involving a motor vehicle and the circumstances of such accident.

**Source:** L. 94: Entire title amended with relocations, p. 2403, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 42-4-1409 as it existed prior to 1994, and the former § 42-4-1609 was relocated to § 42-4-1809.

**ANNOTATION**

**Law reviews.** For article, "Scientific Findings on Death and Coroner's Inquest", see 20 Rocky Mt. L. Rev. 197 (1948).

**42-4-1610. Reports by interested parties confidential.**

All accident reports and supplemental reports required by law to be made by any driver, owner, or person involved in any accident shall be without prejudice to the individual so reporting and shall be for the confidential use of the department; except that the department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his or her presence at such accident. Except as provided in section 42-7-504 (2), no such report shall be used as evidence in any trial, civil or criminal, arising out of an accident; except that the department shall furnish, upon demand of any person who has, or claims to have, made such a report or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department solely to
prove a compliance or failure to comply with the requirement that such a report be made to the
department. This section shall not be construed to mean that reports of investigation or other
reports made by sheriffs, police officers, coroners, or other peace officers shall be confidential,
but the same shall be public records and shall be subject to the provisions of section 42-1-206.


Editor's note: This section is similar to former § 42-4-1410 as it existed prior to 1994, and the
former § 42-4-1610 was relocated to § 42-4-1810.

ANNOTATION

Annotator's note. Since § 42-4-1610 is similar to § 42-4-1410 as it existed prior to the 1994
amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included
with the annotations to this section.

Reports confidential in order to encourage compliance. The provisions of this section are based
upon a declared public policy announced by the general assembly. Public policy requires that motorists
be encouraged to make full and frank compliance with the requirement for filing the reports under the
uniform motor vehicle statutes, and makes any information therein contained unavailable for use except
by the department, and the limited exceptions embraced in this section. Clark v. Reichman, 130 Colo.

Distinction between confidential reports and police reports. The confidentiality provision of this
section distinguishes between reports required to be made "by any driver, owner, or person involved in
any accident", which are not admissible in evidence, and police investigation reports, which are public
records and which are admissible. People v. Reyes, 42 Colo. App. 73, 589 P.2d 1385 (1979).

Inculpatory statements not covered by this section. Inculpatory statements made to police
officers by a party are not part of either the notice or report requirements of § 42-4-1406, and are not
protected by the confidentiality provision of this section, and law enforcement officers' testimony as to
those statements are properly admissible at trial. People v. Reyes, 42 Colo. App. 73, 589 P.2d 1385
(1979).

42-4-1611. Tabulation and analysis of reports.

The department shall tabulate and may analyze all accident reports and shall publish annually
or at more frequent intervals statistical information based thereon as to the number and
circumstances of traffic accidents and in such a way that the information may be of value to the
department of transportation in eliminating roadway hazards. The statistical information shall be
issued in accordance with the provisions of section 24-1-136, C.R.S.


Editor's note: This section is similar to former § 42-4-1411 as it existed prior to 1994, and the
former § 42-4-1611 was relocated to § 42-4-1811.

42-4-1612. Accidents in state highway work areas - annual reporting by department of
transportation and Colorado state patrol.

(1) On or before February 15, 2011, and on or before February 15 of each succeeding year,
the department of transportation and the Colorado state patrol shall present a joint report to the
transportation and energy committee of the house of representatives and the transportation committee of the senate, or any successor committees, regarding fatal accidents in state highway work areas during the preceding year. The report shall include, at a minimum:

(a) A summary of the total number of fatal accidents and the total number of individuals killed;

(b) A categorization of the total number of individuals killed that identifies the individuals as employees of the department of transportation, employees of contractors or subcontractors working on a project for the department, or other individuals;

(c) A copy of the accident reporting form for each fatal accident;

(d) A description of both ongoing and newly implemented measures taken by the department of transportation to prevent fatal accidents in state highway work areas.

(2) For purposes of this section, "state highway work area" includes any area where an employee of the department of transportation is working at the time a fatal accident occurs.

(3) Nothing in this section shall be construed to require the department of transportation or the Colorado state patrol to specifically identify by name any individual killed, injured, or otherwise involved in an accident.

Source: L. 2010: Entire section added, (HB 10-1014), ch. 24, p. 98, § 1, effective August 11.
PART 17
PENALTIES AND PROCEDURE

42-4-1701. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule - repeal.

(1) It is a traffic infraction for any person to violate any of the provisions of articles 1 to 3 of this title and parts 1 to 3 and 5 to 19 of this article unless such violation is, by articles 1 to 3 of this title and parts 1 to 3 and 5 to 19 of this article or by any other law of this state, declared to be a felony, misdemeanor, petty offense, or misdemeanor traffic offense. Such a traffic infraction shall constitute a civil matter.

(2) (a) For the purposes of this part 17, "judge" shall include any county court magistrate who hears traffic infraction matters, but no person charged with a traffic violation other than a traffic infraction or class 2 misdemeanor traffic offense shall be taken before a county court magistrate.

(b) For the purposes of this part 17, "magistrate" shall include any county court judge who is acting as a county court magistrate in traffic infraction and class 2 misdemeanor traffic offense matters.

(3) (a) (I) Except as provided in subsections (4) and (5) of this section or the section creating the infraction, traffic infractions are divided into two classes which shall be subject to the following penalties which are authorized upon entry of judgment against the defendant:

<table>
<thead>
<tr>
<th>Class</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
</tr>
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<tbody>
<tr>
<td>A</td>
<td>$15 penalty</td>
<td>$100 penalty</td>
</tr>
<tr>
<td>B</td>
<td>$15 penalty</td>
<td>$100 penalty</td>
</tr>
</tbody>
</table>

(II) (A) Except as otherwise provided in sub-subparagraph (B) of this subparagraph (II), subsections (4) and (5) of this section, and sections 42-4-1301.3, 42-4-1301.4, and 42-4-1307, or the section creating the offense, misdemeanor traffic offenses are divided into two classes that are distinguished from one another by the following penalties that are authorized upon conviction:

<table>
<thead>
<tr>
<th>Class</th>
<th>Minimum Sentence</th>
<th>Maximum Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ten days imprisonment, or $300 fine, or both</td>
<td>One year imprisonment, or $1,000 fine, or both</td>
</tr>
<tr>
<td>2</td>
<td>Ten days imprisonment, or $150 fine, or both</td>
<td>Ninety days imprisonment, or $300 fine, or both</td>
</tr>
</tbody>
</table>

(B) Any person convicted of a class 1 or class 2 misdemeanor traffic offense shall be required to pay restitution as required by article 18.5 of title 16, C.R.S., and may be sentenced to perform a certain number of hours of community or useful public service in addition to any other
sentence provided by sub-subparagraph (A) of this subparagraph (II), subject to the conditions and restrictions of section 18-1.3-507, C.R.S.

(b) Any traffic infraction or misdemeanor traffic offense defined by law outside of articles 1 to 4 of this title shall be punishable as provided in the statute defining it or as otherwise provided by law.

(c) The department has no authority to assess any points under section 42-2-127 upon entry of judgment for any class B traffic infractions.

(4) (a) (I) Except as provided in paragraph (c) of subsection (5) of this section, every person who is convicted of, who admits liability for, or against whom a judgment is entered for a violation of any provision of this title to which paragraph (a) or (b) of subsection (5) of this section apply shall be fined or penalized, and have a surcharge levied thereon pursuant to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1) (b) (I), C.R.S., in accordance with the penalty and surcharge schedule set forth in sub-subparagraphs (A) to (P) of this subparagraph (I); or, if no penalty or surcharge is specified in the schedule, the penalty for class A and class B traffic infractions shall be fifteen dollars, and the surcharge shall be four dollars. These penalties and surcharges shall apply whether the defendant acknowledges the defendant's guilt or liability in accordance with the procedure set forth by paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction or has judgment entered against the defendant by a county court magistrate. Penalties and surcharges for violating specific sections shall be as follows:

<table>
<thead>
<tr>
<th>Section Violated</th>
<th>Penalty</th>
<th>Surcharge</th>
</tr>
</thead>
<tbody>
<tr>
<td>42-2-101 (1) or (4)</td>
<td>$ 35.00</td>
<td>$ 10.00</td>
</tr>
<tr>
<td>42-2-101 (2), (3), or (5)</td>
<td>15.00</td>
<td>6.00</td>
</tr>
<tr>
<td>42-2-103</td>
<td>15.00</td>
<td>6.00</td>
</tr>
<tr>
<td>42-2-105</td>
<td>70.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-2-105.5 (4)</td>
<td>65.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-2-106</td>
<td>70.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-2-116 (6) (a)</td>
<td>30.00</td>
<td>6.00</td>
</tr>
<tr>
<td>42-2-119</td>
<td>15.00</td>
<td>6.00</td>
</tr>
<tr>
<td>42-2-134</td>
<td>35.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-2-136</td>
<td>35.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-2-139</td>
<td>35.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-2-140</td>
<td>35.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-2-141</td>
<td>35.00</td>
<td>10.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section Violated</th>
<th>Penalty</th>
<th>Surcharge</th>
</tr>
</thead>
<tbody>
<tr>
<td>42-3-103</td>
<td>$ 50.00</td>
<td>$ 16.00</td>
</tr>
<tr>
<td>42-3-113</td>
<td>15.00</td>
<td>6.00</td>
</tr>
<tr>
<td>42-3-202</td>
<td>15.00</td>
<td>6.00</td>
</tr>
<tr>
<td>42-3-116</td>
<td>50.00</td>
<td>16.00</td>
</tr>
<tr>
<td>Code</td>
<td>Type</td>
<td>Rate 1</td>
</tr>
<tr>
<td>--------------------</td>
<td>-------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>42-3-121 (1)(a)</td>
<td>75.00</td>
<td>24.00</td>
</tr>
<tr>
<td>42-3-121 (1)(c)</td>
<td>35.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-3-121 (1)(f), (1)(g), and (1)(h)</td>
<td>75.00</td>
<td>24.00</td>
</tr>
<tr>
<td>42-3-304 to 42-3-306</td>
<td>50.00</td>
<td>16.00</td>
</tr>
</tbody>
</table>

(C) **Traffic regulation generally:**

<table>
<thead>
<tr>
<th>Code</th>
<th>Type</th>
<th>Rate 1</th>
<th>Rate 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>42-4-1412</td>
<td>$ 15.00</td>
<td>$ 6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-109 (13)(a)</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-109 (13)(b)</td>
<td>100.00</td>
<td>15.00</td>
<td></td>
</tr>
<tr>
<td>42-4-1211</td>
<td>30.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-1405</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
</tbody>
</table>

(D) **Equipment violations:**

<table>
<thead>
<tr>
<th>Code</th>
<th>Type</th>
<th>Rate 1</th>
<th>Rate 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>42-4-201</td>
<td>$ 35.00</td>
<td>$ 10.00</td>
<td></td>
</tr>
<tr>
<td>42-4-202</td>
<td>35.00</td>
<td>10.00</td>
<td></td>
</tr>
<tr>
<td>42-4-204</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-205</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-206</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-207</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-208</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-209</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-210</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-211</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-212</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-213</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-214</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-215</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-216</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-217</td>
<td>15.00</td>
<td>6.00</td>
<td></td>
</tr>
</tbody>
</table>
(E) Emissions inspections:

42-4-313 (3)(c) $ 50.00 $ 16.00
42-4-313 (3)(d) 15.00 6.00
(F) Size, weight, and load violations:
42-4-502 $ 75.00 $ 24.00
42-4-503 15.00  6.00
42-4-504 75.00 24.00
42-4-505 75.00 24.00
42-4-506 15.00  6.00
42-4-509 50.00 16.00
42-4-510 (12)(a) 35.00 10.00
42-4-106 (1), (3), (4), (6), or (7) 35.00 10.00
42-4-106 (5)(a)(I) 100.00 32.00
42-4-106 (5)(a)(II) 500.00 156.00
42-4-106 (5)(a)(III) 500.00  78.00
42-4-106 (5)(a)(IV) 1,000.00 156.00
42-4-512 75.00 24.00
42-8-105 (1) to (5) 50.00 16.00
42-8-106 50.00 16.00

(G) Signals, signs, and markings violations:
42-4-603 $ 100.00 $ 10.00
42-4-604  100.00  10.00
42-4-605  70.00  10.00
42-4-606  15.00  6.00
42-4-607 (1)  50.00 16.00
42-4-607 (2)(a) 100.00 32.00
42-4-608 (1)  70.00 6.00
42-4-608 (2)  15.00 6.00
42-4-609  15.00  6.00
42-4-610  15.00  6.00
(H) **Rights-of-way violations:**

42-4-701 $ 70.00 $ 10.00
42-4-702 70.00 10.00
42-4-703 70.00 10.00
42-4-704 70.00 10.00
42-4-705 70.00 16.00
42-4-706 70.00 10.00
42-4-707 70.00 10.00
42-4-708 35.00 10.00
42-4-709 70.00 10.00
42-4-710 70.00 10.00
42-4-711 100.00 10.00
42-4-712 70.00 10.00

(I) **Pedestrian violations:**

42-4-801 $ 15.00 $ 6.00
42-4-802 (1) 30.00 6.00
42-4-802 (3) 15.00 6.00
42-4-802 (4) 30.00 6.00
42-4-802 (5) 30.00 6.00
42-4-803 15.00 6.00
42-4-805 15.00 6.00
42-4-806 70.00 10.00
42-4-807 70.00 10.00
42-4-808 70.00 10.00

(J) **Turning and stopping violations:**

42-4-901 $ 70.00 $ 10.00
<table>
<thead>
<tr>
<th>Section</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>42-4-902</td>
<td>70.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-903</td>
<td>70.00</td>
<td>10.00</td>
</tr>
</tbody>
</table>

(K) **Driving, overtaking, and passing violations:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>42-4-1001</td>
<td>70.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1002</td>
<td>100.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1003</td>
<td>100.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1004</td>
<td>100.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1005</td>
<td>100.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1006</td>
<td>70.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1007</td>
<td>100.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1008</td>
<td>100.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1009</td>
<td>70.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1010</td>
<td>70.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1011</td>
<td>200.00</td>
<td>32.00</td>
</tr>
<tr>
<td>42-4-1012 (3)(a)</td>
<td>65.00</td>
<td>(NONE)</td>
</tr>
<tr>
<td>42-4-1012 (3)(b)</td>
<td>125.00</td>
<td>(NONE)</td>
</tr>
<tr>
<td>42-4-1013</td>
<td>100.00</td>
<td>(NONE)</td>
</tr>
</tbody>
</table>

(L) **Speeding violations:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>42-4-1101 (1) or (8) (b) (1 to 4 miles per hour over the reasonable and prudent speed or over the maximum lawful speed limit of 75 miles per hour)</td>
<td>30.00</td>
<td>6.00</td>
</tr>
<tr>
<td>42-4-1101 (1) or (8) (b) (5 to 9 miles per hour over the reasonable and prudent speed or over the maximum lawful speed limit of 75 miles per hour)</td>
<td>70.00</td>
<td>10.00</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
<td>Fine 1</td>
</tr>
<tr>
<td>------</td>
<td>-----------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>42-4-1101 (1) or (8) (b) (10 to 19 miles per hour over the reasonable and prudent speed or over the maximum lawful speed limit of 75 miles per hour)</td>
<td>135.00</td>
<td>16.00</td>
</tr>
<tr>
<td>42-4-1101 (1) or (8) (b) (20 to 24 miles per hour over the reasonable and prudent speed or over the maximum lawful speed limit of 75 miles per hour)</td>
<td>200.00</td>
<td>32.00</td>
</tr>
<tr>
<td>42-4-1101 (8) (g) (1 to 4 miles per hour over the maximum lawful speed limit of 40 miles per hour driving a low-power scooter)</td>
<td>50.00</td>
<td>6.00</td>
</tr>
<tr>
<td>42-4-1101 (8) (g) (5 to 9 miles per hour over the maximum lawful speed limit of 40 miles per hour driving a low-power scooter)</td>
<td>75.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1101 (8) (g) (greater than 9 miles per hour over the maximum lawful speed limit of 40 miles per hour driving a low-power scooter)</td>
<td>100.00</td>
<td>16.00</td>
</tr>
<tr>
<td>42-4-1101 (3)</td>
<td>100.00</td>
<td>10.00</td>
</tr>
<tr>
<td>42-4-1103</td>
<td>50.00</td>
<td>6.00</td>
</tr>
<tr>
<td>42-4-1104</td>
<td>30.00</td>
<td>6.00</td>
</tr>
</tbody>
</table>

(M) **Parking violations:**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Fine 1</th>
<th>Fee 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>42-4-1201</td>
<td>$ 30.00</td>
<td>$ 6.00</td>
<td></td>
</tr>
<tr>
<td>42-4-1202</td>
<td>30.00</td>
<td>6.00</td>
<td></td>
</tr>
</tbody>
</table>
42-4-1204 15.00 6.00
42-4-1205 15.00 6.00
42-4-1206 15.00 6.00
42-4-1207 15.00 6.00
42-4-1208 (9), (15), or (16) 150.00 32.00

(N) Other offenses:
42-4-1301 (2)(a.5) $ 100.00 $ 16.00
42-4-1305 50.00 16.00
42-4-1402 150.00 16.00
42-4-1403 30.00 6.00
42-4-1404 15.00 6.00
42-4-1406 35.00 10.00
42-4-1407 (3)(a) 35.00 10.00
42-4-1407 (3)(b) 100.00 30.00
42-4-1407 (3)(c) 500.00 200.00
42-4-314 35.00 10.00
42-4-1408 15.00 6.00
42-4-1414 (2)(a) 500.00 156.00
42-4-1414 (2)(b) 1,000.00 312.00
42-4-1414 (2)(c) 5,000.00 1,560.00
42-4-1416 (3) 75.00 4.00
42-20-109 (2) 250.00 66.00

(O) Motorcycle violations:
42-4-1502 (1), (2), (3), or (4) $ 30.00 $ 6.00
42-4-1502 (4.5) 100.00 15.00
42-4-1503 30.00 6.00
42-4-1504 30.00 6.00

(P) Offenses by persons controlling vehicles:
(II) (A) A person convicted of violating section 42-4-507 or 42-4-508 shall be fined pursuant to this sub-subparagraph (A), whether the defendant acknowledges the defendant's guilt pursuant to the procedure set forth in paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction. A person who violates section 42-4-507 or 42-4-508 shall be punished by a fine and surcharge as follows:

<table>
<thead>
<tr>
<th>Excess Weight - Pounds Penalty Surcharge</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 1,000</td>
</tr>
<tr>
<td>$ 20.00 $ 14.00</td>
</tr>
<tr>
<td>1,001 - 3,000</td>
</tr>
<tr>
<td>25.00 14.00</td>
</tr>
<tr>
<td>3,001 - 5,000</td>
</tr>
<tr>
<td>0.03 per pound overweight</td>
</tr>
<tr>
<td>rounded to the nearest dollar 48.00</td>
</tr>
<tr>
<td>5,001 - 7,000</td>
</tr>
<tr>
<td>0.05 per pound overweight</td>
</tr>
<tr>
<td>rounded to the nearest dollar 108.00</td>
</tr>
<tr>
<td>7,001 - 10,000</td>
</tr>
<tr>
<td>0.07 per pound overweight</td>
</tr>
<tr>
<td>rounded to the nearest dollar 384.00</td>
</tr>
<tr>
<td>10,001 - 15,000</td>
</tr>
<tr>
<td>0.10 per pound overweight</td>
</tr>
<tr>
<td>rounded to the nearest dollar 1,892.00</td>
</tr>
<tr>
<td>15,001 - 19,750</td>
</tr>
<tr>
<td>0.15 per pound</td>
</tr>
<tr>
<td>rounded to the nearest dollar 2,438.00</td>
</tr>
<tr>
<td>Over 19,750</td>
</tr>
<tr>
<td>0.25 per pound rounded</td>
</tr>
<tr>
<td>to the nearest dollar 28.00</td>
</tr>
<tr>
<td>for each 250 pounds</td>
</tr>
<tr>
<td>additional overweight,</td>
</tr>
<tr>
<td>plus $ 492.00</td>
</tr>
</tbody>
</table>

(B) The state, county, city, or city and county issuing a citation that results in the assessment of the penalties in sub-subparagraph (A) of this subparagraph (II) may retain and distribute the following amount of the penalty according to the law of the jurisdiction that assesses the penalty, but the remainder of the penalty shall be transmitted to the state treasurer, who shall credit the moneys to the commercial vehicle enterprise tax fund created in section 42-1-225:
Excess Weight - Pounds Penalty Retained

1 - 3,000 $ 15.00
3,001 - 4,250  25.00
4,251 - 4,500  50.00
4,501 - 4,750  55.00
4,751 - 5,000  60.00
5,001 - 5,250  65.00
5,251 - 5,500  75.00
5,501 - 5,750  85.00
5,751 - 6,000  95.00
6,001 - 6,250  105.00
6,251 - 6,500  125.00
6,501 - 6,750  145.00
6,751 - 7,000  165.00
7,001 - 7,250  185.00
7,251 - 7,500  215.00
7,501 - 7,750  245.00
7,751 - 8,000  275.00
8,001 - 8,250  305.00
8,251 - 8,500  345.00
8,501 - 8,750  385.00
8,751 - 9,000  425.00
9,001 - 9,250  465.00
9,251 - 9,500  515.00
9,501 - 9,750  565.00
9,751 - 10,000  615.00
10,001 - 10,250  665.00
Over 10,250 $ 30.00
for each 250 pounds
additional overweight,

plus $ 665.00

(III) Any person convicted of violating any of the rules promulgated pursuant to section 42-4-510, except section 42-4-510 (2) (b) (IV), shall be fined as follows, whether the violator acknowledges the violator's guilt pursuant to the procedure set forth in paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction:

(A) Except as provided in sub-subparagraph (D) of this subparagraph (III), any person who violates the maximum permitted weight on an axle or on gross weight shall be punished by a fine and surcharge as follows:

**Excess Weight Above Maximum**

<table>
<thead>
<tr>
<th>Permitted Weight - Pounds</th>
<th>Penalty</th>
<th>Surcharge</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 2,500</td>
<td>$ 50.00</td>
<td>$ 46.00</td>
</tr>
<tr>
<td>2,501 - 5,000</td>
<td>100.00</td>
<td>96.00</td>
</tr>
<tr>
<td>5,001 - 7,500</td>
<td>200.00</td>
<td>192.00</td>
</tr>
<tr>
<td>7,501 - 10,000</td>
<td>400.00</td>
<td>384.00</td>
</tr>
<tr>
<td>Over 10,000</td>
<td>$150.00</td>
<td>$ 144.00</td>
</tr>
</tbody>
</table>

for each 1,000 pounds additional

$ 400.00 $ 296.00

(B) Any person who violates any of the requirements of the rules and regulations pertaining to transport permits for the movement of overweight or oversize vehicles or loads, other than those violations specified in sub-subparagraph (A) or (C) of this subparagraph (III), shall be punished by a fine of fifty dollars.

(C) Any person who fails to have an escort vehicle when such vehicle is required by the rules and regulations pertaining to transport permits for the movement of overweight or oversize vehicles or loads or who fails to reduce speed when such speed reduction is required by said rules and regulations shall be punished by a fine of two hundred fifty dollars.

(D) The fines for a person who violates the maximum permitted weight on an axle or on gross weight under a permit issued pursuant to section 42-4-510 (1) (b) (II) shall be doubled.

(IV) (A) Any person convicted of violating section 42-3-114 who has not been convicted of a violation of section 42-3-114 in the twelve months preceding such conviction shall be fined as follows, whether the defendant acknowledges the defendant's guilt pursuant to the procedure set
forth in paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction:

Number of days beyond renewal period that registration has been expired Penalty Surcharge

<table>
<thead>
<tr>
<th>Number of days beyond renewal period</th>
<th>Penalty</th>
<th>Surcharge</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 29</td>
<td>$ 35.00</td>
<td>$ 8.00</td>
</tr>
<tr>
<td>30 - 59</td>
<td>50.00</td>
<td>12.00</td>
</tr>
<tr>
<td>60 and over</td>
<td>75.00</td>
<td>18.00</td>
</tr>
</tbody>
</table>

(B) Any person convicted of violating section 42-3-114 who has been convicted of violating said section within the twelve months preceding such conviction shall be fined pursuant to subparagraph (I) of paragraph (a) of subsection (3) of this section.

(V) Any person convicted of violating section 42-20-204 (2) shall be fined twenty-five dollars, whether the violator acknowledges guilt pursuant to the procedure set forth in paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction.

(VI) (A) Except as provided in paragraph (c) of subsection (5) of this section, every person who is convicted of, who admits liability for, or against whom a judgment is entered for a violation of any provision of this title to which the provisions of paragraph (a) or (b) of subsection (5) of this section apply, shall, in addition to any other fine or penalty or surcharge, be assessed a surcharge of one dollar, which amount shall be transmitted to the state treasurer for deposit in the family-friendly court program cash fund created in section 13-3-113 (6), C.R.S. This surcharge shall apply whether the defendant acknowledges the defendant's guilt or liability in accordance with the procedure set forth by paragraph (a) of subsection (5) of this section or is found guilty by a court of competent jurisdiction or has judgment entered against the defendant by a county court magistrate.

(B) Repealed.

(VII) The penalties and surcharges for a second or subsequent violation of section 42-20-109 (2) within twelve months shall be doubled.

(b) (I) The schedule in subparagraph (I) of paragraph (a) of this subsection (4) shall not apply when the provisions of paragraph (c) of subsection (5) of this section prohibit the issuance of a penalty assessment notice for a violation of the aforesaid traffic violation.

(II) The schedules in subparagraphs (II) and (III) of paragraph (a) of this subsection (4) shall apply whether the violator is issued a penalty assessment notice or a summons and complaint.

(c) (I) The penalties and surcharges imposed for speeding violations under subsection (4) (a) (I) (L) of this section shall be doubled if a speeding violation occurs within a maintenance, repair, or construction zone that is designated by the department of transportation pursuant to section 42-4-614 (1) (a); except that the penalty for violating section 42-4-1101 (1) or (8) (b) by
twenty to twenty-four miles per hour over the reasonable and prudent speed or over the maximum lawful speed limit of seventy-five miles per hour shall be five hundred forty dollars.

(II) (A) The penalties and surcharges imposed for violations under sub-subparagraphs (C), (G), (H), (I), (J), (K), (N), and (O) of subparagraph (I) of paragraph (a) of this subsection (4) shall be doubled if a violation occurs within a maintenance, repair, or construction zone that is designated by the department of transportation pursuant to section 42-4-614 (1) (a); except that the fines for violating sections 42-4-314, 42-4-610, 42-4-613, 42-4-706, 42-4-707, 42-4-708, 42-4-709, 42-4-710, 42-4-1011, 42-4-1012, 42-4-1404, 42-4-1408, and 42-4-1414 shall not be doubled under this subparagraph (II).

(B) There is hereby created, within the highway users tax fund, the highway construction workers' safety account.

(C) If a fine is doubled under subparagraph (I) or (II) of this paragraph (c), one-half of the fine allocated to the state by sections 42-1-217 and 43-4-205, C.R.S., shall be transferred to the state treasurer, who shall deposit it in the highway construction workers' safety account within the highway users tax fund to be continuously appropriated to the department of transportation for work zone safety equipment, signs, and law enforcement.

(D) This subparagraph (II) is effective July 1, 2006.

(III) The penalties and surcharges imposed for speeding violations under sub-subparagraph (L) of subparagraph (I) of paragraph (a) of this subsection (4) shall be doubled if a speeding violation occurs within a maintenance, repair, or construction zone that is designated by a public entity pursuant to section 42-4-614 (1) (b).

(IV) The penalties and surcharges imposed for violations under sub-subparagraphs (C), (G), (H), (I), (J), (K), (N), and (O) of subparagraph (I) of paragraph (a) of this subsection (4) shall be doubled if a violation occurs within a maintenance, repair, or construction zone that is designated by a public entity pursuant to section 42-4-614 (1) (b); except that the fines for violating sections 42-4-314, 42-4-610, 42-4-613, 42-4-706, 42-4-707, 42-4-708, 42-4-709, 42-4-710, 42-4-1011, 42-4-1012, 42-4-1404, 42-4-1408, and 42-4-1414 shall not be doubled under this subparagraph (IV).

(d) The penalty and surcharge imposed for any moving traffic violation under subparagraph (I) of paragraph (a) of this subsection (4) are doubled if the violation occurs within a school zone pursuant to section 42-4-615.

(d.5) (I) The penalty and surcharge imposed for any moving traffic violation under subparagraph (I) of paragraph (a) of this subsection (4) are doubled if the violation occurs within a wildlife crossing zone pursuant to section 42-4-616.

(II) (A) There is hereby created, within the highway users tax fund, the wildlife crossing zones safety account.

(B) If a penalty and surcharge are doubled pursuant to subparagraph (I) of this paragraph (d.5), one-half of the penalty and surcharge allocated to the state by sections 42-1-217 and 43-4-205, C.R.S., shall be transferred to the state treasurer, who shall deposit the moneys in the wildlife crossing zones safety account within the highway users tax fund to be continuously
appropriated to the department of transportation for wildlife crossing zones signs and law enforcement.

(e) (I) An additional fifteen dollars shall be assessed for speeding violations under sub-subparagraph (L) of subparagraph (I) of paragraph (a) of this subsection (4) in addition to the penalties and surcharge stated in said sub-subparagraph (L). Moneys collected pursuant to this paragraph (e) shall be transmitted to the state treasurer who shall deposit such moneys in the Colorado traumatic brain injury trust fund created pursuant to section 26-1-309, C.R.S., within fourteen days after the end of each quarter, to be used for the purposes set forth in sections 26-1-301 to 26-1-310, C.R.S.

(II) If the surcharge is collected by a county or municipal court, the surcharge shall be seventeen dollars of which two dollars shall be retained by the county or municipality and the remaining fifteen dollars shall be transmitted to the state treasurer and credited to the Colorado traumatic brain injury trust fund created pursuant to section 26-1-309, C.R.S., within fourteen days after the end of each quarter, to be used for the purposes set forth in sections 26-1-301 to 26-1-310, C.R.S.

(III) An additional fifteen dollars shall be assessed for a violation of a traffic regulation under sub-subparagraph (C) of subparagraph (I) of paragraph (a) of this subsection (4) for a violation of section 42-4-109 (13) (b), in addition to the penalties stated in said sub-subparagraph (C). An additional fifteen dollars shall be assessed for a motorcycle violation under sub-subparagraph (O) of subparagraph (I) of paragraph (a) of this subsection (4) for a violation of section 42-4-1502 (4.5), in addition to the penalties stated in said sub-subparagraph (O). Moneys collected pursuant to this subparagraph (III) shall be transmitted to the state treasurer, who shall deposit the moneys in the Colorado traumatic brain injury trust fund created pursuant to section 26-1-309, C.R.S., to be used for the purposes set forth in sections 26-1-301 to 26-1-310, C.R.S.

(f) (I) In addition to the surcharge specified in sub-subparagraph (N) of subparagraph (I) of paragraph (a) of this subsection (4), an additional surcharge of five dollars shall be assessed for a violation of section 42-4-1301 (2) (a.5). Moneys collected pursuant to this paragraph (f) shall be transmitted to the state treasurer who shall deposit such moneys in the rural alcohol and substance abuse cash fund created in section 27-80-117 (3), C.R.S., within fourteen days after the end of each quarter, to be used for the purposes set forth in section 27-80-117, C.R.S.

(II) If the additional surcharge is collected by a county court, the additional surcharge shall be six dollars of which one dollar shall be retained by the county and the remaining five dollars shall be transmitted to the state treasurer and credited to the rural alcohol and substance abuse cash fund created in section 27-80-117 (3), C.R.S., within fourteen days after the end of each quarter, to be used for the purposes set forth in section 27-80-117, C.R.S.

(III) This paragraph (f) is repealed, effective July 1, 2016, unless the general assembly extends the repeal of the rural alcohol and substance abuse prevention and treatment program created in section 27-80-117, C.R.S.

(5) (a) (I) At the time that any person is arrested for the commission of any misdemeanors, petty offenses, or misdemeanor traffic offenses set forth in subsection (4) of this section, the arresting officer may, except when the provisions of paragraph (c) of this subsection (5) prohibit it, offer to give a penalty assessment notice to the defendant. At any time that a person is charged
with the commission of any traffic infraction, the peace officer shall, except when the provisions of paragraph (c) of this subsection (5) prohibit it, give a penalty assessment notice to the defendant. Such penalty assessment notice shall contain all the information required by section 42-4-1707 (3) or by section 42-4-1709, whichever is applicable. The fine or penalty specified in subsection (4) of this section for the violation charged and the surcharge thereon may be paid at the office of the department of revenue, either in person or by postmarking such payment within twenty days from the date the penalty assessment notice is served upon the defendant; except that the fine or penalty charged and the surcharge thereon shall be paid to the county if it relates to a traffic offense authorized by county ordinance. The department of revenue shall accept late payment of any penalty assessment up to twenty days after such payment becomes due. Except as otherwise provided in subparagraph (II) of this paragraph (a), in the case of an offense other than a traffic infraction, a defendant who otherwise would be eligible to be issued a penalty assessment notice but who does not furnish satisfactory evidence of identity or who the officer has reasonable and probable grounds to believe will disregard the summons portion of such notice may be issued a penalty assessment notice if the defendant consents to be taken by the officer to the nearest mailbox and to mail the amount of the fine or penalty and surcharge thereon to the department. The peace officer shall advise the person arrested or cited of the points to be assessed in accordance with section 42-2-127. Except as otherwise provided in section 42-4-1710 (1) (b), acceptance of a penalty assessment notice and payment of the prescribed fine or penalty and surcharge thereon to the department shall be deemed a complete satisfaction for the violation, and the defendant shall be given a receipt which so states when such fine or penalty and surcharge thereon is paid in currency or other form of legal tender. Checks tendered by the defendant to and accepted by the department and on which payment is received by the department shall be deemed sufficient receipt.

(II) In the case of an offense other than a traffic infraction that involves a minor under the age of eighteen years, the officer shall proceed in accordance with the provisions of section 42-4-1706 (2) or 42-4-1707 (1) (b) or (3) (a.5). In no case may an officer issue a penalty assessment notice to a minor under the age of eighteen years and require or offer that the minor consent to be taken by the officer to the nearest mailbox to mail the amount of the fine or penalty and surcharge thereon to the department.

(b) In the case of an offense other than a traffic infraction, should the defendant refuse to accept service of the penalty assessment notice when such notice is tendered, the peace officer shall proceed in accordance with section 42-4-1705 or 42-4-1707. Should the defendant charged with an offense other than a traffic infraction accept service of the penalty assessment notice but fail to post the prescribed penalty and surcharge thereon within twenty days thereafter, the notice shall be construed to be a summons and complaint unless payment for such penalty assessment has been accepted by the department of revenue as evidenced by receipt. Should the defendant charged with a traffic infraction accept the notice but fail to post the prescribed penalty and surcharge thereon within twenty days thereafter, and should the department of revenue not accept payment for such penalty and surcharge as evidenced by receipt, the defendant shall be allowed to pay such penalty and surcharge thereon and the docket fee in the amount set forth in section 42-4-1710 (4) to the clerk of the court referred to in the summons portion of the penalty assessment notice during the two business days prior to the time for appearance as specified in the notice. If the penalty for a misdemeanor, misdemeanor traffic offense, or a petty offense and surcharge thereon is not timely paid, the case shall thereafter be heard in the court of competent jurisdiction.
jurisdiction prescribed on the penalty assessment notice in the same manner as is provided by law for prosecutions of the misdemeanors not specified in subsection (4) of this section. If the penalty for a traffic infraction and surcharge thereon is not timely paid, the case shall thereafter be heard in the court of competent jurisdiction prescribed on the penalty assessment notice in the manner provided for in this article for the prosecution of traffic infractions. In either case, the maximum penalty that may be imposed shall not exceed the penalty set forth in the applicable penalty and surcharge schedule in subsection (4) of this section.

(b.5) The provisions of section 42-4-1710 (1) (b) shall govern any case described in paragraph (b) of this subsection (5) in which a minor under the age of eighteen years submits timely payment for an infraction or offense in a penalty assessment notice but such payment is not accompanied by the penalty assessment notice signed and notarized in the manner required by section 42-4-1707 (3) (a.5) or 42-4-1709 (1.5).

(c) (I) The penalty and surcharge schedules of subsection (4) of this section and the penalty assessment notice provisions of paragraphs (a) and (b) of this subsection (5) shall not apply to violations constituting misdemeanors, petty offenses, or misdemeanor traffic offenses not specified in said subsection (4) of this section, nor shall they apply to the violations constituting misdemeanors, petty offenses, misdemeanor traffic offenses, or traffic infractions specified in said subsection (4) of this section when it appears that:

(A) (Deleted by amendment, L. 96, p. 580, § 4, effective May 25, 1996.)

(B) In a violation of section 42-4-1101 (1) or (8) (b), the defendant exceeded the reasonable and prudent speed or the maximum lawful speed of seventy-five miles per hour by more than twenty-four miles per hour;

(C) The alleged violation has caused, or contributed to the cause of, an accident resulting in appreciable damage to property of another or in injury or death to any person;

(D) The defendant has, in the course of the same transaction, violated one of the provisions of this title specified in the penalty and surcharge schedules in subsection (4) of this section and has also violated one or more provisions of this title not so specified, and the peace officer charges such defendant with two or more violations, any one of which is not specified in the penalty and surcharge schedules in subsection (4) of this section.

(II) In all cases where this paragraph (c) prohibits the issuance of a penalty assessment notice, the penalty and surcharge schedule contained in subparagraph (I) of paragraph (a) of subsection (4) of this section shall be inapplicable; except that the penalty and surcharge provided in the schedule contained in sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection (4) of this section for any violation of section 42-3-121 (1) (a) shall always apply to such a violation. In all cases where the penalty and surcharge schedule contained in subparagraph (I) of paragraph (a) of subsection (4) of this section is inapplicable, the provisions of subsection (3) of this section shall apply.

(d) In addition to any other cases governed by this section, the penalty and surcharge schedule contained in subparagraph (I) of paragraph (a) of subsection (4) of this section shall apply in the following cases:
In all cases in which a peace officer was authorized by the provisions of this subsection (5) to offer a penalty assessment notice for the commission of a misdemeanor, petty offense, or misdemeanor traffic offense but such peace officer chose not to offer such penalty assessment notice;

In all cases involving the commission of a misdemeanor, petty offense, or misdemeanor traffic offense in which a penalty assessment notice was offered by a peace officer but such penalty assessment notice was refused by the defendant.

An officer coming upon an unattended vehicle that is in apparent violation of any provision of the state motor vehicle law may place upon the vehicle a penalty assessment notice indicating the offense or infraction and directing the owner or operator of the vehicle to remit the penalty assessment provided for by subsection (4) of this section and the surcharges thereon pursuant to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1), C.R.S., to the Colorado department of revenue within ten days. If the penalty assessment and surcharge thereon is not paid within ten days of the issuance of the notice, the department shall mail a notice to the registered owner of the vehicle, setting forth the offense or infraction and the time and place where it occurred and directing the payment of the penalty assessment and surcharge thereon within twenty days from the issuance of the notice. If the penalty assessment and surcharge thereon is not paid within the twenty days from the date of mailing of such notice, the department shall request the police officer who issued the original penalty assessment notice to file a complaint with a court having jurisdiction and issue and serve upon the registered owner of the vehicle a summons to appear in court at a time and place specified therein as in the case of other offenses or infractions.

Notwithstanding the provisions of paragraph (b) of subsection (5) of this section, receipt of payment by mail by the department or postmarking such payment on or prior to the twentieth day after the receipt of the penalty assessment notice by the defendant shall be deemed to constitute receipt on or before the date the payment was due.

The surcharges described in subsections (4) to (6) of this section are separate and distinct from a surcharge levied pursuant to section 24-33.5-415.6, C.R.S.


**Editor’s note:** (1) This section is similar to former § 42-4-1501 as it existed prior to 1994.

(2) Subsections (3)(a)(I), (4)(a)(I), and (4)(a)(IV)(A) were originally numbered as § 42-4-1501 (2)(a)(I), (3)(a)(I.1), and (3)(a)(IV)(A), and the amendments to them in Senate Bill 94-017 were harmonized with Senate Bill 94-001.

(3) Amendments to subsection (4)(a)(I)(F) by Senate Bill 96-084 and House Bill 96-1055 were harmonized.

(4) Amendments to subsection (4)(a)(I)(A) by House Bill 06-1171 and House Bill 06-1055 were harmonized.

(5) Amendments to subsection (4)(a)(I) by Senate Bill 07-055, House Bill 07-1117, and House Bill 07-1229 were harmonized.

(6) Amendments to subsection (3)(a)(II)(A) by House Bill 08-1010 and House Bill 08-1166 were harmonized.

**Cross references:** (1) For community or useful public service for persons convicted of misdemeanors, see § 18-1.3-507; for community service for juvenile offenders, see § 19-2-308; for useful public service for persons convicted of alcohol- or drug-related traffic offenses, see §§ 42-4-1301 and 42-4-1301.4; for surcharges levied on criminal actions and traffic offenses, see § 24-4.2-104.
(2) For the legislative declaration contained in the 1999 act amending subsection (4)(a)(I)(A), see section 1 of chapter 334, Session Laws of Colorado 1999. For the legislative declaration contained in the 2002 act amending subsection (3)(a)(II)(B), see section 1 of chapter 318, Session Laws of Colorado 2002. In 2005, subsection (4)(c) was amended by the "Lopez-Forrester Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 276, Session Laws of Colorado 2005.

(3) Section 1 of chapter 412, Session Laws of Colorado 2008, provides that the act amending subsection (4)(c) shall be known and may be cited as the "Charles Mather Highway Safety Act".

ANNOTATION

Annotator's note. Since § 42-4-1701 is similar to § 42-4-1501 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

The simplified procedures of the penalty assessment statute do not impermissibly offend the due process clauses of either the constitution of the state or the constitution of the United States. Since the penalty assessment statute does not deprive an offender accused of a traffic violation of his right to a trial, on the contrary, the statute not only expressly preserves the accused's right to a trial but also affords him an alternative procedure which he may accept or reject, and therefore the statute does not violate any constitutional rights. Cave v. Colo. Dept. of Rev., 31 Colo. App. 185, 501 P.2d 479 (1972).

Section 42-2-123 and this section give a licensee notice of the ramifications of his failure to appear and the forfeiture of his bond for traffic violation charge and due process requirements are satisfied. Lopez v. Motor Vehicle Div., 189 Colo. 133, 538 P.2d 446 (1975).

Due process standard for using penalty assessment as conviction. Through the provisions of § 42-2-121 (3), the general assembly has mandated a minimum standard of due process which must be followed before payment of a penalty assessment under this section may be used as a conviction for purposes of suspension or revocation of a driver's license pursuant to § 42-2-123 (1)(a). Stortz v. Colo. Dept. of Rev., 195 Colo. 325, 578 P.2d 229 (1978).

Speeding classifications constitutional. Decision to treat higher rates of speeding as more serious making them criminal acts is within legislature's discretion and does not create a suspect class or infringe on a fundamental right. Drawing a distinction based on speed is rationally related to legislative purpose of safety and fuel conservation. People v. Lewis, 745 P.2d 668 (Colo. 1987).

Traffic violations not decriminalized. The general assembly did not intend to decriminalize minor traffic violations by denominating them "misdemeanor traffic offenses" and prescribing a fine-only penalty scheme for certain grades of these offenses. City of Greenwood Vill. v. Fleming, 643 P.2d 511 (Colo. 1982) (decided prior to 1982 amendments).

Jurisdiction of county courts includes offenses reclassified as "misdemeanor traffic offenses" under this section. Phillips v. County Court, 42 Colo. App. 187, 591 P.2d 600 (1979).

When points not assessable. If a traffic violation does not appear on the summons, to be issued under the notice provisions of subsection (4)(a), and the offender is not advised by the arresting officer in reference to the points chargeable for the traffic violation, points cannot be assessed against him for that offense. Stortz v. Colo. Dept. of Rev., 195 Colo. 325, 578 P.2d 229 (1978).

Payment of ticket, and subsequent lack of protest, precludes challenge of conviction. Where a party pays a traffic ticket without a court judgment or a signed acknowledgment of guilt, but does not challenge the validity of the conviction and affirms the accuracy of his driving record at a departmental hearing, the party may not then challenge the conviction. Martinez v. Dolan, 41 Colo. App. 513, 591 P.2d 588 (1978).

Section furthers policy against custodial arrests. The modern policy against custodial arrests and favoring the issuance of citations and summonses is given effect by requiring the issuance of a penalty assessment notice or summons in ordinary traffic violations. People v. Clyne, 189 Colo. 412, 541 P.2d 71 (1975), overruled in People v. Meredith, 763 P.2d 562 (Colo. 1988).

Police have authority to make custodial arrest for driving without a license under this section and § 42-2-101. People v. Meredith, 763 P.2d 562 (Colo. 1988) (overruling People v. Clyne, 189 Colo. 412, 541 P.2d 71 (1975) and People v. Stark, 682 P.2d 1240 (Colo. App. 1984)).

Presumption of correctness of records held insufficient for suspending driving privileges. Presumption of the correctness of department of revenue records indicating that a motorist charged with driving 41 miles per hour in a 30 mile per hour zone in a city had paid $15 to the municipal court clerk was insufficient for purposes of suspending the motorist's driving privileges where the evidence at the hearing established that there was neither a specific court judgment nor a signed acknowledgment of guilt as prescribed by subsection (4)(a) of this section and § 42-4-1505 (2)(a). Troutman v. Dept. of Rev., 38 Colo. App. 417, 571 P.2d 726 (1976); Martinez v. Dolan, 41 Colo. App. 513, 591 P.2d 588 (1978).


Search of an automobile incident to an arrest for driving without a license under this section and § 42-2-101 is lawful. People v. Meredith, 763 P.2d 562 (Colo. 1988).


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 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.

(2) In recognition of the difficulties attending the litigation of stale claims and the potential for frustrating various statutory provisions directed at repeat offenders, former offenders, and habitual offenders, the only exceptions to the time limitations specified in paragraph (a) of this subsection (1) shall be:

(a) A case in which the court entering judgment did not have jurisdiction over the subject matter of the alleged infraction;

(b) A case in which the court entering judgment did not have jurisdiction over the person of the violator;

(c) Where the court hearing the collateral attack finds by a preponderance of the evidence that the failure to seek relief within the applicable time period was caused by an adjudication of
incompetence or by commitment of the violator to an institution for treatment as a person with a mental illness; or

(d) Where the court hearing the collateral attack finds that the failure to seek relief within the applicable time period was the result of circumstances amounting to justifiable excuse or excusable neglect.


Editor's note: This section is similar to former § 42-4-1501.5 as it existed prior to 1994, and the former § 42-4-1702 was relocated to § 43-5-502.

Cross references: For provisions concerning limitation for collateral attack upon trial judgment, see § 16-5-402.

ANNOTATION


Annotator's note. Since § 42-4-1702 is similar to § 42-4-1501.5 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.

Judicially created grace period for collateral attacks on judgments pursuant to § 16-5-402 did not provide notice that the same grace period would apply to this section. People v. Trimble, 839 P.2d 1168 (Colo. 1992).

42-4-1703. Parties to a crime.

Every person who commits, conspires to commit, or aids or abets in the commission of any act declared in this article and part 1 of article 2 of this title to be a crime or traffic infraction, whether individually or in connection with one or more other persons or as principal, agent, or accessory, is guilty of such offense or liable for such infraction, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or directs another to violate any provision of this article is likewise guilty of such offense or liable for such infraction.


Editor's note: This section is similar to former § 42-4-1502 as it existed prior to 1994, and the former § 42-4-1703 was relocated to § 43-5-503.

42-4-1704. Offenses by persons controlling vehicles.

It is unlawful for the owner or any other person employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law. Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense.

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:

(a) When a person arrested demands an appearance without unnecessary delay before a judge;

(b) When the person is arrested and charged with an offense under this article causing or contributing to an accident resulting in injury or death to any person;

(c) When the person is arrested and charged with DUI, DUI per se, habitual user, or UDD;

(d) When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injuries, or damage to property;

(e) In any other event when the provisions of section 42-4-1701 (5) (b) and (5) (c) apply and the person arrested refuses to give a written promise to appear in court as provided in section 42-4-1707.

(2) Whenever any person is arrested by a police officer for any violation of this article punishable as a misdemeanor and is not required to be taken before a county judge as provided in subsection (1) of this section, the arrested person shall, in the discretion of the officer, either be given a written notice or summons to appear in court as provided in section 42-4-1707 or be taken without unnecessary delay before a county judge who has jurisdiction of such offense when the arrested person does not furnish satisfactory evidence of identity or when the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court. The court shall provide a bail bond schedule and available personnel to accept adequate security for such bail bonds.

(2.5) In any case in which the arrested person that is taken before a county judge pursuant to subsection (1) or (2) of this section is a child, as defined in section 19-1-103 (18), C.R.S., the provisions of section 42-4-1706 (2) shall apply.

(3) Any other provision of law to the contrary notwithstanding, a police officer may place a person who has been arrested and charged with 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 article 81 of title 27, C.R.S., except where in conflict with this section.

Source: L. 94: Entire title amended with relocations, p. 2418, § 1, effective January 1, 1995. L. 2004: (2.5) added, p. 1332, § 3, effective July 1, 2005. L. 2008: (1)(c) and (3) amended, p. 253,
§ 22, effective July 1. L. 2010: (3) amended, (SB 10-175), ch. 188, p. 809, § 89, effective April 29.

Editor's note: This section is similar to former § 42-4-1504 as it existed prior to 1994, and the former § 42-4-1705 was relocated to § 43-5-505.

ANNOTATION

Annotator's note. Since § 42-4-1705 is similar to § 42-4-1504 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

Appearance required relative to criminal prosecution. The requirement in this section for an appearance before the county court is a postarrest requirement relative to the criminal prosecution for driving under the influence and has no bearing upon a civil proceeding under the implied consent statute. Ayala v. Colo. Dept. of Rev., 43 Colo. App. 357, 603 P.2d 979 (1979).


(1) Notwithstanding any other provision of law, a child, as defined in section 19-1-103 (18), C.R.S., convicted of a misdemeanor traffic offense under this article, violating the conditions of probation imposed under this article, or found in contempt of court in connection with a violation or alleged violation under this article shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders if the court with jurisdiction is located in a county in which there is a juvenile detention facility operated by or under contract with the department of human services that shall receive and provide care for such child or if the jail is located within forty miles of such facility. The court imposing penalties under this section may confine a child for a determinate period of time in a juvenile detention facility operated by or under contract with the department of human services. If a juvenile detention facility operated by or under contract with the department of human services is not located within the county or within forty miles of the jail, a child may be confined for up to forty-eight hours in a jail pursuant to section 19-2-508 (4), C.R.S.

(2) (a) Notwithstanding any other provision of law, a child, as defined in section 19-1-103 (18), C.R.S., arrested and incarcerated for an alleged misdemeanor traffic offense under this article, and not released on bond, shall be taken before a county judge who has jurisdiction of such offense within forty-eight hours for fixing of bail and conditions of bond pursuant to section 19-2-508 (4) (d), C.R.S. Such child shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders for longer than seventy-two hours, after which the child may be further detained only in a juvenile detention facility operated by or under contract with the department of human services. In calculating time under this subsection (2), Saturdays, Sundays, and court holidays shall be included.

(b) In any case in which a child is taken before a county judge pursuant to paragraph (a) of this subsection (2), the child's parent or legal guardian shall immediately be notified by the court in which the county judge sits. Any person so notified by the court under this paragraph (b) shall comply with the provisions of section 42-4-1716 (4).
42-4-1707. Summons and complaint or penalty assessment notice for misdemeanors, petty offenses, and misdemeanor traffic offenses - release - registration.

(1) (a) Whenever a person commits a violation of this title punishable as a misdemeanor, petty offense, or misdemeanor traffic offense, other than a violation for which a penalty assessment notice may be issued in accordance with the provisions of section 42-4-1701 (5) (a), and such person is not required by the provisions of section 42-4-1705 to be arrested and taken without unnecessary delay before a county judge, the peace officer may issue and serve upon the defendant a summons and complaint which shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the statute alleged to have been violated, a brief description of the offense, the date and approximate location thereof, and the date the summons and complaint is served on the defendant; shall direct the defendant to appear in a specified county court at a specified time and place; shall be signed by the peace officer; and shall contain a place for the defendant to execute a written promise to appear at the time and place specified in the summons portion of the summons and complaint.

(b) A summons and complaint issued and served pursuant to paragraph (a) of this subsection (1) on a minor under the age of eighteen years shall also contain or be accompanied by a document containing an advisement to the minor that the minor's parent or legal guardian, if known, shall be notified by the court from which the summons is issued and be required to appear with the minor at the minor's court hearing or hearings.

(2) If a peace officer issues and serves a summons and complaint to appear in any court upon the defendant as described in subsection (1) of this section, any defect in form in such summons and complaint regarding the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, the date and approximate location thereof, and the date the summons and complaint is served on the defendant may be cured by amendment at any time prior to trial or any time before verdict or findings upon an oral motion by the prosecuting attorney after notice to the defendant and an opportunity for a hearing. No such amendment shall be permitted if substantial rights of the defendant are prejudiced. No summons and complaint shall be considered defective so as to be cause for dismissal solely because of a defect in form in such summons and complaint as described in this subsection (2).

(3) (a) Whenever a penalty assessment notice for a misdemeanor, petty offense, or misdemeanor traffic offense is issued pursuant to section 42-4-1701 (5) (a), the penalty assessment notice that shall be served upon the defendant by the peace officer shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the statute alleged to have been

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violated, a brief description of the offense, the date and approximate location thereof, the amount of the penalty prescribed for the offense, the amount of the surcharges thereon pursuant to sections 24-4.1-119 (1) (f), 24-4.2-104 (1), and 24-33.5-415.6, C.R.S., the number of points, if any, prescribed for the offense pursuant to section 42-2-127, and the date the penalty assessment notice is served on the defendant; shall direct the defendant to appear in a specified county court at a specified time and place in the event the penalty and surcharges thereon are not paid; shall be signed by the peace officer; and shall contain a place for the defendant to elect to execute a signed acknowledgment of guilt and an agreement to pay the penalty prescribed and surcharges thereon within twenty days, as well as such other information as may be required by law to constitute the penalty assessment notice to be a summons and complaint, should the prescribed penalty and surcharges thereon not be paid within the time allowed in section 42-4-1701.

(a.5) A penalty assessment notice issued and served pursuant to paragraph (a) of this subsection (3) on a minor under the age of eighteen years shall also contain or be accompanied by a document containing:

(I) A preprinted declaration stating that the minor's parent or legal guardian has reviewed the contents of the penalty assessment notice with the minor;

(II) Preprinted signature lines following the declaration on which the reviewing person described in subparagraph (I) of this paragraph (a.5) shall affix his or her signature and for a notary public to duly acknowledge the reviewing person's signature; and

(III) An advisement to the minor that:

(A) The minor shall, within seventy-two hours after service of the penalty assessment notice, inform his or her parent or legal guardian that the minor has received a penalty assessment notice;

(B) The parent or legal guardian of the minor is required by law to review and sign the penalty assessment notice and to have his or her signature duly acknowledged by a notary public; and

(C) Noncompliance with the requirement set forth in sub-subparagraph (B) of this subparagraph (III) shall result in the minor and the parent or legal guardian of the minor being required to appear in court pursuant to sections 42-4-1710 (1) (b), 42-4-1710 (1.5), and 42-4-1716 (4).

(b) One copy of said penalty assessment notice shall be served upon the defendant by the peace officer and one copy sent to the supervisor within the department and such other copies sent as may be required by rule of the department to govern the internal administration of this article between the department and the Colorado state patrol.

(4) (a) The time specified in the summons portion of said summons and complaint must be at least twenty days after the date such summons and complaint is served, unless the defendant shall demand an earlier court appearance date.

(b) The time specified in the summons portion of said penalty assessment notice shall be at least thirty days but not more than ninety days after the date such penalty assessment notice is served, unless the defendant shall demand an earlier court appearance date.
(5) The place specified in the summons portion of said summons and complaint or of the penalty assessment notice must be a county court within the county in which the offense is alleged to have been committed.

(6) If the defendant is otherwise eligible to be issued a summons and complaint or a penalty assessment notice for a violation of this title punishable as a misdemeanor, petty offense, or misdemeanor traffic offense and if the defendant does not possess a valid Colorado driver's license, the defendant, in order to secure release, as provided in this section, must either consent to be taken by the officer to the nearest mailbox and to mail the amount of the penalty and surcharges thereon to the department or must execute a promise to appear in court on the penalty assessment notice or on the summons and complaint. If the defendant does possess a valid Colorado driver's license, the defendant shall not be required to execute a promise to appear on the penalty assessment notice or on the summons and complaint. The peace officer shall not require any person who is eligible to be issued a summons and complaint or a penalty assessment notice for a violation of this title to produce or divulge such person's social security number.

(7) Any officer violating any of the provisions of this section is guilty of misconduct in office and shall be subject to removal from office.


**Editor's note:** This section is similar to former § 42-4-1505 as it existed prior to 1994.

**ANNOTATION**


**Annotator's note.** Since § 42-4-1707 is similar to § 42-4-1505 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

Section 42-4-1507 does not allow noncompliance with the mandate of § 42-4-1505; rather, § 42-4-1507 relates to other procedures concerning arrest. People v. Overlee, 174 Colo. 202, 483 P.2d 222 (1971).

Failure of notice to advise that signature and payment of fine constitute guilty plea. Where there was no statement in the penalty assessment notices advising defendant that his signature and payment of the fine constituted a plea of guilty or an acknowledgment of guilt, the notices did not comply with the mandatory requirements of this section, and defendant's acceptance of the notices in the form tendered and his payment of the fines stated therein may not be considered a conviction for which points may be assessed. Cave v. Colo. Dept. of Rev., 31 Colo. App. 185, 501 P.2d 479 (1972).

Presumption of correctness of records held insufficient for suspending driving privileges. Presumption of the correctness of department of revenue records indicating that a motorist charged with driving 41 miles per hour in a 30 mile per hour zone in a city had paid $15 to the municipal court clerk was insufficient for purposes of suspending the motorist's driving privileges where the evidence at the hearing established that there was neither a specific court judgment nor a signed acknowledgment of guilt as

**Payment of ticket, and subsequent lack of protest, precludes challenge of conviction.** Where a party pays a traffic ticket without a court judgment or a signed acknowledgment of guilt, but does not challenge the validity of the conviction and affirms the accuracy of his driving record at a departmental hearing, the party may not then challenge the conviction. Martinez v. Dolan, 41 Colo. App. 513, 591 P.2d 588 (1978).


**42-4-1708. Traffic infractions - proper court for hearing, burden of proof - appeal - collateral attack.**

(1) Every hearing in county court for the adjudication of a traffic infraction, as provided by this article, shall be held before a county court magistrate appointed pursuant to part 5 of article 6 of title 13, C.R.S., or before a county judge acting as a magistrate; except that, whenever a crime and a class A or class B traffic infraction or a crime and both such class A and class B traffic infractions are charged in the same summons and complaint, all charges shall be made returnable before a judge or magistrate having jurisdiction over the crime and the rules of criminal procedure shall apply. Nothing in this part 17 or in part 5 of article 6 of title 13, C.R.S., shall be construed to prevent a court having jurisdiction over a criminal charge relating to traffic law violations from lawfully entering a judgment on a case dealing with a class A or class B traffic infraction.

(2) When a court of competent jurisdiction determines that a person charged with a class 1 or class 2 misdemeanor traffic offense is guilty of a lesser-included offense which is a class A or class B traffic infraction, the court may enter a judgment as to such lesser charge.

(3) The burden of proof shall be upon the people, and the traffic magistrate shall enter judgment in favor of the defendant unless the people prove the liability of the defendant beyond a reasonable doubt. The district attorney or the district attorney's deputy may, in the district attorney's discretion, enter traffic infraction cases for the purpose of attempting a negotiated plea or a stipulation to deferred prosecution or deferred judgment and sentence but shall not be required to so enter by any person, court, or law, nor shall the district attorney represent the state at hearings conducted by a magistrate or a county judge acting as a magistrate on class A or class B traffic infraction matters. The magistrate or county judge acting as a magistrate shall be permitted to call and question any witness and shall also act as the fact finder at hearings on traffic infraction matters.

(4) Appeal from final judgment on a traffic infraction matter shall be taken to the district court for the county in which the magistrate or judge acting as magistrate is located.

(5) (a) Except as otherwise provided in paragraph (b) of this subsection (5), no person against whom a judgment has been entered for a traffic infraction as defined in section 42-4-1701 (3) (a) shall collaterally attack the validity of that judgment unless such attack is commenced within six months after the date of entry of the judgment.

(b) In recognition of the difficulties attending the litigation of stale claims and the potential for frustrating various statutory provisions directed at repeat offenders, former offenders, and
habitual offenders, the only exceptions to the time limitations specified in paragraph (a) of this subsection (5) shall be:

(I) A case in which the court entering judgment did not have jurisdiction over the subject matter of the alleged infraction;

(II) A case in which the court entering judgment did not have jurisdiction over the person of the violator;

(III) Where the court hearing the collateral attack finds by a preponderance of the evidence that the failure to seek relief within the applicable time period was caused by an adjudication of incompetence or by commitment of the violator to an institution for treatment as a person with a mental illness; or

(IV) Where the court hearing the collateral attack finds that the failure to seek relief within the applicable time period was the result of circumstances amounting to justifiable excuse or excusable neglect.


Editor's note: This section is similar to former § 42-4-1505.3 as it existed prior to 1994.

Cross references: For provisions concerning limitation for collateral attack upon trial judgment, see § 16-5-402; for penalties for class A and class B traffic infractions and class 1 and class 2 misdemeanor traffic offenses, see § 42-4-1701 (3)(a).

ANNOTATION

Annotator's note. Since § 42-4-1708 is similar to § 42-4-1505.3 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.

This section requires traffic infractions and criminal offenses to be made returnable to a court having jurisdiction over the criminal offense when all charges are contained in the same summons and complaint. When a summons and complaint charging a traffic infraction are made returnable to a referee, the district attorney is precluded from participating in the proceeding. Williamsen v. People, 735 P.2d 176 (Colo. 1987).

42-4-1709. Penalty assessment notice for traffic infractions - violations of provisions by officer - driver's license.

(1) Whenever a penalty assessment notice for a traffic infraction is issued pursuant to section 42-4-1701 (5) (a), the penalty assessment notice that shall be served upon the defendant by the peace officer shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the statute alleged to have been violated, a brief description of the traffic infraction, the date and approximate location thereof, the amount of the penalty prescribed for the traffic infraction, the amount of the surcharges thereon pursuant to sections 24-4.1-119 (1) (f), 24-4.2-104 (1), and 24-33.5-415.6, C.R.S., the number of points, if any, prescribed for the traffic infraction pursuant to section 42-2-127, and the date the penalty assessment notice is served on the defendant; shall
(1.5) A penalty assessment notice issued and served pursuant to subsection (1) of this section on a minor under the age of eighteen years shall also contain or be accompanied by a document containing:

(a) A preprinted declaration stating that the minor's parent or legal guardian has reviewed the contents of the penalty assessment notice with the minor;

(b) Preprinted signature lines following the declaration on which the reviewing person described in paragraph (a) of this subsection (1.5) shall affix his or her signature and for a notary public to duly acknowledge the reviewing person's signature; and

(c) An advisement to the minor that:

(I) The minor shall, within seventy-two hours after service of the penalty assessment notice, inform his or her parent or legal guardian that the minor has received a penalty assessment notice;

(II) The parent or legal guardian of the minor is required by law to review and sign the penalty assessment notice and to have his or her signature duly acknowledged by a notary public; and

(III) Noncompliance with the requirement set forth in subparagraph (II) of this paragraph (c) shall result in the minor and the parent or legal guardian of the minor being required to appear in court pursuant to sections 42-4-1710 (1) (b), 42-4-1710 (1.5), and 42-4-1716 (4).

(2) One copy of said penalty assessment notice shall be served upon the defendant by the peace officer and one copy sent to the supervisor within the department and such other copies sent as may be required by rule of the department to govern the internal administration of this article between the department and the Colorado state patrol.

(3) The time specified in the summons portion of said penalty assessment notice must be at least thirty days but not more than ninety days after the date such penalty assessment notice is served, unless the defendant shall demand an earlier hearing.

(4) The place specified in the summons portion of said penalty assessment notice must be a county court within the county in which the traffic infraction is alleged to have been committed.

(5) Whenever the defendant refuses to accept service of the penalty assessment notice, tender of such notice by the peace officer to the defendant shall constitute service thereof upon the defendant.

(6) Any officer violating any of the provisions of this section is guilty of misconduct in office and shall be subject to removal from office.
(7) (a) A person shall not be allowed or permitted to obtain or renew a permanent driver's, minor driver's, or probationary license if such person has, at the time of making application for obtaining or renewing such driver's license:

(I) An outstanding judgment entered against such person on and after January 1, 1983, pursuant to section 42-4-1710 (2) or (3);

(II) An outstanding judgment entered against such person by a county or municipal court for a violation of a statute or ordinance relating to the regulation of motor vehicles or traffic, excluding traffic infractions defined by state statute or ordinance and violations relating to parking;

(III) A bench warrant issued against such person by a county or municipal court for failure to appear to answer a citation for an alleged violation of a statute or ordinance relating to the regulation of motor vehicles or traffic, excluding traffic infractions defined by state statute or ordinance and violations relating to parking;

(IV) An outstanding judgment entered against such person by a municipal court for a violation of any municipal ordinance which occurred when such person was under eighteen years of age, excluding traffic infractions defined by state statute or ordinance and violations related to parking;

(V) A bench warrant issued against such person by a municipal court for failure to appear to answer a summons or summons and complaint for an alleged violation of any municipal ordinance that occurred when such person was under eighteen years of age, excluding traffic infractions defined by state statute or ordinance and violations relating to parking;

(VI) Issued a check or order to the department to pay a penalty assessment, a driver's license fee, a license reinstatement fee, or a motor vehicle record fee and such check or order is returned for insufficient funds or a closed account and remains unpaid. For the purposes of this subparagraph (VI), the term "insufficient funds" means having an insufficient balance on account with a bank or other drawee for the payment of a check or order when the check or order is presented for payment within thirty days after issue.

(VII) Repealed.

(VIII) An outstanding judgment entered against such person by a county or municipal court for a violation of section 42-4-1416.

(b) The restrictions in paragraph (a) of this subsection (7) shall not apply in cases where an appeal from any determination of liability and penalty is pending and not disposed of at the time of such application for obtaining or renewing a driver's license.


42-4-1710. Failure to pay penalty for traffic infractions - failure of parent or guardian to sign penalty assessment notice - procedures.

(1) (a) Unless a person who has been cited for a traffic infraction pays the penalty assessment as provided in this article and surcharge thereon pursuant to sections 24-4.1-119 (1) (f) and 24-4.2-104 (1), C.R.S., the person shall appear at a hearing on the date and time specified in the citation and answer the complaint against such person.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1) and section 42-4-1701 (5), a minor under the age of eighteen years shall be required to appear at a hearing on the date and time specified in the citation and answer the complaint if the penalty assessment was timely paid but not signed and notarized in the manner required by section 42-4-1707 (3) (a.5) or 42-4-1709 (1.5).

(1.5) If a minor under the age of eighteen years is required to appear at a hearing pursuant to subsection (1) of this section, the minor shall so inform his or her parent or legal guardian, and the parent or legal guardian shall also be required to appear at the hearing.

(2) If the violator answers that he or she is guilty or if the violator fails to appear for the hearing, judgment shall be entered against the violator.

(3) If the violator denies the allegations in the complaint, a final hearing on the complaint shall be held subject to the provisions regarding a speedy trial which are contained in section 18-1-405, C.R.S. If the violator is found guilty or liable at such final hearing or if the violator fails to appear for a final hearing, judgment shall be entered against the violator.

(4) (a) (I) (A) If judgment is entered against a violator, the violator shall be assessed an appropriate penalty and surcharge thereon, a docket fee of sixteen dollars, and other applicable costs authorized by section 13-16-122 (1), C.R.S. If the violator had been cited by a penalty assessment notice, the penalty shall be assessed pursuant to section 42-4-1701 (4) (a). If a penalty assessment notice is prohibited by section 42-4-1701 (5) (c), the penalty shall be assessed pursuant to section 42-4-1701 (3) (a).

(B) On and after July 1, 2008, all docket fees collected under this subparagraph (I) shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in section 13-32-101 (6), C.R.S.

(II) On and after June 6, 2003, the docket fee assessed in subparagraph (I) of this paragraph (a) shall be increased by three dollars. The additional revenue generated by the docket fee shall be transmitted to the state treasurer for deposit in the state commission on judicial performance cash fund created in section 13-5.5-107, C.R.S.

(a.5) Pursuant to section 13-1-204 (1) (b), C.R.S., a five-dollar surcharge, in addition to the original surcharge described in paragraph (a) of this subsection (4), shall be assessed and collected on each docket fee that is described in paragraph (a) of this subsection (4) concerning penalties assessed on and after July 1, 2007.
(b) In no event shall a bench warrant be issued for the arrest of any person who fails to appear for a hearing pursuant to subsection (1.5) or (2) of this section or for a final hearing pursuant to subsection (3) of this section. Except as otherwise provided in section 42-4-1716, entry of judgment and assessment of the penalty and surcharge pursuant to paragraph (a) of this subsection (4) and any penalties imposed pursuant to section 42-2-127 shall constitute the sole penalties for failure to appear for either the hearing or the final hearing.


Editor's note: This section is similar to former § 42-4-1505.7 as it existed prior to 1994.


42-4-1711. Compliance with promise to appear.

A written promise to appear in court may be complied with by an appearance by counsel.


Editor's note: This section is similar to former § 42-4-1506 as it existed prior to 1994.

42-4-1712. Procedure prescribed not exclusive.

The foregoing provisions of this article shall govern all police officers in making arrests without a warrant or issuing citations for violations of this article, for offenses or infractions committed in their presence, but the procedure prescribed in this article shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense or infraction of like grade.


Editor's note: This section is similar to former § 42-4-1507 as it existed prior to 1994.

Cross references: For arrests generally, see article 3 of title 16.

ANNOTATION

Annotator's note. Since § 42-4-1712 is similar to § 42-4-1507 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

Section relates to other procedures concerning arrest. Section 42-4-1507 does not allow noncompliance with the mandate of § 42-4-1505; rather, § 42-4-1507 relates to other procedures concerning arrest. People v. Overlee, 174 Colo. 202, 483 P.2d 222 (1971).
The inclusion of the word "otherwise" in this section was not meant to give exclusive jurisdiction to a county judge in those cases where the alleged offense was committed in the presence of the arresting officer. People v. Griffith, 130 Colo. 475, 276 P.2d 559 (1954).

42-4-1713. Conviction record inadmissible in civil action.

Except as provided in sections 42-2-201 to 42-2-208, no record of the conviction of any person for any violation of this article shall be admissible as evidence in any court in any civil action.


Editor's note: This section is similar to former § 42-4-1508 as it existed prior to 1994.

ANNOTATION

Law reviews. For article, "Plea of Guilty as an Admission", see 33 Dicta 188 (1956).

Annotator's note. Since § 42-4-1713 is similar to § 42-4-1508 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

This section prohibits the admission in evidence of the record of conviction of any person, for violation of the state traffic laws, in a civil action. Ripple v. Brack, 132 Colo. 125, 286 P.2d 625 (1955).

This section prevents the admission of evidence of conviction for failure to yield in violation of § 42-4-703 (3). That evidence may not be introduced at trial or during summary judgment and may not serve as the basis for issue preclusion on the question of violation of a statute. Bullock v. Wayne, 623 F. Supp. 2d 1247 (D. Colo. 2009).

Unless §§ 42-2-201 to 42-2-208 are implicated, evidence of a driver's prior traffic convictions is not admissible in a civil action, even if such convictions caused the driver's license to be suspended at the time of the accident that is the subject of the civil action. Absent an adjudication by the department of revenue that the driver was an habitual offender, the convictions are inadmissible for any purpose, including to show that the prior convictions giving rise to the suspension indicated a habit, practice, and pattern of disregard for traffic regulations. Lawrence v. Taylor, 8 P.3d 607 (Colo. App. 2000).

Highly speculative assertion in personal injury action that plaintiff's decedent would have been convicted of driving under suspension had he survived, and thus qualify as an habitual offender under §§ 42-2-201 to 42-2-208, does not meet the exception in this section. Thus, the decedent's prior traffic convictions were properly excluded at trial. Lawrence v. Taylor, 8 P.3d 607 (Colo. App. 2000).

Section prohibits admission of evidence of charge of violation. By this section, the general assembly obviously intended, by prohibiting the admission in evidence in a civil action of the record of conviction of any person for violation of the traffic laws, to prohibit also the asking questions as to whether or not the plaintiff had been charged in justice's court with a violation of the state traffic laws. Ripple v. Brack, 132 Colo. 125, 286 P.2d 625 (1955).

No prejudice to defendant. The medical witness stated: "An auto hit him in the back and he got a ticket for reckless driving." The statement is ambiguous; for that reason it was proper to clarify since the plaintiff did not receive a ticket, and the defendant's counsel did not move to strike the statement. The facts do not bring the motion for mistrial within the ambit of the proscription of the statute, since the statement made no mention of a "conviction", nor was any effort made to introduce a "record of the conviction of any person". There was no prejudice to the defendant. Thompson v. Tartler, 166 Colo. 247, 443 P.2d 365 (1968).
42-4-1714. Traffic violation not to affect credibility of witness.

The conviction of a person upon a charge of violating any provision of this article or other traffic regulation less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.


Editor's note: This section is similar to former § 42-4-1509 as it existed prior to 1994.

42-4-1715. Convictions, judgments, and charges recorded - public inspection.

(1) (a) Every judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this article or any other law regulating the operation of vehicles on highways.

(b) (I) Upon application by a person, the court shall expunge all records concerning a conviction of the person for UDD with a BAC of at least 0.02 but not more than 0.05 if:

(A) Such person presents a request for expungement to the court and provides all information required by the court to process such request;

(B) Such person is over twenty-one years of age and the court action regarding the offense has been concluded;

(C) The person has not been convicted for any other offense under section 42-4-1301 that was committed while such person was under twenty-one years of age;

(D) Such person pays the fine and surcharge for such conviction and completes any other requirements of the court with regard to such conviction, including, but not limited to, any order to pay restitution to any party;

(E) Such person has never held a commercial driver's license as defined in section 42-2-402; and

(F) Such person was not operating a commercial motor vehicle as defined in section 42-2-402.

(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 of DUI, DUI per se, DWAI, habitual user, or UDD committed while the person was under twenty-one years of age.

(2) (a) Subject to paragraph (b) of this subsection (2), within ten days after the entry of a judgment, conviction, or forfeiture of bail of a person upon a charge of violating this article or other law regulating the operation of vehicles on highways, the judge or clerk of the court in which the entry of a judgment was made, the conviction was had, or bail was forfeited shall prepare and forward to the department an abstract of the record of the court covering every case
in which the person had a judgment entered against him or her, was convicted, or forfeited bail, which abstract shall be certified by the preparer to be true and correct.

(b) For the holder of a commercial driver's license as defined in section 42-2-402 or an offense committed by a person operating a commercial motor vehicle as defined in section 42-2-402, within five days after conviction of a person upon a charge of violating this article or other law regulating the operation of vehicles on highways, the judge or clerk of the court in which the person was convicted shall prepare and forward to the department an abstract of the record of the court covering every case in which the person was convicted, which abstract shall be certified by the preparer to be true and correct.

(3) Said abstract must be made upon a form furnished by the department and shall include the name, address, and driver's license number of the party charged, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment or whether bail forfeited, and the amount of the fine or forfeiture.

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

(I) Upon the conviction of any person of vehicular homicide or any other felony in the commission of which a vehicle was used; and

(II) Upon the dismissal of a charge for DUI, DUI per se, DWAI, habitual user, or UDD or if the original charge was for DUI, DUI per se, DWAI, habitual user, or UDD and the conviction was for a nonalcohol- or nondrug-related traffic offense.

(b) ( Deleted by amendment, L. 2008, p. 475, § 6, effective July 1, 2008.)

(5) The department shall keep all abstracts received under this section, as well as a record of penalty assessments received, at the main office, and the same shall be public records and subject to the provisions of section 42-1-206.


Editor's note: This section is similar to former § 42-4-1510 as it existed prior to 1994.

Cross references: For vehicular homicide, see § 18-3-106.

ANNOTATION

Annotator's note. Since § 42-4-1715 is similar to § 42-4-1510 as it existed prior to the 1994 of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.

"[E]xpunge all records concerning a conviction of the person for UDD", as that phrase is used in subsection (1)(b)(I), means to strike out, obliterate, or mark for deletion all references to petitioner's arrest for UDD, the institution and prosecution of UDD charges against the petitioner, and the petitioner's conviction therefor. People v. Connors, 230 P.3d 1265 (Colo. App. 2010).
Subsection (1)(b)(I) does not provide for the expungement of non-UDD charges, even if such charges were brought at the same time or in the same document as the UDD charge. People v. Connors, 230 P.3d 1265 (Colo. App. 2010).

"Expunge", as used in subsection (1)(b)(I), does not require expungement of records concerning non-UDD charges when such charges are brought along with the UDD charge. Thus, it was error for magistrate to expunge pursuant to subsection (1)(b)(I) two charges for possession of a controlled substance. People v. Connors, 230 P.3d 1265 (Colo. App. 2010).

Department's driving records are presumed correct. The mere absence of any notation on traffic tickets concerning their disposition does not overcome the presumption of correctness of the department's driving records. A driving record is prima facie proof of its contents, including convictions, without the necessity of looking behind the records to the underlying tickets. People v. Anadale, 674 P.2d 372 (Colo. 1984).

42-4-1716. Notice to appear or pay fine - failure to appear - penalty.

(1) For the purposes of this part 17, tender by an arresting officer of the summons or penalty assessment notice shall constitute notice to the violator to appear in court at the time specified on such summons or to pay the required fine and surcharge thereon.

(2) Except as otherwise provided in subsection (4) of this section, a person commits a class 2 misdemeanor traffic offense if the person fails to appear to answer any offense other than a traffic infraction charged under this part 17.

(3) (Deleted by amendment, L. 2004, p. 1335, § 9, effective July 1, 2005.)

(4) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), a person who is a parent or legal guardian of a minor under the age of eighteen years and who is required to appear in court with the minor pursuant to the provisions of this part 17 including but not limited to section 42-4-1706 (2) (b), 42-4-1707 (1) (b), or 42-4-1710 (1.5), shall appear in court at the location and on the date stated in the penalty assessment notice or in the summons and complaint or as instructed by the court.

(II) The provisions of subparagraph (I) of this paragraph (a) concerning the appearance of a parent or legal guardian shall not apply in a case where the minor under the age of eighteen years or the parent of the minor demonstrates to the court by clear and convincing evidence that the minor is an emancipated minor.

(III) For purposes of this subsection (4), "emancipated minor" means a minor under the age of eighteen years who has no legal guardian and whose parents have entirely surrendered the right to the care, custody, and earnings of the minor, no longer are under any duty to support or maintain the minor, and have made no provision for the support of the minor.

(b) A person who violates any provision of paragraph (a) of subparagraph (I) of this subsection (4) commits a class 1 petty offense and shall be punished pursuant to section 18-1.3-503, C.R.S.

Source: L. 94: Entire title amended with relocations, p. 2426, § 1, effective January 1, 1995. L. 2004: (2) and (3) amended and (4) added, p. 1335, § 9, effective July 1, 2005.

Editor's note: This section is similar to former § 42-4-1511 as it existed prior to 1994.
Cross references: For penalties for class 2 misdemeanor traffic offenses, see § 42-4-1701 (3)(a)(II).

ANNOTATION


42-4-1717. Conviction - attendance at driver improvement school - rules.

(1) Except as otherwise provided in subsection (2) of this section, if a person has been convicted of violating this article or any other law regulating the operation of motor vehicles other than a violation of section 42-4-1301, the court may require the defendant, or, if the defendant has not been convicted of a violation of this article or any other law regulating the operation of motor vehicles within the last eighteen months, the court shall offer the defendant an opportunity, at the defendant's expense, to attend and satisfactorily complete a course of instruction at any designated driver improvement school providing instruction in the traffic laws of this state, instruction in recognition of hazardous traffic situations, and instruction in traffic accident prevention. Upon completion of the course, the court may suspend all or a portion of the fine or sentence of imprisonment. Unless otherwise provided by law, such school shall be approved by the court.

(2) Whenever a minor under eighteen years of age has been convicted of violating any provision of this article or other law regulating the operation of vehicles on highways, other than a traffic infraction, the court shall require the minor to attend and satisfactorily complete a course of instruction at any designated driver improvement school providing instruction in the traffic laws of this state, instruction in recognition of hazardous traffic situations, and instruction in traffic accident prevention. The court shall impose the driver improvement school requirement in addition to the penalty provided for the violation or as a condition of either the probation or the suspension of all or any portion of any fine or sentence of imprisonment for the violation. The minor, or the minor's parent or parents who appear in court with the minor in accordance with section 42-4-1716 (4), shall pay the cost of attending the designated driver improvement school. The courts shall make available information on scholarships and other financial assistance available to help minors or their parents offset the costs of driver improvement school. Unless otherwise provided by law, such school shall be approved by the court.

(3) (a) Effective January 1, 2010, a person who is required to attend a course of instruction pursuant to subsection (1) or (2) of this section shall pay, in addition to any other penalties, a penalty surcharge as determined by rules promulgated by the department. The driver improvement school shall collect the penalty surcharge and remit it to the department at least monthly in accordance with rules promulgated by the department. The department shall set the penalty surcharge in an amount to offset the direct and indirect cost of implementing section 42-1-223. The penalty surcharge shall be transferred to the state treasurer and credited to the defensive driving school fund created in section 42-1-223.

(b) The court shall include on the referral form information concerning the amount and purpose of the penalty surcharge. If the court determines that a person is unable to pay the cost of
the penalty surcharge, the court may waive the surcharge and the driver improvement school shall not collect nor remit the penalty surcharge to the department.

(c) A person who is required to attend a course of instruction pursuant to subsection (1) or (2) of this section shall register with the entity that monitors the driver improvement school pursuant to section 42-1-223. If the person satisfactorily completes the course, the driver improvement school shall electronically notify the entity.


Editor's note: This section is similar to former § 42-4-1513 as it existed prior to 1994.

42-4-1718. Electronic transmission of data - standards.

(1) The department, the judicial department, and the department of public safety shall jointly develop standards for the electronic transmission of any penalty assessment notice or summons and complaint issued pursuant to the provisions of this article or issued pursuant to any county ordinance adopted under section 30-15-401 (1) (h), C.R.S. Such agencies shall consult with county sheriffs, municipal police departments, municipal courts, and the office of transportation safety in the department of transportation in developing such standards. Such standards shall be consistent with requirements of the department for reporting convictions under the provisions of this article and with the requirements of the department of public safety for reporting criminal information under article 21 of title 16, C.R.S. The provisions of this section shall not be interpreted to require any municipality, county, or other government entity to transmit traffic data electronically.

(2) A municipal court, county court, district court, or any court with jurisdiction over violations of traffic rules and laws shall not dismiss any charges or refuse to enforce any traffic law or rule solely because a penalty assessment notice or summons and complaint issued pursuant to the standards established in this section is in electronic form or contains an electronic signature.


42-4-1719. Violations - commercial driver's license - compliance with federal regulation.

As to a holder of a commercial driver's license as defined in section 42-2-402 or the operator of a commercial motor vehicle as defined in section 42-2-402, a court shall not defer imposition of judgment or allow a person to enter into a diversion program that would prevent a driver's conviction for any violation, in any type of motor vehicle, of a traffic control law from appearing on the driver's record.

PART 18
VEHICLES ABANDONED ON
PUBLIC PROPERTY

Editor's note: This title was amended with relocations in 1994, and this part 18 was subsequently amended with relocations in 2002, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 18 prior to 2002, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 2002.

Cross references: For provisions concerning vehicles abandoned on private property, see part 21 of this article.

42-4-1801. Legislative declaration.

The general assembly hereby declares that the purpose of this part 18 is to provide procedures for the removal, storage, and disposal of motor vehicles that are abandoned on public property.


42-4-1802. Definitions.

As used in this part 18, unless the context otherwise requires:

(1) "Abandoned motor vehicle" means:

(a) Any motor vehicle left unattended on public property, including any portion of a highway right-of-way, outside the limits of any incorporated town or city for a period of forty-eight hours or longer;

(b) Any motor vehicle left unattended on public property, including any portion of a highway right-of-way, within the limits of any incorporated town or city for a period longer than any limit prescribed by any local ordinance concerning the abandonment of motor vehicles or, if there is no such ordinance, for a period of forty-eight hours or longer;

(c) Any motor vehicle stored in an impound lot at the request of a law enforcement agency and not removed from the impound lot within seventy-two hours after the time the law enforcement agency notifies the owner or agent that the vehicle is available for release upon payment of any applicable charges or fees;

(d) A motor vehicle fitted with an immobilization device that is on public property and deemed to be abandoned pursuant to section 42-4-1105 (7) (c); or

(e) Any motor vehicle left unattended at a regional transportation district parking facility, as defined in section 32-9-119.9 (6), C.R.S., that is deemed to be abandoned pursuant to section 32-9-119.9 (4) (b), C.R.S.
(2) "Agency employee" means any employee of the department of transportation or other municipal, county, or city and county agency responsible for highway safety and maintenance.

(3) (Deleted by amendment, L. 2009, (HB 09-1279), ch. 170, p. 763, § 1, effective August 5, 2009.)

(4) "Appraisal" means a bona fide estimate of reasonable market value made by any motor vehicle dealer licensed in this state or by any employee of the Colorado state patrol or of any sheriff's or police department whose appointment for such purpose has been reported by the head of the appointing agency to the executive director of the department.

(5) "Disabled motor vehicle" means any motor vehicle that is stopped or parked, either attended or unattended, upon a public right-of-way and that is, due to any mechanical failure or any inoperability because of a collision, a fire, or any other such injury, temporarily inoperable under its own power.

(6) "Impound lot" means a parcel of real property that is owned or leased by a government or operator at which motor vehicles are stored under appropriate protection.

(7) "Operator" means a person or a firm licensed by the public utilities commission as a towing carrier.

(8) "Public property" means any real property having its title, ownership, use, or possession held by the federal government; this state; or any county, municipality, as defined in section 31-1-101 (6), C.R.S., or other governmental entity of this state.

(9) "Responsible law enforcement agency" means the law enforcement agency authorizing the original tow of an abandoned motor vehicle, whether or not the vehicle is towed to another law enforcement agency's jurisdiction.


ANNOTATION

Annotator's note. Since § 42-4-1802 is similar to § 42-4-1802 as it existed prior to the 2002 amendment to part 18 of article 4 of title 42, which resulted in the relocation of provisions, relevant cases decided under former provisions similar to that section have been included in the annotations to this section.

"Disabled" vehicle under former subsection (2). Where the lights on a vehicle fail at a point on the highway where the shoulder of the road is not wide enough to permit the parking of the vehicle off of the pavement and under circumstances rendering it dangerous to move the vehicle, the vehicle was disabled within the meaning of former subsection (2). Anderson v. Hudspeth Pine, Inc., 299 F.2d 874 (10th Cir. 1962).

Vehicle not "disabled". Where motorists stopped automobile partially on paved highway for purpose of removing frost which had entirely covered windshield, the automobile was not "disabled" within meaning of former subsection (2). Dillon v. Sterling Rendering Works, 106 Colo. 407, 106 P.2d 358 (1940).

(1) (a) No person shall abandon any motor vehicle upon public property. Any sheriff, undersheriff, deputy sheriff, police officer, marshal, Colorado state patrol officer, or agent of the Colorado bureau of investigation who finds a motor vehicle that such officer has reasonable grounds to believe has been abandoned shall require such motor vehicle to be removed or cause the same to be removed and placed in storage in any impound lot designated or maintained by the law enforcement agency employing such officer.

(b) If an operator is used by the responsible law enforcement agency to tow or impound the motor vehicle pursuant to paragraph (a) of this subsection (1), the operator shall be provided with written authorization to possess the motor vehicle on a document that includes, without limitation, the year, make, model, vehicle identification number, and storage location.

(2) Whenever any sheriff, undersheriff, deputy sheriff, police officer, marshal, Colorado state patrol officer, agent of the Colorado bureau of investigation, or agency employee finds a motor vehicle, vehicle, cargo, or debris, attended or unattended, standing upon any portion of a highway right-of-way in such a manner as to constitute an obstruction to traffic or proper highway maintenance, such officer or agency employee is authorized to cause the motor vehicle, vehicle, cargo, or debris to be moved to eliminate any such obstruction; and neither the officer, the agency employee, nor anyone acting under the direction of such officer or employee shall be liable for any damage to such motor vehicle, vehicle, cargo, or debris occasioned by such removal. The removal process is intended to clear the obstruction, but such activity should create as little damage as possible to the vehicle, or cargo, or both. No agency employee shall cause any motor vehicle to be moved unless such employee has obtained approval from a local law enforcement agency of a municipality, county, or city and county, the Colorado bureau of investigation, or the Colorado state patrol.

(3) The operator shall be responsible for removing the motor vehicle and the motor vehicle debris from the site pursuant to this section, but shall not be required to remove or clean up any hazardous or commercial cargo the motor vehicle carried. The commercial carrier shall be responsible for removal or clean-up of the hazardous or commercial cargo.


ANNOTATION

Annotator's note. Since § 42-4-1803 is similar to § 42-4-1803 as it existed prior to the 2002 amendment to part 18 of article 4 of title 42, which resulted in the relocation of provisions, relevant cases decided under former provisions similar to that section have been included in the annotations to this section.

These sections prevail over general abandonment provision in § 38-20-116. The removal and storage of abandoned vehicles is specifically provided for in former §§ 42-4-1101 to 42-4-1109 and these special sections will prevail over the more general abandonment provision in § 38-20-116. Calabrese v. Hall, 42 Colo. App. 347, 593 P.2d 1387 (1979).

Negligence in case involving violation of this section. A driver who stops his truck entirely on the highway pavement for emergency repairs when there is ample room on the shoulder outside of the
traveled lane for his vehicle -- no good reason appearing why he could not have safely driven out on the shoulder -- is guilty of negligence in case another car collides with his truck while it is standing in the parked position. Calnon v. Sorel, 108 Colo. 467, 119 P.2d 615 (1941).

**Evidence showing violation.** Alden v. Watson, 106 Colo. 103, 102 P.2d 479 (1940).

**This section prohibits** a party parking, stopping or leaving standing any vehicle upon the main traveled part of the highway, when it is practical to stop, park or leave the vehicle off such part of the highway. Anderson v. Munoz, 159 Colo. 229, 411 P.2d 4 (1966).

**Policeman's act under section nondiscretionary.** A police officer ordering the impoundment of what appears to be an abandoned vehicle under this section is performing a nondiscretionary act. Cooper v. Hollis, 42 Colo. App. 505, 600 P.2d 109 (1979).


42-4-1804. Report of abandoned motor vehicles - owner's opportunity to request hearing.

(1) (a) Upon having an abandoned motor vehicle towed, the responsible law enforcement agency shall ascertain, if possible, whether or not the motor vehicle has been reported stolen, and, if so reported, such agency shall recover and secure the motor vehicle and notify its rightful owner and terminate the abandonment proceedings under this part 18. The responsible law enforcement agency and the towing carrier shall have the right to recover from the owner their reasonable costs and fees for recovering and securing the motor vehicle. Nothing in this section shall be construed to authorize fees for services that were not provided or that were provided by another person or entity.

(b) As soon as possible, but in no event later than ten working days after having an abandoned motor vehicle towed, the responsible law enforcement agency shall report the same to the department by first-class or certified mail, by personal delivery, or by internet communication. The report shall be on a form prescribed and supplied by the department.

(c) The report shall contain the following information:

(I) The fact of possession, including the date possession was taken, the location of storage of the abandoned motor vehicle and the location from which it was towed, the identity of the responsible law enforcement agency, and the business address, telephone number, and name and signature of a representative from the responsible law enforcement agency;

(II) If applicable, the identity of the operator possessing the abandoned motor vehicle, together with the operator's business address and telephone number and the carrier number assigned by the public utilities commission; and

(III) A description of the abandoned motor vehicle, including the make, model, color, and year, the number, issuing state, and expiration date of the license plate, and the vehicle identification number.

(2) Upon its receipt of such report, the department shall search its records to ascertain the last-known owner of record for the abandoned motor vehicle and any lienholder as those persons
are represented in department records. In the event the vehicle is determined by the department not to be registered in the state of Colorado, the report required by this section shall state that no Colorado title record exists regarding the vehicle. Within ten working days after such receipt, the department shall complete its search and shall transmit such report, together with all relevant information, to the responsible law enforcement agency.

(3) The responsible law enforcement agency, upon its receipt of the report required under subsection (2) of this section, shall determine, from all available information and after reasonable inquiry, whether the abandoned motor vehicle has been reported stolen, and, if so reported, such agency shall recover and secure the motor vehicle and notify its rightful owner and terminate the abandonment proceedings under this part 18. The responsible law enforcement agency and the operator shall have the right to recover from the owner their reasonable costs to recover and secure the motor vehicle.

(4) (a) If the responsible law enforcement agency does not use an operator to store the motor vehicle, the responsible law enforcement agency, within ten working days after the receipt of the report from the department required in subsection (2) of this section, shall notify by certified mail the owner of record, if ascertained, and any lienholder, if ascertained, of the fact of such report and the claim of any lien under section 42-4-1806. The notice shall contain information that the identified motor vehicle has been reported abandoned to the department, the location of the motor vehicle and the location from where it was towed, and that, unless claimed within thirty calendar days after the date the notice was sent as determined from the postmark on the notice, the motor vehicle is subject to sale.

(b) If the responsible law enforcement agency uses an operator to store the motor vehicle, the responsible law enforcement agency, within ten working days after the receipt of the report from the department required in subsection (2) of this section, shall notify by first-class mail the owner of record, if ascertained, and any lienholder, if ascertained, of the fact of the report and the claim of any lien under section 42-4-1806. The notice shall contain information that the identified motor vehicle has been reported abandoned to the department, the location of the motor vehicle and the location from where it was towed, and that, unless claimed within thirty calendar days after the date the notice was sent as determined from the postmark on the notice, the motor vehicle is subject to sale.

(c) The responsible law enforcement agency shall include in the notices sent pursuant to either paragraph (a) or (b) of this subsection (4) a statement informing the owner of record of the opportunity to request a hearing concerning the legality of the towing of the abandoned motor vehicle, and the responsible law enforcement agency to contact for that purpose.

(d) If an owner or lienholder requests a hearing, the owner or lienholder shall make the request in writing to the responsible law enforcement agency within ten days after the notice was sent, as determined by the postmark. Such hearing, if requested, shall be conducted pursuant to section 24-4-105, C.R.S., if the responsible law enforcement agency is the Colorado state patrol. If a local political subdivision is the responsible law enforcement agency, such hearing shall be conducted pursuant to local hearing procedures. If it is determined at the hearing that the motor vehicle was illegally towed upon request from a law enforcement agency, all towing charges and storage fees assessed against the vehicle shall be paid by such law enforcement agency.
(5) The department shall maintain department-approved notice forms satisfying the requirements of subsection (4) of this section and shall make them available for use by local law enforcement agencies.

(6) (a) An operator or its agent shall, no less than two days, but no more than ten days after a motor vehicle has been towed, determine if there is an owner and a lienholder represented in department records and send a notice by certified mail, return receipt requested, to the last address of the owner, as shown on the motor vehicle's registration, and the lienholder, as shown on the title, if either is shown in department records. The cost of complying with this paragraph (a) shall be considered a cost of towing; except that the total of such costs shall not exceed one hundred fifty dollars. The notice to the owner and lienholder shall be sent within three days after the operator receives the information from the department. Such notice shall contain the following information:

(I) The fact of possession, including the date possession was taken, the location of storage of the motor vehicle, and the location from which it was towed;

(II) The identity of the operator possessing the abandoned motor vehicle, together with the operator's business address and telephone number and the carrier number assigned by the public utilities commission; and

(III) A description of the motor vehicle, including the make, model, color, and year and the number, issuing state, and expiration date of the license plate, or any other indicia of the motor vehicle's state of origin.

(b) The operator shall not be entitled to recover any daily storage fees from the day the vehicle is towed until the day the owner and lienholder are notified, unless the operator reasonably attempts to notify the owner and lienholder by the date specified in paragraph (a) of this subsection (6). Sending a notice by certified mail, return receipt requested, to the owner and the lienholder as represented in department records shall be deemed a reasonable attempt to notify the owner and the lienholder. Failure to notify the owner and the lienholder due to the receipt of erroneous information from the department or a failure of the law enforcement agency to comply with this section shall not cause the loss of such storage fees accrued from the date the vehicle is towed until the owner and the lienholder receive such notice.


42-4-1805. Appraisal of abandoned motor vehicles - sale.

(1) (a) Abandoned motor vehicles or motor vehicles abandoned in an impound lot subsequent to a tow from public property shall be appraised by a law enforcement officer or an independent motor vehicle dealer and sold by the responsible law enforcement agency at a public or private sale held not less than thirty days nor more than sixty days after the date the notice required by section 42-4-1804 (4) was mailed.

(b) Subject to section 42-4-1804, the operator may continue to charge for daily storage fees until the responsible law enforcement agency complies with this section.
(2) If the appraised value of an abandoned motor vehicle sold pursuant to this section is three hundred fifty dollars or less, the sale shall be made only for the purpose of junking, scrapping, or dismantling such motor vehicle, and the purchaser thereof shall not, under any circumstances, be entitled to a Colorado certificate of title. The responsible law enforcement agency making the sale shall cause to be executed and delivered a bill of sale, together with a copy of the report described in section 42-4-1804 (2), to the person purchasing such motor vehicle. The bill of sale shall state that the purchaser acquires no right to a certificate of title for such vehicle. The responsible law enforcement agency making the sale shall promptly submit a report of sale, with a copy of the bill of sale, to the department and shall deliver a copy of such report of sale to the purchaser of the motor vehicle. Upon receipt of any report of sale with supporting documents on any sale made pursuant to this subsection (2), the department shall purge the records for such vehicle as provided in section 42-4-1810 (1) (b) and shall not issue a new certificate of title for such vehicle. Any certificate of title issued in violation of this subsection (2) shall be void.

(3) If the appraised value of an abandoned motor vehicle sold pursuant to this section is more than three hundred fifty dollars, the sale may be made for any intended use by the purchaser. The responsible law enforcement agency making the sale shall cause to be executed and delivered a bill of sale, together with a copy of the report described in section 42-4-1804 (2), and an application for a Colorado certificate of title signed by a legally authorized representative of the responsible law enforcement agency conducting the sale, to the person purchasing such motor vehicle. The purchaser of the abandoned motor vehicle shall be entitled to a Colorado certificate of title upon application and proof of compliance with the applicable provisions of the "Certificate of Title Act", part 1 of article 6 of this title, within fourteen days after the sale; except that, if such vehicle is less than five years old, including the current year model, and if the department does not provide the name of an owner of record to the law enforcement agency, the purchaser shall apply for a bonded title and the department shall issue such bonded title upon the applicant meeting the qualifications for such title pursuant to rules promulgated by the department.

(4) (a) Transferring the title of a motor vehicle to an operator to satisfy a debt created pursuant to this part 18 shall not be deemed to be the sale of a motor vehicle.

(b) Nothing in this section shall be deemed to require an operator to be licensed pursuant to article 6 of title 12, C.R.S., for purposes of conducting activities under this part 18.


Editor’s note: This section is similar to former § 42-4-1806 as it existed prior to 2002, and the former § 42-4-1805 was relocated to § 42-4-2103.

42-4-1806. Liens upon towed motor vehicles.

(1) Whenever an operator who is registered with the department in accordance with subsection (2) of this section recovers, removes, or stores a motor vehicle upon instructions from any duly authorized law enforcement agency or peace officer who has determined that such motor vehicle is an abandoned motor vehicle, such operator shall have a possessory lien, subject
to the provisions of section 42-4-1804 (6), upon such motor vehicle and its attached accessories or equipment for all fees for recovering, towing, and storage as authorized in section 42-4-1809 (2) (a). Such lien shall be a first and prior lien on the motor vehicle, and such lien shall be satisfied before all other charges against such motor vehicle.

(2) (a) No operator shall have a possessory lien upon a motor vehicle described in subsection (1) of this section unless said operator is registered with the department. Such registration shall include the following information:

(I) The location of the operator's tow business;

(II) The hours of operation of the operator's tow business;

(III) The location of the impound lot where vehicles may be claimed by the owner of record; and

(IV) Any information relating to a violation of any provision contained in this part 18 or of any other state law or rule relating to the operation, theft, or transfer of motor vehicles.

(b) The executive director of the department may cancel the registration of any operator if an administrative law judge finds, after affording the operator due notice and an opportunity to be heard, that the operator has violated any of the provisions set forth in this part 18.


Editor's note: This section is similar to former § 42-4-1807 as it existed prior to 2002, and the former § 42-4-1806 was relocated to § 42-4-1805.

42-4-1807. Perfection of lien.

The lien provided for in section 42-4-1806 shall be perfected by taking physical possession of the motor vehicle and its attached accessories or equipment and by sending to the department within ten working days after the time possession was taken a notice containing the information required in the report to be made under the provisions of section 42-4-1804. In addition, such report shall contain a declaration by the operator that a possessory lien is claimed for all past, present, and future charges, up to the date of redemption, and that the lien is enforceable and may be foreclosed pursuant to the provisions of this part 18.


Editor's note: This section is similar to former § 42-4-1808 as it existed prior to 2002, and the former § 42-4-1807 was relocated to § 42-4-1806.

42-4-1808. Foreclosure of lien.

Any motor vehicle and its attached accessories and equipment or personal property within or attached to such vehicle that are not redeemed by the last-known owner of record or lienholder after such owner or lienholder has been sent notice of such lien by the operator or responsible law enforcement agency shall be sold in accordance with the provisions of section 42-4-1805.

Editor's note: This section is similar to former § 42-4-1809 as it existed prior to 2002, and the former § 42-4-1808 was relocated to § 42-4-1807.

42-4-1809. Proceeds of sale.

(1) If the sale of any motor vehicle, personal property, and its attached accessories or equipment under the provisions of section 42-4-1805 produces an amount less than or equal to the sum of all charges of the operator who has perfected his or her lien, then the operator shall have a valid claim against the owner for the full amount of such charges, less the amount received upon the sale of such motor vehicle. Failure to register such vehicle in accordance with this title shall constitute a waiver of such owner's right to be notified pursuant to this part 18 for the purposes of foreclosure of the lien pursuant to section 42-4-1808. Such charges shall be assessed in the manner provided for in paragraph (a) of subsection (2) of this section.

(2) If the sale of any motor vehicle and its attached accessories or equipment under the provisions of section 42-4-1805 produces an amount greater than the sum of all charges of the operator who has perfected his or her lien:

(a) The proceeds shall first satisfy the operator's reasonable fee arising from the sale of the motor vehicle and the cost and fees of towing and storing the abandoned motor vehicle with a maximum charge that is specified in rules promulgated by the public utilities commission that govern nonconsensual tows by towing carriers. In the case of an abandoned motor vehicle weighing in excess of ten thousand pounds, the operator's charges shall be determined by negotiated agreement between the operator and the responsible law enforcement agency.

(b) Any balance remaining after payment pursuant to paragraph (a) of this subsection (2) shall be paid to the responsible law enforcement agency to satisfy the cost of mailing notices, having an appraisal made, advertising and selling the motor vehicle, and any other costs of the responsible law enforcement agency including administrative costs, taxes, fines, and penalties due.

(b.5) In the case of the sale of an abandoned motor vehicle described in section 42-4-1802 (1) (d), any balance remaining after payment pursuant to paragraph (b) of this subsection (2) shall be paid to the law enforcement agency that is owed a fee for the court-ordered placement of an immobilization device on the motor vehicle pursuant to section 42-4-1105.

(c) Any balance remaining after payment pursuant to paragraphs (b) and (b.5) of this subsection (2) shall be forwarded to the department, and the department may recover from such balance any taxes, fees, and penalties due and payable to it with respect to such motor vehicle.

(d) Any balance remaining after payment pursuant to paragraph (c) of this subsection (2) shall be paid by the department: First, to any lienholder of record as the lienholder's interest may appear upon the records of the department; second, to any owner of record as the owner's interest may so appear; and then to any person submitting proof of such person's interest in such motor vehicle upon the application of such lienholder, owner, or person. If such payments are not requested and made within one hundred twenty days after the sale of the abandoned motor vehicle, the balance shall be transmitted to the state treasurer, who shall credit the same to the highway users tax fund for allocation and expenditure as specified in section 43-4-205 (5.5) (e), C.R.S.
(3) The provisions of paragraphs (a) and (b) of subsection (2) of this section shall not apply to a responsible law enforcement agency operating under a towing contract.


Editor's note: This section is similar to former § 42-4-1810 as it existed prior to 2002, and the former § 42-4-1809 was relocated to § 42-4-1808.

42-4-1810. Transfer and purge of certificates of title.

(1) Whenever any motor vehicle is abandoned and removed and sold in accordance with the procedures set forth in this part 18, the department shall transfer the certificate of title or issue a new certificate of title or shall purge such certificate of title in either of the following cases:

(a) Upon a person's submission to the department of the necessary documents indicating the abandonment, removal, and subsequent sale or transfer of a motor vehicle, the department shall transfer the certificate of title or issue a new certificate of title for such abandoned motor vehicle.

(b) Upon a person's submission of documents indicating the abandonment, removal, and subsequent wrecking or dismantling of a motor vehicle, including all sales of abandoned motor vehicles with an appraised value under three hundred fifty dollars that are conducted pursuant to section 42-4-1805 (2), the department shall keep the records for one year and then purge the records for such abandoned motor vehicle; except that the department shall not be required to wait before purging the records if the purchaser is a licensed motor vehicle dealer.


Editor's note: This section is similar to former § 42-4-1811 as it existed prior to 2002, and the former § 42-4-1810 was relocated to § 42-4-1809.

42-4-1811. Penalty.

Unless otherwise specified in this part 18, any person who knowingly violates any of the provisions of this part 18 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.


Editor's note: This section is similar to former § 42-4-1812 as it existed prior to 2002, and the former § 42-4-1811 was relocated to § 42-4-1810. The amendments to this section in House Bill 02-1046 were harmonized with this section as it appeared in Senate Bill 02-132.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

42-4-1812. Exemptions.
(1) Nothing in this part 18 shall be construed to include or apply to the driver of any disabled motor vehicle who temporarily leaves such vehicle on the paved or improved and main-traveled portion of a highway, subject, when applicable, to the emergency lighting requirements set forth in section 42-4-230.

(2) Nothing in this part 18 shall be construed to include or apply to authorized emergency motor vehicles while such vehicles are actually and directly engaged in, coming from, or going to an emergency.


Editor's note: This section is similar to former § 42-4-1813 as it existed prior to 2002, and the former § 42-4-1812 was relocated to § 42-4-1811.

ANNOTATION

Annotator's note. Since § 42-4-1812 is similar to § 42-4-1813 as it existed prior to the 2002 amendment to part 18 of article 4 of title 42, which resulted in the relocation of provisions, relevant cases decided under former provisions similar to that section have been included in the annotations to this section.

Section limited to situations where a motor vehicle is parked on a highway. It cannot always be extended to cover situations where a stop is necessitated because traffic in one's own lane has stopped, obstructing the flow of traffic. Thus, violation of this statute may not constitute negligence per se. Parker v. Couch, 145 Colo. 209, 358 P.2d 609 (1960).

Circumstances under which section does not apply. Where the condition of the traffic was such that the truck driver had the right to slow down, and even to stop, prior to making the left-hand turn, provided he gave the statutory signals, this section, relating to parking outside of a business or residence does not apply. Hinkle v. Union Transf. Co., 229 F.2d 403 (10th Cir. 1955).

42-4-1813. Local regulations.

(1) The state or any county, municipality as defined in section 31-1-101 (6), C.R.S., or other governmental entity of the state may execute a contract or contracts for the removal, storage, or disposal of abandoned motor vehicles within the area of its authority to effectuate the provisions of this part 18.

(2) The provisions of this part 18 may be superseded by ordinance or resolution of a municipality, as defined in section 31-1-101, C.R.S., or any county that sets forth procedures for the removal, storage, and disposal of abandoned or illegally parked motor vehicles on public property; except that such ordinance or resolution shall not deprive an operator of a lien attached and perfected under this part 18.


Editor's note: This section is similar to former § 42-4-1814 as it existed prior to 2002, and the former § 42-4-1813 was relocated to § 42-4-1812.

42-4-1814. Violation of motor vehicle registration or inspection laws - separate statutory provision.
Owners of motor vehicles impounded by the Colorado state patrol for violation of motor vehicle registration or inspection laws shall receive notice and the opportunity for a hearing pursuant to the provisions of section 42-13-106. If such a motor vehicle is found to be abandoned in accordance with the provisions of said section 42-13-106, the notice and hearing provisions to owners of motor vehicles under other sections of this part 18 shall be deemed to have been met for purposes of proper disposition of the motor vehicle under the terms of this part 18. Nevertheless, the notice and hearing provisions of the other sections of this part 18 as to lienholders are applicable and shall not be deemed to have been met by the provisions of section 42-13-106 or this section.


Editor's note: This section is similar to former § 42-4-1815 as it existed prior to 2002, and the former § 42-4-1814 was relocated to § 42-4-1813.
PART 19
SCHOOL BUS REQUIREMENTS

42-4-1901. School buses - equipped with supplementary brake retarders.

(1) (a) On and after July 1, 1991, except as provided in paragraph (a) of subsection (2) of this section, passengers of any school bus being used on mountainous terrain by any school district of the state shall not occupy the front row of seats and any seats located next to the emergency doors of such school bus during the period of such use.

(b) For purposes of this section, mountainous terrain shall include, but shall not be limited to, any road or street which the department of transportation has designated as being located on mountainous terrain.

(2) (a) The provisions of paragraph (a) of subsection (1) of this section shall not apply to:

(I) Passengers of any school bus which is equipped with retarders of appropriate capacity for purposes of supplementing any service brake systems of such school bus; or

(II) Any passenger who is adequately restrained in a fixed position pursuant to federal and state standards.

(b) The general assembly encourages school districts to consider installing only electromagnetic retarders or state-of-the-art retarders for purposes of supplementing service brake systems of school buses when such retarders are acquired on or after April 17, 1991. The general assembly also encourages school districts to consider purchasing only those new school buses which are equipped with external public address systems and retarders of appropriate capacity for purposes of supplementing any service brake systems of such school buses.

(3) For purposes of this section and section 42-4-1902:

(a) "Mountainous terrain" means that condition where longitudinal and transverse changes in the elevation of the ground with respect to a road or street are abrupt and where benching and sidehill excavation are frequently required to obtain acceptable horizontal and vertical alignment.

(b) Repealed.


Editor's note: This section is similar to former § 42-4-238 as it existed prior to 1994.

42-4-1902. School vehicle drivers - special training required.

On and after July 1, 1992, the driver of any school vehicle as defined in section 42-1-102 (88.5) owned or operated by or for any school district in this state shall have successfully completed training, approved by the department of education, concerning driving on
mountainous terrain, as defined in section 42-4-1901 (3) (a), and driving in adverse weather conditions.


Editor's note: This section is similar to former § 42-4-239 as it existed prior to 1994.

42-4-1903. School buses - stops - signs - passing.

(1) (a) The driver of a motor vehicle upon any highway, road, or street, upon meeting or overtaking from either direction any school bus that has stopped, shall stop the vehicle at least twenty feet before reaching the school bus if visual signal lights as specified in subsection (2) of this section have been actuated on the school bus. The driver shall not proceed until the visual signal lights are no longer being actuated. The driver of a motor vehicle shall stop when a school bus that is not required to be equipped with visual signal lights by subsection (2) of this section stops to receive or discharge schoolchildren.

(b) (I) A driver of any school bus who observes a violation of paragraph (a) of this subsection (1) shall notify the driver's school district transportation dispatcher. The school bus driver shall provide the school district transportation dispatcher with the color, basic description, and license plate number of the vehicle involved in the violation, information pertaining to the identity of the alleged violator, and the time and the approximate location at which the violation occurred. Any school district transportation dispatcher who has received information by a school bus driver concerning a violation of paragraph (a) of this subsection (1) shall provide such information to the appropriate law enforcement agency or agencies.

(II) A law enforcement agency may issue a citation on the basis of the information supplied to it pursuant to subparagraph (I) of this paragraph (b) to the driver of the vehicle involved in the violation.

(2) (a) Every school bus as defined in section 42-1-102 (88), other than a small passenger-type vehicle having a seating capacity of not more than fifteen, used for the transportation of schoolchildren shall:

(I) Bear upon the front and rear of such school bus plainly visible and legible signs containing the words "SCHOOL BUS" in letters not less than eight inches in height; and

(II) Display eight visual signal lights meeting the requirements of 49 CFR 571.108 or its successor regulation.

(b) (I) The red visual signal lights shall be actuated by the driver of the school bus whenever the school bus is stopped for the purpose of receiving or discharging schoolchildren, is stopped because it is behind another school bus that is receiving or discharging passengers, or, except as provided in subsection (4) of this section, is stopped because it has met a school bus traveling in a different direction that is receiving or discharging passengers and at no other time; but such lights need not be actuated when a school bus is stopped at locations where the local traffic regulatory authority has by prior written designation declared such actuation unnecessary.

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(II) A school bus shall be exempt from the provisions of subparagraph (I) of this paragraph (b) when stopped for the purpose of discharging or loading passengers who require the assistance of a lift device only when no passenger is required to cross the roadway. Such buses shall stop as far to the right off the roadway as possible to reduce obstruction to traffic.

(c) The alternating flashing yellow lights shall be actuated at least two hundred feet prior to the point where the bus is to be stopped for the purpose of receiving or discharging schoolchildren, and the red lights shall be actuated only at the time the bus is actually stopped.

(3) Every school bus used for the transportation of schoolchildren, except those small passenger-type vehicles described in subsection (1) of this section, shall be equipped with school bus pedestrian safety devices that comply with 49 CFR 571.131 or its successor regulation.

(4) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway. For the purposes of this section, "highway with separate roadways" means a highway that is divided into two or more roadways by a depressed, raised, or painted median or other intervening space serving as a clearly indicated dividing section or island.

(5) Every school bus shall stop as far to the right of the roadway as possible before discharging or loading passengers; except that the school bus may block the lane of traffic when a passenger being received or discharged is required to cross the roadway. When possible, a school bus shall not stop where the visibility is obscured for a distance of two hundred feet either way from the bus. The driver of a school bus that has stopped shall allow time for any vehicles that have stopped behind the school bus to pass the school bus, if such passing is legally permissible where the school bus is stopped, after the visual signal lights, if any, are no longer being displayed or actuated and after all children who have embarked or disembarked from the bus are safe from traffic.

(6) (a) Except as provided in paragraph (b) of this subsection (6), any person who violates any provision of paragraph (a) of subsection (1) of this section commits a class 2 misdemeanor traffic offense.

(b) Any person who violates the provisions of paragraph (a) of subsection (1) of this section commits a class 1 misdemeanor traffic offense if such person has been convicted within the previous five years of a violation of paragraph (a) of subsection (1) of this section.

(7) The provisions of this section shall not apply in the case of public transportation programs for pupil transportation under section 22-51-104 (1) (c), C.R.S.


Editor's note: This section is similar to former § 42-4-612 as it existed prior to 1994.

Cross references: For penalties for class 1 and class 2 misdemeanor traffic offenses, see § 42-4-1701 (3)(a)(II).
ANNOTATION

Annotator's note. Since § 42-4-1903 is similar to § 42-4-612 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, a relevant case construing that provision has been included with the annotations to this section.

Section not applicable to parties in collision of two automobiles. Where two automobiles were involved in a collision at an intersection, none of the parties to an action arising out of the collision are within the purview of this section; for the intent of the enactment was neither exclusively, nor in part, to protect any interest of either of them. Any violation of it did not constitute a breach of any statutory duty owed, either to the violator or to the other party. Its provisions, therefore, are not determinative of any action between them. Hamilton v. Gravinsky, 174 Colo. 206, 483 P.2d 385 (1971).

Presence of school bus not determinative of negligence as matter of law. The presence of the school bus at the intersection was a factor the jury could properly consider when making its determinations on the questions of the negligence of the respective parties to this case, under ordinary negligence principles; but its presence, and the existence of the statute regulating it, was not determinative, as a matter of law, of the issue of negligence. Hamilton v. Gravinsky, 28 Colo. App. 408, 474 P.2d 185 (1970), aff'd in part, rev'd in part on other grounds, 174 Colo. 206, 483 P.2d 385 (1971).

Violation only makes one liable to person in class protected by section. A statute or ordinance may, because of its title, preamble, history or otherwise, be construed as intended to protect only the interests of a particular class of individuals. If so, a violation of the enactment can make the actor liable only to a person of that class. Hamilton v. Gravinsky, 28 Colo. App. 408, 474 P.2d 185 (1970), aff'd in part, rev'd in part on other grounds, 174 Colo. 206, 483 P.2d 385 (1971).

42-4-1904. Regulations for school buses - regulations on discharge of passengers - penalty - exception.

(1) The state board of education, by and with the advice of the executive director of the department, shall adopt and enforce regulations not inconsistent with this article to govern the operation of all school buses used for the transportation of schoolchildren and to govern the discharge of passengers from such school buses. Such regulations shall prohibit the driver of any school bus used for the transportation of schoolchildren from discharging any passenger from the school bus which will result in the passenger's immediately crossing a major thoroughfare, except for two-lane highways when such crossing can be done in a safe manner, as determined by the local school board in consultation with the local traffic regulatory authority, and shall prohibit the discharging or loading of passengers from the school bus onto the side of any major thoroughfare whenever access to the destination of the passenger is possible by the use of a road or street which is adjacent to the major thoroughfare. For the purposes of this section, a "major thoroughfare" means a freeway, any U.S. highway outside any incorporated limit, interstate highway, or highway with four or more lanes, or a highway or road with a median separating multiple lanes of traffic. Every person operating a school bus or responsible for or in control of the operation of school buses shall be subject to said regulations.

(2) Any person operating a school bus under contract with a school district who fails to comply with any of said regulations is guilty of breach of contract, and such contract shall be cancelled after notice and hearing by the responsible officers of such district.
(3) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(4) The provisions of this section shall not apply in the case of public transportation programs for pupil transportation under section 22-51-104 (1) (c), C.R.S.


Editor's note: This section is similar to former § 42-4-613 as it existed prior to 1994.
PART 20
HOURS OF SERVICE


(1) Any person who operates a commercial motor vehicle solely in intrastate commerce for the purpose of transporting wet, ready-mix concrete need not comply with 49 CFR sec. 395.3 (b). No such person shall drive for any period after:

(a) Having been on duty seventy hours in any seven consecutive days if the employing motor carrier does not operate every day in the week; or

(b) Having been on duty eighty hours in any period of eight consecutive days if the employing motor carrier operates motor vehicles every day of the week.

(2) Within a seven day work week all hours of service after sixty hours are voluntary starting the next scheduled work day.

(3) Twenty-four consecutive hours off duty shall constitute the end of any seven or eight consecutive-day period.

(4) Any commercial motor vehicle that transports hazardous materials shall be exempt from this section and shall be subject to the federal hours-of-service limitations in 49 CFR secs. 395 and 350.

Source: L. 97: Entire part added, p. 311, § 1, effective April 8; entire section amended, p. 1034, § 72, effective August 6.
PART 21
VEHICLES ABANDONED ON PRIVATE PROPERTY

Editor's note: This part 21 was added with relocations in 2002. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For provisions concerning vehicles abandoned on public property, see part 18 of this article.

42-4-2101. Legislative declaration.

The general assembly hereby declares that the purpose of this part 21 is to provide procedures for the removal, storage, and disposal of motor vehicles that are abandoned on private property.


42-4-2102. Definitions.

As used in this part 21, unless the context otherwise requires:

(1) "Abandoned motor vehicle", except as otherwise defined in section 38-20-116 (2.5) (b) (I), C.R.S., for purposes of section 38-20-116 (2.5), C.R.S., means:

(a) Any motor vehicle left unattended on private property for a period of twenty-four hours or longer or for such other period as may be established by local ordinance without the consent of the owner or lessee of such property or the owner's or lessee's legally authorized agent;

(b) Any motor vehicle stored in an impound lot at the request of its owner or the owner's agent and not removed from the impound lot according to the agreement with the owner or agent;

(c) Any motor vehicle that is left on private property without the property owner's consent, towed at the request of the property owner, and not removed from the impound lot by the vehicle owner within forty-eight hours; or

(d) A motor vehicle fitted with an immobilization device that is on private property and deemed to be abandoned pursuant to section 42-4-1105 (7) (c).

(2) "Appraisal" means a bona fide estimate of reasonable market value made by any motor vehicle dealer licensed in this state or by any employee of the Colorado state patrol or of any sheriff's or police department whose appointment for such purpose has been reported by the head of the appointing agency to the executive director of the department.

(3) (Deleted by amendment, L. 2009, (HB 09-1279), ch. 170, p. 766, § 7, effective August 5, 2009.)
(4) "Impound lot" means a parcel of real property that is owned or leased by an operator at which motor vehicles are stored under appropriate protection.

(5) "Operator" means a person or a firm licensed by the public utilities commission as a towing carrier.

(6) "Private property" means any real property that is not public property.

(7) "Public property" means any real property having its title, ownership, use, or possession held by the federal government; this state; or any county, municipality, as defined in section 31-1-101 (6), C.R.S., or other governmental entity of this state.

(8) "Responsible law enforcement agency" means the law enforcement agency having jurisdiction over the private property where the motor vehicle becomes abandoned.


42-4-2103. Abandonment of motor vehicles - private property.

(1) (a) Motor vehicles abandoned at repair shops shall be removed as set forth in section 38-20-116 (2.5), C.R.S.

(b) No person shall abandon any motor vehicle upon private property other than his or her own. Any owner or lessee, or the owner's or lessee's agent authorized in writing, may have an abandoned motor vehicle removed from his or her property by having it towed and impounded by an operator. Motor vehicles abandoned upon the property of a motor vehicle recycler may be recycled in accordance with part 22 of this article if the vehicle's appraisal value is less than three hundred fifty dollars.

(2) Any operator having in his or her possession any motor vehicle that was abandoned on private property shall notify, within thirty minutes, the department, the sheriff, or the sheriff's designee, of the county in which the motor vehicle is located or the chief of police, or the chief's designee, of the municipality in which the motor vehicle is located as to the name of the operator and the location of the impound lot where the vehicle is located and a description of the abandoned motor vehicle, including the make, model, color, and year, the number, issuing state, and expiration date of the license plate, and the vehicle identification number. Upon such notification, the law enforcement agency that receives such notice shall assign the vehicle a tow report number immediately, shall enter the vehicle and the fact that it has been towed in the Colorado crime information center computer system, and shall ascertain, if possible, whether or not the vehicle has been reported stolen and, if so reported, such agency shall recover and secure the motor vehicle and notify its rightful owner and terminate the abandonment proceedings under this part 21. Upon the release of the vehicle to the owner or lienholder, the operator shall notify the responsible law enforcement agent who shall adjust or delete the entry in the Colorado crime information center computer system. The responsible law enforcement agency and operator shall have the right to recover from the owner their reasonable fees for recovering and securing the
vehicle. Nothing in this section shall be construed to authorize fees for services that were not provided or that were provided by another person or entity.

(3) (a) An operator shall, no less than two days, but no more than ten days after a motor vehicle has been towed or abandoned, report such motor vehicle tow to the department by first-class or certified mail, by personal delivery, or by internet communication, which report shall be on a form prescribed and supplied by the department.

(b) The report shall contain the following information:

(I) The fact of possession, including the date possession was taken, the location of storage of the abandoned motor vehicle and the location from which it was towed, the tow report number, and the identity of the law enforcement agency determining that the vehicle was not reported stolen;

(II) The identity of the operator possessing the abandoned motor vehicle, together with the operator's business address and telephone number and the carrier number assigned by the public utilities commission; and

(III) A description of the abandoned motor vehicle, including the make, model, color, and year, the number, issuing state, and expiration date of the license plate, or any other indicia of the motor vehicle's state of origin, and the vehicle identification number.

(c) (I) An operator or its agent shall, no less than two days, but no more than ten days after a motor vehicle has been towed or abandoned, determine if there is an owner and a lienholder represented in department records and send a notice by certified mail, return receipt requested, to the address of the owner, as shown on the motor vehicle's registration, and the lienholder if either is shown in department records. Such notice shall include the information required by the report set forth in paragraph (b) of this subsection (3). The cost of complying with the provisions of this paragraph (c) shall be considered a cost of towing; except that the total of such costs shall not exceed one hundred fifty dollars. The notice to the owner and lienholder shall be sent within three days after receiving the information from the department.

(II) The operator shall not be entitled to recover any daily storage fees from the day the vehicle is towed until the day the owner and lienholder are notified, unless the operator reasonably attempts to notify the owner and lienholder by the date specified in subparagraph (I) of this paragraph (c). Sending a notice by certified mail, return receipt requested, to the owner and the lienholder as represented in department records shall be deemed a reasonable attempt to notify the owner and the lienholder. Failure to notify the owner and the lienholder due to the receipt of erroneous information from the department shall not cause the loss of such storage fees accrued from the date the vehicle is towed until the owner and the lienholder receive such notice.

(III) The department shall implement an electronic system whereby an operator registered under section 42-4-1806 (2) or the agent of such operator shall have access to correct information relating to any owner and lienholder of a vehicle towed by the operator as represented in the department records. The department shall ensure that the information available to an operator or its agent is correct and is limited solely to that information necessary to contact the owner and lienholder of such vehicle.
(4) Within ten days after the receipt of the report set forth in paragraph (b) of subsection (3) of this section from the department, the operator shall notify by certified mail the owner of record including an out-of-state owner of record. The operator shall make a reasonable effort to ascertain the address of the owner of record. Such notice shall contain the following information:

(a) That the identified motor vehicle has been reported abandoned to the department;

(b) The claim of any lien under section 42-4-2105;

(c) The location of the motor vehicle and the location from which it was towed; and

(d) That, unless claimed within thirty calendar days after the date the notice was sent, as determined from the postmark on the notice, the motor vehicle is subject to sale.

(5) The department shall maintain department-approved notice forms satisfying the requirements of subsection (4) of this section and shall make them available for use by operators and local law enforcement agencies.


Editor's note: This section is similar to former § 42-4-1805 as it existed prior to 2002.

42-4-2104. Appraisal of abandoned motor vehicles - sale.

(1) (a) Motor vehicles that are abandoned on private property shall be appraised and sold by the operator in a commercially reasonable manner at a public or private sale held not less than thirty days nor more than sixty days after the postmarked date the notice was mailed pursuant to section 42-4-2103 (4) or the date the operator receives notice that no record exists for such vehicle. Such sale shall be made to a licensed motor vehicle dealer or wholesaler, or wholesale motor vehicle auction dealer, or through a classified newspaper advertisement published in Colorado. For purposes of this section, a sale shall not be considered commercially reasonable if the vehicle's appraisal value is more than three hundred fifty dollars and the vehicle is sold to an officer or partner of the operator that has possession of the vehicle or to any other person with a proprietary interest in such operator.

(b) Nothing in this section shall require that an operator must be a licensed dealer pursuant to article 6 of title 12, C.R.S., for purposes of selling a motor vehicle pursuant to this part 21.

(c) Subject to section 42-4-2103 and if an operator conducts a commercially reasonable sale but fails to sell the motor vehicle, the operator may continue to collect daily storage fees for such vehicle actually accrued for up to one hundred twenty days.

(2) If the appraised value of an abandoned motor vehicle sold pursuant to this section is three hundred fifty dollars or less, the sale shall be made only for the purpose of junking, scrapping, or dismantling such motor vehicle, and the purchaser thereof shall not, under any circumstances, be entitled to a Colorado certificate of title. The operator making the sale shall cause to be executed and delivered a bill of sale, together with a copy of the report described in section 42-4-2103 (3), to the person purchasing such motor vehicle. The bill of sale shall state that the purchaser
acquires no right to a certificate of title for such vehicle. The operator making the sale shall promptly submit a report of sale, with a copy of the bill of sale, to the department and shall deliver a copy of such report of sale to the purchaser of the motor vehicle. Upon receipt of any report of sale with supporting documents on any sale made pursuant to this subsection (2), the department shall purge the records for such vehicle as provided in section 42-4-2109 (1) (b) and shall not issue a new certificate of title for such vehicle. Any certificate of title issued in violation of this subsection (2) shall be void.

(3) If the appraised value of an abandoned motor vehicle sold pursuant to this section is more than three hundred fifty dollars, the sale may be made for any intended use by the purchaser. The operator making the sale shall cause to be executed and delivered a bill of sale, together with a copy of the report described in section 42-4-2103 (3), and an application for a Colorado certificate of title signed by a legally authorized representative of the operator conducting the sale, to the person purchasing such motor vehicle. The purchaser of the abandoned motor vehicle shall be entitled to a Colorado certificate of title upon application and proof of compliance with the applicable provisions of the "Certificate of Title Act", part 1 of article 6 of this title; except that, if such vehicle is less than five years old, including the current year models, and if the department does not provide the name of an owner of record to the operator, the buyer shall apply for a bonded title and the department shall issue such bonded title upon the applicant meeting the qualifications for such title pursuant to rules promulgated by the department.

(4) Transferring the title of a motor vehicle to an operator to satisfy a debt covered by a lien created pursuant to this part 21 shall not be deemed to be the sale of a motor vehicle.


Editor's note: This section is similar to former § 42-4-1806 (2) as it existed prior to 2002.

42-4-2104.5. Abandonment of motor vehicles of limited value at repair shops - legislative declaration - definitions. (Repealed)


42-4-2105. Liens upon towed motor vehicles.

(1) Whenever an operator who is registered with the department in accordance with subsection (2) of this section recovers, removes, or stores a motor vehicle upon instructions from the owner of record, any other legally authorized person in control of such motor vehicle, or from the owner or lessee of real property upon which a motor vehicle is illegally parked or such owner's or lessee's agent authorized in writing, such operator shall have a possessory lien, subject to the provisions of section 42-4-2103 (3), upon such motor vehicle and its attached accessories, equipment, and personal property for all the costs and fees for recovering, towing, and storage as authorized in section 42-4-2108. Such lien shall be a first and prior lien on the motor vehicle, and such lien shall be satisfied before all other charges against such motor vehicle. This subsection...
(1) shall not apply to personal property if subsection (3) of this section applies to such personal property.

(2) (a) No operator shall have a possessory lien upon a motor vehicle described in subsection (1) of this section unless said operator is registered with the department. Such registration shall include the following information:

(I) The location of the operator's tow business;

(II) The hours of operation of the operator's tow business;

(III) The location of the impound lot where vehicles may be claimed by the owner of record; and

(IV) Any information relating to a violation of any provision contained in this part 21 or of any other state law or rule relating to the operation, theft, or transfer of motor vehicles.

(b) The executive director of the department may cancel the registration of any operator if an administrative law judge finds, after affording the operator due notice and an opportunity to be heard, that the operator has violated any of the provisions set forth in this part 21.

(3) If the operator obtains personal property from an abandoned vehicle that has been towed pursuant to this part 21 and if the serial or identification number of such property has been visibly altered or removed, the operator shall not have a lien upon such property and shall destroy or discard such property within five days after disposing of such vehicle pursuant to sections 42-4-2104 and 42-4-2107.


42-4-2106. Perfection of lien.

The lien provided for in section 42-4-2105 shall be perfected by taking physical possession of the motor vehicle and its attached accessories, equipment, or personal property and by sending to the department, within ten working days after the time possession was taken, a notice containing the information required in the report to be made under the provisions of section 42-4-2103. In addition, such report shall contain a declaration by the operator that a possessory lien is claimed for all past, present, and future charges, up to the date of redemption, and that the lien is enforceable and may be foreclosed pursuant to the provisions of this part 21.


42-4-2107. Foreclosure of lien.

(1) Any motor vehicle and its attached accessories and equipment or personal property within or attached to such vehicle that are not redeemed by the last-known owner of record or lienholder after such owner or lienholder has been sent notice of such lien by the operator shall be sold in accordance with the provisions of section 42-4-2104.

(2) Within five days after foreclosure of the lien pursuant to this section, the operator shall send a notice to the law enforcement agency having jurisdiction over the operator. Such notice
shall contain a list of personal property found within the abandoned vehicle that has an intact serial or identification number and such serial or identification number. Such notification shall be made by certified mail, facsimile machine, or personal delivery.


42-4-2108. Proceeds of sale.

(1) If the sale of any motor vehicle, personal property, and attached accessories or equipment under the provisions of section 42-4-2104 produces an amount less than or equal to the sum of all charges of the operator who has perfected his or her lien, then the operator shall have a valid claim against the owner for the full amount of such charges, less the amount received upon the sale of such motor vehicle. Failure to register such vehicle in accordance with this title shall constitute a waiver of such owner's right to be notified pursuant to this part 21 for the purposes of foreclosure of the lien pursuant to section 42-4-2107. Such charges shall be assessed in the manner provided for in paragraph (a) of subsection (2) of this section.

(2) If the sale of any motor vehicle and its attached accessories or equipment under the provisions of section 42-4-2104 produces an amount greater than the sum of all charges of the operator who has perfected his or her lien:

(a) The proceeds shall first satisfy the operator's reasonable costs and fees arising from the sale of the motor vehicle pursuant to section 42-4-2104 and the cost and fees of towing and storing the abandoned motor vehicle with a maximum charge that is specified in rules promulgated by the public utilities commission that govern nonconsensual tows by towing carriers.

(a.5) In the case of the sale of an abandoned motor vehicle described in section 42-4-2102 (1) (d), any balance remaining after payment pursuant to paragraph (a) of this subsection (2) shall be paid to the law enforcement agency that is owed a fee for the court-ordered placement of an immobilization device on the motor vehicle pursuant to section 42-4-1105.

(b) Any balance remaining after payment pursuant to paragraphs (a) and (a.5) of this subsection (2) shall be forwarded to the department, and the department may recover from such balance any taxes, fees, and penalties due to it with respect to such motor vehicle. The department shall provide a receipt to the operator within seven days after receiving the money if the operator provides the department with a postage-paid, self-addressed envelope.

(c) Any balance remaining after payment pursuant to paragraph (b) of this subsection (2) shall be paid by the department: First, to any lienholder of record as the lienholder's interest may appear upon the records of the department; second, to any owner of record as the owner's interest may so appear; and then to any person submitting proof of such person's interest in such motor vehicle upon the application of such lienholder, owner, or person. If such payments are not requested and made within one hundred twenty days after the sale of the abandoned motor vehicle, the balance shall be transmitted to the state treasurer, who shall credit the same to the highway users tax fund for allocation and expenditure as specified in section 43-4-205 (5.5) (e), C.R.S.
42-4-2109. Transfer and purge of certificates of title.

(1) Whenever any motor vehicle is abandoned and removed and sold in accordance with the procedures set forth in this part 21, the department shall transfer the certificate of title or issue a new certificate of title or shall purge such certificate of title in either of the following cases:

(a) Upon a person's submission to the department of the necessary documents indicating the abandonment, removal, and subsequent sale or transfer of a motor vehicle with an appraised value of more than two hundred dollars, the department shall transfer the certificate of title or issue a new certificate of title for such abandoned motor vehicle.

(b) Upon a person's submission of documents indicating the abandonment, removal, and subsequent wrecking or dismantling of a motor vehicle, including all sales of abandoned motor vehicles with an appraised value of three hundred fifty dollars or less that are conducted pursuant to section 42-4-2104 (2) and all sales of abandoned motor vehicles, as defined in section 38-20-116 (2.5) (b) (I), C.R.S., with a retail fair market value of three hundred fifty dollars or less that are conducted pursuant to section 38-20-116 (2.5) (d) (I), C.R.S., the department shall keep the records for one year and then purge the records for such abandoned motor vehicle; except that the department shall not be required to wait before purging the records if the purchaser is a licensed motor vehicle dealer.

42-4-2110. Penalty.

Unless otherwise specified in this part 21, any person who knowingly violates any of the provisions of this part 21 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

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PART 22
RECYCLING MOTOR VEHICLES

42-4-2201. Definitions.

As used in this part 22, unless the context otherwise requires:

(1) "Auto parts recycler" means any person that purchases motor vehicles for the purpose of dismantling and selling the components thereof and that complies with all federal, state, and local laws and regulations.

(2) "Licensed motor vehicle dealer" means a motor vehicle dealer that is licensed pursuant to part 1 of article 6 of title 12, C.R.S.

(3) "Operator" means a person or a firm licensed by the public utilities commission as a towing carrier.

(4) "Recycling" means:

(a) Crushing or shredding a motor vehicle to produce scrap metal that may be used to produce new products; or

(b) Dismantling a motor vehicle to remove reusable parts prior to recycling the remainder of the vehicle.

(5) "System" means the Colorado motor vehicle verification system created in section 42-4-2203.


42-4-2202. Transfer for recycling.

(1) No person who is not a licensed motor vehicle dealer shall purchase or otherwise receive a motor vehicle to recycle the vehicle, unless:

(a) The seller or transferor is the owner on the certificate of title, an operator, or a licensed motor vehicle dealer;

(b) The seller or transferor provides a completed bill of sale on a form prescribed by the department of revenue; or

(c) The receiver or purchaser complies with subsection (2) of this section.

(2) (a) A person other than a licensed motor vehicle dealer who purchases or otherwise receives a motor vehicle for the purpose of recycling the vehicle shall keep the vehicle for seven business days before recycling unless the seller or transferor:
(I) Is the owner on the certificate of title, an operator, or a licensed motor vehicle dealer; or

(II) If the purchaser or transferee is an operator selling an abandoned motor vehicle pursuant to part 18 or 21 of this article or a licensed motor vehicle dealer or used motor vehicle dealer, provides a completed bill of sale on a form prescribed by the department of revenue.

(b) During the seven-day waiting period:

(I) The motor vehicle, the bill of sale, a copy of the system inquiry results, and, if applicable, the daily record required pursuant to section 42-5-105 shall be open at all times during regular business hours to inspection by the department of revenue or any peace officer; and

(II) The receiver or purchaser shall submit the vehicle identification number to the system.

(3) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars for the first offense and one thousand dollars for each subsequent offense.


ANNOTATION

Statute is not impermissibly vague in all of its applications. Metal Mgmt. W., Inc. v. State, 251 P.3d 1164 (Colo. App. 2010).

Definition of motor vehicle in § 42-1-102 (58) is controlling and the alternative definition in § 42-5-101 (5) is not. Metal Mgmt. W., Inc. v. State, 251 P.3d 1164 (Colo. App. 2010).

In the context of the motor vehicle recycling statutes, the definition of a motor vehicle contained in § 42-1-102 (58) connotes any motor vehicle that is or was self-propelled. Metal Mgmt. W., Inc. v. State, 251 P.3d 1164 (Colo. App. 2010).

42-4-2203. Vehicle verification system - fees - rules.

(1) The Colorado motor vehicle verification system is hereby created within the Colorado bureau of investigation. The system shall be a database system that uses a motor vehicle's vehicle identification number to ascertain whether the motor vehicle has been stolen. The system shall be accessible through the internet by motor vehicle dealers, motor vehicle recyclers, automobile repair shops, licensed tow operators, the department of revenue and its authorized agents, and the general public.

(2) The system shall use the latest information that the department of public safety possesses on stolen motor vehicles.

(3) Users of the system shall pay a fee as established by the department of public safety in an amount necessary to fund the direct and indirect costs of administering the system; except that neither the department of revenue nor its authorized agent shall pay a fee for the use of the system.
(4) The department of public safety may register the persons who use the system and promulgate any rules reasonably necessary to implement the system.

Source: **L. 2007:** Entire part amended, p. 1627, § 1, effective July 1. **L. 2008:** (1) and (3) amended, p. 1025, § 2, effective August 5.

**42-4-2204. Theft discovered - duties - liability.**

(1) If a motor vehicle is identified as stolen by the system, the person submitting the inquiry shall report the incident to the nearest law enforcement agency with jurisdiction within one business day.

(2) A person who, acting in good faith, recycles a motor vehicle or reports an incident to a law enforcement agency shall be immune from civil liability and criminal prosecution for such acts if made in reliance on the system. The department of public safety shall not be subject to civil liability for failing to identify a stolen vehicle.

(3) A person who fails to comply with subsection (1) of this section commits a class 3 misdemeanor and, upon conviction thereof, shall be punished in accordance with section 18-1.3-501, C.R.S. A person who fails to comply with subsection (1) of this section two times within five years commits a class 2 misdemeanor and, upon conviction thereof, shall be punished in accordance with section 18-1.3-501, C.R.S. A person who fails to comply with subsection (1) of this section three or more times within five years commits a class 1 misdemeanor and, upon conviction thereof, shall be punished in accordance with section 18-1.3-501, C.R.S.

Source: **L. 2007:** Entire part amended, p. 1628, § 1, effective July 1.
PART 23
EDUCATION REGARDING USE OF NONMOTORIZED
WHEELED TRANSPORTATION BY MINORS

42-4-2301. Comprehensive education.

(1) The department of transportation, in collaboration with the departments of education and public safety and appropriate nonprofit organizations and advocacy groups, shall notify schools of the availability of and make available to schools existing educational curriculum for individuals under eighteen years of age regarding the safe use of public streets and premises open to the public by users of nonmotorized wheeled transportation and pedestrians. The curriculum shall focus on, at a minimum, instruction regarding:

(a) The safe use of bicycles;
(b) High risk traffic situations;
(c) Bicycle and traffic handling skills;
(d) On-bike training;
(e) Proper use of bicycle helmets;
(f) Traffic laws and regulations;
(g) The use of hiking and bicycling trails; and
(h) Safe pedestrian practices.
