

42-2-127. Authority to suspend license - to deny license - type of conviction - points.

(1) (a) Except as provided in paragraph (b) of subsection (8) of this section, the department has the authority to suspend the license of any driver who, in accordance with the schedule of points set forth in this section, has been convicted of traffic violations resulting in the accumulation of twelve points or more within any twelve consecutive months or eighteen points or more within any twenty-four consecutive months, or, in the case of a minor driver eighteen years of age or older, who has accumulated nine points or more within any twelve consecutive months, or twelve points or more within any twenty-four consecutive months, or fourteen points or more for violations occurring after reaching the age of eighteen years, or, in the case of a minor driver under the age of eighteen years, who has accumulated more than five points within any twelve consecutive months or more than six points for violations occurring prior to reaching the age of eighteen years; except that the accumulation of points causing the subjection to suspension of the license of a chauffeur who, in the course of employment, has as a principal duty the operation of a motor vehicle shall be sixteen points in one year, twenty-four points in two years, or twenty-eight points in four years, if all the points are accumulated while said chauffeur is in the course of employment. Any provision of this section to the contrary notwithstanding, the license of a chauffeur who is convicted of DUI, DUI per se, DWAI, habitual user, UDD, or leaving the scene of an accident shall be suspended in the same manner as if the offense occurred outside the course of employment. Whenever a minor driver under the age of eighteen years receives a summons for a traffic violation, the minor's parent or legal guardian or, if the minor is without parents or guardian, the person who signed the minor driver's application for a license shall immediately be notified by the court from which the summons was issued.

(b) If any applicant for a license to operate a motor vehicle has illegally operated a motor vehicle in this state prior to the issuance of a valid driver's or minor driver's license or instruction permit or in violation of the terms of any instruction permit within thirty-six months prior to said application, the department has the authority to deny the issuance of said license for not more than twelve months.

(c) For the purpose of this section, any points accumulated by a minor under an instruction permit shall apply to the minor driver's license subsequently issued to or applied for by such minor.

(d) Except as otherwise provided in subsection (9) of this section, no suspension or denial shall be made until a hearing has been held in accordance with the provisions of this section. This section shall not be construed to prevent the issuance of a restricted license pursuant to section 42-2-116.

(2) (a) The time periods provided in subsection (1) of this section for the accumulation of points shall be based on the date of violation, but points shall not be assessed until after conviction for any such traffic violation.

(b) The accumulation of points within the time periods provided in subsection (1) of this section shall not be affected by the issuance or renewal of any driver's or minor driver's license issued under the provisions of this article or the anniversary date thereof.

(3) Nothing in subsections (1) and (2) of this section shall affect or prevent any proceedings to suspend any license under the provisions of law existing prior to July 1, 1974.

(4) Statutory provisions for cancellation and mandatory revocation of drivers' licenses shall take precedence over this section.

(5) Point system schedule:

Type of conviction Points

(a) Leaving scene of accident¹²

(b) (I) DUI or DUI per se¹²

(II) Habitual user¹²

(III) DWAI⁸

(IV) UDD⁴

(c) (I) Engaging in a speed contest in violation of section 42-4-1105 (1) ¹²

(II) Aiding or facilitating engaging in a speed contest in violation of section 42-4-1105 (3)¹²

(III) Engaging in a speed exhibition in violation of section 42-4-1105 (2)⁵

(IV) Aiding or facilitating engaging in a speed exhibition in violation of section 42-4-1105 (3)⁵

(d) Reckless driving⁸

(e) Careless driving⁴

(f) Speeding:

(I) One to four miles per hour over the reasonable and prudent speed or one to four miles per hour over the maximum lawful speed limit of seventy-five miles per hour⁰

(II) Five to nine miles per hour over the reasonable and prudent speed or five to nine miles per hour over the maximum lawful speed limit of seventy-five miles per hour¹

(III) Ten to nineteen miles per hour over the reasonable and prudent speed or ten to nineteen miles per hour over the maximum lawful speed limit of seventy-five miles per hour⁴

(IV) Twenty to thirty-nine miles per hour over the reasonable and prudent speed or twenty to thirty-nine miles per hour over the maximum lawful speed limit of seventy-five miles per hour⁶

(IV.5) Forty or more miles per hour over the reasonable and prudent speed or forty or more miles per hour over the maximum lawful speed limit of seventy-five miles per hour¹²

(V) Failure to reduce speed below an otherwise lawful speed when a special hazard exists³

(g) Failure to stop for school signals⁶

(h) Driving on wrong side of road or driving on wrong side of divided or controlled-access highway in violation of section 42-4-101⁴

(i) Improper passing⁴

- (j) Failure to stop for school bus⁶
- (k) Following too closely⁴
- (l) Failure to observe traffic sign or signal, except as provided in paragraph (ff) of this subsection (5)⁴
- (m) Failure to yield to emergency vehicle⁴
- (n) Failure to yield right-of-way, except as provided in paragraphs (y) to (bb) of this subsection (5)³
- (o) Improper turn³
- (p) Driving in wrong lane or direction on one-way street³
- (q) Driving through safety zone³
- (r) Conviction of violations not listed in this subsection (5) while driving a moving vehicle, which are violations of a state law or municipal ordinance other than violations classified as class B traffic infractions under section 42-4-1701 or having an equivalent classification under any municipal ordinance³
- (s) Failure to signal or improper signal²
- (t) Improper backing²
- (u) Failure to dim or turn on lights²
- (v) (I) Except as provided in subparagraph (II) of this paragraph (v), operating an unsafe vehicle²
- (II) Operating a vehicle with defective head lamps¹
- (w) Eluding or attempting to elude a police officer¹²
- (x) Alteration of suspension system³
- (y) Failure to yield right-of-way to pedestrian⁴
- (z) Failure to yield right-of-way to pedestrian at walk signal⁴
- (aa) Failure to yield right-of-way to pedestrian upon emerging from alley, driveway, or building in a commercial or residential area⁴
- (bb) Failure to yield right-of-way to person with a disability pursuant to section 42-4-808⁶
- (cc) Failure to exercise due care for pedestrian pursuant to section 42-4-807⁴
- (dd) A second or subsequent violation of section 42-2-101 (1) and (4)⁶
- (ee) Failure to maintain or show proof of insurance pursuant to section 42-4-1409⁴
- (ff) Failure to observe high occupancy vehicle lane restrictions pursuant to section 42-4-101²⁰
- (gg) (Deleted by amendment, L. 2005, p. 334, § 2, effective July 1, 2005.)
- (hh) Driving a motor vehicle while not wearing a seat belt in violation of section 42-2-105.5 (3)²
- (ii) Driving with more passengers than seat belts in violation of section 42-2-105.5 (4)²
- (jj) A violation of section 42-4-239¹
- (kk) Driving with a passenger who is under twenty-one years of age or driving between 12 midnight and 5 a.m. in violation of section 42-4-116²
- (5.5) If a person receives a penalty assessment notice for a violation under section 42-4-1701 (5) and such person pays the fine and surcharge for the

violation on or before the date the payment is due, the points assessed for the violation are reduced as follows:

(a) For a violation having an assessment of three or more points under subsection (5) of this section, the points are reduced by two points;

(b) For a violation having an assessment of two points under subsection (5) of this section, the points are reduced by one point.

(5.6) (a) Any municipality may elect to have the provisions of subsection (5.5) of this section apply to penalty assessment notices issued by the municipality pursuant to counterpart municipal ordinances. Whenever a municipality reduces a traffic offense, the reduced offense and the points assessed for such reduced offense shall conform to the point assessment schedule under subsection (5) of this section.

(b) Any county may elect to have the provisions of subsection (5.5) of this section apply to penalty assessment notices issued by the county pursuant to counterpart county ordinances. Whenever a county reduces a traffic offense, the reduced offense and the points assessed for such reduced offense shall conform to the point assessment schedule under subsection (5) of this section.

(5.7) Notwithstanding any other provision of the statutes to the contrary, if a penalty assessment for a traffic infraction is not personally served on the defendant or the defendant has not accepted the jurisdiction of the court for such penalty assessment, then the traffic infraction is a class B traffic infraction and the department has no authority to assess any points under this section upon entry of judgment for such traffic infraction.

(5.8) Notwithstanding any other provision of this section, the department may not assess any points for a violation if such assessment of points is prohibited under section 42-4-110.5 (3).

(6) (a) "Convicted" and "conviction", as used in this section, include conviction in any court of record or municipal court, or by the Southern Ute Indian tribal court, or by any military authority for offenses substantially the same as those set forth in subsection (5) of this section which occur on a military installation in this state and also include the acceptance and payment of a penalty assessment under the provisions of section 42-4-1701 or under the similar provisions of any town or city ordinance and the entry of a judgment or default judgment for a traffic infraction under the provisions of section 42-4-1701 or 42-4-1710 or under the similar provisions of any municipal ordinance.

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

(c) The provisions of paragraph (r) of subsection (5) of this section shall not be applicable to violations of sections 42-2-115, 42-3-121, and 42-4-314.

(7) Upon the accumulation by a licensee of half as many points as are required for suspension, the department may send such licensee a warning letter in

accordance with section 42-2-119 (2) or order a preliminary hearing, but the failure of the department to send such warning letter or hold such preliminary hearing shall not be grounds for invalidating the licensee's subsequent suspension as a result of accumulating additional points as long as the suspension is carried out under the provisions of this section. Should a preliminary hearing be ordered by the department and should the licensee fail to attend or show good cause for failure to attend, the department may suspend such license in the same way as if the licensee had accumulated sufficient points for suspension and had failed to attend such suspension hearing.

(8) (a) Except as otherwise provided in subsection (9) of this section, whenever the department's records show that a licensee has accumulated a sufficient number of points to be subject to license suspension, the department shall notify the licensee that a hearing will be held not less than twenty days after the date of the notice to determine whether the licensee's driver's license should be suspended. The notification shall be given to the licensee in writing by regular mail, addressed to the address of the licensee as shown by the records of the department.

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

(II) If the department does not order a point suspension against the license of a driver because of the existence of a current or previous license restraint with a determined reinstatement date under the provisions of subparagraph (I) of this paragraph (b), the department shall utilize the points that were assessed against the driver in determining whether to impose any future license suspension if the driver accumulates any more points against the driver's license.

(9) (a) Whenever the department receives notice that a person has pled guilty to, or been found guilty by a court or a jury of, DUI, DUI per se, or habitual user, and receives the license surrendered by the person to the court pursuant to section 42-2-129, the department shall immediately suspend the license of the person for a period of not less than one year. If the department is also required to enter a license revocation for a period of one year or longer under any provision of this title based on the same conviction, the suspension shall not be entered.

(b) Upon suspending the license of any person as required by this subsection (9), the department shall immediately notify the licensee as provided in section 42-2-119 (2).

(c) Upon receipt of the notice of suspension, the licensee or the licensee's attorney may request a hearing in writing. The department, upon notice to the

licensee as provided in section 42-2-119 (2), shall hold a hearing not less than thirty days after receiving such request through a hearing commissioner appointed by the executive director of the department, which hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S. The hearing shall be held at the district office of the department closest to the residence of the licensee; except that all or part of the hearing may, at the discretion of the department, be conducted in real time, by telephone or other electronic means in accordance with section 42-1-218.5. After such hearing, the licensee may appeal the decision of the department to the district court as provided in section 42-2-135. Should a driver who has had a license suspended under this subsection (9) be subsequently acquitted of such charge by a court of record, the department shall immediately, in any event not later than ten days after the receipt of such notice of acquittal, reinstate said license to the driver affected.

Editor's note: This version of subsection (9) is effective until January 1, 2009.
(9) Repealed.

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(10) Suspension hearings when ordered by the department shall be held at the district office of the department closest to the residence of the licensee; except that all or part of the hearing may, at the discretion of the department, be conducted in real time, by telephone or other electronic means in accordance with section 42-1-218.5. A hearing delay shall be granted by the department only if the licensee presents the department with good cause for such delay. Good cause shall include absence from the state or county of residence, personal illness, or any other circumstance which, in the department's discretion, constitutes sufficient reason for delay. In the event that a suspension hearing is delayed, the department shall set a new date for such hearing no later than sixty days after the date of the original hearing.

(11) Upon such hearing, the department or its authorized agent may administer oaths, issue subpoenas for the attendance of witnesses and the production of books and papers, apply to the district court for the enforcement thereof by contempt proceedings, and require a reexamination of the licensee.

(12) If at the hearing held pursuant to subsection (8) of this section it appears that the record of the driver sustains suspension as provided in this section, the department shall immediately suspend such driver's license, and such license shall then be surrendered to the department. If at such hearing it appears that the record of the driver does not sustain suspension, the department shall not suspend such license and shall adjust the accumulated-point total accordingly. In the event that the driver's license is suspended, the department may issue a probationary license for a period not to exceed the period of suspension, which license may contain such restrictions as the department deems reasonable and necessary and which may thereafter be subject to cancellation as a result of any violation of the restrictions imposed therein. The department may also order any driver whose license is suspended to take a complete driving reexamination. After such

hearing, the licensee may appeal the decision to the district court as provided in section 42-2-135.

(13) If the driver fails to appear at such hearing after proper notification as provided in subsections (7) and (8) of this section and a delay or continuance has not been requested and granted as provided in subsection (10) of this section, the department shall immediately suspend the license of such driver, but such suspension or revocation shall not be effective until twenty days after notification of such action has been given to the licensee as provided in section 42-2-119 (2). The notification of suspension or revocation shall recite therein that the licensee may apply for a hearing at any time within twenty days after the date of notification of the order of suspension or revocation, and the licensee shall be advised that, if a hearing is applied for, the effective date of the order will be extended until after the hearing is held. Such hearing shall be held within sixty days after application is made, and, at said hearing, it shall be determined whether the order of suspension or revocation shall be entered in the same manner as if the licensee had originally appeared after first notice.

(14) (a) (I) If there is no other statutory reason for denial of a probationary license, any individual who has had a license suspended by the department because of, at least in part, a conviction of an offense specified in paragraph (b) of subsection (5) of this section may be entitled to a probationary license pursuant to subsection (12) of this section for the purpose of driving for reasons of employment, education, health, or alcohol and drug education or treatment, but:

(A) If ordered by the court that convicted the individual, the individual shall be enrolled in a program of driving education or alcohol and drug education and treatment certified by the division of alcohol and drug abuse in the department of human services; and

(B) If the individual is a persistent drunk driver, as defined in section 42-1-102 (68.5), any probationary license shall require the use of an approved ignition interlock device, as defined in section 42-2-132.5 (7) (a), and the time that the individual holds a probationary license under this section shall not be credited against the time that the individual may be required to hold a restricted license pursuant to section 42-2-132.5.

(II) A probationary license issued pursuant to this subsection (14) shall contain any other restrictions as the department deems reasonable and necessary, shall be subject to cancellation for violation of any such restrictions, including but not limited to absences from alcohol and drug education or treatment sessions or failure to complete alcohol and drug education or treatment programs, and shall be issued for the entire period of suspension.

(b) The department may refuse to issue a probationary license if the department finds that the driving record of the individual is such that the individual has sufficient points, in addition to those resulting from the conviction referred to in this subsection (14), to require the suspension or revocation of a license to drive on the highways of this state, or if the department finds from the record after a hearing conducted in accordance

with subsection (12) of this section that aggravating circumstances exist to indicate the individual is unsafe for driving for any purpose. In refusing to issue a probationary license, the department shall make specific findings of fact to support such refusal.

(c) No district attorney shall enter into, nor shall any judge approve, a plea bargaining agreement entered into solely for the purpose of permitting the defendant to qualify for a probationary license under this subsection (14).

(15) (a) (I) Whenever the department receives notice that a person has twice been convicted of, adjudicated for, or entered a plea of guilty or nolo contendere to a violation of section 18-4-418, C.R.S., the department shall suspend the license of the person for a period of six months.

(II) Whenever the department receives notice that a person has three or more times been convicted of, adjudicated for, or entered a plea of guilty or nolo contendere to a violation of section 18-4-418, C.R.S., the department shall suspend the license of the person for a period of one year.

(b) Upon suspending the license of any person as required by this subsection (15), the department shall immediately notify the licensee as provided in section 42-2-119 (2).

(c) Upon a licensee's receipt of the notice of suspension, the licensee or the licensee's attorney may submit a written request to the department for a hearing. The department shall hold a hearing not less than thirty days after receiving such request. The hearing shall be conducted by a hearing commissioner appointed by the executive director of the department, and shall be conducted in accordance with the provisions of section 24-4-105, C.R.S.

(d) If a driver who has had a license suspended under this subsection (15) is subsequently acquitted of such charge by a court of record, the department shall immediately, or in any event no later than ten days after the receipt of notice of such acquittal, reinstate said license.