

Second Regular Session  
Sixty-third General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 02-0431.01 Thomas Morris

HOUSE BILL 02-1193

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**A BILL FOR AN ACT**

101 **CONCERNING LOWERING THE PRESUMPTIVE BLOOD ALCOHOL**  
102 **CONTENT LIMIT FOR DRIVING UNDER THE INFLUENCE FROM 0.10**  
103 **GRAMS PER 100 MILLILITERS TO 0.08 GRAMS PER 100**  
104 **MILLILITERS.**

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**Bill Summary**

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

In order to qualify for full federal highway funding, lowers Colorado's 0.10 blood alcohol content limit for driving under the influence of alcohol to 0.08 in accordance with federal law contained at 23 U.S.C. sec. 163.

Makes a conforming amendment.

**Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

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

2           **SECTION 1.** 18-3-106 (2) (b) and (2) (c), Colorado Revised  
3 Statutes, are amended to read:

4           **18-3-106. Vehicular homicide.** (2) In any prosecution for a  
5 violation of subsection (1) of this section, the amount of alcohol in the  
6 defendant's blood or breath at the time of the commission of the alleged  
7 offense, or within a reasonable time thereafter, as shown by analysis of  
8 the defendant's blood or breath, shall give rise to the following  
9 presumptions:

10           (b) If there was at such time in excess of 0.05 but less than ~~0.10~~  
11 ~~grams~~ 0.08 GRAMS of alcohol per one hundred milliliters of blood, or if  
12 there was at such time in excess of 0.05 but less than ~~0.10 grams~~ 0.08  
13 GRAMS of alcohol per two hundred ten liters of breath, such fact may be  
14 considered with other competent evidence in determining whether or not  
15 the defendant was under the influence of alcohol.

16           (c) If there was at such time ~~0.10 or~~ 0.08 OR more grams of  
17 alcohol per one hundred milliliters of blood, or if there was at such time  
18 ~~0.10 or~~ 0.08 OR more grams of alcohol per two hundred ten liters of  
19 breath, it shall be presumed that the defendant was under the influence of  
20 alcohol.

21           **SECTION 2.** 18-3-205 (2) (b) and (2) (c), Colorado Revised  
22 Statutes, are amended to read:

23           **18-3-205. Vehicular assault.** (2) In any prosecution for a  
24 violation of subsection (1) of this section, the amount of alcohol in the  
25 defendant's blood or breath at the time of the commission of the alleged  
26 offense, or within a reasonable time thereafter, as shown by analysis of

1 the defendant's blood or breath, shall give rise to the following  
2 presumptions:

3 (b) If there was at such time in excess of 0.05 but less than ~~0.10~~  
4 ~~grams~~ 0.08 GRAMS of alcohol per one hundred milliliters of blood, or if  
5 there was at such time in excess of 0.05 but less than ~~0.10~~ ~~grams~~ 0.08  
6 GRAMS of alcohol per two hundred ten liters of breath, such fact may be  
7 considered with other competent evidence in determining whether or not  
8 the defendant was under the influence of alcohol.

9 (c) If there was at such time ~~0.10~~ or 0.08 OR more grams of  
10 alcohol per one hundred milliliters of blood, or if there was at such time  
11 ~~0.10~~ or 0.08 OR more grams of alcohol per two hundred ten liters of  
12 breath, it shall be presumed that the defendant was under the influence of  
13 alcohol.

14 **SECTION 3.** 42-2-126 (2) (a) (I), (2) (a) (I.5), (5) (a) (I), (7) (a)  
15 (I), (9) (c) (I), and (9) (c) (II), Colorado Revised Statutes, are amended to  
16 read:

17 **42-2-126. Revocation of license based on administrative**  
18 **determination.** (2) (a) The department shall revoke the license of any  
19 person upon its determination that the person:

20 (I) Drove a vehicle in this state when the amount of alcohol, as  
21 shown by analysis of the person's blood or breath, in such person's blood  
22 was ~~0.10~~ or 0.08 OR more grams of alcohol per one hundred milliliters of  
23 blood or ~~0.10~~ or 0.08 OR more grams of alcohol per two hundred ten liters  
24 of breath at the time of driving or within two hours after driving. If the  
25 preponderance of the evidence establishes that such person consumed  
26 alcohol between the time that the person stopped driving and the time of  
27 testing, the preponderance of the evidence must also establish that the

1 minimum ~~0.10 blood~~ 0.08 BLOOD or breath alcohol content was reached  
2 as a result of alcohol consumed before the person stopped driving.

3 (I.5) Drove a vehicle in this state when such person was under  
4 twenty-one years of age and when the amount of alcohol, as shown by  
5 analysis of the person's blood or breath, in such person's blood was in  
6 excess of 0.05 but less than ~~0.10 grams~~ 0.08 GRAMS of alcohol per one  
7 hundred milliliters of blood or in excess of 0.05 but less than ~~0.10 grams~~  
8 0.08 GRAMS of alcohol per two hundred ten liters of breath at the time of  
9 driving or within two hours after driving. If the preponderance of the  
10 evidence establishes that such person consumed alcohol between the time  
11 that the person stopped driving and the time of testing, the preponderance  
12 of the evidence must also establish that the minimum required blood or  
13 breath alcohol content was reached as a result of alcohol consumed  
14 before the person stopped driving.

15 (5) (a) (I) Whenever a law enforcement officer requests a person  
16 to take any test or tests as required by section 42-4-1301 (7) and such  
17 person refuses to take or to complete or to cooperate in the completing of  
18 such test or tests or whenever such test results are available to the law  
19 enforcement officer and such tests show an alcohol concentration of ~~0.10~~  
20 ~~or~~ 0.08 OR more grams of alcohol per one hundred milliliters of blood as  
21 shown by analysis of such person's blood or ~~0.10 or~~ 0.08 OR more grams  
22 of alcohol per two hundred ten liters of breath as shown by analysis of  
23 such person's breath if the person is twenty-one years of age or older or,  
24 subject to section 42-4-1301 (7), at least 0.02 but not in excess of 0.05  
25 grams of alcohol per two hundred ten liters of breath as shown by  
26 analysis of such person's breath if the person is under twenty-one years  
27 of age and when the person who is tested or who refuses to take or to

1 complete or to cooperate in the completing of any test or tests is still  
2 available to the law enforcement officer, the officer, acting on behalf of  
3 the department, shall serve the notice of revocation personally on such  
4 person.

5 (7) (a) The periods of revocation specified by subsection (6) of  
6 this section are intended to be minimum periods of revocation for the  
7 described conduct. No license shall be restored under any circumstances,  
8 and no probationary license shall be issued during the revocation period;  
9 except that:

10 (I) A person whose privilege to drive a commercial motor vehicle  
11 has been revoked because the person drove a commercial motor vehicle  
12 when the person's blood alcohol content was 0.04 or greater, but less than  
13 ~~0.10, grams~~ 0.08, GRAMS of alcohol per one hundred milliliters of blood  
14 or per two hundred ten liters of breath and who was twenty-one years of  
15 age or older at the time of the offense may apply for a driver's license of  
16 another class or type as long as there is no other statutory reason to deny  
17 the person a license. Such person may not operate any commercial motor  
18 vehicle during the period of revocation of such person's privilege to  
19 operate commercial motor vehicles. The department may not issue such  
20 person a probationary license that would authorize such person to operate  
21 any commercial motor vehicle.

22 (9) (c) (I) Where a license is revoked under subparagraph (I),  
23 (I.5), or (I.7) of paragraph (a) of subsection (2) of this section, the sole  
24 issue at the hearing shall be whether, by a preponderance of the evidence,  
25 the person drove a vehicle in this state when the amount of alcohol, as  
26 shown by analysis of the person's blood or breath, in such person's blood  
27 was ~~0.10~~ or 0.08 OR more grams of alcohol per one hundred milliliters of

1 blood or ~~0.10~~ or 0.08 OR more grams of alcohol per two hundred ten liters  
2 of breath at the time of driving or within two hours after driving if the  
3 person was twenty-one years of age or older at the time of driving the  
4 vehicle or, subject to section 42-4-1301 (7), at least 0.02 but not in excess  
5 of 0.05 grams of alcohol per two hundred ten liters of breath at the time  
6 of driving or within two hours after driving if the person was under  
7 twenty-one years of age at the time of driving the vehicle, or in excess of  
8 0.05 grams of alcohol per one hundred milliliters of blood or in excess of  
9 0.05 grams of alcohol per two hundred ten liters of breath at the time of  
10 driving or within two hours after driving if the person was under  
11 twenty-one years of age at the time of driving the vehicle. If the  
12 preponderance of the evidence establishes that such person consumed  
13 alcohol between the time that the person stopped driving and the time that  
14 testing occurred, the preponderance of the evidence must also establish  
15 that the minimum ~~0.10 blood~~ 0.08 BLOOD or breath alcohol content  
16 required in subparagraph (I) of paragraph (a) of subsection (2) of this  
17 section, the minimum 0.05 blood or breath alcohol content required in  
18 subparagraph (I.5) of paragraph (a) of subsection (2) of this section, or  
19 the minimum 0.02 breath alcohol content required in subparagraph (I.7)  
20 of paragraph (a) of subsection (2) of this section was reached as a result  
21 of alcohol consumed before the person stopped driving; or, where a  
22 license is revoked under subparagraph (II) of paragraph (a) of subsection  
23 (2) of this section, whether the person refused to take or to complete or  
24 to cooperate in the completing of any test or tests of the person's blood,  
25 breath, saliva, or urine as required by section 42-4-1301 (7). If the  
26 presiding hearing officer finds the affirmative of the issue, the revocation  
27 order shall be sustained. If the presiding hearing officer finds the

1 negative of the issue, the revocation order shall be rescinded.

2 (II) When the determination of the issue pursuant to this  
3 paragraph (c) is based upon an analysis of the respondent's blood or  
4 breath and evidence is offered by the respondent to show a disparity  
5 between the results of the analysis done on behalf of the law enforcement  
6 agency and the results of an analysis done on behalf of the respondent,  
7 and when a preponderance of the evidence establishes that the blood  
8 analysis conducted on behalf of the law enforcement agency was properly  
9 conducted by a qualified person associated with a laboratory certified by  
10 the department of public health and environment using properly working  
11 testing devices or when a preponderance of the evidence establishes that  
12 the law enforcement breath test was administered using a properly  
13 working breath testing device certified by the department of public health  
14 and environment, which device was properly operated by a qualified  
15 operator, there shall be a presumption favoring the accuracy of the  
16 analysis done on behalf of the law enforcement agency if such analysis  
17 showed the amount of alcohol in the respondent's blood or breath to be  
18 ~~0.12~~ or 0.096 OR more grams of alcohol per hundred milliliters of blood  
19 or ~~0.12~~ or 0.096 OR more grams of alcohol per two hundred ten liters of  
20 breath. If the respondent offers evidence of blood or breath analysis, the  
21 respondent shall be required to state under oath the number of analyses  
22 done in addition to the one offered as evidence and the names of the  
23 laboratories that performed the analyses and the results of all analyses.

24 **SECTION 4.** 42-4-1301 (2) (a), (5) (b), and (5) (c), Colorado  
25 Revised Statutes, are amended to read:

26 **42-4-1301. Driving under the influence - driving while**  
27 **impaired - driving with excessive alcoholic content - tests - penalties**

1     **- useful public service program - alcohol and drug driving safety**  
2     **program.** (2) (a) It is a misdemeanor for any person to drive any vehicle  
3     in this state when the amount of alcohol, as shown by analysis of the  
4     person's blood or breath, in such person's blood is ~~0.10~~ or 0.08 OR more  
5     grams of alcohol per hundred milliliters of blood or ~~0.10~~ or 0.08 OR more  
6     grams of alcohol per two hundred ten liters of breath at the time of  
7     driving or within two hours after driving. During a trial, if the state's  
8     evidence raises the issue, or if a defendant presents some credible  
9     evidence, that the defendant consumed alcohol between the time that the  
10    defendant stopped driving and the time that testing occurred, such issue  
11    shall be an affirmative defense, and the prosecution must establish  
12    beyond a reasonable doubt that the minimum ~~0.10~~ blood 0.08 BLOOD or  
13    breath alcohol content required in this paragraph (a) was reached as a  
14    result of alcohol consumed by the defendant before the defendant stopped  
15    driving.

16           (5) In any prosecution for a violation of paragraph (a) or (b) of  
17    subsection (1) of this section, the amount of alcohol in the defendant's  
18    blood or breath at the time of the commission of the alleged offense or  
19    within a reasonable time thereafter, as shown by analysis of the  
20    defendant's blood or breath, shall give rise to the following presumptions:

21           (b) If there was at such time in excess of 0.05 but less than ~~0.10~~  
22    ~~grams~~ 0.08 GRAMS of alcohol per one hundred milliliters of blood as  
23    shown by analysis of such person's blood or if there was at such time in  
24    excess of 0.05 but less than ~~0.10~~ ~~grams~~ 0.08 GRAMS of alcohol per two  
25    hundred ten liters of breath as shown by analysis of such person's breath,  
26    such fact shall give rise to the presumption that the defendant's ability to  
27    operate a vehicle was impaired by the consumption of alcohol, and such

1 fact may also be considered with other competent evidence in  
2 determining whether or not the defendant was under the influence of  
3 alcohol.

4 (c) If there was at such time ~~0.10~~ or 0.08 OR more grams of  
5 alcohol per one hundred milliliters of blood as shown by analysis of such  
6 person's blood or if there was at such time ~~0.10~~ or 0.08 OR more grams of  
7 alcohol per two hundred ten liters of breath as shown by analysis of such  
8 person's breath, it shall be presumed that the defendant was under the  
9 influence of alcohol.

10 **SECTION 5. Effective date - applicability.** This act shall take  
11 effect October 1, 2003, and shall apply to acts committed on or after said  
12 date.

13 **SECTION 6. Safety clause.** The general assembly hereby finds,  
14 determines, and declares that this act is necessary for the immediate  
15 preservation of the public peace, health, and safety.