

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 11-0678.01 Richard Sweetman

HOUSE BILL 11-1261

HOUSE SPONSORSHIP

Waller and Levy,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ESTABLISHMENT OF A THC BLOOD CONTENT**
102 **THRESHOLD FOR THE PURPOSE OF CHARGING A PERSON WITH**
103 **THE CRIMINAL OFFENSE OF DUI PER SE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill allows a person who drives with a tetrahydrocannabinols (THC) blood content of 5 nanograms or more to be charged with DUI per se.

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.*

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

2 **SECTION 1.** 42-1-102 (27.5), Colorado Revised Statutes, is
3 amended, and the said 42-1-102 is further amended BY THE ADDITION
4 OF THE FOLLOWING NEW SUBSECTIONS, to read:

5 **42-1-102. Definitions.** As used in articles 1 to 4 of this title,
6 unless the context otherwise requires:

7 (27.5) "DUI per se" means:

8 (a) Driving with a BAC of 0.08 or more, ~~and~~ IN WHICH CASE THE
9 use of the term shall incorporate by reference the offense described in
10 section 42-4-1301 (2) (a); OR

11 (b) DRIVING WITH A THC BLOOD CONTENT OF FIVE NANOGRAMS
12 OR MORE, IN WHICH CASE THE USE OF THE TERM SHALL INCORPORATE BY
13 REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301 (2) (a.3).

14 (102.8) "TETRAHYDROCANNABINOLS" MEANS DELTA
15 9-TETRAHYDROCANNIBINOL, THE MAIN PSYCHOACTIVE INGREDIENT OF
16 CANNABIS.

17 (102.9) "THC BLOOD CONTENT" MEANS THE CONTENT OF
18 TETRAHYDROCANNABINOLS IN A PERSON'S BLOOD, EXPRESSED IN
19 NANOGRAMS OF TETRAHYDROCANNABINOLS PER MILLILITER OF WHOLE
20 BLOOD AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD.

21 **SECTION 2.** 42-4-1301 (1) (c), (1) (d), and (2) (c), Colorado
22 Revised Statutes, are amended, and the said 42-4-1301 (2) is further
23 amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24 **42-4-1301. Driving under the influence - driving while**
25 **impaired - driving with excessive alcoholic content - definitions -**
26 **penalties - repeal.** (1) (c) It is a misdemeanor for any person who is an

1 habitual user of any controlled substance defined in ~~section 12-22-303 (7)~~
2 SECTION 18-18-102 (5), C.R.S., to drive a motor vehicle, vehicle, or
3 low-power scooter in this state.

4 (d) For the purposes of this subsection (1), one or more drugs shall
5 mean all substances defined as a drug in section 12-22-303 (13), C.R.S.,
6 and all controlled substances defined in ~~section 12-22-303 (7)~~ SECTION
7 18-18-102 (5), C.R.S., and glue-sniffing, aerosol inhalation, and the
8 inhalation of any other toxic vapor or vapors.

9 (2) (a.3) IT IS A MISDEMEANOR FOR ANY PERSON TO DRIVE A
10 MOTOR VEHICLE OR VEHICLE WHEN THE PERSON'S THC BLOOD CONTENT
11 IS FIVE NANOGRAMS OR MORE AT THE TIME OF DRIVING OR WITHIN TWO
12 HOURS AFTER DRIVING. DURING A TRIAL, IF THE STATE'S EVIDENCE RAISES
13 THE ISSUE, OR IF A DEFENDANT PRESENTS SOME CREDIBLE EVIDENCE, THAT
14 THE DEFENDANT CONSUMED MARIJUANA BETWEEN THE TIME THAT THE
15 DEFENDANT STOPPED DRIVING AND THE TIME THAT TESTING OCCURRED,
16 SUCH ISSUE SHALL BE AN AFFIRMATIVE DEFENSE, AND THE PROSECUTION
17 MUST ESTABLISH BEYOND A REASONABLE DOUBT THAT THE MINIMUM FIVE
18 NANOGRAM THC BLOOD CONTENT REQUIRED IN THIS PARAGRAPH (a.3)
19 WAS REACHED AS A RESULT OF MARIJUANA CONSUMED BY THE
20 DEFENDANT BEFORE THE DEFENDANT STOPPED DRIVING.

21 (c) Pursuant to section 16-2-106, C.R.S., in charging the offense
22 of DUI per se, it shall be sufficient to describe the offense charged as
23 "drove a vehicle with excessive alcohol content" OR "DROVE A VEHICLE
24 WITH EXCESSIVE THC BLOOD CONTENT".


25 **SECTION 3.** The introductory portion to section 42-4-1301 (6)
26 (a) and 42-4-1301 (6) (b), Colorado Revised Statutes, are amended, and
27 the said 42-4-1301 (6) (a) is further amended BY THE ADDITION OF

1 A NEW SUBPARAGRAPH, to read:

2 **42-4-1301. Driving under the influence - driving while**
3 **impaired - driving with excessive alcoholic content - definitions -**
4 **penalties - repeal.** (6) (a) In any prosecution for DUI or DWAI, the
5 defendant's BAC OR THC BLOOD CONTENT at the time of the commission
6 of the alleged offense or within a reasonable time thereafter gives rise to
7 the following presumptions or inferences:

8 (IV) IF AT SUCH TIME THE DEFENDANT'S THC BLOOD CONTENT
9 WAS FIVE NANOGRAMS OR MORE, SUCH FACT GIVES RISE TO THE
10 PERMISSIBLE INFERENCE THAT THE DEFENDANT WAS UNDER THE
11 INFLUENCE OF DRUGS.

12 (b) The limitations of this subsection (6) shall not be construed as
13 limiting the introduction, reception, or consideration of any other
14 competent evidence bearing upon the question of whether or not the
15 defendant was under the influence of alcohol OR ONE OR MORE DRUGS or
16 whether or not the defendant's ability to operate a motor vehicle or
17 vehicle was impaired by the consumption of alcohol OR ONE OR MORE
18 DRUGS.

19 
20 **SECTION 4.** 42-2-132 (2) (a) (IV), Colorado Revised Statutes,
21 is amended to read:

22 **42-2-132. Period of suspension or revocation.** (2) (a) (IV) Any
23 person whose license or privilege to drive a motor vehicle on the public
24 highways has been revoked under section 42-2-125 (1) (g) (I) or (1) (i) or
25 42-2-203 where the revocation was due in part to a DUI, DUI per se,
26 DWAI, or habitual user conviction shall be required to present an
27 affidavit stating that the person has obtained at the person's own expense

1 a signed lease agreement for the installation and use of an approved
2 ignition interlock device, as defined in section 42-2-132.5 (7), in each
3 motor vehicle on which the person's name appears on the registration and
4 any other vehicle that the person may drive during the period of the
5 restricted license and a copy of each signed lease agreement; EXCEPT
6 THAT THE REQUIREMENT DESCRIBED IN THIS SECTION SHALL NOT APPLY IF
7 THE PERSON'S REVOCATION WAS DUE IN PART TO A DUI PER SE
8 CONVICTION BASED ON THE PERSON'S THC BLOOD CONTENT, AS
9 DESCRIBED IN SECTION 42-1-102 (27.5) (b), AND NOT UPON ANY
10 ALCOHOL-RELATED TRAFFIC OFFENSE.

11 **SECTION 5.** 42-2-405 (3) (a), Colorado Revised Statutes, is
12 amended to read:

13 **42-2-405. Driver's license disciplinary actions - grounds for**
14 **denial - suspension - revocation - disqualification.** (3) For purposes
15 of the imposition of restraints and sanctions against commercial driving
16 privileges:

17 (a) A conviction for DUI, DUI per se, DWAI, or habitual user, or
18 a substantially similar law of any other state pertaining to ~~drinking and~~
19 ~~driving~~ ALCOHOL-RELATED AND DRUG-RELATED TRAFFIC OFFENSES, or an
20 administrative determination of a violation of section 42-2-126 (3) (a) or
21 (3) (b) shall be deemed driving under the influence; and

22 **SECTION 6.** The introductory portion to 18-18-102 (35) (a),
23 Colorado Revised Statutes, is amended to read:

24 **18-18-102. Definitions.** As used in this article:

25 (35) (a) "Tetrahydrocannabinols" means ~~synthetic equivalents of~~
26 ~~the substances~~ DELTA 9-TETRAHYDROCANNIBINOL, NATURAL OR
27 SYNTHETIC, contained in the plant, or in the resinous extractives of,

1 cannabis, sp., or synthetic substances, derivatives, and their isomers with
2 similar chemical structure and pharmacological activity, such as the
3 following:

4 **SECTION 7.** 18-3-106 (1) (b) (II), the introductory portion to
5 18-3-106 (2) and 18-3-106 (2) (c), Colorado Revised Statutes, are
6 amended, and the said 18-3-106 is further amended BY THE ADDITION
7 OF A NEW SUBSECTION, to read:

8 **18-3-106. Vehicular homicide.** (1) (b) (II) For the purposes of
9 this subsection (1), "one or more drugs" shall mean all substances defined
10 as a drug in section 12-22-303 (13), C.R.S., and all controlled substances
11 defined in ~~section 12-22-303 (7), C.R.S.~~ SECTION 18-18-102 (5), and
12 glue-sniffing, aerosol inhalation, or the inhalation of any other toxic vapor
13 or vapors as defined in section 18-18-412.

14 (2) In any prosecution for a violation of subsection (1) of this
15 section, the amount of alcohol in the defendant's blood or breath at the
16 time of the commission of the alleged offense, or within a reasonable time
17 thereafter, as shown by analysis of the defendant's blood or breath, ~~shall~~
18 ~~give~~ GIVES rise to the following presumptions OR INFERENCES:

19 (c) If there was at such time 0.08 or more grams of alcohol per
20 one hundred milliliters of blood, or if there was at such time 0.08 or more
21 grams of alcohol per two hundred ten liters of breath, ~~it shall be presumed~~
22 SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE that the defendant
23 was under the influence of alcohol.

24 (2.5) IN ANY PROSECUTION FOR A VIOLATION OF SUBSECTION (1)
25 OF THIS SECTION, IF THE DEFENDANT'S THC BLOOD CONTENT, AS DEFINED
26 IN SECTION 42-1-102 (102.9), C.R.S., WAS FIVE NANOGRAMS OR MORE AT
27 THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE OR WITHIN TWO

1 HOURS THEREAFTER, AS SHOWN BY AN ANALYSIS OF THE DEFENDANT'S
2 BLOOD, SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE THAT THE
3 DEFENDANT WAS UNDER THE INFLUENCE OF DRUGS.

4 **SECTION 8.** 18-3-205 (1) (b) (II), the introductory portion to
5 18-3-205 (2), and 18-3-205 (2) (c), Colorado Revised Statutes, are
6 amended, and the said 18-3-205 is further amended BY THE ADDITION
7 OF A NEW SUBSECTION, to read:

8 **18-3-205. Vehicular assault.** (1) (b) (II) For the purposes of this
9 subsection (1), "one or more drugs" shall mean all substances defined as
10 a drug in section 12-22-303 (13), C.R.S., and all controlled substances
11 defined in ~~section 12-22-303 (7), C.R.S.~~ SECTION 18-18-102 (5), and
12 glue-sniffing, aerosol inhalation, or the inhalation of any other toxic vapor
13 or vapors as defined in section 18-18-412.

14 (2) In any prosecution for a violation of subsection (1) of this
15 section, the amount of alcohol in the defendant's blood or breath at the
16 time of the commission of the alleged offense, or within a reasonable time
17 thereafter, as shown by analysis of the defendant's blood or breath, ~~shall~~
18 ~~give~~ GIVES rise to the following presumptions OR INFERENCES:

19 (c) If there was at such time 0.08 or more grams of alcohol per
20 one hundred milliliters of blood, or if there was at such time 0.08 or more
21 grams of alcohol per two hundred ten liters of breath, ~~it shall be presumed~~
22 SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE that the defendant
23 was under the influence of alcohol.

24 (2.5) IN ANY PROSECUTION FOR A VIOLATION OF SUBSECTION (1)
25 OF THIS SECTION, IF THE DEFENDANT'S THC BLOOD CONTENT, AS DEFINED
26 IN SECTION 42-1-102 (102.9), C.R.S., WAS FIVE NANOGRAMS OR MORE AT
27 THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE OR WITHIN TWO

1 HOURS THEREAFTER, AS SHOWN BY AN ANALYSIS OF THE DEFENDANT'S
2 BLOOD, SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE THAT THE
3 DEFENDANT WAS UNDER THE INFLUENCE OF DRUGS.

4 **SECTION 9. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.