

First Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0678.01 Richard Sweetman

HOUSE BILL 11-1261

---

HOUSE SPONSORSHIP

Waller and Levy,

SENATE SPONSORSHIP

(None),

---

House Committees  
Judiciary

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" SHALL HAVE THE SAME  
15 MEANING AS PROVIDED IN SECTION 18-18-102 (35), C.R.S.

16           (102.9) "THC BLOOD CONTENT" MEANS THE CONTENT OF  
17 TETRAHYDROCANNABINOLS IN A PERSON'S BLOOD, EXPRESSED IN  
18 NANOGRAMS OF TETRAHYDROCANNABINOLS PER MILLILITER OF BLOOD AS  
19 SHOWN BY ANALYSIS OF THE PERSON'S BLOOD.

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

23           **42-4-1301. Driving under the influence - driving while**  
24 **impaired - driving with excessive alcoholic content - definitions -**  
25 **penalties - repeal.** (1) (c) It is a misdemeanor for any person who is an  
26 habitual user of any controlled substance defined in ~~section 12-22-303 (7)~~

1 SECTION 18-18-102 (5), C.R.S., to drive a motor vehicle, vehicle, or  
2 low-power scooter in this state.

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

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

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

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

1           **42-4-1301. Driving under the influence - driving while**  
2 **impaired - driving with excessive alcoholic content - definitions -**  
3 **penalties - repeal.** (6) (a) In any prosecution for DUI or DWAI, the  
4 defendant's BAC OR THC BLOOD CONTENT at the time of the commission  
5 of the alleged offense or within a reasonable time thereafter gives rise to  
6 the following presumptions or inferences:

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

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

18           **SECTION 4.** 42-2-126 (4) (a) (II), Colorado Revised Statutes, is  
19 amended to read:

20           **42-2-126. Revocation of license based on administrative**  
21 **determination.** (4) **Multiple restraints and conditions on driving**  
22 **privileges.** (a) (II) If a license is revoked for excess BAC OR EXCESS  
23 THC BLOOD CONTENT and the person is also convicted on criminal  
24 charges arising out of the same occurrence for DUI, DUI per se, DWAI,  
25 or UDD, both the revocation under this section and any suspension,  
26 revocation, cancellation, or denial that results from the conviction shall  
27 be imposed, but the periods shall run concurrently, and the total period of

1 revocation, suspension, cancellation, or denial shall not exceed the longer  
2 of the two periods.

3 **SECTION 5.** 42-2-132 (2) (a) (IV), Colorado Revised Statutes,  
4 is amended to read:

5 **42-2-132. Period of suspension or revocation.** (2) (a) (IV) Any  
6 person whose license or privilege to drive a motor vehicle on the public  
7 highways has been revoked under section 42-2-125 (1) (g) (I) or (1) (i) or  
8 42-2-203 where the revocation was due in part to a DUI, DUI per se,  
9 DWAI, or habitual user conviction shall be required to present an  
10 affidavit stating that the person has obtained at the person's own expense  
11 a signed lease agreement for the installation and use of an approved  
12 ignition interlock device, as defined in section 42-2-132.5 (7), in each  
13 motor vehicle on which the person's name appears on the registration and  
14 any other vehicle that the person may drive during the period of the  
15 restricted license and a copy of each signed lease agreement; EXCEPT  
16 THAT THE REQUIREMENT DESCRIBED IN THIS SECTION SHALL NOT APPLY IF  
17 THE PERSON'S REVOCATION WAS DUE IN PART TO A DUI PER SE  
18 CONVICTION BASED ON THE PERSON'S THC BLOOD CONTENT, AS  
19 DESCRIBED IN SECTION 42-1-102 (27.5) (b), AND NOT UPON ANY  
20 ALCOHOL-RELATED TRAFFIC OFFENSE.

21 **SECTION 6.** 42-2-405 (3) (a), Colorado Revised Statutes, is  
22 amended to read:

23 **42-2-405. Driver's license disciplinary actions - grounds for**  
24 **denial - suspension - revocation - disqualification.** (3) For purposes  
25 of the imposition of restraints and sanctions against commercial driving  
26 privileges:

27 (a) A conviction for DUI, DUI per se, DWAI, or habitual user, or

1 a substantially similar law of any other state pertaining to ~~drinking and~~  
2 ~~driving~~ ALCOHOL-RELATED AND DRUG-RELATED TRAFFIC OFFENSES, or an  
3 administrative determination of a violation of section 42-2-126 (3) (a) or  
4 (3) (b) shall be deemed driving under the influence; and

5 **SECTION 7. Safety clause.** The general assembly hereby finds,  
6 determines, and declares that this act is necessary for the immediate  
7 preservation of the public peace, health, and safety.