

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0635.01 Jery Payne

HOUSE BILL 10-1164

HOUSE SPONSORSHIP

Kerr A., Ferrandino, Scanlan, Solano

SENATE SPONSORSHIP

Tochtrop, Romer

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING SERVICE OF PROCESS IN ACTIONS CONCERNING
102 INCIDENTS THAT MAY BE COVERED BY A MOTOR VEHICLE
103 INSURANCE POLICY.

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 requires a motor vehicle insurance company to be appointed as an insured person's agent for service of process in a lawsuit arising from an accident that may be covered by the person's motor vehicle insurance. If a potential defendant and the defendant's insurance

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.

company cannot be served in such a lawsuit, the bill deems the defendant to be uninsured for the purposes of allowing recovery under an uninsured motorist coverage policy.

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

2 **SECTION 1.** 10-4-609, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **10-4-609. Insurance protection against uninsured motorists -**
5 **applicability.** (6) AN ALLEGED TORTFEASOR SHALL BE DEEMED TO BE
6 UNINSURED FOR THE PURPOSE OF PAYMENT UNDER AN UNINSURED
7 MOTORIST POLICY, REGARDLESS OF WHETHER THE ALLEGED TORTFEASOR
8 WAS ACTUALLY INSURED, IF:

9 (a) THE ALLEGED TORTFEASOR CANNOT BE LOCATED FOR SERVICE
10 OF PROCESS AFTER A REASONABLE ATTEMPT TO SERVE THE ALLEGED
11 TORTFEASOR; AND

12 (b) (I) SERVICE OF PROCESS ON THE INSURANCE CARRIER AS
13 AUTHORIZED BY SECTION 42-7-414 (2) (h), C.R.S., IS DETERMINED BY A
14 COURT TO BE INSUFFICIENT OR INEFFECTIVE; OR

15 (II) (A) THE REPORT OF A LAW ENFORCEMENT AGENCY
16 INVESTIGATING THE MOTOR VEHICLE ACCIDENT FAILS TO DISCLOSE THE
17 INSURANCE COMPANY COVERING THE ALLEGED TORTFEASOR'S MOTOR
18 VEHICLE; AND

19 (B) THE ALLEGED TORTFEASOR'S INSURANCE COVERAGE WHEN THE
20 INCIDENT OCCURRED IS NOT ACTUALLY KNOWN BY THE PERSON
21 ATTEMPTING TO SERVE PROCESS.

22 **SECTION 2.** 42-7-102, Colorado Revised Statutes, is amended
23 to read:

24 **42-7-102. Legislative declaration.** (1) The general assembly is

1 acutely aware of the toll in human suffering and loss of life, limb, and
2 property caused by negligence in the operation of motor vehicles in our
3 state. Although it recognizes that this basic problem can be and is being
4 dealt with by direct measures designed to protect our people from the
5 ravages of irresponsible drivers, the general assembly is also very much
6 concerned with the financial loss visited upon innocent traffic accident
7 victims by negligent motorists who are financially irresponsible. In
8 prescribing the sanctions and requirements of this article, it is the policy
9 of this state to induce and encourage all motorists to provide for their
10 financial responsibility for the protection of others, and to assure the
11 widespread availability to the insuring public of insurance protection
12 against financial loss caused by negligent financially irresponsible
13 motorists.

14 (2) (a) THE GENERAL ASSEMBLY HEREBY FINDS THAT MOTOR
15 VEHICLE ACCIDENTS CAUSE A SUBSTANTIAL ECONOMIC IMPACT IN LOST
16 WAGES, MEDICAL BILLS, AND PROPERTY DESTRUCTION EXACERBATED BY
17 THE FOLLOWING:

18 (I) SOME NEGLIGENT MOTORISTS ARE UNINSURED OR FLEE THE
19 SCENE OF AN ACCIDENT.

20 (II) NEGLIGENT MOTORISTS OFTEN ATTEMPT TO AVOID FINANCIAL
21 RESPONSIBILITY BY MEANS SUCH AS FLEEING THE STATE, CONCEALING
22 THEIR WHEREABOUTS, OR FAILING TO UPDATE THE ADDRESS ON THEIR
23 DRIVER'S LICENSE WITH THE DEPARTMENT OF REVENUE, THEREBY
24 FRUSTRATING SERVICE OF PROCESS AND PREVENTING THE INNOCENT
25 VICTIM FROM ACCESSING EITHER THE NEGLIGENT DRIVER'S LIABILITY
26 INSURANCE POLICY OR THE UNINSURED MOTORIST COVERAGE THE VICTIM
27 HAS PURCHASED.

1 (III) WHEN INNOCENT TRAFFIC ACCIDENT VICTIMS CANNOT ACCESS
2 EITHER THE NEGLIGENT DRIVER'S AUTOMOBILE LIABILITY POLICY OR THEIR
3 OWN UNINSURED MOTORIST POLICY, THE BURDEN OF THE UNCOMPENSATED
4 LOSSES ARE BORNE BY THE TAXPAYER IN THE FORM OF TAXES FOR
5 MEDICAID, BY TRAUMA FACILITIES IN THE FORM OF UNCOMPENSATED
6 HOSPITAL-RELATED COSTS, AND BY THE INNOCENT VICTIM.

7 (b) (I) THE STATE OF COLORADO ENCOURAGES THE WIDESPREAD
8 AVAILABILITY OF UNINSURED OR UNDERINSURED MOTORIST INSURANCE BY
9 REQUIRING EVERY MOTOR VEHICLE LIABILITY POLICY DELIVERED OR
10 ISSUED IN THIS STATE TO CONTAIN UNINSURED MOTORIST COVERAGE
11 UNLESS THE NAMED INSURED REJECTS SUCH COVERAGE IN WRITING.

12 (II) BECAUSE INSURANCE BENEFITS HAVE BEEN PAID FOR BY
13 EITHER THE NEGLIGENT DRIVER OR THE INNOCENT VICTIM FOR THE
14 PURPOSE OF COMPENSATING THE INNOCENT VICTIM FOR INJURIES OR
15 LOSSES, THE GENERAL ASSEMBLY DECLARES THAT IT IS NECESSARY TO
16 SIMPLIFY THE PROCESS FOR AN INNOCENT VICTIM TO ACCESS THE
17 NEGLIGENT DRIVER'S LIABILITY INSURANCE POLICY OR HIS OR HER OWN
18 UNINSURED MOTORIST POLICY IN ORDER TO PREVENT THE BURDEN FROM
19 BEING BORNE BY THE TAXPAYER OR THE HEALTH CARE SYSTEM.

20 (c) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT THE
21 POLICY OF COLORADO IS THAT ALL MOTOR VEHICLE LIABILITY POLICIES
22 SHALL REQUIRE POLICYHOLDERS OF AN AUTOMOBILE LIABILITY POLICY OR
23 UNINSURED OR UNDERINSURED MOTORIST POLICY TO APPOINT THEIR
24 INSURANCE CARRIER AS AN AGENT FOR THE PURPOSE OF SERVICE OF
25 PROCESS IN CERTAIN LIMITED INSTANCES IN ACCORDANCE WITH SECTION
26 42-7-414 (2) (h), AND TO DEEM A DEFENDANT TO BE UNINSURED FOR
27 PURPOSES OF UNINSURED OR UNDERINSURED MOTORIST COVERAGE IF THE

1 COURT DEEMS SERVICE ON THE DEFENDANT'S INSURANCE COMPANY TO BE
2 INEFFECTIVE OR INSUFFICIENT.

3 **SECTION 3.** 42-7-414, Colorado Revised Statutes, is amended
4 BY THE ADDITION OF A NEW SUBSECTION to read:

5 **42-7-414. Requirements to be complied with.** (3) (a) THE
6 INSURANCE CARRIER THAT ISSUES A MOTOR VEHICLE LIABILITY POLICY
7 ACCEPTED AS PROOF UNDER THIS ARTICLE SHALL INCLUDE THE FOLLOWING
8 PROVISION IN THE POLICY CONTRACT: "IF THE INSURED'S WHEREABOUTS
9 FOR SERVICE OF PROCESS CANNOT BE DETERMINED THROUGH REASONABLE
10 EFFORT, THE INSURED AGREES TO DESIGNATE AND IRREVOCABLY APPOINT
11 THE INSURANCE CARRIER AS THE AGENT OF THE INSURED FOR SERVICE OF
12 PROCESS, PLEADINGS, SUBPOENAS, OR OTHER FILINGS IN A CIVIL ACTION
13 BROUGHT AGAINST THE INSURED OR TO WHICH THE INSURED HAS BEEN
14 JOINED AS A DEFENDANT OR RESPONDENT IN ANY COLORADO COURT IF THE
15 CAUSE OF ACTION CONCERNS AN INCIDENT FOR WHICH THE INSURED CAN
16 POSSIBLY CLAIM COVERAGE. SUBSEQUENT TERMINATION OF THE
17 INSURANCE POLICY DOES NOT AFFECT THE APPOINTMENT FOR AN INCIDENT
18 THAT OCCURRED WHEN THE POLICY WAS IN EFFECT. THE INSURED AGREES
19 THAT ANY SUCH CIVIL ACTION MAY BE COMMENCED AGAINST THE INSURED
20 BY THE SERVICE OF PROCESS UPON THE INSURANCE CARRIER AS IF
21 PERSONAL SERVICE HAD BEEN MADE DIRECTLY ON THE INSURED. THE
22 INSURANCE CARRIER AGREES TO FORWARD ALL COMMUNICATIONS
23 RELATED TO SERVICE OF PROCESS TO THE LAST-KNOWN E-MAIL AND
24 MAILING ADDRESS OF THE POLICYHOLDER IN ORDER TO COORDINATE ANY
25 PAYMENT OF CLAIMS OR DEFENSE OF CLAIMS THAT ARE REQUIRED."

26 (b) IN THE CONTRACT PROVISION REQUIRED BY THIS SUBSECTION
27 (3), THE NAME OF THE INSURANCE CARRIER ISSUING THE POLICY SHALL BE

1 SUBSTITUTED FOR THE PHRASE "THE INSURANCE CARRIER."

2 (c) AS USED IN THIS SUBSECTION (3), "REASONABLE EFFORT"
3 MEANS SERVICE AT THE DEFENDANT'S LAST-KNOWN ADDRESS, AN
4 ADDRESS OBTAINED FROM THE INSURANCE POLICY, AN ADDRESS OBTAINED
5 FROM A DRIVER'S LICENSE OR MOTOR VEHICLE REGISTRATION, OR ANY
6 READILY ASCERTAINABLE SUCCESSOR ADDRESS.

7 **SECTION 4. Specified effective date - applicability.** This act
8 shall take effect July 1, 2010, and shall apply to insurance policies issued
9 on or after said date.

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