

# An Act

HOUSE BILL 07-1313

BY REPRESENTATIVE(S) Marshall, Borodkin, Casso, Gallegos, Green, Hodge, Labuda, Levy, Madden, McFadyen, McGihon, Merrifield, Pommer, Primavera, Todd, and Peniston;  
also SENATOR(S) Sandoval, Bacon, Boyd, Fitz-Gerald, Groff, Hagedorn, Romer, Tapia, Tupa, and Veiga.

CONCERNING THE EVIDENCE REQUIRED BEFORE A PERSON MAY BE ISSUED CERTAIN IDENTITY DOCUMENTS.

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

**SECTION 1.** 42-2-104 (3) (d) and (3) (e), Colorado Revised Statutes, are amended to read:

**42-2-104. Licenses issued - denied.** (3) The department shall not issue any license to:

(d) Any person not submitting proof of age, ~~or~~ **LAWFUL PRESENCE WITHIN THE UNITED STATES**, AND proof of identity, ~~or both~~, as PROVIDED BY LAW OR as required by ~~the department~~ **SECTION 42-2-104.3**;

(e) ~~Any person whose presence in the United States is in violation of federal immigration laws;~~

**SECTION 2.** Part 1 of article 2 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

**42-2-104.3. Licenses - proof of identity, age, and lawful presence - rules.** (1) THE DEPARTMENT SHALL REQUIRE AN APPLICANT FOR A DRIVER'S LICENSE OR AN INSTRUCTION PERMIT TO PROVIDE EVIDENCE OF IDENTITY, AGE, AND LAWFUL PRESENCE IN THE UNITED STATES BEFORE ISSUING A DRIVER'S LICENSE.

(2) AN APPLICANT MAY ESTABLISH IDENTITY, AGE, AND LAWFUL PRESENCE IN THE UNITED STATES BY ANY OF THE FOLLOWING:

(a) PROVIDING TO THE DEPARTMENT ONE OF THE FOLLOWING VALID DOCUMENTS:

(I) A PASSPORT ISSUED BY THE UNITED STATES GOVERNMENT THAT IS NOT EXPIRED OR HAS EXPIRED WITHIN THE LAST TEN YEARS;

(II) A DRIVER'S LICENSE OR IDENTIFICATION DOCUMENT, OTHER THAN A MILITARY IDENTIFICATION DOCUMENT, ISSUED BY THE UNITED STATES OR ANY STATE THAT REQUIRES PROOF OF LAWFUL PRESENCE IN THE UNITED STATES TO OBTAIN SUCH DRIVER'S LICENSE OR AN IDENTIFICATION DOCUMENT THAT IS NOT EXPIRED;

(III) A MILITARY IDENTIFICATION CARD OR ITS EQUIVALENT, INCLUDING, WITHOUT LIMITATION, AN ACTIVE DUTY, RETIREE, NATIONAL GUARD, OR DEPENDENT CARD THAT BEARS A PHOTOGRAPH OF THE APPLICANT AND IS NOT EXPIRED;

(IV) A FOREIGN PASSPORT BEARING A PHOTOGRAPH OF THE APPLICANT IN CONJUNCTION WITH APPROPRIATE VISA OR OTHER IMMIGRATION DOCUMENTS AS ESTABLISHED BY THE DEPARTMENT BY RULE INDICATING THE APPLICANT'S IDENTITY, AGE, AND LAWFUL PRESENCE IN THE UNITED STATES, INCLUDING, WITHOUT LIMITATION, REFUGEE STATUS, ASYLEE STATUS, RESIDENT ALIEN STATUS, OR PERMANENT RESIDENT STATUS;

(b) (I) PROVIDING TO THE DEPARTMENT EITHER TWO VALID PRIMARY DOCUMENTS PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) OR

ONE VALID PRIMARY DOCUMENT AND ONE VALID SECONDARY DOCUMENT PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (b).

(II) THE FOLLOWING DOCUMENTS SHALL BE PRIMARY DOCUMENTS UNDER THIS PARAGRAPH (b):

(A) A DRIVER'S LICENSE OR IDENTIFICATION DOCUMENT ISSUED BY ANY STATE THAT DOES NOT REQUIRE PROOF OF LAWFUL PRESENCE IN THE UNITED STATES TO OBTAIN SUCH DOCUMENT THAT IS NOT EXPIRED OR HAS EXPIRED WITHIN THE LAST TWELVE MONTHS;

(B) A DRIVER'S LICENSE OR IDENTIFICATION DOCUMENT, OTHER THAN A MILITARY IDENTIFICATION DOCUMENT, ISSUED BY THE UNITED STATES OR ANY STATE THAT REQUIRES PROOF OF LAWFUL PRESENCE IN THE UNITED STATES TO OBTAIN SUCH DOCUMENT THAT HAS EXPIRED WITHIN THE LAST TWELVE MONTHS;

(C) AN IDENTIFICATION DOCUMENT ISSUED BY THE FEDERAL BUREAU OF INDIAN AFFAIRS OR A FEDERALLY-RECOGNIZED TRIBE; OR

(D) A BIRTH CERTIFICATE ISSUED BY THE UNITED STATES, INCLUDING ANY AGENCY OR DEPARTMENT THEREOF, THE DISTRICT OF COLUMBIA, ANY STATE OR SUBDIVISION OF A STATE, OR ANY COUNTY, PARISH, OR BOROUGH.

(III) THE FOLLOWING DOCUMENTS SHALL BE SECONDARY DOCUMENTS FOR THE PURPOSES OF THIS PARAGRAPH (b):

(A) A SIGNED SOCIAL SECURITY CARD;

(B) A MILITARY IDENTIFICATION CARD OR ITS EQUIVALENT WITHOUT A PHOTOGRAPH, INCLUDING, WITHOUT LIMITATION, AN ACTIVE DUTY, RETIREE, NATIONAL GUARD, OR DEPENDENT CARD THAT IS NOT EXPIRED OR HAS EXPIRED WITHIN THE LAST TEN YEARS;

(C) AN INDIVIDUAL COLORADO OR FEDERAL TAX RETURN WITH AN EMPLOYEE COPY OF A FEDERAL INTERNAL REVENUE SERVICE FORM W-2 OR 1099; EXCEPT THAT THIS DOCUMENT MAY NOT BE COMBINED WITH THE PRIMARY DOCUMENT DESCRIBED IN SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (b);

(D) A CERTIFICATE OF MARRIAGE, DECREE OF DISSOLUTION OF MARRIAGE, OR A DECREE OF LEGAL SEPARATION ENTERED BY ANY STATE OR FEDERAL COURT; EXCEPT THAT THIS DOCUMENT MAY NOT BE COMBINED WITH THE PRIMARY DOCUMENT DESCRIBED IN SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (b);

(E) AN IDENTITY DOCUMENT ISSUED BY THE FEDERAL BUREAU OF PRISONS OR A DEPARTMENT OF CORRECTIONS OF ANY STATE; EXCEPT THAT THIS DOCUMENT MAY NOT BE COMBINED WITH THE PRIMARY DOCUMENT DESCRIBED IN SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (b);

(F) A FINAL ADOPTION DECREE ENTERED BY ANY STATE OR FEDERAL COURT SHOWING THE APPLICANT'S NAME, AGE OR BIRTH DATE, AND PLACE OF BIRTH WITHIN THE UNITED STATES;

(G) A LIFE, HEALTH, OR OTHER INSURANCE RECORD SHOWING THE APPLICANT'S NAME, AGE OR BIRTH DATE, AND PLACE OF BIRTH WITHIN THE UNITED STATES; OR

(H) IF THE AFFIANT PRESENTS A DOCUMENT IDENTIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (2), AN AFFIDAVIT, SIGNED UNDER PENALTY OF PERJURY IN THE PRESENCE OF AN EMPLOYEE OF THE DEPARTMENT, IDENTIFYING THE APPLICANT AND STATING: THE NAME OR NAMES BY WHICH THE AFFIANT HAS KNOWN THE APPLICANT, THAT THE AFFIANT IS UNAWARE OF ANY FACTS INDICATING THAT THE APPLICANT'S PRESENCE IN THE UNITED STATES IS UNLAWFUL, AND THAT THE AFFIANT IS AN EMPLOYEE OF A GOVERNMENTAL AGENCY OR A NONPROFIT ENTITY REGISTERED WITH THE DEPARTMENT FOR THIS PURPOSE.

(c) PROVIDING A DOCUMENT OR COMBINATION OF DOCUMENTS RECOGNIZED BY THE UNITED STATES GOVERNMENT TO ESTABLISH LAWFUL PRESENCE AND IDENTITY; OR

(d) BEING GRANTED AN EXCEPTION BY THE DEPARTMENT PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(3) THE DEPARTMENT SHALL ESTABLISH BY RULE REASONABLE EXCEPTION PROCEDURES IN ORDER TO ENABLE PERSONS TO ESTABLISH IDENTITY, AGE, AND LAWFUL PRESENCE IN THE UNITED STATES THROUGH

ANY RELEVANT AND REASONABLY RELIABLE EVIDENCE, INCLUDING, WITHOUT LIMITATION, EXPIRED DOCUMENTS, RELIGIOUS RECORDS, EARLY SCHOOL RECORDS, HOSPITAL RECORDS, MUNICIPAL RECORDS, INSURANCE RECORDS, PHOTOCOPIES OF DOCUMENTS, AND THE SWORN TESTIMONY OF WITNESSES IN AFFIDAVIT FORM OR IN PERSON.

(4) IN LIEU OF THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, AN APPLICANT MAY PROVE THE APPLICANT'S AGE BY ANY OF THE DOCUMENTS DESCRIBED IN THIS SECTION THAT REFLECT THE APPLICANT'S DATE OF BIRTH TO ESTABLISH AGE OR BY USE A SCHOOL RECORD CREATED WITHIN THE LAST TWELVE MONTHS BY A SCHOOL WITHIN THE UNITED STATES.

(5) THE DEPARTMENT SHALL MAINTAIN AND PUBLISH A LIST OF THE STATES THAT REQUIRE PROOF OF LAWFUL PRESENCE IN THE UNITED STATES TO OBTAIN A DRIVER'S LICENSE OR IDENTIFICATION DOCUMENT.

(6) THE DEPARTMENT SHALL NOT REJECT AN APPLICATION SOLELY BECAUSE THE APPLICANT IS KNOWN BY A NICKNAME IF THE NICKNAME IS CUSTOMARILY ASSOCIATED WITH THE APPLICANT'S GIVEN NAME.

(7) THE DEPARTMENT SHALL RETAIN A COPY OF AN AFFIDAVIT SUBMITTED UNDER SUB-SUBPARAGRAPH (H) OF SUBPARAGRAPH (III) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION FOR A PERIOD OF TIME AS DETERMINED BY THE DEPARTMENT.

(8) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT THE DEPARTMENT FROM REJECTING APPLICATIONS BASED IN WHOLE OR IN PART ON FRAUDULENT DOCUMENTS OR ORAL REPRESENTATIONS OR FROM PROMULGATING RULES THAT PROVIDE ADDITIONAL BUT NOT MORE RESTRICTIVE METHODS FOR APPLICANTS TO ESTABLISH IDENTITY, AGE, AND LAWFUL PRESENCE IN THE UNITED STATES.

**42-2-104.5. Denial of application - hearings.** (1) IF THE DEPARTMENT DENIES AN APPLICATION FOR A DRIVER'S LICENSE, INSTRUCTION PERMIT, OR IDENTIFICATION CARD, THE DEPARTMENT SHALL PROVIDE THE APPLICANT WITH A WRITTEN NOTICE THAT THE APPLICATION HAS BEEN DENIED AND THAT THE APPLICANT MAY REQUEST A HEARING WITHIN THIRTY DAYS USING A FORM PROVIDED BY THE DEPARTMENT. THE DEPARTMENT SHALL ACCEPT ANY APPLICATION FOR, BUT MAY DENY

ISSUANCE OF, THE DRIVER'S LICENSE, PERMIT, OR IDENTIFICATION CARD.

(2) IF THE APPLICANT REQUESTS A HEARING USING A FORM PROVIDED BY THE DEPARTMENT WITHIN THIRTY DAYS AFTER THE APPLICANT'S RECEIPT OF THE WRITTEN NOTICE, THE DEPARTMENT SHALL HOLD A HEARING IN COMPLIANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND THIS SECTION BEFORE A HEARING OFFICER WITHIN FOURTEEN DAYS AFTER RECEIPT OF THE REQUEST UNLESS THE APPLICANT AGREES TO A LATER HEARING DATE. IF THE APPLICANT FAILS TO REQUEST THE HEARING WITHIN THIRTY DAYS BUT SHOWS GOOD CAUSE FOR THE FAILURE, THE DEPARTMENT SHALL GRANT A HEARING PURSUANT TO THIS SECTION.

(3) AT A HEARING UNDER THIS SECTION, THE HEARING OFFICER SHALL DETERMINE, BY A PREPONDERANCE OF THE EVIDENCE, WHETHER:

(a) THE APPLICANT HAS SATISFIED THE EVIDENCE REQUIREMENTS OF SECTION 42-2-104.3 AND RULES PROMULGATED UNDER SECTION 42-2-104.3; OR

(b) THE APPLICANT QUALIFIES FOR AN EXCEPTION UNDER SECTION 42-2-104.3 (3) BY DEMONSTRATING THE APPLICANT'S AGE AND IDENTITY AND THAT THE APPLICANT IS LAWFULLY PRESENT IN THE UNITED STATES USING ANY RELEVANT EVIDENCE, INCLUDING, WITHOUT LIMITATION, PHOTOCOPIES OF DOCUMENTS AND SWORN TESTIMONY OF WITNESSES.

(4) THE HEARING OFFICER SHALL PROVIDE TO THE APPLICANT A SHORT, WRITTEN STATEMENT OF THE BASIS OF THE DECISION WITHIN TEN DAYS AFTER THE HEARING.

(5) WITHIN THIRTY DAYS AFTER THE ISSUANCE OF THE DECISION PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE APPLICANT MAY PETITION FOR JUDICIAL REVIEW IN A DISTRICT COURT. THE COURT SHALL HEAR AND DETERMINE THE MATTER WITHIN THIRTY DAYS AFTER THE APPLICANT PETITIONS FOR REVIEW. IF THE COURT FINDS THAT THE DEPARTMENT EXCEEDED ITS CONSTITUTIONAL OR STATUTORY AUTHORITY, ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER, OR MADE A DETERMINATION UNSUPPORTED BY THE RECORD, THE COURT MAY REVERSE THE DEPARTMENT'S DETERMINATION OR REMAND THE CASE BACK TO THE DEPARTMENT.

(6) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT A PERSON FROM REAPPLYING FOR A DRIVER'S LICENSE OR IDENTIFICATION CARD, NOTWITHSTANDING BEING DENIED A LICENSE.

**SECTION 3.** 42-2-302 (2) (a), Colorado Revised Statutes, is amended to read:

**42-2-302. Department may issue - limitations - rules.**

(2) (a) (I) The department shall NOT issue an identification card ~~only upon the furnishing of a birth certificate or other documentary evidence of identity that the department may require~~ UNLESS THE APPLICANT SUBMITS THE PROOF OF AGE, IDENTITY, AND LAWFUL PRESENCE THAT IS REQUIRED FOR THE ISSUANCE OF A DRIVER'S LICENCE OR AN INSTRUCTION PERMIT BY SECTION 42-2-104.3.

(II) ~~An applicant who submits a birth certificate or other documentary evidence issued by an entity other than a state or the United States shall also submit such proof as the department may require that the applicant is lawfully present in the United States. An applicant who submits as proof of identity a driver's license or identification card issued by a state that issues drivers' licenses or identification cards to persons who are not lawfully present in the United States shall also submit such proof as the department may require that the applicant is lawfully present in the United States.~~ The department may assess a fee under section 42-2-306 (1) (b) if the department is required to undertake additional efforts to verify the identity of the applicant. IF THE APPLICANT IS DENIED AN IDENTIFICATION CARD BY THE DEPARTMENT, SECTION 42-2-104.5 SHALL APPLY.

**SECTION 4. Applicability.** This act shall apply to applications submitted on or after the effective date of this act.

**SECTION 5. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Andrew Romanoff  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Joan Fitz-Gerald  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Karen Goldman  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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Bill Ritter, Jr.  
GOVERNOR OF THE STATE OF COLORADO