

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

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

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 (3), C.R.S., IS DETERMINED BY A
14 COURT TO BE INSUFFICIENT OR **INEFFECTIVE AFTER REASONABLE EFFORT**
15 **HAS FAILED;** OR

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

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

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

1 **42-7-102. Legislative declaration.** (1) The general assembly is
2 acutely aware of the toll in human suffering and loss of life, limb, and
3 property caused by negligence in the operation of motor vehicles in our
4 state. Although it recognizes that this basic problem can be and is being
5 dealt with by direct measures designed to protect our people from the
6 ravages of irresponsible drivers, the general assembly is also very much
7 concerned with the financial loss visited upon innocent traffic accident
8 victims by negligent motorists who are financially irresponsible. In
9 prescribing the sanctions and requirements of this article, it is the policy
10 of this state to induce and encourage all motorists to provide for their
11 financial responsibility for the protection of others, and to assure the
12 widespread availability to the insuring public of insurance protection
13 against financial loss caused by negligent financially irresponsible
14 motorists.

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

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

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

1 HAS PURCHASED.

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

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

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

21 (c) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT THE
22 POLICY OF COLORADO IS THAT ALL MOTOR VEHICLE LIABILITY POLICIES
23 SHALL REQUIRE POLICYHOLDERS OF AN AUTOMOBILE LIABILITY POLICY OR
24 UNINSURED OR UNDERINSURED MOTORIST POLICY TO APPOINT THEIR
25 INSURANCE CARRIER AS AN AGENT FOR THE PURPOSE OF SERVICE OF
26 PROCESS IN CERTAIN LIMITED INSTANCES IN ACCORDANCE WITH SECTION
27 42-7-414 (3), AND TO DEEM A DEFENDANT TO BE UNINSURED FOR

1 PURPOSES OF UNINSURED OR UNDERINSURED MOTORIST COVERAGE IF THE
2 COURT DEEMS SERVICE ON THE DEFENDANT'S INSURANCE COMPANY TO BE
3 INEFFECTIVE OR INSUFFICIENT.

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

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

27 (b) IF SERVICE OF PROCESS IS MADE ON THE INSURANCE CARRIER

1 UNDER THIS SUBSECTION (3), THE PLAINTIFF SHALL CAUSE THE SERVICE OF
2 PROCESS TO BE MADE ON THE INSURANCE CARRIER'S REGISTERED AGENT.

3 (c) IF SERVICE IS OBTAINED UNDER THIS SECTION, THE VENUE FOR
4 THE UNDERLYING CLAIM IS THE SAME AS IF THE DEFENDANT IS A
5 NONRESIDENT.

6 (d) EXCEPT AS EXPRESSLY PROVIDED IN THIS SUBSECTION (3), THIS
7 SUBSECTION (3) DOES NOT ALTER OR EXPAND THE TERMS AND CONDITIONS
8 OF THE INSURANCE POLICY OR LIABILITY COVERAGE.

9 (e) IN THE CONTRACT PROVISION REQUIRED BY THIS SUBSECTION
10 (3), THE NAME OF THE INSURANCE CARRIER ISSUING THE POLICY SHALL BE
11 SUBSTITUTED FOR THE PHRASE "THE INSURANCE CARRIER."

12 (f) IF SERVICE OF PROCESS IS MADE ON THE INSURANCE CARRIER
13 UNDER THIS SUBSECTION (3) AND THE COURT ENTERS JUDGMENT OR THE
14 INSURANCE CARRIER AGREES TO A SETTLEMENT FOR THE DAMAGES
15 CAUSED BY THE ABSENT INSURED, THE AMOUNT OF THE INSURANCE
16 CARRIER'S LIABILITY SHALL NOT EXCEED THE POLICY LIMITS OF THE
17 COVERAGE. A JUDGEMENT OR SETTLEMENT OBTAINED USING SERVICE OF
18 PROCESS ON THE CARRIER SHALL NOT BAR THE INJURED PERSON FROM
19 SUBSEQUENTLY MAKING PERSONAL SERVICE ON THE PERSON WHO CAUSED
20 THE INJURY AND SEEKING ADDITIONAL REMEDIES PROVIDED BY LAW.

21 (g) AS USED IN THIS SUBSECTION (3), "REASONABLE EFFORT"
22 MEANS SERVICE AT THE DEFENDANT'S LAST-KNOWN ADDRESS, AN
23 ADDRESS OBTAINED FROM THE INSURANCE POLICY, AN ADDRESS OBTAINED
24 FROM A DRIVER'S LICENSE OR MOTOR VEHICLE REGISTRATION, OR ANY
25 READILY ASCERTAINABLE SUCCESSOR ADDRESS.

26 **SECTION 4. Specified effective date - applicability.** This act
27 shall take effect January 1, 2011, and shall apply to insurance policies

1 issued on or after said date.

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