

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

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
Judiciary

SENATE
3rd Reading Unam ended
April 15, 2010

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.**

SENATE
Am ended 2nd Reading
April 1, 2010

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>.)

HOUSE
3rd Reading Unam ended
March 15, 2010

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

HOUSE
Am ended 2nd Reading
March 12, 2010

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 SOLELY FOR THE PURPOSE OF ALLOWING THE INSURED PARTY
7 TO RECEIVE PAYMENT UNDER UNINSURED MOTORIST COVERAGE,
8 REGARDLESS OF WHETHER THE ALLEGED TORTFEASOR WAS ACTUALLY
9 INSURED, IF:

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

13 (b) (I) SERVICE OF PROCESS ON THE INSURANCE CARRIER AS
14 AUTHORIZED BY SECTION 42-7-414 (3), C.R.S., IS DETERMINED BY A
15 COURT TO BE INSUFFICIENT OR INEFFECTIVE AFTER REASONABLE EFFORT
16 HAS FAILED; OR

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

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

24 (7) NOTHING IN SUBSECTION (6) OF THIS SECTION VOIDS THE

1 ALLEGED TORTFEASOR'S POLICY IF THE ALLEGED TORTFEASOR WAS
2 ACTUALLY INSURED.

3 SECTION 2. 42-7-102, Colorado Revised Statutes, is amended
4 to read:

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

19 (2) (a) THE GENERAL ASSEMBLY HEREBY FINDS THAT MOTOR
20 VEHICLE ACCIDENTS CAUSE A SUBSTANTIAL ECONOMIC IMPACT IN LOST
21 WAGES, MEDICAL BILLS, AND PROPERTY DESTRUCTION EXACERBATED BY
22 THE FOLLOWING:

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

25 (II) NEGLIGENT MOTORISTS OFTEN ATTEMPT TO AVOID FINANCIAL
26 RESPONSIBILITY BY MEANS SUCH AS FLEEING THE STATE, CONCEALING
27 THEIR WHEREABOUTS, OR FAILING TO UPDATE THE ADDRESS ON THEIR

1 DRIVER'S LICENSE WITH THE DEPARTMENT OF REVENUE, THEREBY
2 FRUSTRATING SERVICE OF PROCESS AND PREVENTING THE INNOCENT
3 VICTIM FROM ACCESSING EITHER THE NEGLIGENT DRIVER'S LIABILITY
4 INSURANCE POLICY OR THE UNINSURED MOTORIST COVERAGE THE VICTIM
5 HAS PURCHASED.

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

13 (b) (I) THE STATE OF COLORADO ENCOURAGES THE WIDESPREAD
14 AVAILABILITY OF UNINSURED OR UNDERINSURED MOTORIST INSURANCE BY
15 REQUIRING EVERY MOTOR VEHICLE LIABILITY POLICY DELIVERED OR
16 ISSUED IN THIS STATE TO CONTAIN UNINSURED MOTORIST COVERAGE
17 UNLESS THE NAMED INSURED REJECTS SUCH COVERAGE IN WRITING.

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

26 (c) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT THE
27 POLICY OF COLORADO IS THAT ALL MOTOR VEHICLE LIABILITY POLICIES

1 SHALL REQUIRE POLICYHOLDERS OF AN AUTOMOBILE LIABILITY POLICY
2 TO APPOINT THEIR INSURANCE CARRIER AS AN AGENT FOR THE PURPOSE
3 OF SERVICE OF PROCESS IN CERTAIN LIMITED INSTANCES IN ACCORDANCE
4 WITH SECTION 42-7-414 (3), AND TO DEEM A DEFENDANT TO BE
5 UNINSURED FOR PURPOSES OF UNINSURED OR UNDERINSURED MOTORIST
6 COVERAGE IF THE COURT DEEMS SERVICE ON THE DEFENDANT'S
7 INSURANCE COMPANY TO BE INEFFECTIVE OR INSUFFICIENT.

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

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

1 THE LAST-KNOWN E-MAIL AND MAILING ADDRESS OF THE POLICYHOLDER
2 IN ORDER TO COORDINATE ANY PAYMENT OF CLAIMS OR DEFENSE OF
3 CLAIMS THAT ARE REQUIRED."

4 (b) IF SERVICE OF PROCESS IS MADE ON THE INSURANCE CARRIER
5 UNDER THIS SUBSECTION (3), THE PLAINTIFF SHALL CAUSE THE SERVICE OF
6 PROCESS TO BE MADE ON THE INSURANCE CARRIER'S REGISTERED AGENT.

7 (c) IF SERVICE IS OBTAINED UNDER THIS SECTION, THE VENUE FOR
8 THE UNDERLYING CLAIM IS THE SAME AS IF THE DEFENDANT IS A
9 NONRESIDENT.

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

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

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

25 (g) PAYMENT UNDER THE POLICY PURSUANT TO THIS SECTION
26 SHALL NOT BE DEEMED TO BE AN ADMISSION OF LIABILITY BY THE
27 ALLEGED TORTFEASOR AND SHALL NOT PREJUDICE THE RIGHT OF THE

1 ALLEGED TORTFEASOR TO CONTEST HIS OR HER LIABILITY OR THE EXTENT
2 OF DAMAGES OWED TO THE INJURED PARTY.

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

8 **SECTION 4. Specified effective date - applicability.** This act
9 shall take effect January 1, 2011, and shall apply to insurance policies
10 issued on or after said date.

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