

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

INTRODUCED

LLS NO. 10-1087.01 Jery Payne

HOUSE BILL 10-1420

HOUSE SPONSORSHIP

Peniston,

SENATE SPONSORSHIP

Morse,

House Committees
Transportation & Energy

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING COLLECTION OF THE PENALTY SURCHARGE IMPOSED ON**
102 **PERSONS REFERRED TO A DRIVER IMPROVEMENT SCHOOL BY A**
103 **COURT FOR A TRAFFIC VIOLATION.**

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 imposes a penalty of \$15 plus 10% of the amount due plus .5% of such amount per month since the due date and interest on a driver improvement school for failure to collect or remit the fee the school is required to collect from people who are referred to the school by a court.

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.

Procedures and standards are set for notifying and collecting from the school and holding a hearing or appealing a hearing if requested. The department may place a lien on the property of the school to collect on the delinquency and penalties, but the lien does not take priority over previously recorded liens. The executive director of the department of revenue (director) is required to release the lien when the amount is paid. Procedures and standards are set for the lien, lien release, and court actions. A civil action is also authorized to collect the delinquency and penalties. The director is authorized to waive the penalties for good cause.

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

2 **SECTION 1.** 42-1-223 (2), Colorado Revised Statutes, is
3 amended, and the said 42-1-223 is further amended BY THE ADDITION
4 OF A NEW SUBSECTION, to read:

5 **42-1-223. Monitoring driver improvement schools - fund -**
6 **rules.** (2) The department shall, in accordance with article 103 of title
7 24, C.R.S., contract with a private entity by ~~July 1~~ DECEMBER 30, 2010,
8 to monitor and evaluate the curriculum and effectiveness of driver
9 improvement classes required by section 42-4-1717. The private entity
10 shall submit a report to the referring court within three months after a
11 school has been evaluated summarizing the curriculum, location, security,
12 quality, and effectiveness of the classes. The private entity shall also
13 submit an abstract of such reports to the department annually.

14 (4) (a) (I) IF A DRIVER IMPROVEMENT SCHOOL FAILS TO COLLECT
15 OR REMIT TO THE DEPARTMENT THE PENALTY SURCHARGE IMPOSED IN
16 SECTION 42-4-1717 (3), THE EXECUTIVE DIRECTOR OF THE DEPARTMENT
17 SHALL ESTIMATE THE AMOUNT OF PENALTY SURCHARGES DUE, NOT
18 ACCOUNTED FOR, OR INCORRECTLY ACCOUNTED FOR FROM THE SCHOOL
19 AND ADD TO THAT AMOUNT A PENALTY EQUAL TO THE SUM OF FIFTEEN
20 DOLLARS PLUS TEN PERCENT OF THE ESTIMATED AMOUNT PLUS ONE-HALF

1 OF ONE PERCENT OF THE SUM OF THE AMOUNT DUE, THE FIFTEEN DOLLARS,
2 AND THE TEN PERCENT OF THE ESTIMATED AMOUNT PER MONTH STARTING
3 FROM THE DATE THE AMOUNT WAS DUE PLUS INTEREST, IF APPLICABLE, AT
4 THE RATE IMPOSED UNDER SECTION 39-21-110.5, C.R.S., ON THE
5 DELINQUENT PENALTY SURCHARGES. THE EXECUTIVE DIRECTOR SHALL
6 PROMPTLY NOTIFY THE DELINQUENT DRIVER IMPROVEMENT SCHOOL IN
7 WRITING OF THE ESTIMATED PENALTY SURCHARGES, PENALTY, AND
8 INTEREST BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5,
9 C.R.S.

10 (II) THE NOTICE SENT PURSUANT TO SUBPARAGRAPH (I) OF THIS
11 PARAGRAPH (a) IS A NOTICE OF DEFICIENCY AS PROVIDED IN SECTION
12 39-21-103, C.R.S. A HEARING MAY BE HELD AND THE EXECUTIVE
13 DIRECTOR OF THE DEPARTMENT SHALL MAKE A FINAL DETERMINATION
14 PURSUANT TO THAT SECTION. THE DRIVER IMPROVEMENT SCHOOL MAY
15 APPEAL THE FINAL DETERMINATION IN THE MANNER PROVIDED IN SECTION
16 39-21-105, C.R.S. IF, AFTER A HEARING, THE DEPARTMENT SUCCEEDS IN
17 COLLECTING THE ENTIRE AMOUNT ESTIMATED UNDER THIS PARAGRAPH (a),
18 THE DRIVER IMPROVEMENT SCHOOL SHALL REIMBURSE THE DEPARTMENT
19 FOR THE COST OF THE HEARING UNLESS THE COURT LOWERS THE AMOUNT
20 CLAIMED BY THE DEPARTMENT UPON APPEAL.

21 (b) (I) A PENALTY SURCHARGE, PENALTY, AND INTEREST IMPOSED
22 BY THIS SUBSECTION (4) ARE DUE UPON THE LATER OF THE DATE THE
23 HEARING IS COMPLETE OR RECEIPT OF THE NOTICE OF DELINQUENCY. IF
24 THE PENALTY SURCHARGES, PENALTY, AND INTEREST ARE NOT PAID
25 WITHIN FIVE DAYS AFTER THE DUE DATE, THE EXECUTIVE DIRECTOR OF THE
26 DEPARTMENT SHALL ISSUE A NOTICE, SETTING FORTH THE NAME OF THE
27 DRIVER IMPROVEMENT SCHOOL, THE AMOUNT OF THE PENALTY

1 SURCHARGES, PENALTIES, AND INTEREST, THE DATE OF THE ACCRUAL
2 THEREOF, AND THAT THE STATE OF COLORADO CLAIMS A FIRST AND PRIOR
3 LIEN THEREFOR ON THE REAL AND TANGIBLE PERSONAL PROPERTY OF THE
4 DRIVER IMPROVEMENT SCHOOL EXCEPT AS TO PREEXISTING CLAIMS OR
5 LIENS OF A BONA FIDE MORTGAGEE, PLEDGEE, JUDGMENT CREDITOR, OR
6 PURCHASER WHOSE RIGHTS HAVE ATTACHED PRIOR TO THE FILING OF THE
7 NOTICE AS PROVIDED IN THIS SECTION ON PROPERTY OF THE DRIVER
8 IMPROVEMENT SCHOOL, OTHER THAN THE GOODS, STOCK IN TRADE, AND
9 BUSINESS FIXTURES OF THE DRIVER IMPROVEMENT SCHOOL.

10 (II) THE NOTICE SHALL BE ON FORMS PREPARED BY THE EXECUTIVE
11 DIRECTOR AND MAY BE FILED IN THE OFFICE OF THE COUNTY CLERK AND
12 RECORDER OF ANY COUNTY IN THE STATE IN WHICH THE DRIVER
13 IMPROVEMENT SCHOOL OWNS REAL OR TANGIBLE PERSONAL PROPERTY,
14 AND THE FILING OF THE NOTICE SHALL CREATE A LIEN ON THE PROPERTY
15 IN THAT COUNTY AND CONSTITUTE NOTICE OF THE LIEN. AFTER THE
16 NOTICE HAS BEEN FILED, OR CONCURRENTLY THEREWITH, OR AT ANY TIME
17 WHEN PENALTY SURCHARGES DUE ARE UNPAID, WHETHER SUCH NOTICE IS
18 FILED OR NOT, THE EXECUTIVE DIRECTOR MAY ISSUE A WARRANT
19 DIRECTED TO ANY DULY AUTHORIZED REVENUE COLLECTOR, OR TO THE
20 SHERIFF OF ANY COUNTY OF THE STATE, COMMANDING THE SHERIFF TO
21 LEVY UPON, SEIZE, AND SELL SUFFICIENT REAL AND PERSONAL PROPERTY
22 OF THE SCHOOL FOUND WITHIN THE COUNTY FOR THE PAYMENT OF THE
23 AMOUNT DUE, TOGETHER WITH INTEREST, PENALTIES, AND COSTS, SUBJECT
24 TO VALID PREEXISTING CLAIMS OR LIENS.

25 (III) IN ANY ACTION AFFECTING THE TITLE TO REAL ESTATE OR THE
26 OWNERSHIP OR RIGHTS TO POSSESSION OF PERSONAL PROPERTY, THE STATE
27 OF COLORADO MAY BE MADE A PARTY DEFENDANT FOR THE PURPOSE OF

1 OBTAINING AN ADJUDICATION OR DETERMINATION OF ITS LIEN UPON THE
2 PROPERTY. IN THE ACTION, SERVICE OF SUMMONS UPON THE EXECUTIVE
3 DIRECTOR OR ANY PERSON IN CHARGE OF THE OFFICE OF THE EXECUTIVE
4 DIRECTOR IS SUFFICIENT SERVICE AND BINDING UPON THE STATE OF
5 COLORADO.

6 (c) THE REVENUE COLLECTOR OR THE SHERIFF SHALL LEVY UPON
7 SUFFICIENT PROPERTY OF THE DRIVER IMPROVEMENT SCHOOL OR
8 PROPERTY USED BY THE SCHOOL IN CONDUCTING THE BUSINESS, EXCEPT
9 PROPERTY MADE EXEMPT FROM LIEN PURSUANT TO SECTION 39-26-117 (1)
10 (b), C.R.S. THE PROPERTY SHALL BE SOLD IN THE SAME MANNER AS IS
11 PRESCRIBED BY LAW IN RESPECT TO EXECUTIONS AGAINST PROPERTY UPON
12 JUDGMENT OF A COURT. THE SHERIFF SHALL BE ENTITLED TO SUCH FEES
13 IN EXECUTING SUCH WARRANT AS ARE ALLOWED BY LAW FOR SIMILAR
14 SERVICES.

15 (d) UPON PAYMENT OF ALL PENALTY SURCHARGES, PENALTIES,
16 AND INTEREST COVERED BY THE LIEN, THE EXECUTIVE DIRECTOR SHALL
17 RELEASE THE LIEN IN THE SAME MANNER AS MORTGAGES AND JUDGMENTS
18 ARE RELEASED.

19 (e) THE COUNTY CLERK AND RECORDER SHALL FILE AND RECORD
20 A LIEN OR LIEN RELEASE UNDER THIS SUBSECTION (4) WITHOUT COST OR
21 CHARGE.

22 (f) THE EXECUTIVE DIRECTOR MAY ALSO ENFORCE ANY PENALTY
23 SURCHARGES, PENALTIES, OR INTEREST DUE AND UNPAID AS A DEBT DUE
24 THE STATE IN A CIVIL ACTION. THE ACTION MAY BE AN ACTION IN
25 ATTACHMENT AND A WRIT OF ATTACHMENT MAY BE ISSUED TO THE
26 SHERIFF. IN THE ACTION NO BOND IS REQUIRED OF THE EXECUTIVE
27 DIRECTOR, NOR MAY THE SHERIFF REQUIRE OF THE EXECUTIVE DIRECTOR

1 AN INDEMNIFYING BOND FOR EXECUTING THE WRIT OF ATTACHMENT OR
2 WRIT OF EXECUTION UPON A JUDGMENT ENTERED IN THE PROCEEDINGS.
3 THE EXECUTIVE DIRECTOR MAY PROSECUTE APPEALS IN SUCH CASES
4 WITHOUT PROVIDING A BOND THEREFOR. THE ATTORNEY GENERAL OR
5 ANY DISTRICT ATTORNEY, WHEN REQUESTED BY THE EXECUTIVE
6 DIRECTOR, SHALL COMMENCE AN ACTION FOR THE RECOVERY OF PENALTY
7 SURCHARGES DUE UNDER THIS ARTICLE, AND THIS REMEDY SHALL BE IN
8 ADDITION TO ALL OTHER EXISTING REMEDIES OR REMEDIES AUTHORIZED
9 BY THIS SUBSECTION (4).

10 (g) THE EXECUTIVE DIRECTOR IS AUTHORIZED TO WAIVE, FOR
11 GOOD CAUSE SHOWN, A PENALTY OR INTEREST ASSESSED AS PROVIDED IN
12 THIS SUBSECTION (4).

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