

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

2001



HOUSE BILL 01-1210

BY REPRESENTATIVE(S) Sinclair, Cloer, Hoppe, Larson, Paschall, Stafford, Swenson, Weddig, Williams S., and Young;
also SENATOR(S) Arnold and Hernandez.

CONCERNING THE AUTHORIZATION OF ELECTRONIC HEARINGS IN SITUATIONS
WHERE CITATIONS FOR CERTAIN DRIVING OFFENSES MAY CAUSE
INDIVIDUALS TO LOSE THEIR DRIVER'S LICENSES.

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

SECTION 1. 24-34-104 (32), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (32) The following function of the specified agency shall terminate on July 1, 2003:

(d) THE USE OF ELECTRONIC HEARINGS BY THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 42-1-218.5, C.R.S.

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

Capital letters indicate new material added to existing statute; dashes through the words indicate deletions from existing statutes and such material not part of act.

42-1-218.5. Electronic hearings - repeal. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE TO THE CONTRARY, AT THE DISCRETION OF THE DEPARTMENT, ANY HEARING HELD BY THE DEPARTMENT PURSUANT TO THIS TITLE MAY BE CONDUCTED IN WHOLE OR IN PART, IN REAL TIME, BY TELEPHONE OR OTHER ELECTRONIC MEANS.

(2) THE GENERAL ASSEMBLY RECOGNIZES THAT THERE IS AN INCREASE IN THE NUMBER OF HEARINGS CONDUCTED BY THE DEPARTMENT; THAT A LICENSEE HAS THE RIGHT TO APPEAR IN PERSON AT A HEARING; AND THAT A LICENSEE OR A LAW ENFORCEMENT OFFICER MAY NOT BE ABLE TO APPEAR IN PERSON AT A HEARING. THE GENERAL ASSEMBLY THEREFORE DIRECTS THE DEPARTMENT TO CONSIDER THE CIRCUMSTANCES OF THE LICENSEE WHEN A LICENSEE REQUESTS TO APPEAR IN PERSON, AND GRANT THE REQUEST WHENEVER POSSIBLE. THE GENERAL ASSEMBLY FURTHER DIRECTS THE DEPARTMENT TO CONSIDER THE CIRCUMSTANCES OF THE LICENSEE AND THE LAW ENFORCEMENT OFFICER WHEN EITHER MAY NOT BE ABLE TO APPEAR IN PERSON, AND ALLOW THE APPEARANCE BY ELECTRONIC MEANS WHENEVER POSSIBLE.

(3) THE DEPARTMENT SHALL END THE USE OF ELECTRONIC HEARINGS CONDUCTED PURSUANT TO ARTICLES 1 AND 2 OF THIS TITLE, EFFECTIVE JULY 1, 2003. PRIOR TO THIS DATE, THE USE OF ELECTRONIC HEARINGS SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2003.

SECTION 3. 42-2-125 (4), Colorado Revised Statutes, is amended to read:

42-2-125. Mandatory revocation of license and permit - repeal.

(4) Upon receipt of the notice of revocation, the licensee or the licensee's attorney may request a hearing in writing, if the licensee has returned said license to the department in accordance with the provisions of section 42-2-133. The department, upon notice to the licensee, shall hold a hearing at the district office of the department closest to the residence of the licensee; EXCEPT THAT, AT THE DISCRETION OF THE DEPARTMENT, ALL OR PART OF THE HEARING MAY BE CONDUCTED IN REAL TIME, BY TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH SECTION 42-1-218.5. THE DEPARTMENT SHALL HOLD THE HEARING not less than thirty days after receiving such license and request through a hearing commissioner

appointed by the executive director of the department, which hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S. After such hearing, the licensee may appeal the decision of the department to the district court as provided in section 42-2-135. Should a driver who has had his or her license revoked under this section be subsequently acquitted of such charge by a court of record, the department shall immediately, in any event not later than ten days after the receipt of such notice of acquittal, reinstate said license to the driver affected.

SECTION 4. 42-2-126 (8) (e) (II), (8) (f), and (9) (a), Colorado Revised Statutes, are amended to read:

42-2-126. Revocation of license based on administrative determination. (8) (e) (II) The law enforcement officer who submits the documents and affidavit required by subsection (3) of this section need not be present at the hearing unless the presiding hearing officer requires that the law enforcement officer be present and the hearing officer issues a written notice for the law enforcement officer's appearance or unless the respondent or attorney for the respondent determines that the law enforcement officer should be present and serves a timely subpoena upon such officer in accordance with subparagraph (II.5) of this paragraph (e). If the respondent notifies the department in writing at the time that the hearing is requested that the respondent desires the law enforcement officer's presence at the hearing, the department shall issue a written notice for the officer to appear at the hearing. AN OFFICER REQUIRED TO APPEAR AT A HEARING MAY, AT THE DISCRETION OF THE HEARING OFFICER, APPEAR IN REAL TIME BY TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH SECTION 42-1-218.5.

(f) If a hearing is held pursuant to this subsection (8), the department shall review the matter and make a final determination on the basis of the documents and affidavit submitted to the department pursuant to subsections (2) and (3) of this section. Except as provided in paragraph (e) of this subsection (8), the law enforcement officer who submitted the affidavit required by subsection (3) of this section need not be present at the hearing. The department shall consider all other relevant evidence at the hearing, including the testimony of law enforcement officers and the reports of such officers which are submitted to the department. The reports of law enforcement officers shall not be required to be made under oath, but such reports shall identify the officers making the reports. The department may

consider evidence contained in affidavits from persons other than the respondent, so long as such affidavits include the affiant's home or work address and phone number and are dated, signed, and sworn to by the affiant under penalty of perjury. The affidavit need not be notarized or sworn to before any other person. ~~The respondent must present evidence in person.~~

(9) (a) The hearing shall be held in the district office nearest to where the violation occurred, unless the parties agree to a different location; EXCEPT THAT, AT THE DISCRETION OF THE DEPARTMENT, ALL OR PART OF THE HEARING MAY BE CONDUCTED IN REAL TIME, BY TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH SECTION 42-1-218.5. The person requesting the hearing may be referred to as the respondent.

SECTION 5. 42-2-127 (9) (c) and (10), Colorado Revised Statutes, are amended to read:

42-2-127. Authority to suspend license - to deny license - type of conviction - points. (9) (c) Upon receipt of the notice of suspension, the licensee or the licensee's attorney may request a hearing in writing. The department, upon notice to the licensee as provided in section 42-2-119 (2), shall hold a hearing ~~at the district office of the department closest to the residence of the licensee~~ not less than thirty days after receiving such request through a hearing commissioner appointed by the executive director of the department, which hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S. THE HEARING SHALL BE HELD AT THE DISTRICT OFFICE OF THE DEPARTMENT CLOSEST TO THE RESIDENCE OF THE LICENSEE; EXCEPT THAT ALL OR PART OF THE HEARING MAY, AT THE DISCRETION OF THE DEPARTMENT, BE CONDUCTED IN REAL TIME, BY TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH SECTION 42-1-218.5. After such hearing, the licensee may appeal the decision of the department to the district court as provided in section 42-2-135. Should a driver who has had a license suspended under this subsection (9) be subsequently acquitted of such charge by a court of record, the department shall immediately, in any event not later than ten days after the receipt of such notice of acquittal, reinstate said license to the driver affected.

(10) Suspension hearings when ordered by the department shall be held at the district office of the department closest to the residence of the licensee; EXCEPT THAT ALL OR PART OF THE HEARING MAY, AT THE

DISCRETION OF THE DEPARTMENT, BE CONDUCTED IN REAL TIME, BY TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH SECTION 42-1-218.5. A hearing delay shall be granted by the department only if the licensee presents the department with good cause for such delay. Good cause shall include absence from the state or county of residence, personal illness, or any other circumstance which, in the department's discretion, constitutes sufficient reason for delay. In the event that a suspension hearing is delayed, the department shall set a new date for such hearing no later than sixty days after the date of the original hearing.

SECTION 6. 42-2-127.7 (8) (a), Colorado Revised Statutes, is amended to read:

42-2-127.7. Authority to suspend license - uninsured motorists - legislative declaration. (8) (a) The hearing shall be held in the district office of the department closest to the residence of the driver; EXCEPT THAT ALL OR PART OF THE HEARING MAY, AT THE DISCRETION OF THE DEPARTMENT, BE CONDUCTED IN REAL TIME, BY TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH SECTION 42-1-218.5. The person requesting the hearing may be referred to as the respondent.

SECTION 7. 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.

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Stan Matsunaka
PRESIDENT OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO