

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.

An Act

HOUSE BILL 10-1164

BY REPRESENTATIVE(S) Kerr A., Ferrandino, Scanlan, Solano, Kagan, Primavera, Carroll T.;
also SENATOR(S) Tochtrop, Romer, Carroll M., Heath, Hudak, Shaffer B.,
Steadman, Williams.

CONCERNING SERVICE OF PROCESS IN ACTIONS CONCERNING INCIDENTS
THAT MAY BE COVERED BY A MOTOR VEHICLE INSURANCE POLICY.

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

SECTION 1. 10-4-609, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

10-4-609. Insurance protection against uninsured motorists - applicability. (6) AN ALLEGED TORTFEASOR SHALL BE DEEMED TO BE UNINSURED SOLELY FOR THE PURPOSE OF ALLOWING THE INSURED PARTY TO RECEIVE PAYMENT UNDER UNINSURED MOTORIST COVERAGE, REGARDLESS OF WHETHER THE ALLEGED TORTFEASOR WAS ACTUALLY INSURED, IF:

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

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

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

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

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

(7) NOTHING IN SUBSECTION (6) OF THIS SECTION VOIDS THE ALLEGED TORTFEASOR'S POLICY IF THE ALLEGED TORTFEASOR WAS ACTUALLY INSURED.

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

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

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

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

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

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

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

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

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

COURT DEEMS SERVICE ON THE DEFENDANT'S INSURANCE COMPANY TO BE INEFFECTIVE OR INSUFFICIENT.

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

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

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

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

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

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

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

(g) PAYMENT UNDER THE POLICY PURSUANT TO THIS SECTION SHALL NOT BE DEEMED TO BE AN ADMISSION OF LIABILITY BY THE ALLEGED TORTFEASOR AND SHALL NOT PREJUDICE THE RIGHT OF THE ALLEGED TORTFEASOR TO CONTEST HIS OR HER LIABILITY OR THE EXTENT OF DAMAGES OWED TO THE INJURED PARTY.

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

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

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.

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
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Karen Goldman
SECRETARY OF
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APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO