

## CHAPTER 15

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**MOTOR VEHICLES AND TRAFFIC REGULATION**


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HOUSE BILL 93-1006

BY REPRESENTATIVES Entz and Kreutz;  
also SENATOR Meiklejohn.

**AN ACT**

**CONCERNING THE SCHEDULING OF A DRIVER'S LICENSE REVOCATION HEARING UNDER THE EXPRESS CONSENT LAW.**

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

**SECTION 1.** 42-2-122.1 (7) (e), (7) (f), and (8) (c) (II), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

**42-2-122.1. Revocation of license based on administrative determination.**  
(7) (e) (I) The hearing shall be scheduled to be held as quickly as practicable but not more than sixty days after the day of the filing of THAT the request for a hearing is RECEIVED BY THE DEPARTMENT; ~~unless such hearing is rescheduled pursuant to subparagraph (H) of paragraph (e) of subsection (8) of this section~~ EXCEPT THAT, IF A HEARING IS RESCHEDULED BECAUSE OF THE UNAVAILABILITY OF A LAW ENFORCEMENT OFFICER OR THE HEARING OFFICER IN ACCORDANCE WITH SUBPARAGRAPHS (III) OR (IV) OF THIS PARAGRAPH (e), THE HEARING MAY BE RESCHEDULED MORE THAN SIXTY DAYS AFTER THE DAY THAT THE REQUEST FOR THE HEARING IS RECEIVED BY THE DEPARTMENT, AND THE DEPARTMENT SHALL CONTINUE ANY TEMPORARY DRIVING PRIVILEGES HELD BY THE RESPONDENT UNTIL THE DATE THAT SUCH HEARING IS RESCHEDULED. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing in the manner provided in section 42-2-117 (2) at least ten days prior to the scheduled or rescheduled hearing, unless the parties agree to waive this requirement. NOTWITHSTANDING THE PROVISIONS OF SECTION 42-2-117, THE LAST KNOWN ADDRESS OF THE RESPONDENT FOR PURPOSES OF NOTICE FOR ANY HEARING PURSUANT TO THIS SECTION SHALL BE THE ADDRESS STATED ON THE HEARING REQUEST FORM.

(II) THE LAW ENFORCEMENT OFFICER WHO SUBMITS THE DOCUMENTS AND AFFIDAVIT REQUIRED BY SUBSECTION (2) OF THIS SECTION NEED NOT BE PRESENT AT THE HEARING UNLESS THE PRESIDING HEARING OFFICER REQUIRES THAT THE LAW

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

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 AT LEAST FIVE DAYS BEFORE THE DAY OF THE HEARING. 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.

(III) IF THE OFFICER, AFTER RECEIVING A NOTICE OR SUBPOENA TO APPEAR FROM EITHER THE DEPARTMENT OR THE RESPONDENT, HAS A CONFLICT WITH ANY ORIGINAL OR RESCHEDULED HEARING DATE SET BY THE DEPARTMENT, THE OFFICER OR THE OFFICER'S SUPERVISOR MAY CONTACT THE DEPARTMENT AND RESCHEDULE THE HEARING TO A TIME WHEN THE OFFICER WILL BE AVAILABLE. IF THE LAW ENFORCEMENT OFFICER CANNOT APPEAR AT ANY ORIGINAL OR RESCHEDULED HEARING BECAUSE OF MEDICAL REASONS, A LAW ENFORCEMENT EMERGENCY, ANOTHER COURT OR ADMINISTRATIVE HEARING, OR ANY OTHER LEGITIMATE JUST CAUSE AS DETERMINED BY THE DEPARTMENT AND THE OFFICER OR THE OFFICER'S SUPERVISOR GIVES NOTICE OF SUCH OFFICER'S INABILITY TO APPEAR TO THE DEPARTMENT PRIOR TO THE DISMISSAL OF THE REVOCATION PROCEEDING, THE DEPARTMENT SHALL RESCHEDULE THE HEARING FOLLOWING CONSULTATION WITH THE OFFICER OR THE OFFICER'S SUPERVISOR AT THE EARLIEST POSSIBLE TIME WHEN THE OFFICER AND THE HEARING OFFICER WILL BE AVAILABLE.

(IV) IF A HEARING OFFICER CANNOT APPEAR AT ANY ORIGINAL OR RESCHEDULED HEARING BECAUSE OF MEDICAL REASONS, A LAW ENFORCEMENT EMERGENCY, ANOTHER COURT OR ADMINISTRATIVE HEARING, OR ANY OTHER LEGITIMATE JUST CAUSE, SUCH HEARING OFFICER OR THE DEPARTMENT MAY RESCHEDULE THE HEARING AT THE EARLIEST POSSIBLE TIME WHEN THE LAW ENFORCEMENT OFFICER AND THE HEARING OFFICER WILL BE AVAILABLE.

(V) AT THE TIME THAT A RESPONDENT REQUESTS A HEARING, WRITTEN NOTICE SHALL BE GIVEN TO THE RESPONDENT ADVISING SUCH RESPONDENT OF THE RIGHT TO SUBPOENA THE LAW ENFORCEMENT OFFICER FOR THE HEARING, THAT SUCH SUBPOENA MUST BE SERVED UPON THE OFFICER AT LEAST FIVE DAYS BEFORE THE DAY OF THE HEARING, AND OF THE RESPONDENT'S RIGHT, AT THE TIME THAT THE RESPONDENT REQUESTS THE HEARING, TO NOTIFY THE DEPARTMENT IN WRITING THAT THE RESPONDENT DESIRES THE OFFICER'S PRESENCE AT THE HEARING, AND THAT, UPON SUCH NOTIFICATION, THE DEPARTMENT SHALL ISSUE A WRITTEN NOTICE FOR THE OFFICER TO APPEAR AT THE HEARING. THE WRITTEN NOTICE SHALL ALSO STATE THAT, IF THE LAW ENFORCEMENT OFFICER DOES NOT APPEAR AT THE HEARING, DOCUMENTS AND AN AFFIDAVIT PREPARED AND SUBMITTED BY THE LAW ENFORCEMENT OFFICER WILL BE USED AT THE HEARING. THE WRITTEN NOTICE SHALL FURTHER STATE THAT THE AFFIDAVIT AND DOCUMENTS SUBMITTED BY THE LAW ENFORCEMENT OFFICER MAY BE REVIEWED BY THE RESPONDENT PRIOR TO THE HEARING.

(f) If a hearing is held pursuant to this subsection (7), 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 (1.5) and (2) of this section. Except as provided in ~~subparagraph (H) of paragraph (e) of subsection (8) of this~~

~~section~~ PARAGRAPH (e) OF THIS SUBSECTION (7), the law enforcement officer who submitted the affidavit required by subsection (2) 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 his evidence in person.

~~(8) (c) (II) The law enforcement officer who submits the documents and affidavit required by subsection (2) 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 his 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 at least five days before the day of the hearing. 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. If the officer, after receiving a notice or subpoena to appear from either the department or the respondent, has a conflict with any original or rescheduled hearing date set by the department, the officer or his supervisor may contact the department and reschedule the hearing to a time when the officer will be available. If the law enforcement officer cannot appear at any original or rescheduled hearing because of medical reasons, a law enforcement emergency, another court or administrative hearing, or any other legitimate just cause as determined by the department and the officer or his supervisor gives notice of his inability to appear to the department prior to the dismissal of the revocation proceeding, the department shall reschedule the hearing following consultation with the officer or his supervisor at the earliest possible time when the officer and the hearing officer will be available. If a hearing officer cannot appear at any original or rescheduled hearing because of medical reasons, a law enforcement emergency, another court or administrative hearing, or any other legitimate just cause, such hearing officer or the department may reschedule the hearing at the earliest possible time when the law enforcement officer and the hearing officer will be available. Notwithstanding the sixty-day requirement in paragraph (e) of subsection (7) of this section, if a hearing is rescheduled because of the unavailability of a law enforcement officer, the hearing may be rescheduled more than sixty days after the filing of the request for the hearing, and the department shall continue any temporary driving privileges held by the respondent until the date that such hearing is rescheduled. At the time that a respondent requests a hearing, written notice shall be given to the respondent advising him of his right to subpoena the law enforcement officer for the hearing, that such subpoena must be served upon the officer at least five days before the day of the hearing, and of his right, at the time that he requests the hearing, to notify the department in writing that he desires the officer's presence at the hearing, and that, upon such notification, the department shall issue a written notice for the officer to appear at the hearing. The written notice shall also state that, if the law enforcement officer does not appear at the hearing, documents and an affidavit prepared and submitted by the law enforcement officer~~

~~will be used at the hearing. The written notice shall further state that the affidavit and documents submitted by the law enforcement officer may be reviewed by the respondent prior to the hearing.~~

**SECTION 2. 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.

Approved: March 18, 1993