

CHAPTER 207

MOTOR VEHICLES AND TRAFFIC REGULATION

HOUSE BILL 93-1219

BY REPRESENTATIVES Friednash, T. Hernandez, and Kerns;
also SENATORS Wattenberg, Gallagher, and Mares.**AN ACT****CONCERNING THE MAILING REQUIREMENTS FOR DOCUMENTS MAILED PURSUANT TO THE MOTOR VEHICLE LAWS.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** 42-2-117 (2), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

42-2-117. Notices - change of address or name. (2) All notices AND ORDERS required to be given to any licensee or registered owner under the provisions of the motor vehicle laws shall be in writing; and, if mailed, postpaid by ~~registered mail, return receipt requested~~ FIRST-CLASS MAIL, to him OR HER at the last known address shown by the records in the motor vehicle division. Such mailing shall be sufficient notice in accord with the motor vehicle laws. ANY NOTICE OR ORDER OF THE DEPARTMENT MAILED FIRST-CLASS UNDER THE PROVISIONS OF THIS TITLE CREATES A PRESUMPTION FOR ADMINISTRATIVE PURPOSES THAT SUCH NOTICE OR ORDER WAS RECEIVED IF THE DEPARTMENT MAINTAINS A COPY OF THE NOTICE OR ORDER AND MAINTAINS A CERTIFICATION THAT THE NOTICE OR ORDER WAS DEPOSITED IN THE UNITED STATES MAIL BY AN EMPLOYEE OF THE DEPARTMENT. ~~Evidence of a registered return receipt of a notice mailed to the last known address of the licensee,~~ **Evidence of a copy of the notice mailed to the last known address of the licensee AS SHOWN BY THE RECORDS OF THE DEPARTMENT AND A CERTIFICATION OF MAILING BY A DEPARTMENT EMPLOYEE,** or evidence of delivery of notice in person to the last known address of the licensee AS SHOWN BY THE RECORDS OF THE DEPARTMENT, or evidence of personal service upon the licensee or upon any attorney appearing on the licensee's behalf of the order of denial, cancellation, suspension, or revocation of the license by the executive director of the department, or by ~~his~~ **THE EXECUTIVE DIRECTOR'S** duly authorized representative, is prima facie proof that the licensee

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

received personal notice of said denial, cancellation, suspension, or revocation.

SECTION 2. Article 2 of title 42, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

42-2-117.5. Methods of service. (1) ANY NOTICE OR ORDER REQUIRED TO BE SERVED UNDER THE PROVISIONS OF THE MOTOR VEHICLE LAWS MAY BE SERVED IN ANY MANNER REASONABLY DESIGNED TO NOTIFY THE PERSON TO BE SERVED OF THE MATERIAL PROVISIONS OF SUCH NOTICE OR ORDER. A PERSON HAS BEEN SERVED WITH A NOTICE OR ORDER WHEN SUCH PERSON HAS KNOWLEDGE OF THE MATERIAL PROVISIONS OF SUCH NOTICE OR ORDER, REGARDLESS OF THE MANNER IN WHICH SUCH KNOWLEDGE WAS ACQUIRED. ANY IRREGULARITY IN THE FORM OR MANNER OF SERVICE OR DOCUMENTATION OF THE PROOF OF SERVICE OR THE MEANS BY WHICH KNOWLEDGE OF THE MATERIAL PROVISIONS OF A NOTICE OR ORDER IS ACQUIRED SHALL NOT AFFECT THE VALIDITY OF SUCH NOTICE OR ORDER.

(2) FOR PURPOSES OF NOTICES OR ORDERS RELATING TO DRIVING RESTRAINTS ONLY, "MATERIAL PROVISIONS" MEANS THOSE PROVISIONS WHICH IDENTIFY THE AFFECTED PERSON, AND THOSE PROVISIONS WHICH STATE THAT A RESTRAINT AGAINST THE PERSON'S LICENSE OR PRIVILEGE TO DRIVE IN THIS STATE HAS BEEN, OR WILL BE, ENTERED ON THE RECORDS OF THE DEPARTMENT, OR THOSE PROVISIONS WHICH ADVISE THE PERSON THAT HE OR SHE HAS A RIGHT TO REQUEST A HEARING REGARDING THE IMPOSITION OF A RESTRAINT AGAINST SUCH PERSON'S LICENSE OR PRIVILEGE TO DRIVE.

(3) THE DEPARTMENT SHALL DEVELOP PROOF OF SERVICE FORMS WHICH MAY BE USED TO DOCUMENT PROOF OF SERVICE UNDER THIS SUBSECTION (3). SUCH FORMS SHALL INCLUDE BUT NEED NOT BE LIMITED TO THE FOLLOWING:

(a) THE NAME AND DATE OF BIRTH OF THE PERSON SERVED;

(b) THE DATE AND TIME OF SERVICE;

(c) THE IDENTIFICATION NUMBER OF THE NOTICE OR ORDER SERVED, IF ANY, OR, IN THE EVENT THE NOTICE OR ORDER IS NOT AVAILABLE, A DESCRIPTION OF THE INFORMATION RELAYED TO THE PERSON SERVED;

(d) THE NAME, TITLE, SIGNATURE, AND EMPLOYING AGENCY OF THE PERSON MAKING SERVICE;

(e) THE SIGNATURE OF THE PERSON SERVED; AND

(f) THE RIGHT INDEX FINGERPRINT OF THE PERSON SERVED.

(4) IN ADDITION TO SERVICE BY MAIL OR ANY OTHER MEANS, SERVICE OF NOTICES OR ORDERS MAY BE PERSONALLY MADE BY ANY EMPLOYEE OF THE DEPARTMENT, ANY PEACE OFFICER, ANY MUNICIPAL, COUNTY, OR STATE PROSECUTOR, OR ANY MUNICIPAL, COUNTY OR DISTRICT COURT JUDGE, MAGISTRATE, OR JUDICIAL OFFICER. IF SERVICE IS PERSONALLY MADE UNDER THIS SUBSECTION (4), PROOF OF SUCH SERVICE OF ANY NOTICE OR ORDER MAY BE MADE BY SENDING A WRITTEN NOTIFICATION OF SERVICE IN ANY FORM TO THE DEPARTMENT. SUCH NOTIFICATION

SHALL BE AN OFFICIAL RECORD OF THE DEPARTMENT UNDER SECTION 42-2-118. IT SHALL NOT BE NECESSARY THAT THE WRITTEN NOTIFICATION IS ON A FORM SUPPLIED BY THE DEPARTMENT, BUT THE DEPARTMENT MAY REFUSE TO ACCEPT AS AN OFFICIAL RECORD A WRITTEN NOTIFICATION WHICH DOES NOT PROVIDE SUBSTANTIALLY THE SAME INFORMATION AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION.

(5) PEACE OFFICERS AND EMPLOYEES OF THE DEPARTMENT SHALL SERVE NOTICES AND ORDERS RELATING TO DRIVING RESTRAINTS UPON THE AFFECTED PERSON ANYTIME THE AFFECTED PERSON IS CONTACTED BY A PEACE OFFICER OR EMPLOYEE OF THE DEPARTMENT, WHEN SUCH PEACE OFFICER OR EMPLOYEE BELIEVES THAT THE AFFECTED PERSON MAY NOT HAVE BEEN PREVIOUSLY PERSONALLY SERVED WITH ANY NOTICE OR ORDER AFFECTING SUCH PERSON'S LICENSE OR PRIVILEGE TO DRIVE A MOTOR VEHICLE IN THIS STATE.

SECTION 3. 42-2-130 (1) (a), (1) (f) (I), and (2), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended, and the said 42-2-130 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

42-2-130. Driving under restraint - penalty. (1) (a) Any person who drives a motor vehicle or all-terrain recreational vehicle upon any highway of this state ~~at a time when his driver's, minor driver's, or provisional driver's license or driving privilege~~ WITH KNOWLEDGE THAT SUCH PERSON'S LICENSE OR PRIVILEGE TO DRIVE, either as a resident or a nonresident, is ~~denied, suspended, or revoked~~ UNDER RESTRAINT for any reason other than conviction of an alcohol-related driving offense pursuant to section 42-4-1202 (1) or (1.5) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than five days nor more than six months, and, in the discretion of the court, a fine of not less than fifty dollars nor more than five hundred dollars may be imposed. The minimum sentence imposed by this paragraph (a) shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part, or reduce or suspend the fine under this paragraph (a); but, in a case where the defendant is convicted although he established that he had to drive the motor vehicle in violation of this paragraph (a) because of an emergency, the mandatory jail sentence or the fine, if any, shall not apply, and the court may impose a sentence of imprisonment in the county jail for a period of not more than six months and a fine of not more than five hundred dollars. Such minimum sentence need not be five consecutive days but may be served during any thirty-day period.

(f) (I) Any person who drives a motor vehicle or all-terrain recreational vehicle upon any highway of this state ~~at a time when his driver's, minor driver's, or provisional driver's license or driving privilege~~ WITH KNOWLEDGE THAT SUCH PERSON'S LICENSE OR PRIVILEGE TO DRIVE, either as a resident or nonresident, is ~~denied or revoked~~ RESTRAINED under section 42-2-122.1 (1.5) (a) or is ~~denied, suspended, or revoked~~ RESTRAINED solely or partially because of a conviction of a driving offense pursuant to section 42-4-1202 (1) or (1.5) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days nor more than one year and, in the discretion of the court, by a fine of not less than five hundred dollars nor more than one thousand dollars. Upon a second or subsequent conviction, such person shall be punished by imprisonment in the county jail for not less than ninety days nor more than two years and, in the discretion of the court, by a fine of not less than five hundred dollars nor more than

three thousand dollars. The minimum county jail sentence imposed by this subparagraph (I) shall be mandatory, and the court shall not grant probation or a suspended sentence thereof; but, in a case where the defendant is convicted although he established that he had to drive the motor vehicle in violation of this subparagraph (I) because of an emergency, the mandatory jail sentence, if any, shall not apply, and for a first conviction the court may impose a sentence of imprisonment in the county jail for a period of not more than one year and, in the discretion of the court, a fine of not more than one thousand dollars, and for a second or subsequent conviction the court may impose a sentence of imprisonment in the county jail for a period of not more than two years and, in the discretion of the court, a fine of not more than three thousand dollars.

(2) In any prosecution for a violation of this section, the fact of ~~cancellation, denial, suspension, or revocation of~~ THE RESTRAINT ~~a license~~ may be established by ~~a return receipt of a registered notice thereof mailed to the last known address of the defendant and a copy of the notice so mailed by registered mail~~ BY CERTIFICATION THAT A NOTICE WAS MAILED BY FIRST-CLASS MAIL PURSUANT TO SECTION 42-2-117 (2), to the last known address of the defendant, or by the delivery of such notice to the last known address of the defendant, or by personal service of such notice upon the defendant. ~~It is sufficient to prove that notice was mailed with sufficient postage by registered mail addressed to the last known address of the defendant as shown by the records of the department.~~

(4) FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(a) "KNOWLEDGE" MEANS ACTUAL KNOWLEDGE OF ANY RESTRAINT FROM WHATEVER SOURCE, OR KNOWLEDGE OF CIRCUMSTANCES SUFFICIENT TO CAUSE A REASONABLE PERSON TO BE AWARE THAT SUCH PERSON'S LICENSE OR PRIVILEGE TO DRIVE WAS UNDER RESTRAINT. "KNOWLEDGE" DOES NOT MEAN KNOWLEDGE OF A PARTICULAR RESTRAINT OR KNOWLEDGE OF THE DURATION OF RESTRAINT.

(b) "RESTRAINT" OR "RESTRAINED" MEANS ANY DENIAL, REVOCATION OR SUSPENSION OF A PERSON'S LICENSE OR PRIVILEGE TO DRIVE A MOTOR VEHICLE IN THIS STATE, OR ANY COMBINATION OF DENIALS, REVOCATIONS, OR SUSPENSIONS.

SECTION 4. 42-7-301 (2) (b), Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

42-7-301. Security and proof of financial responsibility for the future required under certain circumstances. (2) The director shall determine whether an operator or owner is required to comply with the provisions of this article and, if so, shall:

(b) Within sixty days after receipt of the accident report, send written notice of the requirement of filing security and proof of financial responsibility for the future to each such owner and each such operator at his OR HER last known address, by ~~certified mail, return receipt requested~~ FIRST-CLASS MAIL PURSUANT TO SECTION 42-2-117 (2). ~~Proof of such mailing shall be deemed sufficient notice under this article.~~

SECTION 5. Adjustments to 1993 long bill. For the implementation of this act,

appropriations made in the annual general appropriation act to the department of revenue for the fiscal year beginning July 1, 1993, shall be adjusted as follows: The highway users tax fund appropriation made to the department is reduced by two hundred forty-eight thousand five hundred nine dollars (\$248,509) and the FTE in the Department is reduced by 2.9 FTE. These reductions shall be in the Department of Revenue.

SECTION 6. Effective date. This act shall take effect July 1, 1993.

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.

Approved: May 28, 1993