

CHAPTER 95

INSURANCE

HOUSE BILL 93-1214

BY REPRESENTATIVES Owen, Reeser, Dyer, Kerns, Tanner, and Tucker;
also SENATOR Tebedo.

AN ACT**CONCERNING CEASE AND DESIST ORDERS ISSUED BY THE COMMISSIONER OF INSURANCE TO UNAUTHORIZED INSURERS.**

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

SECTION 1. Part 9 of article 3 of title 10, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

10-3-904.5. Emergency cease and desist orders - issuance. (1) THE COMMISSIONER MAY ISSUE AN EMERGENCY CEASE AND DESIST ORDER EX PARTE IF:

(a) THE COMMISSIONER BELIEVES THAT AN UNAUTHORIZED PERSON IS ENGAGING IN THE BUSINESS OF INSURANCE IN VIOLATION OF THE PROVISIONS OF SECTION 10-3-105 OR 10-3-903 OR IS IN VIOLATION OF A RULE PROMULGATED BY THE COMMISSIONER; AND

(b) IT APPEARS TO THE COMMISSIONER THAT THE ALLEGED CONDUCT IS FRAUDULENT, CREATES AN IMMEDIATE DANGER TO THE PUBLIC SAFETY, OR IS CAUSING OR CAN BE REASONABLY EXPECTED TO CAUSE SIGNIFICANT, IMMINENT, AND IRREPARABLE PUBLIC INJURY.

(2) FOR PURPOSES OF SUBSECTION (1) OF THIS SECTION, "UNAUTHORIZED PERSON" MEANS ANY INDIVIDUAL, CORPORATION, ASSOCIATION, PARTNERSHIP, OR OTHER NATURAL OR ARTIFICIAL PERSON THAT DIRECTLY OR INDIRECTLY ENGAGES IN THE TRANSACTION OF INSURANCE BUSINESS AS DESCRIBED IN SECTION 10-3-903, EXCEPT AS SUCH BUSINESS MAY BE ENGAGED IN IN ACCORDANCE WITH SPECIFIC AUTHORIZATION IN THIS TITLE.

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

(3) UPON MAKING A DETERMINATION UNDER SUBSECTION (1) OF THIS SECTION THAT AN EMERGENCY CEASE AND DESIST ORDER SHOULD BE ISSUED, THE COMMISSIONER SHALL SERVE ON THE PERSON WHO IS THE SUBJECT OF THE ORDER, BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AT SUCH PERSON'S LAST KNOWN ADDRESS, AN ORDER THAT CONTAINS A STATEMENT OF THE CHARGES AND REQUIRES SUCH PERSON TO IMMEDIATELY CEASE AND DESIST FROM THE ACTS, METHODS, OR PRACTICES STATED IN THE ORDER.

(4) THE DIVISION OF INSURANCE SHALL PROMULGATE REASONABLE RULES NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION AND SECTIONS 10-3-904.6 AND 10-3-904.7. SUCH RULES SHALL INCLUDE, TO THE EXTENT POSSIBLE, PROVISIONS REQUIRING UNIFORMITY WITH RESPECT TO THE PROCEDURES OF THIS STATE AND OTHER STATES, THE UNITED STATES, AND THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

10-3-904.6. Emergency cease and desist orders - hearings - judicial review - violations. (1) ANY PERSON WHO IS THE SUBJECT OF AN EMERGENCY CEASE AND DESIST ORDER MAY CONTEST SUCH ORDER BY REQUESTING AN IMMEDIATE HEARING BEFORE THE COMMISSIONER, PURSUANT TO SECTION 24-4-105 (12), C.R.S., AT WHICH SUCH PERSON SHALL HAVE THE OPPORTUNITY TO SHOW CAUSE WHY THE ORDER SHOULD NOT BE AFFIRMED OR UPHOLD. ANY IMMEDIATE HEARING REQUESTED BY A PERSON AGAINST WHOM AN EMERGENCY CEASE AND DESIST ORDER HAS BEEN ISSUED PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE HELD IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 4 OF TITLE 24, C.R.S. THE COMMISSIONER SHALL HAVE ALL OF THE POWERS PROVIDED IN SUCH ARTICLE FOR THE PARTY CONDUCTING THE HEARING.

(2) UPON GOOD CAUSE SHOWN THE COMMISSIONER SHALL PERMIT ANY PERSON TO INTERVENE, APPEAR, AND BE HEARD AT THE HEARING, EITHER IN PERSON OR THROUGH COUNSEL.

(3) FOLLOWING THE HEARING THE COMMISSIONER SHALL AFFIRM, MODIFY, OR SET ASIDE, IN WHOLE OR IN PART, THE EMERGENCY CEASE AND DESIST ORDER.

(4) ANY PERSON ADVERSELY AFFECTED BY THE COMMISSIONER'S DECISION MAY APPEAL SUCH DECISION BY FILING AN ACTION FOR JUDICIAL REVIEW IN THE COURT OF APPEALS PURSUANT TO THE PROVISIONS OF SECTION 24-4-106 (11), C.R.S. ANY APPEAL MADE PURSUANT TO THE PROVISIONS OF THIS SUBSECTION (4) SHALL NOT OPERATE TO STAY OR VACATE A DECISION OR ORDER OF THE COMMISSIONER UNLESS THE COURT ISSUES AN ORDER THAT SPECIFICALLY STAYS OR VACATES THE ORDER OR DECISION. THE COMMISSIONER MAY RECOVER REASONABLE ATTORNEY'S FEES IF JUDICIAL ACTION IS NECESSARY TO ENFORCE AN ORDER MADE PURSUANT TO SECTION 10-3-904.5.

(5) THE COMMISSIONER SHALL BE RESPONSIBLE FOR DETERMINING WHETHER AN EMERGENCY CEASE AND DESIST ORDER HAS BEEN VIOLATED AND MAY CONDUCT A HEARING PURSUANT TO THE PROCEDURES IN SECTION 24-4-105, C.R.S., TO ASSIST IN MAKING SUCH DETERMINATION. IF THE COMMISSIONER DETERMINES THAT A VIOLATION HAS OCCURRED, NOTICE OF A HEARING SHALL BE MAILED BY THE COMMISSIONER TO THE ALLEGED VIOLATOR'S LAST KNOWN ADDRESS. SUCH NOTICE SHALL CONTAIN THE TIME, DATE, AND PLACE OF THE HEARING TO BE HELD FOR THE

PURPOSE OF ELICITING FURTHER INFORMATION. HEARINGS SHALL NOT BE HELD BEFORE THE TWENTY-FIRST DAY AFTER THE DATE THE NOTICE IS SENT. THE NOTICE SHALL CONTAIN A STATEMENT OF THE FACTS OR CONDUCT ALLEGED TO BE IN VIOLATION OF THE EMERGENCY CEASE AND DESIST ORDER. IF AFTER A HEARING THE COMMISSIONER DETERMINES THAT AN EMERGENCY CEASE AND DESIST ORDER HAS BEEN VIOLATED THE COMMISSIONER MAY:

(a) IMPOSE A CIVIL PENALTY OF TWENTY-FIVE THOUSAND DOLLARS FOR EACH ACT OF VIOLATION;

(b) DIRECT THE PERSON AGAINST WHOM THE ORDER WAS ISSUED TO MAKE COMPLETE RESTITUTION, IN THE FORM AND AMOUNT AND WITHIN THE PERIOD DETERMINED BY THE COMMISSIONER, TO ALL STATE RESIDENTS, INSUREDS, AND ENTITIES OPERATING IN THIS STATE THAT WERE DAMAGED BY THE VIOLATION OR FAILURE TO COMPLY; OR

(c) IMPOSE THE PENALTY DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (5) AND DIRECT RESTITUTION PURSUANT TO THE PROVISIONS OF PARAGRAPH (b) OF THIS SUBSECTION (5).

(6) ANY PERSON ADVERSELY AFFECTED BY AN ORDER ISSUED BY THE COMMISSIONER PURSUANT TO SUBSECTION (5) OF THIS SECTION MAY APPEAL SUCH ORDER BY COMMENCING AN ACTION FOR JUDICIAL REVIEW IN THE COURT OF APPEALS PURSUANT TO SECTION 24-4-106 (11), C.R.S. ANY SUCH ACTION SHALL BE COMMENCED NO LATER THAN THE TWENTIETH DAY AFTER THE DATE OF THE ORDER. THE DIVISION MAY RECOVER REASONABLE ATTORNEY'S FEES IF JUDICIAL ACTION IS NECESSARY FOR ENFORCEMENT OF THE COMMISSIONER'S ORDER.

10-3-904.7. Failure to pay penalties or restitution. (1) IF A PERSON FAILS TO PAY A PENALTY OR MAKE COMPLETE RESTITUTION AS DIRECTED BY THE COMMISSIONER UNDER SECTION 10-3-904.6 (5) (a) OR (5) (b), THE COMMISSIONER MAY:

(a) REFER THE MATTER TO THE ATTORNEY GENERAL FOR ENFORCEMENT; OR

(b) CANCEL OR REVOKE ANY PERMIT, LICENSE, CERTIFICATE OF AUTHORITY, CERTIFICATE, REGISTRATION, OR OTHER AUTHORIZATION ISSUED TO SUCH PERSON.

SECTION 2. Effective date. This act shall take effect July 1, 1993.

SECTION 3. 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: April 12, 1993