

CHAPTER 178

**INSURANCE**

**HOUSE BILL 95-1319**

BY REPRESENTATIVES Foster, Salaz, Chlouber, Schwarz, Moellenberg, Dyer, Owen, Schauer, Allen, Acquafresca, Chavez, DeGette, Gordon, Hagedorn, Hernandez, Lamm, Reeser, Sullivan, Sullivant, and Taylor; also SENATORS Rizzuto, Alexander, Ament, Bishop, Casey, Dennis, Gallagher, Hopper, Martinez, Pascoe, L. Powers, Rupert, and Weissmann.

**AN ACT**

**CONCERNING A REQUIREMENT THAT WORKERS' COMPENSATION INSURERS OFFER COVERAGE FOR BLACK LUNG DISEASE.**

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

**SECTION 1.** Article 4 of title 10, Colorado Revised Statutes, 1994 Repl. Vol., is amended BY THE ADDITION OF A NEW PART to read:

**PART 13  
BLACK LUNG DISEASE INSURANCE  
JOINT UNDERWRITING ASSOCIATION**

**10-4-1301. Legislative declaration.** THE PURPOSE OF THIS PART 13 IS TO ENSURE THE CONTINUING AVAILABILITY OF NECESSARY BLACK LUNG INSURANCE IN THIS STATE BY ESTABLISHING A TEMPORARY MARKET FOR BLACK LUNG INSURANCE COVERAGE. IT IS INTENDED THAT THE NONPROFIT TEMPORARY JOINT UNDERWRITING ASSOCIATION CREATED BY THIS PART 13 OPERATE ON A SELF-SUPPORTING BASIS, WITHOUT SUBSIDY FROM ITS MEMBERS, TO MAKE THE NECESSARY BLACK LUNG INSURANCE AVAILABLE FOR AN INTERIM PERIOD IN ORDER TO ALLOW THE VOLUNTARY MARKET TO RESPOND OR TO PROVIDE ADDITIONAL TIME TO THE GENERAL ASSEMBLY TO CONSIDER APPROPRIATE REMEDIAL LEGISLATION ADDRESSING THE PROBLEMS OF AVAILABILITY AND HIGH COST OF BLACK LUNG INSURANCE.

**10-4-1302. Definitions.** AS USED IN THIS PART 13, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- (1) "ASSOCIATION" MEANS THE JOINT UNDERWRITING ASSOCIATION CREATED

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

PURSUANT TO THIS PART 13.

(2) "BLACK LUNG INSURANCE" MEANS ANY INSURANCE POLICY PROVIDING COVERAGE TO EMPLOYERS SUBJECT TO THE "FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969", 30 U.S.C. SECS. 931 TO 942, AS AMENDED.

(3) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE ASSOCIATION.

**10-4-1303. Temporary joint underwriting association.** (1) A NONPROFIT TEMPORARY JOINT UNDERWRITING ASSOCIATION IS HEREBY CREATED, CONSISTING OF ALL INSURANCE CARRIERS AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE, INCLUDING THE COLORADO COMPENSATION INSURANCE AUTHORITY, THAT INSURES EMPLOYERS AGAINST LIABILITY FOR COMPENSATION UNDER THE PROVISIONS OF ARTICLES 40 TO 47 OF TITLE 8, C.R.S., WHO SHALL CONSTITUTE THE MEMBERS THEREOF. EVERY SUCH INSURER SHALL PARTICIPATE IN THE ASSOCIATION AS A CONDITION OF ITS AUTHORITY TO CONTINUE TO MAKE CONTRACTS OF SUCH KIND OF INSURANCE IN THIS STATE.

(2) THE PURPOSE OF THE ASSOCIATION SHALL BE TO PROVIDE BLACK LUNG INSURANCE COVERAGE FOR EMPLOYERS LOCATED IN COLORADO WHO ARE IN GOOD FAITH ENTITLED TO SUCH COVERAGE BUT WHO ARE UNABLE TO PURCHASE SUCH INSURANCE THROUGH THE VOLUNTARY MARKET.

(3) THE ASSOCIATION SHALL ISSUE POLICIES BEGINNING IMMEDIATELY; EXCEPT THAT THE ASSOCIATION SHALL NOT COMMENCE UNDERWRITING OPERATIONS UNTIL THE COMMISSIONER FINDS THAT BLACK LUNG INSURANCE IS NOT, OR AS OF A DETERMINABLE DATE WILL NOT, BE AVAILABLE OR CANNOT BE MADE AVAILABLE IN THE VOLUNTARY MARKET OR THE COST IS SO UNREASONABLY HIGH AS TO MAKE SUCH INSURANCE PRACTICABLY UNAVAILABLE.

(4) (a) THE ASSOCIATION SHALL, PURSUANT TO THE PROVISIONS OF THIS PART 13 AND THE PLAN OF OPERATION, HAVE THE POWER ON BEHALF OF ITS MEMBERS:

(I) TO ISSUE, OR CAUSE TO BE ISSUED, POLICIES OF BLACK LUNG INSURANCE;

(II) TO UNDERWRITE SUCH INSURANCE;

(III) TO ADJUST AND PAY LOSSES WITH RESPECT THERETO; AND

(IV) TO PROVIDE OR CEDE REINSURANCE.

(b) THE ASSOCIATION MAY CONTRACT WITH ONE OR MORE SERVICING CARRIERS OR ANY OTHER APPROPRIATE ENTITY TO PERFORM ANY OR ALL OF THE DUTIES OF THE ASSOCIATION.

**10-4-1304. Board of directors - authority.** (1) THE ASSOCIATION SHALL BE GOVERNED BY A BOARD OF SIX DIRECTORS, TO BE APPOINTED BY THE COMMISSIONER WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS PART 13. SUCH DIRECTORS SHALL BE INDIVIDUALS EMPLOYED FULL-TIME IN THE BUSINESS OF WRITING WORKERS' COMPENSATION INSURANCE IN COLORADO, AT LEAST ONE SHALL BE EMPLOYED BY THE COLORADO COMPENSATION INSURANCE AUTHORITY, AT LEAST ONE SHALL BE

ACTIVELY ENGAGED IN OPERATIONS IN A SMALL UNDERGROUND MINE, AND AT LEAST ONE SHALL BE ACTIVELY ENGAGED IN OPERATIONS IN A LARGE UNDERGROUND MINE. THE BOARD SHALL ELECT A CHAIRPERSON FROM AMONG ITS MEMBERS.

(2) THE BOARD SHALL HAVE THE AUTHORITY TO TAKE ALL LAWFUL ACTIONS NECESSARY TO IMPLEMENT THIS PART 13, INCLUDING, BUT NOT LIMITED TO, ISSUING POLICIES AS NAMED INSURER.

**10-4-1305. Plan of operation - annual certification.** (1) (a) THE BOARD SHALL SUBMIT TO THE COMMISSIONER A PROPOSED PLAN OF OPERATION CONSISTENT WITH THE PROVISIONS OF THIS PART 13. IF THE BOARD FAILS TO DO SO, THE COMMISSIONER SHALL PROMULGATE A PLAN OF OPERATION OR PART THEREOF, AS THE CASE MAY BE. THE PLAN OF OPERATION APPROVED OR PROMULGATED BY THE COMMISSIONER SHALL BECOME EFFECTIVE AND OPERATIONAL UPON ORDER OF THE COMMISSIONER.

(b) THE BOARD MAY CHANGE THE PLAN OF OPERATION AT ANY TIME UPON THE BOARD'S INITIATIVE. ADOPTION OF THE PLAN AND ANY CHANGES THERETO SHALL REQUIRE THE CONSENT OF TWO-THIRDS OF THE MEMBERS AND THE APPROVAL OF THE COMMISSIONER.

(2) THE PLAN OF OPERATION SHALL PROVIDE FOR THE PROMPT AND EFFICIENT PROVISION OF BLACK LUNG INSURANCE AND SHALL CONTAIN OTHER PROVISIONS INCLUDING, BUT NOT LIMITED TO:

(a) A PRELIMINARY UNIFORM ASSESSMENT OF ALL MEMBERS, BASED ON MARKET SHARE AS MEASURED BY WORKERS' COMPENSATION PREMIUM IN THIS STATE, FOR INITIAL EXPENSES NECESSARY TO COMMENCE OPERATIONS;

(b) THE ESTABLISHMENT OF NECESSARY FACILITIES;

(c) THE MANAGEMENT OF THE ASSOCIATION;

(d) A PRO RATA ASSESSMENT OF MEMBERS TO DEFRAID LOSSES AND EXPENSES;

(e) REASONABLE AND OBJECTIVE UNDERWRITING STANDARDS;

(f) THE CESSION OF REINSURANCE;

(g) APPOINTMENTS OF SERVICING CARRIERS OR OTHER SERVICING ARRANGEMENTS, INCLUDING CONTRACTS WITH DATA SERVICE ORGANIZATIONS; EXCEPT THAT THE CRITERIA FOR SELECTING SERVICE PROVIDERS SHALL INCLUDE, AT A MINIMUM, EXPERIENCE IN ADMINISTRATION OF WORKERS' COMPENSATION WITH PARTICULAR EMPHASIS ON WORKERS' COMPENSATION RESIDUAL MARKET MECHANISMS;

(h) PROCEDURES FOR DETERMINING AMOUNTS OF INSURANCE TO BE PROVIDED BY THE ASSOCIATION;

(i) CRITERIA FOR ELIGIBILITY FOR COVERAGE UNDER THE PLAN;

(j) PROGRAMS TO ENCOURAGE INSURERS TO PROVIDE BLACK LUNG INSURANCE COVERAGE IN THE VOLUNTARY MARKET;

(k) PROCEDURES FOR PUBLICATION OF RENEWAL DATES OF EMPLOYERS INSURED UNDER THE PLAN;

(l) PROCEDURES FOR EQUITABLE DISTRIBUTION OF APPLICANTS TO THE PLAN;

(m) THE PROVISION OF POLICY, CLAIMS, AND LOSS CONTROL SERVICES TO THE EMPLOYERS INSURED UNDER THE PLAN;

(n) REVIEW OF APPLICATIONS FOR COVERAGE WITH THE PLAN;

(o) PROCEDURES FOR AUDITING EMPLOYERS INSURED UNDER THE PLAN, WHICH PROCEDURES SHALL BE BASED ON REASONABLE BUSINESS JUDGMENT AND DESIGNED TO MAXIMIZE THE LIKELIHOOD THAT THE PLAN WILL COLLECT THE APPROPRIATE PREMIUMS;

(p) SERVICING CARRIER STANDARDS, COMMISSION SCHEDULES, AND OTHER PROVISIONS RELATING TO AGENTS WHO SUBMIT BUSINESS TO THE PLAN;

(q) TERMINATION OF COVERAGE OF AND REFUSAL OF FUTURE COVERAGE TO AN INSURED EMPLOYER THAT:

(I) FAILS TO MAKE PAYMENTS WHEN DUE;

(II) IS DELINQUENT IN PAYMENT OF WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY INSURANCE PAYMENTS OR DEDUCTIBLE PAYMENTS OWED TO A SERVICE PROVIDER OR FORMER INSURER;

(III) FAILS TO COMPLY WITH ANY REASONABLE LOSS CONTROL PROGRAMS RECOMMENDED BY THE PLAN; OR

(IV) FAILS TO COOPERATE WITH REASONABLE INVESTIGATION OF CLAIMS INVOLVING ITS EMPLOYEES, PAYROLL AUDITS, OR DEVELOPMENT OF LOSS CONTROL RECOMMENDATIONS.

(3) THE PLAN SHALL USE ACTUARIALLY SOUND RATES. THE PLAN SHALL ALSO PUT IN PLACE RATES AND RATING PLANS FOR NEW APPLICANTS THAT HAD PREVIOUSLY BEEN SELF-INSURED. THE PLAN MAY OFFER RATING, DIVIDEND PLANS, AND OTHER MEANS TO ENCOURAGE EMPLOYERS TO PARTICIPATE IN LOSS PREVENTION PROGRAMS. RATES AND RATING PLANS SHALL BE SUBJECT TO APPROVAL BY THE COMMISSIONER USING THE STANDARDS SET FORTH IN PART 4 OF THIS ARTICLE.

**10-4-1306. Deficits - assessment - rebate of surplus.** (1) WHENEVER A DEFICIT EXISTS, THE BOARD SHALL, WITHIN NINETY DAYS, PROVIDE THE COMMISSIONER WITH A PROGRAM TO ELIMINATE THE DEFICIT WITHIN A REASONABLE TIME.

(2) ANY PREMIUMS OR ASSESSMENTS COLLECTED BY THE PLAN IN EXCESS OF THE AMOUNT NECESSARY TO FUND PROJECTED ULTIMATE INCURRED LOSSES AND EXPENSES OF THE PLAN AND NOT PAID TO INSUREDS IN CONJUNCTION WITH DIVIDEND PROGRAMS SHALL BE RETAINED BY THE PLAN FOR FUTURE USE AS NECESSARY TO ENSURE THE CONTINUED OPERATIONAL VIABILITY OF THE PLAN.

(3) IF THE PLAN INCURS A DEFICIT OR SURPLUS FROM OPERATIONS IN EXCESS OF THE AMOUNT REQUIRED UNDER SUBSECTION (2) OF THIS SECTION, AS DETERMINED BY THE COMMISSIONER, THE AMOUNT OF THE DEFICIT OR SURPLUS SHALL BE ASSESSED OR REBATED TO THE PARTICIPATING INSURERS. EACH SUCH INSURER SHALL PAY A PORTION OF THE TOTAL ASSESSMENT OR RECEIVE A PORTION OF THE TOTAL REBATE BASED ON ITS PROPORTION OF THE TOTAL VOLUNTARY COLORADO WORKERS' COMPENSATION INSURANCE WRITTEN DURING THE CALENDAR YEAR IN WHICH THE DEFICIT OR SURPLUS OCCURS.

**10-4-1307. Annual statements.** THE ASSOCIATION SHALL FILE IN THE OFFICE OF THE COMMISSIONER ANNUALLY, ON OR BEFORE JUNE 1, A STATEMENT WHICH SHALL CONTAIN INFORMATION WITH RESPECT TO ITS TRANSACTIONS, CONDITION, OPERATIONS, AND AFFAIRS DURING THE PRECEDING YEAR. SUCH STATEMENT SHALL CONTAIN AN INDEPENDENT ACTUARIAL CERTIFICATION OF THE RESULTS OF THE OPERATION OF THE PLAN AND SUCH OTHER MATTERS AND INFORMATION AS ARE PRESCRIBED. THE COMMISSIONER MAY PRESCRIBE THE FORM OF SUCH STATEMENT AND MAY, AT ANY TIME, REQUIRE THE ASSOCIATION TO FURNISH ADDITIONAL INFORMATION WITH RESPECT TO ITS TRANSACTIONS, CONDITION, OR ANY MATTER CONNECTED THEREWITH CONSIDERED TO BE MATERIAL AND OF ASSISTANCE IN EVALUATING THE SCOPE, OPERATION, AND EXPERIENCE OF THE ASSOCIATION.

**10-4-1308. Examinations - report to general assembly.** (1) THE COMMISSIONER SHALL MAKE AN EXAMINATION INTO THE AFFAIRS OF THE ASSOCIATION AT LEAST ANNUALLY.

(2) ON OR BEFORE MARCH 15, 1996, AND ANNUALLY THEREAFTER, THE COMMISSIONER SHALL REPORT TO THE GENERAL ASSEMBLY ON THE RESULTS OF THE PLAN ESTABLISHED BY THIS PART 13. SUCH REPORT SHALL INCLUDE THE COMMISSIONER'S RECOMMENDATIONS FOR CONTINUATION OR TERMINATION OF THE ASSOCIATION, OR ESTABLISHMENT OF A PERMANENT RESIDUAL MARKET MECHANISM TO INSURE COLORADO EMPLOYERS AGAINST LIABILITY UNDER THE FEDERAL COAL MINE SAFETY AND HEALTH ACT, OR BOTH. SUCH REPORT SHALL ALSO EVALUATE OPTIONS FOR SUCH A MECHANISM, INCLUDING A REQUIREMENT FOR THE COLORADO COMPENSATION INSURANCE AUTHORITY TO ACCEPT COLORADO BLACK LUNG RISKS, AN EXCLUSIVELY SELF-FUNDING JOINT UNDERWRITING ASSOCIATION, A GROUP SELF-INSURANCE PLAN, AND AN ASSIGNED RISK PLAN. THE EVALUATION SHALL INCLUDE INFORMATION ON THE ADMINISTRATIVE COSTS OF OPERATING A FREE-STANDING RESIDUAL MARKET MECHANISM AS WELL AS THE NEED FOR RATE ADJUSTMENTS NECESSARY TO MAKE SUCH MECHANISM ENTIRELY SELF-SUSTAINING.

**10-4-1309. Legislative declaration - authority of commissioner - emergency rules - judicial review.** (1) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THE MATTERS ADDRESSED IN THIS PART 13 ARE OF THE UTMOST URGENCY. ACCORDINGLY, THE COMMISSIONER IS AUTHORIZED TO, AND SHALL, ADOPT EMERGENCY RULES IMPLEMENTING THIS PART 13 IMMEDIATELY. IN ADDITION, THE COMMISSIONER IS EMPOWERED TO ISSUE ALL NECESSARY ORDERS TO IMPLEMENT THIS PART 13 AS SOON AS IS PRACTICABLE.

(2) TO COVER THE COMMISSIONER'S STARTUP COSTS, THE COMMISSIONER MAY ASSESS INSURERS PARTICIPATING IN THE ASSOCIATION BASED ON EACH INSURER'S PROPORTION OF THE TOTAL VOLUNTARY COLORADO WORKERS' COMPENSATION

INSURANCE WRITTEN DURING CALENDAR YEAR 1994.

(3) ALL ORDERS OF THE COMMISSIONER MADE PURSUANT TO THIS PART 13 SHALL BE SUBJECT TO JUDICIAL REVIEW BY THE COURT OF APPEALS AS PROVIDED IN SECTION 24-4-106 (11), C.R.S.; EXCEPT THAT, NOTWITHSTANDING ANY OTHER PROVISION OF LAW, PROCEEDINGS FOR REVIEW SHALL ACT AS A STAY OF THE ENFORCEMENT OF ANY ORDER OR DECISION OF THE INSURANCE COMMISSIONER DISAPPROVING OR ORDERING THE WITHDRAWAL, ADJUSTMENT, OR TERMINATION OF THE EFFECTIVENESS OF ANY RATE FILING MADE BY OR ON BEHALF OF THE ASSOCIATION ON THE GROUND THAT THE RATES OR PREMIUMS FOR THE BUSINESS OF THE ASSOCIATION ARE UNREASONABLE OR EXCESSIVE, AND THE ASSOCIATION MAY CONTINUE TO CHARGE RATES PURSUANT TO SUCH FILING PENDING FINAL ORDER OF THE COURT.

**10-4-1310. Privileged communications.** THERE SHALL BE NO LIABILITY ON THE PART OF, AND NO CIVIL SUIT FOR DAMAGES SHALL ARISE AGAINST, THE ASSOCIATION, THE COMMISSIONER, OR HIS OR HER AUTHORIZED REPRESENTATIVES, OR ANY OTHER PERSON OR ORGANIZATION FOR ANY ACT OR STATEMENT MADE IN GOOD FAITH BY THEM DURING ANY PROCEEDINGS OR CONCERNING ANY MATTERS WITHIN THE SCOPE OF THIS PART 13.

**10-4-1311. Tax exemption.** THE ASSOCIATION SHALL BE EXEMPT FROM PAYMENT OF ALL FEES AND ALL TAXES LEVIED BY THIS STATE OR ANY OF ITS SUBDIVISIONS, EXCEPT TAXES LEVIED ON REAL OR PERSONAL PROPERTY.

**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: May 23, 1995