

## CHAPTER 85

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**INSURANCE**


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**HOUSE BILL 98-1297**

BY REPRESENTATIVES Tucker, Schauer, and Swenson;  
also SENATOR Schroeder.

**AN ACT**

CONCERNING THE AUTHORITY OF THE COMMISSIONER OF INSURANCE TO IMPOSE CERTAIN REQUIREMENTS ON NONADMITTED INSURERS AS A CONDITION OF BEING AN APPROVED NONADMITTED INSURER IN THIS STATE, AND, IN CONNECTION THEREWITH, ADOPTING STANDARDS FOR THE SERVICE OF PROCESS AND TRUST REQUIREMENTS FOR NONADMITTED INSURERS.

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

**SECTION 1.** 10-5-108 (1) (c) (II), Colorado Revised Statutes, is amended to read:

**10-5-108. Placement of surplus line insurance.** (1) No broker shall place any coverage with a nonadmitted insurer unless, at the time of placement, such nonadmitted insurer is included on the list of approved nonadmitted insurers prepared by the commissioner at least annually. Nothing in this section shall require the commissioner to place or maintain the name of any nonadmitted insurer on the list. To be placed and remain on said approved list, such nonadmitted insurer shall:

(c) (II) In the case of a Lloyd's plan or other similar unincorporated group of individual insurers, or a combination of both unincorporated and incorporated insurers, such alien insurer shall have and maintain a trust fund ~~representing the group's liabilities attributable to business written~~ in the United States, ~~with a trust surplus~~ IN AN AMOUNT of not less than one hundred million dollars, which ~~surplus~~ TRUST FUND shall be available for the benefit of United States surplus lines policyholders of any member of the group. THE GROUP SHALL, IN ADDITION, MAINTAIN IN THE UNITED STATES A TRUST FUND OR TRUST FUNDS IN AN AMOUNT SATISFACTORY TO THE COMMISSIONER THAT IS NOT LESS THAN THE AMOUNT REQUIRED BY THE LAW OF THE STATE WHERE THE TRUST FUND OR TRUST FUNDS ARE LOCATED. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the

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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.*

same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The trust funds shall be maintained in an irrevocable trust account in the United States in a qualified financial institution and shall consist of cash, securities, letters of credit, or investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state, and the trust instrument representing the surplus portion of the trust deposit shall satisfy the requirements of the standard trust agreement required for listing with the national association of insurance commissioners' international insurers department.

**SECTION 2.** 10-5-114 (2), Colorado Revised Statutes, is amended to read:

**10-5-114. Actions against insurer - service.** (2) Service of legal process against the insurer may be made in any such action by service upon the commissioner. The commissioner shall forthwith mail the documents of process served, or a true copy thereof, to the person ~~designated by the insurer in the policy~~ DESIGNATED BY THE INSURER PURSUANT TO RULE OF THE COMMISSIONER for the purpose by prepaid certified mail with return receipt requested. The insurer shall have forty days from the date of service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the insurer. For each service of process, the sum of ten dollars shall be paid to the division of insurance at the time of such service.

**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 10, 1998