

CHAPTER 132

INSURANCE

HOUSE BILL 99-1310

BY REPRESENTATIVES McElhany, McKay, and Young;
also SENATOR Owen.

AN ACT

CONCERNING THE CREATION OF AN EXEMPTION FROM FILING REQUIREMENTS FOR INSURERS PROVIDING
COVERAGE TO EXEMPT COMMERCIAL POLICYHOLDERS.

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

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

PART 14
EXEMPTION FOR RATE AND APPROVAL
REQUIREMENTS FOR INSURERS PROVIDING
COVERAGE TO EXEMPT COMMERCIAL POLICYHOLDERS

10-4-1401. Legislative declaration. THE GENERAL ASSEMBLY DECLARES THAT THE HEALTH, WELFARE, AND SAFETY OF THE PEOPLE OF THE STATE OF COLORADO MAY NOT BE ENHANCED BY THE REGULATION OF INSURANCE BETWEEN SOPHISTICATED COMMERCIAL ENTITIES AND INSURERS. THE GENERAL ASSEMBLY FINDS THAT THERE ARE COMMERCIAL ENTITIES THAT UTILIZE PERSONNEL TRAINED IN RISK MANAGEMENT, INSURANCE COVERAGE ISSUES, AND INSURANCE INDUSTRY KNOWLEDGE WHO ARE CAPABLE OF NEGOTIATING AND ENTERING INTO INSURANCE COVERAGE AGREEMENTS WITHOUT THE NEED FOR STATE REGULATION IN THIS AREA. THEREFORE, THE PURPOSE OF THIS PART 14 IS TO EXEMPT INSURERS NEGOTIATING WITH AND INSURING SOPHISTICATED COMMERCIAL ENTITIES FROM RATE FILING AND FORM CERTIFICATION REQUIREMENTS. THIS EXEMPTION WILL ALLOW COMPETITIVE UNDERWRITING AND RATING OF POLICIES.

10-4-1402. Rules. (1) (a) THE COMMISSIONER SHALL PROMULGATE RULES NECESSARY FOR THE IMPLEMENTATION AND ADMINISTRATION OF THIS ARTICLE. SUCH RULES SHALL INCLUDE, WITHOUT LIMITATION, THE DEFINITION OF WHAT

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

ORGANIZATIONS AND ENTITIES QUALIFY AS EXEMPT COMMERCIAL POLICYHOLDERS. SUCH DEFINITION SHALL REQUIRE SUCH ORGANIZATIONS TO BE THOSE PURCHASING TYPE II KINDS OF INSURANCE AS SPECIFIED IN SECTION 10-4-401 (3) (b), EXCEPT THE COMMISSIONER SHALL NOT INCLUDE PURCHASERS OF TITLE INSURANCE WITHIN THE DEFINITION OF AN EXEMPT COMMERCIAL POLICYHOLDER. FOR PURPOSES OF PROMULGATING SUCH RULES, THE COMMISSIONER SHALL CONSIDER RECOMMENDATIONS FROM RISK MANAGEMENT PROFESSIONALS, INSURER REPRESENTATIVES, PRODUCERS, BUYERS, QUALIFIED INSURANCE CONSULTANTS, CONSUMERS OF INSURANCE PRODUCTS, AND ANY OTHER PERSONS AS NECESSARY.

(b) (I) FOR THE PURPOSES OF PROMULGATING THE DEFINITION OF AN EXEMPT COMMERCIAL POLICYHOLDER, THE COMMISSIONER SHALL MANDATE THAT AN EXEMPT COMMERCIAL POLICYHOLDER PROCURE ITS INSURANCE THROUGH USE OF A RISK MANAGER EMPLOYED OR RETAINED BY THE EXEMPT COMMERCIAL POLICYHOLDER. THE QUALIFICATIONS OF THE RISK MANAGER SHALL BE DEFINED BY THE DIVISION OF INSURANCE PURSUANT TO THIS SECTION.

(II) THE COMMISSIONER SHALL DEFINE ALL OTHER CRITERIA OF AN EXEMPT COMMERCIAL POLICYHOLDER WHICH CRITERIA SHALL INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING, AND EACH EXEMPT COMMERCIAL POLICYHOLDER SHALL MEET AT LEAST ONE OF SUCH CRITERIA:

(A) THE MINIMUM AMOUNT FOR AGGREGATE INSURANCE PREMIUM SALES FOR THE EXEMPT COMMERCIAL POLICYHOLDER;

(B) THE MINIMUM NET WORTH OF THE EXEMPT COMMERCIAL POLICYHOLDER;

(C) THE MINIMUM DOLLAR AMOUNT FOR ANNUAL NET REVENUES OR SALES FOR THE EXEMPT COMMERCIAL POLICYHOLDER;

(D) THE MINIMUM NUMBER OF EMPLOYEES OF THE EXEMPT COMMERCIAL POLICYHOLDER PER INDIVIDUAL INSURED, OR, IF THE EXEMPT COMMERCIAL POLICYHOLDER IS A MEMBER OF AN AFFILIATED GROUP, THE MINIMUM NUMBER OF EMPLOYEES IN THE EMPLOYING GROUP;

(E) A NOT-FOR-PROFIT OR PUBLIC ENTITY'S MINIMUM ANNUAL BUDGET OR ASSETS;
OR

(F) A MUNICIPALITY'S MINIMUM POPULATION.

(2) THE DEFINITION OF AN EXEMPT COMMERCIAL POLICYHOLDER SHALL BE REVIEWED PERIODICALLY BY THE COMMISSIONER WITH THE RECOMMENDATIONS FROM RISK MANAGEMENT PROFESSIONALS, INSURER REPRESENTATIVES, PRODUCERS, BUYERS, QUALIFIED INSURANCE CONSULTANTS, CONSUMERS OF INSURANCE PRODUCTS, AND ANY OTHER PERSON AS THE COMMISSIONER DEEMS NECESSARY.

(3) THE COMMISSIONER SHALL PROMULGATE RULES THAT DEFINE THE DISCLOSURE REQUIREMENTS FOR INSURANCE POLICIES ISSUED TO EXEMPT COMMERCIAL POLICYHOLDERS. EACH INSURANCE POLICY ISSUED TO AN EXEMPT COMMERCIAL POLICYHOLDER SHALL CONTAIN A CONSPICUOUS DISCLAIMER PRINTED IN AT LEAST TEN-POINT, BOLD-FACED TYPE THAT STATES THAT THE POLICY IS EXEMPT FROM THE

RATE FILING AND APPROVAL AND THE FORM FILING AND CERTIFICATION REQUIREMENTS OF THE DIVISION OF INSURANCE.

(4) THE DIVISION SHALL DETERMINE BY RULE THE TYPE OF DATA, DOCUMENTS, REPORTS, RATE AND FORM INFORMATION, AND ANY OTHER INFORMATION THE COMMISSIONER DETERMINES NECESSARY, TO BE COLLECTED FROM AN INSURER PROVIDING COVERAGE TO AN EXEMPT COMMERCIAL POLICYHOLDER WHEN THE DIVISION HAS RECEIVED A COMPLAINT THAT AN INSURER IS ANTICOMPETITIVE OR NOT ADEQUATELY SERVICING THE NEEDS OF THE EXEMPT COMMERCIAL POLICYHOLDER.

(5) RULES PROMULGATED UNDER THIS SECTION SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND INITIALLY COMPLETED BY JANUARY 15, 2000.

10-4-1403. Exemption from rate filing and approval and form certification requirements. (1) THE REQUIREMENTS OF SECTIONS 10-4-107, 10-4-108, 10-4-109, 10-4-109.5, 10-4-109.7, 10-4-110, 10-4-113, 10-4-403, 10-4-404, 10-4-404.5, 10-4-414, 10-4-419, AND 10-4-421 SHALL NOT APPLY TO INSURERS OF EXEMPT COMMERCIAL POLICYHOLDERS.

(2) IF THE COMMISSIONER DETERMINES, AFTER PROVIDING AN OPPORTUNITY FOR COMMENT AND A PUBLIC HEARING, THAT A LINE OF INSURANCE IS ANTICOMPETITIVE, AS DESCRIBED IN SECTION 10-4-415, OR IS NOT BEING ADEQUATELY SERVICED BY INSURERS, THE COMMISSIONER MAY REQUIRE THAT THE RATE FOR THAT PARTICULAR LINE OF INSURANCE BE FILED PURSUANT TO SECTION 10-4-401 AND ENFORCED UNDER SECTION 10-4-418.

(3) THE COMMISSIONER SHALL REVIEW ANNUALLY ANY LINE OF INSURANCE FOUND PREVIOUSLY TO BE ANTICOMPETITIVE, AS DESCRIBED IN SECTION 10-4-415, TO DETERMINE WHETHER RATE FILING AND APPROVAL REQUIREMENTS MAY AGAIN BE ELIMINATED BECAUSE THE LINE HAS SUBSEQUENTLY BECOME COMPETITIVE. SUCH REVIEW SHALL INCLUDE THE OPPORTUNITY FOR COMMENT AND A PUBLIC HEARING.

10-4-1404. Multistate insurance risks - choice of law. WHERE THE EXEMPT COMMERCIAL POLICYHOLDER OPERATES IN MORE THAN ONE STATE, THE POLICY MAY INCLUDE PROVISIONS WITHIN THE INSURANCE CONTRACT THAT DETERMINE DISPUTES ARISING FROM CLAIMS HANDLING AND PROCEDURES, CANCELLATION OF THE POLICY, OR NONRENEWAL OF THE POLICY, WHICH DISPUTES SHALL BE GOVERNED BY THE STATE WITH THE LARGEST PERCENTAGE OF PREMIUMS CHARGED UNDER THE POLICY.

SECTION 2. 10-4-403, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-403. Standards for rates - competition - procedure - requirement for independent actuarial opinions regarding 1991 legislation. (7) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE TO EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 3. 10-4-404, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-404. Rate administration. (7) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 4. 10-4-404.5, Colorado Revised Statutes, is amended to read:

10-4-404.5. Rating plans - property and casualty type II insurers - rules.

(1) The commissioner may promulgate rules ~~and regulations~~ for type II insurers ~~which~~ THAT establish reasonable standards for rating plans, including experience rating plans, schedule rating plans, and expense reduction plans, and ~~which~~ THAT are designed to modify rates in the development of premiums for individual risks insured in the property and casualty insurance market. Such rules ~~and regulations~~ may permit recognition of expected differences in loss and expense characteristics and shall be designed so that such plans are reasonable and equitable in their application and are not unfairly discriminatory. Such rules ~~and regulations~~ shall not prevent the development of new rating methods ~~which~~ THAT would otherwise comply with this part 4. The rules ~~and regulations~~ may establish maximum charges against and credits to the experience rating of an insured that may result from the application of a rating plan. The rules ~~and regulations~~ may encourage the use of loss control programs, safety programs, and other methods of risk management and may require insurers to maintain documentation of the basis for the charges and credits applied under any plan. The rules ~~and regulations~~ may also require the rating plans to include merit rating to the extent feasible.

(2) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 5. 10-4-414, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-414. Examinations. (6) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 6. 10-4-418, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-418. Enforcement procedures - penalties. (7) THIS SECTION SHALL APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION, THAT THE COMMISSIONER DETERMINES TO BE ANTICOMPETITIVE, AS DESCRIBED IN SECTION 10-4-415.

SECTION 7. 10-4-419, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-419. Claims-made policy forms. (6.5) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS

DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 8. 10-4-421, Colorado Revised Statutes, is amended to read:

10-4-421. Notice of rate increases and decreases. (1) In the event that a rate filing for type II insurance for commercial liability includes a rate increase or decrease, the filing entity shall clearly identify in a cover letter accompanying the rate filing the specific portion of the rate filing ~~which~~ THAT represents such an increase or decrease and shall state clearly the percentage of any such proposed increase or decrease.

(2) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 9. 10-5-101.1 (1) (b), Colorado Revised Statutes, is amended to read:

10-5-101.1. Legislative declaration. (1) The general assembly finds and declares that property and casualty insurance transactions with nonadmitted insurers are so affected with a public interest as to require regulation, taxation, supervision, and control of such transactions and matters relating thereto, as provided in this article, in order to:

(b) Provide for the public, EXCEPT FOR TRANSACTIONS RELATED TO THE DILIGENT EFFORT REQUIREMENTS OF THIS ARTICLE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION, to the extent that insurance is not procurable from admitted insurers, orderly, reasonable, and regulated access to such insurance from approved nonadmitted insurers through qualified, licensed, and supervised surplus line agents and brokers;

SECTION 10. 10-5-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-5-103. Conditions for export. (2) THE DILIGENT EFFORT REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO TRANSACTIONS WITH EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 11. 10-5-106, Colorado Revised Statutes, is amended to read:

10-5-106. When export declared eligible. The commissioner may, by rule, ~~and regulation,~~ declare eligible for export generally, notwithstanding the provisions of section 10-5-103 (1) (b) and (1) (c), any class of insurance coverage or risk for which the commissioner finds that there is no reasonable or adequate market among insurers licensed in this state. FOR THE PURPOSES OF THIS SECTION, THE DILIGENT EFFORT REQUIREMENTS OF THIS ARTICLE SHALL NOT APPLY TO TRANSACTIONS WITH EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 12. 10-4-107, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-107. Cancellation of medical malpractice policies. (4) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 13. 10-4-108, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-108. Notice. (4) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 14. 10-4-109, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-109. Nonrenewal of medical malpractice policies. (6) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 15. 10-4-109.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-109.5. Notice of intent prior to unilateral increase in premium or decrease in coverage previously provided in medical malpractice policies. (3) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 16. 10-4-109.7, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-109.7. Notice of intent prior to cancellation of certain policies of insurance. (4) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 17. 10-4-110, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-110. Notice of intent prior to nonrenewal of certain policies of insurance. (7) THIS SECTION SHALL NOT APPLY TO INSURERS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 18. 10-4-113 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10-4-113. Exemptions. (1) The commissioner shall have authority to grant reasonable exemptions from the provisions of sections 10-4-107, 10-4-108 (1), 10-4-109 (1), 10-4-109.5, 10-4-109.7, 10-4-110 (1), and 10-4-110.5 if compliance therewith is shown to be impracticable. Such exemptions may be granted to individual companies or by insurance line, type, or class and may be based on any of the following reasons:

(k) IF THE INSURER IS PROVIDING COVERAGE FOR EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED PURSUANT TO SECTION 10-4-1402 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THAT SECTION.

SECTION 19. Effective date - applicability. (1) This act shall take effect January 15, 2000, unless a referendum petition is filed during the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution. If such a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to all property and casualty insurance policies proposed to an exempt commercial policyholder or entered into with an exempt commercial policyholder on or after the applicable effective date of this act.

Approved: April 22, 1999