

CHAPTER 228

LABOR AND INDUSTRY

HOUSE BILL 96-1057

BY REPRESENTATIVES Musgrave, Acquafresca, Agler, Dean, Foster, Jerke, Lyle, Martin, May, Morrison, Nichol, Reeser, Schwarz, and Sullivant;
also SENATORS Schroeder, Perlmutter, and Tebedo.

AN ACT

**CONCERNING THE CREATION OF THE WORKERS' COMPENSATION CLASSIFICATION APPEALS BOARD
IN THE DIVISION OF INSURANCE.**

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

SECTION 1. Title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF NEW ARTICLE to read:

ARTICLE 55

Workers' Compensation Classification Appeals Board

8-55-101. Workers' compensation classification appeals board - creation.

(1) THERE IS HEREBY CREATED IN THE DIVISION OF INSURANCE IN THE DEPARTMENT OF REGULATORY AGENCIES, THE WORKERS' COMPENSATION CLASSIFICATION APPEALS BOARD. THE BOARD SHALL HEAR GRIEVANCES BROUGHT BY EMPLOYERS AGAINST INSURERS AND THE COLORADO COMPENSATION INSURANCE AUTHORITY CONCERNING THE CALCULATION OF EXPERIENCE MODIFICATION FACTORS AND CLASSIFICATION ASSIGNMENT DECISIONS. THE BOARD SHALL CONSIST OF FIVE VOTING MEMBERS, EACH OF WHOM SHALL BE KNOWLEDGEABLE ABOUT WORKERS' COMPENSATION CLASSIFICATION AND EXPERIENCE MODIFICATION FACTORS, AND ONE NONVOTING MEMBER, AS FOLLOWS:

(a) TWO MEMBERS SHALL BE EITHER SALARIED EMPLOYEES OF AN INSURANCE COMPANY THAT ISSUES WORKERS' COMPENSATION INSURANCE POLICIES IN THIS STATE OR REPRESENTATIVES OF THE COLORADO COMPENSATION INSURANCE AUTHORITY. SUCH TWO MEMBERS SHALL NOT BOTH REPRESENT THE COLORADO COMPENSATION INSURANCE AUTHORITY OR THE SAME INSURANCE COMPANY. IN ADDITION, ONE

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

PERSON SHALL BE SELECTED TO SERVE AS AN ALTERNATE MEMBER TO REPRESENT THE INTERESTS OF THE INSURANCE INDUSTRY OR THE COLORADO COMPENSATION INSURANCE AUTHORITY. THE ALTERNATE SHALL REPRESENT SUCH INTERESTS IN THE EVENT THE PRIMARY MEMBER RECUSES HIMSELF OR HERSELF.

(b) ONE MEMBER, WHO SHALL BE A NONVOTING MEMBER, SHALL BE AN EMPLOYEE OF A WORKERS' COMPENSATION RATING ORGANIZATION FUNCTIONING UNDER THE PROVISIONS OF SECTION 10-4-408, C.R.S. THE WORKERS' COMPENSATION RATING ORGANIZATION SHALL SERVE AS A TECHNICAL RESOURCE FOR THE BOARD.

(c) THREE MEMBERS SHALL REPRESENT PRIVATE EMPLOYERS. EACH PRIVATE EMPLOYER MEMBER SHALL BE KNOWLEDGEABLE WITH RESPECT TO WORKERS' COMPENSATION INSURANCE, RULES, AND CLASSIFICATIONS, AND SHALL BE FAMILIAR WITH THE BUSINESS ENVIRONMENT AND COMMUNITY IN THIS STATE. NO PRIVATE EMPLOYER MEMBER SHALL BE AN EMPLOYEE OF AN INSURANCE COMPANY, INSURANCE BROKER, INSURANCE AGENT, LAW FIRM, ACTUARY, THE COLORADO COMPENSATION INSURANCE AUTHORITY, OR ANY ASSOCIATION OF SUCH ENTITIES OR PERSONS. ALL PRIVATE EMPLOYER BOARD MEMBERSHIPS SHALL BE HELD IN THE NAME OF AN INDIVIDUAL. AT LEAST ONE PRIVATE EMPLOYER MEMBER SHALL REPRESENT THE CONSTRUCTION INDUSTRY.

(2) THE PRIVATE EMPLOYER MEMBERS AND THE MEMBERS REPRESENTING INSURERS AND THE COLORADO COMPENSATION INSURANCE AUTHORITY SHALL BE APPOINTED BY THE COMMISSIONER OF INSURANCE. THE WORKERS' COMPENSATION RATING ORGANIZATION REPRESENTATIVE SHALL BE APPOINTED BY THE CHIEF EXECUTIVE OFFICER OF SUCH ORGANIZATION OR BY ANOTHER OFFICER DESIGNATED TO MAKE SUCH APPOINTMENT. THE COMMISSIONER MAY SOLICIT A LIST OF NOMINEES FROM ANY INTERESTED PARTY BEFORE MAKING SUCH APPOINTMENTS. THE COMMISSIONER SHALL IMMEDIATELY NOTIFY THE WORKERS' COMPENSATION RATING ORGANIZATION CONCERNING THE IDENTITY OF ANY APPOINTEES.

(3) EACH MEMBER SHALL SERVE A THREE-YEAR TERM; EXCEPT THAT THE TERMS OF THE INITIAL MEMBERS SHALL BE DETERMINED AS FOLLOWS:

(a) THE MEMBERS WHO REPRESENT THE WORKERS' COMPENSATION RATING ORGANIZATION, THE INSURANCE INDUSTRY, AND THE COLORADO COMPENSATION INSURANCE AUTHORITY, SHALL SERVE THREE-YEAR TERMS EACH, AND OF THE THREE PRIVATE EMPLOYER MEMBERS, ONE SHALL SERVE FOR A THREE-YEAR TERM, ONE SHALL SERVE FOR A TWO-YEAR TERM, AND ONE SHALL SERVE FOR A ONE-YEAR TERM.

(b) A PRIVATE EMPLOYER MEMBER OR MEMBER REPRESENTING THE INSURANCE INDUSTRY OR THE COLORADO COMPENSATION INSURANCE AUTHORITY MAY SERVE A SECOND CONSECUTIVE THREE-YEAR TERM. THE MEMBER REPRESENTING THE WORKERS' COMPENSATION RATING ORGANIZATION MAY BE REAPPOINTED WITHOUT LIMITATION.

(4) ANY VACANCY ON THE BOARD SHALL BE FILLED FOR THE UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT. THE MEMBER APPOINTED TO FILL SUCH VACANCY SHALL BE FROM THE SAME CATEGORY DESCRIBED IN SUBSECTION (1) OF THIS SECTION AS THE MEMBER VACATING THE POSITION.

(5) MEMBERS OF THE BOARD SHALL SERVE WITHOUT COMPENSATION, BUT THEIR REASONABLE EXPENSES INCURRED WHEN PERFORMING THEIR DUTIES AS BOARD MEMBERS SHALL BE REIMBURSED FROM THE WORKERS' COMPENSATION CASH FUND CREATED IN SECTION 8-44-112 (7). SUCH EXPENSES SHALL BE LIMITED TO TRAVEL, FOOD, AND LODGING EXPENSES.

(6) MEMBERS OF THE BOARD, IN THEIR CAPACITY AS MEMBERS, SHALL BE IMMUNE FROM LIABILITY IN ALL CLAIMS FOR INJURY THAT LIE IN TORT OR COULD LIE IN TORT, REGARDLESS OF WHETHER THAT MAY BE THE TYPE OF ACTION OR THE FORM OF RELIEF CHOSEN BY THE CLAIMANT.

8-55-102. Right to appeal - notice of appeal procedures. AN EMPLOYER MAY APPEAL TO THE WORKERS' COMPENSATION CLASSIFICATION APPEALS BOARD ANY ISSUE CONCERNING THE CALCULATION OF EXPERIENCE MODIFICATION FACTORS AND CLASSIFICATION ASSIGNMENT DECISIONS UNDER THE WORKERS' COMPENSATION LAWS OF THIS STATE, BY FILING WRITTEN NOTICE WITH SAID BOARD WITHIN THIRTY DAYS AFTER THE EMPLOYER HAS EXHAUSTED ALL APPEAL REVIEW PROCEDURES PROVIDED BY THE INSURANCE COMPANY. EVERY INSURANCE CARRIER AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE, INCLUDING THE COLORADO COMPENSATION INSURANCE AUTHORITY, SHALL PROVIDE EMPLOYERS WITH A WRITTEN COPY OR SUMMARY OF THEIR APPEAL PROCEDURES, TOGETHER WITH A WRITTEN NOTICE OF THE AVAILABILITY OF AN APPEAL UNDER THIS ARTICLE 55, AT THE BEGINNING OF EACH POLICY YEAR AND WHEN NOTICE IS PROVIDED TO THE EMPLOYER OF A CHANGE IN EXPERIENCE MODIFICATION FACTORS OR JOB CLASSIFICATION.

8-55-103. Hearings - conflicts of interest. (1) THE BOARD SHALL COMMENCE EACH TERM ON JANUARY 1 OF EACH YEAR AND SHALL TERMINATE EACH TERM ON DECEMBER 31.

(2) AT THE BEGINNING OF EACH TERM THE BOARD SHALL EITHER IN PERSON OR BY TELECONFERENCE:

(a) ELECT A CHAIR WHO SHALL BE RESPONSIBLE FOR CONDUCTING EACH HEARING;

(b) APPOINT THE MEMBER REPRESENTING THE WORKERS' COMPENSATION RATING ORGANIZATION AS SECRETARY; AND

(c) ESTABLISH SUCH ORGANIZATIONAL AND PROCEDURAL RULES AS ARE DEEMED NECESSARY.

(3) THE BOARD SHALL MEET AS NEEDED AND IN ACCORDANCE WITH THE FOLLOWING:

(a) THE BOARD SHALL SCHEDULE A HEARING WITHIN THIRTY DAYS AFTER RECEIPT OF AN APPEAL.

(b) THE BOARD SHALL PROVIDE WRITTEN NOTICE OF A HEARING TO THE APPELLANT, THE INSURER, AND THE WORKERS' COMPENSATION RATING ORGANIZATION WITHIN THIRTY DAYS AFTER RECEIPT OF AN APPEAL, BUT NOT LESS THAN TEN DAYS BEFORE THE HEARING.

(c) A HEARING SHALL BE CONDUCTED ONLY IF A QUORUM OF THE BOARD IS PRESENT, EITHER IN PERSON OR BY TELECONFERENCE. A QUORUM SHALL CONSIST OF A SIMPLE MAJORITY OF THE VOTING MEMBERS, INCLUDING AT LEAST TWO PRIVATE SECTOR MEMBERS.

(d) ANY DECISION OF THE BOARD SHALL BE BY MAJORITY VOTE OF THE VOTING MEMBERS WHO ARE PRESENT AT THE HEARING.

(e) A MEMBER'S VOTE SHALL BE CAST ONLY BY SUCH MEMBER.

(f) IF A BOARD MEMBER HAS A CONFLICT OF INTEREST WITH RESPECT TO ANY MATTER SCHEDULED FOR HEARING BEFORE THE BOARD, SUCH MEMBER SHALL RECUSE HIMSELF OR HERSELF FROM ANY DISCUSSION AND DECISIONS ON SAID MATTER UNLESS, AFTER FULL DISCLOSURE OF THE FACTS GIVING RISE TO SUCH CONFLICT, ALL PARTIES TO THE APPEAL AGREE TO WAIVE SUCH CONFLICT. FOR PURPOSES OF THIS PARAGRAPH (f), A MEMBER SHALL BE DEEMED TO HAVE A CONFLICT OF INTEREST IF SUCH MEMBER:

(I) HAS A CONFLICT THAT WOULD CALL INTO QUESTION SUCH MEMBER'S ABILITY TO RENDER AN UNBIASED DECISION; AND

(II) IS ASSOCIATED WITH EITHER PARTY TO THE APPEAL. A MEMBER IS "ASSOCIATED" WITH A PARTY TO AN APPEAL IF:

(A) THE MEMBER AND THE PARTY TO THE APPEAL ARE INVOLVED IN A COMMON BUSINESS ENTERPRISE OR ARE MEMBERS OF A CONTROLLED GROUP, AS DEFINED IN SECTION 1563(a) OF THE "INTERNAL REVENUE CODE OF 1986", AS AMENDED; OR

(B) THE MEMBER HAS A FAMILIAL RELATIONSHIP WITH THE PARTY TO THE APPEAL.

(g) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (f) OF THIS SUBSECTION (3), THE MEMBER REPRESENTING THE WORKERS' COMPENSATION RATING ORGANIZATION SHALL NOT BE DEEMED TO HAVE A CONFLICT OF INTEREST WITH RESPECT TO ANY APPEAL BASED SOLELY ON HIS OR HER AFFILIATION WITH HIS OR HER ORGANIZATION.

(4) THE SECRETARY OF THE BOARD SHALL CARRY OUT THE ADMINISTRATIVE FUNCTIONS OF THE BOARD AND SHALL BE RESPONSIBLE FOR PROVIDING NOTICE OF, PREPARING THE AGENDA FOR, AND ARRANGING THE FACILITIES FOR EACH HEARING AND MEETING. THE SECRETARY SHALL ALSO PREPARE A MEMORANDUM AFTER EACH HEARING THAT INCLUDES THE VOTE OF THE BOARD. SUCH MEMORANDA SHALL BE SIGNED BY THE CHAIR OF THE BOARD AND, EACH MONTH, THE SECRETARY SHALL DELIVER COPIES OF THAT MONTH'S MEMORANDA TO THE WORKERS' COMPENSATION RATING ORGANIZATION.

8-55-104. Review of board decisions. (1) A DECISION OF THE BOARD SHALL BE FINAL AND NOT SUBJECT TO APPEAL UNLESS THE EMPLOYER, INSURANCE COMPANY, OR THE COLORADO COMPENSATION INSURANCE AUTHORITY PROVIDES WRITTEN NOTICE TO THE OFFICE OF THE COMMISSIONER OF INSURANCE, WHO SHALL DETERMINE WHETHER A JOB MISCLASSIFICATION OCCURRED, AS REQUIRED PURSUANT TO SECTION 8-44-108. AN EMPLOYER MAY HOLD DISPUTED PREMIUM AMOUNTS IN ABEYANCE FROM THE DATE AN APPEAL IS FILED PURSUANT TO SECTION 8-55-102 UNTIL THE

LATER OF:

(a) THE DATE A FINAL DECISION IS MADE BY THE BOARD CONCERNING SUCH APPEAL; OR

(b) THE DATE OF ANY WRITTEN DECISION OF THE COMMISSIONER OF INSURANCE ISSUED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(2) EACH EMPLOYER, INSURANCE COMPANY, OR THE COLORADO COMPENSATION INSURANCE AUTHORITY, AS THE CASE MAY BE, SHALL BE ADVISED OF HIS OR HER RIGHT TO APPEAL TO THE OFFICE OF THE COMMISSIONER OF INSURANCE.

(3) AN EMPLOYER, INSURANCE COMPANY, OR THE COLORADO COMPENSATION INSURANCE AUTHORITY SHALL PROVIDE WRITTEN NOTICE OF AN APPEAL TO THE COMMISSIONER OF INSURANCE WITHIN THIRTY DAYS AFTER THE DATE OF THE BOARD'S DECISION. THE COMMISSIONER SHALL REVIEW ANY DECISION OF THE BOARD PROPERLY APPEALED PURSUANT TO THIS SECTION AND SHALL PROVIDE A WRITTEN DECISION WITHIN THIRTY DAYS AFTER THE REQUEST FOR SUCH REVIEW.

(4) ANY EMPLOYER THAT HOLDS DISPUTED PREMIUM AMOUNTS IN ABEYANCE PURSUANT TO SUBSECTION (1) OF THIS SECTION AND LOSES ITS APPEAL SHALL PAY THE DISPUTED PREMIUM AMOUNT PLUS INTEREST AT THE RATE OF ONE PERCENT OF SUCH DISPUTED AMOUNT PER MONTH. SUCH INTEREST SHALL ACCRUE FROM THE DATE OF THE PREMIUM RATE INCREASE TO THE DATE OF PAYMENT.

8-55-105. Repeal of article. (1) THIS ARTICLE IS REPEALED, EFFECTIVE JULY 1, 2001.

(2) PRIOR TO SAID REPEAL, THE WORKERS' COMPENSATION CLASSIFICATION APPEALS BOARD SHALL BE REVIEWED AS PROVIDED IN SECTION 24-34-104 (30) (c), C.R.S.

SECTION 2. 8-44-108 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-44-108. Repayments for misclassifications. (1) Every insurance carrier authorized to transact business in this state, including the Colorado compensation insurance authority, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, is authorized to charge and collect any amount of money which should have been included in premiums paid by an insured but were not included in such premiums as a result of job misclassification. Upon written request by the employer, the issue of whether a job misclassification occurred shall be determined IN WRITING by the ~~office of the insurance commissioner~~ INSURANCE COMPANY. THE EMPLOYER'S REQUEST SHALL BE MADE WITHIN THIRTY WORKING DAYS AFTER THE ANNIVERSARY DATE OF THE POLICY OR THE DATE OF RECEIPT BY THE EMPLOYER OF NOTICE OF A CHANGE IN JOB CLASSIFICATION. THE INSURANCE COMPANY'S DETERMINATION SHALL BE MADE WITHIN THIRTY DAYS AFTER RECEIPT OF THE EMPLOYER'S WRITTEN REQUEST. AN EMPLOYER MAY APPEAL ANY DETERMINATION OF AN INSURANCE COMPANY MADE PURSUANT TO THIS SUBSECTION (1) TO THE WORKERS' COMPENSATION CLASSIFICATION APPEALS BOARD, PURSUANT TO SECTION 8-55-102. If it is determined that a job misclassification occurred and

that such misclassification was caused by the failure of the insured to provide accurate or complete data in order to determine the proper classification as requested by the insurance carrier, the repayment may be collected during the term of the contract for such insurance plus an additional reasonable time not to exceed twelve months.

SECTION 3. 24-1-122 (2) (b), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-1-122. Department of regulatory agencies - creation. (2) The department of regulatory agencies shall consist of the following divisions:

(b) (I) Division of insurance, the head of which shall be the commissioner of insurance. The division of insurance of the state of Colorado, created by section 10-1-103, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies as the division of insurance.

(II) THE WORKERS' COMPENSATION CLASSIFICATION APPEALS BOARD, CREATED BY SECTION 8-55-101 (1), C.R.S., SHALL EXERCISE ITS POWERS AND PERFORM DUTIES AND FUNCTIONS UNDER THE DIVISION OF INSURANCE AS IF SUCH WORKERS' COMPENSATION CLASSIFICATION APPEALS BOARD WERE TRANSFERRED TO THE DIVISION OF INSURANCE BY A **TYPE 1** TRANSFER.

SECTION 4. 24-34-104 (30), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (30) (c) THE FOLLOWING BOARD IN THE DIVISION OF INSURANCE SHALL TERMINATE ON JULY 1, 2001: THE WORKERS' COMPENSATION CLASSIFICATION APPEALS BOARD CREATED BY SECTION 8-55-101, C.R.S.

SECTION 5. Effective date. This act shall take effect October 1, 1996.

SECTION 6. 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 31, 1996