

CHAPTER 249

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**INSURANCE**

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**SENATE BILL 97-104**

BY SENATOR Matsunaka;  
also REPRESENTATIVE McElhany.

**AN ACT**

CONCERNING THE CREATION OF A MARKET CONDUCT EXAMINATIONS PROGRAM WITHIN THE DIVISION OF INSURANCE, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

**SECTION 1.** 10-1-202 (1) and (3), Colorado Revised Statutes, 1994 Repl. Vol., are amended to read:

**10-1-202. Definitions.** As used in this part 2, unless the context otherwise requires:

(1) "Company" means any person or group of persons engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to any administrative, regulatory, or taxing authority of the commissioner AS WELL AS ANY ADVISORY ORGANIZATION OR RATING ORGANIZATION AS DEFINED IN SECTION 10-4-402.

(3) "Examination" means a formal financial examination or market conduct examination, as well as informal investigations conducted by the commissioner for the purpose of determining compliance with the law. MARKET CONDUCT EXAMINATIONS MAY INCLUDE ROUTINE, TARGETED, FOLLOW-UP, MULTI-STATE, OR DESK EXAMINATIONS.

**SECTION 2.** 10-1-203 (1) and the introductory portion to 10-1-203 (3), Colorado Revised Statutes, 1994 Repl. Vol., are amended to read:

**10-1-203. Authority, scope, and scheduling of examinations.** (1) The commissioner or the commissioner's designee may conduct an examination or investigation of any company as often as the commissioner in the commissioner's sole

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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.*

discretion deems appropriate but shall, at a minimum, conduct a formal financial examination of every insurer licensed in this state not less frequently than once every five years; EXCEPT THAT THIS DOES NOT INCLUDE APPROVED NONADMITTED INSURERS REGULATED IN ACCORDANCE WITH ARTICLE 5 OF THIS TITLE. In scheduling FINANCIAL OR MARKET CONDUCT examinations and in determining their nature, scope, and frequency, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, COMPLAINT ANALYSES, UNDERWRITING AND CLAIMS PRACTICES, PRICING, PRODUCT SOLICITATION, POLICY FORM COMPLIANCE, MARKET SHARE ANALYSES, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the national association of insurance commissioners.

(3) In lieu of ~~an~~ A FINANCIAL examination under this part 2 of any foreign or alien insurer licensed in this state, the commissioner may accept ~~until and including December 31, 1993,~~ an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state; ~~On and after January 1, 1994,~~ EXCEPT THAT such reports may only be accepted if:

**SECTION 3.** 10-1-204 (1), (2), (6), and (9), Colorado Revised Statutes, 1994 Repl. Vol., are amended to read:

**10-1-204. Conduct of examinations.** (1) (a) In conducting the examination, the examiners shall observe those guidelines and procedures set forth in the MOST RECENT AVAILABLE EDITION OF THE examiners' handbook adopted by the national association of insurance commissioners and the Colorado insurance examiners handbook. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(b) An examination under this article shall not be limited to an examination of the financial condition of a company but may, in the discretion of the commissioner, also include all other activities and affairs of the company.

(2) (a) Every company or person from whom information is sought and all officers, directors, and agents thereof shall provide to the examiners ~~appointed under subsection (1) of this section~~ timely, convenient, and free access at reasonable hours at its offices to all books, records, accounts, papers, tapes, computer records, and other documents relating to the property, assets, business, and affairs of the company being examined. IF THE EXAMINATION IS AN EXAMINATION AS DEFINED IN SECTION 10-1-202 (3), SUCH COMPANY OR PERSON SHALL MAKE SUCH BOOKS, RECORDS, AND DOCUMENTS AVAILABLE FOR EXAMINATION OR INSPECTION AT THE OFFICE LOCATION OF THE DIVISION WHEN THE COMMISSIONER DETERMINES THAT IT IS REASONABLY COST-EFFECTIVE TO DO SO. The officers, directors, employees, and agents of the company or person must facilitate the examination and aid in the examination so far as it is in their power to do so.

(b) (I) The refusal of any company or any of its officers, directors, employees, or agents to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, denial, or nonrenewal of any license or authority held by the company and subject to the commissioner's jurisdiction.

(II) Proceedings for any suspension or revocation pursuant to this subsection (2) shall be conducted in accordance with section 10-1-111.

(6) (a) In addition to any other powers granted to the commissioner in this section or in any other provision of law, the commissioner may require any company, entity, or new applicant to be examined by independent examiners certified by the society of financial examiners OR THE INSURANCE REGULATORY EXAMINERS SOCIETY, actuaries who are members of the American academy of actuaries, or by any other qualified and competent loss reserve specialists, independent risk managers, independent certified public accountants, AUDITORS, other examiners of insurance companies, or combination of such persons; and any domestic company may make a request to the commissioner to be so examined.

(b) The commissioner may accept, as part of any such examination, reports made by any person qualified and competent to conduct the examination as set forth in this subsection (6). No such person nor any member of such person's immediate family shall be officers of, connected with, or financially interested in the company, entity, or applicant being examined other than as policyholders, nor shall they be financially interested in any other corporation or person affected by the examination or by any related investigation or hearing. Such persons shall keep strictly confidential all information, regardless of its source, obtained through any examination or about any examinee and shall disclose such information only to the commissioner or the examinee upon the specific request of either. The commissioner shall establish guidelines for assuring the neutrality of those persons to be authorized to supplement the examination procedures authorized in this section. The reasonable expenses and charges of persons so retained or designated shall be paid directly by the examinee to such persons. The examinee may contest the amount of fees, costs, and expenses charged to it by such persons by filing an objection with the commissioner which sets forth the charges which the examinee considers to be unreasonable and the basis for the claim that the charges are unreasonable. No amounts which are so disputed will be due to the examiner unless and until the commissioner has reviewed the objection and made a written finding that the disputed charges were reasonable in relation to the examination performed.

(9) (a) The costs of FINANCIAL examinations of foreign companies made outside the borders of this state and of executive or branch offices of domestic companies located outside the borders of this state shall be paid by the company examined and shall include the expenses of the commissioner and the commissioner's assistants, who shall be paid the same compensation as other examiners on such examinations.

(b) THE REASONABLE EXPENSES OF MARKET CONDUCT EXAMINATIONS SHALL BE PAID BY THE COMPANY EXAMINED BUT SHALL NOT INCLUDE THE COMPENSATION OF THE COMMISSIONER AND THE COMMISSIONER'S ASSISTANTS.

(c) (I) THERE IS A PRESUMPTION THAT A MARKET CONDUCT EXAMINATION OF A DOMESTIC COMPANY SHALL BE CONDUCTED BY THE COMMISSIONER OR THE COMMISSIONER'S ASSISTANTS, UNLESS THE COMMISSIONER DETERMINES THAT GOOD CAUSE EXISTS TO HAVE THE EXAMINATION CONDUCTED BY A CONTRACT EXAMINER.

(II) THE COMMISSIONER SHALL DEVELOP RULES FOR DETERMINING WHEN CONTRACT MARKET CONDUCT EXAMINERS CAN BE USED. SUCH RULES SHALL

INCLUDE, BUT SHALL NOT BE LIMITED TO, SUCH FACTORS AS OUT-OF-STATE TRAVEL REQUIREMENTS, WORKLOAD NEEDS, SPECIAL EXPERTISE REQUIRED FOR THE EXAMINATION, AND MARKET ISSUES REQUIRING AN UNANTICIPATED EXAMINATION.

(d) When insurance companies not ~~admitted~~ AUTHORIZED to do business in this state, companies adjudged insolvent, or companies for any cause withdrawing from the state neglect, fail, or refuse to pay the REASONABLE charges for examination as approved by the commissioner, such charges shall be paid by the state treasurer from the general fund upon the order of the commissioner, and the amount so paid shall be a first lien upon all assets and property of such company and may be recovered by suit by the attorney general on behalf of the state of Colorado and restored to the general fund.

**SECTION 4.** 10-1-205 (1) and (8), Colorado Revised Statutes, 1994 Repl. Vol., are amended to read:

**10-1-205. Examination reports and records.** (1) The provisions of this section shall apply to financial examinations AND MARKET CONDUCT EXAMINATIONS, BUT SHALL NOT APPLY TO INFORMAL INVESTIGATIONS OF CONSUMER COMPLAINTS EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF SUBSECTION (8) OF THIS SECTION. Examination reports shall comprise only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted based upon the facts.

(8) **Confidentiality of ancillary information.** (a) All working papers, recorded information, documents, and copies thereof which are produced or obtained by or disclosed to the commissioner or any other person in the course of ~~an~~ A FINANCIAL OR MARKET CONDUCT examination made under this part 2 shall be given confidential treatment, are not subject to subpoena, and may not be made public by the commissioner or any other person except to the extent provided in subsection (5) of this section; except that access to such materials may be granted to the national association of insurance commissioners. Disclosure of the said materials shall be made only upon the prior written agreement of the recipient to hold such information confidential as required by this section or upon the prior written consent of the company to which it pertains.

(b) WHEN AN INFORMAL INVESTIGATION OF A CONSUMER COMPLAINT IS CONDUCTED BY THE COMMISSIONER, ALL WORKING PAPERS, CLAIM FILES, RECORDED INFORMATION, AND DOCUMENTS, AND ALL COPIES THEREOF, THAT ARE PRODUCED OR OBTAINED BY OR DISCLOSED TO THE COMMISSIONER OR ANY OTHER PERSON IN THE COURSE OF AN INFORMAL INVESTIGATION SHALL BE GIVEN CONFIDENTIAL TREATMENT UNTIL THE INFORMAL INVESTIGATION IS CONCLUDED BY THE COMMISSIONER. AFTER AN INFORMAL INVESTIGATION IS CONCLUDED, THE RECORDS SHALL NO LONGER BE CONSIDERED CONFIDENTIAL EXCEPT AS OTHERWISE PROVIDED IN ARTICLE 72 OF TITLE 24, C.R.S., RELATING TO PUBLIC RECORDS.

**SECTION 5.** 10-3-207 (1) (b), Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended to read:

**10-3-207. Fees paid by insurance companies.** (1) There shall be paid to the division of insurance by every entity regulated by the division of insurance in this state the following:

(b) In each year subsequent to 1992, in addition to any fee collected under paragraph (a) of this subsection (1), every insurance company, interinsurance company, fraternal benefit society, health maintenance organization, and nonprofit hospital, medical-surgical, and health service corporation licensed or authorized in this state ~~which~~ THAT is regulated by the division of insurance shall make an annual nonrefundable payment on or before March 1 of each year based on the schedule specified in this paragraph (b) at the time of authorization and each subsequent renewal year. For nonadmitted insurers and accredited reinsurers, the fee specified in this paragraph (b) shall be considered to include the fee pursuant to paragraph (a) of this subsection (1):

(I) For insurance companies, interinsurance companies, fraternal benefit societies, health maintenance organizations, and nonprofit hospital, medical-surgical, and health service corporations ~~which~~ THAT have prior year's direct written premiums, gross contract funds, or charges received in Colorado not exceeding one million dollars, a fee of ~~five~~ SIX hundred SEVENTY dollars;

(II) For insurance companies, interinsurance companies, fraternal benefit societies, health maintenance organizations, and nonprofit hospital, medical-surgical, and health service corporations ~~which~~ THAT have prior year's direct written premiums, gross contract funds, or charges received in Colorado in excess of one million dollars but not exceeding ten million dollars, a fee of ~~one~~ TWO thousand ~~five hundred~~ TEN dollars. Any insurance company ~~which~~ THAT did not write at least eighty thousand dollars of taxable premiums in the previous year in Colorado shall not exceed the fee as otherwise would have been payable pursuant to subparagraph (I) of this paragraph (b).

(III) For insurance companies, interinsurance companies, fraternal benefit societies, health maintenance organizations, and nonprofit hospital, medical-surgical, and health service corporations ~~which~~ THAT have prior year's direct written premiums, gross contract funds, or charges received in Colorado in excess of ten million dollars, a fee of ~~two~~ THREE thousand ~~five~~ THREE hundred FORTY-FIVE dollars. Any insurance company ~~which~~ THAT did not write at least one hundred twenty thousand dollars of taxable premium in Colorado shall not exceed the fee as otherwise would have been payable pursuant to subparagraph (II) of this paragraph (b).

**SECTION 6. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of insurance cash fund not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 1997, the sum of five hundred three thousand two hundred sixty-two dollars (\$503,262) and 7.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 1997, the sum of one hundred thousand eight hundred thirty-one dollars (\$100,831) and 1.4 FTE, or so much

thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related to the implementation of this act. Said sum shall be from cash funds exempt received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

(3) In addition to any other appropriation, there is hereby appropriated to the department of personnel, division of administrative hearings, for the fiscal year beginning July 1, 1997, the sum of seventeen thousand one hundred eighty-two dollars (\$17,182) and 0.1 FTE, or so much thereof as may be necessary, for the provision of administrative law judge services to the department of regulatory agencies related to the implementation of this act. Said sum shall be from cash funds exempt received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

**SECTION 7. 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: June 3, 1997