

CHAPTER 250

INSURANCE

HOUSE BILL 01-1394

BY REPRESENTATIVE(S) Sinclair, Marshall, and Jameson;
also SENATOR(S) Matsunaka.

AN ACT

CONCERNING THE AUTHORITY OF THE COMMISSIONER OF INSURANCE TO ESTABLISH COMPONENT RATING CREDIT INSURANCE, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Repeal. 10-10-109 (2), Colorado Revised Statutes, is repealed.

SECTION 2. 10-10-109, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-10-109. Filing form certification, filing of rating data, and withdrawal of forms. (2.5) (a) FOR CREDIT INSURANCE DIRECTLY WRITTEN BY A STATE OR NATIONAL BANK, AN INSURER MAY, BY FORM NUMBER, ELECT TO BE SUBJECT TO AND HAVE ITS PREMIUM RATE OR SCHEDULE OF PREMIUM RATES DETERMINED PURSUANT TO PARAGRAPH (b) OR PARAGRAPH (c) OF THIS SUBSECTION (2.5). FOR CREDIT INSURANCE NOT DIRECTLY WRITTEN BY A STATE OR NATIONAL BANK, AN INSURER SHALL HAVE ITS PREMIUM RATE OR SCHEDULE OF PREMIUM RATES DETERMINED BY PARAGRAPH (c) OF THIS SUBSECTION (2.5).

(b) A PREMIUM RATE OR SCHEDULE OF PREMIUM RATES SHALL BE DEEMED REASONABLE FOR ALL PURPOSES UNDER THIS ARTICLE IF THE RATE OR SCHEDULE PRODUCES, OR REASONABLY MAY BE EXPECTED TO PRODUCE, A RATIO OF INCURRED CLAIMS TO EARNED PREMIUM OF NOT LESS THAN FORTY PERCENT.

(c) (I) EXCEPT FOR CREDIT INSURANCE DIRECTLY WRITTEN BY A STATE OR NATIONAL BANK WHERE THE INSURER HAS ELECTED TO BE SUBJECT TO PARAGRAPH (b) OF THIS SUBSECTION (2.5), AN INSURER'S PREMIUM RATE OR SCHEDULE OF PREMIUM RATES SHALL BE REASONABLE IN RELATION TO THE BENEFITS PROVIDED AND SHALL NOT BE EXCESSIVE, INADEQUATE, NOR UNFAIRLY DISCRIMINATORY. THE

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

COMMISSIONER MAY ESTABLISH RATES THAT MAY BE USED BY ANY INSURER WITHOUT FILING. IN ESTABLISHING SUCH RATES, THE COMMISSIONER SHALL CONSIDER AND PROVIDE FOR THE FOLLOWING COMPONENT RATING ELEMENTS:

- (A) ACTUAL AND EXPECTED LOSS EXPERIENCE;
- (B) GENERAL AND ADMINISTRATIVE EXPENSES;
- (C) LOSS SETTLEMENT AND ADJUSTMENT EXPENSES;
- (D) REASONABLE CREDITOR COMPENSATION;
- (E) INVESTMENT INCOME;
- (F) THE MANNER IN WHICH PREMIUMS ARE CHARGED;
- (G) OTHER ACQUISITION COSTS;
- (H) RESERVES;
- (I) TAXES;
- (J) REGULATORY LICENSE FEES AND FUND ASSESSMENTS;
- (K) REASONABLE INSURER PROFIT; AND
- (L) OTHER RELEVANT DATA CONSISTENT WITH GENERALLY ACCEPTED ACTUARIAL STANDARDS.

(II) THE COMMISSIONER HAS THE AUTHORITY TO PROMULGATE RULES TO ASSURE THAT THE PREMIUM RATES ARE REASONABLE IN RELATION TO THE BENEFITS PROVIDED, INCLUDING THE AUTHORITY TO REGULATE THE COMPENSATION COMPONENT OF THE PREMIUM RATES AND TO LIMIT THE TYPE AND KIND OF BENEFITS TO WHICH THE RATES SHALL APPLY. THE COMMISSIONER SHALL WORK WITH THE REGULATED COMMUNITY IN THE DEVELOPMENT OF THE COMPONENT RATING ELEMENTS. EACH CREDIT INSURER THAT RECEIVES COMBINED DIRECT CREDIT INSURANCE PREMIUMS IN THIS STATE IN THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS OR MORE SHALL BE SUBJECT TO AN ADMINISTRATIVE ASSESSMENT OF NOT MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS PER INSURER ANNUALLY TO PROVIDE THE DIVISION OF INSURANCE WITH FUNDS TO PERFORM DUTIES REQUIRED BY THIS PARAGRAPH (c).

SECTION 3. 10-10-109 (1), Colorado Revised Statutes, is amended, and the said 10-10-109 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

10-10-109. Filing form certification, filing of rating data, and withdrawal of forms. (1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this state shall be certified, and the schedules of premium rates pertaining thereto shall be filed with the commissioner pursuant to subsections (3), (3.5), and (4) of this

section.

(3.5) IF AN INSURER ELECTS TO FILE PURSUANT TO PARAGRAPH (c) OF SUBSECTION (2.5) OF THIS SECTION, COMMENCING JULY 1, 2002, THE INSURER SHALL OFFER ONLY COMPONENT RATING FOR CREDIT INSURANCE PREMIUMS PURSUANT TO SUBSECTION (2.5) OF THIS SECTION FOR ALL NEW POLICIES, CERTIFICATES OF INSURANCE, NOTICES OF PROPOSED INSURANCE, APPLICATIONS FOR INSURANCE, ENDORSEMENTS, AND RIDERS DELIVERED OR ISSUED FOR DELIVERY AND PHASE IN ALL EXISTING CREDITOR ACCOUNTS TO COMPONENT RATING ACCOUNTS BY NO LATER THAN JULY 1, 2003.

(8) (a) IF, AFTER AN EXAMINATION OR INVESTIGATION OF AN INSURER, THE COMMISSIONER HAS CAUSED TO BELIEVE THAT SUCH INSURER OR ANY RATE, RATING SCHEDULE, RATING PLAN, OR RATING SYSTEM MADE OR USED BY THE INSURER DOES NOT COMPLY WITH APPLICABLE REQUIREMENTS, THE COMMISSIONER SHALL GIVE NOTICE IN WRITING TO SUCH INSURER, STATING IN THE NOTICE IN WHAT MANNER AND TO WHAT EXTENT SUCH NONCOMPLIANCE IS ALLEGED TO EXIST AND SPECIFYING A REASONABLE TIME, NOT LESS THAN TEN DAYS AFTER THE DATE OF RECEIPT OF SUCH NOTICE, BY WHICH SUCH NONCOMPLIANCE SHALL BE CORRECTED.

(b) IF THE COMMISSIONER HAS GOOD CAUSE TO BELIEVE THAT AN INSURER'S NONCOMPLIANCE IS WILLFUL OR, IF WITHIN THE PERIOD PRESCRIBED BY THE COMMISSIONER IN THE NOTICE ISSUED IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (8), THE INSURER DOES NOT EITHER MAKE SUCH CHANGES AS MAY BE NECESSARY TO CORRECT THE NONCOMPLIANCE SPECIFIED BY THE COMMISSIONER OR ESTABLISH TO THE SATISFACTION OF THE COMMISSIONER THAT SUCH SPECIFIED NONCOMPLIANCE DOES NOT EXIST, THE COMMISSIONER MAY HOLD A PUBLIC HEARING IN ACCORDANCE WITH SECTION 24-4-105, C.R.S., ON THE SUBJECT OF THE NONCOMPLIANCE.

(c) (I) IF, AFTER A PUBLIC HEARING, THE COMMISSIONER FINDS THAT ANY RATE VIOLATES THE APPLICABLE PROVISIONS OF THIS TITLE, THE COMMISSIONER MAY ISSUE AN ORDER TO THE INSURER SPECIFYING IN WHAT RESPECTS SUCH VIOLATION EXISTS AND STATING WHEN, WITHIN A REASONABLE PERIOD OF TIME, THE FURTHER USE OF SUCH RATE OR RATING SYSTEM BY SUCH INSURER OR RATING ORGANIZATION IN CONTRACTS OF INSURANCE MADE AFTER SUCH TIME SHALL BE PROHIBITED. IN SUCH ORDER, THE COMMISSIONER MAY REQUIRE A REFUND TO THE POLICYHOLDER IN AN AMOUNT EQUAL TO THE EXCESS PREMIUM PLUS A MAXIMUM OF EIGHTEEN PERCENT INTEREST. THE AMOUNT OF THE REFUND, PLUS INTEREST, SHALL BE COMPUTED FROM THE EFFECTIVE DATE OF THE RATE USED ON THE INDIVIDUAL POLICYHOLDER CONTRACT TO THE COMMENCEMENT DATE OF THE HEARING ON THE RATE. INTEREST SHALL BE COMPUTED AS SIMPLE INTEREST PER ANNUM.

(II) IN ADDITION TO ANY OTHER REMEDIES OR PENALTIES PROVIDED BY LAW, THE COMMISSIONER MAY SUSPEND OR REVOKE, IN WHOLE OR IN PART, THE CERTIFICATE OF AUTHORITY OF ANY INSURER THAT FAILS TO COMPLY WITH AN ORDER OF THE COMMISSIONER WITHIN THE TIME SPECIFIED IN SUCH ORDER. THE COMMISSIONER SHALL NOT SUSPEND OR REVOKE THE LICENSE OR CERTIFICATE OF AUTHORITY FOR FAILURE TO COMPLY WITH AN ORDER UNTIL THE TIME PRESCRIBED FOR AN APPEAL OF THE ORDER HAS EXPIRED, OR, IF AN APPEAL HAS BEEN TAKEN, UNTIL SUCH ORDER HAS BEEN AFFIRMED. THE COMMISSIONER MAY DETERMINE WHEN A SUSPENSION OR REVOCATION OF A CERTIFICATE OF AUTHORITY SHALL BECOME EFFECTIVE. AN ORDER

OF SUSPENSION SHALL REMAIN IN EFFECT FOR THE PERIOD FIXED BY THE COMMISSIONER UNLESS THE COMMISSIONER MODIFIES OR RESCINDS SUCH SUSPENSION OR UNTIL THE ORDER UPON WHICH SUCH SUSPENSION IS BASED IS MODIFIED, RESCINDED, OR REVERSED. NO LICENSE SHALL BE SUSPENDED OR REVOKED EXCEPT PURSUANT TO A WRITTEN ORDER OF THE COMMISSIONER, STATING THE COMMISSIONER'S FINDINGS, MADE AFTER A HEARING HELD UPON NOT LESS THAN TEN DAYS' WRITTEN NOTICE TO SUCH INSURER SPECIFYING THE ALLEGED VIOLATION.

(d) (I) IF, AFTER A PUBLIC HEARING, THE COMMISSIONER FINDS THAT THE VIOLATION OF ANY OF THE APPLICABLE PROVISIONS OF THIS TITLE WAS WILLFUL, THE COMMISSIONER MAY SUSPEND OR REVOKE, IN WHOLE OR IN PART, THE CERTIFICATE OF AUTHORITY OF SUCH INSURER.

(II) IF A FAILURE TO COMPLY WITH AN ORDER OF THE COMMISSIONER WITHIN THE TIME SPECIFIED IN SUCH ORDER IS WILLFUL, THE INSURER SHALL BE LIABLE TO THE STATE IN AN AMOUNT NOT TO EXCEED FIVE THOUSAND DOLLARS FOR SUCH FAILURE. THE COMMISSIONER SHALL COLLECT SUCH AMOUNT AND MAY BRING A CIVIL ACTION IN THE NAME OF THE PEOPLE OF THE STATE OF COLORADO TO ENFORCE COLLECTION. SUCH PENALTY MAY BE IN ADDITION TO THE REMEDY PROVIDED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d). ALL MONEYS COLLECTED BY THE COMMISSIONER SHALL BE PAID INTO THE GENERAL FUND.

(e) ANY FINDING, DETERMINATION, RULE, RULING, OR ORDER MADE BY THE COMMISSIONER PURSUANT TO THIS SUBSECTION (8) IS SUBJECT TO JUDICIAL REVIEW BY THE COURT OF APPEALS. SUCH REVIEW SHALL BE PERFORMED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-4-106 (11), C.R.S.

SECTION 4. 10-10-110 (1), Colorado Revised Statutes, is amended to read:

10-10-110. Premiums and refunds. (1) (a) ~~Any~~ IF AN INSURER HAS ELECTED TO FILE PURSUANT TO SECTION 10-10-109 (2.5) (b), THE insurer may revise its schedules of premium rates from time to time and shall file such revised schedules with the commissioner. No insurer shall issue any credit insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner.

(b) IF AN INSURER HAS ELECTED TO FILE PURSUANT TO SECTION 10-10-109 (2.5) (c), THE INSURER MAY FILE WITH THE COMMISSIONER AND USE ANY PREMIUM RATE OR SCHEDULE OF PREMIUM RATES THAT IS LESS THAN OR EQUAL TO THE PREMIUM RATE ESTABLISHED BY THE COMMISSIONER. INSURERS SHALL NOT USE PREMIUM RATES HIGHER THAN THE PREMIUM RATES ESTABLISHED BY THE COMMISSIONER.

SECTION 5. 5-4-203 (2), Colorado Revised Statutes, is amended to read:

5-4-203. Filing and approval of rates and forms. (2) Except as provided in subsection (3) of this section, all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this state, and the schedules of premium rates or charges pertaining thereto shall be filed by the insurer with the commissioner of insurance. Within thirty days after the filing of any form or schedule, the commissioner shall disapprove it if the premium rates or charges are

unreasonable in relation to the benefits provided under the form or if the form contains provisions that are unjust, unfair, inequitable, or deceptive or encourage misrepresentation of the coverage or are contrary to any provision of title 10, C.R.S., or of any rule or regulation promulgated thereunder. A premium rate or schedule of premium rates shall be deemed reasonable for all purposes under this code if the rate or schedule produces or reasonably may be expected to produce a ratio of incurred claims to earned premium of not less than forty percent FOR THOSE INSURERS UNDER SECTION 10-10-109 (2.5) (b), OR FOR THOSE INSURERS UNDER SECTION 10-10-109 (2.5) (c), A PREMIUM RATE OR SCHEDULE OF PREMIUM RATES IS REASONABLE IN RELATION TO THE BENEFITS PROVIDED AND ARE NOT EXCESSIVE, INADEQUATE, NOR UNFAIRLY DISCRIMINATORY.

SECTION 6. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of insurance cash fund created in section 10-1-103, Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of insurance, for the fiscal year beginning July 1, 2001, the sum of sixty-seven thousand nine hundred twelve dollars (\$67,912), or so much thereof as may be necessary, for the implementation of this act.

SECTION 7. Effective date. Sections 1, 3, and 4 of this act shall take effect July 1, 2002. Sections 2, 5, 6, 7, and 8 shall take effect upon passage.

SECTION 8. 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 1, 2001