

CHAPTER 281

INSURANCE

SENATE BILL 04-078

BY SENATOR(S) Groff and Taylor;
also REPRESENTATIVE(S) Hall.

AN ACT

**CONCERNING ADMINISTRATION BY THE INSURANCE COMMISSIONER OF PROVISIONS TO ENSURE THE
FINANCIAL RESPONSIBILITY OF INSURANCE COMPANIES.**

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

SECTION 1. 8-45-117 (1) (c), Colorado Revised Statutes, is amended to read:

8-45-117. Regulation by commissioner of insurance. (1) Pinnacol Assurance shall be subject to regulation by the commissioner of insurance as provided in:

(c) Sections 10-1-108 (7), 10-1-109, and 10-1-102, C.R.S., except subsections (3) and (6); 10-1-205, C.R.S., (1) through (6) and (8); 10-3-109, C.R.S., except for the publication requirements; 10-3-118, C.R.S.; 10-3-128, C.R.S.; 10-3-202, C.R.S.; 10-3-207, C.R.S.; 10-3-208, C.R.S.; ~~(1) and (2)~~; 10-3-231, C.R.S.; 10-3-239, C.R.S.; 10-3-701, C.R.S.; and part 8 of article 3 of title 10, C.R.S., except as these sections are inconsistent with the provisions of this article.

SECTION 2. The introductory portion to 10-1-205 (3), Colorado Revised Statutes, is amended to read:

10-1-205. Financial examination reports. (3) Within thirty days after the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, any written submissions or rebuttals, and any relevant portions of the examiner's workpapers and shall enter an order that DOES ONE OR MORE OF THE FOLLOWING:

SECTION 3. 10-3-101 (1), (2), and (3), Colorado Revised Statutes, are amended to read:

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

10-3-101. Formation of insurance companies. (1) Whenever any number of persons associate to form an insurance company for any of the purposes named in section 10-3-102, they shall submit articles of incorporation ~~which shall be issued in triplicate~~, to the commissioner and attorney general for examination. After being approved by ~~them~~ THE COMMISSIONER AND THE ATTORNEY GENERAL, the ~~said~~ articles shall be filed ~~and recorded~~ in the office of THE secretary of state, who shall issue a certificate of incorporation. A copy of such articles, certified by the secretary of state, shall be filed with the commissioner. ANY FILINGS MADE PURSUANT TO THIS SUBSECTION (1) MAY BE IN AN ELECTRONIC FORMAT.

(2) When not less than the amount required by section 10-3-201 has been paid in by the incorporators and deposited with the commissioner, as provided for in this title (except ~~part 7 of article 4 and~~ article 15), article 7 of title 12, and article 14 of title 24, C.R.S., the commissioner shall cause an examination to be made either by ~~himself~~ THE COMMISSIONER or some disinterested person especially appointed by ~~him~~ THE COMMISSIONER for the purpose, who shall certify that said provisions have been complied with by said company, as far as applicable thereto. Such certificate shall be filed in the office of the commissioner, who shall thereupon deliver to such company a certified copy thereof, which, together with a copy of the articles of incorporation, shall be filed in the office of the recorder of deeds of the county wherein the company is to be located, before the authority to commence business is granted. ANY FILINGS REQUIRED TO BE MADE WITH THE COMMISSIONER PURSUANT TO THIS SUBSECTION (2) MAY BE IN AN ELECTRONIC FORMAT.

(3) Whenever any such corporation thereafter desires to amend its articles of incorporation, it shall file its certificate of amendment with the commissioner before filing the same with the secretary of state, and if the commissioner, with the advice of the attorney general, finds the same to be legally adopted and in due legal form and not in conflict with the provisions of law governing such companies, then and not otherwise such certificate of amendment shall be filed with the secretary of state. FILINGS REQUIRED PURSUANT TO THIS SUBSECTION (3) MAY BE IN AN ELECTRONIC FORMAT.

SECTION 4. 10-3-107 (1) and (1.5) (b), Colorado Revised Statutes, are amended to read:

10-3-107. Appointment of registered agent - commissioner agent for service of process. (1) Except pursuant to the provisions of article 5 of this title, no foreign insurance company, directly or indirectly, shall issue policies, take risks, or transact business in this state until it has first appointed, in writing, the commissioner to be the true and lawful attorney of such company in and for this state, upon whom all lawful process in any action or proceeding against the company may be served with the same effect as if the company existed in this state. Such power of attorney shall stipulate and agree, upon the part of the company, that any lawful process against the company ~~which~~ THAT is served on said attorney, or in ~~his~~ THE COMMISSIONER'S absence any employee in charge of ~~his~~ THE COMMISSIONER'S office, shall be of the same legal force and validity as if served on the company, and that the authority shall continue in force so long as any liability remains outstanding against the company in this state. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the commissioner, and copies certified by ~~him~~ THE COMMISSIONER shall be deemed sufficient evidence, and service upon such attorney shall be deemed

sufficient service upon the principal. THE CERTIFICATE OF APPOINTMENT MAY BE FILED IN AN ELECTRONIC FORMAT.

(1.5) (b) Each insurance company maintaining a home office or regional home office in this state shall file with the commissioner the name of a person designated to receive service of process. The commissioner shall maintain a list of ~~any person~~ PERSONS so designated and shall make information from such list available to any person upon request. Each company must report any change in the name of the person designated to receive service of process to the commissioner within ten days ~~of~~ AFTER making such change. THE INFORMATION REQUIRED TO BE FILED WITH THE COMMISSIONER PURSUANT TO THIS SUBSECTION (1.5) MAY BE FILED IN AN ELECTRONIC FORMAT.

SECTION 5. 10-3-108, Colorado Revised Statutes, is amended to read:

10-3-108. File duly certified copy of charter - fees. Except pursuant to the provisions of article 5 of this title, no foreign insurance company shall transact any business in this state unless it ~~shall first file~~ FILES in the office of the commissioner a duly certified copy of its charter, ~~or~~ articles of incorporation, or deed of settlement, together with a statement, under oath, of the president and secretary, or other chief officers of such company, showing the condition of affairs of such company on the thirty-first day of December next preceding the date of such oath. The statement shall be in the same form and shall set forth the same particulars as the annual statement required by this title (except ~~part 7 of article 4 and~~ article 15), article 7 of title 12, and article 14 of title 24, C.R.S. After filing its articles of incorporation or charter with the secretary of state, no insurance company shall be required to file its annual report or any other instrument, except amendments to said articles of incorporation or charter, in the office of the secretary of state or to pay to the secretary of state an annual corporation tax. THE FILINGS REQUIRED PURSUANT TO THIS SECTION MAY BE MADE IN AN ELECTRONIC FORMAT.

SECTION 6. 10-3-109 (1), Colorado Revised Statutes, is amended to read:

10-3-109. Reports, statements, assessments, and maintenance of records - publication - penalties for late filing, late payment, or failure to maintain. (1) Every insurance company doing business in this state, on or before the first day of March in each year, shall ~~render~~ SUBMIT to the commissioner a report, signed and ~~sworn to~~ CERTIFIED by its chief officers, of its condition on the preceding thirty-first day of December, which shall include a detailed statement of assets and liabilities, the amount and character of its business transacted, and moneys received and expended during the year, and any further details of expenditures, and such other information, to be included in the report or supplementary thereto, ~~which~~ AS the commissioner deems necessary. A synopsis of such statement, together with the commissioner's certificate of authority to transact business in this state, shall be published in some newspaper of general circulation, published at the state capital, for at least four insertions. Such publication shall be made within thirty days after such certificate of authority is issued, and a copy of the paper containing such publication shall be filed in the office of the commissioner. The commissioner shall revoke and refuse to reissue the certificate of authority of any insurance company failing or refusing to furnish the reports or other information requested by the commissioner as provided in this section. THE REPORT REQUIRED PURSUANT TO THIS SUBSECTION (1)

MAY BE FILED IN AN ELECTRONIC FORMAT.

SECTION 7. 10-3-202, Colorado Revised Statutes, is amended to read:

10-3-202. Surplus ascertained - disposition of. Surplus of domestic insurance companies shall be ascertained by offsetting as a liability against the company's admitted assets the par value of its outstanding capital stock, if any, its reserve liability, and its current obligations of every kind. The excess of said admitted assets over said liabilities shall be the company's surplus. ~~No commission, collection fee, or compensation conditioned upon the payment of an uncollected, deferred, or future premium shall be a liability. No bonus coupon or dividend payable or deductible under a policy of insurance or annuity or other contract and conditioned upon the payment of an uncollected, deferred, or future premium shall be deemed a liability except the present worth of the amount that such bonus, coupon, or dividend exceeds the expense loading of the premium to which it relates.~~ Surplus of domestic stock insurance companies belongs to their stockholders, and such part of the surplus may be apportioned or paid to policyholders, beneficiaries, and annuity and supplementary contract holders as the companies may from time to time determine.

SECTION 8. 10-3-210 (1) (a), (1) (b), (1) (c), and (2) (f), Colorado Revised Statutes, are amended to read:

10-3-210. Deposit and safekeeping of securities. (1) (a) ~~(f)~~ The commissioner shall give receipts for all securities deposited with the commissioner, as required or permitted by law, to the company depositing them.

~~(f) It is the duty of the commissioner, upon the receipt of securities from any company, to forthwith deposit such securities, in the presence of the authorized agent of the company, in a strong iron box which requires two distinct and different keys to unlock it, one key to be kept by the commissioner and the other by the company. The box shall not be opened except in the presence of the commissioner and the authorized agent of the company.~~

(b) If the company depositing securities in accordance with paragraph (a) of this subsection (1) is adjudged insolvent, ~~or is dissolved, any court of competent jurisdiction may make and enforce the necessary orders to place such securities, or any part of them, at the sole disposal of the court or the commissioner~~ SUCH DEPOSIT SHALL BE RELEASED ONLY UPON THE ENTRY OF AN ORDER OF A COURT ACTING IN ACCORDANCE WITH THE PROVISIONS OF PART 5 OF THIS ARTICLE. IF A COMPANY THAT HAS NOT BEEN ADJUDGED INSOLVENT ELECTS TO DISSOLVE, THE COMMISSIONER MAY RELEASE SECURITIES UNDER JOINT CONTROL UPON A SHOWING BY THE INSURANCE COMPANY SATISFACTORY TO THE COMMISSIONER THAT ALL DEBTS, OBLIGATIONS, AND LIABILITIES OF THE INSURANCE COMPANY HAVE BEEN PAID AND DISCHARGED, OR ADEQUATE PROVISIONS FOR PAYMENT AND DISCHARGE HAVE BEEN MADE, AND UPON RETURN OF THE COMPANY'S CERTIFICATE OF AUTHORITY TO THE COMMISSIONER.

(c) ~~The boxes used for deposit of securities pursuant to paragraph (a) of this subsection (1) shall be in the vault of a trust company, safe deposit company, or bank in the city and county of Denver, to be selected by the commissioner and the insurance companies shall pay the several fees for such boxes.~~

(2) (f) If the company depositing securities in accordance with paragraph (a) of this subsection (2) is adjudged insolvent, ~~or is dissolved, any court of competent jurisdiction may make and enforce the necessary orders to place such securities, or any part of them, at the sole disposal of the court or the commissioner~~ SUCH DEPOSIT SHALL BE RELEASED ONLY UPON THE ENTRY OF AN ORDER OF A COURT ACTING IN ACCORDANCE WITH THE PROVISIONS OF PART 5 OF THIS ARTICLE. IF A COMPANY THAT HAS NOT BEEN ADJUDGED INSOLVENT ELECTS TO DISSOLVE, THE COMMISSIONER MAY RELEASE SECURITIES UNDER JOINT CONTROL UPON A SHOWING SATISFACTORY TO THE COMMISSIONER THAT ALL DEBTS, OBLIGATIONS, AND LIABILITIES OF THE INSURANCE COMPANY HAVE BEEN PAID AND DISCHARGED, OR ADEQUATE PROVISIONS FOR PAYMENT AND DISCHARGE HAVE BEEN MADE, AND UPON RETURN OF THE COMPANY'S CERTIFICATE OF AUTHORITY TO THE COMMISSIONER.

SECTION 9. 10-3-211, Colorado Revised Statutes, is amended to read:

10-3-211. Deposit only admitted assets. (1) Deposits made with the commissioner as permitted or required by law shall be only those admitted assets of the company ~~which~~ THAT are securities eligible for the purpose of a deposit, as provided in section 10-3-235 (1) or (2). The company may deposit, withdraw, exchange, or substitute any security at any time if the total amount of securities remaining on deposit is no less than required by law.

(2) When a domestic insurance company reinsures all of its business in another company, the securities deposited by the reinsured company with the commissioner, ~~or the division of insurance,~~ subject to any existing liens against and restrictions upon them, may be assigned or transferred to the reinsuring company, and the latter company shall thereupon acquire all the right, title, and interest of the reinsured company in and to such securities and shall be entitled to all the rights, benefits, and privileges of the reinsured company pertaining thereto. If a domestic company, having securities on deposit with the commissioner, reinsures all of its business, such securities may only be withdrawn, ~~through an order of a court of competent jurisdiction;~~ except for the purpose of exchange or substitution, ~~except that, in the case of domestic fire or casualty insurance companies, the company, upon ceasing to do further business, shall be permitted to withdraw the securities so deposited by filing a certified statement with the commissioner: That the company has ceased doing business and desires to surrender its charter; that all of its business has been reinsured in a company qualified to do such business in the state of Colorado; that all known debts or liabilities of the company have been paid~~ UPON A SHOWING SATISFACTORY TO THE COMMISSIONER THAT ALL DEBTS, OBLIGATIONS, AND LIABILITIES OF THE INSURANCE COMPANY HAVE BEEN PAID AND DISCHARGED, OR ADEQUATE PROVISIONS FOR PAYMENT AND DISCHARGE HAVE BEEN MADE, AND UPON RETURN OF THE COMPANY'S CERTIFICATE OF AUTHORITY TO THE COMMISSIONER.

(3) ~~The certificate shall be signed by each of the directors of the domestic insurance company and shall be sworn to. Thereupon the commissioner shall cause to be published once each month for five successive months, in a newspaper of general circulation published in the county where the home office of such domestic insurance company is located, a notice stating in substance that said domestic insurance company has ceased doing business, and has reinsured its business, and desires to withdraw the securities on deposit with the commissioner, and such notice shall further state that any persons having any claim against the company or having~~

~~any objection to the withdrawal of said securities may file with the commissioner, within six months from the date of such notice, written objections to such withdrawal. If no objection is filed, as required by said notice, the securities, at the expiration of six months from the date of said notice, shall be returned to the insurance company. If such objection is filed with the commissioner, the securities shall be withdrawn only through an order of a court of competent jurisdiction, except for the purpose of exchange or substitution.~~

SECTION 10. The introductory portion to 10-3-228 (1), Colorado Revised Statutes, is amended to read:

10-3-228. Collateral loans. (1) Domestic insurance companies may invest in collateral loans secured by the pledge of any one or more ~~investments of the categories described in sections 10-3-215 to 10-3-217 and 10-3-225 and 10-3-226,~~ INVESTMENTS ALLOWED FOR COLLATERAL LOANS, AS PROVIDED BY NATIONALLY RECOGNIZED INSURANCE STATUTORY ACCOUNTING PRINCIPLES, subject to the following provisions:

SECTION 11. The introductory portion to 10-3-230 (1), Colorado Revised Statutes, is amended to read:

10-3-230. Additional investments. (1) Domestic insurance companies may invest in any additional investments, except items specifically defined AS NONADMITTED ASSETS in this title (except ~~part 7 of article 4 and~~ article 15), article 7 of title 12, and article 14 of title 24, C.R.S., without regard to any limitation, condition, restriction, or exclusion set forth in sections 10-3-215 to 10-3-229 and 10-3-242, and regardless of whether the same or a similar type of investment has been included in or omitted from any such section, subject to the following provisions:

SECTION 12. 10-3-237 (2), Colorado Revised Statutes, is amended to read:

10-3-237. Assets acquired under prior law. (2) Notwithstanding any other provision of this title (except ~~part 7 of article 4 and~~ article 15), article 7 of title 12, and article 14 of title 24, C.R.S., any asset held by a company on May 31, 1969, ~~which~~ THAT is not an admitted asset under section 10-1-102 (2) ~~sections 10-3-215 to 10-3-229,~~ or subsection (1) of this section, and ~~which~~ THAT did not meet the requirements of the law in effect immediately prior to such date for an investment of the company's reserves, paid-up capital stock, and other liabilities, but which, under such law, would have been taken into account as an asset in determining the surplus of the company, shall be taken into account as an admitted asset at all times at which the company has aggregate admitted assets under section 10-1-102 (2) ~~sections 10-3-215 to 10-3-229,~~ and subsection (1) of this section in an amount at least equal to the total of its reserves, paid-up capital stock, and all other liabilities.

SECTION 13. Repeal. 10-4-414 (1), Colorado Revised Statutes, is repealed as follows:

10-4-414. Examinations. (1) ~~The commissioner, at least once in five years, shall make or cause to be made an examination of each rating organization licensed in this state as provided in sections 10-4-408 and 10-4-409, and he, as often as he deems it~~

~~expedient, may make or cause to be made an examination of each advisory organization referred to in section 10-4-410 and of each group, association, or other organization referred to in section 10-4-411. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization, or group, association, or other organization examined upon presentation to it of a detailed account of such costs. In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state.~~

SECTION 14. Effective date - applicability. This act shall take effect July 1, 2004, and shall apply to insurance policies issued or renewed and insurers authorized to conduct business in this state on or after said date.

SECTION 15. 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 21, 2004