

CHAPTER 197

INSURANCE

HOUSE BILL 10-1220

BY REPRESENTATIVE(S) Priola, Liston, Rice, Stephens, Kerr J., Nikkel, Gerou;
also SENATOR(S) Schwartz.

AN ACT

CONCERNING THE SUNSET REVIEW OF THE FUNCTIONS OF THE DIVISION OF INSURANCE RELATED TO THE REGULATION OF SPECIFIED LINES OF INSURANCE, AND, IN CONNECTION THEREWITH, CONTINUING THE FUNCTIONS OF THE DIVISION RELATED TO THE REGULATION OF PROPERTY AND CASUALTY, AUTOMOBILE, AND OTHER INSURERS THAT DO NOT OFFER HEALTH, LIFE, PROPERTY, CASUALTY, OR AUTOMOBILE INSURANCE THROUGH JULY 1, 2017; CONSOLIDATING THE SUNSET REVIEW OF ALL FUNCTIONS OF THE DIVISION OF INSURANCE OTHER THAN THOSE RELATED TO THE LICENSING OF BAIL BONDING AGENTS; AND IMPLEMENTING OTHER RECOMMENDATIONS CONTAINED IN THE SUNSET REPORT.

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

SECTION 1. 10-1-103 (6) (b) (I) (A), (6) (b) (I) (B.5), (6) (b) (I) (C), (6) (b) (I) (D), and (6) (b) (I) (E), Colorado Revised Statutes, are amended to read:

10-1-103. Division of insurance - subject to termination - repeal of functions.
(6) (b) (I) (A) The functions of the division of insurance related to the licensing of bail bonding agents are repealed, effective July 1, ~~2013~~ 2012, pursuant to the provisions of this section and section 12-7-112, C.R.S.

~~(B.5) The functions of the division of insurance related to the regulation of life insurance are repealed, effective July 1, 2016, pursuant to the provisions of this section and section 24-34-104 (47), C.R.S.~~

~~(C) The functions of the division of insurance related to the licensing of insurance producers are repealed, effective July 1, 2019, pursuant to the provisions of this section and section 24-34-104, C.R.S.~~

~~(D) The functions of the division of insurance, related to the regulation of property and casualty, automobile, and any other entity or function that does not~~

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

~~offer health, life, property, casualty, or automobile insurance by the division OTHER THAN THOSE FUNCTIONS RELATED TO THE LICENSING OF BAIL BONDING AGENTS, are repealed, effective July 1, 2010 2017, pursuant to the provisions of this section and section 24-34-104 (41) (48), C.R.S.~~

~~(E) The functions of the division of insurance related to the regulation of health care coverage are repealed, effective July 1, 2012, pursuant to the provisions of this section and section 24-34-104 (43), C.R.S.~~

SECTION 2. 12-7-112, Colorado Revised Statutes, is amended to read:

12-7-112. Repeal - review of functions. This article is repealed, effective July 1, 2013 2012. Prior to such repeal, the licensing functions of the commissioner and the division shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 3. 24-34-104 (43), Colorado Revised Statutes, 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. (43) The following agencies, functions, or both, shall terminate on July 1, 2012:

(f) THE LICENSING OF BAIL BONDING AGENTS THROUGH THE DIVISION OF INSURANCE IN ACCORDANCE WITH ARTICLE 7 OF TITLE 12, C.R.S.

SECTION 4. 24-34-104 (48), Colorado Revised Statutes, 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. (48) The following agencies, functions, or both, shall terminate on July 1, 2017:

(j) THE FUNCTIONS OF THE DIVISION OF INSURANCE IN THE DEPARTMENT OF REGULATORY AGENCIES PURSUANT TO ARTICLE 1 OF TITLE 10, C.R.S., OTHER THAN THE FUNCTIONS OF THE DIVISION RELATED TO THE LICENSING OF BAIL BONDING AGENTS.

SECTION 5. Repeal. 24-34-104 (41) (n), (43) (b), (44) (m), (47) (a), and (50) (a), Colorado Revised Statutes, are repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (41) The following agencies, functions, or both, shall terminate on July 1, 2010:

~~(n) The functions of the division of insurance related to the regulation of property and casualty, automobile, and any other entity or function that does not offer health, life, property, casualty, or automobile insurance by the division, pursuant to article 1 of title 10, C.R.S.;~~

(43) The following agencies, functions, or both, shall terminate on July 1, 2012:

~~(b) The functions of the division of insurance related to the regulation of health care coverage pursuant to the provisions of article 1 of title 10, C.R.S.;~~

(44) The following agencies, functions, or both, shall terminate on July 1, 2013:

~~(m) The licensing of bail bonding agents through the division of insurance in accordance with article 7 of title 12, C.R.S.;~~

(47) The following agencies, functions, or both, shall terminate on July 1, 2016:

~~(a) The functions of the division of insurance related to the regulation of life insurance pursuant to article 1 of title 10, C.R.S.;~~

(50) The following agencies, functions, or both, shall terminate on July 1, 2019:

~~(a) The functions of the division of insurance related to the licensing of insurance producers, pursuant to article 1 of title 10, C.R.S.;~~

SECTION 6. 10-3-1104 (1) (b), Colorado Revised Statutes, is amended to read:

10-3-1104. Unfair methods of competition and unfair or deceptive acts or practices. (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(b) False information and advertising generally:

(I) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his OR HER insurance business, which is untrue, deceptive, or misleading;

(II) KNOWINGLY FILING WITH THE COMMISSIONER OR OTHER PUBLIC OFFICIAL, OR WITH ANY EMPLOYEE OR AGENT OF THE DIVISION OF INSURANCE IN THE DEPARTMENT OF REGULATORY AGENCIES, A WRITTEN, FALSE STATEMENT OF MATERIAL FACT AS TO THE FINANCIAL CONDITION OF AN INSURER;

(III) KNOWINGLY MAKING ANY FALSE ENTRY OF A MATERIAL FACT IN ANY BOOK, REPORT, OR OTHER WRITTEN STATEMENT OF ANY INSURER; KNOWINGLY OMITTING OR FAILING TO MAKE A TRUE ENTRY OF A MATERIAL FACT PERTAINING TO THE BUSINESS OF THE INSURER IN ANY BOOK, REPORT, OR OTHER WRITTEN STATEMENT OF THE INSURER; OR KNOWINGLY MAKING ANY WRITTEN, FALSE MATERIAL STATEMENT TO THE COMMISSIONER OR ANY EMPLOYEE OR AGENT OF THE DIVISION OF INSURANCE IN THE DEPARTMENT OF REGULATORY AGENCIES;

SECTION 7. 10-3-1104 (1) (f), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS to read:

10-3-1104. Unfair methods of competition and unfair or deceptive acts or practices. (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(f) (XIII) MAKING OR PERMITTING ANY UNFAIR DISCRIMINATION BETWEEN INDIVIDUALS OF THE SAME CLASS AND OF ESSENTIALLY THE SAME HAZARD IN THE AMOUNT OF PREMIUM, POLICY FEES, OR RATES CHARGED FOR ANY POLICY OF SICKNESS AND ACCIDENT INSURANCE, IN THE BENEFITS PAYABLE UNDER SUCH POLICY, IN THE TERMS OR CONDITIONS OF THE POLICY, OR IN ANY OTHER MANNER;

(XIV) MAKING OR PERMITTING ANY UNFAIR DISCRIMINATION BETWEEN INDIVIDUALS OR RISKS OF THE SAME CLASS AND OF ESSENTIALLY THE SAME HAZARD BY REFUSING TO INSURE, REFUSING TO RENEW, CANCELING, OR LIMITING THE AMOUNT OF INSURANCE COVERAGE ON A PROPERTY AND CASUALTY RISK SOLELY BECAUSE OF THE GEOGRAPHIC LOCATION OF THE RISK, UNLESS THE ACTION IS THE RESULT OF THE APPLICATION OF SOUND UNDERWRITING AND ACTUARIAL PRINCIPLES RELATED TO ACTUAL OR REASONABLY ANTICIPATED LOSS EXPERIENCE;

(XV) MAKING OR PERMITTING ANY UNFAIR DISCRIMINATION BETWEEN INDIVIDUALS OR RISKS OF THE SAME CLASS AND OF ESSENTIALLY THE SAME HAZARDS BY REFUSING TO INSURE, REFUSING TO RENEW, CANCELING, OR LIMITING THE AMOUNT OF INSURANCE COVERAGE ON THE RESIDENTIAL PROPERTY RISK, OR THE PERSONAL PROPERTY CONTAINED THEREIN, SOLELY BECAUSE OF THE AGE OF THE RESIDENTIAL PROPERTY;

(XVI) TERMINATING OR MODIFYING COVERAGE OR REFUSING TO ISSUE OR RENEW ANY PROPERTY OR CASUALTY POLICY SOLELY BECAUSE THE APPLICANT OR INSURED OR ANY EMPLOYEE OF EITHER IS MENTALLY OR PHYSICALLY IMPAIRED; EXCEPT THAT THIS SUBPARAGRAPH (XVI) DOES NOT:

(A) APPLY TO ACCIDENT AND HEALTH INSURANCE SOLD BY A CASUALTY INSURER;
OR

(B) MODIFY ANY OTHER PROVISION OF LAW RELATING TO THE TERMINATION, MODIFICATION, ISSUANCE, OR RENEWAL OF ANY INSURANCE POLICY OR CONTRACT;

(XVII) REFUSING TO INSURE A PERSON SOLELY BECAUSE ANOTHER INSURER HAS REFUSED TO WRITE A POLICY, OR HAS CANCELLED OR HAS REFUSED TO RENEW AN EXISTING POLICY, IN WHICH THE PERSON WAS THE NAMED INSURED. NOTHING IN THIS SUBPARAGRAPH (XVII) PREVENTS AN INSURER FROM TERMINATING AN EXCESS INSURANCE POLICY BASED ON THE FAILURE OF THE INSURED TO MAINTAIN ANY REQUIRED UNDERLYING INSURANCE.

SECTION 8. 10-1-213, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-1-213. Confidentiality requirements. (5) NOTWITHSTANDING THE CONFIDENTIALITY REQUIREMENTS IN PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION, WHEN THE COMMISSIONER REQUESTS AN INSURER TO CONDUCT A SELF-AUDIT OR ENGAGES IN OTHER MARKET CONDUCT ACTION THAT DOES NOT RISE TO THE LEVEL OF AN EXAMINATION, THE COMMISSIONER MAY MAKE THE FINAL

RESULTS OF THE SELF-AUDIT OR OTHER MARKET CONDUCT ACTION, IN AN AGGREGATED FORMAT, AVAILABLE FOR PUBLIC INSPECTION IN A MANNER DEEMED APPROPRIATE BY THE COMMISSIONER.

SECTION 9. Repeal. Part 2 of article 12 of title 10, Colorado Revised Statutes, is repealed.

SECTION 10. The introductory portion to 10-5-115 (2), Colorado Revised Statutes, is amended to read:

10-5-115. Authority of commissioner - assistance of brokers' association.

(2) The commissioner ~~shall~~ MAY rely upon the advice and assistance of a duly constituted association of brokers in carrying out the purposes of this article, if the association files with the commissioner:

SECTION 11. 10-15-103 (4), Colorado Revised Statutes, is amended to read:

10-15-103. License procedure - records - examination of records. (4)(a) The contract seller shall make all books and records available to the commissioner for examination. The commissioner, or a qualified person designated by the commissioner, ~~may, not more frequently than once in any calendar year unless pursuant to order of court for good cause shown;~~ during ordinary business hours, SHALL examine the books, records, and accounts of the contract seller AT LEAST ONCE EVERY FIVE YEARS, AND MORE OFTEN AS NECESSARY TO ENSURE COMPLIANCE WITH THIS ARTICLE, and for that purpose may require the attendance of and examine under oath all persons whose testimony the commissioner may require.

(b) ~~The commissioner shall make every reasonable effort to utilize examiners employed by the division of insurance in preference to designating persons to perform examinations who are not employees of the division of insurance. However, in the event of evidence of a violation of this article, the commissioner may designate a qualified person who is not an employee of the division of insurance to examine any contract seller, and the reasonable expenses and charges of such examiner shall be paid directly by the contract seller to any such authorized examiner. The examinee may contest the amount of fees, costs, and expenses charged to it by such person by filing an objection with the commissioner which THAT sets forth the charges which the examinee considers to be unreasonable, together with the basis for such claim of unreasonable charges. No amounts which THAT 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.~~

SECTION 12. Repeal. Part 9 of article 4 of title 10, Colorado Revised Statutes, is repealed.

SECTION 13. Repeal. Part 11 of article 4 of title 10, Colorado Revised Statutes, is repealed.

SECTION 14. 10-4-629 (6), Colorado Revised Statutes, is amended to read:

10-4-629. Cancellation - renewal - reclassification. (6) If the commissioner

finds from the notice and other evidence that the protest is with or without merit, the commissioner may grant or dismiss the protest without a hearing and shall, in that event, promptly notify the insurer and the insured in writing of such action. If the protest is dismissed without a hearing, the proposed action of the insurer shall become effective on its proposed effective date or ~~fifteen~~ TWENTY days after written notice of the action is given by the commissioner to the insured, whichever is later. If the notice of the proposed action does not comply with Colorado law, the commissioner shall disallow the action. In all other cases, the commissioner shall hold a hearing on the protest within forty-five days after receipt of the protest and shall give written notice of the time and place thereof to the insurer and the insured at least ten days prior to the scheduled date of the hearing. The insurer shall have the burden of proving its proposed action to be justified and, in doing so, may rely only upon the reasons set forth in its notice to the insured.

SECTION 15. 8-45-111, Colorado Revised Statutes, is amended to read:

8-45-111. Portions of premiums paid carried to surplus. The board shall set aside such proportion as it may deem necessary of the earned premiums paid into the Pinnacol Assurance fund, as a contribution to the surplus of the fund. ~~No later than January 1, 2001, the board shall submit a plan for approval by the commissioner of insurance for the attainment of a reasonable surplus as determined in accordance with section 10-3-201, C.R.S., or such surplus as approved by the commissioner of insurance. All business records related to such plan shall be disclosed by Pinnacol Assurance to the same extent as similar records are disclosed by the other insurance companies.~~

SECTION 16. 8-45-117 (5), Colorado Revised Statutes, is amended to read:

8-45-117. Regulation by commissioner of insurance. (5) At such time as a reasonable surplus of the Pinnacol Assurance fund is reached pursuant to section 8-45-111, ~~or when Pinnacol Assurance fails to comply with the plan to attain a reasonable surplus as set forth in section 8-45-111;~~ Pinnacol Assurance shall be subject to regulation by the commissioner of insurance as provided in section 10-1-205 (7) and part 4 of article 3 of title 10, C.R.S., to the extent consistent with the provisions of this article.

SECTION 17. 10-4-401 (3) (b), Colorado Revised Statutes, is amended to read:

10-4-401. Purpose - applicability. (3) The kinds of insurance subject to this part 4 shall be divided into two classes, as follows:

(b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title, ~~medical malpractice by a joint underwriting association regulated under part 9 of this article;~~ credit, workers' compensation and employer's liability incidental thereto and written in connection therewith for rates filed by insurers, and all other kinds of insurance that are subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner; except that credit life and credit accident and health insurers shall

file schedules of premium rates pursuant to sections 10-10-109 and 10-10-110. A rate filing summary for a type II kind of insurance subject to this part 4, except for workers' compensation insurance, shall be posted on the division's ~~internet~~ WEB site in order to provide notice to the public. The public notice shall include the rate standards that apply pursuant to section 10-4-403 (1). Nothing in this section shall be construed to limit the right of the public to inspect a rate filing and any supporting information pursuant to part 2 of article 72 of title 24, C.R.S., or to impair the commissioner's ability to review rates and determine that the rates are not excessive, inadequate, or unfairly discriminatory.

SECTION 18. 10-4-601, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-601. Definitions. As used in this part 6, unless the context otherwise requires:

(5.5) "LICENSED HEALTH CARE PROVIDER" MEANS A PERSON, CORPORATION, FACILITY, OR INSTITUTION LICENSED OR CERTIFIED BY THIS STATE TO PROVIDE HEALTH CARE OR PROFESSIONAL SERVICES AS A HOSPITAL, HEALTH CARE FACILITY, OR DISPENSARY OR TO PRACTICE AND PRACTICING MEDICINE, OSTEOPATHY, CHIROPRACTIC, NURSING, PHYSICAL THERAPY, PODIATRY, DENTISTRY, PHARMACY, ACUPUNCTURE, OR OPTOMETRY IN THIS STATE, OR AN OFFICER, EMPLOYEE, OR AGENT OF THE PERSON, CORPORATION, FACILITY, OR INSTITUTION WORKING UNDER THE SUPERVISION OF THE PERSON, CORPORATION, FACILITY, OR INSTITUTION IN PROVIDING HEALTH CARE SERVICES.

SECTION 19. 10-4-634 (1), Colorado Revised Statutes, is amended to read:

10-4-634. Assignment of payment for covered benefits. (1) On and after thirty days after April 5, 2004, a policy of motor vehicle insurance coverage pursuant to this part 6 shall allow, but not require, an insured under the policy to assign, in writing, payments due under medical payments coverage of the policy to a licensed hospital or other licensed health care provider, ~~as defined in section 10-4-902 (3)~~, an occupational therapist as defined in section 12-40.5-103, C.R.S., or a massage therapist as defined in section 12-35.5-103 (8), C.R.S., for services provided to the insured that are covered under the policy.

SECTION 20. 10-4-635 (5) (d), Colorado Revised Statutes, is amended to read:

10-4-635. Medical payments coverage - disclosure - definitions. (5) As used in this section:

(d) "Licensed health care provider" shall have the same meaning as set forth in section ~~10-4-902~~ 10-4-601, and also includes an occupational therapist as defined in section 12-40.5-103 (8), C.R.S.

SECTION 21. 10-4-637, Colorado Revised Statutes, is amended to read:

10-4-637. No discrimination by profession. Reimbursement for lawfully performed health care services covered by a policy providing medical payments coverage under a motor vehicle policy issued pursuant to this part 6 shall not be

denied when such services are a covered benefit and rendered within the scope of practice for a licensed health care provider, ~~as defined in section 10-4-902 (3)~~; a massage therapist, as defined in section 12-35.5-103, C.R.S., or an occupational therapist, as defined in section 12-40.5-103, C.R.S., performing the services.

SECTION 22. 10-16-102 (26.3), Colorado Revised Statutes, is amended to read:

10-16-102. Definitions. As used in this article, unless the context otherwise requires:

(26.3) "Licensed health care provider" shall have the same meaning as in section ~~10-4-902 (3)~~ 10-4-601.

SECTION 23. 10-16-106.7 (1) (a), Colorado Revised Statutes, is amended to read:

10-16-106.7. Assignment of health insurance benefits. (1) (a) Any carrier that provides health coverage to a covered person shall allow, but not require, such covered person under the policy to assign, in writing, payments due under the policy to a licensed hospital, other licensed health care provider, ~~as defined in section 10-4-902 (3)~~; an occupational therapist as defined in section 12-40.5-103, C.R.S., or a massage therapist as defined in section 12-35.5-103 (8), C.R.S., also referred to in this section as the "provider", for services provided to the covered person that are covered under the policy.

SECTION 24. Specified effective date. This act shall take effect July 1, 2010.

SECTION 25. 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 5, 2010