

## CHAPTER 104

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**INSURANCE**


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**HOUSE BILL 12-1215**

BY REPRESENTATIVE(S) Gerou, Becker, Levy, Brown, DelGrosso;  
also SENATOR(S) Hodge, Steadman, Lambert.

**AN ACT**

**CONCERNING CHANGES TO THE "NONADMITTED INSURANCE ACT" TO CONFORM IT TO THE REQUIREMENTS OF THE FEDERAL "NONADMITTED AND REINSURANCE REFORM ACT OF 2010".**

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

**SECTION 1.** In Colorado Revised Statutes, **amend** 10-5-101.2 as follows:

**10-5-101.2. Definitions.** As used in this article, unless the context otherwise requires:

(1) "AFFILIATE" MEANS, WITH RESPECT TO AN INSURED, ANY ENTITY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE INSURED.

(2) "AFFILIATED GROUP" MEANS ANY GROUP OF ENTITIES THAT ARE ALL AFFILIATED.

~~(3)~~ (3) "Broker" means a surplus lines producer duly licensed to export insurance under this article.

(4) "CONTROL" MEANS THAT AN ENTITY HAS CONTROL OVER ANOTHER ENTITY IF THE CONTROLLING ENTITY:

(a) DIRECTLY OR INDIRECTLY OR ACTING THROUGH ONE OR MORE OTHER PERSONS OWNS, CONTROLS, OR HAS THE POWER TO VOTE TWENTY-FIVE PERCENT OR MORE OF ANY CLASS OF VOTING SECURITIES OF THE CONTROLLED ENTITY; OR

(b) CONTROLS IN ANY MANNER THE ELECTION OF A MAJORITY OF THE DIRECTORS OR TRUSTEES OF THE CONTROLLED ENTITY.

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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.*

~~(2)~~ (5) "Export" means to place with an insurer under this article insurance covering a ~~subject of insurance that is resident, located, or to be performed in~~ AN INSURED WHOSE HOME STATE IS Colorado.

(6) "FEDERAL ACT" MEANS THE "NONADMITTED AND REINSURANCE REFORM ACT OF 2010", 15 U.S.C. SEC. 8201 ET SEQ., AS AMENDED.

(7) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (7), "HOME STATE" MEANS, WITH RESPECT TO AN INSURED:

(I) THE STATE IN WHICH THE INSURED MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS OR, IN THE CASE OF AN INDIVIDUAL, THE INDIVIDUAL'S PRINCIPAL RESIDENCE; OR

(II) IF ONE HUNDRED PERCENT OF THE INSURED RISK IS LOCATED OUT OF THE STATE REFERRED TO IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED.

(b) WITH RESPECT TO AFFILIATED GROUPS, IF MORE THAN ONE INSURED FROM AN AFFILIATED GROUP ARE NAMED INSUREDS ON A SINGLE SURPLUS LINES INSURANCE CONTRACT, "HOME STATE" MEANS THE HOME STATE, AS DETERMINED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (7), OF THE MEMBER OF THE AFFILIATED GROUP THAT HAS THE LARGEST PERCENTAGE OF PREMIUM ATTRIBUTED TO IT UNDER THE INSURANCE CONTRACT.

(8) "INDEPENDENTLY PROCURED INSURANCE" MEANS INSURANCE PROCURED DIRECTLY BY A PERSON FROM A NONADMITTED INSURER.

(9) "MULTISTATE RISK" MEANS A RISK COVERED BY A NONADMITTED INSURER WITH INSURED EXPOSURES IN MORE THAN ONE STATE.

(10) "NONADMITTED INSURANCE" MEANS ANY PROPERTY OR CASUALTY INSURANCE PERMITTED IN A STATE TO BE PLACED DIRECTLY OR THROUGH A BROKER WITH A NONADMITTED INSURER ELIGIBLE TO ACCEPT SUCH INSURANCE. "NONADMITTED INSURANCE" INCLUDES INDEPENDENTLY PROCURED INSURANCE AND SURPLUS LINES INSURANCE.

~~(3)~~ (11) "Nonadmitted insurers" means insurers not having a certificate of authority to transact business in this state.

(12) "PERSON" HAS THE SAME MEANING AS SET FORTH IN SECTION 2-4-401, C.R.S.

~~(4)~~ (13) "Surplus lines insurance" means coverage placed with an ~~approved~~ ELIGIBLE nonadmitted insurer as provided by section 10-5-108.

**SECTION 2.** In Colorado Revised Statutes, 10-5-108, **amend** (1) introductory portion, (1) (a), (1) (b) introductory portion, (1) (b) (I), (1) (c) (I), and (2) as follows:

**10-5-108. Placement of surplus lines insurance.** (1) ~~No~~ A broker shall NOT place any coverage with a nonadmitted insurer unless, at the time of placement, ~~such~~

~~THE nonadmitted insurer is included on the list of approved nonadmitted insurers prepared by the commissioner at least annually. Nothing in this section shall require the commissioner to place or maintain the name of any nonadmitted insurer on the list~~ MEETS ALL APPLICABLE ELIGIBILITY REQUIREMENTS CONTAINED IN THE FEDERAL ACT OR IS AN INSURANCE EXCHANGE, LLOYDS PLAN, OR GROUP OF INCORPORATED INSURERS UNDER COMMON ADMINISTRATION THAT HAS BEEN APPROVED BY THE COMMISSIONER AND IS INCLUDED ON THE LIST OF ELIGIBLE NONADMITTED INSURERS PREPARED BY THE COMMISSIONER AT LEAST ANNUALLY. To be placed ~~and remain on said approved~~ THE ELIGIBLE list, ~~such~~ THE nonadmitted insurer shall:

(a) ~~Establish and maintain satisfactory evidence of good repute and financial integrity and~~ Submit a current year's application, fees as prescribed by sections 10-3-207 and 10-3-207.5, ~~a copy of its current annual statement, an actuarial opinion,~~ and other information required by the commissioner. In the case of an insurance exchange, THE NONADMITTED INSURER SHALL SUBMIT an aggregate combined ANNUAL statement of all underwriting syndicates operating during the period reported, in addition to individual ANNUAL statements for each syndicate. ~~shall be submitted.~~

(b) (I) In the case of a foreign insurer, ~~have and maintain a deposit in cash or marketable securities having a fair market value of at least two million five hundred thousand dollars with the commissioner or the duly authorized officer of some other state of the United States, to be held for the benefit of all policyholders wherever located, and qualify under one of the following:~~

(I) ~~Have and maintain capital and surplus or its equivalent at least equal to fifteen million dollars, but not less than the amount that would be required by section 10-3-201 for an admitted company writing the same lines of insurance. Notwithstanding the provisions of this subsection (1),~~ MEET ALL APPLICABLE ELIGIBILITY REQUIREMENTS CONTAINED IN THE FEDERAL ACT. The commissioner may approve an insurer with less than the required minimum REQUIREMENTS upon an affirmative finding of acceptability by the commissioner. The finding ~~shall~~ MUST be based upon such factors as ~~but not limited to,~~ quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. ~~In no event shall~~ The commissioner SHALL NOT make an affirmative finding of acceptability when the insurer's capital and surplus is less than four million five hundred thousand dollars.

(c) (I) In the case of an alien insurer, as defined in section 10-3-301 (1), ~~have and maintain in force in the United States an irrevocable trust account in a qualified United States financial institution, for the benefit of United States policyholders, that is in an amount not less than two million five hundred thousand dollars or such greater amount as may be determined by the commissioner and adopted by rule and that consists of cash, securities, letters of credit, or investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state and maintain status on the current national association of insurance commissioners' international insurers department listing;~~

(2) ~~Any~~ A surplus line broker who places insurance with a nonadmitted insurance

company that ~~has not been approved by the commissioner~~ DOES NOT COMPLY WITH THIS ARTICLE is subject to a penalty of up to ten thousand dollars as determined by the commissioner and the surplus line broker's license may be revoked.

**SECTION 3.** In Colorado Revised Statutes, **amend** 10-5-110 as follows:

**10-5-110. Statement - rules.** (1) Each surplus line broker AND EVERY PERSON THAT ENTERS INTO AN INDEPENDENT PROCUREMENT FOR NONADMITTED INSURANCE shall ~~on or before the first day of March of each year,~~ file with the commissioner a verified statement of all ~~surplus line~~ insurance transacted by ~~him~~ THE BROKER OR OTHER PERSON during the preceding ~~calendar year~~ REPORTING PERIOD. THE COMMISSIONER SHALL, BY RULE, DETERMINE THE REPORTING PERIOD.

(2) The statement ~~shall~~ MUST be on forms as prescribed and furnished by the commissioner, and ~~shall~~ MUST show: Gross amount of each kind of insurance transacted, aggregate gross premiums charged, aggregate of returned premiums paid to insureds, aggregate of net premiums, AND additional information as required by the commissioner.

**SECTION 4.** In Colorado Revised Statutes, **amend** 10-5-111 as follows:

**10-5-111. Tax on premiums.** (1) ~~On or before the first day of March of each year,~~ Each surplus line broker AND EVERY PERSON THAT ENTERS INTO AN INDEPENDENT PROCUREMENT FOR NONADMITTED INSURANCE shall remit to the division of insurance a tax ~~of three percent~~ on the net premiums, exclusive of sums collected to cover federal and other state taxes and examination fees, on ~~surplus line~~ NONADMITTED insurance subject to tax ~~transacted by him~~ UNDER THIS ARTICLE during the preceding ~~calendar year~~ REPORTING PERIOD as shown by ~~his annual~~ THE statement filed with the commissioner. THE NET PREMIUMS MUST BE TAXED AT THE RATES DESCRIBED IN SECTION 10-5-111.5.

(2) If a surplus line policy OR INDEPENDENTLY PROCURED POLICY covers AN INSURED WHOSE HOME STATE IS COLORADO, AND THAT POLICY COVERS risks or exposures ~~only partially in this state~~ LOCATED OUTSIDE OF COLORADO, the tax ~~so payable shall be~~ IS computed ~~upon~~ USING the ~~proportion of the premium which is properly allocable to the risks or exposures located in this state~~ ALLOCATION METHOD CONTAINED IN SECTION 10-5-111.5.

**SECTION 5.** In Colorado Revised Statutes, **add** 10-5-111.5 as follows:

**10-5-111.5. Allocation of premium tax.** (1) IN DETERMINING THE AMOUNT OF TAX PAYABLE TO COLORADO, THE ENTIRE AMOUNT OF TAX PAYABLE AT A RATE OF THREE PERCENT ON THE NET PREMIUMS IS PRESUMED TO BE OWED TO COLORADO; EXCEPT THAT, FOR THOSE MULTISTATE RISKS INVOLVING STATES THAT HAVE ENTERED INTO EITHER A COMPACT OR A TAX-SHARING AGREEMENT WITH COLORADO TO SHARE THE TAX, THE PREMIUM TAX RATE AND THE AMOUNTS ALLOCATED TO THE OTHER STATES ARE SUBJECT TO DETERMINATION ACCORDING TO THE TERMS OF THE COMPACT OR AGREEMENT.

(2) THE COMMISSIONER MAY PARTICIPATE IN TAX-SHARING AGREEMENTS TO COLLECT AND DISBURSE FUNDS IN ACCORDANCE WITH SUBSECTION (1) OF THIS

SECTION, IF THE PURPOSES OF THE TAX-SHARING AGREEMENT ARE LIMITED TO:

(a) FACILITATING THE PAYMENT AND ALLOCATION OF PREMIUM TAXES ON NONADMITTED INSURANCE FOR MULTISTATE RISKS AMONG STATES PARTICIPATING IN THE AGREEMENT;

(b) ADOPTING UNIFORM REQUIREMENTS, FORMS, AND PROCEDURES THAT FACILITATE THE REPORTING, PAYMENT, COLLECTION, AND ALLOCATION OF PREMIUM TAXES FOR NONADMITTED INSURANCE FOR MULTISTATE RISKS;

(c) COORDINATING THE REPORTING OF PREMIUM TAXES AND TRANSACTION DATA OF MULTISTATE RISKS AMONG THE STATES PARTICIPATING IN THE AGREEMENT; AND

(d) ESTABLISHING A MECHANISM TO FACILITATE THE RECEIPT AND DISTRIBUTION OF PREMIUM TAXES AND TRANSACTION DATA RELATED TO NONADMITTED INSURANCE OF MULTISTATE RISKS.

**SECTION 6.** In Colorado Revised Statutes, 10-3-909, **amend** (1) as follows:

**10-3-909. Unauthorized insurance premium tax.** (1) Except as to premiums ~~which~~ THAT are subject to a federal premium, excise, or stamp tax equal to or in excess of two and one-fourth percent of net premiums, and except as to premiums on ~~lawfully procured surplus lines insurance and premiums on~~ independently procured insurance on which tax has been paid pursuant to section 10-3-209, 10-5-111, OR 10-5-111.5, every insured under a contract procured from an unauthorized insurer shall pay to the division of insurance before March 1 next succeeding the calendar year in which the insurance was so effectuated, continued, or renewed a premium tax of two and one-quarter percent of net premiums charged for ~~such~~ THE insurance. Such insurance on subjects resident, located, or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, is deemed to be insurance procured, ~~or~~ continued, or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues, and any other consideration for insurance. If the tax prescribed by this section is not paid within the time stated, the tax ~~shall be~~ IS increased by a penalty of twenty-five percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date ~~such~~ THE payment was due to the date paid.

**SECTION 7.** In Colorado Revised Statutes, 10-1-203, **amend** (1) as follows:

**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 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~~ ELIGIBLE 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.

**SECTION 8.** In Colorado Revised Statutes, 10-3-1004, **amend** (1) (b) as follows:

**10-3-1004. Defense of action by unauthorized insurer.** (1) Before any unauthorized foreign or alien insurer files or causes to be filed any pleading in any action, suit, or proceeding instituted against it, such unauthorized insurer shall either deposit, with the clerk of the court in which such action, suit, or proceeding is pending, cash or securities, or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action, or procure a certificate of authority to transact the business of insurance in this state, unless one or more of the following is applicable:

(b) At the time the insurer files any pleading in any action, suit, or proceeding instituted against it, the insurer is listed on the ~~approved~~ ELIGIBLE nonadmitted insurers list prepared by the commissioner pursuant to subsection (1) of section 10-5-108;

**SECTION 9.** In Colorado Revised Statutes, 10-5-101.1, **amend** (1) (b) as follows:

**10-5-101.1. Legislative declaration.** (1) The general assembly finds and declares that property and casualty insurance transactions with nonadmitted insurers are so affected with a public interest as to require regulation, taxation, supervision, and control of such transactions and matters relating thereto, as provided in this article, in order to:

(b) Provide for the public, except for transactions related to the diligent effort requirements of this article for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section, to the extent that insurance is not procurable from admitted insurers, orderly, reasonable, and regulated access to such insurance from ~~approved~~ ELIGIBLE nonadmitted insurers through qualified, licensed, and supervised surplus line agents and brokers;

**SECTION 10.** In Colorado Revised Statutes, **amend** 10-5-104 as follows:

**10-5-104. Endorsement of contract.** Every insurance contract procured and delivered as a surplus line coverage pursuant to this article shall be initialed by or bear the name of the surplus line broker who procured it and shall have stamped upon it the following: "This contract is delivered as a surplus line coverage under the 'Nonadmitted Insurance Act'. The insurer issuing this contract is not licensed in Colorado but is an ~~approved~~ ELIGIBLE nonadmitted insurer. There is no protection under the provisions of the 'Colorado Insurance Guaranty Association Act'."

**SECTION 11.** In Colorado Revised Statutes, 13-64-301, **amend** (1) (a) (I), (1) (a.5) (I), and (1) (b) as follows:

**13-64-301. Financial responsibility.** (1) As a condition of active licensure or authority to practice in this state, every physician or dentist, and every health care institution as defined in section 13-64-202, except as provided in section 13-64-303.5, that provides health care services shall establish financial responsibility, as follows:

(a) (I) If a dentist, by maintaining commercial professional liability insurance coverage with an insurance company authorized to do business in this state or an ~~approved~~ ELIGIBLE nonadmitted insurer allowed to insure in Colorado pursuant to article 5 of title 10, C.R.S., in a minimum indemnity amount of five hundred thousand dollars per incident and one million five hundred thousand dollars annual aggregate per year; except that this requirement is not applicable to a dentist who is a public employee under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(a.5) (I) If a physician, by maintaining commercial professional liability insurance coverage with an insurance company authorized to do business in this state or an ~~approved~~ ELIGIBLE nonadmitted insurer allowed to insure in Colorado pursuant to article 5 of title 10, C.R.S., in a minimum indemnity amount of one million dollars per incident and three million dollars annual aggregate per year; except that this requirement is not applicable to a physician who is a public employee under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(b) If a health care institution, by maintaining, as a condition of licensure, certification, or other authority to render health care services in this state, commercial professional liability insurance coverage with an insurance company authorized to do business in this state or an ~~approved~~ ELIGIBLE nonadmitted insurer allowed to insure in Colorado pursuant to article 5 of title 10, C.R.S., in a minimum indemnity amount of five hundred thousand dollars per incident and three million dollars annual aggregate per year; except that this requirement is not applicable to a certified health care institution that is a public entity under the "Colorado Governmental Immunity Act". In the event a health care institution does not have a commercial professional liability insurance policy in compliance with this paragraph (b), or the limits of professional liability insurance coverage are in excess of any self-insured retention amount, or there is a deductible other than zero dollars, the health care institution shall procure evidence that the commissioner of insurance has accepted and approved an alternative form of establishing financial responsibility in compliance with paragraph (c), (d), or (e) of this subsection (1), in accordance with applicable rules promulgated by the division of insurance. The health care institution shall furnish evidence of alternative financial responsibility compliance to the department of public health and environment as part of the health care institution's application for an initial or renewal license, certification, or other authority.

**SECTION 12. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a referendum petition is filed pursuant to section 1 (3)

of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 13, 2012