

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 09-0990.01 Brita Darling

HOUSE BILL 09-1344

HOUSE SPONSORSHIP

Scanlan,

SENATE SPONSORSHIP

Boyd,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASED REGULATORY OVERSIGHT OF MEDICAL**
102 **NEGLIGENCE INSURANCE, AND MAKING AN APPROPRIATION**
103 **THEREFOR.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Lists medical malpractice insurance as "type I" insurance.

Requires the insurance commissioner to place on file for public inspection any rate filing by a medical malpractice insurer and allows a person, acting in good faith, to require a hearing on any rate increase in excess of 5% by a medical malpractice insurer. Allows the commissioner of insurance to establish minimum qualifications for persons participating

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 21, 2009

in the hearing, including, but not limited to, familiarity with Colorado insurance law and acceptance of a duty to represent the interests of Colorado insurance consumers.

For purposes of calculating a medical malpractice insurer's profits, specifically includes within investment income any investment income on surplus that is reasonably allocable to Colorado insurance.

Adjusts for inflation, annually, the damages limitation for noneconomic loss or injury in medical malpractice lawsuits. Requires the secretary of state to calculate and certify the annual adjusted damages limitation.

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

2 **SECTION 1.** 10-4-401 (3) (a) (VI) and (3) (b), Colorado Revised
3 Statutes, are amended, and the said 10-4-401 (3) (a) is further amended
4 BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

5 **10-4-401. Purpose - applicability.** (3) The kinds of insurance
6 subject to this part 4 shall be divided into two classes, as follows:

7 (a) Type I kinds of insurance, regulated by prior filing and
8 approval of rating information, which shall be subject to all provisions of
9 this part 4 unless specifically excluded by the terms of a section. The
10 following kinds of insurance shall be classified as type I:

11 (VI) ~~Such other kinds of insurance as the commissioner shall~~
12 ~~order classified as type I pursuant to the provisions of section 10-4-403~~
13 ~~(5).~~ MEDICAL MALPRACTICE INSURANCE, INCLUDING MEDICAL
14 MALPRACTICE INSURANCE PROVIDED BY A JOINT UNDERWRITING
15 ASSOCIATION; AND

16 (VII) SUCH OTHER KINDS OF INSURANCE AS THE COMMISSIONER
17 SHALL ORDER CLASSIFIED AS TYPE I PURSUANT TO SECTION 10-4-403 (5).

18 (b) Type II kinds of insurance, regulated by open competition
19 between insurers, including fire, casualty, inland marine, title, medical
20 malpractice by a joint underwriting association regulated under part 9 of

1 ~~this article~~, credit, workers' compensation and employer's liability
2 incidental thereto and written in connection therewith for rates filed by
3 insurers, and all other kinds of insurance that are subject to this part 4 and
4 not specified in paragraph (a) of this subsection (3), including the expense
5 and profit components of workers' compensation insurance, which shall
6 be subject to all the provisions of this part 4 except for sections 10-4-405
7 and 10-4-406. Type II insurers shall file rating data, as provided in
8 section 10-4-403, with the commissioner; except that credit life and credit
9 accident and health insurers shall file schedules of premium rates
10 pursuant to sections 10-10-109 and 10-10-110. A rate filing summary for
11 a type II kind of insurance subject to this part 4, except for workers'
12 compensation insurance, shall be posted on the division's internet site in
13 order to provide notice to the public. The public notice shall include the
14 rate standards that apply pursuant to section 10-4-403 (1). Nothing in this
15 section shall be construed to limit the right of the public to inspect a rate
16 filing and any supporting information pursuant to part 2 of article 72 of
17 title 24, C.R.S., or to impair the commissioner's ability to review rates and
18 determine that the rates are not excessive, inadequate, or unfairly
19 discriminatory.

20 **SECTION 2.** 10-4-403 (2.1) (a) and (2.1) (b), Colorado Revised
21 Statutes, are amended to read:

22 **10-4-403. Standards for rates - competition - procedure -**
23 **requirement for independent actuarial opinions regarding 1991**
24 **legislation.** (2.1) (a) In setting rates for medical malpractice insurance,
25 rates shall not be excessive or inadequate, as defined in this section, nor
26 shall they be unfairly discriminatory. ~~No~~ A rate shall NOT be held to be
27 excessive unless ~~such~~ THE rate is unreasonably high for the insurance

1 provided. ~~and a reasonable degree of competition does not exist in the~~
2 ~~area with respect to the classification to which such rate is applicable. No~~
3 A rate shall NOT be held to be inadequate unless ~~such~~ THE rate is
4 unreasonably low for the insurance provided and ~~the~~ AN INSURER'S
5 continued use of ~~such~~ THE rate endangers the INSURER'S solvency ~~of the~~
6 ~~insurer using the same~~; or unless ~~such~~ THE rate is unreasonably low for
7 the insurance provided and ~~the~~ AN INSURER'S use of THE rate ~~by the~~
8 ~~insurer using the same~~ has or, if continued, will have the effect of
9 destroying competition or creating a monopoly.

10 (b) In setting rates, medical malpractice insurers shall consider
11 past and prospective loss experience and catastrophic hazards, if any,
12 solely within the state of Colorado. However, if there is insufficient
13 experience within Colorado upon which a rate can be based, the insurer
14 may consider experiences within any other state or states ~~which~~ THAT
15 have a similar cost of claim and frequency of claim experience as the state
16 of Colorado. ~~and~~, If insufficient experience is available IN SUCH STATES,
17 the insurer may use a nationwide experience. The insurer, in its rate filing
18 or in its records, shall expressly state and describe what rate experience
19 ~~it~~ THE INSURER is using, specifying the state or states from which
20 experiences were drawn and the considerations used in setting the rates.
21 In considering experience outside the state of Colorado, as much weight
22 as possible shall be given to the Colorado experience. The rates shall
23 allow a reasonable margin for profit and contingencies, including
24 dividends, savings, or unearned premium deposits allowed or returned by
25 insurers to their policyholders, members, or subscribers. In determining
26 profits, the insurer shall consider ALL investment income, ~~from unearned~~
27 ~~premium reserves and reserves for incurred losses and incurred but not~~

1 ~~reported losses~~ INCLUDING INVESTMENT INCOME ON SURPLUS THAT IS
2 REASONABLY ALLOCABLE TO COLORADO INSURANCE.

3 **SECTION 3.** 10-4-406 (2.5), Colorado Revised Statutes, is
4 amended to read:

5 **10-4-406. Review of filings - certain coverages.** (2.5) (a) For
6 any filing made pursuant to section 10-4-405 for workers' compensation
7 and employer's liability insurance incidental thereto and written in
8 connection therewith, and where the commissioner determines that it is
9 necessary to use the services authorized in subsection (3.5) of this section,
10 the commissioner shall have a reasonable time not to exceed sixty days
11 to review or inspect the filing after it is determined to be complete and
12 before the filing shall be considered placed on file pursuant to subsection
13 (2) of this section. The commissioner shall place on file for public
14 inspection the results of any review or examination performed pursuant
15 to subsection (3.5) of this section.

16 (b) THE COMMISSIONER SHALL PLACE ON FILE FOR PUBLIC
17 INSPECTION ALL FILINGS BY A MEDICAL MALPRACTICE INSURER.

18 **SECTION 4.** 10-4-407 (1), Colorado Revised Statutes, is
19 amended to read:

20 **10-4-407. Hearings.** (1) (a) If, pursuant to section 10-4-406 (2),
21 the commissioner determines to hold a public hearing as to a filing or
22 holds such a public hearing pursuant to A request ~~therefor under~~ MADE
23 PURSUANT TO section 10-4-406 (3), ~~he shall give written notice thereof to~~
24 ~~the rating organization or insurer that made the filing,~~ THE COMMISSIONER
25 shall hold ~~such~~ THE hearing within thirty days after commencement of the
26 public inspection period provided for in section 10-4-406 (3), and, not
27 less than ten days prior to the date of the hearing, ~~he~~ THE COMMISSIONER

1 shall give written notice of the hearing to the insurer or rating
2 organization that made the filing. The commissioner may also give
3 advance public notice of ~~such~~ THE hearing by publication of notice in one
4 or more daily newspapers of general circulation in this state.

5 (b) THE COMMISSIONER SHALL HOLD A HEARING IN ACCORDANCE
6 WITH THIS SUBSECTION (1) UPON THE GOOD FAITH REQUEST OF ANY
7 PERSON QUALIFIED UNDER PARAGRAPH (c) OF THIS SUBSECTION (1)
8 REGARDING A PROPOSED AGGREGATE RATE INCREASE OF MORE THAN FIVE
9 PERCENT IN THE RATES OF A MEDICAL MALPRACTICE INSURER. THE
10 CONDUCT OF THE HEARING SHALL BE GOVERNED BY SECTIONS 24-4-102 TO
11 24-4-107, C.R.S. THE PERSON OR PERSONS WHO REQUESTED THE
12 HEARING, AND ANY OTHER PERSON QUALIFIED UNDER PARAGRAPH (c) OF
13 THIS SUBSECTION (1), SHALL BE ALLOWED TO PARTICIPATE IN THE
14 HEARING. THE INSURER SHALL BEAR ALL REASONABLE COSTS OF THE
15 HEARING, AS DETERMINED BY THE COMMISSIONER.

16 (c) THE COMMISSIONER SHALL ESTABLISH THE QUALIFICATIONS OF
17 PERSONS WHO MAY PARTICIPATE IN A HEARING PURSUANT TO PARAGRAPH
18 (b) OF THIS SUBSECTION (1). SUCH QUALIFICATIONS SHALL INCLUDE, BUT
19 NEED NOT BE LIMITED TO:

20 (I) FAMILIARITY WITH THE INSURANCE LAWS OF THE STATE;

21 (II) AN UNDERSTANDING OF THE ACTUARIAL PRINCIPLES
22 EMPLOYED IN ESTABLISHING RATES AND RATING SYSTEMS;

23 (III) SUFFICIENT EXPERTISE TO CONDUCT A TECHNICAL
24 EXAMINATION OF A RATE FILING;

25 (IV) SUFFICIENT RESOURCES TO INTERVENE IN THE RATE FILING
26 PROCESS; AND

27 (V) THE WILLINGNESS AND ABILITY TO REPRESENT THE INTERESTS

1 OF INSURANCE CONSUMERS IN THIS STATE AND THE ACCEPTANCE OF A
2 DUTY OF FIDELITY TO DO SO.

3 **SECTION 5.** 10-3-207 (1), Colorado Revised Statutes, is
4 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

5 **10-3-207. Fees paid by insurance companies.** (1) Every entity
6 regulated by the division in this state shall pay the following fees to the
7 division:

8 (g) (I) FOR THE PURPOSE OF PROVIDING ADEQUATE FUNDS TO THE
9 DIVISION FOR RATES AND FORMS AND ACTUARIAL FOR REVIEW AND
10 APPROVAL OF RATES FOR MEDICAL MALPRACTICE INSURERS AND RATE
11 HEARINGS FOR SUCH INSURERS, IN ADDITION TO ANY OTHER FEE
12 COLLECTED PURSUANT TO THIS SUBSECTION (1), EACH MEDICAL
13 MALPRACTICE INSURER REGULATED BY THE DIVISION SHALL PAY A
14 NONREFUNDABLE ANNUAL FEE ON OR BEFORE MARCH 1 OF EACH YEAR.
15 THIS FEE SHALL BE ESTABLISHED BY THE COMMISSIONER IN AN AMOUNT
16 SUFFICIENT TO COVER THE COSTS ASSOCIATED WITH THE REVIEW AND
17 APPROVAL AND RATES AND RATE HEARINGS.

18 (II) NOTWITHSTANDING ANY PROVISIONS OF SECTION 10-1-103 OR
19 10-1-108 (9) TO THE CONTRARY, ALL FEES AND SURCHARGES COLLECTED
20 PURSUANT TO THIS PARAGRAPH (g) SHALL BE TRANSMITTED TO THE STATE
21 TREASURER, WHO SHALL DEPOSIT THE SAME IN THE DIVISION OF
22 INSURANCE CASH FUND CREATED IN SECTION 10-1-103, AND SHALL BE
23 SUBJECT TO ANNUAL APPROPRIATION TO THE DIVISION AND TO THE
24 DEPARTMENT OF LAW FOR THE PURPOSES SET FORTH IN THIS PARAGRAPH
25 (g).

26

27 **SECTION 6. Appropriation.** (1) In addition to any other

1 appropriation, there is hereby appropriated, out of any moneys in the
2 division of insurance cash fund created in section 10-1-103 (3), Colorado
3 Revised Statutes, not otherwise appropriated, to the department of
4 regulatory agencies, for allocation to the division of insurance, for
5 regulatory oversight of adjustments on medical negligence insurance, for
6 the fiscal year beginning July 1, 2009, the sum of twenty-eight thousand
7 five hundred seventy-four dollars (\$28,574) cash funds and 0.2 FTE, or
8 so much thereof as may be necessary, for the implementation of this act.

9 (2) In addition to any other appropriation, there is hereby
10 appropriated to the department of law, for the fiscal year beginning July
11 1, 2009, the sum of fifteen thousand twenty dollars (\$15,020) and 0.1
12 FTE, or so much thereof as may be necessary, for the provision of legal
13 services to the department of regulatory agencies related to the
14 implementation of this act. Said sum shall be from reappropriated funds
15 received from the department of regulatory agencies out of the
16 appropriation made in subsection (1) of this section.

17 **SECTION 7. Applicability.** This act shall apply to acts
18 occurring on or after the effective date of this act.

19 **SECTION 8. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.