

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0209.01 Thomas Morris

**HOUSE BILL 10-1012**

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**HOUSE SPONSORSHIP**

**Pace,** Miklosi, Ryden

**SENATE SPONSORSHIP**

**Carroll M.,** Hodge, Tochtrop

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**House Committees**

Judiciary  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING LIMITATIONS ON THE USE OF SURVEILLANCE OF**  
102             **EMPLOYEES WHO HAVE SUBMITTED A WORKERS'**  
103             **COMPENSATION CLAIM.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

**Interim Committee to Study Issues Related to Pinnacol Assurance. Section 1** of the bill:

!     Prohibits an insurer or employer from conducting surveillance of an employee who has submitted a workers'

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.*

compensation claim unless the insurer or employer has a reasonable basis to suspect that the employee has committed fraud or made a material misstatement concerning the claim;

- ! Allows the employee to request an expedited hearing before a prehearing administrative law judge;
- ! Requires the insurer or employer to provide all materials collected during the surveillance to the injured worker and to destroy all materials collected during the surveillance unless the materials are reasonably necessary to resolve an ongoing claim of fraud;
- ! Requires persons conducting surveillance to answer the employee's questions truthfully; and
- ! Creates a \$1,000-per-day penalty for violations.

**Section 2** of the bill:

- ! Directs the prehearing administrative law judge to issue an injunction against the surveillance unless the insurer or employer shows that it has a reasonable basis to suspect that the employee has committed fraud or made a material misstatement concerning the claim; and
- ! Allows the identity of a witness or whistleblower who provides evidence in good faith to be withheld or limited to an in camera review.

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

2 **SECTION 1.** 8-43-304 (2), Colorado Revised Statutes, is  
3 amended to read:

4 **8-43-304. Violations - penalty - offset for benefits obtained**  
5 **through fraud - rules.** (2) (a) An insurer or self-insured employer may  
6 take a credit or offset of previously paid workers' compensation benefits  
7 or payments against any further workers' compensation benefits or  
8 payments due a worker when the worker admits to having obtained the  
9 previously paid benefits or payments through fraud, or a civil judgment  
10 or criminal conviction is entered against the worker for having obtained  
11 the previously paid benefits through fraud. Benefits or payments obtained  
12 through fraud by a worker shall not be included in any data used for

1 rate-making or individual employer rating or dividend calculations by any  
2 insurer or by Pinnacol Assurance.

3 (b) (I) NO INSURER OR EMPLOYER SHALL CONDUCT SURVEILLANCE  
4 OF AN EMPLOYEE WHO HAS SUBMITTED A WORKERS' COMPENSATION CLAIM  
5 UNLESS THE INSURER OR EMPLOYER HAS A REASONABLE BASIS TO SUSPECT  
6 THAT THE EMPLOYEE HAS COMMITTED FRAUD OR MADE A MATERIAL  
7 MISSTATEMENT CONCERNING THE CLAIM. [REDACTED] [REDACTED] [REDACTED] ONCE THE  
8 APPLICABLE STATUTE OF LIMITATIONS HAS RUN, THE INSURER OR  
9 EMPLOYER SHALL DESTROY ALL MATERIALS COLLECTED DURING THE  
10 SURVEILLANCE UNLESS THE MATERIALS ARE REASONABLY NECESSARY TO  
11 RESOLVE AN ONGOING CLAIM OF FRAUD. IF THE EMPLOYEE ASKS A PERSON  
12 WHO IS CONDUCTING THE SURVEILLANCE WHAT THAT PERSON IS DOING OR  
13 ON WHOSE BEHALF THE PERSON IS ACTING, IT SHALL BE A VIOLATION OF  
14 THIS PARAGRAPH (b) IF THE PERSON FAILS TO ANSWER TRUTHFULLY THAT  
15 THE PERSON IS CONDUCTING SURVEILLANCE ON THE EMPLOYEE OR THAT  
16 THE PERSON IS ACTING ON BEHALF OF THE INSURER OR EMPLOYER, AS  
17 APPROPRIATE.

18 (II) A VIOLATION OF THIS PARAGRAPH (b) IS PUNISHABLE BY AN  
19 ADMINISTRATIVE FINE OF ONE THOUSAND DOLLARS PER DAY OF  
20 UNAUTHORIZED SURVEILLANCE, AN INJUNCTION, OR BOTH A FINE AND AN  
21 INJUNCTION. INFORMATION COLLECTED BY UNAUTHORIZED  
22 SURVEILLANCE SHALL NOT BE USED TO REJECT A CLAIM. THE DIVISION  
23 SHALL TRANSMIT REVENUES COLLECTED PURSUANT TO THIS PARAGRAPH  
24 (b) TO THE EMPLOYEE.

25 [REDACTED] [REDACTED]

26 **SECTION 2. Act subject to petition - effective date -**  
27 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day

1 following the expiration of the ninety-day period after final adjournment  
2 of the general assembly (August 11, 2010, if adjournment sine die is on  
3 May 12, 2010); except that, if a referendum petition is filed pursuant to  
4 section 1 (3) of article V of the state constitution against this act or an  
5 item, section, or part of this act within such period, then the act, item,  
6 section, or part shall not take effect unless approved by the people at the  
7 general election to be held in November 2010 and shall take effect on the  
8 date of the official declaration of the vote thereon by the governor.

9 (2) The provisions of this act shall apply to surveillance conducted  
10 on or after the applicable effective date of this act.