

Colorado Statutes

Title 10. INSURANCE

LICENSES

Article 2. Licenses

Part 4. LICENSING AND APPOINTMENT OF INSURANCE PRODUCERS

Current through 2011 Legislative Session

§ 10-2-401. License required

(1)

No person shall act as or hold oneself out to be an insurance producer unless duly licensed as an insurance producer in accordance with this article. Every insurance producer who solicits or negotiates an application for insurance of any kind on behalf of an insurer shall be regarded as representing the insurer and not the insured or any beneficiary of the insured in any controversy between the insurer and such insured or beneficiary. A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.

(2)

No insurance producer shall make application for, procure, negotiate for, or place for others any policies for any line or lines of insurance for which he or she is not then qualified and licensed.

(3)(a)

Any representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer; except that a license is not required of any officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch thereof who devotes substantially all of his or her time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of insurance contracts solicited or negotiated.

(b)

Any agent, representative, or member of a fraternal benefit society who in the preceding calendar year solicited and procured life insurance contracts on behalf

of any society in a face amount of insurance not exceeding fifty thousand dollars or, in the case of any other kind of insurance that the fraternal benefit society may write, solicited and procured such insurance on behalf of not more than twenty-five individuals, who received no commissions or other compensation therefor, and who does not reasonably expect to exceed soliciting or procuring insurance on behalf of more than twenty-five individuals in the current year, shall be exempt from the licensing requirements for an insurance producer.

(4)

No insurance producer license shall be granted or extended to any person if the license is being or will be used for the purpose of writing controlled business. As used in this section, "controlled business" means insurance procured or to be procured by or through such person upon:

(a)

The person's own life, person, property, or risks, or those of his or her spouse; or

(b)

The life, person, property, or risks of the person's employer or the person's own business.

(5)

Such a license shall be deemed to have been, or intended to be, used for the purpose of writing controlled business, if during any twelve-month period the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee.

(6)

A title insurance agent and a title insurance company, as defined in section 10-11-102(9) and (10), shall disclose the names of all affiliated business arrangements to which the company or agent is a party at the time of application for a new license, on the continuation due date of an existing license, and upon a change to any identifying information, in a form and manner acceptable to the commissioner. The disclosure shall include the physical location of the affiliated businesses, identify the settlement producer with whom the company or agent is associated, and identify the underwriter of the title insurance business.

History. L. 93: Entire article R&RE, p. 1355, § 1, effective January 1, 1995. L. 94: (3) amended, p. 740, § 1, effective January 1, 1995. L. 2001: (1) amended, p. 1195, § 8, effective January 1, 2002. L. 2006: (6) added,

p. 268, § 3, effective July 1.

Editor's Note:

This section is similar to former §§ 10-2-102 and 10-2-204 as they existed prior to 1993.

Cross References:

For the provisions pertaining to fraternal benefit societies, see article 14 of this title.

Colorado Statutes

Title 10. INSURANCE

REGULATION OF INSURANCE COMPANIES

Article 3. Regulation of Insurance Companies

Part 1. GENERAL

Current through 2011 Legislative Session

§ 10-3-105. Certificate of authority to do business - companies prohibited - definitions

(1)

Except pursuant to the provisions of article 5 of this title, no foreign or domestic insurance company shall transact any insurance business in this state, unless it first procures from the commissioner a certificate of authority stating that the requirements of the laws of this state have been complied with and authorizing it to do business. The certificate of authority shall expire on June 30 each year and shall be renewed annually if the company has continued to comply with the laws of the state.

(2)

Except as provided by subsection (3) of this section, no certificate of authority to transact any kind of insurance business in this state shall be issued or renewed to any company which is owned, or financially controlled in whole or in part, by another state of the United States, or by a foreign government, or by any political subdivision, instrumentality, or agency of either, unless such company was so owned, controlled, or constituted prior to January 1, 1955, and also authorized to do business in this state on or prior to January 1, 1955.

(3)(a)

The ownership or financial control, in part, of any insurer by any state of the United States, or by a foreign government, or by any political subdivision, instrumentality, or agency of either shall not restrict the commissioner from issuing, renewing, or continuing in effect the license of that insurer to transact in this state the kinds of insurance business for which that insurer is otherwise qualified under the provisions of this title and under its charter, if the insurer has satisfied the commissioner that:

(I)

It is not subject to any form of subsidy;

(II)

It does not engage in practices that discriminate in violation of section 24-34-402, C.R.S.;

(III)

The ownership or financial control will not create the presence of any sovereign immunity in the insurer;

(IV)

Appropriate measures and controls exist to avoid security problems resulting from the insurer's access to confidential information and data of its insured; and

(V)

The ownership or financial control will not result in substantial or undue influence being asserted over the insurer.

(b)

The provisions of paragraph (a) of this subsection (3) are a clarification of the provisions of subsection (2) of this section and not a substantive change in the provisions of said subsection (2) as said subsection (2) existed prior to March 11, 1991.

(4)(a)

The commissioner may order an insurer to pay restitution to a person, if, after notice to the insurer and after a hearing held in accordance with sections 24-4-104 and 24-4-105, C.R.S., the commissioner finds that the insurer has violated this title or that the insurer is financially responsible for the unfair business practices of an insurance producer pursuant to section 10-3-131.

(b)

As used in this subsection (4), "insurance producer" shall have the same meaning as set forth in section 10-2-103(6).

(c)

For the purposes of this subsection (4), "restitution" means benefits or moneys owed due to the regulated entity's violation of this title, including, but not limited to, costs and expenses for lost time from work and attorney fees.

History. L. 13: p. 334, § 21(1). C.L. § 2491. CSA: C. 87, § 19. L. 49: p. 472, § 18. CRS 53: § 72-1-17. C.R.S. 1963: § 72-1-17. L. 91: (2) amended and (3) added, p. 1239, § 1, effective March 11. L. 92: (1) amended, p. 1536, § 25, effective July 1. L. 2008: (4) added, p. 585, § 2, effective August 5; (4)(c) amended, p. 2174, § 6,

effective August 5.

Case Notes:

ANNOTATION

Annotator's note. Cases relevant to § 10-3-105 decided prior to its earliest source, L. 13, p. 334, § 21 (1), have been included in the annotations to this section.

After a company is once established according to the provisions of this section upon proper evidence, the validity of the company's organization cannot be questioned or its legal existence denied by any of its members. *Aronoff v. Pioneer Mut. Comp. Co.*, 134 Colo. 395, 304 P.2d 1083 (1956).

The corporation is responsible to the government, and until forfeiture may continue to exercise its legitimate functions. *Aronoff v. Pioneer Mut. Comp. Co.*, 134 Colo. 395, 304 P.2d 1083 (1956).

Even when commissioner unlawfully issued certificate. Policyholders may not attack an assessment as being invalid for the reason that the insurance commissioner unlawfully issued certificates of authority permitting the company to do business when its financial condition was impaired and it had failed to maintain the required reserve and surplus. *Aronoff v. Pioneer Mut. Comp. Co.*, 134 Colo. 395, 304 P.2d 1083 (1956).

Judicial proceedings must be resorted to, and judgment of ouster made to effect a dissolution. *Aronoff v. Pioneer Mut. Comp. Co.*, 134 Colo. 395, 304 P.2d 1083 (1956).

Contracts of insurance made out of the state by correspondence upon property in the state are valid and enforceable. *French v. People*, 6 Colo. App. 311, 40 P. 463 (1895).

Compliance with section presumed on appeal. An action by an insurance company where there was introduced in evidence a document to show its authority to do business in this state, and the abstract of record prepared on appeal fails to contain the document, it will be presumed that the document introduced in evidence was a certificate of the superintendent of insurance that the requirements of the law of the state had been complied with. *Thompson v. Commercial Union Assurance Co.*, 20 Colo. App. 331, 78 P. 1073 (1904).

Cross References:

For acts which constitute transacting business by an unauthorized insurer, see § 10-3-903.

Colorado Statutes

Title 10. INSURANCE

REGULATION OF INSURANCE COMPANIES

Article 3. Regulation of Insurance Companies

Part 9. UNAUTHORIZED INSURANCE

Current through 2011 Legislative Session

§ 10-3-903. Definition of transacting insurance business

(1)

Any of the following acts in this state, effected by mail or otherwise, by an unauthorized insurer constitute transacting insurance business in this state as such term is used in section 10-3-105:

(a)

The making of, or proposing to make, as an insurer, an insurance contract;

(b)

The making of, or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

(c)

The taking or receiving of any application for insurance;

(d)

The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof;

(e)

The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

(f)

Directly or indirectly acting as an agent for or otherwise representing, or aiding on behalf of another, any person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof; or in the dissemination of information as to coverage or rates; or in the forwarding of applications; or in the delivery of

policies or contracts; or in the inspection of risks; or in the fixing of rates; or in the investigation or adjustment of claims or losses; or in the transaction of matters subsequent to the effectuation of the contract and arising out of it; or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. The provisions of this paragraph (f) shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of such employer.

(g)

The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance;

(h)

The doing, or proposing to do, any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes;

(i)

Any other transactions of business in this state by an insurer.

(2)

The provisions of this section do not apply to:

(a)

The lawful transaction of surplus lines insurance;

(b)

The lawful transaction of reinsurance by insurers;

(c)

Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy;

(d)

Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid;

(e)

Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;

(f)

Transactions in this state involving group life or group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business;

(g)

The transaction of business by a preowned home warranty service company pursuant to part 6 of article 61 of title 12, C.R.S.;

(h)

Transactions in this state involving group sickness and accident or blanket sickness and accident insurance where the master policy was lawfully issued and delivered to a single employer in another state in which the company was authorized to do an insurance business, when a master policy which covers residents of this state includes mammography benefits at a level at least as comprehensive as those required by section 10-16-104(18) (b) (III);

(i)

Any transaction in this state involving the issuance of a charitable gift annuity, as defined in section 10-1-102(4);

(j)

The sale of authorized insurance by agents of a motor vehicle rental company if such sale complies with the limitations set forth in section 10-2-105(2) (g);

(k)

Participation in a direct provider contracting pilot program pursuant to section 25.5-5-413, C.R.S.

History. L. 67: p. 868, § 2. C.R.S. 1963: § 72-25-2. L. 79: (2)(g) added, p. 582, § 2, effective June 7. L. 91: (2)(f) amended and (2)(h) added, p. 1213, § 6, effective July 1. L. 92: (2)(h) amended, p. 1750, § 1, effective May 29; (2)(h) amended, p. 1750, § 2, effective July 1. L. 95:(2)(i) added, p. 218, § 2, effective April 17. L. 98: (2)(j) added, p. 234, § 4, effective April 10. L. 2001: (2)(j) amended, p. 1213, § 37, effective January 1, 2002. L. 2003: (2)(i) amended, p. 617, § 11, effective July 1; (2)(k) added, p. 1784, § 15, effective July 1. L. 2006: (2)(k) amended, p. 1998, § 31, effective July 1. L. 2009: (2)(h) amended, (HB 09-1204), ch. 344, p. 1806, § 3, effective January 1, 2010.

Cross References:

(1) For reinsurance, see part 7 of this article; for surplus line insurance, see article 5 of this title.

(2) For the legislative declaration contained in the 1998 act enacting subsection (2)(j), see section 1 of chapter 88, Session Laws of Colorado 1998. For the legislative declaration contained in the 2009 act amending subsection (2)(h), see section 1 of chapter 344, Session Laws of Colorado 2009.

Colorado Statutes

Title 34. MINERAL RESOURCES

MINES AND MINERALS

Mined Land Reclamation

Article 32.5. Colorado Land Reclamation Act for the Extraction of Construction Materials

Current through 2011 Legislative Session

§ 34-32.5-117. Warranties of performance - warranties of financial responsibility - release of warranties

(1)

A permit shall not be issued under this article until the board receives the performance and financial warranties described in subsections (2), (3), and (4) of this section.

(2)

A "performance warranty" is a written promise made by the operator to the board to comply with this article and shall be in such form as the board may prescribe. Whenever two or more persons or entities are named as operators in a single permit, such operators may limit the scope of their individual performance warranties if such warranties, in the aggregate, warrant the performance of all requirements of this article.

(3)(a)

A "financial warranty" is a written promise a party makes to the board to be responsible for reclamation costs, up to the amount specified in subsection (4) of this section, and includes proof of financial responsibility. A financial warranty shall be in such form as the board may prescribe and may be provided by the operator, by a third party, or by any combination of persons or entities.

(b)

The board may accept interests in real and personal property as financial warranties to the extent of a specified percentage of the estimated value of such property. A person offering such a financial warranty shall submit information to show clear title to and the value of such property.

(c)

The board may refuse to accept a financial warranty if:

(I)

The value of such warranty is dependent upon the success, profitability, or continued operation of the mine; or

(II)

It determines that such warranty cannot reasonably be converted to cash within one hundred eighty days of forfeiture.

(d)

For construction materials operations:

(I)

This subsection (3) shall apply on July 1, 1993, to a deed of trust used as collateral for a new financial warranty completed on or after such date;

(II)

This subsection (3) shall be effective on January 1, 1996, with respect to a:

(A)

Financial warranty that is collateral for a deed of trust used as collateral for a financial warranty in existence on July 1, 1993, and subsequent amendments of such deed of trust; and

(B)

Financial warranty completed before July 1, 1993, if the value of such financial warranty includes a construction material value or if construction material value is used to update such warranty. The value of a financial warranty described in this sub-subparagraph (B) shall include the construction material value for the life of the warranty.

(e)

An instrument offered as a financial warranty pursuant to this subsection (3) shall provide that the board may recover any necessary costs it incurs, including attorney fees, in foreclosing on or realizing collateral used to secure such financial warranty in the event of forfeiture.

(f)

Proof of financial responsibility may consist of one or more of the following, subject to approval by the board:

(I)

A surety bond issued by a corporate surety authorized to

do business in this state;

(II)

A letter of credit issued by a bank authorized to do business in the United States;

(III)

A certificate of deposit;

(IV)

A deed of trust or security agreement encumbering real or personal property and creating a first lien in favor of this state;

(V)

Assurance, in such form as the board may require, that:

(A)

Upon commencement of production, the operator will establish an individual reclamation fund to be held by an independent trustee for the board, upon such terms and conditions as the board may prescribe, and funded by periodic cash payments representing such fraction of receipts as will, in the opinion of the board, provide assurance that funds will be available for reclamation;

(B)

Prior to the issuance of a permit, the operator will provide another form of financial warranty as described in this paragraph (f). As the reclamation fund increases in value, the other form of financial warranty may be decreased in value so long as the sum of financial warranties is the amount specified in subsection (4) of this section.

(C)

Project-related fixtures and equipment, excluding rolling stock, owned or to be owned by the financial warrantor within the permit area will have a salvage value at least equal to the amount of the financial warranty or the appropriate portion of such warranty;

(D)

Existing liens and encumbrances applicable to project-related fixtures and equipment shall be subordinated to the lien described in section 34-32.5-118; except that liens in favor of the United States, a state, or a political subdivision shall not be so subordinated;

(E)

Project-related fixtures and equipment shall be maintained in good operating condition and will not be removed from the permit area without the prior consent of the board;

(VI)

A certified financial statement for the financial warrantor's most recent fiscal year and a certification by an independent auditor that:

(A)

The financial warrantor is the issuer of one or more currently outstanding senior credit obligations that have been rated by a nationally recognized rating organization;

(B)

The obligations enjoy a rating by such rating organization of 'A' or better;

(C)

The financial warrantor's net worth was at least twice the amount of all financial warranties made by such warrantor as of the close of the most recent fiscal year;

(VII)

A certified financial statement for the financial warrantor's most recent fiscal year and a certification by an independent auditor that as of the close of such year the financial warrantor's:

(A)

Net worth was at least ten million dollars and was equal to or greater than twice the amount of all financial warranties;

(B)

Tangible fixed assets in the United States were worth at least twenty million dollars;

(C)

Total liabilities-to-net-worth ratio was not more than two to one;

(D)

Net income, excluding nonrecurring items, was positive. Nonrecurring items that affect net income shall be stated in order to determine if they materially affect self-bonding capacity.

(VIII)

Proof that the operator is a department or division of state government or a unit of county or municipal government.

(g)

Proof of financial responsibility submitted or revised on or after July 1, 1993, shall be in compliance with

subsection (4) of this section.

(4)(a)

The board shall prescribe the amount and duration of financial warranties, taking into account the nature, extent, and duration of the proposed mining operation and the magnitude, type, and estimated cost of planned reclamation.

(b)(I)

In a single year during the life of a permit the amount of required financial warranties shall not exceed the estimated cost of fully reclaiming all lands to be affected in such year plus all lands affected in previous permit years and not yet fully reclaimed. For purposes of this paragraph (b), reclamation costs shall be computed with reference to current reclamation costs. A financial warranty shall be sufficient to assure the completion of reclamation of affected lands if, because of forfeiture, the office has to complete such reclamation and shall include an additional amount equal to five percent of the amount of the financial warranty to defray administrative costs incurred by the office in conducting the reclamation.

(II)

The office and the board shall take reasonable measures to assure the continued adequacy of a financial warranty.

(c)(I)

The board may:

(A)

From time to time and for good cause shown, increase or decrease the amount and duration of a required financial warranty;

(B)

By rule or permit condition, require that proof of value of all or any group of warranties held by the board be submitted on a periodic basis;

(C)

By rule or permit condition, limit certain types of warranties to specific purposes or require that a specified percentage of the total bond be held in easily valued and convertible instruments.

(II)

A financial warrantor shall have sixty days after the date of notice of an adjustment to fulfill the new requirements.

(5)(a)

An operator may file a written notice of completion with

the office whenever such operator believes that any or all requirements of this article have been completed with respect to any or all of such operator's affected lands. Within sixty days after receiving such notice, or as soon as weather conditions permit, the office shall inspect affected lands and the reclamation described in the notice to determine if the operator has complied with all applicable requirements.

(b)

If the board or office finds that an operator has successfully complied with any or all requirements of this article, it shall release all performance and financial warranties applicable to such requirements. Releases shall be in writing and delivered promptly to the owner or operator after the date of such finding.

(c)

If the board or office finds that an operator has not complied with applicable requirements of this article, it shall advise the operator of such noncompliance not more than sixty days after the date of the inspection.

(d)

If the office fails to conduct an inspection within the time specified in paragraph (a) of this subsection (5) or to advise the operator of deficiencies within the time specified in paragraph (c) of this subsection (5), then all financial warranties applicable to the reclamation described in the notice shall be deemed released as a matter of law.

(6)(a)

A financial warranty shall be maintained in good standing for the entire life of a permit issued under this article. A financial warrantor shall immediately notify the board of an event that may impair its warranty.

(b)

Each financial warrantor who provides proof of financial responsibility in a form described in subsection (3) (f) (IV) to (3) (f) (VII) or subsection (8) of this section shall cause to be filed with the board a certification by an independent auditor. Such certification shall be filed annually and shall provide that, as of the close of the financial warrantor's most recent fiscal year, such financial warrantor continued to meet all applicable requirements of such subparagraphs (IV) to (VII). A financial warrantor who no longer meets such requirements shall cause to be filed an alternate form of financial warranty.

(c)

A financial warrantor who provides proof of financial responsibility in a form described in paragraph (b) of this

subsection (6) shall notify the board within sixty days after a net loss is incurred in a quarterly period.

(d)

Whenever the board receives a notice under paragraph (a) or (c) of this subsection (6), fails to receive a certification or substitute warranty as required by paragraph (b) of this subsection (6), or otherwise has reason to believe that a financial warranty has been materially impaired, it may convene a hearing for the purpose of determining whether impairment has in fact occurred.

(e)

Whenever the board convenes a hearing pursuant to this subsection (6), it may hire an independent consultant to provide expert advice at the hearing. The fees of any such consultant shall be paid by the financial warrantor, and no consultant shall be hired until the financial warrantor signs a written fee agreement in such form as the board may prescribe. If a financial warrantor refuses to sign such an agreement, the board may, without hearing, order such financial warrantor to provide an alternate form of financial warranty.

(f)

If the board finds, at any hearing held pursuant to this subsection (6), that a financial warranty has been materially impaired, it may order the financial warrantor to provide an alternate form of financial warranty.

(g)

A financial warrantor shall have ninety days to provide any alternate warranty required under this subsection (6).

(h)

All hearings held under this subsection (6) shall comply with the requirements of article 4 of title 24, C.R.S.

(7)

For purposes of this section, a "Rating of 'A' or better" means that a nationally recognized rating organization has determined that the obligations are at least of an upper-medium grade. This means that the factors giving security to the principal and interest are considered to be adequate but elements may be present that suggest the possibility of adverse effects if economic and trade conditions change.

(8)(a)

The board or office may accept a first-priority lien on project-related fixtures and equipment that must remain on site for the reclamation plan to be performed in lieu of including the cost of acquiring and installing such fixtures and equipment in the amount of the financial warranty prescribed pursuant to subsection (4) of this

section.

(b)

The board or office may accept a first-priority lien on project-related fixtures and equipment that must be demolished or removed from the site under a reclamation plan and may, in its discretion, accept such a lien as a portion of the proof of financial responsibility if the amount credited does not exceed the cost of demolishing and removing such fixtures and equipment or the market value of such fixtures and equipment, whichever is less.

(c)

Any fixtures and equipment accepted pursuant to this subsection (8) shall be insured and maintained in good operating condition and shall not be removed from the permit area without the prior consent of the board. A financial warrantor that provides a lien on such equipment and fixtures shall file an annual report with the office in sufficient detail to fully describe the condition, value, and location of all pledged fixtures and equipment. Such financial warrantor shall not pledge such equipment and fixtures to secure any other obligation and shall immediately notify the office of any other interest that arises in the pledged property.

History. L. 95: Entire article added, p. 1178, § 1, effective July 1.