Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

DRAFT
10.5.09

BILL 4

LLS NO. 10-0209.01 Thomas Morris **INTERIM COMMITTEE BILL**

Interim Committee to Study Issues Related to Pinnacol Assurance

SHORT TITLE: "Limit Surveillance Workers' Comp Claims"

A BILL FOR AN ACT

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

Bill Summary

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

Interim Committee to Study Issues Related to Pinnacol Assurance. Requires an insurer or employer who wishes to conduct surveillance of an employee who has submitted a workers' compensation claim to present prima facie evidence that the employee's claim is fraudulent to a prehearing administrative law judge. Assesses a fee to cover the cost of hearings and an additional fee of $50 to fund the injured

worker advocate office. If no fraud is found, requires the insurer or employer to provide all materials collected during the surveillance to the injured worker. Creates a $1,000-per-day penalty for violations.

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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
13 rate-making or individual employer rating or dividend calculations by any
14 insurer or by Pinnacol Assurance.

15 (b) (I) NO INSURER OR EMPLOYER SHALL CONDUCT SURVEILLANCE
16 OF AN EMPLOYEE WHO HAS SUBMITTED A WORKERS' COMPENSATION CLAIM
17 UNLESS THE INSURER OR EMPLOYER PRESENTS PRIMA FACIE EVIDENCE
18 THAT THE CLAIM IS FRAUDULENT TO A PREHEARING ADMINISTRATIVE LAW
19 JUDGE PURSUANT TO SECTION 8-43-207.5 (1) (a) (II). IF THE PREHEARING
20 ADMINISTRATIVE LAW JUDGE APPROVES THE SURVEILLANCE AND NO
21 FRAUD IS FOUND, THE INSURER OR EMPLOYER SHALL PROVIDE ALL
22 MATERIALS COLLECTED DURING THE SURVEILLANCE TO THE INJURED
23 WORKER, INCLUDING A STATEMENT OF THE TOTAL BUDGET SPENT ON
24 SURVEILLANCE, ALL VIDEO RECORDINGS COLLECTED, AND A TRANSCRIPT

1 OR AUDIO RECORDING OF ALL INTERVIEWS CONDUCTED.
2 (II) A VIOLATION OF THIS PARAGRAPH (b) IS PUNISHABLE BY AN
3 ADMINISTRATIVE FINE OF ONE THOUSAND DOLLARS PER DAY OF
4 UNAUTHORIZED SURVEILLANCE. INFORMATION COLLECTED BY
5 UNAUTHORIZED SURVEILLANCE SHALL NOT BE USED TO REJECT A CLAIM.
6 THE DIVISION SHALL TRANSMIT REVENUES COLLECTED PURSUANT TO THIS
7 PARAGRAPH (b) TO THE EMPLOYEE.
8 **SECTION 2.** 8-43-207.5 (1), Colorado Revised Statutes, is
9 amended to read:
10 **8-43-207.5. Prehearing conferences.** (1) (a) Notwithstanding
11 any provision of articles 40 to 47 of this title to the contrary, at any time
12 not less than ten days prior to the formal adjudication on the record of any
13 issue before the director or an administrative law judge in the office of
14 administrative courts, any party to a claim may request a prehearing
15 conference before a prehearing administrative law judge in the division
16 of workers' compensation for the speedy resolution of or simplification
17 of any issues and to determine the general readiness of remaining issues
18 for formal adjudication on the record. The issues addressed in such
19 prehearing conference shall be limited to:
20 (I) Ripeness of legal, but not factual, issues for formal
21 adjudication on the record before the director or an administrative law
22 judge in the office of administrative courts;
23 (II) A REQUEST SUBMITTED BY AN INSURER OR EMPLOYER
24 PURSUANT TO SECTION 8-43-304 (2) (b) FOR SURVEILLANCE OF AN
25 EMPLOYEE WHO HAS SUBMITTED A WORKERS' COMPENSATION CLAIM. THE
26 PREHEARING ADMINISTRATIVE LAW JUDGE SHALL APPROVE THE
27 SURVEILLANCE AFTER AN EX PARTE HEARING ONLY IF THE INSURER OR

1 EMPLOYER PRESENTS PRIMA FACIE EVIDENCE THAT THE CLAIM IS
2 FRAUDULENT. AT THE TIME OF SUBMISSION OF A REQUEST, THE
3 REQUESTER SHALL PAY THE DIVISION A FEE PRESCRIBED BY THE DIRECTOR
4 BY RULE. SUCH FEE SHALL COVER THE DIVISION'S ADMINISTRATIVE COSTS.
5 THE STATE TREASURER SHALL CREDIT FEES COLLECTED PURSUANT TO THIS
6 SUBPARAGRAPH (II) TO THE WORKERS' COMPENSATION CASH FUND
7 CREATED IN SECTION 8-44-112 (7) (a);
8 (III) Discovery matters; and
9 (IV) Evidentiary disputes.
10 (b) The filing of an application for hearing with the office of
11 administrative courts shall not be a prerequisite to a request for a
12 prehearing conference under this section. The director and the
13 administrative law judges in the office of administrative courts may also
14 request a prehearing conference under this section.
15 **SECTION 3.** 8-43-105 (3), Colorado Revised Statutes, as enacted
16 by ___ Bill 10-____, <{***LLS 10-0210***}> is amended to read:
17 **8-43-105. Injured worker advocate office - creation - powers,**
18 **duties, functions - fees.** (3) (a) When a workers' compensation insurer
19 submits a rate filing to the commissioner of insurance pursuant to section
20 10-4-405, C.R.S., the insurer shall pay a fifty-dollar fee.
21 (b) WHEN A PERSON SUBMITS A REQUEST PURSUANT TO SECTION
22 8-43-207.5 (1) (a) (II), THE PERSON SHALL PAY A FIFTY-DOLLAR FEE IN
23 ADDITION TO THE FEE PRESCRIBED BY RULE PURSUANT TO SAID SECTION.
24 (c) The state treasurer shall credit the ~~fee~~ FEES SPECIFIED IN THIS
25 SUBSECTION (3) to the injured worker advocate cash fund created in
26 section 8-43-106.
27 **SECTION 4. Act subject to petition - effective date -**

1 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
2 following the expiration of the ninety-day period after final adjournment
3 of the general assembly (August 11, 2010, if adjournment sine die is on
4 May 12, 2010); except that, if a referendum petition is filed pursuant to
5 section 1 (3) of article V of the state constitution against this act or an
6 item, section, or part of this act within such period, then the act, item,
7 section, or part shall not take effect unless approved by the people at the
8 general election to be held in November 2010 and shall take effect on the
9 date of the official declaration of the vote thereon by the governor; and
10 except that section 3 of this act shall take effect only if _____ Bill
11 10-_____, <{***LLS 10-0210***}> is enacted and becomes law.
12 <{***do you want a safety clause or a specific effective date?***}>
13 (2) The provisions of this act shall apply to surveillance conducted
14 on or after the applicable effective date of this act.