2012 Amendments to Colorado Workers' Compensation Statute

(Please note that these statutory amendments have different effective dates)

8-42-112.5 Signed June 8, 2012 Effective July 1, 2012 Amended HB-12-1311

8-42-112.5. Limitation on payments - use of controlled substances. (1) Nonmedical benefits otherwise payable to an injured worker ~~shall be~~ ARE reduced fifty percent where THE injury results from the presence in the worker's system, during working hours, of ~~not medically prescribed~~ controlled substances, as defined in section ~~12-22-303 (7)~~ 18-18-102 (5), C.R.S., THAT ARE NOT MEDICALLY PRESCRIBED or of a blood alcohol level at or above 0.10 percent, or at or above an applicable lower level as set forth by federal statute or regulation, as evidenced by a forensic drug or alcohol test conducted by a medical facility or laboratory licensed or certified to conduct such tests. A duplicate sample from any test conducted ~~shall~~ MUST be preserved and made available to the worker for purposes of a second test to be conducted at the worker's expense. If the test indicates the presence of such substances or of alcohol at such level, it ~~shall be~~ IS presumed that the employee was intoxicated and that the injury was due to ~~such~~ THE intoxication. This presumption may be overcome by clear and convincing evidence.

8-43-304(1.5)(a) Signed March 22, 2012 Effective August 8, 2012 Amended HB-12-1033

8-43-304. Violations - penalty - offset for benefits obtained through fraud - rules. (1.5) (a) (I) An insurer who knowingly or repeatedly violates any provision of articles 40 to 47 of this title shall be subject to a fine as determined by the director. If necessary, the director may conduct a hearing or may refer the matter to the office of administrative courts for the entry of findings of fact. The director shall promulgate rules that specify, with respect to an insurer's willful or repeated violations that are subject to this subsection (1.5):

~~(I)~~ (A) The circumstances pursuant to which the director may issue an order imposing a fine; and

~~(II)~~ (B) Criteria for determining the amount of the fine.

(II) IF THE DIVISION DETERMINES, AS PART OF A COMPLIANCE AUDIT OF AN INSURER OR SELF-INSURED POOL, THAT AN INJURY OR OCCUPATIONAL DISEASE WAS NOT REPORTED TO THE DIVISION WITHIN THE TIME SPECIFIED IN SECTIONS 8-43-101 AND 8-43-103 BECAUSE THE INSURER OR SELF-INSURED POOL DID NOT HAVE NOTICE OR KNOWLEDGE OF THE INJURY, OCCUPATIONAL DISEASE, OR FATALITY WITHIN A PERIOD OF TIME THAT WOULD ALLOW THE INFORMATION TO BE REPORTED TO THE DIVISION WITHIN THE TIME SPECIFIED IN SECTIONS 8-43-101 AND 8-43-103, THE DIRECTOR SHALL NOT IMPOSE A FINE FOR LATE REPORTING UNDER THIS SUBSECTION (1.5). THE DIRECTOR MAY IMPOSE A FINE UNDER THIS SUBSECTION (1.5) FOR LATE REPORTING UNDER SECTIONS 8-43-101 AND 8-43-103 AS PART OF FINDINGS FROM A COMPLIANCE AUDIT IF THE DIRECTOR FINDS THAT THE LATE REPORTING CONSTITUTED A KNOWING OR REPEATED PATTERN OF NONCOMPLIANCE WITH THE REPORTING REQUIREMENTS OF SECTIONS 8-43-101 AND 8-43-103 AND WAS NOT CAUSED BY THE INSURER OR SELF-INSURED POOL'S LACK OF NOTICE OR KNOWLEDGE OF THE INJURY, OCCUPATIONAL DISEASE, OR FATALITY WITHIN A PERIOD OF TIME THAT WOULD ALLOW THE INFORMATION TO BE REPORTED TO THE DIVISION WITHIN THE TIME SPECIFIED IN SECTIONS 8-43-101 AND 8-43-103.

8-43-401(1) Signed May 3, 2012 Effective July 1, 2012 Amended SB-12-110

(See 24-31-104.5 of this Senate bill for additional clarifying language.)

8-43-401. District attorney or attorney of division to act for director or office - penalties for failure of insurer to pay benefits. (1) Upon the request of the director or the industrial claim appeals office, ~~the attorney general or~~ the district attorney of any district or any attorney-at-law ~~in the regular employ of~~ EMPLOYED BY the division shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of articles 40 to 47 of this title, or any award or order of the director, an administrative law judge, or the industrial claim appeals office, or for the recovery of any money due TO Pinnacol Assurance, or any penalty provided in said articles, and shall defend in like manner all suits, actions, or proceedings brought against the director, an administrative law judge, or the industrial claim appeals office.

8-45-117(1)(c) Signed May 3, 2012 Effective July 1, 2012 Amended SB 12-110

(See 24-31-104.5 of this Senate bill for additional clarifying language.)

8-45-117. Regulation by commissioner of insurance. (1) Pinnacol Assurance shall be subject to regulation by the commissioner of insurance as provided in:

(c) ~~Sections~~ SECTIONS 24-31-104.5, C.R.S.; 10-1-108 (7), 10-1-109, and 10-1-102, C.R.S., except subsections (3) and (6); 10-1-205, C.R.S., (1) to (6) and (8); 10-3-109, C.R.S., except for the publication requirements; 10-3-118, C.R.S.; 10-3-128, C.R.S.; 10-3-202, C.R.S.; 10-3-207, C.R.S.; ~~10-3-207.5, C.R.S.;~~ 10-3-208, C.R.S.; 10-3-231, C.R.S.; 10-3-239, C.R.S.; 10-3-701, C.R.S.; and part 8 of article 3 of title 10, C.R.S., except as these sections are inconsistent with the provisions of this article.

24-31-104.5 Signed May 3, 2012 Effective July 1, 2012 Amended SB 12-110
[Formerly 10-3-207.5]

24-31-104.5. [Formerly 10-3-207.5] Funding for insurance fraud investigations and prosecutions - creation of fund. (1) (a) For the purpose of providing adequate funds to the Colorado department of law for the investigation and prosecution of allegations of insurance fraud, in addition to any other fee collected pursuant to section 10-3-207 (1), C.R.S., each entity regulated by the division OF INSURANCE shall pay to the division a nonrefundable annual fee. ~~of five hundred sixty-one dollars~~ BASED UPON THE APPROPRIATIONS MADE TO THE DEPARTMENT OF LAW FROM THE INSURANCE FRAUD CASH FUND AND THE RECOMMENDATION OF THE ATTORNEY GENERAL, THE COMMISSIONER OF INSURANCE SHALL SET THE FEE SO THAT THE REVENUE GENERATED FROM THE FEE APPROXIMATES THE DIRECT AND INDIRECT COSTS OF THE INVESTIGATION AND PROSECUTION OF ALLEGATIONS OF INSURANCE FRAUD. THE FEE SHALL NOT EXCEED THREE THOUSAND DOLLARS AND IS payable on or before March 1 of each year.

(b) THE COMMISSIONER OF INSURANCE SHALL ESTABLISH A TIERED FEE SCHEDULE THAT SETS THE ANNUAL FEE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (1) BASED UPON THE PRIOR YEAR'S DIRECT WRITTEN PREMIUMS, GROSS CONTRACT FUNDS, OR CHARGES RECEIVED IN COLORADO BY EACH REGULATED ENTITY. THE REGULATED ENTITIES WITH DIRECT WRITTEN PREMIUMS, GROSS CONTRACT FUNDS, OR CHARGES RECEIVED IN COLORADO IN EXCESS OF ONE MILLION DOLLARS SHALL PAY ONE FEE, AND THE REGULATED ENTITIES WITH ONE MILLION DOLLARS OR LESS SHALL PAY A LESSER FEE.

(2) The division OF INSURANCE shall transmit fees collected pursuant to subsection (1) of this section to the state treasurer for deposit in the insurance fraud cash fund, which fund is hereby created in the state treasury. The fund ~~shall consist~~ CONSISTS of fees collected pursuant to this section and any other moneys deposited into the fund. Interest derived from the deposit and investment of moneys in the fund shall be

credited to the fund. The moneys in the fund are subject to annual appropriation by the general assembly to the department of law for use in investigating and prosecuting allegations of insurance fraud. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year ~~shall~~ remain in the fund and ~~shall~~ DO not revert to the general fund.

(3) The attorney general shall provide annual reports to the joint budget committee, the senate business, labor, and technology committee, and the house ECONOMIC AND business ~~affairs and labor~~ DEVELOPMENT committee, or any ~~such~~ successor committees, and shall post on the attorney general's web site a statistical report of the number of FULL-TIME EMPLOYEES DEDICATED TO INSURANCE FRAUD, referrals, OPEN INVESTIGATIONS, convictions, arrests, AND actions initiated, and THE NUMBER OF restitutions, fines, costs, and forfeitures obtained, from the investigation and prosecution of insurance fraud as provided in this section. IN THE REPORT, THE ATTORNEY GENERAL SHALL MAKE HIS OR HER BEST EFFORT TO DELINEATE BETWEEN THE TYPES OF CASES PROSECUTED BY LINE OF INSURANCE.

8-47-111(2) Signed March 19, 2012 Effective August 8, 2012 Amended HB 12-1120

8-47-111. Division efforts to ensure employer compliance with workers' compensation coverage requirements - legislative declaration.(2) In order to implement the declaration in subsection (1) of this section, the division shall develop a procedure for verifying whether or not all employers doing business in the state of Colorado comply with the requirements of article 44 of this title. This procedure ~~shall~~ MUST include ~~but is not limited to,~~ cross-referencing employer records of the division of ~~employment and training~~ UNEMPLOYMENT INSURANCE and the division of workers' compensation. Upon identifying employers that are not in compliance with article 44 of this title, the division, with the assistance and cooperation of the attorney general, shall use all available means under articles 40 to 47 of this title to ensure compliance. Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall furnish the division, upon request, all information required by it to accomplish the purposes of this section.