Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2009 Sunset Review: The Functions of the Division of Insurance Related To the Regulation of Property and Casualty, Automobile and Any Other Entity or Function That Does Not Offer Health or Life Insurance

October 15, 2009

Executive Director's Office
D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2009

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of various functions of the Colorado Division of Insurance (DOI). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2010 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

> The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...
>
> The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination….

The report discusses the question of whether there is a need for the regulation provided under Articles 3 through 6, 10 through 13, and 15 of Title 10, C.R.S., and Articles 44 and 45 of Title 8, C.R.S. The report also discusses the effectiveness of the DOI staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn
Executive Director

1560 Broadway, Suite 1550 Denver, Colorado 80202 Phone 303.894.7855
Fax 303.894.7885 Toll Free 800.866.7675 www.dora.state.co.us V/TDD 711

Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

2009 Sunset Review:
The Functions of the Division of Insurance Related to the Regulation of Property and Casualty, Automobile and Any Other Entity or Function That Does Not Offer Health or Life Insurance

Summary

What Is Regulated?
Insurance is coverage by contract in which one party agrees to indemnify or reimburse another for loss that occurs under the terms of the contract.

Why Is It Regulated?
Consumers want to be assured that the contract they enter into with an insurer will be honored if it is ever needed.

Who Is Regulated?
The Division of Insurance (DOI) regulates, to some degree, all domestic, foreign, and alien insurers who sell insurance in Colorado. During fiscal year 07-08 there were 56 domestic, 1,545 foreign, and 47 alien insurers operating in Colorado.

How Is It Regulated?
Since the need for financial soundness is so great in the insurer/insured relationship, regulation covers almost every aspect of the insurance industry.

What Does It Cost?
During the period under sunset review, fiscal years 03-04 through 07-08, average annual expenditures were $8,232,243 and 77.1 full-time equivalent employees were devoted the DOI.

What Complaint Activity Is There?
The DOI handles incoming inquiries and complaints from individual consumers, employers, providers and provider groups, insurance producers, legislators on behalf of constituents, and from insurers concerning competitors. During fiscal year 07-08, the DOI received 17,212 inquiries, opened 4,362 complaints, and closed 4,651 complaints.

Where Do I Get the Full Report?
The full sunset review can be found on the Internet at: www.dora.state.co.us/opr/oprpublications.htm.

Key Recommendations

Continue the functions of the DOI related to the regulation of property and casualty, automobile, and any other entity or function that does not offer health, life, property, casualty or automobile insurance for seven years, until 2017.

Regulatory oversight of the insurance industry by the DOI serves to insulate consumers from harm, while maintaining a regulatory model that provides an attractive environment for insurers to conduct business in Colorado.

Each year, DOI staff receives thousands of insurance-related consumer complaints in several categories. Responding to consumer complaints; taking appropriate regulatory action to mitigate issues, when necessary; allowing for a formal protest process for Coloradans to challenge changes to their policies; and conducting financial and market conduct examinations create a quality insurance marketplace in Colorado.

Repeal the current sunset review schedule related to the DOI, and schedule the entire DOI for a sunset review, with the exception of the licensing of bail bonding agents.

The current sunset review schedule of the DOI has proven to be both cumbersome and duplicative because it requires the Department of Regulatory Agencies (DORA) to review the same functions in multiple reports as they pertain to individual lines of insurance.

To make available a comprehensive review of the DOI related to the regulation of the insurance industry in Colorado, the entire DOI should be included in one sunset review. Doing so will enable DORA to review the intricacies of DOI regulatory functions and present an overview of how the DOI interacts with other segments of the marketplace to the General Assembly and the public.

Major Contacts Made During This Review

AARP
Colorado Department of Labor and Employment
Colorado Division of Insurance
Colorado Funeral Directors Association
Colorado Hospital Association
Colorado Public Interest Research Group
Consumer Credit Industry Association
Consumer Federation of America
National Association of Professional Surplus Lines Offices
National Council on Compensation Insurance
Office of the Colorado Attorney General
Pinnacol Assurance
Property and Casualty Insurers Association
Rocky Mountain Insurance Information Association
Rocky Mountain Health Plans
Surplus Lines Association of Colorado
TI Services, LLC

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr

Table of Contents

Background 1

Introduction *1*

Types of Regulation *2*

Sunset Process *4*

Methodology.......... *4*

Profile of the Industry *4*

Legal Framework..........21

Program Description and Administration..........37

Analysis and Recommendations..........46

General Provisions.......... *46*

Recommendation 1 – Continue the functions of the Division of Insurance related to the regulation of property and casualty, automobile, and any other entity or function that does not offer health, life, property, casualty or automobile insurance for seven years, until 2017.......... 46

Recommendation 2 – Repeal the current sunset review schedule related to the DOI, and schedule the entire DOI for a sunset review, with the exception of the licensing of bail bonding agents, in 2017. 48

Recommendation 3 - Establish knowingly communicating a false material fact to the DOI as a violation of Title 10, C.R.S. 49

Recommendation 4 – Establish treating individuals of the same class and risk differently, in terms of policy premiums, fees, and rates, for accident and health or property and casualty insurance policies as unfair discrimination and a violation of the Insurance Unfair Competition and Deceptive Practices Act. 49

Recommendation 5 – Repeal outdated language mandating newspaper publication of financial report synopsis. 51

Recommendation 6 – Enhance public interests by authorizing the DOI to release a final summary of market conduct actions that fall short of a full market conduct examination. 51

Mutual Insurance *52*

Recommendation 7 – Sunset the regulation of employers' mutual liability companies. 52

Nonadmitted Insurers *53*

Recommendation 8 – Permit, rather than require, the Commissioner to rely on an association of brokers to carry out the purposes of the Nonadmitted Insurance Act. 53

Preneed Funeral Contracts *54*

Recommendation 9 – Require the Commissioner to perform an examination of books, records and accounts of each licensed preneed funeral contract seller at least once every five years, and authorize the Commissioner to perform such examinations as necessary to ensure compliance with the law. 54

Property and Casualty *55*

Recommendation 10 – Repeal the Medical Malpractice Insurance Joint Underwriting Association. 55

Recommendation 11 – Repeal the Commercial Liability Insurance Joint Underwriting Association. 55

Recommendation 12 – Reconcile the number of days allowed until a motor vehicle protest decision is effective. 56

Pinnacol Assurance *57*

Recommendation 13 – Repeal the obsolete language requiring Pinnacol to submit to the Commissioner a plan to accumulate a surplus fund. 57

Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria[1] and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

[1] Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

Regulation, then, has many positive and potentially negative consequences.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

Certain regulatory functions of the Colorado Division of Insurance (DOI) relating to Articles 3 through 6, 10 through 13, and 15 of Title 10, Colorado Revised Statutes (C.R.S.), and Articles 44 and 45 of Title 8, C.R.S., shall terminate on July 1, 2010, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the DOI pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of insurance should be continued for the protection of the public and to evaluate the performance of the DOI staff. During this review, the DOI must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

Methodology

As part of this review, DORA staff conducted a literature review, attended various insurance advisory committee meetings, interviewed DOI staff, reviewed complaints and examination information, interviewed officials with state and national professional associations, interviewed representatives of the regulated industry, reviewed Colorado statutes and DOI rules, and reviewed the laws of other states.

Profile of the Industry

Simply put, insurance is coverage by contract in which one party agrees to indemnify or reimburse another for loss that occurs under the terms of the contract.[2] Regulation of the insurance industry is very comprehensive because consumers want to be assured that the contracts they enter into with insurers will be honored if they are ever needed.

[2] Dictionary.com. Retrieved August 5, 2009 from http://dictionary.reference.com/browse/insurance

Since the need for financial soundness is so great in the insurer/insured relationship, regulation covers almost every aspect of the insurance industry including but not limited to:

- The formation and naming of insurance companies;
- The financial affairs of insurance companies;
- The circumstances for rehabilitation and liquidation;
- The regulation of holding companies;
- The regulation of both authorized and unauthorized companies;
- The regulation of types/lines of insurance;
- The definitions of, and remedies for, unfair and deceptive business practices;
- The adherence to statutory mandates in policies issued; and
- The conduct of insurance producers/salespeople.

This sunset review requires DORA to examine the DOI's regulatory oversight of various types of insurance, which encompasses the following:

- Captive insurance;
- Credit insurance;
- Inter-insurance;
- Mutual insurance;
- Nonadmitted insurance;
- Preneed funeral contracts;
- Property and casualty insurance;
- Title insurance;
- Workers' compensation insurance; and
- Pinnacol Assurance.

However, this review does not include the regulation of bail bonding agents, health insurance, certificates of authority, life insurance or insurance producers. Instead, these insurance-related issues are addressed in separate, stand-alone reviews in other years.

Captive Insurers

Captive insurance is a formalized type of self-insurance where the captive insurer is owned by its insured. Regardless of the lines of insurance written, captive insurers are typically formed for some combination of the same basic reasons, including:

- To reduce or stabilize the cost of insurance. These savings may be realized through no profit motivation for the insurer (since it is owned by the insured), elimination or reduction of broker commissions and lower administrative costs.

- To increase capacity and provide access to reinsurance.[3] A captive insurer, unlike less formal self-insurance vehicles, can directly access the reinsurance markets, thereby reducing the risk to the parent company.

[3] Reinsurance is, in very general terms, insurance for insurers. It represents a way for an insurer to transfer or cede some of the financial risk that the insurer assumes in writing its various lines of insurance to another insurer, the reinsurer.

- To provide greater control, expanded coverage and more flexible rates and forms. Since the parent company controls the captive insurer, the policies written for the parent can be customized to its exact needs. This may be one of the main reasons to form a captive, particularly if the line of insurance is so specialized (i.e., to insure aircraft or new vehicles on a car dealership's lot) that insurance is not otherwise available on the open market, or if it is, it is overly expensive.
- To take advantage of positive claims history. A parent that forms a captive insurer may have a better than average claims history, but, when purchasing insurance on the open market, may not realize the full benefits of this experience. The captive insurer needs only to cover the losses of the parent, so a positive claims history can result in lower, more affordable premiums.
- To recapture investment income. When a parent company pays premium to an insurer, the parent loses the ability to invest that money, but the insurer can invest it and earn a profit from it. With a captive insurer, the parent is able to recoup that lost profit potential.

Additionally, it is generally recognized that a parent company must pay at least $1 million in annual premiums for the particular line of insurance involved, in order for a captive insurer to be a viable option.

While there are many types of captive insurers, Colorado law authorizes the formation of only two: pure and group.

A pure captive insurer is generally formed, owned and managed by a single parent company. A group captive insurer is generally formed by a group of individuals or business entities in the same or similar industries that band together to write insurance for themselves. In such cases, the individual member owners share control of the group captive insurer.

In determining where to domicile a captive insurer, a parent entity may consider any combination of the following factors:

- The types of captives authorized by law;
- The minimum capitalization and surplus requirements;
- The tax/fee structure of the potential domicile; and
- The regulatory support offered by the domicile.

Approximately 20 states and an equal number of non-U.S. jurisdictions authorize the formation of captive insurers.[4] It is estimated that there are over 5,000 captive insurers worldwide, collecting over $20 billion in annual premiums.[5] Approximately 60 percent of all captive insurers are domiciled in just five jurisdictions: Bermuda, Cayman Islands, Vermont, British Virgin Islands, and Guernsey.[6]

Credit Insurance

Credit insurance is coverage that is available to both businesses and individuals. Businesses purchase credit insurance to protect themselves from clients who fail to pay their debts due to insolvency or bankruptcy. Credit insurance covers a group of the businesses' customers (multiple clients), but it is also possible to cover single transactions. The amount of protection afforded to businesses through credit insurance varies based on specific jurisdictions' regulations.

Additionally, credit insurance provides individuals with protection in the event that they are unable to pay on outstanding debt due to an incident that is covered in the terms of the policy. Common provisions contained within a credit insurance policy include the loss of a job, death of the insured, or an accident that disables the insured.

There are four main types of credit insurance:

- Credit life insurance pays some or all of the insured's loan if the insured dies;
- Credit disability insurance or accident and health insurance, provides payments on a loan if the insured becomes ill or injured and is unable to work;
- Involuntary unemployment insurance or involuntary loss of income insurance, makes the insured's loan payments if the insured loses his or her job through no fault of his or her own, such as a layoff situation; and
- Credit property insurance protects personal property, such as boats or automobiles, which are used to secure a loan, if destroyed by events such as theft or natural disasters.

Credit insurance typically only covers short-term, unpaid debt where the payments are current; accounts in arrears are generally not covered. Additionally, debts incurred after the purchase of credit insurance are typically not covered under the terms of credit insurance policies.

A lender may not include credit insurance in a loan without the borrower's knowledge or permission.

---

[4] Kathryn Westover, "Making the Trip: A Domicile Selection Primer," *Risk Management*, March 1, 2001. Retrieved on April 7, 2009, from www.allbusiness.com/finance/insurance-risk-management/1073726-1.html
[5] Beecher Carlson. *Captive Insurance Companies: A Primer for Healthcare Professionals*. Retrieved on April 9, 2009, from www.beechercarlson.com/files/pdf/captive%20for%20health%20care.pdf
[6] Towers Perrin. *Captives 101: Managing Cost and Risk*. Retrieved April 9, 2009, from www.towersperrin.com/tp/setwebcachedoc?webc=TILL/USA/200408/Captives.pdf

With the exception of private mortgage insurance, lenders cannot deny credit if the borrower does not buy optional credit insurance.[7] Since private mortgage insurance is designed for a long-term loan, it is regulated as collateral protection through casualty insurance rather than as credit insurance.

Inter-Insurance

Inter-insurance is a type of insurance that enables subscribers, which are defined as individuals, partnerships and corporations,[8] to insure or indemnify one another. There are no stockholders associated with inter-insurance insurers. Instead, subscribers are ultimately responsible for paying claims for each other, and participants are individually and severally liable to indemnify each member of the inter-insurance insurer.

Inter-insurance insurers closely resemble mutual and captive insurers because each is owned by the insured. However, the major difference between an inter-insurance insurer and a mutual insurer is the fact that an inter-insurance insurer is not incorporated and is managed by a management company, referred to as an “attorney-in-fact.” The attorney-in-fact is responsible for the administrative functions associated with operating an insurer (e.g., collecting premiums from the insured and paying insurance claims, etc.).

Mutual Insurance

Like captive and inter-insurance insurers, mutual insurers are owned by their insureds. That is, every insured is an owner of the mutual insurer. This is the only distinction between a mutual insurer and an insurer that is a stock company.

Mutual insurers can write any line of insurance except title insurance.[9]

In Colorado, there are two sub-types of mutual insurers: mutual protective associations and employers’ mutual liability companies.

The two mutual protective associations in Colorado write insurance for the agriculture industry. One of the companies insures primarily crops, while the other writes more traditional property and casualty insurance (i.e., outbuildings, equipment, liability, etc.).

Colorado has no employers’ mutual liability companies, and has not had any since 1954, when the last such company dissolved. Regardless, these types of companies, when they did exist, primarily wrote insurance to protect employers. In short, they wrote the equivalent of workers’ compensation lines of insurance.

[7] Private mortgage insurance is added insurance that lenders require from homebuyers with less than a 20 percent down payment.
[8] § 10-13-101, C.R.S.
[9] Pursuant to section 10-11-104, C.R.S., all domestic title insurers formed after 1969 must be stock companies, thereby preventing them from being mutual insurers.

Nonadmitted Insurance

Surplus lines (nonadmitted) insurance is property or casualty coverage that is not available through a licensed (or admitted) insurer in the state. The coverage may not be available from a licensed insurer because it is unusual, such as insuring the fingers of a pianist, or it may be especially high risk, such as insuring a manufacturer of explosives. Because what the traditional insurance market will cover changes depending on the economy, the surplus lines market expands or contracts in reverse of the traditional market.

Surplus lines brokers are required to be licensed. An insurance broker who procures surplus lines insurance must perform a due diligence search to ensure that coverage is not available through a licensed insurer.

Laws governing surplus lines insurance vary by state. The allocation of premium taxes,[10] in particular, varies widely. In Colorado when a surplus line policy covers risks or exposures that crosses into other states, the tax is determined by the proportion of the premium allocated to the risks or exposures in this state. In the traditional insurance market, insurers are responsible for paying premium taxes, but in the surplus lines market, the broker is responsible for premium tax payment.

Because many brokers are licensed and do business in multiple states, each having different premium tax requirements, the allocation of surplus line premium taxes can be particularly complex. Fifteen states[11] have adopted stamping offices, associations of brokers who assist the state departments of insurance with tax collection, serve as a clearinghouse of surplus lines information, and maintain a list of approved surplus lines insurers. A stamping office may place a surcharge on premium taxes to cover its administrative and operational costs.

Preneed Funeral Contracts

A preneed funeral contract is an agreement in which a consumer pays for funeral services and merchandise in advance. Funeral services may include transportation of the remains, embalming, cosmetology, cremation, and other services. Funeral merchandise may include urns, caskets, flowers and other goods. The purpose of preneed funeral contracts is to alleviate family members of the burden of purchasing costly funeral arrangements at the last minute when they are vulnerable and grieving.

Preneed funeral contracts are regulated by the states, and the laws that govern this area are inconsistent from state to state.[12]

---

[10] Premium is the price of insurance protection for a particular risk, and premium tax is the payment owed to a state based on premiums.
[11] Arizona, California, Florida, Idaho, Illinois, Minnesota, Mississippi, Montana, Nevada, New York, Oregon, Pennsylvania, Texas, Utah, and Washington.
[12] AARP Public Policy Institute. *Preneed Funeral and Burial Agreements.* Retrieved September 22, 2009, from http://www.aarp.org/research/ppi/cons-prot/adv-plan/articles/aresearch-import-195-FS76.html

Although there is no federal regulation of preneed funeral contracts, there is a federal law that applies to funeral sales. The Funeral Rule, enforced by the Federal Trade Commission, requires funeral providers or directors to:

- Provide customers with an itemized price list of all goods and services offered;
- Disclose any item required by state or local law on the price list, with a reference to the specific law; and
- Make alternative containers for cremation available.

Additionally, the Funeral Rule prohibits requiring a customer to purchase a package that includes items the customer may not want. A consumer has the right to purchase merchandise and services individually. A funeral provider is also prohibited from refusing or charging a fee to handle a casket that was purchased from another provider.

States vary on who may sell preneed funeral contracts, how much of the funds must be held in trust,[13] whether preneed contracts may be part of an insurance policy, whether the buyer or seller profits from the earnings of the trust, and whether preneed funeral contracts are refundable.

In Colorado, there is no limit on how long a preneed contract may be in effect. The preneed contract binds the contract seller, or the heirs, assigns, or duly authorized representatives of the contract seller, to provide the services or merchandise agreed to in the preneed contract at the time of death. Colorado law mandates that all preneed contracts are refundable.

In Colorado, a contract seller may be someone connected to a funeral establishment or a crematorium, an insurance agent, or an individual broker. If the contract seller retains a contract in the form of funds and not life insurance benefits, then 75 percent of the funds must be held in trust. The trustee may not pay out any excess gains from the trust fund until the value of the trust exceeds the total of all the funds paid by the contract buyer. At that time, any excess gains from the trust fund may be distributed according to the terms of the contract between the contract seller and the contract buyer.

[13] "Trust" is a fiduciary relationship in which one person (the trustee) holds the title to property or funds for the benefit of another (the beneficiary).

Property and Casualty

Property and casualty insurance protects the insured from damage to or loss of an insured's property and legal liability for damages caused to other people or their property.[14] There are a variety of types of property and casualty insurance, including, but not limited to:

- Motor vehicle;
- Homeowner's;
- Commercial;
- Errors and omissions/malpractice; and
- Surety and fidelity bonding.

Motor Vehicle Insurance

In 2003, the General Assembly enacted a tort system for motor vehicle insurance. A tort system is a system in which a driver who is at fault in a motor vehicle accident is responsible for paying the victim's medical expenses and compensating for additional damages, such as loss of wages and "pain and suffering."[15] One of the most noticeable changes in the shift in motor vehicle coverage from a no-fault system to a tort system was the removal of mandatory personal injury protection (PIP) coverage ($130,000) from an insured's motor vehicle insurance policy.

Under the current tort motor vehicle system in Colorado, drivers are required to possess liability insurance on their automobiles. Liability insurance provides coverage for bodily injury an insured causes to another person or for property damage the insured causes to another person's property through negligent use of the insured's vehicle.[16] The minimum amount of motor vehicle liability insurance required by law in Colorado is as follows:[17]

- $25,000 per person for bodily injury;
- $50,000 per accident for bodily injury; and
- $15,000 per accident for property damage.

In addition to the mandatory liability motor vehicle insurance, there are several types of optional coverage available to consumers, including:

- Collision;
- Comprehensive;
- Medical payment coverage (Med-Pay); or
- Uninsured motorist.

[14] Home-owner-insurance-quote.org. Frequently *Used Home Insurance Terms.* Retrieved June 22, 2009, from http://www.home-owner-insurance-quote.org/frequently_used_home_insurance_terms.html
[15] Rocky Mountain Insurance Information Association. *Your Guide to Understanding Insurance.* Retrieved June 22, 2009, from http://www.rmiia.org/Auto/Steering_Through_Your_Auto_Policy/Tort_Auto_Insurance_Basics.htm
[16] Colorado Division of Insurance. *Information for Automobile Insurance.* Retrieved January 14, 2009, from http://www.dora.state.co.us/insurance /consumer/AutoMain.htm
[17] Colorado Division of Insurance. *Information for Automobile Insurance.* Retrieved January 14, 2009, from http://www.dora.state.co.us/insurance /consumer/AutoMain.htm

Collision coverage protects against damage to an insured's vehicle resulting from a collision with another vehicle or object regardless of who is at fault.[18] Under the tort system, if another driver is at fault in an accident, the insurer of the driver who was not at fault may seek reimbursement for damages from the driver who was at fault.

Comprehensive auto insurance provides additional coverage of an insured's vehicle in the event that damage to the vehicle occurs. For example, if an insured's windshield is damaged, comprehensive coverage covers its repair or replacement. Comprehensive coverage also covers a variety of instances during which an insured's vehicle may become damaged due to any of the following:[19]

- Fire;
- Severe weather;
- Vandalism;
- Floods; or
- Theft.

Two components are utilized by insurers in determining the premium of an insured's or prospective insured's motor vehicle insurance: underwriting and rating. Underwriting is the process of assessing risk (likelihood) associated with an applicant in filing a claim on his or her motor vehicle insurance policy. The purpose of underwriting is to group applicants with other applicants who present similar risks. In order to determine the risk of an applicant, the underwriting process for motor vehicle insurance requires applicants to provide information on a variety of characteristics, including, but not limited to:[20]

- Driving record;
- Prior insurance coverage;
- Make and model of vehicle; and
- Credit history.

Insurance companies use the driving record of an applicant in the underwriting process to assist in determining his or her risk of filing a claim. Insurers request driving record information, including accidents and traffic violations for the preceding three to five years.[21] Drivers with previous violations or at-fault accidents are deemed to be a higher risk than drivers with better driving records.[22]

---

[18] Colorado Division of Insurance. *Consumer's Guide to Auto Insurance.* Retrieved June 3, 2009, from http://www.dora.state.co.us/insurance/pb/supporting%20documents/autoins04.pdf
[19] National Association of Insurance Commissioners. *A Consumer's Guide to Auto Insurance.* Retrieved March 22, 2009, from http://www.naic.org/documents/consumer_guide_auto.pdf
[20] National Association of Insurance Commissioners. *A Consumer's Guide to Auto Insurance.* Retrieved March 22, 2009, from http://www.naic.org/documents/consumer_guide_auto.pdf
[21] National Association of Insurance Commissioners. *A Consumer's Guide to Auto Insurance.* Retrieved March 22, 2009, from http://www.naic.org/documents/consumer_guide_auto.pdf
[22] National Association of Insurance Commissioners. *A Consumer's Guide to Auto Insurance.* Retrieved March 22, 2009, from http://www.naic.org/documents/consumer_guide_auto.pdf

Prior insurance coverage is an additional factor that insurers utilize in determining the risk of an applicant. Insurers examine prior insurance coverage to ascertain whether an applicant's prior claims history or whether the applicant's previous coverage was canceled for non-payment of premiums, both of which could assist in determining the risk pool to which an applicant is assigned.[23]

The type of vehicle an applicant drives is another determining factor in assessing the risk an applicant poses to an insurer. Certain motor vehicles have a higher number of claims, and if an applicant requests insurance on a motor vehicle with traditionally higher claims, the applicant is grouped accordingly.

Credit scoring, also known as a credit-based insurance score, is also used as a factor in determining the risk of an applicant to file a claim. The vast majority of states, including Colorado, allow insurance scoring as a criterion in determining an applicant's insurability.

An adverse credit score may result in a higher premium or certain insurers may choose not to offer motor vehicle insurance; however, a strong credit score may result in a decrease in the premium paid for motor vehicle insurance.

In Colorado, there are a variety of protections built into the property and casualty statute related to the use of credit-based insurance scores. For example, insurers are prohibited from calculating an insurance score based on the following:[24]

- Income;
- Gender;
- Address;
- United States postal code;
- Ethnic group;
- Religion;
- Marital status; or
- Nationality.

Upon completion of the underwriting process, an applicant, based on the information provided to the insurer, is grouped with other individuals that possess a similar risk for filing an insurance claim. Once an applicant is grouped with other like risks, the insurer assesses a rate for motor vehicle insurance. The higher the average losses (claims) from a group, the higher the rates that group will be assessed in order to obtain motor vehicle insurance.[25]

---

[23] National Association of Insurance Commissioners. *A Consumer's Guide to Auto Insurance.* Retrieved March 22, 2009, from http://www.naic.org/documents/consumer_guide_auto.pdf
[24] § 10-4-116(1)(a), C.R.S.
[25] National Association of Insurance Commissioners. *A Consumer's Guide to Auto Insurance.* Retrieved March 22, 2009, from http://www.naic.org/documents/consumer_guide_auto.pdf

Additionally, in 2008, the Governor signed Senate Bill 08-11, otherwise known as the Med-Pay bill. Senate Bill 08-11, which is codified in section 10-4-635, *et seq.,* Colorado Revised Statutes, requires insurers to offer a minimum of $5,000 of Med-Pay coverage to consumers.

The purpose of Med-Pay is to cover medical treatment for the driver of a vehicle who is in an accident as well any passengers, regardless of who is at fault. Med-Pay is intended to enable first responders to receive prompt payment for services. Senate Bill 08-11 outlined the entities that are entitled to receive payment for treating a person or persons who are injured in a motor vehicle accident (tiered payment, in descending order) as follows:

1. Licensed ambulances or air ambulances;
2. Trauma physicians;
3. Trauma centers.

In the event of an accident, the first $5,000 of Med-Pay benefits must be held in reserve for 30 days after the accident to ensure that first responders and trauma care providers and centers are able to access their portion of payment for services rendered. After the 30-day reserve period, if there are any Med-Pay funds remaining, any other entity that provided treatment to the injured may access Med-Pay funds for payment.

Senate Bill 08-11 requires insurers to include Med-Pay coverage with new and renewal motor vehicle insurance policies, beginning January 1, 2009. Although Med-Pay is not a mandatory insurance coverage, consumers who do not want Med-Pay must “opt-out” of the coverage. Otherwise, when an applicant obtains a new motor vehicle insurance policy or an insured renews his or her existing policy, the $5,000 minimum Med-Pay will be included.

Another optional motor vehicle insurance product available to consumers is uninsured or underinsured (UM/UIM) motorist insurance. An uninsured driver is someone who does not possess any motor vehicle insurance, while an underinsured motorist is someone who possesses motor vehicle insurance but does not have high enough limits to cover the damage caused by an accident.[26] UM/UIM motorist insurance provides insurance coverage for medical payments for injuries sustained to an insured, authorized drivers of the insured’s motor vehicle and passengers of the vehicle as the result of an accident where the UM/UIM driver is at fault. A driver who possesses UM/UIM motorist insurance is covered for bodily injury, which includes:[27]

- Medical expenses;
- Lost wages; and
- Pain and suffering.

---

[26] Auto Insurance Center. *Why you Need Uninsured/Underinsured Motorist Coverage.* Retrieved July 2, 2009, from http://www.insurance.com/article.aspx/Why_You_Need_UninsuredUnderinsured_Motorist_Coverage/artid/132

[27] Colorado Division of Insurance. *Un-insured or Under-insured Motorist Coverage in Colorado.* Retrieved May 19, 2009, from http://www.dora.state.co.us/insurance/consumer/2007docs/consUninsuredMotoristFAQ100107.pdf

Insurance companies must offer UM/UIM insurance in an amount equal to the insured's bodily injury limits.[28] For example, if an insured possesses the minimum coverage for bodily injury ($25,000), the insurer must offer $25,000 of UM/UIM insurance.

In 2007, the Governor signed Senate Bill 07-256, which enables an insured to "stack" his or her UM/UIM motorist insurance for more than one vehicle if vehicles are insured under multiple policies. For example, if an insured is in an accident, and he or she carries UM/UIM coverage of $100,000 per person and $300,000 per accident on each of his or her two vehicles, he or she would have a total of $200,000/$600,000 if an accident would occur with a motorist who is either uninsured or underinsured.

Homeowner's Insurance

Homeowner's insurance is available to individuals who own or rent their real property. There is a wide-range of homeowner's insurance available, including, but not limited to:

- Single family homes;
- Condominiums; and
- Rental property (apartment or house).

Homeowner's insurance provides coverage in two areas: property and liability. The property coverage insures the structure (e.g., the home) against perils such as the following:[29]

- Fire;
- Wind;
- Hail;
- Vandalism; and
- Theft.

Homeowner's insurance also covers damages to the structure from an event such as a tree falling onto an insured's house or a truck knocking down a wall.[30]

Additionally, the property coverage of a homeowner's insurance policy offers protection in case of loss or damage to personal belongings within the structure up to the specified limit of the policy, including, but not limited to:[31]

- Furniture;
- Appliances;
- Televisions; and
- Clothing.

---

[28] Colorado Division of Insurance. *Un-insured or Under-insured Motorist Coverage in Colorado.* Retrieved May 19, 2009, from http://www.dora.state.co.us/insurance/consumer/2007docs/consUninsuredMotoristFAQ100107.pdf
[29] Colorado Division of Insurance. *Homeowner Information.* Retrieved January 22, 2009, from http://www.dora.state.co.us/insurance/consumer/homemain.htm
[30] Colorado Division of Insurance. *How to Choose Insurance That is Right For You. A Guide For Colorado Consumers.* Retrieved July 2, 2009, from http://www.dora.state.co.us/insurance/guide/ConsumerGuide.htm
[31] Colorado Division of Insurance. *How to Choose Insurance That is Right For You. A Guide For Colorado Consumers.* Retrieved July 2, 2009, from http://www.dora.state.co.us/insurance/guide/ConsumerGuide.htm

Homeowners who want or need additional insurance coverage for their personal property may obtain endorsements. An endorsement is additional insurance coverage for unique items, such as:[32]

- Silverware;
- Computers;
- Guns;
- Money;
- Expensive antiques; and
- Jewelry.

There are two types of homeowner's insurance available that insures the structure as well as the property (contents) within the structure: replacement cost and actual cash value. Replacement cost is the amount it would cost to replace or rebuild a home or repair damages with materials of similar kind and quality, without deducting for depreciation.[33]

Conversely, actual cash value is the amount it would take to repair or replace damage to the home after depreciation.[34] For example, if a homeowner's roof has a 20-year warranty and is 17 years old, there would be depreciation for the age and condition of the roof.[35]

Meanwhile, homeowner's insurance also provides liability coverage. This coverage provides protection if someone is injured on the insured's property.

Condominium homeowner's insurance covers property not insured by the condominium homeowners' association's policy. A condominium homeowners' association's policy typically covers the building, including any common walls and grounds.[36] Meanwhile, a condominium homeowner's insurance policy covers property damage to personal belongings, wall, floor and ceiling coverings, and accessories not originally installed in the unit.[37]

[32] National Association of Insurance Commissioners. *A Consumer's Guide to Home Insurance.* Retrieved July 8, 2009, from http://www.naic.org/documents/consumer_guide_home.pdf
[33] National Association of Insurance Commissioners. *A Consumer's Guide to Home Insurance.* Retrieved July 8, 2009, from http://www.naic.org/documents/consumer_guide_home.pdf
[34] National Association of Insurance Commissioners. *A Consumer's Guide to Home Insurance.* Retrieved July 8, 2009, from http://www.naic.org/documents/consumer_guide_home.pdf
[35] National Association of Insurance Commissioners. *A Consumer's Guide to Home Insurance.* Retrieved July 8, 2009, from http://www.naic.org/documents/consumer_guide_home.pdf
[36] National Association of Insurance Commissioners. *A Consumer's Guide to Home Insurance.* Retrieved July 8, 2009, from http://www.naic.org/documents/consumer_guide_home.pdf
[37] National Association of Insurance Commissioners. *A Consumer's Guide to Home Insurance.* Retrieved July 8, 2009, from http://www.naic.org/documents/consumer_guide_home.pdf

An individual who rents a house or an apartment may choose to purchase rental insurance from an insurer. Renter's insurance provides liability protection in the event that the insured is liable for damage to others.[38] For example, if a fire starts in the insured's unit and the insured is responsible for the fire, the liability coverage will pay for damages caused to others' property, including the property owned by the landlord.[39]

Renter's insurance also provides the insured coverage for personal belongings within a dwelling against perils such as fire and theft.

Commercial Property and Casualty Insurance

Commercial property and casualty insurance provides protection to a business's property as well as liability in the case of injury.

Commercial property insurance is one of the most common types of property insurance and provides coverage for all business-related tangible and intangible assets related to fires, theft and other related disasters including, but not limited to:[40]

- Money;
- Accounting records;
- Inventory;
- Furniture; and
- Other related supplies.

Additionally, commercial casualty insurance provides coverage for liability exposure resulting from the activities of a business.[41] There are three types of liability:[42]

- Direct;
- Contingent; and
- Medical payments to others.

Direct liability coverage offers protection to a business from damage or destruction of another party's property, or bodily injury.[43]

---

[38] Colorado Division of Insurance. *How to Choose Insurance That is Right For You. A Guide For Colorado Consumers.* Retrieved July 2, 2009, from http://www.dora.state.co.us/insurance/guide/ConsumerGuide.htm
[39] Colorado Division of Insurance. *How to Choose Insurance That is Right For You. A Guide For Colorado Consumers.* Retrieved July 2, 2009, from http://www.dora.state.co.us/insurance/guide/ConsumerGuide.htm
[40] Atlist.org. *The Importance of Property and Casualty Insurance.* Retrieved July 7, 2009, from http://www.atlist.org/insurance/property-casualty-insurance.aspx
[41] Answers.com. *Business Liability Insurance.* Retrieved July 8, 2009, from http://www.answers.com/topic/business-liability-insurance
[42] Answers.com. *Business Liability Insurance.* Retrieved July 8, 2009, from http://www.answers.com/topic/business-liability-insurance
[43] Answers.com. *Business Liability Insurance.* Retrieved July 8, 2009, from http://www.answers.com/topic/business-liability-insurance

Contingent liability insurance coverage offers protection to a business in the event that a secondary party affiliated with the business damages another party's property or inflicts bodily injury on someone.[44] For example, if a business utilizes an independent contractor and the contractor damages property or injures someone, the business would be covered by contingent liability insurance.[45]

Medical payments to others provide coverage to the business if an act of the business results in injury to another party, with the insurer paying the medical expenses to that party (up to policy limits) without regard to legal liability of the insured business.

Errors and Omissions/Malpractice

Additionally, errors and omissions insurance is a type of casualty insurance that offers protection to an individual or an organization in the case where errors or omissions occur while in the process of producing, recommending, working, designing or manufacturing.[46] Malpractice insurance insures physicians, lawyers and other specialists against suits alleging their negligence.[47]

Surety and Fidelity Bonding

Surety insurance, sold in the form of a surety bond, is a type of casualty insurance, and the main purpose of issuing surety insurance is to give a guaranteed performance of contract.[48] One common type of surety insurance includes bonding of employees, which is called fidelity insurance.[49] Fidelity insurance indemnifies an employer for loss of money, securities or other property caused by an employee theft from the employer.[50]

Title Insurance

Title insurance protects the insured in the event that a problem should arise in the ownership records of real property. Generally, there are two types of title insurance policies: an owner's policy and a lender's policy. An owner's title insurance policy insures the purchaser of residential real estate in the event of an undisclosed lien, impairment or other problem with the title that is found that negatively affects the value of property. Typically, an owner's title insurance policy indemnifies the owner up to the purchase price of the property.

---

[44] Answers.com. *Business Liability Insurance.* Retrieved July 8, 2009, from http://www.answers.com/topic/business-liability-insurance
[45] Answers.com. *Business Liability Insurance.* Retrieved July 8, 2009, from http://www.answers.com/topic/business-liability-insurance
[46] Professional Liability. *What is Errors and Omissions Insurance?* Retrieved October 5, 2009, from http://www.g1g.com/trial/inside/e_o.php
[47] Maine.gov. Glossary of Insurance Terms. Retrieved October 15, 2009, from http://www.maine.gov/pfr/insurance/glossary.htm
[48] Ezine@rticles. *Surety Bonds Roles and Responsibility.* Retrieved October 5, 2009, from http://ezinearticles.com/?Surety-Bonds-Roles-and-Responsibility&id=531796
[49] Answers.com. *Surety Insurance.* Retrieved October 5, 2009, from http://www.answers.com/topic/surety-insurance
[50] EMC Insurance Companies. Bonds – Surety & Fidelity. Retrieved October 5, 2009, from http://www.emcins.com/ps/bonds_surety.htm

A lender's title insurance policy protects the lender, not the owner; though often the owner pays the premium. A lender's policy indemnifies the lender up to the value of the loan so the policy's value decreases as the loan is paid and provides no coverage once the loan is paid off. Generally, a lender will not provide a loan to a home buyer without a lender's title policy. Therefore, virtually all homebuyers obtain title insurance.

Title insurance is different from other insurance products in a number of ways: title insurance insures against things that have already happened instead of things that may happen, such as an automobile accident; consumers frequently do not shop for title insurance because real estate agents and lenders most often recommend a title insurance provider; and consumers of title insurance pay a one-time fee as part of the real estate transaction, as opposed to ongoing premiums. In addition, title insurance represents a fairly small cost to consumers over their lifetimes if one applies a ballpark figure of $1,000 in premium for a $300,000 home.

Most problems with a title should be revealed in the title search. Because of this, it is reasonable to expect a low rate of title claims since title insurance largely protects against human error in the title search process.

Workers' Compensation

Workers' compensation insurance (workers' compensation) pays benefits to an employee, or the family of an employee, who has been injured or has developed an occupational disease on the job. Benefits include compensation for medical costs, lost wages, disability, and death. Such insurance protects employees by ensuring they will be compensated if they are injured or they develop an occupational disease at work. It also protects employers from being sued by employees who are injured or develop an occupational disease on the job.

Workers' compensation is mandatory insurance for employers in all 50 states. However, laws regarding workers' compensation vary by state.

Workers' compensation premiums are based on the total payroll, the classification of the employees, and the accident experience of an employer. The classification rate is based on the likelihood of an accident occurring while on the job. An employer who has a poor safety record will incur higher rates than an employer who has average or above average safety records.

Workers' compensation in Colorado is primarily regulated by the Division of Workers' Compensation in the Department of Labor and Employment. However, the DOI also plays a part in regulating workers' compensation.

The Division of Workers' Compensation is responsible for:

- Determining that employers have insurance;
- Handling claims-related issues; and
- Overseeing self-insured employers.

DOI is responsible for the following regulatory functions regarding workers' compensation:

- Licensing insurers, agents and brokers;
- Monitoring the financial condition of the insurance industry;
- Overseeing the Classification Appeals Board, which handles classification and experience modification disputes;
- Approving the annual National Council on Compensation Insurance loss cost filing;
- Reviewing rate and form filings submitted by individual insurers; and
- Handling complaints regarding rate or premium-related issues.

This sunset review is concerned with workers' compensation as it is regulated by the DOI and not as it is regulated by the Division of Workers' Compensation.

Pinnacol Assurance

Pinnacol Assurance (Pinnacol) is the largest workers' compensation insurer in the state of Colorado, providing coverage to over half of all Colorado workers. The DOI regulates Pinnacol somewhat differently from other insurers that offer workers' compensation because it was formed by the state in order to provide insurance for those employers who are unable to procure insurance for their workers.

As the state's insurer of last resort, Pinnacol is prohibited from refusing workers' compensation coverage to any Colorado employer. Some states have similar not-for-profit companies that act as the insurer of last resort. Other states, however, have an insurance pool, in which private insurers who provide workers' compensation are required to share the responsibility providing insurance to companies that are otherwise unable to obtain workers' compensation insurance.

Legal Framework

The 14 parts included in Article 3 of Title 10, Colorado Revised Statutes (C.R.S.), are examples of standardization among states' statutes. The majority of the provisions in Article 3 are derived from models disseminated by the National Association of Insurance Commissioners (NAIC).

Article 3 lays out the structures established for the operation of insurance businesses domiciled in Colorado. Insurers that choose to be established and authorized to operate in Colorado, are Colorado-domiciled or Colorado domestic insurers. However, because other states adopt the standardized provisions, Colorado can assume that foreign insurers, those authorized to do business by another state, follow a very similar path toward authorization. The standardization makes the transfer and exchange of information between and among states more efficient.

The following parts correspond to Article 3 of Title 10, C.R.S.:

Part 1: General Provisions

Part 1 explains the basic operating conditions with which any corporation must comply to become authorized to operate as an insurer in Colorado. Included among the 31 sections of Part 1 are provisions addressing corporation formation, determination of the types of insurance the insurer will offer, reporting to the Division of Insurance (DOI), behavior of the corporate directors, and duties of insurers operating in Colorado.

Part 2: Financial Affairs

The goal of Part 2 is to ensure that an insurer authorized to conduct business in Colorado has the financial capability to cover its claims. The statute defines minimum monetary amounts needed to operate and it regulates the composition of an insurer's investment portfolio to ensure finances are diversified and conservative.

Part 3: Uniform Guaranty Deposits

Part 3 requires that any company conducting business in Colorado, regardless of whether they are domiciled in Colorado, have deposits sufficient to pay any insureds in the case of insolvency.

Parts 4 and 5: Delinquencies and Insurers' Rehabilitation and Liquidation

If an insurer is not in compliance with the established regulatory guidelines, it is delinquent. When a company becomes delinquent, the Commissioner of Insurance (Commissioner) may order varying levels of oversight, from direct supervision or takeover, to rehabilitating the company with the policy holders being the top priority. If the company cannot be rehabilitated, then the assets, including the policies, are sold according to statutory guidelines.

Part 6: Exchange of Insurance Securities Act

Part 6 delineates the procedures and circumstances for entire companies to be sold or purchased.

Part 7: Reinsurance

Reinsurance occurs when one insurer insures a quantity of its policies with another insurer. It may do this to lessen the exposure in cases where a portfolio becomes too heavily weighted in a single area. Part 7 also delineates circumstances under which reinsurance can occur and who may issue reinsurance.

Part 8: Insurance Holding Company Systems

Part 8 regulates insurance holding companies to ensure that the marketplace remains competitive so that one holding company does not control too much of a given insurance market.

Part 9: Unauthorized Insurance

Unauthorized insurers are those that operate in Colorado and have a certificate of authority (COA) issued in another state. This part outlines expectations that an unauthorized, nonexempt company must follow to operate in Colorado.

Part 10: Unauthorized Insurers Process Act

Part 10 provides for consumer recourse against unauthorized insurers.

Part 11: Unfair Competition – Deceptive Practices

Part 11 defines unfair competition and deceptive acts or practices and provides procedures to investigate, enforce, and, if necessary, penalize companies that are out of compliance.

Part 12: Systems for Holding and Transferring Securities

Part 12 authorizes modern methods of holding and transferring securities, versus holding physical certificates of ownership for each security held by a company.

Part 13: Model Quality Replacement Parts Act

This is NAIC model legislation which demands disclosure of used parts utilized to repair automobiles.

Part 14: Model Risk Retention Act

This is NAIC model legislation which gives the Commissioner some power to regulate risk retention groups formed under the federal "Liability Risk Retention Act of 1986."

Beyond statute, the Commissioner has promulgated regulations to help implement the many responsibilities of Article 3. The regulations that have the most direct nexus to Article 3 are Chapter 2, Corporate Issues, and Chapter 3, Financial Issues.

Captive Insurance Companies

Captive insurers are unique in the sense that they are owned by their insured(s), or rather, their insured(s) form and own them. They are regulated by the Colorado Captive Insurance Company Act (Captive Act), which can be found at section 10-6-101, *et seq.*, C.R.S.

The Captive Act allows for two basic types of captive insurer, pure and group. A pure captive insurer is one that is owned or controlled by a parent company to insure the risks, hazards and liabilities of the parent company, and its affiliated entities, along with employee benefits coverages.[51]

A group captive insurer is similar to a pure captive insurer with respect to the types of things it may insure, but a group captive insurer is owned by an association of individual professional practitioners or an association of companies with substantially similar or related risks.[52] A group captive insurer may also be a risk retention group, as authorized by the federal Risk Liability Retention Act of 1986.[53]

The difference between a pure and group captive insurer, then, is one of ownership. Pure captive insurers are generally owned by a single parent company, whereas group captive insurers are owned by several companies.

If a captive insurer issues employee benefits coverages, those coverages must provide the same minimum mandated coverages as required of all other insurers in Colorado.[54]

A captive insurer must hold a Colorado-issued COA[55] and must provide to the Commissioner, on an annual basis, a report of its condition.[56]

A Colorado captive insurer must have at least $500,000 in total capital and surplus.[57] Once approved, captive insurers pay premium taxes to the Commissioner.[58]

A captive insurer's COA may be revoked or suspended if the Commissioner finds that the captive insurer has:[59]

- Become insolvent or is impaired;
- Failed to meet the minimum capitalization and surplus requirements;
- Refused or failed to submit an annual report;
- Failed to comply with its own organizational requirements;
- Failed to submit to an examination by the DOI staff;
- Refused or failed to pay the cost of an examination, premium taxes or other penalty or fee;
- Used methods that render its operations hazardous or unsound; or
- Refused or failed to otherwise comply with the Captive Act.

Finally, the Commissioner has promulgated Regulation 2-3-1, which further clarifies certain provisions of the Captive Act.

[51] §§ 10-6-103(8) and 10-6-103(9), C.R.S.
[52] §§ 10-6-103(4) and 10-6-103(5), C.R.S.
[53] § 10-6-103(5), C.R.S.
[54] § 10-6-105(1), C.R.S.
[55] § 10-6-107(1), C.R.S.
[56] § 10-6-114(1), C.R.S.
[57] § 10-6-116(1), C.R.S.
[58] § 10-6-128, C.R.S.
[59] § 10-6-115(1), C.R.S.

Credit Insurance

Credit insurance is attached to a loan or other credit transaction indemnifying a debtor's debt, to a creditor or lender.[60] Article 10 regulates the credit insurance business. Insurers that provide credit insurance as an isolated transaction, rather than as a business, are exempt from regulation under Article 10.[61] The Article lays out regulatory provisions typical to governing insurance lines and how they apply to credit insurance:

- Authorization provision – provides that credit insurance may only be delivered or issued by a DOI-authorized insurer;[62]
- Disclosure provision – provides that consumers know what is covered and for how long;[63]
- Reporting provision – provides that insurers know what to report to the DOI;[64]
- Rating provision – provides the formula insurers are to use for determining premiums;[65]
- Judicial review provision – provides the ability to appeal Commissioner decisions;[66] and
- Penalty provision – provides penalties associated with violation of a Commissioner's order.[67]

Beyond these basics, Article 10 provides regulation specific to the credit insurance business.

A credit insurance policy benefit may not be worth more than the actual debt[68] with two specific exemptions: an agricultural transaction commitment loan, of one year or less in duration; and an educational loan, which may be indemnified for any amount up to the loan commitment, whether borrowed or not.[69]

Rating can be done by either a component rating formula determined by the Commissioner with the help of the regulated industry,[70] or by using a 40 percent loss ratio formula for state and national banks.[71]

Payments on a credit insurance policy may not last longer than 30 days beyond the satisfaction of the debt.[72] The insurance policy must be separate from the loan. However, the creditor may receive a premium commission from a licensed insurer.[73]

---

[60] §§ 10-10-103(2),(4) and (5), C.R.S.
[61] § 10-10-104, C.R.S.
[62] § 10-10-111, C.R.S.
[63] §§ 10-10-108 and 10-10-119, C.R.S.
[64] § 10-10-109(3), C.R.S.
[65] § 10-10-109(2.5), C.R.S.
[66] § 10-10-115, C.R.S.
[67] § 10-10-116, C.R.S.
[68] § 10-10-106(1), C.R.S.
[69] §§ 10-10-106(2) and (3), C.R.S.
[70] § 10-10-109(2.5)(c), C.R.S.
[71] § 10-10-109(2.5)(b), C.R.S.
[72] § 10-10-107, C.R.S.
[73] § 10-10-117, C.R.S.

When credit insurance is required as a condition of a loan, a debtor may request of the creditor, that a policy currently owned or controlled by the debtor be used to securitize the debt. Or, the debtor may use another authorized insurer to furnish the required coverage.[74] Despite these conditions, Article 10 prohibits revolving credit or other charge accounts for purchasing goods and services from requiring credit insurance.[75]

Generally, the rules promulgated by the DOI to aid in the implementation of Article 10 add detail to specific Article provisions.[76] Section 6 of the rules addresses Benefit Standards/Policy Requirements in which regulations govern the specific types of credit insurance products: credit life insurance, credit accident and health insurance, credit unemployment insurance, credit property insurance, and credit dismemberment insurance.

Inter-Insurance

Article 13 of Title 10, C.R.S., contains the statutory directives for inter-insurance.

Inter-insurance insurers enable subscribers, which include individuals, partnerships or corporations, to exchange contracts with each other in order to provide indemnity among themselves from any loss related to insurance.[77] Inter-insurance insurers are permitted to write any kind of insurance except life insurance; however, in Colorado, inter-insurance insurers predominantly write property and casualty lines of insurance.

Prior to operating in Colorado, inter-insurance insurers must obtain a COA from the Commissioner. To obtain a COA, an inter-insurance insurer is required to maintain a surplus of at least $300,000.[78] Inter-insurance insurers must renew their COAs annually.

Inter-insurance insurers are closely related to mutual companies except that inter-insurance insurers utilize a management company, also known as an “attorney-in-fact,” to complete administrative functions associated with the operation of an insurance company (i.e., collecting premiums and paying insurance claims, etc.). Each attorney-in-fact, which includes all solicitors, agents, special agents, etc., doing business in Colorado is required to be licensed by the Commissioner.

[74] § 10-10-113, C.R.S.
[75] § 10-10-118, C.R.S.
[76] Colorado Division of Insurance, *3 CCR 702-4, Life, Accident and Health, Amended Regulation 4-9-2, Credit Insurance*.
[77] § 10-13-101, C.R.S.
[78] § 10-13-106(2), C.R.S.

Also, all subscribers of an inter-insurance insurer in Colorado, through their attorney-in-fact, are required to file a declaration, which includes the following:[79]

- The kind of insurance to be exchanged;
- A copy of the form of policy contract or agreement under or by which insurance is to be exchanged; and
- That applications have been made for indemnity upon at least 100 separate risks aggregating at least $1.5 million, or in the case of liability or compensation insurance, the total payroll must be at least $1.5 million.

The attorney-in-fact must submit an annual financial report to the Commissioner detailing the financial condition of the company.[80]

Any violations of Article 13 are misdemeanors and, if convicted, an insurer may be subject to a fine of at least $100 up to a maximum of $1,000.[81]

Mutual Insurance

Like captive and inter-insurance insurers, mutual insurers are owned by their insureds.[82] Additionally, the corporate name must include the word “mutual.”[83] Unless otherwise prohibited, mutual insurers can write virtually any line of insurance.[84] Mutual insurers, in terms of their ownership structure and operational requirements, are governed by Article 12 of Title 10, C.R.S.

Colorado law provides for two sub-types of mutual insurers: mutual protective associations and employers’ mutual liability insurers.

To form a mutual protective association, there must be at least 100 people who will become the owner-insureds of the mutual protective association.[85]

To form an employers’ mutual liability insurer, there must be at least 15 individuals or business entities who will become owner-insureds. Employers’ mutual liability insurers are generally limited to writing workers’ compensation-type policies.[86]

Regardless of the type of mutual insurer formed, the company is still required to pay all applicable fees and premium taxes.[87]

[79] §§ 10-13-103(b),(c),(f) and (g), C.R.S.
[80] § 10-13-103(g), C.R.S.
[81] § 10-13-110, C.R.S.
[82] § 10-12-403, C.R.S.
[83] § 10-12-404, C.R.S.
[84] § 10-12-406, C.R.S.
[85] § 10-12-101(1), C.R.S.
[86] § 10-12-201, C.R.S.
[87] §§ 10-12-104 and 10-12-106, C.R.S.

Nonadmitted Insurers

Although surplus lines insurers are considered nonadmitted (unlicensed) insurers[88] in Colorado, the DOI still has some limited regulatory oversight of the industry. The laws governing surplus lines insurance are contained in Article 5 of Title 10, C.R.S.

Insurance coverage that cannot be placed with admitted (licensed) insurers may be placed with nonadmitted insurers. Such coverage, designated in Article 5 as surplus lines, must be procured through a licensed broker; and a diligent effort must be made to ensure the insurance is not available through admitted insurers in the state, or the premium quoted by the admitted insurer must be more than 10 percent higher than that quoted by the nonadmitted insurer. An affidavit attesting to the diligent effort must be filed with the Commissioner within 30 days of procuring the coverage, or the Commissioner may instead require a report of surplus lines insurance that is procured each month.[89]

Each surplus lines contract must include the name or be initialed by the broker who procured the coverage, and each contract must be stamped with the following:

> This contract is delivered as surplus lines coverage under the 'Nonadmitted Insurance Act.' The insurer issuing this contract is not licensed in Colorado but is an approved nonadmitted insurer. There is no protection under the provisions of the 'Colorado Insurance Guaranty Association Act.'[90]

For a broker to place coverage with a nonadmitted insurer, the insurer must be on a list of approved nonadmitted insurers prepared by the Commissioner.[91] The Commissioner may fine a broker who places insurance with a nonadmitted insurer which is not on the approved list and may revoke the broker's license.[92]

A surplus lines broker must maintain a full and true record of each surplus lines contract.[93] Such records are open to examination by the Commissioner at all times. A surplus lines broker must file annually, by March 1, a verified statement of all surplus lines insurance transactions made by the broker during the preceding calendar year.[94] All surplus lines coverage is subject to state premium tax collection.

The Commissioner is required to rely on the advice and assistance of an association of brokers to perform the required functions and duties of Article 5.[95] The Commissioner may examine the association's records concerning any functions or duties carried out on behalf of the Commissioner.

---

[88] A nonadmitted insurer is an insurer that is not licensed to do business in the state, also an unlicensed insurer or an unauthorized insurer.
[89] § 10-5-103(1), C.R.S.
[90] § 10-5-104, C.R.S.
[91] § 10-5-108(1), C.R.S
[92] § 10-5-108(2), C.R.S.
[93] § 10-5-109, C.R.S.
[94] § 10-5-110, C.R.S.
[95] § 10-5-115(2), C.R.S.

The Commissioner may examine the records of insurance placed with nonadmitted insurers. The Commissioner may fine any person refusing such an order to pay a fine of up to $10,000.[96]

Preneed Funeral Contracts

Although preneed funeral contracts (preneed contracts) are not technically insurance products, the DOI regulates the industry. The laws governing preneed contracts are housed in Article 15 of Title 10, C.R.S.

A preneed contract is defined as any written contract, agreement, or mutual understanding that upon the death of the beneficiary, a final resting place, merchandise, or services shall be provided or performed. The value of a preneed contract may be held in either a trust fund or the assignment of life insurance benefits.[97] Services include those that are performed to care for and prepare deceased human bodies for burial or cremation.[98] A preneed contract is not a merchandise contract in which the buyer takes physical possession of the merchandise at the time of entering the contract.[99]

A contract seller is a person who sells merchandise and services through a preneed contract.[100] A contract buyer is a person who buys merchandise and services through a preneed contract.[101] A person may be an individual, partnership, firm, joint venture, corporation, company, association, joint stock association, or limited liability company.[102]

In Colorado, a contract seller must be licensed by the state. To become licensed, an applicant must submit to the Commissioner:

- A written application;
- Payment of $500; and
- A current balance sheet, income statement, and statement of cash flow to demonstrate a net worth of at least $10,000 (or post a surety bond in such an amount).

A contract seller is required make all books and records available to the Commissioner for examination. Examinations may not take place more frequently than once in any calendar year unless by court order.[103]

[96] § 10-5-116, C.R.S.
[97] § 10-15-102(13)(a), C.R.S.
[98] § 10-15-102(16), C.R.S.
[99] § 10-15-102(13)(b), C.R.S.
[100] § 10-15-102(6), C.R.S.
[101] § 10-15-102(5), C.R.S.
[102] § 10-15-102(12), C.R.S.
[103] § 10-15-103(4)(a), C.R.S.

Licenses expire annually on June 30.[104] To renew, a licensee must submit an application and pay the required fee, which is determined by the value of all outstanding contracts.

Each contract seller must file an annual report with the Commissioner.[105] Any contract seller who has voluntarily or involuntarily discontinued the sale of preneed contracts is not required to renew his or her license but is still required to submit annual reports until all such contracts have been fully performed by it and must pay 50 percent of the required licensing fee.

A contract seller is required to certify with the Commissioner each contract form offered or sold, or to notify the Commissioner that the contract seller will use preauthorized forms made available by the Commissioner.[106] A contract seller must provide an accurate copy of the contract to the contract buyer.[107]

Additionally, a contract seller, who acts as a broker and does not perform or provide the services or merchandise contracted for, must have in place a general provider agreement,[108] and the contract seller must provide a copy of the general provider agreement to the buyer.[109] Each general provider agreement must be filed with the Commissioner.

A contract buyer may cancel the preneed contract at any time and receive a refund. If the preneed contract is cancelled within seven days of signature, then the buyer must receive a full refund.[110] If the preneed contract is cancelled after seven days of signature, the buyer must receive 85 percent of the amount paid for the contract.[111] Upon the request and consent of the contract buyer, a preneed contract, related trust, or assignment of the ownership or the benefits of a life insurance policy may be made irrevocable.[112] However, the contract buyer, or his or her heirs, assigns, or duly authorized representatives may, at any time before performance, transfer the funds or the assignment to any other contract seller or general provider.

When the consideration paid on a preneed contract is funds, and not the assignment of life insurance benefits, the contract seller must deposit at least 75 percent of the total preneed contract price with a trustee.[113]

---

[104] § 10-15-103(5)(a), C.R.S.
[105] § 10-15-104, C.R.S.
[106] § 10-15-105(1)(b), C.R.S.
[107] § 10-15-105(1)(c), C.R.S.
[108] "General provider" means a person who engages, on a contract basis, in the usual business of providing the merchandise and performing the services, at time of need, for the final disposition of a deceased human body, and does not include subcontractors of a general provider.
[109] § 10-15-105(1)(d), C.R.S.
[110] § 10-15-105(4)(d), C.R.S.
[111] §§ 10-15-105(4)(e) and (j), C.R.S.
[112] § 10-15-105(9), C.R.S.
[113] § 10-15-107(1), C.R.S.

A trustee may disburse any excess trust assets, according the preneed contract between the contract buyer and the contract seller, as long as the value of the trust exceeds the total of all funds paid by the contract buyer.[114]

However, if the consideration of a preneed contract is life insurance benefits and the value of the assignment exceeds the price of providing the contracted services and merchandise based on the provider's current general price list, then the excess amount must be paid to the beneficiary of the policy or the estate of the preneed contract beneficiary.[115]

The Commissioner may impose an administrative fine up to $1,000 for each offense; may issue a letter of admonition; may place a contract seller on probation; and may refuse to renew, may revoke, or may suspend the license of any contract seller if, after an investigation and after notice and a hearing the Commissioner determines that the contract seller has:[116]

- Failed to comply with or has violated any provision of Article 15 or any regulation or order;
- Used false or misleading advertising or made any false or misleading statement or concealment in the contract seller's application for licensure;
- Employed any device, scheme, or artifice which results in defrauding a contract buyer;
- Disposed of, concealed, diverted, converted, or otherwise failed to account for any funds or assets of any contract buyer which are subject to regulation pursuant to Article 15;
- Committed any act that constitutes a violation of the "Colorado Consumer Protection Act," Article 1 of Title 6, C.R.S.;
- Been convicted of, or any officer, director, or controlling shareholder has been convicted of, a crime involving fraud, misappropriation or misuse of funds; or
- Failed to provide appropriate records requested as part of an investigation of a complaint filed with the Commissioner.

Any person who violates Article 15 commits a Class 3 misdemeanor, and any person who violates the trust fund provisions of Article 15 or any other misappropriation of funds commits theft.[117]

[114] § 10-15-109, C.R.S.
[115] § 10-15-111(2), C.R.S.
[116] § 10-15-114(1), C.R.S.
[117] § 10-15-118(1), C.R.S.

Property and Casualty

Article 4 of Title 10, C.R.S., which includes 14 parts, contains the statutory directives for property and casualty insurance in Colorado:

Part 1: General Provisions

Part 1 addresses general issues regarding property and casualty insurance. Part 1 also outlines the provisions for the regulation of homeowner's insurance, including the definition of homeowner's insurance and prohibited practices.

Part 2: Repealed

Part 3: Bonds Executed By Qualified Surety Companies

Part 3 highlights the qualifications for surety companies to conduct business in Colorado.

Part 4: Rate Regulation

Part 4 directs the DOI to regulate insurance rates so the rates are not excessive, inadequate or discriminatory.[118] Rate regulation includes the following kinds of insurance: Type I and Type II. Type I insurance, which includes workers' compensation insurance (for pure losses only), requires "prior approval" of rates. This means that the DOI must approve rates prior to insurers charging employers.

Type II insurance is regulated by open competition between insurers. Type II insurance rates are "file and use," which means that insurers must file a rate change with the DOI but are not required to wait for approval from the DOI before utilizing the rate.

Part 5: Colorado Insurance Guaranty Association Act

Part 5 requires all property and casualty insurers to be members of the Colorado Insurance Guaranty Association (CIGA). The purpose of the CIGA is to protect insureds in the event that an insurer becomes insolvent. The CIGA is divided into three separate funds: workers' compensation, motor vehicle insurance and other property and casualty lines of insurance.[119]

Part 6: Automobile Insurance Policy – Regulations

Part 6 serves as the core for policies related to the regulation of motor vehicle insurance. Specifically, Part 6 establishes the following policies related to motor vehicle insurance including, but not limited to:

- The basis for cancellation of any motor vehicle insurance;
- Minimum automobile coverages; and
- Medical payments coverage.

Part 7: Repealed

Part 8: Repealed

[118] § 10-4-401(1), C.R.S.
[119] § 10-4-506, C.R.S.

Part 9: Medical Malpractice Insurance Joint Association

The purpose of the Medical Malpractice Insurance Joint Association (MMIJA) is to provide a market for medical malpractice insurance on a self-supporting basis.[120] Section 10-4-903(1), C.R.S., required every medical malpractice insurer to participate in the MMIJA as a condition of its authority to operate in Colorado. The MMIJA terminated on February 1, 1981.[121]

Part 10: Fraudulent Claims and Arson Information Reporting Act

Part 10 details the disclosure information required when a person or insurer has reason to believe that a fire may have been caused by other than accidental means or when any insurance claim appears to be fraudulent.

Part 11: Commercial Liability Insurance Joint Underwriting Association

The Commercial Liability Insurance Joint Underwriting Association (CLIJUA) was established in 1987 to ensure the continued availability of necessary commercial liability insurance by establishing a temporary market for Commercial Liability Insurance coverage.[122] The CLIJUA was also established in the event that commercial liability insurance was not available on the voluntary market or the price was too high for consumers.[123] The CLIJUA was only permitted to provide a market for commercial liability insurance on a temporary basis and for no longer than one year unless extended by the Commissioner.[124]

Part 12: Transaction of Business with Producer-Controlled Property and Casualty Insurers

Part 12 implements safeguards for an insurer to protect its solvency related to controlling producers. Further, Part 12 is applicable if the gross written premium on business placed with an insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the insurer.[125]

Part 13: Black Lung Disease Insurance Joint Underwriting Association

The Black Lung Disease Insurance Joint Underwriting Association (BLDIJUA) was created in 1995 to ensure that insurance is available at a reasonable cost to consumers.[126]

Part 14: Exemption for Rate and Approval Requirements for Insurers Providing Coverage to Exempt Commercial Policyholders

Part 14 enables exempt commercial insureds, which utilize risk managers, to purchase Type II insurance products from insurance producers that are not subject to rate and form regulatory requirements.

The Commissioner has also promulgated regulations for the implementation of Article 4 within Title 10, C.R.S.

---

[120] § 10-4-903(2), C.R.S.
[121] § 10-4-903(2), C.R.S.
[122] § 10-4-1101, C.R.S.
[123] § 10-4-1101, C.R.S.
[124] § 10-4-1103(2), C.R.S.
[125] § 10-4-1202(1), C.R.S.
[126] § 10-4-1301, C.R.S.

Title Insurance

The "Title Insurance Code of Colorado," is contained in sections 10-11-101 through 10-11-126, C.R.S. Title insurance insures, guarantees, or indemnifies owners of real property or others interested therein against loss or damage suffered due to liens or encumbrances upon, defects in, or the unmarketability of the title to the property.[127]

Companies providing title insurance must comply with financial requirements, including reserve funds that are supervised by the Commissioner.[128]

Before a title insurance policy can be written, the insurer must perform a reasonable search of the title to determine its insurability and must maintain evidence of this search for a period of not less than seven years from the date the policy was issued.[129] An insurer is not required to disclose to the prospective insured prior to issuing a policy, documents that:[130]

- Are spurious as defined in section 38-35-201, C.R.S.;[131]
- Are not, according to sound underwriting practices for title insurance companies, an impairment of record concerning the property to be insured; or
- Do not encumber the property to be insured.

Title insurers must submit to the DOI a schedule of their rates and fees and amendments to such with their applicable effective dates and may not use amended rates until the amended effective date.[132]

Insurers must provide, for each sale of residential property, a statement disclosing that:[133]

- The property may be located in a special taxing district;
- A certificate of taxes due by jurisdiction is available through the county treasurer; and
- Information regarding special districts and their boundaries is available through various county offices.

[127] § 10-11-102(8), C.R.S.
[128] § 10-11-105(2), C.R.S.
[129] § 10-11-106(1), C.R.S.
[130] § 10-11-106(2), C.R.S.
[131] "Spurious document" means any document that is forged or groundless, contains a material misstatement or false claim, or is otherwise patently invalid. A "spurious lien" is a purported lien or claim of lien that is not provided for by a specific state or federal statute or by a specific ordinance or charter of a home rule municipality. Spurious liens also include a purported lien or claim of lien that is not created, suffered, assumed or agreed to by the owner of the property it purports to encumber or that is not imposed by order, judgment or decree of a state or federal court.
[132] § 10-11-118, C.R.S.
[133] § 10-11-122(1), C.R.S.

Failure to provide this statement is a misdemeanor and upon conviction the insurer can be punished by imprisonment in the county jail for not more than one year and by a fine of not more than $1,000.[134]

Before issuing any title insurance policy, unless the proposed insured declines in writing, the agent or company must provide a certificate of taxes due from the county treasurer.

When making a referral as part of an affiliated business arrangement, insurers must disclose the affiliated business arrangement in accordance with the federal "Real Estate Settlement Procedures Act of 1974;"[135] however, they may not require the use of an affiliated business arrangement as a condition of obtaining title insurance.[136] In addition to other remedies available to the Commissioner, violation of this provision subjects insurers to penalties in the amount of the improperly paid remuneration.[137]

Title insurers are not allowed to:[138]

- Engage in the business of guaranteeing the payment of the principal or interest of bonds, notes or other obligations;
- Transact, underwrite or issue any type of insurance other than title insurance;
- Receive or attempt to receive any form of remuneration for the referral of title insurance business; or
- Give or receive or attempt to give or receive any compensation for services unless the services were actually rendered.

The DOI has also promulgated two regulations clarifying provisions of the Title Insurance Code of Colorado. The regulations include clarification on affiliated business arrangements, standards of conduct, fiduciary responsibilities and the standards for calculating the amount of fees that title insurers are assessed.

Workers' Compensation

Workers' compensation in Colorado is regulated by two state agencies, the DOI and the Division of Workers' Compensation in the Colorado Department of Labor and Employment. The laws that are relevant to this sunset review relate to workers' compensation as it is regulated by the DOI and are contained in Article 44 of Title 8, C.R.S.

---

[134] §§ 10-3-111 and 10-11-122, C.R.S.
[135] § 12 U.S.C. sec. 2601, *et seq.*
[136] §§ 10-11-124(1)(b) and (c), C.R.S.
[137] § 10-11-126(2), C.R.S.
[138] § 10-11-108(1), C.R.S.

Employers must provide workers' compensation insurance through a stock or mutual insurer, through Pinnacol Assurance, or through self-insurance.[139] It is unlawful for employers to require employees to pay for a portion or all of the cost of such insurance.[140] Any policy of insurance must be written on a form previously approved by the Commissioner, as must any attached endorsement, rider, letter or other document affecting such policy.[141] Workers' compensation premiums are based on the employer's annual payroll.[142]

Any insurer who provides workers' compensation insurance must file the following with the Commissioner:[143]

- Any classifications of risks;
- Premiums related to such classifications;
- Any proposed classifications of risks and premiums; and
- All rates and any systems of ratings.

If any insurer intentionally, knowingly, or willfully violates any of the provisions of Articles 40 to 47 of Title 8, C.R.S., which deal with the administration and enforcement of workers' compensation insurance, the Commissioner, at the request of the Director of the Division of Workers' Compensation, must suspend or revoke the license or authority of such insurer to provide workers' compensation insurance.[144]

Insurance companies offering workers' compensation insurance may apply for the authority to examine books, payroll or other documents of an employer. The Commissioner may grant the insurer the authority or may appoint someone from the DOI to make such an investigation.[145]

Workers' compensation insurers may collect any amount that should have been included in a premium but was not due to job misclassification.[146] An employer may request that the insurer make a determination in writing that a job misclassification occurred. The employer may appeal any such determination to the Workers' Compensation Classification Appeals Board. Repayment for misclassification may be collected by the insurer. Likewise, an employer who has overpaid premiums due to job misclassification may recover any amount of money which should not have been paid.[147]

[139] § 8-44-101(1), C.R.S.
[140] § 8-44-101(2), C.R.S.
[141] § 8-44-102, C.R.S.
[142] § 8-44-114, C.R.S.
[143] § 8-44-103, C.R.S.
[144] § 8-44-106, C.R.S.
[145] § 8-44-107, C.R.S.
[146] § 8-44-108(1), C.R.S.
[147] § 8-44-108(2), C.R.S.

Pinnacol Assurance

Pinnacol Assurance (Pinnacol) is created by the General Assembly in Article 45 of Title 8, C.R.S., (Article 45) as a political subdivision of the state that is authorized to operate as a domestic mutual insurer.[148] As a mutual insurer, Pinnacol is subject to regulation by the Commissioner.

Pinnacol may only be dissolved by the General Assembly, but the company is not an agency of state government, nor is it subject to administrative direction by any state agency except as provided for in the provisions of Article 45.[149] Although employees of Pinnacol are not state employees they do benefit from the Public Employees Retirement Association,[150] a public pension program for Colorado state and school employees. Unlike other insurers, Pinnacol is not subject to premium tax.[151]

The powers of Pinnacol are entrusted to its nine-member board of directors, appointed by the Governor with the approval of the Senate.[152] The board of directors is vested with all the powers, rights, and duties of the board of directors of a domestic mutual insurer, except as otherwise provided by law.[153] Members of the board of directors serve five-year terms.[154]

Pinnacol is limited to offering workers' compensation insurance to Colorado employers. It is not authorized to offer any other type of insurance, and it may not offer workers' compensation insurance to employers outside the state of Colorado.[155] Pinnacol is prohibited from taking over any other insurer.[156]

For the most part, Pinnacol is subject to the same regulation by the Commissioner as other insurers. However, other insurers are required to adhere to the pure premium[157] rates approved by the Commissioner while Pinnacol may use different pure premium rates for employers who meet requirements established by the board of directors.[158] As with other insurers, the Commissioner may take control and appoint a supervisor of Pinnacol if it is deemed necessary. If the Commissioner takes control of Pinnacol, the company's portfolio may be transferred to the custody of the state treasury.[159] Most private insurers are subject to an examination every five years. Pinnacol is subject to examination every three years.[160] Additionally, it is audited by the State Auditor every year.[161]

---

[148] § 8-45-101(1), C.R.S.
[149] § 8-45-101(1), C.R.S.
[150] § 8-45-101(8), C.R.S.
[151] § 8-45-117(3), C.R.S.
[152] § 8-45-101(2)(a), C.R.S.
[153] § 8-45-101(2)(c), C.R.S.
[154] § 8-45-101(2)(a), C.R.S.
[155] § 8-45-101(5)(f), C.R.S.
[156] § 8-45-117(10), C.R.S.
[157] Pure premium is a term used in insurance rate making. It refers to that portion of the total premium which is needed to pay expected losses. It does not take into account money needed to pay other company expenses. Thomas E. Green, *Glossary of Insurance Terms,* Merritt Publishing (1994), p. 211.
[158] § 8-45-117(1), C.R.S.
[159] § 8-45-117(9), C.R.S.
[160] § 8-45-121(4), C.R.S.
[161] § 8-45-121(2), C.R.S.

Program Description and Administration

The Colorado Division of Insurance (DOI) regulates, to some degree, all domestic, foreign, and alien insurers who sell insurance in Colorado. As noted below, in Table 1, during fiscal year 07-08, the DOI utilized 80 full-time equivalent (FTE) employees and expended approximately $8.95 million regulating insurers.

Table 1
DOI Expenditures
Fiscal Years 03-04 through 07-08

Fiscal Year	Total Division Expenditures	FTE
03-04	$7,596,317	74
04-05	$8,061,180	76
05-06	$8,147,302	76.5
06-07	$8,404,654	79
07-08	$8,951,764	80

The DOI has three main sections under the direction of the Commissioner of Insurance (Commissioner). The sections are External Affairs, Consumer Affairs, and Finance and Administration.

External Affairs

External Affairs consists of a Director, who is a member of the senior staff, along with two Deputy Commissioners.

The Director works with the Commissioner to develop and supervise legislative activities, provides substantive and administrative support to various advisory groups and studies authorized by the General Assembly, and participates as the DOI representative on advisory committees.

The Director acts as the DOI's outreach coordinator, working with outside groups such as foundations, professional associations, advocacy groups, industry groups, or any entity that is interested in hearing about the DOI's mission and how it is accomplished. This often includes making presentations and organizing other staff, or the Commissioner, to make presentations.

Consumer Affairs

Consumer Affairs is divided into three sub-sections: Senior Health Insurance Program, Insurance Consumer Affairs and Regulatory Enforcement (ICARE), and Compliance and Investigations. These sections administer differing aspects of consumer information and relations as well as policy enforcement.

Senior Health Insurance

The Senior Health Insurance Program helps people enrolled in Medicare with questions about health insurance. The program trains counselors who provide individual counseling and assistance to seniors, provides public education presentations about Medicare related health insurance and Medicare fraud, and distributes printed materials relating to Medicare.

ICARE

The ICARE and Compliance and Investigations sections are directly involved with complaint and complaint resolution issues.

ICARE handles incoming inquiries and complaints from individual consumers, employers, providers and provider groups, insurance producers (agents and brokers), legislators on behalf of constituents, and from insurers concerning competitors. The first chore is to determine whether the DOI has jurisdiction.

If the DOI has jurisdiction over an issue, the staff reviews the complaint and begins an investigation. The complaint is sent to the company, and the company is requested to respond directly to the consumer on the complaint, copy the DOI with its response, and provide further information to the DOI, so the DOI may determine compliance with Colorado law, regulation, and the terms of the insurance policy. If a preliminary investigation determines a violation has occurred, the DOI may issue a show-cause order prior to imposing a fine, order the company to comply with the regulation(s), or, if it is determined that there is a criminal violation, the matter may be referred to the Investigations Unit for further inquiry or the Attorney General's Office for prosecution. Once a matter is resolved, the consumer and company are both informed and the file is closed.

During fiscal year 07-08, the DOI handled more than 25,000 incoming communications. Those contacts included inquiries, which are generally informational in nature, and formal complaints which are required to be in writing and assert specific allegation(s). Table 2 enumerates inquiries and formal complaint activity from fiscal year 04-05 through 07-08. With the exception of the number of complaint cases closed in fiscal year 04-05, there is very little variation in either the number of complaints opened or closed each year.

Table 2
Formal Complaint Activity
Fiscal Years 04-05 through 07-08

	FY 04-05	FY 05-06	FY 06-07	FY 07-08
Inquiries	17,679	14,540	16,878	17,212
Complaints Opened	4,589	4,536	4,797	4,362
Complaints Closed	5,205	4,420	4,829	4,651

ICARE also reviews statistics and trends to determine any patterns and practices or "Hot Consumer Topics" that develop within an industry segment or with respect to a single company. These analyses help DOI staff determine what information or educational efforts need to be made available to consumers and producers.

Other ICARE tasks include:

- Providing assistance to other DOI sections, including assistance reviewing reports, conducting investigations, developing surveys, and resolving issues related to health insurance rating and forms review;
- Implementing and revising insurance regulations and bulletins;
- Interpreting statutes, regulations, and bulletins for consumers, industry, and other sections in the DOI;
- Providing guidance on proposed legislation; and
- Assisting in the development of consumer education publications and website information.

The ICARE Property and Casualty section provides translation for Spanish-speaking consumers and other DOI sections, receives and processes requests for Personal Injury Protection Independent Medical Examinations, enforces insurer reporting requirements to the Motorist Insurance Identification Database, and provides assistance and relief to victims of natural disasters, in addition to the core responsibilities listed above.

Additionally, ICARE provides oversight for the motor vehicle protest process, in which an insured may file a formal protest against an insurer for changes made to his or her motor vehicle insurance policy. If an insurer changes a motor vehicle policy, the insurer is required to provide an insured a notice of the proposed changes 30 days prior to renewal of the policy. The insurer must also provide the insured the "Right to Protest" information, which outlines Colorado's formal protest process. Changes to an insured's motor vehicle insurance policy that meet eligibility requirements to file a protest are:[162]

- An increase in the premium charged;
- Non-renewal of the policy;
- Cancellation of the policy; or
- A reduction in the policy coverage.

To file a protest, an insured is required to mail two signed copies of the "Right to Protest" notice as well as provide a reason for the protest to the DOI.[163] The insured must submit the "Right to Protest" and the reason for the protest to the DOI within 10 days of receiving the notice of premium increase from the insurer.

[162] Colorado Division of Insurance. *How to File a Protest of an Auto Insurance Cancellation or Surcharge.* Retrieved July 14, 2009, from http://www.dora.state.co.us/insurance/consumer/2008%20docs/consHowToFileProtest070108.pdf
[163] Colorado Division of Insurance. *How to File a Protest of an Auto Insurance Cancellation or Surcharge.* Retrieved July 14, 2009, from http://www.dora.state.co.us/insurance/consumer/2008%20docs/consHowToFileProtest070108.pdf

Upon receipt of the "Right to Protest" notice, the DOI mails an acknowledgment of receipt letter to the insured within three to five days.[164]

After reviewing the "Right to Protest," the DOI may:[165]

- Uphold the insurer's actions, if there is no violation of Colorado law;
- Uphold the insured's allegations, if the insurer has made a technical error on the notice given to the insured; or
- Request additional information from both the insurer and the insured.

If the DOI determines that the insurer may have violated Colorado law or regulation, the "Right to Protest" goes through a hearing process with a Hearing Officer within the DOI. If a hearing is scheduled, the insured and the insurer will be notified approximately 10 days prior to the hearing.[166]

At a hearing, the Hearing Officer considers all evidence related to the case and renders a decision. Both the insured and the insurer will be notified by mail of the outcome of the hearing within two to three weeks of the date of the hearing.[167]

After the Hearing Officer renders his or her decision, both the insured and the insurer may file an exception to the decision within 30 days. If an exception is filed, the Commissioner reviews the information and renders a final decision. If an exception is not filed by either party, after 30 days the Hearing Officer's decision is considered final and a Final Agency Order is issued.

The entire motor vehicle insurance protest process takes approximately 45 to 60 days.

[164] Colorado Division of Insurance. *How to File a Protest of an Auto Insurance Cancellation or Surcharge.* Retrieved July 14, 2009, from http://www.dora.state.co.us/insurance/consumer/2008%20docs/consHowToFileProtest070108.pdf

[165] Colorado Division of Insurance. *How to File a Protest of an Auto Insurance Cancellation or Surcharge.* Retrieved July 14, 2009, from http://www.dora.state.co.us/insurance/consumer/2008%20docs/consHowToFileProtest070108.pdf

[166] Colorado Division of Insurance. *How to File a Protest of an Auto Insurance Cancellation or Surcharge.* Retrieved July 14, 2009, from http://www.dora.state.co.us/insurance/consumer/2008%20docs/consHowToFileProtest070108.pdf

[167] Colorado Division of Insurance. *How to File a Protest of an Auto Insurance Cancellation or Surcharge.* Retrieved July 14, 2009, from http://www.dora.state.co.us/insurance/consumer/2008%20docs/consHowToFileProtest070108.pdf

Table 3 delineates the total number of motor vehicle insurance protests filed with the DOI in fiscal years 03-04 through 07-08.

Table 3
Total Number of Motor Vehicle Protests in Fiscal Years 03-04 through 07-08

Fiscal Year	Number of Protests
03-04	1,652
04-05	1,483
05-06	1,219
06-07	1,238
07-08	1,115
Total	6,707

DOI staff was unable to provide a definitive answer as to why the number of motor vehicle protests has declined in each of the fiscal years highlighted in Table 3. However, DOI staff indicated that the vast majority of protests filed by the insured in the referenced fiscal years were due to motor vehicle insurance premium increases.

Though the regulation of life and health insurance is covered in other sunset reviews and not under scrutiny here, it is important to mention that there is also an ICARE Life and Health section.

Compliance and Investigations

The Compliance and Investigations unit's nine-person staff examines possible regulatory violations and enforces DOI policy.

Investigative duties include:

- Investigate qualifications for licensure and handle all license application denials;
- Investigate complaints against licensed producers;
- Investigate potential unauthorized insurance sales; and
- Process insurance fraud referrals and forward to the appropriate law enforcement agency for prosecution.

Compliance duties include:

- Draft rules for promulgation by the Commissioner;
- Review and issue bulletins and notices for the DOI;
- Coordinate legal services for the DOI;
- Manage records for the DOI;
- Enforce disciplinary actions for other sections when required or requested;
- Handle all service of process served upon the Commissioner as the registered agent for carriers authorized to write business in Colorado; and
- Process child support license suspension.

Finance and Administration

Finance and Administration has eight working sections:

- Actuarial
  - Guides, consults, and directs on technical, legal and statistical matters surrounding actuarial issues and regulation.
- Corporate Affairs and Premium Tax
  - Monitors business practices, authorizes foreign, domestic, and non-traditional companies, and collects premium tax from all insurers operating in Colorado.
- Financial Affairs
  - Preserves a safe, sound marketplace for consumers by reviewing and analyzing the finances of insurers domiciled in Colorado.
- Financial Examinations
  - Examines all Colorado domestic insurers at least once every five years to determine compliance with standard accounting practices as well as compliance with Colorado laws.
- Producer Licensing
  - Licenses and provides customer service and regulatory interpretation to more than 110,000 insurance producers.
- Office Management
  - Supports day-to-day operations of the DOI.
- Market Regulation
  - Develops a fundamental perception of the insurance marketplace to identify patterns and practices that pose a risk to consumers and requires remedies when necessary.
- Rates and Forms
  - Reviews and processes policies and riders for regulatory compliance.
  - Reviews rates for regulatory compliance.
  - Processes over 7,400 rates, rules, and riders for regulatory compliance.

The DOI regulates approximately 1,640 insurers. These include domestic companies, those which are based in Colorado and authorized by the DOI; foreign companies, those authorized by another state and operating in Colorado; and alien companies, those established in another country and operating in Colorado. The DOI's overarching regulatory directive is to monitor insurers operating in Colorado to safeguard consumers against a company becoming insolvent or operating outside of acceptable regulatory guidelines.

During the period fiscal year 03-04 through 07-08, the DOI reviewed 292 applications by insurers wishing to do business in Colorado. Applications are analyzed in great detail to determine if the company's organization is adequate, and complies with statute, and to make certain the finances of the company are conservative, diversified, and secure. Seventy-seven of those applications submitted to the DOI were rejected for various financial or structural reasons. Table 4 denotes the number of company applications and the denials made during the review period.

Table 4
Applications to Operate During Fiscal Years 03-04 through 07-08

	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
Number of Applications Reviewed	62	54	68	54	54
Number of Applications Not Approved	12	9	22	14	20

Of the roughly 1,640 insurers doing business in Colorado, only 3.7 percent are actually Colorado domestic companies, the overwhelming majority of which act as holding companies, another 2.9 percent are alien insurers, and the remaining, approximately 93 percent, are foreign insurers. Table 5 delineates the total number of insurers. These totals include all types and lines operating in Colorado during the sunset review period, and which residence category they fit into.

Table 5
Insurers Operating in Colorado
During Fiscal Years 03-04 through 07-08

	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
Domestic Insurers	66	63	61	60	56
Foreign Insurers	1,518	1,517	1,527	1,551	1,545
Alien Insurers	46	48	47	46	47
Total Number of Insurers Operating in Colorado	**1,630**	**1,628**	**1,635**	**1,657**	**1,648**

The administrative structure of domestic insurers, the diversification of its investment portfolio, and the amount of operating cash available, are all scrutinized by the DOI. Companies undergo constant monitoring and a periodic financial review to determine their ability to continue to operate. The DOI reviews virtually every financial move an insurer makes, whether it is the purchase or liquidation of investments, fees charged, premium taxes paid, investor dividend payouts, management agreements, or reinsurance agreements. When a review identifies hazardous issues, the Commissioner may take action to rehabilitate a company to keep it in business or, in the extreme, order that the company be liquidated.

Because the financial reviews are a component of National Association of Insurance Commissioners (NAIC) model law, the states that perform the reviews can, and do, share standardized information with other states when necessary. The NAIC also analyzes information through annual reports submitted to it by individual companies. The multiple external reviews provide added layers of oversight to the DOI.

Table 6 indicates the number of financial reviews performed by the DOI during fiscal year 03-04 through 07-08. The number of companies identified with issues includes information from all sources, internal and external. The one action to rehabilitate, noted in fiscal year 03-04, correlates to the one domestic liquidation the following year, fiscal 04-05. An analysis of Table 6 in its entirety, suggests that harmful business practices and follow-up actions are more the exception than the rule.

Table 6
Financial Reviews and DOI Actions
Fiscal Years 03-04 through 07-08

	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
Number of Financial Reviews	66	63	61	60	56
Troubled Companies (Domestic and Foreign)	90	66	65	22	58
Companies Identified in a Potentially Hazardous Situation (Domestic and Foreign)	17	11	5	3	9
Commissioner Actions to Rehabilitate	1	0	0	0	0
Liquidations-Domestic/Foreign	0/5	1/6	0/2	0/3	0/1

The Market Regulation team performs two basic functions: market analysis and market conduct examinations. Market analysis studies every phase of the insurance marketplace from policy implementation to advertising, rating, underwriting, claims, or any other issue that arises. Market analysis is ongoing and generally both qualitative and quantitative in nature, including an annual filing required by some insurers. The analysis examines how all companies in the marketplace are acting and exposes trends, i.e., who is doing what and how much. This enables the DOI to focus on trends and determine if further investigation is in the best interest of the consumer.

Market conduct examinations are triggered by market analysis. A market conduct examination could involve a small isolated segment of a single company or a large issue involving multiple states and/or multiple insurers. The DOI makes an in-depth investigation of the issue and/or the company(s) identified, using several analytical methods, and then takes regulatory action to rectify any recognized problems. For example, if an insurer's records are not maintained correctly or it isn't paying claims according to policy conditions, the DOI will possibly fine the insurer or require that refunds or claim adjustments be made.

Table 7 shows some market conduct actions started at the DOI during fiscal years 03-04 through 07-08. During fiscal year 05-06 the DOI shifted away from performing major comprehensive examinations for all issues and began taking preliminary steps, in some cases, to determine if a market conduct examination is necessary. Effective January 1, 2007, the statute changed to require market analysis and coordination with the domiciliary state before an examination could be started. The preliminary steps available to the DOI include asking a company for more information, meeting to discuss current areas of concern, gathering data, requesting a policy/procedure review, a self audit or performing analysis of a market sector.

Table 7
Market Conduct Activity
Fiscal Years 03-04 through 07-08

	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
Market Conduct Annual Filings	0	613	619	505	486
Market Conduct Examinations	46	38	30	15	9
Level 1 Analyses	0	26	46	25	24
Self Audits	0	0	2	12	16

Analysis and Recommendations

General Provisions

<u>Recommendation 1 – Continue the functions of the Division of Insurance related to the regulation of property and casualty, automobile, and any other entity or function that does not offer health, life, property, casualty or automobile insurance for seven years, until 2017.</u>

The first sunset criterion asks whether regulation is necessary to protect the health, safety and welfare of the public. There are various types of insurance available to consumers, each of which is regulated by the Colorado Division of Insurance (DOI). Regulatory oversight of the insurance industry by the DOI serves to insulate consumers from harm, while maintaining a regulatory model that provides an attractive environment for insurers to conduct business in Colorado.

This sunset review encompassed various lines (types) of insurance, many of which are unique and require different expertise in order to adequately protect consumers. As such, a comprehensive regulatory framework offering consumer protection is utilized by the DOI, which embodies a variety of oversight tools, including, but not limited to:

- Consumer complaint investigations;
- Motor vehicle protests;
- Financial examinations; and
- Market conduct examinations.

Each year, DOI staff receives thousands of insurance-related consumer complaints. There are several categories (reasons) of complaints filed with the DOI, such as, claims handling and underwriting.

To further enhance consumer protection, the DOI administers a formal protest process through which consumers can appeal changes made to their motor vehicle insurance policies, including premium increases. This process empowers consumers to challenge a change to their motor vehicle insurance policies. Many consumers utilize the protest process, as evidenced by the several thousand protests filed by Colorado consumers in fiscal years 03-04 through 07-08.

Additionally, financial examinations, which are required to be completed every three to five years for Colorado-domiciled insurers, are used by the DOI to insulate consumers from harm. A financial examination is a comprehensive review of an insurer's financial stability; that is, a financial examination is conducted to protect the public interest by:

- Detecting as early as possible those insurers with potential financial troubles;
- Assessing the financial condition and operating practices of insurers to determine compliance with applicable statutes, regulations and statutory accounting principles; and
- Compiling information/documentation needed for timely, appropriate regulatory actions.

The DOI also performs market conduct examinations, which are periodic reviews of an insurer's market-related activities, and may include any or all of the following operational areas:

- Marketing;
- Compliant handling;
- Producer oversight;
- Forms;
- Underwriting; and
- Claims.

By proactively conducting market conduct examinations, the DOI is able to identify problems, or potential problems, and issue corrective orders or fines.

The regulatory oversight of the insurance industry by the DOI provides a heightened level of consumer protection. This is achieved by responding to consumer complaints, and if necessary, taking appropriate regulatory action to mitigate issues; allowing for a formal protest process for Coloradans to challenge changes to their motor vehicle insurance policies; and by conducting financial and market conduct examinations. These functions create a solid regulatory environment in Colorado.

Consequently, the General Assembly should continue the functions of the DOI related to the regulation of property and casualty, automobile, and any other entity or function that does not offer health, life, property, casualty or automobile insurance for seven years, until 2017.

Recommendation 2 – Repeal the current sunset review schedule related to the DOI, and schedule the entire DOI for a sunset review, with the exception of the licensing of bail bonding agents, in 2017.

The 2001 sunset review of the DOI recommended that in order to effectively accommodate the complexity of the various types of insurance, the review of the DOI should be broken down into more manageable parts. The General Assembly subsequently enacted this recommendation and the current sunset review schedule includes several reviews of the various components of insurance (e.g., life insurance, certificates of authority, insurance producer licensing, etc.).

The current sunset review schedule of the DOI has proven to be both cumbersome and duplicative because it requires the Department of Regulatory Agencies (DORA) to review the same functions (e.g., consumer complaints, financial and market examinations, etc.) in multiple reports. For example, this current review, which included property and casualty insurance, and the review on life insurance in 2007, both examined the same functions of the DOI. Doing so did not reveal any discrepancies in which the functions are executed by DOI staff, instead it only served to provide a duplicative review related to the functions preformed by DOI staff.

In order to provide a comprehensive review of the DOI related to the regulation of the insurance industry in Colorado, the entire DOI should be included in one sunset review. Doing so will enable DORA to review the functions that the DOI utilizes when regulating the insurance industry. For example, including the entire DOI for a sunset review would enable DORA to review the intricacies of market conduct examinations on insurers related to all lines of insurance available to consumers.

However, the sunset review of the licensing of bail bonding agents should remain a separate, stand-alone review because the licensing of bail bonding agents requires unique regulatory oversight. In fact, the licensing of bail bonding agents is not contained in Title 10, Colorado Revised Statutes (C.R.S.), which is the insurance statute. Instead, the licensing of bail bonding agents is contained in Title 12, C.R.S.

Consequently, the General Assembly should repeal the current DOI sunset review schedule, and schedule the entire DOI for sunset review in 2017, with the exception of the licensing of bail bonding agents. This will enable DORA to conduct a comprehensive review, which will include the functions (e.g., financial and market conduct examinations, etc.) of the DOI, regardless of the line of insurance.

Recommendation 3 - Establish knowingly communicating a false material fact to the DOI as a violation of Title 10, C.R.S.

It is counter to law to make a false report to the DOI during official DOI examinations.[168] However, those same consumer protections are not currently applicable when insurers submit information to the DOI when it is not part of an official examination.

Insurers periodically file information with the DOI outside of an official examination. The information is reviewed, in part, to determine if a company has any issues that might prompt an official examination. Submitting false information, in any form, undermines this regulatory process and reduces the safeguards expected and demanded by the public. Moreover, this recommendation does not place an additional burden on or generate any additional work for insurers, it merely makes it a violation to lie to the DOI.

Therefore, the General Assembly should include knowingly communicating a false material fact to the DOI, regardless of whether it is during an official examination, a violation of Title 10, C.R.S.

Recommendation 4 – Establish treating individuals of the same class and risk differently, in terms of policy premiums, fees, and rates, for accident and health or property and casualty insurance policies as unfair discrimination and a violation of the Insurance Unfair Competition and Deceptive Practices Act.

For the insurance industry, unfair discrimination is defined as an unfair practice in section 10-3-1104(1)(f), C.R.S. The set of statutes has no form or flow but enumerates the following as unfair discrimination:

- Discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity;[169]
- Discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance;[170]
- Classification solely on the basis of marital status or sex, unless such classification is for the purpose of insuring family units or is justified by actuarial statistics;[171]
- Classification solely on the basis of blindness, partial blindness, or a specific physical disability unless such classification is based upon an unequal expectation of life or an expected risk of loss different than that of other individuals;[172]

[168] §§ 10-1-204(4) and 10-1-204(5), C.R.S.
[169] § 10-3-1104(1)(f)(I), C.R.S.
[170] § 10-3-1104(1)(f)(II), C.R.S.
[171] § 10-3-1104(1)(f)(III), C.R.S.
[172] § 10-3-1104(1)(f)(IV), C.R.S.

- Inquiring about or making an investigation concerning, directly or indirectly, an applicant's, an insured's, or a beneficiary's sexual orientation in an application for coverage or any investigation conducted in connection with an application for coverage;[173]
- Using information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation; [174]
- Using sexual orientation in the underwriting process or in the determination of insurability; [175]
- Making adverse underwriting decisions because an applicant or an insured has demonstrated concerns related to acquired immunodeficiency syndrome (AIDS) by seeking counseling from health care professionals;[176]
- Making adverse underwriting decisions on the basis of the existence of nonspecific blood code information received from the medical information bureau;[177]
- Reducing benefits under a health insurance policy by the addition of an exclusionary rider, unless such rider only excludes conditions which have been documented in the original underwriting application, original underwriting medical examination, or medical history of the insured, or which can be shown with clear and convincing evidence to have been caused by the medically documented excluded condition;[178] and
- Denying health care coverage to any individual based solely on that individual's casual or nonprofessional participation in: motorcycling, snowmobiling, off-highway vehicle riding, skiing, or snowboarding.[179]

Thus, current statutory provisions prohibiting discrimination are confusing and appear to exclude some consumers and some lines, i.e., accident and health, and property and casualty. It makes no sense to protect some consumers in some lines and not others.

Toward this end, the National Association of Insurance Commissioners (NAIC) developed model legislation aimed at protecting consumers from unfair discrimination in policy premiums, fees, and rates in accident and health and property and casualty insurance.

While this sunset review found nothing to indicate widespread discrimination by the insurance industry, to protect citizens from inconsistency, arbitrariness, and unfair discrimination, the General Assembly should determine that any actions that appear to be biased in regard to accident and health and property and casualty insurance policy premiums, fees, and rates in accident and health, and property and casualty insurance should be defined as unfair discrimination.

[173] § 10-3-1104(1)(f)(VI), C.R.S.
[174] § 10-3-1104(1)(f)(VII), C.R.S.
[175] § 10-3-1104(1)(f)(VIII), C.R.S.
[176] § 10-3-1104(1)(f)(IX), C.R.S.
[177] § 10-3-1104(1)(f)(X), C.R.S.
[178] § 10-3-1104(1)(f)(XI), C.R.S.
[179] § 10-3-1104(1)(f)(XII), C.R.S.

Recommendation 5 – Repeal outdated language mandating newspaper publication of financial report synopsis.

Section 10-3-109(1), C.R.S., orders that a synopsis of an annual financial report:

> Shall be published in some newspaper of general circulation, published at the state capital, for at least four insertions. Such publication shall be made within thirty days after such certificate of authority is issued, and a copy of the paper containing such publication shall be filed in the office of the commissioner.

To fulfill this legislative mandate, insurers typically select small publications, with small readerships, and place the report synopsis in its Legal Notices section. The publications are selected because of the cost savings compared to larger, wider circulated publications rather than the desire for information disseminated to a wide audience. Consequently, few consumers see the information.

Moreover, the stipulation requiring the DOI keep a copy of the paper is no longer necessary or practical. Financial reports are generally submitted electronically and the DOI keeps records electronically. Annual statements are available on the DOI website and at the NAIC if a consumer desires information about an individual insurer. Keeping this outdated provision in force causes unnecessary, additional expense for both the insurers, who are forced to purchase advertising, and the DOI, who must purchase and store hard copy records, with no benefit to consumers.

Repealing the outdated section mandating newspaper publication of financial report synopsis presents the least restrictive regulatory environment and more efficient use of DOI resources.

Recommendation 6 – Enhance public interests by authorizing the DOI to release a final summary of market conduct actions that fall short of a full market conduct examination.

The Commissioner of Insurance (Commissioner) is prohibited from disclosing information given to the DOI during a market conduct action:

> …all documents including, but not limited to, working papers, self-audit documents, third-party models or products, complaint logs, and copies of any documents created, produced, obtained by, or disclosed to the commissioner or any other person in the course of a market conduct action…[180]

[180] § 10-1-213(1)(c), C.R.S.

This section was codified when comprehensive market conduct examinations were the norm compared to now when lesser market conduct actions, such a self-audit or a level 1 analysis, which is an analysis of a market sector, occur more often. Nonetheless, when the DOI performs a comprehensive market conduct examination, the final results must be made public.[181]

For actions that fall short of a full market conduct examination, there is no provision to waive the confidentiality of final results. When the DOI chooses to be less invasive and requests a self-audit by an insurer instead of calling for a full examination, statute provides more confidential treatment for this less sensitive information. It is in the public's interest that the DOI to be allowed to make summarized or aggregate information publicly available at the conclusion of any action, not solely a full market conduct examination. The DOI could release the summary in the form of a press release or whatever medium the DOI chooses. However, just as with a full market conduct examination, the working papers, self-audit documents, third-party models or products, complaint logs, and copies of any documents created, produced, obtained by, or disclosed to the DOI should not be made public.

This change is necessary in order to furnish the DOI the authority to publicize the results of market conduct actions which do not rise to the level of a full market conduct examination. Exposure of the results of lesser actions is in the public interest and does not encumber insurers with added regulatory burdens.

Therefore, the General Assembly should enhance public interests by authorizing the DOI to release a final summary of lesser market conduct actions.

Mutual Insurance

Recommendation 7 – Sunset the regulation of employers' mutual liability companies.

Employers' mutual liability companies may be created by groups of 15 or more employers who associate with one another to form an insurer for the purpose of providing its members with, among other related coverages, workers' compensation insurance.[182]

Colorado has authorized such companies since 1915. However, the last employers' mutual liability company was dissolved in 1954. In the end, this is an insurance vehicle that is no longer used, and has not been used for over 50 years.

[181] § 10-1-212(8), C.R.S.
[182] § 10-12-201, C.R.S.

It is reasonable to wonder, however, whether such a vehicle may be desirable at some point in the future, thereby justifying retention of the statutory authorization. However, this concern is alleviated by the existence of section 8-44-205, C.R.S., which also allows employers to "cooperate with one another to form a self-insurance pool to provide insurance coverage required by" the state's workers' compensation laws.[183] According to DOI staff, this statutory provision is not used either.

In the end, both provisions accomplish the same goal of allowing employers to band together to, in essence, self-insure for their workers' compensation needs. Since neither provision is currently utilized and the subject provision has not been used in over 50 years, the General Assembly should repeal the employers' mutual liability companies provisions as unnecessary and redundant.

Nonadmitted Insurers

Recommendation 8 – Permit, rather than require, the Commissioner to rely on an association of brokers to carry out the purposes of the Nonadmitted Insurance Act.

Section 10-5-115(2), C.R.S., mandates that the "Commissioner shall rely on the advice and assistance" of an association of brokers to carry out the purposes of the Nonadmitted Insurance Act.

In 1982, the Commissioner delegated the assessment and collection of premium taxes, among other duties, to the Surplus Lines Association of Colorado, Inc. (SLA). However, in a 2005 audit of the DOI, the state auditor found that the SLA was not performing the tax collection function adequately and was requiring brokers to pay a larger surcharge than necessary. In consideration of these findings, the Commissioner returned duties performed by the SLA to the DOI.

At this time, the DOI is performing these functions effectively. The SLA is still operating as a resource for surplus lines brokers, but it no longer performs any regulatory functions for the DOI.

In the future, the Commissioner may choose to rely on an association to assist with the regulation of surplus lines insurance. However, the Commissioner should not be required to do so.

Accordingly, section 10-5-115(2), C.R.S., should be amended to permit, not require, the Commissioner to rely on an association of brokers.

[183] § 8-44-205(2), C.R.S.

Recommendation 9 – Require the Commissioner to perform an examination of books, records and accounts of each licensed preneed funeral contract seller at least once every five years, and authorize the Commissioner to perform such examinations as necessary to ensure compliance with the law.

The DOI is authorized in section 10-15-103(4)(a), C.R.S., to perform examinations of books, records and accounts of preneed contract sellers (contract sellers). In the past five years, the DOI has not performed any examinations of contract sellers.

The purpose of purchasing a preneed funeral contract is to relieve grieving family members from planning and purchasing expensive funeral arrangements at the last minute. However, because a preneed contract may not be used for many years, any misuse of funds may not be detected for quite some time. A contract seller is required by state law to trust[184] 75 percent of the price of the preneed contract, so that at the time of need, the funds are available to provide for the agreed-to funeral services and goods. In Colorado, there have been instances where preneed contract sellers have misappropriated funds.

The following are recent examples of contract sellers who misappropriated preneed funds in Colorado:

- The DOI suspended a contract seller's license in 2008 after an investigation uncovered over 40 accounts in which the preneed trust funds were combined with company funds.
- The DOI discovered that a contract seller was trusting as little as 35 percent of the preneed contract price, avoiding trusting approximately $2.5 million. The contract seller has over 7,000 preneed funeral contracts in Colorado.

At this time the DOI relies on complaints in order to uncover any misappropriation of preneed funds. Although it is authorized to perform examinations to uncover such wrongdoing, at this time it is not performing any such examinations.

Formerly, the DOI did perform examinations of contract sellers, but after some significant reductions in staff, the DOI determined that preneed examinations were not a priority and stopped performing them. Contract sellers in Colorado recognize that their books are not being examined by the DOI. Without the regulatory oversight, some contract sellers may be more likely to misappropriate funds.

[184] "Trust" (verb) means to invest in a trust. "Trust" (noun) is a fiduciary relationship in which one person (the trustee) holds the title to property or funds for the benefit of another (the beneficiary). *Dictionary.com.* Retrieved August 31, 2009, from http://dictionary.reference.com/browse/trust

Conducting examinations of contract sellers would enhance consumer protection. Therefore, the General Assembly should require the DOI to examine preneed contract sellers at a minimum of once every five years.

Additionally, section 10-15-103(4)(a), C.R.S., prohibits the Commissioner from conducting an examination on any one contract seller more than once a year. The Commissioner should be authorized to perform examinations of contract sellers as necessary to ensure compliance with the law.

Property and Casualty

Recommendation 10 – Repeal the Medical Malpractice Insurance Joint Underwriting Association.

In 1976, the General Assembly created the Medical Malpractice Insurance Joint Underwriting Association (MMIJUA). In the 1970s, medical malpractice insurers were leaving the state due to high premiums and high claims. The purpose of the MMIJUA was to provide a market for medical malpractice insurance on a self-supporting basis. In order to attempt to stabilize the medical malpractice market, every medical insurer was required to participate in the MMIJUA as a condition of its authority to operate in Colorado.

The MMIJUA was a short-term solution created to ensure that medical malpractice insurance was available in Colorado; the MMIJUA terminated operations on February 1, 1981, but the statutory language remained.

After its creation, the MMIJUA was never utilized. Then, during the 1980s, several changes occurred to assist in stabilizing the medical malpractice insurance market, including, but not limited to the creation of the Colorado Physician Insurance Company (COPIC), which offers medical malpractice insurance.

The General Assembly should repeal the MMIJUA because it was a short-term solution to ensure the continued availability of medical malpractice insurance. The MMIJUA terminated operations on February 1, 1981, and it is not currently utilized in Colorado.

Recommendation 11 – Repeal the Commercial Liability Insurance Joint Underwriting Association.

The Commercial Liability Insurance Joint Underwriting Association (CLIJUA) was established by the General Assembly in 1987 to ensure the continued availability of commercial liability insurance coverage. The CLIJUA was also established in the event the commercial liability insurance was not available on the voluntary market or the price was too high for consumers.

The CLIJUA was a short-term solution to ensure that consumers would have access to commercial liability insurance. When the CLIJUA was created, it was only permitted to provide insurance, if necessary, for no longer than one year, unless extended by the Commissioner.

Upon its creation, the CLIJUA was not utilized and was not extended by the Commissioner in 1988. To date, the CLIJUA is not providing any benefits to consumers. It was also intended to be a short-term solution that is not longer needed. Therefore, the General Assembly should repeal the CLIJUA.

Recommendation 12 – Reconcile the number of days allowed until a motor vehicle protest decision is effective.

Currently, the motor vehicle protest process enables consumers to file a formal protest with the DOI against an insurer for changes made to his or her motor vehicle insurance policy.

The Commissioner has the authority to dismiss a protest from a hearing based on the evidence provided. If the Commissioner dismisses a protest, he or she is required to notify the insurer and the insured in writing. Section 10-4-629(6), C.R.S., states that if the protest is dismissed by the Commissioner without a hearing, the proposed action by the insurer is effective on the date highlighted by the insurer or 15 days after the written notice of action is given to the insured by the Commissioner, whichever is later.

Conversely, if a hearing is held on a motor vehicle protest and the Commissioner determines the proposed action by the insurer to be justified, the protest is dismissed. Section 10-4-629(7), C.R.S., highlights the fact that if a protest is dismissed by the Commissioner after a hearing, the proposed action will be taken on its effective date or 20 days after the Commissioner makes the determination, whichever is later.

It is not clear why the two subsections contain different effective dates. However, it is important to provide a uniform time period in which a motor vehicle protest is effective, regardless of whether the Commissioner dismisses the protest with or without a hearing. Doing so alleviates inconsistency within the DOI statute.

As a result, in order to obtain consistency in the motor vehicle protest effective date of a decision to dismiss a motor vehicle protest by the Commissioner, the General Assembly should amend section 10-4-629(6), C.R.S., to allow 20 days instead of 15 days for the Commissioner's decision to become effective.

Recommendation 13 – Repeal the obsolete language requiring Pinnacol to submit to the Commissioner a plan to accumulate a surplus fund.

Nationally, including Colorado, states require insurers to maintain a minimum surplus amount in order to ensure financial solvency. The Commissioner has the authority to require any domestic insurer to submit a plan to accumulate a minimum surplus.

Throughout the 1990s, Pinnacol (formerly the Colorado Compensation Insurance Authority) had a negative net worth. In 1997, in order to gain financial stability, the General Assembly required Pinnacol to submit to the Commissioner a plan to accumulate an adequate surplus fund by 2001.

Since this requirement has been fulfilled, and Pinnacol has an adequate surplus fund, this requirement is obsolete and should be repealed. The requirement to maintain a surplus fund, however, should continue.