

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0209.01 Thomas Morris

HOUSE BILL 10-1012

HOUSE SPONSORSHIP

Pace, Miklosi, Ryden

SENATE SPONSORSHIP

Carroll M., Hodge, Tochtrop

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

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

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

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

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

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

Section 2 of the bill:

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

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

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

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

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

3 (b) (I) NO INSURER OR EMPLOYER SHALL CONDUCT SURVEILLANCE
4 OF AN EMPLOYEE WHO HAS SUBMITTED A WORKERS' COMPENSATION CLAIM
5 UNLESS THE INSURER OR EMPLOYER HAS A REASONABLE BASIS TO SUSPECT
6 THAT THE EMPLOYEE HAS COMMITTED FRAUD OR MADE A MATERIAL
7 MISSTATEMENT CONCERNING THE CLAIM. THE EMPLOYEE MAY REQUEST
8 AN EXPEDITED HEARING BEFORE A PREHEARING ADMINISTRATIVE LAW
9 JUDGE PURSUANT TO SECTION 8-43-207.5 (1) (a) (II). THE INSURER OR
10 EMPLOYER SHALL PROVIDE ALL MATERIALS COLLECTED DURING THE
11 SURVEILLANCE TO THE INJURED WORKER, INCLUDING A STATEMENT OF THE
12 TOTAL BUDGET SPENT ON SURVEILLANCE, ALL VIDEO RECORDINGS
13 COLLECTED, AND A TRANSCRIPT OR AUDIO RECORDING OF ALL INTERVIEWS
14 CONDUCTED. ONCE THE APPLICABLE STATUTE OF LIMITATIONS HAS RUN,
15 THE INSURER OR EMPLOYER SHALL DESTROY ALL MATERIALS COLLECTED
16 DURING THE SURVEILLANCE UNLESS THE MATERIALS ARE REASONABLY
17 NECESSARY TO RESOLVE AN ONGOING CLAIM OF FRAUD. IF THE EMPLOYEE
18 ASKS A PERSON WHO IS CONDUCTING THE SURVEILLANCE WHAT THAT
19 PERSON IS DOING OR ON WHOSE BEHALF THE PERSON IS ACTING, IT SHALL
20 BE A VIOLATION OF THIS PARAGRAPH (b) IF THE PERSON FAILS TO ANSWER
21 TRUTHFULLY THAT THE PERSON IS CONDUCTING SURVEILLANCE ON THE
22 EMPLOYEE OR THAT THE PERSON IS ACTING ON BEHALF OF THE INSURER OR
23 EMPLOYER, AS APPROPRIATE.

24 (II) A VIOLATION OF THIS PARAGRAPH (b) IS PUNISHABLE BY AN
25 ADMINISTRATIVE FINE OF ONE THOUSAND DOLLARS PER DAY OF
26 UNAUTHORIZED SURVEILLANCE. INFORMATION COLLECTED BY
27 UNAUTHORIZED SURVEILLANCE SHALL NOT BE USED TO REJECT A CLAIM.

1 THE DIVISION SHALL TRANSMIT REVENUES COLLECTED PURSUANT TO THIS
2 PARAGRAPH (b) TO THE EMPLOYEE.

3 **SECTION 2.** 8-43-207.5 (1), Colorado Revised Statutes, is
4 amended to read:

5 **8-43-207.5. Prehearing conferences.** (1) (a) Notwithstanding
6 any provision of articles 40 to 47 of this title to the contrary, at any time
7 not less than ten days prior to the formal adjudication on the record of any
8 issue before the director or an administrative law judge in the office of
9 administrative courts, any party to a claim may request a prehearing
10 conference before a prehearing administrative law judge in the division
11 of workers' compensation for the speedy resolution of or simplification
12 of any issues and to determine the general readiness of remaining issues
13 for formal adjudication on the record. The issues addressed in such
14 prehearing conference shall be limited to:

15 (I) Ripeness of legal, but not factual, issues for formal
16 adjudication on the record before the director or an administrative law
17 judge in the office of administrative courts;

18 (II) A REQUEST FOR AN EXPEDITED HEARING SUBMITTED BY AN
19 EMPLOYEE PURSUANT TO SECTION 8-43-304 (2) (b) CONCERNING
20 SURVEILLANCE OF THE EMPLOYEE. THE PREHEARING ADMINISTRATIVE
21 LAW JUDGE SHALL ISSUE AN INJUNCTION AGAINST THE SURVEILLANCE
22 UNLESS THE INSURER OR EMPLOYER SHOWS THAT IT HAS A REASONABLE
23 BASIS TO SUSPECT THAT THE EMPLOYEE HAS COMMITTED FRAUD OR MADE
24 A MATERIAL MISSTATEMENT CONCERNING THE CLAIM. THE IDENTITY OF
25 A WITNESS OR WHISTLEBLOWER WHO PROVIDES EVIDENCE IN GOOD FAITH
26 MAY BE WITHHELD OR LIMITED TO AN IN CAMERA REVIEW.

27 (III) Discovery matters; and

1 (IV) Evidentiary disputes.

2 (b) The filing of an application for hearing with the office of
3 administrative courts shall not be a prerequisite to a request for a
4 prehearing conference under this section. The director and the
5 administrative law judges in the office of administrative courts may also
6 request a prehearing conference under this section.

7 **SECTION 3. Act subject to petition - effective date -**
8 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
9 following the expiration of the ninety-day period after final adjournment
10 of the general assembly (August 11, 2010, if adjournment sine die is on
11 May 12, 2010); except that, if a referendum petition is filed pursuant to
12 section 1 (3) of article V of the state constitution against this act or an
13 item, section, or part of this act within such period, then the act, item,
14 section, or part shall not take effect unless approved by the people at the
15 general election to be held in November 2010 and shall take effect on the
16 date of the official declaration of the vote thereon by the governor.

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