

**Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**REENGROSSED**

*This Version Includes All Amendments  
Adopted in the House of Introduction*

LLS NO. 10-0209.01 Thomas Morris

**HOUSE BILL 10-1012**

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**HOUSE SPONSORSHIP**

**Pace, Miklosi, Ryden**

**SENATE SPONSORSHIP**

**Carroll M., Hodge, Tochtrop**

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**House Committees**

Judiciary  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

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

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**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.*

HOUSE  
3rd Reading Unamended  
March 8, 2010

HOUSE  
Amended 2nd Reading  
March 5, 2010

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.

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

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

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

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

3

4 (b) (I) AN INSURER OR EMPLOYER MAY INTRODUCE EVIDENCE OF  
5 THE PRESENCE OR ABSENCE OF A MEDICAL CONDITION ORIGINATING IN  
6 SURVEILLANCE OF AN EMPLOYEE AT AN ADMINISTRATIVE HEARING ONLY  
7 IF:

8 (A) THE INSURER OR EMPLOYER HAS SUBMITTED THE EVIDENCE  
9 PRIOR TO THE HEARING TO THE TREATING PHYSICIAN FOR REVIEW WITH  
10 THE EMPLOYEE WHO IS THE SUBJECT OF THE SURVEILLANCE. THE  
11 PHYSICIAN SHALL USE THE EVIDENCE AS ONE MEANS, AMONG OTHERS, TO  
12 MAKE RECOMMENDATIONS REGARDING THE EMPLOYEE'S MEDICAL  
13 CONDITION.

14 (B) THE ADMINISTRATIVE LAW JUDGE FINDS THAT THE INSURER OR  
15 EMPLOYER HAD, PRIOR TO INITIATING THE SURVEILLANCE, A REASONABLE  
16 AND ARTICULABLE BASIS TO SUSPECT THAT THE EMPLOYEE COMMITTED  
17 FRAUD, EXCEEDED THE EMPLOYEE'S MEDICALLY DETERMINED  
18 LIMITATIONS, OR MADE A MATERIAL MISSTATEMENT CONCERNING THE  
19 CLAIM;

20 (C) THE ADMINISTRATIVE LAW JUDGE DOES NOT FIND THAT THE  
21 SURVEILLANCE WAS INTRUSIVE, INTIMIDATING, OR HARASSING; AND

22 (D) THE ADMINISTRATIVE LAW JUDGE DOES NOT FIND THAT THE  
23 PERSON WHO WAS CONDUCTING THE SURVEILLANCE AFFIRMATIVELY  
24 MISREPRESENTED TO THE EMPLOYEE, IN RESPONSE TO THE EMPLOYEE'S  
25 INQUIRY, ON WHOSE BEHALF THE PERSON CONDUCTING THE SURVEILLANCE  
26 WAS ACTING.

27 (II) THE INSURER OR EMPLOYER SHALL DESTROY ALL MATERIALS

1 COLLECTED DURING THE SURVEILLANCE NO LATER THAN FIVE YEARS  
2 AFTER RESOLUTION OF THE CLAIM UNLESS THE MATERIALS ARE  
3 REASONABLY NECESSARY TO RESOLVE AN ONGOING CLAIM OF FRAUD.

4 **SECTION 2. Act subject to petition - effective date -**  
5 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
6 following the expiration of the ninety-day period after final adjournment  
7 of the general assembly (August 11, 2010, if adjournment sine die is on  
8 May 12, 2010); except that, if a referendum petition is filed pursuant to  
9 section 1 (3) of article V of the state constitution against this act or an  
10 item, section, or part of this act within such period, then the act, item,  
11 section, or part shall not take effect unless approved by the people at the  
12 general election to be held in November 2010 and shall take effect on the  
13 date of the official declaration of the vote thereon by the governor.

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