

Second Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 08-1003.02 Kristen Forrestal

HOUSE BILL 08-1407

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HOUSE SPONSORSHIP

Romanoff,

SENATE SPONSORSHIP

Gordon,

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House Committees

Business Affairs and Labor

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING STRENGTHENING PENALTIES FOR THE UNREASONABLE  
102 CONDUCT OF AN INSURANCE CARRIER.

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Bill Summary

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

Increases the penalties that the insurance commissioner may impose for the violation of any law, rule, or order of the commissioner. Prohibits an insurer from unreasonably delaying or denying a claim for payment of benefits by a claimant. Creates a cause of action for a claimant who is unreasonably denied insurance benefits. Allows a claimant to recover 2 times the actual damages sustained.

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.*

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

2           **SECTION 1.** 10-1-205 (3) (d), Colorado Revised Statutes, is  
3 amended to read:

4           **10-1-205. Financial examination reports.** (3) Within thirty days  
5 after the end of the period allowed for the receipt of written submissions  
6 or rebuttals, the commissioner shall fully consider and review the report,  
7 any written submissions or rebuttals, and any relevant portions of the  
8 examiner's work papers and shall enter an order that does one or more of  
9 the following:

10           (d) May impose a monetary penalty of not more than ~~one~~ FIVE  
11 thousand dollars for every act in violation of any law, rule, or prior lawful  
12 order of the commissioner described in the report of examination, but not  
13 to exceed an aggregate penalty of ~~ten~~ FIFTY thousand dollars unless the  
14 company knew or reasonably should have known that its conduct was in  
15 violation of any law, rule, or prior lawful order of the commissioner, in  
16 which case the penalty shall not be more than ~~ten~~ FIFTY thousand dollars  
17 for every act or violation, but not to exceed an aggregate penalty of ~~one~~  
18 SEVEN hundred fifty thousand dollars ~~in any six-month period~~ ANNUALLY.

19           **SECTION 2.** 10-2-804 (4), Colorado Revised Statutes, is  
20 amended to read:

21           **10-2-804. Investigation by commissioner.** (4) In addition to or  
22 in lieu of any applicable denial, suspension, or revocation of an insurance  
23 producer license, any person who violates any provision of this article  
24 may, after hearing, be subject to any remedy or civil penalty of not more  
25 than ~~one~~ FIVE thousand dollars for each such violation.

26           **SECTION 3.** 10-3-1108 (1) (a), Colorado Revised Statutes, is

1 amended to read:

2 **10-3-1108. Orders.** (1) If, after a hearing conducted under  
3 section 10-3-1107, the commissioner determines that the person charged  
4 has engaged in an unfair method of competition or an unfair or deceptive  
5 act or practice or has violated any other provision of this title or any rule  
6 or lawful order of the commissioner, the commissioner shall reduce the  
7 findings to writing and shall issue and cause to be served on such person  
8 a copy of such findings and an order requiring such person to cease and  
9 desist from engaging in such method of competition, act, practice, or  
10 violation, and, except in the case of an act or practice that is not a  
11 violation of any specific provision of this title or any specific rule or  
12 lawful order of the commissioner, the commissioner may, at his or her  
13 discretion, order any one or more of the following:

14 (a) Payment of a monetary penalty of not more than ~~one~~ FIVE  
15 thousand dollars for each ~~and every~~ act or violation but not to exceed an  
16 aggregate penalty of ~~ten~~ FIFTY thousand dollars, unless such person, being  
17 an insurer, knew or reasonably should have known he OR SHE was in  
18 violation of this part 11, in which case the penalty shall not be more than  
19 ~~ten~~ FIFTY thousand dollars for each ~~and every~~ act or violation, but not to  
20 exceed an aggregate penalty of ~~one~~ SEVEN hundred fifty thousand dollars  
21 ~~in any six-month period~~ ANNUALLY;

22 **SECTION 4.** 10-3-1114, Colorado Revised Statutes, is amended  
23 to read:

24 **10-3-1114. Construction of part 11.** EXCEPT AS PROVIDED IN  
25 SECTIONS 10-3-1115 AND 10-3-1116, nothing in this part 11 shall be  
26 construed to create a private cause of action based on alleged violations  
27 of this part 11 or to abrogate any common law contract or tort cause of

1 action.

2 **SECTION 5.** Part 11 of article 3 of title 10, Colorado Revised  
3 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW  
4 SECTIONS to read:

5 **10-3-1115. Improper denial of claims - prohibited - definitions**

6 **- severability.** (1) A PERSON ENGAGED IN THE BUSINESS OF INSURANCE  
7 SHALL NOT UNREASONABLY DELAY OR DENY PAYMENT OF A CLAIM FOR  
8 BENEFITS OWED TO OR ON BEHALF OF ANY FIRST-PARTY CLAIMANT. FOR  
9 THE PURPOSES OF THIS SECTION AND SECTION 10-3-1116, "FIRST-PARTY  
10 CLAIMANT" MEANS AN INDIVIDUAL, CORPORATION, ASSOCIATION,  
11 PARTNERSHIP, OR OTHER LEGAL ENTITY ASSERTING AN ENTITLEMENT TO  
12 BENEFITS OWED DIRECTLY TO OR ON BEHALF OF AN INSURED UNDER AN  
13 INSURANCE POLICY. "FIRST-PARTY CLAIMANT" INCLUDES A PUBLIC ENTITY  
14 THAT HAS PAID A CLAIM FOR BENEFITS DUE TO AN INSURER'S  
15 UNREASONABLE DELAY OR DENIAL OF THE CLAIM.

16 (2) NOTWITHSTANDING SECTION 10-3-1113(3), FOR THE PURPOSES  
17 OF AN ACTION BROUGHT PURSUANT TO THIS SECTION AND SECTION  
18 10-3-1116, AN INSURER'S DELAY OR DENIAL WAS UNREASONABLE IF THE  
19 INSURER DELAYED OR DENIED AUTHORIZING PAYMENT OF A COVERED  
20 BENEFIT WITHOUT A REASONABLE BASIS FOR THAT ACTION.

21 (3) IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY  
22 PERSON OR CIRCUMSTANCE IS HELD ILLEGAL, INVALID, OR  
23 UNENFORCEABLE, NO OTHER PROVISIONS OR APPLICATIONS OF THIS  
24 SECTION SHALL BE AFFECTED THAT CAN BE GIVEN EFFECT WITHOUT THE  
25 ILLEGAL, INVALID, OR UNENFORCEABLE PROVISION OR APPLICATION, AND  
26 TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

27 (4) THE GENERAL ASSEMBLY DECLARES THAT THIS SECTION IS A

1 LAW REGULATING INSURANCE.

2 **10-3-1116. Remedies for unreasonable delay or denial of**  
3 **benefits - required contract provision - severability.** (1) A  
4 FIRST-PARTY CLAIMANT AS DEFINED IN SECTION 10-3-1115, WHOSE CLAIM  
5 FOR PAYMENT OF BENEFITS HAS BEEN UNREASONABLY DELAYED OR  
6 DENIED MAY BRING AN ACTION IN A DISTRICT COURT TO RECOVER  
7 REASONABLE ATTORNEY FEES AND UP TO TWO TIMES THE ACTUAL  
8 DAMAGES SUSTAINED.

9 (2) AN INSURANCE POLICY, INSURANCE CONTRACT, OR PLAN,  
10 WHETHER INSURED OR SELF-FUNDED, THAT IS ISSUED IN THIS STATE THAT  
11 OFFERS HEALTH, LIFE, OR DISABILITY BENEFITS SHALL NOT CONTAIN A  
12 PROVISION PURPORTING TO RESERVE DISCRETION TO THE INSURER, PLAN  
13 ADMINISTRATOR, OR CLAIM ADMINISTRATOR TO INTERPRET THE TERMS OF  
14 THE POLICY, CONTRACT, OR PLAN OR TO DETERMINE ELIGIBILITY FOR  
15 BENEFITS.

16 (3) AN INSURANCE POLICY, INSURANCE CONTRACT, OR PLAN,  
17 WHETHER INSURED OR SELF-FUNDED, THAT IS ISSUED IN THIS STATE SHALL  
18 PROVIDE THAT A PERSON WHO CLAIMS HEALTH, LIFE, OR DISABILITY  
19 BENEFITS, WHOSE CLAIM HAS BEEN DENIED IN WHOLE OR IN PART, AND  
20 WHO HAS EXHAUSTED HIS OR HER ADMINISTRATIVE REMEDIES, SHALL BE  
21 ENTITLED TO HAVE HIS OR HER CLAIM REVIEWED DE NOVO IN ANY COURT  
22 WITH JURISDICTION AND TO A TRIAL BY JURY.

23 (4) THE ACTION AUTHORIZED IN THIS SECTION IS IN ADDITION TO,  
24 AND DOES NOT LIMIT OR AFFECT, OTHER ACTIONS AVAILABLE BY STATUTE  
25 OR COMMON LAW, NOW OR IN THE FUTURE.

26 (5) IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY  
27 PERSON OR CIRCUMSTANCE IS HELD ILLEGAL, INVALID, OR

1 UNENFORCEABLE, NO OTHER PROVISIONS OR APPLICATIONS OF THIS  
2 SECTION SHALL BE AFFECTED THAT CAN BE GIVEN EFFECT WITHOUT THE  
3 ILLEGAL, INVALID, OR UNENFORCEABLE PROVISION OR APPLICATION, AND  
4 TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

5 (6) THE GENERAL ASSEMBLY DECLARES THAT THIS SECTION IS A  
6 LAW REGULATING INSURANCE.

7 **SECTION 6.** 10-3-105 (4) (c), Colorado Revised Statutes, as  
8 enacted by House Bill 08-1228, enacted at the Second Regular Session of  
9 the Sixty-sixth General Assembly, is amended to read:

10 **10-3-105. Certificate of authority to do business - companies**  
11 **prohibited - definitions.** (4) (c) For the purposes of this subsection (4),  
12 "restitution" means benefits or moneys owed due to the regulated entity's  
13 violation of this title, INCLUDING, BUT NOT LIMITED TO, COSTS AND  
14 EXPENSES FOR LOST TIME FROM WORK AND ATTORNEY FEES.

15 **SECTION 7.** 10-16-106.5 (5) (b), Colorado Revised Statutes, is  
16 amended to read:

17 **10-16-106.5. Prompt payment of claims - legislative**  
18 **declaration.** (5) (b) A carrier that fails to pay, deny, or settle a claim in  
19 accordance with subsection (4) of this section within ninety days after  
20 receiving the claim shall pay to the insured or health care provider, with  
21 proper assignment, a penalty in an amount equal to ~~ten~~ TWENTY-FIVE  
22 percent of the total amount ultimately allowed on the claim. Such penalty  
23 shall be imposed on the ninety-first day after receipt of the claim by the  
24 carrier. IF A CARRIER DENIES A CLAIM IN ACCORDANCE WITH SUBSECTION  
25 (4) OF THIS SECTION WITHIN NINETY DAYS AFTER RECEIVING THE CLAIM  
26 AND THE DENIAL IS DETERMINED TO BE UNREASONABLE PURSUANT A CIVIL  
27 ACTION IN ACCORDANCE WITH SECTION 10-3-1116, THE CARRIER SHALL

1 PAY THE PENALTY IN THIS PARAGRAPH (b) TO THE INSURED.

2           **SECTION 8. Effective date.** This act shall take effect at 12:01  
3 a.m. on the day following the expiration of the ninety-day period after  
4 final adjournment of the general assembly that is allowed for submitting  
5 a referendum petition pursuant to article V, section 1 (3) of the state  
6 constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008);  
7 except that, if a referendum petition is filed against this act or an item,  
8 section, or part of this act within such period, then the act, item, section,  
9 or part, if approved by the people, shall take effect on the date of the  
10 official declaration of the vote thereon by proclamation of the governor.