

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 20-0114.01 Duane Gall x4335

SENATE BILL 20-176

SENATE SPONSORSHIP

Danielson and Ginal, Bridges, Fields, Hansen, Moreno, Pettersen, Priola, Rodriguez, Story, Winter, Zenzinger

HOUSE SPONSORSHIP

Titone and Young,

Senate Committees
Health & Human Services

House Committees
Health & Insurance

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO FACILITATE ENFORCEMENT OF EXISTING**
102 **PROHIBITIONS AGAINST UNREASONABLE CONDUCT BY HEALTH**
103 **INSURERS.**

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://leg.colorado.gov>.)

The bill clarifies 2008 legislation prohibiting discretionary clauses in certain plans and insurance policies and providing for the de novo standard of review in any court by:

! Declaring that the legislation should be construed broadly to effectuate its remedial purpose, notwithstanding any

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

HOUSE
Amended 2nd Reading
June 10, 2020

SENATE
3rd Reading Unamended
March 5, 2020

SENATE
2nd Reading Unamended
March 3, 2020

- contractual or statutory choice-of-law provision to the contrary;
- ! Nullifying any contract provision that purports to give an insurer or its agent discretionary authority to determine entitlement to benefits;
- ! Severing a claimant's right to de novo review of policy disputes from the claimant's right to a jury trial of those disputes; and
- ! Specifying that the commissioner of insurance may adopt rules as necessary to enforce this prohibition.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds, determines, and declares that:

4 (a) Sections 10-3-1115 and 10-3-1116, Colorado Revised Statutes,
5 are remedial legislation, and therefore should be construed broadly and
6 inclusively to effectuate their remedial purposes; and

7 (b) Section 10-3-1116 took effect August 5, 2008, and subsections
8 (2) and (3) of that section were intended to apply to every health and
9 disability insurance policy, insurance contract, insurance certificate, and
10 insurance agreement existing, offered, issued, delivered, or renewed in
11 the state of Colorado or providing health or disability benefits to a
12 resident or domiciliary of the state of Colorado and every employee
13 benefit plan covering a resident or domiciliary of the state of Colorado
14 (whether or not on behalf of an employer located or domiciled in
15 Colorado) on or after August 5, 2008, notwithstanding any contractual or
16 statutory choice-of-law provision to the contrary.

17 ■ ■

18 **SECTION 2.** In Colorado Revised Statutes, 10-3-1116, **amend**
19 (2), (3), and (6); and **add** (8) as follows:

20 **10-3-1116. Remedies for unreasonable delay or denial of**

1 **benefits - required contract provision - frivolous actions - severability**

2 **- rules.** (2) An insurance policy, insurance contract, or plan that is issued
3 in this state AND that offers health or disability benefits shall not contain
4 a provision purporting to reserve discretion to the insurer, plan
5 administrator, or claim administrator to interpret the terms of the policy,
6 contract, or plan or to determine eligibility for benefits. IF AN INSURANCE
7 POLICY, CONTRACT, OR PLAN CONTAINS SUCH A PROVISION, THE PROVISION
8 IS VOID.

9 (3) An insurance policy, insurance contract, or plan that is issued
10 in this state shall provide that a person who claims health, life, or
11 disability benefits, whose claim has been denied in whole or in part, and
12 who has exhausted ~~his or her~~ THE PERSON'S administrative remedies: ~~shall~~
13 **be**

14 (a) IS entitled to have ~~his or her~~ THE PERSON'S claim reviewed de
15 novo in any court with jurisdiction; and

16 (b) IS ENTITLED to a trial by jury.

17 (6) If any provision of this section, OR OF ANY SUBSECTION OR
18 PORTION OF THIS SECTION, or its application to any person or circumstance
19 is held illegal, invalid, or unenforceable, no other provisions or
20 applications of this section shall be affected that can be given effect
21 without the illegal, invalid, or unenforceable provision or application, and
22 to this end the provisions of this section are severable.

23 (8) AS USED IN THIS SECTION, "ISSUED IN THIS STATE" REFERS TO
24 EVERY HEALTH AND DISABILITY INSURANCE POLICY, INSURANCE
25 CONTRACT, INSURANCE CERTIFICATE, AND INSURANCE AGREEMENT
26 EXISTING, OFFERED, ISSUED, DELIVERED, OR RENEWED IN THE STATE OF
27 COLORADO OR PROVIDING HEALTH OR DISABILITY BENEFITS TO A

1 RESIDENT OR DOMICILIARY OF THE STATE OF COLORADO AND EVERY
2 EMPLOYEE BENEFIT PLAN COVERING A RESIDENT OR DOMICILIARY OF THE
3 STATE OF COLORADO, WHETHER OR NOT ON BEHALF OF AN EMPLOYER
4 LOCATED OR DOMICILED IN COLORADO, ON OR AFTER AUGUST 5, 2008,
5 NOTWITHSTANDING ANY CONTRACTUAL OR STATUTORY CHOICE-OF-LAW
6 PROVISION TO THE CONTRARY.

7 **SECTION 3. Act subject to petition - effective date -**
8 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
9 the expiration of the ninety-day period after final adjournment of the
10 general assembly (August 5, 2020, if adjournment sine die is on May 6,
11 2020); except that, if a referendum petition is filed pursuant to section 1
12 (3) of article V of the state constitution against this act or an item, section,
13 or part of this act within such period, then the act, item, section, or part
14 will not take effect unless approved by the people at the general election
15 to be held in November 2020 and, in such case, will take effect on the
16 date of the official declaration of the vote thereon by the governor.

17 (2) This act applies to every health and disability insurance policy,
18 insurance contract, insurance certificate, and insurance agreement
19 existing, offered, issued, delivered, or renewed in the state of Colorado
20 or providing health or disability benefits to a resident or domiciliary of
21 the state of Colorado and every employee benefit plan covering a resident
22 or domiciliary of the state of Colorado, whether or not on behalf of an
23 employer located or domiciled in Colorado, on or after the applicable
24 effective date of this act, notwithstanding any contractual or statutory
25 choice-of-law provision to the contrary.