

HOUSE No. 939

The Commonwealth of Massachusetts

PRESENTED BY:

Claire D. Cronin

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to greater fairness in insurance.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---------------------------|------------------------------------|
| <i>Claire D. Cronin</i> | <i>11th Plymouth</i> |
| <i>Michael D. Brady</i> | <i>Second Plymouth and Bristol</i> |
| <i>Michelle M. DuBois</i> | <i>10th Plymouth</i> |

HOUSE No. 939

By Ms. Cronin of Easton, a petition (accompanied by bill, House, No. 939) of Claire D. Cronin, Michael D. Brady and Michelle M. DuBois for legislation to prohibit the use of certain discretionary authority by insurers. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 510 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to greater fairness in insurance.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 226 is added to the General Laws of Massachusetts, Chapter 175

2 INSURANCE to read:

3 Section 226.

4 (a) If a policy, contract, certificate, or agreement offered, issued, delivered, or renewed,
5 whether or not in Massachusetts, that provides, backs up, reinsures, or funds, in whole or in part,
6 life insurance, health insurance, annuities, accident insurance, long term care insurance, or
7 disability insurance coverage for any Massachusetts resident contains a provision that reserves
8 discretionary authority to the insurer, or an agent of the insurer, to determine eligibility for
9 benefits or coverage, to interpret the terms of the policy, contract, certificate, or agreement, or to

10 provide standards of interpretation or review that are inconsistent with the laws of this state, that
11 provision is void and unenforceable.

12 (b) For purposes of this section, "renewed" means continued in force on or after the
13 policy's anniversary date.

14 (c) For purposes of this section, the term "discretionary authority" means a policy
15 provision that has the effect of conferring discretion on an insurer or other claim administrator to
16 determine entitlement to benefits or interpret policy language that, in turn, could lead to a
17 deferential standard of review by any reviewing court.

18 (d) Nothing in this section prohibits an insurer from including a provision in a contract
19 that informs an insured that as part of its routine operations the insurer applies the terms of its
20 contracts for making decisions, including making determinations regarding eligibility, receipt of
21 benefits and claims, or explaining policies, procedures, and processes, so long as the provision
22 could not give rise to a deferential standard of review by any reviewing court.

23 (e) The Commissioner of Insurance ("Commissioner") shall not approve any health, life
24 or disability policy for issuance or delivery in Massachusetts in any of the following
25 circumstances:

26 If it includes a provision that reserves discretionary authority, as defined by Section 226,
27 to the insurer, or an agent of the insurer, to determine eligibility for benefits or coverage or to
28 interpret the terms of the policy; or if it provides standards of interpretation or review that are
29 inconsistent with the laws of Massachusetts; or if it contains or incorporates by reference, where
30 the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or
31 exceptions and conditions that deceptively affect the risk purported to be assumed in the general

32 coverage of the contract; or if it has any title, heading, or other indication of its provisions that is
33 misleading; or if it is printed or otherwise reproduced in a manner that renders any provision of
34 the form substantially illegible; or if it fails to conform in any respect with any law of
35 Massachusetts.

36 (f) If any provision of this Section or its application to any person or circumstance is
37 held to be illegal, invalid, or unenforceable, no other provisions or applications of this Section
38 that can be given effect without the illegal, invalid or unenforceable provision or application
39 shall be affected; and to this end the provisions of this Section are severable.