

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

ENGROSSED

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

LLS NO. 20-0761.01 Jery Payne x2157

HOUSE BILL 20-1290

HOUSE SPONSORSHIP

Garnett,

SENATE SPONSORSHIP

Fenberg,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ABILITY OF AN INSURER TO USE A**
102 **FAILURE-TO-COOPERATE DEFENSE IN AN ACTION IN WHICH THE**
103 **INSURED HAS MADE A CLAIM UNDER INSURANCE COVERAGE FOR**
104 **AN INCIDENT.**

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 bars an insurer from using a failure-to-cooperate defense in an action unless:

! The insurer has submitted a request to the insured or the

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 1, 2020

insured's representative for information the insurer deems necessary for litigation;

- ! The information necessary for litigation is not available to the insurer without the assistance of the insured;
- ! The request provides the insured 60 days to respond;
- ! The request is for information the insurer would be entitled to in litigation;
- ! The request cites the specific policy language that entitles the insurer to the information necessary to any lawsuit;
- ! The insured's failure to cooperate has rendered performance by the insurer under the policy impossible; and
- ! The insurer gives the insured an opportunity to cure within 60 days and provides notice to the insured within 30 days, describing, with particularity, the alleged failure to cooperate.

The alleged failure to cooperate must materially and substantially prejudice the portion of the claim for which the defense is asserted. Any language in an insurance contract that conflicts with the bill is void.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 10-3-1118 as
3 follows:

4 **10-3-1118. Failure-to-cooperate defense.** (1) TO PLEAD OR
5 PROVE A FAILURE-TO-COOPERATE DEFENSE IN AN ACTION CONCERNING AN
6 INSURANCE POLICY PROVIDING FIRST-PARTY BENEFITS OR COVERAGE,
7 EACH OF THE FOLLOWING CONDITIONS MUST BE MET BEFORE THE DEFENSE
8 IS ASSERTED IN A COURT OF LAW OR AN ARBITRATION:

9 (a) THE INSURER HAS SUBMITTED A WRITTEN REQUEST TO THE
10 INSURED OR THE INSURED'S REPRESENTATIVE FOR THE INFORMATION THE
11 INSURER SEEKS VIA:

12 (I) ELECTRONIC MEANS IF THE INSURED OR THE INSURED'S
13 REPRESENTATIVE HAS CONSENTED TO RECEIVE ELECTRONIC DOCUMENTS
14 FROM THE INSURER; OR

1 (II) CERTIFIED MAIL;
2 (b) THE INFORMATION IS NOT AVAILABLE TO THE INSURER
3 WITHOUT THE ASSISTANCE OF THE INSURED;
4 (c) THE WRITTEN REQUEST PROVIDES THE INSURED SIXTY DAYS TO
5 RESPOND;
6 (d) THE WRITTEN REQUEST IS FOR INFORMATION THE INSURER
7 WOULD BE ENTITLED TO VIA DISCOVERY IN LITIGATION;
8 (e) THE WRITTEN REQUEST PROVIDES CITATIONS TO THE SPECIFIC
9 POLICY LANGUAGE THAT ENTITLES THE INSURER TO THE INFORMATION
10 REQUESTED, BUT A GENERAL STATEMENT OF A DUTY TO COOPERATE IN THE
11 INVESTIGATION IS INSUFFICIENT TO COMPLY WITH THIS SUBSECTION (1)(e);
12 AND

13
14 (f) THE INSURER GIVES THE INSURED AN OPPORTUNITY TO CURE,
15 WHICH MUST:

16 (I) INCLUDE THE FURNISHING OF WRITTEN NOTICE TO THE INSURED
17 OF THE ALLEGED FAILURE TO COOPERATE, DESCRIBING WITH
18 PARTICULARITY THE ALLEGED FAILURE, WITHIN THIRTY DAYS AFTER THE
19 ALLEGED FAILURE; AND

20 (II) ALLOW THE INSURED SIXTY DAYS AFTER RECEIPT OF THE
21 WRITTEN NOTICE TO CURE THE ALLEGED FAILURE TO COOPERATE.

22 (2) A FAILURE TO COOPERATE DEFENSE ACTS AS A DEFENSE TO THE
23 PORTION OF THE CLAIM MATERIALLY AND SUBSTANTIALLY PREJUDICED TO
24 THE EXTENT THE INSURER COULD NOT EVALUATE OR PAY THAT PORTION
25 OF THE CLAIM.

26 (3) THE EXISTENCE OF A DUTY TO COOPERATE IN A POLICY DOES
27 NOT RELIEVE THE INSURER OF ITS DUTY TO INVESTIGATE OR TO COMPLY

1 WITH SECTION 10-3-1104.

2 (4) ANY LANGUAGE IN A FIRST-PARTY POLICY THAT CONFLICTS
3 WITH THIS SECTION IS VOID AS AGAINST THE PUBLIC POLICY OF COLORADO.

4 **SECTION 2. Act subject to petition - effective date -**
5 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
6 the expiration of the ninety-day period after final adjournment of the
7 general assembly (August 5, 2020, if adjournment sine die is on May 6,
8 2020); except that, if a referendum petition is filed pursuant to section 1
9 (3) of article V of the state constitution against this act or an item, section,
10 or part of this act within such period, then the act, item, section, or part
11 will not take effect unless approved by the people at the general election
12 to be held in November 2020 and, in such case, will take effect on the
13 date of the official declaration of the vote thereon by the governor.

14 (2) This act applies to litigation that occurs on or after the
15 applicable effective date of this act.