

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. 20-0761.01 Jery Payne x2157

HOUSE BILL 20-1290

HOUSE SPONSORSHIP

Garnett, Hooton

SENATE SPONSORSHIP

Fenberg,

House Committees

Judiciary

Senate Committees

State, Veterans, & Military Affairs

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.

SENATE
2nd Reading Unamended
June 9, 2020

HOUSE
Amended 3rd Reading
June 5, 2020

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 A REASONABLE
7 PERSON WOULD DETERMINE THE INSURER NEEDS TO ADJUST THE CLAIM
8 FILED BY THE INSURED OR TO PREVENT FRAUD; AND
- 9
- 10 (e) THE INSURER GIVES THE INSURED AN OPPORTUNITY TO CURE,
11 WHICH MUST:
- 12 (I) INCLUDE THE FURNISHING OF WRITTEN NOTICE TO THE INSURED
13 OF THE ALLEGED FAILURE TO COOPERATE, DESCRIBING WITH
14 PARTICULARITY THE ALLEGED FAILURE, WITHIN SIXTY DAYS AFTER THE
15 ALLEGED FAILURE; AND
- 16 (II) ALLOW THE INSURED SIXTY DAYS AFTER RECEIPT OF THE
17 WRITTEN NOTICE TO CURE THE ALLEGED FAILURE TO COOPERATE.
- 18 (2) A FAILURE TO COOPERATE DEFENSE ACTS AS A DEFENSE TO THE
19 PORTION OF THE CLAIM MATERIALLY AND SUBSTANTIALLY PREJUDICED TO
20 THE EXTENT THE INSURER COULD NOT EVALUATE OR PAY THAT PORTION
21 OF THE CLAIM.
- 22 (3) THE EXISTENCE OF A DUTY TO COOPERATE IN A POLICY DOES
23 NOT RELIEVE THE INSURER OF ITS DUTY TO INVESTIGATE OR TO COMPLY
24 WITH SECTION 10-3-1104.
- 25 (4) ANY LANGUAGE IN A FIRST-PARTY POLICY THAT CONFLICTS
26 WITH THIS SECTION IS VOID AS AGAINST THE PUBLIC POLICY OF COLORADO.
- 27 (5) AN INSURER IS NOT LIABLE FOR A CLAIM IN A CIVIL ACTION

1 BASED UPON A BAD-FAITH BREACH OF CONTRACT UNDER COMMON LAW OR
2 UNDER SECTIONS 10-3-1115 AND 10-3-1116 BECAUSE THE INSURER
3 SOLELY PROVIDES THE INSURED WITH THE REQUIRED AMOUNT OF TIME:

4 (a) TO RESPOND TO THE INSURER'S WRITTEN REQUEST AS SPECIFIED
5 UNDER SUBSECTION (1)(c) OF THIS SECTION; AND

6 (b) TO CURE THE ALLEGED FAILURE TO COOPERATE AS SPECIFIED
7 UNDER SUBSECTION (1)(e) OF THIS SECTION.

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

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