



**Legislative  
Council Staff**

*Nonpartisan Services for Colorado's Legislature*

**HB 20-1290**

**FINAL  
FISCAL NOTE**

<b>Drafting Number:</b>	LLS 20-0761	<b>Date:</b>	August 17, 2020
<b>Prime Sponsors:</b>	Rep. Garnett Sen. Fenberg	<b>Bill Status:</b>	Signed into Law
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**Bill Topic:** FAILURE-TO-COOPERATE DEFENSE FIRST-PARTY INSURANCE

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<b>Summary of Fiscal Impact:</b>	<input type="checkbox"/> State Revenue <input checked="" type="checkbox"/> State Expenditure <input type="checkbox"/> State Transfer	<input type="checkbox"/> TABOR Refund <input type="checkbox"/> Local Government <input type="checkbox"/> Statutory Public Entity
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This bill specifies the conditions that must be met by an insurer before a failure-to-cooperate defense can be plead or proven in an action concerning an insurance policy providing first-party benefits or coverage. It may minimally affect ongoing state workload.

**Appropriation  
Summary:** No appropriation is required.

**Fiscal Note  
Status:** The fiscal note reflects the enacted bill.

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### **Summary of Legislation**

The bill requires that an insurer meet certain conditions before a failure-to-cooperate defense can be pleaded or proven in an action concerning an insurance policy providing first-party benefits or coverage. The conditions include what must be included in a written request and the timeframe for a response. The insurer must prove that it cannot proceed with its investigation without the information from the insured, is entitled to the information, and cannot attain the information from another source. The insurer is also required to give the insured an opportunity to cure, which must include giving the insured written notice of the alleged failure-to-cooperate and allow the insured 60 days after receipt of the written notice to cure the alleged failure-to-cooperate.

A failure-to-cooperate defense may apply to the portion of the claim that the insurer could not evaluate due to the insured's actions. The existence of a duty to cooperate in a policy does not relieve the insurer of its duty to investigate and any language in a policy that conflicts with this bill is void. An insurer is not liable for a claim in a civil action based upon a bad-faith breach of contract because the insurer solely provided the insured with time to respond to the insurer's written request and to cure the alleged failure to cooperate.

## **State Expenditures**

This bill primarily addresses issues between an insurer and its insured but may affect workload for the Department of Regulatory Agencies (DORA) and the Judicial Department. If an insurer meets the conditions required under the bill before asserting a failure-to-cooperate defense and denying coverage of a claim, a complaint from an insured to the Division of Insurance in DORA should be resolved more quickly than under current law. Under current law, the failure-to-cooperate defense is considered more subjectively and takes more time and possibly judicial action in the trial courts in the Judicial Department to resolve or adjudicate. Any change in workload is expected to be minimal and not require a change in appropriations.

## **Effective Date**

The bill was signed into law by the Governor on July 2, 2020, and takes effect on September 14, 2020, assuming no referendum petition is filed.

## **State and Local Government Contacts**

Information Technology  
Law

Judicial  
Regulatory Agencies