

**First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0503.01 Christy Chase x2008

**SENATE BILL 17-088**

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**SENATE SPONSORSHIP**

**Holbert and Williams A.**, Kefalas, Priola, Tate

**HOUSE SPONSORSHIP**

**Hooton and Van Winkle**, Landgraf, Rankin, Buckner, Liston, McKean, Melton, Nordberg

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**Senate Committees**

Business, Labor, & Technology  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING THE CRITERIA USED BY A HEALTH INSURER TO SELECT**  
102                    **HEALTH CARE PROVIDERS TO PARTICIPATE IN THE INSURER'S**  
103                    **NETWORK OF PROVIDERS.**

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**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 requires a health insurer (carrier) to develop, use, and disclose to participating and prospective health care providers the standards the carrier uses for:

- !      Selecting participating providers for its network of providers;

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

- ! Tiering providers within the network; and
- ! Placing participating providers in a narrow or tiered provider network.

If a carrier markets a network as having quality or value, the carrier must include in the selection, narrowing, and tiering standards a quality component that:

- ! Equals or exceeds the weight of the other components of the standards; and
- ! Is based on specialty-appropriate, nationally recognized, evidence-based medical guidelines or nationally recognized, consensus-based guidelines.

A carrier must disclose its standards and any quality criteria to the commissioner of insurance for review and must make the standards available to providers and the public.

At least 45 days before implementing a decision to terminate, deny, restrict, limit, or otherwise condition a provider's participation in one or more provider networks, a carrier must notify the affected provider in writing and inform the provider of the right to request that the carrier reconsider its decision. The bill requires the carrier to develop procedures for providers to request reconsideration and sets forth minimum requirements for, components of, and deadlines for the procedures.

At least annually, and within 30 days after adding or removing a network plan or product, a carrier must provide to providers participating in at least one of its networks a complete list of all network plans and products it offers to consumers, indicating the participating provider's status within each network plan or product.

A carrier that violates a requirement of the bill engages in an unfair or deceptive act or practice in the business of insurance and is subject to penalties and damages authorized by law.

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

2           **SECTION 1.** In Colorado Revised Statutes, **add** 10-16-705.5 as  
 3 follows:

4           **10-16-705.5. Provider networks - selection standards - quality**  
 5 **criteria - disclosure - reconsideration of carrier decision -**  
 6 **enforcement - definitions - legislative declaration. (1) Legislative**  
 7 **declaration.** THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

8           (a) IN THE CURRENT MARKETPLACE, CARRIERS ARE OFFERING

1 CONSUMERS A MULTITUDE OF OPTIONS, MANY OF WHICH INCLUDE A  
2 LIMITED PROVIDER NETWORK THAT MAY RESULT IN CARRIERS  
3 TERMINATING PARTICIPATING PROVIDERS FROM EXISTING NETWORKS OR  
4 EXCLUDING OTHERWISE QUALIFIED AND POTENTIALLY ESSENTIAL  
5 PROVIDERS FROM NETWORK PARTICIPATION;

6 (b) ADDITIONALLY, CARRIERS UTILIZE VARIOUS TERMS, SUCH AS  
7 "HIGH-QUALITY", "HIGH-PERFORMING", OR "VALUE-BASED", TO DESCRIBE  
8 THE QUALITY OF THEIR PRODUCTS AND NETWORKS WITHOUT PROVIDING  
9 CONSUMERS WITH THE DEFINITIONS OF THE TERMS, WHICH CAN CONFUSE  
10 CONSUMERS AND MAY RESULT IN CONSUMERS MAKING CHOICES THAT  
11 LEAVE THEM UNABLE TO CONTINUE UNDER THE CARE OF A PROVIDER WHO  
12 HAS BEEN TREATING THEM FOR YEARS; AND

13 (c) TO ENSURE THAT PATIENTS HAVE SUFFICIENT ACCESS TO CARE  
14 AND THAT LONG-STANDING PATIENT-PROVIDER RELATIONSHIPS THAT ARE  
15 ESSENTIAL TO PATIENT CARE ARE NOT DISRUPTED, CARRIERS SHOULD:

16 (I) DISCLOSE THE STANDARDS USED TO CONSTRUCT THEIR  
17 PARTICIPATING PROVIDER NETWORKS TO THE COMMISSIONER, PROVIDERS,  
18 AND CONSUMERS; AND

19 (II) PROVIDE A PROCESS FOR PROVIDERS TO SEEK  
20 RECONSIDERATION OF A CARRIER'S DECISION TO MAKE CHANGES TO,  
21 TERMINATE PROVIDERS FROM, OR DENY PROVIDERS' PARTICIPATION IN, ITS  
22 PROVIDER NETWORK.

23 (2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT  
24 OTHERWISE REQUIRES:

25 (a) "ADVERSE ACTION" MEANS A DECISION BY A CARRIER TO  
26 NONRENEW A PROVIDER'S CONTRACT OR TERMINATE, DENY, RESTRICT,  
27 LIMIT, OR OTHERWISE CONDITION A PROVIDER'S PARTICIPATION IN ONE OR

1 MORE PROVIDER NETWORKS, INCLUDING A DECISION PERTAINING TO  
2 PARTICIPATION IN A NARROW NETWORK OR ALLOCATION WITHIN A TIERED  
3 NETWORK.

4 (b) "ECONOMIC CRITERIA" MEANS MEASURES USED TO DETERMINE  
5 PROVIDER RESOURCE UTILIZATION OR COSTS OF CARE FOR SPECIFIED  
6 HEALTH CARE SERVICES OR SETS OF HEALTH CARE SERVICES.

7 (c) "NARROW NETWORK" MEANS A REDUCED OR SELECTIVE  
8 PROVIDER NETWORK THAT IS A SUBGROUP OR SUBDIVISION OF A LARGER  
9 PROVIDER NETWORK AND FROM WHICH PROVIDERS WHO PARTICIPATE IN  
10 THE LARGER NETWORK MAY BE EXCLUDED.

11 (d) "NATIONAL QUALITY FORUM" MEANS THE NOT-FOR-PROFIT,  
12 NONPARTISAN, MEMBERSHIP-BASED ORGANIZATION THAT WORKS TO  
13 CATALYZE IMPROVEMENTS IN HEALTH CARE AND WHOSE MISSION IS TO  
14 LEAD NATIONAL COLLABORATION TO IMPROVE HEALTH AND HEALTH CARE  
15 QUALITY THROUGH MEASUREMENT, OR ITS SUCCESSOR ORGANIZATION.

16 (e) "QUALITY CRITERIA" MEANS MEASURES USED TO DETERMINE  
17 THE QUALITY OF CARE PROVIDED BY A PROVIDER, AS DETERMINED BASED  
18 ON THE DEGREE TO WHICH HEALTH CARE SERVICES PROVIDED BY A  
19 PROVIDER TO INDIVIDUALS AND POPULATIONS INCREASE THE LIKELIHOOD  
20 OF THE DESIRED HEALTH OUTCOMES, CONSISTENT WITH CURRENT  
21 PROFESSIONAL KNOWLEDGE.

22 (f) "TIERED NETWORK" MEANS A NETWORK THAT IDENTIFIES AND  
23 ASSIGNS SOME OR ALL TYPES OF PROVIDERS AND FACILITIES TO SPECIFIC  
24 GROUPS TO WHICH DIFFERENT PROVIDER REIMBURSEMENT, COVERED  
25 PERSON COST-SHARING, OR PROVIDER ACCESS REQUIREMENTS, OR ANY  
26 COMBINATION OF REIMBURSEMENT, COST-SHARING, OR ACCESS  
27 REQUIREMENTS, APPLY FOR THE SAME SERVICES.

1 (g) "TIERING" MEANS A SYSTEM THAT COMPARES, RATES, RANKS,  
2 MEASURES, TIERS, OR CLASSIFIES A PROVIDER'S PERFORMANCE, QUALITY  
3 OF CARE, OR COST OF CARE AGAINST OBJECTIVE STANDARDS OR AGAINST  
4 THE PRACTICE OR PERFORMANCE OF OTHER HEALTH CARE PROVIDERS.  
5 "TIERING" INCLUDES QUALITY IMPROVEMENT PROGRAMS,  
6 PAY-FOR-PERFORMANCE PROGRAMS, PUBLIC REPORTING ON HEALTH CARE  
7 PROVIDER PERFORMANCE OR RATINGS, AND THE USE OF TIERED OR  
8 NARROWED NETWORKS.

9 (3) **Selection standards.** (a) IF A CARRIER OFFERS A NARROW  
10 NETWORK OR A TIERED NETWORK, THE CARRIER SHALL DEVELOP  
11 STANDARDS FOR SELECTING PARTICIPATING PROVIDERS FOR ITS NETWORK,  
12 TIERING PARTICIPATING PROVIDERS WITHIN THE PROVIDER NETWORK, AND  
13 PLACING PARTICIPATING PROVIDERS IN A NARROW NETWORK OR TIERED  
14 NETWORK. A CARRIER SHALL DEVELOP THE STANDARDS FOR PROVIDERS  
15 AND EACH HEALTH CARE PROFESSIONAL SPECIALTY AND SHALL  
16 COMMUNICATE THE STANDARDS TO CURRENT AND PROSPECTIVE  
17 PARTICIPATING PROVIDERS.

18 (b) A CARRIER OR AN INTERMEDIARY WITH WHICH THE CARRIER  
19 CONTRACTS SHALL USE THE STANDARDS DEVELOPED UNDER THIS  
20 SUBSECTION (3) IN DETERMINING THE SELECTION, NARROWING, AND  
21 TIERING OF PARTICIPATING PROVIDER NETWORKS.

22 (c) A CARRIER SHALL NOT ESTABLISH SELECTION, NARROWING,  
23 AND TIERING STANDARDS THAT WOULD:

24 (I) ALLOW THE CARRIER TO DISCRIMINATE AGAINST HIGH-RISK  
25 POPULATIONS BY EXCLUDING AND TIERING PROVIDERS BASED ON THEIR  
26 LOCATION IN A GEOGRAPHIC AREA THAT CONTAINS POPULATIONS OR  
27 PROVIDERS PRESENTING A RISK OF HIGHER-THAN-AVERAGE NUMBER OF

1 CLAIMS, LOSSES, OR HEALTH CARE UTILIZATION RATES;

2 (II) EXCLUDE PROVIDERS BECAUSE THEY TREAT OR SPECIALIZE IN  
3 TREATING POPULATIONS PRESENTING A RISK OF HIGHER-THAN-AVERAGE  
4 NUMBERS OF CLAIMS, LOSSES, OR HEALTH CARE UTILIZATION RATES;

5 (III) ALLOW A CARRIER TO SOLELY UTILIZE ECONOMIC CRITERIA TO  
6 CREDENTIAL A PROVIDER; OR

7 (IV) DISCRIMINATE, WITH RESPECT TO PARTICIPATION UNDER THE  
8 HEALTH BENEFIT PLAN, AGAINST ANY PROVIDER WHO IS ACTING WITHIN  
9 THE SCOPE OF THE PROVIDER'S LICENSE OR CERTIFICATION UNDER THE  
10 APPLICABLE STATE LAW OR RULES.

11 (4) **Quality criteria.** (a) FOR NETWORKS THAT A CARRIER  
12 MARKETS AS REPRESENTING QUALITY OR VALUE, THE CARRIER MUST  
13 INCLUDE IN THE SELECTION, NARROWING, AND TIERING STANDARDS A  
14 QUALITY COMPONENT THAT CARRIES AN EQUAL OR GREATER WEIGHT  
15 THAN OTHER COMPONENTS OF THE STANDARDS.

16 (b) A CARRIER MUST BASE THE QUALITY CRITERIA ON  
17 SPECIALTY-APPROPRIATE, NATIONALLY RECOGNIZED, EVIDENCE-BASED  
18 MEDICAL GUIDELINES OR NATIONALLY RECOGNIZED, CONSENSUS-BASED  
19 GUIDELINES. WHERE AVAILABLE, THE CARRIER SHALL USE QUALITY  
20 CRITERIA THAT ARE ENDORSED BY THE NATIONAL QUALITY FORUM AND  
21 DEVELOPED BY ENTITIES WHOSE WORK IN THE AREA OF HEALTH CARE  
22 PROFESSIONAL QUALITY PERFORMANCE IS GENERALLY ACCEPTED WITHIN  
23 THE HEALTH CARE INDUSTRY. ADDITIONALLY, IN DEVELOPING AND USING  
24 QUALITY CRITERIA, THE CARRIER IS SUBJECT TO THE REQUIREMENTS OF  
25 SECTION 25-38-104.

26 (c) A CARRIER MAY USE PROFESSIONAL CERTIFICATION OR  
27 ACCREDITATION IN DETERMINING PROVIDER QUALITY OF CARE, BUT A

1 CARRIER SHALL NOT RELY ON CERTIFICATION OR ACCREDITATION AS THE  
2 SOLE DETERMINANT OF PROVIDER QUALITY.

3 (5) **Disclosure.** A CARRIER SHALL MAKE ITS STANDARDS FOR  
4 SELECTING AND NARROWING OR TIERING ITS NETWORK OF PARTICIPATING  
5 PROVIDERS, AS APPLICABLE, AND ANY QUALITY CRITERIA IT USES  
6 AVAILABLE TO THE COMMISSIONER FOR REVIEW. ADDITIONALLY, THE  
7 CARRIER SHALL MAKE A DESCRIPTION OF THE SELECTION STANDARDS AND  
8 QUALITY CRITERIA, IN PLAIN LANGUAGE, AVAILABLE TO PROVIDERS AND  
9 CONSUMERS IN THE CARRIER'S MARKETING MATERIALS, PLAN OR PRODUCT  
10 INFORMATION, PRINTED AND WEB-BASED PROVIDER DIRECTORIES, AND  
11 PARTICIPATING PROVIDER AGREEMENTS.

12 (6) **Reconsideration.** (a) A CARRIER SHALL NOT TAKE AN  
13 ADVERSE ACTION AGAINST A PROVIDER WITHOUT FIRST COMPLYING WITH  
14 THE REQUIREMENTS OF THIS SUBSECTION (6).

15 (b) AT LEAST SIXTY DAYS BEFORE TAKING AN ADVERSE ACTION,  
16 A CARRIER SHALL SEND THE AFFECTED PROVIDER, BY CERTIFIED MAIL WITH  
17 RETURN RECEIPT REQUESTED, A WRITTEN NOTICE INFORMING THE  
18 PROVIDER OF THE PROPOSED ADVERSE ACTION. THE NOTICE MUST:

19 (I) CONTAIN AN EXPLANATION OF THE REASONS FOR THE  
20 PROPOSED ADVERSE ACTION IN SUFFICIENT DETAIL TO ENABLE THE  
21 PROVIDER TO CHALLENGE THE PROPOSED ADVERSE ACTION;

22 (II) REFERENCE THE EVIDENCE OR DOCUMENTATION UNDERLYING  
23 THE DECISION TO PURSUE THE PROPOSED ADVERSE ACTION, WHICH THE  
24 CARRIER MUST PROVIDE TO THE PROVIDER WITHIN SEVEN WORKING DAYS  
25 AFTER THE DATE ON WHICH THE CARRIER RECEIVES A REQUEST FROM THE  
26 PROVIDER FOR THE EVIDENCE OR DOCUMENTATION; AND

27 (III) INFORM THE PROVIDER OF THE RIGHT TO REQUEST THE

1 CARRIER TO RECONSIDER THE ADVERSE ACTION, INCLUDING THE  
2 OPPORTUNITY FOR A FACE-TO-FACE MEETING, IN ACCORDANCE WITH THE  
3 CARRIER'S PROCEDURES DEVELOPED UNDER SUBSECTION (6)(c) OF THIS  
4 SECTION.

5 (c) A CARRIER SHALL ESTABLISH PROCEDURES FOR A PROVIDER TO  
6 REQUEST A CARRIER TO RECONSIDER AN ADVERSE ACTION. THE  
7 PROCEDURES, IN ADDITION TO THE WRITTEN NOTICE PROVIDED FOR IN  
8 SUBSECTION (6)(b) OF THIS SECTION, MUST PROVIDE THE FOLLOWING:

9 (I) A REASONABLE METHOD BY WHICH THE PROVIDER IS TO SUBMIT  
10 A REQUEST FOR RECONSIDERATION OF A PROPOSED ADVERSE ACTION,  
11 INCLUDING THE NAME OF THE PERSON OR PERSONS TO WHOM THE  
12 PROVIDER IS TO SUBMIT THE REQUEST;

13 (II) IF REQUESTED BY THE PROVIDER, DISCLOSURE OF THE  
14 EVIDENCE OR DOCUMENTATION UPON WHICH THE CARRIER'S ADVERSE  
15 ACTION IS BASED;

16 (III) THE NAME, TITLE, QUALIFICATIONS, AND RELATIONSHIP TO  
17 THE CARRIER OF THE PERSON OR PERSONS RESPONSIBLE FOR THE  
18 PROVIDER'S REQUEST FOR RECONSIDERATION, AS DESIGNATED BY THE  
19 CARRIER UNDER SUBSECTION (6)(e) OF THIS SECTION;

20 (IV) AN OPPORTUNITY TO SUBMIT OR HAVE THE CARRIER  
21 CONSIDER CORRECTED DATA RELEVANT TO THE ADVERSE ACTION AND TO  
22 HAVE THE CARRIER CONSIDER THE APPLICABILITY OF THE CARRIER'S  
23 SELECTION STANDARDS AND QUALITY CRITERIA IN THE DECISION;

24 (V) THE OPPORTUNITY, IF THE PROVIDER REQUESTS, FOR A  
25 FACE-TO-FACE MEETING WITH THOSE RESPONSIBLE FOR THE  
26 RECONSIDERATION DECISION AT A LOCATION REASONABLY CONVENIENT  
27 TO THE PROVIDER OR BY TELECONFERENCE;



1 (VI) THE RIGHT OF THE PROVIDER TO BE ASSISTED BY A  
2 REPRESENTATIVE; AND

3 (VII) A WRITTEN DECISION TO GRANT OR DENY THE PROVIDER'S  
4 RECONSIDERATION REQUEST THAT STATES THE REASONS FOR GRANTING  
5 OR REJECTING THE REQUEST AND FOR IMPLEMENTING, MODIFYING, OR  
6 REVERSING THE ADVERSE ACTION.

7 (d) ALL DATA THAT A PROVIDER SUBMITS TO THE CARRIER UNDER  
8 SUBSECTION (6)(c)(IV) OF THIS SECTION OR IN A FACE-TO-FACE MEETING  
9 UNDER SUBSECTION (6)(c)(V) OF THIS SECTION ARE PRESUMED VALID AND  
10 ACCURATE, AND A CARRIER SHALL NOT UNREASONABLY WITHHOLD  
11 CONSIDERATION OF CORRECTED OR SUPPLEMENTED DATA SUBMITTED  
12 UNDER THOSE SUBSECTIONS.

13 (e) THE CARRIER SHALL DESIGNATE A PERSON OR PERSONS WITH  
14 THE AUTHORITY TO GRANT OR DENY THE RECONSIDERATION REQUEST AND  
15 TO WHOM THE PROVIDER MUST SUBMIT THE REQUEST FOR  
16 RECONSIDERATION.

17 (f) THE CARRIER SHALL COMPLETE THE RECONSIDERATION  
18 PROCESS WITHIN FORTY-FIVE DAYS AFTER THE DATE THE PROVIDER  
19 RECEIVES THE NOTICE OF THE ADVERSE ACTION OR, IF REQUESTED, THE  
20 EVIDENCE OR DOCUMENTATION UPON WHICH THE ADVERSE ACTION IS  
21 BASED, WHICHEVER IS LATER, UNLESS THE CARRIER AND PROVIDER AGREE  
22 TO AN ALTERNATIVE DEADLINE TO COMPLETE THE RECONSIDERATION  
23 PROCESS.

24 (g) A CARRIER SHALL NOT IMPLEMENT AN ADVERSE ACTION THAT  
25 IS THE SUBJECT OF A REQUEST FOR RECONSIDERATION UNTIL THE CARRIER  
26 ISSUES A FINAL DECISION TO GRANT OR DENY THE REQUEST.

27 (7) **Exclusions.** THIS SECTION DOES NOT:

1 (a) PROHIBIT A CARRIER FROM DECLINING TO SELECT A PROVIDER  
2 WHO FAILS TO MEET OTHER LEGITIMATE SELECTION CRITERIA DEVELOPED  
3 BY THE CARRIER IN COMPLIANCE WITH THIS SECTION; EXCEPT THAT THE  
4 CARRIER SHALL COMMUNICATE TO THE PROVIDER THE REASONS WHY THE  
5 PROVIDER FAILS TO MEET THE OTHER CRITERIA; \_\_\_\_\_

6 (b) REQUIRE A CARRIER TO CONTRACT WITH ANY PROVIDER WHO  
7 IS WILLING TO ABIDE BY THE TERMS AND CONDITIONS FOR PARTICIPATION  
8 ESTABLISHED BY THE CARRIER; OR

9 (c) REQUIRE A CARRIER, ITS INTERMEDIARIES, OR THE PROVIDER  
10 NETWORKS WITH WHICH A CARRIER OR INTERMEDIARY CONTRACTS TO  
11 CONTRACT WITH OR RETAIN MORE PROVIDERS ACTING WITHIN THEIR SCOPE  
12 OF PRACTICE AUTHORIZED UNDER APPLICABLE STATE LAW THAN ARE  
13 NECESSARY FOR THE CARRIER TO MAINTAIN A SUFFICIENT PROVIDER  
14 NETWORK.

15 (8) **Participation list.** A CARRIER SHALL PROVIDE A PROVIDER  
16 THAT IS PARTICIPATING IN ONE OR MORE OF ITS NETWORKS WITH A  
17 COMPLETE LIST OF ALL NETWORK PLANS AND PRODUCTS THE CARRIER  
18 OFFERS TO CONSUMERS, WITH AN INDICATION OF THE PROVIDER'S  
19 PARTICIPATION STATUS WITHIN EACH NETWORK PLAN OR PRODUCT, AT  
20 LEAST ANNUALLY AND WITHIN THIRTY DAYS AFTER THE CARRIER ADDS OR  
21 REMOVES A NEW NETWORK PLAN OR PRODUCT FROM ITS OFFERINGS.

22 (9) **Enforcement.** A CARRIER THAT VIOLATES THIS SECTION  
23 ENGAGES IN AN UNFAIR OR DECEPTIVE ACT OR PRACTICE IN THE BUSINESS  
24 OF INSURANCE UNDER PART 11 OF ARTICLE 3 OF THIS TITLE 10.

25 **SECTION 2.** In Colorado Revised Statutes, 10-3-1104, **add**  
26 (1)(ss) as follows:

27 **10-3-1104. Unfair methods of competition - unfair or deceptive**

1 **acts or practices.** (1) The following are defined as unfair methods of  
2 competition and unfair or deceptive acts or practices in the business of  
3 insurance:

4 (ss) VIOLATING SECTION 10-16-705.5.

5 **SECTION 3. Act subject to petition - effective date -**  
6 **applicability.** (1) This act takes effect January 1, 2018; except that, if a  
7 referendum petition is filed pursuant to section 1 (3) of article V of the  
8 state constitution against this act or an item, section, or part of this act  
9 within the ninety-day period after final adjournment of the general  
10 assembly, then the act, item, section, or part will not take effect unless  
11 approved by the people at the general election to be held in November  
12 2018 and, in such case, will take effect on the date of the official  
13 declaration of the vote thereon by the governor.

14 (2) This act applies to health plans issued, amended, or renewed  
15 on or after the applicable effective date of this act.