



Legislative Council Staff

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FISCAL NOTE

Drafting Number: LLS 20-0761 Date: March 6, 2020
Prime Sponsors: Rep. Garnett Bill Status: House Judiciary
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Bill Topic: FAILURE-TO-COOPERATE DEFENSE FIRST-PARTY INSURANCE

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

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 in required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

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.

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.

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 takes effect August 5, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed and applies to litigation that occurs on or after the effective date.

State and Local Government Contacts

Information Technology

Judicial

Law

Regulatory Agencies