Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

REVISED
This Version Includes All Amendments Adopted on Second Reading in the Second House

LLS NO. 08-1003.02 Kristen Forrestal **HOUSE BILL 08-1407**

HOUSE SPONSORSHIP

Romanoff,

SENATE SPONSORSHIP

Gordon,

House Committees
Business Affairs and Labor
Appropriations

Senate Committees
State, Veterans & Military Affairs
Appropriations

SENATE
Amended 2nd Reading
May 5, 2008

HOUSE
3rd Reading Unamended
April 30, 2008

HOUSE
Amended 2nd Reading
April 29, 2008

A BILL FOR AN ACT

CONCERNING STRENGTHENING PENALTIES FOR THE UNREASONABLE CONDUCT OF AN INSURANCE CARRIER, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Increases the penalties that the insurance commissioner may impose for the violation of any law, rule, or order of the commissioner. Prohibits an insurer from unreasonably delaying or denying a claim for payment of benefits by a claimant. Creates a cause of action for a claimant who is unreasonably denied insurance benefits. Allows a claimant to recover 2 times the actual damages sustained.

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.

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

SECTION 1. 10-1-205 (3) (d), Colorado Revised Statutes, is amended to read:

10-1-205. Financial examination reports. (3) Within thirty days after the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, any written submissions or rebuttals, and any relevant portions of the examiner's work papers and shall enter an order that does one or more of the following:

(d) May impose a monetary penalty of not more than ~~one~~ THREE thousand dollars for every act in violation of any law, rule, or prior lawful order of the commissioner described in the report of examination, but not to exceed an aggregate penalty of ~~ten~~ THIRTY thousand dollars unless the company knew or reasonably should have known that its conduct was in violation of any law, rule, or prior lawful order of the commissioner, in which case the penalty shall not be more than ~~ten~~ THIRTY thousand dollars for every act or violation, but not to exceed an aggregate penalty of ~~one~~ SEVEN hundred fifty thousand dollars ~~in any six-month period~~ ANNUALLY.

SECTION 2. 10-2-804 (4), Colorado Revised Statutes, is amended to read:

10-2-804. Investigation by commissioner. (4) In addition to or in lieu of any applicable denial, suspension, or revocation of an insurance producer license, any person who violates any provision of this article may, after hearing, be subject to any remedy or civil penalty of not more than ~~one~~ THREE thousand dollars for each such violation.

SECTION 3. 10-3-1108 (1) (a), Colorado Revised Statutes, is

amended to read:

10-3-1108. Orders. (1) If, after a hearing conducted under section 10-3-1107, the commissioner determines that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice or has violated any other provision of this title or any rule or lawful order of the commissioner, the commissioner shall reduce the findings to writing and shall issue and cause to be served on such person a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act, practice, or violation, and, except in the case of an act or practice that is not a violation of any specific provision of this title or any specific rule or lawful order of the commissioner, the commissioner may, at his or her discretion, order any one or more of the following:

(a) Payment of a monetary penalty of not more than ~~one~~ THREE thousand dollars for each ~~and every~~ act or violation but not to exceed an aggregate penalty of ~~ten~~ THIRTY thousand dollars, unless such person, being an insurer, knew or reasonably should have known he OR SHE was in violation of this part 11, in which case the penalty shall not be more than ~~ten~~ THIRTY thousand dollars for each ~~and every~~ act or violation, but not to exceed an aggregate penalty of ~~one~~ SEVEN hundred fifty thousand dollars ~~in any six-month period~~ ANNUALLY;

SECTION 4. 10-3-1114, Colorado Revised Statutes, is amended to read:

10-3-1114. Construction of part 11. EXCEPT AS PROVIDED IN SECTIONS 10-3-1115 AND 10-3-1116, nothing in this part 11 shall be construed to create a private cause of action based on alleged violations of this part 11 or to abrogate any common law contract or tort cause of

action.

SECTION 5. Part 11 of article 3 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

10-3-1115. Improper denial of claims - prohibited - definitions - severability. (1) (a) A PERSON ENGAGED IN THE BUSINESS OF INSURANCE SHALL NOT UNREASONABLY DELAY OR DENY PAYMENT OF A CLAIM FOR BENEFITS OWED TO OR ON BEHALF OF ANY FIRST-PARTY CLAIMANT.

(b) FOR THE PURPOSES OF THIS SECTION AND SECTION 10-3-1116:

(I) "FIRST-PARTY CLAIMANT" MEANS AN INDIVIDUAL, CORPORATION, ASSOCIATION, PARTNERSHIP, OR OTHER LEGAL ENTITY ASSERTING AN ENTITLEMENT TO BENEFITS OWED DIRECTLY TO OR ON BEHALF OF AN INSURED UNDER AN INSURANCE POLICY. "FIRST-PARTY CLAIMANT" INCLUDES A PUBLIC ENTITY THAT HAS PAID A CLAIM FOR BENEFITS DUE TO AN INSURER'S UNREASONABLE DELAY OR DENIAL OF THE CLAIM.

(II) "FIRST-PARTY CLAIMANT" DOES NOT INCLUDE:

(A) A NONPARTICIPATING PROVIDER PERFORMING SERVICES; OR

(B) A PERSON ASSERTING A CLAIM AGAINST AN INSURED UNDER A LIABILITY POLICY.

(2) NOTWITHSTANDING SECTION 10-3-1113 (3), FOR THE PURPOSES OF AN ACTION BROUGHT PURSUANT TO THIS SECTION AND SECTION 10-3-1116, AN INSURER'S DELAY OR DENIAL WAS UNREASONABLE IF THE INSURER DELAYED OR DENIED AUTHORIZING PAYMENT OF A COVERED BENEFIT WITHOUT A REASONABLE BASIS FOR THAT ACTION.

(3) IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY

PERSON OR CIRCUMSTANCE IS HELD ILLEGAL, INVALID, OR UNENFORCEABLE, NO OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION SHALL BE AFFECTED THAT CAN BE GIVEN EFFECT WITHOUT THE ILLEGAL, INVALID, OR UNENFORCEABLE PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

(4) THE GENERAL ASSEMBLY DECLARES THAT THIS SECTION IS A LAW REGULATING INSURANCE.

(5) THIS SECTION AND SECTION 10-3-1116 SHALL NOT APPLY TO INSURANCE ISSUED IN COMPLIANCE WITH THE "WORKERS' COMPENSATION ACT OF COLORADO", ARTICLES 40 TO 47 OF TITLE 8, C.R.S.

(6) THIS SECTION AND SECTION 10-3-1116 SHALL NOT APPLY TO TITLE INSURANCE ISSUED PURSUANT TO ARTICLE 11 OF THIS TITLE OR TO LIFE INSURANCE ISSUED PURSUANT TO ARTICLE 7 OF THIS TITLE.

10-3-1116. Remedies for unreasonable delay or denial of benefits - required contract provision - frivolous actions - severability. (1) A FIRST-PARTY CLAIMANT AS DEFINED IN SECTION 10-3-1115, WHOSE CLAIM FOR PAYMENT OF BENEFITS HAS BEEN UNREASONABLY DELAYED OR DENIED MAY BRING AN ACTION IN A DISTRICT COURT TO RECOVER REASONABLE ATTORNEY FEES AND COURT COSTS AND TWO TIMES THE COVERED BENEFIT.

(2) AN INSURANCE POLICY, INSURANCE CONTRACT, OR PLAN, THAT IS ISSUED IN THIS STATE THAT OFFERS HEALTH OR DISABILITY BENEFITS SHALL NOT CONTAIN A PROVISION PURPORTING TO RESERVE DISCRETION TO THE INSURER, PLAN ADMINISTRATOR, OR CLAIM ADMINISTRATOR TO INTERPRET THE TERMS OF THE POLICY, CONTRACT, OR PLAN OR TO DETERMINE ELIGIBILITY FOR BENEFITS.

(3) AN INSURANCE POLICY, INSURANCE CONTRACT, OR PLAN,

THAT IS ISSUED IN THIS STATE SHALL PROVIDE THAT A PERSON WHO CLAIMS HEALTH, LIFE, OR DISABILITY BENEFITS, WHOSE CLAIM HAS BEEN DENIED IN WHOLE OR IN PART, AND WHO HAS EXHAUSTED HIS OR HER ADMINISTRATIVE REMEDIES, SHALL BE ENTITLED TO HAVE HIS OR HER CLAIM REVIEWED DE NOVO IN ANY COURT WITH JURISDICTION AND TO A TRIAL BY JURY.

(4) THE ACTION AUTHORIZED IN THIS SECTION IS IN ADDITION TO, AND DOES NOT LIMIT OR AFFECT, OTHER ACTIONS AVAILABLE BY STATUTE OR COMMON LAW, NOW OR IN THE FUTURE. DAMAGES AWARDED PURSUANT TO THIS SECTION SHALL NOT BE RECOVERABLE IN ANY OTHER ACTION OR CLAIM.

(5) IF THE COURT FINDS THAT AN ACTION BROUGHT PURSUANT TO THIS SECTION WAS FRIVOLOUS AS PROVIDED IN ARTICLE 17 OF TITLE 13, C.R.S., THE COURT SHALL AWARD COSTS AND ATTORNEY FEES TO THE DEFENDANT IN THE ACTION.

(6) IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD ILLEGAL, INVALID, OR UNENFORCEABLE, NO OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION SHALL BE AFFECTED THAT CAN BE GIVEN EFFECT WITHOUT THE ILLEGAL, INVALID, OR UNENFORCEABLE PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

(7) THE GENERAL ASSEMBLY DECLARES THAT THIS SECTION IS A LAW REGULATING INSURANCE.

SECTION 6. 10-3-105 (4) (c), Colorado Revised Statutes, as enacted by House Bill 08-1228, enacted at the Second Regular Session of the Sixty-sixth General Assembly, is amended to read:

10-3-105. Certificate of authority to do business - companies

prohibited - definitions. (4) (c) For the purposes of this subsection (4), "restitution" means benefits or moneys owed due to the regulated entity's violation of this title, INCLUDING, BUT NOT LIMITED TO, COSTS AND EXPENSES FOR LOST TIME FROM WORK AND ATTORNEY FEES.

SECTION 7. 10-16-106.5 (5) (b), Colorado Revised Statutes, is amended to read:

10-16-106.5. Prompt payment of claims - legislative declaration. (5) (b) A carrier that fails to pay, deny, or settle a claim in accordance with subsection (4) of this section within ninety days after receiving the claim shall pay to the insured or health care provider, with proper assignment, a penalty in an amount equal to ~~ten~~ TWENTY percent of the total amount ultimately allowed on the claim. Such penalty shall be imposed on the ninety-first day after receipt of the claim by the carrier. IF A CARRIER DENIES A CLAIM IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION WITHIN NINETY DAYS AFTER RECEIVING THE CLAIM AND THE DENIAL IS DETERMINED TO BE UNREASONABLE PURSUANT A CIVIL ACTION IN ACCORDANCE WITH SECTION 10-3-1116, THE CARRIER SHALL PAY THE PENALTY IN THIS PARAGRAPH (b) TO THE INSURED OR TO THE ASSIGNEE.

SECTION 8. Appropriation - adjustments to the 2008 long bill. For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2008, shall be adjusted as follows: to the department of health care policy and financing, division of medical services premiums, for medical services premiums, is decreased by two hundred seventy-seven thousand seven hundred eighty dollars ($277,780). Of said sum, one hundred thirty-eight thousand eight hundred ninety dollars ($138,890) shall be from the general fund and one hundred thirty-eight thousand eight

hundred ninety dollars ($138,890) shall be from federal funds.

SECTION 9. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.