



Legislative
Council Staff

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HB 20-1290

FINAL FISCAL NOTE

Drafting Number: LLS 20-0761
Prime Sponsors: Rep. Garnett
Sen. Fenberg

Date: August 17, 2020
Bill Status: Signed into Law
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Bill Topic: **FAILURE-TO-COOPERATE DEFENSE FIRST-PARTY INSURANCE**

**Summary of
Fiscal Impact:**

- | | |
|---|--|
| <input type="checkbox"/> State Revenue | <input type="checkbox"/> TABOR Refund |
| <input checked="" type="checkbox"/> State Expenditure | <input type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer | <input type="checkbox"/> 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 enacted 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.

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