

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0188.01 Richard Sweetman x4333

HOUSE BILL 20-1076

HOUSE SPONSORSHIP

Williams D.,

SENATE SPONSORSHIP

(None),

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF INSURANCE COMPANIES, AND, IN
102 CONNECTION THEREWITH, REQUIRING THE COMMISSIONER OF
103 INSURANCE TO HOLD CERTAIN HEARINGS WITHIN SIXTY DAYS
104 AFTER A PARTY'S REQUEST FOR A HEARING; PROHIBITING THE
105 IMPOSITION OF AN ADMINISTRATIVE FEE IN ASSOCIATION WITH
106 CERTAIN ADMINISTRATIVE HEARINGS; ALLOWING THE
107 COMMISSIONER OF INSURANCE TO AWARD TREBLE DAMAGES
108 AND ATTORNEY FEES TO AN INSURED PARTY IF AN INSURER
109 BREACHES THE TERMS OF AN ENFORCEABLE POLICY HELD BY
110 THE INSURED PARTY; MAKING DETERMINATIONS THAT ARISE
111 PURSUANT TO CERTAIN ADMINISTRATIVE HEARINGS ADMISSIBLE
112 AS EVIDENCE IN ANY SUBSEQUENT CIVIL ACTION; PROHIBITING
113 THE IMPOSITION OF FEES ON PLAINTIFFS TO RECOVER COSTS

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

101 ASSOCIATED WITH CERTAIN JURY TRIALS INVOLVING INSURANCE
102 CLAIMS; PROHIBITING DEFENDANT INSURERS FROM FILING
103 MOTIONS FOR SUMMARY JUDGMENT, DIRECTED VERDICTS,
104 JUDGMENTS ON THE PLEADINGS, OR ANY OTHER ALTERNATIVE
105 OUTCOMES IN CERTAIN CASES INVOLVING INSURANCE CLAIMS
106 WHEN THE PLAINTIFF HAS REQUESTED A JURY TRIAL;
107 REQUIRING A COURT TO ASSESS TREBLE DAMAGES, COURT
108 COSTS, AND ATTORNEY FEES AGAINST AN INSURER THAT DENIES
109 AN INSURANCE CLAIM IN BAD FAITH; AND SPECIFYING AN
110 INSURER'S UNILATERAL CHANGE TO OR CANCELLATION OF A
111 PREPAID POLICY IS AN UNFAIR OR DECEPTIVE INSURANCE
112 PRACTICE.

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 states that if an insurer or an insured party requests an administrative hearing concerning an allegation that an insurer has breached the terms of an enforceable policy or other contract:

- ! The commissioner of insurance (commissioner) shall hold the hearing not later than 60 days after receiving the request;
- ! Neither the commissioner nor the division nor any administrative court may impose or require a fee of any party in association with the hearing;
- ! The commissioner shall conduct the hearing pursuant to the Colorado rules of procedure for small claims courts;
- ! The commissioner shall issue a ruling, and the ruling is not subject to appeal and does not prevent de novo judicial proceedings;
- ! If the commissioner determines, pursuant to the hearing, that the insurer has breached the terms of an enforceable policy or other contract, the commissioner may award treble damages and attorney fees to the insured party; and
- ! Any determination made by the commissioner, the division

of insurance, or an administrative law judge pursuant to the hearing is admissible as evidence in any subsequent civil action.

The bill states that in any civil action in which a plaintiff claims that an insurer wrongfully denied a claim submitted by the plaintiff pursuant to an enforceable policy issued by the insurer to the plaintiff:

! The court shall not charge the plaintiff any fee to recover costs associated with a jury trial; and

! The defendant insurer may not file a motion for summary judgment, a directed verdict, a judgment on the pleadings, or any other alternative outcome if the plaintiff has requested a jury trial.

The bill states that in any civil action in which the trier of fact determines that an insurer wrongfully denied a claim submitted by a plaintiff pursuant to an enforceable policy issued by the insurer to the plaintiff, that the insurer denied the claim in bad faith, and that the plaintiff suffered damages as a result of the wrongful denial, the court shall award treble damages, court costs, and attorney fees to the plaintiff.

The bill states that it is an unfair method of competition and an unfair or deceptive act or practice in the business of insurance for an insurer to unilaterally change or cancel, or attempt to unilaterally change or cancel, the terms of a prepaid policy of insurance until the policy is due for renewal.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 10-3-1107 as
3 follows:

4 **10-3-1107. Hearings.** (1) Whenever the commissioner has reason
5 to believe that any person has ~~been~~ engaged or is engaging in this state in
6 any unfair method of competition or any unfair or deceptive act or
7 practice, whether defined or reasonably implied in this part 11, or has
8 violated any other provision of this ~~title~~ TITLE 10 or any rule or lawful
9 order of the commissioner and that a proceeding by the commissioner in
10 respect thereto would be to the interest of the public, the commissioner
11 shall proceed as provided in article 4 of title 24. ~~C.R.S.~~ EXCEPT IN THE
12 CASE OF AN ADMINISTRATIVE HEARING THAT IS DESCRIBED IN SUBSECTION

1 (2) OF THIS SECTION, any final action by the commissioner pursuant to this
2 ~~section shall be~~ SUBSECTION (1) IS subject to judicial review by the court
3 of appeals pursuant to section 24-4-106 (11). ~~C.R.S.~~

4 (2) IF AN INSURER OR AN INSURED PARTY REQUESTS AN
5 ADMINISTRATIVE HEARING CONCERNING AN ALLEGATION THAT AN
6 INSURER HAS BREACHED THE TERMS OF AN ENFORCEABLE POLICY OR
7 OTHER CONTRACT:

8 (a) THE COMMISSIONER SHALL HOLD THE HEARING NOT LATER
9 THAN SIXTY DAYS AFTER RECEIVING THE REQUEST;

10 (b) NEITHER THE COMMISSIONER NOR THE DIVISION NOR ANY
11 ADMINISTRATIVE COURT MAY IMPOSE OR REQUIRE A FEE OF ANY PARTY IN
12 ASSOCIATION WITH THE HEARING;

13 (c) THE COMMISSIONER SHALL CONDUCT THE HEARING PURSUANT
14 TO THE COLORADO RULES OF PROCEDURE FOR SMALL CLAIMS COURTS;

15 (d) THE COMMISSIONER SHALL ISSUE A RULING, AND THE RULING
16 IS NOT SUBJECT TO ADMINISTRATIVE APPEAL AND DOES NOT PREVENT DE
17 NOVO JUDICIAL PROCEEDINGS;

18 (e) IF THE COMMISSIONER DETERMINES, PURSUANT TO THE
19 HEARING, THAT THE INSURER HAS BREACHED THE TERMS OF AN
20 ENFORCEABLE POLICY OR OTHER CONTRACT, THE COMMISSIONER MAY
21 AWARD TREBLE DAMAGES AND ATTORNEY FEES TO THE INSURED PARTY;
22 AND

23 (f) ANY DETERMINATION MADE BY THE COMMISSIONER, THE
24 DIVISION, OR AN ADMINISTRATIVE LAW JUDGE PURSUANT TO THE HEARING
25 IS ADMISSIBLE AS EVIDENCE IN ANY SUBSEQUENT CIVIL ACTION.

26 **SECTION 2.** In Colorado Revised Statutes, **add** 13-21-131 as
27 follows:

1 **13-21-131. Civil actions involving denials of insurance claims**
2 **- procedure - treble damages for denying an insurance claim in bad**

3 **faith.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ANY
4 CIVIL ACTION IN WHICH A PLAINTIFF CLAIMS THAT AN INSURER, AS DEFINED
5 IN SECTION 10-1-102 (13), WRONGFULLY DENIED A CLAIM SUBMITTED BY
6 THE PLAINTIFF PURSUANT TO AN ENFORCEABLE POLICY ISSUED BY THE
7 INSURER TO THE PLAINTIFF:

8 (a) THE COURT SHALL NOT CHARGE THE PLAINTIFF ANY FEE TO
9 RECOVER COSTS ASSOCIATED WITH A JURY TRIAL; AND

10 (b) THE DEFENDANT INSURER MAY NOT FILE A MOTION FOR
11 SUMMARY JUDGMENT, A DIRECTED VERDICT, A JUDGMENT ON THE
12 PLEADINGS, OR ANY OTHER ALTERNATIVE OUTCOME IF THE PLAINTIFF HAS
13 REQUESTED A JURY TRIAL.

14 (2) NOTWITHSTANDING SECTION 13-21-102.5 (6)(c), IN ANY CIVIL
15 ACTION IN WHICH THE TRIER OF FACT DETERMINES THAT AN INSURER, AS
16 DEFINED IN SECTION 10-1-102 (13), WRONGFULLY DENIED A CLAIM
17 SUBMITTED BY A PLAINTIFF PURSUANT TO AN ENFORCEABLE POLICY
18 ISSUED BY THE INSURER TO THE PLAINTIFF, THAT THE INSURER DENIED THE
19 PLAINTIFF'S CLAIM IN BAD FAITH, AND THAT THE PLAINTIFF SUFFERED
20 DAMAGES AS A RESULT OF THE WRONGFUL, BAD-FAITH DENIAL, THE COURT
21 SHALL AWARD TREBLE DAMAGES, COURT COSTS, AND ATTORNEY FEES TO
22 THE PLAINTIFF.

23 **SECTION 3.** In Colorado Revised Statutes, 10-3-1104, **amend**
24 (1)(qq) and (1)(ss); and **add** (1)(tt) as follows:

25 **10-3-1104. Unfair methods of competition - unfair or deceptive**
26 **practices.** (1) The following are defined as unfair methods of
27 competition and unfair or deceptive acts or practices in the business of

1 insurance:

2 (qq) Failure to pay a final, nonappealable judgment award for
3 failure to return or repay collateral received to secure a bond; ~~or~~

4 (ss) A violation of section 10-16-704 (3)(d) or (5.5); AND

5 (tt) UNILATERALLY CHANGING OR CANCELING, OR ATTEMPTING TO
6 UNILATERALLY CHANGE OR CANCEL, THE TERMS OF A PREPAID POLICY OF
7 INSURANCE UNTIL THE POLICY IS DUE FOR RENEWAL.

8 **SECTION 4. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2020 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.