

*Colorado Legislative Council Staff Fiscal Note*  
**STATE, LOCAL and  
 STATUTORY PUBLIC ENTITY  
 FISCAL IMPACT**

**Drafting Number:** LLS 08-1003  
**Prime Sponsor(s):** Rep. Romanoff  
 Sen. Gordon

**Date:** April 24, 2008  
**Bill Status:** House Business Affairs and Labor  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**TITLE:** CONCERNING STRENGTHENING PENALTIES FOR THE UNREASONABLE CONDUCT OF AN INSURANCE CARRIER.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
<b>State Revenue</b>		
Cash Funds - Fines Collection Cash Fund	\$732,000	\$732,000
<b>State Expenditures</b>		
General Fund	\$0	\$340,260
<b>FTE Position Change</b>	0.0 FTE	4.8 FTE
<b>Effective Date:</b> 90 days following final adjournment of the General Assembly unless a referendum petition is filed (August 6, 2008, if final adjournment is May 7, 2008).		
<b>Appropriation Summary for FY 2008-2009:</b> None required.		
<b>Local Government Impact:</b> See Local Government Impact section of fiscal note.		

**Summary of Legislation**

This bill prohibits the unreasonable delay or denial of payment of a claim for benefits owed by an insurance company, and provides remedies for claimants, including a new cause of action. It increases the monetary penalties the Commissioner of Insurance can impose on insurance companies and agents for violations of law. It prohibits an insurance contract from giving the plan administrator final discretion in determining eligibility for benefits. The bill expands the definition of restitution to include costs and expenses for lost time from work and attorney fees.

**State Revenue**

State revenue from penalties is expected to increase by \$732,000 in FY 2008-09 and FY 2009-10 to the Fines Collection Cash Fund.

**Penalties.** The Department of Regulatory Agencies, Division of Insurance, expects annual increases of \$732,000 in penalties levied for violations discovered in financial and market exams and for insurance agent disciplinary actions as shown in Table 1. Penalties that were limited in statute to \$1,000 per violation up to \$10,000 total are increased to \$5,000 per violation with a \$50,000

maximum. Penalties when the company knew, or should have known about the violation, that were limited to \$10,000 per violation up to \$100,000 total are increased to \$50,000 per violation with a \$750,000 maximum.

<b>Table 1. Additional Penalties Levied Annually Under HB08-1407</b>	
<b>Fine Categories</b>	<b>Penalty Levied</b>
Market Conduct Examinations	\$500,000
Insurance Agent Discipline	200,000
Financial Examinations	32,000
<b>TOTAL</b>	<b>\$732,000</b>

**State Expenditures**

No increase in expenditures is expected in FY 2008-09. State General Fund expenditures in the Judicial Branch are expected to increase by \$340,260 and 4.8 FTE in FY 2009-10. Additional costs may also be incurred by the state employee health plans as described below.

**Judicial Branch** — expects the new cause of action to result in a significant increase in filings and an additional 2 trial days for bad faith claim cases. The amount of filings for the new cause of action cannot be determined at this time, but because it provides for the award of attorney fees and up to 225% of the value of the claim that was denied, claimants have an incentive to file for recovery. In FY 2007, 159 cases of bad faith claims were tried in district court. With 2 extra days added to these trials, district court expenditure increases of \$340,260 and 4.8 FTE for magistrates and support staff are expected for FY 2009-10.

<b>Table 2. Expenditures Under HB08-1407</b>	
<b>Cost Components</b>	<b>FY 2009-10</b>
Personal Services	\$268,986
FTE	4.8
Operating Expenses	8,550
Capital Outlay (one-time cost)	62,724
<b>TOTAL</b>	<b>\$340,260</b>

**State Employee Health Plan Contributions.** The bill applies to the health insurance plans offered to state employees under the state's employee benefit program. The Division of Human Resources, in the Department of Personnel and Administration, expects higher claim costs because the bill precludes the use of medical necessity reviews which save about \$500,000 per year. The plans may incur additional legal expenses for claims that are taken to court, but those expenses cannot be determined at this time.

Total health plan cost increases are expected to translate into increased annual premiums of approximately \$500,000 spread across all enrolled state employees and dependents. The anticipated increases for the self-funded plans range from \$1.26 per month for employee only coverage, to \$3.63 per month for employee and family coverage beginning in FY 2009-10. Anticipated premium increases for the San Luis Valley plan range from \$10.96 per month for employee only coverage, to \$31.55 per month for employee and family coverage.

***State Employer Health Plan Contributions.*** While premium increases are expected to be paid by state employees in the first year, this bill may influence the General Assembly to increase the state's contribution in order to meet the statutory requirement of providing benefits comparable to private sector employers. Over time, increased health insurance premiums would be incorporated into the Total Compensation Survey, and any increases to the state's contribution to maintain parity with the private sector will increase state expenditures.

***Department of Regulatory Agencies, Division of Insurance***—is not expected to require an increase in expenditures. The bill authorizes the division to levy larger penalties for violations found in the normal course of business.

***Health Care Policy and Financing, Children's Basic Health Plan***—The department contracts with managed care organizations that are responsible for administering the plan and complying with applicable laws; so, no fiscal impact to the department is expected.

### **Local Government Impact**

An increase in premiums for health insurance at the local level is possible as those plans would be prohibited from giving the administrator final discretion in benefit determination. They would also be subject to a cause of action brought by a claimant who was denied benefits. The size of the increase and who will bear the expense, cannot be determined.

### **Statutory Public Entity Impact**

CoverColorado is a non-profit entity created in 1991 to offer health insurance coverage to people unable to obtain insurance at a reasonable cost without significant exclusions. It would be prohibited from giving the administrator final discretion in benefit determination which could result in additional costs. It may also be subject to a cause of action brought by a claimant who was denied benefits. The amount of any increase cannot be determined at this time.

### **Departments Contacted**

Judicial  
Regulatory Agencies  
Law

Personnel and Administration  
Health Care Policy and Financing