

HOUSE No. 02074

The Commonwealth of Massachusetts

PRESENTED BY:

Tom Sannicandro

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to greater fairness in insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

HOUSE No. 02074

By Mr. Sannicandro of Ashland, a petition (accompanied by bill, House, No. 2074) of Turner and others for legislation to prohibit certain discretionary authority by insurers Joint Committee on Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to greater fairness in insurance.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Section 226 is added to the General Laws of Massachusetts, Chapter 175
- 2 INSURANCE to read:
- 3 Section 226.
- 4 (a) If a policy, contract, certificate, or agreement offered, issued, delivered, or renewed, whether
- 5 or not in Massachusetts, that provides, backs up, reinsures, or funds, in whole or in part, life
- 6 insurance, health insurance, annuities, accident insurance, long term care insurance, or disability
- 7 insurance coverage for any Massachusetts resident contains a provision that reserves
- 8 discretionary authority to the insurer, or an agent of the insurer, to determine eligibility for
- 9 benefits or coverage, to interpret the terms of the policy, contract, certificate, or agreement, or to
- 10 provide standards of interpretation or review that are inconsistent with the laws of this state, that
- 11 provision is void and unenforceable.

12 (b) For purposes of this section, "renewed" means continued in force on or after the policy's
13 anniversary date.

14 (c) For purposes of this section, the term "discretionary authority" means a policy provision that
15 has the effect of conferring discretion on an insurer or other claim administrator to determine
16 entitlement to benefits or interpret policy language that, in turn, could lead to a deferential
17 standard of review by any reviewing court.

18 (d) Nothing in this section prohibits an insurer from including a provision in a contract that
19 informs an insured that as part of its routine operations the insurer applies the terms of its
20 contracts for making decisions, including making determinations regarding eligibility, receipt of
21 benefits and claims, or explaining policies, procedures, and processes, so long as the provision
22 could not give rise to a deferential standard of review by any reviewing court.

23 (e) The Commissioner of Insurance ("Commissioner") shall not approve any health, life or
24 disability policy for issuance or delivery in Massachusetts in any of the following circumstances:
25 If it includes a provision that reserves discretionary authority, as defined by Section 226, to the
26 insurer, or an agent of the insurer, to determine eligibility for benefits or coverage or to interpret
27 the terms of the policy; or if it provides standards of interpretation or review that are
28 inconsistent with the laws of Massachusetts; or if it contains or incorporates by reference, where
29 the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or
30 exceptions and conditions that deceptively affect the risk purported to be assumed in the general
31 coverage of the contract; or if it has any title, heading, or other indication of its provisions that is
32 misleading; or if it is printed or otherwise reproduced in a manner that renders any provision of

33 the form substantially illegible; or if it fails to conform in any respect with any law of
34 Massachusetts.

35 (f) If any provision of this Section or its application to any person or circumstance is held to be
36 illegal, invalid, or unenforceable, no other provisions or applications of this Section that can be
37 given effect without the illegal, invalid or unenforceable provision or application shall be
38 affected; and to this end the provisions of this Section are severable.