SENATE DOCKET, NO. 975 FILED ON: 1/20/2011

SENATE . . . . . No. 427

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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:

An Act for greater fairness in insurance policies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Patricia D. Jehlen	☐ *[District]* ☐
James B. Eldridge	☐ *[District]* ☐
Thomas M. McGee	*Third Essex and Middlesex*

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SENATE . . . . . No. 427

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 427) of Patricia D. Jehlen, James B. Eldridge and Thomas M. McGee for legislation to provide greater fairness in insurance policies. Financial Services.

The Commonwealth of Massachusetts

An Act for greater fairness in insurance policies.

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

SECTION 1. Chapter 175 of the General Laws is hereby amended by inserting after Section 225 the following section:-

(a) If a policy, contract, certificate, or agreement offered, issued, delivered, or renewed, whether or not in Massachusetts, that provides, backs up, reinsures, or funds, in whole or in part, life insurance, health insurance, annuities, accident insurance, long term care insurance, or disability insurance coverage for any Massachusetts resident contains a provision that reserves discretionary authority to the insurer, or an agent of the insurer, to determine eligibility for benefits or coverage, to interpret the terms of the policy, contract, certificate, or agreement, or to provide standards of interpretation or review that are inconsistent with the laws of this state, that provision is void and unenforceable.

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

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

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

22 (e) The Commissioner of Insurance ("Commissioner") shall not approve any health, life
23 or disability policy for issuance or delivery in Massachusetts in any of the following
24 circumstances:

25 If it includes a provision that reserves discretionary authority, as defined by Section 226,
26 to the insurer, or an agent of the insurer, to determine eligibility for benefits or coverage or to
27 interpret 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
36 held to be illegal, invalid, or unenforceable, no other provisions or applications of this Section
37 that can be given effect without the illegal, invalid or unenforceable provision or application
38 shall be affected; and to this end the provisions of this Section are severable.