

**SENATE . . . . . No. 446**

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**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 adoption of the accompanying bill:

An Act for greater fairness in insurance policies.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

*Patricia D. Jehlen*

*Second Middlesex*

*Michael J. Barrett*

*Third Middlesex*

**SENATE . . . . . No. 446**

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By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 446) of Patricia D. Jehlen and Michael Barrett for legislation to provide greater fairness in insurance policies. Financial Services.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 427 OF 2011-2012.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Thirteen**  
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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:*

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

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

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

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

17 (d) Nothing in this section prohibits an insurer from including a provision in a contract  
18 that informs an insured that as part of its routine operations the insurer applies the terms of its  
19 contracts for making decisions, including making determinations regarding eligibility, receipt of  
20 benefits and claims, or explaining policies, procedures, and processes, so long as the provision  
21 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.