

**HOUSE . . . . . No. 1088**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Jay D. Livingstone*

*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 relative to greater fairness in insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>1/18/2023</i>

**HOUSE . . . . . No. 1088**

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By Representative Livingstone of Boston, a petition (accompanied by bill, House, No. 1088) of Jay D. Livingstone relative to insurance. Financial Services.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Third General Court  
(2023-2024)**  
\_\_\_\_\_

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,  
5 whether or not in Massachusetts, that provides, backs up, reinsures, or funds, in whole or in part,  
6 life insurance, health insurance, annuities, accident insurance, long term care insurance, or  
7 disability 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  
13 policy's anniversary date.

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

18 (d) Nothing in this section prohibits an insurer from including a provision in a contract  
19 that 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  
24 or disability policy for issuance or delivery in Massachusetts in any of the following  
25 circumstances:

26 If it includes a provision that reserves discretionary authority, as defined by Section 226,  
27 to the insurer, or an agent of the insurer, to determine eligibility for benefits or coverage or to  
28 interpret the terms of the policy; or if it provides standards of interpretation or review that are  
29 inconsistent with the laws of Massachusetts; or if it contains or incorporates by reference, where  
30 the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or  
31 exceptions and conditions that deceptively affect the risk purported to be assumed in the general  
32 coverage of the contract; or if it has any title, heading, or other indication of its provisions that is  
33 misleading; or if it is printed or otherwise reproduced in a manner that renders any provision of

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

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