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HOUSE BILL 26-1017

BY REPRESENTATIVE(S) Espenoza and Zokaie, Bacon, Boesenecker, Lindsay, Mabrey, Martinez, Nguyen, Paschal, Sirota, Woodrow, McCluskie;
also SENATOR(S) Weissman, Gonzales J., Jodeh, Kipp, Wallace, Coleman.

CONCERNING PROHIBITING AN INSURER FROM RECEIVING RESTITUTION THROUGH THE CRIMINAL RESTITUTION PROCESS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-1.3-601, **add** (1)(h) as follows:

18-1.3-601. Legislative declaration.

(1) The general assembly finds and declares that:

(h) AN INSURANCE COMPANY, AS PART OF ITS BUSINESS OPERATIONS, COMPENSATES A DIRECT VICTIM OF A CRIME DUE TO THE CONTRACTUAL RELATIONSHIP BETWEEN THE INSURANCE COMPANY AND VICTIM WHEREBY THE VICTIM PAYS THE INSURANCE COMPANY A PREMIUM AND THE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

INSURANCE COMPANY COMPENSATES THE VICTIM FOR LOSSES SUSTAINED. IN THESE INSTANCES, CRIMINAL RESTITUTION TO MAKE DIRECT VICTIMS WHOLE MUST BE PRIORITIZED, WHILE INSURANCE COMPANIES SHOULD RECOVER THEIR LOSSES THROUGH REMEDIES OTHER THAN CRIMINAL RESTITUTION ORDERS. HOWEVER, AN INSURANCE COMPANY THAT IS A DIRECT VICTIM OF A CRIME MUST BE MADE WHOLE THROUGH THE CRIMINAL RESTITUTION PROCESS, INCLUDING IF THE INSURANCE COMPANY IS A VICTIM OF A SCHEME TO DEFRAUD THE INSURANCE COMPANY OR WHEN THE INSURANCE COMPANY'S PROPERTY IS DAMAGED OR STOLEN BY CRIMINAL ACTS.

SECTION 2. In Colorado Revised Statutes, 18-1.3-602, **amend** (3)(a), (3)(d), (4)(a)(I), (4)(a)(III), and (4)(a)(VI) as follows:

18-1.3-602. Definitions.

As used in this part 6, unless the context otherwise requires:

(3) (a) "Restitution" means any pecuniary loss suffered by a victim and includes, but is not limited to, all out-of-pocket expenses, interest, loss of use of money, anticipated future expenses, rewards paid by victims, money advanced by law enforcement agencies, money advanced by a governmental agency for a service animal, adjustment expenses, and other losses or injuries proximately caused by an offender's conduct and that can be reasonably calculated and recompensed in money. "Restitution" does not include LOSSES FOR WHICH A VICTIM MAY BE COMPENSATED THROUGH A PRIVATE INSURANCE POLICY, damages for physical or mental pain and suffering, loss of consortium, loss of enjoyment of life, loss of future earnings, or punitive damages.

(d) "Restitution" ~~shall also include~~ ALSO INCLUDES costs incurred by a governmental agency or A WORKER'S COMPENSATION insurer that provides medical benefits, health benefits, or nonmedical support services directly related to a medical or health condition to a victim for losses or injuries proximately caused by an offender's conduct, including, but not limited to, costs incurred by medicaid, MEDICARE, and other care programs for indigent persons.

(4) (a) "Victim" means any person aggrieved by the conduct of an offender and includes, but is not limited to, the following:

(I) Any person against whom any felony, misdemeanor, petty OFFENSE, or traffic misdemeanor offense has been perpetrated or attempted, INCLUDING AN INSURANCE COMPANY WHEN THE INSURANCE COMPANY IS A VICTIM OF A SCHEME TO DEFRAUD THE INSURANCE COMPANY OR WHEN THE INSURANCE COMPANY'S PROPERTY IS DAMAGED OR STOLEN THROUGH A CRIMINAL ACT;

(III) Any person who has suffered losses ~~because of a contractual relationship with, including but not limited to, an insurer, or because of liability under~~ PURSUANT TO section 14-6-110 C.R.S., for a person described in ~~subparagraph (I) or (H) of this paragraph (a)~~ SUBSECTION (4)(a)(I) OR (4)(a)(II) OF THIS SECTION;

(VI) Any person who had to expend resources for the purposes described in ~~paragraphs (b), (c), and (d) of subsection (3) of this section~~ SUBSECTIONS (3)(b), (3)(c), OR (3)(d) OF THIS SECTION, EXCEPT NOT AN INSURANCE COMPANY THAT COMPENSATED A VICTIM FOR A LOSS, EXCEPT AS PROVIDED IN SUBSECTION (3)(d) OF THIS SECTION.

SECTION 3. In Colorado Revised Statutes, 18-1.3-603, **amend** (8); and **add** (12) and (13) as follows:

18-1.3-603. Assessment of restitution - corrective orders.

(8) (a) ~~Notwithstanding the provisions of subsection (1) of this section, for a non-felony conviction under title 42, C.R.S.,~~ The court shall order restitution concerning only the portion of the victim's pecuniary loss for which the victim cannot be compensated under a policy of insurance, self-insurance, an indemnity agreement, or a risk management fund. A COURT MAY AWARD A VICTIM RESTITUTION FOR A DEDUCTIBLE AMOUNT UNDER THE VICTIM'S POLICY OF INSURANCE.

~~(b) The court, in determining the restitution amount, shall consider whether the defendant or the vehicle driven by the defendant at the time of the offense was covered by:~~

~~(i) A complying policy of insurance or certificate of self-insurance as required by the laws of this state;~~

~~(ii) Self-insurance including but not limited to insurance coverage~~

~~pursuant to the provisions of part 15 of article 30 of title 24, C.R.S.; or~~

~~(HH) Any other insurance or indemnity agreement that would indemnify the defendant for any damages sustained by the victim.~~

~~(c) (f) Except as otherwise provided in this paragraph (c), a court may not award restitution to a victim concerning a pecuniary loss for which the victim has received or is entitled to receive benefits or reimbursement under a policy of insurance or other indemnity agreement.~~

~~(H) (A) A court may award a victim restitution for a deductible amount under his or her policy of insurance.~~

~~(B) (Deleted by amendment, L. 2004, p. 904, § 28, effective May 21, 2004.)~~

~~(d) (f) (Deleted by amendment, L. 2004, p. 904, § 28, effective May 21, 2004.)~~

~~(H) (b) Nothing in this paragraph (d) shall~~ THIS SECTION DOES NOT prohibit a nonowner driver or passenger in ~~the~~ A vehicle from being awarded restitution if the NONOWNER driver or passenger was not covered by ~~his or her~~ THE NONOWNER DRIVER'S OR PASSENGER'S own medical payments coverage policy.

~~(e) (f) (c)~~ Notwithstanding any provision of law to the contrary, an insurance company, risk management fund, or public entity ~~shall not be~~ IS NOT obligated to defend a defendant in a hearing concerning restitution. ~~No~~ A court shall NOT interpret an indemnity or insurance contract ~~so as to obligate~~ AS REQUIRING an insurance company, risk management fund, or public entity to defend a defendant at a restitution hearing absent a specific agreement.

~~(H) Notwithstanding any provision of law, indemnity contract, or insurance contract to the contrary, an insurance company, risk management fund, or public entity shall not be obligated to pay or otherwise satisfy a civil judgment entered pursuant to this part 6, or to indemnify a defendant for an amount awarded in a restitution order.~~

~~(f) Nothing in this article shall be construed to limit or abrogate the~~

~~rights and immunities set forth in the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.~~

~~(g)(d) The provisions of This subsection (8) shall DOES not preclude the court, pursuant to article 4.1 of title 24, C.R.S., from ordering restitution to reimburse an expenditure made by a victim compensation fund.~~

~~(12) THIS PART 6 DOES NOT PREVENT AN INSURANCE COMPANY FROM FILING A CIVIL ACTION OR PURSUING ANY OTHER CIVIL REMEDY AGAINST A DEFENDANT TO RECOVER LOSSES THE INSURANCE COMPANY SUFFERED.~~

~~(13) THIS PART 6 DOES NOT LIMIT OR ABROGATE THE RIGHTS AND IMMUNITIES SET FORTH IN THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24.~~

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO