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HOUSE BILL 17-1119

BY REPRESENTATIVE(S) Kraft-Tharp, Singer, Arndt, Gray, Hamner, Hansen, Kennedy, Lee, Lontine, Salazar, Young, Rosenthal, Duran; also SENATOR(S) Jahn and Tate, Hill, Kagan.

CONCERNING THE PAYMENT OF WORKERS' COMPENSATION BENEFITS TO INJURED EMPLOYEES OF UNINSURED EMPLOYERS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** article 67 to title 8 as follows:

ARTICLE 67
Colorado Uninsured Employer Act

8-67-101. Short title. THE SHORT TITLE OF THIS ARTICLE 67 IS THE "COLORADO UNINSURED EMPLOYER ACT".

8-67-102. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE PURPOSE OF THIS ARTICLE 67 IS TO PROVIDE A MECHANISM FOR THE PAYMENT OF COVERED CLAIMS TO WORKERS INJURED WHILE EMPLOYED BY EMPLOYERS WHO HAVE FAILED TO

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

OBTAIN AND MAINTAIN THE REQUIRED WORKERS' COMPENSATION INSURANCE AND TO AVOID EXCESSIVE DELAY IN PAYMENT AND FINANCIAL LOSS TO INJURED WORKERS.

(2) THEREFORE, IT IS THE INTENT OF THE GENERAL ASSEMBLY TO REQUIRE EMPLOYERS TO MAINTAIN WORKERS' COMPENSATION INSURANCE AND THAT THE REQUIREMENT BE VIGOROUSLY ENFORCED IN ORDER TO PROTECT COMPLIANT EMPLOYERS FROM THOSE WHO WOULD GAIN A COMPETITIVE ADVANTAGE AT THE EXPENSE OF THE SAFETY AND WELL-BEING OF EMPLOYEES.

8-67-103. Definitions. AS USED IN THIS ARTICLE 67, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BOARD" MEANS THE UNINSURED EMPLOYER BOARD CREATED IN SECTION 8-67-106.

(2) "COVERED CLAIM" MEANS A CLAIM FOR BENEFITS RESULTING FROM AN INJURY OCCURRING ON OR AFTER JANUARY 1, 2020, THAT HAS BEEN ADJUDICATED TO BE COMPENSABLE, FOR WHICH THE EMPLOYER HAS BEEN DETERMINED TO BE UNINSURED, AND FOR WHICH THE EMPLOYER HAS FAILED TO PAY THE FULL AMOUNT OF BENEFITS AS ORDERED.

(3) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(4) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF WORKERS' COMPENSATION.

(5) "DIVISION" MEANS THE DIVISION OF WORKERS' COMPENSATION IN THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(6) "FUND" MEANS THE COLORADO UNINSURED EMPLOYER FUND.

8-67-104. Exclusions. (1) THE FOLLOWING PERSONS MAY NOT RECOVER COMPENSATION OR OTHER BENEFITS FROM THE FUND:

(a) A PARTNER IN A PARTNERSHIP OR AN OWNER OF A SOLE PROPRIETORSHIP;

(b) A DIRECTOR OR OFFICER OF A CORPORATION;

(c) A MEMBER OR MANAGER OF A LIMITED LIABILITY COMPANY;

(d) AN INDIVIDUAL WHO WAS RESPONSIBLE FOR OBTAINING AND MAINTAINING THE EMPLOYER'S WORKERS' COMPENSATION INSURANCE COVERAGE AND WHO FAILED TO DO SO;

(e) AN INDIVIDUAL WHO WAS ELIGIBLE TO BE COVERED UNDER A WORKERS' COMPENSATION INSURANCE POLICY AND VOLUNTARILY REJECTED THE COVERAGE UNDER SECTION 8-41-202, 8-41-404 (4)(a)(V), OR 8-41-404 (4)(a)(VI);

(f) AN INDIVIDUAL WHO IS NOT AN "EMPLOYEE" AS DEFINED IN SECTIONS 8-40-202 AND 8-40-301 OR WHO IS OTHERWISE INELIGIBLE TO RECEIVE BENEFITS UNDER ARTICLES 40 TO 47 OF THIS TITLE 8.

8-67-105. Colorado uninsured employer fund. (1) THE COLORADO UNINSURED EMPLOYER FUND IS HEREBY CREATED IN THE STATE TREASURY. A BOARD OF DIRECTORS ESTABLISHED UNDER SECTION 8-67-106 SHALL ADMINISTER THE FUND UNDER A PLAN OF OPERATION ESTABLISHED UNDER SECTION 8-67-108.

(2) (a) THE MONEY COLLECTED FOR THE FUND PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8 SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE FUND. THE MONEY CREDITED TO THE FUND AND ALL INTEREST EARNED THEREON ARE HEREBY CONTINUOUSLY APPROPRIATED FOR THE PAYMENT OF THE DIRECT COSTS OF ADMINISTERING THE PROGRAM, INCLUDING BENEFITS PAID PURSUANT TO THIS ARTICLE 67 AND PAYMENTS TO THIRD PARTIES RETAINED PURSUANT TO THIS ARTICLE 67.

(b) THE INTERNAL STAFFING COSTS, NOT INCLUDING PAYMENTS TO THIRD PARTIES CONTRACTED BY THE BOARD, ASSOCIATED WITH UNINSURED EMPLOYER PROGRAMS SHALL BE PAID OUT OF THE WORKERS' COMPENSATION CASH FUND IN ACCORDANCE WITH APPROPRIATIONS MADE PURSUANT TO SECTION 8-44-112 (7).

(c) THE FUND CONSISTS OF:

(I) CIVIL PENALTIES, FINES, AND OTHER REVENUE COLLECTED BY THE DIVISION AND SPECIFICALLY ALLOCATED TO THE FUND PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8;

(II) ANY PUBLIC OR PRIVATE GIFTS, GRANTS, OR DONATIONS TO THE FUND RECEIVED BY THE DEPARTMENT;

(III) ANY APPROPRIATIONS MADE TO THE FUND; AND

(IV) EARNED INTEREST, WHICH THE STATE TREASURER SHALL DEPOSIT IN THE FUND.

(d) THE DEPARTMENT MAY USE REVENUES IN THE FUND FOR BENEFITS TO BE PAID OUT OF THE FUND PURSUANT TO THIS ARTICLE 67 AS WELL AS ADMINISTRATIVE COSTS OF THE BOARD.

(e) THE MONEY IN THE FUND:

(I) SHALL REMAIN IN THE FUND AND NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND AT THE END OF ANY FISCAL YEAR;

(II) IS EXEMPT FROM SECTION 24-75-402; AND

(III) IS NOT SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY.

(3) NO LATER THAN JUNE 1, 2022, THE STATE AUDITOR SHALL CONDUCT OR CAUSE TO BE CONDUCTED A PERFORMANCE AUDIT OF THE COLORADO UNINSURED EMPLOYER FUND.

8-67-106. Creation of board. (1) THERE IS HEREBY CREATED IN THE DIVISION THE UNINSURED EMPLOYER BOARD, CONSISTING OF THE DIRECTOR OF THE DIVISION OR THE DIRECTOR'S REPRESENTATIVE AND FOUR MEMBERS APPOINTED BY THE GOVERNOR AND CONFIRMED BY THE SENATE. APPOINTED MEMBERS OF THE BOARD MUST INCLUDE AT LEAST ONE INDIVIDUAL TO REPRESENT EACH OF THE FOLLOWING:

(a) EMPLOYERS;

(b) LABOR ORGANIZATIONS;

(c) INSURERS; AND

(d) ATTORNEY REPRESENTATIVES OF INJURED WORKERS.

(2) THE BOARD SHALL EXERCISE ITS POWERS AND PERFORM ITS FUNCTIONS UNDER THE DEPARTMENT AND THE DIRECTOR AS IF THE BOARD WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER, AS SUCH TRANSFER IS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24.

(3) THE APPOINTED MEMBERS OF THE BOARD SHALL SERVE FOR TERMS OF THREE YEARS AND MAY BE REAPPOINTED; EXCEPT THAT, OF THE MEMBERS FIRST APPOINTED, ONE SHALL SERVE FOR AN INITIAL TERM OF THREE YEARS, TWO SHALL SERVE FOR INITIAL TERMS OF TWO YEARS, AND ONE SHALL SERVE FOR AN INITIAL TERM OF ONE YEAR. A MEMBER MAY SERVE NO MORE THAN THREE CONSECUTIVE TERMS.

(4) MEMBERS OF THE BOARD ARE NOT ENTITLED TO COMPENSATION FOR THEIR SERVICES BUT SHALL BE REIMBURSED FOR ACTUAL AND NECESSARY TRAVELING AND EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES AS MEMBERS OF THE BOARD.

8-67-107. Powers of the board. (1) THE BOARD HAS THE FOLLOWING POWERS AND DUTIES:

(a) TO ESTABLISH STANDARDS AND CRITERIA FOR PAYMENT OF BENEFITS FROM THE FUND;

(b) TO SET MINIMUM AND MAXIMUM BENEFIT RATES; EXCEPT THAT BENEFITS PAID BY THE FUND SHALL NOT EXCEED THE MAXIMUM ALLOWED UNDER ARTICLES 40 TO 47 OF THIS TITLE 8 OR SET FORTH BY ORDER OF THE DIRECTOR. MINIMUM BENEFIT RATES SHALL BE AT THE LEVEL REQUIRED BY ARTICLES 40 TO 47 OF THIS TITLE 8 UNLESS THE FUND LACKS SUFFICIENT MONEY AS DETERMINED BY THE BOARD. IF BENEFITS ARE PAID BELOW THE AMOUNT MANDATED BY ARTICLES 40 TO 47 OF THIS TITLE 8, BENEFITS SHALL BE PRIORITIZED AND PAID AS FOLLOWS:

(I) MEDICAL BENEFITS;

(II) FUNERAL BENEFITS;

- (III) TEMPORARY DISABILITY;
- (IV) DEATH BENEFITS;
- (V) PERMANENT TOTAL DISABILITY;
- (VI) PERMANENT PARTIAL DISABILITY;
- (VII) DISFIGUREMENT.

(c) TO ADJUST CLAIMS, WHICH MAY BE PERFORMED BY CONTRACTING WITH ANY APPROPRIATE ENTITIES DESIGNATED AS THIRD-PARTY ADMINISTRATORS. DESIGNATION OF A THIRD-PARTY ADMINISTRATOR IS SUBJECT TO THE APPROVAL OF THE DIRECTOR.

(d) TO PAY THE EXPENSES OF THE BOARD AS AUTHORIZED BY THIS SECTION;

(e) TO DISSEMINATE INFORMATION REGARDING THE FUND;

(f) TO ADOPT RULES AS NECESSARY TO CARRY OUT THE PURPOSES OF THIS ARTICLE 67, INCLUDING RULES REGARDING ADMISSION TO THE FUND AND PAYMENT OF BENEFITS IN ORDER TO ENSURE THE FINANCIAL STABILITY OF THE FUND;

(g) TO INVESTIGATE CLAIMS BROUGHT FOR BENEFITS AND TO ADJUST, COMPROMISE, SETTLE, AND PAY COVERED CLAIMS TO THE EXTENT PERMITTED BY STATUTE AND RULE; TO DENY PAYMENT OF BENEFITS FROM THE FUND OF ALL OTHER CLAIMS AND TO REVIEW SETTLEMENTS, RELEASES, AND FINAL ORDERS TO WHICH THE UNINSURED EMPLOYER AND INJURED WORKER WERE PARTIES; AND TO DETERMINE THE EXTENT TO WHICH SUCH SETTLEMENTS, RELEASES, AND ORDERS MAY EFFECT ELIGIBILITY FOR BENEFITS.

(2) THE BOARD MAY:

(a) EMPLOY OR RETAIN PERSONS AS NECESSARY TO HANDLE CLAIMS AND PERFORM OTHER DUTIES OF THE BOARD;

(b) INTERVENE AS A PARTY BEFORE ANY COURT OR ADMINISTRATIVE

TRIBUNAL IN THIS STATE THAT HAS JURISDICTION OVER AN UNINSURED EMPLOYER OR OTHER PARTY POTENTIALLY RESPONSIBLE FOR PAYMENT OF BENEFITS;

(c) NEGOTIATE AND BECOME A PARTY TO CONTRACTS AS NECESSARY TO CARRY OUT THE PURPOSES OF THIS ARTICLE 67;

(d) PERFORM OTHER ACTS NECESSARY OR PROPER TO EFFECTUATE THE PURPOSES OF THIS ARTICLE 67;

(e) PURCHASE OR OTHERWISE OBTAIN INSURANCE AND REINSURANCE POLICIES TO LIMIT THE LIABILITY OF THE FUND FOR PAYMENT OF BENEFITS UNDER THIS ARTICLE 67; AND

(f) DENY ENTRY TO THE FUND OR PAYMENT OF BENEFITS IF THE UNDERLYING CLAIM APPEARS TO BE PREMISED ON FRAUDULENT ACTIVITY.

8-67-108. Plan of operation. (1) THE BOARD SHALL, BY RULE, ADOPT A PLAN OF OPERATION AND ANY AMENDMENTS NECESSARY OR SUITABLE TO ASSURE THE FAIR, REASONABLE, AND EQUITABLE ADMINISTRATION OF THE FUND.

(2) IF THE BOARD FAILS TO ADOPT A PLAN OF OPERATION ON OR BEFORE SEPTEMBER 1, 2018, THE DIRECTOR SHALL, AFTER NOTICE AND HEARING, ADOPT AND PROMULGATE REASONABLE RULES AS NECESSARY OR ADVISABLE TO EFFECTUATE THIS ARTICLE 67. THE RULES SHALL CONTINUE IN FORCE UNTIL MODIFIED OR SUPERSEDED BY THE BOARD.

(3) THE PLAN OF OPERATION SHALL:

(a) ESTABLISH THE PROCEDURES BY WHICH ALL THE POWERS AND DUTIES OF THE BOARD UNDER SECTION 8-67-107 WILL BE PERFORMED;

(b) ESTABLISH THE AMOUNT AND METHOD OF REIMBURSING MEMBERS OF THE BOARD UNDER SECTION 8-67-106 (4);

(c) ESTABLISH PROCEDURES BY WHICH CLAIMS MAY BE FILED WITH THE BOARD, INCLUDING ESTABLISHING ACCEPTABLE FORMS OF PROOF OF COVERED CLAIMS;

(d) ESTABLISH PROCEDURES FOR PURSUING ACTIONS AGAINST UNINSURED EMPLOYERS PURSUANT TO SECTION 8-67-110;

(e) ESTABLISH REGULAR PLACES AND TIMES FOR MEETINGS OF THE BOARD;

(f) ESTABLISH PROCEDURES FOR MAINTAINING RECORDS OF ALL FINANCIAL TRANSACTIONS OF THE BOARD;

(g) CONTAIN ADDITIONAL PROVISIONS NECESSARY OR PROPER FOR THE EXECUTION OF THE POWERS AND DUTIES OF THE BOARD; AND

(h) ESTABLISH PROCEDURES FOR CONTRACTING WITH THIRD-PARTY ADMINISTRATORS TO ADMINISTER CLAIMS PAID BY THE FUND.

8-67-109. Effect of benefits. (1) NOTWITHSTANDING THIS SECTION OR ARTICLES 40 TO 47 OF THIS TITLE 8, A PERSON SEEKING BENEFITS UNDER THIS ARTICLE 67 FROM THE FUND IS DEEMED TO HAVE ASSIGNED HIS OR HER RIGHTS UNDER ARTICLES 40 TO 47 OF THIS TITLE 8 TO THE BOARD TO THE EXTENT OF THE BENEFITS PAID BY THE FUND. EVERY INJURED WORKER SEEKING THE PROTECTION OF THIS ARTICLE 67 SHALL COOPERATE WITH THE BOARD TO THE SAME EXTENT AS HE OR SHE WOULD HAVE BEEN REQUIRED TO COOPERATE WITH THE EMPLOYER.

(2) IF AN EMPLOYER HAS NO INSURANCE AND FAILS TO PAY THE FULL AMOUNT OF BENEFITS AS REQUIRED BY ARTICLES 40 TO 47 OF THIS TITLE 8, THE INJURED WORKER MAY APPLY TO THE BOARD FOR PAYMENT OF THE COMPENSATION BENEFITS, INCLUDING MEDICAL BENEFITS, TO WHICH THE INJURED WORKER IS ENTITLED, TO BE PAID FROM THE FUND. BENEFITS TO WHICH THE INJURED WORKER IS ENTITLED FROM THE FUND DO NOT INCLUDE ANY PENALTIES ASSESSED AGAINST THE EMPLOYER.

(3) THE BOARD HAS THE RIGHT TO APPEAR AS A CREDITOR IN A BANKRUPTCY PROCEEDING INVOLVING AN UNINSURED EMPLOYER WHO HAS BEEN FOUND LIABLE TO AN INJURED WORKER ADMITTED TO THE FUND.

(4) THE RECEIVER, LIQUIDATOR, OR STATUTORY SUCCESSOR OF AN UNINSURED EMPLOYER IS BOUND BY SETTLEMENTS OF COVERED CLAIMS WITH THE BOARD. THE COURT HAVING JURISDICTION SHALL GRANT SUCH CLAIMS PRIORITY EQUAL TO THAT WHICH THE INJURED WORKER WOULD

HAVE BEEN ENTITLED IN THE ABSENCE OF THIS ARTICLE 67 AGAINST THE ASSETS OF THE EMPLOYER. THE EXPENSES OF THE BOARD SHALL BE ACCORDED THE SAME PRIORITY AS THE LIQUIDATOR'S EXPENSES.

(5) UPON THE ACCEPTANCE OF A CLAIM INTO THE FUND, THE BOARD SHALL RECORD, AS PROVIDED BY SUBSECTION (6) OF THIS SECTION, A CERTIFICATE PREPARED AND FURNISHED BY THE DIVISION SHOWING THE DATE ON WHICH THE CLAIM WAS FILED, THE DATE OF THE INJURY, THE NAME AND LAST KNOWN ADDRESS OF THE EMPLOYER AGAINST WHOM IT WAS FILED, THE NAMES AND LAST KNOWN ADDRESSES OF THE EMPLOYER'S PRINCIPALS, AND THE FACT THAT THE EMPLOYER HAS NOT SECURED THE PAYMENT OF COMPENSATION AS REQUIRED. UPON RECORDING, THE CERTIFICATE CONSTITUTES A VALID LIEN AGAINST THE ASSETS OF THE EMPLOYER AND ITS PRINCIPALS IN FAVOR OF THE FUND FOR THE WHOLE AMOUNT THAT MAY BE DUE AS COMPENSATION. ANY LIEN SECURED PURSUANT TO THIS ARTICLE 67 HAS PRIORITY IN THE ORDER FILED. THE BOARD SHALL SERVE A COPY OF THE CERTIFICATE UPON THE EMPLOYER AND ITS PRINCIPALS.

(6) THE CERTIFICATE CONSTITUTING A LIEN IN FAVOR OF THE FUND MUST BE FILED IN THE FOLLOWING OFFICES:

(a) THE OFFICES OF THE COUNTY CLERKS OF THE COUNTIES IN WHICH THE PRINCIPALS OF THE DEFENDANT EMPLOYER RESIDE;

(b) THE OFFICE OF THE COUNTY CLERK OF THE COUNTY IN WHICH THE DEFENDANT EMPLOYER HAS ITS PRINCIPAL PLACE OF BUSINESS; AND

(c) THE OFFICES OF THE COUNTY CLERKS IN THE COUNTIES WHERE THE EMPLOYER'S PROPERTY IS LOCATED.

(7) IF AN UNINSURED EMPLOYER BECOMES INSOLVENT, THE BOARD MAY CONVERT ALL FUTURE PAYMENTS OF WORKERS' COMPENSATION WEEKLY BENEFITS, MEDICAL EXPENSES, OR OTHER PAYMENTS PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8 TO A PRESENT LUMP SUM. THE BOARD SHALL FIX THE LUMP SUM OF PROBABLE FUTURE MEDICAL EXPENSES AND WEEKLY COMPENSATION BENEFITS, OR OTHER BENEFITS PAYABLE PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8, CAPITALIZED AT THEIR PRESENT VALUE UPON THE BASIS OF INTEREST AT THE RATE OF FOUR PERCENT PER ANNUM. THE BOARD SHALL THEN FILE WITH THE RECEIVER OR LIQUIDATOR

OF AN INSOLVENT EMPLOYER THE STATEMENT OF THE LUMP SUM, WHICH SHALL PRESERVE THE RIGHTS OF THE BOARD AGAINST THE ASSETS OF THE INSOLVENT EMPLOYER. THE EMPLOYER IS DISCHARGED FROM ALL FURTHER LIABILITY FOR THE COMMUTED WORKERS' COMPENSATION CLAIM UPON PAYMENT OF THE PRESENT LUMP SUM TO EITHER THE INJURED WORKER OR, SUBJECT TO APPROVAL BY THE BOARD, TO A LICENSED INSURER FOR PURCHASE OF AN ANNUITY OR OTHER PERIODIC PAYMENT PLAN FOR THE BENEFIT OF THE INJURED WORKER.

(8) PAYMENT FROM THE FUND DOES NOT RELIEVE THE OBLIGATION OF THE EMPLOYER TO PAY BENEFITS AS REQUIRED BY ARTICLES 40 TO 47 OF THIS TITLE 8 TO THE INJURED WORKER; EXCEPT THAT ANY BENEFITS DUE TO THE INJURED WORKER WILL BE REDUCED BY THE AMOUNT OF THE BENEFITS PAID BY THE FUND TO THE INJURED WORKER. ALL BENEFITS REQUIRED PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8 REMAIN THE LIABILITY OF THE EMPLOYER.

8-67-110. Collection of benefit reimbursements. (1) THE BOARD SHALL INSTITUTE PRACTICES AND PROCEDURES AS IT DEEMS NECESSARY TO COLLECT ANY MONEY DUE THE FUND IN THE FORM OF REIMBURSEMENT FOR BENEFITS PAID FROM THE FUND TO AN INJURED WORKER.

(2) THE BOARD, IN ITS ROLE AS GUARDIAN OF FUND DOLLARS, IS EXEMPT FROM SECTION 24-30-202.4. IF THE BOARD DETERMINES AN ACCOUNT TO BE UNCOLLECTIBLE, THE ACCOUNT MAY BE REFERRED TO THE CONTROLLER FOR COLLECTION. REASONABLE FEES FOR COLLECTION, AS DETERMINED BY THE BOARD AND THE CONTROLLER, SHALL BE ADDED TO THE AMOUNT OF DEBT. THE DEBTOR IS LIABLE FOR REPAYMENT OF THE TOTAL OF THE AMOUNT OF OUTSTANDING DEBT PLUS THE COLLECTION FEE. ALL MONEY COLLECTED BY THE CONTROLLER SHALL BE RETURNED TO THE FUND; EXCEPT THAT ALL FEES COLLECTED SHALL BE RETAINED BY THE CONTROLLER. IF LESS THAN THE FULL AMOUNT IS COLLECTED, THE CONTROLLER SHALL RETAIN ONLY A PROPORTIONATE SHARE OF THE COLLECTION FEE.

(3) IF, AFTER DUE NOTICE, AN EMPLOYER DEFAULTS IN THE REPAYMENT OF ANY BENEFITS PAID BY THE FUND TO AN INJURED WORKER ON THAT EMPLOYER'S BEHALF, THE BOARD MAY SEEK COLLECTION FROM THE EMPLOYER BY INSTITUTING A CIVIL ACTION, WHICH SHALL INCLUDE THE RIGHT OF ATTACHMENT IN THE NAME OF THE FUND. COURT COSTS SHALL

NOT BE CHARGED TO THE BOARD, BUT ANY EMPLOYER AGAINST WHOM JUDGMENT IS TAKEN SHALL BE CHARGED WITH ALL COSTS OF THE ACTION. ALL COSTS COLLECTED BY THE FUND SHALL BE PAID INTO THE REGISTRY OF THE COURT.

(4) THE BOARD MAY EMPLOY COUNSEL AND OTHER PERSONNEL NECESSARY TO COLLECT REIMBURSEMENTS AS DESCRIBED IN THIS SECTION.

8-67-111. Payment of benefits. (1) BENEFITS PAID UNDER THIS ARTICLE 67 ARE TREATED AS BENEFITS PAID BY AN INSURER OR SELF-INSURED EMPLOYER UNDER ARTICLES 40 TO 47 OF THIS TITLE 8.

(2) A PERSON HAVING A SINGLE CLAIM AGAINST MULTIPLE EMPLOYERS IS NOT ENTITLED TO RECEIVE BENEFITS UNLESS EACH OF THE LIABLE EMPLOYERS IS UNINSURED.

(3) WHEN PAYING BENEFITS, THE BOARD IS ENTITLED TO CLAIM ANY REDUCTION OF BENEFITS, TO CLAIM OVERPAYMENTS, OR TO MAKE ANY OTHER ADJUSTMENTS ALLOWED UNDER ARTICLES 40 TO 47 OF THIS TITLE 8.

(4) BENEFITS AWARDED UNDER THIS ARTICLE 67 MUST BE REDUCED BY ANY BENEFITS PAID BY THE UNINSURED EMPLOYER.

8-67-112. Medical benefits. (1) MEDICAL BENEFITS PAID UNDER THIS ARTICLE 67 ARE TREATED AS BENEFITS PAID BY AN INSURER OR SELF-INSURED EMPLOYER UNDER ARTICLES 40 TO 47 OF THIS TITLE 8.

(2) UPON ACCEPTANCE OF A CLAIM FOR BENEFITS FROM THE FUND, THE BOARD MAY DESIGNATE A NEW AUTHORIZED TREATING PHYSICIAN. APPLICATION TO THE FUND SHALL BE DEEMED AS ACCEPTANCE BY THE INJURED WORKER OF THE NEW DESIGNATED PHYSICIAN IF THE DESIGNATION IS MADE. THE PREVIOUSLY AUTHORIZED TREATING PHYSICIAN PROVIDING PRIMARY CARE SHALL CONTINUE AS THE AUTHORIZED TREATING PHYSICIAN PROVIDING PRIMARY CARE FOR THE INJURED EMPLOYEE UNTIL THE INJURED EMPLOYEE'S INITIAL VISIT WITH THE NEWLY AUTHORIZED TREATING PHYSICIAN, AT WHICH TIME THE TREATMENT RELATIONSHIP WITH THE PREVIOUSLY AUTHORIZED TREATING PHYSICIAN PROVIDING PRIMARY CARE IS TERMINATED.

(3) NOTWITHSTANDING ARTICLES 40 TO 47 OF THIS TITLE 8, THE

BOARD IS PERMITTED TO NEGOTIATE RATES OF REIMBURSEMENT FOR MEDICAL PROVIDERS.

8-67-113. Procedure. (1) A CONTROVERSY CONCERNING ANY ISSUE ARISING UNDER THIS SECTION SHALL BE RESOLVED THROUGH HEARINGS IN ACCORDANCE WITH SECTIONS 8-43-207 AND 8-43-207.5. IN ANY SUCH HEARING, A DECISION OF THE BOARD TO DENY BENEFITS MAY ONLY BE SET ASIDE UPON A SHOWING OF ABUSE OF DISCRETION.

(2) THE DIVISION SHALL NOTIFY THE BOARD OF ANY CLAIM DETERMINED OR SUSPECTED TO BE UNINSURED, EITHER AT THE TIME OF FILING OR OTHERWISE. UPON THE NOTIFICATION, THE BOARD IS PERMITTED TO JOIN THE CLAIM AS A PARTY UPON WRITTEN NOTICE TO ALL OTHER PARTIES.

(3) A HEARING MUST NOT PROCEED ON THE ISSUE OF LACK OF COVERAGE WITHOUT THE BOARD HAVING BEEN NOTIFIED AND PROVIDED AN OPPORTUNITY TO JOIN THE CLAIM AS A PARTY.

(4) THE BOARD, ITS AGENTS, OR EMPLOYEES HAVE NO LIABILITY FOR ANY ACTION TAKEN AGAINST THEM FOR THE PERFORMANCE OF THEIR DUTIES UNDER THIS ARTICLE 67.

SECTION 2. In Colorado Revised Statutes, 8-40-301, **amend** (1) as follows:

8-40-301. Scope of term "employee" - definition.

(1)(a) "Employee" excludes any person employed by a passenger tramway area operator, as defined in section 25-5-702 (1), ~~C.R.S.~~, or other employer, while participating in recreational activity, who at such time is relieved of and is not performing any duties of employment, regardless of whether such person is utilizing, by discount or otherwise, a pass, ticket, license, permit, or other device as an emolument of employment.

(b) (I) "EMPLOYEE" EXCLUDES ANY PERSON EMPLOYED BY AN OUT-OF-STATE EMPLOYER PERFORMING INCIDENTAL WORK IN COLORADO WHERE THE EMPLOYEE IS COVERED AT THE TIME OF INJURY UNDER THE WORKERS' COMPENSATION ACT OF ANOTHER STATE REGARDLESS OF WHERE THE CONTRACT FOR EMPLOYMENT WAS CREATED.

(II) FOR PURPOSES OF THIS SECTION, "INCIDENTAL WORK" MEANS WORK THAT IS RANDOMLY OR FORTUITOUSLY IN COLORADO.

(III) THIS SECTION ONLY APPLIES TO A WORKERS' COMPENSATION ACT OF ANOTHER STATE THAT INCLUDES A RECIPROCAL PROVISION EXEMPTING COLORADO EMPLOYERS FROM LIABILITY UNDER THE OTHER STATE'S ACT FOR INCIDENTAL WORK.

SECTION 3. In Colorado Revised Statutes, 8-41-404, **amend** (3) as follows:

8-41-404. Construction work - proof of coverage required - violation - penalty - definitions. (3) A violation of subsection (1) of this section is punishable by an administrative fine imposed pursuant to section 8-43-409 (1)(b). The division shall transmit revenues collected through the imposition of fines pursuant to this section to the state treasurer, who shall credit them to the ~~workers' compensation cash fund created in section 8-44-112 (7)~~. Such revenues shall be appropriated to the division for the ~~purpose of enforcing this section~~ COLORADO UNINSURED EMPLOYER FUND CREATED IN SECTION 8-67-105.

SECTION 4. In Colorado Revised Statutes, 8-43-304, **amend** (1) and (1.5)(b) as follows:

8-43-304. Violations - penalty - offset for benefits obtained through fraud - rules. (1) Any employer or insurer, or any officer or agent of either, or any employee, or any other person who violates ~~any provision of articles 40 to 47 of this title~~ TITLE 8, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined within the time prescribed by the director or panel, for which no penalty has been specifically provided, or fails, neglects, or refuses to obey any lawful order made by the director or panel or any judgment or decree made by any court as provided by ~~said~~ THE articles shall be subject to such order being reduced to judgment by a court of competent jurisdiction and shall also be punished by a fine of not more than one thousand dollars per day for each ~~such~~ offense, to be apportioned, in whole or part, at the discretion of the director or administrative law judge, between the aggrieved party and the ~~workers' compensation cash fund created in section 8-44-112 (7)(a)~~ COLORADO UNINSURED EMPLOYER FUND CREATED IN SECTION 8-67-105; except that the amount apportioned to the aggrieved party shall be a

minimum of ~~fifty~~ TWENTY-FIVE percent of any penalty assessed.

(1.5) (b) Fines imposed pursuant to this subsection (1.5) ON OR AFTER JULY 1, 2018, shall be transmitted to the state treasurer, who shall credit ~~seventy-five percent of such~~ THE fines to the ~~general fund and twenty-five percent to the workers' compensation cash fund, created in section 8-44-112~~ COLORADO UNINSURED EMPLOYER FUND CREATED IN SECTION 8-67-105.

SECTION 5. In Colorado Revised Statutes, 8-43-306, **amend** (2) as follows:

8-43-306. Collection of fines, penalties, and overpayments.

(2) All ~~such~~ penalties, when collected, ~~shall be~~ ARE payable to the division and transmitted through the state treasurer for credit to the ~~subsequent injury fund, created in section 8-46-101~~ COLORADO UNINSURED EMPLOYER FUND CREATED IN SECTION 8-67-105.

SECTION 6. In Colorado Revised Statutes, 8-43-401, **amend** (2)(b) as follows:

8-43-401. District attorney or attorney of division to act for director or office - penalties for failure of insurer to pay benefits.

(2) (b) All ~~moneys~~ MONEY collected as penalties by the division pursuant to this subsection (2) shall be transmitted to the state treasurer, who shall credit ~~the same~~ IT to the ~~workers' compensation cash fund created in section 8-44-112~~ COLORADO UNINSURED EMPLOYER FUND CREATED IN SECTION 8-67-105.

SECTION 7. In Colorado Revised Statutes, 8-43-408, **amend** (1); and **add** (5) and (6) as follows:

8-43-408. Default of employer - additional liability. (1) ~~In any case where the~~ IF AN employer is subject to the provisions of articles 40 to 47 of this ~~title~~ TITLE 8 and, at the time of an injury, has not complied with the insurance provisions of ~~said~~ THOSE articles or has allowed the required insurance to terminate, or has not effected a renewal thereof, the employee, if injured, or, if killed, the employee's dependents may claim the compensation and benefits provided in ~~said~~ THOSE articles. ~~and in any such case the amounts of compensation or benefits provided in said articles shall~~

~~be increased fifty percent.~~

(5) IN ADDITION TO ANY COMPENSATION PAID OR ORDERED IN ACCORDANCE WITH THIS SECTION OR ARTICLES 40 TO 47 OF THIS TITLE 8, AN EMPLOYER WHO IS NOT IN COMPLIANCE WITH THE INSURANCE PROVISIONS OF THOSE ARTICLES AT THE TIME AN EMPLOYEE SUFFERS A COMPENSABLE INJURY OR OCCUPATIONAL DISEASE SHALL PAY AN AMOUNT EQUAL TO TWENTY-FIVE PERCENT OF THE COMPENSATION OR BENEFITS TO WHICH THE EMPLOYEE IS ENTITLED TO THE COLORADO UNINSURED EMPLOYER FUND CREATED IN SECTION 8-67-105.

(6) AN EMPLOYER WHO FAILS TO COMPLY WITH A LAWFUL ORDER OR JUDGMENT ISSUED PURSUANT TO SUBSECTION (2) OR (3) OF THIS SECTION SHALL BE ORDERED TO PAY AN AMOUNT EQUAL TO TWENTY-FIVE PERCENT OF THE COMPENSATION OR BENEFITS TO WHICH THE EMPLOYEE IS ENTITLED TO THE COLORADO UNINSURED EMPLOYER FUND CREATED IN SECTION 8-67-105 IN ADDITION TO ANY OTHER AMOUNT ORDERED PURSUANT TO THIS SECTION OR ARTICLES 40 TO 47 OF THIS TITLE 8.

SECTION 8. In Colorado Revised Statutes, 8-43-409, **amend** (7); and **add** (1.5) as follows:

8-43-409. Defaulting employers - penalties - enjoined from continuing business - fines - procedure - definition - repeal. (1.5) (a) A VIOLATION THAT OCCURS MORE THAN SEVEN YEARS AFTER THE DATE THE PRECEDING VIOLATION ENDED IS SUBJECT TO A FINE UP TO THE MAXIMUM AMOUNT PERMITTED PURSUANT TO SUBSECTION (1)(b)(I) OF THIS SECTION.

(b) AFTER ANY FINES HAVE BEEN IMPOSED PURSUANT TO SUBSECTION (1)(b)(I) OR (1)(b)(II) OF THIS SECTION, THE DIRECTOR HAS THE DISCRETION TO ENTER INTO A SETTLEMENT AGREEMENT AND ACCEPT AS CONSIDERATION AN AMOUNT LESS THAN THE MINIMUM FINE ALLOWED BY SUBSECTION (1)(b)(II) OF THIS SECTION.

(c) NOTWITHSTANDING ARTICLES 40 TO 47 OF THIS TITLE 8, FINES PURSUANT TO THIS SECTION MAY BE IMPOSED ONLY FOR PERIODS THAT TAKE PLACE NO MORE THAN THREE YEARS PRIOR TO THE DATE AN EMPLOYER IS NOTIFIED BY THE DIVISION OF A POTENTIAL VIOLATION OF THE REQUIREMENTS OF ARTICLES 40 TO 47 OF THIS TITLE 8.

(d) THIS SUBSECTION (1.5) IS REPEALED, EFFECTIVE JULY 1, 2022. BEFORE ITS REPEAL, THIS SUBSECTION (1.5) IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

(7) Fines collected pursuant to this section ON OR AFTER JULY 1, 2018, shall be transmitted to the state treasurer, who shall credit ~~twenty-five percent of such~~ THE TOTAL AMOUNT OF THE fine to the ~~workers' compensation cash~~ COLORADO UNINSURED EMPLOYER fund, created in section ~~8-44-112~~, which shall be used to offset the premium surcharge. The state treasurer shall credit the remainder of the fine to the ~~general fund~~ 8-67-105.

SECTION 9. In Colorado Revised Statutes, 8-46-102, **amend** (1)(a); and **add** (1)(c) as follows:

8-46-102. Funding for subsequent injury fund and major medical insurance fund. (1) (a) For every compensable injury resulting in death wherein there are no persons either wholly or partially dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall pay to the division the sum of ~~fifteen~~ TWENTY thousand dollars, not to exceed one hundred percent of the death benefit, to be transmitted to the state treasurer, as custodian, and credited by the state treasurer to the ~~subsequent injury~~ COLORADO UNINSURED EMPLOYER fund CREATED IN SECTION 8-67-105. In the event that there are only partially dependent persons dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall first pay such benefits to such partial dependents and shall transmit the balance of the sum of ~~fifteen~~ TWENTY thousand dollars to the state treasurer, as custodian, who shall credit the same to the ~~subsequent injury~~ COLORADO UNINSURED EMPLOYER fund.

(c) FOR INJURIES SUSTAINED ON OR AFTER JULY 1, 2018, AND ON EACH JULY 1 THEREAFTER, THE DIRECTOR SHALL ADJUST THE AMOUNT PAID TO THE COLORADO UNINSURED EMPLOYER FUND IN THIS SUBSECTION (1) BY THE PERCENTAGE OF THE ADJUSTMENT MADE BY THE DIRECTOR TO THE STATE WEEKLY WAGE PURSUANT TO SECTION 8-47-106.

SECTION 10. In Colorado Revised Statutes, 8-47-203, **add** (1)(c)(III) as follows:

8-47-203. Access to files, records, and orders.

(1) Notwithstanding the provisions of section 8-47-202, the filing of a claim for compensation is deemed to be a limited waiver of the doctor-patient privilege to persons who are necessary to resolve the claim. Access to claim files maintained by the division will be permitted only as follows:

(c) (III) NOTWITHSTANDING ARTICLES 40 TO 47 OF THIS TITLE 8, THE DIRECTOR MAY PROVIDE INFORMATION TO THE COLORADO UNINSURED EMPLOYER BOARD CREATED IN SECTION 8-67-106, AS NECESSARY, TO EXERCISE ITS POWERS AND DUTIES.

SECTION 11. In Colorado Revised Statutes, 24-34-104, **amend** (22)(a) introductory portion; and **add** (22)(a)(II) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (22) (a) The following agencies, functions, or both, ~~will~~ ARE SCHEDULED FOR repeal on July 1, 2022:

(II) THE LIMITATIONS ON IMPOSITION OF FINES FOR FAILURE TO CARRY WORKERS' COMPENSATION INSURANCE PURSUANT TO SECTION 8-43-409 (1.5).

SECTION 12. Appropriation. For the 2017-18 state fiscal year, \$6,000 is appropriated to the department of labor and employment for use by the division of workers' compensation. This appropriation is from the workers' compensation cash fund created in section 8-44-112 (7)(a), C.R.S. To implement this act, the division may use this appropriation for operating expenses.

SECTION 13. Effective date. This act takes effect July 1, 2017.

SECTION 14. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO