

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0143.01 Kristen Forrestal x4217

HOUSE BILL 17-1119

HOUSE SPONSORSHIP

Kraft-Tharp, Singer

SENATE SPONSORSHIP

Jahn and Tate,

House Committees

Business Affairs and Labor
Finance
Appropriations

Senate Committees

State, Veterans, & Military Affairs
Finance

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates the "Colorado Uninsured Employer Act" to create a new mechanism for the payment of covered claims to workers who are injured while employed by employers who do not carry workers' compensation insurance. The bill creates the Colorado uninsured employer fund, which consists of penalties from employers who do not

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
3rd Reading Unamended
May 1, 2017

HOUSE
Amended 2nd Reading
April 28, 2017

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

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

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

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

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

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

15 **8-67-104. Exclusions.** (1) THE FOLLOWING PERSONS MAY NOT
16 RECOVER COMPENSATION OR OTHER BENEFITS FROM THE FUND:

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

19 (b) A DIRECTOR OR OFFICER OF A CORPORATION;

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

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

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

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

4 **8-67-105. Colorado uninsured employer fund.** (1) THE
5 COLORADO UNINSURED EMPLOYER FUND IS HEREBY CREATED IN THE
6 STATE TREASURY. A BOARD OF DIRECTORS ESTABLISHED UNDER SECTION
7 8-67-106 SHALL ADMINISTER THE FUND UNDER A PLAN OF OPERATION
8 ESTABLISHED UNDER SECTION 8-67-108.

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

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

22 (c) THE FUND CONSISTS OF:

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

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

1 (III) ANY APPROPRIATIONS MADE TO THE FUND; AND

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

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

7 (e) THE MONEY IN THE FUND:

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

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

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

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

16 **8-67-106. Creation of board.** (1) THERE IS HEREBY CREATED IN
17 THE DIVISION THE UNINSURED EMPLOYER BOARD, CONSISTING OF THE
18 DIRECTOR OF THE DIVISION OR THE DIRECTOR'S REPRESENTATIVE AND
19 FOUR MEMBERS APPOINTED BY THE GOVERNOR AND CONFIRMED BY THE
20 SENATE. APPOINTED MEMBERS OF THE BOARD MUST INCLUDE AT LEAST
21 ONE INDIVIDUAL TO REPRESENT EACH OF THE FOLLOWING:

22 (a) EMPLOYERS;

23 (b) LABOR ORGANIZATIONS;

24 (c) INSURERS; AND

25 (d) ATTORNEY REPRESENTATIVES OF INJURED WORKERS.

26 (2) THE BOARD SHALL EXERCISE ITS POWERS AND PERFORM ITS
27 FUNCTIONS UNDER THE DEPARTMENT AND THE DIRECTOR AS IF THE BOARD

1 WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER, AS
2 SUCH TRANSFER IS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT
3 OF 1968", ARTICLE 1 OF TITLE 24.

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

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

14 **8-67-107. Powers of the board.** (1) THE BOARD HAS THE
15 FOLLOWING POWERS AND DUTIES:

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

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

26 (I) MEDICAL BENEFITS;

27 (II) FUNERAL BENEFITS;

- 1 (III) TEMPORARY DISABILITY;
- 2 (IV) DEATH BENEFITS;
- 3 (V) PERMANENT TOTAL DISABILITY;
- 4 (VI) PERMANENT PARTIAL DISABILITY;
- 5 (VII) DISFIGUREMENT.

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

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

12 (e) TO DISSEMINATE INFORMATION REGARDING THE FUND;

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

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

25 (2) THE BOARD MAY:

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

1 (b) INTERVENE AS A PARTY BEFORE ANY COURT OR
2 ADMINISTRATIVE TRIBUNAL IN THIS STATE THAT HAS JURISDICTION OVER
3 AN UNINSURED EMPLOYER OR OTHER PARTY POTENTIALLY RESPONSIBLE
4 FOR PAYMENT OF BENEFITS;

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

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

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

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

14 **8-67-108. Plan of operation.** (1) THE BOARD SHALL, BY RULE,
15 ADOPT A PLAN OF OPERATION AND ANY AMENDMENTS NECESSARY OR
16 SUITABLE TO ASSURE THE FAIR, REASONABLE, AND EQUITABLE
17 ADMINISTRATION OF THE FUND.

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

23 (3) THE PLAN OF OPERATION SHALL:

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

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

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

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

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

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

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

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

14 **8-67-109. Effect of benefits.** (1) NOTWITHSTANDING THIS
15 SECTION OR ARTICLES 40 TO 47 OF THIS TITLE 8, A PERSON SEEKING
16 BENEFITS UNDER THIS ARTICLE 67 FROM THE FUND IS DEEMED TO HAVE
17 ASSIGNED HIS OR HER RIGHTS UNDER ARTICLES 40 TO 47 OF THIS TITLE 8
18 TO THE BOARD TO THE EXTENT OF THE BENEFITS PAID BY THE FUND.
19 EVERY INJURED WORKER SEEKING THE PROTECTION OF THIS ARTICLE 67
20 SHALL COOPERATE WITH THE BOARD TO THE SAME EXTENT AS HE OR SHE
21 WOULD HAVE BEEN REQUIRED TO COOPERATE WITH THE EMPLOYER.

22 (2) IF AN EMPLOYER HAS NO INSURANCE AND FAILS TO PAY THE
23 FULL AMOUNT OF BENEFITS AS REQUIRED BY ARTICLES 40 TO 47 OF THIS
24 TITLE 8, THE INJURED WORKER MAY APPLY TO THE BOARD FOR PAYMENT
25 OF THE COMPENSATION BENEFITS, INCLUDING MEDICAL BENEFITS, TO
26 WHICH THE INJURED WORKER IS ENTITLED, TO BE PAID FROM THE FUND.
27 BENEFITS TO WHICH THE INJURED WORKER IS ENTITLED FROM THE FUND

1 DO NOT INCLUDE ANY PENALTIES ASSESSED AGAINST THE EMPLOYER.

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

5 (4) THE RECEIVER, LIQUIDATOR, OR STATUTORY SUCCESSOR OF AN
6 UNINSURED EMPLOYER IS BOUND BY SETTLEMENTS OF COVERED CLAIMS
7 WITH THE BOARD. THE COURT HAVING JURISDICTION SHALL GRANT SUCH
8 CLAIMS PRIORITY EQUAL TO THAT WHICH THE INJURED WORKER WOULD
9 HAVE BEEN ENTITLED IN THE ABSENCE OF THIS ARTICLE 67 AGAINST THE
10 ASSETS OF THE EMPLOYER. THE EXPENSES OF THE BOARD SHALL BE
11 ACCORDED THE SAME PRIORITY AS THE LIQUIDATOR'S EXPENSES.

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

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

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

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

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

7 (7) IF AN UNINSURED EMPLOYER BECOMES INSOLVENT, THE BOARD
8 MAY CONVERT ALL FUTURE PAYMENTS OF WORKERS' COMPENSATION
9 WEEKLY BENEFITS, MEDICAL EXPENSES, OR OTHER PAYMENTS PURSUANT
10 TO ARTICLES 40 TO 47 OF THIS TITLE 8 TO A PRESENT LUMP SUM. THE
11 BOARD SHALL FIX THE LUMP SUM OF PROBABLE FUTURE MEDICAL EXPENSES
12 AND WEEKLY COMPENSATION BENEFITS, OR OTHER BENEFITS PAYABLE
13 PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8, CAPITALIZED AT THEIR
14 PRESENT VALUE UPON THE BASIS OF INTEREST AT THE RATE OF FOUR
15 PERCENT PER ANNUM. THE BOARD SHALL THEN FILE WITH THE RECEIVER OR
16 LIQUIDATOR OF AN INSOLVENT EMPLOYER THE STATEMENT OF THE LUMP
17 SUM, WHICH SHALL PRESERVE THE RIGHTS OF THE BOARD AGAINST THE
18 ASSETS OF THE INSOLVENT EMPLOYER. THE EMPLOYER IS DISCHARGED
19 FROM ALL FURTHER LIABILITY FOR THE COMMUTED WORKERS'
20 COMPENSATION CLAIM UPON PAYMENT OF THE PRESENT LUMP SUM TO
21 EITHER THE INJURED WORKER OR, SUBJECT TO APPROVAL BY THE BOARD,
22 TO A LICENSED INSURER FOR PURCHASE OF AN ANNUITY OR OTHER
23 PERIODIC PAYMENT PLAN FOR THE BENEFIT OF THE INJURED WORKER.

24 (8) PAYMENT FROM THE FUND DOES NOT RELIEVE THE OBLIGATION
25 OF THE EMPLOYER TO PAY BENEFITS AS REQUIRED BY ARTICLES 40 TO 47
26 OF THIS TITLE 8 TO THE INJURED WORKER; EXCEPT THAT ANY BENEFITS DUE
27 TO THE INJURED WORKER WILL BE REDUCED BY THE AMOUNT OF THE

1 BENEFITS PAID BY THE FUND TO THE INJURED WORKER. ALL BENEFITS
2 REQUIRED PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8 REMAIN THE
3 LIABILITY OF THE EMPLOYER.

4 **8-67-110. Collection of benefit reimbursements.** (1) THE BOARD
5 SHALL INSTITUTE PRACTICES AND PROCEDURES AS IT DEEMS NECESSARY TO
6 COLLECT ANY MONEY DUE THE FUND IN THE FORM OF REIMBURSEMENT FOR
7 BENEFITS PAID FROM THE FUND TO AN INJURED WORKER.

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

20 (3) IF, AFTER DUE NOTICE, AN EMPLOYER DEFAULTS IN THE
21 REPAYMENT OF ANY BENEFITS PAID BY THE FUND TO AN INJURED WORKER
22 ON THAT EMPLOYER'S BEHALF, THE BOARD MAY SEEK COLLECTION FROM
23 THE EMPLOYER BY INSTITUTING A CIVIL ACTION, WHICH SHALL INCLUDE
24 THE RIGHT OF ATTACHMENT IN THE NAME OF THE FUND. COURT COSTS
25 SHALL NOT BE CHARGED TO THE BOARD, BUT ANY EMPLOYER AGAINST
26 WHOM JUDGMENT IS TAKEN SHALL BE CHARGED WITH ALL COSTS OF THE
27 ACTION. ALL COSTS COLLECTED BY THE FUND SHALL BE PAID INTO THE

1 REGISTRY OF THE COURT.

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

4 **8-67-111. Payment of benefits.** (1) BENEFITS PAID UNDER THIS
5 ARTICLE 67 ARE TREATED AS BENEFITS PAID BY AN INSURER OR
6 SELF-INSURED EMPLOYER UNDER ARTICLES 40 TO 47 OF THIS TITLE 8.

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

10 (3) WHEN PAYING BENEFITS, THE BOARD IS ENTITLED TO CLAIM
11 ANY REDUCTION OF BENEFITS, TO CLAIM OVERPAYMENTS, OR TO MAKE ANY
12 OTHER ADJUSTMENTS ALLOWED UNDER ARTICLES 40 TO 47 OF THIS TITLE
13 8.

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

16 **8-67-112. Medical benefits.** (1) MEDICAL BENEFITS PAID UNDER
17 THIS ARTICLE 67 ARE TREATED AS BENEFITS PAID BY AN INSURER OR
18 SELF-INSURED EMPLOYER UNDER ARTICLES 40 TO 47 OF THIS TITLE 8.

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

1 PREVIOUSLY AUTHORIZED TREATING PHYSICIAN PROVIDING PRIMARY CARE
2 IS TERMINATED.

3 (3) NOTWITHSTANDING ARTICLES 40 TO 47 OF THIS TITLE 8, THE
4 BOARD IS PERMITTED TO NEGOTIATE RATES OF REIMBURSEMENT FOR
5 MEDICAL PROVIDERS.

6 **8-67-113. Procedure.** (1) A CONTROVERSY CONCERNING ANY
7 ISSUE ARISING UNDER THIS SECTION SHALL BE RESOLVED THROUGH
8 HEARINGS IN ACCORDANCE WITH SECTIONS 8-43-207 AND 8-43-207.5. IN
9 ANY SUCH HEARING, A DECISION OF THE BOARD TO DENY BENEFITS MAY
10 ONLY BE SET ASIDE UPON A SHOWING OF ABUSE OF DISCRETION.

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

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

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

22 **SECTION 2.** In Colorado Revised Statutes, 8-40-301, **amend (1);**
23 **and add (10) as follows:**

24 **8-40-301. Scope of term "employee" - definition.**
25 **(1) (a) "Employee" excludes any person employed by a passenger**
26 **tramway area operator, as defined in section 25-5-702 (1), C.R.S., or other**
27 **employer, while participating in recreational activity, who at such time is**

1 relieved of and is not performing any duties of employment, regardless of
2 whether such person is utilizing, by discount or otherwise, a pass, ticket,
3 license, permit, or other device as an emolument of employment.

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

9 (II) FOR PURPOSES OF THIS SECTION, "INCIDENTAL WORK" MEANS
10 WORK THAT IS TEMPORARY OR TRANSITORY AND IS PERFORMED
11 EXCLUSIVELY FOR AN EMPLOYER WITH NO PERMANENT, REGULAR, OR
12 RECURRING OPERATIONS IN THE STATE OF COLORADO.

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

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

19 **8-41-404. Construction work - proof of coverage required -**
20 **violation - penalty - definitions.** (3) A violation of subsection (1) of this
21 section is punishable by an administrative fine imposed pursuant to
22 section 8-43-409 (1)(b). The division shall transmit revenues collected
23 through the imposition of fines pursuant to this section to the state
24 treasurer, who shall credit them to the ~~workers' compensation cash fund~~
25 ~~created in section 8-44-112 (7).~~ Such revenues shall be appropriated to the
26 ~~division for the purpose of enforcing this section~~ COLORADO UNINSURED
27 EMPLOYER FUND CREATED IN SECTION 8-67-105.

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

3 **8-43-304. Violations - penalty - offset for benefits obtained**
4 **through fraud - rules.** (1) Any employer or insurer, or any officer or
5 agent of either, or any employee, or any other person who violates ~~any~~
6 ~~provision of~~ articles 40 to 47 of this ~~title~~ TITLE 8, or does any act
7 prohibited thereby, or fails or refuses to perform any duty lawfully
8 enjoined within the time prescribed by the director or panel, for which no
9 penalty has been specifically provided, or fails, neglects, or refuses to
10 obey any lawful order made by the director or panel or any judgment or
11 decree made by any court as provided by ~~said~~ THE articles shall be subject
12 to such order being reduced to judgment by a court of competent
13 jurisdiction and shall also be punished by a fine of not more than one
14 thousand dollars per day for each ~~such~~ offense, to be apportioned, in
15 whole or part, at the discretion of the director or administrative law judge,
16 between the aggrieved party and the ~~workers' compensation cash fund~~
17 ~~created in section 8-44-112(7)(a)~~ COLORADO UNINSURED EMPLOYER FUND
18 CREATED IN SECTION 8-67-105; except that the amount apportioned to the
19 aggrieved party shall be a minimum of ~~fifty~~ TWENTY-FIVE percent of any
20 penalty assessed.

21 (1.5) (b) Fines imposed pursuant to this subsection (1.5) ~~ON OR~~
22 ~~AFTER JULY 1, 2018,~~ shall be transmitted to the state treasurer, who shall
23 credit ~~seventy-five percent of such~~ THE fines to the ~~general fund and~~
24 ~~twenty-five percent to the workers' compensation cash fund, created in~~
25 ~~section 8-44-112~~ COLORADO UNINSURED EMPLOYER FUND CREATED IN
26 SECTION 8-67-105.

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

1 as follows:

2 **8-43-306. Collection of fines, penalties, and overpayments.**

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

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

9 **8-43-401. District attorney or attorney of division to act for**
10 **director or office - penalties for failure of insurer to pay benefits.**

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

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

18 **8-43-408. Default of employer - additional liability.** (1) ~~In any~~
19 ~~case where the~~ IF AN employer is subject to ~~the provisions of~~ articles 40
20 to 47 of this ~~title~~ TITLE 8 and, at the time of an injury, has not complied
21 with the insurance provisions of ~~said~~ THOSE articles or has allowed the
22 required insurance to terminate, or has not effected a renewal thereof, the
23 employee, if injured, or, if killed, the employee's dependents may claim
24 the compensation and benefits provided in ~~said~~ THOSE articles. ~~and in any~~
25 ~~such case the amounts of compensation or benefits provided in said~~
26 ~~articles shall be increased fifty percent.~~

27 (5) IN ADDITION TO ANY COMPENSATION PAID OR ORDERED IN

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

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

15

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

18 **8-43-409. Defaulting employers - penalties - enjoined from**
19 **continuing business - fines - procedure - definition - repeal.** (1.5) (a)
20 A VIOLATION THAT OCCURS MORE THAN SEVEN YEARS AFTER THE DATE
21 THE PRECEDING VIOLATION ENDED IS SUBJECT TO A FINE UP TO THE
22 MAXIMUM AMOUNT PERMITTED PURSUANT TO SUBSECTION (1)(b)(I) OF
23 THIS SECTION.

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

1 BY SUBSECTION (1)(b)(II) OF THIS SECTION.

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

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

10 (7) Fines collected pursuant to this section ON OR AFTER JULY 1,
11 2018, shall be transmitted to the state treasurer, who shall credit
12 ~~twenty-five percent of such~~ THE TOTAL AMOUNT OF THE fine to the
13 ~~workers' compensation cash~~ COLORADO UNINSURED EMPLOYER fund,
14 created in section ~~8-44-112~~, which shall be used to offset the premium
15 surcharge. The state treasurer shall credit the remainder of the fine to the
16 ~~general fund~~ 8-67-105.

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

19 **8-46-102. Funding for subsequent injury fund and major**
20 **medical insurance fund.** (1) (a) For every compensable injury resulting
21 in death wherein there are no persons either wholly or partially dependent
22 upon the deceased, the employer or the employer's insurance carrier, if
23 any, shall pay to the division the sum of ~~fifteen~~ TWENTY thousand dollars,
24 not to exceed one hundred percent of the death benefit, to be transmitted
25 to the state treasurer, as custodian, and credited by the state treasurer to the
26 ~~subsequent injury~~ COLORADO UNINSURED EMPLOYER fund CREATED IN
27 SECTION 8-67-105. In the event that there are only partially dependent

1 persons dependent upon the deceased, the employer or the employer's
2 insurance carrier, if any, shall first pay such benefits to such partial
3 dependents and shall transmit the balance of the sum of ~~fifteen~~ TWENTY
4 thousand dollars to the state treasurer, as custodian, who shall credit the
5 same to the ~~subsequent injury~~ COLORADO UNINSURED EMPLOYER fund.

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

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

13 **8-47-203. Access to files, records, and orders.**

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

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

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

25 **24-34-104. General assembly review of regulatory agencies and**
26 **functions for repeal, continuation, or reestablishment - legislative**
27 **declaration - repeal.** (22) (a) The following agencies, functions, or both,

1 ~~will~~ ARE SCHEDULED FOR repeal on July 1, 2022:

2 (II) THE LIMITATIONS ON IMPOSITION OF FINES FOR FAILURE TO
3 CARRY WORKERS' COMPENSATION INSURANCE PURSUANT TO SECTION
4 8-43-409 (1.5).

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

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

12 **SECTION 14. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.