

HB1168_L.001

HOUSE COMMITTEE OF REFERENCE REPORT

 Chairman of Committee

 Date
Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB10-1168 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. Part 1 of article 1 of title 10, Colorado Revised
4 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
5 read:

6 **10-1-135. Reimbursement for benefits - limitations - notice -**
7 **definitions - legislative declaration.** (1) THE GENERAL ASSEMBLY
8 HEREBY FINDS AND DECLARES THAT:

9 (a) WHEN A PAYER OF BENEFITS SEEKS REPAYMENT OF THE
10 BENEFITS PROVIDED TO AN INJURED PARTY, THE REPAYMENT REDUCES THE
11 AMOUNT AVAILABLE TO THE INJURED PARTY TO COMPENSATE HIM OR HER
12 FOR INJURIES AND DAMAGES OTHER THAN THE COST OF MEDICAL CARE
13 AND MEDICAL SERVICES;

14 (b) REIMBURSEMENT OR REPAYMENT OF BENEFITS SHOULD NOT BE
15 PERMITTED WHEN THE INJURED PARTY WOULD NOT BE FULLY
16 COMPENSATED FOR HIS OR HER INJURIES AND DAMAGES;

17 (c) IT IS IN THE BEST INTERESTS OF THE CITIZENS OF THIS STATE TO
18 ENSURE THAT EACH INSURED INJURED PARTY RECOVERS FULL
19 COMPENSATION FOR BODILY INJURY CAUSED BY THE ACT OR OMISSION OF
20 A THIRD PARTY, AND THAT SUCH COMPENSATION IS NOT DIMINISHED BY
21 REPAYMENT, REIMBURSEMENT, OR SUBROGATION RIGHTS OF THE PAYER



1 OF BENEFITS;

2 (d) THIS LAW REGULATING INSURANCE AND HEALTH BENEFIT
3 PLANS IS INTENDED TO ENSURE THAT AN INJURED PARTY WHO RECOVERS
4 DAMAGES FOR BODILY INJURIES CAUSED BY A THIRD PARTY AND RECEIVES
5 BENEFITS PURSUANT TO AN INSURANCE POLICY, CONTRACT, OR BENEFIT
6 PLAN IS FULLY COMPENSATED FOR HIS OR HER INJURIES AND DAMAGES
7 BEFORE THE PAYER OF BENEFITS MAY SEEK REPAYMENT OF BENEFITS
8 PROVIDED TO THE INJURED PARTY;

9 (e) IN THE ABSENCE OF THIS SECTION, PAYERS OF BENEFITS MAY
10 SEEK REPAYMENT OF BENEFITS OUT OF A RECOVERY OBTAINED BY THE
11 INJURED PARTY WITHOUT PAYING ATTORNEY FEES INCURRED BY THE
12 INJURED PARTY IN OBTAINING THE RECOVERY, THEREBY BENEFITTING
13 FROM ATTORNEY SERVICES FOR WHICH THEY DID NOT PAY;

14 (f) THIS SECTION IS INTENDED TO REQUIRE A PAYER OF BENEFITS
15 TO PAY A PROPORTIONATE SHARE OF THE ATTORNEY FEES WHEN THE
16 PAYER OF BENEFITS IS A BENEFICIARY OF THE ATTORNEY SERVICES PAID
17 FOR BY THE INJURED PARTY.

18 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
19 REQUIRES:

20 (a) "BENEFITS" MEANS PAYMENT OR REIMBURSEMENT OF HEALTH
21 CARE EXPENSES, HEALTH CARE SERVICES, DISABILITY PAYMENTS, LOST
22 WAGE PAYMENTS, OR ANY OTHER BENEFITS OF ANY KIND, INCLUDING
23 DISCOUNTS AND WRITE-OFFS, PROVIDED TO OR ON BEHALF OF AN INJURED
24 PARTY UNDER A POLICY OF INSURANCE, CONTRACT, OR BENEFIT PLAN WITH
25 AN INDIVIDUAL OR GROUP, WHETHER OR NOT PROVIDED THROUGH AN
26 EMPLOYER.

27 (b) "INJURED PARTY" MEANS A PERSON WHO HAS SUSTAINED
28 BODILY INJURY AS THE RESULT OF THE ACT OR OMISSION OF A THIRD
29 PARTY, HAS PURSUED A PERSONAL INJURY OR SIMILAR CLAIM AGAINST THE
30 THIRD PARTY OR HAS MADE A CLAIM UNDER HIS OR HER UNINSURED OR
31 UNDERINSURED MOTORIST COVERAGE, AND HAS RECEIVED BENEFITS AS A
32 POLICYHOLDER, PARTICIPANT, OR BENEFICIARY FROM THE PAYER OF
33 BENEFITS. "INJURED PARTY" INCLUDES THE PERSONAL REPRESENTATIVE
34 OF THE ESTATE OF AN INJURED PARTY OR THE LEGAL REPRESENTATIVE OF
35 A PERSON UNDER A DISABILITY AS PROVIDED IN ARTICLE 81 OF TITLE 13,



1 C.R.S.

2 (c) "PAYER OF BENEFITS" MEANS ANY INSURER, HEALTH
3 MAINTENANCE ORGANIZATION, HEALTH BENEFIT PLAN, PREFERRED
4 PROVIDER ORGANIZATION, EMPLOYEE BENEFIT PLAN, OTHER INSURANCE
5 POLICY OR PLAN, OR ANY OTHER PAYER OF BENEFITS. "PAYER OF
6 BENEFITS" INCLUDES A FIDUCIARY OF AN INSURER, PLAN, OR OTHER PAYER
7 OF BENEFITS. "PAYER OF BENEFITS" DOES NOT INCLUDE AN INSURER
8 PROVIDING UNINSURED OR UNDERINSURED MOTORIST COVERAGE
9 PURSUANT TO SECTION 10-4-609 TO AN INJURED PARTY.

10 (d) "RECOVERY" MEANS RECOVERY OF A MONETARY AWARD FROM
11 A THIRD PARTY THROUGH EITHER SETTLEMENT OR JUDGMENT TO
12 COMPENSATE AN INJURED PARTY FOR BODILY INJURY SUSTAINED AS A
13 RESULT OF AN ACT OR OMISSION OF THE THIRD PARTY. "RECOVERY"
14 INCLUDES BENEFITS PAID OR SETTLEMENT OF CLAIMS UNDER UNINSURED
15 OR UNDERINSURED MOTORIST COVERAGE PURSUANT TO SECTION 10-4-609.

16 (3) (a) (I) REIMBURSEMENT OR SUBROGATION PURSUANT TO A
17 PROVISION IN AN INSURANCE POLICY, CONTRACT, OR BENEFIT PLAN IS
18 PERMITTED ONLY IF THE INJURED PARTY HAS FIRST BEEN FULLY
19 COMPENSATED FOR ALL DAMAGES ARISING OUT OF THE CLAIM. ANY
20 PROVISION IN A POLICY, CONTRACT, OR BENEFIT PLAN ALLOWING OR
21 REQUIRING REIMBURSEMENT OR SUBROGATION IN CIRCUMSTANCES IN
22 WHICH THE INJURED PARTY HAS NOT BEEN FULLY COMPENSATED IS VOID
23 AS AGAINST PUBLIC POLICY.

24 (II) THIS PARAGRAPH (a) DOES NOT LIMIT THE RIGHT OF AN
25 INSURER TO SEEK REIMBURSEMENT OR SUBROGATION TO RECOVER
26 AMOUNTS PAID FOR PROPERTY DAMAGE OR THE RIGHT OF AN INSURER
27 PROVIDING UNINSURED OR UNDERINSURED MOTORIST COVERAGE
28 PURSUANT TO SECTION 10-4-609 TO AN INJURED PARTY TO PURSUE CLAIMS
29 AGAINST AN AT-FAULT THIRD PARTY.

30 (b) IF THE INJURED PARTY IS FULLY COMPENSATED AND
31 REIMBURSEMENT OR SUBROGATION OF BENEFITS IS AUTHORIZED, THE
32 REIMBURSEMENT OR SUBROGATION AMOUNT CANNOT EXCEED THE
33 AMOUNT ACTUALLY PAID BY THE PAYER OF BENEFITS TO COVER BENEFITS
34 UNDER THE POLICY, CONTRACT, OR BENEFIT PLAN.

35 (c) THE AMOUNT RECOVERABLE, IF ANY, BY THE PAYER OF

1 BENEFITS FOR REIMBURSEMENT OR SUBROGATION SHALL BE REDUCED BY
2 AN AMOUNT EQUAL TO THE PAYER OF BENEFITS' PROPORTIONATE SHARE
3 OF THE ATTORNEY FEES AND EXPENSES INCURRED BY OR ON BEHALF OF
4 THE INJURED PARTY IN MAKING THE RECOVERY, BASED ON THE RATIO OF
5 THE AMOUNT OF ATTORNEY FEES AND EXPENSES INCURRED TO THE
6 AMOUNT OF THE RECOVERY.

7 (4) (a) (I) ANY DISPUTES BETWEEN THE PAYER OF BENEFITS AND
8 THE INJURED PARTY REGARDING ENTITLEMENT TO REIMBURSEMENT OR
9 SUBROGATION SHALL BE RESOLVED IN ACCORDANCE WITH THIS
10 PARAGRAPH (a), REGARDLESS OF WHETHER ADMINISTRATIVE REMEDIES
11 CONTAINED IN THE POLICY, CONTRACT, OR BENEFIT PLAN DOCUMENTS
12 HAVE BEEN EXHAUSTED BY THE INJURED PARTY.

13 (II) IF THE INJURED PARTY NOTIFIES THE PAYER OF BENEFITS IN
14 WRITING THAT THE AMOUNT OF THE RECOVERY IS LESS THAN THE SUM OF
15 ALL DAMAGES INCURRED BY THE INJURED PARTY, AND THE PAYER OF
16 BENEFITS DISPUTES THAT CLAIM, THE DISPUTE SHALL BE RESOLVED BY
17 ARBITRATION. THE PAYER OF BENEFITS MAY REQUEST ARBITRATION OF
18 THE DISPUTE TO DETERMINE THE EXTENT TO WHICH THE PAYER OF
19 BENEFITS MAY BE ENTITLED TO SHARE IN THE RECOVERY PURSUANT TO
20 SUBSECTION (3) OF THIS SECTION. THE PAYER OF BENEFITS MAY REQUEST
21 ARBITRATION NO LATER THAN SIXTY DAYS AFTER THE INJURED PARTY
22 NOTIFIES THE PAYER OF BENEFITS THAT THE SUM OF ALL HIS OR HER
23 DAMAGES EXCEEDS THE AMOUNT OF THE RECOVERY.

24 (III) IF THE PAYER OF BENEFITS REQUESTS ARBITRATION OF THE
25 DISPUTE, THE INJURED PARTY AND THE PAYER OF BENEFITS SHALL JOINTLY
26 CHOOSE AN ARBITRATOR TO RESOLVE THE DISPUTE. IF THE INJURED PARTY
27 AND THE PAYER OF BENEFITS CANNOT AGREE ON AN ARBITRATOR, THE
28 DISPUTE SHALL BE RESOLVED BY A PANEL OF THREE ARBITRATORS
29 SELECTED AS FOLLOWS:

30 (A) THE INJURED PARTY SHALL SELECT ONE ARBITRATOR;

31 (B) THE PAYER OF BENEFITS SHALL SELECT ONE ARBITRATOR; AND

32 (C) THE ARBITRATORS CHOSEN BY THE PARTIES PURSUANT TO
33 SUB-SUBPARAGRAPHS (A) AND (B) OF THIS SUBPARAGRAPH (III) SHALL
34 SELECT THE THIRD ARBITRATOR.



1 (b) IF THE ARBITRATOR DETERMINES THAT THE AMOUNT OF THE
2 RECOVERY DOES NOT FULLY AND COMPLETELY COMPENSATE THE INJURED
3 PARTY FOR HIS OR HER DAMAGES, THE PAYER OF BENEFITS SHALL HAVE NO
4 RIGHT TO REPAYMENT, REIMBURSEMENT, OR SUBROGATION.

5 (5) A PAYER OF BENEFITS SHALL NOT DENY OR REFUSE TO PROVIDE
6 ANY PLAN BENEFITS OTHERWISE AVAILABLE TO AN INJURED PARTY
7 BECAUSE OF THE EXISTENCE OF A POTENTIAL PERSONAL INJURY OR
8 SIMILAR CLAIM OR THE RESOLUTION OF A PERSONAL INJURY OR SIMILAR
9 CLAIM.

10 (6) (a) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
11 PARAGRAPH (a), A PAYER OF BENEFITS SHALL NOT BRING A DIRECT ACTION
12 FOR SUBROGATION OR REIMBURSEMENT OF BENEFITS AGAINST A THIRD
13 PARTY ALLEGEDLY AT FAULT FOR THE INJURY TO THE INJURED PARTY OR
14 AN INSURER PROVIDING UNINSURED MOTORIST COVERAGE.

15 (II) IF AN INJURED PARTY HAS NOT PURSUED A CLAIM AGAINST A
16 THIRD PARTY ALLEGEDLY AT FAULT FOR THE INJURED PARTY'S INJURIES BY
17 THE DATE THAT IS SIXTY DAYS PRIOR TO THE DATE ON WHICH THE STATUTE
18 OF LIMITATIONS APPLICABLE TO THE CLAIM EXPIRES, A PAYER OF BENEFITS
19 MAY BRING A DIRECT ACTION FOR SUBROGATION OR REIMBURSEMENT OF
20 BENEFITS AGAINST AN AT-FAULT THIRD PARTY. NOTHING IN THIS
21 SUBPARAGRAPH (II) PRECLUDES AN INJURED PARTY FROM PURSUING A
22 CLAIM AGAINST THE AT-FAULT THIRD PARTY AFTER THE PAYER OF
23 BENEFITS BRINGS A DIRECT ACTION PURSUANT TO THIS SUBPARAGRAPH
24 (II), AND THE PAYER OF BENEFITS' RIGHT TO REIMBURSEMENT OR
25 SUBROGATION IS LIMITED BY SUBSECTION (3) OF THIS SECTION.

26 (b) A THIRD PARTY SHALL NOT INCLUDE A PAYER OF BENEFITS
27 THAT IS CLAIMING REPAYMENT OR REIMBURSEMENT PURSUANT TO
28 SUBSECTION (3) OF THIS SECTION AS A COPAYEE ON ANY CHECK OR DRAFT
29 IN PAYMENT OF A SETTLEMENT WITH OR JUDGMENT FOR OR ON BEHALF OF
30 THE INJURED PARTY.

31 (7) (a) A PAYER OF BENEFITS SHALL NOT DELAY, WITHHOLD, OR
32 OTHERWISE REDUCE BENEFITS:

33 (I) BECAUSE THE OBLIGATION TO PAY BENEFITS RESULTS FROM AN
34 ACT OR OMISSION FOR WHICH A THIRD PARTY MAY BE LIABLE; OR

1 (II) AS A MEANS OF ENFORCING OR ATTEMPTING TO ENFORCE A
2 CLAIM FOR REIMBURSEMENT OR SUBROGATION.

3 (b) NOTHING IN THIS SUBSECTION (7) PROHIBITS THE
4 COORDINATION OF BENEFITS BETWEEN OR AMONG PAYERS OF BENEFITS.

5 (8) WHEN A PAYER OF BENEFITS OBTAINS REIMBURSEMENT OF
6 BENEFITS PAID IN ACCORDANCE WITH THIS SECTION, THE PAYER OF
7 BENEFITS SHALL APPLY THE AMOUNT OF THE REIMBURSEMENT AS A CREDIT
8 AGAINST ANY LIFETIME MAXIMUM BENEFIT CONTAINED IN THE POLICY,
9 PLAN, OR CONTRACT UNDER WHICH THE BENEFITS WERE PAID.

10 (9) ANY LANGUAGE IN AN INSURANCE POLICY, CONTRACT, OR
11 BENEFIT PLAN THAT IS CONTRARY TO THIS SECTION IS VOID AND
12 UNENFORCEABLE. ALTHOUGH SUCH LANGUAGE IS UNENFORCEABLE,
13 NOTHING IN THIS SECTION REQUIRES AN INSURER TO MODIFY AND REFILE
14 WITH THE COMMISSIONER, PRIOR TO THE STANDARD FILING DATE, AN
15 INSURANCE POLICY, CONTRACT, OR BENEFIT PLAN THAT CONTAINS
16 LANGUAGE THAT IS CONTRARY TO THIS SECTION.

17 (10) NOTHING IN THIS SECTION MODIFIES:

18 (a) THE REQUIREMENT OF SECTION 13-21-111.6, C.R.S.,
19 REGARDING THE REDUCTION OF DAMAGES BASED ON AMOUNTS PAID FOR
20 THE DAMAGES FROM A COLLATERAL SOURCE. THE FACT OR AMOUNT OF
21 ANY COLLATERAL SOURCE PAYMENT OF BENEFITS SHALL NOT BE
22 ADMITTED AS EVIDENCE IN ANY ACTION AGAINST AN ALLEGED
23 THIRD-PARTY TORTFEASOR OR IN AN ACTION TO RECOVER BENEFITS UNDER
24 SECTION 10-4-609.

25 (b) LIEN RIGHTS OF HOSPITALS PURSUANT TO SECTION 38-27-101,
26 C.R.S., OR OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
27 PURSUANT TO SECTION 25.5-4-301 (5), C.R.S.; OR

28 (c) SUBROGATION AND LIEN RIGHTS GRANTED TO WORKERS'
29 COMPENSATION CARRIERS PURSUANT TO SECTION 8-41-203, C.R.S.

30 **SECTION 2. Act subject to petition - effective date -**
31 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
32 following the expiration of the ninety-day period after final adjournment
33 of the general assembly (August 11, 2010, if adjournment sine die is on



1 May 12, 2010); except that, if a referendum petition is filed pursuant to
2 section 1 (3) of article V of the state constitution against this act or an
3 item, section, or part of this act within such period, then the act, item,
4 section, or part shall not take effect unless approved by the people at the
5 general election to be held in November 2010 and shall take effect on the
6 date of the official declaration of the vote thereon by the governor.

7 (2) The provisions of this act shall apply to a recovery made on or
8 after the applicable effective date of this act."

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