

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 25, 2010
Date

Committee on Judiciary.

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

HB10-1168 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

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

1 A THIRD PARTY, AND THAT SUCH COMPENSATION IS NOT DIMINISHED BY
2 REPAYMENT, REIMBURSEMENT, OR SUBROGATION RIGHTS OF THE PAYER
3 OF BENEFITS;

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

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

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

20 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
21 REQUIRES:

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

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

1 OF THE ESTATE OF AN INJURED PARTY OR THE LEGAL REPRESENTATIVE OF
2 A PERSON UNDER A DISABILITY AS PROVIDED IN ARTICLE 81 OF TITLE 13,
3 C.R.S.

4 (c) "PAYER OF BENEFITS" MEANS ANY INSURER, HEALTH
5 MAINTENANCE ORGANIZATION, HEALTH BENEFIT PLAN, PREFERRED
6 PROVIDER ORGANIZATION, EMPLOYEE BENEFIT PLAN, OTHER INSURANCE
7 POLICY OR PLAN, OR ANY OTHER PAYER OF BENEFITS. "PAYER OF
8 BENEFITS" INCLUDES A FIDUCIARY OF AN INSURER, PLAN, OR OTHER PAYER
9 OF BENEFITS.

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, AND ANY AMOUNTS RECOVERED BY
30 SUCH INSURER SHALL NOT BE REDUCED PURSUANT TO PARAGRAPH (c) OF
31 THIS SUBSECTION (3).

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

1 SERVICES PROVIDED ON A CAPITATED BASIS, THE AMOUNT EQUAL TO
2 EIGHTY PERCENT OF THE USUAL AND CUSTOMARY CHARGE FOR THE SAME
3 SERVICES BY HEALTH CARE PROVIDERS THAT PROVIDE HEALTH CARE
4 SERVICES ON A NONCAPITATED BASIS IN THE GEOGRAPHIC REGION IN
5 WHICH THE SERVICES ARE RENDERED.

6 (c) THE AMOUNT RECOVERABLE, IF ANY, BY THE PAYER OF
7 BENEFITS FOR REIMBURSEMENT OR SUBROGATION SHALL BE REDUCED BY
8 AN AMOUNT EQUAL TO THE PAYER OF BENEFITS' PROPORTIONATE SHARE
9 OF THE ATTORNEY FEES AND EXPENSES INCURRED BY OR ON BEHALF OF
10 THE INJURED PARTY IN MAKING THE RECOVERY, BASED ON THE RATIO OF
11 THE AMOUNT OF ATTORNEY FEES AND EXPENSES INCURRED TO THE
12 AMOUNT OF THE RECOVERY.

13 (d) (I) IF THE INJURED PARTY MAKES A RECOVERY OF AN AMOUNT
14 THAT IS LESS THAN THE TOTAL AMOUNT OF COVERAGE AVAILABLE UNDER
15 ANY THIRD-PARTY LIABILITY INSURANCE POLICY OR UNINSURED OR
16 UNDERINSURED MOTORIST COVERAGE PURSUANT TO SECTION 10-4-609,
17 THERE IS A REBUTTABLE PRESUMPTION THAT THE INJURED PARTY HAS
18 BEEN FULLY COMPENSATED. IF THE INJURED PARTY MAKES A RECOVERY
19 OF AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF COVERAGE AVAILABLE
20 UNDER ALL THIRD-PARTY LIABILITY INSURANCE POLICIES AND UNINSURED
21 OR UNDERINSURED MOTORIST COVERAGES, THERE IS A REBUTTABLE
22 PRESUMPTION THAT THE INJURED PARTY HAS NOT BEEN FULLY
23 COMPENSATED.

24 (II) IF THE INJURED PARTY OBTAINS A JUDGMENT, THE AMOUNT OF
25 THE JUDGMENT IS PRESUMED TO BE THE AMOUNT NECESSARY TO FULLY
26 COMPENSATE THE INJURED PARTY.

27 (4) (a) (I) ANY DISPUTES BETWEEN THE PAYER OF BENEFITS AND
28 THE INJURED PARTY REGARDING ENTITLEMENT TO REIMBURSEMENT OR
29 SUBROGATION SHALL BE RESOLVED IN ACCORDANCE WITH THIS
30 PARAGRAPH (a), REGARDLESS OF WHETHER ADMINISTRATIVE REMEDIES
31 CONTAINED IN THE POLICY, CONTRACT, OR BENEFIT PLAN DOCUMENTS
32 HAVE BEEN EXHAUSTED BY THE INJURED PARTY.

33 (II) IF THE INJURED PARTY OBTAINS A RECOVERY THAT IS LESS
34 THAN THE SUM OF ALL DAMAGES INCURRED BY THE INJURED PARTY AND
35 INTENDS TO ENFORCE THE REQUIREMENTS OF SUBSECTION (3) OF THIS
36 SECTION, THE INJURED PARTY SHALL NOTIFY THE PAYER OF BENEFITS

1 WITHIN SIXTY DAYS OF RECEIPT OF EACH RECOVERY. THE NOTICE SHALL
2 INCLUDE THE TOTAL AMOUNT AND SOURCE OF THE RECOVERY; THE
3 COVERAGE LIMITS APPLICABLE TO ANY AVAILABLE INSURANCE POLICY,
4 CONTRACT, OR BENEFIT PLAN; AND THE AMOUNT OF ANY COSTS CHARGED
5 TO THE INJURED PARTY. IF RECOVERY WAS OBTAINED THROUGH A
6 SETTLEMENT AGREEMENT THAT CONTAINS A CONFIDENTIALITY PROVISION
7 THAT AFFECTS THE INFORMATION REQUIRED BY THIS SUBPARAGRAPH (II),
8 THE CONFIDENTIALITY PROVISION IS UNENFORCEABLE AS TO THE
9 DISCLOSURE OF THE REQUIRED INFORMATION.

10 (III) IF THE PAYER OF BENEFITS DISPUTES THAT THE INJURED
11 PARTY'S RECOVERY IS LESS THAN THE SUM OF ALL DAMAGES INCURRED BY
12 THE INJURED PARTY, THE DISPUTE SHALL BE RESOLVED BY ARBITRATION.
13 THE PAYER OF BENEFITS MAY REQUEST ARBITRATION OF THE DISPUTE TO
14 DETERMINE THE EXTENT TO WHICH THE PAYER OF BENEFITS MAY BE
15 ENTITLED TO SHARE IN THE RECOVERY PURSUANT TO SUBSECTION (3) OF
16 THIS SECTION. THE PAYER OF BENEFITS MAY REQUEST ARBITRATION NO
17 LATER THAN SIXTY DAYS AFTER RECEIPT OF ANY NOTICE UNDER
18 SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

19 (IV) IF THE PAYER OF BENEFITS REQUESTS ARBITRATION OF THE
20 DISPUTE, THE INJURED PARTY AND THE PAYER OF BENEFITS SHALL JOINTLY
21 CHOOSE AN ARBITRATOR TO RESOLVE THE DISPUTE. IF THE INJURED PARTY
22 AND THE PAYER OF BENEFITS CANNOT AGREE ON AN ARBITRATOR, THE
23 DISPUTE SHALL BE RESOLVED BY A PANEL OF THREE ARBITRATORS
24 SELECTED AS FOLLOWS:

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

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

27 (C) THE ARBITRATORS CHOSEN BY THE PARTIES PURSUANT TO
28 SUB-SUBPARAGRAPHS (A) AND (B) OF THIS SUBPARAGRAPH (IV) SHALL
29 SELECT THE THIRD ARBITRATOR.

30 (b) IF THE ARBITRATOR DETERMINES THAT THE AMOUNT OF THE
31 RECOVERY DOES NOT FULLY COMPENSATE THE INJURED PARTY FOR HIS OR
32 HER DAMAGES, THE PAYER OF BENEFITS SHALL HAVE NO RIGHT TO
33 REPAYMENT, REIMBURSEMENT, OR SUBROGATION.

34 (5) A PAYER OF BENEFITS SHALL NOT DENY OR REFUSE TO PROVIDE

1 ANY PLAN BENEFITS OTHERWISE AVAILABLE TO AN INJURED PARTY
2 BECAUSE OF THE EXISTENCE OF A POTENTIAL PERSONAL INJURY OR
3 SIMILAR CLAIM OR THE RESOLUTION OF A PERSONAL INJURY OR SIMILAR
4 CLAIM.

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

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

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

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

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

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

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

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

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

13 (10) NOTHING IN THIS SECTION MODIFIES:

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

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

24 (c) SUBROGATION AND LIEN RIGHTS GRANTED TO WORKERS'
25 COMPENSATION CARRIERS OR SELF-INSURED EMPLOYERS PURSUANT TO
26 SECTION 8-41-203, C.R.S.

27 **SECTION 2. Act subject to petition - effective date -**
28 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
29 following the expiration of the ninety-day period after final adjournment
30 of the general assembly (August 11, 2010, if adjournment sine die is on
31 May 12, 2010); except that, if a referendum petition is filed pursuant to
32 section 1 (3) of article V of the state constitution against this act or an
33 item, section, or part of this act within such period, then the act, item,
34 section, or part shall not take effect unless approved by the people at the
35 general election to be held in November 2010 and shall take effect on the

- 1 date of the official declaration of the vote thereon by the governor.
- 2 (2) The provisions of this act shall apply to a recovery made on or
- 3 after the applicable effective date of this act."

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