

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 13-0790.01 Kristen Forrestal x4217

HOUSE BILL 13-1245

HOUSE SPONSORSHIP

McCann,

SENATE SPONSORSHIP

Steadman,

House Committees

Health, Insurance & Environment
Finance
Appropriations

Senate Committees

Health & Human Services
Finance

A BILL FOR AN ACT

101 **CONCERNING FUNDING MECHANISMS FOR THE COLORADO HEALTH**
102 **BENEFIT EXCHANGE.**

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://www.leg.state.co.us/billsummaries>.)

On and after January 1, 2014, in order to fund the Colorado health benefit exchange, the bill allows:

- ! The health benefit exchange board of directors to assess against small group and individual health insurers in an amount necessary to provide for the sustainability of the

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.*

SENATE
Amended 2nd Reading
May 3, 2013

HOUSE
3rd Reading Unamended
April 19, 2013

HOUSE
Amended 2nd Reading
April 17, 2013

- exchange; and
- ! A credit against the tax imposed against insurance companies to any insurance company that becomes a qualified taxpayer by making a contribution to the exchange.

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

2 **SECTION 1.** In Colorado Revised Statutes, 10-22-103, **amend**
3 (5) and **add** (6), (7), (8), (9) (10), and (11) as follows:

4 **10-22-103. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (5) ~~"Secretary" means the secretary of the United States~~
7 ~~department of health and human services~~ "GROUP HEALTH PLAN" MEANS
8 AN EMPLOYEE WELFARE BENEFIT PLAN AS DEFINED IN 29 U.S.C. SEC. 1002
9 (1) OF THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF
10 1974" TO THE EXTENT THAT THE PLAN PROVIDES HEALTH CARE SERVICES,
11 INCLUDING ITEMS AND SERVICES PAID FOR AS HEALTH CARE SERVICES, TO
12 EMPLOYEES OR THEIR DEPENDENTS DIRECTLY OR THROUGH INSURANCE
13 REIMBURSEMENT OR OTHERWISE. A "GROUP HEALTH PLAN" INCLUDES A
14 GOVERNMENT OR CHURCH PLAN.

15 (6) "HEALTH BENEFIT PLAN" HAS THE SAME MEANING SET FORTH
16 IN SECTION 10-16-102; EXCEPT THAT THE TERM INCLUDES A DENTAL PLAN.

17 (7) "INSURER" MEANS ANY ENTITY THAT PROVIDES GROUP HEALTH
18 PLANS OR INDIVIDUAL HEALTH BENEFIT PLANS SUBJECT TO INSURANCE
19 REGULATION IN THIS STATE, AS WELL AS ANY ENTITY THAT DIRECTLY OR
20 INDIRECTLY PROVIDES STOP-LOSS OR EXCESS LOSS INSURANCE TO A
21 SELF-INSURED GROUP HEALTH PLAN INCLUDING A PROPERTY AND
22 CASUALTY INSURANCE COMPANY.

23 (8) "MEDICAID" MEANS FEDERAL INSURANCE OR ASSISTANCE AS

1 PROVIDED BY TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS
2 AMENDED.

3 (9) "MEDICARE" MEANS FEDERAL INSURANCE OR ASSISTANCE AS
4 PROVIDED BY TITLE XVIII OF THE FEDERAL "SOCIAL SECURITY ACT", AS
5 AMENDED.

6 (10) "NUMBER OF LIVES INSURED" MEANS THE NUMBER OF
7 EMPLOYEES AND RETIRED EMPLOYEES AND INDIVIDUAL POLICYHOLDERS
8 OR SUBSCRIBERS IN THE INDIVIDUAL AND GROUP MARKETS ON MARCH 1
9 OF THE PREVIOUS CALENDAR YEAR FOR WHICH A SPECIAL FEE IS BEING
10 ASSESSED. FOR INSURERS PROVIDING STOP-LOSS, EXCESS LOSS, OR
11 REINSURANCE, "NUMBER OF LIVES INSURED" DOES NOT INCLUDE
12 EMPLOYEES, RETIRED EMPLOYEES, OR INDIVIDUAL POLICYHOLDERS OR
13 SUBSCRIBERS WHO HAVE BEEN COUNTED BY THE PRIMARY INSURER OR
14 PRIMARY REINSURER.

15 (11) "SECRETARY" MEANS THE SECRETARY OF THE UNITED STATES
16 DEPARTMENT OF HEALTH AND HUMAN SERVICES.

17 **SECTION 2.** In Colorado Revised Statutes, 10-22-106, **add** (3)
18 and (4) as follows:

19 **10-22-106. Powers and duties of the board.** (3) THE BOARD
20 MAY CREATE A SEPARATE PROGRAM THAT SHARES RESOURCES AND
21 INFRASTRUCTURE WITH THE EXCHANGE TO OFFER ANCILLARY PRODUCTS.

22 (4) THE BOARD MAY ENTER INTO AN AGREEMENT WITH THE
23 DEPARTMENT OF PERSONNEL AND ADMINISTRATION TO AUTHORIZE
24 ADMINISTRATIVE LAW JUDGES EMPLOYED BY THE OFFICE OF
25 ADMINISTRATIVE COURTS TO HEAR AND DECIDE MATTERS ARISING FROM
26 ELIGIBILITY AND OTHER DETERMINATIONS MADE BY THE EXCHANGE
27 CONSISTENT WITH APPLICABLE STATE AND FEDERAL LAW.

1 **SECTION 3.** In Colorado Revised Statutes, 10-22-107, **amend**
2 (1) and (7) as follows:

3 **10-22-107. Legislative health benefit exchange implementation**
4 **review committee - creation - duties.** (1) For the purposes of guiding
5 implementation of an exchange in Colorado, making recommendations
6 to the general assembly, and ensuring that the interests of Coloradans are
7 protected and furthered, there is hereby created the legislative health
8 benefit exchange implementation review committee. The committee shall
9 meet on or before August 1, 2011, and thereafter at the call of the chair
10 ~~as often as~~ AT LEAST TWO TIMES DURING EACH CALENDAR YEAR, BUT NO
11 MORE THAN five times during each calendar year. The committee may use
12 the legislative council staff to assist its members in researching any
13 matters.

14 (7) THE BOARD SHALL SEND THE COMMITTEE AN ANNUAL REPORT
15 THAT CONTAINS THE FINANCIAL AND OPERATIONAL PLANS OF THE
16 EXCHANGE. The committee shall review the financial and operational
17 plans of the exchange.

18 **SECTION 4.** In Colorado Revised Statutes, **amend** 10-22-108 as
19 follows:

20 **10-22-108. Moneys for implementation, operation, and**
21 **sustainability of the exchange.** Moneys received by the board for the
22 implementation of this article, AND FOR BUILDING RESERVES FOR THE
23 OPERATION AND SUSTAINABILITY OF THE EXCHANGE PURSUANT TO
24 SECTION 10-22-109, must be transferred directly to the exchange for the
25 purposes of this article. The board shall deposit any moneys received in
26 a banking institution within or outside the state. Moneys from the general
27 fund shall not be used for the implementation of this article, except for

1 the sums specified in section 10-22-107 (3) and for legislative staff
2 agency services. The ACCOUNT OF THE banking institution must be
3 insured by the federal deposit insurance corporation and compliant with
4 the "~~Savings and Loan Association~~ "Public Deposit Protection Act",
5 article ~~47~~ 10.5 of title 11, C.R.S.

6 **SECTION 5.** In Colorado Revised Statutes, **add** 10-22-109,
7 10-22-110, and 10-22-111 as follows:

8 **10-22-109. Funding for the operation of the exchange and**
9 **reserves - special fees - rules.** (1) ON AND AFTER JANUARY 1, 2014,
10 AMONG OTHER FUNDING SOURCES DERIVED THROUGH THE OPERATION OF
11 THE EXCHANGE, FUNDING FOR THE EXCHANGE MAY BE FROM THE
12 FOLLOWING SOURCES:

13 (a) SPECIAL FEES ASSESSED AGAINST INSURERS AS PROVIDED IN
14 SUBSECTION (2) OF THIS SECTION;

15 (b) ANY MONEYS ACCEPTED THROUGH GIFTS, GRANTS, OR
16 DONATIONS RECEIVED BY THE BOARD FOR OPERATION, RESERVES, AND
17 SUSTAINABILITY OF THE EXCHANGE, INCLUDING CONTRIBUTIONS RECEIVED
18 PURSUANT TO THE PREMIUM TAX CREDIT ALLOCATION IN SECTION
19 10-22-110; AND

20 (c) MONEYS FROM THE UNCLAIMED PROPERTY TRUST FUND
21 TRANSMITTED PURSUANT TO SECTION 38-13-116.5 (2.9), C.R.S.

22 (2) (a) ON AND AFTER JANUARY 1, 2014, THROUGH DECEMBER 31,
23 2016, THE BOARD SHALL ASSESS SPECIAL FEES AGAINST INSURERS IN AN
24 AMOUNT NECESSARY TO PROVIDE FUNDING FOR THE EXCHANGE. THE
25 BOARD SHALL DETERMINE THE AMOUNT OF THE SPECIAL FEES BASED ON
26 THE BOARD-APPROVED FINANCIAL PLAN AND ANTICIPATED BUDGETARY
27 NEEDS FOR THE UPCOMING YEAR TO COMPLY WITH THIS ARTICLE AND

1 ASSOCIATED FEDERAL REQUIREMENTS. THE SPECIAL FEES MUST NOT
2 EXCEED ONE DOLLAR AND EIGHTY CENTS PER NUMBER OF LIVES INSURED
3 PER MONTH; EXCEPT THAT THE SPECIAL FEES ASSESSED FOR LIVES INSURED
4 UNDER DENTAL PLANS MUST NOT EXCEED EIGHTEEN CENTS PER NUMBER
5 OF LIVES INSURED PER MONTH. THE BOARD SHALL USE SPECIAL FEES
6 ASSESSED PURSUANT TO THIS SECTION FOR THE OPERATING EXPENSES OF
7 THE EXCHANGE, THE RESERVES OF THE EXCHANGE, AND RELATED
8 AGREEMENTS.

9 (b) THE BOARD SHALL USE ANY MONEY RECEIVED PURSUANT TO
10 SECTION 10-8-536 (2), AS ENACTED IN HOUSE BILL 13-1115, ENACTED IN
11 2013, FROM THE RESERVES OF COVERCOLORADO, AS CREATED BY PART 5
12 OF ARTICLE 8 OF TITLE 10, AND ANY MONEYS RECEIVED FROM THE
13 UNCLAIMED PROPERTY TRUST FUND TO OFFSET THE AMOUNT OF THE FEES
14 ASSESSED AGAINST INSURERS PURSUANT TO THIS SUBSECTION (2); EXCEPT
15 THAT THE MONEY RECEIVED MUST NOT BE USED TO OFFSET THE SPECIAL
16 FEES PAID BY DENTAL PLANS.

17 (c) AMOUNTS ASSESSED AGAINST INSURERS TO BE PAID TO THE
18 EXCHANGE PURSUANT TO THIS SUBSECTION (2) ARE NOT CONSIDERED
19 PREMIUMS FOR ANY PURPOSE, INCLUDING THE COMPUTATION OF GROSS
20 PREMIUM TAX OR AGENTS'S COMMISSION.

21 (d) IF AN INSURER FAILS TO PAY THE SPECIAL ASSESSMENT FEE,
22 THE COMMISSIONER MAY, AFTER PROPER NOTICE AND HEARING, SUSPEND
23 OR REVOKE THE INSURER'S CERTIFICATE OF AUTHORITY TO TRANSACT
24 INSURANCE BUSINESS IN THIS STATE.

25 (3) THE COMMISSIONER SHALL PROMULGATE RULES TO IMPLEMENT
26 THIS SECTION THAT INCLUDE:

27 (a) THE REASONABLE TIME PERIODS FOR THE BILLING AND

1 COLLECTION OF THE SPECIAL FEES; AND

2 (b) THE PROCESS FOR DETERMINING THE ALLOCATION OF THE
3 ASSESSMENT AMONG INSURERS, INCLUDING THE PROCESS FOR OBTAINING
4 ACCURATE INFORMATION ABOUT THE NUMBER OF POLICIES ISSUED AND
5 LIVES INSURED BY A INSURER WITHIN THE SIX MONTHS PRIOR TO THE
6 ASSESSMENT.

7 **10-22-110. Tax credit for contributions to the exchange -**
8 **allocation notice - rules.** (1) (a) FOR THE TAX YEAR 2013 AND EACH TAX
9 YEAR THEREAFTER, IS ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY
10 SECTIONS 10-3-209 AND 10-6-128 TO ANY INSURANCE COMPANY THAT
11 BECOMES A QUALIFIED TAXPAYER BY MAKING A CONTRIBUTION TO THE
12 EXCHANGE PURSUANT TO THIS SECTION.

13 (b) A QUALIFIED TAXPAYER CLAIMING A CREDIT AGAINST PREMIUM
14 TAX LIABILITY UNDER THIS SECTION IS NOT REQUIRED TO PAY ANY
15 ADDITIONAL RETALIATORY TAX AS A RESULT OF CLAIMING THE CREDIT.

16 (2) THE COMMISSIONER MAY PROMULGATE RULES NECESSARY FOR
17 THE ADMINISTRATION OF THE TAX CREDIT ALLOWED BY SUBSECTION (1)
18 OF THIS SECTION IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

19 (3) (a) SUBJECT TO PARAGRAPH (c) OF SUBSECTION (4) OF THIS
20 SECTION, AN INSURANCE COMPANY SHALL BECOME A QUALIFIED
21 TAXPAYER IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

22 (I) THE INSURANCE COMPANY DECLARES WITH ITS QUARTERLY TAX
23 PAYMENT DUE ON OR ABOUT JULY 31 IN THE MANNER PRESCRIBED BY THE
24 COMMISSIONER ITS INTENT TO CONTRIBUTE TO THE EXCHANGE ON OR
25 BEFORE OCTOBER 31 AN AMOUNT OF MONEY EQUAL TO THE PREMIUM
26 TAXES PAID BY THE COMPANY PURSUANT TO THE JULY 31 TAX PAYMENT
27 OR A LESSER AMOUNT AS SPECIFIED BY THE COMMISSIONER IF REQUIRED

1 PURSUANT TO PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION;

2 (II) THE TOTAL AMOUNT OF THE TAX CREDITS GRANTED BY THE
3 COMMISSIONER DOES NOT EXCEED FIVE MILLION DOLLARS; AND

4 (III) THE INSURANCE COMPANY RECEIVES AN ALLOCATION NOTICE
5 FROM THE COMMISSIONER AND THE INSURANCE COMPANY MAKES THE
6 CONTRIBUTION TO THE EXCHANGE AS SPECIFIED IN THE ALLOCATION
7 NOTICE ON OR BEFORE OCTOBER 31.

8 (b) SUBJECT TO PARAGRAPH (c) OF SUBSECTION (4) OF THIS
9 SECTION, AN INSURANCE COMPANY BECOMES A QUALIFIED TAXPAYER MAY
10 CLAIM THE TAX CREDIT ON ONE OR MORE SUBSEQUENT QUARTERLY OR
11 ANNUAL TAX PAYMENTS BEGINNING ON OR ABOUT OCTOBER 31.

12 (c) THE BOARD SHALL PROMPTLY NOTIFY THE COMMISSIONER
13 WHEN IT RECEIVES A CONTRIBUTION PURSUANT TO THIS SECTION OF THE
14 AMOUNT AND DATE OF THE CONTRIBUTION AND THE NAME OF THE
15 CONTRIBUTOR.

16 (4) (a) SUBJECT TO PARAGRAPH (c) OF THIS SUBSECTION (4), BY
17 SEPTEMBER 30 OF EACH YEAR, THE COMMISSIONER SHALL:

18 (I) SEND AN ALLOCATION NOTICE TO EACH INSURANCE COMPANY
19 WHOSE DECLARATION OF INTENT TO CONTRIBUTE TO THE EXCHANGE HAS
20 BEEN ACCEPTED PURSUANT TO THIS SUBSECTION (4). THE ALLOCATION
21 NOTICE SHALL SPECIFY THE AMOUNT OF TAX CREDITS ALLOCATED TO THE
22 INSURANCE COMPANY AND THE AMOUNT OF CASH THE INSURANCE
23 COMPANY MUST CONTRIBUTE TO THE EXCHANGE BY OCTOBER 31, WHICH
24 AMOUNTS SHALL BE IDENTICAL AND NOT EXCEED THE AMOUNT OF
25 PREMIUM TAXES PAID BY THE INSURANCE COMPANY IN ITS QUARTERLY
26 TAX PAYMENT DUE ON OR ABOUT JULY 31; AND

27 (II) POST ON THE DIVISION'S WEB SITE WHETHER THE FULL AMOUNT

1 OF TAX CREDITS AUTHORIZED TO BE ALLOCATED EACH YEAR HAS BEEN
2 ALLOCATED.

3 (b) SUBJECT TO PARAGRAPH (c) OF THIS SUBSECTION (4), THE
4 COMMISSIONER SHALL ALLOCATE NO MORE THAN A TOTAL OF FIVE
5 MILLION DOLLARS OF PREMIUM TAX CREDITS PER YEAR. THE
6 COMMISSIONER SHALL ALLOCATE TO AN INSURANCE COMPANY THAT HAS
7 DECLARED ITS INTENT TO CONTRIBUTE TO THE EXCHANGE PURSUANT TO
8 THIS SECTION TAX CREDITS IN AN AMOUNT EQUAL TO THE AMOUNT OF
9 PREMIUM TAXES PAID BY THE INSURANCE COMPANY IN ITS QUARTERLY
10 TAX PAYMENT DUE ON OR ABOUT JULY 31 IN THE ORDER IN WHICH THE
11 DIVISION RECEIVES SUCH QUARTERLY TAX PAYMENTS UNTIL THE FULL
12 AMOUNT OF CREDITS AVAILABLE PURSUANT TO THIS SECTION HAS BEEN
13 ALLOCATED; EXCEPT THAT, IF SUCH AMOUNT OF TAXES OR THE SUM OF ALL
14 THE TAXES FILED BY ALL THE INSURANCE COMPANIES ON ANY ONE DAY
15 WOULD EXCEED, SINGLY OR IN THE AGGREGATE, THE ANNUAL MAXIMUM
16 AGGREGATE AMOUNT OF TAX CREDITS AVAILABLE UNDER THIS SECTION,
17 THE COMMISSIONER SHALL REDUCE THE ALLOCATION TO THE INSURANCE
18 COMPANY WHOSE CONTRIBUTION FIRST EXCEEDS THE ANNUAL MAXIMUM
19 AGGREGATE TO THE AMOUNT NEEDED TO SATISFY THE ANNUAL MAXIMUM
20 AGGREGATE. IF THE COMMISSIONER IS UNABLE TO DETERMINE THE ORDER
21 OF RECEIPT OF TAX PAYMENTS ON THAT DAY, THE COMMISSIONER SHALL
22 ALLOCATE THE TAX CREDITS TO THE COMPANY OR AMONG THE COMPANIES
23 ON A PRO RATA BASIS BASED ON THE RATIO SUCH COMPANY'S QUARTERLY
24 TAX PAYMENT BEARS TO THE TOTAL AMOUNT OF ALL SUCH COMPANIES'
25 QUARTERLY TAX PAYMENTS UNTIL THE FULL AMOUNT OF CREDITS
26 AVAILABLE PURSUANT TO THIS SECTION HAS BEEN ALLOCATED.

27 (c) (I) THE COMMISSIONER SHALL ALLOW INSURANCE COMPANIES

1 TO DECLARE THEIR INTENT TO CONTRIBUTE TO THE EXCHANGE PURSUANT
2 TO THIS SECTION ON THE INSURANCE COMPANIES' QUARTERLY TAX
3 PAYMENTS DUE ON OR ABOUT OCTOBER 31 AND SHALL SEND SUCH
4 COMPANIES ALLOCATION NOTICES BY FEBRUARY 1 IF:

5 (A) THE FULL AMOUNT OF TAX CREDITS AVAILABLE IN ANY ONE
6 YEAR HAVE NOT BEEN FULLY ALLOCATED BY THE COMMISSIONER
7 PURSUANT TO STATEMENTS OF INTENT FILED WITH INSURANCE COMPANIES'
8 QUARTERLY TAX PAYMENTS DUE ON OR ABOUT JULY 31; OR

9 (B) THE TOTAL AMOUNT OF TAX CREDITS HAS BEEN CLAIMED, BUT
10 ONE OR MORE INSURANCE COMPANIES FAILED TO TIMELY MAKE A
11 CONTRIBUTION TO THE EXCHANGE.

12 (II) AN INSURANCE COMPANY THAT DECLARES ITS INTENT TO
13 CONTRIBUTE TO THE EXCHANGE PURSUANT TO THIS PARAGRAPH (c) SHALL
14 MAKE THE CONTRIBUTION TO THE EXCHANGE AS SPECIFIED IN THE
15 ALLOCATION NOTICE ON OR BEFORE MARCH 1 AND MAY CLAIM THE TAX
16 CREDIT ON ONE OR MORE SUBSEQUENT QUARTERLY OR ANNUAL TAX
17 PAYMENTS DUE ON OR ABOUT MARCH 1.

18 (5) THE BOARD SHALL USE MONEYS CONTRIBUTED TO THE
19 EXCHANGE PURSUANT TO THIS SUBSECTION (3) AND INTEREST DERIVED
20 FROM THE DEPOSIT AND INVESTMENT OF THE MONEYS TO OPERATE AND
21 SUSTAIN THE EXCHANGE AND TO BUILD RESERVES.

22 **10-22-111. Tax exemption.** THE EXCHANGE IS EXEMPT FROM ANY
23 TAX LEVIED BY THIS STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

24 **SECTION 6.** In Colorado Revised Statutes, 38-13-116.5, **amend**
25 (1) (b); and **add** (2.9) as follows:

26 **38-13-116.5. Unclaimed property trust fund - creation -**
27 **payments - interest - appropriations - records - rules - repeal.**

1 (1) (b) Except as provided in subsections (2), and (2.7), AND (2.9) of this
2 section, the principal of the trust fund shall not be expended except to pay
3 claims made pursuant to this article. Moneys comprising the principal of
4 the trust fund shall not constitute fiscal year spending of the state for
5 purposes of section 20 of article X of the state constitution and are not
6 subject to appropriation by the general assembly.

7 (2.9) (a) ON JULY 1, 2013, THE STATE TREASURER SHALL
8 TRANSMIT FIFTEEN MILLION DOLLARS TO THE COLORADO HEALTH BENEFIT
9 EXCHANGE, CREATED IN ARTICLE 22 OF TITLE 10, C.R.S., FROM THE
10 UNCLAIMED PROPERTY TRUST FUND.

11 (b) THIS SUBSECTION (2.9) IS REPEALED, EFFECTIVE JULY 1, 2014.

12 **SECTION 7. 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.