

Amendment 56 Employer Responsibility for Health Insurance

1 **Amendment 56 proposes amending the Colorado Constitution to:**

- 2 ♦ require private employers with 20 or more employees to either provide
3 health insurance for both employees and their dependents or pay for
4 insurance through a new state authority;
- 5 ♦ limit the amount the employee must pay to 20 percent for employee-only
6 coverage and to 30 percent for dependent coverage; and
- 7 ♦ require the state legislature to implement the measure, including establishing
8 the new state authority and minimum standards for health insurance plans.

9 **Summary and Analysis**

10 Currently, employers in Colorado are not required by state or federal law to
11 provide health insurance for their employees. No information is available on how
12 many employers with 20 or more employees offer health insurance; however, federal
13 data show that most employers in Colorado with more than 25 employees offer some
14 type of health insurance to their employees. Federal data also show that small
15 employers are less likely to offer health insurance than larger employers.

16 For those employers who offer health insurance, plans and premiums may vary
17 significantly. For example, an employer may offer employees a basic plan, and pay
18 90 percent of the premium. Another employer may offer a comprehensive plan, and
19 pay 50 percent of the premium. There is no state or federal law that requires an
20 employer to contribute to the cost of insurance for employees or their dependents.

21 ***Health care coverage in Colorado.*** According to a state study, about 58 percent
22 of Coloradans obtain health insurance through their employer or through a family
23 member's employer. Other sources of coverage include government programs such
24 as Medicare and Medicaid (21 percent) and individually purchased health insurance
25 (4 percent). The remaining 17 percent of Coloradans are uninsured.

26 ***Requirements of Amendment 56.*** Amendment 56 requires every private
27 employer in Colorado with 20 or more employees to provide health insurance to
28 employees and dependents. Those that currently provide insurance may need to
29 change their plans to meet the requirements of Amendment 56 to: (1) offer dependent
30 insurance, (2) pay 80 percent of the cost of the health insurance for the employee,
31 and (3) pay 70 percent of the cost of insurance for the employee's dependents.

32 Alternatively, employers may choose to pay premiums to a newly established state
33 authority. The authority must contract for health insurance for employees whose
34 employers do not directly provide coverage. The state legislature is responsible for
35 determining how the authority operates. Amendment 56 prohibits the legislature from

1 using general state tax dollars for the operation of the authority or to pay insurance
2 costs, but other sources of revenue may be used. Amendment 56 also requires the
3 legislature to enact laws to implement its provisions, including determining the types of
4 health plans that must be offered by employers.

5 ***Other employer mandates for health insurance in the U.S.*** Federal law
6 generally prohibits states from requiring employers to provide health insurance. Thus,
7 few states have such laws. Congress granted an exception for a Hawaii law that
8 requires employers to choose one of three ways to provide health insurance to
9 employees. Recently, an ordinance was adopted in the City of San Francisco
10 requiring employers to spend a certain amount on health care for employees; it has
11 been implemented, but is being challenged in federal court. A court struck down a
12 Maryland law that would have required private employers with at least
13 10,000 employees to spend at least 8 percent of their payroll on health insurance
14 benefits because it effectively required employers to change their employee health
15 insurance plans. Massachusetts and Vermont require employers who do not provide
16 health insurance benefits to pay a fee to the state; neither of those laws has been
17 challenged in court.

18 **Arguments For**

19 1) Businesses are likely to benefit from higher productivity and fewer days lost to
20 illness when more employees are insured. Individuals with health insurance tend to
21 be healthier because they have access to preventative care and are more likely to
22 seek medical attention for minor illnesses and injuries before they become serious.
23 As a result of Amendment 56, affected businesses may have more insured
24 employees, allowing them to be more productive and contribute to the growth and
25 strength of Colorado's economy.

26 2) Amendment 56 increases access to affordable health insurance for working
27 people and their families. When individuals and families have health insurance, they
28 are better protected from the financial burden of catastrophic medical events. By
29 establishing cost-sharing requirements between employers and employees, the
30 measure provides more workers with a viable option to obtain health insurance.

31 3) Employers in the state share in the responsibility for solving the problem of
32 access to health care. While a majority of Colorado employers offer health insurance
33 to employees, employers that do not provide this benefit have an unfair competitive
34 advantage and create a financial burden on those that do. The costs of treating
35 people with little or no health insurance are passed on in the form of increased
36 charges for health care services and increased insurance premiums, which in turn
37 raise the cost of health care for everyone.

1 **Arguments Against**

2 1) Amendment 56 places a new financial burden on businesses that may result in
3 higher costs, lost jobs, and an increase in the price for goods and services.
4 Additionally, companies may be discouraged from locating in Colorado. All these
5 factors could slow growth and damage the state's economy. The measure removes
6 the flexibility employers currently have to offer benefits that are within a company's
7 budget while meeting the needs of their employees.

8 2) Amendment 56 may ultimately hurt employees. Businesses are likely to
9 decrease employees' wages, bonuses, or other benefits in order to offset increased
10 health care costs. Due to the requirement that employers pay 70 percent of the costs
11 for family-health coverage, the measure could result in discrimination against hiring
12 individuals with families.

13 3) Amendment 56 does not solve the problems associated with the high cost of
14 health insurance. Often the reason that employers do not offer health insurance is
15 because they cannot afford the premiums. Employees may remain uninsured
16 because they cannot afford their share of the premiums or choose not to purchase
17 health insurance. The plans established by the legislature may not provide better or
18 more affordable health insurance for employees covered by the measure.
19 Additionally, the measure does nothing for employees of small businesses. A
20 constitutional change, like Amendment 56, is an inflexible approach to dealing with the
21 complex issue of health insurance.

22 **Estimate of Fiscal Impact**

23 State and local governments are excluded from the health insurance requirements
24 of Amendment 56, so government spending is not affected by these components of
25 the measure. Both state revenue and spending are expected to increase for the new
26 state authority, beginning in budget year 2010. Total revenue from premiums
27 depends upon the number of employers and employees selecting health coverage
28 through the authority. Total spending depends on the specific responsibilities of the
29 authority. The increase in state revenue and spending cannot be estimated until the
30 legislature implements the measure. Employer costs to provide health insurance, as
31 specified by Amendment 56, are not estimated.

**Amendment 56
Employer Responsibility for Health Insurance**

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3 health insurance for both employees and their dependents or pay for
4 insurance through a new state authority;
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6 coverage and to 30 percent for dependent coverage; and
- 7 ♦ require the state legislature to implement the measure, including establishing
8 the new state authority and minimum standards for health insurance plans.

9 **Summary and Analysis**

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11 provide health insurance for their employees. No information is available on how
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13 data show that most employers in Colorado with more than 25 employees offer some
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Mr. Douglas Friednash

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19 Additionally, the measure does DO nothing for employees of small businesses. A
20 constitutional change, like Amendment 56, is an inflexible approach to dealing with the
21 complex issue of health insurance.

22 4) THIS MEASURE MAY LEAD TO UNINTENDED CONSEQUENCES. CRITICAL COMPONENTS,
23 INCLUDING THE SCOPE OF COVERAGE, HAVE NOT BEEN DEFINED. THERE IS NO GUARANTEE
24 THAT THE ESTABLISHED PLANS WILL LEAD TO EITHER BETTER COVERAGE OR MORE
25 AFFORDABLE COVERAGE.

26 **Estimate of Fiscal Impact**

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35 specified by Amendment 56, are not estimated.

DOUGLAS FRIEDNASH'S COMMENTS ON LAST DRAFT OF AMENDMENT 56

August 14, 2008

Thank you for sending me the final draft.

I appreciate your efforts in working on this. I would like to incorporate my earlier comments by this reference.

1. The measure still fails to instruct the voters that the State is ultimately financially liable for this constitutional amendment. The measure now states that it prohibits the use of general state tax dollars for its operation or for insurance costs. However, it fails to state that the legislature is not prohibited from finding other funding mechanisms to pay for it. By failing to apprise the voters of this key provision and only telling them half of the story, voters will be misled.

2. The summary and analysis explains that is confusing and misleading insofar as it states that, "federal data shows that most employers with more than 25 employees offer some type of health insurance to their employees. Federal data also shows that small employers are less likely to offer health insurance than larger employees." First, the issue isn't who offers health insurance, but who pays for it and how much is paid for. This can be misinterpreted to suggest most employers already provide health insurance to their employees. Further, it is silent on the issue of dependent coverage. The fact is very few employers provide and pay for the health insurance for their employees.

3. The analysis fails to discuss what the anticipated costs of providing coverage will be for employers and employees under the policy. Attached is documented information on such monthly costs. By including this information, the voters can determine what this means to a business and employee. In other words, if it costs \$1,000 a month to currently provide health insurance to an employee and their dependents, employers can determine their share (\$700) and employees can determine theirs as well (\$300). This puts a real impact on what we are discussing here and should be included in the blue book.

4. Based upon the totality of the circumstances, it is not clear that the employees will have better coverage or more affordable coverage under this measure.

5. The analysis explains that the ordinance is being challenged in federal court and has been upheld to date. I think it should only state that the ordinance is being challenged in federal court. It is possible to discern its status as of the date the blue book will be published and/or read by voters.

6. The following argument should be included: This measure may lead to unintended consequences. Critical components, including the scope of coverage, have not been defined. There is no guarantee that the established plans will lead to either better coverage or more affordable coverage.

Please do not hesitate to contact me if you have any questions.

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Colorado Health Care Cost Benchmarking - PPO Plans			
Gross Total Average Health Care Premium Costs			
August, 2008			
	Data Source		
	Mountain States Employers Council - 2008 Employer Survey	Watson Wyatt 2007/2008 Survey Report on Employee Benefits	Blue Cross National Association (2006 rates trended 12%)
	(All Colorado Average)		
Rate Tier			
Employee Only	\$ 390.35	\$ 369.60	\$ 429.33
Employee + Spouse	\$ 817.57	\$ 769.60	\$ 858.67
Employee + Child(ren)	\$ 715.71	\$ 690.20	\$ 794.26
Employee + Family	\$ 1,134.56	\$ 1,075.49	\$ 1,326.64
Submitted by Douglas Friednash			

Last Draft as Mailed to Interested Persons

Initiative #92 Employer Responsibility for Health Insurance

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38 higher costs to do business, lost jobs, and an increase in the price for goods and
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1 these factors could slow growth and damage the state's economy. The measure
2 removes the flexibility employers currently have to offer benefits that are within a
3 company's budget while meeting the needs of their employees.

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7 for family health coverage, the measure could result in discrimination against hiring
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10 health insurance. Often the reason that employers do not offer health insurance is
11 because they cannot afford the premiums. Employees may remain uninsured
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13 health insurance. The measure does nothing to make health insurance more
14 affordable and available for people who work for small businesses. A constitutional
15 change, like Amendment __, is an inflexible approach to dealing with the complex
16 issue of health insurance.

17 **Estimate of Fiscal Impact**

18 While local and state governments are excluded from the health insurance
19 requirements of Amendment __, both state revenue and spending are expected to
20 increase for the new state authority, beginning in budget year 2010. Total revenue
21 from premiums depends upon the number of employers and employees selecting
22 health coverage through the authority. Total spending depends on the specific
23 administrative responsibilities of the authority.

24 It is assumed that the legislature will establish the authority in such a way that it
25 will be exempt from the constitutional spending limit. The amount of state revenue
26 and spending increases cannot be estimated until the legislature implements the
27 measure. An estimate of employer costs to provide health insurance is not included.

AMENDMENT 56
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Amendment 56
Employer Responsibility for Health Insurance

1 **Ballot Title:** An amendment to the Colorado Constitution concerning health care
2 coverage for employees, and, in connection therewith, requiring employers that regularly
3 employ twenty or more employees to provide major medical health care coverage to
4 their employees; excluding the state and its political subdivisions from the definition of
5 "employer"; allowing an employer to provide such health care coverage either directly
6 through a carrier, company, or organization or acting as a self-insurer, or indirectly by
7 paying premiums to a health insurance authority to be created pursuant to this measure
8 that will contract with health insurance carriers, companies, and organizations to provide
9 coverage to employees; providing that employees shall not be required to pay more than
10 twenty percent of the premium for such coverage for themselves and more than thirty
11 percent of such coverage for the employees' dependents; financing the costs of
12 administering the health insurance authority and health care coverage provided through
13 the authority with premiums paid by employers to the authority and, if necessary, such
14 revenue sources other than the state general fund as determined by the general assembly;
15 directing the general assembly to enact such laws as are necessary to implement the
16 measure; and setting the effective date of the measure to be no later than November 1,
17 2009.

18 **Text of Proposal:**

19 *Be it Enacted by the People of the State of Colorado:*

20 Article XVIII of the constitution of the state of Colorado is amended BY THE
21 ADDITION OF A NEW SECTION to read:

22 **Section 16. Employers to provide health care coverage.** (1) EVERY EMPLOYER IN
23 THE STATE OF COLORADO THAT EMPLOYS TWENTY OR MORE EMPLOYEES SHALL
24 PROVIDE, DIRECTLY OR INDIRECTLY, MAJOR MEDICAL HEALTH CARE COVERAGE,
25 REFERRED TO IN THIS SECTION AS "HEALTH CARE COVERAGE," FOR ITS EMPLOYEES AND
26 THEIR DEPENDENTS.

27 (2) THE STATE OF COLORADO SHALL ESTABLISH A HEALTH INSURANCE AUTHORITY,
28 REFERRED TO IN THIS SECTION AS THE "AUTHORITY," TO ADMINISTER THE PROVISION OF
29 SUCH HEALTH CARE COVERAGE. EMPLOYERS THAT DO NOT DIRECTLY PROVIDE HEALTH
30 CARE COVERAGE FOR EMPLOYEES AND THEIR DEPENDENTS SHALL PAY PREMIUMS TO THE
31 AUTHORITY, WHICH SHALL NOT PROVIDE SUCH HEALTH CARE COVERAGE ITSELF BUT
32 SHALL HAVE THE POWER TO CONTRACT WITH HEALTH INSURANCE CARRIERS, COMPANIES,
33 AND ORGANIZATIONS TO PROVIDE HEALTH CARE COVERAGE.

1 (3) THE GENERAL ASSEMBLY SHALL NOT APPROPRIATE MONEYS FROM THE GENERAL
2 FUND TO PAY COSTS OF ADMINISTERING THE AUTHORITY OR COSTS OF THE HEALTH CARE
3 COVERAGE MANDATED BY THIS SECTION. THE AUTHORITY SHALL BE FUNDED BY THE
4 PREMIUMS PAID TO IT BY EMPLOYERS WHO DO NOT PROVIDE HEALTH CARE COVERAGE
5 DIRECTLY, AS DEFINED IN THIS SECTION. THE GENERAL ASSEMBLY SHALL NOT BE
6 PRECLUDED FROM USING OTHER SOURCES OF REVENUE, IF NECESSARY, TO PAY FOR THE
7 COSTS OF ADMINISTERING THE AUTHORITY OR PROVIDING THE HEALTH CARE COVERAGE
8 MANDATED BY THIS SECTION.

9 (4) AN EMPLOYER SHALL BE DEEMED TO PROVIDE HEALTH CARE COVERAGE "DIRECTLY"
10 BY OFFERING HEALTH CARE COVERAGE IN COMPLIANCE WITH THIS SECTION TO ITS
11 EMPLOYEES THROUGH A HEALTH INSURANCE CARRIER, COMPANY, OR ORGANIZATION OR
12 BY ACTING AS A SELF-INSURER. TO COMPLY WITH THIS SECTION, THE HEALTH CARE
13 COVERAGE OFFERED OR PROVIDED BY THE EMPLOYER SHALL NOT REQUIRE THE
14 EMPLOYEE TO PAY MORE THAN TWENTY PERCENT OF THE PREMIUM COST OF SUCH
15 COVERAGE FOR THE EMPLOYEE AND SHALL NOT REQUIRE THE EMPLOYEE TO PAY MORE
16 THAN THIRTY PERCENT OF THE PREMIUM COST OF COVERAGE FOR DEPENDENTS OF THE
17 EMPLOYEE. IN THE ALTERNATIVE, AN EMPLOYER SHALL PROVIDE HEALTH CARE
18 COVERAGE "INDIRECTLY" BY PAYING PREMIUMS TO THE AUTHORITY IN SUCH AMOUNTS
19 AS ARE DETERMINED BY THE AUTHORITY TO FULFILL THE REQUIREMENTS OF THIS
20 SECTION.

21 (5) AS USED IN THIS SECTION, "EMPLOYER" MEANS ANY INDIVIDUAL, PERSON, FIRM,
22 PARTNERSHIP, ASSOCIATION, CORPORATION, LIMITED LIABILITY COMPANY, COMPANY,
23 OR OTHER ENTITY THAT REGULARLY EMPLOYS TWENTY OR MORE EMPLOYEES IN THE
24 STATE OF COLORADO, INCLUDING A RECEIVER OR OTHER PERSON ACTING ON BEHALF OF
25 THE EMPLOYER. THE TERM DOES NOT INCLUDE THE STATE OR ANY POLITICAL
26 SUBDIVISION THEREOF.

27 (6) THE GENERAL ASSEMBLY SHALL ENACT SUCH LAWS AS ARE NECESSARY TO
28 IMPLEMENT THE REQUIREMENT FOR HEALTH CARE COVERAGE PROVIDED IN THIS
29 SECTION; TO DEFINE TERMS THAT ARE NOT DEFINED IN THIS SECTION, INCLUDING THE
30 REQUIRED COMPONENTS OF HEALTH CARE COVERAGE; AND TO PROVIDE FOR THE
31 ADMINISTRATION OF THE AUTHORITY.

32 (7) THE EFFECTIVE DATE OF THIS SECTION SHALL BE DELAYED UNTIL THE GENERAL
33 ASSEMBLY HAS AN OPPORTUNITY TO ENACT APPROPRIATE LEGISLATION TO IMPLEMENT
34 THE REQUIREMENTS OF THIS SECTION. THE EFFECTIVE DATE, IN ANY EVENT, SHALL NOT
35 BE DELAYED BEYOND NOVEMBER 1, 2009.