

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 17-0143.01 Kristen Forrestal x4217

HOUSE BILL 17-1119

HOUSE SPONSORSHIP

Kraft-Tharp and Sias, Nordberg, Singer

SENATE SPONSORSHIP

Jahn and Tate,

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE PAYMENT OF WORKERS' COMPENSATION BENEFITS
102 TO INJURED EMPLOYEES OF UNINSURED EMPLOYERS.

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 carry workers' compensation insurance.

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.

The bill creates the uninsured employer board to establish the criteria for the payment of benefits, to set rates, to adjust claims, and to adopt rules. The board is required to adopt, by rule, a plan of operation to administer the fund and to institute procedures to collect money due to the fund.

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

SECTION 1. In Colorado Revised Statutes, **add** article 67 to title 8 as follows:

ARTICLE 67

Colorado Uninsured Employer Act

8-67-101. Short title. THE SHORT TITLE OF THIS ARTICLE 67 IS THE "COLORADO UNINSURED EMPLOYER ACT".

8-67-102. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE PURPOSE OF THIS ARTICLE 67 IS TO PROVIDE A MECHANISM FOR THE PAYMENT OF COVERED CLAIMS TO WORKERS INJURED WHILE EMPLOYED BY EMPLOYERS WHO HAVE FAILED TO OBTAIN AND MAINTAIN THE REQUIRED WORKERS' COMPENSATION INSURANCE AND TO AVOID EXCESSIVE DELAY IN PAYMENT AND FINANCIAL LOSS TO INJURED WORKERS.

(2) THEREFORE, IT IS THE INTENT OF THE GENERAL ASSEMBLY TO REQUIRE EMPLOYERS TO MAINTAIN WORKERS' COMPENSATION INSURANCE AND THAT THE REQUIREMENT BE VIGOROUSLY ENFORCED IN ORDER TO PROTECT COMPLIANT EMPLOYERS FROM THOSE WHO WOULD GAIN A COMPETITIVE ADVANTAGE AT THE EXPENSE OF THE SAFETY AND WELL-BEING OF EMPLOYEES.

8-67-103. Definitions. AS USED IN THIS ARTICLE 67, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BOARD" MEANS THE UNINSURED EMPLOYER BOARD CREATED

1 IN SECTION 8-67-106.

2 (2) "COVERED CLAIM" MEANS A CLAIM FOR BENEFITS RESULTING
3 FROM AN INJURY OCCURRING ON OR AFTER JANUARY 1, 2019, THAT HAS
4 BEEN ADJUDICATED TO BE COMPENSABLE, FOR WHICH THE EMPLOYER HAS
5 BEEN DETERMINED TO BE UNINSURED, AND FOR WHICH THE EMPLOYER HAS
6 FAILED TO PAY THE FULL AMOUNT OF BENEFITS AS ORDERED.

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

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

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

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

14 **8-67-104. Exclusions.** (1) THE FOLLOWING PERSONS MAY NOT
15 RECOVER COMPENSATION OR OTHER BENEFITS FROM THE FUND:

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

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

19 (c) A MEMBER OF A LIMITED LIABILITY COMPANY;

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

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

27 (f) AN INDIVIDUAL WHO IS NOT AN "EMPLOYEE" AS DEFINED IN

1 SECTIONS 8-40-202 AND 8-40-301 OR WHO IS OTHERWISE INELIGIBLE TO
2 RECEIVE BENEFITS UNDER ARTICLES 40 TO 47 OF THIS TITLE 8.

3 **8-67-105. Colorado uninsured employer fund.** (1) THE
4 COLORADO UNINSURED EMPLOYER FUND IS HEREBY CREATED IN THE
5 STATE TREASURY. A BOARD OF DIRECTORS ESTABLISHED UNDER SECTION
6 8-67-106 SHALL ADMINISTER THE FUND UNDER A PLAN OF OPERATION
7 ESTABLISHED UNDER SECTION 8-67-108.

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

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

21 (c) THE FUND CONSISTS OF:

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

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

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

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

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

6 (e) THE MONEY IN THE FUND:

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

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

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

12 **8-67-106. Creation of board.** (1) THERE IS HEREBY CREATED IN
13 THE DIVISION THE UNINSURED EMPLOYER BOARD, CONSISTING OF THE
14 DIRECTOR OF THE DIVISION OR THE DIRECTOR'S REPRESENTATIVE AND
15 FOUR MEMBERS APPOINTED BY THE GOVERNOR AND CONFIRMED BY THE
16 SENATE. APPOINTED MEMBERS OF THE BOARD MUST INCLUDE AT LEAST
17 ONE INDIVIDUAL TO REPRESENT EACH OF THE FOLLOWING:

18 (a) EMPLOYERS;

19 (b) LABOR ORGANIZATIONS;

20 (c) INSURERS; AND

21 (d) ATTORNEY REPRESENTATIVES OF INJURED WORKERS.

22 (2) THE BOARD SHALL EXERCISE ITS POWERS AND PERFORM ITS
23 FUNCTIONS UNDER THE DEPARTMENT AND THE DIRECTOR AS IF THE BOARD
24 WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER, AS
25 SUCH TRANSFER IS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT
26 OF 1968", ARTICLE 1 OF TITLE 24.

27 (3) THE APPOINTED MEMBERS OF THE BOARD SHALL SERVE FOR

1 TERMS OF THREE YEARS AND MAY BE REAPPOINTED; EXCEPT THAT, OF THE
2 MEMBERS FIRST APPOINTED, ONE SHALL SERVE FOR AN INITIAL TERM OF
3 THREE YEARS, TWO SHALL SERVE FOR INITIAL TERMS OF TWO YEARS, AND
4 ONE SHALL SERVE FOR AN INITIAL TERM OF ONE YEAR. A MEMBER MAY
5 SERVE NO MORE THAN THREE CONSECUTIVE TERMS.

6 (4) MEMBERS OF THE BOARD ARE NOT ENTITLED TO
7 COMPENSATION FOR THEIR SERVICES BUT SHALL BE REIMBURSED FOR
8 ACTUAL AND NECESSARY TRAVELING AND EXPENSES INCURRED IN THE
9 PERFORMANCE OF THEIR OFFICIAL DUTIES AS MEMBERS OF THE BOARD.

10 **8-67-107. Powers of the board.** (1) THE BOARD HAS THE
11 FOLLOWING POWERS AND DUTIES:

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

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

22 (I) MEDICAL BENEFITS;

23 (II) FUNERAL BENEFITS;

24 (III) TEMPORARY DISABILITY;

25 (IV) DEATH BENEFITS;

26 (V) PERMANENT TOTAL DISABILITY;

27 (VI) PERMANENT PARTIAL DISABILITY;

1 (VII) DISFIGUREMENT.

2 (c) TO ADJUST CLAIMS, WHICH MAY BE PERFORMED BY STAFF
3 EMPLOYED BY THE DIVISION OR BY CONTRACTING WITH ANY APPROPRIATE
4 ENTITIES DESIGNATED AS THIRD-PARTY ADMINISTRATORS. DESIGNATION
5 OF A THIRD-PARTY ADMINISTRATOR IS SUBJECT TO THE APPROVAL OF THE
6 DIRECTOR.

7 (d) TO PAY THE EXPENSES OF THE BOARD AS AUTHORIZED BY THIS
8 SECTION;

9 (e) TO DISSEMINATE INFORMATION REGARDING THE FUND;

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

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

22 (2) THE BOARD MAY:

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

25 (b) INTERVENE AS A PARTY BEFORE ANY COURT OR
26 ADMINISTRATIVE TRIBUNAL IN THIS STATE THAT HAS JURISDICTION OVER
27 AN UNINSURED EMPLOYER OR OTHER PARTY POTENTIALLY RESPONSIBLE

1 FOR PAYMENT OF BENEFITS;

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

4 (d) PERFORM OTHER ACTS NECESSARY OR PROPER TO EFFECTUATE
5 THE PURPOSES OF THIS ARTICLE 67; AND

6 (e) PURCHASE OR OTHERWISE OBTAIN INSURANCE AND
7 REINSURANCE POLICIES TO LIMIT THE LIABILITY OF THE FUND FOR
8 PAYMENT OF BENEFITS UNDER THIS ARTICLE 67.

9 **8-67-108. Plan of operation.** (1) THE BOARD SHALL, BY RULE,
10 ADOPT A PLAN OF OPERATION AND ANY AMENDMENTS NECESSARY OR
11 SUITABLE TO ASSURE THE FAIR, REASONABLE, AND EQUITABLE
12 ADMINISTRATION OF THE FUND.

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

18 (3) THE PLAN OF OPERATION SHALL:

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

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

23 (c) ESTABLISH PROCEDURES BY WHICH CLAIMS MAY BE FILED WITH
24 THE BOARD, INCLUDING ESTABLISHING ACCEPTABLE FORMS OF PROOF OF
25 COVERED CLAIMS;

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

1 (e) ESTABLISH REGULAR PLACES AND TIMES FOR MEETINGS OF THE
2 BOARD;

3 (f) ESTABLISH PROCEDURES FOR MAINTAINING RECORDS OF ALL
4 FINANCIAL TRANSACTIONS OF THE BOARD;

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

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

9 **8-67-109. Effect of benefits.** (1) NOTWITHSTANDING THIS
10 SECTION OR ARTICLES 40 TO 47 OF THIS TITLE 8, A PERSON SEEKING
11 BENEFITS UNDER THIS ARTICLE 67 FROM THE FUND IS DEEMED TO HAVE
12 ASSIGNED HIS OR HER RIGHTS UNDER ARTICLES 40 TO 47 OF THIS TITLE 8
13 TO THE BOARD TO THE EXTENT OF THE BENEFITS PAID BY THE FUND.
14 EVERY INJURED WORKER SEEKING THE PROTECTION OF THIS ARTICLE 67
15 SHALL COOPERATE WITH THE BOARD TO THE SAME EXTENT AS HE OR SHE
16 WOULD HAVE BEEN REQUIRED TO COOPERATE WITH THE EMPLOYER.

17 (2) IF AN EMPLOYER HAS NO INSURANCE AND FAILS TO PAY THE
18 FULL AMOUNT OF BENEFITS AS REQUIRED BY ARTICLES 40 TO 47 OF THIS
19 TITLE 8, THE INJURED WORKER MAY APPLY TO THE BOARD FOR PAYMENT
20 OF THE COMPENSATION BENEFITS, INCLUDING MEDICAL BENEFITS, TO
21 WHICH THE INJURED WORKER IS ENTITLED, TO BE PAID FROM THE FUND.
22 BENEFITS TO WHICH THE INJURED WORKER IS ENTITLED DO NOT INCLUDE
23 ANY PENALTIES ASSESSED AGAINST THE EMPLOYER.

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

27 (4) THE RECEIVER, LIQUIDATOR, OR STATUTORY SUCCESSOR OF AN

1 UNINSURED EMPLOYER IS BOUND BY SETTLEMENTS OF COVERED CLAIMS
2 WITH THE BOARD. THE COURT HAVING JURISDICTION SHALL GRANT SUCH
3 CLAIMS PRIORITY EQUAL TO THAT WHICH THE INJURED WORKER WOULD
4 HAVE BEEN ENTITLED IN THE ABSENCE OF THIS ARTICLE 67 AGAINST THE
5 ASSETS OF THE EMPLOYER. THE EXPENSES OF THE BOARD SHALL BE
6 ACCORDED THE SAME PRIORITY AS THE LIQUIDATOR'S EXPENSES.

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

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

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

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

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

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

20 (8) PAYMENT FROM THE FUND DOES NOT RELIEVE THE OBLIGATION
21 OF THE EMPLOYER TO PAY BENEFITS AS REQUIRED BY ARTICLES 40 TO 47
22 OF THIS TITLE 8 TO THE INJURED WORKER; EXCEPT THAT ANY BENEFITS DUE
23 TO THE INJURED WORKER WILL BE REDUCED BY THE AMOUNT OF THE
24 BENEFITS PAID BY THE FUND TO THE INJURED WORKER. ALL BENEFITS
25 REQUIRED PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8 REMAIN THE
26 LIABILITY OF THE EMPLOYER.

27 **8-67-110. Collection of benefit reimbursements.** (1) THE BOARD

1 SHALL INSTITUTE PRACTICES AND PROCEDURES AS IT DEEMS NECESSARY TO
2 COLLECT ANY MONEY DUE THE FUND IN THE FORM OF REIMBURSEMENT FOR
3 BENEFITS PAID FROM THE FUND TO AN INJURED WORKER.

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

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

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

27 **8-67-111. Payment of benefits.** (1) BENEFITS PAID UNDER THIS

1 ARTICLE 67 ARE TREATED AS BENEFITS PAID BY AN INSURER OR
2 SELF-INSURED EMPLOYER UNDER ARTICLES 40 TO 47 OF THIS TITLE 8.

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

6 (3) WHEN PAYING BENEFITS, THE BOARD IS ENTITLED TO CLAIM
7 ANY REDUCTION OF BENEFITS, TO CLAIM OVERPAYMENTS, OR TO MAKE ANY
8 OTHER ADJUSTMENTS ALLOWED UNDER ARTICLES 40 TO 47 OF THIS TITLE
9 8.

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

12 **8-67-112. Medical benefits.** (1) MEDICAL BENEFITS PAID UNDER
13 THIS ARTICLE 67 ARE TREATED AS BENEFITS PAID BY AN INSURER OR
14 SELF-INSURED EMPLOYER UNDER ARTICLES 40 TO 47 OF THIS TITLE 8.

15 (2) UPON ACCEPTANCE OF A CLAIM FOR BENEFITS FROM THE FUND,
16 THE BOARD MAY DESIGNATE A NEW AUTHORIZED TREATING PHYSICIAN.
17 APPLICATION TO THE FUND SHALL BE DEEMED AS ACCEPTANCE BY THE
18 INJURED WORKER OF THE NEW DESIGNATED PHYSICIAN IF THE DESIGNATION
19 IS MADE. THE PREVIOUS AUTHORIZED TREATING PHYSICIAN IS THEN
20 DEUNAUTHORIZED UPON ACCEPTANCE OF A CLAIM FOR BENEFITS.

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

24 **8-67-113. Procedure.** (1) A CONTROVERSY CONCERNING ANY
25 ISSUE ARISING UNDER THIS SECTION SHALL BE RESOLVED THROUGH
26 HEARINGS IN ACCORDANCE WITH SECTIONS 8-43-207 AND 8-43-207.5. IN
27 ANY SUCH HEARING, A DECISION OF THE BOARD TO DENY BENEFITS MAY

1 ONLY BE SET ASIDE UPON A SHOWING OF ABUSE OF DISCRETION.

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

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

10 **SECTION 2.** In Colorado Revised Statutes, 8-41-404, **amend** (3)
11 as follows:

12 **8-41-404. Construction work - proof of coverage required -**
13 **violation - penalty - definitions.** (3) A violation of subsection (1) of this
14 section is punishable by an administrative fine imposed pursuant to
15 section 8-43-409 (1)(b). The division shall transmit revenues collected
16 through the imposition of fines pursuant to this section to the state
17 treasurer, who shall credit them to the ~~workers' compensation cash fund~~
18 ~~created in section 8-44-112 (7).~~ Such revenues shall be appropriated to the
19 ~~division for the purpose of enforcing this section~~ COLORADO UNINSURED
20 EMPLOYER FUND CREATED IN SECTION 8-67-105.

21 **SECTION 3.** In Colorado Revised Statutes, 8-43-304, **amend** (1)
22 and (1.5)(b) as follows:

23 **8-43-304. Violations - penalty - offset for benefits obtained**
24 **through fraud - rules.** (1) Any employer or insurer, or any officer or
25 agent of either, or any employee, or any other person who violates ~~any~~
26 ~~provision of~~ articles 40 to 47 of this ~~title~~ TITLE 8, or does any act
27 prohibited thereby, or fails or refuses to perform any duty lawfully

1 enjoined within the time prescribed by the director or panel, for which no
2 penalty has been specifically provided, or fails, neglects, or refuses to
3 obey any lawful order made by the director or panel or any judgment or
4 decree made by any court as provided by ~~said~~ THE articles shall be subject
5 to such order being reduced to judgment by a court of competent
6 jurisdiction and shall also be punished by a fine of not more than one
7 thousand dollars per day for each ~~such~~ offense, to be apportioned, in
8 whole or part, at the discretion of the director or administrative law judge,
9 between the aggrieved party and the ~~workers' compensation cash fund~~
10 ~~created in section 8-44-112(7)(a)~~ COLORADO UNINSURED EMPLOYER FUND
11 CREATED IN SECTION 8-67-105; except that the amount apportioned to the
12 aggrieved party shall be a minimum of ~~fifty~~ TWENTY-FIVE percent of any
13 penalty assessed.

14 (1.5) (b) Fines imposed pursuant to this subsection (1.5) shall be
15 transmitted to the state treasurer, who shall credit ~~seventy-five percent of~~
16 ~~such~~ THE fines to the ~~general fund and twenty-five percent to the workers'~~
17 ~~compensation cash fund, created in section 8-44-112~~ COLORADO
18 UNINSURED EMPLOYER FUND CREATED IN SECTION 8-67-105.

19 **SECTION 4.** In Colorado Revised Statutes, 8-43-306, **amend** (2)
20 as follows:

21 **8-43-306. Collection of fines, penalties, and overpayments.**

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

26 **SECTION 5.** In Colorado Revised Statutes, 8-43-401, **amend**
27 (2)(b) as follows:

1 **8-43-401. District attorney or attorney of division to act for**
2 **director or office - penalties for failure of insurer to pay benefits.**

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

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

10 **8-43-408. Default of employer - additional liability.** (1) ~~In any~~
11 ~~case where the~~ IF AN employer is subject to ~~the provisions of~~ articles 40
12 to 47 of this ~~title~~ TITLE 8 and, at the time of an injury, has not complied
13 with the insurance provisions of ~~said~~ THOSE articles or has allowed the
14 required insurance to terminate, or has not effected a renewal thereof, the
15 employee, if injured, or, if killed, the employee's dependents may claim
16 the compensation and benefits provided in ~~said~~ THOSE articles. ~~and in any~~
17 ~~such case the amounts of compensation or benefits provided in said~~
18 ~~articles shall be increased fifty percent.~~

19 (5) IN ADDITION TO ANY COMPENSATION PAID OR ORDERED IN
20 ACCORDANCE WITH THIS SECTION OR ARTICLES 40 TO 47 OF THIS TITLE 8,
21 AN EMPLOYER WHO IS NOT IN COMPLIANCE WITH THE INSURANCE
22 PROVISIONS OF THOSE ARTICLES AT THE TIME AN EMPLOYEE SUFFERS A
23 COMPENSABLE INJURY OR OCCUPATIONAL DISEASE SHALL PAY AN AMOUNT
24 EQUAL TO TWENTY-FIVE PERCENT OF THE COMPENSATION OR BENEFITS TO
25 WHICH THE EMPLOYEE IS ENTITLED TO THE COLORADO UNINSURED
26 EMPLOYER FUND CREATED IN SECTION 8-67-105.

27 (6) AN EMPLOYER WHO FAILS TO COMPLY WITH A LAWFUL ORDER

1 OR JUDGMENT ISSUED PURSUANT TO SUBSECTION (2) OR (3) OF THIS
2 SECTION SHALL BE ORDERED TO PAY AN AMOUNT EQUAL TO TWENTY-FIVE
3 PERCENT OF THE COMPENSATION OR BENEFITS TO WHICH THE EMPLOYEE IS
4 ENTITLED TO THE COLORADO UNINSURED EMPLOYER FUND CREATED IN
5 SECTION 8-67-105 IN ADDITION TO ANY OTHER AMOUNT ORDERED
6 PURSUANT TO THIS SECTION OR ARTICLES 40 TO 47 OF THIS TITLE 8.

7 (7) THE OFFICERS AND DIRECTORS OF ANY CORPORATION AND
8 MEMBERS OF ANY LIMITED LIABILITY COMPANY OR OTHER LEGAL ENTITY
9 DETERMINED TO BE AN EMPLOYER AS DEFINED IN SECTION 8-40-203 MAY
10 BE HELD PERSONALLY LIABLE FOR PAYMENT OF ANY AMOUNTS ORDERED
11 PAID TO THE INJURED EMPLOYEE AND COLORADO UNINSURED EMPLOYER
12 FUND UNDER THIS SECTION UPON A SHOWING THAT THE CORPORATION,
13 LIMITED LIABILITY COMPANY, OR OTHER LEGAL ENTITY WAS NOT IN
14 COMPLIANCE WITH THE INSURANCE PROVISIONS OF ARTICLES 40 TO 47 OF
15 THIS TITLE 8 AT THE TIME AN EMPLOYEE BECAME ENTITLED TO RECEIVE
16 BENEFITS.

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

19 **8-43-409. Defaulting employers - penalties - enjoined from**
20 **continuing business - fines - procedure - definition.** (1.5) (a) A
21 VIOLATION THAT OCCURS MORE THAN SEVEN YEARS AFTER THE DATE OF
22 THE VIOLATION IS SUBJECT TO A FINE UP TO THE MAXIMUM AMOUNT
23 PERMITTED PURSUANT TO SUBSECTION (1)(b)(I) OF 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 INSURANCE OF A POTENTIAL
6 VIOLATION OF THE REQUIREMENTS OF ARTICLES 40 TO 47 OF THIS TITLE 8.

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

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

15 **8-46-102. Funding for subsequent injury fund and major**
16 **medical insurance fund.** (1) (a) For every compensable injury resulting
17 in death wherein there are no persons either wholly or partially dependent
18 upon the deceased, the employer or the employer's insurance carrier, if
19 any, shall pay to the division the sum of ~~fifteen~~ TWENTY thousand dollars,
20 not to exceed one hundred percent of the death benefit, to be transmitted
21 to the state treasurer, as custodian, and credited by the state treasurer to the
22 ~~subsequent injury~~ COLORADO UNINSURED EMPLOYER fund CREATED IN
23 SECTION 8-67-105. In the event that there are only partially dependent
24 persons dependent upon the deceased, the employer or the employer's
25 insurance carrier, if any, shall first pay such benefits to such partial
26 dependents and shall transmit the balance of the sum of ~~fifteen~~ TWENTY
27 thousand dollars to the state treasurer, as custodian, who shall credit the

1 same to the ~~subsequent injury~~ COLORADO UNINSURED EMPLOYER fund.

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

7 **SECTION 9.** In Colorado Revised Statutes, 8-47-203, **add**
8 (1)(c)(III) as follows:

9 **8-47-203. Access to files, records, and orders.**

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

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

19 **SECTION 10. Act subject to petition - effective date.** This act
20 takes effect July 1, 2018; except that, if a referendum petition is filed
21 pursuant to section 1 (3) of article V of the state constitution against this
22 act or an item, section, or part of this act within the ninety-day period after
23 final adjournment of the general assembly, then the act, item, section, or
24 part will not take effect unless approved by the people at the general
25 election to be held in November 2018 and, in such case, will take effect
26 on the date of the official declaration of the vote thereon by the governor.