

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

ENGROSSED

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

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

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.*

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

24 **10-22-107. Legislative health benefit exchange implementation**
25 **review committee - creation - duties.** (1) For the purposes of guiding
26 implementation of an exchange in Colorado, making recommendations
27 to the general assembly, and ensuring that the interests of Coloradans are

1 protected and furthered, there is hereby created the legislative health
2 benefit exchange implementation review committee. The committee shall
3 meet on or before August 1, 2011, and thereafter at the call of the chair
4 ~~as often as~~ AT LEAST TWO TIMES DURING EACH CALENDAR YEAR, BUT NO
5 MORE THAN five times during each calendar year. The committee may use
6 the legislative council staff to assist its members in researching any
7 matters.

8 (7) THE BOARD SHALL SEND THE COMMITTEE AN ANNUAL REPORT
9 THAT CONTAINS THE FINANCIAL AND OPERATIONAL PLANS OF THE
10 EXCHANGE. The committee shall review the financial and operational
11 plans of the exchange.

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

14 **10-22-108. Moneys for implementation, operation, and**
15 **sustainability of the exchange.** Moneys received by the board for the
16 implementation of this article, AND FOR BUILDING RESERVES FOR THE
17 OPERATION AND SUSTAINABILITY OF THE EXCHANGE PURSUANT TO
18 SECTION 10-22-109, must be transferred directly to the exchange for the
19 purposes of this article. The board shall deposit any moneys received in
20 a banking institution within or outside the state. Moneys from the general
21 fund shall not be used for the implementation of this article, except for
22 the sums specified in section 10-22-107 (3) and for legislative staff
23 agency services. The ACCOUNT OF THE banking institution must be
24 insured by the federal deposit insurance corporation and compliant with
25 the ~~"Savings and Loan Association~~ "Public Deposit Protection Act",
26 article ~~47~~ 10.5 of title 11, C.R.S.

27 **SECTION 5.** In Colorado Revised Statutes, **add** 10-22-109,

1 10-22-110, and 10-22-111 as follows:

2 **10-22-109. Funding for the operation of the exchange and**
3 **reserves - special fees - rules.** (1) ON AND AFTER JANUARY 1, 2014,
4 AMONG OTHER FUNDING SOURCES DERIVED THROUGH THE OPERATION OF
5 THE EXCHANGE, FUNDING FOR THE EXCHANGE MAY BE FROM THE
6 FOLLOWING SOURCES:

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

9 (b) ANY MONEYS ACCEPTED THROUGH GIFTS, GRANTS, OR
10 DONATIONS RECEIVED BY THE BOARD FOR OPERATION, RESERVES, AND
11 SUSTAINABILITY OF THE EXCHANGE, INCLUDING CONTRIBUTIONS RECEIVED
12 PURSUANT TO THE PREMIUM TAX CREDIT ALLOCATION IN SECTION
13 10-22-110; AND

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

16 (2) (a) ON AND AFTER JANUARY 1, 2014, THROUGH DECEMBER 31,
17 2016, THE BOARD SHALL ASSESS SPECIAL FEES AGAINST INSURERS IN AN
18 AMOUNT NECESSARY TO PROVIDE FUNDING FOR THE EXCHANGE. THE
19 BOARD SHALL DETERMINE THE AMOUNT OF THE SPECIAL FEES BASED ON
20 THE BOARD-APPROVED FINANCIAL PLAN AND ANTICIPATED BUDGETARY
21 NEEDS FOR THE UPCOMING YEAR TO COMPLY WITH THIS ARTICLE AND
22 ASSOCIATED FEDERAL REQUIREMENTS. THE SPECIAL FEES MUST NOT
23 EXCEED ONE DOLLAR AND EIGHTY CENTS PER NUMBER OF LIVES INSURED
24 PER MONTH; EXCEPT THAT THE SPECIAL FEES ASSESSED FOR LIVES INSURED
25 UNDER DENTAL PLANS MUST NOT EXCEED EIGHTEEN CENTS PER NUMBER
26 OF LIVES INSURED PER MONTH. THE BOARD SHALL USE SPECIAL FEES
27 ASSESSED PURSUANT TO THIS SECTION FOR THE OPERATING EXPENSES OF

1 THE EXCHANGE, THE RESERVES OF THE EXCHANGE, AND RELATED
2 AGREEMENTS.

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

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

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

19 (3) THE COMMISSIONER SHALL PROMULGATE RULES TO IMPLEMENT
20 THIS SECTION THAT INCLUDE:

21 (a) THE REASONABLE TIME PERIODS FOR THE BILLING AND
22 COLLECTION OF THE SPECIAL FEES; AND

23 (b) THE PROCESS FOR DETERMINING THE ALLOCATION OF THE
24 ASSESSMENT AMONG INSURERS, INCLUDING THE PROCESS FOR OBTAINING
25 ACCURATE INFORMATION ABOUT THE NUMBER OF POLICIES ISSUED AND
26 LIVES INSURED BY A INSURER WITHIN THE SIX MONTHS PRIOR TO THE
27 ASSESSMENT.

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

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

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

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

16 (I) THE INSURANCE COMPANY DECLARES WITH ITS QUARTERLY TAX
17 PAYMENT DUE ON OR ABOUT JULY 31 IN THE MANNER PRESCRIBED BY THE
18 COMMISSIONER ITS INTENT TO CONTRIBUTE TO THE EXCHANGE ON OR
19 BEFORE OCTOBER 31 AN AMOUNT OF MONEY EQUAL TO THE PREMIUM
20 TAXES PAID BY THE COMPANY PURSUANT TO THE JULY 31 TAX PAYMENT
21 OR A LESSER AMOUNT AS SPECIFIED BY THE COMMISSIONER IF REQUIRED
22 PURSUANT TO PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION;

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

25 (III) THE INSURANCE COMPANY RECEIVES AN ALLOCATION NOTICE
26 FROM THE COMMISSIONER AND THE INSURANCE COMPANY MAKES THE
27 CONTRIBUTION TO THE EXCHANGE AS SPECIFIED IN THE ALLOCATION

1 NOTICE ON OR BEFORE OCTOBER 31.

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

6 (c) THE BOARD SHALL PROMPTLY NOTIFY THE COMMISSIONER
7 WHEN IT RECEIVES A CONTRIBUTION PURSUANT TO THIS SECTION OF THE
8 AMOUNT AND DATE OF THE CONTRIBUTION AND THE NAME OF THE
9 CONTRIBUTOR.

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

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

21 (II) POST ON THE DIVISION'S WEB SITE WHETHER THE FULL AMOUNT
22 OF TAX CREDITS AUTHORIZED TO BE ALLOCATED EACH YEAR HAS BEEN
23 ALLOCATED.

24 (b) SUBJECT TO PARAGRAPH (c) OF THIS SUBSECTION (4), THE
25 COMMISSIONER SHALL ALLOCATE NO MORE THAN A TOTAL OF FIVE
26 MILLION DOLLARS OF PREMIUM TAX CREDITS PER YEAR. THE
27 COMMISSIONER SHALL ALLOCATE TO AN INSURANCE COMPANY THAT HAS

1 DECLARED ITS INTENT TO CONTRIBUTE TO THE EXCHANGE PURSUANT TO
2 THIS SECTION TAX CREDITS IN AN AMOUNT EQUAL TO THE AMOUNT OF
3 PREMIUM TAXES PAID BY THE INSURANCE COMPANY IN ITS QUARTERLY
4 TAX PAYMENT DUE ON OR ABOUT JULY 31 IN THE ORDER IN WHICH THE
5 DIVISION RECEIVES SUCH QUARTERLY TAX PAYMENTS UNTIL THE FULL
6 AMOUNT OF CREDITS AVAILABLE PURSUANT TO THIS SECTION HAS BEEN
7 ALLOCATED; EXCEPT THAT, IF SUCH AMOUNT OF TAXES OR THE SUM OF ALL
8 THE TAXES FILED BY ALL THE INSURANCE COMPANIES ON ANY ONE DAY
9 WOULD EXCEED, SINGLY OR IN THE AGGREGATE, THE ANNUAL MAXIMUM
10 AGGREGATE AMOUNT OF TAX CREDITS AVAILABLE UNDER THIS SECTION,
11 THE COMMISSIONER SHALL REDUCE THE ALLOCATION TO THE INSURANCE
12 COMPANY WHOSE CONTRIBUTION FIRST EXCEEDS THE ANNUAL MAXIMUM
13 AGGREGATE TO THE AMOUNT NEEDED TO SATISFY THE ANNUAL MAXIMUM
14 AGGREGATE. IF THE COMMISSIONER IS UNABLE TO DETERMINE THE ORDER
15 OF RECEIPT OF TAX PAYMENTS ON THAT DAY, THE COMMISSIONER SHALL
16 ALLOCATE THE TAX CREDITS TO THE COMPANY OR AMONG THE COMPANIES
17 ON A PRO RATA BASIS BASED ON THE RATIO SUCH COMPANY'S QUARTERLY
18 TAX PAYMENT BEARS TO THE TOTAL AMOUNT OF ALL SUCH COMPANIES'
19 QUARTERLY TAX PAYMENTS UNTIL THE FULL AMOUNT OF CREDITS
20 AVAILABLE PURSUANT TO THIS SECTION HAS BEEN ALLOCATED.

21 (c) (I) THE COMMISSIONER SHALL ALLOW INSURANCE COMPANIES
22 TO DECLARE THEIR INTENT TO CONTRIBUTE TO THE EXCHANGE PURSUANT
23 TO THIS SECTION ON THE INSURANCE COMPANIES' QUARTERLY TAX
24 PAYMENTS DUE ON OR ABOUT OCTOBER 31 AND SHALL SEND SUCH
25 COMPANIES ALLOCATION NOTICES BY FEBRUARY 1 IF:

26 (A) THE FULL AMOUNT OF TAX CREDITS AVAILABLE IN ANY ONE
27 YEAR HAVE NOT BEEN FULLY ALLOCATED BY THE COMMISSIONER

1 PURSUANT TO STATEMENTS OF INTENT FILED WITH INSURANCE COMPANIES'
2 QUARTERLY TAX PAYMENTS DUE ON OR ABOUT JULY 31; OR

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

6 (II) AN INSURANCE COMPANY THAT DECLARES ITS INTENT TO
7 CONTRIBUTE TO THE EXCHANGE PURSUANT TO THIS PARAGRAPH (C) SHALL
8 MAKE THE CONTRIBUTION TO THE EXCHANGE AS SPECIFIED IN THE
9 ALLOCATION NOTICE ON OR BEFORE MARCH 1 AND MAY CLAIM THE TAX
10 CREDIT ON ONE OR MORE SUBSEQUENT QUARTERLY OR ANNUAL TAX
11 PAYMENTS DUE ON OR ABOUT MARCH 1.

12 (5) THE BOARD SHALL USE MONEYS CONTRIBUTED TO THE
13 EXCHANGE PURSUANT TO THIS SUBSECTION (3) AND INTEREST DERIVED
14 FROM THE DEPOSIT AND INVESTMENT OF THE MONEYS TO OPERATE AND
15 SUSTAIN THE EXCHANGE AND TO BUILD RESERVES.

16 **10-22-111. Tax exemption.** THE EXCHANGE IS EXEMPT FROM ANY
17 TAX LEVIED BY THIS STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

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

20 **38-13-116.5. Unclaimed property trust fund - creation -**
21 **payments - interest - appropriations - records - rules - repeal.**

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

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

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

6 **SECTION 7. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.