

**NOTICE OF ELECTION TO INCREASE TAXES  
ON A CITIZEN PETITION**

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**STATEWIDE ELECTION DAY IS  
Tuesday, November 8, 2016**

Voter service and polling centers open 7 a.m. to 7 p.m.

This election is a mail ballot election.  
For information about voter service and polling centers, please contact  
your county election office. Contact information for county election  
offices appears inside the back cover of this booklet.

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**2016 STATE BALLOT  
INFORMATION BOOKLET**

*and*

**Recommendations on  
Retention of Judges**

Legislative Council of the  
Colorado General Assembly

*Research Publication No. 669-6*

A "**YES/FOR**" vote on any ballot issue is a vote **IN FAVOR OF** changing current law or existing circumstances, and a "**NO/AGAINST**" vote on any ballot issue is a vote **AGAINST** changing current law or existing circumstances.

This publication, as well as a link to the full text of the fiscal impact statements for each measure, can be found at:  
**[www.coloradobluebook.com](http://www.coloradobluebook.com)**.

Contact information for county election offices appears inside the back cover of this booklet.

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September 12, 2016

This booklet provides information on the nine statewide measures on the November 8, 2016, ballot and on the judges who are on the ballot for retention in your area. The information is presented in two sections.

### Section One — Analyses, Titles, and Text

**Analyses.** Each statewide measure receives an analysis that includes a description of the measure and major arguments for and against. Careful consideration has been given to the arguments in an effort to fairly represent both sides of the issue. Each analysis also includes an estimate of the fiscal impact of the measure. More information on the fiscal impact of measures can be found at [www.coloradobluebook.com](http://www.coloradobluebook.com). The state constitution requires that the nonpartisan research staff of the General Assembly prepare these analyses and distribute them in a ballot information booklet to registered voter households.

**Titles and text.** Following each analysis is the title that appears on the ballot, which includes information about whether the measure changes the constitution or statute. Following the ballot title is the legal language of each measure, which shows new laws in capitalized letters and laws that are being eliminated in strikeout type.

#### *Amendments and Propositions*

A measure placed on the ballot by the state legislature that amends the state constitution is labeled an "Amendment," followed by a letter. A measure placed on the ballot by the state legislature that amends the state statutes is labeled a "Proposition," followed by a double letter.

A measure placed on the ballot through the signature-collection process that amends the state constitution is labeled an "Amendment," followed by a number between 1 and 99. A measure placed on the ballot through the signature-collection process that amends the state statutes is labeled a "Proposition," followed by a number between 100 and 199.

#### *Constitutional vs. Statutory Changes*

The first line of the analysis of each measure indicates whether the measure is a change to the constitution or statute. Of the nine measures on the ballot, six propose changes to the state constitution, and three propose changes to the state statutes. Voter approval is required in the future to change any constitutional measure adopted by the voters, although the legislature may adopt statutes that clarify or implement these constitutional measures as long as they do not conflict with the constitution. The state legislature, with the approval of the Governor, may change any statutory measure in the future without voter approval.

## **Section Two — Recommendations on Retention of Judges**

The second section of the printed Blue Book contains information about the performances of the Colorado Supreme Court justices, the Colorado Court of Appeals judges, and district and county court judges in your area who are on this year's ballot. The information was prepared by the state commission and district commissions on judicial performance. The narrative for each judge includes a recommendation stated as "BE RETAINED," "NOT BE RETAINED," or "NO OPINION." Please refer to the [Colorado Office of Judicial Performance Evaluation's website](#) for this information.

## **Information on Local Election Officials**

The booklet concludes with addresses and telephone numbers of local election officials. Your local election official can provide you with information on voter service and polling centers, replacement ballots, and early voting.

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**Voter "Cheat Sheet" for Measures  
on 2016 Ballot**

	YES	NO
Amendment T: No Exception to Involuntary Servitude Prohibition	<input type="checkbox"/>	<input type="checkbox"/>
Amendment U: Exempt Certain Possessory Interests from Property Taxes	<input type="checkbox"/>	<input type="checkbox"/>
Amendment 69: Statewide Health Care System	<input type="checkbox"/>	<input type="checkbox"/>
Amendment 70: State Minimum Wage	<input type="checkbox"/>	<input type="checkbox"/>
Amendment 71: Requirements for Constitutional Amendments	<input type="checkbox"/>	<input type="checkbox"/>
Amendment 72: Increase Cigarette and Tobacco Taxes	<input type="checkbox"/>	<input type="checkbox"/>
Proposition 106: Access to Medical Aid-in-Dying Medication	<input type="checkbox"/>	<input type="checkbox"/>
Proposition 107: Presidential Primary Elections	<input type="checkbox"/>	<input type="checkbox"/>
Proposition 108: Unaffiliated Voter Participation in Primary Elections	<input type="checkbox"/>	<input type="checkbox"/>

***\*\*This is not a ballot\*\****





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## Amendment T No Exception to Involuntary Servitude Prohibition

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### ANALYSIS

#### Amendment T proposes amending the Colorado Constitution to:

- ◆ remove language that currently allows slavery and involuntary servitude to be used as punishment for the conviction of a crime.

#### Summary and Analysis

**Definitions.** "Slavery," as defined by Black's Law Dictionary, is a situation in which one person has absolute power over the life, fortune, and liberty of another person. The U.S. Supreme Court has defined "involuntary servitude" as a condition of servitude in which one person is forced to work for another person by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.

**U.S. and Colorado Constitutions.** The 13th Amendment to the U.S. Constitution was passed in 1865 to prohibit slavery and involuntary servitude, except as punishment for a crime for which a person has been found guilty. The amendment gives the U.S. Congress the power to enforce the amendment through legislation.

Similar to the U.S. Constitution, under Article II, Section 26 of the Colorado Constitution, slavery and involuntary servitude are prohibited, except as punishment for the conviction of a crime. Amendment T removes this exception.

**Offender work requirements in the criminal justice system.** The courts have ruled that work requirements resulting from a conviction of a crime are allowable under the above provisions of the U.S. and Colorado Constitutions. Offender work requirements currently used in the Colorado criminal justice system may take the following forms:

- *Prison work requirements.* All eligible offenders are expected to work unless assigned to an approved education or training program. Offenders are not required to work, but those who refuse to participate may face a reduction in or loss of privileges or a delayed parole eligibility date.
- *Community service.* A judge may sentence certain offenders to work a specific number of hours providing community service. These programs emphasize individual restitution for offenses through contributions to the community. In some cases, community service is a condition of probation.
- *Probation.* The courts require that an offender sentenced to probation maintain suitable employment and/or pursue employment-related education or vocational training.

*For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

#### Argument For

1) The section of the Colorado Constitution that allows slavery and involuntary servitude as punishment for a crime should be updated because it represents a time in the United States when not all people were seen as human beings or treated with dignity. Removing the language reflects fundamental values of freedom and equality, and makes an important symbolic statement. There are 25 other states that do not have any language related to slavery and involuntary servitude in their constitutions, and both prison work and community service programs are able to operate within those states.

## **Argument Against**

1) Amendment T may result in legal uncertainty around current offender work practices in the state. Prison work requirements provide structure and purpose for offenders, while enabling skill building and helping to reduce recidivism. Community service programs allow offenders to engage with the community and make amends for their crimes.

## **Estimate of Fiscal Impact**

**State revenue and spending.** Amendment T may impact both state revenue and spending. Should Amendment T be interpreted as prohibiting community service sentences, more fines may be imposed in place of community service and fewer probation fees may be collected from those currently sentenced to community service as the sole condition of probation. Amendment T may also impact costs and workload for the Department of Law, Department of Corrections, and Judicial Department due to potential legal challenges.

**Local government impact.** Amendment T may increase jail and county court costs for local governments and impact revenue and workload for the City and County of Denver due to potential legal challenges.

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**Amendment T  
No Exception to Involuntary  
Servitude Prohibition**

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**TITLE AND TEXT**

The ballot title below is a summary drafted by the professional legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado constitution. The text of the measure that will appear in the Colorado constitution below was referred to the voters because it passed by a two-thirds majority vote of the state senate and the state house of representatives.

***Ballot Title:***

Shall there be an amendment to the Colorado constitution concerning the removal of the exception to the prohibition of slavery and involuntary servitude when used as punishment for persons duly convicted of a crime?

***Text of Measure:***

*Be It Resolved by the Senate of the Seventieth General Assembly of the State of Colorado, the House of Representatives concurring herein:*

**SECTION 1.** At the election held on November 8, 2016, the secretary of state shall submit to the registered electors of the state the ballot title set forth in section 2 for the following amendment to the state constitution:

In the constitution of the state of Colorado, **amend** section 26 of article II as follows:

**Section 26. Slavery prohibited.** There shall never be in this state either slavery or involuntary servitude. ~~except as a punishment for crime, whereof the party shall have been duly convicted.~~

**SECTION 2.** Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall there be an amendment to the Colorado constitution concerning the removal of the exception to the prohibition of slavery and involuntary servitude when used as punishment for persons duly convicted of a crime?"

**SECTION 3.** Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if a majority of the electors voting on the ballot title vote "Yes/For", then the amendment will become part of the state constitution.

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**Amendment U  
Exempt Certain Possessory Interests  
from Property Taxes**

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**ANALYSIS**

**Amendment U proposes amending the Colorado Constitution to:**

- ◆ beginning with tax year 2018, eliminate property taxes for individuals or businesses that use government-owned property for a private benefit worth \$6,000 or less in market value; and
- ◆ beginning with tax year 2019, and every two years thereafter, adjust the \$6,000 exemption threshold to account for inflation.

**Summary and Analysis**

***Property taxes and possessory interests.*** Property taxes are primarily based on the value of land, houses, other buildings, and business equipment. Individuals and businesses pay property taxes to various local governments, such as cities, counties, school districts, and special districts, each of which imposes its own tax rate on property. Property taxes pay for a variety of local government services, including public education, police and fire services, roads and bridges, parks and recreation facilities, hospitals, and libraries.

When an individual or business uses government-owned land or equipment for private purposes, a possessory interest is created. Although government-owned property is exempt from taxes, the financial benefit that a business or individual obtains from using that land or equipment is not. For example, some ranchers lease land from the federal government for cattle grazing. Other businesses lease land to provide a recreational activity, such as skiing or river rafting, or are given a contract to provide a specific service on public land, such as operating a snack bar at a national park. Under current law, the value of a private financial benefit is considered a possessory interest and is subject to property taxes. Typically, the value assigned to a possessory interest is equal to the cost of the lease to use the government-owned land; however, county assessors may use other methods to determine the actual value of a possessory interest prior to determining the tax owed.

There are about 7,000 total possessory interests in Colorado. In 2015, the market value of all possessory interests is about \$315.0 million, which is 0.04 percent of the total market value of all taxable property in the state. At this value, total property tax payments for all possessory interests of any value are approximately \$7.0 million annually.

***How does Amendment U change the taxation of possessory interests?*** Starting in 2018, Amendment U exempts a possessory interest from property taxation if the market value of the interest is \$6,000 or less. Beginning in tax year 2019, and every two years thereafter, the \$6,000 threshold is adjusted to account for inflation. Amendment U exempts approximately 5,100 of the 7,000 possessory interests in the state. In total, these possessory interests pay about \$125,000 in property taxes annually, or about \$24, on average, for each possessory interest.

*For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

## **Argument For**

1) Amendment U reduces the administrative burden of collecting a tax that in many cases costs more to collect than it brings in to local governments. For example, the majority of possessory interests in the state are for agricultural leases, many of which are charged less than \$10 in property taxes. The cost of administering this tax — mailing notices, maintaining tax rolls, and collecting and enforcing the tax — often exceeds this amount.

## **Argument Against**

1) Amendment U provides an unfair tax break for businesses and individuals who use government-owned land for their private financial benefit, and puts a greater tax burden on others to pay for local government services. These property taxes should continue being collected uniformly from all taxpayers. A small tax bill does not justify exempting businesses or individuals from paying the tax on the private benefit they enjoy on government land.

## **Estimate of Fiscal Impact**

**Local government impact.** Amendment U is expected to reduce property taxes for all local governments statewide by up to \$125,000 per year, beginning in budget year 2018-19. Some county governments may experience minor cost savings as a result of fewer properties to assess and fewer tax notifications to mail and process. Costs will only be saved in those counties that assess property taxes on possessory interests with an actual value of \$6,000 or less.

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**Amendment U**  
**Exempt Certain Possessory Interests**  
**from Property Taxes**

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**TITLE AND TEXT**

The ballot title below is a summary drafted by the professional legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado constitution. The text of the measure that will appear in the Colorado constitution below was referred to the voters because it passed by a two-thirds majority vote of the state senate and the state house of representatives.

***Ballot Title:***

Shall there be an amendment to the Colorado constitution concerning an exemption from property taxation for a possessory interest in real property if the actual value of the interest is less than or equal to six thousand dollars or such amount adjusted for inflation?

***Text of Measure:***

*Be It Resolved by the Senate of the Seventieth General Assembly of the State of Colorado, the House of Representatives concurring herein:*

**SECTION 1.** At the election held on November 8, 2016, the secretary of state shall submit to the registered electors of the state the ballot title set forth in section 2 for the following amendment to the state constitution:

In the constitution of the state of Colorado, section 3 of article X, **amend** (1) (b) as follows:

**Section 3. Uniform taxation - exemptions.** (1) (b) (I) Residential real property, which shall include all residential dwelling units and the land, as defined by law, on which such units are located, and mobile home parks, but shall not include hotels and motels, shall be valued for assessment at twenty-one percent of its actual value. For the property tax year commencing January 1, 1985, the general assembly shall determine the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property. For each subsequent year, the general assembly shall again determine the percentage of the aggregate statewide valuation for assessment which is attributable to each class of taxable property, after adding in the increased valuation for assessment attributable to new construction and to increased volume of mineral and oil and gas production. For each year in which there is a change in the level of value used in determining actual value, the general assembly shall adjust the ratio of valuation for assessment for residential real property which is set forth in this paragraph (b) as is necessary to insure that the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property shall remain the same as it was in the year immediately preceding the year in which such change occurs. Such adjusted ratio shall be the ratio of valuation for assessment for residential real property for those years for which such new level of value is used. In determining the adjustment to be made in the ratio of valuation for assessment for residential real property, the aggregate statewide valuation for assessment that is attributable to residential real property shall be calculated as if the full actual value of all owner-occupied primary residences that are partially exempt from taxation pursuant to section 3.5 of this article was subject to taxation. All other taxable property shall be valued for assessment at twenty-nine percent of its actual value. However, the valuation for assessment for producing mines, as defined by law, and lands or leaseholds producing oil or gas, as defined by law, shall be a portion of the actual annual or actual average annual production therefrom, based upon the value of the unprocessed material, according to procedures prescribed by law for different types of minerals. Non-producing unpatented mining claims, which are possessory interests in real property by virtue of leases from the United States of America, shall be exempt from property taxation. OTHER POSSESSORY INTERESTS IN REAL PROPERTY SHALL BE EXEMPT FROM PROPERTY TAXATION AS SPECIFIED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

(II) (A) FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2018, A POSSESSORY INTEREST IN REAL PROPERTY SHALL BE EXEMPT FROM THE LEVY AND COLLECTION OF PROPERTY TAX IF THE ACTUAL VALUE OF SUCH POSSESSORY INTEREST IN REAL PROPERTY IS LESS THAN OR EQUAL TO SIX THOUSAND DOLLARS.

(B) FOR PROPERTY TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2019, A POSSESSORY INTEREST IN REAL PROPERTY SHALL BE EXEMPT FROM THE LEVY AND COLLECTION OF PROPERTY TAX IF THE ACTUAL VALUE OF SUCH POSSESSORY INTEREST IN REAL PROPERTY IS LESS THAN OR EQUAL TO SIX THOUSAND DOLLARS ADJUSTED BIENNIALY TO ACCOUNT FOR INFLATION AS DEFINED IN SECTION 20 (2) (f) OF ARTICLE X OF THIS CONSTITUTION. ON OR BEFORE NOVEMBER 1, 2018, AND ON OR BEFORE NOVEMBER 1 OF EACH EVEN-NUMBERED YEAR THEREAFTER, THE PROPERTY TAX ADMINISTRATOR SHALL CALCULATE THE AMOUNT OF THE EXEMPTION FOR THE NEXT TWO-YEAR CYCLE USING INFLATION FOR THE PRIOR TWO CALENDAR YEARS AS OF THE DATE OF THE CALCULATION. THE ADJUSTED EXEMPTION SHALL BE ROUNDED UPWARD TO THE NEAREST ONE-HUNDRED-DOLLAR INCREMENT. THE ADMINISTRATOR SHALL CERTIFY THE AMOUNT OF THE EXEMPTION FOR THE NEXT TWO-YEAR CYCLE AND PUBLISH THE AMOUNT IN A MANNER PROVIDED BY LAW.

**SECTION 2.** Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall there be an amendment to the Colorado constitution concerning an exemption from property taxation for a possessory interest in real property if the actual value of the interest is less than or equal to six thousand dollars or such amount adjusted for inflation?"

**SECTION 3.** Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if a majority of the electors voting on the ballot title vote "Yes/For", then the amendment will become part of the state constitution.



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## Amendment 69 Statewide Health Care System

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### ANALYSIS

**Amendment 69 proposes amending the Colorado Constitution to:**

- ◆ establish ColoradoCare, a statewide system to finance health care services for Colorado residents;
- ◆ create new taxes on most sources of income, redirect existing state and federal health funding to pay for the services and administration of ColoradoCare, exempt ColoradoCare from constitutional limits on revenue, and require approval by Colorado residents for future tax increases;
- ◆ establish a board of trustees, initially appointed and then elected, to oversee the operations of ColoradoCare; and
- ◆ allow the board to terminate ColoradoCare if the waivers, exemptions, and agreements from the federal government are not sufficient for its fiscally sound operation.

### **Summary and Analysis**

**Background.** Health care in Colorado is currently paid for by a variety of public and private sources, including private health insurance and government programs such as Medicaid and Medicare. Under the federal Patient Protection and Affordable Care Act, all people, with limited exceptions, are required to have health insurance coverage of some kind or pay a tax penalty. The majority of Coloradans receive health insurance through an employer. If employer-based health insurance is not available or is declined, a person may purchase private insurance through an insurance broker, the state health insurance exchange, or directly from an insurer. Persons meeting age, income, or other eligibility criteria may qualify for health care coverage through a publicly funded program such as Medicare, Medicaid, or military and veterans' health care programs.

**Persons eligible for ColoradoCare coverage.** If Amendment 69 is passed and fully implemented, Colorado residents will be eligible for health coverage through ColoradoCare, a new statewide system to finance health care services. ColoradoCare will pay for covered health care services for Coloradans who do not have other forms of health coverage and will provide supplemental coverage to persons who have other coverage. ColoradoCare could replace the current health coverage for many people. However, some people may still choose to purchase private health insurance, and certain government health programs will continue to provide health coverage. Persons with these alternate forms of coverage will still be required to pay the new taxes that fund ColoradoCare.

ColoradoCare, when fully implemented, will affect government health programs and the workers' compensation system. Medicaid and the Children's Basic Health Plan will be administered by ColoradoCare, and the state and federal funds for these programs will be redirected to ColoradoCare. Medicare, military and veterans' health care programs, and certain federally operated health care programs will continue to operate, and persons receiving coverage through these programs will be eligible for supplemental coverage through ColoradoCare. ColoradoCare will also pay the medical portion of workers' compensation benefits, which is currently covered by workers' compensation insurance policies that are purchased by employers.

**Initial implementation.** If Amendment 69 is passed by voters, several steps must be taken before ColoradoCare may begin paying for health care services. The ColoradoCare board of trustees, together with various state agencies, must seek federal approval to transfer administration of the Medicaid program to ColoradoCare and waive various requirements of the federal Patient Protection and Affordable Care Act. The federal act allows states to develop alternative ways to pay for health care services, provided that certain federal requirements are met. Amendment 69 allows the board to terminate ColoradoCare if the waivers, exemptions, and agreements from the federal government are not sufficient for its fiscally sound operation.

During the 2017 legislative session, the state legislature must pass laws to implement Amendment 69. This includes laws that implement the new taxes, allocate state and federal funds, eliminate the state health insurance

exchange, transfer the responsibility for administering various state health care programs to ColoradoCare, and amend workers' compensation laws.

During the initial implementation phase, ColoradoCare will not pay for health care services. Individuals will be responsible for maintaining health insurance coverage and paying any necessary premiums until ColoradoCare is fully implemented and begins making payments for health care services. During this phase, taxpayers will pay the taxes that fund ColoradoCare at the initial, lower tax rates. Both the initial and full tax rates are detailed in the "Taxpayer impacts" section below.

**Health care benefits and delivery of services.** Amendment 69 outlines the types of health services that ColoradoCare must cover, which are the same services as those that are currently required to be covered by private health insurance under federal law. These services include primary and specialty care, hospitalization, prescription drugs, medical equipment, and emergency and urgent care. The ColoradoCare board of trustees may also specify additional covered health care services. ColoradoCare will contract with health care providers to pay for covered health care services. The ColoradoCare board will determine the rates paid to participating providers. Persons accessing health care services through ColoradoCare may choose a primary care provider from among those participating in ColoradoCare.

ColoradoCare is prohibited from charging deductibles, but may require copayments for some health care services. A deductible is the amount of medical costs a patient must pay before an insurance plan starts to cover medical costs. Typically, a copayment is a fixed amount that a patient must pay at the time of service. Consistent with current federal law, ColoradoCare may not charge copayments for primary and preventative care services, such as annual doctor visits. Under Amendment 69, copayments for other services may be waived if the copayment would cause financial hardship for the patient.

**ColoradoCare elections.** ColoradoCare will be governed by a board of trustees. Initially, a 15-member interim board of trustees will be appointed by state legislative leadership and the Governor. The interim board will determine procedures for electing a 21-member board of trustees. The first board of trustees election must be scheduled within three years of the effective date of the measure. Amendment 69 outlines the length of terms of the elected trustees, term limits, and procedures for filling vacancies. ColoradoCare trustees are not subject to recall elections, but may be removed by a majority vote of the board.

ColoradoCare elections will be conducted independently from other Colorado elections in a manner determined by the board of trustees. Existing voter registration requirements do not apply to ColoradoCare elections. For ColoradoCare elections, all Coloradans who are at least 18 years of age and have continuously resided in the state for at least one year are eligible to vote. The interim board must establish seven voter districts in Colorado with substantially the same number of residents prior to the first election of the 21-member board. Three nonpartisan trustees will be elected from each of the seven districts. The trustees must live in the district they seek to represent. The interim board must promulgate rules regarding the selection and eligibility of trustee candidates, the regulation of campaign contributions and spending, and the certification of election results.

**Administration.** In addition to determining the procedures for electing a 21-member board of trustees, the interim board must establish rules and procedures, approve an operating budget, and hire employees and consultants for ColoradoCare. Once the elected board assumes responsibility for the operations of ColoradoCare, its duties will include:

- establishing rules and procedures for the operation of ColoradoCare, determining benefits for Coloradans, and setting payment rates for providers;
- hiring an executive team to administer the operations of ColoradoCare;
- administering all state funds for health care services provided to Coloradans;
- facilitating the creation of medical records and billing records systems and ensuring the confidentiality of patient records;
- establishing an internal office for fraud investigation;
- funding external offices in the Division of Insurance to respond to inquiries and complaints from the public and health care providers and make recommendations to the board; and
- ensuring the financial stability and transparent operations of ColoradoCare and approving a publicly available annual budget.

**Taxpayer impacts.** To fund ColoradoCare, Amendment 69 creates new taxes on wages paid by employers and income received by individuals. The new taxes will be in addition to the state's current 4.63 percent income

tax. Table 1 highlights the initial and full tax rates under the measure and the tax rates paid by employers and individuals. While all employers and individuals will be required to pay the new taxes, the taxes paid may be offset by savings that result from no longer having to pay for private health insurance once ColoradoCare is fully implemented.

The initial taxes are expected to generate approximately \$2 billion per year. The full taxes are projected to generate more than \$25 billion in revenue each year. The initial taxes will be collected starting July 1, 2017, and tax rates will increase to their full amounts 30 days before ColoradoCare assumes responsibility for health care payments in Colorado.

For employees, the new taxes are assessed on wages earned. For employers, the taxes are based on the total wages for all employees. For individuals earning other non-wage sources of income, the taxes are paid solely by the income earner. Wage income includes wages, salaries, tips, and other income reported on an employee W-2 form. Non-wage income includes capital gains, dividends, interest, rental income, non-corporate business income, and retirement income, including Social Security income, reported as taxable income on a taxpayer's federal income tax form.

**Table 1  
New Taxes and Tax Rates Under Amendment 69**

	Initial Tax Rates	Full Tax Rates
<b>Wage Income</b>		
Employee Tax Rate	0.3%	3.33%
Employer Tax Rate	0.6%	6.67%
<b>Total</b>	<b>0.9%</b>	<b>10.0%</b>
<b>Non-wage Income</b>	<b>0.9%</b>	<b>10.0%</b>

The new taxes apply to the first \$350,000 in taxable income for single filer taxpayers and the first \$450,000 in taxable income for joint filers. These amounts are increased by inflation each year. The measure applies an existing state income tax exemption for retirement income to the new taxes. Under this exemption, retirement income up to \$20,000 for those aged 55 to 64, and up to \$24,000 for those 65 and older, is not taxed. Joint filers may claim up to double these amounts. Certain types of income are excluded from the new taxes, including unemployment compensation and alimony. Table 2 shows the amount of taxes owed under the full tax rates by representative households and the employers of persons in those households.

**Table 2  
New Taxes Owed Under Amendment 69 for  
Representative Households Under the Full Tax Rates**

Taxable Household Income	Annual Taxes	
	Household	Employer
A Wage: \$25,000	\$833	\$1,667
B Non-wage: \$25,000	\$2,500	\$0
C Wage: \$50,000 Non-wage: \$1,000	\$1,765*	\$3,335
D Wage: \$100,000 Non-wage: \$5,000	\$3,830	\$6,670
E Wage: \$250,000 Non-wage \$10,000	\$9,325	\$16,675

*\*This number has been updated since initial publication.*

**Potential taxpayer savings.** Individuals and employers who discontinue private health insurance once ColoradoCare is fully implemented may have savings that offset the new taxes they are required to pay under Amendment 69. Potential savings will differ for each individual based on their health care costs, level of coverage, and tax liability. Key factors in determining potential savings include:

- the cost of health insurance premiums that the individual would no longer pay; and
- annual deductibles and out-of-pocket health care costs that would be eliminated or reduced under ColoradoCare.

About half of the Colorado population receives health insurance coverage through an employer, with the costs typically shared between the employee and employer. For employers who provide health insurance benefits to their employees, savings considerations include: health insurance premium costs, administrative costs, and allowable tax deductions for providing employee health insurance.

The net taxpayer impact of Amendment 69 for persons with Medicare, Medicaid, and other types of health coverage will depend on the plan type and taxable income of each person. For instance, persons not currently required to pay health insurance premiums, such as Medicaid recipients, may have higher costs under the measure to the extent that they have taxable income. Costs will increase for Medicare recipients if their income exceeds the maximum allowable deduction for retirement income. Medicare recipients may have savings if they choose to use ColoradoCare instead of private supplemental insurance.

Persons who are uninsured do not pay insurance premiums, but may have high out-of-pocket costs and be subject to a tax penalty under federal law. The new taxes may offset these out-of-pocket costs and the tax penalty for persons without health insurance.

**Voter approval for tax increases.** The measure exempts ColoradoCare from the existing constitutional requirement to seek approval of tax increases at a regularly scheduled November election. Instead, tax increases for ColoradoCare must be approved at a ColoradoCare election scheduled by the board of trustees. The board of trustees may request a tax increase no more than once per year.

**Constitutional limits on revenue.** Under current law, if the state or a district of the state collects revenue in excess of constitutional limits, the revenue must be refunded to taxpayers. ColoradoCare revenue is exempt from these limits under Amendment 69.

*For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

## Arguments For

1) Amendment 69 creates a more equitable health care payment system that provides coverage for all Coloradans. All people should have access to affordable health care regardless of their ability to pay. The current health care system leaves many people uninsured or unable to access care due to insurance denials or high deductibles. ColoradoCare prohibits deductibles and may reduce financial barriers to needed care. The measure helps ensure that individuals and families will not face financial ruin when accessing needed health care services.

2) Amendment 69 offers a means to control health care costs and improve patient outcomes. In the United States, health care costs are higher than in any other industrialized country. Under Amendment 69, health care costs could be controlled by lowering administrative costs, adjusting payment rates to health care providers, and reducing the amount of unpaid care provided by health care providers. By creating a centralized system for health care records, ColoradoCare may improve the coordination of care and create cost savings by more efficiently sharing information between providers, monitoring medical conditions, and reducing diagnostic testing.

3) ColoradoCare provides a more transparent system that serves the interests of Coloradans, instead of the interests of private corporations. The current private health insurance system is profit-motivated, which contributes to rising health care costs. ColoradoCare offers an alternative that shifts incentives toward improving patient care by allowing Coloradans to elect health care decision-makers. Under Amendment 69, Coloradans also have control over tax increases for ColoradoCare, increasing local control over health care costs. Unlike private insurance companies, ColoradoCare board meetings are subject to open meetings laws, which allows Coloradans to monitor decisions made by the board.

## Arguments Against

1) Amendment 69 imposes new taxes, which may harm the Colorado economy by burdening taxpayers and eliminating jobs. The tax increases under this measure will nearly double state government spending, which currently totals \$27 billion for the entire state budget. In the initial years, taxpayers will pay about \$2 billion a year into a system without receiving any direct benefits. Many individuals and businesses will pay more with the new taxes than they currently pay for health care. Additionally, taxpayers must pay the new taxes even if they do not utilize the services offered through ColoradoCare. Under Amendment 69, higher taxes and an uncertain economic climate could discourage businesses from operating in Colorado. Finally, ColoradoCare may cause private health insurance businesses to downsize or leave the state, leaving many people unemployed.

2) Amendment 69 offers no guarantee that ColoradoCare will improve patient care, expand access, or reduce health care costs. Coloradans may never receive the benefits promised under ColoradoCare if federal approval is not granted or revenues are not sufficient. The measure does not specify critical details of how ColoradoCare will be implemented, and has no required implementation date. The measure concentrates control for making important decisions and spending billions of taxpayer dollars in a 21-member board with limited accountability and no required health industry experience. ColoradoCare may not solve fundamental problems of rising health care costs and limited access. If the state fully transitions to ColoradoCare and it fails, it could take years to re-establish a private health insurance market and government programs, and taxpayers will have paid billions of dollars for a failed system.

3) ColoradoCare may limit consumer choice and strain the health care system. Health care providers may be unwilling to serve ColoradoCare patients if reimbursements are too low, or they may choose to leave Colorado due to uncertainties in the health care market. This could reduce options for patients and increase wait times to receive services. Also, the health care system could be further burdened by people coming to the state to receive health care without adequately contributing to the taxes that pay for their care. If the system fails to control costs, health services covered by ColoradoCare may be reduced. Additionally, private health insurance may not be available or affordable if Amendment 69 passes. This could leave people with limited options for accessing alternative coverage or needed care, forcing some people to leave the state.

## Estimate of Fiscal Impact

**ColoradoCare revenue.** Amendment 69 creates ColoradoCare, a new subdivision of the state that will be the recipient of tax revenue from new taxes on employers and individuals and transfers of state and federal funds that are currently used to operate state health programs, such as Medicaid. New tax revenue to ColoradoCare is estimated to be \$2.0 billion in budget year 2017-18 and subsequent years until ColoradoCare assumes responsibility for health care payments in Colorado or, if federal approval is not received, until the board of trustees acts to terminate ColoradoCare. When fully implemented, ColoradoCare is expected to receive total revenue of up to \$36.2 billion, including \$25.0 billion in new tax revenue and up to \$11.2 billion in transferred state and federal funds, assuming implementation in budget year 2019-20. Additional detail on the new taxes created by the measure to fund ColoradoCare, including the initial and full tax rates on individuals and employers, is provided in the "Taxpayer impacts" section above.

**ColoradoCare spending.** Based on available revenue, ColoradoCare will spend up to \$2.0 billion per year beginning in budget year 2017-18 until fully implemented. However, initial spending is expected to be less than this amount, with most revenue to ColoradoCare placed in capital and operating reserves, rather than spent, prior to full implementation of ColoradoCare. During the initial years, the exact spending levels will depend on decisions by the ColoradoCare board of trustees and will likely include costs for seeking federal approval to fully implement ColoradoCare, procuring information technology systems, developing operating procedures, hiring staff, leasing office space, and conducting board elections.

Based on anticipated tax revenue and state and federal funds transferred to ColoradoCare, it is estimated that ColoradoCare will spend up to \$36.2 billion per year on health care payments and administrative expenses once fully implemented. The amount of spending by ColoradoCare will depend on numerous factors, including the terms and conditions of federal waivers, the availability of funds, and the payment rates to health care providers set by the ColoradoCare board of trustees. In the event revenue is not sufficient to meet its spending obligations, ColoradoCare will be required to reduce its expenditures or increase tax revenue. Reductions in expenditures

could be achieved by limiting benefits, increasing the share of health care costs paid by covered individuals, or lowering payments to health care providers.

While the exact date of ColoradoCare's full implementation is not known, the revenue and spending figures for full implementation included in this analysis are based on the assumption that ColoradoCare will assume responsibility for health care payments on August 1, 2019.

**State revenue.** Amendment 69 may reduce state tax revenue, most of which is deposited into the state General Fund; however, the exact impact cannot be estimated at this time. This potential reduction comes from two sources. First, assuming most people covered by private health insurance discontinue private coverage when ColoradoCare coverage becomes available, insurance premium and corporate income taxes paid by health insurance carriers will decrease by at least \$100 million per year once ColoradoCare is fully implemented. Based on the assumed start of date of ColoradoCare, this impact would occur beginning in budget year 2019-20.

Second, Amendment 69 may affect the amount of individual and corporate income subject to the existing 4.63 percent state income tax in several ways, which could both increase and decrease state tax revenue. For individuals and businesses, the amount of ColoradoCare taxes paid may be claimed as a tax deduction, which could reduce state tax revenue. However, a shift away from employer-based health insurance following implementation of ColoradoCare may increase taxable income for both individuals and businesses by eliminating health insurance premium payments that currently do not count as taxable income for individuals and that may be claimed as a business expense deduction by employers. Additionally, the changes to health benefits under the measure could affect employee wages, which could increase or decrease income tax revenue. The net change from these various impacts to individual and corporate income tax revenue will depend on several factors, including the amount of ColoradoCare taxes and health care premiums paid, the amount of tax deductions claimed in any given year, and the net change in employee wages.

**State spending.** Amendment 69 is estimated to increase state spending by \$4.3 million in budget year 2016-17, \$19.5 million in budget year 2017-18, and \$24.6 million in budget year 2018-19. This new spending includes:

- administration of the new payroll and income tax;
- planning and implementation activities to assist in establishing ColoradoCare;
- payment of the new payroll tax; and
- information technology costs.

Unless future implementing legislation for Amendment 69 specifically allows for the new tax revenue to be used to pay state agency costs or the ColoradoCare board agrees to pay these costs, it is assumed that these costs will be paid from existing state resources, including the General Fund, cash funds, and federal funds.

**State agency savings.** When ColoradoCare is fully implemented, spending by state agencies will decrease by \$147.3 million in budget year 2019-20. These savings will result from state agencies discontinuing payments for private health insurance for state employees beginning August 1, 2019. The estimated savings reflect the net impact after accounting for other ongoing costs under the measure for tax administration and payment of payroll taxes.

**Termination of health insurance exchange.** When ColoradoCare becomes fully operational, the state's health insurance exchange, Connect for Health Colorado, will no longer operate. This will result in savings of approximately \$40 million per year. Connect for Health Colorado is funded through fees assessed on health insurance carriers, tax-deductible donations by insurance carriers, and grants. Connect for Health Colorado will have costs between \$5 million and \$10 million over a two-year period to wind down operations and fulfill various contractual obligations.

**Local government impacts.** Spending by cities and counties in Colorado will initially increase under the measure due to the new payroll tax created under Amendment 69. If ColoradoCare is fully implemented and local governments choose to discontinue payments for employee health insurance through private insurance carriers, net savings may result.

**ColoradoCare Spending and Tax Increases**

Article X, Section 20 of the Colorado Constitution requires that the following fiscal information be provided when a tax increase question is on the ballot:

- estimates or actual amounts of ColoradoCare fiscal year spending for the current year and each of the past four years with the overall percentage and dollar change; and
- for the first full year of the proposed tax increase, an estimate of the maximum dollar amount of the tax increase and of ColoradoCare fiscal year spending without the increase.

"Fiscal year spending" is a legal term in the Colorado Constitution. It equals the amount of revenue subject to the constitutional spending limit that the state or a district is permitted to keep and either spend or save for a single year.

Because ColoradoCare is a newly created district, ColoradoCare has no spending history, as shown in Table 3.

**Table 3  
ColoradoCare Fiscal Year Spending**

	Actual FY 2012-13	Actual FY 2013-14	Actual FY 2014-15	Actual FY 2015-16	Estimated FY 2016-17
ColoradoCare Spending	\$0	\$0	\$0	\$0	\$0
Four-Year Dollar Change in State Spending: \$0					
Four-Year Percent Change in State Spending: Not applicable.					

*FY = fiscal year. The state's fiscal (or budget) year runs from July through June.*

In FY 2017-18, ColoradoCare is expected to collect \$2.0 billion from the new taxes, as shown in Table 4. This amount reflects estimated revenue in the first full fiscal year and differs from the \$25.0 billion amount shown in the ballot title of this measure, which represents revenue in FY 2019-20, the final full year of the fully phased-in new taxes.

**Table 4  
Estimated ColoradoCare Fiscal Year Spending and  
the Proposed New Taxes**

	FY 2017-18 Estimate
Fiscal Year Spending Without the New Taxes	\$0
Revenue from the New Taxes	\$2.0 billion

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**Amendment 69  
Statewide Health Care System**

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**TITLE AND TEXT**

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado constitution. The text of the measure that will appear in the Colorado constitution below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

***Ballot Title:***

SHALL STATE TAXES BE INCREASED \$25 BILLION ANNUALLY IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY AN AMENDMENT TO THE COLORADO CONSTITUTION ESTABLISHING A HEALTH CARE PAYMENT SYSTEM TO FUND HEALTH CARE FOR ALL INDIVIDUALS WHOSE PRIMARY RESIDENCE IS IN COLORADO, AND, IN CONNECTION THEREWITH, CREATING A GOVERNMENTAL ENTITY CALLED COLORADOCARE TO ADMINISTER THE HEALTH CARE PAYMENT SYSTEM; PROVIDING FOR THE GOVERNANCE OF COLORADOCARE BY AN INTERIM APPOINTED BOARD OF TRUSTEES UNTIL AN ELECTED BOARD OF TRUSTEES TAKES RESPONSIBILITY; EXEMPTING COLORADOCARE FROM THE TAXPAYER'S BILL OF RIGHTS; ASSESSING AN INITIAL TAX ON THE TOTAL PAYROLL FROM EMPLOYERS, PAYROLL INCOME FROM EMPLOYEES, AND NONPAYROLL INCOME AT VARYING RATES; INCREASING THESE TAX RATES WHEN COLORADOCARE BEGINS MAKING HEALTH CARE PAYMENTS FOR BENEFICIARIES; CAPPING THE TOTAL AMOUNT OF INCOME SUBJECT TO TAXATION; AUTHORIZING THE BOARD TO INCREASE THE TAXES IN SPECIFIED CIRCUMSTANCES UPON APPROVAL OF THE MEMBERS OF COLORADOCARE; REQUIRING COLORADOCARE TO CONTRACT WITH HEALTH CARE PROVIDERS TO PAY FOR SPECIFIC HEALTH CARE BENEFITS; TRANSFERRING ADMINISTRATION OF THE MEDICAID AND CHILDREN'S BASIC HEALTH PROGRAMS AND ALL OTHER STATE AND FEDERAL HEALTH CARE FUNDS FOR COLORADO TO COLORADOCARE; TRANSFERRING RESPONSIBILITY TO COLORADOCARE FOR MEDICAL CARE THAT WOULD OTHERWISE BE PAID FOR BY WORKERS' COMPENSATION INSURANCE; REQUIRING COLORADOCARE TO APPLY FOR A WAIVER FROM THE AFFORDABLE CARE ACT TO ESTABLISH A COLORADO HEALTH CARE PAYMENT SYSTEM; AND SUSPENDING THE OPERATIONS OF THE COLORADO HEALTH BENEFIT EXCHANGE AND TRANSFERRING ITS RESOURCES TO COLORADOCARE?

***Text of Measure:***

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

**SECTION 1.** In the constitution of the state of Colorado, **add** article XXX as follows:

**ARTICLE XXX  
ColoradoCare**

**Section 1. Purpose and findings.**

(1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT:

(a) COLORADANS NEED THE SECURITY OF KNOWING THAT THEY CAN AFFORD HEALTH CARE FOR THEMSELVES AND THEIR FAMILIES;

(b) BUSINESSES NEED RELIEF FROM THE UNSUSTAINABLE FINANCIAL AND ADMINISTRATIVE BURDENS OF PROVIDING HEALTH INSURANCE FOR THEIR EMPLOYEES;

(c) ANNUAL INSURANCE CHANGES DISRUPT COORDINATED LIFETIME HEALTH CARE;

(d) HEALTH CARE COSTS HAVE BEEN INCREASING AT UNSUSTAINABLE RATES AND MUST BE STABILIZED;

(e) COLORADO NEEDS A HEALTH CARE DELIVERY SYSTEM THAT PRIORITIZES VALUE OVER VOLUME AND THAT ENCOURAGES QUALITY, EFFICIENT, AND ACCESSIBLE HEALTH CARE;

(f) COLORADO HEALTH CARE PROVIDERS NEED RELIEF FROM THE ADMINISTRATIVE BURDENS THAT INTERFERE WITH QUALITY HEALTH CARE;

(g) SECTION 1332 OF THE AFFORDABLE CARE ACT ALLOWS COLORADO TO OBTAIN WAIVERS FROM THE INSURANCE EXCHANGE PROGRAM IN ORDER TO CREATE A UNIQUE COLORADO HEALTH CARE SYSTEM; AND THEREFORE, THAT

(2) COLORADO WILL FINANCE HEALTH CARE THROUGH COLORADOCARE, A POLITICAL SUBDIVISION OF THE STATE GOVERNED BY A TWENTY-ONE MEMBER BOARD OF TRUSTEES THAT WILL ADMINISTER A COORDINATED PAYMENT SYSTEM FOR HEALTH CARE SERVICES AND CONTROL THE PER CAPITA COST OF HEALTH CARE, THEREBY IMPROVING ACCESS TO HEALTH CARE FOR ALL COLORADANS, ENHANCING THEIR HEALTH CARE EXPERIENCES, GIVING COLORADANS THE RIGHT TO CHOOSE THEIR PRIMARY HEALTH CARE PROVIDERS, AND IMPROVING THE WORKING LIVES OF PROVIDERS.

**Section 2. Definitions.** FOR THE PURPOSE OF THIS ARTICLE:

(1) "AFFORDABLE CARE ACT" MEANS THE FEDERAL "PATIENT PROTECTION AND AFFORDABLE CARE ACT", PUB.L. 111-148, AS AMENDED BY THE FEDERAL "HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010", PUB.L. 111-152, AND AS MAY BE FURTHER AMENDED, INCLUDING ANY FEDERAL REGULATIONS ADOPTED UNDER THE ACT.

(2) "BENEFICIARY" MEANS AN INDIVIDUAL WHOSE PRIMARY RESIDENCE IS IN COLORADO.

(3) "BOARD" MEANS THE ELECTED BOARD OF TRUSTEES ESTABLISHED IN SECTION 5 OF THIS ARTICLE UNLESS THE CONTEXT INDICATES THAT "BOARD" MEANS THE INTERIM BOARD DEFINED IN SUBSECTION (9) OF THIS SECTION.

(4) "CHILDREN'S BASIC HEALTH PLAN" MEANS THE HEALTH BENEFIT PLAN ESTABLISHED IN ARTICLE 8 OF TITLE 25.5, COLORADO REVISED STATUTES.

(5) "COLORADO HEALTH BENEFIT EXCHANGE" MEANS THE COLORADO HEALTH BENEFIT EXCHANGE CREATED IN ARTICLE 22 OF TITLE 10, COLORADO REVISED STATUTES, OR ITS SUCCESSOR ENTITY.

(6) "EFFECTIVE DATE" MEANS THE EFFECTIVE DATE OF THIS ARTICLE AS SPECIFIED IN SECTION 14 OF THIS ARTICLE.

(7) "EMPLOYEE" MEANS AN INDIVIDUAL WHO WORKS OR RESIDES IN COLORADO AND WHO RECEIVES WAGES, SALARIES, TIPS, OR ANY OTHER INCOME WHICH MUST BE REPORTED ON INTERNAL REVENUE SERVICE FORM W-2.

(8) "EMPLOYER" MEANS AN INDIVIDUAL, A GOVERNMENTAL ENTITY, AND ANY ORGANIZATION DEFINED IN TITLE 7, COLORADO REVISED STATUTES, THAT:

(a) PAYS COMPENSATION TO ONE OR MORE INDIVIDUALS FOR WORK PERFORMED; AND

(b) IS REQUIRED BY COLORADO LAW TO WITHHOLD A PORTION OF THE COMPENSATION FOR THE PAYMENT OF COLORADO INCOME TAXES, OR TO REPORT THOSE EARNINGS TO THE COLORADO DEPARTMENT OF REVENUE.

(9) "INTERIM BOARD" MEANS THE BOARD OF TRUSTEES APPOINTED PURSUANT TO SECTION 4 OF THIS ARTICLE.

(10) "MEDICAID PROGRAM" MEANS THE MEDICAL ASSISTANCE PROGRAM AUTHORIZED IN TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SECTIONS 1305 ET SEQ., AS AMENDED, AND UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4, 5, AND 6 OF TITLE 25.5, COLORADO REVISED STATUTES, OR ANY SUCCESSOR STATUTES.

(11) "MEMBER" MEANS A BENEFICIARY WHO IS AT LEAST EIGHTEEN YEARS OF AGE AND WHOSE PRIMARY RESIDENCE HAS BEEN IN COLORADO FOR AT LEAST ONE CONTINUOUS YEAR.

(12) "NONPAYROLL INCOME" MEANS TOTAL INCOME FROM ALL SOURCES SPECIFIED ON LINES 8 THROUGH 10, 12 THROUGH 18, AND 20 THROUGH 21 OF THE INTERNAL REVENUE SERVICE FORM 1040 FOR THE TAX YEAR 2014 OR THE CORRESPONDING LINES OF ANY SUCCESSOR FORM. "NONPAYROLL INCOME" DOES NOT INCLUDE ANY PENSION OR ANNUITY INCOME WHICH IS NOT SUBJECT TO COLORADO INCOME TAXES PURSUANT TO SECTION 39-22-104(f)(4), COLORADO REVISED STATUTES, OR ANY SUCCESSOR STATUTE.

(13) "PAYROLL INCOME" MEANS WAGES, TIPS, SALARIES, AND ALL OTHER INCOME THAT MUST BE REPORTED ON INTERNAL REVENUE SERVICE FORM W-2.

(14) "PREMIUM TAX" MEANS THE TAX SPECIFIED IN SECTION 9(2) OF THIS ARTICLE.

(15) "PROVIDER" MEANS A HEALTH CARE PROFESSIONAL LICENSED BY THE STATE OF COLORADO AND INCLUDES INDIVIDUALS, HOSPITALS, AND OTHER HEALTH CARE FACILITIES LICENSED OR CERTIFIED BY THE STATE. "PROVIDER" INCLUDES AN INDIVIDUAL OR ENTITY THAT PROVIDES SERVICES, MEDICAL INTERVENTIONS, PHARMACEUTICALS, OR EQUIPMENT USED TO TREAT BENEFICIARIES.

(16) "TRANSITIONAL OPERATING FUND TAX" MEANS THE TAX SPECIFIED IN SECTION 9 (1) OF THIS ARTICLE.

(17) "TRUSTEE" MEANS AN INDIVIDUAL APPOINTED OR ELECTED TO SERVE ON THE INTERIM OR ELECTED BOARD OF TRUSTEES.

**Section 3. ColoradoCare - establishment.** (1) THERE IS HEREBY ESTABLISHED A POLITICAL SUBDIVISION OF THE STATE CALLED COLORADOCARE. COLORADOCARE IS NOT AN AGENCY OF THE STATE AND IS NOT SUBJECT TO ADMINISTRATIVE DIRECTION OR CONTROL BY ANY STATE EXECUTIVE, DEPARTMENT, COMMISSION, BOARD, BUREAU, OR AGENCY.

(2) THE PURPOSE OF COLORADOCARE IS TO FINANCE HEALTH CARE SERVICES FOR ALL COLORADO RESIDENTS, TO ADMINISTER STATE AND FEDERAL HEALTH CARE FUNDS, AND TO INSTITUTE FISCALLY SOUND PAYMENT POLICIES THAT IMPROVE AND MAINTAIN HIGH STANDARDS FOR VALUE, QUALITY, AND HEALTHY OUTCOMES FOR ALL BENEFICIARIES.

**Section 4. Interim board - governance and responsibilities.** (1) (a) WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS ARTICLE, THE PRESIDENT OF THE COLORADO SENATE, THE MINORITY LEADER OF THE COLORADO SENATE, THE SPEAKER OF THE COLORADO HOUSE OF REPRESENTATIVES, THE MINORITY LEADER OF THE COLORADO HOUSE OF REPRESENTATIVES, AND THE GOVERNOR OF THE STATE OF COLORADO SHALL EACH APPOINT THREE TRUSTEES TO SERVE ON THE INTERIM BOARD. IN MAKING THE APPOINTMENTS TO THE INTERIM BOARD, THE APPOINTING AUTHORITIES SHALL MAKE GOOD- FAITH EFFORTS TO ENSURE THAT:

- (I) EACH TRUSTEE WILL STRIVE TO REPRESENT THE INTERESTS OF ALL COLORADANS;
- (II) THEIR APPOINTMENTS REFLECT THE SOCIAL, DEMOGRAPHIC, AND GEOGRAPHIC DIVERSITY OF THE STATE; AND
- (III) THEIR APPOINTEES ARE COMMITTED TO SUCCESSFULLY IMPLEMENTING THIS ARTICLE.

(b) AN INTERIM TRUSTEE MAY BE REMOVED FOR CAUSE BY A MAJORITY VOTE OF THE OTHER TRUSTEES.

(c) IF A VACANCY OCCURS ON THE INTERIM BOARD, THE APPOINTING AUTHORITY SHALL APPOINT A NEW TRUSTEE TO FILL THE VACANCY WITHIN THIRTY DAYS AFTER THE VACANCY OCCURS.

(2)(a) THE INTERIM BOARD SHALL CARRY OUT ALL DUTIES AND RESPONSIBILITIES OF THE BOARD UNTIL THE ELECTED BOARD ASSUMES RESPONSIBILITY FOR THE OPERATION OF COLORADOCARE ON THE DATE SPECIFIED IN PARAGRAPH (i) OF THIS SUBSECTION.

(b) THE INTERIM BOARD SHALL:

(I) PROMULGATE BYLAWS, PROCEDURES, RULES, AND POLICIES. THE BYLAWS, PROCEDURES, RULES, AND POLICIES OF THE INTERIM BOARD SHALL EXPIRE ONE HUNDRED TWENTY DAYS AFTER THE ELECTED BOARD TAKES OFFICE UNLESS THE ELECTED BOARD RATIFIES THEM.

(II) APPROVE AN OPERATING BUDGET;

(III) HIRE EMPLOYEES AND CONSULTANTS; AND

(IV) PROMULGATE RULES TO ENSURE TRANSPARENCY IN ITS OPERATIONS AND DECISIONMAKING, WHICH RULES MUST BE AT LEAST AS STRICT AS THE REQUIREMENTS IN THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, COLORADO REVISED STATUTES, OR ITS SUCCESSOR ACT.

(c) AS SOON AS IT IS ALLOWED UNDER FEDERAL LAW, THE INTERIM BOARD SHALL SEEK A WAIVER TO ALLOW THE STATE TO SUSPEND OPERATION OF THE COLORADO HEALTH BENEFIT EXCHANGE AND TRANSFER ITS RESOURCES TO

COLORADOCARE NO LATER THAN THE DATE ON WHICH COLORADOCARE ASSUMES RESPONSIBILITY FOR HEALTH CARE PAYMENTS.

(d) NO LATER THAN NINETY DAYS PRIOR TO THE DATE COLORADOCARE IS TO ASSUME RESPONSIBILITY FOR HEALTH CARE PAYMENTS, THE BOARD SHALL PROVIDE WRITTEN CERTIFICATION TO THE GOVERNOR AND THE COLORADO DEPARTMENT OF REVENUE OF THE DATE COLORADOCARE INTENDS TO ASSUME THIS RESPONSIBILITY.

(e) FOR PURPOSES OF ELECTING THE BOARD OF TRUSTEES, THE INTERIM BOARD SHALL USE THE MOST RECENT UNITED STATES DECENNIAL CENSUS FIGURES TO DIVIDE THE STATE INTO SEVEN COMPACT CONTIGUOUS DISTRICTS WITH SUBSTANTIALLY THE SAME NUMBER OF RESIDENTS IN EACH DISTRICT.

(f) ELECTIONS SHALL BE NONPARTISAN.

(g) THE INTERIM BOARD SHALL PROMULGATE RULES GOVERNING THE SELECTION OF TRUSTEE CANDIDATES AND THE CONDUCT OF ELECTIONS, INCLUDING RULES THAT REGULATE CAMPAIGN CONTRIBUTIONS AND EXPENDITURES, AND THE CERTIFICATION OF ELECTION RESULTS.

(h) TRUSTEE CANDIDATES MUST BE MEMBERS OF COLORADOCARE WHO LIVE IN THE DISTRICT FROM WHICH THEY ARE SEEKING ELECTION.

(i) THE INTERIM BOARD SHALL SCHEDULE THE FIRST ELECTION WITHIN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS ARTICLE. THE ELECTED BOARD SHALL ASSUME RESPONSIBILITY FOR THE OPERATION OF COLORADOCARE WITHIN FORTY-FIVE DAYS AFTER THE INTERIM BOARD CERTIFIES THE ELECTION RESULTS. INTERIM TRUSTEES SHALL CONTINUE TO SERVE AS EX OFFICIO, NONVOTING TRUSTEES FOR NINETY DAYS AFTER THE ELECTED BOARD ASSUMES RESPONSIBILITY FOR THE OPERATION OF COLORADOCARE.

**Section 5. Elected board of trustees - duties and responsibilities.** (1) A MEMBER-ELECTED BOARD OF TWENTY-ONE TRUSTEES SHALL GOVERN COLORADOCARE. THREE TRUSTEES SHALL BE ELECTED FROM AMONG THE MEMBERS RESIDING IN EACH DISTRICT.

(2) (a) ELECTED TRUSTEES SHALL SERVE FOUR YEAR TERMS OF OFFICE, EXCEPT THAT, OF THE TRUSTEES FIRST ELECTED TO THE BOARD, ONE TRUSTEE FROM EACH DISTRICT SHALL SERVE AN INITIAL TWO YEAR TERM AND TWO TRUSTEES FROM EACH DISTRICT SHALL SERVE INITIAL FOUR YEAR TERMS. THE CHAIRPERSON OF THE INTERIM BOARD SHALL DETERMINE BY LOT WHICH TRUSTEES-ELECT WILL SERVE INITIAL TWO YEAR TERMS AND WHICH WILL SERVE INITIAL FOUR YEAR TERMS. TRUSTEES WHO SERVE INITIAL TWO YEAR TERMS ARE ELIGIBLE TO SERVE TWO CONSECUTIVE FOUR YEAR TERMS AFTER COMPLETING THEIR INITIAL TERMS. TRUSTEES ELECTED TO SERVE AN INITIAL TERM OF FOUR YEARS MAY NOT SERVE MORE THAN TWO CONSECUTIVE TERMS.

(b) A TRUSTEE MAY BE REMOVED FOR CAUSE BY A MAJORITY VOTE OF THE OTHER TRUSTEES.

(c) TRUSTEES ARE NOT SUBJECT TO RECALL ELECTIONS.

(d) IF A VACANCY OCCURS ON THE BOARD, THE BOARD, BY MAJORITY VOTE, SHALL APPOINT A TRUSTEE FROM THE DEPARTING TRUSTEE'S DISTRICT TO COMPLETE THE REMAINDER OF THE DEPARTING TRUSTEE'S TERM OF OFFICE.

(3) NOT MORE OFTEN THAN ONCE PER DECENNIUM, THE ELECTED BOARD MAY MODIFY THE BOUNDARIES OF THE SEVEN DISTRICTS, BUT ONLY IF IT DOES SO WITHIN ONE YEAR AFTER DECENNIAL CENSUS FIGURES ARE PUBLISHED BY THE UNITED STATES CENSUS BUREAU. EACH NEW DISTRICT SHALL BE COMPACT AND CONTIGUOUS AND ALL DISTRICTS SHALL HAVE SUBSTANTIALLY THE SAME NUMBER OF RESIDENTS.

(4) THE BOARD SHALL:

(a) PROMULGATE BYLAWS, PROCEDURES, RULES, AND POLICIES, AND RATIFY, AMEND, OR REJECT THOSE BYLAWS, PROCEDURES, RULES AND POLICIES PROMULGATED BY THE INTERIM BOARD;

(b) HIRE AN EXECUTIVE TEAM TO ADMINISTER THE OPERATIONS OF COLORADOCARE. THE EXECUTIVE TEAM SHALL INCLUDE A CHIEF EXECUTIVE OFFICER, A CHIEF FINANCIAL OFFICER, AND A CHIEF MEDICAL OFFICER.

(c) ESTABLISH A CENTRAL PURCHASING AUTHORITY RESPONSIBLE FOR NEGOTIATING FAVORABLE PRICES FOR PRESCRIPTION DRUGS, MEDICAL EQUIPMENT AND OTHER PRODUCTS AND SERVICES REQUIRED BY COLORADOCARE;

(d) PROVIDE FUNDS TO THE COMMISSIONER OF INSURANCE FOR THE OPERATION OF SEPARATE OMBUDSMAN OFFICES FOR BENEFICIARIES AND PROVIDERS. FUNDING SHALL BE SUFFICIENT TO ALLOW THE TIMELY COMPLETION OF ALL INVESTIGATIONS. EACH OFFICE SHALL HAVE THE CAPACITY TO INVESTIGATE AND RESPOND TO INQUIRIES AND COMPLAINTS AND MAKE RECOMMENDATIONS TO THE BOARD.

(e) ESTABLISH AND FUND AN OFFICE FOR THE INVESTIGATION AND PREVENTION OF FRAUD. THE OFFICE SHALL HAVE THE POWER TO BRING CIVIL ACTIONS IN THE NAME OF COLORADOCARE TO RECOVER ANY MONIES OR THE VALUE OF ANY BENEFITS OBTAINED BY FRAUD OR MISTAKE AND MAY REFER FRAUDULENT CONDUCT TO A DISTRICT ATTORNEY FOR CRIMINAL PROSECUTION.

(f) ESTABLISH PROCEDURES FOR MANAGING SURPLUS FUNDING BY MAINTAINING NECESSARY OPERATING RESERVES, INCREASING BENEFITS, OR ISSUING REFUNDS TO MEMBERS;

(g) ESTABLISH PROCEDURES FOR ENSURING FINANCIAL SUSTAINABILITY BY ADJUSTING PAYMENTS AND BENEFITS;

(h) PROMULGATE RULES FOR INDEPENDENT ANNUAL PERFORMANCE AND FINANCIAL AUDITS;

(i) PROMULGATE RULES THAT PROTECT BENEFICIARY CONFIDENTIALITY WHILE ALLOWING FOR PUBLICLY AVAILABLE RESEARCH OF COLORADOCARE'S DATABASES;

(j) PROMULGATE RULES TO ENSURE TRANSPARENCY IN ITS OPERATIONS AND DECISIONMAKING, WHICH RULES MUST BE AT LEAST AS STRICT AS THE REQUIREMENTS IN THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, COLORADO REVISED STATUTES, OR ITS SUCCESSOR ACT;

(k) APPROVE AND MAKE PUBLICLY AVAILABLE AN ANNUAL BUDGET;

(l) FACILITATE CREATION OF EFFICIENT MEDICAL RECORDS AND BILLING RECORDS SYSTEMS THAT:

(I) CAN BE EASILY ACCESSED BY PROVIDERS AND BENEFICIARIES;

(II) ALLOW COLORADOCARE TO MAINTAIN A CENTRAL DATABASE OF MEDICAL RECORDS FOR MANAGEMENT AND RESEARCH PURPOSES; AND

(III) ENSURE THE CONFIDENTIALITY OF BENEFICIARIES' MEDICAL RECORDS IN COMPLIANCE WITH ALL FEDERAL AND STATE HEALTH CARE LAWS, REGULATIONS, AND RULES CONCERNING THE CONFIDENTIALITY OF PATIENT MEDICAL RECORDS.

(m) ADMINISTER ALL STATE FUNDS FOR HEALTH CARE SERVICES PROVIDED TO BENEFICIARIES;

(n) ESTABLISH POLICIES AND PROCEDURES TO PAY BENEFITS FOR HEALTH CARE SERVICES RENDERED TO A BENEFICIARY WHO IS TEMPORARILY LIVING OR TRAVELING IN ANOTHER STATE; AND

(o) ESTABLISH AN APPEALS PROCEDURE THAT ALLOWS BENEFICIARIES AND PROVIDERS TO CHALLENGE COVERAGE AND PAYMENT DECISIONS. FINAL ACTION ON AN APPEAL SHALL BE SUBJECT TO JUDICIAL REVIEW ACCORDING TO COLORADO LAW AND THE COLORADO RULES OF CIVIL AND APPELLATE PROCEDURE FOR THE REVIEW OF FINAL AGENCY ACTIONS.

(5) THE BOARD MAY:

(a) AUTHORIZE REASONABLE COMPENSATION AND EXPENSE REIMBURSEMENT FOR THE TRUSTEES;

(b) SEEK WAIVERS FROM STATE AND FEDERAL LAWS, RULES, AND REGULATIONS; AND

(c) SEEK AND ACCEPT GIFTS, GRANTS, AND DONATIONS ON BEHALF OF COLORADOCARE.

(6) THE BOARD IS GRANTED ALL POWERS NECESSARY AND PROPER TO FULFILL COLORADOCARE'S RESPONSIBILITIES, INCLUDING THE POWER TO PROMULGATE SUCH RULES AS THE BOARD FINDS NECESSARY FOR THE PROPER ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE.

**Section 6. Health care benefits paid by ColoradoCare.** (1) (a) COLORADOCARE SHALL CONTRACT WITH PROVIDERS TO PAY FOR HEALTH CARE SERVICES TO BENEFICIARIES THAT MUST INCLUDE:

- (I) AMBULATORY PATIENT SERVICES, INCLUDING PRIMARY AND SPECIALTY CARE;
- (II) HOSPITALIZATION;
- (III) PRESCRIPTION DRUGS AND DURABLE MEDICAL EQUIPMENT;
- (IV) MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES, INCLUDING BEHAVIORAL HEALTH TREATMENT;
- (V) EMERGENCY AND URGENT CARE;
- (VI) PREVENTIVE AND WELLNESS SERVICES AND CHRONIC DISEASE MANAGEMENT;
- (VII) REHABILITATIVE AND HABILITATIVE SERVICES AND DEVICES;
- (VIII) PEDIATRIC SERVICES, INCLUDING ORAL, VISION, AND HEARING CARE;
- (IX) LABORATORY SERVICES;
- (X) MATERNITY AND NEWBORN CARE; AND
- (XI) PALLIATIVE AND END-OF-LIFE CARE.

(b) THE BOARD MAY AUTHORIZE PAYMENT FOR BENEFITS NOT SPECIFIED IN PARAGRAPH (a) OF SUBSECTION 1 OF THIS SECTION.

(2) (a) COLORADOCARE SHALL PAY FOR HEALTH CARE SERVICES TO BENEFICIARIES REGARDLESS OF THE CAUSE OF THEIR INJURIES OR ILLNESSES.

(b) COLORADOCARE SHALL ASSUME RESPONSIBILITY FOR PAYMENT OF ALL REASONABLE AND NECESSARY MEDICAL EXPENSES INCURRED BY WORKERS WHO SUFFER INJURIES OR ILLNESSES ARISING OUT OF AND IN THE COURSE OF THEIR EMPLOYMENT ON AND AFTER THE DATE COLORADOCARE ASSUMES RESPONSIBILITY FOR HEALTH CARE PAYMENTS. COLORADOCARE'S RESPONSIBILITY EXTENDS ONLY TO EMPLOYEES WHOSE EMPLOYERS ARE REQUIRED BY THE "WORKERS' COMPENSATION ACT OF COLORADO", ARTICLES 40 TO 47 OF TITLE 8, COLORADO REVISED STATUTES, TO PROVIDE WORKERS' COMPENSATION INSURANCE FOR THEIR EMPLOYEES. WORKERS SUFFERING FROM INJURIES OR ILLNESSES ARISING OUT OF AND IN THE COURSE OF THEIR EMPLOYMENT ARE ENTITLED TO THE SAME BENEFITS AND HAVE THE SAME RIGHTS AND RESPONSIBILITIES AS OTHER BENEFICIARIES.

(c) FOR INDIVIDUALS ELIGIBLE FOR THE MEDICAID PROGRAM, THE CHILDREN'S BASIC HEALTH PLAN, AND ANY OTHER FEDERAL HEALTH CARE PROGRAMS TO BE ADMINISTERED BY COLORADOCARE, THE BENEFIT PACKAGE UNDER COLORADOCARE MUST INCLUDE:

(I) THE BENEFITS REQUIRED BY FEDERAL LAW;

(II) ANY OPTIONAL MEDICAID PROGRAM BENEFITS AUTHORIZED UNDER 42 U.S.C. SEC. 1396d OR THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, COLORADO REVISED STATUTES, OR SERVICES COVERED UNDER THE STATE PLAN FOR THE CHILDREN'S BASIC HEALTH PLAN AS PROVIDED IN 42 U.S.C. SEC. 1397cc, FOR WHICH THESE INDIVIDUALS ARE ELIGIBLE; AND

(III) ANY ADDITIONAL BENEFITS PROVIDED IN COLORADOCARE'S BENEFIT PACKAGE.

(d) AN INDIVIDUAL WHO LOSES ELIGIBILITY FOR STATE OR FEDERAL BENEFITS UNDER THE MEDICAID PROGRAM OR THE CHILDREN'S BASIC HEALTH PLAN SHALL RECEIVE THE SAME BENEFITS AS ANY OTHER BENEFICIARY OF COLORADOCARE.

(3) COLORADOCARE SHALL NOT CHARGE BENEFICIARIES ANY DEDUCTIBLES.

(4) THE BOARD SHALL PROMULGATE RULES FOR WAIVING COPAYMENTS WHEN THEY WILL CAUSE FINANCIAL HARDSHIP

FOR A BENEFICIARY. THE BOARD SHALL NOT REQUIRE COPAYMENTS FOR DESIGNATED PRIMARY AND PREVENTIVE CARE SERVICES.

(5) A PROVIDER MAY NOT REQUIRE A BENEFICIARY TO MAKE A COPAYMENT OR SUBMIT TO ANY OTHER COST-SHARING ARRANGEMENT WITHOUT COLORADOCARE'S APPROVAL.

(6) COLORADOCARE SHALL ALLOW BENEFICIARIES TO CHOOSE THEIR OWN PRIMARY CARE PROVIDERS.

(7) COLORADOCARE MAY PROVIDE FUNDING AND OTHER SUPPORT TO IMPROVE ACCESS TO HEALTH CARE SERVICES FOR ALL BENEFICIARIES REGARDLESS OF WHERE THEY LIVE IN COLORADO.

(8) COLORADOCARE MAY PROVIDE FUNDING AND OTHER SUPPORT FOR STATEWIDE ACCESS TO EMERGENCY AND TRAUMA CARE SERVICES.

**Section 7. Delivery of service models.** (1) COLORADOCARE SHALL BEGIN OPERATION BY ASSUMING PAYMENT FOR HEALTH CARE SERVICES IN A MANNER DESIGNED TO MINIMIZE DISRUPTIONS TO CURRENT DELIVERY AND PAYMENT SYSTEMS.

(2) COLORADOCARE SHALL PHASE IN PAYMENT REFORMS AND A UNIFIED BILLING SYSTEM.

(3) COLORADOCARE SHALL USE PAYMENT MODELS THAT OPTIMIZE QUALITY, VALUE, AND HEALTHY OUTCOMES FOR BENEFICIARIES.

**Section 8. Transition to ColoradoCare.** (1) (a) THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, THE COLORADO HEALTH BENEFIT EXCHANGE, AND ANY OTHER NECESSARY STATE DEPARTMENT OR AGENCY SHALL ASSIST THE INTERIM AND ELECTED BOARDS IN SEEKING ALL WAIVERS, EXEMPTIONS, AND AGREEMENTS FROM THE STATE AND FEDERAL GOVERNMENTS THAT ARE NECESSARY TO TRANSFER HEALTH CARE FUNDING FROM THE FEDERAL GOVERNMENT AND FROM ANY STATE DEPARTMENTS AND AGENCIES TO COLORADOCARE.

(b) TO THE EXTENT ALLOWABLE UNDER FEDERAL LAW, COLORADOCARE AND ALL INVOLVED STATE DEPARTMENTS AND AGENCIES SHALL ARRANGE FOR FEDERAL FUNDS TO BE DELIVERED DIRECTLY TO COLORADOCARE. IF THESE FUNDS CANNOT BE DELIVERED DIRECTLY TO COLORADOCARE, THE STATE SHALL TRANSFER THEM TO COLORADOCARE WITHIN TEN DAYS AFTER IT RECEIVES THEM.

(2) NO LATER THAN THE DATE COLORADOCARE IS TO ASSUME RESPONSIBILITY FOR HEALTH CARE PAYMENTS, THE STATE SHALL TRANSFER TO COLORADOCARE ALL STATE AND FEDERAL FUNDS FOR THE MEDICAID, CHILDREN'S BASIC HEALTH PLAN, AND ANY OTHER PROGRAM TO BE ADMINISTERED BY COLORADOCARE. THE STATE MAY RETAIN ANY FUNDS NECESSARY TO MEET PAYMENT OBLIGATIONS WHICH EXIST AS OF THE DATE OF TRANSFER. UPON RECEIPT OF THIS FUNDING, COLORADOCARE SHALL BE RESPONSIBLE FOR PAYING FOR ALL BENEFITS AND SERVICES PREVIOUSLY PAID BY THE STATE AND FEDERAL GOVERNMENT WITH THOSE FUNDS.

(3) COLORADOCARE SHALL ASSUME RESPONSIBILITY FOR THE PROPER ADMINISTRATION AND DISTRIBUTION OF STATE AND FEDERAL FUNDS PURSUANT TO STATE AND FEDERAL LAW.

(4) THE BOARD MAY APPLY FOR COLORADOCARE TO BECOME A MEDICARE ADVANTAGE PROGRAM, A MEDICARE SUPPLEMENTAL PROGRAM, OR ANY SUCCESSOR PROGRAM.

(5) THE BOARD IS AUTHORIZED TO APPLY FOR FUNDS AND ENROLL IN ANY PROGRAM THAT DOES NOT ALTER THE PURPOSE OF COLORADOCARE AS SET FORTH IN SECTION 3(2) OF THIS ARTICLE.

**Section 9. Funding of ColoradoCare - collection of premiums.** (1) ON AND AFTER JULY 1 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS ARTICLE, AND UNTIL THIRTY DAYS BEFORE COLORADOCARE ASSUMES RESPONSIBILITY FOR HEALTH CARE PAYMENTS, THE COLORADO DEPARTMENT OF REVENUE SHALL COLLECT A TRANSITIONAL OPERATING FUND TAX OF:

(a) SIX-TENTHS PERCENT OF TOTAL PAYROLL FROM EACH EMPLOYER;

(b) THREE-TENTHS PERCENT OF ALL PAYROLL INCOME FROM EACH EMPLOYEE; AND

(c) NINE-TENTHS PERCENT OF ALL NONPAYROLL INCOME FROM ALL BENEFICIARIES.

(d) FROM JULY 1 UNTIL DECEMBER 31 OF THE FIRST YEAR IN WHICH THE TAXES IN THIS SUBSECTION (1) ARE LEVIED, THEY SHALL BE LEVIED ON FIFTY PERCENT OF THE BENEFICIARY'S TOTAL NONPAYROLL INCOME.

(2) THIRTY DAYS BEFORE COLORADOCARE IS TO ASSUME RESPONSIBILITY FOR HEALTH CARE PAYMENTS, THE COLORADO DEPARTMENT OF REVENUE SHALL CEASE COLLECTING TRANSITIONAL OPERATING FUND TAXES AND SHALL BEGIN COLLECTING A PREMIUM TAX OF:

(a) SIX AND SIXTY-SEVEN-ONE-HUNDREDTHS PERCENT OF TOTAL PAYROLL FROM ALL EMPLOYERS, WHICH SATISFIES THEIR OBLIGATION TO PROVIDE HEALTH CARE INSURANCE FOR THEIR EMPLOYEES;

(b) THREE AND THIRTY-THREE-ONE-HUNDREDTHS PERCENT OF ALL PAYROLL INCOME FROM EACH EMPLOYEE; AND

(c) TEN PERCENT OF ALL NON-PAYROLL INCOME FROM ALL BENEFICIARIES.

(d) IF THE PREMIUM TAX LEVIED PURSUANT TO THIS SUBSECTION (2) IS FIRST LEVIED ON A DATE OTHER THAN JANUARY 1, IT SHALL BE LEVIED ON THE BENEFICIARY'S TOTAL NONPAYROLL INCOME MULTIPLIED BY THE PERCENTAGE OF THE CALENDAR YEAR IN WHICH THE TAX IS FIRST LEVIED.

(3) PAYMENT OF THE PREMIUM TAX DOES NOT CONSTITUTE THE PURCHASE OF A HEALTH INSURANCE POLICY BY AN EMPLOYER OR TAXPAYER.

(4) THE TAXES LEVIED PURSUANT TO THIS SECTION 9 SHALL BE LEVIED AGAINST THE INCOME OF NONRESIDENT INDIVIDUALS IN THE MANNER SPECIFIED IN SECTION 39-22-109, COLORADO REVISED STATUTES OR ANY SUCCESSOR STATUTE, AND AGAINST THE INCOME OF PART-YEAR RESIDENTS IN THE MANNER SPECIFIED IN SECTION 39-22-110, COLORADO REVISED STATUTES OR ANY SUCCESSOR STATUTE.

(5) AN EMPLOYER MAY PAY ALL OR PART OF AN EMPLOYEE'S SHARE OF THE TAXES LEVIED PURSUANT TO THIS SECTION.

(6) THE TOTAL AMOUNT OF PAYROLL EARNINGS BY EMPLOYEES AND OF NONPAYROLL INCOME SUBJECT TO THE TAXES LEVIED PURSUANT TO THIS SECTION SHALL NOT EXCEED THREE HUNDRED FIFTY THOUSAND DOLLARS FOR THOSE FILING INDIVIDUAL INCOME TAX RETURNS AND FOUR HUNDRED FIFTY THOUSAND DOLLARS FOR COUPLES FILING JOINTLY. THE DEPARTMENT OF REVENUE SHALL ANNUALLY ADJUST THESE LIMITS FOR INFLATION USING THE CONSUMER PRICE INDEX PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR FOR THE BOULDER-GREELEY-DENVER METROPOLITAN STATISTICAL AREA. ADJUSTMENTS SHALL BE EFFECTIVE ON JANUARY 1 OF EACH YEAR, BEGINNING WITH THE CALENDAR YEAR 2018 AND USING THE CALENDAR YEAR 2017 AS THE BASE YEAR.

(7) THE BOARD SHALL CONDUCT AN ANNUAL ASSESSMENT OF REVENUES AND COSTS AND PREPARE A PUBLIC REPORT REGARDING THE FINANCIAL STATUS OF COLORADOCARE AND OPTIONS CONSIDERED FOR ECONOMIES, BENEFITS, REFUNDS, BUILDING NECESSARY RESERVES, AND PREMIUM ADJUSTMENTS.

(8) IF THE BOARD DETERMINES THAT A PREMIUM INCREASE IS NECESSARY TO MAINTAIN THE FISCAL STABILITY OF COLORADOCARE, THE BOARD MAY INCREASE THE PREMIUM TAXES SPECIFIED IN SUBSECTION (2) OF THIS SECTION NOT MORE OFTEN THAN ONCE PER FISCAL YEAR, BUT ONLY IF A MAJORITY OF THE MEMBERS OF COLORADOCARE WHO CAST VOTES ON THE PROPOSED INCREASE APPROVE IT.

**Section 10. Exemption.** COLORADOCARE AND THIS ARTICLE ARE EXEMPT FROM SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION.

**Section 11. ColoradoCare secondary payor - subrogation rights.** (1) COLORADOCARE SERVES AS A SECONDARY PAYOR TO ANY HEALTH INSURANCE PLAN IN WHICH A BENEFICIARY IS ENROLLED OR WHICH MAY BE RESPONSIBLE FOR A BENEFICIARY'S HEALTH CARE EXPENSES. THE TOTAL OF COLORADOCARE'S PAYMENT AND ALL OTHER PAYMENTS SHALL NOT EXCEED THE AMOUNT THAT COLORADOCARE WOULD PAY IF IT WERE THE ONLY PAYOR.

(2) COLORADOCARE SHALL SERVE AS A STATE HEALTH PLAN THAT PAYS FOR DESIGNATED SUPPLEMENTAL HEALTH CARE SERVICES FOR MEDICARE BENEFICIARIES; EXCEPT THAT COLORADOCARE SHALL NOT PAY FOR SERVICES:

(a) COVERED BY MEDICARE PARTS A, B AND D; OR



(b) COVERED BY A MEDICARE ADVANTAGE PLAN THAT A BENEFICIARY HAS WITH AN ENTITY OTHER THAN COLORADOCARE; OR

(c) THAT WOULD HAVE BEEN PAID BY MEDICARE PARTS B OR D HAD THE BENEFICIARY PURCHASED THOSE OPTIONAL MEDICARE COVERAGES, UNLESS:

(I) COLORADOCARE HAS AN AGREEMENT WITH THE CENTER FOR MEDICARE AND MEDICAID SERVICES THAT REQUIRES IT TO PAY FOR SERVICES THAT WOULD HAVE BEEN PAID UNDER PARTS B AND D; OR

(II) COLORADOCARE OFFERS A MEDICARE ADVANTAGE PLAN AND THE BENEFICIARY VOLUNTARILY ENROLLS IN THIS PLAN.

(3)(a) COLORADOCARE HAS FULL RIGHTS OF SUBROGATION, AHEAD OF THE RIGHTS OF A WORKERS' COMPENSATION OR OTHER INSURER OR HEALTH CARE PLAN, INCLUDING THE RIGHT TO BRING AN INDEPENDENT LAWSUIT OR TO INTERVENE IN A LAWSUIT FILED BY A BENEFICIARY, IN ORDER TO RECOVER HEALTH CARE COSTS FROM COLLATERAL SOURCES FOR WHICH THE BENEFICIARY HAS A RIGHT OF ACTION FOR COMPENSATION AGAINST THE PERSON OR ENTITY THAT CAUSED HIS OR HER ILLNESS OR INJURY. COLORADOCARE MAY ASSERT A LIEN AGAINST ANY PROCEEDS RECOVERED BY THE BENEFICIARY.

(b) COLORADOCARE MAY RECOVER HEALTH CARE PAYMENTS FROM ANY OTHER COLLATERAL SOURCE, SUCH AS A HEALTH INSURANCE PLAN, HEALTH BENEFIT PLAN, OR OTHER PAYOR THAT IS PRIMARY TO COLORADOCARE.

**Section 12. Legislation.** (1) IN THE FIRST REGULAR SESSION OF THE GENERAL ASSEMBLY THAT CONVENES AFTER THE EFFECTIVE DATE OF THIS ARTICLE, THE GENERAL ASSEMBLY SHALL ENACT LEGISLATION:

(a) TO ENABLE THE COLORADO DEPARTMENT OF REVENUE TO COLLECT AND TRANSFER TO COLORADOCARE THE TAXES LEVIED PURSUANT TO SECTION 9 OF THIS ARTICLE. THE GENERAL ASSEMBLY SHALL APPROPRIATE SUFFICIENT FUNDS TO THE DEPARTMENT OF REVENUE TO ENSURE THAT IT CAN BEGIN COLLECTING THESE TAXES ON AND AFTER JULY 1 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS ARTICLE, AND TO ENSURE THAT FUNDS ARE TRANSFERRED TO COLORADOCARE WITHIN TEN DAYS OF COLLECTION;

(b) TO SUSPEND OPERATIONS OF THE COLORADO HEALTH BENEFIT EXCHANGE, TRANSFER ITS RESOURCES TO COLORADOCARE PURSUANT TO SECTION 8 OF THIS ARTICLE, AND REPEAL ARTICLE 22 OF TITLE 10, COLORADO REVISED STATUTES;

(c) TO TRANSFER RESPONSIBILITY FOR ADMINISTERING THE MEDICAID PROGRAM AND THE CHILDREN'S BASIC HEALTH PLAN TO COLORADOCARE;

(d) TO TRANSFER RESPONSIBILITY FOR ADMINISTERING ANY OTHER STATE AND FEDERAL HEALTH CARE PROGRAMS TO COLORADOCARE;

(e) TO ENABLE COLORADOCARE TO RECEIVE THE APPROPRIATE FEDERAL FUND CONTRIBUTION IN LIEU OF THE FEDERAL PREMIUM TAX CREDITS, COST-SHARING SUBSIDIES, AND SMALL BUSINESS TAX CREDITS PROVIDED IN THE AFFORDABLE CARE ACT;

(f) TO REPEAL OR AMEND, AS APPROPRIATE, THOSE PROVISIONS OF THE "WORKERS' COMPENSATION ACT OF COLORADO", ARTICLES 40 TO 47 OF TITLE 8, COLORADO REVISED STATUTES, AND ANY OTHER PROVISIONS OF LAW THAT CONCERN THE PROVISION OF MEDICAL CARE FOR WORKERS WHO SUFFER INJURIES OR ILLNESSES ARISING OUT OF AND IN THE COURSE OF THEIR EMPLOYMENT AND FOR THE PAYMENT OF PREMIUMS FOR MEDICAL BENEFITS, WHETHER BY EMPLOYERS OR INSURERS COVERED UNDER THE WORKERS' COMPENSATION ACT, OR THAT OTHERWISE CONFLICT WITH THIS ARTICLE;

(g) TO ENSURE THAT THE STATE'S EXPENDITURES FOR HEALTH CARE SERVICES, INCLUDING THE STATE'S RESPONSIBILITY FOR PROVIDING MATCHING FUNDS FOR MEDICAID AND OTHER FEDERALLY SUPPORTED HEALTH CARE PROGRAMS, DO NOT FALL BELOW THE EXPENDITURE LEVELS FOR HEALTH CARE SERVICES IN THE YEAR PRECEDING THE EFFECTIVE DATE OF THIS ARTICLE. THE BASE YEAR EXPENDITURE LEVELS SHALL BE ADJUSTED ANNUALLY FOR CHANGES IN THE CONSUMER PRICE INDEX FOR THE DENVER-BOULDER-GREELEY METROPOLITAN STATISTICAL AREA AND IN THE STATE'S POPULATION; AND

(h) NECESSARY TO IMPLEMENT THIS ARTICLE.

(2) THE LEGISLATION SPECIFIED IN PARAGRAPHS (b), (c) AND (d) OF SUBSECTION (1) OF THIS SECTION SHALL INCLUDE THE TRANSFER OF ALL STATE AND FEDERAL FUNDS FOR THESE PROGRAMS TO COLORADOCARE.

(3) THE GENERAL ASSEMBLY SHALL APPROPRIATE SUFFICIENT FUNDS TO ENSURE A SMOOTH AND EFFICIENT TRANSFER OF THE PROGRAMS SPECIFIED IN PARAGRAPHS (b), (c) AND (d) OF SUBSECTION (1) OF THIS SECTION AND TO ENABLE THE AGENCIES SPECIFIED IN SECTION 8(1) OF THIS ARTICLE TO ASSIST COLORADOCARE IN THE MANNER SPECIFIED BY THAT SECTION.

**Section 13. Subject to Colorado sunshine laws.** THE MEETINGS OF THE BOARD AND THE INTERIM BOARD ARE SUBJECT TO ARTICLE 6 OF TITLE 24, COLORADO REVISED STATUTES, THE "COLORADO SUNSHINE ACT OF 1972", OR ITS SUCCESSOR ACT.

**Section 14. Effective Date.** THIS ARTICLE SHALL TAKE FULL FORCE AND EFFECT UPON THE GOVERNOR'S PROCLAMATION PURSUANT TO SECTION 1, ARTICLE V OF THIS CONSTITUTION.

**Section 15. Severability.** IF THE COURTS OF THIS STATE OR OF THE UNITED STATES DECLARE ANY SECTION, PROVISION, PARAGRAPH, CLAUSE, OR PART OF THIS ARTICLE UNCONSTITUTIONAL OR INVALID, THE DECISION OF THE COURT AFFECTS ONLY THE SECTION, PROVISION, PARAGRAPH, CLAUSE, OR PART DECLARED UNCONSTITUTIONAL OR INVALID AND DOES NOT AFFECT ANY OTHER PART OF THIS ARTICLE.

**Section 16. Termination of ColoradoCare's Operations.** (1) IF THE BOARD DETERMINES THAT COLORADOCARE HAS NOT RECEIVED THE WAIVERS, EXEMPTIONS, AND AGREEMENTS FROM THE FEDERAL GOVERNMENT SUFFICIENT FOR ITS FISCALLY SOUND OPERATION, THE BOARD SHALL:

- (a) SHUT DOWN OPERATIONS AND RETURN UNUSED FUNDS;
- (b) NOTIFY THE GOVERNOR OF THE STATE OF COLORADO OF COLORADOCARE'S INABILITY TO FUNCTION; AND
- (c) NOTIFY THE REVISOR OF STATUTES IN WRITING OF THE DATE THE OPERATIONS ARE SHUT DOWN.

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## Amendment 70 State Minimum Wage

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### ANALYSIS

Amendment 70 proposes amending the Colorado Constitution to:

- ◆ increase the state minimum wage from \$8.31 to \$9.30 per hour beginning January 1, 2017;
- ◆ increase the minimum wage annually by \$0.90 per hour beginning January 1, 2018, until it reaches \$12.00 per hour on January 1, 2020; and
- ◆ on January 1, 2021, and thereafter, adjust the minimum wage each year based on cost-of-living increases.

### Summary and Analysis

**What is the minimum wage?** The minimum wage is the lowest wage that can be paid to most workers. The federal minimum wage is currently set at \$7.25 per hour for most workers and \$2.13 per hour for workers who receive tips. It was last increased in 2009. Federal law allows states and cities to set a higher minimum wage than the federal government.

**What is Colorado's current minimum wage law?** In 2006, Colorado voters adopted an amendment to the state constitution that raised the minimum wage to \$6.85 per hour on January 1, 2007, and required that the minimum wage be adjusted each year up or down for changes in inflation, as measured by the Colorado consumer price index (CPI). The CPI is a common measure for changes in the prices of goods and services, such as food, housing, gasoline, and medical care. The Colorado Department of Labor and Employment sets the state's minimum wage each January. It is currently set at \$8.31 per hour for most workers. Colorado law does not allow cities to set a higher minimum wage than the state.

The 2006 amendment also set the minimum wage for tipped workers at \$3.02 less than the state minimum wage. The minimum wage for tipped workers is currently \$5.29 per hour plus tips. Some tipped workers, such as servers and bartenders, may earn enough in tips to bring their hourly earnings above the state minimum wage, while some may not earn enough in tips to reach it. When tipped workers do not earn enough, employers must supplement their wages to ensure that they receive at least the state minimum wage.

The occupations of workers most likely to be paid minimum wage include retail salespeople, food service workers, child care workers, janitors, and home health aides.

**How does Amendment 70 change state law?** Amendment 70 increases the state minimum wage to \$9.30 per hour on January 1, 2017, after which it increases annually by \$0.90 per hour until it reaches \$12.00 per hour in 2020. Because the minimum wage for tipped workers remains at \$3.02 less than the state minimum wage, Amendment 70 increases the tipped minimum wage to \$8.98 per hour plus tips by 2020. Beginning in 2021, the minimum wage is adjusted annually for increases in the CPI. Although Amendment 70 and current law both use the CPI to adjust the minimum wage, Amendment 70 prevents a decrease in the minimum wage if the cost of living falls.

*For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

## Arguments For

1) Colorado's current minimum wage is too low to provide a basic standard of living for some workers. Full-time workers making the minimum wage in Colorado earn approximately \$17,285 annually, or about \$300 per week after taxes, and some rely on public assistance to make ends meet. While the minimum wage has increased only 21 percent since 2007 (when the last voter-approved increase in the minimum wage went into effect), prices for basic necessities such as health care and housing have increased more steeply. For example, the overall average monthly rent price in the Denver metro area has increased about 37 percent, from approximately \$946 in 2007 to about \$1,292 in 2015.

2) Raising the minimum wage may help businesses. Higher wages may improve employee productivity and morale and reduce turnover. This is especially important for businesses that pay the minimum wage, as they tend to have very high turnover. Hiring and training new employees can be very costly for businesses. Lower turnover translates into more experienced, more productive workers and significant cost savings.

## Arguments Against

1) Increasing the state minimum wage may actually hurt the very employees that the higher wage is meant to help. If Amendment 70 passes, some workers earning the minimum wage may face lay-offs, reduced hours, or fewer benefits. Also, workers seeking minimum wage employment may have a harder time finding work if businesses make fewer minimum wage jobs available. Finally, businesses may choose to raise prices. Because low-wage workers spend a higher percentage of their income on basic necessities like food, they are particularly vulnerable to rising prices.

2) Increasing the state minimum wage may hurt small and family-owned businesses, particularly in rural communities where the cost of living is lower and economic recovery has been slow compared with urban areas. Businesses in rural communities have a harder time absorbing increases in costs and may struggle to pay higher costs if the minimum wage increases, which may further distress the economy in rural Colorado.

## Estimate of Fiscal Impact

**State government spending.** Amendment 70 will affect costs for several state government agencies. Any state agency that pays an employee an hourly wage less than that required by Amendment 70 will experience an incremental increase in staffing costs if Amendment 70 passes. The actual increase in state costs for each of these agencies will depend on how the agencies, universities, and the legislature manage the increase. Their options may include increasing state funding, increasing fees, raising prices, reducing workers' hours, or some combination of these choices.

**Local government impact.** The fiscal impact of the measure on local governments has not been estimated. Costs will increase for any local governments that currently pay workers at or near the minimum wage.

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**Amendment 70  
State Minimum Wage**

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**TITLE AND TEXT**

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado constitution. The text of the measure that will appear in the Colorado constitution below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

***Ballot Title:***

Shall there be an amendment to the Colorado constitution increasing the minimum wage to \$9.30 per hour with annual increases of \$0.90 each January 1 until it reaches \$12 per hour effective January 2020, and annually adjusting it thereafter for cost-of-living increases?

***Text of Measure:***

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

**SECTION 1.** In the constitution of the state of Colorado, **amend** section 15 of article XVIII as follows:

**Section 15. State minimum wage rate.** Effective January 1, 2007~~17~~, Colorado's minimum wage ~~shall be~~ is increased to ~~\$6.85~~ \$9.30 per hour and ~~shall be adjusted~~ IS ADJUSTED ANNUALLY BY \$0.90 EACH JANUARY 1 UNTIL IT REACHES \$12 PER HOUR EFFECTIVE JANUARY 2020, AND THEREAFTER IS ADJUSTED ANNUALLY for inflation COST OF LIVING INCREASES, as measured by the Consumer Price Index used for Colorado. This minimum wage shall be paid to employees who receive the state or federal minimum wage. No more than \$3.02 per hour in tip income may be used to offset the minimum wage of employees who regularly receive tips.

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# Amendment 71 Requirements for Constitutional Amendments

## ANALYSIS

Amendment 71 proposes amending the Colorado Constitution to:

- ◆ require that a certain number of signatures be gathered from each state senate district to place a constitutional initiative on the ballot; and
- ◆ increase the percentage of votes required to adopt a constitutional amendment, except for proposals that only repeal part of the state constitution.

### Summary and Analysis

**Background.** In Colorado, citizens have the power to propose changes to the state constitution and statutes through the citizen-initiative process. Under this process, proponents must collect a certain number of signatures to place an initiative on the ballot. The state legislature may refer constitutional changes to the voters with a two-thirds vote of both houses. State statutes can be changed by the legislature without a vote of the people, but amending the constitution, whether by citizen initiative or legislative referendum, requires a majority of the votes cast in an election.

In order to place a citizen initiative on the ballot to change the constitution or state statutes, proponents must collect enough signatures to equal at least 5 percent of the votes cast in the most recent election for Secretary of State. In 2016, this requirement is 98,492 signatures. Proponents have up to six months to gather and submit signatures to the Secretary of State's Office for verification.

**Changes under Amendment 71.** Amendment 71 adds a requirement that signatures be collected statewide for the citizen-initiative process and increases the percentage of votes required to adopt changes to the constitution in most situations. Amendment 71 does not alter the process or requirements for citizen initiatives that propose changes to state statutes.

**Signature requirements.** Amendment 71 creates an additional signature-gathering requirement to place a constitutional initiative on the ballot. Of the total required signatures, some must be collected from each of the state's 35 senate districts in an amount of at least 2 percent of the registered voters in each district.

Table 1 shows a sample of state senate districts and the minimum number of signatures that would be needed to place a measure on the ballot under Amendment 71, based on the 2 percent requirement and the number of registered voters in these districts.

**Table 1  
Sample Signature Collection Requirements  
Under Amendment 71, as of May 1, 2016**

State Senate District	Location	Number of Registered Voters	2 Percent of Registered Voters
District 1	11 counties in northeast Colorado	90,983	1,820
District 7	Mesa County	110,167	2,203
District 20	a portion of Jefferson County	118,644	2,373
District 29	a portion of Arapahoe County	82,963	1,659
District 35	16 counties in south and southeast Colorado	88,962	1,779

Source: Colorado Secretary of State's Office with Legislative Council Staff calculations.

*Percent of vote required to adopt changes to the constitution.* Under current law, changes to the constitution require a simple majority of all votes cast, or 50 percent plus one vote. Amendment 71 changes this requirement to 55 percent of all votes cast, except when a proposed amendment repeals rather than changes part of the constitution, in which case a simple majority of votes is required.

*For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

## **Arguments For**

1) It should be difficult to change the constitution because it is a foundational document for the state. Because the current requirements for proposing and adopting constitutional and statutory amendments are the same, the constitution has seen the addition of detailed provisions that cannot be changed without an election. Amendment 71 is expected to encourage citizen-initiated changes to law in statute by making it harder to amend the constitution. Statutory changes allow the legislature to react when laws require clarification or when problems or unforeseen circumstances arise.

2) Requiring that signatures for constitutional initiatives be gathered from each state senate district ensures that citizens from across the state have a say in which measures are placed on the ballot. Due to the relative ease of collecting signatures in heavily populated urban areas compared to sparsely populated rural areas, rural citizens currently have a limited voice in determining which issues appear on the ballot.

## **Arguments Against**

1) Amendment 71 makes it too difficult for citizens to exercise their right to initiate constitutional changes. Sometimes the will of the people or issues of broad public interest are not adequately addressed by the political process. While statutory changes may be amended or repealed without the approval of the voters, the power to amend the Colorado constitution lies solely with its citizens. It is critical to preserve the current process and to protect the rights of citizens to change the constitution.

2) Requiring proponents to collect signatures statewide for proposed constitutional changes makes the process of placing an amendment on the ballot even more difficult and costly. Amendment 71 unduly restricts ballot access for average Coloradans, leaving an important democratic tool accessible only to those able to bear the higher costs associated with a complicated signature-gathering process.

## **Estimate of Fiscal Impact**

***State government spending.*** Amendment 71 will increase costs for the Secretary of State's Office to implement the changes.



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## Amendment 71 Requirements for Constitutional Amendments

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### TITLE AND TEXT

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado constitution. The text of the measure that will appear in the Colorado constitution below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

**Ballot Title:**

Shall there be an amendment to the Colorado constitution making it more difficult to amend the Colorado constitution by requiring that any petition for a citizen-initiated constitutional amendment be signed by at least two percent of the registered electors who reside in each state senate district for the amendment to be placed on the ballot and increasing the percentage of votes needed to pass any proposed constitutional amendment from a majority to at least fifty-five percent of the votes cast, unless the proposed constitutional amendment only repeals, in whole or in part, any provision of the constitution?

**Text of Measure:**

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

**SECTION 1.** In the constitution of the state of Colorado, Section 1(4) of article V is amended and said section 1 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**Section 1. General assembly - initiative and referendum.**

(2.5) IN ORDER TO MAKE IT MORE DIFFICULT TO AMEND THIS CONSTITUTION, A PETITION FOR AN INITIATED CONSTITUTIONAL AMENDMENT SHALL BE SIGNED BY REGISTERED ELECTORS WHO RESIDE IN EACH STATE SENATE DISTRICT IN COLORADO IN AN AMOUNT EQUAL TO AT LEAST TWO PERCENT OF THE TOTAL REGISTERED ELECTORS IN THE SENATE DISTRICT PROVIDED THAT THE TOTAL NUMBER OF SIGNATURES OF REGISTERED ELECTORS ON THE PETITION SHALL AT LEAST EQUAL THE NUMBER OF SIGNATURES REQUIRED BY SUBSECTION (2) OF THIS SECTION. FOR PURPOSES OF THIS SUBSECTION (2.5), THE NUMBER AND BOUNDARIES OF THE SENATE DISTRICTS AND THE NUMBER OF REGISTERED ELECTORS IN THE SENATE DISTRICTS SHALL BE THOSE IN EFFECT AT THE TIME THE FORM OF THE PETITION HAS BEEN APPROVED FOR CIRCULATION AS PROVIDED BY LAW.

(4) (a) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon OR, IF APPLICABLE THE NUMBER OF VOTES REQUIRED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4), and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the power to enact any measure.

(b) IN ORDER TO MAKE IT MORE DIFFICULT TO AMEND THIS CONSTITUTION, AN INITIATED CONSTITUTIONAL AMENDMENT SHALL NOT BECOME PART OF THIS CONSTITUTION UNLESS THE AMENDMENT IS APPROVED BY AT LEAST FIFTY-FIVE PERCENT OF THE VOTES CAST THEREON; EXCEPT THAT THIS PARAGRAPH (b) SHALL NOT APPLY TO AN INITIATED CONSTITUTIONAL AMENDMENT THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ANY PROVISION OF THIS CONSTITUTION.

**SECTION 2.** In the constitution of the state of Colorado, Section 2(1) of article XIX is amended to read:

**Section 2. Amendments to constitution - how adopted.** (1) (a) Any amendment or amendments to this constitution may be proposed in either house of the general assembly, and, if the same shall be voted for by two-thirds of all the members elected to each house, such proposed amendment or amendments, together

with the ayes and noes of each house thereon, shall be entered in full on their respective journals. The proposed amendment or amendments shall be published with the laws of that session of the general assembly. At the next general election for members of the general assembly, the said amendment or amendments shall be submitted to the registered electors of the state for their approval or rejection, and such as are approved by a majority of those voting thereon OR, IF APPLICABLE THE NUMBER OF VOTES REQUIRED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), shall become part of this constitution.

(b) IN ORDER TO MAKE IT MORE DIFFICULT TO AMEND THIS CONSTITUTION, A CONSTITUTIONAL AMENDMENT SHALL NOT BECOME PART OF THIS CONSTITUTION UNLESS THE AMENDMENT IS APPROVED BY AT LEAST FIFTY-FIVE PERCENT OF THE VOTES CAST THEREON; EXCEPT THAT THIS PARAGRAPH (b) SHALL NOT APPLY TO A CONSTITUTIONAL AMENDMENT THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ANY PROVISION OF THIS CONSTITUTION.

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## Amendment 72 Increase Cigarette and Tobacco Taxes

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### ANALYSIS

Amendment 72 proposes amending the Colorado Constitution to:

- ◆ increase the state tax on a pack of cigarettes from \$0.84 to \$2.59;
- ◆ increase the state tax on other tobacco products from 40 percent to 62 percent of the price; and
- ◆ distribute the new tax money for medical research, tobacco-use prevention, doctors and clinics in rural or low-income areas, veterans' services, and other health-related programs.

### Summary and Analysis

**Existing taxes on cigarettes.** The federal government collects a tax of \$1.01 on each pack of 20 cigarettes. Additionally, every state collects a cigarette tax. Colorado's cigarette tax is 84 cents per pack. Of this amount, 64 cents is required to be spent on health-related programs identified in the Colorado Constitution, including Medicaid, children's health care, tobacco education programs, and disease prevention and treatment. The remaining 20 cents is spent on various state government programs. Local governments may choose not to collect a cigarette tax in order to receive a share of state revenue. Since 1973, no local government has collected a cigarette tax.

**Existing taxes on other tobacco products.** Both the federal and state government collect taxes on non-cigarette tobacco products, including cigars, pipe tobacco, snuff, dip, and chewing tobacco. Existing taxes do not apply to e-cigarettes. The federal tax is calculated according to the product's weight or price. Colorado's state tax is equal to 40 percent of the manufacturer's list price of the product. Of this amount, half is spent on the same health programs as the cigarette tax, and half is spent on other state government programs. Some local governments collect sales taxes on tobacco products.

**Existing cigarette and other tobacco taxes.** Colorado collected about \$200.3 million from cigarette and tobacco taxes in state budget year 2015-16. Of this amount, \$143.7 million was spent on health-related programs as required in the Colorado Constitution, and \$56.6 million was spent on other state and local government programs.

State sales taxes are collected on some services and most goods, including cigarettes and tobacco products. Sales taxes are spent on the state's general operating budget.

**Additional taxes on cigarettes and tobacco products in Amendment 72.** The measure increases the cigarette tax by \$1.75 per pack of 20 cigarettes and the tax on other tobacco products by 22 percent of the manufacturer's list price. The tax increase will take effect on January 1, 2017. Neither the existing taxes nor the additional taxes in Amendment 72 apply to e-cigarettes. Revenue from the new taxes is exempt from the state's constitutional revenue limit.

**Distribution of new tax revenue in Amendment 72.** The distribution of the money generated from the additional taxes is shown in Table 1.

**Table 1**  
**Distribution of Money Generated From Additional Taxes Under Amendment 72**

Purpose	Distribution
Spending on health-related programs funded by previously approved tobacco taxes, including Medicaid, children's health care, tobacco education programs, and disease prevention and treatment	18%, up to \$36 million annually. Any amount over \$36 million will be distributed proportionally to the other uses
Research grants to study tobacco-related health issues	27%
Education and prevention, and other programs encouraging people to stop using tobacco	16%
Grants to improve health, find employment, and prevent homelessness for veterans	14%
Grants for child and adolescent mental health and substance abuse prevention and treatment	10%
Construction or improvements to community health centers or providers that serve predominantly low income patients	10%
Student loan repayment and training for health care professionals working in rural or underserved areas of the state	5%

Amendment 72 requires the state legislature to maintain 2016 funding levels for existing health-related programs in Table 1 and use the new tax revenue to expand the existing programs.

*For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

**Arguments For**

1) Higher prices for cigarettes and tobacco products have been shown to deter smoking and tobacco use, especially among children and young adults. When cigarette taxes were last increased in 2005, the number of cigarettes consumed per person in Colorado fell by 12.6 percent. Tobacco use is a leading cause of preventable diseases like cancer, and heart and lung disease, contributing to 5,100 deaths in Colorado per year. Reducing smoking and tobacco use will improve the health of Colorado residents.

2) Dedicating cigarette and tobacco tax revenue to health care and research is an important way to offset the health care burden and cost tobacco use places on the state. Tobacco use increases direct health care costs in Colorado by an estimated \$1.9 billion annually, with additional health care costs related to secondhand smoke. The revenue from the proposed tax increase will fund health programs, research, and benefits for Colorado veterans, people with mental health diagnoses, and rural health care providers.

**Arguments Against**

1) Amendment 72 is a \$315.7 million tax increase. The measure creates a constitutional requirement that revenue from the new taxes be spent on specific programs, even if these programs are ineffective at reducing the cost of tobacco use. Unless voters approve another constitutional change, the spending priorities in the measure will receive taxpayer funding indefinitely. As tobacco use declines, Amendment 72 will lock in state spending on unnecessary programs even when new needs are identified in the state budget.

2) Tripling the tax on cigarettes impacts low-income tobacco users the most. Recent studies have shown that people with lower incomes are more likely to use tobacco products and less able to afford a tax increase. Nationally, more than a quarter of people in poverty smoke cigarettes, and tobacco users with low incomes spend about 14 percent of their household income on tobacco products. Because these products are addictive, tobacco users may continue using tobacco even after taxes are increased. Low-income tobacco users who are unable to quit will subsidize programs that benefit non-tobacco users, taking money out of already tight household budgets.

**Estimate of Fiscal Impact**

**State revenue and spending.** Amendment 72 is expected to increase new state tax revenue by \$315.7 million in state budget year 2017-18, the first full year in which the new tax will be in effect. The higher cost of cigarettes is expected to reduce tobacco consumption and revenue from existing taxes by \$16.7 million. The net impact to state revenue under Amendment 72 is expected to be \$299.0 million in state budget year 2017-18. The amendment outlines how the new revenue from the tax increase must be spent, shown below in Table 2. All of these programs will be administered by either the Colorado Department of Public Health and Environment or the Department of Health Care Policy and Financing.

**Table 2  
Estimated Revenue from Additional Taxes Under Amendment 72  
State Budget Year 2017-18**

Purpose	Estimated Amount
Spending on health-related programs funded by previously approved tobacco taxes, including Medicaid, children's health care, tobacco education programs, and disease prevention and treatment	\$36 million
Research grants to study tobacco-related health issues	\$92 million
Education and prevention, and other programs encouraging people to stop using tobacco	\$55 million
Grants to improve health, find employment, and prevent homelessness for veterans	\$48 million
Grants for child and adolescent mental health and substance abuse prevention and treatment	\$34 million
Construction or improvements to community health centers or providers that serve predominantly low income patients	\$34 million
Student loan repayment and training for health care professionals working in rural or underserved areas of the state	\$17 million

Because Amendment 72 takes effect January 1, 2017, state revenue will increase by approximately \$149.5 million, and costs will increase in the Colorado Department of Public Health and Environment, the Department of Health Care Policy and Financing, and the Department of Revenue in budget year 2016-17.

**State Spending and Tax Increases**

Article X, Section 20 of the Colorado Constitution requires that the following fiscal information be provided when a tax increase question is on the ballot:

- estimates or actual amounts of state fiscal year spending for the current year and each of the past four years with the overall percentage and dollar change; and
- for the first full year of the proposed tax increase, an estimate of the maximum dollar amount of the tax increase and of state fiscal year spending without the increase.

"State fiscal year spending" is a legal term in the Colorado Constitution. It equals the amount of revenue subject to the constitutional spending limit that the state is permitted to keep and either spend or save for a single year. Table 3 shows state fiscal year spending from FY 2012-13 through FY 2016-17.

**Table 3  
State Fiscal Year Spending, FY 2012-13 to FY 2016-17**

	<b>Actual FY 2012-13</b>	<b>Actual FY 2013-14</b>	<b>Actual FY 2014-15</b>	<b>Preliminary FY 2015-16</b>	<b>Estimated FY 2016-17</b>
Fiscal Year Spending	\$11.11 billion	\$11.69 billion	\$12.36 billion	\$12.90 billion	\$13.08 billion
Four-Year Dollar Change in State Fiscal Year Spending: \$1.97 billion					
Four-Year Percent Change in State Fiscal Year Spending: 17.7 percent					

*\*FY = fiscal year. The state's fiscal (or budget) year begins on July 1.*

Table 4 shows the revenue expected from the new tax, and state fiscal year spending without the tax, for FY 2017-18, the first full fiscal year for which the increase would be in place.

**Table 4  
State Fiscal Year Spending and  
the Proposed Cigarette and Tobacco Tax Increase**

	<b>FY 2017-18 Estimate</b>
State Fiscal Year Spending	\$16.01 billion
Revenue from the New Tax	\$315.7 million

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**Amendment 72  
Increase Cigarette and Tobacco Taxes**

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**TITLE AND TEXT**

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado constitution. The text of the measure that will appear in the Colorado constitution below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

***Ballot Title:***

SHALL STATE TAXES BE INCREASED \$315.7 MILLION ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION INCREASING TOBACCO TAXES, AND, IN CONNECTION THEREWITH, BEGINNING JANUARY 1, 2017, INCREASING TAXES ON CIGARETTES BY 8.75 CENTS PER CIGARETTE (\$1.75 PER PACK OF 20 CIGARETTES) AND ON OTHER TOBACCO PRODUCTS BY 22 PERCENT OF THE MANUFACTURER'S LIST PRICE; AND ALLOCATING SPECIFIED PERCENTAGES OF THE NEW TOBACCO TAX REVENUE TO HEALTH-RELATED PROGRAMS AND TOBACCO EDUCATION, PREVENTION, AND CESSATION PROGRAMS CURRENTLY FUNDED BY EXISTING CONSTITUTIONAL TOBACCO TAXES; AND ALSO ALLOCATING NEW REVENUE FOR TOBACCO-RELATED HEALTH RESEARCH, VETERANS' PROGRAMS, CHILD AND ADOLESCENT BEHAVIORAL HEALTH, CONSTRUCTION AND TECHNOLOGY IMPROVEMENTS FOR QUALIFIED HEALTH PROVIDERS, EDUCATIONAL LOAN REPAYMENT FOR HEALTH PROFESSIONALS IN RURAL AND UNDERSERVED AREAS, AND HEALTH PROFESSIONAL TRAINING TRACKS?

***Text of Measure:***

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

**Section 1.** In the constitution of the state of Colorado, section 21 of article X, **add** (10) as follows:

**Section 21. Tobacco Taxes for Health Related Purposes.** (10) (a) THE PEOPLE OF COLORADO HEREBY FURTHER FIND THAT:

(I) TOBACCO PRODUCT SALES IN THE STATE OF COLORADO HAVE INCREASED;

(II) COLORADO'S NEED TO DETER CHILDREN AND YOUNG ADULTS FROM STARTING SMOKING IS AS CRITICAL AS EVER;

(III) COLORADO NOW SPENDS LESS THAN HALF OF THE CENTERS FOR DISEASE CONTROL RECOMMENDED LEVEL ON TOBACCO EDUCATION AND CESSATION PROGRAMS;

(IV) SMOKING ADVERSELY AFFECTS THE WELFARE OF COLORADANS DIRECTLY AND INDIRECTLY AND, WITHOUT FURTHER ACTION, WILL DO SO NOW AND IN THE FUTURE; AND

(V) IT IS IN THE COLLECTIVE INTEREST OF ALL COLORADANS TO RAISE TOBACCO TAXES AND COMPETITIVELY AWARD TOBACCO TAX REVENUES TO ENHANCE THE PHYSICAL AND BEHAVIORAL HEALTH OF OUR POPULATION, TO FUND RESEARCH TO PREVENT AND CURE DISEASES SUCH AS CANCER, EMPHYSEMA, AND ALZHEIMER'S, AND TO PROVIDE PROGRAMS THAT WILL ENHANCE THE WELL-BEING OF VETERANS, AS WELL AS THOSE WHO LIVE IN RURAL AND UNDERSERVED AREAS OF OUR STATE.

(b) THERE ARE HEREBY IMPOSED THE FOLLOWING ADDITIONAL CIGARETTE AND TOBACCO TAXES, WHICH SHALL BE IN ADDITION TO THE INCREASED RATES BY SUBSECTION (2) OF THIS SECTION:

(I) A STATEWIDE CIGARETTE TAX, ON THE SALE OF CIGARETTES BY WHOLESALERS, AT EIGHT AND THREE-QUARTERS CENTS PER CIGARETTE (\$1.75 PER PACK OF TWENTY); AND

(II) A STATEWIDE TOBACCO PRODUCTS TAX, ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF TOBACCO PRODUCTS BY DISTRIBUTORS, AT TWENTY-TWO PERCENT OF THE MANUFACTURER'S LIST PRICE.

(c) THE CIGARETTE AND TOBACCO TAXES IMPOSED BY THIS SUBSECTION (10) SHALL BE IN ADDITION TO ANY OTHER CIGARETTE AND TOBACCO TAXES EXISTING AS OF THE EFFECTIVE DATE OF THIS SUBSECTION ON THE SALE OR USE OF CIGARETTES BY WHOLESALERS AND ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF TOBACCO PRODUCTS BY DISTRIBUTORS. SUCH EXISTING TAXES AND THEIR DISTRIBUTION SHALL NOT BE REPEALED OR REDUCED BY THE GENERAL ASSEMBLY.

(d) THE REVENUES GENERATED BY OPERATION OF THIS SUBSECTION (10)(b) SHALL BE APPROPRIATED AS FOLLOWS:

(I) EIGHTEEN PERCENT OF THE REVENUES COLLECTED UNDER THIS SUBSECTION, UP TO THIRTY-SIX MILLION DOLLARS ANNUALLY, SHALL BE ALLOCATED UNDER THE FORMULA FOR PROGRAMS SET FORTH IN SUBSECTION (5); PROVIDED, HOWEVER, ANY AMOUNT OVER THIRTY-SIX MILLION DOLLARS THAT WOULD OTHERWISE BE APPROPRIATED FOR THIS PURPOSE, BASED ON THIS EIGHTEEN PERCENT ALLOCATION, SHALL BE DISTRIBUTED PROPORTIONATELY ACCORDING TO THE RELATIVE DISTRIBUTION OF REVENUES PROVIDED BY SUBSECTION (10)(d)(II) (A)-(F).

(II) IN LIGHT OF THE ALLOCATION OF EIGHTEEN PERCENT OF REVENUES COLLECTED UNDER THIS SUBSECTION AS PROVIDED IN SUBSECTION (10)(d)(I), THE REMAINING REVENUES COLLECTED UNDER THIS SUBSECTION (10) SHALL BE APPROPRIATED IN THE FOLLOWING AMOUNTS:

(A) SIXTEEN PERCENT FOR TOBACCO EDUCATION, PREVENTION, AND CESSATION IN THE SAME MANNER AS THE REVENUE PROVIDED BY SUBSECTION (5)(c) OF THIS SECTION.

(B) TWENTY-SEVEN PERCENT FOR TOBACCO-RELATED RESEARCH INTO CARDIOVASCULAR AND PULMONARY DISEASES, CANCER, ALZHEIMER'S DISEASE, BEHAVIORAL HEALTH, MATERNAL HEALTH, AND EARLY CHILDHOOD DEVELOPMENT TO BE ADMINISTERED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR ITS SUCCESSOR AGENCY, WHICH SHALL ESTABLISH FOR THIS PURPOSE GRANT-MAKING GUIDELINES AFTER CONSULTING WITH RESEARCH INSTITUTIONS THAT ARE RECOGNIZED AS AUTHORITIES IN THESE RESEARCH AREAS AND THAT SPECIALIZE IN SUCH RESEARCH. BASED ON SUCH GUIDELINES, GRANTS FROM THESE REVENUES SHALL BE AWARDED FOR IN-STATE RESEARCH BY COLORADO ENTITIES ON THE BASIS OF SCIENTIFIC MERIT AS DETERMINED BY AN OPEN, COMPETITIVE PEER REVIEW PROCESS THAT ASSURES OBJECTIVITY, CONSISTENCY, AND HIGH QUALITY RESEARCH AND ALSO EMPLOYS CONFLICT-OF-INTEREST STANDARDS THAT REPRESENT BEST PRACTICES AS UTILIZED IN THE COMPETITION FOR AND AWARD OF FEDERAL GRANTS IN THIS FIELD.

(C) FOURTEEN PERCENT FOR VETERANS' PROGRAMS TO ASSIST WITH THEIR WELL-BEING, INCLUDING PHYSICAL AND BEHAVIORAL HEALTH, SERVICES TO RURAL VETERANS, HOMELESSNESS PREVENTION, AND EMPLOYMENT TRANSITION SERVICES THROUGH PROGRAMS TO BE ADMINISTERED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR ITS SUCCESSOR AGENCY. THE DEPARTMENT SHALL CONSULT WITH, AND CONSIDER THE EXPERTISE AND RECOMMENDATIONS OF NONPROFIT VETERANS SERVICE ORGANIZATIONS TO DETERMINE SERVICE PRIORITIES AND DEVELOP THE GRANT-MAKING PROCESS.

(D) TEN PERCENT FOR CHILD AND ADOLESCENT BEHAVIORAL HEALTH INCLUDING EVIDENCE-BASED PREVENTION, EARLY INTERVENTION, AND TREATMENT PROGRAMS TO BE ADMINISTERED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR ITS SUCCESSOR AGENCY, THROUGH A GRANT-MAKING PROCESS.

(E) TEN PERCENT FOR CONSTRUCTION, IMPROVEMENT, AND NEW TECHNOLOGIES FOR ANY QUALIFIED PROVIDER, AS DEFINED IN SECTION 25.5-3-301, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, THAT MEETS EITHER OF THE FOLLOWING CRITERIA: IS A COMMUNITY HEALTH CENTER AS DEFINED IN SECTION 330 OF THE PUBLIC HEALTH SERVICE ACT OR ANY SUCCESSOR ACT; OR AT LEAST FIFTY PERCENT OF THE PATIENTS SERVED BY THE QUALIFIED PROVIDER ARE UNINSURED OR MEDICALLY INDIGENT AS DEFINED IN THE COLORADO MEDICAL ASSISTANCE ACT OR ANY SUCCESSOR ACT, OR ARE ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN OR THE COLORADO MEDICAL ASSISTANCE PROGRAM OR SUCCESSOR PROGRAMS.

SUCH REVENUES SHALL BE APPROPRIATED TO THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, OR ITS SUCCESSOR AGENCY, FOR THE PURPOSE OF FUNDING COLORADO HEALTH SAFETY NET INFRASTRUCTURE IMPROVEMENTS, INCLUDING ALTERATION AND RENOVATION, CONSTRUCTION, EQUIPMENT-ONLY PURCHASES, AND HEALTH INFORMATION TECHNOLOGY-RELATED HARDWARE AND SOFTWARE.

(F) FIVE PERCENT FOR EDUCATIONAL LOAN REPAYMENT FOR HEALTH PROFESSIONALS WHO WORK IN RURAL AND UNDERSERVED AREAS OF THE STATE THROUGH THE COLORADO HEALTH SERVICES CORPS, OR SUCCESSOR PROGRAM, AND PROFESSIONAL TRAINING TRACKS FOR PHYSICIANS AT TEACHING HEALTH CENTERS, DENTISTS, PEDIATRIC RESIDENCIES,



PEDIATRIC PSYCHOLOGY FELLOWSHIPS, AND COMMUNITY DENTAL HEALTH COORDINATORS THROUGH PROGRAMS TO BE ADMINISTERED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR ITS SUCCESSOR AGENCY.

(e) THE LEGISLATIVE RESEARCH OFFICES OF THE GENERAL ASSEMBLY SHALL ANNUALLY PUBLISH ON AN EASILY IDENTIFIED PORTION OF THE GENERAL ASSEMBLY'S WEBSITE THE NAMES OF ALL PROGRAMS FUNDED UNDER THIS SUBSECTION (10) FOR THE PREVIOUS FISCAL YEAR, THE AMOUNTS APPROPRIATED FROM THE TAXES GENERATED BY THIS SUBSECTION (10) FOR SUCH PROGRAMS, AND THE PURPOSES OF THE EXPENDITURES.

(f) ALL REVENUES RECEIVED BY OPERATION OF THIS SUBSECTION (10) SHALL BE EXCLUDED FROM FISCAL YEAR SPENDING, AS THAT TERM IS DEFINED IN SECTION 20 OF ARTICLE X OF THIS CONSTITUTION, AND THE CORRESPONDING SPENDING LIMITS UPON STATE GOVERNMENT AND ALL LOCAL GOVERNMENTS RECEIVING SUCH REVENUES.

(g) REVENUES APPROPRIATED PURSUANT TO PARAGRAPHS (10)(d)(II) (B)-(F) OF SUBSECTION (10) SHALL BE USED TO SUPPLEMENT REVENUES THAT ARE APPROPRIATED BY THE GENERAL ASSEMBLY AS OF JANUARY 1, 2016, AND SHALL NOT BE USED TO SUPPLANT THOSE APPROPRIATED REVENUES.

(h) THE GENERAL ASSEMBLY MAY ENACT SUCH LEGISLATION AS WILL FACILITATE IMPLEMENTATION OF THIS INITIATIVE.

(i) THIS SUBSECTION (10) IS EFFECTIVE JANUARY 1, 2017.

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## Proposition 106 Access to Medical Aid-in-Dying Medication

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### ANALYSIS

Proposition 106 proposes amending the Colorado statutes to:

- ◆ allow a terminally ill individual with a prognosis of six months or less to live to request and self-administer medical aid-in-dying medication in order to voluntarily end his or her life;
- ◆ authorize a physician to prescribe medical aid-in-dying medication to a terminally ill individual under certain conditions; and
- ◆ create criminal penalties for tampering with a person's request for medical aid-in-dying medication or knowingly coercing a person with a terminal illness to request the medication.

### Summary and Analysis

Proposition 106 creates the "Colorado End-of-Life Options Act," which allows individuals with a terminal illness to request from their physician and self-administer medical aid-in-dying medication (medication). To be eligible to request medication, the individual must:

- be a Colorado resident aged 18 or older;
- be able to make and communicate an informed decision to health care providers;
- have a terminal illness with a prognosis of six months or less to live (terminally ill) that has been confirmed by two physicians, including the individual's primary physician and a second, consulting physician;
- be determined mentally capable by two physicians, who have concluded that the individual understands the consequences of his or her decision; and
- voluntarily express his or her wish to receive the medication.

**Request process.** To receive the medication, the individual must make two oral requests, at least 15 days apart, and one written request in a specific form to his or her primary physician. The written request must be witnessed by at least two other persons who attest that the requesting individual is mentally capable, acting voluntarily, and not being coerced into signing the request. One witness may not be a relative of the individual; an heir; or an owner, operator, or employee of a health care facility where the individual is receiving medical treatment or is a resident. Neither the primary physician nor the individual's qualified power of attorney or durable medical power of attorney, may be a witness to a written request.

**Physician requirements.** The primary physician is required to document that an individual requesting the medication is terminally ill and meets all other eligibility criteria. The primary physician must provide full and specific information to the individual about his or her diagnosis and prognosis; alternatives or additional treatment opportunities, such as hospice or palliative care; and the potential risks and probable results associated with taking the medication. The primary physician must also inform the individual that he or she may obtain, but choose not to use the medication and may withdraw his or her request at any time. The primary physician must confirm, in private with the individual, that his or her request to receive medication was not coerced or influenced by any other person and is required to refer the individual to a consulting physician to confirm that the individual meets all eligibility criteria.

If either a primary or consulting physician believes the individual is not mentally capable of making an informed decision about receiving the medication, that physician must refer the individual to a licensed psychiatrist or a licensed psychologist before the request process may proceed. This mental health professional must communicate his or her findings in writing to the referring physician. If a person is found to be mentally incompetent, he or she is no longer eligible for medical aid-in-dying.

**Dispensing of medical aid-in-dying medication.** Medication may be dispensed when two physicians agree on the individual's prognosis. Immediately prior to writing a prescription for the medication, the primary physician must verify that the individual is making an informed decision and that the process has been completed properly. Health care providers, including physicians and pharmacists, who dispense medication are required to file a copy of the dispensing record with the state. Unused medication must be returned to the primary physician or to any other state or federally approved medication take-back program.

**Death certificates.** The death certificate of an individual who uses the medication must be signed by the primary physician or hospice medical director and must list the underlying terminal illness as the cause of death. Deaths resulting from medical aid-in-dying are not subject to automatic investigation by the county coroner.

**Voluntary participation by health care providers.** Physicians and pharmacists are not obligated to prescribe or dispense the medication. If a health care provider is unable or unwilling to carry out an eligible individual's request for the medication and the individual transfers to a new provider, the initial provider is required to coordinate the transfer of medical records to the new provider. A health care facility may prohibit a physician employed or under contract with the facility from prescribing medication to an individual who intends to use the medication on the facility's premises. The facility must provide advance written notice of its policy to the physician and its patients. A health care facility may not discipline a physician, nurse, pharmacist, or other person for actions taken in good faith or for refusing to participate in any way.

**Civil and criminal penalties.** The measure creates a class 2 felony for tampering with a request for medication or knowingly coercing a terminally ill person to request the medication. Persons are immune from civil or criminal liability or professional disciplinary action unless they act with negligence, recklessness, or intentional misconduct.

**Insurance, wills, contracts, and claims.** Requesting or self-administering the medication does not affect a life, health, or accident insurance policy or an annuity, and nothing in the measure affects advance medical directives. Insurers may not issue policies with conditions about whether or not individuals may request medication.

*For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

## Arguments For

1) Proposition 106 expands the options and supports available to a terminally ill person in the last stage of life. Under the measure, a terminally ill individual may consult with a physician and benefit from medical guidance in deciding whether and how to end his or her life. The measure allows a mentally competent individual to peacefully end his or her life in the time, place, and environment of his or her choosing after voluntarily requesting and self-administering the medication. Proposition 106 also provides protections from criminal penalties for physicians and family members who choose to support a terminally ill individual through the dying process.

2) Proposition 106 seeks to balance the choice of a terminally ill person to voluntarily end his or her life with the state's interest in promoting public safety. It establishes safeguards by creating criminal penalties and ensuring that an individual's physician, family members, and heirs are not the only witnesses to requests for medication. The measure protects the individual by prohibiting any other person, including a physician, from making the decision to request medical aid-in-dying or from administering the medication. Further, by requiring that at least two physicians examine the individual and document his or her prognosis and mental capabilities, the measure establishes a process to ensure that an individual is capable of making an informed decision to end his or her life.

3) Access to medical aid-in-dying may provide a sense of comfort to a terminally ill person by authorizing medication as insurance against suffering and the potential loss of dignity and autonomy. Proposition 106 is similar to options available in Oregon, Washington, Vermont, Montana, and California, that respect the end-of-life concerns of terminally ill people. Oregon's experience shows that the majority of persons requesting medication cited concerns about losing autonomy and dignity at the end of their lives. Once the medication is requested, it is up to the individual to decide when and if to take it. In Oregon, for example, of the 1,545 people who requested the medication since 1997, approximately one-third chose not to use it.

### Arguments Against

1) Encouraging the use of lethal medication by terminally ill people may send the message that some lives are not worth living to their natural conclusion. People who are in the final stages of life are often in fear of the dying process. The availability of medical aid-in-dying may encourage people to make drastic decisions based on concerns about the potential loss of autonomy and dignity, not realizing that modern palliative and hospice care may effectively address these concerns. Services such as pain and symptom management, in-home services, and counseling can help individuals navigate the end of their lives while minimizing suffering. Promoting medical aid-in-dying may lead to a reduced emphasis on treatment and development of new options for end-of-life care.

2) Proposition 106 creates opportunities for abuse and fraud. The protections in the measure do not go far enough to shield vulnerable people from family members and others who may benefit from their premature death. Proposition 106 allows a family member or heir to be one of the witnesses to a request for the medication, potentially subjecting the individual to coercion. The measure does not require that a physician have any specific training in order to make an assessment of the individual or require independent verification that the medication was taken voluntarily or under medical supervision. Proposition 106 fails to ensure that the lethal medication will be stored in a safe location, potentially placing others at risk or leading to its misuse.

3) Proposition 106 may force physicians to choose between medical ethics and a request to die from a person for whom they feel compassion. The measure compromises a physician's judgment by asking him or her to verify that an individual has a prognosis of six months or less to live, yet fails to recognize that diagnoses can be wrong and prognoses are estimates, not guarantees. The measure also requires that the physician or hospice director list the terminal illness or condition on the death certificate, which requires these professionals to misrepresent the cause of death.

### Estimate of Fiscal Impact

**State revenue and spending.** Beginning in FY 2016-17, Proposition 106 may increase state revenue from criminal fines by a minimal amount. The measure increases state spending by about \$45,000 annually for the Department of Public Health and Environment to collect information about health care provider compliance and prepare an annual report. To the extent that persons are tried and convicted of crimes created by the measure, workload and costs will also increase.

**Local government impact.** This measure may affect local governments as a result of prosecuting new criminal offenses under the measure. These impacts are anticipated to be minimal.

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**Proposition 106**  
**Access to Medical Aid-in-Dying Medication**

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**TITLE AND TEXT**

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado Revised Statutes. The text of the measure that will appear in the Colorado Revised Statutes below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

***Ballot Title:***

Shall there be a change to the Colorado Revised Statutes to permit any mentally capable adult Colorado resident who has a medical prognosis of death by terminal illness within six months to receive a prescription from a willing licensed physician for medication that can be self-administered to bring about death; and in connection therewith, requiring two licensed physicians to confirm the medical prognosis, that the terminally-ill patient has received information about other care and treatment options, and that the patient is making a voluntary and informed decision in requesting the medication; requiring evaluation by a licensed mental health professional if either physician believes the patient may not be mentally capable; granting immunity from civil and criminal liability and professional discipline to any person who in good faith assists in providing access to or is present when a patient self-administers the medication; and establishing criminal penalties for persons who knowingly violate statutes relating to the request for the medication?

***Text of Measure:***

*Be it enacted by the people of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **add** article 48 to title 25 as follows:

**ARTICLE 48**  
**End-of-life Options**

**25-48-101. Short title.** THE SHORT TITLE OF THIS ARTICLE IS THE "COLORADO END-OF-LIFE OPTIONS ACT".

**25-48-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADULT" MEANS AN INDIVIDUAL WHO IS EIGHTEEN YEARS OF AGE OR OLDER.

(2) "ATTENDING PHYSICIAN" MEANS A PHYSICIAN WHO HAS PRIMARY RESPONSIBILITY FOR THE CARE OF A TERMINALLY ILL INDIVIDUAL AND THE TREATMENT OF THE INDIVIDUAL'S TERMINAL ILLNESS.

(3) "CONSULTING PHYSICIAN" MEANS A PHYSICIAN WHO IS QUALIFIED BY SPECIALTY OR EXPERIENCE TO MAKE A PROFESSIONAL DIAGNOSIS AND PROGNOSIS REGARDING A TERMINALLY ILL INDIVIDUAL'S ILLNESS.

(4) "HEALTH CARE PROVIDER" OR "PROVIDER" MEANS A PERSON WHO IS LICENSED, CERTIFIED, REGISTERED, OR OTHERWISE AUTHORIZED OR PERMITTED BY LAW TO ADMINISTER HEALTH CARE OR DISPENSE MEDICATION IN THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION. THE TERM INCLUDES A HEALTH CARE FACILITY, INCLUDING A LONG-TERM CARE FACILITY AS DEFINED IN SECTION 25-3-103.7 (1) (f.3) AND A CONTINUING CARE RETIREMENT COMMUNITY AS DESCRIBED IN SECTION 25.5-6-203 (1)(c)(i), C.R.S.

(5) "INFORMED DECISION" MEANS A DECISION THAT IS:

(a) MADE BY AN INDIVIDUAL TO OBTAIN A PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION THAT THE QUALIFIED INDIVIDUAL MAY DECIDE TO SELF-ADMINISTER TO END HIS OR HER LIFE IN A PEACEFUL MANNER;

(b) BASED ON AN UNDERSTANDING AND ACKNOWLEDGMENT OF THE RELEVANT FACTS; AND

(c) MADE AFTER THE ATTENDING PHYSICIAN FULLY INFORMS THE INDIVIDUAL OF;

(I) HIS OR HER MEDICAL DIAGNOSIS AND PROGNOSIS OF SIX MONTHS OR LESS;

(II) THE POTENTIAL RISKS ASSOCIATED WITH TAKING THE MEDICAL AID-IN DYING MEDICATION TO BE PRESCRIBED;

(III) THE PROBABLE RESULT OF TAKING THE MEDICAL AID-IN-DYING MEDICATION TO BE PRESCRIBED;

(IV) THE CHOICES AVAILABLE TO AN INDIVIDUAL THAT DEMONSTRATE HIS OR HER SELF- DETERMINATION AND INTENT TO END HIS OR HER LIFE IN A PEACEFUL MANNER, INCLUDING THE ABILITY TO CHOOSE WHETHER TO:

(A) REQUEST MEDICAL AID IN DYING;

(B) OBTAIN A PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION TO END HIS OR HER LIFE;

(C) FILL THE PRESCRIPTION AND POSSESS MEDICAL AID-IN-DYING MEDICATION TO END HIS OR HER LIFE; AND

(D) ULTIMATELY SELF-ADMINISTER THE MEDICAL AID-IN-DYING MEDICATION TO BRING ABOUT A PEACEFUL DEATH; AND

(V) ALL FEASIBLE ALTERNATIVES OR ADDITIONAL TREATMENT OPPORTUNITIES, INCLUDING COMFORT CARE, PALLIATIVE CARE, HOSPICE CARE, AND PAIN CONTROL.

(6) "LICENSED MENTAL HEALTH PROFESSIONAL" MEANS A PSYCHIATRIST LICENSED UNDER ARTICLE 36 OF TITLE 12, C.R.S., OR A PSYCHOLOGIST LICENSED UNDER PART 3 OF ARTICLE 43 OF TITLE 12, C.R.S.

(7) "MEDICAL AID IN DYING" MEANS THE MEDICAL PRACTICE OF A PHYSICIAN PRESCRIBING MEDICAL AID-IN-DYING MEDICATION TO A QUALIFIED INDIVIDUAL THAT THE INDIVIDUAL MAY CHOOSE TO SELF-ADMINISTER TO BRING ABOUT A PEACEFUL DEATH.

(8) "MEDICAL AID-IN-DYING MEDICATION" MEANS MEDICATION PRESCRIBED BY A PHYSICIAN PURSUANT TO THIS ARTICLE TO PROVIDE MEDICAL AID IN DYING TO A QUALIFIED INDIVIDUAL.

(9) "MEDICALLY CONFIRMED" MEANS THAT A CONSULTING PHYSICIAN WHO HAS EXAMINED THE TERMINALLY ILL INDIVIDUAL AND THE INDIVIDUAL'S RELEVANT MEDICAL RECORDS HAS CONFIRMED THE MEDICAL OPINION OF THE ATTENDING PHYSICIAN.

(10) "MENTAL CAPACITY" OR "MENTALLY CAPABLE" MEANS THAT IN THE OPINION OF AN INDIVIDUAL'S ATTENDING PHYSICIAN, CONSULTING PHYSICIAN, PSYCHIATRIST OR PSYCHOLOGIST, THE INDIVIDUAL HAS THE ABILITY TO MAKE AND COMMUNICATE AN INFORMED DECISION TO HEALTH CARE PROVIDERS.

(11) "PHYSICIAN" MEANS A DOCTOR OF MEDICINE OR OSTEOPATHY LICENSED TO PRACTICE MEDICINE BY THE COLORADO MEDICAL BOARD.

(12) "PROGNOSIS OF SIX MONTHS OR LESS" MEANS A PROGNOSIS RESULTING FROM A TERMINAL ILLNESS THAT THE ILLNESS WILL, WITHIN REASONABLE MEDICAL JUDGMENT, RESULT IN DEATH WITHIN SIX MONTHS AND WHICH HAS BEEN MEDICALLY CONFIRMED.

(13) "QUALIFIED INDIVIDUAL" MEANS A TERMINALLY ILL ADULT WITH A PROGNOSIS OF SIX MONTHS OR LESS, WHO HAS MENTAL CAPACITY, HAS MADE AN INFORMED DECISION, IS A RESIDENT OF THE STATE, AND HAS SATISFIED THE REQUIREMENTS OF THIS ARTICLE IN ORDER TO OBTAIN A PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION TO END HIS OR HER LIFE IN A PEACEFUL MANNER.

(14) "RESIDENT" MEANS AN INDIVIDUAL WHO IS ABLE TO DEMONSTRATE RESIDENCY IN COLORADO BY PROVIDING ANY OF THE FOLLOWING DOCUMENTATION TO HIS OR HER ATTENDING PHYSICIAN:

(a) A COLORADO DRIVER'S LICENSE OR IDENTIFICATION CARD ISSUED PURSUANT TO ARTICLE 2 OF TITLE 42, C.R.S.;



(b) A COLORADO VOTER REGISTRATION CARD OR OTHER DOCUMENTATION SHOWING THE INDIVIDUAL IS REGISTERED TO VOTE IN COLORADO;

(c) EVIDENCE THAT THE INDIVIDUAL OWNS OR LEASES PROPERTY IN COLORADO; OR

(d) A COLORADO INCOME TAX RETURN FOR THE MOST RECENT TAX YEAR.

(15) "SELF-ADMINISTER" MEANS A QUALIFIED INDIVIDUAL'S AFFIRMATIVE, CONSCIOUS, AND PHYSICAL ACT OF ADMINISTERING THE MEDICAL AID-IN-DYING MEDICATION TO HIMSELF OR HERSELF TO BRING ABOUT HIS OR HER OWN DEATH.

(16) "TERMINAL ILLNESS" MEANS AN INCURABLE AND IRREVERSIBLE ILLNESS THAT WILL, WITHIN REASONABLE MEDICAL JUDGMENT, RESULT IN DEATH.

**25-48-103. Right to request medical aid-in-dying medication.** (1) AN ADULT RESIDENT OF COLORADO MAY MAKE A REQUEST, IN ACCORDANCE WITH SECTIONS 25-48-104 AND 25-48-112, TO RECEIVE A PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION IF:

(a) THE INDIVIDUAL'S ATTENDING PHYSICIAN HAS DIAGNOSED THE INDIVIDUAL WITH A TERMINAL ILLNESS WITH A PROGNOSIS OF SIX MONTHS OR LESS;

(b) THE INDIVIDUAL'S ATTENDING PHYSICIAN HAS DETERMINED THE INDIVIDUAL HAS MENTAL CAPACITY; AND

(c) THE INDIVIDUAL HAS VOLUNTARILY EXPRESSED THE WISH TO RECEIVE A PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION.

(2) THE RIGHT TO REQUEST MEDICAL AID-IN-DYING MEDICATION DOES NOT EXIST BECAUSE OF AGE OR DISABILITY.

**25-48-104. Request process - witness requirements.** (1) IN ORDER TO RECEIVE A PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION PURSUANT TO THIS ARTICLE, AN INDIVIDUAL WHO SATISFIES THE REQUIREMENTS IN SECTION 25-48-103 MUST MAKE TWO ORAL REQUESTS, SEPARATED BY AT LEAST FIFTEEN DAYS, AND A VALID WRITTEN REQUEST TO HIS OR HER ATTENDING PHYSICIAN.

(2)(a) TO BE VALID, A WRITTEN REQUEST FOR MEDICAL AID-IN-DYING MEDICATION MUST BE:

(I) SUBSTANTIALLY IN THE SAME FORM AS SET FORTH IN SECTION 25-48-112;

(II) SIGNED AND DATED BY THE INDIVIDUAL SEEKING THE MEDICAL AID-IN-DYING MEDICATION; AND

(III) WITNESSED BY AT LEAST TWO INDIVIDUALS WHO, IN THE PRESENCE OF THE INDIVIDUAL, ATTEST TO THE BEST OF THEIR KNOWLEDGE AND BELIEF THAT THE INDIVIDUAL IS:

(A) MENTALLY CAPABLE;

(B) ACTING VOLUNTARILY; AND

(C) NOT BEING COERCED TO SIGN THE REQUEST.

(b) OF THE TWO WITNESSES TO THE WRITTEN REQUEST, AT LEAST ONE MUST NOT BE:

(I) RELATED TO THE INDIVIDUAL BY BLOOD, MARRIAGE, CIVIL UNION, OR ADOPTION;

(II) AN INDIVIDUAL WHO, AT THE TIME THE REQUEST IS SIGNED, IS ENTITLED, UNDER A WILL OR BY OPERATION OF LAW, TO ANY PORTION OF THE INDIVIDUAL'S ESTATE UPON HIS OR HER DEATH; OR

(III) AN OWNER, OPERATOR, OR EMPLOYEE OF A HEALTH CARE FACILITY WHERE THE INDIVIDUAL IS RECEIVING MEDICAL TREATMENT OR IS A RESIDENT.

(c) NEITHER THE INDIVIDUAL'S ATTENDING PHYSICIAN NOR A PERSON AUTHORIZED AS THE INDIVIDUAL'S QUALIFIED POWER OF ATTORNEY OR DURABLE MEDICAL POWER OF ATTORNEY SHALL SERVE AS A WITNESS TO THE WRITTEN REQUEST.

**25-48-105. Right to rescind request - requirement to offer opportunity to rescind.** (1) AT ANY TIME, AN INDIVIDUAL MAY RESCIND HIS OR HER REQUEST FOR MEDICAL AID-IN-DYING MEDICATION WITHOUT REGARD TO THE INDIVIDUAL'S MENTAL STATE.

(2) AN ATTENDING PHYSICIAN SHALL NOT WRITE A PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION UNDER THIS ARTICLE UNLESS THE ATTENDING PHYSICIAN OFFERS THE QUALIFIED INDIVIDUAL AN OPPORTUNITY TO RESCIND THE REQUEST FOR THE MEDICAL AID-IN-DYING MEDICATION.

**25-48-106. Attending physician responsibilities.** (1) THE ATTENDING PHYSICIAN SHALL:

(a) MAKE THE INITIAL DETERMINATION OF WHETHER AN INDIVIDUAL REQUESTING MEDICAL AID-IN-DYING MEDICATION HAS A TERMINAL ILLNESS, HAS A PROGNOSIS OF SIX MONTHS OR LESS, IS MENTALLY CAPABLE, IS MAKING AN INFORMED DECISION, AND HAS MADE THE REQUEST VOLUNTARILY;

(b) REQUEST THAT THE INDIVIDUAL DEMONSTRATE COLORADO RESIDENCY BY PROVIDING DOCUMENTATION AS DESCRIBED IN SECTION 25-48-102 (14);

(c) PROVIDE CARE THAT CONFORMS TO ESTABLISHED MEDICAL STANDARDS AND ACCEPTED MEDICAL GUIDELINES;

(d) REFER THE INDIVIDUAL TO A CONSULTING PHYSICIAN FOR MEDICAL CONFIRMATION OF THE DIAGNOSIS AND PROGNOSIS AND FOR A DETERMINATION OF WHETHER THE INDIVIDUAL IS MENTALLY CAPABLE, IS MAKING AN INFORMED DECISION, AND ACTING VOLUNTARILY;

(e) PROVIDE FULL, INDIVIDUAL-CENTERED DISCLOSURES TO ENSURE THAT THE INDIVIDUAL IS MAKING AN INFORMED DECISION BY DISCUSSING WITH THE INDIVIDUAL:

(I) HIS OR HER MEDICAL DIAGNOSIS AND PROGNOSIS OF SIX MONTHS OR LESS;

(II) THE FEASIBLE ALTERNATIVES OR ADDITIONAL TREATMENT OPPORTUNITIES, INCLUDING COMFORT CARE, PALLIATIVE CARE, HOSPICE CARE, AND PAIN CONTROL;

(III) THE POTENTIAL RISKS ASSOCIATED WITH TAKING THE MEDICAL AID-IN-DYING MEDICATION TO BE PRESCRIBED;

(IV) THE PROBABLE RESULT OF TAKING THE MEDICAL AID-IN-DYING MEDICATION TO BE PRESCRIBED; AND

(V) THE POSSIBILITY THAT THE INDIVIDUAL CAN OBTAIN THE MEDICAL AID-IN-DYING MEDICATION BUT CHOOSE NOT TO USE IT;

(f) REFER THE INDIVIDUAL TO A LICENSED MENTAL HEALTH PROFESSIONAL PURSUANT TO SECTION 25-48-108 IF THE ATTENDING PHYSICIAN BELIEVES THAT THE INDIVIDUAL MAY NOT BE MENTALLY CAPABLE OF MAKING AN INFORMED DECISION;

(g) CONFIRM THAT THE INDIVIDUAL'S REQUEST DOES NOT ARISE FROM COERCION OR UNDUE INFLUENCE BY ANOTHER PERSON BY DISCUSSING WITH THE INDIVIDUAL, OUTSIDE THE PRESENCE OF OTHER PERSONS, WHETHER THE INDIVIDUAL IS FEELING COERCED OR UNDULY INFLUENCED BY ANOTHER PERSON;

(h) COUNSEL THE INDIVIDUAL ABOUT THE IMPORTANCE OF:

(I) HAVING ANOTHER PERSON PRESENT WHEN THE INDIVIDUAL SELF-ADMINISTERS THE MEDICAL AID-IN-DYING MEDICATION PRESCRIBED PURSUANT TO THIS ARTICLE;

(II) NOT TAKING THE MEDICAL AID-IN-DYING MEDICATION IN A PUBLIC PLACE;

(III) SAFE-KEEPING AND PROPER DISPOSAL OF UNUSED MEDICAL AID-IN-DYING MEDICATION IN ACCORDANCE WITH SECTION 25-48-120; AND

(IV) NOTIFYING HIS OR HER NEXT OF KIN OF THE REQUEST FOR MEDICAL AID-IN-DYING MEDICATION;

(i) INFORM THE INDIVIDUAL THAT HE OR SHE MAY RESCIND THE REQUEST FOR MEDICAL AID-IN- DYING MEDICATION AT ANY TIME AND IN ANY MANNER;

(j) VERIFY, IMMEDIATELY PRIOR TO WRITING THE PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION, THAT THE INDIVIDUAL IS MAKING AN INFORMED DECISION;

(k) ENSURE THAT ALL APPROPRIATE STEPS ARE CARRIED OUT IN ACCORDANCE WITH THIS ARTICLE BEFORE WRITING A PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION; AND

(l) EITHER:

(I) DISPENSE MEDICAL AID-IN-DYING MEDICATIONS DIRECTLY TO THE QUALIFIED INDIVIDUAL, INCLUDING ANCILLARY MEDICATIONS INTENDED TO MINIMIZE THE INDIVIDUAL'S DISCOMFORT, IF THE ATTENDING PHYSICIAN HAS A CURRENT DRUG ENFORCEMENT ADMINISTRATION CERTIFICATE AND COMPLIES WITH ANY APPLICABLE ADMINISTRATIVE RULE; OR

(II) DELIVER THE WRITTEN PRESCRIPTION PERSONALLY, BY MAIL, OR THROUGH AUTHORIZED ELECTRONIC TRANSMISSION IN THE MANNER PERMITTED UNDER ARTICLE 42.5 OF TITLE 12, C.R.S., TO A LICENSED PHARMACIST, WHO SHALL DISPENSE THE MEDICAL AID-IN-DYING MEDICATION TO THE QUALIFIED INDIVIDUAL, THE ATTENDING PHYSICIAN, OR AN INDIVIDUAL EXPRESSLY DESIGNATED BY THE QUALIFIED INDIVIDUAL.

**25-48-107. Consulting physician responsibilities.** BEFORE AN INDIVIDUAL WHO IS REQUESTING MEDICAL AID-IN-DYING MEDICATION MAY RECEIVE A PRESCRIPTION FOR THE MEDICAL AID-IN-DYING MEDICATION, A CONSULTING PHYSICIAN MUST:

(1) EXAMINE THE INDIVIDUAL AND HIS OR HER RELEVANT MEDICAL RECORDS;

(2) CONFIRM, IN WRITING, TO THE ATTENDING PHYSICIAN:

(a) THAT THE INDIVIDUAL HAS A TERMINAL ILLNESS;

(b) THE INDIVIDUAL HAS A PROGNOSIS OF SIX MONTHS OR LESS;

(c) THAT THE INDIVIDUAL IS MAKING AN INFORMED DECISION; AND

(d) THAT THE INDIVIDUAL IS MENTALLY CAPABLE, OR PROVIDE DOCUMENTATION THAT THE CONSULTING PHYSICIAN HAS REFERRED THE INDIVIDUAL FOR FURTHER EVALUATION IN ACCORDANCE WITH SECTION 25-48-108.

**25-48-108. Confirmation that individual is mentally capable - referral to mental health professional.** (1) AN ATTENDING PHYSICIAN SHALL NOT PRESCRIBE MEDICAL AID-IN-DYING MEDICATION UNDER THIS ARTICLE FOR AN INDIVIDUAL WITH A TERMINAL ILLNESS UNTIL THE INDIVIDUAL IS DETERMINED TO BE MENTALLY CAPABLE AND MAKING AN INFORMED DECISION, AND THOSE DETERMINATIONS ARE CONFIRMED IN ACCORDANCE WITH THIS SECTION.

(2) IF THE ATTENDING PHYSICIAN OR THE CONSULTING PHYSICIAN BELIEVES THAT THE INDIVIDUAL MAY NOT BE MENTALLY CAPABLE OF MAKING AN INFORMED DECISION, THE ATTENDING PHYSICIAN OR CONSULTING PHYSICIAN SHALL REFER THE INDIVIDUAL TO A LICENSED MENTAL HEALTH PROFESSIONAL FOR A DETERMINATION OF WHETHER THE INDIVIDUAL IS MENTALLY CAPABLE AND MAKING AN INFORMED DECISION.

(3) A LICENSED MENTAL HEALTH PROFESSIONAL WHO EVALUATES AN INDIVIDUAL UNDER THIS SECTION SHALL COMMUNICATE, IN WRITING, TO THE ATTENDING OR CONSULTING PHYSICIAN WHO REQUESTED THE EVALUATION, HIS OR HER CONCLUSIONS ABOUT WHETHER THE INDIVIDUAL IS MENTALLY CAPABLE AND MAKING INFORMED DECISIONS. IF THE LICENSED MENTAL HEALTH PROFESSIONAL DETERMINES THAT THE INDIVIDUAL IS NOT MENTALLY CAPABLE OF MAKING INFORMED DECISIONS, THE PERSON SHALL NOT BE DEEMED A QUALIFIED INDIVIDUAL UNDER THIS ARTICLE AND THE ATTENDING PHYSICIAN SHALL NOT PRESCRIBE MEDICAL AID-IN-DYING MEDICATION TO THE INDIVIDUAL.

**25-48-109. Death certificate.** (1) UNLESS OTHERWISE PROHIBITED BY LAW, THE ATTENDING PHYSICIAN OR THE HOSPICE MEDICAL DIRECTOR SHALL SIGN THE DEATH CERTIFICATE OF A QUALIFIED INDIVIDUAL WHO OBTAINED AND SELF-ADMINISTERED AID-IN-DYING MEDICATION.

(2) WHEN A DEATH HAS OCCURRED IN ACCORDANCE WITH THIS ARTICLE, THE CAUSE OF DEATH SHALL BE LISTED AS THE UNDERLYING TERMINAL ILLNESS AND THE DEATH DOES NOT CONSTITUTE GROUNDS FOR POST-MORTEM INQUIRY UNDER SECTION 30-10-606 (1), C.R.S.

**25-48-110. Informed decision required.** (1) AN INDIVIDUAL WITH A TERMINAL ILLNESS IS NOT A QUALIFIED INDIVIDUAL AND MAY NOT RECEIVE A PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION UNLESS HE OR SHE HAS MADE AN INFORMED DECISION.

(2) IMMEDIATELY BEFORE WRITING A PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION UNDER THIS ARTICLE, THE ATTENDING PHYSICIAN SHALL VERIFY THAT THE INDIVIDUAL WITH A TERMINAL ILLNESS IS MAKING AN INFORMED DECISION.

**25-48-111. Medical record documentation requirements - reporting requirements - department compliance reviews - rules.** (1) THE ATTENDING PHYSICIAN SHALL DOCUMENT IN THE INDIVIDUAL'S MEDICAL RECORD, THE FOLLOWING INFORMATION:

(a) DATES OF ALL ORAL REQUESTS;

(b) A VALID WRITTEN REQUEST;

(c) THE ATTENDING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS, DETERMINATION OF MENTAL CAPACITY AND THAT THE INDIVIDUAL IS MAKING A VOLUNTARY REQUEST AND AN INFORMED DECISION;

(d) THE CONSULTING PHYSICIAN'S CONFIRMATION OF DIAGNOSIS AND PROGNOSIS, MENTAL CAPACITY AND THAT THE INDIVIDUAL IS MAKING AN INFORMED DECISION;

(e) IF APPLICABLE, WRITTEN CONFIRMATION OF MENTAL CAPACITY FROM A LICENSED MENTAL HEALTH PROFESSIONAL;

(f) A NOTATION OF NOTIFICATION OF THE RIGHT TO RESCIND A REQUEST MADE PURSUANT TO THIS ARTICLE; AND

(g) A NOTATION BY THE ATTENDING PHYSICIAN THAT ALL REQUIREMENTS UNDER THIS ARTICLE HAVE BEEN SATISFIED; INDICATING STEPS TAKEN TO CARRY OUT THE REQUEST, INCLUDING A NOTATION OF THE MEDICAL AID-IN-DYING MEDICATIONS PRESCRIBED AND WHEN.

(2)(a) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL ANNUALLY REVIEW A SAMPLE OF RECORDS MAINTAINED PURSUANT TO THIS ARTICLE TO ENSURE COMPLIANCE. THE DEPARTMENT SHALL ADOPT RULES TO FACILITATE THE COLLECTION OF INFORMATION DEFINED IN SUBSECTION (1) OF THIS SECTION. EXCEPT AS OTHERWISE REQUIRED BY LAW, THE INFORMATION COLLECTED BY THE DEPARTMENT IS NOT A PUBLIC RECORD AND IS NOT AVAILABLE FOR PUBLIC INSPECTION. HOWEVER, THE DEPARTMENT SHALL GENERATE AND MAKE AVAILABLE TO THE PUBLIC AN ANNUAL STATISTICAL REPORT OF INFORMATION COLLECTED UNDER THIS SUBSECTION (2).

(b) THE DEPARTMENT SHALL REQUIRE ANY HEALTH CARE PROVIDER, UPON DISPENSING A MEDICAL AID-IN-DYING MEDICATION PURSUANT TO THIS ARTICLE, TO FILE A COPY OF A DISPENSING RECORD WITH THE DEPARTMENT. THE DISPENSING RECORD IS NOT A PUBLIC RECORD AND IS NOT AVAILABLE FOR PUBLIC INSPECTION.

**25-48-112. Form of written request.** (1) A REQUEST FOR MEDICAL AID-IN-DYING MEDICATION AUTHORIZED BY THIS ARTICLE MUST BE IN SUBSTANTIALLY THE FOLLOWING FORM:

REQUEST FOR MEDICATION TO END MY LIFE  
IN A PEACEFUL MANNER

I, \_\_\_\_\_ AM AN ADULT OF SOUND MIND. I AM SUFFERING FROM \_\_\_\_\_, WHICH MY ATTENDING PHYSICIAN HAS DETERMINED IS A TERMINAL ILLNESS AND WHICH HAS BEEN MEDICALLY CONFIRMED. I HAVE BEEN FULLY INFORMED OF MY DIAGNOSIS AND PROGNOSIS OF SIX MONTHS OR LESS, THE NATURE OF THE MEDICAL AID-IN-DYING MEDICATION TO BE PRESCRIBED AND POTENTIAL ASSOCIATED RISKS, THE EXPECTED RESULT, AND THE FEASIBLE ALTERNATIVES OR ADDITIONAL TREATMENT OPPORTUNITIES, INCLUDING COMFORT CARE, PALLIATIVE CARE, HOSPICE CARE, AND PAIN CONTROL.

I REQUEST THAT MY ATTENDING PHYSICIAN PRESCRIBE MEDICAL AID-IN-DYING MEDICATION THAT WILL END MY LIFE IN A PEACEFUL MANNER IF I CHOOSE TO TAKE IT, AND I AUTHORIZE MY ATTENDING PHYSICIAN TO CONTACT ANY PHARMACIST ABOUT MY REQUEST.

I UNDERSTAND THAT I HAVE THE RIGHT TO RESCIND THIS REQUEST AT ANY TIME.

I UNDERSTAND THE SERIOUSNESS OF THIS REQUEST, AND I EXPECT TO DIE IF I TAKE THE AID-IN-DYING MEDICATION PRESCRIBED.

I FURTHER UNDERSTAND THAT ALTHOUGH MOST DEATHS OCCUR WITHIN THREE HOURS, MY DEATH MAY TAKE LONGER, AND MY ATTENDING PHYSICIAN HAS COUNSELED ME ABOUT THIS POSSIBILITY. I MAKE THIS REQUEST VOLUNTARILY, WITHOUT RESERVATION, AND WITHOUT BEING COERCED, AND I ACCEPT FULL RESPONSIBILITY FOR MY ACTIONS.

SIGNED: \_\_\_\_\_

DATED: \_\_\_\_\_

DECLARATION OF WITNESSES

WE DECLARE THAT THE INDIVIDUAL SIGNING THIS REQUEST:

IS PERSONALLY KNOWN TO US OR HAS PROVIDED PROOF OF IDENTITY;

SIGNED THIS REQUEST IN OUR PRESENCE;

APPEARS TO BE OF SOUND MIND AND NOT UNDER DURESS, COERCION, OR UNDUE INFLUENCE; AND

I AM NOT THE ATTENDING PHYSICIAN FOR THE INDIVIDUAL.

\_\_\_\_\_ WITNESS 1/DATE

\_\_\_\_\_ WITNESS 2/DATE

NOTE: OF THE TWO WITNESSES TO THE WRITTEN REQUEST, AT LEAST ONE MUST NOT:

BE A RELATIVE (BY BLOOD, MARRIAGE, CIVIL UNION, OR ADOPTION) OF THE INDIVIDUAL SIGNING THIS REQUEST; BE ENTITLED TO ANY PORTION OF THE INDIVIDUAL'S ESTATE UPON DEATH; OR OWN, OPERATE, OR BE EMPLOYED AT A HEALTH CARE FACILITY WHERE THE INDIVIDUAL IS A PATIENT OR RESIDENT.

AND NEITHER THE INDIVIDUAL'S ATTENDING PHYSICIAN NOR A PERSON AUTHORIZED AS THE INDIVIDUAL'S QUALIFIED POWER OF ATTORNEY OR DURABLE MEDICAL POWER OF ATTORNEY SHALL SERVE AS A WITNESS TO THE WRITTEN REQUEST.

**25-48-113. Standard of care.** (1) PHYSICIANS AND HEALTH CARE PROVIDERS SHALL PROVIDE MEDICAL SERVICES UNDER THIS ACT THAT MEET OR EXCEED THE STANDARD OF CARE FOR END-OF-LIFE MEDICAL CARE.

(2) IF A HEALTH CARE PROVIDER IS UNABLE OR UNWILLING TO CARRY OUT AN ELIGIBLE INDIVIDUAL'S REQUEST AND THE INDIVIDUAL TRANSFERS CARE TO A NEW HEALTH CARE PROVIDER, THE HEALTH CARE PROVIDER SHALL COORDINATE TRANSFER OF THE INDIVIDUAL'S MEDICAL RECORDS TO A NEW HEALTH CARE PROVIDER.

**25-48-114. Effect on wills, contracts, and statutes.** (1) A PROVISION IN A CONTRACT, WILL, OR OTHER AGREEMENT, WHETHER WRITTEN OR ORAL, THAT WOULD AFFECT WHETHER AN INDIVIDUAL MAY MAKE OR RESCIND A REQUEST FOR MEDICAL AID IN DYING PURSUANT TO THIS ARTICLE IS INVALID.

(2) AN OBLIGATION OWING UNDER ANY CURRENTLY EXISTING CONTRACT MUST NOT BE CONDITIONED UPON, OR AFFECTED BY, AN INDIVIDUAL'S ACT OF MAKING OR RESCINDING A REQUEST FOR MEDICAL AID-IN-DYING MEDICATION PURSUANT TO THIS ARTICLE.

**25-48-115. Insurance or annuity policies.** (1) THE SALE, PROCUREMENT, OR ISSUANCE OF, OR THE RATE CHARGED FOR, ANY LIFE, HEALTH, OR ACCIDENT INSURANCE OR ANNUITY POLICY MUST NOT BE CONDITIONED UPON, OR

AFFECTED BY, AN INDIVIDUAL'S ACT OF MAKING OR RESCINDING A REQUEST FOR MEDICAL AID-IN-DYING MEDICATION IN ACCORDANCE WITH THIS ARTICLE.

(2) A QUALIFIED INDIVIDUAL'S ACT OF SELF-ADMINISTERING MEDICAL AID-IN-DYING MEDICATION PURSUANT TO THIS ARTICLE DOES NOT AFFECT A LIFE, HEALTH, OR ACCIDENT INSURANCE OR ANNUITY POLICY.

(3) AN INSURER SHALL NOT DENY OR OTHERWISE ALTER HEALTH CARE BENEFITS AVAILABLE UNDER A POLICY OF SICKNESS AND ACCIDENT INSURANCE TO AN INDIVIDUAL WITH A TERMINAL ILLNESS WHO IS COVERED UNDER THE POLICY, BASED ON WHETHER OR NOT THE INDIVIDUAL MAKES A REQUEST PURSUANT TO THIS ARTICLE.

(4) AN INDIVIDUAL WITH A TERMINAL ILLNESS WHO IS A RECIPIENT OF MEDICAL ASSISTANCE UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4, 5, AND 6 OF TITLE 25.5, C.R.S. SHALL NOT BE DENIED BENEFITS UNDER THE MEDICAL ASSISTANCE PROGRAM OR HAVE HIS OR HER BENEFITS UNDER THE PROGRAM OTHERWISE ALTERED BASED ON WHETHER OR NOT THE INDIVIDUAL MAKES A REQUEST PURSUANT TO THIS ARTICLE.

**25-48-116. Immunity for actions in good faith - prohibition against reprisals.** (1) A PERSON IS NOT SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR PROFESSIONAL DISCIPLINARY ACTION FOR ACTING IN GOOD FAITH UNDER THIS ARTICLE, WHICH INCLUDES BEING PRESENT WHEN A QUALIFIED INDIVIDUAL SELF-ADMINISTERS THE PRESCRIBED MEDICAL AID-IN-DYING MEDICATION.

(2) EXCEPT AS PROVIDED FOR IN SECTION 25-48-118, A HEALTH CARE PROVIDER OR PROFESSIONAL ORGANIZATION OR ASSOCIATION SHALL NOT SUBJECT AN INDIVIDUAL TO ANY OF THE FOLLOWING FOR PARTICIPATING OR REFUSING TO PARTICIPATE IN GOOD-FAITH COMPLIANCE UNDER THIS ARTICLE:

- (a) CENSURE;
- (b) DISCIPLINE;
- (c) SUSPENSION;
- (d) LOSS OF LICENSE, PRIVILEGES, OR MEMBERSHIP; OR
- (e) ANY OTHER PENALTY.

(3) A REQUEST BY AN INDIVIDUAL FOR, OR THE PROVISION BY AN ATTENDING PHYSICIAN OF, MEDICAL AID-IN-DYING MEDICATION IN GOOD-FAITH COMPLIANCE WITH THIS ARTICLE DOES NOT:

- (a) CONSTITUTE NEGLIGENCE OR ELDER ABUSE FOR ANY PURPOSE OF LAW; OR
- (b) PROVIDE THE BASIS FOR THE APPOINTMENT OF A GUARDIAN OR CONSERVATOR.

(4) THIS SECTION DOES NOT LIMIT CIVIL OR CRIMINAL LIABILITY FOR NEGLIGENCE, RECKLESSNESS, OR INTENTIONAL MISCONDUCT.

**25-48-117. No duty to prescribe or dispense.** (1) A HEALTH CARE PROVIDER MAY CHOOSE WHETHER TO PARTICIPATE IN PROVIDING MEDICAL AID-IN-DYING MEDICATION TO AN INDIVIDUAL IN ACCORDANCE WITH THIS ARTICLE.

(2) IF A HEALTH CARE PROVIDER IS UNABLE OR UNWILLING TO CARRY OUT AN INDIVIDUAL'S REQUEST FOR MEDICAL AID-IN-DYING MEDICATION MADE IN ACCORDANCE WITH THIS ARTICLE, AND THE INDIVIDUAL TRANSFERS HIS OR HER CARE TO A NEW HEALTH CARE PROVIDER, THE PRIOR HEALTH CARE PROVIDER SHALL TRANSFER, UPON REQUEST, A COPY OF THE INDIVIDUAL'S RELEVANT MEDICAL RECORDS TO THE NEW HEALTH CARE PROVIDER.

**25-48-118. Health care facility permissible prohibitions - sanctions if provider violates policy.** (1) A HEALTH CARE FACILITY MAY PROHIBIT A PHYSICIAN EMPLOYED OR UNDER CONTRACT FROM WRITING A PRESCRIPTION FOR MEDICAL AID-IN-DYING MEDICATION FOR A QUALIFIED INDIVIDUAL WHO INTENDS TO USE THE MEDICAL AID-IN-DYING MEDICATION ON THE FACILITY'S PREMISES. THE HEALTH CARE FACILITY MUST NOTIFY THE PHYSICIAN IN WRITING OF ITS POLICY WITH REGARD TO PRESCRIPTIONS FOR MEDICAL AID-IN-DYING MEDICATION. A HEALTH CARE FACILITY THAT FAILS TO PROVIDE ADVANCE NOTICE TO THE PHYSICIAN SHALL NOT BE ENTITLED TO ENFORCE SUCH A POLICY AGAINST THE PHYSICIAN.

(2) A HEALTH CARE FACILITY OR HEALTH CARE PROVIDER SHALL NOT SUBJECT A PHYSICIAN, NURSE, PHARMACIST, OR OTHER PERSON TO DISCIPLINE, SUSPENSION, LOSS OF LICENSE OR PRIVILEGES, OR ANY OTHER PENALTY OR SANCTION FOR ACTIONS TAKEN IN GOOD-FAITH RELIANCE ON THIS ARTICLE OR FOR REFUSING TO ACT UNDER THIS ARTICLE.

(3) A HEALTH CARE FACILITY MUST NOTIFY PATIENTS IN WRITING OF ITS POLICY WITH REGARD TO MEDICAL AID-IN-DYING. A HEALTH CARE FACILITY THAT FAILS TO PROVIDE ADVANCE NOTIFICATION TO PATIENTS SHALL NOT BE ENTITLED TO ENFORCE SUCH A POLICY.

**25-48-119. Liabilities.** (1) A PERSON COMMITS A CLASS 2 FELONY AND IS SUBJECT TO PUNISHMENT IN ACCORDANCE WITH SECTION 18-1.3-401, C.R.S. IF THE PERSON, KNOWINGLY OR INTENTIONALLY CAUSES AN INDIVIDUAL'S DEATH BY:

(a) FORGING OR ALTERING A REQUEST FOR MEDICAL AID-IN-DYING MEDICATION TO END AN INDIVIDUAL'S LIFE WITHOUT THE INDIVIDUAL'S AUTHORIZATION; OR

(b) CONCEALING OR DESTROYING A RESCISSION OF A REQUEST FOR MEDICAL AID-IN-DYING MEDICATION.

(2) A PERSON COMMITS A CLASS 2 FELONY AND IS SUBJECT TO PUNISHMENT IN ACCORDANCE WITH SECTION 18-1.3-401, C.R.S. IF THE PERSON KNOWINGLY OR INTENTIONALLY COERCES OR EXERTS UNDUE INFLUENCE ON AN INDIVIDUAL WITH A TERMINAL ILLNESS TO:

(a) REQUEST MEDICAL AID-IN-DYING MEDICATION FOR THE PURPOSE OF ENDING THE TERMINALLY ILL INDIVIDUAL'S LIFE; OR

(b) DESTROY A RESCISSION OF A REQUEST FOR MEDICAL AID-IN-DYING MEDICATION.

(3) NOTHING IN THIS ARTICLE LIMITS FURTHER LIABILITY FOR CIVIL DAMAGES RESULTING FROM OTHER NEGLIGENT CONDUCT OR INTENTIONAL MISCONDUCT BY ANY PERSON.

(4) THE PENALTIES SPECIFIED IN THIS ARTICLE DO NOT PRECLUDE CRIMINAL PENALTIES APPLICABLE UNDER THE "COLORADO CRIMINAL CODE", TITLE 18, C.R.S., FOR CONDUCT THAT IS INCONSISTENT WITH THIS ARTICLE.

**25-48-120. Safe disposal of unused medical aid-in-dying medications.** A PERSON WHO HAS CUSTODY OR CONTROL OF MEDICAL AID-IN-DYING MEDICATION DISPENSED UNDER THIS ARTICLE THAT THE TERMINALLY ILL INDIVIDUAL DECIDES NOT TO USE OR THAT REMAINS UNUSED AFTER THE TERMINALLY ILL INDIVIDUAL'S DEATH SHALL DISPOSE OF THE UNUSED MEDICAL AID-IN- DYING MEDICATION EITHER BY:

(1) RETURNING THE UNUSED MEDICAL AID-IN-DYING MEDICATION TO THE ATTENDING PHYSICIAN WHO PRESCRIBED THE MEDICAL AID-IN-DYING MEDICATION, WHO SHALL DISPOSE OF THE UNUSED MEDICAL AID-IN-DYING MEDICATION IN THE MANNER REQUIRED BY LAW; OR

(2) LAWFUL MEANS IN ACCORDANCE WITH SECTION 25-15-328, C.R.S. OR ANY OTHER STATE OR FEDERALLY APPROVED MEDICATION TAKE-BACK PROGRAM AUTHORIZED UNDER THE FEDERAL "SECURE AND RESPONSIBLE DRUG DISPOSAL ACT OF 2010", PUB.L.111-273, AND REGULATIONS ADOPTED PURSUANT TO THE FEDERAL ACT.

**25-48-121. Actions complying with article not a crime.** NOTHING IN THIS ARTICLE AUTHORIZES A PHYSICIAN OR ANY OTHER PERSON TO END AN INDIVIDUAL'S LIFE BY LETHAL INJECTION, MERCY KILLING, OR EUTHANASIA. ACTIONS TAKEN IN ACCORDANCE WITH THIS ARTICLE DO NOT, FOR ANY PURPOSE, CONSTITUTE SUICIDE, ASSISTED SUICIDE, MERCY KILLING, HOMICIDE, OR ELDER ABUSE UNDER THE "COLORADO CRIMINAL CODE", AS SET FORTH IN TITLE 18, C.R.S.

**25-48-122. Claims by government entity for costs.** A GOVERNMENT ENTITY THAT INCURS COSTS RESULTING FROM AN INDIVIDUAL TERMINATING HIS OR HER LIFE PURSUANT TO THIS ARTICLE IN A PUBLIC PLACE HAS A CLAIM AGAINST THE ESTATE OF THE INDIVIDUAL TO RECOVER THE COSTS AND REASONABLE ATTORNEY FEES RELATED TO ENFORCING THE CLAIM.

**25-48-123. No effect on advance medical directives.** NOTHING IN THIS ARTICLE SHALL CHANGE THE LEGAL EFFECT OF:

(1) A DECLARATION MADE UNDER ARTICLE 18 OF TITLE 15, C.R.S., DIRECTING THAT LIFE-SUSTAINING PROCEDURES BE WITHHELD OR WITHDRAWN;

(2) A CARDIOPULMONARY RESUSCITATION DIRECTIVE EXECUTED UNDER ARTICLE 18.6 OF TITLE 15, C.R.S.; OR

(3) AN ADVANCE MEDICAL DIRECTIVE EXECUTED UNDER ARTICLE 18.7 OF TITLE 15, C.R.S.



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## Proposition 107 Presidential Primary Elections

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### ANALYSIS

Proposition 107 proposes amending the Colorado statutes to:

- ◆ establish a presidential primary election in Colorado that allows participation by unaffiliated voters.

### Summary and Analysis

**Background.** Presidential nominees for major political parties are chosen by state delegates at each party's national convention. Delegates to the national convention are selected by each state based on the results of either a caucus or presidential primary election. Proposition 107 establishes a presidential primary election in Colorado that is open to voters affiliated with a major political party and to unaffiliated voters. Presidential primary elections were conducted in the state in 1992, 1996, and 2000. In other years, Colorado's political parties have selected delegates for nominating presidential candidates using a caucus system. Caucus participation is limited to voters who have affiliated with that political party at least two months prior to the caucus. Voters at a caucus typically debate the merits of each candidate and, in most years, a straw poll-style vote is then taken to determine the candidate preference of voters. Based on the caucus results, the parties allocate delegates to the national conventions.

**Process for presidential primaries.** The presidential primary election established by Proposition 107 will be conducted as a mail ballot election on a date set by the Governor, no later than the third Tuesday in March. No other issue may be included on the ballot. Proposition 107 does not impact the existing primary election in Colorado, held in June, for other state, federal, and local offices.

**Participation of affiliated and unaffiliated voters.** Under Proposition 107, voters are not required to affiliate with a political party in order to vote in the presidential primary election. Under Proposition 107, each major political party will have a separate presidential primary ballot for use by voters affiliated with the party. Unaffiliated voters will receive a combined ballot that shows all candidates for each political party. Unaffiliated voters may vote for a candidate of only one political party. If a voter selects candidates of more than one political party on the combined ballot, his or her ballot will not be counted.

**Funding for presidential primaries.** Under Proposition 107, the cost of the presidential primary election will be paid by the state and counties. Counties will be responsible for administering the presidential primary election, and they will be reimbursed for a portion of these costs by the state. Currently, caucuses are paid for and conducted by the political parties.

**Pledging of delegates.** Under Proposition 107, the winner of a party's presidential primary receives all delegates to the national convention, and the delegates are bound to support the winner at the convention.

**Impact on political party caucuses.** Under Proposition 107, parties will still be allowed to hold caucuses to handle internal party business. However, parties will no longer use caucuses to determine the state party's choice for presidential nominee.

*For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

## Arguments For

1) A presidential primary serves Colorado voters better than the caucus system. The current caucus system is confusing and inaccessible to many voters. Caucuses can be crowded, held at inconvenient times, and conducted by inexperienced volunteers. A presidential primary election eliminates the logistical difficulties of conducting caucuses. Under Proposition 107, a presidential primary will give voters several weeks to cast their ballots by mail or at a vote center, and the election will be conducted in the same manner as all other elections by experienced county election officials.

2) All registered voters in Colorado should be allowed to participate in the selection of presidential nominees, even if they are not affiliated with a political party. Unaffiliated voters make up more than one-third of all registered voters in the state. Proposition 107 gives these unaffiliated voters a role in selecting presidential nominees and may increase voter participation.

3) Proposition 107 protects voter confidentiality by allowing voters to select presidential primary candidates using a secret ballot. The current caucus system requires voters to publicly declare their candidate preference, which can discourage participation by many voters who do not wish to make their preference known.

## Arguments Against

1) Proposition 107 uses a combined ballot system for unaffiliated voters that will likely result in some unaffiliated voter ballots not being counted, could change the primary election winners, and would raise costs for taxpayers. On a combined ballot, unaffiliated voters must vote for only one party's candidate. People who vote for candidates in both parties will have their ballot disqualified, and their ballots will not be counted. This can change election results, and may result in contested elections and litigation. Producing and processing a separate combined ballot only for unaffiliated voters creates administrative and financial burdens for counties, especially smaller or rural counties.

2) Proposition 107 shifts costs to taxpayers, as the state and counties will be required to spend at least \$5.0 million every four years to conduct a presidential primary election. Under a caucus system, taxpayers save money because caucuses are conducted and funded by the political parties. Taxpayers should not be required to pay the costs of nominating contests for political parties. The measure also places an administrative burden on counties to conduct an additional election every four years.

3) Under current law, unaffiliated voters who wish to participate at a caucus can declare their party affiliation ahead of time and attend.

## Estimate of Fiscal Impact

**State spending.** Proposition 107 increases state spending in the Secretary of State's Office by about \$210,000 in budget year 2018-19 and by \$2.7 million in budget year 2019-20 when the next presidential primary election will be conducted under the measure. After budget year 2019-20, state spending will increase every four years during presidential election years to conduct the presidential primary election.

**Local government spending.** Under Proposition 107, counties will have costs of about \$5.3 million in budget year 2019-20 to conduct a presidential primary election. Counties will be reimbursed about \$2.6 million by the state to offset these costs. After budget year 2019-20, spending by counties will increase every four years to conduct the presidential primary election.

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**Proposition 107**  
**Presidential Primary Elections**

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**TITLE AND TEXT**

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado Revised Statutes. The text of the measure that will appear in the Colorado Revised Statutes below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

***Ballot Title:***

Shall there be a change to the Colorado Revised Statutes recreating a presidential primary election to be held before the end of March in each presidential election year in which unaffiliated electors may vote without declaring an affiliation with a political party?

***Text of Measure:***

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

**SECTION 1. Declaration of the People of Colorado.**

COLORADO VOTERS EXPERIENCED DISENFRANCHISEMENT AND PROFOUND DISAPPOINTMENT WITH THE STATE'S SYSTEM FOR PARTICIPATING IN THE PRESIDENTIAL NOMINATION PROCESS IN 2016.

ON THE DEMOCRATIC SIDE, ATTENDANCE AT CAUCUSES OVERWHELMED MANY PARTY-RUN EVENTS, WITH LONG LINES OR OTHER PROBLEMS LIMITING MANY ELIGIBLE VOTERS' ABILITY TO TAKE PART.

THE STATE'S REPUBLICAN PARTY CHOSE NOT TO HOLD OFFICIAL PREFERENCE POLLS, ESSENTIALLY LEAVING ACTIVE REPUBLICAN VOTERS WITHOUT A SAY ON THE PARTY'S POTENTIAL NOMINEES.

AND, GIVEN THE RULES FOR PARTICIPATING IN CAUCUSES, THE STATE'S LARGEST GROUP OF VOTERS -- MORE THAN 1 MILLION UNAFFILIATED ELECTORS -- WERE DISENFRANCHISED ALTOGETHER.

COLORADO PREVIOUSLY HELD PRESIDENTIAL PRIMARIES IN 1992, 1996 AND 2000. THIS MEASURE WOULD RESTORE A PRESIDENTIAL PRIMARY IN COLORADO BEGINNING IN 2020. BECAUSE A PRESIDENTIAL PRIMARY ELECTION WOULD BE PAID FOR BY ALL TAXPAYERS, ALL ELIGIBLE VOTERS WHO WANT THEIR VOICES TO BE HEARD SHOULD BE ABLE TO VOTE IN THOSE ELECTIONS.

CURRENTLY, THE 35% OF COLORADO VOTERS WHO ARE INDEPENDENT OF A PARTY MUST JOIN A PARTY IF THEY WANT TO PARTICIPATE IN CAUCUSES WHERE PRESIDENTIAL PREFERENCE POLLS ARE TAKEN OR A PRIMARY ELECTION. IN FACT, COLORADO IS IN THE MINORITY OF STATES THAT LIMIT PARTICIPATION IN THE PRESIDENTIAL NOMINATION PROCESS TO ONLY THOSE REGISTERED WITH A MAJOR POLITICAL PARTY.

A PRESIDENTIAL PRIMARY WOULD INVOLVE MORE VOTERS, INCREASE PARTICIPATION AND COULD ENCOURAGE CANDIDATES WHO ARE RESPONSIVE TO THE VIEWPOINTS OF MORE COLORADANS.

ACCORDINGLY, COLORADO SHOULD RESTORE ITS PRESIDENTIAL PRIMARY AND ALL VOTERS SHOULD BE ALLOWED TO PARTICIPATE IN SELECTING THE PRIMARY CANDIDATES FOR PRESIDENT.

**SECTION 2.** In Colorado Revised Statutes, **recreate and reenact, with amendments**, part 12 to article 4 of title 1 as follows:

**1-4-1201. Declaration.** IN RECREATING AND REENACTING THIS PART 12, IT IS THE INTENT OF THE PEOPLE OF THE STATE OF COLORADO THAT THE PROVISIONS OF THIS PART 12 CONFORM TO THE REQUIREMENTS OF FEDERAL LAW AND NATIONAL POLITICAL PARTY RULES GOVERNING PRESIDENTIAL PRIMARY ELECTIONS, AND THAT THE COLORADO GENERAL

ASSEMBLY WILL, DURING THE 2017 LEGISLATIVE SESSION, ADOPT ALL NECESSARY CONFORMING AMENDMENTS TO ENSURE THE PROPER OPERATION OF A PRESIDENTIAL PRIMARY ELECTION IN COLORADO.

**1-4-1202. Definitions.** AS USED IN THIS PART 12, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "POLITICAL PARTY" MEANS A MAJOR POLITICAL PARTY AS DEFINED IN SECTION 1-1-104 (22).

(2) "PRESIDENTIAL PRIMARY ELECTION" MEANS A PRIMARY ELECTION CONDUCTED IN A YEAR IN WHICH A UNITED STATES PRESIDENTIAL ELECTION WILL BE HELD TO ALLOCATE DELEGATES TO NATIONAL NOMINATING CONVENTIONS OF THE MAJOR POLITICAL PARTIES SELECTED IN ACCORDANCE WITH SECTION 1-4-701.

**1-4-1203. Presidential primary elections - when - conduct.** (1) A PRESIDENTIAL PRIMARY ELECTION SHALL BE HELD ON A TUESDAY ON A DATE DESIGNATED BY THE GOVERNOR. THE DATE SELECTED FOR THE PRIMARY MUST BE NO EARLIER THAN THE DATE THE NATIONAL RULES OF THE MAJOR POLITICAL PARTIES PROVIDE FOR STATE DELEGATIONS TO THE PARTY'S NATIONAL CONVENTION TO BE ALLOCATED WITHOUT PENALTY AND NOT LATER THAN THE THIRD TUESDAY IN MARCH IN YEARS IN WHICH A UNITED STATES PRESIDENTIAL ELECTION WILL BE HELD. THE GOVERNOR SHALL DESIGNATE THE DATE OF THE PRESIDENTIAL PRIMARY ELECTION NO LATER THAN THE FIRST DAY OF SEPTEMBER IN THE YEAR BEFORE THE PRESIDENTIAL PRIMARY ELECTION WILL BE HELD.

(2)(a) EXCEPT AS PROVIDED FOR IN SUBSECTION (5) OF THIS SECTION, EACH POLITICAL PARTY THAT HAS A QUALIFIED CANDIDATE ENTITLED TO PARTICIPATE IN THE PRESIDENTIAL PRIMARY ELECTION PURSUANT TO THIS SECTION IS ENTITLED TO PARTICIPATE IN THE COLORADO PRESIDENTIAL PRIMARY ELECTION. AT THE PRESIDENTIAL PRIMARY ELECTION, AN ELECTOR THAT IS AFFILIATED WITH A POLITICAL PARTY MAY VOTE ONLY FOR A CANDIDATE OF THAT POLITICAL PARTY.

(b) AN UNAFFILIATED ELIGIBLE ELECTOR MAY VOTE IN A POLITICAL PARTY'S PRESIDENTIAL PRIMARY ELECTION WITHOUT AFFILIATING WITH THAT PARTY OR MAY DECLARE AN AFFILIATION WITH A POLITICAL PARTY TO THE ELECTION JUDGES AT THE PRESIDENTIAL PRIMARY ELECTION IN ACCORDANCE WITH SECTION 1-7-201. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO ELECTOR AFFILIATED WITH A MAJOR OR MINOR POLITICAL PARTY OR POLITICAL ORGANIZATION MAY CHANGE OR WITHDRAW HIS OR HER AFFILIATION IN ORDER TO VOTE IN THE PRESIDENTIAL PRIMARY ELECTION OF ANOTHER POLITICAL PARTY UNLESS THE ELECTOR HAS CHANGED OR WITHDRAWN SUCH AFFILIATION NO LATER THAN THE TWENTY-NINTH DAY PRECEDING THE PRESIDENTIAL PRIMARY ELECTION AS PROVIDED IN SECTION 1-2-219(1).

(3) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 12, A PRESIDENTIAL PRIMARY ELECTION MUST BE CONDUCTED IN THE SAME MANNER AS ANY OTHER PRIMARY ELECTION TO THE EXTENT STATUTORY PROVISIONS GOVERNING OTHER PRIMARY ELECTIONS ARE APPLICABLE TO THIS PART 12. THE ELECTION OFFICERS AND COUNTY CLERK AND RECORDERS HAVE THE SAME POWERS AND SHALL PERFORM THE SAME DUTIES FOR PRESIDENTIAL PRIMARY ELECTIONS AS THEY PROVIDE BY LAW FOR OTHER PRIMARY ELECTIONS AND GENERAL ELECTIONS.

(4)(a) A BALLOT USED IN A PRESIDENTIAL PRIMARY ELECTION MUST ONLY CONTAIN THE NAMES OF CANDIDATES FOR THE OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA. THE BALLOT SHALL NOT BE USED FOR THE PURPOSE OF PRESENTING ANY OTHER ISSUE OR QUESTION TO THE ELECTORATE UNLESS EXPRESSLY AUTHORIZED BY LAW.

(b) EACH POLITICAL PARTY THAT IS ENTITLED TO PARTICIPATE IN THE PRESIDENTIAL PRIMARY ELECTION SHALL HAVE A SEPARATE PARTY BALLOT FOR USE BY ELECTORS AFFILIATED WITH THAT POLITICAL PARTY. IN ADDITION, ALL POLITICAL PARTIES THAT ARE ENTITLED TO PARTICIPATE IN THE PRIMARY ELECTION SHALL HAVE THEIR CANDIDATES PLACED ON A SINGLE COMBINED BALLOT TO BE USED BY UNAFFILIATED ELECTORS THAT CONTAINS THE NAMES OF THE CANDIDATES OF EACH OF THE POLITICAL PARTIES AND THAT ARE CLEARLY AND CONSPICUOUSLY SEGREGATED FROM THE NAMES OF THE CANDIDATES OF ANY OTHER POLITICAL PARTY. ACROSS THE TOP OF EACH SUCH BALLOT THE WORDS "PRIMARY ELECTION BALLOT FOR UNAFFILIATED VOTERS" SHALL BE PRINTED AND CLEARLY ADVISE THAT AN ELECTOR MAY CAST THE BALLOT OF ONLY ONE POLITICAL PARTY AND THAT ANY BALLOT IN WHICH VOTES HAVE BEEN CAST IN THE PRIMARY OF MORE THAN ONE PARTY SHALL BE VOID AND NOT COUNTED.

(5) IF, AT THE CLOSE OF BUSINESS ON THE SIXTIETH DAY BEFORE A PRESIDENTIAL PRIMARY ELECTION, THERE IS NOT MORE THAN ONE CANDIDATE FOR PRESIDENT AFFILIATED WITH A POLITICAL PARTY CERTIFIED TO THE PRESIDENTIAL PRIMARY BALLOT PURSUANT TO SECTION 1-4-1204(1) OR WHO HAS FILED A WRITE-IN CANDIDATE STATEMENT OF INTENT PURSUANT TO 1-4-1205, THE SECRETARY OF STATE MAY CANCEL THE PRESIDENTIAL PRIMARY ELECTION FOR THAT POLITICAL PARTY AND DECLARE THAT CANDIDATE THE WINNER OF THE PRESIDENTIAL PRIMARY ELECTION OF SUCH POLITICAL PARTY.

(6) THE SECRETARY OF STATE MAY BY RULE ADOPT ADDITIONAL BALLOT REQUIREMENTS NECESSARY TO AVOID VOTER CONFUSION IN VOTING IN PRESIDENTIAL PRIMARY ELECTIONS.

(7) THE STATE SHALL REIMBURSE THE COUNTIES FOR ALL EXPENSES INCURRED AND SHOWN TO BE DIRECTLY ATTRIBUTABLE TO THE PREPARATION AND CONDUCT OF THE PRESIDENTIAL PRIMARY ELECTION IN THE SAME MANNER AS THE STATE REIMBURSES COUNTIES FOR STATE BALLOT ISSUES IN SECTION 1-5-505.5; EXCEPT THAT THE REIMBURSEMENT MUST BE BASED ON THE NUMBER OF ACTIVE REGISTERED ELECTORS PARTICIPATING IN THE PRESIDENTIAL PRIMARY ELECTION AS OF THE DAY OF THE PRESIDENTIAL PRIMARY ELECTION. THE GENERAL ASSEMBLY SHALL MAKE APPROPRIATIONS TO THE DEPARTMENT OF STATE FROM THE DEPARTMENT OF STATE CASH FUND OR FROM THE GENERAL FUND FOR THE PURPOSE OF REIMBURSING COUNTIES UNDER THE TERMS OF THIS SECTION IN CONFORMITY WITH SECTION 24-21-104.5.

**1-4-1204. Names on ballots.** (1) NOT LATER THAN SIXTY DAYS BEFORE THE PRESIDENTIAL PRIMARY ELECTION, THE SECRETARY OF STATE SHALL CERTIFY THE NAMES AND PARTY AFFILIATIONS OF THE CANDIDATES TO BE PLACED ON ANY PRESIDENTIAL PRIMARY ELECTION BALLOTS. THE ONLY CANDIDATES WHOSE NAMES SHALL BE PLACED ON BALLOTS FOR THE ELECTION SHALL BE THOSE CANDIDATES WHO:

(a) ARE ELIGIBLE TO RECEIVE PAYMENTS PURSUANT TO THE FEDERAL "PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT ACT", 26 U.S.C. SEC. 9031 ET SEQ., OR ANY SUCCESSOR SECTION OF FEDERAL LAW, AT THE TIME CANDIDATES' NAMES ARE TO BE CERTIFIED BY THE SECRETARY OF STATE PURSUANT TO THIS SUBSECTION (1);

(b) ARE SEEKING THE NOMINATION FOR PRESIDENT OF A POLITICAL PARTY AS A BONA FIDE CANDIDATE FOR PRESIDENT OF THE UNITED STATES PURSUANT TO POLITICAL PARTY RULES AND ARE AFFILIATED WITH A MAJOR POLITICAL PARTY THAT RECEIVED AT LEAST TWENTY PERCENT OF THE VOTES CAST BY ELIGIBLE ELECTORS IN COLORADO AT THE LAST PRESIDENTIAL ELECTION; AND

(c) HAVE SUBMITTED TO THE SECRETARY, BY THE SECOND DAY OF JANUARY IN THE YEAR OF THE PRESIDENTIAL PRIMARY ELECTION, A NOTARIZED CANDIDATE'S STATEMENT OF INTENT TOGETHER WITH EITHER A NONREFUNDABLE FILING FEE OF FIVE HUNDRED DOLLARS OR A PETITION SIGNED BY AT LEAST FIVE THOUSAND ELIGIBLE ELECTORS OF THE CANDIDATE'S POLITICAL PARTY WHO RESIDE IN THE STATE. CANDIDATE PETITIONS MUST MEET THE REQUIREMENTS OF PARTS 8 AND 9 OF THIS ARTICLE, AS APPLICABLE.

(2) THE NAMES OF CANDIDATES APPEARING ON ANY PRESIDENTIAL PRIMARY BALLOT MUST BE IN AN ORDER DETERMINED BY LOT. THE SECRETARY OF STATE SHALL DETERMINE THE METHOD OF DRAWING LOTS.

(3) EXCEPT AS OTHERWISE PROHIBITED BY POLITICAL PARTY RULES, THE STATE CHAIRPERSON OF A POLITICAL PARTY MAY REQUEST THE SECRETARY TO PROVIDE A PLACE ON THE PRIMARY BALLOT FOR ELECTORS WHO HAVE NO PRESIDENTIAL CANDIDATE PREFERENCE TO REGISTER A VOTE TO SEND A NONCOMMITTED DELEGATE TO THE POLITICAL PARTY'S NATIONAL CONVENTION. TO BE VALID, THIS REQUEST MUST BE RECEIVED BY THE SECRETARY OF STATE NO LATER THAN SEVENTY DAYS BEFORE THE PRESIDENTIAL PRIMARY ELECTION.

(4) ANY CHALLENGE TO THE LISTING OF ANY CANDIDATE ON THE PRESIDENTIAL PRIMARY ELECTION BALLOT MUST BE MADE IN WRITING AND FILED WITH THE SECRETARY NO LATER THAN FIVE DAYS AFTER THE FILING DEADLINE FOR CANDIDATES. ANY SUCH CHALLENGE MUST PROVIDE NOTICE IN WRITING IN A SUMMARY MANNER OF AN ALLEGED IMPROPRIETY THAT GIVES RISE TO THE COMPLAINT. THE SECRETARY SHALL ADDRESS BY RULE OTHER REQUIREMENTS OF A VALID CHALLENGE. IN RESPONSE TO A VALID CHALLENGE BROUGHT UNDER THIS SUBSECTION (4), THE SECRETARY SHALL TRANSMIT NOTICE OF THE CHALLENGE FORTHWITH TO ALL CANDIDATES APPEARING ON THE PRESIDENTIAL PRIMARY BALLOT AND TO THE STATE CHAIRPERSON OF EACH MAJOR POLITICAL PARTY. NO LATER THAN FIVE DAYS AFTER THE CHALLENGE IS FILED, A HEARING MUST BE HELD AT WHICH TIME THE SECRETARY SHALL HEAR THE CHALLENGE AND ASSESS THE VALIDITY OF ALL ALLEGED IMPROPRIETIES. THE SECRETARY SHALL ISSUE FINDINGS OF FACT AND CONCLUSIONS OF LAW NO LATER THAN FORTY-EIGHT HOURS AFTER THE HEARING. THE PARTY FILING THE CHALLENGE HAS THE BURDEN TO SUSTAIN THE CHALLENGE BY A PREPONDERANCE OF THE EVIDENCE. THE SECRETARY OF STATE'S DECISIONS UPON MATTERS OF SUBSTANCE ARE OPEN TO REVIEW, IF PROMPT APPLICATION IS MADE, AS PROVIDED IN SECTION 1-1-113.

**1-4-1205. Write-in candidate affidavit for presidential primary.** A WRITE-IN VOTE FOR ANY CANDIDATE ON THE PRESIDENTIAL PRIMARY BALLOT SHALL NOT BE COUNTED UNLESS THE CANDIDATE FOR WHOM THE WRITE-IN VOTE WAS CAST HAS FILED A NOTARIZED CANDIDATE'S STATEMENT OF INTENT TO SEEK THE OFFICE OF PRESIDENT OF THE UNITED STATES. ANY SUCH AFFIDAVIT MUST BE ACCOMPANIED BY A NONREFUNDABLE FEE OF FIVE HUNDRED DOLLARS AND MUST BE FILED WITH THE SECRETARY OF STATE NO LATER THAN THE CLOSE OF BUSINESS ON THE SIXTY-SEVENTH DAY BEFORE THE PRESIDENTIAL PRIMARY ELECTION.

**1-4-1206. Presidential primary ballots - survey of returns.** EACH COUNTY CLERK AND RECORDER SHALL SURVEY ALL RETURNS RECEIVED FROM THE PRESIDENTIAL PRIMARY ELECTION IN ALL COUNTY PRECINCTS, AS PROVIDED IN THIS TITLE, AND SHALL CERTIFY THE RESULTS OF THE PRESIDENTIAL PRIMARY ELECTION TO THE SECRETARY NO LATER THAN THIRTEEN DAYS AFTER THE ELECTION.

**1-4-1207. Election results – certification – pledging of delegates.** (1) THE SECRETARY SHALL COMPILE THE NUMBER OF VOTES CAST FOR EACH CANDIDATE NAMED ON THE PRESIDENTIAL PRIMARY ELECTION BALLOT AND THE VOTES CAST TO SEND A NONCOMMITTED DELEGATE TO THE POLITICAL PARTY'S NATIONAL CONVENTION, IF APPLICABLE, AND SHALL CALCULATE THE PERCENTAGE OF VOTES RECEIVED BY EACH CANDIDATE AS COMPARED TO THE NUMBER OF VOTES RECEIVED BY ALL CANDIDATES OF THE SAME POLITICAL PARTY.

(2) THE SECRETARY SHALL CERTIFY THE RESULTS AND PERCENTAGES CALCULATED PURSUANT TO SUBSECTION (1) OF THIS SECTION TO THE STATE CHAIRPERSON AND THE NATIONAL COMMITTEE OF EACH POLITICAL PARTY WHICH HAD AT LEAST ONE CANDIDATE ON THE PRESIDENTIAL PRIMARY ELECTION BALLOT.

(3) EACH POLITICAL PARTY SHALL USE THE RESULTS OF THE ELECTION RESULTS TO ALLOCATE ALL NATIONAL DELEGATE VOTES TO THE PRESIDENTIAL PRIMARY CANDIDATE RECEIVING THE HIGHEST NUMBER OF VOTES AND TO BIND MEMBERS OF THE STATE'S DELEGATION TO VOTE FOR THAT CANDIDATE AT THE PARTY'S NATIONAL CONVENTION.

**SECTION 3.** In Colorado Revised Statutes, 1-2-218.5, **amend** (2) as follows:

**1-2-218.5. Declaration of affiliation.** (2) Any eligible elector who has not declared an affiliation with a political party or political organization shall be designated on the registration records of the county clerk and recorder as "unaffiliated". Any unaffiliated eligible elector may declare a political party affiliation when the elector desires to vote at a primary election, as provided in section 1-7-201(2), or the elector may declare his or her political party or political organization affiliation at any other time during which electors are permitted to register by submitting a letter or a form furnished by the county clerk and recorder, ~~either~~ by mail, ~~or~~ in person, OR ONLINE IN ACCORDANCE WITH SECTION 1-2-202.5. AN UNAFFILIATED ELIGIBLE ELECTOR NEED NOT DECLARE AN AFFILIATION TO VOTE IN A PRESIDENTIAL PRIMARY ELECTION.

**SECTION 4.** In Colorado Revised Statutes, 24-21-104.5, **amend** as follows:

**24-21-104.5. General fund appropriation - cash fund appropriation - elections.** The general assembly is authorized to appropriate moneys from the department of state cash fund to the department of state to cover the costs of the local county clerk and recorders relating to the conduct of PRESIDENTIAL PRIMARY ELECTIONS, general elections, and November odd-year elections. If the amount of moneys in the department of state cash fund is insufficient to cover such costs, the general assembly may appropriate additional general fund moneys to cover such costs after exhausting all moneys in the department of state cash fund. The intent of the general assembly is to authorize the appropriation of department of state cash fund moneys and general fund moneys to the department of state to offset some of the costs of local county clerk and recorders associated with the additional election duties and requirements resulting FROM THE PREPARATION AND CONDUCT OF PRESIDENTIAL PRIMARY ELECTIONS AND from the passage of section 20 of article X of the state constitution and from the increased number of initiatives that are being filed.

**SECTION 5.** In Colorado Revised Statutes, 1-3-102, **amend** (1)(a)(III) as follows:

**1-3-102. Precinct caucuses.** (1) (a) (III) In a year in which a presidential election will be held, a political party may, by decision of its state central committee, hold its precinct caucuses on the first ~~Tuesday in February~~ SATURDAY FOLLOWING THE PRESIDENTIAL PRIMARY ELECTION. The committee shall notify the secretary of state and the clerk and recorder of each county in the state of the decision within five days after the decision.

**SECTION 6.** In Colorado Revised Statutes, 1-4-801, **add** (6) as follows:

**1-4-801. Designation of party candidates by petition.** (6) A CANDIDATE FOR A PRESIDENTIAL PRIMARY ELECTION SHALL NOT BEGIN CIRCULATING PETITIONS BEFORE THE FIRST MONDAY IN NOVEMBER OF THE YEAR PRECEDING THE YEAR IN WHICH THE PRESIDENTIAL PRIMARY ELECTION IS HELD. A CANDIDATE MUST FILE A PETITION NO LATER THAN THE SECOND DAY OF JANUARY IN THE YEAR OF THE PRESIDENTIAL PRIMARY ELECTION.

**SECTION 7. Effective date - applicability.** This measure shall apply to any presidential primary election conducted after the effective date of this measure as declared by proclamation of the governor.

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## Proposition 108 Unaffiliated Voter Participation in Primary Elections

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### ANALYSIS

Proposition 108 proposes amending the Colorado statutes to:

- ◆ change the primary election process in Colorado to allow unaffiliated voters to vote in a nonpresidential primary election of a single political party; and
- ◆ allow political parties to opt out of holding a primary election and instead choose to nominate candidates by assembly or convention.

### Summary and Analysis

**Background.** Under current law, a voter must be affiliated with a political party in order to vote in that party's primary election. Unaffiliated voters, sometimes referred to as independent voters, are not registered members of any political party. An unaffiliated voter may affiliate with a political party at any point up to, and including election day, and be eligible under current law to participate in a party's primary election. In Colorado, primary elections to select party nominees for state, county, and federal offices other than president (nonpresidential primaries) are held on the last Tuesday in June in even-numbered years. These primary elections are conducted by county election officials at a cost of about \$5.0 million every two years.

**Primary election process open to unaffiliated voters.** Under Proposition 108, voters will no longer be required to affiliate with a political party in order to vote in a party's nonpresidential primary election. Instead, unaffiliated voters will receive a combined ballot that shows all candidates for elected office for each political party. The combined ballot must clearly separate candidates for each political party, and unaffiliated voters may only vote in contests for one political party. If a voter selects candidates of more than one political party on the combined ballot, his or her ballot will not be counted. In counties that determine that a combined ballot is not practical, unaffiliated voters will receive separate ballots for all major political parties participating in the primary election and may return the ballot for one party.

**Option for closed party nominations.** The measure allows political parties, which are private organizations, to opt out of holding a primary election that is open to unaffiliated voters. Instead, they may choose to nominate candidates in an assembly or convention that is limited to voters affiliated with that party. The decision to opt out of holding a primary election must be made by the party's state central committee by a three-fourths majority vote.

**Impact on minor parties.** Under current law, the Democratic and Republican Parties, having met certain vote thresholds in prior elections, are classified as major parties; all other parties, such as the American Constitution Party, the Green Party, and the Libertarian Party, are classified as minor parties. Under Proposition 108, minor parties participating in the primary election will be included on the combined ballot sent to unaffiliated voters. However, a minor party may opt to exclude unaffiliated voters from participating in its primary election. In such cases, only voters affiliated with the minor party will receive that party's primary election ballot. The provision allowing the exclusion of unaffiliated voters only applies to minor parties.

*For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

## Arguments For

1) Proposition 108 gives unaffiliated voters, who are Colorado taxpayers, the opportunity to vote in publicly financed primary elections. Unaffiliated voters make up more than one-third of all registered voters in the state. Proposition 108 gives unaffiliated voters a role in selecting candidates for the general election and makes voting in primary elections easier and more accessible for these voters.

2) Allowing unaffiliated voters to participate in primary elections may result in candidates who better represent all Coloradans. In a closed primary, voter participation is typically low and the candidates selected often appeal to a small number of their party's more active members. Opening the primary election may result in candidates who are more responsive to a broader range of interests.

## Arguments Against

1) Proposition 108 uses a combined ballot system for unaffiliated voters that will likely result in about 7 percent of unaffiliated voter ballots not being counted, which could change election winners, and would raise costs for taxpayers. On a combined ballot, unaffiliated voters must vote for only one party's candidates. People who vote for candidates in both parties will have their ballots disqualified, and their ballots will not be counted. In Washington state, where combined ballots are used, 7 percent of ballots are disqualified. This can change election results, and may result in contested elections and litigation. Producing and processing a separate combined ballot only for unaffiliated voters creates administrative and financial burdens for counties, especially smaller or rural counties.

2) Colorado law already allows unaffiliated voters who wish to vote in a political party's primary election to easily change their party affiliation at any point during the election, up to and including on election day. Political parties are membership organizations that have the right to select their own candidates without influence from people who choose not to affiliate with the party.

## Estimate of Fiscal Impact

**State government spending.** Proposition 108 increases state spending by \$160,000, with costs split evenly between budget year 2016-17 and budget year 2017-18. This is a one-time cost for the Secretary of State's Office to make information technology system modifications to the statewide voter database and other voting systems.

**Local government spending.** Proposition 108 increases local government spending by counties by \$750,000 every two years by requiring that ballots be mailed to unaffiliated voters and eliminating a required notification currently sent to unaffiliated voters prior to a primary election. This estimate assumes that all political parties continue to nominate candidates through the primary election process. In the event some or all political parties opt out of conducting primary elections and instead choose to nominate candidates by assembly or convention, counties may have total statewide savings of up to \$5.0 million every two years.

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**Proposition 108  
Unaffiliated Voter Participation  
in Primary Elections**

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**TITLE AND TEXT**

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado Revised Statutes. The text of the measure that will appear in the Colorado Revised Statutes below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

***Ballot Title:***

Shall there be a change to the Colorado Revised Statutes concerning the process of selecting candidates representing political parties on a general election ballot, and, in connection therewith, allowing an unaffiliated elector to vote in the primary election of a political party without declaring an affiliation with that party and permitting a political party in specific circumstances to select all of its candidates by assembly or convention instead of by primary election?

***Text of Measure:***

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

**SECTION 1. Declaration of the people of Colorado**

BECAUSE PRIMARY ELECTIONS ARE PAID FOR BY TAXPAYERS, ALL ELIGIBLE VOTERS WHO WANT THEIR VOICES TO BE HEARD SHOULD BE ABLE TO VOTE IN THOSE ELECTIONS.

CURRENTLY, THE 35% OF COLORADO VOTERS WHO ARE INDEPENDENT OF A POLITICAL PARTY MUST JOIN A PARTY IF THEY WANT TO PARTICIPATE IN THE SELECTION OF OUR GENERAL ELECTION CANDIDATES. IN FACT, COLORADO IS IN THE MINORITY OF STATES THAT LIMIT PARTICIPATION IN PRIMARY ELECTIONS TO ONLY THOSE AFFILIATED WITH A MAJOR POLITICAL PARTY.

BECAUSE PRIMARY ELECTION TURNOUT IS DECLINING, INVOLVING MORE VOTERS CAN INCREASE PARTICIPATION AND ENCOURAGE CANDIDATES WHO ARE RESPONSIVE TO THE VIEWPOINTS OF MORE COLORADANS.

ACCORDINGLY, ALL VOTERS SHOULD BE ALLOWED TO VOTE IN STATE AND LOCAL PRIMARY ELECTIONS WITH THE SAME EASE AS THOSE VOTERS AFFILIATED WITH A MAJOR POLITICAL PARTY.

**SECTION 2.** In Colorado Revised Statutes, 1-2-218.5, **amend** (2) as follows:

**1-2-218.5. Declaration of affiliation.** (2) Any eligible elector who has not declared an affiliation with a political party or political organization shall be designated on the registration records of the county clerk and recorder as "unaffiliated". Any unaffiliated eligible elector may, BUT IS NOT REQUIRED TO, declare a political party affiliation when the elector desires to vote at a primary election, as provided in section 1-7-201 (2), or the elector may declare his or her political party or political organization affiliation at any other time during which electors are permitted to register by submitting a letter or a form furnished by the county clerk and recorder, ~~either~~ by mail, ~~or~~ in person, OR ONLINE IN ACCORDANCE WITH SECTION 1-2-202.5.

**SECTION 3.** In Colorado Revised Statutes, 1-4-101, **amend** (2) as follows:

**1-4-101. Primary elections - when - nominations - expenses.** (2) Each political party that is entitled to participate in the primary election shall have a separate party ballot FOR USE BY ELECTORS AFFILIATED WITH THAT POLITICAL PARTY. IN ADDITION, ALL POLITICAL PARTIES THAT ARE ENTITLED TO PARTICIPATE IN THE PRIMARY ELECTION SHALL HAVE THEIR CANDIDATES PLACED ON A SINGLE COMBINED BALLOT TO BE USED BY UNAFFILIATED ELECTORS THAT CONTAINS

THE NAMES OF THE CANDIDATES OF EACH OF THE POLITICAL PARTIES AND THAT ARE CLEARLY AND CONSPICUOUSLY SEGREGATED FROM THE NAMES OF THE CANDIDATES OF ANY OTHER POLITICAL PARTY. ALL CANDIDATES OF A POLITICAL PARTY SHALL BE GROUPED TOGETHER AND SEPARATED BY THE OFFICE EACH CANDIDATE IS SEEKING. SUCH BALLOTS SHALL CLEARLY ADVISE THAT AN ELECTOR MAY CAST THE BALLOT OF ONLY ONE MAJOR POLITICAL PARTY AND THAT ANY BALLOT IN WHICH VOTES HAVE BEEN CAST IN THE PRIMARY OF MORE THAN ONE PARTY SHALL BE VOID AND NOT COUNTED. HOWEVER, AN ELECTOR IS NOT REQUIRED TO VOTE IN THE SAME PARTY PRIMARY AS THE ELECTOR VOTED IN AS PART OF A PRESIDENTIAL PRIMARY ELECTION OCCURRING IN THAT SAME YEAR, IF SUCH AN ELECTION IS HELD;

(a) IF IT IS NOT PRACTICABLE FOR A COUNTY TO USE A SINGLE COMBINED BALLOT THAT CONTAINS THE NAMES OF THE CANDIDATES OF EACH OF THE POLITICAL PARTIES, THE COUNTY CLERK AND RECORDER SHALL SEND TO ALL ACTIVE ELECTORS IN THE COUNTY WHO HAVE NOT DECLARED AN AFFILIATION WITH A POLITICAL PARTY A MAILING THAT CONTAINS THE BALLOTS OF ALL OF THE MAJOR POLITICAL PARTIES. IN THIS MAILING, THE CLERK SHALL ALSO PROVIDE WRITTEN INSTRUCTIONS ADVISING THE ELECTOR OF THE MANNER IN WHICH THE ELECTOR WILL BE IN COMPLIANCE WITH THE REQUIREMENTS OF THIS CODE IN SELECTING AND CASTING THE BALLOT OF A MAJOR POLITICAL PARTY. AN ELECTOR MAY CAST THE BALLOT OF ONLY ONE MAJOR POLITICAL PARTY. AFTER SELECTING AND CASTING A BALLOT OF A SINGLE MAJOR POLITICAL PARTY, THE ELECTOR SHALL RETURN THE BALLOT TO THE CLERK. IF AN ELECTOR CASTS AND RETURNS TO THE CLERK THE BALLOT OF MORE THAN ONE MAJOR POLITICAL PARTY, ALL SUCH BALLOTS RETURNED WILL BE VOID AND WILL NOT BE COUNTED.

(b) THE SECRETARY OF STATE MAY BY RULE ADOPT ADDITIONAL BALLOT REQUIREMENTS NECESSARY TO AVOID VOTER CONFUSION IN VOTING IN PRIMARY ELECTIONS.

(c) The primary election of all political parties shall be held at the same time and shall be conducted by the same election officials.

**SECTION 4.** In Colorado Revised Statutes, 1-4-502, **amend** (1) as follows:

**1-4-502. Methods of nomination for partisan candidates.** (1) Except as otherwise provided in paragraphs (b) and (c) of subsection (3) of this section, nominations for United States senator, representative in congress, governor, lieutenant governor, secretary of state, state treasurer, attorney general, member of the state board of education, regent of the university of Colorado, member of the general assembly, district attorney, and all county officers to be elected at the general election may be made by primary election UNDER SECTION 1-4-101 OR BY ASSEMBLY OR CONVENTION UNDER SECTION 1-4-702 by major political parties, by petition for nomination as provided in section 1-4-802, or by a minor political party as provided in section 1-4-1304.

**SECTION 5.** In Colorado Revised Statutes, **add** 1-4-702 as follows:

**1-4-702. Nominations of candidates for general election by convention.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A POLITICAL PARTY MAY CHOOSE TO CHANGE FROM THE NOMINATION OF CANDIDATES BY PRIMARY ELECTION TO THE NOMINATION OF CANDIDATES BY ASSEMBLY OR CONVENTION FOR ALL OFFICES INCLUDING, BUT NOT LIMITED TO, UNITED STATES SENATOR, REPRESENTATIVE IN CONGRESS, ALL ELECTIVE STATE, DISTRICT, AND COUNTY OFFICERS, AND MEMBERS OF THE GENERAL ASSEMBLY IF AT LEAST THREE-FOURTHS OF THE TOTAL MEMBERSHIP OF THE PARTY'S STATE CENTRAL COMMITTEE VOTES TO USE THE ASSEMBLY OR CONVENTION NOMINATION PROCESS; EXCEPT THAT NOMINATIONS BY MAJOR POLITICAL PARTIES FOR CANDIDATES FOR LIEUTENANT GOVERNOR SHALL BE MADE BY THE PARTY'S CANDIDATE FOR GOVERNOR PURSUANT TO SECTION 1-4-502 (3). SUCH VOTE OF THE PARTY CENTRAL COMMITTEE SHALL OCCUR NO LATER THAN OCTOBER 1 OF THE YEAR PRECEDING THE YEAR IN WHICH AN ASSEMBLY OR CONVENTION NOMINATING PROCESS IS TO BE USED.

(2) A POLITICAL PARTY NOMINATING CANDIDATES BY PARTY ASSEMBLY OR CONVENTION SHALL NOMINATE THE CANDIDATES OF THE PARTY AND MAKE SUCH NOMINATIONS PUBLIC NOT LATER THAN SEVENTY-FIVE DAYS BEFORE THE GENERAL ELECTION.

(3) WHICHEVER METHOD OF CANDIDATE SELECTION IS CHOSEN BY A MAJOR POLITICAL PARTY AS BETWEEN PRIMARY ELECTION, ASSEMBLY OR CONVENTION, ALL OF THE CANDIDATES FOR THAT PARTY AT ANY LEVEL OF OFFICE IN THAT ELECTION YEAR MUST BE SELECTED BY SUCH METHOD, EXCEPT THAT THE REQUIREMENTS OF THIS PROVISION SHALL NOT APPLY TO A PRIMARY FOR PRESIDENT OF THE UNITED STATES IF SUCH AN ELECTION IS HELD.

**SECTION 6.** In Colorado Revised Statutes, 1-4-1002, **amend** (2.3)(a) as follows:

**1-4-1002. Vacancies in designation or nomination.** (2.3)(a) A vacancy in a party nomination, other than a vacancy for a party nomination for lieutenant governor for a general election occurring after January 1, 2001, that occurs after the day of the primary election or AFTER NOMINATION BY ASSEMBLY OR CONVENTION UNDER SECTION 1-4-702 and more than eighteen days before the general election may be filled by the respective party assembly vacancy committee of the district, county, or state, as appropriate, depending upon the office for which the vacancy in nomination has occurred in accordance with the provisions of subsection (9) of this section. A vacancy in a party nomination for lieutenant governor for a general election occurring after January 1, 2001, shall be filled by a replacement candidate for lieutenant governor nominated by the party's candidate for governor. A vacancy may be caused by the declination, death, disqualification, resignation, or withdrawal of the person nominated at the primary election or by the declination, death, disqualification, resignation, or withdrawal of an elective officer after a primary election at which a nomination could have been made for the office had the vacancy then existed. No person is eligible for appointment to fill a vacancy in the party nomination unless the person meets all of the requirements of candidacy as of the date of the primary election. When a vacancy is filled pursuant to this paragraph (a), the designated election official shall provide notice by publication of the replacement nomination in the same manner as the notice required by section 1-5-205.

**SECTION 7.** In Colorado Revised Statutes, 1-4-1304, **amend** (1.5)(c) as follows:

**1-4-1304. Nomination of candidates.** (1.5) (c) If an assembly designates more than one candidate for an office, or if an assembly designates one or more candidates and one or more candidates qualifies by petition, the candidate of the minor political party for that office shall be nominated at a primary election held in accordance with this code. A MINOR POLITICAL PARTY MAY PROHIBIT UNAFFILIATED ELECTORS FROM VOTING IN THE PARTY'S PRIMARY ELECTION SO LONG AS THE PROHIBITION IS IN ACCORDANCE WITH THE PARTY'S CONSTITUTION, BYLAWS, OR OTHER APPLICABLE RULES. ANY MINOR PARTY CHOOSING TO PROHIBIT UNAFFILIATED ELECTORS FROM VOTING IN ITS PRIMARY ELECTION MUST NOTIFY THE SECRETARY OF STATE OF THE PROHIBITION NOT LESS THAN SEVENTY-FIVE DAYS PRIOR TO THE PRIMARY ELECTION.

**SECTION 8.** In Colorado Revised Statutes, 1-5-402, **add** (2) as follows:

**1-5-402. Primary election ballots.** (2) NO LATER THAN FORTY-FIVE DAYS BEFORE THE PRIMARY ELECTION, THE COUNTY CLERK AND RECORDER SHALL PREPARE A COMBINED PRIMARY ELECTION BALLOT TO BE USED BY UNAFFILIATED ELECTORS. THE BALLOT MUST BE PRINTED IN THE FOLLOWING MANNER:

(a) ALL OFFICIAL BALLOTS MUST BE PRINTED ACCORDING TO THE PROVISIONS OF SECTIONS 1-4-101, 1-5-407, AND 1-5-408. ACROSS THE TOP OF EACH BALLOT THE WORDS "PRIMARY ELECTION BALLOT FOR UNAFFILIATED VOTERS" SHALL BE PRINTED.

(b) THE POSITIONS OF CANDIDATES ON THE BALLOTS TO BE USED BY UNAFFILIATED ELECTORS MUST BE ARRANGED IN THE ORDER SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION; EXCEPT THAT THE CANDIDATES OF EACH POLITICAL PARTY MUST BE CLEARLY AND CONSPICUOUSLY SEGREGATED FROM THE CANDIDATES OF ANY OTHER POLITICAL PARTY AND GROUPED TOGETHER ACCORDING TO SECTION 1-4-101(2).

**SECTION 9.** In Colorado Revised Statutes, 1-7-201, **amend** (2); and add (2.3) as follows:

**1-7-201. Voting at primary election.** (2) If the name is found on the registration list, the election judge having charge of the list shall likewise repeat the elector's name and present the elector with the party ballot of the political party affiliation last recorded. ~~If unaffiliated, the eligible elector shall openly declare to the election judges the name of the political party with which the elector wishes to affiliate, complete the approved form for voter registration information changes, and initial the registration list in the space provided. Declaration of affiliation with a political party shall be separately dated and signed or dated and initialed by the eligible elector in such manner that the elector clearly acknowledges that the affiliation has been properly recorded. Thereupon, the election judges shall deliver the appropriate party ballot to the eligible elector. Eligible electors who decline to state an affiliation with a political party that is participating in the primary shall not be entitled to vote at the primary election.~~

(2.3) AN ELIGIBLE UNAFFILIATED ELECTOR IS ENTITLED TO VOTE IN THE PRIMARY ELECTION OF A MAJOR POLITICAL PARTY WITHOUT AFFILIATING WITH THAT POLITICAL PARTY. TO VOTE IN A POLITICAL PARTY'S PRIMARY ELECTION WITHOUT DECLARING AN AFFILIATION WITH THE POLITICAL PARTY, ANY ELIGIBLE UNAFFILIATED ELECTOR SHALL BE GIVEN A COMBINED BALLOT, IF APPLICABLE. IF A COMBINED BALLOT IS NOT AVAILABLE, THE ELECTOR SHALL DECLARE TO THE ELECTION JUDGES

THE NAME OF THE POLITICAL PARTY IN WHOSE PRIMARY ELECTION THE ELECTOR WISHES TO VOTE. THEREUPON, THE ELECTION JUDGES SHALL DELIVER THE APPROPRIATE PARTY BALLOT TO THE ELECTOR. IN ADDITION, ANY ELIGIBLE UNAFFILIATED ELECTOR MAY OPENLY DECLARE TO THE ELECTION JUDGES THE NAME OF THE POLITICAL PARTY WITH WHICH THE ELECTOR WISHES TO AFFILIATE AND COMPLETE THE NECESSARY FORMS. AN ELIGIBLE ELECTOR MUST SEPARATELY DATE AND SIGN OR DATE AND INITIAL A DECLARATION OF AFFILIATION WITH A POLITICAL PARTY FORM IN SUCH MANNER THAT THE ELECTOR CLEARLY ACKNOWLEDGES THAT THE AFFILIATION HAS BEEN PROPERLY RECORDED. THEREUPON, THE ELECTION JUDGES SHALL DELIVER THE APPROPRIATE PARTY BALLOT TO THE ELIGIBLE ELECTOR.

**SECTION 10.** In Colorado Revised Statutes, 1-7.5-107, **delete** (2.3); and **amend** (2.5)(a)(II) as follows:

**1-7.5-107. Procedures for conducting mail ballot election - primary elections - first-time voters casting a mail ballot after having registered by mail to vote - in-person request for ballot - repeal.** ~~(2.3) (a) Not less than thirty days nor more than forty five days before a primary election, the county clerk and recorder shall mail a notice by forwardable mail to each unaffiliated active registered eligible elector.~~

~~(b) The notice shall indicate that the unaffiliated elector has the ability to and must affiliate with a political party in order to vote in the primary election.~~

~~(c) The notice shall have a returnable portion that allows the elector to request affiliation with a political party.~~

~~(d) The notice may be included with any other communication by mail from the county clerk and recorder to electors within the county.~~

(2.5) (a) (II) For a primary mail ballot election, in addition to the items described in the notice required by subparagraph (I) of this paragraph (a), such notice shall advise eligible electors who are not affiliated with a political party of the ability to ~~declare an affiliation with a political party and vote in the primary election~~ VOTE IN THE PRIMARY ELECTION OF ANY POLITICAL PARTY. THE NOTICE MUST CLEARLY AND CONSPICUOUSLY ADVISE ELECTORS THAT ANY PRIMARY BALLOT CONTAINING VOTES FOR A CANDIDATE OF MORE THAN ONE POLITICAL PARTY SHALL NOT BE COUNTED.

**SECTION 11.** In Colorado Revised Statutes, 1-7.5-116, **amend** (1) (b) as follows:

**1-7.5-116. Applications for absentee ballot.** (1) (b) If the application is made for a primary election ballot, the application shall name the political party with which the applicant is affiliated ~~or wishes to affiliate~~, OR, IF THE APPLICANT IS UNAFFILIATED, THE APPLICATION MUST EITHER NAME THE POLITICAL PARTY WITH WHICH THE APPLICANT WISHES TO AFFILIATE OR MUST STATE THAT THE APPLICANT WISHES TO REMAIN UNAFFILIATED AND RECEIVE AN UNAFFILIATED PRIMARY ELECTION BALLOT, OR IF SUCH COMBINED BALLOT IS NOT AVAILABLE, THE BALLOTS FOR EACH PARTY PRIMARY ALONG WITH NOTICE THAT THE ELECTOR SHALL VOTE IN ONLY ONE PRIMARY.

**SECTION 12.** In Colorado Revised Statutes, 1-8.5-101, **amend** (5) as follows:

**1-8.5-101. Provisional ballot - entitlement to vote.** (5) ANY UNAFFILIATED ELECTOR AT A PRIMARY ELECTION MAY CAST A REGULAR PARTY BALLOT UPON REQUESTING SUCH BALLOT FROM AN ELECTION JUDGE IN ACCORDANCE WITH SECTION 1-7-201 (2.3). Any unaffiliated elector at a primary election may ALSO cast a regular party ballot upon openly declaring to the election judge the name of the political party with which the elector wishes to affiliate pursuant to section 1-2-218.5 or 1-7-201. NOTHING IN THIS SECTION REQUIRES A MINOR POLITICAL PARTY TO ALLOW AN UNAFFILIATED ELECTOR TO VOTE IN THE PRIMARY ELECTION OF SUCH POLITICAL PARTY.

**SECTION 13. Effective date - applicability.** This measure applies to any primary election conducted after the effective date of this measure as declared by proclamation of the governor.

## LOCAL ELECTION OFFICES

Adams	4430 S. Adams County Pkwy., Suite E3102, Brighton, CO 80601	(720) 523-6500
Alamosa	8999 Independence Way, Alamosa, CO 81101	(719) 589-6681
Arapahoe	5334 S. Prince St., Littleton, CO 80120	(303) 795-4511
Archuleta	449 San Juan St., Pagosa Springs, CO 81147	(970) 264-8331
Baca	741 Main St., Suite 3, Springfield, CO 81073	(719) 523-4372
Bent	725 Bent Ave., Las Animas, CO 81054	(719) 456-2009
Boulder	1750 33rd St., Suite 200, Boulder, CO 80301	(303) 413-7740
Broomfield	1 Descombes Dr., Broomfield, CO 80020	(303) 464-5857
Chaffee	104 Crestone Ave., Salida, CO 81201	(719) 539-4004
Cheyenne	51 S. 1st St. E., Cheyenne Wells, CO 80810	(719) 767-5685
Clear Creek	405 Argentine St., Georgetown, CO 80444	(303) 679-2339
Conejos	6683 County Rd. 13, Antonito, CO 81120	(719) 376-5422
Costilla	400 Gasper St., Suite 101, San Luis, CO 81152	(719) 937-7671
Crowley	631 Main St., Suite 102, Ordway, CO 81063	(719) 267-5225
Custer	205 S. 6th St., Westcliffe, CO 81252	(719) 783-2441
Delta	501 Palmer St., Suite 211, Delta, CO 81416	(970) 874-2150
Denver	200 W. 14th Ave., Suite 100, Denver, CO 80204	(720) 913-8683
Dolores	409 N. Main St., Dove Creek, CO 81324	(970) 677-2381
Douglas	125 Stephanie Pl., Castle Rock, CO 80109	(303) 660-7444
Eagle	500 Broadway St., Suite 101, Eagle, CO 81631	(970) 328-8715
Elbert	215 Comanche St., Kiowa, CO 80117	(303) 621-3127
El Paso	1675 W. Garden of the Gods Rd., Suite 2202, Colorado Springs, CO 80907	(719) 575-8683
Fremont	615 Macon Ave., Suite 102, Cañon City, CO 81212	(719) 276-7340
Garfield	109 Eighth St., Suite 200, Glenwood Springs, CO 81601	(970) 384-3700 ext. 2
Gilpin	203 Eureka St., Central City, CO 80427	(303) 582-5321
Grand	308 Byers Ave., Hot Sulphur Springs, CO 80451	(970) 725-3065
Gunnison	221 N. Wisconsin St., #C, Gunnison, CO 81230	(970) 641-7927
Hinsdale	317 N. Henson St., Lake City, CO 81235	(970) 944-2225 ext. 2
Huerfano	401 Main St., Suite 204, Walsenburg, CO 81089	(719) 738-2380 ext. 3
Jackson	396 Lafever St., Walden, CO 80480	(970) 723-4334
Jefferson	3500 Illinois St., Suite 1100, Golden, CO 80401	(303) 271-8111
Kiowa	1305 N. Goff St., Eads, CO 81036	(719) 438-5421
Kit Carson	251 16th St., Burlington, CO 80807	(719) 346-8638 ext. 301
Lake	505 Harrison Ave., Leadville, CO 80461	(719) 486-1410
La Plata	98 Everett St., Suite C, Durango, CO 81303	(970) 382-6296
Larimer	200 W. Oak St., Suite 5100, Ft. Collins, CO 80524	(970) 498-7820
Las Animas	200 E. First St., Room 205, Trinidad, CO 81082	(719) 846-3314
Lincoln	103 Third Ave., Hugo, CO 80821	(719) 743-2444
Logan	315 Main St., Suite 3, Sterling, CO 80751	(970) 522-1544
Mesa	200 S. Spruce St., Grand Junction, CO 81501	(970) 244-1662
Mineral	1201 N. Main St., Creede, CO 81130	(719) 658-2440
Moffat	221 W. Victory Way, Suite 200, Craig, CO 81625	(970) 824-9120
Montezuma	140 W. Main St., Suite 1, Cortez, CO 81321	(970) 565-3728
Montrose	320 S. First St., Room 103, Montrose, CO 81401	(970) 249-3362 ext. 31
Morgan	231 Ensign St., Ft. Morgan, CO 80701	(970) 542-3521
Otero	13 W. Third St., Room 210, La Junta, CO 81050	(719) 383-3020
Ouray	541 Fourth St., Ouray, CO 81427	(970) 325-4961
Park	501 Main St., Fairplay, CO 80440	(719) 836-4333 ext. 1
Phillips	221 S. Interocean Ave., Holyoke, CO 80734	(970) 854-3131
Pitkin	530 E. Main St., Suite 101, Aspen, CO 81611	(970) 920-5180 ext. 5
Prowers	301 S. Main St., Suite 210, Lamar, CO 81052	(719) 336-8011
Pueblo	720 N. Main St., Suite 200, Pueblo, CO 81003	(719) 583-6620
Rio Blanco	1032 Jennifer Drive, Meeker, CO 81641	(970) 878-9460
Rio Grande	965 Sixth St., Del Norte, CO 81132	(719) 657-3334
Routt	522 Lincoln Ave., Steamboat Springs, CO 80477	(970) 870-5558
Saguache	501 Fourth St., Saguache, CO 81149	(719) 655-2512
San Juan	1557 Greene St., Silverton, CO 81433	(970) 387-5671
San Miguel	305 W. Colorado Ave., Telluride, CO 81435	(970) 728-3954
Sedgwick	315 Cedar St., Julesburg, CO 80737	(970) 474-3346
Summit	208 E. Lincoln Ave., Breckenridge, CO 80424	(970) 453-3479
Teller	101 W. Bennett Ave., Cripple Creek, CO 80813	(719) 689-2951 ext. 2
Washington	150 Ash Ave., Akron, CO 80720	(970) 345-6565
Weld	1401 N. 17th Ave., Greeley, CO 80631	(970) 304-6525 ext. 3070
Yuma	310 Ash St., Suite F, Wray, CO 80758	(970) 332-5809