

## CHAPTER 12

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**INSURANCE**


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**HOUSE BILL 04-1206**

BY REPRESENTATIVE(S) Mitchell, Butcher, Clapp, Coleman, Frangas, Hall, Harvey, Judd, Marshall, May M., McFadyen, Pommer, Rose, Salazar, Stafford, Tochtrop, Williams T., Madden, Merrifield, Paccione, Spradley, Weddig, and Williams S.; also SENATOR(S) Hillman.

**AN ACT**

**CONCERNING THE SECOND POOL OF PREMIUM TAX CREDITS AVAILABLE UNDER THE "CERTIFIED CAPITAL COMPANY ACT", AND, IN CONNECTION THEREWITH, CREATING AN INSURANCE PREMIUM TAX CREDIT FOR CONTRIBUTIONS TO COVERCOLORADO BY AN INSURANCE COMPANY.**

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

**SECTION 1. Legislative declaration.** (1) The general assembly hereby:

(a) Finds that health care costs are high and are quickly increasing;

(b) Determines that this increasing burden placed on both employees and employers of paying for adequate health care and health care insurance is impeding economic development; and

(c) Declares that enactment of this legislation is necessary to foster economic development by reducing the costs of health care through incentives for contributions to CoverColorado.

**SECTION 2.** 10-3.5-103 (10) and (14), Colorado Revised Statutes, are amended to read:

**10-3.5-103. Definitions.** As used in this article, unless the context otherwise requires:

(10) "Premium tax credit allocation claim" means a claim for allocation of premium tax credits, prepared and executed by a certified investor on a form provided by the office and filed by a certified capital company with the office. The form shall indicate whether the premium tax credit allocation claim is for an allocation of

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

premium tax credits pursuant to section 10-3.5-106 (2) (a) (I) OR (2) (a) (II) ~~(2) (b) (I), or (2) (b) (II)~~; and shall include an affidavit of the certified investor pursuant to which such certified investor shall become legally bound and irrevocably committed to make an investment of certified capital in a certified capital company in the amount allocated, even if such amount is less than the amount of the claim, subject only to the receipt of an allocation pursuant to section 10-3.5-106.

(14) "Qualified investment" means the investment of cash by a certified capital company in a qualified business or qualified rural business for the purchase of any debt, debt participation, equity, or hybrid security, including a debt instrument or security that has the characteristics of debt but provides for conversion into equity or equity participation instruments, including, but not limited to, options or warrants; except that, with respect to all certified capital invested pursuant to an allocation of tax credits pursuant to section 10-3.5-106 (2) (a) (I), ~~or (2) (b) (I)~~; the investment shall be made in a qualified rural business.

**SECTION 3.** 10-3.5-104 (2) (d) and (5), Colorado Revised Statutes, are amended to read:

**10-3.5-104. Certification - fees.** (2) An applicant shall:

(d) Have at least two principals or at least two persons employed to manage the funds who each have at least two years of money management experience in the venture capital industry; except that an applicant that seeks to be certified with respect to premium tax credits to be allocated pursuant to section 10-3.5-106 (2) (a) (I) ~~or (2) (b) (I)~~ need only have at least two principals or at least two persons employed to manage the funds who each have at least two years of experience in either the venture capital or investment banking industry.

(5) The office shall stamp applications for certification with the date and time of receipt. Within thirty days after receipt of an application, the office shall issue the certification or refuse the certification and communicate in detail to the applicant the grounds for the refusal, including suggestions for the removal of such grounds. The office shall review and approve or reject applications in the order submitted, treating all applications received on the same day as being received simultaneously; except that an application that is incomplete or for which additional information is requested by the office shall be treated as having been received on the date originally submitted only if the applicant submits the additional information within fifteen days after the office's request. The deadline for review may be extended by the office an additional ten days. The certification issued by the office shall indicate whether the certification is applicable only to credits to be allocated pursuant to section 10-3.5-106 (2) (a) (I). ~~or (2) (b) (I)~~.

**SECTION 4.** 10-3.5-105 (1), Colorado Revised Statutes, is amended to read:

**10-3.5-105. Premium tax credit.** (1) Any certified investor that makes an investment of certified capital pursuant to an allocation of premium tax credits as set forth in section 10-3.5-106 shall, during the year of investment, earn a vested credit against state premium tax liability equal to one hundred percent of the certified investor's investment of certified capital. With respect to investments of certified capital made ~~subsequent to~~ AFTER January 31, 2002, but ~~prior to~~ BEFORE January 31,

2004, a certified investor shall be entitled to take up to ten percent of the vested premium tax credit each year beginning in tax year 2003 and continuing thereafter for ten years or, if the credit is carried forward pursuant to subsection (2) of this section, until the credit is fully utilized. ~~With respect to investments of certified capital made subsequent to January 31, 2004, a certified investor shall be entitled to take up to ten percent of the vested premium tax credit each year beginning in tax year 2005 and continuing thereafter for ten years or, if the credit is carried forward pursuant to subsection (2) of this section, until the credit is fully utilized.~~

**SECTION 5.** 10-3.5-106 (1), (2) (b), (3), (6), and (7), Colorado Revised Statutes, are amended to read:

**10-3.5-106. Aggregate limitations on credits.** (1) (a) The aggregate amount of certified capital for which premium tax credits are allowed for all certified investors under this article shall not exceed the amount that would entitle all certified investors in certified capital companies to take aggregate credits of ten million dollars per year for ten years beginning in tax year 2003, which certified capital may be invested in certified capital companies no earlier than January 31, 2002. ~~plus an additional amount that would entitle all certified investors in certified capital companies to take aggregate credits of ten million dollars per year for ten years beginning in tax year 2005, which certified capital may be invested in certified capital companies no earlier than January 31, 2004.~~ A certified capital company, on an aggregate basis together with its affiliates, shall not file premium tax credit allocation claims in excess of the maximum amount of certified capital for which premium tax credits may be allowed at the time of filing as provided in this subsection (1); except that a certified capital company whose certification is applicable only to credits to be allocated pursuant to subparagraph (I) of paragraph (a) ~~or subparagraph (I) of paragraph (b)~~ of subsection (2) of this section shall not file premium tax credit allocation claims in excess of the maximum amount of certified capital for which premium tax credits may be allowed pursuant to such subparagraph (I) of paragraph (a) ~~or subparagraph (I) of paragraph (b)~~ of subsection (2) of this section at the time of filing.

(b) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) AND PURSUANT TO RULES PROMULGATED BY THE OFFICE, ONE OR MORE CERTIFIED INVESTORS MAY CLAIM UP TO TEN MILLION DOLLARS OF STATE PREMIUM TAX CREDITS ANNUALLY FOR TEN YEARS BEGINNING IN TAX YEAR 2005 FOR INVESTMENTS OCCURRING ON OR AFTER APRIL 1, 2004, OF CERTIFIED CAPITAL IN ONE OR MORE CERTIFIED CAPITAL COMPANIES TO BE USED FOR QUALIFIED INVESTMENTS. WITH REGARD TO SUCH INVESTMENTS:

(A) TWENTY-FIVE PERCENT OF CERTIFIED CAPITAL FOR WHICH PREMIUM TAX CREDITS ARE ALLOWED SHALL BE ALLOCATED TO CERTIFIED INVESTORS IN CERTIFIED CAPITAL COMPANIES FOR INVESTMENTS IN QUALIFIED RURAL BUSINESSES IN THE ORDER IN WHICH PREMIUM TAX CREDIT ALLOCATION CLAIMS THAT REQUEST AN ALLOCATION OF PREMIUM TAX CREDITS UNDER THIS SUB-SUBPARAGRAPH (A) ARE FILED WITH THE OFFICE BY CERTIFIED CAPITAL COMPANIES ON BEHALF OF THEIR CERTIFIED INVESTORS; AND

(B) AFTER THE CERTIFIED CAPITAL HAS BEEN ALLOCATED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I), SEVENTY-FIVE PERCENT OF CERTIFIED CAPITAL FOR WHICH PREMIUM TAX CREDITS ARE ALLOWED SHALL BE ALLOCATED TO CERTIFIED INVESTORS IN CERTIFIED CAPITAL COMPANIES IN THE ORDER

IN WHICH PREMIUM TAX CREDIT ALLOCATION CLAIMS THAT REQUEST AN ALLOCATION OF PREMIUM TAX CREDITS UNDER THIS SUB-SUBPARAGRAPH (B) ARE FILED WITH THE OFFICE BY CERTIFIED CAPITAL COMPANIES ON BEHALF OF THEIR CERTIFIED INVESTORS.

(II) NOTWITHSTANDING ANY OTHER REQUIREMENT OF THIS ARTICLE, OF THE TEN MILLION DOLLARS OF TAX CREDITS THAT WOULD OTHERWISE BE CLAIMED ANNUALLY FOR TEN YEARS BEGINNING IN TAX YEAR 2005 PURSUANT TO THIS SUBSECTION (1), FIVE MILLION DOLLARS SHALL NOT BE CLAIMED PURSUANT TO THIS SUBSECTION (1) AND AN EQUIVALENT AMOUNT OF CREDITS MAY INSTEAD BE CLAIMED ANNUALLY PURSUANT TO SECTION 10-8-534; EXCEPT THAT, IF S.B. 04-106 IS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY, BECOMES LAW, AND IS SUBSEQUENTLY DECLARED TO BE UNCONSTITUTIONAL BY A FINAL JUDGMENT THAT INVALIDATES THE TAX CREDITS ENACTED BY SUCH BILL, THE REMAINING FIVE MILLION DOLLARS OF TAX CREDITS THAT WOULD OTHERWISE BE CLAIMED ANNUALLY EACH OF THE REMAINING CALENDAR YEARS THROUGH 2014 SHALL NOT BE CLAIMED PURSUANT TO THIS SUBSECTION (1), AND A TOTAL OF TEN MILLION DOLLARS OF TAX CREDITS MAY INSTEAD BE CLAIMED ANNUALLY FOR EACH OF THE REMAINING CALENDAR YEARS THROUGH 2014 PURSUANT TO SECTION 10-8-534.

~~(2) (b) With regard to investments to be made in certified capital companies after January 31, 2004:~~

~~(I) Twenty-five million dollars of certified capital for which premium tax credits are allowed shall be allocated to certified investors in certified capital companies in the order in which premium tax credit allocation claims that request an allocation of premium tax credits under this subparagraph (I) are filed with the office by certified capital companies on behalf of their certified investors; and~~

~~(II) After all twenty-five million dollars have been allocated pursuant to subparagraph (I) of this paragraph (b), seventy-five million dollars of certified capital for which premium tax credits are allowed shall be allocated to certified investors in certified capital companies in the order in which premium tax credit allocation claims that request an allocation of premium tax credits under this subparagraph (II) are filed with the office by certified capital companies on behalf of their certified investors.~~

(3) If two or more certified capital companies file premium tax credit allocation claims seeking an allocation of premium tax credits pursuant to the same subparagraph of ~~the same~~ paragraph (a) of subsection (2) of this section with the office on behalf of their respective certified investors on the same day and the sum of such premium tax credit allocation claims exceeds, in the aggregate, the maximum aggregate amount available under such particular subparagraph at the time of filing, the capital for which premium tax credits are allowed under such particular subparagraph shall be allocated among the certified investors on a pro rata basis. The pro rata allocation for any one certified investor shall bear the same relation to the maximum aggregate amount available under such particular subparagraph at the time of filing, as that certified investor's premium tax credit allocation claim under such particular subparagraph bears to the total of all premium tax credit allocation claims seeking an allocation of premium tax credits pursuant to the same subparagraph of ~~the same~~ paragraph (a) of subsection (2) of this section filed on behalf of all certified investors on the same day.

(6) The maximum amount of premium tax credit allocation claims that any one certified investor and its affiliates may file in one or more certified capital companies shall not exceed fifteen percent of the maximum aggregate amount available under subsection (1) of this section at the time of such filing; except that a certified investor that files a premium tax credit allocation claim for an investment in a certified capital company whose certification is applicable only to credits to be allocated pursuant to subparagraph (I) of paragraph (a) ~~or subparagraph (I) of paragraph (b)~~ of subsection (2) of this section shall not file, on an aggregate basis with its affiliates, premium tax credit allocation claims in excess of the maximum amount of certified capital for which premium tax credits may be allowed pursuant to such ~~sections~~ SUBPARAGRAPH (I) at the time of filing.

(7) Unless its certification indicates otherwise, a certified capital company may file premium tax credit allocation claims on behalf of its certified investors pursuant to either or both of the subparagraphs of ~~paragraphs~~ PARAGRAPH (a) ~~and (b)~~ of subsection (2) of this section. If the certified investors of a certified capital company are allocated premium tax credits pursuant to both subparagraphs of ~~paragraphs~~ PARAGRAPH (a) ~~and (b)~~ of subsection (2) of this section, the requirements of this act shall apply to the certified capital invested pursuant to each such allocation on a separate and independent basis.

**SECTION 6.** 10-3.5-107 (2), Colorado Revised Statutes, is amended to read:

**10-3.5-107. Requirements for continuance of certification - fees.** (2) The aggregate cumulative amount of all qualified investments made by the certified capital company from an allocation date shall be considered in the calculation of the percentage requirements under this article. For purposes of satisfying the percentage requirements of subsection (1) of this section only, a certified capital company that has raised certified capital pursuant to an allocation under section 10-3.5-106 (2) (a) (II) ~~or (2) (b) (II)~~ shall be deemed to have invested two dollars for every dollar actually invested in a qualified rural business or qualified business that has its principal business operations located in a distressed urban community from certified capital raised under such section. Any proceeds received from a qualified investment may be invested in another qualified investment and shall count toward any requirement in this article with respect to investments of certified capital.

**SECTION 7.** 10-8-506 (1) (n), Colorado Revised Statutes, is amended to read:

**10-8-506. Board - powers and duties.** (1) The board shall be the governing body of the program and shall have all powers necessary to implement the provisions of this part 5. In addition, the board shall have the specific authority to:

(n) Accept and expend gifts, grants, and donations for operation of the program, INCLUDING, WITHOUT LIMITATION, CONTRIBUTIONS RECEIVED PURSUANT TO THE PREMIUM TAX CREDIT ALLOCATION PROVISIONS OF SECTION 10-8-534.

**SECTION 8.** Part 5 of article 8 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**10-8-534. Tax credit for contributions to CoverColorado - rules - certificate - allocation notice.** (1) (a) (I) FOR TAX YEARS 2005 THROUGH 2014 THERE SHALL

BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY SECTIONS 10-3-209 AND 10-6-128 TO ANY INSURANCE COMPANY THAT BECOMES A QUALIFIED TAXPAYER BY MAKING A CONTRIBUTION PURSUANT TO THIS SECTION. A QUALIFYING TAXPAYER SHALL CLAIM THE CREDIT BY SUBMITTING, WITH THE TAXPAYER'S TAX RETURN, A TAX CREDIT CERTIFICATE ISSUED PURSUANT TO SUBSECTION (3) OF THIS SECTION BY THE OFFICE OF ECONOMIC DEVELOPMENT CREATED IN SECTION 24-48.5-101, C.R.S.

(II) THE CREDIT ALLOWED BY THIS PARAGRAPH (a) SHALL BE IN AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE TOTAL AMOUNT OF THE TAXPAYER'S QUALIFYING CONTRIBUTIONS TO COVER COLORADO MADE DURING THE TAX YEAR FOR WHICH THE CREDIT IS CLAIMED.

(III) IF THE AMOUNT OF THE CREDIT ALLOWED BY THIS PARAGRAPH (a) EXCEEDS THE AMOUNT OF PREMIUM TAXES DUE IN THE TAX YEAR FOR WHICH THE CREDIT IS BEING CLAIMED, THE AMOUNT OF THE CREDIT NOT USED AS AN OFFSET MAY BE CARRIED FORWARD AND USED AS A CREDIT AGAINST SUBSEQUENT TAX YEARS' TAX LIABILITY FOR A PERIOD NOT TO EXCEED TEN YEARS AND SHALL BE APPLIED FIRST TO THE EARLIEST TAX YEARS POSSIBLE. ANY CREDIT REMAINING AFTER THE TEN-YEAR PERIOD SHALL NOT BE REFUNDED OR CREDITED TO THE TAXPAYER.

(IV) A QUALIFIED TAXPAYER MAY SUBMIT AN APPLICATION FOR A TAX CERTIFICATE TO THE OFFICE OF ECONOMIC DEVELOPMENT ON OR BEFORE NOVEMBER 1, 2004, AND ON OR BEFORE EACH NOVEMBER 1 THEREAFTER THROUGH NOVEMBER 1, 2013. THE APPLICATION SHALL BE ON A FORM PRESCRIBED BY THE OFFICE AND SHALL INCLUDE SUCH INFORMATION AS THE OFFICE REQUIRES TO DETERMINE WHETHER THE TAXPAYER IS QUALIFIED TO RECEIVE A CREDIT PURSUANT TO SUBSECTION (3) OF THIS SECTION. THE OFFICE SHALL ISSUE TAX CREDIT CERTIFICATES HAVING A MAXIMUM AGGREGATE TOTAL VALUE OF FIVE MILLION DOLLARS IN EACH CALENDAR YEAR FROM 2005 TO 2014; EXCEPT THAT, IF S.B. 04-106 IS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY, BECOMES LAW, AND IS SUBSEQUENTLY DECLARED TO BE UNCONSTITUTIONAL BY A FINAL JUDGMENT THAT INVALIDATES THE TAX CREDITS ENACTED BY SUCH BILL, THE OFFICE SHALL ISSUE TAX CREDIT CERTIFICATES HAVING A MAXIMUM AGGREGATE TOTAL VALUE OF TEN MILLION DOLLARS IN EACH OF THE REMAINING CALENDAR YEARS THROUGH 2014. ON OR BEFORE THE JANUARY 1 IMMEDIATELY FOLLOWING THE APPLICATION DEADLINE, THE OFFICE SHALL CERTIFY TO THE COMMISSIONER OF INSURANCE THE TAXPAYERS WHO ARE QUALIFIED TO RECEIVE THE CREDIT AND THE AMOUNT OF CREDIT EACH TAXPAYER IS ELIGIBLE TO CLAIM.

(b) IN THE CASE OF A TAXPAYER THAT IS A PARTNERSHIP, S CORPORATION, OR OTHER SIMILAR PASS-THROUGH ENTITY, THE AMOUNT OF ANY CREDIT ALLOWED PURSUANT TO THIS SUBSECTION (1) SHALL BE ALLOCATED TO THE ENTITY'S PARTNERS, MEMBERS, OR SHAREHOLDERS IN PROPORTION TO THE PARTNERS', MEMBERS', OR SHAREHOLDERS' DISTRIBUTIVE SHARES OF INCOME FROM SUCH ENTITY.

(2) THE DIRECTOR OF THE OFFICE OF ECONOMIC DEVELOPMENT SHALL PROMULGATE RULES NECESSARY FOR THE ADMINISTRATION OF THE TAX CREDIT ALLOWED BY SUBSECTION (1) OF THIS SECTION IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., INCLUDING A DATE BEFORE WHICH IRREVOCABLE OFFERS UNDER THIS SECTION SHALL NOT BE DEEMED TO HAVE BEEN MADE.

(3) (a) AN INSURANCE COMPANY SHALL BECOME A QUALIFIED TAXPAYER IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(I) PURSUANT TO A FORM ESTABLISHED BY RULE, THE INSURANCE COMPANY MAKES A TIMELY AND IRREVOCABLE OFFER TO THE BOARD, CONTINGENT ONLY UPON THE OFFICE OF ECONOMIC DEVELOPMENT'S ISSUANCE TO THE INSURANCE COMPANY OF AN ALLOCATION NOTICE PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (c) OF THIS SUBSECTION (3), TO MAKE A SPECIFIED CONTRIBUTION OF CASH TO COVER COLORADO;

(II) PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE INSURANCE COMPANY TIMELY MAKES THE CONTRIBUTION OF CASH TO COVER COLORADO SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a); AND

(III) THE OFFICE ISSUES A TAX CREDIT CERTIFICATE TO THE INSURANCE COMPANY.

(b) THE AUTHORITY SHALL ESTABLISH AND PUBLICIZE TO INSURANCE COMPANIES:

(I) DEADLINES FOR SUBMITTING OFFERS FOR CONTRIBUTIONS AND FOR ISSUING TAX CREDIT CERTIFICATES;

(II) FORMS AND REQUIREMENTS FOR OFFERS AND VERIFIED STATEMENTS OF THE ANTICIPATED AMOUNT OF INSURANCE COMPANIES' PREMIUM TAX LIABILITY FOR THE TAX YEAR OF THE CONTRIBUTION; AND

(III) ANY OTHER REQUIREMENT DETERMINED TO BE NECESSARY BY THE OFFICE OF ECONOMIC DEVELOPMENT.

(c) (I) A TAX CREDIT CERTIFICATE SHALL SPECIFY:

(A) AN AMOUNT OF MONEY THAT A QUALIFIED TAXPAYER MAY CLAIM AS A TAX CREDIT PURSUANT TO THIS SECTION. THE AMOUNT SHALL BE EQUAL TO THE AMOUNT OF AN INSURANCE COMPANY'S CONTRIBUTION AS DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (3); AND

(B) THE CALENDAR YEAR IN WHICH THE TAX CREDITS MAY BE USED AGAINST THE QUALIFIED TAXPAYER'S PREMIUM TAX LIABILITY.

(II) THE OFFICE OF ECONOMIC DEVELOPMENT SHALL SEND AN ALLOCATION NOTICE BY CERTIFIED MAIL TO EACH INSURANCE COMPANY TO WHICH THE OFFICE OF ECONOMIC DEVELOPMENT PROPOSES TO ISSUE A TAX CREDIT CERTIFICATE. THE ALLOCATION NOTICE SHALL SPECIFY THE AMOUNT OF CASH THAT THE INSURANCE COMPANY HAS OFFERED TO CONTRIBUTE, THAT THE BOARD HAS ACCEPTED THE OFFER, THE DEADLINE BY WHICH THE INSURANCE COMPANY MUST MAKE THE CONTRIBUTION IN ORDER FOR THE OFFICE OF ECONOMIC DEVELOPMENT TO BE AUTHORIZED TO ISSUE THE TAX CREDIT CERTIFICATE, AND NOTICE OF THE REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION.

(III) AFTER COVER COLORADO'S RECEIPT OF CASH FROM THE INSURANCE COMPANY, THE OFFICE OF ECONOMIC DEVELOPMENT SHALL ISSUE TAX CREDIT CERTIFICATES TO INSURANCE COMPANIES IN THE ORDER THAT INSURANCE COMPANIES MADE AN IRREVOCABLE OFFER UNTIL THE AUTHORITY HAS ISSUED FIVE MILLION DOLLARS OF

TAX CREDIT CERTIFICATES PER YEAR, OR IF S.B. 04-106 IS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY, BECOMES LAW, AND IS SUBSEQUENTLY DECLARED TO BE UNCONSTITUTIONAL BY A FINAL JUDGMENT THAT INVALIDATES THE TAX CREDITS ENACTED BY SUCH BILL, UNTIL THE AUTHORITY HAS ISSUED TEN MILLION DOLLARS OF TAX CREDIT CERTIFICATES PER YEAR. IF TWO OR MORE INSURANCE COMPANIES FILE IRREVOCABLE OFFERS ON THE SAME DAY AND THE SUM OF SUCH OFFERS EXCEEDS, IN THE AGGREGATE, THE MAXIMUM AGGREGATE AMOUNT OF TAX CREDITS AVAILABLE UNDER THIS SECTION, THE AMOUNT OF TAX CREDITS THAT MAY BE SPECIFIED IN THE TAX CERTIFICATES ISSUED TO SUCH COMPANIES SHALL BE ALLOCATED AMONG THE COMPANIES ON A PRO RATA BASIS.

(4) (a) TO BECOME A QUALIFIED TAXPAYER, AN INSURANCE COMPANY SHALL PAY THE SPECIFIED AMOUNT OF CASH TO COVER COLORADO WHEN DUE.

(b) (I) IF AN INSURANCE COMPANY FAILS TO MAKE SUCH PAYMENT WHEN DUE, THE OFFICE OF ECONOMIC DEVELOPMENT SHALL PROVIDE THE INSURANCE COMPANY WITH A NOTICE BY CERTIFIED MAIL THAT THE INSURANCE COMPANY HAS FIFTEEN DAYS TO CURE THE DEFECT. THE FIFTEEN-DAY PERIOD SHALL BEGIN ON THE DATE THE NOTICE IS POSTMARKED.

(II) FAILURE BY AN INSURANCE COMPANY TO MAKE SUCH PAYMENT BY THE END OF THE FIFTEENTH DAY SHALL RESULT IN AN IMMEDIATE FORFEITURE OF ANY RIGHT TO CLAIM THE TAX CREDITS ALLOCATED TO THE INSURANCE COMPANY UNDER THE ALLOCATION NOTICE PREVIOUSLY PROVIDED BY THE OFFICE OF ECONOMIC DEVELOPMENT.

(5) IF AN ASSESSMENT IS NOT REQUIRED PURSUANT TO SECTION 10-8-530 (1.5) FOR ANY TWELVE-MONTH PERIOD, THE BOARD SHALL NOT EXPEND MONEYS CONTRIBUTED TO THE BOARD PURSUANT TO THIS SECTION OR INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF SUCH MONEYS DURING SUCH PERIOD. SUCH MONEYS AND INTEREST SHALL BE USED FOR ONLY THOSE PURPOSES SPECIFIED IN SECTION 10-8-530 (1.5) AND ONLY WHEN AN ASSESSMENT WOULD OTHERWISE BE NECESSARY IN THE ABSENCE OF SUCH MONEYS AND INTEREST.

**SECTION 9.** 10-8-530 (1) (e) and (1.5) (a), Colorado Revised Statutes, are amended to read:

**10-8-530. Funding of program - rules - repeal.** (1) The program shall be funded by the following:

(e) Any moneys accepted through gifts, grants, or donations received by the board for operation of the program, INCLUDING CONTRIBUTIONS RECEIVED PURSUANT TO THE PREMIUM TAX CREDIT ALLOCATION PROVISIONS OF SECTION 10-8-534.

(1.5) (a) The program may assess against insurers such special fees as may be reasonable and necessary for the operation of the program. The special fees shall be assessed on a prospective, per capita basis, with the amount of the special fee assessed to each insurer equal to the number of Colorado lives insured by the insurer under a policy issued and delivered in the state of Colorado, multiplied by the per capita assessment. Special fees shall be assessed only when it is determined by the board that the projected operating revenues of the program, combined with the

projected cash balance of the CoverColorado cash fund and the balance of any funds held or invested by the board or the administering carrier, INCLUDING CONTRIBUTIONS RECEIVED PURSUANT TO THE PREMIUM TAX CREDIT ALLOCATION PROVISIONS OF SECTION 10-8-534, will not be adequate over the next twelve-month period to provide for the projected claims, administrative expenses, reserves for claims incurred but not reported, and surplus equal to ten percent of projected claims. All special fees collected shall be used to pay the administrative expenses and the losses related to eligible individuals. No part of the special fees shall be used to pay for the administrative expenses or losses of any dependents who have chosen coverage under the program. In the event that any insurer fails to pay its special fee to the program in accordance with the time frames set forth by rule, the commissioner is authorized to utilize all powers conferred on the commissioner by the insurance laws of this state to enforce payment of the special fees.

**SECTION 10. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 4, 2004