



**Colorado  
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Council  
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**MEMORANDUM**

**March 27, 2013**

**TO:** Members of the House Health, Insurance, and Environment Committee

**FROM:** Bill Zepernick, Fiscal Analyst, (303-866-4777)

**SUBJECT:** Fiscal Assessment of Proposed Amendment **HB1245\_L.008**.

This memorandum is an assessment of the fiscal impact of the attached proposed amendment to **HB13-1245**. This fiscal assessment is for the impact of the bill with inclusion of this amendment only. Any other added amendment could influence the fiscal impact.

**Summary of Proposed Amendment**

The strike-below amendment L.008 establishes two funding mechanisms for the Colorado Health Benefit Exchange. First, L.008 creates a special fee of up to \$1.80 per member per month assessed on health plans in the individual and small group markets and up to \$0.18 per member per month on dental plans. Second, the amendment creates a premium tax credit, capped at \$5.0 million per year, that insurance carriers may claim for donations provided to the health exchange.

In addition, the amendment specifies that any funds received from the reserves of CoverColorado under House Bill 13-1115 be used to reduce the assessment charged to health plans. The amendment also clarifies that the board of the health exchange is required to submit its operational and financial plans to the Legislative Health Benefit Exchange Implementation Review Committee and that the committee is required to meet at least two times per year.

**Bill's Revised Fiscal Impact with Amendment**

| <b>Fiscal Impact Summary</b>   | <b>FY 2013-2014</b>                      | <b>FY 2014-2015</b> |
|--|--|---------------------|
| <b>State Revenue</b><br>General Fund   | (\$2.5 million)                          | (\$5.0 million)     |
| <b>State Expenditures</b>  | Minimal. See State Expenditures section. |                     |
| <b>FTE Position Change</b>   |  |                     |
| <b>Statutory Public Entity Impact:</b> See Statutory Public Entity Impact section below. |  |                     |

**State revenue.** Amendment L.008 reduces General Fund revenue by \$2.5 million in FY 2013-14 and \$5.0 million in FY 2014-15. Insurance carriers may claim a credit against their premium taxes, up to a statewide total of \$5.0 per year. This analysis assumes that insurance carriers will claim the full \$5.0 million credit each year, as has been the case under a similar tax credit for donation to CoverColorado. The CoverColorado tax credit is repealed if HB 13-1115 becomes law.

**State Expenditures.** Under L.008, the Division of Insurance in the Department of Regulatory Agencies may have a minimal amount of workload to promulgate rules pertaining to the tax credit and the fee assessment of insurance carriers. Any increase in workload can be accomplished within existing appropriations to the department.

**Statutory public entity impact.** Amendment L.008 increases revenue to the Colorado Health Benefit Exchange by \$10.1 million in FY 2013-14 and \$20.2 million in FY 2014-15. This analysis assumes that the health exchange board will charge an assessment on health insurance carriers of \$1.40 for 890,000 insured lives. Exact data on insured lives subject to the dental plan assessment is not available. Assuming a rough estimate of 100,000 insured lives at \$0.18 per member per month, the dental assessment will result in \$216,000 in revenue to the exchange. Revenue from donations under the premium tax credit are expected to be \$5.0 million per year. This revenue is described in Table 1.

| <b>Cost Components</b>  | <b>FY 2013-14*</b>  | <b>FY 2014-15</b>   |
|---|---------------------|---------------------|
| Assessment on health insurers<br>(890,000 insured lives x \$1.40 x 12 months) | \$7,476,000         | \$14,952,000        |
| Assessment of dental insurers<br>(100,000 insured lives x \$0.18 x 12 months) | 108,000             | 216,000             |
| Donations under Premium Tax Credit  | 2,500,000           | 5,000,000           |
| <b>TOTAL</b>  | <b>\$10,084,000</b> | <b>\$20,168,000</b> |

\*Values for FY 2013-14 represent 6 months of revenue beginning on January 1, 2014.

The amendment requires any reserves transferred to the health exchange from CoverColorado under HB 13-1115 to be used to reduce the assessment charged to health insurance carriers. At this time, HB 13-1115 has not been enacted, and if enacted, it is not known what amount of reserves will be available for transfer. Thus, this analysis cannot estimate the extent to which the insurance assessment will be reduced if such a transfer were to occur. The fiscal note will be revised when this information becomes available.

HB1245\_L.008

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Health, Insurance & Environment.

HB13-1245 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute the following:

3 "SECTION 1. In Colorado Revised Statutes, 10-22-103, amend  
4 (5) and add (6), (7), (8), (9) (10), and (11) as follows:

5 **10-22-103. Definitions.** As used in this article, unless the context  
6 otherwise requires:

7 (5) ~~"Secretary" means the secretary of the United States~~  
8 ~~department of health and human services~~ "GROUP HEALTH PLAN" MEANS  
9 AN EMPLOYEE WELFARE BENEFIT PLAN AS DEFINED IN 29 U.S.C. SEC. 1002  
10 (1) OF THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF  
11 1974" TO THE EXTENT THAT THE PLAN PROVIDES HEALTH CARE SERVICES,  
12 INCLUDING ITEMS AND SERVICES PAID FOR AS HEALTH CARE SERVICES, TO  
13 EMPLOYEES OR THEIR DEPENDENTS DIRECTLY OR THROUGH INSURANCE  
14 REIMBURSEMENT OR OTHERWISE. A "GROUP HEALTH PLAN" INCLUDES A  
15 GOVERNMENT OR CHURCH PLAN.

16 (6) "HEALTH BENEFIT PLAN" HAS THE SAME MEANING SET FORTH  
17 IN SECTION 10-16-102; EXCEPT THAT THE TERM INCLUDES A DENTAL PLAN.

18 (7) "INSURER" MEANS ANY ENTITY THAT PROVIDES GROUP HEALTH  
19 PLANS OR INDIVIDUAL HEALTH BENEFIT PLANS SUBJECT TO INSURANCE  
20 REGULATION IN THIS STATE, AS WELL AS ANY ENTITY THAT DIRECTLY OR  
21 INDIRECTLY PROVIDES STOP-LOSS OR EXCESS LOSS INSURANCE TO A  
22 SELF-INSURED GROUP HEALTH PLAN INCLUDING A PROPERTY AND  
23 CASUALTY INSURANCE COMPANY.

24 (8) "MEDICAID" MEANS FEDERAL INSURANCE OR ASSISTANCE AS  
25 PROVIDED BY TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS  
26 AMENDED.

27 (9) "MEDICARE" MEANS FEDERAL INSURANCE OR ASSISTANCE AS  
28 PROVIDED BY TITLE XVIII OF THE FEDERAL "SOCIAL SECURITY ACT", AS  
29 AMENDED.

30 (10) "NUMBER OF LIVES INSURED" MEANS THE NUMBER OF  
31 EMPLOYEES AND RETIRED EMPLOYEES AND INDIVIDUAL POLICYHOLDERS  
32 OR SUBSCRIBERS IN THE INDIVIDUAL AND GROUP MARKETS ON MARCH 1  
33 OF THE PREVIOUS CALENDAR YEAR FOR WHICH A SPECIAL FEE IS BEING  
34 ASSESSED. FOR INSURERS PROVIDING STOP-LOSS, EXCESS LOSS, OR  
35 REINSURANCE, "NUMBER OF LIVES INSURED" DOES NOT INCLUDE  
36 EMPLOYEES, RETIRED EMPLOYEES, OR INDIVIDUAL POLICYHOLDERS OR  
37 SUBSCRIBERS WHO HAVE BEEN COUNTED BY THE PRIMARY INSURER OR



1 PRIMARY REINSURER.

2 (11) "SECRETARY" MEANS THE SECRETARY OF THE UNITED STATES  
3 DEPARTMENT OF HEALTH AND HUMAN SERVICES.

4 **SECTION 2.** In Colorado Revised Statutes, 10-22-107, **amend**  
5 (1) and (7) as follows:

6 **10-22-107. Legislative health benefit exchange implementation**  
7 **review committee - creation - duties.** (1) For the purposes of guiding  
8 implementation of an exchange in Colorado, making recommendations  
9 to the general assembly, and ensuring that the interests of Coloradans are  
10 protected and furthered, there is hereby created the legislative health  
11 benefit exchange implementation review committee. The committee shall  
12 meet on or before August 1, 2011, and thereafter at the call of the chair  
13 ~~as often as~~ AT LEAST TWO TIMES DURING EACH CALENDAR YEAR, BUT NO  
14 MORE THAN five times during each calendar year. The committee may use  
15 the legislative council staff to assist its members in researching any  
16 matters.

17 (7) THE BOARD SHALL SEND THE COMMITTEE AN ANNUAL REPORT  
18 THAT CONTAINS THE FINANCIAL AND OPERATIONAL PLANS OF THE  
19 EXCHANGE. The committee shall review the financial and operational  
20 plans of the exchange.

21 **SECTION 3.** In Colorado Revised Statutes, **amend** 10-22-108 as  
22 follows:

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

36 **SECTION 4.** In Colorado Revised Statutes, **add** 10-22-109 and  
37 10-22-110 as follows:

38 **10-22-109. Funding for the operation of the exchange and**  
39 **reserves - special fees - rules.** (1) ON AND AFTER JANUARY 1, 2014,  
40 AMONG OTHER FUNDING SOURCES DERIVED THROUGH THE OPERATION OF  
41 THE EXCHANGE, FUNDING FOR THE EXCHANGE MAY BE FROM THE



1 FOLLOWING SOURCES:

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

4 (b) ANY MONEYS ACCEPTED THROUGH GIFTS, GRANTS, OR  
5 DONATIONS RECEIVED BY THE BOARD FOR OPERATION, RESERVES, AND  
6 SUSTAINABILITY OF THE EXCHANGE, INCLUDING CONTRIBUTIONS RECEIVED  
7 PURSUANT TO THE PREMIUM TAX CREDIT ALLOCATION IN SUBSECTION (3)  
8 OF THIS SECTION.

9 (2) (a) ON AND AFTER JANUARY 1, 2014, THROUGH DECEMBER 31,  
10 2016, THE BOARD SHALL ASSESS SPECIAL FEES AGAINST INSURERS IN AN  
11 AMOUNT NECESSARY TO PROVIDE FUNDING FOR THE EXCHANGE. THE  
12 BOARD SHALL DETERMINE THE AMOUNT OF THE SPECIAL FEES BASED ON  
13 THE BOARD-APPROVED FINANCIAL PLAN AND ANTICIPATED BUDGETARY  
14 NEEDS FOR THE UPCOMING YEAR TO COMPLY WITH THIS ARTICLE AND  
15 ASSOCIATED FEDERAL REQUIREMENTS. THE SPECIAL FEES MUST NOT  
16 EXCEED ONE DOLLAR AND EIGHTY CENTS PER NUMBER OF LIVES INSURED  
17 PER MONTH; EXCEPT THAT THE SPECIAL FEES ASSESSED FOR LIVES  
18 INSURED UNDER DENTAL PLANS MUST NOT EXCEED EIGHTEEN CENTS PER  
19 NUMBER OF LIVES INSURED PER MONTH. THE BOARD SHALL USE SPECIAL  
20 FEES ASSESSED PURSUANT TO THIS SECTION FOR THE OPERATING EXPENSES  
21 OF THE EXCHANGE, THE RESERVES OF THE EXCHANGE, AND RELATED  
22 AGREEMENTS.

23 (b) THE BOARD SHALL USE ANY MONEY RECEIVED PURSUANT TO  
24 SECTION 10-8-536 (2), AS ENACTED IN HOUSE BILL 13-1115, ENACTED IN  
25 2013, FROM THE RESERVES OF COVER COLORADO, AS CREATED BY PART  
26 5 OF ARTICLE 8 OF TITLE 10, TO OFFSET THE AMOUNT OF THE FEES  
27 ASSESSED AGAINST INSURERS PURSUANT TO THIS SUBSECTION (2); EXCEPT  
28 THAT THE MONEY RECEIVED MUST NOT BE USED TO OFFSET THE SPECIAL  
29 FEES PAID BY DENTAL PLANS.

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

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

38 (3) THE COMMISSIONER SHALL PROMULGATE RULES TO  
39 IMPLEMENT THIS SECTION THAT INCLUDE:

40 (a) THE REASONABLE TIME PERIODS FOR THE BILLING AND  
41 COLLECTION OF THE SPECIAL FEES; AND



1 (b) THE PROCESS FOR DETERMINING THE ALLOCATION OF THE  
2 ASSESSMENT AMONG INSURERS, INCLUDING THE PROCESS FOR OBTAINING  
3 ACCURATE INFORMATION ABOUT THE NUMBER OF POLICIES ISSUED AND  
4 LIVES INSURED BY A INSURER WITHIN THE SIX MONTHS PRIOR TO THE  
5 ASSESSMENT.

6 **10-22-110. Tax credit for contributions to the exchange -**  
7 **allocation notice - rules.** (1) (a) FOR THE TAX YEAR 2014 AND EACH TAX  
8 YEAR THEREAFTER, IS ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY  
9 SECTIONS 10-3-209 AND 10-6-128 TO ANY INSURANCE COMPANY THAT  
10 BECOMES A QUALIFIED TAXPAYER BY MAKING A CONTRIBUTION TO THE  
11 EXCHANGE PURSUANT TO THIS SECTION.

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

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

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

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

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

31 (III) THE INSURANCE COMPANY RECEIVES AN ALLOCATION NOTICE  
32 FROM THE COMMISSIONER AND THE INSURANCE COMPANY MAKES THE  
33 CONTRIBUTION TO THE EXCHANGE AS SPECIFIED IN THE ALLOCATION  
34 NOTICE ON OR BEFORE OCTOBER 31.

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

39 (c) THE BOARD SHALL PROMPTLY NOTIFY THE COMMISSIONER  
40 WHEN IT RECEIVES A CONTRIBUTION PURSUANT TO THIS SECTION OF THE  
41 AMOUNT AND DATE OF THE CONTRIBUTION AND THE NAME OF THE



1 CONTRIBUTOR.

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

4 (I) SEND AN ALLOCATION NOTICE TO EACH INSURANCE COMPANY  
5 WHOSE DECLARATION OF INTENT TO CONTRIBUTE TO THE EXCHANGE HAS  
6 BEEN ACCEPTED PURSUANT TO THIS SUBSECTION (4). THE ALLOCATION  
7 NOTICE SHALL SPECIFY THE AMOUNT OF TAX CREDITS ALLOCATED TO THE  
8 INSURANCE COMPANY AND THE AMOUNT OF CASH THE INSURANCE  
9 COMPANY MUST CONTRIBUTE TO THE EXCHANGE BY OCTOBER 31, WHICH  
10 AMOUNTS SHALL BE IDENTICAL AND NOT EXCEED THE AMOUNT OF  
11 PREMIUM TAXES PAID BY THE INSURANCE COMPANY IN ITS QUARTERLY  
12 TAX PAYMENT DUE ON OR ABOUT JULY 31; AND

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

16 (b) SUBJECT TO PARAGRAPH (c) OF THIS SUBSECTION (4), THE  
17 COMMISSIONER SHALL ALLOCATE NO MORE THAN A TOTAL OF FIVE  
18 MILLION DOLLARS OF PREMIUM TAX CREDITS PER YEAR. THE  
19 COMMISSIONER SHALL ALLOCATE TO AN INSURANCE COMPANY THAT HAS  
20 DECLARED ITS INTENT TO CONTRIBUTE TO THE EXCHANGE PURSUANT TO  
21 THIS SECTION TAX CREDITS IN AN AMOUNT EQUAL TO THE AMOUNT OF  
22 PREMIUM TAXES PAID BY THE INSURANCE COMPANY IN ITS QUARTERLY  
23 TAX PAYMENT DUE ON OR ABOUT JULY 31 IN THE ORDER IN WHICH THE  
24 DIVISION RECEIVES SUCH QUARTERLY TAX PAYMENTS UNTIL THE FULL  
25 AMOUNT OF CREDITS AVAILABLE PURSUANT TO THIS SECTION HAS BEEN  
26 ALLOCATED; EXCEPT THAT, IF SUCH AMOUNT OF TAXES OR THE SUM OF  
27 ALL THE TAXES FILED BY ALL THE INSURANCE COMPANIES ON ANY ONE  
28 DAY WOULD EXCEED, SINGLY OR IN THE AGGREGATE, THE ANNUAL  
29 MAXIMUM AGGREGATE AMOUNT OF TAX CREDITS AVAILABLE UNDER THIS  
30 SECTION, THE COMMISSIONER SHALL REDUCE THE ALLOCATION TO THE  
31 INSURANCE COMPANY WHOSE CONTRIBUTION FIRST EXCEEDS THE ANNUAL  
32 MAXIMUM AGGREGATE TO THE AMOUNT NEEDED TO SATISFY THE ANNUAL  
33 MAXIMUM AGGREGATE. IF THE COMMISSIONER IS UNABLE TO DETERMINE  
34 THE ORDER OF RECEIPT OF TAX PAYMENTS ON THAT DAY, THE  
35 COMMISSIONER SHALL ALLOCATE THE TAX CREDITS TO THE COMPANY OR  
36 AMONG THE COMPANIES ON A PRO RATA BASIS BASED ON THE RATIO SUCH  
37 COMPANY'S QUARTERLY TAX PAYMENT BEARS TO THE TOTAL AMOUNT OF  
38 ALL SUCH COMPANIES' QUARTERLY TAX PAYMENTS UNTIL THE FULL  
39 AMOUNT OF CREDITS AVAILABLE PURSUANT TO THIS SECTION HAS BEEN  
40 ALLOCATED.

41 (c) (I) THE COMMISSIONER SHALL ALLOW INSURANCE COMPANIES



1 TO DECLARE THEIR INTENT TO CONTRIBUTE TO THE EXCHANGE PURSUANT  
2 TO THIS SECTION ON THE INSURANCE COMPANIES' QUARTERLY TAX  
3 PAYMENTS DUE ON OR ABOUT OCTOBER 31 AND SHALL SEND SUCH  
4 COMPANIES ALLOCATION NOTICES BY FEBRUARY 1 IF:

5 (A) THE FULL AMOUNT OF TAX CREDITS AVAILABLE IN ANY ONE  
6 YEAR HAVE NOT BEEN FULLY ALLOCATED BY THE COMMISSIONER  
7 PURSUANT TO STATEMENTS OF INTENT FILED WITH INSURANCE  
8 COMPANIES' QUARTERLY TAX PAYMENTS DUE ON OR ABOUT JULY 31; OR

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

12 (II) AN INSURANCE COMPANY THAT DECLARES ITS INTENT TO  
13 CONTRIBUTE TO THE EXCHANGE PURSUANT TO THIS PARAGRAPH (c) SHALL  
14 MAKE THE CONTRIBUTION TO THE EXCHANGE AS SPECIFIED IN THE  
15 ALLOCATION NOTICE ON OR BEFORE MARCH 1 AND MAY CLAIM THE TAX  
16 CREDIT ON ONE OR MORE SUBSEQUENT QUARTERLY OR ANNUAL TAX  
17 PAYMENTS DUE ON OR ABOUT MARCH 1.

18 (5) THE BOARD SHALL USE MONEYS CONTRIBUTED TO THE  
19 EXCHANGE PURSUANT TO THIS SUBSECTION (3) AND INTEREST DERIVED  
20 FROM THE DEPOSIT AND INVESTMENT OF THE MONEYS TO OPERATE AND  
21 SUSTAIN THE EXCHANGE AND TO BUILD RESERVES.

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

24 **SECTION 5. Safety clause.** The general assembly hereby finds,  
25 determines, and declares that this act is necessary for the immediate  
26 preservation of the public peace, health, and safety."

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