



# COLORADO

## GENERAL ASSEMBLY

Legislative Council  
Research Publication No. 366  
November 1991

Joint State Affairs Committee

Joint Transportation Committee

Joint Legislative Sunrise and Sunset  
Review Committee

Highway Legislation Review Committee

**COLORADO LEGISLATIVE COUNCIL**  
**REPORT TO THE**  
**COLORADO GENERAL ASSEMBLY**

**JOINT STATE AFFAIRS COMMITTEE**

**JOINT TRANSPORTATION COMMITTEE**

**JOINT LEGISLATIVE SUNRISE AND  
SUNSET REVIEW COMMITTEE**

**HIGHWAY LEGISLATION REVIEW  
COMMITTEE**

**Research Publication No. 366**  
**December 1991**

# COLORADO GENERAL ASSEMBLY

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November 20, 1991

To Members of the Fifty-Eighth General Assembly:

Submitted herewith are the final reports of the following interim committees: Joint State Affairs Committee, Joint Transportation Committee, Joint Legislative Sunrise and Sunset Review Committee, and Highway Legislation Review Committee.

The Joint Committees on State Affairs and Transportation were created pursuant to Senate Joint Resolution 91-32; the Joint Legislative Sunrise and Sunset Review Committee is a statutory committee established under section 2-3-1201, C.R.S.; and the Highway Legislation Review Committee is a statutory committee established under section 43-2-145, C.R.S.

At its meeting on November 18, the Legislative Council reviewed the reports of these committees. Motions to forward these reports and the bills therein for consideration in the 1992 session were approved at this meeting.

Respectfully submitted,

/s/ Senator Ted L. Strickland  
Chairman  
Legislative Council

TLS/pn

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# JOINT STATE AFFAIRS COMMITTEE

The Legislative Council directed the Joint State Affairs Committee to study three matters, namely, absentee voting by military service personnel; the personnel classification system; and reorganization of the executive branch of state government. Each area is addressed in this report.

## Absentee Voting

### Committee Objectives

The initial focus of the committee's concern was to streamline absentee voting for the estimated 80,000 Colorado registered electors who are military personnel on active duty stationed overseas, are military dependents of those stationed overseas, or are civilians employed in foreign countries.

### Committee Findings and Recommendations — State Affairs Bill A

In 1986, Congress enacted the Uniformed and Overseas Citizens Absentee Voting Act, consolidating two former federal enactments regarding absentee voting by overseas citizens. Under the 1986 enactment and its predecessors, overseas Americans, military and civilian, have the right to vote in federal elections, including primary and special elections. The U.S. Attorney General has the authority to sue any state or local election official who fails to provide overseas citizens a reasonable opportunity to vote.

A key provision of the federal law is the "Federal Write-In Absentee Ballot." An overseas citizen, military or civilian, who does not receive a state absentee ballot in time to use it is permitted to obtain a "Federal Write-In Absentee Ballot" directly from a military or State Department office and use that ballot to vote for federal offices in the general election. Although federal law prevails over conflicting state law, the federal law only applies to federal elections, not to state and local elections.

The interim committee called upon the Secretary of State for assistance in updating relevant sections of the state statutes. The recommendations made by that office and adopted by the committee extend beyond the issue of absentee voting procedures for registered electors residing outside the United States by including authorization of early voting by any registered elector and by easing conditions under which electors

qualify for absentee status. The results of that effort are contained in State Affairs Bill A. The main provisions of the measure can be summarized as follows:

- establishes a "special write-in blank absent voter ballot" for Colorado registered electors residing outside the United States to enable voting at any primary, general, or congressional vacancy election. The elector's application for such a ballot is to specify the conditions that preclude normal mail delivery of an absent voter ballot. If the request is granted, the special ballot is sent to the voter no sooner than 60 days prior to the election;
- states Colorado's compliance with the federal overseas voting act;
- provides that each county designate an "early voters' polling place." Early voters' polling places using voting machines are to be opened as soon as possible but not later than 15 days prior to the election day. Any registered elector who wishes to vote early may do so;
- changes the earliest date that an application for an absent voter's ballot can be filed with a county clerk from 90 days before the election to January 1 immediately preceding the election; and
- eliminates very specific conditions (such as serious illness, adverse working conditions, residence more than ten miles from the polling place) that a voter presently needs to meet to be classified as an absentee voter.

## **State Personnel System**

### **Committee Objectives**

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Given the limited time that could be spent on each of the three broad study topics, the privatization of state services was identified by the joint committee as an issue of first priority among several concerns with the state personnel system. The joint committee's specific objective was to clarify the state's policy on privatization of state services in light of a variety of legal challenges to privatization efforts and the resulting hesitancy of department executive directors to move forward with privatization.

## **Committee Findings and Recommendations — State Affairs Bill B and Resolution A**

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In 1979, the General Assembly established standards and approval procedures for the heads of executive departments, colleges, or universities to execute personal services contracts. That same year a proposal was also adopted allowing the state to contract with architects, landscape architects, engineers, and land surveyors. In 1987, legislation authorizing the Department of Administration to contract for maintenance services in the capitol complex was vetoed by the Governor. None of these actions have been regarded as providing sufficient statutory authority for departments of state government to contract with private sector vendors to furnish services previously performed by state employees.

The Colorado Supreme Court ruled on April 15, 1991, that contracts substituting private sector vendors for state employees significantly impact the state personnel system, and that, in the absence of statutory or regulatory standards, an executive department (in this case the Department of Highways) could not constitutionally enter such agreements.

By executive order in 1988, the Governor established a thirteen member Commission on Privatization. Two members of the General Assembly serve on the commission. By 1989, the commission had established policy guidelines to evaluate proposals from state agencies for privatization of services. That same year, the Governor issued a second executive order. The order set forth guidelines to be used to identify services which are not appropriate for privatization and those which are appropriate for privatization. Those services found to be appropriate for privatization would then be subject to a detailed cost analysis. Again, the issue of sufficient statutory or constitutional authority has been a roadblock to further developments.

Recommendation for constitutional change. In response to concerns that the state constitution prohibits privatization, the joint committee recommends adoption of State Affairs Resolution A. The resolution amends Section 13 of Article XII to provide that, notwithstanding other provisions of the constitution, the General Assembly may enact laws authorizing state agencies to contract with private sector vendors for services normally performed by state employees. If adopted by the General Assembly during the 1992 legislative session, the proposal would appear on the general election ballot in 1992.

Recommendation for statutory change. In addition to the constitutional change, the joint committee recommends State Affairs Bill B. The bill requires that state agencies desiring to privatize a service conduct an analysis. That analysis calls for the following:



- measurement of the private sector's interest by requiring that a minimum of three competitive proposals to perform the work be received;
- establishing that the private sector provider can perform the service at a cost savings of at least ten percent;
- determining whether the provider has sufficient technical ability and financial capacity; and
- measuring the impact of the privatization proposal on the state personnel system.

Upon completion of the analysis by the agency and a determination that the state would benefit from privatization, the issue will then be presented to the Office of State Planning and Budgeting within the Governor's Office. The Office of State Planning and Budgeting is required to prepare a detailed cost analysis. If the analysis shows that the state can save at least ten percent by privatization, the Office of State Planning and Budgeting is to approve the request.

The bill identifies services that are not to be privatized, namely policy-making or enforcement functions, the exercise of discretionary powers, or in situations in which there is access to confidential information. In addition, a service that cannot be measured in regard to the cost or quality of the privatized service will not be privatized.

## **Organization of State Government**

### **Committee Objectives**

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Twenty-five years ago the General Assembly set about to realign the organizational structure of state government. Responding to the mandate of a constitutional amendment approved by voters in 1966, the General Assembly grouped the nearly 130 agencies in Colorado's executive branch into seventeen executive departments, each department headed by a member of the Governor's cabinet. Political and time constraints prevented functional reorganization — the grouping in a department of all governmental operations that serve the same constituency. Instead, functional reorganization was delayed. Again, during the 1970s and 1980s, the long range objectives of systematic reorganization along functional lines envisioned by drafters of the 1968 act were not initiated.

During the 1991 interim, the joint committee's desire to focus on functional realignments within the executive branch was driven by the need to examine means of increasing the efficient delivery of services to the citizenry during a period of severe state budget constraints. As a result, the committee asked for reorganization

recommendations from the director of the Office of State Planning and Budgeting and the staff director of the Joint Budget Committee.

### **Committee Findings and Recommendations — State Affairs Resolution B**

Discussions with the two budget office directors indicated that the realignment of broad areas within the executive branch is desirable and attainable; however, the process is difficult and time consuming. The committee was pleased to discover that the Joint Budget Committee has asked departments to present budget requests along functional lines. In addition, the Joint Budget Committee has talked with the State Auditor about focusing performance audits in a similar manner. Finally, the Joint Budget Committee has asked departments to adopt mission statements, an exercise that will again give executive departments incentive to focus on functions performed.

A functional reorganization of the executive branch is an arduous task that extends beyond the normal activities of a legislative interim committee. The effort of the Joint State Affairs Committee during the 1991 interim was limited to recognizing the broad scope of the issue. To accomplish the objective will require a substantial commitment of time on the part of policy makers and their staffs. As a result, the committee recommends the establishment of a subcommittee to study the issue. The subcommittee, composed of members of the Joint State Affairs Committee, is to meet periodically with the members and staff of the Joint Budget Committee and with the director of the Office of State Planning and Budgeting and staff.

The focus of the subcommittee is to include, but not be limited to, an evaluation of a manageable number of the recommendations for study discussed during the 1991 interim. Those concepts include the following:

- locating education programs (K-12 and post secondary education) in one department;
- locating economic development programs in one department;
- locating programs dealing with the environment in one department;
- locating programs designed for youth and families in need of assistance in one department;
- locating criminal justice programs in one department;
- examining state programs that could be eliminated or privatized;

- combining entire departments, for example, Administration and Personnel, and Agriculture and Natural Resources; and
- combining related programs within departments, for example, water agencies within the Department of Natural Resources, wildlife and parks functions within the Department of Natural Resources, and gaming and gambling within the Departments of State or Revenue.

The work of the subcommittee is recommended to continue throughout 1992 and the first six months of 1993. This effort will include discussions with department executive directors. In June of 1993, the subcommittee is to report to the full membership of the interim Joint State Affairs Committee and evaluation of the recommendations of the subcommittee is to constitute the agenda of the full committee for the 1993 interim. The recommendations of the Joint State Affairs Committee are to be presented to the Legislative Council in November of 1993 for consideration by the General Assembly during the 1994 legislative session.

The committee's recommendation is contained in State Affairs Resolution B.

### **Materials Available**

The following materials were compiled during the 1991 interim by staff to the Joint State Affairs Committee. They are on file in the offices of the Legislative Council and available to all interested parties.

#### **Committee Meeting Summaries:**

- 1) July 30, 1991. The committee focused on approaches to a functional reorganization of the executive branch of state government. The director of the Governor's budget office and the staff director of the Joint Budget Committee presented their ideas on reorganization. The committee also received a briefing on congressional redistricting.
- 2) August 28, 1991. The Secretary of State's office provided a bill draft to change absentee voting for military personnel as well as other electors. The Department of Personnel highlighted plans to streamline operations and facilitate improved performance among state workers. The Departments of Law, Personnel, and Highways provided background information on the privatization of state services.
- 3) October 9, 1991. Four items were covered during the meeting: fire and police pension disability benefits; the bill draft concerning procedures for

voting prior to election day; three approaches to clarifying the state's position on privatization of state services; and ideas about functional reorganization of state government.

- 4) October 24, 1991. The committee discussed the need to continue the reorganization effort beyond the 1991 interim. In addition, amendments to the privatization of state services bill were considered.
- 5) November 7, 1991. A draft bill and constitutional amendment were adopted regarding the privatization of state services.

**Memoranda:**

- 6) "Overview of Changes to the Organizational Structure of State Government," August 5, 1991.
- 7) "Summary Articles on Privatization," October 23, 1991.

1 SECTION 1. 1-8-102, Colorado Revised Statutes, 1980

2 Repl. Vol., as amended, is amended to read:

3 1-8-102. Registered electors may vote early or by

4 absentee ballot - effect of "Uniformed and Overseas Citizens  
5 Voting Act" - emergency authority of secretary of state.

6 (1) Any registered elector of this state who expects to be  
7 absent from his precinct from 7 a.m. to 7 p.m. on the day of  
8 any general, primary, or congressional vacancy election or  
9 who, by reason of his work or the nature of his employment, is  
10 likely to be absent from his precinct from 7 a.m. to 7 p.m.  
11 or who, because of serious illness or handicap, because he or  
12 she is an elderly elector, or because he will be out of the  
13 United States of America when the absentee ballot is received  
14 and voted, or because his residence within the precinct is  
15 more than ten miles from his polling place by the most direct  
16 route for public travel, or for reasons based upon the  
17 doctrines of established religions, is unable to attend the  
18 polls may cast his ballot at such general, primary, or  
19 congressional vacancy election under the regulations and in  
20 the manner provided in this part 1.

21 (2) IN THE EVENT OF ANY CONFLICT BETWEEN THIS PART 1 AND  
22 ANY PROVISION OF THE FEDERAL "UNIFORMED AND OVERSEAS CITIZENS  
23 VOTING ACT", 42 U.S.C. 1973ff ET SEQ., THE PROVISIONS OF SAID  
24 FEDERAL ACT SHALL CONTROL, AND ALL OFFICERS WHO ARE CHARGED  
25 WITH THE PERFORMANCE OF DUTIES UNDER THIS CODE SHALL PERFORM  
26 THE DUTIES AND DISCHARGE THE OBLIGATIONS PLACED UPON THEM BY

State Affairs Bill A

A BILL FOR AN ACT

1 CONCERNING PROCEDURES FOR VOTING PRIOR TO ELECTION DAY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Eliminates specific grounds required for a registered elector to vote by absentee ballot. Authorizes "early voting" by allowing any registered elector to vote prior to election day by appearing in person at a designated polling place. Requires election officials to carry out obligations imposed upon them by the federal "Uniformed and Overseas Citizens Voting Act". Where a national or local emergency makes strict compliance with absentee and early voting requirements impossible or unreasonable, authorizes the secretary of state to issue emergency orders or rules prescribing special procedures or requirements as may be necessary to facilitate absentee and early voting. Allows applications for absent voters' ballots to be filed as early as January 1 preceding an election, rather than only within the ninety-day period preceding the election. Where overseas registered electors are unable to comply with the time requirements for applying for and voting by regular absent voters' ballots, authorizes such electors to vote by special write-in blank absent voter ballots. Makes technical amendments by deleting obsolete language relating to notarization and voters requiring special assistance.

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

1 SAID FEDERAL ACT.

2 (3) IF A NATIONAL OR LOCAL EMERGENCY ARISES WHICH MAKES  
3 STRICT COMPLIANCE WITH THE PROVISIONS OF THIS PART 1  
4 IMPOSSIBLE OR UNREASONABLE, SUCH AS WHEN CONGRESS HAS DECLARED  
5 A NATIONAL EMERGENCY OR THE PRESIDENT HAS ORDERED INTO THE  
6 ACTIVE MILITARY SERVICE OF THE UNITED STATES ANY UNITS AND  
7 MEMBERS OF THE NATIONAL GUARD OF THIS STATE, THE SECRETARY OF  
8 STATE MAY PRESCRIBE, BY EMERGENCY ORDERS OR RULES AND  
9 REGULATIONS, SUCH SPECIAL PROCEDURES OR REQUIREMENTS AS MAY BE  
10 NECESSARY TO FACILITATE ABSENTEE OR EARLY VOTING BY THOSE  
11 AFFECTED BY SUCH EMERGENCY.

12 SECTION 2. 1-8-103 (1) and (4), Colorado Revised  
13 Statutes, 1980 Repl. Vol., as amended, are amended to read:

14 1-8-103. Application for absent voter's ballot.

15 (1) Requests for an application for an absent voter's ballot  
16 may be made orally or in writing. The application for an  
17 absent voter's ballot shall be either the application form  
18 furnished by the county clerk and recorder, as prescribed by  
19 the secretary of state pursuant to section 1-1-108, or in the  
20 form of a letter, stating the applicant's residence address.  
21 ~~and that he will be absent from the precinct from 7 a.m. to 7~~  
22 ~~p.m. on the day of said general, primary, or congressional~~  
23 ~~vacancy election and stating the reason for such absence,~~  
24 ~~which may include, but not be limited to, that he will be~~  
25 ~~attending school or traveling, or that his work or employment~~  
26 ~~(stating nature thereof) is such that he is likely to be~~

1 ~~absent from the precinct from 7 a.m. to 7 p.m. on said day, or~~  
2 ~~that, on account of serious illness or handicap, because he or~~  
3 ~~she is an elderly elector, or because he will be out of the~~  
4 ~~United States of America when the absentee ballot is received~~  
5 ~~and voted, he will be unable to attend the polls, or that,~~  
6 ~~because his residence within the precinct is more than ten~~  
7 ~~miles from his polling place by the most direct route for~~  
8 ~~public travel or for reasons based upon the doctrines of the~~  
9 ~~established religion of which such applicant is a member, he~~  
10 ~~will be unable to attend the polls, The application form or~~  
11 ~~letter requesting an absentee ABSENT VOTER'S ballot may be~~  
12 ~~faxed to the county clerk and recorder; except that, the vote~~  
13 ~~cast by an absentee ABSENT VOTER'S ballot requested via fax~~  
14 ~~shall count only if an originally signed request is filed with~~  
15 ~~the county clerk and recorder before or at the same time the~~  
16 ~~ballot is received by said county clerk and recorder. If the~~  
17 ~~application is made for a primary election ballot, such~~  
18 ~~application shall designate the name of the political party~~  
19 ~~with which the applicant is affiliated or wishes to affiliate.~~  
20 (4) The application for an absent voter's ballot shall  
21 be filed with the county clerk and recorder of the applicant's  
22 county of residence not earlier than ninety days before  
23 JANUARY 1 IMMEDIATELY PRECEDING the election nor later than  
24 the close of business on the Friday immediately preceding the  
25 election.

26 SECTION 3. 1-8-105 (1.5), Colorado Revised Statutes,

1 1980 Repl. Vol., as amended, is repealed as follows:

2 1-8-105. Verification of registration of early voter.

3 ~~(1.5) The county clerk and recorder receiving the application~~  
4 ~~for an absent voter's ballot shall note, for purposes of~~  
5 ~~section 1-8-114-(1,5), whether or not the registered elector~~  
6 ~~has requested such ballot because he is handicapped or because~~  
7 ~~he will be abroad on election day.~~

8 SECTION 4. 1-8-106 (2), Colorado Revised Statutes, 1980  
9 Repl. Vol., as amended, is repealed as follows:

10 1-8-106. Absent voters' registration book. (2) ~~If, in~~  
11 ~~the application for an absent voter's ballot, the reason given~~  
12 ~~for requesting such ballot was that the registered elector is~~  
13 ~~handicapped or will be abroad on election day, the county~~  
14 ~~clerk and recorder shall stamp the absent voter's ballot~~  
15 ~~envelope "Notarization is not required" before the ballot is~~  
16 ~~delivered or mailed to the registered elector.~~

17 SECTION 5. 1-8-107 (2), Colorado Revised Statutes, 1980  
18 Repl. Vol., as amended, is repealed as follows:

19 1-8-107. Record of absent voters' ballots. (2) ~~If, in~~  
20 ~~the application for an absent voter's ballot, the reason given~~  
21 ~~for requesting such ballot was that the registered elector is~~  
22 ~~handicapped or will be out of the United States of America~~  
23 ~~when the absentee ballot is received and voted, such~~  
24 ~~information shall be noted on the county clerk and recorder's~~  
25 ~~record for purposes of section 1-8-114-(1,5).~~

26 SECTION 6. 1-8-108, Colorado Revised Statutes, 1980

1 Repl. Vol., is amended to read:

2 1-8-108. Watchers at early voters' polling places. Any

3 political party shall have the right to maintain watchers at  
4 the absent EARLY voters' polling place during the casting OF  
5 ABSENT VOTER'S BALLOTS and counting of absent AND EARLY  
6 voters' ballots and also in the office of the county clerk and  
7 recorder during the period within which absent voters' ballots  
8 may be applied for or received in the office of the county  
9 clerk and recorder.

10 SECTION 7. 1-8-109, Colorado Revised Statutes, 1980  
11 Repl. Vol., is amended to read:

12 1-8-109. Challenges - rejections. The vote of any  
13 registered elector voting by absent OR EARLY voters' ballot  
14 may be challenged for residence, age, or citizenship in the  
15 same manner as other votes are challenged.

16 SECTION 8. 1-8-112, Colorado Revised Statutes, 1980  
17 Repl. Vol., is amended to read:

18 1-8-112. Early voters' polling place. Each county shall  
19 provide, in addition to the precinct polling places, an  
20 "absent EARLY voters' polling place", which shall be provided  
21 with such suitable quarters, ballot boxes or voting machines,  
22 and other necessary supplies as provided by law in the case of  
23 precinct polling places; except that voting booths may be  
24 provided in precincts using paper ballots.

25 SECTION 9. 1-8-113 (1), Colorado Revised Statutes, 1980  
26 Repl. Vol., as amended, is amended to read:

1 1-8-113. Procedures and personnel for early voters'  
2 polling place. (1) In every county, the absent EARLY voters'  
3 polling place shall be opened as soon as absent voter ballots  
4 or ballot stubs are printed and delivered to the county clerk  
5 and recorder. Such delivery shall take place no later than  
6 the thirtieth day preceding any primary, general, or  
7 congressional vacancy election.

8 SECTION 10. 1-8-114 (3), Colorado Revised Statutes, 1980  
9 Repl. Vol., is amended, and the said 1-8-114, as amended, is  
10 further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

11 1-8-114. Manner of absentee and early voting by paper  
12 ballot. (3) A registered elector who receives an absent  
13 voter's paper ballot AND ANY REGISTERED ELECTOR WHO WISHES TO  
14 VOTE EARLY, upon appearing in person in the office of the  
15 county clerk and recorder, may vote and cast such ballot in  
16 the absent EARLY voters' polling place, as provided in section  
17 1-8-112. Ballot boxes for such voting shall be locked and  
18 sealed and the keys shall remain in the possession of the  
19 county clerk and recorder until transferred to the supply  
20 judge for the absent EARLY voters' polling place pursuant to  
21 section 1-8-120.

22 (4) EARLY VOTING SHALL NOT BE PERMITTED AFTER 5 P.M. ON  
23 THE FRIDAY IMMEDIATELY PRECEDING THE ELECTION.

24 SECTION 11. 1-8-115 (1), Colorado Revised Statutes, 1980  
25 Repl. Vol., as amended, is amended to read:

26 1-8-115. Self-affirmation or statement on return

1 envelope. (1) The return envelope for the absent voter's  
2 ballot shall have printed on its face a self-affirmation or  
3 statement substantially in the following form:

4 "State of ....., County of  
5 ....., I, ....., state under  
6 penalty of perjury that I am a citizen of the United States  
7 who will have attained the age of eighteen years on .....  
8 (date of next ensuing election) .... and a registered elector  
9 residing in precinct ....., county of .....,  
10 state of Colorado; that I am not registered nor maintaining a  
11 sole place of legal residence in any other precinct, county,  
12 or state; that my address as registered is  
13 .....; that I have not and will not cast any  
14 vote in this election except by the enclosed ballot; that  
15 (check one) [ ] I did not receive assistance in marking my  
16 ballot [ ] I did receive assistance in marking my ballot from  
17 ..... (name of elector giving assistance) .....,  
18 who resides at .....,  
19 because of (check one) [ ] my physical disability [ ] my  
20 inability to read or write [ ] my difficulty with the English  
21 language; [ ] my status as an elderly elector;

22 ~~.....I-APPLIED~~

23 ~~.....I-DID-NOT-APPLY~~

24 ~~for--an--absentee--ballot--as--a--handicapped--voter--or--as--a~~  
25 ~~{--}voter--who--will--be--out--of--the--United--States--of--America~~  
26 ~~when--the--absentee--ballot--is--received--and--voted--{--}my--status~~



1 as-an-elderly-electors; and that I herein enclose said ballot  
2 in accordance with the provisions of the "Colorado Election  
3 Code of 1980".

4 .....  
5 Date Signature of voter"

6 SECTION 12. 1-8-116, Colorado Revised Statutes, 1980  
7 Repl. Vol., as amended, is amended to read:

8 1-8-116. Casting absent or early voter's ballot on  
9 voting machine or electronic voting equipment. In all counties  
10 in which voting machines or electronic voting equipment is  
11 used, the ~~absent~~ EARLY voters' polling place shall be opened  
12 AS SOON AS POSSIBLE BUT NOT LATER THAN fifteen days prior to  
13 the primary, general, or congressional vacancy election day  
14 and shall remain open during the time the offices of the  
15 county clerk and recorder are open until the closing of  
16 business on the Friday immediately preceding the election.  
17 Qualified applicants for absent voters' ballots appearing AND  
18 OTHER REGISTERED ELECTORS WISHING TO VOTE EARLY, WHO APPEAR in  
19 person at the ~~absent~~ EARLY voters' polling place during this  
20 time, may cast their absent OR EARLY voters' ballots on voting  
21 machines or electronic voting equipment expressly provided for  
22 that purpose in the same manner as any ballot would be cast on  
23 a voting machine or electronic voting equipment in a precinct  
24 polling place on election day. The registration record of each  
25 such person voting by absent voter's ballot shall be placed in  
26 the absent voters' registration book. The voting machines or

1 electronic voting equipment used for the casting of such  
2 absent AND EARLY voters' ballots shall remain locked, sealed,  
3 or both locked and sealed, and the tabulation of the votes  
4 cast shall remain unknown until the time prescribed in section  
5 1-8-117 for counting absent AND EARLY voters' ballots. During  
6 the time the ~~absent~~ EARLY voters' polling place is not open,  
7 the county clerk and recorder shall have the custody and keys  
8 of any voting machine or electronic voting equipment being  
9 used for the casting of absent AND EARLY voters' ballots. The  
10 voting machines or electronic voting equipment used for the  
11 casting of absent AND EARLY voters' ballots shall not be used  
12 for the further counting of absent OR EARLY voters' ballots,  
13 as provided in section 1-8-121 (3) (b).

14 SECTION 13. 1-8-117, Colorado Revised Statutes, 1980  
15 Repl. Vol., is amended to read:

16 1-8-117. Hours early voters' polling place open for  
17 receiving and counting absent and early voters' ballots.  
18 (1) In every county, the ~~absent~~ EARLY voters' polling place  
19 shall be open on general, primary, and congressional vacancy  
20 election days from 8:30 a.m. until 7 p.m. for the purpose of  
21 receiving ABSENT VOTERS' BALLOTS and counting absent AND EARLY  
22 voters' ballots. The ~~absent~~ EARLY voters' polling place may  
23 also be open from 8:30 a.m. until 5:30 p.m. on the day  
24 preceding such election for the purpose of receiving ABSENT  
25 VOTERS' BALLOTS and counting absent AND EARLY voters' ballots.  
26 No information concerning the count shall be released by the

1 election officials or watchers until after 7 p.m. on election  
2 day, and the election officials in charge of the absent EARLY  
3 voters' polling place shall take all precautions necessary to  
4 insure the secrecy of the counting proceedings.

5 (2) The duties, power, authority, and jurisdiction of  
6 the election officials at the absent EARLY voters' polling  
7 place on election day and the day preceding are confined to  
8 the receiving, casting, and counting of absent AND EARLY  
9 voters' ballots delivered and turned over to them by the  
10 county clerk and recorder as provided in this part 1.

11 SECTION 14. 1-8-118 (2) and (3), Colorado Revised  
12 Statutes, 1980 Repl. Vol., are amended to read:

13 1-8-118. Emergency absent voting. (2) Any registered  
14 elector, including any judge of election unable to go to the  
15 polls because of conditions arising after the closing date for  
16 absent voters' ballot applications, ~~which will result in his~~  
17 ~~absence from the precinct on election day,~~ may apply at the  
18 office of the county clerk and recorder for an emergency  
19 absent voter's ballot. Upon receipt of an affidavit  
20 APPLICATION signed by the registered elector, ~~on a form~~  
21 ~~provided by the county clerk and recorder and attesting to the~~  
22 ~~fact that the registered elector will be compelled to be~~  
23 ~~absent from his precinct on election day because of conditions~~  
24 ~~arising after the closing date for absent voters' ballot~~  
25 ~~applications,~~ the county clerk and recorder shall provide the  
26 registered elector with an absent voter's ballot with the word

1 "EMERGENCY" stamped on the stubs thereof. The request for the  
2 ballot shall be made by 5 p.m. the day of the election, and  
3 the ballot shall be voted at the county clerk and recorder's  
4 office or outside of the office and returned by 7 p.m. on the  
5 day of the election.

6 (3) After marking his ballot, the registered elector  
7 shall place it in a return envelope provided by the county  
8 clerk and recorder. He shall then fill out and sign the  
9 affidavit SELF-AFFIRMATION on the envelope, as provided in  
10 section 1-8-115, on or before election day and return it to  
11 the office of the county clerk and recorder. Upon receipt of  
12 the envelope, the county clerk and recorder shall verify the  
13 registered elector's name on the return envelope with that  
14 which appears on his office precinct record and, if they  
15 compare, shall deposit the envelope in a safe place in his  
16 office until the time prescribed for counting absent voters'  
17 ballots and deliver these ballots to the counting judges for  
18 the absent EARLY voters' polling place.

19 SECTION 15. Part 1 of article 8 of title 1, Colorado  
20 Revised Statutes, 1980 Repl. Vol., as amended, is amended BY  
21 THE ADDITION OF A NEW SECTION to read:

22 1-8-118.7. Special write-in blank absent voter ballots.  
23 (1) ANY CITIZEN WHO RESIDES OUTSIDE THE UNITED STATES, WHO IS  
24 A REGISTERED ELECTOR IN THIS STATE PRIOR TO HIS OR HER  
25 DEPARTURE, AND WHO QUALIFIES PURSUANT TO THIS SECTION MAY  
26 APPLY TO THE COUNTY CLERK AND RECORDER FOR A SPECIAL WRITE-IN

1 BLANK ABSENT VOTER BALLOT TO VOTE AT ANY PRIMARY, GENERAL, OR  
 2 CONGRESSIONAL VACANCY ELECTION. AN APPLICATION FOR A SPECIAL  
 3 WRITE-IN BLANK ABSENT VOTER BALLOT SHALL CONTAIN A STATEMENT  
 4 BY THE REGISTERED ELECTOR THAT DUE TO MILITARY OR OTHER  
 5 CONTINGENCIES THAT PRECLUDE NORMAL MAIL DELIVERY, AS SPECIFIED  
 6 BY THE ELECTOR, THE ELECTOR CANNOT VOTE AN ABSENT VOTER BALLOT  
 7 DURING THE NORMAL PERIOD PROVIDED BY THIS PART 1. ANY  
 8 APPLICATION MADE PURSUANT TO THIS SECTION WHICH IS RECEIVED BY  
 9 THE COUNTY CLERK AND RECORDER PRIOR TO THE SIXTIETH DAY BEFORE  
 10 THE ELECTION SHALL BE KEPT AND PROCESSED ON OR AFTER THE  
 11 SIXTIETH DAY BEFORE THE ELECTION.

12 (2) IF THE APPLICANT IS QUALIFIED, THE COUNTY CLERK AND  
 13 RECORDER SHALL IMMEDIATELY SEND THE VOTER A BALLOT IN A FORM  
 14 PRESCRIBED BY THE SECRETARY OF STATE AND A LIST OF ALL  
 15 CANDIDATES WHO HAVE QUALIFIED FOR THE BALLOT BY THE SIXTIETH  
 16 DAY BEFORE THE ELECTION AND A LIST OF ALL MEASURES WHICH ARE  
 17 TO BE SUBMITTED TO THE VOTERS AND UPON WHICH THE VOTER IS  
 18 QUALIFIED TO VOTE.

19 (3) ON THE SPECIAL WRITE-IN BLANK ABSENT VOTER BALLOT,  
 20 THE REGISTERED ELECTOR MAY DESIGNATE HIS OR HER CANDIDATE BY  
 21 WRITING IN THE NAME OF THE CANDIDATE OR BY WRITING IN THE NAME  
 22 OF A POLITICAL PARTY OR POLITICAL ORGANIZATION, IN WHICH CASE  
 23 THE BALLOT SHALL BE COUNTED FOR THE CANDIDATE OF THAT  
 24 POLITICAL PARTY OR POLITICAL ORGANIZATION. ANY ABBREVIATION,  
 25 MISSPELLING, OR OTHER MINOR VARIATION IN THE FORM OF THE NAME  
 26 OF THE CANDIDATE, POLITICAL PARTY, OR POLITICAL ORGANIZATION

1 SHALL BE DISREGARDED IN DETERMINING THE VALIDITY OF THE BALLOT  
 2 AS LONG AS THE INTENTION OF THE REGISTERED ELECTOR CAN BE  
 3 ASCERTAINED.

4 (4) (a) IF BOTH A FEDERAL WRITE-IN BLANK ABSENTEE BALLOT  
 5 PURSUANT TO SECTION 1-8-118.5 AND A SPECIAL WRITE-IN BLANK  
 6 ABSENT VOTER BALLOT PURSUANT TO THIS SECTION ARE RETURNED BY  
 7 THE VOTER, THE FEDERAL WRITE-IN ABSENTEE BALLOT SHALL BE  
 8 DEEMED VOID, AND VOTES SHALL BE COUNTED FROM THE SPECIAL  
 9 WRITE-IN BLANK ABSENT VOTER BALLOT ONLY.

10 (b) IF BOTH AN ABSENT VOTER'S BALLOT AND A SPECIAL  
 11 WRITE-IN BLANK ABSENT VOTER BALLOT ARE RETURNED, THE SPECIAL  
 12 WRITE-IN BLANK ABSENT VOTER BALLOT SHALL BE DEEMED VOID, AND  
 13 VOTES SHALL BE COUNTED FROM THE ABSENT VOTER'S BALLOT ONLY.

14 (5) SPECIAL WRITE-IN BLANK ABSENT VOTER BALLOTS SHALL BE  
 15 COUNTED IN ACCORDANCE WITH SECTION 1-8-117.

16 SECTION 16. 1-8-120, Colorado Revised Statutes, 1980  
 17 Repl. Vol., as amended, is amended to read:

18 1-8-120. Delivery to supply judge. No later than 8:30  
 19 a.m. on the day of any general, primary, or congressional  
 20 vacancy election, the county clerk and recorder shall deliver  
 21 to the supply judge of the absent EARLY voters' polling place  
 22 all the absent voters' envelopes received up to that time, in  
 23 sealed packages or in locked and sealed ballot boxes, taking a  
 24 receipt therefor, together with the absent voters'  
 25 registration book, and signed applications for such absent  
 26 voters' ballots, the list of absent voters, and the record of

1 absent voters' ballots as provided for in section 1-8-107. In  
 2 counties which commence counting absent AND EARLY voters'  
 3 ballots on the day preceding such election pursuant to section  
 4 1-8-117, the county clerk and recorder shall make such  
 5 delivery not later than 8:30 a.m. on the day preceding any  
 6 general, primary, or congressional vacancy election. The  
 7 county clerk and recorder shall continue to so deliver any  
 8 envelopes containing absent voters' ballots which may be  
 9 received thereafter up to and including 7 p.m. on election  
 10 day. On the sealed packages and boxes of absent voters'  
 11 envelopes shall be printed or written "This package (or box)  
 12 contains ..... (number) absent voters' ballots." With such  
 13 envelopes, the county clerk and recorder shall deliver to the  
 14 supply judge written instructions, which shall be followed by  
 15 the judges of election in casting and counting the ballots,  
 16 and all such books, records, and supplies as shall be needed  
 17 for tabulating, recording, and certifying the absent AND EARLY  
 18 voters' ballots.

19 SECTION 17. 1-8-121 (1) (a), (2), and (3), Colorado  
 20 Revised Statutes, 1980 Repl. Vol., as amended, are amended to  
 21 read:

22 ' 1-8-121. Casting and counting absent and early voters'  
 23 ballots - rejections. (1) (a) One of the receiving judges  
 24 shall open each absent voter's identification envelope in the  
 25 presence of a majority of the receiving judges, and, after  
 26 announcing in an audible voice the name of such absent voter,

1 he shall tear open such envelope without defacing the  
 2 self-affirmation or certificate printed thereon or mutilating  
 3 the enclosed ballot. One of the election judges shall enter  
 4 the name of the registered elector in the pollbook, and  
 5 another election judge shall deposit the unfolded ballot in  
 6 the ballot box.

7 (2) In counties which have counting judges for the  
 8 ~~absent~~ EARLY voters' polling place, the receiving judges, as  
 9 soon as fifty ballots have been cast, shall deliver the ballot  
 10 box containing such ballots to the counting judges, who shall  
 11 proceed to count the same. In counties which do not have  
 12 counting judges for the ~~absent~~ EARLY voters' polling place,  
 13 the receiving judges may begin counting when at least one  
 14 hundred ballots have been cast.

15 (3) Absent AND EARLY voters' ballots shall be counted in  
 16 one of the following ways:

17 (a) In counties which use paper ballots, the absent AND  
 18 EARLY voters' ballots may be counted in the manner provided in  
 19 section 1-7-307 for counting paper ballots.

20 (b) In counties which use voting machines, the absent  
 21 AND EARLY voters' ballots may be counted in the following  
 22 manner: One judge of election shall call aloud the name of the  
 23 candidate voted for. A second judge of election shall observe  
 24 that the first said judge reads the ballot correctly. Two  
 25 other election judges, one of each major political party,  
 26 shall attend the voting machine so that one of the election

1 judges may depress the lever for the candidate whose name is  
 2 being read, and the other election judge shall observe closely  
 3 that the proper levers are being depressed as the votes are  
 4 read aloud. The fifth election judge shall prepare the  
 5 machine to receive each ballot. Votes for or against any  
 6 measure appearing on the ballot shall be cast in the same  
 7 manner as provided in section 1-8-116.

8 (c) Any county may use adding machines or other  
 9 mechanical calculating devices which print a record of numbers  
 10 to count the absent AND EARLY voters' ballots. In counties  
 11 using this method of counting, one election judge shall call  
 12 aloud the name of the candidate voted for, and a second  
 13 election judge shall observe that the first said judge reads  
 14 the ballot correctly. Two other election judges, one of each  
 15 major political party, shall attend the adding machine or  
 16 other mechanical calculating device. The election judge who  
 17 operates such machine or device shall be of the political  
 18 party opposite that of the election judge who calls the name  
 19 of the candidate voted for. The other election judge  
 20 attending said machine or device shall observe closely that  
 21 the proper totals are entered on the record. When the votes  
 22 have been so tallied, an election judge of the political party  
 23 opposite that of the election judge who operated said machine  
 24 or device shall read from the record to an election judge of  
 25 the opposite political party, who shall check the record,  
 26 reading back against the ballots counted. The election judge

1 reading and the election judge checking said readings shall be  
 2 observed respectively by election judges of the opposite  
 3 political party. The fifth election judge shall act in a  
 4 general supervisory capacity. Votes for or against any  
 5 measure appearing on the ballot shall be cast in the same  
 6 manner as provided in section 1-8-116.

7 (d) Any county may use electronic vote-tabulating  
 8 equipment for the counting of absent AND EARLY voters' ballots  
 9 in the same manner as for the counting of precinct ballots as  
 10 provided in part 6 of article 6 and parts 4 and 5 of article 7  
 11 of this title.

12 SECTION 18. 1-8-122, Colorado Revised Statutes, 1980  
 13 Repl. Vol., is amended to read:

14 1-8-122. Casting and counting - electronic system. In  
 15 counties using a ballot card electronic voting system, absent  
 16 OR EARLY voters' ballots may be cast on paper ballots and  
 17 counted as provided in section 1-8-121 or may be cast on  
 18 ballot cards and counted by electronic voting equipment as  
 19 provided in part 6 of article 6 and parts 4 and 5 of article 7  
 20 of this title, or both methods may be used.

21 SECTION 19. 1-8-123, Colorado Revised Statutes, 1980  
 22 Repl. Vol., is amended to read:

23 1-8-123. Certificate of absent and early voters' ballots  
 24 cast - canvass. (1) Upon the completion of the count of  
 25 absent AND EARLY voters' ballots, the election judges shall  
 26 make the certificate and perform all the official acts

1 required by sections 1-7-310 and 1-7-311.

2 (2) Upon the canvass of the votes of the county by the  
3 county board of canvassers, said board shall include in its  
4 abstract of votes the votes cast and counted at the absent  
5 EARLY voters' polling place in the manner provided for  
6 abstracting votes cast and counted at precinct polling places,  
7 as provided in article 10 of this title.

8 SECTION 20. 1-8-125, Colorado Revised Statutes, 1980  
9 Repl. Vol., as amended, is amended to read:

10 1-8-125. Preservation of rejected absent or early  
11 voters' ballots. All absent voters' identification envelopes,  
12 ballot stubs, and absent AND EARLY voters' ballots rejected by  
13 the receiving judges in accordance with the provisions of  
14 section 1-8-121 shall be returned to the county clerk and  
15 recorder. All absent voters' ballots received by the county  
16 clerk and recorder after 7 p.m. on the day of the general,  
17 primary, or congressional vacancy election, together with the  
18 rejected absent AND EARLY voters' ballots returned by the  
19 judges of election as provided in this section, shall remain  
20 in the sealed identification envelopes and be destroyed later  
21 as provided in section 1-7-701.

22 SECTION 21. Repeal. Part 2 of article 8 of title 1,  
23 Colorado Revised Statutes, 1980 Repl. Vol., as amended, is  
24 repealed.

25 SECTION 22. Safety clause. The general assembly hereby  
26 finds, determines, and declares that this act is necessary

1 for the immediate preservation of the public peace, health,  
2 and safety.

State Affairs Resolution A

SENATE CONCURRENT RESOLUTION 92-

1 SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO  
2 AN AMENDMENT TO SECTION 13 OF ARTICLE XII OF THE  
3 CONSTITUTION OF THE STATE OF COLORADO CONCERNING THE  
4 AUTHORITY OF STATE AGENCIES TO CONTRACT WITH PRIVATE  
5 SECTOR PROVIDERS TO PERFORM SERVICES OTHERWISE PERFORMED  
6 BY EMPLOYEES IN THE STATE PERSONNEL SYSTEM.

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Resolution Summary

(Note: This summary applies to this resolution as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Authorizes the general assembly to establish standards for the privatization of state government services.

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7 Be It Resolved by the Senate of the Fifty-eighth General  
8 Assembly of the State of Colorado, the House of  
9 Representatives concurring herein:

10 SECTION 1. At the next general election for members of  
11 the general assembly, there shall be submitted to the  
12 registered electors of the state of Colorado, for their  
13 approval or rejection, the following amendment to the

1 constitution of the state of Colorado, to wit:

2 Section 13 (8) of article XII of the constitution of the  
3 state of Colorado is amended to read:

4 Section 13. Personnel system of state - merit system.

5 (8) EXCEPT AS PROVIDED IN SUBSECTION (12) OF THIS SECTION,  
6 persons in the personnel system of the state shall hold their  
7 respective positions during efficient service or until  
8 reaching retirement age, as provided by law. They shall be  
9 graded and compensated according to standards of efficient  
10 service which shall be the same for all persons having like  
11 duties. A person certified to any class or position in the  
12 personnel system may be dismissed, suspended, or otherwise  
13 disciplined by the appointing authority upon written findings  
14 of failure to comply with standards of efficient service or  
15 competence, or for willful misconduct, willful failure or  
16 inability to perform his duties, or final conviction of a  
17 felony or any other offense which involves moral turpitude, or  
18 written charges thereof may be filed by any person with the  
19 appointing authority, which shall be promptly determined. Any  
20 action of the appointing authority taken under this subsection  
21 shall be subject to appeal to the state personnel board, with  
22 the right to be heard thereby in person or by counsel, or  
23 both.

24 Section 13 of article XII of the constitution of the  
25 state of Colorado is amended BY THE ADDITION OF A NEW  
26 SUBSECTION to read:

1           Section 13. Personnel system of state - merit system.  
2   (12) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE  
3   GENERAL ASSEMBLY MAY ENACT SUCH LAWS AND DEVELOP SUCH  
4   STANDARDS AS IT DEEMS NECESSARY TO AUTHORIZE STATE AGENCIES TO  
5   CONTRACT WITH PRIVATE SECTOR PROVIDERS TO PERFORM SERVICES  
6   OTHERWISE PERFORMED BY EMPLOYEES IN THE STATE PERSONNEL  
7   SYSTEM.

8           SECTION 2. Each elector voting at said election and  
9   desirous of voting for or against said amendment shall cast  
10   his vote as provided by law either "Yes" or "No" on the  
11   proposition: "An amendment to section 13 of article XII of the  
12   constitution of the state of Colorado concerning the authority  
13   of state agencies to contract with private sector providers to  
14   perform services otherwise performed by employees in the state  
15   personnel system."

16          SECTION 3. The votes cast for the adoption or rejection  
17   of said amendment shall be canvassed and the result determined  
18   in the manner provided by law for the canvassing of votes for  
19   representatives in Congress, and if a majority of the electors  
20   voting on the question shall have voted "Yes", the said  
21   amendment shall become a part of the state constitution.



State Affairs Bill B

A BILL FOR AN ACT

1 CONCERNING THE PRIVATIZATION OF STATE SERVICES.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Establishes criteria which a state agency must consider before privatizing a state service, and provides that no state service may be privatized until such privatization is approved by the office of state planning and budgeting. Requires the office of state planning and budgeting to conduct a detailed cost analysis to determine whether a service should be privatized. Excludes certain functions of state government from privatization.

---

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

3 SECTION 1. 24-50-128, Colorado Revised Statutes, 1988  
4 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to  
5 read:

6 24-50-128. Certification required before salary paid -  
7 contracts for personal services. (4) THE RESTRICTIONS ON  
8 CONTRACTS FOR PERSONAL SERVICES ESTABLISHED IN THIS SECTION

1 SHALL NOT APPLY TO CONTRACTS ENTERED INTO PURSUANT TO ARTICLE  
2 50.7 OF THIS TITLE.

3 SECTION 2. Title 24, Colorado Revised Statutes, 1988  
4 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW  
5 ARTICLE to read:

6 ARTICLE 50.7

7 Privatization of State Services

8 24-50.7-101. Legislative declaration. THE GENERAL  
9 ASSEMBLY HEREBY FINDS AND DECLARES THAT BECAUSE OF THE  
10 INCREASING COSTS OF PROVIDING GOVERNMENT SERVICES, ALTERNATIVE  
11 MEANS OF PROVIDING SUCH SERVICES WHICH MAY BE MORE COST  
12 EFFECTIVE SHOULD BE CONSIDERED. RECOGNIZING THAT THE PRIVATE  
13 SECTOR MAY BE ABLE TO PROVIDE CERTAIN SERVICES WHICH HAVE  
14 TRADITIONALLY BEEN PROVIDED BY STATE GOVERNMENT, THE GENERAL  
15 ASSEMBLY FURTHER FINDS THAT PRIVATIZATION OF SUCH SERVICES MAY  
16 BE APPROPRIATE. THE GENERAL ASSEMBLY FURTHER RECOGNIZES THAT  
17 THE PRIVATIZATION OF STATE SERVICES MAY IMPACT EMPLOYEES IN  
18 THE STATE PERSONNEL SYSTEM AND IT IS THE INTENT OF THE GENERAL  
19 ASSEMBLY THAT NO PRIVATIZATION OCCUR UNTIL SUCH IMPACT CAN BE  
20 EVALUATED BY THE OFFICE OF STATE PLANNING AND BUDGETING.

21 24-50.7-102. Definitions. AS USED IN THIS ARTICLE,  
22 UNLESS THE CONTEXT OTHERWISE REQUIRES:

23 (1) "STATE AGENCY" MEANS EVERY DEPARTMENT, COMMISSION,  
24 COUNCIL, BOARD, BUREAU, COMMITTEE, INSTITUTION OF HIGHER  
25 EDUCATION, OR ANY OTHER INSTRUMENTALITY OF THE STATE OR ITS  
26 POLITICAL SUBDIVISIONS.

1 24-50.7-103. Privatization analysis - department of  
2 personnel. (1) EXCEPT AS OTHERWISE PROVIDED BY LAW, NO STATE  
3 AGENCY MAY PRIVATIZE ANY STATE SERVICE UNTIL SUCH STATE AGENCY  
4 FIRST OBTAINS APPROVAL FROM THE OFFICE OF STATE PLANNING AND  
5 BUDGETING IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

6 (2) EACH STATE AGENCY DESIRING TO PRIVATIZE A STATE  
7 SERVICE SHALL USE THE PRIVATIZATION ANALYSIS ESTABLISHED IN  
8 THIS SECTION TO DETERMINE WHETHER THE SERVICE CAN BE PERFORMED  
9 BY THE PRIVATE SECTOR. SUCH ANALYSIS SHALL INCLUDE THE  
10 FOLLOWING CONSIDERATIONS:

11 (a) THE STATE AGENCY SHALL DETERMINE WHETHER SUFFICIENT  
12 MARKET STRENGTH EXISTS TO PRIVATIZE THE SERVICE. TO MAKE SUCH  
13 A DETERMINATION, THE STATE AGENCY SHALL PUBLISH NOTICE OF THE  
14 SERVICE OR SERVICES WHICH IT PROPOSES TO PRIVATIZE, AND IT  
15 SHALL ISSUE REQUESTS FOR PROPOSALS. THE NOTICE SHALL DESCRIBE  
16 THE SERVICE, AND IT SHALL REQUEST PRIVATE SECTOR PROVIDERS TO  
17 SUBMIT PROPOSALS FOR THE PERFORMANCE OF THE SERVICE. IF THREE  
18 OR MORE PRIVATE SECTOR PROVIDERS SUBMIT COMPETITIVE PROPOSALS,  
19 THE STATE AGENCY SHALL CONCLUDE THAT THERE IS SUFFICIENT  
20 MARKET STRENGTH TO PRIVATIZE THE SERVICE.

21 (b) IF SUFFICIENT MARKET STRENGTH EXISTS, THE STATE  
22 AGENCY SHALL DETERMINE WHETHER THE PRIVATE SECTOR PROVIDER CAN  
23 PROVIDE THE SAME SERVICE FOR A LOWER COST THAN THE STATE  
24 AGENCY. A COST SAVINGS OF AT LEAST TEN PERCENT MUST BE  
25 DEMONSTRATED BEFORE ANY STATE SERVICE MAY BE PRIVATIZED. IN  
26 DETERMINING THE COST TO THE STATE AGENCY OF PROVIDING THE

1 SERVICE, THE STATE AGENCY SHALL CONSIDER ALL OPERATING AND  
2 CAPITAL COSTS INCLUDING, BUT NOT LIMITED TO, SALARIES AND  
3 BENEFITS, RENT, UTILITIES, AND EQUIPMENT.

4 (c) THE STATE AGENCY SHALL CONSIDER WHETHER THE PRIVATE  
5 SECTOR PROVIDER HAS THE TECHNICAL ABILITY TO PROVIDE THE  
6 SERVICE WHICH IS PROPOSED TO BE PRIVATIZED AT THE SAME OR A  
7 HIGHER LEVEL OF QUALITY THAN THAT PRODUCED BY EMPLOYEES IN THE  
8 STATE PERSONNEL SYSTEM.

9 (d) THE STATE AGENCY SHALL EVALUATE THE IMPACT OF THE  
10 PRIVATIZATION OF THE SERVICE ON EMPLOYEES IN THE STATE  
11 PERSONNEL SYSTEM. IF PRIVATIZATION WILL HAVE A NEGATIVE  
12 IMPACT ON SUCH EMPLOYEES, THE STATE AGENCY SHALL DEVELOP A  
13 PLAN FOR MITIGATING SUCH IMPACT.

14 (e) THE STATE AGENCY SHALL DETERMINE WHETHER THE PRIVATE  
15 SECTOR PROVIDER HAS THE FINANCIAL CAPACITY TO PROVIDE THE  
16 SERVICE. SUCH DETERMINATION SHALL INCLUDE AN EXAMINATION OF  
17 WHETHER THE PRIVATE SECTOR PROVIDER IS IN COMPLIANCE WITH ALL  
18 REQUIREMENTS OF THE LAW PERTAINING TO PRIVATE EMPLOYERS  
19 INCLUDING, BUT NOT LIMITED TO, THE PROVISION OF WORKER'S  
20 COMPENSATION AND UNEMPLOYMENT INSURANCE BENEFITS, AND ANY  
21 OTHER INFORMATION WHICH THE STATE AGENCY DEEMS RELEVANT TO  
22 DETERMINE THE FINANCIAL CAPACITY OF THE PROVIDER.

23 (3) IF A STATE AGENCY CONDUCTS THE EVALUATION DESCRIBED  
24 IN SUBSECTION (2) OF THIS SECTION AND DETERMINES THAT THE  
25 STATE WOULD BENEFIT FROM THE PRIVATIZATION OF A SERVICE, THE  
26 AGENCY SHALL THEN SUBMIT SUCH EVALUATION TO THE OFFICE OF

1 STATE PLANNING AND BUDGETING FOR REVIEW. THE OFFICE OF STATE  
2 PLANNING AND BUDGETING SHALL PREPARE A DETAILED COST ANALYSIS  
3 COMPARING THE COST OF PROVIDING THE SERVICE BY THE STATE AND  
4 THE COST IF THE SERVICE IS PROVIDED BY CONTRACTING WITH A  
5 PRIVATE SECTOR PROVIDER. IF SUCH COST ANALYSIS SHOWS THAT THE  
6 STATE CAN SAVE AT LEAST TEN PERCENT BY PRIVATIZING THE  
7 SERVICE, THE OFFICE OF STATE PLANNING AND BUDGETING SHALL  
8 APPROVE THE REQUEST BY THE STATE AGENCY TO PRIVATIZE SUCH  
9 SERVICE.

10 (4) THE FOLLOWING SERVICES SHALL NOT BE PRIVATIZED:

11 (a) ANY CORE FUNCTION OF GOVERNMENT WHICH INVOLVES  
12 POLICY-MAKING OR ENFORCEMENT FUNCTIONS, OR THE EXERCISE OF  
13 DISCRETIONARY POWERS, AS SUCH POWERS ARE DEFINED BY THE  
14 DEPARTMENT OF PERSONNEL, OR THE ACCESS TO CONFIDENTIAL  
15 INFORMATION;

16 (b) SERVICES WHICH CANNOT BE ACCURATELY OR EFFICIENTLY  
17 MEASURED IN REGARD TO THE COST OR QUALITY OF THE PRIVATIZED  
18 SERVICE.

19 24-50.7-104. Authority to adopt rules. THE STATE  
20 PERSONNEL DIRECTOR MAY ADOPT SUCH RULES AND REGULATIONS AS ARE  
21 NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

22 SECTION 3. Effective date. This act shall take effect  
23 July 1, 1992.

24 SECTION 4. Safety clause. The general assembly hereby  
25 finds, determines, and declares that this act is necessary

1 for the immediate preservation of the public peace, health,  
2 and safety.

State Affairs Resolution B

SENATE JOINT RESOLUTION 92-

1 CONCERNING THE APPOINTMENT OF A SUBCOMMITTEE BY THE  
2 LEGISLATIVE COUNCIL FOR THE PURPOSE OF MAKING  
3 RECOMMENDATIONS FOR THE REORGANIZATION OF STATE  
4 GOVERNMENT.

5 WHEREAS, The basic organizational structure of Colorado  
6 state government has not been significantly changed for  
7 twenty-five years; and

8 WHEREAS, No comprehensive study has been conducted of how  
9 the structure of the executive branch could be aligned to  
10 accomplish the grouping of like functional responsibilities;  
11 and

12 WHEREAS, Severe state budget constraints underscore the  
13 need to examine means of increasing the efficient delivery of  
14 government services; and

15 WHEREAS, Functional realignment of the structure of the  
16 executive branch was surveyed during 1991 interim meetings of  
17 the Joint State Affairs Committee; and

18 WHEREAS, The governor's office has pledged its  
19 cooperation in the reorganization effort; and

20 WHEREAS, Functional realignment of the executive branch  
21 is an arduous task that extends beyond the normal activities  
22 of a legislative interim committee; now, therefore,

23 Be It Resolved by the Senate of the Fifty-eighth General  
24 Assembly of the State of Colorado, the House of  
25 Representatives concurring herein:

26 (1) That the Legislative Council is hereby directed to  
27 appoint a subcommittee comprised of members of the Senate  
28 State, Veterans, and Military Affairs Committee and the House  
29 State Affairs Committee for the purpose of making

1 recommendations for a comprehensive functional reorganization  
2 of the executive branch of state government;

3 (2) That the reorganization subcommittee meet  
4 periodically with members and staff of the Joint Budget  
5 Committee and with the director and staff of the Office of  
6 State Planning and Budgeting to jointly evaluate the  
7 realignment of executive agencies along functional lines;

8 (3) That the work of the reorganization subcommittee  
9 continue throughout 1992 and the first six months of 1993, and  
10 that the subcommittee report its findings and recommendations  
11 to the full membership of the interim Joint State Affairs  
12 Committee on or about June 15, 1993, to enable the joint  
13 committee to evaluate said findings and recommendations and  
14 report to the Legislative Council in November, 1993, for  
15 transmission to the General Assembly; and

16 (4) That all expenditures incurred in the conduct of the  
17 study directed by this resolution shall be approved by the  
18 chairman of the Legislative Council and shall be paid by  
19 vouchers and warrants drawn as provided by law and from funds  
20 allocated for legislative studies from appropriations made by  
21 the General Assembly.

# **JOINT LEGISLATIVE TRANSPORTATION COMMITTEE**

## **Members of the Committee**

Senator Bonnie Allison,  
Co-Chairman

Senator Pat Pascoe

Senator Ray Powers

Senator Don Sandoval

Senator Bill Schroeder

Senator MaryAnne Tebedo

Senator Dave Wattenberg

Representative Norma Anderson,  
Co-Chairman

Representative Vickie Agler

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Representative Charles Duke

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Representative Stan Johnson

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# **JOINT LEGISLATIVE TRANSPORTATION COMMITTEE**

## **Summary of Recommendations**

Senate Joint Resolution 91-32 established the legislative committees of reference, meeting jointly, as interim committees for 1991. The Joint Transportation Committee was directed to study 1) metropolitan area transportation needs and 2) the economic deregulation of intrastate motor carriers. These topics were chosen in response to legislation not resolved during the 1991 session.

House Bill 91-1265, Concerning the Financing of the State's Transportation System, and Creating the Metropolitan Transportation Authority (MTA), provided for the governance of the MTA, and for the financing mechanisms, program projects, intergovernmental agreements, and the fiscal impact of creating the MTA. The bill was approved by the House but lost on second reading in the Senate.

House Bill 91-1185, Concerning the Economic Regulation of Certain Carriers by Motor Vehicle, provided for flexible rates to be charged by contract and common carriers of property. The bill would have also 1) established a presumption that a need exists for new carriers to enter the market, and 2) shifted the burden of proof for a new route from the applicant to those carriers protesting the applicant's request to provide service. House Bill 91-1185 failed in the House Transportation Committee. The Joint Legislative Transportation Committee was directed to explore the issues of these two bills.

The committee held four days of meetings during the interim, hearing public testimony from individuals, interest groups, and governmental entities. One meeting focusing on metropolitan transportation issues produced the following points of concern for those testifying before the committee.

- New revenue sources besides gas taxes are needed for metropolitan transportation improvements;
- The Regional Transportation District (RTD) will have a light rail system in Denver and high occupancy vehicle lanes on I-25 open by 1993;
- The Department of Transportation (DOT) expressed concerns about a possible referendum on metropolitan transportation needs and the need for new revenue sources in addition to fuel taxes;
- DOT also reported that the construction and improvement of metropolitan area highways involves the issue of land use planning within the six county area;
- The disposition of off-the-top Highway Users Tax Fund (HUTF) monies needs to be examined (Off-the-top monies are appropriated to various state agencies before HUTF money is distributed to counties.);

- E-470 Public Highway Authority is completing Segment I of the highway and has contracted with Morrison-Knudsen to locate financing for Segment II;
- E-470 is concerned about how any metropolitan area transportation plans will affect the authority;
- E-470 does not expect state money to complete its construction;
- W-470 Public Highway Authority is continuing to work on agreements for a roadway among the concerned entities; and
- The Regional Air Quality Council (RAQC) reported that suburb-to-suburb traffic is a major issue, especially for the daily two and one-half hour, morning and evening rush periods.

A second meeting focused on the topic of economic deregulation of the Colorado intrastate motor carrier industry. Persons testifying represented the Department of Regulatory Agencies, the Public Utilities Commission (PUC), the Colorado Motor Carriers Association, and the Association for Competitive Transportation, and other interest groups. Proponents of deregulation testified that Colorado small businesses are harmed by excessive intrastate motor freight rates and the high cost of applying before the PUC for a carrier permit. They believed that consumers would realize lower prices if trucking were deregulated because transportation costs would go down.

Opponents of deregulation stated that small communities would suffer if freight carriers were deregulated because shippers would serve only the most profitable routes. They expressed the concerns that deregulation would lead to a high rate of bankruptcies, destructive competition, and deterioration of truck safety. Both proponents and opponents of deregulation agreed that PUC regulations and the rate setting process could be amended to allow more flexibility for motor carriers. They also agreed that unprocessed agriculture products commodities should be deregulated.

## **Committee Recommendations**

The Joint Transportation Committee recommends the following three bills, all relating to the regulation of motor vehicle carriers, for consideration during the 1992 legislative session. These bills represent the committee's efforts to provide some flexibility in PUC regulations.

### **Standing to Protest an Application — Transportation Bill A**

- Transportation Bill A requires that a motor vehicle carrier seeking to protest the issuance of a certificate of public convenience and necessity shall establish standing to file such a protest. Establishing standing means that any carrier filing a protest is required to provide proof that it is authorized to provide, and



is actively engaged in providing, service over a route or for a territory which is the subject of the application at issue.

The bill also eliminates the requirement that an application for reconsideration, reargument, and rehearing be filed as a condition precedent to an action in district court in cases where exceptions have been filed. This provision eliminates one step in the current requirements for consideration of an application for a certificate of public convenience and necessity for freight carriage.

### **Limited Rate Adjustments - Transportation Bill B**

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- Transportation Bill B allows motor vehicle carriers to increase or decrease their rates for transporting property by not more than seven percent above or below their most recent rates set by the PUC. This allowance does not apply to motor vehicle rates for carriage of persons. A motor vehicle carrier may vary its rates as often as it deems necessary and is required to notify the PUC of each rate change within ten days of the effective date of such a change. The intent of the bill is to allow carriers to respond to market conditions without the cost and delay of applying to the PUC for every rate change.

Nothing in the bill is to be interpreted as permitting a motor vehicle carrier to discriminate among customers in its rates or charges, or otherwise to violate the statutory authority of PUC to regulate motor freight carriage. The effective date of the bill is July 1, 1992.

### **Carriage of Unprocessed Agriculture Products - Transportation Bill C**

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- Transportation Bill C exempts persons transporting unprocessed agricultural commodities by motor vehicle from regulation as public utilities. The term "agricultural commodities" is defined as any unprocessed agricultural, horticultural, or viticultural commodities. The definition excludes timber, feed grains, hay, livestock, poultry, poultry products, dairy products, bees, and honey. Agricultural motor carriers are required 1) to obtain a minimum amount of \$750,000 combined single limit liability insurance and 2) to register with the PUC. The effective date of the bill is July 1, 1992.

Two additional bills were proposed but the committee chose not to recommend either: a bill which would have totally deregulated intrastate motor freight carriers and a second which would have phased down and eventually eliminated off-the-top HUTF appropriations. The committee also decided not to make any recommendations regarding metropolitan transportation planning or financing.

## **Materials Available**

The following materials relevant to the Joint Transportation Committee hearings are available from the Legislative Council office:

1. Summary of Meetings:
  - July 16, 1991 -- metropolitan transportation needs;
  - August 6, 1991 -- deregulation of motor freight carriers;
  - September 6, 1991 -- metropolitan transportation planning issues and economic deregulation of motor freight carriers; and
  - September 21, 1991 -- discussion and approval of bills.
2. Memorandum dated June 20, 1991, "Specific Ownership Tax."
3. Memorandum dated November 1, 1991, "Description of Off-the-Top Appropriations from the Highway Users Tax Fund - FY 1991-91."
4. Memorandum dated September 30, 1991, "Denver Regional Council of Governments" (discusses metropolitan planning organizations).
5. Memorandum dated July 13, 1991, "Distribution of County Share of Highway Users Tax Fund Revenues."
6. Letter from Suzanne Fasing, Executive Director, PUC, to Representative Norma Anderson and Senator Bonnie Allison, dated September 18, 1991. The letter responds to the committee's request for information from PUC regarding several areas of motor vehicle carriage regulation by PUC.

1 40-10-105. Rules for issuance of applications - standing

2 to protest - judicial review. (3) A MOTOR VEHICLE CARRIER

3 SEEKING TO FILE A PROTEST IN OPPOSITION TO THE ISSUANCE OF A

4 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR CARRIAGE

5 OF PROPERTY BY MOTOR VEHICLE SHALL ESTABLISH STANDING TO FILE

6 SUCH PROTEST. STANDING TO PROTEST SHALL BE ESTABLISHED BY

7 SUBMITTING PROOF OF THE FOLLOWING WITH THE INITIAL PLEADING:

8 (a) THAT THE MOTOR VEHICLE CARRIER IS DULY AUTHORIZED

9 PURSUANT TO A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

10 TO OPERATE A MOTOR VEHICLE FOR THE CARRIAGE OF PROPERTY OVER A

11 ROUTE OR FOR A TERRITORY WHICH IS ALSO THE SUBJECT OF THE

12 APPLICATION AT ISSUE; AND

13 (b) THAT THE MOTOR VEHICLE CARRIER IS CURRENTLY ENGAGED

14 IN PROVIDING THE SPECIFIC SERVICE IT IS SEEKING TO PROTEST.

15 (4) WHEN AN APPEAL OF A COMMISSION DECISION UNDER THIS

16 SECTION HAS BEEN MADE BY FILING EXCEPTIONS PURSUANT TO SECTION

17 40-6-109, AND THE COMMISSION HAS RENDERED A FINAL DECISION ON

18 SUCH EXCEPTIONS AS PROVIDED IN ARTICLE 6 OF THIS TITLE, ANY

19 PARTY THERETO MAY, WITHIN THIRTY DAYS AFTER THE FINAL

20 DECISION, APPLY DIRECTLY TO A DISTRICT COURT OF THE STATE OF

21 COLORADO FOR JUDICIAL REVIEW PURSUANT TO THE PROVISIONS OF

22 SECTION 40-16-115.

23 SECTION 2. 40-6-114, Colorado Revised Statutes, 1984

24 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW

25 SUBSECTION to read:

26 40-6-114. Reconsideration, reargument, or rehearing -

Transportation Bill A

A BILL FOR AN ACT

1 CONCERNING THE APPLICATION PROCESS FOR THE ISSUANCE OF

2 CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR

3 CARRIAGE OF PROPERTY BY MOTOR VEHICLE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Establishes threshold standing requirements to be met by a motor vehicle carrier seeking to protest the issuance of a certificate of public convenience and necessity for carriage of property by motor vehicle. Requires such carrier to provide proof that it is duly authorized to provide and is currently engaged in providing service which is the subject of such application. Eliminates the requirement that an application for reconsideration, reargument, and rehearing be filed as a condition precedent to an action in district court in cases where exceptions have been filed.

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

5 SECTION 1. 40-10-105, Colorado Revised Statutes, 1984

6 Repl Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW

7 SUBSECTIONS to read:

1 application - basis of review - order - exception.  
2 (6) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS REQUIRING A  
3 PARTY SUBJECT TO A FINAL DECISION BY THE COMMISSION ON  
4 EXCEPTIONS FILED PURSUANT TO SECTION 40-10-105 TO FILE AN  
5 APPLICATION FOR RECONSIDERATION, REARGUMENT, OR REHEARING AS A  
6 CONDITION PRECEDENT TO COMMENCING AN ACTION FOR JUDICIAL  
7 REVIEW IN A DISTRICT COURT OF THE STATE OF COLORADO PURSUANT  
8 TO THE PROVISIONS OF SECTION 40-6-115.  
9 SECTION 3. 40-6-115 (1), Colorado Revised Statutes,  
10 1984 Repl. Vol., is amended to read:  
11 40-6-115. Review by district court - mandamus.  
12 (1) Within thirty days after the application for a rehearing,  
13 reargument, or reconsideration is denied by the commission, OR  
14 WITHIN THIRTY DAYS AFTER THE COMMISSION'S FINAL DECISION ON AN  
15 APPLICATION FOR EXCEPTIONS FILED PURSUANT TO SECTION 40-10-105  
16 (4), the applicant may apply to the district court for a writ  
17 of certiorari or review for the purpose of having the  
18 lawfulness of the final decision inquired into and determined.  
19 Such writ shall be made returnable not later than thirty days  
20 after the date of issuance and shall direct the commission to  
21 certify its record in the proceeding to the court. On the  
22 return day, the cause shall be heard by the district court,  
23 unless, for a good reason shown, the same be continued. No  
24 new or additional evidence may be introduced in the district  
25 court, but the cause shall be heard on the record of the  
26 commission as certified by it. The commission and each party

1 to the action or proceeding before the commission shall have  
2 the right to appear in the review proceedings.

3 SECTION 4. Effective date. This act shall take effect  
4 July 1, 1992.

5 SECTION 5. Safety clause. The general assembly hereby  
6 finds, determines, and declares that this act is necessary  
7 for the immediate preservation of the public peace, health,  
8 and safety.

Transportation Bill B

A BILL FOR AN ACT

1 CONCERNING AUTHORIZATION FOR MOTOR VEHICLE CARRIERS TO MAKE  
2 LIMITED ADJUSTMENTS TO THEIR RATES FOR TRANSPORTING  
3 PROPERTY WITHOUT APPROVAL BY THE PUBLIC UTILITIES  
4 COMMISSION.

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Allows motor vehicle carriers to increase or decrease their rates for transporting property within specified percentage limits without requesting a rate change from the public utilities commission. Requires the carrier to give subsequent notice to the public utilities commission. Provides that a carrier may not use this rate-setting authority to charge discriminatory rates.

---

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

6 SECTION 1. 40-3-104 (1) (a), Colorado Revised Statutes,  
7 1984 Repl. Vol., as amended, is amended to read:

8 40-3-104. Changes in rates - notice. (1) (a) In the  
9 case of a public utility other than a rail carrier, subject to

1 the provisions of paragraph (c) of this subsection (1) AND THE  
2 PROVISIONS OF SECTION 40-3-104.6, no change shall be made by  
3 any public utility in any rate, fare, toll, rental, charge, or  
4 classification or in any rule, regulation, or contract  
5 relating to or affecting any rate, fare, toll, rental, charge,  
6 classification, or service or in any privilege or facility,  
7 except after thirty days' notice to the commission and the  
8 public. Notwithstanding the provisions of this paragraph (a),  
9 changes in intrastate telecommunications services which have  
10 been determined by the commission to be competitive in nature,  
11 pursuant to the provisions of article 15 of this title, shall  
12 not be subject to any notice requirement, including, but not  
13 limited to, any requirement in this section whether or not  
14 denoted as a notice requirement.

15 SECTION 2. Part 1 of article 3 of title 40, Colorado  
16 Revised Statutes, 1984 Repl. Vol., as amended, is amended BY  
17 THE ADDITION OF A NEW SECTION to read:

18 40-3-104.6. Special provisions for motor vehicle carrier  
19 rate setting. (1) NOTWITHSTANDING THE PROVISIONS OF SECTIONS  
20 40-3-102, 40-3-104, AND 40-6-111 AND ANY OTHER PROVISION OF  
21 THIS TITLE TO THE CONTRARY, ANY MOTOR VEHICLE CARRIER AS  
22 DEFINED IN SECTION 40-10-101 (4) MAY VARY ITS RATES FOR  
23 TRANSPORTING PROPERTY BY NOT MORE THAN SEVEN PERCENT ABOVE OR  
24 BELOW ITS MOST RECENT RATES SET BY THE PUBLIC UTILITIES  
25 COMMISSION. SUCH RATE CHANGES ARE EFFECTIVE ON THE DATE  
26 DETERMINED BY THE MOTOR VEHICLE CARRIER. THIS SECTION SHALL

1 NOT APPLY TO THE MOTOR VEHICLE CARRIER'S RATES FOR CARRYING  
2 PERSONS.

3 (2) A MOTOR VEHICLE CARRIER MAY VARY ITS RATES AS  
4 PROVIDED IN SUBSECTION (1) OF THIS SECTION AS OFTEN AS IT  
5 DEEMS NECESSARY.

6 (3) A MOTOR VEHICLE CARRIER WHO MAKES A RATE CHANGE  
7 UNDER THIS SECTION SHALL NOTIFY THE PUBLIC UTILITIES  
8 COMMISSION OF EACH SUCH RATE CHANGE WITHIN TEN DAYS OF THE  
9 EFFECTIVE DATE OF SUCH CHANGE ON A FORM APPROVED BY THE PUBLIC  
10 UTILITIES COMMISSION.

11 (4) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO  
12 PERMIT A MOTOR VEHICLE CARRIER TO DISCRIMINATE AMONG CUSTOMERS  
13 IN ITS RATES OR CHARGES, OR OTHERWISE TO VIOLATE THE  
14 PROVISIONS OF SECTION 40-3-102.

15 SECTION 3. Effective date. This act shall take effect  
16 July 1, 1992.

17 SECTION 4. Safety clause. The general assembly hereby  
18 finds, determines, and declares that this act is necessary  
19 for the immediate preservation of the public peace, health,  
20 and safety.

Transportation Bill C

A BILL FOR AN ACT

1 CONCERNING DEREGULATION OF THE TRANSPORT OF UNPROCESSED  
2 AGRICULTURAL COMMODITIES BY MOTOR VEHICLE.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Exempts persons transporting unprocessed agricultural commodities by motor vehicle from regulation as public utilities.

---

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

4 SECTION 1. 40-16-101 (1) and (4), Colorado Revised  
5 Statutes, 1984 Repl. Vol., as amended, are amended, and the  
6 said 40-16-101 is further amended BY THE ADDITION OF THE  
7 FOLLOWING NEW SUBSECTIONS, to read:

8 40-16-101. Definitions. As used in this article, unless  
9 the context otherwise requires:

10 (1) ~~"Charter or scenic bus" means a motor vehicle for~~  
11 ~~the transport of people with a minimum capacity of thirty-two~~

1 ~~passengers which is hired to provide services for a person or~~  
2 ~~group of persons travelling from one location to another for a~~  
3 ~~common purpose. A charter or scenic bus does not provide~~  
4 ~~regular route service from one location to another.~~  
5 "AGRICULTURAL MOTOR CARRIER" MEANS A PERSON WHO TRANSPORTS  
6 AGRICULTURAL COMMODITIES BY MOTOR VEHICLE FOR HIRE.

7 (1.3) "AGRICULTURAL COMMODITIES" MEANS ANY UNPROCESSED  
8 AGRICULTURAL, HORTICULTURAL, OR VITICULTURAL COMMODITIES.  
9 "AGRICULTURAL COMMODITIES" SHALL NOT INCLUDE TIMBER, FEED  
10 GRAINS, HAY, LIVESTOCK, POULTRY, POULTRY PRODUCTS, DAIRY  
11 PRODUCTS, BEES, OR HONEY.

12 (1.5) "CHARTER OR SCENIC BUS" MEANS A MOTOR VEHICLE FOR  
13 THE TRANSPORT OF PEOPLE WITH A MINIMUM CAPACITY OF THIRTY-TWO  
14 PASSENGERS WHICH IS HIRED TO PROVIDE SERVICES FOR A PERSON OR  
15 GROUP OF PERSONS TRAVELLING FROM ONE LOCATION TO ANOTHER FOR A  
16 COMMON PURPOSE. A CHARTER OR SCENIC BUS DOES NOT PROVIDE  
17 REGULAR ROUTE SERVICE FROM ONE LOCATION TO ANOTHER.

18 (4) "Motor vehicle carrier exempt from regulation as a  
19 public utility" means persons who offer services as couriers  
20 OR AGRICULTURAL MOTOR CARRIERS or offer services using charter  
21 or scenic buses, luxury limousines, and off-road scenic  
22 charters.

23 SECTION 2. The introductory portion to 40-16-104 (1),  
24 Colorado Revised Statutes, 1984 Repl. Vol., as amended, is  
25 amended, and the said 40-16-101 (1) is further amended BY THE  
26 ADDITION OF A NEW PARAGRAPH, to read:

1 40-16-104. Insurance requirements. (1) Each motor  
2 vehicle carrier exempt from regulation as a public utility  
3 shall maintain a general liability insurance policy. Such an  
4 insurance policy shall be issued by some insurance carrier or  
5 insurer authorized to do business in Colorado for each motor  
6 vehicle of such carrier. For those motor vehicle carriers  
7 exempt from regulation as public utilities specified in  
8 ~~paragraphs-(a)-to-(e)~~ PARAGRAPHS (a) TO (d) of this subsection  
9 (1), such liability insurance shall be in the following  
10 minimum amounts:

11 (d) FOR AGRICULTURAL MOTOR CARRIERS, A MINIMUM AMOUNT OF  
12 SEVEN HUNDRED FIFTY THOUSAND DOLLARS COMBINED SINGLE LIMIT  
13 LIABILITY.

14 SECTION 3. 40-7-113 (1) (f), Colorado Revised Statutes,  
15 1984 Repl. Vol., as amended, is amended to read:

16 40-7-113. Civil penalties - fines. (1) In addition to  
17 any other penalty otherwise authorized by law and except as  
18 otherwise provided in subsections (3) and (4) of this section,  
19 any person who violates any provision of article 10, 11, 13,  
20 14, or 16 of this title or any rule or regulation promulgated  
21 by the commission pursuant to such articles, which provision  
22 or rule or regulation is applicable to such person, may be  
23 subject to fines as specified in the following paragraphs:

24 (f) Any person who operates a charter or scenic bus as  
25 defined in section 40-16-101 ~~(1)~~ (1.5), a ~~courier-as-defined~~  
26 ~~in-section-40-16-101-(2)~~, a luxury limousine as defined in

1 section 40-16-101 (3), or an off-road scenic charter as  
2 defined in section 40-16-101 (5) OR WHO OPERATES AS A COURIER  
3 AS DEFINED IN SECTION 40-16-101 (2) OR AS AN AGRICULTURAL  
4 MOTOR CARRIER AS DEFINED IN SECTION 40-16-101 (1), without  
5 having first registered with the commission as required by  
6 section 40-16-103, may be assessed a civil penalty of not more  
7 than one hundred dollars.

8 SECTION 4. Effective date. This act shall take effect  
9 July 1, 1992.

10 SECTION 5. Safety clause. The general assembly hereby  
11 finds, determines, and declares that this act is necessary  
12 for the immediate preservation of the public peace, health,  
13 and safety.



# **JOINT LEGISLATIVE SUNRISE AND SUNSET REVIEW COMMITTEE**

## **Members of the Committee**

Senator Bob Schaffer,  
Chairman  
Senator MaryAnne Tebedo  
Senator Bob Martinez

Representative David Owen  
Representative Faye Fleming  
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## **SUMMARY OF RECOMMENDATIONS**

The Joint Legislative Sunrise and Sunset Review Committee was established in 1985 as an ongoing interim committee. It is charged with performing the functions and duties relating to the termination of specific divisions, boards and agencies, and with considering proposals for the new regulation of occupations and professions not presently regulated (section 2-3-1201, et seq., C.R.S., and Rule 35 of the Joint Rules of the Senate and House of Representatives).

During the 1991 interim, the committee reviewed findings and recommendations prepared by the Office of Policy and Research in the Department of Regulatory Agencies (DORA), and heard public testimony from concerned citizens, interest groups, and where appropriate, representatives of regulatory entities and advisory committees. The committee conducted nine sunrise reviews of applications for state occupational regulation, ten sunset reviews of existing state agency regulatory functions, and six advisory committee reviews. Due to the length and number of committee bills, eight bills have been omitted from this report. Copies of the omitted bills may be obtained from the office of Legislative Council (Room 029, State Capitol Building, Denver, Colorado, 80203; (303) 866-3521).

### **A. Sunset Reviews of Existing Regulatory Programs**

#### **Psychotherapy Boards**

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**RECOMMENDATION:** Bill A - Concerning the Practice of Psychotherapy, and, in Connection Therewith, Continuing the Licensing Authority of the Colorado State Board of Psychologist Examiners, the State Board of Social Work Examiners, the State Board of Licensed Professional Counselor Examiners, and the State Board of Marriage and Family Therapist Examiners, and Continuing the Disciplinary Authority of the State Grievance Board Over the Practice of Psychotherapy.

#### **State Board of Optometric Examiners**

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**RECOMMENDATION:** Bill B - Concerning the Regulation of the Practice of Optometry, and, in Connection Therewith, Continuing the State Board of Optometric Examiners.

### **Acupuncturists**

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**RECOMMENDATION:** Bill C - Concerning the Regulation of Acupuncturists, and in Connection Therewith, Continuing the Registration of Acupuncturists with the Director of the Division of Registrations and Amending Certain Provisions Relating to the Practice of Acupuncture.

### **Medication Administration**

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**RECOMMENDATION:** Bill D - Concerning the Delegation of Nursing Functions, and, in Connection Therewith, Regulating the Administration and Monitoring of Medications by Nonmedical Persons in Facilities in Which the Provision of Physical Health Care is not the Primary Statutory Purpose, and the Administration of Nutrition or Fluids Through Gastrostomy Tubes, and Making an Appropriation.

### **Division of Insurance**

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**RECOMMENDATION:** Bill E - Concerning the Regulatory Authority of the Division of Insurance. **(Not printed in this report.)**

**RECOMMENDATION:** Bill F - Concerning the Nonsubstantive Revision of the Laws Concerning Health Care Coverage Contained in Parts 1, 3, and 4 of Article 8 of Title 10 and Articles 16 Through 17 of Title 10, Colorado Revised Statutes, as Amended. **(Not printed in this report.)**

### **Colorado Motor Vehicle Dealer Licensing Board**

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**RECOMMENDATION:** Bill G - Concerning the Regulation of Occupations Relating to the Sale of Motor Vehicles, and, in Connection Therewith, Continuing the Motor Vehicle Dealer Licensing Board, Changing the Name of the Board, and Moving Certain Functions of the Board to the Executive Director of the Department of Revenue.

### **Colorado Manufactured Housing Licensing Board**

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**RECOMMENDATION:** Bill H - Concerning the Regulation of Manufactured Housing, and, in Connection Therewith, Continuing the Regulatory Authority of the Colorado Manufactured Housing Licensing Board and Amending Certain Provisions Relating to the Regulation of Manufactured Housing Dealers and Salespersons. **(Not printed in this report.)**

### **Notaries Public**

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RECOMMENDATION: Bill I - Concerning Notaries Public, and, in Connection Therewith, Continuing the Regulatory Authority of the Secretary of State With Respect Thereto.

### **Massage Parlor Code**

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RECOMMENDATION: Bill J - Concerning the Continuation of the Authority to License Massage Parlors That is Granted to Local Licensing Authorities Pursuant to the "Colorado Massage Parlor Code". (Not printed in this report.)

### **Fireworks Licensing**

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RECOMMENDATION: Bill K - Concerning the Continuation of the Licensing Functions of the Executive Director of the Department of Public Safety Relating to Fireworks. (Not printed in this report.)

## **B. Sunrise Review of Occupations Requesting State Regulation**

### **Lay Midwives**

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RECOMMENDATION: Bill L - Concerning the Practice of Midwifery, and, in Connection Therewith, Providing for the Registration of Midwives Within the Division of Registrations.

### **Financial Planners**

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RECOMMENDATION: Bill M - Concerning Financial Planners, and, in Connection Therewith, the Registration of Financial Planners With the Securities Commissioner.

### **Speech-Language Pathologists, Audiologists, and Hearing Aid Dealers**

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RECOMMENDATION: Bill N - Concerning the Violation of the "Colorado Consumer Protection Act" in Conjunction With the Sale of Hearing Aids.

### **Property Managers**

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**RECOMMENDATION: Bill O - Concerning the Management of Common Interest Communities. (Not printed in this report.)**

### **Plumbing Contractors**

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**RECOMMENDATION: Bill P - Concerning a Requirement That Persons Who Use the Term "Plumbing Contractor" Meet the Definition of Plumbing Contractor in Existence in 1991 Set Out in Section 12-58-102 (7) of the Colorado Revised Statutes. (Not printed in this report.)**

## **C. Sunset Review of Advisory Committees**

**RECOMMENDATION: Bill Q - Concerning Advisory Committees Scheduled for Sunset Review and Repeal July 1, 1992. (Not printed in this report.)**



# JOINT LEGISLATIVE SUNRISE AND SUNSET REVIEW COMMITTEE

## A. Sunset Reviews of Existing State Agency Regulatory Functions

### Statutory Authority and Responsibility

The General Assembly, finding that the state has produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations, established a system for the termination, continuation, or reestablishment of such agencies. The process had developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The Joint Legislative Sunrise Sunset Review Committee was created in 1985 and given the responsibility for such a system. The committee is charged with providing for the analysis and evaluation of such agencies to determine the least restrictive regulation consistent with the public interest.

The Department of Regulatory Agencies (DORA) is required to conduct an analysis and evaluation of the performance of each division, board, agency or each function of an agency that is scheduled for termination (section 24-34-104, et seq., C.R.S.). In its analysis, DORA is required to consider several factors regarding the need for the entity under review (24-34-104 (8), C.R.S.). The DORA report is completed one year before the termination date and sent to the Joint Legislative Sunrise and Sunset Review Committee no later than July 1. The report provides the basis for discussion in public hearings which the Sunrise Sunset Committee schedules for each sunset review during the legislative interim.

One division, eight boards, and five other regulatory programs, were reviewed during the 1991 interim:

- Psychotherapy Boards;
- State Board of Optometric Examiners;
- Acupuncturist Registration;
- Medication Administration;
- Division of Insurance;
- Motor Vehicle Dealer Licensing Board;
- Manufactured Housing Licensing Board;
- Notaries Public;
- Massage Parlor Code; and
- Fireworks Licensure.

## Committee Recommendations

### Psychotherapy Boards

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In 1961, the Colorado General Assembly created the Psychology Board to license psychologists and to discipline licensees engaged in unprofessional conduct. Over the years, state regulation of psychotherapists was expanded and refined. Following sunset reviews in 1986 and 1987, the committee recommended changes to Colorado law to address inadequate disciplinary actions by past boards against psychologists and social workers. In addition, the committee's 1987 bill created boards for licensing professional counselors and marriage and family therapists. The State Grievance Board was also established to hear and adjudicate complaints against all licensed and unlicensed therapists in the state. Each of the four licensing boards is comprised of seven members: five who practice within the given profession and two lay members. The Grievance Board is comprised of one member from each of the four licensed professions and four lay members; when disciplinary actions are being considered against a therapist, an augmentive panel comprised of an additional three members from each licensed group and from the area of certified school psychologists is also appointed. There are no provisions, however, that require unlicensed psychotherapists to sit on the Grievance Board.

Among the committee tasks for the 1991 interim was the review of the five existing mental health boards: the State Board of Psychologist Examiners; the State Board of Social Work Examiners; the State Board of Licensed Professional Counselor Examiners; the State Board of Marriage and Family Therapist Examiners; and the State Grievance Board. Controversial issues surrounding the regulation of psychotherapists attracted large numbers of both licensed and unlicensed practitioners to the two hearings.

Much of the hearing testimony and content of the DORA report centered on issues surrounding unlicensed therapists. These therapists are currently regulated under state law by the State Grievance Board. However, there is no way to identify unlicensed practitioners and their qualifications so that the public can make informed choices about obtaining treatment. Unlicensed therapists are also not required to help fund the costs associated with the Grievance Board, even though 31 percent of all complaints and 38 percent of all disciplinary actions taken by the board as of March 1991 were against unlicensed therapists. Unlicensed therapists argued that, because they are disciplined by the Grievance Board and could potentially be required to help fund the board, they should be allowed representation on the board.

Testimony also focused on the need to adjust the current definition of "psychotherapy" to make the Grievance Board's jurisdiction clearer and to help clarify those groups that are not intended to be included in the definition and regulation.

Groups specifically exempted from the definition/regulation include religious ministers, employment or rehabilitation counselors, employees of the Department of Social Services or county social service providers, and certified school psychologists.

Under the committee's recommendation in **Bill A**, all of these boards are continued through July 1, 2002. The bill creates a requirement for an open state directory with information on licensed and unlicensed psychotherapists. Information in the directory will include, among other things, disclosure statements, educational qualifications, years of experience, and methodology and/or therapeutic orientation. After January 1, 1993, no therapist may practice in the state if he or she is not listed in the directory. Failure to provide information for the directory could subject a therapist to a Class 3 misdemeanor. Other notable items that were adopted for inclusion in Bill A are as follows:

- Amendment of the current statutory definition of "psychotherapy" to state that it "follows a planned procedure of intervention which takes place on a regular basis over a period of time" and a requirement that the Grievance Board interpret the definition of "psychotherapy" in the "narrowest possible manner."
- Definition of "professional relationship" as an interaction that is deliberately planned or directed, or both, by the psychotherapist toward obtaining specific psychotherapeutic objectives, such as those set forth under the definition of "psychotherapy."
- Exemption from licensure requirements or the purview of the Grievance Board for certified drug and alcohol abuse counselors while they are practicing in a licensed Alcohol and Drug Abuse Division facility. Additional exemptions shall apply to custodial evaluations and domestic and child abuse evaluations undertaken in court cases.
- Expansion of Grievance Board to include an unlicensed psychotherapist and a provision that when disciplinary proceedings against an unlicensed therapist take place, the three augmentive board positions shall go to unlicensed therapists. The four original members of the board shall not have a direct involvement or interest in psychotherapy other than currently being or having been a consumer of such services.
- Provision that fees for funding the disciplinary, licensing, and directory components of the mental health law shall be paid by both licensed and unlicensed psychotherapists. Fees shall be as uniform as possible and shall be placed in a fund to be used for administrative costs of all programs.
- Requirement that clients sign a disclosure form upon an initial visit with a therapist.
- Granting of cease and desist powers to the Grievance Board over both licensed and unlicensed therapists, and provisions for an accused person to receive a timely hearing.
- Enforcement of Grievance Board subpoena power in Denver district courts.

- Grievance Board ability to take appropriate action against unlicensed therapists, such as letters of admonition and suspension from the directory.
- Better utilization of the board's time by delegating application reviews and other duties to staff.
- Same day meetings for all licensure boards to enable time for the exchange of information and experiences among the different boards.

### **State Board of Optometric Examiners**

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The State Board of Optometric Examiners, falling under the supervision of the Division of Registrations, consists of seven members: five must be optometrists; and two are members-at-large, one of whom cannot have any direct interest in any profession, agency, or institution providing health services. As established in section 12-40-101 et seq., C.R.S., the board is responsible for handling the licensure of optometrists and the disciplinary actions against licensed optometrists who violate provisions of the law.

In its sunset review, DORA recommended the continuation of the board functions, stating that regulation of optometrists is necessary because optometrists work independently and may use invasive techniques that could seriously injure patients.

Optometrists testifying at the hearing argued for the expansion of their scope of practice to include the treatment of ailments such as iritis and glaucoma. Some physicians argued against allowing optometrists to provide additional diagnoses and treatments stating that optometrists do not have enough training to properly diagnose many problems such as systemic diseases.

The committee voted to continue the State Board of Optometric Examiners through **Bill B**. Expansion of an optometrist's scope of practice, however, was not included. The bill requires that optometrists release medical records to patients. In addition, patients may obtain contact lens prescriptions upon written request, at the time the optometrist would otherwise replace a contact lens without any additional preliminary examination or fitting. Anyone who wishes to practice optometry in Colorado must be examined and meet the state's minimum acceptable levels of competence. Other bill provisions include:

- Addition of a licensed ophthalmologist to the board as a nonvoting, ex-officio member.
- Provision that an optometrist's authority to use prescription drugs to treat abnormal eye conditions is coextensive with an optometrist's authority to treat abnormal eye conditions in general.
- Clarification and expansion of grounds for disciplinary action.
- Amendment of penalties for violation of the act.

- Powers granted to the board including cease and desist power, as well as the ability to reconsider and reverse its own decisions.
- Testing for licensure.
- Exemptions from licensure requirements.

Due to concerns raised by DORA that the board had not been adequately disciplining violators of the act, the committee also required that a board representative report to the committee during the 1994 interim with specific information about disciplinary actions taken.

### **Acupuncturist Registration**

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In 1989, the General Assembly enacted legislation creating a registration program for acupuncturists within the Division of Registrations. The law allows acupuncturists an exemption under the Medical Practice Act provided that they abide by the provisions set out in Title 12, Article 29.5, C.R.S.

The Sunrise Sunset Committee, abiding by its requirement to review the registration program during the 1991 interim, recommends continuing the program. Significant DORA recommendations and other committee proposals contained in **Bill C** include:

- Exemptions from registration for physician extenders and students involved in a training or educational program who are supervised by a registered acupuncturist.
- Additional disclosure statement requirements including information about methods of treatment and techniques used, authorizations to practice that were issued by other jurisdictions in acupuncture or a related health field, and a signed statement of understanding that must be kept in a patient's file.
- Provision that inspections be conducted on a complaint basis rather than on a routine and mandatory basis.
- Clarification of grounds for disciplinary action or denial of registration.
- Requirements that acupuncturists report to the Division of Registrations any claims, judgements, administrative actions, or settlements against them for malpractice, or if they have committed a fraudulent insurance act.

### **Medication Administration**

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The program in the Health Facilities Division, Department of Health, for administration of medications by unlicensed persons in residential care facilities was also reviewed by the committee during the 1991 interim. Initially enacted into law in 1988 (section 25-1-107 (1) (ee), C.R.S.) this program enables authorized individuals

who are exempted from the Medical Practice Act to administer medications in residential care facilities. The establishment of the program alleviated problems facing residential care facilities and their patients at that time. The problems included:

- Many residential care facilities were violating the Medical Practice Act, the Nurse Practice Act, and the Colorado controlled substance act by helping patients take medication. This problem stemmed from the inability of these facilities to afford full-time nurses.
- Elderly and developmentally disabled patients at residential care facilities, who were unable to self-medicate, were facing institutionalization if the facilities were not able to have appropriate individuals administer medications.

Developing or approving medication administration training curricula and competency evaluation procedures is the responsibility of the Health Facilities Division. Residential care facilities are required to have an authorized medication administrator on staff in order to secure an annual operator's license.

In its sunset report, DORA recommended the continuation of the program and that it be moved from the Department of Health to the State Board of Nursing. DORA also suggested amending the Nurse Practice Act to allow nurses to delegate nursing functions such as medication administration and monitoring to unlicensed individuals. DORA also raised concerns that the current program was not effectively enforcing the requirements that residential care facilities employ an authorized person to administer medications, and that settings for establishing additional medication administration training should be expanded to include other facilities and programs.

The committee voted to continue the medication administration program through July 1, 1998. Under provisions in **Bill D**, those who monitor the administration of medication will also be included in the program. The committee decided to keep the program in the Department of Health but to require the division to report back to the committee by July 1, 1993 on the status of the medication administration and monitoring program.

Similar training programs shall also be expanded to the Department of Corrections, Division of Youth Services, Division of Developmental Disabilities, and the Department of Social Services. These similar programs are also given a July 1, 1998 sunset date. Exemptions to the Colorado controlled substance act and the Medical Practice Act shall be provided to authorized persons who successfully complete these programs.

Bill D also defines "delegation" and "nursing function" and provides the parameters within which a licensed nurse can delegate nursing functions to individuals

not licensed as nurses. Provisions also allow medication aids to use "med minders" if the med minders have been filled and properly labeled. Med minders are devices that have compartments containing daily doses of a patient's medication.

During the 1991 Legislative Session, House Bill 1275 was enacted, which allows an unlicensed person to administer nutrition and fluids through a gastrostomy tube while under the guidance of a licensed doctor or nurse. House Bill 1275 limits this program to the Division of Developmental Disabilities and provides that those individuals who administer such gastrointestinal feeding must comply with the medication administration statute. Bill D extends the program for individuals who administer nutrition or fluids through gastrostomy tubes until July 1, 1998.

### **Division of Insurance**

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During the interim, the Colorado Division of Insurance underwent its third sunset review since 1977. In interpreting its legislative charge, the division developed a mission statement listing goals including:

- Developing a safe and sound insurance marketplace.
- Ensuring that rates are neither excessive, nor inadequate, nor unfairly discriminatory.
- Providing prompt and effective service to consumers, both public and insurers.
- Promoting access to affordable insurance.
- Providing meaningful reliable information to consumers, the insurance industry, and public policymakers.
- Ensuring that agent and broker licenses are issued promptly and in accordance with the law.
- Ensuring that staff have adequate tools and sufficient training to perform their jobs.
- Improving management systems.
- Ensuring that revenues are collected efficiently and effectively.

Following an audit in 1989, the division underwent a rather substantial reorganization. The division was expanded from two to eight sections in order to more effectively respond to tasks it must perform in accordance with the Colorado Insurance Code. But achieving an appropriate balance between the public welfare and the health of the insurance industry so that it may exist to serve the public is still the division's primary role. The division regulates 1,800 insurance companies, organizations, and funds providing insurance services in Colorado. As part of this responsibility, the division receives over 10,000 consumer complaints annually, as well as 39,000 telephone inquiries. The division also plays the important role of developing information on issues such as availability of health insurance, auto insurance coverage,

operation of the workers compensation system, and provision of insurance services at reasonable rates.

The growth and complexity of the insurance industry and the effect that has had on industry regulation was stressed in the DORA sunset report. With serious concerns about consumer protection and the prevention of insurance company insolvency, DORA strongly recommended the continuation of regulation by the Division of Insurance. DORA's 53 recommendations responded to four areas that had generated the most concern by consumers and regulators: insurance company failures; consumer issues; public policy issues; and nontraditional insurance/special programs.

Division representatives testified that the division was generally in support of the DORA recommendations. Very few industry representatives were present for the hearing, although a number of individuals raised concerns over suggested amendments to division authority to regulate endowment care cemeteries, preneed funeral contracts, and life care trust funds.

After hearing all testimony, the committee voted to recommend **Bill E**, continuing the regulatory functions of the Division of Insurance until July 1, 1997. The Insurance Commissioner's power is adjusted to include the clear ability to fine insurance companies, but the bill also provides for judicial review by the Colorado Court of Appeals on final agency actions taken by the Insurance Commissioner. In addition, the Commissioner of Insurance is allowed to assess late filing penalties for applications for regional home offices filed after a given deadline, and to impose a fine on insurers who do not make timely payment of a claim.

The commissioner's authority to regulate preneed funeral contracts is significantly updated and reorganized by **Bill E**, as is the commissioner's ability to exercise authority uniformly to all insurance companies, agents, and programs regulated by the division. Cemetery authorities no longer will be required to obtain a license from the commissioner but will be regulated by certain statutory requirements. In addition, the state Commissioner of Financial Services shall be responsible for the regulation of life care institutions. The bill makes this and other changes in regulatory authority consistent with the Division of Financial Services' current authority. Other significant provisions:

- Include parts of model acts provided by the National Association of Insurance Commissioners (NAIC) regarding managing general agents, reinsurance intermediaries, and credit for insurance.
- Include specific provisions for increased consumer protection, such as faster complaint processing and stricter disclosure requirements for insurers.
- Strengthen the examination of health insurers as well as hearing authority for complaints brought on by insurance rate hikes.
- Abolish of motor club licensure.



- Add mandatory provisions in life insurance policies allowing policy holders to have 15 days to opt for and obtain a refund.
- Require the division to establish minimum acceptable level of competency standards for examinations it requires of individuals in the insurance industry.
- Require an increase in credit insurance regulation by the division.
- Eliminate claims adjuster regulation by the division.

**A copy of the bill is available from the Legislative Council office.**

### **Health Insurance Statutes Recodification**

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In response to a recommendation by DORA that was presented during the sunset review of the Division of Insurance, the committee recommends **Bill F** to recodify and better organize fragmented health care statutes. As pointed out in the 1989 audit report of the Division of Insurance, "some statutes seem to be repetitious and cumbersome in their present form." The auditor's report also stated that the statutes tend to be vague and that each section's general provisions can be misleading. Statutes affected by this bill include parts 1,3, and 4 of Article 8 of Title 10 and Articles 16 through 17 of Title 10, Colorado Revised Statutes. The bill does not make any substantive changes to these existing provisions. **A copy of the bill, as well as a guide to help track the statutory location changes of the health insurance statutes, is available from the Legislative Council office.**

### **Motor Vehicle Dealer Licensing Board**

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The committee conducted a hearing to review the Motor Vehicle Dealer Licensing Board and the motor vehicle industry-related licensing functions of the Executive Director of the Department of Revenue. The Motor Vehicle Dealer Licensing Board was created within the Division of Motor Vehicles in 1971 to effectively oversee the industry. Currently, the board is responsible for licensing motor vehicle dealers, wholesalers, auctioneers, and motor vehicle salespeople; processing complaints; and disciplining licensees. Board duties also extend to developing tests to measure licensee competence, ruling on complaints passed on from the Division of Motor Vehicle's Investigative Unit, and promulgating appropriate rules and regulations. Nine members sit on the board, including four new car dealers, three used car dealers, and two consumers. The Executive Director of the Department of Revenue, on the other hand, handles similar responsibilities for overseeing distributors, manufacturers, distributor representatives, factory representatives, distributor branches, and factory branches.

Throughout the report submitted by DORA and the testimony at the interim hearing, concerns were raised about the board's effectiveness as a regulator of the industry. Although DORA recommended the continuation of the board, it suggested that the board's effectiveness could be improved through increasing its disciplinary options and correcting an unbalanced board membership that had resulted in a visible willingness to impose harsher sanctions against used car dealers than to new car dealers. The issue of board composition was discussed at length with many testifying that the consumer was not adequately represented on the board. Board members and employees of the Division of Motor Vehicles discussed the steps involved in the processing of complaints against licensees.

After careful consideration, the committee voted to recommend continuation of the Motor Vehicle Dealer Licensing Board through July 1, 1998. But provisions in **Bill G** require some substantial changes, including transfer of the board's licensing and registration functions to the Executive Director of the Department of Revenue. The board's name is changed to the Motor Vehicle Dealer Board. Other significant changes affecting the board's role are included in the bill:

- Requirement that the board function as a grievance board and that any grievance or complaint requiring a hearing be heard by an administrative law judge.
- Provision for the board to have power to review and modify all hearings and punishments handed down by an administrative law judge.
- Requirement that the board continue to develop policy for motor vehicle licensure.
- Change of the board membership to consist of five consumers, three new car dealers, and two used car dealers.
- Change of motor vehicle salespersons' requirements enabling them to register without being tested.
- Addition of licensure for "buyer representatives" who are agents working for an individual interested in purchasing a motor vehicle.

### **Colorado Manufactured Housing Licensing Board**

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Since 1961, the state of Colorado has regulated manufactured housing dealers and salespersons as a separate occupational group. Initial regulation began as a response to a large number of consumer complaints related to manufactured housing sales. This regulatory program is administered by the Colorado Manufactured Housing Licensing Board within DORA. The seven-member board consists of two public members, four licensed manufactured housing dealers with at least four years experience in the industry, and one representative of a financial institution engaged in manufactured housing financing. One of the at-large members must have been a resident of a manufactured home at the time of appointment to the board.

Although DORA concluded that continued regulation of the manufactured housing industry is necessary due to the significant and persistent number of consumer complaints, a number of concerns about the program were raised. Licensing fees have risen significantly due to a dramatic drop in the number of licensees over the years; in 1982 there were 151 licensed dealers and 700 licensed salesmen, but these totals have dropped to 85 licensed dealers and 158 licensed salesmen in 1991. DORA and industry representatives raised concerns that the cost of the regulation may be too much for members of the small industry to bear. DORA also raised questions about the industry-dominated board's willingness to aggressively enforce the law; the rate of dismissed consumer complaints has risen in recent years to 70 percent. It was noted, however, that shortcomings in statutory language, increased budgetary constraints, and a changing industry have made the board's task of administering the program and enforcing the act very difficult.

The committee recommends **Bill H** to continue the regulation of manufactured housing dealers and salespersons by the Manufactured Housing Licensing Board. Through this legislation, statutory definitions of "manufactured housing," "manufactured home," "manufactured housing dealer," "manufactured housing salesman," and "manufacturer" are clarified. The bill also adds license types that may be issued by the board and clarifies licensure exemptions and investigatory powers of the board. Other provisions of the bill include:

- Additions to and clarification of grounds for disciplinary action and suspension of licenses by the board.
- Restrictions on inspections by the board.
- Removal of provision that had required a place of business be used solely for and occupied for commercial purposes.
- Maintenance of the Manufactured Housing Recovery Fund.
- Request that the board repeal certain identified rules and regulations.

**A copy of the bill is available from the Legislative Council office.**

### **Notaries Public**

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The power of the Secretary of State to appoint and commission notaries public, as set forth in the Notaries Public Act, was reviewed during the interim. In general, notaries are empowered or authorized to attest to the genuineness of deeds or written instruments so that they may be used as evidence. Citizens of Colorado benefit from the notary public system which offers a relatively convenient measure of protection in certain transactions within Colorado as well as for interstate transactions. There are thousands of notaries public in Colorado.

When an individual meets a list of requirements, including the submission of an executed surety bond of \$5,000, the Secretary of State may then grant a commission. After four years, the commissioned individual must renew the commission, which also includes securing another \$5,000 bond.

Although both DORA and the committee agreed that the notary public system was greatly needed in Colorado, much concern was raised about the merit of current bonding requirements. Notaries pay \$50 to secure the required bond, which is not considered an onerous amount. But when consumers are financially harmed by the action of a notary, the \$5,000 bond offers very little recovery potential. DORA indicated that, in fact, injured parties rarely sue the notary or collect against the bond; they usually choose instead to sue the party with the most money. With very few claims being made against notary bonds, it was argued that the current bonding system is not working effectively.

**Bill I** continues the Notaries Public Act through July 1, 2002, and abolishes the bonding requirements of notaries. It establishes instead, as of July 1, 1992, a notary public recovery fund which shall be funded by a five dollar fee at the time of notary commission renewal and by any fees that may periodically be needed to maintain a fund balance of at least \$50,000. Additional provisions include procedures for individuals wishing to obtain payments from the fund and limits on recoveries of \$5,000 per claim. Notaries are also prohibited from notarizing blank documents under **Bill I**.

### **Massage Parlor Code**

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The local licensing of massage parlors began upon the enactment of the Massage Parlor Code (12-48.5-101, et seq., C.R.S.) in 1977. This legislation was responding to public and local law enforcement complaints about the proliferation of massage parlors in the state that were little more than fronts for prostitution. Training rooms of schools and amateur and professional athletic teams are exempt from the statutory definition of "massage parlor." Accredited massage therapists are also exempt.

In its sunset report, DORA recommended continuing the Massage Parlor Code. City and county officials indicated that the dramatic reduction in the number of massage parlors since 1977 proves that the state guidelines for local licensure have been effective in combating prostitution and related crimes.

After hearing brief testimony, the committee voted unanimously to continue licensing massage parlors by local authorities through the Colorado Massage Parlor Code. **Bill J** extends this licensing authority through July 1, 2002. **A copy of the bill is available from the Legislative Council office.**

## **Fireworks Licensure**

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The committee was required by statute to conduct a sunset review of the fireworks licensing program as administered by the Secretary of State's office and local licensing authorities. During the 1991 session, however, Senate Bill 51 transferred this regulatory authority from the Secretary of State to the Executive Director of the Department of Public Safety. These provisions are found in section 12-28-101, et seq., C.R.S. Among other changes to state law, Senate Bill 51 also brought fireworks stands under the purview of the state regulation.

Certain problems have existed in both the enforcement of state regulations and the theory behind the state licensure of fireworks dealers, according to the DORA report. DORA added that in the past, licensees who sold illegal fireworks did not have their licenses revoked. Given the recent changes under Senate Bill 51, DORA recommended that the committee continue the current state licensing program to provide the program with an opportunity to prove its effectiveness.

With this in mind, **Bill K** continues the fireworks licensing functions within the Department of Public Safety and extends the sunset date to July 1, 1995. **A copy of the bill is available from the Legislative Council office.**

## **B. Sunrise Review of Occupations Requesting State Regulation**

Applications for licensure, registration, or other forms of state regulation were submitted pursuant to section 24-34-104.1 (2), C.R.S., and the committee recommendations for each of the eleven occupational groups are listed below.

### **Lay Midwives**

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Two meetings were held to consider a request for licensure of lay midwives, also known as direct-entry midwives, submitted by the Colorado Midwives Association. Lay midwives provide a number of services for pregnant women and newborns, including prenatal care, attendance during labor and delivery, and postpartum care. Currently, the practice of lay midwifery is illegal in Colorado. The Medical Practice Act (12-36-106 (3), C.R.S.), however, allows certified nurse-midwives to perform services under the supervision of a licensed physician. These certified nurse-midwives are regulated by the State Board of Nursing, are registered nurses, have extensive training, and are certified by the American College of Nurse Midwives.

Through licensure, the applicants argued, they could help address Colorado's shortage of maternity care providers, offer lower cost maternity care, and guarantee a

standard of care for home birth consumers. The primary groups who seek midwifery care include well educated, middle-class people who choose midwifery care for philosophical reasons; low-income families who cannot afford standard hospital care; and women in rural areas who live many miles from hospitals that provide maternity care.

Testimony exposed the controversy surrounding this issue. Individuals representing various groups and associations from the medical community claimed that, although lay midwives could be successful in assisting with many home deliveries, they do not have adequate medical training to treat complications that may occur at birth. Many who testified argued that if legislation were enacted to encourage more home births, it should apply to certified nurse-midwives. There was also debate over whether the rights of an unborn child to have access to doctors at a hospital outweigh the rights of parents who wish to have a home birth assisted by a lay midwife.

DORA recommended against regulation of lay midwifery, indicating that the applicants had not proven regulation of lay midwives in Colorado would benefit the public or that such regulation would be enforceable. The agency raised concerns about prohibitive costs for licensing, the unanswered role of physicians in home births, the questionable availability of medications, and the implausibility of lay midwives being able to offer low-cost maternity care while also carrying malpractice insurance.

Although the committee was interested in the safety concerns raised by the medical community testimony, no hard evidence was presented that would suggest that assistance by lay midwives at home deliveries was a significant health or life risk. Consequently, the committee recommends **Bill L** which exempts the practice of lay midwifery from the Medical Practice Act. However, the bill does not grant lay midwives immunity from criminal or civil liability. Lay midwives will be required to register with the Division of Registrations and to provide disclosure statements to patients or subject themselves to a Class 3 misdemeanor. These patients also are to be provided with information about lay midwife regulation in Colorado, and the address and phone number of the complaints and investigations section of the Division of Registrations. The Director of the division shall be given the duty of establishing appropriate rules and regulations and an annual fee to fund the program, as well as the power to pursue court injunctions against lay midwives who violate provisions of this law. The bill establishes a sunset date of July 1, 1998 for this registration program.

## **Financial Planners**

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The Colorado Investment Advisers Act Committee submitted an application for the regulation of financial planners in Colorado. Along with the application was a copy of a proposed Colorado Investment Advisers Act, that would create a licensing program to be administered and enforced by the Colorado Securities Commissioner.

The applicants claimed that the regulation of financial planners in Colorado is not adequate. Under the federal Investment Advisers Act of 1940, investment advisers provide services related to the giving of advice about investing in securities. This federal act does not require an investment advisor to have a minimum level of competency. Colorado citizens currently must rely on overburdened officers of the Securities and Exchange Commission to police activities of investment advisors/financial planners in the state. It was also noted that Colorado is one of only seven states that has not enacted laws to regulate investment advisors/financial planners.

Much discussion took place during the hearings concerning differences, if any, between an investment advisor and a financial planner. It was agreed, however, that for purposes of state regulation, the group would include those who offer financial advice for compensation. Industry representatives argued that a carefully thought out definition of the individuals to be regulated would be needed to avoid objections and confusion from professionals offering such services in related businesses such as accounting and security brokering. DORA recommended the regulation of financial planners who give specific investment advice for compensation, but argued against regulation using the term "financial planner."

The committee, however, decided to recommend regulation using the term "financial planner." Both financial planners and financial planner representatives are required to register with the Securities Commissioner under the provisions of **Bill M**. This bill defines both a financial planner and a financial planner representative. An investment adviser who complies with the federal "Investment Advisers Act of 1940" and can provide the Securities Commissioner with copies of required disclosures under the federal act shall be exempt from registration requirements.

The bill requires that such exempt individuals shall not take possession of customer funds or securities, cannot receive either direct or indirect compensation for a securities transaction, and cannot offer or sell securities to someone to whom they are providing financial planning services. However, financial planners and financial planner representatives filing under the registration program can handle funds and securities of clients under certain conditions. These conditions include segregation of client accounts, detailed record keeping, periodic reports and specific disclosure to clients, periodic unannounced audits, and examination of records by the Securities Commissioner.

The Securities Commissioner may adopt rules and regulations regarding requirements for those applying for registration and may determine initial and annual registration fees. Penalties for not paying the fees are also detailed. References to financial planners and financial planner representatives are included within current provisions relating to securities broker-dealers and sales representatives. Bill M also sets forth civil penalties for violation of these provisions.

### **Speech Language Pathologists, Audiologists, and Hearing Aid Dealers**

Licensure of speech-language pathologists, audiologists, and hearing aid dealers was considered by the committee upon the request of the Colorado Speech-Language-Hearing Association. Due to the lack of state regulation of these three professions, the applicants claimed that consumers are being harmed by unqualified and unethical practitioners. The applicants also argued that licensure would help ensure that practitioners possessed at least minimum credentials and skills to provide speech or hearing health care and that a practitioner who harms a patient through incompetence or unethical behavior would be properly punished. Practitioners who are unable to practice or are barred from practicing in other states and move to Colorado to practice were mentioned as targets for the proposed regulation.

Currently, over 95 percent of audiologists and speech-language pathologists have obtained a Certificate of Clinical Competency from the American Speech-Language and Hearing Association. This certification requires at least a masters degree in the discipline, time in an internship, 300 supervised hours in a clinical environment, and passage of a national exam. There is also a certification program within the Colorado public school system where many audiologists and the majority of speech-language pathologists work.

In its sunrise report, DORA concluded that because consumers had not come forward with complaints of harm, additional regulation of speech-language pathologists and audiologists should not take place. Hearing aid dispensers, however, were another case entirely.

In 1975, the Board of Hearing Aid Dealers was created, requiring a license of anyone who fit, dispensed, or sold hearing aids. But the program was repealed in 1986, with claims that the board had not been adequately protecting hearing aid consumers. At the time, the Sunrise Sunset committee decided that strengthening the Colorado Consumer Protection Act would be a more effective method of regulating hearing aid dispensers. But in the five years since elimination of the board, consumer complaints filed with the Attorney General's office have risen steadily. With these facts in mind, DORA recommended that hearing aids should be regulated as medical devices



by the Department of Health. And in addition, sections of the Consumer Protection Act and the Colorado Food and Drug Act should be amended to accomplish the regulation.

The committee agreed that regulation of speech-language pathologists and audiologists was not merited, but that problems associated with ineffective regulation of hearing aid dealers needed to be addressed. Concerns were raised, however, that administrators of a regulatory program within the Department of Health, as recommended by DORA, would not have sufficient power to effectively enforce compliance by hearing aid dealers.

The committee recommends further definitions of hearing aid dealers who engage in deceptive trade practices by amending the Consumer Protection Act. **Bill N** contains the following major provisions:

- A receipt must be provided to customers explaining that any complaints can be filed with the Attorney General or the local district attorney's office, and the receipt must contain the phone number of each office.
- Each hearing aid sold must bear a warranty listing exact terms, including which items are refundable and nonrefundable.
- The seller must provide a receipt informing customers that they may return the purchased item within 30 days for a refund.
- The seller must respond in a timely manner to a reported problem with a purchased hearing aid.

The bill also exempts a cochlear implant (cochlear prosthesis) from the definition of "hearing aid." A cochlear implant is surgically buried in the skin near the ear and helps to directly stimulate the auditory nerve.

### **Property Managers**

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The Division of Real Estate submitted a request for state regulation of short-term rental property managers and condominium association managers. According to the division, persons employed as property managers who sell or lease real property do not need a real estate broker and sales license. A majority of the states require that such persons be regulated through licensure. In addition, property managers manage money for absentee groups on a regular basis. Because they regularly handle large sums of money through collections, disbursements, and accounting, there is concern that they can too easily misuse the funds by embezzlement, conversion, and fraud.

Although the committee decided not to amend the Real Estate Act to address concerns with licensure, **Bill O** is recommended with provisions which include:

- A requirement that property managers of common interest communities be bonded.
- A requirement that accounts handled by property managers be audited by a third party.
- The maintenance of a separate reserve account of a common interest property, prohibiting it to be commingled with moneys from reserve accounts of other common interest communities.

**A copy of the bill is available from the Legislative Council office.**

### **Plumbing Contractors**

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House Bill 1224, enacted in 1991, required the Sunrise Sunset Review Committee to study possible registration of plumbing contractors with the State Examining Board of Plumbers. Current statutes (12-58-102 (7), C.R.S.) define a plumbing contractor as "any person, firm, partnership, corporation, association, or other organization who undertakes or offers to undertake for another the planning, laying out, supervising, installing, or making of additions, alterations, and repairs in the installation of plumbing." The statute also states that someone acting as or calling themselves a plumbing contractor must be or must employ a full-time master plumber. The State Examining Board of Plumbers regulates master, journeyman, apprentice, and residential plumbers, but does not have authority to regulate plumbing contractors. Since 1982, however, counties and municipalities that have adopted a local plumbing code have been able to license plumbing contractors.

Plumbing contractors argued that mandatory state registration would benefit honest plumbing contractors and the citizens of Colorado by:

- Helping to assure the quality of plumbing work.
- Encouraging proper supervision of plumbing installations.
- Preventing unscrupulous master plumbers from selling their licenses to more than one plumbing business (thus allowing these businesses to satisfy the requirements for employment of a "plumbing contractor.")
- Protecting legitimate contractors from companies that offer cut-rate work due to nonpayment of unemployment taxes, workers' compensation, etc.

Citing the low number of complaints filed over the past few years with the Denver District Attorney's office, the Plumbing Board, the Citizen's Advocacy Office and the Better Business Bureau, DORA concluded that public harm by plumbing contractors was not substantial.

Although the committee did not see a need to regulate plumbing contractors, **Bill P** is recommended to prevent unqualified individuals or businesses from using the term

"plumbing contractor." It requires individuals using the term "plumbing contractor" to be qualified under the current definition of "plumbing contractor" as set forth in 12-58-102 (7), C.R.S. **A copy of the bill is available from the Legislative Council office.**

### **Tanning Facilities**

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A sunrise application submitted by the Colorado Dermatological Society proposed the state regulation of tanning facilities. There are an estimated 400 to 600 tanning establishments in Colorado and citizens are exposed to dangers including development of skin cancer and cataracts, severe burns, exploding bulbs, and the contraction of diseases from others who use the facilities. The applicants also pointed out that the U.S. Food and Drug Administration (FDA), the American Academy of Dermatology, and the American Medical Association all consider tanning booths and sunbeds to pose significant adverse health risks to individuals. The applicants asked that a regulatory program be established to include: placement of mandatory warning labels on tanning equipment warning clients of the potential danger of skin cancer; inspection of tanning facilities; and a requirement that the Division of Disease Control and Epidemiology collect data concerning tanning bed injuries.

In preparing its report on tanning facilities, DORA indicated that the FDA is already empowered to respond to complaints about tanning facilities but that it lacks the resources to provide enforcement. In addition, DORA concluded that actual harm to users of tanning facilities is small based on information provided by the FDA and the applicants. The potential harm, however, was the predominant problem. According to DORA, potential harm could be prevented through the amendment of the Pure Food and Drug Act (25-5-401, et seq., Colorado Revised Statutes), to include suntanning facilities. Additional recommendations for regulation included requiring tanning facilities to:

- Comply with federal and state regulations.
- Provide users with written warning statements about the hazards of using the tanning facilities.
- Report injuries occurring in the tanning facility to the Department of Health and the FDA.
- Pay fees collected by the Department of Health to help fund enforcement of violations.

After hearing testimony on the dangers of tanning facilities, the committee chairman stated that the applicants were requesting the regulation of machinery rather than regulation of a specific occupation or profession. Also questioned was whether consideration of such regulation fell within the purview of the Sunrise Sunset Committee. The committee voted to reject recommendations to regulate tanning

facilities and suggested that the Department of Health pursue legislation for introduction during the 1992 session.

### **Professional Boxing**

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In 1976, a sunset review of the state boxing commission exposed a number of disturbing problems with the commission, including the setting of arbitrary licensure standards, violations of the state sunshine law, and accusations of racial discrimination. The following year, Senate Bill 418 repealed the state boxing commission along with most other state boxing and wrestling regulation. During the summer of 1988, the Sunrise Sunset Review Committee conducted a sunrise review to re-establish a state athletic commission to regulate professional boxing. The applicant, Mile High Professional Boxing Association, sought licensure of promoters, managers, referees, judges, matchmakers, scorekeepers, timekeepers, trainers, and seconds. Although the 1988 committee did not recommend establishing a boxing commission, it recommended legislation to include certain boxing activities in the statutory definition of child abuse or neglect. These recommendations were not enacted.

Mile High Professional Boxing Association submitted a similar application for review during the 1991 interim. The applicants claimed that establishment of an athletic commission would ensure a degree of health and safety for professional boxing participants; provide consumer protection through better quality events; and provide economic development for the state by attracting match spectators from other states and foreign countries.

In its report, however, DORA recommended that the General Assembly not regulate professional boxing. Although there was evidence that suggested some boxers were being harmed and exploited by unscrupulous fight promoters and others connected with boxing in Colorado, DORA stated that the department had found no evidence of harm to the public health, safety, and welfare that would merit state intervention. During the hearing, individuals connected with boxing in Colorado all spoke of the harm that boxers are subjected to in Colorado. A motion to recommend creation of an Athletic Commission to regulate professional boxing was defeated by the committee.

### **Domestic Violence Counselors**

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The committee conducted a sunrise review to consider changes to current regulation of groups and individuals who provide court-ordered treatment for individuals convicted of domestic violence. Currently, the domestic violence statutes enacted in 1988 (18-6-800.3, C.R.S.) require individuals convicted in court of domestic violence to receive treatment by a certified treatment provider. These treatment providers must be certified by one of the 23 local judicial district certification boards

according to standards and procedures established by the State Commission of the Manual of Treatment Standards for Domestic Violence Perpetrators.

The group that submitted the sunrise application requested that the certification program be administered by the Department of Regulatory Agencies. They claimed that current administration of the certification program through the judicial branch is inadequate.

DORA reported that the current domestic violence counselor certification program was deficient and posed potential public harm by endangering the quality and availability of competent domestic violence counselors. Among DORA's conclusions were:

- The current certification program is not uniform throughout the state. This has resulted in some judicial districts certifying individuals/programs that would not pass muster in other judicial districts.
- Some judicial districts were not sending adjudicated domestic violence offenders to certified treatment providers.
- State law does not adequately allow for funding the certification program.

To address these problems, DORA recommended that the regulation of counselors and treatment programs be moved to the Division of Registrations and that a State Board of Domestic Violence Counselors be created to administer tasks such as licensure of counselors and to coordinate statewide domestic violence treatment policy. In addition, DORA argued that domestic violence counselors be represented on the state grievance board for psychotherapy.

After hearing testimony by DORA, Domestic Violence Counselors, and others familiar with the issue, the Sunrise Sunset Review Committee chairman ruled that it would be inappropriate for this committee to recommend changing existing law by amending the criminal code. He also suggested that such changes should be pursued by securing a sponsor of legislation outside of this committee.

### **Sign Language Interpreters**

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Certification of interpreters for the deaf was considered in response to an application submitted by the Deaf Organizations of Colorado and the Colorado Association of the Deaf. Such interpreters are responsible for providing voice interpretation and sign translation to deaf individuals. The applicants claimed that a lack of state regulation has enabled low-skilled interpreters to be assigned work for which they are not qualified. Among other things, poor interpreting services results in inaccurate information being transmitted to the deaf community from those without

hearing impairments. The applicants claim that this situation has prevented deaf citizens from having equal access to government services and public education.

DORA stated in its report that, although Colorado law adequately ensures the quality of interpreters in the legal arena, such services to the deaf should be improved in other areas of the public sector. DORA recommended that the state begin to certify interpreters and that legislation be enacted requiring public schools to use certified interpreters.

After hearing many deaf individuals speak about problems they had encountered with inferior interpreters, the committee voted to support DORA's recommendation for establishing a task force to study and develop appropriate methods for regulating sign language interpreters in Colorado. The task force, which shall be coordinated by DORA, will not be funded by general fund appropriations, and must include representatives of the Department of Education, school districts, interpreters, and the deaf community. In addition, the task force will report to the committee in 1992 with recommendations for legislation to regulate sign language interpreters.

### **C. Sunset Review of Advisory Committees**

The statutory directive for the sunset review of advisory committees is found in section 2-3-1203, C.R.S. The committee is to ascertain which of these committees have outlived their usefulness and which are beneficial to government by involving private citizens in the daily operation of government.

Each advisory committee is required to submit the following information to the committee:

- The names of current members of the advisory committee.
- All revenues and expenses, including advisory committee expenses, per diem paid to members, and any travel expenses.
- The dates all advisory committee meetings were held and the number of members attending the meetings.
- A listing of all advisory proposals made by the advisory committee with an indication as to whether or not each proposal has been acted on, implemented, or enacted into statute.
- The reasons why the advisory committee should be continued.

The committee conducted reviews of six advisory committees and advisory boards. The committee voted to discontinue an advisory committee relating to weather modification and recommends, **Bill Q** which continues the following committees:

- The Psychiatric Technicians Advisory Committee.
- The Advisory Committee to the Colorado Racing Commission Concerning Breeders, Owners, and Stallion Awards and Supplemental Purses (Breeder's Board).
- The Advisory Committee to Assist in the Planning, Implementation, and Evaluation of the Extension Programs of the Colorado Cooperative Extension Service.
- The Advisory Board to the Department of Institutions Responsible for Advising the Department on Mental Health Service Standards for Health Care Facilities.
- The Authorized Agents' Advisory Committee.

The committee recommends changing the names of the Authorized Agents' Advisory Committee to the Distributive Data Processing Advisory Committee, and the Psychiatric Technicians' Advisory Committee to the Psychiatric Technicians' Testing Advisory Committee.

Bill Q limits the advisory committee to the Colorado Cooperative Extension Service to fifteen members and requires that membership appropriately reflect statewide distribution.

The advisory committee that provides input on mental health standards for health care facilities will undergo the following changes: it shall consist of not less than eleven nor more than fifteen members; in addition to current member requirements, there shall also be one member who represents consumers of mental health services, one who represents families of persons with mental illness, and one who represents childrens' health care facilities. **A copy of Bill Q is available from the Legislative Council office.**

## **Additional Committee Reviews**

### **Report from the Civil Rights Commission**

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Pursuant to 24-34-301 (4) (c), C.R.S., the committee reviewed a report submitted by the Colorado Civil Rights Commission (CCRC) regarding abuse of mentally handicapped individuals. The report showed the numbers of cases handled by CCRC and the Department of Housing and Urban Development (HUD) as a result of the inclusion of persons with a mental impairment within the statutory definition of "handicap."

In addition to requiring a review of the report, the statute directed that the committee make a recommendation to the General Assembly for consideration during the 1992 session as to what legal revisions would be necessary to provide the CCRC

with enforcement power over those who discriminate against mentally handicapped individuals.

Jack Lang y Marquez, Director, Division of Civil Rights, submitted the report and discussed the number of housing discrimination cases that had been filed as of October 1, 1991. He also raised concerns about the anticipated number of cases that may be filed after July 1, 1992, when discrimination against mental handicapped individuals will be expanded to include the areas of employment, public accommodations, and advertising. An increase in caseloads will be further ensured by the implementation of the federal Americans with Disabilities Act on July 26, 1992.

In addition to predicting a significant increase in the number of mentally handicapped discrimination cases in 1992, Mr. Lang y Marquez raised concerns that the amount of federal funds appropriated to help defray these court costs was unknown.

Following consideration of the CCRC report and the testimony of Mr. Lang y Marquez, the committee voted to not submit any recommendations to the General Assembly.



## Materials Available

The following materials relevant to the Joint Legislative Sunrise and Sunset Review Committee hearings are available from the Legislative Council office.

### 1. Summary of Meetings:

- June 11, 1991 -- Advisory Committees, and Manufactured Housing Licensing Board Sunset Review.
- June 12, 1991 -- Fireworks Sunset, and Board of Optometric Examiners Sunset.
- June 13, 1991 -- Acupuncture Sunset, Tanning Parlor Sunrise, and Property Managers Sunrise.
- June 25, 1991 -- Speech-Language Pathologists/Audiologists/Hearing Aid Dealers Sunrise, and Interpreters for the Deaf Sunrise.
- June 26, 1991 -- Financial Planners Sunrise.
- June 27, 1991 -- Lay Midwives Sunrise, and Professional Boxing Sunrise.
- July 9, 1991 -- Psychotherapy Boards Sunset.
- July 10, 1991 -- Psychotherapy Boards Sunset, Domestic Violence Counselors Sunrise, and Notaries Public Sunset.
- July 11, 1991 -- Motor Vehicle Dealer Licensing Board Sunset.
- July 23, 1991 -- Division of Insurance Sunset.
- July 24, 1991 -- Lay Midwives Sunrise, Medication Administration Sunset, and Massage Parlor Code Sunset.
- July 25, 1991 -- Office of Regulatory Reform Report on Repeal of Rules and Regulations, and Reviews of Proposed Bills.
- October 4, 1991 -- Plumbing Contractors Sunrise.
- October 7, 1991 -- Financial Planners Sunrise, Civil Rights Division Report on Mental Handicapped Discrimination, and Review of Proposed Bills.
- October 15, 1991 -- Review of Proposed Bills.

### 2. DORA Reports:

Detailed reports on all sunrise and sunset issues were prepared and submitted by the Office of Policy and Research, Department of Regulatory Agencies (DORA).

### 3. Advisory Committee Reports.

SUNRISE/SUNSET BILL A

A BILL FOR AN ACT

1 CONCERNING THE PRACTICE OF PSYCHOTHERAPY, AND, IN CONNECTION  
2 THEREWITH, CONTINUING THE LICENSING AUTHORITY OF THE  
3 COLORADO STATE BOARD OF PSYCHOLOGIST EXAMINERS, THE STATE  
4 BOARD OF SOCIAL WORK EXAMINERS, THE STATE BOARD OF  
5 LICENSED PROFESSIONAL COUNSELOR EXAMINERS, AND THE STATE  
6 BOARD OF MARRIAGE AND FAMILY THERAPIST EXAMINERS, AND  
7 CONTINUING THE DISCIPLINARY AUTHORITY OF THE STATE  
8 GRIEVANCE BOARD OVER THE PRACTICE OF PSYCHOTHERAPY.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Continues the licensing authority of the Colorado state board of psychologist examiners, the state board of social work examiners, the state board of licensed professional counselor examiners, and the state board of marriage and family therapist examiners until a certain date. Continues the disciplinary authority of the state grievance board over the practice of psychotherapy until a certain date.

Defines the term "professional relationship" and clarifies the definition of "psychotherapy". States that the definition of "psychotherapy" should be interpreted narrowly to regulate only those persons specifically included in such definition.

Directs the four mental health licensing boards to hold periodic joint meetings to share policy information related to regulating the practice of psychotherapy in this state. Requires each of such boards to delegate the preliminary review of applications for licensure to the staff of such boards with the boards having final approval authority over such applications. Requires that licensing fees paid by licensees of the four boards be as uniform as possible.

Requires the client to sign the mandatory disclosure of information provided by the psychotherapist at the initial visit with such psychotherapist.

Provides that the statutes regulating psychotherapy do not apply to certified alcohol and drug abuse counselors practicing in a facility authorized by the state department of health or to custodial evaluations or to domestic and child abuse evaluations undertaken in cases in the courts of this state.

Requires the grievance board to maintain a directory of licensed and unlicensed psychotherapists. Authorizes the grievance board to charge a uniform fee for information recorded in the directory. Specifies the information to be recorded by psychotherapists and requires that such information be updated periodically. Requires psychotherapists to record the required information for the directory by a certain date and provides that after such date no person may practice psychotherapy unless they are listed in the directory. Makes it a criminal offense to practice psychotherapy if the person is not included in the directory. Requires the department of regulatory agencies to gather statistics about the numbers, types, and outcomes of complaints about psychotherapists and to report such information to the joint sunrise and sunset review committee so that a determination as to a higher level of protection for the public can be made by the general assembly.

Expands the membership of the grievance board to include a permanent member who is an unlicensed psychotherapist practicing in a nontraditional methodology of psychotherapy. Provides that when disciplinary proceedings of the grievance board relate to an unlicensed psychotherapist, a certain number of additional unlicensed psychotherapist members shall be appointed to such board. Specifies that if a permanent member of the grievance board is disqualified from sitting on any disciplinary case because of a conflict of interest, a member of the augmented panel from the same discipline as the disqualified member may make up part of the quorum of permanent members of the grievance board for conducting business.

Specifies that subpoenas issued by the grievance board may be enforced in Denver district court.

Updates language related to addiction or dependence on alcohol or drugs for purposes of violations of the psychotherapy statutes.

Specifies that for violations of the psychotherapy

statutes the grievance board may permanently or temporarily strike the name of an unlicensed psychotherapist from the directory of psychotherapists, issue a letter of admonition to such an unlicensed psychotherapist, or place an unlicensed psychotherapist on probation. Authorizes the grievance board to issue cease and desist orders enforceable through the courts and provides that the results of mental or physical examinations ordered by the grievance board may be used as evidence in any forum in any proceeding initiated by the board or within the board's jurisdiction.

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

SECTION 1. 12-43-201 (9), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-43-201 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-43-201. Definitions. As used in this part 2, unless the context otherwise requires:

(7.5) "PROFESSIONAL RELATIONSHIP" MEANS AN INTERACTION THAT IS DELIBERATELY PLANNED OR DIRECTED, OR BOTH, BY THE PSYCHOTHERAPIST TOWARD OBTAINING SPECIFIC PSYCHOTHERAPEUTIC OBJECTIVES, SUCH AS THOSE SET FORTH IN SUBSECTION (9) OF THIS SECTION.

(9) "Psychotherapy" means the treatment, diagnosis, testing, assessment, or counseling in a professional relationship to assist individuals or groups to alleviate mental disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors which interfere with effective emotional, social, or intellectual functioning. PSYCHOTHERAPY FOLLOWS A PLANNED PROCEDURE OF INTERVENTION WHICH TAKES PLACE ON A REGULAR BASIS, OVER A PERIOD OF TIME. IT IS THE INTENT

1 OF THE GENERAL ASSEMBLY THAT THE DEFINITION OF PSYCHOTHERAPY  
2 AS USED IN THIS PART 2 BE INTERPRETED IN ITS NARROWEST SENSE  
3 TO REGULATE ONLY THOSE PERSONS WHO CLEARLY FALL WITHIN THE  
4 DEFINITION SET FORTH IN THIS SUBSECTION (9).

5 SECTION 2. 12-43-203 (2) (a), Colorado Revised Statutes,  
6 1991 Repl. Vol., is amended, and the said 12-43-203 is further  
7 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

8 12-43-203. Boards - meetings - duties - powers - removal  
9 of members. (2) (a) Each board shall annually hold a meeting  
10 and elect from its membership a chairperson and  
11 vice-chairperson. ~~The--state--board--of--marriage--and--family~~  
12 ~~therapist--examiners--and--the---state---board---of---licensed~~  
13 ~~professional---counselor--examiners--shall--hold--their--first~~  
14 ~~meetings--within--sixty--days--after--July--1,--1988.~~ Each board  
15 shall meet at such other times as it deems necessary or  
16 advisable or as deemed necessary and advisable by the  
17 chairperson, a majority of its members, or the governor. IN  
18 ORDER TO PROMOTE THE SHARING OF INFORMATION, PROBLEMS, IDEAS,  
19 RESEARCH, AND POTENTIAL SOLUTIONS OR POLICY DIRECTIONS WITH  
20 REGARD TO REGULATING THE PRACTICE OF PSYCHOTHERAPY IN  
21 COLORADO, THE CHAIRPERSONS OF THE BOARDS SHALL COORDINATE  
22 PERIODIC MEETINGS OF THE BOARDS IN JOINT SESSION FOR THE  
23 DISCUSSION OF POLICIES RELATED TO THE REGULATION OF THE  
24 PRACTICE OF PSYCHOTHERAPY. SUCH JOINT MEETINGS SHALL BE HELD  
25 IN CONJUNCTION WITH REGULAR MEETINGS OF THE BOARDS.  
26 Reasonable notice of all meetings shall be given in the manner

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SUNRISE/SUNSET BILL

1 prescribed by each board. A majority of each board shall  
2 constitute a quorum at any meeting or hearing.

3 (3.5) IN CARRYING OUT ITS DUTIES RELATED TO THE APPROVAL  
4 OF APPLICATIONS FOR LICENSURE PURSUANT TO THIS SECTION,  
5 SECTION 12-43-212, AND PARTS 3, 4, 5, AND 6 OF THIS ARTICLE,  
6 EACH BOARD SHALL DELEGATE THE FUNCTION OF THE PRELIMINARY  
7 REVIEW AND APPROVAL OF APPLICATIONS TO THE STAFF OF EACH SUCH  
8 BOARD, WITH APPROVAL OF SUCH APPLICATIONS RATIFIED BY ACTION  
9 OF EACH SUCH BOARD. EACH BOARD, IN ITS SOLE DISCRETION, MAY  
10 INDIVIDUALLY REVIEW ANY APPLICATION REQUIRING BOARD  
11 CONSIDERATION PRIOR TO THE APPROVAL THEREOF PURSUANT TO  
12 SECTION 12-43-212 AND PARTS 3, 4, 5, AND 6 OF THIS ARTICLE.

13 SECTION 3. 12-43-204, Colorado Revised Statutes, 1991  
14 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to  
15 read:

16 12-43-204. Fees - renewal. (3.5) THE DIRECTOR OF THE  
17 DIVISION OF REGISTRATIONS SHALL COORDINATE FEE SETTING  
18 PURSUANT TO THIS SECTION SO THAT ALL LICENSED AND UNLICENSED  
19 PSYCHOTHERAPISTS PAY FEES AS REQUIRED BY THIS SECTION AND  
20 SECTION 12-43-220 (1). FEES SET PURSUANT TO THIS SECTION FOR  
21 APPLICATION, EXAMINATION, LICENSING, AND RENEWAL OF SUCH  
22 LICENSES FOR PSYCHOLOGISTS, LICENSED CLINICAL SOCIAL WORKERS,  
23 MARRIAGE AND FAMILY THERAPISTS, AND LICENSED PROFESSIONAL  
24 COUNSELORS SHALL BE AS UNIFORM AS POSSIBLE. THE FEE SET BY  
25 THE GRIEVANCE BOARD FOR ALL PSYCHOTHERAPISTS REQUIRED TO BE  
26 LISTED IN THE STATE DIRECTORY PURSUANT TO SECTION 12-43-220

1 (1) SHALL BE UNIFORM FOR ALL PERSONS REQUIRED TO COMPLY.

2 SECTION 4. 12-43-214, Colorado Revised Statutes, 1991  
3 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to  
4 read:

5 12-43-214. Mandatory disclosure of information to  
6 clients. (6) UNLESS THE CLIENT, PARENT, OR GUARDIAN IS UNABLE  
7 TO WRITE, THE CLIENT, PARENT, OR GUARDIAN SHALL SIGN THE  
8 DISCLOSURE FORM REQUIRED BY THIS SECTION AT THE TIME OF THE  
9 INITIAL VISIT WITH THE PSYCHOTHERAPIST.

10 SECTION 5. 12-43-215, Colorado Revised Statutes, 1991  
11 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW  
12 SUBSECTIONS to read:

13 12-43-215. Scope of article - exemptions. (6) THE  
14 PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO PERSONS WHO ARE  
15 CERTIFIED AS ALCOHOL AND DRUG ABUSE COUNSELORS BY THE  
16 DEPARTMENT OF HEALTH THROUGH THE DIVISION OF ALCOHOL AND DRUG  
17 ABUSE PURSUANT TO THE PROVISIONS OF PART 2 OF ARTICLE 1 OF  
18 TITLE 25, C.R.S., WHILE PRACTICING IN A FACILITY AUTHORIZED  
19 PURSUANT TO PART 2 OF ARTICLE 1 OF TITLE 25, C.R.S.

20 (7) THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO  
21 CUSTODIAL EVALUATIONS UNDERTAKEN IN DOMESTIC RELATIONS CASES  
22 IN THE COURTS OF THIS STATE OR DOMESTIC AND CHILD ABUSE  
23 EVALUATIONS UNDERTAKEN FOR PURPOSES OF LEGAL PROCEEDINGS IN  
24 THE COURTS OF THIS STATE.

25 SECTION 6. Part 2 of article 43 of title 12, Colorado  
26 Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION

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1 OF A NEW SECTION to read:

2 12-43-220. Directory of licensed and unlicensed  
3 psychotherapists - violation - penalty - data collection -  
4 report to sunrise and sunset review committee. (1) THE  
5 GRIEVANCE BOARD SHALL MAINTAIN A DIRECTORY OF ALL PERSONS  
6 PRACTICING PSYCHOTHERAPY IN THIS STATE, WHETHER AS LICENSED  
7 PRACTITIONERS PURSUANT TO THIS ARTICLE OR AS UNLICENSED  
8 PSYCHOTHERAPISTS. THE GRIEVANCE BOARD SHALL CHARGE A FEE IN  
9 THE SAME MANNER AS AUTHORIZED IN SECTION 24-34-105, C.R.S.,  
10 FOR RECORDING INFORMATION IN THE DIRECTORY AS REQUIRED BY THIS  
11 SECTION. INFORMATION IN THE DIRECTORY MAINTAINED PURSUANT TO  
12 THIS SECTION SHALL BE OPEN TO PUBLIC INSPECTION AT ALL TIMES.

13 (2) NO LATER THAN JANUARY 1, 1993, ANY PSYCHOTHERAPIST  
14 LICENSED PURSUANT TO THE PROVISIONS OF THIS ARTICLE AND ANY  
15 UNLICENSED PSYCHOTHERAPIST SHALL RECORD SUCH THERAPIST'S NAME,  
16 CURRENT ADDRESS, EDUCATIONAL QUALIFICATIONS, DISCLOSURE  
17 STATEMENTS, THERAPEUTIC ORIENTATION OR METHODOLOGY, OR BOTH,  
18 AND YEARS OF EXPERIENCE IN EACH SPECIALTY AREA WITH THE  
19 GRIEVANCE BOARD FOR INCLUSION IN THE DIRECTORY REQUIRED BY  
20 SUBSECTION (1) OF THIS SECTION. PSYCHOTHERAPISTS SHALL BE  
21 REQUIRED TO UPDATE SUCH INFORMATION AT LEAST ANNUALLY AND AT  
22 SUCH OTHER TIMES AND UNDER SUCH CONDITIONS AS THE GRIEVANCE  
23 BOARD SHALL PRESCRIBE BY RULE AND REGULATION. AT THE TIME OF  
24 RECORDING THE INFORMATION REQUIRED BY THIS SECTION, THE  
25 PSYCHOTHERAPIST SHALL INDICATE WHETHER OR NOT THE  
26 PSYCHOTHERAPIST HAS BEEN CONVICTED OF OR ENTERED A PLEA OF

1 GUILTY OR A PLEA OF NOLO CONTENDERE TO ANY FELONY OR  
2 MISDEMEANOR. PSYCHOTHERAPISTS RECORDING THE INFORMATION  
3 REQUIRED BY THIS SECTION SHALL BE GIVEN A COPY OF THE  
4 PROHIBITED ACTIVITIES SPECIFIED IN SECTION 12-43-704  
5 APPLICABLE TO THEM AT THE TIME OF COMPLIANCE WITH THIS  
6 SECTION.

7 (3) ON AND AFTER JANUARY 1, 1993, NO PERSON MAY PRACTICE  
8 PSYCHOTHERAPY IF SUCH PERSON IS NOT INCLUDED IN THE DIRECTORY  
9 REQUIRED BY THIS SECTION. ANY PERSON WHO VIOLATES THE  
10 PROVISIONS OF THIS SUBSECTION (3) COMMITS A CLASS 3  
11 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION  
12 18-1-106, C.R.S.

13 (4) (a) THE DEPARTMENT OF REGULATORY AGENCIES SHALL  
14 GATHER STATISTICS ABOUT THE NUMBERS, TYPES, AND OUTCOMES OF  
15 COMPLAINTS ABOUT LICENSED AND UNLICENSED PSYCHOTHERAPISTS SO  
16 THAT A DETERMINATION CAN BE MADE FROM THAT DATA CONCERNING THE  
17 NEED FOR A HIGHER LEVEL OF PROTECTION FOR THE PUBLIC. SUCH  
18 INFORMATION SHALL BE REPORTED TO THE JOINT SUNRISE AND SUNSET  
19 REVIEW COMMITTEE NO LATER THAN JUNE 1, 1998.

20 (b) THIS SUBSECTION (4) IS REPEALED, EFFECTIVE JULY 1,  
21 1999.

22 SECTION 7. 12-43-701 (9), Colorado Revised Statutes,  
23 1991 Repl. Vol., is amended, and the said 12-43-701 is further  
24 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

25 12-43-701. Definitions. As used in this part 7, unless  
26 the context otherwise requires:

1 (8.5) "PROFESSIONAL RELATIONSHIP" MEANS AN INTERACTION  
2 THAT IS DELIBERATELY PLANNED OR DIRECTED, OR BOTH, BY THE  
3 PSYCHOTHERAPIST TOWARD OBTAINING SPECIFIC PSYCHOTHERAPEUTIC  
4 OBJECTIVES, SUCH AS THOSE SET FORTH IN SUBSECTION (9) OF THIS  
5 SECTION.

6 (9) "Psychotherapy" means the treatment, diagnosis,  
7 testing, assessment, or counseling in a professional  
8 relationship to assist individuals or groups to alleviate  
9 mental disorders, understand unconscious or conscious  
10 motivation, resolve emotional, relationship, or attitudinal  
11 conflicts, or modify behaviors which interfere with effective  
12 emotional, social, or intellectual functioning. PSYCHOTHERAPY  
13 FOLLOWS A PLANNED PROCEDURE OF INTERVENTION WHICH TAKES PLACE  
14 ON A REGULAR BASIS, OVER A PERIOD OF TIME. IT IS THE INTENT  
15 OF THE GENERAL ASSEMBLY THAT THE DEFINITION OF PSYCHOTHERAPY  
16 AS USED IN THIS PART 7 BE INTERPRETED IN ITS NARROWEST SENSE  
17 TO REGULATE ONLY THOSE PERSONS WHO CLEARLY FALL WITHIN THE  
18 DEFINITION SET FORTH IN THIS SUBSECTION (9).

19 SECTION 8. 12-43-702, Colorado Revised Statutes, 1991  
20 Repl. Vol., is amended to read:

21 12-43-702. State grievance board - creation - subject to  
22 termination. (1) There is hereby created the state grievance  
23 board, which shall be under the supervision and control of the  
24 division of registrations as provided in section 24-34-102,  
25 C.R.S. The grievance board shall consist of ~~eight~~ NINE  
26 members or ~~eleven~~ TWELVE members, as determined pursuant to

1 this section, who are residents of the state of Colorado.

2 (2) Four members of the grievance board shall be  
3 appointed by the governor from the general public with a good  
4 faith effort to achieve broad-based geographical  
5 representation, one to serve a term of one year, one to serve  
6 a term of two years, and two to serve a term of three years.  
7 NO SUCH MEMBER SHALL HAVE ANY DIRECT INVOLVEMENT OR INTEREST  
8 IN THE PROVISION OF PSYCHOTHERAPY, EXCEPT THAT SUCH MEMBER MAY  
9 BE OR MAY HAVE BEEN A CONSUMER OF SUCH SERVICES.

10 (2.5) ONE MEMBER OF THE GRIEVANCE BOARD SHALL BE AN  
11 UNLICENSED PSYCHOTHERAPIST WHO PRACTICES A NONTRADITIONAL  
12 METHODOLOGY OF PSYCHOTHERAPY AND WHO SHALL BE APPOINTED BY THE  
13 GOVERNOR FOR A TERM OF THREE YEARS.

14 (3) Four members of the grievance board shall be  
15 licensed members of their respective licensing boards and  
16 shall be appointed by the governor as follows:

17 (a) A licensed marriage and family therapist to serve a  
18 term of ~~one-year~~ TWO YEARS;

19 (b) A licensed professional counselor to serve a term of  
20 two years;

21 (c) A licensed clinical social worker to serve a term of  
22 two years;

23 (d) A licensed psychologist to serve a term of three  
24 years.

25 (4) The grievance board shall attempt to schedule  
26 disciplinary matters to be heard by the grievance board in a

1 manner so as to reduce the number of additional members needed  
2 for any meeting. For disciplinary proceedings of the grievance  
3 board, in addition to the eight NINE members appointed to the  
4 grievance board under subsections (2), (2.5), and (3) of this  
5 section, three additional members shall be appointed by the  
6 governor to the grievance board as follows:

7 (a) If the disciplinary action relates to a licensed  
8 psychologist, the three additional members shall be licensed  
9 psychologists.

10 (b) If the disciplinary action relates to a licensed  
11 clinical social worker, the three additional members shall be  
12 licensed clinical social workers.

13 (c) If the disciplinary action relates to a licensed  
14 marriage and family therapist, the three additional members  
15 shall be licensed marriage and family therapists.

16 (d) If the disciplinary action relates to a licensed  
17 professional counselor, the three additional members shall be  
18 licensed professional counselors.

19 (e) If the disciplinary action relates to a certified  
20 school psychologist, the three additional members shall be  
21 certified school psychologists.

22 (f) IF THE DISCIPLINARY ACTION RELATES TO AN UNLICENSED  
23 PSYCHOTHERAPIST, THE THREE ADDITIONAL MEMBERS SHALL BE  
24 UNLICENSED PSYCHOTHERAPISTS.

25 (5) (a) Five of the persons eligible to serve on the  
26 grievance board under subsection (4) of this section shall be

1 appointed by the governor to serve a term of one year, one  
2 from each of the professions licensed pursuant to parts 3, 4,  
3 5, and 6 of this article and one certified school  
4 psychologist.

5 (b) Five of the persons eligible to serve on the  
6 grievance board under subsection (4) of this section shall be  
7 appointed by the governor to serve a term of two years, one  
8 from each of the professions licensed pursuant to parts 3, 4,  
9 5, and 6 of this article and one certified school  
10 psychologist.

11 (c) Five of the persons eligible to serve on the  
12 grievance board under subsection (4) of this section shall be  
13 appointed by the governor to serve a term of three years, one  
14 from each of the professions licensed pursuant to parts 3, 4,  
15 5, and 6 of this article and one certified school  
16 psychologist.

17 (d) OF THE THREE PERSONS ELIGIBLE TO SERVE ON THE  
18 GRIEVANCE BOARD UNDER SUBSECTION (4) OF THIS SECTION AS  
19 UNLICENSED PSYCHOTHERAPISTS, ONE SHALL BE APPOINTED BY THE  
20 GOVERNOR TO SERVE A TERM OF ONE YEAR, ONE SHALL BE APPOINTED  
21 TO SERVE A TERM OF TWO YEARS, AND ONE SHALL BE APPOINTED TO  
22 SERVE A TERM OF THREE YEARS.

23 (6) (a) Members of the grievance board appointed under  
24 subsection (2), (2.5), or (3) of this section may serve two  
25 full consecutive terms.

26 (b) The appointees under paragraphs (a) and (b) of

1 subsection (3) of this section and under paragraphs (c) and  
2 (d) of subsection (4) of this section shall have met all  
3 qualifications for licensure pursuant to section 12-43-503 (1)  
4 (a) to (1) (d) or 12-43-603 (1) (a) to (1) (d) and shall have  
5 been practicing in their professions for at least five years  
6 prior to appointment. The initial appointees shall be licensed  
7 pursuant to section 12-43-502 (3) or 12-43-602 (3). The  
8 governor shall remove a board member for failure to comply  
9 with the requirements of this section.

10 (7) Each member shall hold office until the expiration  
11 of his appointed term or until a successor is duly appointed.  
12 When the term of each grievance board member expires, the  
13 governor shall appoint his successor for a term of three  
14 years. Any vacancy occurring in the grievance board membership  
15 other than by the expiration of a term shall be filled by the  
16 governor by appointment for the unexpired term of such member.  
17 The governor may remove any grievance board member for  
18 misconduct, incompetence, or neglect of duty. Actions  
19 constituting neglect of duty shall include, but not be limited  
20 to, the failure of board members to attend three consecutive  
21 meetings or at least three-quarters of the board's meetings in  
22 any one calendar year.

23 (8) Members of the grievance board and consultants to  
24 the grievance board shall be immune from suit in any action,  
25 civil or criminal, based upon any disciplinary proceedings or  
26 other official acts performed in good faith as members of such

1 board or as consultants to such board.

2 (9) A majority of the grievance board shall constitute a  
3 quorum for the transaction of all business. However, for  
4 purposes of initial consideration of complaints, a quorum  
5 shall be a majority of all members appointed pursuant to  
6 subsection (2), (2.5), and (3) of this section. FOR PURPOSES  
7 OF THE INITIAL CONSIDERATION OF COMPLAINTS, IF A MEMBER OF THE  
8 GRIEVANCE BOARD APPOINTED PURSUANT TO SUBSECTION (2), (2.5),  
9 OR (3) OF THIS SECTION IS DISQUALIFIED FROM PARTICIPATING IN  
10 GRIEVANCE BOARD DELIBERATIONS ON ANY MATTER DUE TO HAVING AN  
11 IMMEDIATE PERSONAL, PRIVATE, OR FINANCIAL INTEREST IN ANY  
12 MATTER PENDING BEFORE THE GRIEVANCE BOARD, A MEMBER APPOINTED  
13 PURSUANT TO SUBSECTION (4) OF THIS SECTION FROM THE SAME  
14 DISCIPLINE AS THE MEMBER DISQUALIFIED FROM PARTICIPATION MAY  
15 PARTICIPATE AND VOTE ON THE MATTER BEFORE THE GRIEVANCE BOARD  
16 AND SHALL CONSTITUTE PART OF THE QUORUM REQUIRED BY THIS  
17 SUBSECTION (9).

18 (10) The provisions of section 24-34-104, C.R.S.,  
19 concerning the termination schedule for regulatory bodies of  
20 the state unless continued as provided in that section, are  
21 applicable to the grievance board.

22 SECTION 9. 12-43-703 (1) (b), Colorado Revised Statutes,  
23 1991 Repl. Vol., is amended to read:

24 12-43-703. Powers and duties of the grievance board.

25 (1) In addition to all other powers and duties conferred and  
26 imposed upon the grievance board by this article, the



1 grievance board has the following powers and duties:  
2 (b) To make investigations, hold hearings, and take  
3 evidence in accordance with the provisions of article 4 of  
4 title 24, C.R.S., and this article in all matters relating to  
5 the exercise and performance of the powers and duties vested  
6 in the grievance board and, in connection with any  
7 investigation or hearing and through any member or an  
8 administrative law judge, to subpoena witnesses, administer  
9 oaths, and compel the testimony of witnesses and the  
10 production of books, papers, and records relevant to any  
11 inquiry or hearing. Any subpoena issued pursuant to this  
12 article shall be enforceable by the DENVER district court.  
13 Subpoenas issued on behalf of the board may be signed by the  
14 program administrator.

15 SECTION 10. 12-43-704 (1) (e), Colorado Revised  
16 Statutes, 1991 Repl. Vol., is amended to read:

17 12-43-704. Prohibited activities - related provisions.

18 (1) A person practicing psychotherapy under this article is  
19 in violation of this article if he:

20 (e) ~~Was---habitual---intemperance---with--regard--to--or~~  
21 ~~excessive-use-of-any~~ IS ADDICTED TO OR DEPENDENT ON ALCOHOL OR  
22 ANY habit-forming drug, as defined in section 12-22-102 (13),  
23 OR IS A HABITUAL USER OF any controlled substance, as defined  
24 in section 12-22-303 (7), or any alcoholic beverage;

25 SECTION 11. 12-43-704.5 (3), Colorado Revised Statutes,  
26 1991 Repl. Vol., is amended, and the said 12-43-704.5 is

1 further amended BY THE ADDITION OF A NEW SUBSECTION, to read:  
2 12-43-704.5. Authority of grievance board - cease and  
3 desist orders. (3) If an unlicensed psychotherapist violates  
4 any of the provisions of section 12-43-704, the grievance  
5 board may PERMANENTLY OR FOR A SET PERIOD OF TIME STRIKE THE  
6 NAME OF SUCH PSYCHOTHERAPIST FROM THE DIRECTORY MAINTAINED  
7 PURSUANT TO SECTION 12-43-220, ISSUE A LETTER OF ADMONITION TO  
8 SUCH UNLICENSED PSYCHOTHERAPIST, OR PLACE SUCH UNLICENSED  
9 PSYCHOTHERAPIST ON PROBATION, OR apply for an injunction  
10 pursuant to section 12-43-708 to enjoin such unlicensed  
11 psychotherapist from practicing psychotherapy.

12 (4) (a) IF, AS A RESULT OF AN INVESTIGATION OF A  
13 COMPLAINT BY ANY PERSON OR OF AN INVESTIGATION ON ITS OWN  
14 MOTION, THE GRIEVANCE BOARD DETERMINES THAT ANY PERSON IS  
15 ACTING OR HAS ACTED IN VIOLATION OF SECTION 12-43-704, AND THE  
16 GRIEVANCE BOARD DETERMINES THAT ANY SUCH VIOLATION CREATES AN  
17 EMERGENCY CONDITION WHICH MAY AFFECT THE HEALTH, SAFETY, OR  
18 WELFARE OF ANY PERSON, THE GRIEVANCE BOARD MAY ISSUE AN ORDER  
19 TO CEASE AND DESIST SUCH ACTIVITY. THE ORDER SHALL SET FORTH  
20 THE STATUTES AND RULES AND REGULATIONS ALLEGED TO HAVE BEEN  
21 VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE VIOLATION,  
22 AND THE REQUIREMENT THAT ALL UNLAWFUL ACTS CEASE FORTHWITH.  
23 THE PERSON SO ORDERED MAY REQUEST A HEARING ON THE QUESTION OF  
24 WHETHER ANY VIOLATION OCCURRED IF SUCH REQUEST IS MADE WITHIN  
25 THIRTY DAYS AFTER THE DATE OF SERVICE OF THE ORDER TO CEASE  
26 AND DESIST. UPON REQUEST, ANY PERSON ORDERED TO CEASE AND

1 DESIST UNLAWFUL ACTS AS AUTHORIZED IN THIS SUBSECTION (4)  
2 SHALL BE ENTITLED TO A HEARING AND AN ORAL OR WRITTEN DECISION  
3 FROM THE ADMINISTRATIVE LAW JUDGE ON ANY SUCH ORDER WITHIN  
4 SEVEN WORKING DAYS AFTER THE ISSUANCE THEREOF. THE HEARING  
5 SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF  
6 ARTICLE 4 OF TITLE 24, C.R.S.

7 (b) IN THE EVENT THAT ANY PERSON FAILS TO COMPLY WITH A  
8 CEASE AND DESIST ORDER, THE GRIEVANCE BOARD MAY REQUEST THE  
9 ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE JUDICIAL  
10 DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING, AND  
11 IF SO REQUESTED THE ATTORNEY GENERAL OR DISTRICT ATTORNEY  
12 SHALL BRING, A SUIT FOR A TEMPORARY RESTRAINING ORDER AND FOR  
13 INJUNCTIVE RELIEF TO PREVENT ANY FURTHER OR CONTINUED  
14 VIOLATION OF THE ORDER.

15 (c) NO STAY OF A CEASE AND DESIST ORDER SHALL BE ISSUED  
16 BEFORE A HEARING THEREON INVOLVING BOTH PARTIES.

17 (d) MATTERS BROUGHT BEFORE A COURT PURSUANT TO THIS  
18 SECTION SHALL HAVE PREFERENCE OVER OTHER MATTERS ON THE  
19 COURT'S CALENDAR.

20 SECTION 12. 12-43-705 (2) (f), Colorado Revised  
21 Statutes, 1991 Repl. Vol., is amended to read:

22 12-43-705. Disciplinary proceedings - judicial review -  
23 mental and physical examinations. (2) (f) The results of any  
24 mental or physical examination ordered by the board shall not  
25 MAY be used as evidence in any proceeding other than  
26 proceedings before the board INITIATED BY THE BOARD OR WITHIN

1 THE BOARD'S JURISDICTION IN ANY FORUM.

2 SECTION 13. 12-43-712, Colorado Revised Statutes, 1991  
3 Repl. Vol., is amended to read:

4 12-43-712. Repeal of article. This article is repealed,  
5 effective July 1, 1992 JULY 1, 2002. Prior to such repeal,  
6 all of the boards relating to the licensing of and grievances  
7 against any person licensed pursuant to the provisions of this  
8 article shall be reviewed as provided for in section  
9 24-34-104, C.R.S.

10 SECTION 14. 24-34-104 (21) (a) (II), Colorado Revised  
11 Statutes, 1988 Repl. Vol., is repealed as follows:

12 24-34-104. General assembly review of regulatory  
13 agencies and functions for termination, continuation, or  
14 reestablishment. (21) (a) The following boards in the  
15 division of registrations shall terminate on July 1, 1992:

16 (II) ~~Boards relating to the licensing of and grievances~~  
17 ~~against any person licensed pursuant to the provisions of~~  
18 ~~article 43 of title 12, C.R.S., and created pursuant to~~  
19 ~~article 43 of title 12, C.R.S.~~

20 SECTION 15. 24-34-104, Colorado Revised Statutes, 1988  
21 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW  
22 SUBSECTION to read:

23 24-34-104. General assembly review of regulatory  
24 agencies and functions for termination, continuation, or  
25 reestablishment. (31) THE FOLLOWING BOARDS IN THE DIVISION OF  
26 REGISTRATIONS SHALL TERMINATE ON JULY 1, 2002: BOARDS

1 RELATING TO THE LICENSING OF AND GRIEVANCES AGAINST ANY PERSON  
2 REGULATED OR LICENSED PURSUANT TO THE PROVISIONS OF ARTICLE 43  
3 OF TITLE 12, C.R.S., AND CREATED PURSUANT TO ARTICLE 43 OF  
4 TITLE 12, C.R.S.

5 SECTION 16. 24-34-105 (2) (b), Colorado Revised  
6 Statutes, 1991 Repl. Vol., is amended to read:

7 24-34-105. Fee adjustments - division of registrations  
8 cash fund - created. (2) (b) Based upon the appropriation  
9 made and subject to the approval of the executive director of  
10 the department of regulatory agencies, each board or  
11 commission shall adjust its fees so that the revenue generated  
12 from said fees approximates its direct and indirect costs;  
13 EXCEPT THAT THE COSTS OF THE COLORADO STATE BOARD OF  
14 PSYCHOLOGIST EXAMINERS, THE STATE BOARD OF MARRIAGE AND FAMILY  
15 THERAPIST EXAMINERS, THE STATE BOARD OF LICENSED PROFESSIONAL  
16 COUNSELOR EXAMINERS, AND THE STATE BOARD OF SOCIAL WORK  
17 EXAMINERS SHALL BE CONSIDERED COLLECTIVELY IN THE FEE SETTING  
18 PROCESS. SUBSEQUENT REVENUE GENERATED BY THE FEES SET BY SUCH  
19 BOARDS PLUS REVENUES GENERATED PURSUANT TO SECTION 12-43-220,  
20 C.R.S., SHALL BE COMPARED TO THOSE COLLECTIVE COSTS TO  
21 DETERMINE RECOVERY OF DIRECT AND INDIRECT COSTS. Such fees  
22 shall remain in effect for the fiscal year for which the  
23 budget request applies. All fees collected by each board and  
24 commission shall be transmitted to the state treasurer, who  
25 shall credit the same to the division of registrations cash  
26 fund, which fund is hereby created. All moneys credited to

1 the division of registrations cash fund shall be used as  
2 provided in this section and shall not be deposited in or  
3 transferred to the general fund of this state or any other  
4 fund.

5 SECTION 17. Effective date - applicability. This act  
6 shall take effect July 1, 1992, and shall apply to acts  
7 occurring on or after said date.

8 SECTION 18. Safety clause. The general assembly hereby  
9 finds, determines, and declares that this act is necessary  
10 for the immediate preservation of the public peace, health,  
11 and safety.

SUNRISE/SUNSET BILL B

A BILL FOR AN ACT

1 CONCERNING THE REGULATION OF THE PRACTICE OF OPTOMETRY, AND,  
2 IN CONNECTION THEREWITH, CONTINUING THE STATE BOARD OF  
3 OPTOMETRIC EXAMINERS.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

States that the practice of optometry should be limited to qualified persons having been examined and meeting the state's minimum acceptable level of competence to practice the profession. States that a priority of such regulatory provisions shall be to protect consumers of optometric services through appropriate disciplinary procedures.

Continues the regulation of the practice of optometry until a certain date. Continues the state board of optometric examiners until a certain date and requires the board to report to the general assembly on the board's disciplinary activities prior to such date. Adds an ophthalmologist licensed to practice medicine in this state to the board as a nonvoting ex-officio member. Requires any member of the board having a personal or private interest in any matter before the board to disclose such conflict to the board and not participate in board deliberations related to such matter or vote thereon.

Requires optometrists to release to the patient all medical records including prescriptions for contact lenses on the written request of the patient at the time the optometrist would otherwise replace a contact lens without any additional preliminary examination or fitting. Requires the state board of optometric examiners to promulgate rules defining the components of a valid contact lens prescription. Makes

violation of such provision grounds for disciplinary action against an optometrist.

Makes the authority of an optometrist to use prescription drugs in treating abnormal conditions of the eye coextensive with the authority of an optometrist to treat abnormal conditions of the eye in general.

Exempts from the requirement of licensure persons serving a post-doctorate residency or optometric student intern under the supervision of an optometrist licensed in Colorado.

Permits the state board of optometric examiners to accept scores from tests administered by any approved or accredited national testing organization. Requires the board to notify applicants for licensure of the time and place of any Colorado practical examination administered by the board and required for licensure in this state. Requires the board to set the passing score of examinations at a minimum level of competence. Specifies that if the board does not accept the scores of a national clinical optometry examination by a certain date, the board shall conduct a joint study with the psychometrician in the division of registrations to be completed by a certain date to update the state clinical examination so that the test is psychometrically sound. Requires the board to report the results of such study to the general assembly by a certain date.

Authorizes the board to grant licenses by endorsement to applicants who possess credentials and qualifications substantially equivalent to Colorado requirements for licensing by examination. Authorizes the board to establish by rule and regulation what constitutes substantially equivalent credentials and qualifications.

Restricts use of the title "optometrist", the initials "O.D.", and the term "doctor of optometry" to persons licensed as optometrists.

Authorizes the board to subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to any inquiry or hearing. Authorizes the board to issue cease and desist orders.

Requires the board to adopt a license renewal questionnaire designed to determine if licensees have violated regulatory provisions. Requires that applicants for the renewal of an expired optometry license pay a penalty and pay the renewal fee for each year the license was expired. Requires applicants for the renewal of an optometry license that has expired for longer than two years to retake the practical or clinical examination.

Makes the following changes and additions to the grounds for disciplinary action against optometrists for unprofessional conduct: Obtaining or attempting to obtain, renew, or reinstate a license or certificate by use of fraud, misrepresentation, or deception; failing to refer a patient to the appropriate licensed health care practitioner when the services required by the patient are beyond the scope of

competency of the optometrist or the scope of practice of optometry and repealing a provision inconsistent with such standard; administering, dispensing, or prescribing any prescription drug other than in the course of legitimate professional practice; dispensing for a fee any prescription drug; failing to report to the board any optometrist known or believed to have violated any provision regulating the practice of optometry; failing to report to the board any surrender of a license to, or any adverse action taken against the licensee by, an optometry regulatory authority in another jurisdiction; any act or omission which fails to meet generally accepted standards of care, whether or not actual injury to a patient is established; having a physical or mental disability which renders a licensee unable to treat with reasonable skill and safety or which may endanger the health and safety of persons under the care of a licensee; any disciplinary action taken by another jurisdiction; failing to make essential entries in patient records; and engaging in a sexual act with a patient while a patient-optometrist relationship exists.

Authorizes the board to take disciplinary action against the licensee and/or certification of an optometrist to use pharmaceutical agents. Authorizes the board to suspend a license or certificate and order a physical or mental examination if there is reasonable cause to believe an optometrist cannot render optometric services with reasonable skill and safety. Permits the board to reconsider and reverse any action taken by the board. Requires the board to notify the complainant of any meeting at which a complaint against any licensee will be considered by the board for dismissal or further board action. Upon dismissal of a complaint, requires the board to send to the complainant a copy of the investigation report and the response of the optometrist or other person alleged to have violated the provisions regulating the practice of optometry.

Prohibits a licensee whose license or certification has been revoked from reapplying for a new license or certification for a certain period of time.

Makes a second violation of the provisions regulating optometrists a class 1 misdemeanor and a subsequent offense a class 6 felony.

Deletes an obsolete provision requiring the board to submit an annual report to the general assembly and requires the board to prepare and distribute to consumers written communication providing information concerning the board and optometric regulation in Colorado.

Repeals a rule of the state board of optometric examiners related to the length of time an optometrist may use certain terms after taking over the practice of another optometrist.

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

2 SECTION 1. 12-40-101, Colorado Revised Statutes, 1991  
3 Repl. Vol., is amended to read:

4 12-40-101. Legislative declaration. The practice of  
5 optometry in the state of Colorado is declared to affect the  
6 public health and safety and is subject to regulation and  
7 control in the public interest. Optometry is declared to be a  
8 learned profession, and it is further declared to be a matter  
9 of public interest and concern that the practice of optometry  
10 as defined in this article be limited to qualified persons  
11 HAVING BEEN EXAMINED AND MEETING THIS STATE'S MINIMUM  
12 ACCEPTANCE LEVEL OF COMPETENCE AND HAVING BEEN admitted to the  
13 practice of optometry ~~in the state of Colorado~~ under the  
14 provisions of this article. THE PRIORITY OF THIS ARTICLE SHALL  
15 BE TO PROTECT THE CONSUMERS OF THE SERVICES PROVIDED THROUGH  
16 APPROPRIATE DISCIPLINARY PROCEDURES. This article shall be  
17 liberally construed to carry out these objects and purposes in  
18 accordance with this declaration of policy.

19 SECTION 2. 12-40-102 (5), Colorado Revised Statutes,  
20 1991 Repl. Vol., is amended to read:

21 12-40-102. Practice of optometry defined. (5) The  
22 classes of pharmaceutical agents and the procedures approved  
23 for optometric use for treatment of the anterior segment of  
24 the eye OR ITS APPENDAGES, including prescription, by  
25 certified therapeutic optometrists for treatment purposes  
26 under this section are as follows: Topical and oral

1 antimicrobials (except oral antiviral and oral antifungal  
2 agents), topical and oral antihistamines, topical  
3 antiinflammatory agents, and no more than .5 grams of codeine  
4 per one hundred milliliters or not more than thirty milligrams  
5 per dosage unit, with one or more active, nonnarcotic  
6 analgesic ingredients in recognized therapeutic amounts; and  
7 the removal of superficial foreign bodies from the human eye  
8 or its appendages.

9 SECTION 3. 12-40-104, Colorado Revised Statutes, 1991  
10 Repl. Vol., is amended to read:

11 12-40-104. Persons entitled to practice optometry -  
12 title protection of optometrists. It shall be unlawful for any  
13 person to practice optometry in this state, except those who  
14 are duly licensed optometrists before July 1, 1961, pursuant  
15 to the law of this state and those who are duly licensed  
16 optometrists pursuant to the provisions of this article. A  
17 PERSON LICENSED AS AN OPTOMETRIST PURSUANT TO THE PROVISIONS  
18 OF THIS ARTICLE MAY USE THE TITLE "OPTOMETRIST", THE INITIALS  
19 "O.D.", OR THE TERM "DOCTOR OF OPTOMETRY". NO OTHER PERSON  
20 SHALL BE SO DESIGNATED OR SHALL USE ANY OF SUCH TERMS, AND THE  
21 USE OF ANY OF SUCH TERMS BY AN UNLICENSED PERSON SHALL BE  
22 UNLAWFUL.

23 SECTION 4. 12-40-105, Colorado Revised Statutes, 1991  
24 Repl. Vol., is amended to read:

25 12-40-105. Persons excluded from operation of this  
26 article. (1) This article shall not apply to:

1 (a) ~~The practice of his profession~~ PROFESSIONAL PRACTICE  
2 by a physician or surgeon licensed to practice medicine under  
3 the laws of the state of Colorado and ancillary or technical  
4 assistants working under his THE direction OF ANY SUCH  
5 PHYSICIAN OR SURGEON, with the exception of the fitting of  
6 contact lenses which must be done under the physician's or  
7 surgeon's direct supervision;

8 (b) The practice of optometry in the discharge of their  
9 official duties by optometrists or physicians and surgeons in  
10 the service of the United States armed forces, public health  
11 service, coast guard, or veterans administration;

12 (c) Opticians, persons, firms, and corporations who  
13 duplicate spectacles, eyeglasses, or ophthalmic lenses, or who  
14 supply, sell, or repair spectacles, eyeglasses, or ophthalmic  
15 lenses on prescription from persons authorized under the laws  
16 of this state to practice optometry or medicine;

17 (d) PERSONS SERVING A POST-DOCTORATE RESIDENCY OR  
18 OPTOMETRIC STUDENT INTERN UNDER THE SUPERVISION OF AN  
19 OPTOMETRIST LICENSED IN COLORADO AS PART OF A CURRICULUM FROM  
20 AN ACCREDITED COLLEGE OF OPTOMETRY.

21 SECTION 5. 12-40-106 (1) and (3)(b), Colorado Revised  
22 Statutes, 1991 Repl. Vol., are amended to read:

23 12-40-106. State board of optometric examiners - subject  
24 to termination - repeal of article. (1) The state board of  
25 optometric examiners, referred to in this article as the  
26 "board", shall be under the supervision and control of the

1 division of registrations as provided by section 24-34-102,  
2 C.R.S. ~~The members of the board on July 1, 1973, shall~~  
3 ~~continue as members of the board under this article until the~~  
4 ~~expiration of the terms for which they were appointed.~~  
5 ~~Thereafter, the terms of all newly appointed members of the~~  
6 ~~board shall begin on April 20, and such board shall constitute~~  
7 ~~the agency of the state of Colorado to carry out the~~  
8 ~~provisions of this article.~~ The board shall consist of five  
9 optometrists and two members-at-large, to be appointed by the  
10 governor to serve for terms of four years; except that no  
11 person shall be appointed to serve more than two consecutive  
12 terms. IN ADDITION, AN OPHTHALMOLOGIST LICENSED TO PRACTICE  
13 MEDICINE IN THIS STATE SHALL BE APPOINTED TO THE BOARD AS A  
14 NONVOTING EX-OFFICIO MEMBER. SUCH EX-OFFICIO MEMBER SHALL BE  
15 APPOINTED TO SERVE FOR A TERM OF FOUR YEARS AND SHALL NOT  
16 SERVE MORE THAN TWO CONSECUTIVE TERMS. Persons holding office  
17 on June 15, 1987, are subject to the provisions of section  
18 24-1-137, C.R.S. Each member of the board, except for the  
19 members-at-large AND THE EX-OFFICIO OPHTHALMOLOGIST MEMBER,  
20 shall have been actually engaged and licensed in the practice  
21 of optometry as defined in section 12-40-102 in Colorado for  
22 the five years next preceding his THE MEMBER'S appointment. At  
23 least one of the two members-at-large shall not be a member or  
24 representative of, nor have any direct interest in, any  
25 profession, agency, or institution providing health services.  
26 Any four members of said board shall constitute a quorum for

1 the purpose of holding examinations, granting licenses, or  
2 transacting any business connected with the board. A vacancy  
3 in the membership of said board shall be filled by the  
4 governor for the remainder of the unexpired term. Any member  
5 of the board may be removed by the governor for misconduct,  
6 incompetency, or neglect of duty. ANY BOARD MEMBER HAVING A  
7 PERSONAL OR PRIVATE INTEREST IN ANY MATTER BEFORE THE BOARD  
8 SHALL DISCLOSE SUCH FACT TO THE BOARD AND SHALL NOT  
9 PARTICIPATE IN DISCUSSIONS RELATED THERETO OR VOTE THEREON.

10 (3) (b) (I) ~~This article is repealed, effective July 1,~~  
11 ~~1992~~ THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1995.

12 (II) PRIOR TO SUCH REPEAL, THE BOARD SHALL REPORT TO THE  
13 JOINT LEGISLATIVE SUNRISE AND SUNSET REVIEW COMMITTEE ON THE  
14 OPERATION OF ITS DISCIPLINARY ACTIVITIES AND SUCH COMMITTEE  
15 SHALL REVIEW SUCH ACTIVITIES.

16 SECTION 6. 12-40-107, Colorado Revised Statutes, 1991  
17 Repl. Vol., is amended to read:

18 12-40-107. Powers and duties of the board. (1) In  
19 addition to all other powers and duties conferred upon the  
20 board by this article, the board has the following powers and  
21 duties:

22 (a) To ~~conduct~~ PROVIDE FOR examinations at least once  
23 each year to ascertain the qualifications and fitness of  
24 applicants for licenses to practice optometry. THE BOARD MAY  
25 ACCEPT SCORES FROM TESTS ADMINISTERED BY ANY APPROVED OR  
26 ACCREDITED NATIONAL TESTING ORGANIZATION.

1 (b) To prescribe rules and regulations for conducting  
2 and administering examinations of applicants for licensing as  
3 optometrists and to carry out effectively the provisions of  
4 this article. IN PRESCRIBING SUCH RULES AND REGULATIONS THE  
5 BOARD SHALL SET THE PASSING SCORE OF ANY SUCH EXAMINATION AT A  
6 MINIMUM ACCEPTABLE LEVEL OF COMPETENCE FOR THE PRACTICE OF  
7 OPTOMETRY.

8 (c) Repealed, L. 85, p. 539, 15, effective July 1,  
9 1985.

10 (d) To grant licenses in conformity with this article to  
11 such applicants as have been found qualified;

12 (e) and (f) Repealed, L. 85, p. 539, 15, effective July  
13 1, 1985.

14 (g) To adopt and promulgate such rules and regulations  
15 as the board may deem necessary or proper to carry out the  
16 provisions and purposes of this article;

17 (h) Repealed, L. 85, p. 539, 15, effective July 1,  
18 1985.

19 ~~(i) To adopt a seal which shall be affixed to all~~  
20 ~~licenses issued by the board;~~

21 (j) To aid the several district attorneys of this state  
22 in the enforcement of this article and in the prosecution of  
23 all persons, firms, associations, or corporations charged with  
24 the violation of any of its provisions;

25 (k) To establish programs of education and certification  
26 for optometrists wishing to enter new, proven and generally

1 accepted areas of lawful practice involving techniques for  
2 which they have not received appropriate education;

3 ~~(l) To prepare and transmit annually, in the form and~~  
4 ~~manner prescribed by the heads of the principal departments~~  
5 ~~pursuant to the provisions of section 24-1-136, C.R.S., a~~  
6 ~~report accounting to the governor and the general assembly for~~  
7 ~~the efficient discharge of all responsibilities assigned by~~  
8 ~~law or directive to the board TO PREPARE AND DISTRIBUTE TO~~  
9 CONSUMERS WRITTEN COMMUNICATION PROVIDING INFORMATION  
10 CONCERNING THE BOARD AND OPTOMETRIC REGULATION IN COLORADO;

11 (m) MAKE INVESTIGATIONS, HOLD HEARINGS, AND TAKE  
12 EVIDENCE IN ALL MATTERS RELATING TO THE EXERCISE AND  
13 PERFORMANCE OF THE POWERS AND DUTIES VESTED IN THE BOARD AND,  
14 IN CONNECTION WITH ANY INVESTIGATION (WHETHER BEFORE OR AFTER  
15 A FORMAL COMPLAINT IS FILED PURSUANT TO SECTION 12-40-119)  
16 SUBPOENA WITNESSES, ADMINISTER OATHS, AND COMPEL THE TESTIMONY  
17 OF WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, AND RECORDS  
18 RELEVANT TO ANY INQUIRY OR HEARING. ANY SUBPOENA ISSUED  
19 PURSUANT TO THIS ARTICLE SHALL BE ENFORCEABLE BY THE DISTRICT  
20 COURT.

21 (2) IF THE BOARD DOES NOT ACCEPT THE SCORES OF A  
22 NATIONAL CLINICAL EXAMINATION FOR OPTOMETRISTS BY THE FISCAL  
23 YEAR BEGINNING JULY 1, 1994, THE BOARD SHALL CONDUCT A JOINT  
24 STUDY TO BE COMPLETED BY THE END OF THE FISCAL YEAR BEGINNING  
25 JULY 1, 1994, WITH THE PSYCHOMETRICIAN IN THE DIVISION OF  
26 REGISTRATIONS TO UPDATE THE STATE CLINICAL EXAMINATION SO THAT

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1 THE TEST IS PSYCHOMETRICALLY SOUND. THE RESULTS OF SUCH JOINT  
2 STUDY AND CHANGES TO THE CLINICAL EXAMINATION FOR OPTOMETRISTS  
3 SHALL BE REPORTED TO THE JOINT SUNRISE AND SUNSET REVIEW  
4 COMMITTEE OF THE GENERAL ASSEMBLY BY JULY 1, 1995.

5 SECTION 7. Article 40 of title 12, Colorado Revised  
6 Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW  
7 SECTION to read:

8 12-40-107.4. Cease and desist orders. (1) IF, AS THE  
9 RESULT OF AN INVESTIGATION OF A WRITTEN COMPLAINT BY ANY  
10 PERSON OR ON THE BOARD'S OWN MOTION, THE BOARD INITIATES AND  
11 CONDUCTS A HEARING AND, ON THE BASIS OF EVIDENCE PRESENTED AT  
12 THE HEARING, A MAJORITY OF THE BOARD DETERMINES THAT ANY  
13 PERSON WHO IS ACTING OR HAS ACTED WITHOUT THE REQUIRED  
14 LICENSE, OR IS OTHERWISE IN VIOLATION OF THIS ARTICLE, OR IS  
15 ACTING IN A MANNER THAT IS A THREAT TO THE HEALTH AND SAFETY  
16 OF THE PUBLIC, THE BOARD MAY ISSUE AN ORDER TO CEASE AND  
17 DESIST SUCH ACTIVITY. THE ORDER SHALL SET FORTH THE STATUTES  
18 AND RULES AND REGULATIONS ALLEGED TO HAVE BEEN VIOLATED, THE  
19 FACTS ALLEGED TO HAVE CONSTITUTED THE VIOLATION, AND THE  
20 REQUIREMENT THAT ALL UNLAWFUL ACTS CEASE FORTHWITH. THE  
21 HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS  
22 OF ARTICLE 4 OF TITLE 24, C.R.S.

23 (2) IN THE EVENT THAT ANY PERSON FAILS TO COMPLY WITH A  
24 CEASE AND DESIST ORDER, THE BOARD MAY REQUEST THE ATTORNEY  
25 GENERAL OR THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT IN  
26 WHICH THE ALLEGED VIOLATION EXISTS TO BRING, AND IF SO

1 REQUESTED HE SHALL BRING, A SUIT FOR A TEMPORARY RESTRAINING  
2 ORDER AND FOR INJUNCTIVE RELIEF TO PREVENT ANY FURTHER OR  
3 CONTINUED VIOLATION OF THE ORDER.

4 (3) NO STAY OF A CEASE AND DESIST ORDER SHALL BE ISSUED  
5 BEFORE A HEARING THEREON INVOLVING BOTH PARTIES.

6 (4) MATTERS BROUGHT BEFORE A COURT PURSUANT TO THIS  
7 SECTION SHALL HAVE PREFERENCE OVER OTHER MATTERS ON THE  
8 COURT'S CALENDAR.

9 SECTION 8. 12-40-108, Colorado Revised Statutes, 1991  
10 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to  
11 read:

12 12-40-108. Application for license - licensure by  
13 endorsement. (3) THE BOARD MAY ISSUE A LICENSE BY ENDORSEMENT  
14 TO ENGAGE IN THE PRACTICE OF OPTOMETRY TO AN APPLICANT WHO IS  
15 LICENSED TO PRACTICE OPTOMETRY IN ANOTHER STATE OR A TERRITORY  
16 OF THE UNITED STATES OR IN A FOREIGN COUNTRY IF THE APPLICANT  
17 PRESENTS PROOF SATISFACTORY TO THE BOARD THAT, AT THE TIME OF  
18 APPLICATION FOR A COLORADO LICENSE BY ENDORSEMENT, THE  
19 APPLICANT POSSESSES CREDENTIALS AND QUALIFICATIONS WHICH ARE  
20 SUBSTANTIALLY EQUIVALENT TO REQUIREMENTS IN COLORADO FOR  
21 LICENSURE BY EXAMINATION. THE BOARD SHALL SPECIFY BY RULE AND  
22 REGULATION WHAT SHALL CONSTITUTE SUBSTANTIALLY EQUIVALENT  
23 CREDENTIALS AND QUALIFICATIONS.

24 SECTION 9. 12-40-109 (1), Colorado Revised Statutes,  
25 1991 Repl. Vol., is amended to read:

26 12-40-109. Examination - licenses. (1) Each application

1 shall be verified under oath by the applicant, and a material  
2 false statement thereon shall constitute grounds for the  
3 withholding or revocation of a license. When such application  
4 and accompanying proofs as are required by section 12-40-108  
5 are submitted to the board and approved, it shall notify the  
6 applicant to appear for examination at a time and place to be  
7 fixed by the board. THE BOARD SHALL ALSO NOTIFY SUCH  
8 APPLICANTS OF THE TIME AND PLACE OF ANY COLORADO CLINICAL  
9 EXAMINATION ADMINISTERED BY THE BOARD AND REQUIRED FOR  
10 LICENSURE IN THIS STATE. The examination shall be practical  
11 and clinical and of such a character as to test the  
12 qualifications of the applicant to practice optometry.

13 SECTION 10. 12-40-113, Colorado Revised Statutes, 1991  
14 Repl. Vol., is amended to read:

15 12-40-113. License renewal - requirements - fee, failure  
16 to pay. (1) (a) On or before a date designated by the board,  
17 every optometrist licensed to practice optometry in this state  
18 shall transmit to the board, upon a form prescribed by the  
19 board, an application for renewal and such other pertinent  
20 information as may be requested, together with a fee which  
21 shall be determined and collected pursuant to section  
22 24-34-105, C.R.S., and receive a renewal certificate  
23 authorizing him to continue the practice of optometry in this  
24 state for the renewal period.

25 (b) THE BOARD SHALL ESTABLISH A QUESTIONNAIRE TO  
26 ACCOMPANY THE RENEWAL FORM. SAID QUESTIONNAIRE SHALL BE

1 DESIGNED TO DETERMINE IF THE LICENSEE HAS ACTED IN VIOLATION  
2 OF OR HAS BEEN DISCIPLINED FOR ACTIONS THAT MIGHT BE  
3 CONSIDERED AS VIOLATIONS OF THIS ARTICLE OR THAT MIGHT MAKE  
4 THE LICENSEE UNFIT TO PRACTICE OPTOMETRY WITH REASONABLE CARE  
5 AND SAFETY. FAILURE OF THE APPLICANT TO ANSWER THE  
6 QUESTIONNAIRE ACCURATELY SHALL BE CONSIDERED UNPROFESSIONAL  
7 CONDUCT AS SPECIFIED IN SECTION 12-40-118.

8 (c) Any optometrist whose application for renewal is  
9 received by the board after the renewal date shall, in  
10 addition to the renewal fee, transmit to the board with his  
11 SUCH application an additional sum AS A PENALTY which shall be  
12 determined and collected pursuant to section 24-34-105,  
13 C.R.S., AND SHALL PAY THE RENEWAL FEE FOR EACH YEAR THE  
14 LICENSE WAS EXPIRED. Failure to so remit shall cause a denial  
15 of the application for renewal.

16 (d) IF AN OPTOMETRIST'S LICENSE HAS EXPIRED FOR MORE  
17 THAN TWO YEARS, THE BOARD SHALL REQUIRE THE OPTOMETRIST TO  
18 RETAKE THE CLINICAL EXAMINATION.

19 (e) EXCEPT AS PROVIDED IN PARAGRAPH (d) OF THIS  
20 SUBSECTION (1), any optometrist whose application for renewal  
21 indicates that he THE OPTOMETRIST has not actively practiced  
22 optometry or that he THE OPTOMETRIST has not been engaged in  
23 teaching optometry for the preceding five years shall be  
24 issued a renewal certificate by the board only after hearing  
25 and upon notice to said applicant, wherein such applicant has  
26 demonstrated to the board that he THE APPLICANT has maintained

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1 the qualifications set out in section 12-40-109, but no  
2 reexamination shall be required unless the board finds good  
3 cause to believe that the person has not maintained the  
4 professional ability and knowledge required of an original  
5 licensee under this article.

6 (2) Repealed, L. 79, p. 535, 14, effective June 7,  
7 1979.

8 SECTION 11. 12-40-116, Colorado Revised Statutes, 1991  
9 Repl. Vol., is amended to read:

10 12-40-116. Records to be kept by the board. The board  
11 shall keep a record of all persons to whom licenses have been  
12 granted under this article. A copy of said records, certified  
13 ~~under the seal of~~ BY the board, shall be admitted in any of  
14 the courts of this state, in lieu of the originals, as prima  
15 facie evidence of the facts contained in said records. A copy  
16 of said records certified ~~under the seal of~~ BY the board of a  
17 person charged with a violation of any of the provisions of  
18 this article shall be evidence that such person has not been  
19 licensed to practice optometry.

20 SECTION 12. 12-40-117, Colorado Revised Statutes, 1991  
21 Repl. Vol., is amended to read:

22 12-40-117. Patient's exercise of free choice - release  
23 of patient records. (1) No person shall interfere with any  
24 patient's exercise of free choice in the selection of  
25 practitioners licensed to perform examinations for refractions  
26 and visual training or corrections within the field for which

1 their respective licenses entitle them to practice.

2 (2) AN OPTOMETRIST SHALL RELEASE TO A PATIENT ALL  
3 MEDICAL RECORDS PURSUANT TO SECTION 25-1-802, C.R.S.

4 (3) THE OPTOMETRIST SHALL RELEASE TO THE PATIENT, UPON  
5 WRITTEN REQUEST, A VALID, WRITTEN CONTACT LENS PRESCRIPTION AT  
6 THE TIME THE OPTOMETRIST WOULD OTHERWISE REPLACE A CONTACT  
7 LENS WITHOUT ANY ADDITIONAL PRELIMINARY EXAMINATION OR  
8 FITTING. THE BOARD SHALL PROMULGATE RULES AND REGULATIONS  
9 DEFINING THE COMPONENTS OF A VALID WRITTEN CONTACT LENS  
10 PRESCRIPTION.

11 SECTION 13. 12-40-118 (1)(d), (1)(m), (1)(n), (1)(q),  
12 (1)(s), (1)(v), (1)(z), (1)(bb), and (1)(cc), Colorado Revised  
13 Statutes, 1991 Repl. Vol., are amended, and the said 12-40-118  
14 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW  
15 PARAGRAPHS, to read:

16 12-40-118. Unprofessional conduct defined. (1) The term  
17 "unprofessional conduct", as used in this article, means:

18 (d) ~~Obtaining the license or any renewal thereof by use~~  
19 ~~of fraud or deceit~~ RESORTING TO FRAUD, MISREPRESENTATION, OR  
20 DECEPTION IN APPLYING FOR, SECURING, RENEWING, OR SEEKING  
21 REINSTATEMENT OF A LICENSE OR IN TAKING ANY EXAMINATION  
22 PROVIDED FOR IN THIS ARTICLE;

23 (m) ~~Continuing in the practice of optometry during any~~  
24 ~~period of mental disability or while afflicted with a~~  
25 ~~communicable, infectious, or contagious disease of such a~~  
26 ~~serious nature as to render him a menace to his patients~~

1 HAVING A PHYSICAL OR MENTAL DISABILITY WHICH RENDERS AN  
2 OPTOMETRIST UNABLE TO TREAT WITH REASONABLE SKILL AND SAFETY  
3 OR WHICH MAY ENDANGER THE HEALTH AND SAFETY OF PERSONS UNDER  
4 THE CARE OF ANY OPTOMETRIST;

5 (n) Failing to refer ~~or direct~~ a patient to a physician  
6 ~~whenever it comes to the attention of the licensee that a~~  
7 ~~patient exhibits signs or symptoms of a disease requiring~~  
8 ~~treatment by an ophthalmologist or other physician or~~  
9 ~~otherwise failing to obtain a consultation or perform a~~  
10 ~~referral when failing to do so is not consistent with the~~  
11 ~~standard of care for the profession~~ THE APPROPRIATE HEALTH  
12 CARE PRACTITIONER WHEN THE SERVICES REQUIRED BY THE PATIENT  
13 ARE BEYOND THE SCOPE OF COMPETENCY OF THE OPTOMETRIST OR THE  
14 SCOPE OF PRACTICE OF OPTOMETRY;

15 (q) ~~A revocation or suspension of a license~~ ANY  
16 DISCIPLINARY ACTION AGAINST A LICENSEE to practice optometry  
17 in another state or country, ~~for disciplinary reasons, and~~  
18 ~~such revocation or suspension~~ WHICH ACTION shall be deemed to  
19 be prima facie evidence of unprofessional conduct IF THE  
20 GROUNDS FOR THE DISCIPLINARY ACTION WOULD BE UNPROFESSIONAL  
21 CONDUCT OR OTHERWISE CONSTITUTE A VIOLATION OF ANY PROVISION  
22 OF THIS ARTICLE;

23 (s) ~~A pattern of conduct~~ ANY ACT OR OMISSION which fails  
24 to meet generally accepted standards of care whether or not  
25 actual injury to a patient is established;

26 (v) Knowingly making any false or fraudulent statement,

1 written or oral, in connection with the practice of optometry,  
2 including falsifying or repeatedly making incorrect essential  
3 entries or repeatedly failing to make essential entries on  
4 patient records;

5 (z) ~~In utilizing pharmaceutical agents, failing to refer~~  
6 ~~or direct a patient to a physician whenever it comes to the~~  
7 ~~attention of the licensee that a patient exhibits signs or~~  
8 ~~symptoms of a disease or disorder which the licensee should~~  
9 ~~reasonably believe may require treatment by an ophthalmologist~~  
10 ~~or other physician.~~

11 (bb) Administering, dispensing, or prescribing any  
12 ~~habit-forming drug, as defined in section 12-22-102(13),~~  
13 PRESCRIPTION DRUG, AS DEFINED IN SECTION 12-22-102 (30), or  
14 any controlled substance, as defined in section 12-22-303 (7),  
15 other than in the course of legitimate professional practice;

16 (cc) Dispensing for a fee any PRESCRIPTION drug, as  
17 defined in section ~~12-22-102(11)~~ 12-22-102 (30), or any  
18 controlled substance, as defined in section 12-22-303 (7);

19 (ff) FAILING TO REPORT TO THE BOARD ANY OPTOMETRIST  
20 KNOWN TO HAVE VIOLATED, OR UPON INFORMATION OR BELIEF,  
21 BELIEVED TO HAVE VIOLATED ANY OF THE PROVISIONS OF THIS  
22 ARTICLE;

23 (gg) FAILING TO REPORT TO THE BOARD ANY SURRENDER OF A  
24 LICENSE TO, OR ANY ADVERSE ACTION TAKEN AGAINST A LICENSEE BY  
25 ANOTHER LICENSING AGENCY IN ANOTHER STATE, TERRITORY, OR  
26 COUNTRY, ANY GOVERNMENTAL AGENCY, ANY LAW ENFORCEMENT AGENCY,

1 OR ANY COURT FOR ACTS OF CONDUCT THAT WOULD CONSTITUTE GROUNDS  
2 FOR DISCIPLINE UNDER THE PROVISIONS OF THIS ARTICLE;

3 (hh) ENGAGING IN A SEXUAL ACT WITH A PATIENT WHILE A  
4 PATIENT-OPTOMETRIST RELATIONSHIP EXISTS. FOR THE PURPOSES OF  
5 THIS PARAGRAPH (hh), "PATIENT-OPTOMETRIST RELATIONSHIP" MEANS  
6 THAT PERIOD OF TIME BEGINNING WITH THE INITIAL EVALUATION  
7 THROUGH THE TERMINATION OF TREATMENT. FOR THE PURPOSES OF  
8 THIS PARAGRAPH (hh), "SEXUAL ACT" MEANS SEXUAL CONTACT, SEXUAL  
9 INTRUSION, OR SEXUAL PENETRATION AS DEFINED IN SECTION  
10 18-3-401, C.R.S.

11 (ii) FAILING TO PROVIDE A PATIENT WITH COPIES OF PATIENT  
12 MEDICAL RECORDS AS REQUIRED BY SECTION 25-1-802, C.R.S.;

13 (jj) FAILING TO PROVIDE A PATIENT WITH A VALID WRITTEN  
14 CONTACT LENS PRESCRIPTION AS REQUIRED BY SECTION 12-40-117  
15 (3).

16 SECTION 14. Article 40 of title 12, Colorado Revised  
17 Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW  
18 SECTION to read:

19 12-40-118.5. Mental and physical examination of  
20 licensees. (1) IF THE BOARD HAS REASONABLE CAUSE TO BELIEVE  
21 THAT A LICENSEE IS UNABLE TO PRACTICE WITH REASONABLE SKILL  
22 AND SAFETY, THE BOARD MAY REQUIRE SUCH PERSON TO TAKE A MENTAL  
23 OR PHYSICAL EXAMINATION BY A PHYSICIAN DESIGNATED BY SAID  
24 BOARD. IF SUCH LICENSEE REFUSES TO UNDERGO SUCH A MENTAL OR  
25 PHYSICAL EXAMINATION, UNLESS DUE TO CIRCUMSTANCES BEYOND THE  
26 LICENSEE'S CONTROL, THE BOARD MAY SUSPEND SUCH LICENSEE'S

1 LICENSE UNTIL THE RESULTS OF ANY SUCH EXAMINATION ARE KNOWN,  
2 AND THE BOARD HAS MADE A DETERMINATION OF THE LICENSEE'S  
3 FITNESS TO PRACTICE. THE BOARD SHALL PROCEED WITH ANY SUCH  
4 ORDER FOR EXAMINATION AND SUCH DETERMINATION IN A TIMELY  
5 MANNER.

6 (2) AN ORDER TO A LICENSEE PURSUANT TO SUBSECTION (1) OF  
7 THIS SECTION TO UNDERGO A MENTAL OR PHYSICAL EXAMINATION SHALL  
8 CONTAIN THE BASIS OF THE BOARD'S REASONABLE CAUSE TO BELIEVE  
9 THAT THE LICENSEE IS UNABLE TO PRACTICE WITH REASONABLE SKILL  
10 AND SAFETY. FOR THE PURPOSES OF ANY DISCIPLINARY PROCEEDING  
11 AUTHORIZED UNDER THIS ARTICLE, THE LICENSEE SHALL BE DEEMED TO  
12 HAVE WAIVED ALL OBJECTIONS TO THE ADMISSIBILITY OF THE  
13 EXAMINING PHYSICIAN'S TESTIMONY OR EXAMINATION REPORTS ON THE  
14 GROUND THAT THEY ARE PRIVILEGED COMMUNICATIONS.

15 (3) THE LICENSEE MAY SUBMIT TO THE BOARD TESTIMONY OR  
16 EXAMINATION REPORTS FROM A PHYSICIAN CHOSEN BY SUCH LICENSEE  
17 AND PERTAINING TO ANY CONDITION WHICH THE BOARD HAS ALLEGED  
18 MAY PRECLUDE THE LICENSEE FROM PRACTICING WITH REASONABLE  
19 SKILL AND SAFETY. THESE MAY BE CONSIDERED BY THE BOARD IN  
20 CONJUNCTION WITH, BUT NOT IN LIEU OF, TESTIMONY AND  
21 EXAMINATION REPORTS OF THE PHYSICIAN DESIGNATED BY THE BOARD.

22 (4) THE RESULTS OF ANY MENTAL OR PHYSICAL EXAMINATION  
23 ORDERED BY THE BOARD SHALL NOT BE USED AS EVIDENCE IN ANY  
24 PROCEEDING OTHER THAN ONE BEFORE THE BOARD AND SHALL NOT BE  
25 DEEMED PUBLIC RECORDS NOR MADE AVAILABLE TO THE PUBLIC.

26 SECTION 15. 12-40-119, Colorado Revised Statutes, 1991

1 Repl. Vol., is amended to read:

2 12-40-119. Revocation, suspension, supervision,  
3 probation procedure - professional review - reconsideration  
4 and review of action by board. (1) (a) WITH RESPECT TO  
5 LICENSES OR CERTIFICATES ISSUED PURSUANT TO THIS ARTICLE the  
6 board may impose probation with or without supervision on a  
7 licensee, issue a letter of admonition to a licensee, suspend,  
8 revoke, or refuse to renew any license OR CERTIFICATE provided  
9 for by this article for any reason stated in section 12-40-118  
10 or for violating any term of probation of the board.

11 (b) Upon its own motion or upon a signed complaint, an  
12 investigation may be made if there is reasonable cause to  
13 believe that an optometrist licensed OR CERTIFIED, OR BOTH by  
14 the board has committed an act of unprofessional conduct  
15 pursuant to section 12-40-118 or, while under probation, has  
16 violated the terms of said probation.

17 (c) If the board finds such probability great and a  
18 hearing is conducted, such hearing shall be conducted in  
19 accordance with the provisions of section 24-4-105, C.R.S.

20 (d) The board may revoke, suspend, deny, issue, reissue,  
21 or reinstate licenses AND CERTIFICATES granted pursuant to  
22 this article or under the previous laws of this state, and the  
23 board may take such other intermediate action as may be deemed  
24 necessary under the circumstances of each case pursuant to  
25 this section.

26 (2) (a) Repealed, L. 85, p. 539, 15, effective July 1,

1 1985.

2 (b) and (c) Repealed, L. 81, p. 783, 2, effective July  
3 1, 1981.

4 (d) The hearing shall be conducted in accordance with  
5 the provisions of section 24-4-105, C.R.S.; except that the  
6 board may use an administrative law judge, who shall perform  
7 all of those functions indicated in section 24-4-105 (4),  
8 C.R.S.

9 (e) The action of the board in refusing to grant or  
10 renew, revoking, or suspending a license OR CERTIFICATE,  
11 issuing a letter of admonition, or placing a licensee on  
12 probation or under supervision pursuant to subsection (1) of  
13 this section may be reviewed by the court of appeals by  
14 appropriate proceedings under section 24-4-106 (11), C.R.S.

15 (f) When a complaint or an investigation discloses an  
16 instance of misconduct which, in the opinion of the board,  
17 does not warrant formal action by the board but which should  
18 not be dismissed as being without merit, the board may send a  
19 letter of admonition by certified mail to the optometrist  
20 against whom a complaint was made and a copy thereof to the  
21 person making the complaint, but, when the board sends a  
22 letter of admonition by certified mail to an optometrist  
23 complained against, the board shall advise such optometrist  
24 that he THE OPTOMETRIST has the right to request in writing,  
25 within twenty days after proven receipt of the letter, that  
26 formal disciplinary proceedings be initiated against him THE

1 OPTOMETRIST to adjudicate the propriety of the conduct upon  
2 which the letter of admonition is based. If such request is  
3 timely made, the letter of admonition shall be deemed vacated,  
4 and the matter shall be processed by means of formal  
5 disciplinary proceedings.

6 (2.3) NO PERSON WHOSE LICENSE OR CERTIFICATION, OR BOTH,  
7 IS REVOKED BY THE BOARD MAY REAPPLY FOR A NEW LICENSE UNDER  
8 THE PROVISIONS OF THIS ARTICLE FOR AT LEAST TWO YEARS AFTER  
9 ANY SUCH REVOCATION.

10 (2.5) Any person participating in good faith in the  
11 making of a complaint or report or participating in any  
12 investigative or administrative proceeding pursuant to this  
13 section shall be immune from any liability, civil or criminal,  
14 that otherwise might result by reason of such action.

15 (3) (a) Repealed, L. 85, p. 539, 15, effective July 1,  
16 1985.

17 (b) Any member of the board and any witness appearing  
18 before the board or such professional review committee shall  
19 be immune from criminal liability and from suit in any civil  
20 action brought by a licensee if such member or witness acts in  
21 good faith within the scope of the function of the board, has  
22 made a reasonable effort to obtain the facts of the matter as  
23 to which he THE PERSON acts, and acts in the reasonable belief  
24 that the action taken by him THE PERSON is warranted by the  
25 facts.

26 (4) THE COMPLAINANT AND THE RESPONDENT SHALL BE NOTIFIED

1 OF THE TIME AND PLACE OF ANY MEETING AT WHICH A COMPLAINT WILL  
2 BE CONSIDERED BY THE BOARD FOR DISMISSAL OR FURTHER ACTION BY  
3 THE BOARD.

4 (5) UPON DISMISSAL OF A COMPLAINT, THE COMPLAINANT SHALL  
5 BE SENT A COPY OF THE INVESTIGATION REPORT AND THE RESPONSE OF  
6 THE OPTOMETRIST OR OTHER PERSON ALLEGED TO HAVE VIOLATED THE  
7 ACT.

8 (6) (a) THE BOARD, ON ITS OWN MOTION OR UPON  
9 APPLICATION, AT ANY TIME AFTER THE REFUSAL TO GRANT A LICENSE  
10 OR CERTIFICATE, THE IMPOSITION OF ANY DISCIPLINE, OR THE  
11 ORDERING OF PROBATION, AS PROVIDED IN THIS SECTION, MAY  
12 RECONSIDER ITS PRIOR ACTION AND GRANT, REINSTATE, OR RESTORE  
13 SUCH LICENSE OR CERTIFICATE OR TERMINATE PROBATION, OR REDUCE  
14 THE SEVERITY OF ITS PRIOR DISCIPLINARY ACTION. THE TAKING OF  
15 ANY SUCH FURTHER ACTION, OR THE HOLDING OF A HEARING WITH  
16 RESPECT THERETO, SHALL REST IN THE SOLE DISCRETION OF THE  
17 BOARD.

18 (b) UPON THE RECEIPT OF SUCH APPLICATION, IT MAY BE  
19 FORWARDED TO THE ATTORNEY GENERAL FOR SUCH INVESTIGATION AS  
20 MAY BE DEEMED NECESSARY. THE PROCEEDINGS SHALL BE GOVERNED BY  
21 THE APPLICABLE PROVISIONS GOVERNING FORMAL HEARINGS IN  
22 DISCIPLINARY PROCEEDINGS. THE ATTORNEY GENERAL MAY PRESENT  
23 EVIDENCE BEARING UPON THE MATTERS IN ISSUE, AND THE BURDEN  
24 SHALL BE UPON THE APPLICANT SEEKING REINSTATEMENT TO ESTABLISH  
25 THE AVERMENTS OF THE APPLICATION AS SPECIFIED IN SECTION  
26 24-4-105 (7), C.R.S. NO APPLICATION FOR REINSTATEMENT OR FOR

1 MODIFICATION OF A PRIOR ORDER SHALL BE ACCEPTED UNLESS THE  
2 APPLICANT DEPOSITS WITH THE BOARD ALL AMOUNTS UNPAID UNDER ANY  
3 PRIOR ORDER OF THE BOARD.

4 (c) THE ACTION OF THE BOARD IN REFUSING TO GRANT A  
5 LICENSE OR CERTIFICATE, IN TAKING ANY DISCIPLINARY ACTION AS  
6 PROVIDED IN THIS SECTION, OR IN PLACING AN OPTOMETRIST ON  
7 PROBATION MAY BE REVIEWED BY THE COURT OF APPEALS BY  
8 APPROPRIATE PROCEEDINGS UNDER SECTION 24-4-106 (11), C.R.S.

9 SECTION 16. 12-40-124, Colorado Revised Statutes, 1991  
10 Repl. Vol., is amended to read:

11 12-40-124. Penalty for violation. Any person who  
12 violates any of the provisions of this article commits a class  
13 3 misdemeanor and shall be punished as provided in section  
14 18-1-106, C.R.S. ANY PERSON COMMITTING A SECOND OFFENSE  
15 COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE PUNISHED AS  
16 PROVIDED IN SECTION 18-1-106, C.R.S. ANY PERSON COMMITTING A  
17 SUBSEQUENT OFFENSE COMMITS A CLASS 6 FELONY AND SHALL BE  
18 PUNISHED AS PROVIDED IN SECTION 18-1-105, C.R.S.

19 SECTION 17. Article 40 of title 12, Colorado Revised  
20 Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW  
21 SECTION to read:

22 12-40-128. Repeal of article - subject to sunset law.

23 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 12-40-106 (3) (b)  
24 (I), THIS ARTICLE IS REPEALED, EFFECTIVE JULY 1, 2002.

25 (2) THE PROVISIONS OF SECTION 24-34-204, C.R.S.,  
26 CONCERNING THE TERMINATION SCHEDULE FOR REGULATORY BODIES OF

1 THE STATE UNLESS EXTENDED AS PROVIDED IN THAT SECTION, ARE  
2 APPLICABLE TO THE FUNCTIONS PERFORMED PURSUANT TO THIS  
3 ARTICLE.

4 SECTION 18. 24-34-104 (21)(a)(I) and (24), Colorado  
5 Revised Statutes, 1988 Repl. Vol., as amended, are amended,  
6 and the said 24-34-104 is further amended BY THE ADDITION OF A  
7 NEW SUBSECTION, to read:

8 24-34-104. General assembly review of regulatory  
9 agencies and functions for termination, continuation, or  
10 reestablishment. (21) (a) The following boards in the  
11 division of registrations shall terminate on July 1, 1992:

12 (I) ~~The state board of optometric examiners, created by~~  
13 ~~article 40 of title 12, C.R.S.;~~

14 (24) The following boards in the division of  
15 registrations shall terminate on July 1, 1995:

16 (a) The Colorado state board of chiropractic examiners,  
17 created by article 33 of title 12, C.R.S.;

18 (b) The Colorado state board of medical examiners,  
19 created by article 36 of title 12, C.R.S.;

20 (c) The state board of nursing, created by article 38 of  
21 title 12, C.R.S.

22 (d) Repealed, L. 88, p. 533, 10, effective July 1,  
23 1988.

24 (e) The Colorado podiatry board, created by article 32  
25 of title 12, C.R.S.

26 (f) THE STATE BOARD OF OPTOMETRIC EXAMINERS, CREATED BY



1 SECTION 12-40-106, C.R.S.

2 (31) THE FOLLOWING FUNCTION IN THE DIVISION OF  
3 REGISTRATIONS SHALL TERMINATE ON JULY 1, 2002: THE REGULATION  
4 OF THE PRACTICE OF OPTOMETRY PURSUANT TO THE PROVISIONS OF  
5 ARTICLE 40 OF TITLE 12, C.R.S.

6 SECTION 19. Repeal of rules. To further the general  
7 assembly's intent to rescind or delete rules unnecessary for  
8 the administrative functions of an agency as expressed in  
9 section 24-34-914, Colorado Revised Statutes, rules 7 and 8 of  
10 the state board of optometric examiners, pages 8 and 9 of 4  
11 CCR 728-1, are hereby expressly repealed.

12 SECTION 20. Effective date - applicability. This act  
13 shall take effect July 1, 1992, and shall apply to acts  
14 committed on and after said date.

15 SECTION 21. Safety clause. The general assembly hereby  
16 finds, determines, and declares that this act is necessary  
17 for the immediate preservation of the public peace, health,  
18 and safety.

SUNRISE/SUNSET BILL C

A BILL FOR AN ACT

1 CONCERNING THE REGULATION OF ACUPUNCTURISTS, AND, IN  
2 CONNECTION THEREWITH, CONTINUING THE REGISTRATION OF  
3 ACUPUNCTURISTS WITH THE DIRECTOR OF THE DIVISION OF  
4 REGISTRATIONS AND AMENDING CERTAIN PROVISIONS RELATING TO  
5 THE PRACTICE OF ACUPUNCTURE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Continues the registration of acupuncturists with the division of registrations. Requires an acupuncturist to provide new patients with specified written information about the practice of acupuncture and about the acupuncturist's professional status in other jurisdictions, and to keep a copy of such information, signed by the patient, for a specified period of time. Allows reinstatement of registrations which have lapsed due to nonpayment of annual registration fees. Imposes reporting requirements relating to judgments and administrative actions arising in Colorado and other jurisdictions. Adds insurance fraud, practicing while subject to disability or substance abuse, substandard care, false advertising, and criminal convictions to the list of acts and practices for which disciplinary action may be taken. Exempts persons in bona fide, supervised training programs from registration requirements.

Allows the director of the division of registrations to order physical and mental examinations of practitioners suspected of having significant disabilities, and to accept

evidence of disciplinary actions in other jurisdictions as prima facie evidence of prohibited acts and practices. Grants qualified immunity to persons making or participating in complaints or investigations of acupuncturists. Makes conforming amendments.

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

2 SECTION 1. 24-34-104 (21) (b) (VIII), Colorado Revised  
3 Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

4 24-34-104. General assembly review of regulatory  
5 agencies and functions for termination, continuation, or  
6 reestablishment. (21) (b) The following functions of the  
7 specified agencies shall terminate on July 1, 1992:

8 (VIII) ~~The registration of persons with the director of~~  
9 ~~the division of registrations in accordance with article 29.5~~  
10 ~~of title 12, C.R.S.;~~

11 SECTION 2. 24-34-104, Colorado Revised Statutes, 1988  
12 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW  
13 SUBSECTION to read:

14 24-34-104. General assembly review of regulatory  
15 agencies and functions for termination, continuation, or  
16 reestablishment. (31) THE FOLLOWING FUNCTIONS OF THE  
17 SPECIFIED AGENCIES SHALL TERMINATE ON JULY 1, 2002: THE  
18 REGISTRATION OF PERSONS WHO PRACTICE ACUPUNCTURE WITH THE  
19 DIRECTOR OF THE DIVISION OF REGISTRATIONS IN ACCORDANCE WITH  
20 ARTICLE 29.5 OF TITLE 12, C.R.S.

21 SECTION 3. 12-29.5-103 (1), Colorado Revised Statutes,  
22 1991 Repl. Vol., is amended, and the said 12-29.5-103 is

1 further amended BY THE ADDITION OF A NEW SUBSECTION to read:  
 2 12-29.5-103. Mandatory disclosure of information to  
 3 patients - retention of records of disclosure. (1) Every  
 4 acupuncturist shall provide the following information in  
 5 writing to each patient during the initial patient contact:  
 6 (a) The name, business address, and business phone  
 7 number of the acupuncturist;  
 8 (b) A fee schedule;  
 9 (c) A STATEMENT INDICATING THAT:  
 10 (I) THE PATIENT IS ENTITLED TO RECEIVE INFORMATION ABOUT  
 11 THE METHODS OF THERAPY, THE TECHNIQUES USED, AND THE DURATION  
 12 OF THERAPY, IF KNOWN;  
 13 (II) THE PATIENT MAY SEEK A SECOND OPINION FROM ANOTHER  
 14 HEALTH CARE PROFESSIONAL OR MAY TERMINATE THERAPY AT ANY TIME;  
 15 (III) IN A PROFESSIONAL RELATIONSHIP, SEXUAL INTIMACY IS  
 16 NEVER APPROPRIATE AND SHOULD BE REPORTED TO THE DIRECTOR OF  
 17 THE DIVISION OF REGISTRATIONS IN THE DEPARTMENT OF REGULATORY  
 18 AGENCIES;  
 19 {e} (d) A listing of the acupuncturist's education,  
 20 experience, degrees, membership in a professional organization  
 21 whose membership includes not less than one-third of the  
 22 persons registered pursuant to this article, certificates or  
 23 credentials related to acupuncture awarded by such  
 24 organizations, the length of time required to obtain said  
 25 degrees or credentials, and experience;  
 26 {d} (e) A statement indicating any license, certificate,

1 or registration in ~~the health-care field~~ ACUPUNCTURE OR ANY  
 2 OTHER HEALTH CARE PROFESSION which was ~~revoked~~ ISSUED TO THE  
 3 ACUPUNCTURIST by any local, state, or national health care  
 4 agency, AND INDICATING WHETHER ANY SUCH LICENSE, CERTIFICATE,  
 5 OR REGISTRATION WAS REVOKED;  
 6 {e} (f) A statement that the acupuncturist is complying  
 7 with any rules and regulations promulgated by the department  
 8 of health with respect to this article, including those  
 9 related to the proper cleaning and sterilization of needles  
 10 used in the practice of acupuncture and the sanitation of  
 11 acupuncture offices; and  
 12 {f} (g) A statement indicating that the practice of  
 13 acupuncture is regulated by the department of regulatory  
 14 agencies and the address and phone number of the ~~complaints~~  
 15 ~~and---investigation---section~~ DIRECTOR of the division of  
 16 registrations in the department of regulatory agencies.  
 17 (3) THE ACUPUNCTURIST SHALL RETAIN A COPY OF THE WRITTEN  
 18 INFORMATION SPECIFIED IN SUBSECTION (1) OF THIS SECTION, DATED  
 19 AND SIGNED BY THE PATIENT, FROM THE TIME OF THE INITIAL  
 20 EVALUATION UNTIL AT LEAST THREE YEARS AFTER THE TERMINATION OF  
 21 TREATMENT.  
 22 SECTION 4. 12-29.5-104 (1) and (4), Colorado Revised  
 23 Statutes, 1991 Repl. Vol., are amended, and the said  
 24 12-29.5-104 is further amended BY THE ADDITION OF A NEW  
 25 SUBSECTION, to read:  
 26 12-29.5-104. Requirement for registration with the

1 division of registrations - annual fee - required disclosures.

2 (1) Every acupuncturist shall register with the division of  
3 registrations by providing an application to the director in  
4 the form he shall require. Said application shall include the  
5 information specified in section 12-29.5-103 (1) (a) AND (1)  
6 (d) to ~~(1)-(f)~~ (1) (g), and shall include the disclosure of  
7 any act which would be grounds for disciplinary action against  
8 a registered acupuncturist under this article.

9 (4) Every applicant for registration shall pay an annual  
10 registration fee to be established by the director in the same  
11 manner as is authorized by section 24-34-105, C.R.S. THE  
12 DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS FOR THE  
13 REINSTATEMENT OF REGISTRATIONS WHICH HAVE LAPSED DUE TO  
14 NONPAYMENT OF SUCH ANNUAL FEE; EXCEPT THAT, IF A REGISTRANT  
15 HAS NOT APPLIED FOR REINSTATEMENT WITHIN TWO YEARS AFTER THE  
16 DATE OF LAPSE, REINSTATEMENT IS NOT AVAILABLE AND THE  
17 REGISTRANT MUST REAPPLY AS A NEW APPLICANT.

18 (5) EVERY ACUPUNCTURIST SHALL REPORT TO THE DIRECTOR  
19 EVERY JUDGMENT OR ADMINISTRATIVE ACTION, AS WELL AS THE TERMS  
20 OF ANY SETTLEMENT OR OTHER DISPOSITION OF ANY SUCH JUDGMENT OR  
21 ACTION, AGAINST THE ACUPUNCTURIST INVOLVING MALPRACTICE OR  
22 IMPROPER PRACTICE OF ACUPUNCTURE, WHETHER OCCURRING IN  
23 COLORADO OR IN ANY OTHER JURISDICTION. THE ACUPUNCTURIST SHALL  
24 MAKE SUCH REPORT EITHER WITHIN THIRTY DAYS OF THE JUDGMENT OR  
25 ACTION OR UPON APPLICATION FOR REGISTRATION OR REINSTATEMENT,  
26 WHICHEVER OCCURS EARLIER.

1 SECTION 5. 12-29.5-105, Colorado Revised Statutes, 1991  
2 Repl. Vol., is amended to read:

3 12-29.5-105. Unlawful acts - exceptions. (1) It shall be  
4 unlawful for any acupuncturist to practice acupuncture without  
5 a valid and current registration on file with the division of  
6 registrations, UNLESS THE ACUPUNCTURIST IS PRACTICING PURSUANT  
7 TO SECTION 12-36-106 (3) (1) OR UNLESS THE REQUIREMENTS OF  
8 SUBSECTION (2) OF THIS SECTION HAVE BEEN MET.

9 (2) PERSONS IN TRAINING MAY PRACTICE ACUPUNCTURE WITHOUT  
10 A VALID AND CURRENT REGISTRATION ON FILE WITH THE DIVISION IF  
11 SUCH PRACTICE TAKES PLACE IN THE COURSE OF A BONA FIDE  
12 TRAINING PROGRAM AND:

13 (a) ALL ACUPUNCTURE ACTS AND SERVICES PERFORMED BY SUCH  
14 PERSONS ARE PERFORMED UNDER THE DIRECT, ON-SITE SUPERVISION OF  
15 A REGISTERED ACUPUNCTURIST, WHO SHALL BE RESPONSIBLE FOR ALL  
16 SUCH ACTS AND SERVICES AS THOUGH THE REGISTERED ACUPUNCTURIST  
17 HAD PERSONALLY PERFORMED THEM; AND

18 (b) THE NAMES AND CURRENT RESIDENCE ADDRESSES OF ALL OF  
19 SUCH PERSONS HAVE BEEN REPORTED TO THE DIRECTOR BY OR ON  
20 BEHALF OF THE REGISTERED ACUPUNCTURIST SUPERVISING SUCH  
21 PERSONS.

22 SECTION 6. 12-29.5-106, Colorado Revised Statutes, 1991  
23 Repl. Vol., is amended to read:

24 12-29.5-106. Grounds for disciplinary action. (1) The  
25 director may DENY REGISTRATION TO OR take disciplinary action  
26 against an acupuncturist pursuant to section 24-4-105, C.R.S.,

1 if he finds that the acupuncturist has committed any of the  
2 following acts:

- 3 (a) Violated the provisions of section 12-29.5-105;
- 4 (b) Failed to provide the mandatory disclosure required  
5 by section 12-29.5-103 or provided false, deceptive, or  
6 misleading information to patients in the said disclosure;
- 7 (c) Failed to provide the information required by  
8 section 12-29.5-104 (1) or provided false, deceptive, or  
9 misleading information to the division of registrations;
- 10 (d) Committed, or advertised in any manner that he will  
11 commit, any act constituting an abuse of health insurance as  
12 prohibited by section 18-13-119, C.R.S., OR A FRAUDULENT  
13 INSURANCE ACT AS DEFINED IN SECTION 10-1-127, C.R.S.;
- 14 (e) Failed to refer a patient to an appropriate  
15 practitioner when the problem of the patient is beyond the  
16 training, experience, or competence of the acupuncturist;
- 17 (f) Accepted commissions or rebates or other forms of  
18 remuneration for referring clients to other professional  
19 persons;
- 20 (g) Offered or gave commissions, rebates, or other forms  
21 of remuneration for the referral of clients; except that,  
22 notwithstanding the provisions of this paragraph (g), an  
23 acupuncturist may pay an independent advertising or marketing  
24 agent compensation for advertising or marketing services  
25 rendered on his behalf by such agent, including compensation  
26 which is paid for the results of performance of such services,

1 on a per patient basis;

- 2 (h) Failed to comply with, OR AIDED OR ABETTED A FAILURE  
3 TO COMPLY WITH, THE REQUIREMENTS OF THIS ARTICLE OR any lawful  
4 rules or regulations adopted by the executive director of the  
5 department of health, including those regulations governing  
6 the proper cleaning and sterilization of acupuncture needles  
7 or the sanitary conditions of acupuncture offices, OR ANY  
8 LAWFUL ORDERS OF THE DEPARTMENT OF HEALTH OR OF COURT;
- 9 (i) Failed to comply with, OR AIDED OR ABETTED A FAILURE  
10 TO COMPLY WITH, THE REQUIREMENTS OF THIS ARTICLE OR any lawful  
11 rules or regulations governing the practice of acupuncture  
12 adopted by the director, OR ANY LAWFUL ORDERS OF THE DIRECTOR  
13 OR OF COURT; and
- 14 (j) Engaged in sexual contact, sexual intrusion, or  
15 sexual penetration, as defined in section 18-3-401, C.R.S.,  
16 with a patient during the ~~course-of-patient-care~~ PERIOD OF  
17 TIME BEGINNING WITH THE INITIAL PATIENT EVALUATION AND ENDING  
18 WITH THE TERMINATION OF TREATMENT;
- 19 (k) FOLLOWED A PATTERN OF CONDUCT WHICH FAILS TO MEET  
20 GENERALLY ACCEPTED STANDARDS OF CARE, WHETHER OR NOT ACTUAL  
21 INJURY TO A PATIENT IS ESTABLISHED;
- 22 (l) CONTINUED IN THE PRACTICE OF ACUPUNCTURE WHILE  
23 SUBJECT TO ANY PHYSICAL OR MENTAL DISABILITY WHICH RENDERS THE  
24 ACUPUNCTURIST UNABLE TO TREAT PATIENTS WITH REASONABLE SKILL  
25 AND SAFETY OR WHICH MAY ENDANGER A PATIENT'S HEALTH OR SAFETY,  
26 OR WHILE AFFLICTED WITH A COMMUNICABLE, INFECTIOUS, OR

1 CONTAGIOUS DISEASE OF SUCH A SERIOUS NATURE AS TO RENDER THE  
2 ACUPUNCTURIST A MENACE TO PATIENTS;

3 (m) CONTINUED IN THE PRACTICE OF ACUPUNCTURE WHILE  
4 ADDICTED TO OR DEPENDENT UPON ALCOHOL OR UPON ANY  
5 HABIT-FORMING DRUG, AS DEFINED IN SECTION 12-22-102 (13), OR  
6 WHILE ABUSING OR HABITUALLY OR EXCESSIVELY USING ANY SUCH  
7 HABIT-FORMING DRUG OR ANY CONTROLLED SUBSTANCE, AS DEFINED IN  
8 SECTION 12-22-303 (7);

9 (n) COMMITTED AND BEEN CONVICTED OF A FELONY OR ENTERED  
10 A PLEA OF GUILTY OR NOLO CONTENDERE TO A FELONY; AND

11 (o) PUBLISHED OR CIRCULATED, DIRECTLY OR INDIRECTLY, ANY  
12 FRAUDULENT, FALSE, DECEITFUL, OR MISLEADING CLAIMS OR  
13 STATEMENTS RELATING TO ACUPUNCTURE OR TO THE ACUPUNCTURIST'S  
14 PRACTICE, CAPABILITIES, SERVICES, METHODS, OR QUALIFICATIONS.

15 (2) THE DIRECTOR MAY ACCEPT, AS PRIMA FACIE EVIDENCE OF  
16 THE COMMISSION OF ANY ACT ENUMERATED IN SUBSECTION (1) OF THIS  
17 SECTION, EVIDENCE OF DISCIPLINARY ACTION TAKEN BY ANOTHER  
18 JURISDICTION AGAINST AN ACUPUNCTURIST'S LICENSE OR OTHER  
19 AUTHORIZATION TO PRACTICE IF SUCH DISCIPLINARY ACTION WAS  
20 BASED UPON ACTS OR PRACTICES SUBSTANTIALLY SIMILAR TO THOSE  
21 ENUMERATED IN SUBSECTION (1) OF THIS SECTION.

22 SECTION 7. Article 29.5 of title 12, Colorado Revised  
23 Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW  
24 SECTION to read:

25 12-29.5-109.5. Immunity of complainants or witnesses  
26 acting in good faith. ANY PERSON MAKING A COMPLAINT OR REPORT,

1 ACTING AS A CONSULTANT OR EXPERT WITNESS ON BEHALF OF THE  
2 DIRECTOR, OR PARTICIPATING IN ANY INVESTIGATION OR  
3 ADMINISTRATIVE PROCEEDING AUTHORIZED UNDER THIS ARTICLE SHALL  
4 BE IMMUNE FROM SUIT IN ANY CIVIL ACTION BASED UPON SUCH  
5 PERSON'S CONDUCT WITHIN THE SCOPE OF SUCH ACTIVITY OR  
6 PARTICIPATION IF THE PERSON ACTED IN GOOD FAITH, MADE A  
7 REASONABLE EFFORT TO OBTAIN THE RELEVANT FACTS, AND ACTED IN  
8 THE REASONABLE BELIEF THAT THE ACTIONS TAKEN BY SAID PERSON  
9 WERE WARRANTED BY THE FACTS.

10 SECTION 8. 12-29.5-110 (1) (d), Colorado Revised  
11 Statutes, 1991 Repl. Vol., is amended to read:

12 12-29.5-110. Director - powers and duties. (1) In  
13 addition to any other powers and duties conferred by this  
14 article, the director shall have the following powers and  
15 duties:

16 (d) To inspect on a ~~routine--and--mandatory~~ COMPLAINT  
17 basis any premises where acupuncture services are provided to  
18 ensure compliance with this article and the rules and  
19 regulations adopted pursuant thereto;

20 SECTION 9. 12-29.5-110, Colorado Revised Statutes, 1991  
21 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW  
22 PARAGRAPHS to read:

23 12-29.5-110. Director - powers and duties. (1) (j) TO  
24 ORDER THE PHYSICAL OR MENTAL EXAMINATION OF AN ACUPUNCTURIST  
25 IF THE DIRECTOR HAS REASONABLE CAUSE TO BELIEVE THAT THE  
26 ACUPUNCTURIST IS SUBJECT TO A PHYSICAL OR MENTAL DISABILITY

1 WHICH RENDERS THE ACUPUNCTURIST UNABLE TO TREAT PATIENTS WITH  
2 REASONABLE SKILL AND SAFETY OR WHICH MAY ENDANGER A PATIENT'S  
3 HEALTH OR SAFETY; AND THE DIRECTOR MAY ORDER SUCH AN  
4 EXAMINATION WHETHER OR NOT ACTUAL INJURY TO A PATIENT IS  
5 ESTABLISHED.

6 (k) TO REPORT TO THE UNITED STATES DEPARTMENT OF HEALTH  
7 AND HUMAN SERVICES, PURSUANT TO APPLICABLE FEDERAL LAW AND  
8 REGULATIONS, ANY ADVERSE ACTION TAKEN AGAINST THE REGISTRATION  
9 OF ANY ACUPUNCTURIST.

10 SECTION 10. 10-1-127 (1), Colorado Revised Statutes,  
11 1987 Repl. Vol., as amended, is amended to read:

12 10-1-127. Fraudulent insurance acts - immunity for  
13 furnishing information relating to suspected insurance fraud.

14 (1) For purposes of this title, articles 40 to 47 of title 8,  
15 and articles 7, 29.5, 32, 33, 35, 36, 38, 40, 41, 43, and 53  
16 of title 12, C.R.S., a fraudulent insurance act is committed  
17 if a person knowingly and with intent to defraud presents,  
18 causes to be presented, or prepares with knowledge or belief  
19 that it will be presented to or by an insurer, a purported  
20 insurer, a broker, or any agent thereof any written statement  
21 as part or in support of an application for the issuance or  
22 the rating of an insurance policy for commercial insurance or  
23 a claim for payment or other benefit pursuant to an insurance  
24 policy for commercial or personal insurance which he knows to  
25 contain false information concerning any fact material thereto  
26 or if he knowingly and with intent to defraud or mislead

1 conceals information concerning any fact material thereto.  
2 For purposes of this section, "written statement" includes a  
3 patient medical record as such term is defined in section  
4 18-4-412 (2) (a), C.R.S., and any bill for medical services.

5 SECTION 11. Effective date - applicability. This act  
6 shall take effect July 1, 1992, and shall apply to acts  
7 occurring on or after said date.

8 SECTION 12. Safety clause. The general assembly hereby  
9 finds, determines, and declares that this act is necessary  
10 for the immediate preservation of the public peace, health,  
11 and safety.

SUNRISE/SUNSET BILL D

A BILL FOR AN ACT

1 CONCERNING THE DELEGATION OF NURSING FUNCTIONS, AND, IN  
2 CONNECTION THEREWITH, REGULATING THE ADMINISTRATION AND  
3 MONITORING OF MEDICATIONS BY NONMEDICAL PERSONS IN  
4 FACILITIES IN WHICH THE PROVISION OF PHYSICAL HEALTH CARE  
5 IS NOT THE PRIMARY STATUTORY PURPOSE, AND THE  
6 ADMINISTRATION OF NUTRITION OR FLUIDS THROUGH GASTROSTOMY  
7 TUBES, AND MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Continues until a certain date the medication administration and monitoring program for persons to administer and monitor medications in certain facilities. Defines those facilities which are included in the program. Continues until a certain date the program for persons who administer nutrition or fluids through gastrostomy tubes. Continues exemptions from the licensing requirements of the "Colorado Medical Practice Act", the "Nurse Practice Act", and the "Colorado Controlled Substances Act" for certain acts for persons who utilize and comply with the provisions of the medication administration and monitoring program and exemptions from the "Colorado Medical Practice Act" and the "Nurse Practice Act" for the administration of nutrition or fluids through gastrostomy tubes.

Defines and sets parameters for the delegation of nursing

functions by licensed nurses to persons not licensed as nurses.

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

2 SECTION 1. 12-22-304 (5)(e), Colorado Revised Statutes,  
3 1991 Repl. Vol., is amended to read:

4 12-22-304. License required - controlled substances -  
5 drug precursors - fund created - repeal of certain provisions.

6 (5) The following persons need not be licensed by the  
7 department or by the board to lawfully possess controlled  
8 substances under this part 3:

9 (e) (I) Employees of ~~residential-care~~ facilities who are  
10 administering AND-MONITORING medications to residents PERSONS  
11 UNDER THE CARE OR JURISDICTION thereof pursuant to the  
12 provisions to section 25-1-107 (1) (ee), C.R.S.

13 (II) This paragraph (e) is repealed, effective ~~July-1,~~  
14 ~~1992~~ JULY 1, 1998. Prior to such repeal, the exception to the  
15 licensure requirement set forth in this paragraph (e) shall be  
16 subject to review pursuant to the provisions of section  
17 2-3-1201, C.R.S., by the sunrise and sunset review committee.

18 SECTION 2. 12-36-106 (3)(o) and (3) (q), Colorado  
19 Revised Statutes, 1991 Repl. Vol., are amended to read:

20 12-36-106. Practice of medicine defined - exemptions  
21 from licensing requirements. (3) Nothing in this section

22 shall be construed to prohibit, or to require a license under  
23 this article with respect to any of the following acts:

24 (o) (I) The administration AND MONITORING of



1 medications in ~~residential--care~~ facilities as provided in  
2 section 25-1-107 (1) (ee), C.R.S.

3 (II) This paragraph (o) is repealed, effective July 1,  
4 1992 JULY 1, 1998. Prior to such repeal, the exemption TO  
5 LICENSURE REQUIREMENT set forth in this paragraph (o) shall be  
6 subject to review pursuant to the provisions of section  
7 2-3-1201, C.R.S., by the sunrise and sunset review committee,  
8 as set forth in section 2-3-1201, C.R.S., AND THE PROVISIONS  
9 OF SECTION 24-34-104 (5) TO (12), C.R.S., CONCERNING A WINDUP  
10 PERIOD, AN ANALYSIS AND EVALUATION, PUBLIC HEARINGS, AND  
11 CLAIMS BY OR AGAINST AN AGENCY SHALL APPLY TO THE OPERATION OF  
12 THE PROGRAM SPECIFIED IN THIS PARAGRAPH (o).

13 (q) (I) The administration of nutrition or fluids  
14 through gastrostomy tubes as provided in section 27-10.5-103  
15 (2) (k), C.R.S., as a part of residential or day program  
16 services provided through service agencies approved by the  
17 department of institutions pursuant to section 27-10.5-104.5,  
18 C.R.S.

19 (II) This paragraph (q) is repealed, effective July 1,  
20 1992 JULY 1, 1998. Prior to such repeal, the exception to  
21 licensure requirements set forth in this paragraph (q) shall  
22 be subject to review pursuant to the provisions of section  
23 2-3-1201, C.R.S., by the sunrise and sunset review committee,  
24 AND THE PROVISIONS OF SECTION 24-34-104 (5) TO (12), C.R.S.,  
25 CONCERNING A WINDUP PERIOD, AN ANALYSIS AND EVALUATION, PUBLIC  
26 HEARINGS, AND CLAIMS BY OR AGAINST AN AGENCY SHALL APPLY TO

1 THE OPERATION OF THE PROGRAM SPECIFIED IN THIS PARAGRAPH (q).  
2 SECTION 3. 12-38-103, Colorado Revised Statutes, 1991  
3 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW  
4 SUBSECTIONS to read:

5 12-38-103. Definitions. As used in this article, unless  
6 the context otherwise requires:

7 (4.5) "DELEGATION" MEANS:

8 (a) THE ACT OF ASSIGNING OR AUTHORIZING AN UNLICENSED  
9 INDIVIDUAL TO PERFORM NURSING FUNCTIONS; OR

10 (b) THE ACT OF ASSIGNING OR AUTHORIZING A PERSON  
11 CERTIFIED, LICENSED, OR REGISTERED BY THE BOARD OF NURSING,  
12 BUT NOT AS A REGISTERED NURSE, TO PERFORM NURSING FUNCTIONS.

13 (7.5) "NURSING FUNCTION" MEANS THOSE FUNCTIONS SET FORTH  
14 AS NURSING FUNCTIONS PURSUANT TO THE DEFINITION OF "PRACTICE  
15 OF PROFESSIONAL NURSING" IN SUBSECTION (10) OF THIS SECTION.

16 SECTION 4. 12-38-125 (1)(h) and (1)(i), Colorado Revised  
17 Statutes, 1991 Repl. Vol., are amended, and the said 12-38-125  
18 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW  
19 PARAGRAPHS, to read:

20 12-38-125. Exclusions. (1) No provision of this article  
21 shall be construed to prohibit:

22 (h) (I) The administration AND MONITORING of medications  
23 in ~~residential-care facilities as--provided--in~~ PURSUANT TO  
24 section 25-1-107 (1) (ee), C.R.S.

25 (II) This paragraph (h) is repealed, effective July 1,  
26 1992 JULY 1, 1998. Prior to such repeal, the exclusion set

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1 (5) NOTHING IN THIS SECTION SHALL IMPAIR THE USE OF  
2 SECTION 25-1-107 (1) (ee), C.R.S., BY THE DEPARTMENT OF  
3 HEALTH.

4 SECTION 6. Article 1 of title 17, Colorado Revised  
5 Statutes, 1986 Repl. Vol., as amended, is amended BY THE  
6 ADDITION OF A NEW SECTION to read:

7 17-1-113.1. Administration or monitoring of medications  
8 to persons in correctional facilities. THE EXECUTIVE DIRECTOR  
9 HAS THE POWER TO DIRECT THE ADMINISTRATION OR MONITORING OF  
10 MEDICATIONS TO PERSONS IN FACILITIES, AS DEFINED BY SECTION  
11 25-1-107 (1) (ee) (II.5) (A), C.R.S., UNDER THE DIRECTOR'S  
12 CONTROL, IN A MANNER CONSISTENT WITH SECTION 25-1-107 (1)  
13 (ee), C.R.S.

14 SECTION 7. Part 11 of article 2 of title 19, Colorado  
15 Revised Statutes, 1986 Repl. Vol., as amended, is amended BY  
16 THE ADDITION OF A NEW SECTION to read:

17 19-2-1117. Administration or monitoring of medications  
18 to persons in juvenile institutional facilities. THE  
19 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS HAS THE  
20 POWER TO DIRECT THE ADMINISTRATION OR MONITORING OF  
21 MEDICATIONS TO PERSONS IN JUVENILE INSTITUTIONAL FACILITIES  
22 CREATED PURSUANT TO THIS PART 11 IN A MANNER CONSISTENT WITH  
23 SECTION 25-1-107 (1) (ee), C.R.S.

24 SECTION 8. 24-34-104 (21.5), Colorado Revised Statutes,  
25 1988 Repl. Vol., as amended, is repealed as follows:

26 24-34-104. General assembly review of regulatory

1 agencies and functions for termination, continuation, or  
2 reestablishment. (21.5) ~~{a}--The---program---for---the~~  
3 ~~administration--of--medications--in--residential--care--facilities~~  
4 ~~authorized--under--section--25-1-107--(1)--(ee),--C.R.S.,--shall~~  
5 ~~terminate--on--July-1,-1992.~~

6 ~~{b}--The--exemption--from--licensure--under--the--"Colorado~~  
7 ~~Controlled-Substance-Act"--provided--in--section--12-22-304--(5)~~  
8 ~~{e)--(1)--C.R.S.,--for--persons--who--administer--medications--in~~  
9 ~~residential--care--facilities--in--compliance--with--the--program~~  
10 ~~authorized--in--section--25-1-107--(1)--(ee),--C.R.S.,--shall~~  
11 ~~terminate--on--July-1,-1992.~~

12 ~~{c}--The--exemption--from--licensure--under--the--"Colorado~~  
13 ~~Medical--Practice--Act"--provided--in--section--12-36-106--(3)--(e)~~  
14 ~~{1)--C.R.S.,--for--persons--who--administer--medications--in~~  
15 ~~residential--care--facilities--in--compliance--with--the--program~~  
16 ~~authorized--in--section--25-1-107--(1)--(ee),--C.R.S.,--shall~~  
17 ~~terminate--on--July-1,-1992.~~

18 ~~{d}--The--exemption--from--licensure--under--the--"Nurse~~  
19 ~~Practice-Act"--provided--in--section--12-38-125--(1)--(h)--(1),~~  
20 ~~C.R.S.,--for--persons--who--administer--medications--in--residential~~  
21 ~~care--facilities--in--compliance--with--the--program--authorized--in~~  
22 ~~section--25-1-107--(1)--(ee),--C.R.S.,--shall--terminate--on--July-1,~~  
23 ~~1992.~~

24 SECTION 9. 24-34-104, Colorado Revised Statutes, 1988  
25 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW  
26 SUBSECTION to read:

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1        24-34-104. General assembly review of regulatory  
2 agencies and functions for termination, continuation, or  
3 reestablishment. (27.5) (a) THE PROGRAM FOR THE

4 ADMINISTRATION AND MONITORING OF MEDICATIONS IN FACILITIES  
5 AUTHORIZED PURSUANT TO SECTION 25-1-107 (1) (ee), C.R.S.,  
6 SHALL TERMINATE ON JULY 1, 1998.

7        (b) THE EXEMPTION FROM LICENSURE UNDER THE "COLORADO  
8 CONTROLLED SUBSTANCE ACT" PURSUANT TO SECTION 12-22-304 (5)  
9 (e) (I), C.R.S., FOR PERSONS WHO ADMINISTER OR MONITOR  
10 MEDICATIONS IN FACILITIES IN COMPLIANCE WITH THE PROGRAM  
11 AUTHORIZED IN SECTION 25-1-107 (1) (ee), C.R.S., SHALL  
12 TERMINATE ON JULY 1, 1998.

13        (c) THE EXEMPTION FROM LICENSURE UNDER THE "COLORADO  
14 MEDICAL PRACTICE ACT" PURSUANT TO:

15        (I) SECTION 12-36-106 (3) (o) (I), C.R.S., FOR PERSONS  
16 WHO ADMINISTER AND MONITOR MEDICATIONS IN FACILITIES IN  
17 COMPLIANCE WITH THE PROGRAM AUTHORIZED IN SECTION 25-1-107 (1)  
18 (ee), C.R.S., SHALL TERMINATE ON JULY 1, 1998.

19        (II) SECTION 12-36-106 (3) (q) (I), C.R.S., FOR PERSONS  
20 WHO ADMINISTER NUTRITION OR FLUIDS THROUGH GASTROSTOMY TUBES  
21 IN COMPLIANCE WITH THE GUIDELINES ESTABLISHED PURSUANT TO  
22 SECTION 27-10.5-103 (2) (k), C.R.S., SHALL TERMINATE ON JULY  
23 1, 1998.

24        (d) (I) THE EXEMPTION FROM LICENSURE UNDER THE "NURSE  
25 PRACTICE ACT" PURSUANT TO SECTION 12-38-125 (1) (h) (I),  
26 C.R.S., FOR PERSONS WHO ADMINISTER MEDICATIONS IN FACILITIES

1 IN COMPLIANCE WITH THE PROGRAM AUTHORIZED IN SECTION 25-1-107  
2 (1) (ee), C.R.S., SHALL TERMINATE ON JULY 1, 1998.

3        (II) THE EXCEPTION FROM LICENSURE UNDER THE "NURSE  
4 PRACTICE ACT" PURSUANT TO SECTION 12-38-125 (1) (i) (I),  
5 C.R.S., FOR PERSONS WHO ADMINISTER NUTRITION OR FLUIDS THROUGH  
6 GASTROSTOMY TUBES IN COMPLIANCE WITH THE GUIDELINES  
7 ESTABLISHED PURSUANT TO SECTION 27-10.5-103 (2) (k), C.R.S.,  
8 SHALL TERMINATE ON JULY 1, 1998.

9        (e) THE FUNCTIONS OF THE EXECUTIVE DIRECTOR OF THE  
10 DEPARTMENT OF INSTITUTIONS TO ESTABLISH GUIDELINES AND  
11 PROCEDURES FOR AUTHORIZATION OF INDIVIDUALS FOR ADMINISTRATION  
12 OF NUTRITION AND FLUIDS THROUGH GASTROSTOMY TUBES AUTHORIZED  
13 PURSUANT TO SECTION 27-10.5-103 (2) (k), C.R.S., SHALL  
14 TERMINATE ON JULY 1, 1998.

15        SECTION 10. 25-1-107 (1)(ee), Colorado Revised Statutes,  
16 1989 Repl. Vol., as amended, is amended to read:

17        25-1-107. Powers and duties of the department.  
18 (1) (ee) (I) To establish and maintain BY RULE AND REGULATION  
19 a program for the administration AND MONITORING of medications  
20 in ~~residential--care~~ facilities, which program shall be  
21 developed and conducted in cooperation with the department of  
22 social services, and the department of institutions, AND THE  
23 DEPARTMENT OF CORRECTIONS within the following guidelines:

24        (A) ~~Beginning---January--1,--1990,~~ As a condition to  
25 authorizing or renewing the authorization to operate ~~of~~ any  
26 ~~residential---care~~ facility that administers OR MONITORS

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1 medications to ~~its--residents~~ PERSONS UNDER ITS CARE, the  
 2 authorizing agency shall require that the facility have a  
 3 staff member qualified pursuant to sub-subparagraph (B) of  
 4 this subparagraph (I) on duty at any time that the facility  
 5 administers OR MONITORS such medications and that the facility  
 6 maintain a written record of each medication administered to  
 7 OR MONITORED FOR each resident, including the time and the  
 8 amount of the medication. Such record will be subject to  
 9 review by the authorizing agency as a part of its procedure in  
 10 authorizing the continued operation of the facility.

11 (B) Any individual who is not otherwise authorized by  
 12 law to administer AND MONITOR medication in a ~~residential-care~~  
 13 facility shall be allowed to perform such duties only after  
 14 passing a competency evaluation. An individual who  
 15 administers OR MONITORS medications in ~~residential---~~care  
 16 facilities in compliance with the provisions of this paragraph  
 17 (ee) shall be exempt from the licensing requirements of the  
 18 "Colorado Medical Practice Act", the "Nurse Practice Act", and  
 19 the laws of this state pertaining to controlled substances as  
 20 contained in part 1 of article 22 of title 12, C.R.S., or  
 21 under the "Colorado Controlled Substances Act".

22 (C) ~~By-December-31, 1988,~~ The department, in cooperation  
 23 with appropriate agencies or advisory bodies, shall develop or  
 24 approve training curricula and competency evaluation  
 25 procedures for those who administer OR MONITOR medications in  
 26 ~~residential--care~~ facilities. If ~~either-the-department-of~~

1 ~~institutions-or-the-department-of-social-services~~ ANY PROVIDER  
 2 OF TRAINING AND COMPETENCY EVALUATIONS wishes to use a  
 3 different training curriculum and competency evaluation  
 4 procedure for those who administer OR MONITOR medications in  
 5 the ~~residential--care~~ facilities whose operation is authorized  
 6 by ~~those-departments~~ SUCH PROVIDERS, such ~~department~~ PROVIDER  
 7 shall ensure that such training curriculum and competency  
 8 evaluation procedure are first submitted to the department for  
 9 its review. If after such review the department has no  
 10 objection, the submitting ~~department~~ PROVIDER shall assume  
 11 responsibility for the cost and implementation of such  
 12 curriculum and evaluation in keeping with the other provisions  
 13 of this ~~act~~ MEDICATIONS ADMINISTRATION AND MONITORING PROGRAM  
 14 for those ~~residential--care~~ facilities whose operation is  
 15 authorized by such ~~department~~ PROVIDER. Any ~~department~~  
 16 PROVIDER that administers competency evaluations shall  
 17 maintain a list of those who have successfully completed such  
 18 competency evaluation AND SHALL FORWARD A COPY OF SUCH LIST TO  
 19 THE DEPARTMENT WITHIN FORTY-FIVE DAYS OF ADMINISTRATION OF  
 20 SUCH EVALUATION. FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (C)  
 21 "PROVIDER" SHALL INCLUDE NONGOVERNMENTAL ENTITIES AUTHORIZED  
 22 BY THE DEPARTMENT TO TRAIN AND ADMINISTER EVALUATIONS.

23 (D) The department shall assure that ~~at--least--six~~  
 24 training sessions, each followed by a competency evaluation  
 25 set to measure basic competency only, are offered ~~during~~  
 26 ~~calendar--year--1989,--with--such--training--to--be--offered~~ at

1 various geographic locations in the state. An individual who  
 2 does not pass the competency evaluation may apply to retake  
 3 it. An appropriate fee must be paid each time the competency  
 4 evaluation is taken. An individual may apply for and take the  
 5 competency evaluation only once without having first attended  
 6 a training session approved by the department. If such  
 7 individual fails to meet a minimum competency level on such  
 8 first evaluation, the applicant must attend an approved  
 9 training session before again taking the competency  
 10 evaluation.

11 (E) The department shall set and collect a fee for any  
 12 training session given and a fee for any competency evaluation  
 13 administered under the provisions of this paragraph (ee), so  
 14 that the revenue generated from such fees approximates the  
 15 direct and indirect costs incurred by the department in the  
 16 performance of its duties under this paragraph (ee).

17 (F) IF THE INDIVIDUAL AUTHORIZED TO ADMINISTER OR  
 18 MONITOR MEDICATION PURSUANT TO SUB-SUBPARAGRAPH (D) OF THIS  
 19 SUBPARAGRAPH (I) IS FOUND, DURING THE COURSE OF ANY REVIEW BY  
 20 THE AUTHORIZING AGENCY AS PART OF ITS PROCEDURE IN AUTHORIZING  
 21 THE CONTINUED OPERATION OF THE FACILITY, TO BE UNABLE OR  
 22 UNWILLING TO COMPLY WITH THE TRAINING REGIMEN ESTABLISHED FOR  
 23 MEDICATION ADMINISTRATION AND MONITORING, THE DEPARTMENT MAY  
 24 ORDER RETRAINING AS A REMEDIAL MEASURE.

25 (I.5) MEDICATION REMINDER BOXES OR SYSTEMS MAY BE USED  
 26 IF SUCH CONTAINERS HAVE BEEN FILLED AND PROPERLY LABELLED BY A

1 PHARMACIST LICENSED PURSUANT TO ARTICLE 22 OF TITLE 12,  
 2 C.R.S., A NURSE LICENSED PURSUANT TO ARTICLE 38 OF TITLE 12,  
 3 C.R.S., AN UNLICENSED PERSON TRAINED PURSUANT TO THIS  
 4 PARAGRAPH (ee), OR FILLED AND PROPERLY LABELLED THROUGH THE  
 5 GRATUITOUS CARE BY MEMBERS OF ONE'S FAMILY OR FRIENDS.  
 6 UNLICENSED PERSONS MAY PHYSICALLY ASSIST A PERSON WHO IS  
 7 PHYSICALLY IMPAIRED IF SUCH IMPAIRMENT AFFECTS THE ABILITY OF  
 8 THE PERSON TO USE THE MEDICATION REMINDER, IF SUCH UNLICENSED  
 9 PERSON IS TRAINED PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH  
 10 (ee).

11 (II) For the purposes of this paragraph (ee),  
 12 "administration" means assisting a person in the ingestion,  
 13 application, INSERTION, or inhalation of medication, including  
 14 prescription drugs, according to the legibly written or  
 15 printed directions of the attending physician or other  
 16 authorized practitioner or as written on the prescription  
 17 label and making a written record thereof with regard to each  
 18 medication administered, including the time and the amount  
 19 taken but "administration" does not include injections of  
 20 medication; or ~~monitoring~~ the self-administration of  
 21 medication, including prescription drugs and including the  
 22 self-injection of medication by the resident. "Administration"  
 23 also means ingestion through gastrostomy tubes or naso-gastric  
 24 tubes, if administered by an individual authorized pursuant to  
 25 section 27-10.5-103 (2) (k), C.R.S., as part of residential or  
 26 day program services provided through service agencies

1 approved by the department of institutions and supervised by a  
2 licensed physician or nurse.

3 (II.5) FOR PURPOSES OF THIS PARAGRAPH (ee), "FACILITY"  
4 MEANS:

5 (A) THE CORRECTIONAL FACILITIES UNDER THE SUPERVISION OF  
6 THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS  
7 INCLUDING, BUT NOT LIMITED TO: THOSE FACILITIES AT CANON CITY  
8 PROVIDED FOR IN ARTICLE 20 OF TITLE 17, C.R.S.; THE WOMEN'S  
9 CORRECTIONAL INSTITUTION PROVIDED FOR IN ARTICLE 21 OF TITLE  
10 17, C.R.S.; THE REFORMATORY PROVIDED FOR IN ARTICLE 22 OF  
11 TITLE 17, C.R.S.; MINIMUM SECURITY FACILITIES PROVIDED FOR IN  
12 ARTICLE 25 OF TITLE 17, C.R.S.; JAILS PROVIDED FOR IN ARTICLE  
13 26 OF TITLE 17, C.R.S.; AND COMMUNITY CORRECTIONAL FACILITIES  
14 AND PROGRAMS PROVIDED FOR IN ARTICLE 27 OF TITLE 17, C.R.S.

15 (B) INSTITUTIONS FOR JUVENILES PROVIDED FOR IN PART 11  
16 OF ARTICLE 2 OF TITLE 19, C.R.S.;

17 (C) PERSONAL CARE BOARDING HOMES AS DEFINED IN SECTION  
18 25-27-102 (8);

19 (D) ADULT FOSTER CARE FACILITIES PROVIDED FOR IN SECTION  
20 26-1-111 (2) (j), C.R.S.;

21 (E) ALTERNATE CARE FACILITIES PROVIDED FOR IN SECTION  
22 26-4.5-113, C.R.S.;

23 (F) RESIDENTIAL CHILD CARE FACILITIES FOR CHILDREN AS  
24 DEFINED IN SECTION 26-6-102 (8), C.R.S.;

25 (G) SECURE RESIDENTIAL TREATMENT CENTERS AS DEFINED IN  
26 SECTION 26-6-102 (9), C.R.S.;

1 (H) FACILITIES THAT PROVIDE TREATMENT FOR MENTALLY ILL  
2 PERSONS AS DEFINED IN SECTION 27-10-102 (4.5), C.R.S.; AND

3 (I) RESIDENTIAL AND DAY CARE PROGRAMS PROVIDING SERVICES  
4 IN SUPPORT OF PERSONS WITH DEVELOPMENTAL DISABILITIES PURSUANT  
5 TO ARTICLE 10.5 OF TITLE 27, C.R.S.

6 (III) (A) For the purposes of this paragraph (ee),  
7 "monitoring" means: ~~Reminding the resident to take medication~~  
8 ~~or medications at the time ordered by the physician or other~~  
9 ~~authorized practitioner; visual observation of the resident to~~  
10 ~~ensure compliance; making a written record of the resident's~~  
11 ~~compliance with regard to each medication, including the time~~  
12 ~~and the amount taken; notification to the physician or other~~  
13 ~~authorized practitioner if the resident refuses to or is not~~  
14 ~~able to comply with the physician's or other practitioner's~~  
15 ~~instructions with regard to the medication.~~ REMINDING A PERSON  
16 TO TAKE MEDICATION OR MEDICATIONS AT THE TIME PRESCRIBED BY A  
17 PHYSICIAN OR OTHER AUTHORIZED PRACTITIONER; PHYSICALLY  
18 ASSISTING A PERSON WHO IS PHYSICALLY IMPAIRED TO OPEN  
19 MEDICATION REMINDER BOXES AND ASSISTING THE PERSON IN PLACING  
20 THE MEDICATION IN THE PERSON'S HANDS IN ORDER THAT THE PERSON  
21 MAY PERSONALLY MEDICATE; VISUALLY OBSERVING THE PERSON TO  
22 ENSURE THAT MEDICATION IS TAKEN; MAKING A WRITTEN RECORD WITH  
23 REGARD TO THE TIME THE MEDICATION IS TAKEN; AND NOTIFYING THE  
24 PERSON'S PHYSICIAN OR OTHER AUTHORIZED PRACTITIONER IF THE  
25 PERSON IS NOT WILLING OR ABLE TO COMPLY WITH THE INSTRUCTIONS  
26 WITH REGARD TO THE MEDICATION.

1 (B) MONITORING BY UNLICENSED PERSONS REQUIRES TRAINING  
2 PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH (ee). FOR  
3 PURPOSES OF THIS SECTION, "MONITORING" SHALL TAKE PLACE ONLY  
4 IN A "FACILITY" AS DEFINED IN SUBPARAGRAPH (II.5) OF THIS  
5 PARAGRAPH (ee).

6 ~~(IV) For the purposes of this paragraph (ee),~~  
7 ~~"residential care facility" means: Alternative care~~  
8 ~~facilities pursuant to section 26-4-603(3), C.R.S.; adult~~  
9 ~~foster care facilities pursuant to section 26-1-111(2)(j),~~  
10 ~~C.R.S.; residential care facilities for children pursuant to~~  
11 ~~sections 26-6-102 and 26-6-104, C.R.S.; personal care boarding~~  
12 ~~homes pursuant to sections 26-27-102(8) and 26-27-103;~~  
13 ~~community-based residential facilities for the developmentally~~  
14 ~~disabled pursuant to section 27-10-5-109, C.R.S.; residential~~  
15 ~~programs for the developmentally disabled pursuant to section~~  
16 ~~27-10-5-104.5, C.R.S.; and facilities as defined in section~~  
17 ~~27-10-102(4.5), C.R.S., that provide treatment for mentally~~  
18 ~~ill persons.~~

19 (IV.5) FOR PURPOSES OF THIS PARAGRAPH (ee), "SELF  
20 ADMINISTRATION" MEANS THE ABILITY OF A PERSON TO TAKE  
21 MEDICATION INDEPENDENTLY WITHOUT ANY ASSISTANCE FROM ANOTHER  
22 PERSON. SUCH A PERSON IS PERSONALLY RESPONSIBLE FOR  
23 MEDICATION ADMINISTRATION. NO FACILITY SHALL BE RESPONSIBLE  
24 FOR OBSERVING OR DOCUMENTING THE SELF ADMINISTRATION OF  
25 MEDICATION. COMPLIANCE WITH THE REQUIREMENTS FOR THE TRAINING  
26 OF UNLICENSED PERSONS IN MEDICATION ADMINISTRATION PURSUANT TO

1 THIS PARAGRAPH (ee) IS NOT REQUIRED WHEN PERSONS BEING CARE  
2 FOR ARE SELF ADMINISTERING.

3 (V) (A) All fees collected pursuant to this article  
4 shall be transmitted to the state treasurer, who shall credit  
5 the same to the medication administration AND MONITORING cash  
6 fund, which fund is hereby created.

7 (B) The general assembly shall make annual  
8 appropriations from the medication administration AND  
9 MONITORING cash fund for expenditures of the department  
10 incurred in the performance of its duties under this paragraph  
11 (ee).

12 (VI) This paragraph (ee) is repealed, effective July 1,  
13 1992 JULY 1, 1998. Prior to such repeal, the program  
14 established by this paragraph (ee) shall be subject to review  
15 by the sunrise and sunset review committee, as set forth in  
16 section 2-3-1201, C.R.S., and the provisions of section  
17 24-34-104 (5) to (12), C.R.S., concerning a windup period, an  
18 analysis and evaluation, public hearings, and claims by or  
19 against an agency shall apply to the operation of the program  
20 specified in this paragraph (ee).

21 (VII) THE DEPARTMENT SHALL REPORT TO THE SUNRISE AND  
22 SUNSET REVIEW COMMITTEE ON ITS PROGRESS IN IMPLEMENTING THE  
23 MEDICATION ADMINISTRATION AND MONITORING PROGRAM BY JULY 1,  
24 1993.

25 SECTION 11. 26-1-111 (2)(j), Colorado Revised Statutes,  
26 1989 Repl. Vol., is amended to read:

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1 26-1-111. Activities of the state department. (2) The  
2 state department shall:

3 (j) Promulgate rules and regulations concerning adult  
4 foster care and the certification of adult foster care  
5 facilities by the county departments. Adult foster care is  
6 that care and service which in addition to room and board may  
7 include, but is not limited to, personal services,  
8 recreational opportunities, transportation, utilization of  
9 volunteer services, and special diets. SUCH CARE MAY INCLUDE  
10 THE ADMINISTRATION OR MONITORING OF MEDICATIONS TO PERSONS  
11 RECEIVING CARE IF DONE IN CONFORMITY WITH SECTION 25-1-107 (1)  
12 (ee), C.R.S. Such care is provided to recipients of federal  
13 supplemental security income benefits who are also eligible  
14 for the Colorado supplement program for aid to the needy  
15 disabled and aid to the blind assistance--and who do not  
16 require skilled nursing care or intermediate health care and  
17 cannot remain in or return to their residences but who need to  
18 reside in a supervised nonmedical setting on a  
19 twenty-four-hour basis. Those persons with developmental  
20 disabilities as defined in section 27-10.5-102, C.R.S., or who  
21 are receiving or ARE eligible to receive services in programs  
22 administered by the department of institutions do not qualify  
23 for adult foster care under this paragraph (j).

24 SECTION 12. 26-4-603, Colorado Revised Statutes, 1989  
25 Repl. Vol., as amended, is amended to read:

26 26-4-603. Definitions. As used in this subpart 1 and

1 subpart 3 of this part 6, unless the context otherwise  
2 requires:

3 (13.5) "MEDICATIONS ADMINISTRATION" MEANS THE  
4 ADMINISTRATION OR MONITORING OF MEDICATIONS PROVIDED IN A  
5 MANNER CONSISTENT WITH SECTION 25-1-107 (1) (ee), C.R.S.,  
6 UNDER THE AUTHORITY AND DIRECTION OF THE STATE DEPARTMENT, AS  
7 PART OF THE "ALTERNATIVE CARE SERVICES", AS DEFINED IN  
8 SUBSECTION (4) OF THIS SECTION, AS PROVIDED IN AN "ALTERNATIVE  
9 CARE FACILITY", AS DEFINED IN SUBSECTION (3) OF THIS SECTION.

10 SECTION 13. Article 6 of title 26, Colorado Revised  
11 Statutes, 1989 Repl. Vol., as amended, is amended BY THE  
12 ADDITION OF A NEW SECTION to read:

13 26-6-106.1. Administration or monitoring of medications  
14 to persons - residential child care facilities - secure  
15 residential treatment centers. THE EXECUTIVE DIRECTOR HAS THE  
16 POWER TO DIRECT THE ADMINISTRATION OR MONITORING OF  
17 MEDICATIONS TO PERSONS IN RESIDENTIAL CARE FACILITIES OR IN  
18 SECURE RESIDENTIAL TREATMENT CENTERS CREATED PURSUANT TO THIS  
19 ARTICLE IN A MANNER CONSISTENT WITH SECTION 25-1-107 (1) (ee),  
20 C.R.S.

21 SECTION 14. Article 10 of title 27, Colorado Revised  
22 Statutes, 1989 Repl. Vol. is amended BY THE ADDITION OF A NEW  
23 SECTION to read:

24 27-10-117.5. Administration or monitoring of medications  
25 to persons receiving care. THE EXECUTIVE DIRECTOR HAS THE  
26 POWER TO DIRECT THE ADMINISTRATION OR MONITORING OF



1 MEDICATIONS IN CONFORMITY WITH SECTION 25-1-107 (1) (ee),  
2 C.R.S., TO PERSONS RECEIVING TREATMENT IN FACILITIES CREATED  
3 PURSUANT TO THIS ARTICLE.

4 SECTION 15. 27-10.5-103 (2) (k) (V), Colorado Revised  
5 Statutes, 1989 Repl. Vol., as amended, is amended to read:

6 27-10.5-103. Duties of the executive director - rules  
7 and regulations. (2) The executive director shall adopt such  
8 rules and regulations, in accordance with section 24-4-103,  
9 C.R.S., as are necessary to carry out the provisions and  
10 purposes of this article including but not limited to the  
11 following subjects:

12 (k) (V) This paragraph (k) is repealed, effective July  
13 ~~1, 1992~~ JULY 1, 1998. Prior to such repeal, the provisions of  
14 this paragraph (k) shall be subject to review pursuant to the  
15 provisions of section 2-3-1201, C.R.S., AND THE PROVISIONS OF  
16 SECTION 24-34-104 (5) TO (12), C.R.S., CONCERNING A WINDUP  
17 PERIOD, AN ANALYSIS AND EVALUATION, PUBLIC HEARINGS, AND  
18 CLAIMS BY OR AGAINST AN AGENCY SHALL APPLY TO THE FUNCTIONS  
19 SPECIFIED IN THIS PARAGRAPH (k).

20 SECTION 16. 27-10.5-114, Colorado Revised Statutes, 1989  
21 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to  
22 read:

23 27-10.5-114. Right to medical care and treatment.  
24 (6.5) THE EXECUTIVE DIRECTOR HAS THE POWER TO DIRECT THE  
25 ADMINISTRATION OR MONITORING OF MEDICATIONS TO PERSONS BEING  
26 CARED FOR AND TREATED IN CENTERS FOR THE DEVELOPMENTALLY

1 DISABLED CREATED PURSUANT TO THIS ARTICLE IN A MANNER  
2 CONSISTENT WITH SECTION 25-1-107 (1) (ee), C.R.S.

3 SECTION 17. Appropriation. In addition to any other  
4 appropriation, there is hereby appropriated, out of the moneys  
5 in the medication administration and monitoring cash fund  
6 created pursuant to section 25-1-107 (1) (ee) (V) (A),  
7 Colorado Revised Statutes, not otherwise appropriated, to the  
8 department of health, for the fiscal year beginning July 1,  
9 1992, the sum of seven thousand five hundred dollars (\$7,500),  
10 or so much thereof as may be necessary, for the implementation  
11 of this act.

12 SECTION 18. Effective date - applicability. This act  
13 shall take effect July 1, 1992, and shall apply on or after  
14 said date to the administration and monitoring of mediations  
15 by nonmedical persons in facilities in which the provision of  
16 health care is not the primary statutory purpose and to the  
17 administration of nutrition or fluids through gastrostomy  
18 tubes.

19 SECTION 19. Safety clause. The general assembly hereby  
20 finds, determines, and declares that this act is necessary  
21 for the immediate preservation of the public peace, health,  
22 and safety.

SUNRISE/SUNSET BILL G

A BILL FOR AN ACT

1 CONCERNING THE REGULATION OF OCCUPATIONS RELATING TO THE SALE  
2 OF MOTOR VEHICLES, AND, IN CONNECTION THEREWITH,  
3 CONTINUING THE MOTOR VEHICLE DEALER LICENSING BOARD,  
4 CHANGING THE NAME OF THE BOARD, AND MOVING CERTAIN  
5 FUNCTIONS OF THE BOARD TO THE EXECUTIVE DIRECTOR OF THE  
6 DEPARTMENT OF REVENUE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Continues the motor vehicle dealer licensing board. Changes the name of the board. Changes the composition of the board. Transfers the licensing functions of the board to the executive director of the department of revenue. Changes the licensing requirements for motor vehicle salespersons to registration requirements without testing. Provides the executive director with necessary powers to carry out the licensing and registration functions. Mandates the licensing of buyer representatives. Vests rule-making power for issues relating to license issuance in the executive director. Provides that the board review any grievance from a person who is denied a license or whose license is revoked and review complaints from consumers. Vests rule-making power for issues relating to disciplinary hearings in the board. Provides that any grievance or complaint which requires a hearing may be heard by an administrative law judge pursuant to the administrative procedure act. Vests review and modification power in the board for all hearings and punishments handed down by an administrative law judge. Requires the board to

continue to develop policy for licensing pursuant to this article. Makes the article gender neutral.

Provides that persons acting as investigators are defined as, and given commensurate powers of, peace officers of a certain level.

Sunset the licensing and registration functions of the executive director and the functions of the board unless, pursuant to review, such functions are continued.

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

2 SECTION 1. 12-6-101 (1)(a) and (1)(c), Colorado Revised  
3 Statutes, 1991 Repl. vol., are amended, and the said 12-6-101  
4 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to  
5 read:

6 12-6-101. Legislative declaration. (1) The general  
7 assembly hereby declares that:

8 (a) The sale and distribution of motor vehicles is  
9 affected with a public interest and it is recognized that a  
10 significant factor of inducement in making a sale of a motor  
11 vehicle is the trust and confidence of the purchaser in the  
12 retail dealer from whom the purchase is made and the  
13 expectancy that he SUCH DEALER will remain in business to  
14 provide service for the motor vehicle purchased;

15 (c) The licensing and supervision of motor vehicle  
16 dealers by the motor vehicle dealer licensing board are  
17 necessary for the protection of consumers and therefore the  
18 sale of motor vehicles by unlicensed dealers should be  
19 curtailed;

20 (d) CONSUMER EDUCATION CONCERNING THE RULES AND  
21 REGULATIONS OF THE MOTOR VEHICLE INDUSTRY AND WHAT ONE SHOULD

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1 CONSIDER WHEN PURCHASING A MOTOR VEHICLE IS NECESSARY FOR THE  
2 PROTECTION OF CONSUMERS DUE TO THE VALUE OF, AND THE  
3 COMPLICATED NATURE OF THE PURCHASE OF, A MOTOR VEHICLE.

4 SECTION 2. 12-6-102 (1), (2), (12.5), (12.6), and (14),  
5 Colorado Revised Statutes, 1991 Repl. Vol., are amended, and  
6 the said 12-6-102 is further amended BY THE ADDITION OF THE  
7 FOLLOWING NEW SUBSECTIONS, to read:

8 12-6-102. Definitions. As used in this part 1, unless  
9 the context otherwise requires:

10 (1) "~~Administrator~~" means the executive director of the  
11 ~~department of revenue and he is charged with the~~  
12 ~~administration and enforcement of the licensing of~~  
13 ~~manufacturers, distributors, factory branches, distributor~~  
14 ~~branches, factory representatives, and distributor~~  
15 ~~representatives.~~

16 (2) "Board" means the motor vehicle dealer licensing  
17 board.

18 (2.5) (a) (I) "BUYER REPRESENTATIVE" MEANS ANY PERSON  
19 REQUIRED TO BE LICENSED PURSUANT TO THIS PART 1 WHO IS  
20 RETAINED OR HIRED BY A CONSUMER FOR A FEE OR OTHER THING OF  
21 VALUE TO ASSIST, REPRESENT, OR ACT ON BEHALF OF SUCH CONSUMER  
22 IN CONNECTION WITH THE PURCHASE OR LEASE OF A MOTOR VEHICLE.

23 (II) "CONSUMER", AS USED IN THIS SUBSECTION (2.5), MEANS  
24 A PURCHASER OR LESSEE OF A MOTOR VEHICLE, WHICH VEHICLE IS  
25 PRIMARILY USED FOR BUSINESS, PERSONAL, FAMILY, OR HOUSEHOLD  
26 PURPOSES. "CONSUMER" DOES NOT INCLUDE A PURCHASER OF MOTOR

1 VEHICLES WHO PURCHASES SAID MOTOR VEHICLES PRIMARILY FOR  
2 RESALE.

3 (b) "BUYER REPRESENTATIVE" DOES NOT INCLUDE A PERSON  
4 WHOSE BUSINESS INCLUDES THE PURCHASE OF MOTOR VEHICLES  
5 PRIMARILY FOR RESALE OR LEASE AND A "BUYER REPRESENTATIVE"  
6 LICENSED PURSUANT TO THIS PART 1 SHALL NOT BE EMPLOYED BY OR  
7 RECEIVE A FEE FROM SUCH A PERSON, A MOTOR VEHICLE  
8 MANUFACTURER, MOTOR VEHICLE DEALER, OR USED MOTOR VEHICLE  
9 DEALER.

10 (7.5) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR  
11 OF THE DEPARTMENT OF REVENUE CHARGED WITH THE ADMINISTRATION,  
12 ENFORCEMENT, AND ISSUANCE OR DENIAL OF THE LICENSING OF BUYER  
13 REPRESENTATIVES, DISTRIBUTORS, DISTRIBUTOR BRANCHES,  
14 DISTRIBUTOR REPRESENTATIVES, FACTORY BRANCHES, FACTORY  
15 REPRESENTATIVES, MOTOR VEHICLE DEALERS, MOTOR VEHICLE  
16 MANUFACTURERS, USED MOTOR VEHICLE DEALERS, AND WHOLESALERS.

17 (12.5) "~~Motor vehicle agent~~" means ~~any person, not~~  
18 ~~otherwise required to be licensed by this part 1, who is~~  
19 ~~retained or hired by a consumer for a fee or other thing of~~  
20 ~~value to assist, represent, or act on behalf of the consumer~~  
21 ~~in connection with the purchase or lease of a motor vehicle,~~  
22 ~~"Consumer", as used in this subsection (12.5), means a~~  
23 ~~purchaser or lessee of a motor vehicle normally used for~~  
24 ~~business, personal, family, or household purposes and does not~~  
25 ~~include a purchaser of motor vehicles who purchases said motor~~  
26 ~~vehicles for the primary purpose of resale. "Motor vehicle~~

1 agent does not include a person whose business includes the  
 2 purchase of motor vehicles for the primary purpose of resale  
 3 or lease, nor may a motor vehicle agent be employed by or  
 4 receive a fee from such a person or a motor vehicle  
 5 manufacturer, motor vehicle dealer, or used motor vehicle  
 6 dealer.

7 (12.6) "Motor vehicle auctioneer" means any person, NOT  
 8 OTHERWISE REQUIRED TO BE LICENSED PURSUANT TO THIS PART 1, who  
 9 is engaged in the business of offering to sell, or selling,  
 10 used motor vehicles owned by persons other than the auctioneer  
 11 at public auction only.

12 (14) "Motor vehicle salesman SALESPERSON" means any  
 13 natural person who, for a salary, commission, or compensation  
 14 of any kind, is employed either directly or indirectly,  
 15 regularly or occasionally, by any motor vehicle dealer or used  
 16 motor vehicle dealer to sell, purchase, or exchange or to  
 17 negotiate for the sale, purchase, or exchange of motor  
 18 vehicles.

19 SECTION 3. 12-6-103 (1), Colorado Revised Statutes, 1991  
 20 Repl. Vol., is amended to read:

21 12-6-103. Motor vehicle dealer board. (1) There is  
 22 hereby created and established a THE motor vehicle dealer  
 23 licensing board, consisting of nine members who have been  
 24 residents of this state for at least five years, four TWO of  
 25 whom shall be licensed motor vehicle dealers, three TWO of  
 26 whom shall be licensed used motor vehicle dealers, and two

1 FIVE of whom shall be members from the public at large. THE  
 2 MEMBERS REPRESENTING THE PUBLIC AT LARGE SHALL NOT HAVE A  
 3 PRESENT OR PAST FINANCIAL INTEREST IN THE AUTOMOBILE INDUSTRY  
 4 AND SHALL BE VOTED IN CONSUMER AFFAIRS. The board shall  
 5 assume its duties July 1, 1992, and all terms of  
 6 the board members shall commence on that date. The terms of  
 7 office of the board members shall be three years; except that,  
 8 of the members appointed to take office on July 1, 1992,  
 9 three shall be appointed for a one-year term, three  
 10 shall be appointed for a two-year term, and three shall be  
 11 appointed for a three-year term. Any vacancies shall be  
 12 filled by appointment for the unexpired term.

13 SECTION 4. 12-6-104, Colorado Revised Statutes, 1991  
 14 Repl. Vol., is amended to read:

15 12-6-104. Board - oath - meetings - powers and duties.

16 (1) Each member of the board, before entering on the  
 17 discharge of his SUCH MEMBER'S duties and within thirty days  
 18 after the effective date of his SUCH MEMBER'S appointment,  
 19 shall subscribe an oath for the faithful performance of his  
 20 SUCH MEMBER'S duties before any officer authorized to  
 21 administer oaths in this state and shall file the same with  
 22 the secretary of state.

23 (2) The board shall, within thirty days on or after July  
 24 1, 1992, and annually thereafter in the month of  
 25 July, elect from the membership thereof a president, a  
 26 vice-president, and a secretary who shall also serve as

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1 treasurer. The board shall meet at such times as it deems  
2 necessary. A majority of the board shall constitute a quorum  
3 at any meeting or hearing.

4 (3) The board is authorized and empowered:

5 (a) To promulgate, amend, and repeal such reasonable  
6 rules and regulations provisions---for---licensing---and  
7 registration,---establishing---of---standards---and---the---rendering---of  
8 findings,---orders,---and---adjudications---not---inconsistent---with---this  
9 part-1 RELATING TO THOSE FUNCTIONS THE BOARD IS MANDATED TO  
10 CARRY OUT PURSUANT TO THIS PART 1 and the laws of the state of  
11 Colorado as it deems necessary. to-carry-out-the-purposes-of  
12 this-part-1;

13 (b) To-employ-an-executive-secretary-to-coordinate--with  
14 the--administrator--the--enforcement--of--such--rules--and  
15 regulations,---findings,---determinations,---standards,---and---orders  
16 as--may--be--promulgated--or--made--under--paragraph-(a)--of--this  
17 subsection-(3);

18 (c) To--issue--through--the--department--of--revenue---a  
19 temporary--permit--to--any--person--applying--for--a--motor-vehicle  
20 salesman's--license--pending--the--satisfaction--of--the--board--that  
21 the--applicant--has--met--the--requirements--of--this--part-1,---The  
22 temporary--permit--shall--permit--the--operation--by--the--salesman  
23 for--a--period--not--to--exceed--one--hundred--twenty--days--while--the  
24 board--is--completing--its--investigation--and--determination--of--all  
25 facts--relative--to--the--qualifications--of--the--applicant--for--such  
26 a--license.---This--temporary--permit--shall--be--invalid--when--the

1 applicant's--license--has--been--issued--or--refused,

2 (d) To--issue--through--the--department--of--revenue--and,---for  
3 reasonable--cause--shown--or--upon--satisfactory--proof--of--the  
4 unfitness--of--the--applicant--under--standards--established--and--set  
5 forth--in--this--part-1,---to--refuse--to--issue--to--any--applicant--for  
6 a--motor--vehicle--dealer's,---wholesaler's,---motor--vehicle  
7 salesman's,---motor--vehicle--auctioneer's--or--used--motor-vehicle  
8 dealer's--license--any--license--authorized--by--this--part-1;

9 (e) (I) After due notice and A hearing, TO REVIEW THE  
10 FINDINGS OF THE JUDGE IF THE HEARING WAS CONDUCTED BY AN  
11 ADMINISTRATIVE LAW JUDGE PURSUANT TO SECTION 24-4-105, C.R.S.,  
12 OR UPON ITS OWN FINDINGS IF THE HEARING WAS CONDUCTED BY THE  
13 BOARD, to revoke and suspend OR TO REINSTATE, on such terms  
14 and conditions and for such period of time as to the board  
15 shall appear fair and just, any motor--vehicle--dealer's,  
16 wholesaler's,---motor--vehicle--salesman's,---motor--vehicle  
17 auctioneer's---or--used--motor--vehicle--dealer's license OR  
18 REGISTRATION issued BY THE EXECUTIVE DIRECTOR under and  
19 pursuant to the terms and provisions of this part 1;

20 (II) THE FINDINGS OF THE BOARD PURSUANT TO SUBPARAGRAPH  
21 (I) OF THIS PARAGRAPH (e) SHALL BE FINAL.

22 (f) (I) To investigate through the department-of-revenue  
23 EXECUTIVE DIRECTOR, on its own motion or upon the sworn  
24 complaint of any person, any suspected or alleged violation by  
25 any motor-vehicle-dealer, wholesaler, motor-vehicle--salesman,  
26 motor--vehicle--auctioneer,---or--used--motor--vehicle--dealer

1 licensee of any of the terms and provisions of this part 1 or  
2 of any rule or regulation promulgated by the board under the  
3 authority conferred upon it in this section. The board shall  
4 order an investigation of all sworn complaints, and the  
5 administrator EXECUTIVE DIRECTOR shall make an investigation  
6 of all such complaints transmitted by the board PURSUANT TO  
7 SECTION 12-6-105 (d).

8 (II) AFTER AN INVESTIGATION, IF THE BOARD DETERMINES  
9 THAT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION OF THIS  
10 ARTICLE HAS OCCURRED, IT MAY ORDER THAT AN ADMINISTRATIVE  
11 HEARING BE HELD PURSUANT TO SECTION 24-4-105, C.R.S.

12 (g) To prescribe the forms to be used for applications  
13 for motor vehicle dealers, wholesalers, motor vehicle  
14 salesmen, motor vehicle auctioneers, or used motor vehicle  
15 dealers, licenses to be issued, and to require of such  
16 applicants, as a condition precedent to the issuance of such  
17 licenses, such information concerning their fitness to be  
18 licensed under this part, as it may consider necessary.  
19 Every application for a motor vehicle dealer's license or used  
20 motor vehicle dealer's license shall contain, in addition to  
21 such information as the board may require, a statement of the  
22 following facts:

23 (i) The name and residence address of the applicant and  
24 the trade name, if any, under which he intends to conduct his  
25 business, and, if the applicant is a partnership, the name  
26 and residence address of each member thereof, whether a

1 limited or general partner, and the name under which the  
2 partnership business is to be conducted, and, if the applicant  
3 is a corporation, the name of the corporation and the name and  
4 address of each of its principal officers and directors;

5 (ii) A complete description, including the city, town,  
6 or village, the street and number, if any, of the principal  
7 place of business, and such other and additional places of  
8 business as shall be operated and maintained by the applicant  
9 in conjunction with the principal place of business;

10 (iii) If the application is for a motor vehicle dealer's  
11 license, the names of the new motor vehicles that the  
12 applicant has been franchised to sell or exchange and the  
13 name and address of the manufacturer or distributor who has  
14 franchised the applicant;

15 (iv) The names and addresses of the persons who shall  
16 act as salesmen under the authority of the license, if issued.  
17 (h) To adopt a seal with the words "motor vehicle dealer  
18 licensing board" and such other devices as the board may  
19 desire engraved thereon by which it shall authenticate the  
20 acts of its office;

21 (i) To require that a motor vehicle dealer's or used  
22 motor vehicle dealer's principal place of business and such  
23 other sites or locations as may be operated and maintained by  
24 such dealers in conjunction with their principal place of  
25 business have erected or posted thereon such signs or devices  
26 providing information relating to the dealer's name, the

1 location and address of such dealer's principal place of  
2 business, the type of license held by the dealer, and the  
3 number thereof, as the board shall consider necessary to  
4 enable any person doing business with such dealer to identify  
5 ~~the~~ SUCH DEALER properly, and for this purpose to determine  
6 the size and shape of such signs or devices, the lettering  
7 thereon, and other details thereof and to prescribe rules and  
8 regulations for the location thereof;

9 (j) To conduct or cause to be conducted written  
10 examinations as prescribed by the board testing the competency  
11 of all first-time applicants for a motor vehicle dealer's  
12 license, used motor vehicle dealer's license, OR wholesaler's  
13 license; ~~motor-vehicle-auctioneer's-license,-or-motor-vehicle~~  
14 ~~salesman's-license;~~

15 (k) (I) The examination required in paragraph (j) of  
16 this subsection (3) shall be conducted by the department of  
17 revenue;

18 (II) THE BOARD AND THE EXECUTIVE DIRECTOR SHALL REPORT  
19 TO THE SUNRISE AND SUNSET REVIEW COMMITTEE ON THEIR PROGRESS  
20 IN DEVELOPING AN UPDATED EXAMINATION AND PROCEDURE FOR  
21 CONDUCTING SUCH EXAMINATION BY JULY 1, 1992.

22 (l) (I) To prescribe a form or forms to be used as a  
23 part of a contract for the sale of a motor vehicle by any  
24 motor vehicle dealer or motor vehicle salesman SALESPERSON,  
25 other than a retail installment sales contract subject to the  
26 provisions of the "Uniform Consumer Credit Code", articles 1

1 to 9 of title 5, C.R.S., which shall include the following  
2 information in addition to any other disclosures or  
3 information required by state or federal law:

4 (A) In ~~twelve-point bold-face~~ BOLD-FACED type or a size  
5 at least three points larger than the smallest type appearing  
6 in the contract, an instruction that the form is a legal  
7 instrument and that, if the purchaser of the motor vehicle  
8 does not understand ~~what he is signing,~~ THE FORM, SUCH  
9 PURCHASER should seek legal assistance;

10 (B) In ~~bold-face~~ BOLD-FACED type, of the size specified  
11 in sub-subparagraph (A) of this subparagraph (I), an  
12 instruction that only those terms in written form embody the  
13 contract for sale of a motor vehicle and that any conflicting  
14 oral representations made to the purchaser are void;

15 (C) In ~~bold-face~~ BOLD-FACED type, of the size specified  
16 in sub-subparagraph (A) of this subparagraph (I), a notice  
17 that fraud or misrepresentation in the sale of a motor vehicle  
18 is punishable under the laws of this state;

19 (D) In ~~bold-face~~ BOLD-FACED type, of the size specified  
20 in sub-subparagraph (A) of this subparagraph (I), if the  
21 contract for the sale of a motor vehicle requires a single  
22 lump sum payment of the purchase price, a clear disclosure to  
23 the purchaser of that fact or, if the contract is contingent  
24 upon the approval of credit financing for the purchaser  
25 arranged by or through the motor vehicle dealer, in ~~bold-face~~  
26 BOLD-FACED type, a statement that the purchaser shall agree to

1 purchase the motor vehicle which is the subject of the sale  
 2 from the motor vehicle dealer at not greater than a certain  
 3 annual percentage rate of financing, which annual percentage  
 4 rate of financing shall be agreed upon by the parties and  
 5 entered in writing on the contract;

6 (E) Where the purchase price of the motor vehicle is not  
 7 paid to the motor vehicle dealer in full at the time of  
 8 consummation of the sale and the purchaser and motor vehicle  
 9 dealer elect that the motor vehicle dealer shall deliver and  
 10 the purchaser shall take possession of such motor vehicle at  
 11 such time, in ~~bold-face~~ BOLD-FACED type, a statement that in  
 12 the event financing cannot be arranged in accordance with the  
 13 provisions stated in the contract, and the sale is not  
 14 consummated, the purchaser shall agree to pay a daily rate and  
 15 a mileage rate for use of the motor vehicle until such time as  
 16 financing of the purchase price of such motor vehicle is  
 17 arranged for the obligor by or through the authorized motor  
 18 vehicle dealer or until the purchase price is paid to the  
 19 authorized motor vehicle dealer in full by or through the  
 20 obligor, which daily rate and mileage rate shall be specified  
 21 and agreed upon by the parties and entered in writing on the  
 22 contract.

23 (II) The information required by subparagraph (I) of  
 24 this paragraph (1) shall be read and initialed by both parties  
 25 at the time of the consummation of the sale of a motor  
 26 vehicle.

1 (III) The use of the contract form required by  
 2 subparagraph (I) of this paragraph (1) shall be mandatory for  
 3 the sale of any motor vehicle. ~~on-or-after-January-1, 1986.~~

4 (m) (I) To prescribe a form or forms to be used as a  
 5 part of a contract for the lease of a motor vehicle by any  
 6 motor vehicle dealer or motor vehicle salesman SALESPERSON,  
 7 which shall include the following information in addition to  
 8 any other disclosures or information required by state or  
 9 federal law:

10 (A) In ~~bold-face~~ BOLD-FACED type or a size  
 11 of at least three points larger than the smallest type  
 12 appearing in the contract, an instruction that the form is a  
 13 legal instrument and that, if the lessee of the motor vehicle  
 14 does not understand ~~what--he--is--signing,~~ he THE FORM, SUCH  
 15 LESSEE should seek legal assistance;

16 (B) In ~~bold-face~~ BOLD-FACED type, of the size specified  
 17 in sub-subparagraph (A) of this subparagraph (I), an  
 18 instruction that only those terms in written form embody the  
 19 contract for the lease of a motor vehicle and that any  
 20 conflicting oral representations made to the lessee are void;

21 (C) In ~~bold-face~~ BOLD-FACED type, of the size specified  
 22 in sub-subparagraph (A) of this subparagraph (I), a notice  
 23 that fraud or misrepresentation in the lease of a motor  
 24 vehicle is punishable under the laws of this state;

25 (D) A statement disclosing the dollar value of any  
 26 trade-in or capital cost reduction made by the lessee, which



1 value shall be agreed upon by the parties and entered in  
2 writing on the contract.

3 (II) The information required by subparagraph (I) of  
4 this paragraph (m) shall be read and initialed by both parties  
5 at the time of the consummation of the lease of a motor  
6 vehicle.

7 (III) The use of the contract form required by  
8 subparagraph (I) of this paragraph (m) shall be mandatory for  
9 the lease of any motor vehicle. ~~on or after January 1, 1989.~~

10 (n) (I) IF A HEARING IS HELD BEFORE AN ADMINISTRATIVE  
11 LAW JUDGE, AFTER DUE NOTICE AND A HEARING BY SUCH JUDGE  
12 PURSUANT TO SECTION 24-4-105, C.R.S., TO REVIEW THE FINDINGS  
13 OF LAW AND FACT AND THE FAIRNESS OF ANY FINE IMPOSED BY SUCH  
14 JUDGE AND TO UPHOLD SUCH FINE WHICH SHALL NOT EXCEED TEN  
15 THOUSAND DOLLARS FOR EACH SEPARATE OFFENSE BY ANY LICENSEE OR  
16 REGISTRANT, TO IMPOSE AN ADMINISTRATIVE FINE UPON ITS OWN  
17 INITIATIVE WHICH SHALL NOT EXCEED TEN THOUSAND DOLLARS FOR  
18 EACH SEPARATE OFFENSE BY ANY LICENSEE OR REGISTRANT, OR TO  
19 VACATE THE FINE IMPOSED BY THE JUDGE.

20 (II) THE FINDINGS OF THE BOARD PURSUANT TO SUBPARAGRAPH  
21 (I) OF THIS PARAGRAPH (n) OF THIS SUBSECTION (3) SHALL BE  
22 FINAL.

23 (o) THE BOARD SHALL PROMULGATE GUIDELINES IN THE FORM OF  
24 RULES AND REGULATIONS TO ENSURE THAT ADMINISTRATIVE PENALTIES  
25 ARE EQUITABLY ASSESSED AND COMMENSURATE WITH THE SERIOUSNESS  
26 OF THE VIOLATION.

1 SECTION 5. 12-6-105, Colorado Revised Statutes, 1991  
2 Repl. Vol., is amended to read:

3 12-6-105. Powers and duties of executive director.

4 (1) The ~~administrator~~ EXECUTIVE DIRECTOR is hereby charged  
5 with the administration, ENFORCEMENT, AND ISSUANCE OR DENIAL  
6 of the licensing of ~~motor-vehicle-manufacturers, distributors,~~  
7 ~~factory----branches,-----distributor-----branches,----factory~~  
8 ~~representatives,---and---distributor---representatives~~ BUYER  
9 REPRESENTATIVES, DISTRIBUTORS, DISTRIBUTOR BRANCHES,  
10 DISTRIBUTOR REPRESENTATIVES, FACTORY BRANCHES, FACTORY  
11 REPRESENTATIVES, MOTOR VEHICLE DEALERS, MOTOR VEHICLE  
12 MANUFACTURERS, USED MOTOR VEHICLE DEALERS, AND WHOLESALERS AND  
13 THE REGISTRATION OF MOTOR VEHICLE SALESPERSONS and shall have  
14 the following powers and duties:

15 (a) To promulgate, amend, and repeal such reasonable  
16 rules and regulations ~~not--inconsistent--with--this--part--1;~~  
17 RELATING TO THOSE FUNCTIONS THE EXECUTIVE DIRECTOR IS MANDATED  
18 TO CARRY OUT PURSUANT TO THIS PART 1 and the laws of the state  
19 of Colorado ~~as he~~ THAT THE EXECUTIVE DIRECTOR deems necessary;  
20 ~~to carry out the purposes of this part 1;~~

21 (b) To employ, subject to the laws of the state of  
22 Colorado AND AFTER CONSULTATION WITH THE BOARD, AN EXECUTIVE  
23 SECRETARY FOR THE BOARD AND, such clerks, deputies, and  
24 assistants as ~~he~~ THE EXECUTIVE DIRECTOR considers necessary to  
25 discharge the duties imposed upon ~~him~~ THE EXECUTIVE DIRECTOR  
26 by this part 1 and to designate the duties of such clerks,

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1 deputies, and assistants;

2 (c) To issue and, for reasonable cause shown or upon

3 satisfactory proof of the unfitness of the applicant under

4 standards established and set forth in this part 1, to refuse

5 to issue to any applicant ~~for a motor vehicle manufacturer,~~

6 ~~distributor,~~ ~~factory branch,~~ ~~distributor branch,~~ ~~factory~~

7 ~~representative,~~ ~~or distributor representative,~~ license any

8 license OR REGISTRATION authorized by this part 1;

9 (d) (I) To investigate ~~on his own motion~~ UPON THE

10 EXECUTIVE DIRECTOR'S OWN INITIATIVE, ~~or~~ upon the sworn

11 complaint of any person, OR UPON REQUEST BY THE BOARD PURSUANT

12 TO SECTION 12-6-104 (3) (f) (I), any suspected or alleged

13 violation by any ~~motor vehicle manufacturer,~~ ~~distributor,~~

14 ~~factory branch,~~ ~~distributor branch,~~ ~~factory representative,~~ ~~or~~

15 ~~distributor representative~~ licensee OR REGISTRANT of any of

16 the terms and provisions of this part 1 or of any rule or

17 regulation promulgated by the ~~administrator~~ EXECUTIVE DIRECTOR

18 under the authority conferred upon ~~him~~ THE EXECUTIVE DIRECTOR

19 in this section;

20 (II) THE INVESTIGATORS AND THEIR SUPERVISORS UTILIZED BY

21 THE EXECUTIVE DIRECTOR, PURSUANT TO SUBPARAGRAPH (I) OF THIS

22 PARAGRAPH (d), WHILE ACTUALLY ENGAGED IN PERFORMING THEIR

23 DUTIES, SHALL HAVE ALL THE POWERS VESTED IN PEACE OFFICERS,

24 LEVEL III, PURSUANT TO SECTION 18-1-901 (3) (1) (IV), C.R.S.

25 SUCH INVESTIGATORS OR THEIR SUPERVISORS SHALL ALSO HAVE THE

26 AUTHORITY TO ISSUE SUMMONSES FOR VIOLATIONS OF SECTION

1 12-6-120 OR 42-6-140, C.R.S., AND TO PROCURE CRIMINAL RECORDS

2 DURING AN INVESTIGATION.

3 (e) To prescribe the forms to be used for applications

4 for licenses OR REGISTRATIONS to be issued under the

5 provisions of this part 1 and to require of such applicants,

6 as a condition precedent to the issuance of such licenses OR

7 REGISTRATIONS, such information concerning the applicant's

8 fitness to be licensed under this part 1 as ~~he~~ THE EXECUTIVE

9 DIRECTOR considers necessary;

10 (f) ~~After due notice and hearing,~~ To SUMMARILY issue

11 cease and desist orders on such terms and conditions and for

12 such period of time as to the ~~administrator~~ EXECUTIVE DIRECTOR

13 appears fair and just to any ~~licensed manufacturer,~~

14 ~~distributor,~~ ~~factory branch,~~ ~~or distributor branch~~ PERSON who

15 is licensed OR REGISTERED pursuant to this part 1 IF SUCH

16 ORDERS ARE FOLLOWED BY NOTICE AND A HEARING PURSUANT TO

17 SECTION 12-6-104 (3) (e) (I).

18 (g) ~~After due notice and hearing, to issue cease and~~

19 ~~desist orders on such terms and conditions and for such period~~

20 ~~of time as to the administrator appears fair and just to any~~

21 ~~factory representative or distributor representative licensed~~

22 ~~pursuant to this part 1.~~

23 (2) In the event any person fails to comply with a cease

24 and desist order issued pursuant to this section, the

25 ~~administrator~~ EXECUTIVE DIRECTOR may bring a suit for

26 injunction to prevent any further and continued violation of

1 such order. In any such suit the final proceedings of the  
2 administrator EXECUTIVE DIRECTOR, based upon evidence in  
3 record, shall be prima facie evidence of the facts found  
4 therein.

5 SECTION 6. 12-6-106, Colorado Revised Statutes, 1991  
6 Repl. Vol., is amended to read:

7 12-6-106. Records as evidence. Copies of all records and  
8 papers in the office of the board or administrator EXECUTIVE  
9 DIRECTOR, duly authenticated under the hand and seal of the  
10 board or administrator EXECUTIVE DIRECTOR, shall be received  
11 in evidence in all cases equally and with like effect as the  
12 original thereof.

13 SECTION 7. 12-6-107, Colorado Revised Statutes, 1991  
14 Repl. Vol., is amended to read:

15 12-6-107. Attorney general to advise and represent. The  
16 attorney general of this state shall represent the board and  
17 administrator EXECUTIVE DIRECTOR and shall give opinions on  
18 all questions of law relating to the interpretation of this  
19 part 1 or arising out of the administration thereof and shall  
20 appear for and in behalf of the board and administrator  
21 EXECUTIVE DIRECTOR in all actions brought by or against them,  
22 whether under the provisions of this part 1 or otherwise.

23 SECTION 8. 12-6-108 (1)(a), (1)(b), (1)(c), (1)(c.1),  
24 and (2), Colorado Revised Statutes, 1991 Repl. Vol., are  
25 amended, and the said 12-6-108 (1) is further amended BY THE  
26 ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

1 12-6-108. Classes of licenses. (1) Licenses issued  
2 under the provisions of this part 1 shall be of the following  
3 classes:

4 (a) Motor vehicle dealer's license shall permit the  
5 licensee to engage in the business of selling or exchanging  
6 new and used motor vehicles, or both, and this form of license  
7 shall permit not more than two persons named therein who shall  
8 be owners or part owners of the business of the licensee to  
9 act as motor vehicle salesmen SALESPERSONS.

10 (b) Used motor vehicle dealer's license shall permit the  
11 licensee to engage in the business of selling or exchanging  
12 used motor vehicles only, and this form of license shall  
13 permit not more than two persons named therein who shall be  
14 owners or part owners of the business of the licensee to act  
15 as motor vehicle salesmen SALESPERSONS.

16 (c) ~~Motor-vehicle-salesman's-license--shall--permit--the~~  
17 ~~licensee--to--engage--in--the--activities--of--a-motor-vehicle~~  
18 ~~salesman.~~

19 (c.1) ~~Motor-vehicle-auctioneer's--license--shall--permit~~  
20 ~~the--licensee--to--engage--in--the--activities--of--a-motor-vehicle~~  
21 ~~auctioneer--and--shall--not--permit--the--licensee--to--engage--in--the~~  
22 ~~activities--of--a--motor--vehicle-dealer--or--used-motor-vehicle~~  
23 ~~dealer--or--other--licensee--under--this--part--1.~~

24 (g) BUYER REPRESENTATIVE'S LICENSE SHALL PERMIT THE  
25 LICENSEE TO ENGAGE IN THE ACTIVITIES OF A BUYER  
26 REPRESENTATIVE.

1 (h) SALESPERSON'S REGISTRATION SHALL PERMIT THE  
2 REGISTRANT TO ENGAGE IN THE ACTIVITIES OF A SALESPERSON.

3 (2) Any license issued by the administrator EXECUTIVE  
4 DIRECTOR pursuant to law in effect prior to July-17-1971 JULY  
5 1, 1992, shall be valid for the period for which issued.

6 SECTION 9. Article 6 of title 12, Colorado Revised  
7 Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW  
8 SECTION to read:

9 12-6-108.5 Temporary Motor vehicle Dealer License.

10 (1) IF A LICENSED VEHICLE DEALER HAS ENTERED INTO A WRITTEN  
11 AGREEMENT TO SELL A DEALERSHIP TO A PURCHASER AND THE  
12 PURCHASER HAS BEEN AWARDED A NEW DEALERSHIP FRANCHISE, THE  
13 EXECUTIVE DIRECTOR MAY ISSUE A TEMPORARY MOTOR VEHICLE  
14 DEALER'S LICENSE TO SUCH PURCHASER OR PROSPECTIVE PURCHASER.  
15 THE EXECUTIVE DIRECTOR SHALL ISSUE THE TEMPORARY LICENSE ONLY  
16 AFTER RECEIVING THE APPLICATIONS FOR BOTH A TEMPORARY MOTOR  
17 VEHICLE DEALER'S LICENSE AND A MOTOR VEHICLE DEALER'S LICENSE,  
18 THE APPROPRIATE APPLICATION FEE FOR THE MOTOR VEHICLE DEALER'S  
19 APPLICATION, EVIDENCE OF A PASSING TEST SCORE, AND EVIDENCE  
20 THAT THE FRANCHISE HAS BEEN AWARDED TO THE APPLICANT BY THE  
21 MANUFACTURER. SUCH TEMPORARY MOTOR VEHICLE DEALER'S LICENSE  
22 SHALL AUTHORIZE THE LICENSEE TO ACT AS A MOTOR VEHICLE DEALER.  
23 SUCH TEMPORARY LICENSEES SHALL BE SUBJECT TO ALL THE  
24 PROVISIONS OF THIS ARTICLE AND TO ALL APPLICABLE RULES AND  
25 REGULATIONS ADOPTED BY THE EXECUTIVE DIRECTOR OR THE BOARD.  
26 SUCH TEMPORARY MOTOR VEHICLE DEALER'S LICENSE SHALL BE

1 EFFECTIVE FOR UP TO SIXTY DAYS OR UNTIL THE EXECUTIVE DIRECTOR  
2 ACTS ON SUCH LICENSEE'S APPLICATION FOR A MOTOR VEHICLE  
3 DEALER'S LICENSE, WHICHEVER IS SOONER.

4 (2) FOR THE PURPOSE OF ENABLING AN OUT-OF-STATE DEALER  
5 TO SELL VEHICLES ON A TEMPORARY BASIS DURING SPECIFICALLY  
6 IDENTIFIED EVENTS, THE EXECUTIVE DIRECTOR MAY ISSUE A  
7 TEMPORARY DEALER'S LICENSE WHICH SHALL BE EFFECTIVE FOR THIRTY  
8 DAYS. SUCH TEMPORARY LICENSE SHALL SUBJECT THE LICENSEE TO  
9 COMPLIANCE WITH RULES AND REGULATIONS ADOPTED BY THE EXECUTIVE  
10 DIRECTOR OR THE BOARD.

11 SECTION 10. 12-6-109, Colorado Revised Statutes, 1991  
12 Repl. Vol., is amended to read:

13 12-6-109. Display, form, custody, and use of licenses or  
14 registrations. The board and the administrator EXECUTIVE  
15 DIRECTOR shall prescribe the form of the license OR  
16 REGISTRATION TO BE ISSUED BY THE EXECUTIVE DIRECTOR, and each  
17 license OR REGISTRATION shall have imprinted thereon the seal  
18 of their offices. The license OR REGISTRATION of each motor  
19 vehicle salesman SALESPERSON shall be delivered or mailed to  
20 the ~~motor-vehicle-dealer-or-used-motor-vehicle-dealer-by-whom~~  
21 ~~the-motor-vehicle-salesman-is-employed-and-shall-be-kept-in~~  
22 ~~the-custody-and-control-of-such-motor-vehicle-dealer-or-used~~  
23 ~~motor-vehicle-dealer~~ SALESPERSON'S HOME ADDRESS AND SHALL BE  
24 KEPT BY THE SALESPERSON AT SUCH SALESPERSON'S PLACE OF  
25 EMPLOYMENT FOR INSPECTION BY EMPLOYERS, CONSUMERS, THE  
26 EXECUTIVE DIRECTOR, OR THE BOARD. It is the duty of each

1 motor vehicle dealer, manufacturer, distributor, wholesaler,  
 2 factory branch, distributor branch, factory representative,  
 3 distributor representative, or used motor vehicle dealer to  
 4 display conspicuously his SUCH PERSON'S own license in his  
 5 SUCH PERSON'S place of business. ~~It is the duty of each motor~~  
 6 ~~vehicle auctioneer to leave in his custody and readily~~  
 7 ~~accessible the license issued to him pursuant to this part 1~~  
 8 ~~and to display said license upon request.~~ EACH LICENSE OR  
 9 REGISTRATION ISSUED PURSUANT TO THIS PART 1 IS SEPARATE AND  
 10 DISTINCT. IT SHALL BE A VIOLATION OF THIS PART 1 FOR ANY  
 11 PERSON TO EXERCISE ANY OF THE PRIVILEGES GRANTED UNDER A  
 12 LICENSE OR REGISTRATION WHICH SUCH PERSON DOES NOT HOLD, OR  
 13 FOR ANY LICENSEE OR REGISTRANT TO KNOWINGLY ALLOW SUCH AN  
 14 EXERCISE OF PRIVILEGES.

15 SECTION 11. The introductory portion to 12-6-110 (1),  
 16 12-6-110 (1)(g), (1)(h), (2.5), (3), (4), (5)(b), and (5)(c),  
 17 Colorado Revised Statutes, 1991 Repl. Vol., are amended, and  
 18 the said 12-6-110 (1) is further amended BY THE ADDITION OF A  
 19 NEW PARAGRAPH, to read:

20 12-6-110. Fees - disposition - expenses - expiration of  
 21 licenses. (1) There shall be collected with each application  
 22 the fee established pursuant to subsection (5) of this section  
 23 for each of the following licenses OR REGISTRATION:

- 24 (g) Motor vehicle salesman's ~~license~~ SALESPERSON'S
- 25 REGISTRATION;
- 26 (h) ~~Motor vehicle auctioneer's license,~~

- 1 (i) BUYER REPRESENTATIVE'S LICENSE.
- 2 (2.5) If an application for a BUYER REPRESENTATIVE'S,
- 3 motor vehicle dealer's, used motor vehicle dealer's, OR
- 4 wholesaler's ~~or salesman's~~ license OR A REGISTRATION BY A
- 5 SALESPERSON is denied by the ~~board~~ EXECUTIVE DIRECTOR or
- 6 withdrawn by the applicant prior to issuance of the license,
- 7 one-half of the license OR REGISTRATION fee shall be refunded.
- 8 (3) (a) Such licenses OR REGISTRATIONS, if the same have
- 9 not been suspended or revoked as provided in this part 1,
- 10 shall be valid ~~until July 1 next~~ FOR ONE YEAR following the
- 11 date of issuance thereof and shall then expire.
- 12 (b) THIRTY DAYS PRIOR TO THE EXPIRATION OF SUCH LICENSES
- 13 OR REGISTRATIONS, THE EXECUTIVE DIRECTOR SHALL MAIL TO ANY
- 14 SUCH LICENSEE'S OR REGISTRANT'S HOME ADDRESS A NOTICE STATING
- 15 WHEN SUCH PERSON'S LICENSE OR REGISTRATION IS DUE TO EXPIRE
- 16 AND THE FEE NECESSARY TO RENEW SUCH LICENSE OR REGISTRATION.
- 17 (c) Upon the expiration of such license OR REGISTRATION,
- 18 unless suspended or revoked, the same may be renewed upon the
- 19 payment of the fees specified in this section which shall
- 20 accompany applications and such renewal shall be made from
- 21 year to year as a matter of right.
- 22 (d) A TRANSITION PROCEDURE FOR LICENSEES LICENSED PRIOR
- 23 TO JULY 1, 1992, SHALL BE ESTABLISHED BY THE EXECUTIVE
- 24 DIRECTOR BY RULE AND REGULATION.
- 25 (4) ~~The license fee for motor vehicle dealers, used~~
- 26 ~~motor vehicle dealers, and wholesalers' licenses issued after~~

1 January--i--each--year--shall--be--one-half--the--annual--fee  
2 established--pursuant--to--subsection--(5)--of--this--section;--except  
3 that--applications--pending--prior--to--January--1--shall--not--be  
4 entitled--to--any--refund.

5 (5) (b) Based upon the appropriation made and subject to  
6 the approval of the ~~administrator~~ EXECUTIVE DIRECTOR, the  
7 board shall adjust ~~its~~ THE FEES COLLECTED BY THE EXECUTIVE  
8 DIRECTOR so that the revenue generated from said fees covers  
9 ~~its~~ THE direct and indirect costs OF ADMINISTERING THIS  
10 ARTICLE. ~~Except--as--provided--in--subsection--(4)--of--this~~  
11 ~~section,~~ Such fees shall remain in effect for the fiscal year  
12 for which the appropriation is made.

13 (c) ~~Beginning--July--1,--1981,--and--on--each--July--1~~  
14 ~~thereafter,~~ Whenever moneys appropriated to the board for its  
15 activities for the prior fiscal year are unexpended, said  
16 moneys shall be made a part of the appropriation to the board  
17 for the next fiscal year, and such amount shall not be raised  
18 from fees collected by the ~~board~~ THE EXECUTIVE DIRECTOR. If a  
19 supplemental appropriation is made to the board for its  
20 activities, the ~~fees of the board~~ COLLECTED BY THE EXECUTIVE  
21 DIRECTOR, when adjusted for the fiscal year next following  
22 that in which the supplemental appropriation was made, shall  
23 be adjusted by an additional amount which is sufficient to  
24 compensate for such supplemental appropriation. Moneys  
25 appropriated to the board in the annual general appropriation  
26 bill shall be from the fund provided in section 12-6-123.

1 SECTION 12. 12-6-111, Colorado Revised Statutes, 1991  
2 Repl. Vol. is amended to read:

3 12-6-111. Bond of licensee. (1) Before any motor  
4 vehicle dealer's, wholesaler's, or used motor vehicle dealer's  
5 license shall be issued by the ~~board~~ EXECUTIVE DIRECTOR to any  
6 applicant therefor, the said applicant shall procure and file  
7 with the ~~board~~ EXECUTIVE DIRECTOR evidence of a savings  
8 account, deposit, or certificate of deposit meeting the  
9 requirements of section 11-35-101, C.R.S., or a good and  
10 sufficient bond with corporate surety thereon duly licensed to  
11 do business within the state, approved as to form by the  
12 attorney general of the state, and conditioned that said  
13 applicant shall not practice fraud, make any fraudulent  
14 representation, or violate any of the provisions of this part  
15 1 in the conduct of the business for which he SUCH APPLICANT  
16 is licensed. ~~One-of-the-purposes-of-said-bond-is-to-provide~~  
17 ~~the-reimbursement-for-any-loss-or-damage-suffered-by-any~~  
18 ~~person-by-reason-of-the-transfer-of-a-certificate-of-title-by~~  
19 ~~a-motor-vehicle-dealer,--wholesaler,--or--used--motor--vehicle~~  
20 ~~dealer.~~

21 (2) THE PURPOSE OF THE BOND PROCURED BY THE APPLICANT  
22 PURSUANT TO SUBSECTION (1) OF THIS SECTION AND SECTIONS  
23 12-6-112 (1) AND 12-6-112.2 (1) IS TO PROVIDE FOR THE  
24 REIMBURSEMENT FOR ANY LOSS OR DAMAGE SUFFERED BY ANY RETAIL  
25 CONSUMER CAUSED BY VIOLATION OF THIS PART 1 BY A MOTOR VEHICLE  
26 DEALER, USED MOTOR VEHICLE DEALER, OR WHOLESALER. FOR A

1 WHOLESALE TRANSACTION, THE BOND IS AVAILABLE TO EACH PARTY TO  
2 THE TRANSACTION; EXCEPT THAT, IF A RETAIL CONSUMER IS  
3 INVOLVED, SUCH CONSUMER SHALL HAVE PRIORITY TO RECOVER FROM  
4 THE BOND. The amount of the bond shall be twenty THIRTY  
5 thousand dollars for a motor vehicle dealer applicant, USED  
6 MOTOR VEHICLE DEALER APPLICANT, OR wholesaler applicant. ~~or~~  
7 ~~used-motor-vehicle-dealer-applicant-until-July-1, 1991, and~~  
8 ~~after-which-date-the-amount-of-the-bond-shall-be-thirty~~  
9 ~~thousand-dollars.~~

10 (3) ALL BONDS REQUIRED PURSUANT TO THIS SECTION SHALL BE  
11 RENEWED ANNUALLY AT SUCH TIME AS THE BONDHOLDER'S LICENSE IS  
12 RENEWED.

13 (4) NOTHING IN THIS PART 1 SHALL INTERFERE WITH THE  
14 AUTHORITY OF THE COURTS TO ADMINISTER AND CONDUCT AN  
15 INTERPLEADER ACTION FOR CLAIMS AGAINST A LICENSEE'S BOND.

16 SECTION 13. 12-6-112, Colorado Revised Statutes, 1991  
17 Repl. Vol., is amended to read:

18 12-6-112. Motor vehicle salesperson's bond. (1) Before  
19 any motor vehicle salesman's ~~or any motor vehicle auctioneer's~~  
20 ~~license~~ SALESPERSON'S REGISTRATION is issued by the board  
21 EXECUTIVE DIRECTOR to any applicant therefor, the said  
22 applicant shall procure and file with the board EXECUTIVE  
23 DIRECTOR evidence of a savings account, deposit, or  
24 certificate of deposit meeting the requirements of section  
25 11-35-101, C.R.S., or a good and sufficient bond in the amount  
26 of two FIVE thousand dollars with corporate surety thereon

1 duly licensed to do business within the state, approved as to  
2 form by the attorney general of the state and conditioned that  
3 said applicant shall perform his ~~duties~~ IN GOOD FAITH as a  
4 motor vehicle salesman ~~or as a motor vehicle auctioneer~~  
5 SALESPERSON without fraud or fraudulent representation and  
6 without the violation of any of the provisions of this part 1.

7 (2) No corporate surety shall be required to make any  
8 payment to any person claiming under such bond until a final  
9 determination of fraud or fraudulent representation or the  
10 violation of any of the provisions of this part 1 has been  
11 made by the board or by a court of competent jurisdiction. ~~On~~  
12 ~~and after July 1, 1989, the bond required by this section~~  
13 ~~shall be in the amount of five thousand dollars.~~

14 (3) ALL BONDS REQUIRED PURSUANT TO THIS SECTION SHALL BE  
15 RENEWED ANNUALLY AT SUCH TIME AS THE BONDHOLDER'S REGISTRATION  
16 IS RENEWED.

17 SECTION 14. Article 6 of title 12, Colorado Revised  
18 Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW  
19 SECTION to read:

20 12-6-112.2 Buyer representative bonds. (1) A BUYER  
21 REPRESENTATIVE'S LICENSE SHALL NOT BE ISSUED BY THE EXECUTIVE  
22 DIRECTOR TO ANY APPLICANT THEREFOR, UNTIL SAID APPLICANT  
23 PROCURES AND FILES WITH THE EXECUTIVE DIRECTOR EVIDENCE OF A  
24 SAVINGS ACCOUNT, DEPOSIT, OR CERTIFICATE OF DEPOSIT MEETING  
25 THE REQUIREMENTS OF SECTION 11-35-101, C.R.S., OR A GOOD AND  
26 SUFFICIENT BOND IN THE AMOUNT OF FIVE THOUSAND DOLLARS WITH A

1 CORPORATE SURETY DULY LICENSED TO DO BUSINESS WITHIN THE  
2 STATE, APPROVED AS TO FORM BY THE ATTORNEY GENERAL. THE BOND  
3 SHALL BE AVAILABLE TO ENSURE THAT SAID APPLICANT SHALL PERFORM  
4 IN GOOD FAITH AS A BUYER REPRESENTATIVE WITHOUT FRAUD OR  
5 FRAUDULENT REPRESENTATION AND WITHOUT VIOLATING THIS PART 1.

6 (2) ALL BONDS REQUIRED PURSUANT TO THIS SECTION SHALL BE  
7 RENEWED ANNUALLY AT SUCH TIME AS THE BONDHOLDER'S LICENSE IS  
8 RENEWED.

9 SECTION 15. 12-6-112.7, Colorado Revised Statutes, 1991  
10 Repl. Vol., is amended to read:

11 12-6-112.7. Notice of claims honored against bond.

12 (1) Any corporate surety which has provided a bond to a  
13 licensee pursuant to the requirements of section 12-6-111, ~~or~~  
14 ~~section~~ 12-6-112, OR 12-6-112.2 shall provide notice to the  
15 board AND EXECUTIVE DIRECTOR of any claim which is honored  
16 against such bond. Such notice shall be provided to the board  
17 AND EXECUTIVE DIRECTOR within thirty days after a claim is  
18 honored.

19 (2) A notice provided by a corporate surety pursuant to  
20 the requirement of subsection (1) of this section shall be in  
21 such form as required by the ~~board~~ EXECUTIVE DIRECTOR SUBJECT  
22 TO APPROVAL BY THE BOARD and shall include, but shall not be  
23 limited to, the name of the licensee OR REGISTRANT, the name  
24 and address of the claimant, the amount of the honored claim,  
25 and the nature of the claim against the licensee OR  
26 REGISTRANT.

1 SECTION 16. 12-6-113, Colorado Revised Statutes, 1991  
2 Repl. Vol., is amended to read:

3 12-6-113. Testing licensees. All persons applying for a  
4 motor vehicle dealer's, used motor vehicle dealer's, OR  
5 wholesaler's ~~motor-vehicle-auctioneer's,--or--motor-vehicle~~  
6 ~~salesman's~~ license under this part 1 shall be examined for  
7 their knowledge of the motor vehicle laws of the state of  
8 Colorado and the rules and regulations promulgated pursuant to  
9 this part 1. If the applicant is a corporation, the managing  
10 officer shall take such examination, and, if the applicant is  
11 a partnership, all the general partners shall take such  
12 examination.

13 SECTION 17. 12-6-114, Colorado Revised Statutes, 1991  
14 Repl. Vol., is amended to read:

15 12-6-114. Filing of written warranties. All licensed  
16 manufacturers shall file with the ~~administrator~~ EXECUTIVE  
17 DIRECTOR all written warranties and changes in written  
18 warranties that such manufacturer makes on any motor vehicle  
19 or parts thereof. All licensed manufacturers shall file with  
20 the ~~administrator~~ EXECUTIVE DIRECTOR a copy of the delivery  
21 and preparation obligations of a manufacturer's dealer, and  
22 these warranties and obligations shall constitute the dealer's  
23 only responsibility for product liability as between the  
24 dealer and the manufacturer. Any mechanical, body, or parts  
25 defects arising from any express or implied warranties of the  
26 manufacturer shall constitute the manufacturer's product or



1 warranty liability, and the manufacturer shall reasonably  
2 compensate any authorized dealer who performs work to rectify  
3 said manufacturer's product or warranty defects.

4 SECTION 18. 12-6-115 (1), (2), and (5), Colorado Revised  
5 Statutes, 1991 Repl. Vol., are amended to read:

6 12-6-115. Application. (1) ~~Application--for--a--motor~~  
7 ~~vehicle--dealer's,--wholesaler's,--used-motor-vehicle-dealer's,~~  
8 ~~motor-vehicle-auctioneer's,--or--salesman's--license--shall--be~~  
9 ~~made--to--the--board.~~

10 (2) Application for ~~manufacturer's,--distributor's,~~  
11 ~~factory----branch's,----distributor----branch's,----factory~~  
12 ~~representative's,--and--distributor--representative's--licenses~~

13 ANY LICENSE ISSUED PURSUANT TO THIS PART 1 shall be made to  
14 the ~~administrator~~ EXECUTIVE DIRECTOR.

15 (5) All persons applying for a manufacturer's or  
16 distributor's license shall file with the ~~administrator~~  
17 EXECUTIVE DIRECTOR a certified copy of their typical written  
18 agreement with all motor vehicle dealers, and also evidence of  
19 the appointment of an agent for process in the state of  
20 Colorado shall be included with the application.

21 SECTION 19. 12-6-116, Colorado Revised Statutes, 1991  
22 Repl. Vol., is amended to read:

23 12-6-116. Notice of change of address or status.

24 (1) The ~~board~~ EXECUTIVE DIRECTOR shall not issue a motor  
25 vehicle dealer's license or used motor vehicle dealer's  
26 license to any applicant therefor who has no principal place

1 of business as is defined in this part 1. Should the motor  
2 vehicle dealer or used motor vehicle dealer change the site or  
3 location of his SUCH DEALER'S principal place of business, he  
4 SUCH DEALER shall immediately upon making such change so  
5 notify the ~~board~~ EXECUTIVE DIRECTOR in writing, and thereupon  
6 a new license shall be granted for the unexpired portion of  
7 the term of such license at a fee established pursuant to  
8 section 12-6-110. Should a motor vehicle dealer or used motor  
9 vehicle dealer, for any reason whatsoever, cease to possess a  
10 principal place of business, as defined in this part 1, from  
11 and on which he SUCH DEALER conducts the business for which he  
12 SUCH DEALER is licensed, he SUCH DEALER shall immediately so  
13 notify in writing the ~~board~~ EXECUTIVE DIRECTOR and, upon  
14 demand therefor by the ~~board~~ EXECUTIVE DIRECTOR, shall deliver  
15 to it such dealer's license, which shall be held and retained  
16 until it appears to the ~~board~~ EXECUTIVE DIRECTOR that such  
17 licensee again possesses a principal place of business;  
18 whereupon, such dealer's license shall be reissued. ~~to him.~~  
19 Nothing in this part 1 shall be construed to prevent a motor  
20 vehicle dealer or used motor vehicle dealer from conducting  
21 the business for which such dealer is licensed at one or more  
22 sites or locations not contiguous to such dealer's principal  
23 place of business but operated and maintained in conjunction  
24 therewith.

25 (2) Should the motor vehicle dealer change to a new line  
26 of motor vehicles, add another franchise for the sale of new

1 motor vehicles, or cancel or, for any cause whatever,  
2 otherwise lose a franchise for the sale of new motor vehicles,  
3 he SUCH DEALER shall immediately so notify the BOARD EXECUTIVE  
4 DIRECTOR. In the case of a cancellation or loss of franchise,  
5 the BOARD EXECUTIVE DIRECTOR shall determine whether or not by  
6 reason thereof such dealer should be licensed as a used motor  
7 vehicle dealer, in which case the BOARD EXECUTIVE DIRECTOR  
8 shall take up and the motor vehicle dealer shall deliver to it  
9 such dealer's license, and the BOARD EXECUTIVE DIRECTOR shall  
10 thereupon issue to such dealer a used motor vehicle dealer's  
11 license. Upon the cancellation or loss of a franchise to sell  
12 new motor vehicles and the relicensing of such dealer as a  
13 used motor vehicle dealer, such dealer may continue in the  
14 business for which a motor vehicle dealer is licensed for a  
15 time, not exceeding six months from the date of the  
16 relicensing of such dealer, to enable such dealer to dispose  
17 of the stock of new motor vehicles which he had on hand at the  
18 time of such relicensing, but not otherwise.

(3) Should any motor vehicle salesman be discharged or  
leave his employer or change his place of employment, the  
motor vehicle dealer or used motor vehicle dealer who last  
employed said salesman shall forthwith return his license to  
the board. The salesman shall be notified by the board at his  
last known place of residence that his license has been  
returned to the board and that upon obtaining employment  
again as a motor vehicle salesman, the motor vehicle salesman

1 may notify the board and thereupon a new license shall be  
2 issued for the unexpired portion of the term of the returned  
3 license at a fee established pursuant to section 12-6-110 (5),  
4 it shall be unlawful for him to act as a motor vehicle  
5 salesman until a new license is procured.

(4) Should a wholesaler, for any reason whatsoever,  
change his SUCH WHOLESALER'S place of business or business  
address during any license year, he SUCH WHOLESALER shall  
immediately so notify the board EXECUTIVE DIRECTOR.

SECTION 20. 12-6-118, Colorado Revised Statutes, 1991  
Repl. Vol., is amended to read:

12-6-118. Licenses - grounds for denial, suspension, or  
revocation. (1) A manufacturer's, distributor's, factory  
branch's, or distributor branch's license may be denied,  
suspended, or revoked on the following grounds:

(a) Proof of unfitness;  
(b) Material misstatement in an application for a  
license.

(c) WILLFUL FAILURE TO COMPLY WITH ANY PROVISIONS OF  
THIS PART I OR ANY RULE OR REGULATION PROMULGATED BY THE  
EXECUTIVE DIRECTOR OR THE BOARD;

(d) ENGAGING, IN THE PAST OR PRESENT, IN ANY ILLEGAL  
BUSINESS PRACTICE.

(2) A factory representative's or distributor  
representative's license may be denied, suspended, or revoked  
on the following grounds:

1 (a) ~~Proof-of-unfitness;~~  
2 (b) Material misstatement in an application for a  
3 license;  
4 (c) Willful failure to comply with any provision of this  
5 part 1 or any rule or regulation promulgated by the  
6 ~~administrator~~ EXECUTIVE DIRECTOR under this part 1;  
7 (d) Having indulged in any unconscionable business  
8 practice pursuant to section 6-1-105, C.R.S.;  
9 (e) Having coerced or attempted to coerce any motor  
10 vehicle dealer to accept delivery of any motor vehicle, parts  
11 or accessories therefor, or any other commodities or services  
12 which have not been ordered by said dealer;  
13 (f) Having coerced or attempted to coerce any motor  
14 vehicle dealer to enter into any agreement to do any act  
15 unfair to said dealer by threatening to cause the cancellation  
16 of the franchise of said dealer;  
17 (g) Having withheld, threatened to withhold, reduced, or  
18 delayed without just cause an order for motor vehicles, parts  
19 or accessories therefor, or any other commodities or services  
20 which have been ordered by a motor vehicle dealer;  
21 (h) ENGAGING, IN THE PAST OR PRESENT, IN ANY ILLEGAL  
22 BUSINESS PRACTICE.  
23 (3) A motor vehicle dealer's, wholesaler's, ~~motor~~  
24 ~~vehicle-auctioneer's~~ BUYER REPRESENTATIVE'S, or used motor  
25 vehicle dealer's license may be denied, suspended, or revoked  
26 on the following grounds:

1 (a) ~~Proof-of-unfitness;~~  
2 (b) Material misstatement in an application for a  
3 license;  
4 (c) Violation of any of the terms and provisions of this  
5 part 1 or any rule or regulation promulgated by the board  
6 under this part 1;  
7 (d) Having been convicted of any felony, or any crime  
8 pursuant to article 3, 4, or 5 of title 18, C.R.S., or any  
9 like crime pursuant to federal law or the law of any other  
10 state. A certified copy of the judgment of conviction by a  
11 court of competent jurisdiction shall be conclusive evidence  
12 of such conviction in any hearing held pursuant to this  
13 article.  
14 (e) Defrauding any buyer, seller, motor vehicle salesman  
15 SALESPERSON, or financial institution to such person's damage;  
16 (f) Intentional or negligent failure to perform any  
17 written agreement with any buyer or seller;  
18 (g) Failure or refusal to furnish and keep in force any  
19 bond required under this part 1;  
20 (h) Having made a fraudulent or illegal sale,  
21 transaction, or repossession;  
22 (i) Willful misrepresentation, circumvention, or  
23 concealment of or failure to disclose, through whatsoever  
24 subterfuge or device, any of the material particulars or the  
25 nature thereof required to be stated or furnished to the  
26 buyer;

1 (j) Repealed, L. 77, p. 611, 1, effective June 1, 1977.  
2 (k) To intentionally publish or circulate any  
3 advertising which is misleading or inaccurate in any material  
4 particular or which misrepresents any of the products sold or  
5 furnished by a licensed dealer;

6 (l) To knowingly purchase, sell, or otherwise acquire or  
7 dispose of a stolen motor vehicle;

8 (m) For any licensed motor vehicle dealer or used motor  
9 vehicle dealer to engage in the business for which such dealer  
10 is licensed without at all times maintaining a principal place  
11 of business as required by this part 1 during reasonable  
12 business hours;

13 (n) Engaging in such business through employment of an  
14 unlicensed UNREGISTERED motor vehicle salesman SALESPERSON;

15 (o) To willfully violate any state or federal law  
16 respecting commerce or motor vehicles or any lawful rule or  
17 regulation respecting commerce or motor vehicles promulgated  
18 by any licensing or regulating authority pertaining to motor  
19 vehicles;

20 (p) Failure to pass the licensing test required by this  
21 part;

22 (q) Engaging in such business without having adequate  
23 service facilities for the reconditioning and servicing of  
24 motor vehicles or having a valid and existing contract with a  
25 duly licensed and reputable garage with such facilities;

26 (r) Representing or selling as a new and unused motor

1 vehicle any motor vehicle which the dealer or salesman  
2 SALESPERSON knows has been used and operated for demonstration  
3 purposes or which the dealer or salesman SALESPERSON knows is  
4 otherwise a used motor vehicle;

5 (s) Violating any state or federal statute or regulation  
6 issued thereunder dealing with odometers;

7 (t) (I) Selling to a retail customer a motor vehicle  
8 which is not equipped or in proper condition and adjustment as  
9 required by part 2 of article 4 of title 42, C.R.S., unless  
10 such vehicle is sold as a towaway, not to be driven.

11 (II) Repealed, L. 84, p. 1080, 1, effective July 1,  
12 1984.

13 (t.1) Repealed, L. 84, p. 1080, 1, effective July 1,  
14 1984.

15 (u) COMMITTING A FRAUDULENT INSURANCE ACT PURSUANT TO  
16 SECTION 10-1-127, C.R.S.

17 (4) A wholesaler's license may be denied, suspended, or  
18 revoked for the selling or offering or attempting to negotiate  
19 the sale or exchange of an interest in motor vehicles by the  
20 wholesaler to persons other than motor vehicle dealers, used  
21 motor vehicle dealers, or other wholesalers.

22 (5) The license REGISTRATION of a motor vehicle salesman  
23 SALESPERSON may be denied, revoked, or suspended on the  
24 following grounds:

25 (a) Proof of unfitness;

26 (b) Material misstatement in an application for a

1 ~~license~~ A REGISTRATION STATEMENT;

2 (c) Failure to comply with any provision of this part 1  
3 or any rule or regulation promulgated by the board OR  
4 EXECUTIVE DIRECTOR under this part 1;

5 (d) To engage in the business for which such ~~licensee~~-is  
6 ~~licensee~~ REGISTRANT IS REGISTERED without having in force and  
7 effect a good and sufficient bond with corporate surety as  
8 provided in this part 1;

9 (e) To intentionally publish or circulate any  
10 advertising which is misleading or inaccurate in any material  
11 particular or which misrepresents any motor vehicle products  
12 sold or attempted to be sold by such salesman SALESPERSON;

13 (f) Having indulged in any fraudulent business practice;

14 (g) Selling, offering, or attempting to negotiate the  
15 sale or exchange of motor vehicles for any motor vehicle  
16 dealer or used motor vehicle dealer for which he SUCH  
17 SALESPERSON is not licensed;

18 (h) ~~Having represented himself~~ REPRESENTING ONESELF as a  
19 salesman SALESPERSON for any motor vehicle dealer or used  
20 motor vehicle dealer when he SUCH SALESPERSON is not so  
21 employed and ~~licensed~~ REGISTERED;

22 (i) ~~Having failed to pass the licensing test as required~~  
23 ~~by this part 1;~~

24 (j) Having been convicted of any felony, or any crime  
25 pursuant to article 3, 4, or 5 of title 18, C.R.S., or any  
26 like crime pursuant to federal law or the law of any other

1 state. A certified copy of the judgment of conviction by a  
2 court of competent jurisdiction shall be conclusive evidence  
3 of such conviction in any hearing held pursuant to this  
4 article.

5 (k) Having knowingly purchased, sold, or otherwise  
6 acquired or disposed of a stolen motor vehicle;

7 (l) Employing an ~~unlicensed~~ UNREGISTERED motor vehicle  
8 salesman SALESPERSON;

9 (m) Violating any state or federal statute or regulation  
10 issued thereunder dealing with odometers;

11 (n) Defrauding any retail buyer to such person's damage;

12 (o) Representing or selling as a new and unused motor  
13 vehicle any motor vehicle which the salesman SALESPERSON knows  
14 has been used and operated for demonstration purposes or which  
15 the salesman SALESPERSON knows is otherwise a used motor  
16 vehicle;

17 (p) (I) Selling to a retail customer a motor vehicle  
18 which is not equipped or in proper condition and adjustment as  
19 required by part 2 of article 4 of title 42, C.R.S., unless  
20 such vehicle is sold as a towaway, not to be driven.

21 (II) Repealed, L. 84, p. 1080, 1, effective July 1,  
22 1984.

23 (p.1) Repealed, L. 84, p. 1080, 1, effective July 1,  
24 1984.

25 (q) Willfully violating any state or federal law  
26 respecting commerce or motor vehicles or any lawful rule or

1 regulation respecting commerce or motor vehicles promulgated  
2 by any licensing or regulating authority pertaining to motor  
3 vehicles;  
4 (c) Improperly obtaining, misappropriating, or  
5 converting to his SUCH SALESPERSON'S own use any money  
6 belonging to customers or other persons, received in the  
7 course of his employment as a motor vehicle salesman  
8 SALESPERSON.

9 (6) ANY LICENSE OR REGISTRATION ISSUED PURSUANT TO THIS  
10 PART 1 MAY BE DENIED, REVOKED, OR SUSPENDED IF UNFITNESS OF  
11 SUCH LICENSEE OR REGISTRANT IS SHOWN IN THE FOLLOWING:

12 (a) THE LICENSING CHARACTER OR RECORD OF THE LICENSEE OR  
13 REGISTRANT;

14 (b) THE CRIMINAL CHARACTER OR RECORD OF THE LICENSEE OR  
15 REGISTRANT;

16 (c) THE FINANCIAL CHARACTER OR RECORD OF THE LICENSEE OR  
17 REGISTRANT.

18 SECTION 21. 12-6-120 (2), Colorado Revised Statutes,  
19 1991 Repl. Vol., is amended, and the said 12-6-120 is further  
20 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

21 12-6-120. Unlawful acts. (2) It is unlawful for any  
22 person to act as a motor vehicle dealer, manufacturer,  
23 distributor, wholesaler, factory branch, distributor branch,  
24 factory representative, distributor representative, used motor  
25 vehicle dealer, ~~motor-vehicle-auctioneer-or-motor-vehicle~~  
26 salesman OR BUYER REPRESENTATIVE unless such person has been

1 duly licensed under the provisions of this part 1, except for  
2 persons exempt from licensure as a manufacturer pursuant to  
3 section 12-6-102 (11); however, such persons shall be required  
4 to comply with all other applicable requirements for  
5 manufacturers, including, but not limited to, those pertaining  
6 to vehicle identification numbers and manufacturers'  
7 statements of origin.

8 (3) IT IS UNLAWFUL AND A VIOLATION OF THIS PART 1 FOR A  
9 BUYER REPRESENTATIVE TO ENGAGE IN THE FOLLOWING:

10 (a) TO MAKE A MATERIAL MISSTATEMENT IN AN APPLICATION  
11 FOR A LICENSE;

12 (b) TO WILLFULLY FAIL TO PERFORM OR CAUSE TO BE  
13 PERFORMED ANY WRITTEN AGREEMENT WITH RESPECT TO ANY MOTOR  
14 VEHICLE OR PARTS THEREOF;

15 (c) TO DEFRAUD ANY BUYER, SELLER, MOTOR VEHICLE  
16 SALESPERSON, OR FINANCIAL INSTITUTION;

17 (d) TO INTENTIONALLY ENTER INTO A FINANCIAL AGREEMENT  
18 WITH A SELLER OF A MOTOR VEHICLE FOR THE BUYER  
19 REPRESENTATIVE'S OWN BENEFIT;

20 (e) TO COERCE ANY MOTOR VEHICLE DEALER INTO PROVIDING  
21 INSTALLMENT FINANCING WITH A SPECIFIED FINANCIAL INSTITUTION.

22 SECTION 22. 12-6-121, Colorado Revised Statutes, 1991  
23 Repl. Vol., is amended to read:

24 12-6-121. Penalty. Any person who willfully violates any  
25 of the provisions of this part 1 or who willfully commits any  
26 offense in this part 1 declared to be unlawful commits a class

1 1 misdemeanor and shall be punished as provided in section  
2 18-1-106, C.R.S.; except that any person who violates the  
3 provisions of section 12-6-120 (2) commits a class-2 petty  
4 offense CLASS 3 MISDEMEANOR and, upon conviction thereof,  
5 shall be punished by a fine of ~~two-thousand-five-hundred~~  
6 ~~dollars~~, NOT LESS THAN ONE HUNDRED DOLLARS OR MORE THAN ONE  
7 THOUSAND DOLLARS FOR EACH SEPARATE OFFENSE; EXCEPT THAT, IF  
8 THE VIOLATOR IS A CORPORATION, THE FINE SHALL BE NOT LESS THAN  
9 FIVE HUNDRED DOLLARS OR MORE THAN TWO THOUSAND FIVE HUNDRED  
10 DOLLARS FOR EACH SEPARATE OFFENSE. A SECOND CONVICTION SHALL  
11 BE PUNISHED BY A FINE OF TWO THOUSAND FIVE HUNDRED DOLLARS.

12 SECTION 23. 12-6-121.6 (1), Colorado Revised Statutes,  
13 1991 Repl. Vol., is amended to read:

14 12-6-121.6. Drafts not honored for payment - penalties.

15 (1) If a motor vehicle dealer, wholesaler, or used motor  
16 vehicle dealer issues a draft or check to a motor vehicle  
17 dealer, wholesaler, used motor vehicle dealer, motor vehicle  
18 auction house, or consignor and fails to honor such draft or  
19 check, then the license of such licensee shall be subject to  
20 suspension by ~~the board~~ PURSUANT TO 12-6-104 (3) (e) (I). The  
21 license suspension shall be effective upon the date of any  
22 final decision against such licensee based upon the unpaid  
23 draft or check. A licensee whose license has been suspended  
24 pursuant to the provisions of this subsection (1) shall not be  
25 eligible for reinstatement of such license and shall not be  
26 eligible to apply for any other license issued under this part

1 1 unless it is demonstrated to the board that the unpaid draft  
2 or check has been paid in full and that any fine imposed on  
3 the licensee pursuant to subsection (2) of this section has  
4 been paid in full.

5 SECTION 24. 12-6-122 (1), Colorado Revised Statutes,  
6 1991 Repl. Vol., is amended to read:

7 12-6-122. Right of action for loss. (1) If any person  
8 suffers loss or damage by reason of any fraud practiced on ~~him~~  
9 SUCH PERSON or fraudulent representation made to ~~him~~ SUCH  
10 PERSON by a ~~licensed-motor-vehicle-auctioneer~~ or a licensed  
11 dealer or one of the dealer's ~~salesmen~~ SALESPERSONS acting for  
12 the dealer ~~in his~~ ON SUCH DEALER'S behalf or within the scope  
13 of the employment of the ~~salesman~~ SALESPERSON or suffers any  
14 loss or damage by reason of the violation by such ~~auctioneer~~  
15 or dealer or ~~salesman~~ SALESPERSON of any of the provisions of  
16 this part 1, whether or not such violation is the basis for  
17 denial, suspension, or revocation of a license, such person  
18 shall have a right of action against ~~the auctioneer~~, the  
19 dealer, ~~his automobile salesman~~ SUCH DEALER'S MOTOR VEHICLE  
20 SALESPERSONS, and the sureties upon their respective bonds.  
21 The right of a person to recover for loss or damage as  
22 provided in this subsection (1) against the ~~auctioneer~~ or  
23 dealer or ~~salesman~~ SALESPERSON shall not be limited to the  
24 amount of their respective bonds.

25 SECTION 25. 12-6-124, Colorado Revised Statutes, 1991  
26 Repl. Vol., is amended to read:

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1 12-6-124. Repeal of article. This article is repealed,  
 2 effective ~~July 1, 1992~~ JULY 1, 1998. Prior to such repeal,  
 3 the motor vehicle dealer licensing board and the licensing  
 4 functions of the executive director ~~of the department of~~  
 5 ~~revenue~~ shall be reviewed as provided for in section  
 6 24-34-104, C.R.S.

7 SECTION 26. 10-1-127 (1), Colorado Revised Statutes,  
 8 1987 Repl. Vol., as amended, is amended to read:

9 10-1-127. Fraudulent insurance acts - immunity for  
 10 furnishing information relating to suspected insurance fraud.

11 (1) For purposes of this title, articles 40 to 47 of title 8,  
 12 and articles 6, 7, 32, 33, 35, 36, 38, 40, 41, 43, and 53 of  
 13 title 12, C.R.S., a fraudulent insurance act is committed if a  
 14 person knowingly and with intent to defraud presents, causes  
 15 to be presented, or prepares with knowledge or belief that it  
 16 will be presented to or by an insurer, a purported insurer, a  
 17 broker, or any agent thereof any written statement as part or  
 18 in support of an application for the issuance or the rating of  
 19 an insurance policy for commercial insurance or a claim for  
 20 payment or other benefit pursuant to an insurance policy for  
 21 commercial or personal insurance which he knows to contain  
 22 false information concerning any fact material thereto or if  
 23 he knowingly and with intent to defraud or mislead conceals  
 24 information concerning any fact material thereto. For  
 25 purposes of this section, "written statement" includes a  
 26 patient medical record as such term is defined in section

1 18-4-412 (2) (a), C.R.S., and any bill for medical services.

2 SECTION 27. 11-35-101 (1), Colorado Revised Statutes,  
 3 1987 Repl. Vol., as amended, is amended to read:

4 11-35-101. Alternatives to surety bonds permitted -  
 5 requirements. (1) The requirement of a surety bond as a  
 6 condition to licensure or authority to conduct business or  
 7 perform duties in this state provided in sections 10-2-111  
 8 (1), 12-6-111, 12-6-112, 12-6-112.2, 12-11-101 (1) (d),  
 9 12-14-124 (1), 12-53-103 (2) (e), 12-59-115 (1), 12-60-112  
 10 (2), 33-4-101 (1), 33-12-104 (1), 35-33-403 (3), 35-55-104  
 11 (1), 37-91-107 (2) and (3), 38-38-101 (1) (b), 38-38-404 (1)  
 12 (c), 38-39-102 (3) (b), 39-21-105 (4), 39-27-104 (2) (a),  
 13 39-27-204 (6), 39-28-105 (1), 42-6-113 (2), and 42-7-301 (6),  
 14 C.R.S., may be satisfied by a savings account or deposit in or  
 15 a certificate of deposit issued by a state or national bank  
 16 doing business in this state or by a savings account or  
 17 deposit in or a certificate of deposit issued by a state or  
 18 federal savings and loan association doing business in this  
 19 state. Such savings account, deposit, or certificate of  
 20 deposit shall be in the amount specified by statute, if any,  
 21 and shall be assigned to the appropriate state agency for the  
 22 use of the people of the state of Colorado. The aggregate  
 23 liability of the bank or savings and loan association shall in  
 24 no event exceed the amount of the deposit. For the purposes  
 25 of the sections referred to in this section, "bond" includes  
 26 the savings account, deposit, or certificate of deposit



1 authorized by this section.

2 SECTION 28. 18-1-901 (3)(1)(IV), Colorado Revised  
3 Statutes, 1986 Repl. Vol., as amended, is amended to read:

4 18-1-901. Definitions. (3) (1) (IV) "Peace officer,  
5 level III," means a chief security officer for the general  
6 assembly pursuant to section 2-2-402, C.R.S., a coroner, AN  
7 INVESTIGATOR OR SUCH INVESTIGATOR'S SUPERVISOR PURSUANT TO  
8 SECTION 12-6-105, C.R.S., the commissioner of agriculture or  
9 his designee acting under the "Farm Products Act" or the  
10 "Commodity Warehouse Act" pursuant to sections 12-16-114 and  
11 12-16-210, C.R.S., or under the "Animal Protection Act"  
12 pursuant to section 35-42-107 (4), C.R.S., a probation  
13 officer, a juvenile probation officer pursuant to section  
14 19-2-1002, C.R.S., a brand inspector pursuant to section  
15 35-53-128, C.R.S., an employee of a district attorney's office  
16 assigned to administer an offender diversion program, a  
17 student loan investigator, an officer or member of the  
18 Colorado national guard while acting under call of the  
19 governor in cases of emergency or civil disorder, a member of  
20 the public utilities commission, part of entry personnel  
21 acting as peace officers pursuant to section 42-8-104, C.R.S.,  
22 toll road owners acting as peace officers under section  
23 43-3-304, C.R.S., or any other person designated as a peace  
24 officer unless otherwise specified in this section as a level  
25 I, level Ia, level II, or level IIIa peace officer. "Peace  
26 officer, level III," has the authority to enforce all the laws

1 of the state of Colorado while acting within the scope of his  
2 authority and in the performance of his duties.

3 SECTION 29. 24-34-104 (21) (b) (I), Colorado Revised  
4 Statutes, 1988 Repl. Vol., is repealed as follows:

5 24-34-104. General assembly review of regulatory  
6 agencies and functions for termination, continuation, or  
7 reestablishment. (21) (b) The following functions of the  
8 specified agencies shall terminate on July 1, 1992:

9 (I) ~~The motor-vehicle-dealer--licensing-board-and-the~~  
10 ~~licensing-of--motor--vehicle---manufacturers,---distributors,~~  
11 ~~factory-----branches,-----distributor-----branches,----factory~~  
12 ~~representatives-and-distributor-representatives--through--the~~  
13 ~~executive--director-of-the-department-of-revenue-in-accordance~~  
14 ~~with-part-i-of-article-6-of-title-12, C.R.S.;~~

15 SECTION 30. 24-34-104 (27), Colorado Revised Statutes,  
16 1988 Repl. Vol., is amended to read:

17 24-34-104. General assembly review of regulatory  
18 agencies and functions for termination, continuation, or  
19 reestablishment. (27) (a) The following boards in the  
20 division of registrations shall terminate on July 1, 1998:

21 (a) (I) The Colorado state board of examiners of  
22 architects, created by article 4 of title 12, C.R.S.;

23 (b) (II) The state electrical board, created by article  
24 23 of title 12, C.R.S.;

25 (c) (III) The examining board of plumbers, created by  
26 article 58 of title 12, C.R.S.;

1 (b) THE FOLLOWING BOARD AND FUNCTIONS OF THE SPECIFIED  
2 AGENCIES SHALL TERMINATE ON JULY 1, 1998:

3 (I) THE MOTOR VEHICLE DEALER BOARD;

4 (II) THE LICENSING FUNCTIONS OF THE EXECUTIVE DIRECTOR  
5 OF THE DEPARTMENT OF REVENUE FOR THE LICENSING OF BUYER  
6 REPRESENTATIVES, DISTRIBUTORS, DISTRIBUTOR BRANCHES,  
7 DISTRIBUTOR REPRESENTATIVES, FACTORY BRANCHES, FACTORY  
8 REPRESENTATIVES, MANUFACTURERS, MOTOR VEHICLE DEALERS, USED  
9 MOTOR VEHICLE DEALERS, AND WHOLESALERS AND THE REGISTRATION  
10 FUNCTION OF THE EXECUTIVE DIRECTOR FOR THE REGISTERING OF  
11 MOTOR VEHICLE SALESPERSONS, IN ACCORDANCE WITH PART 1 OF  
12 ARTICLE 6 OF TITLE 12, C.R.S.

13 SECTION 31. Effective date. This act shall take effect  
14 July 1, 1992.

15 SECTION 32. Safety clause. The general assembly hereby  
16 finds, determines, and declares that this act is necessary  
17 for the immediate preservation of the public peace, health,  
18 and safety.

SUNRISE/SUNSET BILL I

A BILL FOR AN ACT

1 CONCERNING NOTARIES PUBLIC, AND, IN CONNECTION THEREWITH,  
2 CONTINUING THE REGULATORY AUTHORITY OF THE SECRETARY OF  
3 STATE WITH RESPECT THERETO.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Prohibits notaries public from notarizing blank documents. Abolishes the requirement that applicants for commissions as notaries public acquire surety bonds as a condition for appointment and replaces such requirement with a notary public recovery fund. Sets forth the procedures to receive payment from such recovery fund.

---

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

5 SECTION 1. 12-55-106, Colorado Revised Statutes, 1991  
6 Repl. Vol., is amended to read:

7 12-55-106. Notary public recovery fund - creation -  
8 procedures for payment. Every applicant for appointment and  
9 commission as a notary public shall submit to the secretary of  
10 state, together with his application, an executed bond

1 covering his term of commission in the sum of five thousand  
2 dollars, with, as surety thereon, a company qualified to write  
3 surety bonds in this state. The bond shall be conditioned  
4 upon the faithful performance of all notarial acts in  
5 accordance with this article. (1) THERE IS HEREBY CREATED IN  
6 THE OFFICE OF THE STATE TREASURER A NOTARY PUBLIC RECOVERY  
7 FUND, REFERRED TO IN THIS SECTION AS THE "FUND", WHICH SHALL  
8 BE DEPOSITED IN AN INTEREST-BEARING ACCOUNT AND WHICH SHALL BE  
9 USED UNDER THE DIRECTION OF THE SECRETARY OF STATE IN THE  
10 MANNER PRESCRIBED IN THIS SECTION. INTEREST ACCRUED TO THE  
11 FUND SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED TO THE  
12 GENERAL FUND.

13 (2) BEFORE A NOTARY PUBLIC IS APPOINTED AND COMMISSIONED  
14 PURSUANT TO THIS PART 1 OR ANY SUCH NOTARIAL COMMISSION IS  
15 RENEWED, EACH APPLICANT SHALL AT THE TIME OF ANY SUCH  
16 APPLICATION PAY A FEE OF FIVE DOLLARS IN ADDITION TO THE FEE  
17 COLLECTED PURSUANT TO SECTION 24-21-104, C.R.S., FOR DEPOSIT  
18 IN THE FUND CREATED BY SUBSECTION (1) OF THIS SECTION.

19 (3) WHENEVER THE BALANCE IN THE FUND ON JANUARY 1 IS  
20 LESS THAN FIFTY THOUSAND DOLLARS, AN ASSESSMENT SHALL BE MADE  
21 BY THE SECRETARY OF STATE AND COLLECTED FROM EACH NOTARY  
22 PUBLIC IN THE AMOUNT NECESSARY TO INCREASE THE FUND TO FIFTY  
23 THOUSAND DOLLARS. THE SECRETARY OF STATE SHALL SUMMARILY  
24 REVOKE THE COMMISSION OF ANY NOTARY PUBLIC FAILING TO PAY ANY  
25 SUCH ASSESSMENT WITHIN THIRTY DAYS AFTER BEING BILLED BY THE  
26 SECRETARY OF STATE THEREFOR. ANY NOTARY PUBLIC COMMISSION

1 REVOKED PURSUANT TO THIS SUBSECTION (3) MAY BE REINSTATED BY  
2 PAYING THE ASSESSMENT REQUIRED BY THIS SUBSECTION (3) WITHIN  
3 SIXTY DAYS OF NOTIFICATION OF REVOCATION.

4 (4) WHEN ANY PERSON WHO HAS USED THE SERVICES OF A  
5 NOTARY PUBLIC OBTAINS A FINAL JUDGMENT IN ANY COURT OF  
6 COMPETENT JURISDICTION, INCLUDING THE SMALL CLAIMS COURT,  
7 AGAINST ANY SUCH NOTARY PUBLIC ON THE GROUNDS OF THE FAILURE  
8 OF SUCH NOTARY PUBLIC TO FAITHFULLY PERFORM NOTARIAL ACTS AS  
9 REQUIRED BY THIS PART 1 OR AS OTHERWISE REQUIRED BY LAW, ANY  
10 SUCH PERSON, UPON TERMINATION OF ALL PROCEEDINGS INCLUDING  
11 APPEALS, MAY FILE A VERIFIED APPLICATION IN THE COURT IN WHICH  
12 THE JUDGMENT WAS ENTERED FOR AN ORDER DIRECTING PAYMENT OUT OF  
13 THE FUND OF THE AMOUNT OF ACTUAL AND DIRECT LOSS, EXCLUDING  
14 LOSS FOR PAIN AND SUFFERING OR MENTAL ANGUISH, IN SUCH  
15 TRANSACTION, INCLUDING COURT COSTS AND REASONABLE ATTORNEY  
16 FEES NOT TO EXCEED FIVE THOUSAND DOLLARS. NO PERSON MAY APPLY  
17 FOR RECOVERY FROM THE FUND FOR A CLAIM COVERED BY ANY BOND IN  
18 EFFECT FOR ACTS PRIOR TO JULY 1, 1992.

19 (5) IF THE MAXIMUM LIABILITY OF THE FUND IS INSUFFICIENT  
20 TO PAY IN FULL THE VALID CLAIMS OF ALL AGGRIEVED PERSONS BY  
21 WHOM CLAIMS HAVE BEEN FILED AGAINST ANY ONE NOTARY PUBLIC,  
22 SUCH MAXIMUM LIABILITY SHALL BE DISTRIBUTED AMONG SUCH  
23 AGGRIEVED PERSONS IN A RATIO THAT THEIR RESPECTIVE CLAIMS BEAR  
24 TO THE AGGREGATE OF SUCH VALID CLAIMS OR IN SUCH OTHER MANNER  
25 AS A COURT OF COMPETENT JURISDICTION MAY DEEM EQUITABLE.  
26 DISTRIBUTION OF SUCH MONEYS SHALL BE AMONG THE PERSONS

1 ENTITLED TO SHARE THEREIN WITHOUT REGARD TO THE ORDER OF  
2 PRIORITY IN WHICH THEIR RESPECTIVE JUDGMENTS MAY HAVE BEEN  
3 OBTAINED OR THEIR CLAIMS MAY HAVE BEEN FILED. UPON PETITION  
4 OF THE SECRETARY OF STATE, THE COURT MAY REQUIRE ALL CLAIMANTS  
5 AND PROSPECTIVE CLAIMANTS AGAINST ONE NOTARY PUBLIC TO BE  
6 JOINED IN ONE ACTION SO THAT ALL CLAIMS MAY BE DETERMINED  
7 EQUITABLY AND SETTLED.

8 (6) NO ORDER FOR PAYMENT FROM THE FUND SHALL BE ISSUED  
9 UNLESS THE SUIT FROM WHICH SUCH ORDER SUBSEQUENTLY RESULTS WAS  
10 COMMENCED WITHIN ONE YEAR AFTER THE ACT OCCURRED WHICH IS THE  
11 BASIS OF THE LAWSUIT. WHEN ANY PERSON COMMENCES AN ACTION FOR  
12 A JUDGMENT WHICH MAY RESULT IN AN ORDER FOR PAYMENT FROM THE  
13 FUND, THE PERSON SHALL NOTIFY THE SECRETARY OF STATE IN  
14 WRITING AT THE COMMENCEMENT OF THE ACTION. THE SECRETARY OF  
15 STATE, IN SUCH SECRETARY'S DISCRETION, MAY BE DECLARED A PARTY  
16 IN ANY SUCH ACTION, BUT SHALL NOT BE DECLARED A JUDGMENT  
17 DEBTOR WHEN MADE A PARTY TO OR A DEFENDANT IN ANY SUCH ACTION.

18 (7) (a) ANY NOTARY PUBLIC WHO IS COMMISSIONED OR RENEWS  
19 SUCH COMMISSION UNDER THIS PART 1 ON OR AFTER JULY 1, 1992,  
20 AND UPON WHOM PERSONAL SERVICE CANNOT BE MADE WITH REASONABLE  
21 DILIGENCE SHALL BE DEEMED TO HAVE APPOINTED THE SECRETARY OF  
22 STATE AS AGENT FOR SERVICE OF PROCESS FOR PURPOSES OF ACTIONS  
23 FILED AGAINST THE NOTARY PUBLIC PURSUANT TO THIS PART 1.  
24 SERVICE OF PROCESS PURSUANT TO THIS SECTION SHALL BE MADE AS  
25 NEARLY AS PRACTICABLE IN THE MANNER PRESCRIBED FOR SERVICE ON  
26 CORPORATIONS.

1 (b) ANY NOTARY PUBLIC WHO IS COMMISSIONED OR RENEWS SUCH  
2 COMMISSION UNDER THIS PART 1 ON AND AFTER JULY 1, 1992, SHALL  
3 SIGN AND FILE AN IRREVOCABLE CONSENT THAT SUITS AND ACTIONS  
4 MAY BE COMMENCED AGAINST SUCH NOTARY PUBLIC IN THE PROPER  
5 COURTS OF ANY COUNTY IN THIS STATE IN WHICH A CAUSE OF ACTION  
6 MAY ARISE BY THE SERVICE OF ANY PROCESS OR PLEADING AUTHORIZED  
7 BY THE LAWS OF THIS STATE ON THE SECRETARY OF STATE. SUCH  
8 CONSENT SHALL PROVIDE THAT SUCH SERVICE OF PROCESS OR PLEADING  
9 ON THE SECRETARY OF STATE SHALL BE HELD IN ALL COURTS TO BE AS  
10 VALID AND BINDING AS IF DUE SERVICE HAD BEEN MADE UPON THE  
11 LICENSEE IN THIS STATE.

12 (8) THE COURT SHALL CONDUCT A HEARING ON ANY APPLICATION  
13 FOR PAYMENT FROM THE FUND, AND IT MAY ISSUE AN ORDER DIRECTING  
14 PAYMENT OUT OF THE FUND AS PROVIDED IN SUBSECTION (4) OF THIS  
15 SECTION, SUBJECT TO THE LIMITATIONS OF SAID SUBSECTION (4), IF  
16 THE JUDGMENT CREDITOR SHOWS:

17 (a) THAT SUCH JUDGMENT CREDITOR IS NOT A SPOUSE OF THE  
18 JUDGMENT DEBTOR OR A PERSON REPRESENTING SUCH SPOUSE;

19 (b) THAT SUCH JUDGMENT CREDITOR IS APPLYING NOT MORE  
20 THAN ONE YEAR AFTER THE TERMINATION OF ALL PROCEEDINGS,  
21 INCLUDING APPEALS, IN CONNECTION WITH THE JUDGMENT;

22 (c) THAT THE JUDGMENT DEBTOR REFUSES FOR ANY REASON TO  
23 PAY ALL OR PART OF THE JUDGMENT AGAINST SUCH JUDGMENT DEBTOR.

24 (9) UPON A FINAL ORDER OF THE COURT DIRECTING THAT  
25 PAYMENT BE MADE OUT OF THE FUND, THE CONTROLLER IS AUTHORIZED  
26 TO DRAW A WARRANT FOR THE PAYMENT OF THE SAME UPON A VOUCHER

1 APPROVED BY THE SECRETARY OF STATE, AND THE STATE TREASURER IS  
2 AUTHORIZED TO PAY THE SAME OUT OF THE FUND.

3 (10) NO APPLICATION FOR PAYMENT OUT OF THE RECOVERY FUND  
4 SHALL BE GRANTED BY THE COURT UNLESS THE SECRETARY OF STATE  
5 HAS BEEN NOTIFIED PURSUANT TO SUBSECTION (6) OF THIS SECTION.

6 (11) IF ANY PAYMENT FROM THE FUND IS MADE IN SETTLEMENT  
7 OF A CLAIM OR TOWARD THE SATISFACTION OF A JUDGMENT PURSUANT  
8 TO THE PROVISIONS OF THIS SECTION, THE NOTARY PUBLIC  
9 COMMISSION OF THE JUDGMENT DEBTOR SHALL BE AUTOMATICALLY  
10 REVOKED UPON THE DATE OF A FINAL ORDER BY THE COURT, AS  
11 DESCRIBED IN SUBSECTION (3) OF THIS SECTION. WHEN A NOTARY  
12 PUBLIC COMMISSION IS REVOKED PURSUANT TO THIS SUBSECTION (11),  
13 THE JUDGMENT DEBTOR SHALL NOT BE ELIGIBLE TO BE COMMISSIONED  
14 AGAIN AS A NOTARY PUBLIC UNTIL SUCH PERSON HAS REPAID IN FULL  
15 THE AMOUNT PAID FROM THE FUND WITH INTEREST THEREON OF TWELVE  
16 PERCENT PER ANNUM.

17 (12) WHEN, UPON ORDER OF ANY COURT OF COMPETENT  
18 JURISDICTION, THE SECRETARY OF STATE HAS CAUSED PAYMENT TO BE  
19 MADE FROM THE FUND TO A JUDGMENT CREDITOR, THE SECRETARY OF  
20 STATE SHALL BE SUBROGATED TO THE RIGHTS OF THE JUDGMENT  
21 CREDITOR WITH RESPECT TO THE AMOUNT SO PAID.

22 (13) UP TO AN AMOUNT EQUAL TO TEN PERCENT OF THE PAYMENT  
23 TO A JUDGMENT CREDITOR MAY BE DRAWN FROM THE FUND AND EXPENDED  
24 BY THE SECRETARY OF STATE FOR THE PURPOSE OF ENFORCING THE  
25 RIGHTS OF A PARTICULAR JUDGMENT CREDITOR TO WHICH THE  
26 SECRETARY OF STATE IS SUBROGATED PURSUANT TO THIS SECTION.

1 (b) ANY NOTARY PUBLIC WHO IS COMMISSIONED OR RENEWS SUCH  
 2 COMMISSION UNDER THIS PART 1 ON AND AFTER JULY 1, 1992, SHALL  
 3 SIGN AND FILE AN IRREVOCABLE CONSENT THAT SUITS AND ACTIONS  
 4 MAY BE COMMENCED AGAINST SUCH NOTARY PUBLIC IN THE PROPER  
 5 COURTS OF ANY COUNTY IN THIS STATE IN WHICH A CAUSE OF ACTION  
 6 MAY ARISE BY THE SERVICE OF ANY PROCESS OR PLEADING AUTHORIZED  
 7 BY THE LAWS OF THIS STATE ON THE SECRETARY OF STATE. SUCH  
 8 CONSENT SHALL PROVIDE THAT SUCH SERVICE OF PROCESS OR PLEADING  
 9 ON THE SECRETARY OF STATE SHALL BE HELD IN ALL COURTS TO BE AS  
 10 VALID AND BINDING AS IF DUE SERVICE HAD BEEN MADE UPON THE  
 11 LICENSEE IN THIS STATE.

12 (8) THE COURT SHALL CONDUCT A HEARING ON ANY APPLICATION  
 13 FOR PAYMENT FROM THE FUND, AND IT MAY ISSUE AN ORDER DIRECTING  
 14 PAYMENT OUT OF THE FUND AS PROVIDED IN SUBSECTION (4) OF THIS  
 15 SECTION, SUBJECT TO THE LIMITATIONS OF SAID SUBSECTION (4), IF  
 16 THE JUDGMENT CREDITOR SHOWS:

17 (a) THAT SUCH JUDGMENT CREDITOR IS NOT A SPOUSE OF THE  
 18 JUDGMENT DEBTOR OR A PERSON REPRESENTING SUCH SPOUSE;

19 (b) THAT SUCH JUDGMENT CREDITOR IS APPLYING NOT MORE  
 20 THAN ONE YEAR AFTER THE TERMINATION OF ALL PROCEEDINGS,  
 21 INCLUDING APPEALS, IN CONNECTION WITH THE JUDGMENT;

22 (c) THAT THE JUDGMENT DEBTOR REFUSES FOR ANY REASON TO  
 23 PAY ALL OR PART OF THE JUDGMENT AGAINST SUCH JUDGMENT DEBTOR.

24 (9) UPON A FINAL ORDER OF THE COURT DIRECTING THAT  
 25 PAYMENT BE MADE OUT OF THE FUND, THE CONTROLLER IS AUTHORIZED  
 26 TO DRAW A WARRANT FOR THE PAYMENT OF THE SAME UPON A VOUCHER

1 APPROVED BY THE SECRETARY OF STATE, AND THE STATE TREASURER IS  
 2 AUTHORIZED TO PAY THE SAME OUT OF THE FUND.

3 (10) NO APPLICATION FOR PAYMENT OUT OF THE RECOVERY FUND  
 4 SHALL BE GRANTED BY THE COURT UNLESS THE SECRETARY OF STATE  
 5 HAS BEEN NOTIFIED PURSUANT TO SUBSECTION (6) OF THIS SECTION.

6 (11) IF ANY PAYMENT FROM THE FUND IS MADE IN SETTLEMENT  
 7 OF A CLAIM OR TOWARD THE SATISFACTION OF A JUDGMENT PURSUANT  
 8 TO THE PROVISIONS OF THIS SECTION, THE NOTARY PUBLIC  
 9 COMMISSION OF THE JUDGMENT DEBTOR SHALL BE AUTOMATICALLY  
 10 REVOKED UPON THE DATE OF A FINAL ORDER BY THE COURT, AS  
 11 DESCRIBED IN SUBSECTION (3) OF THIS SECTION. WHEN A NOTARY  
 12 PUBLIC COMMISSION IS REVOKED PURSUANT TO THIS SUBSECTION (11),  
 13 THE JUDGMENT DEBTOR SHALL NOT BE ELIGIBLE TO BE COMMISSIONED  
 14 AGAIN AS A NOTARY PUBLIC UNTIL SUCH PERSON HAS REPAID IN FULL  
 15 THE AMOUNT PAID FROM THE FUND WITH INTEREST THEREON OF TWELVE  
 16 PERCENT PER ANNUM.

17 (12) WHEN, UPON ORDER OF ANY COURT OF COMPETENT  
 18 JURISDICTION, THE SECRETARY OF STATE HAS CAUSED PAYMENT TO BE  
 19 MADE FROM THE FUND TO A JUDGMENT CREDITOR, THE SECRETARY OF  
 20 STATE SHALL BE SUBROGATED TO THE RIGHTS OF THE JUDGMENT  
 21 CREDITOR WITH RESPECT TO THE AMOUNT SO PAID.

22 (13) UP TO AN AMOUNT EQUAL TO TEN PERCENT OF THE PAYMENT  
 23 TO A JUDGMENT CREDITOR MAY BE DRAWN FROM THE FUND AND EXPENDED  
 24 BY THE SECRETARY OF STATE FOR THE PURPOSE OF ENFORCING THE  
 25 RIGHTS OF A PARTICULAR JUDGMENT CREDITOR TO WHICH THE  
 26 SECRETARY OF STATE IS SUBROGATED PURSUANT TO THIS SECTION.

1 SECTION 8. Effective date - applicability. This act  
2 shall take effect July 1, 1992, and shall apply to acts  
3 occurring on or after said date.

4 SECTION 9. Safety clause. The general assembly hereby  
5 finds, determines, and declares that this act is necessary  
6 for the immediate preservation of the public peace, health,  
7 and safety.

1 to read:  
2 12-36-106. Practice of medicine defined - exemptions  
3 from licensing requirements. (1) For the purpose of this  
4 article "practice of medicine" means:

5 (d) Using the title M.D., D.O., physician, surgeon, or  
6 any word or abbreviation to indicate or induce others to  
7 believe that one is licensed to practice medicine in this  
8 state and engaged in the diagnosis or treatment of persons  
9 afflicted with disease, injury, or defect of body or mind,  
10 except as otherwise expressly permitted by the laws of this  
11 state enacted relating to the practice of any limited field of  
12 the healing arts; OR

13 (e) Performing any kind of surgical operation upon a  
14 human being. or

15 (f) The practice of midwifery except--services--rendered  
16 by--nurse-midwives--licensed--pursuant--to--article-38-of-this  
17 title-and-certified-by-the-American-college-of-nurse-midwives,

18 (3) Nothing in this section shall be construed to  
19 prohibit, or to require a license under this article with  
20 respect to any of the following acts:

21 (n) The---rendering---of---services---by---a---nurse-midwife  
22 certified-by-the-American-college-of-nurse-midwives---whose  
23 services---are-performed-pursuant-to-the-responsible-directionary  
24 supervisory-and-protocol-of-an-identified-and-personally  
25 responsible-physician-and-who-is-licensed-pursuant-to-article  
26 38-of-this-title-and-in-concurrence-with-the-board,---The

SUNRISE/SUNSET BILL L

A BILL FOR AN ACT

1 CONCERNING THE PRACTICE OF MIDWIFERY, AND, IN CONNECTION  
2 THEREWITH, PROVIDING FOR THE REGISTRATION OF MIDWIVES  
3 WITHIN THE DIVISION OF REGISTRATIONS.

Bill Summary

(Note: This summary applies to this bill as introduced  
and does not necessarily reflect any amendments which may be  
subsequently adopted.)

Decriminalizes the unlicensed practice of midwifery, by  
excluding it from the definition of the practice of medicine,  
while expressly not immunizing midwives from other civil or  
criminal liability. Requires registration of direct-entry  
("lay") midwives with the division of registrations in the  
department of regulatory agencies. Requires a midwife to  
disclose to patients the midwife's education, experience, and  
other qualifications. Establishes criminal penalties for  
violation of registration and disclosure requirements. Allows  
the director of the division of registrations to seek  
injunctions against persons violating the act's substantive  
provisions. Authorizes the charging of an annual fee to cover  
the cost of registration. Contains "sunset" provisions.

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

5 SECTION 1. 12-36-106 (1) (d), (1) (e), (1) (f), and (3)

6 (n), Colorado Revised Statutes, 1991 Repl. Vol., are amended



~~medical--services-of-certified-nurse-midwives-shall-be-limited  
to-these-normally-and-routinely-delivered-by--the--supervisory  
physician-or-physicians.~~ THE PRACTICE OF MIDWIFERY, SUBJECT TO  
THE CONDITIONS AND LIMITATIONS PROVIDED IN ARTICLE 37 OF THIS  
TITLE, WHICH PRACTICE IS HEREBY EXPRESSLY DECLARED NOT TO  
CONSTITUTE THE PRACTICE OF MEDICINE; EXCEPT THAT THIS  
PARAGRAPH (n) SHALL NOT BE CONSTRUED TO IMMUNIZE ANY PERSON  
WHO PRACTICES MIDWIFERY FROM ANY CIVIL OR CRIMINAL LIABILITY;

SECTION 2. Article 37 of title 12, Colorado Revised  
Statutes, 1991 Repl. Vol., is RECREATED AND REENACTED, WITH  
AMENDMENTS, to read:

ARTICLE 37

Midwives

12-37-101. Scope of article. THE PROVISIONS OF THIS  
ARTICLE SHALL APPLY ONLY TO DIRECT-ENTRY MIDWIVES, ALSO KNOWN  
AS "LAY" MIDWIVES, AND SHALL NOT APPLY TO THOSE PERSONS WHO  
ARE OTHERWISE LICENSED BY THE STATE OF COLORADO UNDER THIS  
TITLE IF THE PRACTICE OF MIDWIFERY IS WITHIN THE SCOPE OF SUCH  
LICENSURE.

12-37-102. Definitions. AS USED IN THIS ARTICLE, UNLESS  
THE CONTEXT OTHERWISE REQUIRES:

(1) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF  
REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES.

(2) "MIDWIFE" MEANS ANY PERSON WHO PRACTICES OR OFFERS  
TO PRACTICE MIDWIFERY WITHIN THE SCOPE OF THIS ARTICLE AS SET  
FORTH IN SECTION 12-37-101, WHETHER OR NOT FOR COMPENSATION.

(3) "REGISTRANT" MEANS A MIDWIFE REGISTERED PURSUANT TO  
SECTION 12-37-103.

12-37-103. Requirement for registration with the  
division of registrations - annual fee. (1) EVERY MIDWIFE  
SHALL REGISTER WITH THE DIVISION OF REGISTRATIONS BY PROVIDING  
AN APPLICATION TO THE DIRECTOR IN THE FORM THE DIRECTOR SHALL  
REQUIRE. SAID APPLICATION SHALL INCLUDE THE INFORMATION  
SPECIFIED IN SECTION 12-37-104.

(2) ANY CHANGES IN THE INFORMATION REQUIRED BY  
SUBSECTION (1) OF THIS SECTION SHALL BE REPORTED WITHIN THIRTY  
DAYS OF SAID CHANGE TO THE DIVISION OF REGISTRATIONS IN THE  
MANNER PRESCRIBED BY THE DIRECTOR.

(3) EVERY APPLICANT FOR REGISTRATION SHALL PAY AN ANNUAL  
REGISTRATION FEE TO BE ESTABLISHED BY THE DIRECTOR IN THE  
MANNER AUTHORIZED BY SECTION 24-34-105, C.R.S.

12-37-104. Mandatory disclosure of information to  
patients. (1) EVERY MIDWIFE SHALL PROVIDE THE FOLLOWING  
INFORMATION IN WRITING TO EACH PATIENT DURING THE INITIAL  
PATIENT CONTACT:

(a) THE NAME, BUSINESS ADDRESS, AND BUSINESS PHONE  
NUMBER OF THE MIDWIFE;

(b) A LISTING OF THE MIDWIFE'S EDUCATION, EXPERIENCE,  
DEGREES, MEMBERSHIP IN ANY PROFESSIONAL ORGANIZATION WHOSE  
MEMBERSHIP INCLUDES NOT LESS THAN ONE-THIRD OF ALL  
REGISTRANTS, CERTIFICATES OR CREDENTIALS RELATED TO MIDWIFERY  
AWARDED BY ANY SUCH ORGANIZATION, AND THE LENGTH OF TIME

1 REQUIRED TO OBTAIN SAID DEGREES, CERTIFICATES, OR CREDENTIALS;

2 (c) A LISTING OF ANY LICENSE, CERTIFICATE, OR  
3 REGISTRATION IN THE HEALTH CARE FIELD PREVIOUSLY HELD BY THE  
4 MIDWIFE AND REVOKED BY ANY LOCAL, STATE, OR NATIONAL HEALTH  
5 CARE AGENCY; AND

6 (d) A STATEMENT THAT THE PRACTICE OF MIDWIFERY IS  
7 REGULATED BY THE DEPARTMENT OF REGULATORY AGENCIES AND  
8 INCLUDING THE ADDRESS AND PHONE NUMBER OF THE COMPLAINTS AND  
9 INVESTIGATIONS SECTION OF THE DIVISION OF REGISTRATIONS IN THE  
10 DEPARTMENT OF REGULATORY AGENCIES.

11 (2) ANY CHANGES IN THE INFORMATION REQUIRED BY  
12 SUBSECTION (1) OF THIS SECTION SHALL BE REFLECTED IN THE  
13 MANDATORY DISCLOSURE WITHIN FIVE DAYS OF THE SAID CHANGE.

14 12-37-105. Criminal penalties. (1) ANY PERSON WHO  
15 PRACTICES OR OFFERS OR ATTEMPTS TO PRACTICE MIDWIFERY WITHOUT  
16 FIRST COMPLYING WITH THE REGISTRATION REQUIREMENTS OF SECTION  
17 12-37-103 AND THE DISCLOSURE REQUIREMENTS OF SECTION 12-37-104  
18 COMMITS A CLASS 3 MISDEMEANOR AND SHALL BE PUNISHED AS  
19 PROVIDED IN SECTION 18-1-106, C.R.S.

20 12-37-106. Director - powers and duties. (1) IN  
21 ADDITION TO ANY OTHER POWERS AND DUTIES CONFERRED ON THE  
22 DIRECTOR BY LAW, THE DIRECTOR HAS THE FOLLOWING POWERS AND  
23 DUTIES:

24 (a) TO ADOPT SUCH RULES AND REGULATIONS AS MAY BE  
25 NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTICLE;

26 (b) TO ESTABLISH THE FEES FOR REGISTRATION AND RENEWAL

1 OF REGISTRATION IN THE MANNER AUTHORIZED BY SECTION 24-34-105,  
2 C.R.S.;

3 (c) TO ACCEPT APPLICATIONS FOR REGISTRATION WHICH MEET  
4 THE REQUIREMENTS SET FORTH IN THIS ARTICLE, AND TO COLLECT THE  
5 ANNUAL REGISTRATION FEES AUTHORIZED BY THIS ARTICLE;

6 (d) TO SEEK, THROUGH THE OFFICE OF THE ATTORNEY GENERAL,  
7 AN INJUNCTION IN ANY COURT OF COMPETENT JURISDICTION TO ENJOIN  
8 ANY PERSON FROM COMMITTING ANY ACT PROHIBITED BY THIS ARTICLE.  
9 WHEN SEEKING AN INJUNCTION UNDER THIS PARAGRAPH (d), THE  
10 DIRECTOR SHALL NOT BE REQUIRED TO ALLEGE OR PROVE THE  
11 INADEQUACY OF ANY REMEDY AT LAW OR THAT SUBSTANTIAL OR  
12 IRREPARABLE DAMAGE IS LIKELY TO RESULT FROM A CONTINUED  
13 VIOLATION OF THIS ARTICLE.

14 SECTION 3. 24-34-104 (27), Colorado Revised Statutes,  
15 1988 Repl. Vol., as amended, is amended to read:

16 24-34-104. General assembly review of regulatory  
17 agencies and functions for termination, continuation, or  
18 reestablishment. (27) (a) The following boards in the  
19 division of registrations shall terminate on July 1, 1998:

20 {a} (I) The Colorado state board of examiners of  
21 architects, created by article 4 of title 12, C.R.S.;

22 {b} (II) The state electrical board, created by article  
23 23 of title 12, C.R.S.;

24 {c} (III) The examining board of plumbers, created by  
25 article 58 of title 12, C.R.S.;

26 (b) THE FOLLOWING FUNCTION OF THE DIVISION OF

1 REGISTRATIONS SHALL TERMINATE ON JULY 1, 1998: THE REGISTERING  
2 OF MIDWIVES IN ACCORDANCE WITH ARTICLE 37 OF TITLE 12, C.R.S.

3 SECTION 4. Effective date - applicability. This act  
4 shall take effect July 1, 1992, and shall apply to acts  
5 committed on or after said date.

6 SECTION 5. Safety clause. The general assembly hereby  
7 finds, determines, and declares that this act is necessary  
8 for the immediate preservation of the public peace, health,  
9 and safety.

SUNRISE/SUNSET BILL M

A BILL FOR AN ACT

1 CONCERNING FINANCIAL PLANNERS, AND, IN CONNECTION THEREWITH,  
2 REQUIRING THE REGISTRATION OF FINANCIAL PLANNERS WITH THE  
3 SECURITIES COMMISSIONER.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Requires registration of financial planners with the securities commissioner. Defines "financial planner" as any person who advises others as to the value of securities or as to the advisability of investing, purchasing, or selling securities, or who professes to be a financial or investment planner, counselor, or consultant, subject to specific exceptions and qualifications. Requires registration of financial planner representatives, defined as employees or associates of a financial planner who provide investment advisory services on behalf of the planner. Exempts from the registration requirements any investment adviser who complies with the federal "Investment Advisers Act of 1940" and furnishes the securities commissioner with copies of all disclosures required under the federal act. Authorizes the securities commissioner to adopt rules and set fees relating to registration.

Prescribes conditions under which a financial planner or financial planner representative may handle funds or securities on behalf of clients. Requires segregation of client accounts, detailed recordkeeping, periodic reports and specific disclosures to clients, and periodic audits without prior notice. Authorizes the securities commissioner to

examine records without prior notice. Inserts references to financial planners, financial planner representatives, and their respective registrations within existing substantive provisions relating to securities broker-dealers and sales representatives. Establishes civil penalties, including liability for costs and attorney fees, for violations of substantive provisions.

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

2 SECTION 1. 11-51-201, Colorado Revised Statutes, 1987  
3 Repl. Vol., as amended, is amended BY THE ADDITION OF THE  
4 FOLLOWING NEW SUBSECTIONS to read:

5 11-51-201. Definitions. As used in this article, unless  
6 the context otherwise requires:

7 (5.5) "EXEMPT INVESTMENT ADVISER" MEANS ANY PERSON:

8 (a) REGISTERED, OR EXEMPT FROM REGISTRATION OTHER THAN  
9 BY REASON OF SECTION 203 (b) (1) OF THE FEDERAL "INVESTMENT  
10 ADVISERS ACT OF 1940", 15 U.S.C. 80b-3 (b) (1), AS AN  
11 INVESTMENT ADVISER, INCLUDING ANY PERSON EMPLOYED BY OR  
12 OTHERWISE DIRECTLY ASSOCIATED WITH SUCH A PERSON; AND

13 (b) WHO DOES NOT TAKE POSSESSION OF CUSTOMER FUNDS OR  
14 SECURITIES; AND

15 (c) WHO DOES NOT RECEIVE COMPENSATION, EITHER DIRECTLY  
16 OR INDIRECTLY, FROM THE PURCHASE OR SALE OF SECURITIES; AND

17 (d) WHO DOES NOT OFFER OR SELL SECURITIES TO ANY PERSON  
18 TO WHOM SUCH PERSON PROVIDES FINANCIAL PLANNING SERVICES.

19 (6.3) (a) "FINANCIAL PLANNER" MEANS, EXCEPT AS PROVIDED  
20 IN PARAGRAPH (b) OF THIS SUBSECTION (6.3), ANY PERSON WHO:

21 (1) FOR COMPENSATION, ENGAGES IN THE BUSINESS OF

1 ADVISING OTHERS, EITHER DIRECTLY OR THROUGH PUBLICATIONS OR  
2 WRITINGS, AS TO THE VALUE OF SECURITIES OR AS TO THE  
3 ADVISABILITY OF INVESTING IN, PURCHASING, OR SELLING  
4 SECURITIES, OR WHO, AS PART OF A REGULAR BUSINESS, ISSUES OR  
5 PROMULGATES ANALYSES OR REPORTS CONCERNING SECURITIES; OR

6 (II) FOR COMPENSATION, ENGAGES IN THE BUSINESS OF  
7 PROVIDING OR OFFERING TO PROVIDE, DIRECTLY OR INDIRECTLY,  
8 FINANCIAL AND INVESTMENT COUNSELING OR ADVICE ON A GROUP OR  
9 INDIVIDUAL BASIS; OR

10 (III) FOR COMPENSATION, ENGAGES IN THE BUSINESS OF  
11 GATHERING INFORMATION RELATING TO INVESTMENTS, PROCESSING AND  
12 ANALYZING SUCH INFORMATION, AND, BASED THEREON, ESTABLISHING  
13 FINANCIAL GOALS AND OBJECTIVES AND RECOMMENDING A FINANCIAL  
14 PLAN; OR

15 (IV) HOLDS HIMSELF OR HERSELF OUT OR, IN THE CASE OF AN  
16 ENTITY, HOLDS ITSELF OUT AS AN INVESTMENT ADVISER OR FINANCIAL  
17 PLANNER IN ANY WAY, INCLUDING BY ADVERTISEMENT, CARD, OR  
18 LETTERHEAD, OR IN ANY OTHER MANNER INDICATES THAT SUCH PERSON  
19 IS A FINANCIAL OR INVESTMENT "PLANNER", "COUNSELOR",  
20 "CONSULTANT", OR ANY OTHER SIMILAR TYPE OF ADVISER OR  
21 CONSULTANT.

22 (b) THE TERM "FINANCIAL PLANNER" DOES NOT INCLUDE:

23 (I) A PUBLISHER OF ANY BONA FIDE NEWSPAPER, MAGAZINE, OR  
24 BUSINESS OR FINANCIAL PUBLICATION WITH A REGULAR AND PAID  
25 CIRCULATION; A PUBLISHER OF ANY SECURITIES ADVISORY NEWSLETTER  
26 WITH A REGULAR AND PAID CIRCULATION WHICH DOES NOT PROVIDE

1 ADVICE TO SUBSCRIBERS ON THEIR SPECIFIC INVESTMENT SITUATIONS;  
2 OR ANY AUTHOR OF MATERIAL INCLUDED IN ANY SUCH NEWSPAPER,  
3 MAGAZINE, PUBLICATION, OR NEWSLETTER WHO DOES NOT OTHERWISE  
4 COME WITHIN THE DEFINITION OF A FINANCIAL PLANNER OR FINANCIAL  
5 PLANNER REPRESENTATIVE;

6 (II) A FINANCIAL PLANNER REPRESENTATIVE;

7 (III) A LICENSED BROKER-DEALER OR SALES REPRESENTATIVE,  
8 IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

9 (A) THE PERFORMANCE OF FINANCIAL PLANNING SERVICES BY  
10 SUCH PERSON IS SOLELY INCIDENTAL TO THE CONDUCT OF SUCH  
11 PERSON'S BUSINESS AS A BROKER-DEALER OR SALES REPRESENTATIVE;  
12 AND

13 (B) SUCH PERSON RECEIVES NO SPECIAL COMPENSATION FOR  
14 SUCH SERVICES; AND

15 (C) SUCH PERSON DOES NOT HOLD HIMSELF OR HERSELF OUT OR,  
16 IN THE CASE OF AN ENTITY, HOLD ITSELF OUT AS A FINANCIAL  
17 PLANNER WITHOUT, AT THE SAME TIME, DISCLOSING THAT SUCH PERSON  
18 IS ENGAGED IN THE BUSINESS OF EFFECTING TRANSACTIONS FOR THE  
19 PURCHASE OR SALE OF SECURITIES;

20 (IV) A DEPOSITORY INSTITUTION OR ANY PERSON EMPLOYED BY  
21 OR DIRECTLY ASSOCIATED WITH A DEPOSITORY INSTITUTION;

22 (V) A LAWYER, ACCOUNTANT, ENGINEER, OR TEACHER, IF SUCH  
23 PERSON:

24 (A) DOES NOT TAKE POSSESSION OF CLIENT FUNDS OR  
25 SECURITIES INCIDENTAL TO PROVIDING FINANCIAL PLANNING  
26 SERVICES; AND

1 (B) DOES NOT RECEIVE COMMISSIONS OR OTHER COMPENSATION,  
2 DIRECTLY OR INDIRECTLY, FROM THE SALE OF ANY SECURITY TO ANY  
3 CLIENT TO WHOM SUCH PERSON PROVIDES ADVICE ABOUT THE VALUE OR  
4 ADVISABILITY OF INVESTING IN SUCH SECURITY; AND

5 (C) DOES NOT ENGAGE IN THE BUSINESS OF ADVISING CLIENTS  
6 AS TO THE VALUE OF SECURITIES OR AS TO THE ADVISABILITY OF  
7 INVESTING IN, PURCHASING, OR SELLING SECURITIES, AND PROVIDES  
8 SUCH ADVICE, IF AT ALL, IN A MANNER SOLELY INCIDENTAL TO THE  
9 PRACTICE OF THE PERSON'S PROFESSION;

10 (VI) ANY OFFICIAL, EMPLOYEE, OR REPRESENTATIVE OF THE  
11 UNITED STATES, ANY STATE, ANY POLITICAL SUBDIVISION OF A  
12 STATE, OR ANY AGENCY OR CORPORATE OR OTHER INSTRUMENTALITY  
13 THEREOF, ACTING IN SUCH PERSON'S OFFICIAL CAPACITY ON BEHALF  
14 OF SUCH ENTITY.

15 (6.5) "FINANCIAL PLANNER REPRESENTATIVE" MEANS ANY  
16 INDIVIDUAL WHO IS A PARTNER, OFFICER, OR DIRECTOR OF A  
17 FINANCIAL PLANNER, WHO OCCUPIES A SIMILAR STATUS WITH OR  
18 PERFORMS SIMILAR FUNCTIONS FOR A FINANCIAL PLANNER, OR WHO IS  
19 EMPLOYED OR OTHERWISE ASSOCIATED WITH A FINANCIAL PLANNER, AND  
20 WHO PROVIDES FINANCIAL PLANNING SERVICES DIRECTLY TO CLIENTS  
21 ON BEHALF OF THE FINANCIAL PLANNER.

22 (6.7) "FINANCIAL PLANNING SERVICES" MEANS THOSE  
23 ACTIVITIES PERFORMED BY A PERSON IN CONNECTION WITH SUCH  
24 PERSON'S ENGAGING IN ANY OF THE ACTIVITIES ENUMERATED IN  
25 SUBPARAGRAPHS (I) TO (III) OF PARAGRAPH (a) OF SUBSECTION  
26 (6.3) OF THIS SECTION AND THOSE ACTIVITIES PERFORMED BY A

1 PERSON WHO HOLDS HIMSELF OR HERSELF OR, IN THE CASE OF AN  
2 ENTITY, HOLDS ITSELF OUT AS AN INVESTMENT ADVISER, FINANCIAL  
3 PLANNER, OR SIMILAR TYPE OF ADVISER OR CONSULTANT AS  
4 ENUMERATED IN SUBPARAGRAPH (IV) OF THE SAID PARAGRAPH (a).

5 SECTION 2. 11-51-401, Colorado Revised Statutes, 1987  
6 Repl. Vol., as amended, is amended to read:

7 11-51-401. Licensing and financial planner registration  
8 requirements. (1) A person shall not transact business in  
9 this state as a broker-dealer or sales representative unless  
10 licensed or exempt from licensing under section 11-51-402.

11 (1.5) A PERSON SHALL NOT TRANSACT BUSINESS IN THIS STATE  
12 AS A FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE  
13 UNLESS REGISTERED OR EXEMPT FROM REGISTRATION UNDER SECTION  
14 11-51-402.5. FOR THE PURPOSE OF THIS SUBSECTION (1.5),  
15 TRANSACTING BUSINESS IN THIS STATE INCLUDES ENGAGING IN ANY OF  
16 THE ACTIVITIES ENUMERATED IN SECTION 11-51-201 (6.3) (a) (I)  
17 TO (6.3) (a) (III) OR HOLDING ONESELF OUT AS AN INVESTMENT  
18 ADVISER, FINANCIAL PLANNER, OR SIMILAR TYPE OF ADVISER OR  
19 CONSULTANT AS ENUMERATED IN SECTION 11-51-201 (6.3) (a) (IV)  
20 WHENEVER THE SAID ACTIVITIES ARE ENGAGED IN, OR THE HOLDING  
21 OUT OCCURS, WITHIN THE STATE REGARDLESS OF WHETHER ANY PERSON  
22 TO WHOM SERVICES ARE PROVIDED OR TO WHOM SUCH HOLDING OUT IS  
23 MADE IS PHYSICALLY PRESENT WITHIN THE STATE, AND INCLUDES  
24 ENGAGING IN THE SAID ACTIVITIES OR SO HOLDING ONESELF OUT  
25 WHENEVER ANY PERSON TO WHOM SERVICES ARE PROVIDED OR TO WHOM  
26 SUCH HOLDING OUT IS MADE IS PHYSICALLY PRESENT WITHIN THE

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1 STATE.

2 (2) Neither a broker-dealer nor an issuer shall employ  
3 or otherwise engage an individual to act as a sales  
4 representative in this state unless the sales representative  
5 is licensed or exempt from licensing under section 11-51-402.

6 (2.5) A FINANCIAL PLANNER SHALL NOT EMPLOY OR OTHERWISE  
7 ENGAGE ANY PERSON TO ACT AS A FINANCIAL PLANNER REPRESENTATIVE  
8 IN THIS STATE UNLESS SUCH PERSON IS REGISTERED IN ACCORDANCE  
9 WITH SECTION 11-51-403.5.

10 (3) ~~Neither~~--a NO broker-dealer, FINANCIAL PLANNER,  
11 EXEMPT INVESTMENT ADVISER, ~~nor an~~ OR issuer shall employ or  
12 otherwise engage a person to participate in any activity in  
13 this state contrary to an order by the securities commissioner  
14 applicable to that person under section 11-51-410. A  
15 broker-dealer, FINANCIAL PLANNER, EXEMPT INVESTMENT ADVISER,  
16 or issuer does not violate this subsection (3) if the  
17 broker-dealer, FINANCIAL PLANNER, EXEMPT INVESTMENT ADVISER,  
18 or issuer sustains the burden of proof that it did not know  
19 and in the exercise of reasonable care could not have known of  
20 the order. Upon request from a broker-dealer, FINANCIAL  
21 PLANNER, INVESTMENT ADVISER, or issuer and for good cause  
22 shown, the securities commissioner may waive the prohibition  
23 of this subsection (3) with respect to a person subject to an  
24 order under section 11-51-410.

25 SECTION 3. Part 4 of article 51 of title 11, Colorado  
26 Revised Statutes, 1987 Repl. Vol., as amended, is amended BY

1 THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

2 11-51-402.5. Persons exempt from registration  
3 requirements. (1) THE FOLLOWING PERSONS ARE EXEMPT FROM THE  
4 FINANCIAL PLANNER AND FINANCIAL PLANNER REPRESENTATIVE  
5 REGISTRATION REQUIREMENTS OF SECTION 11-51-401:

6 (a) AN EXEMPT INVESTMENT ADVISER, OR ANY PERSON EMPLOYED  
7 BY OR OTHERWISE DIRECTLY ASSOCIATED WITH AN EXEMPT INVESTMENT  
8 ADVISER, IF:

9 (I) THE EXEMPT INVESTMENT ADVISER AND ANY SUCH PERSON  
10 COMPLY WITH THE REQUIREMENTS OF THE FEDERAL "INVESTMENT  
11 ADVISERS ACT OF 1940" FOR DISCLOSURE OF INFORMATION TO  
12 CLIENTS; AND

13 (II) THE EXEMPT INVESTMENT ADVISER AND ANY SUCH PERSON  
14 PROMPTLY FILE WITH THE SECURITIES COMMISSIONER TRUE COPIES OF  
15 ALL DOCUMENTS REQUIRED TO BE FILED AND IN FACT FILED BY THEM  
16 WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE  
17 FEDERAL "INVESTMENT ADVISERS ACT OF 1940";

18 (b) ANY OTHER PERSON DESIGNATED BY THE SECURITIES  
19 COMMISSIONER, PURSUANT TO RULE OR ORDER, AS NOT BEING WITHIN  
20 THE INTENT OF THIS ARTICLE.

21 11-51-403.5. Registration of financial planners and  
22 financial planner representatives. (1) AN APPLICANT FOR  
23 REGISTRATION AS A FINANCIAL PLANNER OR FINANCIAL PLANNER  
24 REPRESENTATIVE SHALL FILE WITH THE SECURITIES COMMISSIONER AN  
25 APPLICATION FOR REGISTRATION AND THE CONSENT TO SERVICE OF  
26 PROCESS REQUIRED BY SECTION 11-51-706.

1 (2) THE APPLICATION SHALL CONTAIN SUCH INFORMATION AND  
2 SHALL BE IN SUCH FORM AS IS PRESCRIBED BY THE SECURITIES  
3 COMMISSIONER BY RULE.

4 (3) IF THE INFORMATION CONTAINED IN THE APPLICATION IS  
5 INACCURATE OR INCOMPLETE IN ANY MATERIAL RESPECT WHEN FILED,  
6 OR BECOMES INACCURATE OR INCOMPLETE IN ANY MATERIAL RESPECT AS  
7 A RESULT OF ANY SUBSEQUENT EVENT, THE APPLICANT SHALL PROMPTLY  
8 FILE AN AMENDMENT TO THE APPLICATION TO CURE THE INACCURACY OR  
9 OMISSION. THE SECURITIES COMMISSIONER MAY REQUIRE AN  
10 APPLICANT TO SUBMIT ADDITIONAL RELEVANT INFORMATION, AND THE  
11 APPLICATION SHALL BE DEEMED INCOMPLETE UNTIL ALL SUCH  
12 ADDITIONAL INFORMATION HAS BEEN SUBMITTED.

13 SECTION 4. 11-51-404, Colorado Revised Statutes, 1987  
14 Repl. Vol., as amended, is amended to read:

15 11-51-404. License and registration fees. (1) An  
16 applicant for a license as a broker-dealer or sales  
17 representative shall pay an initial license fee and a licensed  
18 person shall pay an annual license fee which shall be  
19 determined and collected pursuant to section 11-51-707; except  
20 that no such license fee for a sales representative shall be  
21 more than twenty-five dollars.

22 (1.5) AN APPLICANT FOR REGISTRATION AS A FINANCIAL  
23 PLANNER OR FINANCIAL PLANNER REPRESENTATIVE SHALL PAY AN  
24 INITIAL REGISTRATION FEE, AND A REGISTERED FINANCIAL PLANNER  
25 OR FINANCIAL PLANNER REPRESENTATIVE SHALL PAY AN ANNUAL FEE,  
26 WHICH SHALL BE DETERMINED AND COLLECTED IN ACCORDANCE WITH

1 SECTION 11-51-707.

2 (2) If an initial license OR REGISTRATION fee is not  
3 paid within ninety days after the application is filed, the  
4 securities commissioner may deem the application to be  
5 withdrawn.

6 (3) (a) If an annual license OR REGISTRATION fee is not  
7 paid within thirty days after the securities commissioner  
8 sends a written notice that the fee was not paid when due, the  
9 amount of the annual license OR REGISTRATION fee shall be  
10 double the amount originally payable. In the case of a sales  
11 representative, written notice will be deemed sent to the  
12 sales representative when the notice is sent to a  
13 broker-dealer or an issuer for whom the sales representative  
14 is licensed to act. IN THE CASE OF A FINANCIAL PLANNER  
15 REPRESENTATIVE, NOTICE WILL BE DEEMED SENT TO THE FINANCIAL  
16 PLANNER REPRESENTATIVE WHEN THE NOTICE IS SENT TO A FINANCIAL  
17 PLANNER WITH WHOM THE REPRESENTATIVE IS EMPLOYED OR OTHERWISE  
18 ASSOCIATED.

19 (b) If an annual license OR REGISTRATION fee is not paid  
20 within sixty days after the securities commissioner sends the  
21 written notice described in paragraph (a) of this subsection  
22 (3), the securities commissioner may by order summarily  
23 suspend the license OR REGISTRATION. The securities  
24 commissioner shall send a copy of the order to the  
25 broker-dealer whose license has been summarily suspended, or  
26 TO THE FINANCIAL PLANNER WHOSE REGISTRATION HAS BEEN SUMMARILY



1 SUSPENDED, in the case of a sales representative who has been  
 2 licensed to act for a broker-dealer or an issuer and whose  
 3 license has been summarily suspended, to a broker-dealer or an  
 4 issuer for whom the sales representative has been licensed to  
 5 act, OR, IN THE CASE OF A FINANCIAL PLANNER REPRESENTATIVE  
 6 WHOSE REGISTRATION HAS BEEN SUMMARILY SUSPENDED AND WHO IS  
 7 EMPLOYED BY OR OTHERWISE ASSOCIATED WITH A FINANCIAL PLANNER,  
 8 TO THE SAID FINANCIAL PLANNER. If the annual license OR  
 9 REGISTRATION fee is not paid within thirty days after the  
 10 effective date of the summary suspension, the securities  
 11 commissioner may by order summarily revoke the license OR  
 12 REGISTRATION on the grounds that the license OR REGISTRATION  
 13 has been abandoned.

14 (4) If an application is denied or withdrawn, or a  
 15 license OR REGISTRATION is abandoned, revoked, suspended, or  
 16 withdrawn, the securities commissioner shall retain all fees  
 17 paid.

18 SECTION 5. 11-51-406, Colorado Revised Statutes, 1987  
 19 Repl. Vol., as amended, is amended to read:

20 11-51-406. General provisions. (1) (a) Unless a  
 21 proceeding under section 11-51-410 is instituted, the license  
 22 of a broker-dealer or sales representative OR THE REGISTRATION  
 23 OF A FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE  
 24 becomes effective upon the last to occur of the following:

25 (I) The passage of thirty days after the filing of the  
 26 application or, in the event any amendment is filed before the

1 license OR REGISTRATION becomes effective, the passage of  
 2 thirty days after the filing of the latest amendment, if the  
 3 application, including all amendments, if any, was complete at  
 4 the commencement of the thirty-day period;

5 (II) IN THE CASE OF A SALES REPRESENTATIVE, the  
 6 examination requirement under section 11-51-405 is satisfied;

7 (III) In the case of a broker-dealer, the requirements  
 8 of section 11-51-407 are satisfied; and

9 (IV) The required fee has been paid.

10 (b) The securities commissioner may authorize an earlier  
 11 effective date of licensing OR REGISTRATION.

12 (2) The securities commissioner may by rule or order,  
 13 waive or reduce any of the requirements of this section and  
 14 sections 11-51-405 and 11-51-407 with respect to any person or  
 15 class of persons and, in connection with the waiver or  
 16 reduction of any requirement, may limit or impose conditions  
 17 on the securities activities that such person or class of  
 18 persons may conduct in this state.

19 (3) The license of a sales representative is effective  
 20 only with respect to actions taken for a broker-dealer or  
 21 issuer for whom the sales representative is licensed. THE  
 22 REGISTRATION OF A FINANCIAL PLANNER REPRESENTATIVE IS  
 23 EFFECTIVE ONLY WITH RESPECT TO ACTIONS TAKEN FOR A FINANCIAL  
 24 PLANNER WITH WHOM SUCH FINANCIAL PLANNER REPRESENTATIVE IS  
 25 EMPLOYED OR OTHERWISE ASSOCIATED.

26 (4) A person may act as a sales representative for more

1 than one broker-dealer or issuer. A FINANCIAL PLANNER  
2 REPRESENTATIVE MAY ACT ON BEHALF OF MORE THAN ONE FINANCIAL  
3 PLANNER.

4 (5) If a licensed sales representative ceases to be  
5 employed or otherwise engaged by a broker-dealer or issuer or  
6 ceases to act as a sales representative, the broker-dealer or,  
7 in the case of a sales representative licensed to act for an  
8 issuer, the sales representative shall promptly notify the  
9 securities commissioner. A notification required by this  
10 subsection (5) may be given by a broker-dealer who is  
11 registered as a broker-dealer under the federal "Securities  
12 Exchange Act of 1934" by filing the information through the  
13 central registration depository.

14 (5.5) IF A REGISTERED FINANCIAL PLANNER REPRESENTATIVE  
15 CEASES TO BE EMPLOYED OR OTHERWISE ASSOCIATED WITH A FINANCIAL  
16 PLANNER OR BROKER-DEALER, SAID FINANCIAL PLANNER OR  
17 BROKER-DEALER SHALL PROMPTLY NOTIFY THE SECURITIES  
18 COMMISSIONER.

19 (6) The license of a broker-dealer or sales  
20 representative AND THE REGISTRATION OF A FINANCIAL PLANNER OR  
21 FINANCIAL PLANNER REPRESENTATIVE is effective until terminated  
22 by revocation or withdrawal.

23 SECTION 6. 11-51-407 (3), Colorado Revised Statutes,  
24 1987 Repl. Vol., as amended, is amended, and the said  
25 11-51-407 is further amended BY THE ADDITION OF A NEW  
26 SUBSECTION, to read:

1 11-51-407. Operating requirements. (3) Every licensed  
2 broker-dealer, and every licensed sales representative, EVERY  
3 REGISTERED FINANCIAL PLANNER, AND EVERY REGISTERED FINANCIAL  
4 PLANNER REPRESENTATIVE shall file with the securities  
5 commissioner such information as may be necessary to correct  
6 any information in that person's application for license OR  
7 REGISTRATION which is or has become inaccurate in any material  
8 respect. The requirements of this subsection (3) may be  
9 satisfied by a broker-dealer who is registered as a  
10 broker-dealer under the federal "Securities Exchange Act of  
11 1934" or by a sales representative licensed to act for such a  
12 broker-dealer by filing the correcting information through the  
13 central registration depository.

14 (5) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS  
15 SUBSECTION (5), NO PERSON WHO IS A FINANCIAL PLANNER OR  
16 FINANCIAL PLANNER REPRESENTATIVE SHALL TAKE OR MAINTAIN  
17 CUSTODY OR POSSESSION OF ANY FUNDS OR SECURITIES IN WHICH ANY  
18 CLIENT OF SUCH PERSON HAS ANY BENEFICIAL INTEREST UNLESS SUCH  
19 PERSON AT ALL TIMES MAINTAINS SUCH FUNDS OR SECURITIES AND  
20 KEEPS AND PROVIDES INFORMATION AS FOLLOWS:

21 (I) ALL SUCH SECURITIES OF EACH CLIENT SHALL BE  
22 SEGREGATED, MARKED TO IDENTIFY THE PARTICULAR CLIENT WITH ANY  
23 BENEFICIAL INTEREST THEREIN, AND HELD IN SAFEKEEPING IN SOME  
24 PLACE REASONABLY FREE FROM RISK OF LOSS, DAMAGE, OR  
25 DESTRUCTION.

26 (II) (A) ALL SUCH FUNDS SHALL BE DEPOSITED IN ONE OR

1 MORE ACCOUNTS, CONTAINING ONLY CLIENTS' FUNDS, AT A DEPOSITORY  
2 INSTITUTION; AND

3 (B) EACH SUCH ACCOUNT SHALL BE MAINTAINED IN THE NAME OF  
4 THE FINANCIAL PLANNER AS AGENT OR TRUSTEE FOR SUCH CLIENTS;  
5 AND

6 (C) THE FINANCIAL PLANNER SHALL MAINTAIN A SEPARATE  
7 RECORD FOR EACH SUCH ACCOUNT WHICH SHOWS THE NAME AND ADDRESS  
8 OF THE DEPOSITORY INSTITUTION WHERE THE ACCOUNT IS MAINTAINED,  
9 THE DATES AND AMOUNTS OF DEPOSITS TO AND WITHDRAWALS FROM THE  
10 ACCOUNT, AND THE EXACT AMOUNT OF THE CLIENT'S BENEFICIAL  
11 INTEREST IN THE ACCOUNT.

12 (III) THE FINANCIAL PLANNER OR FINANCIAL PLANNER  
13 REPRESENTATIVE, IMMEDIATELY AFTER ACCEPTING CUSTODY OR  
14 POSSESSION OF SUCH FUNDS OR SECURITIES FROM ANY CLIENT, SHALL  
15 NOTIFY THE CLIENT IN WRITING OF THE PLACE AND MANNER IN WHICH  
16 SUCH FUNDS OR SECURITIES WILL BE MAINTAINED, AND THEREAFTER,  
17 IF AND WHEN THERE IS ANY CHANGE IN THE SAID PLACE OR MANNER,  
18 SHALL GIVE THE CLIENT WRITTEN NOTICE OF SUCH CHANGE.

19 (IV) THE FINANCIAL PLANNER SHALL SEND TO EACH CLIENT,  
20 NOT LESS FREQUENTLY THAN ONCE EVERY THREE MONTHS, AN ITEMIZED  
21 STATEMENT SHOWING THE FUNDS AND SECURITIES IN THE CUSTODY OR  
22 POSSESSION OF THE FINANCIAL PLANNER OR FINANCIAL PLANNER  
23 REPRESENTATIVE AT THE END OF SUCH PERIOD, AND ALL DEBITS,  
24 CREDITS, AND TRANSACTIONS AFFECTING SUCH FUNDS AND SECURITIES  
25 DURING SUCH PERIOD.

26 (V) ALL SUCH FUNDS AND SECURITIES OF CLIENTS MUST BE

1 VERIFIED BY ACTUAL EXAMINATION AT LEAST ONCE DURING EACH  
2 CALENDAR YEAR BY A CERTIFIED PUBLIC ACCOUNTANT AT A TIME  
3 CHOSEN BY SUCH ACCOUNTANT WITHOUT PRIOR NOTICE TO THE  
4 FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE. A  
5 CERTIFICATE OF SUCH ACCOUNTANT STATING THAT AN EXAMINATION OF  
6 SUCH FUNDS AND SECURITIES HAS BEEN MADE, AND DESCRIBING THE  
7 NATURE AND EXTENT OF THE EXAMINATION, SHALL BE FILED BY THE  
8 FINANCIAL PLANNER WITH THE SECURITIES COMMISSIONER PROMPTLY  
9 AFTER EACH EXAMINATION.

10 (b) PARAGRAPH (a) OF THIS SUBSECTION (5) DOES NOT APPLY  
11 TO:

12 (I) A PERSON REGISTERED AS AN INVESTMENT ADVISER UNDER  
13 THE FEDERAL "INVESTMENT ADVISERS ACT OF 1940" AND IN  
14 COMPLIANCE WITH THE REQUIREMENTS OF SAID ACT AND ALL RULES AND  
15 REGULATIONS PROMULGATED PURSUANT TO SAID ACT WITH REGARD TO  
16 CUSTODY OR POSSESSION OF CUSTOMER FUNDS OR SECURITIES; OR

17 (II) A LICENSED BROKER-DEALER WHO COMPLIES WITH ALL  
18 REQUIREMENTS OF THIS ARTICLE APPLICABLE TO BROKER-DEALERS,  
19 INCLUDING ALL RULES AND REGULATIONS OF THE SECURITIES  
20 COMMISSIONER RELATING TO THE SAFEKEEPING OF FUNDS AND  
21 SECURITIES OF CLIENTS.

22 SECTION 7. 11-51-408, Colorado Revised Statutes, 1987  
23 Repl. Vol., as amended, is amended BY THE ADDITION OF THE  
24 FOLLOWING NEW SUBSECTIONS to read:

25 11-51-408. Licensing and registration of successor  
26 firms. (3) A REGISTERED FINANCIAL PLANNER MAY FILE AN

1 APPLICATION FOR REGISTRATION ON BEHALF OF A SUCCESSOR WHETHER  
 2 OR NOT THE SUCCESSOR IS IN EXISTENCE. IF A FINANCIAL PLANNER  
 3 SUCCEEDS TO AND CONTINUES THE BUSINESS OF A REGISTERED  
 4 FINANCIAL PLANNER AND THE SUCCESSOR FILES, WITHIN THIRTY DAYS  
 5 OF THE SUCCESSION, AN APPLICATION FOR REGISTRATION MEETING ALL  
 6 THE REQUIREMENTS OF AN APPLICATION UNDER THIS ARTICLE, THE  
 7 REGISTRATION OF THE PREDECESSOR REMAINS EFFECTIVE AS THE  
 8 REGISTRATION OF THE SUCCESSOR FOR SIXTY DAYS AFTER THE  
 9 SUCCESSION.

10 (4) IF A SUCCESSOR IS REGISTERED PURSUANT TO SUBSECTION  
 11 (3) OF THIS SECTION, THE REGISTRATION OF EACH FINANCIAL  
 12 PLANNER REPRESENTATIVE REGISTERED TO ACT FOR THE PREDECESSOR  
 13 SHALL REMAIN EFFECTIVE AS A REGISTRATION TO ACT FOR THE  
 14 SUCCESSOR WITHOUT A SEPARATE FILING OR PAYMENT OF A SEPARATE  
 15 FEE.

16 SECTION 8. 11-51-409, Colorado Revised Statutes, 1987  
 17 Repl. Vol., as amended, is amended BY THE ADDITION OF THE  
 18 FOLLOWING NEW SUBSECTIONS to read:

19 11-51-409. Access to records. (5) THE SECURITIES  
 20 COMMISSIONER, IN A MANNER REASONABLE UNDER THE CIRCUMSTANCES,  
 21 MAY EXAMINE, WITHOUT NOTICE, THE RECORDS, WITHIN OR WITHOUT  
 22 THIS STATE, OF A REGISTERED FINANCIAL PLANNER, EXEMPT  
 23 INVESTMENT ADVISER DOING BUSINESS IN THIS STATE, OR FINANCIAL  
 24 PLANNER REPRESENTATIVE WHICH ARE MADE AND MAINTAINED BY SUCH  
 25 PERSON IN THE NORMAL COURSE OF PROVIDING FINANCIAL PLANNING  
 26 SERVICES IN ORDER TO DETERMINE COMPLIANCE WITH THIS ARTICLE.

1 RECORDS MAY BE MADE AND MAINTAINED IN ANY FORM OF DATA STORAGE  
 2 IF THEY ARE READILY ACCESSIBLE TO THE SECURITIES COMMISSIONER  
 3 IN LEGIBLE FORM.

4 (6) THE SECURITIES COMMISSIONER, IN A MANNER REASONABLE  
 5 UNDER THE CIRCUMSTANCES, MAY COPY RECORDS MADE AND MAINTAINED  
 6 BY A REGISTERED FINANCIAL PLANNER, EXEMPT INVESTMENT ADVISER  
 7 DOING BUSINESS IN THIS STATE, OR FINANCIAL PLANNER  
 8 REPRESENTATIVE IN THE NORMAL COURSE OF PROVIDING FINANCIAL  
 9 PLANNING SERVICES OR MAY REQUIRE SUCH PERSON AT SUCH PERSON'S  
 10 EXPENSE, TO PROVIDE TRUE COPIES OF SUCH RECORDS TO THE  
 11 SECURITIES COMMISSIONER.

12 SECTION 9. Part 4 of article 51 of title 11, Colorado  
 13 Revised Statutes, 1987 Repl. Vol., as amended, is amended BY  
 14 THE ADDITION OF A NEW SECTION to read:

15 11-51-409.5. Mandatory disclosure by financial planners  
 16 and financial planner representatives. (1) EVERY FINANCIAL  
 17 PLANNER AND FINANCIAL PLANNER REPRESENTATIVE REQUIRED TO BE  
 18 REGISTERED UNDER THIS ARTICLE SHALL FURNISH TO EACH  
 19 PROSPECTIVE CLIENT AND TO EACH CLIENT WHO IS TO RECEIVE  
 20 FINANCIAL PLANNING SERVICES FROM SUCH PLANNER OR  
 21 REPRESENTATIVE A WRITTEN DISCLOSURE STATEMENT CONTAINING THE  
 22 INFORMATION REQUIRED TO BE FILED PURSUANT TO SECTION  
 23 11-51-403.

24 (2) THE DISCLOSURE STATEMENT DESCRIBED IN SUBSECTION (1)  
 25 OF THIS SECTION SHALL BE DELIVERED TO THE CLIENT OR  
 26 PROSPECTIVE CLIENT PRIOR TO THEIR INCURRING ANY OBLIGATION FOR

1 OR IN CONNECTION WITH THE FINANCIAL PLANNING SERVICES. IN  
2 ADDITION, THE FINANCIAL PLANNER OR FINANCIAL PLANNER  
3 REPRESENTATIVE SHALL ANNUALLY, WITHOUT CHARGE, DELIVER OR  
4 OFFER IN WRITING TO DELIVER UPON WRITTEN REQUEST TO EACH  
5 CLIENT A TRUE COPY OF THE MOST RECENT AVAILABLE DISCLOSURE  
6 STATEMENT.

7 SECTION 10. The introductory portion to 11-51-410 (1)  
8 and 11-51-410 (1)(a), (1)(d), (1)(e), (1)(f), (1)(i), (1)(j),  
9 and (2), Colorado Revised Statutes, 1987 Repl. Vol., as  
10 amended, are amended, and the said 11-51-410 (1) is further  
11 amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12 11-51-410. Denial, suspension, or revocation. (1) The  
13 securities commissioner may by order deny an application for a  
14 license OR REGISTRATION, suspend or revoke a license OR  
15 REGISTRATION, censure a licensed OR REGISTERED person, limit  
16 or impose conditions on the securities activities that a  
17 licensed person may conduct OR THE FINANCIAL PLANNING SERVICES  
18 THAT A REGISTERED PERSON MAY PERFORM in this state, and bar a  
19 person from association with any licensed broker-dealer OR  
20 FINANCIAL PLANNER in the conduct of its business in this state  
21 in such capacities and for such period as the order specifies.  
22 These sanctions may be imposed only if the securities  
23 commissioner makes a finding, in addition to the findings  
24 required by section 11-51-704 (2), that the applicant or  
25 licensed OR REGISTERED person or, in the case of a  
26 broker-dealer OR FINANCIAL PLANNER, a partner, officer,

1 director, person occupying a similar status or performing  
2 similar functions, or person directly or indirectly  
3 controlling the broker-dealer OR FINANCIAL PLANNER:

4 (a) Has filed an application for a license OR  
5 REGISTRATION with the securities commissioner which, as of the  
6 effective date of the license OR REGISTRATION or as of any  
7 date after filing in the case of an order denying  
8 effectiveness, was false or misleading as a result of an  
9 untrue statement of a material fact or an omission to state a  
10 material fact, unless the applicant sustains the burden of  
11 proof that the applicant did not know and in the exercise of  
12 reasonable care could not have known of the untruth or  
13 omission;

14 (d) ~~Has--been--found--in--a--final--decree~~ IS CURRENTLY A  
15 SUBJECT OF A TEMPORARY OR PERMANENT INJUNCTION issued by a  
16 court of competent jurisdiction within the past five years, in  
17 an action instituted by the securities commissioner, the  
18 securities agency or administrator of another state or a  
19 Canadian province or territory, the securities and exchange  
20 commission, or the commodity futures trading commission, ~~to~~  
21 have BASED ON ALLEGATIONS THAT THE PERSON violated any  
22 securities registration, ~~or~~ broker-dealer, FINANCIAL PLANNER,  
23 or similar license OR REGISTRATION requirement in any federal,  
24 state, or provincial law or ~~to~~ have THAT THE PERSON engaged in  
25 fraudulent conduct;

26 (e) Is currently the subject of an order of the

1 securities commissioner denying, suspending, or revoking the  
2 person's license as a broker-dealer or sales representative OR  
3 REGISTRATION AS A FINANCIAL PLANNER OR FINANCIAL PLANNER  
4 REPRESENTATIVE or barring the person from association with any  
5 licensed broker-dealer OR FINANCIAL PLANNER;

6 (f) Is currently the subject of any of the following  
7 orders issued within the past five years:

8 (I) An order by the securities agency or administrator  
9 of another state or a Canadian province or territory, entered  
10 after notice and opportunity for hearing and based upon  
11 fraudulent conduct, denying or revoking the person's license  
12 as a BROKER, DEALER, broker-dealer, sales representative, or  
13 investment adviser, FINANCIAL PLANNER, OR FINANCIAL PLANNER  
14 REPRESENTATIVE, or the substantial equivalent of those terms,  
15 or suspending or barring the right of the person to be  
16 associated with a BROKER, DEALER, broker-dealer, INVESTMENT  
17 ADVISER, OR FINANCIAL PLANNER;

18 (II) An order by the securities and exchange commission,  
19 entered after notice and opportunity for hearing, denying,  
20 suspending, or revoking the person's registration as a  
21 ~~broker-dealer~~ BROKER OR DEALER under the federal "Securities  
22 Exchange Act of 1934" OR AS AN INVESTMENT ADVISER UNDER THE  
23 FEDERAL "INVESTMENT ADVISERS ACT OF 1940" or suspending or  
24 barring the right of the person to be associated with a  
25 ~~broker-dealer~~ BROKER, DEALER, OR INVESTMENT ADVISER;

26 (III) An order by the commodity futures trading

1 commission, entered after notice and opportunity for hearing,  
2 denying, suspending, or revoking registration under the  
3 federal "Commodity Exchange Act"; or

4 (IV) A suspension or expulsion from membership in or  
5 association with a member of a self-regulatory organization;

6 (i) Has failed reasonably to supervise, with a view to  
7 preventing violations of this article, another person who is  
8 subject to the person's supervision and who commits such a  
9 violation, but for the purpose of this paragraph (i) no person  
10 shall be deemed to have failed to supervise another person if  
11 there existed established procedures, and a system for  
12 applying such procedures, which would reasonably be expected  
13 to prevent and detect, insofar as practicable, any such  
14 violation by such other person and such person reasonably  
15 discharged the duties and obligations incumbent upon such  
16 person by reason of such procedures and system without  
17 reasonable cause to believe that such procedures and system  
18 were not being complied with; or

19 (j) Has ceased to do business as a broker-dealer, or  
20 sales representative, FINANCIAL PLANNER, OR FINANCIAL PLANNER  
21 REPRESENTATIVE; OR

22 (k) IN THE CASE OF A FINANCIAL PLANNER OR FINANCIAL  
23 PLANNER REPRESENTATIVE, HAS WILLFULLY FAILED TO PROVIDE A  
24 CLIENT WITH THE WRITTEN DISCLOSURE STATEMENT REQUIRED UNDER  
25 SECTION 11-51-409.5.

26 (2) The securities commissioner may not begin a

1 proceeding under this section against any person more than  
2 ninety days after a license has been issued to that person, OR  
3 MORE THAN NINETY DAYS AFTER THE EFFECTIVE DATE OF A  
4 REGISTRATION, on the basis of a fact or transaction which the  
5 person shows was known to the securities commissioner when the  
6 license was issued or when any prior license of the same class  
7 was issued to that person OR WHEN THAT PERSON'S REGISTRATION  
8 BECAME EFFECTIVE if such prior license OR REGISTRATION was not  
9 revoked on the basis, in whole or in part, of such fact or  
10 transaction.

11 SECTION 11. 11-51-411, Colorado Revised Statutes, 1987  
12 Repl. Vol., as amended, is amended to read:

13 11-51-411. Abandonment of license or registration. If a  
14 licensed OR REGISTERED person has died or ceased to exist as a  
15 legal entity, has been adjudicated incompetent, or cannot be  
16 located by the securities commissioner after a reasonable  
17 search, the securities commissioner may by order summarily  
18 revoke the license OR REGISTRATION on the grounds that the  
19 license OR REGISTRATION has been abandoned.

20 SECTION 12. 11-51-412, Colorado Revised Statutes, 1987  
21 Repl. Vol., as amended, is amended to read:

22 11-51-412. Withdrawal. (1) An application for a license  
23 OR REGISTRATION may be withdrawn without prejudice by the  
24 applicant upon written notice to the securities commissioner  
25 before the license OR REGISTRATION becomes effective unless a  
26 proceeding under section 11-51-410 to deny the license OR

1 REGISTRATION is pending.

2 (2) Withdrawal from licensing as a broker-dealer or  
3 sales representative OR FROM REGISTRATION AS A FINANCIAL  
4 PLANNER OR FINANCIAL PLANNER REPRESENTATIVE becomes effective  
5 thirty days after receipt by the securities commissioner of an  
6 application to withdraw, or at such earlier time as the  
7 securities commissioner may allow, unless:

8 (a) A proceeding under section 11-51-410 against the  
9 licensed OR REGISTERED person is pending when the application  
10 is filed or is instituted within thirty days thereafter; or

11 (b) Additional information regarding the application is  
12 requested by the securities commissioner within thirty days  
13 after the application is filed.

14 (3) If a proceeding is pending or instituted under  
15 subsection (2) of this section, withdrawal becomes effective  
16 at the time and upon the conditions the securities  
17 commissioner by order determines. If additional information  
18 is requested, withdrawal is effective thirty days after the  
19 additional information is received by the securities  
20 commissioner. If no proceeding is pending or instituted under  
21 subsection (2) of this section and withdrawal becomes  
22 effective, the securities commissioner may institute a  
23 proceeding under section 11-51-410 within one year after  
24 withdrawal became effective and enter an order as of the last  
25 date on which licensing OR REGISTRATION was effective.

26 SECTION 13. 11-51-501, Colorado Revised Statutes, 1987

1 Repl. Vol., as amended, is amended to read:

2 11-51-501. Fraud and other prohibited conduct. (1) It  
3 is unlawful for any person, in connection with the offer,  
4 sale, or purchase of any security, directly or indirectly:

5 (a) To employ any device, scheme, or artifice to  
6 defraud;

7 (b) To make any untrue statement of a material fact or  
8 to omit to state a material fact necessary in order to make  
9 the statements made, in the light of the circumstances under  
10 which they are made, not misleading; or

11 (c) To engage in any act, practice, or course of  
12 business which operates or would operate as a fraud or deceit  
13 upon any person.

14 (2) IT IS UNLAWFUL FOR ANY FINANCIAL PLANNER, FINANCIAL  
15 PLANNER REPRESENTATIVE, OR EXEMPT INVESTMENT ADVISER, DIRECTLY  
16 OR INDIRECTLY:

17 (a) TO EMPLOY ANY DEVICE, SCHEME, OR ARTIFICE TO DEFRAUD  
18 ANY CLIENT OR PROSPECTIVE CLIENT;

19 (b) IN ANY DISCLOSURE STATEMENT DELIVERED TO ANY CLIENT  
20 OR PROSPECTIVE CLIENT PURSUANT TO SECTION 11-51-409.5, TO MAKE  
21 ANY UNTRUE STATEMENT OF A MATERIAL FACT OR TO OMIT TO STATE A  
22 MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE,  
23 IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT  
24 MISLEADING;

25 (c) TO ENGAGE IN ANY TRANSACTION, ACT, PRACTICE, OR  
26 COURSE OF BUSINESS WHICH OPERATES OR WOULD OPERATE AS A FRAUD

1 OR DECEIT UPON ANY CLIENT OR PROSPECTIVE CLIENT OR WHICH IS  
2 FRAUDULENT, DECEPTIVE, OR MANIPULATIVE.

3 (3) IT IS UNLAWFUL FOR ANY FINANCIAL PLANNER OR  
4 FINANCIAL PLANNER REPRESENTATIVE ACTING AS PRINCIPAL FOR SUCH  
5 PERSON'S OWN ACCOUNT OR ON BEHALF OF A THIRD PARTY TO SELL ANY  
6 INVESTMENT, INCLUDING BUT NOT LIMITED TO A SECURITY, TO A  
7 CLIENT WITHOUT DISCLOSING IN WRITING, BEFORE THE COMPLETION OF  
8 THE TRANSACTION, THE CAPACITY IN WHICH THE FINANCIAL PLANNER  
9 OR FINANCIAL PLANNER REPRESENTATIVE IS ACTING AND WITHOUT  
10 FIRST OBTAINING THE WRITTEN CONSENT OF THE CLIENT TO SUCH  
11 TRANSACTION.

12 (4) SUBSECTIONS (2) AND (3) OF THIS SECTION SHALL APPLY  
13 IN ALL CASES IN WHICH THE PROSCRIBED CONDUCT OCCURS WITHIN  
14 THIS STATE REGARDLESS OF WHETHER ANY CLIENT OR PROSPECTIVE  
15 CLIENT IS PRESENT WITHIN THE STATE, AND SHALL APPLY IN ALL  
16 CASES IN WHICH ANY CLIENT OR PROSPECTIVE CLIENT IS PHYSICALLY  
17 PRESENT WITHIN THE STATE REGARDLESS OF WHERE THE PROSCRIBED  
18 CONDUCT OCCURS.

19 (5) NOTHING IN SUBSECTION (2) OR (3) OF THIS SECTION  
20 SHALL RELIEVE ANY FINANCIAL PLANNER, FINANCIAL PLANNER  
21 REPRESENTATIVE, OR EXEMPT INVESTMENT ADVISER OF ANY LIABILITY  
22 UNDER SUBSECTION (1) OF THIS SECTION OR UNDER ANY OTHER LAW.

23 SECTION 14. 11-51-503, Colorado Revised Statutes, 1987  
24 Repl. Vol., as amended, is amended to read:

25 11-51-503. Unlawful representation concerning a license,  
26 registration as a financial planner, securities registration,



1 or exemption. (1) Neither the fact that an application for a  
 2 license, REGISTRATION AS A FINANCIAL PLANNER OR FINANCIAL  
 3 PLANNER REPRESENTATIVE, or a SECURITIES registration statement  
 4 has been filed, nor the fact that a person is licensed OR  
 5 REGISTERED or THAT a security is registered, constitutes a  
 6 finding by the securities commissioner that any document filed  
 7 under this article is true, complete, and not misleading. No  
 8 such fact, nor the fact that an exemption or exception is  
 9 available for a person, security, or transaction, means that  
 10 the securities commissioner has passed in any way upon the  
 11 merits or qualifications of, or has recommended or given  
 12 approval to, any person, security, or transaction.

13 (2) It is unlawful to make, or cause to be made, to any  
 14 prospective purchaser or to any existing or prospective  
 15 customer or client any representation inconsistent with  
 16 subsection (1) of this section.

17 SECTION 15. 11-51-602, Colorado Revised Statutes, 1987  
 18 Repl. Vol., as amended, is amended to read:

19 11-51-602. Enforcement by injunction. (1) Whenever it  
 20 appears to the securities commissioner upon sufficient  
 21 evidence satisfactory to the securities commissioner that any  
 22 person has engaged in or is about to engage in any act or  
 23 practice constituting a violation of any provision of this  
 24 article or of any rule or order under this article, the  
 25 securities commissioner may apply to the district court of the  
 26 city and county of Denver to temporarily restrain or

1 preliminarily or permanently enjoin the act or practice in  
 2 question and to enforce compliance with this article or any  
 3 rule or order under this article. If the action is against a  
 4 broker-dealer, or sales representative, FINANCIAL PLANNER,  
 5 FINANCIAL PLANNER REPRESENTATIVE, OR EXEMPT INVESTMENT ADVISER  
 6 and the court finds that ~~the--broker-dealer--or--sales~~  
 7 ~~representative~~ SUCH PERSON has committed a violation of  
 8 section 11-51-501, in addition to any other relief the court  
 9 may enter an order imposing such conditions on the  
 10 ~~broker-dealer-or-sales--representative~~ PERSON as the court  
 11 deems appropriate. In any such action, the securities  
 12 commissioner shall not be required to plead or prove  
 13 irreparable injury or the inadequacy of the remedy at law.  
 14 Under no circumstances shall the court require the securities  
 15 commissioner to post a bond.

16 (2) The securities commissioner may include in any  
 17 action authorized by subsection (1) of this section, relating  
 18 to any violation of section 11-51-301, 11-51-401, 11-51-407  
 19 (5), 11-51-409.5, or 11-51-501, a claim for damages under  
 20 section 11-51-604 or restitution, disgorgement, or other  
 21 equitable relief on behalf of some or all of the persons  
 22 injured by the act or practice constituting the subject matter  
 23 of the action, if the applicable scienter standard of section  
 24 11-51-604 is met. No person shall be liable for damages or  
 25 for restitution, disgorgement, or other equitable relief in  
 26 any action authorized by subsection (1) of this section for a

1 violation of section 11-51-301 due solely to a failure to file  
2 the prescribed notification of exemption or to pay the  
3 required exemption fee for an exemption under section  
4 11-51-308 (1) (p).

5 SECTION 16. 11-51-604 (3), (5), and (8). Colorado  
6 Revised Statutes, 1987 Repl. Vol., as amended, are amended,  
7 and the said 11-51-604 is further amended BY THE ADDITION OF  
8 THE FOLLOWING NEW SUBSECTIONS, to read:

9 11-51-604. Civil liabilities. (2.5) ANY FINANCIAL  
10 PLANNER OR FINANCIAL PLANNER REPRESENTATIVE WHO VIOLATES  
11 SECTION 11-51-403.5 IS LIABLE TO EACH PERSON TO WHOM FINANCIAL  
12 PLANNING SERVICES ARE PROVIDED IN VIOLATION OF SAID SECTION IN  
13 AN AMOUNT EQUAL TO THE GREATER OF ONE THOUSAND DOLLARS OR THE  
14 VALUE OF ALL BENEFITS DERIVED, DIRECTLY OR INDIRECTLY, FROM  
15 THE RELATIONSHIP OR DEALINGS PRIOR TO SUCH TIME AS THE  
16 VIOLATION MAY BE CURED, TOGETHER WITH INTEREST AT THE  
17 STATUTORY RATE FROM THE DATE OF RECEIPT OF SUCH BENEFITS,  
18 COSTS, AND REASONABLE ATTORNEY FEES.

19 (2.6) ANY FINANCIAL PLANNER OR FINANCIAL PLANNER  
20 REPRESENTATIVE WHO PROVIDES FINANCIAL PLANNING SERVICES TO  
21 ANOTHER PERSON BUT WHO FAILS TO FURNISH TO THAT PERSON A  
22 WRITTEN DISCLOSURE STATEMENT AS REQUIRED BY SECTION  
23 11-51-409.5 IS LIABLE TO SUCH OTHER PERSON IN AN AMOUNT EQUAL  
24 TO THE GREATER OF ONE THOUSAND DOLLARS OR THE VALUE OF ALL  
25 BENEFITS DERIVED, DIRECTLY OR INDIRECTLY, FROM THE  
26 RELATIONSHIP OR DEALINGS AND FOR ACTUAL DAMAGES, INTEREST AT

1 THE STATUTORY RATE, COSTS, REASONABLE ATTORNEY FEES, OR SUCH  
2 LEGAL OR EQUITABLE RELIEF THAT THE COURT DEEMS APPROPRIATE.

3 (3) Any person who recklessly, knowingly, or with an  
4 intent to defraud sells or buys a security in violation of  
5 section 11-51-501 (1) OR PROVIDES FINANCIAL PLANNING SERVICES  
6 TO ANOTHER PERSON IN VIOLATION OF SECTION 11-51-501 (2) is  
7 liable to the person buying or selling -a- SUCH security OR  
8 RECEIVING SUCH SERVICES in connection with the violation for  
9 such legal or equitable relief which the court deems  
10 appropriate, including rescission, actual damages, interest at  
11 the statutory rate, costs, and reasonable attorney fees.

12 (4.5) ANY FINANCIAL PLANNER OR FINANCIAL PLANNER  
13 REPRESENTATIVE WHO FAILS TO COMPLY WITH THE REQUIREMENTS OF  
14 PARAGRAPH (a) OF SUBSECTION (5) OF SECTION 11-51-407, OR WHO  
15 VIOLATES SUBSECTION (3) OF SECTION 11-51-501, IS LIABLE TO  
16 EACH CLIENT WITH RESPECT TO WHOM SUCH VIOLATION WAS COMMITTED  
17 IN AN AMOUNT EQUAL TO THE GREATER OF ONE THOUSAND DOLLARS OR  
18 THE VALUE OF ALL BENEFITS DERIVED, DIRECTLY OR INDIRECTLY, BY  
19 THE VIOLATOR FROM THE RELATIONSHIP OR DEALINGS WITH THE  
20 CLIENT, TOGETHER WITH INTEREST AT THE STATUTORY RATE FROM THE  
21 DATE OF RECEIPT, COSTS, AND REASONABLE ATTORNEY FEES.

22 (5) (a) Every person who, directly or indirectly,  
23 controls a person liable under subsection (1), or (2), (2.5),  
24 OR (2.6) of this section is liable jointly and severally with  
25 and to the same extent as such controlled person, unless the  
26 controlling person sustains the burden of proof that such

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1 person did not know, and in the exercise of reasonable care  
2 could not have known, of the existence of the facts by reason  
3 of which the liability is alleged to exist.

4 (b) Every person who, directly or indirectly, controls a  
5 person liable under subsection (3), ~~or~~ (4), OR (4.5) of this  
6 section is liable jointly and severally with and to the same  
7 extent as such controlled person, unless such controlling  
8 person sustains the burden of proof that such person acted in  
9 good faith and did not, directly or indirectly, induce the act  
10 or acts constituting the violation or cause of action.

11 (c) Any person who knows that another person liable  
12 under subsection (3), ~~or~~ (4), OR (4.5) of this section is  
13 engaged in conduct which constitutes a violation of section  
14 11-51-501 and who gives substantial assistance to such conduct  
15 is jointly and severally liable to the same extent as such  
16 other person.

17 (8) No person may sue under subsection (1), ~~or~~ (2),  
18 (2.5), OR (2.6) or paragraph (a) of subsection (5) of this  
19 section more than two years after the contract of sale, OR, AS  
20 THOSE PROVISIONS PERTAIN TO FINANCIAL PLANNERS, FINANCIAL  
21 PLANNER REPRESENTATIVES, AND FINANCIAL PLANNING SERVICES, MORE  
22 THAN TWO YEARS AFTER THE DATE OF THE VIOLATION. No person may  
23 sue under subsection (3), ~~or~~ (4), OR (4.5) or paragraph (b) or  
24 (c) of subsection (5) of this section more than three years  
25 after the discovery of the facts giving rise to a cause of  
26 action under subsection (3) or (4) of this section or after

1 such discovery should have been made by the exercise of  
2 reasonable diligence and in no event more than five years  
3 after the purchase or sale, OR, AS THOSE PROVISIONS PERTAIN TO  
4 FINANCIAL PLANNERS, FINANCIAL PLANNER REPRESENTATIVES, AND  
5 FINANCIAL PLANNING SERVICES, MORE THAN FIVE YEARS AFTER THE  
6 DATE OF THE VIOLATION.

7 SECTION 17. Effective date - applicability. This act  
8 shall take effect January 1, 1993, and shall apply to acts  
9 committed on or after said date.

10 SECTION 18. Safety clause. The general assembly hereby  
11 finds, determines, and declares that this act is necessary  
12 for the immediate preservation of the public peace, health,  
13 and safety.

SUNRISE/SUNSET BILL N

A BILL FOR AN ACT  
CONCERNING THE VIOLATION OF THE "COLORADO CONSUMER PROTECTION  
ACT" IN CONJUNCTION WITH THE SALE OF HEARING AIDS.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Excludes certain terms from the definition of "hearing aid" within the "Colorado Consumer Protection Act". Defines certain terms for purposes of specifying what a deceptive trade practice is with regard to the sale of hearing aids within the "Colorado Consumer Protection Act". Mandates that the receipt provided with the sale of a hearing aid contain certain specified information. Specifies what information the consumer must provide to a merchant when returning a hearing aid to adequately constitute a refund request. Provides that certain conduct on the part of the merchant in response to a complaint by a purchaser of a hearing aid shall automatically extend the period of time the consumer has to request a refund. Makes not responding to a consumer complaint in conjunction with the sale of a hearing aid a deceptive trade practice. Provides for criminal penalties for the violation of the "Colorado Consumer Protection Act" provisions on hearing aid sales.

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

SECTION 1. 6-1-105.5 (1) (b), (2) (a), (2) (e) (III), and (2) (f), Colorado Revised Statutes, as amended, are

amended, and the said 6-1-105.5 (2) (e) is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS, to read:

6-1-105.5. Hearing aid dealers - deceptive trade practices. (1) As used in this section, unless the context otherwise requires:

(b) (I) "Hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories thereto, including ear molds but excluding batteries and cords; EXCEPT THAT "HEARING AID" DOES NOT INCLUDE A "COCHLEAR IMPLANT" OR "COCHLEAR PROSTHESIS".

(II) "COCHLEAR IMPLANT" OR "COCHLEAR PROSTHESIS" MEANS AN ELECTRODE OR ELECTRODES SURGICALLY IMPLANTED IN THE COCHLEA WHICH ARE ATTACHED TO AN INDUCTION COIL BURIED UNDER THE SKIN NEAR THE EAR, AND THE ASSOCIATED UNIT WHICH IS WORN ON THE BODY.

(2) In addition to any other deceptive trade practices under section 6-1-105, a hearing aid dealer engages in a deceptive trade practice when he:

(a) fails to deliver to each person supplied with a hearing aid a receipt which:

(I) Bears the business address of the hearing aid dealer together with specifications as to the make and serial number of the hearing aid furnished and the full terms of the sale clearly stated. If a hearing aid which is not new is sold, the container thereof and the receipt shall be clearly marked

as "used" or "reconditioned", whichever is applicable, within the terms of the guarantee, if any.

(II) Bears, in no smaller type than the largest used in the body portion OF THE RECEIPT, in substance, a provision that the purchaser has been advised at the outset of his relationship with the hearing aid dealer that any examination or representation made by a hearing aid dealer in connection with the practice of dispensing, fitting, or dealing in hearing aids is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice.

(III) BEARS, IN NO SMALLER TYPE THAN THE LARGEST USED IN THE BODY OF THE RECEIPT, A PROVISION INDICATING THAT CONSUMER COMPLAINTS MAY BE FILED WITH THE ATTORNEY GENERAL'S OFFICE OR THE OFFICE OF THE DISTRICT ATTORNEY FOR THE JURISDICTION WHERE THE DEVICE WAS SOLD AND THE ADDRESS AND TELEPHONE NUMBER OF THE ATTORNEY GENERAL'S OFFICE DIVISION WHERE SUCH COMPLAINTS MAY BE FILED;

(IV) BEARS A PROVISION LABELED "WARRANTY" IN WHICH THE EXACT WARRANTY TERMS AND PERIODS AVAILABLE FROM THE MANUFACTURER ARE DOCUMENTED, OR INCLUDES AN ORIGINAL OR PHOTOCOPY OF THE ORIGINAL MANUFACTURER'S WARRANTY WITH THE RECEIPT;

(V) BEARS A PROVISION STATING WHICH ITEMS ARE REFUNDABLE AND WHICH ARE NONREFUNDABLE.

(e) Fails to provide a thirty-day rescission period with

following terms:

(III) The seller shall provide a written receipt or contract to the buyer which includes, in immediate proximity to the space reserved for the signature of the buyer, ~~or on the first page if there is no space reserved for the signature of the buyer,~~ the following specific statement in all capital letters of no less than ten-point bold-faced type: "THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO 12 MIDNIGHT OF THE 30TH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE SELLER WRITTEN NOTICE OF CANCELLATION OR BY RETURNING THE HEARING AID."

(IV) THE REFUND REQUEST FORM SHALL CONTAIN THE INFORMATION IN SUBPARAGRAPH (1) OF PARAGRAPH (a) OF THIS SUBSECTION (2) AND THE STATEMENT, IN ALL CAPITAL LETTERS OF NO LESS THAN TEN-POINT BOLD-FACED TYPE: "REFUND REQUEST - THIS FORM MUST BE POSTMARKED BY \_\_\_\_\_ (DATE TO BE FILLED IN). ARRANGEMENTS FOR RETURN OF DEVICE, IF NECESSARY, WILL BE MADE AT A LATER DATE BY THE SELLER." A SPACE FOR THE BUYER'S ADDRESS, TELEPHONE NUMBER, AND SIGNATURE MUST BE PROVIDED. THE BUYER WILL BE REQUIRED ONLY TO SIGN, LIST HIS CURRENT ADDRESS AND TELEPHONE NUMBER AND MAIL THE REFUND REQUEST FORM TO THE SELLER.

(V) ANY CONDUCT IN RESPONSE TO A BUYER'S REPORT OF A PROBLEM WITH A HEARING AID ALREADY DELIVERED WHICH WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE PROBLEM WITH THE

HEARING AID MIGHT OR WOULD BE RESOLVED TO THE BUYER'S SATISFACTION, OR ANY CONDUCT WHICH FAILS TO PROVIDE A MEANINGFUL CONTENT BASED RESPONSE TO THE BUYER'S REPORT OF A PROBLEM, SHALL HAVE THE EFFECT OF EXTENDING THE REFUND PERIOD BY AN ADDITIONAL THIRTY DAYS FROM THE DAY OF THE REPORT OF THE PROBLEM; OR FROM THE TIME PROPOSED FOR ANY ACTION TO BE TAKEN TO RESOLVE THE PROBLEM; OR FROM THE COMPLETION OF ANY ACTION TAKEN TO RESOLVE THE PROBLEM, WHICHEVER IS LATER.

(f) Represents that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state-licensed clinic", "state-registered", "state-certified", or "state-approved" or any other term, abbreviation, or symbol when it would falsely give the impression that service is being provided by persons trained in medicine or that the hearing aid dealer's service has been recommended by the state when such is not the case; OR WHEN THAT WOULD BE FALSE OR MISLEADING.

SECTION 2. 6-1-105.5 (2), Colorado Revised Statutes, as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

6-1-105.5. Hearing aid dealers - deceptive trade practices. (2) (i) DOES NOT RESPOND IN A TIMELY MANNER OR EMPLOYS DELAYING TACTICS IN RESPONSE TO A BUYER'S REQUEST FOR A REFUND SO THAT THE BUYER'S RIGHT OF RESCISSION EXPIRES AND

THE BUYER IS THEREBY EFFECTIVELY DENIED SUCH BUYER'S RIGHT TO A REFUND.

SECTION 3. 6-1-114, Colorado Revised Statutes, as amended, is amended to read:

6-1-114. Criminal penalties. (1) Any person who promotes a pyramid promotional scheme in this state, OR WHO VIOLATES ANY PROVISION OF 6-1-105.5 upon a first conviction, is guilty of a class 1 misdemeanor, as defined in section 18-1-106, C.R.S., and upon a second or subsequent conviction, is guilty of a class 6 felony, as defined in section 18-1-105, C.R.S.

(2) SUCH VIOLATIONS SHALL ALSO BE DEEMED A CLASS 1 PUBLIC NUISANCE SUBJECT TO THE PROVISIONS OF PART 3 OF ARTICLE 13 OF TITLE 16, C.R.S.

SECTION 4. Effective date - applicability. This act shall take effect July 1, 1992, and shall apply to acts occurring on and after said date.

SECTION 5. 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.

# HIGHWAY LEGISLATION REVIEW COMMITTEE

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# HIGHWAY LEGISLATION REVIEW COMMITTEE

## Summary of Recommendations

The Highway Legislation Review Committee (HLRC) was created in 1953 (section 43-2-101, et seq., Colorado Revised Statutes). The legislation which created the HLRC also occurred in conjunction with the reorganization of the state highway system and its relationships to county and city road systems. The committee's original charge was to review the implementation and impact of these new relationships. Committee members are appointed by the governor every five years and include six members of the General Assembly and five non-legislative members "from such highway advisory groups as the governor shall select" (section 43-2-145, C.R.S.).

The HLRC was reconstituted in 1986 to give guidance and direction to the state Department of Transportation "in the development of the state system of highways and to provide legislative overview of and input into such developments." This mandate included consultation with experts in highway construction and planning, review of the Department of Transportation operations and projects, review of department performance audits, and recommendations concerning the financing of roads and mass transit in the state.

The committee's oversight responsibilities were expanded to include 1) statutory authority to review the activities of public highway authorities (section 43-4-501, C.R.S.) in 1987; 2) statutory authority to review the Regional Transportation District's (RTD) implementation of state mandated privatization (section 32-9-119.5 (8) (a), C.R.S.) in 1988; and 3) statutory authority to review the Colorado traffic laws and make recommendations to the General Assembly concerning the recodification of such laws as directed by House Bill 91-1106 (section 43-2-145.5, C.R.S.) in 1991.

In 1990, the General Assembly extended the HLRC indefinitely and required that the committee meet at least once each year. In 1991 the committee held six meetings and reviewed the following issues:

- Surface access to the new Denver International Airport;
- Sunset of state Special Bridge Fund statutes;
- The creation and study plans of an Advisory Committee on Traffic Law Recodification, pursuant to HB 91-1106;
- Statutorily required annual reports of the E-470 and W-470 Public Highway Authorities;

- The role of metropolitan planning organizations in regional transportation development;
- Highway access to Colorado towns with limited gaming facilities;
- Recommendations for legislation from the Department of Transportation, Department of Revenue (Division of Motor Vehicles), and the Colorado State Patrol;
- Status reports on the Federal Highway Reauthorization Act and its implications for highway funding in Colorado; and
- Incident management project updates from the Colorado Department of Transportation.

Concerning matters relating to RTD, the committee heard testimony regarding the following issues:

- A review of the most recent independent audit report concerning the privatization of RTD;
- An update on the discount token program;
- A proposal to upgrade the Radio and Automatic Vehicle Location System; and
- An update on RTD's planned Metro Area Connection (MAC) light rail line through downtown Denver.

## **Committee Recommendations**

The following seven bills are recommended for consideration during the 1992 legislative session:

### **Special Bridge Fund — HLRC Bill A**

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- Bill A recommends the continuation of the Special Bridge Fund account, section 43-4-205 (6) (a), C.R.S., in the Highway Users Tax Fund for highway bridges. Revenues for the fund are raised by the excise tax imposed on gasoline and special fuels in excess of seven cents per gallon of tax. Of this amount, 16 percent is placed in the Special Bridge Fund account. The bill extends the sunset date for the depositing of revenue in the account set aside for highway bridge repair, replacement, or posting from June 30, 1992 to July 1, 1997. The committee received testimony from the state Department of Transportation, Colorado Counties Inc., and the Colorado Municipal League indicating that the

program had been successful in reducing the number of deficient bridges in the state. Extending the sunset date represents the committee's support for ongoing efforts under this program.

### **Transportation of Hazardous Materials – HLRC Bill B**

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- Bill B amends several sections of current law dealing with the transportation of hazardous materials:

A) Amends sections 40-2.2-208 (1) and (2), C.R.S., to authorize the Chief of the Colorado State Patrol to adopt rules designating routes for the transportation of nuclear materials. This statute now authorizes the Executive Director of the Department of Transportation to adopt such rules. The State Patrol maintains it could easily incorporate this function into its operations because it now designates routes for hazardous materials. This portion of the bill has the approval of the Department of Transportation;

B) Amends the definition of "hazardous substance incident," inserting new language to include incidents involving the potential for a spill prior to or during the cleanup period. This bill would grant a Designated Emergency Response Agency (DERA) the authority to respond to a motor vehicle accident prior to the discharge of a hazardous material. Under current law, a DERA has no authority at an accident scene unless a discharge has occurred. It is hoped that this proposal would increase the level of expertise at an accident scene and reduce the risk of a hazardous materials spill; and

C) In addition, the bill makes other technical changes such as 1) repealing an obsolete section concerning the transportation of explosives and hazardous materials; 2) repealing the hazardous materials safety fund which was created for distribution during fiscal year 1990; 3) amending the penalty for violations section as to be more consistent with similar violations as found in section 18-1-106, C.R.S.; and 4) granting the Chief of the State Patrol the authority to promulgate the rules and regulations governing vehicles that transport hazardous materials.

### **Maximum Allowable Length for Vehicles – HLRC Bill C**

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- Bill C is designed to foster greater efficiency of truck travel in the state and to promote uniformity with regional and federal standards. Two of the changes increasing the allowable length of certain vehicles are supported by the Western Association of State Highway Transportation Officials (WASHTO). The bill will 1) increase the allowable length of single motor vehicles to 45 feet from 40 feet in order to gain uniformity with WASHTO member states; 2) increase the allowable length for saddlemount combinations to 75 feet from 70 feet to match that allowed by the Federal Highway Administration on federally designated

truck systems; and 3) include state highway C-470 in the designated system for Longer Combination Vehicles (LCV) in order to promote safer LCV traffic flows by diverting this traffic away from the core city.

#### **Prenegotiation Audits — HLRC Bill D**

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- Bill D encourages cost and time savings on department projects by streamlining the prenegotiation audit process. The bill requires the Department of Transportation's internal auditor to conduct external audits on persons entering into contracts with the department whenever such audits are deemed necessary and advisable by the department. The department will accomplish this by 1) establishing a \$250,000 cost threshold at which point a prenegotiation audit would be performed and 2) conducting prenegotiation audits under this amount only after certain departmental conditions have been met.

#### **Authorization to Accept Late Payments — HLRC Bill E**

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- Bill E authorizes the Motor Vehicle Division of the Department of Revenue to accept late payments for penalty assessments during a specified period (20 days) after such payments come due. Under current law, the department lacks the authority to make such collections which, according to a recent state audit report, have resulted in lost revenues, duplicative administrative tasks, and unnecessary court appearances.

#### **Licensing of Branch Offices - Commercial Driving Schools — HLRC Bill F**

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- Bill F grants the Motor Vehicle Division of the Department of Revenue the statutory authority to require a separate application and an assessment of certification fees to individual branch offices of a commercial driving school prior to commencing operations. This bill responds to a recent state auditor's report which determined that driving schools with multiple branch offices now pay the same certification fee as a school with a single office. The report concluded that non-certification of branch offices has resulted in the inequitable assessment of fees and lost revenues to the state.

#### **Classification of Commercial Vehicles — HLRC Bill G**

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- Bill G grants Colorado interstate operators of heavy vehicles, now restricted as Class A vehicles, the option of registering as intrastate and obtaining trip permits for occasional interstate travel. Under current law (section 42-3-105, C.R.S.), all heavy vehicles based in Colorado which travel outside the state must register as Class A vehicles. This bill allows operators to chose between apportioning their vehicles as either Class A or Class B. The bill also defines "apportioned registration," "base jurisdiction," "commercial carrier," and "reciprocal agreement."

## **Materials Available**

The following list of materials are available upon request from the Legislative Council staff.

- 1) Highway Legislation Review Committee meeting summaries for the 1991 interim (June 6, July 2, July 23, August 20, October 8, and November 5).
- 2) Annual reports of the E-470 and W-470 Public Highway Authorities.
- 3) Legislative Council staff memorandum concerning Metropolitan Planning Organizations entitled "Denver Regional Council of Governments," September 30, 1991.
- 4) Department of Transportation report on the Federal Highway Reauthorization Act.
- 5) Audit report from KPMG Peat Marwick, Inc., concerning state mandated privatization of the Regional Transportation District.

HLRC BILL A

A BILL FOR AN ACT

1 CONCERNING THE CONTINUATION OF THE SPECIAL ACCOUNT IN THE  
2 HIGHWAY USERS TAX FUND FOR HIGHWAY BRIDGES.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Changes the sunset date for the depositing of revenue in the account set aside for highway bridge repair, replacement, or posting, from June 30, 1992, to July 1, 1997.

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

4 SECTION 1. 43-4-205 (6) (a) and (7) (b), Colorado  
5 Revised Statutes, 1984 Repl. Vol., as amended, are amended to  
6 read:

7 43-4-205. Allocation of fund. (6) (a) Sixteen percent  
8 of such revenue shall be deposited in a special account within  
9 the highway users tax fund until ~~June 30, 1992~~, JULY 1, 1997,  
10 and shall be expended only for highway bridge repair,  
11 replacement, or posting, pursuant to provisions of paragraph

1 (a) of subsection (7) of this section.

2 (7) (b) Not later than ~~June 30, 1992~~, JULY 1, 1997, the  
3 general assembly shall review the needs of this state for  
4 highway bridge repair, replacement, or posting, and shall  
5 determine if the fund, as provided in paragraph (a) of  
6 subsection (6) of this section, should be continued. If said  
7 fund is not continued, the balance of revenues in said fund  
8 shall be allocated in accordance with the provisions of  
9 paragraph (b) of subsection (6) of this section.

10 SECTION 2. Safety clause. The general assembly hereby  
11 finds, determines, and declares that this act is necessary  
12 for the immediate preservation of the public peace, health,  
13 and safety.

HLRC BILL B

A BILL FOR AN ACT

1 CONCERNING THE TRANSPORTATION OF HAZARDOUS MATERIALS.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Expands the statutory provisions that govern emergency spills of hazardous substances to include all incidents during transportation in which hazardous substances were not spilled during the initial incident, but in which such spill is threatened prior to or during the cleanup period. Transfers the authority to promulgate rules governing inspections of vehicles carrying nuclear materials from the public utilities commission to the Colorado state patrol. Transfers the authority to designate routes for moving nuclear materials on state highways from the executive director of the department of transportation to the chief of the state patrol. Repeals an obsolete section concerning the transportation of explosives or hazardous materials and an obsolete provision governing the disposition of unspent moneys in the hazardous materials safety fund at the end of the 1989-90 fiscal year. Corrects a subsection number designating rule-making authority for transportation of hazardous materials. Changes misdemeanor penalties for violations of rules governing transportation of hazardous materials to conform to the classification system for misdemeanors contained in the criminal code. Provides that only local governments and not the state can limit transportation of certain hazardous materials through the territory of the affected local government.

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

2 SECTION 1. 29-22-101 (2) (a), Colorado Revised Statutes,  
3 1986 Repl. Vol., is amended to read:

4 29-22-101. Definitions. (2) (a) "Hazardous substance  
5 incident" means any emergency circumstance involving the  
6 sudden discharge of a hazardous substance which, in the  
7 judgment of an emergency response authority, threatens  
8 immediate and irreparable harm to the environment or the  
9 health and safety of any individual other than individuals  
10 exposed to the risks associated with hazardous substances in  
11 the normal course of their employment. "Hazardous substance  
12 incident" includes those incidents of spilling, dumping, or  
13 abandonment of a hazardous substance, whether or not such  
14 spilling, dumping, or abandonment is found to threaten  
15 immediate and irreparable harm, but such term does not include  
16 any discharge of a hazardous substance authorized pursuant to  
17 any federal, state, or local law or regulation. "HAZARDOUS  
18 SUBSTANCE INCIDENT" INCLUDES THOSE INCIDENTS WHICH OCCUR  
19 DURING TRANSPORTATION OF A HAZARDOUS SUBSTANCE, IN WHICH A  
20 SPILL DOES NOT OCCUR DURING THE INCIDENT BUT IS THREATENED  
21 PRIOR TO OR DURING THE CLEANUP PERIOD.

22 SECTION 2. 40-2.2-106, Colorado Revised Statutes, 1984  
23 Repl. Vol., as amended, is amended to read:

24 40-2.2-106. Inspections. All vehicles carrying nuclear  
25 materials entering the state on the public highways shall be  
26 inspected by port of entry personnel or Colorado state patrol

-10-

1 officers at the port of entry weigh station nearest the point  
 2 at which the shipment enters the state or at a location  
 3 specified by the Colorado state patrol. For all shipments  
 4 originating within the state, inspection shall be made at the  
 5 point of origination by Colorado state patrol officers. All  
 6 such inspections conducted by port of entry weigh station  
 7 personnel and Colorado state patrol officers shall be in  
 8 accordance with the rules promulgated pursuant to section  
 9 40-2.2-105 and sections ~~42-4-228~~ and 42-4-234 AND 43-6-108  
 10 (1), C.R.S.

11 SECTION 3. 40-2.2-208, Colorado Revised Statutes, 1984  
 12 Repl. Vol., as amended, are amended to read:

13 40-2.2-208. Route designation - motor vehicles. (1) The  
 14 ~~executive-director~~ CHIEF of the ~~department--of--transportation~~  
 15 COLORADO STATE PATROL shall have the authority to adopt rules  
 16 to designate which state highways shall be used and which  
 17 shall not be used by motor vehicles transporting nuclear  
 18 materials in this state.

19 (2) The carrier shall not deviate from the routes  
 20 designated pursuant to subsection (1) of this section except  
 21 in order to make local pickups and deliveries and in cases of  
 22 emergency conditions which would make continued use of the  
 23 designated route unsafe, or to refuel, or when the designated  
 24 route is closed due to road conditions, road construction, or  
 25 maintenance operations. When making local pickups and  
 26 deliveries or when refueling, the carrier shall remain on the

1 routes designated by the ~~department-of-transportation~~ COLORADO  
 2 STATE PATROL and shall minimize the distance traveled on  
 3 nondesignated routes.

4 SECTION 4. 43-6-107 (3) (b), Colorado Revised Statutes,  
 5 1984 Repl. Vol., as amended, is repealed as follows:

6 43-6-107. Hazardous materials safety fund. (3) (b) At  
 7 ~~the-end-of-fiscal-year-1989-90, the first--forty-two--thousand~~  
 8 ~~two--hundred--dollars--of--any--moneys--remaining--in-the-fund~~  
 9 ~~shall, notwithstanding the provisions of paragraph (a) of this~~  
 10 ~~subsection (3), be available for appropriation by the--general~~  
 11 ~~assembly--to the department of public safety for allocation to~~  
 12 ~~the Colorado emergency planning commission created in--section~~  
 13 ~~24-33.5-1503,--C.R.S., for the purpose of conducting--an~~  
 14 ~~assessment--of--available--resources--described--in--section~~  
 15 ~~24-33.5-1503,--C.R.S., and for personnel to staff the Colorado~~  
 16 ~~emergency planning commission and assist the--local--emergency~~  
 17 ~~planning--committees on the implementation of Title III of the~~  
 18 ~~"Superfund Amendments and Reauthorization Act of--1986",--Any~~  
 19 ~~moneys--remaining--after such appropriation shall be available~~  
 20 ~~for distribution in accordance with paragraph (a) of this~~  
 21 ~~subsection (3).~~

22 SECTION 5. 43-6-108 (4), Colorado Revised Statutes, 1984  
 23 Repl. Vol., as amended, is amended to read:

24 43-6-108. Rules and regulations for transportation of  
 25 hazardous materials. (4) The rules and regulations adopted by  
 26 the chief pursuant to subsection (3) (2) of this section shall



1 not apply to farm machinery which is exempted from  
2 registration requirements pursuant to section 42-3-102,  
3 C.R.S., agricultural distribution equipment attached to or  
4 conveyed by such farm machinery, or vehicles used to transport  
5 to or from the farm or ranch site products necessary for  
6 agricultural production, except when such vehicles are used in  
7 the furtherance of any commercial business other than  
8 agriculture.

9 SECTION 6. 43-6-109 (2), Colorado Revised Statutes, 1984  
10 Repl. Vol., as amended, is amended to read:

11 43-6-109. Penalty for violations. (2) Any person who  
12 violates a rule or regulation promulgated by the chief  
13 pursuant to section 43-6-108 ~~is guilty of a misdemeanor and,~~  
14 ~~upon conviction thereof, shall be punished by a fine of not~~  
15 ~~less than twenty-five dollars nor more than one thousand~~  
16 ~~dollars, or by imprisonment in the county jail for not more~~  
17 ~~than one year, or by both such fine and imprisonment~~ COMMITS A  
18 CLASS 3 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN  
19 SECTION 18-1-106, C.R.S.

20 SECTION 7. 43-6-301 (1), Colorado Revised Statutes, 1984  
21 Repl. Vol., as amended, is amended to read:

22 43-6-301. Route designation. (1) The patrol, after  
23 consultation with local governmental authorities, shall have  
24 the sole authority to designate which public roads shall be  
25 used and which shall not be used by motor vehicles  
26 transporting hazardous materials. The exercise of such

1 authority shall be made pursuant to section 43-6-302. Such  
2 designation shall exempt gasoline, diesel fuel, and liquefied  
3 petroleum gas unless the A petitioning authority specified in  
4 ~~section 43-6-302~~ SECTION 43-6-302 (1) (a) OR (1) (b) requests  
5 their inclusion. Such designation may include route  
6 restrictions, closing of streets and highways, and whatever  
7 other conditions or restrictions the patrol deems advisable,  
8 except for hours of operation and curfews. Any such  
9 designation in this part 3 shall be referred to as a route  
10 designation. Routes designated by the patrol pursuant to this  
11 part 3 shall not apply to motor vehicles when used to  
12 transport to or from the farm or ranch site products necessary  
13 for agricultural production. No city, county, or city and  
14 county may impose restrictions on hours of operation on  
15 designated routes; except that this provision shall not apply  
16 to any city, county, or city and county which, by resolution  
17 or ordinance, had routes or hours of operation restrictions in  
18 effect on July 1, 1985.

19 SECTION 8. Repeal. 42-4-228, Colorado Revised Statutes,  
20 1984 Repl. Vol., as amended, is repealed.

21 SECTION 9. Effective date. This act shall take effect  
22 July 1, 1992.

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

HLRC BILL C

A BILL FOR AN ACT

1 CONCERNING THE MAXIMUM ALLOWABLE LENGTH FOR VEHICLES OPERATED  
2 ON HIGHWAYS WITHIN THE STATE.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Increases the maximum allowable length for single motor vehicles. Increases the maximum allowable length for saddlemount combinations. Establishes state highway C-470 as a designated highway upon which longer vehicle combinations may be operated.

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

4 SECTION 1. 42-1-102, Colorado Revised Statutes, 1984  
5 Repl. Vol., as amended, is amended BY THE ADDITION OF THE  
6 FOLLOWING NEW SUBSECTIONS to read:

7 42-1-102. Definitions. As used in articles 1 to 4 of  
8 this title, unless the context otherwise requires:

9 (29.5) "FULLMOUNT" MEANS A VEHICLE WHICH IS MOUNTED  
10 COMPLETELY ON THE FRAME OF THE FIRST VEHICLE OR LAST VEHICLE

1 IN A SADDLEMOUNT COMBINATION.

2 (67.5) "SADDLEMOUNT COMBINATION" MEANS A COMBINATION OF  
3 VEHICLES IN WHICH A TRUCK OR TRUCK TRACTOR TOWS ONE OR MORE  
4 ADDITIONAL TRUCKS OR TRUCK TRACTORS AND IN WHICH EACH SUCH  
5 TOWED TRUCK OR TRUCK TRACTOR IS CONNECTED BY A SADDLE TO THE  
6 FRAME OR FIFTH WHEEL OF THE VEHICLE IMMEDIATELY IN FRONT OF  
7 SUCH TRUCK OR TRUCK TRACTOR. FOR THE PURPOSES OF THIS  
8 SUBSECTION (67.5), "SADDLE" MEANS A MECHANISM WHICH CONNECTS  
9 THE FRONT AXLE OF A TOWED VEHICLE TO THE FRAME OR FIFTH WHEEL  
10 OF A VEHICLE IMMEDIATELY IN FRONT OF SUCH TOWED VEHICLE AND  
11 WHICH FUNCTIONS LIKE A FIFTH WHEEL KINGPIN CONNECTION. A  
12 SADDLEMOUNT COMBINATION MAY INCLUDE ONE FULLMOUNT.

13 SECTION 2. 42-4-404 (2) and (4), Colorado Revised  
14 Statutes, 1984 Repl. Vol., as amended, are amended to read:

15 42-4-404. Height and length of vehicles. (2) No single  
16 motor vehicle shall exceed a length of ~~forty~~ FORTY-FIVE feet  
17 extreme overall dimension, inclusive of front and rear  
18 bumpers. The length of vehicles used for the mass  
19 transportation of passengers wholly within the limits of a  
20 town, city, or municipality or within a radius of fifteen  
21 miles thereof may extend to sixty feet. The length of school  
22 buses may also extend to forty feet.

23 (4) No combination of vehicles coupled together shall  
24 consist of more than four units, and no such combination of  
25 vehicles shall exceed a total overall length of seventy feet.  
26 Said length limitation shall not apply to truck

1 tractor-semitrailer combinations when the semitrailer is  
2 fifty-seven feet four inches or less in length or to truck  
3 tractor-semitrailer-trailer combinations when both the  
4 semitrailer and the trailer are twenty-eight feet six inches  
5 or less in length. SAID LENGTH LIMITATION SHALL ALSO NOT APPLY  
6 TO SADDLEMOUNT COMBINATIONS, WHICH SHALL NOT EXCEED  
7 SEVENTY-FIVE FEET IN TOTAL OVERALL LENGTH. Said length  
8 limitations shall also not apply to vehicles operated by a  
9 public utility when required for emergency repair of public  
10 service facilities or properties or when operated under  
11 special permit as provided in section 42-4-409, but, in  
12 respect to night transportation, every such vehicle and the  
13 load thereon shall be equipped with a sufficient number of  
14 clearance lamps on both sides and marker lamps upon the  
15 extreme ends of any projecting load to clearly mark the  
16 dimensions of such load. Said length limitations shall also  
17 not apply to specialized equipment used in combination for  
18 transporting automobiles or boats when such specialized  
19 equipment is stinger-steered, as defined in section 42-1-102  
20 (76.3), and the combination does not exceed seventy-five feet  
21 in length exclusive of safety devices, which safety devices  
22 shall not be designed or used for carrying cargo. The  
23 limitations provided in this section shall be strictly  
24 construed and enforced. Extensions of not more than eighteen  
25 inches in length on each end of a vehicle or combination of  
26 vehicles used to transport manufactured vehicles shall not be

1 included in measuring the length of such vehicle or  
2 combination of vehicles when loaded.

3 SECTION 3. 42-4-404.5 (3), Colorado Revised Statutes,  
4 1984 Repl. Vol., as amended, is amended to read:

5 42-4-404.5. Longer vehicle combinations. (3) The long  
6 combinations shall be limited to interstate highway 25,  
7 interstate highway 76, interstate highway 70 west of its  
8 intersection with state highway 13 in Garfield county,  
9 interstate highway 70 east of its intersection with U.S. 40  
10 and state highway 26, the circumferential highways designated  
11 I-225 and I-270, and state highway 133 in Delta county from  
12 mile marker 8.9 to mile marker 9.7, AND STATE HIGHWAY C-470.  
13 The department of transportation shall promulgate rules and  
14 regulations to provide carriers with reasonable ingress to and  
15 egress from such designated highway segments.

16 SECTION 4. Effective date. This act shall take effect  
17 July 1, 1992.

18 SECTION 5. Safety clause. The general assembly hereby  
19 finds, determines, and declares that this act is necessary  
20 for the immediate preservation of the public peace, health,  
21 and safety.

HLRC BILL D

A BILL FOR AN ACT

1 CONCERNING EXTERNAL AUDITS CONDUCTED BY THE DEPARTMENT OF  
 2 TRANSPORTATION ON PERSONS WHO CONTRACT WITH THE  
 3 DEPARTMENT.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Requires the department of transportation's internal auditor to conduct external audits on persons entering into contracts with the department whenever such audits are deemed advisable by the department.

---

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

5 SECTION 1. 43-1-106 (12) (b) (II), Colorado Revised  
 6 Statutes, 1984 Repl. Vol., as amended, is amended to read:

7 43-1-106. Transportation commission - powers and duties.

8 (12) (b) The internal auditor shall conduct and supervise:

9 (II) External audits on persons entering into contracts  
 10 with the department, AS DEEMED NECESSARY OR ADVISABLE BY THE

1 DEPARTMENT;

2 SECTION 2. Safety clause. The general assembly hereby  
 3 finds, determines, and declares that this act is necessary  
 4 for the immediate preservation of the public peace, health,  
 5 and safety.

HLRC BILL E

A BILL FOR AN ACT

1 CONCERNING THE ACCEPTANCE OF LATE PENALTY ASSESSMENT PAYMENTS  
2 RECEIVED BY THE MOTOR VEHICLE DIVISION OF THE DEPARTMENT  
3 OF REVENUE.

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Authorizes the motor vehicle division of the department of revenue to accept late payments for penalty assessments during a specified period after such payments become due.

---

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

5 SECTION 1. 40-2.2-108 (2), Colorado Revised Statutes,  
6 1984 Repl. Vol., as amended, is amended to read:

7 40-2.2-108. Violations - civil penalties - motor  
8 vehicles. (2) Any person who commits any of the acts  
9 enumerated in subsection (3) of this section shall be subject  
10 to the civil penalty listed in said subsection (3). Parts of  
11 entry personnel, investigative personnel of the commission,

1 and officers of the Colorado state patrol shall have the  
2 authority to issue civil penalty assessments for the  
3 enumerated violations. At any time that a person is cited for  
4 a violation enumerated in subsection (3) of this section, the  
5 person in charge of or operating the motor vehicle involved  
6 shall be given a notice in the form of a civil penalty  
7 assessment notice. Such notice shall be tendered by the  
8 enforcement official and shall contain the name and address of  
9 such person, the license number of the motor vehicle involved,  
10 if any, the number of such person's driver's license, the  
11 nature of the violation, the amount of the penalty prescribed  
12 for such violation, the date of the notice, a place for such  
13 person to execute a signed acknowledgment of his receipt of  
14 the civil penalty assessment notice, a place for such person  
15 to execute a signed acknowledgment of liability for the cited  
16 violation, and such other information as may be required by  
17 law to constitute such notice as a complaint to appear in  
18 court should the prescribed penalty not be paid within ten  
19 days. Every cited person shall execute the signed  
20 acknowledgment of his receipt of the civil penalty assessment  
21 notice. The acknowledgment of liability shall be executed at  
22 the time the cited person pays the prescribed penalty. The  
23 person cited shall pay the civil penalty specified in  
24 subsection (3) of this section for the violation involved at  
25 the office of the department of revenue, motor vehicle  
26 division, Denver, Colorado, either in person or by postmarking

1 such payment within ten days of the citation. THE MOTOR  
 2 VEHICLE DIVISION OF THE DEPARTMENT OF REVENUE MAY ACCEPT LATE  
 3 PAYMENT OF ANY PENALTY ASSESSMENT UP TO TWENTY DAYS AFTER SUCH  
 4 PAYMENT BECOMES DUE. If the person cited does not pay the  
 5 prescribed penalty within ten days of the notice, the civil  
 6 penalty assessment notice shall constitute a complaint to  
 7 appear in court UNLESS PAYMENT FOR SUCH PENALTY ASSESSMENT HAS  
 8 BEEN ACCEPTED BY THE MOTOR VEHICLE DIVISION OF THE DEPARTMENT  
 9 OF REVENUE AS EVIDENCED BY RECEIPT, and the person cited  
 10 shall, within the time specified in the civil penalty  
 11 assessment notice, file an answer to this complaint with the  
 12 county court for the county in which the penalty assessment  
 13 was issued. The attorney general shall represent the state  
 14 agency which issued the civil penalty assessment notice if so  
 15 requested by the agency.

16 SECTION 2. 42-4-1501 (4) (a) and (b), Colorado Revised  
 17 Statutes, 1984 Repl. Vol., as amended, are amended to read:

18 42-4-1501. Traffic offenses and infractions classified -  
 19 penalties - penalty and surcharge schedule. (4) (a) At the  
 20 time that any person is arrested for the commission of any  
 21 misdemeanors, petty offenses, or misdemeanor traffic offenses  
 22 set forth in subsection (3) of this section, the arresting  
 23 officer may, except when the provisions of paragraph (c) of  
 24 this subsection (4) prohibit it, offer to give a penalty  
 25 assessment notice to the defendant. At any time that a person  
 26 is charged with the commission of any traffic infraction, the

1 peace officer shall, except when the provisions of paragraph  
 2 (c) of this subsection (4) prohibit it, give a penalty  
 3 assessment notice to the defendant. Such penalty assessment  
 4 notice shall contain all the information required by section  
 5 42-4-1505 (2) or by section 42-4-1505.5, whichever is  
 6 applicable. The fine or penalty specified in subsection (3)  
 7 of this section for the violation charged and the surcharge  
 8 thereon may be paid at the office of the department of  
 9 revenue, motor vehicle division, Denver, Colorado, either in  
 10 person or by postmarking such payment within twenty days from  
 11 the date the penalty assessment notice is served upon the  
 12 defendant. THE MOTOR VEHICLE DIVISION OF THE DEPARTMENT OF  
 13 REVENUE MAY ACCEPT LATE PAYMENT OF ANY PENALTY ASSESSMENT UP  
 14 TO TWENTY DAYS AFTER SUCH PAYMENT BECOMES DUE. In the case of  
 15 an offense other than a traffic infraction, a defendant who  
 16 otherwise would be eligible to be issued a penalty assessment  
 17 notice but who does not furnish satisfactory evidence of  
 18 identity or who the officer has reasonable and probable  
 19 grounds to believe will disregard the summons portion of such  
 20 notice may be issued a penalty assessment notice if the  
 21 defendant consents to be taken by the officer to the nearest  
 22 mailbox and to mail the amount of the fine or penalty and  
 23 surcharge thereon to the department. The peace officer shall  
 24 advise the person arrested or cited of the points to be  
 25 assessed in accordance with section 42-2-123. Acceptance of a  
 26 penalty assessment notice and payment of the prescribed fine

1 or penalty and surcharge thereon to the department shall be  
2 deemed a complete satisfaction for the violation, and the  
3 defendant shall be given a receipt which so states when such  
4 fine or penalty and surcharge thereon is paid in currency or  
5 other form of legal tender. Checks tendered by the defendant  
6 to and accepted by the department and on which payment is  
7 received by the department shall be deemed sufficient receipt.

8 (b) In the case of an offense other than a traffic  
9 infraction, should the defendant refuse to accept service of  
10 the penalty assessment notice when such notice is tendered,  
11 the peace officer shall proceed in accordance with section  
12 42-4-1504 or section 42-4-1505. Should the defendant charged  
13 with an offense other than a traffic infraction accept service  
14 of the penalty assessment notice but fail to post the  
15 prescribed penalty and surcharge thereon within twenty days  
16 thereafter, the notice shall be construed to be a summons and  
17 complaint UNLESS PAYMENT FOR SUCH PENALTY ASSESSMENT HAS BEEN  
18 ACCEPTED BY THE MOTOR VEHICLE DIVISION OF THE DEPARTMENT OF  
19 REVENUE AS EVIDENCED BY RECEIPT. Should the defendant charged  
20 with a traffic infraction accept the notice but fail to post  
21 the prescribed penalty and surcharge thereon within twenty  
22 days thereafter, AND SHOULD THE DIVISION OF MOTOR VEHICLES OF  
23 THE DEPARTMENT OF REVENUE NOT ACCEPT PAYMENT FOR SUCH PENALTY  
24 AND SURCHARGE AS EVIDENCED BY RECEIPT, he shall be allowed to  
25 pay such penalty and surcharge thereon and the docket fee in  
26 the amount set forth in section 42-4-1505.7 (4) to the clerk

1 of the court referred to in the summons portion of the penalty  
2 assessment notice during the two business days prior to the  
3 time for appearance as specified in the notice. If the penalty  
4 for a misdemeanor, misdemeanor traffic offense, or a petty  
5 offense and surcharge thereon is not timely paid, the case  
6 shall thereafter be heard in the court of competent  
7 jurisdiction prescribed on the penalty assessment notice in  
8 the same manner as is provided by law for prosecutions of the  
9 misdemeanors not specified in subsection (3) of this section.  
10 If the penalty for a traffic infraction and surcharge thereon  
11 is not timely paid, the case shall thereafter be heard in the  
12 court of competent jurisdiction prescribed on the penalty  
13 assessment notice in the manner provided for in this article  
14 for the prosecution of traffic infractions. In either case,  
15 the maximum penalty which may be imposed shall not exceed the  
16 penalty set forth in the applicable penalty and surcharge  
17 schedule in subsection (3) of this section.

18 SECTION 3. 43-6-105 (2), Colorado Revised Statutes, 1984  
19 Repl. Vol., as amended, is amended to read:

20 43-6-105. Enforcement. (2) Any enforcement official  
21 shall have the authority to issue penalty assessments for the  
22 misdemeanor traffic offenses specified in section 43-6-204 (1)  
23 and (2) and section 43-6-305 (2). At any time that a person  
24 is cited for a violation of any of the offenses specified, the  
25 person in charge of or operating the motor vehicle involved  
26 shall be given a notice in the form of a penalty assessment

1 notice. Such notice shall be tendered by the enforcement  
 2 official and shall contain the name and address of such  
 3 person, the license number of the motor vehicle involved, if  
 4 any, the number of such person's driver's license, the nature  
 5 of the violation, the amount of the penalty prescribed for  
 6 such violation, the date of the notice, a place for such  
 7 person to execute a signed acknowledgment of his receipt of  
 8 the penalty assessment notice, a place for such person to  
 9 execute a signed acknowledgment of guilt for the cited  
 10 violation, and such other information as may be required by  
 11 law to constitute such notice as a summons and complaint to  
 12 appear in court should the prescribed penalty not be paid  
 13 within twenty days. Every cited person shall execute the  
 14 signed acknowledgment of his receipt of the penalty assessment  
 15 notice. The acknowledgment of guilt shall be executed at the  
 16 time the cited person pays the prescribed penalty. The person  
 17 cited shall pay the specified penalty at the office of the  
 18 department of revenue, either in person or by postmarking such  
 19 payment within twenty days after the citation. THE MOTOR  
 20 VEHICLE DIVISION OF THE DEPARTMENT OF REVENUE MAY ACCEPT LATE  
 21 PAYMENT OF ANY PENALTY ASSESSMENT UP TO TWENTY DAYS AFTER SUCH  
 22 PAYMENT BECOMES DUE. If the person cited does not pay the  
 23 prescribed penalty within twenty days of the notice, the  
 24 penalty assessment notice shall constitute a summons and  
 25 complaint to appear in the county court of the county in which  
 26 the penalty assessment was issued at a time and place

1 specified by the notice, UNLESS PAYMENT FOR SUCH PENALTY  
 2 ASSESSMENT HAS BEEN ACCEPTED BY THE MOTOR VEHICLE DIVISION OF  
 3 THE DEPARTMENT OF REVENUE AS EVIDENCED BY RECEIPT.

4 SECTION 4. Effective date. This act shall take effect  
 5 July 1, 1992.

6 SECTION 5. Safety clause. The general assembly hereby  
 7 finds, determines, and declares that this act is necessary  
 8 for the immediate preservation of the public peace, health,  
 9 and safety.



HLRC BILL F

A BILL FOR AN ACT

1 CONCERNING THE LICENSING OF BRANCH OFFICES OF COMMERCIAL  
2 DRIVING SCHOOLS.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Requires that a separate license be obtained for each branch office of a commercial driving school prior to commencing operations. Requires that a separate license application and license application fee be provided for each such branch office.

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

4 SECTION 1. 12-15-102, Colorado Revised Statutes, 1991  
5 Repl. Vol., is amended to read:  
6 12-15-102. License required. On and after January 1,  
7 1970, it is unlawful for any person to operate a commercial  
8 driving school without having obtained a license therefor from  
9 the department. A SEPARATE LICENSE IS REQUIRED FOR EACH  
10 BRANCH OFFICE OF A COMMERCIAL DRIVING SCHOOL.

1 SECTION 2. 12-15-103, Colorado Revised Statutes, 1991  
2 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to  
3 read:

4 12-15-103. Application - fee. (3) A SEPARATE LICENSE  
5 APPLICATION AND LICENSE APPLICATION FEE SHALL BE REQUIRED FOR  
6 EACH BRANCH OFFICE OF A COMMERCIAL DRIVING SCHOOL.

7 SECTION 3. Effective date. This act shall take effect  
8 July 1, 1992.

9 SECTION 4. Safety clause. The general assembly hereby  
10 finds, determines, and declares that this act is necessary  
11 for the immediate preservation of the public peace, health,  
12 and safety.

HLRC BILL G

A BILL FOR AN ACT

1 CONCERNING THE CLASSIFICATION OF COMMERCIAL VEHICLES USED IN  
2 INTERSTATE COMMERCE FOR PURPOSES OF THE DETERMINATION OF  
3 APPROPRIATE FEES AND TAXES.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Limits the application of the Class A personal property classification, as it pertains to vehicles, to those vehicles which are used in interstate commercial carrier operations and for which an application for apportioned registration has been made. Defines "apportioned registration", "base jurisdiction", "commercial carrier", and "reciprocal agreement".

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

5 SECTION 1. 42-1-102, Colorado Revised Statutes, 1984  
6 Repl. Vol., as amended, is amended BY THE ADDITION OF THE  
7 FOLLOWING NEW SUBSECTIONS to read:

8 (3.7) "APPORTIONED REGISTRATION" MEANS REGISTRATION OF A  
9 VEHICLE PURSUANT TO A RECIPROCAL AGREEMENT UNDER WHICH THE

1 FEES PAID FOR REGISTRATION OF SUCH VEHICLE ARE ULTIMATELY  
2 DIVIDED AMONG THE SEVERAL JURISDICTIONS IN WHICH THE VEHICLE  
3 TRAVELS, BASED UPON THE NUMBER OF MILES TRAVELED BY THE  
4 VEHICLE IN EACH JURISDICTION OR UPON SOME OTHER AGREED  
5 CRITERION.

6 (5.7) "BASE JURISDICTION" MEANS THE STATE, PROVINCE, OR  
7 OTHER JURISDICTION WHICH RECEIVES, APPORTIONS, AND REMITS TO  
8 OTHER JURISDICTIONS MONEYS PAID FOR REGISTRATION OF A VEHICLE  
9 PURSUANT TO A RECIPROCAL AGREEMENT GOVERNING REGISTRATION OF  
10 VEHICLES.

11 (12.5) "COMMERCIAL CARRIER" MEANS ANY OWNER OF A MOTOR  
12 VEHICLE, TRUCK, TRUCK TRACTOR, TRAILER, OR SEMITRAILER USED IN  
13 THE BUSINESS OF TRANSPORTING PERSONS OR PROPERTY OVER THE  
14 PUBLIC HIGHWAYS FOR PROFIT, HIRE, OR OTHERWISE IN ANY BUSINESS  
15 OR COMMERCIAL ENTERPRISE.

16 (61.5) "RECIPROCAL AGREEMENT" OR "RECIPROCITY" MEANS AN  
17 AGREEMENT AMONG TWO OR MORE STATES, PROVINCES, OR OTHER  
18 JURISDICTIONS FOR COORDINATED, SHARED, OR MUTUAL ENFORCEMENT  
19 OR ADMINISTRATION OF LAWS RELATING TO THE REGISTRATION,  
20 OPERATION, OR TAXATION OF VEHICLES AND OTHER PERSONAL PROPERTY  
21 IN INTERSTATE COMMERCE. THE TERM INCLUDES WITHOUT LIMITATION  
22 THE "INTERNATIONAL REGISTRATION PLAN" AND ANY SUCCESSOR  
23 AGREEMENT PROVIDING FOR THE APPORTIONMENT, AMONG PARTICIPATING  
24 JURISDICTIONS, OF VEHICLE REGISTRATION FEES OR TAXES.

25 SECTION 2. 42-3-105 (1) (a), Colorado Revised Statutes,  
26 1984 Repl. Vol., as amended, is amended to read:

1           42-3-105. Classification - taxable value - imposition of  
 2 tax. (1) (a) Every motor vehicle, truck, truck tractor,  
 3 trailer, and semitrailer used in the business of transporting  
 4 persons or property over any public highway in this state as  
 5 an interstate COMMERCIAL carrier, whether or not such business  
 6 is engaged in by contract, FOR WHICH AN APPLICATION IS MADE  
 7 FOR APPORTIONED REGISTRATION, REGARDLESS OF BASE JURISDICTION,  
 8 shall be Class A personal property.

9           SECTION 3. 42-3-123 (13) (b.3), Colorado Revised  
 10 Statutes, 1984 Repl. Vol., as amended, is amended to read:

11           42-3-123. Registration fees - passenger and  
 12 passenger-mile taxes. (13) The annual registration fee for  
 13 those trucks and truck tractors operated over the public  
 14 highways of this state, except trucks which are registered  
 15 under the provisions of subsections (11) and (22) of this  
 16 section, shall be as follows:

17           (b.3) For each such vehicle registered under this  
 18 subsection (13) having an empty weight exceeding sixteen  
 19 thousand pounds which is used in interstate commerce AND FOR  
 20 WHICH AN APPLICATION IS MADE FOR APPORTIONED REGISTRATION,  
 21 REGARDLESS OF BASE JURISDICTION, such registration fee shall  
 22 be determined according to the following schedule:

1	<u>Declared</u>	
2	<u>Gross Vehicle</u>	<u>Registration</u>
3	<u>Weight (Pounds)</u>	<u>Fee</u>
4	16,001 but not more than 20,000	\$1,050
5	20,001 but not more than 24,000	1,100
6	24,001 but not more than 30,000	1,200
7	30,001 but not more than 36,000	1,250
8	36,001 but not more than 42,000	1,350
9	42,001 but not more than 48,000	1,400
10	48,001 but not more than 54,000	1,500
11	54,001 but not more than 60,000	1,525
12	60,001 but not more than 66,000	1,650
13	66,001 but not more than 74,000	1,700
14	Over 74,000	1,800

15           SECTION 4. Safety clause. The general assembly hereby  
 16 finds, determines, and declares that this act is necessary  
 17 for the immediate preservation of the public peace, health,  
 18 and safety.