



COLORADO

GENERAL ASSEMBLY

Legislative Council
Research Publication No. 367
November 1991

Joint Education Committee

Joint Health, Environment, Welfare,
and Institutions Committee

Joint Judiciary Committee

COLORADO LEGISLATIVE COUNCIL

REPORT TO THE

COLORADO GENERAL ASSEMBLY

JOINT EDUCATION COMMITTEE

**JOINT HEALTH, ENVIRONMENT,
WELFARE AND INSTITUTIONS COMMITTEE**

JOINT JUDICIARY COMMITTEE

Research Publication No. 367

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 Education Committee, Joint Judiciary Committee, and Joint Health, Environment, Welfare, and Institutions Committee. All of these committees were created pursuant to Senate Joint Resolution 91-32.

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
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TLS/pn

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JOINT EDUCATION COMMITTEE

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JOINT EDUCATION COMMITTEE

Committee Charge

Senate Joint Resolution 91-32 directed the Joint Committee on Education to study 1) school district consolidation in the state's K-12 public schools and 2) the role and mission of the Colorado Commission on Higher Education (CCHE) and, specifically, the commission's implementation of House Bill 1187, 1985 Session. In addition, in anticipation of a scheduled repeal of the Colorado Advanced Technology Institute (CATI) in July 1992, the committee provided CATI with the opportunity to inform the committee of their accomplishments to date. The committee met four times and then received approval from the Executive Committee of Legislative Council for a fifth meeting.

Committee Activities

The committee met two full days to address the issue of school district consolidation. A representative from the Colorado Department of Education presented a historical perspective of school district consolidation in Colorado and outlined the process for reorganization set forth in article 30 of title 22, C.R.S., "The School District Organization Act of 1965." In addition, representatives from school districts and boards of cooperative educational services (BOCES) discussed the pros and cons of the consolidation process.

The committee spent three days discussing issues related to the implementation of House Bill 1187, 1985 Session. Among other issues, CCHE provided information about accountability; admission standards; program approval, review, reduction and discontinuance; off-campus programs; financial aid; administrative costs; and linking the state's K-12 system of education to the public postsecondary system of education. Members of the Board of Regents of the University of Colorado and the president of the university testified about administrative costs and allocation of funds in the University of Colorado system.

During consideration of higher education issues, the committee also heard testimony from board members and grant recipients of the Colorado Advanced Technology Institute. Information was provided about CATI's accomplishments to date and the organization's effectiveness in developing technologies and research in conjunction with the state's public institutions of higher education. While no legislation was introduced at the meeting, the committee resolved, by unanimous vote of those present, to support future legislation authorizing the continuation of CATI.

Committee Recommendations

The committee recommends the following two bills for consideration in the 1992 legislative session:

- Bill A - Concerning the Adoption of Policies by the Colorado Commission on Higher Education to Achieve a Better Transition From the Colorado System of Public Elementary and Secondary Education to the Colorado System of Public Postsecondary Education; and
- Bill B - Concerning Changes Relating to the Organization of School Districts .

Linking Higher Education and K-12 Education - Bill A

The committee recommends Bill A as a mechanism to enhance students' ability to succeed in the higher education arena. It requires the Colorado Commission on Higher Education (CCHE), after consultation with the State Board of Education and local school district boards, to develop policies and procedures for a system where postsecondary institutions will report to elementary and secondary public schools regarding the following:

- The skills, abilities, and proficiencies needed by first-year students to succeed at the state's postsecondary institutions;
- The skills, abilities, and proficiencies demonstrated by current first-year students at postsecondary institutions;
- The level of achievement exhibited by first-year students; and
- Other information that will provide a better transition between the two systems of education.

In addition, the bill directs CCHE to adopt policies and procedures for establishing a network for the purpose of exchanging information between faculty at postsecondary institutions and teachers in public schools.

School District Reorganization - Bill B

Prior to the 1940s there were over 2,000 school districts in Colorado, some of which consisted of a single school and many others which did not provide a complete K-12 education. In an attempt to reduce the number of districts and provide a more uniform system of education, the School District Reorganization Act of 1949 was

passed. As the reduction of school districts continued, the 1949 act was revised in 1953, 1957, 1963 and 1965 to accommodate changing needs. During that period, the number of school districts declined to 181. In 1974 the act was revised a final time when pre-1940 statutes regarding consolidation of school districts were incorporated into the 1965 act so that all law regarding the organization of school districts was in one part of Colorado statutes. From 1983 to 1986, five more consolidations occurred, resulting in the present 176 school districts.

Representatives of school districts that had attempted to consolidate or had successfully consolidated from 1983 to 1986 told the committee that the process outlined in the 1965 act is cumbersome, outdated, and does not recognize the needs of districts. For example, the 1965 act still refers to a "county planning committee" and a "county superintendent," neither of which exists today. In addition, those involved in the process found other parts of the statutes to be unclear and difficult to follow.

The committee recognizes that the 1965 act and those preceding it were intended to facilitate the mass reduction of school districts in the state and provide a more uniform system of education. With different circumstances surrounding school districts today, Bill B is recommended with the following goals in mind:

- To provide an updated process that addresses the needs of school districts today;
- To simplify and clarify the process for consolidation or reorganization of school districts; and
- To make statute more readable so that districts and citizens might have a clear sense of the process.

Bill B contains many of the same provisions as in current law. However, in addition to reorganizing current provisions to make the law more readable, the bill contains substantive changes. These are discussed below.

Initiating the school district organization planning process. Current law approaches the reorganization of school districts at a county level through the election of a county planning committee. The law requires the formation of a planning committee if any school district in the county does not provide a complete K-12 system of education or fails to meet accreditation standards set by the Department of Education. Current law also provides a process for consolidation, dissolution and annexation, detachment and annexation, and petitioning for the reorganization of school districts. However, initiating the process in any of these cases differs.

Dissolution and annexation. When a school district fails to establish and operate a school during the current or subsequent school year or when a school district fails

to offer a K-12 program, a planning committee, with the approval of the Commissioner of Education, may dissolve and annex a district under the committee's jurisdiction. In this case, the committee is not required to develop a plan of organization.

Detachment and annexation. When the school boards of adjoining districts deem it to be in their best interests to change their boundaries for the purpose of more economical operation or to provide better educational opportunities to the students in the districts, each board must pass a resolution relative to the proposed change in boundaries. In this case, the committee is not required to develop a plan of organization.

Consolidation. Consolidation is initiated when two adjoining school districts find it in their best interest to consolidate and, by resolution, call for the appointment of a planning committee. Alternatively, 25 percent of the registered voters in a district may file a petition requesting the formation of a planning committee to study consolidation of two or more districts.

The proposed bill amends present law so that any type of school district reorganization may be initiated in either of the following ways:

- One or more local school district boards of education, by resolution, request the appointment of a committee;
- A "petition committee," consisting of three to five people who are not members of the same family, presents a petition signed by 25 percent of a school district's registered electors to the Commissioner of Education and the county clerk requesting the appointment of a committee; or
- When the Commissioner of Education is notified that a district is no longer accredited.

School district organization planning committee. Current law provides that the local school boards affected by a consolidation are to become the planning committee, or in the case of a petition, a planning committee is elected. Bill B provides that when a planning committee is requested or required (as listed above), the Commissioner of Education must call for the appointment of the committee and establish the parameters of the study to be conducted by the committee. The membership of a planning committee, as proposed in Bill B, varies depending on the circumstances surrounding the appointment of a committee.

If multiple school districts are involved in the study:

- one member is appointed by the Commissioner of Education to serve as chair of the committee;

- two members are appointed by the local school board in each of the affected school districts; and
- one member, who must be a parent of a child attending a public school in the affected area, is appointed by the school district advisory accountability committee in each of the affected school districts.

If a single school district is involved in the study:

- one member is appointed by the Commissioner of Education to serve as chair of the committee;
- two members are appointed by the local school board in the school district affected by the study; and
- two members who are parents of children attending a public school in the affected area are appointed by the school district advisory accountability committee in the school district affected by the study.

In either case, if the planning committee is activated by a petition, three additional members are appointed by the petition committee.

When the committee is directed to study detachment and annexation or dissolution and annexation, the district boards of education of the affected school districts serve as the committee, as in current law.

Parameters of study. Both current law and Bill B permit a planning committee to develop an organization plan when a consolidation is envisioned or when a district is not accredited. Bill B also allows the committee to develop a plan for the creation of one or more additional school districts within the existing boundaries of a school district, for dissolution and annexation, and for detachment and annexation.

Contents of the school district organization plan. Bill B contains one comprehensive section regarding requirements of the organization plan. The new section combines three sections of current law regarding the development of an organization plan, requirements of the plan, and those components necessary prior to submission of the plan to the voters. The plan developed pursuant to proposed legislation must include the following:

- Documentation of the parameters of the study and documentation of the committee's consideration of the following: the educational needs of the affected population; provision of diverse educational opportunities for students and parents; equalization of educational opportunities for all public

school students in the state; efficiency and effectiveness of the various education organization options studied; and facility utilization;

- Boundaries for all existing or new school districts;
- The name and number by which each proposed district must be designated;
- A specific proposal for the equitable adjustment and distribution of all or any part of the properties and cash assets of the district whose boundaries may be affected by the plan;
- A specific plan of representation for the members of the board of education for each proposed district, including five or seven director districts, or five or seven directors elected at large, or a combination thereof. (The option of six directors is deleted in Bill B.)

Finally, if the plan results in the dissolution of a school district which has outstanding bonded indebtedness obligations or liabilities, the plan must designate a new district to include at least a portion of the dissolved district. The new district will serve the purpose of administering payment of the bonded indebtedness of the dissolved district.

Tentative approval and hearing on the plan. The proposed bill provides that when the school district organization plan has been tentatively agreed upon by the committee, it must be filed with the Commissioner of Education along with a map and legal description of the boundaries of each proposed district. The commissioner is required to give notice of the filing of the plan within fifteen days by publication of notice in a newspaper of general circulation in each area affected by the plan and must post a copy of the notice at each public school building in the affected area. Current law provides that the tentative plan be submitted to the county superintendent, who, as mentioned previously, no longer exists.

As in current law, Bill B provides that the committee must hold a sufficient number of hearings to allow residents of the areas affected by the plan to receive information about the plan. The bill states that after the hearings, the committee may change the plan and forward its revisions to the Commissioner of Education. Under current law, the commissioner receives the plan and may return it to the committee with suggested changes, with the intended goal of developing revisions which are mutually acceptable to the commissioner and the committee. Bill B, however, provides that if the commissioner requires changes to the plan, it shall be returned to the committee with directions to revise and adopt the plan.

Approval of the plan. Current law requires a majority vote in each district in order for a plan of organization to be approved. Bill B requires a majority vote in the entire area affected by the plan for the plan to be approved. In both cases, if the plan

is approved, the new district or districts are formed 60 days after certification of the vote.

Rejection of the plan. Bill B adds a new provision in case a plan is rejected by the voters. If the proposed plan is rejected, the committee is dissolved. The commissioner may choose to pursue the issue no further, to reappoint the previous committee to develop a revised plan, or to appoint a new committee to develop a revised plan. At that time, the commissioner may also choose to establish new parameters for any additional study.

Status of district assets and indebtedness. Both Bill B and current law contain similar provisions for the distribution of districts assets and indebtedness once a reorganization occurs.

Materials Available

The following materials relevant to the Joint Education Committee hearings are available from the Legislative Council library.

- 1) Summary of meetings:
 - August 19, 1991: consolidation of school districts
 - August 20, 1991: consolidation of school districts
 - October 16, 1991: issues relating to the Colorado Commission on Higher Education
 - October 17, 1991: issues relating to the Colorado Commission on Higher Education
 - November 12, 1991: further discussion of higher education issues, presentation by Colorado Advanced Technology Institute, consideration of interim bills
- 2) A Report on School District Organization, by Morris Danielson and Arthur Ellis, Colorado Department of Education, August 16, 1991
- 3) Responses to the charges set forth in House Bill 1187, 1985 Session, Colorado Commission on Higher Education (Notebook prepared for committee members)

EDUCATION BILL A

A BILL FOR AN ACT

1 CONCERNING THE ADOPTION OF POLICIES BY THE COLORADO COMMISSION
2 ON HIGHER EDUCATION TO ACHIEVE A BETTER TRANSITION FROM
3 THE COLORADO SYSTEM OF PUBLIC ELEMENTARY AND SECONDARY
4 EDUCATION TO THE COLORADO SYSTEM OF PUBLIC POSTSECONDARY
5 EDUCATION.

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 Colorado commission on higher education, after consultation with the state board of education and appropriate school district boards, to adopt policies to aid the Colorado system of public elementary and secondary education and the Colorado system of public postsecondary education in providing a better transition for students from one system to the other.

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

7 SECTION 1. Article 1 of title 23, Colorado Revised
8 Statutes, 1988 Repl. Vol., as amended, is amended BY THE
9 ADDITION OF A NEW SECTION to read:

1 23-1-119. Commission directive - transition between K-12
2 education system and postsecondary education system. (1) THE
3 GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT, IN ORDER FOR
4 STUDENTS TO SUCCEED AT STATE-SUPPORTED INSTITUTIONS OF HIGHER
5 EDUCATION, THE COLORADO PUBLIC SYSTEM OF ELEMENTARY AND
6 SECONDARY EDUCATION MUST HAVE PROVIDED SUCH STUDENTS WITH THE
7 SKILLS AND ABILITIES NECESSARY TO MAKE THE TRANSITION TO THE
8 POSTSECONDARY SYSTEM. THE GENERAL ASSEMBLY FURTHER RECOGNIZES
9 THAT THE ESTABLISHMENT OF GOALS AND STANDARDS FOR PROVIDING
10 SUCH SKILLS AND ABILITIES IS THE PREROGATIVE OF THE ELEMENTARY
11 AND SECONDARY PUBLIC EDUCATION SYSTEM. IT IS THEREFORE THE
12 INTENT OF THE GENERAL ASSEMBLY THAT THE COMMISSION, AFTER
13 CONSULTATION WITH THE STATE BOARD OF EDUCATION AND APPROPRIATE
14 SCHOOL DISTRICT BOARDS, ADOPT POLICIES AND PROCEDURES TO AID
15 THE ELEMENTARY AND SECONDARY PUBLIC EDUCATION SYSTEM AND THE
16 POSTSECONDARY PUBLIC EDUCATION SYSTEM IN ESTABLISHING A BETTER
17 TRANSITION FOR STUDENTS BETWEEN THE TWO SYSTEMS.

18 (2) AFTER CONSULTATION WITH THE STATE BOARD OF EDUCATION
19 AND APPROPRIATE SCHOOL DISTRICT BOARDS, THE COMMISSION SHALL
20 ADOPT POLICIES AND PROCEDURES TO ESTABLISH A MECHANISM FOR
21 POSTSECONDARY INSTITUTIONS TO REPORT BACK TO THE ELEMENTARY
22 AND SECONDARY PUBLIC EDUCATION SYSTEM CONCERNING:

23 (a) THE SKILLS AND ABILITIES, AND THE LEVEL OF
24 PROFICIENCY THEREOF, THAT FIRST-YEAR STUDENTS AT SUCH
25 POSTSECONDARY INSTITUTIONS NEED TO HAVE IN ORDER TO SUCCEED;

26 (b) THE LEVEL OF PROFICIENCY IN SUCH SKILLS AND

1 ABILITIES CURRENTLY EXHIBITED BY FIRST-YEAR STUDENTS;

2 (c) THE LEVEL OF ACHIEVEMENT CURRENTLY EXHIBITED BY
3 FIRST-YEAR STUDENTS; AND

4 (d) ANY OTHER INFORMATION THAT WILL PROVIDE A BETTER
5 TRANSITION FOR STUDENTS BETWEEN THE TWO EDUCATION SYSTEMS.

6 (3) AFTER CONSULTATION WITH THE STATE BOARD OF EDUCATION
7 AND APPROPRIATE SCHOOL DISTRICT BOARDS, THE COMMISSION SHALL
8 ALSO ADOPT POLICIES AND PROCEDURES TO AID THE ELEMENTARY AND
9 SECONDARY PUBLIC EDUCATION SYSTEM AND THE POSTSECONDARY PUBLIC
10 EDUCATION SYSTEM IN ESTABLISHING A NETWORK TO CONNECT THE
11 FACULTY OF POSTSECONDARY INSTITUTIONS WITH THE TEACHERS IN
12 SCHOOL DISTRICTS FOR THE PURPOSE OF EXCHANGING INFORMATION.

13 (4) FOR PURPOSES OF THIS SECTION, "POSTSECONDARY" MEANS
14 RELATED TO INSTRUCTION OF STUDENTS OVER THE AGE OF SIXTEEN
15 YEARS WHO ARE NOT ENROLLED IN A REGULAR PROGRAM OF
16 KINDERGARTEN THROUGH GRADE TWELVE IN A PUBLIC, INDEPENDENT, OR
17 PAROCHIAL SCHOOL.

18 SECTION 2. 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.

EDUCATION BILL B

A BILL FOR AN ACT

1 CONCERNING CHANGES RELATING TO THE ORGANIZATION OF SCHOOL
2 DISTRICTS.

Bill Summary

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

Repeals and reenacts article 30 of title 22, C.R.S., and makes the following changes: Changes the short title of the act to the "School District Organization Act of 1992"; specifies that one process shall apply in all circumstances of organization, including creation of a new district, consolidation of two or more districts, dissolution and annexation of a district, and detachment and annexation of a district; clarifies means for initiating the process, including a request from a board of education, a petition signed by twenty-five percent of the school district's electors, and loss of state accreditation by a district; allows the commissioner of education to set the parameters of the study to be completed by the committee; provides for appointment of committee members by the commissioner, the boards of education of affected school districts, advisory accountability committees of affected school districts, and petition committees if the process was initiated by a petition; states the duties of the committee, including studying the public school system affected by the organization, developing a plan of organization, cooperating with the local boards of education, the state board, and the commissioner, calling and arranging elections on the school organization plan, and assisting in promoting the proposed plan; provides for termination of the committee in accordance

with the parameters set by the commissioner; states requirements for a school organization plan, including boundaries for the new and existing school districts affected by the plan, and a plan of representation for new districts which divides the districts into five or seven director districts or allows election of at-large directors; provides for public hearings after the proposed plan is filed with the commissioner; requires the committee to accept any changes proposed by the commissioner; allows the committee to appeal any of the commissioner's proposed changes to the state board of education; provides for a special school organization election to be conducted by the county clerk and recorder of each county affected by the plan; provides for a public meeting prior to the special election which shall be attended by both the commissioner and the committee to explain the proposed plan; requires the committee to file a certificate of canvass with the county clerk and recorder in each county affected following the election; requires such county clerk and recorder to certify the election results to the commissioner; and provides that, if the proposed plan is not approved by majority vote, the committee shall be dissolved, but allows the commissioner to seek no further action, to reappoint the previous committee, or to appoint a new committee.

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

2 SECTION 1. Article 30 of title 22, Colorado Revised
3 Statutes, 1988 Repl. Vol., as amended, is REPEALED AND
4 REENACTED, WITH AMENDMENTS, to read:

5 ARTICLE 30

6 School District Organization Act of 1992

7 22-30-101. Short title. THIS ARTICLE SHALL BE KNOWN AND
8 MAY BE CITED AS THE "SCHOOL DISTRICT ORGANIZATION ACT OF
9 1992".

10 22-30-102. Legislative declaration. (1) THE GENERAL
11 ASSEMBLY HEREBY DECLARES THAT THIS ARTICLE IS ENACTED FOR THE
12 GENERAL IMPROVEMENT OF THE PUBLIC SCHOOLS IN THE STATE OF
13 COLORADO; FOR THE EQUALIZATION OF THE BENEFITS OF EDUCATION

1 THROUGHOUT THE STATE; FOR THE ORGANIZATION OF PUBLIC SCHOOL
2 DISTRICTS IN THE STATE AND THE ALTERATION OF THE BOUNDARIES OF
3 ESTABLISHED DISTRICTS, IN ORDER TO PROVIDE FOR THE MAINTENANCE
4 OF A THOROUGH AND UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS
5 THROUGHOUT THE STATE; AND FOR A MORE RESPONSIBLE EXPENDITURE
6 OF PUBLIC FUNDS FOR THE SUPPORT OF THE PUBLIC SCHOOL SYSTEM OF
7 THE STATE. IN ORDER TO ACCOMPLISH THESE ENDS, THIS ARTICLE
8 SHALL BE LIBERALLY CONSTRUED.

9 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
10 THE PROVISIONS OF THIS ARTICLE SHALL APPLY IN ALL OF THE
11 FOLLOWING SITUATIONS:

12 (a) THE CREATION OF ONE OR MORE ADDITIONAL SCHOOL
13 DISTRICTS WITHIN THE EXISTING BOUNDARIES OF A SCHOOL DISTRICT;

14 (b) THE CONSOLIDATION OF TWO OR MORE DISTRICTS OR PARTS
15 OF DISTRICTS INTO A NEW SINGLE DISTRICT;

16 (c) THE DISSOLUTION AND ANNEXATION OF A SCHOOL DISTRICT
17 WHEN SUCH DISTRICT FAILS TO OPERATE A SCHOOL WITHIN THE
18 DISTRICT OR WHEN THE STATE BOARD DECLARES THE DISTRICT IS NO
19 LONGER ACCREDITED;

20 (d) THE DETACHMENT AND ANNEXATION TO REVISE, ALTER, OR
21 MODIFY THE BOUNDARIES OF DISTRICTS, FOR THE PURPOSE OF MORE
22 EFFECTIVE OR ECONOMICAL OPERATION, OR IN ORDER TO PROVIDE
23 BETTER EDUCATIONAL OPPORTUNITIES FOR THE SCHOOL AGE CHILDREN
24 RESIDENT IN CERTAIN TERRITORY.

25 (3) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
26 NO REORGANIZATION OF A SCHOOL DISTRICT SHALL OCCUR WITHOUT THE

1 APPOINTMENT OF A SCHOOL ORGANIZATION PLANNING COMMITTEE TO
2 STUDY THE SCHOOL ORGANIZATION AND DEVELOP A PLAN FOR
3 REORGANIZATION OF THE SCHOOL DISTRICT.

4 22-30-103. Definitions. AS USED IN THIS ARTICLE, UNLESS
5 THE CONTEXT OTHERWISE REQUIRES:

6 (1) "COMMISSIONER" MEANS THE COMMISSIONER OF EDUCATION.

7 (2) "COMMITTEE" MEANS THE SCHOOL ORGANIZATION PLANNING
8 COMMITTEE AUTHORIZED TO STUDY SCHOOL DISTRICT ORGANIZATION AND
9 DEVELOP A PLAN FOR REORGANIZATION.

10 (3) "CONSOLIDATION" MEANS REORGANIZATION OF TWO OR MORE
11 SCHOOL DISTRICTS INTO FEWER DISTRICTS.

12 (4) "DETACHMENT AND ANNEXATION" MEANS THE ALTERATION OF
13 BOUNDARIES OF TWO OR MORE SCHOOL DISTRICTS.

14 (5) "DIRECTOR DISTRICTS" MEANS SUBDIVISIONS OF A
15 DISTRICT WHICH ARE CONTIGUOUS, COMPACT, AND AS NEARLY EQUAL IN
16 POPULATION AS POSSIBLE.

17 (6) "DISSOLUTION AND ANNEXATION" MEANS THE
18 DISCONTINUANCE OF A SCHOOL DISTRICT AND ANNEXATION OF ITS
19 TERRITORY TO ANOTHER EXISTING SCHOOL DISTRICT.

20 (7) "NEW DISTRICT" MEANS A SCHOOL DISTRICT WHICH HAS
21 BECOME A NEW BODY CORPORATE PURSUANT TO THE PROVISIONS OF THIS
22 ARTICLE.

23 (8) "PARAMETERS OF THE STUDY" MEANS THE TYPE OF
24 ORGANIZATION AND THE BOUNDARIES OF THE TERRITORY TO BE
25 INCLUDED IN THE STUDY AND THE TIMELINESS WITH WHICH THE
26 COMMITTEE SHALL COMPLETE THE STUDY.

1 (9) "PETITION COMMITTEE" MEANS NOT LESS THAN THREE NOR
2 MORE THAN FIVE PERSONS WHO ARE NOT MEMBERS OF THE SAME FAMILY
3 WHO SHALL REPRESENT THE SIGNORS OF A PETITION FOR THE STUDY OF
4 SCHOOL ORGANIZATION IN A DISTRICT.

5 (10) "PLAN OF ORGANIZATION" MEANS THE PLAN OF SCHOOL
6 ORGANIZATION DEVELOPED PURSUANT TO THIS ARTICLE.

7 (11) "REORGANIZATION" MEANS ANY CHANGE IN SCHOOL
8 DISTRICT ORGANIZATION PURSUANT TO THE PROVISIONS OF THIS
9 ARTICLE.

10 (12) "STATE BOARD" MEANS THE STATE BOARD OF EDUCATION.

11 22-30-104. Activation of the school district
12 organization planning process. (1) THE APPOINTMENT OF A
13 SCHOOL ORGANIZATION PLANNING COMMITTEE CHARGED TO STUDY SCHOOL
14 DISTRICT ORGANIZATION SHALL OCCUR WHEN THE COMMISSIONER IS
15 NOTIFIED THAT ANY OF THE FOLLOWING CONDITIONS EXIST:

16 (a) ONE OR MORE DISTRICT BOARDS OF EDUCATION, BY
17 RESOLUTION, REQUEST THE APPOINTMENT OF A SCHOOL ORGANIZATION
18 PLANNING COMMITTEE;

19 (b) A PETITION COMMITTEE, AS DEFINED IN SECTION
20 22-30-103 (9), PRESENTS A PETITION SIGNED BY TWENTY-FIVE
21 PERCENT OF A SCHOOL DISTRICT'S REGISTERED ELECTORS TO THE
22 COMMISSIONER AND TO THE COUNTY CLERK AND RECORDER REQUESTING
23 THE APPOINTMENT OF AN ORGANIZATION PLANNING COMMITTEE AND SUCH
24 PETITION IS DEEMED SUFFICIENT BY THE COUNTY CLERK AND
25 RECORDER'S OFFICE; OR

26 (c) THE STATE BOARD DECLARES A DISTRICT IS NO LONGER

1 ACCREDITED.

2 22-30-105. School organization planning committee.

3 (1) UPON DETERMINATION THAT ONE OR MORE OF THE CONDITIONS
4 DESCRIBED IN SECTION 22-30-104 EXIST, THE COMMISSIONER SHALL
5 CALL FOR THE APPOINTMENT OF A SCHOOL ORGANIZATION PLANNING
6 COMMITTEE AND DEFINE THE PARAMETERS OF THE STUDY. SUCH A
7 COMMITTEE SHALL BE APPOINTED AND HOLD ITS FIRST MEETING WITHIN
8 THIRTY DAYS OF NOTIFICATION BY THE COMMISSIONER.

9 (2) THE COMMITTEE SHALL CONSIST OF THE FOLLOWING
10 APPOINTED MEMBERS:

11 (a) ONE MEMBER APPOINTED BY THE COMMISSIONER WHO SHALL
12 SERVE AS THE CHAIR OF THE COMMITTEE;

13 (b) (I) IF MULTIPLE SCHOOL DISTRICTS ARE INVOLVED IN THE
14 STUDY, TWO MEMBERS APPOINTED BY THE BOARD OF EDUCATION IN EACH
15 SCHOOL DISTRICT AFFECTED BY THE STUDY AND ONE MEMBER APPOINTED
16 BY THE SCHOOL DISTRICT ADVISORY ACCOUNTABILITY COMMITTEE OF
17 EACH SCHOOL DISTRICT AFFECTED BY THE STUDY. SUCH MEMBER SHALL
18 BE A PARENT OF A CHILD ATTENDING A PUBLIC SCHOOL IN THE
19 AFFECTED AREA.

20 (II) IF A SINGLE SCHOOL DISTRICT IS INVOLVED IN THE
21 STUDY, TWO MEMBERS APPOINTED BY THE DISTRICT BOARD OF
22 EDUCATION AND TWO MEMBERS APPOINTED BY THE DISTRICT ADVISORY
23 ACCOUNTABILITY COMMITTEE. THE MEMBERS APPOINTED BY THE
24 DISTRICT ADVISORY ACCOUNTABILITY COMMITTEE SHALL BE PARENTS OF
25 CHILDREN ATTENDING PUBLIC SCHOOL IN THE AFFECTED AREA AND
26 MEMBERS OF SCHOOL BUILDING ACCOUNTABILITY COMMITTEES.

1 (c) IF THE SCHOOL ORGANIZATION PLANNING PROCESS WAS
2 ACTIVATED BY A PETITION, THREE MEMBERS APPOINTED BY THE
3 PETITION COMMITTEE.

4 (3) NOTWITHSTANDING THE ABOVE DESIGNATION OF COMMITTEE
5 MEMBERS, IN THE CASE OF DETACHMENT AND ANNEXATION OR
6 DISSOLUTION AND ANNEXATION, THE DISTRICT BOARDS OF EDUCATION
7 OF THE AFFECTED SCHOOL DISTRICTS SHALL SERVE AS THE COMMITTEE.

8 22-30-106. Duties of the committee. (1) THE COMMITTEE
9 SHALL HAVE THE FOLLOWING DUTIES:

10 (a) TO MAKE A CAREFUL STUDY OF THE PUBLIC SCHOOL SYSTEMS
11 WITHIN THE PARAMETERS OF THE STUDY ESTABLISHED BY THE
12 COMMISSIONER;

13 (b) TO DEVELOP A PLAN OF ORGANIZATION FOR THE SCHOOL
14 DISTRICT WHICH INCLUDES CONSIDERATION OF THE FOLLOWING:

15 (I) THE EDUCATIONAL NEEDS OF THE AFFECTED POPULATION;

16 (II) THE PROVISION OF DIVERSE EDUCATIONAL OPPORTUNITIES
17 FOR STUDENTS AND PARENTS;

18 (III) EQUALIZATION OF THE EDUCATIONAL OPPORTUNITIES FOR
19 ALL PUBLIC SCHOOL STUDENTS IN THE STATE OF COLORADO;

20 (IV) THE EFFICIENCY AND EFFECTIVENESS OF THE VARIOUS
21 EDUCATIONAL ORGANIZATION OPTIONS BEING STUDIED; AND

22 (V) FACILITY UTILIZATION;

23 (c) TO COOPERATE WITH THE BOARDS OF EDUCATION, THE STATE
24 BOARD, AND THE COMMISSIONER IN ARRIVING AT A PLAN OF
25 ORGANIZATION WITHIN THE PARAMETERS OF THE STUDY ESTABLISHED BY
26 THE COMMISSIONER;

1 (d) TO FILE WITH THE COMMISSIONER AND THE COUNTY CLERK
2 AND RECORDER IN EACH COUNTY AFFECTED BY THE PROPOSED PLAN OF
3 ORGANIZATION A MAP AND LEGAL DESCRIPTION OF ANY NEW DISTRICT,
4 THE NAME OF THE COUNTY IN WHICH THE NEW DISTRICT SHALL BE
5 HEADQUARTERED, AND THE NAME AND NUMBER BY WHICH THE NEW
6 DISTRICT SHALL BE DESIGNATED;

7 (e) TO CALL FOR AND MAKE ARRANGEMENTS FOR AN ELECTION OR
8 ELECTIONS TO VOTE UPON THE PLAN OF ORGANIZATION AS PROVIDED IN
9 SECTION 22-30-119 AND, IF THE MAJORITY VOTE IN FAVOR OF SUCH
10 PLAN, TO CALL FOR AN ELECTION TO ELECT A BOARD OF EDUCATION
11 FOR THE NEW DISTRICT AS PROVIDED IN SECTION 22-30-125;

12 (f) TO ASSIST IN THE DISSEMINATION OF INFORMATION AS TO
13 THE PURPOSE AND BENEFITS OF THE PROPOSED PLAN OF ORGANIZATION;
14 AND

15 (g) TO MAKE ALL CERTIFICATIONS AND PERFORM ALL OTHER
16 ACTS SPECIFICALLY REQUIRED OF THE COMMITTEE BY THIS ARTICLE.

17 22-30-107. Vacancies. AFTER A COMMITTEE IS FORMED, IN
18 CASE OF A VACANCY ON THE COMMITTEE BY DEATH, RESIGNATION,
19 REMOVAL FROM THE COUNTY, OR FAILURE TO ACCEPT MEMBERSHIP
20 THEREON, THE VACANCY SHALL BE FILLED IN THE SAME MANNER AS THE
21 ORIGINAL APPOINTMENT. IF ANY MEMBER FAILS TO ATTEND TWO
22 CONSECUTIVE MEETINGS, AFTER DUE NOTICE AND WITHOUT BEING
23 EXCUSED BY THE COMMITTEE CHAIR, THE OFFICE OF SUCH MEMBER
24 SHALL BE DECLARED VACANT.

25 22-30-108. Meetings - notice. MEETINGS OF A COMMITTEE
26 MAY BE HELD AT A TIME AND PLACE SPECIFIED BY THE COMMITTEE AT

1 A PREVIOUS MEETING WITHOUT FURTHER NOTICE. THE CHAIR MAY CALL
2 SPECIAL MEETINGS UPON NOTICE MAILED BY THE SECRETARY TO EACH
3 MEMBER AT LEAST FIVE DAYS BEFORE SUCH MEETING. A MEETING OF
4 THE COMMITTEE SHALL BE CALLED BY THE CHAIR ON WRITTEN REQUEST
5 OF THREE MEMBERS OF THE COMMITTEE UPON NOTICE MAILED BY THE
6 SECRETARY TO EACH MEMBER AT LEAST FIVE DAYS BEFORE SUCH
7 MEETING.

8 22-30-109. Names certified to commissioner. WHEN ANY
9 COMMITTEE HAS BEEN APPOINTED, AS PROVIDED IN SECTION 22-30-105
10 (2), THE SECRETARY THEREOF SHALL CERTIFY TO THE COMMISSIONER
11 THE NAMES AND POST OFFICE ADDRESSES OF EACH MEMBER OF SUCH
12 COMMITTEE, INDICATING THE PERSONS ELECTED AS CHAIR AND
13 VICE-CHAIR. ANY CHANGE IN THE PERSONNEL OR OFFICERS OF SUCH
14 COMMITTEE SHALL BE LIKEWISE CERTIFIED TO THE COMMISSIONER.

15 22-30-110. State school organization fund. THERE IS
16 HEREBY ESTABLISHED IN THE STATE TREASURY A FUND TO BE KNOWN AS
17 THE STATE SCHOOL ORGANIZATION FUND, WHICH FUND SHALL CONSIST
18 OF SUCH MONEYS AS MAY BE FROM TIME TO TIME APPROPRIATED
19 THERETO BY THE GENERAL ASSEMBLY. THE COMMISSIONER SHALL
20 ADMINISTER THE FUND IN ACCORDANCE WITH THE PROVISIONS OF THIS
21 ARTICLE.

22 22-30-111. Compensation - expenses. MEMBERS OF A
23 COMMITTEE SHALL NOT RECEIVE ANY COMPENSATION FOR THEIR
24 SERVICES BUT SHALL BE ENTITLED TO REIMBURSEMENT FROM THE STATE
25 SCHOOL ORGANIZATION FUND UPON APPROVAL OF VOUCHERS SUBMITTED
26 TO THE COMMISSIONER FOR ACTUAL EXPENSES INCURRED IN THE

1 PERFORMANCE OF THEIR DUTIES UNDER THIS ARTICLE.

2 22-30-112. Department consultants. (1) UPON REQUEST OF
3 A COMMITTEE, THE COMMISSIONER SHALL PROVIDE CONSULTANTS,
4 ASSISTANTS, OR SUCH OTHER PERSONNEL AS ARE REASONABLY
5 NECESSARY TO ASSIST THE COMMITTEE IN DEVELOPING AND
6 SUBMITTING THE PLAN OF ORGANIZATION.

7 (2) THE STATE BOARD IS AUTHORIZED TO EMPLOY SUCH
8 CONSULTANTS, ASSISTANTS, AND OTHER PERSONNEL, WITHIN THE
9 LIMITS OF APPROPRIATIONS TO THE DEPARTMENT OF EDUCATION FOR
10 SALARIES AND TRAVEL EXPENSES OF PERSONNEL, AS MAY BE NECESSARY
11 TO RENDER ALL REASONABLE ASSISTANCE TO THE VARIOUS COMMITTEES
12 IN THE DEVELOPMENT AND SUBMISSION OF PLANS OF ORGANIZATION.
13 ALL PERSONNEL EMPLOYED SHALL WORK UNDER THE DIRECTION OF THE
14 COMMISSIONER OR A DESIGNATED ASSISTANT COMMISSIONER.

15 22-30-113. Duties of the attorney general. THE ATTORNEY
16 GENERAL SHALL BE THE LEGAL COUNSEL AND ADVISOR OF THE STATE
17 BOARD, THE COMMISSIONER, AND ALSO, WHEN REQUESTED BY THE
18 COMMISSIONER, ANY OF THE COMMITTEES ORGANIZED PURSUANT TO THE
19 PROVISIONS OF THIS ARTICLE FOR PURPOSES RELATED TO THE PROPER
20 ADMINISTRATION OF THIS ARTICLE.

21 22-30-114. Termination of committee existence. THE
22 PARAMETERS OF THE STUDY, AS ESTABLISHED BY THE COMMISSIONER,
23 SHALL CONTROL THE EXISTENCE OF THE COMMITTEE. THE COMMITTEE
24 SHALL THEREFORE CEASE TO EXIST AT THE TIME INDICATED IN THE
25 PARAMETERS OF THE STUDY.

26 22-30-115. Requirements for plan of organization.

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1 (1) THE RECOMMENDATIONS INCLUDED IN THE PLAN OF ORGANIZATION
2 SHALL DOCUMENT THE PARAMETERS OF THE STUDY, AS ESTABLISHED BY
3 THE COMMISSIONER, AND SHALL DOCUMENT THE COMMITTEE'S
4 CONSIDERATION OF THE FACTORS LISTED IN SECTION 22-30-106 (1)
5 (b).

6 (2) THE PLAN OF ORGANIZATION SHALL ESTABLISH BOUNDARIES
7 FOR ALL EXISTING OR NEW SCHOOL DISTRICTS IN THE PLAN BY LEGAL
8 DESCRIPTION.

9 (3) THE PLAN OF ORGANIZATION SHALL SET FORTH THE NAME
10 AND NUMBER BY WHICH EACH PROPOSED DISTRICT SHALL BE
11 DESIGNATED.

12 (4) THE PLAN OF ORGANIZATION SHALL CONTAIN A SPECIFIC
13 PROPOSAL FOR THE EQUITABLE ADJUSTMENT AND DISTRIBUTION OF ALL
14 OR ANY PART OF THE PROPERTIES AND CASH ASSETS OF THE DISTRICTS
15 WHOSE BOUNDARIES MAY BE AFFECTED BY THE CREATION OR
16 DISSOLUTION OF A DISTRICT OR DISTRICTS. IN CONSIDERING AN
17 EQUITABLE ADJUSTMENT OF THE ASSETS OF SUCH SCHOOL DISTRICTS,
18 THE COMMITTEE SHALL CONSIDER THE OUTSTANDING GENERAL
19 LIABILITIES AND OBLIGATIONS OF THE DISTRICTS WHICH MAY BE SO
20 AFFECTED, THE NUMBER OF CHILDREN ATTENDING PUBLIC SCHOOL IN
21 EACH SUCH DISTRICT, THE VALUATION FOR ASSESSMENT OF TAXABLE
22 PROPERTY IN EACH SUCH DISTRICT, THE AMOUNT OF OUTSTANDING
23 BONDED INDEBTEDNESS OF EACH SUCH DISTRICT, THE PURPOSE FOR
24 WHICH SUCH BONDED INDEBTEDNESS WAS INCURRED, AND THE VALUE,
25 LOCATION, AND DISPOSITION OF ALL REAL PROPERTIES LOCATED IN
26 THE DISTRICTS WHICH MAY BE AFFECTED BY THE CREATION OR

1 DISSOLUTION OF A DISTRICT OR DISTRICTS.

2 (5) THE PLAN OF ORGANIZATION SHALL PROVIDE A SPECIFIC
3 PLAN OF REPRESENTATION FOR THE MEMBERS OF THE BOARD OF
4 EDUCATION OF EACH PROPOSED DISTRICT. EACH SUCH PROPOSED
5 DISTRICT MAY BE SUBDIVIDED INTO FIVE OR SEVEN DIRECTOR
6 DISTRICTS OR MAY HAVE ALL DIRECTORS ELECTED AT LARGE OR MAY
7 HAVE A COMBINATION THEREOF.

8 (6) IF THE PLAN OF ORGANIZATION RESULTS IN THE
9 DISSOLUTION OF A SCHOOL DISTRICT WHICH HAS OUTSTANDING BONDED
10 INDEBTEDNESS OBLIGATIONS OR LIABILITIES, THE PLAN OF
11 ORGANIZATION SHALL DESIGNATE A NEW DISTRICT, WHICH INCLUDES AT
12 LEAST A PORTION OF THE DISSOLVED DISTRICT, AS A SUCCESSOR FOR
13 THE PURPOSE OF ADMINISTERING PAYMENT OF THE BONDED
14 INDEBTEDNESS OBLIGATIONS OF THE DISSOLVED DISTRICT, AND THE
15 BOARD OF EDUCATION OF THE NEW DISTRICT SO DESIGNATED SHALL
16 HAVE ALL THE POWERS, RIGHTS, DUTIES, AND RESPONSIBILITIES OF
17 THE BOARD OF EDUCATION OF THE DISSOLVED DISTRICT FOR
18 ADMINISTERING PAYMENT OF THE OUTSTANDING BONDED INDEBTEDNESS
19 OBLIGATIONS AND LIABILITIES OF THE DISSOLVED DISTRICT. ALL
20 REVENUES WHICH ACCRUE FROM THE TAX LEVIES TO SATISFY SAID
21 OBLIGATIONS AND LIABILITIES, AND ALL INTEREST WHICH MAY ACCRUE
22 THERETO AS A RESULT OF INVESTMENTS AUTHORIZED BY LAW, SHALL BE
23 HELD IN TRUST BY THE BOARD OF EDUCATION OF THE NEW DISTRICT SO
24 DESIGNATED FOR THE PURPOSE ONLY OF SATISFYING SAID BONDED
25 INDEBTEDNESS OBLIGATIONS AND LIABILITIES OF THE DISSOLVED
26 DISTRICT.

1 22-30-116. Hearing on a plan of organization. (1) WHEN
2 A PLAN OF ORGANIZATION HAS BEEN TENTATIVELY AGREED UPON BY THE
3 COMMITTEE, THE PLAN, ALONG WITH AN ATTACHED MAP AND LEGAL
4 DESCRIPTION OF THE BOUNDARIES OF EACH PROPOSED SCHOOL
5 DISTRICT, SHALL BE FILED WITH THE COMMISSIONER.

6 (2) WITHIN FIFTEEN DAYS OF THE FILING OF THE PLAN OF
7 ORGANIZATION, THE COMMISSIONER SHALL GIVE NOTICE OF THE FILING
8 OF SUCH PLAN, MAP, AND LEGAL DESCRIPTION BY PUBLICATION OF
9 SAID FACT IN A NEWSPAPER OF GENERAL CIRCULATION IN EACH AREA
10 AFFECTED BY THE PLAN AND BY CAUSING TO BE POSTED A COPY OF
11 SAID NOTICE UPON EACH PUBLIC SCHOOL BUILDING IN WHICH SCHOOL
12 IS HELD DURING ANY PART OF THE PRECEDING TWELVE MONTHS AND
13 WHICH IS LOCATED WITHIN THE BOUNDARIES OF ANY AREA AFFECTED BY
14 THE PLAN. SUCH PUBLIC NOTICE SHALL GIVE THE TIME AND PLACE OF
15 ANY MEETING TO BE HELD WITHIN THIRTY DAYS BY THE COMMITTEE FOR
16 HEARINGS ON SUCH PLAN. THE COMMITTEE SHALL HOLD A SUFFICIENT
17 NUMBER OF HEARINGS TO ENABLE THE RESIDENTS OF THE AFFECTED
18 AREA TO RECEIVE ADEQUATE INFORMATION AND DETAIL OF SAID PLAN
19 BEING CONSIDERED. ANY INTERESTED PERSON MAY APPEAR AT SUCH
20 HEARINGS AND MAKE COMMENTS ON THE PLAN. IF THERE IS NO
21 NEWSPAPER OF GENERAL CIRCULATION IN THE COMMUNITIES AFFECTED
22 BY THE PLAN, POSTING OF THE NOTICE AS PROVIDED IN THIS
23 SUBSECTION (2) SHALL BE SUFFICIENT.

24 22-30-117. Approval of the plan and submission to the
25 commissioner. FOLLOWING SUCH HEARINGS, THE COMMITTEE MAY MAKE
26 CHANGES IN THE PLAN OF ORGANIZATION AND FORWARD TO THE

1 COMMISSIONER A COPY OF ANY REVISIONS IN THE PLAN. IF THE
2 COMMISSIONER REQUIRES MODIFICATIONS OR AMENDMENTS TO THE PLAN,
3 THE PLAN SHALL BE RETURNED TO THE COMMITTEE WITH DIRECTIONS TO
4 SO REVISE AND ADOPT THE PLAN.

5 22-30-118. Appeal to the state board of education.
6 WHENEVER THE COMMISSIONER FAILS TO APPROVE ANY PLAN OF
7 ORGANIZATION, OR PART OF ANY PLAN, OR REQUIRES MODIFICATIONS
8 OR AMENDMENTS TO ANY PLAN SUBMITTED BY THE COMMITTEE, THE
9 COMMITTEE SHALL HAVE THE RIGHT TO APPEAL THE COMMISSIONER'S
10 DISAPPROVAL, AMENDMENTS, OR MODIFICATIONS TO THE STATE BOARD
11 OF EDUCATION. ANY COMMITTEE WISHING TO MAKE SUCH APPEAL TO
12 THE STATE BOARD SHALL PETITION THE CHAIR OF THE STATE BOARD,
13 IN WRITING, FOR A HEARING ON THE REASONABLENESS OF SUCH
14 DISAPPROVAL, AMENDMENTS, OR MODIFICATION BY THE COMMISSIONER.
15 UPON RECEIPT OF ANY SUCH PETITION, THE CHAIR OF THE STATE
16 BOARD SHALL FIX A TIME FOR THE HEARING OF THE PETITION, NOT
17 MORE THAN THIRTY DAYS AFTER RECEIPT THEREOF, AND SHALL CAUSE
18 NOTICE OF SUCH HEARING TO BE GIVEN TO THE COMMITTEE BY MAILING
19 A COPY OF SUCH NOTICE TO THE SECRETARY OF SUCH COMMITTEE, WHO
20 SHALL IN TURN NOTIFY EACH MEMBER OF THE COMMITTEE OF THE TIME
21 OF SUCH HEARING. ALL SUCH HEARINGS SHALL BE HELD IN SUCH
22 PLACES AS THE STATE BOARD MAY DESIGNATE AND SHALL BE OPEN TO
23 THE PUBLIC. THE STATE BOARD, UPON THE COMPLETION OF ANY SUCH
24 HEARING, SHALL RULE UPON THE REASONABLENESS OF THE
25 COMMISSIONER'S DISAPPROVAL, AMENDMENTS, OR MODIFICATIONS AND
26 SHALL MAKE ITS DECISION AND RESOLVE THE POINTS AT ISSUE

1 BETWEEN THE COMMITTEE AND THE COMMISSIONER, AND SUCH DECISION
2 OF THE STATE BOARD SHALL BE FINAL.

3 22-30-119. Special school organization election
4 scheduled. WHEN THE PLAN OF ORGANIZATION HAS BEEN APPROVED BY
5 THE COMMISSIONER, OR BY THE STATE BOARD WHEN NECESSARY, A
6 SPECIAL ELECTION SHALL BE HELD WHEREIN THE REGISTERED ELECTORS
7 IN EACH SUCH AFFECTED DISTRICT SHALL VOTE UPON ITS ADOPTION OR
8 REJECTION. AT SAID SPECIAL ELECTION, THOSE REGISTERED
9 ELECTORS PARTICIPATING IN THE ELECTION SHALL ALSO DETERMINE BY
10 VOTE WHETHER THE TERM OF OFFICE OF SCHOOL DIRECTORS IN EACH
11 SUCH REORGANIZED DISTRICT SHALL BE FOR FOUR OR SIX YEARS.

12 22-30-120. Special school organization election notice.
13 THE COMMITTEE SHALL SET THE DATE FOR THE SPECIAL SCHOOL
14 ORGANIZATION ELECTION, WHICH SHALL BE CONDUCTED BY EACH COUNTY
15 CLERK AND RECORDER OF THE AFFECTED DISTRICTS IN THE MANNER OF
16 REGULAR SCHOOL BOARD ELECTIONS. THE ELECTION SHALL BE HELD
17 NOT MORE THAN FORTY DAYS AFTER THE PLAN OF ORGANIZATION HAS
18 BEEN APPROVED BY THE COMMISSIONER.

19 22-30-121. Meeting to explain plan. PRIOR TO ANY SPECIAL
20 ORGANIZATION ELECTION, THE COMMISSIONER AND THE COMMITTEE
21 SHALL MEET WITH THE REGISTERED ELECTORS OF THE AREA AFFECTED
22 BY THE PLAN OF ORGANIZATION IN A CONVENIENT PLACE WITHIN SUCH
23 AREA TO EXPLAIN THE PLAN OF ORGANIZATION. THE COMMISSIONER
24 SHALL ARRANGE FOR SUCH MEETING AND SHALL GIVE PUBLIC NOTICE
25 THEREOF AS REQUIRED IN SECTION 22-30-116 (2) AND IN SUCH OTHER
26 MANNER AS MAY BE DEEMED BEST BY THE COMMITTEE.

1 22-30-122. Canvass of votes - certificate - contests.

2 (1) THE COUNTY CLERK AND RECORDER IN EACH COUNTY IN WHICH THE
3 SPECIAL SCHOOL ORGANIZATION ELECTION IS HELD SHALL CANVASS THE
4 RETURNS AND CERTIFY THE RESULTS THEREOF TO THE COMMITTEE AND
5 TO THE COMMISSIONER WITHIN TEN DAYS AFTER THE CLOSING OF THE
6 POLLS. A CERTIFICATE OF THE CANVASS AND RESULTS THEREOF SHALL
7 BE RETAINED ON FILE IN EACH OFFICE OF THE COUNTY CLERK AND
8 RECORDER.

9 (2) IF THE MAJORITY VOTE IS IN FAVOR OF THE PLAN OF
10 ORGANIZATION, THE COUNTY CLERK AND RECORDER IN EACH COUNTY IN
11 WHICH THE ELECTION WAS HELD SHALL FURNISH TO THE COMMISSIONER
12 A MAP AND LEGAL DESCRIPTION OF THE NEW DISTRICT TOGETHER WITH
13 THE NAME AND NUMBER BY WHICH THE SAME SHALL BE DESIGNATED.

14 (3) PROCEEDINGS TO CONTEST THE SPECIAL SCHOOL
15 ORGANIZATION ELECTION OF ANY SCHOOL DISTRICT IN THIS STATE MAY
16 BE INSTITUTED BY ANY REGISTERED ELECTOR OF SUCH SCHOOL
17 DISTRICT. SUCH PROCEEDINGS SHALL BE INSTITUTED WITHIN TEN
18 DAYS AFTER THE VOTES CAST AT SUCH ELECTION ARE CANVASSED. THE
19 DISTRICT COURT OF THE COUNTY WHEREIN THE HEADQUARTERS OF A
20 SCHOOL DISTRICT SHALL BE SITUATED SHALL HAVE JURISDICTION IN
21 ALL SUCH CONTESTS CONCERNING THE PLAN OF ORGANIZATION. IN
22 SUCH CASES THE RULES OF PRACTICE AND PROCEDURE IN CONTESTED
23 ELECTIONS FOR COUNTY OFFICERS SHALL APPLY, AS FAR AS
24 APPLICABLE.

25 22-30-123. new district - powers. IF A MAJORITY OF THE
26 VOTES CAST IN THE SPECIAL SCHOOL ORGANIZATION ELECTION ARE IN

1 FAVOR OF THE PLAN OF ORGANIZATION, THE NEW DISTRICT SHALL,
 2 UPON THE SIXTIETH DAY AFTER CERTIFICATION OF THE RESULTS OF
 3 SAID ELECTION BY THE COUNTY CLERK AND RECORDER IN EACH COUNTY
 4 IN WHICH THE ELECTION WAS HELD, REORGANIZE UNDER THE NAME AND
 5 NUMBER IN THE PLAN AND, IN SUCH NAME, MAY TAKE, HOLD, AND
 6 CONVEY PROPERTY, BOTH REAL AND PERSONAL, AND BE A PARTY TO
 7 SUITS AND CONTRACTS.

8 22-30-124. Rejection of proposed plan. IF THE MAJORITY
 9 VOTE AT SAID ELECTION IS NOT IN FAVOR OF THE PLAN OF
 10 ORGANIZATION, THE COMMITTEE SHALL BE DISSOLVED. THE
 11 COMMISSIONER MAY SEEK NO FURTHER ORGANIZATION PLANNING, MAY
 12 REAPPOINT THE PREVIOUS COMMITTEE TO DEVELOP A REVISED PLAN, OR
 13 MAY APPOINT A NEW COMMITTEE TO DEVELOP A REVISED PLAN. THE
 14 COMMISSIONER MAY CHOOSE TO ESTABLISH NEW PARAMETERS FOR ANY
 15 ADDITIONAL STUDY.

16 22-30-125. Election of school directors in new
 17 districts. (1) WHEN A NEW DISTRICT IS FORMED UNDER THE
 18 PROVISIONS OF THIS ARTICLE, THE CHAIR OF THE COMMITTEE SHALL
 19 CALL FOR A SPECIAL ELECTION IN SUCH NEW DISTRICT FOR THE
 20 SELECTION OF A BOARD OF EDUCATION FOR THE DISTRICT, TO BE HELD
 21 ON THE DAY THE NEW DISTRICT BECOMES A BODY CORPORATE. AT SUCH
 22 ELECTION, FIVE OR SEVEN SCHOOL DIRECTORS, THE NUMBER HAVING
 23 BEEN ESTABLISHED IN SECTION 22-30-115 (5) AND THE TERM OF
 24 OFFICE HAVING BEEN ESTABLISHED AS PROVIDED IN SECTION
 25 22-30-119, SHALL BE ELECTED AS FOLLOWS:

26 (a) WHEN FIVE SCHOOL DIRECTORS ARE TO BE ELECTED AT SUCH

1 ELECTION IN NEW DISTRICTS HAVING FOUR-YEAR TERMS OF OFFICE,
 2 TWO SHALL BE ELECTED TO SERVE UNTIL THE NEXT REGULAR BIENNIAL
 3 SCHOOL ELECTION AND THREE SHALL BE ELECTED TO SERVE UNTIL THE
 4 SECOND REGULAR BIENNIAL SCHOOL ELECTION. AS THE TERM OF
 5 OFFICE OF EACH SUCH SCHOOL DIRECTOR EXPIRES, A SUCCESSOR SHALL
 6 BE ELECTED FOR A FOUR-YEAR TERM OF OFFICE. IN NEW DISTRICTS
 7 HAVING SIX-YEAR TERMS OF OFFICE, TWO DIRECTORS SHALL BE
 8 ELECTED TO SERVE UNTIL THE NEXT REGULAR BIENNIAL SCHOOL
 9 ELECTION, TWO SHALL BE ELECTED TO SERVE UNTIL THE SECOND
 10 REGULAR BIENNIAL SCHOOL ELECTION, AND ONE SHALL BE ELECTED TO
 11 SERVE UNTIL THE THIRD REGULAR BIENNIAL SCHOOL ELECTION. AS
 12 THE TERM OF OFFICE OF EACH SUCH SCHOOL DIRECTOR EXPIRES, A
 13 SUCCESSOR SHALL BE ELECTED FOR A SIX-YEAR TERM OF OFFICE.

14 (b) WHEN SEVEN DIRECTORS ARE TO BE ELECTED AT SUCH
 15 ELECTION, IN NEW DISTRICTS HAVING FOUR-YEAR TERMS OF OFFICE,
 16 THREE SHALL BE ELECTED TO SERVE UNTIL THE NEXT REGULAR
 17 BIENNIAL SCHOOL ELECTION AND FOUR SHALL BE ELECTED TO SERVE
 18 UNTIL THE SECOND REGULAR BIENNIAL SCHOOL ELECTION. AS THE
 19 TERM OF OFFICE OF EACH SUCH SCHOOL DIRECTOR EXPIRES, A
 20 SUCCESSOR SHALL BE ELECTED FOR A FOUR-YEAR TERM OF OFFICE. IN
 21 NEW DISTRICTS HAVING SIX-YEAR TERMS OF OFFICE, TWO DIRECTORS
 22 SHALL BE ELECTED TO SERVE UNTIL THE NEXT REGULAR BIENNIAL
 23 SCHOOL ELECTION, TWO SHALL BE ELECTED TO SERVE UNTIL THE
 24 SECOND REGULAR BIENNIAL SCHOOL ELECTION, AND THREE SHALL BE
 25 ELECTED TO SERVE UNTIL THE THIRD REGULAR BIENNIAL SCHOOL
 26 ELECTION. AS THE TERM OF OFFICE OF EACH SUCH SCHOOL DIRECTOR

1 EXPIRES, A SUCCESSOR SHALL BE ELECTED FOR A SIX-YEAR TERM OF
2 OFFICE.

3 (c) SAID ELECTION SHALL BE HELD IN ACCORDANCE WITH THE
4 "COLORADO ELECTION CODE OF 1980", ARTICLES 1 TO 13 OF TITLE 1,
5 C.R.S., EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE.

6 (d) ALL SCHOOL DIRECTORS SHALL BE VOTED ON AT LARGE BY
7 THE REGISTERED ELECTORS OF THE NEW DISTRICT, EVEN THOUGH EACH
8 CANDIDATE IS REQUIRED TO BE A RESIDENT OF THE DIRECTOR
9 DISTRICT WHICH THAT CANDIDATE SEEKS TO REPRESENT.

10 (2) AFTER THE FIRST ELECTION OF MEMBERS OF THE BOARD OF
11 EDUCATION, THE MEMBERS SO ELECTED FOR SUCH NEW DISTRICT SHALL
12 MEET WITHIN TEN DAYS AFTER THE DATE OF THE FIRST ELECTION OF
13 MEMBERS OF THE BOARD OF EDUCATION AND SHALL ELECT OFFICERS AS
14 PROVIDED BY LAW AND THEREUPON ENTER UPON AND PERFORM ALL THE
15 DUTIES AND EXERCISE ALL THE POWERS OF A BOARD OF EDUCATION.
16 SUCH OFFICERS SHALL BE SELECTED TO SERVE UNTIL THE NEXT
17 REGULAR BIENNIAL SCHOOL ELECTION.

18 (3) WHEN THE MEMBERS OF THE BOARD OF EDUCATION OF THE
19 NEW DISTRICT ASSUME THEIR DUTIES AS PROVIDED IN THIS ARTICLE,
20 THE BOARD OF EDUCATION OF ANY DISTRICT SITUATED WHOLLY WITHIN
21 SAID NEW DISTRICT SHALL CEASE TO FUNCTION, AND THE TERMS OF
22 OFFICE OF THE MEMBERS THEREOF SHALL THEREUPON AUTOMATICALLY
23 EXPIRE.

24 (4) ANY PERSON DESIRING TO BE A CANDIDATE FOR THE OFFICE
25 OF DIRECTOR OF A NEW DISTRICT FORMED UNDER THE PROVISIONS OF
26 THIS ARTICLE SHALL BE A REGISTERED ELECTOR OF THE DISTRICT AND

1 A RESIDENT OF THE DIRECTOR DISTRICT WHICH THE CANDIDATE SEEKS
2 TO REPRESENT. EACH SUCH CANDIDATE SHALL BE NOMINATED IN THE
3 MANNER OTHERWISE PROVIDED BY LAW FOR SCHOOL DIRECTORS.

4 22-30-126. Status of old district - assets. (1) WHEN A
5 PORTION OF THE TERRITORY OF A SCHOOL DISTRICT IS INCLUDED
6 WITHIN A NEW DISTRICT ORGANIZED UNDER THE PROVISIONS OF THIS
7 ARTICLE, SUCH PORTION OF THE TERRITORY OF THE OLD SCHOOL
8 DISTRICT SHALL BE DETACHED BY OPERATION OF LAW WHEN THE NEW
9 DISTRICT BECOMES A BODY CORPORATE, AND IT SHALL BECOME
10 TERRITORY OF THE NEW DISTRICT. WHEN ALL OF THE TERRITORY OF
11 AN OLD SCHOOL DISTRICT IS INCLUDED WITHIN A NEW DISTRICT OR
12 DISTRICTS, IF THE ELECTORS OF MORE THAN ONE PROPOSED NEW
13 DISTRICT SIMULTANEOUSLY ADOPT THE PLANS OF ORGANIZATION, THE
14 CORPORATE STATUS OF THE OLD SCHOOL DISTRICT OR DISTRICTS SHALL
15 BE DISSOLVED BY OPERATION OF LAW WHEN SAID NEW DISTRICT
16 BECOMES A BODY CORPORATE.

17 (2) UNLESS OTHERWISE PROVIDED IN THE PLAN OF
18 ORGANIZATION, WHEN A NEW DISTRICT FORMED UNDER THIS ARTICLE
19 EMBRACES ALL OF THE TERRITORY OF AN OLD SCHOOL DISTRICT, ALL
20 OF THE ASSETS OF THE OLD SCHOOL DISTRICT, INCLUDING ALL
21 PERSONAL AND REAL PROPERTY, EXCEPT MONEYS THEN ON HAND OR TO
22 BE RECEIVED FROM PREVIOUSLY MADE TAX LEVIES FOR THE
23 SATISFACTION OF BONDED INDEBTEDNESS, SHALL BECOME THE PROPERTY
24 OF THE NEW DISTRICT. THE BOARD OF EDUCATION OF THE SUCCESSOR
25 NEW DISTRICT AS DESIGNATED IN THE PLAN OF ORGANIZATION SHALL
26 HAVE ALL RIGHTS, POWERS, AND DUTIES FOR ADMINISTERING PAYMENT

1 OF SAID OUTSTANDING BONDED INDEBTEDNESS OBLIGATIONS IN
 2 ACCORDANCE WITH SECTION 22-30-115 (6).

3 (3) UNLESS OTHERWISE PROVIDED IN THE PLAN OF
 4 ORGANIZATION, WHEN ONLY A PORTION OF THE TERRITORY OF A SCHOOL
 5 DISTRICT IS INCLUDED WITHIN A NEW DISTRICT ORGANIZED UNDER THE
 6 PROVISIONS OF THIS ARTICLE, OR WHEN ALL OF THE TERRITORY OF AN
 7 OLD SCHOOL DISTRICT IS INCLUDED IN MORE THAN ONE NEW DISTRICT
 8 ORGANIZED SIMULTANEOUSLY, ALL OF THE ASSETS OF THE OLD SCHOOL
 9 DISTRICT SHALL BE APPORTIONED BETWEEN THE OLD SCHOOL DISTRICT
 10 AND THE NEW DISTRICT, OR BETWEEN THE TWO OR MORE NEW
 11 DISTRICTS, IF APPLICABLE, IN THE MANNER PRESCRIBED IN
 12 SUBSECTION (4) OF THIS SECTION. IF THE CORPORATE STATUS OF
 13 THE OLD SCHOOL DISTRICT IS NOT DISSOLVED AS A RESULT OF THE
 14 ORGANIZATION OF THE NEW DISTRICT, THE BOARD OF EDUCATION OF
 15 THE OLD DISTRICT SHALL CONTINUE TO PERFORM DUTIES AND EXERCISE
 16 POWERS DELEGATED CONCERNING THE ADMINISTERING OF THE PAYMENT
 17 OF ITS PREVIOUSLY INCURRED BONDED INDEBTEDNESS, EVEN THOUGH
 18 SUCH TERRITORY IS DETACHED, EXCEPT INSOFAR AS A NEW DISTRICT
 19 HAS VOTED TO ASSUME A PROPORTIONATE SHARE OF SAID BONDED
 20 INDEBTEDNESS IN THE MANNER AUTHORIZED BY LAW. IF THE
 21 CORPORATE STATUS OF THE OLD SCHOOL DISTRICT IS DISSOLVED AS A
 22 RESULT OF IT HAVING BEEN WHOLLY INCLUDED WITHIN A NEW DISTRICT
 23 OR DISTRICTS AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION,
 24 THE BOARD OF EDUCATION OF THE NEW DISTRICT SHALL PERFORM THE
 25 DUTIES AND EXERCISE THE POWERS DELEGATED FOR ADMINISTERING
 26 PAYMENT OF SUCH BONDED INDEBTEDNESS WITH DUE REGARD TO ANY

1 PROPORTIONATE SHARE THEREOF WHICH MAY HAVE BEEN ASSUMED BY A
 2 NEW DISTRICT IN THE MANNER AUTHORIZED BY LAW.

3 (4) UNLESS OTHERWISE PROVIDED IN THE PLAN OF
 4 ORGANIZATION, WHEN THE CONDITIONS PRESCRIBED IN SUBSECTION (3)
 5 OF THIS SECTION OCCUR, ALL OF THE ASSETS OF THE OLD SCHOOL
 6 DISTRICT, INCLUDING ALL PERSONAL AND REAL PROPERTIES EXCEPT
 7 MONEYS THEN ON HAND OR TO BE RECEIVED FROM PREVIOUSLY MADE TAX
 8 LEVIES FOR THE SATISFACTION OF BONDED INDEBTEDNESS, SHALL BE
 9 APPORTIONED BETWEEN THE OLD SCHOOL DISTRICT AND THE NEW
 10 DISTRICT OR DISTRICTS OR BETWEEN THE TWO OR MORE NEW
 11 DISTRICTS, IF APPLICABLE, AS FOLLOWS:

12 (a) ALL REAL PROPERTY SHALL REMAIN OR BECOME THE
 13 PROPERTY OF THE OLD SCHOOL DISTRICT OR NEW DISTRICT IN WHICH
 14 LOCATED.

15 (b) ALL PERSONAL PROPERTY, EXCEPT CASH ASSETS, BUT
 16 INCLUDING MONEYS THEN ON HAND OR TO BE RECEIVED FROM
 17 PREVIOUSLY MADE TAX LEVIES FOR THE SATISFACTION OF BONDED
 18 INDEBTEDNESS, SHALL REMAIN OR BECOME THE PROPERTY OF THE OLD
 19 SCHOOL DISTRICT OR NEW DISTRICT IN WHICH LOCATED.

20 (c) ALL CASH ASSETS, EXCEPT MONEYS THEN ON HAND OR TO BE
 21 RECEIVED FROM PREVIOUSLY MADE TAX LEVIES FOR THE SATISFACTION
 22 OF BONDED INDEBTEDNESS, SHALL BE APPORTIONED BETWEEN THE OLD
 23 SCHOOL DISTRICT AND THE NEW DISTRICT OR BETWEEN THE TWO OR
 24 MORE NEW DISTRICTS, IF APPLICABLE, ON THE BASIS OF THE SCHOOL
 25 ENROLLMENT OF EACH SUCH OLD SCHOOL DISTRICT AS SHOWN BY THE
 26 SECRETARY'S MOST RECENT ANNUAL REPORT. THE APPORTIONMENT OF

1 MONEYS UNDER THIS PROVISION SHALL BE MADE BY THE COUNTY
 2 TREASURER, UNDER THE DIRECTION OF THE COMMISSIONER AND IN A
 3 ACCORDANCE WITH THE PROVISIONS OF THE PLAN OF ORGANIZATION,
 4 MONTHLY AS THE MONEYS BECOME AVAILABLE. IF THERE ARE ANY
 5 UNPAID SCHOOL DISTRICT TAXES ON THE DATE UPON WHICH THE NEW
 6 DISTRICT BECOMES A BODY CORPORATE OTHER THAN TAXES LEVIED FOR
 7 THE SATISFACTION OF BONDED INDEBTEDNESS, THE COUNTY TREASURER,
 8 UNDER THE DIRECTION OF THE COMMISSIONER AND IN ACCORDANCE WITH
 9 THE PROVISIONS OF THE PLAN OF ORGANIZATION, SHALL APPORTION
 10 THE REVENUES FROM SUCH UNPAID TAXES MONTHLY, WHEN SUCH
 11 REVENUES ACCRUE AFTER THE NEW DISTRICT HAS BECOME A BODY
 12 CORPORATE, BETWEEN THE OLD SCHOOL DISTRICT AND THE NEW
 13 DISTRICT OR DISTRICTS, OR BETWEEN THE TWO OR MORE NEW
 14 DISTRICTS, IF APPLICABLE, IN ACCORDANCE WITH THE LOCATION OF
 15 THE PROPERTY FROM WHICH SUCH TAX REVENUES SHALL ACCRUE.

16 (5) (a) IN THE EVENT ONLY ONE NEW DISTRICT EMBRACES ALL
 17 OF THE TERRITORY OF AN OLD SCHOOL DISTRICT, THE NEW DISTRICT
 18 SHALL ASSUME ALL OF THE OUTSTANDING OBLIGATIONS AND
 19 LIABILITIES OF THE DISSOLVED DISTRICT, EXCEPT THOSE FOR
 20 PREVIOUSLY INCURRED BONDED INDEBTEDNESS; BUT BONDED
 21 INDEBTEDNESS INCURRED BY THE FORMER SCHOOL DISTRICT MAY BE
 22 ASSUMED BY THE NEW DISTRICT AS PROVIDED IN SECTION 22-30-128.

23 (b) WHEN THE OLD SCHOOL DISTRICT REMAINS IN EXISTENCE,
 24 EVEN THOUGH A PORTION OF THE TERRITORY HAS BEEN INCORPORATED
 25 WITHIN A NEW DISTRICT, PREVIOUSLY INCURRED BONDED INDEBTEDNESS
 26 OF SUCH OLD DISTRICT SHALL BE PAID AS PROVIDED IN SECTIONS

1 22-30-127 AND 22-42-122; AND, EXCEPT WHEN THE PLAN OF
 2 ORGANIZATION PROVIDES OTHERWISE, THE SCHOOL DISTRICT FROM
 3 WHICH THE TERRITORY WAS REMOVED SHALL REMAIN LIABLE FOR ALL
 4 OTHER PREVIOUSLY INCURRED LIABILITIES AND OBLIGATIONS.

5 (c) UNLESS OTHERWISE PROVIDED IN THE PLAN OF
 6 ORGANIZATION, WHEN TWO OR MORE NEW DISTRICTS ORGANIZED
 7 SIMULTANEOUSLY SHALL INCLUDE ALL OF THE TERRITORY OF AN OLD
 8 SCHOOL DISTRICT, EACH NEW DISTRICT SHALL BE JOINTLY AND
 9 SEVERALLY LIABLE FOR ALL OF THE OUTSTANDING LIABILITIES AND
 10 OBLIGATIONS OF THE DISSOLVED SCHOOL DISTRICT, EXCEPT THOSE
 11 OUTSTANDING OBLIGATIONS AND LIABILITIES PREVIOUSLY INCURRED
 12 FOR BONDED INDEBTEDNESS; BUT A PROPORTIONATE SHARE OF THE
 13 PREVIOUSLY INCURRED BONDED INDEBTEDNESS MAY BE ASSUMED AS
 14 PROVIDED IN SECTION 22-30-128.

15 (6) IF, UPON THE EFFECTIVE DATE OF THE ORGANIZATION OF A
 16 NEW SCHOOL DISTRICT, AS SPECIFIED IN SECTION 22-30-123, A
 17 SCHOOL DISTRICT INCLUDED IN A PLAN OF ORGANIZATION HAS A
 18 WARRANT INDEBTEDNESS OR OUTSTANDING LIABILITY, OTHER THAN
 19 BONDED INDEBTEDNESS, IN EXCESS OF THE EQUIVALENT OF ONE-HALF
 20 MILL ON ITS VALUATION FOR ASSESSMENT, THEN THE BOARD OF
 21 EDUCATION OF ANY SUCCESSOR DISTRICT IS AUTHORIZED TO LEVY A
 22 SPECIAL TAX, NOT TO EXCEED ONE MILL, AGAINST THE TAXABLE
 23 PROPERTY OF THE OLD DISTRICT, THE REVENUE FROM WHICH SHALL BE
 24 APPLIED TO THE RETIREMENT OF THE WARRANT INDEBTEDNESS OR
 25 OUTSTANDING LIABILITIES OF SUCH DISTRICT. WHEN THEY ARE
 26 RETIRED, THE LEVY SHALL BE DISCONTINUED. THE PROCEDURES TO BE

1 FOLLOWED UNDER THE PROVISIONS OF THIS SUBSECTION (6) SHALL BE
2 THE SAME AS PROVIDED IN THIS TITLE FOR THE RETIREMENT OF
3 BONDED INDEBTEDNESS.

4 22-30-127. Existing bonded indebtedness. (1) THE BONDED
5 INDEBTEDNESS OF ANY SCHOOL DISTRICT OUTSTANDING AT THE TIME OF
6 INCLUSION OF ALL OR ANY PART OF SUCH DISTRICT'S TERRITORY IN A
7 NEW DISTRICT ORGANIZED UNDER THIS ARTICLE SHALL BE PAID IN THE
8 FOLLOWING MANNER:

9 (a) ALL OF SAID BONDED INDEBTEDNESS OF SUCH OLD SCHOOL
10 DISTRICT SHALL BE PAID BY THE OLD SCHOOL DISTRICT WHICH ISSUED
11 AND OWES THE SAME BY A SPECIAL TAX LEVIED FROM TIME TO TIME AS
12 MAY BE NECESSARY BY THE BOARD OF EDUCATION OF THE NEW
13 DISTRICT, WHICH SPECIAL TAX SHALL BE LEVIED UPON THE SAME
14 TAXABLE PROPERTY WHICH WOULD HAVE BEEN LEVIED UPON TO PAY SAID
15 INDEBTEDNESS OF SAID OLD SCHOOL DISTRICT IF NO REORGANIZATION
16 HAD OCCURRED, EXCEPT AS IS PROVIDED IN THIS ARTICLE TO THE
17 CONTRARY.

18 (b) IF THE ASSUMPTION OF ALL OF SAID BONDED INDEBTEDNESS
19 BY ONE NEW DISTRICT HAS BEEN APPROVED AS PROVIDED IN SECTION
20 22-30-128, SUCH BONDED INDEBTEDNESS SHALL BE PAID IN THE
21 MANNER PROVIDED BY LAW FOR THE PAYING OF ANY BONDED
22 INDEBTEDNESS WHICH THE NEW DISTRICT CONTRACTS PURSUANT TO
23 SECTION 22-30-130.

24 (c) IF THE ASSUMPTION OF ONLY A PORTION OF SAID BONDED
25 INDEBTEDNESS HAS BEEN APPROVED BY ANY NEW DISTRICT, AS
26 PROVIDED IN SECTION 22-30-128, SUCH PORTION OF THE BONDED

1 INDEBTEDNESS SHALL BE PAID BY A TAX LEVIED FROM TIME TO TIME
2 ON ALL THE TAXABLE PROPERTY LOCATED WITHIN THE NEW DISTRICT.
3 SUCH TAX SHALL NOT EXCEED THAT PROPORTIONATE SHARE OF THE
4 TOTAL AMOUNT OF OUTSTANDING BONDED INDEBTEDNESS SO ASSUMED, AS
5 DETERMINED BY THE PROPORTION WHICH THE TOTAL VALUATION FOR
6 ASSESSMENT OF THE TAXABLE PROPERTY IN THE OLD SCHOOL DISTRICT,
7 WHICH IS INCLUDED IN THE NEW DISTRICT, BEARS TO THE TOTAL
8 VALUATION FOR ASSESSMENT OF ALL TAXABLE PROPERTY IN SUCH OLD
9 SCHOOL DISTRICT.

10 (2) WHENEVER TWO OR MORE OLD SCHOOL DISTRICTS, OR
11 PORTIONS OF SUCH DISTRICTS, HAVE BEEN REORGANIZED AND INCLUDED
12 WITHIN A NEW DISTRICT AND WHENEVER AN OLD SCHOOL DISTRICT HAS
13 BEEN DISSOLVED AND INCLUDED IN ANY OTHER DISTRICT OR
14 DISTRICTS, UNDER THE PROVISIONS OF THIS ARTICLE, AND AT THE
15 TIME OF SUCH REORGANIZATION OR DISSOLUTION AND INCLUSION ONE
16 OR MORE OF SAID OLD SCHOOL DISTRICTS HAS OUTSTANDING BONDED
17 INDEBTEDNESS, WHICH INDEBTEDNESS HAS NOT BEEN ASSUMED BY SAID
18 NEW DISTRICT PURSUANT TO SECTION 22-30-128, THE FOLLOWING
19 DUTIES AND RESPONSIBILITIES SHALL BE PERFORMED BY THE
20 FOLLOWING OFFICERS:

21 (a) THE BOARD OF EDUCATION OF SUCH NEW DISTRICT SHALL
22 CERTIFY TO THE BOARD OF COUNTY COMMISSIONERS UNDER SEPARATE
23 HEADINGS THE FOLLOWING: THE NUMBERS OF ALL OLD SCHOOL
24 DISTRICTS WHICH HAD ANY BONDED INDEBTEDNESS OUTSTANDING AT THE
25 TIME SAID OLD SCHOOL DISTRICTS WERE REORGANIZED AND UNITED
26 INTO SUCH NEW DISTRICT; THE LEGAL DESCRIPTION OF THE PROPERTY

1 OF SUCH OLD SCHOOL DISTRICTS, WHICH PROPERTY IS LIABLE FOR
2 PAYMENT OF ALL OR A PORTION OF THE OUTSTANDING BONDED
3 INDEBTEDNESS OF SUCH DISTRICTS; THE AMOUNT OF SUCH
4 INDEBTEDNESS WHICH IS OUTSTANDING; AND THE AMOUNT REQUIRED FOR
5 THE ENSUING CALENDAR YEAR TO MEET THE INTEREST AND PRINCIPAL
6 FALLING DUE THEREIN.

7 (b) THE BOARD OF COUNTY COMMISSIONERS SHALL LEVY,
8 SEGREGATED UNDER SEPARATE HEADINGS FOR THE SAID OLD SCHOOL
9 DISTRICTS AND FOR THE WHOLE OF SAID NEW DISTRICT, THE SEVERAL
10 AMOUNTS PROPERLY APPLICABLE THERETO FOR TAXES AT THE SAME TIME
11 THAT OTHER TAXES ARE LEVIED AND AT SUCH RATES, AS TO EACH SUCH
12 OLD SCHOOL DISTRICT AND AS TO THE WHOLE OF SAID NEW DISTRICT,
13 FOR THE PAYMENT OF THE MONEYS REQUIRED FOR SAID AMOUNTS OF
14 EITHER PRINCIPAL OR INTEREST, OR BOTH, AND FOR THE OTHER FUNDS
15 NEEDED BY SAID NEW DISTRICT, CERTIFIED BY THE BOARD OF
16 EDUCATION AS WILL PRODUCE THE SEVERAL AMOUNTS SO CERTIFIED.

17 (c) THE AMOUNTS OF SAID TAXES WHICH SHALL BE LEVIED ON
18 THE SEVERAL PORTIONS OF SAID NEW DISTRICT AND ON THE ENTIRE
19 NEW DISTRICT SHALL BE PLACED IN SEPARATE COLUMNS IN THE TAX
20 BOOK, WHICH COLUMNS SHALL BE HEADED "SPECIAL SCHOOL TAX" AND
21 SHALL BE SUBDIVIDED INTO SEPARATE COLUMNS DESIGNATED BY THE
22 NUMBERS OF THE OLD SCHOOL DISTRICTS BY WHICH SAID BONDED
23 INDEBTEDNESS WAS ISSUED, SHOWING WHAT PORTION OF SAID SPECIAL
24 TAX IS FOR THE PURPOSES OF THE ENTIRE NEW DISTRICT AND WHAT
25 PORTION IS FOR INTEREST OR PRINCIPAL OF BONDED INDEBTEDNESS OF
26 OLD SCHOOL DISTRICTS, TO WHICH INDEBTEDNESS SAID OLD SCHOOL

1 DISTRICTS WERE SUBJECT AT THE TIME OF REORGANIZATION OR
2 DISSOLUTION, AND INCLUSION OF SUCH OLD SCHOOL DISTRICTS IN THE
3 NEW DISTRICT.

4 (d) THE COUNTY ASSESSOR AND THE COUNTY TREASURER SHALL
5 SO ARRANGE THEIR TAX SCHEDULES AND BOOKS AS TO CONFORM TO THE
6 PROVISIONS OF THIS SECTION AND WITH COLUMN HEADINGS
7 RESPECTIVELY FOR THE ENTIRE NEW DISTRICT SUBDIVIDED INTO
8 COLUMNS DESIGNATED BY PARENTHESES, WITH THE NUMBER OF THE OLD
9 SCHOOL DISTRICT BY WHICH SUCH BONDED INDEBTEDNESS WAS CREATED
10 AND WHICH INDEBTEDNESS IS UNDISCHARGED, AND SHOWING, AS TO
11 EACH PROPERTY LISTED, THE AMOUNT OF TAX PROPERLY LEVIED ON
12 SUCH PROPERTY ON ACCOUNT OF SUCH BONDED INDEBTEDNESS EXISTING
13 AGAINST SAID PROPERTY AS A PORTION OF THE OLD SCHOOL DISTRICT
14 REORGANIZED OR DISSOLVED, AND INCLUDED WITHIN THE NEW DISTRICT
15 AT THE TIME OF SAID LEVY.

16 22-30-128. Election on assuming the existing bonded
17 indebtedness. (1) THE COMMITTEE MAY SUBMIT THE ISSUE OF
18 ASSUMING THE BONDED INDEBTEDNESS OF ANY SCHOOL DISTRICT, OR OF
19 ANY PORTION THEREOF, EXISTING AT THE TIME OF INCLUSION IN THE
20 PROPOSED NEW DISTRICT, TO THE REGISTERED ELECTORS OF SUCH NEW
21 DISTRICT. IF THE COMMITTEE SO DECIDES, THE QUESTION SHALL BE
22 SUBMITTED AT THE SPECIAL SCHOOL DISTRICT ORGANIZATION
23 ELECTION.

24 (2) (a) THE ELECTION SHALL BE HELD IN THE MANNER
25 PRESCRIBED BY LAW FOR A SCHOOL DISTRICT TO INCUR BONDED
26 INDEBTEDNESS UNLESS OTHERWISE SPECIFIED IN THIS SECTION. THE

1 OUTSTANDING BONDED INDEBTEDNESS INCURRED BY MORE THAN ONE
2 SCHOOL DISTRICT, OR THE PROPORTIONATE SHARES THEREOF, MAY BE
3 ASSUMED SIMULTANEOUSLY BY A NEW DISTRICT UNDER THE PROVISIONS
4 OF THIS SECTION THROUGH THE SUBMISSION OF A SINGLE BALLOT, BUT
5 VOTING ON SEPARATE AMOUNTS OR ALTERNATIVE VOTING ON ONE BALLOT
6 SHALL BE PROHIBITED.

7 (b) IF ONE OR MORE WHOLE SCHOOL DISTRICTS HAVE BEEN
8 INCLUDED IN A NEW DISTRICT, THE BALLOT SHALL CONTAIN A
9 STATEMENT OF THE AMOUNT OR AMOUNTS OF OUTSTANDING BONDED
10 INDEBTEDNESS PROPOSED TO BE ASSUMED BY THE NEW DISTRICT.

11 (c) IF ONLY A PORTION OF THE TERRITORY OF AN OLD SCHOOL
12 DISTRICT HAS BEEN INCLUDED IN A NEW DISTRICT, THE
13 PROPORTIONATE SHARE OF THE OUTSTANDING BONDED INDEBTEDNESS
14 INCURRED BY SAID OLD SCHOOL DISTRICT TO BE ASSUMED SHALL BE
15 THAT SHARE WHICH WOULD BE PAID BY THE PORTION OF THE TERRITORY
16 OF THE OLD SCHOOL DISTRICT INCLUDED IN THE NEW DISTRICT IF NO
17 ASSUMPTION THEREOF SHALL OCCUR, AND THE BALLOT SHALL CONTAIN A
18 STATEMENT OF THE TOTAL AMOUNT OF BONDED INDEBTEDNESS OF SUCH
19 OLD SCHOOL DISTRICT AND THAT A PROPORTIONAL SHARE OF SUCH DEBT
20 IS PROPOSED TO BE ASSUMED BY THE NEW SCHOOL DISTRICT.

21 (d) IF PRINTED BALLOTS ARE USED, THE BALLOT SHALL BE
22 PRINTED OR TYPEWRITTEN AND SHALL CONTAIN THE WORDS "OFFICIAL
23 BALLOT" AND BELOW SET FORTH THE AMOUNT OF OUTSTANDING BONDED
24 INDEBTEDNESS TO BE ASSUMED, OR THAT A PROPORTIONAL SHARE OF
25 SUCH AMOUNT IS PROPOSED TO BE ASSUMED, AS THE CASE MAY BE, BY
26 THE NEW DISTRICT, THE NAME AND NUMBER OF EACH OLD SCHOOL

1 DISTRICT WHICH INCURRED SAID BONDED INDEBTEDNESS, AND, IF THE
2 BALLOT CONTAINS MORE THAN ONE AMOUNT TO BE ASSUMED, THE TOTAL
3 OF SUCH AMOUNTS SHALL BE INDICATED THEREON.

4 (3) ONLY REGISTERED ELECTORS ELIGIBLE TO VOTE ON THE
5 QUESTION OF A SCHOOL DISTRICT INCURRING BONDED INDEBTEDNESS
6 SHALL BE ENTITLED TO VOTE ON THE QUESTION OF ASSUMING THE
7 OUTSTANDING BONDED INDEBTEDNESS, OR PROPORTIONATE SHARE
8 THEREOF, PURSUANT TO THE PROVISIONS OF THIS SECTION.

9 (4) ELECTION OFFENSES IN SUCH ELECTION SHALL BE THE SAME
10 AS THOSE PRESCRIBED IN ARTICLE 13 OF TITLE 1, C.R.S.

11 (5) IF A MAJORITY OF THE REGISTERED ELECTORS VOTING ON
12 THE PROPOSED QUESTION VOTE FOR THE ASSUMPTION OF THE BONDED
13 INDEBTEDNESS, THE PUBLIC OFFICIALS SHALL PERFORM THE DUTIES
14 SET FORTH IN SECTIONS 22-42-117 TO 22-42-121 WHICH ARE
15 NECESSARY TO ASSURE THAT THE ASSUMED BONDED INDEBTEDNESS IS
16 PAID IN THE MANNER PROVIDED BY LAW FOR THE PAYING OF ANY
17 BONDED INDEBTEDNESS WHICH THE NEW DISTRICT CONTRACTS.

18 22-30-129. Limit of bonded indebtedness - new district.
19 ANY NEW DISTRICT ORGANIZED UNDER THIS ARTICLE SHALL HAVE A
20 LIMIT OF BONDED INDEBTEDNESS OF TWENTY PERCENT OF THE LATEST
21 VALUATION FOR ASSESSMENT OF THE TAXABLE PROPERTY IN SUCH
22 DISTRICT. THE INDEBTEDNESS OF THE OLD SCHOOL DISTRICTS OR
23 PARTS OF DISTRICTS CONSTITUTING THE NEW DISTRICTS SHALL NOT BE
24 CONSIDERED IN FIXING THE LIMIT OF SUCH TWENTY PERCENT; BUT, IF
25 ANY NEW DISTRICT SHALL ASSUME THE BONDED INDEBTEDNESS OF ANY
26 DISTRICT OR DISTRICTS, OR A PROPORTIONATE SHARE THEREOF,

1 EXISTING AT THE TIME OF INCLUSION IN THE NEW DISTRICT,
2 PURSUANT TO THE PROVISIONS OF SECTION 22-30-128, SUCH BONDED
3 INDEBTEDNESS SHALL BE INCLUDED IN THE TWENTY PERCENT
4 LIMITATION.

5 22-30-130. New district - bonded indebtedness. (1) ANY
6 NEW DISTRICT ORGANIZED UNDER THE PROVISIONS OF THIS ARTICLE
7 HAS THE POWER AND AUTHORITY TO CONTRACT BONDED INDEBTEDNESS IN
8 THE SAME MANNER AND UNDER THE SAME PROCEDURE FOR THE ISSUANCE
9 OF BONDS AS IS PROVIDED BY LAW FOR THE ISSUANCE OF SUCH BONDS
10 BY OTHER SCHOOL DISTRICTS.

11 (2) ANY NEW DISTRICT HAS THE POWER TO ISSUE REFUNDING
12 BONDS FOR THE PURPOSE OF REFUNDING OUTSTANDING INDEBTEDNESS OF
13 SAID NEW DISTRICT IN THE SAME MANNER AND PROCEDURE AS IS
14 PROVIDED BY LAW FOR THE ISSUANCE OF SUCH BONDS BY OTHER SCHOOL
15 DISTRICTS.

16 (3) ANY NEW DISTRICT HAS THE POWER TO ISSUE REFUNDING
17 BONDS FOR THE PURPOSE OF REFUNDING OUTSTANDING INDEBTEDNESS OF
18 OLD SCHOOL DISTRICTS, WHICH OLD DISTRICTS HAVE BEEN
19 REORGANIZED OR DISSOLVED, AND INCLUDED WITHIN SAID NEW
20 DISTRICT AND WHICH INDEBTEDNESS HAS BEEN ASSUMED BY SAID NEW
21 DISTRICT PURSUANT TO SECTION 22-30-128. SUCH REFUNDING BONDS
22 SHALL BE ISSUED IN THE SAME MANNER AS IF THE INDEBTEDNESS
23 BEING REFUNDED WERE INDEBTEDNESS ORIGINALLY CONTRACTED BY THE
24 NEW DISTRICT UNDER THE PROVISIONS OF THIS ARTICLE.

25 (4) ANY NEW DISTRICT HAS THE POWER TO ISSUE REFUNDING
26 BONDS FOR THE PURPOSE OF REFUNDING OUTSTANDING BONDED

1 INDEBTEDNESS OF OLD SCHOOL DISTRICTS, WHICH OLD DISTRICTS HAVE
2 BEEN REORGANIZED OR DISSOLVED, AND INCLUDED WITHIN SAID NEW
3 DISTRICT, AND WHICH INDEBTEDNESS HAS NOT BEEN ASSUMED BY THE
4 NEW DISTRICT, IN THE SAME MANNER AS IF THE INDEBTEDNESS BEING
5 REFUNDED WERE INDEBTEDNESS ORIGINALLY CONTRACTED BY THE NEW
6 DISTRICT UNDER THE PROVISIONS OF THIS ARTICLE, EXCEPT FOR THE
7 FOLLOWING PARTICULARS:

8 (a) SAID BONDS SHALL BE DESIGNATED AS REFUNDING BONDS OF
9 THE OLD SCHOOL DISTRICT WHICH CONTRACTED THE ORIGINAL
10 INDEBTEDNESS IN THE FIRST INSTANCE. THE REFUNDING BONDS SHALL
11 BE PAYABLE FROM THE SAME FUNDS WHICH ARE TO BE DERIVED FROM
12 THE SAME SOURCE AS WOULD HAVE BEEN USED TO PAY THE ORIGINAL
13 BONDS OF THE OLD SCHOOL DISTRICT IF NO REFUNDING THEREOF HAD
14 EVER OCCURRED.

15 (b) THE COVENANTS AND AGREEMENTS IN AND RELATING TO SUCH
16 REFUNDING BONDS SHALL BE MADE AND ENTERED INTO BY THE NEW
17 DISTRICT AS SUCCESSOR TO THE OLD DISTRICT, AND ALL NECESSARY
18 ACTIONS SHALL BE TAKEN BY THE BOARD OF EDUCATION OF THE NEW
19 DISTRICT AS SUCCESSOR TO THE BOARD OF EDUCATION OF THE OLD
20 DISTRICT.

21 (5) WHENEVER ANY OLD SCHOOL DISTRICT HAS BEEN
22 REORGANIZED AND PARTS THEREOF INCLUDED WITHIN TWO OR MORE NEW
23 DISTRICTS, AND WHENEVER AN OLD SCHOOL DISTRICT HAS BEEN
24 DISSOLVED AND PARTS THEREOF INCLUDED IN TWO OR MORE OTHER
25 DISTRICTS, UNDER THE PROVISIONS OF THIS ARTICLE, AND SAID OLD
26 DISTRICT HAS OUTSTANDING BONDED INDEBTEDNESS, THE REFUNDING OF

1 SUCH OUTSTANDING INDEBTEDNESS OF SAID FORMER DISTRICT SHALL
2 REQUIRE AFFIRMATIVE ACTION BY A MAJORITY OF THE MEMBERS OF THE
3 BOARDS OF EDUCATION OF EACH NEW DISTRICT WITHIN WHICH ANY PART
4 OF THE LANDS FORMERLY INCLUDED WITHIN SAID OLD DISTRICT ARE
5 NOW INCLUDED, EXCEPT AS IS PROVIDED IN THIS ARTICLE TO THE
6 CONTRARY.

7 (6) ANY SCHOOL DISTRICT FROM WHICH LAND HAS BEEN
8 DETACHED AND INCLUDED WITHIN ANY OTHER SCHOOL DISTRICT, BY
9 REORGANIZATION OR ANY OTHER LAWFUL MEANS, AND WHICH DISTRICT
10 HAS RETAINED ITS LAWFUL CORPORATE EXISTENCE SUBSEQUENT TO THE
11 DETACHMENT OF SUCH LAND FROM SAID DISTRICT SHALL BE
12 SPECIFICALLY EXEMPTED FROM THE REQUIREMENTS AND PROVISIONS OF
13 SUBSECTION (5) OF THIS SECTION, AND THE BOARD OF EDUCATION OF
14 SAID DISTRICT FROM WHICH LAND HAS BEEN DETACHED MAY REFUND ITS
15 BONDS TO WHICH SUCH DETACHED LAND IS SUBJECT WITH OR WITHOUT
16 CONCURRENCE OR ACTION BY THE BOARD OF EDUCATION OF THE
17 DISTRICT WITHIN WHICH SAID DETACHED LAND IS THEN INCLUDED.

18 SECTION 2. 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.

LEGISLATIVE COUNCIL

JOINT HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE

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Co-Chairman

Senator Bonnie Allison

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* Resigned from the House of Representatives and sworn in as a Senator on October 16, 1991.

** Replaced Don Mares in the House of Representatives on November 6, 1991.

List of Bills

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JOINT HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE

Summary of Recommendations

The Joint Health, Environment, Welfare, and Institutions Committee (HEWI) was directed by the Legislative Council to conduct a study of 1) health insurance plans; 2) tax credits for health care providers; 3) access to Medicaid benefits for persons in the "Utah Gap" (above Medicaid eligibility but below the ability to pay for long-term health care); and 4) home health care reimbursement.

The committee met four times and considered nine legislative proposals. Six of the proposals considered related to health care programs or to health insurance plans, but only two of these proposals were approved. A proposal concerning tax credits for health care providers was considered but failed to win approval. A home health care proposal was discussed and approved by the committee.

Another proposal addressing access to Medicaid benefits for elderly and disabled persons in the "Utah Gap" received favorable consideration by the committee. The proposal would assist persons in need of long-term health care whose income was above Medicaid eligibility standards (\$1221 per month income for 1991) but too low for them to afford the average private rate for nursing home care (approximately \$1800 per month).

House Bill 91S2-1030, Concerning Long-Term Care Limitations, was introduced during the second special session of 1991 by Representative Marleen Fish. Under the bill, persons in the "Utah Gap" are allowed to establish Colorado court approved trusts to reduce their countable income and qualify for Medicaid nursing home care. This is allowed in accordance with an "undue hardship" exception under the federal Social Security Act.

The bill also minimizes the fiscal cost to the state by allowing for an estate recovery program. The money accumulated in such trusts during the beneficiary's lifetime will revert back to the Colorado Medicaid program after the nursing home resident dies. The recovered amount helps to compensate for the care that was provided. The bill was approved by the General Assembly and signed by the Governor on October 16, 1991.

The Joint HEWI Committee recommends three bills for consideration during the 1992 legislative session: 1) Regulation of Providers of Home Care Services; 2) Provision of Prosthetic Devices to Medicaid Recipients; and 3) a Study of a Statewide Health Care Plan.

Regulation of Providers of Home Health Care Services - HEWI Bill A

Home health care agencies provide equipment, supplies, medications, or assistance to persons at risk of an injury, with an illness, or with a disability requiring short- or long-term intervention under a plan of care in the client's residence. Services provided in the home include assistance with activities of daily living (i.e. eating, bathing, and dressing), dispensing and administering of medications as authorized by law, nutritional support, durable medical equipment and services, and oxygen equipment and oxygen.

Currently, no minimum requirements exist for the operation of home health care agencies unless the agency is certified by the state Department of Health as a provider under the Medicare or Medicaid programs. This situation places clients who are not served by Medicare or Medicaid certified agencies at risk of poor quality and unsafe care. Licensure of home health care agencies would protect the health, safety, and welfare of home health care clients and their families by ensuring minimum standards for home health care agencies.

Bill A provides for the licensing of home health care agencies. The state Board of Health is given the authority to adopt rules regarding the regulation of such providers. The bill provides that persons who are acting alone, providing home care services to a client on an individual basis, and are licensed pursuant to the laws of the state to provide such services (i.e. a licensed practical nurse) are exempt from licensure under this bill. Persons who are personally retained by a client to provide such services are also exempt from licensure, as well as home care providers who deliver only homemaker services and entities that provide only equipment, supplies, or medications. The bill also provides for automatic licensing of providers who are certified as Medicare or Medicaid providers, are certified by specific health professional organizations, or are licensed hospices.

The bill imposes an annual \$250 licensure fee to finance the licensure program and creates a fund for the deposit of the fees. Penalties of \$500 to \$5,000 are imposed for the provision of services without a license or for false statements made in connection with the licensure procedure. The bill also provides for the denial, revocation, or suspension of a license. A home care advisory committee is established to advise and make recommendations to the state board and to report annually to the General Assembly its evaluation of the licensing program. The home care advisory committee is scheduled to repeal on July 1, 1998.

Provision of Prosthetic Devices to Medicaid Recipients - HEWI Bill B

With assistance in obtaining needed prosthesis, many amputees are able to either obtain or retain their current employment and their capacity for independence. An optional prosthesis benefit is offered to states under the Medicaid program, but

Colorado does not participate in this program. The Department of Social Services estimates that if the state were to participate in this program, over 13,900 persons would be eligible in fiscal year 1993.

Bill B creates an alternative to the Medicaid program to assist Medicaid recipients who are in need of prosthetic devices. The bill authorizes the Department of Social Services to accept grants from federal or private sources and transfer such monies to the newly created prosthetic device fund (the funding sources have not yet been identified). This bill is modeled after a current program that provides dentures and dental services to needy elderly persons.

Bill B provides that the Department of Social Services is to allocate the money in the prosthetic device fund for the purpose of creating and implementing the program. An advisory board, appointed by the Executive Director of the department, is created to recommend guidelines for the prosthetic device program. Unlike the federal Medicaid option, the benefits provided by the state program will not be entitlements. Guidelines will be developed to determine those most in need of services, and the program will provide assistance to eligible persons based on how much money is available in the fund.

A Study of a Colorado Care program to Provide Health Insurance Coverage – HEWI Bill C

Bill C was a proposal developed by a diverse group of concerned citizens including business, consumer, and health care provider representatives who organized as the Colorado Coalition for Health Care Access. The Coalition has identified a private foundation as a possible funding source to conduct the feasibility study and pilot program proposed by the bill.

The bill directs the Department of Regulatory Agencies to conduct a full scale feasibility and cost impact analysis of implementing a statewide health care program, to be known as the "Colorado Care Program." The department, as part of the study, is to conduct a demonstration project under which counties may develop and implement a county-wide health care program to test some or all of the features of the Colorado Care Program. The bill also requires that a final feasibility report be submitted to the House and Senate HEWI Committees no later than July 31, 1993.

The Department of Regulatory Agencies is authorized to accept grants and donations, to contract with other entities, and to seek the assistance of other state departments in conducting the study and demonstration project. The bill exempts any county participating in the demonstration project from any state law or regulation that would otherwise prohibit the county from adopting and implementing a health care program for its citizens. The state Department of Social Services is also required to seek

any necessary federal waiver for a county wishing to participate in the demonstration project. On or before November 30, 1993, and each year thereafter that the demonstration programs are in place, the department is to report the results of such programs to the Joint HEWI Committees.

Materials Available

The following list of materials are available upon request from the Legislative Council staff.

- 1) Joint Health, Environment, Welfare, and Institutions Committee meeting summaries for the 1991 interim (July 22, August 19, October 7, and November 8).
- 2) Insurance paper from the Colorado Department of Regulatory Agencies, Division of Insurance, entitled "Health Insurance Availability and Affordability in Colorado: A Report on Underwriting and Pricing Practices."
- 3) Colorado Uninsurable Health Insurance Plan (CUHIP) brochure.
- 4) Colorado Department of Health materials concerning environmental management and the federal Clean Air Act Amendments of 1990.

HEWI BILL A

A BILL FOR AN ACT

1 CONCERNING THE REGULATION OF PROVIDERS OF HOME CARE SERVICES.

Bill Summary

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

Provides for the licensing of providers of home care services. Describes the powers and duties of the state board of health in licensing and regulating such providers. Exempts certain home care providers from licensure and provides for the automatic licensing of providers who are certified as medicare or medicaid providers, certified by specific health professional organizations, or are licensed hospices. Imposes an annual licensure fee. Creates a fund for the deposit of the fees. Imposes penalties for the provision of services without a license and for false statements made in connection with the licensing procedure. Provides for the denial, revocation, or suspension of a license. Establishes a home care advisory committee. Requires the state board of health to adopt rules based on recommendations made by the advisory committee. Makes conforming amendments.

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

3 SECTION 1. Title 25, Colorado Revised Statutes, 1989

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

5 ARTICLE to read:

1 ARTICLE 27.5

2 Licensing of Home Health Care Agencies

3 25-27.5-101. Definitions. AS USED IN THIS ARTICLE,
4 UNLESS THE CONTEXT OTHERWISE REQUIRES:

5 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH.

6 (2) "HOME CARE PROVIDER" OR "PROVIDER" MEANS ANY PERSON,
7 AS SUCH TERM IS DEFINED IN SUBSECTION (4) OF THIS SECTION AND
8 IS NOT OTHERWISE EXEMPTED FROM THE PROVISIONS OF THIS ARTICLE
9 BY SECTION 25-27.5-109, THAT PROVIDES EQUIPMENT, SUPPLIES,
10 MEDICATIONS, OR ASSISTANCE TO A CLIENT AT THE CLIENT'S
11 RESIDENCE. "PROVIDER" INCLUDES ANY PERSON WHO REPRESENTS OR
12 ADVERTISES THAT SUCH PERSON IS A HOME CARE PROVIDER OR BILLS
13 ITS CLIENTS AS SUCH.

14 (3) "HOME CARE SERVICES" MEANS ANY EQUIPMENT, SUPPLIES,
15 MEDICATIONS, OR ASSISTANCE PROVIDED TO A CLIENT UNDER A PLAN
16 OF CARE IN THE CLIENT'S RESIDENCE DURING A VISIT OR ON AN
17 HOURLY BASIS, AND THE CLIENT HAS OR IS AT RISK OF AN INJURY,
18 ILLNESS, OR DISABLING CONDITION AND REQUIRES SHORT-TERM OR
19 LONG-TERM INTERVENTION. SERVICES INCLUDE:

20 (a) PERSONAL CARE SERVICES, INCLUDING ASSISTANCE WITH
21 ACTIVITIES OF DAILY LIVING, AS SUCH TERM IS DEFINED IN SECTION
22 26-4-507 (2) (a), C.R.S.;

23 (b) PHARMACEUTICAL SERVICES PROVIDED TO A CLIENT,
24 INCLUDING THE DISPENSING AND ADMINISTERING OF MEDICATIONS AS
25 AUTHORIZED BY LAW, PARENTERAL NUTRITIONAL SUPPORT, AND SUCH
26 OTHER SERVICES AS SET FORTH IN RULES WHICH SHALL BE ADOPTED BY

1 THE STATE BOARD OF HEALTH;

2 (c) DURABLE MEDICAL EQUIPMENT AND SERVICES;

3 (d) OXYGEN EQUIPMENT AND OXYGEN.

4 (4) "PERSON" MEANS ANY PUBLIC OR PRIVATE PROFIT OR
5 NOT-FOR-PROFIT BUSINESS, PARTNERSHIP, CORPORATION, SOLE
6 PROPRIETORSHIP, ASSOCIATION, GOVERNMENTAL AGENCY OR
7 SUBDIVISION, OR OTHER LEGAL ENTITY.

8 (5) "RESIDENCE" MEANS A CLIENT'S HOUSE, APARTMENT, OR
9 LIVING QUARTERS WITHIN ANOTHER PERSON'S HOUSE OR APARTMENT OR
10 WITHIN A GROUP HOME. THE TERM DOES NOT INCLUDE A FACILITY
11 THAT SOLELY PROVIDES LONG-TERM CARE AS SUCH TERM IS DEFINED IN
12 SECTION 26-4-507 (2) (h), C.R.S.

13 25-27.5-102. License required - investigations - when
14 license application not required. (1) ON AND AFTER JANUARY 1,
15 1993, EXCEPT AS OTHERWISE PROVIDED BY SECTION 25-27.5-109, NO
16 PERSON SHALL ESTABLISH OR OPERATE AS A HOME CARE PROVIDER OR
17 PROVIDE HOME CARE SERVICES WITHOUT A LICENSE ISSUED PURSUANT
18 TO THIS SECTION.

19 (2) AN APPLICATION FOR A LICENSE TO OPERATE AS A HOME
20 CARE PROVIDER SHALL BE SUBMITTED TO THE DEPARTMENT UPON SUCH
21 FORM AND IN SUCH MANNER AS PRESCRIBED BY THE DEPARTMENT. A
22 LICENSE SHALL EXPIRE ON THE SECOND ANNIVERSARY DATE OF ITS
23 ISSUANCE. A LICENSE MAY BE RENEWED UPON APPLICATION BY THE
24 LICENSEE PRIOR TO THE EXPIRATION DATE OF THE LICENSE AND SHALL
25 BE MADE IN THE SAME MANNER AS AN APPLICATION FOR AN ORIGINAL
26 LICENSE.

1 (3) THE DEPARTMENT SHALL ISSUE OR RENEW A LICENSE
2 FOLLOWING AN INVESTIGATION BY THE DEPARTMENT INTO THE
3 ACTIVITIES OF AND THE SERVICES PROVIDED BY THE APPLICANT AND A
4 DETERMINATION BY THE DEPARTMENT THAT SUCH ACTIVITIES AND
5 SERVICES PROMOTE THE HEALTH, SAFETY, AND WELFARE OF THE
6 APPLICANT'S CLIENTS. THE DEPARTMENT MAY PERIODICALLY INSPECT
7 SUCH ACTIVITIES OF AND SERVICES RENDERED BY A HOME CARE
8 PROVIDER WHEN DEEMED NECESSARY TO PROTECT THE HEALTH, SAFETY,
9 AND WELFARE OF HOME HEALTH CARE CLIENTS.

10 (4) FOR THE PURPOSES OF THIS SECTION, "INVESTIGATION"
11 MEANS A VERIFICATION OF THE INFORMATION PROVIDED BY THE
12 APPLICANT AND A SHORT AND REASONABLE INTERVIEW WITH THE
13 APPLICANT.

14 (5) NO LICENSE ISSUED PURSUANT TO THIS SECTION SHALL BE
15 TRANSFERRED OR ASSIGNED TO ANY OTHER PROVIDER OR PERSON.

16 (6) A LICENSE SHALL BE ISSUED TO AN APPLICANT WITHOUT AN
17 INVESTIGATION AS REQUIRED BY SUBSECTION (3) OF THIS SECTION IF
18 THE APPLICANT IS:

19 (a) A HOME CARE PROVIDER CERTIFIED BY THE STATE
20 DEPARTMENT OF SOCIAL SERVICES IN ACCORDANCE WITH TITLE XVIII
21 OR XIX OF THE FEDERAL "SOCIAL SECURITY ACT";

22 (b) A HOME CARE PROVIDER ACCREDITED BY THE JOINT
23 COMMISSION ON ACCREDITATION OF HEALTH CARE ORGANIZATIONS, THE
24 NATIONAL LEAGUE FOR NURSING, OR THE NATIONAL HOME CARING
25 COUNCIL;

26 (c) A HOSPICE LICENSED BY THE DEPARTMENT IN ACCORDANCE

1 WITH SECTION 25-1-107 (1) (1) (I).
2 25-27.5-103. Criminal penalties. (1) ON AND AFTER
3 JANUARY 1, 1993, IT IS UNLAWFUL FOR ANY PERSON TO OPERATE AS A
4 HOME CARE PROVIDER OR TO PROVIDE HOME CARE SERVICES WITHOUT
5 HAVING OBTAINED A LICENSE IN ACCORDANCE WITH SECTION
6 25-27.5-102. ANY PERSON WHO VIOLATES THIS PROVISION IS GUILTY
7 OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE
8 PUNISHED BY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR
9 MORE THAN FIVE THOUSAND DOLLARS.

10 (2) ANY PERSON WHO KNOWINGLY OR WILLFULLY MAKES OR
11 CAUSES TO BE MADE OR WHO INDUCES OR SEEKS TO INDUCE ANOTHER
12 PERSON TO MAKE ANY FALSE STATEMENT OR MISREPRESENTATION OF A
13 MATERIAL FACT IN CONNECTION WITH THE LICENSING PROCEDURE SET
14 FORTH IN SECTION 25-27.5-102 (3), IS GUILTY OF A MISDEMEANOR
15 AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF
16 NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN FIVE THOUSAND
17 DOLLARS.

18 25-27.5-104. Fees - fund created. (1) A NONREFUNDABLE
19 FEE OF TWO HUNDRED FIFTY DOLLARS SHALL BE SUBMITTED TO THE
20 DEPARTMENT WITH AN APPLICATION FOR AN ORIGINAL OR RENEWAL
21 LICENSE. IN ADDITION, A FEE IN THE SAME AMOUNT SHALL BE
22 SUBMITTED PRIOR TO EACH ANNIVERSARY OF THE DATE ON WHICH A
23 LICENSE WAS ISSUED OR RENEWED TO OPERATE AS A HOME CARE
24 PROVIDER.

25 (2) THE FEES COLLECTED PURSUANT TO SUBSECTION (1) OF
26 THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO

1 SHALL CREDIT THE SAME TO THE HOME CARE LICENSING CASH FUND,
2 WHICH FUND IS HEREBY CREATED. THE MONEYS IN THE FUND SHALL BE
3 SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR
4 THE DIRECT AND INDIRECT COSTS OF THE DEPARTMENT AND THE HOME
5 CARE ADVISORY COMMITTEE CREATED IN SECTION 25-27.5-108 IN
6 PERFORMING THEIR DUTIES UNDER THIS ARTICLE. AT THE END OF ANY
7 FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE
8 FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR
9 TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

10 25-27.5-105. Liability and insurance required. THE STATE
11 BOARD OF HEALTH SHALL ADOPT RULES THAT ESTABLISH LIABILITY
12 INSURANCE AND BOND REQUIREMENTS THAT ARE ADEQUATE TO
13 COMPENSATE HOME CARE CLIENTS OR OTHER INDIVIDUALS FOR INJURIES
14 OR LOSSES THAT RESULT FROM THE NEGLIGENT OR CRIMINAL ACTS OR
15 OMISSIONS OF HOME CARE PROVIDERS. THE RULES SHALL REQUIRE
16 THAT EACH LICENSEE MAINTAIN AN ACTIVE LIABILITY INSURANCE
17 POLICY AND SURETY BOND AND THAT NONCOMPLIANCE WITH SUCH
18 REQUIREMENTS SHALL BE GROUNDS FOR A LICENSE REVOCATION
19 PURSUANT TO SECTION 25-27.5-107.

20 25-27.5-106. Rules. (1) THE STATE BOARD OF HEALTH, WITH
21 THE ADVICE AND RECOMMENDATIONS OF THE HOME CARE ADVISORY
22 COMMITTEE CREATED IN SECTION 25-27.5-108, SHALL ADOPT RULES
23 THAT PRESCRIBE MINIMUM STANDARDS GOVERNING THE ACTIVITIES OF
24 AND SERVICES PROVIDED BY HOME CARE PROVIDERS AS MAY BE
25 NECESSARY TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF HOME
26 CARE CLIENTS.

1 (2) THE RULES SHALL INCLUDE, BUT SHALL NOT BE LIMITED
2 TO:

3 (a) ORGANIZATIONAL REQUIREMENTS AND SPECIFICATIONS AS TO
4 PERSONNEL, INCLUDING THE QUALIFICATIONS OF AND THE AMOUNT OF
5 SUPERVISION OVER LICENSED AND UNLICENSED STAFF;

6 (b) THE REQUIREMENT THAT THE HOME CARE PROVIDER USE
7 INFORMED CONSENT CONTRACTS;

8 (c) THE ESTABLISHMENT OF A CONSUMER COMPLAINT AND
9 EVALUATION PROCESS;

10 (d) THE ESTABLISHMENT OF A SYSTEM FOR COORDINATING HOME
11 CARE SERVICES;

12 (e) REQUIREMENTS CONCERNING THE MAINTENANCE AND REVIEW
13 OF CLIENT RECORDS AND PLANS OF CARE OF HOME CARE PROVIDERS;

14 (f) THE ESTABLISHMENT OF A UTILIZATION AND QUALITY
15 CONTROL REVIEW PROCESS FOR HOME CARE PROVIDERS.

16 25-27.5-107. License denial, suspension, or revocation.

17 (1) WHEN AN APPLICATION FOR AN ORIGINAL LICENSE TO OPERATE AS
18 A HOME CARE PROVIDER HAS BEEN DENIED BY THE DEPARTMENT, THE
19 DEPARTMENT SHALL NOTIFY THE APPLICANT IN WRITING OF SUCH
20 DENIAL BY MAILING A NOTICE TO THE APPLICANT AT THE ADDRESS
21 SHOWN ON THE APPLICATION. ANY APPLICANT AGGRIEVED BY SUCH
22 DENIAL MAY SEEK REVIEW AS PROVIDED IN ARTICLE 4 OF TITLE 24,
23 C.R.S. ALL HEARINGS ON THE DENIAL OF ORIGINAL LICENSES SHALL
24 BE CONDUCTED IN CONFORMITY WITH THE PROVISIONS AND PROCEDURES
25 SPECIFIED IN ARTICLE 4 OF TITLE 24, C.R.S.

26 (2) THE DEPARTMENT MAY SUSPEND, REVOKE, OR REFUSE TO

1 RENEW THE LICENSE OF ANY HOME CARE PROVIDER WHICH IS NOT IN
2 COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE OR THE RULES
3 PROMULGATED THEREUNDER. SUCH SUSPENSION, REVOCATION, OR
4 REFUSAL SHALL BE MADE ONLY AFTER A HEARING IS PROVIDED IN
5 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

6 (3) THE DEPARTMENT SHALL DENY OR REVOKE OR REFUSE TO
7 RENEW THE LICENSE OF A HOME CARE PROVIDER WHERE THE OWNER OR
8 LICENSEE HAS BEEN CONVICTED OF A FELONY OR MISDEMEANOR
9 INVOLVING MORAL TURPITUDE OR INVOLVING CONDUCT WHICH THE
10 DEPARTMENT DETERMINES COULD POSE A RISK TO THE HEALTH, SAFETY,
11 AND WELFARE OF THE HOME CARE CLIENT. SUCH DENIAL, REVOCATION,
12 OR REFUSAL SHALL BE MADE ONLY AFTER A HEARING IS PROVIDED IN
13 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

14 (4) FOLLOWING THE REVOCATION OR SUSPENSION OF A HOME
15 CARE PROVIDER'S LICENSE, THE DEPARTMENT MAY, IF IT DEEMS
16 NECESSARY, SEEK FROM THE COURT INJUNCTIVE RELIEF PROHIBITING
17 THE HOME CARE PROVIDER FROM PROVIDING HOME CARE SERVICES TO
18 CLIENTS.

19 (5) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6) OF
20 THIS SECTION, THE DEPARTMENT SHALL ISSUE OR RENEW A LICENSE
21 WHEN IT IS SATISFIED THAT THE APPLICANT OR LICENSEE IS IN
22 COMPLIANCE WITH THE REQUIREMENTS SET OUT IN THIS ARTICLE AND
23 THE RULES PROMULGATED THEREUNDER. EXCEPT FOR PROVISIONAL
24 LICENSES ISSUED IN ACCORDANCE WITH SUBSECTION (6) OF THIS
25 SECTION, A LICENSE ISSUED OR RENEWED PURSUANT TO THIS SECTION
26 SHALL EXPIRE IN THE SAME MANNER AS AN ORIGINAL LICENSE ISSUED

1 PURSUANT TO SECTION 25-27.5-102 (2) AND FEES SHALL BE PAID
2 ACCORDING TO THE DATE ON WHICH A LICENSE IS ISSUED PURSUANT TO
3 THIS SECTION.

4 (6) THE DEPARTMENT MAY ISSUE A PROVISIONAL LICENSE TO AN
5 APPLICANT FOR THE PURPOSE OF OPERATING AS A HOME CARE PROVIDER
6 FOR A PERIOD OF NINETY DAYS IF THE APPLICANT IS TEMPORARILY
7 UNABLE TO CONFORM TO ALL THE MINIMUM STANDARDS REQUIRED UNDER
8 THIS ARTICLE; EXCEPT THAT NO LICENSE SHALL BE ISSUED TO AN
9 APPLICANT IF THE OPERATIONS OF THE HOME CARE PROVIDER OR THE
10 PROVISION OF HOME CARE SERVICES BY THE APPLICANT WILL
11 ADVERSELY AFFECT THE HEALTH, SAFETY, AND WELFARE OF THE HOME
12 CARE CLIENTS. AS A CONDITION OF OBTAINING A PROVISIONAL
13 LICENSE, THE APPLICANT SHALL SHOW PROOF TO THE DEPARTMENT THAT
14 ATTEMPTS ARE BEING MADE TO CONFORM AND COMPLY WITH APPLICABLE
15 STANDARDS.

16 25-27.5-108. Home care advisory committee created -
17 powers and duties. (1) THERE IS HEREBY ESTABLISHED A HOME
18 CARE ADVISORY COMMITTEE, HEREIN AFTER REFERRED TO AS THE
19 ADVISORY COMMITTEE, WHICH SHALL ADVISE AND MAKE
20 RECOMMENDATIONS TO THE DEPARTMENT AS TO THE RULES ADOPTED BY
21 THE STATE BOARD OF HEALTH IN ACCORDANCE WITH THE PROVISIONS OF
22 THIS ARTICLE. THE ADVISORY COMMITTEE SHALL CONSIST OF TEN
23 MEMBERS TO BE APPOINTED BY THE EXECUTIVE DIRECTOR OF THE
24 DEPARTMENT. THE ADVISORY COMMITTEE SHALL ELECT ITS OWN
25 CHAIRPERSON AND SHALL SERVE WITHOUT COMPENSATION. THE
26 MEMBERSHIP SHALL BE AS FOLLOWS:

1 (a) TWO MEMBERS SHALL REPRESENT THE PUBLIC AT LARGE;

2 (b) ONE MEMBER SHALL BE THE EXECUTIVE DIRECTOR OF THE
3 STATE DEPARTMENT OF SOCIAL SERVICES OR A PERSON DESIGNATED BY
4 THE EXECUTIVE DIRECTOR;

5 (c) ONE MEMBER SHALL BE THE EXECUTIVE DIRECTOR OF THE
6 STATE DEPARTMENT OF HEALTH OR A PERSON DESIGNATED BY THE
7 EXECUTIVE DIRECTOR;

8 (d) SIX MEMBERS SHALL REPRESENT AND BE AFFILIATED WITH
9 HOME CARE PROVIDERS, AS FOLLOWS:

10 (I) ONE MEMBER SHALL REPRESENT PROVIDERS THAT ARE
11 CERTIFIED BY THE STATE DEPARTMENT OF SOCIAL SERVICES IN
12 ACCORDANCE WITH TITLE XVIII OR XIX OF THE FEDERAL "SOCIAL
13 SECURITY ACT";

14 (II) ONE MEMBER SHALL REPRESENT PROVIDERS THAT ARE
15 CERTIFIED BY THE HEALTH PROFESSIONAL ORGANIZATIONS DESCRIBED
16 IN SECTION 25-27.5-102 (6) (b);

17 (III) ONE MEMBER SHALL REPRESENT PROVIDERS THAT RENDER
18 GENERAL HOME CARE SERVICES;

19 (IV) ONE MEMBER SHALL REPRESENT PROVIDERS THAT RENDER
20 PERSONAL CARE SERVICES;

21 (V) ONE MEMBER SHALL REPRESENT PROVIDERS THAT ARE
22 LICENSED HOSPICES;

23 (VI) ONE MEMBER SHALL REPRESENT PROVIDERS THAT RENDER
24 DURABLE MEDICAL EQUIPMENT.

25 (2) ALL MEMBERS OF THE ADVISORY COMMITTEE SHALL SERVE
26 TERMS OF THREE YEARS; EXCEPT THAT THE TERMS OF THE MEMBERS

1 INITIALLY APPOINTED BY THE EXECUTIVE DIRECTOR OF THE
2 DEPARTMENT SHALL BE AS FOLLOWS:

3 (a) THE TWO MEMBERS REPRESENTING THE PUBLIC AT LARGE
4 SHALL BE APPOINTED FOR TERMS ENDING JULY 1, 1994;

5 (b) THE MEMBERS REPRESENTING HOME CARE PROVIDERS AS
6 DESCRIBED IN SUBPARAGRAPHS (IV) TO (VI) OF PARAGRAPH (d) OF
7 SUBSECTION (1) SHALL BE APPOINTED FOR TERMS ENDING JULY 1,
8 1995;

9 (c) THE MEMBERS REPRESENTING HOME CARE PROVIDERS AS
10 DESCRIBED IN SUBPARAGRAPHS (I) TO (III) OF PARAGRAPH (d) OF
11 SUBSECTION (1) SHALL BE APPOINTED FOR TERMS ENDING JULY 1,
12 1996.

13 (3) THE HOME CARE ADVISORY COMMITTEE SHALL CONDUCT AN
14 EVALUATION OF THE LICENSING PROGRAM AND SHALL REPORT ITS
15 FINDINGS ANNUALLY TO THE GENERAL ASSEMBLY NO LATER THAN
16 JANUARY 15 OF EACH YEAR, WITH REPORTS TO BE MADE FROM JANUARY
17 15, 1994, TO JANUARY 1, 1998.

18 (4) (a) THIS SECTION IS REPEALED, EFFECTIVE JULY 1,
19 1998.

20 (b) PRIOR TO SAID REPEAL, THE HOME CARE ADVISORY
21 COMMITTEE SHALL BE REVIEWED AS PROVIDED IN SECTION 2-3-1203

22 (3) (k), C.R.S.

23 25-27.5-109. Exemption from article. (1) THE PROVISIONS
24 OF THIS ARTICLE SHALL NOT APPLY TO THE FOLLOWING:

- 25 (a) ANY INDIVIDUAL WHO IS:
- 26 (I) ACTING ALONE, PROVIDING HOME CARE SERVICES TO A

1 CLIENT ON AN INDIVIDUAL BASIS AND IS LICENSED PURSUANT TO THE
2 LAWS OF THIS STATE TO PROVIDE SUCH SERVICES; OR

3 (II) PERSONALLY RETAINED BY THE CLIENT TO PROVIDE SUCH
4 SERVICES;

5 (b) ANY HOME CARE PROVIDER THAT PROVIDES ONLY HOMEMAKER
6 SERVICES;

7 (c) ANY ENTITY THAT ONLY DELIVERS EQUIPMENT, SUPPLIES,
8 OR MEDICATIONS.

9 25-27.5-110. Applicability of other statutes. NOTHING IN
10 THIS ARTICLE SHALL BE CONSTRUED TO ABROGATE ANY DUTIES OR
11 RESPONSIBILITIES OF HOME CARE PROVIDERS OTHERWISE REQUIRED BY
12 LAW OR TO RENDER INAPPLICABLE ANY CIVIL OR CRIMINAL STATUTES
13 PROTECTING HOME CARE CLIENTS, INCLUDING STATUTES PROTECTING
14 AT-RISK ADULTS WHICH ARE SET FORTH IN ARTICLE 3.1 OF TITLE 26
15 OR ARTICLE 6.5 OF TITLE 18, C.R.S.

16 SECTION 2. 2-3-1203, Colorado Revised Statutes, 1980
17 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
18 PARAGRAPH to read:

19 2-3-1203. Sunset review of advisory committees. (3) The
20 following dates are the dates for which the statutory
21 authorization for the designated advisory committees is
22 scheduled for repeal:

23 (k) JULY 1, 1998: THE HOME CARE ADVISORY COMMITTEE,
24 APPOINTED PURSUANT TO SECTION 25-27.5-108 (1), C.R.S.

25 SECTION 3. 10-8-401 (1) (a), Colorado Revised Statutes,
26 1987 Repl. Vol., as amended, is amended to read:

1 10-8-401. Health insurance benefits for home health
2 services and hospice care. (1) As used in this section,
3 unless the context otherwise requires:

4 (a) "Home health services" means home health services as
5 defined in section 26-4-103 (6), C.R.S., which are provided by
6 a home health agency certified OR LICENSED by the department
7 of health.

8 SECTION 4. 12-38.1-102 (4), Colorado Revised Statutes,
9 1991 Repl. Vol., is amended to read:

10 12-38.1-102. Definitions. As used in this article,
11 unless the context otherwise requires:

12 (4) "Medical facility" means a nursing facility licensed
13 by the department of health or certified by the department of
14 health to receive medicare or medicaid funds, distinct part
15 nursing facilities, or home health agencies certified OR
16 LICENSED by the department of health to receive medicare
17 funds. "Medical facility" does not include a licensed
18 hospital engaged primarily in providing acute care to
19 patients, except to the extent that federal law or regulation
20 requires such hospital to be included in the definition of
21 "medical facility".

22 SECTION 5. 25-1-108 (1), Colorado Revised Statutes, 1989
23 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to
24 read:

25 25-1-108. Powers and duties of the state board of
26 health. (1) In addition to all other powers and duties

1 conferred and imposed upon the state board of health by the
2 provisions of this part 1, the board has the following
3 specific powers and duties:

4 (g) TO ADOPT RULES IN ACCORDANCE WITH ARTICLE 27.5 OF
5 THIS TITLE, REGARDING THE REGULATION OF PROVIDERS OF HOME
6 CARE.

7 SECTION 6. 26-4-103 (6), Colorado Revised Statutes, 1989
8 Repl. Vol., as amended, is amended to read:

9 26-4-103. Definitions. As used in this article, unless
10 the context otherwise requires:

11 (6) "Home health services" is synonymous with "home
12 health care" and includes the following services provided to
13 an eligible person in his place of residence, through a
14 certified OR LICENSED home health agency, pursuant to a home
15 health plan of care:

- 16 (a) Nursing services;
- 17 (b) Home health aide services;
- 18 (c) Provision of medical supplies, equipment, and
19 appliances suitable for use in the home;
- 20 (d) Physical therapy, occupational therapy, or speech
21 and hearing therapy.

22 SECTION 7. Effective date. This act shall take effect
23 January 1, 1993.

24 SECTION 8. 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.

HEWI BILL B

A BILL FOR AN ACT

1 CONCERNING THE PROVISION OF PROSTHETIC DEVICES TO MEDICAID
2 RECIPIENTS.

Bill Summary

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

Creates a program to provide prosthetic devices to recipients of medicaid. Creates the prosthetic device fund. Provides that the department of social services shall allocate the money in such fund for the purpose of creating and implementing such program. Creates an advisory board appointed by the executive director of the department of social services to recommend guidelines for the prosthetic device program. Authorizes the department to accept grants of funds from federal or private sources and transfer said monies to the prosthetic device fund. Provides for sunset review of the advisory board.

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

4 SECTION 1. Title 26, Colorado Revised Statutes, 1989
5 Repl. Vol., is amended BY THE ADDITION OF A NEW ARTICLE to
6 read:

7 ARTICLE 8.6

1 Prosthetic Devices

2 26-8.6-101. Legislative declaration. IT IS THE PURPOSE
3 OF THIS ARTICLE TO ASSIST MEDICAID RECIPIENTS WHO ARE IN NEED
4 OF PROSTHETIC DEVICES IN ORDER TO OBTAIN EMPLOYMENT OR TO
5 RETAIN THEIR CURRENT EMPLOYMENT AND WHO ARE UNABLE TO OBTAIN
6 FUNDS UNDER ANY CURRENT PROGRAM TO PURCHASE PROSTHETIC
7 DEVICES.

8 26-8.6-102. Definitions. AS USED IN THIS ARTICLE, UNLESS
9 THE CONTEXT OTHERWISE REQUIRES:

10 (1) "BOARD" MEANS THE STATE BOARD OF SOCIAL SERVICES.

11 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF SOCIAL
12 SERVICES.

13 (3) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
14 THE DEPARTMENT OF SOCIAL SERVICES.

15 (4) "FUND" MEANS THE PROSTHETIC DEVICE FUND ESTABLISHED
16 IN SECTION 26-8.6-103.

17 26-8.6-103. Fund created. THERE IS HEREBY ESTABLISHED IN
18 THE STATE TREASURY A FUND TO BE KNOWN AS THE PROSTHETIC DEVICE
19 FUND, WHICH SHALL BE SUBJECT TO ANNUAL APPROPRIATION TO THE
20 DEPARTMENT FOR THE PURPOSES OF THIS ARTICLE. THE FUND SHALL
21 BE CREDITED WITH SUCH APPROPRIATIONS AS THE GENERAL ASSEMBLY
22 MAY MAKE FROM THE GENERAL FUND FOR THE PURPOSES OF THIS
23 ARTICLE, AS WELL AS ANY MONEYS RECEIVED BY THE DEPARTMENT
24 PURSUANT TO SECTION 26-8.6-105. ALL INCOME FROM THE
25 INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE
26 FUND.

1 26-8.6-104. Allocation of fund. (1) ALL MONEYS IN THE
2 FUND SHALL BE USED BY THE DEPARTMENT FOR THE PURPOSE OF
3 CREATING AND IMPLEMENTING A PROSTHETIC DEVICE PROGRAM,
4 UNDERTAKEN THROUGH THE ADVISORY BOARD ESTABLISHED IN SECTION
5 26-8.6-105, WHICH SHALL PROVIDE PROSTHETIC DEVICES TO MEDICAID
6 RECIPIENTS WHO ARE IN NEED OF SUCH DEVICES IN ORDER TO OBTAIN
7 EMPLOYMENT OR TO RETAIN THEIR CURRENT EMPLOYMENT.

8 26-6.8-105. Powers and duties of the department and the
9 advisory board. (1) THE EXECUTIVE DIRECTOR SHALL APPOINT A
10 PROSTHETIC DEVICE ADVISORY BOARD WHICH SHALL RECOMMEND
11 GUIDELINES FOR THE SERVICES OF THE PROGRAM AND SUCH RULES AND
12 REGULATIONS AS MAY BE NECESSARY TO EFFECT THE PURPOSES OF THIS
13 ARTICLE. MEMBERS OF THE ADVISORY BOARD SHALL BE PERSONS FROM
14 BOTH THE PRIVATE AND PUBLIC SECTOR. THE BOARD SHALL HAVE THE
15 AUTHORITY TO APPROVE RECOMMENDATIONS OF THE ADVISORY BOARD AND
16 THE AUTHORITY TO PROMULGATE RULES AND REGULATIONS RECOMMENDED
17 BY THE ADVISORY BOARD.

18 (2) THE DEPARTMENT IS AUTHORIZED TO ACCEPT ANY GRANT OR
19 AWARD OF FUNDS FROM THE FEDERAL GOVERNMENT OR PRIVATE SOURCES
20 FOR THE FURTHERANCE OF THE PURPOSES OF THIS ARTICLE. ANY
21 MONEYS THUS RECEIVED SHALL BE CREDITED TO THE FUND. ANY
22 EXPENSES INCURRED IN THE SOLICITATION OF DONATIONS TO THE FUND
23 SHALL BE PAID FROM THE FUND.

24 26-8.6-106. Repeal of article. (1) (a) THIS ARTICLE IS
25 REPEALED, EFFECTIVE JULY 1, 1995.

26 (b) PRIOR TO SAID REPEAL, THE PROSTHETIC DEVICE ADVISORY

1 BOARD SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 2-3-1203,
2 C.R.S.

3 SECTION 2. 2-3-1203 (3) (h), Colorado Revised Statutes,
4 1980 Repl. Vol., as amended, is amended BY THE ADDITION OF A
5 NEW SUBPARAGRAPH to read:

6 2-3-1203. Sunset review of advisory committees.
7 (h) July 1, 1995:

8 (VII) THE ADVISORY BOARD ON PROSTHETIC DEVICES APPOINTED
9 PURSUANT TO SECTION 26-8.6-105, C.R.S.

10 SECTION 3. 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.

HEMT BILL C

A BILL FOR AN ACT

1 CONCERNING A STUDY OF A COLORADO CARE PROGRAM TO PROVIDE
2 HEALTH INSURANCE COVERAGE FOR ALL COLORADO RESIDENTS.

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 regulatory agencies to study the feasibility and the cost savings associated with implementing a statewide health care program, to be known as the "Colorado Care Program". Requires the department, as part of the study, to conduct a demonstration project under which counties may develop and implement a countywide health care program for citizens within their respective counties to test some or all of the features of the Colorado Care Program. Requires that a report of findings based on the study be submitted to the general assembly. Allows the department to accept grants and donations, to contract with other entities, and to seek the assistance of other principle departments in conducting the study and demonstration project. Exempts any county participating in the demonstration project from any state law or regulation that would otherwise prohibit the county from adopting and implementing a health care program for its citizens and requires the state department of social services to seek any necessary federal waivers for a county wishing to participate in the demonstration project.

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

1 SECTION 1. Title 10, Colorado Revised Statutes, 1987
2 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
3 ARTICLE to read:

4 ARTICLE 21

5 The Colorado Care Health Insurance Program

6 10-21-101. Short title. THIS ARTICLE SHALL BE KNOWN AND
7 MAY BE CITED AS "THE COLORADO CARE HEALTH INSURANCE PROGRAM".

8 10-21-102. Legislative declaration. (1) THE GENERAL
9 ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT ACCESS TO
10 AFFORDABLE HEALTH INSURANCE IS A SERIOUS AND GROWING PROBLEM
11 FOR COLORADO RESIDENTS, OF WHOM AN ESTIMATED TWENTY-SIX
12 PERCENT ARE UNINSURED OR UNDERINSURED.

13 (2) THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND
14 DECLARES THAT, TO ADDRESS THIS PROBLEM, IT WOULD BE TO THE
15 BENEFIT OF THE CITIZENS OF THIS STATE TO CONDUCT A STUDY OF
16 THE FEASIBILITY OF A PROGRAM CALLED "COLORADO CARE HEALTH
17 INSURANCE PROGRAM", REFERRED TO IN THIS ARTICLE AS COLORADO
18 CARE AND TO AUTHORIZE VOLUNTARY COUNTY DEMONSTRATIONS OF SOME
19 OR ALL OF THE FEATURES OF SUCH A PROGRAM, AND THAT COLORADO
20 CARE WOULD ASSURE UNIVERSAL, PORTABLE HEALTH INSURANCE
21 COVERAGE FOR ALL RESIDENTS, PRESERVING FREEDOM OF CHOICE,
22 ENCOURAGING COMPETITION AMONG PROVIDERS AND INSURERS, AND
23 BUILDING ON THE EXISTING PRIVATE HEALTH INSURANCE SYSTEM;
24 CONTAIN HEALTH CARE COSTS, PROMOTING PREVENTION AND EARLY
25 INTERVENTION; REDUCE ADMINISTRATIVE COSTS OF FINANCING AND
26 BILLING FOR HEALTH CARE BENEFITS, AND EQUITABLY DIVIDING THE

1 BURDEN OF HEALTH CARE FINANCING BETWEEN THE GOVERNMENT, THE
2 INDIVIDUAL, AND EMPLOYERS.

3 10-21-103. Feasibility study. (1) (a) THE EXECUTIVE
4 DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES SHALL
5 CONDUCT A FEASIBILITY STUDY OF COLORADO CARE. THE COLORADO
6 CARE PROGRAM TO BE STUDIED SHALL BE A UNIVERSAL HEALTH
7 INSURANCE PLAN WHICH WOULD PROVIDE COMPREHENSIVE PRIVATE
8 HEALTH INSURANCE COVERAGE FOR ALL COLORADO RESIDENTS UNDER THE
9 AGE OF SIXTY-FIVE YEARS.

10 (b) COLORADO CARE SHALL INCLUDE THE FOLLOWING FEATURES:

11 (I) THE PROGRAM WOULD PROVIDE FOR A FIXED DOLLAR AMOUNT
12 OF HEALTH INSURANCE FOR EACH RESIDENT.

13 (II) BENEFITS WOULD BE PROVIDED BY A LIMITED NUMBER OF
14 PRIVATE INSURERS, AND SUCH INSURERS WOULD BEAR ALL FINANCIAL
15 RISK FOR COVERED SERVICES. COVERED SERVICES WOULD HAVE TO, AT
16 A MINIMUM, INCLUDE COST-EFFECTIVE PREVENTIVE CARE AND A
17 DEFINED SET OF BASIC SERVICES.

18 (III) OVERSIGHT OF THE PROGRAM WOULD BE PROVIDED BY A
19 STATE HEALTH AUTHORITY WHICH WOULD CONTRACT WITH INSURERS TO
20 PROVIDE COVERAGE AND BILLING SERVICES.

21 (IV) ANY PRE-EXISTING CONDITION LIMITATION OR WAITING
22 PERIOD WOULD BE ELIMINATED UNDER THE PROGRAM.

23 (V) FINANCING FOR COLORADO CARE WOULD COME FROM SEVERAL
24 SOURCES AND WOULD BE POOLED AT THE STATE LEVEL IN A STATE
25 HEALTH CARE COVERAGE FINANCING FUND TO PAY FOR THE INSURANCE
26 PLANS SELECTED BY STATE RESIDENTS. THE FINANCING SOURCE WOULD

1 INCLUDE A PREMIUM TAX PAID BY EMPLOYERS AND EMPLOYEES BASED ON
2 A PERCENTAGE OF TOTAL EMPLOYER PAYROLL; EXISTING STATE
3 MEDICALLY INDIGENT FUNDS; AN INCREASE IN THE STATE CIGARETTE
4 TAX; NEW FEDERAL MATCHING DOLLARS TO PAY HALF THE COSTS OF
5 PROVIDING COVERAGE TO EVERY RESIDENT WHOSE INCOME IS LESS THAN
6 THE FEDERAL POVERTY LEVEL; A NOMINAL COLLEGE STUDENT HEAD TAX;
7 AND VARIOUS FEES AND TAXES TO BE PAID BY THE NONWORKING,
8 NONPOOR TO COVER THE COSTS OF COVERAGE FOR SUCH PERSONS.

9 (c) THE STUDY SHALL INCLUDE, BUT IS NOT LIMITED TO, THE
10 EVALUATION AND EXAMINATION OF THE FOLLOWING:

11 (I) THE COST TO ADMINISTER COLORADO CARE;

12 (II) THE FEDERAL WAIVERS NECESSARY TO IMPLEMENT THE
13 PROGRAM AND THE LIKELIHOOD OF GETTING SUCH WAIVERS;

14 (III) THE TOTAL FINANCIAL IMPACT TO THE STATE OF
15 IMPLEMENTING COLORADO CARE, INCLUDING AN ASSESSMENT OF THE TAX
16 IMPACT ON LARGE AND SMALL EMPLOYERS, EMPLOYED PERSONS,
17 UNEMPLOYED PERSONS, AND THE POOR;

18 (IV) THE NUMBER OF COLORADO RESIDENTS WHO WOULD BE
19 INSURED AND UNINSURED UNDER THE PROGRAM;

20 (V) THE EFFECT COLORADO CARE WOULD HAVE ON THE MEDICAID
21 AND MEDICALLY INDIGENT PROGRAMS;

22 (VI) THE EFFECT OF COLORADO CARE ON COST SHIFTING AND
23 UNCOMPENSATED CARE;

24 (VII) THE SAVINGS, IF ANY, THAT WOULD BE REALIZED FROM
25 THE PROGRAM AS A RESULT OF STREAMLINED FINANCING, PAYMENT, AND
26 ELIGIBILITY DETERMINATION UNDER COLORADO CARE;

1 (VIII) THE EFFECT OF COLORADO CARE ON THE ABILITY OF ALL
2 COLORADO RESIDENTS TO OBTAIN MEDICALLY NECESSARY CARE;

3 (IX) THE EFFECT THAT COLORADO CARE WOULD HAVE ON
4 EMPLOYMENT AND ECONOMIC DEVELOPMENT IN THE STATE.

5 (2) THE DIRECTOR OF THE DEPARTMENT OF REGULATORY
6 AGENCIES SHALL SUBMIT AN INTERIM FEASIBILITY REPORT REGARDING
7 THE STUDY TO THE HOUSE AND SENATE COMMITTEES ON HEALTH,
8 ENVIRONMENT, WELFARE, AND INSTITUTIONS ON OR BEFORE NOVEMBER
9 30, 1992, AND A FINAL FEASIBILITY REPORT TO SUCH COMMITTEES NO
10 LATER THAN JULY 31, 1993.

11 10-21-104. Demonstration programs. (1) THE DEPARTMENT
12 OF REGULATORY AGENCIES MAY PROVIDE ASSISTANCE TO COUNTIES
13 WHICH VOLUNTEER TO PARTICIPATE IN A PROGRAM TO DEMONSTRATE
14 SOME OR ALL OF THE FEATURES OF COLORADO CARE AT THE COUNTY
15 LEVEL. IN ADDITION, THE DEPARTMENT SHALL EVALUATE SUCH
16 DEMONSTRATION PROGRAMS AND SHALL SUBMIT A REPORT OF ITS
17 EVALUATION IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

18 (2) ON OR BEFORE NOVEMBER 30, 1993, AND EACH YEAR
19 THEREAFTER SO LONG AS THE DEMONSTRATIONS SHALL BE IN PLACE,
20 THE DEPARTMENT SHALL REPORT AS TO THE RESULTS OF THE
21 DEMONSTRATION PROGRAM TO THE HOUSE AND SENATE COMMITTEES ON
22 HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS.

23 10-21-105. Executive director - authority to accept
24 grants and donations - contract or solicitation for
25 assistance. (1) THE DEPARTMENT OF REGULATORY AGENCIES MAY
26 CONTRACT WITH ANY INDIVIDUAL OR PUBLIC OR PRIVATE AGENCY OR

1 ORGANIZATION IN CARRYING OUT THE DUTIES REQUIRED BY THIS
2 ARTICLE.

3 (2) THE DEPARTMENT MAY SOLICIT THE ASSISTANCE OF ANY
4 PRINCIPAL DEPARTMENT OR PUBLIC AGENCY IN CARRYING OUT THE
5 DUTIES REQUIRED BY THIS ARTICLE.

6 (3) THE EXECUTIVE DIRECTOR IS HEREBY AUTHORIZED TO
7 ACCEPT ON BEHALF OF THE DEPARTMENT ANY GRANTS OR DONATIONS
8 FROM ANY PUBLIC OR PRIVATE SOURCE FOR THE PURPOSE OF
9 IMPLEMENTING THIS ARTICLE.

10 SECTION 2. Part 1 of article 4 of title 26, Colorado
11 Revised Statutes, 1989 Repl. Vol., as amended, is amended BY
12 THE ADDITION OF A NEW SECTION to read:

13 26-4-109. County departments - participation in Colorado
14 Care demonstration project - state department to obtain
15 waivers. THE STATE DEPARTMENT SHALL SEEK ANY NECESSARY FEDERAL
16 WAIVERS FOR ANY COUNTY WISHING TO PARTICIPATE IN THE
17 DEMONSTRATION PROJECT PURSUANT TO SECTION 10-21-104, C.R.S.,
18 FOR THE PURPOSE OF STUDYING THE FEASIBILITY OF A PROGRAM KNOWN
19 AS THE "COLORADO CARE HEALTH INSURANCE PROGRAM", AS DESCRIBED
20 IN ARTICLE 21 OF TITLE 10.

21 SECTION 3. No appropriation. The general assembly has
22 determined that no state moneys need to be appropriated to
23 state agencies to carry out the purposes of this act.

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

-17-

HEMI BILL C

1 for the immediate preservation of the public peace, health,

2 and safety.

LEGISLATIVE COUNCIL
JOINT JUDICIARY COMMITTEE

Members of the Committee

Senator Dottie Wham, Co-Chairman	Representative Pat Grant, Co-Chairman
Senator Bonnie Allison	Representative Jeanne Adkins
Senator Terry Considine	Representative Tom Blickensderfer
Senator Dennis Gallagher	Representative Mary Ellen Epps
Senator Regis Groff	Representative Renny Fagan
Senator David Leeds	Representative Marleen Fish
Senator Donald Mares	Representative Stan Johnson
Senator Harold McCormick	Representative Peggy Kerns
Senator Richard Mutzebaugh*	Representative Steve Ruddick
Senator Bob Pastore	Representative Shirleen Tucker

Legislative Council Staff

Stan Elofson Assistant Director	Jon Moe Senior Fiscal Analyst II
Elizabeth Haskell Research Assistant	

Office of Legislative Legal Services

David A. Bergen Senior Staff Attorney	Pat Rosales-Kroll Staff Attorney
Mark T. Hamby Staff Attorney	

*Senator Mares served on the committee as a member of the House of Representatives and was sworn in as a member of the Senate on October 23, 1991.

List of Bills

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Bill B	Concerning the Enforcement of Regulations Relating to Bailbonds	29

JOINT JUDICIARY COMMITTEE

Committee Activities and Recommendations

The Legislative Council and its Executive Committee assigned three topics for consideration by the Joint Judiciary Committee in the 1991 interim: patient autonomy in regard to medical treatment decisions, regulations relating to bailbonds, and the reinstatement of the death penalty.

The committee prepared the death penalty bill and submitted it to the second special session of the 58th Colorado General Assembly which began in September 1991. The bill was enacted in the special session. Two other bills are recommended for consideration in the 1992 session. Bill A provides for patient autonomy in regard to medical treatment decisions, and Bill B amends regulations relating to bailbonds.

Patient Autonomy in Regard to the Making of Medical Treatment Decisions – Judiciary Bill A

Current Colorado law does not adequately address the rights of persons to communicate advance medical directives in case they become incapacitated. Colorado law does not protect health care providers from liability for following the known wishes of a patient who is incapacitated or for carrying out the directives of an appointed guardian. Further, few guidelines exist in Colorado for future cases because of a lack of case law involving medical treatment decisions of incapacitated persons.¹ The recommended legislation addresses these concerns.

Bill A contains three parts which affect different situations. Part 1, Medical Durable Power Of Attorney, allows persons to create a document which would contain directives for medical treatment upon their incapacitation. Part 2, Health Care Proxies Designated by Statute, permits the court to appoint a proxy for an incapacitated person. Part 3, Cardiopulmonary (CPR) Resuscitation Declarations as Advance Medical Directives, provides that an adult may state in advance that he or she does not wish to have CPR administered as a way to prolong life.

1 Two cases have been decided by district courts in Colorado: In the Matter of Betty Peterson, 90PR82 (El Paso County Dist. Court 1991); and In the Matter of Hector O. Rodas, 86PR139 (Mesa County Dist. Court 1987). Neither of these decisions was appealed to the Colorado Supreme Court.

In Colorado, three laws are often cited in debate concerning this type of legislation: the living will statutes, the power of attorney statutes, and the guardianship statutes. The proposed legislation will help clarify problems in each of these statutes. First, the living will statute (Title 15, Article 18, C.R.S) only applies to persons who are both terminally ill and unconscious. Some persons want to be able to state, in advance, their desire for the extent of medical treatment in situations when they may be neither in a terminal condition nor unconscious.

Secondly, a durable power of attorney (Title 15, Article 14, C.R.S.) creates an agency relationship and was not designed to meet the needs of health care decision making. The statute does not require the third party, in this situation the health care provider, to accept the authority of the power of attorney. A provider may say, for example, "We do not believe that this document is sufficiently clear for it to remove our liability from suit."

In the guardianship statutes (Title 15, Article 14, C.R.S.), the court determines the extent to which a guardian shall be permitted to make medical decisions for the ward of the guardian. If the court determines that there is any category of care which might not be in the best interest of the ward, the guardian is required to obtain prior court approval for such care. The court hearings to determine the guardian's ability to make medical decisions may be difficult to hold in a timely manner and are expensive. Possible costs can be in excess of \$10,000 because expert testimony on the patient's medical condition, mental state, and future progress may be required.

Medical Durable Power of Attorney

Part 1 of Bill A provides that an adult who is in sound health may create a document which affirms the traditional right of a person to accept or reject medical treatment and to establish procedures by which he or she may make such decisions known in advance of becoming unconscious or incapacitated. An advance medical directive may include any or all medical treatment decisions for a person, referred to as the "principal," who becomes incapacitated. "Medical treatment" is defined as the provision, withholding, or withdrawal of any care, treatment, surgery, service, or procedure to maintain, diagnose, treat, or provide for a patient's physical or mental health or personal care.

Bill A also permits the principal to designate an agent to make health care decisions for the principal upon his or her incapacitation. The agent is required to act in good faith and in accordance with the advance medical directives. In the cases where the medical directives are not clear, the agent will act in the best interests of the principal.

An advance directive must be signed by two witnesses, but the witnesses may not be any of the following:

- the health care agent;
- the attending physician or any other physician directly involved in the immediate care of the principal;
- an employee of the attending physician, of any other physician directly involved in the immediate care of the principal, or the health care facility in which the principal is receiving care; or
- a person who at the time the medical durable power of attorney is signed, knows or believes that they are entitled, as a beneficiary of a will or as an heir at law, to any portion of the estate of the principal upon the death of the principal.

The principal who creates the advance directive is responsible for notifying health care providers of such document and for providing copies to the health care provider. The directive may be revoked by the principal orally, in writing, or by physically destroying the directive. The principal is responsible for revoking all copies of the directive.

The bill removes liability from a health care provider for acting in compliance with the medical directive or for actions taken in accordance with the decisions of the agent. If a health care provider is unable to carry out any procedure which is contrary to his or her religious beliefs or sincere moral convictions, the provider must facilitate the prompt transfer of the patient to a facility which will comply with the directive.

Procedures for challenging the validity of the advance directive in district court are provided for in the bill. The persons who may challenge the validity are limited to the following:

- a health care agent;
- the principal's legally appointed guardian;
- the principal's spouse;
- the principal's adult children;
- the principal's parents; and
- the principal's attending physician or a health care provider who is directly responsible to administer medical treatment to the principal.

The only reasons for challenging are as follows:

- the power of attorney was not properly executed;
- the principal is not incapacitated as defined by statute;
- the advance medical directive was executed under fraud, duress, or undue influence.

Health Care Proxies Designated by Statute

Part 2 of Bill A codifies common practice by allowing a health care proxy to be appointed by the court. A proxy may be appointed under three conditions: an adult patient does not have a health care agent or a guardian who is authorized to make medical treatment decisions; the patient has not executed an advance medical directive; and the patient is incapacitated. The proxy has all of the powers and duties of the health care agent, except that the proxy cannot withdraw or withhold life-sustaining procedures or artificial nourishment unless the person is in a terminal condition or if the continuation or provision of medical treatment would be futile.

A proxy is to be one of the following people in the following order: the patient's spouse, any adult child of the patient, either parent of the patient, an adult sibling of the patient, or any other adult relative of the patient who has resided with the patient in the preceding six months.

This part of the bill does not completely resolve either the difficulties of the expense of guardianships or having guardians subject to court approval. The bill does not amend the guardianship statutes; therefore, the guardian is still subject to the current law requiring court permission when making medical decisions for the patient.

Cardiopulmonary Resuscitation (CPR) Declarations as Advance Medical Directives

Part 3 provides for a directive which an adult may execute if he or she does not wish to be resuscitated, and if such resuscitation would not restore the declarant's independent cardiac or respiratory function and would serve only to prolong life. A form may be filled out and signed by an adult as an advance directive for CPR. The adult must sign this form under informed consent, meaning that the person understands that death may result as a consequence of withdrawing or withholding CPR.

A physician shall also sign the declaration after personally examining the declarant and being convinced that the declarant understands death may result as a consequence of withdrawing or withholding CPR.

Forms for the declaration and for the necessary certifications by witnesses and the physician are included in the bill. The declarant may wear a wrist bracelet expressing the wish not to receive CPR.

This part of the bill also includes provisions similar to those found in Part 1 (Durable Power of Attorney) for the following:

- revocation of a declaration;
- provisions for immunity from civil and criminal liability for health care providers who follow the CPR directive; and
- transfer of patients by providers who refuse to comply with the terms of a CPR declaration.

Additional Comments on the Present Colorado Law

This report does not attempt to summarize the many hours of testimony heard by the committee from persons representing a variety of viewpoints concerning advance medical directives. Some further information may be useful, however, on the topic of why the present Colorado law is considered by some to be inadequate to deal with a person who is either terminally ill, but not unconscious, or is unconscious, but not terminally ill. For example, a patient may be in a coma and, in fact, brain dead but still not in a terminal condition. This situation was the condition in which the Nancy Cruzan case from the state of Missouri had been taken to the U.S. Supreme Court (110 S. Ct. 2841 (1990)).

Colorado has three statutes that could result in a Cruzan-type case. First, the role of the guardian under the guardianship statutes is to care for the body - food, shelter, clothing, health care. An incapacitated person cannot give consent as to whether a life saving procedure should take place. The guardian, in the majority of cases, is a family member, yet the Colorado statute says that the guardian cannot make medical decisions without the approval of the court. As noted previously, these proceedings involve both time and money.

The second statute noted is the durable power of attorney statute. A durable power of attorney creates an agency relationship. The result is that nothing in the statute requires the third party, in the case of the health care provider, to accept the authority of the power of attorney. The health care provider may question the validity of the power

of attorney and choose not to honor the agent's wishes for any number of reasons — e.g., because the document is too old or it appears to have not been executed properly.

The third statute, which is often used as a reason not to enact a medical treatment decision law, is the living will statute. The living will only applies if the person is terminal and either unconscious or otherwise incompetent. The definition is problematic in this case because according to statute, "terminal" means cessation of all brain functions. In the case of Nancy Cruzan, the part of her brain which controlled thinking, personality, and functioning was dead. The part of her brain which controlled digestion, respiration, and heartbeat continued to live. In Colorado, persons in a persistent vegetative state are not considered to be in a terminal condition; therefore, the living will would not apply.

Regulations Relating to Bailbonds – Judiciary Bill B

The second issue which the Joint Judiciary Committee discussed was the enforcement of regulations relating to bailbonds. Bill B was presented to the committee and was amended to reflect concerns of law enforcement and judicial representatives. The provisions of the bill, as amended, are listed below.

- Prohibits bondsmen from badgering, harassing, hounding, importuning, pestering, plaguing, tormenting, or vexing any person in or on the grounds of any jail or court.
- Expedites the return of collateral to the defendant upon release of the bond by reducing the time of its return from 20 calendar days to 10 working days and requires that a certified copy of the bond release be presented to the bondsman by the person for whom the bond was written. This provision was changed in order to assure the bondsman that the bond has been released.
- Prohibits a defendant who fails to appear in court while free on bond from being eligible for a personal recognizance bond. The purpose of this change is to protect the liability of the bondsman from a defendant who may possibly not appear for a court date.
- Changes the number of days from 30 calendar to 10 working days after the posting of bond for a refund of a portion of the premium paid by the defendant if the terms and conditions of the bond are changed or altered. This provision was amended because a county needs no longer than 10 working days to change or alter the terms and conditions of a bond.
- Reconciles the method of using real property as security for a bond with other Colorado security law and provides protection for the court by substituting a deed

of trust for the quitclaim deed and by requiring that the deed be recorded before the bond is accepted. The purpose of this change is to eliminate the problem of subsequent interests taking precedence over the court's interest in recovering property. This provision was suggested by members of the Real Estate Section of the Colorado Bar Association.

- Increases the time limit placed on forfeiture of a bond from 90 days to 180 days. This provision eliminates hearings held for the purpose of requesting a time extension, by the bondsman, to apprehend the defendant.

A fiscal impact memorandum indicates that Bill B has no fiscal impact.

Death Penalty Recommendations

This report should also make note that the interim Judiciary Committee prepared the bill to restore the death penalty in Colorado that was considered and enacted during this year's second extraordinary session of the 58th General Assembly. The Colorado Supreme Court ruled on July 9, 1991 that the Colorado death penalty, as it then existed, was unconstitutional (People v. Young, ___ Colo. ___, 1814 P.2d 834). The interim committee heard testimony on the issue of reinstating the law as it existed prior to 1988 and prepared a bill that was recommended to the Governor for placement on the call for the special session. The bill, House Bill 1001, was enacted without amendment and was signed by the Governor on September 20, 1991.

Materials Available

The following list of materials are available upon request from Legislative Council staff.

- 1) Summary of Meetings:
 - July 8, 1991 – Hearing on Patient Autonomy
 - July 29, 1991 – Hearings on Patient Autonomy and Death Penalty
 - August 29, 1991 – Hearing and Action on Death Penalty
 - October 14, 1991 – Hearing on Bailbonds and Patient Autonomy
 - November 4, 1991 – Action on Bailbonds and Patient Autonomy
- 2) "Comparison of Relevant Pre-1988 and 1988 Statutory Provisions Regarding Jury Sentencing in Capital Cases," Prepared by Office of Legislative Legal Services.
- 3) "Comparison of Bills Amending the 'Colorado Medical Treatment Decision Act'," Prepared by Legislative Council Staff, July 8, 1991.

JUDICIARY BILL A

A BILL FOR AN ACT

1 CONCERNING PATIENT AUTONOMY IN REGARD TO THE MAKING OF MEDICAL
2 TREATMENT DECISIONS.

Bill Summary

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

Creates a state patient autonomy act that authorizes persons to make advance medical treatment decisions for another person who becomes unconscious or incapacitated. Specifies the requirements for making a medical durable power of attorney and states what directives may be incorporated in a medical durable power of attorney, including the appointment of a health care agent to act on behalf of the person who executes the medical durable power of attorney. Allows for the designation of a health care proxy to act on an incapacitated patient's behalf when the patient has not executed a medical durable power of attorney and has no appointed health care agent or court-appointed guardian to act on the patient's behalf. Provides for judicial review of the validity of a medical durable power of attorney and of specified actions taken by agents, health care providers, and facilities. Describes the relation of a medical durable power of attorney to living wills and powers of attorney.

Specifies the powers and duties of appointed and designated health care agents and proxies. Describes the responsibility and rights of health care providers and facilities in regard to medical durable powers of attorney and to directions by health care agents and proxies. Specifies the extent of decision-making authority of health care agents and proxies in regard to life-sustaining procedures for

patients who are terminally ill or for whom such treatment would be futile. Sets forth penalties and regulatory sanctions for certain actions of health care agents and proxies, health care providers, health care facilities, and other persons.

Specifies that medical durable power of attorneys executed on and after a specified date must comply with the act. Validates advance medical directives executed prior to the effective date of the act if executed in another state in accordance with that state's laws and if substantially in compliance with the provisions of the act.

Provides for the execution of a cardiopulmonary resuscitation declaration (CPR declaration). Specifies who may execute such a declaration and the procedure for executing a declaration. Requires the declaration to be made using a standard form set forth in the act. Requires the state board of health to adopt rules for the implementation of the provisions concerning the CPR declaration. Allows for the use of wrist bracelets of a declarant's CPR declaration. Allows the department of health to impose a fee for forms and wrist bracelets issued pursuant to the act.

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

2 SECTION 1. Title 15, Colorado Revised Statutes, 1987
3 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
4 ARTICLE to read:

5 ARTICLE 18.5

6 Patient Autonomy Act

7 PART 1

8 MEDICAL DURABLE POWER OF ATTORNEY

9 15-18.5-101. Short title. THIS ARTICLE SHALL BE KNOWN
10 AND MAY BE CITED AS THE "COLORADO PATIENT AUTONOMY ACT".

11 15-18.5-102. Legislative declaration. (1) THE GENERAL
12 ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

13 (a) COLORADO COURTS HAVE TRADITIONALLY RECOGNIZED THE
14 RIGHT OF AN ADULT TO ACCEPT OR REJECT MEDICAL TREATMENT;

1 (b) RECENT ADVANCES IN MEDICAL SCIENCE HAVE MADE IT
2 POSSIBLE TO PROLONG DYING THROUGH THE USE OF ARTIFICIAL,
3 EXTRAORDINARY, EXTREME, OR RADICAL MEDICAL TREATMENT;

4 (c) SUCH MEDICAL TREATMENT IS INCREASINGLY USED FOR
5 PERSONS WHO ARE INCAPACITATED, UNCONSCIOUS, OR OTHERWISE
6 INCOMPETENT TO MAKE KNOWN THEIR PERSONAL DESIRES WITH RESPECT
7 TO THE ACCEPTANCE OR REJECTION OF SUCH MEDICAL TREATMENT;

8 (d) EACH ADULT HAS THE RIGHT TO ESTABLISH, IN ADVANCE OF
9 THE NEED FOR MEDICAL TREATMENT, SUCH PROVISIONS, DIRECTIVES,
10 AND INSTRUCTIONS FOR THE ADMINISTRATION OF MEDICAL TREATMENT
11 IN THE EVENT OF SUCH PERSON'S INCAPACITY; AND

12 (e) THE ENACTMENT OF THIS ARTICLE IS APPROPRIATE IN
13 ORDER TO AFFIRM THE TRADITIONAL RIGHT OF A PERSON TO ACCEPT OR
14 REJECT MEDICAL TREATMENT AND TO ESTABLISH PROCEDURES BY WHICH
15 AN ADULT MAY MAKE SUCH DECISIONS KNOWN IN ADVANCE OF BECOMING
16 UNCONSCIOUS OR INCAPACITATED.

17 (2) THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND
18 DECLARES THAT THE FOLLOWING GENERAL PRINCIPLES GOVERN THE
19 PROVISIONS OF THIS ARTICLE:

20 (a) ALL PERSONS ARE FREE TO FOLLOW THEIR OWN CONSCIENCES
21 AND BELIEFS IN MAKING AN ADVANCE MEDICAL DIRECTIVE;

22 (b) THE RIGHT TO MAKE ADVANCE MEDICAL DIRECTIVES
23 INCLUDES, BUT IS NOT LIMITED TO, THE RIGHT TO MODIFY, AMEND,
24 OR REVOKE SUCH DIRECTIVES AT ANY TIME; AND

25 (c) IN ORDER FOR AN ADVANCE MEDICAL DIRECTIVE TO BE
26 HONORED IN A TIMELY AND RESPECTFUL MANNER, PHYSICIANS, HEALTH

1 CARE PROVIDERS, AND HEALTH CARE FACILITIES MUST BE ABLE TO ACT
2 IN GOOD FAITH ON SUCH DIRECTIVES WITHOUT CONCERN THAT THEIR
3 ACTIONS WILL RESULT IN CIVIL, CRIMINAL, OR REGULATORY ACTIONS.

4 15-18.5-103. Definitions. AS USED IN THIS ARTICLE,
5 UNLESS THE CONTEXT OTHERWISE REQUIRES:

6 (1) "ADULT" MEANS ANY PERSON EIGHTEEN YEARS OF AGE OR
7 OLDER.

8 (2) "ADVANCE MEDICAL DIRECTIVE" MEANS ANY WRITTEN
9 INSTRUCTIONS RECOGNIZED UNDER THIS STATE'S LAWS CONCERNING THE
10 MAKING OF MEDICAL TREATMENT DECISIONS ON BEHALF OF THE PERSON
11 WHO PROVIDED THE INSTRUCTIONS IN THE EVENT SUCH PERSON BECOMES
12 INCAPACITATED. "ADVANCE MEDICAL DIRECTIVE" INCLUDES A MEDICAL
13 DURABLE POWER OF ATTORNEY EXECUTED IN ACCORDANCE WITH PART 1
14 OF THIS ARTICLE, A LIVING WILL EXECUTED IN ACCORDANCE WITH
15 ARTICLE 18 OF THIS TITLE, A POWER OF ATTORNEY NOT AFFECTED BY
16 A PERSON'S DISABILITY EXECUTED IN ACCORDANCE WITH SECTION
17 15-14-501, AND A CARDIOPULMONARY DECLARATION EXECUTED IN
18 ACCORDANCE WITH PART 3 OF THIS ARTICLE.

19 (3) "ARTIFICIAL NOURISHMENT" MEANS MEDICAL NOURISHMENT
20 WHEREBY NOURISHMENT IS SUPPLIED THROUGH A TUBE INSERTED INTO
21 THE STOMACH OR INTESTINES, OR NUTRIENTS INJECTED INTRAVENOUSLY
22 INTO THE BLOODSTREAM.

23 (4) "COURT" MEANS THE DISTRICT COURT OF THE COUNTY IN
24 WHICH THE PRINCIPAL IS LOCATED AT THE TIME A PETITION IS FILED
25 PURSUANT TO THIS ARTICLE. IN THE CITY AND COUNTY OF DENVER,
26 "COURT" MEANS THE PROBATE COURT.

1 (5) "HEALTH CARE AGENT" MEANS AN INDIVIDUAL, OTHER THAN
2 AN ATTENDING PHYSICIAN, APPOINTED UNDER A MEDICAL DURABLE
3 POWER OF ATTORNEY, EXECUTED IN ACCORDANCE WITH PART 1 OF THIS
4 ARTICLE, TO MAKE MEDICAL TREATMENT DECISIONS FOR ANOTHER
5 INDIVIDUAL.

6 (6) "HEALTH CARE FACILITY" MEANS ANY HOSPITAL, HOSPICE,
7 NURSING FACILITY, CARE CENTER, DIALYSIS TREATMENT FACILITY,
8 ASSISTED LIVING FACILITY, ANY ENTITY THAT PROVIDES HOME AND
9 COMMUNITY-BASED SERVICES, HOME HEALTH CARE AGENCY, OR ANY
10 OTHER FACILITY ADMINISTERING OR CONTRACTING TO ADMINISTER
11 HEALTH CARE, WHICH FACILITY IS LICENSED, CERTIFIED, OR
12 OTHERWISE AUTHORIZED OR PERMITTED BY LAW TO ADMINISTER MEDICAL
13 TREATMENT.

14 (7) "HEALTH CARE PROVIDER" MEANS A PHYSICIAN OR ANY
15 OTHER INDIVIDUAL, INCLUDING, BUT NOT LIMITED TO, ANY NURSE,
16 EMERGENCY MEDICAL TECHNICIAN, PARAMEDIC, OR OTHER EMERGENCY
17 CARE PERSONNEL WHO ADMINISTERS HEALTH CARE TO A PATIENT AND
18 WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED OR
19 PERMITTED BY LAW TO ADMINISTER HEALTH CARE OR WHO IS EMPLOYED
20 BY OR ACTING FOR SUCH AUTHORIZED PERSON. FOR THE PURPOSES OF
21 THIS ARTICLE, "HEALTH CARE PROVIDER" ALSO INCLUDES A HEALTH
22 MAINTENANCE ORGANIZATION LICENSED AND CONDUCTING BUSINESS IN
23 THIS STATE PURSUANT TO STATE OR FEDERAL LAW.

24 (8) "HEALTH CARE PROXY" MEANS AN ADULT AUTHORIZED BY
25 PART 2 OF THIS ARTICLE TO MAKE MEDICAL TREATMENT DECISIONS FOR
26 A PRINCIPAL WHO HAS NOT APPOINTED A HEALTH CARE AGENT UNDER AN

1 ADVANCE MEDICAL DIRECTIVE OR WHO DOES NOT HAVE A GUARDIAN
2 APPOINTED BY THE COURT AND AUTHORIZED TO MAKE MEDICAL
3 TREATMENT DECISIONS FOR THE GUARDIAN'S WARD PURSUANT TO
4 SECTION 15-14-312.

5 (9) "INCAPACITATED" OR "INCAPACITATED PERSON" HAS THE
6 SAME MEANING AS SET FORTH IN SECTION 15-14-101 (1), AND,
7 UNLESS THE CONTEXT OTHERWISE PROVIDES, INCLUDES EITHER A
8 TEMPORARY OR PERMANENT CONDITION.

9 (10) "LIFE-SUSTAINING PROCEDURE" MEANS ANY MEDICAL
10 TREATMENT THAT, IF ADMINISTERED TO A PATIENT, WOULD SERVE ONLY
11 TO PROLONG THE DYING PROCESS.

12 (11) "MEDICAL DURABLE POWER OF ATTORNEY" MEANS A
13 DOCUMENT EXECUTED IN ACCORDANCE WITH SECTION 15-18.5-105.

14 (12) "MEDICAL TREATMENT" MEANS THE PROVISION,
15 WITHHOLDING, OR WITHDRAWAL OF ANY CARE, TREATMENT, SURGERY,
16 SERVICE, OR PROCEDURE TO MAINTAIN, DIAGNOSE, TREAT, OR PROVIDE
17 FOR A PATIENT'S PHYSICAL OR MENTAL HEALTH OR PERSONAL CARE.

18 (13) "PHYSICIAN" MEANS A PERSON DULY LICENSED UNDER THE
19 PROVISIONS OF ARTICLE 36 OF TITLE 12, C.R.S.

20 (14) "PRINCIPAL" MEANS AN ADULT WHO EXECUTES AN ADVANCE
21 MEDICAL DIRECTIVE OR FOR WHOM MEDICAL TREATMENT DECISIONS ARE
22 AUTHORIZED TO BE MADE BY A HEALTH CARE PROXY PURSUANT TO THIS
23 ARTICLE.

24 15-18.5-104. Scope and applicability. EACH PHYSICIAN,
25 HEALTH CARE PROVIDER, OR HEALTH CARE FACILITY PROVIDING
26 MEDICAL TREATMENT TO A PRINCIPAL SHALL, IN GOOD FAITH, COMPLY

1 IN RESPECTIVE ORDER WITH: THE WISHES OF THE PRINCIPAL; THE
2 PROVISIONS OF AN ADVANCE MEDICAL DIRECTIVE; OR THE DECISIONS
3 OF A HEALTH CARE AGENT ACTING PURSUANT TO THE PROVISIONS OF
4 THIS ARTICLE. FOR THE PURPOSES OF THIS SECTION "GOOD FAITH"
5 MEANS ACTIONS PERFORMED TO THE BEST OF ONE'S ABILITY AND IN
6 ACCORDANCE WITH ETHICAL AND PROFESSIONAL STANDARDS.

7 15-18.5-105. Medical durable power of
8 attorney - appointment health care agent - execution.

9 (1) (a) ANY ADULT MAY EXECUTE, AS AN ADVANCE MEDICAL
10 DIRECTIVE, A MEDICAL DURABLE POWER OF ATTORNEY WHICH SETS
11 FORTH THAT PERSON'S WISHES WITH RESPECT TO MEDICAL TREATMENT
12 FOR THAT PERSON IN THE EVENT SUCH PERSON BECOMES
13 INCAPACITATED.

14 (b) A MEDICAL DURABLE POWER OF ATTORNEY MAY INCLUDE THE
15 APPOINTMENT OF A HEALTH CARE AGENT TO MAKE ANY AND ALL MEDICAL
16 TREATMENT DECISIONS ON THE PRINCIPAL'S BEHALF. SUCH AGENT
17 SHALL HAVE A DUTY TO ACT IN GOOD FAITH AND TO COMPLY WITH ANY
18 WISHES OF THE PRINCIPAL WITH RESPECT TO MEDICAL TREATMENT THAT
19 ARE KNOWN TO THE HEALTH CARE AGENT, INCLUDING ANY INSTRUCTIONS
20 SET FORTH IN A MEDICAL DURABLE POWER OF ATTORNEY.

21 (2) (a) A MEDICAL DURABLE POWER OF ATTORNEY MAY CONTAIN
22 MEDICAL TREATMENT DIRECTIVES FOR THE HEALTH CARE AGENT
23 APPOINTED THEREUNDER TO FOLLOW AND MAY SET FORTH CONDITIONS
24 AND LIMITATIONS ON THE EXERCISE OF THE HEALTH CARE AGENT'S
25 AUTHORITY, INCLUDING, BUT NOT LIMITED TO, DIRECTIONS AS TO THE
26 WITHDRAWAL OR WITHHOLDING OF LIFE-SUSTAINING PROCEDURES OR

1 ARTIFICIAL NOURISHMENT. A MEDICAL DURABLE POWER OF ATTORNEY
2 THAT SETS FORTH A PRINCIPAL'S DIRECTIONS CONCERNING
3 LIFE-SUSTAINING PROCEDURES OR ARTIFICIAL NOURISHMENT SHALL
4 SUPERSEDE A DECLARATION EXECUTED ON OR BEFORE JULY 1, 1992,
5 PURSUANT TO ARTICLE 18 OF THIS TITLE.

6 (b) A HEALTH CARE AGENT INFORMED OF THE PRINCIPAL'S
7 INCAPACITY IS AUTHORIZED TO RECEIVE INFORMATION AND SHALL
8 RENDER ANY APPROPRIATE DECISION IN ACCORDANCE WITH PARAGRAPH
9 (b) OF THIS SUBSECTION (1) AS TO THE PROVISION, WITHHOLDING,
10 OR WITHDRAWAL OF MEDICAL TREATMENT FOR THE PRINCIPAL. A
11 HEALTH CARE PROVIDER OR HEALTH CARE FACILITY RENDERING CARE TO
12 THE PRINCIPAL SHALL FOLLOW THE HEALTH CARE AGENT'S DECISIONS
13 CONCERNING MEDICAL TREATMENT FOR THE PRINCIPAL.

14 (c) A HEALTH CARE AGENT MAY CONTRACT OR OTHERWISE ENTER
15 INTO AN AGREEMENT FOR THE PROVISION OF MEDICAL TREATMENT FOR
16 THE PRINCIPAL AND SUCH AGENT SHALL NOT INCUR PERSONAL
17 LIABILITY FOR THE COST OF TREATMENT SOLELY ON THE BASIS OF THE
18 AGENT'S AUTHORIZATION OF TREATMENT FOR THE PRINCIPAL.

19 (3) A MEDICAL DURABLE POWER OF ATTORNEY, EXECUTED IN
20 ACCORDANCE WITH THIS SECTION, SHALL BE:

21 (a) SELF-EXECUTING UPON DETERMINATION BY THE COURT OR
22 THE PRINCIPAL'S ATTENDING PHYSICIAN THAT THE PRINCIPAL IS
23 INCAPACITATED, UPON A DETERMINATION BY THE ATTENDING PHYSICIAN
24 THAT THE PRINCIPAL IS UNABLE TO PROVIDE INFORMED CONSENT OR
25 REFUSAL FOR ANY PROPOSED MEDICAL TREATMENT, OR UPON THE
26 OCCURRENCE OF CONDITIONS AS REQUIRED BY THE MEDICAL DURABLE

1 POWER OF ATTORNEY; AND

2 (b) IN FULL FORCE AND EFFECT DURING THE PERIOD OF THE
3 PRINCIPAL'S INCAPACITY AND SHALL TERMINATE IMMEDIATELY UPON A
4 DETERMINATION THAT THE PRINCIPAL IS NO LONGER INCAPACITATED.

5 (4) THE PROVISIONS OF THIS ARTICLE OR THOSE CONTAINED IN
6 AN ADVANCE MEDICAL DIRECTIVE NOTWITHSTANDING, NO AGENT MAY
7 CONSENT TO THE PROVISION, WITHDRAWAL, OR WITHHOLDING OF
8 LIFE-SUSTAINING TREATMENT OR ARTIFICIAL NUTRITION OVER THE
9 PRINCIPAL'S OBJECTION.

10 (5) (a) EVERY MEDICAL DURABLE POWER OF ATTORNEY EXECUTED
11 UNDER THE PROVISIONS OF THIS SECTION SHALL BE IN WRITING AND
12 SIGNED OR MARKED BY THE PRINCIPAL OR SIGNED IN THE PRINCIPAL'S
13 NAME BY AN ADULT, OTHER THAN A HEALTH CARE AGENT TO BE
14 DESIGNATED UNDER THE DIRECTIVE, IN THE PRINCIPAL'S PRESENCE
15 AND AT THE PRINCIPAL'S DIRECTION.

16 (b) IN ADDITION, THE MEDICAL DURABLE POWER OF ATTORNEY
17 SHALL BE SIGNED BY TWO WITNESSES WHO WITNESSED EITHER THE
18 SIGNING OR THE PRINCIPAL'S ACKNOWLEDGEMENT OF THE SIGNING OF
19 THE DIRECTIVE. NEITHER WITNESS SHALL BE:

20 (I) THE HEALTH CARE AGENT DESIGNATED UNDER A MEDICAL
21 DURABLE POWER OF ATTORNEY;

22 (II) THE ATTENDING PHYSICIAN OR ANY OTHER PHYSICIAN
23 DIRECTLY INVOLVED IN THE IMMEDIATE CARE OF THE PRINCIPAL;

24 (III) AN EMPLOYEE OF THE ATTENDING PHYSICIAN, OF ANY
25 OTHER PHYSICIAN DIRECTLY INVOLVED IN THE IMMEDIATE CARE OF THE
26 PRINCIPAL, OR OF THE HEALTH CARE FACILITY IN WHICH THE

1 PRINCIPAL IS RECEIVING CARE; OR

2 (IV) A PERSON WHO, AT THE TIME THE MEDICAL DURABLE POWER
3 OF ATTORNEY IS SIGNED, KNOWS OR BELIEVES THAT THEY ARE
4 ENTITLED, AS A BENEFICIARY OF A WILL OR AS AN HEIR AT LAW, TO
5 ANY PORTION OF THE ESTATE OF THE PRINCIPAL UPON THE DEATH OF
6 THE PRINCIPAL.

7 (6) A DURABLE POWER OF ATTORNEY MAY BE REVOKED BY THE
8 PRINCIPAL ORALLY, IN WRITING, OR BY BURNING, TEARING,
9 CANCELLING, OBLITERATING, OR OTHERWISE DESTROYING SAID
10 DIRECTIVE.

11 (7) A PHOTOCOPY OF A DULY EXECUTED MEDICAL DURABLE POWER
12 OF ATTORNEY SHALL BE EFFECTIVE AS AN ORIGINAL.

13 15-18.5-106. Notification of medical durable powers of
14 attorney - placement in medical record. (1) (a) IT SHALL BE
15 THE RESPONSIBILITY OF THE PRINCIPAL OR THE PRINCIPAL'S HEALTH
16 CARE AGENT TO NOTIFY THE HEALTH CARE PROVIDER OR FACILITY OF
17 THE EXISTENCE OF A MEDICAL DURABLE POWER OF ATTORNEY, AND TO
18 PROVIDE THE HEALTH CARE PROVIDER OR FACILITY WITH A COPY OF
19 THE MEDICAL DURABLE POWER OF ATTORNEY, TOGETHER WITH ANY
20 AMENDMENTS THERETO. A COPY OF THE MEDICAL DURABLE POWER OF
21 ATTORNEY AND ANY AMENDMENTS THERETO SHALL BE ENTERED INTO THE
22 PRINCIPAL'S MEDICAL RECORDS.

23 (b) IF THE PRINCIPAL IS ENROLLED IN A HEALTH MAINTENANCE
24 ORGANIZATION OR OTHER MANAGED CARE PROGRAM, A COPY OF THE
25 MEDICAL DURABLE POWER OF ATTORNEY SHALL BE ENTERED INTO THE
26 PRINCIPAL'S MEDICAL RECORDS SO AS TO BE APPARENT AND

1 ACCESSIBLE TO ALL PERSONS TREATING THE PRINCIPAL IN ACCORDANCE
2 WITH THE PLAN. SUCH PERSONS SHALL COMPLY WITH THE MEDICAL
3 DURABLE POWER OF ATTORNEY IN ACCORDANCE WITH THE PROVISIONS OF
4 THIS ARTICLE, AND SHALL BE SUBJECT TO THE PROVISIONS OF THIS
5 ARTICLE GOVERNING RESPONSIBILITIES AND LIMITATIONS ON
6 LIABILITY FOR HEALTH CARE PROVIDERS.

7 (2) (a) UPON A DETERMINATION BY THE ATTENDING PHYSICIAN
8 THAT THE CIRCUMSTANCES SPECIFIED IN SECTION 15-18.5-105 (3),
9 C.R.S., EXIST, THE ATTENDING PHYSICIAN SHALL INFORM THE
10 PRINCIPAL'S HEALTH CARE AGENT.

11 (b) A HEALTH CARE AGENT, UPON RECEIVING NOTICE PURSUANT
12 TO PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL CERTIFY IN
13 WRITING THAT THE INDIVIDUAL IS THE APPOINTED HEALTH CARE AGENT
14 AND THAT SUCH PERSON IS NOT AWARE OF THE EXISTENCE OF ANY
15 AMENDMENT OR REVOCATION OF AN ADVANCE MEDICAL DIRECTIVE THAT
16 HAS BEEN ENTERED INTO THE PRINCIPAL'S MEDICAL RECORD. THE
17 WRITTEN CERTIFICATION SHALL BE ENTERED INTO THE PRINCIPAL'S
18 MEDICAL RECORD IN ACCORDANCE WITH SUBSECTION (1) OF THIS
19 SECTION.

20 15-18.5-107. Medical durable power of attorney presumed
21 valid - challenges to medical durable power of attorney -
22 health care agent. (1) A MEDICAL DURABLE POWER OF ATTORNEY
23 EXECUTED IN ACCORDANCE WITH SECTION 15-18.5-105 SHALL BE
24 PRESUMED VALID AND MAY BE RELIED UPON BY PERSONS RESPONSIBLE
25 FOR ITS EXECUTION. ANY PERSON WHO CHALLENGES THE VALIDITY OF
26 A MEDICAL DURABLE POWER OF ATTORNEY OR WHO CHALLENGES THE

1 AUTHORITY OF A HEALTH CARE AGENT TO ACT, SHALL HAVE THE BURDEN
2 OF SHOWING, BY CLEAR AND CONVINCING PROOF, THAT THE MEDICAL
3 DURABLE POWER OF ATTORNEY IS INVALID OR THAT THE HEALTH CARE
4 AGENT LACKS AUTHORITY TO ACT.

5 (2) (a) THE VALIDITY OF A MEDICAL DURABLE POWER OF
6 ATTORNEY OR OF THE AUTHORITY OF A HEALTH CARE AGENT TO ACT ON
7 THE PRINCIPAL'S BEHALF MAY BE CHALLENGED ONLY WHEN PROPERLY
8 FILED IN THE APPROPRIATE COURT AS DEFINED IN SECTION
9 15-18.5-103 (4). A PETITION FILED PURSUANT TO THIS SECTION
10 SHALL SET FORTH THE GROUNDS FOR A CHALLENGE WITH REASONABLE
11 SPECIFICITY AS TO DEMONSTRATE THAT THE CHALLENGE IS
12 MERITORIOUS. WRITTEN NOTICE OF THE FILING OF THE PETITION
13 SHALL BE GIVEN TO THE PRINCIPAL'S ATTENDING PHYSICIAN BY
14 PERSONAL DELIVERY AND TO ALL OTHER MEMBERS OF THE CLASS OF
15 PERSONS LISTED IN PARAGRAPH (b) OF THIS SUBSECTION. UPON THE
16 FILING OF A PETITION AND PROPER NOTICE IN ACCORDANCE WITH
17 THIS SECTION, THE COURT SHALL ISSUE A TEMPORARY RESTRAINING
18 ORDER PENDING A FINAL RULING ON THE PETITION.

19 (b) THE CLASS OF PERSONS WHO MAY CHALLENGE THE VALIDITY
20 OF A MEDICAL DURABLE POWER OF ATTORNEY SHALL BE LIMITED TO THE
21 FOLLOWING PERSONS:

- 22 (I) A HEALTH CARE AGENT;
- 23 (II) THE PRINCIPAL'S LEGALLY APPOINTED GUARDIAN;
- 24 (III) THE PRINCIPAL'S SPOUSE;
- 25 (IV) THE PRINCIPAL'S ADULT CHILDREN;
- 26 (V) THE PRINCIPAL'S PARENTS; AND

1 (VI) THE PRINCIPAL'S ATTENDING PHYSICIAN OR A HEALTH
2 CARE PROVIDER WHO IS DIRECTLY RESPONSIBLE TO ADMINISTER
3 MEDICAL TREATMENT TO THE PRINCIPAL.

4 (c) THE VALIDITY OF A MEDICAL DURABLE POWER OF ATTORNEY
5 MAY BE CHALLENGED ONLY FOR THE FOLLOWING REASONS:

6 (I) THE PRINCIPAL WAS INCAPACITATED, AS DEFINED IN
7 SECTION 15-18.5-103 (9), AT THE TIME THE MEDICAL DURABLE POWER
8 OF ATTORNEY WAS EXECUTED;

9 (II) THE MEDICAL DURABLE POWER OF ATTORNEY WAS NOT
10 PROPERLY EXECUTED IN ACCORDANCE WITH SECTION 15-18.5-105;

11 (III) THE PRINCIPAL IS NOT INCAPACITATED AS DEFINED IN
12 SECTION 15-18.5-103 (9);

13 (IV) THE ADVANCE MEDICAL DIRECTIVE WAS EXECUTED UNDER
14 FRAUD, DURESS, OR UNDUE INFLUENCE.

15 (d) THE AUTHORITY, ACTIONS, OR DECISIONS OF A HEALTH
16 CARE AGENT MAY BE CHALLENGED AS FOLLOWS:

17 (I) ONLY THE PERSONS ENUMERATED IN SECTION 15-18.5-201
18 (1) (b) SHALL HAVE STANDING TO FILE A PETITION PURSUANT TO
19 THIS SECTION;

20 (II) GROUNDS FOR SUCH PETITION SHALL BE LIMITED TO:

21 (A) THE HEALTH CARE AGENT ACTS IN BAD FAITH OR
22 DISREGARDS OR FAILS TO COMPLY WITH THE PRINCIPAL'S
23 INSTRUCTIONS, GUIDELINES, OR LIMITATIONS SET FORTH IN AN
24 ADVANCE MEDICAL DIRECTIVE OR WITH THE EXPRESSED WISHES OF THE
25 PRINCIPAL WITH RESPECT TO MEDICAL TREATMENT FOR THE PRINCIPAL,
26 WHICH WISHES ARE KNOWN TO THE AGENT;

1 (B) THE IMPROPER EXECUTION OF AN ADVANCE MEDICAL
2 DIRECTIVE;

3 (C) THE PERSON WHO PURPORTS TO BE A HEALTH CARE AGENT IS
4 NOT THE PERSON DESIGNATED AS SUCH UNDER THE MEDICAL DURABLE
5 POWER OF ATTORNEY EXECUTED BY THE PRINCIPAL;

6 (D) THE HEALTH CARE AGENT IS NOT ACTING IN GOOD FAITH;

7 (E) THE HEALTH CARE AGENT'S DECISION OR ACTION CONFLICTS
8 WITH A DIRECTION, LIMITATION, OR CONDITION SET FORTH IN THE
9 MEDICAL DURABLE POWER OF ATTORNEY;

10 (3) (a) IF AT ANY TIME DURING THE PROCEEDINGS CONDUCTED
11 PURSUANT TO THIS SECTION THE PRINCIPAL REQUESTS THAT AN
12 ATTORNEY BE APPOINTED FOR THE PRINCIPAL, THE COURT SHALL
13 APPOINT AN ATTORNEY TO REPRESENT THE PRINCIPAL IN THE
14 PROCEEDINGS.

15 (b) IF AT ANY TIME DURING THE PROCEEDINGS CONDUCTED
16 PURSUANT TO THIS SECTION, IN THE OPINION OF THE COURT, THE
17 RIGHTS AND INTEREST OF THE PRINCIPAL CANNOT OTHERWISE BE
18 ADEQUATELY PROTECTED OR REPRESENTED, THE COURT SHALL APPOINT
19 AN ATTORNEY TO REPRESENT THE PRINCIPAL IN THE PROCEEDINGS.

20 (4) UNLESS OTHERWISE PROVIDED BY THE COURT BASED ON GOOD
21 CAUSE, THE PETITIONER SHALL, AT LEAST FIVE BUSINESS DAYS PRIOR
22 TO A HEARING SET PURSUANT TO THIS SECTION, PROVIDE NOTICE OF
23 THE TIME AND PLACE OF THE HEARING TO THE FOLLOWING PERSONS:

24 (A) THE PRINCIPAL;

25 (B) THE PRINCIPAL'S GUARDIAN OR CONSERVATOR, IF ANY, AND
26 TO THE ATTORNEY APPOINTED PURSUANT TO SUBSECTION (3) OF THIS

1 SECTION;

2 (C) THE PRINCIPAL'S SPOUSE, IF THE IDENTITY AND
3 WHEREABOUTS OF THE SPOUSE ARE KNOWN TO THE PETITIONER, IF NOT,
4 TO EACH OF THE PRINCIPAL'S ADULT CHILDREN AND PARENTS;

5 (D) TO THE PRINCIPAL'S ATTENDING PHYSICIAN AND THE
6 HEALTH CARE FACILITY CARING FOR THE PRINCIPAL;

7 (E) TO THE HEALTH CARE AGENT.

8 (5) ANY NOTICE REQUIRED BY THIS SECTION SHALL BE MADE IN
9 ACCORDANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE.

10 (6) THE COURT MAY REQUIRE SUCH EVIDENCE, INCLUDING
11 INDEPENDENT MEDICAL EVIDENCE, AS THE COURT DEEMS NECESSARY TO
12 MAKE A DETERMINATION IN ACCORDANCE WITH THIS SECTION.

13 (7) UPON A DETERMINATION AS TO THE VALIDITY OF THE
14 ADVANCE MEDICAL DURABLE POWER OF ATTORNEY, THE COURT SHALL
15 ENTER ANY APPROPRIATE ORDER, INCLUDING, BUT NOT LIMITED TO:

16 (a) REVOKING, TEMPORARILY OR PERMANENTLY, THE AUTHORITY
17 OF THE HEALTH CARE AGENT FOR THE PRINCIPAL;

18 (b) APPOINTING AN ALTERNATIVE HEALTH CARE AGENT FOR THE
19 PRINCIPAL;

20 (c) ORDERING THE PROVISION, WITHHOLDING, OR WITHDRAWAL
21 OF GENERAL SPECIFIC MEDICAL TREATMENT;

22 (d) SUCH RELIEF AS THE COURT DEEMS APPROPRIATE OR
23 EQUITABLE UNDER THE CIRCUMSTANCES.

24 (8) IN ENTERING AN ORDER PURSUANT TO THIS SECTION, THE
25 COURT SHALL, AS CLOSELY AS POSSIBLE, HONOR AND FOLLOW THE
26 DESIRES OF THE PRINCIPAL.

1 (9) A COPY OF A COURT ORDER ENTERED PURSUANT TO THIS
2 SECTION SHALL BE PERSONALLY SERVED ON THE PRINCIPAL'S
3 ATTENDING PHYSICIAN, HEALTH CARE PROVIDER, AND HEALTH CARE
4 FACILITY.

5 (10) NOTHING IN THIS SECTION SHALL PRECLUDE THE HEALTH
6 CARE AGENT FROM SEEKING INJUNCTIVE RELIEF FROM THE COURT IN
7 REGARD TO THE ACTION OR INACTION OF A HEALTH CARE PROVIDER OR
8 HEALTH CARE FACILITY.

9 15-18.5-10B. Liability. (1) WITH RESPECT TO ANY MEDICAL
10 DURABLE POWER OF ATTORNEY WHICH, ON ITS FACE, APPEARS TO HAVE
11 BEEN EXECUTED IN ACCORDANCE WITH THE PROVISIONS OF THIS
12 ARTICLE, ACTIONS OF THE HEALTH CARE AGENT AND HEALTH CARE
13 PROVIDERS AND FACILITIES SHALL BE TREATED AS FOLLOWS:

14 (a) IN THE ABSENCE OF ACTUAL NOTICE OF REVOCATION,
15 FRAUD, MISREPRESENTATION, OR IMPROPER EXECUTION, ANY PHYSICIAN
16 MAY ACT IN COMPLIANCE WITH THE DIRECTION OF THE HEALTH CARE
17 AGENT APPOINTED BY THE PRINCIPAL IN A MEDICAL DURABLE POWER OF
18 ATTORNEY AND WITH ANY DIRECTION, LIMITATION, OR CONDITION SET
19 FORTH THEREIN.

20 (b) NO PHYSICIAN, HEALTH CARE PROVIDER, OR HEALTH CARE
21 FACILITY SHALL BE SUBJECT TO CIVIL LIABILITY, CRIMINAL
22 PENALTY, OR LICENSING OR OTHER REGULATORY SANCTION FOR ACTING
23 IN GOOD FAITH IN COMPLIANCE WITH A HEALTH CARE AGENT'S
24 DECISION MADE PURSUANT TO A MEDICAL DURABLE POWER OF ATTORNEY
25 OR FOR ACTING IN COMPLIANCE WITH ANY DIRECTION, LIMITATION, OR
26 CONDITION SET FORTH THEREIN.

1 (c) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS
 2 ARTICLE, NO HEALTH CARE AGENT WHO ACTS IN GOOD FAITH IN MAKING
 3 MEDICAL TREATMENT DECISIONS ON BEHALF OF A PRINCIPAL PURSUANT
 4 TO THE INSTRUCTIONS OR LIMITATIONS CONTAINED IN A MEDICAL
 5 DURABLE POWER OF ATTORNEY SHALL INCUR ANY CRIMINAL OR CIVIL
 6 LIABILITY ARISING OUT OF A CLAIM OF BREACH OF DUTY TO THE
 7 PRINCIPAL.

8 (2) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO
 9 REQUIRE A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY TO
 10 HONOR A HEALTH CARE AGENT'S DECISION, WHICH, IF SAID DECISION
 11 HAD BEEN MADE BY THE PRINCIPAL, THE HEALTH CARE PROVIDER OR
 12 FACILITY WOULD NOT HONOR ON THE BASIS THAT THE DECISION IS
 13 CONTRARY TO THE RELIGIOUS BELIEFS OR SINCERE MORAL CONVICTIONS
 14 HELD BY THE HEALTH CARE PROVIDER OR FACILITY. HOWEVER, A
 15 HEALTH CARE PROVIDER, HEALTH CARE FACILITY, OR PHYSICIAN SHALL
 16 HAVE THE FOLLOWING DUTIES:

17 (a) TO INFORM, WHERE REASONABLY POSSIBLE, THE PRINCIPAL
 18 OR THE PRINCIPAL'S HEALTH CARE AGENT PRIOR TO ACCEPTING CARE
 19 FOR THE PRINCIPAL, OR UPON THE PRINCIPAL'S ADMISSION TO A
 20 HEALTH CARE FACILITY, OF THE RELIGIOUS BELIEFS OR SINCERE
 21 MORAL CONVICTIONS HELD BY THAT FACILITY THAT LIMIT THE
 22 PROVIDER'S WILLINGNESS OR ABILITY TO COMPLY WITH AN ADVANCE
 23 MEDICAL DIRECTIVE; AND

24 (b) (I) TO FACILITATE THE PROMPT TRANSFER OF THE
 25 PRINCIPAL OR CARE OF THE PRINCIPAL TO ANOTHER HEALTH CARE
 26 PROVIDER OR HEALTH CARE FACILITY WHICH IS REASONABLY

1 ACCESSIBLE UNDER THE CIRCUMSTANCES AND WHERE THE PRINCIPAL'S
 2 ADVANCE MEDICAL DIRECTIVE OR AGENT'S DECISIONS WILL BE
 3 HONORED.

4 (II) THE TRANSFER OF A PRINCIPAL TO ANOTHER HEALTH CARE
 5 PROVIDER IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH
 6 (b) SHALL NOT CONSTITUTE A VIOLATION OF TITLE XIX OF THE
 7 FEDERAL "SOCIAL SECURITY ACT" PROHIBITING THE TRANSFER OF
 8 PATIENTS DUE TO THEIR FINANCIAL STATUS.

9 (3) NOTHING IN THIS SECTION SHALL RELIEVE OR EXONERATE A
 10 HEALTH CARE PROVIDER OR FACILITY FROM THE DUTY TO PROVIDE FOR
 11 THE CARE AND COMFORT OF THE PRINCIPAL PENDING TRANSFER
 12 PURSUANT TO SUBSECTION (2) OF THIS SECTION.

13 (4) (a) A PHYSICIAN'S WILLFUL REFUSAL TO COMPLY WITH A
 14 HEALTH CARE AGENT'S DIRECTIVE OR WILLFUL REFUSAL OR FAILURE TO
 15 TRANSFER THE CARE OF THE PRINCIPAL IN ACCORDANCE WITH
 16 SUBSECTION (2) OF THIS SECTION OR FAILURE TO COMPLY WITH
 17 SUBSECTION (3) OF THIS SECTION CONSTITUTES UNPROFESSIONAL
 18 CONDUCT AS PROVIDED BY SECTION 12-36-117 (1) (gg), C.R.S., AND
 19 MAY SUBJECT THE PHYSICIAN TO CIVIL AND CRIMINAL LIABILITY.

20 (b) THE WILLFUL REFUSAL OF A HEALTH CARE FACILITY OR
 21 HEALTH CARE PROVIDER, OTHER THAN A PHYSICIAN, TO COMPLY WITH A
 22 HEALTH CARE AGENT'S AUTHORITY UNDER A PROPERLY EXECUTED
 23 MEDICAL DURABLE POWER OF ATTORNEY OR WILLFUL REFUSAL OR
 24 FAILURE TO TRANSFER THE CARE OF THE PRINCIPAL IN ACCORDANCE
 25 WITH SUBSECTION (2) OF THIS SECTION OR FAILURE TO COMPLY WITH
 26 SUBSECTION (3) OF THIS SECTION MAY SUBJECT THE FACILITY OR

1 PROVIDER TO CIVIL OR CRIMINAL LIABILITY OR TO LICENSING OR
2 OTHER REGULATORY SANCTIONS.

3 (5) NOTHING IN THIS ARTICLE OR IN A MEDICAL DURABLE
4 POWER OF ATTORNEY SHALL COMPEL A HEALTH CARE PROVIDER OR
5 HEALTH CARE FACILITY TO PERFORM MEDICAL SERVICES WHICH ARE
6 OTHERWISE ILLEGAL OR WOULD OTHERWISE CONSTITUTE UNPROFESSIONAL
7 CONDUCT IN THE PRACTICE OF MEDICINE AS DESCRIBED IN SECTION
8 12-36-117, C.R.S., OR TO AUTHORIZE OR OTHERWISE PERMIT A
9 HEALTH CARE PROVIDER OR FACILITY TO ACT BEYOND THE SCOPE OF
10 ANY FEDERAL OR STATE REGULATORY STATUTE OR RULE.

11 (6) NOTHING IN THIS ARTICLE OR IN A MEDICAL DURABLE
12 POWER OF ATTORNEY SHALL BE CONSTRUED TO SUPERSEDE THE
13 PROVISIONS OF ARTICLE 34 OF TITLE 12, C.R.S., GOVERNING
14 ANATOMICAL GIFTS AND ANY STATE LAW GOVERNING THE PERFORMANCE
15 OF AUTOPSIES.

16 (7) NOTHING IN THIS ARTICLE OR IN A MEDICAL DURABLE
17 POWER OF ATTORNEY SHALL BE CONSTRUED TO RELIEVE ANY HEALTH
18 CARE PROVIDER OR HEALTH CARE FACILITY FROM THE NOTIFICATION
19 REQUIREMENTS OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C.
20 SEC. 1396a (a) (57) AND SEC. 1396a (2), AS AMENDED, AND AS SET
21 FORTH IN SECTION 26-4-403.5, C.R.S.

22 (8) NOTHING IN THIS ARTICLE OR IN A MEDICAL DURABLE
23 POWER OF ATTORNEY SHALL BE CONSTRUED SO AS TO LIMIT ANY RIGHTS
24 A PATIENT MAY HAVE PURSUANT TO ARTICLE 1 OF TITLE 25, C.R.S.,
25 ARTICLE 10 OF TITLE 27, C.R.S., OR ARTICLE 10.5 OF TITLE 27,
26 C.R.S.

1 (9) THE PROVISIONS OF THIS ARTICLE SHALL NOT SUPERSEDE
2 OR ABRIDGE ANY STATUTORY RIGHTS OF PERSONS SUBJECT TO
3 PROCEEDINGS OR MEDICAL TREATMENT RELATED TO MENTAL HEALTH
4 COMMITMENTS, ALCOHOLISM, MENTAL HEALTH, OR TREATMENT OR
5 INSTITUTIONALIZATION FOR DEVELOPMENTAL DISABILITIES.

6 15-18.5-109. Determination of suicide or homicide -
7 effect of a medical durable power of attorney. (1) (a) THE
8 WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING PROCEDURES OR
9 ARTIFICIAL NOURISHMENT FROM A PRINCIPAL IN ACCORDANCE WITH THE
10 PROVISIONS OF A MEDICAL DURABLE POWER OF ATTORNEY OR AT THE
11 DIRECTION OF A HEALTH CARE AGENT AUTHORIZED TO SO ACT, SHALL
12 NOT, WITH RESPECT TO THE AGENT OR HEALTH CARE PROVIDER ACTING
13 IN ACCORDANCE WITH THIS ARTICLE, CONSTITUTE A SUICIDE OR A
14 HOMICIDE.

15 (b) GOOD FAITH ACTIONS IN COMPLYING WITH A MEDICAL
16 DURABLE POWER OF ATTORNEY OR AT THE DIRECTION OF A HEALTH CARE
17 AGENT OF THE PRINCIPAL WHICH RESULTS IN THE DEATH OF THE
18 PRINCIPAL FOLLOWING TRAUMA CAUSED BY A CRIMINAL ACT OR
19 CRIMINAL CONDUCT, SHALL NOT AFFECT CRIMINAL PROSECUTION OF ANY
20 PERSON CHARGED WITH THE COMMISSION OF SUCH CRIMINAL ACT OR
21 CONDUCT.

22 (2) THE EXISTENCE OF A MEDICAL DURABLE POWER OF ATTORNEY
23 SHALL NOT AFFECT, IMPAIR, OR MODIFY ANY CONTRACT OF LIFE
24 INSURANCE OR ANNUITY OR BE THE BASIS FOR ANY DELAY IN ISSUING
25 OR REFUSING TO ISSUE AN ANNUITY OR POLICY OF LIFE INSURANCE OR
26 ANY INCREASE OF A PREMIUM THEREFOR.

1 (3) NO INSURER OR PROVIDER OF HEALTH CARE SHALL REQUIRE
 2 ANY PERSON TO EXECUTE A MEDICAL DURABLE POWER OF ATTORNEY AS A
 3 CONDITION OF BEING INSURED OR RECEIVING HEALTH CARE SERVICES,
 4 NOR SHALL THE FAILURE OF A PERSON TO EXECUTE A MEDICAL DURABLE
 5 POWER OF ATTORNEY BE THE BASIS FOR ANY INCREASED OR
 6 ADDITIONAL PREMIUM FOR A CONTRACT OR POLICY FOR MEDICAL OR
 7 HEALTH INSURANCE COVERAGE.

8 15-18.5-110. Penalties. (1) ANY PERSON WHO WILLFULLY
 9 CONCEALS, DEFACES, DAMAGES, OR DESTROYS THE MEDICAL DURABLE
 10 POWER OF ATTORNEY OF ANOTHER PERSON, WITHOUT THE KNOWLEDGE AND
 11 CONSENT OF SUCH PERSON, COMMITS A CLASS 1 MISDEMEANOR AND
 12 SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1-106, C.R.S.

13 (2) ANY PERSON WHO FALSIFIES OR FORGES A MEDICAL DURABLE
 14 POWER OF ATTORNEY OF ANOTHER PERSON COMMITS A CLASS 5 FELONY
 15 AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1-105, C.R.S.

16 (3) ANY PERSON WHO FALSIFIES OR FORGES A MEDICAL DURABLE
 17 POWER OF ATTORNEY OF ANOTHER PERSON, AND THE TERMS OF THE
 18 DIRECTIVE ARE ACTED UPON AND RESULT IN THE DEATH OF THE
 19 PRINCIPAL, COMMITS A CLASS 2 FELONY AND SHALL BE PUNISHED AS
 20 PROVIDED IN SECTION 18-1-105, C.R.S.

21 (4) ANY PERSON WHO WILLFULLY WITHHOLDS INFORMATION
 22 CONCERNING THE REVOCATION OF A MEDICAL DURABLE POWER OF
 23 ATTORNEY OF ANOTHER COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE
 24 PUNISHED AS PROVIDED IN SECTION 18-1-106, C.R.S.

25 15-18.5-111. Effective in this state. (1) ANY MEDICAL
 26 DURABLE POWER OF ATTORNEY OR SIMILAR INSTRUMENT EXECUTED IN

1 ANOTHER JURISDICTION WHICH COMPLIES WITH THE LAWS OF SUCH
 2 JURISDICTION AND WHICH SUBSTANTIALLY COMPLIES WITH THIS
 3 ARTICLE SHALL BE CONSIDERED VALIDLY EXECUTED FOR THE PURPOSES
 4 OF THIS ARTICLE.

5 (2) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO
 6 INVALIDATE A MEDICAL DURABLE POWER OF ATTORNEY EXECUTED PRIOR
 7 TO JULY 1, 1992, INCLUDING ANY PREVIOUSLY EXECUTED, BUT NOT
 8 REVOKED, POWER OF ATTORNEY THAT HAS BEEN EXECUTED IN
 9 ACCORDANCE WITH THE PROVISIONS OF PART 5 OF ARTICLE 14 OF THIS
 10 TITLE AND PROVIDES FOR THE MAKING OF MEDICAL TREATMENT
 11 DECISIONS. HOWEVER, IN THE EVENT THERE IS A CONFLICT BETWEEN
 12 SUCH A DOCUMENT AND THE PROVISIONS OF A MEDICAL DURABLE POWER
 13 OF ATTORNEY, THE PROVISIONS OF THE MEDICAL DURABLE POWER OF
 14 ATTORNEY CONTROL.

15 PART 2

16 HEALTH CARE PROXIES DESIGNATED BY STATUTE

17 15-18.5-201. Lack of advance medical directive
 18 designation of health care proxy. (1) (a) IN THE EVENT AN
 19 ADULT PATIENT DOES NOT HAVE A HEALTH CARE AGENT OR A GUARDIAN
 20 AUTHORIZED TO MAKE MEDICAL TREATMENT DECISIONS PURSUANT TO
 21 SECTION 15-14-312, AND HAS NOT EXECUTED AN ADVANCE MEDICAL
 22 DIRECTIVE AND THE PATIENT'S ATTENDING PHYSICIAN DETERMINES
 23 THAT THE CIRCUMSTANCES OR CONDITIONS SPECIFIED IN SECTION
 24 15-18.5-105 (3) EXIST, THE ATTENDING PHYSICIAN SHALL MAKE A
 25 GOOD FAITH EFFORT TO INFORM ONE OF THE INDIVIDUALS DESIGNATED
 26 IN SUBPARAGRAPHS (I) TO (VI) OF PARAGRAPH (b) OF THIS

1 SUBSECTION (1) TO ACT AS A HEALTH CARE PROXY ON THE PATIENT'S
2 BEHALF. A TERMINAL CONDITION, OR A DIAGNOSIS THAT THE
3 CONTINUATION OR PROVISION OF MEDICAL CARE WOULD BE FUTILE,
4 SHALL BE CONFIRMED BY AN INDEPENDENT PHYSICIAN OR
5 NEUROPSYCHIATRIST. BOTH THE ATTENDING PHYSICIAN'S DIAGNOSIS
6 AND THE INDEPENDENT DIAGNOSIS SHALL BE CERTIFIED IN WRITING
7 AND SHALL BE ENTERED INTO THE PATIENT'S MEDICAL RECORD AS
8 PROVIDED IN SECTION 15-18.5-106 (1).

9 (b) THE FOLLOWING PERSONS, IN THE FOLLOWING ORDER,
10 UNLESS UNAVAILABLE, UNWILLING, OR DISQUALIFIED FROM SERVING,
11 ARE AUTHORIZED AND VESTED WITH THE RESPONSIBILITY OF MAKING
12 MEDICAL TREATMENT DECISIONS AS A HEALTH CARE PROXY ON BEHALF
13 OF A PATIENT DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION
14 (1):

15 (I) THE PATIENT'S SPOUSE, IF THE PATIENT AND SPOUSE ARE
16 NOT LEGALLY SEPARATED AND THERE IS NO PENDING PETITION FOR A
17 DISSOLUTION OF MARRIAGE OR A LEGAL SEPARATION;

18 (II) ANY ADULT CHILD OF THE PATIENT, WHETHER RELATED BY
19 BLOOD OR ADOPTION;

20 (III) EITHER PARENT OF THE PATIENT, WHETHER RELATED BY
21 BLOOD OR ADOPTION;

22 (IV) AN ADULT SIBLING OF THE PATIENT, WHETHER RELATED BY
23 BLOOD OR ADOPTION; OR

24 (V) ANY OTHER ADULT RELATIVE OF THE PATIENT WHO HAS
25 RESIDED WITH THE PERSON IN THE PRECEDING SIX MONTHS AND WHO,
26 ACTING IN GOOD FAITH, REASONABLY AND CONVINCINGLY DEMONSTRATES

1 SPECIAL KNOWLEDGE OF THE PERSON'S WISHES WITH RESPECT TO
2 MEDICAL TREATMENT.

3 (2) A HEALTH CARE PROXY DESIGNATED UNDER THIS SECTION
4 WHO HAS BEEN INFORMED OF THE PATIENT'S INCAPACITY BY THE
5 ATTENDING PHYSICIAN IN ACCORDANCE WITH SUBSECTION (1) OF THIS
6 SECTION, MAY CONSENT TO THE PROVISION, WITHDRAWAL, OR
7 WITHHOLDING OF MEDICAL TREATMENT ON BEHALF OF THE PATIENT;
8 EXCEPT THAT, A HEALTH CARE PROXY MAY DIRECT THAT
9 LIFE-SUSTAINING PROCEDURES OR ARTIFICIAL NOURISHMENT BE
10 WITHHELD OR WITHDRAWN ONLY WHEN THE PERSON IS IN A TERMINAL
11 CONDITION OR THE CONTINUATION OR PROVISION OF MEDICAL
12 TREATMENT WOULD BE FUTILE.

13 (3) FOR THE PURPOSES OF THIS SECTION, A CONDITION IS
14 DEEMED TO BE:

15 (a) TERMINAL, IF THE PERSON SUFFERS FROM A CONDITION
16 WHICH IS INCURABLE OR IRREVERSIBLE AND FOR WHICH THE
17 ADMINISTRATION OF LIFE-SUSTAINING PROCEDURES ONLY SERVES TO
18 POSTPONE THE MOMENT OF DEATH;

19 (b) FUTILE, IF THE PERSON SUFFERS FROM A NEUROLOGICAL
20 CONDITION IN WHICH THE BRAIN IS SEVERELY DAMAGED TO THE EXTENT
21 THAT WITHIN REASONABLE MEDICAL CERTAINTY THE PATIENT IS NOT,
22 NOR EVER WILL BECOME, AWARE OF HIS ENVIRONMENT; CANNOT, NOR
23 EVER WILL, CONSCIOUSLY INTERACT WITH THE ENVIRONMENT OR OTHER
24 PERSONS; AND CANNOT, NOR EVER WILL, ACT CONSCIOUSLY,
25 VOLUNTARILY OR PURPOSELY.

26 15-18.5-202. Health care proxy - powers and duties -

1 subject to part one of this article. THE PROVISIONS OF PART 1
 2 AND PART 3 OF THIS ARTICLE GOVERNING THE POWERS AND DUTIES OF
 3 A HEALTH CARE AGENT, AND ANY OTHER STATUTORY PROVISION
 4 CONCERNING HEALTH CARE AGENTS UNDER A MEDICAL DURABLE POWER OF
 5 ATTORNEY SHALL APPLY TO A HEALTH CARE PROXY DESIGNATED
 6 PURSUANT TO THIS PART 2; EXCEPT THAT A HEALTH CARE PROXY SHALL
 7 BE SUBJECT TO SECTION 15-18.5-201 (2). IN ADDITION, THE
 8 PROVISIONS OF PART 1 OF THIS ARTICLE GOVERNING THE RIGHTS AND
 9 DUTIES OF A HEALTH CARE PROVIDER AND HEALTH CARE FACILITY IN
 10 DEALING WITH A HEALTH CARE AGENT SHALL APPLY TO A HEALTH CARE
 11 PROXY, INCLUDING SECTION 15-18.5-107.

12 PART 3

13 CARDIOPULMONARY RESUSCITATION

14 DECLARATIONS AS ADVANCE MEDICAL DIRECTIVES

15 15-18.5-301. Definitions. AS USED IN THIS PART 3,
 16 UNLESS THE CONTEXT OTHERWISE PROVIDES:

17 (1) "CARDIOPULMONARY RESUSCITATION" OR "CPR" MEANS
 18 MEASURES TO RESTORE CARDIAC FUNCTION OR TO SUPPORT BREATHING
 19 IN THE EVENT OF CARDIAC OR RESPIRATORY ARREST OR MALFUNCTION.
 20 CPR INCLUDES CHEST COMPRESSION, DELIVERING ELECTRIC SHOCKS TO
 21 THE CHEST, AND PLACING TUBES IN THE AIRWAY TO ASSIST
 22 BREATHING.

23 (2) "CPR DECLARATION" MEANS A DECLARATION EXECUTED IN
 24 ACCORDANCE WITH THIS PART 3, ON THE FORM CONTAINED HEREIN.

25 (3) "DECLARANT" MEANS THE PERSON WHO EXECUTES A CPR
 26 DECLARATION OR FOR WHOM A CPR DECLARATION IS EXECUTED.

1 15-18.5-302. CPR declaration - who may execute. (1) ANY
 2 MENTALLY COMPETENT ADULT MAY EXECUTE A CPR DECLARATION IN
 3 ACCORDANCE WITH THIS PART 3.

4 (2) (a) IN ADDITION, A CPR DECLARATION MAY BE EXECUTED
 5 ON BEHALF OF AN INCAPACITATED PERSON BY ANY OF THE FOLLOWING
 6 PERSONS:

7 (I) A GUARDIAN FOR SUCH INCAPACITATED PERSON, IF THE
 8 LETTERS OF APPOINTMENT OF SUCH GUARDIAN INCLUDE THE AUTHORITY
 9 TO MAKE MEDICAL TREATMENT DECISIONS FOR SUCH PERSON;

10 (II) A HEALTH CARE AGENT APPOINTED IN A MEDICAL DURABLE
 11 POWER OF ATTORNEY EXECUTED IN ACCORDANCE WITH PART 1 OF THIS
 12 ARTICLE;

13 (III) A HEALTH CARE PROXY DESIGNATED IN ACCORDANCE WITH
 14 THE PART 2 OF THIS ARTICLE;

15 (IV) A HEALTH CARE AGENT APPOINTED IN AN ADVANCE MEDICAL
 16 DIRECTIVE EXECUTED IN ANOTHER STATE, WHICH IS RECOGNIZED AS A
 17 VALID MEDICAL DURABLE POWER OF ATTORNEY IN ACCORDANCE WITH
 18 SECTION 15-18.5-111.

19 (b) NO INDIVIDUAL LISTED IN SUBPARAGRAPH (I) TO (IV) OF
 20 PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL ACT CONTRARY TO AN
 21 ADVANCE MEDICAL DIRECTIVE THAT OTHERWISE EXPRESSLY PROHIBITS
 22 THE AGENT FROM AUTHORIZING A CPR FOR THE PRINCIPAL OR SHALL
 23 ACT CONTRARY TO THE EXPRESS WISHES OF A PRINCIPAL.

24 (3) A CPR DECLARATION SHALL ONLY AFFECT DECISIONS ABOUT
 25 CPR AND SHALL NOT AFFECT ANY OTHER MEDICAL TREATMENT DECISION.

26 15-18.5-303. Execution of declaration. (1) A CPR

1 DECLARATION SHALL BE EXECUTED IN WRITING, THROUGH THE USE OF A
2 UNIFORM STATEWIDE FORM SET FORTH IN SECTION 15-18.5-304.

3 (2) THE CPR DECLARATION MUST BE PERSONALLY SIGNED BY THE
4 DECLARANT.

5 (3) IN THE EVENT THAT THE DECLARANT IS PHYSICALLY UNABLE
6 TO SIGN THE DECLARATION, IT MAY BE SIGNED BY SOME OTHER PERSON
7 IN THE DECLARANT'S PRESENCE AND AT THE DECLARANT'S DIRECTION;
8 EXCEPT THAT SUCH PERSON SHALL NOT BE:

9 (a) THE DECLARANT'S ATTENDING PHYSICIAN OR ANY OTHER
10 PHYSICIAN;

11 (b) AN EMPLOYEE OF THE ATTENDING PHYSICIAN OR, IF
12 APPLICABLE, THE HEALTH CARE FACILITY IN WHICH THE DECLARANT IS
13 A PATIENT;

14 (c) A PERSON WHO, AT THE TIME THE DECLARATION IS SIGNED
15 HAS A CLAIM AGAINST ANY PORTION OF THE ESTATE OF THE DECLARANT
16 UPON THE DECLARANT'S DEATH;

17 (d) A PERSON WHO, AT THE TIME THE DECLARATION IS SIGNED,
18 KNOWS OR REASONABLY BELIEVES THAT SUCH PERSON IS ENTITLED, AS
19 A BENEFICIARY UNDER A WILL OR AS AN HEIR AT LAW, TO ANY
20 PORTION OF THE ESTATE OF THE DECLARANT UPON THE DECLARANT'S
21 DEATH.

22 (4) A CPR DECLARATION SHALL BE SIGNED BY A PHYSICIAN WHO
23 CERTIFIES THAT SUCH PHYSICIAN HAS:

24 (a) PERSONALLY EXAMINED THE DECLARANT;

25 (b) EVALUATED THE MEDICAL APPROPRIATENESS OF CPR FOR THE
26 DECLARANT AND INFORMED THE DECLARANT OF THE RISKS AND

1 CONSEQUENCES OF ENFORCING A CPR DECLARATION;

2 (c) EVALUATED THE UNDERSTANDING OF THE DECLARANT IN
3 REGARD TO THE INFORMATION PROVIDED IN ACCORDANCE WITH
4 PARAGRAPH (b) OF THIS SUBSECTION (4);

5 (d) DETERMINED THAT:

6 (I) THE DECLARANT UNDERSTANDS THAT AS A RESULT OF
7 SIGNING THE CPR DECLARATION, CPR WILL NOT BE ADMINISTERED TO
8 THE DECLARANT;

9 (II) THE DECLARANT UNDERSTANDS THAT DEATH MAY RESULT AS
10 A CONSEQUENCE OF WITHDRAWING OR WITHHOLDING CPR; AND

11 (III) THAT IF THE DECLARANT, AT THE TIME OF THE
12 PHYSICIAN'S CERTIFICATION, IS AN INDIVIDUAL LISTED IN SECTION
13 15-18.5-302 (2)(a), THAT:

14 (A) THE ADMINISTRATION OF CPR WOULD NOT RESTORE THE
15 DECLARANT'S INDEPENDENT CARDIAC OR RESPIRATORY FUNCTION; OR

16 (B) CPR WOULD BE FUTILE, AS SUCH TERM IS DEFINED IN
17 SECTION 15-18.5-201 (3);

18 (e) BASED ON THE ACTION TAKEN IN ACCORDANCE WITH
19 PARAGRAPHS (a) TO (b) OF THIS SUBSECTION (4), THE DECLARANT
20 WISHES TO EXECUTE A CPR DECLARATION.

21 (5) (a) A CPR DECLARATION SHALL BE WITNESSED BY TWO
22 PERSONS, NEITHER OF WHOM MAY BE ANY OF THE PERSONS LISTED IN
23 PARAGRAPH (a) TO (d) OF SUBSECTION (3) OF THIS SECTION.

24 (b) EACH WITNESS MUST SIGN THE DECLARATION STATING THAT:

25 (I) SUCH PERSON IS NOT A PERSON DESCRIBED IN PARAGRAPH
26 (a) OF THIS SUBSECTION (5);

1 (II) THE DECLARANT, AT THE TIME THE DECLARATION WAS
2 EXECUTED, ACTED VOLUNTARILY AND WAS UNDER NO CONSTRAINT OR
3 INFLUENCE BY ANY OTHER PERSON.

4 (3) IN THE EVENT A DECLARANT IS A RESIDENT OF A NURSING
5 HOME OR OTHER RESIDENTIAL CARE FACILITY LICENSED IN THIS STATE
6 AT THE TIME A CPR DECLARATION IS EXECUTED, A PHYSICIAN SHALL
7 NOTIFY THE LOCAL LONG-TERM CARE OMBUDSMAN, DESIGNATED IN
8 ACCORDANCE WITH ARTICLE 11.5 OF TITLE 26, C.R.S., THAT THE
9 DECLARANT EXECUTED THE CPR DECLARATION VOLUNTARILY AND WAS
10 UNDER NO CONSTRAINT OR UNDUE INFLUENCE BY ANY PERSON.

11 15-18.5-304. Form. (1) A CPR DECLARATION SHALL BE IN
12 THE FOLLOWING FORM:

13 CARDIOPULMONARY DECLARATION

14 I _____, THE DECLARANT, HAVE BEEN ADVISED BY
15 (PRINT FULL NAME)

16 THE UNDER-SIGNED PHYSICIAN OF MY MEDICAL CONDITION, THE
17 MEANING OF CARDIOPULMONARY RESUSCITATION, HEREINAFTER "CPR",
18 THE APPROPRIATENESS OF EXECUTING THIS CPR DECLARATION GIVEN MY
19 MEDICAL CONDITION, AND THE RISKS AND CONSEQUENCES OF ENFORCING
20 THIS CPR DECLARATION. I UNDERSTAND MY OPTION TO WITHHOLD
21 CONSENT FOR SUCH RESUSCITATION AND I HEREBY DO SO VOLUNTARILY
22 AND WITH FULL UNDERSTANDING THAT MY DEATH MAY RESULT AS A
23 CONSEQUENCE. THEREFORE, IF I STOP BREATHING OR MY HEART
24 STOPS, I DO NOT WISH TO BE RESUSCITATED. NO MEDICAL
25 INTERVENTION SHALL BE TAKEN TO INTERFERE WITH THE PROCESS OF
26 DYING NATURALLY.

1 I UNDERSTAND THAT THIS DECISION SHALL NOT PREVENT ME FROM
2 OBTAINING ANY OTHER EMERGENCY MEDICAL CARE OR COMFORT
3 MEASURES, SHORT OF CPR.

4 I UNDERSTAND THAT I MAY REVOKE THIS DECLARATION AT ANY TIME,
5 ORALLY OR IN WRITING, OR BY BURNING, TEARING, CANCELLING,
6 OBLITERATING, OR BY DESTROYING SAID DECLARATION.

7 I GIVE PERMISSION FOR THIS INFORMATION TO BE FORWARDED TO
8 HEALTH CARE PROVIDERS AND FACILITIES AS NECESSARY TO IMPLEMENT
9 THIS DECLARATION.

10 I AM 18 YEARS OF AGE OR OLDER, AND I AM ACTING VOLUNTARILY
11 WITHOUT PRESSURE FROM OR UNDUE INFLUENCE BY ANY OTHER PERSON.

12 _____
13 Signature of Declarant Date

14 _____
15 Address City County State Zip

16 WITNESSES' CERTIFICATION

17 I DECLARE THAT THE PERSON WHO SIGNED OR ACKNOWLEDGED THIS
18 DOCUMENT SIGNED OR ACKNOWLEDGED THIS CPR DECLARATION IN MY
19 PRESENCE; THAT SUCH PERSON APPEARS TO BE OF SOUND MIND AND
20 UNDER NO DURESS, FRAUD, OR UNDUE INFLUENCE, THAT I AM NOT THE
21 PATIENT'S HEALTH CARE PROVIDER, OR AN EMPLOYEE OF THE
22 PATIENT'S HEALTH CARE PROVIDER, AND THAT, TO THE BEST OF MY
23 KNOWLEDGE, I HAVE NO CLAIM AGAINST THE PERSON FOR WHOM THE CPR

1 DECLARATION HAS BEEN EXECUTED, AND AM NOT ENTITLED TO ANY PART
2 OF SUCH PERSON'S ESTATE UNDER AN EXISTING WILL OR BY
3 INHERITANCE.

4 FIRST WITNESS	SECOND WITNESS
5 Signature: _____	Signature: _____
6 Home Address: _____	Home Address: _____
7 Print Name: _____	Print Name: _____
8 Date: _____	Date: _____

9 PHYSICIAN'S CERTIFICATION

10 I DECLARE THAT I AM A PHYSICIAN LICENSED IN THE STATE OF
11 COLORADO; THAT I HAVE PERSONALLY EXAMINED THE PERSON
12 IDENTIFIED AS THE DECLARANT IN THIS DOCUMENT; AND THAT THE
13 MEANING, RISKS, AND CONSEQUENCES OF CARDIOPULMONARY
14 RESUSCITATION HAVE BEEN EXPLAINED TO THE IDENTIFIED DECLARANT,
15 WHICH DECLARANT INCLUDES THE PERSON WHO HAS EXECUTED THIS CPR
16 DECLARATION ON THE DECLARANT'S BEHALF.

17 _____
18 Physician's Signature Date

19 (2) AN ADVANCE MEDICAL DIRECTIVE REGARDING CPR THAT HAS
20 BEEN EXECUTED IN ANOTHER STATE, WHICH APPEARS TO BE DULY
21 EXECUTED, AND WHICH SUBSTANTIALLY COMPLIES WITH THIS PART (3),

1 SHALL BE PRESUMED TO BE VALID AND TO CONFORM WITH SUBSECTION
2 (1) OF THIS SECTION.

3 15-18.5-305. Rules - forms - wrist bracelets - fees.
4 (1) THE STATE BOARD OF HEALTH, CREATED IN SECTION 25-1-103,
5 C.R.S., BASED ON RECOMMENDATIONS MADE BY THE STATE ADVISORY
6 COUNCIL ON EMERGENCY MEDICAL SERVICES, CREATED IN SECTION
7 25-35-104, C.R.S., SHALL PROMULGATE RULES AND FORMS FOR THE
8 IMPLEMENTATION OF THIS PART 3.

9 (2) THE RULES SHALL INCLUDE, BUT SHALL NOT BE LIMITED
10 TO, THE ADOPTION OF THE FORM SET FORTH IN SECTION 15-18.5-304
11 (1). THE EXECUTIVE DIRECTOR SHALL MAKE SUCH FORMS AVAILABLE
12 TO THE PUBLIC. SUCH RULES MAY INCLUDE OTHER UNIFORM MEANS, IN
13 ADDITION TO BUT NOT IN LIEU OF THE FORM, FOR INFORMING
14 INDIVIDUALS OF A DECLARANT'S CPR DECLARATION. SUCH FORMS MAY
15 INCLUDE WRIST BRACELETS WHICH MAY BE WORN BY PERSONS WHO
16 EXECUTE CPR DECLARATIONS.

17 15-18.5-306. Revocation of CPR declaration. (1) A CPR
18 DECLARATION EXECUTED IN ACCORDANCE WITH THIS PART 3 MAY BE
19 REVOKED AT ANY TIME BY THE DECLARANT OR THE DECLARANT'S HEALTH
20 CARE AGENT ORALLY OR IN WRITING, OR BY BURNING, TEARING,
21 CANCELLING, OBLITERATING, OR BY DESTROYING SAID DECLARATION.

22 (2) IT IS THE RESPONSIBILITY OF THE DECLARANT OR THE
23 DECLARANT'S HEALTH CARE AGENT TO PROVIDE NOTICE OF THE CPR
24 DECLARATION, OR THE REVOCATION THEREOF, TO HEALTH CARE
25 PROVIDERS WHO ATTEND TO THE DECLARANT.

26 15-18.5-307. Immunities and liabilities. (1) ANY

1 HEALTH CARE FACILITY, HEALTH CARE PROVIDER, OR OTHER PERSON
2 THAT WITHDRAWS OR WITHHOLDS CPR FROM A DECLARANT SHALL NOT BE
3 SUBJECT TO CIVIL OR CRIMINAL LIABILITY, OR ANY REGULATORY
4 SANCTIONS.

5 (2) ANY HEALTH CARE PROVIDER WHO REFUSES TO COMPLY WITH
6 THE TERMS OF THE CPR DECLARATION EXECUTED IN ACCORDANCE WITH
7 THIS PART 3, WHICH DECLARATION IS KNOWN TO THE PROVIDER, SHALL
8 IMMEDIATELY TRANSFER THE CARE OF THE DECLARANT TO ANOTHER
9 PROVIDER IN TIMELY FASHION OR BE DEEMED TO HAVE ENGAGED IN
10 UNPROFESSIONAL CONDUCT AND BE SUBJECT TO ANY REGULATORY
11 SANCTION AS PROVIDED BY SECTION 12-36-117, C.R.S., OR
12 25-3-103, C.R.S.

13 15-18.5-308. Effect of declaration after inpatient
14 admission. A CPR DECLARATION FOR ANY PERSON WHO IS ADMITTED
15 TO A HEALTH CARE FACILITY SHALL BE ENFORCED AS A PHYSICIAN'S
16 ORDER NOT TO RESUSCITATE THE PERSON.

17 15-18.5-309. Presumption created by absence of
18 declaration. IN THE ABSENCE OF A CPR DECLARATION, A PATIENT'S
19 CONSENT TO RESUSCITATION SHALL BE PRESUMED AND DECISIONS
20 REGARDING RESUSCITATION SHALL BE MADE BY THE PATIENT'S
21 PHYSICIAN IN ACCORDANCE WITH ACCEPTED STANDARDS OF MEDICAL
22 PRACTICE.

23 15-18.5-310. Determination of suicide or homicide -
24 effect of CPR declaration or insurance. (1) THE WITHHOLDING
25 OR WITHDRAWAL OF CPR FROM A DECLARANT PURSUANT TO THIS PART 3
26 SHALL NOT, WITH RESPECT TO THE HEALTH CARE AGENT AND HEALTH

1 CARE PROVIDERS AND FACILITIES ACTING IN ACCORDANCE WITH THIS
2 PART 3, CONSTITUTE A SUICIDE OR A HOMICIDE.

3 (2) THE EXISTENCE OF A DECLARATION PURSUANT TO THIS PART
4 3 SHALL NOT AFFECT, IMPAIR, OR MODIFY ANY CONTRACT OF LIFE
5 INSURANCE OR ANNUITY OR BE THE BASIS FOR ANY DELAY IN ISSUING
6 OR REFUSING TO ISSUE AN ANNUITY OR POLICY OF LIFE INSURANCE OR
7 ANY INCREASE OF THE PREMIUM THEREFOR.

8 (3) NO INSURER OR PROVIDER OF HEALTH CARE SHALL REQUIRE
9 ANY PERSON TO EXECUTE A DECLARATION AS A CONDITION OF BEING
10 INSURED FOR OR RECEIVING HEALTH CARE SERVICES NOR SHALL THE
11 FAILURE TO EXECUTE A DECLARATION BE THE BASIS FOR ANY
12 INCREASED OR ADDITIONAL PREMIUM FOR A CONTRACT OR POLICY FOR
13 MEDICAL OR HEALTH INSURANCE.

14 15-18.5-311. Incorporation of CPR declaration into
15 medical durable power of attorney. NOTHING IN THIS PART 3
16 SHALL BE CONSTRUED TO PROHIBIT A PERSON FROM INCORPORATING, BY
17 REFERENCE OR ATTACHMENT, A CPR DECLARATION INTO A MEDICAL
18 DURABLE POWER OF ATTORNEY EXECUTED PURSUANT TO PART 1 OF THIS
19 ARTICLE.

20 15-18.5-312. Effective date of article - applicability.
21 THIS ARTICLE SHALL TAKE EFFECT JULY 1, 1992, AND SHALL APPLY
22 TO ANY ADVANCE MEDICAL DIRECTIVE EXECUTED, AMENDED, OR REVOKED
23 AFTER SAID DATE.

24 SECTION 2. 15-14-501, Colorado Revised Statutes, 1987
25 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
26 SUBSECTION to read:

1 15-14-501. When power of attorney not affected by
 2 disability. (3) THE AUTHORITY OF AN AGENT APPOINTED UNDER A
 3 MEDICAL DURABLE POWER OF ATTORNEY EXECUTED IN ACCORDANCE WITH
 4 PART 1 OF ARTICLE 18.5 OF THIS TITLE OR AN AGENT DESIGNATED IN
 5 ACCORDANCE WITH THE PROVISIONS OF PART 2 OF ARTICLE 18.5 OF
 6 THIS TITLE SHALL PREVAIL OVER THE POWERS OF AN
 7 ATTORNEY-IN-FACT, UNLESS OTHERWISE PROVIDED BY ARTICLE 18.5 OF
 8 THIS TITLE. EXCEPT AS OTHERWISE PROVIDED BY ARTICLE 18.5 OF
 9 THIS TITLE, AN ATTORNEY-IN-FACT SHALL NOT HAVE ANY POWER TO
 10 REVOKE, SUSPEND, OR TERMINATE A PRINCIPAL'S MEDICAL DURABLE
 11 POWER OF ATTORNEY, OR ANY PART THEREOF, EXECUTED OR AMENDED IN
 12 ACCORDANCE WITH ARTICLE 18.5 OF THIS TITLE.

13 SECTION 3. Part 5 of article 14 of title 15, Colorado
 14 Revised Statutes, 1987 Repl. Vol., as amended, is amended BY
 15 THE ADDITION OF A NEW SECTION to read:

16 15-14-503. Durable powers of attorney for medical or
 17 health care purposes - after specified date - not subject to
 18 part. ON AND AFTER JULY 1, 1992, NO DURABLE POWER OF ATTORNEY
 19 FOR MEDICAL OR HEALTH CARE PURPOSES SHALL BE EXECUTED UNDER
 20 THE PROVISIONS OF THIS PART 5. A DURABLE POWER OF ATTORNEY
 21 FOR MEDICAL OR HEALTH CARE PURPOSES SHALL BE EXECUTED AS A
 22 MEDICAL DURABLE POWER OF ATTORNEY IN ACCORDANCE WITH PART 1 OF
 23 ARTICLE 18.5 OF THIS TITLE.

24 SECTION 4. Article 18 of title 15, Colorado Revised
 25 Statutes, 1987 Repl. Vol., as amended, is amended BY THE
 26 ADDITION OF A NEW SECTION to read:

1 15-18-114. Declaration for medical treatment after
 2 specified date - not subject to article. ON AND AFTER JULY 1,
 3 1992, NO DECLARATION FOR MEDICAL TREATMENT PURPOSES SHALL BE
 4 EXECUTED UNDER THIS ARTICLE. ANY MEDICAL TREATMENT DIRECTIVE
 5 BY A PERSON SHALL BE EXECUTED AS A MEDICAL DURABLE POWER OF
 6 ATTORNEY IN ACCORDANCE WITH PART 1 OF ARTICLE 18.5 OF THIS
 7 TITLE.

8 SECTION 5. 12-36-117 (1), C.R.S., 1985 Repl. Vol., as
 9 amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to
 10 read:

11 12-36-117. Unprofessional conduct. (1) "Unprofessional
 12 conduct" as used in this article means:

13 (gg) THE WILLFUL REFUSAL OF A PHYSICIAN TO COOPERATE IN
 14 THE TRANSFER OF THE PATIENT OR CARE OF THE PATIENT IN
 15 ACCORDANCE WITH THE PROVISIONS OF ARTICLE 18.5 OF TITLE 15,
 16 C.R.S., FOR ANY REASONS OTHER THAN THOSE SPECIFIED IN SUCH
 17 ARTICLE, OR THE WILLFUL FAILURE TO COMPLY WITH A HEALTH CARE
 18 AGENT'S DECISION AUTHORIZED BY SUCH ARTICLE.

19 SECTION 6. 13-64-302, C.R.S., 1987 Repl. Vol., as
 20 amended, is amended to read:

21 13-64-302. Limitation of liability - immunity for
 22 relying on medical durable power of attorney. (1) The total
 23 amount recoverable for all damages for a course of care for
 24 all defendants in any civil action for damages in tort brought
 25 against a health care professional, as defined in section
 26 13-64-202, or a health care institution, as defined in section

1 13-64-202, or as a result of binding arbitration, whether past
 2 damages, future damages, or a combination of both, shall not
 3 exceed one million dollars, present value per patient,
 4 including any derivative claim by any other claimant, of which
 5 not more than two hundred fifty thousand dollars, present
 6 value per patient, including any derivative claim by any other
 7 claimant, shall be attributable to noneconomic loss or injury,
 8 as defined in section 13-21-102.5 (2) (a) and (2) (b), whether
 9 past damages, future damages, or a combination of both; except
 10 that if, upon good cause shown, the court determines that the
 11 present value of the amount of lost past earnings and the
 12 present value of lost future earnings, or the present value of
 13 the amount of past medical and other health care costs and
 14 the present value of the amount of future medical and other
 15 health care costs, or both, when added to the present value of
 16 other past damages and the present value of other future
 17 damages, would exceed such limitation and that the application
 18 of such limitation would be unfair, the court may award the
 19 present value of additional future damages only for loss of
 20 such excess future earnings, or such excess future medical and
 21 other health care costs, or both. The limitations of this
 22 section are not applicable to a health care professional who
 23 is a public employee under the "Colorado Governmental Immunity
 24 Act" and are not applicable to a certified health care
 25 institution which is a public entity under the "Colorado
 26 Governmental Immunity Act". For purposes of this section,

1 "present value" has the same meaning as that set forth in
 2 section 13-64-202 (7). The existence of the limitations and
 3 exceptions thereto provided in this section shall not be
 4 disclosed to a jury.

5 (2) NO HEALTH CARE PROFESSIONAL OR HEALTH CARE
 6 INSTITUTION, AS SUCH TERMS ARE DEFINED IN SECTION 13-64-202,
 7 SHALL, IN ANY WAY, BE SUBJECT TO CIVIL LIABILITY, CRIMINAL
 8 PROSECUTION, OR ANY DISCIPLINARY OR REGULATORY ACTION FOR
 9 UNPROFESSIONAL CONDUCT FOR HAVING IN GOOD FAITH ACCEPTED AND
 10 RELIED UPON AN ADVANCE MEDICAL DIRECTIVE OR MEDICAL DURABLE
 11 POWER OF ATTORNEY EXECUTED BY ANY PERSON WHO SHALL COME UNDER
 12 THE CARE OF ANY SUCH HEALTH CARE PROFESSIONAL OR HEALTH CARE
 13 INSTITUTION, OR FOR HAVING IN GOOD FAITH ACCEPTED AND RELIED
 14 UPON THE DECISIONS OF A HEALTH CARE AGENT ACTING ON BEHALF OF
 15 ANY PERSON WHO SHALL COME UNDER THE CARE OF ANY HEALTH CARE
 16 PROFESSIONAL OR HEALTH CARE INSTITUTION.

17 SECTION 7. 25-1-108 (1), Colorado Revised Statutes, 1989
 18 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to
 19 read:

20 25-1-108. Powers and duties of the state board of
 21 health. (1) In addition to all other powers and duties
 22 conferred and imposed upon the state board of health by the
 23 provisions of this part 1, the board has the following
 24 specific powers and duties:

25 (g) TO ADOPT RULES IN ACCORDANCE WITH SECTION
 26 15-18.5-305, C.R.S., REGARDING THE EXECUTION OF

1 CARDIOPULMONARY RESUSCITATION DECLARATIONS.

2 SECTION 8. 25-3-103, C.R.S., 1989 Repl. Vol., as
3 amended, is amended BY THE ADDITION OF A NEW SUBSECTION to
4 read:

5 25-3-103. License denial or revocation - provisional
6 license. (6) THE DEPARTMENT OF HEALTH MAY SUSPEND OR REVOKE
7 THE LICENSE OF A HEALTH CARE FACILITY, AS SAID TERM IS DEFINED
8 IN SECTION 15-18.5-103 (8) C.R.S., IF THE DEPARTMENT FINDS
9 THAT THE FACILITY WILLFULLY REFUSED TO COOPERATE IN THE
10 TRANSFER OF THE PATIENT OR CARE OF THE PATIENT IN ACCORDANCE
11 WITH THE PROVISIONS OF ARTICLE 18.5 OF TITLE 15, C.R.S., FOR
12 ANY OTHER REASONS THAN THOSE AUTHORIZED BY SUCH ARTICLE, OR IF
13 THE FACILITY WILLFULLY FAILED TO COMPLY WITH A HEALTH CARE
14 AGENT'S DECISION AUTHORIZED BY SUCH ARTICLE.

15 SECTION 9. 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.

JUDICIARY BILL B

A BILL FOR AN ACT

1 CONCERNING THE ENFORCEMENT OF REGULATIONS RELATING TO
2 BAILBONDS.

Bill Summary

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

Prohibits bondsmen from soliciting business in a harassing or vexatious manner in specified places. Requires bondsmen to return collateral or security within a specified number of days after receipt of a certified copy of a court order that results in the release of the bond. Requires the person for whom the bond was written to provide such certified copies of court orders to bondsmen. Requires the court to mail notice of bond forfeitures to depositors or assignees of deposits of cash or property. Prohibits release on a personal recognizance bond if a person has previously failed to appear in conjunction with the offense upon which bond was originally posted unless the defendant shows the failure to appear was due to circumstances or events beyond the defendant's control. Allows new circumstances under which a surety on a bailbond may recover the bond after judgment has been entered against such surety for the amount of the bond. Provides additional circumstances under which bailbonds are not forfeited by the surety to the court.

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

1 SECTION 1. 12-7-106 (1), Colorado Revised Statutes, 1991
2 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to
3 read:

4 12-7-106. Denial, suspension, revocation, and refusal to
5 renew license - hearing - alternative civil penalty. (1) The
6 division shall deny, suspend, revoke, or refuse to renew, as
7 may be appropriate, the license of any person engaged in the
8 business of professional bondsman for any of the following
9 reasons:

10 (o) BADGERING, HARASSING, HOUNDING, IMPORTUNING,
11 PESTERING, PLAGUING, TORMENTING, OR VEXING ANY PERSON IN OR ON
12 THE GROUNDS OF ANY PLACE WHERE ANY PERSON IS DETAINED IN LEGAL
13 CUSTODY FOR THE PURPOSES OF SECURING BUSINESS FOR ANY
14 PROFESSIONAL BONDSMAN.

15 SECTION 2. 12-7-109 (1) (d.5), Colorado Revised
16 Statutes, 1991 Repl. Vol., is amended to read:

17 12-7-109. Prohibited activities - penalties. (1) It is
18 unlawful for any licensee under this article to engage in any
19 of the following activities:

20 (d.5) EXCEPT FOR THE FEE RECEIVED FOR THE BOND, TO fail
21 to return any collateral or security within ~~twenty~~ TEN WORKING
22 days ~~of~~ AFTER RECEIPT OF A CERTIFIED COPY OF THE COURT ORDER
23 THAT RESULTS IN A release of the bond by the court. ~~except--as~~
24 ~~to--the--fee--received--for--the--bond;~~ A CERTIFIED COPY OF THE
25 COURT ORDER SHALL BE PROVIDED TO THE BONDSMAN IN COLORADO OR
26 THE COMPANY, IF ANY, FOR WHOM THE BONDSMAN WORKS WHETHER IN

1 COLORADO OR OUT OF STATE, OR BOTH, BY THE PERSON FOR WHOM THE
2 BOND WAS WRITTEN.

3 SECTION 3. 16-4-104 (3), Colorado Revised Statutes, 1986
4 Repl. Vol., as amended, is amended to read:

5 16-4-104. Bail bond - alternatives. (3) (a) If the bond
6 is secured by real estate, the amount of the owner's
7 unencumbered equity shall be determined by deducting the
8 amount of all encumbrances listed in the owner and
9 encumbrances certificate from the actual value of such real
10 estate as shown on the current notice of valuation. The owner
11 of the real estate shall file with the bond the following,
12 which shall constitute a material part of the bond:

13 {a} (I) The current notice of valuation for such real
14 estate prepared by the county assessor pursuant to section
15 39-5-121, C.R.S.; and

16 {b} (II) An owner and encumbrances certificate issued by
17 a title insurance company or agent licensed pursuant to
18 article 11 of title 10, C.R.S., within thirty days of the date
19 upon which the bond is filed; and

20 ~~{c}--A--signed--and--executed--quitclaim--deed--transferring~~
21 ~~the--real--estate--to--the--court--approving--the--bond,--to--be--filed~~
22 ~~with--the--county--clerk--and--recorder--upon,--and--only--upon,~~
23 ~~forfeiture--of--the--bond;--and~~

24 {d} (III) A sworn statement by the owner of the real
25 estate that the real estate is security for the compliance by
26 the accused with the primary condition of the bond; AND

1 (IV) A DEED OF TRUST TO THE PUBLIC TRUSTEE OF THE COUNTY
2 IN WHICH SUCH REAL ESTATE IS LOCATED WHICH SHALL BE EXECUTED
3 AND ACKNOWLEDGED BY ALL RECORD OWNERS OF SUCH REAL ESTATE
4 WHICH SHALL NAME AS BENEFICIARY THE CLERK OF THE COURT
5 APPROVING SUCH BOND AND WHICH SHALL SECURE AN AMOUNT EQUAL TO
6 ONE AND ONE-HALF TIMES THE AMOUNT OF THE BOND.

7 (b) (I) IF THE BOND IS SECURED BY REAL ESTATE, SUCH BOND
8 SHALL NOT BE ACCEPTED BY THE CLERK OF THE COURT UNLESS THE
9 RECORD OWNER OF SUCH PROPERTY HAS PRESENTED TO THE CLERK OF
10 SUCH COURT THE ORIGINAL DEED OF TRUST AS SET FORTH IN
11 SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (3) AND
12 THE APPLICABLE RECORDING FEE. UPON RECEIPT OF SUCH DEED OF
13 TRUST AND FEE, THE CLERK OF THE COURT SHALL CAUSE THE DEED OF
14 TRUST TO BE RECORDED WITH THE CLERK AND RECORDER FOR THE
15 COUNTY IN WHICH THE PROPERTY IS LOCATED.

16 (II) UPON SATISFACTION OF THE TERMS OF THE BOND, THE
17 CLERK OF THE COURT SHALL, WITHIN TEN DAYS OF SUCH
18 SATISFACTION, EXECUTE A RELEASE OF THE DEED OF TRUST AND AN
19 AFFIDAVIT WHICH STATES THAT THE OBLIGATION FOR WHICH THE DEED
20 OF TRUST HAD BEEN RECORDED HAS BEEN SATISFIED, EITHER FULLY OR
21 PARTIALLY, AND THAT THE RELEASE OF SUCH DEED OF TRUST MAY BE
22 RECORDED AT THE EXPENSE OF THE RECORD OWNER OF THE PROPERTY
23 DESCRIBED IN SUCH DEED OF TRUST.

24 (III) IF THERE IS A FORFEITURE OF THE BOND PURSUANT TO
25 SECTIONS 16-4-103 AND 16-4-109, AND IF THE FORFEITURE IS NOT
26 SET ASIDE PURSUANT TO SECTION 16-4-109 (3), THE DEED OF TRUST

1 MAY BE FORECLOSED AS PROVIDED BY LAW.

2 (IV) IF THERE IS A FORFEITURE OF THE BOND PURSUANT TO
3 SECTIONS 16-4-103 AND 16-4-109, BUT THE FORFEITURE IS SET
4 ASIDE PURSUANT TO SECTION 16-4-109 (3), THE CLERK OF THE COURT
5 SHALL EXECUTE A RELEASE OF THE DEED OF TRUST AND AN AFFIDAVIT
6 WHICH STATES THAT THE OBLIGATION FOR WHICH THE DEED OF TRUST
7 HAD BEEN RECORDED HAS BEEN SATISFIED, EITHER FULLY OR
8 PARTIALLY, AND THAT THE RELEASE OF SUCH DEED OF TRUST MAY BE
9 RECORDED AT THE EXPENSE OF THE RECORD OWNER OF THE REAL ESTATE
10 DESCRIBED IN SUCH DEED OF TRUST.

11 SECTION 4. 16-4-105 (1), Colorado Revised Statutes, 1986
12 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
13 PARAGRAPH to read:

14 16-4-105. Selection by judge of the amount of bail and
15 type of bond - criteria. (1) In determining the amount of
16 bail and the type of bond to be furnished by the defendant,
17 the judge fixing the same shall consider and be governed by
18 the following criteria:

19 (p.5) ANY DEFENDANT, WHO FAILS TO APPEAR WHILE FREE ON
20 BOND IN CONJUNCTION WITH A CLASS I MISDEMEANOR OR A FELONY AND
21 WHO IS SUBSEQUENTLY ARRESTED, SHALL NOT BE ELIGIBLE FOR A
22 PERSONAL RECOGNIZANCE BOND; EXCEPT THAT IF THE DEFENDANT CAN
23 PROVIDE SATISFACTORY EVIDENCE TO THE COURT THAT THE FAILURE TO
24 APPEAR WAS DUE TO CIRCUMSTANCES OR EVENTS BEYOND THE CONTROL
25 OF THE DEFENDANT, THE COURT SHALL HAVE THE DISCRETION TO GRANT
26 A PERSONAL RECOGNIZANCE BOND.

1 SECTION 5. 16-4-108 (1), Colorado Revised Statutes, 1986
2 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to
3 read:

4 16-4-108. Exoneration from bond liability. (1) Any
5 person executing a bail bond as principal or as surety shall
6 be exonerated as follows:

7 (b.5) WHEN SUCH PERSON PROVIDES SATISFACTORY EVIDENCE TO
8 THE COURT, WHICH MAY INCLUDE BUT SHALL NOT BE LIMITED TO A
9 CERTIFIED COPY OF ANY ORDER, SHOWING THAT THE DEFENDANT IS
10 BEING HELD OR INCARCERATED IN A FOREIGN JURISDICTION AND,
11 THEREFORE, THAT SUCH DEFENDANT'S RETURN TO COLORADO IS NOT
12 LIKELY; OR

13 SECTION 6. 16-4-108 (1.5), Colorado Revised Statutes,
14 1986 Repl. Vol., is amended to read:

15 16-4-108. Exoneration from bond liability. (1.5) If,
16 within ~~thirty~~ TEN WORKING days after the posting of a bond by
17 a defendant, the terms and conditions of said bond are changed
18 or altered either by order of court or upon the motion of the
19 district attorney or the defendant, the court, after a
20 hearing, may order a compensated surety to refund a portion of
21 the premium paid by the defendant, if necessary to prevent
22 unjust enrichment. If more than ~~thirty~~ TEN WORKING days have
23 elapsed after posting of a bond by a defendant, the court
24 shall not order the refund of any premium.

25 SECTION 7. 16-4-109 (2), Colorado Revised Statutes, 1986
26 Repl. Vol., is amended, and the said 16-4-109 is further

1 amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to
2 read:

3 16-4-109. Disposition of security deposits upon
4 forfeiture or termination of bond. (2) Where the defendant
5 has been released upon deposit of cash, stocks, or bonds, OR
6 PROPERTY or upon a surety bond secured by property, if the
7 defendant fails to appear in accordance with the primary
8 condition of the bond, the court shall declare a forfeiture.
9 Notice of the order of forfeiture shall be mailed forthwith by
10 the court to the defendant, and ALL sureties, if any, AND ALL
11 DEPOSITORS OR ASSIGNEES OF ANY DEPOSITS OF CASH OR PROPERTY IF
12 SUCH SURETIES, DEPOSITORS, OR ASSIGNEES HAVE DIRECT CONTACT
13 WITH THE COURT, at their last known address ADDRESSES. SUCH
14 NOTICE SHALL BE SENT WITHIN TEN DAYS AFTER THE ENTRY OF THE
15 ORDER OF FORFEITURE. ~~If the defendant does not appear and~~
16 ~~surrender to the court having jurisdiction within thirty days~~
17 ~~from the date of the forfeiture or within that period satisfy~~
18 ~~the court that appearance and surrender by the defendant is~~
19 ~~impossible and without his fault, the court shall enter~~
20 ~~judgment for the state against the defendant for the amount of~~
21 ~~the bail and costs of the court proceedings.~~ Any cash
22 deposits made with the clerk of the court shall be applied to
23 the payment of costs. If any amount of such cash deposit
24 remains after the payment of costs, it shall be applied to
25 payment of the judgment.

26 (4) WITHIN ONE HUNDRED EIGHTY DAYS AFTER SENDING THE

1 NOTICE OF FORFEITURE SPECIFIED IN SUBSECTION (2) OF THIS
2 SECTION THE COURT SHALL ORDER THE FORFEITURE OF THE BOND OR
3 DEPOSIT VACATED IF:

4 (a) THE SURETY EFFECTS THE SURRENDER OF THE DEFENDANT TO
5 THE COURT OR TO THE SHERIFF OF THE COUNTY FROM WHICH THE BOND
6 WAS TAKEN; OR

7 (b) THE SURETY APPEARS AND PROVIDES SATISFACTORY
8 EVIDENCE TO THE COURT THAT THE DEFENDANT IS UNABLE TO APPEAR
9 BEFORE THE COURT DUE TO SUCH DEFENDANT'S DEATH, AN ILLNESS
10 WHICH THREATENS THE LIFE OF SUCH DEFENDANT, OR THE DETENTION
11 OR INCARCERATION OF SUCH DEFENDANT IN A FOREIGN JURISDICTION
12 AND THAT THE ABSENCE OF THE DEFENDANT IS NOT DUE TO ANY ACT OR
13 OMISSION ON THE PART OF THE SURETY; OR

14 (c) AN EVENT OCCURS WHICH WOULD HAVE RESULTED IN THE
15 DISCHARGE OF THE SURETY BEFORE FORFEITURE OCCURRED UNDER
16 SECTION 16-4-108.

17 (5) (a) UPON THE EXPIRATION OF THE
18 ONE-HUNDRED-EIGHTY-DAY PERIOD, IF THE FORFEITURE HAS NOT BEEN
19 VACATED PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE COURT
20 SHALL ENTER JUDGMENT AGAINST THE DEFENDANT AND THE SURETY;
21 EXCEPT THAT THE JUDGMENT SHALL NOT EXCEED THE AMOUNT OF THE
22 BOND PLUS ANY COSTS OF THE COURT AND SHALL NOT INCLUDE ANY
23 PENALTIES IN ADDITION TO THE AMOUNT OF THE BOND.

24 (b) IF THE COURT ENTERS JUDGMENT FOR THE STATE AGAINST
25 THE SURETY, EXECUTION SHALL ISSUE THEREON AS ON OTHER
26 JUDGMENTS. THE DISTRICT ATTORNEY SHALL HAVE EXECUTION ISSUED

1 FORTHWITH UPON THE JUDGMENT AND SHALL DELIVER IT TO THE
2 SHERIFF TO BE EXECUTED BY LEVY UPON THE STOCKS, BOND, OR REAL
3 ESTATE WHICH HAS BEEN ACCEPTED AS SECURITY FOR THE BOND.

4 (6) IF, WITHIN ONE YEAR AFTER JUDGMENT THE PERSON WHO
5 EXECUTED THE FORFEITED BOND AS PRINCIPAL OR AS SURETY EFFECTS
6 THE APPREHENSION OR SURRENDER OF THE DEFENDANT TO THE SHERIFF
7 OF THE COUNTY FROM WHICH THE BOND WAS TAKEN OR TO THE COURT
8 WHICH GRANTED THE BOND, THE COURT SHALL VACATE THE JUDGMENT
9 AND ORDER A REMISSION LESS NECESSARY AND ACTUAL COSTS OF THE
10 COURT.

11 SECTION 8. 16-4-110, Colorado Revised Statutes, 1986
12 Repl. Vol., is repealed as follows:

13 16-4-110. Enforcement when forfeiture not set aside. By
14 entering--into--a--bond,--each--obligor,--whether--he--is--the
15 principal--or--a--surety,--submits--to--the--jurisdiction--of--the
16 court,--His--liability--under--the--bond--may--be--enforced,--without
17 the--necessity--of--an--independent--action,--as--follows:--The--court
18 shall--order--the--issuance--of--a--citation--directed--to--the--obligor
19 to--show--cause,--if--any--there--be,--why--judgment--should--not--be
20 entered--against--him--forthwith--and--execution--issue--thereon,
21 Said--citation--may--be--served--personally--or--by--certified--mail
22 upon--the--obligor--directed--to--the--address--given--in--the--bond.
23 Hearing--on--the--citation--shall--be--held--not--less--than--twenty
24 days--after--service,---The--defendant's--attorney---and---the
25 prosecuting--attorney--shall--be--given--notice--of--the--hearing,--At
26 the--conclusion--of--the--hearing,--the--court--may--enter--a--judgment

1 ~~for the state and against the obligor, and execution shall~~
2 ~~issue thereon as on other judgments. The district attorney~~
3 ~~shall have execution issued forthwith upon the judgment and~~
4 ~~deliver it to the sheriff to be executed by levy upon the~~
5 ~~stocks, bond, or real estate which has been accepted as~~
6 ~~security for the bond.~~

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

9 SECTION 10. 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.