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0339 Joint Legislative Review Committee on Sunrise and Sunset



COLORADO

GENERAL ASSEMBLY

Legislative Council
Research Publication No. 339

Sunrise and Sunset

Joint Legislative Review
Committee on Sunrise and Sunset

December, 1989

RECOMMENDATIONS FOR 1990

**JOINT LEGISLATIVE SUNRISE SUNSET
REVIEW COMMITTEE**

**Report to the
Colorado General Assembly**

**Research Publication No. 339
December, 1989**

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To Members of the Fifty-Seventh Colorado General Assembly:

Submitted herewith is the final report of the Joint Legislative Sunrise Sunset Review Committee. The Committee was created pursuant to section 2-3-1201, C.R.S., (House Bill 1087, 1985 session), and Rule 35 of the Joint Rules of the Senate and House of Representatives. The purpose of the committee is to review the termination of divisions, boards or agencies pursuant to the statutory sunset provisions (section 24-34-104, C.R.S.) and to review requests for new regulation of occupations and professions pursuant to the statutory sunrise provisions (section 24-3-104.1, C.R.S.).

At its meeting on November 9, the Legislative Council reviewed this report. A motion to forward the report and recommendations of the Joint Legislative Sunrise Sunset Review Committee to the Fifty-seventh General Assembly was also approved.

Respectfully submitted,

/s/ Representative Barbara Philips
Chairman
Joint Legislative Sunrise Sunset
Review Committee

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**JOINT LEGISLATIVE
SUNRISE SUNSET REVIEW COMMITTEE**

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SUMMARY OF RECOMMENDATIONS

The Joint Legislative Sunrise Sunset Review Committee was established in 1985 to perform the functions and duties relating to the termination of specified commissions, division, agencies, and citizens' advisory committees and to consider proposals for the new regulation of occupations and professions not presently regulated (section 2-3-1201, et seq., C.R.S. and Rule 35 of the Joint Rules of the Senate and House of Representatives).

In carrying out its directives, the committee held fourteen days of meetings during the 1989 interim. Findings and recommendations prepared by the Department of Regulatory Agencies (DORA) were reviewed, and the committee heard public testimony from concerned citizens, interest groups, and where appropriate, representatives of licensing boards and advisory committees. The committee conducted four sunset reviews of regulatory boards, three sunset reviews of licensing functions of state agencies, twelve sunrise reviews of applications for occupational licensure, and nine sunset reviews of advisory committees. (All agencies and committees reviewed are scheduled for termination on July 1, 1990.) Twelve bills are recommended for action in the 1990 session.

A. Sunset Review of Existing Regulatory Boards

The following regulatory boards are recommended for continuation. The statutory directive for review of these boards is found in section 24-34-104, C.R.S.

Board of Barbers and Cosmetologists

Recommendation: Bill 1 -- Concerning Barbers and Cosmetologists, and, in Connection Therewith, Continuing the State Board of Barbers and Cosmetologists.

Collection Agency Board

Recommendation: Bill 2 -- Concerning the Continuation of the Colorado Collection Agency Board.

Colorado Podiatry Board

Recommendation: Bill 3 -- Concerning the Regulation of the Practice of Podiatry, and, in Connection Therewith, Providing for the Continuation of the Colorado Podiatry Board.

State Board of Accountancy

Recommendation: Bill 4 -- Concerning the Regulation of Accountants, and, in Connection Therewith, Providing for the Continuation of the State Board of Accountancy.

B. Sunset Review of Licensing Functions of Certain Agencies

The agencies and functions listed below are recommended for continuation. The statutory directive for review of these licensing functions is found in section 24-34-104 (1) (b), C.R.S.

Asbestos Control Functions of the Air Pollution Control Division, Department of Health

Recommendation: Bill 5 -- Concerning the Asbestos Control Functions in the Department of Health, and Providing for the Continuation Thereof.

Beekeeper Licensure, Department of Agriculture

Recommendation: Bill 6 -- Concerning Continuation of the Colorado Bee and Bee Products Act.

Pesticide Applicators' Act, Department of Agriculture

Recommendation: Bill 7 -- A Bill for an Act Concerning the Regulation of Pesticide Applications.

C. Sunrise Review of Occupations Requesting Licensure

Applications for licensure were submitted pursuant to section 2-3-1202, C.R.S., with committee recommendations for each occupational group noted below.

Asbestos Air Sampling Professionals

Recommendation: The committee recommends that asbestos air samplers not be licensed.

Creative Arts Therapists

Recommendation: The committee recommends that creative arts therapists not be licensed.

Dietitians

Recommendation: The committee recommends that dietitians not be licensed.

Fire Suppression System Installers

Recommendation: Bill 8 -- Concerning Creation of the Fire Suppression Program Under the Director of the Division of Fire Safety in the Department of Public Safety, and Making an Appropriation Therefor.

Interior Designers

Recommendation: The committee recommends that interior designers not be licensed.

Landscape Architects

Recommendation: The committee recommends that landscape architects not be licensed.

Locksmiths

Recommendation: The committee recommends that locksmiths not be licensed.

Massage Therapists

Recommendation: Although the committee recommends that massage therapists not be licensed, the following bill is recommended.

Bill 9 -- Concerning the Exemption of Massage Therapy From the "Colorado Massage Parlor Code" by Defining a "Massage Therapist" to be a Person Who Has Graduated From an Accredited or Approved Massage Therapy School With a Minimum of Five Hundred Hours of Massage Therapy Training.

Pesticide Dealer Managers

Recommendation: The committee recommends that pesticide dealers not be licensed but does recommend licensure of pesticide consultants. That licensure is included in Bill 7, which continues the Pesticide Applicators Act.

Real Estate Appraisers

Recommendation: Bill 10 -- Concerning the Regulation of Appraisers, and Making an Appropriation in Connection Therewith.

Security Guards

Recommendation: The committee recommends that security guards not be licensed.

X-Ray Assistants

Recommendation: Bill 11 -- Concerning Establishment and Enforcement of Minimum Standards for Qualifications and Training of X-Ray Assistants.

D. Sunset Review of Advisory Committees

The statutory directive for the sunset review of advisory committees is found in section 2-3-1203, C.R.S. The committee recommends the continuation of the following advisory committees.

- Advisory Committee Concerning Standards for the Eligibility and Certification of Providers of Alternative Care Services

- Advisory Council to the Division of Employment and Training
- Alcohol and Drug Abuse Advisory Council
- Governor's Traffic Safety Advisory Committee
- Medical Assistance and Services Advisory Council
- State Certificated Personnel Performance Evaluation Council
- Technical Advisory Committee to the Joint Review Committee on the Medically Indigent
- Beekeepers' Advisory Committee
- Pesticide Applicators' Advisory Committee

Recommendation: Bill 12 -- Concerning Advisory committees Scheduled to Sunset July 1, 1990. (The Beekeepers' Advisory Committee and the Pesticide Applicators' Advisory Committee are continued in Bills 6 and 7.)

E. Review of the Necessity of Rules

Recommendation: The committee recommends no legislation to affect changes in rules promulgated by regulatory agencies.

A. SUNSET REVIEWS OF EXISTING BOARDS

Statutory Authority and Responsibility

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

The Department of Regulatory Agencies (DORA) is required to conduct an analysis and evaluation of the performance of each division, board, or agency or each function of an agency that is scheduled for termination (section 24-34-104, et seq., Colorado Revised Statutes (C.R.S.)). In conducting the analysis, DORA is statutorily required to consider several factors regarding the need for the entity under review (24-34-104 (9) (b)). The DORA report is completed one year before the termination date and sent to the Joint Legislative Sunrise Sunset Review Committee by July 1. The report provides a basis for discussion in public hearings which the Sunrise Sunset Committee schedules for each sunset review during the legislative interim.

Four boards were reviewed in 1988:

- Board of Barbers and Cosmetologists;
- Collection Agency Board;
- Colorado Podiatry Board; and
- State Board of Accountancy.

Committee Recommendations

Board of Barbers and Cosmetologists

The regulation of barbering and cosmetology began in Colorado in 1909 and 1931 respectively. The combined Board of Barbers and Cosmetologists was established on July 1, 1977, by section 12-8-101, C.R.S. 1973, as amended. The board, by a type-1

transfer, is located within the Division of Registrations in the Department of Regulatory Agencies (DORA).

The board consists of five members appointed by the Governor, who may remove members for cause. Two members are licensed in Colorado as cosmetologists, two members are licensed in Colorado as barbers. One member is from the general public who is not licensed or employed in the practice of barbering or cosmetology and who has no financial interest in the practice of barbering or cosmetology. The board licenses barbers, cosmetologists, cosmeticians, manicurists, and instructors of barbering and cosmetology. The board also licenses and inspects shops, salons, and schools of barbering and cosmetology. Further, the board approves barber and cosmetology school curricula and investigates complaints concerning all licensees.

In its sunset report, DORA recommended that Article 8 of Title 12 be repealed and that the General Assembly allow the Board of Barbers and Cosmetologists to terminate July 1, 1990. DORA asserted that the regulation of barbers, cosmetologists, manicurists, cosmeticians, and the instructors of these occupations could be terminated without significantly jeopardizing the health, safety, or welfare of the public. That conclusion was based on the following research findings:

- Chemicals used in the practice of barbering and cosmetology are sold over the counter and are not restricted in use from the general public.
- Federal regulations implemented by the Occupational Safety and Health Administration and the Federal Food, Drug, and Cosmetic Act protect the consumer from chemical misuse.
- The spread of infection from lice, scabies, tinea, staphylococci and similar parasites is easily preventable and, if contracted, easily cured. The Colorado Department of Health has the authority to respond to outbreaks of infection and is prepared to address them.
- The possibility of transmitting or contracting acquired immunodeficiency syndrome (AIDS) or hepatitis B in a hair salon is not significant enough to justify the present level of regulation. If serious concerns regarding transmission of these diseases should develop, they are more appropriately addressed by the Department of Health and not the Board of Barbers and Cosmetologists.
- Shops and salons will continue to require of their employees the same exacting standards for training and competence that are currently required under licensure. In a competitive job market, employers use some type of screening process to select the most qualified candidate.

Kathy Wells, Program Administrator, Board of Barbers and Cosmetologists, testified regarding several board functions. Two full-time inspectors and one half-

time inspector are employed to inspect approximately 3,000 shops. The board has revoked three licenses for training school instructors since 1977. No salon licenses have been revoked since 1977. Ms. Wells reported that 12 cases are pending (as of August 24, 1989) before the board regarding repeated violations of sanitation regulations.

Barbers and cosmetologists testified that regulation of their industry should be continued for several reasons. Malpractice insurance may be unavailable or exorbitantly expensive if the industry is deregulated. Citing new technologies in cosmetology, several practitioners asserted that state approved training and continuing education are necessary to protect the public from incompetent practitioners.

Brad Mallon, Director, Office of Policy and Research, DORA, testified that barber and cosmetology schools in Colorado have a significant default rate on federally funded student loans. Mr. Mallon reported that the Board of Barbers and Cosmetologists has difficulty in determining how to regulate those schools because that kind of regulation is unrelated to licensure functions. Mr. Mallon recommended that state oversight of the barber and cosmetology schools be given to the State Board of Community Colleges and Occupational Education.

The Sunrise Sunset Review Committee recommends Bill 1 to continue the board until July 1, 2000, and amends the Barber and Cosmetology Act of 1977. The proposed bill removes the requirement that individuals, shops, or salons possess a license to practice barbering or cosmetology (Section 8). The sections of the statutes which pertain to examination and licensure of barbers and cosmetologists are repealed (Section 28). Instead, on or after July 1, 1990, practitioners will be required to possess a valid diploma from a board-accredited barber or cosmetology school. The holder of a valid Colorado license or certificate of registration to practice barbering or cosmetology prior to July 1, 1990, will be considered the holder of a diploma (Section 22). The health and safety inspection of shops and salons is delegated to county health departments. Those departments are authorized to respond to complaints against shops or salons (Section 15).

Statutes regarding the board are amended to stagger the terms of the members and to clarify the Governor's authority to remove board members for cause including misconduct, incompetence, or neglect of duty (Section 4). The powers and duties of the board are strengthened in several areas. The right to use administrative fines and letters of admonition as disciplinary measures are included (Section 6). The board may also employ persons to assist in conducting evaluations of barber or cosmetology schools (Section 14).

Bill 1 strengthens the power of the board to regulate barber and cosmetology schools by restructuring the approval and licensure requirements for these schools (Section 16). The board is authorized to approve the curriculum of barber and cosmetology schools, and a ceiling of 1,650 hours is placed on the school terms. The

board is to require compliance from schools for certain minimum standards. These include:

- demonstrating sufficient financial resources to meet its commitment to students, make refunds of tuition and fees, and meet the school's financial obligations;
- furnishing and maintaining a surety bond in the minimum amount of \$10,000;
- maintaining adequate educational, financial, and other records;
- providing educational services, adequate facilities, equipment, instructional materials and staff necessary to achieve the school's stated educational objectives;
- providing each prospective student, prior to the execution of any enrollment agreement, with such material facts concerning the school and its program of instruction that are likely to affect the student's decision to enroll;
- providing each student with a copy of the executed enrollment agreement or contract at the time of enrollment; and
- adhering to a policy for the cancellation, settlement, and refund of tuition and fees which complies with this bill.

The penalty section of the bill (Section 18) adds civil penalties to existing criminal penalties for practicing or employing someone to practice barbering or cosmetology without a diploma from an approved school. The grounds for denial, revocation, or suspension of a license are expanded to include deceptive trade or sales practices, which are defined in Section 24 of the bill. A new section is added to provide a mechanism for complaints regarding these practices (Section 25).

In addition, the bill: a) empowers the board to issue cease and desist orders to individuals operating a school without a license and to persons practicing without a diploma or in a manner that endangers the public (Section 19); b) grants the board broader investigation and inspection powers (Section 21); c) provides that judicial review of final board action to be the jurisdiction of the court of appeals (section 12-8-131, C.R.S.); and d) declares as an unfair or deceptive trade practice the alteration of insurance coverage for barbers and cosmetologists based on changes in regulation imposed by the act (Section 26).

Collection Agency Board

The Collection Agency Board is established in the Colorado Fair Debt Collection Practices Act (section 12-14-101, et.seq., C.R.S.). The board consists of five members appointed by the Governor for three-year terms. Three members of the board must

be engaged in the collection business within the state of Colorado as owners, partners, or officers of a corporation for at least five years immediately prior to their appointment. Two members must be representatives of the general public and not engaged in the collection business. Any member of the board may be removed by the Governor for cause, and no member may serve more than two consecutive terms.

In the sunset review, DORA recommended that the board, the licensure of collection agencies, the registration of debt collectors, and the provisions of the Colorado Fair Debt Collection Practices Act be continued. DORA found that consumers are not adequately protected by the federal Fair Debt Collection Practices Act and by civil law remedies and recommended that the Colorado law be strengthened. Bill 2 continues the board until July 1, 2000. The bill also specifies that the Governor may remove board members for misconduct, neglect of duty, or incompetence.

In the "definitions" and "deceptive forms" sections of the proposed bill, the Fair Debt Practices Act is amended to extend its requirements to firms, corporations, or partnerships who engage in the collection of any debts (Sections 2 and 5). The provisions of the act apply to all owners of a collection agency and any persons who have a position of responsibility in a collection agency, including but not limited to any manager, director, officer, partner, or shareholder owning ten percent or more of the stock. The scope of the article will also include attorneys who regularly collect debts but will not require such attorneys to obtain a license to perform acts for which they are licensed by the Colorado Supreme Court.

Bill 2 requires more disclosure of information to the consumer who is subject to debt collection. Specific consumer rights must be disclosed in writing in bold-face type of no less than 8-point size. If rights are printed on the back of such a notice, a statement on the front of the notice must direct the consumer to this important information (Section 3). The collection agency is also required to disclose to the consumer in the disclosure notice the name of the original creditor and the fact that collection agencies are regulated by the Collection Agency Board (Section 4).

The powers and duties of the executive director are expanded to include the authority to develop and administer any examination required for the administration of this act and to determine the amount of any examination fee. The executive director is required to offer each such examination at least twice a year and to establish a passing score for each examination which reflects a minimum level of competency (Section 9). The executive director is further authorized to approve or deny any application for licensure or registration. Under current law, the board has a policy of requiring the applicant for a collection agency license to appear before the board and to submit to an oral examination regarding honesty, financial responsibility, and competency to engage in the collection of debts.

Bill 2 expands the current requirements for registration of individuals to include collections managers, and makes unlawful the hiring of any person as a solicitor,

collections manager, or debt collector without a valid registration certificate (Section 7). Collections managers hired by collection agencies are responsible for the action of the debt collectors in their offices and, if hired on or after July 1, 1990, will be required to pass a written examination administered by the executive director (Section 11).

The requirements for licensure or renewal of licenses for collections agencies are reenacted in this bill (Sections 12 and 13). The executive director of the Collections Agency Board is authorized to issue or deny any application for a license or its renewal. Bill 2 also recodifies the duties of the licensee and the procedures for notifying the executive director or applying for a new license after certain changes are made by the licensee in the ownership or operation of the licensee's business (Sections 14 and 15). Requirements for the bond to be filed for licensure as a collection agency are changed (Section 16).

The new legislation reorganizes and clarifies the acts specified as unlawful under the Fair Debt Collection Practices Act and adds, as an unlawful act, the falsification of any information provided on any application authorized under the act (Section 20). The criminal penalties for committing such acts are conformed to the classifications of the Colorado Criminal Code (Section 21).

The powers of the board with regard to complaints against collection agencies and subsequent investigations are recodified and expanded (Section 22). This section of the bill provides that the board may:

- receive written complaints about or investigate any person, firm, corporation, or partnership concerning compliance with such act;
- accept as prima facie evidence of a disciplinary violation under the act any disciplinary or adverse action taken against a licensee or registrant by another jurisdiction; and
- pursue several disciplinary options in addition to revocation and suspension, including probation, letters of admonition, and administrative fines; and
- recover its costs of investigations in bond hearings (prevents costs being passed on to licensees in the form of higher license fees).

The bill provides good faith immunity to board members, expert witnesses, and consultants when they perform any duties in any proceedings authorized under the act, and to complainants who file complaints under the act. In addition, the legislation provides jurisdiction in the court of appeals to review all final actions and orders of the board subject to judicial review.

Colorado Podiatry Board

Podiatry was first regulated in 1915 under the Colorado Board of Medical Examiners. In 1943 a podiatry advisory board was created in Article 32 of Title 12, C.R.S., to advise the Medical Board on podiatry issues. This board consisted of three members and was called the Colorado Chiropody Board. In 1973, it was renamed the Colorado Podiatry Board and increased to five members. In 1985, the board was separated from the Board of Medical Examiners and became an independent policy-autonomous board.

The Podiatry Board consists of four podiatrists and one public member. The Governor may remove members for misconduct, incompetency, or neglect of duty (section 12-32-103, C.R.S.). The board has the power to promulgate rules and regulations, examine and license applicants, renew licenses, conduct investigations, and conduct disciplinary hearings. The board also has investigative subpoena authority and can prosecute or seek injunction against those violating the podiatry law.

In its sunset review, DORA recommended the continuation of the board independent of the Board of Medical Examiners. The Sunrise Sunset Review Committee approved Bill 3 to continue the board until July 1, 1995, and to make amendments in the regulation of podiatry, ranging from clarification of the scope of practice to enhancement of the ability of the board to discipline podiatrists.

Bill 3 clarifies the definition of the practice of podiatry, using language that is consistent with the Medical Practice Act (Section 1). The amendment broadens the scope of practice to allow podiatrists to treat all conditions of the foot and ankle that they are qualified to treat. The restriction that podiatrists perform surgery only in licensed or certified hospitals is eliminated. (The change will allow podiatrists to perform surgery in licensed ambulatory surgical centers.) Additionally, physicians certified by the American Osteopathic Board of Orthopedic Surgery are allowed to supervise surgery performed by a podiatrist. Currently, a podiatrist who is not certified by the American Board of Podiatric Surgery can perform ankle surgery only under the supervision of a physician certified by the American Board of Orthopedic Surgery.

The bill amends certain examination and licensure requirements. The board is required to ensure that the passing score on the podiatry examination reflects a standard of minimum competency (Section 3). The same section abolishes the requirement that an examinee who has twice failed the podiatry examination wait a year between each subsequent retake. The current continuing education requirement for license renewal is repealed. The license renewal procedure is amended to require the board to establish a questionnaire to accompany the renewal form (Section 11). The purpose of the questionnaire is to determine if the licensee has acted in violation of or has been disciplined for actions that might be construed as violations of this article. Licensure by endorsement is also extended to podiatrists licensed in another jurisdic-

tion and possessing qualifications substantially equivalent to those required in Colorado (Section 5).

Section 4 includes as acts of unprofessional conduct the following:

- violating any rule or regulation promulgated by the board;
- failing to complete the renewal questionnaire;
- failing to report a violation of any of the regulations governing podiatrists;
- paying a "finders fee" to another person, firm, association, or corporation or billing for services performed by an unlicensed person as prohibited by section 12-32-117;
- misstating or omitting a material fact in obtaining or renewing a license; and
- failing to report any adverse action against a licensee by another jurisdiction or the surrender of a license in another jurisdiction.

The powers of the board in disciplinary actions are strengthened in Bill 3. The board is authorized to issue letters of concern when dismissing a case if the board has noticed errant conduct that could lead to adverse consequences if not corrected (Section 6). If the board learns of a second or subsequent action of the same or similar nature, it shall not issue a letter of concern but is required to take such other action as it deems appropriate. The board may impose a suspension of the license of a podiatrist who refused to submit to mental or physical evaluation until the board has made a determination on the ability of the podiatrist to practice with reasonable care and safety to patients (Section 7). The board is directed to conduct and determine such evaluations promptly.

Bill 3 amends the act to allow podiatrists to use physician assistants in podiatry practice on the same basis as the Medical Practice Act allows medical and osteopathic physicians to use physician assistants (Section 10). Registered nurses are exempted from the requirements of the podiatry act if they are practicing lawfully under the Nurse Practice Act. This provision is similar to the exemption for nurses under the Medical Practice Act (Section 12).

State Board of Accountancy

Colorado enacted legislation in 1907 to regulate and certify public accountants. The act created a three-member state board of accountancy and provided for the certification of Certified Public Accountants (CPAs). No attempt was made by the state to restrict the practice of accountancy, except that only accountants who were certified could hold themselves out as CPAs. Also, the original regulation did not include a definition of the terms "accounting" or "public accounting" and this tradition

has been carried through to the current Colorado Public Accountancy Act (section 12-2-101, et seq., C.R.S.).

In 1937 a new accountancy law was enacted, repealing the 1907 law and replacing it with more restrictive legislation. A debate arose, in which CPAs claimed that the new act restricted the practice of accounting to those who were either CPAs or grandfathered "Registered Accountants" under the new law. The public accountants (PAs) maintained that the 1937 statute merely continued the practice of the 1907 statute by restricting the use of the title CPA to those actually licensed by the state. The debate between CPAs and PAs continues in numerous forms to this day.

In 1959 new accountancy legislation was enacted which provided for regulation of the title and, in the opinion of the Colorado Public Accountants Society, continued to restrict the attest function (auditor's opinion on financial statements) to CPAs. The board was also expanded from three to five members. In 1974, after a test case was appealed to the Colorado Supreme Court, unlicensed public accountants were allowed to continue attesting to the accuracy of financial statements as long as they did not hold themselves out as CPAs.

The 1977 revision of the Accountancy Act further restricted the scope of accountancy practice but did not put an end to the controversy. The 1977 act prohibits unlicensed accountants from conducting an audit or other "investigation" or "examination" of any financial statement in order to determine its accuracy or fairness. The act further prohibits an unlicensed accountant from attesting to or expressing an opinion about a financial statement.

A recent judicial decision regarding this scope of practice held that the above referenced prohibitions may not be interpreted by the State Board of Accountancy to include a ban on the performance of "review reports" by PAs. Review reports are analyses of financial statements that are less thorough than a full audit and which carry a "negative attestation" that the reviewer does not know of any material modification which should be made to bring the financial statement into conformity with generally accepted accounting principles. The current statute does not address this problem because review reports were relatively unknown when the act was last amended in 1977. Since they are cheaper and less time intensive than audits, review reports have become increasingly popular.

Within the context of these controversies, DORA found that regulation of accountancy by the state is essential to protect the public, but significant statutory changes were recommended. The Sunrise Sunset Committee recommends Bill 4, which continues the Board of Accountancy until July 1, 2000.

Two issues regarding accountancy regulation consumed most of the committee's public testimony -- whether review reports should be statutorily limited to CPAs and whether the continuing education requirement for CPAs should be deleted. The DORA report did not address the issue of review reports, but representatives of the

Board of Accountancy and the American Institute of Certified Public Accountants proposed a statutory requirement that review reports be prepared by CPAs. The Public Accountants Society of Colorado testified against the proposal. The committee did not approve the proposed requirement.

DORA recommended that mandatory continuing education for accountants be discontinued, in part, because no studies show that continuing education is of substantial benefit in maintaining competency. (Current law requires CPAs to complete 80 hours of continuing education every two years, with a minimum of 20 hours of such education each year.) The DORA report offered several alternatives to continuing education, including a process known as "quality review" or "peer review" under the auspices of professional accounting societies. Representatives of the Board of Accountancy and the Colorado Society of Public Accountants testified in favor of mandatory continuing education. Following discussion of compromise proposals, the committee recommends no changes in the continuing education requirement for CPAs.

Bill 4 discontinues the requirement that individual CPAs and public accounting firms and partnerships obtain annual permits to practice public accounting. Since CPAs are required to obtain a certificate, the requirement for permits was considered duplicative and confusing.

Several out-of-date sections of the Accountancy Act are repealed or amended. Provisions dealing with a grandfathered class of accountants, known as "registered accountants," who no longer actively practice in Colorado, are repealed or amended (Sections 11, 13, 15, 30). Obsolete provisions for licensure are repealed (Section 30). Also, the general powers and duties of the board are updated (Sections 3 and 4).

Bill 4 sets forth the procedures and requirements for obtaining a CPA certificate and for renewing, reactivating, or reinstating such certificate (Section 7). Persons seeking reinstatement of certificates after expiration of the four-year reinstatement period are required to retake the Uniform Certified Public Accountant Examination as one condition for reinstatement. The procedure to acquire inactive status and the procedure for reinstatement to active status are established (Section 19). The board is also allowed to establish a reinstatement fee for certificants applying for active status after a lapse in practice (Section 6). The requirements for issuance of certificates by reciprocity are also amended (Section 10).

Sections of the Accountancy Act pertaining to the CPA examination are also amended. Candidates withdrawing from an examination are required to notify the board of such intent not less than 30 days prior to the examination to qualify for a refund of the examination fee (Section 6). The 75 percent passing score for each of the five sections of the CPA examination is repealed. The board is required to ensure that the passing score for the examination in each subject is set to measure the level of minimum competency for the practice of accounting (Section 9).

The disciplinary functions of the board are expanded in this bill. The board is authorized to issue letters of admonition for misconduct warranting a reprimand, but less than a full hearing, and the board is granted fining authority for misconduct subject to discipline (Section 20). Failure to retain records of the work performed for each client for five years and failure of partnerships or professional corporations to register with the board every three years are added to the grounds for disciplinary action. (See Section 30 for repealed statutes.)

Other provisions of the bill include: 1) granting the board the authority to reconsider its disciplinary actions at its discretion (Section 27); 2) providing that judicial review of any action of the board is within the jurisdiction of the Colorado court of appeals (Section 26); 3) allowing the board to hire administrative law judges for hearings (Section 24); and 4) providing for confidentiality of complaints to the board prior to board action.

B. Sunset Review of Licensing Functions of Certain Agencies

Asbestos Certification Program

The Asbestos Control Act was enacted in 1985 to reduce the public's exposure to friable (readily crumbled) asbestos (section 25-7-501, et seq., C.R.S.). The original law did not contain a certification program for practitioners. In 1987, House Bill 1239 was enacted, in part, to bring the law in compliance with the 1986 federal Asbestos Hazard Emergency Response Act (AHERA) (P.L. 99-519). The federal act required all persons engaged in asbestos abatement work in schools as inspectors, management planners, project designers, work-site supervisors, and asbestos abatement workers to be certified.

House Bill 1239 established dual certification programs, one for schools and one for non-school abatement work, under the authority of the Air Quality Control Commission (AQCC) with enforcement by the Air Pollution Control Division (APCD) of the Colorado Department of Health. The new law requires a certification program for abatement contractors and supervisors and training by contractors of all workers in proper abatement procedures. Although the Asbestos Certification program only became effective July 1, 1987, the bill specifies a termination date of July 1, 1990, on the functions of the entire act and requires the certification functions to be reviewed by DORA.

DORA recommended that the certification program be continued to protect the public and focused on the critical deficiencies of the existing statute which prevent the APCD from implementing an effective program. The committee recommends Bill 5 to continue the asbestos control functions and the certification program in the Department of Health to July 1, 1995.

Bill 5 authorizes the AQCC to establish standards for asbestos air sampling and for entry into the air sampling occupation (Section 2). The commission is also prohibited from using the term "air sampling professional" in its standards and is directed to amend that term in its rules. This section of the bill is included as a response to the sunrise application by air sampling professionals which was reviewed on the same day as the Asbestos Certification Program review. (See page 24 for a report of the asbestos air samplers' sunrise review.)

DORA recommended changes in the examination requirements because it could not determine if the examinations used by the APCD were valid measures of competency. The bill requires the APCD to develop or purchase examinations administered to applicants for certification (Section 3). The tests are to be administered at least twice each year, or more frequently if demand warrants, and passing scores are to reflect a minimum level of competency in asbestos abatement procedures. Procedures are established for applicants who fail the examination and seek to be reexamined for certification. Certification by endorsement is authorized for applicants who are equivalently certified and in good standing in another jurisdiction. A new subsection of law provides for the renewal of a trained supervisor's certificate (Section 4).

Bill 5 broadens the powers of the Division of Administration in the Department of Health (the APCD is part of the division) for disciplinary measures and for taking corrective action against certificants. The division is authorized to issue letters of admonition for misconduct that should not be dismissed without merit but that does not warrant more severe disciplinary action (Section 5). Actions in violation of the article include the failure of a certified trained supervisor to adequately supervise an asbestos abatement project.

Other powers of the division include (Sections 6,7):

- requiring corrective education as a disciplinary action against certified persons under the program;
- imposing administrative fines upon persons who violate the provisions of the program or any rules or regulations of the program;
- recertification of persons whose certificate has been revoked;
- use of injunctive proceedings through the Attorney General to enforce the provisions of the program; and
- denying a certificate or refusing to renew a certificate.

The APCC is required to promulgate rules and regulations governing refresher training programs for persons in both school and non-school asbestos abatement (Section 7). The commission is to ensure that refresher training requirements are

related to continuing competency in asbestos abatement procedures. The refresher training is also not to exceed the requirements of AHERA. As a further amendment to refresher training requirements, the bill repeals Regulation 8 as promulgated by the AQCC (Section 9). That regulation establishes continuing education requirements for non-school supervisors and abatement workers.

Colorado Bee and Bee Products Act

The Colorado General Assembly enacted the first regulation of bee products in 1903. From that year to the present, the Bee and Bee Products Act has been amended and expanded many times to provide for the regulation of beekeeping to prevent the spread of contagious diseases among bees. The Commissioner of Agriculture is responsible for enforcing the act (Article 25 of Title 35). The powers and duties of the Commissioner include examining apiaries for disease, registering beekeepers, inspecting interstate and intrastate movement of bees, requiring the labeling of adulterated or artificial bee products, and enforcing the provisions of the act.

In its review, DORA recommended that the Bee and Bee Products Act be terminated. DORA found that beekeepers in Colorado are generally not registering with the Agriculture Department as required by the act. This widespread noncompliance has reduced the funds available to the department for inspections. Currently, the department does no random inspections. DORA concluded that the Agriculture Department's enforcement program has been virtually eliminated due to lack of funds but that the health and safety of the public has not been jeopardized by the absence of this regulatory program. DORA did, however, make recommendations for amendments to the act in case the Sunrise Sunset Review chose to recommend continuation of beekeeping regulations.

Representatives of the the Colorado Beekeepers Association testified that the beekeeping industry needs an inspection program if the industry is to survive the threat of such bee diseases as the Varroa mite and the tracheal mite. Representatives of the industry pointed out that most of the honey consumed in Colorado is produced by Colorado beekeepers. Of more importance is the pollination of Colorado crops by honey bees. Although some pollination services are paid for, according to industry representatives, most pollination is a free byproduct of honey production. In addition, California, Texas, and other states currently buying migratory bee services from Colorado will not allow such activity without regulation of the beekeeping industry in Colorado.

The committee asked representatives of the beekeeping industry, DORA, and the Department of Agriculture to develop a compromise proposal that will meet the needs of the industry without creating a program that cannot be cash funded. The proposals from that group are recommended as Bill 6.

Bill 6 removes the regulation of bee products from the Bee and Bee Products Act (Section 1). Since the Department of Health regulates the production of food, the

bee products regulation was considered duplicative. The definition of "contagious disease" is broadened so that the Commissioner of Agriculture can have greater power to eliminate bees that he considers diseased (Section 2). Although the Beekeepers' Advisory Committee is not scheduled for a sunset review until July 1, 1991, the Sunrise Sunset Committee chose to review the advisory committee in conjunction with the beekeepers' act. The advisory committee is continued in Bill 6, and the per diem for board members' attendance at meetings is eliminated (Section 4).

Civil penalties are added to the existing criminal penalties (Section 9), and the commissioner is provided additional enforcement powers. The commissioner is also provided emergency powers, which include the establishment and enforcement of bee quarantines (Section 12).

The requirement for registration of beekeepers is abolished and replaced with a requirement that beekeepers or persons requesting an inspection of beehives for contagious disease for the purpose of interstate movement are to pay for the costs incurred (Section 7). The bill also requires that beehives be equipped with movable combs in order to make inspection of hives efficient (Section 8). A bee inspection fund, to replace the beekeeper licensing fund, is created in the state treasury. Any funds in the beekeepers' licensing fund prior to the effective date of this bill are to be credited to the bee inspection fund (Section 13).

Pesticide Applicators' Act

In 1953, the General Assembly first enacted a commercial pesticide applicator licensure law for persons making any "application of insecticides, fungicides, herbicides, or other agricultural chemicals by aircraft for hire." In 1961, the statute was amended to require licensure of all "for hire" applicators of agricultural chemicals, which were defined as "insecticide, fungicide herbicide, nematocide, or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant." The statute was revised again in 1967 to specify three types of applicators: ground agricultural applicator, aerial agricultural applicator, and commercial applicator. In 1983, the applicator act was rewritten to comply with federal Environmental Protection Agency (EPA) requirements for approved state commercial pesticide applicator licensure programs. The current law remains essentially as it was passed in 1983 (section 35-10-101, et seq., C.R.S.).

DORA concluded that the act should be continued to protect the public from serious potential harm. DORA reported that the current statute is misleading since it gives the impression that in Colorado most of the persons applying pesticides are licensed by the state. The statute contains numerous exemptions and only loosely regulates commercial for-hire pesticide applicators and those using restricted use pesticides. DORA recommended that regulation be strengthened by bringing all commercial and public pesticide applicators under its restrictions and that the act be rewritten in order to clarify and simplify Colorado's pesticide applicator regulatory scheme.

Bill 7 is recommended to clarify and expand the Applicators' Act. A termination date of July 1, 1996, is provided for the licensing of commercial applicators, qualified supervisors, certified operators, and pest control consultants through the Commissioner of Agriculture. The commissioner is granted authority to regulate all aspects of pesticide application by commercial applicators and by certain limited commercial and public applicators. Examination and licensing procedures are established for all licensees authorized under the bill.

The definitions section of the current statute is simplified by the elimination of some definitions and the inclusion of definitions for classes of applicators and individuals qualified to perform certain acts related to the evaluation and use of pesticides or other pest controls (35-10-102). "Limited commercial" applicators are defined as persons engaged in applying pesticides in the course of conducting a business, except that the application is to be only in or on property owned by the person or the person's employer. "Public applicator" includes any agency of the state or any unit of local government which applies pesticides.

The application of pesticides to agricultural commodities on property owned or rented by the applicator or his employer is exempted from the bill, unless the application is with limited use pesticides as regulated by section 35-9-105 of current law. Commercial applicators' licensure requirements are made more stringent in Bill 7. The current act requires commercial applicators to have minimum liability insurance coverage in the amount of \$100,000 per person, \$300,000 per accident for bodily injury, and \$100,000 for property damage. The bill requires liability insurance in the minimum amount of \$400,000. Three new requirements are added for commercial applicators: 1) employing a qualified supervisor who is licensed in the class or subclass or pesticide application performed by the business; 2) providing verifiable training to all technicians in the employ of that business according to standards adopted by the Commissioner of Agriculture (35-10-106); and 3) including on each customer invoice a statement that commercial applicators are licensed by the Department of Agriculture (35-1-108).

Limited commercial and public applicators are not required to have a license but are required to employ or secure the services of a qualified supervisor and to provide verifiable training to their technicians (35-10-109 and 110). Procedures are provided for the application, examination, licensing, and renewal of licenses for qualified supervisors, certified operators, and pest control consultants (35-10-113 through 117).

Bill 7 creates a series of requirements for notifying the public of pesticide application. The commissioner is authorized to establish a registry of pesticide-sensitive persons (35-10-112). Those persons may apply for the registry and are to pay a fee for having their names placed on the registry. The registry is to be updated and republished at least annually and provided to all commercial, limited commercial, and public applicators on record with the commissioner. Registered persons are to

be supplied standardized pesticide-sensitive notification signs to be posted on their property.

Further measures to ensure public notification include the requirement for commercial, limited commercial, and public applicators to post standardized notice-of-application signs following any turf, water, or ornamental pesticide applications on any property. Counties and municipalities are prohibited from imposing any notification requirements upon commercial applicators which are more stringent than those imposed by Bill 7. Those entities are allowed, however, to impose any notification requirements upon private individuals, property owners, and the general public.

Unlawful acts under the Applicators' Act are recodified in Bill 7 to conform to new requirements of the bill (35-10-118). The powers and duties of the commissioner are expanded to include the power to issue cease and desist orders and to seek injunctive relief for violation of the act (35-10-120). The bill establishes grounds for disciplinary actions against any licensees under the act (35-10-125) and establishes civil and criminal penalties for violations of the act (35-10-123 and 124).

Bill 7 repeals the existing Pesticide/Pesticide Applicator Advisory Committee (sections 35-9-106 and 35-10-121) and reestablishes the committee in section 35-10-126. The membership of the existing advisory committee is changed by deleting one member each from the ornamental and turf pesticide applicators, agricultural pesticide applicators, and the Department of Agriculture and adds one public member. A sunset date of July 1, 1996, is provided for the advisory committee to coincide with the sunset date of the Pesticide Applicators' Act.

C. Sunrise Review of Occupations Requesting Licensure

The Joint Legislative Sunrise Sunset Review Committee is responsible for reviewing requests for new regulation of an occupation or profession (section 24-34-104.1). Any professional or occupational group or organization, any individual, or any other interested party which proposes the regulation of any unregulated professional or occupational group is required to submit the following information to the committee.

- A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, and an estimate of the number of practitioners in each group.
- A definition of the problem and the reasons why regulation is deemed necessary.

- The reasons why certification, registration, licensure, or other type of regulation is being proposed and why that regulation and that regulatory alternative was chosen.
- The benefit to the public that would result from the proposed regulation.
- The cost of the proposed regulation.

The Department of Regulatory Agencies (DORA) is required to conduct an analysis and evaluation of the proposed regulation based on the following criteria:

- whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence; and
- whether the public can be adequately protected by other means in a more cost-effective manner.

DORA submits its report and supporting materials to the Sunrise Sunset Committee no later than July 1 following the date the proposal is submitted to the committee. The DORA report makes recommendations as to whether an occupational group should be regulated and, if regulated, to what extent.

After receiving the DORA report, the committee conducts hearings to receive testimony from the public, the executive director of DORA, and the group, organization, or individual who submitted the proposal for regulation. The determination as to whether regulation of an occupation or a profession is needed is to be based on the same considerations as required for the DORA analysis (listed above). During the 1989 interim, the committee considered twelve sunrise applications.

Asbestos Air Sampling Professionals

A group of air sampling professionals submitted an application for the certification of asbestos air samplers. (Air samplers provide documentation of ambient airborne asbestos fiber concentrations.) The application requested a certification process which would require an air sampler to show competency in the use of the National Institute of Occupational Safety and Health 7400 method and the EPA-approved air sampling method (in effect, a licensure program). The proposal contained an exemption for industrial hygienists who are certified by private professional organizations but did not exempt engineers, architects, or industrial hygienists without private certification.

Because the asbestos abatement industry is already regulated through the Asbestos Certification Program of the Air Pollution Control Division, DORA did not recommend regulation of air samplers. The DORA report stated that documentation of harm to the public from incompetent air sampling procedures would be difficult to obtain and unreliable. Further, the proposal for licensure would impose burdensome costs and requirements on other occupational groups that are already licensed, privately credentialed, or have the training and competence to practice--such as architects, engineers, industrial hygienists, chemists, health physicists, and toxicologists.

The Sunrise Sunset Review Committee does not recommend licensure for air samplers but has included a provision for air samplers in Bill 5, which continues the Asbestos Certification Program (see page 15). That bill requires the Air Quality Control Commission to establish standards for asbestos air sampling and for entry into the air sampling occupation.

Creative Arts Therapists

The Colorado Coalition of Creative Arts Therapists applied for licensure of creative arts therapists, persons trained to treat mentally and physically ill people through the arts. (The same group applied for licensure in 1988 but was not approved by the Sunrise Sunset Review Committee for a bill.) The application stated that the lack of regulation of arts therapists allows unqualified individuals to represent themselves as arts therapists. Since their professional associations cannot exert control over such practitioners, only the state can aid the consumer who may suffer adverse effects from incompetent arts therapy.

DORA did not recommend regulation of arts therapists because public harm from the practice of that occupation could not be documented. DORA reported that since arts therapists are regulated as unlicensed psychotherapists by the State Grievance Board (12-43-701, C.R.S.), state power to discipline arts therapists already exists. Further, the language of the statutory definition of the State Board of Licensed Professional Counselor Examiners (12-43-601) shows that arts therapists are to be included in the professional counselors' scope of practice, if the therapists can pass the required examination. DORA pointed out that the difficulty for arts therapists in obtaining licensure has been in the board's reluctance to approve arts therapy education as equivalent to professional counseling education.

The applicants noted that House Bill 1026, enacted in 1988, requires unlicensed psychotherapists, a category including arts therapists, to be supervised by a licensed psychotherapist; that supervision increases the costs of arts therapy for patients. The Director of the State Board of Licensed Professional Counselors, DORA, testified that since the board in the past year had adopted a more liberal approach to educational qualifications for professional counselors, arts therapists may be able to obtain licensure as professional counselors. Before that change, the educational require-

ments for creative arts therapists were so restrictive as to eliminate them from such licensure.

The Colorado Coalition of Creative Arts Therapists stated that they would be willing to work with the State Board of Licensed Professional Counselors to achieve licensure under present statutes. The Sunrise Sunset Committee then voted against recommending further regulation for arts therapists.

Dietitians

The Colorado Dietetic Association applied for certification of nutritionists and dietitians so that only persons who possess certain educational and experiential qualifications could identify themselves using the titles "licensed nutritionists" or "licensed dietitian." The application also proposed that the terms "licensed nutritionists" and "licensed dietitians" be used to signify those nutritionists and dietitians who are certified by the Commission on Dietetic Registration. The purpose for seeking certification, according to the applicants, was to protect the health, safety, and welfare of Colorado citizens because 1) consumers would have a means of identifying competent nutrition professionals, and 2) unscrupulous nutrition practitioners would be restricted from providing inappropriate goods or services.

The DORA sunrise report concluded that the unregulated practice of dietetics and nutrition does not cause significant harm to the public and, therefore, did not recommend the regulation of dietitians and nutritionists. DORA offered several additional reasons for not regulating these occupations: 1) regulation, even merely protecting titles, could reduce public access to alternative modes of nutritional advice from qualified practitioners; 2) regulation would not prevent unqualified practitioners from advising on dietary matters; and 3) existing federal and state regulations and statutes adequately protect the public from the few cases of harm resulting from the unregulated practice of dietetics.

Testimony centered on opposing arguments concerning the need for regulating the nutrition industry. Proponents of regulation stressed the need for federal, state, and local government cooperation to prevent nutritional quackery, which, according to the proponents, costs the public billions of dollars per year. Opponents of regulation insisted that regulation would limit consumers' freedom of choice in obtaining health information and products. The committee voted against recommending legislation in this area.

Fire Suppression System Installers

The Colorado Fire Protection Association applied for the regulation of fire suppression contractors who sell, install, modify, alter, repair, maintain, and perform maintenance inspections of fire sprinkler systems. The application proposed licensure for fire sprinkler contractors and a requirement that each contractor have an on-site

installer who is certified as qualified in the practical installation of the system according to applicable standards.

In its analysis, DORA found that the potential for public harm is extreme if a fire sprinkler system is installed incorrectly. The installation of fire sprinkler systems is a specialized field requiring specialists in design, installation, and maintenance. Furthermore, state statutes regulating the plumbing occupation specifically exclude fire sprinkler systems. DORA recommended the licensure of fire sprinkler system contractors and installers and suggested a regulatory scheme.

Bill 8 is recommended to create a regulatory program for the fire sprinkler installation industry. The bill establishes the Director of the Division of Fire Safety, Department of Public Safety, as the state fire sprinkler administrator (Section 1). The administrator is empowered to establish the fire sprinkler program, to set standards governing the conduct of fire sprinkler contractors, and to impose disciplinary actions on contractors violating such standards (Section 2).

Instead of licensure, which the applicants requested, the bill requires registration of fire sprinkler installers with the state fire sprinkler administrator (Section 2). Contractors are required to assure that each job is supervised by an on-site installer who is qualified in the layout, fabrication, installation, alteration, servicing, repair, and inspection of fire sprinkler systems.

Under Bill 8, no fire sprinkler system project may be started until all required local permits have been obtained and the job has been registered with and approved by the state administrator. Any working plans and hydraulic calculations submitted for review by the administrator must bear the signature and certification number of either a registered professional engineer or a level three or higher engineering technician certified by the National Institute for the Certification of Engineering Technologists (NICET). Fire sprinkler systems are to be designed and installed in accordance with the applicable standards adopted by the state administrator by rule, by manufacturer's specifications, and by applicable local codes.

The bill creates a certification program for fire safety inspectors and requires that no installation, modification, alteration, or repair of a fire suppression system can be completed and cleared for use until such system has been approved by a certified inspector. Unlawful acts are specified in the bill, and civil as well as criminal penalties for violations of law are provided. A fire suppression cash fund is also created to receive monies collected by the fire suppression program.

Interior Designers

The application of the Colorado Coalition of Interior Designers proposed either title protection or certification for interior designers. (Title protection does not limit who may practice an occupation; it only limits a certain title to those who meet established criteria.) The application stated that regulation will provide the public a

means for identifying interior designers who meet the minimum standards for competent practice and whose practices are ethical and responsible. The coalition asserted that lack of regulation of the industry causes poor workmanship, abuses of title, and non compliance with building codes.

In its sunrise analysis, DORA found that few, if any, complaints against interior designers have been filed with consumer fraud sections of district attorneys' offices or the Attorney General's office. Although several major professional associations for interior designers exist, 75 percent of practicing interior designers do not belong to any one of these organizations. Concluding that the unregulated practice of interior design does not clearly harm or endanger the health, safety, or welfare of the public, DORA recommended against regulation of interior designers.

Interior designers expressed concerns with the unregulated practice of their profession. Many people involved in construction and building contracting who are licensed, such as engineers and architects, are often under the supervision of interior designers who are not licensed. During the redesign of buildings, an interior designer often determines whether reconstruction work will meet building codes, yet no regulation exists to require a minimum level of competence for the interior designer. The committee concluded that the applicants had not proven a need to protect the public through regulation. Committee members also believed that regulating interior designers would not be cost effective and voted against legislation for the regulation of interior designers.

Landscape Architects

A group of landscape architects, under the name of The Landscape Architects Licensure Assistance Work Group, Inc., (L.A. Law, Inc.) applied for licensure of their profession. (The functions performed by landscape architects include land use planning, urban landscape design, project landscape and site design, and water conservation landscape design.) The application stated that the licensure of landscape architects would protect the health, safety, and welfare of the citizens of Colorado by regulating minimum standards of education, experience, and competence. Licensure would also require out-of-state landscape architects to be licensed to practice in this state, just as Colorado landscape architects must be licensed to practice in the surrounding states where licensure is required. The application proposed that architects and engineers be excluded from the regulation of landscape architecture. In addition, the application pointed out that unfair restrictions apply to landscape architects in Colorado because state and federal agencies often are required to hire licensed landscape architects for projects involving federal money.

DORA recommended against regulating landscape architects because the department could not document harm to the public from the unregulated practice of that profession. The DORA analysis pointed out that landscape architects had been regulated in this state for a number of years prior to 1976; in 1976, their board and regulation were repealed. The previous law was for title protection of landscape

architects only. While recognizing the arguments that landscape architects are at a competitive disadvantage in Colorado because they are not licensed, DORA stated that such arguments did not meet the criteria for regulation under the sunrise provision of Colorado law. Following a public hearing, the committee agreed with DORA and voted against legislation to regulate this profession.

Locksmiths

A group of independent locksmiths filed an application proposing the licensure of locksmiths. A draft bill was submitted with the application which detailed licensure of locksmiths and apprentice locksmiths, including the issuance of a permit to key duplicators and the registration of key duplicating machines. The applicants stated that the benefits of regulation would include protection of the public from unethical locksmithing practices, such as misrepresentation of products or the selling and installation of inferior products by unskilled locksmiths. The applicants asserted that regulation would also protect the public by: maintaining educational levels for locksmiths; insuring that the public is underwritten through the imposition of mandatory insurance requirements on locksmiths, apprentice locksmiths, and key duplicators; and by prohibiting convicted felons from practicing as locksmiths. Further, the applicants stated that physical, emotional, and financial harm to the public can result from the incompetent or unethical practice of locksmithing.

In its sunset analysis, DORA did not recommend the regulation of the locksmithing industry because it could not document harm to the public from the unregulated practice of locksmithing and related occupations. DORA contacted numerous law enforcement agencies regarding the occurrence of crime related to locksmithing activities but found no evidence that locksmithing is a contributing factor to crimes committed as a result of illegal entry. Consumer fraud divisions of numerous district attorneys offices, as well as the state Attorney General's office, could document virtually no cases of the sale and servicing of inferior products by locksmiths. Further, private credentialing for locksmiths is available from the Associated Locksmiths of America.

During the hearing for the application, locksmiths asked for a regulatory board to require certification, training, liability insurance, and personal background checks for locksmiths. The Sunrise Sunset Committee, however, voted against recommending legislation to regulate the locksmithing occupation. Committee members concluded that harm to the public from the unregulated practice of locksmithing had not been demonstrated by the applicants.

Massage Therapists

The Colorado Chapter of the American Massage Therapy Association applied for approval of a licensure program for therapeutic massage therapists. The stated goals of the application were: to obtain an exemption for massage therapists from the

Colorado Massage Parlor Act; to establish educational and professional standards for massage therapists; and to provide an effective method for citizens to identify trained competent massage therapists. In the public hearing for the application, the applicants changed their requests from licensure to title protection. (Under title protection, anyone could practice the occupation, but only registered massage therapists could use that title.)

DORA found no documented harm to the public as a direct result of massage therapy as practiced by trained therapists. DORA did not recommend that massage therapists be licensed but it did recommend that massage therapists be taken out of the Massage Parlor Act (section 12-48.5-101, C.R.S.). DORA concluded that the General Assembly sought to control prostitution that was occurring through the proliferation of massage parlors but did not intend to regulate the practice of massage therapy when the Massage Parlor Code was enacted in 1977.

The committee agreed that the applicants had not demonstrated sufficient threat of public harm from the unregulated practice of massage therapy. The state's physical therapy regulation will be before the committee for a sunset review in 1990, and the massage therapists can work for an inclusion of massage therapy regulation with physical therapy regulation. The committee recommends Bill 9 to exempt a facility operated for the purpose of massage therapy performed by a qualified massage therapist from the definition of "massage parlor" under the Massage Parlor Code.

Pesticide Dealer Managers

The Pesticide/Pesticide Applicators Statutory Revision Task Force filed a sunrise application for the licensing of pesticide "dealer/managers" to coincide with the sunset review of the Pesticide Applicators Act. Pesticide dealer/managers are persons who are either employed by pesticide manufacturing companies or persons who are in the employ of pesticide wholesalers and retailers. Their duties include supervising the sale, storage, and handling of state and federal restricted use pesticides. Furthermore, they often make recommendations on the use of such pesticides.

In its sunrise report, DORA concluded that the unregulated practice of this profession clearly endangers the public and that the public would benefit from regulation of this group. However, DORA concluded that the public could be more adequately protected, and in a more cost-effective manner, by improving regulation of a related occupational group, pesticide consultants. That category would include the applicant group as well as many other persons who are now unregulated.

Representatives of DORA, the Department of Agriculture, and the Pesticide/Pesticide Applicators Statutory Revision Task Force reached a compromise agreement as to a definition for "pesticide consultant." The Sunrise Sunset Committee subsequently agreed to include the regulation of pesticide consultants in Bill 7, which continues the Pesticide Applicators Act (see page 21 for a summary of the sunset review and Bill 7).

Real Estate Appraisers

The Colorado Real Estate Appraiser Certification Steering Committee proposed a voluntary certification program for real estate appraisers. The applicants stated that voluntary certification would identify those persons who have the qualifications to perform appraisal work that requires a higher level of knowledge, experience, ethical conduct, and professional competence than ordinary appraisal work. The proposal was modeled after the regulatory system that governs the accounting profession.

In its report, DORA concluded that a threat to the public health, safety, and welfare posed by the continued lack of regulation of real estate appraisers had been clearly demonstrated by the national savings and loan crisis. This threat was deemed no less immediate for Colorado citizens because of its national scale and impact. Although mismanagement of lending institutions and lack of effective oversight of lenders were noted as the primary causes of the S and L crisis, substandard or fraudulent appraisals often formed the basis on which the bad loans were made. DORA also noted that the federal Financial Institutional Recovery, Reform, and Enforcement Act of 1989 (FIRREA), known as the "S and L Bailout Bill," requires that state certified appraisers perform all appraisals on property that is involved in a transaction related to federal monies, such as Veterans Administration or Federal Housing Administration financing.

The Sunrise Sunset Committee recommends Bill 10 to amend Article 61 of Title 12, C.R.S., by the addition of a new Part 7. The bill declares that the General Assembly intends to implement the requirements of FIRREA by enacting a licensing and certification scheme for real estate appraisers which meets the minimum requirements of the federal law (section 12-61-701, C.R.S.). A Board of Real Estate Appraisers is created in the Division of Real Estate, DORA, to license and certify real estate appraisers (section 12-61-703C.R.S.). The qualifications and powers and duties of the proposed five-member board are specified, including the power to prosecute persons who perform appraisals without a license. The board is authorized to apply for a federal waiver of the July 1, 1991, compliance date for FIRREA requirements.

Three levels of licensure are established -- a basic level of real estate appraiser licensing, a residential level of real estate appraiser certification, and a general level of real estate appraiser certification, all with a three-year renewal cycle (12-61-706 through 709). The bill also provides for the terms of the expiration of appraisers' licenses and certificates, licensure or certification by endorsement from other jurisdictions, and denial by the board of licensure or certification. The board is to prescribe continuing education requirements for licensed and certified appraisers (12-61-706).

Bill 10 specifies prohibited activities on the part of licensees and certificants and provides for disciplinary actions by the board--revocation, suspension, probation, letters of admonition, or administrative fines (12-61-710). Administrative and criminal penalties for violation of the act are specified (12-61-712 and 713). A real

estate appraiser licensing fee cash fund is established in the state treasury to provide monies for the costs of the board and the appraiser division (12-61-705). A sunset date of July 1, 1999, is provided so that the board is subject to review at the same time as the Real Estate Commission (24-34-104).

Security Guards

Four individuals, three members of the security industry and one law enforcement professional, filed an application proposing the regulation of armed and unarmed private security guards. The application stated that the group was seeking the consolidation of current municipal licensing ordinances into one licensing and regulatory program under state authority. The application asserted that because each municipality has different standards for the regulation of security guards, convicted felons are sometimes able to obtain employment as security guards. The applicants proposed two standards to ensure that armed guards are properly trained: 1) twelve hours of instruction which would include legal limitations on the use of weapons, basic weapon handling, safety and maintenance of weapons; and 2) marksmanship training consisting of a passing score on a silhouette target course.

In its analysis, DORA concluded that the public is not being harmed by security guards in such a manner or to a degree that the proposed level of state regulation would be necessary. Since consumers are capable of making reasonably informed choices concerning security services, DORA also concluded that the most cost-effective method of protecting the public -- free competition in the marketplace -- is functioning adequately without state regulation. However, the evidence submitted showed that harm is usually directed towards the security guard during confrontations with armed trespassers. Such confrontations could escalate and involve bystanders. As a consequence, DORA recommended the passage of a statute which would require armed security guards to complete a firearms safety training program approved by the National Rifle Association or the equivalent.

The committee agreed that it needed more information from Colorado cities which regulate security guards before it could make a decision regarding regulation at the state level. A representative of the Colorado Municipal League (CML) was asked to meet with representatives of cities and municipalities, the security guard industry, and law enforcement groups to discuss the issue of state-level regulation and report the findings to the committee by June 1, 1990.

X-Ray Assistants

The Colorado Society of Radiologic Technologists applied for a sunrise review of licensure of radiologic technologists, persons who operate x-ray machines. The applicants stated objectives were to; 1) solve the problem of uncredentialed operators performing radiographic examinations on human beings; and 2) to reduce unnecessary radiation exposure to the consumer-patient and, therefore, the costs of x-rays.

DORA recommended against regulating radiologic technologists as proposed by the applicants. The applicants demonstrated potential harm to the public but had not shown where specific harm had occurred. DORA concluded that the benefits of regulation would be small compared to the cost of regulating this occupation. DORA recommended an amendment to the current law to allow the Division of Radiation Control, Department of Health, to regulate the technical qualifications of personnel involved with both ionizing and nonionizing (radioactive) radiation. The amendment would give the division the authority to withhold the machine certification stickers of licensees not in compliance with division rules and regulations in regard to the technical qualifications of personnel and safety rules for workers associated with the operation of x-ray machines.

Dr. Geoff Ibbott, a radiation health physicist from the University of Colorado Health Sciences Center, spoke in favor of licensure. He testified that radiation diseases are often identical to spontaneous diseases; therefore, tracking radiation induced carcinogenic diseases is difficult. According to the physicist, 22 percent of radiation diseases are from x-rays and 30 percent of those x-rays are unnecessary. He also stated that according to his colleagues, 90 percent of the practicing radiologic technologists in rural Colorado are not fully qualified in the occupation.

Radiation Control Division representatives testified that since the x-ray machine inspection program began in 1988, approximately half of the 1,600 machines inspected by the division have been found in non compliance with the Department of Health requirements. Furthermore, approximately half of all machines inspected in chiropractors' offices were defective. The committee agreed to send a letter to the Executive Director of the Department of Health expressing concern about the lack of compliance with safety rules by x-ray machine owners.

The committee does not recommend the licensure of x-ray machine assistants but does recommend Bill 11 as a means to enhance the protection of persons using and receiving x-rays. The proposed bill requires the State Board of Health to promulgate rules and regulations setting minimum standards for the qualifications and training of x-ray assistants in any area of the state. The bill provides that on or after January 1, 1992, no health care professional licensed as a podiatrist, chiropractor, dentist, osteopathic or medical doctor, nurse, or physical therapist shall employ any x-ray assistant who does not meet the standards of the minimum qualifications and training set by the State Board of Health. This requirement applies to x-ray use in settings other than licensed hospitals (Section 1).

The Department of Health, during its inspections of x-ray machines, is required to inspect for the qualifications of x-ray assistants operating those machines. The department is to report both the use of substandard equipment and inadequately trained assistants to the appropriate regulatory board or official in the Division of Registrations in the Department of Regulatory Agencies. Under Bill 11, the employment of an unqualified x-ray assistant by a licensed health care professional is a

violation of the respective medical practice act for such individual and is grounds for disciplinary action (Sections 2 through 8).

D. Sunset Review of Advisory Committees

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

- Advisory Committee Concerning Standards for the Eligibility and Certification of Providers of Alternative Care Services (section 26-4.5-113, C.R.S.);
- Advisory Council to the Division of Employment and Training (section 8-72-105);
- Alcohol and Drug Abuse Advisory Council (section 25-1-208, C.R.S.);
- Governor's Traffic Safety Advisory Committee (section 24-42-101, C.R.S.);
- Medical Assistance and Services Advisory Council (section 26-4-113, C.R.S.);
- State Certificated Personnel Performance Evaluation Council (section 22-9-105, C.R.S.); and
- Technical Advisory Committee to the Joint Review Committee for the Medically Indigent (section 26-15-108, C.R.S.).

The Pesticide/Pesticide Applicator Advisory Committee and the Beekeepers Advisory Committee were not scheduled for sunset review in 1989. Those committees were reviewed and recommended for continuation, however, in conjunction with the sunset reviews of the Pesticide Applicators' Act (page 21 or Bill 7) and the Bee and Bee Products Act (page 20 or Bill 6).

Each advisory committee is required to submit the following information to the Sunrise Sunset Review Committee:

- the names of the current members of the advisory committee;
- all revenues and expenditures, including advisory committee expenses, per diem paid to members, and any travel expenses;

- the dates all advisory committee meetings were held and the number of members attending the meetings;
- a listing of all advisory proposals made by the advisory committee together with an indication as to whether or not each proposal has been acted on, implemented, or enacted into statute; and
- the reasons why the advisory committee should be continued.

The Sunrise Sunset Review Committee recommends Bill 12 as an omnibus bill to continue seven advisory committees without new termination dates. Bill 12 deletes the per diem for members of the Advisory Council to the Division of Employment and Training and staggers the terms of its members. The terms of the members of the Advisory Committee to the Division of Highway Safety are also staggered.

E. Review of the Necessity of Rules

The Office of Regulatory Reform, DORA, is authorized to notify the Sunrise Sunset Review Committee of any proposed rules which the office believes are unnecessary for the administrative functions of a particular regulatory agency (section 24-34-913, C.R.S.). The committee has the authority to review such rules and to introduce legislation which rescinds or deletes the rules or portions of such rules which the committee believes to be unnecessary.

Greg Romberg, Director, Office of Regulatory Reform, reported that his office reviewed over 200 rules this past year. He described his efforts to work with the Mined Land Reclamation Board to rewrite their rules and regulations. The committee endorsed Mr. Romberg's work with the Department of Social Services to effect rules changes without asking the committee to correct the problem with legislation.

BY REPRESENTATIVE Kopel;
also SENATORS DeNier and Owens.

A BILL FOR AN ACT

1 CONCERNING BARBERS AND COSMETOLOGISTS, AND, IN CONNECTION
2 THEREWITH, CONTINUING THE STATE BOARD OF BARBERS AND
3 COSMETOLOGISTS.

Bill Summary

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

Removes the requirement that individuals and shops or salons possess a license to practice barbering or cosmetology. Defines "diploma" and requires a diploma from an approved school as the basic requirement for practicing barbering or cosmetology in this state.

Provides for the staggering of the terms of the members of the state board of barbers and cosmetologists and gives board members, consultants, witnesses, and complainants a good faith immunity for actions taken in their respective capacities. Clarifies the governor's authority to remove board members for cause as including misconduct, incompetence, or neglect of duty. Provides the board with the additional discipline sanctions of administrative fines and letters of admonition.

Removes certain limitations applicable to the practice of cosmeticians. Provides for sanitation inspections of shops and salons to be conducted by the counties where said shops or salons are located. Permits the board to employ persons to assist in conducting school evaluations.

Restructures approval and licensure requirements for beauty and barber schools. Provides a ceiling on the required school term of training for barber and beauty schools. Deletes the specific number of credit hours a student must

have before a school may charge for services rendered by that student and provides for the board to establish an appropriate requirement for a minimum number of credit hours by rule and regulation.

Adds civil penalties to existing criminal penalties for practicing or employing someone to practice barbering or cosmetology without a diploma from an approved school. Defines deceptive and unfair trade practices and provides a mechanism for complaints regarding these practices. Empowers the board to issue cease and desist orders to individuals operating a school without a license and to persons practicing without a diploma or in a manner that endangers the public. Grants the board broader investigation and inspection powers. Provides for judicial review of final board action to be the jurisdiction of the court of appeals. Provides for sunset review of the board on a certain date.

Makes it an unfair or deceptive practice for an insurance company to alter insurability of a barber, cosmetologist, manicurist, barber shop, or a beauty salon based on changes in regulation imposed by the act.

Makes conforming amendments.

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

2 SECTION 1. 12-8-101, Colorado Revised Statutes, 1985
3 Repl. Vol., is amended to read:

4 12-8-101. Short title. This article shall be known and
5 may be cited as the "Barber and Cosmetologist Act". ~~of-1977~~.

6 SECTION 2. 12-8-102, Colorado Revised Statutes, 1985
7 Repl. Vol., is amended to read:

8 12-8-102. Legislative declaration. The purpose of this
9 article is to enhance and maintain high standards of quality
10 and performance for the professions of barbering and
11 cosmetology and their related services in this state; to
12 provide for continuing up-to-date tests for barber and
13 cosmetology school instructors; ~~and operators~~; to insure that
14 students of barbering and cosmetology receive thorough and
15 reliable instruction; and to encourage understanding and

1 cooperation among members of the barbering and cosmetology
2 professions and their related services.

3 SECTION 3. 12-8-103 (10), Colorado Revised Statutes,
4 1985 Repl. Vol., is amended, and the said 12-8-103 is further
5 amended BY THE ADDITION OF A NEW SUBSECTION to read:

6 12-8-103. Definitions. (9.5) "Diploma" means an award
7 for the successful completion of an approved prescribed
8 program of study in barbering, cosmetology, or manicuring or
9 as a cosmetician.

10 (10) (a) "Instructor of barbering" means a person who is
11 licensed COMPETENT to teach barbering in this state as
12 provided in--this--article IN THE RULES AND REGULATIONS
13 PROMULGATED BY THE BOARD.

14 (b) "Instructor of cosmetology" means a person who is
15 licensed COMPETENT to teach cosmetology in this state as
16 provided in--this--article IN THE RULES AND REGULATIONS
17 PROMULGATED BY THE BOARD.

18 SECTION 4. 12-8-104 (1), Colorado Revised Statutes, 1985
19 Repl. Vol., is amended to read:

20 12-8-104. State board of barbers and cosmetologists.

21 (1) There is hereby created in the division of registrations
22 in the department of regulatory agencies a state board of
23 barbers and cosmetologists consisting of five members to be
24 appointed by the governor. Two members shall be licensed--in
25 Colorado---to---engage---in---the---practice---of cosmetology
26 PRACTITIONERS; two members shall be licensed--in--Colorado--to
27 engage--in--the--practice--of barbering PRACTITIONERS; and one

1 member shall be from the general public who is not licensed or
2 employed in the practice of barbering or cosmetology and who
3 has no financial interest in the practice of barbering or
4 cosmetology. NO MEMBER SHALL BE AN OWNER OF A BARBER SCHOOL
5 OR A BEAUTY SCHOOL. The professional members shall have been
6 actively employed in their professions at least two years
7 immediately preceding their appointment and shall be active in
8 their professions while serving on the board. No more than
9 three members shall be appointed from the metropolitan area
10 composed of the city and county of Denver and Adams, Arapahoe,
11 Jefferson, and Boulder counties. Each member shall be
12 appointed for a term of three years; EXCEPT THAT, OF THE TERMS
13 SCHEDULED TO BEGIN ON JULY 1, 1989, THE TERMS OF ONE BARBERING
14 PRACTITIONER AND ONE COSMETOLOGY PRACTITIONER, WHO SHALL BE
15 DETERMINED BY THE GOVERNOR, SHALL EXPIRE ON JULY 1, 1990, THE
16 TERM OF THE MEMBER FROM THE GENERAL PUBLIC SHALL EXPIRE ON
17 JULY 1, 1991 AND THE TERMS OF THE TWO REMAINING MEMBERS SHALL
18 EXPIRE ON JULY 1, 1992. Any interim appointment necessary to
19 fill a vacancy which has occurred by any reason other than
20 expiration of term shall be for the remainder of the term of
21 the individual member whose office has become vacant. No
22 person shall be appointed ~~on or after July 1, 1977,~~ to serve
23 more than two terms as a member of the board. The governor may
24 remove any board member for cause, WHICH SHALL INCLUDE BUT
25 NEED NOT BE LIMITED TO MISCONDUCT, INCOMPETENCE, OR NEGLECT OF
26 DUTY.

27 SECTION 5. 12-8-106, Colorado Revised Statutes, 1985

1 Repl. Vol., is amended to read:
 2 12-8-106. Meetings - quorum - rules. The board shall
 3 ~~meet in January and July of each year and~~ at such other times
 4 as the board may direct. Three members of the board shall
 5 constitute a quorum for the transaction of business. All
 6 decisions of the board shall require an affirmative vote of a
 7 majority of the members present at such board meeting. If any
 8 board member has more than two unexcused absences from
 9 regularly scheduled or called meetings in any calendar year,
 10 the board shall ask the governor to appoint a new member in
 11 his place. The board shall prescribe rules for its
 12 government. ~~and have a seal with which to authenticate its~~
 13 ~~acts.~~

14 SECTION 6. 12-8-108, Colorado Revised Statutes, 1985
 15 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
 16 read:

17 12-8-108. Powers and duties of the board. (1) The
 18 board has the following powers and duties:

- 19 (a) To promulgate, in accordance with article 4 of title
 20 24, C.R.S., such rules and regulations as are necessary for
 21 the administration of this article;
- 22 (b) To supervise and inspect barber schools and beauty
 23 schools and to revoke, suspend, deny, or place on probation
 24 licenses upon proof of violation of the rules and regulations
 25 established by the board or violation of the statutes of this
 26 state;
- 27 (c) To supervise and regulate the industries of

1 barbering and cosmetology of this state in accordance with
 2 this article, but nothing contained in this article shall be
 3 construed to abrogate the status, force, or operation of any
 4 provisions of any public health law of this state or any local
 5 health ordinance or regulation;

6 (d) To prescribe standards and approve curricula for
 7 educational programs preparing persons for the practice of
 8 barbering or cosmetology under this article in conformity with
 9 section 12-8-125, including minimum criteria for quality of
 10 education, ethical business practices, and fiscal
 11 responsibility;

12 (e) To deny or withdraw approval from educational
 13 programs for failure to meet prescribed standards;

14 (f) To investigate, as it deems necessary, all suspected
 15 or alleged violations of this article, including the physical
 16 inspection of school facilities and records;

17 (g) Through its designated agents, to subpoena such
 18 books, records, or documents as it deems necessary for a
 19 complete investigation of any suspected or alleged violation
 20 of this article and to compel the attendance of witnesses and
 21 the giving of testimony and documents for any proceeding
 22 conducted by the board pursuant to such investigation;

23 (h) By and through the attorney general of this state,
 24 to apply to a court of competent jurisdiction for an order
 25 enjoining any act or practice which constitutes a violation of
 26 this article. Upon a showing to the satisfaction of the court
 27 that a person is engaging or intends to engage in any such act

1 or practice, an injunction, temporary restraining order, or
2 other appropriate order shall be granted by such court,
3 regardless of the existence of another remedy therefor. The
4 requirements for notice, hearing, duration of any injunction
5 or temporary restraining order issued pursuant to this
6 paragraph (h), or other similar matter shall be in accordance
7 with the Colorado rules of civil procedure;

8 (i) To send letters of admonition, when a complaint or
9 an investigation discloses a violation of this article which,
10 in the opinion of the board, does not warrant formal action
11 but which should not be dismissed as being without merit, and
12 such letter of admonition shall be sent to the person against
13 whom the complaint was made by certified mail and a copy
14 thereof to the person making the complaint, but such person
15 complained against shall be advised that he has the right to
16 request in writing, within twenty days after proven receipt of
17 the letter, that formal disciplinary proceedings be initiated
18 against him to adjudicate the propriety of the conduct upon
19 which the letter of admonition is based. If such request is
20 timely made, the letter of admonition shall be deemed vacated,
21 and the matter shall be processed by means of formal
22 disciplinary proceedings;

23 (j) To issue cease and desist orders pursuant to section
24 12-8-127.5.

25 SECTION 7. 12-8-111, Colorado Revised Statutes, 1985
26 Repl. Vol., is amended to read:

27 12-8-111. Application - form. Each applicant for

1 ~~examination~~ LICENSURE OR APPROVAL shall file with the board,
2 or its designee, a written application in such form as the
3 board may require to set forth the qualifications of the
4 applicant and shall submit ~~satisfactory-proof-of-the-required~~
5 ~~age-and-education~~ OTHER INFORMATION AS THE BOARD MAY REQUIRE.
6 All fees for ~~examinations--and~~ licenses shall be paid in
7 advance, except as otherwise provided in this article.

8 SECTION 8. 12-8-114, Colorado Revised Statutes, 1985
9 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
10 read:

11 12-8-114. Qualifications of practitioners. On and after
12 July 1, 1990, all barbers, manicurists, cosmeticians, and
13 cosmetologists shall possess a valid diploma to practice
14 barbering or cosmetology in this state.

15 SECTION 9. 12-8-115 (2), Colorado Revised Statutes, 1985
16 Repl. Vol., is amended to read:

17 12-8-115. Renewal of license. (2) All licenses shall
18 be issued for a period not to exceed three years, as
19 determined by the executive director of the department of
20 regulatory agencies. ~~In--the-case-of-a-license-for-a-barber~~
21 ~~school--beauty--school--barbershop--or--beauty--salon,~~ The
22 expiration date shall be determined by the original date of
23 the establishment of ~~such-business~~ THE SCHOOL.

24 SECTION 10. 12-8-118, Colorado Revised Statutes, 1985
25 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
26 read:

27 12-8-118. Reciprocity. (1) The board, upon the request

1 of any person or on its own motion, shall verify that an
2 out-of-state diploma represents credentials from a school with
3 substantially equivalent requirements to schools located in
4 the state of Colorado.

5 (2) If a person holds a valid license or certificate of
6 registration to practice barbering or cosmetology from a state
7 other than Colorado, where such person would have been
8 required to possess a diploma to obtain such credential, and
9 the diploma was from a school with requirements substantially
10 equivalent to schools located within the state of Colorado,
11 then such credential shall be considered the equivalent of a
12 diploma for the purposes of practicing barbering or
13 cosmetology in this state.

14 (3) To ensure that Colorado practitioners seeking
15 licensure or reciprocity in states which require a license are
16 not penalized because they do not possess a license, the board
17 is authorized to produce documentation verifying that an
18 individual is authorized to practice in Colorado and meets the
19 qualifications required by law to practice in Colorado, and
20 such verification shall be in whatever form is deemed
21 necessary by the state requesting verification. The board is
22 hereby authorized to establish and collect a fee for providing
23 this documentation.

24 SECTION 11. 12-8-119, Colorado Revised Statutes, 1985
25 Repl. Vol, is amended to read:

26 12-8-119. Issuance of license - display. If an
27 applicant for ~~examination-to-practice-barbering-or-cosmetology~~

1 ~~passes-such-examination-to-the-satisfaction-of-the-board~~
2 APPROVAL AND LICENSURE OF A SCHOOL HAS MET ALL REQUIREMENTS OF
3 THE BOARD and has paid the required fee and complies with the
4 requirements of this article, the board shall issue a license
5 to that effect. TO ENSURE THAT THE COSTS OF LICENSE FEES DO
6 NOT JEOPARDIZE SMALLER SCHOOLS, THE BOARD IS DIRECTED TO
7 ESTABLISH A FORMULA TO COMPUTE LICENSE FEES WHICH IMPOSES A
8 FLAT FEE FOR ALL SCHOOLS AND ADDS AN ADDITIONAL AMOUNT BASED
9 UPON THE AVERAGE NUMBER OF STUDENTS ENROLLED AT EACH
10 INDIVIDUAL SCHOOL. Such license shall be evidence that the
11 ~~person~~ OWNER to whom it is issued is entitled to engage
12 PROVIDE INSTRUCTION in the practices ~~occupation~~ ~~or~~
13 ~~occupations~~ stipulated therein AT A SPECIFIED LOCATION. Such
14 license shall be conspicuously displayed in his THE principal
15 office or place of business ~~or-employment~~ OF SAID SCHOOL.

16 SECTION 12. 12-8-120 (1), Colorado Revised Statutes,
17 1985 Repl. Vol., is amended to read:

18 12-8-120. License required. (1) It is unlawful for any
19 person, public school district, or public institution of
20 higher education in this state to engage in, or to attempt to
21 engage in, ~~or-to-teach-the-occupations-of-barbering-or~~
22 ~~cosmetology~~ or to conduct a barber school ~~barbershop~~, beauty
23 salon, or beauty school in this state unless such person,
24 public school district, or public institution of higher
25 education first obtains a license as provided by this article.

26 SECTION 13. 12-8-121 (2) and (3), Colorado Revised
27 Statutes, 1985 Repl. Vol., are amended to read:

1 12-8-121. Exemptions. (2) Nothing in this article
2 shall prohibit the teaching of barbering or cosmetology in a
3 barbershop or beauty salon to ~~licensees~~ PERSONS POSSESSING A
4 DIPLOMA regularly employed in such salon ~~and--licensed--under~~
5 ~~this--article~~ during the regular course of business of such
6 salon.

7 (3) No BARBER OR beauty school shall operate within this
8 state unless a proper license under this article has been
9 obtained; and every person teaching cosmetology ~~except when~~
10 ~~actually demonstrating under the supervision of a licensed~~
11 ~~instructor of cosmetology,~~ OR BARBERING shall be considered a
12 BARBER OR beauty school and shall comply with all of the
13 requirements in this article applying to BARBER AND beauty
14 schools.

15 SECTION 14. 12-8-122, Colorado Revised Statutes, 1985
16 Repl. Vol., is amended to read:

17 12-8-122. Board may employ aid - compensation. The
18 board may employ any QUALIFIED person ~~licensed--pursuant--to~~
19 ~~this--article~~ for the purpose of conducting examinations SCHOOL
20 EVALUATIONS. Such persons shall not be connected with any
21 school teaching barbering or cosmetology. Any person so
22 employed by the board may receive for his services ~~not more~~
23 ~~than fifty dollars~~ COMPENSATION for each day employed in the
24 actual discharge of his official duties and his actual and
25 necessary expenses incurred, TO BE SET BY THE BOARD upon the
26 approval of the executive director of the department of
27 regulatory agencies.

1 SECTION 15. 12-8-123, Colorado Revised Statutes, 1985
2 Repl. Vol., is amended to read:

3 12-8-123. Inspections. The board, in coordination with
4 the department of health, shall promulgate rules and
5 regulations for proper safety and sanitary conditions in the
6 conduct and management of barber schools ~~barbershops,~~ beauty
7 ~~salons,~~ and beauty schools in this state, and the board shall
8 provide for the inspection of all barber schools ~~barbershops,~~
9 ~~beauty--salons,~~ and beauty schools. ~~Inspections shall be held~~
10 ~~at least once every three years,~~ and the board may provide for
11 ~~additional inspections at its discretion~~ UPON COMPLAINT,
12 INSPECTIONS OF BARBERSHOPS, BEAUTY SALONS, AND RENTAL BOOTHS
13 THEREIN OPERATED BY INDEPENDENT PRACTITIONERS SHALL BE
14 PERFORMED BY THE COUNTY HEALTH DEPARTMENT FOR THE COUNTY IN
15 WHICH THE SHOPS OR SALONS ARE LOCATED, AND THE COUNTIES ARE
16 HEREBY AUTHORIZED TO ESTABLISH AND COLLECT A FEE FOR SUCH
17 INSPECTIONS.

18 SECTION 16. 12-8-125, Colorado Revised Statutes, 1985
19 Repl. Vol., is amended to read:

20 12-8-125. License for barber school and beauty school-
21 requirements. (1) Any person, public school district, or
22 public institution of higher education shall apply to the
23 board for a license as a BARBER OR beauty school. Every
24 application for a license shall be made in compliance with
25 the provisions of this article, and, except in the case of an
26 application of a public school district or public institution
27 of higher education, every application for a license shall be

1 accompanied by a license fee as provided in section 12-8-116.

2 (2) No BARBER SCHOOL OR beauty school shall be granted a
3 license unless it has ~~assigned to its staff, as a consultant,~~
4 ~~a person licensed by this state to practice an unlimited or~~
5 ~~limited branch of medicine; employs and maintains a sufficient~~
6 ~~number of competent instructors, licensed as such; and~~
7 requires a school term of training of not less than one MORE
8 THAN ONE thousand SIX HUNDRED FIFTY hours for a complete
9 course comprising a ~~combination of the practice of cosmetology~~
10 CURRICULUM APPROVED BY THE BOARD, including practical
11 demonstrations, written or oral tests, and practical
12 instructions in sanitation, sterilization, and the use of
13 antiseptics, cosmetics, and electrical appliances, consistent
14 with the practical and theoretical requirements applicable to
15 BARBERING, cosmetology, MANICURING, AND THE PRACTICES OF
16 COSMETICIANS.

17 (3) IN ESTABLISHING THE CRITERIA REQUIRED BY THIS
18 SECTION, THE STATE BOARD SHALL OBSERVE AND REQUIRE COMPLIANCE
19 WITH AT LEAST THE FOLLOWING MINIMUM STANDARDS FOR ALL SCHOOLS:

20 (a) THAT THE SCHOOL CAN DEMONSTRATE THAT IT HAS
21 SUFFICIENT FINANCIAL RESOURCES TO:

- 22 (I) FULFILL ITS COMMITMENTS TO STUDENTS;
23 (II) MAKE REFUNDS OF TUITION AND FEES TO THE EXTENT AND
24 IN THE MANNER SET FORTH IN THIS ARTICLE; AND
25 (III) MEET THE SCHOOL'S FINANCIAL OBLIGATIONS;

26 (b) THAT THE SCHOOL SHALL FURNISH AND MAINTAIN A SURETY
27 BOND IN THE MINIMUM AMOUNT OF TEN THOUSAND DOLLARS, EXECUTED

1 BY THE APPLICANT AS PRINCIPAL AND BY A SURETY COMPANY
2 QUALIFIED AND AUTHORIZED TO DO BUSINESS IN THIS STATE AS
3 SURETY, AND SUCH BOND SHALL BE CONDITIONED UPON COMPLIANCE
4 WITH THE PROVISIONS OF THIS ARTICLE AND WITH THE RULES AND
5 REGULATIONS PROMULGATED UNDER THIS ARTICLE;

6 (c) THAT THE EDUCATIONAL SERVICES ARE SUCH AS WILL
7 ADEQUATELY ACHIEVE THE STATED OBJECTIVES FOR WHICH THE
8 EDUCATIONAL SERVICES ARE OFFERED;

9 (d) THAT THE SCHOOL HAS ADEQUATE FACILITIES, EQUIPMENT,
10 INSTRUCTIONAL MATERIALS, INSTRUCTIONAL STAFF, AND OTHER
11 PERSONNEL TO PROVIDE EDUCATIONAL SERVICES NECESSARY TO MEET
12 THE STATED OBJECTIVES FOR WHICH THE EDUCATIONAL SERVICES ARE
13 OFFERED;

14 (e) THAT THE EDUCATION AND EXPERIENCE QUALIFICATIONS OF
15 ADMINISTRATORS, INSTRUCTIONAL STAFF, AND OTHER PERSONNEL ARE
16 SUCH AS WILL ADEQUATELY INSURE THAT THE STUDENTS WILL RECEIVE
17 EDUCATIONAL SERVICES CONSISTENT WITH THE STATED OBJECTIVES FOR
18 WHICH THE EDUCATIONAL SERVICES ARE OFFERED;

19 (f) THAT THE SCHOOL PROVIDES EACH PROSPECTIVE STUDENT
20 WITH A SCHOOL CATALOG AND OTHER PRINTED INFORMATION DESCRIBING
21 THE EDUCATIONAL SERVICES OFFERED, INCLUDING ENTRANCE
22 REQUIREMENTS, PROGRAM OBJECTIVES, LENGTH OF PROGRAMS, SCHEDULE
23 OF TUITIONS, FEES, ALL OTHER CHARGES, AND EXPENSES NECESSARY
24 FOR THE COMPLETION OF THE PROGRAM OF STUDY, CANCELLATION AND
25 REFUND POLICIES, AND SUCH OTHER MATERIAL FACTS CONCERNING THE
26 SCHOOL AND THE PROGRAM OF INSTRUCTION THAT ARE LIKELY TO
27 AFFECT THE DECISION OF A STUDENT TO ENROLL THEREIN AS REQUIRED

1 BY THE BOARD AND THAT SUCH INFORMATION IS PROVIDED TO A
2 PROSPECTIVE STUDENT PRIOR TO THE COMMENCEMENT OF CLASSES AND
3 THE EXECUTION OF ANY ENROLLMENT AGREEMENT OR CONTRACT;

4 (g) THAT, UPON SATISFACTORY COMPLETION OF TRAINING, THE
5 STUDENT IS GIVEN APPROPRIATE EDUCATIONAL CREDENTIALS BY SAID
6 SCHOOL WHICH SHALL INCLUDE A DIPLOMA; EXCEPT THAT THE SCHOOL
7 MAY REQUIRE THE PAYMENT OF ALL TUITION AND FEES DUE AT THE
8 TIME OF COMPLETION;

9 (h) THAT ADEQUATE EDUCATIONAL, FINANCIAL, AND OTHER
10 RECORDS ARE MAINTAINED BY THE SCHOOL;

11 (i) THAT THE SCHOOL ADHERES TO PROCEDURES, STANDARDS,
12 AND POLICIES SET FORTH IN THE SCHOOL CATALOG AND OTHER PRINTED
13 MATERIALS;

14 (j) THAT THE SCHOOL IS MAINTAINED AND OPERATED IN
15 COMPLIANCE WITH ALL PERTINENT ORDINANCES AND LAWS, INCLUDING
16 RULES AND REGULATIONS ADOPTED PURSUANT THERETO, RELATIVE TO
17 THE HEALTH AND SAFETY OF ALL PERSONS UPON THE PREMISES;

18 (k) THAT THE PRINCIPAL OWNERS, OFFICERS, AGENTS,
19 ADMINISTRATORS, AND INSTRUCTORS ARE OF GOOD REPUTATION AND
20 COMPETENT TO DISCHARGE THEIR RESPONSIBILITIES;

21 (l) THAT THE SCHOOL PROVIDES THE STUDENT WITH A COPY OF
22 THE EXECUTED ENROLLMENT AGREEMENT OR CONTRACT, AT THE TIME OF
23 ENROLLMENT, WHICH COMPLIES WITH THIS ARTICLE;

24 (m) THAT THE SCHOOL ADHERES TO A POLICY FOR THE
25 CANCELLATION, SETTLEMENT, AND REFUND OF TUITION AND FEES WHICH
26 COMPLIES WITH THIS ARTICLE;

27 (n) THAT THE SCHOOL SHALL SUBMIT TO THE BOARD THE NAME

1 AND COLORADO ADDRESS OF A DESIGNATED AGENT UPON WHOM ANY
2 PROCESS, NOTICE, OR DEMAND MAY BE SERVED, AND SUCH AGENT SHALL
3 BE MAINTAINED CONTINUOUSLY. NOTHING CONTAINED IN THIS SECTION
4 SHALL LIMIT OR AFFECT THE RIGHT TO SERVE ANY PROCESS, NOTICE,
5 OR DEMAND REQUIRED OR PERMITTED BY LAW TO BE SERVED UPON A
6 FOREIGN CORPORATION IN ANY OTHER MANNER NOW OR HEREAFTER
7 PERMITTED BY LAW.

8 (o) THAT THE SCHOOL SHALL NOT DENY ENROLLMENT OF A
9 STUDENT OR MAKE ANY DISTINCTION OR CLASSIFICATION OF STUDENTS
10 ON ACCOUNT OF RACE, COLOR, CREED, NATIONAL ORIGIN, OR SEX.

11 SECTION 17. 12-8-126, Colorado Revised Statutes, 1985
12 Repl. Vol., is amended to read:

13 12-8-126. Barber and beauty school operation. (1) Each
14 BARBER AND beauty school shall orient students to the
15 functions and purposes of the BARBER AND cosmetology
16 profession. Each BARBER AND beauty school shall make
17 available to each student a copy of the state BARBER AND
18 cosmetology laws and a copy of the rules and regulations
19 promulgated by the board. A copy of the beauty school rules
20 and regulations shall be provided by such beauty school to
21 each student at the time of his enrollment. Each of the said
22 materials shall be read and explained to each student. Each
23 beauty school shall obtain and keep on file a receipt signed
24 by the student, or by the student and his parent if the
25 student is under eighteen years of age, showing that the
26 student has received and understands said information.

27 (2) No student or beauty school shall be permitted to

1 charge for BARBER OR cosmetology services rendered by a
2 student who has received less than three hundred hours of
3 instruction in cosmetology NOT RECEIVED THE MINIMUM HOURS OF
4 BASIC INSTRUCTION IN HIS RESPECTIVE COURSE AS ESTABLISHED IN
5 THE RULES AND REGULATIONS OF THE BOARD.

6 SECTION 18. 12-8-127, Colorado Revised Statutes, 1985
7 Repl. Vol., is amended to read:

8 12-8-127. Penalty. (1) Any person practicing barbering
9 or cosmetology, or any of the practices thereof, who maintains
10 WITHOUT A DIPLOMA, MAINTAINING a barber school barbershop,
11 beauty salon, or beauty school, or acts ACTING in any capacity
12 wherein a license OR DIPLOMA is required without a license OR
13 DIPLOMA AS provided for in this article; any person knowingly
14 employing a barber or cosmetologist who has not obtained such
15 license DIPLOMA; any person who falsely pretends to be
16 qualified to practice such occupation; any person who permits
17 anyone in his employ or under his supervision or control to
18 practice barbering or cosmetology without a license from the
19 board DIPLOMA; any person who obtains or attempts to obtain a
20 license OR DIPLOMA for money other than the required fee; and
21 any person who willfully fails to display a license as
22 required by this article commits a class 2 misdemeanor
23 and shall be punished as provided in section 18-1-106, C.R.S.

24 (2) IN ADDITION TO ANY OTHER PENALTY, ANY PERSON WHO
25 VIOLATES THE PROVISIONS OF THIS ARTICLE OR THE RULES AND
26 REGULATIONS OF THE BOARD PROMULGATED UNDER THIS ARTICLE MAY BE
27 PENALIZED BY THE BOARD UPON A FINDING OF A VIOLATION PURSUANT

1 TO ARTICLE 4 OF TITLE 24, C.R.S., AS FOLLOWS:

2 (a) IN THE FIRST ADMINISTRATIVE PROCEEDING AGAINST ANY
3 PERSON, A FINE OF NOT LESS THAN ONE HUNDRED DOLLARS BUT NOT
4 MORE THAN FIVE HUNDRED DOLLARS PER DAY PER VIOLATION;

5 (b) IN ANY SUBSEQUENT ADMINISTRATIVE PROCEEDING AGAINST
6 ANY PERSON FOR TRANSACTIONS OCCURRING AFTER A FINAL AGENCY
7 ACTION DETERMINING THAT A VIOLATION OF THIS ARTICLE HAS
8 OCCURRED, A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS BUT NOT
9 MORE THAN TWO THOUSAND DOLLARS PER DAY PER VIOLATION.

10 (3) ANY PERSON WHO IS FOUND TO HAVE COMMITTED A
11 VIOLATION PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL PAY
12 FOR THE COSTS INCURRED IN BRINGING AND CONDUCTING SUCH
13 ADMINISTRATIVE PROCEEDING.

14 (4) ALL FINES COLLECTED PURSUANT TO THIS ARTICLE SHALL
15 BE CREDITED TO THE GENERAL FUND.

16 SECTION 19. Article 8 of title 12, Colorado Revised
17 Statutes, 1985 Repl. Vol., as amended, is amended BY THE
18 ADDITION OF A NEW SECTION to read:

19 12-8-127.5. Penalties - cease and desist orders.

20 (1) (a) If, as the result of an investigation of a complaint
21 by any person or of an investigation on the board's own
22 motion, the board initiates and conducts a hearing and, on the
23 basis of evidence presented at the hearing, a majority of the
24 board determines that any person who is acting or has acted
25 without the required license or diploma, or is otherwise in
26 violation of this article, or is acting in a manner that is a
27 threat to the health and safety of the public, the board may

1 issue an order to cease and desist such activity. The order
2 shall set forth the statutes and rules and regulations alleged
3 to have been violated, the facts alleged to have constituted
4 the violation, and the requirement that all unlawful acts
5 cease forthwith. The hearing shall be conducted in accordance
6 with the provisions of article 4 of title 24, C.R.S.

7 (b) In the event that any person fails to comply with a
8 cease and desist order, the board may request the attorney
9 general or the district attorney for the judicial district in
10 which the alleged violation exists to bring, and if so
11 requested he shall bring, a suit for a temporary restraining
12 order and for injunctive relief to prevent any further or
13 continued violation of the order.

14 (c) No stay of a cease and desist order shall be issued
15 before a hearing thereon involving both parties.

16 (d) Matters brought before a court pursuant to this
17 section shall have preference over other matters on the
18 court's calendar.

19 SECTION 20. 12-8-128, Colorado Revised Statutes, 1985
20 Repl. Vol., is amended to read:

21 12-8-128. Enforcement. It is the duty of the several
22 district attorneys of EACH JUDICIAL DISTRICT OF this state and
23 the attorney general of this state to prosecute all persons
24 charged with the violation of any of the provisions of this
25 article. It is the duty of the administrator of the board,
26 under the direction of the board, to aid said attorneys in the
27 enforcement of this article.

1 SECTION 21. 12-8-129, Colorado Revised Statutes, 1985
2 Repl. Vol., is amended to read:

3 12-8-129. Investigations. The practice and procedure of
4 the board with respect to any investigation by the board
5 authorized by this article shall be in accordance with rules
6 and regulations promulgated by the board, which rules and
7 regulations shall provide for, ~~reasonable--notice--to--all~~
8 ~~persons--affected--by--orders--made--by--the--board--for--such~~
9 ~~investigations--and--shall--also--provide--opportunity--to--be--heard~~
10 ~~either--in--person--or--by--counsel--and--to--introduce--testimony--at--a~~
11 ~~public--hearing--held--for--that--purpose~~ BUT NEED NOT BE LIMITED
12 TO, INVESTIGATION POWERS, INCLUDING THE RIGHT TO ENTER THE
13 PREMISES OF ANY SCHOOL LICENSED UNDER THIS ARTICLE AT ANY TIME
14 SAID SCHOOL IS OPEN FOR BUSINESS OR HAS STUDENTS PRESENT ON
15 THE PREMISES.

16 SECTION 22. 12-8-130, Colorado Revised Statutes, 1985
17 Repl. Vol., is amended to read:

18 12-8-130. Persons licensed or registered under previous
19 law. The holder of a valid Colorado license or certificate of
20 registration to practice barbering or cosmetology ~~to--operate--a~~
21 ~~barbershop--or--beauty--salon,--to--operate--a--barber--school,--barber~~
22 ~~college,--or--beauty--school,--to--practice--as--an--instructor--of~~
23 ~~barbering--or--cosmetology,--or--to--practice--as--a--manicurist--prior~~
24 ~~to--July--1,--1977,~~ PRIOR TO JULY 1, 1990, shall be deemed to be
25 ~~licensed~~ POSSESS A DIPLOMA under the provisions of this
26 article. IF SAID HOLDER DOES NOT POSSESS A DIPLOMA OR OTHER
27 DOCUMENTATION EVIDENCING GRADUATION FROM AN APPROVED SCHOOL,

1 AND THE HOLDER CANNOT OBTAIN A DUPLICATE ORIGINAL FROM THE
 2 SCHOOL THE HOLDER MAY OBTAIN A DOCUMENT FROM THE BOARD
 3 INDICATING THE RIGHT TO PRACTICE ANY SUCH OCCUPATION LICENSED
 4 PRIOR TO JULY 1, 1990. THE BOARD IS HEREBY AUTHORIZED TO
 5 ESTABLISH AND COLLECT A FEE FOR THIS DOCUMENT. A BARBER OR
 6 BEAUTY SCHOOL HOLDING A LICENSE PRIOR TO JULY 1, 1990, SHALL
 7 BE DEEMED LICENSED UNDER THE PROVISIONS OF THIS ARTICLE BUT
 8 SHALL BE REEVALUATED FOR CONTINUED APPROVAL UNDER THE
 9 PROVISIONS OF THIS ARTICLE IN EFFECT ON AND AFTER JULY 1,
 10 1990, PRIOR TO RENEWAL OF SAID LICENSE. IF THE BOARD CANNOT
 11 PERFORM THE REQUIRED REEVALUATION PRIOR TO THE EXPIRATION OF
 12 THE EXISTING LICENSE, THE BOARD MAY GRANT A TEMPORARY LICENSE
 13 THAT WILL BE EFFECTIVE UNTIL THE REEVALUATION IS PERFORMED,
 14 BUT UNDER NO CIRCUMSTANCE SHALL A TEMPORARY LICENSE BE
 15 EFFECTIVE FOR MORE THAN ONE YEAR.

16 SECTION 23. 12-8-131 (7), Colorado Revised Statutes,
 17 1985 Repl. Vol., is amended to read:

18 12-8-131. Disciplinary proceedings - administrative law
 19 judges - judicial review. (7) Final board action may be
 20 judicially reviewed. ~~and--judicial---proceedings---for---the~~
 21 ~~enforcement--of--a-board-order-may-be-instituted-in-accordance~~
 22 ~~with-section-24-4-106-C.R.S.~~ THE COURT OF APPEALS SHALL HAVE
 23 INITIAL JURISDICTION TO REVIEW ALL FINAL ACTIONS AND ORDERS
 24 THAT ARE SUBJECT TO JUDICIAL REVIEW. SUCH PROCEEDINGS SHALL
 25 BE CONDUCTED IN ACCORDANCE WITH SECTION 24-4-106 (11), C.R.S.

26 SECTION 24. The introductory portion to 12-8-132 (1) and
 27 12-8-132 (1) (b), (1) (c), (1) (e), (1) (i), and (1) (j),

1 Colorado Revised Statutes, 1895 Repl. Vol., are amended, and
 2 the said 12-8-132 (1) is further amended BY THE ADDITION OF A
 3 NEW PARAGRAPH, to read:

4 12-8-132. Grounds for denial, revocation, or suspension
 5 of license. (1) The board may deny, revoke, MAKE
 6 PROBATIONARY, or suspend any license issued under its
 7 authority pursuant to this article upon proof that the
 8 licensee:

9 (b) Has made any misstatement on his application for
 10 licensure to ~~practice--barbering--or--cosmetology~~ OPERATE A
 11 BARBER OR BEAUTY SCHOOL;

12 (c) Is incompetent TO OPERATE A BARBER OR BEAUTY SCHOOL;

13 (e) Has ~~willfully~~ violated any of the provisions of this
 14 article;

15 (i) Fails to comply with the ~~sanitation~~ rules
 16 promulgated by the board as provided in section ~~12-8-123~~
 17 12-8-109; ~~or~~

18 (j) Is guilty of willful misrepresentation; OR

19 (k) Engages in deceptive trade or sales practices, which
 20 shall include but not be limited to:

21 (I) A school or agent making or causing to be made any
 22 statement or representation, oral, written, or visual, in
 23 connection with the offering of educational services if such
 24 school or agent knows or reasonably should have known the
 25 statement or representation to be false, substantially
 26 inaccurate, or misleading;

27 (II) A school or agent representing falsely, directly

1 or by implication, through the use of a trade or business name
2 or in any other manner, including the use of "help wanted" or
3 other employment columns in a newspaper or other publication,
4 that it is an employment agency or agent or authorized
5 training facility for another industry or member of such
6 industry or to otherwise deceptively conceal the fact that it
7 is a school;

8 (III) A school or agent adopting a name, trade name, or
9 trademark which represents falsely, directly or by
10 implication, the quality, scope, nature, size, or integrity of
11 the school or its educational services;

12 (IV) A school or agent representing falsely, directly
13 or by implication, that students completing a course or
14 program of instruction successfully may transfer credit
15 therefor to any institution of higher education;

16 (V) A school or agent representing falsely, directly or
17 by implication, in its advertising or promotional materials or
18 in any other manner, the size, location, facilities, or
19 equipment of the school, the number or educational experience
20 qualifications of its faculty, the extent or nature of any
21 approval received from any state agency, or the extent or
22 nature of any accreditation received from any accrediting
23 agency or association;

24 (VI) A school or agent providing prospective students
25 with any testimonials, endorsements, or other information
26 which has the tendency to mislead or deceive prospective
27 students or the public regarding current practices of the

1 school, current conditions for employment opportunities, or
2 probable earnings in the industry or occupation for which the
3 educational services were designed or as a result of the
4 completion of any such educational service; and

5 (VII) A school or agent enrolling a student when it is
6 reasonably obvious that the student is unlikely to complete
7 successfully a program of study or is unlikely to benefit from
8 the program of study.

9 SECTION 25. Article 8 of title 12, Colorado Revised
10 Statutes, 1985 Repl. Vol., as amended, is amended BY THE
11 ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12 12-8-132.5. Complaints of deceptive trade or sales
13 practices. (1) Any person claiming loss of tuition or fees as
14 a result of a deceptive trade or sales practice as set forth
15 in section 12-8-132 (1)(k) by a school or agent thereof may
16 file with the board a notarized written complaint against such
17 school or such agent. The complaint shall set forth the
18 alleged violation and shall contain such other information as
19 may be required by the board. Any complaint filed under this
20 section shall be filed within one hundred eighty days after
21 the student discontinued his training at such school or at any
22 time prior to the commencement of such training.

23 (2) The board shall investigate any such complaint and
24 thereafter may consider such complaint at a hearing. If, upon
25 all the evidence at a hearing, the board finds that a school
26 or agent has engaged in or is engaging in any deceptive trade
27 or sales practice, the board may issue and cause to be served

1 upon such school, such agent, or the designated agent for
2 service of process, notice, or demand an order requiring such
3 school or agent to cease and desist from such practice. The
4 board may obtain an order for enforcement of its order in the
5 district court pursuant to section 24-4-106, C.R.S.

6 (3) If the board finds that the complainant or class of
7 complainants has suffered loss of tuition or fees as a result
8 of such practice, the board, at its discretion, may award the
9 complainant or class of complainants full restitution for such
10 loss. The board may also commence a civil action against a
11 school or agent believed by the board to have caused a
12 complainant or class of complainants to suffer a loss of
13 tuition or fees as a result of any deceptive trade or sales
14 practice. Upon a finding that such complainant or class of
15 complainants has suffered a loss of tuition or fees as a
16 result of any deceptive trade or sales practice, the court
17 shall order the school or agent to pay to the complainant or
18 class of complainants full restitution for such loss.

19 12-8-134. Immunity. Any person acting as a consultant
20 to the board, any witness testifying in a proceeding
21 authorized under this article, and any person who lodges a
22 complaint pursuant to this article shall be immune from
23 liability in any civil action brought against him for acts
24 occurring while acting in his capacity as a consultant,
25 witness, or complainant, respectively, if such individual was
26 acting in good faith within the scope of his respective
27 capacity, made a reasonable effort to obtain the facts of the

1 matter as to which he acted, and acted in the reasonable
2 belief that the action taken by him was warranted by the
3 facts.

4 SECTION 26. 10-3-1104, Colorado Revised Statutes, 1987
5 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
6 PARAGRAPH to read:

7 10-3-1104. Unfair methods of competition and unfair or
8 deceptive acts or practices. (1) (q) Increasing the premiums
9 unilaterally or decreasing the coverage benefits on renewal of
10 a policy of insurance, increasing the premium on new policies,
11 or failing to issue an insurance policy to barbers,
12 cosmetologists, cosmeticians, manicurists, barbershops, or
13 beauty salons, as regulated in article 8 of title 12, C.R.S.,
14 regardless of the type of risk insured against, based solely
15 on the decision of the general assembly to stop issuing
16 licenses as the state's means of regulating barbers,
17 cosmetologists, cosmeticians, manicurists, barbershops, or
18 beauty salons.

19 SECTION 27. 24-34-104, Colorado Revised Statutes, 1988
20 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
21 SUBSECTION to read:

22 24-34-104. General assembly review of regulatory
23 agencies and functions for termination, continuation, or
24 reestablishment. (29) The following board in the division of
25 registrations shall terminate on July 1, 2000: The state
26 board of barbers and cosmetologists, created by article 8 of
27 title 12, C.R.S.

1 SECTION 28. Repeal. 12-8-105, 12-8-110, 12-8-112,
2 12-8-113, 12-8-115 (3) and (4), 12-8-120 (2), 12-8-124, and
3 12-8-132 (1) (d), Colorado Revised Statutes, 1985 Repl. Vol.,
4 and 24-34-104 (19) (b), Colorado Revised Statutes, 1988 Repl.
5 Vol., are repealed.

6 SECTION 29. Effective date. This act shall take effect
7 July 1, 1990.

8 SECTION 30. Safety clause. The general assembly hereby
9 finds, determines, and declares that this act is necessary
10 for the immediate preservation of the public peace, health,
11 and safety.

BY REPRESENTATIVES Owen, Kopel and Phillips;
also SENATOR Gallagher.

A BILL FOR AN ACT

1 CONCERNING THE CONTINUATION OF THE COLORADO COLLECTION AGENCY
2 BOARD.

Bill Summary

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

Provides new definitions for certain terms. Specifies new requirements for communications made in connection with debt collection and in the form and content of certain disclosures made as part of the validation of debts. Provides that any person, firm, corporation, or partnership supplying or using forms for debt collections shall be subject to the "Colorado Fair Debt Collection Practices Act" if the said person, firm, corporation, or partnership supplying or using the forms or if the consumer receiving the forms is located within this state.

Provides that members of the collection agency board may be removed by the governor for misconduct, neglect of duty, or incompetence.

Provides that collections managers hired by collection agencies after a certain date must pass an examination administered by the executive director. Authorizes the executive director to develop any examination required for the administration of the act, to establish the amount of any examination fee, and to set a passing score for any examination which reflects a minimum level of competency. Requires collections managers to be registered as debt collectors and makes unlawful the hiring of any person as a solicitor, collections manager, or debt collector without a valid registration certificate. Recodifies the application requirements for registration as a debt collector or solicitor.

Changes and recodifies certain requirements for licensure or renewal of licensure as a collections agency. Authorizes the executive director to issue or deny any application for a license or its renewal. Recodifies the procedures for notifying the executive director or applying for a new license after certain changes are made by the licensee in the ownership or operation of the licensee's business. Recodifies the duties of the licensee. Changes requirements for the bond required to be filed for licensure as a collection agency.

Recodifies the acts specified as unlawful under the "Colorado Fair Debt Collection Practices Act" and adds, as an unlawful act, the falsification of any information provided on any application authorized under the act. Provides that the board may receive written complaints about or investigate any person, firm, corporation, or partnership concerning compliance with such act. Provides that the board may accept as prima facie evidence of a disciplinary violation under the act any disciplinary or adverse action taken against a licensee or registrant by another jurisdiction. Authorizes the board to issue letters of admonition, to place a licensee or registrant on probation, and to impose administrative fines. Provides jurisdiction in the court of appeals to review all final actions and orders of the collection agency board subject to judicial review. Provides good faith immunity to board members, expert witnesses, and consultants when they perform any duties in any proceedings authorized under the act, and to complainants who file complaints under the act. Provides for the sunset of the act in a certain year.

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

2 SECTION 1. 12-14-102, Colorado Revised Statutes, 1985
3 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
4 read:

5 12-14-102. Scope of article. (2) This article shall
6 apply to attorneys-at-law; except that attorneys-at-law shall
7 not be required to be licensed as collection agencies to
8 perform acts for which they are licensed by the supreme court
9 of this state.

10 SECTION 2. 12-14-103 (2) (a), (2) (d), (3), and (5),
11 Colorado Revised Statutes, 1985 Repl. Vol., are amended, and

1 the said 12-14-103 is further amended BY THE ADDITION OF A NEW
2 SUBSECTION, to read:

3 12-14-103. Definitions. (2) (a) "Collection agency"
4 means any person, FIRM, CORPORATION, OR PARTNERSHIP ~~who~~ WHICH
5 engages in any business, the principal purpose of which is the
6 collection of any debts, or ANY PERSON, FIRM, CORPORATION, OR
7 PARTNERSHIP ~~who~~ WHICH regularly collects or attempts to
8 collect, directly or indirectly, debts owed or due or asserted
9 to be owed or due another, or ~~who~~ WHICH takes assignment of
10 claims for the purposes of collecting such claims, or ~~who~~
11 WHICH, directly or indirectly, solicits claims for the
12 collection of debts owed or due or asserted to be owed or due
13 another.

14 (d) For the purposes of section 12-14-108 (1) (f),
15 "collection agency" includes any person, FIRM, CORPORATION, OR
16 PARTNERSHIP engaged in any business, the principal purpose of
17 which is the enforcement of security interests.

18 (3) "Communication" means ~~the~~ conveying of information
19 regarding a debt IN WRITTEN OR ORAL FORM, directly or
20 indirectly, to any person through any medium.

21 (5) "Creditor" means any person, FIRM, CORPORATION, OR
22 PARTNERSHIP ~~who~~ WHICH offers or extends credit creating a debt
23 or to ~~whom~~ WHICH a debt is owed, but such term does not
24 include any person, FIRM, CORPORATION, OR PARTNERSHIP to the
25 extent that he IT receives an assignment or transfer of a debt
26 in default solely for the purpose of facilitating collection
27 of such debt for another.

1 (9.5) "Principal" means any individual having a position
2 of responsibility in a collection agency, including but not
3 limited to any manager, director, officer, partner, owner, or
4 shareholder owning ten percent or more of the stock.

5 SECTION 3. 12-14-105 (3) (c), Colorado Revised Statutes,
6 1985 Repl. Vol., is amended, and the said 12-14-105 (3) is
7 further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

8 12-14-105. Communication in connection with debt
9 collection. (3) (c) With the initial written communication
10 to the consumer, the collection agency shall notify the
11 consumer in writing of the consumer's rights under this
12 subsection (3). THE NOTIFICATION OF SUCH RIGHTS SHALL BE MADE
13 IN BOLD-FACE TYPE NO LESS THAN EIGHT-POINT SIZE AND, IF SUCH
14 NOTIFICATION IS PLACED ON THE BACK OF ANY WRITTEN
15 COMMUNICATION, THERE SHALL BE A STATEMENT ON THE FRONT OF THE
16 WRITTEN COMMUNICATION THAT IMPORTANT INFORMATION MAY BE FOUND
17 ON THE BACK OF THE WRITTEN COMMUNICATION.

18 (d) If a consumer orally informs a debt collector or
19 collection agency of any of the matters specified in paragraph
20 (a) of this subsection (3), the debt collector or collection
21 agency shall advise the consumer that such communication must
22 be made in writing.

23 SECTION 4. The introductory portion to 12-14-109 (1) and
24 12-14-109 (1) (b) and (1) (e), Colorado Revised Statutes, 1985
25 Repl. Vol., are amended to read:

26 12-14-109. Validation of debts. (1) Within five days
27 after the initial communication with a consumer in connection

1 with the collection of any debt, a debt collector or
2 collection agency shall, unless the following information is
3 contained in the initial written communication or the consumer
4 has paid the debt, send the consumer a written notice stating:
5 WITH THE DISCLOSURES SPECIFIED IN PARAGRAPHS (a) THROUGH (e)
6 OF THIS SUBSECTION (1). SUCH DISCLOSURES SHALL BE MADE IN
7 BOLD-FACE TYPE NO LESS THAN EIGHT-POINT SIZE, AND, IF SUCH
8 DISCLOSURES ARE PLACED ON THE BACK OF THE NOTICE, THE FRONT OF
9 THE NOTICE SHALL CONTAIN A STATEMENT THAT IMPORTANT
10 INFORMATION MAY BE FOUND ON THE BACK OF THE NOTICE. SUCH
11 DISCLOSURES SHALL STATE THE FOLLOWING:

12 (b) The name of the creditor to whom the debt is owed
13 AND, IF THAT CREDITOR IS NOT THE ORIGINAL CREDITOR, THE NAME
14 AND ADDRESS OF THE ORIGINAL CREDITOR;

15 (e) ~~That, upon the consumer's written request within the~~
16 ~~thirty-day period, the debt collector or collection agency~~
17 ~~will provide the consumer with the name and address of the~~
18 ~~original creditor, if different from the current creditor.~~
19 THAT COLLECTION AGENCIES ARE REGULATED BY THE COLLECTION
20 AGENCY BOARD IN THE DEPARTMENT OF LAW, WITH THE CURRENT
21 ADDRESS OF THE DEPARTMENT OF LAW LISTED THEREAFTER.

22 SECTION 5. 12-14-112, Colorado Revised Statutes, 1985
23 Repl. Vol., is amended to read:

24 12-14-112. Deceptive forms. (1) It is unlawful for any
25 person to design, compile, and furnish any form knowing that
26 such form would be used to create the false belief in a
27 consumer that a person other than the creditor of such

1 consumer is participating in the collection OR IN THE
2 ATTEMPTED COLLECTION of ~~or in an attempt to collect~~ a debt
3 that such consumer allegedly owes such creditor when in fact
4 such person is not so participating. FOR THE PURPOSES OF THIS
5 SUBSECTION (1), "PERSON" MEANS ANY INDIVIDUAL, FIRM,
6 CORPORATION, OR PARTNERSHIP.

7 (2) Any person, FIRM, CORPORATION, OR PARTNERSHIP who
8 WHICH violates this section shall be liable to the same extent
9 and in the same manner as a debt collector or collection
10 agency is liable under section 12-14-113 for failure to comply
11 with a provision of this article.

12 (3) THIS SECTION SHALL APPLY IF THE PERSON, FIRM,
13 CORPORATION, OR PARTNERSHIP SUPPLYING OR USING THE FORMS OR
14 THE CONSUMER RECEIVING THE FORMS IS LOCATED WITHIN THIS STATE.

15 SECTION 6. 12-14-113, Colorado Revised Statutes, 1985
16 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
17 read:

18 12-14-113. Civil liability. (7) Notwithstanding
19 subsection (1) of this section, harassment of the employer of
20 a debtor shall be considered an invasion of privacy, and a
21 civil action may be brought thereon which is not subject to
22 the damage limitations of the said subsection (1).

23 SECTION 7. 12-14-115 (3), Colorado Revised Statutes,
24 1985 Repl. Vol., is amended, and the said 12-14-115 is further
25 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

26 12-14-115. License - registration - unlawful acts.
27 (3) It is unlawful for any person to act as a COLLECTIONS

1 MANAGER OR A debt collector without a valid registration as a
2 debt collector under this article.

3 (4) It is unlawful for any person, firm, corporation, or
4 partnership to employ any person as a solicitor, collections
5 manager, or debt collector under this article without a valid
6 registration certificate.

7 SECTION 8. 12-14-116 (1), Colorado Revised Statutes,
8 1985 Repl. Vol., is amended to read:

9 12-14-116. Collection agency board - created. (1) For
10 the purpose of carrying out the provisions of this article,
11 the governor shall appoint five members to the collection
12 agency board, which board is hereby created. The members of
13 the board serving on July 1, 1985, shall continue to serve
14 their appointed terms, and their successors shall be appointed
15 for three-year terms. Upon the death, resignation, or removal
16 of any member of the board, the governor shall appoint a
17 member to fill out the unexpired term. Any member of the
18 board may be removed by the governor for cause, MISCONDUCT,
19 NEGLECT OF DUTY, OR INCOMPETENCE. No member may serve more
20 than two consecutive terms.

21 SECTION 9. 12-14-117, Colorado Revised Statutes, 1985
22 Repl. Vol., is amended to read:

23 12-14-117. Powers and duties of the executive director.

24 (1) Any provision of this article to the contrary
25 notwithstanding, the board, created by section 12-14-116, is
26 under the supervision and control of the executive director,
27 who may exercise any of the powers granted to the board.

1 (2) THE EXECUTIVE DIRECTOR IS AUTHORIZED TO DEVELOP ANY
2 EXAMINATION REQUIRED FOR THE ADMINISTRATION OF THIS ARTICLE
3 AND TO DETERMINE THE AMOUNT OF ANY EXAMINATION FEE. HE SHALL
4 OFFER EACH SUCH EXAMINATION AT LEAST TWICE A YEAR OR, IF
5 DEMAND WARRANTS, AT MORE FREQUENT INTERVALS. HE SHALL
6 ESTABLISH A PASSING SCORE FOR EACH EXAMINATION WHICH REFLECTS
7 A MINIMUM LEVEL OF COMPETENCY.

8 (3) THE EXECUTIVE DIRECTOR IS AUTHORIZED TO APPROVE OR
9 DENY ANY APPLICATION SUBMITTED PURSUANT TO THIS ARTICLE AND TO
10 ISSUE ANY LICENSE OR CERTIFICATE OF REGISTRATION AUTHORIZED BY
11 THIS ARTICLE.

12 SECTION 10. 12-14-118, Colorado Revised Statutes, 1985
13 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
14 read:

15 12-14-118. Collection agency license - required. Any
16 person, firm, corporation, or partnership acting as a
17 collection agency must possess a valid license issued by the
18 executive director in accordance with this article and any
19 rules and regulations adopted pursuant thereto.

20 SECTION 11. 12-14-119, Colorado Revised Statutes, 1985
21 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
22 read:

23 12-14-119. Collection agency license - requirements -
24 application - fee - expiration. (1) As requisites for
25 licensure, the applicant for a collection agency license
26 shall:

27 (a) Be owned by, or shall employ as the manager or as an

1 executive officer of the agency, at least one individual who
2 has been engaged in a responsible position in an established
3 collection agency for a period of at least two years; except
4 that the board is authorized to substitute other business
5 experience for this requirement where such business experience
6 has provided comparable experience in collections; and

7 (b) (I) For each office of the agency, employ a
8 collections manager who shall:

9 (A) If he is hired by a collection agency on or after
10 July 1, 1990, pass a written examination administered by the
11 executive director;

12 (B) Be responsible for the actions of the debt
13 collectors in that office.

14 (II) The collections manager may be the same individual
15 specified in paragraph (a) of this subsection (1) if the
16 collections manager also meets the qualifications of said
17 paragraph (a).

18 (c) For each office of the agency, file a bond in the
19 amount and manner specified in section 12-14-124;

20 (d) If a foreign corporation, comply fully with the laws
21 of this state so as to entitle it to do business within the
22 state.

23 (2) Each applicant for a collection agency license shall
24 submit an application providing all information in the form
25 and manner the executive director shall designate, including,
26 but not limited to:

27 (a) The location, ownership, and, if applicable, the

1 previous history of the business and the name, address, age,
2 and relevant debt-collection experience of each of the
3 principals of the business;

4 (b) A duly verified financial statement for the previous
5 year;

6 (c) If a corporation, the name of the shareholder and
7 the number of shares held by any shareholder owning ten
8 percent or more of the stock;

9 (d) For any of the principals of the applicant:

10 (I) The conviction of any felony or the acceptance by a
11 court of competent jurisdiction of a plea of guilty or nolo
12 contendere to any felony;

13 (II) The denial, revocation, or suspension of any
14 license issued to any collection agency which employed the
15 principal or which was owned by the principal, in whole or in
16 part, directly or indirectly, and a statement of the
17 principal's position and authority at that collection agency:

18 (A) For any license issued pursuant to this article; or

19 (B) For any comparable license issued by any other
20 jurisdiction.

21 (III) The taking of any other disciplinary or adverse
22 action or the existence of any outstanding complaints against
23 any collection agency which employed the principal or which
24 was owned in whole or in part, directly or indirectly, by the
25 principal, and a statement of the principal's position and
26 authority at that collection agency:

27 (A) For any license issued pursuant to this article; or

1 (B) When such action was taken by any other jurisdiction
2 or such complaint exists in any other jurisdiction, whether or
3 not a license was issued by that jurisdiction.

4 (IV) The denial, suspension, or revocation of any
5 certificate of registration issued under this article, or any
6 other disciplinary or adverse action taken against the
7 applicant or principal by the board or by any other
8 jurisdiction.

9 (3) At the time the application is submitted, the
10 applicant shall pay a nonrefundable investigation fee in an
11 amount determined by the board. A separate investigation fee
12 shall not be required for branch offices.

13 (4) When the executive director approves the
14 application, the applicant shall pay a nonrefundable license
15 fee in an amount determined by the board. The applicant shall
16 pay a separate license fee for each branch office operated by
17 the collection agency.

18 (5) Each license issued pursuant to this section shall
19 expire on July 1 of each year; except that a licensee, at any
20 time, may voluntarily surrender the license to the executive
21 director to be cancelled.

22 (6) If the application is submitted or approved after
23 January 1 in any year, the license fee for the remainder of
24 that licensing year shall be one-half the license fee
25 determined by the board.

26 SECTION 12. 12-14-120, Colorado Revised Statutes, 1985
27 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to

1 read:

2 12-14-120. License - issuance - grounds for denial -
3 appeal - contents. (1) Upon the approval of the license
4 application by the executive director and the satisfaction of
5 all application requirements, the executive director shall
6 issue the applicant a license to operate as a collection
7 agency.

8 (2) The executive director may deny any application for
9 a license or its renewal if any grounds exist which would
10 justify disciplinary action under section 12-14-130.

11 (3) If any application for a license or its renewal is
12 denied, the applicant may appeal the decision pursuant to
13 section 24-4-104, C.R.S.

14 (4) The license shall state the name of the licensee,
15 location by street and number or office building and room
16 number, city, county, and state where the licensee has his
17 principal place of business, together with the number and date
18 of such license and the date of expiration of the license, and
19 shall further state that it is issued pursuant to this article
20 and that the licensee is duly authorized under this article.

21 (5) The license issued for each branch office shall bear
22 on its face in conspicuous type the words "branch office" and
23 shall bear the address of the branch office only, but in all
24 other respects shall be the same as any license issued to a
25 licensee.

26 SECTION 13. 12-14-121, Colorado Revised Statutes, 1985
27 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to

1 read:

2 12-14-121. Collection agency license - renewals.

3 (1) Each licensee shall make an application to renew its
4 license on or before June 15 of each year. Said application
5 shall be in the form and manner prescribed by the executive
6 director and shall be accompanied by a nonrefundable renewal
7 fee in an amount determined by the board.

8 (2) If the application is not postmarked on or before
9 June 15, a penalty fee of twenty-five dollars per day shall be
10 assessed and added to the license fee. No license shall be
11 renewed until the total fee is paid.

12 (3) If a licensee fails to submit an application or any
13 part of the total fee on or before July 15 of each year, the
14 license may not be renewed and an application for a new
15 license must be submitted.

16 (4) If a licensee submits an application and the total
17 fee on or before July 15 of the renewal year, the licensee may
18 continue to operate as a collection agency until the renewal
19 application is approved or denied.

20 SECTION 14. 12-14-122, Colorado Revised Statutes, 1985
21 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
22 read:

23 12-14-122. Collection agency license - notification of
24 change and reapplication requirements. (1) (a) Upon any of
25 the following changes, the licensee shall notify the executive
26 director in writing of said change within thirty days
27 thereafter:

1 (I) Change of business name or address;

2 (II) If a corporation, change in ownership of ten or
3 more percent but less than fifty percent of the corporate
4 stock.

5 (b) If the licensee fails to provide such written
6 notification, the license shall automatically expire on the
7 thirtieth day following such change.

8 (2) (a) Upon any of the changes specified in paragraph
9 (c) of this subsection (2), the licensee shall apply for a new
10 license within thirty days of said change. The executive
11 director shall have twenty-five days to review the application
12 and issue or deny the new license. If the executive director
13 denies the license, he shall provide to the licensee a written
14 statement stating why the application for the license was
15 denied, and the licensee shall have fifteen days to cure any
16 defects in said application. The executive director shall
17 approve or deny the resubmitted application within fifteen
18 days.

19 (b) If the licensee fails to file an application for a
20 new license, the license shall expire on the thirtieth day
21 following the change which necessitated the new license
22 application. If the application is denied and the licensee
23 fails to resubmit the application within fifteen days of said
24 denial, the license shall expire on the fifteenth day
25 following the denial.

26 (c) The changes which require a new license application
27 are as follows:

1 (I) In a sole proprietorship or partnership, any change
2 in the persons owning the collection agency;

3 (II) In a corporation, any change of ownership of fifty
4 percent or more of the stock in any one transaction or a
5 cumulative change of ownership of fifty percent or more from
6 the date of the issuance of the license or from the date of
7 the latest renewal of the license;

8 (III) Any change of ownership structure, including but
9 not limited to a change to or from a sole proprietorship,
10 partnership, or corporation.

11 (3) (a) Upon a change of collections manager, the
12 licensee shall notify the executive director in the form and
13 manner he shall designate within thirty days of said change.

14 (b) The executive director, within fifteen days, shall
15 approve or disapprove the qualifications of the new
16 collections manager, or shall direct the new collections
17 manager to take the examination authorized pursuant to section
18 12-14-119 (1) (b).

19 (c) The licensee may continue to operate as a collection
20 agency unless and until the executive director disapproves the
21 qualifications of the new collections manager.

22 (4) Any licensee which has submitted an application for
23 a new license may continue to operate as a collection agency
24 until the final decision of the executive director.

25 (5) The licensee may appeal the final decision of the
26 executive director pursuant to section 24-4-104, C.R.S.

27 SECTION 15. 12-14-123, Colorado Revised Statutes, 1985

1 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
2 read:

3 12-14-123. Duties of collection agencies. (1) A
4 collection agency shall:

5 (a) Maintain, at all times, liquid assets in the form of
6 cash or deposit accounts in the total sum of not less than two
7 thousand five hundred dollars more than all sums due and owing
8 to clients;

9 (b) Maintain, at all times, an office within this state
10 which is open to the public during normal business hours and
11 which is staffed by at least one full-time employee, said
12 office to keep a record of all moneys collected and remitted
13 by such agency for residents of Colorado;

14 (c) Maintain, at all times, a trust account for the
15 benefit of its clients which shall contain, at all times,
16 sufficient funds to pay all sums due or owing to clients. The
17 trust account shall be maintained in a commercial bank,
18 industrial bank, or savings and loan association account in
19 this state until disbursed to the creditor. Such account
20 shall be clearly designated as a trust account and shall be
21 used only for such purposes and not as an operating account.
22 A deposit of all funds received to a trust account followed by
23 a transfer of the agency share of the collection to an
24 operating account is not a violation of this section.

25 (d) Within thirty days after the last day of the month
26 in which any collections are made for a client, account to the
27 client for all collections made during that month and remit to

1 the client all moneys owed to the client pursuant to the
2 agreement between the client and the collection agency;

3 (e) Upon written demand of the board, within five days
4 of receipt of such demand, produce a complete set of all form
5 notices or form letters used by the licensee in the collection
6 of accounts.

7 (2) No collection agency shall employ any collections
8 manager, debt collector, or solicitor who has been convicted
9 of or who has entered a plea of guilty or nolo contendere to
10 any crime specified in part 4 of article 4 or in part 1, 2, 3,
11 5, or 7 of article 5 of title 18, C.R.S, or any similar crime
12 under the jurisdiction of any federal court or court of
13 another state.

14 SECTION 16. 12-14-124 (1), (2), (3), (5), (7), (8) and
15 (10), Colorado Revised Statutes, 1985 Repl. Vol., are amended
16 to read:

17 12-14-124. Bond. (1) Each licensee shall maintain AT
18 ALL TIMES and each applicant shall file, prior to the issuance
19 of any license to such applicant, a bond in the sum of eight
20 thousand dollars plus an additional two thousand dollars for
21 each ten thousand dollars or part thereof by which the average
22 monthly sums remitted or owed to clients during the previous
23 year exceed fifteen thousand dollars, the total amount of the
24 bond not to exceed twenty thousand dollars, in favor of the
25 attorney general of the state of Colorado for use of the
26 people of the state of Colorado AND THE COLLECTION AGENCY
27 BOARD, or shall present evidence of a savings account,

1 deposit, or certificate of deposit of the same sum and meeting
2 the requirements of section 11-35-101, C.R.S. Such bond shall
3 be executed by the applicant as principal and by a
4 corporation, which is licensed by the commissioner of
5 insurance to transact the business of fidelity and surety
6 insurance, as surety. If any such surety, during the life of
7 the bond, cancels the bond, it immediately shall notify the
8 board which shall give notice to the licensee that his bond is
9 cancelled and that his license will be revoked unless a new
10 bond with proper sureties is filed within fifteen THIRTY days.

11 (2) The bond shall be conditioned that the licensee,
12 upon demand in writing made by the board, will pay over to
13 said board for the use of any claimant from whom any claim is
14 taken or received for collection by said licensee, the
15 proceeds of such collection, PLUS ANY ADDITIONAL AMOUNTS
16 INCURRED BY THE BOARD IN THE INVESTIGATION OF CLAIMS AGAINST
17 THE BOND, less the charges for collection in accordance with
18 the terms of the agreement made between said licensee and said
19 claimant.

20 (3) Any claimant may file with such board a duly
21 verified claim as to money due such claimant for money
22 collected by any licensee. The board shall consider such
23 claim after written notice to such licensee of such complaint
24 TO THE LICENSEE AND SURETY, giving THE time and place of
25 hearing thereon, and, if such claim is found to be correct and
26 unpaid, the board shall make a demand upon the licensee on
27 such bond and OR the surety thereon FOR THE CLAIM AND AN

1 AMOUNT INCLUDING INVESTIGATION COSTS, and, if not paid, shall
2 bring action on such bond in any court of record within the
3 state of Colorado. NOTHING IN THIS SECTION SHALL PRECLUDE THE
4 BOARD FROM MAKING A DEMAND ON BOTH THE LICENSEE AND THE
5 SURETY.

6 (5) In case any claimant has filed a duly verified claim
7 with said board and the board has refused to make demand upon
8 the licensee and OR surety, said claimant may bring suit
9 against the licensee and OR surety on said bond for the
10 recovery of money due such claimant from such licensee without
11 assignment of such bond to such claimant. NOTHING IN THIS
12 SECTION SHALL PRECLUDE A CLAIMANT FROM MAKING A DEMAND ON BOTH
13 THE LICENSEE AND THE SURETY.

14 (7) Such bond shall cover all matters placed with said
15 licensee during the term of the license granted and any
16 renewal thereof, except as provided in this section. Such
17 bond may be enforced in the manner provided for the
18 enforcement of bonds and undertakings in special proceedings
19 by the board, or by a receiver appointed to take charge of the
20 assets of any licensee, or by any claimant in case of refusal
21 of the board to act. The aggregate liability of the surety,
22 for any and all claims AND COSTS OF INVESTIGATION, which may
23 arise under such bond, shall in no event exceed the penalty of
24 such bond.

25 (8) Any licensee, at any time, may file a new bond with
26 the board. Any surety may file with the board notice of his
27 withdrawal as surety on the bond of any licensee. Upon filing

1 of such new bond or on expiration of fifteen THIRTY days after
2 the filing of notice of withdrawal as surety by the surety,
3 the liability of the former surety for all future acts of the
4 licensee shall terminate, except as provided in subsection (9)
5 of this section. The board shall cancel the bond given by any
6 surety company upon being advised its license to transact the
7 business of fidelity and surety insurance has been revoked by
8 the commissioner of insurance and shall notify the licensee.

9 (10) In lieu of an individual surety bond, the executive
10 director may authorize a blanket bond covering qualifying
11 licensees in the sum of two million dollars in favor of the
12 attorney general of the state of Colorado for use of the
13 people of the state of Colorado AND THE COLLECTION AGENCY
14 BOARD. Each new and renewal applicant shall pay a fee in an
15 amount determined by the executive director to offset the
16 applicant's share of the blanket bond. Conditions and
17 procedures regarding the bond shall be as set forth in this
18 section for individual bonds.

19 SECTION 17. 12-14-125, Colorado Revised Statutes, 1985
20 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
21 read:

22 12-14-125. Debt collectors - collections manager -
23 registration required. (1) Any person acting as a debt
24 collector must possess a certificate of registration issued by
25 the executive director in accordance with this article and any
26 rules and regulations adopted pursuant thereto.

27 (2) Any person acting as a collections manager shall

1 register with the executive director as a debt collector and
2 must possess a certificate of registration as a debt
3 collector.

4 SECTION 18. 12-14-126, Colorado Revised Statutes, 1985
5 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
6 read:

7 12-14-126. Solicitor - registration required. Any
8 person acting as a solicitor must possess a certificate of
9 registration issued by the executive director in accordance
10 with this article and any rules and regulations adopted
11 pursuant thereto.

12 SECTION 19. 12-14-127, Colorado Revised Statutes, 1985
13 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH
14 AMENDMENTS, to read:

15 12-14-127. Debt collectors and solicitors -
16 certificates of registration - application - expiration -
17 notification of change required. (1) Each applicant for a
18 certificate of registration as a debt collector or solicitor
19 shall submit an application to the executive director in the
20 form and manner he shall require and shall pay a registration
21 fee in an amount determined by the board. No debt collector
22 nor solicitor shall be employed by more than one collection
23 agency.

24 (2) Each certificate issued pursuant to this section
25 shall expire on the third July 1 following the date of its
26 issuance.

27 (3) (a) On or before June 15 of the final year of the

1 certificate, the holder of the certificate shall submit an
2 application for a new certificate in the form and manner
3 designated by the executive director and shall pay the
4 registration fee.

5 (b) If the application or the fee is not postmarked on
6 or before June 15 of the final year, a penalty fee of one-half
7 the registration fee shall be assessed and added to the
8 registration fee and shall be paid by the applicant before a
9 new certificate is issued.

10 (c) If the application or the total fee is not
11 postmarked by July 15, the registration of the debt collector
12 or solicitor shall terminate automatically.

13 (4) Each holder of a certificate shall be required to
14 report to the executive director, in the form and manner he
15 shall designate, any change to the information provided in the
16 application for certificate or in any such reports previously
17 submitted, within thirty days of such change.

18 SECTION 20. 12-14-128, Colorado Revised Statutes, 1985
19 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH
20 AMENDMENTS, to read:

21 12-14-128. Unlawful acts. (1) In addition to the
22 unlawful acts specified in sections 12-14-112 and 12-14-115,
23 it is unlawful and a violation of this article for any person,
24 firm, corporation, or partnership:

25 (a) To refuse or fail to comply with section 12-14-104,
26 12-14-105, 12-14-106, 12-14-107, 12-14-108, 12-14-109,
27 12-14-110, 12-14-118, 12-14-119 (1), 12-14-123 (1) (b), (1)

1 (c), (1) (d), (1) (e), or (2), 12-14-125, or 12-14-126;

2 (b) To aid or abet any person, firm, corporation, or
3 partnership operating or attempting to operate in violation of
4 any provision of this article, including but not limited to
5 section 12-14-115; except that nothing in this article shall
6 prevent any licensed collection agency from accepting, as
7 forwarder, claims for collection from any collection agency or
8 attorney whose place of business is outside this state;

9 (c) To recover or attempt to recover treble damages for
10 any check, draft, or order not paid on presentment without
11 complying with the provisions of section 13-21-109, C.R.S.

12 (2) It is unlawful and a violation of this article for
13 any licensee or any attorney representing a licensee to invoke
14 a cognovit clause in any note so as to confess judgment.

15 (3) It is unlawful and a violation of this article for
16 any licensee to render or to advertise that it will render
17 legal services; except that a licensee may solicit claims for
18 collection and take assignments and pursue the collection
19 thereof subject to the provisions of law concerning the
20 unauthorized practice of law.

21 (4) It is unlawful and a violation of this article for
22 any licensee, collections manager, debt collector, or
23 solicitor:

24 (a) To refuse or fail to comply with any rule and
25 regulation adopted pursuant to this article or any lawful
26 order of the board or executive director; or

27 (b) To aid or abet any person, firm, corporation, or

1 partnership in such refusal or failure.

2 (5) It is unlawful and a violation of this article for
3 any person to falsify any information or make any misleading
4 statements in any application authorized under this article.

5 (6) Any officer or agent of a corporation who personally
6 participates in any violation of this article shall be subject
7 to the penalties prescribed in section 12-14-129 for
8 individuals.

9 SECTION 21. 12-14-129, Colorado Revised Statutes, 1985
10 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
11 read:

12 12-14-129. Criminal penalties. Any person, firm,
13 corporation, or partnership who violates any provision of
14 section 12-14-128 (1), (2), (3), or (4) commits a class 1
15 misdemeanor and shall be punished as provided in section
16 18-1-106, C.R.S.

17 SECTION 22. 12-14-130, Colorado Revised Statutes, 1985
18 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
19 read:

20 12-14-130. Complaint - investigations - powers of the
21 board - sanctions. (1) Upon the filing with the board by any
22 interested person of a written complaint charging any person,
23 firm, corporation, or partnership with a violation of any
24 provision of this article, any rule or regulation adopted
25 pursuant to this article, or any lawful order of the board,
26 the board shall conduct an investigation thereof.

27 (2) The board may, on its own motion, conduct an

1 investigation of the conduct of any person, firm, corporation,
2 or partnership concerning compliance with this article.

3 (3) If any licensee or registrant is convicted of or
4 enters a plea of guilty or nolo contendere to any crime
5 specified in part 4 of article 4 or in part 1, 2, 3, 5, or 7
6 of article 5 of title 18, C.R.S., or to any similar crime
7 under the jurisdiction of any federal court or court of
8 another state, said conviction or plea shall constitute
9 grounds for disciplinary action under this section.

10 (4) In any proceeding held under this section, the board
11 may accept as prima facie evidence of grounds for disciplinary
12 or adverse action any disciplinary or adverse action taken
13 against a licensee or registrant by another jurisdiction if
14 the violation which prompted the disciplinary or adverse
15 action by that jurisdiction would be grounds for disciplinary
16 action under this section.

17 (5) The board, or someone designated by it for such
18 purpose, has the right, during normal business hours without
19 resort to subpoena, to examine the books, records, and files
20 of any licensee. If the books, records, and files are located
21 outside Colorado, the licensee shall bear all expenses in
22 making them available to the board or its designee.

23 (6) (a) The board may require the making and filing, by
24 any licensee, at any time, of a written, verified statement of
25 the licensee's assets and liabilities, including, if
26 requested, a detailed statement of amounts due claimants. The
27 board may also require an audited statement in any instance it

1 deems appropriate.

2 (b) Any financial statement of any applicant or licensee
3 required to be filed with the board shall not be a public
4 record but may be introduced in evidence in any court action
5 or in any administrative action involving the applicant or
6 licensee.

7 (7) For the purpose of any proceeding under this
8 article, the board may subpoena witnesses and compel them to
9 give testimony under oath. If any witness subpoenaed by the
10 board or an administrative law judge fails or refuses to
11 appear or testify, the subpoenaing authority may petition the
12 district court, and, upon proper showing, the court may order
13 such witness to appear and testify. Disobedience of the order
14 of court may be punished as a contempt of court.

15 (8) The board may appoint an administrative law judge
16 pursuant to part 10 of article 30 of title 24, C.R.S., to
17 conduct any proceedings authorized under this article.

18 (9) If the board finds cause to believe a licensee or
19 registrant has violated any provision of this article, any
20 rules or regulations adopted pursuant to this article, or any
21 lawful order of the board, the board shall so notify the
22 licensee or registrant and hold a hearing. Any proceedings
23 conducted pursuant to this section shall be in accordance with
24 the provisions of article 4 of title 24, C.R.S.

25 (10) (a) If the board or the administrative law judge
26 finds that the licensee or registrant has violated a provision
27 of this article, the rules and regulations adopted pursuant to

1 this article, or any lawful order of the board, the board may
2 issue letters of admonition, deny, revoke, or suspend the
3 license or registration, place the licensee or registrant on
4 probation, or impose administrative fines in an amount up to
5 one thousand dollars per violation on the licensee or
6 registrant.

7 (b) The board or the executive director may issue
8 letters of admonition pursuant to paragraph (a) of this
9 subsection (10) without a hearing; except that the licensee or
10 registrant receiving the letter of admonition may request a
11 hearing before the board to appeal the issuance of the letter.

12 (c) A letter of admonition may be issued to a licensee
13 whether or not its license has been surrendered prior to said
14 issuance.

15 (d) No person, firm, or corporation or partnership whose
16 license has been revoked shall be licensed again under the
17 terms of this article for a period of five years. No person
18 whose registration has been revoked shall be registered again
19 under the terms of this article for a period of two years.

20 (11) The court of appeals shall have initial
21 jurisdiction to review all final actions and orders that are
22 subject to judicial review of the collection agency board.
23 Such proceedings shall be conducted in accordance with section
24 24-4-106 (11), C.R.S.

25 (12) Members of the collection agency board, expert
26 witnesses, and consultants shall be immune from civil suit
27 when they perform any duties in connection with any

1 proceedings authorized under this section in good faith. Any
2 person who files a complaint in good faith under this section
3 shall be immune from civil suit.

4 SECTION 23. 12-14-131, Colorado Revised Statutes, 1985
5 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
6 read:

7 12-14-131. Records. The executive director shall keep
8 in his office in a suitable record all applications for
9 licenses and all bonds required to be filed, and such record
10 shall state whether or not a license has been issued under
11 such application and bond and, if revoked, the date of the
12 filing of the order of revocation. The executive director
13 shall keep a list of each person, firm, corporation, or
14 partnership which has had a license or solicitor's or debt
15 collector's registration revoked. In such record all licenses
16 issued shall be indicated by their serial numbers as well as
17 by the names and addresses of the licensees. This section
18 shall apply to the renewal applications and renewal licenses,
19 which shall be entered in said record in their proper order in
20 the same manner as original applications and licenses are
21 entered; except that, with respect to such an application or
22 license, said record shall show, in addition, the word
23 "renewal" with the number of the last preceding license
24 granted to the same licensee. Such record shall be open for
25 inspection as a public record in the office of the executive
26 director.

27 SECTION 24. 12-14-136, Colorado Revised Statutes, 1985

1 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
2 read:

3 12-14-136. Disposition of fees. All revenue under this
4 article shall be collected by the executive director and
5 transmitted to the state treasurer, who shall credit the same
6 to the collection agency board cash fund, which fund is hereby
7 created. The general assembly shall make annual
8 appropriations from such fund for the uses and purposes of
9 this article. All revenue credited to such fund, including
10 earned interest, shall be used for the administration and
11 enforcement of this article.

12 SECTION 25. 12-14-137, Colorado Revised Statutes, 1985
13 Repl. Vol., as amended, is amended to read:

14 12-14-137. Termination of board. The collection agency
15 board shall be terminated July 1, 1990 2000. Prior to such
16 termination, the board shall be reviewed as provided in
17 section 24-34-104, C.R.S.

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

21 24-34-104. General assembly review of regulatory
22 agencies and functions for termination, continuation, or
23 reestablishment. (29) The following board shall terminate on
24 July 1, 2000: The collection agency board created in section
25 12-14-116, C.R.S.

26 SECTION 27. Repeal. 12-14-103 (2) (b) (VI), Colorado
27 Revised Statutes, 1985 Repl. Vol., and 24-34-104 (19.1) (a),

1 Colorado Revised Statutes, 1988 Repl. Vol., are repealed.

2 SECTION 28. Effective date. This act shall take effect
3 July 1, 1990.

4 SECTION 29. Safety clause. The general assembly hereby
5 finds, determines, and declares that this act is necessary
6 for the immediate preservation of the public peace, health,
7 and safety.

BY SENATORS DeNier and L. Trujillo;
also REPRESENTATIVES Owen, Kopel, and Phillips.

A BILL FOR AN ACT

- 1 CONCERNING THE REGULATION OF THE PRACTICE OF PODIATRY, AND, IN
- 2 CONNECTION THEREWITH, PROVIDING FOR THE CONTINUATION OF
- 3 THE COLORADO PODIATRY BOARD.

Bill Summary

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

Clarifies through the definition of podiatry the scope of the practice of podiatry. Directs the Colorado podiatry board to ensure that the passing score on the podiatry examination reflects a standard of minimum competency. Eliminates the restriction that podiatrists perform surgery only in licensed or certified hospitals. Includes within the practice of podiatry treatment of the ankle as well as the foot. Allows physicians certified by the American osteopathic board of orthopedic surgery to supervise surgery performed by a podiatrist. Allows podiatrists to use the assistance of physician assistants. Specifies that registered nurses are not subject to any podiatric licensure requirements in rendering nursing services consistent with the scope of nursing practice. Allows podiatrists to delegate podiatric functions to nurses.

Abolishes the requirement that an examinee who has twice failed the podiatry examination wait a year between each subsequent retake. Repeals the continuing education requirements for licensure renewal. Requires the Colorado podiatry board to create a questionnaire for completion by podiatrists renewing a license. Allows licensure by endorsement for podiatrists licensed in another jurisdiction and possessing qualifications substantially equivalent to those required in Colorado. Includes as acts of

unprofessional conduct the following: Violating any rule or regulation promulgated by the board; failing to complete the renewal questionnaire; failing to report a violation of any of the regulations governing podiatrists; dividing fees or compensation or billing for services performed by an unlicensed person; misstating or omitting a material fact in obtaining or renewing a license; and failing to report any adverse action against a licensee by another jurisdiction or the surrender of a license in another jurisdiction. Grants the board reasonable time in which to evaluate mental or physical examinations of a podiatrist. Makes conforming amendments.

- 1 Be it enacted by the General Assembly of the State of Colorado:
- 2 SECTION 1. 12-32-101 (3), Colorado Revised Statutes,
- 3 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
- 4 to read:

5 12-32-101. Definitions. (3) (a) "Practice of podiatry"

6 means:

- 7 (I) Holding out one's self to the public as being able
- 8 to treat, prescribe for, palliate, correct, or prevent any
- 9 disease, ailment, pain, injury, deformity, or physical
- 10 condition of the human toe, foot, ankle, and tendons that
- 11 insert into the foot by the use of any medical, surgical,
- 12 mechanical, manipulative, or electrical treatment, including
- 13 complications thereof consistent with such scope of practice;

- 14 (II) Suggesting, recommending, prescribing, or
- 15 administering any form of treatment, operation, or healing for
- 16 the intended palliation, relief, or cure of any disease,
- 17 ailment, injury, condition, or defect of the human toe, foot,
- 18 ankle, and tendons that insert into the foot, including
- 19 complications thereof consistent with such scope of practice,

1 with the intention of receiving, either directly or
2 indirectly, any fee, gift, or compensation whatsoever; and

3 (III) Maintaining an office or other place for the
4 purpose of examining and treating persons afflicted with
5 disease, injury, or defect of the human toe, foot, ankle, and
6 tendons that insert into the foot, including the complications
7 thereof consistent with such scope of practice.

8 (b) The "practice of podiatry" does not include the
9 amputation of the foot or the administration of an anesthetic
10 other than a local anesthetic.

11 SECTION 2. Article 32 of title 12, Colorado Revised
12 Statutes, 1985 Repl. Vol., as amended, is amended BY THE
13 ADDITION OF A NEW SECTION to read:

14 12-32-101.5. Podiatric surgery. (1) Surgical
15 procedures of the ankle below the level of the dermis may be
16 performed by a podiatrist licensed in this state who is:

17 (a) Certified by the American board of podiatric
18 surgery; or

19 (b) Performing surgery under the direct supervision of a
20 licensed podiatrist certified by the American board of
21 podiatric surgery; or

22 (c) Performing surgery under the direct supervision of a
23 person licensed to practice medicine and certified by the
24 American board of orthopedic surgery or by the American
25 osteopathic board of orthopedic surgery.

26 SECTION 3. 12-32-106, Colorado Revised Statutes, 1985
27 Repl. Vol., is amended to read:

1 12-32-106. Fees for examination - passing grade - date

2 of examination. Every applicant for an examination for a

3 license to practice podiatry, at the time of filing the

4 application, shall pay a fee which shall be determined and

5 collected pursuant to section 24-34-105, C.R.S. Subject to

6 the provisions of section 12-32-104, the Colorado podiatry

7 board shall grade the examination. The board may designate

8 representatives to administer and score the examination. To

9 insure impartiality, the written examination of any applicant

10 shall not contain his name but shall be identified by number,

11 and the board shall not know an applicant's identity when his

12 examination is graded. The passing score in each part of the

13 examination shall be determined by the board, WHICH SHALL

14 ENSURE THAT SUCH SCORE MEASURES THE LEVEL OF MINIMUM

15 COMPETENCY FOR THE PRACTICE OF PODIATRY. If an applicant fails

16 to meet minimum grade requirements, he may be reexamined upon

17 paying a fee to be determined pursuant to section 24-34-105,

18 C.R.S. Commencing--July--1,--1983, If he fails in a second

19 examination, -a- further examination EXAMINATIONS may be

20 taken, but ~~not--less--than--one--year--after--the--date--of--the~~

21 ~~preceding--examination,--and--he~~ SUCH EXAMINEE shall be required

22 to file a new application FOR EACH SUBSEQUENT EXAMINATION and

23 pay a fee to be determined pursuant to section 24-34-105,

24 C.R.S. No fees remitted with an application shall be

25 refunded, but, in case an applicant is prevented through no

26 fault of his own from taking the examination applied for, he

27 may take a subsequently scheduled examination within one year

1 without payment of another fee or submission of a new
2 application.

3 SECTION 4. 12-32-107 (2), (3) (i), (3) (j), (3) (k), (3)
4 (o), (3) (r) (I), and (3.5), Colorado Revised Statutes, 1985
5 Repl. Vol., as amended, are amended, and the said 12-32-107
6 (3) is further amended BY THE ADDITION OF THE FOLLOWING NEW
7 PARAGRAPHS, to read:

8 12-32-107. Issuance, revocation, or suspension of
9 license - probation - immunity in professional review.

10 (2) The Colorado podiatry board may refuse to issue or may
11 revoke, suspend, or refuse to renew the license to practice
12 podiatry issued to any person; or the board may issue a letter
13 of admonition OR A LETTER OF CONCERN to or place on probation
14 any person who, while holding such a license, is guilty of any
15 unprofessional conduct.

16 (3) (i) ~~-An- ANY act or omission constituting--grossly~~
17 ~~negligent--conduct--of-the-practice-of-podiatry-or-two-or-more~~
18 ~~acts-or-omissions-which-fail~~ WHICH FAILS to meet generally
19 accepted standards of the practice of podiatry;

20 (j) Practicing podiatry as the partner, agent, or
21 employee of, or in joint adventure VENTURE with, any person
22 who does not hold a license to practice podiatry within this
23 state, or practicing podiatry as an employee of, or in joint
24 adventure VENTURE with, any partnership or association any of
25 whose partners or associates do not hold a license to practice
26 podiatry within this state, or practicing podiatry as an
27 employee of, or in joint adventure VENTURE with, any

1 corporation other than a professional service corporation for
2 the practice of podiatry as provided for in sections 12-32-109
3 (4) and 12-32-109.5. Any licensee holding a license to
4 practice podiatry in this state may accept employment from any
5 person, partnership, association, or corporation to examine
6 and treat the employees of such person, partnership,
7 association, or corporation.

8 (k) Violating, or attempting to violate, directly or
9 indirectly, or assisting in or abetting the violation of, or
10 conspiring to violate any provision or term of this article,
11 ANY RULE OR REGULATION PROMULGATED BY THE BOARD PURSUANT TO
12 THIS ARTICLE, OR ANY FINAL AGENCY ORDER;

13 (o) Conviction of violation of any federal or state law
14 regulating the possession, distribution, or use of any
15 controlled substance, as defined in section 12-22-303 (7);
16 AND, FOR THE PURPOSES OF THIS PARAGRAPH (o), A PLEA OF GUILTY
17 OR A PLEA OF NOLO CONTENDERE ACCEPTED BY THE COURT SHALL BE
18 CONSIDERED AS A CONVICTION;

19 (r) (I) Violation of OR abuse of health insurance
20 pursuant to section 18-13-119, C.R.S.; or

21 (x) Misstating or omitting a material fact in procuring
22 or attempting to procure a license or in taking the
23 examination provided for in this article;

24 (y) Refusing to complete and submit the renewal
25 questionnaire, or failing to report all of the relevant facts,
26 or falsifying any information on the questionnaire as required
27 pursuant to section 12-32-115 (2) (b);

1 (z) Failing to report to the board any podiatrist known
2 to have violated or, upon information or belief, believed to
3 have violated any of the provisions of this subsection (3);

4 (aa) Dividing fees or compensation or billing for
5 services performed by an unlicensed person as prohibited by
6 section 12-32-117;

7 (bb) Failing to report to the board any adverse action
8 taken against the licensee by another licensing agency in
9 another state, territory, or country, any peer review body,
10 any health care institution, any professional or medical
11 society or association, any governmental agency, any law
12 enforcement agency, or any court for acts of conduct that
13 would constitute grounds for action as described in this
14 article;

15 (cc) Failing to report to the board the surrender of a
16 license or other authorization to practice medicine in another
17 state or jurisdiction or the surrender of membership on any
18 medical staff or in any medical or professional association or
19 society while under investigation by any of those authorities
20 or bodies for acts or conduct similar to acts or conduct that
21 would constitute grounds for action as defined in this
22 article;

23 (3.5) A ~~---revocation--or--suspension--of--a--license--to~~
24 ~~practice-podiatry~~ ANY DISCIPLINARY ACTION IMPOSED WITH RESPECT
25 TO THE PRACTICE OF PODIATRY in any other state, territory, or
26 country for disciplinary reasons shall be deemed to be prima
27 facie evidence of unprofessional conduct. This subsection

1 (3.5) shall apply only to ~~revocations--or--suspensions~~
2 DISCIPLINARY ACTION based upon acts or omissions in such other
3 state, territory, or country substantially as defined as
4 unprofessional conduct pursuant to subsection (3) of this
5 section.

6 SECTION 5. 12-32-108, Colorado Revised Statutes, 1985
7 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
8 read:

9 12-32-108. Licensure by endorsement. (1) The Colorado
10 podiatry board may issue a license by endorsement to engage in
11 the practice of podiatry in this state to any applicant who
12 has a license in good standing as a podiatrist under the laws
13 of another jurisdiction if the applicant presents proof
14 satisfactory to the board that, at the time of application for
15 a Colorado license by endorsement, the applicant possesses
16 credentials and qualifications which are substantially
17 equivalent to requirements in Colorado for licensure by
18 examination. The board may specify by rule and regulation
19 what shall constitute substantially equivalent credentials and
20 qualifications.

21 (2) A fee to be set by the board shall be charged for
22 registration by endorsement.

23 (3) "In good standing", as used in subsection (1) of
24 this section, means a license which has not been revoked or
25 suspended or against which there are no disciplinary or
26 adverse actions.

27 SECTION 6. 12-32-108.3 (2) (c), Colorado Revised

1 Statutes, 1985 Repl. Vol., is amended BY THE ADDITION OF A
2 NEW SUBPARAGRAPH to read:

3 12-32-108.3. Disciplinary action by board.
4 (2) (c) (V) The investigation discloses an instance of
5 conduct which, in the opinion of the board, does not warrant
6 formal action but in which the board has noticed indications
7 of possible errant conduct by the licensee that could lead to
8 serious consequences if not corrected, in which case, a letter
9 of concern shall be sent to the podiatrist against whom a
10 complaint was made. If the board learns of second or
11 subsequent actions of the same or similar nature by the
12 licensee, the board shall not issue a letter of concern but
13 shall take such other course of action as it deems
14 appropriate.

15 SECTION 7. 12-32-108.3 (11) (a), Colorado Revised
16 Statutes, 1985 Repl. Vol., is amended to read:

17 12-32-108.3. Disciplinary action by board. (11) (a) If
18 the Colorado podiatry board has reasonable cause to believe
19 that a person licensed to practice podiatry in this state is
20 unable to practice podiatry with reasonable skill and safety
21 to patients because of a condition described in section
22 12-32-107 (3) (f) or (3) (p), it may require such licensee to
23 submit to mental or physical examinations by physicians
24 designated by said board. Upon the failure of such licensee
25 to submit to such mental or physical examinations, unless due
26 to circumstances beyond his control, the board may suspend
27 such licensee's license to practice podiatry in this state

1 until such time as he submits to the required examinations AND
2 THE BOARD HAS MADE A DETERMINATION ON THE ABILITY OF SUCH
3 LICENSEE BASED ON THE RESULTS THEREOF. THE BOARD SHALL ENSURE
4 THAT ALL EXAMINATIONS ARE CONDUCTED AND EVALUATED IN A TIMELY
5 MANNER.

6 SECTION 8. 12-32-108.5 (1), Colorado Revised Statutes,
7 1985 Repl. Vol., as amended, is amended, and the said
8 12-32-108.5 is further amended BY THE ADDITION OF A NEW
9 SUBSECTION, to read:

10 12-32-108.5. Reconsideration and review of action of
11 board. (1) The Colorado podiatry board, on its own motion or
12 upon application IN ACCORDANCE WITH SUBSECTION (3) OF THIS
13 SECTION, at any time after the refusal to grant a license, the
14 imposition of any discipline as provided in section
15 12-32-108.3, or the ordering of probation, as provided in
16 section 12-32-107 (2), may reconsider its prior action and
17 grant, reinstate, or restore such license or terminate
18 probation or reduce the severity of its prior disciplinary
19 action. The taking of any such further action, or the holding
20 of a hearing with respect thereto, shall rest in the sole
21 discretion of the board.

22 (3) No licensee whose license is revoked shall be
23 allowed to apply for reinstatement of such license earlier
24 than two years after the effective date of the revocation.

25 SECTION 9. 12-32-109 (3), Colorado Revised Statutes,
26 1985 Repl. Vol., is amended, and the said 12-32-109, as
27 amended, is further amended BY THE ADDITION OF A NEW

1 SUBSECTION, to read:

2 12-32-109. Violations - penalties - exemptions. (3) No
3 podiatrist shall willfully cause the public to believe that he
4 has qualifications extending beyond the limits of this
5 article, and no podiatrist shall willfully sign his name using
6 the prefix "Doctor" or "Dr." without following his name with
7 "podiatrist", "Doctor of Podiatric Medicine", or "D.P.M.". No
8 podiatrist shall use the title "podiatric physician" unless
9 such title is followed by the words "practice limited to
10 treatment of the foot AND ANKLE".

11 (8) The provisions of this article shall not be
12 construed to prohibit, or to require a license for, the
13 rendering of nursing services by registered or other nurses in
14 the lawful discharge of their duties pursuant to article 38 of
15 this title.

16 SECTION 10. Article 32 of title 12, Colorado Revised
17 Statutes, 1985 Repl. Vol., as amended, is amended BY THE
18 ADDITION OF A NEW SECTION to read:

19 12-32-109.3. Use of physician assistants. (1) A person
20 licensed under the laws of this state to practice podiatry may
21 delegate to a physician assistant certified by the Colorado
22 state board of medical examiners pursuant to section 12-36-106
23 (5) the authority to perform acts which constitute the
24 practice of podiatry to the extent and in the manner
25 authorized by rules and regulations promulgated by the
26 Colorado podiatry board, including the authority to prescribe,
27 on a case-by-case basis and per-patient-visit basis as

1 approved by the supervising podiatrist, and dispense only such
2 drugs as designated by the Colorado podiatry board. Such acts
3 shall be consistent with sound practices of podiatry. Each
4 prescription issued by a physician assistant shall have
5 imprinted thereon the name of his supervising podiatrist, and
6 under no circumstances shall a physician assistant write
7 prescriptions unless countersigned by the supervising
8 podiatrist. Nothing in this section shall limit the ability
9 of otherwise licensed health personnel to perform delegated
10 acts. The dispensing of prescription medication by a
11 physician assistant shall be subject to the provisions of
12 section 12-22-121 (6).

13 (2) If the authority to perform an act is delegated
14 pursuant to subsection (1) of this section, the act shall not
15 be performed except under the personal and responsible
16 direction and supervision of a person licensed under the laws
17 of this state to practice podiatry, and said person shall not
18 be responsible for the direction and supervision of more than
19 two physician assistants at any one time without specific
20 approval of the board. The board may define appropriate
21 direction and supervision pursuant to rules and regulations.

22 (3) The provisions set forth in section 12-36-106 (5)
23 which govern physician assistants under the "Colorado Medical
24 Practice Act" shall apply to physician assistants under this
25 section.

26 SECTION 11. 12-32-115 (2) and (3), Colorado Revised
27 Statutes, 1985 Repl. Vol., are amended to read:

1 12-32-115. Procedure - registration - fees.

2 (2) (a) The secretary shall mail to each such licensee, at
3 his last address as shown by the records of the Colorado
4 podiatry board, notice of the foregoing provisions OF
5 PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION together with
6 such form of application for registration as may be prescribed
7 by the board. Failure of any licensee to pay the registration
8 fee prescribed AUTHORIZED by PARAGRAPH (a) OF subsection (1)
9 of this section ~~within--thirty--days--following--written~~
10 ~~notification-of-delinquency--shall--operate--automatically--to~~
11 ~~suspend-his-license-while-he-is-so-delinquent,~~ SHALL CAUSE ANY
12 SUCH LICENSE TO LAPSE, and the name of any delinquent LAPSED
13 licensee shall be omitted from such list.

14 (b) THE BOARD SHALL ESTABLISH A QUESTIONNAIRE TO
15 ACCOMPANY THE RENEWAL FORM. SAID QUESTIONNAIRE SHALL BE
16 DESIGNED TO DETERMINE IF THE LICENSEE HAS ACTED IN VIOLATION
17 OF OR HAS BEEN DISCIPLINED FOR ACTIONS THAT MIGHT BE CONSTRUED
18 AS VIOLATIONS OF THIS ARTICLE OR THAT MIGHT MAKE THE LICENSEE
19 UNFIT TO PRACTICE PODIATRY WITH REASONABLE CARE AND SAFETY.
20 FAILURE OF THE APPLICANT TO ANSWER THE QUESTIONNAIRE
21 ACCURATELY SHALL BE CONSIDERED UNPROFESSIONAL CONDUCT AS
22 SPECIFIED IN SECTION 12-32-107 (3).

23 (3) Upon application made to the Colorado podiatry board
24 WITHIN TWO YEARS FROM THE DATE OF THE LAPSE OF A LICENSE by
25 any such licensee on a form prescribed by the board, his
26 license shall be reinstated, subject to the payment to the
27 board of ~~all-registration-fees-which-would-have-accrued--under~~

1 ~~this--article--had--his--license--not--been--suspended-and-the~~
2 ~~payment-of-an-additional-fee-in-the-same--amount--as--required~~
3 ~~for--the--original-issuance-of-the-license~~ THE CURRENT RENEWAL
4 FEE AND A REINSTATEMENT FEE DETERMINED BY THE BOARD PURSUANT
5 TO SECTION 24-34-105, C.R.S. If, before or after such
6 application for reinstatement has been made, charges are
7 preferred against the licensee by the board or by any person,
8 as provided by section 12-32-108.3, the board shall defer
9 action on the pending application for reinstatement, if any,
10 and proceed with a hearing on such charges in accordance with
11 section 12-32-108.3, and thereupon shall ~~reinstate--further~~
12 ~~suspend--or--revoke--such--license~~ IMPOSE SUCH DISCIPLINARY
13 ACTION AS THE BOARD DEEMS APPROPRIATE. No license to practice
14 podiatry which has been delinquent for more than two years
15 shall be reinstated unless the applicant ~~demonstrates--to--the~~
16 ~~board-his-continued-professional-competence~~ FULFILLS AND MEETS
17 THE REQUIREMENTS AND CONDITIONS REQUIRED OF AN APPLICANT
18 APPLYING FOR THE ISSUANCE OF AN ORIGINAL LICENSE.

19 SECTION 12. 12-38-103 (4) and (9), the introductory
20 portion to 12-38-103 (10) and 12-38-103 (12), Colorado Revised
21 Statutes, 1985 Repl. Vol., are amended to read:

22 12-38-103. Definitions. (4) "Delegated medical
23 function" means an aspect of care which implements the medical
24 plan as prescribed by a licensed or otherwise legally
25 authorized physician, PODIATRIST, or dentist.

26 (9) "Practice of practical nursing" means the
27 performance, under the supervision of a dentist, physician,

1 PODIATRIST, or professional nurse authorized to practice in
 2 this state, of those services requiring the education,
 3 training, and experience, as evidenced by knowledge,
 4 abilities, and skills required in this article for licensing
 5 as a practical nurse pursuant to section 12-38-112, in caring
 6 for the ill, injured, or infirm, in teaching and promoting
 7 preventive health measures, in acting to safeguard life and
 8 health, or in administering treatments and medications
 9 prescribed by a legally authorized dentist, PODIATRIST, or
 10 physician. Nothing in this article shall limit or deny a
 11 practical nurse from supervising other practical nurses or
 12 other health care personnel.

13 (10) "Practice of professional nursing" means the
 14 performance of both independent nursing functions and
 15 delegated medical, PODIATRIC, and dental functions, including
 16 the initiation and performance of nursing care through
 17 prevention, diagnosis, and treatment of human disease,
 18 ailment, pain, injury, deformity, or physical or mental
 19 condition which requires such specialized knowledge, judgment,
 20 and skill involving the application of principles of
 21 biological, physical, social, and behavioral sciences as are
 22 required for licensing as a professional nurse pursuant to
 23 section 12-38-111. "Practice of professional nursing" shall
 24 include the performance of such services as:

25 (12) "Treating" means the selection, recommendation,
 26 execution, and monitoring of those nursing measures essential
 27 to the effective determination and management of actual or

1 potential human health problems and to the execution of the
 2 delegated medical, PODIATRIC, and dental functions. Such
 3 delegated medical, PODIATRIC, and dental functions shall be
 4 performed under the responsible direction and supervision of a
 5 person licensed under the laws of this state to practice
 6 medicine, PODIATRY, or dentistry.

7 SECTION 13. 24-34-104 (24), Colorado Revised Statutes,
 8 1988 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH
 9 to read:

10 24-34-104. General assembly review of regulatory
 11 agencies and functions for termination, continuation, or
 12 reestablishment. (24) (e) The Colorado podiatry board,
 13 created by article 32 of title 12, C.R.S.

14 SECTION 14. Repeal. 12-32-108.3 (2) (d), 12-32-111,
 15 12-32-115 (1) (b), and 12-32-117 (2), Colorado Revised
 16 Statutes, 1985 Repl. Vol., and 24-34-104 (19) (c), Colorado
 17 Revised Statutes, 1988 Repl. Vol., are repealed.

18 SECTION 15. Effective date - applicability. This act
 19 shall take effect July 1, 1990, and shall apply to licenses
 20 issued, renewed, or reinstated and acts committed on or after
 21 said date.

22 SECTION 16. Safety clause. The general assembly hereby
 23 finds, determines, and declares that this act is necessary
 24 for the immediate preservation of the public peace, health,
 25 and safety.

BY REPRESENTATIVES Philips and Kopel;
also SENATORS McCormick and L. Trujillo.

A BILL FOR AN ACT

1 CONCERNING THE REGULATION OF ACCOUNTANTS, AND, IN CONNECTION
2 THEREWITH, PROVIDING FOR THE CONTINUATION OF THE STATE
3 BOARD OF ACCOUNTANCY.

Bill Summary

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

Discontinues the requirement that individual certified public accountants and public accounting firms and partnerships obtain annual permits to practice public accounting. Sets forth the procedures and requirements for obtaining a certificate of certified public accountant and for renewing, reactivating, or reinstating such certificate. Requires a person seeking reinstatement of his certificate after expiration of the four-year reinstatement period to retake the uniform certified public accountant examination as one condition for reinstatement. Grants to the members of the board of accountancy and its consultants immunity from liability in civil and criminal actions. Allows the board to establish a reinstatement fee for certificants applying for active status after a lapse in practice.

Requires candidates withdrawing from an examination to notify the board of such intent not less than thirty days prior to the examination to qualify for a refund of the examination fee. Sets forth the procedure to acquire inactive status and the procedure for reinstatement to active status. Authorizes the board to issue letters of admonition for misconduct warranting a reprimand other than a full hearing. Prohibits a certificant whose certificate was revoked from applying for reinstatement for a minimum of two years. Requires a certificant to retain the work product for each

client for five years. Grants the board the authority to reconsider its disciplinary actions at its discretion. Provides that judicial review of any action of the board is within the jurisdiction of the Colorado court of appeals. Changes the passing score for the certified public accountant examination from seventy-five percent to a grade reflecting a standard of minimum competency to be determined by the board. Deletes all references to "registered accountant" and makes such title synonymous with certified public accountant. Requires partnerships and corporations to register with the board of accountancy once every three years.

Grants the board of accountancy fining authority for misconduct subject to discipline. Allows the board of accountancy to employ administrative law judges to assist the board with its hearing docket. Provides for confidentiality of complaints to the board prior to board action.

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

2 SECTION 1. 12-2-101, Colorado Revised Statutes, 1985
3 Repl. Vol., is amended to read:

4 12-2-101. Legislative declaration. (1) It is declared
5 to be in the interest of the citizens of the state of Colorado
6 and a proper exercise of the police power of the state of
7 Colorado to provide for the licensing and registration of
8 professional CERTIFIED PUBLIC accountants, to insure that
9 persons who hold themselves out as possessing professional
10 qualifications as CERTIFIED PUBLIC accountants are, in fact,
11 qualified to render accounting services of a professional
12 nature, and to provide for the maintenance of high standards
13 of professional conduct by those so licensed and registered as
14 professional CERTIFIED PUBLIC accountants. Because of the
15 customary reliance by the public upon audited financial
16 statements and upon financial information presented with the
17 opinion or certificate of persons purporting to possess expert

1 knowledge in accounting or auditing, it is further declared to
 2 be in the interest of such citizens to limit and restrict,
 3 under the circumstances set forth in this article, the
 4 issuance of opinions or certificates relating to accounting or
 5 financial statements which utilize or contain wording
 6 indicating that the author has expert knowledge in accounting
 7 or auditing or which purport to express an independent
 8 auditor's opinion as to financial position, financial results
 9 of operations, changes in financial position, reliability of
 10 financial information, or compliance with conditions
 11 established by law or contract to persons so licensed or
 12 registered.

13 (2) IT IS FURTHER DECLARED THAT THE STATE BOARD OF
 14 ACCOUNTANCY MAY INVOKE DISCIPLINE PROACTIVELY WHEN REQUIRED
 15 FOR THE PROTECTION OF THE PUBLIC HEALTH, SAFETY, AND WELFARE
 16 OF THE CITIZENS OF THIS STATE.

17 SECTION 2. 12-2-102 (2) and (4), Colorado Revised
 18 Statutes, 1985 Repl. Vol., are amended to read:

19 12-2-102. Definitions. (2) "Foreign corporation" means
 20 a corporation organized under the laws of another state, which
 21 meets the requirements of section ~~12-2-131-(6)~~ 12-2-117 (7).

22 (4) "Professional corporation" means a corporation
 23 organized for the sole purpose of providing professional
 24 services to the public customarily performed by certified
 25 public accountants ~~or registered accountants~~, and includes
 26 foreign corporations.

27 SECTION 3. 12-2-103 (1) and (3), Colorado Revised

1 Statutes, 1985 Repl. Vol., are amended, and the said 12-2-103
 2 is further amended BY THE ADDITION OF A NEW SUBSECTION, to
 3 read:

4 12-2-103. State board of accountancy - subject to
 5 termination. (1) The state board of accountancy shall
 6 consist of five members appointed by the governor. Each
 7 member of the board shall be a citizen of the United States
 8 and a resident of this state. ~~Four~~ THREE members of the board
 9 shall be holders of VALID certified public accountant
 10 certificates issued under the laws of this state, ~~who have~~
 11 ~~been issued annual permits to practice under section 12-2-119,~~
 12 ~~a majority~~ ALL of whom are engaged in active practice as
 13 certified public accountants. ~~One member~~ TWO MEMBERS of the
 14 board shall be ~~a person who is not a holder of such a~~
 15 ~~certificate or permit to practice or otherwise licensed by the~~
 16 ~~board~~ MEMBERS OF THE PUBLIC SECTOR WHO DO NOT HOLD A CERTIFIED
 17 PUBLIC ACCOUNTANT CERTIFICATE. ~~Members of the board as of~~
 18 ~~July 1, 1977, shall continue to serve for the remainder of the~~
 19 ~~terms to which they were appointed. The successors to such~~
 20 Members shall be appointed for terms of four years each. The
 21 ~~additional certified public accountant member of the board~~
 22 ~~shall be appointed to a three-year term, commencing August 1,~~
 23 ~~1977, and the successor to such member shall thereafter be~~
 24 ~~appointed for a term of four years. The additional member of~~
 25 ~~the board who is not a holder of such certificate or licensed~~
 26 ~~by the board shall be appointed for a four-year term,~~
 27 ~~commencing August 1, 1977, and his successors shall be~~

1 ~~appointed-for-like-terms~~. Any vacancy occurring during a term
2 shall be filled by appointment by the governor for the
3 unexpired term. Upon the expiration of his term of office, a
4 member shall continue to serve until his successor is
5 appointed. The governor shall remove from the board any
6 member whose ~~permit-to-practice~~ CERTIFICATE has become void or
7 has been revoked or suspended and may ~~after-a-hearing~~, remove
8 any member of the board for neglect of duty, ~~or--other--just~~
9 ~~cause~~ MISCONDUCT, OR INCOMPETENCE.

10 (3) In any proceeding in court, civil or criminal,
11 arising out of or founded upon any provision of this article,
12 a copy of the records of the board certified as correct ~~under~~
13 ~~the-seal-of~~ BY the board shall be admissible in evidence as
14 being the records of the board.

15 (6) Any member of the board, any person acting as a
16 consultant to the board, any witness testifying in a
17 proceeding authorized under this article, and any person who
18 lodges a complaint pursuant to this article shall be immune
19 from liability in any civil action brought against him for
20 acts occurring while acting in his capacity as a board member,
21 consultant, witness, or complainant, respectively, if such
22 individual was acting in good faith within the scope of his
23 respective capacity, made a reasonable effort to obtain the
24 facts of the matter as to which he acted, and acted in the
25 reasonable belief that the action taken by him was warranted
26 by the facts.

27 SECTION 4. 12-2-104 (1) (a), (1) (c), (1) (g), (1) (h),

1 and (1) (k), Colorado Revised Statutes, 1985 Repl. Vol., are
2 amended to read:

3 12-2-104. Powers and duties of board. (1) (a) Elect
4 annually from AMONG its members a president ~~a-secretary,-and-a~~
5 ~~treasurer-and-prescribe-their-duties~~ AND PRESCRIBE THE DUTIES
6 OF SUCH OFFICE;

7 (c) Make appropriate rules of professional conduct in
8 order to establish and maintain a high standard of integrity
9 in the profession of public accounting. Any rule of
10 professional conduct applies with equal force to all persons
11 holding certificates under this article. No rule of
12 professional conduct shall be promulgated which will work to
13 the disadvantage of one group and in favor of another. Every
14 person practicing as a certified public accountant ~~or--a~~
15 ~~registered--accountant~~ in the state shall be governed and
16 controlled by such rules. All rules of professional conduct
17 shall be promulgated pursuant to the provisions of article 4
18 of title 24, C.R.S.

19 (g) Prescribe forms for and receive applications for
20 certificates and ~~permits--and-grants~~ GRANT certificates; and
21 ~~permits~~;

22 (h) Give examinations to applicants AND, AS NECESSARY,
23 CONTRACT FOR ASSISTANCE IN ADMINISTERING THE EXAMINATION;

24 (k) Administer this article AND EXERCISE AND PERFORM ANY
25 OTHER POWERS AND DUTIES GRANTED OR DIRECTED BY THE GENERAL
26 ASSEMBLY;

27 SECTION 5. 12-2-104 (1) (i), Colorado Revised Statutes,

1 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
2 to read:

3 12-2-104. Powers and duties of board. (1) (i) Deny the
4 issuance or renewal of, suspend for a specified period of
5 time, or revoke a certificate; or issue a letter of admonition
6 to or censure or place on probation or fine any person who,
7 while holding a certificate, violates any of the provisions of
8 this article; or impose other conditions and limitations;

9 SECTION 6. 12-2-106 (1), (2), and (3), Colorado Revised
10 Statutes, 1985 Repl. Vol., are amended to read:

11 12-2-106. Fees. (1) A fee AUTHORIZED TO BE established
12 pursuant to section 24-34-105, C.R.S., shall be paid for each
13 application made to the board, whether the same is an
14 application for examination ~~an application for~~ OR
15 reexamination ~~an application~~ FOR, OR for issuance, RENEWAL,
16 REACTIVATION, OR REINSTATEMENT of, a certificate of certified
17 public accountant, AN APPLICATION FOR REGISTRATION WITH THE
18 BOARD, or any other application requiring formal action or
19 consideration by the board. The fee required shall not be
20 returnable irrespective of the action taken by the board.

21 (2) A fee AUTHORIZED TO BE established pursuant to
22 section 24-34-105, C.R.S., shall be paid for each examination
23 in which the candidate is examined in all THE subjects
24 prescribed by the board. ~~A fee established pursuant to~~
25 ~~section 24-34-105, C.R.S., shall be paid for each examination~~
26 ~~in which the candidate is examined in fewer than all subjects~~
27 ~~prescribed by the board.~~ Examination fees required in this

1 subsection (2) are in addition to the fee required in
2 subsection (1) of this section and shall be returned to the
3 candidate should the board deny the candidate the right to
4 take the examination or the candidate request in writing, not
5 less than ten THIRTY days prior to the date fixed by the board
6 for the examination, that the application be withdrawn.

7 (3) Any person making application for a certificate of
8 certified public accountant under section 12-2-113 shall pay a
9 fee AUTHORIZED TO BE established pursuant to section
10 24-34-105, C.R.S., ~~in~~ in addition to the fee required in
11 subsection (1) of this section. Should such application be
12 rejected by the board, the fee shall be returned to the
13 applicant.

14 SECTION 7. 12-2-108 (1), Colorado Revised Statutes, 1985
15 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to
16 read:

17 12-2-108. Certificate of certified public accountant -
18 issuance - renewal - reactivation - reinstatement.

19 (1) (d) Who meets the requirements of section 12-2-113.

20 SECTION 8. 12-2-108, Colorado Revised Statutes, 1985
21 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW
22 SUBSECTIONS to read:

23 12-2-108. Certificate of certified public accountant -
24 issuance - renewal - reactivation - reinstatement. (3) All

25 certificates shall expire once every two years on a date
26 established by the board but may be renewed in a manner
27 prescribed by the board, which shall include compliance with

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1 the continuing education requirements authorized in section
2 12-2-119 (5) and payment of the renewal fee authorized to be
3 established by the board pursuant to section 24-34-105, C.R.S.

4 (4) Any person may reactivate an expired certificate
5 within a two-year grace period after the date of its
6 expiration by making written application for reactivation,
7 complying with the continuing education requirements imposed
8 by the board, and paying a reactivation fee imposed by the
9 board.

10 (5) In the event that a person fails to reactivate his
11 certificate within the two-year grace period specified in
12 subsection (4) of this section, a person may reinstate such
13 certificate within four years after the date of the expiration
14 of such grace period by making written application for
15 reinstatement, complying with all continuing education
16 requirements imposed by the board, paying a reinstatement fee,
17 and providing proof to the board of his continued professional
18 competence as required by the board. Thereafter, a person
19 shall not be reinstated unless he fulfills and meets the
20 requirements and conditions required of an applicant applying
21 for the issuance of an original certificate, which
22 requirements shall include retaking and passing the uniform
23 certified public accountant examination.

24 (6) Any person who practices public accounting after the
25 expiration of his certificate shall be practicing in violation
26 of this article. The board may refuse to reactivate or
27 reinstate any expired certificate for conduct which

1 constitutes a violation of any provision of this article.

2 SECTION 9. 12-2-111 (5) and (8), Colorado Revised
3 Statutes, 1985 Repl. Vol., are amended to read:

4 12-2-111. Examinations - reexaminations. (5) Any
5 candidate sitting for all parts of the examination who passes
6 a-satisfactory THE examination in at least two subjects or the
7 single subject of practice shall have the right to be
8 reexamined in the remaining subjects at any of the five next
9 succeeding examinations or, with the approval of the board, at
10 some other regular examination in lieu of any or all of the
11 next five examinations thereafter held by the board, and, if
12 he passes in the remaining subjects, he shall be considered to
13 have passed the examination. ~~Seventy-five-percent-shall-be~~
14 ~~the-passing-grade-in-each-subject.~~ THE BOARD SHALL ENSURE
15 THAT THE PASSING SCORE FOR THE EXAMINATION IN EACH SUBJECT IS
16 SET TO MEASURE THE LEVEL OF MINIMUM COMPETENCY FOR THE
17 PRACTICE OF ACCOUNTING.

18 (8) If a candidate sitting for all parts of the
19 examination for which he is eligible passes in two or more
20 subjects or the single subject of practice in an examination
21 given by the examining board of another state, under
22 requirements substantially the same as requirements in this
23 state, which examination the board of this state finds to be
24 equivalent to the examination in this state, the board may
25 SHALL accept the results of such examination in such other
26 state as though taken in this state.

27 SECTION 10. 12-2-113 (1) (a) and (1) (b), Colorado

1 Revised Statutes, 1985 Repl. Vol., are amended to read:

2 12-2-113. Issuance of certificate by reciprocity or by
3 passing examination of another state. (1) (a) Any person who
4 is the holder of a certificate of certified public accountant
5 issued after examination under the laws of another state and
6 who possesses the qualifications prescribed in section
7 12-2-108 for an applicant applying for a certificate as of the
8 time of the issuance of the certificate by such other state or
9 possesses SUBSTANTIALLY equivalent qualifications; ~~unless--the~~
10 ~~issuance--of--the--certificate--by--such--other--state--was--prior--to~~
11 ~~January-1,-1966,-in-which-case,-the--applicant--may--meet--the~~
12 ~~requirements-of-section-12-2-110;~~

13 (b) Any person who has passed an examination under the
14 laws of another state and who possesses the qualifications
15 prescribed in section 12-2-108 at the time he applies for a
16 certificate in this state or possesses SUBSTANTIALLY
17 equivalent qualifications; or

18 SECTION 11. 12-2-114 (1), Colorado Revised Statutes,
19 1985 Repl. Vol., is amended to read:

20 12-2-114. Existing certificates confirmed. (1) No
21 person who, on or before August 1, 1959, holds a certified
22 public accountant certificate previously issued under the laws
23 of this state shall be required to secure an additional
24 certificate under this article but shall otherwise be subject
25 to all the provisions of this article. Such certificate
26 previously issued shall, for all purposes, be considered a
27 certificate issued under this article. ~~and--subject--to--the~~

1 ~~provisions--of--this--article.--No--person--holding--a--certificate~~
2 ~~as--a--registered--accountant--on--or--before--August--1,-1959,-which~~
3 ~~certificate--was--granted--as--a--result--of--the--holder--thereof~~
4 ~~having--passed--the--examination--provided--for--by--previously~~
5 ~~existing--law,-shall--be--required--to--secure--an--additional~~
6 ~~certificate--under--this--article--but--shall--otherwise--be--subject~~
7 ~~to--all--the--provisions--of--this--article.~~

8 SECTION 12. 12-2-115, Colorado Revised Statutes, 1985
9 Repl. Vol., is amended to read:

10 12-2-115. Use of the title "certified public
11 accountant". Any person who has received from the board -a-
12 AND HOLDS AN ACTIVE certificate of certified public accountant
13 ~~and--who--holds--a--permit--issued--under--section--12-2-119~~ shall be
14 styled and known as a certified public accountant and may also
15 use the abbreviation "C.P.A.". ~~Any--certified--public~~
16 ~~accountant--may--also--be--known--as--a--public--accountant--and--may~~
17 ~~also--use--the--abbreviation--"P.A."~~ NO OTHER PERSON SHALL ASSUME
18 OR USE THE TITLE CERTIFIED PUBLIC ACCOUNTANT OR THE
19 ABBREVIATION "C.P.A." OR ANY OTHER WORD, WORDS, LETTERS, OR
20 FIGURES TO INDICATE THAT THE PERSON USING THE SAME IS A
21 CERTIFIED PUBLIC ACCOUNTANT. THE TERMS CHARTERED ACCOUNTANT
22 AND CERTIFIED ACCOUNTANT AND THE ABBREVIATION "C.A." ARE
23 SPECIFICALLY PROHIBITED TO SUCH OTHER PERSONS AS BEING
24 MISLEADING TO THE PUBLIC.

25 SECTION 13. 12-2-116, Colorado Revised Statutes, 1985
26 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
27 read:

1 12-2-116. Registered accountants. Any person who holds
 2 a certificate of registered accountant issued under the laws
 3 of this state shall be subject to all the provisions of this
 4 article. For the purposes of this article, certified public
 5 accountant and registered accountant shall be deemed
 6 synonymous and all references in this article to certified
 7 public accountants shall likewise refer and pertain to
 8 registered accountants.

9 SECTION 14. The introductory portion to 12-2-117 (1) and
 10 12-2-117 (1)(e) and (2), Colorado Revised Statutes, 1985 Repl.
 11 Vol., are amended, and the said 12-2-117 is further amended BY
 12 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

13 12-2-117. Partnerships or professional corporations
 14 composed of certified public accountants - registration
 15 thereof. (1) A partnership or professional corporation
 16 engaged, in this state, in the practice of public accounting
 17 as certified public accountants shall register ONCE EVERY
 18 THREE YEARS with the board as a partnership or professional
 19 corporation of certified public accountants and must meet the
 20 following requirements:

21 (e) Each resident manager in charge of an office of the
 22 firm PARTNERSHIP OR PROFESSIONAL CORPORATION in this state
 23 must be a certified public accountant of this state in good
 24 standing.

25 (2) (a) Application for such registration must be made
 26 upon the affidavit of a partner of such partnership or of a
 27 shareholder of such professional corporation who is a

1 certified public accountant of this state in good standing AND
 2 MUST PROVIDE THE NAMES AND ADDRESSES OF THE PERSONS WHO ARE
 3 PRACTICING PUBLIC ACCOUNTING FOR THE PARTNERSHIP OR
 4 PROFESSIONAL CORPORATION AND ANY OTHER INFORMATION THE BOARD
 5 MAY REASONABLY REQUEST. TO COVER THE BOARD'S ADMINISTRATIVE
 6 COSTS, SUCH APPLICATION SHALL BE ACCOMPANIED BY A REGISTRATION
 7 FEE, THE AMOUNT OF WHICH SHALL BE SET BY THE BOARD.

8 (b) The board shall in each case determine whether the
 9 applicant is eligible for registration. A partnership or
 10 professional corporation which is so registered and--which
 11 holds-a-permit-issued-under-section-12-2-119 may use the words
 12 "certified public accountants" or the abbreviation "C.P.A.'s"
 13 in connection with its partnership or professional corporation
 14 name. Any--partnership--or--professional--corporation--of
 15 certified--public--accountants--may--also--be--known--as--public
 16 accountants--or--may--use--the--abbreviation--"P.A.'s". Notification
 17 shall be given the board within one month after the admission
 18 to or withdrawal of a partner from any partnership so
 19 registered or after any change in shareholders of any such
 20 corporation.

21 (3) The corporation must be in compliance with the
 22 "Colorado Corporation Code", articles 1 to 10 of title 7,
 23 C.R.S., and the articles of incorporation of such corporation
 24 shall contain provisions complying with the following
 25 requirements:

26 (a) The corporation shall be organized solely for the
 27 purpose of practicing accountancy and such other activities as

1 may from time to time be specifically found by the board to be
2 activities suitable and proper to be performed by certified
3 public accountants only through or under the supervision of at
4 least one person who holds a certificate to practice public
5 accounting as a certified public accountant.

6 (b) The president shall be a shareholder and a director
7 and one or more of such directors shall be certified public
8 accountants of this state in good standing. Lay directors and
9 officers shall not exercise any authority whatsoever over
10 professional matters.

11 (c) All shareholders of the corporation shall be jointly
12 and severally liable for all acts, errors, and omissions of
13 the employees of the corporation or all shareholders of the
14 corporation shall be jointly and severally liable for all
15 acts, errors, and omissions of the employees of the
16 corporation except during periods of time when the corporation
17 maintains in good standing professional liability insurance
18 which meets the following minimum standards:

19 (I) The insurance shall insure the corporation against
20 liability imposed upon the corporation by law for damages
21 resulting from any claim made against the corporation arising
22 out of the performance of professional services for others by
23 those employees of the corporation who hold certificates to
24 practice public accounting as certified public accountants.

25 (II) Such policies shall insure the corporation against
26 liability imposed upon it by law for damages arising out of
27 the acts, errors, and omissions of all other employees.

1 (III) The insurance shall be in an amount for each claim
2 of at least fifty thousand dollars multiplied by the number of
3 certified public accountants employed by the corporation
4 within this state, and the policy may provide for an aggregate
5 top limit of liability per year for all claims of one hundred
6 fifty thousand dollars also multiplied by the number of
7 certified public accountants employed by the corporation
8 within this state; except that no firm shall be required to
9 carry insurance in excess of three hundred thousand dollars
10 for each claim with an aggregate top limit of liability for
11 all claims during the year of one million dollars and except
12 that the board, in the public interest, may adopt regulations
13 increasing the minimum amounts of insurance coverage required
14 by this subsection (3).

15 (IV) (A) The policy may provide that it does not apply
16 to: Any dishonest, fraudulent, criminal, or malicious act or
17 omission of the insured corporation or any stockholder or
18 employee thereof; the conduct of any business enterprise in
19 which the insured corporation under this article is not
20 permitted to engage but which nevertheless may be owned by the
21 insured corporation or in which the insured corporation may be
22 a partner or which may be controlled, operated, or managed by
23 the insured corporation in its own or in a fiduciary capacity
24 including the ownership, maintenance, or use of any property
25 in connection therewith; and bodily injury to, or sickness,
26 disease, or death of, any person, or to injury to or
27 destruction of any tangible property, including the loss of

1 use thereof.

2 (B) The policy may contain reasonable provisions with
3 respect to policy periods, territory, claims, conditions, and
4 other usual matters.

5 (d) The corporate name shall be ended by the word
6 "Corporation" or "Incorporated" or by the words "Professional
7 Corporation" or by the abbreviations "Corp.", "Inc.", or
8 "P.C.". An assumed or trade name may be used if it is not
9 misleading and clearly indicates that the firm is engaged in
10 providing accounting services.

11 (4) The corporation may exercise the powers and
12 privileges conferred upon corporations by the laws of Colorado
13 in furtherance of and subject to its corporate purposes and
14 may invest its funds in a manner not incompatible with the
15 practice of public accounting as certified public accountants.
16 Any stock purchased by the corporation may be made out of
17 capital as well as surplus without regard to the impairment of
18 the corporation capital.

19 (5) The corporation shall do nothing in this state
20 which, if done by a person who holds a certificate as a
21 certified public accountant within this state and employed by
22 it, would violate the provisions of this article. Any
23 violation by the corporation of this article shall be grounds
24 for the board to revoke or suspend its registration.

25 (6) Nothing in this section shall diminish or change the
26 obligation of each person who holds a certificate of certified
27 public accountant employed by the corporation within this

1 state to conduct his practice in accordance with the
2 provisions of this article. Any person who holds a
3 certificate to practice public accounting as a certified
4 public accountant who, by act or omission, causes the
5 corporation to act or fail to act in a way which violates this
6 article is personally responsible for such act or omission and
7 subject to discipline therefor.

8 (7) Foreign corporations may engage in the practice of
9 public accounting in this state as certified public
10 accountants so long as their articles of incorporation provide
11 that such corporation is organized solely for the purpose of
12 practicing accountancy and such other activities as may from
13 time to time be specifically found by the board to be
14 activities suitable and proper to be performed by certified
15 public accountants and comply with and meet the requirements
16 of subsection (3) of this section.

17 (8) Except as provided in this section, professional
18 corporations shall not practice public accounting as certified
19 public accountants.

20 (9) Nothing in this section shall modify the
21 accountant-client privilege specified in section 13-90-107 (1)
22 (f), C.R.S.

23 (10) When any law of this state or any rule or
24 regulation of any agency or other authority established under
25 the constitution or laws of this state requires or authorizes
26 any audit, financial report, or statement to be made,
27 approved, or certified by a certified public accountant, such

1 audit, report, or statement may be made, approved, or
2 certified by a professional corporation registered in this
3 state.

4 SECTION 15. 12-2-119 (5), (7), and (9), Colorado Revised
5 Statutes, 1985 Repl. Vol., are amended to read:

6 12-2-119. Continuing education. (5) ~~After January 1,~~
7 ~~1975, As a condition of the renewal of an annual permit, each~~
8 ~~holder of a certificate of certified public accountant who~~
9 ~~obtained such certificate after April 26, 1973,~~ RENEWING,
10 REACTIVATING, OR REINSTATING A CERTIFICATE OF CERTIFIED PUBLIC
11 ACCOUNTANT, EVERY APPLICANT shall comply with continuing
12 education requirements adopted by the board.

13 (7) In exercising its power under subsection (6) of this
14 section, the board shall, as a basis for a high standard of
15 practice by certified public accountants, ~~and registered~~
16 ~~accountants,~~ establish requirements which will assure
17 reasonable currency of knowledge. The requirements shall
18 assure that a variety of alternative means of compliance with
19 continuing education requirements are available to certificate
20 holders and shall take cognizance of specialized areas of
21 practice.

22 (9) The board shall determine in each case whether a
23 holder of certificate of certified public accountant ~~or~~
24 ~~registered accountant~~ has complied with continuing education
25 requirements adopted by the board.

26 SECTION 16. 12-2-120 (1), (2), (5), and (6) (a) (I) and
27 the introductory portion to 12-2-120 (6) (a) (II), Colorado

1 Revised Statutes, 1985 Repl. Vol., are amended to read:

2 12-2-120. Unlawful acts. (1) No person shall assume or
3 use the title or designation "certified public accountant" or
4 the abbreviation "C.P.A.", or any other title, designation,
5 words, letters, abbreviation, sign, card, or device tending to
6 indicate that such person is a certified public accountant
7 unless such person has received a HOLDS AN ACTIVE certificate
8 as a certified public accountant under sections SECTION
9 12-2-108, 12-2-109, ~~12-2-110,~~ or 12-2-113, or a prior law of
10 this state. ~~and holds a permit issued under section 12-2-119~~
11 ~~not revoked or suspended.~~

12 (2) No partnership OR PROFESSIONAL CORPORATION shall
13 assume or use the title or designation "certified public
14 accountants" or the abbreviation "C.P.A.'s", or any other
15 title, designation, words, letters, abbreviation, sign, card,
16 or device tending to indicate that such partnership OR
17 PROFESSIONAL CORPORATION is composed of certified public
18 accountants unless such partnership OR PROFESSIONAL
19 CORPORATION is registered as a partnership OR PROFESSIONAL
20 CORPORATION of certified public accountants under section
21 12-2-117. ~~and holds a permit issued under section 12-2-119~~
22 ~~not revoked or suspended.~~

23 (5) Except as provided in sections 12-2-115 ~~to 12-2-118~~
24 AND 12-2-117 (2)(b), no person, partnership, or PROFESSIONAL
25 corporation shall assume or use any title or designation using
26 the word certified, registered, chartered, enrolled, licensed,
27 independent, or approved in conjunction with the word

1 accountant or auditor or any abbreviation thereof or any
2 title, designation, or abbreviation likely to be confused with
3 certified public accountant ~~registered--accountant,~~ or the
4 abbreviations ABBREVIATION "C.P.A." ~~or--"R.A."~~.

5 (6) (a) (I) No person, PARTNERSHIP, or PROFESSIONAL
6 corporation shall issue, author, or publish any opinion or
7 certificate relating to any accounting or financial statement
8 if such opinion or certificate utilizes any title or
9 designation, the use of which is prohibited by law.

10 (II) No person, PARTNERSHIP, or PROFESSIONAL corporation
11 shall, ~~unless--he--holds--a--valid--permit--to--do--so--issued--under~~
12 ~~the--provisions--of--section--12-2-119~~ WITHOUT AN ACTIVE
13 CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANT OR A VALID
14 REGISTRATION:

15 SECTION 17. 12-2-121 (1), Colorado Revised Statutes,
16 1985 Repl. Vol., is amended to read:

17 12-2-121. Exceptions - acts not prohibited.

18 (1) Nothing in this article shall prohibit any person not a
19 certified public accountant ~~or--registered--accountant~~ from
20 serving as an employee of or an assistant to a certified
21 public accountant ~~registered--accountant,~~ HOLDING AN ACTIVE
22 CERTIFICATE OR SERVING AS AN EMPLOYEE OR ASSISTANT OF A
23 VALIDLY REGISTERED partnership or professional corporation
24 composed of certified public accountants. ~~or--registered~~
25 ~~accountants---holding--a--permit--to--practice--under--section~~
26 ~~12-2-119.~~ Such employee or assistant shall not issue any
27 accounting or financial statement over his name.

1 SECTION 18. 12-2-122, Colorado Revised Statutes, 1985
2 Repl. Vol., is amended to read:

3 12-2-122. Single act evidence of practice. Any person
4 who displays, utters, or causes to be displayed or uttered a
5 card, sign, advertisement, or other printed, engraved, or
6 written instrument or device bearing such person's name in
7 conjunction with the words "certified public accountant" ~~or~~
8 ~~"registered--accountant"~~ or the abbreviations ABBREVIATION
9 "C.P.A." ~~or--"R.A."~~ or any title, designation, or abbreviation
10 prohibited by section 12-2-120 may be presumed in any action
11 brought under section 12-2-126 to have held himself out to be
12 a certified public accountant ~~or--registered--accountant--holding~~
13 ~~a--permit--to--practice--under--section--12-2-119~~ HOLDING AN ACTIVE
14 CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANT PURSUANT TO SECTION
15 12-2-108. In any LEGAL action brought under ~~section--12-2-126~~
16 ~~or--section--12-2-129~~ THIS ARTICLE, evidence of the commission
17 of a single act prohibited by this article is sufficient to
18 justify an injunction.

19 SECTION 19. Article 2 of title 12, Colorado Revised
20 Statutes, 1985 Repl. Vol., is amended BY THE ADDITION OF A NEW
21 SECTION to read:

22 12-2-122.5. Inactive certificant. (1) The holder of a
23 certificate of certified public accountant, upon written
24 notice by first class mail to the board, shall have his name
25 transferred to an inactive list and shall not be required to
26 comply with the continuing education requirements for
27 certificate renewal pursuant to section 12-2-119 so long as he

1 remains inactive. Each inactive certificant shall register
2 once every three years with the board in the same manner as
3 partnerships and corporations pursuant to section 12-2-117.
4 At such time as an inactive certificant wishes to resume the
5 practice of public accounting as a certified public
6 accountant, he shall file an application therefor, meet any
7 education requirements imposed by the board, and pay a fee as
8 established by the board.

9 (2) During such time as a certified public accountant
10 remains in an inactive status, he shall not perform those acts
11 restricted to active certified public accountants pursuant to
12 section 12-2-120 (6)(a). The board shall retain jurisdiction
13 over inactive certified public accountants for the purposes of
14 disciplinary action pursuant to section 12-2-123.

15 SECTION 20. The introductory portion to 12-2-123 (1) and
16 12-2-123 (1) (a), (1) (b), (1) (c), (1) (e), (1) (f), (1) (j),
17 (1) (m), and (1) (n), Colorado Revised Statutes, 1985 Repl.
18 Vol., are amended, and the said 12-2-123 (1) is further
19 amended by THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to
20 read:

21 12-2-123. Grounds for disciplinary action -
22 administrative penalties. (1) After notice and hearing as
23 provided in section 12-2-125, the board may DENY THE ISSUANCE
24 OF, REFUSE TO RENEW, revoke, or suspend any certificate of a
25 certified public accountant ~~or registered accountant~~ issued
26 under this article or any prior law of this state ~~or may~~
27 ~~revoke, suspend, or refuse to renew any permit issued under~~

1 ~~section 12-2-119,~~ or may FINE, censure, ISSUE A LETTER OF
2 ADMONITION TO or place on probation the holder of any such
3 ~~permit~~ CERTIFICATE and impose other conditions or limitations
4 for any of the following causes:

5 (a) Fraud or deceit in obtaining OR IN ATTEMPTING TO
6 OBTAIN a certificate as A certified public accountant OR in
7 obtaining registration under this article; ~~or in obtaining a~~
8 ~~permit to practice public accounting under this article;~~

9 (b) Dishonesty, Fraud or gross negligence in the
10 practice of public accounting IN COLORADO OR ANY OTHER STATE
11 or in the filing of or failure to file his own income tax
12 returns;

13 (c) Violation of any ~~of the provisions~~ PROVISION of
14 ~~section 12-2-120~~ THIS ARTICLE, OF ANY FINAL RULE OR REGULATION
15 PROMULGATED BY THE BOARD, OR OF ANY VALID AGENCY ORDER;

16 (e) Conviction of a felony under the laws of any state
17 or of the United States, and, for the purposes of this
18 paragraph (e), a plea of GUILTY OR A PLEA OF nolo contendere
19 accepted by the court shall be considered as a conviction;

20 (f) Conviction of any crime, an element of which is
21 dishonesty or fraud, under the laws of any state or of the
22 United States, and, for the purposes of this paragraph (f), a
23 plea of GUILTY OR A PLEA OF nolo contendere accepted by the
24 court shall be considered as a conviction;

25 (j) Providing ~~professional~~ PUBLIC ACCOUNTING services to
26 the public for a fee without the ~~annual permit required by~~
27 ~~section 12-2-119~~ AN ACTIVE CERTIFICATE OF CERTIFIED PUBLIC

1 ACCOUNTANT OR A VALID REGISTRATION, or, WITHOUT AN ACTIVE
 2 CERTIFICATE, acting as an employee of a holder of a
 3 certificate of certified public accountant, ~~or--registered~~
 4 ~~accountant~~ or acting as an employee, partner, or shareholder
 5 of a partnership or professional corporation registered
 6 pursuant to section 12-2-117; ~~or-12-2-118-without-the-annual~~
 7 ~~permit-required-by-section-12-2-119,-without-or-the-failure-of~~
 8 ~~any-other-certificate-holder-or-registrant--to--apply--for--an~~
 9 ~~annual--permit-under-section-12-2-119-within-three-consecutive~~
 10 ~~years-after-the-expiration-date-of-the-permit-to-practice-last~~
 11 ~~obtained-or-renewed-by-said-certificate-holder--or--registrant~~
 12 ~~or---within---three--years--after--the--date--upon--which--the~~
 13 ~~certificate-holder-or-registrant-was-granted--his--certificate~~
 14 ~~or-registration-if-no-permit-was-ever-issued-to-him;~~

15 (m) Failure to comply with the basic requirements for
 16 continuing education as prescribed by the board;

17 (n) ~~A-pattern-of-accounting-practice~~ AN ACT OR OMISSION
 18 which fails to meet generally accepted ACCOUNTING PRINCIPLES
 19 OR GENERALLY ACCEPTED AUDITING standards in the profession;

20 (o) Use of false, misleading, or deceptive advertising;

21 (p) Habitual intemperance with respect to or excessive
 22 use of any habit-forming drug as defined in section 12-22-102
 23 (13), any controlled substance as defined in section 12-22-303
 24 (7), or any alcoholic beverage, any of which renders him unfit
 25 to practice public accounting;

26 (q) Failure to retain records of the work performed for
 27 each client for a period of five years;

1 (r) Failure of a partnership or professional corporation
 2 to register with the board pursuant to section 12-2-117 and to
 3 renew such registration once every three years as prescribed
 4 by the board.

5 SECTION 21. 12-2-123, Colorado Revised Statutes, 1985
 6 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW
 7 SUBSECTIONS to read:

8 12-2-123. Grounds for disciplinary action -
 9 administrative penalties. (3) When a complaint or an
 10 investigation discloses an instance of misconduct which, in
 11 the opinion of the board, does not warrant formal action but
 12 which should not be dismissed as being without merit, the
 13 board may send a letter of admonition to the certificate
 14 holder. Such letter shall be sent to the certificant by
 15 certified mail, with a copy to the complainant, and shall
 16 advise such certificant that he may, within twenty days after
 17 proven receipt of the letter, make a written request to the
 18 board to institute a formal hearing pursuant to section
 19 12-2-125 to determine the propriety of the alleged misconduct.
 20 If such request is timely made, the letter of admonition shall
 21 be deemed vacated, and the matter shall be processed by means
 22 of formal proceedings.

23 (4) No certificant whose certificate is revoked shall be
 24 allowed to apply for reinstatement of such certificate earlier
 25 than two years after the effective date of the revocation.

26 (5) (a) In addition to any other penalty which may be
 27 imposed pursuant to this section, any person violating any

1 provision of this article or any rules or regulations
2 promulgated pursuant to this article may be fined upon a
3 finding of misconduct by the board as follows:

4 (I) In the first administrative proceeding against a
5 certificant, a fine not in excess of one thousand dollars;

6 (II) In any subsequent administrative proceeding against
7 a certificant, a fine not less than one thousand dollars nor
8 in excess of two thousand dollars.

9 (b) All fines collected pursuant to this subsection (5)
10 shall be credited to the general fund.

11 SECTION 22. Article 2 of Title 12, Colorado Revised
12 Statutes, 1985 Repl. Vol., is amended BY THE ADDITION OF A NEW
13 SECTION to read:

14 12-2-123.5. Response to board communication. Except as
15 otherwise provided in section 12-2-123 (3), a certificant
16 shall, at the request of the board, respond to communications
17 from the board within thirty days of the mailing of any
18 communication by registered or certified mail.

19 SECTION 23. 12-2-124 (1), the introductory portion to
20 12-2-124 (2), and 12-2-124 (2) (a), Colorado Revised Statutes,
21 1985 Repl. Vol., are amended to read:

22 12-2-124. Revocation or suspension of partnership or
23 professional corporation registration. (1) After notice and
24 hearing as provided in section 12-2-125, the board shall
25 revoke the registration and--~~permit--to--practice~~ of a
26 partnership or professional corporation if, at the time of
27 such hearing, the partnership or professional corporation does

1 not have all the qualifications prescribed by the section of
2 this article under which it qualified for registration.

3 (2) After notice and hearing as provided in section
4 12-2-125, the board may revoke or suspend the registration ~~or~~
5 ~~may-revoke,-suspend,-or-refuse-to-renew-the-permit-to-practice~~
6 of a partnership or professional corporation ~~or--may--censure~~
7 ~~the-holder-of-any-such-permit~~ for any of the causes enumerated
8 in section 12-2-123 and OR for the following additional
9 causes:

10 (a) ~~The-revocation-or-suspension-of-the--certificate--or~~
11 ~~registration--or~~ The revocation, suspension, or refusal to
12 renew the ~~permit-to-practice~~ CERTIFICATE of any partner or
13 shareholder;

14 SECTION 24. 12-2-125 (1) and (2), Colorado Revised
15 Statutes, 1985 Repl. Vol., are amended to read:

16 12-2-125. Hearings before board - notice - procedure -
17 review. (1) (a) The board may initiate proceedings under
18 this article, either on its own motion or on the complaint of
19 any person.

20 (b) THE BOARD, THROUGH THE DEPARTMENT OF REGULATORY
21 AGENCIES, MAY EMPLOY ADMINISTRATIVE LAW JUDGES ON A FULL-TIME
22 OR PART-TIME BASIS TO CONDUCT HEARINGS AS PROVIDED BY THIS
23 ARTICLE OR ON ANY MATTER WITHIN THE BOARD'S JURISDICTION UPON
24 SUCH CONDITIONS AND TERMS AS THE BOARD MAY DETERMINE.

25 (2) Except as otherwise provided in this article, all
26 proceedings before the board with respect to the denial,
27 suspension, or revocation of certificates or permits

1 REGISTRATIONS issued under this article shall be conducted
2 pursuant to the provisions of sections 24-4-104 and 24-4-105,
3 C.R.S.

4 SECTION 25. 12-2-126 (1) and (2), Colorado Revised
5 Statutes, 1985 Repl. Vol., are amended to read:

6 12-2-126. Investigations, examinations, and cease and
7 desist orders against unlawful act. (1) (a) The board, on
8 its own motion or on the complaint of any person, may
9 investigate any person who has engaged, is engaging, or
10 threatens to engage in any act or practice which constitutes a
11 violation of ~~section-12-2-120--or-12-2-131~~ ANY PROVISION OF
12 THIS ARTICLE. The board or any member thereof may issue
13 subpoenas to compel the attendance of witnesses and the
14 production of documents and may administer oaths, take
15 testimony, hear proofs, and receive exhibits in evidence in
16 connection with any investigation under this section. In case
17 of disobedience to a subpoena, the board may invoke the aid of
18 any court of this state in requiring the attendance and
19 testimony of witnesses and the production of documentary
20 evidence.

21 (b) COMPLAINTS OF RECORD ON FILE WITH THE BOARD AND THE
22 RESULTS OF INVESTIGATION SHALL BE CLOSED TO PUBLIC INSPECTION
23 DURING THE INVESTIGATORY PERIOD AND UNTIL DISMISSED OR UNTIL
24 NOTICE OF HEARING AND CHARGES ARE SERVED ON AN APPLICANT OR
25 CERTIFICANT. THE BOARD'S RECORDS AND PAPERS SHALL BE SUBJECT
26 TO THE PROVISIONS OF SECTIONS 24-72-203 AND 24-72-204, C.R.S.,
27 REGARDING PUBLIC RECORDS AND CONFIDENTIALITY.

1 (2) If the board has reason to believe that any person
2 has engaged, is engaging, or threatens to engage in an act or
3 practice which constitutes a violation of ~~section-12-2-120-or~~
4 ~~12-2-131~~ ANY PROVISION OF THIS ARTICLE, the board may initiate
5 and conduct proceedings as provided by section 12-2-125 to
6 determine if such a violation has occurred or threatens to
7 occur. Upon the determination by a majority of the board of a
8 violation of ~~section-12-2-120-or--12-2-131~~ ANY PROVISION OF
9 THIS ARTICLE on the basis of the evidence presented at the
10 hearing, a majority of the board may issue an order to cease
11 and desist the act or acts violating ~~section-12-2-120-or~~
12 ~~12-2-131~~ ANY PROVISION OF THIS ARTICLE. A copy of the cease
13 and desist order shall be furnished to each party.

14 SECTION 26. 12-2-127 (1), Colorado Revised Statutes,
15 1985 Repl. Vol., is REPEALED and REENACTED, WITH AMENDMENTS,
16 to read:

17 12-2-127. Judicial review. (1) Any person aggrieved by
18 any final action or order of the board and affected thereby is
19 entitled to a review thereof by the court of appeals by
20 appropriate proceedings under section 24-4-106 (11), C.R.S.

21 SECTION 27. 12-2-128, Colorado Revised Statutes, 1985
22 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
23 read:

24 12-2-128. Reconsideration and review of action of board.
25 The board, on its own motion or upon application, at any time
26 after the imposition of any discipline as provided in section
27 12-2-123 (1), may reconsider its prior action and reinstate or

1 restore such license or terminate probation or reduce the
2 severity of its prior disciplinary action. The taking of any
3 such further action, or the holding of a hearing with respect
4 thereto, shall rest in the sole discretion of the board.

5 SECTION 28. 12-2-129, Colorado Revised Statutes, 1985
6 Repl. Vol., is amended to read:

7 12-2-129. Misdemeanors - penalties. (1) Any person who
8 violates any provision of ~~section--12-2-120~~ THIS ARTICLE or
9 violates a cease and desist order issued pursuant to section
10 12-2-126 commits a class 3 misdemeanor and shall be punished
11 as provided in section 18-1-106, C.R.S.

12 SECTION 29. 24-34-104, Colorado Revised Statutes, 1988
13 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
14 SUBSECTION to read:

15 24-34-104. General assembly review of regulatory
16 agencies and functions for termination, continuation, or
17 reestablishment. (29) The following board in the division of
18 registration shall terminate on July 1, 2000: The state board
19 of accountancy, created by article 2 of title 12, C.R.S.

20 SECTION 30. Repeal. 12-2-104 (1) (d) and (1) (e),
21 12-2-110, 12-2-114 (2) and (3), 12-2-117 (1) (b) and (1) (c),
22 12-2-118, 12-2-119 (1), (2), (3), and (4), 12-2-120 (3), (4),
23 (10), and (11), 12-2-123 (1) (k) and (1) (l), and 12-2-131,
24 Colorado Revised Statutes, 1985 Repl. Vol., and 24-34-104
25 (19) (a), Colorado Revised Statutes, 1988 Repl. Vol., are
26 repealed.

27 SECTION 31. Effective date - applicability. This act

1 shall take effect July 1, 1990, and shall apply to
2 certificates issued, renewed, or reinstated pursuant to
3 article 2 of title 12, Colorado Revised Statutes, and to any
4 acts committed on or after said date.

5 SECTION 32. Safety clause. The general assembly hereby
6 finds, determines, and declares that this act is necessary
7 for the immediate preservation of the public peace, health,
8 and safety.

BY SENATOR McCormick;
also REPRESENTATIVES Kopel and Philips.

A BILL FOR AN ACT

1 CONCERNING THE ASBESTOS CONTROL FUNCTIONS IN THE DEPARTMENT OF
2 HEALTH, AND PROVIDING FOR THE CONTINUATION THEREOF.

Bill Summary

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

Continues the asbestos control functions in the department of health for a specified period of time. Provides that prior to such termination, the asbestos control functions shall be reviewed by the department of regulatory agencies.

Authorizes the air quality control commission to promulgate standards for asbestos air sampling and persons who conduct asbestos air sampling. Requires the commission to amend a certain term used in rules and regulations to conform to the legislative intent of such standards.

Requires the air pollution control division within the division of administration in the department of health to develop or purchase examinations administered to applicants for certification under the program. Requires that such tests be administered a certain number of times per year and that the division set passing scores based on a minimum level of competency in the procedures to be followed in asbestos abatement. Establishes procedures to be followed and requirements for applicants who fail such an examination and seek to be reexamined for certification under the program.

Authorizes the certification by endorsement of individuals under the program if such persons are equivalently certified in good standing in another jurisdiction. Provides for the renewal of certification under the program.

Provides grounds for disciplinary action against persons certified under the program for violation of its provisions. Authorizes the division to issue letters of admonition for

misconduct that should not be dismissed without merit but does not warrant more severe disciplinary action. Authorizes the appeal of actions taken by the commission under the program to the Colorado court of appeals. Authorizes the division to require corrective education as a disciplinary action against certified persons under the program. Authorizes the imposition of administrative fines upon persons who violate the provisions of the program or any rules or regulations promulgated thereunder. Sets the requirements for recertification of persons whose certification is revoked under the program. Authorizes the use of injunctive proceedings through the attorney general to enforce the provisions of the program.

Requires the commission to promulgate rules and regulations governing refresher training for persons certified under the program. Provides that such refresher training shall not exceed the requirements of the federal "Asbestos Hazard Emergency Response Act of 1986" and that such regulations shall be related to insuring continuing competency in asbestos abatement procedures with a system of testing to measure the effectiveness of such programs. Repeals a rule of the air quality control commission in conflict with the statutory refresher training requirements in the act.

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

2 SECTION 1. 24-34-104, Colorado Revised Statutes, 1988

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

4 SUBSECTION to read:

5 24-34-104. General assembly review of regulatory

6 agencies and functions for termination, continuation, or

7 reestablishment. (24.2) The functions of the division of

8 administration in the department of health relating to

9 asbestos control performed in accordance with part 5 of

10 article 7 of title 25, C.R.S., shall terminate on July 1,

11 1995.

12 SECTION 2. 25-7-503 (1), Colorado Revised Statutes, 1989

13 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to

14 read:

1 25-7-503. Powers and duties of the commission - rules
2 and regulations - delegation of authority to division.

3 (1) (e) To promulgate rules and regulations setting minimum
4 standards for asbestos air sampling and for persons engaging
5 in such sampling and to seek injunctive relief under section
6 25-7-511.5, including relief against any asbestos air sampler
7 who acts beyond his level of competency. In promulgating
8 rules and regulations setting such standards, the commission
9 shall not use the term "air sampling professional" in such
10 standards and shall amend said term in rules III.C.7.a. (i),
11 (i)(A), and (iv) of part B of regulation 8 of the rules and
12 regulations of the commission, concerning measuring asbestos
13 levels (5 CCR 1001-10), to conform to the requirements of this
14 paragraph (e).

15 SECTION 3. Part 5 of article 7 of title 25, Colorado
16 Revised Statutes, 1982 Repl. Vol., as amended, is amended BY
17 THE ADDITION OF A NEW SECTION to read:

18 25-7-505.5. Testing for certification under part 5.

19 (1) The division shall develop or purchase the examinations
20 administered pursuant to this part 5 for certification under
21 sections 25-7-506 and 25-7-507 and shall set the passing
22 scores on all such examinations based on a minimum level of
23 competency in the procedures to be followed in asbestos
24 abatement. The division shall administer such examinations at
25 least twice each year or more frequently if demand so warrants
26 and shall administer such examinations at various locations in
27 the state if demand so warrants. The purpose of the

1 examinations required pursuant to this section is to insure
2 minimum competency in asbestos abatement procedures. If a
3 person fails to achieve a passing score on any such
4 examination, retesting of such person shall be with a
5 different examination and after such person has completed
6 remedial training as determined to be satisfactory to the
7 division for minimum competency in asbestos abatement
8 procedures. Prior to such reexamination, an applicant shall
9 file a new application as specified in subsection (1) of this
10 section, and such individual shall pay a fee set by the
11 division. Such fee shall be no greater than the amount paid
12 for the original examination.

13 (2) Notwithstanding the provisions of sections 25-7-506
14 and 25-7-507, the division may certify an individual under
15 this part 5 by endorsement if such individual possesses in
16 good standing a valid license, certificate, or other
17 registration from any other state or territory of the United
18 States or from the district of Columbia, which license,
19 certificate, or other registration requires qualifications
20 substantially equivalent to those of this part 5 as determined
21 by the division.

22 SECTION 4. 25-7-506 (2) (b), Colorado Revised Statutes,
23 1989 Repl. Vol., is amended, and the said 25-7-506 is further
24 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

25 25-7-506. Certificate of trained supervisors -
26 application - approval by division - responsibilities of
27 trained supervisors - renewal. (2) (b) That the applicant

1 has passed an examination administered by the division
2 PURSUANT TO SECTION 25-7-505.5 on the procedures to be
3 followed in asbestos abatement.

4 (5) Any certificate that has lapsed shall be deemed to
5 have expired. A certificate issued pursuant to this section
6 may be renewed prior to expiration upon payment of a renewal
7 fee set by the commission. An individual may reinstate an
8 expired certificate within two years of such expiration upon
9 payment of a reinstatement fee set by the commission. An
10 individual whose certificate has lapsed for a period longer
11 than two years after expiration shall apply to the division
12 for certification as required by this section and shall not be
13 recertified until the division determines that such individual
14 has complied with the provisions of subsections (1) and (2) of
15 this section.

16 SECTION 5. 25-7-508 (2), Colorado Revised Statutes, 1989
17 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
18 read:

19 25-7-508. Grounds for disciplinary action - letters of
20 admonition - denial of certification - suspension, revocation,
21 or refusal to renew - requirement for corrective education -
22 administrative fines. (2) (a) The division may take
23 disciplinary action in the form of the issuance of a letter of
24 admonition, or, in conformity with the provisions of article 4
25 of title 24, C.R.S., the suspension, revocation, or refusal to
26 renew certification pursuant to section 25-7-505, 25-7-506, or
27 25-7-507, should the division find that a person certified

1 under this part 5:

2 (I) Has violated or has aided and abetted in the
3 violation of any provision of this part 5 or any rule or
4 regulation or order of the division or commission promulgated
5 or issued hereunder;

6 (II) Has been subject to a disciplinary action relating
7 to a certification or other form of registration or license to
8 practice asbestos abatement under this part 5 or any related
9 occupation in any other state, territory, or country for
10 disciplinary reasons, which action shall be deemed to be prima
11 facie evidence of grounds for disciplinary action, including
12 denial of certification by the division. This subparagraph
13 (II) shall apply only to disciplinary actions based upon acts
14 or omissions in such other state, territory, or country
15 substantially similar to those set out as grounds for
16 disciplinary action pursuant to this part 5.

17 (III) Has been convicted of a felony or has had accepted
18 by a court a plea of guilty or nolo contendere to a felony if
19 the felony is related to the ability to engage in activities
20 regulated pursuant to this part 5 a certified copy of the
21 judgment of a court of competent jurisdiction of such
22 conviction or plea shall be conclusive evidence of such
23 conviction or plea. In considering the disciplinary action,
24 the division shall be governed by the provisions of section
25 24-5-101, C.R.S.

26 (IV) Has failed to report to the division a disciplinary
27 action specified in subparagraph (II) or a felony conviction

1 for an act specified in subparagraph (III) of this paragraph
2 (a);

3 (V) Has failed to meet any permit and notification
4 requirement or failed to correct any violations cited by the
5 division during any inspection within a reasonable period of
6 time;

7 (VI) Has used misrepresentation or fraud in obtaining or
8 attempting to obtain a certificate under this part 5;

9 (VII) Has failed to adequately supervise an asbestos
10 abatement project as a certified trained supervisor;

11 (VIII) Has committed any act or omission which does not
12 meet generally accepted standards of the practice of asbestos
13 abatement;

14 (IX) Has engaged in any false or misleading advertising.

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

1 of admonition is based. If such request is timely made, the
2 letter of admonition shall be deemed vacated, and the matter
3 shall be processed by means of formal disciplinary
4 proceedings.

5 SECTION 6. 25-7-508 (3), Colorado Revised Statutes, 1989
6 Repl. Vol., is amended, and the said 25-7-508, as amended, is
7 further amended BY THE ADDITION OF THE FOLLOWING NEW
8 SUBSECTIONS, to read:

9 25-7-508. Grounds for disciplinary action - letters of
10 admonition - denial of certification - suspension, revocation,
11 or refusal to renew - requirement for corrective education -
12 administrative fines. (3) A person aggrieved by an action
13 taken by the division pursuant to subsection (2) of this
14 section may contest the action by requesting a hearing before
15 the commission within thirty days after the applicant is
16 notified in writing of the division's action. Such hearing
17 shall be held pursuant to section 25-7-119. ANY PERSON
18 AGGRIEVED BY AN ACTION TAKEN BY THE COMMISSION PURSUANT TO
19 SUBSECTION (2) OF THIS SECTION MAY APPEAL SUCH ACTION TO THE
20 COURT OF APPEALS IN ACCORDANCE WITH SECTION 24-4-106 (11),
21 C.R.S.

22 (4) In addition to or in lieu of the forms of
23 disciplinary action authorized in subsection (2) of this
24 section, the division, in its discretion, may require
25 corrective education in the area of asbestos abatement as a
26 disciplinary action against a certified person when the
27 situation so warrants, such corrective education to be

1 directed toward weak or problematic areas of a certified
2 person's practice.

3 (5) Any certified person who violates any provision of
4 this part 5 or any standards or rules or regulations
5 promulgated pursuant to this part 5 may be disciplined upon a
6 finding of misconduct by the division as follows:

7 (a) In any first administrative proceeding against a
8 certified person, a fine of not less than one hundred dollars
9 nor more than one thousand dollars;

10 (b) In a second or subsequent administrative proceeding
11 against a certified person for transactions occurring after a
12 final agency action determining that a violation of this part
13 5 has occurred, a fine of not less than one thousand dollars
14 nor more than ten thousand dollars.

15 (6) If a certification is revoked by the division, the
16 person against whom such action was taken shall not apply for
17 recertification for a period of six months after such
18 revocation and shall be required to demonstrate compliance
19 with any disciplinary action imposed by the division and to
20 demonstrate competency in asbestos abatement procedures prior
21 to receiving a new certificate.

22 SECTION 7. Part 5 of article 7 of title 25, Colorado
23 Revised Statutes, 1989 Repl. Vol., is amended BY THE ADDITION
24 OF THE FOLLOWING NEW SECTIONS to read:

25 25-7-511.5. Injunctive proceedings. (1) The division
26 may, in the name of the people of the state of Colorado,
27 through the attorney general of the state of Colorado, apply

1 for an injunction in any court of competent jurisdiction:

2 (a) To enjoin any person from committing any act
3 prohibited by the provisions of this part 5;

4 (b) To enjoin a certified person from practicing the
5 profession for which he is certified under this part 5.

6 (2) If it is established that the defendant has been or
7 is committing any act prohibited by this part 5, the court
8 shall enter a decree perpetually enjoining said defendant from
9 further committing said act or from practicing asbestos
10 abatement.

11 (3) Such injunctive proceedings shall be in addition to
12 and not in lieu of all penalties and other remedies provided
13 in this part 5.

14 (4) When seeking an injunction under this section, the
15 division shall not be required to allege or prove either that
16 an adequate remedy at law does not exist or that substantial
17 or irreparable damage would result from a continued violation.

18 25-7-511.6. Refresher training - authorization. The
19 commission shall promulgate rules and regulations governing
20 refresher training programs for persons in both school and
21 nonschool asbestos abatement. Such programs shall not exceed
22 the requirements of refresher training mandated under the
23 federal "Asbestos Hazard Emergency Response Act of 1986"
24 (Public Law 99-519), as amended, and any rules and regulations
25 promulgated under such federal law. In adopting such rules
26 and regulations, the commission shall ensure that refresher
27 training requirements are related to ensuring continuing

1 competency in asbestos abatement procedures. The division
2 shall implement a system of testing to measure the knowledge
3 obtained by certified persons attending such programs.

4 SECTION 8. 25-7-512, Colorado Revised Statutes, 1989
5 Repl. Vol., is amended to read:

6 25-7-512. Repeal of part. This part 5 is repealed,
7 ~~effective July 1, 1990. The certification function of the~~
8 ~~division shall also terminate on July 1, 1990~~ 1995. Prior to
9 such termination, the ~~certification function~~ FUNCTIONS OF THE
10 DIVISION UNDER THIS PART 5 shall be reviewed as provided for
11 in section 24-34-104, C.R.S. ~~Such review shall include a~~
12 ~~determination whether continued certification, training, and~~
13 ~~state supervision is a necessary benefit to the public or~~
14 ~~whether the public can be adequately protected by other means~~
15 ~~in a more cost-effective manner.~~

16 SECTION 9. Repeal of rule. To further the general
17 assembly's intent as expressed in the provisions of section
18 25-7-511.6, Colorado Revised Statutes, Rule II. B. 3. of
19 Regulation No. 8 of the Air Quality Control Commission in the
20 Department of Health, concerning refresher training courses (5
21 CCR 1001-10), is expressly repealed.

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

BY SENATORS DeNier and L. Trujillo;
also REPRESENTATIVES Kopel and Philips.

A BILL FOR AN ACT

1 CONCERNING CONTINUATION OF THE REGULATION OF THE BEE INDUSTRY.

Bill Summary

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

Removes regulation of bee products from the "Colorado Bee and Bee Products Act". Broadens the definition of "contagious disease". Abolishes the registration requirement of beekeepers and requires the beekeeper or person requesting an inspection of beehives for contagious disease for the purpose of interstate movement to be liable for the costs incurred. Requires beehives to be equipped with movable combs.

Changes membership of the advisory committee and deletes the provision authorizing reimbursement to the members thereof for travel and subsistence.

Establishes the bee inspection fund, which replaces the beekeeper licensing fund, and credits funds in the beekeeper licensing fund prior to the effective date of this act to said bee inspection fund.

Adds civil penalties to existing criminal penalties and provides an enforcement mechanism. States that, in an action for injunction, the commissioner of agriculture shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law and that the court shall not require the commissioner to post a bond. Grants emergency powers to the commissioner.

Repeals provisions defining and regulating bee products and the sunset review provision for the licensing program.

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

1 SECTION 1. 35-25-101, Colorado Revised Statutes, 1984
2 Repl. Vol., is amended to read:

3 35-25-101. Short title. This article shall be known and
4 may be cited as the "Colorado Bee and-Bee-Products Act".

5 SECTION 2. 35-25-102 (12) and (19), Colorado Revised
6 Statutes, 1984 Repl. Vol., are amended to read:

7 35-25-102. Definitions. (12) "Contagious disease"
8 means diseases ANY DISEASE produced by disease agents or
9 parasites, PARASITIC AGENTS OR OTHER HEALTH THREATS TO BEES OR
10 BEEKEEPERS which shall be determined by the advisory-committee
11 COMMISSIONER as being hazardous to the beekeeping industry in
12 this state.

13 (19) "Person" means any body politic, individual,
14 partnership, association, corporation, company, joint stock
15 association, or organized group of persons whether
16 incorporated or not and includes any trustee, receiver, or
17 assignee. "BODY POLITIC" MEANS ANY AGENCY OF THIS STATE OR OF
18 THE FEDERAL GOVERNMENT OR ANY UNIT OF LOCAL GOVERNMENT
19 INCLUDING ANY COUNTY, CITY, TOWN, SCHOOL DISTRICT, LOCAL
20 IMPROVEMENT OR SERVICE DISTRICT, SPECIAL DISTRICT, OR OTHER
21 GOVERNMENTAL UNIT HAVING AUTHORITY UNDER THE LAW TO TAX OR
22 IMPOSE ASSESSMENTS, INCLUDING SPECIAL ASSESSMENTS.

23 SECTION 3. 35-25-103 (2) (a), Colorado Revised Statutes,
24 1984 Repl. Vol., is amended, and the said 35-25-103 is further
25 amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to
26 read:

27 35-25-103. Enforcement. (2) (a) If it appears to the

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1 commissioner after examination of the facts that a violation
2 of any provision of this article has occurred, he shall MAY
3 refer the facts to the district attorney for the county in
4 which the violation occurred.

5 (5) (a) Any person who violates any provision of this
6 article or any regulation made pursuant to this article is
7 subject to a civil penalty, as determined by the commissioner.
8 The maximum penalty shall not exceed one thousand dollars per
9 violation.

10 (b) No civil penalty may be imposed unless the person
11 being charged has been given notice and opportunity for a
12 hearing pursuant to article 4 of title 24, C.R.S.

13 (c) If the commissioner is unable to collect such civil
14 penalty or if any person fails to pay all or a set portion of
15 the civil penalty as determined by the commissioner, the
16 commissioner may recover such amount plus costs and attorney
17 fees by action in any court of competent jurisdiction.

18 (d) Whenever the commissioner is found to have lacked
19 substantial justification to impose a civil penalty, the
20 person charged may recover his costs and attorney fees from
21 the department of agriculture.

22 (e) Moneys collected from any civil penalties under the
23 provisions of this section shall be paid to the state
24 treasurer, who shall credit the same to the bee inspection
25 fund.

26 (f) Before imposing any civil penalty, the commissioner
27 may consider the effect of such penalty on the ability of the

1 person charged to stay in business.

2 (6) The commissioner shall have full authority to
3 administer oaths and take statements, to issue subpoenas
4 requiring the attendance of witnesses before him and the
5 production of all books, memoranda, papers, and other
6 documents, articles, or instruments, and to compel the
7 disclosure by such witnesses of all facts known to them
8 relative to the matters under investigation. Upon the failure
9 or refusal of any witness to obey any subpoena, the
10 commissioner may petition the district court, and, upon a
11 proper showing, the court may enter an order compelling the
12 witness to appear and testify or produce documentary evidence.
13 Failure to obey such an order of the court shall be punishable
14 as a contempt of court.

15 SECTION 4. 35-25-104 (1) (g) and (2), Colorado Revised
16 Statutes, 1984 Repl. Vol., are amended to read:

17 35-25-104. Advisory committee and districts - sunset
18 review. (1) (g) One member ~~from the department of~~
19 ~~agriculture~~ WHO IS A BEEKEEPER AT LARGE.

20 (2) Members of the advisory committee shall receive no
21 compensation. ~~but shall be reimbursed for actual and necessary~~
22 ~~traveling and subsistence expenses incurred in performance of~~
23 ~~their official duties as members of such committee.~~

24 SECTION 5. 35-25-105, Colorado Revised Statutes, 1984
25 Repl. Vol., is amended to read:

26 35-25-105. Rules and regulations. (1) The commissioner
27 is authorized to adopt rules and regulations pursuant to the

1 provisions of article 4 of title 24, C.R.S., FOR THE
2 ADMINISTRATION OF THIS ARTICLE.

3 (2) THE POWERS AND DUTIES OF THE COMMISSIONER UNDER THIS
4 ARTICLE MAY BE DELEGATED BY THE COMMISSIONER TO EMPLOYEES OF
5 THE DEPARTMENT OF AGRICULTURE DESIGNATED BY HIM.

6 SECTION 6. 35-25-106 (1), Colorado Revised Statutes,
7 1984 Repl. Vol., is amended to read:

8 35-25-106. Examination of apiaries. (1) The
9 commissioner, when he has reason to suspect disease in any
10 apiary, shall MAY examine all reported or suspected apiaries.
11 If any contagious disease is present, he shall MAY examine all
12 apiaries in the same locality and ascertain whether or not any
13 contagious disease exists in the apiaries. If satisfied of
14 the existence of any such contagious disease, the commissioner
15 shall MAY burn, sterilize, or medically treat said apiary in
16 strict compliance with rules and regulations pertaining
17 thereto, OR THE COMMISSIONER MAY REQUIRE THE BEEKEEPER TO
18 BURN, STERILIZE, OR MEDICALLY TREAT SAID APIARY.

19 SECTION 7. 35-25-107, Colorado Revised Statutes, 1984
20 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH
21 AMENDMENTS, to read:

22 35-25-107. Inspection of beehives for interstate
23 movement. Any beekeeper or person requesting an inspection of
24 beehives for contagious disease for the purpose of interstate
25 movement shall be liable for all costs of such inspection.
26 The beekeeper or his agent shall accompany and assist the
27 inspector in making the inspection.

1 SECTION 8. 35-25-108, Colorado Revised Statutes, 1984
2 Repl. Vol., is amended to read:

3 35-25-108. Beehives equipped with movable combs -
4 certificate - permit. (1) ~~The commissioner may order any~~
5 ~~owner or possessor of bees in box hives, being hives without~~
6 ~~movable combs, to transfer such bees to movable frame hives~~
7 ~~within a specified time in accordance with rules and~~
8 ~~regulations pertaining thereto and to destroy said bees if~~
9 ~~they are not transferred within the time specified~~ BEEHIVES
10 SHALL BE EQUIPPED WITH MOVABLE COMBS.

11 (2) Bees on combs and used beekeeping appliances or
12 equipment entering Colorado must be accompanied by a
13 certificate declaring the apiaries from which the bees,
14 appliances, or equipment originated to be free from bee
15 CONTAGIOUS diseases. This certificate shall be from a duly
16 authorized inspector of the state of origin.

17 (3) Anyone desiring to move bees on combs or used bee
18 equipment into the state of Colorado shall be required to
19 secure ~~a Colorado beekeeper's license and~~ an entry permit from
20 the commissioner. Application for this permit shall be
21 accompanied by a TIMELY certificate of inspection, issued
22 ~~within the past sixty days~~ AS DEFINED BY THE COMMISSIONER,
23 ISSUED from the state apiary inspection agency of the state of
24 origin, showing freedom from CONTAGIOUS disease, the number of
25 colonies to be moved, and the county to which the owner or
26 operator desires to move. The owner or operator of the bees
27 or equipment shall notify the commissioner upon arrival in the

1 state.

2 SECTION 9. 35-25-111, Colorado Revised Statutes, 1984
3 Repl. Vol., is amended to read:

4 35-25-111. Penalties. IN ADDITION TO CIVIL PENALTIES
5 WHICH MAY BE IMPOSED PURSUANT TO SECTION 35-25-103 (5), any
6 person violating any provision of this article is guilty of a
7 misdemeanor and, upon conviction thereof, shall be punished by
8 a fine of not more than one hundred dollars for the first
9 offense and, for any offense thereafter, is guilty of a class
10 2 misdemeanor and shall be punished as provided in section
11 18-1-106, C.R.S.

12 SECTION 10. 35-25-112, Colorado Revised Statutes, 1984
13 Repl. Vol., is amended to read:

14 35-25-112. Injunctive relief. The commissioner may
15 institute an action to enjoin any violation of this article or
16 any rule or regulation promulgated under this article. A
17 violation of this article or any rule or regulation
18 promulgated pursuant thereto is declared to constitute a
19 public nuisance. Such action for injunction may be maintained
20 notwithstanding the existence of other legal remedies and
21 notwithstanding the pendency or successful completion of a
22 criminal prosecution. IN ANY SUCH ACTION, THE COMMISSIONER
23 SHALL NOT BE REQUIRED TO PLEAD OR PROVE IRREPARABLE INJURY OR
24 THE INADEQUACY OF THE REMEDY AT LAW. UNDER NO CIRCUMSTANCES
25 SHALL THE COURT REQUIRE THE COMMISSIONER TO POST A BOND.

26 SECTION 11. 35-25-116, Colorado Revised Statutes, 1984
27 Repl. Vol., as amended, is amended to read:

1 35-25-116. Bee inspection fund - created. All fees
2 collected pursuant to ~~section 35-25-107~~ THIS ARTICLE shall be
3 transmitted to the state treasurer, who shall credit the same
4 to the ~~beekeeper--licensing~~ BEE INSPECTION fund, which is
5 hereby created. All moneys credited to the beekeeper
6 licensing fund PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, AS
7 AMENDED, shall be REMITTED TO THE BEE INSPECTION FUND TO BE
8 used to offset the direct and indirect costs of the department
9 of agriculture in administering the provisions of this
10 article. Moneys in the ~~beekeeper--licensing~~ BEE INSPECTION
11 fund shall not be deposited in or transferred to the general
12 fund of this state or any other fund. Moneys in such fund
13 shall not revert to the general fund at the end of any fiscal
14 year. The moneys credited to the ~~beekeeper--licensing~~ BEE
15 INSPECTION fund shall be appropriated by the general assembly
16 to the department of agriculture in the general appropriation
17 act for the sole purpose of administering this article.

18 SECTION 12. Article 25 of title 35, Colorado Revised
19 Statutes, 1984 Repl. Vol., as amended, is amended BY THE
20 ADDITION OF A NEW SECTION to read:

21 35-25-117. Emergency powers. If, at any time, the
22 commissioner determines the existence of any imminent hazard
23 inimical to the beekeeping industry in this state, the
24 commissioner may take appropriate action, including but not
25 limited to: Inspecting any public or private place;
26 establishing and enforcing quarantines; issuing and enforcing
27 orders and regulations for the control and eradication of said

1 hazard; and taking such other action as may seem advisable
2 and not contrary to law as the commissioner is empowered with
3 pursuant to this title. After the commissioner acts pursuant
4 to any emergency power, he shall submit a written report to
5 the general assembly within thirty days of such action
6 detailing the underlying hazard and describing any necessary
7 continuing activity. The commissioner is hereby authorized to
8 seek reimbursement from the general assembly for any funds
9 expended in the exercise of these emergency powers.

10 SECTION 13. Repeal. 2-3-1203 (3) (e) (VII), Colorado
11 Revised Statutes, 1980 Repl. Vol., as amended, 24-34-104
12 (19.1) (d), Colorado Revised Statutes, 1988 Repl. Vol., and
13 35-1-112, 35-25-102 (1.5), (2.5), (6), (17), and (18),
14 35-25-102.5, 35-25-104 (3), and 35-25-109, Colorado Revised
15 Statutes, 1984 Repl. Vol., as amended, are repealed.

16 SECTION 14. Safety clause. The general assembly hereby
17 finds, determines, and declares that this act is necessary
18 for the immediate preservation of the public peace, health,
19 and safety.

BY REPRESENTATIVES Owen, Kopel, and Philips;
also SENATORS McCormick and L. Trujillo.

A BILL FOR AN ACT

1 CONCERNING THE REGULATION OF PESTICIDE APPLICATIONS.

Bill Summary

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

Grants authority to the commissioner of agriculture to regulate all aspects of pesticide application by commercial applicators and by certain limited commercial and public applicators. Defines classes of applicators and individuals qualified to perform certain acts related to the evaluation and use of pesticides or other pest controls. Requires commercial applicators to possess a business license issued by the commissioner, to obtain certain insurance coverage, to provide verifiable training to their technicians, and to employ or secure the services of a qualified supervisor. Requires limited commercial and public applicators subject to the act to employ or secure the services of a qualified supervisor and to provide verifiable training to their technicians. Requires all applicators to maintain certain records. Requires qualified supervisors, certified operators, and pest control consultants to be licensed under the act. Establishes examination and licensing procedures for all licensees authorized under the act.

Authorizes the commissioner to establish a registry of pesticide-sensitive persons and requires commercial, limited commercial, and public applicators to take reasonable and verifiable actions to prenotify such persons prior to undertaking any pesticide application on property abutting the property where the pesticide-sensitive person resides. Requires commercial, limited commercial, and public applicators to post standardized notification signs following any turf, water, or ornamental pesticide application on any property. Provides that no county, city and county, or

municipality shall impose any notification requirements upon commercial applicators which are more stringent than those imposed by this act; except that such entities shall retain the authority to impose any notification requirements upon private individuals, property owners, and the general public.

Defines actions which are unlawful under the act. Authorizes the commissioner to make any and all investigations necessary to insure compliance with the act and to issue cease and desist orders and to seek injunctive relief for violations of the act. Establishes grounds for disciplinary actions against any licensees licensed under the act and penalties for such violations. Establishes civil and criminal penalties for violations of the act.

Establishes an advisory committee to assist the commissioner in promulgating rules and regulations to carry out the provisions of the act. Establishes the commercial pesticide applicator fund. Provides for the repeal of the advisory committee and the licensing function of the commissioner on a certain date.

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

2 SECTION 1. Article 10 of title 35, Colorado Revised
3 Statutes, 1984 Repl. Vol., as amended, is REPEALED AND
4 REENACTED, WITH AMENDMENTS, to read:

5 ARTICLE 10

6 Pesticide Applicators' Act

7 35-10-101. Short title. This article shall be known and
8 may be cited as the "Pesticide Applicators' Act".

9 35-10-102. Legislative declaration. The general
10 assembly hereby finds and declares that pesticides perform a
11 valuable function in controlling insects, rodents, weeds, and
12 other forms of life which may be injurious to crops,
13 livestock, and other desirable forms of plant and animal life,
14 to structures, and to individuals. The general assembly
15 further finds and declares that pesticides contain toxic
16 substances which may pose a serious risk to the public health

1 and safety and that regulation of pesticide use is necessary
2 to prevent adverse effects on individuals and the environment.

3 35-10-103. Definitions. As used in this article, unless
4 the context otherwise requires:

5 (1) "Certified operator" means an individual who mixes,
6 loads, or applies any pesticide, including restricted use
7 pesticides, under the supervision of a qualified supervisor.

8 (2) "Commercial applicator" means any person who engages
9 in the business of applying pesticides or operating a device
10 for hire.

11 (3) "Commissioner" means the commissioner of
12 agriculture.

13 (4) "Department" means the department of agriculture.

14 (5) "Device" means any instrument or contrivance, other
15 than a firearm, intended for trapping, destroying, repelling,
16 or mitigating any pest or any other form of plant or animal
17 life (other than man and other than bacteria, viruses, or
18 other microorganisms on or in living man or other living
19 animals); except that "device" shall not include equipment
20 used for the application of pesticides when sold separately
21 therefrom.

22 (6) "EPA" means the United States environmental
23 protection agency.

24 (7) "General use pesticide" means any pesticide so
25 designated by the commissioner or the administrator of the
26 EPA.

27 (8) "Limited commercial applicator" means any person

1 engaged in applying pesticides in the course of conducting a
2 business; except that such application shall be only in or on
3 property owned by the person or the person's employer.

4 (9) "Pest" means any insect, rodent, nematode, fungus,
5 weed, or other form of terrestrial or aquatic plant or animal
6 life or virus, bacteria, or other microorganism (except
7 viruses, bacteria, or other microorganisms on or in living man
8 or in other living animals) which the commissioner or the
9 administrator of the EPA declares to be a pest.

10 (10) "Pest control consultant" means any individual who,
11 for compensation, evaluates pest problems, recommends pest
12 controls using pesticides or devices, evaluates the results of
13 the use of pest controls using pesticides or devices, or
14 supervises the distribution of restricted use pesticides.

15 (11) "Pesticide" means any substance or mixture of
16 substances intended for preventing, destroying, repelling, or
17 mitigating any pest or any substance or mixture of substances
18 intended for use as a plant regulator, defoliant, or
19 desiccant; except that the term "pesticide" shall not include
20 any article that is a "new animal drug" as designated by the
21 United States food and drug administration.

22 (12) "Plant regulator" means any substance or mixture of
23 substances intended, through physiological action, for
24 accelerating or retarding the rate of growth or rate of
25 maturation or for otherwise altering the behavior of plants or
26 the produce thereof; except that "plant regulator" shall not
27 include substances to the extent that they are intended as

1 plant nutrients, trace elements, nutritional chemicals, plant
2 inoculants, and soil amendments. Also, "plant regulator"
3 shall not be required to include any of those nutrient
4 mixtures or soil amendments which are commonly known as
5 vitamin-hormone horticultural products, intended for
6 improvement, maintenance, survival, health, and propagation of
7 plants, which are not for pest destruction and which are
8 nontoxic and nonpoisonous in the undiluted packaged
9 concentration.

10 (13) "Public applicator" means any agency of the state,
11 any county, city and county, or municipality, or any other
12 local governmental entity or political subdivision which
13 applies pesticides.

14 (14) "Qualified supervisor" means any individual who,
15 without supervision, evaluates pest problems, or recommends
16 pest controls using pesticides or devices, or mixes, or
17 loads, or applies any pesticide, or sells application
18 services, or operates devices, or supervises others in any of
19 these functions.

20 (15) "Restricted use pesticide" means any pesticide
21 designated as a restricted or limited use pesticide by the
22 commissioner or as a restricted use pesticide by the
23 administrator of the EPA.

24 (16) (a) "Technician" means any individual who:

25 (I) Uses a device under the supervision of a qualified
26 supervisor;

27 (II) Mixes or applies general use pesticides under the

1 supervision of a qualified supervisor or restricted use
2 pesticides under the on-site supervision of a qualified
3 supervisor; or

4 (III) Evaluates pest problems, recommends products or
5 treatments for pest problems, or sells application services
6 under the supervision of a qualified supervisor.

7 (b) "Technician" does not include any individual whose
8 duties are solely clerical or janitorial or otherwise
9 completely disassociated from pest control.

10 (17) "Under the on-site supervision of" refers to work
11 performed by an individual acting under the instruction and
12 control of a qualified supervisor who is present at the work
13 site at the time the work is being performed.

14 (18) "Under the supervision of" refers to work performed
15 by an individual acting under the instruction and control of
16 a qualified supervisor, even if the qualified supervisor is
17 not physically present at the work site at the time the work
18 is performed.

19 35-10-104. Scope of article. (1) The following shall
20 be subject to the provisions of this article and to any rules
21 and regulations adopted pursuant thereto:

22 (a) Any commercial applicator;

23 (b) Any limited commercial applicator or any public
24 applicator which applies restricted use pesticides, whether or
25 not a particular application involves restricted use or
26 general use pesticides; or

27 (c) Any limited commercial applicator or public

1 applicator which requests, in the form and manner specified by
2 the commissioner, that it be subject to the provisions of this
3 article and to any rules and regulations adopted pursuant
4 thereto.

5 (2) The provisions of this article shall not apply to:

6 (a) Any person who performs the following acts for the
7 purposes of producing any agricultural commodities on property
8 owned or rented by him or his employer or, if such acts are
9 performed without compensation other than trading of personal
10 services between producers of agricultural commodities, on the
11 property of another person:

12 (I) The operation of a device or the supervision of such
13 operation;

14 (II) The use or supervision of the use of any pesticides
15 except those designated for limited use by the commissioner
16 pursuant to section 35-9-105 (1) (d);

17 (b) Any individual who operates a device or uses any
18 pesticide or who supervises, evaluates, or recommends such
19 acts on the property of another without compensation; or

20 (c) Any individual who uses a device or applies any
21 pesticide or who supervises such acts at his home or on his
22 property, when such use or supervision is not compensated and
23 is not in the course of conducting a business.

24 35-10-105. Commercial applicator - business license
25 required. Any person acting as a commercial applicator must
26 possess a valid commercial applicator business license issued
27 by the commissioner in accordance with this article and any

1 rules and regulations adopted pursuant thereto. A commercial
2 applicator business license may only be issued for the class
3 or subclass of pesticide application in which the qualified
4 supervisor employed or otherwise retained by the commercial
5 applicator is licensed.

6 35-10-106. Commercial applicator - license requirements
7 - application - fees. (1) As requisites for licensure, the

8 applicant for a commercial applicator business license shall:

9 (a) Obtain liability insurance in the *minimum* amount of
10 four hundred thousand dollars with the provision that such
11 policy shall not be cancelled unless written notice is
12 provided to the commissioner at least ten days prior to such
13 cancellation; except that liability insurance policies
14 containing a so-called "pollution exclusion" shall satisfy
15 this paragraph (a);

16 (b) Employ or secure the services by documented
17 agreement of a qualified supervisor who is licensed in the
18 class or subclass of pesticide application performed by the
19 business;

20 (c) Provide verifiable training to all technicians in
21 his employ according to standards adopted by the commissioner;

22 (d) Identify all pesticide application equipment in the
23 form and manner prescribed by the commissioner.

24 (e) If it engages in aerial application of pesticides,
25 possess a certificate issued by the federal aviation
26 administration as specified in license qualifications adopted
27 by the commissioner.

1 (2) Each applicant for a commercial applicator business
2 license shall submit an application providing all information
3 in the form and manner the commissioner shall designate,
4 including, but not limited to, verification that the applicant
5 has complied with subsection (1) of this section.

6 (3) (a) If a commercial applicator operates under more
7 than one business name from a single location, the name of
8 each such business providing services related to pesticide
9 application shall be listed with the commissioner in the form
10 and manner he shall designate. The commissioner may require
11 that a separate fee be paid for each business name so listed.

12 (b) No additional commercial applicator business license
13 shall be required for such additional business names.

14 (c) If a commercial applicator operates under more than
15 one business name from a single location, the applicator must
16 maintain separate pesticide application records pursuant to
17 section 35-10-111 and separate business records for each such
18 business name.

19 (4) Each applicant for a commercial applicator business
20 license shall pay a license fee in an amount determined by the
21 commissioner.

22 (5) Each commercial applicator business license shall
23 expire on January 1 of each year.

24 (6) Each licensee shall report to the commissioner, in
25 the form and manner the commissioner shall designate, any
26 change to the information provided in such licensee's
27 application or in such reports previously submitted, within

1 fifteen days of such change.

2 35-10-107. Commercial applicator business license -
3 renewals. (1) Each commercial applicator shall make an
4 application to renew its business license on or before the
5 first working day of January for the year of renewal. Said
6 application shall be in the form and manner prescribed by the
7 commissioner and shall be accompanied by the renewal fee.

8 (2) If the application for renewal is not postmarked on
9 or before the first working day of January for the year of
10 renewal, a penalty fee of one-half the renewal fee shall be
11 assessed and added to the license fee. No license shall be
12 renewed until the total fee is paid.

13 (3) If the application and fee for renewal are not
14 postmarked on or before February 1, the business license shall
15 not be renewed, and the commercial applicator shall apply for
16 a new license.

17 35-10-108. Commercial applicators - invoice notice.
18 Commercial applicators shall include a statement in
19 conspicuous type on each customer invoice that indicates that
20 commercial applicators are licensed by the department. Said
21 statement shall be exactly prescribed by rule adopted by the
22 commissioner.

23 35-10-109. Limited commercial and public applicators -
24 no business license required. No business license shall be
25 required for limited commercial or public applicators; except
26 that the commissioner may require such applicators to register
27 with the department in the form and manner he shall designate

1 and to pay an administrative fee in an amount which he shall
2 determine.

3 35-10-110. Limited commercial and public applicators -
4 requirements for operation. (1) For each class or subclass
5 of pesticide application a limited commercial or public
6 applicator applies, it shall employ at least one qualified
7 supervisor who is licensed in that class or subclass of
8 pesticide application or shall secure the services of such
9 qualified supervisor by documented agreement.

10 (2) Notwithstanding the provisions of subsections (1) of
11 this section, no public applicator shall be required to pay
12 licensing or certification fees for any qualified supervisor
13 or certified operator which it may employ.

14 (3) Every limited commercial or public applicator shall
15 provide verifiable training to its technicians according to
16 standards adopted by the commissioner.

17 (4) If the commissioner, pursuant to section 35-10-109,
18 establishes a registry of limited commercial and public
19 applicators, he may also require that each applicator report,
20 in the form and manner the commissioner shall designate, any
21 change to the information provided by such applicator to the
22 registry or in any such reports previously submitted, within
23 fifteen days of said change.

24 35-10-111. Record-keeping requirements. (1) Each
25 commercial, limited commercial, and public applicator shall:

26 (a) Keep and maintain records of each pesticide
27 application in the form and manner designated by the

1 commissioner. Such records shall be retained for a period of
2 three years from the date of the pesticide application and
3 shall be kept at the address specified in the application for
4 the commercial applicator's business license or, in the case
5 of limited commercial and public applicators, at the address
6 specified in the registry authorized in section 35-10-109.

7 (b) Submit such additional reports as may be required by
8 the commissioner.

9 35-10-112. Notification requirements - registry of
10 pesticide-sensitive persons - preemption. (1) The
11 commissioner shall promulgate rules and regulations for the
12 establishment of a registry of pesticide-sensitive persons to
13 be maintained by the department. Pesticide-sensitive persons
14 may apply to be placed on the registry in the form and manner
15 prescribed by the commissioner and shall pay an administrative
16 fee in an amount to be determined by the commissioner. Said
17 registry shall be updated at least annually and the published
18 registry shall be provided to all commercial, limited
19 commercial, and public applicators on record with the
20 commissioner. Names added after the most recently published
21 registry shall be available from the department upon request.

22 (2) Pesticide-sensitive persons accepted for the
23 registry shall be provided with standardized
24 pesticide-sensitive notification signs to be posted on their
25 property.

26 (3) Commercial, limited commercial, and public
27 applicators shall take reasonable and verifiable actions to

1 notify, prior to any pesticide application, any
2 pesticide-sensitive person who resides on property abutting
3 the property on which any pesticide is to be applied:

- 4 (a) Whose name is listed on the registry; or
- 5 (b) Whose pesticide-sensitive notification sign is
6 reasonably visible from the site of the pesticide application.

7 (4) Commercial, limited commercial, and public
8 applicators shall post standardized notice-of-application
9 signs following any turf, water, or ornamental pesticide
10 applications on any property.

11 (5) The pesticide-sensitive notification signs specified
12 in subsection (2) of this section shall be designed,
13 manufactured, and distributed solely by the department. The
14 design of the notice-of-application signs specified in
15 subsection (4) of this section shall be precisely prescribed
16 by rule and regulation adopted by the commissioner.

17 (6) No county, city and county, or municipality shall
18 enact or impose any notification requirements upon commercial
19 applicators which are more stringent than those imposed by
20 this article; except that each county, city and county, and
21 municipality shall retain the authority to impose any
22 notification requirements upon private individuals, property
23 owners, and the general public.

24 35-10-113. Qualified supervisor - license required. Any
25 individual acting as a qualified supervisor must possess a
26 valid qualified supervisor license issued by the commissioner
27 in accordance with this article and any rules and regulations

1 adopted pursuant thereto.

2 35-10-114. Certified operator - license required. On
3 and after a date determined by the commissioner pursuant to
4 rules and regulations, any individual acting as a certified
5 operator must possess a valid certified operator license
6 issued by the commissioner in accordance with this article and
7 any rules and regulations adopted pursuant thereto.

8 35-10-115. Pest control consultant - license required.
9 On and after a date determined by the commissioner pursuant to
10 rules and regulations, any person acting as a pest control
11 consultant must possess a valid pest control consultant
12 license issued by the commissioner in accordance with this
13 article and any rules and regulations adopted pursuant
14 thereto; except that any person licensed as a qualified
15 supervisor is also legally qualified to act as a pest control
16 consultant.

17 35-10-116. Qualified supervisor, certified operator, and
18 pest control consultant licenses - examination - application -

19 fees. (1) Each applicant for a qualified supervisor,
20 certified operator, or pest control consultant license shall:

- 21 (a) Pass a written examination in each class or subclass
22 of pesticide application in which he wishes to be licensed;
- 23 (b) Possess the degree of experience and any other
24 qualifications which may be required by the commissioner for
25 licensure under this section; and

26 (c) If he wishes to be licensed to engage in aerial
27 application of pesticides, possess a certificate issued by the

1 federal aviation administration as specified in license
2 qualifications adopted by the commissioner.

3 (2) Each applicant for licensure under this section
4 shall submit an application providing all information in the
5 form and manner the commissioner shall designate, including,
6 but not limited to, verification that such applicant has
7 complied with subsection (1) of this section.

8 (3) Each licensee shall be required to report to the
9 commissioner, in the form and manner he shall designate, any
10 change to the information provided in such licensee's
11 application or in any such reports previously submitted,
12 within fifteen days of such change.

13 (4) Each applicant for a license issued under this
14 section shall pay a license fee in an amount determined by the
15 commissioner.

16 35-10-117. Qualified supervisor, certified operator, and
17 pest control consultant licenses - expiration - renewal of
18 licenses. (1) Licenses issued pursuant to section 35-10-116
19 shall be valid for three years and shall expire on the
20 anniversary date of such license.

21 (2) A licensee licensed pursuant to section 35-10-116
22 may have the option to apply to renew a license without
23 further examination if he has completed, within the previous
24 three years, the competency requirements established by the
25 commissioner.

26 (3) A licensee shall submit a renewal application in the
27 form and manner designated by the commissioner on or before

1 the termination date of such license and shall pay a renewal
2 fee in an amount determined by the commissioner.

3 (4) If the application for renewal of any license issued
4 pursuant to section 35-10-116 is not postmarked on or before
5 the expiration date of the license, a penalty fee of one-half
6 the renewal fee shall be assessed and added to the renewal
7 fee. No license shall be renewed until the total renewal fee
8 is paid.

9 (5) If the application and fee for renewal of any
10 license issued pursuant to section 35-10-116 are not
11 postmarked on or before the thirtieth day following the
12 expiration date of the license, the license shall not be
13 renewed and the licensee shall apply for a new license.

14 35-10-118. Unlawful acts. (1) Unless otherwise
15 authorized by law, it is unlawful and a violation of this
16 article for any person:

17 (a) To perform any of the acts for which licensure as a
18 commercial applicator, qualified supervisor, certified
19 applicator, or pest control consultant is required without
20 possessing a valid license to do so;

21 (b) To hold oneself out as being so qualified to perform
22 any of the acts for which licensure as a commercial
23 applicator, qualified supervisor, certified applicator, or
24 pest control consultant is required without possessing a valid
25 license to perform such acts;

26 (c) To solicit, advertise, or offer to perform any of
27 the acts for which licensure as a commercial applicator,

1 qualified supervisor, certified applicator, or pest control
2 consultant is required without possessing a valid license to
3 perform such acts; to act as an agent for any principal to
4 solicit from any person the purchase of pesticide application
5 or pest control services from the principal when the principal
6 does not possess a valid license to perform the services being
7 offered; or to enter into a contract to perform such services;

8 (d) To refuse to comply with a cease and desist order
9 issued pursuant to section 35-10-121;

10 (e) To refuse or fail to comply with the provisions of
11 this article;

12 (f) (I) To make false, misleading, deceptive, or
13 fraudulent representations regarding:

14 (A) Pests and any infestation of pests prior to or
15 following any application of pesticide; or

16 (B) Pesticides or other pest controls or any aspect of
17 their use, including, but not limited to, representations
18 regarding their safety and effectiveness.

19 (II) It is a false representation to make claims as to
20 the safety of any pest control or pesticide or its components
21 or ingredients, including but not limited to such claims as
22 "safe", "noninjurious", "harmless", or "nontoxic to humans and
23 pets", with or without such qualifying phrases as "when used
24 as directed" and "when properly applied".

25 (g) To impersonate any state, county, city and county,
26 or municipal official or inspector;

27 (h) To refuse or fail to comply with any rules or

1 regulations adopted by the commissioner or any lawful order
2 issued by the commissioner.

3 (2) It is unlawful and a violation of this article for
4 any person acting as a commercial, limited commercial, or
5 public applicator, or as a qualified supervisor, certified
6 operator, or pest control consultant:

7 (a) To use, store, or dispose of pesticides, pesticide
8 containers, rinsates, or other related materials, or to
9 supervise or recommend such acts, in a manner inconsistent
10 with labelling directions or requirements, unless otherwise
11 provided for by law, or in an unsafe, negligent, or fraudulent
12 manner;

13 (b) To use or recommend the use of any pesticide or
14 device not registered with the department pursuant to article
15 9 of this title or to use or recommend the use of a pesticide
16 or device in any manner inconsistent with the restrictions of
17 the commissioner or the administrator;

18 (c) To use any device or pesticide or to direct or
19 recommend such use without providing appropriate supervision,
20 including, but not limited to, the application of any
21 pesticide without providing the supervision of a qualified
22 supervisor licensed in that class or subclass of pesticide
23 application;

24 (d) To maintain or supervise the maintenance of any
25 device or pesticide application equipment, including, but not
26 limited to, loading pumps, hoses, or metering devices in an
27 unsafe or negligent manner;

1 (e) To fail to provide the notification required
2 pursuant to section 35-10-112 (3).

3 (f) To make false or misleading representations or
4 statements of fact in any application, record, or report
5 required by this article or any rules or regulations adopted
6 pursuant thereto;

7 (g) To fail to maintain or submit any records or reports
8 required by this article or any rules or regulations adopted
9 pursuant thereto.

10 (3) It is unlawful and a violation of this article for
11 any commercial applicator, qualified supervisor, certified
12 applicator, or pest control consultant:

13 (a) To permit the use of his license by any other
14 person;

15 (b) To use or supervise or recommend the use of any
16 device or pesticide which, according to generally accepted
17 standards of practice, would be ineffective or inappropriate
18 for the pest problem being treated;

19 (c) To use any device or apply any pesticide or to
20 recommend or supervise such acts in any manner which fails to
21 meet generally accepted standards for such use or application.

22 (4) It is unlawful and a violation of this article for
23 any commercial applicator:

24 (a) To operate any device or to apply any pesticide if
25 the insurance required by section 35-10-106 (1) (a) is not in
26 full force and effect at the time of such use or application,
27 or if it does not have on file with the department, in the

1 form and manner designated by the commissioner, verification
2 that said insurance is in full force and effect;

3 (b) To fail to provide any customer with any information
4 required to be so provided by this article or by any rules and
5 regulations adopted pursuant thereto.

6 (5) It is unlawful and a violation of this article for
7 any employee or official of the department to disclose or use
8 for his own advantage any information derived from any
9 applications, reports, or records, including medical records,
10 submitted to the department pursuant to this article or to
11 reveal such information to anyone except authorized persons,
12 who may include officials or employees of the state, the
13 federal government, the courts of this or other states, and
14 physicians.

15 (6) The failure by any person to comply with the
16 provisions of section 35-10-118 (1) (a), (1) (b), (1) (c), (1)
17 (f), or (4) (b), is a deceptive trade practice and is subject
18 to the protections of the "Colorado Consumer Protection Act",
19 article 1 of title 6, C.R.S.

20 35-10-119. Powers and duties of the commissioner.

21 (1) The commissioner is authorized to administer and enforce
22 the provisions of this article and any rules and regulations
23 adopted pursuant thereto.

24 (2) The commissioner is authorized to adopt all
25 reasonable rules and regulations for the administration and
26 enforcement of this article, including, but not limited to:

27 (a) The regulation of all aspects of pesticide

1 application, including, but not limited to, the storage, use,
2 application, and disposal of any pesticide or device by any
3 person subject to this article;

4 (b) The establishment of qualifications for any
5 applicant and standards of practice for any of the licenses
6 authorized under this article, including the establishment of
7 classifications and subclassifications for any license
8 authorized under this article;

9 (c) The issuance and reinstatement of any license
10 authorized under this article and the grounds for any
11 disciplinary actions authorized under this article, including
12 letters of admonition or the denial, suspension, or revocation
13 of any license authorized under this article;

14 (d) The amount of the license fee for a commercial
15 applicator business license.

16 (3) The commissioner shall determine the content of each
17 such examination required for the administration of this
18 article and the amount of any examination fee. He shall
19 establish a passing score for each examination which reflects
20 a minimum level of competency in the class or subclass for
21 which the applicant is being tested.

22 (4) The commissioner shall establish standards and
23 procedures to issue a license to any person who possesses a
24 valid license from another jurisdiction, where the
25 qualifications for that license are substantially similar to
26 those adopted for a comparable license authorized under this
27 article.

1 (5) The commissioner shall establish any competency
2 requirements and standards for any individuals licensed under
3 section 35-10-116;

4 (6) The commissioner may require remedial continuing
5 education or training as a requisite for the reinstatement of
6 a license which has been revoked or suspended.

7 (7) The commissioner is authorized to conduct hearings
8 required under sections 35-10-120 and 35-10-121 pursuant to
9 article 4 of title 24, C.R.S., and to use administrative law
10 judges to conduct such hearings when their use would result in
11 a net saving of costs to the department.

12 (8) The commissioner is authorized to determine the
13 amount of any licensing fee, except that required for a
14 commercial applicator business license, authorized under this
15 article based on the actual cost of administering and
16 enforcing the article and any rules and regulations adopted
17 pursuant thereto.

18 (9) The commissioner is authorized to enter into
19 cooperative agreements with any agency or political
20 subdivision of this state or any other state, or with any
21 agency of the United States government, for the purpose of
22 carrying out the provisions of this article, receiving
23 grants-in-aid, securing uniformity of rules, and entering into
24 reciprocal licensing agreements.

25 (10) The commissioner is authorized to promulgate rules
26 and regulations to comply with the "Federal Insecticide,
27 Fungicide and Rodenticide Act", as amended; except that such

1 rules and regulations shall not contravene any provision of
2 this article, article 9 of this title, or any other provision
3 of state law.

4 (11) The powers and duties vested in the commissioner by
5 this article may be delegated to qualified employees of the
6 department.

7 35-10-120. Inspections - investigations - access -
8 subpoena. (1) The commissioner shall provide for the
9 inspection and analysis of pesticides being used and for the
10 inspection of equipment, devices, or apparatus used for the
11 application of pesticides, and he may require proper repairs
12 or other changes before further use.

13 (2) The commissioner, upon his own motion or upon the
14 complaint of any person, may make any and all investigations
15 necessary to insure compliance with this article.

16 (3) At any reasonable time during regular business hours,
17 the commissioner shall have free and unimpeded access upon
18 consent or upon obtaining an administrative search warrant:

19 (a) To all buildings, yards, warehouses, and storage
20 facilities in which any devices, pesticides, containers,
21 rinsates, or other related materials are kept, used, stored,
22 handled, processed, disposed of, or transported for the
23 purpose of carrying out any provision of this article or any
24 rule made pursuant to this article;

25 (b) To all records required to be kept and may make
26 copies of such records for the purpose of carrying out any
27 provision of this article or any rule made pursuant to this

1 article.

2 (4) The commissioner shall have full authority to
3 administer oaths and take statements, to issue subpoenas
4 requiring the attendance of witnesses before him and the
5 production of all books, memoranda, papers, and other
6 documents, articles, or instruments, and to compel the
7 disclosure by such witnesses of all facts known to them
8 relative to the matters under investigation. Upon the failure
9 or refusal of any witness to obey any subpoena, the
10 commissioner may petition the district court, and, upon a
11 proper showing, the court may enter an order compelling the
12 witness to appear and testify or produce documentary evidence.
13 Failure to obey such an order of the court shall be punishable
14 as a contempt of court.

15 (5) Complaints of record made to the commissioner and
16 the results of his investigations may, in the discretion of
17 the commissioner, be closed to public inspection, except as
18 provided by court order, during the investigatory period and
19 until dismissed or until notice of hearing and charges are
20 served on a licensee.

21 35-10-121. Enforcement. (1) The commissioner or his
22 designee shall enforce the provisions of this article.

23 (2) Whenever the commissioner has reasonable cause to
24 believe a violation of any provision of this article or any
25 rule made pursuant to this article has occurred and immediate
26 enforcement is deemed necessary, he may issue a cease and
27 desist order, which may require any person to cease violating

1 any provision of this article or any rule made pursuant to
 2 this article. Such cease and desist order shall set forth the
 3 provisions alleged to have been violated, the facts alleged to
 4 have constituted the violation, and the requirement that all
 5 actions cease forthwith. At any time after service of the
 6 order to cease and desist, the person may request, at his
 7 discretion, an immediate hearing to determine whether or not
 8 such violation has occurred. Such hearing shall be conducted
 9 pursuant to the provisions of article 4 of title 24, C.R.S.,
 10 and shall be determined promptly.

11 (3) Whenever the commissioner possesses sufficient
 12 evidence satisfactory to him indicating that any person has
 13 engaged in or is about to engage in any act or practice
 14 constituting a violation of any provision of this article or
 15 of any rule adopted under this article, the commissioner may
 16 apply to any court of competent jurisdiction to temporarily or
 17 permanently restrain or enjoin the act or practice in question
 18 and to enforce compliance with this article or any rule or
 19 order under this article. In any such action, the
 20 commissioner shall not be required to plead or prove
 21 irreparable injury or the inadequacy of the remedy at law.
 22 Under no circumstances shall the court require the
 23 commissioner to post a bond.

24 35-10-122. Disciplinary actions - denial of license.

25 (1) The commissioner, pursuant to the provisions of article 4
 26 of title 24, C.R.S., may issue letters of admonition or deny,
 27 suspend, refuse to renew, or revoke any license authorized

1 under this article if the applicant or licensee:

2 (a) Has refused or failed to comply with any provision
 3 of this article, any rule or regulation adopted under this
 4 article, or any lawful order of the commissioner;

5 (b) Has been convicted of a felony for an offense
 6 related to the conduct regulated by this article;

7 (c) Has had an equivalent license denied, revoked, or
 8 suspended by any authority;

9 (d) Has violated any provision of any other agricultural
 10 statute;

11 (e) Has been adjudicated a violator or has committed a
 12 violation of the "Federal Insecticide, Fungicide and
 13 Rodenticide Act", as amended; except that a consent decree
 14 entered into with the EPA shall not be considered a violation
 15 of such act unless an order from the regional administrator of
 16 the EPA or the consent decree shall specifically state that a
 17 violation has occurred;

18 (f) Has refused to provide the commissioner with
 19 reasonable, complete, and accurate information regarding
 20 methods or materials used or work performed when requested by
 21 the commissioner; or

22 (g) Has falsified any information requested by the
 23 commissioner.

24 (2) In any proceeding held under this section, the
 25 commissioner may accept as prima facie evidence of grounds for
 26 disciplinary action any disciplinary action taken against a
 27 licensee or certified person from another jurisdiction if the

1 violation which prompted the disciplinary action in that
2 jurisdiction would be grounds for disciplinary action under
3 this section.

4 (3) No licensee whose license has been revoked may apply
5 or reapply for any license under this article until two years
6 from the date of such revocation.

7 35-10-123. Civil penalties. (1) Any person who
8 violates any provision of this article or any rule or
9 regulation adopted pursuant to this article is subject to a
10 civil penalty, as determined by the commissioner. The maximum
11 penalty shall not exceed five thousand dollars per violation
12 per day.

13 (2) No civil penalty may be imposed unless the person
14 charged is given notice and opportunity for a hearing pursuant
15 to article 4 of title 24, C.R.S.

16 (3) If the commissioner is unable to collect such civil
17 penalty or if any person fails to pay all or a set portion of
18 the civil penalty as determined by the commissioner, the
19 commissioner may bring suit to recover such amount plus costs
20 and attorney fees by action in any court of competent
21 jurisdiction.

22 (4) Before imposing any civil penalty, the commissioner
23 may consider the effect of such penalty on the ability of the
24 person charged to stay in business.

25 35-10-124. Criminal penalties. (1) Any person who
26 violates any of the provisions of section 35-10-118 (1) (a),
27 (1) (b), (1) (c), (1) (e), (1) (g), (2) (a), (2) (b), (2) (c),

1 (2) (d), (3) (a), or (4) (a) commits a class 6 felony and
2 shall be punished as provided in section 18-1-105, C.R.S.

3 (2) Any person who violates any of the provisions of
4 section 35-10-118 (1) (f), (2) (f), (2) (g), (4) (b), and (5)
5 commits a class 1 misdemeanor and shall be punished as
6 provided in section 18-1-106, C.R.S.

7 35-10-125. Information. The commissioner, in
8 cooperation with other agencies of this state or the federal
9 government, may publish information pertaining to the use and
10 handling of pesticides and conduct workshops for the purpose
11 of informing the pesticide applicators of new developments in
12 the field of pesticides.

13 35-10-126. Advisory committee - sunset review. (1) The
14 state agricultural commission created by section 35-1-105
15 shall appoint an advisory committee of twelve members to
16 assist the commissioner in promulgating rules and regulations
17 to carry out the provisions of this article.

18 (2) The committee shall consist of the following
19 members:

20 (a) A formulator, or his Colorado representative,
21 actively engaged in the sale of pesticides in Colorado;

22 (b) A pest control consultant, licensed under this
23 article, who is actively engaged in business in Colorado;

24 (c) A commercial applicator, licensed under this
25 article, who is actively engaged in the commercial application
26 of pesticides for the control of agricultural crop pests;

27 (d) A commercial applicator, licensed under this

1 article, who is actively engaged in the commercial application
2 of pesticides for the control of turf or ornamental pests;

3 (e) A commercial applicator, licensed under this
4 article, who is actively engaged in the application of
5 pesticides for the control of structural pests;

6 (f) A qualified supervisor, employed by a limited
7 commercial applicator, who is actively engaged in the
8 application of pesticides;

9 (g) Two representatives from public applicators
10 registered under this article, each of whom shall be an
11 elected official or a designee thereof who is a qualified
12 supervisor;

13 (h) A representative from Colorado state university
14 agricultural experiment station or extension service;

15 (i) A representative from the department of health; and

16 (j) Two representatives from the general public, one of
17 whom is actively engaged in agricultural production.

18 (3) All members of the advisory committee, with the
19 exception of the formulator, shall be residents of this state.

20 (4) The appointment of the formulator, the pest control
21 consultant, the commercial applicator engaged in the control
22 of agricultural crop pests, and one of the representatives
23 from a public applicator shall expire on January 1, 1991; and
24 the appointment of the commercial applicator engaged in the
25 control of turf or ornamental pests, the representative from
26 the general public who is actively engaged in agricultural
27 production, the qualified supervisor employed by a limited

1 commercial applicator, and the representative from the
2 department of health shall expire on January 1, 1992. The
3 initial appointment of all other members shall be for a term
4 of three years. Thereafter, the appointment of each member to
5 the committee shall be for a term of three years.

6 (5) Members of the advisory committee shall receive no
7 compensation but shall be reimbursed for actual and necessary
8 traveling and subsistence expenses incurred in the performance
9 of their official duties as members of such committee.

10 (6) (a) This section is repealed, effective July 1,
11 1996.

12 (b) Prior to said repeal, the advisory committee
13 appointed pursuant to this section shall be reviewed as
14 provided for in section 2-3-1203, C.R.S.

15 35-10-127. Commercial pesticide applicator fund - fees.

16 All fees and civil fines collected pursuant to this article
17 shall be transmitted to the state treasurer who shall credit
18 the same to the commercial pesticide applicator fund, which
19 fund is hereby created. All moneys credited to the fund and
20 all interest earned on the investment of moneys in the fund
21 shall be a part of this fund and shall not be transferred or
22 credited to the general fund or to any other fund except as
23 directed by the general assembly acting by bill. The general
24 assembly shall make annual appropriations from such fund to
25 the department to carry out the purposes of this article.

26 35-10-128. Deadline for promulgation of rules and
27 regulations for implementation for article, as amended. Any

1 rules and regulations necessary for the implementation of this
2 article, as amended at the second regular session of the
3 fifty-seventh general assembly, shall be promulgated by the
4 commissioner no later than December 31, 1991.

5 35-10-129. Repeal of article - termination of functions.
6 Effective July 1, 1996, this article shall be repealed. The
7 licensing function of the commissioner of agriculture shall
8 also terminate on July 1, 1996. Prior to such termination,
9 the licensing function shall be reviewed as provided for in
10 section 24-34-104, C.R.S.

11 SECTION 2. 35-9-102 (6) and (23), Colorado Revised
12 Statutes, 1984 Repl. Vol., are amended to read:

13 35-9-102. Definitions. (6) "Device" means any
14 instrument or contrivance, OTHER THAN A FIREARM, intended for
15 trapping, destroying, repelling, or mitigating ~~insects-or~~
16 ~~rodents--or--destroying,--repelling,--or---mitigating---fungi,~~
17 ~~nematodes,--or--such--other--pests-as-may-be-designated-by-the~~
18 ~~department-of-agriculture,-but-not--including--equipment--used~~
19 ~~for---the--application--of--pesticides--when--sold--separately~~
20 ~~therefrom~~ ANY PEST OR ANY OTHER FORM OF PLANT OR ANIMAL LIFE
21 (OTHER THAN MAN AND OTHER THAN BACTERIA, VIRUSES, OR OTHER
22 MICROORGANISMS ON OR IN LIVING MAN OR OTHER LIVING ANIMALS);
23 EXCEPT THAT "DEVICE" SHALL NOT INCLUDE EQUIPMENT USED FOR THE
24 APPLICATION OF PESTICIDES WHEN SOLD SEPARATELY THEREFROM.

25 (23) "Plant regulator" means any substance or mixture of
26 substances intended, through physiological action, for
27 accelerating or retarding the rate of growth or RATE OF

1 maturation or for otherwise altering the behavior of
2 ~~ornamental--or--crop~~ plants or the produce thereof, but it does
3 not include substances to the extent that they are intended as
4 plant nutrients, trace elements, nutritional chemicals, plant
5 inoculants, and soil amendments. ALSO, "PLANT REGULATOR"
6 SHALL NOT BE REQUIRED TO INCLUDE ANY OF THOSE NUTRIENT
7 MIXTURES OR SOIL AMENDMENTS WHICH ARE COMMONLY KNOWN AS
8 VITAMIN-HORMONE HORTICULTURAL PRODUCTS, INTENDED FOR
9 IMPROVEMENT, MAINTENANCE, SURVIVAL, HEALTH, AND PROPAGATION OF
10 PLANTS, WHICH ARE NOT FOR PEST DESTRUCTION AND WHICH ARE
11 NONTOXIC AND NONPOISONOUS IN THE UNDILUTED PACKAGED
12 CONCENTRATION.

13 SECTION 3. 35-9-102 (21), Colorado Revised Statutes,
14 1984 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
15 to read:

16 35-9-102. Definitions. (21) "Pesticide" means any
17 substance or mixture of substances intended for preventing,
18 destroying, repelling, or mitigating any pest or any substance
19 or mixture of substances intended for use as a plant
20 regulator, defoliant, or desiccant; except that the term
21 "pesticide" shall not include any article that is a "new
22 animal drug" as designated by the United States food and drug
23 administration.

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

27 2-3-1203. Sunset review of advisory committees.

1 (3) (i) July 1, 1996: The advisory committee for regulation
2 of pesticides and pesticide use, appointed pursuant to section
3 35-10-126, C.R.S.

4 SECTION 5. 24-34-104, Colorado Revised Statutes, 1988
5 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
6 SUBSECTION to read:

7 24-34-104. General assembly review of regulatory
8 agencies and functions for termination, continuation, or
9 reestablishment. (25.1) The following functions of the
10 specified agency shall terminate on July 1, 1996: The
11 licensing of commercial applicators, qualified supervisors,
12 certified operators, and pest control consultants through the
13 commissioner of agriculture in accordance with article 10 of
14 title 35, C.R.S.

15 SECTION 6. Repeal. 2-3-1203 (3) (e) (VI), Colorado
16 Revised Statutes, 1980 Repl. Vol., as amended, 24-34-104
17 (19.1) (c), Colorado Revised Statutes, 1988 Repl. Vol., and
18 35-9-106, Colorado Revised Statutes, 1984 Repl. Vol., as
19 amended, are repealed.

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

BY SENATOR Gallagher;
also REPRESENTATIVES Philips, Kopel, and Fleming.

A BILL FOR AN ACT

1 CONCERNING CREATION OF THE FIRE SUPPRESSION PROGRAM UNDER THE
2 DIRECTOR OF THE DIVISION OF FIRE SAFETY IN THE DEPARTMENT
3 OF PUBLIC SAFETY, AND MAKING AN APPROPRIATION THEREFOR.

Bill Summary

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

Establishes the director of the division of fire safety in the department of public safety as the state fire suppression administrator. Sets up the fire suppression cash fund in the state treasury for moneys to administer the program created by the act. Empowers the administrator to establish the fire suppression program. Requires the registration of fire suppression contractors. Authorizes the administrator to set standards governing the conduct of fire suppression contractors and to impose disciplinary actions on contractors violating such standards. Requires the registration of fire suppression jobs and the review of plans therefor to facilitate inspections by certified fire safety inspectors. Sets standards for certifying such inspectors. Establishes standards for the approval of fire suppression systems by such inspectors. Establishes criminal and civil penalties for violations of the act. Provides that the administrator shall have no authority over local governmental entities by virtue of the act.

Makes an appropriation.

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

1 SECTION 1. 24-33.5-1202, Colorado Revised Statutes, 1988
2 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
3 read:

4 24-33.5-1202. Definitions. As used in this part 12,
5 unless the context otherwise requires:

6 (1) "Administrator" means the state fire suppression
7 administrator, who shall be the director of the division of
8 fire safety, under the department of public safety, or the
9 designee of such director.

10 (2) "Certification" means the issuance to a firefighter,
11 by the advisory board, of a signed instrument evidencing
12 satisfactory completion by such firefighter of the
13 requirements of the fire service education and training
14 program.

15 (3) "Certified fire safety inspector" means a person
16 certified as provided in section 24-33.5-1206.4.

17 (4) "Firefighter" means any person, whether paid or a
18 volunteer, who is actively participating in or employed by a
19 public or private fire service unit in this state.

20 (5) "Fire suppression contractor" means any individual,
21 firm, corporation, association, or organized group of persons,
22 that individually or through others, offers to undertake,
23 represents itself as being able to undertake, or does
24 undertake to sell, layout, fabricate, install, modify, alter,
25 repair, maintain, or perform maintenance inspections of any
26 fire suppression system.

27 (6) "Fire suppression system" means an assembly of any

1 or all of the following: Piping valves, conduits, dispersal
2 openings, sprinkler heads, orifices, and other similar devices
3 that convey extinguishing agents for the purpose of
4 controlling, confining, or extinguishing fire, with the
5 exception of preengineered range hoods, duct systems, and
6 portable fire extinguishers.

7 (7) "First responder program" means the program
8 developed by the national highway traffic safety
9 administration to train emergency response personnel to deal
10 with an emergency incident upon first arrival at the scene.

11 (8) "Principal" means an individual having a position of
12 responsibility in any entity acting as a fire suppression
13 contractor, including but not limited to any manager,
14 director, officer, partner, owner, or shareholder owning ten
15 percent or more of the stocks of any such entity.

16 SECTION 2. Part 12 of article 33.5 of title 24, Colorado
17 Revised Statutes, 1988 Repl. Vol., is amended BY THE ADDITION
18 OF THE FOLLOWING NEW SECTIONS to read:

19 24-33.5-1204.5. Powers of the administrator. (1) In
20 addition to any other duties and powers granted by this
21 section or sections 24-33.5-1206.2 and 24-33.5-1206.4, the
22 administrator has the following duties and powers:

23 (a) To establish a fire suppression program and to adopt
24 such rules and regulations as may be necessary to administer
25 the fire suppression program for registration of fire
26 suppression contractors and inspection of fire suppression
27 systems pursuant to article 4 of this title;

1 (b) To establish a schedule of fees for the direct and
2 indirect costs of the fire suppression registration program,
3 which fees shall be assessed against any person registered
4 pursuant to the provisions of section 24-33.5-1206.1;

5 (c) In the discretion of the administrator, to receive,
6 investigate, and act upon complaints against those persons who
7 violate any of the provisions of section 24-33.5-1206.6 or any
8 rule or regulation adopted by the administrator pursuant to
9 this section;

10 (d) To maintain records of all applications,
11 investigations, disciplinary or other actions, and
12 registrants;

13 (e) To conduct hearings upon charges for discipline of
14 a fire suppression contractor or a certified fire safety
15 inspector, issue subpoenas, compel attendance of witnesses,
16 compel the production of books, records, papers, and
17 documents, administer oaths to persons giving testimony at
18 hearings, and cause prosecution and enjoinder of all persons
19 violating this article.

20 24-33.5-1206.1. Registration required. (1) On or after
21 January 1, 1991, no person shall act, assume to act, or
22 advertise as a fire suppression contractor who is not
23 registered as a fire suppression contractor with the
24 administrator.

25 (2) Any registered fire suppression contractor shall
26 obtain any locally required licenses or permits and comply
27 with local building and fire codes.

BY SENATOR Gallagher;
also REPRESENTATIVES Phillips, Kope1, and Fleming.

A BILL FOR AN ACT

CONCERNING CREATION OF THE FIRE SUPPRESSION PROGRAM UNDER THE
DIRECTOR OF THE DIVISION OF FIRE SAFETY IN THE DEPARTMENT
OF PUBLIC SAFETY, AND MAKING AN APPROPRIATION THEREFOR.

Bill Summary

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

Establishes the director of the division of fire safety
in the department of public safety as the state fire
suppression administrator. Sets up the fire suppression cash
fund in the state treasury for moneys to administer the
program created by the act. Empowers the administrator to
establish the fire suppression program. Requires the
registration of fire suppression contractors. Authorizes the
administrator to set standards governing the conduct of fire
suppression contractors and to impose disciplinary actions on
contractors violating such standards. Requires the
registration of fire suppression jobs and the review of plans
therefor to facilitate inspections by certified fire safety
inspectors. Sets standards for certifying such inspectors.
Establishes standards for the approval of fire suppression
systems by such inspectors. Establishes criminal and civil
penalties for violations of the act. Provides that the
administrator shall have no authority over local governmental
entities by virtue of the act.

Makes an appropriation.

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

SECTION 1. 24-33.5-1202, Colorado Revised Statutes, 1988
Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
read:

24-33.5-1202. Definitions. As used in this part 12,
unless the context otherwise requires:

(1) "Administrator" means the state fire suppression
administrator, who shall be the director of the division of
fire safety, under the department of public safety, or the
designee of such director.

(2) "Certification" means the issuance to a firefighter,
by the advisory board, of a signed instrument evidencing
satisfactory completion by such firefighter of the
requirements of the fire service education and training
program.

(3) "Certified fire safety inspector" means a person
certified as provided in section 24-33.5-1206.4.

(4) "Firefighter" means any person, whether paid or a
volunteer, who is actively participating in or employed by a
public or private fire service unit in this state.

(5) "Fire suppression contractor" means any individual,
firm, corporation, association, or organized group of persons,
that individually or through others, offers to undertake,
represents itself as being able to undertake, or does
undertake to sell, layout, fabricate, install, modify, alter,
repair, maintain, or perform maintenance inspections of any
fire suppression system.

(6) "Fire suppression system" means an assembly of any

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1 or all of the following: Piping valves, conduits, dispersal
2 openings, sprinkler heads, orifices, and other similar devices
3 that convey extinguishing agents for the purpose of
4 controlling, confining, or extinguishing fire, with the
5 exception of preengineered range hoods, duct systems, and
6 portable fire extinguishers.

7 (7) "First responder program" means the program
8 developed by the national highway traffic safety
9 administration to train emergency response personnel to deal
10 with an emergency incident upon first arrival at the scene.

11 (8) "Principal" means an individual having a position of
12 responsibility in any entity acting as a fire suppression
13 contractor, including but not limited to any manager,
14 director, officer, partner, owner, or shareholder owning ten
15 percent or more of the stocks of any such entity.

16 SECTION 2. Part 12 of article 33.5 of title 24, Colorado
17 Revised Statutes, 1988 Repl. Vol., is amended BY THE ADDITION
18 OF THE FOLLOWING NEW SECTIONS to read:

19 24-33.5-1204.5. Powers of the administrator. (1) In
20 addition to any other duties and powers granted by this
21 section or sections 24-33.5-1206.2 and 24-33.5-1206.4, the
22 administrator has the following duties and powers:

23 (a) To establish a fire suppression program and to adopt
24 such rules and regulations as may be necessary to administer
25 the fire suppression program for registration of fire
26 suppression contractors and inspection of fire suppression
27 systems pursuant to article 4 of this title;

1 (b) To establish a schedule of fees for the direct and
2 indirect costs of the fire suppression registration program,
3 which fees shall be assessed against any person registered
4 pursuant to the provisions of section 24-33.5-1206.1;

5 (c) In the discretion of the administrator, to receive,
6 investigate, and act upon complaints against those persons who
7 violate any of the provisions of section 24-33.5-1206.6 or any
8 rule or regulation adopted by the administrator pursuant to
9 this section;

10 (d) To maintain records of all applications,
11 investigations, disciplinary or other actions, and
12 registrants;

13 (e) To conduct hearings upon charges for discipline of
14 a fire suppression contractor or a certified fire safety
15 inspector, issue subpoenas, compel attendance of witnesses,
16 compel the production of books, records, papers, and
17 documents, administer oaths to persons giving testimony at
18 hearings, and cause prosecution and enjoinder of all persons
19 violating this article.

20 24-33.5-1206.1. Registration required. (1) On or after
21 January 1, 1991, no person shall act, assume to act, or
22 advertise as a fire suppression contractor who is not
23 registered as a fire suppression contractor with the
24 administrator.

25 (2) Any registered fire suppression contractor shall
26 obtain any locally required licenses or permits and comply
27 with local building and fire codes.

1 (3) Any registered fire suppression contractor shall be
2 responsible for the acts of its agents and employees while
3 acting on behalf of the contractor to sell, advertise, layout,
4 fabricate, install, add to, alter, service, repair, or inspect
5 fire suppression systems of any kind.

6 (4) Every registered fire suppression contractor shall
7 be responsible to assure that:

8 (a) A responsible person in the management or employment
9 of the contractor is qualified in the layout, fabrication,
10 installation, alteration, servicing, repair, and inspection of
11 fire suppression systems;

12 (b) Each job is supervised by an on-site installer who
13 is qualified in the layout, fabrication, installation,
14 alteration, servicing, repair, and inspection of fire
15 suppression systems;

16 (c) Any layout, fabrication, installation, alteration,
17 servicing, repair, or inspection of fire suppression systems
18 is done according to applicable standards adopted by the
19 administrator by rule and regulation and applicable local
20 codes and ordinances. In adopting standards pursuant to this
21 paragraph (c), the administrator may consider and adopt the
22 standards of the national fire prevention association.

23 (d) Actual fabrication, installation, alteration,
24 servicing, or repair of any fire suppression system is done in
25 accordance with approved plans, layout, or design.

26 (e) All interim and final inspections and system tests
27 are completed according to standards adopted by the

1 administrator and requirements laid out by local fire safety
2 inspectors and the administrator, and that any required logs,
3 reports, or results of said inspections and system tests are
4 accurately kept and conveyed to the appropriate fire safety
5 inspectors.

6 (5) No registration shall be granted to any fire
7 suppression contractor who has as a principal any person who,
8 within the past two years, has violated any provision of this
9 part 12 or any rule or regulation of the administrator
10 pursuant thereto.

11 24-33.5-1206.2. Job registration and plan review.

12 (1) Except for minor alterations, modifications, repairs, or
13 maintenance work which does not affect the integrity of the
14 system, no installation, modification, alteration, or repair
15 of a fire suppression system shall be started until:

- 16 (a) Any required local permits have been obtained;
- 17 (b) (I) The job, including the name and registration
18 number of the contractor, the address and description of the
19 premises where the job will be done, and the name and address
20 of the general contractor or the name and address of the owner
21 if no general contractor is involved, has been registered with
22 the administrator.

23 (II) Where approved by rule or regulation, the
24 administrator may accept job registration with local fire
25 safety officials in satisfaction of the registration
26 requirement imposed by subparagraph (I) of this paragraph (b).

27 (c) (I) The working plans and hydraulic calculations for

1 the job have been reviewed and approved by the administrator.

2 (II) The administrator shall establish standards of
3 review and approval and shall, where appropriate, accept
4 review and approval by local fire safety inspectors in
5 satisfaction of the requirements of this paragraph (c).

6 (2) Any working plans and hydraulic calculations
7 submitted for review by the administrator shall bear the
8 signature and certification number of either a registered
9 professional engineer or a level three or higher engineering
10 technician (fire suppression engineering technology -
11 automatic sprinkler design) certified by the national
12 institute for the certification of engineering technologists.
13 Such registered professional engineer or engineering
14 technician shall certify that he has reviewed the plan and
15 design and finds that it meets the applicable standards
16 adopted by the administrator for fire safety, and that it is
17 adequately designed to meet the system requirements.

18 24-33.5-1206.3. Requirements for installation,
19 inspection, and maintenance of fire suppression systems.

20 (1) Fire suppression systems shall be designed and installed
21 in accordance with the applicable standards adopted by the
22 administrator by rule, manufacturer's specifications, and
23 applicable local codes and ordinances. In adopting standards,
24 the administrator may consider and adopt the standards of the
25 national fire protection association.

26 (2) The contractor shall furnish the user with operating
27 instructions for all equipment installed, together with

1 as-built diagrams of the final installation.

2 (3) Contractor inspections and tests, where required,
3 shall be conducted by qualified personnel or certified fire
4 safety inspectors and in compliance with applicable standards
5 adopted by the administrator. Complete records shall be kept
6 of the tests and operations of each system. The records shall
7 be available for examination by the local certified fire
8 safety inspector or the fire suppression administrator.

9 24-33.5-1206.4. System approval, inspection, and

10 inspectors. (1) No installation, modification, alteration,
11 or repair of a fire suppression system shall be completed and
12 cleared for use, and no structure or partial structure in
13 which such fire suppression system is installed, modified,
14 altered, or repaired shall be cleared for occupancy, until
15 such fire suppression system has been approved by a certified
16 fire safety inspector. Approval shall include review of
17 approved working plans and hydraulic calculations,
18 installation inspections, and final tests.

19 (2) (a) Each county, municipality, and special district
20 that has fire safety enforcement responsibilities shall employ
21 or contract with a certified fire safety inspector. Such
22 inspector shall conduct all fire safety inspections that are
23 required by state law or by the local building codes and fire
24 safety codes of the jurisdiction. The governing body of the
25 county, municipality, or special district that has fire safety
26 enforcement responsibilities may provide a schedule of fees to
27 pay only the costs of inspections conducted pursuant to this

1 subsection (2) and related administrative expenses, and
2 collect said fees from the fire suppression contractor.

3 (b) Two or more counties, municipalities, or special
4 districts that have fire safety enforcement responsibilities
5 may jointly employ or contract with a fire safety inspector.

6 (c) The administrator or his agent shall be available to
7 provide such fire safety inspections to any county,
8 municipality, or special district on a contractual or
9 job-by-job basis. The county, municipality, or special
10 district shall pay the actual costs of such inspections by the
11 administrator or his agents.

12 (3) Every inspection of a fire suppression system
13 conducted pursuant to state or local fire safety requirements
14 shall be by a person certified as having met the inspection
15 training requirements set by the administrator. Such person
16 shall:

17 (a) Be at least eighteen years of age;

18 (b) Not have been engaged in any of the activities
19 specified in section 24-33.5-1206.6 (2); and

20 (c) (I) Have satisfactorily completed the fire safety
21 inspector certification examination as prescribed by the
22 administrator;

23 (II) Have demonstrated to the administrator that the
24 applicant has met such other equivalent qualifications as may
25 be prescribed by the administrator;

26 (III) Have received in another state training which is
27 determined by the administrator to be at least equivalent to

1 that required by the administrator for approved certified fire
2 safety inspector education and training programs in this
3 state.

4 (4) Every certificate issued by the administrator is
5 valid for a period of three years from the date of issuance.
6 Renewal of certification shall require the affected person to
7 complete a proper application for renewal and meet any other
8 requirements for renewal as prescribed by the administrator,
9 including successful passage of an examination as established
10 by the administrator.

11 24-33.5-1206.5. Unlawful acts criminal penalties.

12 (1) Any person who violates any of the provisions of section
13 24-33.5-1206.1 commits a class 3 misdemeanor and, if a natural
14 person, shall, upon conviction thereof, be punished as
15 provided in section 18-1-106, C.R.S., and, if a corporation,
16 shall be punished by a fine of not more than five thousand
17 dollars. Any natural person who violates any provision of
18 section 24-33.5-1206.1 subsequent to a prior conviction for
19 such a violation commits a class 2 misdemeanor and shall, upon
20 conviction thereof, be punished as provided in section
21 18-1-106, C.R.S.

22 (2) Any person who knowingly and willfully makes any
23 false statement whatsoever or who conceals a material fact in
24 any application, form, claim, advertisement, contract,
25 warranty, guarantee, or statement, either written or oral,
26 with the intent to influence the actions or decisions of any
27 owner or contractor negotiating or contracting for the

1 installation, alteration, or repair of any fire suppression
2 system, or to any bonding agent, commits a class 1 misdemeanor
3 and shall, upon conviction thereof, be punished as provided in
4 section 18-1-106, C.R.S.

5 24-33.5-1206.6. Unlawful acts civil penalties -
6 disciplinary actions. (1) Any person, firm, association, or
7 corporation which violates any of the provisions of sections
8 24-33.5-1206.1 to 24-33.5-1206.3 or any rule or regulation
9 promulgated by the administrator pursuant to this part 12 may
10 be punished upon a finding of such violation by the
11 administrator as follows:

12 (a) In any first administrative proceeding against a
13 licensee, a fine of not less than one hundred dollars nor more
14 than one thousand dollars;

15 (b) In any subsequent administrative proceeding against
16 a licensee for transactions occurring after a final agency
17 action determining that any violation of sections
18 24-33.5-1206.1 to 24-33.5-1206.3 or any rule or regulation of
19 the administrator has occurred, a fine of not less than one
20 thousand dollars nor more than ten thousand dollars.

21 (2) In addition to the penalties provided in subsection
22 (1) of this section, the administrator may withhold, deny,
23 suspend, or revoke the registration or certification of any
24 registered fire suppression contractor or certified fire
25 safety inspector or applicant therefor if the administrator
26 finds, upon proof, that any such person has committed any of
27 the following:

1 (a) Fraud or material deception in the obtaining or
2 renewing of a registration;

3 (b) Professional incompetence as manifested by poor,
4 faulty, or dangerous workmanship;

5 (c) Engaging in dishonorable, unethical, or
6 unprofessional conduct of a character likely to deceive,
7 defraud, or harm the public in the course of professional
8 services or activities;

9 (d) Performing any services in a negligent manner or
10 permitting any of his agents or employees to perform services
11 in a grossly negligent manner, regardless of whether actual
12 damage or damages to the public is established;

13 (e) Directly or indirectly, willfully receiving
14 compensation for any professional services not actually
15 rendered;

16 (f) Failing to comply with any provision of this part 12
17 or the standards or rules promulgated by the administrator
18 pursuant thereto;

19 (g) Contracting or assisting unregistered persons to
20 perform services for which registration is required under this
21 part 12.

22 (3) All fines imposed by the administrator pursuant to
23 this section shall be credited to the fire suppression fund
24 created in section 24-33.5-1207.6.

25 (4) A person acting as a fire suppression contractor may
26 not bring any legal action to collect compensation due for
27 performing any act for which registration is required pursuant

1 to section 24-33.5-1206.1 unless such contractor alleges and
2 proves that he was duly registered under said section at the
3 time the alleged cause of action arose.

4 24-33.5-1207.6. Fire suppression cash fund - created.
5 All moneys collected by the administrator pursuant to the
6 administration of the fire suppression program shall be
7 transmitted to the state treasurer, who shall credit the same
8 to the fire suppression cash fund, which fund is hereby
9 created. All moneys credited to said fund and all interest
10 earned thereon are subject to appropriations by the general
11 assembly for paying the expenses of the fire suppression
12 program, and said moneys shall remain in such fund for such
13 purposes and shall not revert or be credited to the general
14 fund.

15 SECTION 3. 24-33.5-1208, Colorado Revised Statutes, 1988
16 Repl. Vol., is amended to read:

17 24-33.5-1208. Limitation of authority. Nothing in this
18 part 12 shall be construed to give the division, director, or
19 ~~advisory--board~~ ADMINISTRATOR any power of control or
20 supervision over any unit of local government.

21 SECTION 4. Appropriation. In addition to any other
22 appropriation, there is hereby appropriated, out of any moneys
23 in the fire suppression cash fund not otherwise appropriated,
24 to the department of public safety, for allocation to the
25 division of fire safety, for the fiscal year beginning July 1,
26 1990, the sum of _____ dollars (\$) and ___ FTE, or so
27 much thereof as may be necessary, for the implementation of

1 this act.

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

BY SENATOR Gallagher;
also REPRESENTATIVES Owen and Kopel.

A BILL FOR AN ACT

1 CONCERNING THE EXEMPTION OF MASSAGE THERAPY FROM THE "COLORADO
2 MASSAGE PARLOR CODE" BY DEFINING A "MASSAGE THERAPIST" TO
3 BE A PERSON WHO HAS GRADUATED FROM AN ACCREDITED OR
4 APPROVED MASSAGE THERAPY SCHOOL WITH A MINIMUM OF FIVE
5 HUNDRED HOURS OF MASSAGE THERAPY TRAINING.

Bill Summary

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

Exempts a facility operated for the purpose of massage therapy performed by a massage therapist from the definition of "massage parlor" under the "Colorado Massage Parlor Code". Defines "massage therapist".

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

7 SECTION 1. 12-48.5-103 (6), Colorado Revised Statutes,
8 1985 Repl. Vol., is amended to read:

9 12-48.5-103. Definitions. (6) "Massage parlor" means
10 an establishment providing massage, but it does not include
11 training rooms of public and private schools accredited by the
12 state board of education or approved by the state board for

1 community colleges and occupational education, training rooms
2 of recognized professional or amateur athletic teams, and
3 licensed health care facilities. A FACILITY WHICH IS OPERATED
4 FOR THE PURPOSE OF MASSAGE THERAPY PERFORMED BY A MASSAGE
5 THERAPIST IS NOT A MASSAGE PARLOR. FOR PURPOSES OF THIS
6 SUBSECTION (6), "MASSAGE THERAPIST" MEANS A PERSON WHO HAS
7 GRADUATED FROM A MASSAGE THERAPY SCHOOL ACCREDITED BY THE
8 STATE BOARD OF EDUCATION OR APPROVED BY THE STATE BOARD FOR
9 COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION WITH TRANSCRIPTS
10 INDICATING COMPLETION OF AT LEAST FIVE HUNDRED HOURS OF
11 TRAINING IN MASSAGE THERAPY.

12 SECTION 2. Safety clause. The general assembly hereby
13 finds, determines, and declares that this act is necessary
14 for the immediate preservation of the public peace, health,
15 and safety.

BY SENATOR McCormick;
also REPRESENTATIVES Phillips and Kopel.

A BILL FOR AN ACT

1 CONCERNING THE REGULATION OF APPRAISERS, AND MAKING AN
2 APPROPRIATION IN CONNECTION THEREWITH.

Bill Summary

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

Declares that the general assembly intends to implement the requirements of the federal "Real Estate Appraisal Reform Amendments", title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", by enacting a licensing and certification scheme for real estate appraisers which meets the minimum requirements of such federal law. Defines terms. Creates the board of real estate appraisers in the division of real estate and provides for the qualifications of members of the board and for the appointment of such members. Specifies the powers and duties of the board. Establishes the requirements for licensure and certification under the act. Creates the real estate appraiser licensing fee cash fund in the state treasury for moneys collected from fees for licensing and certifying such appraisers and specifies that moneys in such fund shall be appropriated for the administration of the act. Provides for the terms of the expiration of appraisers' licenses and certificates, licensure or certification by endorsement from other jurisdictions, denial of licensure or certification, grounds for disciplinary action by the board, and administrative and criminal penalties for violation of the act. Provides for judicial review of actions of the board of real estate appraisers.

Makes an appropriation.

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

2 SECTION 1. Article 61 of title 12, Colorado Revised
3 Statutes, 1985 Repl. Vol., as amended, is amended BY THE
4 ADDITION OF A NEW PART to read:

5 PART 7

6 REAL ESTATE APPRAISERS

7 12-61-701. Legislative declaration. The general
8 assembly finds, determines, and declares that this part 7 is
9 enacted pursuant to the requirements of the federal "Real
10 Estate Appraisal Reform Amendments", title XI of the federal
11 "Financial Institutions Reform, Recovery, and Enforcement Act
12 of 1989". The general assembly further finds, determines, and
13 declares that this part 7 is intended to implement the minimum
14 requirements of federal law in the least burdensome manner to
15 real estate appraisers while providing the protection to the
16 public mandated by federal law.

17 12-61-702. Definitions. As used in this part 7, unless
18 the context otherwise requires:

19 (1) "Appraisal", "appraisal report", or "real estate
20 appraisal" means an analysis, opinion, or conclusion relating
21 to the nature, quality, value, or utility of specified
22 interests in, or aspects of, identified real estate. Such
23 terms include a valuation, which is an estimate of the value
24 of real estate, and an analysis, which is a general study of
25 real estate not specifically performed only to determine
26 value.

27 (2) "Board" means the board of real estate appraisers

1 created in section 12-61-703.

2 (3) "Division" means the division of real estate.

3 (4) "Director" means the director of the division of
4 real estate.

5 (5) "Real estate appraiser" or "appraiser" means any
6 person who provides for a fee or a salary an unbiased estimate
7 of the nature, quality, value, or utility of an interest in,
8 or aspect of, identified real estate and related personalty
9 and includes one who estimates value and who possesses the
10 necessary qualifications, ability, and experience to execute
11 or direct the appraisal of real property. "Real estate
12 appraiser" does not include any person licensed as a broker or
13 a salesman pursuant to part 1 of this article when conducting
14 a valuation of real property which is listed with such broker
15 or when conducting a valuation in connection with obtaining a
16 listing of real property.

17 12-61-703. Board of real estate appraisers - creation -
18 compensation - immunity - subject to termination. (1) There
19 is hereby created in the division a board of real estate
20 appraisers consisting of five members appointed by the
21 governor with the consent of the senate. Of such members,
22 three shall be licensed or certified real estate appraisers,
23 one shall be a county assessor in office, and one shall be a
24 member of the public at large. Of the members of the board
25 appointed for terms beginning July 1, 1990, two of the
26 appraiser members and the public member shall be appointed for
27 terms of three years, and the county assessor member and the

1 remaining appraiser member shall be appointed for terms of one
2 year. Of such members appointed for terms beginning July 1,
3 1990, the appraiser members and the assessor member need not
4 be licensed appraisers, but, unless a federal extension is
5 granted pursuant to section 12-61-704 (1) (j), shall be
6 licensed by July 1, 1991, or shall be ineligible to remain as
7 members of the board and shall be removed by the governor.
8 Members of the board appointed after July 1, 1990, shall hold
9 office for a term of three years. In the event of a vacancy
10 by death, resignation, removal, or otherwise, the governor
11 shall appoint a member to fill out the unexpired term. The
12 governor shall have the authority to remove any member for
13 misconduct, neglect of duty, or incompetence.

14 (2) The board shall exercise its powers and perform its
15 duties and functions under the division as if transferred
16 thereto by a type 1 transfer as such transfer is defined in
17 the "Administrative Organization Act of 1968", article 1 of
18 title 24, C.R.S.

19 (3) Each member of the board shall receive the same
20 compensation and reimbursement of expenses as those provided
21 for members of boards and commissions in the division of
22 registrations pursuant to section 24-34-102 (13), C.R.S.
23 Payment for all such per diem compensation and expenses shall
24 be made out of annual appropriations from the real estate
25 appraiser licensing cash fund provided for in section
26 12-61-705.

27 (4) Members of the board, consultants, and expert

1 witnesses shall be immune from suit in any civil action based
2 upon any disciplinary proceedings or other official acts they
3 performed in good faith pursuant to this part 7.

4 (5) A majority of the board shall constitute a quorum
5 for the transaction of all business, and actions of the board
6 shall require a vote of a majority of such members present in
7 favor of the action taken.

8 (6) The provisions of section 24-34-104, C.R.S.,
9 concerning the termination schedule for regulatory bodies of
10 the state, unless extended as provided in that section, are
11 applicable to the board of real estate appraisers created by
12 this section.

13 12-61-704. Powers and duties of the board. (1) In
14 addition to all other powers and duties imposed upon it by
15 law, the board has the following powers and duties:

16 (a) To promulgate and amend, as necessary, rules and
17 regulations pursuant to article 4 of title 24, C.R.S., for the
18 implementation and administration of this part 7 and as
19 required to comply with title XI of the federal "Financial
20 Institutions Reform, Recovery, and Enforcement Act of 1989";

21 (b) To charge application, examination, and license and
22 certificate renewal fees established pursuant to section
23 12-61-705 to all applicants for licensure, certification,
24 examination, and renewal under this part 7. No fees received
25 from applicants seeking licensure, certification, examination,
26 or renewal shall be refunded.

27 (c) (I) To keep all records of proceedings and

1 activities of the board conducted under authority of this part
2 7, which records shall be open to public inspection at such
3 time and in such manner as may be prescribed by rules and
4 regulations formulated by the board.

5 (II) The board shall not be required to maintain or
6 preserve licensing history records of any person licensed or
7 certified under the provisions of this part 7 for any period
8 of time longer than seven years.

9 (d) Through the department of regulatory agencies and
10 subject to appropriations made to the department of regulatory
11 agencies, to employ administrative law judges on a full-time
12 or part-time basis to conduct any hearings required by this
13 part 7. Such administrative law judges shall be appointed
14 pursuant to part 10 of article 30 of title 24, C.R.S.

15 (e) To issue, deny, or refuse to renew a license or
16 certificate pursuant to this part 7;

17 (f) To take disciplinary actions in conformity with this
18 part 7;

19 (g) To delegate to the director the administration and
20 enforcement of this part 7 and the authority to act on behalf
21 of the board on such occasions and in such circumstances as
22 the board directs;

23 (h) Except as provided in section 12-61-706 (4), to
24 develop or purchase any examination required for the
25 administration of this part 7, to offer each such examination
26 at least twice a year or, if demand warrants, at more frequent
27 intervals, and to establish a passing score for each

1 examination which reflects a minimum level of competency;

2 (i) In compliance with the provisions of article 4 of
3 title 24, C.R.S., to make investigations, subpoena persons and
4 documents, which subpoenas may be enforced by a court of
5 competent jurisdiction if not obeyed, hold hearings, and take
6 evidence in all matters relating to the exercise of the
7 board's power under this part 7;

8 (j) Pursuant to sec. 1119 (b) of title XI of the federal
9 "Financial Institutions Reform, Recovery, and Enforcement Act
10 of 1989", to apply, if necessary, for a federal waiver of the
11 requirement relating to certification or licensing of a person
12 to perform appraisals and to make the necessary written
13 determinations specified in said section for purposes of
14 making such application.

15 12-61-705. Real estate appraiser licensing fee cash fund
16 - creation - use of funds - fee adjustments. (1) All fees,
17 penalties, and fines collected pursuant to this part 7 shall
18 be transmitted to the state treasurer, who shall credit the
19 same to the real estate appraiser licensing fee cash fund,
20 which fund is hereby created. All interest derived from the
21 deposit and investment of moneys in the fund shall be credited
22 to the fund. All moneys in the fund shall be subject to
23 appropriation by the general assembly for the direct and
24 indirect costs of the activities of the board and the division
25 pursuant to this part 7.

26 (2) (a) The board shall propose, as part of its annual
27 budget request, an adjustment in the amount of each fee,

1 penalty, and fine which it is authorized by law to collect.
2 The budget request and the adjusted fees, penalties, and fines
3 for the board or the division, when such fees, penalties, and
4 fines are combined with other revenue credited to the real
5 estate appraiser licensing fee cash fund, shall reflect direct
6 and indirect costs.

7 (b) Based upon the appropriation made and subject to the
8 approval of the executive director of the department of
9 regulatory agencies, the board shall adjust its fees,
10 penalties, and fines so that the revenue generated from said
11 fees, penalties, and fines when combined with other revenue
12 credited to the real estate appraiser licensing fee cash fund,
13 approximates the direct and indirect costs of the board and
14 the division. Such fees, penalties, and fines shall remain in
15 effect for the fiscal year for which the budget request
16 applies.

17 (c) For fiscal years beginning on or after July 1, 1990,
18 any unexpended and unencumbered moneys remaining in the fund
19 at the end of the prior fiscal year shall be included in the
20 appropriation to the board for the next fiscal year, and the
21 fees of the board, when adjusted for said next fiscal year,
22 shall be adjusted so that such amount is not raised from fees
23 collected by the board. If a supplemental appropriation is
24 made from the fund to the board for its activities, the fees
25 of the board, when adjusted for the fiscal year next following
26 that in which the supplemental appropriation was made, shall
27 be adjusted by an amount which is sufficient to compensate for

1 such supplemental appropriation.

2 (d) Moneys appropriated to the board in the annual
3 general appropriation act shall be designated as cash funds
4 and shall not exceed the amount anticipated to be credited to
5 the fund.

6 12-61-706. Qualifications for appraiser's license and
7 certification - continuing education. (1) A person applying
8 for an appraiser's license shall apply in such form and manner
9 as prescribed by the board. Applicants shall have had at
10 least fifty-five hours of education and training in appraisal
11 practice, as approved by the board, and shall pass an
12 examination developed or purchased by the board, except as
13 otherwise provided in subsection (4) of this section for the
14 initial examination pursuant to this section.

15 (2) A person applying for a residential appraiser's
16 certification shall have met the qualifications of subsection
17 (1) of this section and shall apply in such form and manner as
18 prescribed by the board. Applicants shall have had at least
19 forty hours of appraisal education and training, or a college
20 degree in a related field and two years of appraisal
21 experience as approved by the board, and shall pass an
22 examination developed or purchased by the board, except as
23 otherwise provided in subsection (4) of this section for the
24 initial examination pursuant to this section.

25 (3) A person applying for a general appraiser's
26 certification shall have met the qualifications of subsection
27 (1) of this section and shall apply in such form and manner as

1 prescribed by the board. Applicants shall have had at least
2 one hundred fifty hours of appraisal education and training,
3 or a college degree in a related field and three years of
4 appraisal experience as approved by the board, and shall pass
5 an examination developed or purchased by the board, except as
6 otherwise provided in subsection (4) of this section for the
7 initial examination pursuant to this section.

8 (4) (a) For purposes of such initial examination only,
9 the director shall have the following powers and duties:

10 (I) To follow the requirements for application for
11 licensure or certification pursuant to this subsection (4) and
12 subsections (1) to (3) of this section;

13 (II) To designate in advance a place of examination;

14 (III) To follow the requirements of the board for
15 determining a passing score;

16 (b) Initial appointees to the board are prohibited from
17 participation in the development of the initial examinations
18 given under this section. Any other person who participates
19 in the development of an examination pursuant to this
20 subsection (4) shall be prohibited from taking such
21 examination for a period of two years from the date the
22 examination is first given.

23 (5) The board shall prescribe continuing education
24 requirements for licensees and other persons certified under
25 this part 7 as needed to meet the requirements of the federal
26 "Real Estate Appraisal Reform Amendments", title XI of the
27 federal "Financial Institutions Reform, Recovery, and

1 Enforcement Act of 1989" and shall require tests to measure
2 the information obtained by persons attending such continuing
3 education courses. The board shall not establish any
4 continuing education requirements which are more stringent
5 than the requirements of federal law.

6 12-61-707. Expiration of licenses - renewal. Any
7 license or certificate issued by the board shall expire on
8 January 1 of the third year following issuance if not timely
9 renewed by the licensee; except that the initial license or
10 certificate issued to a licensee shall expire January 1 of the
11 year following issuance and shall be renewed as provided in
12 this section. Upon compliance with this section and any
13 applicable rules and regulations of the board regarding
14 renewal, including the payment of a renewal fee plus a late
15 payment penalty fee established pursuant to section 12-61-705,
16 the expired license or certificate shall be reinstated. No
17 real estate appraiser's license or certificate which has not
18 been renewed for a period of time greater than two years shall
19 be reinstated, and such person shall be required to make new
20 application for licensure or certification.

21 12-61-708. Licensure or certification by endorsement.
22 The board may issue a license or certification to an appraiser
23 by endorsement to engage in the occupation of real estate
24 appraisal to any applicant who has a license, registration, or
25 certification in good standing as a real estate appraiser
26 under the laws of another jurisdiction if the applicant
27 presents proof satisfactory to the board that, at the time of

1 application for a Colorado license or certificate by
2 endorsement, the applicant possesses credentials and
3 qualifications which are substantially equivalent to the
4 requirements of this part 7. The board may specify by rules
5 and regulation what shall constitute substantially equivalent
6 credentials and qualifications and the manner in which
7 credentials and qualifications of an applicant will be
8 reviewed by the board.

9 12-61-709. Denial of license or certificate - renewal.

10 (1) The board is empowered to determine whether an applicant
11 for licensure or certification possesses the qualifications
12 for licensure or certification required by this part 7.

13 (2) If the board determines that an applicant does not
14 possess the applicable qualifications required by this part 7,
15 or such applicant has violated any provision of this part 7 or
16 the rules and regulations promulgated by the board or any
17 board order, the board may deny the applicant a license or
18 certification or deny the reinstatement of a license or
19 certificate pursuant to section 12-61-707; and, in such
20 instance, the board shall provide such applicant with a
21 statement in writing setting forth the basis of the board's
22 determination that the applicant does not possess the
23 qualifications or professional competence required by this
24 part 7. Such applicant may request a hearing on such
25 determination as provided in section 24-4-104 (9), C.R.S.

26 12-61-710. Prohibited activities - grounds for
27 disciplinary actions - procedures. (1) A real estate

1 appraiser is in violation of this part 7 if he:

2 (a) Has been convicted of a felony or has had accepted
3 by a court a plea of guilty or nolo contendere to a felony if
4 the felony is related to the ability to act as a real property
5 appraiser. A certified copy of the judgment of a court of
6 competent jurisdiction of such conviction or plea shall be
7 conclusive evidence of such conviction or plea. In
8 considering the disciplinary action, the board shall be
9 governed by the provisions of section 24-5-101, C.R.S.

10 (b) Has violated, or attempted to violate, directly or
11 indirectly, or assisted in or abetted the violation of, or
12 conspired to violate any provision or term of this part 7 or
13 rule or regulation promulgated pursuant to this part 7 or any
14 order of the board established pursuant to this part 7;

15 (c) Has accepted any fees, compensation, or other
16 valuable consideration to influence the outcome of an
17 appraisal;

18 (d) Has used advertising which is misleading, deceptive,
19 or false;

20 (e) Has used fraud or misrepresentation in obtaining a
21 license or certificate under this part 7;

22 (f) Has conducted an appraisal in a fraudulent manner or
23 used misrepresentation in any such activity;

24 (g) Has acted or failed to act in a manner which does
25 not meet the generally accepted standards of professional
26 appraisal practice as adopted by the board by rule and
27 regulation. A certified copy of a malpractice judgment of a

1 court of competent jurisdiction shall be conclusive evidence
2 of such act or omission, but evidence of such act or omission
3 shall not be limited to a malpractice judgment.

4 (h) Has performed appraisal services beyond his level of
5 competency;

6 (i) Has been subject to an adverse or disciplinary
7 action in another state, territory, or country relating to a
8 license, certificate, registration, or other authorization to
9 practice as an appraiser. A disciplinary action relating to a
10 license or certificate as an appraiser licensed or certified
11 under this part 7 or any related occupation in any other
12 state, territory, or country for disciplinary reasons shall be
13 deemed to be prima facie evidence of grounds for disciplinary
14 action or denial of licensure or certification by the board.
15 This paragraph (i) shall apply only to violations based upon
16 acts or omissions in such other state, territory, or country
17 that are also violations of this part 7.

18 (2) If an applicant, a licensee, or a certified person
19 has violated any of the provisions of this section, the board
20 may deny, or refuse to renew any license or certificate, or,
21 as specified in subsection (5) of this section, revoke or
22 suspend any license or certificate, issue a letter of
23 admonition to a licensee or certified person, or place a
24 licensee or certified person on probation.

25 (3) A proceeding for discipline of a licensee or
26 certified person may be commenced when the board has
27 reasonable grounds to believe that a licensee or certified

1 person has committed any act or failed to act pursuant to the
2 grounds established in subsection (1) of this section.

3 (4) Disciplinary proceedings shall be conducted in the
4 manner prescribed by the "State Administrative Procedure Act",
5 article 4 of title 24, C.R.S.

6 (5) As authorized in subsection (2) of this section,
7 disciplinary actions may consist of the following:

8 (a) Revocation of a license. (I) Revocation of a
9 license or certificate by the board shall mean that the
10 licensee or certified person shall surrender his license or
11 certificate immediately to the board.

12 (II) Any person whose license or certificate to practice
13 is revoked is rendered ineligible to apply for any license or
14 certificate issued under this part 7 until more than two years
15 have elapsed from the date of surrender of the license or
16 certificate. Any reapplication after such two-year period
17 shall be treated as a new application.

18 (b) Suspension of a license. Suspension of a license or
19 certificate by the board shall be for a period to be
20 determined by the board.

21 (c) Probationary status. Probationary status may be
22 imposed by the board. If the board places a licensee or
23 certified person on probation, it may include such conditions
24 for continued practice as the board deems appropriate to
25 assure that the licensee or certified person is otherwise
26 qualified to practice in accordance with generally accepted
27 professional standards of professional appraisal practice as

1 adopted by rule and regulation of the board, including any or
2 all of the following:

3 (I) The taking by him of such courses of training or
4 education as may be needed to correct deficiencies found in
5 the hearing;

6 (II) Such review or supervision of his practice as may
7 be necessary to determine the quality of his practice and to
8 correct deficiencies therein; and

9 (III) The imposition of restrictions upon the nature of
10 his appraisal practice to assure that he does not practice
11 beyond the limits of his capabilities.

12 (d) Issuance of letters of admonition. Such letters
13 shall be sent by certified mail to the licensee or certified
14 person against whom a complaint was made. The letter shall
15 advise the licensee that he may, within twenty days after
16 receipt of the letter, make a written request to the board to
17 institute formal disciplinary proceedings in order to formally
18 adjudicate the conduct or acts on which the letter was based.

19 (6) In addition to any other discipline imposed pursuant
20 to this section, any person who violates the provisions of
21 this part 7 or the rules and regulations of the board
22 promulgated pursuant to this article may be penalized by the
23 board upon a finding of a violation pursuant to article 4 of
24 title 24, C.R.S., as follows:

25 (a) In the first administrative proceeding against any
26 person, a fine of not less than three hundred dollars but not
27 more than five hundred dollars per violation;

1 (b) In any subsequent administrative proceeding against
2 any person for transactions occurring after a final agency
3 action determining that a violation of this part 7 has
4 occurred, a fine of not less than one thousand dollars but not
5 more than two thousand dollars.

6 (7) Complaints of record in the office of the board and
7 the results of staff investigations may, in the discretion of
8 the board, be closed to public inspection, except as provided
9 by court order, during the investigatory period and until
10 dismissed or until notice of hearing and charges are served on
11 a licensee.

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

17 (9) Any board member having an immediate personal,
18 private, or financial interest in any matter pending before
19 the board shall disclose the fact to the board and shall not
20 vote upon such matter.

21 (10) Any licensee or certified person having direct
22 knowledge that any person has violated any of the provisions
23 of this part 7 shall report such knowledge to the board.

24 (11) The board, on its own motion or upon application,
25 at any time after the imposition of any discipline as provided
26 in this section may reconsider its prior action and reinstate
27 or restore such license or certificate or terminate probation

1 or reduce the severity of its prior disciplinary action. The
2 taking of any such further action or the holding of a hearing
3 with respect thereto shall rest in the sole discretion of the
4 board.

5 12-61-711. Judicial review of final board actions and
6 orders. Final actions and orders of the board under sections
7 12-61-709 and 12-61-710 appropriate for judicial review shall
8 be judicially reviewed in the court of appeals, in accordance
9 with section 24-4-106 (11), C.R.S.

10 12-61-712. Unlawful acts - real estate appraiser license
11 required. (1) It is unlawful for any person to violate any
12 provision of this part 7 or, on and after July 1, 1991, to act
13 as a real estate appraiser in this state without first having
14 obtained a license or certificate from the board pursuant to
15 this part 7.

16 (2) Any person who violates any provision of subsection
17 (1) of this section commits a class 3 misdemeanor and shall be
18 punished as provided in section 18-1-106, C.R.S. Any person
19 who subsequently violates any provision of subsection (1) of
20 this section within three years after the date of a conviction
21 for a violation of subsection (1) of this section commits a
22 class 6 felony and shall be punished as provided in section
23 18-1-105, C.R.S.

24 12-61-713. Injunctive proceedings. (1) The board may,
25 in the name of the people of the state of Colorado, through
26 the attorney general of the state of Colorado, apply for an
27 injunction in any court of competent jurisdiction to

1 perpetually enjoin any person from committing any act
2 prohibited by the provisions of this part 7.

3 (2) Such injunctive proceedings shall be in addition to
4 and not in lieu of all penalties and other remedies provided
5 in this part 7.

6 (3) When seeking an injunction under this section, the
7 board shall not be required to allege or prove either that an
8 adequate remedy at law does not exist or that substantial or
9 irreparable damage would result from a continued violation.

10 12-61-714. Requirement for appraisers to be licensed by
11 July 1, 1991. Unless a federal waiver is applied for and
12 granted pursuant to section 12-61-704 (1) (j), on and after
13 July 1, 1991, any person practicing real estate appraisal in
14 this state shall be licensed as provided in this part 7, and,
15 on and after said date, no person shall practice without such
16 a license or certificate or hold himself out to the public as
17 a real estate appraiser or appraiser unless licensed or
18 certified pursuant to this part 7.

19 SECTION 2. 24-1-122 (2) (k), Colorado Revised Statutes,
20 1988 Repl. Vol., is amended to read:

21 24-1-122. Department of regulatory agencies - creation.
22 (2) (k) (I) Division of real estate, the head of which shall
23 be the division director. The real estate commission, created
24 by part 1 of article 61 of title 12, C.R.S, and its powers,
25 duties, and functions are transferred by a type 1 transfer to
26 the department or regulatory agencies as the division of real
27 estate.

1 (II) THE DIVISION SHALL INCLUDE THE BOARD OF REAL ESTATE
2 APPRAISERS, CREATED BY PART 7 OF ARTICLE 61 OF TITLE 12,
3 C.R.S, WHICH SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES
4 AND FUNCTIONS, UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS
5 IF THE SAME WERE TRANSFERRED THERETO BY A TYPE 1 TRANSFER.

6 SECTION 3. 24-34-104 (28), Colorado Revised Statutes,
7 1988 Repl. Vol., as amended, is amended to read:

8 24-34-104. General assembly review of regulatory
9 agencies and functions for termination, continuation, or
10 reestablishment. (28) (a) The following division in the
11 department of regulatory agencies shall terminate on July 1,
12 1999: The Colorado civil rights division, including the
13 Colorado civil rights commission, created by part 3 of this
14 article.

15 (b) THE FOLLOWING BOARD IN THE DEPARTMENT OF REGULATORY
16 AGENCIES SHALL TERMINATE ON JULY 1, 1999: THE BOARD OF REAL
17 ESTATE APPRAISERS, CREATED BY SECTION 12-61-703, C.R.S.

18 SECTION 4. Appropriation. In addition to any other
19 appropriation, there is hereby appropriated, out of any moneys
20 in the real estate appraiser licensing fee cash fund not
21 otherwise appropriated, to the department of regulatory
22 agencies for allocation to the board of real estate
23 appraisers, for the fiscal year beginning July 1, 1990, the
24 sum of _____ dollars (\$) and ____ FTE, or
25 so much thereof as may be necessary, for the implementation of
26 this act.

27 SECTION 5. Effective date. This act shall take effect

1 July 1, 1990.

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

BY REPRESENTATIVE Kopel;
also SENATOR DeNier.

A BILL FOR AN ACT

1 CONCERNING ESTABLISHMENT AND ENFORCEMENT OF MINIMUM STANDARDS
2 FOR QUALIFICATIONS AND TRAINING OF X-RAY ASSISTANTS.

Bill Summary

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

Defines "x-ray assistant". Declares the legislative intent of the act to be the enhancement of the protection of persons using and receiving machine sources of ionizing radiation for therapeutic and diagnostic purposes in settings other than hospitals licensed by the department of health. Further declares that the general assembly does not intend the operation of the act to create any shortage of qualified x-ray assistants in any area of the state. Requires the state board of health to promulgate rules and regulations setting minimum standards for the qualifications and training of x-ray assistants. Provides that on and after a certain date, no health care professional licensed in this state as a podiatrist, chiropractor, dentist, osteopathic or medical doctor, nurse, or physical therapist shall employ any x-ray assistant who does not meet the standards of the minimum qualifications and training set by the state board of health. Requires the department of health during its inspections of machine sources of ionizing radiation to also inspect to insure that x-ray assistants using such equipment meet the minimum requirements promulgated by the state board of health and to report the use of substandard equipment and employees to the appropriate regulatory board or official in the division of registrations in the department of regulatory agencies for podiatry, chiropractic, dentistry, medical practice, nursing, or physical therapy. Makes the employment of such an unqualified x-ray assistant by such a licensed

health care professional a violation of the respective practice act for such individual and grounds for disciplinary action.

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

2 SECTION 1. 25-11-104, Colorado Revised Statutes, 1982
3 Repl. Vol., as amended, is amended BY THE ADDITION OF THE
4 FOLLOWING NEW SUBSECTIONS to read:

5 25-11-104. Rules and regulations to be adopted - fees -
6 fund created. (9) (a) For purposes of this subsection (9),
7 "x-ray assistant" means any person other than a health care
8 professional otherwise licensed under articles 32, 33, 35, 36,
9 38, or 41 of title 12, C.R.S., who administers a machine
10 source of ionizing radiation to humans for therapeutic or
11 diagnostic purposes.

12 (b) The general assembly hereby finds, determines, and
13 declares that it is the intent of the general assembly by the
14 enactment and enforcement of this subsection (9) that the
15 health and safety of x-ray assistants using and persons
16 receiving machine sources of ionizing radiation for
17 therapeutic or diagnostic purposes be furthered, but that the
18 general assembly seeks to ensure that there not be a shortage
19 of qualified individuals to operate such machine sources of
20 ionizing radiation in all areas of the state for beneficial
21 medical purposes.

22 (c) (I) In order to carry out the legislative intent
23 expressed in paragraph (b) of this subsection (9), the state
24 board of health shall adopt rules and regulations prescribing

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1 minimum standards for qualifications and training required for
2 x-ray assistants using machine sources of ionizing radiation
3 in settings other than hospitals licensed pursuant to section
4 25-1-107.

5 (II) On and after January 1, 1992, health care
6 professionals licensed under articles 32, 33, 35, 36, 38, and
7 41 of title 12, C.R.S., shall only employ, in settings other
8 than hospitals licensed pursuant to section 25-1-107, x-ray
9 assistants who meet the qualifications and training specified
10 by this subsection (9).

11 (III) On and after January 1, 1992, the department, as
12 part of its inspection function under subsection (8) of this
13 section, shall also determine that any x-ray assistant using a
14 machine source of ionizing radiation meets the requirements of
15 this subsection (9). If an inspection determines that an
16 x-ray assistant using a machine source of ionizing radiation
17 does not meet the requirements of this subsection (9), the
18 division shall report such deficiency to the Colorado podiatry
19 board under article 32 of title 12, C.R.S., the Colorado state
20 board of chiropractic examiners under article 33 of title 12,
21 C.R.S., the state board of dental examiners under article 35
22 of title 12, C.R.S., the Colorado state board of medical
23 examiners under article 36 of title 12, C.R.S., the state
24 board of nursing under article 38 of title 12, C.R.S., or the
25 director of the division of registrations for physical
26 therapists registered pursuant to article 41 of title 12,
27 C.R.S., as appropriate for the professional regulation of the

1 health care professional responsible for such machine source
2 of ionizing radiation. Such deficiency or an adverse report
3 under subsection (8) of this section shall form the basis of
4 disciplinary action against the licensed health care
5 professional pursuant to articles 32, 33, 35, 36, 38, or 41 of
6 title 12, C.R.S., as appropriate.

7 (10) (a) The failure of any qualified individual making
8 an inspection under subsections (8) and (9) of this section to
9 provide reports on deficiencies in machine sources of ionizing
10 radiation or the qualifications of x-ray assistants to the
11 department and to the appropriate agencies under articles 32,
12 33, 35, 36, 38, or 41 of title 12, C.R.S., shall be grounds
13 for requiring the department to terminate the contract with
14 any such qualified inspector.

15 (b) Qualified inspectors shall be immune from suit in
16 any action, civil or criminal, for official acts performed in
17 good faith in the implementation of subsections (8) and (9) of
18 this section.

19 (c) Any person participating in good faith in the making
20 of a complaint or report or participating in any investigation
21 pursuant to subsections (8) and (9) of this section shall be
22 immune from any liability, civil or criminal, that otherwise
23 might result by reason of such action.

24 SECTION 2. 12-32-107 (3), Colorado Revised Statutes,
25 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
26 NEW PARAGRAPH to read:

27 12-32-107. Issuance, revocation, or suspension of

1 license - probation - immunity in professional review.

2 (3) (x) Any violation of any provisions of section 25-11-104
3 (8) or (9), C.R.S., or of any rule or regulation of the state
4 board of health promulgated pursuant thereto.

5 SECTION 3. 12-33-117 (2), Colorado Revised Statutes,
6 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
7 NEW PARAGRAPH to read:

8 12-33-117. Suspension or revocation of license.

9 (2) (p) Any violation of any provisions of section 25-11-104
10 (8) or (9), C.R.S., or of any rule or regulation of the state
11 board of health promulgated pursuant thereto.

12 SECTION 4. 12-35-118 (1), Colorado Revised Statutes,
13 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
14 NEW PARAGRAPH to read:

15 12-35-118. Causes for denial of issuance or renewal -

16 suspension or revocation of licenses - other disciplinary
17 action - unprofessional conduct defined - immunity in
18 professional review. (1) (z) Any violation of any provisions

19 of section 25-11-104 (8) or (9), C.R.S., or of any rule or
20 regulation of the state board of health promulgated pursuant
21 thereto.

22 SECTION 5. 12-36-117 (1), Colorado Revised Statutes,
23 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
24 NEW PARAGRAPH to read:

25 12-36-117. Unprofessional conduct. (1) (ee) Any

26 violation of any provisions of section 25-11-104 (8) or (9),
27 C.R.S., or of any rule or regulation of the state board of

1 health promulgated pursuant thereto.

2 SECTION 6. 12-38-117 (1), Colorado Revised Statutes,
3 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
4 NEW PARAGRAPH to read:

5 12-38-117. Grounds for discipline. (1) (p) Any
6 violation of any provisions of section 25-11-104 (8) or (9),
7 C.R.S., or of any rule or regulation of the state board of
8 health promulgated pursuant thereto.

9 SECTION 7. 12-41-118 (1), Colorado Revised Statutes,
10 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
11 NEW PARAGRAPH to read:

12 12-41-118. Denial, revocation, or suspension of
13 registration. (1) (o) Violated any provisions of section
14 25-11-104 (8) or (9), C.R.S., or of any rule or regulation of
15 the state board of health promulgated pursuant thereto.

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

BY REPRESENTATIVES Philips and Kopel;
also SENATOR Gallagher.

A BILL FOR AN ACT

1 CONCERNING ADVISORY COMMITTEES SCHEDULED TO SUNSET JULY 1,
2 1990.

Bill Summary

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

Continues various advisory committees scheduled to sunset July 1, 1990. Deletes the per diem allowance for members of the advisory council to the division of employment and training. Sets up a system to stagger the terms of members of such council and a system to stagger the terms of members of the advisory committee to the division of highway safety, appointed by the governor.

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

4 SECTION 1. 8-72-105 (1), Colorado Revised Statutes, 1986
5 Repl. Vol., is amended to read:

6 8-72-105. Advisory council. (1) (a) There is hereby
7 created a council known as the advisory council to the
8 division of employment and training, composed of four employer
9 representatives, four employee representatives, two members of
10 the general assembly, and three representatives of the general

1 public. Except for the legislative members, members of the
2 council shall be appointed by the governor, who shall take
3 into account the extent to which the council represents the
4 geographic areas, population concentrations, and ethnic
5 communities of this state.

6 (b) Appointments by the governor shall be for a period
7 of four years. FOR THE PURPOSE OF STAGGERING THE TERMS OF
8 MEMBERS OF THE COUNCIL APPOINTED BY THE GOVERNOR, THE TERMS OF
9 THREE SUCH MEMBERS SCHEDULED TO EXPIRE APRIL 20, 1993, SHALL
10 EXPIRE APRIL 1, 1994, AND THE TERM OF ONE MEMBER SCHEDULED TO
11 EXPIRE APRIL 20, 1992, SHALL EXPIRE APRIL 1, 1994. The two
12 members of the general assembly shall be appointed by the
13 speaker of the house of representatives and the president of
14 the senate, respectively. Said two members shall be appointed
15 from each of the two major political parties for terms of two
16 years or for the same terms to which they were elected,
17 whichever is the lesser. Successors shall be appointed in the
18 same manner as the original members. Vacancies of all other
19 members shall be filled by appointment by the governor for
20 unexpired terms. In the case of a vacancy, the remaining
21 members of the council shall exercise all the powers and
22 authority of the council until such vacancy is filled.

23 (c) Members of the council shall be reimbursed for any
24 necessary expenses. ~~and shall receive for each day actually~~
25 ~~engaged in the duties of the council a per diem amount of~~
26 ~~thirty-five dollars; except that the legislative members shall~~
27 ~~be compensated in the same manner as for attendance at interim~~

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1 ~~committee-meetings.~~

2 (d) The council shall aid the division in formulating
3 policies and discussing problems related to the administration
4 of articles 70 to 82 of this title and assuring impartiality
5 and freedom from political influence in the solution of such
6 problems. Expenditures out of the unemployment revenue fund
7 pursuant to section 8-77-106 shall be made only upon the
8 approval of a majority of the council first had and obtained.
9 A majority of the council shall constitute a quorum to
10 transact business and for the exercise of any of the powers or
11 authority conferred.

12 SECTION 2. 24-42-102 (1), Colorado Revised Statutes,
13 1988 Repl. Vol., is amended to read:

14 24-42-102. Advisory committee - sunset review.

15 (1) There is hereby created within the division of highway
16 safety an advisory committee to advise and consult with the
17 director of the division of highway safety. The advisory
18 committee shall be composed of twelve citizens of the state
19 appointed as follows: In each second year, the governor shall
20 appoint four members for terms beginning January 31 of said
21 year and expiring January 30 of the fourth year thereafter.
22 Persons holding office on June 15, 1987, are subject to the
23 provisions of section 24-1-137. NOTWITHSTANDING THE
24 PROVISIONS OF SECTION 24-1-137, TO STAGGER THE TERMS OF
25 MEMBERS OF THE COMMITTEE IN A MANNER CONSISTENT WITH A
26 FOUR-YEAR TERM OF OFFICE, THE TERMS OF FOUR MEMBERS OF THE
27 COMMITTEE APPOINTED BY THE GOVERNOR IN EXECUTIVE ORDER NUMBER

1 A023 87, DATED FEBRUARY 13, 1987, SHALL EXPIRE JANUARY 30,
2 1993, AS SCHEDULED. THE TERM OF ONE MEMBER APPOINTED BY THE
3 GOVERNOR PURSUANT TO SAID EXECUTIVE ORDER AND THE TERMS OF
4 THREE MEMBERS OF THE COMMITTEE APPOINTED BY THE GOVERNOR FOR
5 TERMS COMMENCING JANUARY 31, 1989, SHALL EXPIRE JANUARY 30,
6 1995. Any vacancy on the advisory committee shall be filled
7 by the governor by the appointment of a qualified person for
8 the unexpired term. Each THE committee shall elect its own
9 officers, fix its times and places of meetings, and determine
10 its own procedure. The advisory committee shall be composed of
11 persons who are known to have an interest in highway safety,
12 and shall be representative of all groups interested and
13 active in the promotion of highway safety, AND SHALL ALSO
14 INCLUDE REPRESENTATIVES OF RURAL AREAS OF THE STATE. The
15 members of the committee shall receive no compensation for
16 their services but shall be reimbursed for actual and
17 necessary expenses incurred in the performance of their
18 official duties. The members of the advisory committee created
19 by section 132-1-8, C.R.S. 1963, and existing on July 1, 1974,
20 shall constitute the first advisory committee and shall serve
21 the remainder of the terms for which originally appointed.

22 SECTION 3. Repeal. 2-3-1203 (3) (c) (III), (3) (c) (V),
23 (3) (c) (VI), (3) (c) (VII), (3) (c) (VII.5), and (3) (c)
24 (VIII), Colorado Revised Statutes, 1980 Repl. Vol., as
25 amended, 8-72-105 (2), Colorado Revised Statutes, 1986 Repl.
26 Vol., 24-42-102 (2), Colorado Revised Statutes, 1988 Repl.
27 Vol., and 25-1-208 (7), 26-4-113 (2), 26-4.5-113 (6) (b), and

1 26-15-108 (2), Colorado Revised Statutes, 1989 Repl. Vol., are
2 repealed.

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

1 article, who is actively engaged in the commercial application
2 of pesticides for the control of turf or ornamental pests;

3 (e) A commercial applicator, licensed under this
4 article, who is actively engaged in the application of
5 pesticides for the control of structural pests;

6 (f) A qualified supervisor, employed by a limited
7 commercial applicator, who is actively engaged in the
8 application of pesticides;

9 (g) Two representatives from public applicators
10 registered under this article, each of whom shall be an
11 elected official or a designee thereof who is a qualified
12 supervisor;

13 (h) A representative from Colorado state university
14 agricultural experiment station or extension service;

15 (i) A representative from the department of health; and

16 (j) Two representatives from the general public, one of
17 whom is actively engaged in agricultural production.

18 (3) All members of the advisory committee, with the
19 exception of the formulator, shall be residents of this state.

20 (4) The appointment of the formulator, the pest control
21 consultant, the commercial applicator engaged in the control
22 of agricultural crop pests, and one of the representatives
23 from a public applicator shall expire on January 1, 1991; and
24 the appointment of the commercial applicator engaged in the
25 control of turf or ornamental pests, the representative from
26 the general public who is actively engaged in agricultural
27 production, the qualified supervisor employed by a limited

1 commercial applicator, and the representative from the
2 department of health shall expire on January 1, 1992. The
3 initial appointment of all other members shall be for a term
4 of three years. Thereafter, the appointment of each member to
5 the committee shall be for a term of three years.

6 (5) Members of the advisory committee shall receive no
7 compensation but shall be reimbursed for actual and necessary
8 traveling and subsistence expenses incurred in the performance
9 of their official duties as members of such committee.

10 (6) (a) This section is repealed, effective July 1,
11 1996.

12 (b) Prior to said repeal, the advisory committee
13 appointed pursuant to this section shall be reviewed as
14 provided for in section 2-3-1203, C.R.S.

15 35-10-127. Commercial pesticide applicator fund - fees.
16 All fees and civil fines collected pursuant to this article
17 shall be transmitted to the state treasurer who shall credit
18 the same to the commercial pesticide applicator fund, which
19 fund is hereby created. All moneys credited to the fund and
20 all interest earned on the investment of moneys in the fund
21 shall be a part of this fund and shall not be transferred or
22 credited to the general fund or to any other fund except as
23 directed by the general assembly acting by bill. The general
24 assembly shall make annual appropriations from such fund to
25 the department to carry out the purposes of this article.

26 35-10-128. Deadline for promulgation of rules and
27 regulations for implementation for article, as amended. Any

1 rules and regulations necessary for the implementation of this
2 article, as amended at the second regular session of the
3 fifty-seventh general assembly, shall be promulgated by the
4 commissioner no later than December 31, 1991.

5 35-10-129. Repeal of article - termination of functions.
6 Effective July 1, 1996, this article shall be repealed. The
7 licensing function of the commissioner of agriculture shall
8 also terminate on July 1, 1996. Prior to such termination,
9 the licensing function shall be reviewed as provided for in
10 section 24-34-104, C.R.S.

11 SECTION 2. 35-9-102 (6) and (23), Colorado Revised
12 Statutes, 1984 Repl. Vol., are amended to read:

13 35-9-102. Definitions. (6) "Device" means any
14 instrument or contrivance, OTHER THAN A FIREARM, intended for
15 trapping, destroying, repelling, or mitigating ~~insects or~~
16 ~~rodents or destroying, repelling, or mitigating fungi,~~
17 ~~nematodes, or such other pests as may be designated by the~~
18 ~~department of agriculture, but not including equipment used~~
19 ~~for the application of pesticides when sold separately~~
20 ~~therefrom~~ ANY PEST OR ANY OTHER FORM OF PLANT OR ANIMAL LIFE
21 (OTHER THAN MAN AND OTHER THAN BACTERIA, VIRUSES, OR OTHER
22 MICROORGANISMS ON OR IN LIVING MAN OR OTHER LIVING ANIMALS);
23 EXCEPT THAT "DEVICE" SHALL NOT INCLUDE EQUIPMENT USED FOR THE
24 APPLICATION OF PESTICIDES WHEN SOLD SEPARATELY THEREFROM.

25 (23) "Plant regulator" means any substance or mixture of
26 substances intended, through physiological action, for
27 accelerating or retarding the rate of growth or RATE OF

1 maturation or for otherwise altering the behavior of
2 ~~ornamental or crop~~ plants or the produce thereof, but it does
3 not include substances to the extent that they are intended as
4 plant nutrients, trace elements, nutritional chemicals, plant
5 inoculants, and soil amendments. ALSO, "PLANT REGULATOR"
6 SHALL NOT BE REQUIRED TO INCLUDE ANY OF THOSE NUTRIENT
7 MIXTURES OR SOIL AMENDMENTS WHICH ARE COMMONLY KNOWN AS
8 VITAMIN-HORMONE HORTICULTURAL PRODUCTS, INTENDED FOR
9 IMPROVEMENT, MAINTENANCE, SURVIVAL, HEALTH, AND PROPAGATION OF
10 PLANTS, WHICH ARE NOT FOR PEST DESTRUCTION AND WHICH ARE
11 NONTOXIC AND NONPOISONOUS IN THE UNDILUTED PACKAGED
12 CONCENTRATION.

13 SECTION 3. 35-9-102 (21), Colorado Revised Statutes,
14 1984 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
15 to read:

16 35-9-102. Definitions. (21) "Pesticide" means any
17 substance or mixture of substances intended for preventing,
18 destroying, repelling, or mitigating any pest or any substance
19 or mixture of substances intended for use as a plant
20 regulator, defoliant, or desiccant; except that the term
21 "pesticide" shall not include any article that is a "new
22 animal drug" as designated by the United States food and drug
23 administration.

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

27 2-3-1203. Sunset review of advisory committees.

1 (3) (1) July 1, 1996: The advisory committee for regulation
2 of pesticides and pesticide use, appointed pursuant to section
3 35-10-126, C.R.S.

4 SECTION 5. 24-34-104, Colorado Revised Statutes, 1988
5 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
6 SUBSECTION to read:

7 24-34-104. General assembly review of regulatory
8 agencies and functions for termination, continuation, or
9 reestablishment. (25.1) The following functions of the
10 specified agency shall terminate on July 1, 1996: The
11 licensing of commercial applicators, qualified supervisors,
12 certified operators, and pest control consultants through the
13 commissioner of agriculture in accordance with article 10 of
14 title 35, C.R.S.

15 SECTION 6. Repeal. 2-3-1203 (3) (e) (VI), Colorado
16 Revised Statutes, 1980 Repl. Vol., as amended, 24-34-104
17 (19.1) (c), Colorado Revised Statutes, 1988 Repl. Vol., and
18 35-9-106, Colorado Revised Statutes, 1984 Repl. Vol., as
19 amended, are repealed.

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

BY SENATOR Gallagher;
also REPRESENTATIVES Philips, Kopel, and Fleming.

A BILL FOR AN ACT

1 CONCERNING CREATION OF THE FIRE SUPPRESSION PROGRAM UNDER THE
2 DIRECTOR OF THE DIVISION OF FIRE SAFETY IN THE DEPARTMENT
3 OF PUBLIC SAFETY, AND MAKING AN APPROPRIATION THEREFOR.

Bill Summary

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

Establishes the director of the division of fire safety
in the department of public safety as the state fire
suppression administrator. Sets up the fire suppression cash
fund in the state treasury for moneys to administer the
program created by the act. Empowers the administrator to
establish the fire suppression program. Requires the
registration of fire suppression contractors. Authorizes the
administrator to set standards governing the conduct of fire
suppression contractors and to impose disciplinary actions on
contractors violating such standards. Requires the
registration of fire suppression jobs and the review of plans
therefor to facilitate inspections by certified fire safety
inspectors. Sets standards for certifying such inspectors.
Establishes standards for the approval of fire suppression
systems by such inspectors. Establishes criminal and civil
penalties for violations of the act. Provides that the
administrator shall have no authority over local governmental
entities by virtue of the act.

Makes an appropriation.

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

1 SECTION 1. 24-33.5-1202, Colorado Revised Statutes, 1988
2 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
3 read:

4 24-33.5-1202. Definitions. As used in this part 12,
5 unless the context otherwise requires:

6 (1) "Administrator" means the state fire suppression
7 administrator, who shall be the director of the division of
8 fire safety, under the department of public safety, or the
9 designee of such director.

10 (2) "Certification" means the issuance to a firefighter,
11 by the advisory board, of a signed instrument evidencing
12 satisfactory completion by such firefighter of the
13 requirements of the fire service education and training
14 program.

15 (3) "Certified fire safety inspector" means a person
16 certified as provided in section 24-33.5-1206.4.

17 (4) "Firefighter" means any person, whether paid or a
18 volunteer, who is actively participating in or employed by a
19 public or private fire service unit in this state.

20 (5) "Fire suppression contractor" means any individual,
21 firm, corporation, association, or organized group of persons,
22 that individually or through others, offers to undertake,
23 represents itself as being able to undertake, or does
24 undertake to sell, layout, fabricate, install, modify, alter,
25 repair, maintain, or perform maintenance inspections of any
26 fire suppression system.

27 (6) "Fire suppression system" means an assembly of any

1 or all of the following: Piping valves, conduits, dispersal
2 openings, sprinkler heads, orifices, and other similar devices
3 that convey extinguishing agents for the purpose of
4 controlling, confining, or extinguishing fire, with the
5 exception of preengineered range hoods, duct systems, and
6 portable fire extinguishers.

7 (7) "First responder program" means the program
8 developed by the national highway traffic safety
9 administration to train emergency response personnel to deal
10 with an emergency incident upon first arrival at the scene.

11 (8) "Principal" means an individual having a position of
12 responsibility in any entity acting as a fire suppression
13 contractor, including but not limited to any manager,
14 director, officer, partner, owner, or shareholder owning ten
15 percent or more of the stocks of any such entity.

16 SECTION 2. Part 12 of article 33.5 of title 24, Colorado
17 Revised Statutes, 1988 Repl. Vol., is amended BY THE ADDITION
18 OF THE FOLLOWING NEW SECTIONS to read:

19 24-33.5-1204.5. Powers of the administrator. (1) In
20 addition to any other duties and powers granted by this
21 section or sections 24-33.5-1206.2 and 24-33.5-1206.4, the
22 administrator has the following duties and powers:

23 (a) To establish a fire suppression program and to adopt
24 such rules and regulations as may be necessary to administer
25 the fire suppression program for registration of fire
26 suppression contractors and inspection of fire suppression
27 systems pursuant to article 4 of this title;

1 (b) To establish a schedule of fees for the direct and
2 indirect costs of the fire suppression registration program,
3 which fees shall be assessed against any person registered
4 pursuant to the provisions of section 24-33.5-1206.1;

5 (c) In the discretion of the administrator, to receive,
6 investigate, and act upon complaints against those persons who
7 violate any of the provisions of section 24-33.5-1206.6 or any
8 rule or regulation adopted by the administrator pursuant to
9 this section;

10 (d) To maintain records of all applications,
11 investigations, disciplinary or other actions, and
12 registrants;

13 (e) To conduct hearings upon charges for discipline of
14 a fire suppression contractor or a certified fire safety
15 inspector, issue subpoenas, compel attendance of witnesses,
16 compel the production of books, records, papers, and
17 documents, administer oaths to persons giving testimony at
18 hearings, and cause prosecution and enjoinder of all persons
19 violating this article.

20 24-33.5-1206.1. Registration required. (1) On or after
21 January 1, 1991, no person shall act, assume to act, or
22 advertise as a fire suppression contractor who is not
23 registered as a fire suppression contractor with the
24 administrator.

25 (2) Any registered fire suppression contractor shall
26 obtain any locally required licenses or permits and comply
27 with local building and fire codes.

BY SENATOR Gallagher;
also REPRESENTATIVES Philips, Kopel, and Fleming.

A BILL FOR AN ACT

1 CONCERNING CREATION OF THE FIRE SUPPRESSION PROGRAM UNDER THE
2 DIRECTOR OF THE DIVISION OF FIRE SAFETY IN THE DEPARTMENT
3 OF PUBLIC SAFETY, AND MAKING AN APPROPRIATION THEREFOR.

Bill Summary

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

Establishes the director of the division of fire safety
in the department of public safety as the state fire
suppression administrator. Sets up the fire suppression cash
fund in the state treasury for moneys to administer the
program created by the act. Empowers the administrator to
establish the fire suppression program. Requires the
registration of fire suppression contractors. Authorizes the
administrator to set standards governing the conduct of fire
suppression contractors and to impose disciplinary actions on
contractors violating such standards. Requires the
registration of fire suppression jobs and the review of plans
therefor to facilitate inspections by certified fire safety
inspectors. Sets standards for certifying such inspectors.
Establishes standards for the approval of fire suppression
systems by such inspectors. Establishes criminal and civil
penalties for violations of the act. Provides that the
administrator shall have no authority over local governmental
entities by virtue of the act.

Makes an appropriation.

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

1 SECTION 1. 24-33.5-1202, Colorado Revised Statutes, 1988
2 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
3 read:

4 24-33.5-1202. Definitions. As used in this part 12,
5 unless the context otherwise requires:

6 (1) "Administrator" means the state fire suppression
7 administrator, who shall be the director of the division of
8 fire safety, under the department of public safety, or the
9 designee of such director.

10 (2) "Certification" means the issuance to a firefighter,
11 by the advisory board, of a signed instrument evidencing
12 satisfactory completion by such firefighter of the
13 requirements of the fire service education and training
14 program.

15 (3) "Certified fire safety inspector" means a person
16 certified as provided in section 24-33.5-1206.4.

17 (4) "Firefighter" means any person, whether paid or a
18 volunteer, who is actively participating in or employed by a
19 public or private fire service unit in this state.

20 (5) "Fire suppression contractor" means any individual,
21 firm, corporation, association, or organized group of persons,
22 that individually or through others, offers to undertake,
23 represents itself as being able to undertake, or does
24 undertake to sell, layout, fabricate, install, modify, alter,
25 repair, maintain, or perform maintenance inspections of any
26 fire suppression system.

27 (6) "Fire suppression system" means an assembly of any

1 or all of the following: Piping valves, conduits, dispersal
2 openings, sprinkler heads, orifices, and other similar devices
3 that convey extinguishing agents for the purpose of
4 controlling, confining, or extinguishing fire, with the
5 exception of preengineered range hoods, duct systems, and
6 portable fire extinguishers.

7 (7) "First responder program" means the program
8 developed by the national highway traffic safety
9 administration to train emergency response personnel to deal
10 with an emergency incident upon first arrival at the scene.

11 (8) "Principal" means an individual having a position of
12 responsibility in any entity acting as a fire suppression
13 contractor, including but not limited to any manager,
14 director, officer, partner, owner, or shareholder owning ten
15 percent or more of the stocks of any such entity.

16 SECTION 2. Part 12 of article 33.5 of title 24, Colorado
17 Revised Statutes, 1988 Repl. Vol., is amended BY THE ADDITION
18 OF THE FOLLOWING NEW SECTIONS to read:

19 24-33.5-1204.5. Powers of the administrator. (1) In
20 addition to any other duties and powers granted by this
21 section or sections 24-33.5-1206.2 and 24-33.5-1206.4, the
22 administrator has the following duties and powers:

23 (a) To establish a fire suppression program and to adopt
24 such rules and regulations as may be necessary to administer
25 the fire suppression program for registration of fire
26 suppression contractors and inspection of fire suppression
27 systems pursuant to article 4 of this title;

1 (b) To establish a schedule of fees for the direct and
2 indirect costs of the fire suppression registration program,
3 which fees shall be assessed against any person registered
4 pursuant to the provisions of section 24-33.5-1206.1;

5 (c) In the discretion of the administrator, to receive,
6 investigate, and act upon complaints against those persons who
7 violate any of the provisions of section 24-33.5-1206.6 or any
8 rule or regulation adopted by the administrator pursuant to
9 this section;

10 (d) To maintain records of all applications,
11 investigations, disciplinary or other actions, and
12 registrants;

13 (e) To conduct hearings upon charges for discipline of
14 a fire suppression contractor or a certified fire safety
15 inspector, issue subpoenas, compel attendance of witnesses,
16 compel the production of books, records, papers, and
17 documents, administer oaths to persons giving testimony at
18 hearings, and cause prosecution and enjoinder of all persons
19 violating this article.

20 24-33.5-1206.1. Registration required. (1) On or after
21 January 1, 1991, no person shall act, assume to act, or
22 advertise as a fire suppression contractor who is not
23 registered as a fire suppression contractor with the
24 administrator.

25 (2) Any registered fire suppression contractor shall
26 obtain any locally required licenses or permits and comply
27 with local building and fire codes.

1 (3) Any registered fire suppression contractor shall be
2 responsible for the acts of its agents and employees while
3 acting on behalf of the contractor to sell, advertise, layout,
4 fabricate, install, add to, alter, service, repair, or inspect
5 fire suppression systems of any kind.

6 (4) Every registered fire suppression contractor shall
7 be responsible to assure that:

8 (a) A responsible person in the management or employment
9 of the contractor is qualified in the layout, fabrication,
10 installation, alteration, servicing, repair, and inspection of
11 fire suppression systems;

12 (b) Each job is supervised by an on-site installer who
13 is qualified in the layout, fabrication, installation,
14 alteration, servicing, repair, and inspection of fire
15 suppression systems;

16 (c) Any layout, fabrication, installation, alteration,
17 servicing, repair, or inspection of fire suppression systems
18 is done according to applicable standards adopted by the
19 administrator by rule and regulation and applicable local
20 codes and ordinances. In adopting standards pursuant to this
21 paragraph (c), the administrator may consider and adopt the
22 standards of the national fire prevention association.

23 (d) Actual fabrication, installation, alteration,
24 servicing, or repair of any fire suppression system is done in
25 accordance with approved plans, layout, or design.

26 (e) All interim and final inspections and system tests
27 are completed according to standards adopted by the

1 administrator and requirements laid out by local fire safety
2 inspectors and the administrator, and that any required logs,
3 reports, or results of said inspections and system tests are
4 accurately kept and conveyed to the appropriate fire safety
5 inspectors.

6 (5) No registration shall be granted to any fire
7 suppression contractor who has as a principal any person who,
8 within the past two years, has violated any provision of this
9 part 12 or any rule or regulation of the administrator
10 pursuant thereto.

11 24-33.5-1206.2. Job registration and plan review.

12 (1) Except for minor alterations, modifications, repairs, or
13 maintenance work which does not affect the integrity of the
14 system, no installation, modification, alteration, or repair
15 of a fire suppression system shall be started until:

16 (a) Any required local permits have been obtained;

17 (b) (I) The job, including the name and registration
18 number of the contractor, the address and description of the
19 premises where the job will be done, and the name and address
20 of the general contractor or the name and address of the owner
21 if no general contractor is involved, has been registered with
22 the administrator.

23 (II) Where approved by rule or regulation, the
24 administrator may accept job registration with local fire
25 safety officials in satisfaction of the registration
26 requirement imposed by subparagraph (I) of this paragraph (b).

27 (c) (I) The working plans and hydraulic calculations for

1 the job have been reviewed and approved by the administrator.

2 (II) The administrator shall establish standards of
3 review and approval and shall, where appropriate, accept
4 review and approval by local fire safety inspectors in
5 satisfaction of the requirements of this paragraph (c).

6 (2) Any working plans and hydraulic calculations
7 submitted for review by the administrator shall bear the
8 signature and certification number of either a registered
9 professional engineer or a level three or higher engineering
10 technician (fire suppression engineering technology -
11 automatic sprinkler design) certified by the national
12 institute for the certification of engineering technologists.
13 Such registered professional engineer or engineering
14 technician shall certify that he has reviewed the plan and
15 design and finds that it meets the applicable standards
16 adopted by the administrator for fire safety, and that it is
17 adequately designed to meet the system requirements.

18 24-33.5-1206.3. Requirements for installation,
19 inspection, and maintenance of fire suppression systems.

20 (1) Fire suppression systems shall be designed and installed
21 in accordance with the applicable standards adopted by the
22 administrator by rule, manufacturer's specifications, and
23 applicable local codes and ordinances. In adopting standards,
24 the administrator may consider and adopt the standards of the
25 national fire protection association.

26 (2) The contractor shall furnish the user with operating
27 instructions for all equipment installed, together with

1 as-built diagrams of the final installation.

2 (3) Contractor inspections and tests, where required,
3 shall be conducted by qualified personnel or certified fire
4 safety inspectors and in compliance with applicable standards
5 adopted by the administrator. Complete records shall be kept
6 of the tests and operations of each system. The records shall
7 be available for examination by the local certified fire
8 safety inspector or the fire suppression administrator.

9 24-33.5-1206.4. System approval, inspection, and
10 inspectors. (1) No installation, modification, alteration,

11 or repair of a fire suppression system shall be completed and
12 cleared for use, and no structure or partial structure in
13 which such fire suppression system is installed, modified,
14 altered, or repaired shall be cleared for occupancy, until
15 such fire suppression system has been approved by a certified
16 fire safety inspector. Approval shall include review of
17 approved working plans and hydraulic calculations,
18 installation inspections, and final tests.

19 (2) (a) Each county, municipality, and special district
20 that has fire safety enforcement responsibilities shall employ
21 or contract with a certified fire safety inspector. Such
22 inspector shall conduct all fire safety inspections that are
23 required by state law or by the local building codes and fire
24 safety codes of the jurisdiction. The governing body of the
25 county, municipality, or special district that has fire safety
26 enforcement responsibilities may provide a schedule of fees to
27 pay only the costs of inspections conducted pursuant to this

1 subsection (2) and related administrative expenses, and
2 collect said fees from the fire suppression contractor.

3 (b) Two or more counties, municipalities, or special
4 districts that have fire safety enforcement responsibilities
5 may jointly employ or contract with a fire safety inspector.

6 (c) The administrator or his agent shall be available to
7 provide such fire safety inspections to any county,
8 municipality, or special district on a contractual or
9 job-by-job basis. The county, municipality, or special
10 district shall pay the actual costs of such inspections by the
11 administrator or his agents.

12 (3) Every inspection of a fire suppression system
13 conducted pursuant to state or local fire safety requirements
14 shall be by a person certified as having met the inspection
15 training requirements set by the administrator. Such person
16 shall:

17 (a) Be at least eighteen years of age;

18 (b) Not have been engaged in any of the activities
19 specified in section 24-33.5-1206.6 (2); and

20 (c) (I) Have satisfactorily completed the fire safety
21 inspector certification examination as prescribed by the
22 administrator;

23 (II) Have demonstrated to the administrator that the
24 applicant has met such other equivalent qualifications as may
25 be prescribed by the administrator;

26 (III) Have received in another state training which is
27 determined by the administrator to be at least equivalent to

1 that required by the administrator for approved certified fire
2 safety inspector education and training programs in this
3 state.

4 (4) Every certificate issued by the administrator is
5 valid for a period of three years from the date of issuance.
6 Renewal of certification shall require the affected person to
7 complete a proper application for renewal and meet any other
8 requirements for renewal as prescribed by the administrator,
9 including successful passage of an examination as established
10 by the administrator.

11 24-33.5-1206.5. Unlawful acts criminal penalties.

12 (1) Any person who violates any of the provisions of section
13 24-33.5-1206.1 commits a class 3 misdemeanor and, if a natural
14 person, shall, upon conviction thereof, be punished as
15 provided in section 18-1-106, C.R.S., and, if a corporation,
16 shall be punished by a fine of not more than five thousand
17 dollars. Any natural person who violates any provision of
18 section 24-33.5-1206.1 subsequent to a prior conviction for
19 such a violation commits a class 2 misdemeanor and shall, upon
20 conviction thereof, be punished as provided in section
21 18-1-106, C.R.S.

22 (2) Any person who knowingly and willfully makes any
23 false statement whatsoever or who conceals a material fact in
24 any application, form, claim, advertisement, contract,
25 warranty, guarantee, or statement, either written or oral,
26 with the intent to influence the actions or decisions of any
27 owner or contractor negotiating or contracting for the

1 installation, alteration, or repair of any fire suppression
2 system, or to any bonding agent, commits a class 1 misdemeanor
3 and shall, upon conviction thereof, be punished as provided in
4 section 18-1-106, C.R.S.

5 24-33.5-1206.6. Unlawful acts civil penalties -
6 disciplinary actions. (1) Any person, firm, association, or
7 corporation which violates any of the provisions of sections
8 24-33.5-1206.1 to 24-33.5-1206.3 or any rule or regulation
9 promulgated by the administrator pursuant to this part 12 may
10 be punished upon a finding of such violation by the
11 administrator as follows:

12 (a) In any first administrative proceeding against a
13 licensee, a fine of not less than one hundred dollars nor more
14 than one thousand dollars;

15 (b) In any subsequent administrative proceeding against
16 a licensee for transactions occurring after a final agency
17 action determining that any violation of sections
18 24-33.5-1206.1 to 24-33.5-1206.3 or any rule or regulation of
19 the administrator has occurred, a fine of not less than one
20 thousand dollars nor more than ten thousand dollars.

21 (2) In addition to the penalties provided in subsection
22 (1) of this section, the administrator may withhold, deny,
23 suspend, or revoke the registration or certification of any
24 registered fire suppression contractor or certified fire
25 safety inspector or applicant therefor if the administrator
26 finds, upon proof, that any such person has committed any of
27 the following:

1 (a) Fraud or material deception in the obtaining or
2 renewing of a registration;

3 (b) Professional incompetence as manifested by poor,
4 faulty, or dangerous workmanship;

5 (c) Engaging in dishonorable, unethical, or
6 unprofessional conduct of a character likely to deceive,
7 defraud, or harm the public in the course of professional
8 services or activities;

9 (d) Performing any services in a negligent manner or
10 permitting any of his agents or employees to perform services
11 in a grossly negligent manner, regardless of whether actual
12 damage or damages to the public is established;

13 (e) Directly or indirectly, willfully receiving
14 compensation for any professional services not actually
15 rendered;

16 (f) Failing to comply with any provision of this part 12
17 or the standards or rules promulgated by the administrator
18 pursuant thereto;

19 (g) Contracting or assisting unregistered persons to
20 perform services for which registration is required under this
21 part 12.

22 (3) All fines imposed by the administrator pursuant to
23 this section shall be credited to the fire suppression fund
24 created in section 24-33.5-1207.6.

25 (4) A person acting as a fire suppression contractor may
26 not bring any legal action to collect compensation due for
27 performing any act for which registration is required pursuant

1 to section 24-33.5-1206.1 unless such contractor alleges and
2 proves that he was duly registered under said section at the
3 time the alleged cause of action arose.

4 24-33.5-1207.6. Fire suppression cash fund - created.

5 All moneys collected by the administrator pursuant to the
6 administration of the fire suppression program shall be
7 transmitted to the state treasurer, who shall credit the same
8 to the fire suppression cash fund, which fund is hereby
9 created. All moneys credited to said fund and all interest
10 earned thereon are subject to appropriations by the general
11 assembly for paying the expenses of the fire suppression
12 program, and said moneys shall remain in such fund for such
13 purposes and shall not revert or be credited to the general
14 fund.

15 SECTION 3. 24-33.5-1208, Colorado Revised Statutes, 1988
16 Repl. Vol., is amended to read:

17 24-33.5-1208. Limitation of authority. Nothing in this
18 part 12 shall be construed to give the division, director, or
19 advisory--board ADMINISTRATOR any power of control or
20 supervision over any unit of local government.

21 SECTION 4. Appropriation. In addition to any other
22 appropriation, there is hereby appropriated, out of any moneys
23 in the fire suppression cash fund not otherwise appropriated,
24 to the department of public safety, for allocation to the
25 division of fire safety, for the fiscal year beginning July 1,
26 1990, the sum of _____ dollars (\$) and ___ FTE, or so
27 much thereof as may be necessary, for the implementation of

1 this act.

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

BY SENATOR McCormick;
also REPRESENTATIVES Philips and Kopel.

A BILL FOR AN ACT

1 CONCERNING THE REGULATION OF APPRAISERS, AND MAKING AN
2 APPROPRIATION IN CONNECTION THEREWITH.

Bill Summary

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

Declares that the general assembly intends to implement the requirements of the federal "Real Estate Appraisal Reform Amendments", title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", by enacting a licensing and certification scheme for real estate appraisers which meets the minimum requirements of such federal law. Defines terms. Creates the board of real estate appraisers in the division of real estate and provides for the qualifications of members of the board and for the appointment of such members. Specifies the powers and duties of the board. Establishes the requirements for licensure and certification under the act. Creates the real estate appraiser licensing fee cash fund in the state treasury for moneys collected from fees for licensing and certifying such appraisers and specifies that moneys in such fund shall be appropriated for the administration of the act. Provides for the terms of the expiration of appraisers' licenses and certificates, licensure or certification by endorsement from other jurisdictions, denial of licensure or certification, grounds for disciplinary action by the board, and administrative and criminal penalties for violation of the act. Provides for judicial review of actions of the board of real estate appraisers.

Makes an appropriation.

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

2 SECTION 1. Article 61 of title 12, Colorado Revised
3 Statutes, 1985 Repl. Vol., as amended, is amended BY THE
4 ADDITION OF A NEW PART to read:

5 PART 7

6 REAL ESTATE APPRAISERS

7 12-61-701. Legislative declaration. The general
8 assembly finds, determines, and declares that this part 7 is
9 enacted pursuant to the requirements of the federal "Real
10 Estate Appraisal Reform Amendments", title XI of the federal
11 "Financial Institutions Reform, Recovery, and Enforcement Act
12 of 1989". The general assembly further finds, determines, and
13 declares that this part 7 is intended to implement the minimum
14 requirements of federal law in the least burdensome manner to
15 real estate appraisers while providing the protection to the
16 public mandated by federal law.

17 12-61-702. Definitions. As used in this part 7, unless
18 the context otherwise requires:

19 (1) "Appraisal", "appraisal report", or "real estate
20 appraisal" means an analysis, opinion, or conclusion relating
21 to the nature, quality, value, or utility of specified
22 interests in, or aspects of, identified real estate. Such
23 terms include a valuation, which is an estimate of the value
24 of real estate, and an analysis, which is a general study of
25 real estate not specifically performed only to determine
26 value.

27 (2) "Board" means the board of real estate appraisers

1 created in section 12-61-703.

2 (3) "Division" means the division of real estate.

3 (4) "Director" means the director of the division of
4 real estate.

5 (5) "Real estate appraiser" or "appraiser" means any
6 person who provides for a fee or a salary an unbiased estimate
7 of the nature, quality, value, or utility of an interest in,
8 or aspect of, identified real estate and related personalty
9 and includes one who estimates value and who possesses the
10 necessary qualifications, ability, and experience to execute
11 or direct the appraisal of real property. "Real estate
12 appraiser" does not include any person licensed as a broker or
13 a salesman pursuant to part 1 of this article when conducting
14 a valuation of real property which is listed with such broker
15 or when conducting a valuation in connection with obtaining a
16 listing of real property.

17 12-61-703. Board of real estate appraisers - creation -
18 compensation - immunity - subject to termination. (1) There
19 is hereby created in the division a board of real estate
20 appraisers consisting of five members appointed by the
21 governor with the consent of the senate. Of such members,
22 three shall be licensed or certified real estate appraisers,
23 one shall be a county assessor in office, and one shall be a
24 member of the public at large. Of the members of the board
25 appointed for terms beginning July 1, 1990, two of the
26 appraiser members and the public member shall be appointed for
27 terms of three years, and the county assessor member and the

1 remaining appraiser member shall be appointed for terms of one
2 year. Of such members appointed for terms beginning July 1,
3 1990, the appraiser members and the assessor member need not
4 be licensed appraisers, but, unless a federal extension is
5 granted pursuant to section 12-61-704 (1) (j), shall be
6 licensed by July 1, 1991, or shall be ineligible to remain as
7 members of the board and shall be removed by the governor.
8 Members of the board appointed after July 1, 1990, shall hold
9 office for a term of three years. In the event of a vacancy
10 by death, resignation, removal, or otherwise, the governor
11 shall appoint a member to fill out the unexpired term. The
12 governor shall have the authority to remove any member for
13 misconduct, neglect of duty, or incompetence.

14 (2) The board shall exercise its powers and perform its
15 duties and functions under the division as if transferred
16 thereto by a type 1 transfer as such transfer is defined in
17 the "Administrative Organization Act of 1968", article 1 of
18 title 24, C.R.S.

19 (3) Each member of the board shall receive the same
20 compensation and reimbursement of expenses as those provided
21 for members of boards and commissions in the division of
22 registrations pursuant to section 24-34-102 (13), C.R.S.
23 Payment for all such per diem compensation and expenses shall
24 be made out of annual appropriations from the real estate
25 appraiser licensing cash fund provided for in section
26 12-61-705.

27 (4) Members of the board, consultants, and expert

1 witnesses shall be immune from suit in any civil action based
2 upon any disciplinary proceedings or other official acts they
3 performed in good faith pursuant to this part 7.

4 (5) A majority of the board shall constitute a quorum
5 for the transaction of all business, and actions of the board
6 shall require a vote of a majority of such members present in
7 favor of the action taken.

8 (6) The provisions of section 24-34-104, C.R.S.,
9 concerning the termination schedule for regulatory bodies of
10 the state, unless extended as provided in that section, are
11 applicable to the board of real estate appraisers created by
12 this section.

13 12-61-704. Powers and duties of the board. (1) In
14 addition to all other powers and duties imposed upon it by
15 law, the board has the following powers and duties:

16 (a) To promulgate and amend, as necessary, rules and
17 regulations pursuant to article 4 of title 24, C.R.S., for the
18 implementation and administration of this part 7 and as
19 required to comply with title XI of the federal "Financial
20 Institutions Reform, Recovery, and Enforcement Act of 1989";

21 (b) To charge application, examination, and license and
22 certificate renewal fees established pursuant to section
23 12-61-705 to all applicants for licensure, certification,
24 examination, and renewal under this part 7. No fees received
25 from applicants seeking licensure, certification, examination,
26 or renewal shall be refunded.

27 (c) (I) To keep all records of proceedings and

1 activities of the board conducted under authority of this part
2 7, which records shall be open to public inspection at such
3 time and in such manner as may be prescribed by rules and
4 regulations formulated by the board.

5 (II) The board shall not be required to maintain or
6 preserve licensing history records of any person licensed or
7 certified under the provisions of this part 7 for any period
8 of time longer than seven years.

9 (d) Through the department of regulatory agencies and
10 subject to appropriations made to the department of regulatory
11 agencies, to employ administrative law judges on a full-time
12 or part-time basis to conduct any hearings required by this
13 part 7. Such administrative law judges shall be appointed
14 pursuant to part 10 of article 30 of title 24, C.R.S.

15 (e) To issue, deny, or refuse to renew a license or
16 certificate pursuant to this part 7;

17 (f) To take disciplinary actions in conformity with this
18 part 7;

19 (g) To delegate to the director the administration and
20 enforcement of this part 7 and the authority to act on behalf
21 of the board on such occasions and in such circumstances as
22 the board directs;

23 (h) Except as provided in section 12-61-706 (4), to
24 develop or purchase any examination required for the
25 administration of this part 7, to offer each such examination
26 at least twice a year or, if demand warrants, at more frequent
27 intervals, and to establish a passing score for each

1 examination which reflects a minimum level of competency;

2 (i) In compliance with the provisions of article 4 of
3 title 24, C.R.S., to make investigations, subpoena persons and
4 documents, which subpoenas may be enforced by a court of
5 competent jurisdiction if not obeyed, hold hearings, and take
6 evidence in all matters relating to the exercise of the
7 board's power under this part 7;

8 (j) Pursuant to sec. 1119 (b) of title XI of the federal
9 "Financial Institutions Reform, Recovery, and Enforcement Act
10 of 1989", to apply, if necessary, for a federal waiver of the
11 requirement relating to certification or licensing of a person
12 to perform appraisals and to make the necessary written
13 determinations specified in said section for purposes of
14 making such application.

15 12-61-705. Real estate appraiser licensing fee cash fund
16 - creation - use of funds - fee adjustments. (1) All fees,
17 penalties, and fines collected pursuant to this part 7 shall
18 be transmitted to the state treasurer, who shall credit the
19 same to the real estate appraiser licensing fee cash fund,
20 which fund is hereby created. All interest derived from the
21 deposit and investment of moneys in the fund shall be credited
22 to the fund. All moneys in the fund shall be subject to
23 appropriation by the general assembly for the direct and
24 indirect costs of the activities of the board and the division
25 pursuant to this part 7.

26 (2) (a) The board shall propose, as part of its annual
27 budget request, an adjustment in the amount of each fee,

1 penalty, and fine which it is authorized by law to collect.
2 The budget request and the adjusted fees, penalties, and fines
3 for the board or the division, when such fees, penalties, and
4 fines are combined with other revenue credited to the real
5 estate appraiser licensing fee cash fund, shall reflect direct
6 and indirect costs.

7 (b) Based upon the appropriation made and subject to the
8 approval of the executive director of the department of
9 regulatory agencies, the board shall adjust its fees,
10 penalties, and fines so that the revenue generated from said
11 fees, penalties, and fines when combined with other revenue
12 credited to the real estate appraiser licensing fee cash fund,
13 approximates the direct and indirect costs of the board and
14 the division. Such fees, penalties, and fines shall remain in
15 effect for the fiscal year for which the budget request
16 applies.

17 (c) For fiscal years beginning on or after July 1, 1990,
18 any unexpended and unencumbered moneys remaining in the fund
19 at the end of the prior fiscal year shall be included in the
20 appropriation to the board for the next fiscal year, and the
21 fees of the board, when adjusted for said next fiscal year,
22 shall be adjusted so that such amount is not raised from fees
23 collected by the board. If a supplemental appropriation is
24 made from the fund to the board for its activities, the fees
25 of the board, when adjusted for the fiscal year next following
26 that in which the supplemental appropriation was made, shall
27 be adjusted by an amount which is sufficient to compensate for

1 such supplemental appropriation.

2 (d) Moneys appropriated to the board in the annual
3 general appropriation act shall be designated as cash funds
4 and shall not exceed the amount anticipated to be credited to
5 the fund.

6 12-61-706. Qualifications for appraiser's license and
7 certification - continuing education. (1) A person applying
8 for an appraiser's license shall apply in such form and manner
9 as prescribed by the board. Applicants shall have had at
10 least fifty-five hours of education and training in appraisal
11 practice, as approved by the board, and shall pass an
12 examination developed or purchased by the board, except as
13 otherwise provided in subsection (4) of this section for the
14 initial examination pursuant to this section.

15 (2) A person applying for a residential appraiser's
16 certification shall have met the qualifications of subsection
17 (1) of this section and shall apply in such form and manner as
18 prescribed by the board. Applicants shall have had at least
19 forty hours of appraisal education and training, or a college
20 degree in a related field and two years of appraisal
21 experience as approved by the board, and shall pass an
22 examination developed or purchased by the board, except as
23 otherwise provided in subsection (4) of this section for the
24 initial examination pursuant to this section.

25 (3) A person applying for a general appraiser's
26 certification shall have met the qualifications of subsection
27 (1) of this section and shall apply in such form and manner as

1 prescribed by the board. Applicants shall have had at least
2 one hundred fifty hours of appraisal education and training,
3 or a college degree in a related field and three years of
4 appraisal experience as approved by the board, and shall pass
5 an examination developed or purchased by the board, except as
6 otherwise provided in subsection (4) of this section for the
7 initial examination pursuant to this section.

8 (4) (a) For purposes of such initial examination only,
9 the director shall have the following powers and duties:

10 (I) To follow the requirements for application for
11 licensure or certification pursuant to this subsection (4) and
12 subsections (1) to (3) of this section;

13 (II) To designate in advance a place of examination;

14 (III) To follow the requirements of the board for
15 determining a passing score;

16 (b) Initial appointees to the board are prohibited from
17 participation in the development of the initial examinations
18 given under this section. Any other person who participates
19 in the development of an examination pursuant to this
20 subsection (4) shall be prohibited from taking such
21 examination for a period of two years from the date the
22 examination is first given.

23 (5) The board shall prescribe continuing education
24 requirements for licensees and other persons certified under
25 this part 7 as needed to meet the requirements of the federal
26 "Real Estate Appraisal Reform Amendments", title XI of the
27 federal "Financial Institutions Reform, Recovery, and

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1 Enforcement Act of 1989" and shall require tests to measure
2 the information obtained by persons attending such continuing
3 education courses. The board shall not establish any
4 continuing education requirements which are more stringent
5 than the requirements of federal law.

6 12-61-707. Expiration of licenses - renewal. Any
7 license or certificate issued by the board shall expire on
8 January 1 of the third year following issuance if not timely
9 renewed by the licensee; except that the initial license or
10 certificate issued to a licensee shall expire January 1 of the
11 year following issuance and shall be renewed as provided in
12 this section. Upon compliance with this section and any
13 applicable rules and regulations of the board regarding
14 renewal, including the payment of a renewal fee plus a late
15 payment penalty fee established pursuant to section 12-61-705,
16 the expired license or certificate shall be reinstated. No
17 real estate appraiser's license or certificate which has not
18 been renewed for a period of time greater than two years shall
19 be reinstated, and such person shall be required to make new
20 application for licensure or certification.

21 12-61-708. Licensure or certification by endorsement.
22 The board may issue a license or certification to an appraiser
23 by endorsement to engage in the occupation of real estate
24 appraisal to any applicant who has a license, registration, or
25 certification in good standing as a real estate appraiser
26 under the laws of another jurisdiction if the applicant
27 presents proof satisfactory to the board that, at the time of

1 application for a Colorado license or certificate by
2 endorsement, the applicant possesses credentials and
3 qualifications which are substantially equivalent to the
4 requirements of this part 7. The board may specify by rules
5 and regulation what shall constitute substantially equivalent
6 credentials and qualifications and the manner in which
7 credentials and qualifications of an applicant will be
8 reviewed by the board.

9 12-61-709. Denial of license or certificate - renewal.

10 (1) The board is empowered to determine whether an applicant
11 for licensure or certification possesses the qualifications
12 for licensure or certification required by this part 7.

13 (2) If the board determines that an applicant does not
14 possess the applicable qualifications required by this part 7,
15 or such applicant has violated any provision of this part 7 or
16 the rules and regulations promulgated by the board or any
17 board order, the board may deny the applicant a license or
18 certification or deny the reinstatement of a license or
19 certificate pursuant to section 12-61-707; and, in such
20 instance, the board shall provide such applicant with a
21 statement in writing setting forth the basis of the board's
22 determination that the applicant does not possess the
23 qualifications or professional competence required by this
24 part 7. Such applicant may request a hearing on such
25 determination as provided in section 24-4-104 (9), C.R.S.

26 12-61-710. Prohibited activities - grounds for
27 disciplinary actions - procedures. (1) A real estate

1 appraiser is in violation of this part 7 if he:

2 (a) Has been convicted of a felony or has had accepted
3 by a court a plea of guilty or nolo contendere to a felony if
4 the felony is related to the ability to act as a real property
5 appraiser. A certified copy of the judgment of a court of
6 competent jurisdiction of such conviction or plea shall be
7 conclusive evidence of such conviction or plea. In
8 considering the disciplinary action, the board shall be
9 governed by the provisions of section 24-5-101, C.R.S.

10 (b) Has violated, or attempted to violate, directly or
11 indirectly, or assisted in or abetted the violation of, or
12 conspired to violate any provision or term of this part 7 or
13 rule or regulation promulgated pursuant to this part 7 or any
14 order of the board established pursuant to this part 7;

15 (c) Has accepted any fees, compensation, or other
16 valuable consideration to influence the outcome of an
17 appraisal;

18 (d) Has used advertising which is misleading, deceptive,
19 or false;

20 (e) Has used fraud or misrepresentation in obtaining a
21 license or certificate under this part 7;

22 (f) Has conducted an appraisal in a fraudulent manner or
23 used misrepresentation in any such activity;

24 (g) Has acted or failed to act in a manner which does
25 not meet the generally accepted standards of professional
26 appraisal practice as adopted by the board by rule and
27 regulation. A certified copy of a malpractice judgment of a

1 court of competent jurisdiction shall be conclusive evidence
2 of such act or omission, but evidence of such act or omission
3 shall not be limited to a malpractice judgment.

4 (h) Has performed appraisal services beyond his level of
5 competency;

6 (i) Has been subject to an adverse or disciplinary
7 action in another state, territory, or country relating to a
8 license, certificate, registration, or other authorization to
9 practice as an appraiser. A disciplinary action relating to a
10 license or certificate as an appraiser licensed or certified
11 under this part 7 or any related occupation in any other
12 state, territory, or country for disciplinary reasons shall be
13 deemed to be prima facie evidence of grounds for disciplinary
14 action or denial of licensure or certification by the board.
15 This paragraph (i) shall apply only to violations based upon
16 acts or omissions in such other state, territory, or country
17 that are also violations of this part 7.

18 (2) If an applicant, a licensee, or a certified person
19 has violated any of the provisions of this section, the board
20 may deny, or refuse to renew any license or certificate, or,
21 as specified in subsection (5) of this section, revoke or
22 suspend any license or certificate, issue a letter of
23 admonition to a licensee or certified person, or place a
24 licensee or certified person on probation.

25 (3) A proceeding for discipline of a licensee or
26 certified person may be commenced when the board has
27 reasonable grounds to believe that a licensee or certified

1 person has committed any act or failed to act pursuant to the
2 grounds established in subsection (1) of this section.

3 (4) Disciplinary proceedings shall be conducted in the
4 manner prescribed by the "State Administrative Procedure Act",
5 article 4 of title 24, C.R.S.

6 (5) As authorized in subsection (2) of this section,
7 disciplinary actions may consist of the following:

8 (a) Revocation of a license. (I) Revocation of a
9 license or certificate by the board shall mean that the
10 licensee or certified person shall surrender his license or
11 certificate immediately to the board.

12 (II) Any person whose license or certificate to practice
13 is revoked is rendered ineligible to apply for any license or
14 certificate issued under this part 7 until more than two years
15 have elapsed from the date of surrender of the license or
16 certificate. Any reapplication after such two-year period
17 shall be treated as a new application.

18 (b) Suspension of a license. Suspension of a license or
19 certificate by the board shall be for a period to be
20 determined by the board.

21 (c) Probationary status. Probationary status may be
22 imposed by the board. If the board places a licensee or
23 certified person on probation, it may include such conditions
24 for continued practice as the board deems appropriate to
25 assure that the licensee or certified person is otherwise
26 qualified to practice in accordance with generally accepted
27 professional standards of professional appraisal practice as

1 adopted by rule and regulation of the board, including any or
2 all of the following:

3 (I) The taking by him of such courses of training or
4 education as may be needed to correct deficiencies found in
5 the hearing;

6 (II) Such review or supervision of his practice as may
7 be necessary to determine the quality of his practice and to
8 correct deficiencies therein; and

9 (III) The imposition of restrictions upon the nature of
10 his appraisal practice to assure that he does not practice
11 beyond the limits of his capabilities.

12 (d) Issuance of letters of admonition. Such letters
13 shall be sent by certified mail to the licensee or certified
14 person against whom a complaint was made. The letter shall
15 advise the licensee that he may, within twenty days after
16 receipt of the letter, make a written request to the board to
17 institute formal disciplinary proceedings in order to formally
18 adjudicate the conduct or acts on which the letter was based.

19 (6) In addition to any other discipline imposed pursuant
20 to this section, any person who violates the provisions of
21 this part 7 or the rules and regulations of the board
22 promulgated pursuant to this article may be penalized by the
23 board upon a finding of a violation pursuant to article 4 of
24 title 24, C.R.S., as follows:

25 (a) In the first administrative proceeding against any
26 person, a fine of not less than three hundred dollars but not
27 more than five hundred dollars per violation;

1 (b) In any subsequent administrative proceeding against
 2 any person for transactions occurring after a final agency
 3 action determining that a violation of this part 7 has
 4 occurred, a fine of not less than one thousand dollars but not
 5 more than two thousand dollars.

6 (7) Complaints of record in the office of the board and
 7 the results of staff investigations may, in the discretion of
 8 the board, be closed to public inspection, except as provided
 9 by court order, during the investigatory period and until
 10 dismissed or until notice of hearing and charges are served on
 11 a licensee.

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

17 (9) Any board member having an immediate personal,
 18 private, or financial interest in any matter pending before
 19 the board shall disclose the fact to the board and shall not
 20 vote upon such matter.

21 (10) Any licensee or certified person having direct
 22 knowledge that any person has violated any of the provisions
 23 of this part 7 shall report such knowledge to the board.

24 (11) The board, on its own motion or upon application,
 25 at any time after the imposition of any discipline as provided
 26 in this section may reconsider its prior action and reinstate
 27 or restore such license or certificate or terminate probation

1 or reduce the severity of its prior disciplinary action. The
 2 taking of any such further action or the holding of a hearing
 3 with respect thereto shall rest in the sole discretion of the
 4 board.

5 12-61-711. Judicial review of final board actions and
 6 orders. Final actions and orders of the board under sections
 7 12-61-709 and 12-61-710 appropriate for judicial review shall
 8 be judicially reviewed in the court of appeals, in accordance
 9 with section 24-4-106 (11), C.R.S.

10 12-61-712. Unlawful acts - real estate appraiser license
 11 required. (1) It is unlawful for any person to violate any
 12 provision of this part 7 or, on and after July 1, 1991, to act
 13 as a real estate appraiser in this state without first having
 14 obtained a license or certificate from the board pursuant to
 15 this part 7.

16 (2) Any person who violates any provision of subsection
 17 (1) of this section commits a class 3 misdemeanor and shall be
 18 punished as provided in section 18-1-106, C.R.S. Any person
 19 who subsequently violates any provision of subsection (1) of
 20 this section within three years after the date of a conviction
 21 for a violation of subsection (1) of this section commits a
 22 class 6 felony and shall be punished as provided in section
 23 18-1-105, C.R.S.

24 12-61-713. Injunctive proceedings. (1) The board may,
 25 in the name of the people of the state of Colorado, through
 26 the attorney general of the state of Colorado, apply for an
 27 injunction in any court of competent jurisdiction to

1 perpetually enjoin any person from committing any act
2 prohibited by the provisions of this part 7.

3 (2) Such injunctive proceedings shall be in addition to
4 and not in lieu of all penalties and other remedies provided
5 in this part 7.

6 (3) When seeking an injunction under this section, the
7 board shall not be required to allege or prove either that an
8 adequate remedy at law does not exist or that substantial or
9 irreparable damage would result from a continued violation.

10 12-61-714. Requirement for appraisers to be licensed by
11 July 1, 1991. Unless a federal waiver is applied for and
12 granted pursuant to section 12-61-704 (1) (j), on and after
13 July 1, 1991, any person practicing real estate appraisal in
14 this state shall be licensed as provided in this part 7, and,
15 on and after said date, no person shall practice without such
16 a license or certificate or hold himself out to the public as
17 a real estate appraiser or appraiser unless licensed or
18 certified pursuant to this part 7.

19 SECTION 2. 24-1-122 (2) (k), Colorado Revised Statutes,
20 1988 Repl. Vol., is amended to read:

21 24-1-122. Department of regulatory agencies - creation.
22 (2) (k) (I) Division of real estate, the head of which shall
23 be the division director. The real estate commission, created
24 by part 1 of article 61 of title 12, C.R.S. and its powers,
25 duties, and functions are transferred by a type 1 transfer to
26 the department or regulatory agencies as the division of real
27 estate.

(II) THE DIVISION SHALL INCLUDE THE BOARD OF REAL ESTATE
APPRAISERS, CREATED BY PART 7 OF ARTICLE 61 OF TITLE 12,
C.R.S, WHICH SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES
AND FUNCTIONS, UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS
IF THE SAME WERE TRANSFERRED THERETO BY A TYPE 1 TRANSFER.

SECTION 3. 24-34-104 (28), Colorado Revised Statutes,
1988 Repl. Vol., as amended, is amended to read:

24-34-104. General assembly review of regulatory
agencies and functions for termination, continuation, or
reestablishment. (28) (a) The following division in the
department of regulatory agencies shall terminate on July 1,
1999: The Colorado civil rights division, including the
Colorado civil rights commission, created by part 3 of this
article.

(b) THE FOLLOWING BOARD IN THE DEPARTMENT OF REGULATORY
AGENCIES SHALL TERMINATE ON JULY 1, 1999: THE BOARD OF REAL
ESTATE APPRAISERS, CREATED BY SECTION 12-61-703, C.R.S.

SECTION 4. Appropriation. In addition to any other
appropriation, there is hereby appropriated, out of any moneys
in the real estate appraiser licensing fee cash fund not
otherwise appropriated, to the department of regulatory
agencies for allocation to the board of real estate
appraisers, for the fiscal year beginning July 1, 1990, the
sum of _____ dollars (\$ _____) and _____ FTE, or
so much thereof as may be necessary, for the implementation of
this act.

SECTION 5. Effective date. This act shall take effect

1 July 1, 1990.

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

BY REPRESENTATIVE Kopel;
also SENATOR DeNier.

A BILL FOR AN ACT

- 1 CONCERNING ESTABLISHMENT AND ENFORCEMENT OF MINIMUM STANDARDS
- 2 FOR QUALIFICATIONS AND TRAINING OF X-RAY ASSISTANTS.

Bill Summary

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

Defines "x-ray assistant". Declares the legislative intent of the act to be the enhancement of the protection of persons using and receiving machine sources of ionizing radiation for therapeutic and diagnostic purposes in settings other than hospitals licensed by the department of health. Further declares that the general assembly does not intend the operation of the act to create any shortage of qualified x-ray assistants in any area of the state. Requires the state board of health to promulgate rules and regulations setting minimum standards for the qualifications and training of x-ray assistants. Provides that on and after a certain date, no health care professional licensed in this state as a podiatrist, chiropractor, dentist, osteopathic or medical doctor, nurse, or physical therapist shall employ any x-ray assistant who does not meet the standards of the minimum qualifications and training set by the state board of health. Requires the department of health during its inspections of machine sources of ionizing radiation to also inspect to insure that x-ray assistants using such equipment meet the minimum requirements promulgated by the state board of health and to report the use of substandard equipment and employees to the appropriate regulatory board or official in the division of registrations in the department of regulatory agencies for podiatry, chiropractic, dentistry, medical practice, nursing, or physical therapy. Makes the employment of such an unqualified x-ray assistant by such a licensed

health care professional a violation of the respective practice act for such individual and grounds for disciplinary action.

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

2 SECTION 1. 25-11-104, Colorado Revised Statutes, 1982

3 Repl. Vol., as amended, is amended BY THE ADDITION OF THE

4 FOLLOWING NEW SUBSECTIONS to read:

5 25-11-104. Rules and regulations to be adopted - fees -

6 fund created. (9) (a) For purposes of this subsection (9),

7 "x-ray assistant" means any person other than a health care

8 professional otherwise licensed under articles 32, 33, 35, 36,

9 38, or 41 of title 12, C.R.S., who administers a machine

10 source of ionizing radiation to humans for therapeutic or

11 diagnostic purposes.

12 (b) The general assembly hereby finds, determines, and

13 declares that it is the intent of the general assembly by the

14 enactment and enforcement of this subsection (9) that the

15 health and safety of x-ray assistants using and persons

16 receiving machine sources of ionizing radiation for

17 therapeutic or diagnostic purposes be furthered, but that the

18 general assembly seeks to ensure that there not be a shortage

19 of qualified individuals to operate such machine sources of

20 ionizing radiation in all areas of the state for beneficial

21 medical purposes.

22 (c) (I) In order to carry out the legislative intent

23 expressed in paragraph (b) of this subsection (9), the state

24 board of health shall adopt rules and regulations prescribing

1 minimum standards for qualifications and training required for
2 x-ray assistants using machine sources of ionizing radiation
3 in settings other than hospitals licensed pursuant to section
4 25-1-107.

5 (II) On and after January 1, 1992, health care
6 professionals licensed under articles 32, 33, 35, 36, 38, and
7 41 of title 12, C.R.S., shall only employ, in settings other
8 than hospitals licensed pursuant to section 25-1-107, x-ray
9 assistants who meet the qualifications and training specified
10 by this subsection (9).

11 (III) On and after January 1, 1992, the department, as
12 part of its inspection function under subsection (8) of this
13 section, shall also determine that any x-ray assistant using a
14 machine source of ionizing radiation meets the requirements of
15 this subsection (9). If an inspection determines that an
16 x-ray assistant using a machine source of ionizing radiation
17 does not meet the requirements of this subsection (9), the
18 division shall report such deficiency to the Colorado podiatry
19 board under article 32 of title 12, C.R.S., the Colorado state
20 board of chiropractic examiners under article 33 of title 12,
21 C.R.S., the state board of dental examiners under article 35
22 of title 12, C.R.S., the Colorado state board of medical
23 examiners under article 36 of title 12, C.R.S., the state
24 board of nursing under article 38 of title 12, C.R.S., or the
25 director of the division of registrations for physical
26 therapists registered pursuant to article 41 of title 12,
27 C.R.S., as appropriate for the professional regulation of the

1 health care professional responsible for such machine source
2 of ionizing radiation. Such deficiency or an adverse report
3 under subsection (8) of this section shall form the basis of
4 disciplinary action against the licensed health care
5 professional pursuant to articles 32, 33, 35, 36, 38, or 41 of
6 title 12, C.R.S., as appropriate.

7 (10) (a) The failure of any qualified individual making
8 an inspection under subsections (8) and (9) of this section to
9 provide reports on deficiencies in machine sources of ionizing
10 radiation or the qualifications of x-ray assistants to the
11 department and to the appropriate agencies under articles 32,
12 33, 35, 36, 38, or 41 of title 12, C.R.S., shall be grounds
13 for requiring the department to terminate the contract with
14 any such qualified inspector.

15 (b) Qualified inspectors shall be immune from suit in
16 any action, civil or criminal, for official acts performed in
17 good faith in the implementation of subsections (8) and (9) of
18 this section.

19 (c) Any person participating in good faith in the making
20 of a complaint or report or participating in any investigation
21 pursuant to subsections (8) and (9) of this section shall be
22 immune from any liability, civil or criminal, that otherwise
23 might result by reason of such action.

24 SECTION 2. 12-32-107 (3), Colorado Revised Statutes,
25 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
26 NEW PARAGRAPH to read:

27 12-32-107. Issuance, revocation, or suspension of

1 license - probation - immunity in professional review.

2 (3) (x) Any violation of any provisions of section 25-11-104
3 (8) or (9), C.R.S., or of any rule or regulation of the state
4 board of health promulgated pursuant thereto.

5 SECTION 3. 12-33-117 (2), Colorado Revised Statutes,
6 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
7 NEW PARAGRAPH to read:

8 12-33-117. Suspension or revocation of license.
9 (2) (p) Any violation of any provisions of section 25-11-104
10 (8) or (9), C.R.S., or of any rule or regulation of the state
11 board of health promulgated pursuant thereto.

12 SECTION 4. 12-35-118 (1), Colorado Revised Statutes,
13 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
14 NEW PARAGRAPH to read:

15 12-35-118. Causes for denial of issuance or renewal -
16 suspension or revocation of licenses - other disciplinary
17 action - unprofessional conduct defined - immunity in
18 professional review. (1) (z) Any violation of any provisions
19 of section 25-11-104 (8) or (9), C.R.S., or of any rule or
20 regulation of the state board of health promulgated pursuant
21 thereto.

22 SECTION 5. 12-36-117 (1), Colorado Revised Statutes,
23 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
24 NEW PARAGRAPH to read:

25 12-36-117. Unprofessional conduct. (1) (ee) Any
26 violation of any provisions of section 25-11-104 (8) or (9),
27 C.R.S., or of any rule or regulation of the state board of

1 health promulgated pursuant thereto.

2 SECTION 6. 12-38-117 (1), Colorado Revised Statutes,
3 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
4 NEW PARAGRAPH to read:

5 12-38-117. Grounds for discipline. (1) (p) Any
6 violation of any provisions of section 25-11-104 (8) or (9),
7 C.R.S., or of any rule or regulation of the state board of
8 health promulgated pursuant thereto.

9 SECTION 7. 12-41-118 (1), Colorado Revised Statutes,
10 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A
11 NEW PARAGRAPH to read:

12 12-41-118. Denial, revocation, or suspension of
13 registration. (1) (o) Violated any provisions of section
14 25-11-104 (8) or (9), C.R.S., or of any rule or regulation of
15 the state board of health promulgated pursuant thereto.

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

BY REPRESENTATIVES Philips and Kopel;
also SENATOR Gallagher.

A BILL FOR AN ACT

1 CONCERNING ADVISORY COMMITTEES SCHEDULED TO SUNSET JULY 1,
2 1990.

Bill Summary

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

Continues various advisory committees scheduled to sunset July 1, 1990. Deletes the per diem allowance for members of the advisory council to the division of employment and training. Sets up a system to stagger the terms of members of such council and a system to stagger the terms of members of the advisory committee to the division of highway safety, appointed by the governor.

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

4 SECTION 1. 8-72-105 (1), Colorado Revised Statutes, 1986
5 Repl. Vol., is amended to read:

6 8-72-105. Advisory council. (1) (a) There is hereby
7 created a council known as the advisory council to the
8 division of employment and training, composed of four employer
9 representatives, four employee representatives, two members of
10 the general assembly, and three representatives of the general

1 public. Except for the legislative members, members of the
2 council shall be appointed by the governor, who shall take
3 into account the extent to which the council represents the
4 geographic areas, population concentrations, and ethnic
5 communities of this state.

6 (b) Appointments by the governor shall be for a period
7 of four years. FOR THE PURPOSE OF STAGGERING THE TERMS OF
8 MEMBERS OF THE COUNCIL APPOINTED BY THE GOVERNOR, THE TERMS OF
9 THREE SUCH MEMBERS SCHEDULED TO EXPIRE APRIL 20, 1993, SHALL
10 EXPIRE APRIL 1, 1994, AND THE TERM OF ONE MEMBER SCHEDULED TO
11 EXPIRE APRIL 20, 1992, SHALL EXPIRE APRIL 1, 1994. The two
12 members of the general assembly shall be appointed by the
13 speaker of the house of representatives and the president of
14 the senate, respectively. Said two members shall be appointed
15 from each of the two major political parties for terms of two
16 years or for the same terms to which they were elected,
17 whichever is the lesser. Successors shall be appointed in the
18 same manner as the original members. Vacancies of all other
19 members shall be filled by appointment by the governor for
20 unexpired terms. In the case of a vacancy, the remaining
21 members of the council shall exercise all the powers and
22 authority of the council until such vacancy is filled.

23 (c) Members of the council shall be reimbursed for any
24 necessary expenses. ~~and--shall--receive--for--each--day--actually~~
25 ~~engaged--in--the--duties--of--the--council--a--per--diem--amount--of~~
26 ~~thirty-five-dollars;-except-that-the-legislative-members-shall~~
27 ~~be-compensated-in-the-same-manner-as-for-attendance-at-interim~~

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Bill 12

1 ~~committee-meetings.~~

2 (d) The council shall aid the division in formulating
3 policies and discussing problems related to the administration
4 of articles 70 to 82 of this title and assuring impartiality
5 and freedom from political influence in the solution of such
6 problems. Expenditures out of the unemployment revenue fund
7 pursuant to section 8-77-106 shall be made only upon the
8 approval of a majority of the council first had and obtained.
9 A majority of the council shall constitute a quorum to
10 transact business and for the exercise of any of the powers or
11 authority conferred.

12 SECTION 2. 24-42-102 (1), Colorado Revised Statutes,
13 1988 Repl. Vol., is amended to read:

14 24-42-102. Advisory committee - sunset review.

15 (1) There is hereby created within the division of highway
16 safety an advisory committee to advise and consult with the
17 director of the division of highway safety. The advisory
18 committee shall be composed of twelve citizens of the state
19 appointed as follows: In each second year, the governor shall
20 appoint four members for terms beginning January 31 of said
21 year and expiring January 30 of the fourth year thereafter.
22 Persons holding office on June 15, 1987, are subject to the
23 provisions of section 24-1-137. NOTWITHSTANDING THE
24 PROVISIONS OF SECTION 24-1-137, TO STAGGER THE TERMS OF
25 MEMBERS OF THE COMMITTEE IN A MANNER CONSISTENT WITH A
26 FOUR-YEAR TERM OF OFFICE, THE TERMS OF FOUR MEMBERS OF THE
27 COMMITTEE APPOINTED BY THE GOVERNOR IN EXECUTIVE ORDER NUMBER

1 A023 87, DATED FEBRUARY 13, 1987, SHALL EXPIRE JANUARY 30,
2 1993, AS SCHEDULED. THE TERM OF ONE MEMBER APPOINTED BY THE
3 GOVERNOR PURSUANT TO SAID EXECUTIVE ORDER AND THE TERMS OF
4 THREE MEMBERS OF THE COMMITTEE APPOINTED BY THE GOVERNOR FOR
5 TERMS COMMENCING JANUARY 31, 1989, SHALL EXPIRE JANUARY 30,
6 1995. Any vacancy on the advisory committee shall be filled
7 by the governor by the appointment of a qualified person for
8 the unexpired term. Each THE committee shall elect its own
9 officers, fix its times and places of meetings, and determine
10 its own procedure. The advisory committee shall be composed of
11 persons who are known to have an interest in highway safety,
12 and shall be representative of all groups interested and
13 active in the promotion of highway safety, AND SHALL ALSO
14 INCLUDE REPRESENTATIVES OF RURAL AREAS OF THE STATE. The
15 members of the committee shall receive no compensation for
16 their services but shall be reimbursed for actual and
17 necessary expenses incurred in the performance of their
18 official duties. The members of the advisory committee created
19 by section 132-1-8, C.R.S. 1963, and existing on July 1, 1974,
20 shall constitute the first advisory committee and shall serve
21 the remainder of the terms for which originally appointed.

22 SECTION 3. Repeal. 2-3-1203 (3) (c) (III), (3) (c) (V),
23 (3) (c) (VI), (3) (c) (VII), (3) (c) (VII.5), and (3) (c)
24 (VIII), Colorado Revised Statutes, 1980 Repl. Vol., as
25 amended, 8-72-105 (2), Colorado Revised Statutes, 1986 Repl.
26 Vol., 24-42-102 (2), Colorado Revised Statutes, 1988 Repl.
27 Vol., and 25-1-208 (7), 26-4-113 (2), 26-4.5-113 (6) (b), and

1 26-15-108 (2), Colorado Revised Statutes, 1989 Repl. Vol., are
2 repealed.

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